

DEVELOPMENT AGREEMENT

between the
City of Everett and Port of Everett

for the
North Marina Planned Development Overlay zone
PDO-WC

CITY OF EVERETT

PORT OF EVERETT

Approved and Passed by City Council, November 16, 2005

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into on this 28TH day of DECEMBER, 2005, by and between the Port of Everett, a Washington Port District (hereinafter the "Port") and the City of Everett, a municipal corporation under the laws of the State of Washington (hereinafter the "City").

RECITALS

1. The Port is the owner of property located in the City's central harborfront area containing approximately 120 acres of uplands and water, the legal description of which is contained in Section 2.2 (the "Property").
2. The Property currently contains the northern half of the Port's existing Marina, including the water area and its recreational boat haulout and wash-down facilities, boat repair work yards, conference center, Port maintenance shop and impound yard, net sheds, 12th Street Waterway, Jordan Park and numerous buildings and properties leased to a variety of industrial and commercial tenants.
3. The Port wishes to redevelop the Property shown in Attachment A, as part of its North Marina Redevelopment Project ("NMRP"). The NMRP is a multi-district, multi-phase master planned effort to create a new mixed-use development on the site. Redevelopment will include a mix of uses, including, but not limited to, marina, boat sales, boat storage and repair, restaurant, retail, office, residential, and public recreational uses.
4. The NMRP is consistent with and would implement the goals and policies of the 1994 Everett Comprehensive Plan.
5. The NMRP is consistent with the Port's 2004 - 2007 Strategic Plan and Port Resolution No. 776.
6. The NMRP will recognize the distinct functions of the North Marina area (an intensive mix of uses including marina activities, boat sales and repair, restaurants, public access and recreation and other compatible mixed-uses) through an almost completely new combination of buildings, improvements, expanded marina facilities, public walkways and open space that creates a new public gathering place, a recreational boating destination, and a residential/commercial mixed-use district.
7. The City Council has found that the conceptual site plan as adopted by the Port Commission August 8, 2005, for the Port master plan as proposed through the Planned Development Overlay ("PDO") is consistent with the City's vision for a new waterfront recreational and commercial destination in its central harborfront area.
8. The City and Port agree that utilization of the PDO process is the most appropriate for a large-scale project with a complex mixture of uses and with the long-term effects that the North Marina Redevelopment Project represents.

9. Consequently, the Port, on July 1, 2001, filed a Planned Development Overlay application with the City in accordance with Chapter 19.41.160.D of the Everett Municipal Code ("EMC"). The purpose of a Planned Development Overlay zone is to allow for:

"development that is innovative or otherwise beneficial to the community but which does not strictly comply with the provisions of the [zone] in which the property is located. This mechanism... is intended to promote high quality developments which benefit the city more than would a development which complies with the specific requirements of this title, while allowing greater flexibility in the design of such developments".

-EMC 19.29.010

10. The NMRP is proposed to be implemented through the PDO designation and the issuance of the necessary permits for construction.
11. The Port has structured a process, under the PDO, wherein this Agreement and associated conceptual Site Plan (Attachment B) describe the fundamental location of structures, features and themes to be used in the design of improvements to be developed and incorporated into the Property. This Agreement outlines the review procedure to be used as more detailed designs become available and requires that such review take place before issuance of building permits for individual project elements.
12. This Agreement sets forth the mitigation measures, development standards and guidelines through which the Port intends to develop the Property in an innovative manner, which will be beneficial to the community. The intent is to provide for a high quality development, which will benefit the City more than would a development strictly in accordance with the underlying zoning standards. The public will be benefited by the establishment of development standards together with the implementation of mitigation measures through the planned development overlay process.
13. This Agreement is entered into pursuant to RCW 36.70B.170, .180 and .190. The intent of the parties is to describe in this Development Agreement the development standards and other provisions that shall apply to, govern and vest the redevelopment and use of the development of the Property. This Agreement shall be construed in a manner that is consistent with applicable development regulations adopted by the City, except as modified herein.
14. The parties hereto agree that, as conditioned by this Agreement, the Port's proposed development of the Property satisfies the criteria for approval of alternative development standards under EMC 19.29.050.C.
15. On July 15, 2003, the Everett Planning Commission recommended approval of the PDO subject to certain performance conditions and subject to this Agreement and the associated Conceptual Site Plan Alternatives.
16. The City Council approved the PDO rezone based on findings that:
 - a. The Port of Everett North Marina Redevelopment Project is consistent with and would implement the goals and policies of the Everett Comprehensive Plan.

- b. The NMRP vision is compatible with Design Standards & Guidelines set forth in this agreement. The policies of the Comprehensive Plan pertaining to compatibility of land uses, shoreline redevelopment, and urban design along the central harborfront were considered in the design of the project.
 - c. The proposed rezone bears a substantial relation to public health, safety or welfare; and promotes the best long-term interests of the Everett community.
 - d. The design of the new 12th Street marina, the reconfiguration of the existing marina, boat repair facilities, new buildings and roadways, public walkways and urban plazas, will be compatible with the surrounding neighborhoods and harborfront areas.
 - e. The proposal, as developed over time, will meet or exceed the performance-based intent of the City's development standards in order to provide an exceptional civic and redeveloped shoreline environment.
 - f. The elements of the project will respond to and balance the needs of Everett residents and visitors, recreational boat owners, marine service businesses, the Port of Everett, the City of Everett and other public agencies.
 - g. The City and Port SEPA Responsible Officials determined that the Port North Marina Redevelopment Project is an appropriate subject of Phased Environmental Review.
 - h. The City of Everett assumed lead agency status for the Phase 1 SEPA review related to the amendments to the City's Comprehensive Plan, Zoning, and Shoreline Master Program necessary for the NMRP.
 - i. The City's Responsible Official issued a Mitigated Determination of Nonsignificance, the requirements of which have been incorporated into this Agreement. These conditions, along with the additional conditions in this Agreement are sufficient to mitigate adverse impacts upon existing or anticipated land uses in the immediate vicinity of the subject property that could result from the revisions to the Comprehensive Plan, Zoning and Shoreline Master Program.
 - j. Future SEPA reviews will be required to address the impacts of specific development activities on the Property.
 - k. The anticipated development schedule intends that all elements are to be completed by 2023. However, due to the different construction schedules and time frames for various aspects of each of the NMRP project components (public esplanade, new and reconfigured marinas, 13th Street improvements, Craftsmen District, Wharf's Edge District, West End District, Captain's Walk District and Gateway District), the components will proceed forward at different construction start times and are to be completed at different times.
 - l. The Everett City Council approved the PDO rezone subject to certain conditions as described in this Agreement;
17. The Port, in August, 2005, submitted to the City a request to amend the 2003 Development Agreement based upon the conceptual site plan approved by the Port Commission on August 8, 2005, which included revisions to standards contained in the Development Agreement.
18. On October 18, 2005, the Everett Planning Commission recommended approval of amendments to the 2003 Development Agreement subject to certain performance conditions and subject to this Agreement and the associated Conceptual Site Plan.
19. On November 16, 2005, the Everett City Council adopted Resolution No. 5703 authorizing amendments to the Development Agreement consistent with the conceptual site plan approved by the Port Commission on August 8, 2005.

Now, **THEREFORE**, the parties herein do mutually agree as follows:

SECTION ONE - INTRODUCTION

The City hereby adopts this Development Agreement in conjunction with the rezone of the Property described in Section Two of this Agreement to a Planned Development Overlay in accordance with provisions of Chapter 19.29 and 19.41.160 of the Everett Municipal Code.

The City and the Port agree that the purpose of this Agreement is to comply with the Everett Municipal Code and the Conditions of Approval for the PDO-WC Rezone. The City and the Port further agree that this Agreement establishes certain rights of the Port to develop the Property in accordance with the conditions specified herein. Provided, however, that additional SEPA review, and issuance of appropriate City approvals and permits are required prior to any development activity.

The City and the Port agree that each has entered into this Agreement knowingly and voluntarily and agree to be bound by its terms and conditions.

It is the intent of this Agreement that all of the major components of the NMRP will be completed in several phases beginning in 2004 and continuing to 2023. The City and the Port recognize that phasing and construction time among the different components of the NMRP will differ and that various structures and districts will be completed in different years. However, the Port commits that key public infrastructure improvements including the public shoreline walkway extension along the existing marina and enhancements to 13th Street will be completed as part of the first phase of the project, per Section 4.4.a.

SECTION TWO – ACTION - PROPERTY DESCRIPTION

2.1 PROPOSED ACTION:

The proposed action is the approval by the City of a Planned Development Overlay (PDO) zone for the Property described in Section 2.2 for the Port of Everett North Marina Redevelopment Project (NMRP). The PDO includes this Development Agreement with attachments.

The NMRP is a multi-district master plan to create a new mixed-use development to meet the Port's strategic planning objectives in a setting that is conducive to expanded and more efficient provision of marina moorage and related boating and maritime services, expanding public shoreline access and recreation, providing for residential use, and creating expanded economic development and employment opportunities.

The general location of the proposed action is between the Port's existing marina, north of and adjoining the Waterfront – Commercial (W-C) zone boundary and the 10th Street Boat Launch, and extending west of West Marine View Drive to the Snohomish River Channel.

2.2 PROPERTY DESCRIPTION: The Port property subject to the PDO is legally described as follows:

**PORT OF EVERETT NORTH MARINA
LEGAL DESCRIPTION**

That portion of Tide Lands conveyed to The Everett Land Company by the State of Washington in that certain instrument recorded in Volume 30 of Deeds starting at page 162, under Auditor's File No. 24048, records of Snohomish County, Washington, in and fronting Government Lots 2 and 3 of Section 18, Township 29 North, Range 5 East of the Willamette Meridian, described as follows: Commencing at the Standard City Monument at the intersection of 14th Street and Grand Avenue, which monument is shown on Plat of Everett, Division "R", according to the Plat thereof recorded in Volume 6 of Plats, page 38, records of Snohomish County, Washington, and which monument is positioned 14.00 feet North and 22.00 feet East of the intersection of the center lines of said streets, and from said monument the Standard City Monument at the intersection of 14th Street and Rucker Avenue, as shown on said plat, bears South 89°52'00" East a distance of 354.13 feet, and from said monument the Standard City Monument at the intersection of 14th Street and Wetmore Avenue, as shown on said plat, bears South 89°52'00" East a distance of 1396.16 feet; thence North 89°52'00" West, along the monument line of 14th Street projected Westerly, which monument line is 14.00 feet North of the center line of 14th Street, as measured at right angles to said center line, a distance of 369.16 feet to the center line of that certain road known as Marine View Drive; thence continuing North 89°52'00" West a distance of 217.29 feet to the point of intersection of said monument line with the Westerly Margin of the Northern Pacific Railway Company right of way; thence North 1°15'00" West, along said Westerly Margin, a distance of 1481.43 feet to the True Point of Beginning; thence North 89°52'00" West a distance of 2154.56 feet to the point of intersection with the Government Pierhead Line; thence South 3°41'45" West, along said Government Pierhead Line, a distance of 2124.28 feet; thence North 89°41'40" East a distance of 1950.45 feet; thence South 0°18'20" East a distance of 170.62 feet; thence North 89°41'40" East a distance of 354.78 feet; thence South 0°18'20" East a distance of 102.17 feet; thence North 89°41'40" East a distance of 215.66 feet to the point of intersection with the Westerly Margin of said Marine View Drive; thence in a Northerly direction, along said Westerly Margin of Marine View Drive, on the following courses: North 0°26'58" West a distance of 263.60 feet, North 1°44'43" West a distance of 285.96 feet, South 88°15'17" West a distance of 6.00 feet, North 1°44'43" West a distance of 230.62 feet, South 89°50'10" East a distance of 6.00 feet, North 1°44'43" West a distance of 46.00 feet, North 89°52'00" West a distance of 6.00 feet, North 1°44'43" West a distance of 64.00 feet, South 89°52'29" East a distance of 6.00 feet, North 1°44'43" West a distance of 3.00 feet to the point of intersection of said Westerly Margin with said Monument line of 14th Street projected Westerly; thence North 1°44'43" West, along said Westerly Margin, a distance of 26.01 feet to the point of intersection of said Westerly Margin with the North Margin of said 14th Street projected Westerly; thence in a Northerly direction, along said Westerly Margin of Marine View Drive, on the following courses: North 1°44'29" West a distance of 17.10 feet, North 89°52'29" West a distance of 6.00 feet, North 1°44'29" West a distance of 295.04 feet; thence North 1°52'10" East a distance of 95.27 feet; thence North 1°44'29" West, along said Westerly Margin, a distance of 215.66 feet; thence on a curve, to the left, of said Westerly Margin, having a radius of 11314.19 feet, through a central angle of 4°07'25", an arc distance of 814.25 feet; thence North 5°51'54" West, along said Westerly Margin, a distance of 5.13 feet to the North Margin of 11th Street projected Westerly; thence North 89°52'00" West, along said North Margin projected Westerly, a distance of 135.01 feet to said Westerly Margin of the Northern Pacific Railway Company right of way; thence North 1°15'00" West, along said Westerly Margin, a distance of 15.01 feet to the True Point of Beginning. All containing 119.62 acres, more or less.

SUBJECT TO Easements of Record, Also SUBJECT TO City Street Rights of Way.
082003, 231920, CML-LS

All division and segregation of land on the affected property shall be consistent with City regulations governing such actions.

SECTION THREE – DEVELOPMENT PLAN

3.1 INTRODUCTION:

Upon approval of the PDO, the provisions of this Agreement and the standards set forth herein shall govern and control the development of the Property. The City and Port recognize that development of the property to conform to the conditions and project phasing objectives contained in this document is subject to third party permits and approvals outside of the control of the City or Port.

3.2 CONTROLLING DOCUMENTS:

Several codes, plans, policies and analyses provide the basis for the conditions contained in this Agreement. Where questions or the need for interpretation arise during the permitting or construction of improvements on the Development Property, these documents, as reasonably interpreted by the Planning Director, will control.

- A. Everett Municipal Code including but not limited to the Zoning Code (Title 19 EMC) and the Planned Development Overlay Zone (PDO) provisions.
- B. Everett GMA Comprehensive Plan

The Planned Development Overlay zone was found to be compliant with the Everett Comprehensive Plan as required by EMC 19.29. An analysis of the consistency of the PDO with the Comprehensive Plan is found in the Environmental Checklist prepared for this PDO proposal and other annual docket process applications.

- C. Phased SEPA Environmental Review

The City of Everett issued a Mitigated Determination of Non Significance (MDNS) on March 18, 2003 that addressed the Comprehensive Plan, Zoning, and SMP amendments needed for the proposal. Comments were received from the public regarding noise and view impacts, to which the Port responded with noise and view impact studies acceptable to the City, and a Revised Mitigated Determination of Non Significance was issued on July 10, 2003. The Revised Mitigated Determination of Non Significance, Environmental Checklist, and attachments contain background material in support of several provisions of this Development Agreement, including land and shoreline use compatibility.

3.3 RELATED AND CONCURRENT REDEVELOPMENT PROJECTS:

A. 10th Street Boat Launch and Marine Park

The Site Plan in Attachment B shows that portions of the 10th Street Boat Launch and Marine Park would be used for parking for the 12th St. Marina Project. The design and environmental analysis of the Port's North Marina Project Redevelopment must be coordinated with potential improvements being planned for the 10th Street Boat Launch and Marine Park.

B. 12th Street Marina

The Port will integrate design of the new 12th Street marina, the permitting and construction of which may proceed as a separate action, into designs for NMDP PDO area.

C. Existing marina reconfiguration

The Port will reconfigure the north side of the existing marina, which lies north of the southern edge of the PDO area, in conjunction with work in the uplands PDO area.

3.4 USE DISTRICTS

1. The Site Plan is included as Attachment B to this Agreement. This site plan is approved conceptually only. Revisions may be required to comply with the conditions of this Agreement, future SEPA environmental reviews, and specific regulations, including, but not limited to, the Shoreline Master Program, Zoning Code, Fire Codes, Public Works Standards, and mitigation requirements.

2. This Agreement hereby approves and supports the Port's desire to create certain use "Districts" with associated themes. The following descriptions are not intended to regulate the development of uses, but to more generally describe the types of uses within the project.

a. Craftsmen District—this area includes the entire portion of the site north of 13th Street extending from the east end of the 12th Street Waterway to West Marine View Drive, except the area included in the Gateway District. It will be the location for consolidating the majority of the marine related activities (e.g. marine-related retail sales, displays, boat repair and dry storage facilities) to accommodate marina services business needs and future growth potential.

b. Esplanade District – this will be the public walkway bordering the shoreline edge along the entire length of the existing Marina and the new 12th Street Marina in the location shown on Attachment B. This district will consist of a pedestrian walkway, with seating areas, viewing places and landscaping that provides a continuous means for public access and circulation. In places the landscaping will include multiple expanded “mini-parks” throughout the District.

Generally ground floor shops and restaurants and second floor professional offices will border the esplanade. This district will include short-term parking and loading areas available to boat owners and guests, and for shoreline viewing, subject to the findings and requirements of the traffic and parking management studies.

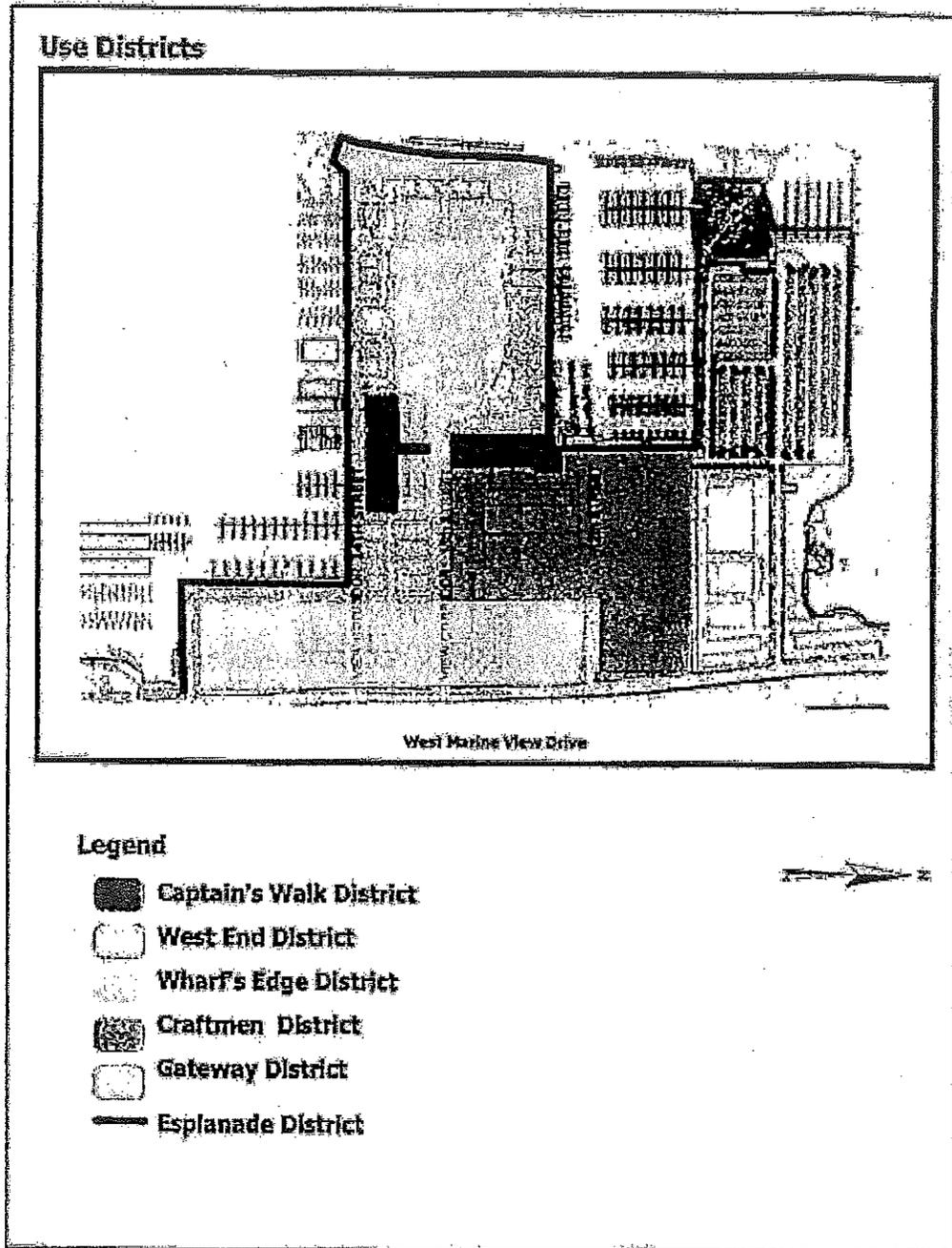
c. West End District – the area along the westernmost edge of the site will contain a mix of pedestrian-orientated uses, which may include restaurants, cafes and a hotel. In addition, a major public plaza will open to the Snohomish River Channel. A pier would be added as a visiting “tall ships” style mooring dock.

d. Captain’s Walk District – the area located roughly in the center of the site will function as a major pedestrian connection between the existing Marina and the new 12th Street Marina. This area will be designed to emphasize pedestrian activity and will use special paving materials, building designs and displays to emphasize the historical character of the waterfront and Everett’s heritage. If vehicular access is provided, measures shall be included to reduce traffic speeds. The district will include ground floor retail and service shops and upper-level offices (including professional offices) along with potential live-work spaces. The south end of this district is anticipated to include an area reserved for a public market.

e. Wharf’s Edge District – this area is located in the western portion of the Property landward of the 200-foot shoreline management zone. This will be the residential neighborhood with a variety of housing types. Parking will be integrated into the design of the buildings so as to minimize surface parking and maximize open space. Retail and service uses may be located on the first floor of buildings fronting the marina to the south and the Captain’s walk to the east. The housing would be organized around a major east-west pedestrian way or “promenade” (13th Street) containing small stopping places and extensive landscaping. This promenade would be open to the public. This district will also contain another north-south pedestrian connection. This north-south pedestrian connection will connect the new, proposed, marina esplanade with the esplanade along the existing marina.

f. Gateway District – the eastern portion of the property adjacent to West Marine View Drive except the portion in the Craftsmen District. This district will serve as a main gateway into the site for autos, cyclists and pedestrians. It will provide the transition area that will accommodate larger buildings for corporate/high technology users and larger retailers. It could also be used to as the location for a parking structure to provide long term site parking for boaters and for special events, depending on the outcome of the traffic study and parking management plan.

3. Location of the approved Districts will generally conform to this diagram:



3.5 PERMITTED USES –SPECIAL PROVISIONS

1. Proposed uses shall be permitted in accordance with the provisions of Tables 1 and 2 in Attachment E and the City's Local Project Review Procedures, EMC Title 15.
2. The scale of the project by the Port of Everett shall be allowed to range in use categories and net building square footage areas as follows:

Marine Sales & Service	98,600 s.f. to 117,900 s.f.
Office, retail, commercial*	502,900 s.f. to 640,000 s.f.
Housing	467,500 s.f. (430 units) to 726,000 s.f. (660 units)
Hotel & Restaurant	75,000 s.f.
TOTAL BUILDING AREA	1,144,000 s.f. to 1,558,900 s.f.

* Includes uses such as theaters, research and development, and educational facilities.

The allocation between different uses may be adjusted between uses, providing the total square feet of net building area does not exceed 1,558,900 and 660 residential units.

3. Permitted uses not already listed in the current Shoreline Master Program shall not be permitted within the 200 foot shoreline overlay zone area until or unless the Shoreline Master Program is amended and approved by the State of Washington Department of Ecology.

3.6 GENERAL CONDITIONS:

1. Development of the Property shall be subject to all standards, and design guidelines of the Zoning Code, except as specifically modified in this agreement, (collectively the "Development Standards"). The Property is zoned North Marina Planned Development Overlay – WC. If there is conflict between the provisions of the WC Zone and the provisions of this agreement, the standards in this agreement shall apply. Unless otherwise stated, all standards, guidelines, and other requirements of this section are in addition to those identified in the Zoning Code. It is the intent of the Development Agreement to set standards and guidelines for building height, landscaping, parking, design, allowed uses, number of housing units, (density), maximum square footage of buildings, District areas, lighting, signage and view protection.

2. The following development standards apply to the Property.

ZONE STANDARDS	PDO - WC (1)
Min. Lot Area	5,000 sf
Min. Required Setbacks	(2)(3)
Lot Width, Min.	50
Lot Depth, Min.	80
Max. Lot Coverage by Building	N/A
Max. Building Height	35 to 65 (4)(6)
Landscape Category	(3)
Sign Category	B

SPECIAL REGULATIONS FOR DEVELOPMENT STANDARDS TABLE

- (1) See Section 6.080 of the Zoning Code.
 (2) See Section 39.150 of the Zoning Code for exceptions to required setback standards.
 (3) 10 foot setbacks are required on West Marine View Drive street frontage.
 (4) See Attachment C and conditions in this Section for exceptions to building height.
 (5) See Attachment F and G to this Agreement for landscape standards.
 (6) Fisherman Tribute Tower maximum height is 95 feet.

At the option of the Port, these standards may be applied to individual legal lots within the Property or collectively to any combination of such lots that are developed as an integrated unit.

3. Building heights on the site will be restricted to height zones by block as depicted in the Height Zone Map (Attachment C). Measurement of building heights will be determined at the time of the building pre-application conference with the City by an onsite verified method acceptable to the City. In the residential district, building heights will be measured from existing average grade of 17.0 feet above Mean Lower Low Water (MLLW). The Planning Director shall review all building plans to verify that the height of the building, rooftop appurtenances, and rooftop gardens comply with the terms of this agreement.
4. "Rooftop appurtenances" are allowed to exceed the permitted building height by up to ten feet, but shall be designed to be the lowest height necessary to screen mechanical equipment, house elevator shafts, stairwell access, and other similar building elements. The profile of rooftop appurtenances, landscaping trellises and landscaping materials located above the permitted maximum building height shall be designed to minimize visual impact as viewed from the east-west line that is perpendicular to West Marine View Drive.
5. The draft "Port Gardner Wharf Design Guidelines" submitted to the Planning Department on October 7, 2005, shall be used as a supplement to the Design Standards and Guidelines contained in Attachment G of this Agreement.
6. The Planning Director shall have the sole authority to determine if site layout and building designs proposed in each phase of implementation of the North Marina Redevelopment plan, including but not limited to shoreline permits, SEPA reviews, building permits, binding site plans, or other permits required by the EMC or State law, are consistent with the character

and quality represented in the site development plan identified as Exhibit A, and the "Port Gardner Wharf Design Guidelines."

7. The Planning Director is directed to reject any plan that does not provide the level of detail, architectural quality, and character represented by the site development plan identified as Exhibit A, and the "Port Gardner Wharf Design Guidelines." A decision to reject a plan or permit based on inconsistency with the site development plan or Port Gardner Wharf Design Guidelines must not be arbitrary and must be made in writing and supported by detailed findings and outlining the identified inconsistency.
8. In reviewing plans for individual phases of development and individual buildings, the Planning Director shall have the authority, if he deems it necessary to determine consistency with the character and quality represented in the site development plan identified as Exhibit A and the "Port Gardner Wharf Design Guidelines," to retain the services of an independent architect with appropriate expertise as an independent third party. The selection of the architect shall be mutually agreed upon by the City and the applicant.
9. View corridors shall be maintained to the western water's edge along the lengths and width of the existing 13th Street right-of-way, and on 14th Street as depicted on Exhibit D. In these corridors, construction of buildings will not be permitted, though temporary structures, landscaping and pedestrian improvements may be allowed. Elements that may encroach up to 5 feet into the view corridors include: decks and balconies, architectural features such as cornices and architectural terminations, roof eaves, and bay windows. Retail canopies and awnings may encroach 10 feet at the first building floor.
10. That portion of the Property fronting West Marine View Drive shall be treated as a City Gate Way Corridor with the appearance and landscape standards established in the Design Standards & Guidelines Document (Attachment G) for this project.
11. Curb cuts in the sidewalks along the westerly side of West Marine View Drive frontage no longer needed as a result of this project shall be removed, i.e. the sidewalk shall be restored to a level surface along the length of the removed curb-cut so it matches the existing sidewalk level and appearance at both ends of the cut area.
12. The attached public circulation map represents the conceptual layout (Attachment D) of this element of the project.
13. Public access corridors, walkways and plazas shall be substantially provided as conceptually depicted in Attachments B and D, in which 14 such linked and "expanded" public spaces are shown on the Property.
14. Design of the proposed amphitheater shall be such that sound is carried away from residential areas as much as possible. Stage, seating and area lighting shall be directed down so as not to shine toward residential areas. The location of this feature may move to another location, the conditions of which must be acceptable to the City.
15. Pedestrian access to all parts of the shoreline touching the North Marina area will be made available to the public, during the course of the phased development of the project. Boat launching and haulout areas may be restricted by the Port during the movement of boats.

16.
 - a. Prior to issuance of permits for any residential units on the site, a noise study shall be completed by a qualified acoustical consultant and approved by the City. The study must describe any special construction on the buildings needed to ensure that interior noise levels in the residential units are no greater than 45 dBA LDN or the ambient LDN level, whichever is higher. The qualified acoustical consultant must sign off on the plans submitted for building permits to ensure that the construction proposed is designed to be consistent with this condition.
 - b. Prior to issuance of permits for any buildings over 35 feet tall along West Marine View Drive, a noise study shall be completed by a qualified acoustical consultant. The study must describe any special design and construction of the buildings needed to ensure that reflected noise from such building will not cause noise levels at the residential receiving properties to the east to exceed the existing noise levels described in the findings of the Greenbusch noise study provided by the Port to the City dated June 2, 2003 (after subtracting ambient noise sources not accounted for in the June 2, 2003 study). The noise study is attached to the City SEPA document for this action (Revised Mitigated Determination of Non Significance #02-058. All plans submitted for building permits must be consistent with the SEPA conditions.
17. All exterior lighting, including lighting of signs, shall be directed downward onto the site and away from other shoreline properties or nearby neighborhoods. Exterior lighting will be approved by the Planning Director.
18. The Port shall provide to the City a detailed parking management plan for approval by the Planning Director and City Engineer for each phase of development, prior to the issuance of any building permits within each phase. This requirement shall not apply to demolition permits, or permits for street, utility and public access infrastructure improvements. The City shall have the authority to approve or reject the parking management plan as necessary so adequate parking is provided for the activities anticipated within the project. Provisions shall be made to accommodate the public for normal weekend and peak season activities. The Port shall not be required to provide parking on-site to accommodate anticipated special events with an extraordinary parking demand, such as 4th of July fireworks exhibitions or Fresh Paint, but shall provide for alternative means of accommodating anticipated public access such as transit or shuttle service from off-site parking facilities.
19. Parking must be provided per Zoning Code requirements, except that the minimum requirement for residential parking shall be 1.8 parking spaces per dwelling unit, provided that not more than sixty percent of the dwelling units have three or more bedrooms. This residential parking requirement cannot be administratively modified unless the City, Port and applicant consent to its modification. The parking required for residential uses shall be addressed in the parking management plan for each phase of redevelopment. For each phase of redevelopment after the first phase, in making the determination as to accept or reject the parking management plan, the Planning Director and City Engineer shall consider whether to require a greater number, or allow a lesser number of non-residential parking spaces, based upon the mix and size of residential dwelling units, the presence or absence of regular public transit service, and experience with residential parking demand in preceding phases of development.

20. All required parking for residential use shall be located within enclosed structures.
21. Traffic mitigation must be provided per City Traffic regulations.
22. SEPA reviews for residential construction on the site must address impacts to the Everett School District. Mitigation of impacts to the School District must be provided per a written agreement between the Port of Everett and the Everett School District. Documentation of compliance with this requirement must be received from the School District prior to issuance of any building permits for residential use.
23. All sales, lease and rental agreements for the residential units must include a clause that provides disclosure of vibrations that are caused by rail car impacts in the area, unless studies by a qualified consultant demonstrate to the City's satisfaction that such disclosure is not necessary.
24. Boat painting and sanding area(s) shall be screened / fenced and landscaped (wind blocking foliage) such that drifting spray and debris is substantially contained within the work yard area.
25. Soil stability, seismic, load bearing tests and flood protection regulations and other requirements of the City engineer as necessary shall apply, including testing and studies where applicable.
26. An increase in building height from 35 feet up to 65 feet on portions of the site outside the 200 foot shoreline jurisdiction zone will be permitted per the Height Zone Map in Attachment C. No building heights within 200 feet of the shoreline will go above 35 feet, no building along West Marine View Drive will be above 45 feet. The Fisherman's Tribute Tower will not exceed 95'.
27. Non-water dependent and non-water related uses, such as retail, commercial and office, will be allowed within the 200 foot shoreline area.
28. The dry boat storage building will use materials and architectural details which will reduce the perceived scale of the building and make it compatible with the architecture of the new buildings within the project.
29. The dry boat storage building will be set back 140 feet from the shoreline, the height of the building within the 200 foot shoreline jurisdiction shall be 35 feet or less, and the dry storage portion of the building will not exceed 140 feet wide and overall length less than 400 feet. Any increase in these dimensions, other than setback, will be reviewed by the Planning Commission and City Council. Portions of the building used for ancillary boat repair and services may exceed the 140 feet width dimension but will not exceed 35 feet in height.
30. The hours of operation of the dry boat storage facility will be 7 AM to 7 PM, seven days a week.
31. The transient moorage dock along the Snohomish River in the existing marina and the proposed new marina transient moorage will be open to the public at all times.

32. Within the North Marina PDO, rooftop appurtenances will be integrated into the architecture of the building and will be limited to vents, HVAC and elevator equipment, stair enclosures for roof access, parapets, cornices or other architectural termination, guardrails/railings, skylights, and planters.
33. Any mechanical / air conditioning / HVAC equipment in new buildings will not increase the noise levels to affect residents on the bluff above the project.
34. The applicant shall provide dedication of an easement to the public, or other device acceptable to the City Attorney, to ensure that the spaces listed on the open space plan as "semi-public open space" in Attachment D will remain open from at least the hours of 7 a.m. to 10 p.m.

SECTION FOUR – PROCESS

4.1 PHASED SEPA REVIEW

The City of Everett assumed lead agency status and completed a Phase I SEPA review that addressed the revisions to the Comprehensive Plan, Zoning, and Shoreline Master Program necessary for the approval of the proposed NMRP alternative conceptual site plans and master plan. The analysis of impacts and mitigation measures was limited to those that could be identified at the master planning level and do not address all impacts and mitigation associated with subsequent specific development activities.

Additional environmental review shall be completed prior to the Port's adoption of a preferred site master plan alternative, and City issuance of individual approvals and permits for specific site plans and development activities consistent with this PDO (e.g., shoreline substantial development permits, subdivisions and/or binding site plans, building permits, public works permits, etc.). Such future environmental reviews shall include, but not be limited to, noise studies, geotechnical studies, analysis of light and glare impacts, analysis of air quality impacts, traffic studies, parking studies, analysis of stormwater and water quality impacts, analysis of impacts to habitat (including biological assessments), analysis of shoreline restoration opportunities, and analysis of impacts on schools and other public services. All studies shall be sufficient to address City regulations, including the requirements of this Agreement, the Shoreline Master Program, the Zoning Code, the Transportation Mitigation Ordinance (EMC 18.40), Stormwater Regulations and Standards, Land Division regulations, Public Works Standards, etc. Review and approval by appropriate City staff (Planning and Community Development Director, Traffic Engineer, Fire Marshal, City Engineer, etc.) is required prior to issuance of permits and other approvals. As more specific information is available for future development, new SEPA reviews or Addendums may be required to address the more detailed information.

To ensure that mitigation consistent with City SEPA policies and regulations is required of development within the PDO zone, conditions addressing interior noise levels in residential units, traffic mitigation, and school district mitigation are included in Section 3.6 of this

Agreement (Development Standards, Design Standards and Mitigation Measures - Special Provisions).

Other Proposals:

Several developments planned by the Port could occur regardless of whether the NMRP is implemented or which alternative conceptual site plan is selected by the Port. SEPA reviews and permitting for these actions may be completed separately from the SEPA reviews and permitting for the master plan. These include:

- 12th St. Marina and associated improvements on the 10th Street Boat Launch and Marine Park property, and
- Bulkhead and walkway maintenance and reconstruction along the north side of the existing marina.

While SEPA reviews may be completed separately for these projects, those reviews must be consistent with the requirements of this Agreement.

4.2 FINAL DEVELOPMENT PLAN AND MODIFICATIONS

Within three years of approval of this Agreement by City Council, the Port shall submit the final conceptual site plan to the Planning Director for review and approval in accordance with EMC 19.29.090 - 19.29.130. The final conceptual site plan may be modified from time to time to reflect changing conditions. If the Port fails to submit the final plan within the specified time frame and requests an extension, the City may impose additional standards on the PDO if such changes are based on changes in the zoning code or any other ordinances which have occurred since the original PDO approval was granted. If submission of final conceptual site plan is delayed as a result of events or activities outside of the control of the Port, including any appeals or litigation related to the Property, SEPA compliance or the project, the time period for submission will be extended accordingly.

Modifications to the approved site plan shall be reviewed and approved according to EMC 19.29.120; except that

- Any increases in building height beyond what is allowed in this Agreement shall be considered a major modification,
- Any changes from an area originally planned to be occupied by a structure to public open space or recreational use shall be considered a minor modification,
- Any relocation of buildings required in order to comply with City regulations or this Agreement shall be considered minor modifications,
- Construction of parking structures in areas shown for parking shall be considered minor modifications.

Minor modifications will be addressed administratively by the Director of Planning and Community Development, after consultation with affected departments and agencies.

Final development plans for each phase of redevelopment shall include the details required by EMC 19.29.110, and shall be submitted for review prior to the issuance of any required land use approvals or building permits.

4.3 PERMIT/CONSTRUCTION PHASING REQUIREMENTS

The Port will construct the NMRP in accordance with the phasing requirements set forth below. The Port will be requesting permit approvals for some NMRP elements before other permits; and before the designs are completed on others. The City will allow approvals and permits to be issued in a timely manner, subject to compliance with applicable City policies, regulations and standards. In the event the Port fails to comply with these requirements, the City is authorized to withhold permits or, in the event work has commenced, issue stop work orders in order to maintain or obtain compliance with the schedule.

1. The division of the residential property must occur prior to issuance of permits for the residential units.
2. Prior to issuance of occupancy permits for nonwater-dependent uses, including residential use, improvements to 13th Street, West Marine View Drive, and the walkways along the shoreline edge must be usable by the public and linked to other walkways within the NMRP.
3. The public access esplanade abutting water's edge in the diagram for the open space network proposed in the notebooks submitted to the Planning Department October 7, 2005, shall be constructed concurrent with the first phase of buildings in the North Marina Redevelopment Area. The Planning Director may allow for interim level of improvements in areas where future phases of development would require demolition of public access improvements. Any such interim improvements shall be replaced with permanent improvements consistent with the draft Port Gardner Wharf design guidelines concurrent with the phase of development abutting the public access facility. The Esplanade along the south side and the amphitheater will be completed in the initial phase of the project.

The Port agrees that "provision for public access" means the earliest possible linkage that can practically be provided for the public benefit between the 10th Street boat launch area and the existing marina esplanade, even if some portions of the connection are temporary in nature.

4. Each phase of the development must construct improvements necessary to comply with provisions found herein for that phase, including, but not limited to, parking, utilities, fire access, landscaping, etc.

4.4 PROJECT PHASING:

The order of Construction of individual components of the project will depend on market demand. The public access esplanade abutting water's edge shall be constructed as described in Section 4.3.3. In general, it is anticipated that project phasing will be as follows:

- a. Phase 1: This stage will include improvements to 13th Street, construction of an Esplanade along the south side of the uplands area, a pedestrian walkway along the southern portion of the west end. The amphitheater will be constructed.

Parking will be reconfigured in the southwest corner. The utility work for the project will commence.

- b. Phase 2: This stage will include buildings in the Craftsmen District, such as the conversion of the MSRC building, new haul out facilities, a new boatyard, and a new washdown facility. The remaining parking along the south side will be constructed, and professional office, retail and residential construction will begin.
- c. Phase 3: The permanent esplanade walkway will be extended along the remainder of the west end, wrapping around along the north side of the upland area. The north/south pedestrian walkway from the existing marina will be completed, linking the marinas. The Public Market will be completed and additional residential, retail and professional office space will be constructed.
- d. Phase 4: The remainder of the public access components in the project will be completed, including public plazas along the west end walkway. Parking along the west end will be constructed. Buildings along West Marine View Drive will be constructed, as well as additional office, residential and retail.
- e. Phase 5: Additional office space along West Marine View Drive, as well as retail and professional office space along the 12th Street Marina will be completed.

SECTION FIVE – GENERAL TERMS

5.1 VESTING OF DEVELOPMENT STANDARDS:

Pursuant to RCW 36.70B.170 *et seq.*, all development within the Property shall be governed by this Agreement to the extent this Agreement is not inconsistent with the final judicial determination entitled CITY OF EVERETT VS. CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD, NO. 03-2-05830-9, No. 52276-1-1, No. 52262-1-1 [Consolidated] or revised DOE Shoreline Master Program Guidelines/Regulations and shall be implemented through permit approvals issued by the City. A "Buildout Period" of twenty (20) years from the date of this Agreement is established for the development and construction of the uses on the Property permitted and carried out in accordance with the provisions of this Agreement.

During the Buildout Period, the City shall not modify or impose new or additional zoning standards beyond those set forth in this Agreement. To the extent this Agreement does not establish zoning standards addressing a certain subject, element or condition of the approved site plan, then the Project shall be governed by the zoning regulations in effect upon the date of this Agreement (i.e., those regulations set forth in Title 19 EMC). After the date of execution of this Agreement, the City may adopt new zoning standards or generally-applicable standards relating to particular subject matters specified under this Agreement or under presently-existing zoning standards. If, in adoption of the new zoning standards, the City elects to make such zoning standards available for development of the Property, then the Port, as an alternative to satisfying one or more of the zoning standards, may upon the approval of the City, develop the Property in accordance with the new zoning standards. To the extent that the Port proposes a major amendment to the Project (as defined in EMC 19.29 and in this Agreement), the City may elect to make the Project, as amended, subject to the zoning standards in effect at the time of the City's approval of such amendment.

5.2 CHANGE OF DEVELOPER. The approval granted herein shall be binding upon the Port and its development partner, Maritime Trust, and any heirs or assigns.

5.3 TERM:

The term of this Agreement shall continue at a minimum through the Buildout Period, and shall continue after the Buildout Period unless and until the City gives a notice of termination. The City shall mail notice of termination to the Port under Section 5.4. No sooner than three (3) months after delivery of the notice of termination, the City shall hold public hearing(s) and shall adopt whatever zoning standards for the Property determined appropriate by the City. Such zoning standards shall consist of a continuation of the zoning standards in this Agreement, modification of such zoning standards, or new zoning standards. Upon such adoption, this Agreement shall terminate and thereafter the Property shall be governed by the newly adopted zoning standards.

5.4 NOTICES:

Any notice, request, direction or other communication under this Agreement shall be in writing and shall be delivered by first class mail, properly addressed and with the required postage, or by facsimile, to the Director of Planning and Community Development and the Executive Director of the Port of Everett. Receipt shall be deemed to have occurred on the date of delivery, or on the date of a confirmed facsimile.

5.5 ENFORCEMENT; INTERPRETATION; DISPUTES:

This Agreement and the PDO-WC zoning designation represent the zoning standards for the Property and, therefore, this Agreement and the PDO-WC zoning designation shall be enforced in accordance with the provisions of EMC Chapter 1.20 and interpreted by the Planning and Community Development Director (or his successor) in accordance with the provisions of the EMC, as these provisions of the EMC may hereafter be amended. A violation of any provision of this Agreement shall constitute a violation of the City of Everett Zoning Code, Title 19 EMC. The Port agrees that the City may withhold permits and administrative approvals pending compliance. For any disputes arising under this Agreement not subject to the above-cited provisions of the Everett Municipal Code, the parties retain all rights available under the law to resolve such disputes through negotiation and, if negotiation fails, through legal action. The venue for such action shall be in Snohomish County Superior Court. In any such action, each party shall have all rights and remedies provided by law to enforce this Agreement including, without limitation, damages, specific performance or writs to compel performance or require action consistent with this Agreement.

5.6 ENTIRE AGREEMENT; AMENDMENTS:

This Agreement sets forth the entire agreement of the parties. This Agreement shall be construed as a whole. No amendment, change or modification of any provisions of this Agreement shall be valid unless set forth in writing and signed by both parties.

5.7 NONWAIVER:

The failure of either party to enforce strict performance by the other party of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement shall not be construed as a waiver or relinquishment to any extent of such party's right to assert or rely upon any such provisions or rights in that or any other instance; rather, the same shall be and remain in full force and effect.

5.8 COVENANT NOT TO CONTEST:

The parties have entered into this Agreement voluntarily, after full consultation with their own respective independent counsel and consultants, and both parties agree not to contest the validity of this Agreement, directly or indirectly, in any administrative or judicial proceeding, now or at any time in the future; notwithstanding the foregoing, the Port reserves the right to challenge the enforcement of, or an interpretation of this Agreement by the City. Both parties agree to appear and defend this Agreement in the event of legal challenge by a third party.

5.9 RECORDING - IMPLEMENTATION AND PERFORMANCE; BINDING ON SUCCESSORS AND ASSIGNS:

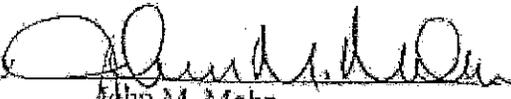
Each party shall take such action (including, but not limited to the execution, acknowledgment and delivery of documents) as may be reasonably requested by the other party for the implementation or continuing performance of this Agreement. This Agreement shall be recorded with the Snohomish County Auditor's office, as necessary to be disclosed on title documents for the property and shall run with the land as binding on the parties and their successors and assigns. It is mutually agreed that the terms of this Agreement touch and concern the land and shall be covenants running with the land. The parties acknowledge that development of the Property likely will involve sale and assignment of portions of the Property to other persons who will, subject to this Agreement, own, develop and/or occupy portions of the Property and buildings thereon. Upon such assignment, the assignee shall be entitled to all interests and rights and be subject to all obligations under this Agreement. In the event of such sale, the Port shall thereafter be released of liability hereunder as to that portion of the Property so transferred only by written approval of the City, which consent shall not be unreasonably withheld. In considering such release of the Port from liability, the City must determine that the Port is in compliance at the time of transfer with all of its obligations under this Agreement, that the transferee has the experience and financial capability to perform its obligations under this Agreement, and/or that the City has been provided with adequate security to assume such performance.

IN WITNESS WHEREOF, the parties hereto executed this Agreement the day and year first above written.

CITY OF EVERETT

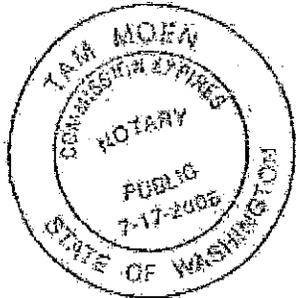
PORT OF EVERETT

By 
Ray Stephanson,
Mayor

By 
John M. Mohr,
Executive Director

Jamie Moeva
NOTARY PUBLIC in and for the State of

Washington, residing at Everett Commission expires 7-17-2006



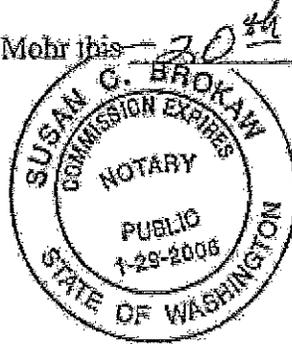
STATE OF WASHINGTON)
) ss.
COUNTY OF EVERETT

On this day personally appeared before me John M. Mohr, to me known to be the Executive Director of the Port of Everett, and acknowledged to me the said instrument was the free and voluntary act and deed of said Port for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument and or on its behalf.

SUBSCRIBED AND SWORN to before me by John M. Mohr this 20th day of
December 2005.

Susan C. Brokaw
NOTARY PUBLIC in and for the State of

Washington, residing at Arlington



Commission expires 1-29-2006