

No. 36003-9-II

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**COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
DIVISION II**

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**CITY OR BREMERTON,**

*Appellant,*

vs.

**WEBG, LLC,**

*Respondent.*

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COURT OF APPEALS  
DIVISION II  
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STATE OF WASHINGTON  
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**BRIEF OF RESPONDENT**

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## **I. INTRODUCTION**

WEBG, LLC, a Washington Limited Liability Company desired to rebuild and restore an existing restaurant in the Manette neighborhood of the City of Bremerton. Toward that end, WEBG applied for an exemption from the Shoreline Substantial Development Permitting Process. It also submitted detailed and specific plans and specifications for issuance of a building permit. The plans and specifications for the building permit were very detailed and included engineering and structural calculations. Bremerton's Building Public Works and Fire Departments required several revisions spanning a review period of approximately eight months. WEBG finally received all the permits necessary to begin its work.

Unfortunately, the Bremerton planners who issued the exemption from the Shoreline Substantial Development Permit never reviewed the detailed plans and specifications. As a result, the planners did not understand what WEBG intended and what the City had approved.

WEBG commenced construction pursuant to its properly issued shoreline exemption and building permits. Bremerton planners visited the site and directed that a Stop Work Order be placed on WEBG's construction activities. At this point, Bremerton planners still had not reviewed the City approved plans and specifications. Nevertheless, the

Stop Work Order contended that WEBG's activities exceeded the scope of the permit approvals.

Had the planners reviewed the plans (or talked to its own building staff) they would have realized that WEBG's permitted work preserved only the north wall of the existing structure and portions of the existing foundation stem walls. Otherwise, the existing structure was to be totally rebuilt in order for WEBG to comply with current City requirements.

Contrary to assertions now made by Bremerton, the work to be performed by WEBG did not involve total replacement of the existing structure. Further, the work being performed by WEBG at the time the Stop Work Order was issued was consistent with the City approved specific and detailed plans and specifications.

After issuance of a Stop Work Order, Bremerton conjured up an appeal procedure to the planning director not found in any Bremerton ordinances. WEBG submitted an appeal of the Stop Work Order to the director as instructed by Bremerton. Not surprisingly, the director upheld the decision of his department. This decision was appealed to the hearing examiner. Unfortunately, the decision of the hearing examiner was so fraught with legal and factual errors that both parties moved for reconsideration. Ultimately, both WEBG and Bremerton appealed the decision of the hearing examiner to the Kitsap County Superior Court.

The Honorable Craddock D. Verser, sitting as a visiting judge for the Kitsap County Superior Court, performed a thorough and exhaustive review of the administrative record. The trial court further allowed the parties several hours of argument including colloquy on specific aspects of both parties' appeals.

The trial court then correctly concluded that the City's exemption from the Shoreline Substantial Development Permit was properly granted. It also properly concluded that the building permits were properly issued and that the work being performed by WEBG was consistent with its approved permits.

The trial court granted the LUPA appeal of WEBG and reversed the decision of the hearing examiner. It denied Bremerton's LUPA petition and affirmed the hearing examiner's conclusion that Bremerton had illegally revoked WEBG's exemption from the Shoreline Substantial Development Permit. This appeal follows.

## **II. RESPONSE TO BREMERTON'S ASSIGNMENTS OF ERROR**

Response to Assignment of Error No. 1: The trial court properly applied LUPA's standards to the hearing examiner's decision. A copy of the trial court's memorandum opinion and order is attached as Appendix

A-1. This Court will note at page 3 of Appendix A-1 that the trial court properly applied LUPA standards to the hearing examiner's decision.

Response to Assignment of Error No. 2: The hearing examiner properly concluded that Bremerton illegally revoked WEBG's shoreline exemption by issuance of a Stop Work Order.

### **III. STATEMENT OF THE CASE**

#### **A. FACTUAL BACKGROUND**

On September 21, 2005, Respondent WEBG applied for a building permit to remodel the existing Bridge Tender Restaurant within the City of Bremerton. At the same time, WEBG submitted an application for an exemption from the shoreline permitting process. (Ex. K)

The building permit application identified the project as a commercial remodel and a commercial repair. The application referenced a set of building plans which were initially submitted along with the building permit application. (Ex. E) Detailed plans and specifications were submitted over the next several months for the electrical, mechanical, plumbing and sprinkler systems. (ADR 116, Ex. G, H, J) Engineered drawings and structural calculations were submitted on September 21, 2005. (ADR 95, Ex. H) The entire permitting process took over eight months. (ADR 103)

The request for a shoreline exemption was initially denied by the City in June of 2005. (Ex. L) After its initial denial, attorney Kenneth Letterman, on behalf of WEBG, submitted a July 6, 2005 letter requesting that the City revisit its initial denial. (Ex. L) Mr. Lederman indicated in his correspondence that the estimated value of the improvements would be one million dollars. (Ex. L)

After considering Mr. Lederman's letter, the City communicated that an exemption might be considered if the new roof for the structure was changed from a pitched to a shed roof. A letter from WEBG was sent to the Planning Director on October 3, 2005 confirming that the City would consider the exemption. (Ex. P) The City granted the exemption on November 27, 2005. (Ex. V)

The City review of WEBG's initial submittals resulted in additional submittals. See (Ex. G) revised architectural plans, (Ex. I) civil engineered site plans, (Ex. J), and revisions to those plans based on comments by the City. See (Ex. Q, R, S, W, X, Y, Z).

Throughout this process of submittals and revisions, representatives of WEBG and representatives of the City of Bremerton discussed the details of the commercial remodel and its required compliance with current City codes. The discussions, plans and

specifications submitted clearly demonstrated that very little of the existing structure could be utilized. (ADR at 119)

The City's directive that the remodel comply with current city codes required that the building be almost completely reconstructed. (ADR at 75-85, 91-97) Portions of the existing foundation were to be utilized in the remodel. The existing masonry in the north wall containing the utilities was also to be utilized. (ADR at 105)

Otherwise, the plans and specifications clearly showed the following work:

1. Additional excavation and installation of new footings and interior foundations.
2. A new basement/slab floor.
3. New walls, floor joists and floors.
4. New roof trusses and a new roof.
5. A complete new electrical system including an upgrade from single phase electrical to three phase electrical.
6. A complete new mechanical system.
7. New windows and siding.
8. New insulation.
9. New range hoods
10. A complete and code compliant sprinkler system.

11. New ADA access and bathroom configuration.

(ADR 75-85, 91-104)

After reviewing these detailed plans, the City issued to WEBG a building permit for the work identified in the plans and specifications. (Ex. AA)

In preparing the cover sheet for the building permit, planner Vidinhar erroneously included permit language for an “interior” remodel. Ms. Vidinhar mistakenly inserted the word “interior” on her own volition as it is found nowhere else. (ADR at 37-38) This fact is demonstrated by the following testimony:

**Q. Were the application for building permit submitted by WEBG or the application for a shoreline exemption, did they ever include the terms “interior” remodel?**

**A. No. The term “interior” remodel, I do not believe that it is on there. It is from the scope of work, that’s what the intent was.**

(ADR at 39, Ln. 10-15)

Ms. Vidinhar apparently did not review any of the plans and specifications which were submitted by WEBG for its building permit and apparently did not review or discuss with the City of Bremerton Building Plans Examiners the approved sets of plans and specifications. (ADR 36)

Witness the following colloquy at ADR at 35, Ln. 3-18:

**Q. In fact, have you reviewed the plans, specifications and structural calculations that were submitted by WEBG in support of its application for an exemption and its application for a building permit?**

**A. I'm not a plans examiner, so I do not review plans. I do look at the elevations that was (sic) submitted to make sure that the original elevation would meet the same as what you were proposing.**

**Q. Ok. You – when you issued the exemptions- or I guess Mr. Svensson issued it, but it looks like you prepared it, the exemption from the shoreline substantial development permit – the City had in its possession the detailed plans and specifications for the application for a building permit, did it not?**

**A. For a repair and remodel, yes.**

Vindihar then states at ADR at 36, Ln. 18-25:

**Q. Okay. And did you talk to any of your plans examiners about the scope of the work anticipated in the detailed set of plans and specifications before you issued the exemption?**

**A. No, I did not have to.**

**Q. Okay. And I noticed in the exemption that you issued, it discusses remodel, is that correct?**

**A. Yes.**

Vindihar finally admits her mistake at ADR 39-40.

WEBG member Andrew Graham, who had been the “runner” for WEBG delivering information back and forth between the City of Bremerton Plan and WEBG’s design team, was the WEBG representative who picked up the building permit. In his haste and excitement to obtain the permit, Mr. Graham failed to notice Vindihar’s error on the last page of the permit cover sheet. (ADR at 122)

The following day work commenced on the structure. WEBG member and builder David Wideman decided that the most cost effective methodology for the remodel was to remove all of the existing improvements structurally non-compliant with current codes, leaving only portions of the foundations and the north wall. Bremerton, apparently disagreeing with this construction methodology, issued a Stop Work Order and halted construction on the project. (Ex. NN)

## **B. PROCEDURAL BACKGROUND**

Bremerton correctly identifies the procedural background in this matter in its opening brief. Because Bremerton has removed all non-LUPA claims made by WEBG to the United States District Court, only the LUPA related claims are before this Court. A copy of the order from the federal court is attached as Appendix A-2 to this memorandum.

## **IV. ARGUMENT**

### **A. STANDARD OF REVIEW**

The standard of review for this Court is the same standard utilized by the Superior Court in reversing the decision of the hearing examiner.

WEBG bears the burdens of proof and persuasion in this Court pursuant to the standards of the Land Use Petition Act, Chapter 36.70C RCW. These are the same standards used by the Kitsap County Superior

Court in reversing the decision of the hearing examiner. The trial Court properly concluded:

- 1.) The Stop Work Order and revocation of Petitioners' permits were issued illegally, pursuant to an unlawful procedure, which failed to follow a prescribed process;
- 2.) The Stop Work Order and revocation of Petitioners' permits were erroneous interpretations of the law.
- 3.) The Stop Work Order and revocation of Petitioners' permits were not supported by evidence that was substantial in light of all of the evidence.
- 4.) The Stop Work Order and revocation of Petitioners' permits is a clearly erroneous application in light of the facts.
- 5.) The Stop Work Order and revocation of Petitioners' permits is outside the authority or jurisdiction of the City of Bremerton and its officers, agents and employees.

Review of the decision of the hearing examiner is made somewhat more difficult in this particular dispute because of the poor quality and

internal inconsistencies in the hearing examiner decision. Here are some examples:

1. **Finding of Fact No. 6 is not supported by substantial evidence.** The building permit application consistently referenced the plans submitted as part of the application. (Ex. E). The evidence is undisputed that the initial application did not include the values or costs for the plumbing, electrical and mechanical components which were subject to a separate permitting fee. The undisputed evidence is that the plumbing, mechanical, and electrical cut sheet plans were submitted weeks after the initial building permit application. (See Ex. G). In addition, the project costs did not include any of the site work or site improvements for which different permits were required. (See Ex. J)

2. **Finding of Fact No. 8 of the decision of the hearing examiner is also not supported by substantial evidence.** The examiner concludes that the construction plans submitted lack full framing detail. The testimony of builder and WEBG member, David Wideman is that those construction plans included full framing detail. In fact, all of the plans submitted contained all the necessary details to allow the City to issue a building permit. (See Ex. F – J)

3. **Several findings of fact are superfluous.** Finding of Fact No. 10, 11 and 12 are irrelevant.

4. **Finding of Fact No. 16 is not supported by substantial evidence.** Ex. W – Z are full and complete construction plans with revisions required by Bremerton during the building permit review process. This Finding of Fact references Finding of Fact No. 12 which was addressed earlier in the brief and is also incorrect. The exhibits speak for themselves and show full and complete construction details.

5. **The last sentence of Finding of Fact No. 17 is not supported by substantial evidence.** This finding references the building permit issued. The examiner asserts that a condition of the building permit required that the applicant obtain a permit for demolition work. (See Ex. AA, condition 4.) In fact, a demolition permit was not required according to the testimony of the Bremerton building official. (ADR at 80)

6. **Finding of Fact No. 22 is not supported by substantial evidence at least in part.** This Finding of Fact correctly states that the City of Bremerton Shoreline Master Program and the Bremerton Municipal Code do not define the terms “remodel” or “demolition”. While this portion of the finding is correct, the later portion of Finding No. 22 states that the existing structure was to be replaced. The record reflects that a portion of the existing foundation and the existing north concrete block wall were not being replaced.

Fortunately, both the trial court and this Court have before it detailed plans and specifications as well as other documents which were part of the administrative record before the hearing examiner. Moreover the testimony of the witnesses before the hearing examiner is fairly consistent on the major issues presented by Bremerton in this appeal. Based upon this record, the trial court concluded that the decision of the hearing examiner upholding the stop work order and revoking the WEBG exemptions and permits was not supported by substantial evidence.

## **B. OVERVIEW OF ARGUMENT**

Bremerton properly issued a shoreline exemption to the requirement for a Shoreline Substantial Development Permit to WEBG on November 29, 2005. (Ex. V) The Bremerton Shoreline Master Program allows the City to issue a shoreline exemption to the Shoreline Substantial Development Permit Requirements where an existing development is restored to a state comparable to its original condition except where the restoration or repair involves total replacement. A copy of the Bremerton Shoreline Master Program definitions is attached as Appendix A-3 to this memorandum. The Court will note that an exemption can even be granted for **total** replacement of an existing structure if total replacement will not cause substantial adverse effects to the shoreline resource or environment

or where total replacement is common practice. See Appendix A-3 at Chapter 8; pages 6-7.

The Superior Court properly held that the restoration by WEBG of the existing restaurant did not involve total replacement. The undisputed evidence shows that the north wall and portions of the foundation of the existing structure were to be preserved and utilized in the restoration of the structure. The hearing examiner's attempt to redefine total replacement differently from the definition of the City's Shoreline Master Program is an erroneous application of the law to the facts. See RCW 36.70C.130(1).

Bremerton's revocation of the exemption is also untimely. Bremerton was required to appeal its grant of a shoreline exemption within 21 days of the granting of the exemption. See *Samuels Furniture, Inc. v. Dept. of Ecology*, 147 Wn. 2d 440, 54 P. 3d 1194, (2002).

Bremerton's continuing insistence that WEBG "demolished" the existing structure ignores the uncontroverted record that portions of the existing foundation and the north wall. As noted by the Superior Court, Bremerton's argument is directed more to the construction methodology employed by WEBG than the scope of the work found in the approved plans. (See Appendix A-1 at 7,8)

Bremerton's revocation of WEBG's shoreline exemption is similarly uncontroverted. This determination by the hearing examiner was upheld by the Superior Court and is clearly identified in the various exhibits. (See for example Ex. NN and Appellant's Opening Brief at 1-2)

**C. BREMERTON PROPERLY ISSUED WEBG AN EXEMPTION FROM THE REQUIREMENTS OF THE SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT**

It is undisputed that the detailed plans and specifications submitted to Bremerton by WEBG identified that only the north wall and portions of the foundation were to remain in WEBG's restoration of the building. Detailed plans, specifications and structural calculations were submitted to Bremerton on September 21, 2005. (See Ex. E, F, H)

Attached as Appendix A-4 to this memorandum are excerpts from Exhibits E and F. Exhibits E and F were originally submitted to the City of September 21, 2005 and provide a very detailed description of the work to be performed by WEBG. At Sheet 1 of Exhibit E, the plans identify the existing exterior concrete masonry foundation stem wall which is to remain. This sheet depicts the existing foundation footing which is to remain. This sheet also shows the newest portion of the existing foundation of the structure. The second page of Appendix A-4 shows the top of Sheet 4 of Exhibit E, again showing the existing CMU wall and how it is to be reinforced. Sheet S-5 of Exhibit E depicts the detail of how

the existing CMU foundation wall is to be reinforced. Sheet S-5 notes that the engineer is to be notified if the existing CMU stem wall is not grouted. The next page of Exhibit E, Sheet 6 again shows the existing CMU wall and footing connection and a detail for reinforcement of those existing components. Sheet S-7 of Exhibit E shows utilization of the existing north wall as well as the existing foundation.

Otherwise, the detailed plans, specifications and structural calculations submitted to the City in Exhibits E and F show that the existing structure is to be completely rebuilt. These documents detail all of the lumber, posts, beams and steel to be used and calculate their strength. (ADR at 90-104)

Bremerton's building department reviewed the initial submittals from WEBG for compliance with all current building codes and development regulations. (ADR at 75, Ln.21-23) Larry Craze who reviewed WEBG's for compliance with Bremerton Building Codes testified that the plans showed the following:

1. A new lighting system (ADR at 76, Ln. 10);
2. A new roof and roof system (ADR at 76, Ln. 19-21);
3. New siding and different exterior appearance (ADR at 87, Ln. 22-25);
4. Compliance with Washington State Energy Code (ADR at 76, Ln. 12-14);

5. New windows (ADR at 77, Ln. 1-3);
6. New floor and floor joists, including changes in elevation of the floors (ADR at 77, Ln. 7-11);
7. New posts and beams and structural support for new roof (ADR at 77, Ln. 11-13);
8. New foundation footings for both the interior and exterior walls (ADR at 77, Ln. 14-16);
9. Sprinkler system (ADR at 77, Ln. 22-24);
10. New HVAC system (ADR at 70, Ln. 20-25);
11. New insulation (ADR at 78, Ln. 12-14);
12. Compliance with American's with Disabilities Act code requirements (ADR at 78, Ln. 15-16);
13. Compliance with building code earthquake requirement (ADR 78, Ln. 17-22);

It is clear from the testimony of the Bremerton building official that he understood that with the exception of portions of the existing foundation footing and CMU stem walls the structure was to be totally rebuilt and reconstructed in compliance with current building codes, energy codes and accessibility codes.

Bremerton argues that WEBG was somehow dishonest with Bremerton as to the scope of the work to be performed on the existing structure. (Appellant's Opening Brief at 33) Unfortunately, the

misunderstanding created here was not the result of dishonesty by WEBG but rather the result of bureaucratic incompetence by Bremerton.

Bremerton's planners unfortunately failed to properly review the project. In her testimony before the examiner, Vidinhar first correctly notes that an exemption to the Shoreline Substantial Development Permitting process can be granted for the rebuilding of an existing structure including total replacement. (ADR at 34, Ln. 13-23) When asked whether WEBG's remodel was less than a total replacement, Vidinhar testified she did not review WEBG's plans, specifications and structural calculations. Witness the following colloquy at ADR at 35, Ln. 3-18:

**Q. In fact, have you reviewed the plans, specifications and structural calculations that were submitted by WEBG in support of its application for an exemption and its application for a building permit?**

**A. I'm not a plans examiner, so I do not review plans. I do look at the elevations that was (sic) submitted to make sure that the original elevation would meet the same as what you were proposing.**

**Q. Ok. You – when you issued the exemptions- or I guess Mr. Svensson issued it, but it looks like you prepared it, the exemption from the shoreline substantial development permit – the City had in its possession the detailed plans and specifications for the application for a building permit, did it not?**

**A. For a repair and remodel, yes.**

Not only did the planner who issued the shoreline exemption fail to adequately review the work proposed by WEBG; she also apparently

failed to discuss the project with those responsible for reviewing the plans.

Witness the following testimony from Ms. Vidinhar, ADR at 36, Ln. 18-25:

**Q. Okay. And did you talk to any of your plans examiners about the scope of the work anticipated in the detailed set of plans and specifications before you issued the exemption?**

**A. No, I did not have to.**

**Q. Okay. And I noticed in the exemption that you issued, it discusses remodel, is that correct?**

**A. Yes.**

Contrary to the assertions now being made by Bremerton, WEBG not only accurately represented that it was proposing to remodel and refurbish the existing building but provided very detailed plans and specifications as to how the refurbishment of the building was to occur. Unfortunately, Bremerton did not take the time or effort to understand WEBG's proposal. WEBG should not be penalized for Bremerton's shortcomings.

Bremerton continues with this line of argument, indicating that had WEBG revealed its "true intentions" it is "highly unlikely that the City would have granted a shoreline exemption." (Appellant's Opening Brief at 33.) This argument is incorrect for two reasons. First, WEBG clearly did specifically and accurately indicate its intentions with regard to the rebuilding of the existing structure. Further, Bremerton's Shoreline

Master Program specifically allows for reconstruction of an existing structure pursuant to a shoreline exemption even where it involves total replacement of an existing structure. Bremerton recognized the scope of the project early on, terming it a “major remodel”. (Ex. N)

The only objection raised by Bremerton prior to issuing the shoreline exemption was that the project not exceed the footprint and envelope of the existing structure. Specifically, Bremerton required WEBG to eliminate its proposed pitched roof and replace it with a flat roof similar to the existing roof. (Ex. O, P)

Finally, Bremerton argues that it had “no choice” but to issue a Stop Work Order. (Appellant’s Opening Brief at 35) What is interesting about this argument is that there is no provision in Bremerton’s Shoreline Master Program for issuance of a Stop Work Order. Under Bremerton’s own Shoreline Master Program Administrative and Enforcement Provisions, Bremerton provides to itself choices of enforcement actions and penalties. Specifically, Chapter 7(F)(1)(a) states as follows:

The City Attorney shall bring such injunctive, declaratory, or other actions as are necessary to insure that no uses are made of the shorelines of the State in conflict with the provisions of the Act and/or of this Master Program, and otherwise enforce the provisions of both. Appendix A-3.

The Master Program goes on to set forth a civil penalty for violations. In short, Bremerton's Shoreline Master Program does not provide for issuance of Stop Work Order in the event of a violation.

Unfortunately, Bremerton's removal of WEBG's constitutional claims to Federal Court prevents WEBG from presenting its arguments regarding Bremerton's due process violations in this proceeding. However, it should be noted that Bremerton repeatedly failed to follow its own ordinances and codes in dealing with WEBG.

**D. BREMERTON WAS PROHIBITED FROM REVOKING WEBG'S SHORELINE EXEMPTION AND BUILDING PERMIT PURSUANT TO LUPA.**

The parties are in agreement that a local government's decision that a project is exempt from the permitting requirements of the Shoreline Management Act, Chapter 90.58 RCW, is a decision that must be appealed to Superior Court, rather than to the Shoreline Hearings Board. RCW 90.58.180; *Samuels Furniture Inc. v. State*, 146 Wn. 2d 440, 448 - 449, 54 P. 3d 1194 (2003). Bremerton did not bring a LUPA appeal, or any other action, to challenge its issuance of a shoreline exemption that allowed WEBG to remodel its existing restaurant. Therefore, the shoreline exemption became final and binding on Bremerton 21 days after the shoreline exemption was issued. As is stated in RCW 36.70C.040, a land

use petition is barred and the court may not grant review, unless the petition is timely filed with the court and timely served.....

Bremerton and WEBG disagree as to whether the shoreline exemption would have been appealable pursuant to LUPA. WEBG submits that the issuance of the shoreline exemption was a final determination that shoreline permits were not required for WEBG's remodel and that Bremerton failed to appeal its exemption within 21 days. This conclusion is reinforced by Washington case law. For example, in *Twin Bridge Marine Park v. Dept. of Ecology*, 130 Wn. App. 730, 125 P.3d 155 (2005) the Court held that Ecology was required to invoke LUPA to challenge a filling grading permit that it believed was inconsistent with the Shoreline Management Act. The court further noted that an inferential decision by local government that an additional shoreline permit is not required must be appealed through LUPA to the Superior Court. WEBG submits that Bremerton's determination that the project was exempt from the Shoreline Management Act required it to appeal that determination within 21 days of issuance of the exemption.

However, resolution of this dispute is not necessary in the instant case. Not only did Bremerton not appeal the issuance of the shoreline exemption as required under LUPA; it also did not appeal its issuance of a building permit to WEBG within the time allotted under RCW

36.70C.040. Bremerton's failure to appeal the issuance of the exemption or the building permit bars it from now challenging their issuance.

**E. WEBG WAS IN FULL COMPLIANCE WITH THE TERMS OF BREMERTON'S PERMITS AND IS CURRENTLY IN COMPLIANCE WITH THE TERMS OF THE STOP WORK ORDER**

Bremerton argues that it has not revoked WEBG's shoreline exemption and building permit by issuance of its Stop Work Orders. Bremerton's argument on these issues is difficult to follow as it seeks to mix and match the shoreline exemption and building permits. This approach creates confusion and is misleading.

(a) **Shoreline Exemption** – Bremerton argues that the shoreline exemption issued by Bremerton limited the scope of WEBG's work to the interior remodel of an existing restaurant. This statement is factually incorrect. Ex. V is the grant of an exemption by Bremerton on the shoreline substantial development permitting requirements. This document, dated November 27, 2005 does not contain the term "interior" remodel. Rather, the exemption applies to the remodel of the Quarterdeck Restaurant in accordance with the plans and specifications submitted by WEBG. There is no dispute that when the shoreline exemption was issued, the City understood that the remodel of the restaurant was substantially more than an "interior" remodel. (Ex. N) This Court will

recall that Exhibits O and P specifically discuss the replacement of the existing roof. Vidinhar also testified that replacement of a roof is not an “interior” remodel. Witness the following:

**Q. Okay. Does replacement of a roof constitute an interior remodel?**

**A. Replacement of a roof?**

**Q. Yes.**

**A. No.**

ADR at 36-39, Ln. 24, 25, Ln. 1-4

Therefore, the record clearly indicates that Vidinhar did not consider the work to be performed as being an “interior” remodel. (Ex. N) The Court will also recall from her testimony referenced earlier in this memorandum that Vidinhar did not review the plans and specifications and did not discuss the scope of work with the building official. While Bremerton argues that WEBG violated the terms of the shoreline exemption, it is unable to demonstrate how the shoreline exemption was violated. (Appellant’s Opening Brief at 38)

The utilization of a Stop Work Order adds to the confusion. As discussed earlier in this brief, Bremerton Shoreline Master Program does not contain a provision authorizing the City to utilize a Stop Work Order for a violation of a shoreline permit or a shoreline exemption. Rather, the City authorizes itself to bring legal action in Superior Court and/or impose

monetary penalties. Therefore, it is logical to conclude that the Stop Work Order is inapplicable to the shoreline exemption.

Unfortunately, Bremerton's failure to follow its own ordinances creates nothing but confusion. The first Stop Work Order issued by the building department simply states that the "work being done exceeds work defined on permit." (Ex. CC) No permit is identified and how the work being done exceeds the permitted work is not identified. Later that day, Bremerton issued an amended Stop Work Order that required WEBG to obtain a demolition permit and asbestos analysis. The second Stop Work Order further directs the property owner to submit a written request for reconsideration to the Director of the department of Community Development.<sup>1</sup> (Ex. DD)

In the Director's Decision on Reconsideration dated March 3, 2006, the Director states that the work on the subject property exceeds the scope of the exemption from the shoreline substantial development permit requirement. The City then threatens issuance of a Notice of Violation and alternatively states that WEBG may immediately apply for a shoreline substantial development permit.

---

<sup>1</sup> Bremerton references Bremerton Municipal Code Section 20.02.040 for the proposition that a Stop Work Order may be reconsidered by the Community Development Director. Bremerton Municipal Code 20.02.040 is inapplicable to Stop Work Orders. See Appendix A-6, attached

Alternatively stated, the City justifies its issuance of a stop work order in part on a violation of a shoreline exemption by WEBG and directs WEBG to apply for a shoreline exemption development permit or face further enforcement activity.

Clearly, the City considered the shoreline exemption revoked by this decision. It is not surprising that the hearing examiner also determined that Bremerton had revoked the shoreline exemption. Unfortunately, it did so without following its own processes and without providing WEBG any notice of its action. Bremerton also asserts that it did not revoke WEBG's building permit. As stated earlier, the language on the Stop Work Orders and Director's Decision on Reconsideration clearly require WEBG to reapply for a revision to the building permit, depicting the work to be performed. The decision also requires WEBG to obtain a demolition permit.

**(b) Building Permit**

Bremerton issued a building permit to WEBG in accordance with plans, specifications and structural engineering calculations submitted by WEBG. The plans were stamped by the Bremerton building official as approved by the City of Bremerton Building Department on February 8, 2006. (Ex. H) The International Building Code as adopted by the City of Bremerton empowers the building official to ascertain whether the

construction indicated and described is in accordance with the requirements of the International Building Code and other pertinent laws and ordinances. International Building Code Section 106.3, attached as Appendix A-5

While the record is somewhat unclear, it appears that after the building official determined that WEBG's plans, specifications and structural calculations were in compliance with all Bremerton Codes and Ordinances, a building permit cover sheet was prepared by Vidinhar. As mentioned earlier, Vidinhar had not reviewed the detailed plans and specifications submitted by WEBG and had not discussed the approved plans and specifications with the building official.

In filling out the cover sheet to accompany the approved plans, Ms. Vidinhar inserted the following language as Condition 32 of the permit:

Development is for interior remodel of the restaurant, including replacing the roof in its configuration, installation of sprinklers and ADA accessible amenities, installation of new curb, gutter, sidewalk, streetlights and landscaping. In addition, development includes repaving, top coating and re-stripping the existing parking lot abutting the restaurant. Any work outside of this scope requires additional review and approval.

This condition, which went unnoticed by WEBG representatives initially, is clearly erroneous. It was added by a planner who had not reviewed the plans, specifications and calculations approved by the

building official. When questioned about this condition, Vidinhar was unable to explain the origin of the language. Witness the following colloquy:

**Q. Where the application for building permit submitted by WEBG or the application for a shoreline exemption, did they ever include the terms “interior” remodel?**

**A. No. The term “interior” remodel, I do not believe that it is on there. It is from the scope of work, that’s what the intent was.**

ADR at 39, Ln. 10-15

Vidinhar later asserts that the applications submitted by WEBG were for an “interior” remodel and repair. (ADR at 26, Ln. 6-8) Reference to the record indicates Ms. Vidinhar is mistaken in making this assertion. (See Ex. E, K) As early as June of 2005, she recognized this project as a “major remodel.” (Ex. N)

As the trial court opined, the language in Condition 32 is internally inconsistent and more importantly is not consistent with the plans which the City reviewed with WEBG for eight months. As was stated in *Friends of the Law v. King County*, 123 Wn. 2d 518, 525, 869 P. 2d 1056 (1994):

The duty of those empowered to enforce the codes and ordinances of the County is to ensure compliance therewith and not to devise anonymous procedures available in an arbitrary and uncertain fashion. See also *Eastlake Community Council v. Roanoke Assoc.*, 82 Wn. 2d 475, 513 P. 2d 36 (1973). *Id.* at 525

A decision to grant or deny a building permit is ministerial, not discretionary. *WCHS, Inc. v. City of Lynnwood*, 120 Wn. App. 668, 86 P. 3d 1169 (2004). This is because review by a local government of an application for a building permit requires the building official to determine whether the proposed plans and specifications are in compliance with the requirements of the International Building Code.

In the instant case, the building official made the determination that the proposed plans and specifications complied with the requirements of city ordinances. Ms. Vidinhar's addition of an anonymous and erroneous condition buried within the permit cover sheets inconsistent with the approved plans and specifications is clearly arbitrary and capricious. As such, the trial court held this condition should be ignored and disregarded.

**F. BREMERTON ERRONEOUSLY MIXES AND MATCHES ZONING NONCONFORMING USE ISSUES WITH SHORELINE EXEMPTION ISSUES.**

Bremerton argues that WEBG lost its ability to remodel the restaurant under the Bremerton zoning ordinances because it was substantially destroyed pursuant to BMC 20.54.070. However, the record clearly demonstrates that Bremerton required WEBG to comply with current zoning and building codes in its submittals. City testimony of zoning non-compliance is contradictory and in error.

In September of 2005, Bremerton sent a letter to WEBG initially denying WEBG's request for a shoreline exemption. (Ex. N.) At page two of her communication, Vidinhar notes that the work proposed consists of a "major remodel" of a "dangerous building" and had lost its nonconforming status over time. Vidinhar then states that WEBG needs to conform to the current requirements of the Bremerton codes. She notes that a restaurant use conforms to current zoning but that the proposed parking for the restaurant is inadequate. In addition to the parking deficiency, Vidinhar notes that this project will also require street frontage improvements. Finally, Vidinhar indicates that WEBG will need to retain a geotechnical engineer to address soil stability and critical area issues. (Ex. N)

Pursuant to the Vidinhar letter of September 29, 2005, WEBG supplied the City with necessary geotechnical information to satisfy the requirements of the critical areas ordinance. (Ex. T, U) Because the property is in a commercial zone, Vidinhar raised no issues regarding zoning code setbacks when permits were issued. In summary, the City and WEBG agreed early on that the existing restaurant had lost its nonconforming protections and that all current city codes would apply to the project. As a result, Bremerton required WEBG to comply with all

current city codes. WEBG's compliance with those codes is documented by the issuance of a building permit for the project. (Ex. AA)

The agreement between WEBG and Bremerton that the project would need to comply with current codes was apparently not appreciated by the hearing examiner who discusses nonconformity at great length in his decision. (H.E. Decision at 11-12) Unfortunately, the hearing examiner only concludes from his discussion of this issue that a shoreline exemption should not have been granted because the work to be performed no longer constituted "normal repair." He opines that too much time had elapsed-(an issue not raised by either party). He states the building was demolished-(the record clearly shows the remaining components). Both of these findings were reversed by the trial court.

Bremerton repeats this error in the current appeal. Bremerton's Shoreline Master Program defines the requirements for an exemption; not the zoning codes. As stated earlier in this brief, the decision to grant a shoreline exemption is totally within the province of the local jurisdiction. RCW 90.58.050. Bremerton's Shoreline Master Program allows for an existing structure being restored or even totally replaced to qualify for a shoreline exemption. Discussions made by Bremerton in its brief and by the hearing examiner referencing zoning codes are misplaced.

**G. RECOGNIZING THAT THE APPROVED PLANS AND SPECIFICATIONS DIRECT REBUILDING OF MOST THE EXISTING STRUCTURE, BREMERTON ARGUES THAT THE CONTRACTOR EXCEEDED THE PLANS.**

Throughout Bremerton's Opening Brief, it repeatedly utilizes the erroneous term "interior" remodel. This term is used without any reference to actual scope of work reflected in the approved plans and specifications. Bremerton only references the plans and specifications when it finds it convenient to do so. (See Appellant's Opening Brief at 14, 24) As David Wideman testified and as the approved plans and specifications illustrate, Bremerton's current code requirements mandated that most of the structure be rebuilt. (ADR at 96-100)

For example, Wideman testified that the plans showed that new interior concrete footings had to be poured to support what would be an entirely new structure above them. (ADR at 96) He testified that the existing foundation would be utilized as much as possible. (ADR at 91, Ln. 4-11) He testified that the plans required additional foundations and concrete supports to be poured at the basement of the structures. (ADR at 92, Ln. 3-6) Entirely new structural beams had to be constructed in order to support the new floor system. (ADR at 92, Ln. 9-10) The plans detail installation of new posts, beams, support systems and new flooring from the foundation to the roof. (ADR at 92, Ln. 22-24; Ex. H) The plans and

specifications show an entirely new roof framing plan, new roof trusses and incorporation of new steel support into existing portions of the foundation. (ADR at 93, Ln. 10-20; Ex. H – Sheet S-5)

Wideman further testified that the portions of the existing foundations which were to be utilized needed to be reinforced and strengthened. (ADR at 94, Ln. 5-16)

Bremerton argues that the plans depict that the south and east walls of the existing structure were to remain in the remodel. (Appellant's Opening Brief at 14, 24) However, Bremerton has provided no testimony on this issue and is incorrect in its interpretation of the plan.

As Mr. Wideman testified, there were existing cinderblock (CMU) foundation walls in addition to the existing "new" foundation on the west side. Wideman testified that how much of the existing cinderblock foundation could be utilized would require further analysis. Specifically, Wideman testified as follows:

**Q. Was – there was some testimony by the city building official who did the plan review that the plan was not consistent with a remodel. Did you hear his testimony about that?**

**A. Yes.**

**Q. Do you disagree with that?**

**A. Yes.**

**Q. And why?**

**A. Pretty much every component coming from the soil up had been redrawn, re-proposed, with the exception of the foundation wall, at which time we were**

**waiting for a structural engineer to do core samples on the existing foundation to follow up with that, as I informed the City the day we picked the permit up.**

**Q. As I understand the –**

**(Interruption by Mr. Driscoll the hearing examiner)**

**Q. You informed the City the day you what?**

**A. I was present the day the permit was picked up.**

**Q. Oh.**

**A. I was asked about the foundation at which time I told them we had to wait to – to remove all the building through core samples on the existing foundation to see if they met the engineers requirement or not.**

**(Mr. Broughton resumes):**

**Q. So you told the City that the building was going to need to be removed and core samples taken before you would know the extent of the additional foundation work?**

**A. Correct.**

**Q. Did anyone at the City say anything to you at that time about doing that?**

**A. No, never.**

ADR at 101- 103

Despite the City's assertions to the contrary, the existing concrete masonry foundation walls were not demolished. Those components of the structure can be easily seen in Ex. BB.

The existing CMU foundation walls were not field tested by WEBG's engineer before the Stop Work Order was issued. However, the plans clearly demonstrate how the existing concrete masonry foundation was to be reinforced. (Ex. H, Sheet S-6). Mr. Wideman also testified to the reinforcement methodology to be utilized. (ADR at 94)

Further, Wideman explained to city representatives at the time the building permit was issued the work that his engineer was to perform after the existing wooden walls were removed. (ADR at 102)

The incorrectness of the City argument is further demonstrated by reference to Ex. F and Ex. H of the administrative record. Ex. F provides the structural calculations required by the City to ascertain compliance with its building code. All of the components identified in Ex. F are new components needed to be constructed to properly support the building. The components identified in Ex. F can be cross-referenced with the detail in Ex. H, demonstrating that the building is to be totally reframed. (Ex. H at Sheet S-2). The detail for connection of the new foundations to be constructed to the existing concrete masonry foundation and stem wall are found at Sheet S-6. The Court will note that the existing concrete masonry wall is reinforced with additional concrete footings and steel on both a lateral and horizontal base. The detail further shows the placement of the compacted structural fill within the reinforced concrete masonry wall with a four inch slab to be poured on top of the compacted structural fill. These strengthened footing and foundation walls provide the support for the new framed walls, floors and roof.

These plan details are all explained by the contractor Wideman. (ADR at 93, Ln. 12-20; ADR at 94 -104)

## V. CONCLUSION

In conclusion, Bremerton properly issued a shoreline exemption and building permits to WEBG for remodel of the existing restaurant. While Congressman Norm Dicks and Mayor Cary Bozeman have accomplished a lot in the redevelopment of Bremerton, their efforts have not extended to the Bremerton Planning Department.

WEBG was entitled to rebuild most of the existing structure under an exemption from Bremerton's Shoreline Master Program. However, because of the loss of its status as a nonconforming structure, the rebuilding was required to comply with current building and zoning requirements. WEBG's compliance with current codes is reflected in the fact that permits were issued.

A Stop Work Order was improperly issued by Bremerton. Bremerton did not appeal the issuance of its shoreline exemption and building permits pursuant to LUPA and failed to follow its own procedures for enforcement of shoreline issues.

As a result, the trial court properly reversed the decision of the hearing examiner and reinstated WEBG's shoreline exemption and building permits. It is requested that this Court reach the same conclusion.

Respectfully submitted this 16<sup>th</sup> day of July, 2007.



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CERTIFICATE OF SERVICE BY MAIL ✓

I certify that I mailed or caused to be mailed a copy of the foregoing BRIEF OF RESPONDENT, via U.S. mail, postage prepaid, on the 16 day of July, 2007 to the following counsel of record at the following addresses:

Roger Lubovich  
City of Bremerton  
345 Sixth St., Suite 600  
Bremerton, WA 98337

Richard L. Settle  
Foster Pepper  
1111 Third Ave., Suite 3400  
Seattle, WA 98101-3299

DATED this 16<sup>th</sup> day of July, 2007.



Maureen E. Ahern, Paralegal

**ATTACHMENT A -1**

**ATTACHMENT A -1**



1 After submitting revised construction plans, on February 9, 2006 the  
2 City issued a building permit to WEBG. On February 17, 2006, the City got a  
3 phone call alleging that the restaurant was being "demolished".  
4 Mr. Svensson, City Development Manager, went to the construction site and  
5 directed the issuance of a "Stop Work Order" stating that the "work being  
6 done exceeds work defined on permit". [AR, Exhibit CC]. That same day  
7 Mr. Svensson issued a revised "Stop Work Order" stating that no further work  
8 could occur until a Demolition Permit was issued. [AR, Exhibit DD, EE].  
9

10 WEBG requested reconsideration of the issuance of the Stop Work Order  
11 and on March 3, 2006, Christopher Hugo the Director of the City's Community  
12 Development Department issued his Decision upholding the Stop Work Order.  
13 [AR, Exhibit NN].  
14

15 WEBG appealed that decision to the hearing examiner who issued  
16 Findings of Fact and Conclusions of Law and Decision on April 10, 2006, and  
17 a decision on reconsideration on April 26, 2006.  
18

19 On May 15, 2006, WEBG filed its Land Use Petition (RCW 36.70C) seeking  
20 judicial review of the April 10, 2006 decision of the City of Bremerton  
21 hearing examiner James Driscoll and the April 26, 2006 decision on  
22 reconsideration.  
23

24 The City of Bremerton also filed a Land Use Petition under cause  
25 number 06-2-01181-5 seeking judicial review of the same decisions. By  
26 stipulation the matters were consolidated under this cause number on June  
27 23, 2006. This Court will refer to Petitioner as "WEBG" and the Respondent  
28 City of Bremerton as "City" and avoid the use of "Petitioner", "Cross  
29 Petitioner", "Respondent", or "Cross Respondent".  
30

31 Pursuant to RCW 36.70C.080 the parties stipulated to an order on the  
32 initial hearing on August 21, 2006. The matter was set for a hearing on the  
33 merits for November 17, 2006  
34

#### 35 Decision for Review

36  
37 WEBG asks the Court to review the hearing examiner's decision which  
38 denied its appeal from the decision of the Director of the Department of  
39 Community Development for the City of Bremerton which upheld the issuance of  
40 a Stop Work Order.  
41

42 The City asks the Court to review the hearing examiner's determination  
43 that the City revoked the exemption to the Shoreline Substantial Development  
44 Permit it had granted to WEBG.  
45  
46  
47  
48  
49

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Record Considered on Review

This Court considered the March 27, 2006 Verbatim Report of Proceedings before Hearing Examiner James Driscoll. ("AR" herein) That Report included the transcribed testimony of JoAnn Vidinhar, James Svensson, Larry Craze, David Wideman and Andy Graham. In addition to the testimony Exhibits A through Z and Exhibits AA through NN which were admitted at the hearing were considered by this Court.

The two decisions for review (April 10, 2006 Findings and Conclusions and April 26, 2006 conclusions and decision on reconsideration) are a part of the record on review.

In addition to the foregoing administrative record and decisions the Court considered the briefs filed by the parties in the two cause numbers at issue including the following: WEBG's opening brief entitled "Respondent's Opening Brief" filed 9/13/06; the City's Opening Brief filed 9/27/06; WEBG's responsive brief filed 10/26/06; the City's Response Brief filed 10/27/06; and the City's Reply Brief filed 11/09/06. The Court also considered the Petitions for Review filed by both parties.

Standard for Review

The Land use Petition Act provides that in order for WEBG to prevail it must establish either that the hearings examiner engaged in unlawful procedure, made a mistake of law, that the decision was not supported by substantial evidence or that the decision was clearly erroneous. (RCW 36.70C.130 (a)-(d)). Substantial evidence in this context is that amount of evidence sufficient to persuade a fair-minded person of the truth or correctness of the decision. City of University Place v. McGuire, 144 Wn.2d 640 647, 30 P.3d 453 (2001). The evidence and reasonable inferences from the evidence must be reviewed in the light most favorable to the City. Schofield v. Spokane County, 96 Wn. App. 581, 586. 980 P.2d 277 (1999).

The Court can only grant the relief requested by WEBG if it establishes that one of more of the standards as set forth in RCW 36.70C.130 (a) through (f) have been met. Wenatchee Sportsmen Association v. Chelan County, 141 Wn.2d 169, 175, 4 P.3d 123 (2000).

The review is based upon the administrative record. This Court reviews factual findings to determine if "substantial evidence" exists in the record to support those findings. The review of questions of law is "de novo". Biermann v. City of Spokane, 90 Wn. App. 816, 821, 960 P.2d 434 (Div. III, 1998). Under the "error of law" standard, this Court can substitute its own judgment for that of the hearing examiner, but substantial weight is usually given to the examiner's interpretation of the

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1 law. Van Sant v. City of Everett, 69 Wn. App. 641, 647, 849 P.2d 1276  
2 (1993).

3  
4 ISSUE

5  
6 Does substantial evidence support the decision of the hearing examiner?

7  
8 Building Permit

9  
10 The City issued a building permit to WEBG based upon construction  
11 plans and revisions to those plans which were considered by the City over at  
12 least an eight month period. Those plans were "approved" after extensive  
13 review by the City of Bremerton Building Department officials. The final  
14 revised plans were stamped "approved" on February 3, 2006 and the building  
15 permit was issued on February 9, 2006 [exhibit AA].

16  
17 The City cites condition number 32 on page 5 of the 6 page permit and  
18 asserts this condition limits the nature of the WEBG can perform under the  
19 permit. That paragraph states:

20  
21 Development is for interior remodel of the restaurant, including  
22 replacing the roof in its current configuration, installation of  
23 sprinklers and ADA accessible amenities, installation of a new  
24 curb, gutter, sidewalk, streetlights, and landscaping. In  
25 addition development includes repaving, top-coating and  
26 restripping the existing parking lot abutting the restaurant).  
27 Any work outside of this scope requires additional review and  
28 approval.

29  
30 Condition 32 was added to the permit by city planner Joann Vidinhar.  
31 [AR p. 38]. She added the phrase "interior remodel" even though the  
32 application for the permit did not use the phrase "interior" and the  
33 exemption from the SSDP did not describe the project as an "interior  
34 remodel". She did not discuss the project with the plans examiner who had  
35 approved the plans. The fact that the roof was to be replaced is clearly  
36 inconsistent with her description of the project as an "interior remodel".  
37 Ms. Vidinhar acknowledges that she did not know if the plans submitted by  
38 WEBG showed that the exterior walls were going to be rebuilt.

39  
40 Mr. Craze, a plans examiner for the City testified that the plans  
41 submitted were not consistent with "what is going on at the site currently".  
42 [AR p. 68]. But when asked how the work was inconsistent with the plans he  
43 testified about the excavation of the basement area, and says "I don't see  
44 any way of placing a wall on a foundation that is five feet higher than it  
45 needs to be to get the elevation". [AR p. 70]. He clarifies this unusual  
46 statement by acknowledging that there would have to be excavation "just like  
47 any other remodel". [AR p. 71]. He then indicates that in his opinion all

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1 of the foundation needed to be removed. However, Mr. Craze did not realize  
2 that where the plans showed "new foundation" the plans referred to newer  
3 portions of the existing foundation. [AR 71, 91 & 92]. Mr. Craze  
4 acknowledged that the plans did show an extensive remodel including but not  
5 limited to, new siding, new footings, changes to the exterior, new floors  
6 and floor joists, and a new roof and support for the roof. He acknowledged  
7 that walls would be "opened up" and had to be "upgraded". [AR 76-78]. He  
8 also acknowledged that a portion of the foundation was going to be  
9 demolished and replaced by new "stem walls". [AR 79] Mr. Craze indicated  
10 that "they" (referring to City employees) all knew that there were "sections  
11 of this building that were going to be rebuilt". [AR 85].  
12

13 Mr. Svensson the "development manager" for the City, issued the  
14 initial stop work order, because due to "the demolition" he believed the  
15 work was beyond the scope of work addressed by the building permit. [AR  
16 44]. He also felt that the work was beyond the \$350,000 price on the  
17 building application, but acknowledges that his department had the letter  
18 from WEBG's attorney estimating that the remodel would cost one million  
19 dollars. [AR 46-49]. Mr. Svensson based his conclusion that the  
20 "demolition" exceeded the scope of the project in part on Mr. Craze's  
21 misunderstanding of the plans reference to "new foundation". [AR 50].  
22

23 The Hearing examiner at finding of fact number 17 cites condition 4 of  
24 the building permit as requiring an asbestos survey prior to any "renovation  
25 or demolition work". It is undisputed that WEBG did not obtain that survey  
26 prior to the removal of the walls, however they did obtain that survey after  
27 the stop work order was issued. [AR Exhibit LL]. The face of the building  
28 permit anticipates that some demolition will take place as it states  
29 directly above the owner's signature space: "Any demolition, testing, or  
30 financial burden shall be bore directly by the permit holder." The record  
31 also establishes that a demolition permit is not required for this project.  
32 (AR 56- 58).  
33

34 In addition the building permit provides that: "The issuance of a  
35 permit based on construction documents and other data shall not prevent the  
36 building official from requiring that correction of errors in the  
37 construction documents and other data." [AR exhibit AA, page 2, condition  
38 5). Thus if the building officials believed there was an error in the  
39 construction plans (for instance a lack of framing detail) they could have  
40 required that the plans be corrected, rather than issue a stop work order.  
41

#### 42 Critical Findings and Conclusions made by the Hearing Examiner

43  
44 The hearing examiner found that the City (Community Development  
45 Department) determined that the construction plans and other document  
46 submitted by WEBG misrepresented the scope of the work preformed to date.  
47  
48  
49  
50

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1 [Decision p. 13]. The hearing examiner correctly points out that  
2 determination is entitled to great weight.

3  
4 The hearing examiner also determined that the City is exercising its  
5 authority to enforce provisions of the permit which limited development to  
6 the refurbishment of an existing structure to its lawful use as a restaurant  
7 and maintaining the structure with its original, size, shape, configuration,  
8 and external appearance. {Decision p. 13}.

9  
10 The hearing officer also granted deference to the determination by the  
11 Director of Community Development who determined the WEBG had exceeded the  
12 scope of work approved by the city with the building permit and the  
13 shoreline exemption. [Decision p. 14]. Finally the hearing examiner  
14 determined that the Director's decision was not arbitrary and that the work  
15 on the building did not amount to normal repair and/or maintenance as  
16 allowed by WAC 173-27-040 or the Shorelines Management Act. [Decision p.  
17 14].

18  
19 It is undisputed that WEBG worked with the City for eight months  
20 revising plans to make them acceptable to the City. It is undisputed that  
21 the City knew that the restaurant was going to be remodeled. The City  
22 granted the permit allowing WEBG to proceed. A building permit gives the  
23 holder a vested right which cannot be taken without due process. Mission  
24 Springs v. City of Spokane, 134 Wn. 2d 947, 954 P.2d 250 (1998). Eastlake  
25 Community Council v. Roanoke Associates, Inc., 82 Wn. 2d 475, 513 P.2d 36  
26 (1973). In this case the city was authorized to issue a stop work order,  
27 and WEBG was provided due process, i.e., notice and opportunity to be heard  
28 through the appeal process.

29  
30 In one of the 35 "conditions" contained in the 6 page permit,  
31 condition number 32, cited above, the City attempts to limit the "scope" of  
32 the remodel. The language in that condition is not specific. The language  
33 in that condition is not consistent, and most importantly the language in  
34 that condition is not consistent with the plans which the City reviewed with  
35 WEBG for eight months. The City reads that condition as saying: "You  
36 cannot do any work except as set forth in this paragraph". The paragraph  
37 does not say that. It says, "development is for...". What exactly does that  
38 phrase mean? The word "development" does not appear in any other portion of  
39 the permit. It would be simple to say: "This permit entitles you to do the  
40 following...and if you try to do more the City will issue a stop work order".  
41 Any such limitation should appear in bold type on the face of the permit,  
42 not vaguely referred to in condition 32.

43  
44 ...the duty of those empowered to enforce the codes and ordinances  
45 of the county is to ensure compliance therewith and not to  
46 devise anonymous procedures available...in an arbitrary and  
47 uncertain fashion.

48  
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1 determination was made arbitrarily. The determination is not  
2 supported by substantial evidence given the record as a whole.  
3

4 Shoreline Substantial Development Exemption  
5

6 The hearing examiner determined that the Director's decision that the  
7 construction was not maintenance and/or repair allowed by WAC 173-27-040 is  
8 not supported by substantial evidence in the record when viewed in light of  
9 the whole record. In addition the hearing examiner made an error of law then  
10 he determined that the planned remodel of the restaurant is not a "normal  
11 repair".  
12

13 "Normal Repair" means to restore a development to a state comparable to  
14 its original condition within a reasonable period after decay or partial  
15 destruction except where repair involves total replacement which is not  
16 common practice or causes substantial adverse effects to the shoreline  
17 resource or environment. WAC 173-14-040.  
18

19 The City determined that the remodel was within a reasonable period of  
20 time even though the restaurant had been vacant since 1998. No one has  
21 challenged that determination. To the extent that the hearing officer  
22 determined that WEBG was not entitled to an SSDP exemption because in his  
23 view eight years was not a "reasonable period" of time under the WAC, is an  
24 erroneous interpretation of the law and an erroneous application of the law  
25 to the facts in this case. RCW 36.70C.130(1)(b)(d). No party challenged  
26 that determination made by the city in granting the exemption.  
27

28 The determination by the hearing examiner that the plans as submitted  
29 by WEBG as revised to meet the exemption requirements imposed by the City  
30 and the work which has progressed thus far is not a restoration of the  
31 restaurant to a state comparable to its original condition is not supported  
32 by substantial evidence given the record as a whole. If WEBG had torn down  
33 one half of one wall and then replaced it with a new wall, and then removed  
34 half of one wall and replaced it with a new wall, and continued to do so the  
35 restoration would have proceeded and the City would not have received the  
36 phone call that precipitated the stop work order. The fact that the person  
37 in charge of the construction, David Wideman, elected to tear down three  
38 walls at one time in order to economically proceed with the restoration and  
39 remodel, should not and cannot be cause to revoke the SSDP exemption.  
40

41 The restoration does not involve "total replacement" of the  
42 restaurant. "Total" means "all" or "entire" and the fact that one wall and  
43 portions of the foundation are being preserved prevents this from being a  
44 "total replacement" of the restaurant. The hearing examiner's and the  
45 City's attempt to redefine "total replacement" to mean "almost everything"  
46 is an erroneous application of the law to the facts. RCW 36.70C.130(1)(d).  
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CRADDOCK D. VERSER  
JUDGE

Jefferson County Superior Court  
P.O. Box 1220  
Port Townsend, WA 98368



**ATTACHMENT A -2**

**ATTACHMENT A -2**

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HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

WEBG, LLC,

Petitioner,

v.

CITY OF BREMERTON, a Washington  
Municipal Corporation,

Respondent.

Case No. C06-05685 RBL

STIPULATION AND ORDER TO  
REMAND LUPA PETITIONS AND  
TO STAY PROCEEDINGS

NOTE ON MOTION CALENDAR:  
JANUARY 3, 2007

STIPULATION

The parties, through their attorneys, stipulate as follows:

1. That both Petitioner WEBG, LLC (hereinafter "WEBG") and Respondent City of Bremerton (hereinafter "the City") filed petitions under Washington State's Land Use Petition Act (LUPA), RCW Chapter 36.70C, in Kitsap County Superior Court.
2. That the issues related to the LUPA petitions were thoroughly briefed by the parties and that on November 17, 2006 the parties argued the LUPA petitions before Kitsap County Superior Court, Visiting Judge Craddock Verser.

Stipulation and Order to Remand LUPA  
Petitions - 1

ROGER A. LUBOVICH  
BREMERTON CITY ATTORNEY  
345 6th Street, Suite 600, Bremerton, Washington 98337  
Phone: 360-473-2345 Fax: 360-473-5161

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3. That on November 17, 2006, immediately prior to the LUPA hearing, Judge Verser granted WEBG's motion to amend its LUPA petition to include additional damage claims under state and federal law.

4. That on November 17, 2006, WEBG filed and served its Amended Land Use Petition & Complaint for Damages.

5. That on November 22, 2006, the City filed a Notice of Removal.

6. That on December 20, 2006, WEBG filed an Objection to Removal and Motion for Remand or Abstain and for Attorney's Fees and Memorandum Thereon set for hearing on January 12, 2007.

7. That this Court has original jurisdiction over federal damage claims alleged in WEBG, LLC's Amended Petition under 28 U.S.C. §§1331 and 1343.

8. That under 28 U.S.C. §§1367 and 1441(c) this Court has discretion whether to assert supplemental jurisdiction over the LUPA petitions filed by both parties and the state law damage claims alleged in WEBG, LLC's Amended Petition.

9. That since the LUPA petitions have been briefed and argued before the Kitsap County Superior Court and since the issues related to the LUPA petitions involve somewhat complex issues of Washington State law, the parties believe that the LUPA petitions should be remanded to Kitsap County Superior Court.

10. That since WEBG's damage claims alleged in its Amended Land Use Petition & Complaint for Damages allege federal law claims, this Court should retain jurisdiction over the federal damage claims.

Stipulation and Order to Remand LUPA  
Petitions - 2

ROGER A. LUBOVICH  
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Phone: 360-473-2345 Fax: 360-473-5161

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11. That since WEBG's alleged state law damage claims form part of the same case or controversy, this Court may exercise supplemental jurisdiction over the state law damage claims under 28 U.S.C. §1367, provided that WEBG shall have the opportunity to object and remove the state law claims after resolution of the LUPA claims.

12. That if this Court enters the below Order, the Court should strike WEBG's Objection to Removal and Motion to Remand or Abstain and for Attorney's Fees and Memorandum Thereon.

13. That the parties should not engage in any discovery on WEBG's damages claims until after Kitsap County Superior Court has issued a decision on the LUPA petitions.

14. That the causes of action over which this Court retains jurisdiction should be stayed until after the Kitsap County Superior Court has issued a decision on the LUPA petitions.

DATED this 3<sup>rd</sup> day of January, 2007.

ROGER A. LUBOVICH BREMERTON CITY ATTORNEY  <u>/s/ Mark E. Koontz</u> Mark E. Koontz, WSBA #26212 Attorney for Respondent	BROUGHTON & SINGLETON, INC., P.S.  <u>/s/ William H. Broughton</u> William H. Broughton, WSBA #8858 Attorney for Petitioner
---	---

ORDER

Based on the above stipulation of the parties, It Is Ordered:

1. That this Court has original jurisdiction over federal damage claims alleged in WEBG, LLC's Amended Petition under 28 U.S.C. §§1331 and 1343.

Stipulation and Order to Remand LUPA  
Petitions - 3

ROGER A. LUBOVICH  
BREMERTON CITY ATTORNEY  
345 6th Street, Suite 600, Bremerton, Washington 98337  
Phone: 360-473-2345 Fax: 360-473-5161

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2. That under 28 U.S.C. §§1367 and 1441(c) this Court has discretion whether to exercise supplemental jurisdiction over the LUPA petitions filed by both parties and the state law damage claims alleged in WEBG, LLC's Amended Petition.

3. That since the LUPA petitions have been briefed and argued before the Kitsap County Superior Court and since the issues related to the LUPA petitions involve somewhat complex issues of Washington State law, the LUPA petitions are hereby remanded to Kitsap County Superior Court.

4. That since WEBG's damage claims alleged in its Amended Land Use Petition & Complaint for Damages allege federal law claims over which this Court has original jurisdiction, this Court retains jurisdiction over WEBG's alleged federal damage claims.

5. That since WEBG's alleged state law damage claims form part of the same case or controversy, this Court hereby exercises its supplemental jurisdiction over the state law damage claims under 28 U.S.C. §1367 and retains jurisdiction over WEBG's alleged state law damages claims until the LUPA proceedings are completed, at which time WEBG shall have the opportunity to object and move to remand the state law claims after resolution of the LUPA claims.

6. That WEBG's Objection to Removal and Motion to Remand or Abstain and for Attorney's Fees and Memorandum Thereon is hereby stricken without an award of attorney's fees to either party.

7. That the parties shall not engage in any discovery on WEBG's damages claims until after Kitsap County Superior Court has issued a decision on the LUPA petitions.

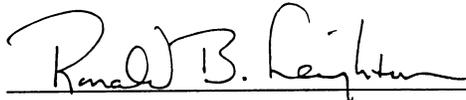
Stipulation and Order to Remand LUPA  
Petitions - 4

ROGER A. LUBOVICH  
BREMERTON CITY ATTORNEY  
345 6th Street, Suite 600, Bremerton, Washington 98337  
Phone: 360-473-2345 Fax: 360-473-5161

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8. That the causes of action over which this Court retains jurisdiction shall be stayed until after the Kitsap County Superior Court has issued a decision on the LUPA petitions.

ENTERED this 4<sup>th</sup> day of January, 2007.



RONALD B. LEIGHTON  
UNITED STATES DISTRICT JUDGE

Presented by:  
Presentation

Approved as to form; Notice of

Waived:

ROGER A. LUBOVICH BREMERTON CITY ATTORNEY  <u>/s/ Mark E. Koontz</u> Mark E. Koontz, WSBA #26212 Attorney for Respondent City of Bremerton	BROUGHTON & SINGLETON, INC., P.S.  <u>/s/ William H. Broughton</u> William H. Broughton, WSBA #8858 Attorney for Petitioner
--	---

Stipulation and Order to Remand LUPA  
Petitions - 5

ROGER A. LUBOVICH  
BREMERTON CITY ATTORNEY  
345 6th Street, Suite 600, Bremerton, Washington 98337  
Phone: 360-473-2345 Fax: 360-473-5161

**ATTACHMENT A -3**

**ATTACHMENT A -3**

## Chapter 7

### ADMINISTRATION AND ENFORCEMENT

#### A. APPLICABILITY

The Bremerton **Shoreline Master Program** applies to **development** activity along certain **shorelines** within the incorporated city limits of Bremerton, including: Puget Sound, Kitsap Lake, Kitsap Lake Wetlands, Twin Lakes, Union River, and Union Reservoir. The program also applies to development activity that occurs within the **wetlands** associated with these water bodies -- all of Kitsap Lake Wetlands, and the uplands within 200 feet landward of these water bodies, measured from the **Ordinary High Water Mark (OHWM)**.

The program applies only to development projects, or portions of development projects, within these areas. While development on **adjacent lands** does not require a **shoreline permit**, it must be consistent with **Master Program** requirements for shoreline development. Where a **substantial development** is located partly inside the shoreline and partly on adjacent lands, the shoreline permit covers the total project action as defined by the State Environmental Policy Act (SEPA). The permit will include conditions on development located on adjacent lands when necessary to mitigate adverse impacts on the shoreline caused by the development.

#### **Development Activity that Requires a Permit**

State law requires that all **substantial development** occurring within the state's **shorelines** obtain a shoreline substantial development permit before construction is undertaken. There are several exceptions, which are listed in under substantial development in Chapter 8 - Definitions.

While exceptions do not require a shoreline substantial development permit, all **development** activity in the shoreline area must be consistent with the Shoreline Management Act (RCW.90.58) and the Bremerton **Shoreline Master Program**.<sup>1</sup>

#### **Statement of Exemption**

Whenever a **development** is exempt from the requirement to obtain a **Substantial Development** permit, and the development is subject to a U.S. Corps of Engineers Section 10 Permit under the Rivers and Harbors Act of 1899, or a Section 404 Permit under the Federal Water Pollution Control Act of 1972, the **City** shall issue a Letter of **Exemption** consistent with **WAC** 173-14-115 before development will be permitted to proceed.

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<sup>1</sup>Exemption from Substantial Development Permit requirements does not constitute exemption from the policies and use/activity regulations of the Shoreline management Act, the provisions of this Master Program, and other applicable City, State or Federal permit requirements.

## Nonconforming Development

**Nonconforming development** may be continued provided it conforms to requirements in Bremerton Zoning Ordinance Chapter IX: Nonconformities.

## Restrictions Affecting Fair Market Value of Property

The restrictions imposed by this **Master Program** shall be considered by the County Assessor in establishing the **fair market value** of the property. *[RCW 90.58.290]*

## B. TYPES OF SHORELINE PERMITS

There are three types of **shoreline permits**: **Substantial Development**, **Conditional Use**, and **Variance** permits. A description of each permit is presented below.

### Substantial Development Permit

1. Substantial Development Permits (SDPs) are issued for **substantial development** activities that are classified as "Permitted Uses" by the Bremerton Shoreline Program.
2. The Shoreline Use/Activity Matrix (Table 3-1) lists the permitted uses for each portion of Bremerton's **shorelines**.
3. **Substantial Development** Permits are issued by the City of Bremerton. However, the City's final decision may be appealed within 30 days by an aggrieved person to the State Shorelines Hearing Board pursuant to **RCW 90.58.180**, and to the courts.
4. According to State law, **Substantial Development** Permits can only be granted if the proposed **development** is consistent with the policies and procedures of the Shoreline Management Act, the provisions of **WAC 173-14**, and the City of Bremerton's Shoreline Program.

### Conditional Use Permit

1. Conditional Use Permits (CUPs) are issued for proposed **substantial development** activity when the activity is classified as a **Conditional Use** in the Shoreline Use/ Activity Matrix (Table 3-1). The purpose of the Conditional Use Permit is to allow greater flexibility in the application of the Shoreline Program.
2. **Development** activity considered a Conditional Use may be authorized if all of the criteria in **WAC 173-14-140** are met. The criteria include:
  - a. The proposed use is consistent with **RCW 90.58.020** and the policies of Bremerton's Shoreline Program;
  - b. The proposed use will not interfere with the normal public use of public **shorelines**;

- c. The proposed use of the site and design are compatible with other permitted uses in the area;
  - d. The proposed use will cause no unreasonable adverse effects to the shoreline environment; and
  - e. The public interest will suffer no substantial detrimental effect.
3. Uses that are specifically prohibited by the **Master Program** cannot be authorized.
  4. In addition, when considering the application, consideration must be given to the cumulative impact of additional requests for similar actions in the area.<sup>2</sup>
  5. After the **City** makes a final decision on a Conditional Use Permit, the permit and application must be reviewed and approved by the State Department of Ecology. Aggrieved parties may appeal the decision to the State Shoreline Hearings Board, and to the courts.

### Variance Permit

1. State law allows the granting of relief from specific bulk, dimensional or performance standards in the shoreline program. Relief can only be granted when there are "...extraordinary or unique circumstances relating to the property such that strict implementation of the **Master Program** will impose unnecessary hardships on the applicant or thwart the policies set forth in **RCW 90.58.020**."
2. The criteria that must be met before a **Variance** permit can be granted are found in **WAC 173-14-150**. The criteria include:
  - a. The strict application of the bulk, dimensional, or performance standards would preclude or significantly interfere with the reasonable use of the property not otherwise prohibited by the **Shoreline Master Program**;
  - b. The hardship is specifically related to the property, and is the result of unique conditions such as lot shape or natural features, and the application of the **Master Program**;
  - c. The project design is compatible with other permitted uses in the area, and will not cause adverse effects to adjacent properties or the shoreline environment;
  - d. The Variance will not constitute a grant of special privilege, and is the minimum necessary to afford relief;
  - e. The public interest will suffer no substantial detrimental effect; and

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<sup>2</sup>In other words, if comparable developments were permitted by CUP in the area where similar circumstances exist, the total of the developments must also be consistent with the SMA and must not produce substantial adverse effects to the shoreline environment.

- f. If the **development** is waterward of the **ordinary high-water mark**, the public rights of navigation and use of the **shorelines** will not be adversely affected.
3. After the City of Bremerton makes a final decision on a variance permit, the permit and application must be reviewed and approved by the State Department of Ecology. Aggrieved parties may appeal the decision to the state Shoreline Hearings Board, and to the courts.

## C. PERMIT APPLICATION

### Pre-application Conference

Prior to the submittal of a permit application, the applicant may request a Pre-application Conference. The applicant shall present a sketch map of existing conditions and a sketch plan of the proposed **development** at the Conference. The Director, or his representative shall furnish the applicant with written comments upon request of the applicant.

### Application Process

#### 1. Application Form:

The same application form is used for all three permits, and may be obtained at the City of Bremerton Department of Community Development.

#### 2. Review Process:

In general, **shoreline permits** are reviewed by the **City** using the same procedures used for zoning permit applications. However, additional public notice may be required by the **Shoreline Master Program**. The procedure for processing shoreline permits is as follows:

- a. **Proposal Requiring Zoning Approval:** If a proposal requires a zoning permit, **variance**, rezone or site plan review for the **development** to proceed: The **shoreline permit** will be reviewed using the same procedure as the applicable Zoning Ordinance authorization.
- b. **Proposal Not Requiring Zoning Approval:** If a proposal does not require any formal zoning approval for the development to proceed, **and:**
  - 1) **A Shoreline Substantial Development Permit is required:** The permit application will be reviewed and approved, approved with conditions, or denied by the Director of Community Development.
  - 2) **A Shoreline Conditional Use Permit or Variance Permit is required:** The permit application will be reviewed and approved, approved with conditions, or denied by the Administrative Hearing Examiner pursuant to Chapter 2.13 BMC. (Ord. 4797, 2002)

**3. Public Notice:** The public notice requirements for **shoreline permits** are:

- a. A public notice published at least once a week on the same day of the week for two (2) consecutive weeks in a local newspaper of general circulation (**WAC** 173-14-070). The notice must give the public an opportunity to request and receive a copy of the final **City** decision made on the permit application;
- b. A public notice mailed to landowners located within at least three hundred (300) feet of the boundary of the property;
- c. A public review period of thirty (30) days from the final date that the public notice is published in the newspaper; and
- d. Additional public notice as determined by the director of Community Development.

**4. Final Action**

- a. A decision by the Director of Community Development shall become final unless an appeal is filed to the Administrative Hearing Examiner pursuant to Chapter 2.13 BMC within fourteen (14) calendar days of the date of the decision<sup>3</sup>
- b. An open record decision or a decision on appeal by the Administrative Hearing Examiner pursuant to Chapter 2.13 BMC shall become final unless a Request for Review is filed with the Shorelines Hearings Board, as prescribed in **RCW** 90.58.180.

(Ord. 4797, 2002)

**5. Washington State DOE Review**

- a. As noted earlier, **Conditional Use** and **Variance** Permits must also be approved by the Department of Ecology.
- b. Construction of the proposed project is not authorized until thirty (30) days have lapsed from the date the final decision was received by the Department of Ecology, or until any appeal procedures have been completed. [**WAC** 173-14-090]

**Duration of Permits**

The **City** may issue permits with termination dates of up to five years. If a permit does not specify a termination date, the following requirements apply, consistent with **WAC** 173-14-060:

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<sup>3</sup>A Request for Review may be filed directly with the Shorelines Hearing Board at the option of the applicant, as provided for in RCW 90.58.180.

**1. Time limit for Substantial Progress:**

Construction, or substantial progress toward completion, must begin within two (2) years after approval of the permits.

**2. Extension for Substantial Progress:**

The **City** may at its discretion, with prior notice to parties of record and the **Department**, extend the two-year time period for the substantial progress for a reasonable time up to one (1) year based on factors, including the inability to expeditiously obtain other governmental permits which are required prior to the commencement of construction.

**3. Five Year Permit Authorization:**

If construction has not been completed within five (5) years of approval by the **City**, the **City** will review the permit and, upon showing of good cause, either extend the permit for one (1) year, or terminate the permit. Prior to the **City** authorizing any permit extensions, it shall notify any parties of record or the **Department**. Note: Only one *single* extension is permitted.

**D. APPEAL**

All action taken during the administration and enforcement of these regulations may be appealed as follows:<sup>4</sup>

**1. Director of Community Development Decision**

A decision of the Director of Community Development may be appealed to the Planning Commission.

**2. Planning Commission Decision**

A decision of the Planning Commission may be appealed to the City Council.

**3. City Council Decision**

The decision of the City Council may be appealed to the Shorelines Hearings Board, as provided in **RCW 90.58.180**.

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<sup>4</sup>A Request for Review may be filed directly with the Shorelines Hearing Board at the option of the applicant, as provided for in RCW 90.58.180.

## E. REVISION OF PERMITS

When an applicant desires to revise a permit, the applicant must submit detailed plans and text describing the proposed changes. If the Director of Community Development determines that the revisions meet the criteria below, the Director may approve the revision. Criteria include:

1. No additional over-water construction is involved, except that pier, dock or float construction may be increased by five hundred (500) square feet or ten percent, (10%) whichever is less;
2. Ground area coverage and **height** is not increased more than ten percent (10%);
3. Additional **structures** do not exceed a total of two hundred fifty (250) square feet;
4. The revision does not authorize **development** to exceed height, setback, lot coverage, or any other requirement of the Bremerton **Shoreline Master Program**;
5. Additional landscaping is consistent with conditions (if any) attached to the original permit;
6. The use authorized pursuant to the original permit is not changed;
7. The revision will not result in the obstruction of the view of a substantial number of residences on areas adjoining the shoreline; and
8. No substantial adverse environmental impact will be caused by the project revision.

If the sum of the proposed revision and any previously approved revisions do not meet the criteria above, an application for a new **shoreline permit** must be submitted. If the revision involves a **Conditional Use** or **Variance** which was conditioned by the Department of Ecology, the revision also must be reviewed and approved by the Department of Ecology (see **WAC 173-14-064**).

A **City** or **Department** decision on revision to the permit may be appealed within thirty (30) days of such decision, in accordance with **RCW 90.58-180** and **WAC 173-14-064**.<sup>5</sup>

Construction allowed by the revised permit that is not authorized under the original permit is undertaken at the applicant's own risk until the expiration of the appeals deadline.

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<sup>5</sup>Also see Section C.4.a. Application Process/Final Action and Section D. Appeal, above.

## F. ENFORCEMENT AND PENALTIES

### Policy

The choice of enforcement action and the severity of any penalty should be based on the nature of the violation and the damage or risk to the public or to the public resources. The existence or degree of bad faith of the persons subject to the enforcement action, the benefits that accrue to the violator, and the cost of obtaining compliance may also be considered.

### Regulations

#### 1. Civil Penalty:

##### a. Action:

The City Attorney shall bring such injunctive, declaratory, or other actions as are necessary to insure that no uses are made of the **shorelines of the state** in conflict with the provisions of the **Act** and/or of this **Master Program**, and to otherwise enforce the provisions of both.

##### b. Non-Compliance:

Any person who fails to conform to the terms of a permit issued under this **Master Program**, or who undertakes a **development** or use on the **shorelines of the state** without first obtaining a permit required under this Master Program, or who fails to comply with a Cease and Desist Order, issued under these regulations, shall also be subject to a civil penalty not to exceed one thousand dollars (\$1,000.00) for each violation. Each permit violation and/or each day of continued use or development without a required permit shall constitute a separate violation.

##### c. 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 civil penalty.

##### d. Notice of Penalty:

The penalty provided for in this chapter 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 **City**. The notice shall include the "content of order" specified in Section 1 (f) Regulatory Order.

**e. Remission (RCW):**

Within thirty (30) days after the notice is received, the person incurring the penalty may apply in writing to the City of Bremerton for remission or mitigation of such penalty. Upon receipt of the application, the **City** 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. Any penalty imposed by the City pursuant to this chapter shall be subject to review by the City Council. Any penalty jointly imposed by the **Department** and the City shall be appealed to the Shorelines Hearings Board. When a penalty is imposed jointly by the Department and the City, it may be remitted or mitigated only upon such terms as both the Department and the City agree.

**f. Regulatory Order:**

- 1) **Content of Order:** The order shall set forth and contain:
  - a) A description of the specific nature, location, extent, and time of violation, and the damage or potential damage; and
  - 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.
- 2) **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.
- 3) **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.

**2. Delinquent Permit Penalty:**

Permittees obtaining a permit after work on the permitted activity has already commenced may, at the discretion of the **City**, be required, in addition, to pay a delinquent permit penalty not to exceed three (3) times the appropriate permit fee paid by the permittee. A person who has caused, aided, or abetted a violation within two (2) years after the issuance of a regulatory order, notice of violation, or penalty by the **Department** or City against said person may be subject to a delinquent permit penalty, not to exceed ten (10) times the appropriate permit fee paid by the permittee. Delinquent permit penalties shall be paid in full prior to construction re-commencement or project occupancy.

**3. Property Lien:**

Any person who fails to pay the prescribed penalty, as authorized in this chapter, shall be subject to a lien upon the affected property until such time as the penalty is paid in full. The City Attorney shall file said lien against the affected property at the office of the Kitsap County Assessor.

**4. Mandatory Civil Penalties:**

Issuance of civil penalties is mandatory in the following instances:

- a. The violator has ignored the issuance of an order or notice of violation by the **City**.
- b. The violation causes or contributes to significant environmental damage to **shorelines of the state**, as determined by the **Department** or **City**.
- c. A person causes, aids or abets in a violation within two (2) years after issuance of a similar regulatory order, notice of violation or penalty by or the **City** against said person.

**5. Minimum Penalty Levels:**

- a. Regarding all violations that are mandatory penalties, the minimum penalty is two hundred fifty dollars (\$250.00).
- b. For all other penalties, the minimum penalty is one hundred dollars (\$100.00).

**6. General Criminal Penalty:**

In addition to incurring civil liability under Section 1, any person found to have willfully engaged in activities on the **shorelines of the state** in violation of the provisions of the **Act** or of the **Master Program** shall be guilty of a gross misdemeanor, and shall be punished by a fine of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00), or by imprisonment in the county jail for not more than ninety (90) days for each separate offense, or by both such fine and imprisonment: PROVIDED, that the fine for each separate offense for the third and all subsequent violations in any five-year period shall be not less than five hundred dollars (\$500.00), nor more than five thousand dollars (\$5,000.00).

**7. Violator's Liability -- Damages, Attorney's Fees/Costs:**

Any person subject to the regulatory program of the **Act** or of this **Master Program** who violates any provision thereof or permit issued pursuant thereto, shall be liable for all damage to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to violation. The City Attorney shall bring suit for damages under this section on behalf of the **City**. Private persons shall have the right to bring suit for damages under this section on their own behalf and on the behalf of all persons similarly situated. If liability has been established for the cost of restoring an area affected by a violation, the court shall make provision to assure that restoration will be accomplished within reasonable time at the expense of the violator. In addition to such relief, including monetary damages, the court in its discretion may award attorney's fees and costs of the suit to the prevailing party.

## 8. Development and Building Permits:

No building permit, septic tank permit, or other **development** permit shall be issued for any parcel of land developed or divided in violation of this **Master Program**. All purchases or transferees of property shall comply with provisions of the **Act** and this Master Program, and each purchaser and transferee may recover his damages from any person, firm, corporation, or agent selling, transferring, or leasing land in violation of the Act or this Master Program, including any amount reasonably spent as a result of inability to obtain any development permit and spent to conform to the requirements of the Act or this Master Program, as well as cost of investigation, suit, and reasonable attorney's fees occasioned thereby. Such purchaser, transferee, or lessor may, as an alternative to conforming his property to these requirements, rescind the sale, transfer, or lease and recover costs of investigation and reasonable attorney's fees occasioned thereby from the violator.

## G. UPDATING SHORELINE MASTER PROGRAM

### Master Program Review

This **Master Program** shall be periodically reviewed and adjustments shall be made as are necessary to reflect changing local circumstances, new information or improved data, and changes in State statutes and regulations. This review process shall be consistent with **WAC** 173-19-061 and include a citizen involvement program and public hearing to obtain the views and comments of the public.

### Amendments to Master Program

Any of the provisions of this **Master Program** may be amended as provided for in **RCW** 90.58.120, using the following process:

1. The Planning Commission shall make recommendation to the City Council after holding at least one (1) public hearing on the proposed amendment(s).
2. The City Council shall take action on the proposed amendment(s) after holding at least one (1) public hearing.

### Severability

If any provision of this **Master Program**, or its application to any person or legal entity or parcel of land or circumstances, is held invalid, the remainder of the Master Program, or the application of the provisions to other persons or legal entities or parcels of land or circumstances, shall not be affected.

## Chapter 8

# DEFINITIONS

As used herein, the following words and phrases shall have the following meanings.<sup>1</sup>

- Accessory Use:** A use that is demonstrably subordinate and incidental to the principal use and which functionally supports its activity.
- Act:** The Shoreline Management Act of 1971, Chapter 90.58 RCW. [WAC 173-14-030(1)]
- Adjacent Lands:** Those lands immediately adjacent to and abutting lands under **shoreline permit** jurisdiction, extending landward to the extent necessary to control direct and significant impacts to shorelands and to implement the management policy articulated in the **Act**, the Department of Ecology guidelines, and the **Master Program**. [RCW 90.58.340]
- Average Grade Level:** The average of the natural or existing **topography** of the portion of the lot, parcel, or tract of real property which will be directly under the proposed building or **structure**: PROVIDED, that in the case of structures to be built over water, average grade level shall be the elevation of ordinary high water. Calculation of the average grade level shall be made by averaging the elevations at the center of all exterior walls of the proposed building or structure. [WAC 173-14-030(3)]
- Bluff:** A steep headland, promontory, broad faced bank, or cliff running adjacent to and rising up from the shoreline. For the purpose of measuring setbacks from the top of a bluff the following shall apply. A bluff rises up from the **OHWM** to the first significant break in slope. The first significant break in slope is a bench at least thirty (30) feet wide. The top of a bluff is measured from the point where the first significant break in slope occurs.
- City:** The City of Bremerton.

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<sup>1</sup>Definitions for **Shorelines of Statewide Significance**, Environments, and each Use/Activity are at the appropriate place in the text of the Master Program. Additional definitions applicable to Shoreline Management activities are found in RCW 90.58 and WAC 173-14, -16, -17, -19, -20, and -22. Shorelines Hearings Board determinations also provide interpretations of some shoreline management terms.

<b>Class I Beaches:</b>	Accretional or rollback dry beaches, the backshore of which is only wetted under extreme tide and wave conditions. These beaches are usually the accretion terminals of their <b>drift sectors</b> , and as such are components of points, spits, and tombolos, as well as the various <b>bluff</b> -offset, and bay or marsh-barrier shore forms.
<b>Class II Beaches:</b>	Marginal erosion beaches, usually at the foot of gravel-containing banks and <b>bluffs</b> that supply the upper foreshore with a fairly heavy drift berm, but without creating a stable and dry backshore zone above <b>Mean Higher High Water (MHHW)</b> level.
<b>Class III Beaches:</b>	Erosional beaches under banks and <b>bluffs</b> that are generally low in gravel and high in clay, and where the bluff toe and upper foreshore is wave-cut below <b>MHHW</b> level with minimum beach material cover to protect the foreshore shelf.
<b>Community Boating Facilities:</b>	Joint-use <b>structures</b> , including docks, piers, floats and boat launching ramps, that abut the shoreline and are used as landing, launching, or moorage places for watercraft and which serve up to ten (10) boats. Boating facilities serving more than ten (10) boats are considered <b>marinas</b> . Community boating facilities may be designated for temporary day use only, or for permanent (long-term) moorage.
<b>Conditional Use:</b>	A use or <b>development</b> which is classified as a conditional use or is not classified within the <b>Master Program</b> , and development exceeds two thousand five hundred dollars (\$2,500.00) in total cost or <b>fair market value</b> or materially interferes with the normal public use of the water or <b>shorelines of the state</b> .
<b>Department:</b>	The State of Washington Department of Ecology.
<b>Development:</b>	A use, consisting of the construction or exterior alteration of <b>structures</b> ; dredging; drilling; dumping; filling; removal of any sand, gravel or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this program at any state of water level. [RCW 90.58.030(3d)]
<b>Drift Sector:</b>	A particular reach of marine shore in which littoral drift may occur without significant interruption, and which contains any and all natural sources to such drift, and also any accretion shore form(s) accreted by such drift. Each normal drift sector contains these shore process elements: feeder <b>bluff</b> or estuary, driftway, littoral drift, and accretion shore form.

<b>Exemption:</b>	Authorization from the <b>City</b> which establishes that an activity is exempt from <b>Substantial Development</b> Permit requirements under <b>WAC 173-14-040</b> , but subject to regulations of the <b>Act</b> and the <b>Master Program</b> .
<b>Extreme Low Tide:</b>	The lowest line on the land reached by a receding tide. [ <b>RCW 90.58.030(2a)</b> ]
<b>Fair Market Value:</b>	The expected price at which the <b>development</b> can be sold to a willing buyer. For developments which involve nonstructural operations such as dredging, drilling, dumping, or filling, the fair market value is the expected cost of hiring a contractor to perform the operation, or where no such value can be calculated, the total of labor, equipment use, transportation, and other costs incurred for the duration of the permitted project. [ <b>WAC 173-14-030(7)</b> ]
<b>Feasible:</b>	Physically capable of being put into effect, accomplished, or utilized; practicable or suitable.
<b>Height:</b>	The distance measured from the <b>average grade level</b> to the highest point of a <b>structure</b> : PROVIDED, that television antennas, chimneys, and similar <b>appurtenances</b> shall not be used in calculating height, except where it obstructs the view of a substantial number of residences on areas adjoining such <b>shorelines</b> , or the <b>Master Program</b> provides otherwise: Provided further, that temporary construction equipment is excluded in this calculation. [ <b>WAC 173-14-030(9)</b> ]
<b>Marina:</b>	A water dependent facility that provides wet and/or dry moorage for over ten (10) boats, and related accessory boat launching facilities and supplies and services for small commercial and/or pleasure craft. Marinas may be designated for temporary day-use only or for permanent (long-term) moorage.
<b>Master Program or Shoreline Master Program:</b>	The City of Bremerton Shoreline Master Program. The Master Program includes the program's goals, policies and regulations, together with descriptive maps and diagrams, that have been adopted by the Bremerton City Council and approved by the Department of Ecology.
<b>Minor Projects:</b>	Minor <b>accessory uses</b> , minor remodels of existing <b>development</b> or other minor projects requiring a <b>shoreline permit</b> to correspond to the impact of the improvement, when such projects meet Master Program criteria for revision of permits. [ <i>Chapter 7, Revision of Permits.</i> ]

**Mixed-Use Commercial:**

Mixed-use commercial **developments** are shoreline developments which combine more than one separate but related activity into a coordinated package. Activities usually include one or more **water-dependent** uses with non-water dependent uses, and feature high amenity **public access** or recreational uses. The public benefit will be evaluated and weighed against the impact of the project in review of a mixed-use commercial development proposal.

**Nonconforming Development:**

A **shoreline** use or **structure** which was lawfully constructed or established prior to the effective date of the Shoreline Management Act or the Bremerton **Shoreline Master Program** or amendments thereto, but which does not conform to present regulations or standards of the Master Program or policies of the **Act**. [WAC 173-14-040(1b)]

**Non-Water-Oriented Use:**

A use which does not require or depend on a location on or near the waterfront, and which is neither a **water-dependent**, **water-related**, or **water-enjoyment use** as defined herein.

**OHWM or Ordinary High Water Mark:**

The mark on all lakes, streams, and tidal waters which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation, as that condition exists on the effective date of this chapter, or as it may naturally change thereafter; or as it may change thereafter in accordance with permits issued by the **City** or the **Department**: PROVIDED, that in any area where the ordinary high-water mark cannot be found, the following criteria shall be used to clarify this mark:

1. **Tidal Waters:**

- a. In high energy environments where the action of waves or currents is sufficient to prevent vegetation establishments below mean higher high tide, the ordinary high-water mark is coincident with the line of vegetation. Where there is no vegetative cover for less than one hundred feet parallel to the shoreline, the ordinary high-water mark is the average tidal elevation of the adjacent lines of vegetation.

Where the ordinary high-water mark cannot be found, it is the elevation of mean higher high tide.

- b. In low energy environments where the action of waves and currents is not sufficient to prevent vegetation establishment below mean higher high tide, the ordinary high-water mark is coincident with the landward limit of salt tolerant vegetation.

**OHWM or Ordinary High Water Mark**  
(Cont.)

**"Salt tolerant vegetation"** means vegetation which is tolerant of interstitial soil salinities greater than or equal to 0.5 parts per thousand.

2. **Lakes:** Where the ordinary high-water mark cannot be found, it shall be the line of mean high water.
3. **Streams:** Where the ordinary high-water mark cannot be found, it shall be the line of mean high water. For braided streams, the ordinary high-water mark is found on the banks forming the outer limits of the depression within which the braiding occurs.

**OHWM Yard:** The shoreline setback area upland of the ordinary high water mark.

**Person:** Any individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, agency of the State, or local government unit, however designated. [RCW 90.58.030(1d)]

**Public Access, General:** Public access of a size and design appropriate to the site, size and general nature of the proposed **development**.

**Public Access, Improved:** Physical public access from the right-of-way to and along the entire waterfront of the subject property within the **OHWM yard**.

**Public Access, Limited (physical or visual):** Access with restrictions that are deemed necessary to protect the health, safety or welfare of the public OR to protect and maintain a particular site. Restrictions may limit times of use, or allow access only to certain users. [A limitation to restrict access may not be based on race, sex, color, creed, age or physical disability.] For example, such restrictions may limit public use to daylight hours, limit use to residents of a private community, or restrict use of tidelands used for shellfish production.

**Public Access, Physical:** Unobstructed access with public use improvements which are available to the general public extending from the public right-of-way to the **OHWM** or to the wetland directly abutting the OHWM. This includes access to the navigable waters of any water body and to tidelands in marine waters.

**Public Access, Visual:** Access with public use improvements available to the general public which provide a view of the shoreline or water but do not allow physical public access to the shoreline.

**RCW:** Revised Code of Washington.

<b>Shoreline Permit:</b>	A <b>substantial development, conditional use, revision, or variance</b> permit or any combination thereof. [WAC 173-14-030(13)]
<b>Shorelines:</b>	All of the water areas of the State, including reservoirs and their associated <b>wetlands</b> , together with the lands underlying them, except: <ol style="list-style-type: none"> <li>1. <b>Shorelines of state-wide significance</b> (sub-tidal Puget Sound);</li> <li>2. <b>Shorelines on segments of streams</b> upstream of a point where the mean annual flow is twenty (20) cubic feet per second or less, and the <b>wetlands</b> associated with such upstream segments; and</li> <li>3. <b>Shorelines on lakes</b> less than twenty (20) acres in size, and <b>wetlands</b> associated with such small lakes.</li> </ol>
<b>Shorelines of the State:</b>	The total of all <b>Shorelines</b> and <b>Shorelines of Statewide Significance</b> within the state.
<b>State Master Program:</b>	The cumulative total of all <b>Master Programs</b> approved or adopted by the Department of Ecology.
<b>Structure:</b>	A permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water, except for <b>vessels</b> . [WAC 173-14-03(15)]
<b>Substantial Development:</b>	Any <b>development</b> of which the total cost or <b>fair market value</b> , whichever is higher, exceeds two thousand five hundred dollars (\$2,500.00), or any development which materially interferes with the normal public use of the water or <b>shorelines of the state</b> . <p><b>Exemptions [RCW 90.58.030(3e) and WAC 173-14-040]:</b></p> <ol style="list-style-type: none"> <li>1. <b>Normal maintenance or repair of existing structures or developments</b>, including damage by accident, fire or elements. <p><b>"Normal maintenance"</b> includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition.</p> <p><b>"Normal repair"</b> means to restore a <b>development</b> to a state comparable to its original condition within a reasonable period after decay or partial destruction except where repair involves total replacement which is</p> </li> </ol>

**Substantial  
Development**  
(Cont.)

not common practice or causes substantial adverse effects to the shoreline resource or environment.

2. **Construction of a normal protective bulkhead common to a single-family residence.**

A "**normal protective**" bulkhead is constructed at or near the ordinary high water mark to protect an existing single family residence and is for protecting land from erosion, not for the purpose of creating land.

Where an existing bulkhead is being replaced, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings.

3. **Emergency construction** necessary to protect property from damage by the elements.

An "**emergency**" is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with this **Master Program**.

4. **Construction of a barn or similar agricultural structure on wetlands.** Construction and practices normal or necessary for farming, irrigation, and ranching activities including agricultural service roads and utilities on **wetlands**, and the construction and maintenance of irrigation **structures** including but not limited to head gates, pumping facilities, and irrigation channels; PROVIDED, that a feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the wetlands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities.

A **feedlot** shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations.

5. **Construction or modification of navigational aids** such as channel markers and anchor buoys.
6. **Construction on wetlands by an owner, lessee, or contract purchaser of a single-family residence** for

**Substantial  
Development**  
(Cont.)

his own use or for the use of his family, which residence does not exceed a **height** of thirty-five (35) feet above **average grade level** and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to this **Master Program**. Construction authorized under this **exemption** shall be located landward of the **ordinary high water mark**. [NOTE: See Table 3-2 Development Standards for additional height limits.]

**"Single-family residence"** means a detached dwelling designed for and occupied by one family, including those **structures** and **development** within a contiguous ownership which are a normal appurtenance.

An **"appurtenance"** is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the perimeter of a marsh, bog, or swamp. Normal appurtenances include a garage; deck; driveway; utilities; fences; beach access stairs, ramps or paths for pedestrian use only; boat ramps for the sole use of the private owner; and grading which does not exceed two hundred fifty (250) cubic yards (except to construct a conventional drainfield).

7. **Construction of a dock**, including a community dock, designed for pleasure craft only, for the private, non-commercial use of the owner, lessee, or contract purchaser of single family and multiple family residences, the cost of which does not exceed two thousand five hundred dollars (\$2,500.00).
8. **Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities** that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored ground water from the irrigation of lands.
9. **The marking of property lines or corners on State-owned lands**, when such marking does not significantly interfere with normal public use of the surface of the water.
10. **Operation and maintenance of any system of dikes, ditches, drains or other facilities** existing on the effective date of the 1975 State Shoreline Management Program which were created, developed or utilized

<b>Substantial Development (Cont.)</b>	<p>primarily as a part of an agricultural drainage or diking system.</p> <p>11. <b>Any project with a certification from the Governor pursuant to chapter 80.50 RCW.</b></p>
<b>Topography, Natural or Existing:</b>	The topography of the lot, parcel, or tract of real property immediately prior to any site preparation or grading, including excavation or filling.
<b>Variance:</b>	A means to grant relief from the specific bulk, dimensional or performance standards set forth in the <b>Master Program</b> , and not a means to vary a use of a shoreline.
<b>Vessel:</b>	A ship, boat, barge, or any other floating craft which is designed and used for navigation and does not interfere with the normal public use of the water.
<b>WAC</b>	Washington Administrative Code.
<b>Water-Dependent Use:</b>	A use or portion of a use which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations. Examples of water-dependent uses may include cargo terminal loading areas, ferry and passenger terminals, <b>marinas</b> , and sewer outfalls.
<b>Water-Related Use:</b>	A use or portion of a use which is not intrinsically dependent on a waterfront location but whose operation cannot occur economically without a shoreline location. Examples of water-related uses may include warehousing of goods transported by water, seafood processing plants, or log storage. (Also see <b>Non-water-oriented Use</b> .)
<b>Water-Enjoyment Use:</b>	<p>A recreational use such as a park, pier, or other use facilitating <b>public access</b> as a primary character of the use; or, a use that provides for passive and active interaction of a large number of people with the shoreline for leisure and enjoyment as a general character of the use and which, through location, design and operation, assure the public's ability to interact with the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the public and most if not all of the shoreline oriented space in the facility must be devoted to the specific aspects of the use that foster shoreline interaction.</p> <p>Water-enjoyment uses include, but are not limited to, restaurants, museums, and mixed-use commercial, provided that such use conforms to the above requirements and the provisions of the <b>Master Program</b>.</p>

**Wetlands or  
Wetlands areas:**

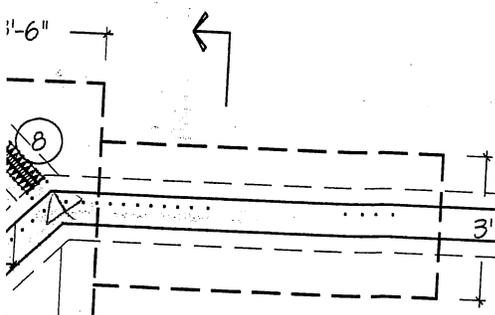
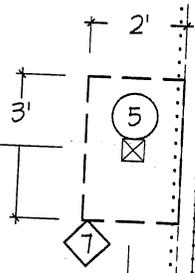
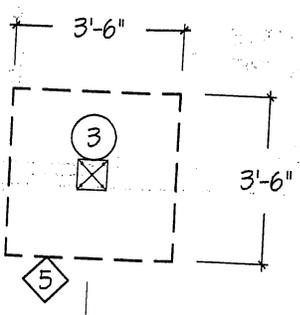
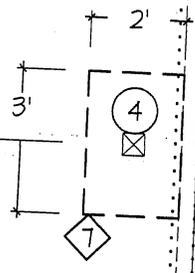
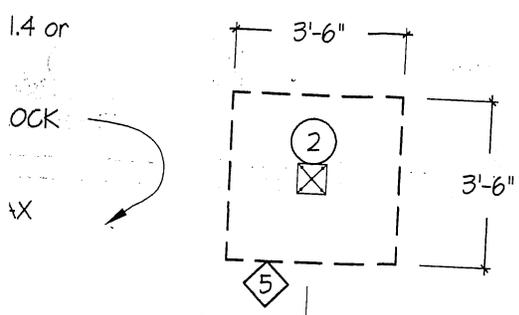
Those lands extending landward for two hundred (200) feet in all directions as measured on a horizontal plane from the **ordinary high-water mark**, and all marshes, bogs, swamps, floodways, river deltas, and flood plains associated with the streams, lakes and tidal waters which are subject to the provisions of this **Master Program**.

**ATTACHMENT A -4**

**ATTACHMENT A -4**

EX.  
W

47-



11'-1<sup>3</sup>/<sub>16</sub>"

10'-10<sup>11</sup>/<sub>16</sub>"

14'-3<sup>9</sup>/<sub>16</sub>"

BLOCK OUT  
STEM WALL  
AT DOOR

EX. CMU WALL TO REMAIN

EX. FTG TO REMAIN

EPOXY DOWEL - AT STEMWALL & FT.  
#4x24" REBAR  
DET (2/56)

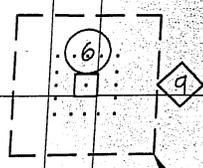
NEW  
FOUNDATION

11'-3<sup>3</sup>/<sub>4</sub>"

x8" CONT. FTG  
 (2) #4 CONT. REBAR AND  
 STEM WALL W/  
 RTZ REBAR - #4 @12"OC &  
 RTICAL REBAR - #4 @18"OC W 90d HOOK

5  
57

5  
56



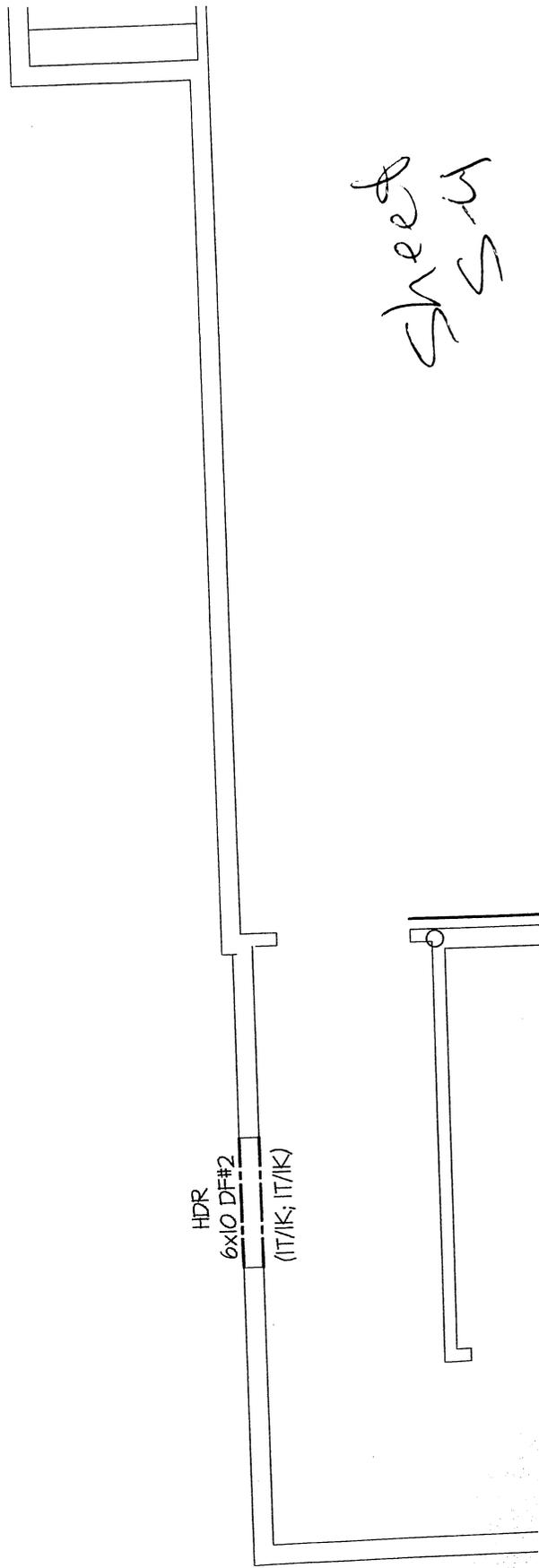
DBL STUD BEHIND EXISTING CMU WALL  
(LANDING AREA ONLY)



SW-3  
(16' WIDE)

INST  
,

HDR  
6x10 DF#2  
(1T/1K, 1T/1K)



Sheets  
S-W

1T/2K

### FLOOR TO FLOOR HOLD-DOWN LEGEND

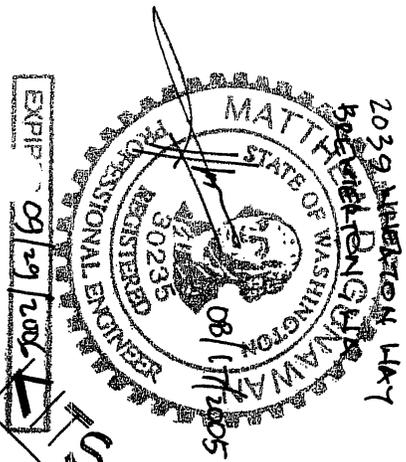
QUANTITY		
FIRST FLR WL & BASEMENT	SECOND FLR WL & FIRST FLR	
~	~	L SIMPSON TWIST STRAP HTS30C (TOTAL NAIL: 28-16d) AND FASTEN TO (4 X) BEAM OR DBL (2)
~	~	> SIMPSON MSTC40 (TOTAL NAIL: 28-16d) CENTER OF VERTICAL STRAP IS AT MID
13	~	>> SIMPSON MSTC52 (TOTAL NAIL: 44-16d) CENTER OF VERTICAL STRAP IS AT MID
~	~	>>> SIMPSON MSTC66 (TOTAL NAIL: 64-16d) CENTER OF VERTICAL STRAP IS AT MID
~	~	⊗ (2) - SIMPSON PHD5 (TOTAL SCREW: 28-5 W 5/8" DIA. THRD ROD BETWEEN UPPER
~	~	⊗ 2 - SIMPSON PHD6 (TOTAL SCREW: 36-5 W 3/4" DIA. THRD ROD BETWEEN UPPER
4	~	⊗ 2 - SIMPSON HDQB-SDS3 (TOTAL SCREW: 36-5 W 7/8" DIA. THRD ROD BETWEEN UPPER

**NOTE:**

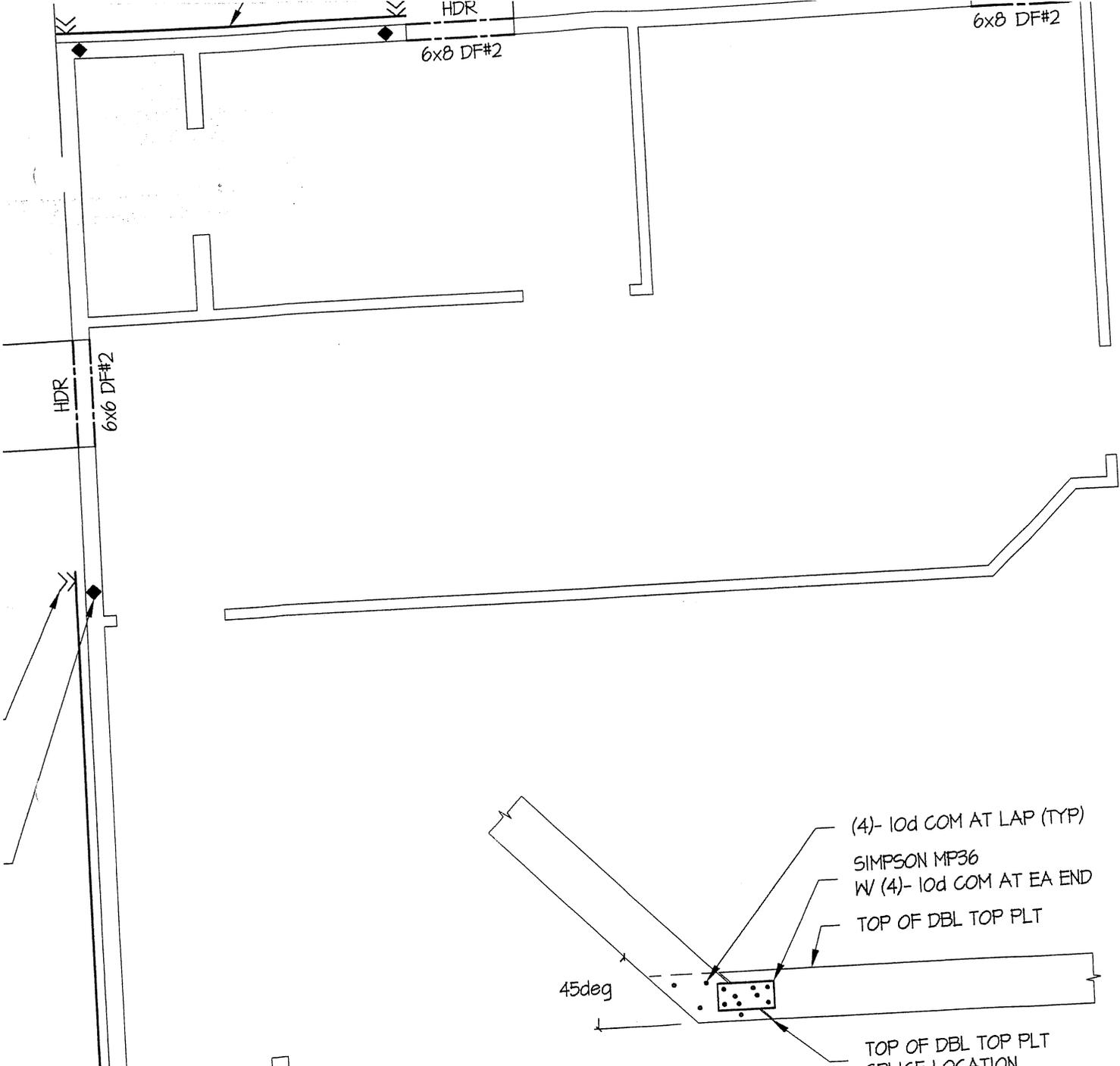
- (1) CENTER OF VERTICAL STRAP IS AT THE MID-DEPTH OF RIM JOIST.
- (2) WHEN CONNECTED TO BEAMS OR HEADER OR JOISTS BELOW, WRAP THE EXCESS TAIL END OF NAIL

◆ RETROFIT HOLD DOWN (11 PLACES)  
SEE (A/55) FOR LOCATION

sheet  
S-5



**KTSAP CONSULTING ENGINEER, Inc.**  
 6088 KINGFISHER CT, BREMERTON, WA 98312  
 DATE: 08/17/2005  
 JOB NO: 28BD062005  
 PROJECT: RESTAURANT  
 WAY  
 PLAN



1  
55 DBL TOP PLT SPLICE & WALL DET  
AT CORNER - PLAN NTS

C

IT/2K IT/1K

SW-3 (1st FLR & CRIPPLE WALL)

HDR

6x8 DF#2

IT/1K

IT/1K

HDR

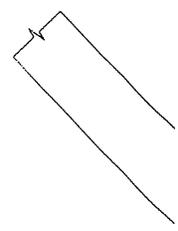
6x6 DF#2

B

SIMPSON MSTC52  
(1st FLR WALL & CRIPPLE WALL)  
(13 PLACES)

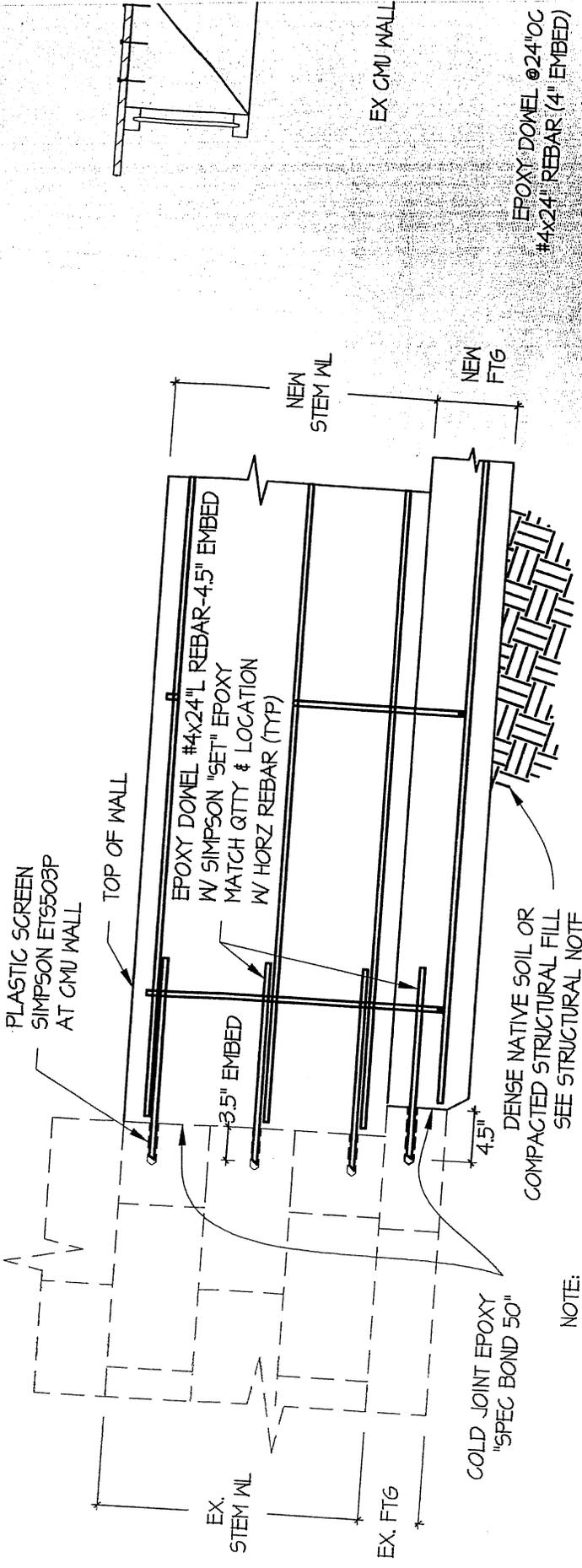
HOLD DOWN RETROFIT  
SIMPSON PHD5 + 5/8" dia THRD ROD  
W/ SIMPSON "SET" EPOXY  
12" EMBEDMENT (11 PLACES)  
NOTIFY ENGINEER-  
IF EX. CMU WALL IS NOT GROUTED

SW-3  
(1st FLR & CRIPPLE WALL)  
(24" WIDE)



45deg

1  
55



EPOXY DOWEL @24"OC  
#4x24" REBAR (4" EMBED)

EX CMU WALL

NEW STEM WL

NEW FTG

PLASTIC SCREEN  
SIMPSON ET5503P  
AT CMU WALL

TOP OF WALL

EPOXY DOWEL #4x24" L REBAR-4.5" EMBED  
W SIMPSON "SET" EPOXY  
MATCH QTTY & LOCATION  
W HORZ REBAR (TYP)

3.5" EMBED

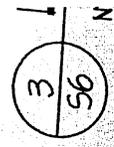
COLD JOINT EPOXY  
1/2" SPEC BOND 50"

DENSE NATIVE SOIL OR  
COMPACTED STRUCTURAL FILL  
SEE STRUCTURAL NOTE

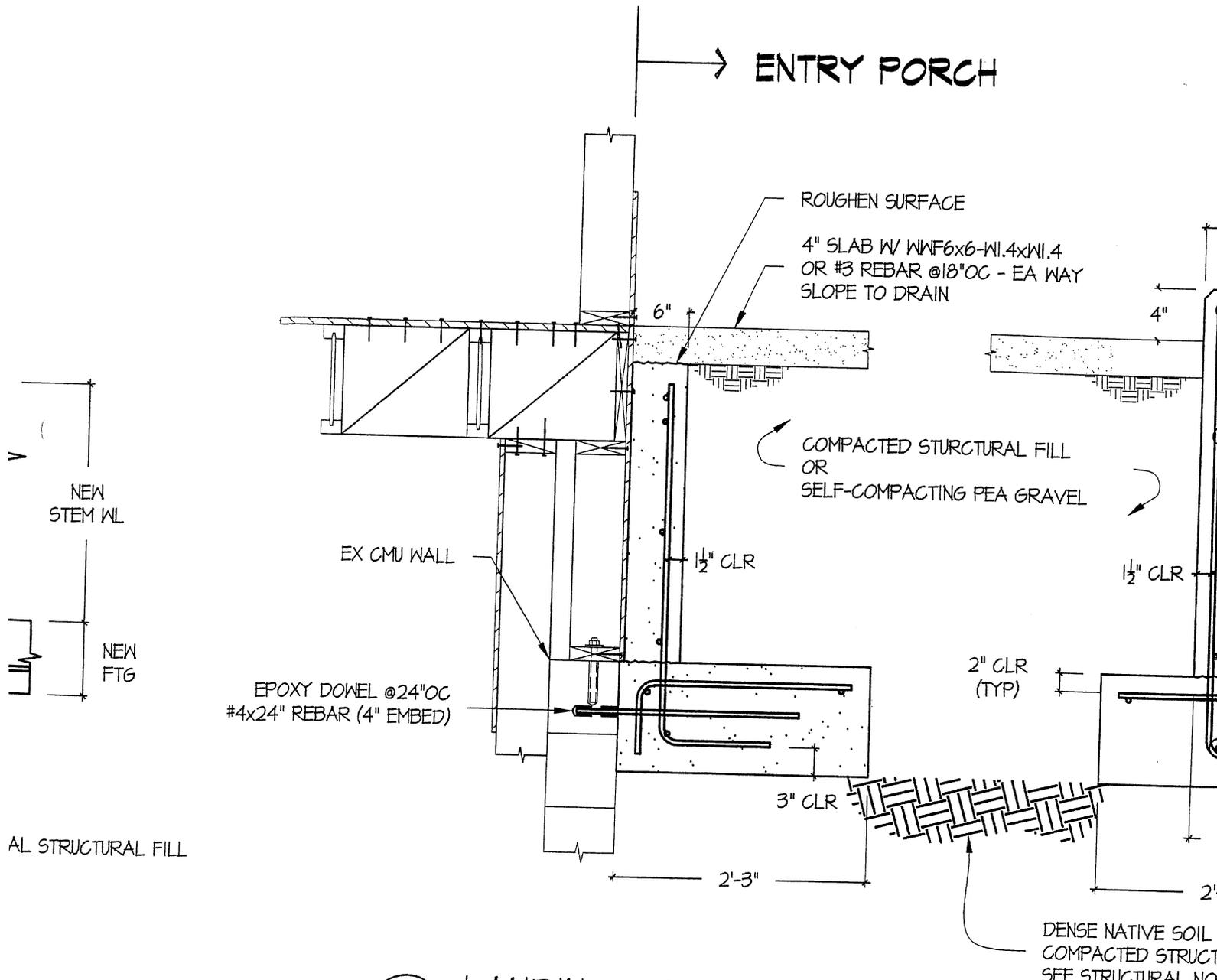
NOTE:

- ~ BOT OF FTG SHALL BE 12" BELOW FINISH GRADE
- ~ BOT OF FTG SHALL BEAR ON DENSE UNDISTURBED GROUND OR COMPACTED STRUCTURAL STRUCTURAL FILL
- AS NOTED ON STRUCTURAL NOTE OR PER GEOTECHNICAL ENGINEER REPORT.
- ~ SOIL BELOW FOUNDATION SHALL BE FREE FROM ORGANIC MATERIAL
- ~ J-BOLT AND MUDSILL NOT SHOWN

2 56 EXISTING CMU WALL & FOOTING CONNECTION NTS



S-6

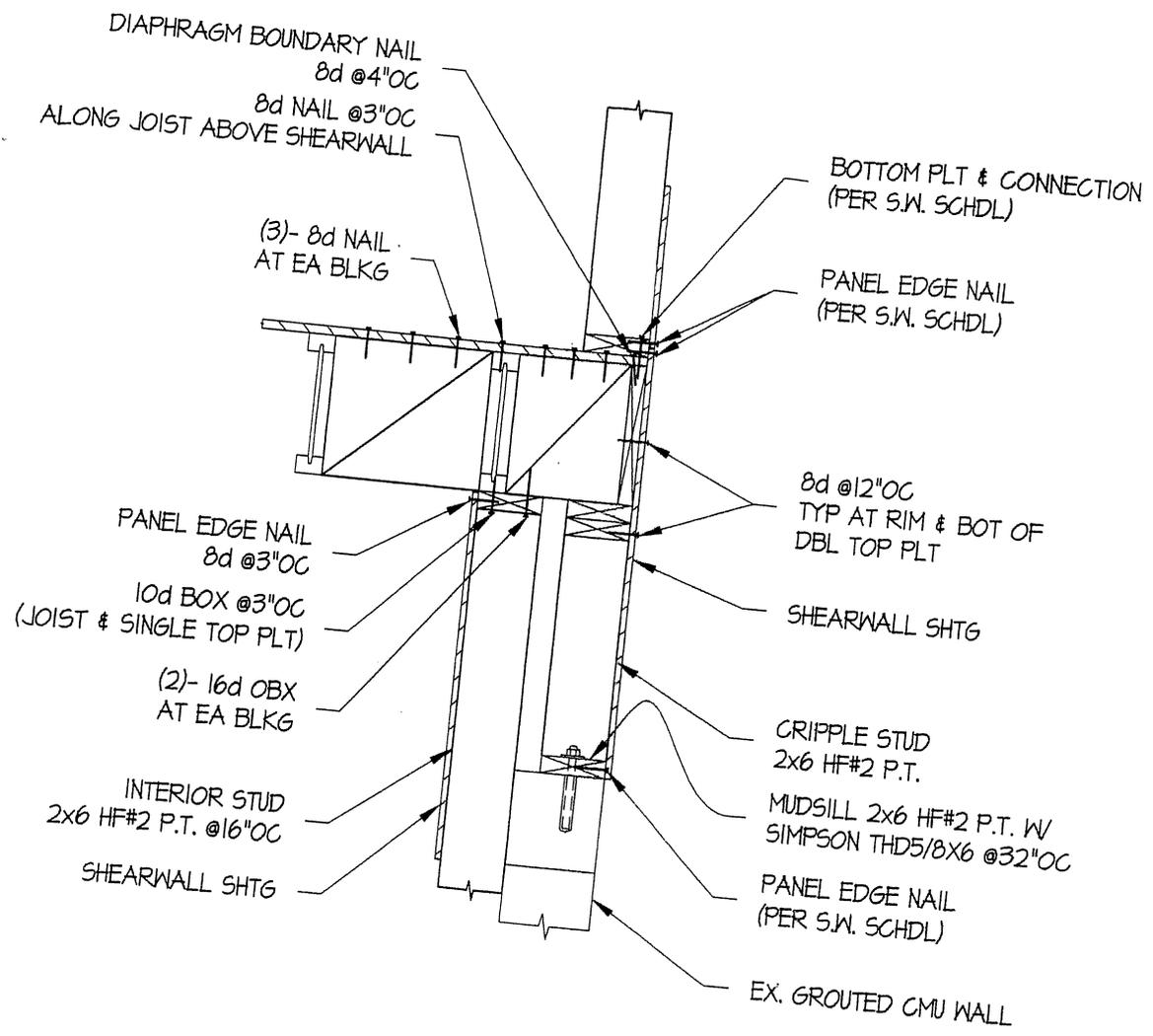


3  
56

# LANDING - SECTION

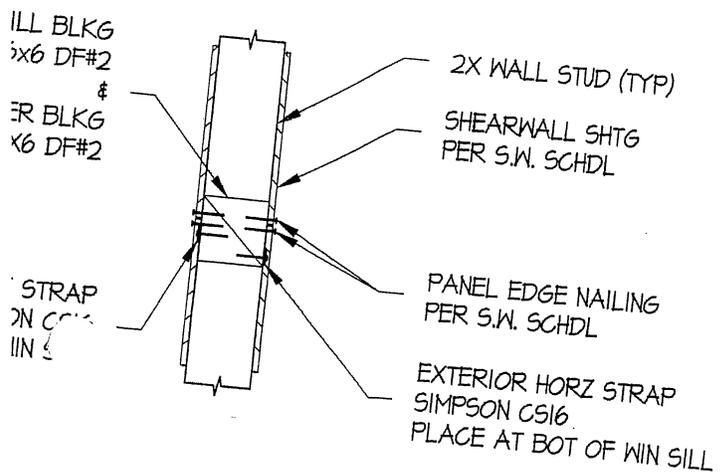
NTS

S-6



6 SECTION  
57  
NTS

-2 places



S-7

A DBL SHTG - SECTION  
7

I PLT & CONNECTION  
N. SCHDL)

EDGE NAIL  
N. SCHDL)

OC  
RIM & BOT OF  
P PLT  
WOOD SHTG & COATED  
W/ EMULSION &  
P.E. (TYP AT RAMP AND LANDING)

E STUD  
#2 P.T.  
2x6 HF#2 P.T. W/  
N THD5/8X6 @32"OC

EDGE NAIL  
N. SCHDL)

OUTED CMU WALL

PER S.W. SCHDL

INTERMEDIATE NAIL  
PER S.W. SCHDL

SHEARWALL SHTG  
PER S.W. SCHDL

PANEL EDGE NAIL  
PER S.W. SCHDL

FINISH GRADE  
5% SLOPE FIRST 10'

ROOF DRAIN (SOLID PIPE)  
PER CIVIL ENGR OR LOCAL JURISDICTION  
CONNECT TO ALL DOWNSPOUT

FOOTING DRAIN (PERFORATED PIPE)  
PER CIVIL ENGR. OR LOCAL JURISDICTION  
COVER W/ 12" T WASH ROCK & WRAP W/ FILTER FABRIC  
PLACE ALONG THE PERIMETER FOOTING  
PROVIDE CLEAN OUT ACCESS AT STRATEGIC LOCATION

ENLARGE FTG UNDER BEAM  
W/ #4 @8"OC EA. WAY  
SEE PLAN FOR LOCATION  
(REF LOCATION)

J BOLT & PL  
PER S.W. SC

P.T. MUDSIL

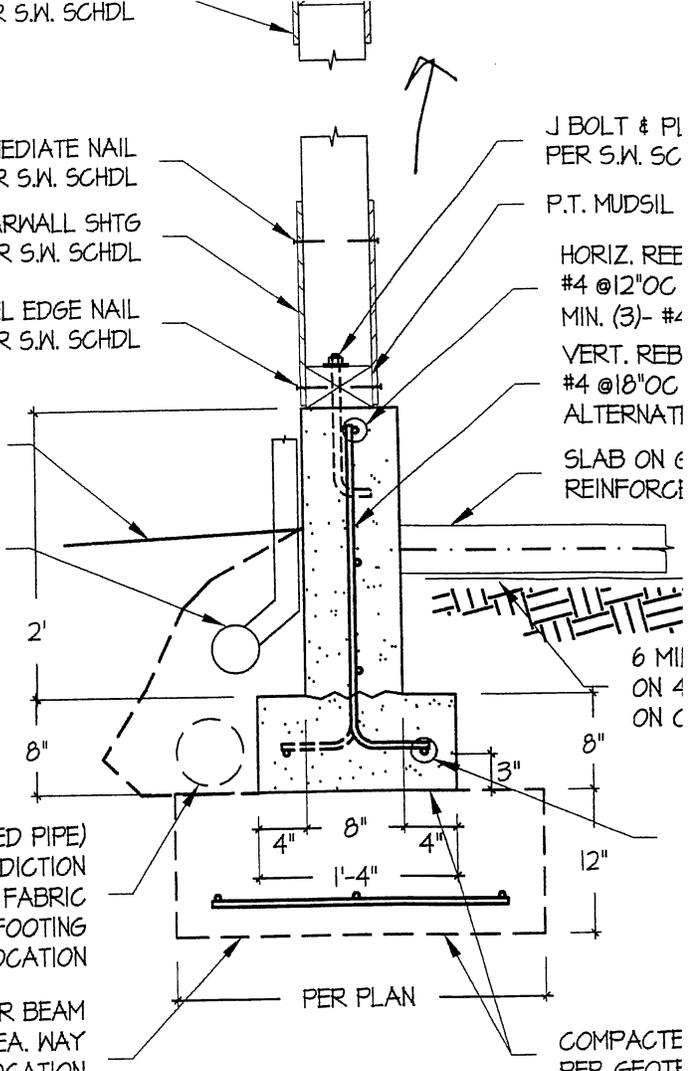
HORIZ. REB  
#4 @12"OC  
MIN. (3)- #4

VERT. REB  
#4 @18"OC  
ALTERNATI

SLAB ON C  
REINFORC

6 MI  
ON 4  
ON C

COMPACTE  
PER GEOTE



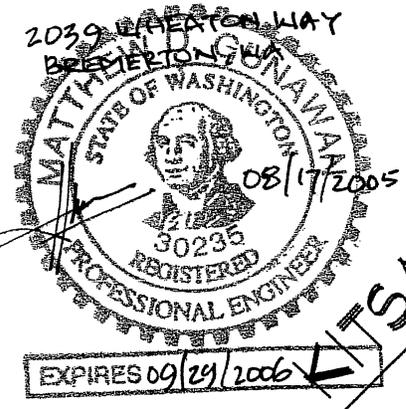
5  
S7

# EXTERIOR SHEAR WALL - SECTION

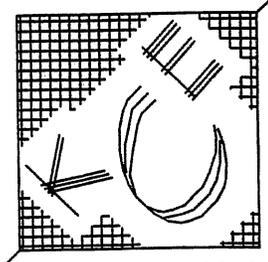
NTS

FOUNDATION  
5 DRAIN  
VERIFY

Full Framing Detail



S7



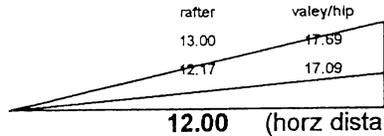
ph: 360 479 4423

fax: 360 479 4424

MATSAP CONSULTANTS  
6088 KING  
DATE:  
JOB NO  
DRAWN  
CLIFF

1/37

JOB LOCATION : THE CLIFF SIDE RESTAURANT - 2039 WHEATON WAY, BREMERTON, W/ width depth  
 ROOF I.D. : ROOF 12.00 12.00



5.00 Roof Slope adjustment = 1.08 rafter 1.04 hip or valley  
 2.00 Ceiling Slope Adjustment = 1.01 1.01

	Material	Default Weight (psf) , (uno)	Selected Weight (psf)	Slope Adjustment (Y or N)	Adjusted Weight (psf)	NOTE:
ROOFING	ROOFING metal 20 GA	1.80				
	wood shingle	2.00				
	asphalt shingle	3.00	4.00	Y	4.33	
	clay tile shingle (10-20 psf)	16.00				
	5 ply felt & gravel	6.50				
	FELT 30# / sq.	0.30	0.30	Y	0.33	
	SHEATHING 1/2" plywood or OSB	1.50	1.50	Y	1.63	
	1-1/2" decking	4.50				
	FRAMING 2x4 @24"OC	0.70	1.40	Y	1.52	TOP CHORD + WEB
	2x6 @24"OC	1.10				
2x8 @24"OC	1.50					
2x10 @24"OC	1.90					
2x12 @24"OC	2.20					
INSULATION (roll / batt)	R11 glass wool	0.70				
	R19 glass wool	1.10				
	R30 glass wool	1.80				
	R38 glass wool	2.20				
					7.80	7.20 (per ft of m

CEILING	FRAMING 2x4 @24"OC	0.70	1.05	Y	1.06	BOT CHORD + WEB	
	2x6 @24"OC	1.10					
	2x8 @24"OC	1.50					
	2x10 @24"OC	1.90					
	2x12 @24"OC	2.20					
	INSULATION (roll / batt)	R11 glass wool	0.70				
		R21 glass wool	1.22				
		R30 glass wool	1.80	2.20	Y	2.23	
		R38 glass wool	2.20				
	CEILING	acoustical fiber tile	1.00				
suspension - metal frmg		1.80					
suspension - wood frmg		2.50					
1/2" GWB		2.20					
5/8" GWB		2.80	2.80	Y	2.84		
plaster (1")	8.00						
SPRINKLER schdl 40	1" ø wet (PLF)	2.10	1.00	Y	1.01	wet system	
	2" ø wet (PLF)	5.20				3" leader (2 rows)	
	3" ø wet (PLF)	10.80				1.5 lateral @12' OC	
	4" ø wet (PLF)	16.40					
	6" ø wet (PLF)	31.70					
8" ø wet (PLF)	50.80						
MISCELLANEOUS basic -min.	1.50	2.00	Y	2.03			
					9.17	9.05 (per ft of m	

LIVE	ROOF SNOW Basic (x 1.15 IF>300PERSON)	25.00	25.00	N	25.00	
	Drift ( include Basic)	35.00		N		
	Sliding (include Basic+Drift)	40.00		N		
	ROOF MIN. LIVE	20.00		N		
						25.00
CEILING		10.00		N		(per ft of m
CEILING OVER STAGE		20.00		N		

	horizontal plane	sloped plane
D(rf)	7.80	7.20 (psf)
D(cl)	9.17	9.05 (psf)
D(rf) + D(cl)	16.97	16.25 (psf)
D(rf) + D(cl) + L(rf)	41.97	39.33 (psf) min
D(rf) + D(cl) + L(rf&cl)	41.97	39.33 (psf) max

*E.V.F*

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JOB LOCATION : THE CLIFF SIDE RESTAURANT - 2039 WHEATON WAY, BREMERTON, WA  
 FLOOR LOCATION : 1ST FLOOR (MAIN FLOOR) - DINING: carpet

		Material	Default Weight (psf) , (uno)	Selected Weight (psf)	NOTE:
<b>FLOOR DEAD LOAD</b>	COVERING	linoleum / vinyl	1.00		
		carpet & pad	1.50	2.00	
		wood - 1" nom.	4.00		
		tile / ceramic - 3/4"	10.00		
	UNDERLAYMENT	OSB - 1/2"	1.50		
		gyp-crete - 3/4"	6.50		
		concrete (LW) - 1 1/2"	11.00		
	SHEATHING	3/4" T&G	2.30	2.30	
		1-1/8" T&G	3.70		
		1-1/2" decking	4.50		
	FRAMING	2x4 @16"OC	1.10		
		2x6 @16"OC or 9.5" TJI / PRO 150	1.70		
2x8 @16"OC or 14" TJI / PRO 250		2.20	2.20		
2x10 @16"OC or 16" TJI / PRO 350		2.80			
2x12 @16"OC or		3.30			
16" TJI / PRO 550 (plf) - or 3.98 psf @ 16"oc		5.30			
INSULATION (roll / batt)	R11	0.70	0.70		
	R21	1.22			
	R30	1.80			
CEILING	acoustical fiber tile	1.00			
	suspension - metal frmg	1.80			
	suspension - wood frmg	2.50			
	1/2" GWB	2.20			
	5/8" GWB	2.80	2.80		
SPRINKLER	1" ø wet (PLF)	2.10	1.00		
	2" ø wet (PLF)	5.20			
	3" ø wet (PLF)	10.80			
	4" ø wet (PLF)	16.40			
	6" ø wet (PLF)	31.70			
	10" ø wet (PLF)	74.60			
PARTITION	access floor system	10.00			
	office or partition subjected to change	20.00			
MISCELLANEOUS	basic -min.	1.50	1.50		
	live- over stage	20.00			

<b>LIVE</b>	LIVE LOAD				
		Snow (verify): basic + drift + sliding	45.00		
		Assembly/auditorium/balcony - fix seat	50.00		
		Assembly/auditorium/balcony - moveable	100.00	100.00	
		Stage area and enclosed platform	125.00		
		Garage - general storage and/or repair (40% gross)	100.00		
		Garage - private / pleasure (2000#)	50.00		
		Exit facility (300# Stair Tread)	100.00		
		Library - reading room (1000#)	60.00		
		Library - stack room (1500#)	125.00		
		Office (2000#)	50.00		
		Residential - basic /deck /storage (300# - Str)	40.00		
		Residential - exterior balcony	60.00		
		School - classroom (1000#)	40.00		
		Storage - light	125.00		
	Store-retail (3000#)	100.00			

RESTAURANT  
 ( NO PARTITION LOAD  
 2003 FBL-1607.5

D(flr) 12.50 (psf) IS PER  
 D(flr) + Live 112.50 (psf)

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JOB LOCATION : THE CLIFF SIDE RESTAURANT - 2039 WHEATON WAY, BREMERTON, WA  
 FLOOR LOCATION : 1ST FLOOR (MAIN FLOOR) - HARDWOOD: bar

		Material	Default Weight (psf), (uno)	Selected Weight (psf)	NOTE:
<b>FLOOR DEAD LOAD</b>	COVERING	linoleum / vinyl	1.00	3.00	3/4" THICK
		carpet & pad	1.50		
		wood - 1" nom.	4.00		
		tile / ceramic - 3/4"	10.00		
		OSB - 1/2"	1.50		
	UNDERLAYMENT	gyp-crete - 3/4"	6.50		
		concrete (LW) - 1 1/2"	11.00		
		3/4" T&G	2.30	2.30	
	SHEATHING	1-1/8" T&G	3.70		
		1-1/2" decking	4.50		
		FRAMING	2x4 @16"OC	1.10	2.20
	2x6 @16"OC or 9.5" TJI / PRO 150	1.70			
	2x8 @16"OC or 14" TJI / PRO 250	2.20			
2x10 @16"OC or 16" TJI / PRO 350	2.80				
2x12 @16"OC or	3.30				
16" TJI / PRO 550 (plf) - or 3.98 psf @ 16"oc	5.30				
INSULATION (roll / batt)	R11	0.70	0.70		
	R21	1.22			
	R30	1.80			
CEILING	acoustical fiber tile	1.00	2.80		
	suspension - metal frmg	1.80			
	suspension - wood frmg	2.50			
	1/2" GWB	2.20			
	5/8" GWB	2.80			
	plaster (1")	8.00			
SPRINKLER	1" ø wet (PLF)	2.10	1.00		
	2" ø wet (PLF)	5.20			
	3" ø wet (PLF)	10.80			
	4" ø wet (PLF)	16.40			
	6" ø wet (PLF)	31.70			
	10" ø wet (PLF)	74.60			
PARTITION	access floor system	10.00			
	office or partition subjected to change	20.00			
MISCELLANEOUS	basic -min.	1.50	1.50		
	live- over stage	20.00			

<b>LIVE</b>	LIVE LOAD	Snow (verify): basic + drift + sliding	45.00	100.00	RESTAURANT
		Assembly/auditorium/balcony - fix seat	50.00		
		Assembly/auditorium/balcony - moveable	100.00		
		Stage area and enclosed platform	125.00		
		Garage - general storage and/or repair (40% gross)	100.00		
		Garage - private / pleasure (2000#)	50.00		
		Exit facility (300# Stair Tread)	100.00		
		Library - reading room (1000#)	60.00		
		Library - stack room (1500#)	125.00		
		Office (2000#)	50.00		
		Residential - basic /deck /storage (300# - Str)	40.00		
		Residential - exterior balcony	60.00		
		School - classroom (1000#)	40.00		
		Storage - light	125.00		
		Store-retail (3000#)	100.00		

D(flr) 13.50 (psf) 15 psf  
 D(flr) + Live 113.50 (psf)

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JOB LOCATION : THE CLIFF SIDE RESTAURANT - 2039 WHEATON WAY, BREMERTON, WA  
 FLOOR LOCATION : 1ST FLOOR (MAIN FLOOR) - TILE: entry, kitchen, bathroom

	Material	Default Weight (psf) , (uno)	Selected Weight (psf)	NOTE:	
<b>FLOOR DEAD LOAD</b>	COVERING	linoleum / vinyl	1.00		
		carpet & pad	1.50		
		wood - 1" nom.	4.00		
		tile / ceramic - 3/4"	10.00	10.00	
	UNDERLAYMENT	OSB - 1/2"	1.50		
		gyp-crete - 3/4"	6.50	3.25	3/8" conc backer
		concrete (LW) - 1 1/2"	11.00		
	SHEATHING	3/4" T&G	2.30	2.30	
		1-1/8" T&G	3.70		
		1-1/2" decking	4.50		
	FRAMING	2x4 @16"OC	1.10		
		2x6 @16"OC or 9.5" TJI / PRO 150	1.70		
2x8 @16"OC or 14" TJI / PRO 250		2.20			
2x10 @16"OC or 16" TJI / PRO 350		2.80	2.80		
2x12 @16"OC or		3.30			
16" TJI / PRO 550 (plf) - or 3.98 psf @ 16"oc		5.30			
INSULATION (roll / batt)	R11	0.70	0.70		
	R21	1.22			
	R30	1.80			
CEILING	acoustical fiber tile	1.00			
	suspension - metal frmg	1.80			
	suspension - wood frmg	2.50			
	1/2" GWB	2.20			
	5/8" GWB	2.80	2.80		
SPRINKLER	plaster (1")	8.00			
	1" ø wet (PLF)	2.10	1.00		
	2" ø wet (PLF)	5.20			
	3" ø wet (PLF)	10.80			
	4" ø wet (PLF)	16.40			
	6" ø wet (PLF)	31.70			
PARTITION	10" ø wet (PLF)	74.60			
	access floor system	10.00			
MISCELLANEOUS	office or partition subjected to change	20.00			
	basic -min.	1.50	1.50		
	live- over stage	20.00			

<b>LIVE</b>	LIVE LOAD	Snow (verify): basic + drift + sliding	45.00		
		Assembly/auditorium/balcony - fix seat	50.00		
		Assembly/auditorium/balcony - moveable	100.00	100.00	RESTAURANT
		Stage area and enclosed platform	125.00		
		Garage - general storage and/or repair (40% gross)	100.00		
		Garage - private / pleasure (2000#)	50.00		
		Exit facility (300# Stair Tread)	100.00		
		Library - reading room (1000#)	60.00		
		Library - stack room (1500#)	125.00		
		Office (2000#)	50.00		
		Residential - basic /deck /storage (300# - Str)	40.00		
		Residential - exterior balcony	60.00		
		School - classroom (1000#)	40.00		
		Storage - light	125.00		
		Store-retail (3000#)	100.00		

D(flr) 24.35 (psf) 25 R&F  
 D(flr) + Live 124.35 (psf)

### WALL DEAD LOAD

JOB LOCATION : THE CLIFF SIDE RESTAURANT - 2039 WHEATON WAY, BREMERTON, WA

WALL HEIGHT: 9 (ft)

STUD SPACING: 16 (in)

Material		Default Weight (PLF) , (uno)	Adjusted Weight (PSF)	Interior Wall (PSF)	Exterior Wall (PSF)	NOTE:	
WALL	FRAMING	top plate - dbl 2 x 4 / ft	2.80	0.31	0.31		
	DOUGLAS-FIR	top plate - dbl 2 x 6 / ft	4.40	0.49		0.49	
		top plate - dbl 2 x 8 / ft	5.80	0.64			
		stud - 2 x 4 / ft	1.40	1.05	1.05		
		stud - 2 x 6 / ft	2.20	1.65		1.65	
		stud - 2 x 8 / ft	2.90	2.18			
		bot (sole) plate - 2 x 4 / ft	1.40	0.16	0.16		
		bot (sole) plate - 2 x 6 / ft	2.20	0.24		0.24	
		bot (sole) plate - 2 x 8 / ft	2.90	0.32			
		bot (sole) plate - 4 x 6 / ft	5.20	0.58			
		bot (sole) plate - 4 x 8 / ft	6.80	0.76			
		ICF	4" [4] conc wall		50.00		
			6" [6 1/4] conc wall		78.13		
			8" [7 7/8] conc wall		98.44		
			10" [9 7/8] conc wall		123.44		
		INSULATION (roll / batt)	R11 glass wool		0.70	0.70	
			R21 glass wool		1.22		1.22
			rigid insulation 5.5" thick (ICF)		1.65		
		SHEATHING	exterior - 1/2" ply		1.70		1.70
			exterior - 5/8" ply		2.00		
		exterior - 5/8" GWB (fire)		2.80		2.80	
		interior - 1/2" GWB		2.20	4.40		
		interior - 5/8" GWB		2.80		2.80	
	FINISHING	finish ext - wood siding		2.50		2.50	
		finish ext - gypsum plaster (1")		8.00			
		finish ext - solid plaster (1")		10.00			
		finish ext - clay brick (4")		35.00			
	MISCELLANEOUS	basic - min.		1.00	1.00	1.00	
		others		2.00			

Weight per square foot of wall = **7.62**    **14.40** (psf)  
 Weight per linear foot of wall = **68.55**    **129.63** (plf)

NORTH & SOUTH  
1 HR WALL

12.0 PSF — EAST & WEST

**ATTACHMENT A -5**

**ATTACHMENT A -5**

The extension shall be requested in writing and justifiable cause demonstrated.

**105.6 Suspension or revocation.** The building official is authorized to suspend or revoke a permit issued under the provisions of this code wherever the permit is issued in error or on the basis of incorrect, inaccurate or incomplete information, or in violation of any ordinance or regulation or any of the provisions of this code.

**105.7 Placement of permit.** The building permit or copy shall be kept on the site of the work until the completion of the project.

## SECTION 106 CONSTRUCTION DOCUMENTS

**106.1 Submittal documents.** Construction documents, special inspection and structural observation programs, and other data shall be submitted in one or more sets with each application for a permit. The construction documents shall be prepared by a registered design professional where required by the statutes of the jurisdiction in which the project is to be constructed. Where special conditions exist, the building official is authorized to require additional construction documents to be prepared by a registered design professional.

**Exception:** The building official is authorized to waive the submission of construction documents and other data not required to be prepared by a registered design professional if it is found that the nature of the work applied for is such that review of construction documents is not necessary to obtain compliance with this code.

**106.1.1 Information on construction documents.** Construction documents shall be dimensioned and drawn upon suitable material. Electronic media documents are permitted to be submitted when approved by the building official. Construction documents shall be of sufficient clarity to indicate the location, nature and extent of the work proposed and show in detail that it will conform to the provisions of this code and relevant laws, ordinances, rules and regulations, as determined by the building official.

**106.1.1.1 Fire protection system shop drawings.** Shop drawings for the fire protection system(s) shall be submitted to indicate conformance with this code and the construction documents and shall be approved prior to the start of system installation. Shop drawings shall contain all information as required by the referenced installation standards in Chapter 9.

**106.1.2 Means of egress.** The construction documents shall show in sufficient detail the location, construction, size and character of all portions of the means of egress in compliance with the provisions of this code. In other than occupancies in Groups R-2, R-3, as applicable in Section 101.2, and I-1, the construction documents shall designate the number of occupants to be accommodated on every floor, and in all rooms and spaces.

**106.1.3 Exterior wall envelope.** Construction documents for all buildings shall describe the exterior wall envelope in sufficient detail to determine compliance with this code. The construction documents shall provide details of the ex-

terior wall envelope as required, including flashing, intersections with dissimilar materials, corners, end details, control joints, intersections at roof, eaves or parapets, means of drainage, water-resistive membrane and details around openings.

The construction documents shall include manufacturer's installation instructions that provide supporting documentation that the proposed penetration and opening details described in the construction documents maintain the weather resistance of the exterior wall envelope. The supporting documentation shall fully describe the exterior wall system which was tested, where applicable, as well as the test procedure used.

**106.2 Site plan.** The construction documents submitted with the application for permit shall be accompanied by a site plan showing to scale the size and location of new construction and existing structures on the site, distances from lot lines, the established street grades and the proposed finished grades and, as applicable, flood hazard areas, floodways, and design flood elevations; and it shall be drawn in accordance with an accurate boundary line survey. In the case of demolition, the site plan shall show construction to be demolished and the location and size of existing structures and construction that are to remain on the site or plot. The building official is authorized to waive or modify the requirement for a site plan when the application for permit is for alteration or repair or when otherwise warranted.

**106.3 Examination of documents.** The building official shall examine or cause to be examined the accompanying construction documents and shall ascertain by such examinations whether the construction indicated and described is in accordance with the requirements of this code and other pertinent laws or ordinances.

**106.3.1 Approval of construction documents.** When the building official issues a permit, the construction documents shall be approved, in writing or by stamp, as "Reviewed for Code Compliance." One set of construction documents so reviewed shall be retained by the building official. The other set shall be returned to the applicant, shall be kept at the site of work and shall be open to inspection by the building official or a duly authorized representative.

**106.3.2 Previous approvals.** This code shall not require changes in the construction documents, construction or designated occupancy of a structure for which a lawful permit has been heretofore issued or otherwise lawfully authorized, and the construction of which has been pursued in good faith within 180 days after the effective date of this code and has not been abandoned.

**106.3.3 Phased approval.** The building official is authorized to issue a permit for the construction of foundations or any other part of a building or structure before the construction documents for the whole building or structure have been submitted, provided that adequate information and detailed statements have been filed complying with pertinent requirements of this code. The holder of such permit for the foundation or other parts of a building or structure shall proceed at the holder's own risk with the building operation and

without assurance that a permit for the entire structure will be granted.

#### 106.3.4 Design professional in responsible charge.

**106.3.4.1 General.** When it is required that documents be prepared by a registered design professional, the building official shall be authorized to require the owner to engage and designate on the building permit application a registered design professional who shall act as the registered design professional in responsible charge. If the circumstances require, the owner shall designate a substitute registered design professional in responsible charge who shall perform the duties required of the original registered design professional in responsible charge. The building official shall be notified in writing by the owner if the registered design professional in responsible charge is changed or is unable to continue to perform the duties.

The registered design professional in responsible charge shall be responsible for reviewing and coordinating submittal documents prepared by others, including phased and deferred submittal items, for compatibility with the design of the building.

Where structural observation is required by Section 1709, the inspection program shall name the individual or firms who are to perform structural observation and describe the stages of construction at which structural observation is to occur (see also duties specified in Section 1704).

**106.3.4.2 Deferred submittals.** For the purposes of this section, deferred submittals are defined as those portions of the design that are not submitted at the time of the application and that are to be submitted to the building official within a specified period.

Deferral of any submittal items shall have the prior approval of the building official. The registered design professional in responsible charge shall list the deferred submittals on the construction documents for review by the building official.

Documents for deferred submittal items shall be submitted to the registered design professional in responsible charge who shall review them and forward them to the building official with a notation indicating that the deferred submittal documents have been reviewed and been found to be in general conformance to the design of the building. The deferred submittal items shall not be installed until the design and submittal documents have been approved by the building official.

**106.4 Amended construction documents.** Work shall be installed in accordance with the approved construction documents, and any changes made during construction that are not in compliance with the approved construction documents shall be resubmitted for approval as an amended set of construction documents.

**106.5 Retention of construction documents.** One set of approved construction documents shall be retained by the building official for a period of not less than 180 days from date of

completion of the permitted work, or as required by state or local laws.

## SECTION 107 TEMPORARY STRUCTURES AND USES

**107.1 General.** The building official is authorized to issue a permit for temporary structures and temporary uses. Such permits shall be limited as to time of service, but shall not be permitted for more than 180 days. The building official is authorized to grant extensions for demonstrated cause.

**107.2 Conformance.** Temporary structures and uses shall conform to the structural strength, fire safety, means of egress, accessibility, light, ventilation and sanitary requirements of this code as necessary to ensure the public health, safety and general welfare.

**107.3 Temporary power.** The building official is authorized to give permission to temporarily supply and use power in part of an electric installation before such installation has been fully completed and the final certificate of completion has been issued. The part covered by the temporary certificate shall comply with the requirements specified for temporary lighting, heat or power in the ICC *Electrical Code*.

**107.4 Termination of approval.** The building official is authorized to terminate such permit for a temporary structure or use and to order the temporary structure or use to be discontinued.

## SECTION 108 FEES

**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 as established by the applicable governing authority.

**108.3 Building permit valuations.** The applicant for a permit shall provide an estimated permit value at time of application. Permit valuations shall include total value of work, including materials and labor, for which the permit is being issued, such as electrical, 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, 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 any 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 that shall be in addition to the required permit fees.

**108.5 Related fees.** The payment of the fee for the construction, alteration, removal or demolition for work done in connection to or concurrently with the work authorized by a building permit shall not relieve the applicant or holder of the

**ATTACHMENT A -6**

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## **20.02.040 PROJECT PERMIT PROCESSING PROCEDURES.**

Project permit applications are categorized as Type I, Type II, Type III or Type IV project permits. Permit processing procedures may include determination of completeness, notice of application, notice of public hearing and notice of decision. Applicable procedures for the processing of permits are pursuant to the following provisions:

(a) Type I Project Permits. These are administrative decisions by the Director who may approve, conditionally approve or deny the application. They include permits categorically exempt from SEPA review or that have had SEPA review completed in connection with another application or permit. Type I project permit processing procedures are set forth in Table 040 following this chapter.

(b) Type II Project Permit. These are administrative decisions by the Director with limited public notice. The Director has the authority to approve, conditionally approve or deny the application. Type II project permit processing procedures are set forth in Table 040 following this chapter.

(c) Type III Project Permit. These are Hearing Examiner decisions. The Hearing Examiner may approve, conditionally approve, or deny the application. Type III project permit processing procedures are set forth in Table 040 following this chapter.

(d) Type IV Project Permit. These are decisions by the City Council after a closed-record hearing. The City Council may approve, conditionally approve, modify and approve or deny the application. Type IV project permit processing procedures are set forth in Table 040 following this chapter. (Ord. 4938 § 3 (part), 2005)