

1 I certify under penalty of perjury under the laws of the State of
Washington that on this day I deposited in the mails of the United
States of America a properly stamped and addressed envelope
directed to J. K. Sells, the attorneys of
record for plaintiff/defendant, containing a copy of the document to
which this certificate is attached.

2 DATED 7/6, 2004, at Silverdale,
Washington.

3 James K. Sells

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7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF MASON

8 RESIDENTS FOR PRESERVATION) NO. 03 2 0758 1
9 OF QUALITY OF LIFE ON)
ON HOOD CANAL,)
10 Plaintiff) NOTICE OF PRESENTATION
11 vs.)
12 PORT COMMISSION OF THE)
PORT OF TAHUYA,)
13 Defendant)

14 TO: Defendant above-named
15 AND TO: JAMES K. SELLS, Defendant's Attorney

16 NOTICE IS HEREBY GIVEN that the undersigned attorney for
17 plaintiff will present for entry in the above-entitled
matter, on July 12, 2004, at 9:00 a. m., before the
18 Honorable James B. Sawyer, II, Judge of the above-entitled
Court, Mason County Courthouse, Shelton, Washington 98584,
19 the following:

20 Findings of Fact and Conclusions of Law
Judgment

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

1 DATED: July 5, 2004.

2 SMITH & O'HARE, P. S., INC.

3 By _____
4 THOMAS C. O'HARE (WSBA #220)
5 Attorneys for Plaintiff
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF MASON

RESIDENTS FOR PRESERVATION)	
OF QUALITY OF LIFE ON HOOD)	NO. 03 2 0758 1
CANAL)	
)	FINDINGS OF FACT AND
Plaintiff)	CONCLUSIONS OF LAW
)	
v.)	
)	
PORT COMMISSION OF THE PORT)	
OF TAHUYA,)	
)	
Defendant)	
)	

The above captioned matter coming on duly and regularly for trial on June 18, 2004, and the court having heard the testimony offered, reviewed the exhibits offered and heard the argument of counsel, and being fully advised in the premises, now makes the following

FINDINGS OF FACT

1. Plaintiff Residents for Preservation of Quality of Life on Hood Canal (hereafter "Residents") is a

1 Washington non-profit corporation whose members are
2 residents of the Port of Tahuya.

3 2. Defendant Port Commission of the Port of
4 Tahuya (hereafter "Port") is the governing body of a
5 municipal corporation and a "local agency" under the Public
6 Disclosure Act, RCW 42.17 et seq.

7 3. On or about August 8, 2003 Plaintiff
8 Residents, through their attorney Mary Kay High, made a
9 request to Defendant Port for copies of documents related to
10 the Port and specifically related to action the Port was
11 considering known as a Beach Access Plan.

12 4. On or about August 11, 2003 the Port notified
13 Plaintiff's counsel that the Port would be unable to provide
14 an exact date for providing the requested documents but that
15 an attempt would be made to locate the documents by the end
16 of September, 2003.

17 5. On or about August 12, 2003 counsel for
18 Residents made another request for documents from the Port
19 advising the Port that review of the documents was necessary
20 prior to the August 20, 2003 meeting of the Port Commission
21 and offering to come to the Port offices at any reasonable
22 time to review the documents and select documents for

1 copying.

2 6. Defendant Port did not respond to the August
3 12, 2003 request.

4 7. At the time of the document requests by
5 Residents, the applicable Port of Tahuya policy regarding
6 response to citizens' document requests was expressed in
7 Port of Tahuya Resolution No. 90-004 which provided, in
8 part, that:

9 "HEREFORE, BE IT RESOLVED, that the Port of
10 Tahuya shall make available all records not
11 protected under Executive Session regulations,
12 including minutes, manuals, financial statements
13 and correspondence. Said records may be inspected
14 between the hours of 9:00 A.M. - 4:00 P.M. Monday
15 through Friday, by contacting one of the Port of
16 Tahuya Commissioners as listed below. Requestor of
17 copies will be charged a fee of ten cents per
18 copy. Responses to requests for inspection and/or
19 copies may require twenty-four hour notice. All
20 requestors shall be responsible for maintaining
21 said records in the appropriate file(s) and in the
22 same collated condition as when said records were
inspected. Copies will be made by authorized Port
personnel."

23 8. The Port of Tahuya Commissioners acted, on
24 August 20, 2003 to adopt the Beach Access Plan which was the
25 subject of the August 8, 2003 and August 12, 2003 document
26 requests.

27 9. In September, 2003 the Port made selected

1 documents of the Port of Tahuya available to Residents at
2 the Silverdale, Washington offices of the Port attorneys.
3 Many, but not all, of the documents requested by Residents,
4 were included in the September, 2003 response to the
5 Residents' document requests.

6 10. The documents and records of the Port of
7 Tahuya were, at all material times, contained in one four
8 drawer file cabinet and a cardboard "banker's box" located
9 at the Tahuya Fire Hall where a copier was also available
10 for use by the Port of Tahuya.

11 11. On February 23, 2004, more than 208 days
12 after a five day grace period following the August 8, 2003
13 records request, newly elected Port Commissioner Jim
14 Christen met with representatives of Residents at the Tahuya
15 Fire Hall and permitted a complete review by Residents of
16 the Port of Tahuya files and records. At that time
17 Residents received copies of documents not previously
18 supplied to Residents but which had been the subject of the
19 August 8, 2003 and August 12, 2004 document requests
20 including Port of Tahuya resolutions regarding document
21 production policies, documents relating to the creation of
22 the Port of Tahuya, documents concerning Port of Tahuya

1 Based on the foregoing Findings of Fact the Court
2 makes the following Conclusions of Law:

3 1. Defendant Port failed to timely or completely
4 comply, as required by RCW Chapter 42.17 with the Residents'
5 August 8, 2003 and August 12, 2003 records requests.

6 2. Pursuant to RCW 42.17.340 (4) Defendant Port
7 should be required to pay to Plaintiff Residents \$1,040.00
8 representing \$5.00 per day for each of the 208 days when
9 Plaintiff Residents was denied the right to copy and inspect
10 the requested records of the Port.

11 3. Pursuant to RCW 42.17.340 (4) Defendant Port
12 should be required to pay to Plaintiff Residents the sum of
13 \$13,275.00 in reasonable attorneys fees and \$257.16 in
14 reasonable costs incurred by Plaintiff Residents as a result
15 of the failure by the Port to permit inspection and copying
16 of its records in a reasonable time. Such costs include
17 \$110 in filing fees, \$112.91 for service of process, \$26.35
for copies and \$7.90 for postage.

18 Done in Open Court This _____ Day of July, 2004

19
20 _____
JUDGE JAMES B. SAWYER II

21
22 Findings of Fact and
Conclusions of Law - 6 -

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Presented by:

THOMAS C. O'HARE (WSBA #220)
SMITH & O'HARE P.S. INC.
Attorneys for Plaintiff Residents

Approved as to form:

JAMES K. SELLS (WSBA #6040)
RYAN, SELLS, UPTGRAFT, INC.
Attorneys for Defendant Port