

CONTRACT FOR SERVICES

Between
PACIFIC COUNTY, WASHINGTON
And
THE PORT OF WILLAPA HARBOR

THIS CONTRACT is made between Pacific County – P.O. Box 187, South Bend, Washington, 98586-0187 (the “COUNTY”), and The Port of Willapa Harbor – 1725 Ocean Avenue, Raymond, Washington 98577 (the “RECIPIENT”).

WHEREAS, to foster and retain economic viability of the Pacific County community, the RECIPIENT desires to redevelop the Tokeland Marina by constructing a new breakwater/transient float, public restrooms and marina office, reconstruct the commercial pier as well as other improvements to support both the local recreation/tourism and commercial fishing and aquaculture industries; and

WHEREAS, the RECIPIENT’S Tokeland Marina Redevelopment Project meets the definition of a project eligible for public facility funding as defined by Chapter 82.14.370 RCW; and

WHEREAS, the RECIPIENT’S Tokeland Marina Redevelopment Project implements the economic development purposes identified in Chapter 82.14.370 RCW by expanding economic development opportunities and promoting job creation and retention in Pacific County; and

WHEREAS, the RECIPIENT’S Tokeland Marina Redevelopment Project will require substantial financial support from multiple sources; and

WHEREAS, the RECIPIENT’S Tokeland Marina Redevelopment Project is listed on the Pacific County WACERT project ranking list and/or the Overall Economic Development Plan; and

WHEREAS, RCW 82.14.370 provides statutory authority for rural (distressed) counties to impose sales and use taxes to finance public facilities in rural counties as deductions from the tax otherwise required to be collected or paid over to the state department of revenue under chapters 82.08 or 82.12 RCW; and

WHEREAS, finding Pacific County to be a rural “distressed county” in need of public facilities, the Board of Pacific County Commissioners enacted Ordinance No. 148 which imposed a sales and use tax under RCW 82.14.370(1) for twenty-five (25) years at the rate of four one-hundredths percent (0.04%) effective July 1, 1998, and established the Public Facilities Improvements Fund No. 126 within the COUNTY treasury to finance public facilities within Pacific County; and

WHEREAS, finding Pacific County a “rural county” in need of additional “public facilities” financing, the Board of County Commissioners enacted Ordinance No. 148-A increasing the locally retained sales and use tax rate under Ordinance No. 148 to eight one-hundredths percent (0.08%) effective August 1, 1999, and subsequently the Board of County Commissioners enacted Ordinance No. 148-B further increasing the locally retained sales and use tax rate under Ordinance No. 148A to nine one-hundredths percent (0.09%) effective August 1, 2007; and

WHEREAS, the COUNTY has the statutory authority under RCW 82.14.370 to assist with financing public facilities throughout Pacific County; and

WHEREAS, the COUNTY desires to financially assist the RECIPIENT with its Project; and

WHEREAS, the COUNTY has authorized expenditure of funds retained from sales and use taxes as per RCW 82.14.370 on this project following a public review process, and

WHEREAS, the Pacific County Council of Governments has reviewed applications for public facility funding, and has recommended that this project be provided with public facility financial assistance from the County; and

WHEREAS, the RECIPIENT wishes to enter into this CONTRACT to perform these services on behalf of Pacific County.

NOW, THEREFORE, in consideration of covenants, conditions, performances and promises hereinafter contained, the parties hereto agree as follows:

1. **FUNDING**

Twenty Five thousand dollars (\$25,000) for years 2014, 2015, and 2016 has been pledged within Pacific County Public Facilities Improvement Fund No. 126 to assist the RECIPIENT with this “public facilities” improvement. Said amount shall constitute the maximum reimbursement the RECIPIENT is eligible to receive from the COUNTY under this CONTRACT. These funds are to be dispersed on a cost reimbursement basis.

2. **USE OF FUNDS**

The RECIPIENT shall use these COUNTY funds solely for the Tokeland Marina Redevelopment Project by constructing a new breakwater/transient float, public restrooms and marina office, reconstruct the commercial pier as well as other improvements to support both the local recreation/tourism and commercial fishing and aquaculture industries. The RECIPIENT shall comply with all applicable public works and competitive bidding laws, and shall provide documentation thereof. The RECIPIENT shall also comply with all applicable local, state and/or federal laws or regulations that assure quality of the services being performed, including standards for licensing, certification and operation of facilities, and any other standards or criteria herein described.

3. **SCOPE OF WORK**

Reimbursement shall only be for expenses incurred for the Tokeland Marina Redevelopment Project as specified in the 2013 Port of Port of Willapa Harbor Infrastructure Funding Application (Attachment A).

4. **LOCAL FUNDING**

The RECIPIENT affirms its pledge to use its own funds and grant and loan funds in support of the Project as needed to complete the project.

5. **PAYMENT PROVISIONS**

The COUNTY, from the Pacific County Public Facilities Improvement Fund (No. 126), has pledged twenty-five thousand dollars (\$25,000) for the years 2014, 2015, and 2016 to assist the RECIPIENT to complete this project. These funds shall be disbursed to the RECIPIENT as per the terms listed within Section 1. Funding by warrant within forty five (45) days of billing.

As a provision for receiving reimbursement, the RECIPIENT shall provide the following information to the COUNTY in a final project report:

- Project expenditure details, and
- Identification of the economic benefits to the ports and Pacific County resulting from the project, including the projected number of jobs preserved and/or created.

Said final project report is to be submitted to the County with the final request for reimbursement.

6. **EVALUATION AND MONITORING**

- A. The RECIPIENT shall maintain books, records, documents and other evidence and accounting procedures and practices that sufficiently and properly reflect the performance of this CONTRACT. The RECIPIENT will retain all books, records, documents and other material relevant to this CONTRACT for six (6) years after expiration of the CONTRACT, or from the date final payment hereunder is made, whichever is later.
- B. The COUNTY or the State Auditor and any of their representatives shall have full access to and the right to examine during normal business hours and as often as the COUNTY or the State Auditor may deem necessary, those books, records, documents and other evidence retained by the RECIPIENT with respect to all matters covered in this CONTRACT. Such representatives shall be permitted to audit, examine, and make excerpts or transcripts from such records and to make audits of all contracts, invoices, materials, payrolls, and records of matters covered by this CONTRACT. These rights shall last for six (6) years after expiration of the CONTRACT, or from the date final payment hereunder is made, whichever is later.
- C. The COUNTY will use reasonable security procedures and protections to assure that related records and documents provided by the RECIPIENT are not erroneously disclosed to third parties. To the extent chapter 42.56 RCW permits, pertinent records and other documents in any medium furnished by the RECIPIENT will remain its property unless otherwise agreed. The COUNTY will not disclose or make this material available to anyone other than those authorized by/in the above paragraph without first providing notice to the RECIPIENT and giving the RECIPIENT a reasonable opportunity to respond.
- D. The RECIPIENT shall cooperate with and freely participate in any other monitoring or evaluation activities pertinent to this CONTRACT that the COUNTY needs to have conducted.

7. **RECAPTURE PROVISION**

- A. In the event the RECIPIENT fails to expend these funds in accordance with state law and/or the provisions of this CONTRACT, the COUNTY reserves the right to recapture funds in an amount equivalent to the extent of noncompliance.
- B. Such right of recapture shall exist for six (6) years after expiration of this CONTRACT or final payment hereunder, whichever occurs later. Repayment by the RECIPIENT of funds under this recapture provision shall occur within twenty (20) days of demand. In the event the COUNTY is required to institute legal proceedings to enforce this recapture provision, the COUNTY shall be entitled to its costs thereof, including reasonable attorney's fees.

8. **NONDISCRIMINATION**

The RECIPIENT shall comply with all federal and state nondiscrimination laws, including, but not limited to chapter 49.60 RCW – Washington's Law Against Discrimination, and 42 U.S.C. 12101 et seq. – the Americans with Disabilities Act (ADA) as amended.

9. **NONCOMPLIANCE WITH NONDISCRIMINATION LAWS**

In the event the RECIPIENT fails or refuses to comply with any nondiscrimination law, regulation, or policy, this CONTRACT may be rescinded, canceled, or terminated in whole or in part, and the RECIPIENT may be declared by the COUNTY ineligible for further Public Facilities Improvement Funds. The RECIPIENT shall be given a reasonable time in which to cure any such noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

10. **EMPLOYMENT RELATIONSHIPS**

The RECIPIENT, its employees or agents performing under this CONTRACT are not deemed to be employees of the COUNTY nor agents of the COUNTY in any manner whatsoever. No officer, employee or agent of the RECIPIENT will hold themselves out as, or claim to be, an officer, employee or agent of the COUNTY by reason hereof, nor will they make any claim, demand or application to or for any right or privilege applicable to an officer, employee or agent of the COUNTY.

11. **INDUSTRIAL INSURANCE COVERAGE**

The parties agree that the COUNTY will not be responsible for the payment of any industrial insurance premiums or related claims or other benefits that may arise during the performance of services under this CONTRACT for any RECIPIENT employee, or for any consultant, contractor or subcontractor, or employee(s) thereof retained by the RECIPIENT.

12. **HOLD HARMLESS**

- A. It is understood and agreed that this CONTRACT is solely for the benefit of the parties hereto and gives no right to any other party. No joint venture or partnership is formed as a result of this CONTRACT. Each party hereto agrees to be responsible and assumes liability for its own negligent acts or omissions, or those of its officers, employees or agents to the fullest extent required by law, and agrees to save, indemnify, defend and hold the other party harmless from any such liability. In the case of negligence of both the COUNTY and the RECIPIENT, any damages allowed shall be levied in proportion to the percentage of negligence attributable to each party, and each party shall have the right to seek contribution from the other party in proportion to the percentage of negligence attributable to the other party.

- B. In accepting this CONTRACT, the CONTRACTOR, including its successors and assigns, does hereby covenant and agree to indemnify and protect and save harmless the COUNTY and its officers and employees from all claims, actions, or damages of every kind and description which may accrue to or be suffered by any person, partnership, corporation, or other entity of any kind that arise in whole or in part from intentional tort(s), or negligent act(s) or omission(s), or strict liability of the CONTRACTOR or its employees, agents, successors, or assigns. If the above sentence applies and any suit or action is brought against the COUNTY, its officers, its employees, or any combination thereof, the CONTRACTOR, including its successors or assigns, shall defend the suit or action at his or her or their sole cost and expense and shall fully satisfy any judgment that is rendered against the COUNTY, its officers, its employees, or any combination thereof.

13. **ENTIRE CONTRACT**

This CONTRACT represents all the terms and conditions agreed to by the parties. No other understandings, oral or otherwise, regarding the subject matter of this CONTRACT shall be deemed to exist or to bind any parties hereto.

14. **CONTRACT MODIFICATIONS**

The COUNTY and the RECIPIENT may, from time to time, request changes in services being performed with these funds. Any such changes that are mutually agreed upon shall be incorporated herein by written amendment to this CONTRACT. It is mutually agreed and understood that no alteration or variation of the terms of this CONTRACT shall be valid unless made in writing and signed by the parties hereto, and that any oral understanding or agreements not incorporated herein shall not be binding. For example and without limitation, an amendment to this CONTRACT must be approved in writing by the COUNTY prior to the RECIPIENT expending funds for the items covered within that amendment. Costs incurred by the RECIPIENT in contravention of this Paragraph are the sole responsibility of the RECIPIENT.

15. **CONTRACT PERIOD**

The terms of this CONTRACT and the performance of the parties hereto shall be deemed to have commenced the 1st day of May, 2014. It will continue in effect through the 31st day of December 2016 unless sooner terminated or extended as provided herein.

16. **TERMINATION OF CONTRACT**

- A. If, through any cause, the RECIPIENT shall fail to fulfill in a timely and proper manner its obligations under this CONTRACT, or if the RECIPIENT shall violate any of its covenants, agreements or stipulations, the COUNTY shall thereupon have the right to terminate this CONTRACT and withhold the remaining allocation if such default or violation is not corrected within twenty (20) days after submitting written notice to the RECIPIENT describing such default or violation.
- B. Notwithstanding any provisions of this CONTRACT, either party may terminate this CONTRACT by providing written notice of such termination, specifying the effective date thereof, at least twenty (20) days prior to such date. Payment for Project-related expenses incurred by the RECIPIENT and not otherwise paid for by the COUNTY prior to the effective date of such termination shall be as the COUNTY reasonably determines.

C. The COUNTY may unilaterally terminate all or part of this CONTRACT, or reduce the Scope of Work, if the Public Facilities Improvements funds are reduced as a result of a reduction or loss of the rural sales and use taxing authority or a substantial reduction in taxable activity.

17. **SPECIAL PROVISION**

The failure of the COUNTY to insist upon the strict performance of any provision of this CONTRACT or to exercise any right based upon breach thereof or the acceptance of any performance during such breach shall not constitute a waiver of any right under this CONTRACT.

18. **SEVERABILITY**

In the event any provision, or any portion thereof, contained in this CONTRACT is held to be unconstitutional, invalid or unenforceable, said provision(s) or portion(s) thereof shall be deemed severed and the remainder of this CONTRACT shall not be affected and shall remain in full force and effect. Furthermore, if such an event occurs, the parties agree to negotiate a modification to replace the unacceptable provision(s) as soon as possible.

19. **DISPUTE RESOLUTION**

Except as otherwise provided in this CONTRACT, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute hearing. The parties shall select a dispute resolution team to resolve the dispute. The team shall consist of a representative appointed by the COUNTY, a representative appointed by the RECIPIENT, and a third party mutually agreed upon by both parties. This team shall attempt, by majority vote, to resolve the dispute. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

20. **GOVERNING LAW AND VENUE**

This CONTRACT shall be construed and enforced in accordance with, and its validity and performance governed by, the laws of the state of Washington. The superior court of Pacific County, Washington shall be the venue for any suit between the parties arising out of this CONTRACT.

21. **ADMINISTRATION**

The following individuals are designated to co-administer this CONTRACT. They shall also serve as their respective party's contact person for any and all communications relative to this CONTRACT.

For the COUNTY: Kathy Spoor, County Administrative Officer
Dept. of General Administration
P.O. Box 6
South Bend, WA 98586-0006
Telephone: 360/875-9334

For the RECIPIENT: Rebecca Chaffee, Manager
Port of Willapa Harbor
1725 Ocean Avenue
Raymond, WA 98577
Telephone: 360/942-3422

PACIFIC COUNTY
RURAL ECONOMIC DEVELOPMENT
INFRASTRUCTURE FUNDING APPLICATION

Project Title: Tokeland Marine Redevelopment

Annual 1 Year
Long-term 2 Years

Applicant: Port of Willapa Harbor

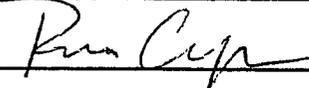
Contact: Name Rebecca Chaffee

Address: 1725 Ocean Avenue

City, state, zip: Raymond, WA 98577

Phone #: 360-942-3422 E-Mail: portofwh@willapabay.org

Name of person authorizing submittal (print or type): Rebecca Chaffee

Signature of person authorizing submittal: 

1. Is project listed in the County's Comprehensive Economic Development Strategy (WA-CERT List) or with your city's or county's comprehensive plan? **(Attach copy of WA-CERT list or comprehensive plan). If no, do not submit application.**

Yes, this project is on the WA-CERT List.

2. Briefly describe your project:

The existing facilities at the Tokeland Marina including the boat launch, moorage floats, commercial pier and RV Park are minimal and in poor condition. Restrooms are limited to sanicans. There is moorage for only 20 recreational and 22 commercial boats. Moorage is leased annually with a long waiting list. Lack of moorage forces most boaters to launch and retrieve daily, creating ramp gridlock during the peak recreational fishing season.

The commercial pier has been taken out of service because of its unsafe condition and the Port is under an L&I order to repair the dock. Commercial boats must offload with a temporary hoist and move product by handcarts. The old timber "L" float has also been taken out of service due to safety concerns, but remains in place to provide breakwater protection from winter storms.

Working over the last several years with the community and the Shoalwater Bay Indian Tribe, the Port developed a marina master plan. The preliminary design, the SEPA environmental review, the cultural assessment and the septic system site evaluation are complete. The Shoreline Development and HPA Permits have been issued.

This project involves the long overdue redevelopment of the Tokeland Marina including:

1. Planning, Design and Permitting
2. New Breakwater/Transient Float

3. Public Restrooms and Marina Office
4. Reconstructed Commercial Pier
5. Landscaping and Parking Improvements
6. Seafood/Local Products Market
7. Upgraded Septic Systems
8. New Transient Floats
9. Expanded/Upgraded RV Park
10. Shoreline Erosion Protection
11. Marine Fuel Service

3. Describe the current status of your project: (Include work completed or in progress)

The Port has been working with the Tokeland Community planning and seeking resources for the last four years. Permit applications have been submitted, final design is underway and the majority of the funding for the first phase of development has been awarded.

4. State why this project meets the standard of HB2260 passed during the Washington State 1999 Legislative Session:

The Tokeland Marina is a public facility, which supports both the local recreation/tourism and commercial fishing and aquaculture industries.

5. Total project cost: \$2,700,000

6. Yearly amount requested from this funding: \$25,000

7. Number of years funding is requested: 3

8. Is this a phased project? Yes No (Describe)

This project has been divided into three phases:

1. Planning, design and permitting (\$213,000)
2. Phase 1 Development (Restroom, breakwater/transient float, reconstructed commercial pier, seafood/local products markets, landscaping, parking) (\$1,689,000)
3. Phase 2 Development (RV Park upgrades, transient moorage, shoreline erosion protection) (\$800,000)

SUBTOTAL DESIGN + PHASE 1:	\$1,902,000
GRAND TOTAL:	\$2,702,000

9. List all other approved funding sources and amounts and describe why this funding request is necessary to complete the "funding package":

	<u>Grant:</u>	<u>Required Match:</u>
RCO Boating Facilities Program (Planning/Design)	\$ 130,000	\$ 50,000
Local Sales Tax (Commercial Pier/RV Park Property Design)*	\$ 55,000	\$ 15,000
RCO Boating Facilities Program (Development)	\$ 664,000	\$276,000
CERB Community Revitalization Grant	\$ 500,000	\$150,000
Private Contributions (Tribe, Nelson, Tokeland Seafood Exchange and Chamber)	\$ 62,000	\$ 0
TOTAL:	\$1,411,000	\$491,000

The Port has been awarded a total of \$1,411,000 in grant and private funds for planning/design and the first phase of the marina redevelopment project. In order to leverage this money the Port must contribute \$491,000 in local funds. To-date approximately \$105,000 in local funds have been expended. The additional local match required is thus \$389,000. The Port is proposing to contribute \$125,000 in force account labor and \$269,000 in cash over a three-year period.

Port revenues are projected to plummet with the loss of Halosource, our biggest industrial tenant. To ensure that this project can move forward the Port is requesting \$75,000 or \$25,000 per year in local sales tax funds for three years.

* NOTE: The Port was also awarded \$25,000 in local sales tax funds for the purchase of property to expand the RV Park. RV Park improvements will be included in the second phase of development.

10. Have you applied for any other sources to complete your funding? Yes X No ___ (List)

Source	Amount	Status
USDA Rural Business Enterprise Grant	\$50,000	Pending

11. Describe project specific employment benefits as follows:

Additional 10 FTE During Construction
 Additional 10 FTE Employed by Facility when complete
 Additional 6 FTE hired as a direct result of this project
 Retained 4 FTE as a direct result of this project

Explain in detail the basis for the numbers of FTEs and provide any supporting documentation from employers.

Additional 2 Businesses Created by Facility when complete
 Retained 3 Businesses as a direct result of this project

Construction:

This is a relatively large project. It is estimated that approximately 10 FTE's will be involved in the construction. Project elements include sitework, carpentry, pile driving, demolition, electrical, asphalt, concrete, etc.

Employed by Facility when complete:

This project involves the construction of a seafood/local products market and small business incubator located on the southeasterly edge of the Tokeland Marina boat basin. Nelson Crab, a local business founded in 1934, will lease and operate the market/incubator. Nelson's recently sold their Tokeland based seafood processing plant to Custom Seafood Services (CSS) of Seattle. Nelson's will contract with CSS for custom processing and relocate their seafood retail market to the marina. Nelson's will also continue to buy locally caught seafood at the Tokeland Marina. The new market will be expanded to include an array of local seafood, local agricultural products such as cranberries, blueberries, wines, jam, etc., non timber and forest products such as mushrooms and wild berries, as well as locally made crafts.

In addition to access to a local retail sales outlet, the participating individuals will be provided technical assistance in expanding their businesses.

Nelson's will retain 4 FTE. An additional estimated 6 FTE's will be created by the local products market, and expanded marina usage.

Retained Businesses:

This project and the economic activity the marina supports contributes to the overall economy of North Pacific County. Up to 200 recreational fishing boats launch daily during the peak of the salmon season. Two commercial fish buying stations are located at the marina. These stations support over 100 local seafood-processing jobs. Tokeland Seafood Exchange, Custom Seafood Services and Nelson Crab are directly dependent on a viable Tokeland Marina.

12. What quantifiable outcomes are you going to track to measure the success of this project:

The Port will track the number of boat launches and total marina revenues including wharfage from seafood offloads. The number of local vendors participating in the Seafood/Local Products Market will also be tracked.

13. Describe any other economic benefits of this project:

The Seafood/Local Products Market will provide an outlet for an estimated 20 local vendors at startup. It will also include a small commercial kitchen/prep room, which will be available to the vendors.

Tokeland Seafood Exchange will partner with the Port to provide marine fuel service during peak recreational and commercial fishing seasons. Currently boaters have to carry fuel in a 5-gallon container to their boats or haul their boat on a trailer to a service station.

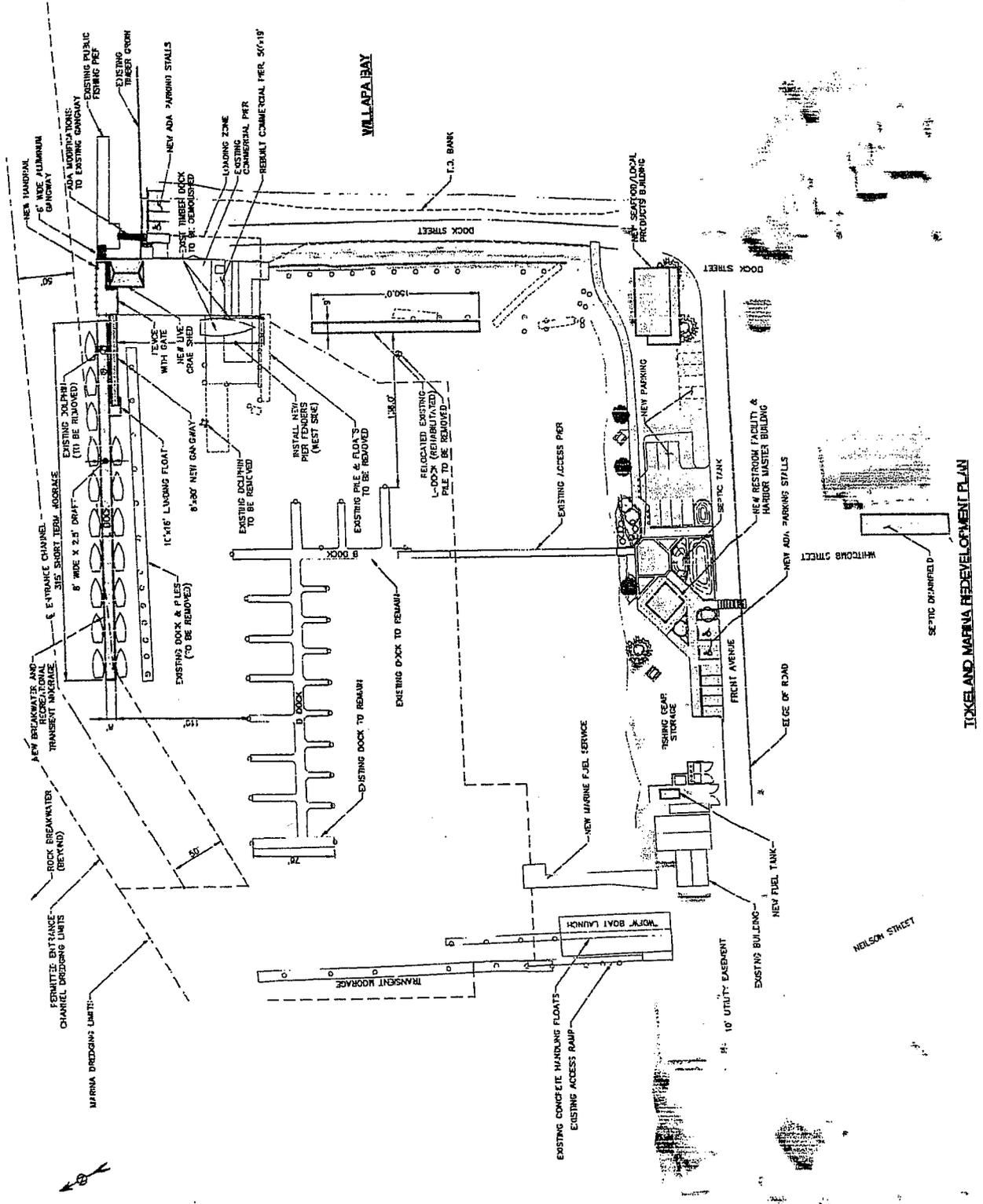
14. List any other information you feel is pertinent to this application:

The Tokeland Marina provides the only marine facilities on the north end of Willapa Bay. These facilities are minimal, in poor condition and in urgent need of upgrades. This project will upgrade the marina and thus, the community with safe facilities, expanded amenities and public spaces, incorporating landscaping, art and historic designs.

The community has been actively involved in the planning of this project and enthusiastically supports it.

Attachments:

1. Pacific County WA-CERT List
2. Master Marina Redevelopment Plan
3. Seafood/Local Products Building
4. Pictures of Marina Facilities



TOKELAND MARINA REDEVELOPMENT PLAN



LEGEND	
[Symbol]	EXISTING DOCK TO BE REPLACED
[Symbol]	EXISTING STRUCTURES TO BE REMOVED
[Symbol]	PIER REBUILT
[Symbol]	PROPOSED NEW FLOATS
[Symbol]	PROPOSED NEW GANGWAY IMPROVEMENTS
[Symbol]	PROPOSED UPLAND IMPROVEMENTS
[Symbol]	DEVELOPED MARINA BOUNDARY
[Symbol]	PROPOSED REDDING BOUNDARY
[Symbol]	EXISTING UTILITY BOUNDARY
[Symbol]	EXISTING BUILDING
[Symbol]	EXISTING BUILDING

Top of Building 33' - 0"

CORRUGATED METAL ROOFING

High Roof 20' - 0"

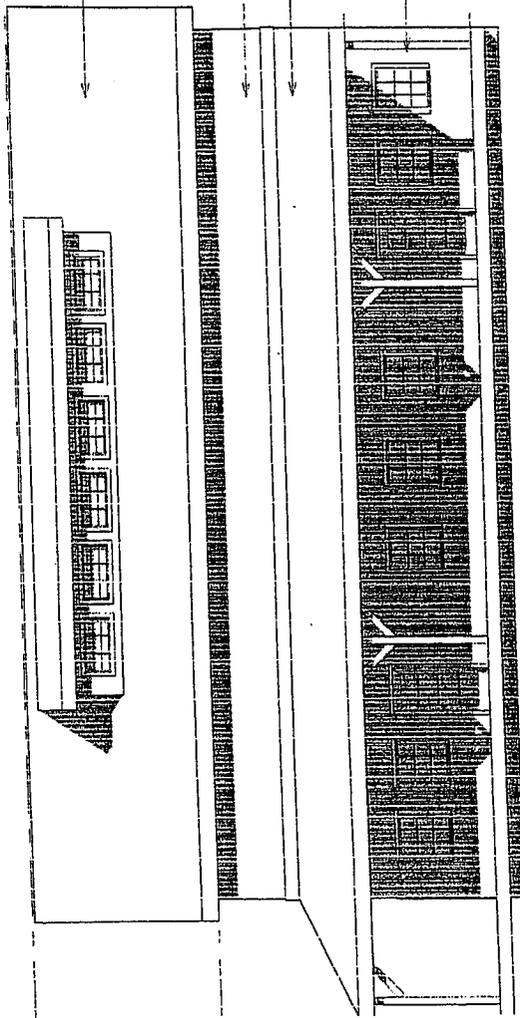
CORRUGATED METAL SIDING

CORRUGATED METAL ROOFING

Low Roof 9' - 0"

BOARD AND BATT SIDING

Level 1 0' - 0"



① South
1/8" = 1'-0"

South Elevation

Project Number	AI03
Issue Date	
Drawn by	
Checked by	
Scale	1/8" = 1'-0"

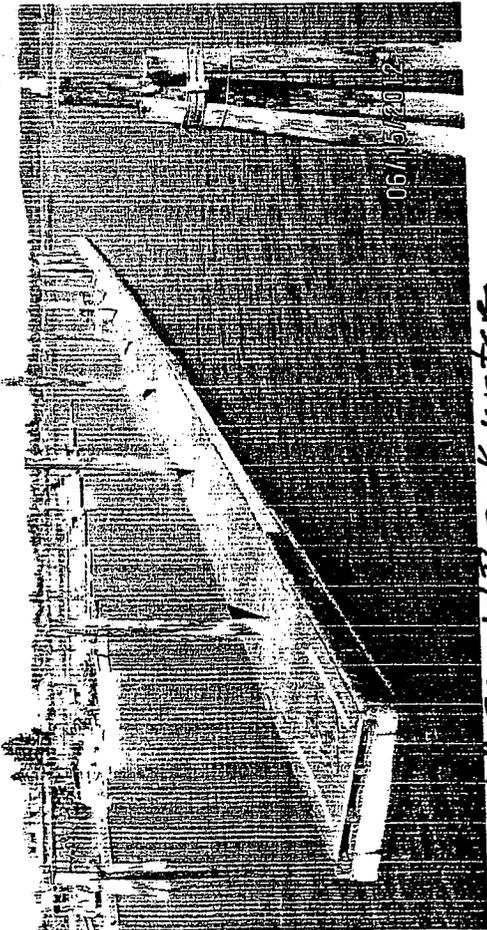
No.	Description	Date

Willapa Harbor
Tokeland Commercial/Retail
Building

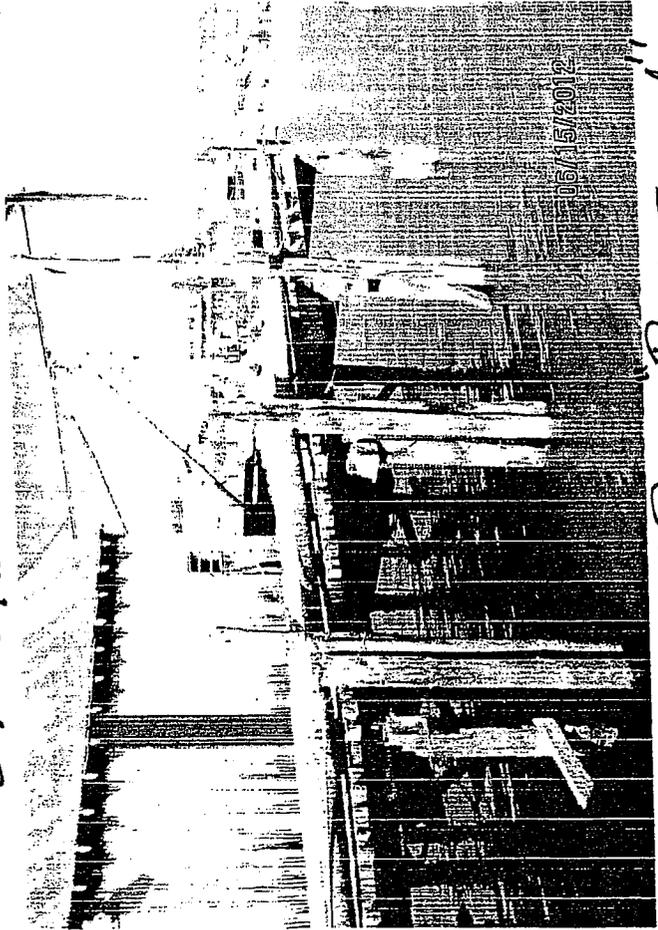
550 McKinley Road
Cosmopolis, VA 88537
PH: 260-532-6753
Fax: 260-528-1180

GERALD MERTL
LANDSCAPE ARCHITECT

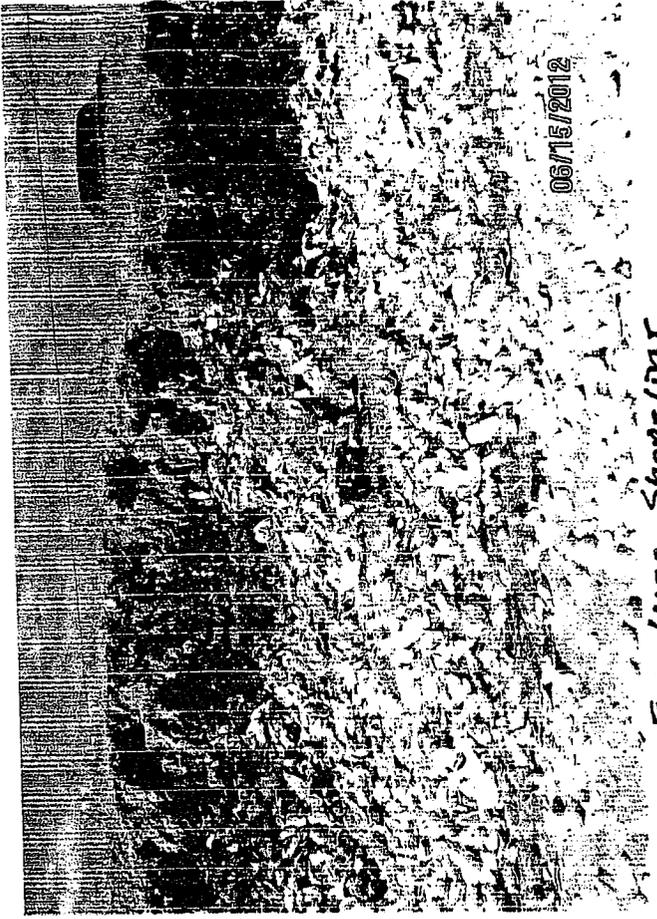
Tokeland Marina - Existing Facilities



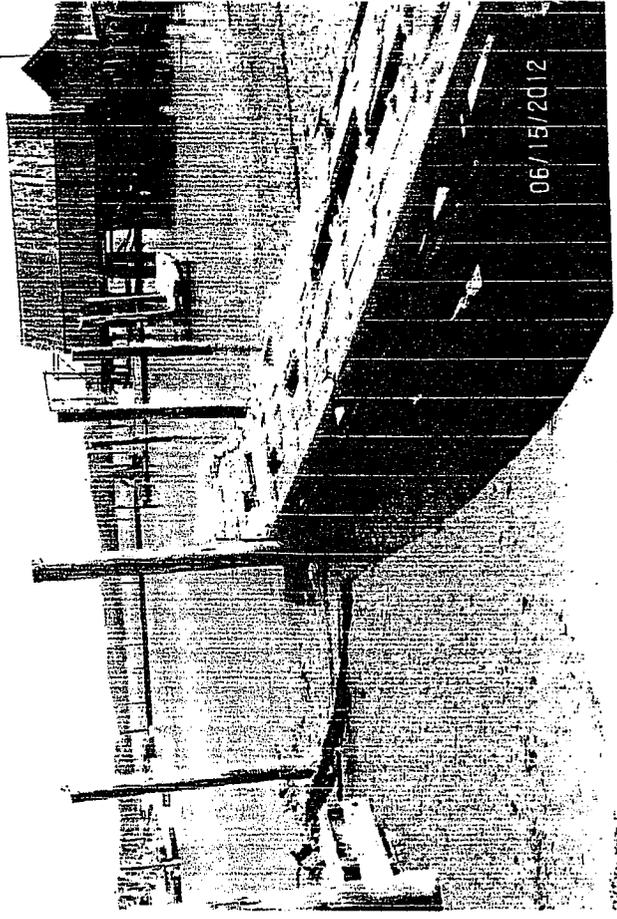
"L1 Float/Breakwater"



Commercial Pier - Red Tagged"



Eroding Shoreline



Old Floats