



HEARING EXAMINER

IN THE MATTER OF THE APPLICATION
OF THE PORT OF EVERETT FOR
APPROVAL OF A SHORELINE SUB-
STANTIAL DEVELOPMENT PERMIT
"PORT GARDNER WHARF – PERMIT #1"

SMA #05-009

ORDER REQUESTS FOR RECONSIDERATION/CLARIFICATION

On January 5, 2006, a Shoreline Permit was granted to the Port of Everett (Port) for the North Marina Redevelopment (Port Gardner Wharf – Permit #1). The approval was subject to 70 conditions. On January 20, 2006, a representative of the Port submitted a Request for Reconsideration/Clarification of Findings of Fact #15, #19, #28 and Conditions of Approval #4, #13, #39, #40, #41. On January 20, 2006, the City of Everett Planning Department submitted a Request for Clarification of Findings of Fact #16 and #19. A review has been made of these requests and the following changes to the Findings of Fact and Conditions of Approval as set forth in the January 5, 2006, Decision are made:

Finding of Fact #15 read as follows:

15. In addition to the proposed physical access, a plaza/amphitheater would be located at the west end of 13th Street and would provide a water's edge venue for recreation. The plaza would be approximately 200 feet wide, extending east from the pedestrian esplanade, and would provide informal seating with capability for temporary seating during events. The plaza would be landscaped with trees, shrubs, and a grassy area to provide additional seating and would include water features, viewing areas, and bench seating. Noise generated from events at the amphitheater would be directed away from residential areas. Parking facilities would be adjacent to the area. (*exhibit 1-staff report; exhibit 3-Applicant's Narrative; exhibit 12-amphitheater plan, pages 1, 7-9*)

The Port requested the following changes to Finding #15:

15. In addition to the proposed physical access, a plaza/amphitheater would be located at the west end of 13th Street and would provide a water's edge venue for recreation. The plaza would be approximately 200 feet wide, **north to south** extending east from the pedestrian esplanade, and would provide informal seating with capability for temporary seating during events. The **final design of the** plaza would **may include features such as** be landscaped **landscaping** with trees, shrubs, and a grassy area to provide additional seating and would **could** include water features, viewing areas, and bench seating. Noise generated from events at the amphitheater would be directed away from residential areas. Parking facilities would be adjacent to the area. (*exhibit 1-staff report; exhibit 3-Applicant's Narrative; exhibit 12-amphitheater plan, pages 1, 7-9*)

In its Motion, the Port indicates that the design that was submitted to the City was "only conceptual" and that the language used in the Port's hearing Narrative supports that position.

The amenity changes requested by the Port would be determined at a later date. The general concept of the development and limitations of impacts to the shorelines would not be changed.

Finding of Fact #15 is hereby changed to read:

15. In addition to the proposed physical access, a plaza/amphitheater would be located at the west end of 13th Street and would provide a water's edge venue for recreation. The plaza would be approximately 200 feet wide north to south, and would provide informal seating with capability for temporary seating during events. The final design of the plaza may include features such as landscaping with trees, shrubs, and a grassy area to provide additional seating and could include water features, viewing areas, and bench seating. Noise generated from events at the amphitheater would be directed away from residential areas. Parking facilities would be adjacent to the area. *(exhibit 1-staff report; exhibit 3-Applicant's Narrative; exhibit 12-amphitheater plan, pages 1, 7-9)*

Finding of Fact #16 read as follows:

16. A 1.5 pedestrian esplanade, to be constructed along the shoreline perimeter of the project area, would be 15-20 feet in width and be landscaped. It would be accented by lighting with seating and viewing areas. As noted, access to parking areas would be provided. Portions of the esplanade have already received Shoreline Permits from the City of Everett¹. Additional public walkways/plazas would be constructed throughout the project to ensure access to the esplanade. *(exhibit 1-staff report; exhibit 3-Applicant's Narrative; exhibit 12-esplanade plans, pages 1, 12-16; Derickson testimony)*

The City requested the following minor change to Finding #16:

16. A 1.5 **mile** pedestrian esplanade, to be constructed along the shoreline perimeter of the project area, would be 15-20 feet in width and be landscaped. It would be accented by lighting with seating and viewing areas. As noted, access to parking areas would be provided. Portions of the esplanade have already received Shoreline Permits from the City of Everett². Additional public walkways/plazas would be constructed throughout the project to ensure access to the esplanade. *(exhibit 1-staff report; exhibit 3-Applicant's Narrative; exhibit 12-esplanade plans, pages 1, 12-16; Derickson testimony)*

¹ The two permits that have been issued are: (1) 14th Street Bulkhead Replacement Project 2004; (2) 12th Street Marina Project 2005. The 14th Street project provided for a 13' wide public walkway, while the current proposal would provide for a 7' wide walkway addition to the previously approved walkway.

² The two permits that have been issued are: (1) 14th Street Bulkhead Replacement Project 2004; (2) 12th Street Marina Project 2005. The 14th Street project provided for a 13' wide public walkway, while the current proposal would provide for a 7' wide walkway addition to the previously approved walkway.

Finding of Fact #16 is hereby changed to read:

16. A 1.5 mile pedestrian esplanade, to be constructed along the shoreline perimeter of the project area, would be 15-20 feet in width and be landscaped. It would be accented by lighting with seating and viewing areas. As noted, access to parking areas would be provided. Portions of the esplanade have already received Shoreline Permits from the City of Everett³. Additional public walkways/plazas would be constructed throughout the project to ensure access to the esplanade. (*exhibit 1-staff report; exhibit 3-Applicant's Narrative; exhibit 12-esplanade plans, pages 1, 12-16; Derickson testimony*)

Finding of Fact #19 read as follows:

19. The PDO zoning and Development Agreement adopted height restrictions specific to the project. The original Development Agreement identified two height zones in various blocks of West Marine View Drive. The majority of buildings would be 35 feet or less, and the maximum building height would be 95 feet. In the November 2005 Amendment, the Everett City Council approved an increase in the allowable building heights at certain locations of the site. However, all Phase #1 structures would be constructed between 16 to 35 feet in height. (*exhibit 1-staff report, page 6; Resolution 5703; exhibit 17-Applicant's Power Point, page 27; Russell testimony*)

The Port requested the following changes to Finding #19:

19. The PDO zoning and Development Agreement adopted height restrictions several specific to the project. The original Development Agreement identified ~~two **several** height zones **varying from 35 feet to 55 feet**~~ in various blocks of West Marine View Drive. The majority of buildings would be 35 feet or less, and the maximum building height would be 95 feet. In the November 2005 Amendment, the Everett City Council approved an increase in the allowable building heights at certain locations of the site. However, all Phase #1 **Shoreline Permit No. 05-009** structures would be constructed between 16 to 35 feet in height. (*exhibit 1-staff report, page 6; Resolution 5703; exhibit 17-Applicant's Power Point, page 27; Russell testimony*)

The City suggested the following minor change to Finding #19:

19. The PDO zoning and Development Agreement adopted height restrictions specific to the project. The original Development Agreement identified several height zones varying from 35 feet to 55 feet. In the November 2005 Amendment, the Everett City Council approved an increase in the allowable building heights at certain locations of the site. However, all Shoreline Permit No. 05-009 structures would be constructed ~~between~~ no more than 35 feet in height. (*exhibit 1-staff report, page 6; Resolution 5703; exhibit 17-Applicant's Power Point, page 27; Russell testimony*)

A review of the record has been made and the proposed changes are an accurate statement of the facts as presented.

³ The two permits that have been issued are: (1) 14th Street Bulkhead Replacement Project 2004; (2) 12th Street Marina Project 2005. The 14th Street project provided for a 13' wide public walkway, while the current proposal would provide for a 7' wide walkway addition to the previously approved walkway.

Finding of Fact #19 is hereby changed to read:

19. The PDO zoning and Development Agreement adopted height restrictions specific to the project. The original Development Agreement identified several height zones varying from 35 feet to 55 feet. In the November 2005 Amendment, the Everett City Council approved an increase in the allowable building heights at certain locations of the site. However, all Shoreline Permit No. 05-009 structures would be constructed no more than 35 feet in height. (*exhibit 1-staff report, page 6; Resolution 5703; exhibit 17-Applicant's Power Point, page 27; Russell testimony*)

Finding of Fact #28 read as follows:

28. The Applicant proposed a design that includes replacement of all existing on-site utilities including water, sanitary sewer, natural gas, stormwater drainage, and electrical and communication utilities. All utilities on-site, except for the electrical and communication system cabinets, would be underground. Those cabinets would remain above ground for easy access. Stormwater control improvements would include installation of three 24" diameter stormwater outfalls (the 14th Street bulkhead) and installation of a 30" diameter stormwater outfall (the North Marina basin bulkhead). The outfalls would be coordinated with those that were approved in 2005 with the 12th Street Marina Shoreline Permit. An existing 15' combined sewer overflow outfall would be located at the Applicant's existing boat haul-out facility near the Craftsmen District. The integrated stormwater system would collect, treat, and convey stormwater from a designated sub-basin. It would include water quality treatment vaults installed in each sub-basin. The stormwater treatment would be designed to satisfy the City's Stormwater Manual, and conditions of approval would ensure such compliance. The Best Management Practices (BMP's) would be implemented, and the Applicant must obtain a National Pollution Discharge Elimination System Permit. (*exhibit 1-staff report, pages 6, 8, 13; exhibit 2-JARPA Application, page 3; exhibit 3-Applicant's Narrative, page 5; exhibit 12, pages 19-24; ESMP, Sections 3.9 & 5.7*)

The Port requested the following changes to Finding #28:

28. The Applicant proposed a design that includes replacement of all existing on-site utilities including water, sanitary sewer, natural gas, stormwater drainage, and electrical and communication utilities. All utilities on-site, except for **and most of the** electrical and communication system cabinets, would be underground **per subsequent discussion with Snohomish County PUD.** ~~Those cabinets would remain above ground for easy access.~~ Stormwater control improvements would include installation of three 24" diameter stormwater outfalls (the 14th Street bulkhead) and installation of a 30" diameter stormwater outfall (the North Marina basin bulkhead). The outfalls would be coordinated with those that were approved in 2005 with the 12th Street Marina Shoreline Permit. An existing 15' combined sewer overflow outfall would be located at the Applicant's existing boat haul-out facility near the Craftsmen District. The integrated stormwater system would collect, treat, and convey stormwater from a designated sub-basin. It would include water quality treatment vaults installed in each sub-basin. The stormwater treatment would be designed to satisfy the City's Stormwater Manual, and conditions of approval would ensure such compliance. The Best Management Practices (BMP's) would be implemented, and the Applicant must obtain a National Pollution Discharge Elimination System Permit. (*exhibit 1-staff report, pages 6, 8, 13; exhibit 2-JARPA Application, page 3; exhibit 3-Applicant's Narrative, page 5; exhibit 12, pages 19-24; ESMP, Sections 3.9 & 5.7*)

The Port suggested a change to Finding of Fact #28. A review of the record has been made and the proposed change is an accurate statement of the facts as presented. According to the Port, negotiations have occurred with Snohomish County PUD to locate as many utility boxes underground as possible. The suggested changes reflect those negotiations.

Finding of Fact #28 is hereby changed to read:

28. The Applicant proposed a design that includes replacement of all existing on-site utilities including water, sanitary sewer, natural gas, stormwater drainage, and electrical and communication utilities. All utilities on-site and most of the electrical and communication system cabinets, would be underground per subsequent discussion with Snohomish County PUD. Stormwater control improvements would include installation of three 24" diameter stormwater outfalls (the 14th Street bulkhead) and installation of a 30" diameter stormwater outfall (the North Marina basin bulkhead). The outfalls would be coordinated with those that were approved in 2005 with the 12th Street Marina Shoreline Permit. An existing 15' combined sewer overflow outfall would be located at the Applicant's existing boat haul-out facility near the Craftsmen District. The integrated stormwater system would collect, treat, and convey stormwater from a designated sub-basin. It would include water quality treatment vaults installed in each sub-basin. The stormwater treatment would be designed to satisfy the City's Stormwater Manual, and conditions of approval would ensure such compliance. The Best Management Practices (BMP's) would be implemented, and the Applicant must obtain a National Pollution Discharge Elimination System Permit. (*exhibit 1-staff report, pages 6, 8, 13; exhibit 2-JARPA Application, page 3; exhibit 3-Applicant's Narrative, page 5; exhibit 12, pages 19-24; ESMP, Sections 3.9 & 5.7*)

The Port also requested reconsideration/clarification of Conditions of Approval #4, #13, #39, #40, and #41.

Condition #4 read as follows:

4. A Public Works Permit is required for this project. Detailed drawings in accordance with City Design and Construction Standards shall be submitted to the Public Works Department, showing site parking layout, landscaping, utilities, storm drainage, temporary construction erosion control, and all required improvements in the public right-of-way. Public Works Department approval of these drawings is required prior to any permits being issued. All improvements shall be completed, approved, and warranted before the Occupancy Permit is issued/final approval is granted, except as noted in Condition #5 and Condition #25 below.

The Port requested the following changes to Condition #4:

4. A Public Works Permit is required for this project. Detailed drawings in accordance with City Design and Construction Standards shall be submitted to the Public Works Department, showing site parking layout, landscaping, utilities, storm drainage, temporary construction erosion control, and all required improvements in the public right-of-way. Public Works Department approval of these drawings is required prior to any permits being issued. All improvements shall be completed, approved, and warranted before the Occupancy Permit is issued/final approval is granted, **Applicable drawings must be approved by the City of Everett prior to building permits being issued** except as noted in Condition #5 and Condition #25 below.

The Port has requested a change to Condition #4. The change, as proposed by the Port, removes any interpretation as to what permits are required and is acceptable.

Condition #4 is hereby changed to read:

4. A Public Works Permit is required for this project. Detailed drawings in accordance with City Design and Construction Standards shall be submitted to the Public Works Department, showing site parking layout, landscaping, utilities, storm drainage, temporary construction erosion control, and all required improvements in the public right-of-way. Applicable drawings must be approved by the City of Everett prior to building permits being issued, except as noted in Condition #5 and Condition #25 below.

Condition #13 read as follows:

13. The options for storm water treatment for this project are:
 - a) an infiltration basin, if suitable soils exist on the site
 - b) a wetpond
 - c) a constructed wetland
 - d) a SMI StormFilter, with stormwater pretreatment

The Port requested the following change to Condition #13:

13. The options for storm water treatment for this project are:
 - a) an infiltration basin, if suitable soils exist on the site
 - b) a wetpond
 - c) a constructed wetland
 - d) ~~a SMI StormFilter, with stormwater pretreatment~~
 - d) other stormwater treatment system as acceptable to the City of Everett**

The requested change in Condition #13(d) eliminates a particular brand name of stormwater pretreatment. Because of innovative new stormwater treatment methods being developed, the Port desires to keep options available.

Condition #13 is hereby changed to read:

13. The options for storm water treatment for this project are:
 - a) an infiltration basin, if suitable soils exist on the site
 - b) a wetpond
 - c) a constructed wetland
 - d) other stormwater treatment system as acceptable to the City of Everett

Condition #39 read as follows:

39. A one year warranty is required on the public improvement for an amount not less than 10% of the cost of construction and shall run for one year from the date of final approval/issuance of the first Occupancy Permit.

The Port requested the following change to Condition #39:

39. A one year warranty is required on the ~~public~~ **City** improvements for an amount not less than 10% of the cost of construction and shall run for one year from the date of final approval/issuance of the first Occupancy Permit.

The Port submitted that it will own and maintain much of the infrastructure. As a result, warranties to the City are not applicable except for such services that will be maintained by the City.

Condition #39 is hereby changed to read:

39. A one year warranty is required on City improvements for an amount not less than 10% of the cost of construction and shall run for one year from the date of final approval/issuance of the first Occupancy Permit.

Condition #40 read as follows:

40. Prior to issuance of a building permit, the following financial assurance, in forms and amounts acceptable to the City, shall be provided:
 - a. A two-year guarantee for private retention/detention or other drainage treatment/abatement facilities serving areas larger than one acre;
 - b. A Performance Guarantee is required for public improvements.
 - c. A ten percent (10%) financial assurance to ensure proper maintenance of all landscaped areas.

The Port requested the following change to Condition #40:

40. Prior to issuance of a building permit, the following financial assurance, in forms and amounts acceptable to the City, shall be provided:
 - a. A two-year guarantee for private retention/detention or other drainage treatment/abatement facilities serving areas larger than one acre;
 - b. A Performance Guarantee is required for public **City** improvements.
 - c. A ten percent (10%) financial assurance to ensure proper maintenance of all landscaped areas.

The Port will own and maintain many of the public improvements and a Performance Guarantee is required only for City improvements.

Condition #40 is hereby changed to read:

40. Prior to issuance of a building permit, the following financial assurance, in forms and amounts acceptable to the City, shall be provided:
 - a. A two-year guarantee for private retention/detention or other drainage treatment/abatement facilities serving areas larger than one acre;
 - b. A Performance Guarantee is required for City improvements.
 - c. A ten percent (10%) financial assurance to ensure proper maintenance of all landscaped areas.

Condition #41 read as follows:

41. The Applicant shall pay Traffic Mitigation fees as required by the City's Traffic Mitigation Ordinance. Traffic Mitigation Fees shall be paid at the beginning of each phase, pursuant to City code, based on a phasing plan to be provided by the Applicant subject to approval by the City Engineer.

The Port requested the following changes to Condition #41:

41. The Applicant shall pay Traffic Mitigation fees as required by the City's Traffic Mitigation Ordinance. Traffic Mitigation Fees shall be paid ~~at the beginning of each phase,~~ **at the issuance of building permits** pursuant to City code, based on a ~~phasing plan~~ **fee schedule** to be provided by the Applicant subject to approval by the City Engineer.

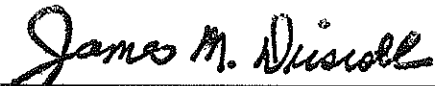
Traffic mitigation is currently being determined by City officials. Final Traffic Mitigation fees will be established by the City.

Condition #41 is hereby changed to read:

41. The Applicant shall pay Traffic Mitigation fees as required by the City's Traffic Mitigation Ordinance. Traffic Mitigation Fees shall be paid at the issuance of building permits, pursuant to City code, based on a fee schedule to be provided by the Applicant subject to approval by the City Engineer.

No other changes to the January 5, 2006, Hearing Examiner Decision are made.

Done and dated this 27th day of January, 2006.



James M. Driscoll
Hearing Examiner