

The Shoreline Permitting Process

“A System of Checks and Balances: An Applicant’s Perspective”

Presented by David Douglas, Waterfront Construction, Inc.

-  The Shoreline Permitting Process involves local, state and federal agencies, multiple permits and has more checks and balances than most other regulatory programs.
-  Most property owners and the general public are not aware of or familiar with the process shoreline projects must go through and many have never heard of a Shoreline Master Program.
-  Government employees, including local Land Use and Planning Department staff and state legislators have varying degrees of experience and understanding of the entire Shoreline Permitting Process.
-  Planning Commissioners, City and County Council Members, and local leaders have varying degrees of experience and understanding of the Shoreline Permitting Process and associated costs and it represents only a small portion of their responsibilities.

The Shoreline Permitting Process

Checks and Balances

-  The Shoreline Permitting Process is a system of checks and balances that requires:
 -  Cooperative effort between property owner, contractor, and government including:
 -  Property owners working within the process.
 -  Contractors designing and building responsible projects and refusing to conduct unauthorized work.
 -  Government using its authority and responsibility by managing an equitable and flexible regulatory process that encourages participation by property owners, recognizes improvements, and balances their responsibility to protect the environment and natural resources with the reasonable wants and rights of property owners.

The Shoreline Permitting Process

Checks and Balances (cont.)

 The Shoreline Permitting Process is a system of checks and balances that requires:

 A thorough knowledge of the permitting process including:

 The process is complex.

 The process is expensive.

 The process takes time and patience and most property owners cannot or will not be able to work through it.

 The process places the burden of proof on the applicant, even when improvements are made.

 The process is the responsibility of all parties.

 The process places similar responsibilities on various agencies leading to overlapping reviews, redundancy, conflict and frustration on the part of applicants.

The Shoreline Permitting Process

Agencies Involved in the Process

-  City or County Land Use/Planning Department
 -  Shoreline Substantial Development Permit (Approval)
 -  State Environmental Policy Act (SEPA) (Determination)
 -  Shoreline Variance Permit (Review and Recommendation)
 -  Conditional Use Permit (Review and Recommendation)
 -  Shoreline and SEPA Exemptions (Approval)

-  WA Department of Ecology
 -  Shoreline Substantial Development Permit (Review, Comment and Appeal Authority)
 -  Shoreline Variance (Approval)
 -  Shoreline Conditional Use Permit (Approval)
 -  Shoreline and SEPA Exemptions (Administrative Oversight)
 -  Coastal Zone Management (Issuance)
 -  Water Quality Certification (Issuance)

The Shoreline Permitting Process

Agencies Involved in the Process (cont.)

-  WA Department of Fish and Wildlife
 -  Hydraulic Project Approval (Approval)
 -  State Species of Concern

-  WA Department of Natural Resources
 -  Aquatic Lands Lease (Approval)

-  U. S. Army Corps of Engineers
 -  Section 10 Permit (Rivers & Harbors) (Approval)
 -  Section 404 Permit (Clean Water Act) (Approval)

-  U. S. Fish and Wildlife Service (Concurrence)
 -  *Section 7 Endangered Species Act Consultation
 -  Biological Opinion

-  National Marine Fisheries Service (Concurrence)
 -  *Section 7 Endangered Species Act Consultation
 -  Biological Opinion

The Shoreline Permitting Process

Steps Involved in the Process



Each agent or applicant may handle the permitting process differently although the same result must be reached. Based on experience, Waterfront Construction has found the following step-by-step process to be the most efficient, flexible and cost effective way to manage shoreline permits:

1. Receive call from prospective client.
2. Conduct initial meeting on site.
3. If client stands firm on a project that cannot or will not be permitted we recommend they work with others.
4. Begin property research.
5. Request site survey if required.
6. Conduct site visit.

The Shoreline Permitting Process

Steps Involved in the Process (cont.)

7. Work with Project Manager and Drafter to design project.
8. Coordinate services of a landscape designer, biological firm and geotechnical engineer.
9. Complete all local and federal application documents.
10. Review drawings and make changes for drafter.
11. If there is an inwater sewer line involved, send copy of approved drawings to local utility.
12. Send completed drawings and applicable local forms to client for review, approval, and signature
13. Schedule and attend pre-application meeting with local government if required.
14. If project qualifies, complete Shoreline SDP and SEPA exemption request letter.

The Shoreline Permitting Process

Steps Involved in the Process (cont.)

15. Submit Shoreline SDP and SEPA (Variance or CUP) and Corps permit application packets to local government and Army Corps of Engineers.
16. Monitor and wait for SEPA Determination from local government's SEPA Responsible Official.
17. Upon receipt of SEPA, review conditions, prepare and submit HPA Application to WDFW.
18. Monitor and wait for SDP review and approval from local government.
19. For any approvals other than administrative, attend PC, CC, or Public Hearing.
20. Receive SDP approval from local government.
21. Concurrently during the SEPA and SDP reviews, work with WDFW and Army Corps of Engineers.

The Shoreline Permitting Process

Steps Involved in the Process (cont.)

22. WDFW evaluates impacts of the project on fish and critical habitat.
23. The U. S. Army Corps of Engineers Section 10 Permit process reviews projects in navigable waterways of the U.S.
24. During the Corps review process, back and forth communication takes place if needed, mainly for projects submitted under the LOP process or which do not fully comply with RGP, NWP and Programmatic guidelines.
25. U.S. Fish and Wildlife Service and NMFS reviews Memorandum from the Corps and all supporting documentation against ESA Section guidelines and concurs with the Corps determination or recommends changes.
26. If a Water Quality Certification Determination cannot be made by the Corps of Engineers, application materials are sent to WA Dept of Ecology for review and certification.

The Shoreline Permitting Process

Steps Involved in the Process (cont.)

27. Prepare local building application packet which can include Building, Demolition, Grading, Clearing, or Drainage Permits.
28. Receive Building Permit, review all project permits and conditions, prepare Permit Completion Project Manager Information Sheet to ensure PM and Crew are aware of all vital information so no violations are committed.
29. If work may not be completed prior to inwater work window closure apply for extension or delay construction until next window if extension is unlikely to be approved.
30. Schedule interim inspections required during the construction of a project and conduct site visits for compliance.

The Shoreline Permitting Process

Steps Involved in the Process (cont.)

Following Construction:

31. Schedule final building permit inspection after electrical and plumbing inspections are completed.
Note: Plantings may or may not be required to be installed prior to final inspection.
32. Contact WDFW for compliance inspection.
33. Submit Certificate of Compliance to Corps of Engineers.
34. Prepare Initial Planting Monitoring Report and Annual Monitoring Reports for Client with instructions to submit report with photos for 5 years ensuring 100% survival or replanting for 3 years and 80% after 5 years.
35. Close out project. Depending on project total duration for permitting is 6 to 24 months with the average being approximately 10 to 14 months.

The Shoreline Permitting Process

Positive Elements of the Current Process



The process is transparent and thorough with each regulatory level taking ownership of their responsibility for protecting natural resources.



The tri-level (local, state and federal) process has resulted in environmental improvements over the last 10 years.



The process allows flexibility in design.



The process protects listed species, species of concern and their critical habitat.



The process is designed to promote a cooperative effort between all parties.

The Shoreline Permitting Process

Positive Elements of the Current Process (cont.)



Partial and full bulkheads have been voluntarily replaced with more natural shorelines.



New piers have been designed and built to incorporate impact minimization, conservation and mitigation measures.



Thousands of feet of shoreline have had native riparian and/or emergent vegetation planted.



When administered fairly the process encourages property owners and contractors to participate.

The Shoreline Permitting Process

Negative Elements of the Current Process



The Shoreline Permitting Process as administered has resulted in a relatively low level of cooperation and teamwork between property owner, contractor and government.



The best available science used is often inconclusive and uses studies funded by governmental agencies or special interest groups with a desired or predetermined goal and lack of objectivity.



Multiple levels of government reviewing the same project and drawing different conclusions.



Process is complicated and expensive.



Property owners are not given fair and equitable credit for improvements or removal of existing structures.

The Shoreline Permitting Process

Negative Elements of the Current Process (cont.)

-  Regulatory staff place disproportionate mitigation requirements on property owners to get as much as they can.
-  Property owners have no representation from local, state or federal leaders making them easy targets for special interest and environmental groups and regulatory agencies.
-  Progressive rewording and narrow interpretation of guidelines over the years has resulted in misapplication of written regulations.
-  For many shoreline planners and regulatory staff preventing or greatly restricting development along the shoreline is a personal quest.
-  Waterfront property owners are often viewed by regulatory agencies and many citizens as privileged so they must do their part and pay the price.

The Shoreline Permitting Process

Negative Elements of the Current Process (cont.)

-  The current process as administered by the various agencies results in:
 -  Property owner, agents and contractors against government.
 -  Government against property owner, agents and contractors.
 -  Conservation groups against property owners, agents, contractors and government.
 -  Property owners against local staff, commissions, councils and leaders.
 -  Property owner against contractor.
 -  Government agency against government agency.

The Shoreline Permitting Process

Negative Elements of the Current Process (cont.)



The current process as administered by the various agencies:



Operates from a position of mistrust toward the very property owners and contractors who are working within it.



Creates an environment for property owners to use self-help or unqualified contractors to do unauthorized and unsafe work.



Makes property owners resistant to following through and maintaining agreed mitigation.



Renegade contractors doing unauthorized work with a very small chance of being caught.



Pushing many people who would never consider breaking the law or doing something illegal beyond their usual way of thinking.

The process currently promotes an “everyone for themselves” attitude.

Recently Approved Shoreline Projects

- The following slides are a small sample of the hundreds of pier and bulkhead projects approved and constructed on Lake Washington after the Endangered Species Act Update and/or the Shoreline Management Act requirement for “No Net Loss of Shoreline Ecological Functions” (2003) and the Corps Regional General Permit 3 (2005).
- All projects for replacement of existing piers and bulkheads represent improvements over previously existing conditions and structures.
- The vast majority of projects include a riparian and/or emergent planting plan of native trees, plants or shrubs and/or nearshore fill to improve fish habitat.

Bulkheads
Beaches
Shoreline Renovation
Rockerries



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AFTER

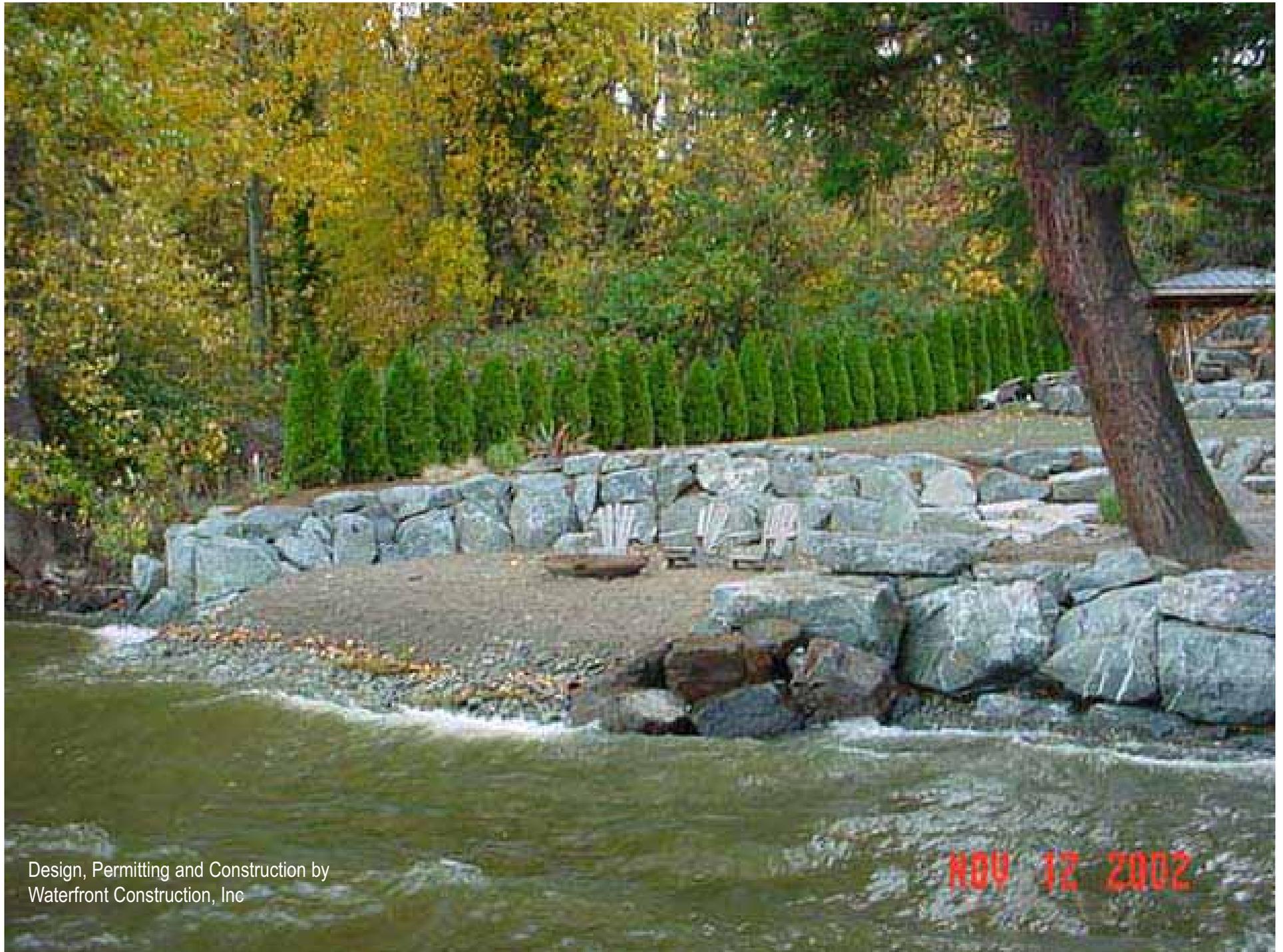
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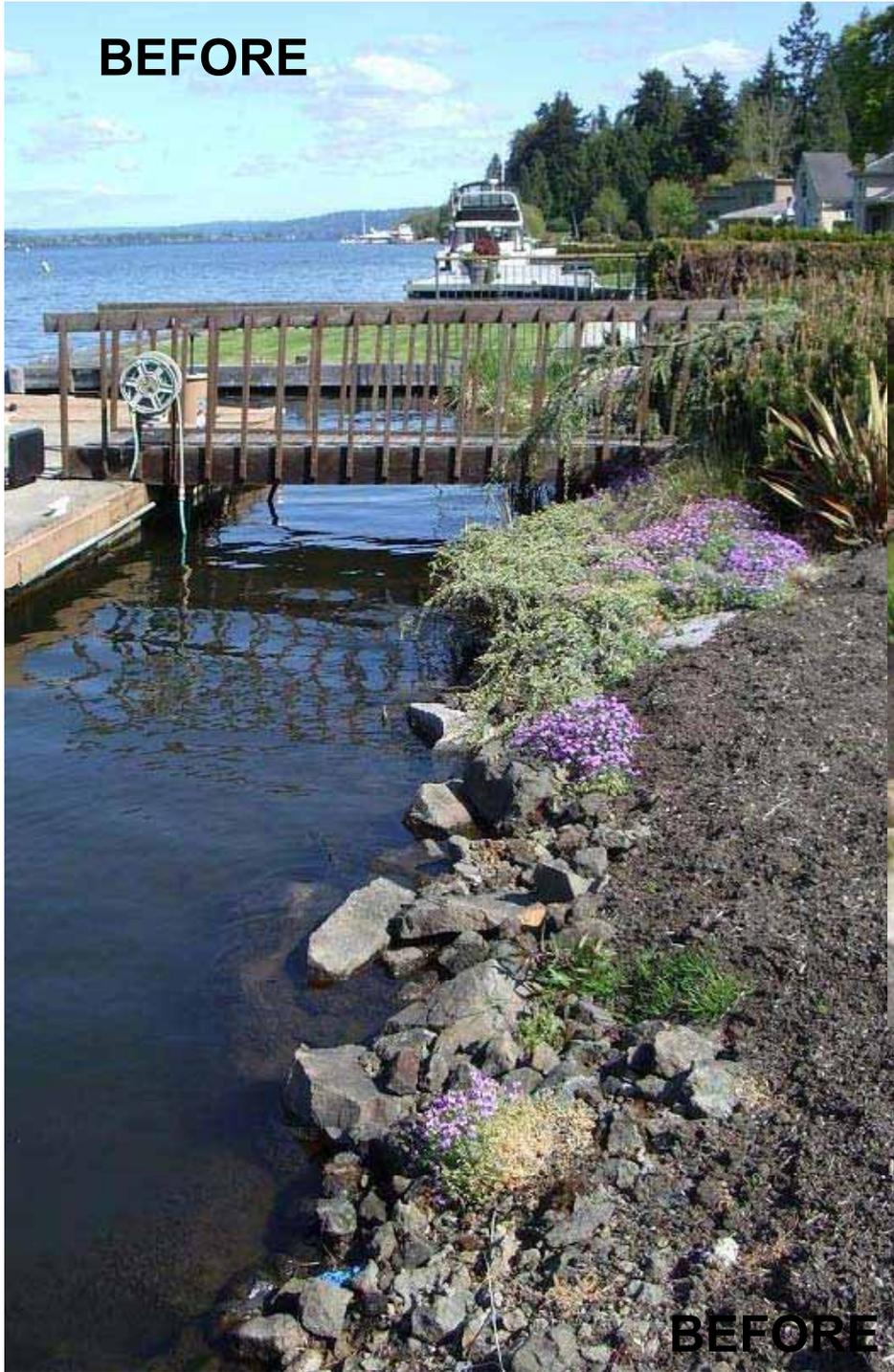
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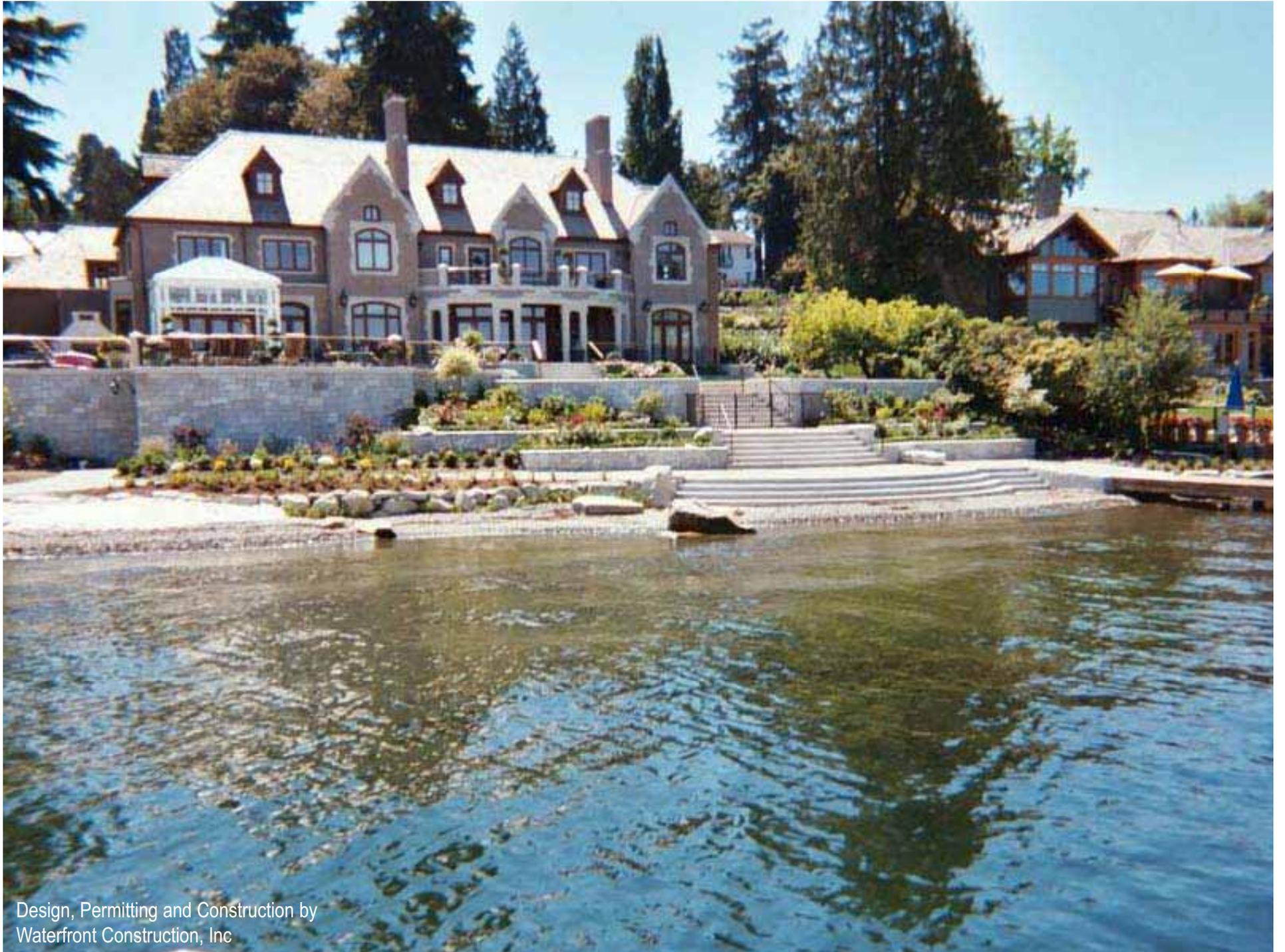
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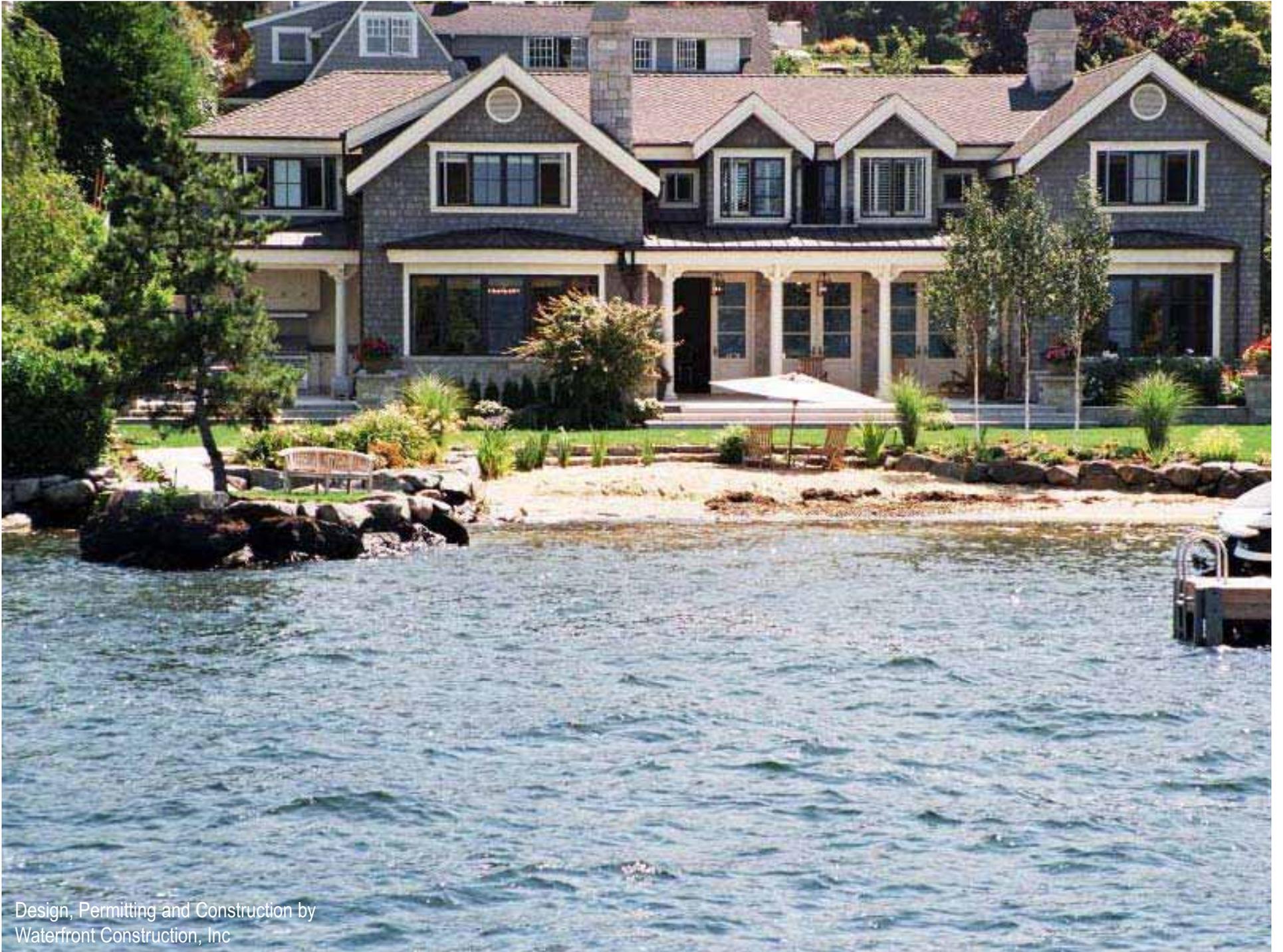
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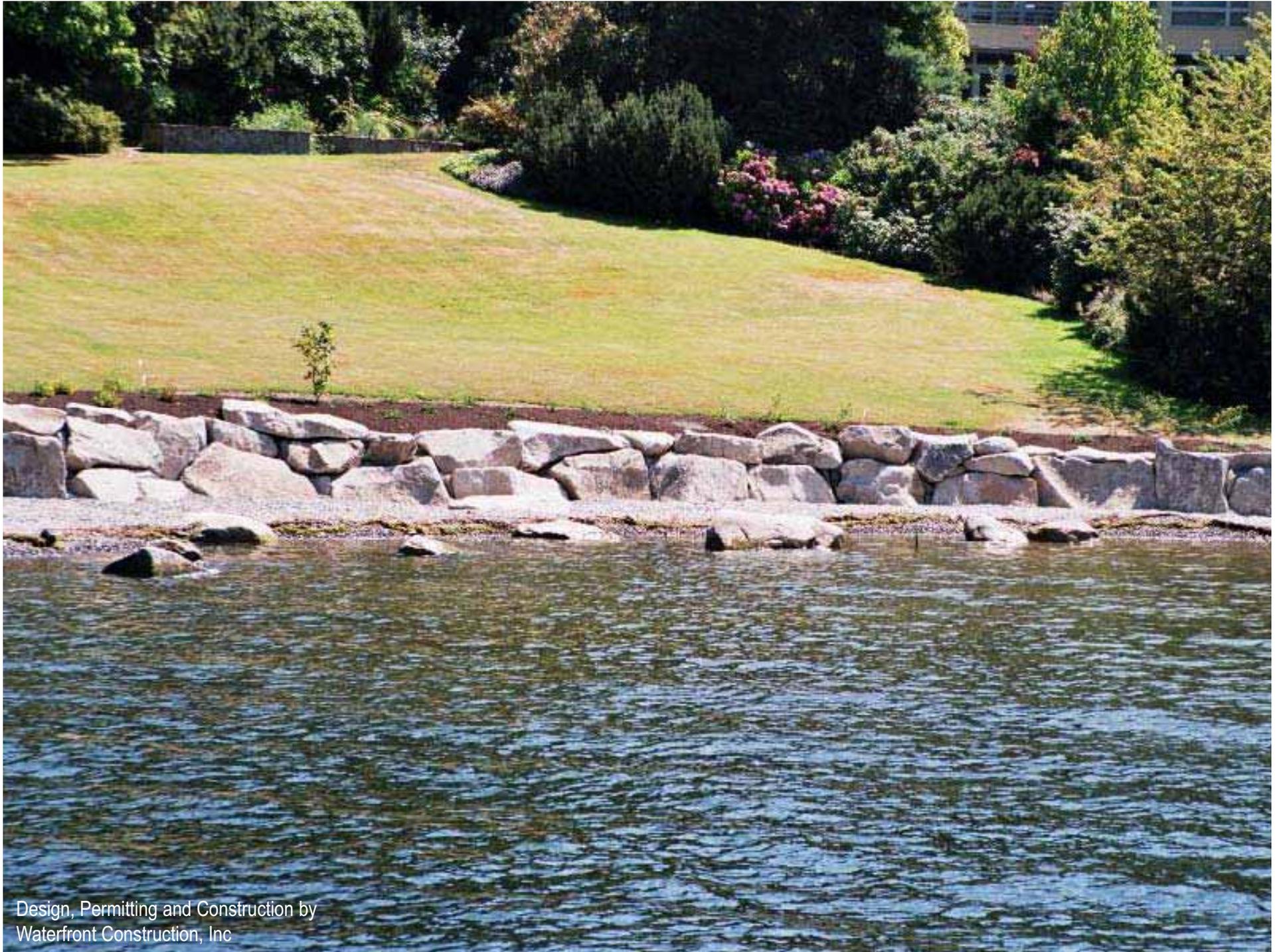
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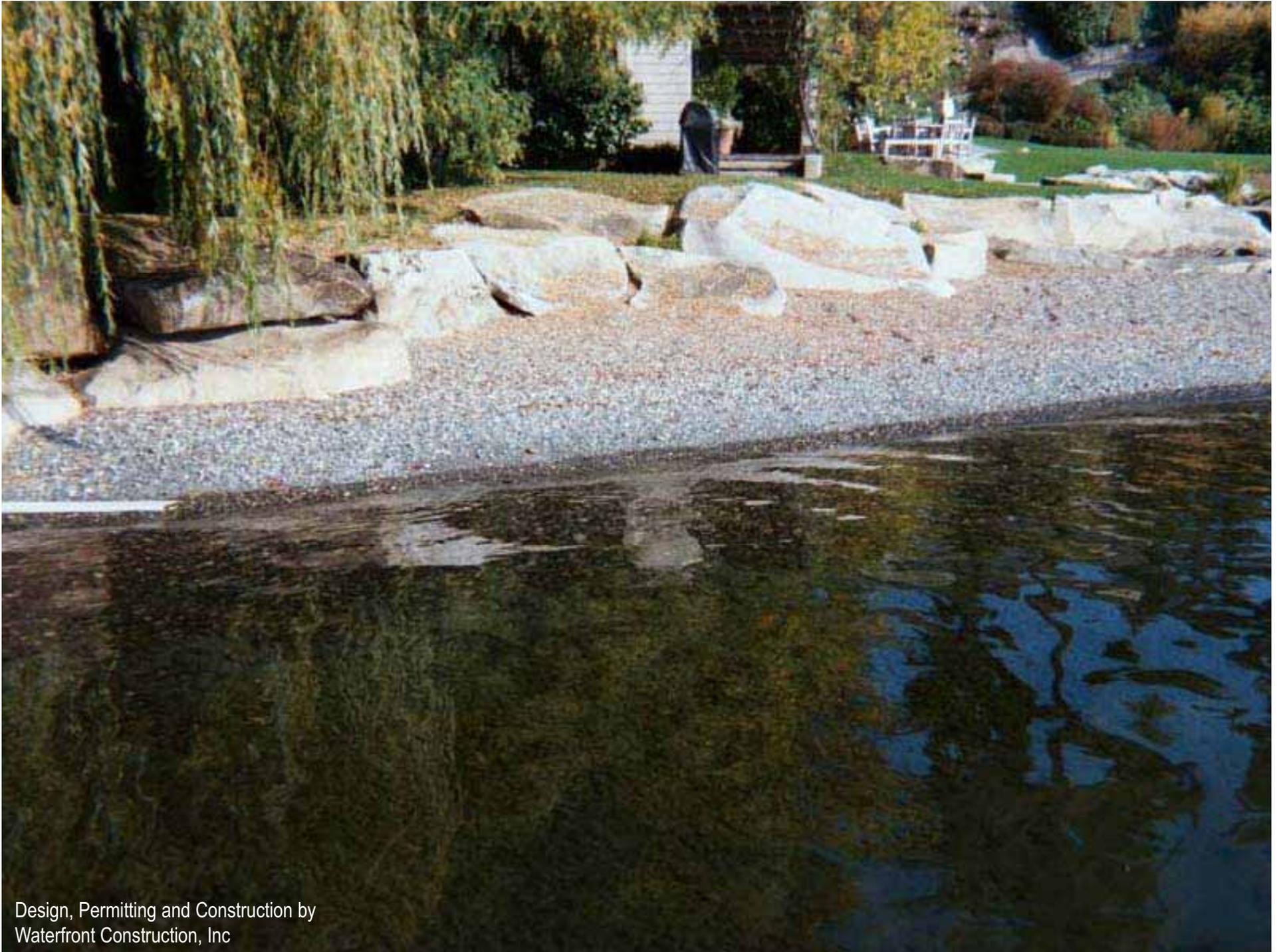
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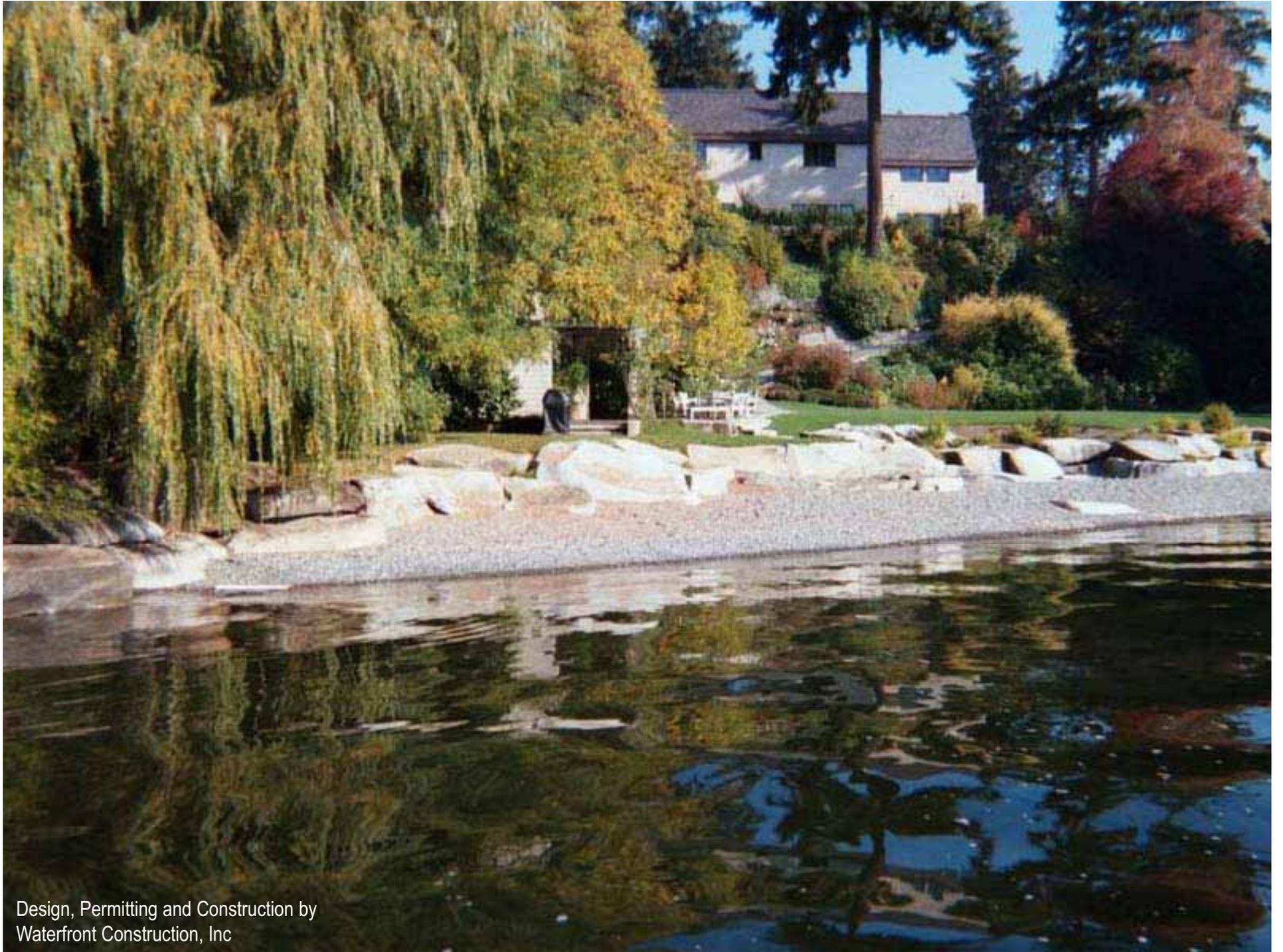
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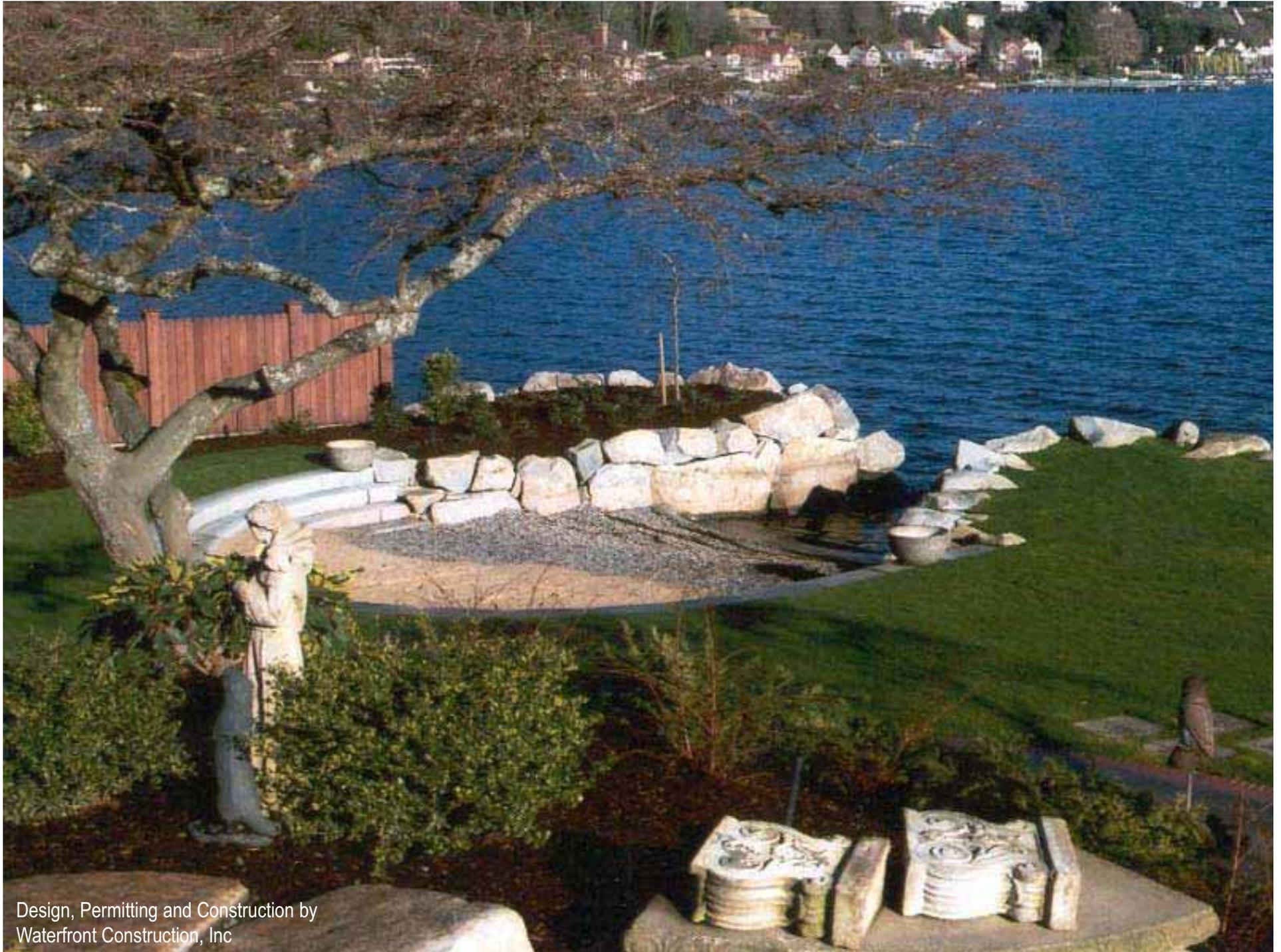
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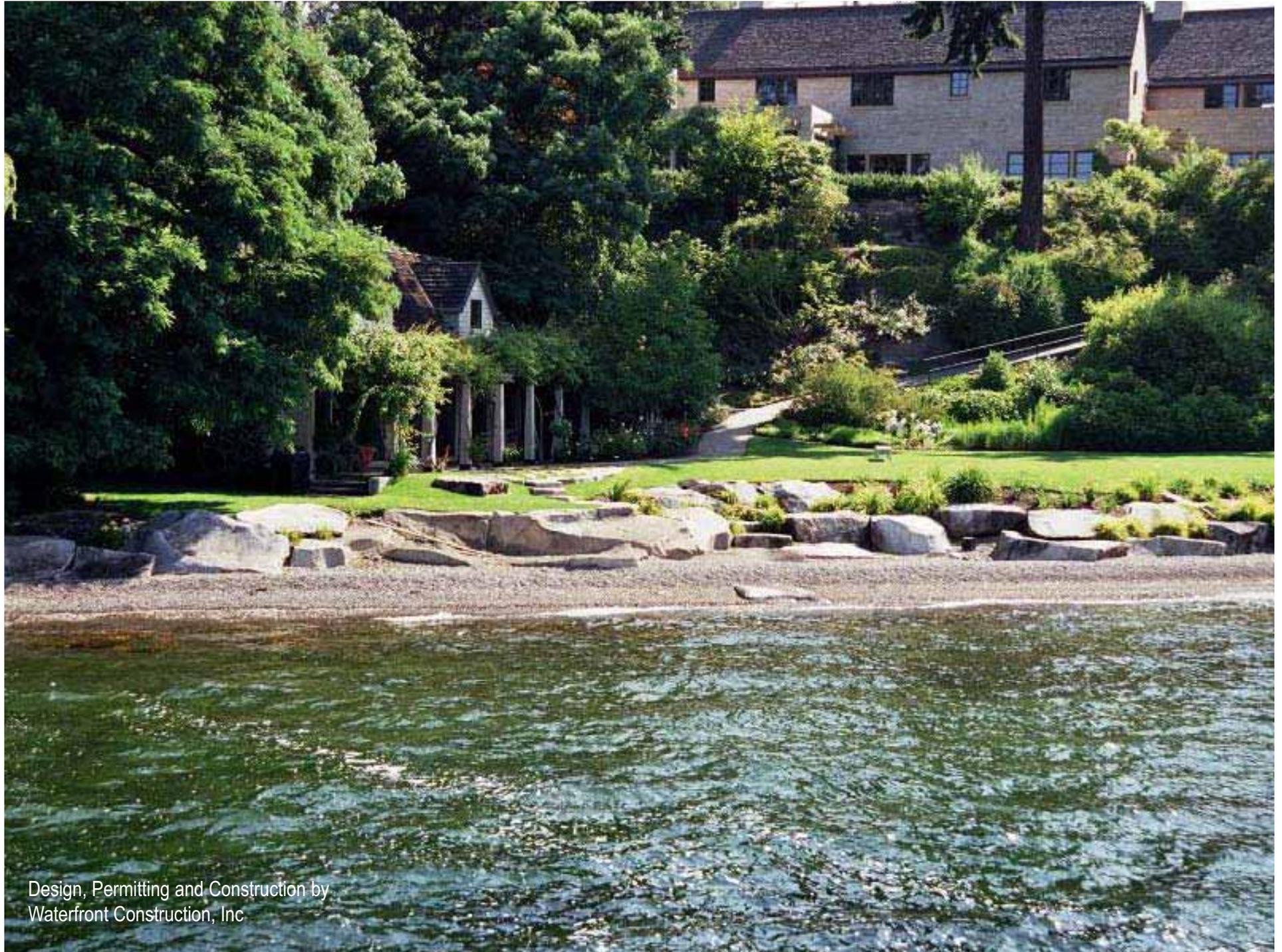
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