

Gig Harbor City Council Meeting

**December 13, 2004
7:00 p.m.**



AGENDA FOR GIG HARBOR CITY COUNCIL MEETING

December 13, 2004 – 7:00 p.m.

CALL TO ORDER:

PLEDGE OF ALLEGIANCE:

PUBLIC HEARINGS:

1. Clarifying Maximum House Size for Building Moratorium.
2. Adopting a Revised Comprehensive Plan as Required by State Statute (RCW 36.07A.130)
3. Adopting Revisions to the Zoning Ordinance to Increase Certain Zoning Densities, Adding Notification Requirements for Mineral Resource Lands and Amending Critical Areas Regulations as Required by State Statute (RCW 36.70A.130).

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 City Council Meeting of November 22, 2004.
2. Correspondence / Proclamations: a) Note from Chamber re: Terry McClelland
b) Certificates of Recognition: Melinda Jenkins and Kaylee Moore.
3. Department of Assigned Counsel – Renewal of Contract.
4. Renewal of Radio Communications Maintenance Agreement.
5. Contract for Environmental Services.
6. Approval of Payment of Bills for November 22, 2004:
Checks #45674 through #45824 in the amount of \$397,839.84.
7. Approval of Payroll for the month of November:
Checks #3513 through #3550 and direct deposits in the amount of \$254,172.49.

OLD BUSINESS:

1. Second Reading of Ordinance – Clarifying Maximum House Size for Building Moratorium.
2. Second Reading of Ordinance – Amending the 2004 Budget.
3. Second Reading of Ordinance - Adopting a Revised Comprehensive Plan as Required by State Statute (RCW 36.07A.130).
4. Second Reading of Ordinance – Adopting Revisions to the Zoning Ordinance to Increase Certain Zoning Densities, Adding Notification Requirements for Mineral Resource Lands, and Amending Critical Areas Regulations as Required by State Statute (RCW 36.70A.130).

NEW BUSINESS:

1. Settlement Agreement – North Creek Homeowner's Association V. City of Gig Harbor.
2. Resolution – City Support for Peninsula School District Levy.
3. Association of Washington Cities Workers' Compensation Group Retrospective Rating Program.
4. Pierce County 2005 Comprehensive Plan Amendments – Council Letter to P.C. Executive.
5. Pierce County 2005 Comprehensive Plan Amendment – Submitted Applications.
6. First Reading of Ordinance – Update of Building Codes.
7. First Reading of Ordinance – Building Code Advisory Board.
8. First Reading of Ordinance – Flood Plain Regulations.
9. Resolution – Autumn Crest Final Plat.

STAFF REPORT:

1. GHPD – November Stats.
2. Public Right(s) of Way Standards Update.

PUBLIC COMMENT:

COUNCIL COMMENTS / MAYOR'S REPORT:

ANNOUNCEMENT OF OTHER MEETINGS:

EXECUTIVE SESSION: For the purpose of discussing property acquisition per RCW 42.30.110(1)(b).

ADJOURN:

GIG HARBOR CITY COUNCIL MEETING OF NOVEMBER 22, 2004

PRESENT: Councilmembers Ekberg, Young, Franich, Conan, Dick, Picinich, Ruffo and Mayor Wilbert.

CALL TO ORDER: 7:05 p.m.

PLEDGE OF ALLEGIANCE:

PUBLIC HEARINGS:

The Mayor announced that there would be four public hearings. She opened the first at 7: 03.

1. 2005 Proposed Budget – Final Hearing. David Rodenbach, Finance Director, said that the total budget was the same as at the first reading. The only change is the addition of \$70,000 to the Building Department of the General Fund to outfit the front doors of the Civic Center with ADA hardware and to repair the HVAC system. There were no questions or comments from the public and the Mayor closed the public hearing at 7:05 p.m. She then opened the hearing on the next item.

2. North Donkey Creek Annexation. John Vodopich, Community Development Director, explained that this public hearing is for a resolution accepting the petition for annexation of approximately 9.7 acres located north of 96th, and across from the entrance of the Gig Harbor Sportsman's Club. He gave an overview of the effort to annex this property, adding that the next step is to adopt the resolution accepting the petition before forwarding this to the Boundary Review Board for consideration.

There were no comments and the Mayor closed the public hearing at 7:06 p.m. and opened the next public hearing.

3. Six-Year Transportation Improvement Program. John Vodopich said that this is a public hearing on the resolution to adopt the annual Six-Year Transportation Improvement Program that is required under state statute. The proposed TIP was reviewed by the Community Development Committee and it is now before Council for adoption.

There were no comments and the Mayor closed the public hearing on this item at 7:07 p.m. and opened the final public hearing.

4. Adopting a Revised Comprehensive Plan and Implementing Development Regulations. John Vodopich explained that yearly the city is required to review and update the Comprehensive Plan and implement development regulations by December 1st. What is before Council for consideration is the revised 2004 Comprehensive Land Use Plan, with amendments to Title 17 with regards to densities and zoning. He continued to explain that there also is a proposed new chapter relating to adjacent

property notification for mineral resource lands, and a substantive revision to the Critical Areas Ordinance relating to wetlands.

Mr. Vodopich presented information on recently received letter from the Department of Ecology regarding the critical areas update, and a letter from Jim Wright regarding the deletion of the PRD provision in the R-1 zone. Mr. Vodopich said that in addition, the Planning Commission had forwarded recommendations, which were outlined in an attachment in the packet. He added that they had unanimously recommended approval of the proposed amendments.

Mr. Vodopich said that he had passed out a colored version of Chapter 18 that responds to a number of issues raised in the letter from DOE, and that he would be asking a representative from Adolphson and Associates to come to the next meeting to address these concerns.

Mr. Vodopich said that Carol Morris has recommended that the amendments be separated into two ordinances, which will be done before the next meeting. He continued to explain that both he and Ms. Morris recommend deletion of the word "maximum" before "density" in the five residential zones. He said that the consultants assisting in the amendments are present tonight to answer questions and that there is a memo from AHBL in the Council packet that outlines the proposed amendments in each chapter. In addition, the minutes from the public hearing held by the Planning Commission are included.

Jim Wright – 2419 76th Ave Ct NW. Mr. Wright summarized the information in the letter he had submitted. He said that one of the goals in the Urban Growth Act was to increase densities in areas that city services are available. He said that he would like the ability for planned residential developments and for more creative ways to achieve increased density to not be deleted. He said that the Planning Staff needs these tools in order to make decisions without having to go through hearings and variances that add time and cost to development. He asked Council to refer to the information in his letter.

There were no further public comments and the public hearing was closed at 7:14 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 City Council Meeting of November 8, 2004.
2. Contract for Attorney Services.
3. Stinson Avenue Pedestrian Improvement Project - Asphalt Paving Contract.
4. Pump Station 2A Wet Well Construction – Contract Bid Award.
5. Renewal of Emergency Management Services Agreement with Pierce County.
6. Liquor License Renewals: The Harbor Kitchen; Terracciano's.
7. Approval of Payment of Bills for November 22, 2004:
Checks #45565 through #45673 in the amount of \$340,080.07.

MOTION: Move to approve the consent agenda as presented.
Ruffo / Picinich – unanimously approved.

OLD BUSINESS:

1. Second Reading of Ordinance – 2005 Proposed Budget. David Rodenbach said that he had nothing to add, and offered to answer questions.

MOTION: Move to adopt Ordinance No. 976 adopting the 2005 budget.
Ruffo / Picinich – unanimously approved.

2. Second Reading of Ordinance – Amendment to the Planned Community Development Residential Medium Density (PCD-RMD) Zone Performance Standards. Steve Osguthorpe explained that this ordinance amends the development standards for the PCD-RMD designation in the Gig Harbor North area. He gave an overview of the changes, adding that he had made the amendment requested by Council at the last meeting.

Councilmember Franich asked for clarification for whether there would be other ways to obtain more open space than this proposal. Mr. Osguthorpe explained that under the existing language, there is a stated minimum density but no upper limit, even with bonus density. This inconsistency was the reason for the proposed change. The proposed change would allow a minimum of five and a maximum of eight units, but the allowance for additional density would apply here as well as in a PRD. He continued to explain that the 30% open space requirements are identical in both.

Councilmember Franich voiced concerns that this change would discourage affordable housing. He then said he was concerned with the results from the floating impervious coverage allowance. He stressed that this type of development would detract from the character of Gig Harbor. Councilmember Young explained that this change allows more housing diversity without limiting development to apartments. There was continued discussion regarding what constitutes affordable housing and how density affects the price.

Mayor Wilbert asked about a site for mobile or modular homes. Mr. Osguthorpe explained that the code allows manufactured homes only in a designated park and that a property owner would have to propose a park in order to do this.

Councilmember Franich then voiced concern that the Planning Commission recommendation came without full support. He urged Council to take a good look at the issues before approval.

Jim Wright. Mr. Wright asked for clarification on the density in an R-1 zone for a manufactured home park. Mr. Osguthorpe said that it would be the same for single family, or three per acre. He said that this is not feasible and is another reason to increase densities.

Carl Halsan. Mr. Halsan addressed the concern voiced by Councilmember Franich by explaining that this change would not eliminate the ability to construct apartments, but would provide a second choice in that zone. He continued to explain that the market and insurance concerns are pushing developers towards the cottage style homes.

MOTION: Move to adopt Ordinance No. 977 as presented.
Picinich / Ruffo – six voted in favor. Councilmember Franich voted against the motion.

3. Reintroduction - First Reading of Ordinance – Clarifying Maximum House Size for Building Moratorium. Steve Osguthorpe gave a brief history of this item, and explained the changes that had been made since the last reading of the ordinance recognize that there are some open structures that might be significant in size and impact. He said that the 3500 s.f. limit had been retained that would include garages, but exclude other open area structures.

Michael Kattermann, AHBL – 316 Occidental Ave So, Seattle. Mr. Kattermann explained that he represents the Peninsula School District. He referred to the letter asking for Council's consideration of an additional amendment to the ordinance to address the district's issues and to allow the school to proceed with Phase II of the Harbor Ridge Middle School project. He said that if the moratorium should continue for any length of time that they may be able to get through the code amendments and get a height exception, but still not be able to apply for land use approval. Mr. Kattermann continued to explain that they are requesting language be added that would exempt the Harbor Ridge site from the moratorium, and read the proposed language that would accomplish this. He stressed that granting exemption from the moratorium in no way would grant any approval for the project, as they would still have to obtain a code amendment to the height exception, gain approval by the Hearing Examiner, and go through site plan and design review.

Mr. Kattermann addressed Council's questions regarding the project. After further discussion, Steve Osguthorpe suggested an exemption for public schools, explaining that because schools are a conditional use, there will be the opportunity to review the height and scale of a the project. He was directed to amend the ordinance to exempt public schools from the moratorium and bring it back at the next meeting as a public hearing and second reading.

NEW BUSINESS:

1. First Reading of Ordinance – Amending the 2004 Budget. David Rodenbach, Finance Director, explained that this ordinance increases the Building Fund department of the General Fund by \$37,100.00 to account for additional expenses incurred in this department. He said that this will return at the next meeting for a second reading.

2. First Reading of Ordinance – Repealing Ordinance No. 966 and Terminating the Water Moratorium. John Vodopich explained that on October 7, 2004, the Department of Ecology granted the city additional water rights, and the appeal period has expired

without the filing of any appeals. He said that this ordinance terminates the water moratorium established under Ordinance No. 966, recommending that this be passed in one reading and that it become effective immediately upon passage.

After discussion, Councilmembers agreed that it was appropriate to lift the moratorium as quickly as possible.

MOTION: Move to adopt Ordinance No. 978 repealing Ordinance No. 966 and terminating the water moratorium; that it is passed in one reading and that it becomes effective immediately.
Ruffo / Ekberg – unanimously approved.

3. First Reading of Ordinance - Adopting a Revised Comprehensive Plan and Implementing Development Regulations as Required by State Statute (RCW 36.70A.130). John Vodopich explained that this ordinance was the subject of the public hearing earlier this evening, and will return as two separate ordinances and continued public hearing on December 13th. He added that he will ask the consultants to respond to the letter received from the Department of Ecology before the next meeting. Mr. Vodopich gave a brief overview of the changes and addressed questions from Council.

Councilmember Young asked that this be re-advertised as a public hearing due to the code changes, specifically to the wetland buffers.

Councilmember Franich commented on the elimination of the Urban Growth Area tiers. He said that this is a more credible way to determine what should be in the UGA. He then said that the reduction in minimum lot size from 12,000 s.f. to 7200 s.f. is too low, and asked if a 10,800 s.f. lot size would work as well and still meet the density requirements.

John Vodopich responded that Pierce County and the others cities never implemented tiering, and so this was removed when the County-wide Planning Policies were updated. It is appropriate that Gig Harbor also remove the tiering policies contained in the 1994 Comprehensive Plan. He then addressed the minimum lot sizes, explaining that the increase to four dwelling units per acre calculates to lot sizes of 10,800 s.f., but it was recommended by the consultant that it would be appropriate to take into account such things as critical areas, roads, and utilities and to further reduce the minimum lot size calculation to 7200 s.f. He continued to say that this is something for deliberation by Council.

4. Resolution – Accepting North Donkey Creek Annexation Petition. John Vodopich said that this was a resolution accepting annexation for approximately ten acres north of 96th Street, and adoption of the resolution would result in the forwarding of the application to the Pierce County Boundary Review Board for consideration.

MOTION: Move to adopt Resolution No. 634 accepting the North Donkey Creek Annexation Petition.
Dick / Picinich – unanimously approved.

5. Resolution – Adopting the Six-Year Transportation Program. Mr. Vodopich offered to answer questions on the resolution adopting the annual Six-Year Tip for the years 2005-2010.

MOTION: Move to adopt Resolution No. 635 adopting the Six-Year Transportation Program.
Picinich / Young – unanimously approved.

STAFF REPORTS:

1. John Vodopich, Community Development Director – Third Quarter 2004 Building Permit Data. Mr. Vodopich explained that what had been prepared is a report of the third quarter building permits statistics. He said that Dick Bower, Building Official, was present to answer questions.

PUBLIC COMMENT: None.

COUNCIL COMMENTS / MAYOR'S REPORT:

Councilmember Franich asked for an update on the progress on revisions to the Public Works Standards in relation to the chapter deleted from the Design Review Manual. Steve Osguthorpe said that he had met with Steve Misiurak, City Engineer, who has indicated that they are in the process of amending the standards and are aware of the Council expectation to insert this chapter. He said that he had not yet seen a draft, but that he would follow up to address concerns.

Councilmember Franich stressed that he believes that public works projects need to go before the Design Review Board. Other Councilmembers agreed, and Councilmember Dick shared that the Community Development Committee was assured by Mr. Misiurak that the draft would be coming to them soon. He stressed the importance of reference to public projects in both the Design Review Manual and the Public Works Standards and consistency between both documents.

John Vodopich said that he would come back with a staff report at the December 13th meeting with an update on the progress of the standards. He said that as a policy, there are public meetings on public works projects to gain public input, using the Stinson Avenue Pedestrian Improvement project as an example.

Councilmember Young voiced concern that by submitting a public works project to the Design Review Board would indicate that they have some approval authority. Further discussion clarified that the City Engineer provides the expert advice, but the city can adopt legislative rules on how projects can be designed aesthetically in conjunction with good engineering practices. Councilmember Ruffo suggested clear direction on how the Design Review Board and public works can work together to design a project that

works best for all. Mark Hoppen said that there are simple mechanisms to allow this to occur without slowing a project, and that the Design Review Procedures Review Committee should be able to define those mechanisms.

Councilmember Franich said that he is proud of the City of Sumner as they chose not to increase their property taxes as they have a healthy budget, and hopes that Gig Harbor will follow suit.

Councilmember Picinich said that Council should write a letter to the Pierce County Council stressing that the city has chosen not to take any action to include the 30 area off Crescent Valley Drive in the UGA. John Vodopich said that he had sent a letter to the Senior Planner at Pierce County in charge of the Comprehensive Plan Amendments indicating that the Council deliberated this at length and decided not to submit an application. He said that he would draft another letter for Council signature to consider at the next meeting. He pointed out that if any property owners submitted applications for inclusion, those would be referred to the city for review, and at that time Council would be asked to respond. Councilmembers agreed that they would like to take a more proactive stance and send a letter at this time.

ANNOUNCEMENT OF OTHER MEETINGS:

EXECUTIVE SESSION: For the purpose of discussing pending litigation per RCW 42.30.110(1)(i).

MOTION: Move to adjourn to Executive Session at 8:26 p.m. for approximately five minutes for the purpose of discussing pending litigation.
Picinich / Ruffo - unanimously approved.

MOTION: Move to return to regular session at 8:40 p.m.
Picinich / Conan – unanimously approved.

MOTION: Move to adjourn at 8:40 p.m.
Picinich / Young – unanimously approved.

CD recorder utilized:
Disc #1 Tracks 1 – 21.
Disc #2 Tracks 1 – 5.

Gretchen A. Wilbert, Mayor

Molly Towslee, City Clerk



GIG HARBOR PENINSULA AREA
CHAMBER OF COMMERCE

FACSIMILE TRANSMITTAL SHEET

TO:

Gretchen Wilbert, *Board Member -Associate*

COMPANY:

City of Gig Harbor

FAX NUMBER: 253-851-8563

PHONE NUMBER: 253-851-8136

FROM:

Kim D.E.D. Hails, *Executive Director*

DATE:

11/30/2004

TOTAL NO. OF PAGES INCLUDING COVER: **2**

RE: **ED National Certification
Letter Terry McClelland**

Dear Gretchen:

Attached is a letter we received from a Harbor Heights Teacher, Mr. Terry McClelland expressing his appreciation for the Chamber's support of the National Certification.

Thank you, and have a wonderful week!

Respectfully,

Kim

Kim D.E.D. Hails, *Executive Director*
Gig Harbor Peninsula Area Chamber of Commerce





4002 - 36th Street N.W.
Gig Harbor, WA 98335
858-5600

Rec'd
11/22/01

Leslie Rose - Principal

Gig Harbor Chamber of Commerce
3302 Harborview Dr., Suite 2
Gig Harbor, WA 98332

Dear Chamber,

In January 2001, I believe, the Chamber began a program to reach out to the school community by financially supporting teachers working toward their National Certification. I was one of those first teachers supported. It has taken a few tries but I have persisted and recently achieved the goal of becoming a Nationally Certificated teacher.

I want to sincerely thank you for your support. The process of becoming nationally certificated is a rather daunting and, often, frustrating one. I had considered dropping the idea at a couple different junctures for a variety of valid reasons. One of the things that kept me going, however, was the support the Chamber gave... support which I did not take lightly. Originally, I almost turned down the offer because I didn't want to feel beholden to anybody in case I changed my mind about the whole process. I know there would have been no problem had I given up. I continued largely because it was a challenge to me and I wanted to see it through and partly because I *did* feel an obligation to those who supported me.

That kind of community-school support is wonderful and invaluable. It encourages people to stretch themselves and to take risks. (Believe me, it *is* a risk. Your heart beats hard when you open that webpage to see how you did, what your score is. There is a deep feeling of disappointment when, after 250+ hours of work you find that your score is not quite up to "standard". You take it very personally.)

Thank you for your work, not only in this one arena but in the many, many ways the Chamber and all its members help in supporting and encouraging our public schools and staff.

Sincerely,

Terry McClelland
Harbor Heights Elementary

Looking forward
to seeing you
Dec. 21st

The Peninsula School District shall provide equal educational opportunity and treatment for all students in all aspects of the academic and activities program without regard to race, creed, color, or national origin, sex, sexual preference, marital status, previous arrest (unless a clear and present danger exists), or incarceration or non-program-related physical, sensory or mental disabilities, as per RCW 49.60 Law Against Discrimination

CERTIFICATE OF RECOGNITION

WHEREAS, Melinda Jenkins, a student at Gig Harbor High School, has completed all her requirements for earning the Girl Scout Gold Award; *and*

WHEREAS, to earn this distinction, Melinda has earned four interest project patches, each of which require seven activities that center on skill building, technology, service projects, and career exploration; *and*

WHEREAS, Melinda has earned the Career Exploration pin that involves researching careers, resume writing, and planning a career fair or trip; *and*

WHEREAS, in addition, Melinda has earned the Senior Girl Scout Leadership Award that requires a minimum of 30 hours of work involving use of leadership skills; *and*

WHEREAS, Melinda has designed a self-development plan that requires assessment of ability to interact with others and prioritize values, participating in a community service project, and developed a plan to promote Girl Scouting; *and*

WHEREAS, Melinda led tours of the Washington State History Museum and created a History Booklet for children; *and*

WHEREAS, all of these things promote community service, personal and spiritual growth, positive values, and leadership skills; *and*

WHEREAS, in 1980, the Girl Scout Gold Award was officially designated as the highest award in Girl Scouting,

I, Gretchen A. Wilbert, Mayor of the City of Gig Harbor, do formally recognize

Melinda Jenkins

for her efforts, which will have a positive and lasting impact on the community.

Gretchen A. Wilbert, Mayor

Date

CERTIFICATE OF RECOGNITION

WHEREAS, Kaylee Moore is a very active student at Gig Harbor High School, a member of the cheerleading squad, a member of the Diversity Club, a participant in Young Life and leads a Young Life group for eighth grade girls; and

WHEREAS, at the prompting and support of her friends and family, Kaylee submitted her application for the Miss Washington Teen USA pageant; and

WHEREAS, Kaylee was accepted into the pageant process; and

WHEREAS, Kaylee decided to participate because she determined that it would be a fun, new experience where she would meet many new people and success in the competition could result in thousands of dollars worth of scholarships to go toward fulfilling her dream of becoming a surgeon and open a clinic in Africa; and

WHEREAS, Kaylee prepared for the pageant by attending workshops to learn poise, confidence and the other necessities to successfully participate; and

WHEREAS, Kaylee was nervous at first, but it became all about having fun and the goal of making it to the Top 10; and

WHEREAS, Kaylee remained calm throughout the process and lived up to her vow to stay true herself no matter the circumstances and have an experience she would be proud of and always remember; and

WHEREAS, through her successful efforts, Kaylee was crowned 2005 Miss Washington Teen USA and will represent Washington State in the National competition for 2005 Miss Teen USA this August; now therefore,

I, Gretchen A. Wilbert, Mayor of the City of Gig Harbor, do formally recognize and congratulate

Kaylee Moore

for her efforts, which will have a positive and lasting impact on her personal goals and the community.

Gretchen A. Wilbert, Mayor

Date



ADMINISTRATION

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MARK HOPPEN, CITY ADMINISTRATOR
SUBJECT: ASSIGNED COUNSEL AGREEMENT
DATE: DECEMBER 2, 2004

MH

INFORMATION/BACKGROUND

Pierce County provides indigent defense services for the Gig Harbor Municipal Court through Pierce County's Department of Assigned Counsel. The attached contract authorizes the continuation of this relationship from January 1, 2005 through December 31, 2006.

POLICY CONSIDERATIONS

Except for the change of dates and payment amounts, the contract provisions are identical to Assigned Counsel contract provisions approved by the City Council for the year 2003. The City of Gig Harbor and Pierce County anticipate a two-year contract.

FISCAL CONSIDERATIONS

The new contract provides for a 35.5% increase in cost for services for 2005-2007. **The contract can be evaluated quarterly to determine whether payments should be revised to accurately reflect costs.** In previous years, neither party to the agreement made request for such revision. Moreover, the contract can be terminated with 30 days written notice by either party to the agreement. The caseload for public defense has increased significantly; the reasons for this are likely as complex as society.

1997	50 cases
1998	73 cases
1999	78 cases
2000	66 cases
2001	123 cases
2002	92 cases
2003	137 cases
2004	139 cases (1/04 – 11/30/04)

The city budget provides \$50,000 to cover this contract and its potential fluctuations as per quarterly review. The 2003 contract increased 2% from 2002. DAC expected the caseload over the course of the contract to decline consistent with previous years, but the caseload has essentially doubled. Note again that DAC has not requested a quarterly re-evaluation of the contract throughout the term of the contract.

RECOMMENDATION

Administration recommends approval of the agreement.

ASSIGNED COUNSEL AGREEMENT

THIS AGREEMENT, made and entered into this 1st day of January, ~~2003~~, 2005 by and between the City of Gig Harbor, (hereinafter called the "City"), and Pierce County, (hereinafter called the "County").

WITNESSETH:

WHEREAS, the Revised Code of Washington, Rules for Courts of Limited Jurisdiction JCR 2.11 requires legal counsel to be furnished every indigent defendant charged in the Gig Harbor Municipal Court with an offense whereby upon conviction may be punished by imprisonment; and

WHEREAS, the Gig Harbor Municipal Court Judge and City Administrator determined that the Pierce County Department of Assigned Counsel (hereinafter "the Department") is capable and qualified to provide the necessary and required legal services; and

WHEREAS, said Judge and City Administrator have evaluated the performance of the above-named Department and found the requirements of the Rules for Court of Limited Jurisdiction met by providing the necessary and qualified legal services to indigent defendants, thereby satisfying the requirements of the Judge of the Municipal Court; and

WHEREAS, the Pierce County Department of Assigned Counsel indicated their willingness to enter into a contractual agreement to furnish such services to the City for the period beginning January 1, ~~2003~~ 5, and ending December 31, ~~2004~~ 2006.

NOW THEREFORE,

1. The Department will provide legal counsel services to indigent defendants in the Gig Harbor Municipal Court for the 2004 ~~5-2006~~ calendar years. Such services will include, but are not limited to, legal services to all indigent defendants charged with misdemeanor crimes, including, where appropriate, interviewing defendants held in custody, representation at arraignments as requested by the Court, and at all subsequent proceedings in the Municipal Court. Indigency status will be determined by the City in coordination with the Court.
2. In return for the services rendered to the city and to those indigent defendants represented by the Department, the City agrees to pay the County a sum not to exceed ~~\$31,370.00~~ 42,500.00 annually, commencing January 1, ~~2003~~ 2005, and ending December 31, ~~2004~~ 2006. Payments

shall be due and payable in the amount of ~~\$7688.73~~ \$10,625.00 the end of each quarter for those services rendered.

3. The parties to this agreement may review the agreement quarterly to determine whether the costs contemplated by the Department of Assigned Counsel have been materially altered such that the payments made by the City are not proportionate to the actual cost of the services provided. Every quarter, the Department shall provide the City with the appropriate records to facilitate such review. If at any such review by the Department or by the City it is determined that the actual expenses of the Department have been materially increased or decreased, then the payment provisions of this Agreement may be amended upon written agreement by the parties, or upon the option of either party, canceled with 90 days written notice.
4. The Department will comply with such reporting and project evaluation requirements as may be established by the City to enable it to appraise the effectiveness of the Department's services. Upon request by the City, the Department shall allow the City reasonable access to its records for the purpose of evaluating the Department's performance under this paragraph.
5. The Department will not subcontract any of its responsibilities or activities required hereunder without the prior written approval of the Judge(s) of the Municipal Court of Gig Harbor and the City.
6. The Department shall carry on its activities pursuant to this agreement at all times in full compliance with all applicable laws, rules and regulations of the United States Government, the State of Washington, the County of Pierce, and the City of Gig Harbor.
7. In all hiring or employment made possible by or resulting from this Agreement, (1) there will not be any discrimination against any employee or applicant for employment because of race, color, religion, sex, or national origin, (2) affirmative action will be taken to assure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, or marital status, and (3) the Department agrees to comply with Section 504 of the Rehabilitation Act of 1973, thereby assuring that no person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or other be subjected to discrimination under any program, service, or activity provided by the Department as part of this Agreement.
8. None of the funds, materials, property, or services provided directly or indirectly in this Agreement shall be used in the performance of this Agreement for any partisan political activity, or to further the election or

defeat of any candidate for public office. None of the funds provided under this Agreement shall be used for publicity or propaganda purposes designed to defeat or support legislation pending before any legislative body.

9. The County shall provide all the Department's malpractice coverage either through malpractice insurance or through self-insurance.
10. ~~The Department~~ Pierce County Department of Assigned Counsel agrees to indemnify, defend and hold the City harmless for any and all claims or liabilities of any nature for any negligent or intentional acts performed by the Department, its agents or employees pursuant to this Agreement.
11. Either party may terminate this Agreement by providing the other with written notice 30 days prior to the termination date.
12. The written provisions of this Agreement shall supersede all prior verbal statements of any officer or representative of the City, or any prior agreements between the parties and such statement or prior agreements shall not be effective or be construed as entering into, forming a part of, or altering this Agreement in any way. The entire agreement between the parties is contained in this Agreement document.
13. In the event that any provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid, the remaining provisions shall remain in full force and effect.
14. Notice given pursuant to the Agreement shall be given in writing to the parties as follows:

Department: Department of Assigned Counsel
949 Market Street, Suite 334
Tacoma, WA 98402

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

This Agreement shall be in effect until the 31st day of December, ~~2004~~ 2006, provided that it be renewable or renegotiable on or before such termination date.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year above written.

CITY OF GIG HARBOR

PIERCE COUNTY

MAYOR GRETCHEN A. WILBERT

JOHN H. HILL, DIRECTOR, DAC

CITY ADMINISTRATOR

PIERCE COUNTY EXECUTIVE DIRECTOR



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: RENEWAL OF PIERCE COUNTY RADIO COMMUNICATIONS
MAINTENANCE AGREEMENT
DATE: DECEMBER 13, 2004

BACKGROUND

The Operations division has utilized the services of the Pierce County Radio Communications Division since 1988 to provide communications equipment, repair and service. The agreement must be renewed each calendar year.

The City Attorney has reviewed and approved the language in this agreement.

FISCAL CONSIDERATIONS

The agreement provided by Pierce County for these services is offered at the same time and materials rate as last year. This work is anticipated under repairs and maintenance in the 2005 Budget.

RECOMMENDATION

I recommend that Council authorize the Mayor to sign the maintenance agreement as presented.

AGREEMENT FOR COMMUNICATIONS MAINTENANCE PROGRAM

AGREEMENT made January 1, 2005, between PIERCE COUNTY, herein referred to as "County," and CITY OF GIG HARBOR (PW) referred to as CITY OF GIG HARBOR (PW).

SECTION I. THE PARTIES

This is a communications maintenance and installation program contract between CITY OF GIG HARBOR (PW) and PIERCE COUNTY.

SECTION II. TERM OF AGREEMENT – TERMINATION

This agreement shall commence as of January 1, 2005 and terminate on December 31, 2005. Either party may terminate this agreement upon thirty- (30) days written notice.

SECTION III. OBLIGATIONS OF COUNTY

- A. All maintenance, repair, installation, engineering, and upgrading of CITY OF GIG HARBOR (PW)'s radio communications system previously agreed to or requested in writing by CITY OF GIG HARBOR (PW) shall be carried out by County, according to schedules or arrangements to be negotiated by the parties giving due consideration to the immediacy of the need and the workload of the County.
- B. On notice from CITY OF GIG HARBOR (PW), County shall make any repairs necessitated by normal wear and tear resulting from normal operation, whenever such repairs are required for safe and proper operation of radio system unit.
- C. County and its agents and representatives shall at all reasonable times be given access to the radio system unit for the purpose of inspecting, altering, repairing, improving or adding to or removing the same.
- D. The described work on base station and associated equipment will be done on site. Work on all equipment, including portables, will be performed at the County Radio Shop, which shall include installation of radio equipment in all CITY OF GIG HARBOR (PW)'s vehicles.

SECTION IV. FEES

CITY OF GIG HARBOR (PW) Shall reimburse the County for its services described above, at the rate of Ninety (\$90.00) Dollars per hour from 7:30 a.m. through 4:00 p.m., plus time and one-half or double time adjustments required by law, where performed outside these hours as authorized by CITY OF GIG HARBOR (PW). In addition, the County shall be reimbursed its cost plus 20% for all materials and parts provided by County; except that prior written authorization by CITY OF GIG HARBOR (PW) Shall be required for materials or parts in excess of Five Hundred (\$500.00) dollars. Payment shall be made by CITY OF GIG HARBOR (PW) within thirty (30) days of presentation of invoice listing time, parts and materials by the County.

SECTION V. INDEMNITY

Notwithstanding anything to the contrary contained in this agreement, CITY OF GIG HARBOR (PW) shall not be responsible or liable in any manner whatsoever for, and the County shall indemnify CITY OF GIG HARBOR (PW) against any and all claims, suits, damages, costs or expenses arising from or growing out of, or caused directly or indirectly by any defect or error in, or any negligence or error, in connection with the installation, maintenance, engineering or upgrading of the radio system unit performed by the County, except for the sole negligence of CITY OF GIG HARBOR (PW). The County will not be responsible for claims arising out of the Antenna Supporting Structures.

SECTION VI. ASSIGNABILITY

This agreement shall not be assigned by County without the written consent of CITY OF GIG HARBOR (PW). If this agreement is assigned without CITY OF GIG HARBOR (PW)'s written consent either by act of County or by operation of law, it shall thereupon terminate subject to the provisions herein before set forth.

SECTION VII. GOVERNING LAW

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

IN WITNESS WHEREOF, the parties have executed this agreement this _____ day of _____, 20_____.

CITY OF GIG HARBOR (PW)

PIERCE COUNTY

BY: _____
Authorized Signatory


Steven C. Bailey, Director
Department of Emergency Management
Radio Communications Division



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: CAROL MORRIS, CITY ATTORNEY
SUBJECT: CONTRACT FOR ENVIRONMENTAL SERVICES
DATE: DECEMBER 13, 2004

INFORMATION/BACKGROUND

As part of the activities associated with the purchase and sale of the Eddon Boatyard property, the City must obtain a report from an environmental consultant on the condition of the property. The City has already hired environmental attorneys experienced with the interpretation of such reports and the purchase transaction.

The City's environmental attorneys, Bill Joyce and Barry Ziker, recommended that the City hire Anchor Environmental, LLC (Anchor) to perform the environmental report for the Eddon Boatyard property. A copy of the City's standard consultant contract was forwarded to Anchor and they asked for changes to the indemnification provision. Anchor will not agree to sign the City's contract with the standard indemnification provision.

Bill Joyce recommends that the City hire Anchor because of the quality of their work and their unique experience in providing reports evaluating sediment in the water. Mr. Joyce states that the seller of the property had contacted Anchor about performing this work, so Anchor is already familiar with the site. The fact that Anchor was contacted by the seller to perform the work will also lend more credibility to Anchor's report, which will be used by the City to satisfy at least one condition of the purchase and sale agreement that is being negotiated.

RECOMMENDATION

The City Attorney recommends that the City Council authorize the Mayor to sign the consultant's contract with Anchor with the modifications shown in the attached contract.

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

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Anchor Environmental, L.L.C., a limited liability corporation organized under the laws of the State of Washington located and doing business at 1423 3rd Avenue, Suite 300, Seattle, Washington 98101 (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in negotiations for the purchase of property commonly known as the Eddon Boatyard. Initial investigation has disclosed the presence of hazardous waste on the property, and the City desires that the Consultant perform services necessary to evaluate the extent of the contamination, and provide the consultation services described below.

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work, dated November 30, 2004, including any addenda thereto as of the effective date of this agreement, all of which are attached hereto as **Exhibit A – Scope of Work**, and are incorporated by this reference as if fully set forth herein.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

TERMS

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 (see **Exhibit A**) 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 A**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit A** or bill at rates in excess of the

hourly rates shown in **Exhibit A**; unless the parties agree to a modification of this Contract, pursuant to Section 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 by December 31, 2008; provided however, that additional time shall be granted by the City for excusable days 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 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 original 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; PROVIDED THAT: 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. 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.

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. All policies and coverage's shall be on a claims made basis.

C. The Consultant is responsible for the payment of any deductible or self-insured retention that is required by any of the Consultant's insurance. If the City is required to contribute to the deductible under any of the Consultant's insurance policies, the Contractor shall reimburse the City the full amount of the deductible within 10 working days of the City's deductible payment.

D. The City of Gig Harbor shall be named as an additional insured on the Consultant's commercial general liability policy. This additional insured endorsement shall be included with evidence of insurance in the form of a Certificate of Insurance for coverage necessary in Section B. The City reserves the right to receive a certified and complete copy of all of the Consultant's insurance policies.

E. Under this agreement, the Consultant's insurance shall be considered primary in the event of a loss, damage or suit. The City's own comprehensive general liability policy will be considered excess coverage with respect to defense and indemnity of the City only and no other party. Additionally, the Consultant's commercial general liability policy must provide cross-liability coverage as could be achieved under a standard ISO separation of insured's clause.

F. The Consultant shall request from his insurer a modification of the ACORD certificate to include language that prior written notification will be given to the City of Gig

Harbor at least 30-days in advance of any cancellation, suspension or material change in the Consultant's coverage.

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. The Consultant may retain copies of documents, drawings, designs and reports. 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 Community Development Director and the City shall determine the term or provision's true intent or meaning. The City Community Development 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 Community Development Director determination in a reasonable time, or if the Consultant does not agree with the City's decision on the disputed matter, jurisdiction of any resulting litigation shall be filed in King County Superior Court, King 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:

Anchor Environmental LLC
 1423 Third Avenue Suite 300
 Seattle WA 98101
 (206) 207-9130

John Vodopich
 Community Development Director
 City of Gig Harbor
 3510 Grandview Street
 Gig Harbor, Washington 98335
 (253) 851-8145

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 _____, 200__.

CONSULTANT

By: David Inghtan
 Its Principal

CITY OF GIG HARBOR

By: _____
 Mayor

Notices to be sent to:

-
-
-
-
-

John Vodopich
Community Development Director
City of Gig Harbor
3510 Grandview Street
Gig Harbor, Washington 98335
(253) 851-6170

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that David Templeton is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the member of Anchor Environmental, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: December 1, 2004



Barry G. Ziker
BARRY G. ZIKER
(print or type name)

NOTARY PUBLIC in and for the State of Washington, residing at:

SEATTLE, WA
My Commission expires: 6-16-06

STATE OF WASHINGTON)
) ss.
 COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Gretchen A. Wilbert is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Mayor of Gig Harbor to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

(print or type name)
 NOTARY PUBLIC in and for the
 State of Washington, residing at:

My Commission expires: _____



Anchor Environmental, L.L.C.
1423 3rd Avenue, Suite 300
Seattle, Washington 98101
Phone 206.287.9130
Fax 206.287.9131

December 6, 2004

Mr. William Joyce
Salter Joyce Ziker, PLLC
1601 Fifth Avenue, Suite 2040
Seattle, WA 98101-1686

RECEIVED

DEC 07 2004

Salter Joyce Ziker, PLLC

**Re: Exhibit A-Scope of Work
Environmental Assessment and Remediation Services
Eddon Boatyard Property**

Dear Mr. Joyce:

This letter contains Anchor Environmental L.L.C.'s (Anchor's) scope of work for assistance to the City of Gig Harbor (City) on environmental assessment and remediation issues for the upland and sediment portions of the Eddon Boatyard Property (also known as the "Harbor Cove" property) located at 3711 Harborview Drive (the Property).

Anchor is an environmental science and engineering consulting firm based in Seattle, with offices in Oregon, California, Pennsylvania, Mississippi, and Massachusetts, that specializes in waterfront projects. Our staff of over 70 includes sediment and soil remediation engineers and scientists, hydrogeologists, environmental planners, and landscape architects who have extensive national experience working on waterfront development projects. Anchor is unique in that it has specialized experience taking shoreline sediment remediation, habitat, and park development projects from the remedial investigation and feasibility study phase, through design and permitting, and into construction and monitoring. Anchor has proven its capability by managing shoreline and sediment investigation and remedial design teams that draw on local, site-specific expertise and experience. Anchor also supports our clients in property acquisition and insurance coverage matters.

In addition to our familiarity with the Property, we believe that our experience with these specific types of environmental issues, including boatyards and park development, is consistent with the City's needs. Additional information on Anchor can be found at www.anchorenv.com, or we can provide a formal Statement of our Qualifications, including key project personnel resumes, at your request.

Mr. William Joyce

December 6, 2004

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Based on our preliminary review of material prepared by the Eddon Boatworks Ad-Hoc Committee and conversations with John Vodopich (Community Development Director), it is Anchor's understanding that the City is currently assessing whether to buy the Property (as allowed for under Proposition No. 1 Land Acquisition and Development General Obligation Bonds) and proceed with initial restoration of the Eddon boatyard and dock for historical, cultural, educational, and recreational purposes. Initial restoration would include any necessary environmental cleanup and remediation of the property to support restoration. Because the type and extent of development can drive the level of environmental remediation needed (and costs), Anchor expects to continue to work with the City to focus our understanding of the City's potential plans for development of the property. The scope of work contained in this letter is intended to set the foundation for an estimate of environmental costs associated with likely site development plans.

Task Descriptions

Identified tasks are discussed below.

Task 1 – Review Available Information

Through previous work, Anchor is familiar with conditions at the Property. We have been provided copies of the 1999 Phase I Environmental Site Assessment (Saltbush 1999) and the 2003 Geotechnical Engineering – Phase II Environmental Investigation (Krazan & Associates, Inc. 2003). It is our understanding that these reports are the only available documents relevant to the property, although we have requested additional information (e.g., electronic site maps, outfall information, etc.). The information from these reports will form the basis of a recommended investigation approach and discussions with the City (Task 2). Even though our staff is familiar with the property, we have allowed for a brief site reconnaissance to view the existing condition of the property (likely in conjunction with a meeting with the City). We assume that the City will provide a survey map of the Property (electronic CAD file) to support development of site maps.

Task 2 – Prepare Sampling and Analysis Plan

Anchor participated in a conference call on December 2, 2004 with John P. Vodopich and Salter Joyce Ziker, PLLC to discuss preliminary or conceptual development plans that may already exist for the site. The purpose of this meeting was to determine the general planned facility layout and type of buildings, if possible. We understand that the Property may be developed for maritime-themed educational activities, a waterfront park, and/or a boardwalk; our understanding of these development plans or concepts affects the type of environmental investigation that is needed to establish related estimated environmental remediation activities and costs.

For example, a site planned for commercial development will have less stringent environmental cleanup requirements under Ecology's Model Toxic Control Act (MTCA)

Mr. William Joyce

December 6, 2004

Page 3

than would be required for a residential development. Buildings with deep foundations or underground parking might have more complex soil cleanup issues than buildings with slab on-grade construction. Similarly, any sediment quality issues will need to consider future waterfront uses (habitat versus marina). Some of the issues we discussed in the meeting included:

- What are the uncertainties associated with the existing levels and quality of data currently available?
- Is existing information sufficient to identify areas/volumes soils, groundwater, and sediments that may require cleanup?
- If not, what information is needed to make such determinations?
- What potentially unknown cleanup issues have not been addressed at the site to date?
- What additional information would be needed to conceptually design remediation (upland and sediment) sufficient to obtain a No Further Action letter, or similar determination, from Ecology?
- What are the regulatory options for addressing the environmental issues?

Based on the December 2, 2004 discussion of these considerations and an understanding of the Eddon Boatworks Ad-Hoc Committee short term goals (November 18, 2004), Anchor has enough information to move forward with the development of a detailed Sampling and Analysis Plan (SAP). The SAP will identify the exact locations, numbers, and types of samples to be collected as well as the physical and chemical testing of samples that will be conducted. As noted above, we assume that the City will provide a survey map of the Property (electronic CAD file) to support development of site maps. The SAP will describe the overall approach and specific methods used in the investigation. The SAP will be of sufficient detail to document quality control/quality assurance levels for results that may be needed for possible future City efforts including support of remedial design tasks and/or submittal of data to Ecology for No Further Action or other determinations. We have not allowed for submittal, review, or approval by Ecology prior to implementation of field activities.

Additional sampling or data gathering will likely be needed in the future to further support design, permitting, and implementation of final site restoration and development plans should the City decide to proceed with purchase, remediation, and development of the property.

Following sampling and analysis methods outlined in the SAP, samples will be collected and submitted to laboratories for chemical and/or physical analyses. Based on our current site understanding, it is anticipated that sample collection will likely include, at a minimum, soils, groundwater, and sediment samples and may also include bank seep and/or surface water samples. Once data are received from the laboratory, results will be quality assurance reviewed, compiled, and summarized in a data report to the City. This data report will compare analytical results to appropriate Ecology Sediment

Mr. William Joyce

December 6, 2004

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Management Standards (SMS) and MTCA criteria to estimate the potential for and extent of any remediation that may be required at the site. Implementation of sampling is discussed in Task 3.

Task 3 – Sampling, Analysis, and Reporting

The proposed scope and budget for this task cannot be determined until the exact numbers and types of needed samples have been determined through Task 2.

Task 4 – Estimated Site Cleanup Costs

Using the information obtained through Task 3, the need for and extent of any environmental remediation of the site will be described for this task. This will include and evaluation of both potential upland and in-water remediation needs. The determination of remediation needs will be based on appropriate Ecology SMS and MTCA criteria. The remediation needs will also consider the development plans and/or range of development scenarios that the City is considering for the site. Depending on the level of specificity the City has available at this time, Anchor will determine how remediation might vary under different development scenarios. As noted above, the need for soil excavation or sediment dredging to support development construction may dictate the extent to which soils/sediment may need to be removed versus contained safely in place without further disturbance. These types of options will also impact the costs of remediation.

Anchor will prepare a memorandum to the City that will identify possible and/or a likely range of remediation scenarios (consistent with the development scenarios). Each scenario will be presented in sufficient detail so that the general remedial approach for each type and area of contaminated media is described. Some scenarios may include approaches to minimize future remediation costs using risk-based cleanup methods. For example, it may be possible to reduce soil cleanup costs using institutional controls or risk-based soil re-use methods. The uncertainties associated with the remedial scenarios in terms of obtaining No Further Action determinations from Ecology will be described. For each scenario, a general level cost estimate will also be provided. Because they are based on conceptual remedial designs, these cost estimates should be considered planning level estimates only. The cost to complete Task 4 can be estimated when we know more about contamination at the site and have considered the City's site development plans.

Estimated Costs and Contracting

Based on our current understanding, the following major tasks, budgets, and schedule were estimated:

Mr. William Joyce
December 6, 2004
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Task	Description	Proposed Budget	Estimated Completion Date*
1	Review Available Information	\$2,500	Early-December 2004
2	Prepare Sampling and Analysis Plan	\$8,500	Mid December 2004
3	Sampling, Analysis, and Reporting	Reserved	Mid January 2005
4	Estimated Site Cleanup Costs	Reserved	TBD

*Assuming December 7, 2004 authorization date.

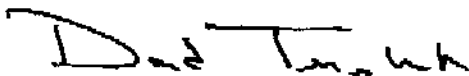
From the results of Task 4, we anticipate the City would be able to make decisions on whether to purchase the property and estimated costs that would be incurred for remediation before site development could be completed.

These tasks will be completed on a time and material (rate schedule attached) and not to exceed basis under our existing Consultant Services Agreement with the City (this letter would be Exhibit A - Scope of Work). If the project conditions change outside the scope of this cost estimate, Anchor will work with you to re-scope the necessary project elements.

If this Scope of Work meets the City's needs, please sign and return one copy for our files. Please feel free to contact me (206) 287-9130 or dtempleton@anchorenv.com if you have any questions or would like additional information on this scope of work.

Please let me know if you have any questions, or need any additional information. We are glad for this opportunity to be of service to the City of Gig Harbor.

Sincerely,



David Templeton
Anchor Environmental

Mr. William Joyce

December 6, 2004

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ACCEPTED BY:

David Templeton

December 6, 2004

David Templeton, Partner
Anchor Environmental, L.L.C.

Date

Name: _____ Date: _____

Title: _____

City of Gig Harbor

- cc: Jon Boyce, Anchor Environmental, L.L.C.
- John Edwards, Anchor Environmental, L.L.C.
- Carl Stivers, Anchor Environmental, L.L.C.

Mr. William Joyce
 December 6, 2004
 Page 7

EXHIBIT B

2004/2005 Rate Schedule
Anchor Environmental, L.L.C.

Professional Level Hourly Rates

Principal Engineer/Planner/Scientist	\$165
Consulting Engineer/Planner/Scientist	\$145
Senior Engineer/Land Arch/Planner/Scientist	\$130
Engineer/Planner/Scientist	\$105
Senior Staff Engineer/Land Arch/Planner/Scientist	\$90
Staff 2 Engineer/Planner/Scientist	\$80
Staff 1 Engineer/Planner/Scientist	\$65
Senior Designer	\$85
Designer/Graphics	\$75
Project Assistant/Administrative	\$60

Special Hourly Rates

All work by a testifying expert..... 1.5 times professional level rate

EXPENSE BILLING RATES

Expense Rates

Diving Services (per day).....	Project Specific
CAD/GIS/Modeling (per hour)	\$10.00
Graphic Plots (varies with plot size)	\$3-6/sf
Photocopies (per copy)	\$0.10
Faxes (per page)	\$1.00
Mileage (per mile)	Current Federal Standard

FEE ON LABOR AND EXPENSE CHARGES

Subcontracts/subconsultants	10%
Travel and other direct costs	10%
Field equipment & supplies	10%

This is a company confidential document.



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: STEVE OSGUTHORPE, AICP *SO.*
PLANNING & BUILDING MANAGER
SUBJECT: SECOND READING AND PUBLIC HEARING OF REVISED
ORDINANCE ON BUILDING SIZE MORATORIUM CLARIFYING
MAXIMUM HOUSE SIZE AND EXEMPTING PUBLIC SCHOOLS
DATE: DECEMBER 13, 2004

INFORMATION/BACKGROUND

At the November 8, 2004 Council meeting, the staff presented for first reading an ordinance amending the existing building size moratorium to redefine how building size should be calculated. The proposed revised language would have excluded from the building size calculation eave overhangs, open carports, decks and porches. There were differing opinions expressed by Council Members on this matter because the moratorium was intended to address overall scale of buildings, but it was recognized that the standard way of determining a building size (at least in the real estate industry) is to calculate only the enclosed living area of a structure. The changes presented at the November 8th meeting would have been consistent with that standard. However, it was also recognized that some structures that are entirely open (e.g., the Skansie Boatyard structure) may also have impacts because of their overall size. The proposed changes would not have taken that into account.

There was some discussion about increasing the building size limit to 4,000 square feet, but staff understood that proposal to apply only if we maintained our current language that includes in the building size calculation all roofed portions of buildings. Based upon concerns to be consistent with the "industry standard", and to ensure that fully open stand-alone structures are not excluded, the staff recommended at the November 22, 2004 meeting that the Council adopt an amended version of the language presented at the November 8th meeting, which would read as follows:

" . . . projects in which building(s) do not exceed 3,500 square feet in size, including each story of a building (finished or unfinished) as defined in GHMC Section 17.04.750, and including all habitable space with a finished ceiling height 5 feet or greater, including garages, shops and similar work or storage rooms, and also including non-walled stand-alone structures such as pavilions and canopies, but excluding eave overhangs open carports, decks, and porches which are incidental and secondary extensions of a fully enclosed structure.

The Council was supportive of the revised language, which would be considered at a public hearing on December 13, 2004.

During public comment at the November 22, 2004 meeting, Michael Katterman, AHBL, representing the Peninsula School District, asked the Council to consider amendments that would exempt public schools, subject to certain criteria. After deliberation on this matter, it was agreed to include public schools in the list of exemptions in the proposed amendments. The legal notice for the public hearing on the proposed amendments was therefore amended to reflect this change.

POLICY CONSIDERATIONS

The City's code defines "building" as ". . . any structure built for the support or enclosure of persons, animals, chattels or property of any kind." (GHMC Section 17.04.130).

The City's code defines "structure" as ". . . a combination of materials that is constructed or erected, either on or under the ground, or that is attached to something having a permanent location on the ground, excluding residential fences, retaining walls, rockeries and similar improvements of a minor character the construction of which is not regulated by the building code of the city." (GHMC Section 17.04.770).

The City's Code defines "story" as ". . . that portion of a building between any floor and the next floor above, except that the topmost story shall be that portion of a building between the topmost floor and the ceiling or roof above it. If the finished floor level directly above a basement, cellar or unused floor space is more than six feet above the grade for more than 50 percent of the total perimeter of the building or is more than 12 feet above the grade at any one point, then such basement, cellar or unused floor space shall be considered a story. A story as used here shall not exceed 15 feet in height." (GHMC Section 17.04.750).

Section 1.4 of Chapter 17.99 (Design Manual) specifies zone transition requirements intended to ensure compatibility between structures in opposing zones.

RECOMMENDATION

I recommend that the City Council adopt the Ordinance as presented at this second reading.

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO THE EMERGENCY MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR NEW DEVELOPMENT OR CERTAIN TYPES OF RE-DEVELOPMENT IN THE CITY'S HEIGHT RESTRICTION AREA, AMENDING ORDINANCE NO. 965 IMPOSING THE MORATORIUM AND ORDINANCE NO. 969 ADOPTING FINDINGS AND CONCLUSIONS SUPPORTING THE CONTINUATION OF THE MORATORIUM BY AMENDING THE DEFINITION OF "EXEMPT DEVELOPMENT PERMITS," TO SPECIFY THE AREAS TO BE INCLUDED IN THE CALCULATION OF THE 3,500 SQUARE FOOT LIMITATION AND TO INCLUDE PUBLIC SCHOOLS IN THE LIST OF EXEMPTIONS.

WHEREAS, on July 12, 2004, the Gig Harbor City Council passed Ordinance No. 965, imposing an immediate moratorium on the acceptance of applications for new development or certain types of re-development within the height restriction area as shown on the official height restriction map; and

WHEREAS, Ordinance No. 965 defined the permit applications that were exempt from the moratorium; and

WHEREAS, on September 13, 2004, the City Council passed Ordinance No. 968, which adopted findings and conclusions supporting the continued maintenance of the moratorium; and

WHEREAS, Ordinance 968 included definitions of the permit applications that were exempt from the moratorium; and

WHEREAS, on December 13, 2004, after a public hearing, the City Council heard testimony on the definition of "exempt permit applications" and deliberated on the issue; Now, therefore,

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

Section 1. The City Council finds that the definition of "exempt development permit" in Ordinances No. 965 and 968 is too restrictive for the reason that (a) covered open areas of a house like porches and carports do not significantly add to the visual bulk of a structure, and (b) public schools are essential public facilities that must meet minimum size requirements to serve their intended purpose and (c) the only school site in the height restriction area is in the PI district, which is subject to zone transition standards of Chapter 17.99 that are intended to address a building's height and scale in relation to surrounding buildings in opposing zones.

Section 2. The City Council hereby amends Section 1 in Ordinance 965 and Section 1 in Ordinance 968 as follows:

Definitions. For the purpose of this Ordinance, the following definitions shall apply:

A. '**Exempt Development Permits**' shall include all of the following permit applications for 'development' or 'development activity' defined in GHMC Section 19.14.020(24) and 19.14.010(26), as copy of which is attached to this Ordinance as Exhibit B, which:

1. are not subject to any other moratorium in the City;
2. were determined complete by City staff and submitted to the City on or before the effective date of this Ordinance;
3. propose development or a development activity on property located outside the City Height Restriction Area (see, Subsection B below); and
4. are project(s) located on publicly-owned property and which building(s) do not exceed one thousand (1,000) square feet in size;
5. include demolition permits, sign permits, and marinas without upland buildings;

6. are building permits associated with development applications which were determined complete by City staff before the effective date of this Ordinance; and

7. are projects in which building(s) do not exceed 3,500 square feet in size, including each story of a building (finished or unfinished) as defined in GHMC Section 17.04.750, and including all habitable space with a finished ceiling height 5 feet or greater, including garages, shops and similar work or storage rooms, and also including non-walled stand-alone structures such as pavilions and canopies, but excluding eave overhangs open carports, decks, and porches which are incidental and secondary extensions of a fully enclosed structure; and

8. Public Schools.

'Exempt development permits' shall also include any permits meeting all of the above criteria and which involve interior remodeling of existing structures anywhere in the City, as long as the remodeling will not increase the size of the existing structure in footprint, height, bulk or scale.

* * *

Section 3. Amendment Does Not Affect Other Provisions of Ordinances

965 and 968. All other provisions of Ordinances 965 and 968 shall remain the same, and this Ordinance does not affect any other provision of those Ordinances, except as specifically amended above.

Section 4. Moratorium Maintained. This Ordinance shall not affect the moratorium imposed by Ordinances 965 and 968.

Section 5. Severability. If any section, sentence, clause or phrase of this Ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or unconstitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 6. Effective Date. This Ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the Gig Harbor City Council and the Mayor of the City of Gig Harbor this ___th day of _____, 2004.

CITY OF GIG HARBOR

GRETCHEN WILBERT, MAYOR

ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, CITY CLERK

APPROVED AS TO FORM:

By: _____
CAROL A. MORRIS, CITY ATTORNEY

FIRST READING:
DATE PASSED:
DATE OF PUBLICATION:
EFFECTIVE DATE:

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

On _____, 2005, the City Council of the City of Gig Harbor, Washington, approved Ordinance No. _____, the main points of which are summarized by the title as follows:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO THE EMERGENCY MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR NEW DEVELOPMENT OR CERTAIN TYPES OF RE-DEVELOPMENT IN THE CITY'S HEIGHT RESTRICTION AREA, AMENDING ORDINANCE NO. 965 IMPOSING THE MORATORIUM AND ORDINANCE NO. 969 ADOPTING FINDINGS AND CONCLUSIONS SUPPORTING THE CONTINUATION OF THE MORATORIUM BY AMENDING THE DEFINITION OF "EXEMPT DEVELOPMENT PERMITS," TO SPECIFY THE AREAS TO BE INCLUDED IN THE CALCULATION OF THE 3,500 SQUARE FOOT LIMITATION AND TO INCLUDE PUBLIC SCHOOLS IN THE LIST OF EXEMPTIONS.

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


APPROVED by the City Council at their meeting of _____, 2005.

MOLLY TOWSLEE, City Clerk



"THE MARITIME CITY"

ADMINISTRATION

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: DAVID RODENBACH, FINANCE DIRECTOR 
SUBJECT: SECOND READING OF AN ORDINANCE AMENDING THE 2004 BUDGET
DATE: DECEMBER 13, 2004

BACKGROUND

The Building Department of the General Fund accounts for maintenance and repair of the Civic Center and the Bogue Building. Due to some unexpected repairs during the year the Building department requires a budget amendment in order to meet obligations through year-end.

FISCAL CONSIDERATIONS

The 2004 budget for this department is \$236,900 and expenditures are projected to be \$274,000 at year-end.

RECOMMENDATION

I recommend that Council approve an Ordinance amending the 2004 budget. This ordinance requires a vote of one more than the majority in order to pass.

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO THE CITY'S 2004 BUDGET, AMENDING THE 2004 BUDGET FOR THE PURPOSE OF TRANSFERRING FUNDS FROM THE GENERAL FUND ENDING FUND BALANCE TO THE GENERAL FUND NON DEPARTMENTAL DEPARTMENT.

WHEREAS, the City's 2004 budget has adequate funds in the General Fund Ending Fund; and

WHEREAS, adjustments to the 2004 annual appropriations are necessary to conduct city business;

NOW, THEREFORE,
THE GIG HARBOR CITY COUNCIL ORDAINS AS FOLLOWS:

Section 1. The annual appropriations in the departments and funds listed below in the City's 2004 budget shall be increased to the amounts shown:

<u>Fund/Dept.</u>	<u>Original Appropriations</u>	<u>Amendment</u>	<u>Amended Appropriations</u>
001-General Government			
01 – Non-Departmental	\$236,900	\$ 37,100	\$274,000
001-Ending Fund Balance	\$1,073,540	\$(37,100)	\$1,036,440

Section 2. The City Council finds that it is in the best interest of the City to increase the General Governmental Non-Departmental Fund in the amount of \$37,100 in order to provide for unanticipated expenditures.

Section 3. This ordinance shall be in force and take effect five (5) days after its publication of a summary according to law.

PASSED by a vote of one more than the majority of all members of the City Council, as required by RCW 35A.33.120, and approved by the Mayor at a regular meeting of the council held on this ____ day of _____, 2004.

Gretchen A. Wilbert, Mayor

ATTEST:

Molly Towslee, City Clerk

Filed with City Clerk: 11/16/04

Passed by the City Council:

Date published:

Date effective:



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: PUBLIC HEARING AND SECOND READING OF AN ORDINANCE
ADOPTING A REVISED COMPREHENSIVE PLAN AS REQUIRED BY
STATE STATUTE (RCW 36.70A.130)
DATE: DECEMBER 13, 2004

INFORMATION/BACKGROUND

The City is required to take action to review and, if needed, revise the comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of the Growth Management Act (GMA) on or before December 1, 2004 (RCW 36.70A.130 (4)(a)). This requirement was anticipated and included as a budgeted objective in 2004. The consulting firm of AHBL, Inc. was hired to provide the services necessary to assist the City in the review and update as required by state statute.

The Planning Commission reviewed the Comprehensive Plan and development regulations at a series of work-study sessions and has identified recommended updates consistent with the state mandate. These recommended updates were considered at a public hearing before the Planning Commission on November 4, 2004 and during a follow-up work-study session on November 18, 2004. A copy of the November 18, 2004 meeting minutes have been attached for your review.

A public hearing on the revised Comprehensive Plan was held during the November 22, 2004 City Council meeting. No testimony on the Comprehensive Plan was received at that hearing (testimony was received with regards to the proposed amendments to Title 17 and 18).

Proposed revisions to the Comprehensive Plan include recommend policy language related to the Tacoma Narrows Airport (Land Use Element, 2.3.2. Airport Overlay Districts). Proposed language suggests density limitations in the area south of 44th Street NW. This area is built-out with residential subdivisions and such language is not needed.

Staff has prepared a draft ordinance for the adoption a revised Comprehensive Plan as required by state statute. The City Attorney has reviewed and approved the draft ordinance.

RECOMMENDATION

I recommend that the City Council adopt the ordinance as presented with one amendment to the Land Use Element 2.3.2. Airport Overlay Districts as follows:

2.3.2. Airport Overlay Districts

- The City of Tacoma's Tacoma Narrows Airport is an essential public facility in close proximity to the City's southern boundary. The City intends to support the general aviation airport facilities at Tacoma Narrows airport when consistent with the Gig Harbor Comprehensive Plan goals and Federal Aviation Administration standards.
- Lands that may be detrimentally affected by airport activities should be designated and regulated to limit the potential for harm. Regulation of such lands should balance the interests of residents and property owners with preservation of public safety. The City should consider application of density limitations in areas south of 44th Street NW. Conversion of lands in this area to uses that promote public assembly, that are sensitive to noise generated by the airport, or that generate electronic emissions that may adversely affect use of the airport should be discouraged.



Project Memo

TO: Mayor Wilbert and City Council
FROM: Owen Dennison, AHBL
DATE: November 22, 2004
PROJECT: City of Gig Harbor Comprehensive Plan Update
OUR FILE NO.: 204129.30
SUBJECT: Comprehensive Plan and Code Amendments

The Growth Management Act (GMA) requires that jurisdictions in Pierce County update their comprehensive plans and development regulations to ensure consistency with the requirements of the Act by December 2004. The City hired the firms of AHBL, Inc., Adolfson Associates, Inc., and Associated Earth Sciences, Inc., to conduct a review of the City's existing Comprehensive Plan and municipal code to identify areas that are out of compliance with the requirements of GMA and to recommend changes to bring the plan and code into compliance. The result of the initial review was adopted as the scope of the work program in Gig Harbor Resolution No. 629.

Recommendations for amendments have been brought to the Gig Harbor Planning Commission in a series of study sessions on September 16, October 7, October 21, and November 4. A final study session, deliberation, and approval of a recommendation to the Council are scheduled to occur on November 18, 2004. Public comment was taken at a public hearing on November 4, 2004.

The following is a summary of the changes proposed by the consultants with input from staff and the Planning Commission.

General

- Throughout all elements, a new and consistent formatting convention for goals and policies is proposed for easier reference. The format for goals is the chapter number followed by the goal number. The format for policies is the chapter number, followed by the goal number and policy number. For example, the first goal in the Land Use Element, Chapter 2, is Goal 2.1. The first policy under Goal 2.1 is Policy 2.1.1.

Chapter 1. Introduction

- Minor revisions to update references to existing GMA requirements and to the current amendment process.

SEATTLE

316 Occidental Avenue S
Suite 320
Seattle, WA 98104-4421
206.267.2425 TEL
206.267.2429 FAX

www.ahbl.com



Chapter 2. Land Use Element

- References to growth targets are revised to be consistent with the Pierce County allocations.
- References to urban growth tiers are removed, since tiering is no longer part of the Pierce County County-Wide Planning Policies.
- Policies 2.2.3 and 2.3.4 are revised to raise the lowest end of the residential density range from 3 to 4 units per acre, consistent with Growth Management Hearings Board determinations that 4 units per acre is the lowest urban residential density.
- A new draft Policy 2.3.2 is added identifying the Tacoma Narrows Airport as an essential public facility and addressing potential limitations to land use in areas that may be detrimentally affected by the activities of the airport. No code amendment is proposed as part of this update.
- A new draft Goal 2.5 and Policy 2.5.1 are added to consistent with the requirement for to address drainage, flooding, and stormwater runoff.
- A new draft Policy 2.5.2 is added at the direction of the Commission following the Public Hearing to encourage the use of Low Impact Development strategies.
- The element also includes the amendments to the Planned Community Development description adopted under Gig Harbor Ordinance No. 933.

Chapter 3. Community Design Element

- Only format changes.

Chapter 4. Environment Element

- A new Policy 4.2.4 is added for consistency with the requirement to identify and address mineral resource lands of long-term commercial significance.
- A new Policy 4.3.3 is added to address the requirement that Best Available Science practices be used in critical area policies and regulations.

Chapter 5. Housing Element

- Proposed revisions are primarily updating the descriptions and analyses of the existing housing stock, household economic profiles, projected growth, estimated capacity, and affordable housing issues. Capacity estimates reflect the most current staff analysis. No policy amendments are proposed.

Chapter 6. Economic Development Element

- Only format changes.

Chapter 7. Essential Public Facilities Element

- A new Goal 7.1 and Policies 7.1.1 and 7.1.2 are added identifying state and county essential public facilities lists and stating that lands for public purposes will be maintained within the framework of the Comprehensive Plan.
- Minor wording changes are proposed to Goal 7.4 and Policy 7.4.1.

Chapter 8. Utilities Element

- Only format changes.



Chapter 9. Shoreline Management Element

- Only format changes.

Chapter 10. Parks, Recreation, and Open Space Element

- The current element is replaced with a sheet referring to the Park, Recreation and Open Space Plan adopted as the City's Parks Element under Gig Harbor Ordinance No. 933.

Chapter 11. Transportation Element

- The existing element has been replaced with the 2002 Transportation Plan Update as revised by staff to reflect the most current information and Transportation Improvement Program project list.
- Several policy amendments are recommended by staff.
- For GMA consistency, a new policy 11.4.2 is proposed to include a reference to re-evaluation of the Land Use Element, among other strategies, if funding of capacity projects falls short of projected need.

Chapter 12. Capital Facilities Element

- Descriptions of existing facilities and future needs are updated from adopted functional plans with revisions from staff.
- A new Policy 12.1.4 is added at the direction of the Planning Commission to tie the sewer service area to the urban growth boundary, so that separate amendment of the service area is not required when the City's urban growth area is revised.
- A new Policy 12.1.12 is added to state that, among other strategies, the Land Use Element may be re-evaluated if funding falls short of projected need for infrastructure capacity projects.
- The transportation level of service is amended to refer to the Transportation Element.
- The capital facilities project lists are updated with information from staff.

The following are proposed amendments to the Title 17 and Title 18 of the Gig Harbor Municipal Code to achieve consistency with current GMA requirements.

Title 17. Zoning

- Chapters 17.16 (R-1), 17.28 (RB-1), 17.46 (WR), 17.48 (WM), and 17.50 (WC) are proposed for amendment to raise the maximum density from 3 and 3.5 units per acre to 4 units per acre consistent with the Growth Management Hearings Board's 4 unit per acre "bright line" for urban residential density. Minimum lot areas in Chapters 17.16 and 17.28 are proposed for reduction to allow achievement of the revised density.
- A new Chapter 17.92 is proposed to address mineral resource lands. The draft chapter defines mineral resource lands and requires notification on title for development in the vicinity of such sites.

Title 18. Environment

GMA requires that best available science (BAS) be used in the development of policies and regulations to protect the functions and values of critical areas. As part of the initial review, environmental consultants Adolfson, Inc., and Associated Earth Sciences, Inc., conducted a review of BAS literature with application to the City's circumstances and of the City's policies and regulations for consistency with BAS. The consultants recommend merging the Wetland



Management Regulations in 18.08 GHMC with the Critical Areas regulations in 18.12 GHMC. Therefore, the draft regulations are proposed to be located in a reformatted Chapter 18.08. The recommendations to the City's critical areas regulations are as follows.

- Geologic hazard areas.
 - 18.12.050 GHMC, proposed as 18.08.060 GHMC, is revised to change the vegetated setback from the top and toe of ravine sidewalls and bluffs from a standard 50 feet to be a width equal to the height of the slope. This accounts for slopes that are both greater than and less than an assumed standard height.
- Wetlands, streams, and habitats
 - New wetland rating categories
 - New wetland buffer widths
 - Revisions to buffer averaging provisions
 - New wetland replacement ratios
 - New stream section separate from the wetlands section
 - New stream classifications
 - New stream performance standards including buffers
 - New section addressing anadromous fish habitats

Note: There may be duplication of certain procedural sections of the proposed wetlands code with other critical areas regulations. Although the proposed code can be implemented as drafted, a consolidation of areas of potential duplication may be appropriate as part of a follow-up work program.

In addition to the above recommendations, the consultants make the following additional recommendations that are outside of the scope of the current work program.

- Update the City's aquifer protection area map consistent with map provided by Associated Earth Sciences, Inc., and showing the attributes at a scale that allows identification of streets and landmarks by the public.
- Produce landslide and erosion hazard area maps with information from available Pierce County critical areas mapping and with information from the document *Relative Slope Stability of Gig Harbor Peninsula, Pierce County Washington, 1976*, as referenced in the Associated Earth Sciences Literature Inventory produced for the current project. The map set should be of sufficient scale to allow easy identification of streets and landmarks by the public.
- Produce an updated map of flood hazards from the FEMA database at a scale that allows streets and landmarks to be easily located by the public.
- Update the City's wetland inventory consistent with the proposed wetland ratings categories and complete for all portions of the City.
- Reconcile procedural regulations in various sections of Chapter 18.08 as noted above.
- Evaluate mapped zoning and land use designations for consistency.
- Produce maps of major non-municipal utility facilities for inclusion in the Comprehensive Plan.



Conclusion:

City, AHBL, Adolfson, and Associated Earth Sciences staff will be available at the Council meeting to explain the issues and recommendations and to answer any questions.

cc: John Vodopich, City of Gig Harbor
Steve Osguthorpe, City of Gig Harbor
Stephen Misiurak, City of Gig Harbor
Teresa Vanderburg, Adolfson Associates, Inc.
Jon Sondergaard, Associated Earth Sciences, Inc.
Michael Kattermann, AHBL, Inc.
Project file

**CITY OF GIG HARBOR
ORDINANCE NO.**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, ADOPTING A REVISED LAND USE COMPREHENSIVE PLAN, AS REQUIRED BY THE WASHINGTON STATE GROWTH MANAGEMENT ACT, TO ENSURE COMPLIANCE WITH THE ACT AS REQUIRED BY CHAPTER 36.70A; AND REPEALING THE NOVEMBER 1994 CITY OF GIG HARBOR COMPREHENSIVE PLAN, AS AMENDED, ADOPTED BY ORDINANCE NO. 686.

WHEREAS, the City of Gig Harbor plans under the Washington State Growth Management Act (chapter 36.70A RCW); and

WHEREAS, the City is required to take action to review and, if needed, revise the comprehensive plan and development regulations to ensure the plan and regulations comply with the requirements of the Growth Management Act (GMA) on or before December 1, 2004 (RCW 36.70A.130 (4)(a)); and

WHEREAS, the City is required to provide public notice of and hold a public hearing on any amendments to the Comprehensive Plan and implementing development regulations (RCW 36.70A.035, RCW 36.70A.130); and

WHEREAS, the City Community Development Director notified the Washington State Office of Community Development of the City's intent to amend the Comprehensive Plan and development regulations on October 21, 2004 pursuant to RCW 36.70A.106; and

WHEREAS, on October 20, 2004, the City's SEPA Responsible Official issued a Determination of Non-Significance with regards to the proposed adoption of a revised Comprehensive Plan, as well as the amendments to Title 17 and Title 18 of the Gig Harbor Municipal Code; and

WHEREAS, no appeals of the issuance of the Determination of Non-Significance were filed; and

WHEREAS, the City anticipated this requirement the review and revision of the Comprehensive Plan and included an objective in the 2004 Annual Budget for the update of the Comprehensive Plan; and

WHEREAS, on April 12, 2004 the City Council approved a consultant services contract with AHBL, Inc. for the services necessary to assist the City in the review and update of the Comprehensive Plan and development regulations; and

WHEREAS, in order to ensure that the review and update of the Comprehensive Plan is completed in a timely fashion consistent with State law it was necessary to establish a timeline and work program; and

WHEREAS, the City Council adopted Resolution No. 629 on September 13, 2004, which was subsequently revised by Resolution No. 631, which established a timeline and work program for the review and revision of the City of Gig Harbor Comprehensive Plan; and

WHEREAS, the City Planning Commission reviewed the recommendations for the update of the Comprehensive Plan and development regulations as outlined in the scope of work in Resolutions Nos. 629 and 631; and

WHEREAS, the City Planning Commission conducted work-study sessions for the 2004 review and update of the Comprehensive Plan and development regulations on September 16, 2004, October 7, 2004, October 21, 2004 and November 18, 2004; and

WHEREAS, the City Planning Commission held a legally advertised public hearing on the 2004 review and update of the Comprehensive Plan on November 4, 2004 and recommended adoption of a revised City of Gig Harbor Comprehensive Plan and certain amendments to Title 17 and Title 18 of the Gig Harbor Municipal Code; and

WHEREAS, the Gig Harbor City Council held a public hearing and first reading of an Ordinance implementing the recommendations of the Planning Commission amending the Comprehensive Plan and development regulations on November 22, 2004; and

WHEREAS, the Gig Harbor City Council held a second public hearing and second reading of an Ordinance implementing the recommendations of the Planning Commission amending the Comprehensive Plan and development regulations on December 13, 2004; Now, Therefore,

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

Section 1. Comprehensive Plan Repealed. The City's Comprehensive Land Use Plan, which was Exhibit 1 to Ordinance No. 686, as amended, is hereby repealed.

Section 2. Adoption of a Revised Comprehensive Plan.

A. **Notice.** The City Clerk confirmed that public notice of the public hearing held by the City Council was provided.

B. **Hearing Procedure.** The City Council's consideration of the comprehensive land plan and amendments to the Gig Harbor Municipal Code is a legislative act. The Appearance of Fairness doctrine does not apply.

C. **Testimony.** The following persons testified on the applications at the November 22, 2004 public hearing:

James A. Wright, testified and submitted a letter for consideration by the Council regarding the use of Planned Residential Developments; and

The Washington State Department of Ecology submitted a letter dated November 22, 2004 regarding the draft Critical Areas Ordinance via facsimile.

The following persons testified on the applications at the December 13, 2004 public hearing:

[Fill in with meeting minutes]

D. Comprehensive Plan Adopted. The City's 2994 Comprehensive Land Use Plan, a copy of which is attached hereto as Exhibit A and incorporated herein by reference as if fully set forth herein, is hereby adopted.

Section 3. Transmittal to State. The City Community Development Director is directed to forward a copy of this Ordinance, together with all of the exhibits, to the Washington State Office of Community Development within ten days of adoption, pursuant to RCW 36.70A.106.

Section 4. Severability. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, clause or phrase of this Ordinance.

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

PASSED by the City Council and approved by the Mayor of the City of Gig Harbor this 13th day of December, 2004.

CITY OF GIG HARBOR

GRETCHEN WILBERT, MAYOR

ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: _____
CAROL A. MORRIS

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

2004

CITY OF GIG HARBOR
COMPREHENSIVE PLAN



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

On December 13, 2004 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 COUNCIL OF THE CITY GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, ADOPTING A REVISED LAND USE COMPREHENSIVE PLAN, AS REQUIRED BY THE WASHINGTON STATE GROWTH MANAGEMENT ACT, TO ENSURE COMPLIANCE WITH THE ACT AS REQUIRED BY CHAPTER 36.70A; AND REPEALING THE NOVEMBER 1994 CITY OF GIG HARBOR COMPREHENSIVE PLAN, AS AMENDED, ADOPTED BY ORDINANCE NO. 686.

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 December 13, 2004

BY: _____
MOLLY M. TOWSLEE, CITY CLERK

**City of Gig Harbor Planning Commission
Minutes of Work-Study Session
Thursday, November 18, 2004
Gig Harbor Civic Center**

PRESENT: Commissioners Theresa Malich, Kathy Franklin, Carol Johnson, Dick Allen, Bruce Gair, Scott Wagner and Chairperson Paul Kadzik. Staff present: John Vodopich, Steve Osguthorpe, Kristin Riebli, and Diane Gagnon.

CALL TO ORDER: 6:05 p.m.

APPROVAL OF MINUTES:

MOTION: Move to approve the minutes of November 4, 2004 Johnson/Franklin – unanimously approved.

NEW BUSINESS

1. Comprehensive Plan Update – Code and Policy Study Session #5

Community Development Director John Vodopich explained to the Planning Commission that this would be the final work-study session with them and that they would need to make a final recommendation to the City Council for their meeting of November 22, 2004.

Mr. Vodopich then briefed the Planning Commission on the proposal from AHBL for the new Chapter 17.92 Mineral Resource Lands and read the requirements to notify property owners who are within 400 feet of a site designated as mineral resource land. Chairman Kadzik asked if city staff would be responsible for the notification process. Planning Manager Steve Osguthorpe answered that staff would contact the Department of Natural Resources to determine any areas presently operating under a valid surface mining permit. The Planning Commission agreed to the proposed language in the new section.

The next item for discussion was the Airport Overlay District. Commissioner Gair asked why we were calling the airport an “essential public facility” and John Vodopich replied that the definition of essential public facilities includes airports.

Commissioner Gair stated that in section 2.3.2 it states that “The City intends to support continued growth and development of the general aviation airport facilities at Tacoma Narrows airport when consistent with the Gig Harbor Comprehensive Plan goals” and asked which goals were being referred to. It was decided that this was a general statement referring to all the goals of the Comprehensive Plan and that the word “all” should be inserted to reflect that. Mr. Gair further expressed concern with voicing support of the airport’s continued growth. Mr. Vodopich suggested that the language

"continued growth and development of" be removed and the Planning Commission agreed.

The discussion then continued to the next item which was new language supporting low impact development. Community Development Director John Vodopich read the proposed language to support low impact development methods to manage stormwater runoff on-site and the Planning Commission agreed with the language as presented.

Owen Dennison from AHBL presented the information on the Housing Element pointing out Table 3 which illustrates existing zoned capacity. Commissioner Gair asked about the new language following the table which references an excess cushion of 23 percent above the projected need and expressed a concern with maintaining excess housing capacity. Mr. Vodopich explained that the cushion was to accommodate projected growth and may never be developed. Owen Dennison continued to explain the difference between housing units and households and the vacancy rate.

Chairman Paul Kadzik clarified that basically we are changing the maximum density from 3 dwelling units per acre to 4 dwelling units per acre. Associate Planner Kristin Riebli pointed out that there is also a 30% incentive allowed for developing a planned residential development in those zones. It was agreed to remove the 30% bonus and the Planning Commission agreed with the density increase.

The Planning Commission then discussed Title 18 – Critical Areas. Owen Dennison reviewed the various changes. It was decided to discuss the proposed changes to the wetland buffers first.

Commissioner Scott Wagner asked the other Planning Commission members to review the matrix which had been distributed at the last meeting which compared the city's existing buffers with those proposed by the consultant and the range suggested by best available science.

Commissioner Johnson stated that we have to be sure that what we adopt is defensible and asked if our current buffers were. Commissioner Wagner stated that our current buffer widths were within the recommended range and expressed concern with doubling them. He then suggested that they be increased somewhat but not doubled.

Discussion followed on the changes to the categories and how they compared to our current categories. Commissioner Johnson pointed out that the proposed categories are more in line with the state.

Chairman Kadzik stated that the numbers proposed seemed to be in the conservative range and expressed the need to balance conservation with the needs of the community. Commissioner Wagner added that we needed to achieve 4 dwelling units per acre while still protecting the wetlands and that he didn't believe these large buffers accomplished that goal. He then recommended that the buffer for a Category 1 wetland remain at the suggested 200 feet and that Category II be changed to 75, Category III to

35 and Category IV to 25. Discussion followed on the state recommended ranges and whether those suggested fell within them. It was decided that that Planning Commission would recommend the following wetland buffers:

- Category I – 200 feet
- Category II – 100 feet
- Category III – 50 feet
- Category IV – 25 feet

Owen Dennison then went over the changes to the section on buffer reductions, pointing out that the current regulation states that degraded buffers may be enhanced and reduced to not less than 50 percent and that they were suggesting that it be changed to 70 percent.

Chairman Kadzik asked for clarification of a degraded buffer and Planning Manager Steve Osguthorpe stated that staff does not have the knowledge to determine the quality of a buffer and would rely on a certified wetland specialist hired by the proponent.

Commissioner Johnson suggested that the allowance be changed to 55 percent and the Planning Commission agreed.

Associate Planner Kristin Riebli cautioned that there may be situations where a wetland may be willfully degraded in order to utilize the buffer reduction. Commissioner Wagner expressed concern for how it would be determined what was willful as animals and farming can degrade a wetland. Chairman Kadzik suggested that language be added stating buffer reduction will not be allowed if the buffer degradation is a result of a documented code violation and the Planning Commission agreed.

The next item for discussion was the new section on streams. Planning Manager Steve Osguthorpe explained that we don't currently have a section on streams. Commissioner Wagner asked what types of streams we have in the city and Mr. Osguthorpe answered that Donkey Creek, Crescent Creek and their tributaries probably fell within the type 2 and 3 categories. The Planning Commission agreed with the recommendation of AHBL.

The Planning Commission then discussed the wetland buffer replacement ratios. Associate Planner Kristin Riebli read from the current code noting that the ratios being proposed were only a slight increase in the lower categories.

Commissioner Franklin noted that these ratios seem to balance both the environmental interests and property owner interests. The Planning Commission agreed with the recommended ratios.

Owen Dennison then asked the Planning Commission to go over the introduction noting that the numbers had been updated to reflect current information.

Chairman Paul Kadzik then asked if there was any other discussion and stated that a motion for recommendation would be appropriate at this time.

MOTION: Move to recommend the City Council approve the 2004 Comprehensive Plan as modified. Johnson/Franklin – unanimously approved.

NEXT REGULAR MEETING:

December 2, 2004 at 6pm – Work-Study Session

Commissioner Bruce Gair noted that he would not be attending the meetings of December 2nd and 16th, 2004.

Commissioner Kathy Franklin stated that she would also be absent from the meeting of December 2nd.

ADJOURN:

MOTION: Move to adjourn at 7:40 p.m.
Johnson/Malich – unanimously approved

CD

recorder utilized:

Disc #1 Track 1
Disc #2 Track 1



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: PUBLIC HEARING AND SECOND READING OF AN ORDINANCE
INCREASING THE ALLOWED DENSITIES ALLOWED IN THE R-1, RB-
1, WR, WM, AND WC ZONES TO 4 DWELLING UNITS PER ACRE;
ADDING A CHAPTER RELATING TO NOTICES REGARDING
MINERAL RESOURCE LANDS; AND AMENDING CRITICAL AREAS
REGULATIONS AS REQUIRED BY STATE STATUTE (RCW
36.70A.130 & 172)
DATE: DECEMBER 13, 2004

INFORMATION/BACKGROUND

The City is required to take action to review and, if needed, revise the comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of the Growth management Act (GMA) on or before December 1, 2004 (RCW 36.70A.130 (4)(a)). Specifically, this review is to include consideration of critical areas ordinances (RCW 36.70A.130 (1)(a)) and that best available science be used in designating and protecting critical areas (RCW36.70A.172). These requirements were anticipated and included as a budgeted objective in 2004. The consulting firm of AHBL, Inc. was hired to provide the services necessary to assist the City in the review and update as required by State statute.

The Planning Commission reviewed the Comprehensive Plan and development regulations at a series of work-study sessions and has identified recommended updates consistent with the State mandate. These recommended updates were considered at a public hearing before the Planning Commission on November 4, 2004 and during a follow-up work-study session on November 18, 2004. A copy of the November 18, 2004 meeting minutes have been attached for your review.

A public hearing on the proposed amendments to Title 17 and Tile 18 was held during the November 22, 2004 City Council meeting. The Washington State Department of Ecology submitted a letter dated November 22, 2004 commenting on the proposed amendments to the Critical Areas Ordinance. Teresa Vanderburg of Adolfson Associates, Inc. has provided a point by point review of this letter (attached) and will be available at the December 13, 2004 Council meeting.

Staff has prepared a draft Ordinance for the adoption of certain amendments to Title 17 and Title 18 of the Gig Harbor Municipal Code as required by state statute. The City Attorney has reviewed and approved the draft Ordinance.

RECOMMENDATION

I recommend that the City Council adopt the Ordinance as presented.

MEMORANDUM



DATE: December 8, 2004
TO: Owen Dennison, AHBL Engineering
FROM: Teresa Vanderburg, Director of Natural Sciences *Environmental Solutions*
CC: John Vodopich, Community Development Director, Gig Harbor
RE: Response to Ecology Comments, Review of Draft Critical Areas Ordinance

Adolfson Associates, Inc. (Adolfson) is pleased to provide this technical memorandum to provide scientific information to the City of Gig Harbor in response to comments from the Washington State Department of Ecology (Ecology). The City sent its draft critical areas ordinance to Ecology for review. This memorandum provides the scientific basis for wetland protection measures outlined in the City's proposed critical areas ordinance and offers revisions to the code based on Ecology's comments. Additional information available for the Council is provided in a separate technical memorandum prepared by Adolfson documenting best available science as it pertains to wetlands, streams, and fish and wildlife habitat conservation areas (Adolfson, June 2004).

A letter from Ms. Gretchen Lux, Wetland Specialist for the Shorelands and Environmental Assistance Program of Ecology was received on November 22, 2004. The letter states that Ecology is concerned that "use of an outdated [wetland] rating system, combined with the proposed buffers and compensation ratios do not adequately include the best available science and will fail to protect wetland functions and values in the City." However, Ecology's comments did not further address the compensation, or mitigation, ratios proposed in the draft wetland regulations. Ms. Lux's letter did comment on: 1) wetland ratings; 2) exemptions for small wetlands of 2,500 square feet; and 3) proposed wetland buffers. This memorandum addresses these areas of concern.

1. Consider use of Ecology's four-tiered wetland rating system.

The Washington State Department of Ecology recommends that a four-tiered wetland rating system be used to "rank" wetlands from high to low function and value. Ecology released a public review draft of a new wetland rating system for western Washington in April 2004. This rating system, outlined in the *Washington State Wetland Rating System for Western Washington*, was subsequently finalized in August of 2004. Adolfson agrees with this comment and has recommended use of the new state system in Gig Harbor due to the diversity of wetland types that are located in the City. We had previously recommended the older state wetland rating system (Ecology 1993), which is recommended in the Washington State Department of Community, Trade and Economic Development (CTED) *Example Code Provisions for Designating and Protecting Critical Areas* (2003). The City's draft code has been revised to include the new state rating system.

2. Exemptions for hydrologically isolated wetland less than 2,500 square feet are not supported by best available science.

Ms. Lux states in her comment letter that placing a threshold on wetlands to be regulated in the City's proposed ordinance based upon size alone is not supported by best available science. Adolfson agrees with this concept from a scientific basis and recommends that the exemption be limited to the City's lowest value wetlands (Category IV) and be limited to wetlands less than 1,000 square feet in area. While it is recognized that small wetlands may provide functions and values, we recommend that the exemption be based upon both small size *and* category. The City desires to focus its protection measures on wetlands larger than 1,000 square feet and minimize permit processing for its smallest, lowest value wetland areas. Given the urban nature of the City of Gig Harbor, Adolfson and city staff do not believe that significant wetland functions and values will be lost across the city landscape with this exemption in place, as amended.

3. Wetland buffers widths are inadequate to protect wetland functions and values.

Ms. Lux has commented that wetland buffers should be increased to the range of widths recommended by Ecology in their statewide guidelines. Ecology in its draft best available science review for freshwater wetlands has recommended a range of buffer widths from 50 to 300 feet or more, depending upon the function to be protected (Sheldon et al., 2003). Ms. Lux's review letter states that "...For buffer widths based only on wetland category, the best available science calls for buffers of 300 feet for Category I and II wetlands and 150 and 50 feet, respectively, for Category III and IV wetlands." The Ecology recommendations outlined in *Freshwater Wetlands in Washington State, Volume 2: Guidance of Protecting and Managing Wetlands* (Ecology, Draft, August 2004) state that three parameters should be considered in determining a wetland buffer width: wetland category, the intensity of land use, and the functions that the wetland provides. Generally, all land uses within an urban growth area such as Gig Harbor would be considered "high intensity" land uses according to the definitions in the document.

According to Buffer Alternative 3 in this document, the range of buffer widths recommended to protect wetlands from high intensity land uses are: Category I (100 – 300 feet), Category II (100 – 300 feet), Category III (80 – 150 feet) and Category IV (25 – 50 feet). According to the scientific literature, larger buffer widths are recommended to protect buffer functions related to wildlife habitat and water quality improvement. While the Ecology statewide recommended buffers are wider than those proposed for Gig Harbor, the City's proposed wetland buffers fall within the range of best available science as described in Ecology's best available science review and the City's best available science report (Adolfson 2004).

The City's proposed wetland buffers range from 200 feet (Category I wetlands) to 25 feet (Category IV wetlands). In its final recommendations, the Planning Commission

modified Category III and IV wetland buffers. The wetland buffers recommended lie within the range of the best available science for protection of wetland resources, albeit at the low end. The buffer recommendations by Adolfson and city staff have been tailored to the existing conditions in the City of Gig Harbor in recognition of its urban character. Use of larger buffers on wetlands in the City will, in many cases, result in buffers that include existing infrastructure (e.g., roads, building and parking lots) and are not anticipated to provide actual buffer habitat or functions given existing conditions.

The City should be aware that the wetland exemption provision, wetland buffer widths proposed, and wetland buffer reduction policies may be considered a departure from Ecology's recommendations and should be documented in the City's Findings of Fact. The City and Adolfson believe that the proposed critical areas ordinance, including the updates to the wetland regulations, will protect overall wetland functions and values in the City as required under the Growth Management Act. Risks to wildlife habitat and water quality functions of wetland buffers are offset by the protection of critical fish and wildlife habitat areas in the City and updates to the City's stormwater management regulations, respectively.

References Cited

Adolfson Associates, Inc., June 2004. Best Available Science Technical Memorandum, Gig Harbor, Washington.

Sheldon et al. 2003. Draft *Washington State Department of Ecology Freshwater Wetlands in Washington State - Volume 1: A Synthesis of the Science*.

Washington State Department of Ecology. 1993. *Washington State Wetlands Rating System - Western Washington*. Washington Department of Ecology, Olympia, Publ. #93-74.

Washington State Office of Community Development (OCD). 2002. *Citations for Recommended Sources of Best Available Science for Designating and Protecting Critical Areas*. Olympia, Washington.

Washington State Department of Community, Trade and Economic Development (CTED). 2003. *Critical Areas Assistance Handbook - Protecting Critical Areas Within the Framework of the Washington Growth Management Act*. Olympia, Washington.

Washington State Department of Ecology. August 2004 DRAFT. *Wetlands in Washington State Volume 2: Managing and Protecting Wetlands*. Washington State Department of Ecology Publication #04-06-024.

**WETLAND BUFFERS COMPARISON
GIG HARBOR CA
November 4, 2004**

GIG HARBOR MUNICIPALITY	GIG HARBOR PROPOSED	STATE OF WASHINGTON WAC 173-201	MERCER COUNTY PLANNING COMMISSION BEST AVAILABLE SCIENCE MEMORANDUM MAY 2003	ROBBER HILL PLANNING COMMISSION BEST AVAILABLE SCIENCE MEMORANDUM OCT 2003	SEASIDE CITY PLANNING COMMISSION BEST AVAILABLE SCIENCE MEMORANDUM MAY 2003	REAGAN BOUNDARY BEST AVAILABLE SCIENCE
Category I 100 feet Category II 50 feet Category III 25 feet Category IV 25 feet (as measured from Type 4 ordinary high water) 15 feet (as measured from Type 5 ordinary high water)	Category I 200 feet Category II 100 feet Category III 60 feet Category IV 35 feet 11/18/04 Planning Commission Recommendations: 50-ft. for Category III 25-ft. for Category IV	<u>Urban</u> Class 1 125 to 225 feet Class 2 100 to 200 feet Class 3 75 to 125 feet Class 4 50 feet <u>Rural</u> Class 1 50 to 300 feet Class 2 50 to 300 feet Class 3 40 to 150 feet Class 4 25 to 50 feet	Category I 150 feet Category II 100 feet Category III 50 feet Category IV 25 feet * These are the <i>base</i> buffer widths. The specific wetland buffer is determined by applying the base buffer width and then applying the adjustments for <i>wetland</i> <i>characteristics</i> and <i>intensity of impact</i> as described in Appendix F of 18E.30.070	Category 1* 200 feet Category 2 100 feet Category 3 50 feet Category 4 30 feet * As of October 20, 2003, no Category 1 wetlands exist in Burien.	Category I High intensity 300 ft Moderate intensity 250 ft Low intensity 200 ft Category II High intensity 200 ft Moderate intensity 150 ft Low intensity 100 ft Category III High intensity 100 ft Moderate intensity 75 ft Low intensity 50 ft Category IV High intensity 50 ft Moderate intensity 35 ft Low intensity 25 ft	<p><i>The Draft Freshwater Wetlands in Washington State Volume I: A Synthesis of the Science</i> (Sheldon, et al. 2003) published by the Washington State Department of Ecology in August 2003 recommends considering four basic criteria for determining buffer widths:</p> <ol style="list-style-type: none"> 1) value of the aquatic resource; 2) characteristics of the aquatic resource and its watershed; 3) intensity of the adjacent existing or proposed land use; and 4) the specific functions the buffer is to provide. <p>Effective buffer widths should be based on the above factors and generally should range from: 25 to 75 feet for wetlands with minimal habitat functions and adjacent low-intensity land uses; 50 to 150 feet for wetlands with moderate habitat functions or adjacent high-intensity land uses; and 150 to 300 feet for wetlands with high habitat functions.</p> <p>For additional discussion of recommended buffers by function, see <i>City of Gig Harbor Best Available Science Technical Memorandum</i> (Adolfson, 2004)</p>

**CITY OF GIG HARBOR
ORDINANCE NO.**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, INCREASING THE ALLOWED DENSITIES ALLOWED IN THE R-1, RB-1, WR, WM, AND WC ZONES TO 4 DWELLING UNITS PER ACRE; ADDING A CHAPTER, 17.92, TO THE ZONING CODE RELATING TO NOTICES RECORDED ON PROPERTY ADJACENT TO MINERAL RESOURCE LANDS; INTEGRATING THE CITY'S WETLAND REGULATIONS WITH THE CRITICAL AREAS REGULATIONS; ADDING NEW DEFINITIONS TO THE CHAPTER ON CRITICAL AREAS AND WETLANDS; ADOPTING NEW WETLAND RATING CATEGORIES, CONSISTENT WITH THE DOE WETLAND RATINGS; ESTABLISHING NEW WETLAND BUFFER WIDTHS; ADOPTING A WETLAND BUFFER AVERAGING PROCEDURE; ADOPTING STREAM CLASSIFICATIONS, BUFFER WIDTHS AND STREAM PROTECTION REGULATIONS; ADDING NEW PROVISIONS TO FISH AND WILDLIFE HABITAT FOR SPECIAL CONSIDERATIONS FOR SALMONIDS; AMENDING SECTIONS 17.16.060, 17.28.050, 17.46.040, 17.48.040, 17.50.040; 18.08.020; 18.08.030; 18.08.040; 18.08.060; 18.08.040; 18.08.050; 18.08.100; 18.08.120; 18.08.170; 18.08.180; 18.12.090; ADDING NEW SECTIONS 18.08.____; 18.08.____; 18.08._____ TO THE GIG HARBOR MUNICIPAL CODE.

WHEREAS, the City of Gig Harbor plans under the Washington State Growth Management Act (chapter 36.70A RCW); and

WHEREAS, the City is required to take action to review and, if needed, revise the comprehensive plan and development regulations to ensure the plan and regulations comply with the requirements of the Growth Management Act (GMA) on or before December 1, 2004 (RCW 36.70A.130 (4)(a)); and

WHEREAS, the City is required to consider critical areas ordinances and utilize best available science in designation and protection critical areas as part of the mandated review (RCW 36.70A.130 (1)(a) & .172)

WHEREAS, the City is required to provide public notice of and hold a public hearing on any amendments to the Comprehensive Plan and implementing development regulations (RCW 36.70A.035, RCW 36.70A.130); and

WHEREAS, the City Community Development Director notified the Washington State Office of Community Development of the City's intent to amend the Comprehensive Plan and development regulations on October 21, 2004 pursuant to RCW 36.70A.106; and

WHEREAS, on October 20, 2004, the City's SEPA Responsible Official issued a Determination of Non-Significance with regards to the proposed adoption of a revised

Comprehensive Plan, as well as the amendments to Title 17 and Title 18 of the Gig Harbor Municipal Code; and

WHEREAS, no appeals of the issuance of the Determination of Non-Significance were filed; and

WHEREAS, the City anticipated this requirement the review and revision of the Comprehensive Plan and included an objective in the 2004 Annual Budget for the update of the Comprehensive Plan; and

WHEREAS, on April 12, 2004 the City Council approved a consultant services contract with AHBL, Inc. for the services necessary to assist the City in the review and update of the Comprehensive Plan and development regulations; and

WHEREAS, in order to ensure that the review and update of the Comprehensive Plan is completed in a timely fashion consistent with State law it was necessary to establish a timeline and work program; and

WHEREAS, the City Council adopted Resolution No. 629 on September 13, 2004, which was subsequently revised by Resolution No. 631, which established a timeline and work program for the review and revision of the City of Gig Harbor Comprehensive Plan; and

WHEREAS, the City Planning Commission reviewed the recommendations for the update of the Comprehensive Plan and development regulations as outlined in the scope of work in Resolutions Nos. 629 and 631; and

WHEREAS, the City Planning Commission conducted work-study sessions for the 2004 review and update of the Comprehensive Plan and development regulations on September 16, 2004, October 7, 2004, October 21, 2004 and November 18, 2004; and

WHEREAS, the City Planning Commission held a legally advertised public hearing on the 2004 review and update of the Comprehensive Plan and development regulations on November 4, 2004 and recommended adoption of a revised City of Gig Harbor Comprehensive Plan and certain amendments to Title 17 and Title 18 of the Gig Harbor Municipal Code; and

WHEREAS, the Gig Harbor City Council held a public hearing and first reading of an Ordinance implementing the recommendations of the Planning Commission amending the Comprehensive Plan and development regulations on November 22, 2004; and

WHEREAS, the Gig Harbor City Council held a second public hearing and second reading of an Ordinance implementing the recommendations of the Planning

Commission amending the Comprehensive Plan and development regulations on December 13, 2004; Now, Therefore,

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

Section 1. Development Regulations. The City Council hereby adopts the amendments to Title 17 and Title 18 of the Gig Harbor Municipal Code, as set forth in Exhibit A, which are incorporated herein by reference.

Section 2. Critical Areas Findings of Fact. The City Council hereby adopts the Critical Areas Findings of Fact, as set forth in Exhibit B, which are incorporated herein by reference.

Section 3. Implementing Development Regulations.

A. **Notice.** The City Clerk confirmed that public notice of the public hearing held by the City Council was provided.

B. **Hearing Procedure.** The City Council's consideration of the comprehensive land plan and amendments to the Gig Harbor Municipal Code is a legislative act. The Appearance of Fairness doctrine does not apply.

C. **Testimony.** The following persons testified on the applications at the November 22, 2004 public hearing:

James A. Wright, testified and submitted a letter for consideration by the Council regarding the use of Planned Residential Developments; and

The Washington State Department of Ecology submitted a letter dated November 22, 2004 regarding the draft Critical Areas Ordinance via facsimile.

The following persons testified on the applications at the December 13, 2004 public hearing:

[Fill in with meeting minutes]

Section 4. Transmittal to State. The City Community Development Director is directed to forward a copy of this Ordinance, together with all of the exhibits, to the Washington State Office of Community Development within ten days of adoption, pursuant to RCW 36.70A.106.

Section 5. Severability. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, clause or phrase of this Ordinance.

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

PASSED by the City Council and approved by the Mayor of the City of Gig Harbor this 13th day of December, 2004.

CITY OF GIG HARBOR

GRETCHEN A. WILBERT, MAYOR

ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: _____
CAROL A. MORRIS

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

Exhibit A

Chapter 17.16

SINGLE-FAMILY RESIDENTIAL (R-1)

17.16.060 Development standards.

In an R-1 district, the minimum lot requirements are as follows:

A. Minimum lot area per building site for short plats ¹	12,07,200 sq. ft.
B. Minimum lot width ¹	70'
C. Minimum front yard setback ²	25'
D. Minimum rear yard setback	30'
E. Minimum side yard setback	8'
F. Maximum impervious lot coverage	40%
G. Minimum street frontage	20'
H. Maximum Density ³	3-4 dwelling units/acre

¹A minimum lot area is not specified for subdivisions of five or more lots. The minimum lot width shall be 0.7 percent of the lot area, in lineal feet.

²In the case of a corner lot, the owner of such lot may elect any property line abutting on a street as the front property line; provided, such choice does not impair corner vision clearance for vehicles and shall not be detrimental to adjacent properties as determined by the planning and public works directors. The other property line abutting a street shall be deemed the side property line. An undersized lot or parcel shall qualify as a building site if such lot is a lot of record.

³~~A maximum density of up to four dwelling units per acre may be permitted within a planned residential development, pursuant to Chapter 17.89 GHMC.~~

(Ord. 710 § 6, 1996; Ord. 573 § 2, 1990. Formerly 17.16.070).

Chapter 17.28

RESIDENTIAL AND BUSINESS DISTRICT (RB-1)

17.28.050 Minimum development standards.

In an RB-1 district, the minimum lot requirements are as follows:

	Residential	Nonresidential
A. Minimum lot area (sq. ft.)	12,07,200	15,000
B. Minimum lot width	70'	70'
C. Minimum front yard setback	20'	20'
D. Minimum rear yard setback	25'	15'
E. Minimum side yard setback	7'	10'
F. Maximum impervious lot coverage	50%	60%
G. Minimum street frontage	20'	50'
H. Maximum Density	3-4 dwelling units/acre	
I. Maximum gross floor area	N/A	5,000 sq. ft. per lot

Chapter 17.46

WATERFRONT RESIDENTIAL (WR)

17.46.040 Development standards.

A minimum lot area for new subdivisions is not specified. The minimum lot requirements are as follows:

	Single-Family	Duplex	Nonresidential
A. Minimum lot area (sq. ft.) ¹	7,000	14,000	12,000
B. Minimum lot width	70'	50'	50'
C. Minimum front yard ²	20'	20'	20'
D. Minimum side yard	10'	10'	10'
E. Minimum rear yard	25'	25'	25'
F. Minimum yard abutting tidelands	0'	0'	0'
G. Maximum site impervious coverage	40%	45%	50%
H. Maximum Density ³	3-4 dwelling units per acre		

¹An undersized lot or parcel shall qualify as a building site if such lot is a lot of record.

²In the case of a corner lot, the owner of such lot may elect any property line abutting on a street as the front property line; provided such choice does not impair corner vision clearance for vehicles and shall not be detrimental to adjacent properties as determined by the planning and public works directors.

³Density bonus of up to 30 percent may be granted subject to the requirements of Chapter 17.89 GHMC, Planned residential district.

Chapter 17.48

WATERFRONT MILLVILLE (WM)

17.48.040 Development standards.

A minimum lot area for new subdivisions is not specified. The minimum development standards are as follows:

	Single-Family Dwelling	Attached up to 4 units	Non-residential
A. Minimum lot area (sq. ft.) ¹	6,000	6,000/unit	15,000
B. Minimum lot width	50'	100'	100'
C. Minimum front yard ²	20'	20'	20'
D. Minimum side yard	8'	10'	10'
E. Minimum rear yard	25'	25'	25'
F. Minimum yard abutting tidelands	0'	0'	0'
G. Maximum site impervious coverage	50%	55%	70%
H. Maximum Density ³	3-4 dwelling units per acre		
I. Maximum gross floor area	N/A	N/A	3,500 sq. ft. per lot

¹An undersized lot or parcel shall qualify as a building site if such lot is a lot of record.

²In the case of a corner lot, the owner of such lot may elect any property line abutting on a street as the front property line, provided such choice does not impair corner vision clearance for vehicles and shall not be detrimental to adjacent properties in the opinion of the planning and public works directors.

³Density bonus of up to 30 percent may be granted subject to the requirements of Chapter 17.89 GHMC (Planned residential district).

Chapter 17.50

WATERFRONT COMMERCIAL (WC)

17.50.040 Development standards.

In a waterfront commercial district, the minimum development requirements are as follows:

	Single- Family Dwelling	Attached up to 4 units	Non- residential
A. Minimum lot area (sq. ft.) ¹	6,000	6,000/unit	15,000
B. Minimum lot width	50'	100'	100'
C. Minimum front yard ²	20'	20'	20'
D. Minimum side yard	8'	10'	10'
E. Minimum rear yard	25'	25'	25'
F. Minimum yard abutting tidelands	0'	0'	0'
G. Maximum site impervious coverage	50%	55%	70%
H. Maximum density	3.54 dwelling units per acre		

¹An undersized lot shall qualify as a building site if such lot is a lot of record at the time this chapter became effective.

²In the case of a corner lot, the owner of such lot may elect any property line abutting on a street as the front property line, provided such choice does not impair corner vision clearance for vehicles and shall not be detrimental to adjacent properties as determined by the planning and public works directors.

Chapter 17.92

Mineral Resource Lands

Sections:

17.92.010 Short title.

17.92.020 Purpose.

17.92.030 Applicability.

17.92.040 Designation of mineral resource lands.

17.92.050 Title notification.

17.92.060 Plat Notification.

17.92.010 Short title.

This chapter shall be known and may be cited as the "mineral resource lands" code of the city.

17.92.020 Purpose.

The purpose of this chapter is:

- A. To promote the health, safety, and welfare of the citizens of the city;
- B. To designate mineral resource lands;
- C. To provide notification to future property owners in the vicinity of mineral resource lands of activities that may be incompatible with residential land use; and
- D. To comply with the Washington State Growth Management Act.

17.92.030 Applicability.

The provisions of this chapter shall apply to new residential development on property of which any portion is within four hundred (400) feet of the boundary of any parcel designated as a mineral resource land.

17.92.040 Designation of mineral resource lands.

Mineral resource lands subject to this chapter include the following:

- A. Any area presently operating under a valid Washington State Department of Natural Resources (DNR) surface mining permit and a valid land use permit from the county or the city.
- B. Any other area shall be classified a mineral resource land when:
 - 1. A surface mining permit is granted by the DNR; and
 - 2. The mining operation is approved by the city for compliance with zoning and the State Environmental Policy Act, Chapter 18.04 GHMC.

17.92.050 Title notification.

The owner of a site, any portion of which is within four hundred (400) feet of the property boundary of a site designated as a mineral resource land, for which an application for development activity is submitted, shall record a title notice with the Pierce County auditor. The notice shall be notarized and shall be recorded prior to approval of any development proposal for the site. Such notification shall be in the form as set forth below:

MINERAL RESOURCE LANDS NOTICE

Parcel Number: _____

Address: _____

Legal Description: _____

Notice: This parcel lies within or near an area of land designated Mineral Resource Lands by the City of Gig Harbor. A variety of commercial mineral extraction activities occur in the area that may be inconvenient or cause discomfort to area residents. This may arise from the use of heavy equipment, chemicals, and spraying which may generate dust, smoke, and noise associated with the extraction of mineral resources. The City of Gig Harbor has established mineral resource extraction as a priority use on existing productive mineral resource lands, and residents of adjacent property should be prepared to accept such inconvenience or discomfort from normal, necessary mineral resource extraction operations.

Signature of owner(s)

(NOTARY ACKNOWLEDGEMENT)

17.92.060 Plat notification.

The owner of a site, any portion of which is within four hundred (400) feet of the property boundary of a site designated as a mineral resource land, on which a short subdivision or subdivision is submitted, shall record a notice on the face of the plat. Such notification shall be in the form as set forth below.

Notice: This property lies within or near an area of land designated Mineral Resource Lands by the City of Gig Harbor. A variety of commercial mineral extraction activities occur in the area that may be inconvenient or cause discomfort to area residents. This may arise from the use of heavy equipment, chemicals, and spraying which may generate dust, smoke, and noise associated with the extraction of mineral resources. The City of Gig Harbor has established mineral resource extraction as a priority use on existing productive mineral resource lands, and residents of adjacent property should be prepared to accept such inconvenience or discomfort from normal, necessary mineral resource extraction operations.

18-1

Title 18

ENVIRONMENT

Chapters:

18.04 Environmental Review (SEPA)

18.08 ~~Wetland Management Regulations~~Critical

Areas

~~18.12 Critical Areas~~

[Wetland Management Regulations moved into
Critical Areas – new Critical Areas section 18.08]

Gig Harbor Municipal Code 18.08.030
18-11 (Revised 10/96)

Chapter 18.1208
CRITICAL AREAS

Sections:

- 18.08.010 Purpose.
- 18.08.020 Goals.
- 18.08.030 Best Available Science.
- 18.08.040 Definitions.
- 18.08.050 Applicability.
- 18.08.060 Hillside, ravine sidewalls and bluffs.
- 18.08.070 Landslide and erosion hazard areas.
- 18.08.080 Seismic hazard areas.
- 18.08.090 Flood hazard areas.
- 18.08.100 Wetlands – Designation and Mapping.
- 18.08.110 Wetlands – classification guidelines/ratings.
- 18.08.120 Wetlands – Regulated activities.
- 18.08.130 Wetlands – Permitting process.
- 18.08.140 Wetlands – Administration.
- 18.08.150 Wetlands – analysis report requirements.
- 18.08.160 Wetlands – Buffers.
- 18.08.170 Wetlands – Alteration of buffers.
- 18.08.180 Wetlands – Permitted uses in buffer areas.
- 18.08.190 Wetlands – Sequence of mitigation actions.
- 18.08.200 Wetlands – Mitigation plan submittal requirements.
- 18.08.210 Wetlands – Criteria for compensatory mitigation/location criteria and timing of compensatory mitigation.
- 18.08.220 Wetlands – replacement criteria.
- 18.08.230 Wetlands – Monitoring program and contingency plan.
- 18.08.240 Streams – Designation and rating of Streams.
- 18.08.250 Streams – Critical Areas Report.
- 18.08.260 Streams – Performance Standards- General.
- 18.08.270 Streams – Performance Standards- Mitigation Requirements.
- 18.08.280 Critical fish and wildlife habitat areas.
- 18.08.290 Aquifer recharge areas.
- 18.08.300 Maintenance of existing structures and developments.
- 18.08.310 Exemptions from development standards.
- 18.08.320 Variances from the minimum requirements.
- 18.08.330 Reasonable use exceptions.
- 18.08.340 Performance Bonding.
- 18.08.350 Penalties and enforcement.
- 18.08.360 Suspension and revocation.
- 18.08.370 Nonconforming uses.

~~18.08.12.010 Purpose.~~

~~18.08.12.020 Goals.~~

~~18.08.03012.xxx Best Available Science~~

~~18.1208.0340 Definitions.~~

~~18.08.12.0540 Applicability.~~

~~18.1208.0650 Hillside, ravine sidewalls and bluffs.~~

~~18.1082.0760 Landslide and erosion hazard areas.~~

~~18.08.12.0870 Seismic hazard areas.~~

~~18.08.12.0890 Flood hazard areas.~~

~~18.1208.100xxx Wetlands~~

~~18.08.11012.xxx Streams~~

~~18.1208.012090 Critical fish and wildlife habitat areas.~~

~~18.08.12.1300 Aquifer recharge areas.~~

~~18.08.12.1140 Reasonable use exceptions.~~

~~18.08.12.1520 Maintenance of existing structures and developments.~~

~~18.1208.1360 Exemptions from development standards.~~

~~18.1208.1470 Variances from the minimum requirements.~~

~~18.1208.1850 Performance assurance.~~

~~18.08.12.1960 Penalties and enforcement.~~

~~18.08.12.20170 Severability.~~

~~18.1208.180210 Chapter and ordinance updates.~~

18.1208.010 Purpose.

The ordinance codified in this chapter is intended to promote the maintenance, enhancement and preservation of critical areas and environmentally sensitive natural systems by avoiding or minimizing adverse impacts from construction and development. This chapter implements the goals and objectives of the state Growth Management Act of 1990 through the development and implementation of policies and interim regulations to manage critical areas in the public's interest and welfare. It is not the intent of this chapter to deny a reasonable use of private property, but to assure that development on or near critical areas is accomplished in a manner that is sensitive to the environmental resources of the community. (Ord. 619 § 1, 1992).

18.1208.020 Goals.

In implementing the purposes stated in GHMC ~~18.12.18.08.010~~, it is the intent of this chapter to accomplish the following:

A. Protect environmentally sensitive natural areas and the functions they perform by the careful and considerate regulation of development;

B. Minimize damage to life, limb and property due to landslides and erosion on steep or unstable slopes, seismic hazard areas and areas subject to subsidence;

C. Protect wetlands and their functions and values;

D. Protect and maintain stream flows and water quality within the streams;

DE. Minimize or prevent siltation to the receiving waters of Gig Harbor Bay for the maintenance of marine water quality and the maintenance and preservation of marine fish and shellfish;

EE. Preserve natural forms of flood control and stormwater storage from alterations to drainage or stream flow patterns;

FG. Protect aquifer recharge areas from undesirable or harmful development;

GH. Protect, maintain and enhance areas suitable for wildlife, including rare, threatened or endangered

species;

H. Protect, maintain and enhance fish and wildlife habitat conservation areas within their natural geographic distribution so as to avoid the creation of subpopulations;

I. Implement the goals, policies and requirements of the Growth Management Act. (Ord. 619 § 1, 1992).

18.1082.030 Best Available Science.

A. The Growth Management Act requires jurisdictions to include the best available science when designating and protecting critical areas. The Growth Management Act also requires the implementation of conservation or protection measures necessary to preserve or enhance anadromous fish and their habitat (WAC 365-195-900 through WAC 365-195-925). Anadromous fish are those that spawn and rear in freshwater and mature in the marine environment, including salmon and char (bull trout).

Best available science shall be used in developing policies and development regulations to protect the functions and values of critical areas. Critical area reports and decisions to alter critical areas shall rely on the best available science to protect the functions and values of critical areas. The best available science is that scientific information applicable to the critical area prepared by local, state or federal natural resource agencies, a qualified scientific professional or team of qualified scientific professionals, that is consistent with criteria established in WAC 365-195-900 through WAC 365-195-925.

18.1208.0340 Definitions.

This chapter applies to all designated or defined critical areas within the city of Gig Harbor. The following definitions apply:

Definitions:

A. For purposes of this chapter, the following definitions shall apply:

1. "Alteration" means any activity which materially affects the existing condition of land or improvements.

2. "Applicant" means the person, party, firm, corporation, or other legal entity that proposes any activity. The applicant is either the owner of the land on which the proposed activity would be located, a contract vendee, a lessee of the land, the person who would actually control and direct the proposed activity, or the authorized agent of such a person.

3. "Aquifer" means a subsurface, saturated geologic formation which produces, or is capable of producing, a sufficient quantity of water to serve as a private or public water supply.

4. "Aquifer recharge areas" means those areas

which serve as critical ground water recharge areas and which are highly vulnerable to contamination from intensive land uses within these areas.

5. "Best management plan" means a plan or program developed by the local Soil Conservation District (U.S.D.A.) which specifies best management practices for the control of animal wastes, stormwater runoff and erosion.

6. "Bluff" means a steeply rising, near vertical slope which abuts and rises from the Puget Sound shoreline. Bluffs occur in the east area of the city, fronting the Tacoma Narrows, and are further identified in the Coastal Zone Atlas, Volume 7, for Pierce County. The toe of the bluff is the beach and the top is typically a distinct line where the slope abruptly levels out. Where there is no distinct break in a slope, the top is the line of vegetation separating the unvegetated slope from the vegetated uplands, or, if the bluff is vegetated, that point where the bluff slope diminishes to 15 percent or less.

7. "Buffer" means a natural area adjacent to hillsides or ravines which provides a margin of safety through protection of slope stability, attenuation of surface water flows and landslide, seismic and erosion hazards reasonably necessary to minimize risk to the public from loss of life, well-being or property damage from natural disaster.

8. "Building setback line" means a distance, in feet, beyond which the footprint or foundation of a building or structure shall not extend.

9. "City" means the city of Gig Harbor.

10. "Clearing" means the removal of timber, brush, grass, ground cover or other vegetative matter from a site which exposes the earth's surface of the site.

11. "Compensatory mitigation" means mitigation for wetland losses or impacts resulting from alteration of wetlands and/or their buffers. It includes, but is not limited to, creation, enhancement and restoration.

12. "Contaminant" means any chemical, physical, biological or radiological material that is not naturally occurring and is introduced into the environment by human action, accident or negligence.

13. "Creation" means the producing or forming of a wetland through artificial means from an upland (nonwetland) site.

14. "Critical areas" consist of those lands which are subject to natural hazards, contain important or significant natural resources or which have a high capability of supporting important natural resources.

15. "Department" means the city department of community development.

16. "Designated wetland" means those lands identified through the classification process established by this chapter.

17. "Development" means alteration (see definition for alteration).

18. "DRASTIC" means a model developed by the National Water Well Association and Environmental

Protection Agency and which is used to measure aquifer susceptibility to contamination.

19. "Earth/earth material" means naturally occurring rock, soil, stone, sediment, organic material, or combination thereof.

20. "Enhancement" means actions performed to improve the conditions of existing degraded wetlands and/or buffers so that the functions they provide are of a higher quality (e.g., increasing plant diversity, increasing wildlife habitat, installing environmentally compatible erosion controls, removing nonindigenous plant or animal species, removing fill material or garbage).

21. "Erosion" means the wearing away of the earth's surface as a result of the movement of wind, water, or ice.

22. "Erosion hazard areas" means those areas which are vulnerable to erosion due to natural characteristics including vegetative cover, soil texture, slope, gradient or which have been induced by human activity. Those areas which are rated severe or very severe for building site development on slopes or cut banks, in accordance with the United States Department of Agriculture Soil Conservation Service Soil Survey for Pierce County Area (February 1979), are included within this definition.

23. "Excavation" means the mechanical removal of earth material or fill.

24. "Existing and on-going agricultural activities" means those activities conducted on lands defined in RCW 84.34.020(2), and those activities involved in the production of crops and livestock, including but not limited to operation and maintenance of farm and stock ponds or drainage ditches, irrigation systems, changes between agricultural activities, and normal operation, maintenance or repair of existing serviceable structures, facilities or improved areas. Activities which bring an area into agricultural use are not part of an on-going activity. An operation ceases to be on-going when the area on which it was conducted has been converted to a non-agricultural use or has lain idle both more than five years and so long that modifications to the hydrological regime are necessary to resume operations, unless the idle land is registered in a federal or state soils conservation program.

25. "Fill/fill material" means a deposit of earth material, placed by human or mechanical (machine) means, and which is not defined by solid waste according to Chapter 70.95 RCW.

26. "Filling" means the act of placing fill material on any surface.

27. "Fish and wildlife habitat areas" means those areas identified as being of critical importance in the maintenance and preservation of fish, wildlife and natural vegetation including waters of the state, and as further identified in GHMC 18.08.280990.

28. "Flood hazard areas" mean those areas within the city of Gig Harbor which are determined to be at risk of having a one percent or greater chance of experiencing

a flood in any one year, with those areas defined and identified on the Federal Emergency Management Administration (FEMA) flood insurance rate maps for the city of Gig Harbor.

29. "Floodplain development permit" means the permit required by the city flood hazard construction ordinance Chapter 15.04 GHMC.

30. "Geologically hazardous areas" means those areas as designated in the city of Gig Harbor comprehensive plan as "landslide hazards," in the Washington Department of Ecology Coastal Zone Atlas, Volume 7, and which are further defined in WAC 365-190-080(5) and this title.

31. "Grading" means any excavating, filling, clearing, leveling, or contouring of the ground surface by human or mechanical means.

32. "Grading permit" means the permit required by the city for grading and clearing ordinance.

33. "In-kind mitigation" means to replace wetlands with substitute wetlands whose characteristics and functions and values are intended to replicate those destroyed or degraded by a regulated activity.

34. "Habitat management plan" means a report prepared by a qualified wildlife biologist.

35. "Hazardous substance" means any material that exhibits any of the characteristics or criteria of hazardous waste, inclusive of waste oil and petroleum products, and which further meets the definitions of "hazardous waste" pursuant to Chapter 173-303 WAC.

36. "Hillsides" means geologic features with slopes of 15 percent or greater. The ordinance codified in this chapter provides four classes of hillsides in order to differentiate between the levels of protection and the application of development standards.

37. "Landslide" means an abrupt downslope movement of soil, rock or ground surface material.

38. "Landslide hazard area" means those areas which are susceptible to risk of mass movement due to a combination of geologic, topographic and hydrologic factors.

39. "Mitigation" means to avoid, minimize, or compensate for adverse wetland impacts.

40. "Out-of-kind mitigation" means to replace wetlands with substitute wetlands whose characteristics do not closely approximate those destroyed or degraded by a regulated activity.

41. "Permanent erosion control" means continuous on-site and off-site control measures that are needed to control conveyance or deposition of earth, turbidity or pollutants after development, construction, or restoration.

42. "Person" means an individual, firm, co-partnership, association or corporation.

43. "Qualified biologist" means a person with a minimum of a four-year degree in wildlife sciences, biology, environmental sciences, soil science, limnology or an equivalent academic background who also has at least two years of experience in stream restoration.

44. "Qualified wetland specialist" is a person with a minimum of a four-year degree in wildlife sciences, biology, environmental sciences, soil science, limnology, or an equivalent academic background who also has experience in performing wetland delineations, analysis of wetland functions and values and project impacts, and wetland mitigation and restoration techniques. The person must be familiar with the Washington State Department of Ecology Wetland Identification and Delineation Manual (1997), which is consistent with the 1987 Federal Manual used by the U.S. Army Corps of Engineers, city grading and clearing ordinance, and Chapter 18.08 GHMC regulations and the requirements of this chapter. (Ord. 726 § 1, 1996; Ord. 611 § 1, 1991).

45. "Qualified wildlife biologist" means a person having, at a minimum, a bachelor's degree in wildlife biology, wildlife science, wildlife ecology, wildlife management or zoology, or a bachelor's degree in natural resource or environmental science plus 12 semester or 18 quarter hours on wildlife course works and two years of professional experience.

4346. "Ravine sidewall" means a steep slope which abuts and rises from the valley floor of a stream and which was created by the normal erosive action of the stream. Ravine sidewalls are characterized by slopes predominantly in excess of 25 percent although portions may be less than 25 percent. The base of a ravine sidewall is the stream valley floor. The top of a ravine sidewall is a distinct line where the slope abruptly levels out. Where there is no distinct break in slope, the top shall be that point where the slope diminishes to 15 percent or less.

4447. "Restoration" means the reestablishment of a viable wetland from a previously filled or degraded wetland site.

4548. "Seismic hazard areas" means those areas which are susceptible to severe damage from earthquakes as a result of ground shaking, slope failure, settlement or soil liquefaction.

4649. "Significant impact" means a meaningful change or recognizable effect to the ecological function and value of a critical area-wetland, which is noticeable or measurable, resulting in a loss of wetland function and value.

4750. "Single-family residence" or "dwelling" means a building or structure, or portion thereof, which is designed for and used to provide a place of abode for human beings, including mobile homes, as defined in the city zoning code (GHMC 17.04.300 and 17.04.305).

4851. "Site" means any parcel or combination of contiguous parcels, or right-of-way or combination of contiguous rights-of-way under the applicant's ownership or control where the proposed project impacts a wetland critical area (s).

4952. "Slope" means an inclined ground surface, the inclination of which is expressed as a ratio

(percentage) of vertical distance to horizontal distance by the following formula: V (vertical distance) \times 100 = % slope H (horizontal distance)

5053. "Species of local importance" means a species of animal which is of local concern due to their population status or their sensitivity to habitat manipulation. This term also includes game species.

5154. "Stockpiling" means the placement of material with the intent to remove at a later time.

55. "Streams" means those areas where surface waters produce a defined channel or bed, not including irrigation ditches, canals, storm or surface water runoff devices, or other entirely artificial watercourses, unless they are used by salmonids or are used to convey streams naturally occurring prior to construction in such watercourses. For the purpose of this definition, a defined channel or bed is an area which demonstrates clear evidence of the passage of water and includes, but is not limited to, bedrock channels, gravel beds, sand and silt beds, and defined-channel swales. The channel or bed need not contain water year-round.

56. "Stream buffer zone" means a designated area contiguous or adjacent to a stream that is required for the continued maintenance, function, and structural stability of the stream. Functions of a buffer include shading, input of organic debris and coarse sediments, uptake of nutrients, stabilization of banks, protection from intrusion, or maintenance of wildlife habitat.

5257. "Substrate" means the soil, sediment, decomposing organic matter or combination of those located on the bottom surface of the wetland.

5358. "Utility line" means pipe, conduit, cable or other similar facility by which services are conveyed to the public or individual recipients. Such services shall include, but are not limited to, water supply, electric power, gas and communications.

5459. "Wetland" or "wetlands" means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, retention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street or highway. Wetlands include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands.

5560. "Wetland buffer zone" means a designated area contiguous or adjacent to a wetland that is required for the continued maintenance, function, and

structural stability of the wetland. Functions of a buffer include shading, input of organic debris and coarse sediments, uptake of nutrients, stabilization of banks, protection from intrusion, or maintenance of wildlife habitat. For further information on permitted uses, see GHMC 18.08.18016020.

5661. "Wetland class" means the U.S. Fish and Wildlife Service wetland classification scheme using a hierarchy of systems, subsystems, classes and subclasses to describe wetland types (refer to USFWS, December 1979, Classification of Wetlands and Deepwater Habitats of the United States for a complete explanation of the wetland classification scheme). Eleven class names are used to describe wetland and deepwater habitat types. These include: forested wetland, scrub-shrub wetland, emergent wetland, moss-lichen wetland, unconsolidated shore, aquatic bed, unconsolidated bottom, rock bottom, rocky shore, streambed, and reef.
57. "Wetland specialist" is a person with a minimum of a four year degree in wildlife sciences, biology, environmental sciences, soil science, limnology or an equivalent academic background who also has experience in performing wetland delineations, analysis of wetland functions and values and project impacts, and wetland mitigation and restoration techniques. The person must be familiar with the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, city grading and clearing ordinance, and the city wetlands management ordinance. (Ord. 726 § 1, 1996; Ord. 611 § 1, 1991).

58. "Wildlife biologist" means a person having, at a minimum, a bachelor's degree in wildlife biology, wildlife science, wildlife ecology, wildlife management or zoology, or a bachelor's degree in natural resource or environmental science plus 12 semester or 18 quarter hours on wildlife course works and two years of professional experience.

18.12.18.08.050 Applicability.

A. Critical Area Review. All development proposals in critical areas, whether on public or private property, shall comply with the requirements of this chapter. The planning director Community Development Director or his/her designee shall utilize the procedures and rules established in the city of Gig Harbor environmental policy ordinance, Chapter 18.04 GHMC (Environmental Review (SEPA)) and the applicable provisions of GHMC Title 19, to implement the provisions of this chapter. Development proposals include any development project which would require any of the following:

1. Building permit for any construction,
2. Clearing and grading permit,
3. Any shoreline management permit as authorized under Chapter 90.58 RCW,
4. Site plan review,
5. Subdivision, short subdivision or planned unit development,

6. Zoning variance or conditional use permit.

B. Special Studies Required. When an applicant submits an application for any development proposal, the application shall indicate whether any critical area is located on the site. The planning director Community Development Director or designee shall visit the site, and in conjunction with the review of the information provided by the applicant and any other suitable information, shall make a determination as to whether or not sufficient information is available to evaluate the proposal. If it is determined that the information presented is not sufficient to adequately evaluate a proposal, the planning director Community Development Director shall notify the applicant that additional studies as specified herein shall be provided.

C. Appeals. A decision of the planning director Community Development Director to approve, conditionally approve or deny a permit, or any official interpretation in the administration of this chapter may be appealed in accordance with the procedures established under GHMC Title 19, (Ord. 727 § 3, 1996; Ord. 619 § 1, 1992).

18.1208.0560 Hillsides, ravine sidewalls and bluffs.

A. Disturbance Limitations. If a hillside, ravine sidewall or bluff is located on or adjacent to a development site, all activities on the site shall be in compliance with the following requirements:

I. Ravine Sidewalls and Bluffs.

a. Buffers. An 50-foot-undisturbed buffer of natural vegetation with a minimum width equal to the height of the ravine sidewall shall be established and maintained from the top, toe and sides of all ravine sidewalls and bluffs. All buffers shall be measured on a horizontal plane.

b. Buffer Delineation. The edge of a buffer shall be clearly staked, flagged and fenced prior to any site clearing or construction. Markers shall be clearly visible and weather resistant. Site clearing shall not commence until such time that the project proponent or authorized agent for the project proponent has submitted written notice to the city that the buffer requirements of this section have been met. Field marking of the buffer shall remain in place until all phases of construction have been complete and an occupancy permit has been issued by the city.

c. Buffer Reduction. A buffer may be reduced upon verification by a qualified professional and supporting environmental information, to the satisfaction of the city, that the proposed construction method will:

- i. Not adversely impact the stability of ravine sidewalls;
- ii. Not increase erosion and mass movement potential of ravine sidewalls;
- iii. Use construction techniques which minimize disruption of existing topography and

vegetation;

iv. Includes measures to overcome any geological, soils and hydrologic constraints of the site.

The buffer may be reduced to no less than the minimum rear yard setback established in the respective zoning district, pursuant to GHMC Title 17.

d. Building Setback Lines. A building setback line of 10 feet is required from the edge of any buffer of a ravine sidewall or bluff.

2. Hillside of 15 Percent Slope and Greater - Studies Required. Developments on hillsides shall comply with the following requirements:

a. Site Analysis Reports Required. The following chart sets forth the level of site analysis report required to be developed based upon the range of the slope of the site and adjacent properties:

B. Slope of Length of Parameters Report Site and/or Slope (feet) of Report Prepared Adjacent (see key) by Properties

0% to 15% No limit Report not required

15% to 25% > 50 1, 2, 3 Building contractor or other technical consultant 25% to 40% > 35 1, 2, 3, 4 Registered civil engineer 40% + > 20 1, 2, 3, 4 Registered engineer or geotechnical engineer. ~~Gig Harbor Municipal Code 18.12.18.08.070 18-29~~

C. Report Key Contents

1. Recommended maximum site ground disturbance.

2. Estimate of storm drainage (gpm) for preconstruction, during construction and post-construction.

3. Recommended methods to minimize erosion and storm water runoff from site during construction and post-construction.

4. Seismic stability of site, preconstruction, during construction and post-construction.

a. Development Location. Structures and improvements shall be located to preserve the most sensitive portion of the site, its natural land forms and vegetation.

b. Landscaping. The disturbed areas of a development site not used for buildings and other developments shall be landscaped according to the landscape standards of the zoning code (Chapter 17.78 GHMC).

c. Project construction shall be required to implement all recommended requirements of the report referenced in subsection A2a of this section, and any additional requirements as determined by city staff. In addition, should adjacent properties be adversely impacted by the implementation or construction, additional mitigation measures necessary to minimize or eliminate these impacts shall be implemented by the applicant. (Ord. 619 § 1, 1992).

18.1208.0670 Landslide and erosion hazard areas.

Areas which are identified as landslide or erosion hazard areas shall be subject to the requirements established in this section.

A. Regulation. Applications for regulated activities proposed within designated landslide and erosion hazard areas shall be accompanied by a geotechnical report prepared by a geologist or geotechnical engineer licensed as a civil engineer with the state. If it is satisfactorily demonstrated to the ~~planning director~~ Community Development Director that a landslide or erosion hazard potential does not exist on the site, the requirements of this section may be waived.

B. Geotechnical Report Requirements. A geotechnical report required under this section shall include, at a minimum, the following information:

1. Topographic data at a minimum scale of 1:240 (1 inch = 20 feet). Slope ranges shall be clearly delineated in increments of 15 percent to 25 percent, 25 percent to 40 percent and greater than 40 percent;

2. Subsurface data, including boring logs and exploratory methods, soil and rock stratigraphy, ground water levels and any seasonal variations of ground water levels;

3. Site history, including description of prior grading and clearing, soil instability or slope failure. If a geotechnical report has been prepared and accepted by the ~~planning director~~ Community Development Director within the previous two years for a specific site and the proposed land use development and site conditions have not changed, the report may be utilized without the requirement for a new report.

C. Development Standards. Upon submission of a satisfactory geotechnical report or assessment, site development may be authorized by the director subject to the following:

1. Buffers shall comply with the requirements of GHMC ~~18.08.06012.160050(A)~~ 18.08.06012.160050(A);

2. Approved erosion-control measures are in place prior to, or simultaneous, with site clearing or excavation;

3. Such other conditions as deemed appropriate by the administrator to ensure compliance with the provisions of this chapter. (Ord. 619 § 1, 1992).

18.0812.07080 Seismic hazard areas.

Designated seismic hazard areas shall be subject to the requirements of this section. At a minimum, seismic hazard areas shall include areas of alluvial and recessional outwash surficial geologic units as identified in "Water Resources and Geology of the Kitsap Peninsula and Certain Adjacent Lands, Water Supply Bulletin Number 18, Plate One," U.S. Department of the Interior, Geological Survey, Water Resources Division, and any lot, tract, site or parcel which has been modified

by imported or excavated earthen fill material.

A. Regulation. Applications for regulated activities proposed within designated seismic hazard areas shall be accompanied by a geotechnical report prepared by a geologist or geotechnical engineer licensed as a civil engineer with the state. If it is satisfactorily demonstrated that a seismic hazard potential does not exist on the site, the requirements of this section may be waived.

B. Geotechnical Report Requirements. The required report shall evaluate the existing site conditions, including geologic, hydrologic and site capability to accommodate the proposed activity. At a minimum, the following shall be included:

1. Analysis of subsurface conditions;
2. Delineation of the site subject to seismic hazards;
3. Analysis of mitigation measures which may be employed to reduce or eliminate seismic risks, including an evaluation of the effectiveness of mitigation measures.

If a proposal is required to submit a seismic risk analysis pursuant to any requirements of the most recently adopted edition of the ~~Uniform City's Building Code (Chapters 23 or 25) by the city of Gig Harbor~~, the report requirements of this section may be waived by the department. (Ord. 619 § 1, 1992).

~~18.1208.08090~~ 18.08.090 Flood hazard areas.

Areas which are prone to flooding and which are identified in the Federal Emergency Management Administration flood insurance rate maps for the city of Gig Harbor (September 2, 1981) shall be subject to the requirements of this section.

A. Regulation. All development within flood hazard areas shall be subject to the requirements of the city of Gig Harbor flood hazard construction standards (Chapter 15.04 GHMC). (Ord. 619 § 1, 1992).

~~A.18.08.xxx?~~ 18.08.100 Wetlands – Designation and Mapping, mapping of wetlands.

A. Pursuant to WAC 197-11-908, the city designates wetlands as critical areas defined in this chapter.

B. The approximate location and extent of critical areas are shown on the City's critical area maps. These maps are to be used as a guide and may be updated as new critical areas are identified. They are a reference and do not provide a final critical area designation. Mapping sources include:

1. Areas designated on the National Wetland Inventory maps:
the Pierce County wetland atlas of 1990;
2. Areas which have been designated as wetlands on the Pierce County wetland atlas; per the city of Gig Harbor wetlands inventory and maps, May/June 1992. (Ord. 628 § 1, 1992; Ord. 611 § 1, 1991).

Definitions for the following have been integrated into the Definitions Section 18.08.03040 above.

Alteration
Applicant
City
Clearing
Compensatory mitigation
Creation
Department
Designated wetland
Development
Earth/earth material
Enhancement
Erosion
Excavation
Existing and on-going agricultural activities
Fill/fill material
Floodplain development permit
Grading
Grading permit
In-kind mitigation
Mitigation
Out-of-kind mitigation
Permanent erosion control
Person
Restoration
Significant impact
Single-family residence or dwelling
Site
Slope
Stockpiling
Substrate
Utility line
Wetland or wetlands
Wetland buffer zone
Wetland class
Wetland specialist

18.08.11040 Wetlands – classification guidelines/ratings.

A. Wetland rating and classification shall be established based upon the completion of a delineation report prepared by a qualified wetland specialist to determine boundary, size, function and value. Guidelines for preparing a wetland delineation report are defined in GHMC 18.08.070150 and the Department of Ecology Wetland Identification and Delineation Manual (1997), which is consistent with the 1987 Federal Manual for Identifying and Delineating Jurisdictional Wetlands, in use as of January 1, 1995, used by the U.S. Army Corps of Engineers.

B. Wetland ratings. Wetlands shall be rated according to the Washington State Department of Ecology wetland rating system found in the Washington State Wetland Rating System for Western Washington, revised April 2004- (Ecology Publication #04-06-025).

These documents contain the definitions and methods for determining if the criteria below are met.

1. Wetland rating categories

a. Category I. Category I wetlands are those wetlands of exceptional resource value based on their functional value and diversity. Category I wetlands are:

- i. Undisturbed estuarine wetlands larger than one acre.
- ii. Wetlands designated by Washington Natural Heritage Program as high quality.
- iii. Bogs.
- iv. Mature and old-growth forested wetlands larger than one acre.
- v. Wetlands in coastal lagoons.
- vi. Wetlands that perform high functions (wetlands scoring 70 points or more on the Ecology wetland rating form).

i. Documented habitat for federal or state listed endangered or threatened fish, animal, or plant species;
ii. High quality native wetland communities, including documented category I or II quality Natural Heritage wetland sites and sites which qualify as a category I or II quality Natural Heritage wetland (defined in the rating system documents);

iii. High quality, regionally rare wetland communities with irreplaceable ecological functions, including sphagnum bogs and fens, estuarine wetlands, or mature forested swamps (defined in the rating system documents); or

iv. Wetlands of exceptional local significance.

A. Wetlands shall be classified as Category I, II, III and IV, in accordance with the following criteria:

1. Category I:

- a. Documented habitats for sensitive plant, fish or animal species recognized by federal or state agencies, or
- b. Regionally rare wetland communities which are not high quality, but which have irreplaceable ecological functions, including sphagnum bogs and fens, estuarine wetlands, or mature forested swamps, or
- c. Wetland types with significant functions which may not be adequately replicated through creation or restoration. These wetlands may be demonstrated by the following characteristics:
 - i. Significant peat systems, or
 - ii. Forested swamps that have three canopy layers, excluding monotypic stands of red alder averaging eight inches diameter or less at breast height, or
 - iii. Significant spring fed systems, or
 - d. Wetlands with significant habitat value based on diversity and size, including wetlands which are:

- i. Ten acres or greater in size; and
- two or more wetland classes together with open

- water at any time during a normal year, or
- ii. Ten acres or greater in size; and
- three or more wetland classes; and five or more subclasses of vegetation in a dispersed pattern, or
- iii. Five acres or greater in size; and 40 to 60 percent open water at any time during a normal year; and two or more subclasses of vegetation in a dispersed pattern, or
- e. Regulated wetlands which are contiguous with both year round and intermittent salmonid fish-bearing waters, or
- f. Wetlands with significant use by fish and wildlife.

b. Category II. Category II wetlands are those wetlands of significant resource value based on their functional value and diversity. Category II wetlands are:

- i. Estuarine wetlands smaller than one acre or disturbed estuarine wetlands larger than one acre, or
- ii. Wetlands scoring between 51 and 69 points on the Ecology wetland rating form.

2. Category II. Regulated wetlands that do not contain features outlined in Category I or III.

c. Category III. Category III wetlands are those wetlands of important resource value based on their functional value and diversity. Category III wetlands are wetlands with a moderate to low level of functions (wetlands scoring 30 to 50 points on the wetland rating form).

3. Category III:

- a. Regulated wetlands which do not meet the criteria of a Category I or II wetland and which are greater than 10,000 square feet in area; and
- b. Hydrologically isolated wetlands that are greater than 10,000 square feet but less than or equal to one acre in size, and have only one wetland class, and have only one dominant plant species (monotypic vegetation);
- c. Hydrologically isolated wetlands less than 10,000 square feet in area which contain a rare or unique species or which have significant biological function and value.

d. Category IV. Category IV wetlands are those wetlands with the lowest level of functions scoring less than 30 points on the Ecology wetland rating form. Hydrologically isolated Category IV wetlands less than 1,000 square feet are exempt as per GHMC 18.08.310H.

4. Category IV Criteria:

- a. All streams designated as Type 3—5 waters by the Department of Natural Resources, Forest Practices Rules and Regulations pursuant to WAC 222-16-020 and 222-16-030. (Ord. 726 § 2, 1996; Ord. 628 § 1, 1992; Ord. 611 § 1, 1991).

18.08.120050 Wetlands – Regulated activities.

- A. Unless specifically exempted by GHMC

18.08.060310, the following activities in a wetland and/or its associated buffer shall be regulated pursuant to the requirements of this chapter. The regulated activities are as follows:

1. Removing, excavating, disturbing or dredging soil, sand, gravel, minerals, organic matter or materials of any kind;
2. Dumping, discharging or filling with any material;
3. Draining, flooding or disturbing the water level or water table;
4. Constructing, reconstructing, demolishing or altering the size of any structure or infrastructure, except repair of an existing structure or infrastructure, where the existing square footage or foundation footprint is not altered;
5. Destroying or altering vegetation through clearing, harvesting, cutting, intentional burning, shading or planting vegetation that would alter the character of a wetland;
6. Activities from construction or development that result in significant, adverse changes in water temperature, physical or chemical characteristics of wetland water sources, including quantity and pollutants.

B. Activities listed in subsection (A) above which do not result in alteration in a wetland and/or its associated buffer, may require fencing along the outside perimeter of the buffer or erosion control measures as provided in GHMC 18.08.210160(B). (Ord. 611 § 1, 1991).

18.08.060 Exemptions:

The following activities shall be exempt from the provisions of this chapter:

- A. Existing and ongoing agricultural activities, as defined in this chapter;
- B. Forestry practices regulated and conducted in accordance with the provisions of Chapter 76.09 RCW and forest practice regulations;
- C. Activities affecting a hydrologically isolated wetland, if the functional wetland size is less than 2,500 square feet, except that such activities shall comply with the city flood hazard construction code and the city storm drainage management plan;
- D. Maintenance, operation and reconstruction of existing roads, streets, utility lines and associated structures, provided that reconstruction of any such facilities does not extend outside the scope of any designated easement or right of way;
- E. Activities on improved roads, rights of way, easements, or existing driveways;
- F. Normal maintenance and reconstruction of structures, provided that reconstruction may not extend the existing ground coverage;
- G. Site investigative work necessary for land use

~~application submittals such as surveys, soil logs, percolation tests and other related activities;~~

~~H. Activities having minimum adverse impacts on wetlands, such as passive recreational uses, sport fishing or hunting, scientific or educational activities;~~

~~I. Activities and developments which are subject to the policies and standards and subject to review pursuant to the state Shoreline Management Act and the city shoreline master program;~~

~~J. Emergency actions which must be undertaken immediately or for which there is insufficient time for full compliance with this chapter where necessary to:~~

- ~~1. Prevent an imminent threat to public health or safety, or~~
- ~~2. Prevent an imminent danger to public or private property, or~~
- ~~3. Prevent an imminent threat of serious environmental degradation.~~

~~The department shall determine on a case by case basis emergency action which satisfies the general requirements of this subsection. In the event a person determines that the need to take emergency action is so urgent that there is insufficient time for review by the department, such emergency action may be taken immediately. The person undertaking such action shall notify the department within one working day of the commencement of the emergency activity. Following such notification the department shall determine if the action taken was within the scope of the emergency actions allowed in this subsection. If the department determines that the action taken or part of the action taken is beyond the scope of allowed emergency action, enforcement action according to provisions of this chapter is warranted. (Ord. 726 § 3, 1996; Ord. 611 § 1, 1991).~~

18.08.130070 Wetlands – Permitting process.

A. Overview. Inquiries regarding conduct of a regulated activity in a wetland can be made to the city ~~planning department~~ Department. The department shall utilize the National Wetlands Inventory (NWI) maps and the Department of Natural Resources Stream Type ~~Pierce County wetland atlas~~ maps to establish general location of wetland sites. If the maps indicate the presence of a wetland, a wetland delineation report shall be filed, unless the department determines that a wetland is not on or within the site. This determination may be based on information provided by the applicant and from other sources. If the map does not indicate the presence of a wetland or wetland buffer zone within the site, but there are other indications that a wetland may be present, the department shall determine whether a wetland analysis report is required.

B. Permit Requirements. No separate application or permit is required to conduct regulated activities within a wetland or its associated buffer. Review of regulated activities within a wetland and buffers is

subject to the permit processing procedure for the required permit type as defined under GHMC Title 19. The department shall utilize existing environmental review procedures, city SEPA Ordinance, Chapter 18.04 GHMC, to assess impacts to wetlands and impose required mitigation. Department review of proposed alterations to wetlands and buffer areas and a wetland mitigation plan may be required prior to issuance of a SEPA determination by the city's responsible official.

C. This chapter applies to all regulated activities, public or private, which will occur within wetlands, including but not limited to, the following:

1. Building, grading, filling, special and sanitary sewer permits;
2. Subdivisions, short plats, and planned unit developments;
3. Site plan approvals, variance and conditional use permits;
4. Any activity which is not categorically exempt within the environmental review procedures of the state Environmental Policy Act for environmentally sensitive areas, pursuant to WAC 197-11-908, and the city SEPA Ordinance, Chapter 18.04 GHMC.

D. Prior to submittal of a wetland delineation report, recommendation on wetland category, proposed alterations to wetlands and buffer areas, or wetland mitigation plan, the applicant may request a pre-filing pre-application conference in accordance with the procedures established in GHMC 19.02.001.

E. Request for Official Determination. A request for an official determination of whether a proposed use or activity at a site is subject to this chapter must be in writing and made to the city office of community development. The request can be accompanied by a SEPA environmental checklist. The request shall contain plans, data and other information in sufficient detail to allow for determination, including a wetland delineation report. The applicant shall be responsible for providing plans and the wetland delineation report to the department.

F. A wetland analysis report shall be submitted to the department for review of a proposal for activity which lies within a wetland, or within 150 feet of a wetland. The purpose of the wetland analysis report is to determine the extent and function of wetlands to be impacted by the proposal. ~~This analysis and report may be waived for Category IV wetlands if the proposed activity includes the required minimum streamside buffer as established under GHMC 18.08.15000.~~

G. Preliminary Site Inspection. Prior to conducting a wetland analysis report, the applicant may request that the department conduct a preliminary site inspection to determine if a wetland may be present on the proposal site. Upon receipt of the appropriate fee, the department shall make a site inspection. If the department determines that a wetland is not on the site, this shall be indicated to the applicant in writing, and a wetland analysis report

shall not be required.

H. Prior to submittal of the wetland analysis report or the development of a lot which has a classified wetland ~~as identified on the city wetland map~~, boundaries of wetlands ~~2,500 square feet or more~~ shall be staked and flagged in the field by a qualified wetland specialist and surveyed by a licensed professional surveyor registered in the state. Field flagging shall be distinguishable from other survey flagging on the site.

I. If alteration of a wetland or buffer is proposed, a wetland mitigation plan shall be submitted pursuant to requirements of this chapter, subsequent to staff review of the wetland analysis report. In no event will a wetland mitigation plan be required prior to a determination of whether a designated wetland is present on a site. (Ord. 726 § 3, 1996; Ord. 628 § 1, 1992; Ord. 611 § 1, 1991).

18.08.140080 Wetlands – Administration.

A. Filing Fees. A wetland regulatory processing fee in an amount established under the city's development fee ordinance, GHMC Title 3, shall be paid at the time of a request for official determination of whether a proposed use or activity at a site is subject to this chapter. The fee shall be paid prior to administrative review, including environmental review. It shall include all costs of administrative and environmental review, including the preliminary site inspection, and review and approval of a wetland analysis report. It shall be in addition to any other fees for environmental assessment and environmental impact review, provided by the city environmental policy ordinance, Chapter 18.04 GHMC.

B. Notice and Title.

1. Notice. Upon submission of a complete application for a wetland development approval, notice shall be provided in accordance with the city zoning code for site plan review for notification of property owners within 300 feet of the subject property.

2. Notice of Title. The owner of any property with field verified presence of wetland or wetland buffer on which a development proposal is submitted shall file for record with the Pierce County auditor a notice approved by the department in a form substantially as set forth below. Such notice shall provide notice in the public record of the presence of a wetland or wetland buffer, the application of this chapter to the property, and that limitations on actions in or affecting such wetlands and their buffers may exist. The notice shall be notarized and shall be recorded prior to approval of any development proposal for such site. The notice shall run with the land and shall be in the following form:

WETLAND AND/OR
WETLAND BUFFER NOTICE
Legal Description:

Present Owner: _____

NOTICE: This property contains wetlands or their buffers as defined by City of Gig Harbor Ordinance. Restrictions on use or alteration of the wetlands or their buffers may exist due to natural conditions of the property and resulting regulations.

Date Signature Owner

C. Other Laws and Regulations. No approval granted pursuant to this chapter shall remove an obligation to comply with the applicable provisions of any other federal, state or local law or regulation.

D. Atlas. As part of its review, the department shall include the appropriately designated wetland in the Pierce County wetlands atlas or in the city wetland atlas, as may be adopted. (Ord. 611 § 1, 1991).

18.08.150090 Wetlands – analysis report requirements.

A. A wetland analysis report shall be prepared by a qualified wetland specialist and submitted to the department as part of the SEPA review process established by the city of Gig Harbor environmental policy ordinance, Chapter 18.04 GHMC. A wetlands analysis report is not required for those wetlands mapped and classified per the city of Gig Harbor wetlands map. A wetlands analysis report is required with all annexation petitions and land use applications for properties which do not have wetlands mapped and classified per the city of Gig Harbor wetlands map.

B. The wetland analysis report shall be prepared in accordance with the methods outlined in the Uniform Federal Methods for Wetland Delineation Ecology 1997 Wetland Identification and Delineation Manual and submitted to the department for review for any proposals that are within ~~450~~200 feet of a wetland.

C. Within 30 days of receipt of the wetland analysis report and other information, the department shall determine the appropriate wetland category, buffering requirement, and required mitigation. The report shall be accorded substantial weight and the department shall approve the report's findings and approvals, unless specific, written reasons are provided which justify not doing so. Once accepted, the report shall control future decisionmaking related to designated wetlands unless new information is found demonstrating the report is in error. (Ord. 628 § 1, 1992; Ord. 611 § 1, 1991).

18.08.1600 Wetlands – Buffers – areas.

A. Following the department's determination of the category for a wetland associated with a proposal, the department shall determine appropriate buffer widths. Wetland buffer zones shall be evaluated for all development proposals and activities adjacent to wetlands to determine their need to protect the integrity, functions and values of the wetland. All wetland buffer zones are measured perpendicular from the wetland boundary as surveyed in ~~edge as marked in the field.~~ Except as otherwise permitted by this chapter, wetland buffers shall consist of a relatively intact native vegetation community adequate to protect the wetland functions and values at the time of the proposed activity. If the vegetation is inadequate then the buffer width shall be planted to maintain the standard width, they shall consist of an undisturbed area of native vegetation and existing non-native vegetation.

The following standard buffer widths are required:

Wetland Category Buffer Width

- Category I ~~200~~100 feet
- Category II ~~100~~50 feet
- Category III ~~60~~25 50 feet
- Category IV ~~Type 3 water: 35- 25 feet~~
(as measured from Type 4 water: 25 feet ordinary high water) Type 5 water: 15 feet

B. ~~Landscape buffering between the wetland boundary and the building setback will be evaluated. If it is determined that such uses could cause secondary impacts to the wetlands, a maximum 15-foot setback may be imposed. A 15-foot building setback is required from the edge of the wetland buffer.~~ (Ord. 726 § 4, 1996; Ord. 628 § 1, 1992; Ord. 611 § 1, 1991).

18.08.1710 Wetlands – Alteration of buffers.

Alteration of a buffer may occur in two ways:

(1) quantitative alteration, in which the boundaries of the designated buffer area are adjusted, so that the actual area within the buffer is altered from the parameters of subsection A of this section; and (2) qualitative alteration, in which permitted activities within the buffer area alter its character. In determining appropriate buffer alterations, quantitative and qualitative alterations are generally reviewed concurrently.

A. ~~Buffer zones~~Wetland buffers may be modified under the following conditions (quantitative alteration):

1. **Wetland buffer reductions.** Buffer width reductions shall be considered on a case-by-case basis to take varying values of individual portions of a given wetland into consideration. where existing buffers are significantly degraded and would benefit from enhancement activities. Buffers shall not be reduced where degradation is the result of a documented code violation. Reductions may be allowed where the

applicant demonstrates to the department that the wetland contains variations in sensitivity due to existing physical characteristics and that reducing the buffer width would not adversely affect the wetland functions and values, and the minimum buffer shall not be less than ~~50 to 55~~ 55 percent of the widths established in GHMC 18.08.100; 18.08.160~~xxx~~ or 25 feet, whichever is greater;

a. Decisional Criteria. Prior to approval, a buffer reduction proposal shall meet all of the decisional criteria listed below. The buffer modification will be approved in a degraded wetland buffer only if:

1) It will provide an overall improvement in water quality protection for the wetland;

2) It will not adversely affect fish or wildlife species and will provide an overall enhancement to fish and wildlife habitat;

3) It will provide a net improvement in drainage and/or storm water detention capabilities;

4) All exposed areas are stabilized with native vegetation, as appropriate;

5) It will not lead to unstable earth conditions or create an erosion hazard; and

6) It will not be materially detrimental to any other property or the City as a whole.

b. Buffer Enhancement Plan. As part of the buffer reduction request, the applicant shall submit a buffer enhancement plan prepared by a qualified professional wetland specialist. The report shall assess the habitat, water quality, storm water detention, ground water recharge, shoreline protection, and erosion protection functions of the buffer; assess the effects of the proposed modification on those functions; and address the six (6) criteria listed in this subsection. The buffer enhancement plan shall also provide the following: (a) a map locating the specific area of enhancement; (b) a planting plan that uses native plant species indigenous to this region including groundcover, shrubs, and trees; and (c) provisions for monitoring and maintenance over the monitoring period.

2. Buffer widths may be increased by the department

2. Wetland buffer width averaging. The department may allow modification of the wetland buffer width in accordance with an approved critical area report and the best available science on a case-by-case basis provided that by averaging buffer widths. Averaging of buffer widths may only be allowed where a qualified wetland specialist ~~professional~~ demonstrates that: the maximum buffer for Category II or III wetlands shall not exceed 100 feet;

a. It will not reduce wetland functions or values;

b. The wetland contains variations in

sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation, and the wetland would benefit from a wider buffer in places and would not be adversely impacted by a narrower buffer in other places;

c. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer; and

d. The buffer width is not reduced, at any single point, to less than fifty percent (50%) of the standard width or fifty (50) feet, whichever provides the greater buffer, except for buffers of Category IV wetlands.

3. Wetland buffer increases. The department may require increased buffer widths in accordance with the recommendations of a qualified professional biologist/wetland specialist and the best available science on a case-by-case basis when a larger buffer is necessary to protect wetland functions and values based on local conditions, site-specific characteristics. This determination shall be reasonably related to protection of the functions and values of the regulated wetland. Such determination shall demonstrate that:

a. A larger buffer is necessary to maintain viable populations of existing species, or

b. The wetland is used by species listed by the federal government or the state as endangered, threatened, sensitive or as documented priority species or habitats, or essential or outstanding potential sites such as heron rookeries or raptor nesting areas, or

c. The adjacent land is susceptible to severe erosion and erosion control measures will not effectively prevent adverse wetland impact, or

d. The adjacent land has minimum vegetative cover or slopes greater than 15 percent.

B. Alteration of Character of Buffer (Qualitative Alteration).

1. Qualitative alteration of buffer for Categories II and III Categories II, III, and IV wetlands shall be allowed when it is demonstrated that modification of the existing character of the buffer would not reduce the functions and values of the wetland; and

2. That the alteration does not include structures associated with the development unless identified in GHMC 18.08.1702(A)(2) and (3), i.e. wells and associated access; and

3. No net loss of wetland acreage due to the alteration occurs. (Ord. 611 § 1, 1991).

18.08.1820 Wetlands – Permitted uses in buffer areas.

The following activities are permitted within the wetland buffer as impacts, if any, are mitigated through the requirements of this chapter:

A. Wells and necessary appurtenances associated with single-family residences including a pump and appropriately sized pump house, including a storage tank, may be allowed on each site in a wetland buffer if

all the following conditions are met:

1. The well is either an individual well (serving only one residence) or a Class B well (a maximum of 15 connections including necessary storage tanks);

2. For Category I and II wetlands, the minimum distance from the well and appurtenances to the wetland edge is not less 50 percent of the buffer widths established in the table in GHMC 18.08.16000. A decrease in the required buffer width through buffer reduction or buffer width averaging or other means does not indicate a corresponding decreased distance is allowed from the wetland edge to the well and appurtenances;

3. Access to the well and pump house shall be allowed.

B. Pervious trails and associated viewing platforms, provided that, in the case of Category I wetlands, the minimum distance from the wetland edge is not less than 50 percent of the Category I buffer width established in the table in GHMC 18.08.16000. A decrease in the required buffer width through buffer width averaging or other means does not indicate a corresponding decreased distance from a Category I wetland edge for trails and viewing platforms.

C. The placement of underground utility lines, on-site septic drainfields meeting the requirements of the Pierce County health code, and grass-lined swales and detention/retention facilities for water treated by biofiltration or other processes prior to discharge, provided the minimum distance from the wetland edge is not less than 50 percent of the buffer widths established in the table in GHMC 18.08.16000.

D. Placement of access roads and utilities across Category II, III and IV wetland-buffers, if the department determines that there is no reasonable alternative location for providing access and/or utilities to a site and mitigation is provided as designated in this chapter. (Ord. 611 § 1, 1991).

18.08.130 Alteration 18.08.XXX Alteration of wetlands.

Alteration of Category I wetlands is prohibited. (Ord. 611 § 1, 1991).

18.08.140 18.08.190XXX Wetlands – Sequence of mitigation actions.

A. Alteration of Category I wetlands is prohibited. (Ord. 611 § 1, 1991).

A B. Alteration of Category II, III and IV wetlands may be allowed when all significant adverse impacts to wetland functions and values can be shown to be fully mitigated. Criteria to be considered by the applicant or the property owner are:

1. Avoiding the impact altogether by not taking a certain action or parts of actions;
2. Minimizing impacts by limiting the degree or

magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;

3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

4. Compensating for the impact by replacing or providing substitute resources or environments.

B C. Mitigation may include a combination of the above measures and may occur concurrently, unless a phased schedule is agreed. (Ord. 726 § 5, 1996; Ord. 611 § 1, 1991).

18.08.150 Mitigation 18.08.200XXX Wetlands – Mitigation plan submittal requirements.

A. Following submittal of any proposed alterations to wetland and buffer areas, the applicant shall submit to the department a wetland mitigation plan substantially in the following form:

1. Conceptual Phase. A conceptual compensatory wetland mitigation plan shall be submitted to the department. In cases in which environmental review is required, a threshold determination may not be made prior to department review of the conceptual wetland mitigation plan. The conceptual wetland mitigation plan shall include:

a. General goals of the compensatory wetland mitigation plan, including an overall goal of no net loss of wetland function and acreage, and to strive for a net resource gain in wetlands over present conditions,

b. A review of literature or experience to date in restoring or creating the type of wetland proposed,

c. Approximate site topography following construction,

d. Location of proposed wetland compensation area,

e. General hydrologic patterns on the site following construction,

f. Nature of compensation, including wetland types (in-kind and out-of-kind), general plant selection and justification, approximate project sequencing and schedule, and approximate size of the new wetland buffer,

g. A conceptual maintenance plan,
h. Conceptual monitoring and contingency plan.

2. Detailed Phase. Following approval of the conceptual wetland mitigation plan by the department, a detailed wetland mitigation plan shall be submitted to the department. The detailed wetland mitigation plan shall contain, at a minimum, the following components, and shall be consistent with the standards in GHMC 18.08.210340180 and 18.08.230350190:

a. Text and map of the existing condition of the proposed compensation area, including:

- i. Existing vegetation community analysis,
- ii. Hydrological analysis, including

topography, of existing surface and significant subsurface flows into and out of the area in question,
iii. Soils analysis providing both Soil Conservation Service mapping and data provided by on-site verified determinations,

iv. Detailed description of flora and fauna existing on the site,

v. Description of existing site conditions in relation to historic conditions for those sites which have been recently altered or degraded;

b. Text and map of the proposed alterations to the compensation area, including:

i. Relationship of the project to the watershed and existing water bodies,

ii. Topography of site using one foot contour intervals,

iii. Water level data, including depth and duration of seasonally high water table,

iv. Water flow patterns,

v. Grading, filling and excavation,

including a description of imported soils,

vi. Irrigation requirements, if any,

vii. Water pollution mitigation measures

during construction,

viii. Aerial coverage of planted areas to open water areas (if any open water is to be present),

ix. Appropriate buffers; ~~The compensation~~ wetland mitigation plan shall include detailed site diagrams, scaled cross-sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome. The wetland mitigation plan shall provide for elevations which are appropriate for the desired habitat type(s) and which provide sufficient tidal prism and circulation data;

c. As part of the ~~compensation-wetland~~ mitigation plan, a landscaping plan shall be designed by a registered landscape architect or contractor working with a qualified wetland scientist/ecologist/specialist, describing what will be planted where and when. The landscape plan shall include the following:

i. Soils and substrate characteristics,

ii. Specification of substrate stockpiling techniques,

iii. Planting instructions, including species, stock type and size, density or spacing of plants, and water and nutrient requirement,

iv. Specification of where plant materials will be procured. Documentation shall be provided which guarantees plant materials are to be procured from licensed regional nurseries, or from wetlands on site which are part of the wetland mitigation plan;

d. A schedule shall be provided showing dates for beginning and completing the mitigation project, including a sequence of construction activities;

e. A monitoring and maintenance plan, consistent with GHMC 18.08.230340180. The plan shall

include all the following:

i. Specification of procedures for monitoring and site maintenance,

ii. A schedule for submitting monitoring reports to the department;

f. A contingency plan, consistent with GHMC 18.08.230340180;

g. A detailed budget for implementation of the wetland mitigation plan, including monitoring, maintenance and contingency phases;

h. A guarantee that the work will be performed as planned and approved, consistent with GHMC 18.08.340180;

i. The wetland mitigation plan shall be signed by the qualified wetland specialist to indicate that the plan is according to specifications determined by the qualified wetland specialist. A signed original wetland mitigation plan shall be submitted to the department.

3. Approval of the detailed wetland mitigation plan shall be signified by a notarized memorandum of agreement signed by the applicant and director of the department, and recorded with the Pierce County auditor. The agreement shall refer to all mitigation requirements for the project.

4. Approval of the detailed wetland mitigation plan shall occur prior to the issuance of building permits or other development permits. No development activity shall occur on the site prior to approval. Required mitigation may also be required prior to issuance of permits or prior to commencing development activity. Timing of required mitigation shall be determined on a case by case basis. (Ord. 611 § 1, 1991).

~~18.08.160~~**18.08.210XXX Wetlands – Criteria for compensatory mitigation/location criteria and timing of compensatory mitigation.**

A. The applicant shall develop a wetland mitigation plan that provides for construction, maintenance, monitoring and contingencies of the replacement wetland. In addition, the applicant and landowner shall meet the following criteria:

1. The restored, created, or enhanced wetland shall be as persistent as the wetland it replaces;
2. The applicant shall demonstrate sufficient capability to carry out the compensation project;
3. The compensation area shall be provided with permanent protection and management to avoid further development or degradation and to provide for the long term persistence of the compensation area as designed.

B. In cases in which it is determined that compensatory mitigation is appropriate, the following shall apply:

1. Compensatory mitigation shall be provided on-site, except where on-site mitigation is not scientifically feasible or practical due to physical features of the site. The burden of proof shall be on the applicant to demonstrate that mitigation cannot be provided on-site.

~~(Revised 10/96)~~ **18-20**

2. When compensatory mitigation cannot be provided on-site, mitigation shall be provided in the immediate vicinity of and within the same watershed as the permitted activity.

3. Compensatory mitigation shall duplicate the overall functions and values and standards of the wetland to be replaced and shall include at least 50 percent in-kind compensation mitigation unless it can be demonstrated by the applicant that the overall wetland values of the mitigation area and adjacent or connecting wetlands can be enhanced by a higher percentage of out-of-kind mitigation.

4. Only when it is determined by the department that ~~subdivisions~~ subsections 1, 2 and 3 above are inappropriate and/or impractical shall off-site, compensatory mitigation be considered.

5. Mitigation projects shall be completed concurrent with other activities on the site, unless a phased schedule is agreed upon between the department and the applicant. Refer to GHMC 18.08.3220170 for guidelines on determining wetland acreage replacement ratios. (Ord. 611 § 1, 1991).

~~18.08.170~~**18.08.220XXX Wetlands – replacement criteria.**

A. Where wetlands are altered, the applicant shall meet the minimum requirements of this section.

B. When it is proposed to alter or eliminate a wetland and the department is considering the alteration or elimination, the applicant shall be required to replace or preferably enhance the functional and biological values of the affected wetland. The wetland values will be based on an approved evaluation procedure such as Wetlands Evaluation Technique (WET), Habitat Evaluation Procedure (HEP) etc. ~~A reduction in overall wetland acres is allowed if the conditions in subsection B of this section are met.~~ procedure. The recommended ~~ratios~~ ratios for replacement/compensation are as established in in the following table:

Wetland Type Replacement Ratio

Category I: (No Alteration or Replacement)

Category II:

Forested: 2:1

Scrub/Shrub: 1.5:1

Emergent: 1:1

Open Water: 1:1

Category III:

Forested: 1.5:1

Scrub/Shrub: 1:1

Emergent: 1:1

Open Water: 1:1

Category IV: 1:1

Note that within Category II and III wetlands replacement ratios vary depending on wetland class. For example, it will be required to replace the forested portion of a wetland at a higher ratio than the other portions of the wetland.

Category I 6-to-1

Category II 3-to-1

Category III 2-to-1

Category IV 1.5-to-1

C. Ratios provided are for proposed projects with on-site, in-kind replacement which occurs prior to development of the site. Replacement ratio for unauthorized wetland ~~elimination~~ impact requires ~~resurface~~ replacement at a ratio two times that listed for the wetland categorical type. The increased ratio is based on the uncertainty of probable success of proposed replacement, projected losses of wetland functions or ~~at~~ values, or significant period of time between elimination and replacement of wetland. Such required increases in

replacement ratios will be made by the department after review of all pertinent data relating to the proposed or committed alteration.

D. The department will allow the ratios to be decreased if the applicant provides findings of special studies coordinated with agencies with expertise which demonstrate to the satisfaction of the department that no net loss of wetland function or value is attained under the decreased ratio.

E. The replacement ratio may be decreased to a ratio of ~~less than~~ 1:1, if the following criteria are met:

1. The applicant shows to the satisfaction of the department that a replacement ratio of greater than 1:1 is either not feasible on-site, would be likely to result in substantial degradation of other natural features or results in an increase of wetland function and values; and

2. The applicant submits to the department a wetland mitigation plan according to requirements of GHMC 18.08.340200 which shows to the satisfaction of the department that a net increase in wetland functions and ~~at~~ values will result from the mitigation; and

3. The mitigation is completed and monitored by the department for one year after completion of the mitigation. After one year the department shall make a determination of whether or not the mitigation has been successful.

a. If the department is satisfied that the mitigation will successfully meet the anticipated final outcome of the wetland mitigation plan, development permits may be issued and development activity on the site may begin.

b. If the department is not satisfied that the mitigation will successfully meet the anticipated final outcome of the wetland mitigation plan, development permits shall not be issued and development activity on the site shall not begin.

**Gig Harbor Municipal Code 18.08.170
18-21 (Revised 10/96)**

Modifications to the wetland mitigation plan and further monitoring may be required until the department is satisfied that the mitigation will be successful.

F. In-kind compensation shall be provided except where the applicant can demonstrate to the satisfaction of the department that:

1. The wetland system is already significantly degraded and out-of-kind replacement will result in a wetland with greater functional value; or

2. Scientific problems such as exotic vegetation and changes in watershed hydrology make implementation of in-kind compensation impossible; or

3. Out-of-kind replacement will best meet identified regional goals (e.g., replacement of historically diminished wetland types);

4. Where out-of-kind replacement is accepted, greater acreage replacement ratios may be required to compensate for lost functions ~~at~~ and values.

G. Site specific quantifiable criteria shall be

provided for evaluating whether or not the goals and objectives for the proposed compensation are being met. Such criteria include but are not limited to water quality standards, survival rates for planted vegetation, habitat diversity indices, species abundance or use patterns, hydrological standards including depths and durations of water patterns. Detailed performance standards for mitigation planning shall include the following criteria:

1. Use only plants indigenous to Pierce County (not introduced or foreign species);

2. Use plants appropriate to the depth of water at which they will be planted;

3. Use plants available from local sources;

4. Use plant species high in food and cover value for fish and wildlife;

5. Plant mostly perennial species;

6. Avoid committing significant areas of site to species that have questionable potential for successful establishment;

7. Plant selection must be approved by a qualified wetland scientist/ecologist/specialist;

8. Water depth is not to exceed 6.5 feet (two meters);

9. The grade or slope that water flows through the wetland is not to exceed six percent;

10. Slopes within the wetland basin and the buffer zone should not be steeper than 3:1 (horizontal to vertical);

11. The substrate should consist of a minimum of one foot, in depth, of clean (uncontaminated with chemicals, or solid/hazardous wastes) inorganic/organic materials;

12. Planting densities and placement of plants shall be determined by a ~~wetlands biologist/ecologist~~ qualified wetland specialist and shown on the design plans;

13. The wetland (excluding the buffer area) should not contain more than 60 percent open water as measured at the seasonal high water mark;

14. The planting plan must be approved by a qualified wetland scientist/ecologist/specialist;

15. Stockpiling shall be confined to upland areas and contract specifications should limit stockpile durations to less than four weeks;

16. Planting instructions shall describe proper placement, diversity, and spacing of seeds, tubers, bulbs, rhizomes, sprigs, plugs, and transplanted stock;

17. Apply controlled release fertilizer at the time of planting and afterward only as plant conditions warrant (determined during the monitoring process), and only to the extent that the release would be conducted in an environmentally sound manner;

18. Install an irrigation system, if necessary, for initial establishment period;

19. Construction specifications and methods shall be approved by a qualified wetland scientist/ecologist/specialist and the department;

20. All mitigation shall be consistent with requirements of the ~~city flood hazard construction ordinance Chapter 15.04 GHMC~~ and city storm drainage comprehensive plan;

21. As appropriate, and if impacts to natural wetland functions ~~and at-values~~ can be fully mitigated, capacity of the wetland to store surface water should be equal to or greater than surface water storage capacity prior to the proposed activity;

22. As appropriate, and if impacts to natural wetland functions ~~and at-values~~ can be fully mitigated, ability of the wetland to intercept surface water runoff on the site should be equal to or greater than such ability prior to the proposed activity;

23. As appropriate, and if impacts to natural wetland functions ~~and at-values~~ can be fully mitigated, the ability of the wetland to perform stormwater detention functions should be equal to or greater than such functions prior to the proposed activity.

H. Wetland mitigation shall occur according to the approved wetland mitigation plan, and shall be consistent with all provisions of this regulation.

I. On completion of construction required to mitigate for impacts to wetlands, the wetland mitigation project shall be signed off by an approved qualified wetland scientist/ecologist specialist and the county's environmental official. Signature will indicate that the construction has been completed as planned. (Ord.726 § 6, 1996; Ord. 611 § 1, 1991).

~~18.08.18018.08.XXX~~ (Revised 10/96) ~~18-22~~

~~18.08.18018.08.230XXX~~ **Wetlands – Monitoring program and contingency plan.**

A. If the wetland mitigation plan includes compensatory mitigation, a monitoring program shall be implemented to determine the success of the compensatory mitigation project.

B. Specific criteria shall be provided for evaluating the mitigation proposal relative to the goals and objectives of the project and for beginning remedial action or contingency measures. Such criteria may include water quality standards, survival rates of planted vegetation, species abundance and diversity targets, habitat diversity indices, or other ecological, geological or hydrological criteria.

C. A contingency plan shall be established for compensation in the event that the mitigation project is inadequate or fails. ~~A cash deposit, assignment of funds, or other acceptable security device is required for the duration of the monitoring period specified in the approved mitigation plan, to ensure the applicant's compliance with the terms of the mitigation agreement. The amount of the security device shall equal 125 percent of the cost of the mitigation project.~~

D. Requirements of the monitoring program and contingency plan are as follows:

1. During monitoring, use scientific procedures

for establishing the success or failure of the project;

2. For vegetation determinations, permanent sampling points shall be established;

3. Vegetative success equals 80 percent per year survival of planted trees and shrubs and 80 percent per year cover of desirable understory or emergent species;

4. Submit monitoring reports of the current status of the mitigation project to the department. The reports are to be prepared by a qualified wetland biologist/ecologist specialist and shall include monitoring information on wildlife, vegetation, water quality, water flow, stormwater storage and conveyance, and existing or potential degradation, and shall be produced on the following schedule:

- a. At time of construction,
- b. Thirty days after planting,
- c. Early in the growing season of the first year,
- d. End of the growing season of first year,
- e. Twice the second year,
- f. Annually;

5. Monitor a minimum of three and up to 10 growing seasons, depending on the complexity of the wetland system. The time period will be determined and specified in writing prior to the implementation of the site plan;

6. If necessary, correct for failures in the mitigation project;

7. Replace dead or undesirable vegetation with appropriate plantings;

8. Repair damages caused by erosion, settling, or other geomorphological processes;

9. Redesign mitigation project (if necessary) and implement the new design;

10. Correction procedures shall be approved by a qualified wetland specialist wetlands biologist/ecologist and the Pierce County environmental official. (Ord. 611 § 1, 1991).

~~18.08.19018.08.XXX~~ **Reconsideration and appeal procedure.**

~~Repealed by Ord. 726. (Ord. 611 § 1, 1991).~~

~~[General procedures in wetland regulations need to be integrated with chapter]~~

~~18.08.20018.08.XX~~ **Variance.**

A. ~~Wetland variance applications are a Type III permit procedure under GHMC Title 19. A complete application for a wetland variance shall consist of the requirements as stated in Chapter 17.66 GHMC, except that required showings for a wetland variance shall be according to subsection (B)(1) of this section. The burden is upon the applicant in meeting the required showings for the granting of a variance.~~

B. ~~Wetland Variance Application. The examiner shall have the authority to grant a wetland variance from the provisions of this chapter, including variance for buffer widths, when, in the opinion of the examiner, the~~

conditions as set forth below have been found to exist. In such cases a wetland variance may be granted which is in harmony with the general purpose and intent of this chapter.

~~1. Required Showings for a Wetland~~

~~Variance. Before any wetland variance may be granted, it shall be shown:~~

~~a. That there are special circumstances applicable to the subject property or to the intended use such as shape, topography, location, or surroundings that do not apply generally to other properties and which support the granting of a variance from the buffer width requirements, and~~

~~b. That such wetland variance is necessary for the preservation and enjoyment of a substantial property right or use possessed by other similarly situated property but which because of this chapter is denied to the property in question, and~~

~~c. That the granting of such wetland variance will not be materially detrimental to the public welfare; and~~

~~2. Required Showings for Wetland Buffer~~

~~Area Variance. Before any wetland buffer area variance may be granted, it shall be shown:~~

~~a. Such variance is necessary for the preservation and enjoyment of a substantial property right or use possessed by other similarly situated property but which because of this regulation is denied to the property in question, and~~

~~b. The granting of such buffer width variance will not be materially detrimental to the public welfare, and~~

~~c. The granting of the buffer width variance will not materially affect the subject wetland.~~

~~3. When granting a wetland variance, the examiner shall determine that the circumstances do exist as required by this section, and attach specific conditions to the wetland variance which will serve to accomplish the standards, criteria, and policies established by this chapter. (Ord. 726 § 7, 1996; Ord. 611 § 1, 1991).~~

~~18.08.21018.08.XXX Suspension and revocation.~~

~~In addition to other penalties provided elsewhere, the department may suspend or revoke an approval if it finds that the applicant has not complied with any or all of the conditions or limitations set forth in the approval, has exceeded the scope of work set forth in the approval, or has failed to undertake the project in the manner set forth in the approved application. (Ord. 611 § 1, 1991).~~

~~18.08.22018.08.XXX Enforcement.~~

~~A. The department shall have authority to enforce this chapter, any rule or regulation adopted, and any permit, order or approval issued pursuant to this chapter, against any violation or~~

~~threatened violation thereof. The department is authorized to issue violation notices and administrative orders, levy fines, and/or institute legal actions in court. Recourse to any single remedy shall not preclude recourse to any of the other remedies. Each violation of this chapter, or any rule or regulation adopted, or any permit, permit condition, approval or order issued pursuant to this chapter, shall be a separate offense, and, in the case of a continuing violation, each day's continuance shall be deemed to be a separate and distinct offense. All costs, fees, and expenses in connection with enforcement actions may be recovered as damages against the violator.~~

~~B. Enforcement actions shall include civil penalties, administrative orders and actions for damages and restoration.~~

~~1. The department may bring appropriate actions at law or equity, including actions for injunctive relief, to ensure that no uses are made of regulated wetlands or their buffers which are inconsistent with this chapter or an applicable wetlands protection program.~~

~~2. The department may serve upon a person a cease and desist order if any activity being undertaken on regulated wetlands or its buffer is in violation of this chapter. Whenever any person violates this chapter or any approval issued to implement this chapter, the department director may issue an order reasonably appropriate to cease such violation and to mitigate any environmental damage resulting therefrom. The order shall set forth and contain the following:~~

~~a. A description of the specific nature, extent and time of violation and the damage or potential damage;~~

~~b. A notice that the violation or the potential violation cease and desist or, in appropriate cases, the specific corrective action to be taken within a given time. A civil penalty may be issued with the order;~~

~~c. Effective Date. The cease and desist order issued under this section shall become effective immediately upon receipt by the person to whom the order is directed;~~

~~d. Compliance. Failure to comply with the terms of a cease and desist order can result in enforcement actions including, but not limited to, the issuance of a civil penalty.~~

~~3. Any person who undertakes any activity within a regulated wetland or its buffer without first obtaining an approval required by this chapter, except as specifically exempted, or any person who violates one or more conditions of any approval required by this chapter or of any cease and desist order issued pursuant to this chapter shall incur a penalty as provided for in Chapter 17.07 GHMC.~~

The penalty assessed shall be appealable to the city hearing examiner in accordance with the procedures established pursuant to Chapter 17.07

GHMC.

4. ~~Aiding or Abetting.~~ Any person who, through an act of commission or omission procures, aids or abets in the violation shall be considered to have committed a violation for the purposes of the penalty.

5. ~~Notice of Penalty.~~ Civil penalties imposed under this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department. The notice shall describe the violation, approximate the date(s) of violation, and shall order the acts constituting the violation to cease and desist, or, in appropriate cases, require necessary corrective action within a specific time.

6. ~~Application for Remission or Mitigation.~~ Any person incurring a penalty may apply in writing within 30 days of receipt of the penalty to the department for remission or mitigation of such penalty. Upon receipt of the application, the department may remit or mitigate the penalty only upon a demonstration of extraordinary circumstances, such as the presence of information or factors not considered in setting the original penalty.

7. ~~Orders and penalties issued pursuant to this section may be appealed as provided for by this chapter.~~ (Ord. 726 § 8, 1996; Ord. 611 § 1, 1991).

~~18.08.230 Designated wetlands.~~

A. Pursuant to WAC 197 11 908, the city designates the following wetland areas as environmentally sensitive areas:

1. Areas designated on the Pierce County wetland atlas of 1990;
2. Areas that meet the definition of wetlands found in this chapter;
3. Areas which have been designated as wetlands per the city of Gig Harbor wetlands inventory and maps, May/June 1992. (Ord. 628 § 1, 1992; Ord. 611 § 1, 1991).

~~18.08.240 18.08. xxx Nonconforming uses.~~

An established use of existing structure that was lawfully permitted prior to adoption of this chapter, may continue subject to the following:

A. Nonconforming uses shall not be expanded or changed in any way that increases their nonconformity.

However, an existing use may be changed to a less intensive use provided all other zoning and land use regulations are met;

B. Existing structures shall not be expanded or altered in any manner which will increase the nonconformity;

C. Activities or uses which are discontinued for 12 consecutive months shall be allowed to resume only if they are in compliance with this chapter; and

D. Nonconforming uses or structures destroyed by an act of God may be replaced or resumed. (Ord. 611 § 1, 1991).

~~18.08.250 18.08. xxx Severability.~~

~~Repealed by Ord. 726. (Ord. 611 § 1, 1991).~~

~~18.08.260 18.08. xxx Chapter and ordinance updates.~~

This chapter and its related ordinance shall be reviewed by the city within two years of the effective date of the ordinance. The purpose of reviewing is to determine what amendments are appropriate to be made, and to establish a schedule for effecting those amendments. (Ord. 611 § 1, 1991).

~~Gig Harbor Municipal Code 18.12.030 18.08.030 18-25 (Revised 10/96)~~

~~Gig Harbor Municipal Code 18.12.18.08.030 18-25 (Revised 10/96)~~

STREAMS – DESIGNATION and RATING

18.12.18.08.110 Streams

18.08.240 xxx –Streams – Designation and rating of Streams.

A. Streams are waterbodies with a defined bed and banks and demonstrable flow of water as defined in the chapter. Streams are designated as environmentally critical areas.

B. Stream Classification. Streams shall be designated Type 1, Type 2, Type 3, and Type 4 according to the criteria in this subsection.

1. Type 1 Streams are those streams identified as "Shorelines of the State" under Chapter 90.58 RCW.

2. Type 2 Streams are those streams which are:
a. natural streams that have perennial (year-round) flow and are used by salmonid fish, or

b. natural streams that have intermittent flow and are used by salmonid fish.

3. Type 3 Streams are those streams which are:
a. natural streams that have perennial flow and are used by fish other than salmonids, or

b. natural streams that have intermittent flow and are used by fish other than salmonids.

4. Type 4 Streams are those natural streams with perennial or intermittent flow that are not used by fish.

C. Ditches. Ditches are artificial drainage features created in uplands through purposeful human action, such as irrigation and drainage ditches, grass-lined swales, and canals. Purposeful creation must be

demonstrated through documentation, photographs, statements and/or other evidence. Ditches are excluded from regulation as streams under this section. Artificial drainage features with documented fish usage are regulated as streams. Drainage setbacks are required as per the City's Surface Water Manual.

18.08.250xxx Streams --Critical Areas Report.

A. Requirements for critical areas reports for streams are available from the Director. A stream analysis report shall be prepared by a qualified biologist and submitted to the department as part of the SEPA review process established by the city of Gig Harbor environmental policy ordinance, Chapter 18.04 GHMC.

B. The stream analysis report shall be prepared in accordance with the methods provided by Washington Department of Fish and Wildlife or Pierce County Planning and Land Services or other acceptable scientific method and submitted to the department for review for any proposals that are within 200 feet of a stream.

C. Within 30 days of receipt of the stream analysis report and other information, the department shall determine the appropriate stream category, buffering requirement, and required mitigation. The report shall be accorded substantial weight and the department shall approve the report's findings and approvals, unless specific, written reasons are provided which justify not doing so. Once accepted, the report shall control future decision making related to designated streams unless new information is found demonstrating the report is in error.

18.08.260xxx Streams --Performance Standards-General.

A. Establishment of stream buffers. The establishment of buffer areas shall be required for all development proposals and activities in or adjacent to streams. The purpose of the buffer shall be to protect the integrity, function, and value of the stream. Buffers shall be protected during construction by placement of a temporary barricade, on-site notice for construction crews of the presence of the stream, and implementation of appropriate erosion and sedimentation controls. Native vegetation removal or disturbance is not allowed in established buffers.

Required buffer widths shall reflect the sensitivity of the stream or the risks associated with development and, in those circumstances permitted by these regulations, the type and intensity of human activity and site design proposed to be conducted on or near the sensitive area. Buffers or setbacks shall be measured as follows:

B. Stream Buffers

1. The following buffers are established for streams:

<u>Stream Type</u>	<u>Buffer Width (feet)</u>
Type 1	200
Type 2	100
Type 3	50
Type 4	25

2. Measurement of stream buffers. Stream buffers shall be measured perpendicularly from the ordinary high water mark.

3. Increased stream buffer widths. The Director shall require increased buffer widths in accordance with the recommendations of a qualified professional biologist and the best available science on a case-by-case basis when a larger buffer is necessary to protect stream functions and values based on site-specific characteristics. This determination shall be based on one or more of the following criteria:

a. A larger buffer is needed to protect other critical areas;

b. The buffer or adjacent uplands has a slope greater than thirty percent (30%) or is susceptible to erosion and standard erosion-control measures will not prevent adverse impacts to the wetland.

4. Buffer conditions shall be maintained. Except as otherwise specified or allowed in accordance with this Title, stream buffers shall be retained in an undisturbed condition.

5. Degraded buffers shall be enhanced. Stream buffers vegetated with non-native species or otherwise degraded shall be enhanced with native plants, habitat features or other enhancements.

6. Buffer uses. The following uses may be permitted within a stream buffer in accordance with the review procedures of this TitleChapter, provided they are not prohibited by any other applicable law and they are conducted in a manner so as to minimize impacts to the buffer and adjacent wetlandstream:

a. Conservation and restoration activities. Conservation or restoration activities aimed at protecting the soil, water, vegetation, or wildlife;

b. Passive recreation. Passive recreation facilities designed in accordance with an approved critical area report, including:

(i) Walkways and trails, provided that those pathways that are generally parallel to the perimeter of the stream shall be located in the outer twenty-five percent (25%) of the buffer area;

(ii) Wildlife viewing structures; and

(iii) Fishing access areas.

c. Stormwater management facilities. Grass lined swales and dispersal trenches may be located in the outer 25% of the buffer area. All other surface water management facilities are not allowed within the buffer area.

7. Building setback. A 15-foot building setback is required from the edge of the stream buffer-per 18.08xx.240xxx).

C. Stream crossings. Stream crossings may be allowed and may encroach on the otherwise required stream buffer if:

1. All crossings use bridges or other construction techniques which do not disturb the stream bed or bank, except that bottomless culverts or other appropriate methods demonstrated to provide fisheries protection may be used for Type 2 or 3 streams if the applicant demonstrates that such methods and their implementation will pose no harm to the stream or inhibit migration of fish;

2. All crossings are constructed during the summer low flow and are timed to avoid stream disturbance during periods when use is critical to salmonids;

3. Crossings do not occur over salmonid spawning areas unless the City determines that no other possible crossing site exists;

4. Bridge piers or abutments are not placed within the FEMA floodway or the ordinary high water mark;

5. Crossings do not diminish the flood-carrying capacity of the stream;

6. Underground utility crossings are laterally drilled and located at a depth of four feet below the maximum depth of scour for the base flood predicted by a civil engineer licensed by the state of Washington. Temporary bore pits to perform such crossings may be permitted within the stream buffer established in this Title; and

7. Crossings are minimized and serve multiple purposes and properties whenever possible.

D. Stream relocations.

1. Stream relocations may be allowed only for:

a. All Stream types as part of a public project for which a public agency and utility exception is granted pursuant to this Title; or

b. Type 3 or 4 streams for the purpose of enhancing resources in the stream if:

i. appropriate floodplain protection measures are used; and

ii. the location occurs on the site except that relocation off the site may be allowed if the applicant demonstrates that any on-site relocation is impracticable, the applicant provides all necessary easements and waivers from affected property owners and the off-site location is in the same drainage sub-basin as the original stream.

2. For any relocation allowed by this section, the applicant shall demonstrate, based on information provided by a civil engineer and a qualified biologist, that:

a. The equivalent base flood storage volume and function will be maintained;

b. There will be no adverse impact to local groundwater;

c. There will be no increase in velocity;

d. There will be no interbasin transfer of water;

e. There will be no increase in the sediment load;

f. Requirements set out in the mitigation plan are met;

g. The relocation conforms to other applicable laws; and

h. All work will be carried out under the direct supervision of a qualified biologist.

E. Stream enhancement. Stream enhancement not associated with any other development proposal may be allowed if accomplished according to a plan for its design, implementation, maintenance and monitoring prepared by a civil engineer and a qualified biologist and carried out under the direction of a qualified biologist.

F. Minor stream restoration. A minor stream restoration project for fish habitat enhancement may be allowed if:

1. The project results in an increase in stream function and values.

2. The restoration is sponsored by a public agency with a mandate to do such work;

3. The restoration is not associated with mitigation of a specific development proposal;

4. The restoration is limited to removal and enhancement of riparian vegetation, placement of rock weirs, log controls, spawning gravel and other specific salmonid habitat improvements;

5. The restoration only involves the use of hand labor and light equipment; or the use of helicopters and cranes which deliver supplies to the project site provided that they have no contact with sensitive areas or their buffers; and

6. The restoration is performed under the direction of a qualified biologist.

18.12.18.08.270xxx Streams – Performance Standards– Mitigation Requirements.

A. Stream mitigation. Mitigation of adverse impacts to riparian habitat areas shall result in equivalent functions and values on a per function basis, be located as near the alteration as feasible, and be located in the same sub drainage basin as the habitat impacted.

B. Alternative mitigation for stream areas. The performance standards set forth in this Subsection may be modified at the City's discretion if the applicant demonstrates that greater habitat functions, on a per function basis, can be obtained in the affected sub-drainage basin as a result of alternative mitigation measures.

~~18.12.18.08.280090 xxx~~ **Critical fish and wildlife habitat areas.**

Critical fish and wildlife habitat areas are those areas identified as being of critical importance in the maintenance and preservation of fish, wildlife and natural vegetation. Areas which are identified or classified as fish and wildlife habitat areas subject to this section shall be subject to the requirements of this section.

A. General. Critical fish and wildlife habitat areas are identified as follows:

1. Areas with which federal or state endangered, threatened and sensitive species of fish, wildlife and plants have a primary association and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term;

2. Habitats and species of local importance, including:

a. Areas with which state-listed monitor or candidate species or federally listed candidate species have a primary association and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term,

b. Special habitat areas which are infrequent in occurrence in the city of Gig Harbor and which provide specific habitats as follows:

- i. Old growth forests,
- ii. Snag-rich areas,
- iii. Category 2 wetland areas,
- iv. Significant stands of trees which provide roosting areas for endangered, threatened, rare or species of concern as identified by the Washington Department of Wildlife;

3. Commercial and public recreational shellfish areas;

4. Kelp and eelgrass beds;

5. Herring and smelt spawning areas;

6. Naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat;

7. Lakes, ponds and streams planted with fish by a governmental agency, and agency-sponsored group or tribal entity;

8. State natural area preserves and natural resource conservation areas;

~~9. Crescent and Donkey (north) Creeks, including those lands within 35 feet of the ordinary highwater mark of the stream.~~

B. Classification. Critical fish and wildlife habitat areas are identified in the following documents:

1. Puget Sound Environmental Atlas (Puget Sound Water Quality Authority);

2. Coastal Zone Atlas of Washington, Volume IV, Pierce County (Washington Department of Ecology);

3. Commercial and Recreational Shellfish Areas in Puget Sound (Washington Department of Health);

4. The Department of Natural Resources stream

typing maps and natural heritage data base;

5. The Washington Department of Wildlife priority habitats and species program, the Nongame data base, and the Washington rivers information system.

C. Regulation.

1. Habitat Assessment. For all regulated activity proposed on a site which contains or is within 300 feet of critical fish and wildlife habitat, a habitat assessment shall be prepared by a professional qualified wildlife biologist with a minimum of a bachelor's degree in wildlife biology or an equivalent curriculum. The habitat assessment shall include, at a minimum, the following:

a. An analysis and discussion of species or habitats known or suspected to be located within 300 feet of the site;

b. A site plan which clearly delineates the critical fish and wildlife habitats found on or within 300 feet of the site.

2. Habitat Assessment Review. A habitat assessment shall be forwarded for review and comment to agencies with expertise or jurisdiction on the proposal, including, but not limited to:

a. Washington Department of Fish and Wildlife;

~~b. Washington Department of Fisheries;~~

~~c. Washington Department of Natural Resources;~~

~~d. United States Fish and Wildlife Service.~~ Comments received by the requested review agencies within 45 days of the submittal of the assessment shall be considered by the department. If it is determined, based upon the comments received, that critical fish and wildlife habitat does not occur on or within 300 feet of the site, the development may proceed without any additional requirements under this section. If it is determined that a critical fish and wildlife habitat is on or within 300 feet of the site, a habitat management plan shall be prepared.

3. Habitat Management Plan. Habitat management plans required under this section shall be prepared in coordination with the Washington Department of Fish and Wildlife by a professional qualified wildlife biologist with a bachelor's degree in wildlife biology or an equivalent curriculum. A habitat management plan shall contain, at a minimum, the following:

a. Analysis and discussion on the project's effects on critical fish and wildlife habitat;

b. An assessment and discussion on special management recommendations which have been developed for species or habitat located on the site by any federal or state agency;

c. Proposed mitigation measures which could minimize or avoid impacts;

d. Assessment and evaluation of the effectiveness of mitigation measures proposed;

e. Assessment and evaluation of ongoing

management practices which will protect critical fish and wildlife habitat after development of the project site, including proposed monitoring and maintenance programs;

f. Assessment of project impact or effect on water quality in Crescent or Donkey (north) Creeks, and any proposed methods or practices to avoid degradation of water quality. Upon a review of the habitat management plan by appropriate federal and state agencies, comments received by the agencies within 45 days of the submittal of the proposed plan shall be considered by the city and, if mitigation is recommended, may be incorporated into conditions of project approval, as appropriate. If it is determined, based upon the comments received, that a project or proposal will result in the extirpation or isolation of a critical fish or wildlife species, including critical plant communities, the project or proposal may be denied.

D. Buffer Requirements. If it is determined, based upon a review of the comments received on the habitat management plan, that a buffer would serve to mitigate impacts to a critical fish or wildlife habitat, an undisturbed buffer shall be required on the development site. The width of the buffer shall be based upon a recommendation of at least one of the appropriate review agencies but, in no case, shall exceed 150 feet, nor be less than 25 feet.

E. Buffer Reduction. A buffer required under this section may be reduced or eliminated if the local conservation district has approved a best management plan (BMP) for the site which would provide protection to a critical fish or wildlife habitat. (Ord. 619 § 1, 1992).

F. Specific Habitats - Anadromous fish

1. All activities, uses, and alterations proposed to be located in water bodies used by anadromous fish or in areas that affect such water bodies shall give special consideration to the preservation and enhancement of anadromous fish habitat, including, but not limited to, adhering to the following standards:

a. Activities shall be timed to occur only during the allowable work window as designated by the Washington Department of Fish and Wildlife for the applicable species;

b. An alternative alignment or location for the activity is not feasible;

c. The activity is designed so that it will not degrade the functions or values of the fish habitat or other critical areas; and

d. Any impacts to the functions or values of the habitat conservation area are mitigated in accordance with an approved critical area report.

2. Structures that prevent the migration of salmonids shall not be allowed in the portion of water bodies currently or historically used by anadromous fish. Fish bypass facilities shall be provided that allow the upstream migration of adult fish and shall prevent fry

and juveniles migrating downstream from being trapped or harmed.

3. Fills, when authorized by the City of Gig Harbor's Shoreline Management Master Program, SEPA review or clearing and grading, shall not adversely impact anadromous fish or their habitat or shall mitigate any unavoidable impacts, and shall only be allowed for a water-dependent use.

18.12.18.08.290100-130 Aquifer recharge areas.

Aquifer recharge areas are particularly susceptible to contamination and degradation from land use activities. Areas which have a high potential for ground water resource degradation are identified as aquifer recharge areas under this section and shall be subject to the requirements herein.

A. Designation/Classification. For the purposes of this section, the boundaries of any aquifer recharge areas within the city shall consist of the two highest DRASTIC zones which are rated 180 and above on the DRASTIC index range. Any site located within these boundaries is included in the aquifer recharge area.

B. Regulation.

1. Hydrogeologic Assessment Required. The following land uses shall require a hydrogeologic assessment of the proposed site if the site is located within an aquifer recharge area:

- a. Hazardous substance processing and handling;
- b. Hazardous waste treatment and storage facility;
- c. Wastewater treatment plant sludge disposal categorized as S-3, S-4 and S-5;
- d. Solid waste disposal facility.

2. Hydrogeologic Assessment Minimum Requirements. A hydrogeologic assessment shall be submitted by a firm, agent or individual with experience in geohydrologic assessments and shall contain, at a minimum, and consider the following parameters:

- a. Documentable information sources; ~~18.12.18.08.11018-32~~
- b. Geologic data pertinent to well logs or borings used to identify information;
- c. Ambient ground water quality;
- d. Ground water elevation;
- e. Depth to perched water table, including mapped location;
- f. Recharge potential of facility site, respective to permeability and transmissivity;
- g. Ground water flow vector and gradient;
- h. Currently available data on wells and any springs located within 1,000 feet of the facility site;
- i. Surface water location and recharge potential;
- j. Water supply source for the facility;
- k. Analysis and discussion of the effects of the proposed project on the ground water resource;

l. Proposed sampling schedules;
m. Any additional information that may be required or requested by the Pierce County environmental health department.

3. Review of Geohydrologic Assessment. A geohydrologic assessment prepared under this section shall be submitted to the Pierce County department of environmental health for review and comment. Comments received by the department of health within 60 days of submittal of the assessment shall be considered by the city in the approval, conditional approval or denial of a project.

4. Findings for Consideration of Approval. A hydrogeologic assessment must clearly demonstrate that the proposed use does not present a threat of contamination to the aquifer system, or provides a conclusive demonstration that application of new or improved technology will result in no greater threat to the ground water resource than the current undeveloped condition of the site. Successful demonstration of these findings warrants approval under this section. (Ord. 619 § 1, 1992).

~~18.12.18.08.110-140~~ Reasonable use exceptions.

If the application of this chapter would preclude all reasonable use of a site, development may be permitted, consistent with the general purposes and intent of this chapter.

A. Information Required. An application for a reasonable use exception shall be in writing to the department director and shall include the following information:

1. A description of the area of the site which is within a critical resource area or within the setbacks or buffers as required under this title;
2. The area of the site which is regulated under the respective setbacks (minimum yards) and maximum impervious coverage of the zoning code (GHMC Title 17);
3. An analysis of the impact that the amount of development proposed would have on the critical area as defined under this title;
4. An analysis of whether any other reasonable use with less impact on the critical area and buffer area, as required, is possible;
5. A design of the project as proposed as a reasonable use so that the development will have the least practicable impact on the critical area;
6. A description and analysis of the modification requested of the minimum requirements of this title to accommodate the proposed development;
7. Such other information as may be required by the department which is reasonable and necessary to evaluate the reasonable use respective to the proposed development.

B. Findings for Approval of Reasonable Use Exception. If an applicant successfully demonstrates

that the requirements of this title would deny all reasonable use of a site, development may be permitted. The department director shall make written findings as follows:

1. There is no feasible alternative to the proposed development which has less impact on the critical area;
2. The proposed development does not present a threat to the public health, safety or welfare;
3. Any modification of the requirements of this title shall be the minimum necessary to allow for the reasonable use of the property;
4. The inability of the applicant to derive a reasonable use of the property is not the result of actions by the applicant which resulted in the creation of the undevelopable condition after the effective date of this title;
5. The proposal mitigates the impacts to the critical area to the maximum extent practicable, while maintaining the reasonable use of the site;
6. That all other provisions of this chapter apply excepting that which is the minimum necessary to allow for the reasonable use of the site or property.

The director may impose any reasonable conditions on the granting of the reasonable use exception, consistent with the minimum requirements of this chapter.

C. Notification of Decision. A decision by the director under this section shall be provided, in writing, to the applicant and all property owners **Gig Harbor Municipal Code 18.12.18.08.140 18-33** (Revised 10/96)

adjacent to or abutting the site. The applicant shall be responsible for providing a current listing of all adjacent property owners along with application for a reasonable use exception.

D. Appeal of Director's Decision. The decision of the director may be appealed in accordance with the procedures established under GHMC Title 19.

E. Limits of Applying Reasonable Use Exception. A reasonable use exception shall only be considered in those situations where a reasonable use would be prohibited under this title. An applicant who seeks an exception from the minimum requirements of this title shall request a variance under the provisions of this title.

F. Time Limitation. A reasonable use exception shall be valid for a period of two years, unless an extension is granted by the department at least 30 days prior to the expiration date. Any extension granted shall be on a one-time basis and shall be valid for a period not to exceed one year. The time limit is void if the applicant fails to procure the necessary development permit within the time allotted. The department may grant a time extension if:

- ~~1. Unforeseen circumstances or conditions necessitate the extension of the development exception; and~~
- ~~2. Termination of the development exception would result in unreasonable hardship to the applicant, and the applicant is not responsible for the delay; and~~
- ~~3. The extension of the development exception will not cause adverse impacts to environmentally sensitive areas. (Ord. 727 § 4, 1996; Ord. 619 § 1, 1992).~~

18.12.18.08.300120-150 Maintenance of existing structures and developments.

Structures and developments lawfully existing prior to the adoption of this section shall be allowed to be maintained and repaired without any additional review procedures under this title; provided, that the maintenance or repair activity itself remains consistent with the provisions of this chapter and does not increase its nonconformity of such structures or development. Additionally, such construction activity shall not prove harmful to adjacent properties. Maintenance consists of usual actions necessary to prevent a decline, lapse or cessation from a lawfully established condition. Repair consists of the restoration of a development comparable to its original condition within two years of sustaining damage or partial destruction. Maintenance and repair shall include damage incurred as a result of accident, fire or the elements. Total replacement of a structure or development which is not common practice does not constitute repair. In addition to the requirements of this section, the requirements of Chapter 17.68 GHMC (Nonconformities) shall apply. (Ord. 619 § 1, 1992).

18.12.18.08.310130-160 Exemptions from development standards.

Certain activities and uses may be of such impact and character or of such dependency to the maintenance and welfare of a lawfully permitted use that the requirements of this title shall not apply and may be waived at the discretion of the department. Notwithstanding the requirements of Title 17 GHMC, the following uses and activities are exempt from the requirements of this chapter:

- A. ~~Minimum actions necessary to protect life or property in an emergency situation. Qualification as an emergency shall be based upon the factual occurrence of imminent threat or danger. Emergency actions which must be undertaken immediately or for which there is insufficient time for full compliance with this chapter where necessary to:~~
1. Prevent an imminent threat to public health or safety, or
 2. Prevent an imminent danger to public or private property, or
 3. Prevent an imminent threat of serious

environmental degradation.

The department shall determine on a case-by-case basis emergency action which satisfies the general requirements of this subsection. In the event a person determines that the need to take emergency action is so urgent that there is insufficient time for review by the department, such emergency action may be taken immediately. The person undertaking such action shall notify the department within one working day of the commencement of the emergency activity. Following such notification the department shall determine if the action taken was within the scope of the emergency actions allowed in this subsection. If the department determines that the action taken or part of the action taken is beyond the scope of allowed emergency action, enforcement action according to provisions of this chapter is warranted.

B. Public and private pedestrian trails which consist of a pervious surface not exceeding four feet in width;

C. Science research and educational facilities, including archaeological sites and attendant excavation, which do not require the construction of permanent structures or roads for vehicle access;

D. Site investigative work necessary for land use application submittals such as surveys, soil logs, percolation tests and other related activities; Subsurface drilling for geologic exploration associated with a proposed development which is not exempt from the requirements of this title;

E. The placement of signs consistent with Chapter 17.80 GHMC. (Ord. 619 § 1, 1992);

F. Existing and ongoing agricultural activities, as defined in this chapter;

G. Forestry practices regulated and conducted in accordance with the provisions of Chapter 76.09 RCW and forest practice regulations;

H. Activities affecting a hydrologically isolated Category IV wetland, if the functional wetland size is less than 2,500 1,000 square feet, except that such activities shall comply with the city flood hazard construction code and the city storm drainage management plan;

I. Maintenance, operation and reconstruction of existing roads, streets, utility lines and associated structures, provided that reconstruction of any such facilities does not extend outside the scope of any designated easement or right-of-way;

J. Activities on improved roads, rights-of-way, easements, or existing driveways;

K. Normal maintenance and reconstruction of structures, provided that reconstruction may not extend the existing ground coverage;

L. Activities having minimum adverse impacts on wetlands, such as passive recreational uses, sport fishing or hunting, scientific or educational activities;

M. Activities and developments which are subject

to the policies and standards and subject to review pursuant to the state Shoreline Management Act and the city shoreline master program.

18.12.18.08.140-170320 Variances from the minimum requirements.

A. Variance applications shall be considered by the city according to variance procedures described in Chapter 17.66 GHMC and shall be processed as a Type III application under the permit processing procedures of GHMC Title 19. The required showings for a variance shall be according to this section. The burden is upon the applicant in meeting the required showings for the granting of a variance.

B. The examiner shall have the authority to grant a variance from the provisions of this chapter, ~~including variance for buffer widths,~~ when, in the opinion of the examiner, the conditions as set forth in this section have been found to exist. In such cases a variance may be granted which is in harmony with the general purpose and intent of this chapter.

1. Required Showings for a Variance. Before any variance may be granted, it shall be shown:

~~18.12.18.08.150~~

~~(Revised 10/96) 18-34~~

a. That there are special circumstances applicable to the subject property or the intended use such as shape, topography, location or surroundings that do not apply generally to other properties and which support the granting of a variance from the minimum requirements; and

b. That such variance is necessary for the preservation and enjoyment of a substantial property right or use possessed by other similarly situated property but which, because of the ordinance codified in this chapter, is denied to the property in question; and

c. That the granting of such variance will not be materially detrimental to the public welfare.

2. ~~Required Showings for Buffer Area Variance.~~ ~~Before any buffer area variance may be granted, it shall be shown:~~

~~a. Such variance is necessary for the preservation and enjoyment of a substantial property right or use possessed by other similarly situated property, but which because of this regulation is denied to the property in question; and~~

~~b. The granting of the buffer width variance will not adversely affect the subject site materially detrimental to the public welfare; and~~

~~c. The granting of the buffer width variance will not materially affect the subject critical area.~~

2.3. Granting a Variance. When granting a variance, the examiner shall determine that the circumstances do exist as required by this section, and attach specific conditions to the variance which will serve to accomplish the standards, criteria and policies established by this chapter.

4C. To apply for a variance, the applicant shall submit to the city a complete variance application. Such application shall include a site plan, pertinent information, a cover letter addressing the required showings for a variance and required fees. (Ord. 727 § 5, 1996; Ord. 619 § 1, 1992).

18.08.140330 Reasonable use exceptions.

If the application of this chapter would preclude all reasonable use of a site, development may be permitted, consistent with the general purposes and intent of this chapter.

A. Information Required. An application for a reasonable use exception shall be in writing to the department director and shall include the following information:

1. A description of the area of the site which is within a critical resource area or within the setbacks or buffers as required under this title;

2. The area of the site which is regulated under the respective setbacks (minimum yards) and maximum impervious coverage of the zoning code (GHMC Title 17);

3. An analysis of the impact that the amount of development proposed would have on the critical area as defined under this title;

4. An analysis of whether any other reasonable use with less impact on the critical area and buffer area, as required, is possible;

5. A design of the project as proposed as a reasonable use so that the development will have the least practicable impact on the critical area;

6. A description and analysis of the modification requested of the minimum requirements of this title to accommodate the proposed development;

7. Such other information as may be required by the department which is reasonable and necessary to evaluate the reasonable use respective to the proposed development.

B. Findings for Approval of Reasonable Use Exception. If an applicant successfully demonstrates that the requirements of this title would deny all reasonable use of a site, development may be permitted. The department director shall make written findings as follows:

1. There is no feasible alternative to the proposed development which has less impact on the critical area;

2. The proposed development does not present a threat to the public health, safety or welfare;

3. Any modification of the requirements of this title shall be the minimum necessary to allow for the reasonable use of the property;

4. The inability of the applicant to derive a reasonable use of the property is not the result of actions by the applicant which resulted in the creation of the undevelopable condition after the effective date of this

title;

5. The proposal mitigates the impacts to the critical area to the maximum extent practicable, while maintaining the reasonable use of the site;

6. That all other provisions of this chapter apply excepting that which is the minimum necessary to allow for the reasonable use of the site or property. The director may impose any reasonable conditions on the granting of the reasonable use exception, consistent with the minimum requirements of this chapter.

C. Notification of Decision. A decision by the director under this section shall be provided, in writing, to the applicant and all property owners adjacent to or abutting the site. The applicant shall be responsible for providing a current listing of all adjacent property owners along with application for a reasonable use exception.

D. Appeal of Director's Decision. The decision of the director may be appealed in accordance with the procedures established under GHMC Title 19.

E. Limits of Applying Reasonable Use Exception. A reasonable use exception shall only be considered in those situations where a reasonable use would be prohibited under this title. An applicant who seeks an exception from the minimum requirements of this title shall request a variance under the provisions of this title.

F. Time Limitation. A reasonable use exception shall be valid for a period of two years, unless an extension is granted by the department at least 30 days prior to the expiration date. Any extension granted shall be on a one-time basis and shall be valid for a period not to exceed one year. The time limit is void if the applicant fails to procure the necessary development permit within the time allotted. The department may grant a time extension if:

1. Unforeseen circumstances or conditions necessitate the extension of the development exception; and

2. Termination of the development exception would result in unreasonable hardship to the applicant, and the applicant is not responsible for the delay; and

3. The extension of the development exception will not cause adverse impacts to environmentally sensitive areas. (Ord. 727 § 4, 1996; Ord. 619 § 1, 1992).

~~18.12.18.08.150 180~~ Performance assurance.

A. The planning director/Community Development Director may allow the applicant to provide a performance assurance device in lieu of constructing required mitigation measures and may require a performance assurance device to guarantee installation/construction of required mitigation measures within one year of the issuance of a certificate of occupancy or final inspection.

B. Performance assurance devices shall take the form of one of the following:

1. A surety bond executed by a surety company authorized to transact business in the state in

a form approved by the city attorney;

2. Cash;

3. A letter of credit approved by the city attorney from a financial institution stating that the money is held for the purpose of development of the landscaping;

4. Assigned savings pursuant to an agreement approved by the city attorney;

C. If a performance assurance device is employed, the property owner shall provide the city with a nonrevocable notarized agreement granting the city and its agents the right to enter the property and perform any required work remaining undone at the expiration of the assurance device.

D. If the developer/property owner fails to carry out provisions of the agreement and the city has incurred costs or expenses resulting from such failure, the city shall call on the bond or cash deposit for reimbursement. If the amount of the bond or cash deposit is less than the cost and expense incurred by the city, the developer shall be liable to the city for the difference. If the amount of the bond or cash deposit exceeds the cost and expense incurred by the city, the remainder shall be released. (Ord. 619 § 1, 1992).

18.08.XXX340 Performance Bonding.

A. As part of the contingency plan the City shall require the applicant to post a performance bond or other security in a form and amount deemed acceptable by the City to ensure mitigation is fully functional.

1. A performance bond shall be in the amount of one hundred and twenty-five percent (125%) of the estimated cost of the uncompleted actions or the estimated cost of restoring the functions and values of the critical area that are at risk, whichever is greater.

2. The bond shall be in the form of a surety bond, performance bond, assignment of savings account, or an irrevocable letter of credit guaranteed by an acceptable financial institution with terms and conditions acceptable to the City attorney.

3. Bonds or other security authorized by this Section shall remain in effect until the City determines, in writing, that the standards bonded for have been met. Bonds or other security shall be held by the City for a minimum of five (5) years to ensure that the required mitigation has been fully implemented and demonstrated to function, and may be held for longer periods when necessary.

4. Depletion, failure, or collection of bond funds shall not discharge the obligation of an applicant or violator to complete required mitigation, maintenance, monitoring, or restoration.

5. Public development proposals shall be relieved from having to comply with the bonding requirements of this Section if public funds have previously been committed for mitigation, maintenance, monitoring, or restoration.

6. Any failure to satisfy critical area requirements established by law or condition including, but not limited to, the failure to provide a monitoring report within thirty (30) days after it is due or comply with other provisions of an approved mitigation plan shall constitute a default, and the City may demand payment of any financial guarantees or require other action authorized by the City code or any other law.

7. Any funds recovered pursuant to this Section shall be used to complete the required mitigation.

18.12.18.08.160-190350 Penalties and enforcement.

A. The ~~planning director~~Community Development Director shall have authority to enforce this chapter, any rule or regulation adopted, and any permit, order or approval issued pursuant to this chapter, against any violation or threatened violation thereof. The ~~planning director~~Community Development Director is authorized to issue violation notices and administrative orders, levy fines and/or institute legal actions in court. Recourse to any single remedy shall not preclude recourse to any of the other remedies. Each violation of this chapter, or any rule or regulation adopted, or any permit, permit condition, approval or order issued pursuant to this chapter, shall be a separate offense, and, in the case of a continuing violation, each day's continuance shall be deemed to be a separate and distinct offense. All costs, fees and expenses in connection with enforcement actions may be recovered as damages against the violator.

B. The ~~planning director~~Community Development Director may serve upon a person a cease and desist order if any activity being undertaken in a designated critical area or its buffer is in violation of this chapter. Whenever any person violates this chapter or any approval issued to implement this chapter, the ~~planning director~~Community Development Director may issue an order reasonably appropriate to cease such violation and to mitigate any environmental damage resulting therefrom.

~~B~~ C. Any person who undertakes any activity within a designated critical area or within a required buffer without first obtaining an approval required by this chapter, except as specifically exempted, or any person who violates one or more conditions of any approval required by this chapter or of any cease and desist order issued pursuant to this chapter shall incur a civil penalty as provided for in Chapter 17.07 GHMC.

D. The city's enforcement of this chapter shall proceed according to Chapter 17.07 GHMC. assessed per violation. In the case of a continuing violation, each permit violation and each day of activity without a required approval shall be a separate and distinct violation. The civil penalty shall be assessed at a rate of \$50.00 per day per violation. The penalty

~~provided shall be appealable to the city of Gig Harbor hearing examiner in accordance with the Gig Harbor Municipal Code 18.12.18.08.180 18-35~~

~~procedures established pursuant to Chapter 15.06 GHMC. (Ord. 619 § 1, 1992).~~

18.12.18.08.170 200 Severability.

~~If any section, sentence, clause or phrase of this chapter, or the statutes adopted herein by reference, 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 chapter. (Ord. 619 § 1, 1992).~~

18.12.18.08.180 210 Chapter and ordinance updates.

~~This chapter and its related ordinance shall be reviewed by the city of Gig Harbor within two years of the effective date of this chapter. The purpose of reviewing is to determine what amendments are appropriate to be made, and to establish a schedule for effecting those amendments. (Ord. 619 § 1, 1992).~~

18.08.XXX360 Suspension and revocation.

In addition to other penalties provided elsewhere, the department may suspend or revoke an approval if it finds that the applicant has not complied with any or all of the conditions or limitations set forth in the approval, has exceeded the scope of work set forth in the approval, or has failed to undertake the project in the manner set forth in the approved application. (Ord. 611 § 1, 1991).

18.08.XXX370 Nonconforming uses.

An established use of existing structure that was lawfully permitted prior to adoption of this chapter, may continue subject to the following:

A. Nonconforming uses shall not be expanded or changed in any way that increases their nonconformity. However, an existing use may be changed to a less intensive use provided all other zoning and land use regulations are met;

B. Existing structures shall not be expanded or altered in any manner which will increase the nonconformity;

C. Activities or uses which are discontinued for 12 consecutive months shall be allowed to resume only if they are in compliance with this chapter; and

D. Nonconforming uses or structures destroyed by an act of God may be replaced or resumed. (Ord. 611 § 1, 1991).

Exhibit B
CITY OF GIG HARBOR 2004 CRITICAL AREAS UPDATE
Findings of Fact

The Growth Management Act requires the adoption of development regulations that protect critical areas designated in accordance with RCW 36.70A.170.

RCW 36.70A.172 requires local governments to include the best available science in developing policies and development regulations to protect the functions and values of critical areas and to give special consideration to the conservation and protection measures necessary to preserve or enhance anadromous fisheries.

Critical areas include wetlands, areas with a critical recharging effect on aquifers used for potable water, frequently flooded areas, geologically hazardous areas, and fish and wildlife habitat conservation areas.

The City of Gig Harbor hired the environmental consultants Adolfson Associates, Inc., and Associated Earth Sciences, Inc., to evaluate a wide range of sources of best science available with respect to the City's critical areas and to make recommendations that meet the intent of the Growth Management Act and are also reflective of local needs and conditions.

The review of applicable best available science and local conditions are documented in the following technical memoranda: *Gig Harbor Comprehensive Plan Update - Geologic and Flood Hazard Areas; Aquifer Recharge Areas - Phase I*, July 23, 2004 prepared by Associated Earth Sciences, Inc., included as Attachment 1, and *Final Best Available Science Technical Memorandum*, June 8, 2004 prepared by Adolfson Associates, Inc., included as Attachment 2. Best available science sources are listed in each memorandum.

Adolfson Associates, Inc., and Associated Earth Sciences, Inc., reviewed existing policies and development regulations with respect to best available science documentation and recommended amendments to city code and policies consistent with the documentation and the GMA. These recommendations were tailored to the local setting to recognize the urban character of Gig Harbor.

Proposed amendments to the policies of the Comprehensive Plan and the Gig Harbor Municipal Code based on the best available science documentation were reviewed by the Planning Commission at four study sessions on October 7, 2004, October 21, 2004, November 4, 2004, and November 18, 2004. The study sessions were advertised and open to the public. The Planning Commission held a public hearing on November 4, 2004, which was advertised in accordance with City notification requirements.

The Planning Commission recommended amendments to the Comprehensive Plan and Gig Harbor Municipal Code (GHMC) included departures from the best available science recommendations by Adolfson Associates, Inc. These departures include:

1. Amending the recommended minimum buffer width for Category III wetlands from 60 feet to 50 feet (draft Section 18.08.100 GHMC);
2. Amending the recommended minimum buffer width for Category IV wetlands from 35 feet to 25 feet (draft Section 18.08.100 GHMC);
3. Amending the recommended minimum wetland buffer requirements when buffer reductions are allowed from 70 percent to 55 percent of the standard width (draft Section 18.08.110 GHMC); and
4. Amending the recommended criteria for wetland buffer reductions to exclude from eligibility buffers that are degraded due to a documented code violation.

Departures 1 and 2 are supported in the Planning Commission record as being necessary to meet planned residential densities and achieve the growth projections for the City, i.e., balancing the requirements of the Growth Management Act. Potential impacts of Departures 1 and 2 are mitigated by a code provision to increase the buffer from the standard if necessary, based on best available science, to maintain viable populations of existing species; if endangered, threatened, sensitive or as documented priority species or habitats, or essential or outstanding habitat sites are present; or if required due to geotechnical considerations.

Adolfson Associates proposed new buffer reduction approval criteria that must be addressed in a buffer enhancement plan to offset potential adverse impacts of the buffer reduction allowance (Departure 3) recommended by the Planning Commission. Proposed approval criteria for wetland buffer reductions limit reductions to degraded buffers and include determinations of no harm to wildlife and property and enhancement of habitat, drainage and water quality.

Proposed amendment 4 increases regulatory restrictions and is not a departure from best available science.

The Gig Harbor City Council held a public hearing on the Planning Commission's recommended amendments to critical area policies and regulations on November 22, 2004. The public hearing was continued to December 13, 2004.

The City of Gig Harbor received comments from State Washington Department of Ecology (Ecology) in a letter from Ms. Gretchen Lux dated November 22, 2004. Ecology commented on the proposed wetland rating system, exemption for small wetlands, and wetland buffers proposed. Adolfson Associates and City staff considered recommendations from Ecology and revised regulations to include the wetland rating system and narrower provisions for the exemption language for small wetlands.

The City of Gig Harbor has adopted policies and codes to protect the functions and values of critical areas. These are shown in Findings of Fact Attachment 3. In addition,

critical areas may be protected by other actions of the City of Gig Harbor, such as stormwater management standards, critical area restoration, and public education; and from external regulations, such as the Forest Practices Act.

Attachment 1

Associated Earth Sciences, Inc.

July 23, 2004
Project No. KE04196A

RECEIVED

JUL 27 2004

AHBL
2215 North 30th Street, Suite 300
Tacoma, Washington 98403

AHBL, INC.

Attention: Mr. Mike Katterman, ACIP

Subject: Gig Harbor Comprehensive Plan Update
Geologic and Flood Hazard Areas; Aquifer Recharge Areas
Phase I

Dear Mr. Katterman:

Associated Earth Sciences Inc. (AESI) is pleased to present this letter providing the results of our Phase I assessment of the Gig Harbor Critical Areas Ordinance, in particular our preliminary review of the Geologic Hazard Areas, Flood Hazard Areas, and Aquifer Recharge Areas. This work has been performed in general accordance with AHBL's proposal to the City of Gig Harbor dated April 2, 2004. The purpose of the Phase I scope of work with respect to critical areas was: 1) review the literature on best available science (BAS) and existing inventory information relevant to Gig Harbor, and 2) review the Critical Areas Ordinances for consistency with BAS cited above.

Literature Inventory

The following documents were reviewed or citations noted as part of the Phase I scope of work:

1. *Model Critical Areas Regulations and Review Procedures (Draft)*, dated February 20, 2003 prepared by the Washington State Office of Community Development.
2. *Citations of Recommended Sources of Best Available Science For Designating and Protecting Critical Areas*, dated February 2002 prepared by the Washington State Office of Community Development.
3. *Guidance Document for the Establishment of Critical Aquifer Recharge Area Ordinances*, dated December 1998 prepared by the Washington State Department of Ecology.

4. Smith, Mackey, *Relative Slope Stability of Gig Harbor Peninsula, Pierce County, Washington*, Washington Division of Geology and Earth Resources Geologic Map GM-18 dated 1976.
5. *The Coastal Zone Atlas of Pierce County*, dated December 1979 prepared by the Washington State Department of Ecology.
6. *Water Resources and Geology of the Kitsap Peninsula and Certain Adjacent Lands*, Washington State Department of Conservation, Division of Water Resources, Water Supply Bulletin No. 18, Plate One dated 1962.
7. Pierce County Critical Area Maps Entitled, *Slope Stability, Aquifer Recharge Areas, Flood Hazard Areas, Steep Slopes, Landslide Hazard Areas, Landslide and Erosion Hazard Areas* and *Gig Harbor Community Plan Update, Land Use Designations* from the Pierce County Web Site Map Gallery.
8. *Soil Survey of Pierce County*, dated February 1979 prepared by the United States Department of Agriculture, Soil Conservation Service.
9. Shipman, Hugh, *Coastal Landsliding on Puget Sound: A Review of the Landslides Occurring Between 1996 and 1999*, dated 2001 prepared by the Washington State Department of Ecology, Report #01-06-019.
10. Thorsen, G.W., *Landslide Provinces in Washington*, 1989 in *Engineering Geology in Washington* prepared by the Washington Division of Geology and Earth Resources, Washington Department of Natural Resources.

Best Available Science Inventory

The City of Gig Harbor has developed their own critical areas regulations in the Gig Harbor Municipal Code (GHMC Chapter 18.12) but relies on the Pierce County critical area maps to identify their known critical areas. These maps and the sources used to produce these Pierce County maps were reviewed and compared to the BAS inventory listed in the *Literature Inventory* section presented above.

- **Landslide and Erosion Hazard Areas**

The sources for the Pierce County *Slope Stability, Landslide and Erosion Hazard Areas, Landslide Hazard Areas and Steep Slopes* maps are listed as the following publications:

1. Washington State Department of Ecology *Coastal Zone Atlas*, 1979
2. Soil Survey of Pierce County, 1979
3. Pierce County Digital Orthophotography, 2001

The various Pierce County maps that deal with slope stability and landslide hazards do not always agree on where the critical areas in Gig Harbor are located. These maps rely largely upon the Coastal Zone Atlas that does a good job of mapping landslide or unstable areas on the coast but does not provide maps for inland areas. Another problem with the Pierce County maps is that they are at such a large scale that it is difficult to locate a particular site or address to determine if the site is in a critical area. Also Pierce County does not provide a map that shows the areas classified as hillsides, ravine sidewalls and bluffs (GHMC Chapter 18.12.050) which is peculiar to the GHMC.

We proposed four action items for updating the landslide and erosion hazard area maps and for creating a hillside, ravine sidewalls and bluffs map.

- a) Compare all the various Pierce County maps dealing with landslide hazards and compose a composite map for Gig Harbor that clearly shows the known hazard areas.
- b) Review document number 4 in the literature inventory list and add that information into the updated map.
- c) Produce the updated map at a smaller scale that does not extend much beyond the city limits and that shows streets and other landmarks so that properties can be easily located by the public.
- d) Use existing topography maps to prepare a hillside, ravine sidewall and bluff critical area map at a useable scale with streets and known landmarks.

- Flood Hazard Areas

Flood Hazard Areas are defined in Chapter 18.12.080 of the GHMC and are based on the Federal Emergency Management Administration (FEMA) flood insurance rate maps. The Pierce County Flood Hazard Area Map is also based on this same source, which is the predominant document for identifying flood hazard areas and represents the BAS in this area. Like the landslide hazard maps, the flood hazard map for Pierce County is at too large a scale to be useful to the public.

We proposed two action items for updating the flood hazard area maps for the City of Gig Harbor:

- a) Review the recent FEMA database to confirm that the flood maps have not changed since the Pierce County maps were produced.
- b) AESI should be provided a copy of the report entitled "The Flood Insurance Study for the City of Gig Harbor" dated March 22, 1981 and the accompanying flood insurance maps for our review.

- c) Produce an updated map at a smaller scale that does not extend much beyond the city limits and that shows streets and other landmarks so that properties can be easily located by the public.

- Aquifer Recharge Areas

The aquifer recharge areas of Pierce County in the vicinity of Gig Harbor are based on the DRASTIC model and on the wellhead protection source area reference on file with the Tacoma-Pierce County Health Department. The DRASTIC model is a computer model produced by the United States Environmental Protection Agency (EPA) to identify areas of ground water recharge that are susceptible to contamination. From review of the Pierce County Aquifer Recharge Area Map, it appears that most of the aquifer recharge areas identified in the vicinity of Gig Harbor are based on wellhead protection zones. This conclusion is based on the circular shapes of the aquifer recharge areas that are typical for a wellhead protection area based on a standard fixed radius analysis.

- We proposed two action items for updating the flood hazard area maps for the City of Gig Harbor:
 - a) Review published geologic maps that include Gig Harbor to determine if other areas within the city should be protected based on geologic and hydrogeologic factors other than protecting domestic water supply wells.
 - b) Produce an updated map at a smaller scale that does not extend much beyond the city limits and that shows streets and other landmarks so that properties can be easily located by the public.

Critical Areas Ordinance Review

AESI reviewed the GHMC Chapter 18.12, Sections 18.12.010 through 18.12.180 and Chapter 15.04, Sections 15.04.010 through 15.04.090. In general the ordinance appears to be fairly complete. Based on our review, we have the following comments:

1. Section 18.12.050A1(a): We recommend that the section on buffers be changed to read as follows: "Buffers. A 50-foot undisturbed buffer of natural vegetation shall be established and maintained from the top, toe and sides of all ravine sidewalls and bluffs 50 feet high or less. For ravine sidewalls and bluffs greater than 50 feet high, the width of the buffer shall be equal to the height of the ravine sidewalls or bluffs. All buffers shall be measured on a horizontal plane."
2. Section 18.12.050A2(a): We recommend that a geologist or engineering geologist licensed in the State of Washington be added to the list of professionals able to prepare the site analysis reports.

3. Section 18.12.060A: We recommend that the section be changed to read as follows: "...shall be accompanied by a geotechnical report prepared by a geologist or engineering geologist licensed in the State of Washington or a geotechnical engineer licensed as a civil engineer in the State of Washington. If it ..."
4. Section 18.12.100A: This section may be revised depending upon the results of the BAS review recommended above.
5. Section 15.04.090: We recommend this section be revised to read: "... a further review must be made by persons licensed as a geologist, engineering geologist or geotechnical engineer in the State of Washington; and the proposed new ...".

We appreciate the opportunity to be of service to you on this project. Should you have any questions regarding this letter, please call us at your earliest convenience.

Sincerely,
ASSOCIATED EARTH SCIENCES, INC.
Kirkland, Washington



Jon N. Sondergaard, P.G., P.E.G.
Senior Associate Geologist

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Attachment 2

MEMORANDUM



DATE: June 8, 2004
TO: Mike Katterman, AHBL Inc.
FROM: Teresa Vanderburg, Ilon Logan
CC: Kent Hale
RE: Final Best Available Science Technical Memorandum

Environmental Solutions

1.0 INTRODUCTION

1.1 Project Authorization

On behalf of the City of Gig Harbor, Adolfson Associates, Inc. (Adolfson) has prepared this technical memo to provide a brief overview of the "best available science" pertaining to management of critical areas and its application to urban environments such as those found in the City of Gig Harbor (the City). This paper will provide guidance to the City in development and revision of the Gig Harbor Municipal Code (GHMC) Title 18 Environment regarding streams, wetlands, and critical fish and wildlife habitat areas (City of Gig Harbor, 2001a). Shorelines of the state are described separately in another document prepared for the City, the *City of Gig Harbor Draft Shoreline Characterization* (Adolfson, 2003).

Rules promulgated under the 1990 Washington State's Growth Management Act (GMA) (RCW 360.70A.060) required counties and cities to adopt development regulations that protect the functions and values of critical areas, including streams, wetlands, wildlife habitat, and critical aquifer recharge areas. In 1995, the Washington State legislature added a new section to the GMA to ensure that counties and cities consider reliable scientific information when adopting policies and development regulations to designate and protect critical areas. As a result of this legislation, in 2000 the Growth Management Division of Washington's Office of Community Development (OCD) adopted procedural criteria to guide cities and counties in identifying and including the "best available science" (BAS) in their critical area policies and regulations in accordance with RCW 36.70A.172(1).

This paper discusses the results of a limited BAS review for streams, wetlands, and critical fish and wildlife habitat areas and evaluates the applicability of the science to these critical areas in the City. The information is a summary of existing literature and is not intended to be an exclusive list of all BAS currently published, but is intended to provide a brief overview of published information useful for local planning and regulatory review. Adolfson has based our review of the City environment on existing literature, and preliminary information from the City. No field investigations were conducted as part of this review. At the City's direction, Adolfson

has limited its effort in this phase of the critical areas ordinance update to conserve funds for the second phase involving the revisions to the regulations.

1.2 Overview of the City Environment

The City of Gig Harbor is an urbanizing city located on the Gig Harbor Peninsula at the southern end of Puget Sound in Pierce County, Washington. The City encompasses an area of approximately four square miles and has an estimated population of 6,575 (as of August 2000). An additional five square miles of unincorporated land lies within the City's urban growth area (UGA). The City is bordered by Henderson Bay to the northwest, unincorporated Pierce County to the west, south and north, and Puget Sound to the east.

2.0 STATE OF THE SCIENCE FOR STREAMS AND RIPARIAN BUFFERS

2.1 Functions and Values of Streams

The important functions provided by streams include: maintaining stream baseflows; maintaining water quality; providing in-stream structural diversity; and providing biotic input of insects and organic matter. Stream baseflows are maintained by surface water that flows into riparian areas during floods or as direct precipitation and infiltrates into groundwater in riparian areas to be stored for later discharge to the stream (Ecology, 2001a) particularly during the region's typically dry season (Booth, 2000; May et al., 1997a). Urbanization changes the volume, rate, and timing of surface water flowing through stream systems, which can impact the physical characteristics of the stream channel (Booth, 1991). In addition, several studies have found that stream degradation has been associated with the quantity of impervious surface in a basin (Booth, 2000; May et al., 1997a; May et al. 1997b; Horner and May, 2000).

Low stream temperature and high water quality are critical elements of essential habitat for all native salmonid fish. Riparian vegetation, particularly forested riparian areas, can affect water temperature by providing shade to reduce solar exposure and regulate high ambient air temperatures, ameliorating water temperature increases (Brazier and Brown, 1973; Corbett and Lynch, 1985). Dissolved oxygen is one of the most influential water quality parameters for stream biota, including salmonid fish (Lamb, 1985). The most significant factor affecting dissolved oxygen levels in most streams is temperature, with cooler waters maintaining higher levels of oxygen than warmer waters (Lamb, 1985). Common pollutants in urban areas that affect water quality include nutrients such as phosphorus and nitrogen, pesticides, bacteria, and miscellaneous contaminants such as PCBs and heavy metals. In general, concentrations of pollutants increase in direct proportion to total impervious area (May, et al., 1997a).

Substrate quality, pool quality and quantity, and floodplain connectivity and off-channel refugia are general habitat elements that support many species of salmonid fish. The National Marine Fisheries Service (NMFS, 1996) and U.S. Fish and Wildlife Service (USFWS, 1998) have developed guidelines to address physical habitat elements necessary to support healthy salmonid

populations under variable conditions. Most of the research has been done in rural environments; however, these represent the BAS for urban environments at this time.

Riparian areas provide food for salmonids, both directly and indirectly through biotic input (Meehan et al., 1977). Many species of aquatic invertebrates have become adapted to feed on dead and decomposing organic material that has fallen or washed into the stream from adjacent uplands (Benfield and Webster, 1985). Most juvenile salmonids that rear in streams prey on terrestrial insects that fall into streams from overhanging vegetation or aquatic invertebrates (Horner and May, 1999; May et al., 1997a). Undisturbed riparian areas can retain sediments, nutrients, pesticides, pathogens, and other pollutants that may be present in stormwater runoff, protecting water quality in streams (Ecology, 2001a).

2.2 Function and Values of Riparian Buffers

Riparian buffers along stream banks help mitigate the impacts of urbanization and disturbance on adjacent lands (Finkenbine et al., 2000 in Bolton and Shellberg, 2001). Knutson and Naef (1997) summarize many of the functions of riparian buffers for Washington. The Washington Department of Fish and Wildlife's (WDFW) recommended standard buffer widths for the state's five-tier stream typing system are based on this latter research (OCD, 2002). Table 1 identifies the ranges for recommended buffer widths from two of the papers used in the development of the WDFW recommended buffers. Buffer widths reported to be effective for riparian functions vary considerably; the literature is not definitive in identifying one buffer width for each function studied (Williams and Lavey, 1986; Johnson and Ryba, 1992).

Table 1. Range of Effective Buffer Widths Based on Scientific Literature

Function	Riparian Buffer Functions and Appropriate Widths Identified by May (2000)	Riparian Buffer Functions and Appropriate Widths Identified by Knudson and Naef (1997)
Sediment Removal/Erosion Control	26 - 600 feet	N/A
Sediment Removal	N/A	26 - 300 feet
Erosion Control	N/A	100 - 125 feet
Pollutant Removal	13 - 860 feet	13 - 600 feet
Large Woody Debris	33 - 328 feet	100 - 200 feet
Water Temperature	36 - 141 feet	35 - 151 feet
Wildlife Habitat	33 - 656 feet	25 - 984 feet

A general relationship between buffer width and buffer effectiveness is apparent in the research findings. Studies indicate that buffers 100-to 150-feet (30 to 45 meters) wide provide most (on the order of 80 percent) of the potential functions (Horner and May, 2000; Knutson and Naef, 1997; and Leavitt, 1998).

2.3 Stream Management in Urban Environments

Two recent studies have focused on the general effects of urbanization on streams in the lowland Puget Sound region; Booth, 2000, and Horner and May, 1999. In these studies, a general trend has emerged that places a greater emphasis on evaluation of buffer effectiveness in the context of other watersheds and evaluation of landscape-level alterations to watersheds (Roni et al., 2002; Richards et al., 1996). For example, restoration of the natural woody debris recruitment function of riparian areas is difficult in areas that lack mature forested streamside vegetation (Larson, 2000). Booth, 2000 and Horner and May, 1999 recommend that new watershed-based strategies may need to be implemented that would address hydrology, water quality, and riparian functions to successfully address management of buffer width and quality, land use controls, and stormwater management. When applied in the context of a basin-wide change, these strategies may most effectively address protection, enhancement, and restoration of stream systems as opposed to prescriptive buffers. In terms of fish habitat restoration, barriers like lengthy and/or inappropriately installed culverts and stormwater control structures can inhibit fish migration and prohibit fish from accessing upstream habitats. Restoring fish passage is an effective way to increase the quality and accessibility of habitat and can result in relatively large increases in potential fish production at a nominal cost (Roni et al., 2002).

2.4 Fisheries Habitat and Salmonid Use in the City of Gig Harbor

2.4.1 Streams in the City of Gig Harbor

The City of Gig Harbor can be divided into six drainage basins: North/Donkey Creek, Gig Harbor, Bitter/Garr/Wollochet Creek, Gooch/McCormick Creek, Crescent Creek, and Puget Sound. The City's *Stormwater Comprehensive Plan* (2001b) describes the major streams found in these drainage basins and provides an assessment of their functions. The major streams include: Crescent Creek, North/Donkey Creek, Gooch Creek, McCormick Creek, Bitter Creek, and Garr Creek. All the creeks eventually discharge into Puget Sound. There is generally less than three miles to their headwaters with steep descents over short distances (City of Gig Harbor, 2001b).

None of the streams in the City of Gig Harbor are currently listed on the Washington State Department of Ecology's (Ecology) 1998 303(d) list, which lists streams that do not meet water quality standards for one or more parameters (Ecology website, 2004). Water quality sampling in the Key Peninsula/Gig Harbor/Island (KGI) watersheds has been undertaken by Stream Team volunteers and by URS Corporation technicians on behalf of Pierce County Water Programs (KGI Watershed Interim Council, 2001). Samples were taken on June 1, 2000 and July 31, 2001. Fecal coliform bacteria levels in Crescent Creek were found to be in excess of the state water quality standard of 100 cfu/100ml. Nitrate levels in Goodnough Creek were slightly elevated, with levels ranging between 1.7 and 1.86 mg/L, and likely indicate the presence of nutrients or fertilizers in the system (KGI Watershed Interim Council, 2001). Potential water quality hazards exist at marinas and boat moorage facilities due to fuel spills, increased nutrients from sewage pump-out activities, increased presence of pollutants due to hull scraping and use of anti-fouling paint on boat hulls, and high concentrations of creosote-treated wood pilings and structures.

The primary marine waters along the UGA boundary are Gig Harbor, Henderson Bay, Colvos Passage, and the Puget Sound Narrows. Burley Lagoon, a saltwater lagoon, is adjacent to Henderson Bay on Puget Sound.

2.4.2 Salmonid Fish Use in Gig Harbor

The *Salmonid habitat limiting factors: Water Resources Inventory Area (WRIA) 15 (East) Final Report* identifies the known presence of salmon in streams in the City of Gig Harbor (Haring, 2000). Chinook salmon (*Oncorhynchus tshawytscha*), listed as threatened under the ESA, are present in Crescent, Purdy, and McCormick Creeks. Chinook presence in these listed drainages are likely strays from other basins (Haring, 2000). Crescent Creek contained a historic wild run of Chinook, which ended in the 1940's (Williams et al., 1975). Chinook are still observed in Crescent Creek and are likely returns from annual plantings (Haring, 2000). Steelhead trout (*O. mykiss*) are present in Crescent, McCormick, Purdy, and Donkey Creeks. Coho (*O. kisutch*) may be found in Purdy, McCormick, Crescent, and Donkey Creeks. Chum salmon (*O. keta*) are present in Purdy, Crescent, Donkey, and McCormick Creeks. Cutthroat trout (*Salmo clarki*) are ubiquitous throughout the watershed and are believed to be present in most streams (Haring, 2000). Gig Harbor Bay and Henderson Bay provide habitat for rearing and outmigration (WDFW, 2003). Nearshore habitat is important environment for juvenile salmonids, where the shallow water depth obstructs the presence of larger, predator species (City of Gig Harbor, 2001b).

Potential forage fish spawning areas within the City are referenced in three sources: Marine Resource Species (MRS) data maintained by WDFW (2003), the *Key Peninsula, Gig Harbor, and Islands Watershed Nearshore Salmon Habitat Assessment* (Pentec Environmental, 2003), and the *Final Report: Northwest Straits Nearshore Habitat Evaluation* (Anchor Environmental and People for Puget Sound, 2002). The three forage fish species most likely to occur include surf smelt, sand lance, and Pacific herring. The different species utilize different parts of the intertidal and subtidal zones, with sand lance and surf smelt spawning primarily in the substrate of the upper intertidal zone, and Pacific herring spawning primarily on intertidal or subtidal vegetation (Anchor Environmental and People for Puget Sound, 2002). These three species account for over 50 percent of the diet of adult salmonids. Information on the three potential forage fish species within the City's jurisdiction is summarized in the *City of Gig Harbor Draft Shoreline Characterization* (Adolfson, 2003).

3.0 STATE OF THE SCIENCE FOR WETLANDS AND WETLAND BUFFERS

While estuarine and tidal habitats are considered wetlands, they fall under the jurisdiction of the Shoreline Management Act (SMA) and will be addressed under the SMA and not in this report. The *City of Gig Harbor Draft Shoreline Characterization* (Adolfson, 2003) provides information regarding estuarine and tidal wetlands in the City of Gig Harbor. This memorandum also

includes review of the Washington State Department of Ecology's draft review document summarizing best available science for freshwater wetlands (*Freshwater Wetlands in Washington State Volume 1: A Synthesis of the Science*) prepared by Sheldon et al., 2003.

3.1 Wetland Definition

Wetlands are formally defined by the Corps of Engineers (Corps) (Federal Register, 1982), the Environmental Protection Agency (EPA) (Federal Register, 1988), the Washington Shoreline Management Act (SMA) of 1971 (Ecology, 1991) and the Washington State Growth Management Act (GMA) (Ecology, 1992) as "... those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas" (Federal Register, 1982, 1986). The City of Gig Harbor Municipal Code also defines wetlands as described above (City of Gig Harbor, 2001a).

3.2 Wetland Functions and Values

Wetlands are integral parts of the natural landscape. Their "functions and values" to both the environment and to the general public depend on several elements including their size and location within a basin, as well as their diversity and quality. The functions provided by wetlands and their assigned human-based values have been identified and evaluated through several studies (Cowardin et al., 1979; Adamus et al., 1987; Mitsch and Gosselink, 2000; Reppert et al., 1979; Cooke, 2000). These functions include; flood water attenuation and flood peak desynchronization, stream base flow maintenance and groundwater support, shoreline protection, water quality improvement, biological support and wildlife habitat, and recreation, education, and open space.

Flood water attenuation and flood peak desynchronization can be aided by a wetlands ability to control flood water and stormwater flow and to slowly release it to adjacent water bodies and/or groundwater (Verry and Boelter, 1979 *in* Mitsch and Gosselink, 2000). A wetlands effectiveness in controlling flood waters is based on factors such as the storage capacity and outlet discharge capacity of the wetland relative to the magnitude of stormwater inflow (Reinelt and Horner, 1991). The loss of wetlands in urban areas affects the ability of the remaining wetland systems to function in attenuating stormwater runoff, resulting in increased flood frequency and higher peak flood flows in drainage basins (Azous and Horner, 2001; Mitsch and Gosselink, 2000; Booth, 2000). In addition, increasingly higher storm flows in urbanized basins, relative to undisturbed watersheds, can result in sediment loading of streams and destruction of habitat for fish and other aquatic organisms (Richter and Azous, 2001, Azous and Horner, 2001).

Maintaining stream flow is an important function of freshwater wetlands to stream-flow-sensitive salmonids in the Pacific Northwest. Wetlands provide baseflow during the region's typically dry season (Booth, 2000; May et al., 1997a; Mitsch and Gosselink, 2000). Many studies have found that wetland loss, reduction, and vegetation alteration reduce most wetlands' capacity to provide baseflow support to streams (Booth, 2000; Mitsch and Gosselink, 2000; Brinson, 1993).

Wetlands adjacent to waterbodies serve to provide protection for the shoreline of that stream, river, or lake. Wetlands in basins that have relatively undeveloped shorelines and stream banks that contain dense woody vegetation along the Ordinary High Water Mark (OHWM) of a lake or

stream and extend more than 200 to 600 feet from the OHWM provide the highest level of shoreline protection and erosion control. Wetlands that extend less than 200 feet provide less protection (Hruby et al., 1999; Cooke, 2000).

Removal of sediment and pollutants from stormwater are important water quality functions of wetlands (Mitsch and Gosselink, 2000; Cooke, 2000). A wetland's ability to perform water quality improvements can depend on a wetland's size, location within the basin, vegetation community structure, and productivity (Ecology, 1996).

Wetlands provide opportunities for foraging wildlife and for organisms that depend on detritus and/or organic debris for a food source (Erwin, 1990). Wetland habitats generally provide greater structural and plant diversity, more edge habitat where two or more habitat types adjoin, more varied forage, and a predictable water source that increases wildlife species abundance and diversity than upland habitats (Kauffman, et al., 2001).

In urbanizing areas, aquatic resources and adjacent uplands provide opportunities for greenways and open space. In Gig Harbor, wetlands and adjacent uplands provide important resources for wildlife viewing, passive recreation, and education about natural wetland-upland ecosystems. The *City of Gig Harbor Park, Recreation, and Open Space Plan* (City of Gig Harbor, 2001c) provides a thorough inventory of existing parks and opportunities.

3.3 Wetland Functional Assessment Methods

As described above, the functions provided by wetlands and their assigned human-based values have been identified and evaluated through many scientific studies (Cowardin et al., 1979; Adamus et al., 1987; Mitsch and Gosselink, 2000; Reppert et al., 1979; Cooke, 2000). Several functional assessment methods have been developed to identify functions performed in a wetland and evaluate the effectiveness of the wetland in performing that function. Some methods are quantitative, while others are qualitative.

Quantitative assessment methods include the US Army Corps of Engineers Hydrogeomorphic Method (HGM). HGM is based on the concept that wetland functions are driven primarily by the wetland's geomorphology (i.e., position in the landscape) and hydrologic characteristics (Brinson, 1993). In 1996, Ecology began the Washington State Wetland Function Assessment Method (WFAM) project. This functional assessment method, which was published in 1999, is a modified version of the HGM approach and is designed to provide a more scientific approach to assessing wetland functions (Hruby et al, 1999). The Washington Department of Transportation (WDOT) developed another method for rapid wetland assessments for linear projects (Null et al., 2000). Both the WFAM and the WDOT methods are cited in the OCD citations for best available science (OCD, 2002). The WDOT method is considered a qualitative method.

3.4 Wetland Rating System

In the State of Washington, Ecology has developed a wetland rating system for ranking wetlands according relative importance. This rating system is outlined in the *Washington State Wetland*

Rating System for Western Washington (Ecology 1993). Wetlands in this system are rated into four distinct categories; from Category I wetlands of highest value to Category IV wetlands of lowest value. Category I and IV wetlands are defined specifically in the rating system and Category II and III wetlands are determined by the summarized results of a rating form. The rating form uses semi-quantitative criteria such as size, level of disturbance, habitat diversity, connectivity to streams or other habitats, and buffer quality to classify wetlands. Ecology has recently released a draft of an updated wetland rating system for western Washington, which is based upon hydro-geomorphic (HGM) features (Hruby, 2004). The new wetland rating system is currently in public review.

3.5 Functions and Values of Wetland Buffers

Wetland buffers are vegetated upland areas immediately adjacent to wetlands. A scientific literature review indicates that buffer widths to protect a given habitat function or group of functions depend on numerous site-specific factors (Castelle et al., 1992a; Castelle and Johnson, 2000; FEMAT, 1993). These factors include the plant community (species, density, and age), aspect, slope, and soil type, as well as adjacent land use. Several literature reviews have been published summarizing the effectiveness of various buffer widths, mainly for riparian areas, but also for wetlands (Castelle et al., 1992a; Castelle and Johnson, 2000). Generally, the riparian buffer literature also applies to wetlands because very similar functions are provided by riparian buffers and wetland buffers. McMillan (2000) provides a recent literature review specific to wetland buffers in western Washington and evaluates land use intensity as well as wetland value when determining buffer widths.

Several studies indicate that buffers ranging from 100 to 150 feet wide provide most (on the order of 80 percent) of potential functions in most situations. In these studies, the relationship between buffer width and effectiveness is logarithmic, so that after a certain width an incremental increase in buffer width provides diminishing functional effectiveness. One study indicates that 90 percent of sediment removal can be accomplished within the first 100 feet of a riparian buffer, but an additional 80 feet of buffer is needed to remove just five percent more sediment (Wong and McCuen, 1982). However, other studies show that wildlife responses to human disturbance are varied and a buffer of 50 to 150 feet may not provide enough separation or protection (Knutson and Naef, 1997). Rather, wildlife use of wetland and riparian buffers is highly dependent upon the species and site-specific characteristics (i.e., type of wetland, geographic setting, etc.). A buffer of 200 or 300 feet or more from the aquatic resource has been documented as more appropriate for some species.

3.5.1 Wetland Mitigation & Enhancement Strategies

The Clean Water Act Section 404(b)(1) Guidelines for wetland mitigation require "no net loss" of wetlands by first avoiding, minimizing, rectifying, and reducing impacts to wetlands and their functions. Where loss of wetland acreage and/or functions is necessary, replacement or compensatory mitigation should be required. In compliance with GMA, the majority of local jurisdictions in Washington implement these guidelines through local critical area regulations.

Off-site and out-of-kind wetland mitigation has also been allowed by agencies in certain cases. The U.S. Army Corps of Engineers (Corps) and other agencies have allowed off-site mitigation of wetlands, and there has been growing interest in mitigation banks in Washington. Mitigation banking may give developers additional options for mitigation and banking also allows creation or preservation of larger and higher quality wetlands than might have been established on any one development site. The *Critical Areas Assistance Handbook* also includes mitigation banking as an allowed type of mitigation (CTED, 2003).

3.5.2 Wetland and Buffer Mitigation Success

Most wetland mitigation projects in Washington have not been successful for various reasons and have resulted in lost acreage, wetland types, and wetland functions (Castelle et al., 1992b; Ecology, 2001b; Mockler et al., 1998). An initial study by Ecology (Castelle et al., 1992b) reported that 50 percent or more of the mitigation projects studied did not meet permit requirements.

Twenty four mitigation sites in Washington were analyzed by Ecology (2001b) and found that although mitigation success has improved in the last 10 years, there is still much room for improvement. The Ecology study had the following major findings:

- 29 percent of the projects were achieving all of their specified measures;
- 54 percent of the projects were found to be minimally successful or not successful;
- Wetland enhancement as a type of mitigation performed poorly, compared to creation (50 percent of enhancement sites provided minimal or no contribution to overall wetland functions; 75 percent of sites provided minimal or no contribution to general habitat function); and
- 60 percent of created wetlands were moderately or fully successful and provided significant contribution to water quality and quantity functions.

3.5.3 Mitigation Ratios

Generally, wetland mitigation is implemented over a larger area than the wetland area adversely affected by a proposed project. Several authors and agencies have recommended various replacement ratios (Castelle et al., 1992b; CTED, 2003). Studies of the success of wetland mitigation projects suggest that replacement ratios based on mitigation success could be between 1:1.25 and 3:1 to replace lost wetland function and value. Mitigation ratios for wetlands in most local jurisdictions in western Washington currently range between 1:1 and 4:1. However, more information is needed to understand whether lost wetland functions and acreage can be entirely compensated.

The State of Washington Department of Community, Trade and Economic Development (CTED) *Critical Areas Assistance Handbook* (2003) recommends the following wetland mitigation ratios by classification of wetland:

- Category I wetlands - 6:1
- Category II wetlands - 3:1

- Category III wetlands - 2:1
- Category IV wetlands - 1.5:1

Larger replacement ratios are used to offset temporal losses of habitat and to ensure no net loss of wetlands. However, wetland mitigation ratios greater than 3:1 are based in part upon policy decisions to provide a disincentive to developers for impact of wetlands.

3.6 Wetlands and Wetland Buffers in the City of Gig Harbor

The *City of Gig Harbor Comprehensive Plan* (City of Gig Harbor, 1994) includes a map showing wetland areas in the City and UGA, based on a *City of Gig Harbor Wetlands Inventory and Report* completed in May 1992 (IES Associates, 1992). The May 1992 report included wetlands data provided by Pierce County GIS mapping and information gathered during field visits. The May 1992 Inventory was not available to Adolfsen during preparation of this paper.

Wetlands in the City include tidal and non-tidal wetlands. Based upon the GIS information and other existing resources, it appears that scattered non-tidal wetlands within the City boundaries are mostly associated with Donkey and Crescent Creeks and their tributaries. Within the UGA, several wetlands occur on the plateau west of the City between Gig Harbor itself and Wollochet Bay. Non-tidal wetlands found in the City are characterized in the *City of Gig Harbor Park, Recreation, and Open Space Plan* (City of Gig Harbor, 2001c) and tidal wetlands, including salt and freshwater habitats, are described in the *City of Gig Harbor Draft Shoreline Characterization* (Adolfsen, 2003).

4.0 STATE OF THE SCIENCE FOR CRITICAL FISH AND WILDLIFE HABITAT AREAS

4.1 Wildlife habitat types

Johnson and O'Neil (2001) provides the most up-to-date description of wildlife habitats in western Washington. The WDFW and the Northwest Habitat Institute developed this habitat typing methodology with input from a panel of regional wildlife experts and with information collected from more than 12,000 pertinent publications. Using this methodology, habitats can be assessed at three levels of detail: wildlife habitat types, structural conditions, and habitat elements. The term "wildlife habitat type" as referred to in Johnson and O'Neil (2001) generally describes vegetation cover types or land use/land cover types. Geographic distribution and physical setting (including climate, elevation, soils, hydrology, geology, and topography) and human activities (such as agriculture and urban development) influence vegetation cover and land use patterns. Wildlife species abundance and distribution are directly related to wildlife habitat types.

The WDFW has published management recommendations for Washington's priority habitats and species (Rodrick and Milner, eds., 1991). Specific documents addressing birds, reptiles and amphibians, invertebrates, riparian areas, and Oregon white oak woodlands have also been

published by WDFW since 1991. These documents summarize the most up-to-date life history information for certain priority species and current research on priority habitats.

4.2 Wildlife habitat types and species commonly present in the City Gig Harbor

The City of Gig Harbor contains several habitat types due to the presence of marine, estuarine, freshwater, and terrestrial zones. These habitats are described in detail in the City's *Park, Recreation, and Open Space Plan* (City of Gig Harbor, 2001c).

The City provides habitat for many common wildlife species found in the Pacific Northwest. The *City of Gig Harbor Draft Shoreline Characterization* (Adolfson, 2003) and the City's *Park, Recreation, and Open Space Plan* (City of Gig Harbor, 2001c) contain discussions of species documented in the City.

Urban areas within Gig Harbor tend to support more "generalist" species and are more prone to invasion by non-native, invasive plant and animal species due to the high level of disturbance to soil and vegetation in agricultural and urban habitats (Ferguson et al., 2001). Generalist species can use a variety of vegetation cover types for breeding and foraging and include both native and non-native species tolerant of human disturbance. In contrast, many "specialist" species require specific habitat characteristics that are either limited or no longer present in developed landscapes. While Gig Harbor's urban character limits habitat for a number of specialist species, the City does provide habitat for several "special status" species. The potential effects of urban development on these "special status" species in Gig Harbor and management considerations for these species are discussed below.

4.3 Special Status Species

Special status species include species designated by federal government agencies (USFWS and NMFS) as endangered, threatened, proposed, and candidate, and species designated by WDFW as endangered or threatened. Like all wildlife species, each of the special status wildlife species identified in the City of Gig Harbor requires adequate forage, water, structure, and space for breeding/nesting, roosting, and cover. Their ability to survive in the remaining fragmented habitat areas in Gig Harbor depends on the presence of and their specific requirements for forage, water, and structure.

Correspondence received from the USFWS noted the presence of five bald eagle nesting territories in the vicinity of the City of Gig Harbor and that wintering bald eagles may also occur along the City's shoreline (USFWS, 2003). Other listed species that may occur in the vicinity include bull trout and marbled murrelet. No proposed or candidate species were identified by the USFWS and no species of concern have been documented within a one-mile radius of the City.

The regular nesting and roosting sites of special status species are considered priority habitat by the WDFW, and the agency has published recommendations for managing breeding and foraging habitats for these species (Rodrick and Milner, 1991). A bald eagle protection ordinance is

outlined in WAC 232-12-292 and Watson and Rodrick (2002) provides management recommendations. Bald eagle nesting sites have been identified on priority habitats and species (PHS) maps (WDFW, 2003). Great blue heron and osprey, both state monitor species, are indicated as nesting and feeding in the City. Purple martin (state candidate) also have documented nesting occurrence in the City (WDFW, 2003).

4.4 Habitat Linkages, Isolation, and Fragmentation

Wildlife habitat linkages are typically linear strips of habitat that connect larger habitats, such as lowland forest or riparian areas. These bands of habitat provide enough food, structure, and water for some wildlife species to live in the linkage area, while others use these areas to move from one habitat area to another. Linkages that connect larger tracts of more diverse habitat are especially important in urban areas where habitats are fragmented and isolated by development and roads (Adams, 1994). Habitat linkages in urbanizing areas generally consist of riparian areas and forested steep slopes that provide habitat for species moving between foraging areas, breeding areas, and seasonal ranges, and which can provide habitat for the dispersal of young animals (Knutson and Naef, 1997). The potential and existing habitat linkages also encompass public lands, such as parks, open space, and trail corridors. Major roads and urban development, however, interrupt even the most substantial (widest) habitat linkages in Gig Harbor. Roads can be partial or complete barriers to terrestrial wildlife movement, especially to slow moving species such as turtles and salamanders (Ferguson et al., 2001).

Primary habitat linkages in Gig Harbor include riparian corridors along Donkey Creek and its tributaries and along Crescent Creek. The steep forested slopes along the Narrows and Coivos Passage provide habitat and in some places connect with inland forest patches. Additional linkage areas connecting smaller habitat tracts include the scattered forested areas and wetlands throughout the UGA.

4.5 Wildlife Habitat Protection and Restoration Strategies

Protecting the highest quality habitats in Gig Harbor may be an effective strategy for protecting wildlife habitat. In addition, protection of the remaining patches of lowland conifer forest in the City would preserve some of the remaining upland habitat and existing habitat linkages. Protection efforts can be focused on protecting intact, native forest habitats because these habitats are not easily replaced.

Changes to forest structure drive the composition of wildlife communities that live in western Washington habitats (Brown, ed. 1985). In upland and riparian habitats, the goal of enhancement could be to improve forest structure. To achieve long-term habitat improvement or enhancement this means planting native trees, providing regular monitoring and maintenance, followed by planting shade tolerant ground cover to complete the forest vegetation community. Measures that provide almost immediate habitat improvement include installation of upright snags, downed logs, brush piles, and other structural habitat elements.

5.0 DATA GAPS

The lack of a recent field inventory of streams, wetlands, and critical fish and wildlife conservation areas is a critical data gap in the preparation of this study. GIS data containing wetlands and streams was provided by the City for this study, but updated information including ground-truthing of mapped wetlands, wetland functions and values, and buffer quality is needed. An inventory of remaining open space and wildlife habitat in the City is needed and could be used to protect the larger patches and linkages of remaining forest, riparian corridors, wetlands, and open water habitats.

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Attachment 3

CRITICAL AREA PROTECTION IN THE COMPREHENSIVE PLAN AND GIG HARBOR MUNICIPAL CODE

COMPREHENSIVE PLAN POLICIES

Land Use Element

2.2.3. Generalized Land Use Categories

Generalized land use categories are identified to serve as a basis for establishing or accommodating the more detailed zoning code designation. The Comprehensive Plan defines eight generalized land use categories:

Preservation Areas

Preservation areas are defined as natural features or systems which possess physical limitations or environmental constraints to development or construction and which require review under the City's wetland ordinance or Critical Areas Ordinance. Preservation areas are suitable for retention or designation as open space or park facilities either as part of a development approval, easement or outright purchase by the City. Preservation areas are considered as overlays to the other generalized land use categories.

GOAL 2.4: PROTECT AND MAINTAIN GROUNDWATER QUALITY AND QUANTITY USED FOR PUBLIC WATER SUPPLIES

Provide an adequate supply of potable water to the city residents and allocate sufficient resources to assure continued supply of groundwater in the future. Require new developments within the urban area to connect to city water as it becomes available for the area. Minimize the impact of on-site septic systems by requiring new development within the urban area to be served by city sewer.

2.4.1. Aquifer Recharge Area and Site Suitability

- Avoid siting industry or uses which pose a great potential for groundwater contamination in those areas which are considered as critical aquifer recharge areas.
- Employ innovative urban design through flexible performance standards to permit increased structure height with decreased impervious coverage to maintain and enhance groundwater recharge.

2.4.2. Adequate Wastewater Treatment and Potable Water Supplies

- Provide for the expansion of the City's wastewater treatment plant to accommodate anticipated twenty-year growth within the urban growth area to minimize or avoid the potential impact to groundwater supplies from on-site septic systems.
- Discourage the continued use of sub-surface sewage disposal (on-site septic systems) within the urban growth area and encourage new developments to connect to the City sewer system.
- Coordinate with other agencies and water purveyors in developing a plan for the consolidation of small water systems within the urban growth area into the municipal water system.

GOAL 2.5: PROTECT AND ENHANCE SURFACE WATER QUALITY AND MANAGE FLOWS TO PRESERVE ENVIRONMENTAL RESOURCES

2.5.1. Adequate Provisions for Storm and Surface Water Management

- Maintain and implement the City's Stormwater Comprehensive Plan to ensure consistency with State and federal clean water guidelines, to preserve and enhance existing surface water resources, to eliminate localized flooding, and to protect the health of Puget Sound.

2.5.2. Support Low Impact Development methods to manage stormwater runoff on-site.

- Establish a review process and toolkit of Low Impact Development (LID) techniques for use in public and private development to reduce or eliminate conveyance of stormwater runoff from development sites. Allow and encourage alternative site and public facility design and surface water management approaches that implement the intent of Low Impact Development.

GOAL 2.6: OPEN SPACE/PRESERVATION AREAS

Define and designate natural features which have inherent development constraints or unique environmental characteristics as areas suitable for open space or preservation areas and provide special incentives or programs to preserve these areas in their natural state.

2.6.1. Critical Areas

- Designate the following critical areas as open space or preservation areas:
 - Slopes in excess of twenty-five (25) percent.
 - Sidewalls, ravines and bluffs.
 - Wetlands and wetland buffers.
- Restrict or limit development or construction within open space/preservation areas but provide a wide variety of special incentives and performance standards to allow increased usage or density on suitable property which may contain these limitations.
- Encourage landowners who have land containing critical areas to consider utilizing the resources of available land preservation trusts as a means of preserving these areas as open space.
- Consider the adoption of "existing use zoning" districts as an overlay for the protection and maintenance of environmentally unique or special areas within the urban growth area. Areas for consideration of this special type of district are as follows:

The Crescent Valley drainage from Vernhardson Street (96th Street NW) north to the UGA boundary.

2.6.2. Incentives and Performance

- Provide bonus densities to property owners that them to include the preservation area as part of the density-bonus calculation.
- Provide a variety of site development options which preserve open space but which allow the property owner maximum flexibility in site design and construction.

2.6.3. Acquisition of Quality Natural Areas

- Consider the purchase of natural areas which are of high quality and which the public has expressed a clear interest in the protection and preservation of these areas.

Environmental Element

4.1.1. Tributary drainage

Protect perennial streams, ponds, springs, marshes, swamps, wet spots, bogs and other surface tributary collection areas from land use developments or alterations which

would tend to alter natural drainage capabilities, contaminate surface water run-off or spoil the natural setting.

4.1.2. Stream and drainage corridors

Enforce buffer zones along the banks of perennial streams, creeks and other tributary drainage systems to allow for the free flow of storm run-off and to protect run-off water quality.

4.1.3. Floodplains

Protect alluvial soils, tidal pools, retention ponds and other floodplains or flooded areas from land use developments which would alter the pattern or capacity of the floodway, or which would interfere with the natural drainage process.

4.1.4. Dams and beaches

Enforce control zones and exacting performance standards governing land use developments around retention pond dams, and along the tidal beaches to protect against possible damage due to dam breaches, severe storms and other natural hazards or failures.

4.1.5. Impermeable soils

Protect soils with extremely poor permeability from land use developments which could contaminate surface water run-off, contaminate ground water supplies, erode or silt natural drainage channels, overflow natural drainage systems and otherwise increase natural hazards.

4.1.6. Septic System use

Enforce exacting performance governing land use developments on soils which have fair to poor permeability, particularly the possible use of septic sewage drainage fields or similar leaching systems. In areas which are prone to septic field failure, work with the Tacoma-Pierce County Health district to encourage the use of City sewer, as available and where appropriate.

4.1.7. High water table

Protect soils with high water tables from land use developments which create high surface water run-off with possible oil, grease, fertilizer or other contaminants which could be absorbed into the ground water system.

4.1.8. Noncompressive soils

Protect soils with very poor compressive strengths, like muck, peat bogs and some clay and silt deposits, from land use developments or improvements which will not be adequately supported by the soil's materials.

4.1.9. Bedrock escarpments

Enforce exacting performance standards governing land use developments on lands containing shallow depths to bedrock or bedrock escarpments, particularly where combined with slopes which are susceptible to landslide hazards.

4.1.10. Landslide

Protect soils in steep slopes which are composed of poor compressive materials, or have shallow depths to bedrock, or have impermeable subsurface deposits or which contain other characteristic combinations which are susceptible to landslide or land slumps.

4.1.11. Erosion

Enforce exacting performance standards governing possible land use development on soils which have moderate to steep slopes which are composed of soils, ground covers, surface drainage features or other characteristics which are susceptible to high erosion risks.

4.2.5. Open space wildlife habitat

Enforce exacting standards governing possible land use development of existing, natural open space areas which contain prime wildlife habitat characteristics. Promote use of clustered development patterns, common area conservancies and other innovative concepts which conserve or allow, the possible coexistence of natural, open space areas within or adjacent to the developing urban area. Incorporate or implement the standards adopted in the Washington State Administrative Guidelines for the identification and protection of critical wildlife habitat, as appropriate.

4.2.6. Wetland wildlife habitat

Protect lands, soils or other wetland areas which have prime wildlife habitat characteristics. Promote use of site retention ponds, natural drainage methods and other site improvements which conserve or increase wetland habitats. Incorporate or implement the standards adopted in the Washington State Administrative Guidelines for the identification and protection of critical wildlife habitat, as appropriate.

4.2.7. Woodland wildlife habitat

Protect lands, soils or other wooded areas which have prime woodland habitat characteristics. Promote use of buffer zones, common areas, trails and paths, and other innovative concepts which conserve or increase woodland habitats. Incorporate or implement the standards adopted in the Washington State Administrative Guidelines for the identification and protection of critical wildlife habitat, as appropriate.

4.3.1. Best to least allocation policies

As much as possible, allocate high density urban development onto lands which are optimally suitable and capable of supporting urban uses, and/or which pose fewest environmental risks. To the extent necessary, allocate urban uses away from lands or soils which have severe environmental hazards.

4.3.2. Performance criteria

As much as practical, incorporate environmental concerns into performance standards rather than outright restrictions. Use review processes which establish minimum performance criteria which land-owners and developers must satisfy in order to obtain project approvals. As much as possible, allow for innovation and more detailed

investigations, provided the end result will not risk environmental hazards or otherwise create public problems or nuisances.

4.3.3. Best Available Science

Ensure that land use and development decisions are consistent with Best Available Science practices to avoid contamination or degradation of wetland, stream, shoreline, and other aquatic habitats. Special attention should be placed on anadromous fisheries.

4.4.3. Groundwater

Prevent groundwater contamination risks due to failed septic systems. To the extent practical, cooperate with County agencies to create and implement plans which will provide suitable solutions for subdivisions with failed septic systems, and which will prevent future developments in high risk areas. Adopt specific performance standards for the development of land in areas identified as critical aquifer recharge areas.

4.4.4. Stormwater - development standards

Prevent surface water contamination and erosion of natural surface drainage channels due to ill-conceived or poorly designed urban development. Promote the use of storm water retention ponds and holding areas, natural drainage and percolation systems, permeable surface improvements, clustered developments and other concepts which will reduce stormwater volumes and velocities.

4.4.5. Stormwater - operating standards

Coordinate with the appropriate local and state agencies in promoting public education and awareness on the proper use of household fertilizers and pesticides. Develop and implement performance standards regarding the dumping of wastes, trapping of greases and other byproducts which can be carried into the natural drainage system.

Shoreline Management Element

9.1.1. Waterway

Define and regulate the design and operation of water-oriented activities including aquaculture and fish farming, and over-water-structures or water-borne improvements including piers, floats, barges and the like to protect the navigational capabilities of the harbor. Define and regulate activities which may occur within or affect the natural tides, currents, flows and even floodways to protect the functional integrity of the harbor.

9.1.2. Habitats

Preserve natural habitat areas, including beaches, streams and estuaries, from disruption. Protect fragile ecosystems which provide the waterfront unique value, especially fish spawning beds in the natural tributaries of Crescent Valley and Donkey Creeks.

9.1.3. Water and shoreline quality

Define and regulate activities which can possibly contaminate or pollute the harbor and shorelines including the use or storage of chemicals, pesticides, fertilizers, fuels and lubricants, animal and human wastes, erosion and other potentially polluting practices or conditions.

Coordinate with the Puget Sound Water Quality Authority, Pierce County and the Tacoma-Pierce County Health Department to secure adequate funding from available sources to develop and implement a water quality baseline study as a prelude to an area-wide water-quality basin plan.

9.1.4. Natural setting

Preserve the natural shoreline and harbor setting to the maximum extent feasible and practical. Control dredging, excavations, land fill, construction of bulkheads, piers, docks, marinas or other improvements which will restrict the natural functions or visual character of the harbor or shoreline. Utilize natural materials and designs where improvements are considered to blend new constructions with the natural setting and with older structures.

GIG HARBOR MUNICIPAL CODE

Chapter 14.20 - STORMWATER MANAGEMENT

Chapter 15.04 - FLOOD HAZARD CONSTRUCTION STANDARDS

Chapter 17.94 - LAND CLEARING

Chapter 18.04 - ENVIRONMENTAL REVIEW (SEPA)

Chapter 18.94 - CRITICAL AREAS

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

On December 13, 2004 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 COUNCIL OF THE CITY GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, INCREASING THE ALLOWED DENSITIES ALLOWED IN THE R-1, RB-1, WR, WM, AND WC ZONES TO 4 DWELLING UNITS PER ACRE; ADDING A CHAPTER, 17.92, TO THE ZONING CODE RELATING TO NOTICES RECORDED ON PROPERTY ADJACENT TO MINERAL RESOURCE LANDS; INTEGRATING THE CITY'S WETLAND REGULATIONS WITH THE CRITICAL AREAS REGULATIONS; ADDING NEW DEFINITIONS TO THE CHAPTER ON CRITICAL AREAS AND WETLANDS; ADOPTING NEW WETLAND RATING CATEGORIES, CONSISTENT WITH THE DOE WETLAND RATINGS; ESTABLISHING NEW WETLAND BUFFER WIDTHS; ADOPTING A WETLAND BUFFER AVERAGING PROCEDURE; ADOPTING STREAM CLASSIFICATIONS, BUFFER WIDTHS AND STREAM PROTECTION REGULATIONS; ADDING NEW PROVISIONS TO FISH AND WILDLIFE HABITAT FOR SPECIAL CONSIDERATIONS FOR SALMONIDS; AMENDING SECTIONS 17.16.060, 17.28.050, 17.46.040, 17.48.040, 17.50.040;18.08.020; 18.08.030; 18.08.040; 18.08.060; 18.08.040; 18.08.050; 18.08.100; 18.08.120; 18.08.170; 18.08.180; 18.12.090; ADDING NEW SECTIONS 18.08.____; 18.08.____; 18.08._____ 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 December 13, 2004

BY: _____
MOLLY M. TOWSLEE, CITY CLERK

**City of Gig Harbor Planning Commission
Minutes of Work-Study Session
Thursday, November 18, 2004
Gig Harbor Civic Center**

PRESENT: Commissioners Theresa Malich, Kathy Franklin, Carol Johnson, Dick Allen, Bruce Gair, Scott Wagner and Chairperson Paul Kadzik. Staff present: John Vodopich, Steve Osguthorpe, Kristin Riebli, and Diane Gagnon.

CALL TO ORDER: 6:05 p.m.

APPROVAL OF MINUTES:

MOTION: Move to approve the minutes of November 4, 2004 Johnson/Franklin – unanimously approved.

NEW BUSINESS

1. Comprehensive Plan Update – Code and Policy Study Session #5

Community Development Director John Vodopich explained to the Planning Commission that this would be the final work-study session with them and that they would need to make a final recommendation to the City Council for their meeting of November 22, 2004.

Mr. Vodopich then briefed the Planning Commission on the proposal from AHBL for the new Chapter 17.92 Mineral Resource Lands and read the requirements to notify property owners who are within 400 feet of a site designated as mineral resource land. Chairman Kadzik asked if city staff would be responsible for the notification process. Planning Manager Steve Osguthorpe answered that staff would contact the Department of Natural Resources to determine any areas presently operating under a valid surface mining permit. The Planning Commission agreed to the proposed language in the new section.

The next item for discussion was the Airport Overlay District. Commissioner Gair asked why we were calling the airport an "essential public facility" and John Vodopich replied that the definition of essential public facilities includes airports.

Commissioner Gair stated that in section 2.3.2 it states that "The City intends to support continued growth and development of the general aviation airport facilities at Tacoma Narrows airport when consistent with the Gig Harbor Comprehensive Plan goals" and asked which goals were being referred to. It was decided that this was a general statement referring to all the goals of the Comprehensive Plan and that the word "all" should be inserted to reflect that. Mr. Gair further expressed concern with voicing support of the airport's continued growth. Mr. Vodopich suggested that the language

"continued growth and development of" be removed and the Planning Commission agreed.

The discussion then continued to the next item which was new language supporting low impact development. Community Development Director John Vodopich read the proposed language to support low impact development methods to manage stormwater runoff on-site and the Planning Commission agreed with the language as presented.

Owen Dennison from AHBL presented the information on the Housing Element pointing out Table 3 which illustrates existing zoned capacity. Commissioner Gair asked about the new language following the table which references an excess cushion of 23 percent above the projected need and expressed a concern with maintaining excess housing capacity. Mr. Vodopich explained that the cushion was to accommodate projected growth and may never be developed. Owen Dennison continued to explain the difference between housing units and households and the vacancy rate.

Chairman Paul Kadzik clarified that basically we are changing the maximum density from 3 dwelling units per acre to 4 dwelling units per acre. Associate Planner Kristin Riebli pointed out that there is also a 30% incentive allowed for developing a planned residential development in those zones. It was agreed to remove the 30% bonus and the Planning Commission agreed with the density increase.

The Planning Commission then discussed Title 18 – Critical Areas. Owen Dennison reviewed the various changes. It was decided to discuss the proposed changes to the wetland buffers first.

Commissioner Scott Wagner asked the other Planning Commission members to review the matrix which had been distributed at the last meeting which compared the city's existing buffers with those proposed by the consultant and the range suggested by best available science.

Commissioner Johnson stated that we have to be sure that what we adopt is defensible and asked if our current buffers were. Commissioner Wagner stated that our current buffer widths were within the recommended range and expressed concern with doubling them. He then suggested that they be increased somewhat but not doubled.

Discussion followed on the changes to the categories and how they compared to our current categories. Commissioner Johnson pointed out that the proposed categories are more in line with the state.

Chairman Kadzik stated that the numbers proposed seemed to be in the conservative range and expressed the need to balance conservation with the needs of the community. Commissioner Wagner added that we needed to achieve 4 dwelling units per acre while still protecting the wetlands and that he didn't believe these large buffers accomplished that goal. He then recommended that the buffer for a Category 1 wetland remain at the suggested 200 feet and that Category II be changed to 75, Category III to

35 and Category IV to 25. Discussion followed on the state recommended ranges and whether those suggested fell within them. It was decided that that Planning Commission would recommend the following wetland buffers:

- Category I – 200 feet
- Category II – 100 feet
- Category III – 50 feet
- Category IV – 25 feet

Owen Dennison then went over the changes to the section on buffer reductions, pointing out that the current regulation states that degraded buffers may be enhanced and reduced to not less than 50 percent and that they were suggesting that it be changed to 70 percent.

Chairman Kadzik asked for clarification of a degraded buffer and Planning Manager Steve Osguthorpe stated that staff does not have the knowledge to determine the quality of a buffer and would rely on a certified wetland specialist hired by the proponent.

Commissioner Johnson suggested that the allowance be changed to 55 percent and the Planning Commission agreed.

Associate Planner Kristin Riebli cautioned that there may be situations where a wetland may be willfully degraded in order to utilize the buffer reduction. Commissioner Wagner expressed concern for how it would be determined what was willful as animals and farming can degrade a wetland. Chairman Kadzik suggested that language be added stating buffer reduction will not be allowed if the buffer degradation is a result of a documented code violation and the Planning Commission agreed.

The next item for discussion was the new section on streams. Planning Manager Steve Osguthorpe explained that we don't currently have a section on streams. Commissioner Wagner asked what types of streams we have in the city and Mr. Osguthorpe answered that Donkey Creek, Crescent Creek and their tributaries probably fell within the type 2 and 3 categories. The Planning Commission agreed with the recommendation of AHBL.

The Planning Commission then discussed the wetland buffer replacement ratios. Associate Planner Kristin Riebli read from the current code noting that the ratios being proposed were only a slight increase in the lower categories.

Commissioner Franklin noted that these ratios seem to balance both the environmental interests and property owner interests. The Planning Commission agreed with the recommended ratios.

Owen Dennison then asked the Planning Commission to go over the introduction noting that the numbers had been updated to reflect current information.

Chairman Paul Kadzik then asked if there was any other discussion and stated that a motion for recommendation would be appropriate at this time.

MOTION: Move to recommend the City Council approve the 2004 Comprehensive Plan as modified. Johnson/Franklin – unanimously approved.

NEXT REGULAR MEETING:

December 2, 2004 at 6pm – Work-Study Session

Commissioner Bruce Gair noted that he would not be attending the meetings of December 2nd and 16th, 2004.

Commissioner Kathy Franklin stated that she would also be absent from the meeting of December 2nd.

ADJOURN:

MOTION: Move to adjourn at 7:40 p.m.
Johnson/Malich – unanimously approved

CD

recorder utilized:

Disc #1 Track 1

Disc #2 Track 1



ADMINISTRATION

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: CAROL MORRIS, CITY ATTORNEY
SUBJECT: SETTLEMENT AGREEMENT – NORTH CREEK HOMEOWNER'S ASSN
V. CITY OF GIG HARBOR
DATE: DECEMBER 13, 2004

BACKGROUND:

The North Creek Estates subdivision was approved by Pierce County prior to annexation into the City of Gig Harbor. Pierce County approved North Creek Estates with a private road access, which is North Creek Lane (or 76th Street N.W.).

On June 26, 2000, the North Creek Homeowner's Association (NCHA) filed a lawsuit against the City, alleging seven causes of action as well as damages against the City. With the exception of one claim (implied dedication), the Pierce County Superior Court dismissed all claims (and damages) in favor of the City.

The attached settlement agreement proposes that the remaining claim (implied dedication) be addressed through the City Council's acceptance of a portion of North Creek Lane (or 76th Street N.W.), as a public street. This acceptance will address the portion of North Creek Lane that abuts North Creek Estates, to the full 60 foot dedicated width. The settlement agreement requires that each party pay its own attorneys' fees.

If the Council signs the settlement agreement, it should set the date for a hearing on the Council's acceptance of North Creek Lane as a public street. Once North Creek Lane is accepted as a public street, NCHA's attorneys are required to sign the Stipulation and Order of Dismissal with Prejudice. The Stipulation and Settlement Agreement will then be entered into the Court files and the case will be dismissed with prejudice.

RECOMMENDATION:

The City Attorney recommends that if the settlement agreement is acceptable to the City Council, that the Council vote to authorize the Mayor to sign it. After that point, the Council should set the date for the hearing on the acceptance of North Creek Lane as a public street.

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (hereinafter "Agreement") is entered into by and between the CITY OF GIG HARBOR, a Washington municipal corporation (hereinafter "City"), and the NORTH CREEK HOMEOWNERS' ASSOCIATION (hereinafter "NCHA"), effective as of the date of the last signature herein.

RECITALS

WHEREAS, North Creek Estates subdivision was approved by Pierce County prior to annexation of the property into the City of Gig Harbor; and

WHEREAS, Pierce County approved North Creek Estates with a private road access, which is North Creek Lane (or 76th Street N.W.); and

WHEREAS, NCHA is the Homeowners' Association for the North Creek Estates subdivision, in Gig Harbor, in Pierce County, Washington; and

WHEREAS, on June 26, 2000, NCHA filed a Complaint and Petition for Declaratory Judgment, Writ of Mandamus, Trespass and Damages, alleging seven causes of action against the defendant City (Pierce County Cause no. 00-2-09055 8); and

WHEREAS, NCHA alleged, among other things, that dedication to the public of a portion of North Creek Lane had occurred through implication, even though the City of Gig Harbor had not formally accepted it as a public street (Third cause of action in the Complaint); and

WHEREAS, NCHA filed a motion for a writ of mandamus with the Pierce County Superior Court in the same cause of action (on a number of grounds), and both the motion and NCHA's motion for reconsideration were denied; and

WHEREAS, NCHA filed an interlocutory appeal to the Court of Appeals of the decisions of the Pierce County Superior Court, under Court of Appeals, Division II, No. 28251-8-II; and

WHEREAS, the Court of Appeals denied review of the Court's decisions on April 5, 2002 and a Certificate of Finality was issued on May 15, 2002; and

WHEREAS, the City filed a motion for summary judgment to dismiss all remaining claims, and the Pierce County Court partially granted this motion, denying only the City's motion as to the implied dedication of North Creek Lane; and

WHEREAS, the relief available to NCHA at trial is a judgment that North Creek Lane was a public road by implied dedication; and

WHEREAS, the same result can be obtained by the City accepting North Creek Lane as a public road; and

WHEREAS, the City and NCHA desire to resolve the remaining issue without further litigation and expense to the parties;

WHEREAS, both of the undersigned parties to this Agreement have had ample opportunity to review the facts and law relevant to the claims associated with the litigation, have had the opportunity to fully consult with counsel of their own choice and have done so, and have entered into this Agreement knowingly and voluntarily, without duress and coercion from any source;

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and obligations of the parties as set forth below, the parties agree and promise as follows:

TERMS

Section 1. Dedication of North Creek Lane. The parties agree that the City shall properly notice, schedule and hold a public hearing for the acceptance of North Creek Lane (or 76th Street N.W.) as a public street. NCHA agrees that the City shall send notice of the public hearing to NCHA's address in Section 4. At the public hearing, the City Council will make findings similar to the "whereas" sections set forth above, and vote on whether to accept the dedication of 76th Street N.W. lying adjacent to the North Creek Estates. The area to be accepted by the City is the sixty (60) foot wide private easement highlighted and identified as 76th Street N.W. in the North Creek Estates plat map, Exhibit A, attached hereto and incorporated herein by this reference. If the City Council does not vote to accept dedication of 76th Street N.W. as provided in this Section, then this Settlement Agreement shall be null and void and of no further effect.

Section 2. Dismissal of Litigation. The parties agree to execute a Stipulation and Agreed Order of Dismissal with Prejudice (hereinafter the "Stipulation"), substantially in the form attached hereto as Exhibit B, which is incorporated herein by this reference. After all of the events described in Section 1 of this Agreement have been fully and completely performed, and after execution of the Stipulation by both parties, the Stipulation shall be presented to the Court for entry in Pierce County Superior Court No. 00-2-09055-8. The parties agree that entry of this Stipulation shall dismiss all proceedings in Pierce County Superior Court No. 00-2-09055-8 and Court of Appeals No. 28251-8-II with prejudice, and that each party shall bear its own costs and attorneys' fees incurred therein.

Section 3. NCHA acknowledges that the City's decision to accept a portion of 76th Street N.W. or North Creek Lane as a public street means that this portion of the Lane or 76th Street N.W. will be treated the same as any other public street for purposes of maintenance, operation and repair. **Section 4.** All required notices under this Agreement shall be delivered to the parties' representatives at the addresses listed below:

To the City:

Carol Morris
City Attorney
P.O. Box 948
Seabeck, WA 98380-0948

Mark Hoppen
Gig Harbor Administrator
3510 Grandview Street
Gig Harbor, WA 98335

To NCHA:

North Creek Homeowners Association
P.O. Box 2041
Gig Harbor, WA 98335

Section 5. Representations or Warranties. The parties acknowledge that no other person or entity, nor any agent or attorney of any person or entity, has made any promise, representation or warranty whatsoever, express or implied, not contained in this Agreement concerning the subject matter hereof, to induce the parties to execute this Agreement. The parties further acknowledge that they have not executed this Agreement in reliance on any such promise, representation, or warranty not contained herein.

Section 6. Compromise of Claims. The parties understand and agree that this Agreement is a compromise of disputed claims, and the execution and performance of this Agreement does not constitute and shall not be construed as an admission of liability, fault or responsibility by the other party.

Section 7. Release. After the activities in Section 1 have been fully performed, and upon execution of the Stipulation referenced in Section 2, and entry of the Stipulation into the files of the Clerk of Pierce County Superior Court, the undersigned parties to this Settlement Agreement agree that they shall and hereby do, mutually release, quit and forever discharge one another and their successors, past, present, and future officers, agents, employees, members, assigns, relations, and attorneys of and from any and all claims, demands, damages, actions, controversies, attorneys' fee claims, disputes, causes of action, or suits of any kind or nature, whatsoever, whether known or unknown, asserted or not asserted, foreseen or unforeseen, whether past, present or future, which each has, may have or could have had to the exercise of diligence, against the other, pertaining to or arising from Pierce County Superior Court Cause No. 00-2-09055-8 and Court of Appeals No. 28251-8-II, including, but not limited to, any and all claims for damages and/or attorneys' fees under 42 U.S.C. Section 1983 and Section 1988. The parties have no knowledge of any existing claims against the other party not released under this paragraph.

Section 8. Authority to Execute. Each signatory of this Agreement represents and warrants that he or she has full power and authority to execute and deliver this Agreement on behalf of the entity or party for which he or she is signing, and that he or she will defend and hold harmless the other party from any claim that he or she was not fully authorized to execute this Agreement on behalf of the person or entity for whom he or she signed. Upon a proper execution and delivery, this Agreement will have been duly entered into by the parties, will constitute as against each party a valid, legal and binding obligation, and will be enforceable against each party in accordance with the terms herein.

Section 9. Specific Performance. The parties agree that damages alone do not constitute an adequate remedy for breach, and that the parties are entitled to compel specific performance of all material terms of this Agreement by any party in default hereof, as well as to obtain damages. All terms and provisions of this Agreement are material. The “whereas” sections or “recitals” to this Agreement are not material terms of this Agreement.

Section 10. Governing Law and Attorneys’ Fees. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In the event that either party institutes litigation to enforce the terms of this Agreement, venue shall be in the Pierce County Superior Court, Pierce County, Washington or the U.S. District Court for the Western District of Washington. The prevailing party shall be entitled to recover its reasonable attorneys’ fees and costs.

Section 11. Entire Agreement. This Agreement contains the entire Agreement between the parties with respect to the subject matter hereof, and shall not be modified or amended in any way except in writing, and signed by each of the parties hereto.

Section 12. Interpretation. This Agreement was drafted by negotiation by counsel for the parties, and there shall not be a presumption or construction against either party. Any titles or captions of paragraphs contained in this Agreement are for convenience and reference only.

Section 13. Binding Nature of Agreement. Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the parties, their heirs, executors, administrators, successors, devisees, assigns, and all persons now or hereafter holding or having all or any part of the interest of a party to this Agreement.

Section 14. Severability. If any portion of this Agreement is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect any other portion of this Agreement.

Section 15. Counterpart Originals. Each signatory to this Agreement may sign a separate original of the Agreement. In such event, the Agreement remains as binding and enforceable as it would be if all parties signed the Agreement at the same time and place.

Section 16. Third Party Beneficiaries. This Agreement is neither expressly nor impliedly intended to be for the benefit of any third party, and is neither expressly nor impliedly enforceable by any third party.

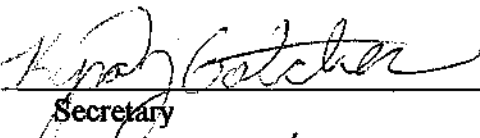
CITY OF GIG HARBOR

NORTH CREEK HOMEOWNERS' ASSN.

By: _____
MAYOR

By 
President

DATE: _____

By 
Secretary

ATTEST:

DATE: 11/18/2007

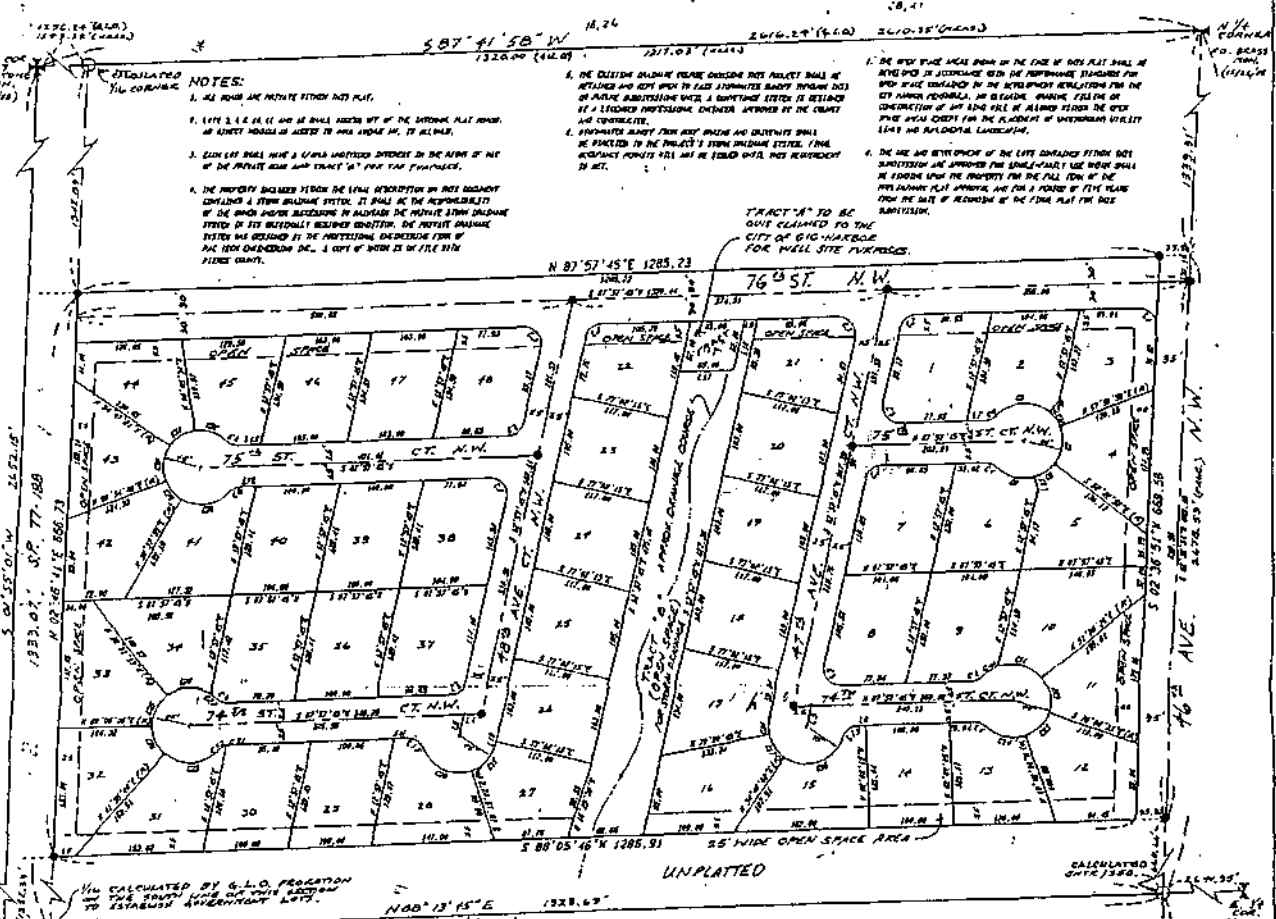
City Clerk

APPROVED AS TO FORM:

City Attorney

NORTH CREEK ESTATES

IN THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 7, TOWNSHIP 21 NORTH,
RANGE 2 EAST OF THE WILLAMETTE MERIDIAN
PIERCE COUNTY, WASHINGTON
A REPLAT OF LOTS 1-4 OF PIERCE COUNTY LARGE LOT NO. 8701280291



NOTES:

1. ALL LOTS ARE PRIVATE WITHIN THIS PLAT.
2. LOTS 1 & 2 ARE 1/2 ACRES EACH AND SHALL BESET BY THE SURROUNDING PLAT BOUNDARIES. AN EASEMENT SHALL BE GRANTED TO AREA AROUND LOT 1, TO BE LARGER.
3. LOTS 1 & 2 SHALL HAVE A 1/2 ACRES UNDIVIDED INTEREST IN THE BOUNDARY OF THE PRIVATE ROAD AND TRACT "A" FOR THE PURPOSES.
4. THE PROPERTY BOUNDARIES WITHIN THE LOTS ARE SET BY THIS PLAT. THE BOUNDARIES BETWEEN THE LOTS ARE SET BY THIS PLAT. THE BOUNDARIES BETWEEN THE LOTS ARE SET BY THIS PLAT. THE BOUNDARIES BETWEEN THE LOTS ARE SET BY THIS PLAT.

5. THE DESIGN OF THE PLAT IS SUBJECT TO THE APPROVAL OF THE CITY OF GIG HARBOR. THE DESIGN OF THE PLAT IS SUBJECT TO THE APPROVAL OF THE CITY OF GIG HARBOR.
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8. THE DESIGN OF THE PLAT IS SUBJECT TO THE APPROVAL OF THE CITY OF GIG HARBOR. THE DESIGN OF THE PLAT IS SUBJECT TO THE APPROVAL OF THE CITY OF GIG HARBOR.

TRACT "A" TO BE
GIVE CLAIMED TO THE
CITY OF GIG HARBOR
FOR WALK-WAY PURPOSES.

3/4 COR.
S. 02° 57' 01" W
25.52' 01" (CALC.)
S.P. 77-188
N. 02° 56' 41" E 886.73'
20.881'

CALCULATED BY G.L.O. PROXATION
TO ESTABLISH ADJACENT LOTS.

N 00° 13' 15" E
2574.02' (CALC.)

CALCULATED
GIVE 3880'
S. 02° 57' 01" W
25.52' 01" (CALC.)
S.P. 77-188
N. 02° 56' 41" E 886.73'
20.881'



NORTH

SCALE 1" = 100'

LEGEND

- DENOTES PIERCE COUNTY STANDARD MONUMENT, SET.
- ▲ DENOTES MONUMENT FOUND AS NOTED.
- BEARING DATA NORTH UNLESS OTHERWISE NOTED. (ASSUMED)
- SHRIMP WITHIN LOT 1: 1" DIAL STATION
- REMARKS: UNDER 1/2 ACRES UNDIVIDED INTEREST IN THE BOUNDARY OF THE PRIVATE ROAD AND TRACT "A" FOR THE PURPOSES.

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THIS PLAT OF NORTH CREEK ESTATES IS BASED ON AN ACTUAL SURVEY DONE BY ME OR UNDER MY DIRECT SUPERVISION. THAT THE BEARINGS AND DISTANCES ARE SHOWN CORRECTLY. THAT THE PERIMETER MONUMENTS HAVE BEEN SET AND THAT ALL OTHER MONUMENTS AND LOT CORNERS HAVE BEEN SET OR BOUND WITH THE COUNTY AND WILL BE SET PRIOR TO THE RELEASE OF THE BOND. THAT I COMPLIED WITH ALL STATE AND COUNTY REGULATIONS GOVERNING PLATTING AND THAT IT CONFORMS TO THE APPROVED PRELIMINARY PLAT AND THE CONDITIONS THEREOF.



Melvin F. Garland
P.O. GARLAND & SONS
1152400

7/31/97
DATE

EASEMENT PROVISIONS

AN EASEMENT IS HEREBY RESERVED FOR AND GRANTED TO
PENINSULA POWER & LIGHT CO.
WASHINGTON NATURAL GAS, CITY OF GIG HARBOR WATER
VIACOM CABLEVISION

AND U.S. WEST COMMUNICATIONS

AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS UNDER AND UPON THE EXTERIOR 7 FEET THE FRONT AND REAR BOUNDARY LINES AND UNDER AND UPON THE EXTERIOR 2.5 FEET OF SIDE BOUNDARY LINES OF ALL LOTS, IN WHICH TO INSTALL, LAY, CONSTRUCT, REPAIR, OPERATE AND MAINTAIN UNDERGROUND CONDUITS, CABLES AND WIRES WITH NECESSARY FACILITIES AND OTHER EQUIPMENT FOR THE PURPOSE OF SERVING THE SUBDIVISION AND OTHER PROPERTY WITH THE ABOVE NAMED UTILITY SERVICES, TOGETHER WITH THE RIGHT TO ENTER UPON THE LOTS AT ALL TIMES FOR THE PURPOSES STATED. ALL PERMANENT UTILITY SERVICES SHALL BE PROVIDED BY UNDERGROUND SERVICE EXCLUSIVELY.

8910180357



PAC - TECH
ENGINEERING, INDI. 0571 PAGE 3903
2401 SOUTH 336A STREET, SUITE 200
TACOMA, WASHINGTON 98409 (206) 473-4493
SEATTLE 829-5738 GIG HARBOR 851-3033

NORTH CREEK ESTATES

A REPLAY OF LOTS 1-4 OF PIERCE COUNTY LARGE LOT NO. 8701280291
IN THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 7, TOWNSHIP 21 NORTH,
RANGE 2 EAST OF THE WILLAMETTE MERIDIAN
PIERCE COUNTY, WASHINGTON. APPROVALS

LEGAL DESCRIPTION

THE NORTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 21 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, COUNTY OF PIERCE, STATE OF WASHINGTON, EXCEPT THE EAST 35 FEET FOR COUNTY ROAD, TOGETHER WITH AND SUBJECT TO A 60 FOOT ACCESS AND UTILITIES EASEMENT AS RECORDED UNDER AUDITOR'S FEE NO. 2710298.

ALSO KNOWN AS LOT'S 1 THROUGH 4 OF PIERCE COUNTY LARGE LOT SUBDIVISION AS RECORDED UNDER AUDITOR'S FEE NO. 8701280291.

PUBLIC WORKS DEPARTMENT

EXAMINED AND APPROVED WITH THE FOLLOWING CONDITIONS:
PIERCE COUNTY HAS NO OBLIGATION FOR THE MAINTENANCE OR REPAIR OF THE PRIVATE ROADS OR STORM SEWER SYSTEM LOCATED IN THIS PLAT. EACH AND EVERY LOT OWNER WILL BE RESPONSIBLE FOR THE MAINTENANCE OF ALL ROADS AND STORM DRAINAGE SYSTEM ASSOCIATED WITH THE PLAT. THEY WILL ALSO BE COLLECTIVELY RESPONSIBLE FOR CONTROLLING ALL STORM WATER RUNOFF THAT WILL BE CREATED BY THE DEVELOPMENT OF THIS PLAT.
PIERCE COUNTY HAS NO OBLIGATION TO ACCEPT THE ROADS IN THIS PLAT FOR DEDICATION OR MAINTENANCE AT ANYTIME. IF THE COUNTY DESIRES TO ACCEPT THE ROADS FOR DEDICATION THE ROADS AND ASSOCIATED STORM SEWER SYSTEM SHALL MEET ALL CURRENT DESIGN AND CONSTRUCTION STANDARDS.

Thomas M. Ballal 10/3/89
for DIRECTOR OF PUBLIC WORKS DATE

HEALTH DEPARTMENT

PRELIMINARY INSPECTIONS INDICATE SOIL AND SITE CONDITIONS MAY ALLOW USE OF ON-SITE SEWAGE SYSTEMS AS A MEANS OF SEWAGE DISPOSAL FOR SOME BUT NOT NECESSARILY ALL BUILDING SITES WITHIN THIS PLAT.
WATER SUPPLY APPROVED

Michelle Schreiner 10/03/89
DEPARTMENTAL REPRESENTATIVE DATE

ASSESSOR / TREASURER

I HEREBY CERTIFY THAT ALL STATE AND COUNTY TAXES HERETOFORE LEVIED AGAINST THE PROPERTY DESCRIBED HEREIN, ACCORDING TO THE BOOKS AND RECORDS OF MY OFFICE HAVE BEEN FULLY PAID AND DISCHARGED.

DATED THIS 12 DAY OF OCTOBER, 1989

Wendell Bruns
ASSESSOR - TREASURER PIERCE COUNTY, WASHINGTON
PLANNING AND NATURAL RESOURCE MANAGEMENT DEPT.

HE HEREBY CERTIFY THAT THIS PLAT IS APPROVED BY THE PIERCE COUNTY PLANNING DEPARTMENT AND THAT THE PLANNING FEE HAS BEEN PAID.
DATED THIS 4th DAY OF OCTOBER, 1989

U.S.
DIRECTOR, PLANNING AND NATURAL RESOURCE MANAGEMENT
PROSECUTING ATTORNEY
APPROVED AS TO FORM THIS 14 DAY OF SEPT, 1989

John R. Helms
DEPUTY PROSECUTING ATTORNEY
HEARINGS EXAMINER

EXAMINED AND APPROVED BY THE HEARINGS EXAMINER OF PIERCE COUNTY, WASHINGTON
THIS 13th DAY OF SEPTEMBER, 1989

Frank J. McLeod
PIERCE COUNTY HEARINGS EXAMINER
AUDITOR

FILED FOR RECORD AT THE REQUEST OF Rinco Inc
THIS 10th DAY OF Oct, 1989, AT 5:53 MINUTES P.M.
AND RECORDED IN VOLUME OF PLATS AT PAGES
PIERCE COUNTY AUDITOR, TACOMA, WASHINGTON.

Brian Sonntag by Dolly Walters 10/18/89
PIERCE COUNTY AUDITOR DATE
8910180357 \$53.00
FEE NUMBER

FIRE PREVENTION BUREAU

WE HEREBY CERTIFY THAT THIS PLAT IS DULY APPROVED, SUBJECT TO COMPLIANCE WITH ALL CURRENT REQUIREMENTS OF THE FIRE PREVENTION BUREAU.

Waddell F Hill 10-11-89
FIRE MARSHAL DATE

UTILITIES DEPARTMENT

ALL LOTS IN THIS PLAT ARE SERVED BY INDIVIDUAL SEPTIC SYSTEMS.

Donald J. King 10/18/89
DIRECTOR OF UTILITIES DATE

UTILITIES DEPARTMENT

ALL LOTS WITHIN THIS PLAT ARE SERVED BY THE CITY OF 616 HARBOR SANITARY SEWER.

Donald J. King 10/18/89
DIRECTOR OF UTILITIES DATE

UTILITIES DEPARTMENT

ALL LOTS WITHIN THIS PLAT ARE SERVED BY A PRIVATE SANITARY SEWER. PIERCE COUNTY HAS NO OBLIGATION FOR THE MAINTENANCE OR REPAIR OF THE PRIVATE SANITARY SEWER SYSTEM LOCATED ON THIS PLAT, EACH AND EVERY LOT OWNER COLLECTIVELY WILL BE RESPONSIBLE FOR THE MAINTENANCE OF THE PRIVATE SANITARY SEWER SYSTEM ASSOCIATED WITH THIS PLAT.

Donald J. King 10/18/89
DIRECTOR OF UTILITIES DATE

DEDICATION

WE THE UNDERSIGNED OWNERS OF THE HEREIN DESCRIBED PROPERTY DEDICATE THESE LOTS TO THE PURCHASERS THEREOF. ALL ROADS ARE PRIVATE AND ARE NOT DEDICATED TO THE PUBLIC. EACH LOT OWNER SHALL HAVE AN EASEMENT FOR INGRESS AND EGRESS AND UTILITY PURPOSES, AND ANY OTHER PURPOSES NOT INCONSISTENT WITH ITS USE AS A ROADWAY, OVER AND ACROSS ALL THE PRIVATE ROADS SHOWN ON THE PLAT. THE OWNERS RESERVE THE RIGHT TO MAKE ANY NECESSARY CUTS AND FILLS UPON THESE LOTS IN THE ORIGINAL REASONABLE GRADING OF THESE ROADS. THESE STREETS AND ROADS WILL NOT BE DEDICATED TO PIERCE COUNTY UNTIL SUCH TIME AS THEY ARE CONSTRUCTED TO PIERCE COUNTY STANDARDS; AND AT SUCH TIME AS PIERCE COUNTY DESIRES TO ACCEPT THEM.

WE DEDICATE TO PIERCE COUNTY, ITS OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS, ASSIGNS, CONTRACTORS, FOR THE USE OF THE PUBLIC FOREVER, A PERPETUAL EASEMENT WITH A RIGHT OF ENTRY AND CONTINUED ACCESS FOR THE CONSTRUCTION, IMPROVEMENT, MAINTENANCE AND REPAIR OF SEWER PIPELINES, MANHOLES AND OTHER APPURTENANT SEWER STRUCTURES, DRIVEWELLS, OR UNDERGROUND DRAINAGE FACILITIES OVER, UNDER AND ACROSS THE EASEMENTS AND/OR PRIVATE ROADS SHOWN ON THE FACE OF THIS PLAT.

Hamilton R Harris
PRESIDENT OF RINCO, INC., A WASHINGTON CORPORATION

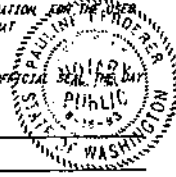
ACKNOWLEDGEMENT

IN WITNESS WHEREOF, SAID CORPORATION HAS CAUSED THIS INSTRUMENT TO BE EXECUTED BY ITS PROPER OFFICERS THIS 12th DAY OF OCTOBER, 1989

STATE OF WASHINGTON
COUNTY OF PIERCE) S. S.

ON THIS 12th DAY OF October, 1989, BEFORE ME PERSONALLY APPEARED Hamilton R Harris TO ME KNOWN TO BE THE PRESIDENT OF THE CORPORATION THAT EXECUTED THE WITHIN AND FOREGOING INSTRUMENT, AND ACKNOWLEDGED SAID INSTRUMENT TO BE THE FREE AND VOLUNTARY ACT AND DEED OF SAID CORPORATION, FOR THE USES AND PURPOSES THEREIN MENTIONED, AND ON OATH STATED THAT IS/ARE AUTHORIZED TO EXECUTE SAID INSTRUMENT.

IN WITNESS WHEREOF, I HAVE HERELIETO SET MY HAND AND OFFICIAL SEAL THE DAY AND YEAR FIRST ABOVE WRITTEN.
Pauline D. DeLeon
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON
RESIDING AT R.V.



ACKNOWLEDGEMENT

IN WITNESS WHEREOF, SAID CORPORATION HAS CAUSED THIS INSTRUMENT TO BE EXECUTED BY ITS PROPER OFFICERS THIS _____ DAY OF _____, 19__.

STATE OF WASHINGTON
COUNTY OF PIERCE) S. S.

ON THIS _____ DAY OF _____, 19__, BEFORE ME PERSONALLY APPEARED TO ME KNOWN TO BE THE _____ OF THE CORPORATION THAT EXECUTED THE WITHIN AND FOREGOING INSTRUMENT, AND ACKNOWLEDGED SAID INSTRUMENT TO BE THE FREE AND VOLUNTARY ACT AND DEED OF SAID CORPORATION, FOR THE USES AND PURPOSES THEREIN MENTIONED, AND ON OATH STATED THAT IS/ARE AUTHORIZED TO EXECUTE SAID INSTRUMENT.

IN WITNESS WHEREOF, I HAVE HERELIETO SET MY HAND AND OFFICIAL SEAL THE DAY AND YEAR FIRST ABOVE WRITTEN.
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON
RESIDING AT _____



PAC - TECH
ENGINEERING, INC. 0571 PAGE 3904
8801 SOUTH 35th STREET, SUITE 208
TACOMA, WASHINGTON 98409 (206) 473-4400
SEATTLE 823-5738 BLD HARBOR 851-3033

Hon. Rosanne Buckner

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THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

NORTH CREEK HOMEOWNERS'
ASSOCIATION,

Plaintiff,

vs.

CITY OF GIG HARBOR, a Washington
Municipal corporation;

Defendant.

Case No.: 00-2-09055-8

STIPULATION AND ORDER
OF DISMISSAL WITH PREJUDICE

I. Stipulation.

North Creek Homeowners, plaintiff, by their attorneys of record, Spencer and
Loescher, and Theda Fowler 1326 Tacoma Avenue South, Suite 101, Tacoma, WA 98402,
and Paul Brain, Ater Wynne, 601 Union Street, Suite 5450, Seattle, WA 98101, and the
City of Gig Harbor, defendant, by its attorney of record, Carol A. Morris, Law Office of
Carol A. Morris, P.C. P.O. Box 948, Seabeck, WA 98380, hereby stipulate to the
dismissal of the above-entitled case with prejudice, pursuant to the Settlement Agreement
attached hereto as Exhibit A. Each party shall bear its own attorneys' fees and costs.

Dated: _____

STIPULATION AND ORDER OF DISMISSAL
WITH PREJUDICE

Law Office of
CAROL A. MORRIS
A Professional Corporation
P.O. Box 948
Seabeck, WA 98380-0948
(360) 830-0328; fax (360) 850-1099

1 LAW OFFICE OF CAROL A. MORRIS, P.C.

2
3 By _____
4 Carol A. Morris, WSBA #19241
5 Attorney for the City of Gig Harbor

6 ATER WYNNE

7
8 By _____
9 Paul Brain, WSBA # 13438

10
11 SPENCER & LOESCHER

12
13 By _____
14 Joseph Loescher, WSBA#
15 Theda Braddock Fowler, WSBA# 31472
16 Attorneys for NCHA, plaintiff

17
18 **II. Order.**

19 IT IS HEREBY ADJUDGED AND DECREED that pursuant to the above
20 Stipulation and the Settlement Agreement attached hereto as Exhibit A, that this case is
21 dismissed with prejudice and without the award of attorneys' fees or costs to either party.

22 DATED: _____

23
24 _____
25 Hon. Rosanne Buckner

26
STIPULATION AND ORDER OF DISMISSAL
WITH PREJUDICE

Page 2 of 3

Law Office of
CAROL A. MORRIS
A Professional Corporation
P.O. Box 948
Seabeck, WA 98380-0948
(360) 830-0328; fax (360) 850-1099

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Presented by:

LAW OFFICE OF CAROL A. MORRIS, P.C.

By _____
Carol A. Morris, WSBA #19241
Attorney for defendant City of Gig Harbor

Approved as to form, Notice of Presentation Waived:

ATER WYNNE

By _____
Paul Brain, WSBA # 31472

SPENCER & LOESCHER

By _____
Joseph Loescher, WSBA # _____
Theda Braddock Fowler, WSBA #31472

STIPULATION AND ORDER OF DISMISSAL
WITH PREJUDICE

Law Office of
CAROL A. MORRIS
A Professional Corporation
P.O. Box 948
Seabeck, WA 98380-0948
(360) 830-0328; fax (360) 850-1099



'THE MARITIME CITY'

ADMINISTRATION

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MARK HOPPEN, CITY ADMINISTRATOR
SUBJECT: RESOLUTION - CITY SUPPORT FOR FEBRUARY 8, 2005,
PENINSULA SCHOOL DISTRICT LEVY
DATE: DECEMBER 13, 2004

INFORMATION/BACKGROUND

The attached resolution supports the upcoming Peninsula School District Maintenance and Operations levy.

RECOMMENDATION

I recommend that the City Council pass the attached resolution.

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF GIG HARBOR,
WASHINGTON, ENDORSING THE PENINSULA SCHOOL
DISTRICT LEVY OF FEBRUARY 8, 2005.**

WHEREAS, a strong school system contributes to a community's vitality;
and

WHEREAS, great schools play an integral role in developing great
communities; and

WHEREAS, local businesses, citizens and property owners know the
benefits of a quality school district that is supported by its community through
continued levy passage; and

WHEREAS, strong educational programs produce and sustain solid
citizens; and; now, therefore,

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GIG
HARBOR, WASHINGTON, AS FOLLOWS:**

The Gig Harbor City Council strongly supports the passage of the
February 8, 2005 Peninsula School District Maintenance and Operations levy.

**ADOPTED BY THE CITY COUNCIL OF THE CITY OF GIG HARBOR
this _____ day of _____, 2004.**

APPROVED:

Gretchen A. Wilbert, Mayor

John Picinich, Councilmember

Steven Ekberg, Councilmember

Derek Young, Councilmember

Jim Franich, Councilmember

Bob Dick, Councilmember

Paul Conan, Councilmember

Frank Ruffo, Councilmember

ATTEST/AUTHENTICATED:

MOLLY M. TOWSLEE, CITY CLERK

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
RESOLUTION NO.



TO: MAYOR WILBERT AND CITY COUNCIL
FROM: DAVID RODENBACH, FINANCE DIRECTOR
DATE: DECEMBER 13, 2004
SUBJECT: ASSOCIATION OF WASHINGTON CITIES WORKERS'
COMPENSATION GROUP RETROSPECTIVE RATING PROGRAM

INTRODUCTION

This contract authorizes the city to participate in a group Retrospective Rating Program (Retro Program) sponsored by the Association of Washington Cities through the Department of Labor and Industries. This is an optional financial incentive program that will provide the city an opportunity to receive refunds on workers' compensation premiums.

BACKGROUND

The Retro Program will provide experienced claims representatives and safety professionals to assist with accident prevention program development, training and other safety needs, assistance with return to work programs and access to an internet-based risk, health, and safety service.

Enrolling in this program will enhance the city's current workplace safety program and provide the city a greater opportunity to reduce future industrial insurance rates. In addition, if claim costs are lower than anticipated, a portion of the premiums will also be refunded.

FINANCIAL

The city's 2005 workers' estimated worker's compensation premium is \$59,577. Participation in the program will cost an additional 6.5% (\$3,873 in 2005) of the annual premium.

RECOMMENDATION

I recommend approval of the participation agreement in the AWC Workers' Compensation Group Retro Program.

ASSOCIATION OF WASHINGTON CITIES WORKERS' COMPENSATION GROUP RETRO PROGRAM

Participation Agreement and Group Enrollment Application Government, Utilities & Related Services

As a member in good standing with the Association of Washington Cities

Member Name

L&I Account Number

Enrolls by this agreement as a participating member in the Group Retrospective Rating Plan Agreement submitted by AWC.

This contract agreement renews provided the member submits, and is approved by Labor & Industries, a valid "Application For Group Membership And Authorization For Release Of Insurance Data" (L&I retro application form).

1. **Goals of the Plan:**

- A. Offer participants an opportunity to qualify for refunds on Standard Premium paid to the Department of Labor & Industries
- B. Reduce the frequency and severity of industrial injuries; and
- C. Reduce participants' experience factor

2. **Administration & Management of the Plan:**

AWC will be responsible for the day-to-day operation of the Plan. Duties include, but are not limited to:

- A. Assisting plan participants in reducing the frequency and severity of industrial injuries;
- B. Educating plan participants in the most appropriate ways to control costs;
- C. Claims Management Services;
- D. Introduction and training materials;
- E. Annual Retrospective Review; and
- F. Administration of State Fund claims while enrolled in AWC Group Program.
- G. Loss Control and Risk Management Services.

AWC Retro Advisory Committee

A committee consisting of no more than seven member cities/towns will be assembled to advise the AWC Retro Plan Administrator on operational issues including contract terms, distribution of refunds, program enhancements, conditions for continued participation and other issues. This committee shall meet at least once per year to develop policy, review participants, adjust the contract terms or address any other issues regarding the successful administration of the plan.

3. Member Agrees To:

- A. During contract term, maintain an individual account for workers' compensation insurance in good standing with the Department of Labor & Industries;
- B. Comply with all applicable laws, rules and regulations set forth by L&I;
- C. Participate in safety and loss control programs available as an AWC Retro Plan member;
- D. Maintain membership in the Association of Washington Cities through the final retro year adjustment;
- E. Pay a Service Fee of six and one half percent (6.5%) of total Industrial Insurance Premium, billed annually in January.
- F. If you do not pay your service fee as agreed the member will forfeit any refund.

4. Refunds/Adjustments:

- A. It is understood and agreed by the employer that all refunds, exceeding Service Fees of six and one half percent (6.5%) of Industrial Insurance Premium, will be made on the basis of a merit rated formula based on performance. However, should the Member's retro premium exceed their standard premium, the member will not be eligible for a refund beyond their service fee. Plan participants also acknowledge that returns are based on a number of factors, such as premium size, claim costs, and related factors, therefore returns are not guaranteed.
- B. Employers acknowledge that AWC is enrolled in Plan B with a Maximum Premium Ratio (MPR) of 1.15. If a group assessment develops for any Plan Year, those members that caused the assessment will be assessed first, up to a maximum liability of fifteen percent (15%) of the participating member's Standard Premium. If necessary to cover the assessment, the remaining members shall pay the balance on the basis of their individual percentage of the total group premium. Penalties become due and payable within 30 days of notification of the amount. If you do NOT re-enroll in the program, any refund will be held until the final adjustment of that Retro year.

5. Indemnification/Liability:

Each party shall indemnify and hold harmless the other and its directors, officers, employees, agents, parents, subsidiaries, successors and assigns from and against any and all liabilities, claims, suits, actions, demands, settlements, losses, judgments, costs, damages, and expenses (including reasonable attorney's fees) arising out of or resulting from, in whole or part, the acts or omissions of the indemnifying party, its employees, agents or contractors and the indemnifying party's affiliated companies and their employees, agents or contractors.

Authorized By:

(Name)

(Title)

(Signature)

(Address)

(City/Town Applicant)

(Date)



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: PIERCE COUNTY 2005 COMPREHENSIVE PLAN AMENDMENTS
- CITY COUNCIL LETTER TO PIERCE COUNTY EXECUTIVE
DATE: DECEMBER 13, 2004

BACKGROUND

Recently, the Council deliberated the matter of the thirty (30) acres of the City's water service area, located east of Crescent Valley Drive along 96th Avenue NW that is outside of the Urban Growth Area. At the November 22, 2004 Council meeting, staff was directed to prepare a letter expressing the City's opposition to this area being included in the Urban Growth Area.

Staff has prepared a letter addressed to the Pierce County Executive for Council consideration.



COMMUNITY DEVELOPMENT DEPARTMENT

December 13, 2004

John W. Ladenburg
Pierce County Executive
930 Tacoma Ave S, #737
Tacoma, WA 98402

SUBJ: 2005 Pierce County Comprehensive Plan Amendment Process

Dear Mr. Ladenburg:

Recently, it was noted that thirty (30) acres of the City's water service area, located east of Crescent Valley Drive along 96th Avenue NW is outside of the Gig Harbor Urban Growth Area. This area is the only portion of the City water service area that is not located within the City limits or the Urban Growth Area.

The Gig Harbor City Council deliberated this matter at length and it was the unanimous decision of the Council not to submit an application for an Urban Growth Area amendment for the upcoming 2005 Pierce County Comprehensive amendment process. Additionally, the City Council will not be supportive of any citizen-initiated amendments for inclusion of any portion of this area in the City's Urban Growth Area.

If you have any questions or comments regarding this correspondence, please feel free to contact Mr. John Vodopich, Community Development Director. Mr. Vodopich can be reached by telephone at (253) 851-6170 or by E-mail at vodopichj@cityofgigharbor.net.

Sincerely,

Gretchen A. Wilbert
Mayor

Paul Conan
Councilmember

Bob Dick
Councilmember

Steven Ekberg
Councilmember

Jim Franich
Councilmember

John Picinich
Councilmember

Frank Ruffo
Councilmember

Derek Young
Councilmember

c: Mike Erkinen, Senior Planner



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: PIERCE COUNTY 2005 COMPREHENSIVE PLAN AMENDMENTS –
SUBMITTED APPLICATIONS
DATE: DECEMBER 13, 2004

BACKGROUND

Pierce County has begun the process of accepting applications for 2005 amendments to the County Comprehensive Plan. We have been notified that the Pierce County Executive has received three applications in and around the City's Urban Growth Area. The County Executive has asked that the City review and comment on the applications before moving them forward in the review process.

Map #6 - Proposed map amendment to change the land use designation of 24 acres from Moderate Density Single Family to Community Employment.

Map # 7 - Proposed map amendment to change the land use designation of 20 acres from Moderate Density Single Family to Community Employment.

Map #8 - Proposed map amendment to change the land use designation of 18 acres from Rural 10 to Rural Neighborhood Center.

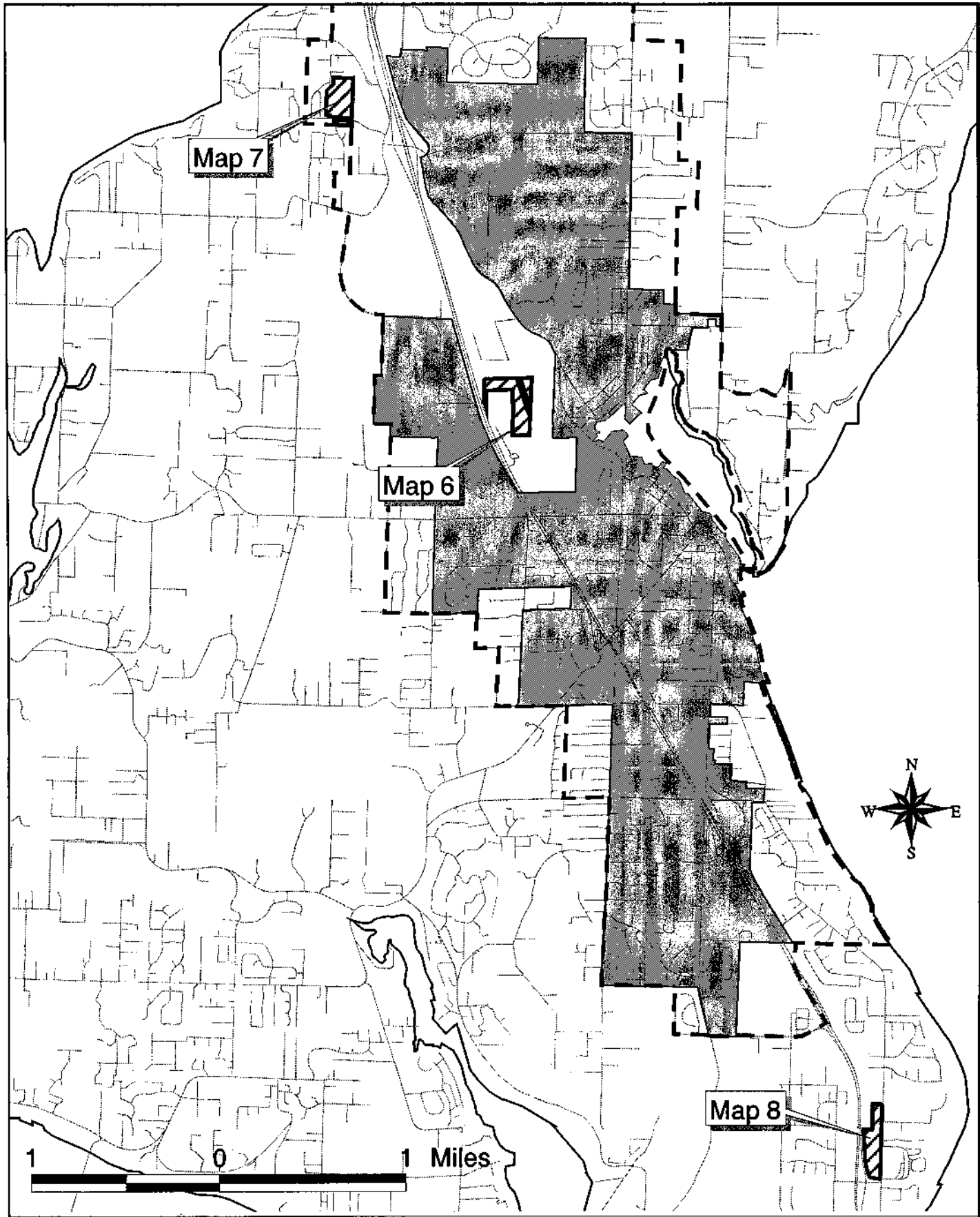
The Pierce County Buildable Lands Report, which looked only at the City Limits, identified an excess of lands designated for employment growth. As such, there is no readily apparent need to convert lands designated for residential development to employment type uses.

Pierce County staff notes that the Map #8 proposal is not consistent with Pierce County Comprehensive Plan and Gig Harbor Peninsula Community Plan policies.

Copies of the application materials are attached.

RECOMMENDATION

I recommend that the Council move to not support these applications.



**2005 Pierce County
Comprehensive Plan Map Amendments**



Pierce County

Department of Planning and Land Services

CHUCK KLEEBERG
Director

2401 South 35th Street
Tacoma, Washington 98409-7460
(253) 798-7210 • FAX (253) 798-7425

November 23, 2004

RECEIVED
CITY OF GIG HARBOR
NOV 29 2004
COMMUNITY
DEVELOPMENT

Mr. John Vodopich, AICP
Community Development Director
City of Gig Harbor
3510 Grandview
Gig Harbor, WA 98335

Dear John:

Pursuant to our discussion this morning, I have enclosed the relevant information regarding the plan amendments the County is being asked to consider that relate to the City of Gig Harbor. I appreciate you agreeing to take these before your Council on December 13, 2004, to get an indication of whether they will support these proposals or not. Either way, our expectation from the County perspective is to follow the City's direction on these amendments. One note with respect to the amendment for Rural Neighborhood Center (RNC) for the golf driving range, it is our perspective that this not be authorized as an RNC, but rather through an expansion of the City's UGA should it be allowed urban uses.

Thanks for your help.

Sincerely,

C. E. "Chip" Vincent
Principal Planner

CEV:vll
F:\...\City of Gig Harbor Letter 11-23.doc
Attachments



REC'D
CITY CLERK
MED
BOB

<p>2004 AMENDMENTS TO THE PLAN OF THE COUNTY GOVERNMENT PUBLIC UTILITIES DEPARTMENT November 22, 2004</p>					
Item #	Applicant	Author	Type of Amendment	Summary of Request	Staff Recommendation
Text #1	Planning & Land Services Department	Mike Erkinen	Text	Update UGA policies to clarify that resource lands and extensive areas of critical areas should not be include in a UGA. A similar amendment was considered by the County Council as Amendment #7 in the 2004 GMA Compliance Update.	Staff recommends <u>yes</u> to initiation: <ul style="list-style-type: none"> The proposal would decrease the conversion of lands that are inappropriate for urban development; The proposal would implement GMA provisions regarding the distribution and location of resource land uses and critical areas.
Text #2	Planning & Land Services Department/ Public Works & Utilities Department	Mike Erkinen/ Harold Smelt	Text	Update the Land Use and Utilities Elements of the Comprehensive Plan to clarify that urban level stormwater systems should not extend outside of UGAs. A similar amendment was considered by the County Council as Amendment #9 in the 2004 GMA Compliance Update.	Staff recommends <u>yes</u> to initiation: <ul style="list-style-type: none"> The proposal would improve consistency with GMA provisions that limit urban level stormwater systems to urban areas; Coordination between PALS and Water Programs staff will ensure that policies can be readily implemented, and that urban level stormwater systems are clearly defined.
Text #3	Planning & Land Services Department	Mike Erkinen	Text	Review the Upper Nisqually Valley Community Plan and provide needed updates and amendments.	Staff recommends <u>yes</u> to initiation: <ul style="list-style-type: none"> The proposal is consistent with provisions in the UNVCP that call for review and update of the Plan five years after intial adoption; The UNVCP went into effect on January 1, 2000.
Text #4	Planning & Land Services Department	Mike Erkinen/ Jesse Hamashima	Text	Update the 1992 Pierce County Transportation Plan to address transportation project improvements in rural areas, consistency with policies in community plans, and consistency between community plans relative to transportation projects.	Staff recommends <u>yes</u> to initiation: <ul style="list-style-type: none"> The proposal would address inconsistencies between the Transportation Plan and the County's Comprehensive Plan and community plans. The proposal should be contingent upon PW&U and PALS agreeing to a scope of work agreement.
Text #5	Planning & Land Services Department	Mike Erkinen	Text	Add policies to the Land Use Element of the Comprehensive Plan to address the design and placement of accessory dwelling units (ADUs).	Staff recommends <u>yes</u> to initiation: <ul style="list-style-type: none"> The proposal would improve consistency between the Plan and community plans with policies for designing and placing ADUs.
Text #6	Planning & Land Services Department	Mike Erkinen	Text	Amend PCC Chapter 19C.10, Procedures for Amendments to the Comprehensive Plan, to allow the Council to approve designations associated with PUDs and PDDs at locations for which a development proposal has been approved by the Hearing Examiner.	Staff recommends <u>yes</u> to initiation: <ul style="list-style-type: none"> The proposal would allow proposals for MPRs that have been approved by the Hearing Examiner to proceed without being subject to delay due to the 3-year cycle for Comprehensive Plan amendments.
Text #7	Planning & Land Services Department	Mike Erkinen	Text	Delete three parks from the South Hill Community Plan. These identified future parks are located at Rainier Meadows, Forest Estates, and Hidden Valley.	Staff recommends <u>yes</u> to initiation: <ul style="list-style-type: none"> These sites have been removed from consideration as future parks in the South Hill area.
Text #8	Public Works & Utilities Department	Marsha Huebner	Text	Update Comprehensive Plan and Community Plans as necessary to ensure consistency and needed linkages are in place between plans in regard to utilites.	Staff recommends <u>yes</u> to initiation: <ul style="list-style-type: none"> These changes will provide for improved coordination for planning for and providing utility service throughout the County.

2015 AMENDMENTS TO PIERCE COUNTY COMPREHENSIVE ZONING PLAN
 APPLICABLE TO THE DISTRICTS CHINA LAKE AND HOVING TURTLE (C/O) AND EXHIBITS C & D
 November 2, 2015

Proposal	Applicant	Author	Map/Amendment	Summary of Request	Staff Recommendation
Text #9	Planning & Land Services Department	Mike Erkkinen	Text/Area Wide Map/UGA	Correct technical errors, adjust boundaries to recognize annexations, and perform other needed technical changes.	Staff recommends <u>yes</u> to initiation.
Map #1	Planning & Land Services Department	Mike Erkkinen	Area Wide Map	Apply the Public Institution designation to the WSU Cooperative Extension properties west of Puyallup	Staff recommends <u>yes</u> to initiation: <ul style="list-style-type: none"> • Property is owned by a public institution and is used for such purposes; • Designation will preclude residential development; • City has agreed to apply PI designation upon annexation.
Map #2	Residential Resources Northwest	Halsan Frey LLC	Area Wide Map	Change the land use designation for the Sunrise East area from Residential Resource to Master Planned Community, to allow implementation of the MOU executed for this area. The site includes two parcels on 400 acres between 180 th and 184 th Streets, east of the Sunrise development in the South Hill area.	Staff recommends <u>yes</u> to initiation: <ul style="list-style-type: none"> • The proposal reflects the results of an agreement reached between the property owners and Pierce County.
Map #3	Planning & Land Services Department	Mike Erkkinen	Area Wide Map	Change the land use designation at six locations in the South Hill area to reflect existing residential development patterns. Each is a change from one residential designation to another. The proposed changes are: <ul style="list-style-type: none"> • (3A) Change 17 residential lots from MSF to HSF, at 136th St. E. and 107th Ave. E., in the SW 1/4 of Sec. 15, T19N, R4E; • (3B) Change six residential lots from MSF to HSF, at 149th St. E. and 98th Ave. E., in the NE 1/4 of Sec. 21, T19N, R4E. • (3C) Change a subdivision from MSF to HSF, in the SE 1/4 of Sec. 23, T19N, R4E. • (3D) Change a subdivision from MSF to HSF, at 160th St. E. and Gem Heights Drive, in the NW 1/4 of Sec. 28, T19N, R4E. • (3E) Change a 35 acre parcel from HRD/MHR to MSF, at 18611 86th Ave. E., in the SW 1/4 of Sec. 33, T19N, R4E. • (3F) Change three parcels from HRD/MHR to HSF, in the NE and SE 1/4s of Sec. 33, T19N, R4E. 	Staff recommends <u>yes</u> to initiation: <ul style="list-style-type: none"> • The proposal would change land use designations to better reflect the residential development patterns in each of the six areas.

SUBMITTALS TO THE BOARD OF COUNTY COMMISSIONERS
 APPLICATIONS REQUESTING LAND-USE DESIGNATION
 November 22, 2009

Map #/UGA #	Applicant	Agent	Map Type/Amendment	Summary of Request	Staff Recommendation
Map #4	Steven Verbul, et al	Progressive Land Planning LLC/ Robert "Doc" Hansen	Area Wide Map	Change the land use designation for five parcels on 12 acres in the Mid-County Communities Plan Area from Rural Separator to Rural Activity Center, at 72 nd St. E. and Canyon Rd., in the SE 1/4 of Sec. 25, T20N, R3E, and SW 1/4 of Sec. 30, T20N, R4E.	Staff recommends <u>no</u> to initiation: <ul style="list-style-type: none"> The proposal should be referred to the Mid-County CPB, which is currently developing a community plan for the area.
Map #5	Woodworth and Company, Inc.	Miles Sand and Gravel/ Dave Lewis	Area Wide Map	Change the land use designation for four parcels on 1.1 acres in the Alderton-McMillin Community Plan Area from Rural-10 to Rural Neighborhood Center, at 128 th St. E. and SR 162, in the SE 1/4 of Sec. 12 and the NE 1/4 of Sec. 13, T19N, R4E.	Staff recommends <u>no</u> to initiation: <ul style="list-style-type: none"> The proposal should be referred to the Alderton-McMillin CPB, which is currently developing a community plan for the area.
* Map #6 G.H. APPLICATION	Mehl, Steward, & Buchanan	Carl Halsan	Area Wide Map	Change the land use designation for two parcels on 24 acres in the Gig Harbor Peninsula Community Plan Area from Moderate Density Single Family to Community Employment, at the 3500 block of SR-16 and Burnham Drive NW, in the NW 1/4 of Sec. 6, T21N, R2E.	Staff recommends <u>no</u> to initiation: <ul style="list-style-type: none"> The proposal is within the City of Gig Harbor UGA. The City has indicated that they will not at this time consider amending their Comprehensive Plan to address these properties.
* Map #7 G.H. APPLICATION	Walt Smith	Carl Halsan	Area Wide Map	Change the land use designation for one parcel on 20 acres in the Gig Harbor Peninsula Community Plan Area from Moderate Density Single Family to Community Employment, at 6002 112 th St. NW, in the SW 1/4 of Sec. 25, T22N, R1E.	Staff recommends <u>no</u> to initiation: <ul style="list-style-type: none"> The proposal is within the City of Gig Harbor UGA. The City has not indicated that they have planned to amend their Comprehensive Plan to address this property.
* Map #8 G.H. APPLICATION	John C. Dummer & Tracy Rutt	James H. Morton, Atty.	Area Wide Map	Change the land use designation for four parcels on 18 acres in the Gig Harbor Peninsula Community Plan Area from Rural 10 to Rural Neighborhood Center, at 2416 14 th Ave. NW, in the NW 1/4 of Sec. 28, T21N, R2E.	Staff recommends <u>no</u> to initiation: <ul style="list-style-type: none"> The proposal, approximately 1 1/2 miles from Gig Harbor's UGA, is not consistent with Comprehensive Plan policy that RNCs be 2 miles from a UGA; The proposal is inconsistent with GHPCP policy that "under no circumstances shall a RNC exceed five acres in size."
UGA #1	Cody Miller, et al	Progressive Land Planning, LLC/ Robert "Doc" Hansen	Urban Growth Area	Change the land use designation for 1,222 parcels on 1,130 acres in the Graham Community Plan Area from Reserve 5 to Moderate Density Single Family, in Sections 11 and 12, T18N, R3E.	Staff recommends <u>no</u> to initiation: <ul style="list-style-type: none"> The proposal should be referred to the Graham CPB, which is currently developing a community plan for the area; The proposal would increase the size of the County's UGA and the excess residential capacity that currently exists in the UGA.
UGA #2	Joyce M. Whitemarsh	Genesis Real Estate/ William Virella	Urban Growth Area	Change the land use designation for two parcels on 61 acres, east of the City of Bonney Lake, from Rural 10 to Mixed Use District, between 96 th St. E. and SR 410, in the NE 1/4 of Sec. 1, T19N, R5E.	Staff recommends <u>no</u> to initiation: <ul style="list-style-type: none"> Bonney Lake has not planned for expanding its UGA to this area; The proposal would create an urban island in the County's rural area.

2005 AMENDMENTS TO THE COUNTY COMPREHENSIVE PLAN
 APPLICABLE TO THE CITY OF BONNEY LAKE
 NOVEMBER 22, 2005

UGA #	Applicant	Agent	Type of Amendment	Summary of Request	Staff Recommendation
UGA #3	Robert R. & Norma J. Sorger	n.a.	Urban Growth Area	Change the land use designation for one parcel on 10 acres east of the City of Bonney Lake, from Rural 10 to Mixed Use District, at 10311 254 th Ave. E., in the NE 1/4 of Sec. 6, T19N, R6E.	Staff recommends <u>no</u> to initiation: <ul style="list-style-type: none"> Bonney Lake has not planned for expanding its UGA to this area; The proposal would create an urban island in the County's rural area.
UGA #4	Wanda L. Looney	n.a.	Urban Growth Area	Change the land use designation for one parcel on 10 acres, east of the City of Bonney Lake, from Rural 10 to Mixed Use District, at 10115 254 th Ave. E., in the NE 1/4 of Sec. 6, T19N, R6E.	Staff recommends <u>no</u> to initiation: <ul style="list-style-type: none"> Bonney Lake has not planned for expanding its UGA to this area; The proposal would create an urban island in the County's rural area.
UGA #5	Capri Investments LLC	Larson & Associates/ Bill Diamond	Urban Growth Area	Change the land use designation for the Falling Water development including 128 parcels on 478 acres from Rural 10 to an urban Master Planned Community, in Sections 7, 8, and 9, T19N, R5E.	Staff recommends <u>yes</u> to initiation: <ul style="list-style-type: none"> The proposal is for an area with an existing residential development; The proposal would allow sewer service to be provided in an area with significant environmental features associated with Fennel Creek. The recommendation to initiate should be contingent on receipt of a letter of support from the City of Bonney Lake prior to January 1, 2005.
UGA #6	JT & Mark Takasaki	Larson & Associates/ Bill Diamond	Urban Growth Area	Change the land use designation for the Creckridge Glen Division 2 development including 5 parcels on 130 acres from Rural 10 to an urban Master Planned Community, in Sections 5, 7, and 8, T19N, R5E.	Staff recommends <u>yes</u> to initiation: <ul style="list-style-type: none"> The proposal for an existing approved development; The proposal would allow sewer service to be provided in an area with significant environmental features associated with Fennel Creek. The recommendation to initiate should be contingent on receipt of a letter of support from the City of Bonney Lake prior to January 1, 2005.
UGA #7	City of Federal Way	Isaac Conlen	Urban Service Area	Create a Federal Way USA for the Brown's Point/Dash Point area, consisting of 1,169 parcels on 569 acres, in Sections 9, 10, 14, 15, 16, 17, and 21, T21N, R3E.	Staff recommends <u>yes</u> to initiation: <ul style="list-style-type: none"> The area is contiguous with Federal Way city limits; The proposal would potentially offer the residents of the area a choice for annexation to either Tacoma or Federal Way.

PIERCE COUNTY PLANNING AND LAND SERVICES
CARL HALSAN FREY, L.L.C.

NOV 15 2004

PIERCE COUNTY

November 10, 2004

Map #6
RECEIVED
CITY OF GIG HARBOR
NOV 29 2004
COMMUNITY
DEVELOPMENT

The Honorable John Ladenburg
Pierce County Executive
930 Tacoma Avenue South, #737
Tacoma, WA 98402

**RE: PROPOSED COMPREHENSIVE PLAN AMENDMENT
(MEHL, STERNARD & BUCHANAN)**

Dear Mr. Ladenburg:

On behalf of our clients, we are formally requesting you to initiate an Area-Wide Comprehensive Plan Amendment in the Gig Harbor area of unincorporated Pierce County. The property is currently designated for low and medium density single family residential development, while the property owners would like the designation to be changed to allow for community employment type land uses. There a number of reasons why this amendment makes sense and we will detail these reasons below. However, before we make the case for the amendment, we must first explain why this amendment is not being initiated by the City of Gig Harbor, since the property is within its UGA.

On the advice of your Advance Planning department, we began this process by meeting with the City of Gig Harbor's planning staff in December of 2003. We prepared our arguments for the amendment and met them a few times to discuss its merits. We were encouraged by the staff support we seemed be getting, so on April 5, 2003 we made a complete application to the City. That application, including the necessary SEPA documentation, requested the City Council to amend the land use designation they had placed on the subject property from Residential-Low to Employment Center. Our strategy was to first get the City to approve the change, and if we were successful, we would then ask the County to amend its maps accordingly. This strategy has worked for us before with other cities and towns, and we believe it is the proper strategy. Since the subject property is within Gig Harbor's UGA, meaning that it will be within the City limits someday, it only makes sense for the City to be the lead and for the County to follow. This would allow our clients to develop the property while it is still under County control, but not develop it in a manner inconsistent with the City's long term plans.

You can probably imagine our shock and dismay when we received a letter from the Community Development Director a few weeks after we submitted the application materials telling us they cannot process Comprehensive Plan amendments for property outside of

PO BOX 1447 * GIG HARBOR, WA * 98335
OFFICE: (253) 858-8820 FAX: (253) 858-9816
EMAIL: CARLHALSAN@HOTMAIL.COM

the City limits. The letter says that this is their current position based on advice of the City Attorney. The letter went on to tell us that the correct procedure would be to initiate an amendment to the Pierce County Comprehensive Plan. A copy of this letter is attached for your reference. If initiated, and if the County agrees that the amendment makes sense and it is approved next fall, we then may go back to the City and see if they will then amend their Plan.

Therefore, we ask you to please initiate the amendment for the subject property. Below is our rationale for the proposed amendment. We think you will see that this property is much more suited for employment type uses than it is for single-family residential uses.

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

The property owners are asking the Executive to change the Comprehensive Plan designation from Residential to Employment. The two parcels that are the subject of the amendment each cross the power line right-of-way. We are only asking that the portion of the property west of the power line be re-designated. The Knapp property, parcel numbers 02-21-06-2015 and 2016, are not included in the application because we couldn't reach Mr. Knapp to find out if he was interested in having the designation of his property changed as well. It would make sense to include it, but we can't make that decision for him. It would probably also make sense to include the small parcel that abuts the highway in the amendment as well, but we haven't reached that property owner either. Perhaps the County can include these other parcels as the process moves forward, if it makes sense to staff to include them.

2. **Change in circumstances pertaining to the Comprehensive Plan or public policy.**

Access to and from the site is horrible for any intense type of residential development. It is extremely unlikely that anyone would ever want to develop the site with homes so long as the access remains the same. Chance for alternative access is not likely. Coming up from Rosedale Street has been planned for over 30 years, but no funding exists for such a grandiose scheme. Moreover, the need simply doesn't warrant the cost. There is not enough critical mass of land uses in the area. Accessing from the east would require an easement across others property, would require crossing North Creek and Donkey Creek, would require crossing the power line right-of-way, and would mean building a road up a hill that would have to climb from 75' of elevation to nearly 350' of elevation. Coming in from the north would also require crossing the power line right-of-way, climbing the hill, and gaining access easements from others.

The topography of the site and the power line right-of-way keeps it very nicely separated from the next nearest residential projects, or property likely to be developed residentially. This will prevent incompatible land uses from locating next to one another.

November 10, 2004

The surrounding existing uses are a mixture of non-residential uses including industrial, warehousing, offices, retail and the cemetery. These neighbors are not conducive to new residential development.

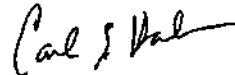
The market is simply not interested in this property for residential development. Some or all of the parcels have been on the market for the last several years and no one is interested in using it residentially. This is really saying something since the supply of residential land in the Gig Harbor area is so limited. Builders and developers have us looking everyday for possible project sites and they are buying even questionable land. Even in this type of market, no one is interested in this property with its current designation.

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

The property will finally be developed rather than sitting fallow. The neighboring properties are all developed with non-residential land uses. The worst thing that could happen would be for the subject property to be developed with houses. The conflicts would be never ending and traffic would be a nightmare. This vacant property would be added to the tax rolls with some real value and more jobs would be created in the area. There is already interest from buyers who will develop the property if the re-designation is successful. The only impacts will be positive.

We know you and your staff would prefer that we first gain the City's blessing on the amendment, but since we tried that and were told to come to you first, we hope you will initiate the amendment. If you have any questions, comments or concerns, please call me directly at 858-8820.

Sincerely,



Carl E. Halsan
Member

c: Chip Vincent, Advance Planning



COMMUNITY DEVELOPMENT DEPARTMENT

April 16, 2004

Mr. Carl Halsan
P.O. Box 1447
Gig Harbor, WA 98335

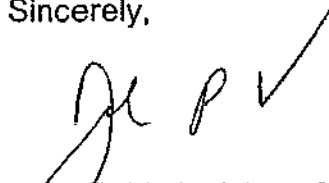
Re: Mehl, Sternand, & Buchanan Comprehensive Plan Amendment Application
(COMP 04-02)

Dear Mr. Halsan:

I have received your proposed Comprehensive Plan amendment application on behalf of Mehl, Sternand, & Buchanan for properties located outside of the City limits but within the Urban Growth Boundary. I have discussed this application with the City Attorney and determined that the City cannot process an application for a comprehensive plan amendment for property outside of the City limits. The correct procedure to be followed would be to initiate an amendment to the Pierce County Comprehensive Plan. I will initiate a refund of the application fees you have paid related to this proposal.

Please feel free to contact me should you have any questions regarding this correspondence. I can be contacted by telephone at (253) 851-6170 or by E-mail at vodopichj@cityofgigharbor.net.

Sincerely,



John P. Vodopich, AICP
Community Development Director

Cc: Mike Erkkinen, Senior Planner, Pierce County PALS

**2005 APPLICATION
FOR AREA-WIDE MAP AMENDMENT
TO PIERCE COUNTY COMPREHENSIVE PLAN**

An Area-Wide Map Amendment is a proposed change or revision to the Comprehensive Plan Land Use Designations Map that affects an area which is either comprehensive in nature, deals with homogeneous communities, is geographically distinctive, or has a unified interest within the County, such as community plan areas. An Area-Wide Map Amendment, unlike a parcel or site-specific land use reclassification, is of area-wide significance and includes many separate properties under various ownerships. Single-parcel or single-ownership map changes do not meet the criteria for consideration as an Area-Wide Map Amendment.

NOTE: An application must be completed for all proposed amendments, whether initiated by the County Council, County Executive, or a city or town with jurisdiction in Pierce County. No application is considered officially initiated until: 1) the Executive forwards the application to the County Council for inclusion in the Council resolution initiating amendments; 2) a city or town forwards the application to the County Council for inclusion in the Council resolution initiating amendments; or 3) the County Council includes the application in the resolution initiating amendments. It is the applicant's responsibility to provide the completed application and to check on the status of the request. If you want a city or town to initiate an amendment, you need to work directly with the city or town. See the handout 2005 Guidelines for Submitting Applications for Amendments to the Pierce County Comprehensive Plan for additional information. The deadline to submit an application to the Council is 4:30 p.m., December 1, 2004. The deadline to submit an application to the Executive is 4:30 p.m., November 15, 2004.

Complete all the blanks in this application form. We will not accept a letter or report in lieu of this application. However, reports, photos or other materials may be submitted to support your application.

Applicant: MEHL, STERNARD & BUCHANAN
Address: 33832 134TH PLACE SE
City/State/Zip Code: AUBURN, WA 98092
Phone: (253) 853-2560

Agent: CARL HALSAN
Address: PO BOX 1447
City/State/Zip Code: GIG HARBOR, WA 98335
Phone: (253) 858-8820

Initiation (check one):

- Request Pierce County Council to initiate the amendment.
 Request Pierce County Executive to initiate the amendment.
 City/Town of _____ is initiating the amendment.

DESCRIPTION OF AMENDMENT:

Attach a map of the proposed map amendment, showing all parcels and parcel numbers (see the County Assessor's Office to obtain maps and parcel information). If the Executive, County Council, or a city or town initiates your amendment, you may be required to provide names, mailing addresses, and mailing labels for all property owners within the proposed amendment area. You will be sent detailed instructions for submitting that information.

Area of Amendment: Quarter: NW Section: 6 Township: 21N Range: 2E

Total Number of Parcels: 2 *The total number of parcels and total acreage must be consistent with County Assessor data.*

Total Acreage: 24.23

Current Land Use Designation (see enclosed handout: "Pierce County Comprehensive Plan Land Use Designations and Zone Classifications"): SF & MSF

Desired Land Use Designation (see enclosed handout: "Pierce County Comprehensive Plan Land Use Designations and Zone Classifications"): CE

Desired Zone Classification to implement the Land Use Designation (see enclosed handout: "Pierce County Comprehensive Plan Land Use Designations and Zone Classifications"): CE

If within a city's or town's Urban Growth Area or Urban Service Area, identify the city or town: GIG HARBOR.

1. General Description of Proposal:

CHANGE THE LAND USE DESIGNATION FROM RESIDENTIAL TO
EMPLOYMENT CENTER (CE) FOR 2 PARCELS CONTAINING 24.23 ACRES.

2. Why is the land use reclassification needed and being proposed?

- ① POOR RESIDENTIAL ACCESS
- ② DIFFICULT TOPOGRAPHY
- ③ INCOMPATIBLE NEIGHBORING USES
- ④ NO MARKET FOR LAND AS RESIDENTIAL LAND

3. Describe the land uses surrounding the proposed amendment (residential, commercial, agricultural, etc.).

North: VACANT

South: CEMETARY

East: POWER LINE RIGHT-OF-WAY

West: BUSINESS PARK & STATE HIGHWAY

PARCEL INFORMATION

This page must be completed for each parcel proposed for the Area-Wide Map Amendment.

Taxpayer or Legal Owner: MEHL & STERNARD

Address: 10611 SE 29TH STREET

City/State/Zip: AUBURN, WA 98092-1923

Phone:

Tax Parcel Number: 02-21-06-2023

Lot Size: Acreage/Square Footage: 10.07 (From County Assessor Records or Tax Statement)

Current Use Code: 1101 (4 Digit Code From County Assessor Records or Tax Statement)

Site Address: 8502 SR 16

Location:

Range: 2 Township: 21 Section: 6 Quarter: NW

Current Land Use Designation (see enclosed handout: "Pierce County Comprehensive Plan Land Use Designations and Zone Classifications"): SF

Desired Land Use Designation (see enclosed handout: "Pierce County Comprehensive Plan Land Use Designations and Zone Classifications"): CE

Desired Zone Classification to implement the Land Use Designation (see enclosed handout: "Pierce County Comprehensive Plan Land Use Designations and Zone Classifications"): CE

Current Use of the Property (Describe what buildings/businesses are on the site):

AN OLD HOUSE

SERVICES:

Please provide the following information regarding the availability of services.

The site is currently served by sewer ; septic . (check one)

The site is currently served by a public water system ; well . (check one)

Water Purveyor: WASHINGTON WATER

The site is located on a public road ; private road . (check one)

Name of road: STATE ROUTE 16

Fire District #: 5 Name: GIG HARBOR

School District #: 401 Name: PENINSULA

F:\WPFILES\LONG\2005AMEND\FORMS\AREA WIDE.APP

PARCEL INFORMATION

This page must be completed for each parcel proposed for the Area-Wide Map Amendment.

Taxpayer or Legal Owner: DON BUCHANAN
Address: 6519 27TH AVE NW
City/State/Zip: GIG HARBOR, WA 98335
Phone:

Tax Parcel Number: 02-21-06-2017

Lot Size: Acreage/Square Footage: 14.16 ACRES (From County Assessor Records or Tax Statement)

Current Use Code: 9100 (4 Digit Code From County Assessor Records or Tax Statement)

Site Address: 10852 SR16

Location:

Range: 2 Township: 21 Section: 6 Quarter: NW

Current Land Use Designation (see enclosed handout: "Pierce County Comprehensive Plan Land Use Designations and Zone Classifications"): MSF

Desired Land Use Designation (see enclosed handout: "Pierce County Comprehensive Plan Land Use Designations and Zone Classifications"): CE

Desired Zone Classification to implement the Land Use Designation (see enclosed handout: "Pierce County Comprehensive Plan Land Use Designations and Zone Classifications"): CE

Current Use of the Property (Describe what buildings/businesses are on the site):
VACANT

SERVICES:

Please provide the following information regarding the availability of services.

The site is currently served by sewer ___; septic (check one)

The site is currently served by a public water system ; well ___ (check one)

Water Purveyor: WASHINGTON WATER

The site is located on a public road ; private road ___ (check one)

Name of road: STATE ROUTE 16

Fire District #: 5 Name: GIG HARBOR

School District #: 401 Name: PENINSULA

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Legal Description of Amendment Area

1. **Parcel # 02-21-06-2-023**

The east 484 feet of the south $\frac{1}{2}$ of the southeast of the northwest of Section 6, Township 21 north, Range 2 east of the Willamette Meridian; except that portion condemned by City of Tacoma for power line right-of-way; also the east 484 feet of the north 300 feet of the northeast of the southwest; subject to easements of record.

2. **Parcel # 02-21-06-2-017**

The north $\frac{1}{2}$ of the southeast of the northwest of Section 6, Township 21 north, Range 2 east of the Willamette Meridian; except that portion condemned by City of Tacoma for power line right-of-way; except the west 800 feet of the south 330 feet thereof; also the westerly 60 of the following described property: Extending from the north line thereof south to and including the existing access road to the State Highway of Carl E. Bartlett; the south $\frac{1}{2}$ of the southeast of the northwest; except State Highway #14 and the north 300 feet of the northeast of the southwest lying easterly of State Highway #14; less access rights.



Pierce County Assessor-Treasurer
 electronic Property
 Information Profile (e-PIP)



Ken Madsen
 Assessor-T


Pierce County Home Assessor-Treasurer Home Parcel Search Recorded Documents Permits
 Summary Taxes/Values Land Buildings Sales Map


Parcel Map for 0221062017


MAP#6

03/29/

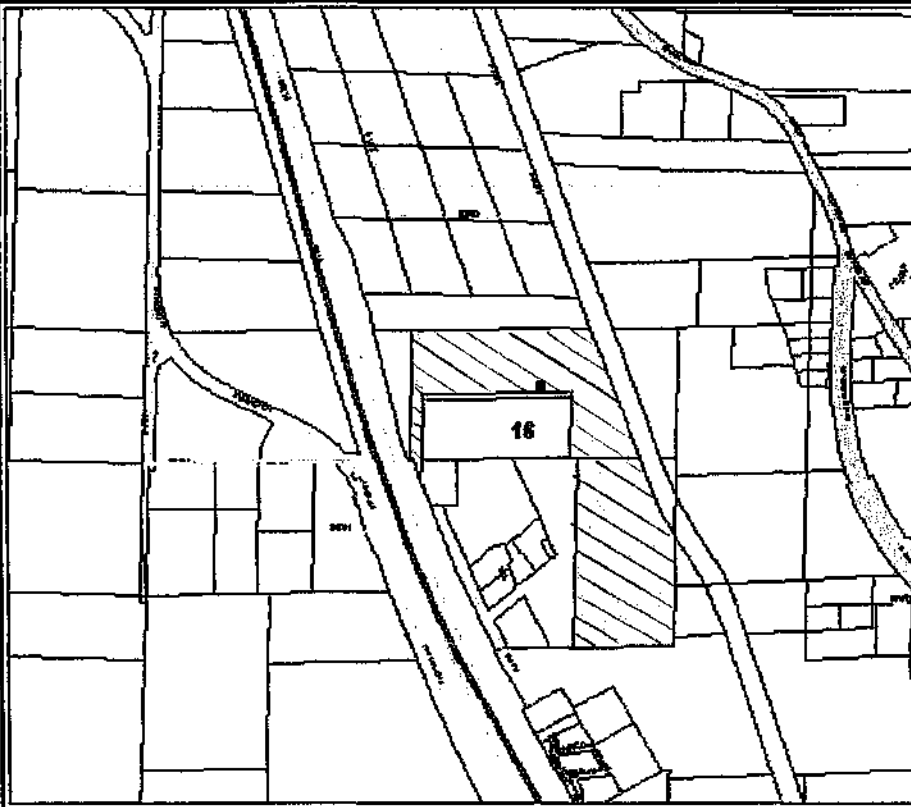
Taxpayer Details	Property Details
Taxpayer Name: BUCHANAN DONALD A Mailing Address: BONNIE SCHICK 6519 27TH AVE NW GIG HARBOR WA 98335-1970	Parcel Number: 0221062017 Site Address: 10852XXX SR16 HWY W Account Type: Real Property Category: Land and Improvements Use Code: 9100-RES VACANT LAND


 Area Subject
 to Amendment

Zoom Level: 4 
 Zoom

N


For additional mapping options,
 visit [Map Your Way](#)



I acknowledge and agree to the prohibitions listed in RCW 42.17.260(9) against releasing and/or using lists of individual commercial purposes. Neither Pierce County nor the Assessor-Treasurer warrants the accuracy, reliability or timeliness of any information system, and shall not be held liable for losses caused by using this information. Portions of this information may not be current or a person or entity who relies on any information obtained from this system, does so at their own risk. **All critical information should be independently verified.**

Cal S. Idals
 3-31-2004

Pierce County Assessor-Treasurer
 Ken Madsen
 2401 South 35th St Room 142
 Tacoma, Washington 98409

HALSAN FREY, L.L.C.

Map #7
PIERCE COUNTY PLANNING
& LAND SERVICES

NOV 15 2004

November 12, 2004

PIERCE COUNTY

The Honorable John Ladenburg
Pierce County Executive
930 Tacoma Avenue South, #737
Tacoma, WA 98402

RECEIVED
CITY OF GIG HARBOR
NOV 29 2004
COMMUNITY
DEVELOPMENT

**RE: PROPOSED COMPREHENSIVE PLAN AMENDMENT
(WALT SMITH)**

Dear Mr. Ladenburg:

On behalf of Mr. Smith, we are asking you to initiate an Area-Wide Comprehensive Plan Amendment in the Gig Harbor area of unincorporated Pierce County. The property is currently designated for low density single family residential development, yet everyone agrees that the designation should be changed to allow for community employment type land uses.

In the old days, we would have asked Advance Planning to process this as a map correction. However, we've been told that it is no longer acceptable to process map correction amendments. In talking with the Advance Planning staff, we think that this particular amendment may be able to be lumped in with the technical amendments that go through each cycle. Once you understand the nature of the request, we think you too will see this as a fairly benign request.

Back in 1971 and 1972, Mr. Smith was granted approval of two Unclassified Use Permits to mine sand, gravel and other aggregates from 38.2 acres of property he owns in the Gig Harbor area. Over the ensuing 32 years, his total property ownership in this particular area has grown to over 66 acres. In 1994, a preliminary plat was approved by the Pierce County Hearing Examiner for the western and northern portions of the 66 acres. The property to be platted included much of the property that could have been mined pursuant to the old UP approvals.

When the GMA Comprehensive Plan was implemented in 1995, and again when it was updated through adoption of the Gig Harbor Community Plan, Mr. Smith's property was given three separate zones. The lower portion down by Burnham Drive was zoned commercial, the middle portion was zoned industrial and the upper portion was zoned residential. If you look at the enclosed map, the red portion is the commercially zoned property, the purple portion is the industrially zoned area and the yellow portion is the residentially zoned property. At the time the property was zoned, these divisions made sense since a plat had been approved for the yellow area, the purple area was being mined and the red area was planned for commercial uses. We were involved in the 1995 planning process and the Community Plan process on behalf of Mr. Smith

PO BOX 1447 * GIG HARBOR, WA * 98335
OFFICE: (253) 858-8820 FAX: (253) 858-9816
EMAIL: CARLHALSAN@HOTMAIL.COM

November 12, 2004

and thought the designations made sense as well. Subsequently, the division between the CE area and the SF area no longer make sense.

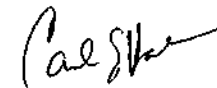
Since the UP approvals allowed mining to occur on the property that was also the subject of the plat approval, Mr. Smith had to decide if it made sense to mine the property first and then finish the plat. In the alternative, he could have chosen to not mine some of the allowed areas in order to create a topographic separation between the mining and the plat. This option had some merit since the mining could have been a nuisance to the future homeowners as could the future industrial/employment uses that would be developed on the site post-mining. In the end, he chose to blend the two choices into one.

In conjunction with Current Planning staff, we decided to only mine a portion of the UP approval area, and to shrink the size of the plat and the number of lots to be created. As part of the mutual effort by both sides, we also agreed to forego any mining rights on the portion of the property to be platted, and to install a solid board fence and vegetative buffer along the boundary between the plat and the CE zoned property. The fence and the portion of the buffer at the plat elevation were to be installed at the time of final plat, while the portion of the buffer along the slope would be done post-mining. In February of 2004, the plat was recorded and homes are now under construction.

This presents us with today's zoning problem. Because of the above compromise resolution, Mr. Smith has been left with about five (5) acres of property between the plat and the CE zoned property zoned SF (the cross-hatched area on the attached map). This is a problem because this area will be mined out down to the elevation of the rest of the mining area that will be developed post mining with industrial/employment type land uses. We don't think this area should be developed with homes at SF densities, and don't think anybody else does either. Alternatively, its designation should be changed to CE so that it can be developed in a manner consistent with the rest of the CE zoned property that is similarly situated. The fence and buffer will be in place to protect the two separate uses from each other, and the topographic separation that will exist post-mining will also create additional buffering.

We've discussed this proposed amendment with Advance Planning and Current Planning, and they both feel that it makes sense. We hope you will initiate the amendment as we've requested. If you have any questions, comments or concerns, please call me directly at 858-8820.

Sincerely,



Carl E. Halsan
Member

c: Chip Vincent, Advance Planning
Walt Smith, Property Owner

**2005 APPLICATION
FOR AREA-WIDE MAP AMENDMENT
TO PIERCE COUNTY COMPREHENSIVE PLAN**

An Area-Wide Map Amendment is a proposed change or revision to the Comprehensive Plan Land Use Designations Map that affects an area which is either comprehensive in nature, deals with homogeneous communities, is geographically distinctive, or has a unified interest within the County, such as community plan areas. An Area-Wide Map Amendment, unlike a parcel or site-specific land use reclassification, is of area-wide significance and includes many separate properties under various ownerships. Single-parcel or single-ownership map changes do not meet the criteria for consideration as an Area-Wide Map Amendment.

NOTE: An application must be completed for all proposed amendments, whether initiated by the County Council, County Executive, or a city or town with jurisdiction in Pierce County. No application is considered officially initiated until: 1) the Executive forwards the application to the County Council for inclusion in the Council resolution initiating amendments; 2) a city or town forwards the application to the County Council for inclusion in the Council resolution initiating amendments; or 3) the County Council includes the application in the resolution initiating amendments. It is the applicant's responsibility to provide the completed application and to check on the status of the request. If you want a city or town to initiate an amendment, you need to work directly with the city or town. See the handout 2005 Guidelines for Submitting Applications for Amendments to the Pierce County Comprehensive Plan for additional information. The deadline to submit an application to the Council is 4:30 p.m., **December 1, 2004**. The deadline to submit an application to the Executive is 4:30 p.m., **November 15, 2004**.

Complete all the blanks in this application form. We will not accept a letter or report in lieu of this application. However, reports, photos or other materials may be submitted to support your application.

Applicant: WALT SMITH

Address: PO BOX 191

City/State/Zip Code: GIG HARBOR, WA 98335-0191

Phone: (253) 851-4696

Agent: CARL HALSAN

Address: PO BOX 1447

City/State/Zip Code: GIG HARBOR, WA 98335

Phone: (253) 858-8820

Initiation (check one):

Request Pierce County Council to initiate the amendment.

Request Pierce County Executive to initiate the amendment.

City/Town of _____ is initiating the amendment.

DESCRIPTION OF AMENDMENT:

Attach a map of the proposed map amendment, showing all parcels and parcel numbers (see the County Assessor's Office to obtain maps and parcel information). If the Executive, County Council, or a city or town initiates your amendment, you may be required to provide names, mailing addresses, and mailing labels for all property owners within the proposed amendment area. You will be sent detailed instructions for submitting that information.

Area of Amendment: Quarter: SW Section: 25 Township: 22 Range: 1E

Total Number of Parcels: 1 *The total number of parcels and total acreage must be consistent with County Assessor data.*

Total Acreage: 19.84

Current Land Use Designation (see enclosed handout: "Pierce County Comprehensive Plan Land Use Designations and Zone Classifications"): SF

Desired Land Use Designation (see enclosed handout: "Pierce County Comprehensive Plan Land Use Designations and Zone Classifications"): CE

Desired Zone Classification to implement the Land Use Designation (see enclosed handout: "Pierce County Comprehensive Plan Land Use Designations and Zone Classifications"): CE

If within a city's or town's Urban Growth Area or Urban Service Area, identify the city or town: GIG HARBOR

1. General Description of Proposal:

CHANGE THE DESIGNATION OF THE REST OF THE MINING AREA FROM SF TO CE.

2. Why is the land use reclassification needed and being proposed?

NOW THAT THE PLAT HAS BEEN RECORDED, WE KNOW WHERE THE BOUNDARY IS BETWEEN THE RESIDENTIAL USES AND THE MINING / INDUSTRIAL USES; THE DESIGNATION SHOULD BE CHANGED ACCORDINGLY.

3. Describe the land uses surrounding the proposed amendment (residential, commercial, agricultural, etc.).

North: SINGLE FAMILY

South: SINGLE FAMILY

East: INDUSTRIAL / COMMERCIAL

West: SINGLE FAMILY

PARCEL INFORMATION

This page must be completed for each parcel proposed for the Area-Wide Map Amendment.

Taxpayer or Legal Owner: WALT & NORMA SMITH

Address: PO BOX 191

City/State/Zip: GIG HARBOR, WA 98335-0191

Phone: (253) 851-4696

Tax Parcel Number: 01-22-25-3070

Lot Size: Acreage/Square Footage: 19.84 ACRES (From County Assessor Records or Tax Statement)

Current Use Code: 9100 (4 Digit Code From County Assessor Records or Tax Statement)

Site Address: 6002 112th ST NW

Location:

Range: 01

Township: 22

Section: 25

Quarter: SW

Current Land Use Designation (see enclosed handout: "Pierce County Comprehensive Plan Land Use Designations and Zone Classifications"): SF/CE

Desired Land Use Designation (see enclosed handout: "Pierce County Comprehensive Plan Land Use Designations and Zone Classifications"): CE

Desired Zone Classification to implement the Land Use Designation (see enclosed handout: "Pierce County Comprehensive Plan Land Use Designations and Zone Classifications"): CE

Current Use of the Property (Describe what buildings/businesses are on the site):

SERVICES:

Please provide the following information regarding the availability of services.

The site is currently served by sewer ; septic . (check one)

The site is currently served by a public water system ; well . (check one)

Water Purveyor: WASHINGTON WATER

The site is located on a public road ; private road . (check one)

Name of road: 112th STREET NW

Fire District #: 5 Name: GIG HARBOR

School District #: 401 Name: PENINSULA

PIERCE COUNTY ZONING
Gig Harbor Community Plan

2/20/86	Ord. #95-14952	
8/01/94	Ord. #98-183	
12/01/02	Ord. #2002-113s	
Adopted by Pierce County Council, Ord. #95-77 Effective 7/21/95		

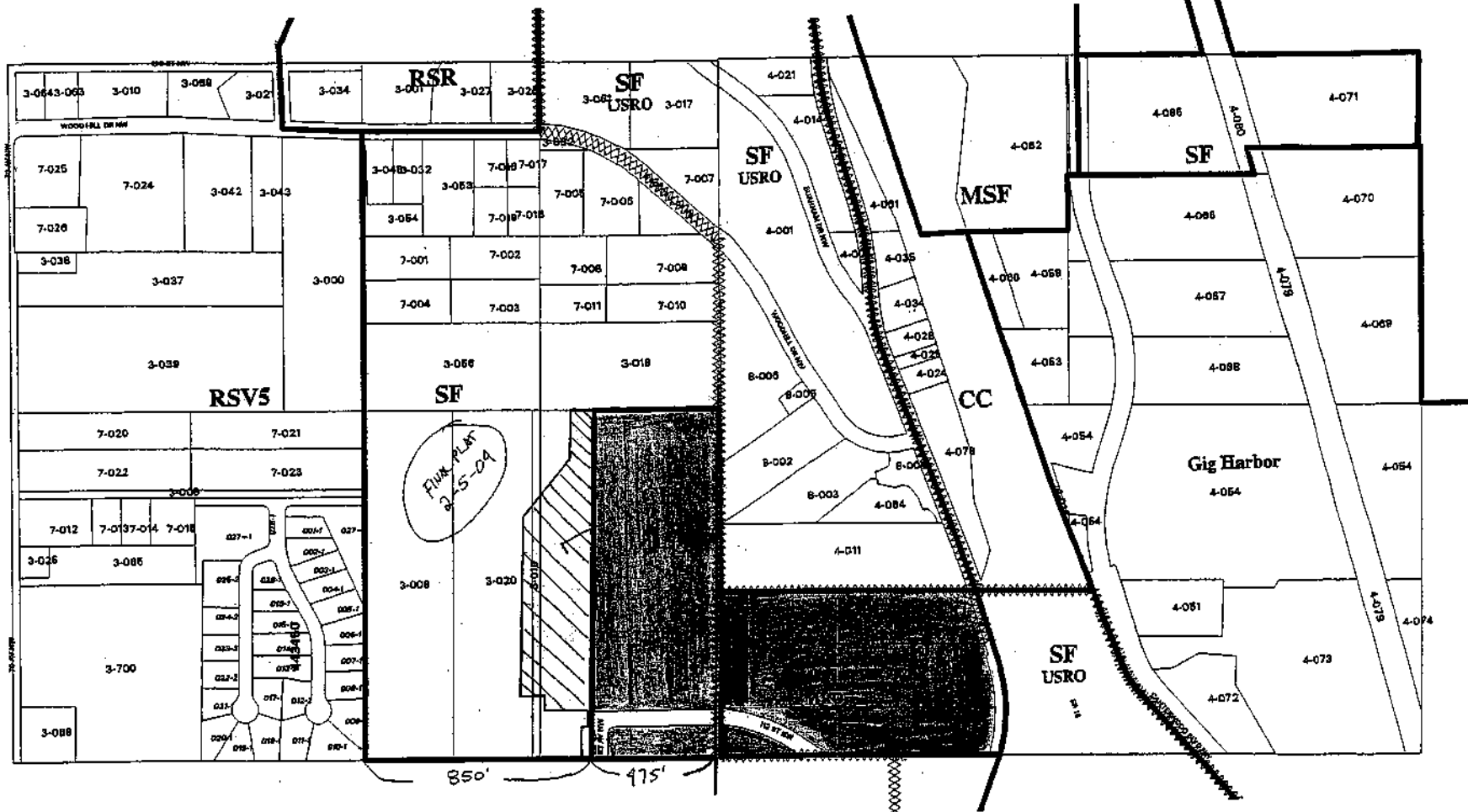
PIERCE COUNTY ZONING
Gig Harbor Community Plan

2/20/86	Ord. #95-14952	CL
4/10/87	Ord. #96-1376	CL
3/30/88	Ord. #98-4	CL
04/01/02	Ord. #2002-11s	CL
Adopted by Pierce County Council, Ord. #95-77 Effective 7/21/95		
12/01/02	Ord. #2002-113s	CL

Area Subject
to Amendment



MAP #7



Dept. of Planning & Land
Plot Date: November 25, 2002



Dept. of Planning & Land Services
Plot Date: November 25, 2002

Map #8

2005 APPLICATION
FOR AREA-WIDE MAP AMENDMENT
TO PIERCE COUNTY COMPREHENSIVE PLAN

RECEIVED
CITY OF GIG HARBOR
NOV 29 2004
COMMUNITY
DEVELOPMENT

An Area-Wide Map Amendment is a proposed change or revision to the Comprehensive Plan Land Use Designations Map that affects an area which is either comprehensive in nature, deals with homogeneous communities, is geographically distinctive, or has a unified interest within the County, such as community plan areas. An Area-Wide Map Amendment, unlike a parcel or site-specific land use reclassification, is of area-wide significance and includes many separate properties under various ownerships. Single-parcel or single-ownership map changes do not meet criteria for consideration as an Area-Wide Map Amendment.

NOTE: An application must be completed for all proposed amendments, whether initiated by the County Council, County Executive, or a city or town with jurisdiction in Pierce County. No application is considered officially initiated until: 1) the Executive forwards the application to the County Council for inclusion in the Council resolution initiating amendments; 2) a city or town forwards the application to the County Council for inclusion in the Council resolution initiating amendments; or 3) the County Council includes the application in the resolution initiating amendments. It is the applicant's responsibility to provide the completed application and to check on the status of the request. If you want a city or town to initiate an amendment, you need to work directly with the city or town. See the handout 2005 Guidelines for Submitting Applications for Amendments to the Pierce County Comprehensive Plan for additional information. The deadline to submit an application to the Council is 4:30 p.m., **December 1, 2004**. The deadline to submit an application to the Executive is 4:30 p.m. **November 15, 2004**.

Complete all the blanks in this application form. We will not accept a letter or report in lieu of this application. However, reports, photos or other materials may be submitted to support your application.

Applicant:	John C. Dimmer	Tracy Rutt
Address:	1019 Pacific Ave, Ste. 916	3008 14 th Ave NW
City/State/Zip Code:	Tacoma, WA 98402	Gig Harbor, WA 98335
Phone:	(253) 272-3654	(253) 858-8242

Agent:	James H. Morton, Attorney
Address:	820 A Street, Ste. 600
City/State/Zip Code:	Tacoma, WA 98402
Phone:	(253) 627-8131

PIERCE COUNTY PLANNING
& LAND SERVICES

NOV 15 2004

PIERCE COUNTY

Initiation (check one):

- Request Pierce County Council to initiate the amendment.
- Request Pierce County Executive to initiate the amendment
- City/Town of _____ is initiating the amendment.

DESCRIPTION OF AMENDMENT:

Attach a map of the proposed map amendment, showing all parcels and parcel numbers (see the County Assessor's Office to obtain maps and parcel information). If the Executive, County Council, or a city or town initiates your amendment, you may be required to provide names, mailing addresses, and mailing labels for all property owners within the proposed amendment area. You will be sent detailed instructions for submitting that information.

Area of Amendment: Quarter: East ½ Lot 18 Section: 28 Township: 21 Range: 2 East

Total Number of Parcels: 4 *The total number of parcels and total acreage must be consistent with County Assessor data.*

Total Acreage: 17.85

Current Land Use Designation (see enclosed handout: "Pierce County Comprehensive Plan Land Use Designations and Zone Classifications"): Rural 10

Desired Land Use Designation (see enclosed handout: Pierce County Comprehensive Plan Land Use Designations and Zone Classifications"): Rural Neighborhood Center (RNC)

Desired Zone Classification to implement the Land Use Designation (see enclosed handout: Pierce County Comprehensive Plan Land Use Designations and Zone Classifications"): Rural Center

If within a city's or town's Urban Growth Area or Urban Service Area, identify the city or town: No

General Description of Proposal: The construction of the new Narrows Bridge project has significantly impacted the property in the vicinity. The current land use controls should be modified to take into consideration the development of a new Narrows Bridge and associated impacts on the area. An overpass at 24th Street NW is the main off-ramp for the southern Gig Harbor Peninsula area. Tax parcel numbers 0221282009 and 0221282036 are already constructed as the Golf Park driving range. The present zoning is inappropriate for the applicants' parcels (totaling in excess of 17 acres) in light of the new bridge design, proximity to Highway 16, and historical commercial uses in the area. The RNC zoning designation would allow for low intensity, commercial use which is compatible and complimentary to the area.

- Why is the land use reclassification needed and being proposed? The property abuts State Highway 16 near the Narrows Bridge which is being altered to accommodate a new bridge. Tax parcel numbers 0221282009 and 0221282036 are currently developed as Golf Park driving range and supporting amenities. This use cannot be realistically changed without a change in the zoning designation. Moreover, the adjacent tax parcel 0221282044 is vacant and cannot be developed suitably under present Rural 10 zoning.
- Describe the land uses surrounding the proposed amendment (residential, commercial, agricultural, etc.): Residential uses are not suitable abutting Highway 16 and the surrounding commercial uses.

North: Commercial paint contractor, landscaping business, towing business

South: New 24th Street interchange

East: 14th Ave NW, then apartments, condos, single family residences and Cottesmore Nursing Home

West: State Highway 16

PARCEL INFORMATION

This page must be completed for each parcel proposed for the Area-Wide Map Amendment.

Taxpayer or Legal Owner: Firs Management, LLC
Address: 1019 Pacific Ave, Ste. 916
City/State/Zip: Tacoma, WA 98402
Phone: (253) 272-3654

Tax Parcel Number: 0221282044

Lot Size: Acreage/Square Footage: 192,535 sq ft or 4.42 acres (From County Assessor Records or Tax Statement)

Current Use Code: 9100 (4 Digit Code County Assessor Records or Tax Statement)

Site Address: 2416 14th Ave NW, Gig Harbor, WA 3008 14th Ave NW, Gig Harbor, WA

Location:

Range: 2 East Township: 21 Section: 28 Quarter: East 1/2 Lot 18

Current Land Use Designation (see enclosed handout: *Pierce County Comprehensive Plan Land Use Designations and Zone Classifications*): R-10

Desired Land Use Designation (see enclosed handout: *Pierce County Comprehensive Plan Land Use Designations and Zone Classifications*): RNC

Desired Zone Classification to implement the Land Use Designation (see enclosed handout: *Pierce County Comprehensive Plan Land Use Designations and Zone Classifications*): Rural

Current Use of the Property (Describe what buildings/businesses are on the site): Vacant land intended for recreation or low intensity commercial use.

SERVICES:

Please provide the following information regarding the availability of services.

The site is currently served by sewer ; septic X (check one)

The site is currently served by a public water system X; well (check one)

Water Purveyor: Washington Water

The site is located on a public road X; private road (check one)

Name of road: 14th Ave NW (Reed Road)

Fire District #: 5 Name: Peninsula Fire District

School District #: 401 Name: Peninsula School District

PARCEL INFORMATION

This page must be completed for each parcel proposed for the Area-Wide Map Amendment.

Taxpayer or Legal Owner: Firs Management, LLC
Address: 1019 Pacific Ave, Ste. 916
City/State/Zip: Tacoma, WA 98402
Phone: (253) 272-3654

Tax Parcel Number: 0221282036

Lot Size: Acreage/Square Footage: 229,126 or 5.26 acres (From County Assessor Records or Tax Statement)

Current Use Code: 7300 (4 Digit Code County Assessor Records or Tax Statement)

Site Address: 2416 14th Ave NW, Gig Harbor, WA 3008 14th Ave NW, Gig Harbor, WA

Location:

Range: 2 East Township: 21 Section: 28 Quarter: East ½ Lot 18

Current Land Use Designation (see enclosed handout: *Pierce County Comprehensive Plan Land Use Designations and Zone Classifications*): R-10

Desired Land Use Designation (see enclosed handout: *Pierce County Comprehensive Plan Land Use Designations and Zone Classifications*): RNC

Desired Zone Classification to implement the Land Use Designation (see enclosed handout: *Pierce County Comprehensive Plan Land Use Designations and Zone Classifications*): Rural

Current Use of the Property (Describe what buildings/businesses are on the site): Golf Driving Range, miniature golf, chipping and putting greens and retail sales, commercial paint contractor. Vacant land for adjoining tax parcel 0221282044 intended for amusement or recreation or low intensity commercial use.

SERVICES:

Please provide the following information regarding the availability of services.

The site is currently served by sewer ___; septic X (check one)

The site is currently served by a public water system X; well ___ (check one)

Water Purveyor: Washington Water

The site is located on a public road X; private road ___ (check one)

Name of road: 14th Ave NW (Reed Road)

Fire District #: 5 Name: Peninsula Fire District

School District #: 401 Name: Peninsula School District

PARCEL INFORMATION

This page must be completed for each parcel proposed for the Area-Wide Map Amendment.

Taxpayer or Legal Owner: Firs Management, LLC
Address: 1019 Pacific Ave, Ste. 916
City/State/Zip: Tacoma, WA 98402
Phone: (253) 272-3654

Tax Parcel Number: 0221282009

Lot Size: Acreage/Square Footage: 319,295 sq ft or 7.33 acres (From County Assessor Records or Tax Statement)

Current Use Code: 7300 (4 Digit Code County Assessor Records or Tax Statement)

Site Address: 2416 14th Ave NW, Gig Harbor, WA 3008 14th Ave NW, Gig Harbor, WA

Location:

Range: 2 East Township: 21 Section: 28 Quarter: East 1/2 Lot 18

Current Land Use Designation (see enclosed handout: *Pierce County Comprehensive Plan Land Use Designations and Zone Classifications*): R-10

Desired Land Use Designation (see enclosed handout: *Pierce County Comprehensive Plan Land Use Designations and Zone Classifications*): RNC

Desired Zone Classification to implement the Land Use Designation (see enclosed handout: *Pierce County Comprehensive Plan Land Use Designations and Zone Classifications*): Rural

Current Use of the Property (Describe what buildings/businesses are on the site): Golf Driving Range, miniature golf, chipping and putting greens and retail sales, commercial paint contractor.

SERVICES:

Please provide the following information regarding the availability of services.

The site is currently served by sewer ___; septic X (check one)

The site is currently served by a public water system X; well ___ (check one)

Water Purveyor: Washington Water

The site is located on a public road X; private road ___ (check one)

Name of road: 14th Ave NW (Reed Road)

Fire District #: 5 Name: Peninsula Fire District

School District #: 401 Name: Peninsula School District

PARCEL INFORMATION

This page must be completed for each parcel proposed for the Area-Wide Map Amendment.

Taxpayer or Legal Owner: Tracy Rutt
Address: 3008 14th Ave NW
City/State/Zip: Gig Harbor, WA 98335
Phone: (253) 858-8242

Tax Parcel Number: 0221282042

Lot Size: Acreage/Square Footage: 36,402 sq ft or .84 acres (From County Assessor Records or Tax Statement)

Current Use Code: 1101 (4 Digit Code County Assessor Records or Tax Statement)

Site Address: 2416 14th Ave NW, Gig Harbor, WA 3008 14th Ave NW, Gig Harbor, WA

Location:

Range: 2 East Township: 21 Section: 28 Quarter: East 1/2 Lot 18

Current Land Use Designation (see enclosed handout: *Pierce County Comprehensive Plan Land Use Designations and Zone Classifications*): R-10

Desired Land Use Designation (see enclosed handout: *Pierce County Comprehensive Plan Land Use Designations and Zone Classifications*): RNC

Desired Zone Classification to implement the Land Use Designation (see enclosed handout: *Pierce County Comprehensive Plan Land Use Designations and Zone Classifications*): Rural

Current Use of the Property (Describe what buildings/businesses are on the site): Golf Driving Range, miniature golf, chipping and putting greens and retail sales, commercial paint contractor. Vacant land for adjoining tax parcel 02-2128-2-035 intended for amusement or recreation, or low intensity commercial.

SERVICES:

Please provide the following information regarding the availability of services.

The site is currently served by sewer ___; septic X (check one)

The site is currently served by a public water system X; well ___ (check one)

Water Purveyor: Washington Water

The site is located on a public road X; private road ___ (check one)

Name of road: 14th Ave NW (Reed Road)

Fire District #: 5 Name: Peninsula Fire District

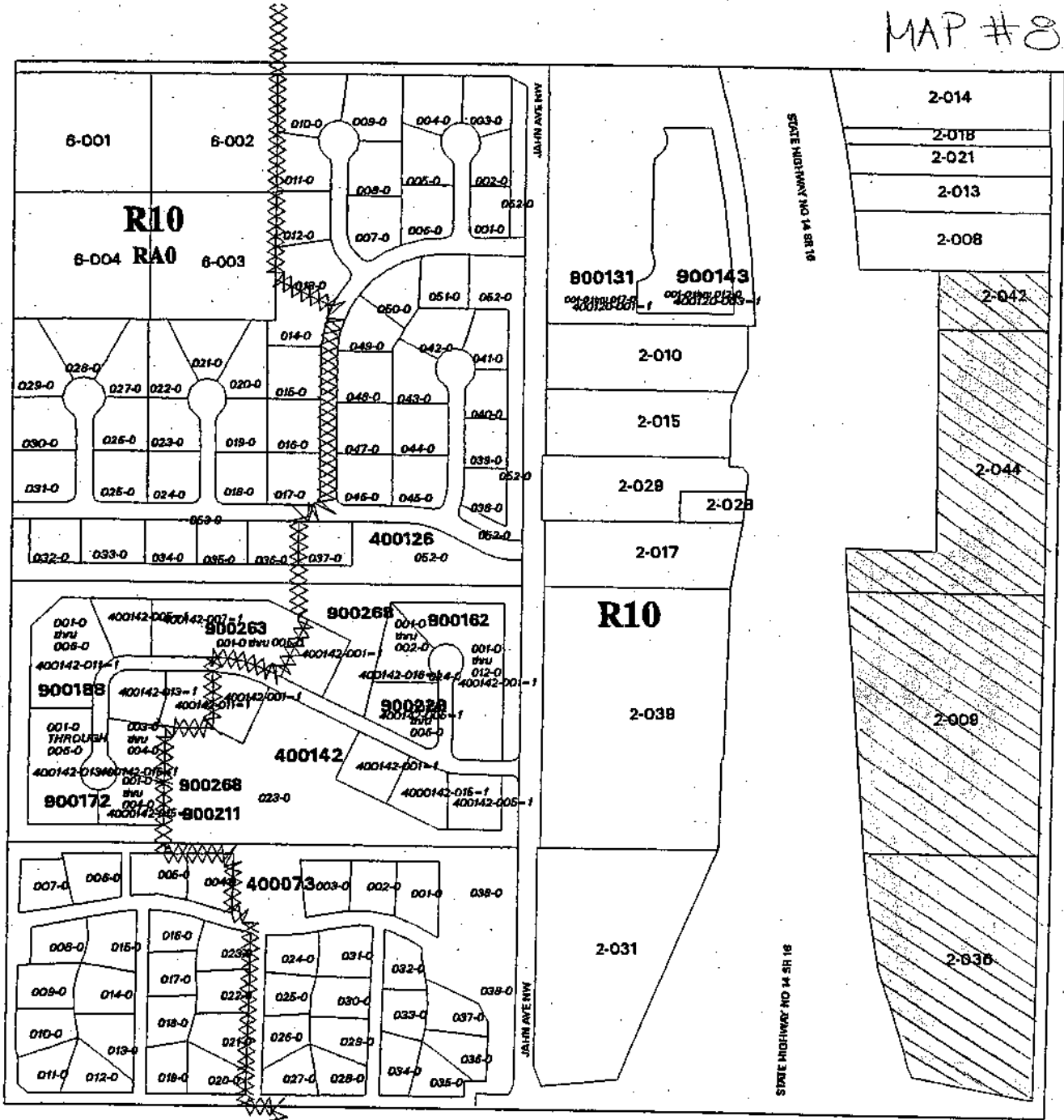
School District #: 401 Name: Peninsula School District

PIERCE COUNTY ZONING

Gig Harbor Community Plan

Date	Revision	By
5/01/86	Ord. #86-185	CL
12/01/02	Ord. #2002-113s	CL
Adopted by Pierce County Council, Ord. #95-79s Effective 7/31/95		

MAP #8



Dept. of Planning & Land Services

Plot Date: November 25, 2002

QUARTER SECTION TOWNSHIP RANGE


NW28-21-02E



Area Subject
to Amendment



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: DICK J. BOWER, CBO 
BUILDING OFFICIAL/FIRE MARSHAL
SUBJECT: FIRST READING OF ORDINANCE
- CITY BUILDING CODES UPDATE
DATE: DECEMBER 13, 2004

INFORMATION/BACKGROUND

Attached and for your consideration and for first reading is an ordinance updating the City's building codes. On July 1, 2004 the State of Washington put into effect the new State Building Code pursuant to 19.27 and 70.92 RCW. This included the adoption of the 2003 editions of the International Building, Fire, Mechanical, and Fuel Gas Codes as well as the 2003 ed. of the Uniform Plumbing Code, and the 2003 ed. of the WA. St. Energy Code and Ventilation and Indoor Air Quality Code. State law requires that local jurisdictions charged with administration of building code programs enforce, at a minimum, the State Building Code.

The ordinance before the Council proposes to adopt the codes specified in the State Building Code as amended by the State, with certain local amendments to the administrative chapters, and the addition of selected appendix chapters considered relevant to building construction and development in the City. In addition, the International Existing Building Code is proposed to provide desired clarification and guidance on the application of the International Codes to existing buildings; and the Uniform Code for the Abatement of Dangerous Buildings is proposed to provide guidance in the abatement of buildings and structures presenting a fire, life or safety hazard to the public due to structural failure or dilapidation.

POLICY CONSIDERATIONS

The codes proposed for adoption offer the most current and comprehensive construction, and fire and life safety codes available. In keeping with the wishes of the State Building Code Council and the Washington Association of Building Officials, amendments to the structural and design provisions have been limited to those necessary to address unique local conditions. As proposed, the ordinance will provide the City with progressive, predictable construction codes consistent with those in effect in other jurisdictions statewide.

FISCAL CONSIDERATIONS

Adoption of the State Building Code has required the purchase of code and reference books and other publications necessary for the effective application and enforcement of the new codes. In addition, staff training is being provided on an ongoing basis to

educate staff in the intent, interpretation and application of the new codes. These expenditures are anticipated under Training and Publications in the 2005 Budget.

RECOMMENDATION

On November 30, 2004 the City's Building Code Advisory Board convened to consider this ordinance. It was unanimously recommended by the Board that the ordinance be passed by the Council. I recommend that the City Council approve the ordinance as presented following the second reading.

ORDINANCE NO. ___

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO ADOPTION OF THE WASHINGTON STATE BUILDING CODE, ADOPTING THE 2003 EDITIONS OF THE INTERNATIONAL BUILDING CODE, THE INTERNATIONAL RESIDENTIAL CODE, THE INTERNATIONAL MECHANICAL CODE, THE INTERNATIONAL FIRE CODE, THE INTERNATIONAL EXISTING BUILDING CODE AND THE UNIFORM PLUMBING CODE BY REFERENCE, ADOPTING THE 1997 EDITION OF THE UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS BY REFERENCE, ADOPTING THE WASHINGTON ENERGY CODE, THE WASHINGTON STATE VENTILATION AND INDOOR AIR QUALITY CODE AND HISTORIC BUILDING CODE BY REFERENCE, AS WELL AS CERTAIN AMENDMENTS TO THE CODES, MAKING CHANGES TO THE CITY'S TITLE 15 CODE ENFORCEMENT PROCESS, ELIMINATING HEARING EXAMINER APPEALS AND AMENDING THE PENALTIES FOR VIOLATIONS; REPEALING CHAPTERS 15.06, 15.08, 15.10, 15.12, 15.18, 15.32, 15.36; ADOPTING NEW CHAPTERS 15.06, 15.08, 15.10, 15.12, 15.14, 15.16, 15.18, 15.20, 15.22 AND 15.26 TO THE GIG HARBOR MUNICIPAL CODE.

WHEREAS, the Washington State Legislature adopted the state building code, to be effective in all counties and cities in Washington (RCW 19.27.031); and

WHEREAS, the state building code is comprised of a number of published codes, which are adopted by reference; and

WHEREAS, the City of Gig Harbor may adopt local amendments, consistent with chapter 19.27 RCW; Now, therefore:

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

Section 1. Chapter 15.06 of the Gig Harbor Municipal Code is hereby repealed.

Section 2. A new chapter 15.06 of the Gig Harbor Municipal Code is hereby adopted to read as follows:

CITY BUILDING CODE

Sections:

- 15.06.010 Purpose.**
- 15.06.020 State Building Code – Adoption.**
- 15.06.030 Code Conflicts.**
- 15.06.040 Exclusions from Permit Processing.**
- 15.06.050 Submission and Acceptance of Applications.**

15.06.010 Purpose. The purpose of this chapter is to promote the health, safety and welfare of the public as a whole by ensuring that buildings, dwellings, structures and land will be constructed, maintained and used in a manner so as to reduce hazards, increase durability and require consistent patterns of community development; provided that any duties established in this chapter or the codes adopted in this chapter are duties owed to the public as a whole, not to any individual, persons or class of persons.

15.06.020 State Building Code adoption. The following codes, together with the specifically identified appendices and the amendments in the Washington Administrative Code (WAC), and as further amended in this Chapter, are hereby adopted by reference:

A. The International Building Code, 2003 Edition, as published by the International Code Council, Inc, including Appendix J, and as amended pursuant to chapter 51-50 WAC;

B. The International Residential Code, 2003 Edition, as published by the International Code Council, Inc., including Appendix Chapter G, as amended pursuant to chapter 51-50 WAC;

C. The International Mechanical Code, 2003 Edition, as published by the International Code Council, Inc., including Appendix A, as amended pursuant to chapter 51-52 WAC;

D. The International Fire Code, 2003 Edition, as published by the International Code Council, Inc., including chapter 46 and Appendix Chapters B and C, as amended pursuant to chapter 51-45 WAC;

E. The Uniform Plumbing Code, 2003 Edition, published by the International Association of Plumbing and Mechanical Officials, as amended pursuant to chapter 51-56 WAC and the Uniform Plumbing Code Standards (Appendices B and H to the Uniform Plumbing Code, as amended pursuant to Chapter 51-57 WAC;

F. The International Existing Building Code, 2003 Edition, as published by the International Code Council, Inc. including Appendix Chapters A and B;

G. The Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, published by the International Conference of Building Officials;

H. The Washington State Energy Code as published by the Washington State Building Code Council, pursuant to chapter 51-11 WAC;

I. The Washington State Ventilation and Indoor Air Quality Code as published by the Washington State Building Code Council, pursuant to WAC 51-13 WAC; and

J. The Historic Building Code, as written by the Washington State Building Code Council, pursuant to Chapter 51-19 WAC.

15.06.030. Code Conflicts. In cases of conflict among the codes enumerated in Section 15.06.020 (A), (B), (C) and (D), the first named code shall govern over those following.

15.06.040. Exclusions from project permit processing. Pursuant to RCW 36.70B.140(2), building permits, other construction permits or similar administrative approvals which are categorically exempt from environmental review under the State Environmental Policy Act (Chapter 43.21C RCW) and GHMC Title 18 (SEPA), or permits/approvals for which environmental review has been completed in connection with other project permits under GHMC Title 19, are excluded from the following procedures:

A. Notice of application (GHMC 19.02.004);

- B. Except as provided above, optional consolidated project permit review processing (GHMC 19.02.002(B);
- C. Joint public hearings (GHMC 19.01.004).

15.06.050. Submission and acceptance of Application. The procedures set forth in GHMC Section 19.02.003 shall apply to building permit applications.

Section 3. Chapter 15.08 of the Gig Harbor Municipal Code is hereby repealed.

Section 4. A new chapter 15.08 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

15.06.060 Definitions. The following definitions shall apply when used in this Title.

Building Official/Fire Marshal. Wherever the terms building official, code official, fire code official, authority having jurisdiction, or other reference to the chief code enforcement official is used in this Title, it shall mean the Building Official/Fire Marshal of the City of Gig Harbor.

15.08 Amendments to the International Building Code

Sections:

- 15.08.010 Amendment to IBC Section 103.**
- 15.08.020 Amendment to IBC Section 105.**
- 15.08.030 Amendment to IBC Section 108.**
- 15.08.040 Amendment to IBC Section 109.**
- 15.08.050 Amendment to IBC Section 110.**
- 15.08.060 Amendment to IBC Section 112.**
- 15.08.070 Amendment to IBC Section 113.**
- 15.08.080 Amendment to IBC Section 114.**

15.08.010. Amendment to IBC Section 103.

Section 103 of the International Building Code is amended as follows:

103.1 Creation of enforcement agency. The Division of Fire and Building Safety is hereby created in the Community Development Department for the purpose of enforcing this code; and the official in charge thereof shall be known as the building official/fire marshal.

103.2 Appointment. The building official/fire marshal shall be appointed by the chief appointing authority of the City of Gig Harbor.

103.3 Deputies. In accordance with the prescribed procedures of the this jurisdiction, ~~City of Gig Harbor and with the concurrence of the appointing authority, the building official/fire marshal shall have the authority to appoint an deputy assistant building official/fire marshal,~~ the related technical officers, inspectors, plan examiners and other employees. Such employees shall have powers as delegated by the building official/fire marshal. ~~For the maintenance of existing properties, see the International Property Maintenance Code.~~

15.08.020 Amendment to IBC Section 105. Section 105 of the International Building Code is amended as follows:

105.1 Required. Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert, or replace any electrical, gas, mechanical, or plumbing system, the installation of which is regulated by this code, or cause such work to be done, shall first make application to the building official and obtain the required permit. A building permit shall also be required for the installation or structural modification of a sign which will be attached to building or be self supporting with the top of the sign over 36 inches above grade. The issuance of a building permit for the installation or structural modification of a sign does not exempt the applicant from obtaining the necessary sign permit.

* * *

105.2 Work exempt from permit: Exemptions from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction. Permits shall not be required for the following:

Building:

1. One-story detached accessory structures used as tool and storage sheds, play houses and similar uses, provided the floor area does not exceed ~~420~~ 200 square feet (18.58 m²).
2. Fences not over 6 feet (1829 mm) high.
3. Oil derricks.
4. Retaining walls which are not over 4 feet (1219 mm) in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge or impounding Class I, II or III-A liquids.
5. Water tanks supported directly on grade if the capacity does not exceed 5,000 gallons (18925 L) and the ratio of height to diameter or width does not exceed 2 to 1.
6. Sidewalks, driveways and platforms not more than 30 inches (762 mm) above grade and not over any basement or story below and which are not part of an accessible route.

7. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.
8. Temporary motion picture, television and theater stage sets and scenery.
9. Prefabricated swimming pools accessory to a Group R-3 occupancy, as applicable in Section 101.2, which are less than 24 inches (610 mm) deep, do not exceed 5,000 gallons (18925 L) and are installed entirely above ground.
10. Shade cloth structures constructed for nursery or agricultural purposes and not including service systems.
11. Swings and other playground equipment accessory to detached one and two family dwellings.
12. Window awnings supported by an exterior wall which do not project more than 54 inches (1372 mm) from the exterior wall and do not require additional support of Group R-3, as applicable in Section 101.2 and Group U occupancies.
13. Movable cases, counters and partitions not over 5 feet 9 inches (1753 mm) in height.
14. All interior signs, flags, pennants, streamers, banners, balloons, inflatable signs, the painting of a sign on glazing, the change of a sign plastic face and other nonstructural modifications to a sign which is attached to a building or nonstructural modifications to a self supported sign. This exception does not exempt the applicant from obtaining the necessary sign permit.

Electrical:

~~Repairs and maintenance: Minor repair work, including the replacement of lamps or the connection of approved permanently installed receptacles.~~

~~Radio and television transmitting stations: The provisions of this code shall not apply to electrical equipment used for radio and television transmissions, but do apply to equipment and wiring for power supply, the installation of towers and antennas.~~

~~Temporary testing systems: A permit shall not be required for the installation of any temporary system required for the testing or servicing of electrical equipment or apparatus.~~

Electrical permits, inspections and approvals shall be under the jurisdiction of the Washington State Department of Labor and Industries, Electrical Section.

Gas:

1. Portable heating appliance.
2. Replacement of any minor part that does not alter approval of equipment or make such equipment unsafe.

Mechanical:

1. Portable heating appliance.
2. Portable ventilation equipment.
3. Portable cooling unit.
4. Steam, hot or chilled water piping within any heating or cooling equipment regulated by this code.

5. Replacement of any part which does not alter its approval or make it unsafe.
6. Portable evaporative cooler.
7. Self-contained refrigeration system containing 10 pounds (4.54 kg) or less of refrigerant and actuated by motors of 1 horsepower (746 W) or less.

Plumbing:

1. The stopping of leaks in drains, water, soil, waste or vent pipe provided, however, that if any concealed trap, drain pipe, water, soil, waste or vent pipe becomes defective and it becomes necessary to remove and replace the same with new material, such work shall be considered as new work and a permit shall be obtained and inspection made as provided in this code.
2. The clearing of stoppages or the repairing of leaks in pipes, valves or fixtures, and the removal and reinstallation of water closets, provided such repairs do not involve or require replacement or rearrangement of valves, pipes or fixtures.

105.3. Application for permit.

A. To obtain a permit, the applicant shall first file a written application on a form furnished by the City for that purpose. An application therefore in writing on a form furnished by the department of building safety. Such application shall:

A complete building permit application shall consist of the following information:

1. The legal description or tax parcel number and the street address of the property;
 2. The property owners name, address, and phone number;
 3. A description of the work to be covered by the permit for which application is made;
 4. The proposed use and occupancy for which the proposed work is intended;
 5. The valuation of the proposed work; and
 6. Evidence of potable water and a sewer connection.
1. ~~Identify and describe the work to be covered by the permit for which application is made;~~
 2. ~~Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.~~
 3. ~~Indicate the use and occupancy for which the proposed work is intended.~~
 4. ~~Be accompanied by construction documents and other information as required in Section 106.3.~~
 5. ~~State the valuation of the proposed work.~~

- ~~6. Be signed by the applicant, or the applicant's authorized agent.~~
- ~~7. Give such other data and information as required by the building official.~~
7. All materials and information required by IBC Section 106.

B. For all projects with a valuation in excess of five thousand dollars, the following additional information shall be required in accordance with RCW 19.27.095:

1. The prime contractor's business name, address, phone number, current state contractor registration number; and

2. Either:

a. The name, address and phone number of the office of the lender administering the interim construction financing, if any, or

b. The name and address of the firm that has issued a payment bond, if any, on behalf of the prime contractor for the protection of the owner, if the bond is for an amount not less than 50 percent of the total amount of the construction project;

3. A SEPA Checklist, and any other information required to demonstrate compliance with the State Environmental Policy Act, as adopted by the city under GHMC Title 18;

C. If the information required by IBC section 105.3(B)(1) and (B)(2) above are not available at the time the application is submitted, the applicant shall so state and the application shall be processed forthwith and the permit issued as if the information had been supplied, and the lack of the information shall not cause the application to be deemed incomplete for the purposes of vesting. However, the applicant shall provide the remaining information as soon as the applicant can reasonably obtain such information.

~~105.3.1 Action on application. The building official shall review the application according to the procedures in GHMC Section 19.02.003, and shall issue the building permit within the deadline required by GHMC Section 19.05.009. The building official shall examine or cause to be examined applications for permits and amendments thereto within a reasonable time after filing. If the application or the construction documents do not conform to the requirements of pertinent laws, the building official shall deny reject such application in writing, stating the reasons therefore. If the building official is satisfied that the proposed work conforms to the requirements of this code and laws and ordinances applicable thereto, the building official shall issue a permit therefore. As seen as practicable.~~

105.3.2 Time limitation on application. An application for a permit for any proposed work shall be deemed to have been abandoned 180 days after the date of filing, unless such application has been pursued in good faith or a permit has been issued; except that the building official/fire marshal is authorized to grant one or more extensions of time for additional periods not exceeding 90

days each. The extension shall be requested in writing and justifiable cause demonstrated.

105.3.3 Vesting. A valid and fully complete building permit application for a structure, that is permitted under the zoning or other land use control ordinances in effect on the date the application shall be considered under the building permit ordinance in effect at the time of application, and the zoning or other land use control ordinances in effect on the date of application.

15.08.030 Amendment to IBC Section 108.

Section 108 of the IBC is amended to read as follows:

108.1 Payment of fees. A permit shall not be valid until the fees adopted by the City in a resolution for this purpose ~~prescribed by law~~ have been paid. Nor shall an amendment to a permit be released until the additional fee, if any, has been paid.

108.2 Schedule of permit fees. On buildings, structures, ~~electrical,~~ gas, mechanical and plumbing systems or alterations requiring a permit, a fee for each permit shall be paid as required in accordance with the resolution adopted by the City for this purpose ~~schedule established by the applicable governing authority under GHMC Ch. 3.40.~~

108.3 Building permit valuations. The applicant for a permit shall provide an estimated permit value at the time of application. Permit valuations shall include the total value of work, including materials, labor, normal site preparation, architectural and design fees, overhead and profit, for which the permit is being issued, including such work as gas, mechanical, plumbing equipment and permanent systems. If, in the opinion of the building official/fire marshal, the valuation is underestimated on the application, ~~the permit shall be denied,~~ the valuation shall be recalculated, based on the valuation as determined using the Square Foot Construction Costs adopted by the City as Table 1-2 in the fee resolution, unless the applicant can show detailed estimates to meet the approval of the building official. Final building permit valuation shall be set by the building official/fire marshal.

108.4 Work commencing before permit issuance. Any person who commences work on a building, structure, ~~electrical,~~ gas, mechanical, or plumbing system before obtaining the necessary permits shall be subject to an investigation fee established by City resolution, ~~by the building official~~ that shall be in addition to the required permit fees.

108.5 Related fees. The payment of a fee for the construction, alteration, removal, or demolition of work done in connection to or concurrently with the work authorized by a building permit shall not relieve the applicant or holder of the permit from the payment of other fees that are prescribed by law.

108.6 Refunds. The building official is authorized to establish a refund policy. The building official/fire marshal may authorize refunding of any fee paid hereunder which was erroneously paid or collected. The building official/fire marshal may also authorize refunding of not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code.

The building official/fire marshal may authorize refunding of not more than 80 percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or cancelled before any plan reviewing is done.

The building official/fire marshal shall not authorize refunding of any fee paid except on written application filed by the original permittee not later than 180 days after the date of fee payment.

15.08.040 Amendment to IBC Section 109.

Section 109 of the IBC is hereby amended to add a new subsection 109.7, which shall read as follows:

* * *

109.7 Reinspections. A reinspection fee may be assessed for each inspection or reinspection when the work for which the inspection is requested is not complete or when corrections noted on previous inspections are not made.

This section is not to be interpreted as requiring reinspection fees the first time a job is rejected for failure to comply with code requirements, but rather that fees are intended as a means of controlling the practice of calling for inspections before the job is ready for inspection or reinspection.

Reinspection fees may also be assessed when the inspection record card is not available on the work site, the approved plans are not readily available to the inspector, for failure to provide access for the inspection or for deviating from plans requiring the approval of the building official/fire marshal.

To obtain a reinspection, the applicant shall file an application therefore in writing on a form furnished for that purpose and pay the reinspection fee in accordance with the City's fee resolution.

15.08.050 Amendment to IBC Section 110.

Section 110 of the IBC is hereby amended to read as follows:

110.1 Use and occupancy. No building or structure shall be used or occupied, and no change in the existing occupancy classification of a building or structure or portion thereof shall be made until the building official has issued a certificate of occupancy therefor as provided herein. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction.

110.2 Certificate issued. After payment of the fee established in the City's fee resolution, and after the building official inspects the building or structure and finds no violations of the provisions of this code or other laws that are enforced by the department of building safety division of fire and building safety, the building official shall issue a certificate of occupancy that contains the following:

1. The building permit number (if applicable).
2. The address of the structure.
3. The name and address of the owner.
4. A description of that portion of the structure for which the certificate is issued.
5. A statement that the described portion of the structure has been inspected for compliance with the requirements of this code for the occupancy and division of occupancy and the use for which the proposed occupancy is classified.
6. The name of the building official.
7. The edition of the code under which the permit certificate was issued.
8. The use and occupancy in accordance with the provisions of Chapter 3 of the IBC.
9. The type of construction as defined in Chapter 6.
10. The design occupant load.
11. If an automatic sprinkler system or fire alarm system is provided, whether the sprinkler system or fire alarm system is required.
12. Any special stipulations and conditions of ~~the building permit~~ issuance of the certificate.

110.3 Temporary Occupancy. Upon payment of a fee as set forth in the City's fee resolution, the building official is authorized to issue a temporary certificate of occupancy before the completion of the entire work covered by the permit, provided that such portion or portions shall be occupied safely. The building official shall set a time period during which the temporary certificate of occupancy is valid.

110.4 Revocation. The building official/fire marshal is authorized to, in writing, suspend or revoke a certificate of occupancy or completion issued under the provisions of this code wherever the certificate is issued in error, or on the basis of incorrect information supplied, or where it is determined that the building or structure or portion thereof is in violation of any ordinance or regulation or any of the provisions of this code.

110.5 Maintenance of certificate of occupancy. The certificate of occupancy issued under the provisions of this section shall be maintained on the premises at all times. The certificate shall be made available for inspection at the request of the building official/fire marshal upon request.

15.08.060 Amendment to IBC Section 112.1.

Section 112.1 of the IBC is hereby amended to read as follows:

~~112.1 General. In order to hear and decide appeals of orders, decisions, or determinations made by the building official relative to the application and interpretation of this code, there shall be and is hereby created a board of appeals. The board of appeals shall be appointed by the governing body and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business. The Building Code Advisory Board shall hear and decide those appeals and interpretations described in chapter 15.02 GHMC.~~

* * *

15.08.070 Amendment to IBC Section 113.

Section 113 of the IBC is repealed. A new section 113 is hereby added to the IBC, which shall read as follows:

113. Enforcement. Enforcement of violations of this code shall proceed as set forth in chapter 15.26 GHMC.

15.08.080 Amendment to IBC Section 114.

Section 114 of the IBC is hereby repealed. A new section 114 is hereby added to the IBC, which shall read as follows:

114. Stop work orders. Enforcement of violations of this code, including the issuance of stop work orders, shall proceed as set forth in chapter 15.26 GHMC.

Section 9. Chapter 15.10 of the Gig Harbor Municipal Code is hereby repealed.

Section 10. A new chapter 15.10 is hereby adopted, which shall read as follows:

Chapter 15.10 Amendments to the International Residential Code (IRC)

Sections:

- 15.10.010 Amendment to IRC Section R103**
- 15.10.020 Amendment to IRC Section R105.2**
- 15.10.030 Amendment to IRC Section R108**
- 15.10.040 Amendment to IRC Section R109.1**
- 15.10.050 Amendment to IRC Section R110.4**
- 15.10.060 Amendment to IRC Section R112.1**
- 15.10.070 Amendment to IRC Section R113**
- 15.10.080 Amendment to IRC Section R114**

15.010.010. Amendment to IRC Section 103. Section 103 of the IRC is hereby amended to read as follows:

R103.1 Creation of enforcement agency. The department of fire and building safety is hereby created and the official in charge thereof shall be known as the building official/fire marshal.

R103.2 Appointment. The building official/fire marshal shall be appointed by the chief appointing authority of the City of Gig Harbor.

R103.3 Deputies. In accordance with the prescribed procedures of ~~this jurisdiction, the City of Gig Harbor~~ and with the concurrence of the appointing authority, the building official/fire marshal shall have the authority to appoint an deputy assistant building official/fire marshal, the related technical officers, inspectors, plan examiners and other employees. Such employees shall have powers as delegated by the building official/fire marshal. ~~For the maintenance of existing properties, see the International Property Maintenance Code.~~

15.10.020 Amendment to IRC Section R105.2. Section R105.2 is repealed. A new section R105.2 shall be adopted, which shall read as follows:

105.2 Required. Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert, or replace any electrical, gas, mechanical, or plumbing system, the installation of which is regulated by this code, or cause such work to be done, shall first make application to the building official and obtain the required permit.

* * *

105.2.1 Work exempt from permit: Exemptions from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction. Permits shall not be required for the following:

Building:

1. One-story detached accessory structures used as tool and storage sheds, play houses and similar uses, provided the floor area does not exceed ~~120~~ 200 square feet (18.58 m²).
2. Fences not over 6 feet (1829 mm) high.
3. Oil derricks.
4. Retaining walls which are not over 4 feet (1219 mm) in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge or impounding Class I, II or III-A liquids.
5. Water tanks supported directly on grade if the capacity does not exceed 5,000 gallons (18925 L) and the ratio of height to diameter or width does not exceed 2 to 1.

6. Sidewalks, driveways and platforms not more than 30 inches (762 mm) above grade and not over any basement or story below and which are not part of an accessible route.
7. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.
8. Temporary motion picture, television and theater stage sets and scenery.
9. Prefabricated swimming pools accessory to a Group R-3 occupancy, as applicable in Section 101.2, which are less than 24 inches (610 mm) deep, do not exceed 5,000 gallons (18925 L) and are installed entirely above ground.
10. Shade cloth structures constructed for nursery or agricultural purposes and not including service systems.
11. Swings and other playground equipment accessory to detached one and two family dwellings.
12. Window awnings supported by an exterior wall which do not project more than 54 inches (1372 mm) from the exterior wall and do not require additional support of Group R-3, as applicable in Section 101.2 and Group U occupancies.
13. Movable cases, counters and partitions not over 5 feet 9 inches (1753 mm) in height.

Electrical:

~~Repairs and maintenance: Minor repair work, including the replacement of lamps or the connection of approved permanently installed receptacles.~~

~~Radio and television transmitting stations: The provisions of this code shall not apply to electrical equipment used for radio and television transmissions, but do apply to equipment and wiring for power supply, the installation of towers and antennas.~~

~~Temporary testing systems: A permit shall not be required for the installation of any temporary system required for the testing or servicing of electrical equipment or apparatus.~~

Electrical permits, inspections and approvals shall be under the jurisdiction of the Washington State Department of Labor and Industries, Electrical Section.

Gas:

1. Portable heating appliance.
2. Replacement of any minor part that does not alter approval of equipment or make such equipment unsafe.

Mechanical:

1. Portable heating appliance.
8. Portable ventilation equipment.
9. Portable cooling unit.
10. Steam, hot or chilled water piping within any heating or cooling equipment regulated by this code.
11. Replacement of any part which does not alter its approval or make it unsafe.

12. Portable evaporative cooler.
13. Self-contained refrigeration system containing 10 pounds (4.54 kg) or less of refrigerant and actuated by motors of 1 horsepower (746 W) or less.

Plumbing:

3. The stopping of leaks in drains, water, soil, waste or vent pipe provided, however, that if any concealed trap, drain pipe, water, soil, waste or vent pipe becomes defective and it becomes necessary to remove and replace the same with new material, such work shall be considered as new work and a permit shall be obtained and inspection made as provided in this code.
4. The clearing of stoppages or the repairing of leaks in pipes, valves or fixtures, and the removal and reinstallation of water closets, provided such repairs do not involve or require replacement or rearrangement of valves, pipes or fixtures.

105.3. Application for permit.

A. To obtain a permit, the applicant shall first file a written application on a form furnished by the City for that purpose. An application therefore in writing on a form furnished by the department of building safety. Such application shall: A complete building permit application shall consist of the following information:

3. The legal description or tax parcel number and the street address of the property;
4. The property owners name, address, and phone number;
3. A description of the work to be covered by the permit for which application is made;
4. The proposed use and occupancy for which the proposed work is intended;
5. The valuation of the proposed work; and
6. Evidence of potable water and a sewer connection.
8. Identify and describe the work to be covered by the permit for which application is made;
9. Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work;
10. Indicate the use and occupancy for which the proposed work is intended;
11. Be accompanied by construction documents and other information as required in Section 106.3.
12. State the valuation of the proposed work.
13. Be signed by the applicant, or the applicant's authorized agent.

~~14. Give such other data and information as required by the building official.~~

7. All materials and information required by IBC Section 106.

B. For all projects with a valuation in excess of five thousand dollars, the following additional information shall be required in accordance with RCW 19.27.095:

1. The prime contractor's business name, address, phone number, current state contractor registration number; and

2. Either:

a. The name, address and phone number of the office of the lender administering the interim construction financing, if any, or

b. The name and address of the firm that has issued a payment bond, if any, on behalf of the prime contractor for the protection of the owner, if the bond is for an amount not less than 50 percent of the total amount of the construction project;

3. A SEPA Checklist, and any other information required to demonstrate compliance with the State Environmental Policy Act, as adopted by the city under GHMC Title 18;

C. If the information required by IBC section 105.3(B)(1) and (B)(2) above are not available at the time the application is submitted, the applicant shall so state and the application shall be processed forthwith and the permit issued as if the information had been supplied, and the lack of the information shall not cause the application to be deemed incomplete for the purposes of vesting. However, the applicant shall provide the remaining information as soon as the applicant can reasonably obtain such information.

~~105.3.2 Action on application. The building official shall review the application according to the procedures in GHMC Section 19.02.003, and shall issue the building permit within the deadline required by GHMC Section 19.05.009. The building official shall examine or cause to be examined applications for permits and amendments thereto within a reasonable time after filing. If the application or the construction documents do not conform to the requirements of pertinent laws, the building official shall deny reject such application in writing, stating the reasons therefore. If the building official is satisfied that the proposed work conforms to the requirements of this code and laws and ordinances applicable thereto, the building official shall issue a permit therefore. As soon as practicable.~~

105.3.2 Time limitation on application. An application for a permit for any proposed work shall be deemed to have been abandoned 180 days after the date of filing, unless such application has been pursued in good faith or a permit has been issued; except that the building official/fire marshal is authorized to grant one or more extensions of time for additional periods not exceeding 90

days each. The extension shall be requested in writing and justifiable cause demonstrated.

105.3.3 Vesting. A valid and fully complete building permit application for a structure, that is permitted under the zoning or other land use control ordinances in effect on the date the application shall be considered under the building permit ordinance in effect at the time of application, and the zoning or other land use control ordinances in effect on the date of application.

15.10.030 Amendment to IRC Section R108. Section R108 of the IRC is repealed. A new section R108 shall be adopted, which shall incorporate GHMC Section 15.08.030 by reference.

15.10.040 Amendment to IRC Section R109.1.

Section R109.1 of the IRC is amended to read as follows:

R109.1 Types of inspections. For onsite construction, from time to time the building official, upon notification from the permit holder or his or her agent, shall make or cause to be made any necessary inspections and shall either approve that portion of the construction as completed or shall notify the permit holder or his or her agent wherein the same fails to comply with this code.

R109.1.1 Footing and foundation inspections. Inspection of the footings and foundation shall be made after poles or piers are set or trenches or casement areas are excavated and any required forms erected and any required reinforcing steel is in place and prior to the placing of concrete. The footing and foundation inspections shall include excavations for thickened slabs intended for the support of bearing walls, partitions, structural supports, or equipment and special requirements for wood foundations.

~~R109.1.2 Plumbing, mechanical, gas and electrical systems inspection. Rough installation of plumbing, mechanical, gas and electrical systems shall be made prior to covering or concealment, before fixtures or appliances are set or installed, and prior to framing inspection. Exception: Ground-source heat pump loop systems tested in accordance with Section M2105.1 shall be permitted to be backfilled prior to inspection.~~

R109.1.2 Concrete slab or under-floor inspection. Concrete slab and under-floor inspections shall be made after in-slab or under-floor reinforcing steel and building service equipment, conduit, piping accessories and other ancillary equipment items and all floor framing, blocking anchor bolts and ancillary items are in place but before any concrete is placed or floor sheathing installed, including the sub-floor.

R109.1.3 Floodplain inspections. For construction in areas prone to flooding as established table R301.2(1), upon placement of the lowest floor, including

basement, and prior to further vertical construction, the building official shall require the submission of documentation, prepared and sealed by a registered design professional, of the elevation of the lowest floor, including basement, required in Section R323.

~~R109.1.4 Frame and masonry inspection. Inspection of framing and masonry construction shall be made after the roof, masonry, all framing, firestopping, draftstopping and bracing are in place and after the plumbing, mechanical and electrical rough inspections are approved.~~

R109.1.4 Roof and wall sheathing. Roof and wall sheathing inspections shall be made prior to the installation of any interior or exterior roof and wall coverings.

R109.1.5 Plumbing, mechanical, and gas system inspection. Rough inspection of plumbing, mechanical, and gas systems shall be made prior to covering or concealment, before fixtures or appliances are set or installed, and prior to framing inspection.

Exception: Ground-source heat pump loop systems tested in accordance with Section M2105.1 shall be permitted to be backfilled prior to inspection.

R109.1.6 Energy efficiency inspection. Inspections shall be made to determine compliance with the WA State Energy, and Ventilation and Indoor Air Quality Codes (51-11 and 51-13 WAC) and shall include but not be limited to, inspections for: envelope insulation R and U values, fenestration U value, duct system R value, and HVAC and water-heating equipment efficiency.

R109.1.7 Frame and masonry inspection. Inspection of framing and masonry construction shall be made after the roof, masonry, all framing, firestopping, draftstopping, and bracing are in place and after the plumbing, mechanical, and electrical rough inspections are approved.

R109.1.8 Other inspections. In addition to the called inspections above, the building official may make or require any other inspections to ascertain compliance with this code and other laws enforced by the building official.

R109.1.8.1 Fire-resistance-rated construction inspection. Where fire-resistance-rated construction is required between dwelling units or due to location on property, the building official shall require an inspection of such construction after all lathing and/or wall board is in place, but before any plaster is applied, or before wallboard joints and fasteners are taped and finished.

R109.1.8.2 Erosion control inspections. Where projects create exposed earth subject to erosion and siltation of adjoining properties or storm water

management structures or facilities, a temporary erosion control inspection shall be conducted upon installation of silt fence, matting, straw, or any other approved temporary erosion control measures and prior to beginning building construction. A final erosion control inspection shall be conducted prior to final approval of the project to verify that site conditions will not result in erosion or siltation of adjoining properties or storm water management structures or facilities. Final erosion control measures shall be maintained indefinitely.

R109.1.8.3 Final inspections. Final inspection shall be made after the permitted work is complete and prior to occupancy.

* * *

R109.5 Reinspections. A reinspection fee may be assessed for each inspection or reinspection when the work for which the inspection is requested is not complete or when corrections noted on previous inspections are not made.

This section is not to be interpreted as requiring reinspection fees the first time a job is rejected for failure to comply with code requirements, but rather that fees are intended as a means of controlling the practice of calling for inspections before the job is ready for inspection or reinspection.

Reinspection fees may also be assessed when the inspection record card is not available on the work site, the approved plans are not readily available to the inspector, for failure to provide access for the inspection or for deviating from plans requiring the approval of the building official.

To obtain a reinspection, the applicant shall file an application therefore in writing on a form furnished for that purpose and pay the reinspection fee in accordance with the City's fee resolution.

15.10.050 Amendment to IRC Section R110.4

Section R110.4 of the IRC is amended to read as follows:

R110.4 Temporary Occupancy. Upon payment of a fee as set forth in the City's fee resolution, the building official is authorized to issue a temporary certificate of occupancy before the completion of the entire work covered by the permit, provided that such portion or portions shall be occupied safely. The building official shall set a time period during which the temporary certificate of occupancy is valid.

15.10.060 Amendment to IRC Section R 112.1.

Section R112.1 of the IRC is amended to read as follows:

~~R112.1 General. In order to hear and decide appeals of orders, decisions, or determinations made by the building official relative to the application and interpretation of this code, there shall be and is hereby created a board of appeals. The building official shall be an ex-officio member of said board but~~

~~shall have no vote on any matter before the board. The board of appeals shall be appointed by the governing body and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business and shall render all decisions and findings in writing to the appellant with a duplicate copy to the building official. The Building Code Advisory Board shall hear and decide appeals and make interpretations, all as described in chapter 15.02 GHMC.~~

~~R112.2 Limitations on Authority. An application for an appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or an equally good or better form of construction is proposed. The board shall have no authority to waive requirements of this code.~~

R112.2 Determination of substantial improvement in areas prone to flooding. When the building official makes a finding required in Section R105.3.1.1, the ~~building official board of appeals~~ shall determine whether the value of the proposed work constitutes a substantial improvement. A substantial improvement means any repair, reconstruction, rehabilitation, addition or improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the building or structure before the improvement or repair is started. If the building or structure has sustained substantial damage, all repairs are considered substantial improvement regardless of the actual repair work performed. The term does not include:

1. Improvements to a building or structure required to correct existing health, sanitary or safety code violations identified by the building official and which are the minimum necessary to assure safe living conditions; and
2. Any alteration of a historic building or structure provided that the alteration will not preclude the continued designation as an historic building or structure. For the purpose of this exclusion, an historic building is:

2.1 Listed or preliminarily determined to be eligible for listing in the National Register of Historic Places; or

2.2 Determined by the Secretary of the U.S. Department of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined to qualify as an historic district; or

2.3 Designated as historic under a state or local historic preservation program that is approved by the Department of Interior.

R112.2.2 Criteria for issuance of a variance for areas prone to flooding. A variance shall only be issued upon:

1. A showing of good and sufficient cause that the unique characteristics of the size, configuration and topography of the site render the elevation standards in Section R323 in appropriate.

2. A determination that failure to grant the variance would result in exceptional hardship by rendering the lot undevelopable.
3. A determination that granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
4. A determination that the variance is the minimum necessary to afford relief, considering the flood hazard.
5. Submission to the applicant of written notice specifying the difference between the design flood elevation and the elevation to which the building is to be built, stating that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced floor elevation, and stating that construction below the design flood elevation increases risks to life and property.

~~112.3 Qualifications. The board of appeals shall consist of members who are qualified by experience and training to pass on matters pertaining to building construction and are not employees of the jurisdiction.~~

~~112.4 Administration. The building official shall take immediate action in accordance with the decision of the board.~~

15.10.070 Amendment to IRC Section R113.

Section R113 is repealed. A new section R113 is hereby added to the IRC, which shall read as follows:

R113 Enforcement. Enforcement of violations of this code shall proceed as set forth in chapter 15.26 GHMC.

15.10.080 Amendment to IRC Section R114.

Section R114 is repealed. A new section R114 is hereby added to the IRC, which shall read as follows:

R114. Stop work orders. Enforcement of this code, including the issuance of stop work orders, shall proceed as set forth in chapter 15.26 GHMC.

Section 11. Chapter 15.10 of the Gig Harbor Municipal Code is hereby repealed.

Section 12. A new chapter 15.12 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

**Chapter 15.12
INTERNATIONAL MECHANICAL CODE (IMC)**

Sections:

- 15.12.010 Amendment to IMC Section 103
- 15.12.020 Amendment to IMC Section 108
- 15.12.030 Amendment to IMC Section 109.1
- 15.12.040 Amendment to IMC Section 109.2
- 15.12.050 Amendment to IMC Section 109.3
- 15.12.060 Amendment to IMC Section 109.4
- 15.12.070 Amendment to IMC Section 109.5
- 15.12.080 Amendment to IMC Section 109.6
- 15.12.090 Amendment to IMC Section 109.7
- 15.12.100 Amendment to IMC Section 202

15.12.010 Amendment to IMC Section 103.

Section 103 of the IMC is amended to read as follows:

103.1 Creation of enforcement agency. The Division of Fire and Building Safety is hereby created in the Community Development Department for the purpose of enforcing this code and the official in charge thereof shall be known as the building official/fire marshal.

103.2 Appointment. The building official/fire marshal shall be appointed by the chief appointing authority of the City of Gig Harbor.

103.3 Deputies. In accordance with the prescribed procedures of the City of Gig Harbor and with the concurrence of the appointing authority, the building official/fire marshal shall have the authority to appoint an deputy assistant building official/fire marshal, the related technical officers, inspectors, plan examiners and other employees. Such employees shall have powers as delegated by the building official/fire marshal. ~~For the maintenance of existing properties, see the International Property Maintenance Code.~~

103.4 Liability. The building official/fire marshal, assistants and other officers and employees charged with the enforcement of this code, while acting for the jurisdiction in good faith and without malice in the discharge of duties required by this code or other pertinent law or ordinance, shall not thereby be rendered liable personally, and is hereby relieved from all personal liability for any damage accruing to persons or property as a result of an act or omission in the discharge of official duties.

Any suit instituted against any officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be defended by the legal representative of the jurisdiction until the final termination of the proceedings. The building official/fire marshal or any subordinate shall not be liable for costs in an action, suit or proceeding that is instituted in pursuance of the provisions of this code; and any officer of the department, acting in good faith and without malice, shall be free from liability for acts performed under any of the provisions of this code or by reason of any act or omission in the performance of official duties in connection therewith.

15.12.020 Amendment to IMC Section 108.

Section 108 of the IMC is amended to read as follows:

~~108.1 Unlawful acts. It shall be unlawful for a person, firm or corporation to erect, construct, alter, repair, remove, demolish or utilize a mechanical system, or cause same to be done, in conflict with or in violation of any of the provisions of this code.— Enforcement of violations of this code shall proceed as set forth in chapter 15.26 GHMC.~~

~~108.2 Notice of violation. The code official shall serve a notice of violation or order to the person responsible for the erection, installation, alteration, extension, repair, removal or demolition of mechanical work in violation of the provisions of this code, or in violation of a detail statement or the approved construction documents thereunder, or in violation of a permit or certificate issued under the provisions of this code. Such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.~~

~~108.3 Prosecution of violation. If the notice of violation is not complied with promptly, the code official shall request the legal counsel of the jurisdiction to institute appropriate proceedings at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the structure in violation of the provisions of this code or of the order or direction made pursuant thereto.~~

~~108.4 Violation penalties. Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install alter or repair mechanical work in violation of the approved construction documents or directive of the code official, or of a permit or certificate issued under the provisions of this code, shall be guilty of a _____ punishable by a fine of not more than _____ amount dollars or by imprisonment not exceeding _____ or both such fine and imprisonment. Each day that a violation continues after due notice has been served shall be deemed a separate offense.~~

~~108.5 Stop work orders. Upon notice from the code official that mechanical work is being done contrary to the provisions of this code or in a dangerous or unsafe manner, such work shall immediately cease. Such notice shall be in writing and shall be given to the owner of the property, or to the owner's agent, or to the person doing the work. The notice shall state the conditions under which work is authorized to resume. Where an emergency exists, the code official shall not be required to give a written notice prior to stopping the work. Any person who shall continue any work on the system after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to legal enforcement action 105.2 Stop Work Orders. Stop work orders shall issue as set forth in chapter 15.26, Enforcement.~~

~~108.6 Abatement of violation.~~ The imposition of the penalties herein prescribed shall not preclude the legal officer of the jurisdiction from instituting appropriate action to prevent unlawful construction or to restrain, correct or abate a violation, or to prevent illegal occupancy of a building, structure or premises, or to stop an illegal act, conduct, business or utilization of the mechanical system on or about any premises.

~~108.7~~ 108.3 Unsafe mechanical systems. A mechanical system that is unsafe, constitutes a fire or health hazard, or is otherwise dangerous to human life, as regulated by this code, is hereby declared as an unsafe mechanical system. Use of a mechanical system regulated by this code constituting a hazard to health, safety or welfare by reason of inadequate maintenance, dilapidation, fire hazard, disaster, damage or abandonment is hereby declared an unsafe use. Such unsafe equipment and appliances are hereby declared to be a public nuisance and shall be abated by repair, rehabilitation, demolition or removal.

~~108.7.1-108.3.1~~ Authority to ~~condemn~~ abate mechanical systems. Whenever the code official determines that any mechanical system, or portion thereof, regulated by this code has become hazardous to life, health, property, or has become unsanitary, the code official shall order in writing that such system either be removed or restored to a safe condition. A time limit for compliance shall be specified in the written notice, which shall be in a Notice of Violation, issued pursuant to chapter 15.26 GHMC. A person shall not use or maintain a defective mechanical system after receiving such notice.

When such mechanical system is to be disconnected, written notice as prescribed in ~~Section 108.2~~ chapter 15.26 GHMC shall be given. In cases of immediate danger to life or property, such disconnection shall be made immediately without such notice.

~~108.7.2-108.3.2~~ Authority to order disconnection of energy sources. The code official shall have the authority to order disconnection of energy sources supplied to a building, structure or mechanical system regulated by this code, when it is determined that the mechanical system or any portion thereof has become hazardous or unsafe. Written notice of such order to disconnect service and the causes therefore shall be given within 24 hours to the owner and occupant of the building, structure or premises, provided, however, that in cases of immediate danger to life or property, such disconnection shall be made immediately without such notice. Where energy sources are provided by a public utility, the code official shall immediately notify the serving utility in writing of the issuance of such order to disconnect.

~~108.7.3-108.3.3~~ Connection after order to disconnect. A person shall not make energy source connections to mechanical systems regulated by this code which have been disconnected or ordered to be disconnected by the code official, or

the use of which has been ordered to be discontinued by the code official until the code official authorizes the reconnection and use of such mechanical systems.

When a mechanical system is maintained in violation of this code, and in violation of a notice issued pursuant to the provisions of this section, the code official shall institute appropriate action to prevent, restrain, correct or abate the violation.

15.12.030 Amendment to IMC Sec. 109.1

Section 109.1 of the IMC is amended to read as follows:

~~109.1 Application for appeal. A person shall have the right to appeal a decision of the code official to the board of appeals. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or an equally good or better form of construction is proposed. The application shall be filed on a form obtained from the code official within 20 days after the notice was served. The Building Code Advisory Board shall hear and decide those appeals and interpretations described in chapter 15.02 GHMC, under the procedures set forth therein.~~

~~109.1.1 Limitations of authority. The board of appeals shall have no authority relative to interpretations of the administration of this code nor shall such board be empowered to waive requirements of this code.~~

15.12.040 Amendment to IMC Section 109.2. Section 109.2 of the IMC is hereby repealed.

15.12.050 Amendment to IMC Section 109.3. Section 109.3 of the IMC is hereby repealed.

15.12.060 Amendment to IMC Section 109.4. Section 109.4 of the IMC is hereby repealed.

15.12.070 Amendment to IMC Section 109.5. Section 109.5 of the IMC is hereby repealed.

15.12.080 Amendment to IMC Section 109.6. Section 109.6 of the IMC is hereby repealed.

15.12.090 Amendment to IMC Section 109.7. Section 109.7 of the IMC is hereby repealed.

15.12.100 Amendment to IMC Section 202.

Section 202 of the IMC is amended to read as follows:
The following definitions and abbreviations are added to those found in Section 202, Chapter 2 of the International Mechanical Code:

ADMINISTRATIVE AUTHORITY is the city of Gig Harbor building official/fire marshal. This definition shall include the city of Gig Harbor building official/fire marshal's duly authorized representative.

Section 13. Chapter 15.12 of the Gig Harbor Municipal Code is hereby repealed.

Section 15. A new chapter 15.14 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

**Chapter 15.14
INTERNATIONAL FUEL GAS CODE**

Sections:

- 15.14.010 Amendment to IFGC Section 103**
- 15.14.020 Amendment to IFGC Section 106.5**
- 15.14.030 Amendment to IFGC Section 107.2**
- 15.14.040 Amendment to IFGC Section 109**

15.14.010 Amendment to IFGC Section 103.

Section 103 of the IFGC is amended to read as follows:

103.1 General. The Division of Fire and Building Safety is hereby created in the Community Development Department for the purpose of enforcing this code; and the ~~executive~~-official in charge thereof shall be know as the building official/fire marshal.

103.2 Appointment. The building official/fire marshal shall be appointed by the chief appointing authority of the City of Gig Harbor. ~~And the code official shall not be removed from office except for cause and after full opportunity to be heard on specific and relevant charges by and before the appointing authority.~~

103.3 Deputies. In accordance with the prescribed procedures of the City of Gig Harbor and with the concurrence of the appointing authority, the building official/fire marshal shall have the authority to appoint an deputy assistant building official/fire marshal, the related technical officers, inspectors, plan examiners and other employees. Such employees shall have powers as delegated by the building official/fire marshal.

103.4 Liability. The building official/fire marshal, assistants and other officers and employees charged with the enforcement of this code, while acting for the jurisdiction in good faith and without malice in the discharge of duties required by this code or other pertinent law or ordinance, shall not thereby be rendered liable personally, and is hereby relieved from all personal liability for any damage accruing to persons or property as a result of an act or omission in the discharge of official duties.

Any suit instituted against any officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be defended by the legal representative of the jurisdiction until the final termination of the proceedings. The building official/fire marshal or any subordinate shall not be liable for costs in an action, suit or proceeding that is instituted in pursuance of the provisions of this code; and any officer of the department, acting in good faith and without malice, shall be free from liability for acts performed under any of the provisions of this code or by reason of any act or omission in the performance of official duties in connection therewith.

15.14.020 Amendment to IFGC Section 106.5.

Section 106.5 of the IFGC is amended to read as follows:

106.5 Fees. A permit shall not be issued until the fees prescribed in Section 106.5.2 have been paid, nor shall an amendment to a permit be released until the additional fee, if any, due to an increase of the installation, has been paid.

106.5.1 Work commencing before permit issuance. Any person who commences work on an installation before obtaining the necessary permit shall be subject to ~~100 percent of the usual permit fee in~~ a fee as set forth in the City's fee resolution, in addition to the permit fees.

106.5.2 Fee schedule. ~~The fees for work shall be as indicated in the following schedule.~~ The fees for work shall be as indicated in ~~the following schedule:~~ the City's fee resolution.

106.5.3 Fee Refunds. ~~The code~~ building official shall may authorize the refunding of fees as follows.

1. The full amount of any fee paid hereunder which was erroneously paid or collected.

2. Not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code.

3. Not more than 80 percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or cancelled before any plan review effort has been expended.

The Building official shall not authorize the refunding of any fee paid, except upon written application filed by the original permittee not later than 180 days after the date of fee payment.

15.14.030 Amendment to IFGC Section 107.2.

Section 107.2 of the IFGC is amended to read as follows:

107.2 Testing. Installations shall be tested as required in this code and in accordance with Sections 107.2.1 through 107.2.3. Tests shall be made by the permit holder and observed by the code official.

* * *

Section 107.2.4 Reinspection Fee. A reinspection fee may be assessed for each inspection or reinspection when the work for which the inspection is requested is not complete or when corrections noted on previous inspections are not made.

This section is not to be interpreted as requiring reinspection fees the first time a job is rejected for failure to comply with code requirements, but rather that fees are intended as a means of controlling the practice of calling for inspections before the job is ready for inspection or reinspection.

Reinspection fees may also be assessed when the inspection record card is not available on the work site, the approved plans are not readily available to the inspector, for failure to provide access for the inspection or for deviating from plans requiring the approval of the building official.

To obtain a reinspection, the applicant shall file an application therefore in writing on a form furnished for that purpose and pay the reinspection fee in accordance with the City's fee resolution.

15.14.040 Amendment to IFGC Section 109

Section 109 of the IFGC is amended as follows:

~~Section 109.1 Application for appeal. A person shall have the right to appeal a decision of the code official to the board of appeals. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply or an equally good or better form of construction is proposed. The application shall be filed on a form obtained from the code official within 20 days after the notice was served.~~

~~109.2 Membership of the board. The board of appeals shall consist of five members appointed by the chief appointing authority as follows: one for five years; one for four years; one for three years; one for two years; and one for one year. Thereafter, each new member shall serve for five years or until a successor has been appointed.~~

~~109.2.1 Qualifications. The board of appeals shall consist of five individuals, one from each of the following professions or disciplines.~~

- ~~1. Registered design professional who is a registered architect; or a builder or superintendent of building construction with at least 10 years' experience, five of which shall have been in responsible charge of work.~~
 - ~~2. Registered design professional with structural engineering or architectural experience.~~
 - ~~3. Registered design professional with fuel gas and plumbing engineering experience; or a fuel gas contractor with at least 10 years' experience, five of which shall have been in responsible charge of work.~~
 - ~~4. Registered design professional with electrical engineering experience; or an electrical contractor with at least 10 years' experience, five of which shall have been in responsible charge of work.~~
 - ~~5. Registered design professional with fire protection engineering experience; or a fire protection contractor with at least 10 years' experience, five of which shall have been in responsible charge of work.~~
- ~~109.2.2 Alternate members. The chief appointing authority shall appoint two alternate members who shall be called by the board chairman to hear appeals during the absence or disqualification of a member. Alternate members shall possess the qualifications required for board membership and shall be appointed for five years, or until a successor has been appointed.~~
- ~~109.2.3 Chairman. The board shall annually select one of its members to serve as chairman.~~
- ~~109.2.4 Disqualification of member. A member shall not hear an appeal in which that member has a personal, professional or financial interest.~~
- ~~109.2.5 Secretary. The chief administrative officer shall designate a qualified clerk to serve as secretary to the board. The secretary shall file a detailed record of all proceedings in the office of the chief administrative officer.~~
- ~~109.2.6 Compensation of members. Compensation of members shall be determined by law.~~
- ~~109.3 Notice of meeting. The board shall meet upon notice from the chairman, within 10 days of the filing of an appeal, or at stated periodic meetings.~~
- ~~109.4 Open hearing. All hearings before the board shall be open to the public. The appellant, the appellant's representative, the code official and any person whose interests are affected shall be given an opportunity to be heard.~~
- ~~109.4.1 Procedure. The board shall adopt and make available to the public through the secretary procedures under which a hearing will be conducted. The procedures shall not require compliance with strict rules of evidence, but shall mandate that only relevant information be received.~~
- ~~109.5 Postponed hearing. When five members are not present to hear an appeal, either the appellant or the appellant's representative shall have the right to request a postponement of the hearing.~~
- ~~109.6 Board decision. The board shall modify or reverse the decision of the code official by a concurring vote of three members.~~
- ~~109.6.1 Resolution. The decision of the board shall be by resolution. Certified copies shall be furnished to the appellant and to the code official.~~
- ~~109.6.2 Administration. The code official shall take immediate action in accordance with the decision of the board.~~

~~109.7 Court review. Any person, whether or not a previous party to the appeal, shall have the right to apply to the appropriate court for a writ of certiorari to correct errors of law. Application for review shall be made in the manner and time required by law following the filing of the decision in the office of the chief administrative officer.~~

The Building Code Advisory Board shall hear and decide those appeals and interpretations described in chapter 15.02 GHMC, under the procedures set forth therein.

Section 16. A new chapter 15.16 is hereby added to the Gig Harbor

Municipal Code, which shall read as follows:

**Chapter 15.16
INTERNATIONAL FIRE CODE (IFC)**

Sections:

- 15.16.010 Amendment to IFC Section 102.5**
- 15.16.020 Amendment to IFC Section 103**
- 15.16.030 Amendment to IFC Section 105.1**
- 15.16.040 Amendment to IFC Section 106**
- 15.16.050 Amendment to IFC Section 108**
- 15.16.060 Amendment to IFC Section 109**
- 15.16.070 Amendment to IFC Section 202**
- 15.16.080 Amendment to IFC Section 503.1**
- 15.16.090 Amendment to IFC Section 503.2**
- 15.16.100 Amendment to IFC Section 503.6**
- 15.16.110 Amendment to IFC Section 506.1**
- 15.16.120 Amendment to IFC Section 508.1**
- 15.16.130 Amendment to IFC Section 508.5**
- 15.16.140 Amendment to IFC Section 605.1**
- 15.16.150 Amendment to IFC Section 902.1**
- 15.16.160 Amendment to IFC Section 903.2**
- 15.16.170 Amendment to IFC Section 907.2**

15.16.010 Amendment to IFC Section 102.5.

Section 102.5 of the IFC is amended to read as follows:

102.5 Historic Buildings. The construction, alteration, repair, enlargement, restoration, relocation or movement of buildings or structures that are designated as historic buildings when such buildings or structures do not constitute a distinct hazard to life or property shall be in accordance with the provisions of the International Existing Building Code adopted under Ch. 15.16 GHMC and the Washington State Historic Building Code adopted under Section 15.06.030 GHMC.

15.16.020 Amendment to IFC Section 103.

Section 103 of the IFC is amended to read as follows:

103.1 General. The Division of Fire and Building Safety department of fire prevention is established hereby created in the Community Development Department under the direction of the fire code official, for the purpose of enforcing this code; and the official in charge thereof shall be know as the building official/fire marshal. The function of the department shall be the implementation, administration and enforcement of the provisions of this code.

103.2 Appointment. The building official/fire marshal ~~fire code official~~ shall be appointed by the chief appointing authority of the City of Gig Harbor. ~~The jurisdiction; and the fire code official shall not be removed from office except for cause and after full opportunity to be heard on specific and relevant charges by and before the appointing authority.~~

103.3 Deputies. In accordance with the prescribed procedures of ~~this jurisdiction~~ the City of Gig Harbor and with the concurrence of the appointing authority, the building official/fire marshal shall have the authority to appoint an deputy assistant building official/fire marshal, the related technical officers, inspectors, plan examiners and other employees. Such employees shall have powers as delegated by the building official/fire marshal.

* * *

15.16.030 Amendment to IFC Section 105.1.

Section 105.1 of the IFC is amended to read as follows:

105.1 General. Permits shall be in accordance with Section 105.

105.1.1. Permits required. Permits required by this code shall be obtained from the fire code official. Permit fees shall be paid prior to issuance of a fire code operational or construction permit prescribed under IFC Section 105 as required in accordance with the City's permit fee resolution. Issued permits shall be kept on the premises designated therein at all times and shall be readily available for inspection by the fire code official.

105.1.2 Types of permits. There shall be two types of permits as follows:

1. Operational permit. An operational permit allows the applicant to conduct an operation or a business for which a permit is required by Section 105.6 for either:

- 1.1 a prescribed period;
- 1.2 until renewed or revoked.

2. Construction permit. A construction permit allows the applicant to install or modify systems and equipment for which a permit is required by Section 105.7.

105.1.3 Permits for the same location. When more than one permit is required for the same location, the fire code official is authorized to consolidate such permits into a single permit provided that each provision is listed in the permit.

15.16.040 Amendment to IFC Section 106.

Section 106 of the IFC is amended to add a new section 106.4, which shall read as follows:

Section 106.4 Reinspections. A reinspection fee may be assessed for each inspection or reinspection when the work for which the inspection is requested is not complete or when corrections noted on previous inspections are not made.

This section is not to be interpreted as requiring reinspection fees the first time a job is rejected for failure to comply with code requirements, but rather that fees are intended as a means of controlling the practice of calling for inspections before the job is ready for inspection or reinspection.

Reinspection fees may also be assessed when the inspection record card is not available on the work site, the approved plans are not readily available to the inspector, for failure to provide access for the inspection or for deviating from plans requiring the approval of the building official.

To obtain a reinspection, the applicant shall file an application therefore in writing on a form furnished for that purpose and pay the reinspection fee in accordance with the City fee resolution.

15.16.050 Amendment to IFC Section 108.

Section 108 of the IFC is repealed and a new Section 108 is hereby added, which shall read as follows:

108 Appeals. The Building Code Advisory Board shall hear and decide those appeals and interpretations described in chapter 15.02 GHMC, under the procedures set forth therein.

15.16.060 Amendment to IFC Section 109.

Section 109 of the IFC is repealed and a new Section 109 is hereby added, which shall read as follows:

109 Enforcement. Enforcement of violations of this code shall proceed as set forth in chapter 15.26 GHMC.

15.16.070 Amendment to IFC Section 202.

Section 202 of the IFC is amended to read as follows:

The following definitions and abbreviations are added to those found in Article 2 of the International Fire Code:

1. "AWWA" means the American Water Works Association.
2. "Dead-end main" means a water main over 50 feet long and not being fed from both ends at the time of installation.
3. "Expanding water system" means an approved, expanding water system which is undertaking new construction (definition follows) to provide water service to additional service connections. Any expanding water system shall install facilities sized to meet the necessary minimum design criteria for area being served. The expanding system shall show by plans submitted by a registered professional engineer how fire flow, if required, is to be provided and the plan shall be approved by the City of Gig Harbor.
4. Fire Code Official. The Building Official/Fire Marshal of the City of Gig Harbor or other designated authority charged with the administration and enforcement of the code or a duly authorized representative.
5. Fire Department is Pierce Co. Fire District No. 5.
6. Primary Fire Department Access Road. Means any road required to provide access to the front or main entry side of a property or structure.
7. "Private hydrant" means a fire hydrant situated and maintained to provide water for firefighting purposes with restrictions as to use. The location may be such that it is not readily accessible for immediate use by the fire department for other than certain private property.
8. "Public hydrant" means a fire hydrant so situated and maintained as to provide water for firefighting purposes without restriction as to use for the purpose. The location is such that it is accessible for immediate use of the fire department for all nearby property.
9. Secondary Fire Department Access Road. Means any on-site access road required to provide access to remote areas of a property or structure.
10. "Substantial alteration" is any alteration, where the total cost of all alterations (including but not limited to electrical, mechanical, plumbing, and structural changes) for a building or facility within any 12-month period amounts to 60 percent or more of the current assessed value established by the Pierce County Assessors Office.
11. "Water authority" and "purveyor" means the city public works department, a water district, or other body legally supplying water in the area and approved by the city.
12. "Yard system" means any extension from a transmission main and/or water main onto a development site.

15.16.080 Amendment to IFC Section 503.1.

Section 503.1 of the IFC is amended to read as follows:

503.1. Where required. Fire apparatus roads shall be provided and maintained in accordance with Sections 503.1.1 through 503.1.3.

503.1.1 Buildings and facilities. Approved fire apparatus access roads shall be provided for every facility, building or portion of a building hereafter constructed or moved into or within the jurisdiction. The fire apparatus access road shall comply with the requirements of this section and shall extend to within 150 feet (45720 mm) of all portions of the facility and all portions of the exterior walls of the first story of the building measured by an approved route around the exterior of the building or facility.

In those situations in which emergency vehicles must cross private property from a public right of way, the property owner shall grant an emergency vehicle access easement to the City of Gig Harbor and Pierce Co. Fire District #5 for such purposes. The form of the easement shall be approved by the City Attorney and recorded against the property at the property owners expense.

Exception: The fire code official is authorized to increase the dimension of 150 feet (45720 mm) where:

1. The building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1, 903.3.1.2, or 903.3.1.3.
2. Fire apparatus access roads cannot be installed because of location on property, topography, waterways, non-negotiable grades or other similar conditions, and an approved alternative means of fire protection is provided.
3. There are not more than two group R-3 or Group U occupancies.

15.16.090 Amendment to IFC Section 503.2.

Section 503.2.1 of the IFC is amended to read as follows:

503.2 Specifications. Fire apparatus access roads shall be installed and arranged in accordance with Sections 503.2.1 through 503.2.7.

503.2.1 Dimensions. Fire apparatus access roads shall have an unobstructed width of not less than 20 feet (6096 mm) except for approved security gates in accordance with Section 503.6, and an unobstructed vertical clearance of not less than 13 feet 6 inches (4115 mm).

Exception. Access roads not exceeding 100 ft. in length and serving not more than a one single family residence or one duplex or group U structure accessory to a single/two family residence may be a minimum of 12 feet in width.

* * *

15.16.100 Amendment to IFC Section 503.6.

Section 503.6 to the IFC is amended to read as follows:

503.6 Security gates. The installation of security gates across private fire apparatus access roads shall be approved by the ~~fire chief~~ building official/fire marshal and the city engineer. Where security gates are installed on primary fire department access roads, they shall ~~have an approved means of emergency operation.~~ be provided with optical communication controls as the primary means of emergency operation. Optical controls shall default to the open condition in the event of a power failure. Gates installed on secondary fire department access roads shall be provided with optical controls, an approved access key box at the gate, or an approved lock keyed to the fire department access key system. Security gates and the emergency operation shall be maintained operational at all times.

15.16.110 Amendment to IFC Section 506.1

Section 506.1 of the IFC is amended to read as follows:

506.1 Where required. Where access to or within a structure or an area is restricted because of secured openings or where immediate access is necessary for life-saving or fire-fighting purposes the building official/fire marshal is authorized to require a key box be installed in an approved location. Key boxes shall also be required for buildings containing fire suppression systems or fire alarm systems. The key box shall be of an approved type and shall contain keys to gain necessary access as required by the building official/fire marshal.

506.1.1 Locks. An approved lock shall be installed on gates or similar barriers when required by the fire code official.

15.16.120 Amendment to IFC Section 508.1.

Section 508.1 to the IFC is amended to read as follows:

508.1 Required water supply. An approved water supply capable of supplying the required fire flow for fire protection shall be provided to premises upon which facilities, buildings or portions of buildings are hereafter constructed or moved into or within the jurisdiction.

508.1.1 Private property easements. When water is provided to private property from facilities located in the public right of way, but such water facilities must cross private property owned by third parties, the property owner shall obtain, at his/her own expense, easement(s) granting access to the City of Gig Harbor, allowing the city access for installation, repair and maintenance of the fire flow system. The form of the easement shall be approved by the City Attorney and recorded against the property at the property owner's expense.

508.1.2 Certificate of water availability. Prior to approval of plans for new developments, the applicant shall submit a certificate of water availability from

the water purveyor, if other than the City of Gig Harbor, certifying the purveyor's ability and intention to provide the required fire flow at the site.

508.1.3 Water system plan approval. Plans and specifications for new, revised or extended water systems providing fire protection water supply shall be approved in writing by the fire code official.

508.1.4 Prior to final approval of a development's water system, two copies of the "as-built" drawings shall be filed with the Gig Harbor Community Development Department.

15.16.130 Amendment to IFC Section 508.5.

Section 508.5 of the IFC is amended to read as follows:

508.5 Fire hydrant systems. Fire hydrant systems shall comply with Sections 508.5.1 through 508.5.6.

508.5.1 Where required. Where a portion of the facility or building hereafter constructed or moved into or within the jurisdiction is more than 400 feet (122 m) from a hydrant on a fire apparatus access road, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains shall be provided where required by the building official/fire marshal. Fire hydrant locations shall be marked with a stake, flagging or other approved means by a land surveyor registered by the State of Washington, and the locations approved prior to installation. Fire hydrant systems shall be installed, tested and approved prior to beginning combustible construction.

Exceptions:

1. For group R-3 and Group U occupancies, the distance requirement shall be 600 feet (183 m)
2. For buildings equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2, the distance requirement shall be 600 feet (183 m).

508.5.2 Inspection, testing and maintenance. Newly installed fire hydrants shall be flow tested by an approved testing agency, in the presence of the fire marshal/building official or designee, to verify the systems ability to provide the required fire flow prior to final approval. Fire hydrant systems shall be subject to periodic tests as required by the building official/fire marshal. Fire hydrant systems shall be maintained in an operative condition at all times and shall be repaired where defective. Additions, repairs, alterations and servicing shall comply with approved standards.

* * *

Section 508.5.7 Type of hydrant. Standard hydrants shall have not less than five inch main valve openings with two, two and one-half inch outlets and one, four and one-half inch outlet. Hydrants shall comply with City of Gig Harbor public works standards. All four and one-half inch outlets shall be equipped with five inch Storz fittings.

Section 508.5.8 Fire hydrant system installations. Hydrant systems shall be installed in accordance with City of Gig Harbor Public Works Standards and NFPA 24, Standard for the Installation of Private Fire Service Mains and Their Appurtenances. Hydrants shall stand plumb and be set to finished grade. The bottom of the lowest outlet shall be no less than 18 inches above the finished grade and the bottom of the ground flange shall be no less than 1" above finished grade. The five inch storz fitting shall face the roadway.

Section 508.5.9 Backflow prevention. When required by the fire marshal/building official, private fire hydrant systems shall be separated from the public water system with an approved detector check valve installed in accordance with the manufacturer's installation instructions and City of Gig Harbor Public Works Standards.

15.16.140 Amendment to IFC Section 605.1.

Section 605.1 of the IFC is amended to read as follows:

605.1 Abatement of electrical hazards. Identified electrical hazards shall be abated. Identified hazardous electrical conditions in permanent wiring shall be brought to the attention of the ~~code official responsible for enforcement of the ICC Electrical Code.~~ State Department of Labor and Industries, Electrical Section. Electrical wiring, devices, appliances, and other equipment that is modified or damaged and constitutes an electrical shock or fire hazard shall not be used.

605.1.1 Electrical permit, inspections and approval required. A final inspection and certificate of occupancy will not be issued by the City of Gig Harbor without receipt of documentation of approval of electrical work by the Washington State Department of Labor and Industries, Electrical Section.

15.16.150 Amendment to IFC Section 902.1.

Section 902.1 of the IFC is amended to read as follows:

902.1 Definitions. The following words and terms shall, for the purposes of this chapter and as used elsewhere in this code, have the meanings shown herein:

* * *

SUBSTANTIAL REMODEL/RENOVATION. A building or structure undergoes substantial remodel/renovation when the value of the construction exceeds sixty

percent of the building valuation determined by the most recent Pierce County Assessors Office assessment.

* * *

15.16.160 Amendment to IFC Section 903.2.

Section 903.2.7 of the IFC is amended to read as follows:

903.2 Where required. Approved automatic sprinkler systems in new buildings and structures shall be provided in the locations described in this section.

* * *

903.2.7 Group R. An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area. Exception: Group R-3 occupancies subject to the requirements of the International Residential Code.

903.2.7.1 Application to existing structures. Automatic sprinklers shall be installed, tested and approved:

1. Whenever an existing building containing a Group R fire area is being substantially remodeled or renovated.
2. Whenever an existing building containing a Group R fire area incurs fire damage requiring repairs meeting the definition of substantial remodel/renovation.
3. In all existing hotels and motels annexed into the City of Gig Harbor within five years of the effective date of the annexation.

* * *

15.16.170 Amendment to Section 907.2 of the IFC.

Section 907.2 of the IFC is amended to read as follows:

907.2 Where required – new buildings and structures. An approved manual, automatic or manual and automatic fire alarm system shall be provided in new buildings and structures in accordance with Sections 907.2.1 through 907.2.23. Where automatic sprinkler protection installed in accordance with Section 903.3.1 or 903.3.1.2 is provided and connected to the building fire alarm system, automatic heat detection required by this section shall not be required.

An approved automatic fire detection system shall be installed in accordance with the provisions of this code and NFPA 72. Devices, combinations of devices, appliances and equipment shall comply with Section 907.1.2. The automatic fire detectors shall be smoke detectors, except that an approved alternative type of detector shall be installed in spaces such as boiler rooms where, during normal operation, products of combustion are present in sufficient quantity to actuate a smoke detector.

* * *

907.2.10.1.4 Existing Group R and I-1 Occupancies. Existing Group R and I-1 Occupancies not already provided with smoke alarms shall be provided with approved single and multiple station smoke alarms installed in accordance with Section 907.2.10.1.4.

Exception: Group R-3 occupancies subject to the requirements of the International Residential Code shall be subject to the smoke alarm requirements of that code.

907.2.10.1.4.1 Installation. Approved single or multiple station smoke alarms shall be installed in all existing Group R and Group I-1 occupancies in accordance with Section 907.2.10.

907.2.10.1.4.2 Retrofit Timing. Existing Group R and I-1 occupancies shall have smoke alarms installed in accordance with this code. ~~Within five years of the enactment of this code.~~ Occupancies subject to Section 907.2.10 and annexed into the City of Gig Harbor shall have smoke alarms installed in accordance with this section within five years of the date of annexation.

907.2.10.1.4.1 Permit and inspection required. A permit, inspection, and approval shall be required for the installation of smoke alarms required under this section. Permit fees shall be as established under the City's permit fee resolution.

15.16.110 Addition of a new chapter 46 to the IFC.

The IFC is amended to add a new chapter 46, which shall read as follows:

Chapter 46 MARINAS

Section 4601 Scope. Marina facilities shall be constructed, used, maintained and operated in accordance with this chapter.

Section 4602 Construction Permits, Plans and approvals. Building, plumbing, mechanical, and fire protection system permits for construction of marinas and their fire-protection facilities shall be approved prior to installation. The work shall be subject to final inspection and approval after installation.

Exception: A building permit is not required for installation of floats, however float systems must comply with all requirements of this chapter including Section 4606.5.

Section 4603 Operational Permits. A permit is required to use open-flame devices for maintenance or repair on vessels, floats, piers or wharves.

Section 4604 Definitions.The following words and terms shall, for the purpose of this chapter and as used elsewhere in this code, have the meanings shown herein.

FLOAT is a floating structure normally used as a point of transfer for passengers and goods, or both, for mooring purposes.

MARINA is any portion of the ocean or inland water, either naturally or artificially protected, for the mooring, servicing or safety of vessels and shall include artificially protected works, the public or private lands ashore, and structures or facilities provided within the enclosed body of water and ashore for the mooring or servicing of vessels or the servicing of their crews or passengers.

PIER is a structure built over the water, supported by pillars or piles, and used as a landing place, pleasure pavilion or similar purpose.

VESSEL is watercraft of any type, other than seaplanes on the water, used or capable of being used as a means of transportation. Included in this definition are non-transportation vessels such as houseboats and boathouses.

WHARF is a structure or bulkhead constructed of wood, stone, concrete or similar material built at the shore of a harbor, lake or river for vessels to lie alongside of, and piers or floats to be anchored to.

Section 4605 General Precautions

4605.1 Combustible Debris. Combustible debris and rubbish shall not be deposited or accumulated on land beneath marina structures, piers or wharves.

4605.2 Sources of Ignition. The use of open flame devices for lighting or decoration on the exterior of a vessel, float, pier or wharf shall have the prior approval of the building official/fire marshal.

4605.3 Flammable or Combustible Liquid Spills. Spills of flammable or combustible liquids at or upon the water shall be reported immediately to the fire department or jurisdictional authorities.

4605.4 Rubbish Containers. Containers with tight-fitting or self-closing lids shall be provided for the temporary storage of combustible trash or rubbish.

4605.5 Electrical Equipment. Electrical equipment shall be installed and used in accordance with its listing and Section 605 of the IFC as required for wet, damp and hazardous locations.

4605.7 Slip Identification. Slips and mooring spaces shall be individually identified by an approved numeric or alphabetic designator. Space designators shall be posted at the space. Signs indicating the space designators located on finger piers and floats shall be posted at the base of all piers, finger piers, floats, and finger floats.

Section 4606 FIRE-PROTECTION

4606.1 General. Marinas, piers, wharves, floats with facilities for mooring or servicing five or more vessels, and marine motor vehicle fuel-dispensing stations shall be equipped with fire-protection equipment in accordance with Section 4606.

4606.2 Standpipes. Marinas shall be equipped throughout with standpipe systems in accordance with NFPA 303.

4606.3 Access and Water Supply. Piers and wharves shall be provided with fire apparatus access roads and water-supply systems with on-site fire hydrants whenever any point in the marina exceeds 250 feet from an approved fire department access or water supply or when otherwise required by the fire code official.

4606.4 Portable Fire Extinguishers. One fire extinguisher with a minimum rating of 2A:10 BC shall be provided at each required hose station or standpipe outlet and within 75 feet of all points on the float system. Additional fire extinguishers, suitable for the hazards involved, shall be provided and maintained in accordance with IFC Section 906.

4606.5 Communications. A telephone not requiring a coin to operate or other approved, clearly identified means to notify the fire department shall be provided on the site in a location approved by the building official/fire marshal.

4606.5 Equipment staging areas. Space shall be provided on all float systems for the staging of emergency equipment. Staging areas shall provide a minimum of 4 feet wide by 10 feet long clear area exclusive of walkways and shall be located such that no point on the floats is further than 100 feet walking distance from a staging area.

Section 4607 MARINE MOTOR VEHICLE FUEL-DISPENSING STATIONS

4607.1 Fuel- Dispensing. Marine motor vehicle fuel-dispensing stations shall be in accordance with IFC Chapter 22.

Section 15. A new chapter 15.18 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

**Chapter 15.18
INTERNATIONAL EXISTING BUILDING CODE (IEBC)**

Sections:

- 15.18.010 Amendment to IEBC Section 101.5**
- 15.18.020 Amendment to IEBC Section 102.2**
- 15.18.030 Amendment to IEBC Section 103**
- 15.18.040 Amendment to IEBC Section 105.1**
- 15.18.050 Amendment to IEBC Section 105.2**
- 15.18.060 Amendment to IEBC Section 108**
- 15.18.070 Amendment to IEBC Section 112**
- 15.18.080 Amendment to IEBC Section 202**
- 15.18.090 Amendment to IEBC Section 302.2**
- 15.18.100 Amendment to IEBC Section 309.2**
- 15.18.110 Amendment to IEBC Section 408**
- 15.18.120 Amendment to IEBC Section 1201.2**

15.18.010 Amendment to IEBC Section 101.5.

Section 101.5 of the IEBC is amended to read as follows:

101.5 Maintenance. Buildings and parts thereof shall be maintained in a safe and sanitary condition. ~~The provisions of the International Property Maintenance Code shall apply to the maintenance of existing buildings and premises; equipment and facilities; light, ventilation, space heating, sanitation, life and fire safety hazards; responsibilities of owners, operators, and occupants; and occupancy of existing premises and buildings.~~ All existing devices or safeguards shall be maintained in all existing buildings. The owner or the owner's designated agent shall be responsible for the maintenance of the building. To determine compliance with this subsection, the code official shall have the authority to require a building to be reinspected. Except where specifically permitted by this code, the code shall not provide the basis for removal or abrogation of fire protection and safety systems and devices in existing buildings.

15.18.020 Amendment to IEBC Section 102.2.

~~Section 102.2 of the IEBC is amended to read as follows:~~

~~102.2 Other laws. The provisions of this code shall not be deemed to nullify any provisions of local, state or federal law.~~

15.18.030 Amendment to IEBC Section 103.

Section 103 of the IEBC is amended to read as follows:

103.1 Creation of enforcement agency. The Division of Fire and Building Safety is hereby created in the Community Development Department for the purpose of enforcing this code; and the official in charge thereof shall be know as the building official/fire marshal.

103.2 Appointment. The building official/fire marshal shall be appointed by the chief appointing authority of the City of Gig Harbor.

103.3 Deputies. In accordance with the prescribed procedures of the City of Gig Harbor and with the concurrence of the appointing authority, the building official/fire marshal shall have the authority to appoint an deputy assistant building official/fire marshal, the related technical officers, inspectors, plan examiners and other employees. Such employees shall have powers as delegated by the building official/fire marshal. ~~For the maintenance of existing properties, see the International Property Maintenance Code.~~

15.18.040 Amendment to IEBC Section 105.1.

Section 105.1 is amended as follows:

105.1 Required Any owner or authorized agent who intends to repair, add to, alter, relocate, demolish, or change the occupancy of a building or to repair, install, add, alter, remove, convert, or replace any electrical, gas, mechanical, or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the code official and obtain the required permit. A building permit shall also be required for the installation or structural modification of a sign which will be attached to building or be self supporting with the top of the sign over 36 inches above grade. The obtaining of a building permit for the installation or structural modification of a sign does not exempt the applicant from obtaining the necessary sign permit.

15.18.050 Amendment to IEBC Section 105.2.

Section 105.2 of the IEBC is amended to read as follows:

105.2 Work exempt from permit. Exemptions from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction. Permits shall not be required for the following:

Building:

1. One-story detached accessory structures used as tool and storage sheds, play houses and similar uses, provided the floor area does not exceed ~~120~~ 200 square feet (18.58 m²)
2. Sidewalks, driveways and platforms not more than 30 inches (762 mm) above grade and not over any basement or story below and which are not part of an accessible route.
3. Painting, papering, tiling, carpeting, cabinets, countertops, and similar finish work.
4. Shade cloth structures constructed for nursery or agricultural purposes, and not including service systems.

5. Window awnings supported by an exterior wall of Group R-3 or Group U occupancies.

6. Movable cases, counters, and partitions not over 69 inches (1753 mm) in height.

7. All interior signs, flags, pennants, streamers, banners, balloons, inflatable signs, the painting of a sign on glazing, the change of a sign plastic face and other nonstructural modifications to a sign which is attached to a building or nonstructural modifications to a self supported sign. This exception does not exempt the applicant from obtaining the necessary sign permit.

Exemption from the permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction.

Electrical:

~~Repairs and maintenance: Minor repair work, including the replacement of lamps or the connection of approved permanently installed receptacles.~~

~~Radio and television transmitting stations: The provisions of this code shall not apply to electrical equipment used for radio and television transmissions, but do apply to equipment and wiring for power supply, the installation of towers and antennas.~~

~~Temporary testing systems: A permit shall not be required for the installation of any temporary system required for the testing or servicing of electrical equipment or apparatus.~~

Electrical permits, inspections and approvals shall be under the jurisdiction of the Washington State Department of Labor and Industries, Electrical Section.

Gas:

1. Portable heating appliance.
2. Replacement of any minor part that does not alter approval of equipment or make such equipment unsafe.

Mechanical:

1. Portable heating appliance.
2. Portable ventilation equipment.
3. Portable cooling unit;
4. Steam, hot, or chilled water piping within any heating or cooling equipment regulated by this code.
5. Replacement of an part that does not alter its approval or make it unsafe.
6. Portable evaporative cooler.
7. Self-contained refrigeration system containing 10 pounds (4.54 kg) or less of refrigerant and actuated by motors of 1 horsepower (746 W) or less.

Plumbing:

1. The stopping of leaks in drains, water, soil, waste, or vent pipe, provided, however, that if any concealed trap, drainpipe, water soil, waste, or vent pipe becomes defective and it becomes necessary to remove and replace the same

with new material, such work shall be considered as new work, and a permit shall be obtained and inspection made as provided in this code.

2. The clearing of stoppages or the repairing of leaks in pipes, valves or fixtures, and the removal and reinstallation of water closets, provided such repairs do not involve or require the replacement or rearrangement of valves, pipes or fixtures.

15.18.060 Amendment to IEBC Section 108.

Section 108 of the IEBC is amended to read as follows:

108.1 Payment of fees. A permit shall not be valid until the fees prescribed by law have been paid. Nor shall an amendment to a permit be released until the additional fee, if any, has been paid.

108.2 Schedule of permit fees. On buildings, structures, ~~electrical,~~ gas, mechanical and plumbing systems or alterations requiring a permit, a fee for each permit shall be paid as required in accordance with the schedule established by ~~the applicable governing authority~~ in the City permit fee resolution.

108.3 Building permit valuations. The applicant for a permit shall provide an estimated permit value at the time of application. Permit valuations shall include the total value of work, including materials, labor, normal site preparation, architectural and design fees, overhead and profit, for which the permit is being issued, such as gas, mechanical, plumbing equipment and permanent systems.

If, in the opinion of the building official, the valuation is underestimated on the application, ~~the permit shall be denied,~~ the valuation shall be based on the valuation as determined using the most current Table 1, Square Foot Construction Costs contained in the Building Valuation Data published by the International Code Council, unless the applicant can show detailed estimates to meet the approval of the building official. Final building permit valuation shall be set by the building official.

108.4 Work commencing before permit issuance. Any person who commences work on a building, structure, ~~electrical,~~ gas, mechanical, or plumbing system before obtaining the necessary permits shall be subject to a fee established by ~~the building official in the City's permit fee resolution that shall be in addition to~~ the required permit fees.

108.5 Related fees. The payment of a fee for the construction, alteration, removal, or demolition of work done in connection to or concurrently with the work authorized by a building permit shall not relieve the applicant or holder of the permit from the payment of other fees that are prescribed by law.

108.6 Refunds. ~~The building official is authorized to establish a refund policy.~~ The building official may authorize refunding of any fee paid hereunder which was erroneously paid or collected.

The building official may authorize refunding of not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code.

The building official may authorize refunding of not more than 80 percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or cancelled before any plan reviewing is done.

The building official shall not authorize refunding of any fee paid except on written application filed by the original permittee not later than 180 days after the date of fee payment.

15.18.070 Amendment to IEBC Section 112.

Section 112 of the IEBC is amended as follows:

~~112.1 General. In order to hear and decide appeals of orders, decisions, or determinations made by the building official relative to the application and interpretation of this code, there shall be and is hereby created a board of appeals. The board of appeals shall be appointed by the governing body and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business. The Building Code Advisory Board shall hear and decide those appeals and interpretations described in chapter 15.02 GHMC.~~

15.18.080 Amendment to IEBC Section 202.

Section 202 of the IEBC is amended as follows:

Plumbing Code. The plumbing code adopted by the State of Washington and City of Gig Harbor shall be the referenced plumbing code.

Electrical Code. The electrical code adopted by the State of Washington shall be the referenced electrical code.

The state of Washington Department of Labor and Industries, Electrical Section shall be the electrical jurisdiction Code Official. Where the term "code official" is used in this code it shall mean the Building Official/Fire Marshal of the City of Gig Harbor or his/her authorized representative.

15.18.090 Amendment to IEBC Section 308.2.

Section 308.2 of the IEBC is amended as follows:

308.2 Application. Except as specifically provided for in the Washington State Historic Building Code and Chapter 10 of this code, historic buildings shall comply with applicable provisions of this code for the type of work being performed.

15.18.100 Amendment to IEBC Section 309.2.

Section 309.2 of the IEBC is amended as follows:

309.2 Application. Relocated buildings shall comply with the provisions of Chapter 11 and the building code.

15.18.110 Amendment to IEBC Section 408.

Section 408.1 is amended as follows:

408.1 Material. Existing electrical wiring and equipment undergoing repair shall be allowed to be repaired or replaced with like material as approved by the State of Washington, Department of Labor and Industries, Electrical Section.

15.18.120 Amendment to IEBC Section 1201.2.

Section 1201.2 is amended as follows:

1201.2 Applicability. Structures existing prior to the date of adoption of this code, in which there is work involving additions, alterations, or changes of occupancy shall be made to conform with the requirements of this chapter or the provisions of Chapters 4 through 10. The provisions of Sections 1201.2.1 through 1201.2.5 shall apply to existing occupancies that will continue to be, or are proposed to be, in Groups A,B,E,F,M,R, and S. These provisions shall not apply to buildings with occupancies in Group H or Group I.

Section 18. Chapter 15.18 of the Gig Harbor Municipal Code is hereby repealed.

Section 19. A new Chapter 15.20 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

**15.20
UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS
(UCADB)**

Sections:

- 15.20.010 Amendment to UCADB Section 103**
- 15.20.020 Amendment to UCADB Section 201**
- 15.20.030 Amendment to UCADB Section 205.1**
- 15.20.040 Amendment to UCADB Section 301**
- 15.20.050 Repeal of UCADB Section 501**
- 15.20.060 Repeal of UCADB Section 502**
- 15.20.070 Repeal of UCADB Section 503**
- 15.20.080 Repeal of UCADB Section 504**
- 15.20.090 Repeal of UCADB Section 601**
- 15.20.100 Repeal of UCADB Section 602**
- 15.20.110 Repeal of UCADB Section 603**

- 15.20.120 Repeal of UCADB Section 604
- 15.20.130 Repeal of UCADB Section 605
- 15.20.140 Repeal of UCADB Section 801
- 15.20.150 Repeal of UCADB Section 802
- 15.20.160 Repeal of UCADB Section 901
- 15.20.170 Repeal of UCADB Section 902
- 15.20.180 Repeal of UCADB Section 903.
- 15.20.190 Repeal of UCADB Section 904
- 15.20.200 Repeal of UCADB Section 905
- 15.20.210 Repeal of UCADB Section 906
- 15.20.220 Repeal of UCADB Section 907
- 15.20.230 Repeal of UCADB Section 908
- 15.20.240 Repeal of UCADB Section 909
- 15.20.250 Repeal of UCADB Section 910
- 15.20.260 Repeal of UCADB Section 911
- 15.20.170 Repeal of UCADB Section 912

15.20.010. Amendment to UCADB Section 103.

Section 103 of the UCADB is amended as follows:

103. All buildings or structures which are required to be repaired under the provisions of this code shall be subject to the provisions of Section 3403 of the International Building Code, and the International Existing Building Code as adopted by the City of Gig Harbor.

15.20.020 Amendment to UCADB Section 201.

201.1 Administration. The building official/fire marshal is hereby authorized to enforce the provisions of this code. The building official shall have the power to render interpretations of this code and to adopt and enforce rules and supplemental regulations in order to clarify the application of its provisions. Such interpretations, rules and regulations shall be in conformity with the intent and purpose of this code.

201.2 Inspections. The health officer and the building official/fire marshal are hereby authorized to make such inspections and take such actions as may be required to enforce the provisions of this code.

* * *

15.20.030 Amendment to UCADB Section 205.1

Section 205.1 is amended as follows:

~~205.1 General. In order to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretations of this code, there shall be and is hereby created a board of appeals consisting of members who are qualified by experience and training to~~

~~pass upon matters pertaining to building construction and who are not employees of the jurisdiction. The building official shall be an ex officio member and shall act as secretary to said board but shall have no vote upon any matter before the board. The board of appeals shall be appointed by the governing body and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business and shall render all decisions and findings in writing to the appellant, with a duplicate copy to the building official. Appeals to the board shall be processed in accordance with the provisions contained in Section 501 of this code. Copies of all rules or regulations adopted by the board shall be delivered to the building official, who shall make them freely accessible to the public.—The Building Code Advisory Board shall hear those appeals and interpretations described in chapter 15.02 GHMC.~~

15.20.040 Amendment to UCADB Section 301.

Section 301 is amended as follows:

BUILDING CODE is the International Building Code promulgated by the International Code Council as adopted by the City of Gig Harbor.

BUILDING OFFICIAL is the building official/fire marshal of the City of Gig Harbor or his/her authorized representative.

DIRECTOR OF PUBLIC WORKS is the community development director of the City of Gig Harbor or his/her authorized representative.

15.20.050. Repeal of UCADB Section 501.

Section 501 of Chapter 5 of the UCADB is hereby repealed.

15.20.060. Repeal of UCADB Section 502.

Section 502 of the UCADB is hereby repealed.

15.20.070. Repeal of UCADB Section 503.

Section 503 of the UCADB is hereby repealed.

15.20.080 Repeal of UCADB Section 504.

Section 504 of the UCADB is hereby repealed.

15.20.090 Repeal of UCADB Section 601.

Section 601 of the UCADB is hereby repealed.

15.20.100. Repeal of UCADB Section 602.

Section 602 of the UCADB is hereby repealed.

15.20.110. Repeal of UCADB Section 603.

Section 603 of the UCADB is hereby repealed.

15.20.120. Repeal of UCADB Section 604

Section 604 of the UCADB is hereby repealed.

15.20.130. Repeal of UCADB Section 605.

Section 605 of the UCADB is hereby repealed.

15.20.140. Repeal of UCADB Section 801.

Section 801 of the UCADB is hereby repealed.

15.20.150. Repeal of UCADB Section 802.

Section 802 of the UCADB is hereby repealed.

15.20.160. Repeal of UCADB Section 901.

Section 901 of the UCADB is hereby repealed.

15.20.170. Repeal of UCADB Section 902.

Section 902 of the UCADB is hereby repealed.

15.20.180. Repeal of UCADB Section 903.

Section 903 of the UCADB is hereby repealed.

15.20.190. Repeal of UCADB Section 904.

Section 904 of the UCADB is hereby repealed.

15.20.200. Repeal of UCADB Section 905

Section 905 of the UCADB is hereby repealed.

15.20.210. Repeal of UCADB Section 906.

Section 906 of the UCADB is hereby repealed.

15.20.220. Repeal of UCADB Section 907.

Section 907 of the UCADB is hereby repealed.

15.20.230. Repeal of UCADB Section 908.

Section 908 of the UCADB is hereby repealed.

15.20.240. Repeal of UCADB Section 909.

Section 909 of the UCADB is hereby repealed.

15.20.250. Repeal of UCADB Section 910.

Section 910 of the UCADB is hereby repealed.

15.20.260. Repeal of UCADB Section 911.

Section 911 of the UCADB is hereby repealed.

15.20.270. Repeal of UCADB Section 912.

Section 912 of the UCADB is hereby repealed.

Section 19. A new chapter 15.22 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

**15.22
UNIFORM PLUMBING CODE (UPC)**

Sections:

15.22.010 Amendment to UPC Section 102.1

15.22.020 Amendment to UPC Section 102.2

15.22.030 Amendment to UPC Section 102.3

15.22.040 Amendment to UPC Section 103.1

15.22.050 Amendment to UPC Section 103.4

15.22.060 Amendment to UPC Section 103.5

15.22.070 Amendment to UPC Section 203.0

15.22.010 Amendment to UPC Section 102.1

Section 102.1 of the UPC is amended as follows:

102.0 Organization and Enforcement.

102.1 Authority having Jurisdiction. The Authority having Jurisdiction shall be the City of Gig Harbor. ~~Authority duly appointed to enforce this code.~~

15.22.020 Amendment to UPC Section 102.2

Section 102.2 of the UPC is amended to read as follows:

102.2 Duties and Powers of the Authority having Jurisdiction.

102.2.1 ~~The Authority Having Jurisdiction building official/fire marshal~~ may appoint such assistants, deputies, inspectors, or other employees as are necessary to carry out the functions of the department and this code.

* * *

102.2.3 Stop Orders. Stop Work Orders may be issued by the building official/fire marshal as provided in chapter 15.26 GHMC. ~~Whenever any work is being done contrary to the provisions of this code, the Authority having Jurisdiction may order the work stopped by notice in writing served on any persons engaged in the doing or causing such work to be done, and any such persons shall forthwith stop work until authorized by the Authority Having Jurisdiction.~~

* * *

102.2.5 Authority to ~~Censure~~ Abate. Whenever the Authority Having Jurisdiction ascertains that any plumbing system or portion thereof, regulated by this code, has become hazardous to life, health, property, or has become insanitary, the Authority Having Jurisdiction shall order in writing that such plumbing either be removed or placed in a safe or sanitary condition, as appropriate. The order shall issue as provided in chapter 15.26 GHMC, and shall fix a reasonable time for compliance. No persons shall use or maintain defective plumbing after receiving such notice. When such plumbing system is to be disconnected, written notice shall be given. In cases of immediate danger to life or property, such disconnection may be made immediately without such notice.

* * *

15.22.030 Amendment to UPC Section 102.3.

Section 102.3 of the UPC is hereby amended to read as follows:

102.3 Violations and Penalties.

102.3.1 Violations. Enforcement of violations of this code shall proceed as set forth in chapter 15.26 GHMC. ~~It shall be unlawful for any person, firm, or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert, demolish, equip, use or maintain any plumbing or permit the same to be done in violation of this code.~~

~~102.3.2 Penalties. Any person, firm, or corporation violating any provision of this code shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punishable by a fine and/or imprisonment set forth by the governing laws of the jurisdiction. Each separate day or any portion thereof, during which any violation of this code occurs or continues, shall be deemed to constitute a separate offense.~~

15.22.040 Amendment to UPC Section 103.1

Section 103.1 is amended as follows:

103.1 Permits.

* * *

103.1.3 Licensing. Except as allowed under state law, all persons performing work on any system regulated by this code shall be licensed in accordance with the licensing requirements of the state Department of Licensing. Proof of current licensing may be required at the time of permit application. ~~As a result of an agreement between the Department of Housing and Urban Development (HUD) and IAPMO, the requirements for licensing have been removed from this section of the UPC. Provision for licensing shall be determined by the Authority Having Jurisdiction.~~

15.22.050 Amendment to UPC Section 103.4.

Section 103.4. is amended as follows:

103.4.Fees

103.4.1 Permit Fees. Fees shall be assessed in accordance with the provisions of this section and as set forth in the City's fee resolution. ~~The fee schedule Table 1-1. The fees are to be determined and adopted by this jurisdiction.~~

103.4.2 Plan Review Fees. When a plan or other data is required to be submitted by Section 103.2.2, a plan review fee shall be paid at the time of submitting plans and specifications for review.

The plan review fees for plumbing work shall be as ~~determined and adopted by this jurisdiction~~ set forth in GHMC 3.40.

The plan review fees specified in this subsection are separate fees from the permit fees specified in this section and are in addition to the permit fees.

When plans are incomplete or changed so as to require additional review, a fee shall be charged ~~at the rate shown in Table 1-1~~ as set forth in the City's fees resolution.

* * *

103.4.4 Investigation Fees: work without a permit.

* * *

103.4.4.2 An investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. The investigation fee shall be equal to the amount of the permit fee that would be required by this code if a permit were to be issued. as set forth in GHMC 3.40. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this code, nor from any penalty prescribed by law.

* * *

103.4.5 Fee Refunds.

* * *

~~103.4.5.2 The Authority Having Jurisdiction may authorize the refunding of not more than a percentage, as determined by this jurisdiction when no work has been done under a permit issued in accordance with this code. The building official may authorize refunding of not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code.~~

~~103.4.5.3 The Authority Having Jurisdiction may authorize the refunding of not more than a percentage, as determined by this jurisdiction when no work has been done under a permit issued in accordance with this code. The building official may authorize refunding of not more than 80 percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or cancelled before any plan reviewing is done.~~

The Authority Having Jurisdiction building official shall not authorize refunding of any fee paid except on written application filed by the original permittee not later than 180 days after the date of fee payment.

15.22.060 Amendment to UPC Section 103.5.

Section 103.5 is amended as follows:

103.5 Inspections.

* * *

103.5.6 Reinspections. A reinspection fee as set forth in GHMC 3.40 may be assessed for each inspection or reinspection when such portion of work for which inspection is called is not complete or when required corrections have not been made.

This provision is not to be interpreted as requiring reinspection fees the first time a job is rejected for failure to comply with the requirements of this code, but as controlling the practice of calling for inspections before the job is ready for inspection or reinspection.

Reinspection fees may be assessed when the approved plans are not readily available to the inspector, for failure to provide access on the date for which the inspection is requested, or for deviating from plans requiring the approval of the Authority Having Jurisdiction.

To obtain reinspection, the applicant shall file ~~an application therefor in writing upon a form furnished for that purpose and~~ a written request for reinspection and pay the reinspection fee in accordance with ~~Table 1-1. GHMC 3.40.~~

In instances where reinspection fees have been assessed, no additional inspection of the work will be performed until the required fees have been paid.

* * *

15.22.070 Amendment to UPC Section 203.0.

Section 203.0 of the UPC is amended as follows:

Authority Having Jurisdiction – ~~The organization, office, or individual responsible for enforcing the requirements of a code or standard, or for approving equipment, materials, installations, or procedures. The Authority Having Jurisdiction shall be a federal, state, local, or other regional department or an individual such as a plumbing official; mechanical official; labor department official, health department official, building official or others having statutory authority, the Authority Having Jurisdiction may be some other responsible party. The building official/fire marshal of the City of Gig Harbor shall be the Authority Having Jurisdiction for the purposes of this code.~~ This definition shall include the Authority Having Jurisdiction's duly authorized representative.

Section 20. Chapter 15.32 of the Gig Harbor Municipal Code is hereby repealed.

Section 21. A new chapter 15.24 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

Chapter 15.24 ENFORCEMENT

Sections:

- 15.24.010 Violations.**
- 15.24.004 Duty to enforce.**
- 15.24.006 Investigation and notice of violation.**
- 15.24.008 Time to comply.**
- 15.24.010 Stop work order.**
- 15.24.012 Emergency order.**
- 15.24.014 Review by hearing examiner.**
- 15.24.016 Civil penalty.**

15.24.018 Criminal penalties.

15.24.020 Additional relief.

15.24.010 Violations.

~~A. Building Code Violation. Building code violations are described in the Uniform Building Code (UBC) Section 103, as the same now exists or may hereafter be amended.~~

~~B. Plumbing Code Violation. Plumbing code violations are described in the Uniform Plumbing Code (UPC) Section 102.3.1, as the same now exists or may hereafter be amended.~~

~~C. Mechanical Code Violation. Mechanical code violations are described in the Uniform Mechanical Code (UMC) Section 111, as the same now exists or may hereafter be amended.~~

~~D. Fire Code Violation. Fire code violations are described in the Uniform Fire Code (UFC) Article 103.4, as the same now exists or may hereafter be amended.~~

~~E. Energy Code Violation. Energy code violations are described in WAC 51-11-0106, as the same now exists or may hereafter be amended.~~

~~F. Indoor Air Quality Violation. Indoor air quality code violations are described in WAC 51-13-107, as the same now exists or may hereafter be amended.~~

It shall be unlawful for any person, firm or corporation to erect, construct, alter, extend, repair, move, remove, demolish or occupy any building, structure or equipment regulated by any code adopted in Title 15, or cause same to be done, in conflict with or in violation of any of the provisions of this code.

~~G.B Additional Violations. In addition to the above, it is a violation of GHMC Title 15 to:~~

- ~~1. Remove or deface any sign, notice, complaint or order required by or posted in accordance with this chapter;~~
- ~~2. To misrepresent any material fact in any application, plans or other information submitted to obtain any building or construction authorization;~~
- ~~3. Fail to comply with any of the requirements of GHMC Title 15, including any requirement of the Uniform City's Codes and state codes adopted by reference herein.~~

15.24.020 Duty to enforce.

A. ~~The~~ It shall be the duty of the building official/fire marshal shall have the ability to enforce this chapter. The building official/fire marshal may call upon the police, fire, planning and community development or other appropriate city departments to assist in enforcement. As used in this chapter, "building official/fire marshal" shall also mean his or her duly authorized representative.

B. Upon presentation of proper credentials, the building official/fire marshal may, with the consent of the owner or occupier of a building or premises, or pursuant to a lawfully issued inspection warrant, enter at reasonable times any building or

premises subject to the consent or warrant, in order to perform the duties imposed by GHMC Title 15.

~~C. In lieu of the enforcement procedures set forth in this chapter, the building official may implement the enforcement procedures set forth in any of the Uniform codes adopted by reference in GHMC Title 15.~~

C. This chapter shall be enforced for the benefit of the health, safety and welfare of the general public, and not for the benefit of any particular person or class of persons.

D. It is the intent of this chapter to place the obligation of complying with its requirements upon the owner, occupier or other person responsible for the condition of the land and buildings within the scope of GHMC Title 15.

E. No provision of or any term used in this chapter is intended to impose any duty upon the city or any of its officers or employees which would subject them to damages in a civil action.

15.24.030 Investigation and notice of violation.

A. Investigation. The building official/fire marshal shall investigate any structure or use which the building official/fire marshal reasonably believes does not comply with the standards and requirements of GHMC Title 15.

B. Notice of Violation. If after investigation, the building official/fire marshal determines that the standards or requirements of GHMC Title 15 have been violated, the building official/fire marshal shall serve a notice of violation upon the owner, tenant or other person responsible for the condition. The notice of violation shall contain the following information:

1. A separate statement of each standard, code provision or requirement violated;

2. What corrective action, if any, is necessary to comply with the standards, code provision or requirements;

3. A reasonable time for compliance;

4. A statement that if the violation is not already subject to criminal prosecution, that any

subsequent violations may result in criminal prosecution as provided in GHMC 15.26.018.

C. Service. The notice shall be served on the owner, tenant or other person responsible for the condition by personal service, registered mail, or certified mail with return receipt requested,

addressed to the last known address of such person. If, after a reasonable search and reasonable efforts are made to obtain service, the whereabouts of the person(s) is unknown or service cannot be accomplished and the building official/fire marshal makes an affidavit to that effect, then service of the notice upon such person(s) may be made by:

1. Publishing the notice once each week for two consecutive weeks in the city's official newspaper; and
 2. Mailing a copy of the notice to each person named on the notice of violation by first class mail to the last known address if ~~known~~ as shown on the official Pierce County Assessors parcel data, or if unknown, to the address of the property involved in the proceedings.
- D. Posting. A copy of the notice shall be posted at a conspicuous place on the property, unless posting the notice is not physically possible.
- E. Other Actions May Be Taken. Nothing in this section shall be deemed to limit or preclude any action or proceeding pursuant to GHMC 15.26.010, 15.26.012, 15.26.018 or 15.26.020.
- F. Optional Notice to Others. The building official/fire marshal may mail, or cause to be delivered to all residential and/or nonresidential rental units in the structure or post at a conspicuous place on the property, a notice which informs each recipient or resident about the notice of violation, stop work order or emergency order and the applicable requirements and procedures.
- G. Amendment. A notice or order may be amended at any time in order to:
1. Correct clerical errors; or
 2. Cite additional authority for a stated violation.
- H. Withdrawal. The City may choose to withdraw a notice of violation at any time, without prejudice to the City's ability to re-issue it, if a certificate of compliance has not been obtained for the specific violations.

15.24.040 Time to comply.

- A. Determination of Time. When calculating a reasonable time for compliance, the building official shall consider the following criteria:
1. The type and degree of violation cited in the notice;
 2. The stated intent, if any, of a responsible party to take steps to comply;
 3. The procedural requirements for obtaining a permit to carry out corrective action;
 4. The complexity of the corrective action, including seasonal considerations, construction requirements and the legal prerogatives of landlords and tenants; and
 5. Any other circumstances beyond the control of the responsible party.
- B. Order Becomes Final Unless Appealed. Unless an appeal is filed with the building official/fire marshal for hearing before the hearing examiner in accordance with GHMC 15.26.014, the notice of violation shall become the final order of the building official/fire marshal. A copy of the notice shall be filed with the Pierce County auditor. The building official/fire marshal may choose not to file a copy of the notice or order if the notice or order is directed only to a responsible person other than the owner of the property.

15.24.050 Stop work order.

Whenever a continuing violation of this code will materially impair the building official/fire marshal's ability to secure compliance with this code, or when the continuing violation threatens the health or safety of the public, the building official/fire marshal may issue a stop work order specifying the violation and prohibiting any work or other activity at the site. A failure to comply with a stop work order shall constitute a violation of this chapter.

15.24.060 Emergency order.

Whenever any use or activity in violation of GHMC Title 15 threatens the health and safety of the occupants of the premises or any member of the public, the building official/fire marshal may issue an emergency order directing that the use or activity be discontinued and the condition causing the threat to the public health and safety be corrected. The emergency order shall specify the time for compliance and shall be posted in a conspicuous place on the property, if posting is physically possible. A failure to comply with an emergency order shall constitute a violation of this chapter. Any condition described in the emergency order which is not corrected within the time specified is hereby declared to be a public nuisance and the building official/fire marshal is authorized to abate such nuisance summarily by such means as may be available. The cost of such abatement shall be recovered from the owner or person responsible or both in the manner provided by law.

15.24.070 ~~Review by hearing examiner.~~ No Administrative Appeal of Notices of Violation.

~~A. Notice of Violation (Criminal Penalties). There is no administrative appeal of a notice of violation issued pursuant to chapter 15.26 GHMC. ~~for a violation of the codes in this title which subject the violator to criminal prosecution.~~~~

~~B. Notice of Violation (Civil Penalties). Any person significantly affected by or interested in a~~

~~notice of violation issued by the building official pursuant to GHMC 15.26.006 for a violation of the codes in this title which subject the violator to civil prosecution may obtain an appeal of the notice by requesting such appeal within 15 calendar days after service of the notice. When the last day of the period so computed is a Saturday, Sunday or federal or city holiday, the period shall run until 5:00 p.m. on the next business day. The request shall be in writing, and upon receipt of the appeal request, the building official/fire marshal shall forward the request to the office of the hearing examiner, pursuant to Chapter 17.10 GHMC.~~

~~C. At or after the appeal hearing, the hearing examiner may:~~

- ~~— 1. Sustain the notice of violation;~~
- ~~— 2. Withdraw the notice of violation;~~
- ~~— 3. Continue the review to a date certain for receipt of additional information;~~
- ~~— 4. Modify the notice of violation, which may include an extension of the compliance date.~~

~~D. The hearing examiner shall issue a decision within 10 days of the date of the completion of the~~

~~review and shall cause the same to be mailed by regular first class mail to the person(s) named on the notice of violation, mailed to the complainant, if possible, and filed with the department of records and elections of Pierce County.~~

~~E. The decision of the hearing examiner shall be final, and no further administrative appeal may be filed. In order to appeal the decision of the hearing examiner, a person with standing to appeal must make application for a land use petition under Chapter 36.70C RCW within 21 days of the issuance of the examiner's decision. (Ord.827 § 1, 1999; Ord.705 § 5, 1996; Ord.672 § 12, 1994).~~

15.26.080 Civil Penalty.

A. In addition to any other sanction or remedial procedure which may be available, any person violating or failing to comply with any of the provisions of GHMC Title 15 shall be subject to a cumulative penalty in the amount of \$50.00 per day for each violation from the date set for compliance until compliance with the order is achieved.

B. The penalty imposed by this section shall be collected by civil action brought in the name of the city. The building official/fire marshal shall notify the city attorney in writing of the name of any person subject to the penalty, and the city attorney shall, with the assistance of the building official/fire marshal, take appropriate action to collect the penalty.

C. The violator may show as full or partial mitigation of liability:

1. That the violation giving rise to the action was caused by the willful act, or neglect, or abuse of another; or
2. That correction of the violation was commenced promptly upon receipt of the notice thereof, but that full compliance within the time specified was prevented by inability to obtain necessary materials or labor, inability to gain access to the subject structure, or other condition or circumstance beyond the control of the defendant.

15.26.090 Criminal Penalties.

~~A. Any person violating or failing to comply with any of the provisions of GHMC Title 15 and who has had a judgment entered against him or her pursuant to GHMC 15.26.016 or its predecessors within the past five years shall be subject to criminal prosecution and upon conviction of a subsequent violation shall be fined in a sum not exceeding \$5,000 or be imprisoned for a term not exceeding one year or be both fined and imprisoned. Each day of noncompliance with any of the provisions of GHMC Title 15 shall constitute a separate offense.~~

~~B. The above criminal penalty may also be imposed:~~

- ~~— 1. For any other violation of GHMC Title 15 for which corrective action is not possible; and~~
- ~~— 2. For any willful, intentional, or bad faith failure or refusal to comply with the standards or~~

—requirements of GHMC Title 15.

~~C. Uniform Fire Code and Uniform International Plumbing Code Violations. A violation of the Uniform International Fire Code and International Plumbing Code is a misdemeanor, and every person so convicted shall be punished by imprisonment for a maximum term of not more than 90 days, or by a fine in an amount of not more than \$1,000 or both such imprisonment and fine. Each day of noncompliance with any of the provisions of the Uniform International Fire or Uniform Plumbing Code shall constitute a separate offense.~~

A. Civil penalty. Civil penalties may be assessed against any person, firm or corporation who violates any provision of Title 15, as provided in GHMC Section 15.26.080.

B. Criminal penalty. In addition to or as an alternative to any other penalty provided in this chapter or by law, any person, firm or corporation who violates any provision of Title 15 shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punishable by a fine of up to Five Thousand Dollars and/or imprisonment for a period of up to one year, or both such fine and imprisonment (as provided in RCW 35A.11.020).

C. Criminal penalties for violations of the IMC, UPC and IFC. Any person, firm or corporation who violates any provision of the International Mechanical Code, the Uniform Plumbing Code and the International Fire Code, as adopted by the City in Title 15, shall be imposed as set forth in GHMC Section 15.26.090(B) above.

15.24.100 Additional relief.

The building official/fire marshal may seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of GHMC Title 15 when ~~civil or~~ criminal penalties are inadequate to effect compliance.

Section 22. Chapter 15.36 of the Gig Harbor Municipal Code is hereby repealed.

Section 23. Codes Adopted by Reference. One copy of all codes adopted by reference in this Ordinance are on file with the Gig Harbor City Clerk for viewing by the public.

Section 24. Severability. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by a court of competent

jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, clause or phrase of this Ordinance.

Section 25. Effective Date. This Ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the Gig Harbor City Council and approved by the Mayor of the City of Gig Harbor this ____ day of _____, 2005.

Mayor Gretchen Wilbert

ATTEST/AUTHENTICATED:

By: _____
Molly Towslee, City Clerk

APPROVED AS TO FORM:

By: _____
Carol Morris, City Attorney

FILED WITH CITY CLERK: 12/7/04
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO.

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

On _____, 2005, the City Council of the City of Gig Harbor, Washington, approved Ordinance No. _____, the main points of which are summarized by the title as follows:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO ADOPTION OF THE WASHINGTON STATE BUILDING CODE, ADOPTING THE 2003 EDITIONS OF THE INTERNATIONAL BUILDING CODE, THE INTERNATIONAL RESIDENTIAL CODE, THE INTERNATIONAL MECHANICAL CODE, THE INTERNATIONAL FIRE CODE, THE INTERNATIONAL EXISTING BUILDING CODE AND THE UNIFORM PLUMBING CODE BY REFERENCE, ADOPTING THE 1997 EDITION OF THE UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS BY REFERENCE, ADOPTING THE WASHINGTON ENERGY CODE, THE WASHINGTON STATE VENTILATION AND INDOOR AIR QUALITY CODE AND HISTORIC BUILDING CODE BY REFERENCE, AS WELL AS CERTAIN AMENDMENTS TO THE CODES, MAKING CHANGES TO THE CITY'S TITLE 15 CODE ENFORCEMENT PROCESS, ELIMINATING HEARING EXAMINER APPEALS AND AMENDING THE PENALTIES FOR VIOLATIONS; REPEALING CHAPTERS 15.06, 15.08, 15.10, 15.12, 15.18, 15.32, 15.36; ADOPTING NEW CHAPTERS 15.06, 15.08, 15.10, 15.12, 15.14, 15.16, 15.18, 15.20, 15.22 AND 15.26 TO THE GIG HARBOR MUNICIPAL CODE.

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

APPROVED by the City Council at their meeting of _____, 2005.

MOLLY TOWSLEE, City Clerk



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: DICK J. BOWER, CBO
SUBJECT: BUILDING OFFICIAL/FIRE MARSHAL
FIRST READING OF ORDINANCE
- BUILDING CODE ADVISORY BOARD
DATE: DECEMBER 13, 2004

INFORMATION/BACKGROUND

Attached for your consideration and for first reading is an ordinance updating Title 15 of the Gig Harbor Municipal Code (GHMC). This ordinance was created due to the changes in the State Building Code. Title 15 contains language creating the City's Building Code Advisory Board. In reviewing the existing language some desirable clarifications were identified. These clarifications are included in the proposed ordinance and presented as a separate ordinance to simplify the process of future modifications of Title 15.

POLICY CONSIDERATIONS

The Building Code Advisory Board has been in existence since 1987. It provides a knowledgeable community body to provide guidance and recommendations to the Council and staff regarding matters related to the City's construction and fire and life safety codes.

FISCAL CONSIDERATIONS

Any of the minor expenditures are anticipated under Office and Operating Supplies in the 2005 Budget.

RECOMMENDATION

On November 30, 2004, the City's Building Code Advisory Board convened to consider this ordinance. It was unanimously recommended by the Board that the ordinance be passed by City Council. Staff whole-heartedly agrees with the Board's recommendation and recommends that the City Council approved the ordinance as presented following the second reading.

ORDINANCE NO. __

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO THE BUILDING CODE ADVISORY BOARD, CLARIFYING THE BOARD'S AUTHORITY WITH REGARD TO CODE INTERPRETATIONS AND APPEALS OF REQUESTS FOR ALTERNATE MATERIALS/MODIFICATIONS, ESTABLISHING THE REQUIREMENTS FOR THE BOARD'S PUBLIC HEARINGS AND CLARIFYING THE EFFECT OF THE BOARD'S DECISION AND THE MANNER IN WHICH IT MAY BE JUDICIALLY APPEALED, REPEALING GIG HARBOR MUNICIPAL CODE SECTION 15.02.010 AND ADOPTING NEW SECTIONS 15.02.010, 15.02.020, 15.02.030 AND 15.02.040 TO THE GIG HARBOR MUNICIPAL CODE.

WHEREAS, the establishment and authority of the building code advisory board is set forth in GHMC Section 15.02.010; and

WHEREAS, nothing in GHMC Section 15.02.010 describes the procedures that the board must follow when handling open public hearings on requests for interpretations or alternative materials; and

WHEREAS, nothing in GHMC Section 15.02.010 describes the effect of a decision of the board, or whether it may be appealed judicially; Now, therefore:

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

Section 1. Section 15.02.010 is hereby repealed.

Section 2. A new Section 15.02.010 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

15.02.010 Building Code Advisory Board established – membership.

A. The building code advisory board, consisting of six members who are qualified by experience and training to pass upon matters of building construction and who are not employees of the City, is established.

B. The board shall be comprised of two state-licensed contractors, two architects, and two engineers, all of whom must be residents of the Gig Harbor community, at least two of whom are city residents.

C. The building code advisory board shall be appointed by the mayor and approved by the city council and shall hold office for a four-year term. The terms shall not run concurrently, and the first selected board member's terms shall run for two, three, and four years, respectively. The mayor may remove any board member at his/her pleasure and discretion.

D. All board member's terms shall expire on March 31st and all successive terms shall commence on April 1st.

Section 3. A new Section 15.02.020 is hereby added to the Gig Harbor

Municipal Code, which shall read as follows:

15.02.020 Rules of Procedure. The board shall adopt procedural rules governing the transaction of its business. Provisions shall be made for maintaining minutes of board meetings and records of all board decisions. The rules of the board shall provide that all board meetings and hearings shall be open to the public, as provided in the Open Public Meetings Act, chapter 42.30 RCW. The rules for board hearings on quasi-judicial decision-making shall follow the procedures set forth in chapter 19.05 GHMC.

Section 4. A new Section 15.02.030 is hereby added to the Gig Harbor

Municipal Code, which shall read as follows:

15.02.030 Authority of Board. The board is authorized to take the following actions:

A. Hold open public hearings and make the final decision on appeals of administrative determinations where alternate materials or methods of construction are proposed to those required by any code adopted in GHMC Title 15;

B. Hold open public hearings and make the final decision on interpretations of the codes adopted in GHMC Title 15; provided that the board shall have no authority to make any interpretation of any administrative provision of such codes. In addition, the board

shall have no authority to handle any interpretation or appeal relating to any enforcement action; and

C. Review and make recommendations to the Gig Harbor City Council on the adoption of new codes and amendments within GHMC Title 15.

Section 5. A new Section 15.02.040 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

15.02.040 Final Decision-making. The decision of the board on the actions described in GHMC Section 15.02.030(A) and (B) above shall be final. Appeals of the board's decisions under GHMC Section 15.02.030(A) and (B) shall be filed with Pierce County Superior Court within 21 days of issuance of the final decision.

Section 6. Severability. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, clause or phrase of this Ordinance.

Section 7. Effective Date. This ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor this ___th day of _____, 2005.

CITY OF GIG HARBOR

Gretchen Wilbert, Mayor

ATTEST/AUTHENTICATED:

Molly Towslee, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Carol A. Morris, City Attorney

FILED WITH THE CITY CLERK: 12/7/04
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO.

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

On _____, 2005, the City Council of the City of Gig Harbor, Washington, approved Ordinance No. _____, the main points of which are summarized by the title as follows:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO THE BUILDING CODE ADVISORY BOARD, CLARIFYING THE BOARD'S AUTHORITY WITH REGARD TO CODE INTERPRETATIONS AND APPEALS OF REQUESTS FOR ALTERNATE MATERIALS/MODIFICATIONS, ESTABLISHING THE REQUIREMENTS FOR THE BOARD'S PUBLIC HEARINGS AND CLARIFYING THE EFFECT OF THE BOARD'S DECISION AND THE MANNER IN WHICH IT MAY BE JUDICIALLY APPEALED, REPEALING GIG HARBOR MUNICIPAL CODE SECTION 15.02.010 AND ADOPTING NEW SECTIONS 15.02.010, 15.02.020, 15.02.030 AND 15.02.040 TO THE GIG HARBOR MUNICIPAL CODE.

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

APPROVED by the City Council at their meeting of _____, 2005.

MOLLY TOWSLEE, City Clerk



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: DICK J. BOWER, CBO *DJB*
BUILDING OFFICIAL/FIRE MARSHAL
SUBJECT: FIRST READING OF ORDINANCE
- FLOOD PLAIN REGULATIONS
DATE: DECEMBER 13, 2004

INFORMATION/BACKGROUND

Attached for your consideration and for first reading is an ordinance updating Title 15 of the Gig Harbor Municipal Code (GHMC). Due to changes in the State Building Code, an update of GHMC Title 15 has been proposed. Title 15 contains language establishing the City's floodplain regulations as required for participation in the National Flood Insurance Program. In reviewing the existing language some typographical errors and desirable clarifications were identified. Those clarifications and corrections to typos are included in the ordinance before the Council. The revised flood plain regulations are presented as a separate ordinance to simplify the process of future modifications of Title 15.

POLICY CONSIDERATIONS

Flood plain regulations have been in Title 15 since at least 1987. These regulations allow the City to promote public health, safety and welfare by minimizing life and property loss, and environmental damage due to floods. In addition, the City's participation in the National Flood Insurance Program benefits our residents by providing affordable flood insurance coverage. Finally, regulation of development activities in accordance with the National Flood Insurance Program is a requirement of the Natural Hazard Mitigation Plan required by the Federal Emergency Management Agencies, mitigation grant program.

FISCAL CONSIDERATIONS

None.

RECOMMENDATION

On November 30, 2004 the City's Building Code Advisory Board convened to consider this ordinance. It was unanimously recommended by the Board that the ordinance be passed by the Council. I recommend that the City Council approve the ordinance as presented following the second reading.

ORDINANCE NO. __

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO FLOODPLAIN REGULATIONS, MAKING AMENDMENTS TO THE CITY'S FLOODPLAIN REGULATIONS TO CORRECT TYPOGRAPHICAL ERRORS AND TO ACCURATELY REFLECT THE TITLE OF CITY OFFICIALS REFERENCED IN THE CODE; AMENDING GIG HARBOR MUNICIPAL CODE SECTIONS 15.04.050, 15.04.060, 15.04.080 AND 15.04.090.

WHEREAS, the City's floodplain regulations contain certain typographical errors and need to be corrected to correctly reference the titles of City officials enforcing the code; Now, therefore:

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

Section 1. Section 15.04.050 of the Gig Harbor Municipal Code is amended to read as follows:

15.04.050 General provisions.

A. Lands to Which this Chapter Applies. This chapter shall apply to all areas of special flood hazards within the jurisdiction of the city.

B. Basis for Establishing the Areas of Special Flood Hazard. The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for the City of Gig Harbor," dated March 2, 1981, with accompanying flood insurance maps is adopted by reference and declared to be a part of the ordinance codified in this chapter. The Flood Insurance Study is on file at Gig Harbor City Hall, ~~3105 Judson Street~~, Civic Center, 3510 Grandview Street, Gig Harbor, Washington.

C. Penalties for Noncompliance. No structure or land shall hereafter be constructed, located, extended, converted or altered without full compliance with the terms of this chapter and other applicable regulations. Failure to comply with any of the provisions of this chapter (including violations of conditions and safeguards

established in connection with conditions) shall constitute a violation of this chapter. Any person who violates this chapter or fails to comply with any of its requirements shall incur a cumulative civil penalty in the amount of \$50.00 per day from the date set for correction thereof, as prescribed in Title 15 Chapter 15.18 GHMC. Nothing contained in this chapter shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation.

D. Abrogation and Greater Restrictions. This chapter is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this chapter and another ordinance, easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

E. Interpretation. In the interpretation and application of this chapter, all provisions shall be:

1. Considered as minimum requirements;
2. Liberally construed in favor of the governing body; and
3. Deemed neither to limit nor repeal any other powers granted under state statutes.

F. Warning and Disclaimer of Liability. The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Larger flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the city, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made under this chapter.

Section 2. Section 15.04.060 of the Gig Harbor Municipal Code is hereby amended to read as follows:

15.04.060 Administration.

A. Establishment of Development Permit.

1. Development Permit Required. A development permit shall be obtained before construction or development begins within any area of special flood hazard established in GHMC Section 15.04.050 (B). The permit shall be for all structures including manufactured homes, as set forth in GHMC 15.06.040, defined in the Building Code adopted in Title 15 GHMC, and for all

development including fill and other activities, also as set forth in ~~GHMC Section 15.06.040-~~ Title 15 GHMC.

2. Application for Development Permit. Application for a development permit shall be made on forms furnished by the building official. A complete development permit shall include the following: ~~and may include but not be limited to;~~

a. plans in duplicate drawn to scale showing the nature, location, dimensions and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities and the location of the foregoing. Specifically, the following information is required:

1. Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures;

2. Elevation in relation to mean sea level to which any structure has been floodproofed;

3. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in GHMC 15.04.070(B)(2); and

b. Description of the extent to which a watercourse will be altered or relocated as a result of proposed development.

B. Designation of the building official/fire marshal. The building official/fire marshal is appointed to administer and implement this chapter by granting or denying development permit applications in accordance with its provisions.

C. Duties and Responsibilities of the building official/fire marshal. Duties of the building official/fire marshal shall include, but not be limited to:

1. Permit Review.

a. Review all development permits to determine that the permit requirements of this chapter have been satisfied.

b. Review all development permits to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.

2. Use of Other Base Flood Data. When base flood elevation data has not been provided in accordance with GHMC 15.04.050(B), Basis For Establishing the Areas of Special Flood Hazard, the building official shall obtain, review and reasonably utilize any base flood elevation data available from a federal, state or other source, in order to administer GHMC 15.04.070(B), Specific Standards.

3. Information to be Obtained and Maintained.

a. Where base flood elevation data is provided through the Flood Insurance Study or required as in subsection (C)(2) of this section obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or

substantially improved structures, and whether or not the structure contains a basement.

b. For all new or substantially improved floodproofed structures:

i. Verify and record the actual elevation (in relation to mean sea level); and

ii. Maintain the floodproofing certifications required in subsection (A)(2) of this section.

c. Maintain for public inspection all records pertaining to the provisions of this chapter.

4. Alteration of Watercourses.

a. Notify adjacent communities and the State Department of Ecology's Floodplain Management Section prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.

b. Require that maintenance is provided within the altered or relocated portion of such watercourse so that the flood carrying capacity is not diminished.

5. Interpretation of FIRM Boundaries. Make interpretations where needed, as to exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in subsection (D) of this section.

D. Variance Procedure.

1. Appeal Board.

a. The building code advisory board shall hear and decide appeals and requests for variances from the requirements of this chapter.

b. The building code advisory board shall hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the building official in the enforcement or administration of this chapter.

c. Those aggrieved by the decision of the building code advisory board, or any taxpayer, may appeal such decision to the city council.

d. In passing upon such applications, the building code advisory board shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and:

i. The danger that materials may be swept onto other lands to the injury of others;

ii. The danger to life and property due to flooding or erosion damage;

iii. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

iv. The importance of the services provided the proposed facility to the community;

v. The necessity to the facility of a waterfront location, where applicable;

vi. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;

vii. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

viii. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

ix. The safety of access to the property in times of flood for ordinary and emergency vehicles;

x. The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

xi. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

e. Upon consideration of the factors of subsection (D)(1)(d) of this section and the purposes of this chapter, the building code advisory board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

f. The building official shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.

2. Conditions for Variances.

a. Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items set out in subsections (D)(1)(d)(i) through (xi) of this section have been fully considered. As the lot size increases the technical justification required for issuing the variance increases.

b. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in this section.

c. Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.

d. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

e. Variances shall only be issued upon:

i. A showing of good and sufficient cause;

ii. A determination that failure to grant the variance would result in exceptional hardship to the applicant;

iii. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in subsection (D)(1)(d) of this section, or conflict with existing local laws or ordinances.

f. Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.

g. Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except GHMC 15.04.060(D)(2)(a), and otherwise complies with GHMC 15.04.070(A)(1) and (A)(2), general standards.

h. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

Section 3. Section 15.04.080 of the Gig Harbor Municipal Code is hereby amended to read as follows:

15.04.080 Excavation, grading, fill – Permit required.

The building inspector official/fire marshal shall require the issuance of a permit for any excavation, grading, fill or construction in the community.

Section 4. Section 15.04.090 of the Gig Harbor Municipal Code is hereby amended to read as follows:

15.04.090 Mudslide hazard.

The building ~~inspector~~ official/fire marshal shall require review of each permit application to determine whether the proposed site and improvements will be reasonably safe from mudslide hazards, a further review must be made by persons qualified in geology and soils engineering; and the proposed new construction, substantial improvement, or grading must

- (a) be adequately protected against mudslide damage, and
- (b) not aggravate the existing hazard.

Section 5. Severability. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, clause or phrase of this Ordinance.

Section 6. Effective Date. This ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor this ___th day of _____, 2005.

CITY OF GIG HARBOR

Gretchen Wilbert, Mayor

ATTEST/AUTHENTICATED:

Molly Towslee, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Carol A. Morris, City Attorney

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

On _____, 2005, the City Council of the City of Gig Harbor, Washington, approved Ordinance No. _____, the main points of which are summarized by the title as follows:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO FLOODPLAIN REGULATIONS, MAKING AMENDMENTS TO THE CITY'S FLOODPLAIN REGULATIONS TO CORRECT TYPOGRAPHICAL ERRORS AND TO ACCURATELY REFLECT THE TITLE OF CITY OFFICIALS REFERENCED IN THE CODE; AMENDING GIG HARBOR MUNICIPAL CODE SECTIONS 15.04.050, 15.04.060, 15.04.080 AND 15.04.090.

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

APPROVED by the City Council at their meeting of _____, 2005.

MOLLY TOWSLEE, City Clerk



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP,
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: RESOLUTION - FINAL PLAT FOR 'AUTUMN CREST' PLANNED
RESIDENTIAL DEVELOPMENT
DATE: DECEMBER 13, 2004

INFORMATION/BACKGROUND

Attached for your consideration is a resolution approving the final plat and final PRD (Planned Residential Development) of the Autumn Crest subdivision (SUB 04-05), located along Emerald Lane, between McDonald Avenue and Soundview Drive. The applicant is Frederick M. Paulson. The preliminary plat (SUB 02-04) was conditionally approved on July 2, 2003, for a 21-lot subdivision on approximately 4.92 acres.

POLICY CONSIDERATIONS

Staff has reviewed the criteria for approval of the final plat as specified in GHMC Chapter 16.06 and has determined that the applicant has met the criteria for approval of the final plat and final PRD as follows:

GHMC 16.06.004 Recommendations as prerequisites for final plat approval

Each preliminary plat submitted for final approval shall be accompanied by the following recommendations:

(A) Local health department or other agency furnishing sewage disposal and supplying water as to the adequacy of the proposed means of sewage disposal and water supply.

The City of Gig Harbor is furnishing sewage disposal and supplying water to the site. The City Engineer's representative, Gus Garcia, Associate Engineer, approved the design of the utilities, on June 4, 2003. The installation of the utilities has been completed. Water and sewer is available to the site as outlined in the Water Capacity Reservation Certificate (CRC) on file with the Director of Operations, David Brereton.

(B) Planning Director's recommendation as to compliance with all of the terms of preliminary plat approval of the proposed plat or subdivision.

The applicant has complied with all terms of the preliminary plat approval.

(C) Approval of the city engineer.

The City Engineer's representative, Gus Garcia, Associate Engineer, recommends approval of the final plat of Autumn Crest as all improvements required by the preliminary plat have been constructed or bonded to his satisfaction.

GHMC 16.06.005 Criteria for approval of subdivisions:

(A) The subdivision meets all general requirements for plat approval as set forth in Chapter 16.08 GHMC General Requirements for Subdivision Approval;

The plat of Autumn Crest has met the requirements of the municipal code. The proposed subdivision conforms to all applicable zoning ordinances and the comprehensive plan. The applicant has complied with the requirements to dedicate streets, open space, and utility and access easements. Construction of required improvements has complied with the city's adopted public works construction standards. For those improvements that have not been completed, the applicant has bonded for the work pursuant to GHMC 16.08. In addition the final plat contains the required certificates from the owner, surveyor, and city and county officials.

(B) Conforms to all terms of preliminary plat approval; and

The plat of Autumn Crest conforms to all the terms of preliminary plat approval as conditionally approved by the City's Hearing Examiner on July 2, 2003.

(C) Meets the requirements of Chapter 58.17 RCW, other applicable state laws, Title 16 GHMC, and all applicable ordinances which were in effect at the time of preliminary plat approval.

Staff concludes that the subdivision complies with the requirements of Chapter 58.17 RCW, other applicable state laws, Title 16 GHMC, and all applicable ordinances which were in effect at the time of preliminary plat approval.

GHMC 17.89.080 Criteria for approval of final PRD application:

(A) All features and amenities identified in the preliminary PRD have been constructed and/or are retained or improved;

All features and amenities identified in the preliminary PRD are either completed or the applicant has provided performance assurance in the form of a bond. All bonds are on file with the city clerk.

(B) The city public works director has documented that all conditions imposed on the preliminary PRD requiring public works department approval have been constructed or improved to the satisfaction of the director;

On December 3, 2004, the city public works director's representative, Willy Hendrickson, Engineering Technician, documented that all conditions of approval have been constructed or improved to the satisfaction of the director.

(C) The city fire marshal has documented that all conditions imposed on the preliminary PRD requiring fire code approval have been constructed (or per the fire marshal's discretion will be constructed pursuant to a subsequent permit) to the satisfaction of the fire marshal;

On November 15, 2004, the city fire marshal/building official, Dick Bower, documented that all conditions imposed on the preliminary PRD requiring fire code approval have been constructed (or per the fire marshal's discretion will be constructed pursuant to a subsequent permit) to the satisfaction of the fire marshal.

(D) The city planning director has documented that all conditions imposed on the preliminary PRD requiring planning department approval have been constructed to the satisfaction of the director;

The Autumn Crest PRD conforms to all the terms of preliminary PRD approval as conditionally approved by the City's Hearing Examiner on July 2, 2003.

(E) Findings must be made that the preliminary PRD (and/or preliminary plat) conforms to all terms of preliminary PRD approval, and that the PRD meets the requirements of this chapter and all other applicable codes and state laws.

Staff finds that the Autumn Crest PRD conforms to all the terms of preliminary PRD approval as conditionally approved by the City's Hearing Examiner on July 2, 2003.

Staff further finds that the Autumn Crest PRD complies with the requirements of Chapter 58.17 RCW, other applicable state laws, Title 16 GHMC, and all applicable ordinances which were in effect at the time of preliminary plat approval.

(F) The applicant shall provide a bond or other financial assurance acceptable to the hearing examiner to ensure that any improvements made in the common open space will be completed.

The applicant has provided a bond to ensure that any improvements made in the common open space will be completed. Copies of all bonds pertaining to the development of the Autumn Crest PRD are on file with the city clerk.

(G) The applicant shall submit to the city any covenants, deeds and/or homeowner's association bylaws, or other documents guaranteeing maintenance, construction and common fee ownership, if applicable, of open space, community facilities, and all other commonly owned and operated property. These documents shall be reviewed and approved as to form by the city attorney to ensure that they comply with the requirements of this chapter prior to final PRD approval. Such documents and conveyances shall be recorded with the county auditor as a condition of any final PRD approval.

The applicant has submitted all pertinent covenants, deeds, and easements for the Autumn Crest PRD. Said documents have been reviewed and approved by the City Attorney.

ENVIRONMENTAL ANALYSIS

A Determination of Non-Significance (DNS) was issued on April 8, 2002. The appeal period for the DNS ended April 25, 2004. No appeals were filed.

FISCAL IMPACTS

The proposal does not include any significant fiscal impacts.

RECOMMENDATION

I recommend that the City Council approve the resolution as presented following the second reading with the following conditions:

- 1) The plat certificate and document titled "Declaration and Covenants, Conditions, Restrictions, Easements and Reservations for the Plat of Autumn Crest" shall be recorded with the Pierce County Auditor prior to the issuance of building permits.

Enclosures: Hearing Examiners Decision dated July 2, 2003.
Declaration and Covenants, Conditions, Restrictions, Easements and Reservations for the Plat of Autumn Crest.

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR,
WASHINGTON, APPROVING THE FINAL PLAT OF AUTUMN CREST,
(SUB 04-05)**

WHEREAS, on July 2, 2003, the Hearing Examiner conditionally granted preliminary plat approval to the Plat of Autumn Crest; and

WHEREAS, the preliminary plat approval was not appealed; and

WHEREAS, after preliminary plat approval, the applicant began work to install required utilities and construct roads on the property; and

WHEREAS, street names for Autumn Crest were selected from the City's list of approved historic street names; and

WHEREAS, the proposed final plat was circulated to the appropriate departments of the City and recommendations for approval were obtained; and

WHEREAS, the proposed plat certificate has been reviewed by the City Attorney and all certificates of completion as required by GHMC Section 16.06.001 have been received; and

WHEREAS, notice of the Council Meeting scheduled for final plat approval was provided as required by the City's code; and

WHEREAS, the City Council reviewed the application for the final plat at its regular meeting of _____; Now, Therefore,

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

Section 1. Findings

A. The City Council hereby finds that, pursuant to Gig Harbor Municipal Code 16.06.005, the proposed subdivision:

1. Meets all general requirements for plat approval as set forth in Chapter 16.08 GHMC, General Requirements for Subdivision Approval;
2. Meets all of the criteria for approval of final PRD as set forth in Chapter 17.89.080;
3. Conforms to all terms of the preliminary plat approvals; and
4. Meets the requirements of Chapter 58.17 RCW, other applicable state laws, Title 16 GHMC, and all applicable ordinances which were in effect at the time of preliminary plat approval.

Section 2. The City Council directs the Mayor and all other appropriate City officials to inscribe and execute the City's written approval on the face of the plat.

Section 3. The applicant shall record the final plat with the County Auditor after all inspections and approvals, and after all fees, charges and assessments due the City resulting from the subdivision development have been paid in full. Once recorded, two reproducible copies of the final plat shall be filed with the City of Gig Harbor Community Development Director, at the expense of the applicant.

RESOLVED this ___ day of _____, 2004.

APPROVED:

GRETCHEN A. WILBERT, MAYOR

● ATTEST/AUTHENTICATED:

MOLLY TOWSLEE, CITY CLERK

APPROVED AS TO FORM;
OFFICE OF THE CITY ATTORNEY

BY: _____
CAROL A. MORRIS

FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
RESOLUTION NO. _____

AFTER RECORDING RETURN TO:

Law Office of Jacob L. Potak, P.S.
5801 Soundview Drive, Suite 258
Gig Harbor, WA 98335

RECEIVED
CITY OF GIG HARBOR
NOV 10 2004
COMMUNITY
DEVELOPMENT

**DECLARATION
AND
COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS AND RESERVATIONS
FOR
THE PLAT OF AUTUMN CREST**

Grantors: Autumn Crest, LLC, a Washington Limited Liability Company, formerly known as Narrows Pacific Development III, LLC, a Washington Limited Liability Company

Grantees: Autumn Crest Homeowners' Association, Inc. a Washington Nonprofit Corporation; and Gig Harbor, a Washington Municipal Corporation

Legal Description:

Tax Parcel No.: 0121134003

The South half of the South half of Lot 6 and the South half of the South half of Lot 5A, Section 8, Township 21 North, Range 2 East of the W.M., in Pierce County, Washington, the same being the South half of the South half of the North half of the Southeast quarter of the Southwest quarter of Section 8, Township 21 North, Range 2 East of the W.M., in Pierce County, Washington.

EXCEPT the East 30 feet thereof for Soundview Drive.

Situated in the County of Pierce, State of Washington.

Subject to Conditions and Restrictions of Record.

COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS
AND RESERVATIONS FOR AUTUMN CREST

Page 1 of 19

THIS DECLARATION AND COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS AND RESERVATIONS FOR THE PLAT OF AUTUMN CREST (the "Declaration") is made by Autumn Crest, LLC, a Washington Limited Liability Company, and/or assigns, ("Declarant"), as of this ___ day of _____ 2004.

RECITALS

Declarant is the owner of certain real property (the "Plat of AUTUMN CREST") located in Pierce County, Washington.

The Plat of AUTUMN CREST consists of Lots 1 through 21, Open Space Tracts A, C and D and private road Tract B as legally described in the final plat of Autumn Crest, recorded under Auditor's File No. _____, in Pierce County, Washington and incorporated herein by reference. The Plat of Autumn Crest is also referred to herein as the "Property."

Declarant wishes to subject the Property to this Declaration.

NOW, THEREFORE, Declarant declares that all of the property described above be subjected to this Declaration, shall be held, transferred, sold, conveyed, leased, used and occupied subject to the covenants, conditions, restrictions, easements, assessments and liens hereinafter set forth which are for the purpose of protecting the value and desirability of and which shall touch and concern and run with title to the real property subjected to this Declaration and which shall be binding on all parties having any right, title, or interest in the described property or any portion thereof, and their respective heirs, successors and assigns, and shall inure to the benefit of each owner thereof and to the benefit of the Autumn Crest Homeowners' Association and shall otherwise in all respects be regarded as covenants running with the land.

ARTICLE 1 DEFINITIONS

Section 1.01 Words Defined. For the purposes of this Declaration and any amendments hereto, the following terms shall have the following meanings and all definitions shall be applicable to the singular and plural forms of such terms.

1.01.01 "Architectural Control Committee" or alternatively "Committee" or "ACC" shall mean the committee appointed by the board of directors of the Autumn Crest Homeowners' Association tasked to enforce the provisions of Article 4 herein.

1.01.02 "Association" shall mean the Autumn Crest Homeowner's Association described in Article 6 of this Declaration, its successors and assigns.

1.01.03 "Board" shall mean the board of directors of the Association.

1.01.04 "Builder" shall mean any person responsible for any construction on any Lot together with the Owner of the Lot.

1.01.05 "Open Space" and "Open Space Improvements" shall mean and refer to all real and personal property, if any, now or hereafter owned or leased by the Association, or in which the Association has an easement, for the common use and enjoyment of the Owners. The Open Space shall include those areas within the Plat and designated as Landscape Buffers or Open Space and improvements thereon, such as walkways, including access gates; street lighting; recreation facilities; rights under any landscape and signage easements, and any installed signs thereon, fencing and any planted landscape features within any of the Open Space Areas. The designation of any land and/or improvements as Open Space shall not mean or imply that the public at large acquires any easement of use or enjoyment therein, unless specifically designated as such herein or in applicable documents or records.

1.01.06 "Common Expenses" shall mean the cost of maintaining Open Space and Common Maintenance Areas and carrying out all other Association obligations.

1.01.07 "Common Maintenance Areas" shall mean those portions of all real property maintained by the Association for the benefit of the members of the Association. The areas to be maintained by the Association at the time of recording of this Declaration are as follows:

- (a) All private streets.
- (b) All Open Space and Open Space Improvements thereon as defined above.
- (c) Storm water retention systems and facilities or easements appurtenant thereto, including all drainage and storm retention pond easements.
- (d) All Landscape Buffer Tracts and Improvements thereon designated on the Plat.
- (e) Those areas designated as Shared Access Elements and improvements therein.
- (f) The development access gates.
- (g) All other landscaped areas between the Lots that are designed to provide pedestrian access to the individual Lots. However, such areas expressly exclude decks that shall be individually maintained by the Lot Owner.

1.01.08 "Construction" and "Constructed" shall mean any construction, reconstruction, erection, repair or alteration of an improvement on a Lot, except wholly interior alterations to a then existing structure.

1.01.09 "Declarant" shall mean Autumn Crest, LLC and/or assigns.

1.01.10 "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions, Easements, and Reservations, as it may from time to time be amended.

1.01.11 "Improvement" shall mean any residence, accessory building, fence, wall, driveway, walkway, patio, deck, sign or the like constructed on a Lot, Landscape Buffer, Common Maintenance Area or Open Space.

1.01.12 "Lot" shall mean any one of the twenty one (21) numbered lots 1 through 21 as shown on the Plat of Autumn Crest or any lots added thereto, together with the structures and improvements, if any, thereon.

1.01.13 "Mortgage" shall mean a recorded mortgage or deed of trust that creates a lien against a Lot and shall also mean a real estate contract for the sale of a Lot.

1.01.14 "Mortgagee" shall mean the beneficial owner, or the designee of the beneficial owner, of an encumbrance on a Lot created by a mortgage or deed of trust and shall also mean the vendor, or the designee of a vendor, of a real estate contract for the sale of a Lot.

1.01.15 "Owner" shall mean the record owner, whether one or more Persons, of fee simple title to a Lot within the Property, including a contract seller, except those having such interest merely for the performance of an obligation.

1.01.16 "Person" shall mean an individual, limited liability company, corporation, partnership, association, trustee or legal entity.

1.01.17 "Plat of Autumn Crest" or alternatively the "Plat" shall mean the Plat of Autumn Crest recorded in Volume of Plats, pages under Pierce County Recording No. _____ and any amendments, corrections, or addenda thereto subsequently recorded.

1.01.18 "Property" shall mean the land described on the Plat of Autumn Crest and any additions thereto, together with all improvements thereon, which are brought within the jurisdiction of the Association.

1.01.19 "Replacement Reserves" shall mean that fund allocated for the replacement and for repair of Common Area Improvements and Common Maintenance Area Improvements.

1.01.20 "Shared Access Elements" shall mean these specified easement areas on the Plat of Autumn Crest that enable the Owners to access their Lots from the Street by traveling on and across adjacent Lots.

1.01.21 "Stormwater Drainage and Detention Facilities" shall mean the storm water drainage and retention systems designated on The Plat of Autumn Crest and facilities or easements appurtenant thereto, including all drainage and storm retention pond easements.

1.01.22 "Street" shall mean the following street within the boundary of the plat: Emerald Lane.

Section 1.02 Forms of Words. The singular form of words shall include the plural, and the plural shall include the singular. Masculine, feminine and neuter pronouns shall be used interchangeably.

ARTICLE 2 PLAN OF DEVELOPMENT

Section 2.01 Development of Property. The Autumn Crest community shall consist of the Property described in the Plat of Autumn Crest. The Property contains twenty one (21) Lots, each of which shall contain residential housing. The Property also includes the Open Space, Street and Shared Access Elements owned by the Association and designated as such on the Plat of Autumn Crest. All Lots within Autumn Crest shall be subject to the standards and restrictions set forth in Articles 5 and 6.

Declarant shall have the right, but not the obligation, for so long as Declarant owns any Lot to make improvements and changes to all Common Areas for: (a) installation and maintenance of any improvements; and (b) installation and maintenance of any water sewer and other utilities systems and facilities.

ARTICLE 3 OPEN SPACE AREAS, COMMON MAINTENANCE AREAS, DEDICATIONS AND EASEMENTS

Section 3.01 Tract Dedications. Landscape and Buffer Tracts, Open Space Tracts, Shared Access Elements and the Street in the Plat of Autumn Crest have been dedicated by the Plat of Autumn Crest to the Association or to the named entity for the purposes stated thereon. These dedications, and the responsibilities of the Declarant, Association, and Owners related thereto, are described below:

Shared Access Elements: Dedicated to the Association for providing broad vehicular and pedestrian access to Lot Owners.

Landscape Buffer Tracts B, C and D: Dedicated to the Association for open space, recreation, park and landscaping.

Tract A: Dedicated as storm water detention vault to be maintained by Association as provided by the Plat documents. Tract A dedicated to the public as open space/public park area to be maintained by Association as provided by the Plat documents.

Street – Tract B: Dedicated to the Association for access and utility easement purposes.

Section 3.02 Open Space Areas. "Open Space" and "Open Space Improvements" are as defined in Article 1 above. All recreational facilities within Open Space Areas, if any, whenever and wherever located, shall be available for use on a non-discriminatory basis by all Owners within the Property. In addition, Tract A shall be available for use by the public. The Association shall maintain the Open Space Areas.

Section 3.03 Association to Maintain Common Maintenance Areas. The Association shall have the right and the obligation to maintain the Common Maintenance Areas, and any improvements or landscape features therein.

Section 3.04 Alteration of Open Space or Common Maintenance Areas. Nothing shall be altered or constructed upon or removed from the Open Space Areas, Common Maintenance Areas or other designated buffers, whether or not privately owned, without the prior written consent of the Board.

Section 3.05 Tract A. Tract A is dedicated to the Association as a storm water vault and open space/public park area for the benefit of the Owners subject to those easements and restrictions found on the face of the Plat. The Association shall be responsible, at its expense, for maintenance of any improvements added to this Tract and shall be responsible, at its expense, for the installation and maintenance of any improvements added to such Tract.

Section 3.06 Stormwater Drainage and Detention Facilities. The Stormwater Drainage and Detention Facilities are hereby dedicated to the Association. The Association shall have the right and obligation to maintain the Stormwater Drainage Facilities, unless those improvements are deeded or sold to a government agency or other entity approved by the County of Pierce that assumes the maintenance responsibility.

Section 3.07 Utilities Easements. Declarant does hereby grant, establish, create, reserve and convey, for the benefit of itself, the Association, all Owners, and the described grantees, and their respective heirs and assigns, a utilities easement for various utilities under and upon the Street in which to install, lay, construct, renew, maintain, and operate underground pipe, conduits, cables and wire with necessary facilities and other equipment for the purpose of serving the Property with electric, cable television, telephone, water, sanitary sewer, drainage and utility service, together with the right to enter upon the Street and Lots at all times for the above purposes. All electric, telephone, or cable television lines must be underground or attached in conduit to a building.

Section 3.08 Street. Declarant does hereby establish, create, reserve and convey, for the benefit of itself, the Association and all Lot Owners an easement over all roadways designated in the Plat of Autumn Crest, for ingress and egress and utility purposes and all other purposes not inconsistent with their use as roadways. Declarant reserves the right to make any necessary cuts and fills upon these Lots in the original reasonable grading of these roads. The roads will not be dedicated to Gig Harbor until such time as they are constructed to Gig Harbor City standards and at such time Gig Harbor desires to accept them. All roads are private and are not dedicated to the public.

ARTICLE 4 CONSTRUCTION ON LOTS AND USE OF LOTS

Section 4.01 Permitted Improvements. No Improvement of any kind shall be Constructed or altered upon any Lot or any other part of the Property, except: (a) Improvements when they are Constructed or modified by Declarant or its agents or assigns; or (b) such Construction or alterations as are approved by the Board in accordance with this Article 4.

Section 4.02 Architectural Review. No structure, including storage shelters, shall be commenced, erected, placed or altered on any Lots until the construction plans and specifications and a plan showing the nature, shape, heights, materials, colors, and proposed location of the structure has been submitted to and approved in writing by the Architectural Control Committee ("ACC"). It is the intention and purpose of this covenant to assure quality of workmanship and materials, harmony of external design with the existing structure as to location with respect to topography, and finish grade elevations. In all cases in which Architectural Control Committee consent is required by these Covenants, the following provisions shall apply:

(A) Major Construction. In the case of initial or substantial addition construction of a dwelling, the Owner shall prepare and submit to the Architectural Control Committee such plans and specification for the proposed work as the Committee may require. Material required by the Committee includes, but is not necessarily limited to: (1) a plot plat indicating location of all improvements; (2) a detailed plan for the removal of timber, identifying each tree to be taken down during the course of construction; (3) drawings showing elevations, exterior materials and exterior color scheme of all improvements; and (4) certification of square footage contained within the structure and each floor thereof.

(B) Minor Work. In the case of a minor addition or remodeling, change of existing exterior color scheme of exterior material, greenhouse, or any other work not referred to in Paragraph (A) above, the Owner shall submit to the Architectural Control Committee such plans and specifications for the proposed work as the Committee determines to be necessary to enable it to evaluate the proposal.

(C) The following minimum design criteria must be met before the ACC will consider an application for approval:

(1) Minimum Square Footage. Every residence must contain a minimum of 2,000 square feet of finished living space (garage excluded).

(2) Roofs. Roofs must be 30-year architectural composition, tile or cedar shake (medium grade or better). Roofs must have a pitch of 3/12 or steeper.

(3) Siding. T -1-11 siding is prohibited. Consistency of appearance shall be promoted.

(4) Exterior Paint. Shall be subject to ACC discretion. Earth tones are encouraged and may be required by the ACC.

(5) Garage. All designs must have a garage suitable for at least two (2) automobiles.

Section 4.03 Architectural Control Committee Discretion. The Committee may, at its sole discretion, withhold consent to any proposed work if the Committee finds that the proposed work would be inappropriate for the particular Lot or incompatible with the design standards that the Committee intends for this Plat. Consideration such as siding, shape, size, color, design, height, impairment of the view from other Lots within this Plat, or other effects on the enjoyment of other Lots or Open Space, disturbance of existing terrain, mature trees and vegetation, and any other factors which the Committee reasonably believes to be relevant in determining whether or not to consent to any proposed work. It is the intent of the Declarant to maintain some mature trees on Lots and in Landscape Buffers for the purpose of preserving a forest like setting in the Plat.

Section 4.04 Procedure. The Architectural Control Committee shall render its decision with respect to the proposal within sixty (60) calendar days after it has received all material required by it with respect thereto. In the event the Committee fails to render its approval or disapproval within sixty (60) calendar days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with.

Section 4.05 Membership Appointment and Renewal. The Architectural Control Committee shall consist of not more than three (3) persons, as the Declarant or, following the Transition Date, the Board may from time to time appoint. The Board may remove any member of the Committee from office at any time and may appoint new or additional members at any time. This Association shall keep on file at its principal office a list of names and addresses of the members of the Committee. A member of the Committee shall not be entitled to any compensation for services performed pursuant to these Covenants. Nothing in this section shall prohibit the Declarant from acting as the Committee until the Transition Date.

Section 4.06 Liability. Neither the Architectural Control Committee nor any member thereof shall be liable to any Owner, builder or developer for any damages, loss, or prejudice suffered or claimed on account of any action or failure to act of the Committee or a member thereof, provided that the member has, in accordance with the actual knowledge possessed by him, acted in good faith.

Section 4.07 Action. Except as otherwise provided herein, the Architectural Control Committee alone shall have the power to act using in the case of a three member Committee the principal of majority rules. The Committee may render its decision only by written instrument setting forth the action taken by the member consenting thereto.

Section 4.08 Nonwaiver. Consent by the Architectural Control Committee to any matter proposed to it and within its jurisdiction under these Covenants shall not be deemed to constitute a precedent or waiver impairing its rights to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.

Section 4.09 Effective Period of Consent. The Committee's consent to any proposed work shall automatically be revoked on (1) year after the issuance unless construction of the work has been commenced or the Owner has applied for and received an extension of time from the Committee.

Section 4.10 Architectural Control Committee Approval Not Warranty. Owners shall obtain all necessary permits for any modification or alteration, and Committee consent shall not constitute any warranty or representation whatever that Architectural Control Committee approved plans meet applicable governmental codes or are in any way sufficient for their intended purpose; and each Owner hereby releases any and all claims or possible claims against the Architectural Control Committee and their heirs, successors and assigns, or of any nature whatsoever, based upon the sufficiency of said plans.

Section 4.11 Lot Size. No Lot or portion of a Lot in the Plat shall be divided and sold or resold, or ownership changed or transferred whereby the ownership of any portion of the Plat shall be less than the area required for the use district in which the lot is located or is otherwise approved by the relevant authority.

Section 4.12 Landscape Completion. All landscaping must be completed within forty five (45) days of the completion of construction or prior to occupancy, whichever comes first. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval by the Committee. Once the landscaping is completed, thereafter, the Association shall undertake the ongoing maintenance of it.

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ARTICLE 5
USE RESTRICTIONS

5.01 Residential Use. The Improvements on all Lots are intended for and restricted to residential use only, on an ownership, rental or lease basis, and for social, recreational, or other reasonable activities normally incident to such use.

5.02 Maintenance of Buildings, Shared Access Elements and Lots. Each Owner shall, at the Owner's sole expense, keep the interior and exterior of the Improvements on the Owner's Lot in a clean and sanitary condition, free of rodents and pests, and in good order, condition and repair and shall do all redecorating, painting, and maintenance at any time necessary to maintain the appearance and condition of the Improvements and the Lot. The Association shall be responsible for all landscaping and its maintenance to include maintaining the Shared Access Elements, watering all lawns and other vegetation on Lots and to maintain them in a viable and, in the case of lawns, green condition, unless prohibited by state or local water restrictions. In the event an Owner of any Lot in the Property shall fail to maintain the premises and the improvements situated thereon in accordance with this Section, the Association, after approval by two-thirds (2/3rds) vote of the Board, shall have the right through its agents and employees to enter upon said Lot and to repair, maintain, and restore the Lot and the exterior of the buildings and any other improvements erected thereon, if the Owner shall fail to respond in a satisfactory manner within thirty (30) days after written notice of the maintenance violation. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

5.03 Signs. No sign or any kind shall be displayed to the public view on or from any Lot without the prior written consent of the Board, except for "For Rent" or "For Sale" signs and house identification signs containing the address and/or name of the Owner, not to exceed two feet by two feet in a form not prohibited by any rules and regulations of the Board. This Section shall not apply to the Declarant.

5.04 Radio and Television Aerials. No television or radio aerial, rotary beams, separate tower, or similar device shall be erected or placed on any Lot. No satellite receiving dishes or other such electronic receiving devices shall be located on any Lot except as approved by the ACC with respect to size and location; PROVIDED no receiving device shall exceed one meter in diameter.

5.05 Trash Containers and Debris. All trash, yard waste, and recyclables shall be placed in sanitary containers and stored inside the garage of each Owner, except for the day of pickup. Compost bins are expressly prohibited. No Lot, Open Space, Common Maintenance Areas, or any portion thereof shall be used as a dumping ground for trash or rubbish of any kind. Yard rakings, dirt and debris resulting from landscaping work or Construction shall not be dumped onto adjoining Lots or any other location on the Property.

5.06 Offensive Activity. No trade, craft, business, profession, commercial or manufacturing enterprise or business or commercial activity of any kind including day schools, nurseries, or church schools, shall be conducted or permitted on any Lot, nor shall goods, equipment, vehicles, or materials used in connection therewith, be kept, parked, stored, dismantled or repaired outside of any Lot or the Street within the Property. No mobile home, boat, non-functioning vehicle, recreational vehicle, trailer of any kind, truck camper, or permanent tent or similar structure shall be kept, placed, or maintained, or constructed, reconstructed or repaired, upon any property or the Street within the Property or on any Lot, however, that the provisions of this Section shall not apply to emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any improvement approved by the Architectural Control Committee. No noxious or offensive activity including but not limited to the creation of excess levels of noise, shall be carried on in any Lot, nor shall anything be done therein which may be or become an annoyance or nuisance to other Owners or tenants. Nothing in this Section shall prevent Owners from having home offices, so long as such Owner does not offer goods or services to the public which would require members of the public to travel to the Lot.

5.07 Restriction on Pets. No pets, animals, livestock or poultry shall be kept or bred in or about any Lot or Open Space, except that the keeping of household pets which do not unreasonably interfere with the reasonable use and enjoyment of any other Lot or Open Space shall be permitted subject to reasonable rules and regulations. The reasonable rules and regulations may include, among other things, rules limiting the number of pets per Owner or prohibiting an Owner from keeping a particular pet on his/her Lot. In no event shall any pet be permitted outside of the boundaries of its Owner's Lot or in any Open Space area, unless on a leash controlled by a responsible person or carried. All persons responsible for pets in Open Space areas must immediately dispose of any pet waste in a sanitary manner.

5.08 Fences and Hedges. As defined in this section, "fencing" shall mean any barrier or wall other than natural living organic vegetation, including streets and shrubs. In furtherance of maintaining the park like setting in the Plat, boundary line type fencing between Lots within the Plat is expressly prohibited. The intent of this restriction is to preclude an Owner from "fencing in" his or her yard and thereby detracting from the overall park like appearance of the Plat. Fences on the Property shall be maintained by the Association in a good and workmanlike manner. Only location, colors and designs, including materials, approved by the Architectural Control Committee may be used to construct and maintain fences.

5.09 Driveways, Streets and Walks. Streets, walks and paths whether or not classified as Shared Access Elements shall be maintained by the Association and used exclusively for normal transit, and no obstructions shall be placed thereon or therein except by express written consent by the Architectural Control Committee.

5.10 Underground Utilities. All utility lines or wires located outside a dwelling unit shall be in conduits attached to such units or underground.

5.11 Mailboxes. Mailboxes shall be installed and provided for by the Declarant. The Association shall maintain such mailboxes in good repair and condition. Said mailboxes shall be gang type and shall be uniform in appearance including individual mailboxes. Any changes to the mailboxes shall be approved by the Committee and may require approval of the appropriate postal authority.

5.12 Drainage. All Owners shall provide that all drainage from impervious surfaces shall be directed to the storm drainage system. Absolutely no dumping of any pollutants into the storm water systems shall be permitted.

5.13 Damage. Any damage to streets, plat improvements, front gate, entry structures or other Open Space Area Improvements, fences, landscaping, mailboxes, lights and lighting standards by Owners, their children, contractors, agents, visitors, friends, relatives or service personnel shall be repaired in a first-class workmanlike manner by such Owner within twelve (12) days from the occurrence of such damage, unless such time is extended by the Board. The Board may direct that such repairs commence sooner in circumstances in which the Board, in its sole discretion, determines that earlier repairs are warranted for public safety. If such repairs are not timely made, the Association shall execute the repair, and the Owner shall be immediately obligated to pay the Association or its designee for the repair. If the Owner fails to make such payment within thirty (30) days, the Owner shall be charged interest at the rate of twelve percent (12%) per annum on the payment due, and the payment obligation shall be a personal obligation of the Owner, and the amount due shall be a lien on Owner's Lot.

5.14 Compliance with Laws. Notwithstanding anything to the contrary set forth herein, each Owner and the Association shall comply with the more restrictive of either (a) the terms and conditions of this Declaration, or (b) the laws, codes, ordinances and regulations of any governmental entity having jurisdiction.

ARTICLE 6 AUTUMN CREST HOMEOWNERS' ASSOCIATION

To incorporate the Autumn Crest Homeowners' Association (the "Association") as a non-profit association of all Owners, Declarant shall file articles of incorporation under the laws of the State of Washington relating to nonprofit corporations, and adopt bylaws which, together with the Articles and this Declaration, shall govern the affairs of the Association. Each fee Owner of a Lot shall be a member of the Association.

The "Transition Date," at which time control passes from the Declarant to the Association, shall be no later than the earlier of: (a) three years after the conveyance of the first Lot or (b) four (4) months after Declarant has transferred title to one hundred percent (100%) of the Lots within the project to Lot Purchasers. Nothing in this section shall prevent Declarant from relinquishing control at an earlier date.

ARTICLE 7
NOTICES FOR ALL PURPOSES

All notices given under the provisions of this Declaration or rules or regulations of the Association shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, the notice shall be deemed to have been delivered on the third day of regular mail delivery after a copy has been deposited in the United States mail, first class, postage prepaid, addressed to the Person entitled to such notice at the most recent address known to the Board. Mailing addresses may be changed by notice in writing to the Board. Notices to the Board may be mailed or delivered to the President of the Association or the agent for service of process for the Association, as established by the Articles of Incorporation of the Association. The Board's address may be changed from time to time by the records and recording of an instrument in the real property records of Pierce County, Washington which (a) refers to this Declaration and this Article 7, and (b) which sets forth the Board's new address.

ARTICLE 8
AUTHORITY OF THE BOARD

Section 8.01 Adoption of Rules and Regulations. The Board is empowered to adopt, amend, and revoke on behalf of the Association, detailed administrative rules and regulations necessary or convenient from time to time to insure compliance with the general guidelines of this Declaration, to promote the comfortable use and enjoyment of the Property, set a budget and make assessments and to govern the operation and procedures of the Association. The rules and resolutions may, without limitation, authorize voting by proxy or mail, or both, on Association matters. The rules and regulations of the Association shall be binding upon all Owners and occupants and all other Persons claiming any interest in the Property.

Section 8.02 Enforcement of Declaration. Etc. The Board shall have the power to enforce the provisions of this Declaration and the rules and regulations of the Association for the benefit of the Association. The failure of any Owner to comply with the provisions of this Declaration, or the rules and regulations of the Association will give rise to a cause of action in the Association (acting through the Board) and any aggrieved Owner for recovery of damages, foreclosure and/or injunctive relief. The Board may also levy reasonable fines in accordance with a previously established schedule adopted by the Board and furnished to Owners for violations of the rules and regulations or Declaration. If a legal action is brought to interpret or enforce compliance with the provisions of this Declaration, or the rules or regulations of the Association, the prevailing party shall be entitled to judgment against the other party for its reasonable expenses, court costs, and attorneys' fees in the amount awarded by the Court.

Section 8.03 Assessments Are a Lien: Priority. All unpaid sums assessed by the Association for the share of the common expenses chargeable to any Lot and any sums specifically assessed to any Lot under the authority of this Declaration shall constitute a lien on the Lot and all its appurtenances from the date the assessment becomes due and until fully paid. The lien for such unpaid assessments shall be subordinate to tax liens on the Lot in favor of any

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assessing unit and/or special district, and to all sums unpaid on all first Mortgages of record, but, to the extent permitted by applicable law, shall have priority over all other liens against the Lot. A first Mortgagee that obtains possession through a Mortgage foreclosure or deed of trust sale, or by taking a deed in lieu of foreclosure or sale, or a purchaser at a foreclosure sale, shall take the Lot free of any claims for the share of common expenses or assessments by the Association chargeable to the Lot which became due before such possession, but will be liable for the common expenses and assessments that accrue after the taking of possession. The Lot's past due share of common expenses or assessments shall become new common expenses chargeable to all of the Owners, including the Mortgagee or foreclosure sale purchaser and their successors and assigns, in proportion to the number of Lots owned by each of them. Notwithstanding any of the foregoing, however, the Owner and the real estate contract purchaser shall continue to be personally liable for past due assessments as provided in Section 8.05. For purposes of this Section, "Mortgage" does not include a real estate contract, and "Mortgagee" does not include the vendor or the assignee or designee of a vendor of a real estate contract.

Section 8.04 Lien May Be Foreclosed. The lien for delinquent assessments may be foreclosed by suit by the Board, acting on behalf of the Association, in like manner as the foreclosure of a mortgage of real property. The Board, acting on behalf of the Association, shall have the power to bid on the Lot at the foreclosure sale, and to acquire and hold, lease, Mortgage, and convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment in a judicial foreclosure action, the period of redemption shall be eight (8) months. Nothing in this section shall prohibit the Association from taking a deed lieu of foreclosure. In order that a lien for unpaid assessments may be enforced non-judicially, the Declarant and each subsequent Lot Owner grants an interest in the Lot to First American Title Insurance Company, a corporation, as the trustee with power of sale of any Lot in the Plat of Autumn Crest for the benefit of the Association, as security for the payment of Assessments. The Lots are not used principally for agricultural or farming purposes. The power of sale herein is operative in the case of default on the obligation of pay Assessments. This Declaration may be amended as elsewhere provided for herein and as provided by law without the necessity of action, consent, joinder, or execution of the trustee; nonetheless, the trustee is instructed to join in and execute any such amendment to this Declaration at the request of the Association.

Section 8.05 Assessments Are Personal Obligations. In addition to constituting a lien on the Lot, all sums assessed by the Association, chargeable to any Lot, together with interest, late charges, costs and attorneys' fees in the event of delinquency, shall be the joint and several personal obligations of the Owner and any contract purchaser of the Lot when the assessment is made and they are grantees. Suit to recover personal judgment for any delinquent assessments shall be maintainable without foreclosing or waiving the liens securing them.

Section 8.06 Late Charges and Interest on Delinquent Assessments. The Board may from time to time establish late charges and a rate of interest to be charged on assessments delinquent for a period of more than ten (10) days after the date when due. In the absence of another established, non-usurious rate, delinquent assessments shall bear interest at the rate of twelve percent (12%) per annum.

If an installment on an assessment against a Lot is not paid when due, the Board may elect to declare the entire assessments against the Lot for the remainder of the fiscal year to be immediately due and payable.

Section 8.07 Recovery of Attorneys' Fees and Costs. In any action to collect delinquent assessments, the prevailing party shall be entitled to recover, as part of its judgment, a reasonable sum for attorneys' fees and all costs permitted by law.

Section 8.08 Remedies Cumulative. The remedies provided herein are cumulative, and the Board may pursue them, and any other remedies which may be available under law although not expressed herein, either concurrently or in any order. The Board shall commence foreclosure or any other remedy at law within ninety (90) days after the due date for the assessment; provided that failure to commence such actions shall not be construed as a waiver or relinquishment of any rights hereunder.

Section 8.09 Goods and Services. The Board shall acquire and pay for as common expenses of the Association all goods and services reasonably necessary or convenient for the efficient and orderly maintenance of all portions of the Common Maintenance Areas not maintained by public utility companies or a governmental entity. The goods and services shall include (by way of illustration and not limitation) utility services for the Common Maintenance Areas; policies of insurance; and maintenance, repair, landscaping, gardening and general upkeep of the Common Maintenance Areas. The Board may hire such independent contractors as it considers necessary.

Section 8.10 Protection of Common Maintenance Areas. The Board may spend such funds and take such action as it may from time to time deem necessary to preserve the Open Space Areas and Common Maintenance Areas, settle claims, or otherwise act in what it considers to be the best interests of the Association.

Section 8.11 Establish Committees. The Board may, in its sole discretion, establish committees to assist with its duties, including a committee to review requests for Construction.

ARTICLE 9 COMPLIANCE WITH DECLARATION

Section 9.01 Compliance of Owner. Each Owner shall strictly comply with the provisions of this Declaration and with the Bylaws and administrative rules and regulations adopted by the Association and as lawfully amended thereby. Failure to comply shall be grounds for an action to recover sums due for damages, or injunctive relief, or both, maintainable by the Board (acting through its officers on behalf of the Owners) or by the aggrieved Owner on his or her own against the party (including an Owner or the Association) for failing to comply.

Section 9.02 Compliance of Lessee. Each Owner who shall rent or lease his or her Lot shall ensure that the lease or rental agreement is in writing and subject to the terms of this Declaration, Articles of Incorporation, Bylaws and administrative rules and regulations of the Association. Such an agreement shall also provide that failure of any lessee to comply with the provisions of such documents shall constitute a default under the lease.

Section 9.03 No Waiver of Strict Compliance. The failure of the Board in any instance to insist upon the strict compliance with this Declaration or rules and regulations of the Association, or to exercise any right contained in such documents, or to serve any notice or to institute any action, shall not be construed as a waiver nor a relinquishment for the future of any term, covenant, condition, or restriction. The receipt by the Board of payment of any assessment from an Owner, with knowledge of any breach by the Owner, shall not be a waiver of the breach. No waiver by the Board of any requirement shall be effective unless expressed in writing and signed by the Board.

Section 9.04 Right of Entry. Except as otherwise provided herein, violation of any provisions, conditions, restrictions, covenants, reservations or easements contained herein, shall give to Declarant, its successors, or the Association, the right to enter upon the Property as to which the violation exists and to abate, correct and remove, at the expense of the Owner thereof, any erection, thing or condition that may be or exists thereon contrary to the intent of the provisions hereof. Such entry shall be made only after three (3) days notice to said Owner, except in the case of an emergency, and with as little inconvenience to the Owner as possible. In the event the abatement requires the demolition or alteration of construction, a judicial proceeding shall be instituted prior to such abatement.

ARTICLE 10 LIMITATION OF LIABILITY

So long as a Board member, or Association member, or Declarant has acted in good faith, without willfull or intentional misconduct, upon the basis of such information as is then possessed by such Person, then no such Person shall be personally liable to any Owner, or to any other Person, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error or negligence of such Person; provided, that this Article shall not apply where the consequences of such act, omission, error, or negligence are covered by any insurance actually obtained by the Board.

ARTICLE 11 INDEMNIFICATION

Each Board member, Association Officers and Declarant shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees,, reasonably incurred by or imposed in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of holding or having held such position, or any settlement thereof, whether or not he holds such position at the time such expense or liabilities are incurred, except

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to the extent such expenses and liabilities are covered by insurance and expect in such cases wherein such Board member or Declarant is adjudged to have been involved in intentional misconduct or a knowing violation of the law or for any transaction from which the Director/Officer/Declarant will personally receive a benefit in money, property or services to which such person is not legally entitled; PROVIDED, that in the event of a settlement, the indemnification shall apply only when the Board approves such settlement and reimbursement as being for the best interests of the Association.

ARTICLE 12 AMENDMENTS OF DECLARATION

Section 12.01 Amendments to Conform to Construction. Declarant, upon Declarant's sole signature, and as attorney-in-fact for all Lot Owners with an irrevocable power, coupled with an interest, may at any time, until all lots have been sold by Declarant, file an amendment to the Declaration and to the Plat map to conform data depicted therein to Improvements as actually constructed and to establish, vacate and relocate utility easements, access road easements, parking areas and other common maintenance improvements.

Section 12.02 Amendments to Conform to Lending Institution/Title Insurance Guidelines So long as Declarant continues to own one or more Lots, the Declarant, on its signature alone as an attorney-in-fact for all Lots Owners with an irrevocable power, coupled with an interest, may file such amendments to the Declaration as are necessary to meet the then requirements of Federal National Mortgage Association, Veteran's Administration, Federal Home Loan Mortgage Corporation, or other agencies, institutions, or lenders financing and/or title insuring the purchase of a Lot from the Declarant.

Section 12.03 Amendments by Association. Any Owner may propose amendments to this Declaration to the Board. A majority of the members of the Board may cause a proposed amendment to be submitted to the members of the Association for their consideration. If an amendment is proposed by Owners of twenty percent (20%) or more of the Lots, then, irrespective of whether the Board concurs in the proposed amendment, it shall be submitted to the members of the Association for their consideration at their next regular or special meeting for which timely notice may be given. Notice of a meeting at which an amendment is to be considered shall include the text of the proposed amendment. Amendments may be adopted at a meeting of the Association or by written consent of the requisite number of Persons entitled to vote, after notice has been given to all Persons entitled to receive notice of a meeting of the Association. The unanimous consent of all Owners shall be required for adoption of an amendment changing either the voting power or portion of assessments appurtenant to each Lot, or changing this Article 12. Approval of eighty percent (80%) of all Lot Owners shall be required for any other amendment.

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AND RESERVATIONS FOR AUTUMN CREST

Once an amendment has been adopted by the Association, the amendment will become effective when a certificate of the amendment, executed by a member of the Board, has been recorded in the real property records of Pierce County, Washington. So long as Declarant owns one or more Lots, no provision hereof which confers upon Declarant a right, power or privilege not conferred upon Owners generally may be amended without Declarant's prior consent.

Section 12.04 Amendments to Article 3. Notwithstanding the foregoing provision, no amendment to this Declaration which affects the obligation of Owners to maintain Common Areas, Dedications and Easements as set forth in Article 3 hereof shall become effective without the prior written consent of Pierce County, Washington, or the then governing jurisdiction.

Section 12.05 Challenge to Validity. No challenge to the validity of an amendment adopted by the Association may be brought more than one (1) year after the amendment is recorded.

ARTICLE 13 DURATION

The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Owners, their respective legal representatives, heirs, successors and assigns, for a period of thirty (30) years from the date this Declaration is recorded, after which time the covenants, conditions and restrictions shall automatically extended for successive periods of ten (10) years each unless an instrument signed by a majority of the then Owners has been recorded agreeing to terminate the covenants, conditions and restrictions. Notwithstanding the foregoing, no such termination shall be effective so as to terminate the obligation of the Owners to maintain the Common Areas, Dedications and Easements as set forth in Article 3 hereof without the prior written consent of Pierce County.

ARTICLE 14 SEVERABILITY

The provisions of this Declaration shall be independent and severable, and the validity or partial invalidity or unenforceability of one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof, if the remainder as covenants effect the common plan.

ARTICLE 15 EFFECTIVE DATE

This Declaration shall be effective upon recording.

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DATED as of the date first written above.

DECLARANT:
AUTUMN CREST, LLC

Boyd Hansen
Boyd Hansen, Authorized Agent

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STATE OF WASHINGTON)
) ss.
County of Pierce)

On this day before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared Boyd Hansen, to me known to be the Authorized Agent of AUTUMN CREST, LLC, the entity described herein and that he executed the within and foregoing instrument on behalf of AUTUMN CREST, LLC and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 27 day of October 2004.

Michael A. Potax
Print Name: Michael Potax
NOTARY PUBLIC in and for the State of
Washington, residing at: 617 Huber, WA
My commission expires: 6-10-07

RECEIVED
CITY OF GIG HARBOR
JUL 03 2003
COMMUNITY
DEVELOPMENT

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BEFORE THE HEARING EXAMINER
FOR THE CITY OF GIG HARBOR

In Re: the Application of Paul Cyr and
Barghausen Consulting Engineers, on behalf
of Fredrick and Jane Paulson, re: Autumn
Crest Planned Residential Development,

SUB 02-04 (PRD); DRB 02-01;
VAR 02-01, VAR 03-01

FINDINGS, CONCLUSIONS AND
DECISION

I. SUMMARY OF DECISION

The applications for approval of a PRD, design review, and the variance related to landscape buffering for development of the Autumn Crest subdivision within the City of Gig Harbor are approved with conditions. The application for a variance to the maximum impervious site coverage requirements is denied.

II. SUMMARY OF PROCEDURE

A. Hearing. An open record hearing was held in the City of Gig Harbor on June 18, 2003.

B. Exhibits. The Examiner admitted the following exhibits:

1. Gig Harbor Planning and Building Services Division Report to the Hearing Examiner, SUB 02-01, DRB 02-01, VAR 02-01 and VAR 03-01, Autumn Crest Planned Residential Development;
2. General Application for Variance, received by City on January 22, 2002;
3. General Application for Variance, Site Plan Review, and Binding Site Plan Review, received by City on January 31, 2003;
4. Design Review Application, received by City on January 22, 2002;

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- 5. Commitment for Title Insurance;
- 6. Comment letters to Hearing Examiner regarding Autumn Crest Application, including letters from Harris and Mary Atkins, and David G. Folsom, both received by City on June 17, 2003;
- 7. City of Gig Harbor Notice of Determination of Nonsignificance, issued April 8, 2002;
- 8. REVISED Autumn Crest Variance Request No. 2: Reduction of Southern Buffer Area Within the Proposed Plat;
- 9. REVISED Autumn Crest Variance Request No. 1 – Site Coverage;
- 10. Memorandum dated June 4, 2003, from Building Official/Fire Marshal Dick J. Bower to Rob White regarding Autumn Crest;
- 11. Memorandum dated June 4, 2002, from Gus Garcia, Associate Engineer, to Robert White, Senior Planner, regarding Autumn Crest D-0117;
- 12. Traffic Impact Analysis for Autumn Crest Adult Condominium Project, dated August 24, 2001;
- 13. Revised Site Plan and PRD for Autumn Crest Plat, received by City on June 9, 2003;
- 14. Landscape Planting Plan for Autumn Crest Adult Condominium Project;
- 15. Proposed Unit for the Plat of Autumn Crest – Elevations/Details;
- 16. Revised Site Plan and PRD for Autumn Crest Plat, received by City on June 18, 2003;
- 17. Statutory Warranty Deed reserving a non-exclusive easement for road and utility purposes, dated May 26, 1978;
- 18. Boundary and Topographic Survey;
- 19. Aerial site view;
- 20. Photograph of prototype home;
- 21. Photograph; and
- 22. Photograph.

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* C. Pleadings. In addition, the Hearing Examiner considered the following:

1. None.

D. Testimony. The following individuals provided testimony under oath:

- 1. The Staff Report was presented by Rob White, Senior Planner;
- 2. Paul Cyr, Barghausen Consulting Engineers, applicant;
- 3. Fred Paulson, owner;
- 4. Mel Wohlman;
- 5. Dave Folsom;
- 6. John Miller;
- 7. Suzanne Miller;
- 8. Tim Williams; and
- 9. Tina Hagedorn.

III. FINDINGS

1. The applicant proposes to develop a 21-lot subdivision consisting of 20 new attached single-family residences that will be owner occupied and located on individual lots, plus the existing "Pillars" site. Ex. 16. Two-family attached dwellings are permitted in the R-2 zone. GHMC 17.20.020. The applicant seeks approval of this proposal through a Planned Residential Development (PRD) review.

2. The property consists of Parcel No. 0221083094, Parcel No. 0221083093, and Parcel No. 0221083056, totaling approximately 4.92 acres and zoned R-2 medium density residential under the Gig Harbor Municipal Code and Comprehensive Plan.

3. A mix of uses and a mixed zoned area within the City of Gig Harbor surrounds the property. The property will have primary access off of Soundview Drive and secondary access off of McDonald Avenue.

4. The dimensions of the property measure approximately 1,296 feet long by 165 feet wide. Due to the site's long, narrow shape and sloping topography, the attached-home design provides for moderate terracing and connection with firewalls.

1 5. A private road with gated entrances off Soundview Drive and McDonald Avenue
will service the plat.

2 6. The proposed plat design preserves the significant trees on the perimeter of the
3 property and at least 23 percent of the entire vegetation for the site. Ex. 1, 13 - 16.

4 7. The applicant also seeks two variances under the proposed review:

5 a. A variance from the 40 percent maximum site coverage limits within the
6 R-2 zone, to allow 44 percent site coverage to accommodate housing units and road surface
within the long, narrow lot configuration (Ex. 9); and

7 b. A variance for the landscape buffer width adjacent to private road Tract B
8 along the southern boundary abutting the R-1 zone from the required 25 feet, to a buffer
width of between five and fifteen feet (Ex. 8).

9 8. The proposed buffer will measure 5 feet wide adjacent to the RB-2 and B-2
10 commercial zoned properties, and 15 feet wide adjacent to Seaview Place, the residential
11 neighborhood to the south. The entire buffer will consist of a vegetated buffer with 6-foot
12 solid cedar board fencing. The reduction in buffer width is requested in order to provide
adequate room for the road as it passes "The Pillars," the existing home formerly known as
13 The Pillars Bed and Breakfast, at the east side of the parcel adjacent to Soundview Drive.
Id.

14 9. Although this project is a PRD, the applicant is not seeking increased density, as
15 would otherwise be allowed under the Gig Harbor Municipal Code. The overall density for
16 the project equates to approximately 4.8 dwelling units per acre, which is well below the
17 maximum 7.8 units per acre allowed through the PRD process. Rather, the applicant
18 testified that duplexes are specifically permitted within the R-2 zone but, in order to best
accommodate the wishes of the owners of the nearby homes, he was avoiding construction
of typical duplexes and increased on-site density. Ex. 1; testimony of Messrs. Cyr and
Paulson.

19 10. The applicant believes that the project provides for what he described as "high-
20 end" single-family attached housing that is comparable in price range and quality to the
21 single-family detached homes in the adjacent R-1 zones. These homes are located
22 convenient to bus transportation, a Park and Ride lot, shopping, and are within walking
distance of downtown, Grandview Forest Park, and the Gig Harbor Civic Center. As
proposed, Autumn Crest would provide transitional infill housing in an R-2 zone that is
situated between commercial uses and existing R-1 zones.

23 11. The pertinent land-use policies include the following:
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A. Comprehensive Plan.

i. The proposal is designated Residential Medium on the City of Gig Harbor Comprehensive Plan Generalized Land Use Map.

ii. Page 11 – Land Use Goal: **PROMOTE COMMUNITY DIVERSITY AND DISTINCTION AND INCREASE HOUSING OPPORTUNITIES.**

Provide a control and review process that permits maximum design flexibility while meeting social and community needs for employment, housing, education and recreation. Provide for a range of residential densities which would accommodate a broad variety of housing types and tenures.

Encourage higher densities for developments which 1) Provide substantial open space or buffers, 2) Have natural site characteristics suitable for higher intensity residential development, 3) Propose innovative design throughout the project which reflects the historical character of the area, 4) Have relatively easy access to major local employment areas, 5) Would not significantly impact established single family neighborhoods.

iii. Page 18 – Community Design Element Goal: **ASSURE THAT NEW COMMERCIAL AND RESIDENTIAL PROJECTS INCLUDE ACTIVE INTERFACE BETWEEN THE PUBLIC AND PRIVATE REALMS.**

To accomplish this projects should 1) Create outdoor people spaces, 2) Provide public orientation, 3) Keep commercial structures in foreground of development, 4) Encourage houses which engage the neighborhood.

iv. Page 41 – Housing Element Goal: **MAINTAIN AND PROTECT THE SCALE AND CHARACTER OF EXISTING NEIGHBORHOODS.**

To accomplish this Gig Harbor should 1) Encourage infill with housing types which are similar to surrounding housing types, 2) Develop guidelines which define how larger structures should be designed to fit with existing structures.

v. Page 41 – Housing Element Goal: **ENCOURAGE HIGH DENSITY HOUSING WHICH MAINTAINS GIG HARBOR’S HISTORIC VISUAL CHARACTERISTIC AS A SINGLE FAMILY COMMUNITY.**

To accomplish this Gig Harbor, the community, and project applicants should 1) Identify areas where small lot sizes are

1 appropriate, 2) Minimize the appearance of multi-family
2 structures, 3) Reward acceptance of density with corresponding
3 benefits.

4 **B. Gig Harbor Municipal Code (GHMC).**

5 i. GHMC 17.66 General Variance Standards. GHMC Section
6 17.66.030(B) states that variances may be granted only if the applicant can successfully
7 demonstrate that all of the enumerated criteria are satisfied. These criteria are discussed in
8 detail below.

9 ii. GHMC 17.20 R-2 Residential Zone Standards.

10 a. GHMC 17.20.010 states that an R-2 district is intended to
11 allow for a moderate density of land use that is greater than that permitted in an R-1
12 district but less than that permitted in an R-3 district, provided that suitable facilities such
13 as streets, water, sewer and storm drainage are available. An R-2 district provides a
14 transition between a higher density residential district in order to preserve the primarily
15 residential character of existing lower density residential uses.

16 b. GHMC 17.20.020 states that single-family detached and
17 two-family attached dwellings are permitted in the R-2 zone.

18 c. GHMC 17.20.040 describes development standards for the
19 R-2 zone. Applicable development standards for a PRD in an R-2 zone include i.)
20 minimum front yard setback of 25 feet, ii.) Maximum impervious site coverage of 40%,
21 and iii.) Maximum density of 6 dwelling units per acre (7.8 with bonus density credits).

22 d. GHMC 17.20.060 states that the maximum height for any
23 structure located in the R-2 zone is 35 feet.

24 iii. GHMC 17.89.010 Planned Residential Development Zone
25 Standards. According to the express policy direction of the City Council, as codified in
26 GHMC Chapter 17.89, "The intent of the PRD zone is to allow opportunity for more
27 creative and imaginative residential projects than are generally possible under strict
28 application of the zoning regulations in order that such projects shall provide substantial
29 additional benefit to the general community. It is further intended to preserve unique or
30 sensitive physical features, such as steep slopes, public views, retention of natural vegetation
31 and to provide more open space and recreational amenities, for residents of the development
32 and the general public, than would be available under conventional land development
33 practices. Additionally, it is intended to promote more economical and efficient use of land
34 and a unified design concept for residential development."

The following PRD standards apply to this proposal:

a. Under GHMC 17.89.020, PRD projects are allowed in all
residential zones on parcels 2 acres or larger in size.

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1 b. Under GHMC 17.89.050, allowed uses in a PRD project
2 include all uses allowed conditionally and outright in the underlying zone.

3 c. Under GHMC 17.89.060(A), certain development and
4 design standards may be modified through a PRD, including lot area and width, setbacks,
5 impervious surface on individual parcels, and building height.

6 d. Under GHMC 17.89.060(B), certain other development and
7 design standards may not be modified through a PRD, including shoreline regulations,
8 standards pertaining to environmentally sensitive areas, regulations pertaining to
9 nonconforming uses, standards pertaining to screening around outdoor storage areas, total
10 coverage by impervious surface, and height restrictions as identified on the adopted City
11 of Gig Harbor Height Restriction Area Map and Shoreline Master Program.

12 e. Under GHMC 17.89.070, applicants for a preliminary PRD
13 application must demonstrate that they have met several specific design requirements.

14 f. Under GHMC 17.89.090, all roads within a PRD must be
15 consistent with the adopted policies and standards of the City of Gig Harbor public works
16 construction standards for public roads.

17 iv. GHMC 17.78 Landscaping and Screening Standards.

18 a. Under GHMC 17.78.050, all significant vegetation located
19 within the perimeter landscape areas shall be retained.

20 b. Under GHMC 17.78.060, requirements for residential
21 landscaping, including quantity of trees, shrubs, and groundcover are established. That
22 section further provides that all residential plats shall have a minimum buffer of 25 feet
23 around the perimeter of the plat and that screening may be achieved with rows of trees,
24 shrubs, fencing, and existing native vegetation.

25 C. Design Manual (DM).

 The following sections of the City's Design Manual are applicable to this
project: Minor Streets, Zone Transition, Site Design, On-Site Walkways, Landscaping
and Screening, Fences, Parking, Outdoor Lighting, Outdoor Furnishings, Architecture,
Topographic Considerations, Building Lighting, and Single-Family Housing Design.

 12. With that general background, each of the four permits requested by the
applicant will be addressed below, beginning with the PRD application. The review criteria
for PRD approval are found at GHMC Section 17.89.070(A) and (B), and are serially
addressed below:

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A. 17.89.070(A).

1. Landscaping and site plans showing the location of proposed open space or parks, road layout and proposed buffering of buildings, parking, integrated pedestrian circulation, loading and storage areas, all approved under the design review process.

- The proposed landscaping and site plans indicate the location of open space adjacent to Soundview Drive, and between units in shared cottage-style front yards. Buildings are buffered with a perimeter fence and native vegetation buffer. The parking requirement of two stalls per unit is exceeded by providing two stalls in each garage and one guest stall for each unit in the alleys. Pedestrian circulation is integrated into the project by providing a sidewalk connecting Soundview Drive to McDonald Avenue and also by providing a path from the sidewalk to the front porch of each unit. Loading and storage will be accommodated within the garage of each unit. Exs. 1, 13 - 16.

2. Identification of unique characteristics of the subject property proposed to be retained and how these characteristics qualify for density and/or height bonus under GHMC 17.89.100.

- The applicant has proposed to retain more significant vegetation than required. However, since the applicant is not seeking increased density or height, this requirement is not applicable.

3. Identification of unique characteristics of the proposed use(s) and how those characteristics qualify for increased density and/or height.

- The proposed use is single-family residential. Since the applicant is not seeking increased density or height, this requirement is not applicable.

4. The proposed relationship and arrangement of buildings and open spaces as they relate to various uses within or adjacent to the PRD approved under the design review process.

- The cluster arrangement of the single-family homes in this cottage-style project promotes social interaction by proximity while at the same time concentrating utility and alley areas in groups of four. What typically would have been four driveways now becomes one.

Additionally, the structures as designed will meet the specific design review requirements for single-family homes, integrating well with the surrounding neighborhoods and traditional style of residential architecture found in Gig Harbor, while allowing room for open space and buffer areas.

1 The applicant's decision not to seek any of the otherwise
2 permissible increased density further reflects satisfaction of this criterion.

3 5. Measures proposed to mitigate visual impact of the PRD upon
4 the surrounding area and approved under the design review process.

5 • The applicant has proposed to mitigate visual impacts by
6 combining infill plantings into a reduced width buffer with a 6-foot solid cedar board
7 fence. Additionally, the architectural style and detailing proposed, and discussed further
8 in this decision below, exceeds the minimum requirements for single-family design
9 review.

10 In response to questions raised in Mr. and Mrs. Atkins' letter (Ex.
11 6, page 3), the applicant further agreed to plant 12 foot Leyland Cypress to further
12 mitigate visual impact. Testimony of Mr. Cyr.

13 6. Identification of any extraordinary public improvements
14 proposed for acceptance of ownership by the City in connection with the planned
15 development that qualify for the density and/or height bonus under GHMC 17.89.100.

16 • Since the applicant is not seeking increased density or height,
17 this requirement is not applicable.

18 7. Identification of any unique natural features of the property
19 proposed for acceptance of ownership by the City for preservation, and that qualify for
20 the density and/or height bonus under GHMC 17.89.100.

21 • Since the applicant is not seeking increased density or height,
22 this requirement is not applicable.

23 8. Identification of any proposed recreational opportunities in
24 excess of those normally required of a subdivision and a description of how they qualify
25 for density and/or height bonus.

• Since the applicant is not seeking increased density or height,
this requirement is not applicable.

9. Identification of any unique historic or cultural features of the
property and surrounding neighborhood proposed for acceptance of ownership by the
City for preservation, and that qualify for the density and/or height bonus under GHMC
17.89.100.

• Since the applicant is not seeking increased density or height,
this requirement is not applicable.

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B. 17.89.070(B).

1. The director of public works and the decisionmaker finds that the site access, proposed onsite circulation and off-street parking meet all public works standards and makes adequate provision for roads, streets, alleys and other public ways. Streets and sidewalks, existing and proposed, must be suitable and adequate to carry anticipated traffic within the proposed PRD and in the vicinity of the PRD.

- Public facilities are adequate, or the applicant will provide adequate mitigation to improve public facilities as necessary. Exs. 11 - 12.

Although some concerns were raised about traffic impacts, Mr. Cyr correctly noted that the SEPA DNS was not appealed. Mr. White commented that all traffic impacts will be addressed through applicable provisions of the municipal code. Associate Engineer Gus Garcia likewise testified that Public Works' comments have been offered only at a "site plan or architecturally driven" level, and that no determination has been made at the building permit level. In particular, Mr. Garcia explained that a required traffic capacity reservation certificate has not yet been issued, and additional code-based traffic requirements may still be imposed. See also, Ex. 10.

2. The director of public works and the decisionmaker finds that the PRD makes adequate provision for all public utilities, including, but not limited to, water, sewer and storm water drainage. Water, sewer and storm water facilities, existing and proposed, must be suitable and adequate to provide service within the proposed PRD and in the vicinity of the PRD.

- At the site plan level, this criteria has been met. Ex. 11. As with the street issues discussed above, however, the applicant must demonstrate compliance with all applicable code provisions at the building permit stage. See also, Ex. 10.

3. The PRD is consistent with the Comprehensive Plan.

- The clustered arrangement of single-family homes combined with the open space and buffer areas in this cottage-style project are consistent with the Comprehensive Plan goals set forth above.

4. The PRD accomplishes, by the use of permitted flexibility and variation in design, a development that is better than that resulting from traditional development, and benefiting the general public as well as the residents of the PRD. Net benefit to the city may be demonstrated by one or more of the following:

- a. Placement, type or reduced bulk of structures, or
- b. Interconnected usable open space, or
- c. Recreational facilities, or
- d. Other public facilities, or

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- e. Conservation of natural features, or
- f. Aesthetic features and harmonious design, or
- g. Energy efficient site design or building features.

• Net benefit to the City has been demonstrated by provision of the following: 1) Placement and reduced bulk of structures, 2) Interconnected, usable open space, 3) Conservation of natural features, 4) Aesthetic features and harmonious design, and 5) Energy efficient site design. Exs. 1, 13 - 16; testimony of Messrs. Cyr and White.

Placement of structures in the proposed orientation will allow concentrated density to in-fill a long narrow lot while keeping in character with surrounding development. Open space has been provided at approximately 30% of the total parcel size in the form of cottage courtyards, buffers, and passive recreation areas. Conservation of natural features has been provided by preserving significant vegetation. Aesthetic features and harmonious design has been provided by designing units that will respect and mimic traditional architectural styles found in Gig Harbor's historic district. Finally, energy efficient site design has been achieved by clustering units, thus reducing the need for higher pavement ratios per unit than could otherwise be achieved with this location and by sharing courtyard space, further reducing the need for water and maintenance of residential landscaping. Id.

5. The PRD results in no greater burden on present and projected public utilities and services than would result from traditional development.

• Public facilities are adequate, or the applicant will provide adequate mitigation to improve public facilities as necessary. Exs. 10 - 11.

6. The fire marshal and the decisionmaker find that adequate provision has been made for fire protection.

• Public facilities are adequate, or the applicant will provide adequate mitigation to improve public facilities as necessary. Exs. 10 - 11.

7. The perimeter of the PRD is compatible with the existing land use or property that abuts of is directly across the street from the subject property. Compatibility includes but is not limited to size, scale, mass and architectural design.

• The inclusion of single-family homes of similar size and quality to adjacent neighborhoods, open space, fences, and buffers all combine to make this project compatible with surrounding development.

8. One or more major circulation point(s) functionally connected to a public right-of-way as required by the director of public works, or the fire marshal, or by any other appropriate decisionmaker.

1 • Connection to the public right-of-way for ingress, egress, and
2 fire access is provided via Soundview Drive and also by McDonald Avenue. Exs. 1, 13 -
3 16.

4 9. Open space within the PRD is an integrated part of the project
5 rather than an isolated element of the PRD and is accessible to the general public.

6 • Open space has been provided at approximately 30% of the
7 total parcel size in the form of cottage courtyards, buffers, and passive recreation areas.
8 The degree of accessibility varies with each type. The buffer qualifies as open space, but
9 is more intended for preservation than accessibility. The courtyards are accessible via the
10 sidewalk but are intended to be semi-private for clusters of four units. The open space
11 adjacent to Soundview Drive is most easily accessible to the general public and is
12 expected to be a key feature at the final design stage.

13 10. The design is compatible with and responds to the existing or
14 intended character, appearance, quality of development and physical characteristics of the
15 subject property or immediate vicinity.

16 • The inclusion of single-family homes of similar size adjacent
17 neighborhoods, open space, fences, and buffers all combine to make this project
18 compatible with surrounding development.

19 11. Each phase of the proposed PRD, as it is planned to be
20 completed, contains the required parking spaces, open space, roads, recreation space,
21 utilities and utility area and landscaping necessary for creating and sustaining a desirable
22 and stable environment.

23 • A phasing schedule is not necessary as the applicant proposes
24 to complete the project in one phase.

25 13. In addition to the measures described above, the applicant has further
proposed to provide the following mitigation to better satisfy the variance and PRD
review criteria. As set forth below, implementation of this additional mitigation is a
specific condition of permit approval:

a. Additional planting of native trees and native under-story vegetation to
a maximum healthy density as determined by a landscape architect within all buffer
areas. As offered by Mr. Cyr, the tree plantings shall also include Leyland Cypress of
approximately twelve feet in height.

b. Installation of a 6-foot solid cedar board fence within the buffer areas.

c. Carriage style garage doors on all units.

1 d. Between six and eight individual unit design schemes including
2 variation in garage door designs, siding materials, roof forms, color pallets, and window
3 styles.

4 e. The Pillars shall be incorporated through architectural detailing into the
5 PRD project as a residential unit.

6 f. Pervious unit pavers shall be used in alleys to reduce overall aesthetic
7 and environmental impacts.

8 14. Accordingly, the Examiner finds that all of the review criteria necessary for
9 PRD approval have been satisfied.

10 15. Under GHMC 17.89.060(A), certain development standards otherwise
11 applicable in the underlying zone may be varied in a PRD. The developments standards
12 subject to a variance include the standards for impervious surfaces and setbacks, with
13 certain limitations. The applicant has requested variances from the otherwise applicable
14 development standards for impervious surfaces and landscape buffers.

15 Variances are permitted under GHMC 17.66. As determined by the City Council,
16 variances are intended to address "special situations" where otherwise applicable bulk
17 and dimensional standards and spacing requirements may be "relaxed." GHMC
18 17.66.010. A variance may not, however, be used to evade an "individually
19 inconvenient" regulation. Id., Ex. 6.

20 16. For the impervious surface variance, GHMC 17.66.030 requires the Examiner
21 to make written findings on the following criteria:

22 a. "The proposed variance will not amount to a rezone nor authorize any use
23 not allowed in the district."

24 • The variance if approved will not amount to a rezone. Two-family
25 attached dwellings are permitted within the R-2 zone. GHMC 17.20.020. This review
26 criterion has been satisfied.

27 b. "Special conditions and circumstances exist which are peculiar to the land
28 such as size, shape, topography or location, not applicable to other land in the same district
29 and that literal interpretation of the provisions of this title would deprive the property owner
30 of rights commonly enjoyed by other properties similarly situated in the same district under
31 the terms of this title."

32 • Initially, some difficulty exists in analyzing this review criterion because,
33 by its terms, it requires comparison to other properties "in the same district." The site is
34 zoned R-2, but is completely surrounded by other sites zoned R-1, R-3, B-2, and RB-2. Ex.
35 16. Nonetheless, under commonly accepted rules of statutory construction, equally
36 applicable to the construction of municipal ordinances, the Examiner is required to give

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1 meaning to every pronouncement of the City Council. Every effort should be made to read
2 one of the Council's ordinances harmoniously with the others. Strained or absurd results
3 should be avoided.

4 Here, although it is possible that the Council intended that no general
5 variance could be granted in a case, such as this one, where the project site is not adjacent to
6 any other properties "in the same district," it seems far more plausible to the Examiner that
7 the Council simply did not consider a situation such as this one. The Council has authorized
8 the consideration of variance requests broadly. If it had intended to bar consideration of
9 variance applications in cases where the project site is the only property in a particular
10 district, the Council easily could have provided that express direction. Accordingly, the
11 Examiner will consider this criterion in relation to the other adjoining properties, despite
12 their disparate zoning district classifications.

13 The site is long and narrow. Ex. 19. The slope increases by more than 80
14 feet from the east end to the west end. Ex. 18. The applicant seeks to vary the site coverage
15 by approximately four percentage points, from a 40% maximum to 44%.¹ On this point,
16 there is no contrary evidence in the record. In other words, the "overall impervious surface
17 coverage of the PRD" in fact exceeds 40%, the maximum allowed in an R-2 zone. GHMC
18 17.20.040.

19 While GHMC 17.89.060(A)(3) allows for variance of the impervious surface
20 coverage for *individual* parcels within a PRD, the "overall impervious surface coverage of
21 the PRD" may not exceed the maximum permitted in the underlying zone. *Id.*, See also
22 GHMC 17.89.060(B)(5).

23 This review criterion has *not* been satisfied.

24 c. "The special conditions and circumstances do not result from the actions
25 of the applicant."

• The long, narrow, steep conditions on the site are not the result of the
applicant's actions. This review criterion has been satisfied.

d. "Granting of the variance requested will not confer a special privilege that
is denied other lands in the same district."

• The variance request is denied. This review criterion has not been
satisfied.

e. "The granting of the variance will not be materially detrimental to the
public welfare or injurious to the property or improvements in the vicinity and zone in

¹ Ex. 1 at 2 reflects a request for 44% coverage. Ex. 9 at 1 reflects the applicant's view that the site plan
required site coverage for "approximately 43% of the total lot area," while page two of that exhibit reflects
the use of 53% site coverage.

1 which the subject property is situated.”

2 • The variance request is denied. This review criterion has not been
3 satisfied.

4 f. “The Hearing Examiner shall further make a finding that the reasons set
5 forth in the application justify the granting of the variance, and that the variance is the
6 minimum variance that will make possible the reasonable use of the land.”

7 • As described above, the Examiner finds that the reasons set forth in the
8 application, taken together with the other evidence received at the public hearing, fail to
9 justify the granting of the requested variance. This review criterion has not been satisfied.

10 17. For the requested landscape buffer variance, GHMC 17.66.030 requires the
11 Examiner to make written findings on the following criteria:

12 a. “The proposed variance will not amount to a rezone nor authorize any use
13 not allowed in the district.”

14 • The variance if approved will not amount to a rezone. Two-family
15 attached dwellings are permitted within the R-2 zone. GHMC 17.20.020. This review
16 criterion has been satisfied.

17 b. “Special conditions and circumstances exist which are peculiar to the land
18 such as size, shape, topography or location, not applicable to other land in the same district
19 and that literal interpretation of the provisions of this title would deprive the property owner
20 of rights commonly enjoyed by other properties similarly situated in the same district under
21 the terms of this title.”

22 • Initially, some difficulty exists in analyzing this review criterion because,
23 by its terms, it requires comparison to other properties “in the same district.” The site is
24 zoned R-2, but is completely surrounded by other sites zoned R-1, R-3, B-2, and RB-2. Ex.
25 16. Nonetheless, under commonly accepted rules of statutory construction, equally
applicable to the construction of municipal ordinances, the Examiner is required to give
meaning to every pronouncement of the City Council. Every effort should be made to read
one of the Council’s ordinances harmoniously with the others. Strained or absurd results
should be avoided.

Here, although it is possible that the Council intended that no variance could
be granted in a case, such as this one, where the project site is not adjacent to any other
properties “in the same district,” it seems far more plausible to the Examiner that the
Council simply did not consider a situation such as this one. The Council has authorized the
consideration of variance requests broadly. If it had intended to bar consideration of
variance applications in cases where the project site is the only property in a particular
district, the Council easily could have provided that express direction. Accordingly, the
Examiner will consider this criterion in relation to the other adjoining properties, despite

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1 their disparate zoning district classifications.

2 The site is long and narrow, and includes a slope inclination of more than 80
3 feet from end to end. Exs. 18 - 19. Access to the site is obviously permitted, but the
4 question arises regarding appropriate access and how that may impact the 25 foot landscape
5 buffer required by GHMC 17.78.060.B. As proposed, access is by a private, gated road
6 running along the entire southern boundary between McDonald Avenue and Soundview
7 Drive. Ex. 16.

8 In response to a question by Mr. Folsom regarding relocating at least a
9 portion of the road at the eastern end to the north side, Mr. Cyr conceded that the buffer is a
10 substantial issue to the neighbors. As mentioned before, he agreed to use twelve foot
11 Leyland Cypress to help screen to the south and to have an arborist on site during grading to
12 identify and preserve healthy trees, and to remove dead or diseased trees.

13 More fundamentally, however, Mr. Cyr also correctly noted that relocating a
14 portion of the road to the north side of the PRD would result in a road requiring landscape
15 buffer variances on both the north and south sides of the PRD. Mr. Cyr also testified
16 without opposition that road relocation to the north would require the removal of
17 "significant trees," and would involve two curb cuts within 150 feet of each other (referring
18 to the R-1 neighborhood to the north) in violation of Public Works standards. In short, Mr.
19 Cyr testified that there was no benefit to removing significant trees to the north in order to
20 save comparatively "scrub" vegetation to the south.

21 Additionally, and also compelling to the Examiner, is the fact that the
22 southern wall of the even-numbered units (Ex. 16) in the PRD will be 49' from the property
23 line (Ex. 8; testimony of Mr. Cyr), from where it is an additional 45 feet to the northern wall
24 of the residences to the south of the PRD on Ann-Marie Court (Ex. 6 at 1). In other words,
25 regardless of the actual landscape buffer width, more than 90 feet separates the homes in the
PRD from the homes to the south. This review criterion has been satisfied.

26 c. "The special conditions and circumstances do not result from the actions
27 of the applicant."

28 • The long, narrow, steep conditions on the site, which direct the access
29 and buffer issues, are not the result of the applicant's actions.

30 d. "Granting of the variance requested will not confer a special privilege that
31 is denied other lands in the same district."

32 • Owners of other properties are equally free to apply for buffer variances.
33 This review criterion has been satisfied.

34 e. "The granting of the variance will not be materially detrimental to the
35 public welfare or injurious to the property or improvements in the vicinity and zone in
which the subject property is situated."

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1
2 • Much testimony was offered on this point by Messrs. Folsom, Miller,
3 and Williams, and by Mrs. Williams and Ms. Hagedorn. As discussed above (and
4 conditioned below), however, the applicant is taking substantial steps to address the
5 public welfare (e.g., not seeking maximum density, additional voluntary mitigation, etc.).
6 Although the issues raised by the neighbors have merit, they fail to rise to the level of
7 "material detriment." This review criterion has been satisfied.

8 f. "The Hearing Examiner shall further make a finding that the reasons set
9 forth in the application justify the granting of the variance, and that the variance is the
10 minimum variance that will make possible the reasonable use of the land."

11 • As described above, the Examiner finds that the reasons set forth in the
12 application, taken together with the other evidence received at the public hearing, justify the
13 granting of the requested variance. The first clause of this review criterion has been
14 satisfied.

15 The second clause of this final review criterion requires the Examiner to
16 make a finding that the variance requested is the "minimum" necessary to make possible the
17 "reasonable use" of the land. The Examiner is required to give meaning to every
18 pronouncement of the City Council. The City Council has specifically authorized variances,
19 upon satisfaction of the review criteria in the municipal code.

20 Here, the applicant is seeking to vary the landscape buffer requirements,
21 depending on the particular portion of the site involved, from the required 25 feet to between
22 five and fifteen feet. On this record, there is no evidence that the requested buffer reduction
23 is less than the minimum necessary.

24 The "reasonable use" of property depends to some extent on the
25 "expectations of the landowners at the time of purchase of the property." In addition, "the
size, location, and physical attributes" of property are relevant in determining reasonable
use. *Buechel v. Dep't of Ecology*, 125 Wn. 2d 196, 209 (1994).

Accordingly, and on this record, the Examiner will also find that the variance
requested is the minimum variance that will make possible the reasonable use of the land in
question, thereby satisfying the second clause of this final review criterion.

18. Design Review. The project has been reviewed for conformance with the City's
Design Manual. The staff has approved the design as revised and conditioned. Ex. 1.
Under GHMC 17.98.050.E, however, the Examiner shall not revisit design approval
unless appealed or the Examiner independently finds a health/safety concern regarding
design that would require site plan amendment. There was no appeal. The Examiner
finds no independent health/safety concern regarding design review that would require
amendment of the site plan.

1 19. The SEPA Responsible Official issued a Determination of Non-significance
(DNS) on April 8, 2002. Ex. 7.

2 20. Public notice for this project was provided by mailing the agenda for this
3 meeting to property owners within three hundred feet (300') of the project site at least one
4 week prior to the public meeting, and publishing notice of the meeting in the Peninsula
Gateway at least one week prior to the public meeting.

5 IV. CONCLUSIONS

6 A. Jurisdiction. The Examiner has jurisdiction to rule on requests for PRD and
7 variance approvals pursuant to GHMC 17.66.030 and GHMC 19.01.003. The Examiner has
8 jurisdiction to rule on the design review matter pursuant to GHMC 17.98.050.E, but only
9 upon appeal of the decision of the Design Review Board or if the Examiner independently
10 finds the existence of a specific health/safety consideration that would require changes to the
11 site plan. No appeal was filed. The Examiner finds no independent health/safety concern
12 requiring amendment of the site plan.

13 B. Criteria for Review. The criteria for the Examiner to consider in deciding on (a)
14 PRD applications are found at GHMC 17.89.070, (b) variances are found at GHMC
15 17.66.030, and (c) design review are found at GHMC 17.89.030.E and 17.98.050.E.

16 C. Conclusions Based on Findings. The Examiner adopts the findings set forth
17 above, and accordingly concludes that all of the criteria necessary to grant the requested
18 PRD, the landscape buffer variance, and design review have been satisfied. The criteria
19 necessary to grant the impervious surface variance have not been satisfied.

20 V. DECISION

21 Based on the above findings and conclusions, the applications for a PRD (SUB 02-
22 04 (PRD)), the landscape buffer variance, and for related design review (DRB 02-01) for
23 Autumn Crest within the City of Gig Harbor, are APPROVED, subject to the following
24 conditions. The application for an impervious surface variance is DENIED.

25 A. Planned Residential Development SUB 02-04.

1. Open space adjacent to Soundview Drive shall be designed in such a
way as to be accessible to the general public as required under GHMC 17.89.070(B)(9).
Final design shall be submitted to the Community Development Department for review
prior to construction. The design shall include amenities typical of common areas as
described on pages 31 through 34 in the City's Design Manual. Installation shall be
completed and inspected by Community Development Department staff prior to approval
of final PRD.

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1 2. In order to minimize "pass through" vehicular traffic, automatic gates
2 shall be installed and maintained at both the McDonald and Soundview accesses to the
3 road through the PRD.

4 B. Buffer/Setback Variance VAR 02-01.

5 1. The buffer variance is granted along the south side of the PRD in the
6 dimensions reflected on Exhibit 16 (e.g., five foot buffer adjoining the B-2 and RB-2
7 districts, and 15 foot buffer adjoining the R-1 district except for the "telescoping" portion
8 where the buffer reduces from 15 to 5 feet at the far eastern end of the R-1 district).

9 2. The required quantity of significant vegetation retained on the PRD site
10 shall be 23%. Along the portion of the southern boundary of the PRD adjoining the R-1
11 district, Leyland Cypress approximately 12 feet in height on eight to ten foot centers shall
12 be a material component of the "dense vegetated screen" required by GHMC 17.78.060.

13 3. During grading, the applicant shall retain and maintain on site a
14 licensed arborist to identify and retain healthy trees, and identify and remove any dead or
15 materially diseased trees.

16 4. A 6-foot solid cedar board fence shall be required along the entire east
17 to west distances of the north and south buffers. The fence shall be located on the parcel
18 line, except that the fence shall meander to avoid negative impact to, or removal of, any
19 significant trees.

20 5. Increased project visibility resulting from buffer dimension reduction
21 together with unit clustering justifies an increase in the quality of materials used
22 throughout the project. Exterior design elements including traditional/historic siding
23 materials, color variation, window patterns (single or double-hung with traditional grid
24 patterns), and carriage style garage doors shall be required as additional mitigation for the
25 requested buffer dimension reduction. Such design elements shall be subject to final
review and approval by the City at or before the time of building permit submittal.

 C. General Conditions.

 1. Final project design and construction shall reflect the submitted site,
landscape, and structural drawings dated June 9 or June 18, 2003 and reflected in
Exhibits 13 - 16. The City shall retain the ability but not obligation to accept minor
amendments to those drawings.

 2. Significant vegetation shall be protected and retained as required in
GHMC 17.78 and Design Manual. In the City's sole discretion, and in lieu of the orange
construction safety fencing identified in the Design Manual, a temporary 6'- 0" chain-
link fence may be installed to provide both a physical and visual barrier along the drip-
line of all significant vegetation. This fence shall remain in place until all construction is

1 complete, except that access may be provided to allow for landscaping.

2 3. All pedestrian crossings shall include colored and textured crosswalks
3 consistent with the Soundview Drive Parkway standard.

4 4. Final color and material, and accessory and lighting design review shall be
5 completed prior to issuance of any permits.

6 5. All applicant-proposed mitigation shall be required to be incorporated into the
7 final project design as stated in Finding No. 13 of this Decision.

8 6. If any artifacts are uncovered during grading or construction, the State Historic
9 Preservation Office in Olympia at (360) 753-4405, must be notified.

10 7. Further project development and construction shall remain subject to all other
11 applicable code requirements of the City of Gig Harbor.

12 VI. PARTIES OF RECORD

13 1. Mel Wohlman
14 3222 Anne Marie Court
15 Gig Harbor, WA

16 2. Dave Folsom
17 3160 Anne Marie Ct.
18 Gig Harbor, WA

19 3. Paul Cyr
20 4102 55th St. Ct. NW
21 Gig Harbor, WA

22 4. Harbor Home Design

23 5. John and Suzanne Miller
24 6556 Snug Harbor Ln.
25 Gig Harbor, WA

6. Tim Williams
6621 Snug Harbor Ln.
Gig Harbor, WA

7. Tina Hagedorn
3222 Soundview
Gig Harbor, WA

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8. Randy Stewart
6917 Rainier Ave.
Gig Harbor, WA

9. Roger E. Van Valex
3170 Soundview Ct.
Gig Harbor, WA

10. George Hooper
3050 Soundview Ct.
Gig Harbor, WA

VII. APPEAL OF EXAMINER'S DECISION

Pursuant to GHMC 19.01.003 as amended by Ordinance No. 903, any party of record with standing to file a land use petition and desiring to appeal the Examiner's decision may do so within 21 days of the issuance of this decision by filing an appeal with the Pierce County Superior Court, pursuant to the provisions of the Land Use Petition Act, RCW 36.70C.

DATED this 2 day of July, 2003.

KENYON DISEND, PLLC

By Michael R. Kenyon
Michael R. Kenyon, Hearing Examiner



POLICE

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: CHIEF OF POLICE MIKE DAVIS
SUBJECT: GHPD MONTHLY REPORT FOR NOVEMBER 2004
DATE: DECEMBER 13, 2004

DEPARTMENTAL ACTIVITIES

Activity statistics for the month of November 2004, when compared to October 2004 show a slight increase in calls for service from 337 in October, to 369 in November. Most activity levels stayed static for the month of November.

The mid-year Uniform Crime Report (UCR) is out and I have attached a copy for your review. This report measures two categories of crimes; violent people crimes and property crimes. Our overall violent crime totals have dropped 50% from ten incidents in 2003 to five in 2004 and our property crime totals have dropped from 280 incidents in 2003 to 230 in 2004 for the first six months of each year. Overall we have seen a 19% drop in reported crimes in the first six months of 2004 when compared to the first six months of 2003. The violent crime categories include rape, aggravated assault, homicide and robbery and the property crimes include larceny, burglary, vehicle theft and arson.

The Marine Services Unit (MSU) and the Bike Patrol Unit have been inactive during the month of November.

The Reserve Unit supplied 113.75 hours of volunteer time assisting our officers in November. We are completing a background on a new reserve candidate.

We will have officers working several shifts on overtime this holiday season specifically targeting DUIs. Five eight-hour shifts will be randomly scheduled and they will be paid for with grant money from the Washington Traffic Safety Commission.

We will also have several officers working additional shifts during the Christmas season, paying special attention to our high traffic business districts (i.e. Olympic Village, downtown and the Borgen Blvd. commercial area). This has been a reoccurring program during the last several years.

Some of the more interesting calls during the month of November included:

- Sgt. Scott Emmett and a paramedic were assaulted by a 17 year-old teenager who was arrested for minor in possession (MIP) and three counts of assault 3rd.
- A burglary was interrupted in the 3500 block of Harborview Drive. The tenants saw a white male suspect 30-40 years old with a medium build and long hair exiting the residence through the rear door. The suspect then fled in a dark colored Ford Ranger PU. Missing in the burglary is a loaded 9mm pistol and cash.
- We recently had a large amount of graffiti at the Skate Park. Several options are being looked at including the possibility of painting the concrete when the weather dries up. We are working with Crime Stoppers on this and will be canvassing area secondary schools for possible suspect information.
- We had an area transient hit by a car and killed in the area of 5700 block of Soundview Drive. Washington State Patrol (WSP) assisted with the investigation and it appears the driver will not be cited.
- We have been hit hard with over 24 vehicle prowls during the month of November. CSO Mock has completed a crime analysis report with a evaluation of the locations using a mapping technique. We will be using this information to devise a response plan to attempt to arrest the person (s) responsible. Most of the prowls have involved unlocked vehicles with personal property clearly visible inside the vehicles. I have forwarded a copy of the report to each of you via your mailboxes for information.
- As a result of information developed by GHPD officers, a marijuana grow operation was taken down in Tacoma. The original warrant was then expanded to another residence across the street. A Chevy SUV was seized during the warrant service.
- GHPD officers assisted Drug Enforcement Administration (DEA) agents with the arrest of a drug dealer in the Target Parking lot. The suspect was arrested with 26.4 grams of cocaine and approximately \$5,000 in cash.

TRAVEL/TRAINING

Chief Davis attended the fall Washington State Sheriff's and Police Chief's (WASPC) Conference in Ocean Shores. The draft WASPC officer involved domestic violence policy was approved unanimously. We will be using this policy to create a new policy of our own next year.

CSO Lynn Mock attended first level property room training.

CSO Lynn Mock also attended training at Bonney Lake Police Department dealing with hulk vehicle removal. This is a program that assists citizens in the removal of abandoned vehicles left on private property.

Detective Kevin Enzie attended a fraud seminar.

SPECIAL PROJECTS

The Washington State Patrol is preparing to close their office at the Olympic Village Shopping Mall. We have offered to provide an area in our facility where their troopers can complete their reports. This is part of our continuing efforts to share resources and establish partnerships with local law enforcement.

The Gig Harbor Police Department recently received word that a 94 year-old Gig Harbor resident, Lillian Jaycox left the department \$10,000 in her will. Ms. Jaycox passed away recently. Her husband Loren was a retired New York Police Officer and during the early 1980s volunteered his time for the department. We are planning on creating a 501-C3 called the Jaycox Gig Harbor Police Benevolent Fund. Our plan is to use this money to provide scholarships to area student interested in pursuing a career in law enforcement and providing assistant to local families and citizens during times of need.

We are close to approving a contract with the Kitsap County Jail to take our misdemeanor arrests. With this arrangement our officers will not be required to travel over the heavily congested Narrows Bridge. The Kitsap County Correctional Facility charges less per day for inmate housing and has a substantial lower rate for just a book and release of our prisoners.

Our new Community Service Officer Lynn Mock (CSO) has been overseeing the logging of the boats at the city dock. Her efforts have resulted in the seizure of two small boats and most recently the arrest of an individual staying on a boat that had an outstanding warrant. This individual was arrested without incident, even though he had in his possession a very large knife and drug paraphernalia.

We are looking at securing a contract with Pierce County for specialized services. We are currently working with our city attorney on a contract submitted by the Pierce County Sheriff's Office. This contract will enable us to pay a per capital amount to be guaranteed specialized services throughout the year such as a major investigative team for major crimes such as violent rapes, robberies or homicides.

We are currently working on an ordinance regulating motor-scooters and pocket bikes on our city roadways. The city attorney is reviewing a proposed ordinance from Everett.

PUBLIC CONCERNS

The cormorants are back at a local residence and roosting in a stand of fir trees. This has been an ongoing problem for several years. The residence has recently contacted the Game and Wildlife Department and is going to try a new method to get the birds to roost someplace else. A special "round" is shot out of a pistol using .22 Cal blanks. The projectile is shot at a 45 degree angle toward the area the birds are roosting. A delayed firecracker like explosion occurs at the level the birds are roosting. The resident will be contacting his neighbors before using the special rounds.

FIELD CONTACTS

Detective Kelly Busey participated in the Gig Harbor Peninsula Area Chamber of Commerce and Peninsula School District Career day on November 18th. Three students from GHHS spent the day learning about what police officers in Gig Harbor do and the challenges faced with a career in law enforcement.

Chief Davis has agreed to serve as the Chair of the Tacoma Pierce County DUI Task Force this next year. Chairmanship of the task force was turned over to Chief Davis during the Night of 1,000 Stars Holiday Celebration and Candlelight Vigil held on Friday December 3, at the Washington State History Museum.

CSO Mock and Chief Davis presented a second Bank Robbery seminar to the Kitsap Bank at the Pt. Fosdick branch.

CSO Mock will be working with the Puget Sound Educational School District for Safe Schools and Healthy Students, exploring ways our school district and police department can partnership to find ways to ensure our students learn in a safe and healthy environment.

OTHER COMMENTS

Nothing further

GIG HARBOR POLICE DEPARTMENT

MONTHLY ACTIVITY REPORT

Nov 2004

	<u>Nov 2004</u>	<u>YTD 2004</u>	<u>YTD 2003</u>	<u>% chg</u>
CALLS FOR SERVICE	369	4865	5311	-08%
CRIMINAL TRAFFIC	5	74	105	-30%
TRAFFIC INFRACTIONS	66	941	848	11%
DUI ARRESTS	4	37	50	-26%
FELONY ARRESTS	7	121	63	92%
MISDEMEANOR ARRESTS	12	215	238	-10%
WARRANT ARRESTS	10	87	71	23%
CASE REPORTS	106	1196	1214	-01%
REPORTABLE VEHICLE ACCIDENTS	15	190	177	7%
SECONDARY OFFICER ASSIST	55	641	720	-11%

WASHINGTON ASSOCIATION OF SHERIFFS & POLICE CHIEFS

3060 Willamette Dr NE Lacey, WA 98516 PHONE (360) 486-2380 FAX (360) 486-2381 WEBSITE -- www.waspc.org

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Mid-Year - Index Crime Trends For the Agency GIG HARBOR P.D.



OFFENSE	YEAR	NUMBER OF OFFENSES	PERCENT OF CHANGE
Murder:	2004	0	0.0%
	2003	1	
Forcible Rape:	2004	1	-66.7%
	2003	3	
Robbery:	2004	2	100.0%
	2003	1	
Aggravated Assault:	2004	2	-60.0%
	2003	5	
Burglary:	2004	45	28.6%
	2003	35	
Larceny:	2004	169	-23.2%
	2003	220	
Motor Vehicle Theft:	2004	15	-37.5%
	2003	24	
Arson	2004	1	0.0%
	2003	1	
<hr/>			
Violent Crime Total:	2004	5	-50.0%
	2003	10	
Property Crime Total:	2004	230	-17.9%
	2003	280	
TOTAL INDEX CRIME:	2004	235	-19.0%
	2003	290	

Number of Months Reported from	2004	6
January - June:	2003	6

PLEASE NOTE: If the number of reported months differs, the computed crime trend shown here will not accurately portray real crime trend.

President
JAMES T. SCHARF
Chief - Everett

Executive Board
SCOTT G. SMITH
Chief - Mountlake Terrace
GENE DANA
Sheriff - Kitsap County

President Elect
CRAIG E. TRAYER
Sheriff - Stevens County

COLLEEN WILSON
Chief - Sumner
JOHN L. DIDION
Sheriff - Pacific County

Vice President
RANDALL H. CARROLL
Chief - Bellingham

GARRY ANDERSON
Chief - Renton
DAVID G. REICHERT
Sheriff - King County

Past President
DAN LaROCHE
Sheriff - Douglas County

BRUCE J. BJORK
Chief - Dept. of Fish & Wildlife
PATRICK J. ADAMS
SAC - FBI

Treasurer
MIKE VANDIVER
Chief - Tumwater

LOWELL M. PORTER
Chief - WSP
LARRY V. ERICKSON
Executive Director



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: STEPHEN MISIURAK, P.E.
CITY ENGINEER
SUBJECT: STAFF REPORT - PUBLIC RIGHT(S) OF WAY STANDARDS UPDATE
DATE: DECEMBER 13, 2004

At the November 22, 2004 City Council meeting, Council directed staff to provide a report regarding the schedule for inclusion of the applicable sections from the deleted Section 4, "Public Rights of Way" Chapter from the Planning Department's, "Design Manual" for site and architectural design standards. Below is a brief summary of the schedule for discussion and inclusion into the ongoing Engineering Division Public Works Standards Update, slated for completion and adoption in October 2005.

January 2005:

Engineering staff to review Design Manual deleted section 4 and compare to current and proposed standards for congruency and applicability with the ITE, AASHTO, and WSDOT design guidelines and standards. The Operations and Engineering staff will meet with Public Works Committee to discuss inclusion of the appropriate Section 4 criteria into the Transportation Section of the updated Public Works Standards.

February 2005:

Engineering staff will revise the proposed Transportation Chapter of the Public Works Standards to include the Committee recommendations. Staff will complete the necessary revisions and generate a draft Public Works Chapter update and conduct a Public Meeting and solicit Public Comment.

March 2005:

Staff will review public comment and present proposed draft changes of the transportation chapter and make a final recommendation to the Public Works Committee for final review and decision. Staff will provide a review memorandum to Council summarizing the Public Works Committee determination.

City Engineer, Stephen Misiurak P.E, will supervise all aspects of the proposed update(s) to the Public Works Standards. All inquiries and concerns will be directed to his attention.