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**No. 36201-5-II
COURT OF APPEALS,
DIVISION II
OF THE STATE OF WASHINGTON**

PM 9-26-07

CITY OF GIG HARBOR, a Washington municipal
Corporation, Respondent,

v.

RAINIER YACHT HARBOR, LLC. et al., Appellant.

RESPONDENT'S BRIEF

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I. Introduction.

In order to obtain an exemption from the requirement to obtain a shoreline substantial development permit under RCW 90.58.140(3)(e), Rainier Yacht, a *limited liability corporation*, asks this Court to believe that it is an owner of property seeking to construct two single family homes “for the use of its family.” To suspend reality further, Rainier Yacht asks this Court to accept that while each garage in these “homes” are large enough for 14 or more cars, that such massive garages are “necessarily connected to the use and enjoyment of a single family home.”¹ Rainier Yacht further argues that a 20-foot wide concrete “driveway” dedicated by deed to commercial use, suitable for two way traffic and providing access from the street to the site of its future marina is also “necessarily connected to the use and enjoyment of a single family home.”

The Washington State Department of Ecology, the Gig Harbor City staff and the Pierce County Superior Court all concluded that Rainier Yacht misrepresented the planned use of the structures in the applications it submitted to the City. All agreed

¹ An additional criterion to obtain the shoreline exemption.

that the facts show that Rainier Yacht will construct these two “single family homes” for commercial use/ commercial parking associated with Rainier Yacht’s planned marina, and that the shoreline exemptions were not appropriate. The City staff denied the exemptions, the Hearing Examiner reversed the City and the Superior Court reversed the Examiner.

If Rainier Yacht can convince this Court that these two structures with such massive basement garages and a commercial “driveway” are actually for single-family use, it gains a number of benefits, including, but not limited to: (1) avoidance of a Gig Harbor moratorium on the processing of development applications for commercial structures; (2) vesting under the old code (the new code would not allow construction of these structures as proposed); (2) exemptions from the more burdensome shoreline substantial development permit requirements for the two structures; (3) exemptions from environmental review under the State Environmental Policy Act, (4) review of the two structures under the City’s codes applicable to single-family residential structures, instead of commercial; (5) and elimination of the possibility of an administrative appeal to the Shoreline Hearings Board.

The Trial Court correctly reversed the Hearing Examiner's decision. However, even though the Examiner conditionally approved the exemptions, it is apparent that he also believed that Rainier Yacht would convert use of the structures to commercial. The Examiner specifically found that there was a "significant amount of evidence regarding Rainier Yacht's undisputed plans to obtain approval for a marina," and that "a convincing picture [was painted] that Rainier Yacht may try in the future to convert these homes to a marina or other permissible commercial use." Apparently, the Examiner decided to grant the shoreline exemptions because he erroneously believed that an ameliorative condition could be added to become operative once conversion to commercial use occurred. This condition is both contrary to law and unenforceable, and allows Rainier Yacht to circumvent applicable law. The Trial Court was correct, the Examiner's decision should be reversed and the shoreline exemptions denied.

II. Assignments of Error.

A. Was the Trial Court correct in finding that the Hearing Examiner failed to follow a prescribed process, and that this error was not harmless (RCW 36.70C.130(1)(a), because his decision contains no analysis or evidence to support the conclusion that the

shoreline exemptions should be conditionally granted? (App. Assn. of Error No. 1, 2, 3.)

B. Was the Trial Court correct in finding that the Hearing Examiner failed to follow a prescribed process, and that this error was not harmless (RCW 36.70C.130(1)(a), because this allowed circumvention of the law, and imposed a condition on the shoreline exemption that is contrary to law/unenforceable? (App. Assn. of Error No. 1, 2, 3.)

C. Was the Trial Court correct in finding that the Hearing Examiner's decision allowing an exemption from the shoreline substantial development permit requirement under RCW 90.58.140(3)(e) and WAC 173-27-040(2)(g) for a single family home with garages large enough for 16-17 cars, was an erroneous interpretation of the law, under RCW 36.70C.130(1)(b)? (App. Assn. of Error No. 1, 2, 3.)

D. Was the Trial Court correct in finding that the Hearing Examiner's decision allowing an exemption from the shoreline substantial development permit requirement under RCW 90.58.140(3)(e) and WAC 173-27-040(2)(g) for a single family home with a 20 foot wide driveway bound by a commercial use recorded deed restriction, was an erroneous interpretation of the

law, under RCW 36.70C.130(1)(b)? (App. Assn. of Error No. 1, 2, 3.)

E. Was the Trial Court correct in finding that the Hearing Examiner's decision to allow an exemption from the shoreline substantial development permit requirement for what Rainier Yacht claims will be two single family homes with garages, was not supported by evidence that is substantial when viewed in light of the whole record before the court (under RCW 36.70C.130(1)(c)? (App. Assn. of Error No. 1, 2, 3.

F. Was the Trial Court correct in finding that the Hearing Examiner's decision to allow an exemption from the shoreline substantial development permit requirement for garages that are too large to be "necessarily connected to the use and enjoyment of a single family residence," and for a 20 foot wide commercial driveway perpetually restricted to commercial use, was a clearly erroneous application of the law to the facts (RCW 36.70C.130(1)(d))? (App. Assn. of Error 1, 2, 3.)

G. Was the Trial Court correct in finding that the City carried the burden of establishing that the applicable

standards in RCW 36.70C.130(1) have been met, reversing the Hearing Examiner's decision? (App. Assn. of Error 1, 2, 3, 4.)

H. Was the Trial Court correct in finding that it had the authority to reverse the Hearing Examiner's decision under RCW 36.70C.140, and therefore, there was no need to remand the matter back to the Examiner for any purpose? (App. Assn. of Error No. 4.)

III. FACTS.

A. Statutory Background.

The Shoreline Management Act of the State of Washington prohibits anyone from undertaking a "substantial development" on the shorelines of the state unless a permit is first obtained from the local jurisdiction. RCW 90.58.140(2). "Substantial development" is defined in RCW 90.58.030(3)(e) as excluding:

Construction on shorelands by an owner, lessee or contract purchaser of a single family residence for his own use or for the use of his or her family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than the requirements imposed pursuant to this chapter.

RCW 90.58.030(3)(e)(vi). For development meeting the criteria described above, a shoreline exemption may be obtained from the local government.

The Department of Ecology has promulgated administrative rules to further describe the exemption for single-family residences, as it corresponds to RCW 90.58.030(3)(e)(vi), explaining that a shoreline substantial development permit is not required for:

Construction on shorelands by an owner, lessee, or contract purchaser of a single-family residence for their own use or the use of their family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof. 'Single-family residence' means a detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership, which are a normal appurtenance. An 'appurtenance' is necessarily connected to the use and enjoyment of a single-family residence . . . On a statewide basis, normal appurtenances include a garage; deck; driveway; utilities; fences; installation of a septic tank and drainfield and grading which does not exceed two hundred fifty cubic yards . . . Local circumstances may dictate additional interpretations of normal appurtenances which shall be set forth and regulated within the applicable master program . . .

WAC 173-27-040(2)(g). The City's Shoreline Master Program does not have any local interpretations of exemptions or normal appurtenances. SMP, Section 4.05, pp. 50-51.

The administrative rules interpreting WAC 173-27-040(2)(g) above provide that “exemptions shall be construed narrowly.” WAC 173-27-040. “Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemption from the substantial development permit process.” *Id.*

The applicant bears the burden to demonstrate that a development or use is exempt. WAC 173-27-040(1)(c). If any part of the proposed exemption is not eligible for exemption, then a substantial development permit is required for the entire proposed development project. WAC 173-27-040(1)(d).²

In addition, environmental review under the State Environmental Policy Act is required for construction of a building over 4,000 square feet that will house office or commercial uses. WAC 197-11-800(1)(b)(iii). Single family homes are exempt from SEPA review. WAC 197-11-800(1)(b)(i).

B. Factual Background.

The waterfront property purchased by Rainier Yacht and subject to this appeal is located at 3525 and 3555 Harborview Drive

² The City’s decision whether to grant an exemption from the shoreline substantial development permit requirements is appealed to the Court, not to the Shoreline Hearings Board. *Samuel’s Furniture v. Department of Ecology*, 147 Wn.2d 440, 448, 54 P.3d 1194 (2002).

in Gig Harbor (hereinafter the "Property"). (CP 179, Ex. A hereto (AR #21).) Rainier Yacht planned to construct a marina on the Property, and made application to the Washington State Department of Natural Resources for a lease of the underwater area from the Property line to the outer harbor line. (CP 208, Ex. B hereto (AR #25).) The lease application was signed by Bruce Steel, the managing member of Rainier Yacht, describing the proposed use of the Property as "marina with approximately 30 slips ranging from 50 feet to 70 feet."³ (Id., p. 2.) Mr. Steel proposed the following improvements to be constructed on the Property: "parking lot with associated drainage, bathrooms, office, marina." (Id., p. 3.) He also noted that the "development permit has not been applied for with Gig Harbor or other agencies subject to securing DNR lease." In a letter to DNR, Bruce Steel stated that the application is "part of a \$5,000,000 development which will establish maximum value on the uplands." (CP 217, Ex. C hereto, (AR #28).)

³ Rainier Yacht has not withdrawn this lease application for the purpose of constructing a marina with 30 slips, and has represented to this Court that "such a lease would be needed for **any use** of the associated tidelands." Opening Brief, footnote 15, p. 38, emphasis in original. Rainier Yacht asserts that it can't be "faulted for preserving as many options as possible." *Id.*

On May 4, 2005, Rainier Yacht submitted a request for an interpretation to the City of Gig Harbor, relating to the planned commercial development of the Property. (CP 41, Ex. D hereto (AR #3).) This documentation describes Rainier Yacht's plans for the property: "the proposed development includes a marina of approximately 35 berths, the renovation of an existing net shed, and the construction of two (2) story structures. . . . Below these buildings, . . . a fully covered basement level of approximately 10,000 square feet would provide approximately 36 parking stalls and storage lockers for the marina." (CP 282, Ex. E hereto (AR #40).) In the attached plans, 36 parking stalls and 36 storage lockers are shown, and one of the structures is labeled "2690 SF office." (Id.) Some of the elevations show an office level and residential level above. (Id.)

On May 31, 2005, the City of Gig Harbor adopted Ordinance 1003, which imposed an immediate moratorium on the acceptance of applications for new development of non-residential structures within the Waterfront Millville Zone. (CP 142, Ex. F (AR #15).) The purpose behind the moratorium was to consider the adoption of ordinances to limit the construction of excessively large

nonresidential structures along the waterfront, which block views of the water and are not in keeping with the area's small-town character. (*Id.*, p. 3.) The Rainier Yacht Property is located in this zone, and was subject to the moratorium.

However, Rainier Yacht was determined to avoid the moratorium:

The moratorium effectively stopped Rainier Yacht from submitting permit applications for its mixed-use development. . . . Rainier Yacht was understandably concerned that the Council would pursue additional legislative changes to further limit development on this valuable piece of property . . . Additional legislative changes were anticipated as early as July 11, 2005, and Rainier wanted an application submitted before additional code revisions were adopted.

(CP 1272, Rainier Yacht Response Brief, p. 7-8.) To circumvent the City's moratorium, Rainier Yacht submitted applications for exemptions from the City's shoreline substantial development permit requirement for two single family homes, with the intent to convert these homes into commercial structures in the future for the marina project.⁴ (The Waterfront Millville zone allows construction

⁴ As explained by Rainier Yacht, "there is no law that would support a conclusion that Rainier Yacht was without the right to keep its options open." Opening Brief, footnote 15, p. 38. "The City cannot . . . fault the owners for trying to do what they can to preserve the value of their investment." *Id.*

of both commercial and residential uses, and there was no square footage limitation on the construction of single-family homes at that point in time.)

On July 11, 2005, Rainier Yacht submitted two building permit applications to the City, describing one “residence” located at 3525 Harborview Drive as 4,258 square feet in size, with a basement garage of 3,650 square feet. (CP 134, Ex. G hereto (AR #155).) The “residence” located at 3555 Harborview Drive is described as 4,917 square feet in size, with a basement garage of 5,150 square feet. (Id.) A 20-foot wide roadway on the Property would provide access from the public street to both garages, as well as a commercial fishing dock that is partially on the lot at 3525 Harborview Drive. (Although Rainier Yacht characterizes this road as a “driveway,” the Gig Harbor Municipal Code defines “driveways” as not less than 12 feet in width. GHMC Section 17.72.020(C). If a “driveway” is 20 feet in width, two-way traffic is allowed. *Id.*) The roadway is dedicated to commercial use by deed recorded against the property, to provide access for a third party travel with vehicles, trailers and boats from the street to the existing dock, for

“commercial uses relating to the fishing and maritime industries.”

(CP 171, Ex. H hereto, (AR #20, p. 2).)⁵

Once Rainier Yacht characterized the two structures as “single family homes” in the City building permit applications, it also sought to obtain exemptions from the shoreline substantial development permit requirement in the Shoreline Management Act and the City’s Shoreline Master Program. (CP 596, 597, Ex. I and J hereto (AR # 69, 70).) Single family homes built with shoreline exemptions would not undergo environmental review under the State Environmental Policy Act, nor could there be an administrative appeal of the exemptions to the Shoreline Hearings Board.⁶

On July 22, 2005, contrary to the active residential building permit applications it submitted to the City, Rainier Yacht applied for a Joint Aquatic Resources Permit (“JARPA”) to the Army Corps of Engineers for a 36 slip marina, showing that the basements of these two “single-family homes” would be used for commercial

⁵ Rainier Yacht claims that this 20 foot wide roadway providing commercial access to the water (and future marina) was designed “based exclusively upon the planned residential use and it has not been designed for any other purpose.” (Opening Brief, p. 12.)

⁶ These are only some of the additional requirements applicable to a shoreline substantial development permit, and this is not meant to be an exhaustive list.

marina parking. In this permit application, Rainier Yacht describes the project as follows:

The proposed work will consist of a 36 slip marina. Slip lengths will range from 36 feet to 60 feet. Floats will be constructed of concrete encased foam. The floating piers will be moored to the harbor bottom with steel and/or concrete guide piling. Access to the marina from the uplands will be provided by two aluminum pedestrian bridges and a 6 foot wide by 80 foot long aluminum gangway. The gangway will be connected to a marina clubhouse, which will include restrooms and a multi-purpose room. Water sewer, fire and electrical power and communications utilities will be extended from the uplands to the marina slips. Parking for the marina will be provided on the uplands. See the attached JARPA drawings for project details.

(CP 486, Ex. K hereto, (AR #55, p. 2, No. 7a).) As is evident from the above, Rainier Yacht's proposed development did not include the construction of two single family residences, even though marina parking is proposed for the basement garages of these residences.⁷ On the face of this JARPA application are the following directions to the applicant Rainier Yacht:

You must submit a copy of this completed JARPA application form and the Fish Habitat Enhancement JARPA addition to your local Government Planning Department and Washington Department of Fish & Wildlife Area Habitat Biologist on the same day.

⁷ Rainier Yacht did identify its pending building permit applications with the City for "upland residences" in another portion of the application, but does not explain why this written description of the project does not include the "upland residences."

(CP 486, Ex. K hereto, (AR 55, p. 1, emphasis in original).) Further down, the application reads: “Based on the information provided, I am sending copies of this application to the following:” *Id.* The list of agencies includes local government, and Rainier Yacht was required to check the boxes to indicate that copies of the application had been sent to the respective agencies. *Id.* Rainier Yacht checked the box to indicate that it sent a copy of the application to the “local government for shoreline substantial development.” Language above this box states: “NOTE: LOCAL GOVERNMENTS – You must submit any comments on these projects to WDFW within 15 working days.”

Rainier Yacht didn’t send a copy of this application to the City, because the City would then learn of its misrepresentation in the residential building permits. The City did not learn of this application until provided with a copy of the application by the other respondent, Robert Frisbie, in his submissions to the Hearing Examiner. Rainier Yacht has misrepresented throughout this appeal that its original plan to construct a marina and mixed-use development changed once the City adopted a moratorium, but this application clearly indicates that there was no change in plans, only

changes made to the applications submitted to the City. Rainier Yacht has extreme difficulty explaining its misrepresentations regarding the JARPA permit application, and states only that: “The documents that represent efforts by Rainier Yacht Harbor to obtain approval for a marina generally pre-date the moratorium and the applications for single-family homes.” (Opening Brief, p. 37, emphasis added.)

On July 25, 2005, the City of Gig Harbor adopted Ordinance 1008, which imposed square footage limitations and footprint restrictions on the size of structures in the Waterfront Millville Zone. (CP 157, Ex. L hereto (AR #17).) The new square footage limitation for single family residences and nonresidential structures is 3,500 square feet. (*Id.*, p. 5.) This means that if Rainier Yacht had not illegally evaded the City’s moratorium by falsely claiming that the two structures would be single family homes, it would not have been allowed to build structures 7,908 and 10,067 square feet in size on the property.

On November 2, 2005, the City received a letter from Kim Van Zwalenburg of the Department of Ecology, which provided DOE’s interpretation of RCW 90.58.030(3)(e)(vi) and WAC 173-27-040(2)(g) on the pending shoreline exemption applications. Ms.

Van Zwalenburg stated that the garages associated with the two “single-family residences” are not “normal appurtenances” to a single family residence, and as a result, the exemption should be denied. (CP 301, Ex. M hereto (AR #2).) Here is the pertinent part of the letter:

I am hard pressed to believe that a 17-car garage, or even a 14-car garage, meets the true intent of a garage as a ‘normal appurtenance’ to a single family residence. If the intent is to ultimately use those parking garages to serve a future marina, it would appear that this project is coming in a piecemeal fashion and is inconsistent with the policies of the Shoreline Management Act (see RCW 90.58.020), which was promulgated for that very reason.

(Id., p. 2.)⁸

On November 2, 2005, the City of Gig Harbor issued a Notice of Decision of Denial of Shoreline Substantial Development Permit Exemption. (CP 128, Ex. N hereto (AR #10).) On November 7, 2005, the Notice of Decision was revised to correct a typographical error in the Findings of Fact. (CP 850, Ex. O (AR #144).) The Decision to deny the exemption was unchanged.

After receiving the City’s decisions denying the shoreline exemptions and realizing that the JARPA permit application

⁸ Rainier Yacht claims not to understand the origin of the concept of a 17 or 14 car garage. The original application showing Rainier Yacht’s intended use of the structures has 36 parking stalls. (AR #40.)

(showing that the marina parking would be housed in the “single family homes”) would present contradictory evidence in its appeal to the Hearing Examiner, Rainier Yacht decided to cancel this application (November 11, 2005). (CP 486 Ex. K (AR 55).) However, its correspondence with the Corps states that “Rainier intends to re-submit the application,” and the Corps acknowledged that “cancellation of your application at this time does not preclude you from resubmitting an application at a later date . . .” (Id.)

On January 11, 2006, the City issued a 2nd Revised Notice of Decision issued, amending the rationale for the denial to address the garages. (CP 857, Ex. G (AR #155).) The decision of denial was unchanged.

Up to this point, Rainier Yacht had a pending lease application with DNR for a 30-slip marina, it had requested and received an interpretation from the City for a marina/mixed use commercial development, it had submitted applications to the City for two single family homes, and it had submitted (only to later withdraw) a JARPA application to the Corps for a marina with marina parking in the garages of the two single family homes – all on the same piece of property. Rainier Yacht doesn’t think that the facts and this

history should have created any confusion about its pending City applications, and complains that the City “kept changing its position” on the applications and the development rules. (Opening Brief, p. 13.) Rainier Yacht’s architect also claimed that a City staff member told him that the single family homes would be exempt from the shoreline substantial development permit requirement, although he has never been able to identify this staff member, and he knew the City’s code requires a decision on an exemption to be done in writing. (Opening Brief, p. 13.)

On January 12, 2006, the Gig Harbor Hearing Examiner held an open public hearing on the appeals filed by Rainier Yacht Harbor, LLC, Robert Frisbee and Richard Allen. Rainier Yacht Harbor’s managing member, Bruce Steel, did not testify. Here is the explanation provided by its attorney for Rainier Yacht’s decision to submit building permits/exemptions for single family homes, instead of the commercial marina:

At that time they presented to the City, this is about May 12th I think the record will show, they presented to the City their plans for this parking garage with two buildings and the marina. . . . A few days later, they found out that the City was considering a moratorium on nonresidential applications in the Millville district, and in fact, on May 31st [2005] the City adopts a

moratorium. So all of a sudden their ability to vest an application to submit something that was consistent with the zoning rules that had been in effect, and were still in effect, they're faced with a moratorium. And the only thing that moratorium would allow to be submitted was an application for a single family home. That's the only thing that was free of the constraints of that moratorium, so that's in fact what they filed.

Transcript, p. 11. In other words, Rainier Yacht wanted to file anything with the City that would allow them to construct their proposed development and circumvent the moratorium. After studying the City's regulations, they realized that all they had to do to evade the moratorium and the shoreline substantial development permit requirement was to submit building permit applications for two single family homes. After careful study, Rainier Yacht knew that because both commercial and residential development was allowed in the underlying zone, they could misrepresent the true use of the structures in the applications, but change the use later. Rainier Yacht was so anxious to begin work on the commercial marina, it decided to submit the JARPA application to the Corps showing that the structures would be used for parking, even after it submitted building permits for single family homes to the City. It falsely claimed on this application that it sent a copy of the

application to the City, because it did not want the City to learn of this fraud.

Once the City staff denied the shoreline exemption, Rainier Yacht knew that it would have to file an appeal to the Hearing Examiner, and withdrew the JARPA permit application because it flatly contradicts the single family building permit applications by showing the marina parking in the “single family homes.” Steven Bull, Rainier Yacht’s architect, testified during the Hearing Examiner’s hearing that he knew about the application submitted to the Corps for the commercial marina, but the plans he worked on had “no parking for those facilities.” (CP 85-87 (Transcript, p. 29).) The City’s codes require parking for a marina, and it is clear the garages of the upland structures must be used for marina parking.

The Examiner was required to make a decision on the issue whether garages that could accommodate 36 parking stalls beneath two “single family homes” and a roadway devoted to commercial uses were “appurtenances necessarily connected to the use and enjoyment of a single-family residence.” The City presented declarations from four Community Development/Planning Directors with significant experience reviewing (and supervising other planners who reviewed) shoreline

applications. (CP 967, 969, 971, 973, Ex. P, Q, R, and S attached hereto (AR 156, 157, 158, 159).) In each of these declarations, the Community Development Directors states that:

In all of my years of experience, I have never seen any plans submitted by any applicant for a single-family home with basement garages [with basement garages of 3,650 and 5,150 square feet]. It is my opinion that basement garages of this size are not 'normal appurtenances' to a single family home.

Id., page 2 of each declaration.) Rainier Yacht, however, was not able to provide any evidence to show that such large garages were "normal appurtenances" to a single family home, only that it was able to find 29 homes with large garages in a multi-county search. (CP 550, (AR 61).) Only eight of these homes in the search appeared to have garages that might accommodate at least 10 cars (which is the number of cars Rainier Yacht asserts would be housed in each garage under its single-family home scheme). No evidence was submitted to show whether any of these homes obtained shoreline exemptions prior to construction.⁹

The City's planner testified at the hearing that if the "single-family homes" were built to the proposed size, they could later be

⁹ Rainier Yacht submitted a chart to the Examiner entitled "Pierce County Garage Sizes information from Pierce County Assessor." (AR #61.) The City objected to the submission of this chart because the Steel and Burton structures appear on the chart as if they were already built, and already included in the Assessor's data base.

changed to commercial use. (CP 78, (Transcript, p. 55-56).) The planner also testified that such a future change in use of the structures, once constructed, would not require that Rainier Yacht submit a shoreline substantial development permit. (CP 78, (Transcript, p. 55-56).)

On February 10, 2006, the Gig Harbor Hearing Examiner issued his Findings, Conclusions and Decision,¹⁰ finding that:

Messrs. Frisbie and Allen presented a significant amount of evidence regarding Rainier Yacht's undisputed plans to obtain approval for a marina, and paints a convincing picture that Rainier Yacht may try in the future to convert these homes to a marina or other permissible commercial use.

Id., p. 19. Regardless of the significant amount of evidence in the administrative record, the Examiner reversed the City to grant the shoreline exemptions, because: "despite what Rainier Yacht may, or may not, intend for the future, Rainier Yacht's single-family residential proposals have been submitted and processed consistent with city code applicable at the time of submittal." *Id.*

On the issue of the applicability of the shoreline exemption to the 20 foot roadway which will serve commercial uses such as the

¹⁰ (attached to Volume 1 of the Administrative Record.)¹⁰ The decision was amended with the Order Amending Findings, Conclusions and Decision on February 13, 2006 (attached to Volume 4 of the Administrative Record).

future marina, the Examiner neglected to make any finding at all. (CP 7, p. 21 (AR # 45, p. 21).) According to the Examiner, if “nothing in the applicable city code would prohibit the proposed driveway,” he did not need to determine whether or not it was appropriate to allow a shoreline exemption for the driveway.

Avoiding any analysis of the statute or administrative rule to the facts, the Examiner simply approved the exemptions with the following condition:

if constructed, the two proposed single-family residences remain used as single-family residences. In the event that Rainier Yacht Harbor, its members, or any of their respective successors seek to change the use from single-family residential, a shoreline substantial development permit (and any other then-required permits or approvals) must first be obtained.

(Id., CP 7, p. 24.) As shown by the record, the City’s planner testified that a shoreline substantial development permit is required for development, not for a change in use¹¹, and the City’s planner testified to this fact.¹² Therefore, the Examiner’s decision requires

¹¹ A shoreline substantial development permit may be required for some changes in use, but the City’s Shoreline Master Program does not automatically require a shoreline substantial development permit for a simple change in use.

¹² Here is the pertinent portion of the transcript at pages 55-56:

CM: And so wouldn’t the effect of what has happened with regard to the Burton and Steel residences and their request for an exemption be that if the houses were later converted to

the property owner and the City to perform a useless act – after all, if the property owner applies for a substantial development permit after construction, the City can't deny the permit and prohibit construction that has already taken place. Furthermore, a requirement that subsequent property owners obtain permits is not effective if the property transfers ownership -- a title search would not catch this condition unless it appeared in an agreement that is recorded against the property.

IV. ARGUMENT

- A. The Trial Court correctly determined that the City satisfied its burden under RCW 36.70C.130(1) and reversed the Hearing Examiner under RCW 36.70C.140.

The Land Use Petition Act (“LUPA”) establishes a uniform, expedited appeal process to provide consistent, predictable and timely judicial review of land use decisions by local government. *Washington Shell Fish, Inc. v. Pierce County*, 132 Wn. App. 239, 131 P.3d 326, 331 (2006). The party seeking LUPA review has the

commercial use, they would be circumventing the City's exemption requirements?

JS: Looking at the Shoreline Master Program, barring them in changing from residential to commercial and then making major changes to the actual building, it appears that they would not be required to submit a shoreline substantial development permit application . . .

burden of proving that the challenged land use decision was an erroneous interpretation of the law and was not supported by substantial evidence. RCW 36.70C.130. In reviewing administrative decisions, the Court of Appeals stands in the shoes of the superior court, and reviews conclusions of law de novo. *Cingular Wireless LLC v. Thurston County*, 131 Wn. App. 756, 768, 129 P.3d 300 (2006).

The Trial Court correctly found that the City met its burden to establish that at least one of the following standards was met:

- (a) The body or officer that made the land use decision engaged in unlawful procedure or failed to follow a prescribed process, unless the error was harmless;
- (b) The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise;
- (c) The land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court;
- (d) The land use decision is a clearly erroneous application of the law to the facts; . . .

RCW 36.70C.130(1)¹³ The Washington courts have ruled that standards (a) and (b) present questions of law that are reviewed de novo. *Cingular Wireless*, 131 Wn. App. at 768.

Standard (c) concerns a factual determination that the courts review for substantial evidence. “Substantial evidence is evidence that would persuade a fair-minded person of the truth of the statement asserted.” *Freeburg v. Seattle*, 71 Wn. App. 367, 371, 859 P.2d 610 (1993). Rainier Yacht argues that this Court must provide deferential review of the Hearing Examiner’s decision, because it prevailed in the appeal before the Examiner. However, there is a different standard of review applicable to shoreline cases, allowing a court to substitute its judgment for that of the Examiner “where necessary to ensure that a proposed project complies with the Shoreline Management Act.” *Batchelder v. Seattle*, 77 Wn. App. 154, 161, 890 P.2d 25 (1995).

The clearly erroneous standard in RCW 36.70C.130(1)(d) involves applying the law to the facts. *Cingular Wireless*, 131 Wn. App. at 768. “Under that test, we determine whether we are left

¹³ The standards in RCW 36.70C.130(1)(e) and (f) are not triggered here.

with a definite and firm conviction that a mistake has been committed.” *Id.*

- B. The Examiner “engaged in unlawful procedure” or “failed to follow a prescribed process,” the error was not harmless, and the Trial Court correctly determined that the City met its burden under RCW 36.70C.130(1)(a).

The issue presented by the appeal before the Hearing Examiner was whether Rainier Yacht was entitled to two shoreline exemptions under RCW 90.58.140(3)(e)(vi) and WAC 173-27-040(2)(g) for the two structures, the garages and the roadway. In order to make this determination, the Examiner had to examine the criteria in the statute and administrative rule against the facts. However, all he did was make a list of all of the facts presented to him, and fashion a condition that he thought would appease everyone. The inadequacy of the Examiner’s decision is a question this Court reviews *de novo*.

The first question the Examiner was required to address was whether a corporation could obtain an exemption under RCW 90.58.030(3)(e)(vi), given that the exemption is only available to “an owner, lessee or contract purchaser of a single family residence for his own use or the use of his or her family.” There are no findings or analysis in the decision relating to this criterion. Obviously, a

corporation has no family, and if corporations are allowed to obtain shoreline exemptions regardless of this criterion, they would be able to construct “spec” houses. This is specially prohibited. *State Department of Ecology v. Pacesetter Construction Co.*, 89 Wn.2d 203, 571 P.2d 196 (1977).

Like Rainier Yacht, the developer in *Pacesetter* “had taken steps to avoid the otherwise existing necessity of obtaining a substantial development permit under the Shoreline Management Act” for construction of two houses on the shoreline. *Id.*, 89 Wn.2d at 206. The developer entered into a contract with a person for the construction of one home, which contract was later found by the court to be a “subterfuge by [the developer Pacesetter] to deceive the City of Seattle and to avoid the requirement of obtaining a substantial development permit required by SMA.” *Id.* An earnest money agreement for construction of a second home was found by the court to be a “sham to mislead the City into continuing, in effect, a building permit on the upper portion of the Pacesetter property.” *Id.* Ultimately, the court ordered removal of both houses, restoration of original grade, cancellation of the building permits on both houses because they were fraudulently obtained, ordered the City to require a substantial development permit prior to allowing

any further construction on the property and required the City to consider whether the area around the property was environmentally sensitive under SEPA. *Id.*, at 198. On appeal, the Washington Supreme Court held that “such fundamental violation is a threat to the future effectiveness of the Shoreline Management Act.” *Id.* at 199.

The second question the Examiner should have addressed¹⁴ was whether the two structures, their garages and the 20 foot concrete roadway meet the definition of “single-family residence,” and its “normal appurtenances.” WAC 173-27-040(2)(g). No one contests that the second story of the structures appear to be designed for residential use. However, the basement garages do not meet the definition of a “normal appurtenance,” because garages that are 3,650 and 5,150 square feet, respectively, are not “normal.” In a multi-county search, Rainier Yacht could only find 8 homes that had parking for 8-10 cars. (CP 861 (AR #61).) On this point, the Examiner made no findings, and provided no analysis or conclusions. Rainier Yacht explains this lack of analysis by asserting that as long as the garage is labeled a “garage” on the

¹⁴ The structures are not over 35 feet in height, so this criterion is not mentioned.

plans, he could automatically assume that it is a “normal appurtenance” to a single family home.

If this were true, there would be no need for the additional definition of an “appurtenance” in WAC 173-27-040(2)(g). This rule provides that the basement garages must also be “necessarily connected to the use and enjoyment of a single family residence” in order for the exemption to apply. WAC 173-27-040(2)(g).

Rainier Yacht believes that this Court should assume that all garages are “necessarily connected to the use and enjoyment of a single family home,” and the specific configuration of these two basement garages should not be examined. This ignores the applicable law, which requires the City to view all exemptions narrowly. If Rainier Yacht’s argument were to prevail, the City would be required to approve homes that were 500 square feet in size with garages of 25,000 square feet, and accept the fact that the 25,000 square foot garage is “necessarily connected” to the use of the single family home.

The Examiner’s decision did not include any findings or analysis to show how he concluded that a 20 foot wide concrete roadway devoted to third party commercial use could possibly be “normal appurtenance to a single family residence and necessarily

connected with the use and enjoyment of a single-family residence.” He did recite the applicable law which provides that: “If any part of the proposed exemption is not eligible for exemption, then a substantial development permit is required for the entire proposed development project,” (WAC 173-27-040(1)), but then ignored its significance to the facts. This roadway alone should have triggered the need for a shoreline substantial development permit for the entire project.

The only reason the Examiner determined that the shoreline exemptions should be granted is because he thought that the City had already processed the applications as single-family homes. He mistakenly believed that if he added a condition stating that Rainier Yacht had to obtain a shoreline substantial development permit when it converted the use from residential to commercial, this would address the problem. Unfortunately, this condition is contrary to law and unenforceable – and it allows Rainier Yacht to bypass environmental review, develop its property under less stringent residential codes and create a nonconforming structure (when the property is converted to commercial).

Rainier Yacht can't point to any part of the Examiner's decision that shows that he even considered the applicable statute,

rules or the facts (other than his idea that the City is processing the applications as single-family). Instead, Rainier Yacht believes that as long as the Court can read the Examiner's ultimate decision (to reverse the City's denial of the exemptions and grant them), no analysis is required.

This is an incorrect reading of the law, because the Examiner's decision does not satisfy the standard for minimal adequacy in *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 873 P.2d 498 (1994). In *Weyerhaeuser*, the hearing examiner's decision was determined by the Washington Supreme Court to be "inadequate as a matter of law" (124 Wn.2d at 37) because:

The purpose of findings of fact is to ensure that the decision maker 'has dealt fully and properly with all of the issues in the case before he [or she] decides it and so that the parties involved' and the appellate court 'may be fully informed as to the bases of his [or her] decision when it is made. Findings must be made on matters 'which establish the existence or nonexistence of determinative factual matters.'" The process used by the decision maker should be revealed by findings of fact and conclusions of law. Statements of the positions of the parties, and a summary of the evidence presented, with findings which consist of general conclusions drawn from an 'indefinite, uncertain, undeterminative narration of general conditions and events,' are not adequate.

Id., at 35 (citations omitted).

The Hearing Examiner decision in this case is inadequate as a matter of law for the same reasons. The Examiner performed no legal analysis whatsoever, ignored important facts relevant to a finding whether the shoreline exemption was proper, and gave no explanation for his decision to disregard the applicable law. He did list all of the facts presented to him, and even determined that there was substantial evidence in the record for him to rule that the exemptions were being requested for a commercial use, not single family residential. But contrary to his own findings, he reversed the City's decision and granted the exemptions.

Citizens for Responsible and Organized Planning v. Chelan County, 105 Wn. App. 753, 21 P.3d 304 (2001) is another case in which the deficiency in the findings and conclusions resulted in a reversal of the decision. In *CROP*, the court held:

Meaningful appellate review requires entry of adequate and detailed findings of fact and conclusions of law. See, *Org. to Pres. Agric. Lands v. Adams County*, 128 Wn.2d 869, 882, 913 P.2d 793 (1996) ('review is limited to determining whether substantial evidence supports the findings and, if so, whether the findings in turn support the trial court's conclusions of law.') Here, the Chelan County Board of Commissioners adopted findings and conclusions prepared by the planning staff which do not address the central question presented by the parties . . . In fact, there is no conclusion whatsoever on this crucial

point. Nor do the findings specify any reasons which would support such a conclusion.

Id., 105 Wn. App. at 755.

Rainier Yacht argues that the Examiner's non-existent analysis is acceptable under *Tugwell v. City of Ellensburg*, 90 Wn. App. 1, 951 p.2d 272 (1997). In *Tugwell*, however, the Court determined that in order for the appellant to meet its burden under RCW 36.70C.130(1)(a), it had to show that the County's findings and conclusions violated RCW 36.70.620 (which relates to county administrative decisions) and if so, whether the violation was harmless. A city hearing examiner's decision is not required to meet any statute applicable to counties, so this case is not analogous.

Rainier Yacht next contends that the standard in *Citizens Alliance to Protect our Wetlands v. City of Auburn*, 126 Wn.2d 356, 894 P.2d 1300 (1995) was met in the Examiner's decision. In *Citizens*, the court found that the examiner's decision was ten typed pages and as a result, it met the *Weyerhaeuser* standard. There was no discussion in *Citizens* regarding the analysis, only the court's observation that it was lengthy, so it was not determined to be as conclusory as the examiner's decision in *Weyerhaeuser*. The

length of the Examiner's decision should not be the determinative factor in the standard for adequacy.

- C. The Examiner's decision is an erroneous interpretation of the law, and the Trial Court was correct in finding that the City satisfied its burden under RCW 36.70C.130(1)(b).

Whether the shoreline exemptions should be granted under RCW 90.58.030(3)(e)(vi) and WAC 173-27-040(2)(g) is a question of law this Court reviews de novo. *Cingular*, 131 Wn. App. at 768. Construction of a statute and the administrative rule interpreting the statute are also questions of law which the court reviews de novo under the error of law standard. *McTavish v. Bellevue*, 89 Wn. App. 561, 564, 949 P.2d 837 (1998). As stated by the *McTavish* court:

When a statute or ordinance is unambiguous, construction is not necessary as the plain meaning controls. *ARCO Prods. Co. v. Washington Utils. & Transp. Comm'n*, 125 Wn.2d 805, 810, 888 P.2d 728 (1995); *State v. McCraw*, 127 Wn.2d 281, 288, 898 P.2d 838 (1995) (stating that the Supreme Court will not construe unambiguous language and that in judicial interpretation of statutes, the first rule is 'the court should assume that the legislature means exactly what it says. Plain words do not require construction.)

McTavish, 89 Wn. App. at 565. There is also a different standard of review applicable to shoreline cases, allowing a court to substitute

its judgment for that of the Examiner “where necessary to ensure that a proposed project complies with the Shoreline Management Act.” *Batchelder v. Seattle*, 77 Wn. App. 154, 161, 890 P.2d 25 (1995). As stated by the *Batchelder* court:

Although substantial weight is accorded the agency’s legal interpretation if it falls within the agency’s expertise in a special area of the law, the reviewing court may, where necessary to ensure that a proposed project complies with the Shoreline Management Act, substitute its judgment for that of the agency.

Id., 77 Wn. App. at 161.

The Washington State Department of Ecology was delegated the authority to adopt administrative rules to interpret RCW 90.58.030(3)(e)(vi), which allows an exemption from the shoreline substantial development permit requirement. The administrative rules define a “single family residence” as “a detached dwelling designed for and occupied by one family, including those structures and developments within a contiguous ownership, which are a normal appurtenance.” WAC 173-27-040(2)(g). According to this rule, an “‘appurtenance’ is necessarily connected to the use and enjoyment of a single-family residence.” *Id.* The rule goes on to identify what are “appurtenances,” and lists “a garage, deck; driveway, . . .” *Id.*

Again, an “appurtenance” in this context is that “necessarily connected to the use and enjoyment of a single family residence,” such as a garage or driveway. The City staff concluded that Rainier Yacht’s garage and driveway was not “necessarily connected” to such use – a finding that easily could have been made by the Examiner, if he had consulted a dictionary. Any dictionary definition of “necessary” would include the following terms; “an indispensable item, essential, prerequisite, of an inevitable nature, inescapable, logically unavoidable.” Merriam-Webster’s Collegiate Dictionary, 11th Ed. (2003). Obviously, neither a 17 car garage nor a 20 foot wide commercial drive way is indispensable or essential to a single-family home. The City staff simply interpreted the WAC as it was written, reviewed the dictionary definitions, and determined that the shoreline exemptions were not appropriate.

The rule provides no guidance as to how large or small a garage or driveway may be in order to gain the benefit of the exemption, but does require that both be “necessarily connected to the use and enjoyment of a single-family residence.” With regard to the Rainier Yacht “single family homes,” DOE determined that a shoreline exemption was improper.

Rainier Yacht argues that as long as the applicant simply labels a space in the single-family home as a “garage,” or identifies the driveway as a “driveway,” it is entitled to an exemption. Because the statute exempts single-family homes and their normal appurtenances, garages and driveways, Rainier Yacht believes that the remainder of the administrative rule should be disregarded.

This is inconsistent with accepted rules of statutory construction. The regulations adopted by the Legislature and the Department of Ecology in WAC 173-27-040 are “entitled to considerable weight in determining legislative intent, unless compelling reasons are presented sufficient to show the scheme is in conflict with the intent and purpose of the legislation.”

Weyerhaeuser Co. v. State Department of Ecology, 86 Wn.2d 310, 318, 545 P.2d 5 (1976). Furthermore, the rules require that “exemptions shall be construed narrowly,” not broadly to encompass the activities of extremely wealthy individuals who seek to avoid compliance with city and state regulations by submitting applications to the City one day for single family homes, and two weeks later submitting applications to the Corps showing that such garages will be used for commercial marina guest parking. According to the rule, “only those developments that meet the

precise terms of one or more of the listed exemptions may be granted exemption from the substantial development permit process.” WAC 173-27-040. A garage capable of housing up to 17 cars and a roadway perpetually restricted to (and sized to accommodate) commercial use, two-way traffic simply does not meet this standard.

Therefore, a reading of the statute together with the rule leads to the conclusion that not all single-family homes, garages and driveways are exempt from the requirement to obtain a shoreline substantial development permit, only those necessarily connected to the use and enjoyment of a single family home. The Trial Court correctly determined that the Hearing Examiner’s decision should be reversed because he disregarded the law in his summary decision.

- D. The Trial Court correctly reversed the Examiner’s decision because it was not supported by substantial evidence in the record, and the City satisfied its burden under RCW 36.70C.130(1)(d).

Although this Court is required to consider the evidence in the light most favorable to Rainier Yacht (because it prevailed before the Examiner), there is not substantial evidence in the

administrative record to support the Examiner's decision. The facts show that Rainier Yacht misrepresented the proposed use of the two structures in order to circumvent the City's moratorium, environmental review and the necessity to obtain a shoreline substantial development permit.

Here are the facts supporting Rainier Yacht's misrepresentation and denial of the shoreline exemptions:

- Rainier Yacht's intention to construct a marina, as shown on the lease it has submitted to DNR.
- The fact that there is no place on the Property to locate the necessary parking for this marina except in the basement garages of the two upland structures.
- Rainier Yacht's previous submittals to the City (such as the interpretation request), showing the proposed commercial development, with 36 parking stalls in the basement garages.
- Rainier Yacht's submission of a JARPA permit to the Corps for a marina with parking in the two upland structures **AFTER** it submitted building permits for these two structures to the City, representing that they would be used as single family homes.
- Failure to send a copy of the JARPA application to the City as required by the Corps in its application.
- The fact that a corporation is not a person without a family, and therefore cannot construct a home for itself or its family.
- The deed restriction which shows that the 20 foot wide concrete roadway will be used for commercial purposes.
- The physical characteristics of the two structures which clearly show that the basement garages are

- not suitable for habitation and are too large for the vehicles/storage needed for single family use.
- The physical characteristics of the 20 foot wide concrete roadway – this width allows two-way traffic under the City’s code.
- The fact that Rainier Yacht has no explanation for its decision to withdraw the JARPA permit for marina parking in the two upland structures, and its letter to the Corps stating that it intends to re-submit the application.
- The fact that the Hearing Examiner also concluded that there was a significant amount of evidence in the record regarding Rainier Yacht’s undisputed plans to obtain approval for a marina, and his observation that the evidence “paints a convincing picture that Rainier Yacht may try in the future to convert these homes to a marina or other permissible commercial use.”
- The Declarations of four Community Development Directors stating that single family homes with such large garages are extremely unusual and not necessarily connected to the use and enjoyment of a single family home.

In addition, Frisbie/Allen submitted much evidence to support the City staff’s denial of the exemption, such as the background information which demonstrated that Rainier Yacht intended the garages to be used for the commercial marina parking, and that the 20 foot wide commercial driveway was restricted by a perpetual covenant.

As for the evidence in the record to support a finding that the shoreline exemptions should be granted, there is nothing but the

exemption and building permit applications themselves. Rainier Yacht's managing member attended the hearing before the Gig Harbor Hearing Examiner, but did not testify, apparently because he knew that he might be asked whether he intended to convert the use of the structures from residential to commercial in the future. Rainier Yacht's attorneys have repeatedly asserted that Rainier Yacht has the right to convert these structures to commercial use and may do so in the future.¹⁵

Rainier Yacht submitted a chart to the Examiner entitled "Pierce County Garage Sizes, Information from Pierce County Assessor. (CP 681, (AR #61).) The City objected to the submission of this chart because the Steel and Burton house appear on the chart as if they were already built, and already included in the Assessor's data base. This document should not have been considered by the Examiner.

¹⁵ "In this climate, . . . the Applicant can certainly not be faulted, for preserving as many of its options as possible. The City cannot challenge every single land use action associated with property and somehow fault the owners for trying to do what they can to preserve the value of their investment." Opening Brief, footnote 15, p. 38.

"There is also no law that would support a conclusion that Rainier Yacht was without the right to keep its options open. . . . If this project is ultimately denied, or even if approved, Rainier Yacht could, consistent with the code, explore a marina without the upland structures or with different upland structures." Opening brief, footnote 16, p. 38.

To show that these garages were not terribly big for single family homes, Rainier Yacht submitted a list of homes with large garages, but only one appeared to have a garage to accommodate the number of vehicles proposed by Rainier Yacht. (This was the home at 904 – 96th St. N.W. (CP 681, (AR #61).) Notably, after a multi-county search, Rainier Yacht could only find 7 other residences with such large garages – again demonstrating that garages of this size are not “necessarily connected to the use and enjoyment of a single-family home.”

- E. The Trial Court correctly determined that the Examiner’s decision was a “clearly erroneous application of the law to the facts,” and that the City satisfied its burden under RCW 36.70C.130(1)(d).

Rainier Yacht argued to the Examiner that if the City performed a “factual inquiry” each time it determined whether an exemption should be granted, the City would be “limiting the exception” provided in WAC 173-27-040(2)(g). However, the rules require the City to ensure that the exemption will be “construed narrowly,” and that the request for an exemption “meets the precise terms of one or more of the listed exemptions.” This necessarily involves a factual inquiry into the actual request, not a blind

approval simply because an applicant labels a space in a house as “garage.”

Here, the City was placed on notice by the contradictory application to the Corps in the JARPA permit, that the garages would be used for marina parking, not parking for the “single family homes.” Rainier Yacht’s attorney claimed that the space in the basement may not be used solely for the cars of the two families, but may be used for other needs and a “variety of uses.”

Even so, the basement of each residence is accessed by garage doors and given that both garages are mostly underground, it is not likely that this area will be used for living space. The “residences” are also large enough that the basements would not be needed for living space.

Therefore, the Examiner should have applied the law to the facts in order to determine whether the City correctly decided that basement garages of 5,150 and 3,650 square feet in size are not “necessarily connected to the use and enjoyment of a single-family residence.” While Rainier Yacht argued that garages of this size “are not exceptionally big for large, expensive, waterfront homes,” this does not mean that such large garages are “necessarily connected” to the use and enjoyment of a single-family home,

especially when the living space in the homes can easily accommodate normal living and storage needs.

F. The Trial Court correctly reversed the Examiner, instead of remanding the matter to him for further action.

Contrary to Rainier Yacht's argument (presented in the response to the City's Motion for Stay), both this Court and the Trial Court may reverse the Hearing Examiner's decision and/or substitute its judgment for that of the Examiner. RCW 36.70C.140. There is a different standard of review applicable to shoreline cases, allowing a court to substitute its judgment for that of the Examiner "where necessary to ensure that a proposed project complies with the Shoreline Management Act." *Batchelder v. Seattle*, 77 Wn. App. 154, 161, 890 P.2d 25 (1995).

Furthermore, no purpose would be served by remanding it to the Hearing Examiner, given that he has already ruled that there is substantial evidence in the record to support the conclusion that Rainier Yacht intends to construct a marina on the property. Without the use of the basement garages in these "single-family homes," there is no parking for the marina. Rainier Yacht

complains that this process has delayed its project¹⁶, and a remand to the Examiner would unnecessarily waste time and resources.

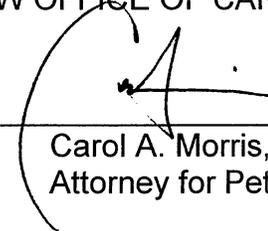
VI. CONCLUSION.

The Court should affirm the Trial Court's decision to reverse the Examiner's decision. The matter should be remanded to the City for entry of a denial of Rainier Yacht's requested exemptions from the City's shoreline substantial development permit requirement.

DATED this 26th day of September, 2007.

LAW OFFICE OF CAROL A. MORRIS, P.C.

By



Carol A. Morris, WSBA #19241
Attorney for Petitioner City of Gig Harbor

¹⁶ See, Opening Brief, p. 13.

EXHIBIT A

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43094
MAY 24 - 2005
CHICAGO TITLE

200505240605 6 PGS
05-24-2005 11:48am \$24.00
PIERCE COUNTY, WASHINGTON

WITH RECORDED RETURN TO
RAINIER YACHT HARBOR LLC
P.O. BOX 875
TACOMA, WASHINGTON 98401

 CHICAGO TITLE INSURANCE COMPANY 4309459

STATUTORY WARRANTY DEED

Dated: MAY 13, 2005

THE GRANTOR
PATRICIA M. JERKOVICH, PERSONAL REPRESENTATIVE OF THE ESTATE OF NICKOLAS JOHN JERKOVICH,
DECEASED; NICHOLAS JERKOVICH, JR.; JOHN JERKOVICH; MARY ELLEN J. HANSON AND ELVY
JERKOVICH

for and in consideration of
TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION

in hand paid, conveys and warrants to
RAINIER YACHT HARBOR LLC, A WASHINGTON LIMITED LIABILITY COMPANY

the following described real estate situated in the County of PIERCE State of Washington:
Tax Account Number(s): 597000-024-1, -024-2

LOT 5, BLOCK 3, TOWN OF MILLVILLE, PIERCE COUNTY, W.T., ACCORDING TO
PLAT RECORDED IN BOOK 2 OF PLATS, PAGE 23, RECORDS OF PIERCE COUNTY
AUDITOR.

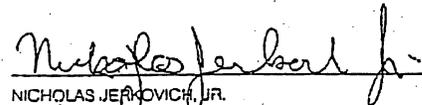
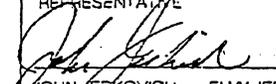
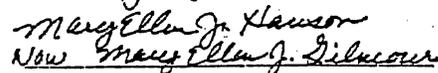
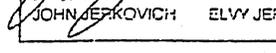
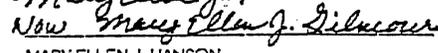
TOGETHER WITH SECOND CLASS TIDELANDS ABUTTING THEREON TO MEAN LOW TIDE.

SUBJECT TO EXCEPTIONS AND RESERVATIONS CONTAINED IN DEED FROM THE STATE
OF WASHINGTON.

SUBJECT TO QUESTION OF LOCATION OF LATERAL BOUNDARIES OF SAID SECOND
CLASS TIDELANDS OR SHORELANDS.

SUBJECT TO RIGHT OF THE STATE OF WASHINGTON IN AND TO THAT PORTION, IF
ANY, OF THE PROPERTY HEREIN DESCRIBED WHICH LIES BELOW THE LINE OF
ORDINARY HIGH WATER OF GIG HARBOR.

SEE ATTACHED DESCRIPTION

<p> PATRICIA M. JERKOVICH, PERSONAL REPRESENTATIVE</p>	<p> NICHOLAS JERKOVICH, JR.</p>
<p> JOHN JERKOVICH</p>	<p> MARY ELLEN J. HANSON</p>
<p> ELVY JERKOVICH</p>	<p> MARY ELLEN J. GILMAN</p>

SWS/IRDA/0891

4084086 2 PGS

05-24-2005 11:45am EA CLARK1
EXCISE COLLECTED: \$8,900.00
PAT MCCARTHY, AUDITOR
PIERCE COUNTY, WASHINGTON
AFF. FEE: \$0.00

EXHIBIT # 21

HEX EXHIBIT# 21
APPEAL NOS. 05-1097, 05-1143, 05-1144

24

WHEN RECORDED RETURN TO
RAINIER YACHT HARBOR LLC
P.O. BOX 875
TACOMA, WASHINGTON 98401



CHICAGO TITLE INSURANCE COMPANY

4309459

STATUTORY WARRANTY DEED

Dated: MAY 13, 2005

THE GRANTOR

PATRICIA M. JERKOVICH, PERSONAL REPRESENTATIVE OF THE ESTATE OF NICKOLAS JOHN JERKOVICH,
DECEASED; NICHOLAS JERKOVICH, JR.; JOHN JERKOVICH; MARY ELLEN J. HANSON AND ELVY
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SEE ATTACHED DESCRIPTION

PATRICIA M. JERKOVICH, PERSONAL
REPRESENTATIVE

NICHOLAS JERKOVICH, JR.

JOHN JERKOVICH ELVY JERKOVICH

MARY ELLEN J. HANSON

SWD/RDA/0829

EXHIBIT #21

2/6

1	CHICAGO TITLE INSURANCE COMPANY	
2	Escrow No.: 4309459	Title No.: 4309459
3	SUBJECT TO ANY PROHIBITION OR LIMITATION OF USE, OCCUPANCY OR IMPROVEMENT	
4	OF THE LAND RESULTING FROM THE RIGHTS OF THE PUBLIC OR RIPARIAN OWNERS TO	
5	USE ANY PORTION WHICH IS NOW OF HAS BEEN FORMERLY COVERED BY WATER.	
6	SUBJECT TO PARAMOUNT RIGHTS AND EASEMENTS IN FAVOR OF THE UNITED STATES FOR	
7	COMMERCE, NAVIGATION, FISHERIES AND THE PRODUCTION OF POWER.	
8	SUBJECT TO DECLARATION OF EASEMENT AND THE TERMS AND CONDITIONS THEREOF	
9	DATED MAY 20, 2005, AND RECORDED MAY 24, 2005 UNDER AUDITOR'S FILE NO.	
10	<u>100575240604</u>	
11	ACCEPTED AND APPROVED:	
12	RAINIER YACHT HARBOR LLC	
13	BY: <u>Bruce Steel</u>	
14	BRUCE STEEL, MANAGING MEMBER	

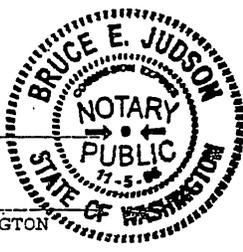
EXHIBIT #21

3/0

STATE OF WASHINGTON SS
COUNTY OF PIERCE

I CERTIFY THAT I KNOW OR HAVE SATISFACTORY EVIDENCE THAT PATRICIA M. JERKOVICH IS THE PERSON WHO APPEARED BEFORE ME, AND SAID PERSON ACKNOWLEDGED THAT SHE SIGNED THIS INSTRUMENT, ON OATH STATED THAT SHE WAS AUTHORIZED TO EXECUTE THE INSTRUMENT AND ACKNOWLEDGED IT AS PERSONAL REPRESENTATIVE OF THE ESTATE OF NICKOLAS JOHN JERKOVICH TO BE THE FREE AND VOLUNTARY ACT OF SUCH PARTY FOR THE USES AND PURPOSES MENTIONED IN THE INSTRUMENT.

DATE: MAY 23, 2005
[Handwritten Signature]

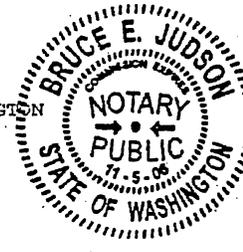


NOTARY SIGNATURE
PRINTED NAME: Bruce E. Judson
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON
RESIDING AT Stevacore
MY APPOINTMENT EXPIRES 11-5-06

STATE OF WASHINGTON SS
COUNTY OF PIERCE

ON THIS 23rd DAY OF MAY 2005 BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON, DULY COMMISSIONED AND SWORN, PERSONALLY APPEARED NICHOLAS JERKOVICH, JR. KNOWN TO ME TO BE THE INDIVIDUAL(S) DESCRIBED IN AND WHO EXECUTED THE WITHIN INSTRUMENT AND ACKNOWLEDGED THAT HE SIGNED AND SEALED THE SAME AS HIS FREE AND VOLUNTARY ACT AND DEED, FOR THE USES AND PURPOSES HEREIN MENTIONED.

[Handwritten Signature]

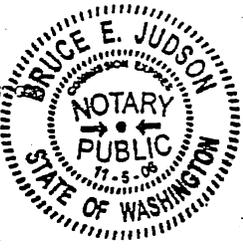


NOTARY SIGNATURE
PRINTED NAME: Bruce E. Judson
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON
RESIDING AT Stevacore
MY COMMISSION EXPIRES ON 11-5-06

STATE OF WASHINGTON SS
COUNTY OF PIERCE

ON THIS 19th DAY OF MAY 2005 BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON, DULY COMMISSIONED AND SWORN, PERSONALLY APPEARED JOHN JERKOVICH KNOWN TO ME TO BE THE INDIVIDUAL(S) DESCRIBED IN AND WHO EXECUTED THE WITHIN INSTRUMENT AND ACKNOWLEDGED THAT HE SIGNED AND SEALED THE SAME AS HIS FREE AND VOLUNTARY ACT AND DEED, FOR THE USES AND PURPOSES HEREIN MENTIONED.

[Handwritten Signature]



NOTARY SIGNATURE
PRINTED NAME: Bruce E. Judson
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON
RESIDING AT Stevacore
MY COMMISSION EXPIRES ON 11-5-06

STATE OF WASHINGTON SS
COUNTY OF PIERCE

ON THIS 19th DAY OF MAY 2005 BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON, DULY COMMISSIONED AND

EXHIBIT #21

4/6

SWORN, PERSONALLY APPEARED MARY ELLEN J. HANSON KNOWN TO ME TO BE THE INDIVIDUAL(S) DESCRIBED IN AND WHO EXECUTED THE WITHIN INSTRUMENT AND ACKNOWLEDGED THAT SHE SIGNED AND SEALED THE SAME AS HER FREE AND VOLUNTARY ACT AND DEED, FOR THE USES AND PURPOSES HEREIN MENTIONED.

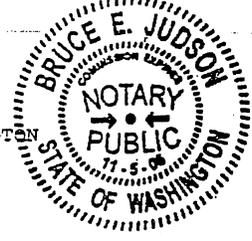
[Signature]
NOTARY SIGNATURE

PRINTED NAME: Bruce E. Judson

NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON

RESIDING AT Steverson

MY COMMISSION EXPIRES ON 11-05-06



STATE OF CALIFORNIA
COUNTY OF _____

SS

ON THIS _____ DAY OF MAY 2005 BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR THE STATE OF CALIFORNIA, DULY COMMISSIONED AND SWORN, PERSONALLY APPEARED ELVY JERKOVICH KNOWN TO ME TO BE THE INDIVIDUAL(S) DESCRIBED IN AND WHO EXECUTED THE WITHIN INSTRUMENT AND ACKNOWLEDGED THAT SHE SIGNED AND SEALED THE SAME AS HER FREE AND VOLUNTARY ACT AND DEED, FOR THE USES AND PURPOSES HEREIN MENTIONED.

NOTARY SIGNATURE

PRINTED NAME: _____

NOTARY PUBLIC IN AND FOR THE STATE OF CALIFORNIA

RESIDING AT _____

MY COMMISSION EXPIRES ON _____

STATE OF WASHINGTON
COUNTY OF PIERCE

SS

I CERTIFY THAT I KNOW OR HAVE SATISFACTORY EVIDENCE THAT BRUCE STEEL IS THE PERSON WHO APPEARED BEFORE ME, AND SAID PERSON ACKNOWLEDGED THAT HE SIGNED THIS INSTRUMENT, ON OATH STATED THAT HE WAS AUTHORIZED TO EXECUTE THE INSTRUMENT AND ACKNOWLEDGED IT AS MANAGER OF RAINIER YACHT HARBOR LLC TO BE THE FREE AND VOLUNTARY ACT OF SUCH PARTY FOR THE USES AND PURPOSES MENTIONED IN THE INSTRUMENT.

DATED: MAY 23, 2005

[Signature]
NOTARY SIGNATURE

PRINTED NAME: Bruce E. Judson

NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON

RESIDING AT Steverson

MY APPOINTMENT EXPIRES 11-05-06



EXHIBIT #21

5/6

TO: KAREN - City of Gig Harbor

FOR IMMEDIATE RELEASE

Contact:

Judy Park

Mostly Books

3126 Harborview Drive

Gig Harbor, WA 98335

Phone: 253-851-3219

mostlybooks@harbornet.com

Author Beth Whitman to Sign Her New Book, Wanderlust and Lipstick : The Essential Guide for Women Traveling Solo at Mostly Books

Gig Harbor, WA -- September 24, 2007 -- On Saturday, October 13, 2007, from 1:00 pm until 3:00 pm, Beth Whitman will be at Mostly Books in Gig Harbor to sign copies of her book, Wanderlust and Lipstick.

"The hip road map to creating your own adventure" -- Drawing on her 20 years of travel experience, Beth Whitman offers far more than travel tips. Wanderlust and Lipstick is an inspirational handbook that provides encouragement, travel-tested information and lighthearted anecdotes to help women travel safely and comfortably.

The book, a \$17.95 paperback, is currently available at Mostly Books in historic downtown Gig Harbor.

Who : Beth Whitman
What: Wanderlust and Lipstick book signing
When: 1-3 pm, Saturday, October 13, 2007
Where: Mostly Books
3126 Harborview Drive
Gig Harbor, WA 98335

EXHIBIT B

APPLICATION FOR AUTHORIZATION TO USE STATE-OWNED AQUATIC LANDS

I. SUBMISSION OF APPLICATION

NO WORK CAN BE STARTED ON THE PROJECT AREA UNTIL A USE AUTHORIZATION HAS BEEN GRANTED BY THE DEPARTMENT OF NATURAL RESOURCES

Enclose a \$25.00 non-refundable application processing fee with the application (this fee is not required for local, state, and other government agencies). This application form will be reviewed by the Department of Natural Resources upon receipt at the address given below. Applicants will be notified in writing if the application will be accepted for further review. However, this application may be rejected at any time before signed execution of a use authorization.

Please send the completed application form to your region land manager at:

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

II. APPLICANT INFORMATION

Date of Application: 11/10/04

Authorization to be Issued To (how name is to appear in the lease document): RAINIER YACHT HARBOR, LLC

Address: P.O. Box 875

City: TACOMA State: WA Zip Code: 98401

Telephone Number: 253-759-2287 FAX Number: 253-759-2342

Applicant's Representative: BRUCE R STEEL

Relationship to Applicant: MANAGING MEMBER

Address: P.O. Box 875

City: TACOMA State: WA Zip Code: 98401

Telephone Number: 253-759-2287 FAX Number: 253-759-2342

If Property will be used for business purposes, Applicants' Washington Department of Revenue Tax *Registration Number (Unified Business Identifier) is Required: 601 435 193

FOR OFFICIAL USE ONLY

Land Manager: Type: (20, 21, 22, 23, 31, 51)

Land Manager: New Application Renewal Application

Land Manager: Initials WW Aquatic Program Manager Initials

Support: Application Fee Received 11/12/04 Date

Land Records: New Application Number 22-077053

Land Records: Trust 25 County 21 AQR Plate No. TFZ7-133

Note 73

EN
12/13/2004

1 Which of the following applies Applicant: Check One and Attach written authority to: (laws, power of attorney, etc):
2 Corporation _____ (State of Registration): _____
3 General Partnership _____ Limited Partnership _____ (State of Registration): _____
4 Sole Proprietorship _____ Marital Community _____ (Spouse): _____
5 Other LLC (Please Explain): LIMITED LIABILITY COMPANY

6 Has the site use been authorized before or is it currently under lease: Yes(##) _____ No Don't Know

7 **III. LOCATION**

8 The Body of Water on which the state property is located: GIG HARBOR BAY
9 County in which the state property is located: PIERCE
10 Government Lot 7, Section 05, Township 21, Range 02 E/W

11 A LEGAL PROPERTY SURVEY INCLUDING THE LEGAL DESCRIPTION AND OTHER INFORMATION ABOUT THE
12 PROPERTY IS REQUIRED TO OBTAIN A USE AUTHORIZATION. THE SURVEY REQUIREMENTS ARE DESCRIBED IN
13 SECTION VII, PROPERTY SURVEY OF THIS FORM. THE SURVEY PLAT WILL BE ATTACHED TO THE LEASE AS
14 EXHIBIT A. (DO NOT HAVE THIS SURVEY CONDUCTED UNTIL YOU HAVE BEEN NOTIFIED IN WRITING THAT
15 THE APPLICATION HAS BEEN ACCEPTED FOR PROCESSING.)

16 Physical description of Project Area (For example, Marsh, Tideflat adjacent to the Chehalis River, etc.): UNDER WATER
17 AREA FROM PROPERTY LINE TO OUTER HARBOR LINE
18 _____

19 Name of Owner(s) of Uplands, Shorelands, and/or Tidelands shoreward and adjacent to the Property:
20 Name: RAINIER YACHT HARBOR, LLC (CONTRACT PURCHASER)
21 Address: P.O. BOX 875
22 _____
23 City: TACOMA State: WA Zip Code: 98401 Phone Number: 253-759-2287

24 EXCEPT FOR PROPERTY LOCATED WITHIN ESTABLISHED HARBOR AREAS, PROOF OF OWNERSHIP, OR
25 AUTHORIZATION TO USE THE ADJACENT TIDELAND, SHORELAND, OR UPLAND PROPERTY MAY BE REQUIRED.
26 IF THE APPLICANT IS THE OWNER OF THE ADJACENT LAND, ATTACH A COPY OF THE DEED OR CONTRACT OF
27 SALE.

28 County Parcel No(s). for adjacent properties, upland, and/or adjacent tideland properties: 5970000250

29 **IV. USE OF PROPERTY**

30 1. Describe, in detail, the proposed use of the Property. MARINA WITH APPROXIMATELY
31 30 SLIPS RANGING FROM 50 FEET TO 70 FEET
32 2. Is or will the Property be subleased to another party? Yes No (If yes, submit a copy of the sublease agreement.)

33 3. What are the current and past uses of the site? CURRENTLY THE SITE IS VACANT EXCEPT FOR
34 A DILAPIDATED NET SHED. PREVIOUSLY USED FOR FISHING RELATED ACTIVI
35 4. Do you have any knowledge of contamination of the site by toxic or hazardous substances, or of past uses or practices that might
36 have lead to contamination by such substances? If so, please explain: NO

37 5. Do you know if any fill material has been placed on the property in question? If yes, please explain: NO

38 **V. IMPROVEMENTS**

PHYSICAL IMPROVEMENTS ARE STRUCTURES PLACED ON THE LAND THAT CANNOT BE REMOVED WITHOUT
DAMAGE TO THE LAND. EXAMPLES OF SUCH STRUCTURES INCLUDE PILINGS, DOLPHINS, PIERS, WHARVES,
PILING-SUPPORTED BUILDINGS, STRUCTURES BUILT ON FILL OR CONCRETE FOUNDATIONS, BURIED PIPELINES
AND CABLES, AND SUPPORT STRUCTURES FOR BRIDGES.

1. What physical improvements currently exist on the site? (Photos may be required.) AND SMALL NET UPDATED NET SHEET
2. If there are physical improvements currently on the site, who owns them? UPLAND OWNERS
3. If there are physical improvements currently on the site, describe their condition: POOR
THE NET SHEET WILL BE RESTORED
Which, if any, of the existing physical improvements will be removed, remodeled, or reconstructed? _____
5. Describe any physical improvements that the applicant is proposing to construct on the site: PARKING LOT WITH ASSOC DRAINAGE, BATHROOMS, OFFICE, MARINA
6. Has any fill material been placed on the site? If Yes, please describe: NO

VI. LOCAL, STATE, AND FEDERAL REGULATORY PERMITS

COPIES OF ALL GOVERNMENT REGULATORY PERMITS ARE REQUIRED BEFORE ISSUANCE OF A DNR USE AUTHORIZATION. YOUR PROJECT MAY REQUIRE SOME OR ALL OF THESE PERMITS.

Please include the following permit applications, permits, or waivers with the application:

JARPA (Joint Aquatic Resource Permit Application)

This one form is used to apply for all of the following individual permits:

1. Section 10 Permit (Required by the US Army Corps of Engineers for any work in or affecting navigable waters, e.g., floats, docks, piers, dredging, pilings, bridges, overhead power lines.)
2. Shoreline Substantial Development, Conditional Use, Variance Permit or Exemption (Issued by Local Government, and is required for work or activity in the 100 year floodplain, or within 200 feet of the Ordinary High Water mark of certain waters; and which included any one of the following: dumping, drilling, dredging, filing, placement or alteration of structures or any activity which substantially interferes with normal public use of the waters.)
3. Hydraulic Project Approval (Required by the Department of Fish and Wildlife if the project includes work that will use, divert, obstruct, or change the natural flow or bed of any fresh or salt water of the state.)
4. Section 404 Permit (Required by the US Army Corps of Engineers if your project will discharge or excavate any dredged or fill material waterward of the Ordinary High Water mark or the Mean Higher High Tide Line in tidal areas.)
5. Section 401 Water Quality Certification (Required by the Department of Ecology if a Section 404 permit is required.)

NPDES (National Pollutant Discharge Elimination System Permit)

Required by the Department of Ecology under delegated authority from the Federal Environmental Protection Agency for projects that include the discharge of fluid on or into surface water.

SEPA (State Environmental Policy Act) Checklist and Environmental Assessments

When you submit a permit application to any agency, if the project is not exempt, the lead agency will ask you to fill out an environmental checklist. Based on checklist answers and the reviewers knowledge of the project site, agency personnel will determine the types of impacts the project may have on the environment. The agency assessments may be the following forms: Determination of Nonsignificance, Determination of Significance, scoping documents, draft or final Environmental Impact Statements (EIS) or others prepared for the purpose of compliance.

Describe any habitat mitigation required by any of the permitting agencies identified above and identify where such mitigation is proposed to occur: DEVELOPMENT PERMIT HAS NOT BEEN APPLIED FOR WITH G16 HAS OR OTHER AGENCIES SUBJECT TO SECURING DNR LEASE.

VII. PROPERTY SURVEY

STATE OF WASHINGTON DEPARTMENT OF NATURAL RESOURCES
REQUIREMENTS FOR RECORDS OF SURVEY FOR LEASES AND EASEMENTS

Records of Survey are required for easements and leases granted by the department for:

- | | |
|---|---|
| \$ County roads | \$ Drainage or irrigation easements |
| \$ Highways | \$ Railroads |
| \$ Easements across high value lands | \$ Aquatic land uses: exemptions are provided for recreational docks and mooring buoys per RCW 79.90.105 and for those permits issued as a Right of Entry |
| \$ Easements across transition lands | |
| \$ Utilities | |
| \$ Upland leases | |
| \$ Communication sites | |
| \$ Other grants as determined by the department based upon site specific considerations | |

The applicant is responsible for:

- \$ All costs and work associated with creating, submitting, revising and recording the Record of Survey
- \$ Submitting a preliminary Record of Survey for review and approval by the department prior to approval of the agreement.
- \$ Recording the final Record of Survey with the county auditor's office.
- \$ Submitting a digital copy in AutoCAD.DWG or DXF (drawing exchange format) of the final survey.
- \$ Submitting two full size copies and one 8 1/2 X 11" copy and of the recorded survey including the auditor's recording information to the department.

A Record of Survey must:

1. **Be produced by a licensed surveyor.**
2. **Meet the requirements of Title 58 RCW and Chapter 332-130 WAC.**
3. Include the name of the applicant, the purpose of the easement or lease and the DNR easement or lease number.
4. Clearly show easement or lease boundaries with distances and directions of all boundary lines.
5. Show the easement or lease area to an accuracy of (\pm) 0.5% of the total area or (\pm) 10 square feet, whichever is greater.
6. **(Not required for aquatic lands lease across the bed of Puget Sound or the Pacific Ocean)** Indicate the acreage encompassed by the lease or easement within each quarter-quarter section or government lot.
7. Show distances and directions from two or more controlling corners of a recorded subdivision, recorded survey or government survey (GLO) corners.
8. Be related by meridian and coordinate to the Washington Coordinate System NAD'83(1991) by closed ties to NGS Control monuments, or the extension thereof. The designation of the control stations used shall appear on the plat.
9. Include a narrative legal description describing the servient estate (grantor's parcel) on the Record of Survey.
10. Show a detailed plan of improvements to be constructed or already existing on the easement or lease area. All improvements must be shown in sufficient detail to determine what they are used for and to ensure they are entirely within the easement area.
11. Show the location of any proposed utility.
12. **(linear lease or easement)** Show the lineal footage along the centerline.
13. **(linear lease or easement)** Show the complete alignment information and width including any necessary curve data.
14. **(Easements or leases crossing a section line or state ownership boundary, not required for aquatic lands lease across the bed of Puget Sound or the Pacific Ocean)** Provide ties to the centerline of an easement along the section or subdivision line from the nearest appropriate Public Land Survey System (PLSS) section corner, quarter section or subdivision corner, where the easement

enters and leaves the section or state ownership.

15. **(Easements or leases falling entirely within one section and not crossing a section line or state ownership boundary)** Provide ties from both end points of the linear easement to PLSS corners or other subdivision corners shall be provided.
16. **(A lease which encroaches on a previously leased site)** Show the boundary for the senior lease in the vicinity of the proposed lease shall also be shown, together with ties between the two leases sufficient to determine the full extent of the encroachments.

Additional Requirements for Communication Site Leases

17. Show ties to the corners of previously monumented communication sites adjacent to, or in the immediate vicinity of the proposed communication site.
18. Show access to the site.
19. Mark the corners of the communication site, as described and granted, with substantial permanent magnetically locatable monuments. The monuments shall be in place and obviously marked on the ground after the construction of installations and improvements.
20. Show the center of any communication site tower by Washington Plane Coordinates, NAD83 (1991), or latitude and longitude having an accuracy of and showing 3 decimals of a second.
21. On all communication sites where towers or beam paths are shown, an elevation is required at the base of the tower.
22. Show the tower height, and the height of the antenna or microwave dish and any beam path used shall have the diameter and tilt thereof shown.
23. The elevation shall be derived from an established benchmark in the vicinity of the site, or an elevation designated by the Department of Natural Resources.

Additional Requirements for Aquatic Land Uses

24. The lease of aquatic lands is often subject to preference rights. Applicants and surveyors should carefully determine the direction, and show details of the proration of coves and irregular shoreline.
25. **(lease sites which contain existing or proposed structures and improvements that are classified as a non water-dependent or a water oriented use as described within RCW 79.90.465 and WAC 332-30-106)** Provide the square footage of each structure and improvement.

Additional Requirements for Aquatic Land Uses (cont.):

26. Where applicable, the survey of aquatic lands must show the location of the following lines for:
 - a. Tidal areas –Government meander line, the original and current locations of line of mean high tide, line of mean low tide, and line of extreme low tide. The survey must include the name of tidal bench mark(s) used or describe the alternate method employed for determining a Tidal Datum. **Lease areas which contain tidelands and bedlands** at a minimum must show the location of the line of extreme low tide crossing the lease area. **Lease areas containing bedlands exclusively** may be required to show the relationship to the line of extreme low tide and the -18 foot contour line only.
 - b. Lakes –Government meander line, line of ordinary high water (original ordinary high water if the lake has experienced artificial raising or lowering of the water level), and line of ordinary low water (include source of data) and line of navigability if established.
 - c. Rivers - Line of ordinary high water and line of ordinary low water (include source of data) and line of navigability if established.
 - d. Lots and blocks of platted tide lands or shore lands, inner and outer harbor lines, waterway lines, street boundaries, any local construction limit lines, any dredge or fill areas, and easements of record within the lease site.

e. All lines must be shown in sufficient detail to compute and show the area of each portion of State-owned bedlands, tidelands, shorelands, harbor areas or water included within the proposed lease site.

Include any other data necessary for the complete understanding of the information shown on the survey. If, in the opinion of the department, such information is lacking, the survey may be rejected.

Record of Survey Revisions:

- 27. Any differences between the as-built road and the regulation plat must be reflected in a revised Record of Survey and recorded with the county by the applicant.
- 28. When any portion of the completed improvements are located outside of the granted lease site, the as-built locations must be reflected in a revised Record of Survey and legal description. In this instance, a new application for an amended lease site may be required if the as-built location creates adverse impacts. In the case of linear leases across the bed lands of the sound or the ocean, an as-built Record of Survey and a revised legal description of the linear lease must be provided.

Survey Requirements updated July 2002.

All answers and statements are true and correct to the best of my knowledge.

Applicant RAINIER YACHT HARBOR, LLC
(Please Print)

Signed Bruce R. [Signature]
(Applicant or Authorized Signature)

Title MANAGING MEMBER

Company RAINIER YACHT HARBOR, LLC

Date 11/10/04

For additional information contact one of the following region offices:

Central Region
1405 Rush Rd
Chehalis, WA 98532-8763
360-748-2383
TTY: 360-740-6841

Olympic Region
411 Tillicum Ln
Forks, WA 98331-9797
360-374-6131
TTY: 360-374-2819

Northwest Region
919 N Township St
Sedro-Woolley, WA 98284-9333
360-856-3500
TTY: 360-856-1371

Northeast Region
P.O. Box 190
225 S Silke Rd
Colville, WA 99114-0190
360-684-7474
TTY: 509-684-7474

Southwest Region
P.O. Box 280
601 Bond Rd
Castle Rock, WA 98611-0280
360-577-2025
TTY: 360-577-2025

South Puget Sound Region
950 Farman Ave N
Enumclaw, WA 98022-9282
360-825-1631
TTY: 360-825-6381

Southeast Region
713 Bowers Rd
Ellensburg, WA 98926-9341
509-925-8510
TTY: 509-925-8527

EXHIBIT #25

2/7
214

EXHIBIT C



Norpoint Communities

A Subsidiary of Matia Investment Fund, Inc.

22-077053
22-002792

Wynnae
Regina
Oly

RECEIVED

JUN 07 2005

DNR-SPS

June 6, 2005

Ms. Wynnae Wright, Land Manager
Washington State Department of Natural Resources
950 Farman Avenue North
Enumclaw, Washington 98022

Subject: Rainier Yacht Harbor, LLC Aquatic Resources Lease Application
Application No. 22-077053

Dear Ms. Wright:

This letter is in response to our learning of a competing application being submitted for a portion of land within our proposed lease area under the above described application. We, of course, are very disappointed as we have spent approximately \$30,000 on all the permit application requirements, surveys, engineering, sediment sampling, land use planning, etc. as well as closed on the purchase of the property for \$1,700,000 in cash. We did this with the understanding that first application filed constituted first in line if and when a lease was granted.

We have several salient points I would like to make regarding this competing application.

1. Our application was filed over half a year ago and should have priority.
2. The Rainier application is part of a \$5,000,000 development which will establish maximum value on the uplands.
3. The competing application would be part of a derelict dock and float which is in significant disrepair on a site which is covered with floating debris, piling and dock parts.
4. A portion of the Modoc, which is not owned by Ancich/Tarabochia is on or over our fee simple tide lands.
5. The existing floats for Modoc were installed without a permit.
6. Ancich/Tarabochia has historically been significantly delinquent in their lease payments to DNR.

EXHIBIT # 28

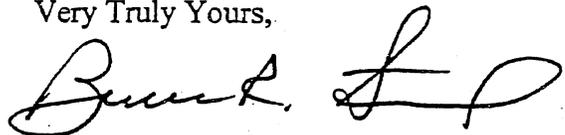
EXHIBIT # 28

HEX EXHIBIT# 28
APPEAL NOS. 05-1097,05-1143, 05-1144

But all of this is inconsequential when there is a solution which benefits all parties including The Department of Natural Resources. Increase the lease area for Ancich/Tarabochia straight out to the outer harbor area. They could then move their existing float and extend it to the outer harbor line and move Modoc to that location. Modoc gets to stay. Rainier gets their proposed lease area for their development. DNR gets what it wants which is maximum return on the leased area. And, a 50 foot water "corridor" is opened up along the entire length between the two properties if and when a fishing vessel or other vessel needs to reach the Ancich/Tarabochia main pier (although this is probably a moot point as I do not understand how they can possibly do it without trespassing on our fee simple property area.) I have enclosed a drawing to demonstrate what we think should be done.

A quick response and decision would be appreciated as design and development costs for this project are currently exceeding \$20,000 a month. Thank you.

Very Truly Yours,



Bruce R. Steel
Managing Member

EXHIBIT #28

2/3

218

BEING WITHIN THE S 1/4 OF THE SW 1/4 SECTION 5, TOWN
CITY OF GIG HARBOR, PIERCE COUNTY, WASHINGTON

24

REPOSITION MOODOC FLOAT HERE

EW LEASE
 REA FOR
 NCKH/
 TARABOCHIA

GIG

50' WIDE ACCESS
 AREA IF A FISHING
 VESSEL NEEDED TO GET
 TO HEAD OF PIER.
PRELIMINARY

HARBOR LEASE
 AREA 'B' = 82,586±
 SF.
 (190 AC±)

RAINIER
 PROPOSED DOCK

TIDELANDS LEASE
 AREA A = 17,288± SF.
 (0.40 AC±)

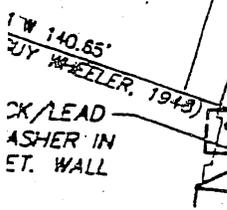
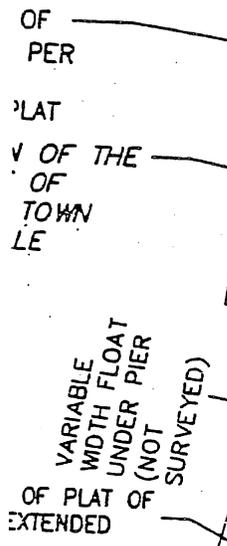
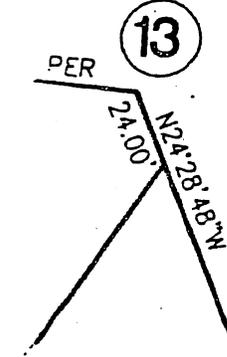
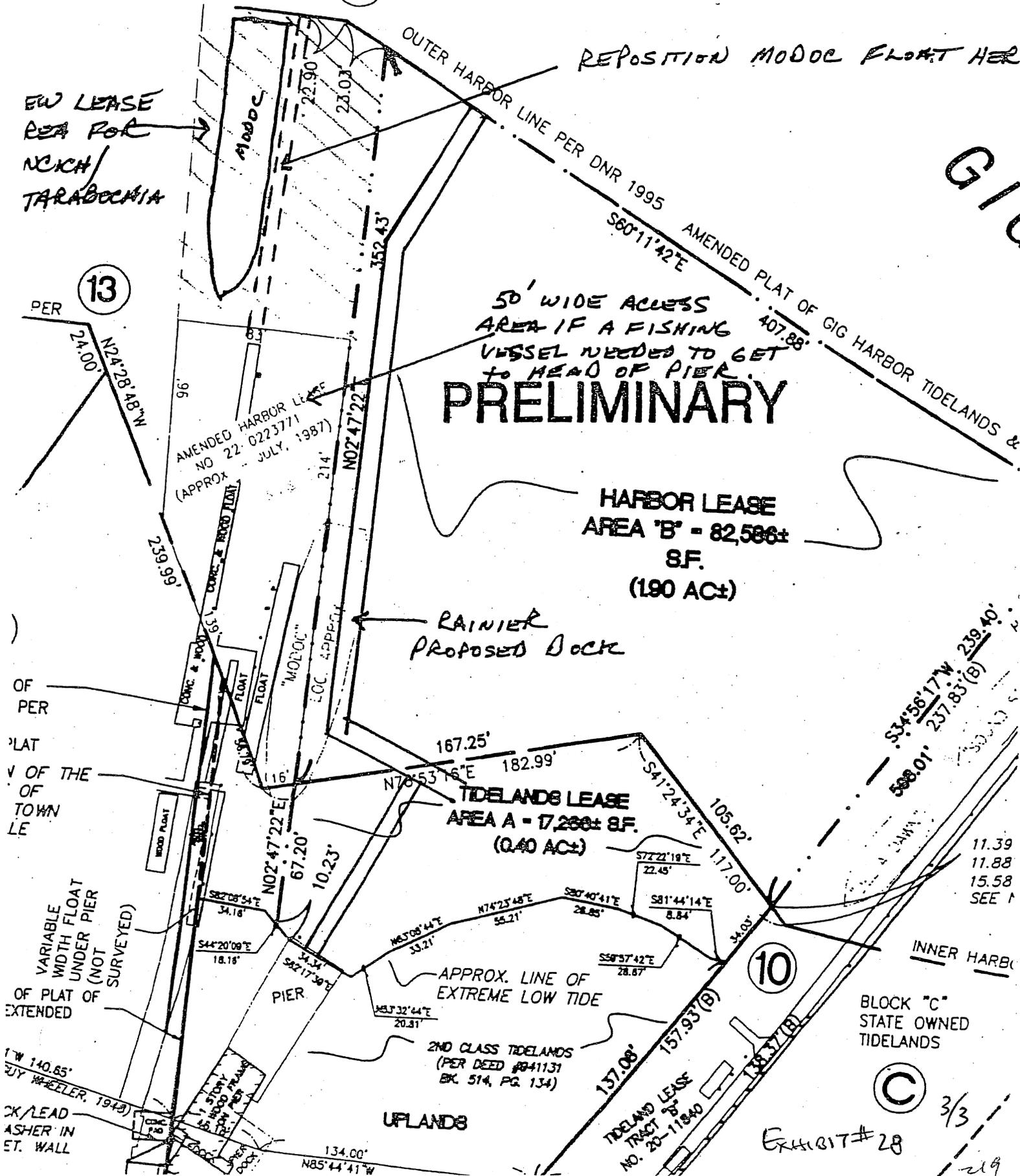
BLOCK "C"
 STATE OWNED
 TIDELANDS

10

UPLANDS

EXHIBIT # 28

3/3



C

EXHIBIT D



Norpoint Communities

A Subsidiary of Matia Investment Fund, Inc.

RECEIVED
CITY OF GIG HARBOR
JUN 06 2005
COMMUNITY
DEVELOPMENT

June 3, 2005

John Vodopich
Community Development Director
CITY OF GIG HARBOR
3510 Grandview Street
Gig Harbor, WA 98335

RE: Rainier Yacht Harbor

Dear Mr. Vodopich

1 This letter shall serve as an application for zoning code administration under Gig Harbor
2 Municipal Code §17.66.050. This application is made by Rainier Yacht Harbor, LLC
3 concerning property at 3500 Harborview Drive in Gig Harbor. Rainier Yacht Harbor, LLC holds
4 title to the subject property.

5 We are proposing to construct a marina along with office and other uses and in
6 conjunction with that development will propose to install an underground parking area for the
7 required off-street parking spaces. We propose to construct an underground parking garage that
8 will extend into the required side yard. We are writing to request an interpretation of GHMC
9 17.72.020(d) which provides that "off-street parking spaces may be located in any required yard
10 unless otherwise indicated in GHMC Title 17".

11 Please advise us if anything else is necessary in order for the City to make this
12 interpretation.

Very truly yours,

RAINIER YACHT HARBOR, LLC

By Brent Lip
Its MANAGING MEMBER

[Rainier to vodopich 2]

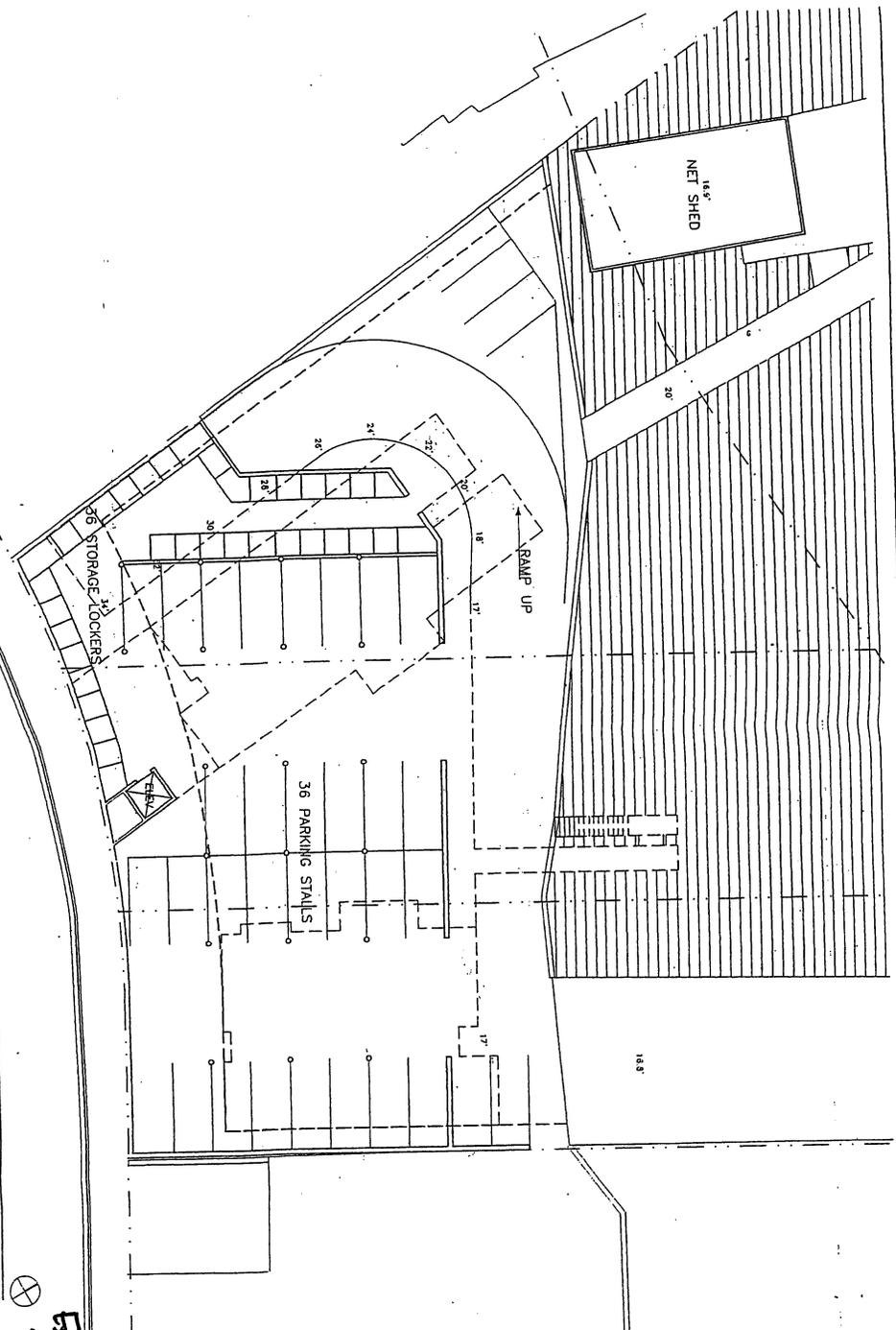
2323 North 31st Street, Suite 200 • PO Box 875 • Tacoma, WA 98401 • (253) 759-2287 • (253) 759-2342 Fax
www.norpoint.com

EXHIBIT # 3

1/1

EXHIBIT E

1 BULKHEAD / PARKING LEVEL PLAN @ ELEV + 17'-0"



Workshop for architecture + design
511 western avenue
anville, wa 98116
206.903.5414
info@workshopdc.com

PROJECT
HARBOR TOWN MARINA
600 HARBOR, WA

DATE
4 MAY 2005

PLAN @ ELEV + 17'-0"

6/14
EXHIBIT #40
A1.1

PREDESIGN
282

EXHIBIT F

5/31/05

ORDINANCE NO. 1003

1 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG
 2 HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING,
 3 ADOPTING AN IMMEDIATE EMERGENCY MORATORIUM ON THE
 4 ACCEPTANCE OF APPLICATIONS FOR NEW DEVELOPMENT OF
 5 NON-RESIDENTIAL STRUCTURES OR CERTAIN TYPES OF RE-
 6 DEVELOPMENT OF NON-RESIDENTIAL STRUCTURES WITHIN THE
 7 WATERFRONT MILLVILLE ZONE, SUCH MORATORIUM TO BE
 8 EFFECTIVE IMMEDIATELY, DEFINING THE APPLICATIONS SUBJECT
 9 TO THE MORATORIUM, SETTING A DATE FOR A PUBLIC HEARING
 10 ON THE MORATORIUM, ESTABLISHING TWO MONTHS AS THE
 11 TENTATIVE EFFECTIVE PERIOD OF THE MORATORIUM, AND
 12 DECLARING AN EMERGENCY NECESSITATING IMMEDIATE
 13 ADOPTION OF A MORATORIUM.

14 WHEREAS, the City Council has conducted an in-depth review of development
 15 along the waterfront in Gig Harbor, which has been detailed in several recently passed
 16 ordinances, including Ordinance 965 (imposing a moratorium on development in the
 17 waterfront and height restriction area) and ordinances continuing and terminating the
 18 moratorium; and

19 WHEREAS, the City Council's consideration of development along the Gig
 20 Harbor waterfront led to the adoption of several ordinances regulating building size; and

21 WHEREAS, upon further investigation, the Council learned that the Waterfront
 22 Millville zone is unique among the waterfront zones because non-residential structures
 23 in that zone are limited in size by "gross floor area," while the other waterfront zones
 24 limit building size based on building footprint; and

25 WHEREAS, the calculation of "gross floor area," as defined in the Gig Harbor
 26 Municipal Code, does not include areas constructed for and designated as a garage
 27 area (it also does not include accessory water tanks and cooling towers, mechanical

EXHIBIT # 15

1 equipment, unfinished attics regardless of headroom), which may result in the
2 development of excessively large structures that are incompatible with other structures
3 in the same zone;

4 WHEREAS, the fact that nonresidential structures in the WM zone are regulated
5 differently from nonresidential structures in the other waterfront zones could result in the
6 development of excessively large structures which are uncharacteristic of the historical
7 development pattern in the WM;

8 WHEREAS, the City desires to impose an immediate moratorium on the
9 acceptance of development applications for any "development activity" or "development
10 permit" as defined in Gig Harbor Municipal Code Section 19.14.010(24) and (26) for any
11 nonresidential structure in the Waterfront Millville (WM) zone, unless the development is
12 actually a remodel of an existing nonresidential structure which will not increase the size
13 of the existing structure; Now, Therefore:

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

16 Section 1. Definitions. For the purpose of this Ordinance, the following
17 definitions shall apply:

18 A. "Exempt Development Permit" shall mean all of the following permit
19 applications for "development" or "development activity" defined in GHMC Section
20 19.14.010(24) and 19.14.010(26), a copy of which is attached to this Ordinance as
21 Exhibit A, which:

22 1. were determined complete by City staff and submitted to the City on or
23 before the effective date of this Ordinance;

2. propose development or a development activity which is not a nonresidential structure in the Waterfront Millville zone; and/or

3. are remodels of any existing nonresidential structure in the Waterfront Millville zone, as long as it does not increase the size of the existing structure (either by height, bulk, scale or footprint).

B. "Non-Exempt Development Permits" shall include any permits or permit applications for any "development activity" as defined in GHMC Section 19.14.010(24) and 19.14.010(26), including planned unit developments, for nonresidential structures in the Waterfront Millville zone. Any permits meeting this description that were submitted to the City but not determined complete by City staff on or before the effective date of this Ordinance are also "non-exempt development permits." The Waterfront Millville (WM) zone is shown on the City's Official Zoning Map.

Section 2. Purpose. The purpose of this moratorium is to allow the City to analyze the issue whether nonresidential structures in all waterfront zones should be regulated uniformly as to building size. Currently, the nonresidential structures in the Waterfront Millville zone are not regulated as to building footprint, but instead as to "gross floor area," which may allow the construction of buildings that are incompatible with other structures in the waterfront zones. In addition, the current regulations may allow construction of nonresidential structures that do not preserve the "small town feel" that is characteristic of the structures along the waterfront. Additional time is needed for the Planning Commission to hold a hearing on this issue, allow the receipt of public testimony and consideration of a proposed ordinance by the City Council.

1 Section 3. Moratorium Imposed. The City Council hereby imposes an immediate
2 two (2) month moratorium on the acceptance of all non-exempt development permit
3 applications for development activities relating to nonresidential structures in the
4 Waterfront Millville zone. All such non-exempt applications received shall be rejected
5 and returned to the applicant. With regard to the City's acceptance of any exempt
6 development application, such acceptance shall only allow processing to proceed, but
7 shall not constitute an assurance that the application will be approved.

8 Section 4. Duration of Moratorium. The moratorium imposed by this Ordinance
9 shall commence on the date of the adoption of this Ordinance. As long as the City
10 holds a public hearing on the moratorium and adopts findings and conclusions in
11 support of the moratorium (as contemplated by Section 5 herein), the moratorium shall
12 not terminate until two (2) months after the date of adoption. The Council shall make
13 the decision to terminate the moratorium by ordinance, and termination shall not
14 otherwise be presumed to have occurred.

15 Section 5. Public Hearing on Moratorium. Pursuant to RCW 36.70A.390 and
16 RCW 35A.63.220, the City Council shall hold a public hearing on this moratorium within
17 sixty (60) days of its adoption, or before July 29, 2005. The Council shall hold this
18 hearing on June 27, 2005. Immediately after the public hearing, the City Council shall
19 adopt findings of fact on the subject of the moratorium and either justify its continued
20 imposition or cancel the moratorium.

21 Section 6. Severability. If any section, sentence, clause or phrase of this
22 Ordinance should be held to be unconstitutional or invalid by any court of competent

4/7
146

1 jurisdiction, such invalidity or unconstitutionality shall not affect the validity or
2 constitutionality of any other section, sentence, clause or phrase of this Ordinance.

3 Section 7. Declaration of Emergency. The City Council hereby declares that an
4 emergency exists necessitating that this Ordinance take effect immediately upon
5 passage by a majority vote plus one of the whole membership of the Council, and that
6 the same is not subject to a referendum (RCW 35A.12.130). Without an immediate
7 moratorium on the City's acceptance of non-exempt development applications for
8 nonresidential structures in the WM zone, such applications could become vested,
9 leading to development that could be incompatible with the codes eventually adopted by
10 the City. Therefore, the moratorium must be imposed as an emergency measure to
11 protect the public health, safety and welfare, and to prevent the submission of a flood of
12 applications to the City in an attempt to vest rights for an indefinite period of time. This
13 Ordinance does not affect any existing rights, nor will it prohibit all development in the
14 City, because those property owners with exempt applications/permits, those with
15 previously obtained approvals for development or redevelopment of the type identified
16 as "exempt" may proceed with processing and development, as the case may be.

17 Section 8. Publication. This Ordinance shall be published by an approved
18 summary consisting of the title.

19 Section 9. Effective Date. This Ordinance shall take effect and be in full force
20 and effect immediately upon passage, as set forth in Section 7, as long as it is approved
21 by a majority plus one of the entire membership of the Council, as required by RCW
22 35A.12.130.

1 PASSED by the Council and approved by the Mayor of the City of Gig Harbor,
2 this 31st day of May, 2005.

CITY OF GIG HARBOR


MAYOR GRETCHEN WILBERT

ATTEST/AUTHENTICATED:


MOLLY TOWSLEE, CITY CLERK

APPROVED AS TO FORM:


CAROL A. MORRIS CITY ATTORNEY

Exhibit "A"

Gig Harbor Municipal Code

Chapter 19.14

CONCURRENCY AND IMPACT FEE PROGRAM DEFINITIONS

19.14.010 Definitions.

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

26. "Development permit" or "project permit" means any land use permit required by the city for a project action, including but not limited to building permits, subdivisions, short plats, binding site plans, planned unit developments, conditional uses, shoreline substantial developments, site plan reviews, or site specific rezones, and, for purposes of the city's concurrency ordinance, shall include applications for amendments to the city's comprehensive plan which request an increase in the extent or density of development on the subject property.

EXHIBIT G

CITY OF GIG HARBOR - PLANNING AND BUILDING SERVICES

APPLICATION NO.

3510 GRANDVIEW STREET • GIG HARBOR, WASHINGTON 98335
TELEPHONE (253) 851-4278 • FAX (253) 858-6408

PERMIT NO.

9520

8905-111

APPLICATION AND PERMIT

ASSESSOR PARCEL NUMBER 5970000250 5970000241 ZONING WM

Sec. 05 T. 21 R. 02 Dia. No. _____

BUILDING ADDRESS 3555 HARBORVIEW DRIVE

LOT NO. 5, 6, 7 SUBDIVISION TOWN OF MILLVILLE SHORT PLAT _____

APPLICANT'S NAME RAINIER YACHT HARBOR, LLC TELEPHONE NO. 759-2287

OWNER SAME AS APPLICANT TELEPHONE NO. _____

OWNER'S MAILING ADDRESS P.O. Box 875 TAUOMA, WA 98401

CONTRACTOR'S NAME OWNER TELEPHONE NO. _____

CONTRACTOR'S MAILING ADDRESS SEE ATTACHED CONTACT LIST

ARCHITECT OR ENGINEER'S NAME WORKSTOP AND TELEPHONE NO. 206 903-5414

ARCHITECT OR ENGINEER'S MAILING ADDRESS 911 WESTERN AVE SEATTLE WA 98104 LICENSE NO. 7514

LOAN LENDER FIRM HOLDING PAYMENT BOND

NONE

MAILING ADDRESS _____ TELEPHONE NO. _____

WATER SERVICED BY CITY OF GIG HARBOR

WATER AVAILABILITY LETTER ATTACHED

SEPTIC DESIGN APPROVED BY TACOMA / PIERCE COUNTY HEALTH DEPT.

USE OF STRUCTURE SINGLE FAMILY RESIDENCE C-404 No. _____

TYPE OF WORK
New Addition Remodel Utilities Installation Other

Describe work: CONSTRUCT SINGLE FAMILY RESIDENCE

CONTRACTOR'S REGISTRATION ACT

I declare under penalty of perjury (check one):

I am registered under the provisions of Chapter 18.27 RCW and my registration is in full force and effect. Lic. No. _____

I, as the owner, or my employees with wages as their sole compensation, will do the work, and the structure is not intended or offered for sale.

I am aware that the State Contractor's Registration Act requires all persons doing any work as contractors to obtain a certificate of registration from the Washington State Department of Labor and Industries.

I am aware that it is unlawful to do any work as a contractor without a certificate of registration and that a violation of this requirement is a criminal misdemeanor.

I, as owner, am exclusively contracting with Licensed contractors.

Notice to Applicant: If after making this statement, should you become subject to Chapter 18.27 RCW, you must forthwith comply with such provisions or this permit shall be deemed revoked.

I certify that I have read this application and state that the above information is correct. I agree to comply with all City Ordinances and State Laws relating to building construction, and hereby authorize representatives of the City of Gig Harbor to enter upon the above-mentioned property for inspection purposes.

I also agree to save, indemnify, and keep harmless the City of Gig Harbor, against all liabilities, judgements, costs, and expenses which may in any way accrue against said city in consequence of the granting of this permit.

Signature of applicant - Brent P Owner Contractor Agent

MANAGING MEMBER Date 7/7/05

Receipt No. 0045489 \$ 4026.10 7/11/05

Receipt No. _____

BUILDING PERMIT			
SQ. FT.	OCC. #	TYPE	VALUATION
9,642	R-3	VB X	906,940
Fireplace / Stove			
Total Valuation			\$
Wash. State Fees / BCC			\$
Basic Fee			\$ 6194.00
Plan Checking Fee			\$ 4026.10
Penalty			\$
Permit Fee			\$

PLUMBING PERMIT		Filing Fee
Each Trap		
Water Piping		
Each Water Heater or Vent		
Plan Checking Fee	\$	
Permit Fee	\$	

MECHANICAL PERMIT		Filing Fee
Heating		
Cooling		
Hood		
Ventilation		
Gas Piping System 1-5 Outlets		
Plan Checking Fee	\$	
Permit Fee	\$	

GRADING PERMIT			Filing Fee
Cut	Fill	CU. YDS.	
Basic Fee			\$
Plan Checking Fee			\$
Permit Fee			\$

FIRE CODE PERMIT	
Permit Fee	\$
Inspt. Fee	\$
Permit Fee	\$

SEPA	
Required	Not Required
DNS	EIS
Conditions of Approval Yes <input type="checkbox"/> (see attached)	No
Date Issued	
SEPA Fee: \$	

TOTAL PERMIT FEE \$ _____

STAFF COMMENTS: _____

SITE PLAN	P/W	SDP	FIRE	UTIL	PARCEL	PD	HD	ISSUE

This permit is hereby issued under the applicable provisions of the Gig harbor code and/or resolutions to do work indicated above for which fees have been paid.

GIG HARBOR BUILDING OFFICIAL

By _____ Date _____

PERMIT EXPIRES Date _____

HEX EXHIBIT# 67
APPEAL NOS. 05-1097,05-1143, 05-1144

CITY OF GIG HARBOR - PLANNING AND BUILDING SERVICES

APPLICATION NO.

3510 GRANDVIEW STREET • GIG HARBOR, WASHINGTON 98335
TELEPHONE (253) 851-4278 • FAX (253) 858-6408

PERMIT NO.

9521

805-112

APPLICATION AND PERMIT

ASSESSOR PARCEL NUMBER 5970000250 5970000241		ZONING WM	BUILDING PERMIT					
Sec. 05	T. 21	R. 02	Dia. No.	SQ. FT. 8,022	OCC. # R3	TYPE VB	VALUATION 734,228	
BUILDING ADDRESS 3525 HARBORVIEW DRIVE								
LOT NO. 51617	SUBDIVISION TOWN OF MILLVILLE		SHORT PLAT					
APPLICANT'S NAME RAINIER YACHT HARBOR, LLC			TELEPHONE NO. 759-2287	Fireplace / Stove				
OWNER SAME AS APPLICANT			TELEPHONE NO.	Total Valuation \$				
OWNER'S MAILING ADDRESS P.O. Box 875 TACOMA, WA. 98401					Wash. State Fees / BCC \$ 450			
CONTRACTOR'S NAME OWNER			TELEPHONE NO.	Basic Fee \$ 5282.00		Plan Checking Fee \$ 3433.30		
CONTRACTOR'S MAILING ADDRESS					Penalty \$			
ARCHITECT OR ENGINEER'S NAME SEE ATTACHED CONTACT LIST			TELEPHONE NO.	Permit Fee \$				
ARCHITECT OR ENGINEER'S MAILING ADDRESS			LICENSE NO. 7514	PLUMBING PERMIT		Filing Fee		
LOAN LENDER <input type="checkbox"/> FIRM HOLDING PAYMENT BOND <input type="checkbox"/> NONE					Each Trap			
MAILING ADDRESS			TELEPHONE NO.	Water Piping				
WATER SERVICED BY CITY OF GIG HARBOR					Each Water Heater or Vent			
<input checked="" type="checkbox"/> WATER AVAILABILITY LETTER ATTACHED					Plan Checking Fee \$			
<input type="checkbox"/> SEPTIC DESIGN APPROVED BY TACOMA / PIERCE COUNTY HEALTH DEPT.					Permit Fee \$			
USE OF STRUCTURE SINGLE FAMILY RESIDENCE			C404 No.	MECHANICAL PERMIT		Filing Fee		
TYPE OF WORK New <input checked="" type="checkbox"/> Addition <input type="checkbox"/> Remodel <input type="checkbox"/> Utilities <input type="checkbox"/> Installation <input type="checkbox"/> Other <input type="checkbox"/>					Heating			
Describe work: CONSTRUCT SINGLE FAMILY RESIDENCE					Cooling			
					Hood			
					Ventilation			
					Gas Piping System 1-5 Outlets			
					Plan Checking Fee \$			
					Permit Fee \$			
					GRADING PERMIT			
					Cut	Fill	CU. YDS.	
					Basic Fee \$			
					Plan Checking Fee \$			
					Permit Fee \$			
					FIRE CODE PERMIT			
					Permit Fee \$			
					Inspt. Fee \$			
					Permit Fee \$			
					SEPA			
					Required			Not Required <input type="checkbox"/>
					DNS			EIS <input type="checkbox"/>
					Conditions of Approval Yes <input type="checkbox"/> (see attached)			No <input type="checkbox"/>
					Date Issued			
					SEPA Fee: \$			
					TOTAL PERMIT FEE \$			
					STAFF COMMENTS:			
					SITE PLAN			
					PW			
					SDP			
					FIRE			
					UTIL			
					PARCEL			
					PD			
					HD			
					ISSUE			
					This permit is hereby issued under the applicable provisions of the Gig harbor code and/or resolutions to do work indicated above for which fees have been paid.			
					GIG HARBOR BUILDING OFFICIAL			
					By _____ Date _____			
					PERMIT EXPIRES Date _____			

CONTRACTOR'S REGISTRATION ACT
I declare under penalty of perjury (check one):
 I am registered under the provisions of Chapter 18.27 RCW and my registration is in full force and effect. Lic. No. _____
 I, as the owner, or my employees with wages as their sole compensation, will do the work, and the structure is not intended or offered for sale.
I am aware that the State Contractor's Registration Act requires all persons doing any work as contractors to obtain a certificate of registration from the Washington State Department of Labor and Industries.
I am aware that it is unlawful to do any work as a contractor without a certificate of registration and that a violation of this requirement is a criminal misdemeanor.
 I, as owner, am exclusively contracting with Licensed contractors.
Notice to Applicant: If after making this statement, should you become subject to Chapter 18.27 RCW, you must forthwith comply with such provisions or this permit shall be deemed revoked.

I certify that I have read this application and state that the above information is correct. I agree to comply with all City Ordinances and State Laws relating to building construction, and hereby authorize representatives of the City of Gig Harbor to enter upon the above-mentioned property for inspection purposes.
I also agree to save, indemnify, and keep harmless the City of Gig Harbor, against all liabilities, judgements, costs, and expenses which may in any way accrue against said city in consequence of the granting of this permit.

x Bank S MANAGING MEMBER Date 7/7/05
Signature of applicant - Owner Contractor Agent

Receipt No. 45488 \$ 3523.30 7/11/2005 Pm
Receipt No. _____

EXHIBIT H

MAY 24 2005
CHICAGO TITLE
4389499

200505240604 8 PGS
05-24-2005 11:48am \$26.00
PIERCE COUNTY, WASHINGTON

WHEN RECORDED RETURN TO:

Mark R. Roberts
DAVIS ROBERTS & JOHNS, PLLC
7525 Pioneer Way, Suite 202
Gig Harbor, WA 98335

DECLARATION OF EASEMENT

GRANTOR: NICK JERKOVICH, NICKOLAS JERKOVICH, JR., JOHN JERKOVICH,
MARY ELLEN J. HANSON AND ELVY JERKOVICH.
GRANTEE: NICK JERKOVICH, NICKOLAS JERKOVICH, JR., JOHN JERKOVICH,
MARY ELLEN J. HANSON AND ELVY JERKOVICH.

Legal Description (abbreviated): Lot 5, BL 3 MILLVILLE
Additional legal(s) on page 1 of document.
Assessor's Tax Parcel ID No. 597000-024-1 and 597000-024-2.
Reference Nos. of Documents Released or Assigned: None.

THIS DECLARATION is made this 20 day of May, 2005 by the Estate of Nick Jerkovich, Nickolas Jerkovich, Jr., John Jerkovich, Mary Ellen J. Hanson and Elvy Jerkovich (hereinafter collectively the "Declarants").

RECITALS

A. Declarants are all of the owners of a parcel of real property commonly known as 3525 Harborview Drive, Gig Harbor, Pierce County, Washington and legally described as follows:

LOT 5, BLOCK 3, TOWN OF MILLVILLE, PIERCE COUNTY, W.T.,
ACCORDING TO PLAT RECORDED IN BOOK 2 OF PLATS, PAGE 23,
RECORDS OF PIERCE COUNTY AUDITOR.

TOGETHER WITH SECOND CLASS TIDELANDS ABUTTING THEREON
TO MEAN LOW TIDE.

SITUATE IN THE CITY OF GIG HARBOR, COUNTY OF PIERCE, STATE OF
WASHINGTON.

Hereinafter "the Property".

Declaration of Easement
Page 1 of 7

EXCISE TAX EXEMPT DATE 5/24/05
Pierce County

By [Signature] Auth. Sig

EXHIBIT # 20

HEX EXHIBIT# 20
APPEAL NOS. 05-1097,05-1143, 05-1144

26

171

1 B. Declarants and their predecessors have used the Property and adjacent dock
2 and floats for more than 100 years as a part of their family commercial fishing
3 operations, including without limitation the moorage and maintenance of fishing
4 vessels, storage of nets and related fishing and maritime activities.

5 C. Declarants anticipate selling the Property but wish to retain access to the dock
6 for the purpose of continuing their use of the dock and floats for fishing and maritime
7 purposes. Therefore, Declarants wish to reserve and convey to themselves and their
8 successors and assigns an easement over the Property for the purpose of ingress,
9 egress and utilities from the public right-of-way to the dock and floats.

EASEMENTS

10 1. Access Easement. Declarants hereby grant, convey and reserve unto
11 themselves, their children (including without limitation Nickolas J. Jerkovich III and
12 Marc E. Jerkovich) and their heirs, a non-exclusive easement for ingress and egress
13 ten (10) feet in width on a route from the public right-of-way known as Harborview
14 Drive to the existing dock. The right-of-way, the Property and the dock are all
15 depicted on Exhibit "A". The easement shall be initially located along the southern
16 property line as depicted on Exhibit "A". Provided, however, that the owner of the
17 Property, its successors and assigns (hereinafter the "Property Owner"), may
18 relocate the easement at any time, to a location on the Property, or adjoining
19 property or properties, but at the Property Owner's sole cost and expense. If the
20 easement is relocated, the Property Owner may not interrupt Declarants' access.
21 The relocated easement shall be ten (10) feet in width and have turning radiuses
22 sufficient to allow vehicular and trailer ingress and egress from Harborview Drive to
23 the dock and is intended to include, without limitation, commercial uses related to the
24 fishing and maritime industries.

25 2. Utility Easement. Declarants hereby grant, convey and reserve unto
26 themselves, their children (including without limitation Nickolas J. Jerkovich III and
27 Marc E. Jerkovich) and their heirs a non-exclusive easement for utilities from the
28 public right-of-way known as Harborview Drive to the existing dock. Provided,
29 however, that the Property Owner may relocate the easement at any time, but at the
30 Property Owner's sole cost and expense. If the easement is relocated, the Property
31 Owner may not interrupt Declarants' use of the utilities for a period in excess of
32 twenty-four (24) hours.

33 3. Indemnification. Declarants agree to indemnify and hold the Property Owner
34 harmless from and against any and all claims, debts, demands, suits or obligations
35 which may be made against the Property Owner arising out of, or in connection with,
36 any alleged negligent and/or wrongful act or omission of Declarants or any person
37 claiming under, by, or through Declarants.

Declaration of Easement

Page 2 of 7

EXHIBIT #20

2/8

172

4. Termination. This Declaration shall terminate upon the cessation of use of the docks for fishing and/or maritime purposes.

5. Modification. A modification, waiver, amendment, discharge, or change of this Declaration shall be valid only if in writing and executed by the Property Owner and the Declarants.

6. Attorney's Fees. The prevailing party in any action arising out of or related to the enforcement or interpretation of this Declaration shall be entitled to its reasonable attorney's fees and costs.

7. Benefits and Burdens of this Declaration. The rights and obligations set forth herein shall inure to and be binding upon the Declarants, their heirs, successors and assigns. The Declarants expressly intend to assign their rights herein for the continued operation of docks for fishing and maritime use. Any assignment of these rights shall be reflected in a written document and recorded.

8. Severability. If any term, provision, covenant or condition of this Declaration is held to be invalid, void or otherwise unenforceable, to any extent, the remainder of this Declaration shall not be affected thereby, and each term, provision, covenant or condition of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

9. Counterparts. This Declaration may be executed in multiple counterparts, each of which shall be deemed to be an original declaration, and all of which shall constitute one declaration.

ESTATE OF NICK JERKOVICH

By: Patricia Jerkovich
PATRICIA JERKOVICH
Personal Representative

Nickolas Jerkovich, Jr.
NICKOLAS JERKOVICH, JR.

John Jerkovich
JOHN JERKOVICH

Mary Ellen G. Hanson
Mrs Mary Ellen G. Hanson
MARY ELLEN G. HANSON

ELVY JERKOVICH

EXHIBIT #20

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173

- 4. Termination. This Declaration shall terminate upon the cessation of use of the docks for fishing and/or maritime purposes.
- 5. Modification. A modification, waiver, amendment, discharge, or change of this Declaration shall be valid only if in writing and executed by the Property Owner and the Declarants.
- 6. Attorney's Fees. The prevailing party in any action arising out of or related to the enforcement or interpretation of this Declaration shall be entitled to its reasonable attorney's fees and costs.
- 7. Benefits and Burdens of this Declaration. The rights and obligations set forth herein shall inure to and be binding upon the Declarants, their heirs, successors and assigns. The Declarants expressly intend to assign their rights herein for the continued operation of docks for fishing and maritime use. Any assignment of these rights shall be reflected in a written document and recorded.
- 8. Severability. If any term, provision, covenant or condition of this Declaration is held to be invalid, void or otherwise unenforceable, to any extent, the remainder of this Declaration shall not be affected thereby, and each term, provision, covenant or condition of this Declaration shall be valid and enforceable to the fullest extent permitted by law.
- 9. Counterparts. This Declaration may be executed in multiple counterparts, each of which shall be deemed to be an original declaration, and all of which shall constitute one declaration.

ESTATE OF NICK JERKOVICH

By: _____
PATRICIA JERKOVICH
Personal Representative

NICKOLAS JERKOVICH, JR.

JOHN JERKOVICH

MARY ELLEN J. HANSON


ELVY JERKOVICH

EXHIBIT #20

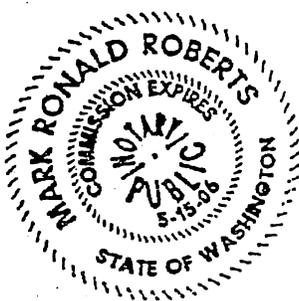
4/18/8

179

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

On this 20th day of May 2005, before me, the undersigned, a notary public in and for the State of Washington, duly commissioned and sworn, personally appeared PATRICIA JERKOVICH, the Personal Representative for the ESTATE OF NICK JERKOVICH, to me known to be the individual that executed the foregoing instrument, and acknowledged that she signed the same as her free and voluntary act and deed for the uses and purposes therein mentioned.

SUBSCRIBED AND SWORN to before me this 20th day of May, 2005.



[Handwritten Signature]

[Notary Signature]
MARK R. ROBERTS

[Type or Print Name of Notary]
NOTARY PUBLIC in and for the State of WA.
My commission expires: 5/15/06

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

On this 20th day of May 2005, before me, the undersigned, a notary public in and for the State of Washington, duly commissioned and sworn, personally appeared NICKOLAS JERKOVICH, JR., to me known to be the individual that executed the foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

SUBSCRIBED AND SWORN to before me this 20th day of May, 2005.



[Handwritten Signature]

[Notary Signature]
MARK R. ROBERTS

[Type or Print Name of Notary]
NOTARY PUBLIC in and for the State of WA.
My commission expires: 5/15/06

EXHIBIT #20

5/8
175

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

On this 20th day of May 2005, before me, the undersigned, a notary public in and for the State of Washington, duly commissioned and sworn, personally appeared JOHN JERKOVICH, to me known to be the individual that executed the foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

SUBSCRIBED AND SWORN to before me this 20th day of May, 2005.



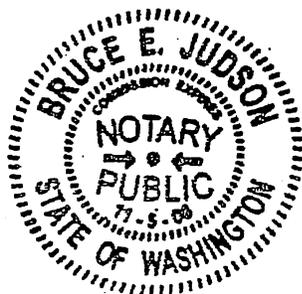
[Handwritten Signature]
[Notary Signature]
MARK R. ROBERTS

[Type or Print Name of Notary]
NOTARY PUBLIC in and for the State of WA.
My commission expires: 5/15/06

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

On this 20th day of May 2005, before me, the undersigned, a notary public in and for the State of Washington, duly commissioned and sworn, personally appeared MARY ELLEN J. HANSON to me known to be the individual that executed the foregoing instrument, and acknowledged that she signed the same as her free and voluntary act and deed for the uses and purposes therein mentioned.

SUBSCRIBED AND SWORN to before me this 20th day of May, 2005.



[Handwritten Signature]
[Notary Signature]
Bruce E. Judson

[Type or Print Name of Notary]
NOTARY PUBLIC in and for the State of WA.
My commission expires: 11-05-06

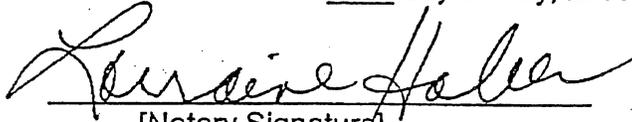
EXHIBIT # 20

6/8/06

STATE OF CALIFORNIA)
)
COUNTY OF Los Angeles) ss.

On this 23rd day of May 2005, before me, the undersigned, a notary public in and for the State of Washington, duly commissioned and sworn, personally appeared ELVY JERKOVICH, to me known to be the individual that executed the foregoing instrument, and acknowledged that she signed the same as her free and voluntary act and deed for the uses and purposes therein mentioned.

SUBSCRIBED AND SWORN to before me this 23rd day of May, 2005.



[Notary Signature]
Lorraine Haber

[Type or Print Name of Notary]
NOTARY PUBLIC in and for the State of CA.
My commission expires: 11-21-05



EXHIBIT #20

7/8/07

EXHIBIT A

DEPICTION OF PROPERTY, RIGHT-OF-WAY AND DOCK
(NOT TO SCALE)

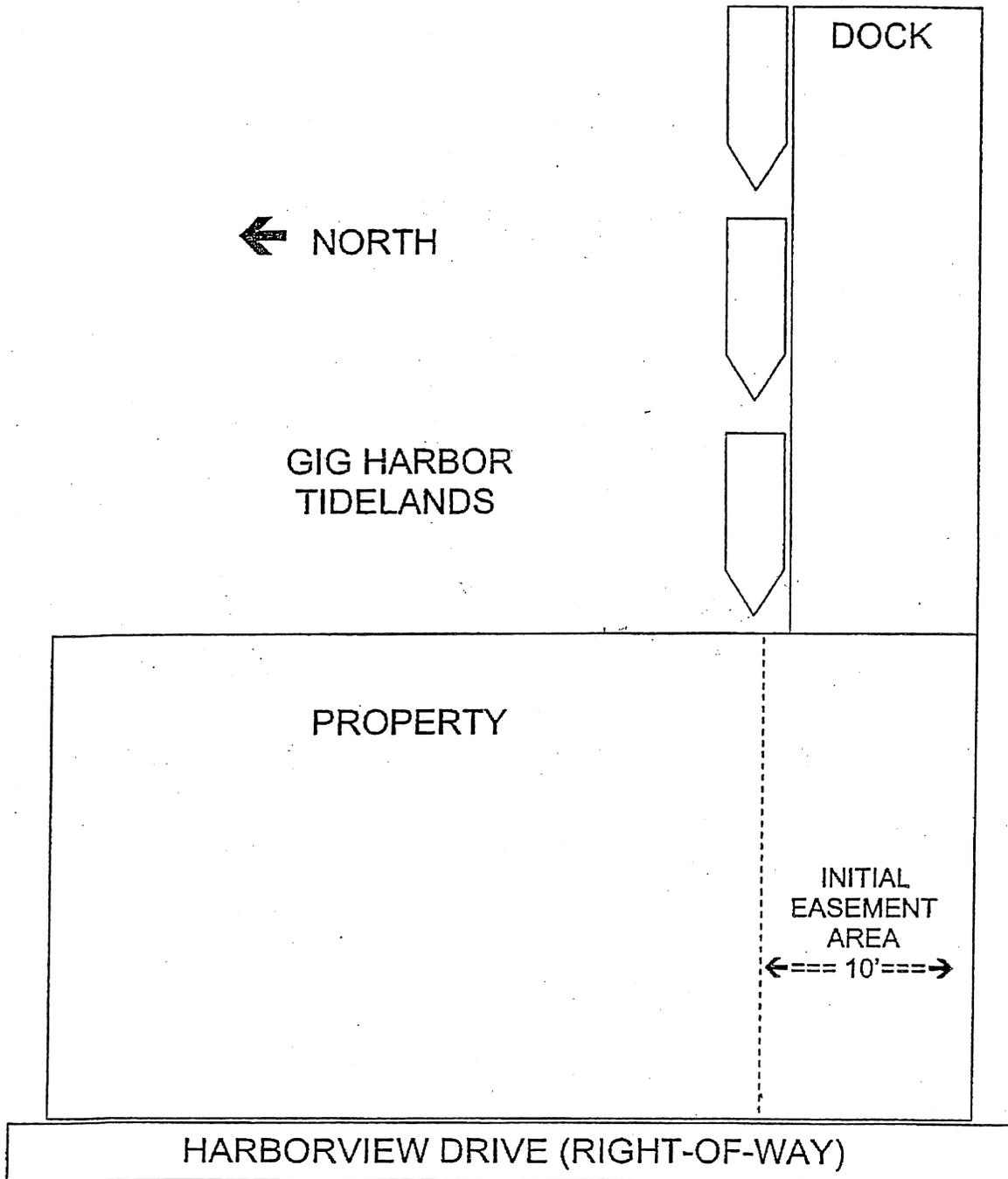


EXHIBIT #20

8/8/17

EXHIBIT I



Norpoint Communities

A Subsidiary of Matia Investment Fund, Inc.

July 11, 2005

RECEIVED
CITY OF GIG HARBOR
JUL 11 2005
COMMUNITY
DEVELOPMENT

Rob White
Perry Fegley
City of Gig Harbor
3510 Grandview Street
Gig Harbor, Wa. 98335

Subject: Burton Residence

Dear Mr. White and Mr. Fegley:

Rainier Yacht Harbor, LLC, is submitting permits for two single family homes.

I hereby request an exemption from the substantial shoreline developmental permits in accordance with Section 3.15 of the City of Gig Harbor Shoreline Master Program.

If any additional information is needed please don't hesitate to call me at 253-759-2287.

Sincerely,

Bruce R. Steel

HEX EXHIBIT# 69
APPEAL NOS. 05-1097,05-1143, 05-1144

RECEIVED

CITY OF GIG HARBOR

JUL 11 2005
CITY OF GIG HARBOR
SHORELINE PERMIT(S) APPLICATION
COMMUNITY DEVELOPMENT

CITY USE ONLY
Case Number EXP 05-836

Date Received 7/11/05

By CR @ 15.00

Receipt # _____ By _____

Please check the permit(s) you wish to apply for:

- Shoreline Management Substantial Development
- Exception Request
- Shoreline Conditional Use
- Shoreline Variance

To the Applicant: This is an application for a Shoreline Management Development Permit and is authorized by the Shoreline Management Act of 1971. It is suggested that you check with the appropriate local, state or federal officials to determine whether your project falls within any other Permit system, since a Permit under the Shoreline Management Act will not excuse the applicant from compliance with any other local, state or federal ordinances, regulations or statutes applicable to the project.

Name of project/proposal _____

Applicant RAINIER YACHT HARBOR, LLC
(name)
P.O. Box 875 253-759-2287
(street address) (telephone)
TACOMA WA 98401
(city & state) (zip)

Owner SAME
(name)

(street address) (telephone)

(city & state) (zip)

I (We) RAINIER YACHT HARBOR, LLC
(name)
[Signature] 7/11/05
(signature) (date)
MNC MEMBER
(signature) (date)

do hereby affirm and certify, under penalty of perjury, that I am one (or more) of the owners or owner under contract of the herein described property and that the foregoing statements and answers are in all respects true and correct on my information and belief as to those matters, I believe it to be true.

Property Location
Property Address 355 S HARBOURVIEW
~~3578~~
Section 05 Township 21 Range 02
Assessor's Tax Parcel Number 5970000250
5970000241

Full Legal Description (attach separate sheet if too long)
LOTS 5, 6, 7 OF TOWN OF MILLVILLE ACCORDING TO PLAT RECORDED IN BOOK 2 OF PLATS AT PAGE 23, IN PIERCE COUNTY, WASHINGTON

Total Square Footage of the Site
Uplands: 1,381,436
Private Tidelands: _____

Total Lineal Feet of Shoreline 117'

Property Information

Zoning Designation: WM

Slopes exceeding 15%?: 0

Shoreline Master Program Designation: URBAN

Existing land use: Describe (or illustrate separately), existing land use, including location of all existing structures and docks (in feet) from property

lines. DILAPIDATED NET SHED AND PIER
DILAPIDATED SINGLE FAMILY HOUSE

Summary of Request (list type of uses)

EXEMPTION FOR CONSTRUCTION OF A SINGLE
FAMILY RESIDENCE.

APPLICATION REQUIREMENTS FOR SHORELINE PERMIT, CONDITIONAL USE, AND VARIANCE APPLICATIONS

A complete application for a shoreline management substantial development, conditional use or variance permit shall contain, at a minimum, the information described in WAC 173-27-180, which is attached to this application form..

RECEIVED

CITY OF GIG HARBOR

CITY OF GIG HARBOR
JUL 11 2005
SHORELINE PERMIT(S) APPLICATION
COMMUNITY
DEVELOPMENT

CITY USE ONLY
Case Number EXP 05-837

Date Received 7/11/05

By CR @ 15.00

Receipt # _____ By _____

Please check the permit(s) you wish to apply for:

- Shoreline Management Substantial Development
- Exemption Request
- Shoreline Conditional Use
- Shoreline Variance

To the Applicant: This is an application for a Shoreline Management Development Permit and is authorized by the Shoreline Management Act of 1971. It is suggested that you check with the appropriate local, state or federal officials to determine whether your project falls within any other Permit system, since a Permit under the Shoreline Management Act will not excuse the applicant from compliance with any other local, state or federal ordinances, regulations or statutes applicable to the project.

Name of project/proposal _____

Applicant
RAINIER YACHT HARBOR, LLC
(name)
P.O. Box 875 253-759-2287
(street address) (telephone)
TACOMA WA 98401
(city & state) (zip)

Owner
SAME
(name)

(street address) (telephone)

(city & state) (zip)

I (We)
RAINIER YACHT HARBOR, LLC
(name)
Bruce [Signature] 7/11/05
(signature) (date)
MNC MEMBER
(signature) (date)

do hereby affirm and certify, under penalty of perjury, that I am one (or more) of the owners or owner under contract of the herein described property and that the foregoing statements and answers are in all respects true and correct on my information and belief as to those matters, I believe it to be true.

Property Location

Property Address 3525 HARBORVIEW

Section _____ Township _____ Range _____

Assessor's Tax Parcel Number _____

Full Legal Description (attach separate sheet if too long)

LOTS 5, 6, 7 OF
TOWN OF MILLVILLE
ACCORDING TO PLAT RECORDED
IN BOOK 2 OF PLATS AT
PAGE 23, IN PIERRE COUNTY,
WASHINGTON.

Total Square Footage of the Site

Uplands: 15,638

Private Tidelands: _____

Total Lineal Feet of Shoreline 67'

Property Information

Zoning Designation: WM

Slopes exceeding 15%?: 0

Shoreline Master Program Designation: URBAN

Existing land use: Describe (or illustrate separately) existing land use, including location of all existing structures and docks (in feet) from property

lines.

DILAPIDATED NET SHED AND PIER
DILAPIDATED SINGLE FAMILY HOUSE

Summary of Request (list type of uses)

EXEMPTION FOR CONSTRUCTION OF A SINGLE
FAMILY RESIDENCE

**APPLICATION REQUIREMENTS FOR SHORELINE PERMIT, CONDITIONAL USE, AND VARIANCE
APPLICATIONS**

A complete application for a shoreline management substantial development, conditional use or variance permit shall contain, at a minimum, the information described in WAC 173-27-180, which is attached to this application form.

EXHIBIT J



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
SEATTLE DISTRICT, CORPS OF ENGINEERS
P.O. BOX 3755
SEATTLE, WASHINGTON 98124-3755

Regulatory Branch

Date: 1/18/06

Number of pages faxed: 20

Reference: 200501001

Applicant: Rainier Yacht Harbor, LLC

To: Bob Frisbie

FAX Number: 503.641.0944

From:

Project Manager: Ron Wilcox

Regulatory Branch

Phone Number: (206) 766-6439

Fax Number: (206) 764-6602

COMMENTS:

Hello Bob,

I've faxed the JARPA, drawings and cancellation letters for the Rainier project.

Ron Wilcox
USACE

EXHIBIT # 5

HEX EXHIBIT# 55
APPEAL NOS. 05-1097,05-1143, 05-1144



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
SEATTLE DISTRICT, CORPS OF ENGINEERS
P.O. BOX 3755
SEATTLE, WASHINGTON 98124-3755

NOV 17 2005

Regulatory Branch

Rainier Yacht Harbor, LLC
Mr. Bruce Steel
Post Office Box 875
Tacoma, Washington 98401

Reference: 200501001
Rainier Yacht Harbor, LLC

Dear Mr. Steel:

In response to your agent's request of November 11, 2005, I have canceled your application for a Department of the Army permit to construct a marina for small craft in Gig Harbor at Gig Harbor, Washington.

Cancellation of your application at this time does not preclude you from resubmitting an application at a later date if and when this information is available. If you choose to reapply for a permit, you must submit a new permit application which includes a completed Joint Aquatic Resource Permit Application form, drawings, and the requested information.

Since a Department of the Army permit is necessary for this work, do not commence construction before the permit has been issued. A copy of this letter will be furnished to Mr. Jeffrey Layton at 12515 Willows Road Northeast, Suite 205, Kirkland, Washington 98034-8795. If you have any questions, please call me at (206) 766-6439 or via email at Ronald.J.Wilcox@usace.army.mil.

Sincerely,

Ron Wilcox, Project Manager
South Application Review Section

EXHIBIT #55

2/24



November 11, 2005

Ref. No. 460-01

Mr. Ron Wilcox
Project Manager
Department of the Army
Seattle District, Corps of Engineers
P. O. Box 3755
Seattle, WA 98124-3755

Jeffrey A Layton, P.E.
John D. Sell, P.E.
Jeffrey T. Becker, RECEIVED

NOV 14 2005
REGULATORY

RE: Permit Application Withdrawal for Reference: 200501001
Applicant: Rainier Yacht Harbor, LLC
Purpose: Proposed Marina for Private Boat Moorage in Gig Harbor, WA

Dear Ron:

At the request of my client, Rainer Yacht Harbor, LLC (Rainer) this letter shall serve as notice that Rainer hereby withdraws its permit application for Corps reference number 200501001.

The application is being withdrawn because of pending design modifications, which would preclude the applicant from making a timely response to your comment letter dated October 7, 2005. Once the design modifications are complete, Rainier intends to re-submit the application. This will likely occur in the first quarter of 2006.

Copies of this letter will be provided to the Washington Department of Ecology and the Washington Department of Fish and Wildlife.

Thank you for your assistance in this matter.

Sincerely yours,

LAYTON & SELL, INC., P.S.

Jeffrey A. Layton, P.E.
President

cc: Mr. Bruce Steel, Rainier Yacht Harbor, LLC
Mr. David C. Molenaar, WDFW
Federal Permit Coordinator, DOE

EXHIBIT #55

3/24

AGENCY USE ONLY

Agency Reference #:

Date Received:

Circulated by:

(local govt. or agency)

REVA 8/2/05 AUG 24 2005

JOINT AQUATIC RESOURCES PERMIT APPLICATION FORM (JARPA)

(for use in Washington State)



PLEASE TYPE OR PRINT IN BLACK INK.

TO FILL IN ELECTRONICALLY, USE F11 TO MOVE THROUGH THE FORM

- Application for a Fish Habitat Enhancement Project per requirements of RCW 77.55.290. You must submit a copy of this completed JARPA application form and the (Fish Habitat Enhancement JARPA Addition) to your local Government Planning Department and Washington Department of Fish & Wildlife Area Habitat Biologist on the same day.

NOTE: LOCAL GOVERNMENTS - You must submit any comments on these projects to WDFW within 15 working days.

Based on the instructions provided, I am sending copies of this application to the following: (check all that apply)

- Local Government for shoreline: [X] Substantial Development [] Conditional Use [] Variance [] Exemption [] Revision [] Floodplain Management [] Critical Areas Ordinance
[X] Washington Department of Fish and Wildlife for HPA (Submit 3 copies to WDFW Region)
[X] Washington Department of Ecology for 401 Water Quality Certification (to Regional Office-Federal Permit Unit)
[X] Washington Department of Natural Resources for Aquatic Resources Use Authorization Notification
[X] Corps of Engineers for: [X] Section 404 [X] Section 10 permit
[] Coast Guard for: [] General Bridge Act Permit [] Private Aids to Navigation (for non-bridge projects)
[] For Department of Transportation projects only: This project will be designed to meet conditions of the most current Ecology/Department of Transportation Water Quality Implementing Agreement

SECTION A - Use for all permits covered by this application. Be sure to ALSO complete Section C (Signature Block) for all permit applications.

1. APPLICANT

Rainier Yacht Harbor, LLC, Attention: Bruce Steel

MAILING ADDRESS

P. O. Box 875, Tacoma, WA 98401

WORK PHONE 253-759-2297

E-MAIL ADDRESS bsteel@norpoint.com

HOME PHONE

FAX # 253-759-2342

If an agent is acting for the applicant during the permit process, complete #2. Be sure agent signs Section C (Signature Block) for all permit applications

2. AUTHORIZED AGENT

Jeffrey A. Layton, P.E., Layton & Sell, Inc., P.S., Consulting Engineers

MAILING ADDRESS

12515 Willows Road NE, Suite 205, Kirkland, WA 98034-8795

WORK PHONE 425-825-1735

E-MAIL ADDRESS jlayton@layton-sell.com

HOME PHONE

FAX # 425-825-1363

3. Relationship of applicant to property: [X] OWNER [] PURCHASER [] LESSEE []

4. Name, address and phone number of property owner(s) if other than applicant:

5. Location (street address, including city, county and zip code, where proposed activity exists or will occur)

3518 & 3525 Harborview Drive, Gig Harbor, Pierce County, Washington 98332

Local government with jurisdiction (city or county)

Waterbody you are working in Gig Harbor

Is this waterbody on the 303(d) List** YES [] NO [X]

If YES, what parameter(s)?

**For 303d List,

http://www.ecy.wa.gov/programs/wq/303d/index.html

Tributary of

WRIA # 15

Shoreline designation Urban

Zoning designation Waterfront Millville

1/4 Section Section 05 Township 21N Range 2E Government Lot

DNR stream type if known Not Applicable

Latitude and Longitude: 47°-20'-02" Lat. & 122°-35'-07" Long.

Tax Parcel Number 5970000250, 5970000241, 5970000242

EXHIBIT # 55

4/24

6. Describe the current use of the property and structures existing on the property. Have you completed any portion of the proposed activity on this property? YES NO
 For any portion of the proposed activity already completed on this property, indicate month and year of completion.
 The existing site conditions consist of the following elements: (1) single-family home, (2) timber bulkhead, (3) overwater net shed and two timber piers.

Is the property agricultural land? YES NO Are you a USDA program participant? YES NO

- 7a. Describe the proposed work that needs aquatic permits: Complete plans and specifications should be provided for all work waterward of the ordinary high water mark or line, including types of equipment to be used. If applying for a shoreline permit, describe all work within and beyond 200 feet of the ordinary high water mark. If you have provided attached materials to describe your project, you still must summarize the proposed work here. Attach a separate sheet if additional space is needed.

Proposed Work:

The proposed work will consist of the construction of a 36-slip marina. Slip lengths will range from 36 feet to 60 feet. Floats will be constructed of concrete encased foam. The floating piers will be moored to the harbor bottom with steel and/or concrete guide piling. Access to the marina from the uplands will be provided by two aluminum pedestrian bridges and a 6-foot-wide by 80-foot-long aluminum gangway. The gangway will be connected to the seaward end of an existing timber pier. An existing net shed building located on the project site will be converted to a marina clubhouse, which will include restrooms and a multi-purpose room. Water, sewer, fire, electrical power and communications utilities will be extended from the uplands to the marina slips. Parking for the marina will be provided on the uplands. See the attached JARPA drawings for project details.

Proposed Mitigation:

For mitigation of the new overwater coverage, portions of two existing timber piers will be demolished and light permeable grating will be incorporated into an existing pier and into the new floating piers, access bridges and the gangway. In addition, 38 creosote-treated timber piles will be removed from the project site and disposed of on the uplands at an approved disposal site. Also, an existing 190-foot-long timber bulkhead will be removed to create 437 square feet \pm of new high intertidal habitat. Approximately 18 cubic yards of "fish mix" gravel will be placed over the former bulkhead site. Approximately 40 cubic yards of uplands will be excavated behind the bulkhead to create the new intertidal. (See 7c below for additional discussion).

PREPARATION OF DRAWINGS: See sample drawings and guidance for completing the drawings. **ONE SET OF ORIGINAL OR GOOD QUALITY REPRODUCIBLE DRAWINGS MUST BE ATTACHED.** NOTE: Applicants are encouraged to submit photographs of the project site, but these DO NOT substitute for drawings. **THE CORPS OF ENGINEERS AND COAST GUARD REQUIRE DRAWINGS ON 8-1/2 X 11 INCH SHEETS. LARGER DRAWINGS MAY BE REQUIRED BY OTHER AGENCIES.**

- 7b. Describe the purpose of the proposed work and why you want or need to perform it at the site. Please explain any specific needs that have influenced the design.
 The purpose of the proposed project is to provide private boat moorage for watercraft varying in length from approximately 36 feet to 60 feet.

- 7c. Describe the potential impacts to characteristic uses of the water body. These uses may include fish and aquatic life, water quality, water supply, recreation and aesthetics. Identify proposed actions to avoid, minimize, and mitigate detrimental impacts and provide proper protection of fish and aquatic life. Identify which guidance documents you have used. Attach a separate sheet if additional space is needed.

The primary impact of the project will be an increase in overwater coverage of the project site. Existing overwater coverage is approximately 7,085 square feet. Developed conditions will result in approximately 13,388 square feet of coverage, resulting in a net increase of approximately 6,303 square feet. Light permeable grating will be incorporated into the floating moorage system, pedestrian bridges and gangway to help mitigate for overwater coverage impacts. In addition, portions of the two existing timber piers will be demolished, which will result in a significant increase (4,097 square feet) in sunlight to the intertidal zone. See Section 7a above for additional proposed mitigation features. For additional impact analysis, refer to the attached Biological Evaluation prepared by Dr. Dan Cheney, BioAquatics International, dated August 23, 2005.

- 7d. For in water construction work, will your project be in compliance with the State of Washington water quality standards for turbidity WAC 173.201A-110? YES NO (See USEFUL DEFINITIONS AND INSTRUCTIONS)

8. Will the project be constructed in stages? YES NO
 Proposed starting date: July 2006, pending approval
 Estimated duration of activity: 3 months

9. Check if any temporary or permanent structures will be placed:
 Waterward of the ordinary high water mark or line for fresh or tidal waters AND/OR
 Waterward of the mean higher high water for tidal waters?

10. Will fill material (rock, fill, bulkhead, or other material) be placed: Yes, "fish mix" gravel for mitigation
 Waterward of the ordinary high water mark or line for fresh waters?
 If YES, VOLUME (cubic yards) / AREA (acres)
 Waterward of the mean higher high water for tidal waters?
 If YES, VOLUME (cubic yards) 18 / AREA 0.022 (acres) (0.011 \pm acres of existing intertidal and 0.011 \pm acres of new intertidal)

EXHIBIT #55

5/24

11. Will material be placed in wetlands? YES NO

If YES:

A. Impacted area in acres:

B. Has a delineation been completed? If YES, please submit with application. YES NO
 Has a wetland report been prepared? If YES, please submit with application YES NO

C. Type and composition of fill material (e.g., sand, etc.)

E. Material source:

F. List all soil series (type of soil) located at the project site, and indicate if they are on the county's list of hydric soils. Soils information can be obtained from the natural Resources Conservation Service (NRCS).

G. WILL PROPOSED ACTIVITY CAUSE FLOODING OR DRAINING OF WETLANDS? YES NO
 If YES, IMPACTED AREA IS _____ ACRES OF DRAINED WETLANDS.

NOTE: If your project will impact greater than 1/2 of an acre of wetland, submit a mitigation plan to the Corps and Ecology for approval along with the JARPA form.
 NOTE: A 401 water quality certification will be required from Ecology in addition to an approved mitigation plan if your project impacts wetlands that are: a) greater than 1/2 acre in size, or b) tidal wetlands or wetlands adjacent to tidal water. Please submit the JARPA form and mitigation plan to Ecology for an individual 401 certification if a) or b) applies.

12. Stormwater Compliance for Nationwide Permits Only: This project is (or will be) designed to meet ecology's most current stormwater manual, or an Ecology approved local stormwater manual. YES NO

If YES - Which manual will your project be designed to meet? DoE February, 2005

If NO - For clean water act Section 401 and 404 permits only - Please submit to Ecology for approval, along with this JARPA application, documentation that demonstrates the stormwater runoff from your project or activity will comply with the water quality standards, WAC 173.201(A)

13. Will excavation or dredging be required in water or wetlands? YES NO

If YES:

A. Volume: _____ (cubic yards) /area _____ (acre)

B. Composition of material to be removed: _____

C. Disposal site for excavated material: _____

D. Method of dredging: _____

14. Has the State Environmental Policy Act (SEPA) been completed YES NO

SEPA Lead Agency: **City of Gig Harbor**

PA Decision: DNS, MDNS, EIS, Adoption, Exemption Decision Date (end of comment period)

SUBMIT A COPY OF YOUR SEPA DECISION LETTER TO WDFW AS REQUIRED FOR A COMPLETE APPLICATION

15. List other Applications, approvals or certifications from other federal, state or local agencies for any structures, construction discharges or other activities described in the application (i.e. preliminary plat approval, health district approval, building permit, SEPA review, federal energy regulatory commission license (FERC), Forest practices application, etc.). Also, indicate whether work has been completed and indicate all existing work on drawings. NOTE: For use with Corps Nationwide Permits, identify whether your project has or will need an NPDES permit for discharging wastewater and/or stormwater.

TYPE OF APPROVAL	ISSUING AGENCY	IDENTIFICATION NO.	DATE OF APPLICATION	DATE APPROVED	COMPLETE D?
Building Permit for Marina	City of Gig Harbor	N/A	To be applied for		
Harbor Area Lease	Dept. of Natural Resources	Pending	Pending	Pending	
Building Permit for Upland Residence	City of Gig Harbor	BP05-111	July 11, 2005	Pending	
Building Permit for Upland Residence	City of Gig Harbor	BP05-112	July 11, 2005	Pending	

16. Has any agency denied approval for the activity you're applying for or for any activity directly related to the activity described herein? YES NO

If YES, explain:

EXHIBIT #55

6/24

SECTION B - Use for Shoreline and Corps of Engineers permit

17a. Total cost of project. This means the fair market value of the project, including materials, labor, machine rentals, etc.
\$1,500,000 +/-

7b. If a project or any portion of a project receives funding from a federal agency, that agency is responsible for ESA consultation. Please indicate if you will receive federal funds and what federal agency is providing those funds. See instructions for information on ESA.*
FEDERAL FUNDING YES NO If YES, please list the federal agency.

18. Local government with jurisdiction: **City of Gig Harbor**

19. For Corps, Coast Guard and DNR permits, provide names, addresses and telephone numbers of adjoining property owners, lessees, etc. Please note: Shoreline Management Compliance may require additional notice - consult your local government.

NAME	ADDRESS	PHONE NUMBER
Tarabochia Rose J	8021 Shirley Ave, Gig Harbor, WA 98332	253-851-5721
Dupille Carolyn S	3526 Harborview Drive, Gig Harbor, WA 98332	N/A
Jerkovich Nick	7302 Soundview Dr, Gig Harbor, WA 98335	253-851-2841

SECTION C - This section MUST be completed for any permit covered by this application

20. Application is hereby made for a permit or permits to authorize the activities described herein. I certify that I am familiar with the information contained in this application, and that to the best of my knowledge and belief, such information is true, complete, and accurate. I further certify that I possess the authority to undertake the proposed activities. I hereby grant to the agencies to which this application is made, the right to enter the above-described location to inspect the proposed, in-progress or completed work. I agree to start work **ONLY** after all necessary permits have been received.

Bruce R. S.P. MANAGING MEMBER
SIGNATURE OF APPLICANT DATE 7/22/05

Jeffrey A. Layton
SIGNATURE OF AUTHORIZED AGENT DATE 8/23/05

I HEREBY DESIGNATE Jeffrey A. Layton, P.E. TO ACT AS MY AGENT IN MATTERS RELATED TO THIS APPLICATION FOR PERMIT(S). I UNDERSTAND THAT IF A FEDERAL PERMIT IS ISSUED, I MUST SIGN THE PERMIT.

Bruce R. S.P. MANAGING MEMBER 7/22/05
SIGNATURE OF APPLICANT DATE

Bruce R. S.P. MANAGING MEMBER
SIGNATURE OF LANDOWNER (EXCEPT PUBLIC ENTITY LANDOWNERS, E.G. DNR) RAINIER YACHT HARBOR, LLC

THIS APPLICATION MUST BE SIGNED BY THE APPLICANT AND THE AGENT, IF AN AUTHORIZED AGENT IS DESIGNATED.

18 U.S.C §1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly falsifies, conceals, or covers up by any trick, scheme, or device a material fact or makes any false, fictitious, or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than 5 years or both.

COMPLETED BY LOCAL OFFICIAL

- A. Nature of the existing shoreline. (Describe type of shoreline, such as marine, stream, lake, lagoon, marsh, bog, swamp, flood plain, floodway, delta; type of beach, such as accretion, erosion, high bank, low bank, or dike; material such as sand, gravel, mud, clay, rock, riprap; and extent and type of bulkheading, if any)
- B. In the event that any of the proposed buildings or structures will exceed a height of thirty-five feet above the average grade level, indicate the approximate location of and number of residential units, existing and potential, that will have an obstructed view:
- C. If the application involves a conditional use or variance, set forth in full that portion of the master program which provides that the proposed use may be a conditional use, or, in the case of a variance, from which the variance is being sought:

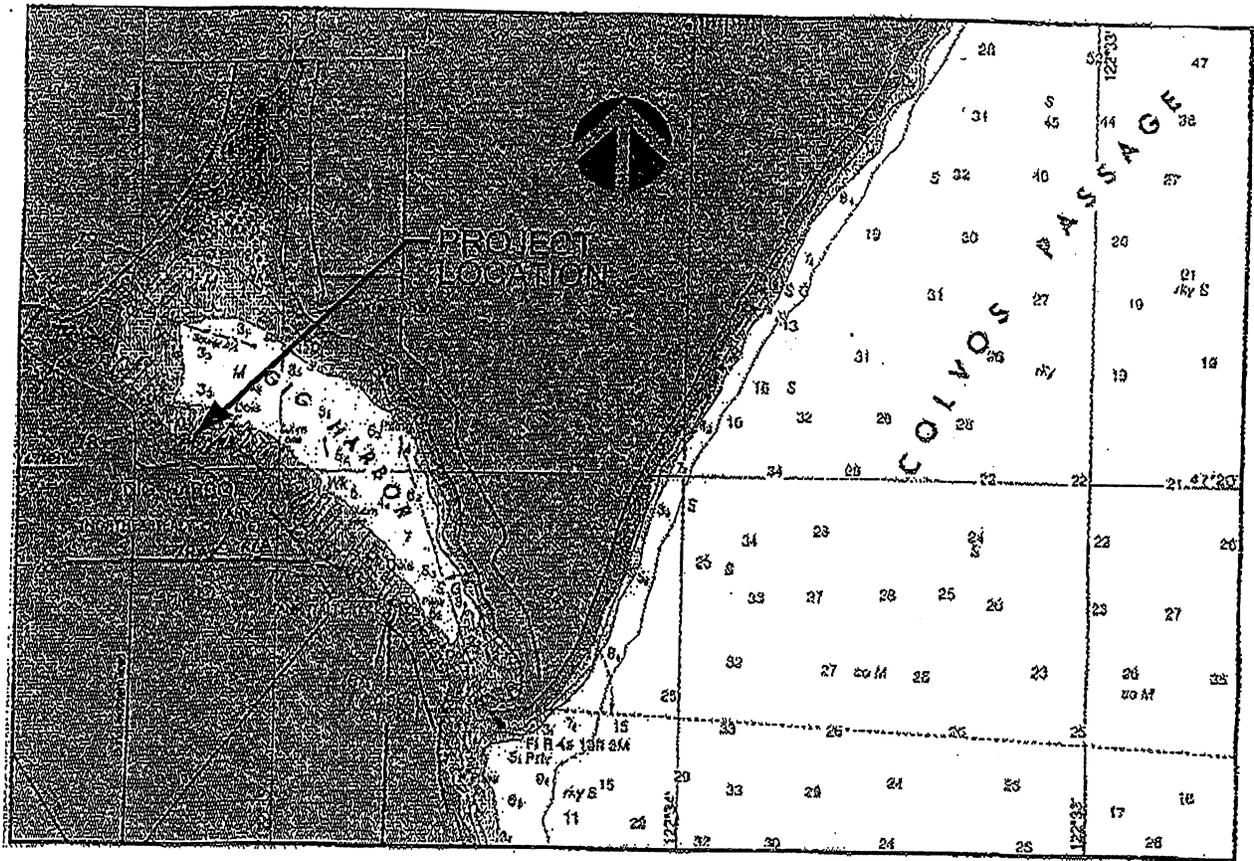
These Agencies are Equal Opportunity and Affirmative Action employers.

For special accommodation needs, please contact the appropriate agency in the instructions

FGY 070-15 (Rev. 11/04) JARPA Contact the State of Washington Office of Regulatory Assistance for latest version or call 360/407-7037 or 800/917-0043

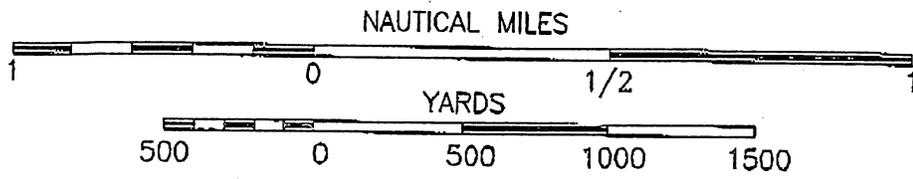
EXHIBIT #55

7/29



SOURCE: NOAA CHART NO. 18445
INSET 7 (DEPTH IN FATHOMS)

VICINITY MAP



PURPOSE: PROPOSED MARINA FOR PRIVATE BOAT MOORAGE

PROJECT LOCATION:
LAT = 47°20'02"
LO' = 122°35'07"

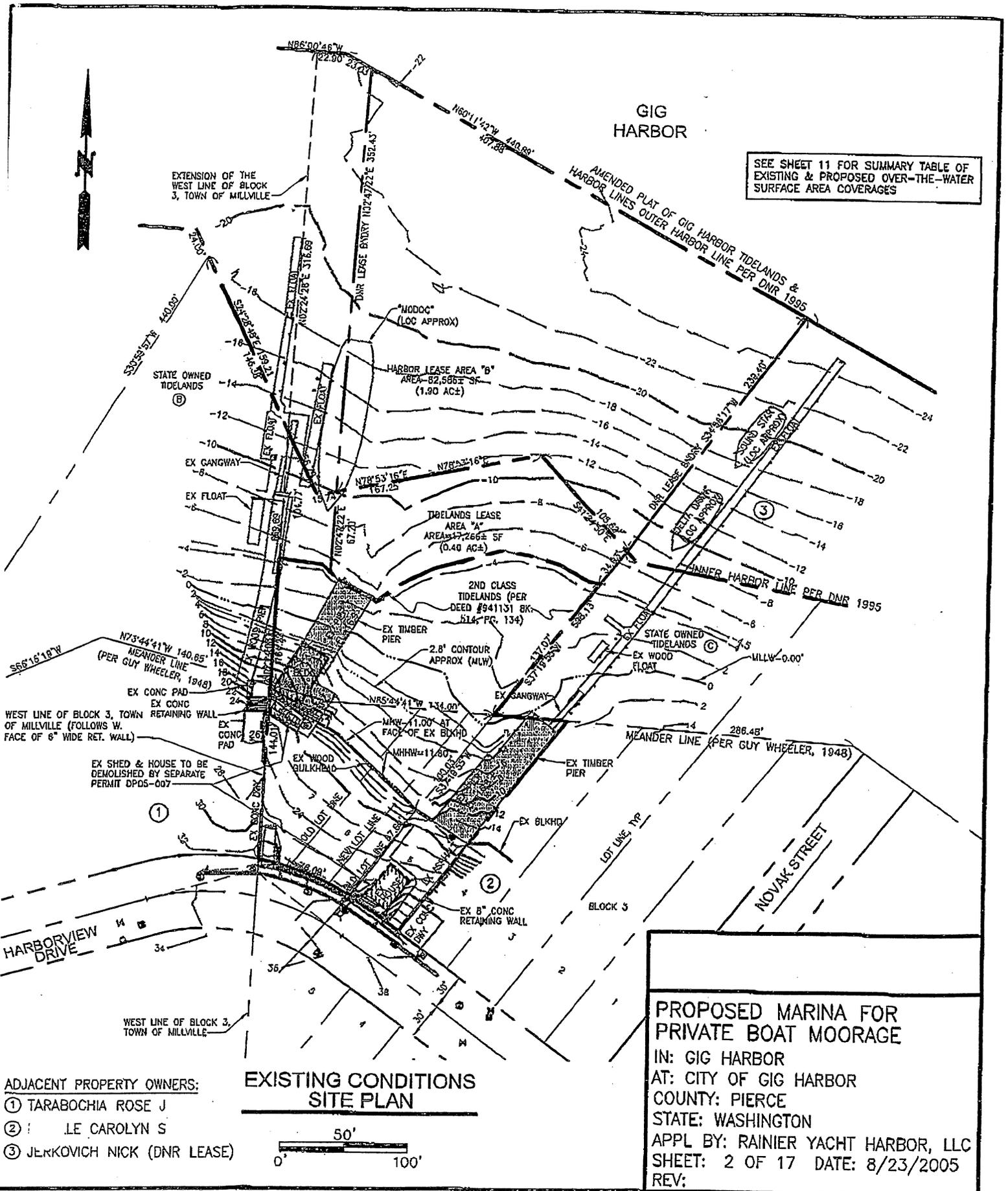
DATUM: MLLW=0.0'

PROPOSED MARINA FOR
PRIVATE BOAT MOORAGE

IN: GIG HARBOR
AT: CITY OF GIG HARBOR
COUNTY: PIERCE
STATE: WASHINGTON
APPL BY: RAINIER YACHT HARBOR, LLC
SHEET: 1 OF 17 DATE: 8/23/2005
REV:

EXHIBIT #55

8/24



SEE SHEET 11 FOR SUMMARY TABLE OF EXISTING & PROPOSED OVER-THE-WATER SURFACE AREA COVERAGES

PROPOSED MARINA FOR PRIVATE BOAT MOORAGE

IN: GIG HARBOR
 AT: CITY OF GIG HARBOR
 COUNTY: PIERCE
 STATE: WASHINGTON
 APPL BY: RAINIER YACHT HARBOR, LLC
 SHEET: 2 OF 17 DATE: 8/23/2005
 REV:

Exhibit #55

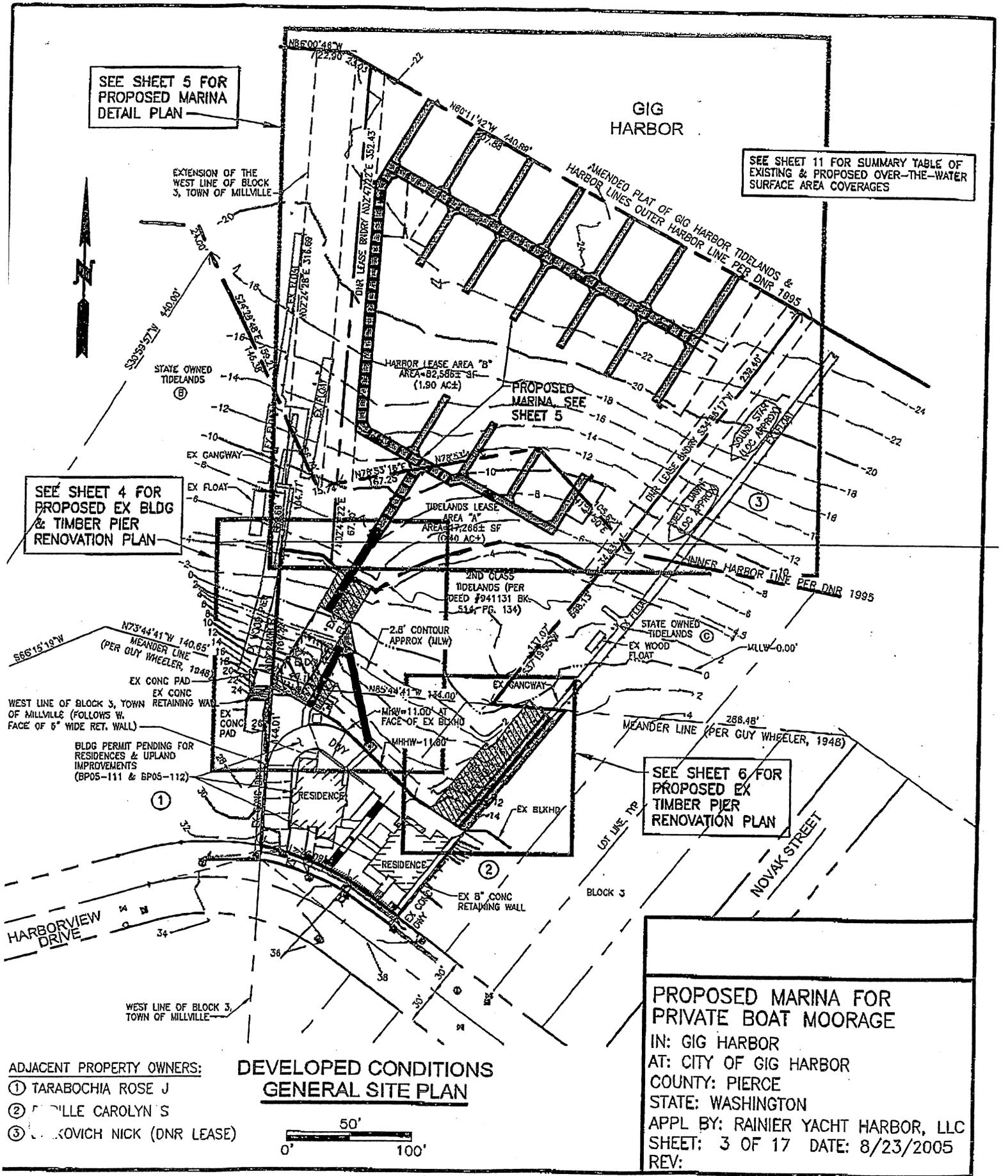
9/24

SEE SHEET 5 FOR PROPOSED MARINA DETAIL PLAN

SEE SHEET 11 FOR SUMMARY TABLE OF EXISTING & PROPOSED OVER-THE-WATER SURFACE AREA COVERAGES

SEE SHEET 4 FOR PROPOSED EX BLDG & TIMBER PIER RENOVATION PLAN

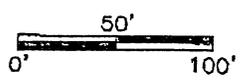
SEE SHEET 6 FOR PROPOSED EX TIMBER PIER RENOVATION PLAN



ADJACENT PROPERTY OWNERS:

- ① TARABOCHIA ROSE J
- ② CAROLYN'S
- ③ KROVICH NICK (DNR LEASE)

**DEVELOPED CONDITIONS
GENERAL SITE PLAN**



**PROPOSED MARINA FOR
PRIVATE BOAT MOORAGE**

IN: GIG HARBOR
 AT: CITY OF GIG HARBOR
 COUNTY: PIERCE
 STATE: WASHINGTON
 APPL BY: RAINIER YACHT HARBOR, LLC
 SHEET: 3 OF 17 DATE: 8/23/2005
 REV:

EXHIBIT #55

10/24

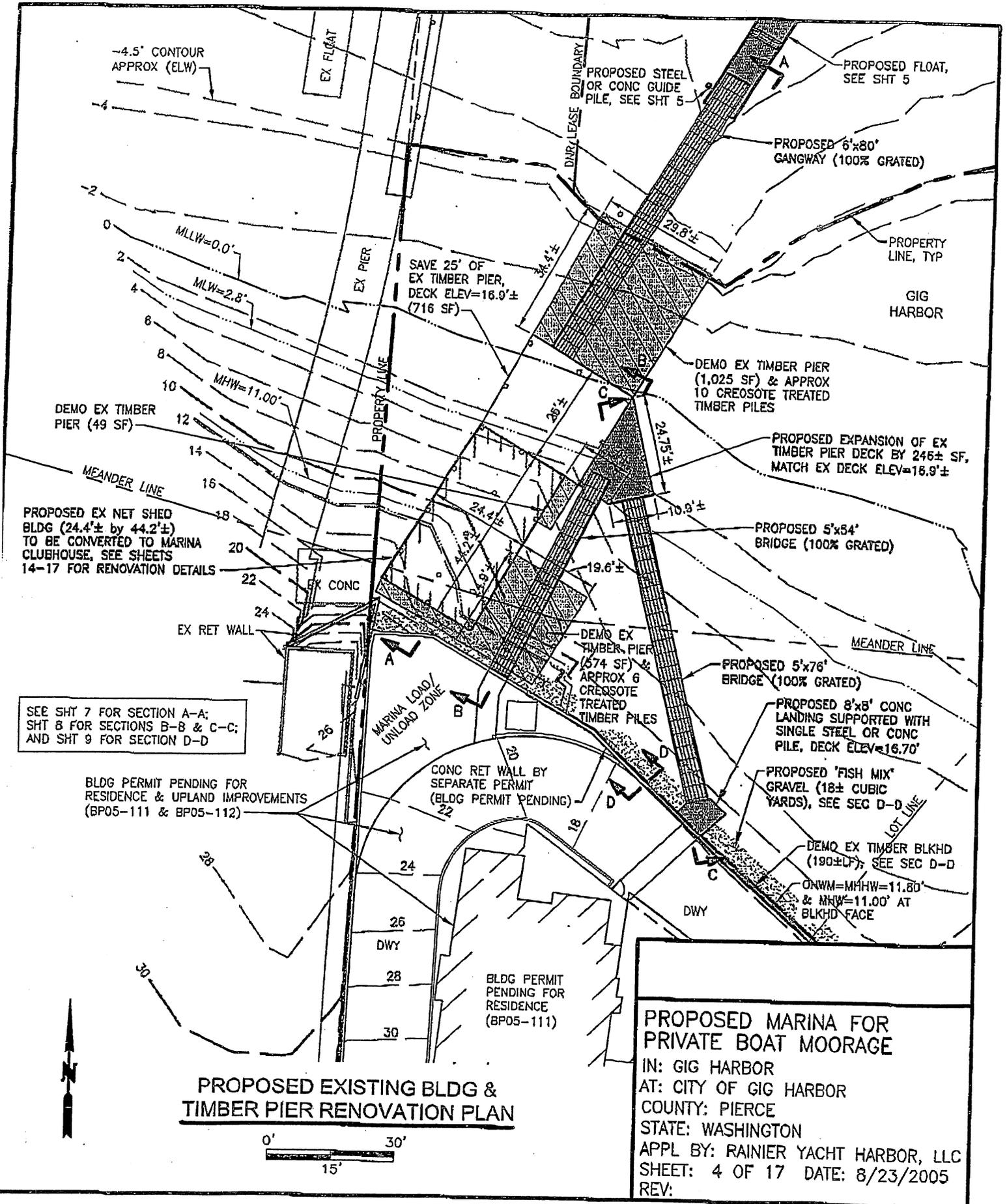
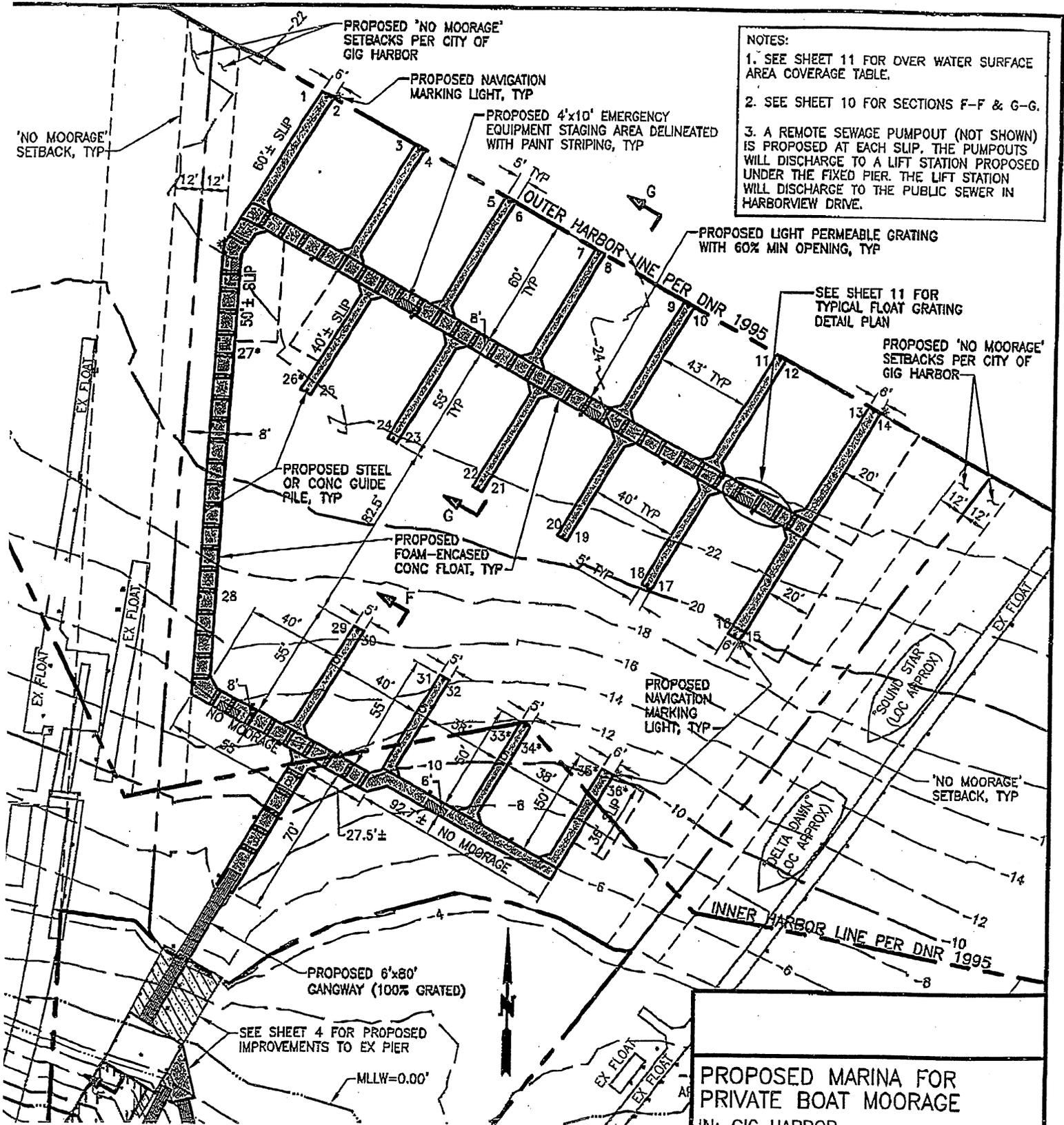


EXHIBIT # 55

11/24

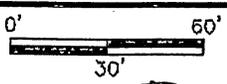


NOTES:

1. SEE SHEET 11 FOR OVER WATER SURFACE AREA COVERAGE TABLE.
2. SEE SHEET 10 FOR SECTIONS F-F & G-G.
3. A REMOTE SEWAGE PUMPOUT (NOT SHOWN) IS PROPOSED AT EACH SLIP. THE PUMPOUTS WILL DISCHARGE TO A LIFT STATION PROPOSED UNDER THE FIXED PIER. THE LIFT STATION WILL DISCHARGE TO THE PUBLIC SEWER IN HARBORVIEW DRIVE.

PROPOSED MARINA FOR PRIVATE BOAT MOORAGE
 IN: GIG HARBOR
 AT: CITY OF GIG HARBOR
 COUNTY: PIERCE
 STATE: WASHINGTON
 APPL BY: RAINIER YACHT HARBOR, LLC
 SHEET: 5 OF 17 DATE: 8/23/2005 REV:

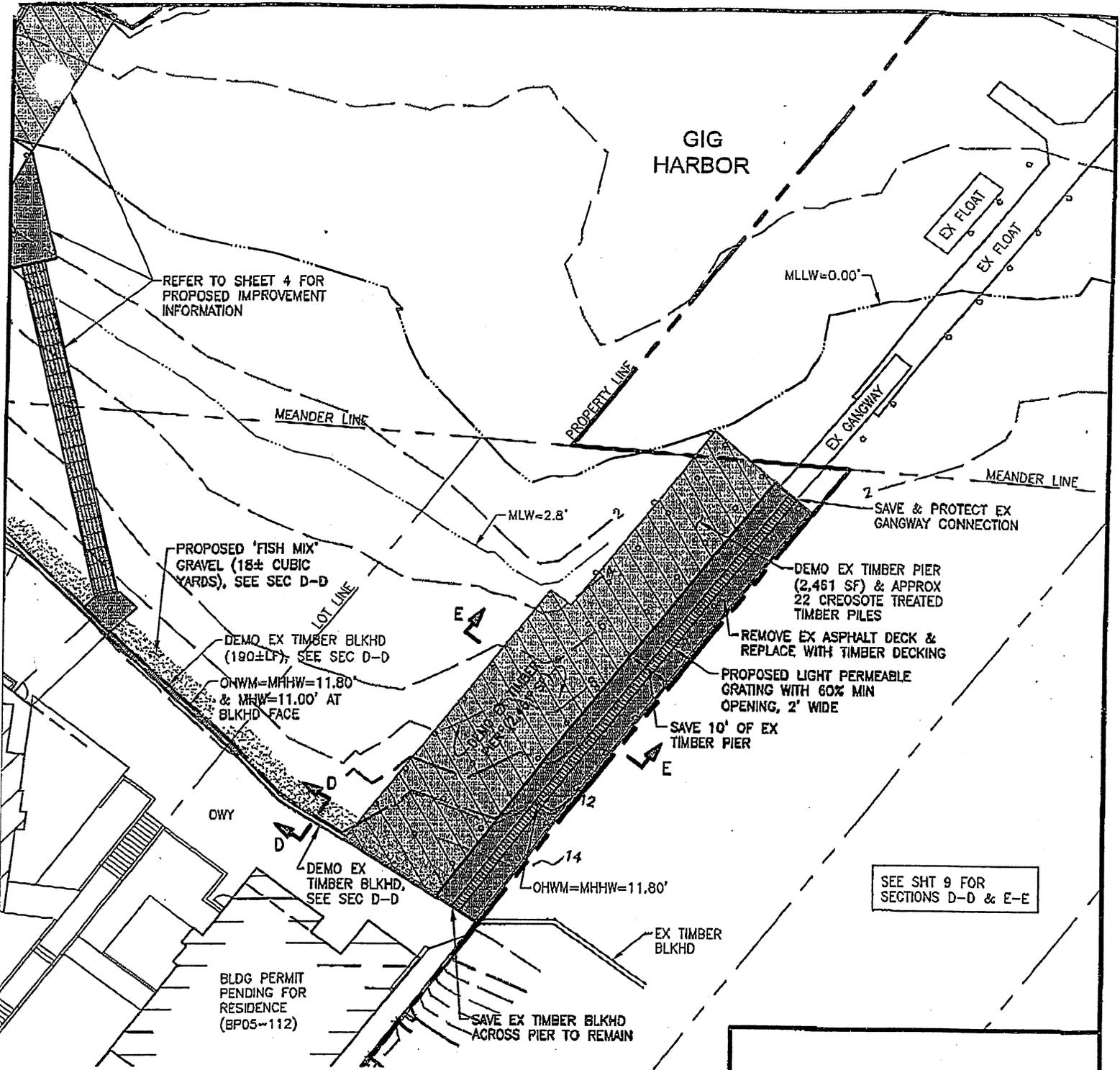
PROPOSED MARINA DETAIL PLAN



* = BERTH WITH RESTRICTED ACCESS AND/OR WATER DEPTH.

EXHIBIT A

12/2005



SEE SHT 9 FOR SECTIONS D-D & E-E

BLDG PERMIT PENDING FOR RESIDENCE (BP05-112)



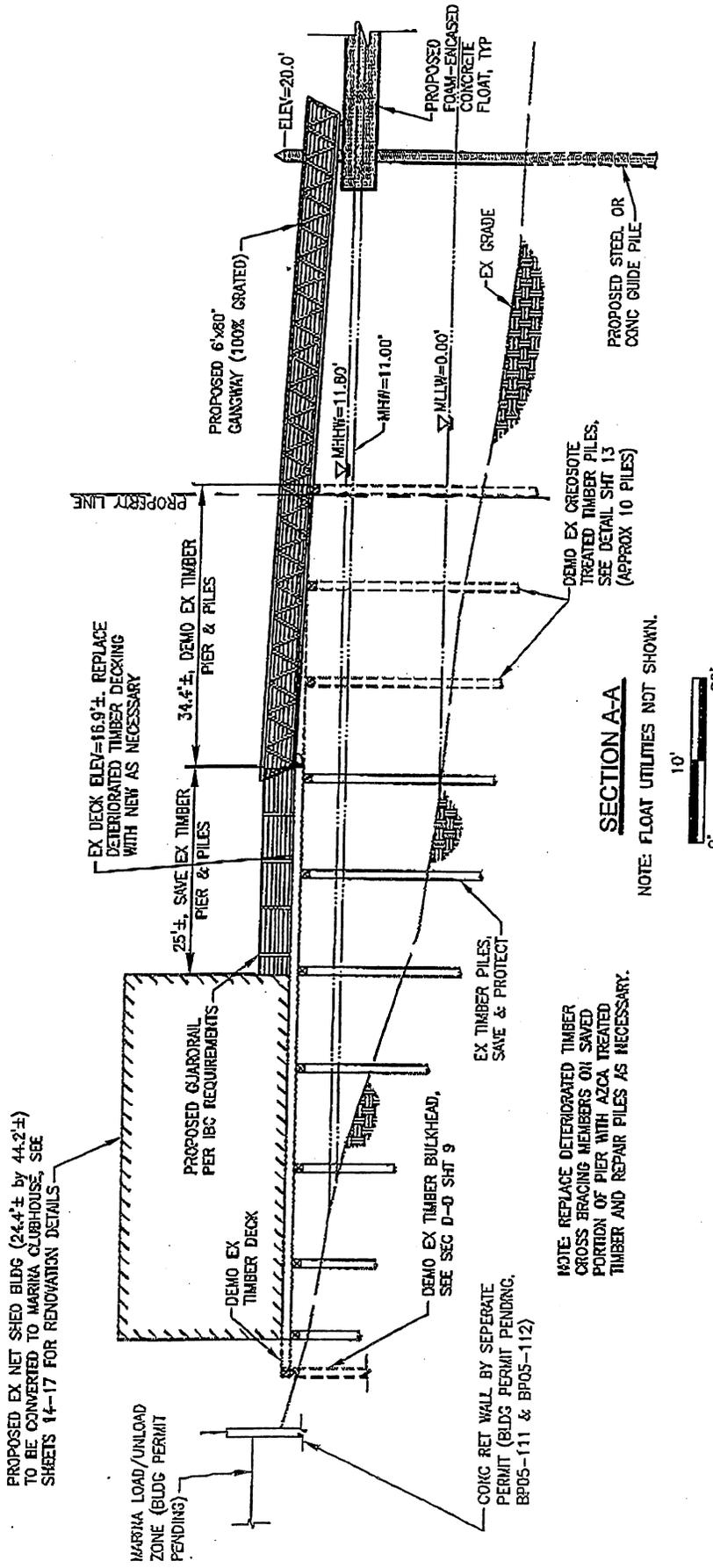
PROPOSED EXISTING TIMBER PIER RENOVATION PLAN



PROPOSED MARINA FOR PRIVATE BOAT MOORAGE
 IN: GIG HARBOR
 AT: CITY OF GIG HARBOR
 COUNTY: PIERCE
 STATE: WASHINGTON
 APPL BY: RAINIER YACHT HARBOR, LLC
 SHEET: 6 OF 17 DATE: 8/23/2005
 REV:

EXHIBIT #55

13/24



SECTION A-A

NOTE: FLOAT UTILITIES NOT SHOWN.



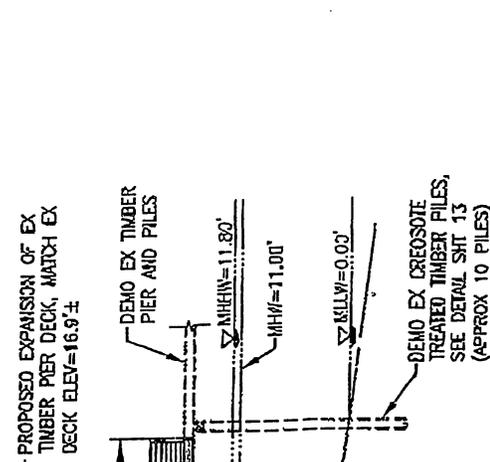
NOTE: REPLACE DETERIORATED TIMBER CROSS BRACING MEMBERS ON SAVED PORTION OF PIER WITH AZCA TREATED TIMBER AND REPAIR PILES AS NECESSARY.

CONC RET WALL BY SEPERATE PERMIT (BLDG PERMIT PENDING. BP05-111 & BP05-112)

PROPOSED MARINA FOR PRIVATE BOAT MOORAGE
 IN: GIG HARBOR
 AT: CITY OF GIG HARBOR
 COUNTY: PIERCE
 STATE: WASHINGTON
 APPL BY: RAINIER YACHT HARBOR, LLC
 SHEET: 7 OF 17 DATE: 8/23/2005
 REV:

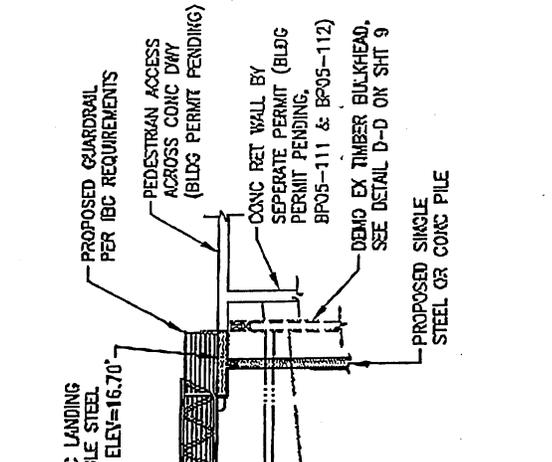
EXHIBIT #55

14/24



SECTION B-B

NOTE: FLOAT UTILITIES NOT SHOWN.



SECTION C-C



CONC LANDING AT MAX. LOAD/UNLOAD ZONE (BLDG PERMIT PENDING)

CONC RET WALL BY SEPERATE PERMIT (BLDG PERMIT PENDING, BP05-111 & BP05-112)

PROPOSED GUARDRAIL PER IBC REQUIREMENTS

VARIES

PROPOSED 5'x54 BRIDGE (100% GRATED)

EX GRADE

DEMO EX TIMBER BULKHEAD, SEE SEC D-D SHT 9

PROPOSED STEEL OR CONC PILE, TYP

DEMO EX TIMBER PIER AND PILES

MHW=11.00'

MHWH=11.80'

MLLW=0.00'

DEMO EX CREOSOTE TREATED TIMBER PILES, SEE DETAIL SHT 13 (APPROX 10 PILES)

REPAIR EX TIMBER PILING AS NECESSARY

PROPOSED EXPANSION OF EX TIMBER PIER DECK, MATCH EX DECK ELEV=16.9'± (GUARDRAILS NOT SHOWN)

SAVE & PROTECT EX TIMBER PIER. REPLACE DETERIORATED TIMBER DECKING & CROSS BRACING WITH NEW AZCA TREATED TIMBER AS NECESSARY

VARIES

PROPOSED 5'x76" BRIDGE (100% GRATED)

MHWH=11.80'

EX GRADE

MHW=11.00'

PROPOSED STEEL OR CONC PILE, TYP

EX TIMBER PILE, SAVE & PROTECT

PROPOSED 8'x8' CONC LANDING SUPPORTED WITH SINGLE STEEL OR CONC PILE, DECK ELEV=16.70'

PEDESTRIAN ACCESS ACROSS CONC DWY (BLDG PERMIT PENDING)

CONC RET WALL BY SEPERATE PERMIT (BLDG PERMIT PENDING, BP05-111 & BP05-112)

DEMO EX TIMBER BULKHEAD, SEE DETAIL D-D ON SHT 9

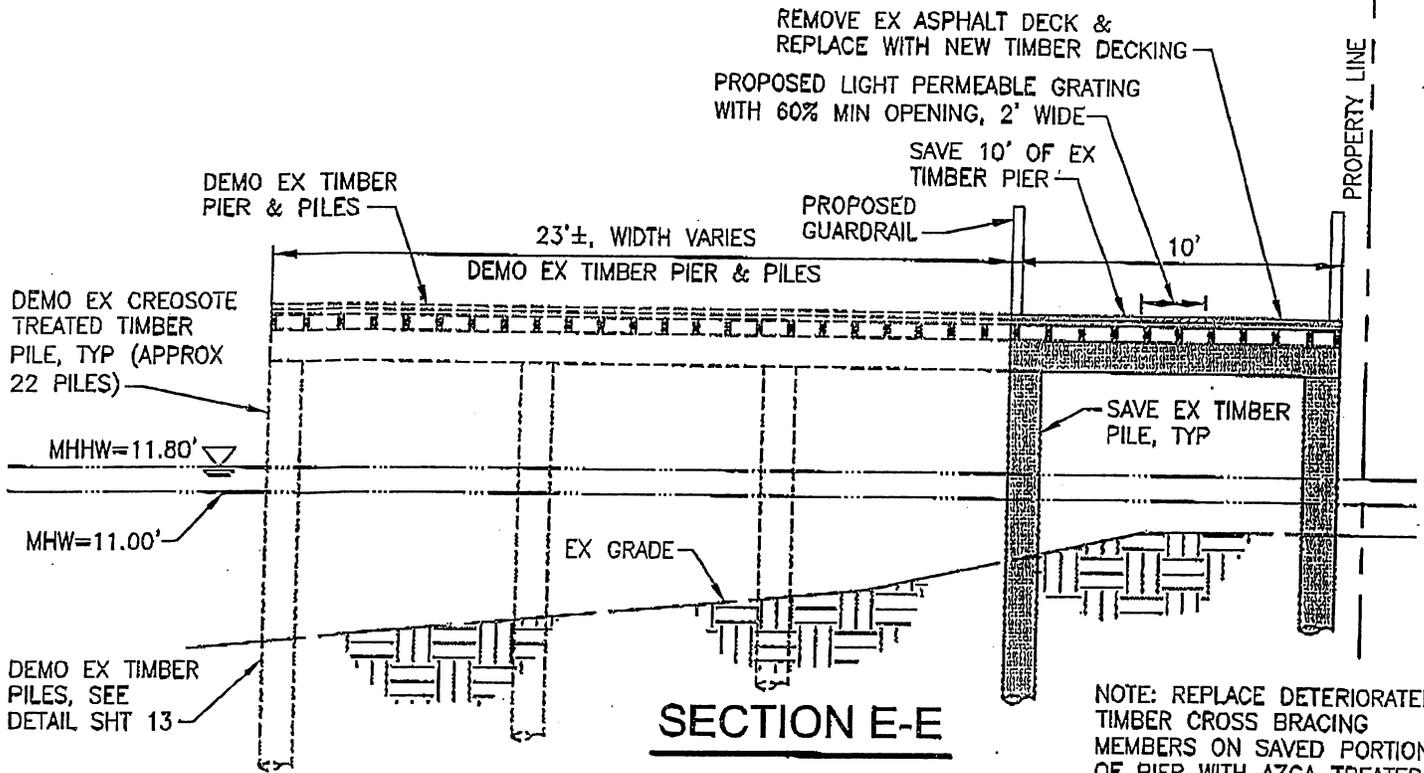
PROPOSED SINGLE STEEL OR CONC PILE

PROPOSED MARINA FOR PRIVATE BOAT MOORAGE

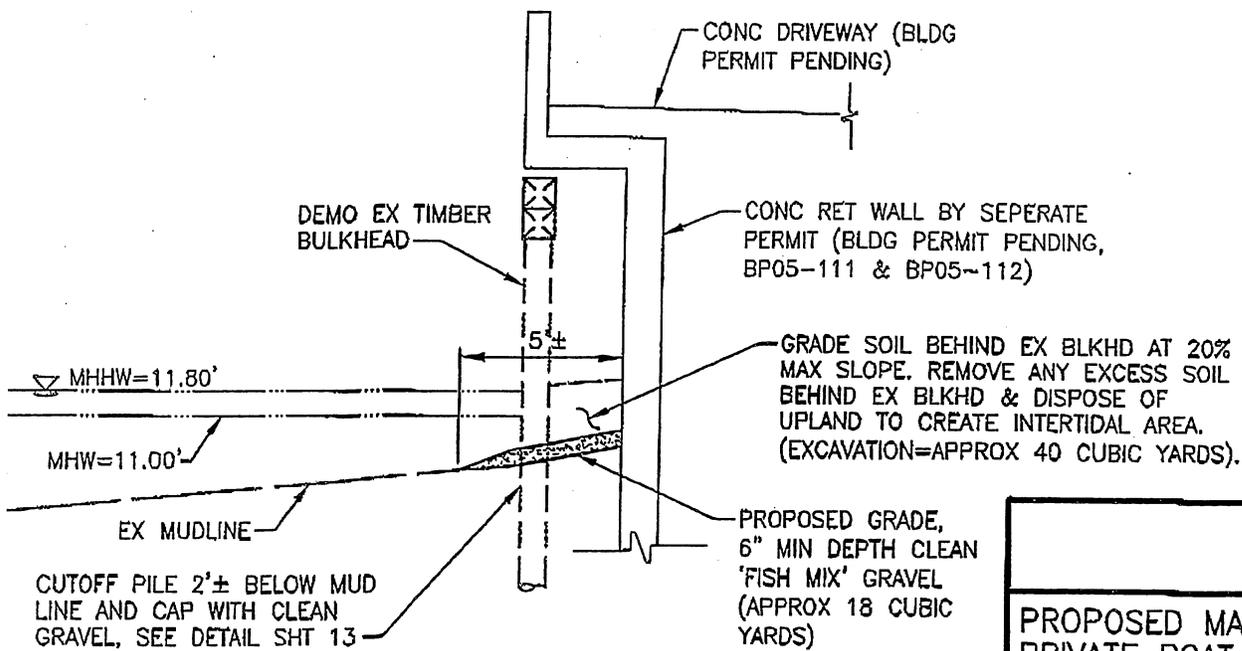
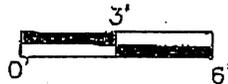
IN: GIG HARBOR
 AT: CITY OF GIG HARBOR
 COUNTY: PIERCE
 STATE: WASHINGTON
 APPL BY: RAINIER YACHT HARBOR, LLC
 SHEET: 8 OF 17 DATE: 8/23/2005
 REV:

EXHIBIT #55

15/24



SECTION E-E



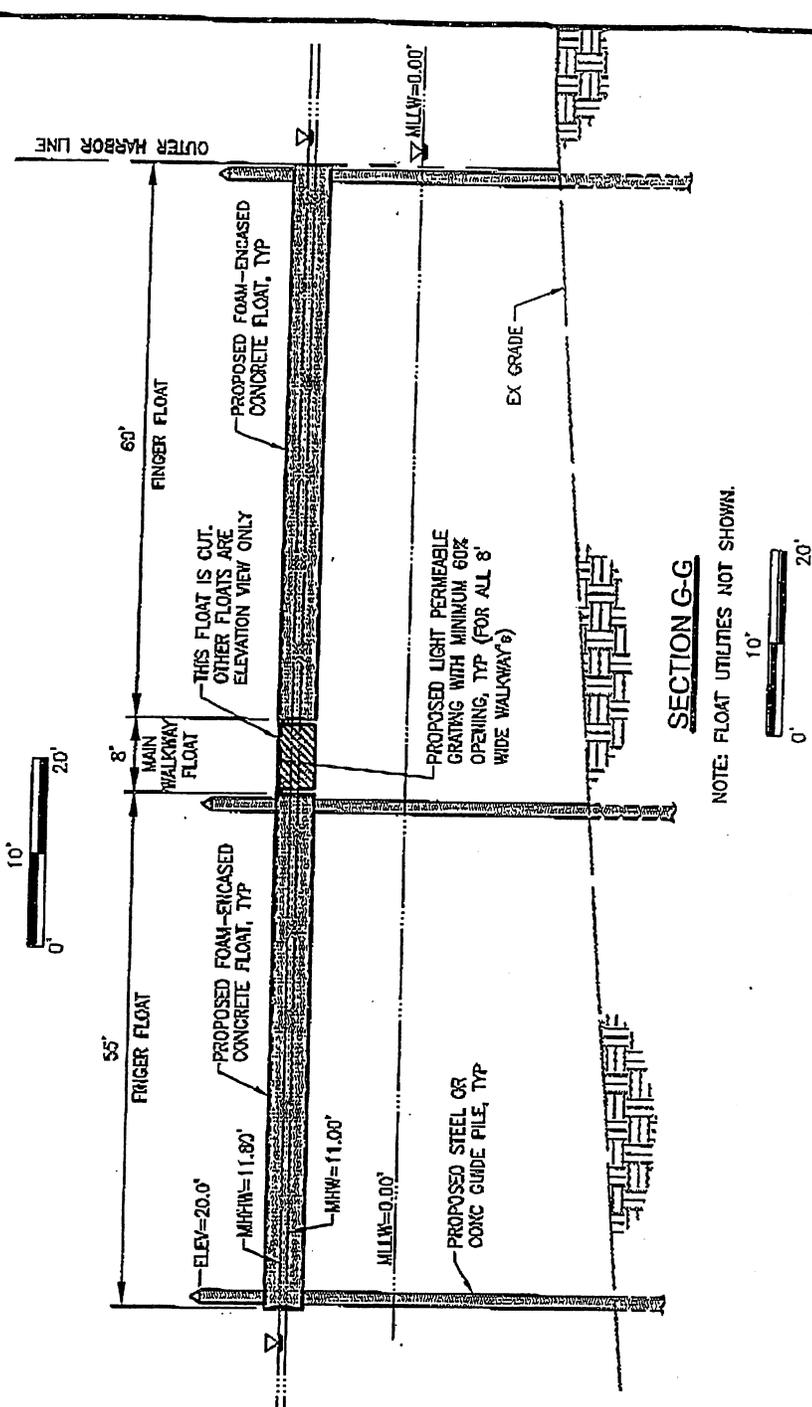
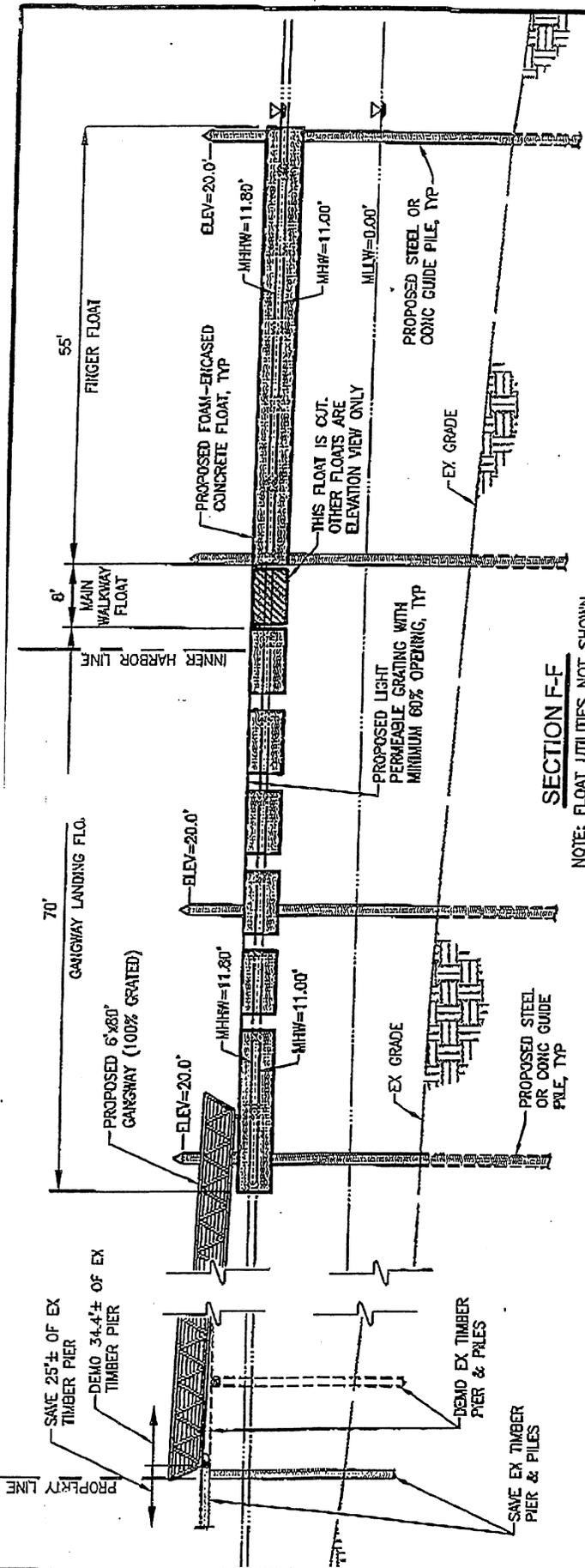
SECTION D-D



PROPOSED MARINA FOR PRIVATE BOAT MOORAGE
 IN: GIG HARBOR
 AT: CITY OF GIG HARBOR
 COUNTY: PIERCE
 STATE: WASHINGTON
 APPL BY: RAINIER YACHT HARBOR, LLC
 SHEET: 9 OF 17 DATE: 8/23/2005
 REV:

EXHIBIT #55

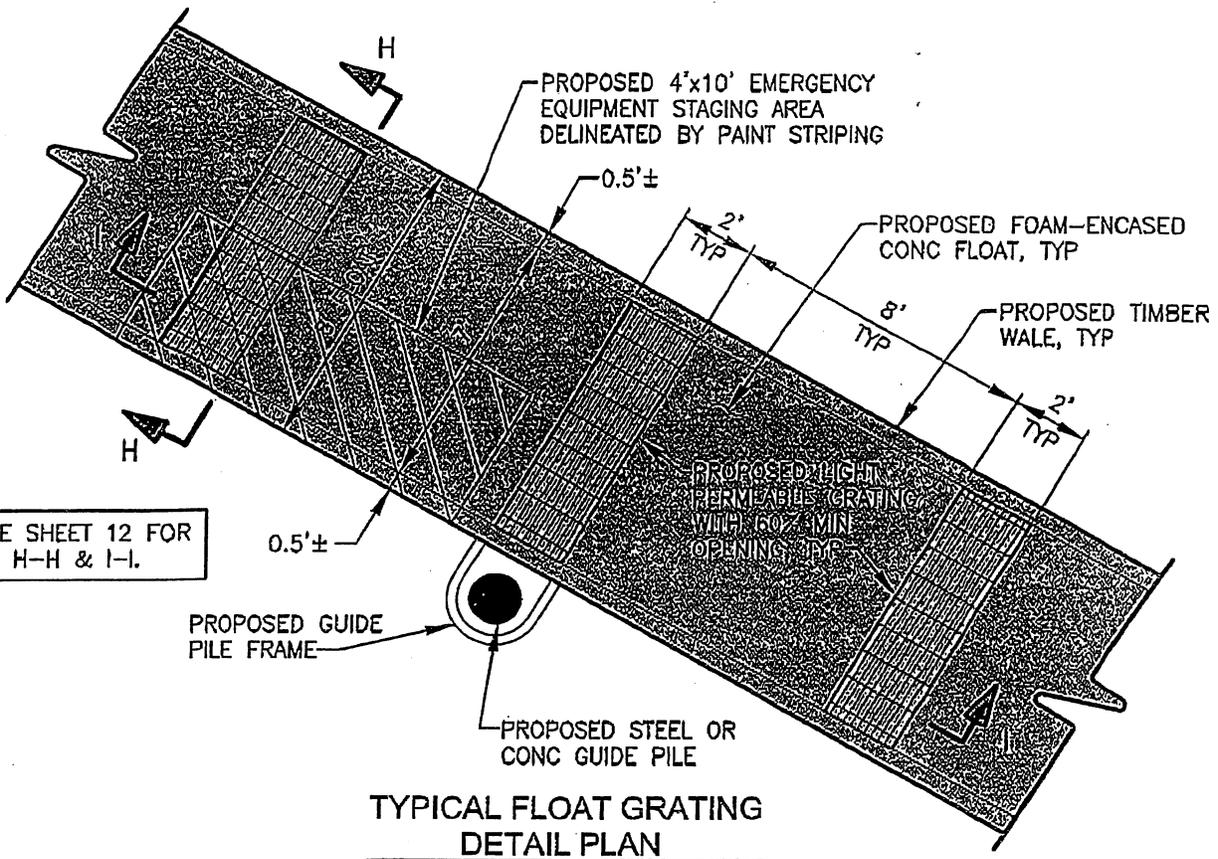
16/29



PROPOSED MARINA FOR PRIVATE BOAT MOORAGE
 IN: GIG HARBOR
 AT: CITY OF GIG HARBOR
 COUNTY: PIERCE
 STATE: WASHINGTON
 APPL BY: RAINIER YACHT HARBOR, LLC
 SHEET: 10 OF 17 DATE: 8/23/2005
 REV:

EXHIBIT #55

17/24



TYPICAL FLOAT GRATING
DETAIL PLAN



SUMMARY TABLE OVER-THE-WATER
SURFACE AREA COVERAGES:

	EXISTING CONDITIONS (SQ. FEET)	PROPOSED DEVELOPED CONDITIONS (SQ. FEET)	PROPOSED LIGHT PERMEABLE GRATING ADJUSTMENT (SQ. FEET)	PROPOSED NET CHANGE (SQ. FEET)
EXISTING OVER-THE-WATER BUILDING (WEST)	-1,080	1,080	--	0
EXISTING FIXED PIER (WEST)	-2,364	962	--	-1,402
EXISTING FIXED PIER (EAST)	-3,641	1,180	-234	-2,695
PROPOSED GANGWAY, BRIDGE'S & 8'x8' BRIDGE LANDING	--	1,108	-1,050	+58
PROPOSED MOORAGE FLOATS	--	11,238	-896	+10,342
TOTALS	-7,085	15,568	-2,180	+6,303

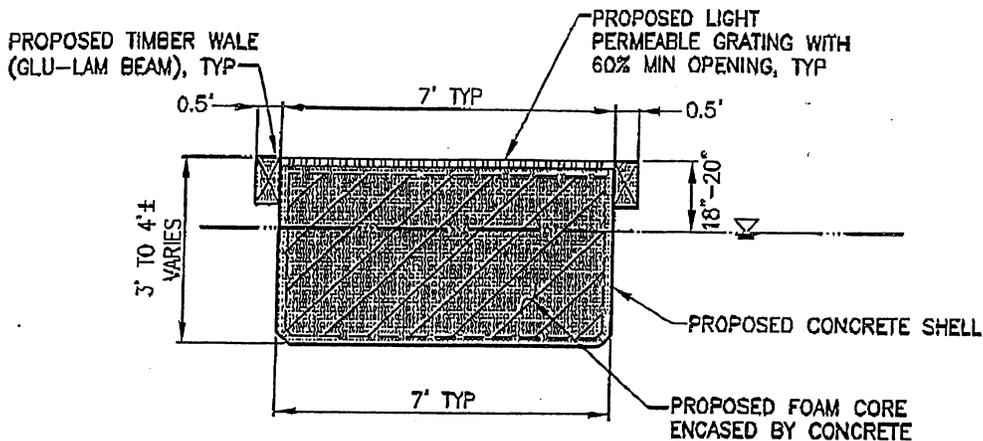
APPROXIMATE MOORAGE DISTRIBUTION:

SLIP LENGTH	NUMBER	LINEAL FEET
60	14	840
55	15	825
50	5	250
40	1	40
36	1	36
TOTALS	36	1,991

**PROPOSED MARINA FOR
PRIVATE BOAT MOORAGE**
 IN: GIG HARBOR
 AT: CITY OF GIG HARBOR
 COUNTY: PIERCE
 STATE: WASHINGTON
 APPL BY: RAINIER YACHT HARBOR, LLC
 SHEET: 11 OF 17 DATE: 8/23/2005
 REV:

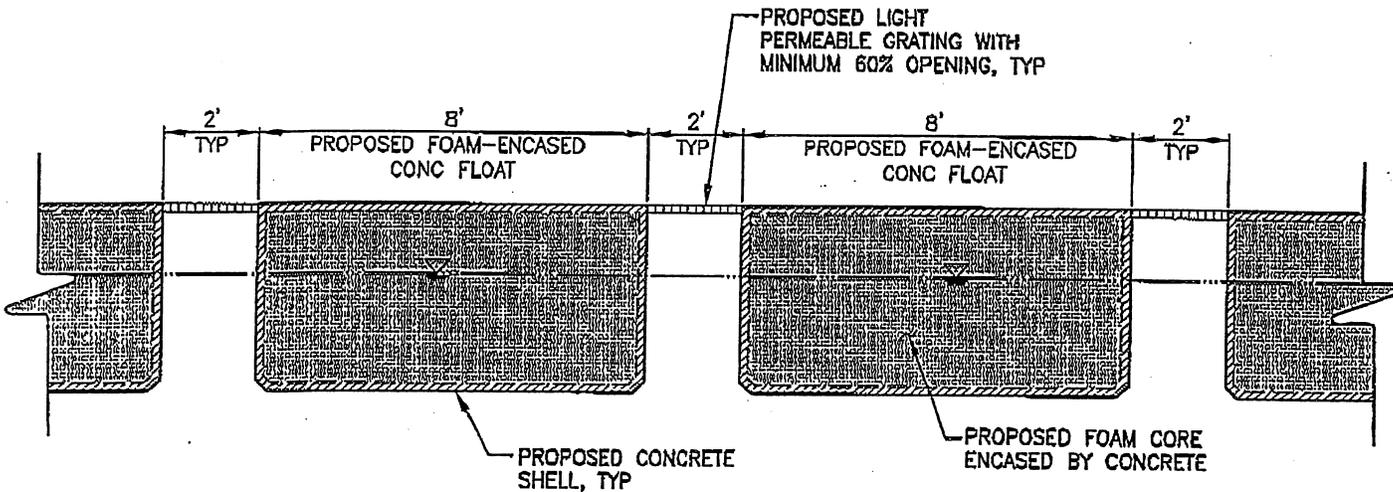
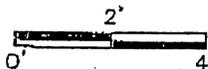
Ex 11817 755

18/24



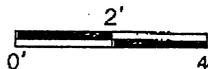
SECTION H-H

NOTE: FLOAT UTILITIES NOT SHOWN.



SECTION I-I

NOTE: FLOAT UTILITIES NOT SHOWN.

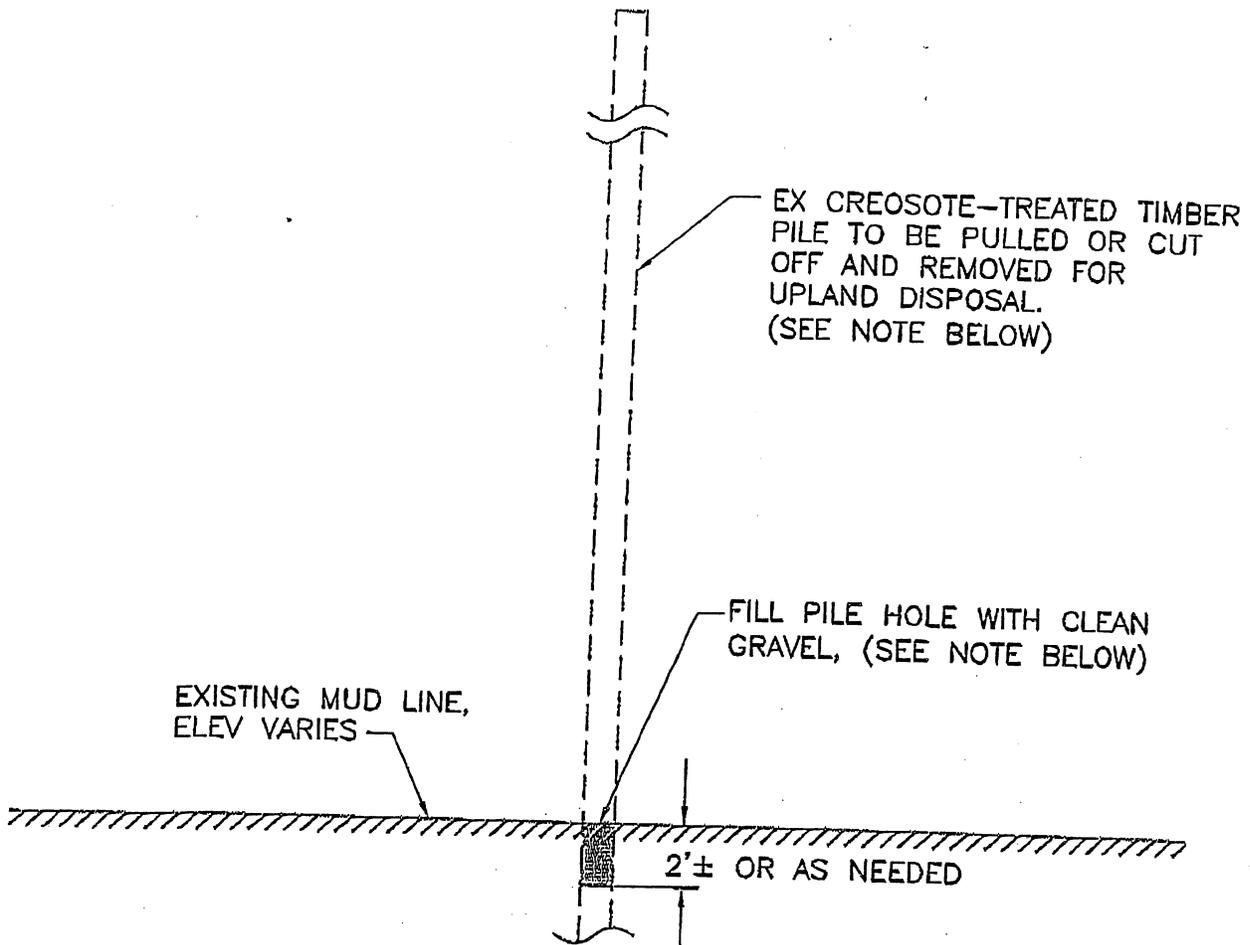


PROPOSED MARINA FOR PRIVATE BOAT MOORAGE

IN: GIG HARBOR
 AT: CITY OF GIG HARBOR
 COUNTY: PIERCE
 STATE: WASHINGTON
 APPL BY: RAINIER YACHT HARBOR, LLC
 SHEET: 12 OF 17 DATE: 8/23/2005
 REV:

Exhibits

A/24



TYPICAL PILE REMOVAL DETAIL

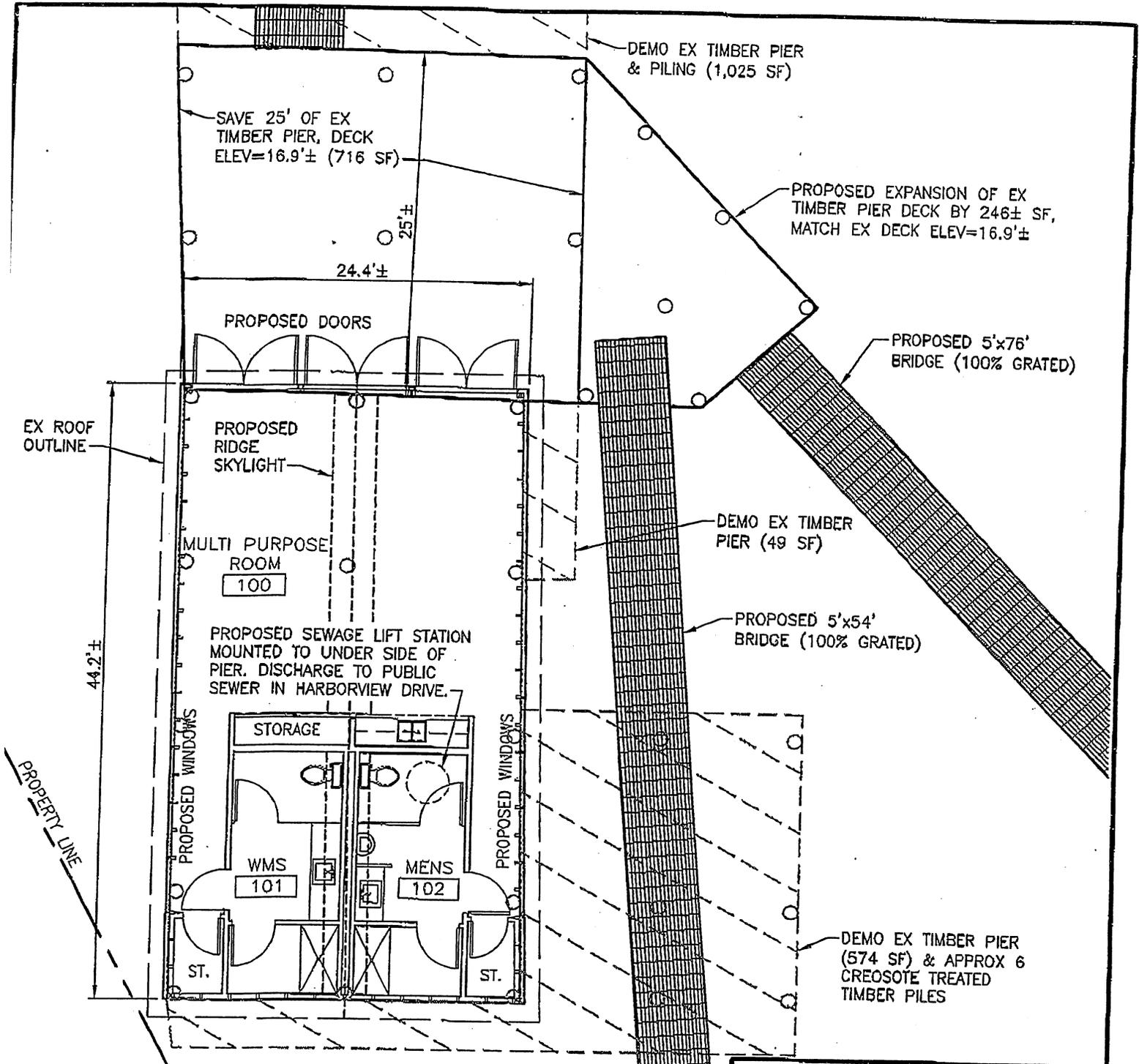
NOT TO SCALE

NOTE: EXISTING TIMBER PILES SHALL BE FULLY EXTRACTED BY DIRECT PULLING WITH A CRANE BARGE OR VIBRATORY HAMMER. HYDRAULIC WATER JETTING WILL NOT BE ALLOWED. REMAINING PILE HOLES SHALL BE FILLED WITH CLEAN SAND. IF AN EXISTING PILE CAN NOT BE EXTRACTED, THE PILE SHALL BE CUT 2- FEET BELOW THE MUDLINE AND CAPPED WITH CLEAN SAND OR COVERED WITH A PLASTIC OR STEEL CAP TO INSURE THAT CHEMICALS FROM THE EXISTING PILE DO NOT LEACH INTO THE ADJACENT SEDIMENTS. EXTRACTED PILES WILL BE CUT INTO FOUR (4) FOOT LENGTHS PRIOR TO DISPOSAL.

PROPOSED MARINA FOR
PRIVATE BOAT MOORAGE
IN: GIG HARBOR
AT: CITY OF GIG HARBOR
COUNTY: PIERCE
STATE: WASHINGTON
APPL BY: RAINIER YACHT HARBOR, LLC
SHEET: 13 OF 17 DATE: 8/23/2005
REV:

EXHIBIT # 55

20 / 24



MHW=11.00' &
MHHW=11.80' AT
FACE OF EX BLKHD

**PROPOSED EXISTING BLDG
FLOOR PLAN RENOVATION**
PROPOSED EXISTING NET SHED BLDG TO
BE CONVERTED TO MARINA CLUBHOUSE



**PROPOSED MARINA FOR
PRIVATE BOAT MOORAGE**
 IN: GIG HARBOR
 AT: CITY OF GIG HARBOR
 COUNTY: PIERCE
 STATE: WASHINGTON
 APPL BY: RAINIER YACHT HARBOR, LLC
 SHEET: 14 OF 17 DATE: 8/23/2005
 REV:

Ex 41817 #55

21/29

EXHIBIT K

7/25/05

ORDINANCE NO. 1008

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2
M
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6

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING; ADDING A NEW SECTION 17.04.367 DEFINING FOOTPRINT; AMENDING 17.04.360 FLOOR AREA; AMENDING GHMC SECTION 17.46.040 LIMITING THE SIZE OF STRUCTURES IN THE WATERFRONT RESIDENTIAL (WR) DISTRICT; AMENDING GHMC SECTION 17.48.040 LIMITING THE SIZE OF STRUCTURES IN THE WATERFRONT MILLVILLE (WM) DISTRICT; AND AMENDING GHMC SECTION 17.50.040 LIMITING THE SIZE OF STRUCTURES IN THE WATERFRONT COMMERCIAL (WC) DISTRICT.

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WHEREAS, the City Council has conducted an in-depth review of development along the waterfront in Gig Harbor, which has been detailed in several recently passed ordinances, including Ordinance 965 (imposing a moratorium on development in the waterfront and height restriction area) and ordinances continuing and terminating the moratorium; and

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16

WHEREAS, the City Council's consideration of development along the Gig Harbor waterfront led to the adoption of Ordinance No. 995 regulating building size; and

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WHEREAS, upon further investigation, the Council recognized that the Waterfront Residential (WR), Waterfront Millville (WM), and Waterfront Commercial (WC) zones do not regulate building size consistently; and

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WHEREAS, the City Council in their meeting of April 25, 2005 directed that the Planning Commission make recommendations regarding building size limitations in the waterfront zones, and;

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24

WHEREAS, the directive from Council was to maintain the scale and character of the waterfront areas, to consider the mass and scale of structures, and the existing pattern of development; and

EXHIBIT # 17

1 / 157

1 WHEREAS, based on these considerations the building size of structures in all
2 waterfront zones needed to be addressed; and

3 WHEREAS, the Waterfront Residential (WR) zone included no building size
4 limitations for residential or commercial structures, and;

5 WHEREAS, the Waterfront Millville (WM) zone included no building size
6 limitations for residential structures including single family, duplex and multi-family, and;

7 WHEREAS, in the Waterfront Residential (WR) and Waterfront Millville (WM)
8 zones measuring building size by gross floor area is in keeping with the nature and
9 character of the zones, and;

10 WHEREAS, in the Waterfront Commercial (WC) zone measuring building size by
11 footprint and gross floor area per structure is consistent with the nature and character of
12 the zone, and;

13 WHEREAS, the existing code refers to "footprint" but does not provide a
14 definition; and

15 WHEREAS, the code defines "floor area" but calculates building size based on
16 "gross floor area"; and

17 WHEREAS, "floor area" does not include areas constructed for and designated
18 as a garage area (it also does not include accessory water tanks and cooling towers,
19 mechanical equipment, or unfinished attics regardless of headroom), which may result
20 in the development of excessively large structures that are incompatible with other
21 structures in the same zone; and

22 WHEREAS, in order to maintain the size and scale of structures in the WR and
23 WM zones, and because of the natural beauty of the harbor views and vistas to and

EXHIBIT #17

2/8 78

1 from the water should be preserved and developed by the city and private parties alike
2 (Comprehensive Plan, adopted 2004, 9.3.9 Views and Natural Features, page 9-4)
3 garage areas in these zones need to be included in the building size calculations; and

4 WHEREAS; in the WC zone due to the more intense uses allowed in the zone,
5 there is benefit to exclude garage areas from the calculation of building size; and

6 WHEREAS, the City's Shoreline Master Program does not require residential
7 development to provide public shoreline access opportunities; and

8 WHEREAS, the City's Design Manual does not require residential development
9 to provide common areas; and

10 WHEREAS, non-residential uses in the WC zone be should encouraged by
11 allowing more gross square footage than residential uses in order to encourage
12 commercial development, thus increasing the likelihood of public shoreline access
13 opportunities and common areas; and

14 WHEREAS, the proposed text amendment is consistent with the goals,
15 objectives, and policies of the Comprehensive Plan; and

16 WHEREAS, the City's SEPA Responsible Official issued a Determination of Non-
17 Significance for the proposed text amendment on February 17, 2005, pursuant to WAC
18 197-11-350; and

19 WHEREAS, the City's Planning Manager forwarded a copy of this Ordinance to
20 the Washington State Department of Trade and Community Development on June 6,
21 2005, requesting expedited review, pursuant to RCW 36.70A.106; and

EXHIBIT # 17

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1 WHEREAS, the City Planning Commission held a public hearing on this
2 Ordinance on June 30, 2005, and made a recommendation of approval to the City
3 Council; and

4 WHEREAS; the City Council considered this Ordinance during its regular City
5 Council meetings of July 11th and July 25th, 2005, Now, Therefore,

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

8 Section 1. A new Section 17.04.367 of the Gig Harbor Municipal Code is hereby
9 adopted to read as follows:

10 17.04.367 Footprint

11 "Footprint" of a structure or building shall be measured from the outer
12 perimeter excluding eave overhangs and other cantilevered portions projecting
13 no more than 18 inches and no wider than 10 feet. The footprint of a structure or
14 building shall not include any portions that are completely below ground.

15 Section 2. Section 17.04.360 of the Gig Harbor Municipal Code is hereby
16 amended as follows:

17 17.04.360 Gross Floor Area.

18 "Gross Floor Area" means the sum of the horizontal area of the several floors of
19 a building or buildings measured from the exterior faces of exterior walls and
20 from center lines of division walls. The gross floor area includes basement
21 space, garage space, the elevator shafts and stairwells at each floor, mechanical
22 equipment rooms, finished attics with a headroom of seven and one-half feet or
23 more, penthouse floors, interior balconies and mezzanines, and enclosed
24 porches. The gross floor area shall not include accessory water tanks and
25 cooling towers, mechanical equipment, and unfinished attics regardless of
26 headroom, ~~nor areas constructed for and designated as a garage area.~~

27 Section 3. Section 17.48.040 (WM Development Standards) of the Gig Harbor
28 Municipal Code is hereby amended to read as follows:

29 17.48.040 Development standards.

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

EXHIBIT # 17

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	Single-family Dwelling	Attached up to 4 units	Non-residential
A. Minimum lot area (sq/ft) ¹	6,000	6000/unit	15,000
B. Minimum lot width	50'	100'	100'
C. Minimum front yard ²			
D. Minimum side yard ²			
E. Minimum rear yard ²			
F. Minimum yard abutting tidelands	0'	0'	0'
G. Maximum site impervious coverage	50%	55%	70%
H. Density ³	4 dwelling units per acre		
I. Maximum gross floor area including garages, attached and detached	N/A 3,500 square feet per lot	N/A 3,500 square feet per lot	3,500 square feet per lot
J. Separation between structures	20'	20'	20'

- 12 ¹An undersized lot or parcel shall qualify as a building site if such lot is a lot of record.
 13
 14 ²The setbacks of GHMC 17.99.310 and 17.99.320 are applicable in the WM district.
 15
 16 ³Density bonus of up to 30 percent may be granted subject to the requirements of Chapter 17.89 GHMC (Planned Residential Development)
 17

18 Section 4. Section 17.50.040 (WC Development Standards) of the Gig Harbor Municipal Code is hereby amended to read as follows:
 19

20 17.50.040 Development standards.
 21 In a waterfront commercial district, the minimum development requirements are
 22 as follows:

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	Single-family Dwelling	Attached up to 4 units	Non-residential
A. Minimum lot area (sq/ft) ¹	6,000	6,000/unit	15,000
B. Minimum lot width	50'	100'	100'
C. Minimum front yard ²			
D. Minimum side yard ²			
E. Minimum rear yard ²			
F. Minimum yard abutting tidelands	0'	0'	0'
G. Maximum site impervious coverage	50%	55%	70%
H. Maximum Density	4 dwelling units per acre		
I. Maximum footprint / gross floor area	3,000 square feet max gross floor area per structure	3,000 square feet max footprint/ 6,000 square feet gross floor area per structure	3,000 square feet max footprint/ 6,000 square feet gross floor area per structure
J. Separation between structures ³	20'	20'	20'

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

EXHIBIT # 17

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1
2 ²The setbacks of GHMC 17.99.310 and 17.99.320 are applicable in the WC district.

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4
5 ³Separation between structures is not required upon lots or parcels within the Finholm Marketplace portion of the WC district which contain multiple structures and/or which abut the DB (downtown business) district.

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12 I-K. Maximum impervious lot coverage may be increased up to a maximum of 80 percent upon execution of a written agreement with the city and the property owner; and provided further, that the agreement is filed with the county auditor as a covenant with the land, when the development provides for waterview opportunities and/or waterfront access opportunities in conjunction with commercial uses, as follows:

13 Section 5. Section 17.50.045 of the Gig Harbor Municipal Code is hereby
14 repealed.

15 Section 6. Section 17.46.040 (WR Development Standards) of the Gig Harbor
16 Municipal Code is hereby amended to read as follows:

17 17.46.040 Development standards.
18 A minimum lot area for new subdivisions is not specified. The minimum
19 development standards are as follows:

20

	Single-family Dwelling	Duplex	Non-residential
21 A. Minimum lot area (sq/ft) ¹	7,000	14,000	12,000
22 B. Minimum lot width	70'	50'	50'
23 C. Minimum front yard ²			
24 D. Minimum side yard ²			
25 E. Minimum rear yard ²			
26 F. Minimum yard abutting tidelands	0'	0'	0'
27 G. Maximum site impervious coverage	40%	45%	50%
28 H. Density ³	4 dwelling units per acre		
29 I. Maximum gross floor area including garages, attached and detached	4,000 square feet per lot	4,000 square feet per lot	4,000 square feet per lot

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

31
32 ²The setbacks of GHMC 17.99.310 and 17.99.320 are applicable in the WR district.

33
34 ³Density bonus of up to 30 percent may be granted subject to the requirements
35 of Chapter 17.89 GHMC, Planned residential district.

36 Section 7. Severability. If any section, sentence, clause or phrase of this
37 Ordinance is held to be invalid or unconstitutional by a court of competent
38 jurisdiction, such invalidity or unconstitutionality shall not affect the validity or
39 constitutionality of any other section, clause or phrase of this Ordinance.

EXHIBIT # 17

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1 Section 8. Effective Date. This Ordinance shall take effect and be in full force
2 five (5) days after passage and publication of an approved summary consisting of
3 the title.

4 PASSED by the City Council and approved by the Mayor of the City of Gig
5 Harbor this 25th day of July, 2005.

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7
8
CITY OF GIG HARBOR


GRETCHEN WILBERT, MAYOR

9 ATTEST/AUTHENTICATED:

10 By: 
MOLLY TOWSLEE, City Clerk

11 APPROVED AS TO FORM:
12 OFFICE OF THE CITY ATTORNEY

13 By: 
14 CAROL A. MORRIS

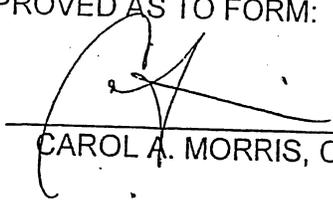
15 FILED WITH THE CITY CLERK: 7/6/06
16 PASSED BY THE CITY COUNCIL: 7/25/05
17 PUBLISHED: 8/3/05
18 EFFECTIVE DATE: 8/8/05
19 ORDINANCE NO: 1008

EXHIBIT # 17

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1 APPROVED AS TO FORM:

2

By: 

3

CAROL A. MORRIS, CITY ATTORNEY

4

FIRST READING: 7/11/05

5

DATE PASSED: 7/25/05

6

DATE OF PUBLICATION: 8/3/05

7

EFFECTIVE DATE: 8/8/05

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EXHIBIT # 17

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144

EXHIBIT L



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

November 2, 2005

Ms. Kristin Moerler
City of Gig Harbor
Community Development Department
3510 Grandview Street
Gig Harbor, WA 98335

Re: Burton and Steel Residential Proposals

Dear Ms. Moerler:

- 1 This letter follows my e-mail message sent to you on October 27, 2005, and is a hardcopy
2 of the comments sent in late that afternoon.
- 3 Mr. Bob Frisbie and Mr. Richard Allen contacted me regarding these proposals taking
4 place on adjacent parcels. Their question largely had to do with the applicability of the
5 single-family residential exemption under the Shoreline Management Act as it pertains to
6 the proposal that is currently before the City.
- 7 I have reviewed the documents they have which I believe they obtained from the City's
8 files. As I understand it, both proposals involve two floors of residential space and an
9 underground parking garage. Development of both sites will require a significant amount
10 of grading and they are asking whether Ecology considers grading in excess of 250 cubic
11 yards as needing a Shoreline Substantial Development Permit.
- 12 We have historically advised local governments that grading which exceeds 250 cubic
13 yards, does trigger the need for a Substantial Development Permit and **does not meet the**
14 **exemption criteria** for construction of a single family residence as defined by the state in
15 our rule WAC 173-27-040(2)(g) and in RCW 90.58 030(3)(e)(vi). This 250 cubic yard
16 quantity listed as a normal appurtenance is over and above any grading that might be
17 required to install a septic system and drainfield. It is my understanding that the grading
18 proposed is approximately 1500 cubic yards per lot.
- 19 I have received a number of shoreline permits from a variety of local jurisdictions for this
20 very sort of proposal. The home itself was exempt but the preparation of the lot,
21 involving significant quantities of grading triggered the need for a permit.



- 1 As a final point, I am hard pressed to believe that a 17-car garage, or even a 14-car
2 garage, meets the true intent of a garage as a "normal appurtenance" to a single family
3 residence. If the intent is to ultimately use those parking garages to serve a future marina,
4 it would appear that this project is coming in a piecemeal fashion and is inconsistent with
5 the policies of the Shoreline Management Act (see RCW 90.58.020) which was
6 promulgated for that very reason.
- 7 Please feel free to contact me at (360) 407-6520, or by e-mail at kvan461@ecy.wa.gov, if
8 you have any questions.

Sincerely,



Kim Van Zwalenburg
Shoreline Specialist
Shorelands and Environmental
Assistance Program

KV:dn

cc: Richard Allen & Bob Frisbie
John Vodopich, Gig Harbor Community Development Director

Exhibit # 2

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EXHIBIT M



COMMUNITY DEVELOPMENT DEPARTMENT

REVISED NOTICE OF DECISION
DENIAL OF SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT
EXEMPTION

A Notice of Decision was issued in November 2, 2005, to Rainier Yacht Harbor, LLC for the denial of the Shoreline Substantial Development Permit Exemption Request for the Burton Residence and Steel Residence. This revision supersedes the Notice of Decision issued on November 2, 2005.

Date: November 7, 2005
Applicant: Rainier Yacht Harbor, LLC
Bruce Steel, Managing Member
Norpoint Communities
2323 North 31st Street, Suite 200
P.O. Box 875
Tacoma, WA 98401
Re: Shoreline Exemption Requests (EXP 05-837 and EXP 05-836)

I. Findings of Fact. The applicant has submitted the following facts in support of a request for a shoreline substantial development permit exemption for the single family residences located at 3525 and 3555 Harborview Drive:

- 1. The residence located at 3525 Harborview Drive will be constructed for the use of Mike Burton and his family, for use as a single family residence and garage appurtenant to a single family residence, as allowed under WAC 173-27-040(g).
2. The residence located at 3555 Harborview Drive will be constructed for the use of Bruce Steel and his family, for use as a single family residence and garage appurtenant to a single family residence, as allowed under WAC 173-27-040(g).
3. The two residences do not exceed a height of 35 feet above average grade level.
4. Grading on site for the garages appurtenant to the proposed single family residences exceeds 1500 cubic yards of material for each residence.
5. On November 2, 2005, the City received a letter from Kim Van Zwalenburg of the Department of Ecology, which provides DOE's interpretation of WAC 173-27-040(g) that any grading exceeding 1500 250 cubic yards of material for a single family residence requires a shoreline substantial development permit. This letter includes additional rationale for DOE's opinion that a shoreline substantial development permit is required.

II. Conclusions.
EXHIBIT # 10
HEX EXHIBIT# 10
APPEAL NOS. 05-1097,05-1143, 05-1144

Threshold Decision: Permit is exempt from SEPA per WAC 197-11-800(1)(b)(i)

Based on WAC 173-27-040(g), grading for a single family residence which exceeds 1500 2
250 cubic yards of material requires a shoreline substantial development permit. The permit 3
application materials demonstrate that grading for each single family residence associated with 4
the construction of the large garages exceeds 1500 cubic yards of material. The requests for 5
exemptions EXP 05-837 and EXP 05-836 are denied. The applicant is required to submit 6
shoreline substantial development permit applications for the development(s). 7

III. Appeals.

This decision may be administratively appealed to the Gig Harbor Hearing Examiner 8
pursuant to the procedures in Section 4.10 of the City's Shoreline Master Program, within ten 9
days following the issuance of this Notice of Decision. 10
11

IV. Distribution.

This Notice of Decision shall be provided to the following persons:

Rainier Yacht Harbor, LLC
Bruce Steel, Managing Member
P.O. Box 875
Tacoma, WA 98401

Richard B. Allen and
Bob Frisbie
3603 Ross Avenue
Gig Harbor WA 98332

Lita Dawn Stanton
111 Raft Island
Gig Harbor WA 98335

Kim Van Zwalenburg
Shoreline Specialist
Department of Ecology - Southwest
Regional Office
PO Box 47775
Olympia WA 98504-7775

Chuck Hunter
8829 Franklin Avenue
Gig Harbor WA 98332

Pierce County Assessor
2401 South 35th Street Room 142
Tacoma, WA 98409

Tomi Kent Smith
3414 Harborview Drive
Gig Harbor WA 98332

Peter Katich
3509 Ross Avenue
Gig Harbor WA 98332

V. RCW 36.70B.130 requires that every Notice of Decision state that affected property
owners may request a change in valuation for property tax purposes notwithstanding any
program of revaluation.

Date

11/7/05

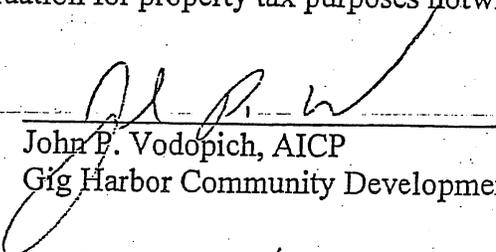

John P. Vodopich, AICP
Gig Harbor Community Development Director

EXHIBIT #10

2/2 129

EXHIBIT N



COMMUNITY DEVELOPMENT DEPARTMENT

REVISED NOTICE OF DECISION DENIAL OF SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT EXEMPTION

A Notice of Decision was issued in November 2, 2005, to Rainier Yacht Harbor, LLC for the denial of the Shoreline Substantial Development Permit Exemption Request for the Burton Residence and Steel Residence. **This revision supersedes the Notice of Decision issued on November 2, 2005.**

Date: November 7, 2005
Applicant: Rainier Yacht Harbor, LLC
Bruce Steel, Managing Member
Norpoint Communities
2323 North 31st Street, Suite 200
P.O. Box 875
Tacoma, WA 98401
Re: *Shoreline Exemption Requests (EXP 05-837 and EXP 05-836)*

I. Findings of Fact. The applicant has submitted the following facts in support of a request for a shoreline substantial development permit exemption for the single family residences located at 3525 and 3555 Harborview Drive:

1. The residence located at 3525 Harborview Drive will be constructed for the use of Mike Burton and his family, for use as a single family residence and garage appurtenant to a single family residence, as allowed under WAC 173-27-040(g).
2. The residence located at 3555 Harborview Drive will be constructed for the use of Bruce Steel and his family, for use as a single family residence and garage appurtenant to a single family residence, as allowed under WAC 173-27-040(g).
3. The two residences do not exceed a height of 35 feet above average grade level.
4. Grading on site for the garages appurtenant to the proposed single family residences exceeds 1500 cubic yards of material for each residence.
5. On November 2, 2005, the City received a letter from Kim Van Zwalenburg of the Department of Ecology, which provides DOE's interpretation of WAC 173-27-040(g) that any grading exceeding 1500 250 cubic yards of material for a single family residence requires a shoreline substantial development permit. This letter includes additional rationale for DOE's opinion that a shoreline substantial development permit is required.

II. Conclusions.

HEX EXHIBIT# 144
APPEAL NOS. 05-1097,05-1143, 05-1144

Threshold Decision: Permit is exempt from SEPA per WAC 197-11-800(1)(b)(i)

Based on WAC 173-27-040(g), grading for a single family residence which exceeds ~~1500~~ 250 cubic yards of material requires a shoreline substantial development permit. The permit application materials demonstrate that grading for each single family residence associated with the construction of the large garages exceeds 1500 cubic yards of material. The requests for exemptions EXP 05-837 and EXP 05-836 are denied. The applicant is required to submit shoreline substantial development permit applications for the development(s).

III. Appeals.

This decision may be administratively appealed to the Gig Harbor Hearing Examiner pursuant to the procedures in Section 4.10 of the City's Shoreline Master Program, within ten days following the issuance of this Notice of Decision.

IV. Distribution.

This Notice of Decision shall be provided to the following persons:

Rainier Yacht Harbor, LLC
Bruce Steel, Managing Member
P.O. Box 875
Tacoma, WA 98401

Richard B. Allen and
Bob Frisbie
3603 Ross Avenue
Gig Harbor WA 98332

Lita Dawn Stanton
111 Raft Island
Gig Harbor WA 98335

Kim Van Zwalenburg
Shoreline Specialist
Department of Ecology - Southwest
Regional Office
PO Box 47775
Olympia WA 98504-7775

Chuck Hunter
8829 Franklin Avenue
Gig Harbor WA 98332

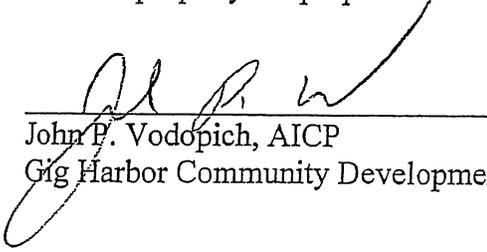
Pierce County Assessor
2401 South 35th Street Room 142
Tacoma, WA 98409

Peter Katich
3509 Ross Avenue
Gig Harbor WA 98332

V. RCW 36.70B.130 requires that every Notice of Decision state that affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.

Date

11/7/05


John P. Vodopich, AICP

Gig Harbor Community Development Director

EXHIBIT O



COMMUNITY DEVELOPMENT DEPARTMENT

2nd REVISED NOTICE OF DECISION DENIAL OF SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT EXEMPTION

Date: January 11, 2006
Applicant: Rainier Yacht Harbor, LLC
Bruce Steel, Managing Member
Norpoint Communities
2323 North 31st Street, Suite 200
P.O. Box 875
Tacoma, WA 98401
Re: *Shoreline Exemption Requests (EXP 05-837 and EXP 05-836)*

I. Findings of Fact.

A. The applicant has submitted the following facts in support of a request for a shoreline substantial development permit exemption for the single family residences located at 3525 and 3555 Harborview Drive:

1. The residence located at 3525 Harborview Drive will be constructed for the use of Mike Burton and his family, for use as a single family residence and garage appurtenant to a single family residence, as allowed under WAC 173-27-040(g). This residence is 4,258 square feet in size, with a basement garage of 3,650 square feet.
2. The residence located at 3555 Harborview Drive will be constructed for the use of Bruce Steel and his family, for use as a single family residence and garage appurtenant to a single family residence, as allowed under WAC 173-27-040(g). This residence is 4,917 square feet in size, with a basement garage of 5,150 square feet.
3. The two residences do not exceed a height of 35 feet above average grade level.
4. There is a proposed driveway that will provide access to the garages of both single-family residences and a commercial fishing dock that is partially on the lot at 3525 Harborview Drive. The proposed driveway will access Harborview Drive along the west boundary of 3555 Harborview Drive, run down the west boundary line and the bulkhead. The driveway extends almost the entire north side of the property with the exception of about 50 feet. The driveway will be concrete and 20 feet wide.

The file shows that the driveway provides access to the Burton and Steel residences through a Joint Use and Maintenance Covenant (Recording No. 2005070080293 5 PGS, recorded on 7-8-05), and lists the “common amenities” to the properties as “driveway and road access easement,” among other things. The owner of the Burton and Steel properties (Rainier Yacht Harbor, L.L.C., purchased the properties subject to a “Declaration of Easement and the Terms and Conditions thereof, dated May 20, 2005 . . .” The Declaration of Easement (Recording No. 200505240604 8 PGS, dated 05-24-05) provides that Rainier Yacht will provide an easement for ingress and egress to the Jerkovichs (the sellers) from Harborview Drive to the existing dock. This easement was required to be 10 feet in width and “to have turning radiuses (sic) sufficient to allow vehicular and trailer ingress and egress from Harborview Drive to the dock, and is intended to include, without limitation, commercial uses relating to the fishing and maritime industries.”

B. On November 2, 2005, the City received a letter from Kim Van Zwalenburg of the Department of Ecology, which provides DOE’s interpretation of RCW 90.58.030(3)(e)(vi) and WAC 173-27-040(2)(g) that the garages associated with the two single family residences are not normal appurtenances to a single family residence, and as a result, the exemption should be denied.

C. On November 2, 2005, the City of Gig Harbor issued a Notice of Decision of Denial of Shoreline Substantial Development Permit Exemption. In this Decision, the City based the Denial on the grading, and referenced the portion of the letter from Ms. Zwalenburg, which related to Section B above.

D. On November 7, 2005, the Notice of Decision was revised to correct a typographical error in the Findings of Fact. The Decision was unchanged.

E. On January 5, 2006, Kim Van Zwalenburg sent an e-mail to Bill Lynn, attorney for the applicants. In that e-mail, Ms. Zwalenburg recollected a conversation that she had with Mr. Lynn, discussing the fact that the garages are proposed to be constructed in a manner that will accommodate large numbers of vehicles. Ms. Zwalenburg states that Mr. Lynn informed her that the garages will “likely be used by the owner for a variety of purposes.”

F. On January 10, 2006, in response to questioning from the City staff, at least four Community Development Directors/Planning Directors from nearby cities stated that they had never seen any garages of this size associated with single family residences that could compare with the proposed Steel and Burton Residences.

II. Conclusions.

Threshold Decision: Permit is exempt from SEPA per WAC 197-11-800(1)(b)(i).

The garages associated with the single-family residences are extraordinarily large, and will accommodate parking of many vehicles. It has been estimated that the garages

will accommodate somewhere from 14-17 vehicles. In the recollection of the past Gig Harbor Planning Director, Planning Manager and the existing Community Development Director, the garages associated with these applications are larger than any other garages proposed for any other single-family residence in the City of Gig Harbor.

The applicant proposes to construct a driveway that will not only provide access to these garages, but also provide access to a third party. This third party will be utilizing the driveway for vehicular and trailer ingress and egress, in order to access the dock. A recorded easement memorializes the fact that the use of the driveway by this third party “is intended to include, without limitation, commercial uses relating to the fishing and maritime industries.”

RCW 59.58.030(3)(e)(vi) and WAC 173-27-040(2)(g) create an exemption for construction of single family residences on shorelands. The construction must be by an owner, lessee or contract purchaser for their own use or the use of their family. A “single family residence” is a detached dwelling designed for and occupied by one family, including those structures and developments with a contiguous ownership which are a normal appurtenance. An appurtenance must be connected to the use and enjoyment of a single-family residence. “Normal appurtenances” include a garage and driveway.

A garage that would accommodate 14-17 vehicles (or even more than 4) is not a normal appurtenance to a single-family residence. The driveway will provide access to the garages in both residences, and also be used for commercial purposes by a third party. Use of the driveway for commercial purposes is not connected to the use and enjoyment of a single-family residence.

III. Decision. The exemption from the requirement to obtain a shoreline substantial development permit is denied. The applicant must obtain a shoreline substantial development permit. The conclusions in this Decision shall supercede the conclusions set forth in the Notice of Decision issued on November 2, 2005, as revised on November 7, 2005.

IV. Appeals.

This decision may be administratively appealed to the Gig Harbor Hearing Examiner pursuant to the procedures in Section 4.10 of the City’s Shoreline Master Program, within ten days following the issuance of this Notice of Decision.

V. Distribution.

This Notice of Decision shall be provided to the following persons:

Rainier Yacht Harbor, LLC
Bruce Steel, Managing Member
P.O. Box 875
Tacoma, WA 98401

Richard B. Allen and
Robert Frisbie
3603 Ross Avenue
Gig Harbor, WA 98332

Lita Dawn Stanton
111 Raft Island
Gig Harbor, WA 98335

Kim Van Zwalenburg
Shoreline Specialist
Department of Ecology
S.W. Regional Office
P.O. Box 47775
Olympia, WA 98504-7775

Chuck Hunter
8829 Franklin Avenue
Gig Harbor, WA 98332

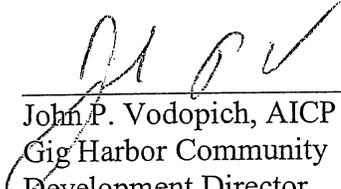
Pierce County Assessor
2401 South 35th Street Room 142
Tacoma, WA 98409

Toni Kent Smith
3414 Harborview Drive
Gig Harbor, WA 98332

Peter Katich
3509 Ross Avenue
Gig Harbor, WA 98332

VI. Compliance with law. RCW 36.70B.130 requires that every Notice of Decision state that affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.

1/11/06
Date



John P. Vodopich, AICP
Gig Harbor Community
Development Director

EXHIBIT P

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BEFORE THE HEARING EXAMINER OF
THE CITY OF GIG HARBOR

In the Matter of the Appeal of Notice of
Decision of the Denial of Shoreline
Substantial Development Permit Exemptions
(EXP 05-837 and ESP 836.

Case No.: _APP 05-1097

DECLARATION OF
JOHN P. VODOPICH
IN SUPPORT OF
CITY'S DENIAL OF SHORELINE
SUBSTANTIAL DEVELOPMENT
PERMIT EXEMPTION

JOHN P. VODOPICH declares as follows:

- 1. I am over the age of 18 years, not a party to the above-entitled appeal, and competent to be a witness herein.
- 2. I am the City of Gig Harbor Community Development Director. I have held this position since January, 2002. From October 2000 to December 2001, I was the Director of Planning and Building Services for the City. Prior to that time, during the period of 1991 to 2000, I was the employed by Kitsap County as a Planner II, Planner III, Manager of the Planning Division, and ultimately Assistant Director of the Department of Community Development. Between 1987 and 1991, I was the employed by Chelan County in the Planning Department serving as a Plans Administrator and Associate Planner.

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HEX EXHIBIT# 156
APPEAL NOS. 05-1097,05-1143, 05-1144

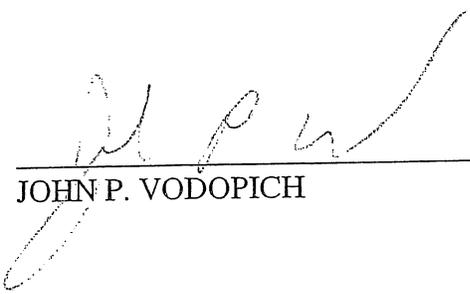
1 3. I have reviewed the building permit applications submitted by Rainier Yacht
2 Club for the Steel and Burton residences. These applications have been submitted for what
3 is described as two single-family homes, located along the waterfront. The first home¹ is
4 4,258 square feet in size, with a basement garage of 3,650 square feet. The second home²
5 is 4,917 square feet in size, with a basement garage of 5,150.

6 4. These applications raised the question under RCW 90.58.030(3)(e)(vi) and
7 WAC 173-27-040(2)(g), whether the applicants should be allowed an exemption for
8 construction of single family residences on shorelines which includes those structures and
9 developments which are a normal appurtenance. It is my understanding that a normal
10 appurtenance is connected to the use and enjoyment of a single family residence, such as a
11 garage.
12

13 5. In all of my years of experience, I have never seen any plans submitted by any
14 applicant for a single family home with basement garages meeting the description above.
15 It is my opinion that basement garages of this size are not "normal appurtenances" to a
16 single family home.

17 I declare that the above is true and correct under penalty of perjury under the laws
18 of the State of Washington.
19

20 January 10, 2006, Gig Harbor, Washington
21 Date and Place



JOHN P. VODOPICH

24 _____
25 ¹ The Burton residence, located at 3525 Harborview Drive.
26 ² The Steel residence, located at 3555 Harborview Drive.

EXHIBIT Q

BEFORE THE HEARING EXAMINER OF
THE CITY OF GIG HARBOR

In the Matter of the Appeal of Notice of
Decision of the Denial of Shoreline
Substantial Development Permit Exemptions
(EXP 05-837 and ESP 836.

Case No.: _APP 05-1097

DECLARATION OF
STEVE OSGUTHORPE
IN SUPPORT OF
CITY'S DENIAL OF SHORELINE
SUBSTANTIAL DEVELOPMENT
PERMIT EXEMPTION

STEVE OSGUTHORPE, declares as follows:

1. I am over the age of 18 years, not a party to the above-entitled appeal, and competent to be a witness herein.
2. I am the Shelton Community & Economic Development Director. I have held this position since April 18, 2005. Prior to that time, and during the years June 2002 – April 2005, I was the Planning and Building Manager for the City of Gig Harbor. Between July 1999 and June 2002, I was the Senior Planner for the City of Puyallup. During February 1992 and July 1999 I was an Associate Planner for the City of Gig Harbor.
3. I understand that plans have been submitted by Rainier Yacht Club for what are described as two single-family homes (Steel and Burton Residences), located along the

DECLARATION OF STEVE OSGUTHORPE

Law Office of
CAROL A. MORRIS, P.C.
P.O. Box 948
Seabeck, WA 98380-0948

HEX EXHIBIT# 157
APPEAL NOS. 05-1097, 05-1143, 05-1144

waterfront in Gig Harbor. I further understand that the first home¹ is 4,258 square feet in size, with a basement garage of 3,650 square feet, and that the second home² is 4,917 square feet in size, with a basement garage of 5,150.

4. These applications raised the question under RCW 90.58.030(3)(e)(vi) and WAC 173-27-040(2)(g), whether the applicants should be allowed an exemption for construction of single-family residences on shorelines which includes those structures and developments constituting a normal appurtenance. It is my understanding that a normal appurtenance is connected to the use and enjoyment of a single-family residence, such as a garage.

5. In all of my years of experience, I have never seen any plans submitted by any applicant for a single family home with basement garages meeting the description above. It is my opinion that basement garages of this size are not "normal appurtenances" to a single family home.

I declare that the above is true and correct under penalty of perjury under the laws of the State of Washington.

1-11-06 Shelton, WA.
Date and Place


STEVE OSGUTHORPE

¹ The Burton residence, located at 3525 Harborview Drive.

² The Steel residence, located at 3555 Harborview Drive.

EXHIBIT R

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BEFORE THE HEARING EXAMINER OF
THE CITY OF GIG HARBOR

In the Matter of the Appeal of Notice of
Decision of the Denial of Shoreline
Substantial Development Permit Exemptions
(EXP 05-837 and ESP 836.

Case No.: _APP 05-1097

DECLARATION OF
RAY GILMORE
IN SUPPORT OF
CITY'S DENIAL OF SHORELINE
SUBSTANTIAL DEVELOPMENT
PERMIT EXEMPTION

RAY GILMORE, declares as follows:

1. I am over the age of 18 years, not a party to the above-entitled appeal, and competent to be a witness herein.
2. I am the Fircrest Planning and Building Director. I have held this position since February of 2005. Prior to that time, and during the years 2000-2004, I was the Community Development Director for the City of Sammamish. Between 1989 and 2000, I was the Gig Harbor Planning Director. During 1979 through 1989, I was the Clallam County Planning Manager and Shoreline Administrator.
3. It is my understanding that a development is being proposed in Gig Harbor, which is described as two single-family homes, located along the waterfront. The first

EXHIBIT# 158
PEAL NOS. 05-1097, 05-1143, 05-1144

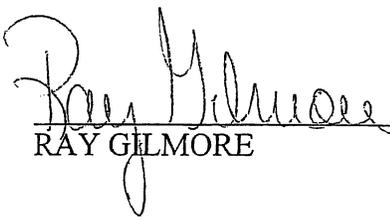
1 home¹ is 4,258 square feet in area, with a basement garage of 3,650 square feet. The
2 second home² is 4,917 square feet in area, with a basement garage of 5,150 square feet.

3 4. It is my understanding that a question has arisen whether the proposed basement
4 garages are "normal appurtenances" to a single family home.

5 5. In all of my years of experience, I have never seen any plans submitted by any
6 applicant for a single family home with basement garages meeting the description above.
7 It is my opinion that basement garages of this size are not "normal appurtenances" to a
8 single family home.

9 I declare that the above is true and correct under penalty of perjury under the laws
10 of the State of Washington.

11
12 H-10-06
13 Date and Place

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15 
16 RAY GILMORE

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25 ¹ The Burton residence, located at 3525 Harborview Drive.

26 ² The Steel residence, located at 3555 Harborview Drive.

EXHIBIT S

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BEFORE THE HEARING EXAMINER OF
THE CITY OF GIG HARBOR

In the Matter of the Appeal of Notice of
Decision of the Denial of Shoreline
Substantial Development Permit Exemptions
(EXP 05-837 and ESP 836.

Case No.: _APP 05-1097

DECLARATION OF
CHRIS HUGO
IN SUPPORT OF
CITY'S DENIAL OF SHORELINE
SUBSTANTIAL DEVELOPMENT
PERMIT EXEMPTION

CHRIS HUGO, declares as follows:

1. I am over the age of 18 years, not a party to the above-entitled appeal, and
competent to be a witness herein.

2. I am the Bremerton Director of Community Development. I have held this
position since Dec., 2000. During the prior 22 years, I held the positions of Zoning
Administrator, Neighborhood Planning Program Manager, and Growth Planning Manager
in the City of Spokane. In total, I have been employed in the planning profession for 31
years and have reviewed thousands of development projects in that time.

3. I have been informed that Gig Harbor has received two applications for a
shoreline substantial permit exemption for what is described as two single-family homes,

EXHIBIT# 159
APPEAL NOS. 05-1097,05-1143, 05-1144

1 located along the waterfront. The first home¹ is 4,258 square feet in size, with a basement
2 garage of 3,650 square feet. The second home² is 4,917 square feet in size, with a
3 basement garage of 5,150.

4 4. These applications have raised the question under the Shoreline Management
5 Act and the administrative rules interpreting the Act, whether the applicants should be
6 allowed an exemption for construction of single-family residences on shorelines. This
7 exemption is allowed for those structures and developments constituting a normal
8 appurtenance to a single family residence. One normal appurtenance connected to the use
9 and enjoyment of a single family residence is a garage.
10

11 5. In all of my years of code administration in several local jurisdictions, I have
12 never seen any plans submitted by any applicant for a single family home with basement
13 garages meeting the description above. It is my opinion that basement garages of this size
14 are not "normal appurtenances" to a single family home.

15 I declare that the above is true and correct under penalty of perjury under the laws
16 of the State of Washington.

17
18 1/11/06 Bremerton, WA
19 Date and Place

20
21 Chris Hugo
CHRIS HUGO
22

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25 ¹ The Burton residence, located at 3525 Harborview Drive.

26 ² The Steel residence, located at 3555 Harborview Drive.

STATE OF WASHINGTON
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BY _____
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THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

CITY OF GIG HARBOR, a Washington
municipal corporation,

Respondents,

vs.

RAINIER YACHT HARBOR, a Washington
municipal corporation,

Appellant.

Superior Court No. 06-2-05725-8
Court of Appeals No. 36201-5-II
DECLARATION OF SERVICE

CAROL A. MORRIS, declares as follows:

1. I am over the age of 18 years and competent to make this Declaration.
2. On September 26, 2007, I placed the following documents in the U.S. Mail, postage prepaid, first class: City of Gig Harbor Respondent's Brief, addressed to:

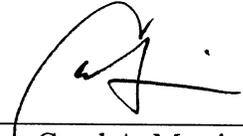
Margaret Archer
Bill Lynn
1201 Pacific Avenue, Suite 2100
Tacoma, WA 98401

Robert Frisbie
9270 Woodworth Avenue
Gig Harbor, WA 98332-1049

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I declare that the above is true and correct under penalty of perjury under the laws of the State of Washington.

Date and Place: 9-26-07
Big Harbor WA

By 

Carol A. Morris