

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
PENALTY ASSESSMENT DG-190243, Investigation # 7945

RECEIVED

MAY 22 2019

WASH. UT & TR. COMM

PLEASE NOTE: You must complete and sign this document, and send it to the Commission within 15 days after you receive the penalty assessment. Use additional paper if needed.

I have read and understand RCW 9A.72.020 (printed below), which states that making false statements under oath is a class B felony. I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters. I hereby make, under oath, the following statements:

1. **Payment of penalty.** I admit that the violation occurred and enclose \$1,000 in payment of the penalty.
2. **Contest the violation.** I believe that the alleged violation did not occur for the reasons I describe below (if you do not include reasons supporting your contest here, your request will be denied):

*Please see attached letter # JCC-UTC-001*

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision.

OR  b) I ask for a Commission decision based solely on the information I provide above.

3. **Request mitigation.** I admit the violation, but I believe that the penalty should be reduced for the reasons set out below (if you do not include reasons supporting your application here, your request will be denied):

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision.

OR  b) I ask for a Commission decision based solely on the information I provide above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing, including information I have presented on any attachments, is true and correct.

Dated: May 16, 2019 [Month/Day/Year], at Wenatchee, WA [City, State]

Shane Webley, Johansen Excavating, Inc.  
Name of Respondent (company) – please print

  
Signature of Applicant

**If you do not act within 15 days**, the Commission may refer this matter to the Office of the Attorney General for collection. The Commission may then sue you to collect the penalty.

DATED at Olympia, Washington, and effective May 2, 2019.

*/s/ Rayne Pearson*  
RAYNE PEARSON  
Director, Administrative Law Division



P.O. Box 674  
Buckley, WA 98321

Ph: 360-829-6493  
Fax: 360-829-5473

May 16, 2019

SL#: JCC-UTC-001

Washington Utilities Transportation Commission  
PO Box 47250  
Olympia, WA 98504-7250

RE: Penalty Assessment: DG-190243  
Investigation #7945  
SUBJECT: Contest of Violation & request for Hearing

To Whom It May Concern,

Johansen Construction Company, Inc. (JCC) (formerly Johansen Excavating, Inc.) is writing to contest the Washington Utilities and Transportation Commission's (UTC) violation and penalty assessment DG-190242; investigation #7945. Following is JCC's detailed response to this contested violation:

1. **UTC claim:** JCC violated RCW 19.122.030(2) by excavating on 10/11/2018 without "...first submitting a request to locate underground utilities, which resulted in damage to the underground gas utility" and which "...violation appears to be due to negligence by Johansen rather than a lack of knowledge regarding Washington state's dig law."

**JCC Response:**

On 10/11/2018 JCC was performing excavation work under an active Washington One Call Ticket (Ticket No. 18390091, attached for reference) that covered work being performed in the area where the utility strike took place. (Note that the affected utility provider (PSE) was notified of the excavation associated with this ticket).


The work being performed on 10/11/18 included the installation of a new water meter vault which was to be installed during a limited water shutdown period. Upon commencing work, it was discovered that the designed location of the new water meter vault was in conflict with existing telephone lines. For this reason, JCC received field direction from the Project Owners Representative (The City of Fife) to shift the new water meter vault to the North to avoid the existing telephone line. This field direction moved the water tie-in point, which, in hindsight, appears to be slightly outside of the Right Of Way (ROW) (see attached sketch titled "CONSTRUCTION ROW PLAN").

The JCC crew, working at the direction of the Owner, then struck an unmarked PSE gas service lateral which PSE had failed to identify when requested to do so under Ticket No. 18390091. As the UTC is aware, PSE's failure to identify its existing gas service is a violation of RCW 19.122.030(3)(c)(i)(ii) and RCW 19.122.030(4)(b) (attached for reference) and is the sole reason that JCC was not aware of the existing gas service laterals existence.

Attached for the UTC's reference are multiple pre-excavation photographs taken in the area where the utility strike took place. These photos clearly show that PSE failed to identify this existing gas service lateral (reference photo D in particular). Furthermore, the existing valve for the service lateral was completely buried and not visible at the time the utility was struck and had to be dug up and exposed before PSE could perform repair work (also confirmed in the attached photographs). Had the existing valve been visible it would have been some indicator that a buried utility was in the area and could have also helped to prevent this unfortunate utility strike from taking place.

Given the above facts it is JCC's position that it did not violate RCW 19.122.030(2), and that it was not negligent in its actions that resulted in this unmarked gas service lateral being struck. JCC further contends that it should not be assessed the associated penalty issued by the UTC, and asks that UTC to investigate PSE's own actions in failing to identify the existing gas service lateral which ultimately lead to this unmarked utility being struck.

Respectfully,



Shane Webley  
Vice President of Operations

Enclosure: Washington One Call Ticket No. 18390091  
Sketch titled "CONSTRUCTION ROW PLAN"  
RCW 19.122.030  
Pre-Excavation Locate Photos A-F  
cc: Derrick Sas, Correspondence to Project File

RETURN Email Ticket

# Washington One Call

**Ticket No:** 18390091 **2 FULL BUSINESS DAYS**  
**Original Call Date:** 09/06/18 10:26 am  
**Work to Begin Date:** 09/11/18 12:00 am

**Caller Information**

**Company Name:** JOHANSEN EXCAVATING **Best Time:**  
**Contact Name:** FRED SAS **Phone:** (253)797-4812  
**Alt. Contact:** KEN GUTHRIE **Phone:** (253)397-0383  
**Fax Phone:**  
**Email Address:** FSas@Johansenccei.com

**Dig Site Information**

**Type of Work:** EXCAVATION, UTILITY INSTALLATION, & IMPROVEMENTS  
**Work Being Done For:** CITY OF FIFE

**Dig Site Location**

**State:** WA **County:** PIERCE  
**Place:** FIFE  
**Address:**  
**Street:** STATE ROUTE 99  
**Intersecting Street:** 54TH AVE E

**Location of Work:**

150 FT WEST OF THE 54TH AVE E INTERSECTION WITH SR99 TO 50 FT EAST OF THE INTERSECTION OF 59TH AVE CT E AND SR99 ROW TO ROW, 100 FT NORTH OF THE INTERSECTION OF 54TH AVE E AND SR99 ROW TO ROW, 250 FT TO THE SOUTH OF THE INTERSECTION OF 54TH AVE E AND SR99 ROW TO ROW.  
AREA MARKED IN WHITE

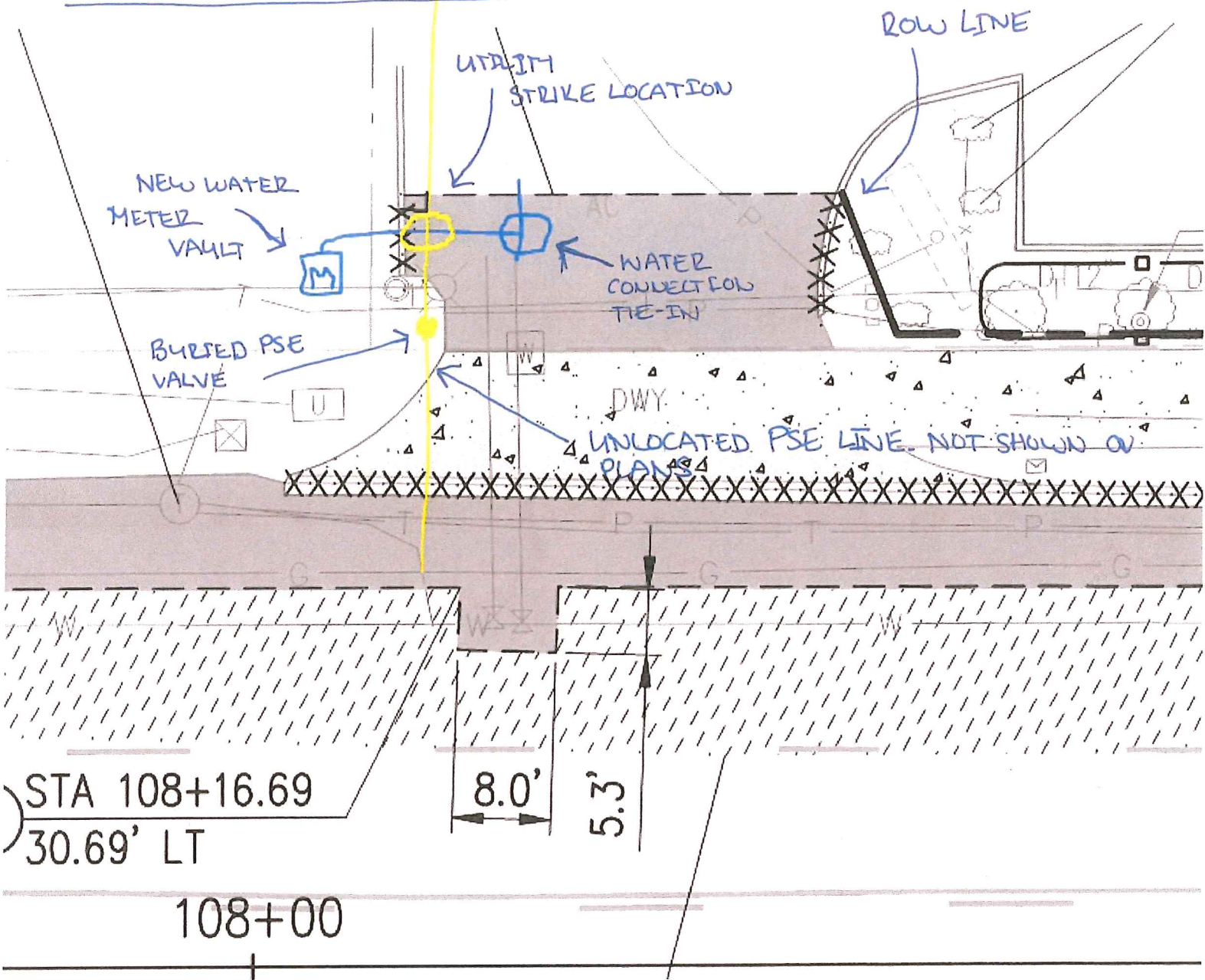
**Remarks:**

**Caller Twp:** **Rng:** **Sect-Qtr:**  
**Map Twp:** 20N **Rng:** 3E **Sect-Qtr:** 12-NE,1-SE  
**Map Twp:** 20N **Rng:** 4E **Sect-Qtr:** 7-NW,6-SW  
**Map Coord NW Lat:** 47.2433690 **Lon:** -122.3576619 **SE Lat:** 47.2424420 **Lon:** -122.3495929

**MEMBERS NOTIFIED:**

District	Company Name	Phone Number	Status
CC7711	COMCAST CABLE	(800)762-0592	Does not report
FIFE01	CITY OF FIFE	(253)922-9315	Does not report
MTRMED01	ZAYO FNA ABOVENET	(888)267-1063	Does not report
OLYPE01	BP/OLYMPIC PIPE LINE COMPANY	(800)548-6482	Does not report
PUGE07	PUGET SOUND ENERGY ELECTRIC	(888)728-9343	Clear, No Utility Owned Facility in Excavation Area
PUGG07	PUGET SOUND ENERGY GAS	(888)728-9343	Marked, Complete
QLNWA24	CTLQL-CENTURYLINK	(800)778-9140	Does not report
RTS02	REDFLEX TRAFFIC SYSTEMS INC.	(800)568-8405	Does not report
TACPWR01	TACOMA PWR & CLICK NETWORK	(253)502-8263	Does not report
WDOTOR01	WSDOT OLYMPIC REGION-AREA 1	(253)983-7550	Does not report
WSDOT10	WA DOT - OLYMPIC REGION	(360)357-2647	Does not report

# CONSTRUCTION ROW PLAN



## RCW 19.122.030

### Excavator and facility operator duties before excavation.

(1)(a) Unless exempted under RCW 19.122.031, before commencing any excavation, an excavator must mark the boundary of the excavation area with white paint applied on the ground of the worksite, then provide notice of the scheduled commencement of excavation to all facility operators through a one-number locator service.

(b) If boundary marking required by (a) of this subsection is infeasible, an excavator must communicate directly with affected facility operators to ensure that the boundary of the excavation area is accurately identified.

(2) An excavator must provide the notice required by subsection (1) of this section to a one-number locator service not less than two business days and not more than ten business days before the scheduled date for commencement of excavation, unless otherwise agreed by the excavator and facility operators. If an excavator intends to work at multiple sites or at a large project, the excavator must take reasonable steps to confer with facility operators to enable them to locate underground facilities reasonably in advance of the start of excavation for each phase of the work.

(3) Upon receipt of the notice provided for in subsection (1) of this section, a facility operator must, with respect to:

(a) The facility operator's locatable underground facilities, provide the excavator with reasonably accurate information by marking their location;

(b) The facility operator's unlocatable or identified but unlocatable underground facilities, provide the excavator with available information as to their location; and

(c) Service laterals, designate their presence or location, if the service laterals:

(i) Connect end users to the facility operator's main utility line; and

(ii) Are within a public right-of-way or utility easement and the boundary of the excavation area identified under subsection (1) of this section.

(4)(a) A facility operator must provide information to an excavator pursuant to subsection (3) of this section no later than two business days after the receipt of the notice provided for in subsection (1) of this section or before excavation commences, at the option of the facility operator, unless otherwise agreed by the parties.

(b) A facility operator complying with subsection (3)(b) and (c) of this section may do so in a manner that includes any of the following methods:

(i) Placing within a proposed excavation area a triangular mark at the main utility line pointing at the building, structure, or property in question, indicating the presence of an unlocatable or identified but unlocatable underground facility, including a service lateral;

(ii) Arranging to meet an excavator at a worksite to provide available information about the location of service laterals; or

(iii) Providing copies of the best reasonably available records by electronic message, mail, facsimile, or other delivery method.

(c) A facility operator's good faith attempt to comply with subsection (3)(b) and (c) of this section:

(i) Constitutes full compliance with the requirements of this section, and no person may be found liable for damages or injuries that may result from such compliance, apart from liability for arranging for repairs or relocation as provided in RCW 19.122.050(2); and

(ii) Does not constitute any assertion of ownership or operation of a service lateral by the facility operator.

(d) An end user is responsible for determining the location of a service lateral on their property or a service lateral that they own. Nothing in this section may be interpreted to require an end user to subscribe to a one-number locator service or to locate a service lateral within a right-of-way or utility easement.

(5) An excavator must not excavate until all known facility operators have marked or provided information regarding underground facilities as provided in this section.

(6)(a) Once marked by a facility operator, an excavator is responsible for maintaining the accuracy of the facility operator's markings of underground facilities for the lesser of:

(i) Forty-five calendar days from the date that the excavator provided notice to a one-number locator service pursuant to subsection (1) of this section; or

(ii) The duration of the project.

(b) An excavator that makes repeated requests for location of underground facilities due to its failure to maintain the accuracy of a facility operator's markings as required by this subsection (6) may be charged by the facility operator for services provided.

(c) A facility operator's markings of underground utilities expire forty-five calendar days from the date that the excavator provided notice to a one-number locator service pursuant to subsection (1) of this section. For excavation occurring after that date, an excavator must provide additional notice to a one-number locator service pursuant to subsection (1) of this section.

(7) An excavator has the right to receive reasonable compensation from a facility operator for costs incurred by the excavator if the facility operator does not locate its underground facilities in accordance with the requirements specified in this section.

(8) A facility operator has the right to receive reasonable compensation from an excavator for costs incurred by the facility operator if the excavator does not comply with the requirements specified in this section.

(9) A facility operator is not required to comply with subsection (4) of this section with respect to service laterals conveying only water if their presence can be determined from other visible water facilities, such as water meters, water valve covers, and junction boxes in or adjacent to the boundary of an excavation area identified under subsection (1) of this section.

(10) If an excavator discovers underground facilities that are not identified, the excavator must cease excavating in the vicinity of the underground facilities and immediately notify the facility operator or a one-number locator service. If an excavator discovers identified but unlocatable underground facilities, the excavator must notify the facility operator. Upon notification by a one-number locator service or an excavator, a facility operator must allow for location of the uncovered portion of an underground facility identified by the excavator, and may accept location information from the excavator for marking of the underground facility.

[ 2011 c 263 § 4; 2000 c 191 § 17; 1988 c 99 § 1; 1984 c 144 § 3.]

## NOTES:

**Report—Effective date—2011 c 263:** See notes following RCW 19.122.010.

**Intent—Findings—Conflict with federal requirements—Short title—Effective date—2000 c 191:** See RCW 81.88.005 and 81.88.900 through 81.88.902.

*Damages to facilities on state highways: RCW 47.44.150.*





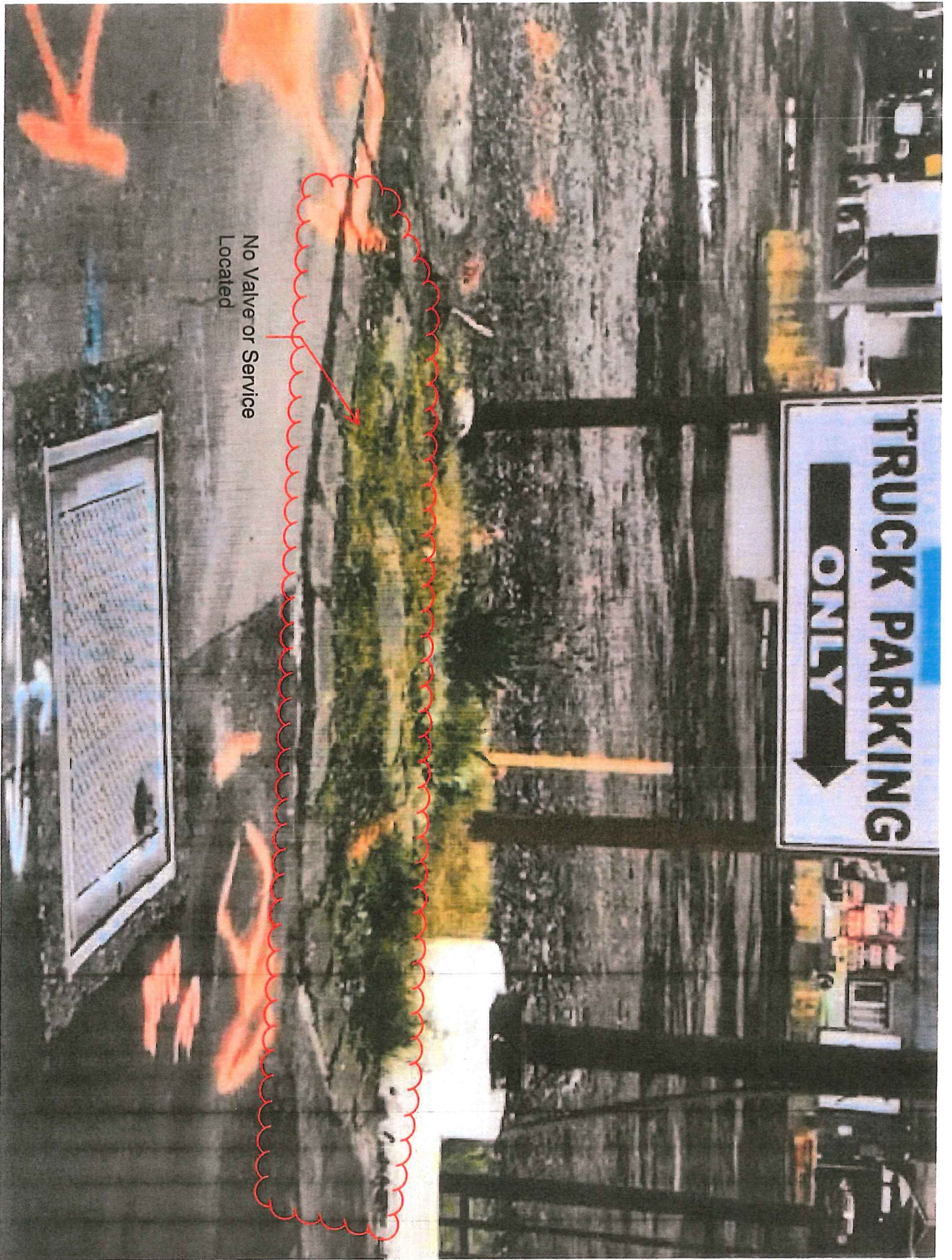
No PSE Valve  
Located or Shown

Unlocated Gas  
Service to Day's Inn

Utility Locate photo prior to  
excavation. No PSE Valve  
present and service not  
located.

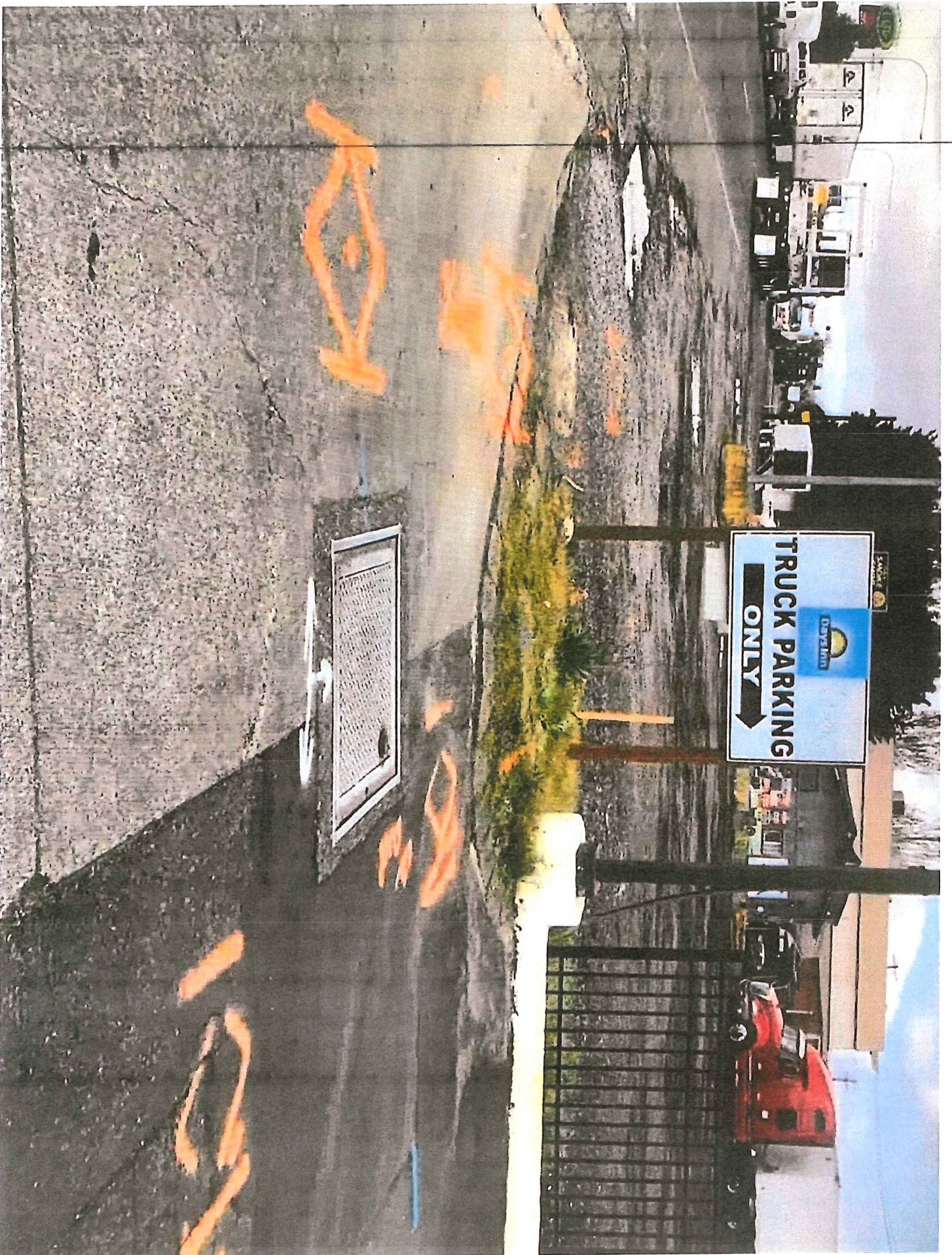
PRE-EXCAVATION 1

A



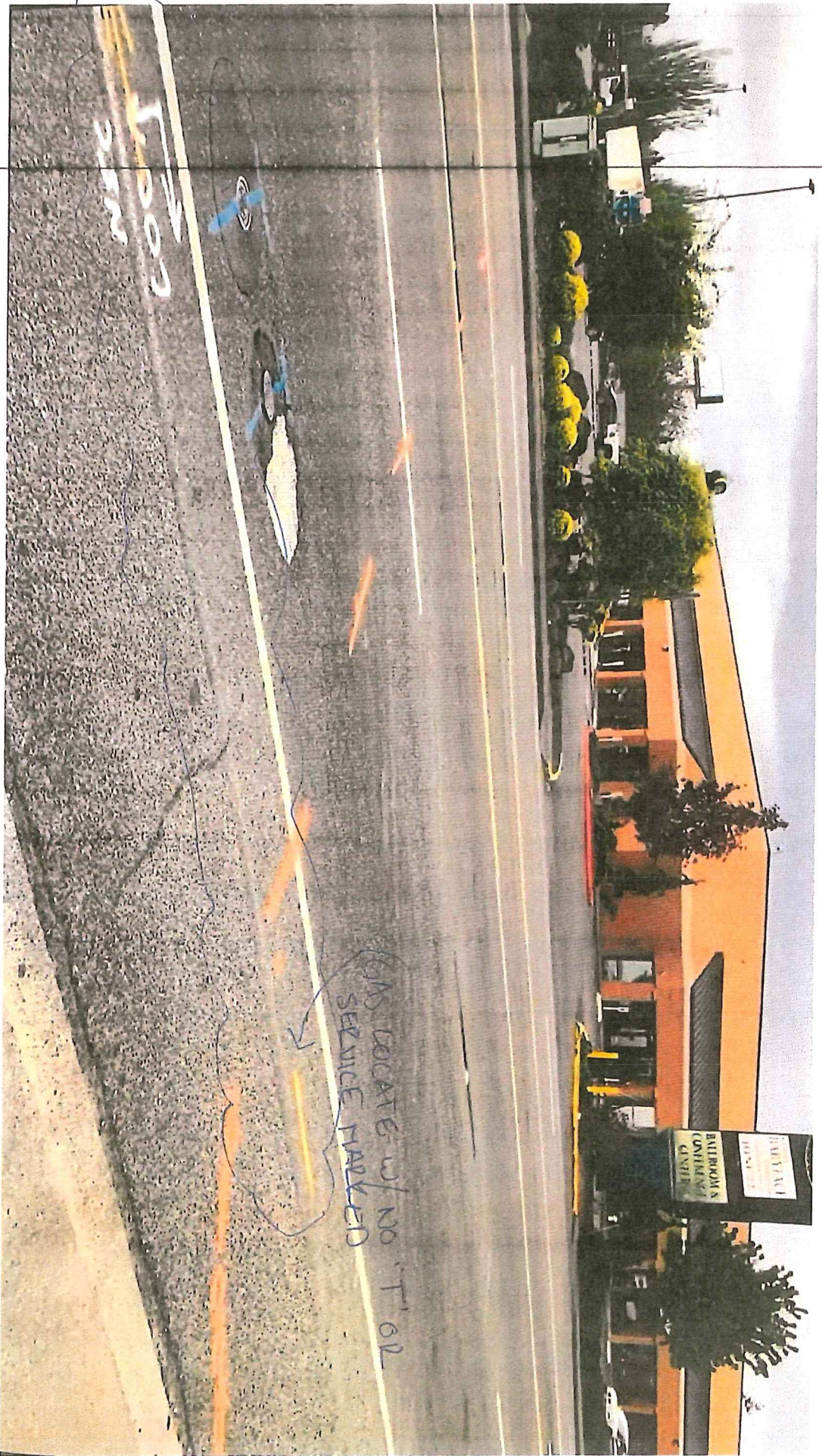
No Valve or Service  
Located

Pre-Excavation Photo



PRE-EXCAVATION 3





AS LOCATED w/ NO 'T' OR SERVICE MARKED

PRE-EXCAVATION 4 (TURNED SOUTH @ LIGHT POLE)  
(NO SERVICE LOCATED OFF OF MAIN LINE)





Light Pole at Day's Inn for Reference

Gas service that was struck with no locates in this area.

Valve that was buried and not exposed. PSE had to dig to find valve. See prior to excavation photos of valve not being visible.

Locates as of 3/7/19.  
Much different the  
locates prior to  
excavation activities.



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