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IN WITNESS WHEREOF, I have hereunto set my hand and affixed  
the seal of said court this

16 Nov 04

County Clerk and Clerk of the Superior  
Court of the State of Washington in  
and for the County of Mason.  
By D. Rodger Deputy

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MASON CO. WA.  
PAT SWARTOS, CO. CLERK

BY \_\_\_\_\_ DEPUTY

8 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
9 IN AND FOR THE COUNTY OF MASON

10 RESIDENTS FOR PRESERVING )  
11 QUALITY OF LIFE ON HOOD )  
12 CANAL )

12 Plaintiff )

13 V. )

14 PORT OF TAHUYA, )

15 Defendant )

NO. 04 2 00954 9

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

16 The court having previously entered an Order of Default  
17 herein as to Defendant Port of Tahuya, and having reviewed  
18 the Declaration of Brad Carey and the Declaration of Cynthia  
19 Olsen, now makes the following

20 FINDINGS OF FACT

21 Smith & O'Hare, P.S., Inc.  
22 Post Office Box 68  
Silverdale, Washington 98383  
Phone: (360) 692-5566  
Fax: (360) 692-1373  
E-Mail som@tscnet.com

1 1. Plaintiff Residents for Preserving Quality of Life on  
2 Hood Canal is a Washington non-profit corporation whose  
3 membership is comprised of residents of the Port of Tahuya.  
4 All license taxes and fees due and owing by such corporation  
5 to the State of Washington have been fully paid.

6 2. Defendant Port of Tahuya is a municipal corporation  
7 located in Mason County, Washington existing pursuant to RCW  
8 Chapter 53.

9 3. On or about August 20, 2003 the Port Commissioners of  
10 the Port of Tahuya, pursuant to Resolution 2003-02, adopted  
11 a "Port of Tahuya Public Access Plan" and recited, in part  
12 that it was adopted "as a part of the Port of Tahuya's  
13 Comprehensive Plan".

14 4. RCW 53.20.010 authorizes a port district to adopt a  
15 comprehensive scheme of harbor improvements after a public  
16 hearing thereon of which notice is published once a week for  
17 two consecutive weeks in a newspaper of general circulation.

18 4. The Port of Tahuya never conducted a public hearing on  
19 the draft of the Port of Tahuya Public Access Plan which was  
20 adopted on August 20, 2003. The only public hearing  
21 conducted by the Port of Tahuya regarding the Public Access  
22

1 Plan was conducted on March 20, 2003 at which time only a  
2 preliminary and incomplete draft of the Public Access Plan  
3 was available for review and discussion.

4 5. RCW 53.08.260 permits Washington port districts such as  
5 the Port of Tahuya to operate park and recreation facilities  
6 only when such facilities are necessary to more fully  
7 utilize boat landings, harbors, wharves and piers...and  
8 other port facilities authorized by law pursuant to the  
9 port's comprehensive plan of harbor improvements and  
10 industrial development.

11 6. RCW 53.08.270 only permits port district adoption of a  
12 plan for the operation of park and recreational facilities  
13 after first submitting a plan for such park or recreational  
14 facilities to the director of the State of Washington Parks  
15 and Recreation Commission and to the governing body of any  
16 county or municipal park agency having jurisdiction in the  
17 area. The Port of Tahuya did not so submit the final draft  
18 of its Public Access Plan in advance to such persons and  
19 agencies for review prior to adoption of the Plan by the  
20 Port of Tahuya.

21  
22  
THIRD CAUSE OF ACTION

Smith & O'Hare, P.S., Inc.  
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1 7. RCW 53.08.260 only permits port districts to operate  
2 park and recreation facilities when such facilities are  
3 necessary to more fully utilize port facilities otherwise  
4 authorized by law such as boat landings, harbors, wharves  
5 and piers.

6 8. The Public Access Plan adopted by the Port of Tahuya  
7 stated that the mission of the Port of Tahuya was "to  
8 fulfill recreation needs" and therefore discussed, analyzed  
9 and planned for park and recreational facilities as its  
10 primary purpose and objective and not as parks or  
11 recreational facilities necessary to more fully utilize  
12 other non-park or recreation port facilities.

13 9. The Public Access Plan of the Port of Tahuya recited  
14 that it was adopted pursuant to RCW Chapter 35.63.

15 10. The Port of Tahuya is not authorized under the laws of  
16 the State of Washington to conduct planning activities  
17 pursuant to RCW Chapter 35.63.

18 11. The Port of Tahuya Public Access Plan is not an  
19 amendment to the Port of Tahuya comprehensive scheme of  
20 harbor improvements in the port district but is rather an  
21 improper attempt by the Port of Tahuya to adopt a

1 comprehensive land use plan pursuant to RCW 36.70A.030 (4)  
2 and RCW Chapter 35.63.

3 12. The Public Access Plan of the Port of Tahuya purports  
4 to plan for recreational facilities outside of the Port of  
5 Tahuya.

6 13. The Port of Tahuya is not authorized by the laws  
7 creating and authorizing port districts to plan for  
8 recreational facilities outside the port district  
9 boundaries.

10 14. The Public Access Plan, together with any previously  
11 adopted portions of the Port of Tahuya comprehensive scheme  
12 for harbor improvements, fails to meet the statutory  
13 requirements for a Port District comprehensive scheme of  
14 harbor improvements pursuant to RCW 53.08.020.

#### 15 CONCLUSIONS OF LAW

16 1. Plaintiff Residents to Preserve Quality of Life on Hood  
17 Canal is entitled to a declaratory judgment declaring that  
18 the Port of Tahuya Public Access Plan has not been validly  
19 adopted as a result of failure to conduct a public hearing  
20 on the adopted plan as required by RCW 53.08.010.

21 2. Plaintiff Residents to Preserve Quality of Life on Hood  
22

1 Canal is entitled to a declaratory judgment declaring that t  
2 the Port of Tahuya Public Access Plan has not been validly  
3 adopted as a result of failure to submit the final draft of  
4 the plan for review to the Director of the State Parks and  
5 Recreation Commission and the governing body of the Mason  
6 County park agency having jurisdiction of the area.

7 3. Plaintiff Residents to Preserve Quality of Life on Hood  
8 Canal is entitled to a declaratory judgment declaring that  
9 the Port of Tahuya Public Access Plan is invalid because it  
10 exceeds the authority of the Port of Tahuya to plan for park  
11 and recreation facilities which are not necessary for a  
12 fuller utilization of permitted port district facilities.


13 4. Plaintiff Residents to Preserve Quality of Life on Hood  
14 Canal is entitled to a declaratory judgment declaring that  
15 the Port of Tahuya Public Access Plan is invalid because it  
16 was adopted in reliance on and to carry out planning  
17 activity under RCW Chapter 35.63 which may not be validly  
18 carried out by a port district.

19 5. Plaintiff Residents to Preserve Quality of Life on Hood  
20 Canal is entitled to a declaratory judgment declaring that t  
21 the Port of Tahuya Public Access Plan is invalid because it  
22

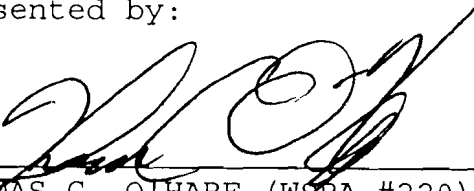
1 purports to plan for recreation facilities outside of the  
2 Port of Tahuya port district boundaries.

3 6. Plaintiff Residents to Preserve Quality of Life on Hood  
4 Canal is entitled to a declaratory judgment declaring that  
5 the Port of Tahuya Public Access Plan is invalid because  
6 neither the Public Access Plan nor any prior Port of Tahuya  
7 resolutions comply with the requirements of RCW 53.08.010  
8 for adoption of a port district comprehensive scheme of  
9 harbor improvements.

10 DONE ~~IN OPEN COURT~~ THIS 15<sup>th</sup> DAY OF NOVEMBER, 2004

11   
12 \_\_\_\_\_  
13 JUDGE

14 Presented by:

15   
16 \_\_\_\_\_  
17 THOMAS C. O'HARE (WSBA #220)  
18 SMITH & O'HARE P.S. INC.  
19 Attorneys for Plaintiff Residents for Preserving  
20 Quality of Life on Hood Canal  
21  
22

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