STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

REPORT OF EXAMINATION
Change of: Point of Diversion
WRTS File # CS2-SWC7057

PRIORITY DATE	CLAIM NO.	PERMIT NO.	CERTIFICATE NO.
June 15, 1948		5769	S2-SWC7057

NAME
Merrimount Water System, Inc. (DOH Water System ID#54050)

ADDRESS/STREET	CITY/STATE	ZIP CODE
20 E. Merrimount	Union, WA	98584

PUBLIC WATERS TO BE APPROPRIATED

SOURCE
Unnamed spring

TRIBUTARY OF (IF SURFACE WATERS)
Hood Canal

MAXIMUM CUBIC FEET PER SECOND (cfs)	MAXIMUM GALLONS PER MINUTE (gpm)	MAXIMUM ACRE FEET PER YEAR (ac-ft/yr)
0.15		9.9

QUANTITY, TYPE OF USE, PERIOD OF USE

9.9 Acre-feet per year	Multiple Domestic Supply (20 connections)	Year-round, as needed

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION--WITHDRAWAL

50 feet South and 108 feet East from the West quarter corner of Section 36, T. 22 N., R. 03 W.W.M.

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP	RANGE	WRIA	COUNTY
NW ¼ SW ¼	36	22 N.	03 W.W.M.	14	Mason

PARCEL NUMBER	LATITUDE	LONGITUDE	DATUM
322360000000	47.35345	-123.01383	NAD 83

RECORDED PLATTED PROPERTY

LOT	BLOCK	OF (GIVE NAME OF PLAT OR ADDITION)

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED
[Attachment 1 shows location of the authorized place of use and point(s) of diversion or withdrawal]

Gov't Lot 1, Section 35, T. 22 N., R. 3 W.W.M.

DESCRIPTION OF PROPOSED WORKS

A gravity-flow system consisting of an underground spring collection box and concrete tank shared with Pebble Beach Water System, discharging to a supply tank and 3-inch distribution main to the MWS service area.

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE	COMPLETE PROJECT BY THIS DATE	WATER PUT TO FULL USE BY THIS DATE
Started	Install meter by March 1, 2011	In full use

PROVISIONS

1. Measurements, Monitoring, Metering and Reporting

1.1. An approved measuring device shall be installed and maintained for the source identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173. The measuring point in this case shall be the outflow from the main/upper Merrimount Water System receiving tank, minus the overflow.

1.2. Water use data shall be recorded annually and maintained by the water system manager for a minimum of five years, and shall be promptly submitted to the Department of Ecology upon request.

1.3. WAC 173-173 describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition the Department of Ecology for modifications to some of the requirements. Installation, operation and maintenance requirements are enclosed as a document entitled "Water Measurement Device Installation and Operation Requirements". http://www.ecy.wa.gov/programs/wr/measuring/measuringhome.html

2. Quantity Limits, Flow and Regulation

2.1. The total amount of water diverted under Water Right Nos. S2-26054 and S2-SWC7057 shall not exceed a total of 0.15 cubic feet per second and 9.9 acre-feet per year.

2.2. Use of water under this authorization shall be contingent upon the water right holder's maintenance of efficient water delivery systems and use of up-to-date water conservation practices consistent with established regulation requirements and facility capabilities.

3. Schedule and Inspections

3.1. Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the project location, and to inspect at reasonable times, records of water use, wells, diversions, measuring devices and associated distribution systems for compliance with water law.

3.2. The water right holder shall file the notice of Proof of Appropriation of water (under which the superseding certificate of water right will be issued) when a meter has been installed to measure diversions from the source. The certificate will reflect the extent of the project perfected within the limitations of the water right. Elements of a proof inspection may include, as appropriate, the source, system instantaneous capacity, beneficial use, annual quantity, place of use, and satisfaction of provisions.

4. Department of Health Requirements

Prior to any new construction or alterations of a public water supply system, the State Board of Health rules require public water supply owners to obtain written approval from the Office of Drinking Water of the Washington State Department of Health. Please contact the Office of Drinking Water at Southwest Drinking Water Operations, 243 Israel Road S.E., PO Box 47823, Tumwater, WA 98504-7823, (360) 236-3030, prior to beginning (or modifying) your project.

5. Easement and Right-of-Way

The water source and/or water transmission facilities are not wholly located upon land owned by the applicant. Issuance of a water right change authorization by this department does not convey a right of access to, or other right to use, land which the applicant does not legally possess. Obtaining such a right is a private matter between applicant and owner of that land.

FINDINGS OF FACT AND ORDER

Upon reviewing the investigator's report, I find all facts relevant and material to the subject application have been thoroughly investigated. Furthermore, I find the change of water right as recommended will not impair existing rights.

Therefore, I ORDER approval of the recommended change of point of diversion under Change Application No. CS2-SWC7057, subject to existing rights and the provisions listed above.

You have a right to appeal this ORDER. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the "date of receipt" of this document. Filing means actual receipt by the Board during regular office hours

- Serve your appeal on the Department of Ecology within 30 days of the "date of receipt" of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). "Date of receipt" is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted.

1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:	OR	Deliver your appeal in person to:
The Pollution Control Hearings Board PO Box 40903 Olympia WA 98504-0903		The Pollution Control Hearings Board 4224 – 6th Ave SE Rowe Six, Bldg 2 Lacey WA 98503

2. To serve your appeal on the Department of Ecology

Mail appeal to:	OR	Deliver your appeal in person to:
The Department of Ecology Appeals Coordinator P.O. Box 47608 Olympia WA 98504-7608		The Department of Ecology Appeals Coordinator 300 Desmond Dr SE Lacey WA 98503

3. And send a copy of your appeal to:

Thomas Loranger
Department of Ecology
Southwest Regional Office
PO Box 47775
Olympia WA 98504-7775

For additional information visit the Environmental Hearings Office Website: http://www.eho.wa.gov. To find laws and agency rules visit the Washington State Legislature Website: http://www1.leg.wa.gov/CodeReviser.

Signed at Olympia, Washington, this 11th day of May 2010.

Michael J Gallagher for Thomas Loranger
Thomas Loranger, Section Manager
Water Resources Program
Southwest Region Office

BACKGROUND

Description and Purpose of Proposed Change

On March 2, 2007, James E. Hungerford, President of Merrimount Water System (MWS) Inc., filed an *Application for Change of Water Right* to change the point of diversion of 0.15 cubic feet per second (cfs) under Surface Water Right Certificate S2-26054. The original point of diversion for MWS was an unnamed spring on a small stream, tributary to Hood Canal. The new point of diversion is on an adjacent spring feeding the same stream. On November 19, 2009, Mr. Hungerford filed a change application on Surface Water Right CS2-SWC7057 to request a change of the point of diversion on MWS's primary water right, consistent with this request for Certificate S2-26054.

Merrimount Water System is a Group A community water system with 20 connections. Washington State Department of Health (DOH) declared the original source as groundwater under the direct influence of surface water and unsafe for public water supply. The neighboring Pebble Beach Water System (PBWS) diverts water from a nearby spring that discharges from the same groundwater source. The PBWS spring is approved by DOH.

To remedy the unsafe drinking water situation, DOH required MWS to reconstruct their water system or obtain water from PBWS. MWS entered into an agreement to purchase water from PBWS and is now supplied through the PBWS. The two systems share a common diversion point at the PBWS spring and common infrastructure up to the primary receiving tank.

The project site is located within the Kennedy-Goldsborough Water Resource Inventory Area (WRIA 14) in Mason County. Merrimount Water System is an existing Group A community water system with 20 active single-family residential connections.

Attributes of Surface Water Right Certificate 7057 and Recommended Change

Table 1 Summary of Recommended Changes to Surface Water Right Certificate 7057

Attributes	*Existing*	*Proposed/Recommended*
Name	Clara H. Eastwood	Merrimount Water System, Inc.
Priority Date | Date of Application for Change	June 15, 1948	Change Application filed November 19, 2009
Instantaneous Quantity	0.15 cfs	Same
Annual Quantity	25 Acre-feet per year	9.9 Acre-feet per year
Source	Unnamed spring, tributary to Hood Canal	Unnamed spring, tributary to Hood Canal
Point of Diversion	Government Lot 1 (SE¼ NE¼), Section 35, T. 22 N., R. 3 W.W.M. (200 feet North and 10 feet West of quarter corner common to Sections 35 and 36)	NW¼ SW¼ Section 36, T. 22 N., R. 3 W.W.M. (50 feet South and 108 feet East of the West quarter corner of Section 36)
Purpose of Use	Community domestic supply	Multiple domestic supply (same)
Period of Use	Not specified	Year-round, as needed
Place of Use	Government Lot 1, Section 35, T. 22 N., R. 3 W.W.M.	Same

Legal Requirements for Proposed Change

The following is a list of requirements that must be met prior to authorizing the requested change in point of diversion of surface water:

- **Public Notice**
  A public notice of the proposed change of Certificate S2-26054 was published in *Shelton-Mason County Journal* on May 22 and 29, 2002. A public notice for change of Certificate 7057 was published in the *Shelton-Mason County Journal* on December 31, 2009 and January 7, 2010. No protests or comments were received in response to either of these notices.

- **State Environmental Policy Act (SEPA)**
  A water right application is subject to a SEPA threshold determination (i.e., an evaluation whether there are likely to be significant adverse environmental impacts) if any one of the following conditions is met.
  - It is a surface water right application for more than 1 cubic feet per second. If the project is for agricultural irrigation, the threshold is increased to 50 cubic feet per second if the project will not receive public subsidies;
  - It is a groundwater right application for more than 2,250 gallons per minute;
  - It is an application combined with other water right applications for the same project, exceeds the amounts above;
  - It is a part of a larger proposal that is subject to SEPA for other reasons (e.g., the need to obtain other permits that are not exempt from SEPA);
  - It is part of a series of exempt actions that, considered together, trigger the need to do a threshold determination, as defined under WAC 197-11-305.

  This project is categorically exempt from the requirements of SEPA.

- **Water Resources Statutes and Case Law**
  - RCW 90.03.380(1) states that a water right that has been beneficially used may be changed. The point of diversion, place of use, and purpose of use may be changed if it would not result in harm or injury to other water rights.

  - When processing an application for change to a water right, Ecology is required to make a tentative determination of extent and validity of the claim or right. This is necessary to establish whether the claim or right is eligible for change (R.D. Merrill v. PCHB and Okanogan Wilderness League v. Town of Twisp).

INVESTIGATIONS

My review of this application included, but was not limited to, research and review of the following:

- Ecology's Water Right Tracking System database
- Survey map showing service area and points of diversion for Merrimount and Pebble Beach Water Systems
- Information from Washington State Department of Health (DOH) Sentry Database
- DOH Water System Design Manual, August, 2001
- Notes from a site examination on August 13, 2009 with Jim Hungerford of Merrimount Water System
- E-mail communication with Jim Hungerford
- E-mail communication with Frank Meriwether of DOH

Location
The service area for MWS is south of State Route 106, approximately 3.5 miles east of the town of Union, on the Great Bend of Hood Canal, in Mason County. The Pebble Beach community is located adjacent to and east of the MWS service area.

See Attachment 1: Vicinity Map

Description of diversion
The point of diversion is located in a wooded ravine up-gradient of the Merrimount and Pebble Beach lots. A pipe in the hillside directs emerging spring water into an underground collection box. French drains release excess water as a continuous flow into the natural stream channel below the spring site.

The collected spring water is diverted into a pipe which conveys water via gravity flow, approximately 200 feet, to a concrete tank shared with PBWS. Flow from the common tank feeds separate storage tanks for PBWS and MWS, as well as a back-up tank below. Overflow continues downhill and returns to the creek approximately 250 feet downstream of the diversion point. MWS's main distribution line runs along the east side of the creek to the service area, approximately 600 feet below the diversion point.

Other rights appurtenant to the place of use

Table 2 Water rights appurtenant to the service area of Merrimount Water System:

Water Right Number	*Priority Date*	*Purpose*	*Instantaneous Quantity(cfs)*	*Annual Quantity (Acre-feet/year)*
Certificate 7057 (Clara Eastwood)	June 15, 1948	Community domestic supply (100 capita)	0.15 cfs	25
Certificate 9111 (Elmer and Margaret Christie)	July 26, 1963	Fish propagation and irrigation of ¼ acre	0.03 cfs (irrigation diversion of .01 cfs non-additive to Certificate 7057)	Non-consumptive fish propagation/0.5 acre-feet/year irrigation
Certificate S2-26054 (MWS)	December 31, 1981	Community domestic supply	*0.15 cfs	*26.5
Total			***0.15 cfs**	***26. 5 AF/yr**

*The combined diversion under Certificate 7057 and S2-26054 is limited to 0.15 cfs and 26.5 acre-feet per year under the provisions of Water Right Certificate S2-26054.

The source for all appurtenant rights listed in Table 2 is the same unnamed spring or stream, tributary to Hood Canal, subject of this change application.

Surface Water Right Certificate 7057 was issued to Clara Eastwood in 1957 for community domestic supply within Government Lot 1, Section 35, T. 22 N., R. 3 W.W.M. At that time, MWS's diversion point was located within the SE¼ NE¼ of Section 35, on the stream that flows from the spring that is the subject of this change application. The Proof of Appropriation form indicated that the full 0.15 cfs was being diverted and was in use for community domestic supply and irrigation of lawn and garden areas within Merrimount Tracts. MWS later moved this diversion upstream to a spring in Section 36, located uphill from the current diversion shared with PBWS. However, a change application for that point of diversion was never filed.

In 1963, Elmer and Margaret Christie applied for a right for fish propagation and irrigation of a ¼-acre lot. The fish propagation diversion was issued for non-consumptive use. Because this lot was already covered as part of the place of use of Certificate 7057, the instantaneous diversion for the irrigation portion was issued as a non-additive right.

In 1981, Merrimount Water System filed Application S2-26054 to request three additional services outside of the place of use of Certificate 7057. A letter in the water right file for Certificate S2-26054 indicates that a second point of diversion, receiving overflow from the Pebble Beach Water System to the east, was in use at that time and that the applicant intended to have the second point of diversion identified in a water right document. The application specified a point of diversion in the SW¼ NW¼ of Section 36, coinciding with Merrimount's diversion from Pebble Beach Water System's storage tank overflow, rather than the actual point of diversion from the creek. The Report of Examination, Permit and Certificate for this right incorrectly identified the point of diversion as being within the SW¼ SW¼ of Section 36, T. 22 N., R. 3 W.W.M.

History of Water Use

There are 22 lots in the MWS service area. Water is currently in full beneficial use for 20 single-family residences. MWS is a non-expanding water system at full build-out. Water use is not expected to increase.

MWS has provided continuous service to homes in the Merrimount community since Certificate 7057 was issued in 1957. At least three additional services were being served by 1982 when Water Right Permit S2-26054 was issued. MWS has historically, and in the past five years, diverted an instantaneous quantity of 0.15 cfs.

MWS does not have a meter installed at the spring source or the primary receiving tank but there is a meter on the system at the spring house where water is treated prior to distribution. Meter records from the last three years indicate that that the average annual water use for this system was 3,065,552 gallons or 9.4 acre-feet per year. As a condition of this change approval, MWS will be required install a meter at the MWS receiving tank, below the overflow point, in order to measure all water entering its distribution system.

Some system leakage is expected between the MWS receiving tank and the metering point at the spring house which includes approximately 600 feet of aged piping. To account for leakage within this upper reach of the distribution system, an estimate of 5% leakage will be added to the measured 9.4 acre-feet of water reaching the spring house. This raises the estimate of water use to 9.9 acre-feet per year. MWS is advised that leakage should be monitored and minimized as excessive system leakage constitutes a waste of water which is prohibited under RCW 90.03.

Impairment Considerations
PBWS's Certificate S2-25855 was intended to serve 50 connections within the plats of Pebble Beach and Little Paris. PBWS is an expanding water system with 23 existing connections and DOH approval for 36. Thus, Certificate S2-25855 is a "pumps and pipes" certificate, issued prior to full perfection of the right.

Table 3 Water Rights appurtenant to Pebble Beach Water System:

Water Right Number	*Priority Date*	*Purpose*	*Instantaneous Quantity*	*Annual Quantity (Acre-feet/year)*
Certificate 8710	August 24, 1962	Multiple domestic supply	0.35 cfs	unspecified
Certificate S2-25855	April 14, 1981	Multiple domestic supply	*0.35 cfs	*25 AF/yr
Total			**0.35 cfs**	**25 AF/yr**

*The total diversion under Certificate 8710 and S2-25855 is limited to 0.35 cfs and 25 acre-feet per year.

PBWS's point of diversion, the current shared point of diversion for MWS, is located approximately 80 feet down-gradient of the point of diversion for MWS under Surface Water Right Certificate S2-26054. The former MWS point of diversion has been abandoned and is no longer in use.

The PBWS diversion is the only diversion potentially affected by the requested change. A diversion for the Busch surface water right (Certificate 11054 for plats of Merrimount and Pebble Beach) was located on the subject stream, but was abandoned decades ago according to Mr. Hungerford. No other water rights have points of diversions on the stream fed by the subject springs.

The shared spring has enough year-round flow to supply both the MWS and the PBWS service areas. Because the PBWS service area is still growing, the amount of water used by the two systems combined will increase in the future. However, there will be no increase from changing the point of diversion for MWS.

Stream flow on the subject creek will not be affected by this change. The new diversion point is down-gradient of the original diversion point. Overflow returns to the creek with no greater bypass reach than there was originally. Approval of the requested change will not enlarge this water right.

CONCLUSIONS

I tentatively determine that 0.15 cfs and 9.9 acre-feet per year have been beneficially used under Certificate 7057 and that these quantities are valid and eligible for the requested change.

In accordance with Chapter 90.03 RCW, I find that:

- Approval of the requested change of the point of diversion will not result in harm or injury to existing rights.
- The proposed change will not enlarge the original right conveyed by Surface Water Right Certificate 7057.

I recommend that a Superseding Certificate issue identifying the new point of diversion coinciding with the point of diversion described for Surface Water Right Certificate S2-25855C for PBWS.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that the request for change to Surface Water Right Certificate 7057 be approved in the amounts and within the limitations listed below and subject to the provisions beginning on Page 2.

Purpose of Use and Authorized Quantities
The amount of water recommended is a maximum limit and the water user may only use that amount of water within the specified limit that is reasonable and beneficial:

- 0.15 cfs
- 9.9 acre-feet per year
- Multiple domestic supply for 20 connections
- Year-round, as needed

Point of Diversion
NW¼, SW¼, Section 36, Township 22 North, Range 03W.W.M.

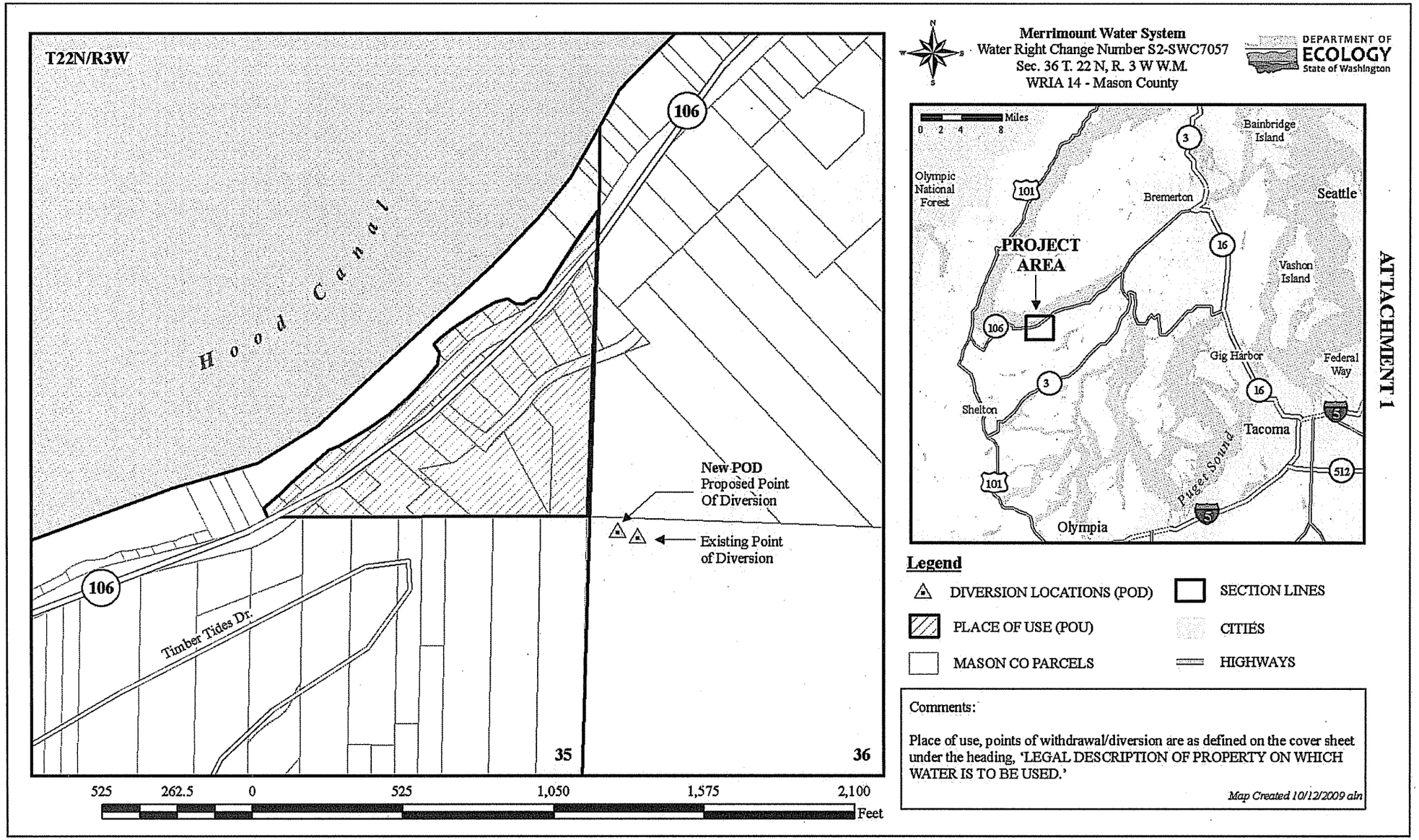
Place of Use
As described on Page 1 of this Report of Examination.

Report by: Marie Peter
Marie Peter
Water Resources Program

5/12/10
Date

If you need this publication in an alternate format, please call Water Resources Program at 360-407-6300. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.

Attachment 1: Vicinity Map



ATTACHMENT 1