

**FINDINGS AND DECISION
OF THE HEARING EXAMINER OF THE
CITY OF EVERETT**

IN THE MATTER OF THE APPLICATION
OF THE PORT OF EVERETT FOR
APPROVAL OF A SHORELINE SUB-
STANTIAL DEVELOPMENT PERMIT
"PORT GARDNER WHARF – PERMIT #2"

SMA #05-013

DECISION: The Shoreline Substantial Development Permit for the Port Gardner Wharf – Permit #2 is granted subject to the conditions as set forth herein.

INTRODUCTION

The Port of Everett (Applicant) requested approval of Shoreline Substantial Development Permit (Shoreline Permit) for a mixed-use 65-acre development consisting of residential, retail, office, restaurants, lodging and marina support uses located at the west side of West Marine View Drive, extending between the 1000 and 1600 Blocks, in the City of Everett, Washington (subject property). At build-out, the project could have up to 660 residential dwellings and a total building area up to 1,558,900 s.f., which includes, in addition to the dwellings, offices, retail, a restaurant and inn, and marine sales and services. Other improvements include 1.5 miles of esplanade around the perimeter of the site, an outdoor amphitheater, marina parking and service, and public parking.

The project is being reviewed and permitted by the City of Everett (City) and is proposed to be developed in phases. The instant request represents the second Shoreline Permit application. Included in the scope of the instant permit are the following:

1. Site preparation, including demolition of sixteen buildings, nine of which are within shoreline jurisdiction, and relocation of the existing City of Everett combined sewer overflow conveyance pipes.
2. Public open space, including an approximate 7,000 s.f. public plaza located at the northwest corner of the site and an approximate 3,000 s.f. public plaza near the southwest corner of the site. Both plazas will have direct connections to, and will augment, the previously approved shoreline edge esplanade.
3. Utility, parking, pedestrian, lighting, and landscaping improvements necessary to support the proposed facilities for this permit.
4. Craftsmen District improvements, including a new marine sales and service building (approximately 26,000 s.f.) connected to a new dry stack boat storage building (approximately 38,500 s.f.) which may have a small restaurant and accessory office space; a 14,000 s.f. outdoor work yard; addition of second floors to three buildings permitted as single story buildings under Shoreline Permit 1, thus increasing the combined area of those buildings by 16,425 s.f.;

and conversion of the residential sales center approved with the previous Shoreline Permit (3,000-4,000 s.f.) to a two story, 8,200 s.f. marine sales and service building.

5. Mixed Use and Hospitality Buildings, including five new buildings totaling 267,000 s.f. These buildings will support a mix of offices, retail and hospitality uses, including lodging with up to 272 guest rooms and associated restaurants.

Phasing of Improvements. The Applicant proposes that these improvements will be completed in phases. The order in which improvements are completed is subject to change as the project evolves.

A hearing was held before the Hearing Examiner of the City of Everett on February 9, 2006. At the hearing the following presented testimony and evidence:

John Jimerson, City of Everett Planning Department

Gerry Ervine, City of Everett Planning Department

Brad Cattle, Attorney
2707 Colby Avenue, #1001, Everett, WA 98201

Eric Russell, Port of Everett
2911 Bond Street, Everett, WA 98201

Graham Anderson, Port of Everett
2911 Bond Street, Everett, WA 98201

Ken Olsen, Maritime Trust Co.
404 – 14th Street, Suite 100, Everett, WA 98201

Jeff LaLone, Bayside Marina
1001 – 14th Street, Everett, WA 98201

Dan Hatch, Bayside Marina
1001 – 14th Street, Everett, WA 98201

Casey Salz
5200 Evergreen Way, Everett, WA 98203

Chris Moore, Washington Trust for Historic Preservation
1204 Minor Avenue, Seattle, WA 98136

David Mascarenas
517 Laurel Drive, Everett, WA 98201

Dennis Derickson, David Evans & Associates
1620 West Marine View Drive, #200, Everett, WA 98201

Bill Belshaw
2111 Rucker Avenue, Everett, WA 98201

At the hearing the following exhibits were submitted and were admitted as part of the official record of these proceedings:

1. Staff Report
2. JARPA Application
3. Applicant Summary of Project
4. Proposed Updated Parking Management Plan
5. Notice of Application and Hearing
6. Planned Development Overlay Zoning Resolution/Ordinance and Development Agreement (on file with the Planning Department)
7. PDO Design Standards and Guidelines (*on file with the Planning Department*)
8. Port Gardner Wharf Design Guidelines (*on file with the Planning Department*)
9. Final Environmental Impact Statement for the North Marina Redevelopment Project (*on file with the Planning Department*)
10. Shoreline Permit #2 Plan Set Consisting of Drawings A0-A7, B1-B3, C1-C2, and Structured Parking Plan Concept Study
11. Agency Comments:
 - 11a. Public Works Comments
 - 11b. Fire Department Comments
 - 11c. Snohomish County PUD Comments¹
12. Memo to Hearing Examiner from John Jimerson dated 02/09/06 re: Staff Report Revisions
13. Letter to City of Everett Planning Department and Hearing Examiner from Jennifer Meisner, Washington Trust for Historic Preservation, dated 02/06/06 re: Collins Building
14. Power Point Presentation (*hard copy*)
15. Applicant's Proposed Revisions to Staff Report
16. Replacement Page – Exhibit 10, Page 6
17. Memorandum of Agreement Between the US Army Corps of Engineers and the Washington State Historic Preservation Officer re: 12th Street Marina Redevelopment Project

Subsequent to the hearing, the following exhibits were submitted and were admitted as part of the official record of these proceedings:

18. Letter to Hearing Examiner from Graham Anderson, Port of Everett, dated 02/10/06 re: Collins Building – Historic Places Registration
19. Memo to Hearing Examiner from John Jimerson, Planning Department, dated 02/10/06 re: revisions to staff report and conditions

All of the exhibits are available for inspection at the Hearing Examiner's Office located at 2930 Wetmore Avenue, 8th floor, Everett, Washington.

Based upon a review of the above record, the following Findings of Fact and Conclusions hereby constitute the basis of the decision of the Everett Hearing Examiner.

¹ The PUD comments are from the initial shoreline permit and addressed the development as a whole at that time. They are included here for reference.

FINDINGS OF FACT

1. The Applicant requested approval of a Shoreline Permit for Phase II of a mixed-use development project, the North Marina Redevelopment project (NMRD). The NMRD is a multi-district master plan intended to create a mixed-use development to meet the Port of Everett's strategic planning objectives. These objectives include providing a "setting that is conducive to expanding and more efficient provisions of marina moorage and related boating and maritime services, expanding public shoreline access and recreation, providing for residential uses, and creating expanded economic development and employment opportunities." (*exhibit 1, staff report; exhibit 2, JARPA application; exhibit 3, Applicant Summary*)
2. The Applicant's complete project would consist of 430-660 residential dwelling units, office space, retail and commercial space consisting of 500,000-640,000 s.f. The project would include a hotel and restaurants that would be comprised of approximately 75,000 s.f. A marine sales and service space consisting of approximately 117,900 s.f. would be provided. The proposed development would be completed in several phases. Phase I of the project has been approved. (*exhibit 1, staff report; exhibit 2, JARPA application; exhibit 3, Applicant Summary*)
3. The entire development project is a joint public/private venture that includes the Applicant and its development partner, Maritime Trust Company. The Applicant will work with Maritime Trust in developing the project and upon build-out, the Applicant will retain ownership of commercial properties, public roads, outdoor amphitheater, and esplanade, while Maritime Trust will control the residential development projected for the project. (*exhibit 1, staff report; Russell testimony*)
4. In addition to the instant application, there have been three other permits issued for the development project. In 2004, a Shoreline Permit was issued to authorize replacement of a failing bulkhead along the south shoreline. In 2006, a Shoreline Permit was issued for the 12th Street Marina that is north of the subject property². That permit included improvements to the existing esplanade on the subject property. In late 2005, a Shoreline Permit was issued which authorized site preparation, utilities, and infrastructure to serve the site, and approved shoreline public access improvements, marina parking and support facilities, public parking and parking in support of the on-site activities, commercial buildings, and Craftsmen District improvements. (*exhibit 1, staff report; Russell testimony; Anderson testimony; Jimerson testimony*)
5. The subject property is generally located on the west side of West Marine View Drive, Everett, Washington, and extends between the 1000 and 1600 Blocks of that street. The site is currently being used for a variety of marina related uses and water and non-water related industrial and commercial business uses. (*exhibit 1, staff report*)

² The City staff report indicated that the Shoreline Permit for Phase I was issued in 2005. However, the City submitted a correction update memorandum and a revised staff report that reflects that this was not accurate. The correct date is 2006.

6. The subject property is zoned Waterfront Commercial (WC) with Planned Development Overlay (PDO) and is designated as 4.5 Waterfront Commercial under the City's Comprehensive Plan. In 2003, the Everett City Council approved the PDO zone for the subject property. The purpose of the PDO zone is to allow for commercial, industrial, and mixed-use developments which are of unique character and desirable quality and which are beneficial to the area in which the property is located and beneficial to the community in general. *EMC 19.1.050(F)(8)*. In 2005, the Everett City Council approved modifications to the PDO, including increasing building heights, modifying residential parking requirements, and requiring public improvements during the initial phase. *(exhibit 1, staff report; Jimerson testimony)*
7. The subject property fronts Port Gardner Bay (Puget Sound) which is a significant shoreline within the State of Washington. The property is subject to the shoreline jurisdiction of the City of Everett which has adopted a Shoreline Master Program (ESMP) and has designated the shoreline of this project as Urban Maritime. The review of this project will be done consistent with that shoreline designation. *(exhibit 1, staff report)*
8. The Comprehensive Plan designation is applied to a limited portion of the City of Everett's shorelines which have unique shoreline character and provide for increased public enjoyment of the shoreline. It also provides for uses that are supportive of other water dependent uses. *(exhibit 1, staff report; exhibit 14, Power Point presentation, slides 1-3; the Everett Comprehensive Plan - Land Use Element Section V[D][17])*
9. The project site is within the jurisdiction of the ESMP of the City of Everett and is also subject to the Shoreline Management Act (SMA), RCW 90.58. The primary goal of the SMA is to protect the public's interest at a statewide level in the State's significant shorelines. This is done through a coordinated management and development process. The SMA allows reasonable and appropriate uses of the shorelines in a manner that promotes and enhances the public interest. The preferred use of shorelines includes parks, marinas, piers, improvements facilitating public access, commercial development which is particularly dependent on a shoreline location, and other development that would provide an opportunity for people to enjoy the shoreline. Permitted uses in the shorelines are to be designed and conducted in a manner that minimizes resultant damages to the ecology and environment of the shoreline area and does not interfere with the public's use of the water. *(RCW 90.58.020; exhibit 14, Power Point presentation, slide 4)*
10. The proposed project exceeds the \$5,000.00 threshold cost which necessitates a Shoreline Permit. Because the proposed cost exceeds millions of dollars, a Shoreline Permit is required. *(exhibit 2, JARPA application)*
11. Pursuant to the State Environmental Policy Act (SEPA), the Applicant was designated as the lead agency for identification of environmental impacts and the environmental review of the proposed project. The Applicant issued a Determination of Significance, and an Environmental Impact Statement (EIS) was prepared. The Applicant issued the Final EIS for the project on May 27, 2005. The EIS examined the environmental impacts of the project and included studies relating to a Collins Building Adaptive Reuse Study, Geotechnical Reports, Air Quality Reports, Biological Evaluations, Environmental Site Assessments, and Historic and Cultural Resource Assessments. The Collins

Building Economic and Financial Analysis of Development Scenarios were also addressed in the EIS. The EIS was independently reviewed and was determined to provide an adequate review of the environmental issues related to the project. No appeals on that determination were submitted. (*exhibit 1, staff report; exhibit 5, Notice of Application & Hearing*)

12. The subject property is a shoreline of statewide significance. In the ESMP, the subject property has been designated as Urban Maritime. The ESMP envisions development of the urbanized parts of the City of Everett's shoreline that promote a balance between economic diversification, recreational opportunities, and environmental protection/restoration of the shoreline. (*ESMP Section 1.1 Community Vision*)
13. The purpose of the Urban Maritime shoreline designation is to provide areas for intense development of maritime activities and to protect and restore ecological functions. The allowed and permitted maritime activities include marinas, businesses serving boating and fishing communities, heavy commercial and industrial uses, compatible water oriented commercial and recreational uses, and public access. The proposed projects that would be developed under Phase II are permitted uses in this designated area. (*ESMP Section 4.4; Jimerson testimony*)
14. In reviewing the Urban Maritime shoreline designation, priorities are given to maritime uses and services with a mix of compatible water dependent and associated water related industrial and recreational uses, as well as water oriented commercial uses. Public access and attractions are also encouraged in this designated area. Expansion and redevelopment of developed areas are permitted, and landscaping is allowed to be utilized and improved to screen from potential impacts to neighboring properties. Provisions are made for limiting or screening lighting to minimize impacts. The proposed project has been designed in a manner that satisfies these policies. The design of the project, which is set forth in detail in exhibits 2, 3, 7, and 8, clearly demonstrates compliance with these policies. (*Jimerson testimony; ESMP Section 4.4 Management Policy 1-7*)
15. The ESMP sets forth general and specific regulations to which the proposed project must comply. Included in these general regulations are provisions that all development in Phase II that is located within the shoreline jurisdiction must adhere to noise and lighting requirements (*ESMP 3.2*); cultural and archeological preservation (*ESMP 3.5*); public access (*ESMP 3.7*); and environmental protection and conservation (*ESMP 3.9*). The commercial development of the proposed project must adhere to the provisions of *ESMP 5.5*; the industrial development of the proposed project must adhere to the provisions as set forth in *ESMP 5.7*; parking must adhere to the provisions of *ESMP 5.12*; recreation must adhere to the provisions of *ESMP 5.13*; signage must adhere to provisions of *ESMP 5.15*; solid waste must adhere to provisions of *ESMP 5.16*; and utilities must adhere to provisions of *ESMP 5.18*. The proposed project has been reviewed in light of all of these requirements, and based on the City of Everett Planning Department's review, the proposed project satisfies the requirements as set forth in this finding. No testimony was submitted indicating that any of these requirements are not satisfied. (*Jimerson testimony; exhibit 1, staff report; exhibit 3, Applicant Summary; exhibit 7, PDO standards & guidelines*)

16. Phase II of the development would consist of site preparation, including demolition of 16 existing buildings. Although some of these buildings are not within the jurisdiction of the SMA, they are part of the project. Phase II would also include the relocation of the combined sewer overflow conveyance pipes; the construction of two public plazas; utility improvements; improvements to parking, landscaping, and pedestrian facilities; and construction of new buildings. There would be storage areas and modifications of existing buildings within the Craftsmen District. Five mixed-use hospitality buildings would be constructed. *(exhibit 1, staff report; Jimerson testimony)*
17. As part of Phase II, there would be public area improvements. The Applicant would construct an approximate 7,000 s.f. public plaza at the northwest corner of the site and an approximate 3,000 s.f. public plaza near the southwest corner of the site. Both plazas would have direct connections to the previously approved shoreline edge esplanade. These plazas would be for formal recreational use and would feature textured surfaces. They would be landscaped, have handicap access, and have benches and other amenities. *(exhibit 3, Applicant Summary; exhibit 10, drawings pages 4, 6; exhibit 14, Power Point presentation, slides 6-9)* Landscaping design guidelines and standards were adopted by the Everett City Council and are referenced in the Development Agreement. Landscaping of public areas would be consistent with the Urban character of the development. *(exhibit 6, PDO Zoning Resolution/Ordinance and Development Agreement)*
18. As noted above, removal of 16 buildings would occur. Nine of these buildings are located in the shoreline jurisdiction. Some of the buildings may contain asbestos material and lead based paint. The demolition and removal of the buildings would be done in a manner consistent and in accordance with State and Federal requirements. Cleanup activities would consist of a voluntary cleanup plan for the contaminants and would be done pursuant to Washington's Toxic Control Act *(RCW 70.105.D)*. *(exhibit 3, Applicant Summary; exhibit 10, drawings page 9)*
19. The Craftsmen District is an area on-site that would provide open and covered work space for repair of boats up to 75' feet in length. It would also provide boat wash down facilities, boat trailer drop-off area, marina operations office, and public restrooms. The Phase II improvements for this district include construction of the marine sales and service building that would provide approximately 26,000 s.f. on two floors and the construction of a dry stack boat storage building providing approximately 38,500 s.f. of storage area on one floor. In addition, modifications to sales and service buildings that were approved as part of Phase I would be incorporated as part of the entire services provided on-site. The buildings that are not demolished would include conversion of four buildings from a single-story structure to two-story structures with no buildings exceeding 35' in height. There would also be an approximate 14,000 s.f. outdoor work yard and parking for approximately 128 vehicles. Landscaping and fencing would be provided to buffer and screen the boat yard area from adjacent areas and uses. *(Jimerson testimony; exhibit 1, staff report; exhibit 3, Applicant Summary; exhibit 10, drawings pages 12 & 13; exhibit 14, Power Point presentation, slides 14-18)*

20. Phase II would also include construction of five mixed-use and hospitality buildings consisting of approximately 267,000 s.f. of floor area, including an approximate 32,000 s.f. two-story professional/retail building in block N2-1; an approximate 16,000 s.f. two-story professional/retail building in block N1-2; an approximate 32,000 s.f. two-story hospitality retail space in block N1-1; an approximate 104,000 s.f. three-story hotel/restaurant/retail building in block N1-3 (for up to 168 guest rooms; and an approximate 83,000 two-story hotel/restaurant/retail building in block S1-1 (for approximately 104 guest rooms). (*exhibit 3, Applicant Summary; exhibit 10 drawings, pages 2 & 4; exhibit 14, Power Point presentation, slides 5, 7, 9, 10*) No building would exceed 35' in height. (*Anderson testimony*)
21. There are two portions of the City's combined sewer overflow service lines that must be relocated to accommodate the proposed development. These overflow lines are identified as the 13th Street line and the 14th Street line and would be relocated and connected to existing combined sewer overflow lines. However, all of this activity would occur on land, and there is no in-water work anticipated. The old lines would be abandoned. (*exhibit 3, Applicant Summary; exhibit 10 drawings*) Stormwater management for the proposal must satisfy City, State, and Federal guidelines and standards, including requirements of the National Pollution Discharge Elimination System. (*exhibit 10, drawings*)
22. As part of Phase II, the Applicant submitted a Parking Management Plan. (*exhibit 4*) In developing the Plan, the demand for parking was identified based on observations, standards issued by the Institute of Transportation Engineers (which is the standard used by most cities and counties in the United States), the parking provisions of the EMC, and accepted transit oriented development planning principles. (*Jimerson testimony*) The Plan addressed temporary parking for the amphitheater, dedicated marina slip holder parking, permanent parking on 12th and 14th Streets, and the parking in the Craftsmen District and residential districts. The Plan calls for the retention of a professional parking management operator; adequate signage and traffic controls; priority being given to preferred parking such as carpools and shared use parking. According to the Applicant which submitted the Plan, permanent and interim parking spaces would be available for evenings and weekend use by boat clubs and restaurant patrons. At least 40% of these permanent and interim parking spaces would be set aside for such purposes. (*exhibit 4, Parking Plan; exhibit 10 drawings, page 8*) Parking areas must satisfy landscaping standards adopted as part of the PDO. (*exhibit 1, staff report*)
23. As part of the review for the Shoreline Permit, the City's Engineering/Public Service Department reviewed the proposal. Based on its review, they submitted 23 conditions that include payment of traffic mitigation fees; charges for connections to the sewer and water systems; upgrades to sewer systems; emergency vehicular access provisions; fire sprinklers and hydrants; performance bonds for public improvements; warranties and guarantees for public improvements and drainage facilities; stormwater control treatment; parking; and compliance with the Best Management Practices (BMP's) during and after construction. (*exhibit 11a, Public Works Comments*)

24. Compliance with the EMC, Development Agreement, PDO, and the Port Gardner Design Standards and Guidelines will ensure that the ESMP policies that are applicable to exterior lighting, signs, noise, landscaping, and parking are satisfied. (*exhibit 1, staff report pages 3, 4, 8 & 9*)
25. The City Fire Department reviewed the proposal and determined that 14 conditions would mitigate impacts from the development of the project. These conditions include fire access lanes being provided and identified; buildings being identified from the access roads; fire hydrants being provided with adequate water pressure and locations approved by the Fire Marshal; automatic fire detection systems and fire suppression systems being required in all buildings; portable fire extinguishers being required during construction; and restrictions for commercial cooking operations. (*exhibit 11b, Fire Department Comments*)
26. The Snohomish County Public Utility District No. 1 (PUD) submitted that at full build-out the project could create a demand of approximately 4MW. The PUD has sufficient system capacity to serve up to 4MW but may not have system capacity for the project if other new developments commence operation prior to the development of Port Gardner Wharf. The PUD would require the Applicant to provide suitable sites and easements for any electrical facilities that are required, and the Applicant would be responsible for all, or a portion of, the costs of infrastructure necessary to serve the proposed project. (*exhibit 11c, PUD Comments*)
27. The Washington Trust for History Preservation (Washington Trust) submitted comments on the proposal. These comments addressed the Collins Building (North Coast Casket Company building) which has been designated by the Washington State Department of Archaeology Historic Preservation as eligible for listing in the National Register of Historic Places. The Collins Building is outside the shoreline jurisdiction but abuts the eastern border of the site. (*exhibit 10, drawings page 12*) On August 11, 2005, the Applicant, the US Army Corps of Engineers, and the Washington State Historic Preservation Officer entered into a Memorandum of Agreement addressing potential adverse impacts that the Port Gardner Wharf proposal could have on the Collins Building. The Memorandum of Agreement also discussed the possibility for redevelopment and/or rehabilitation of the building or, in the alternative, the demolition and/or relocation of the building. At the hearing, the Washington Trust requested that the Shoreline Permit include abatement measures protecting the Collins Building from ground vibrations and other potential adverse construction activities. The Washington Trust further requested that any permitted change in the Craftsmen District be done with consideration of the financial impact for redevelopment of the Collins Building. (*exhibit 13, letter; exhibit 17, memorandum; Moore testimony*)
28. Testimony at the public hearing supported the proposal and the resulting benefit to the Port of Everett and the citizens of Everett. Public testimony was received supporting the work area to be used as part of the Craftsmen District; the inclusion of retail, residential, and professional uses; the sensitivity towards historical preservation; and the provision for public access. (*Lalone testimony, Hatch testimony, Salz testimony, Mascarenas testimony, Belshaw testimony*)

Jurisdiction: *The Hearing Examiner of the City of Everett has jurisdictional authority to hold a hearing and to issue the decision. That authority is set forth in EMC 15.16.100. Based on the above Findings of Fact, the Hearing Examiner enters the following Conclusions:*

CONCLUSIONS OF LAW

1. The Applicant requested approval of a Shoreline Permit for Phase II of a mixed-use development project, the North Marina Redevelopment project (NMRD). The NMRD is a multi-district master plan intended to create a mixed-use development to meet the Port of Everett's strategic planning objectives. These objectives include providing a "setting that is conducive to expanding and more efficient provisions of marina moorage and related boating and maritime services, expanding public shoreline access and recreation, providing for residential uses, and creating expanded economic development and employment opportunities." (*finding 1*)
2. The Everett Hearing Examiner may approve an application for a Shoreline Permit only if the following criteria as set forth in the ESMP 2.3 and EMC 19.33.D.030(A) are satisfied:
 - A. The policies and procedures of the Shoreline Act of 1971, RCW 90.58, as amended;
 - B. The Everett Shoreline Master Program, EMC 19.33.D; and
 - C. The State Environmental Policy Act, RCW 43.21.C.
3. The proposal is consistent with the policies of the Shoreline Management Act. The Washington State Shoreline Management Act of 1971 (RCW 90.58) establishes a cooperative program of shoreline management between local and state governments, with the local government (City of Everett) having the primary responsibility for initiating the planning required by the charter and administering the regulatory program consistent with the Shoreline Management Act. The ESMP provides goals and policies for ensuring that development within the shorelines of the State is consistent with the policies and provisions of RCW Chapter 90.58. The proposal is consistent with the policies of the Shoreline Management Act because it provides for industrial and commercial development while facilitating public access with social, cultural, and recreational activities. It is adjacent to, and would provide services to, marinas and would not impede navigable waters. Based on evidence presented, there are no endangered species to be adversely impacted. (*findings 2, 11, 13-22*)
4. With conditions, the proposed development would be consistent with the ESMP. Phase II of the proposed mixed-use development is consistent with the goals of the ESMP because it seeks to promote a balance between economic development, public access, and environmental protection. With conditions established in the Development Agreement and in this decision, the proposed Phase II would comply with goals, objectives, policies, and regulations of the ESMP. The proposed use is consistent with the WC-PDO zone; the proposal is an allowed use in the Urban Maritime shoreline designation; the proposal satisfies the criteria for development within the Urban Maritime shoreline; and the proposal is consistent with the zoning standards of the City of Everett as set forth in the EMC. (*findings 2, 11, 13-23, 25, 26*)

5. With the conditions as set forth in the Development Agreement between the Applicant and the City and the EIS that was issued for this project, there would not be significant adverse environmental impacts associated with the proposal. The Applicant is required to comply with all mitigation measures, including conditions of any other required State and Federal permits. This compliance would ensure that any impact to the environment is sufficiently addressed and mitigated. (*findings 11, 14, 18, 24, 27*)
6. With conditions, the proposal is consistent with the State of Washington's Environmental Policy Act. RCW 43.21.C, the Washington State Environmental Policy Act (SEPA), encourages harmony between humans and their environment and requires protection of that environment. SEPA seeks to ensure that all citizens have aesthetically and culturally pleasing surroundings that support diversity and variety while permitting high standards of living and wide sharing of life's amenities. For the entire project, an EIS was prepared, and the impacts of Phase II have been addressed. The EIS was adopted by the Applicant, the lead agency, after a review. The review determined that the EIS has adequately reviewed the environmental issues related to the proposed project and provided adequate measures to ensure that impacts to the environment were mitigated to the level that they were not determined significant. In addition, conditions of approval have been imposed on this Shoreline Permit that will ensure that the shoreline and adjacent environment would be adequately protected. (*findings 11, 14 & 18, 24, 27*)

DECISION

Based upon the preceding Findings of Fact and Conclusions and testimony and evidence submitted at the public hearing, it is hereby ordered that the Shoreline Substantial Development Permit for the Port Gardner Wharf Permit #2 is granted subject to the following conditions:

General

1. The proposal must comply with all other City code and ordinance requirements not specifically set forth herein.
2. Construction, or substantial progress toward construction, of a project in reliance of this Shoreline Permit must be undertaken within two years after final approval of the permit, and completed within ten years plus an extension, as may be otherwise allowed by State and/or City shoreline regulations.
3. The construction plans must be designed based on a site survey performed by a licensed State of Washington land surveyor.
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.

5. The build-out of Shoreline Permit No. 2 may be phased. Certificates of occupancy/final inspection may be issued for individual buildings and facilities prior to completion of all improvements authorized by the Shoreline Permit, provided that the improvements necessary to support the particular building or facility are completed to the City's satisfaction. Those improvements include, but are not necessarily limited to, parking, utilities, fire access, and landscaping.
6. A binding site plan shall be prepared and recorded upon City approval. Recordation of a binding site plan may be required prior to issuance of a building permit if it is determined the proposed building would otherwise encroach on property line(s) or within required setback areas.
7. Prior to issuance of a building permit, the Applicant or its agents shall provide updated calculations, in square feet, of each use category identified in Section 3.5 of the development agreement, including all Phase 1 and Phase 2 buildings, whether within shoreline jurisdiction or out. These calculations shall be updated with each building permit so as to ensure the parameters set forth in Section 3.5 are not exceeded.

Construction Impacts and Grading (applies to facility construction and any future maintenance)

8. City streets and alleys are to be kept clear of dirt and debris at all times during construction. Dust suppression and street cleaning must occur as directed by the Public Works Inspector.
9. Temporary erosion control measures for construction activity must be operational prior to commencement of any clearing or earthwork.

Stormwater and Water Quality

10. Treatment of stormwater runoff from paved areas must occur, per City standards, prior to discharge of the stormwater from the site. Stormwater treatment is required when 5,000 square feet or more of pavement is created and/or redeveloped by a project.
11. All stormwater facilities shall be designed in accordance with applicable City standards and/or design policies.
12. The project should utilize the Best Management Practices (BMPs) listed in Section 2.2 Pollutant Source-Specific BMPs for the repair and maintenance of boats and ships, found in the 2001 DOE Stormwater Management Manual for Western Washington.
13. The options for stormwater 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.
14. All chemicals or products of a hazardous or toxic nature that may be used or stored on the site must be stored under cover and isolated from the storm drainage system. The Applicant must develop operational procedures to address the handling and storage of fuel, chemicals, oil and other substances with the

potential for spillage into adjacent waters, and shall develop operational procedures to handle potential spills into adjacent waters. In addition, physical structures, which would contain any potential spills, shall also be provided. Procedures meeting State or Federal requirements shall be acceptable. The proposed operational procedures must be reviewed and approved by the City prior to the issuance of construction permits for any uses subject to these procedures.

15. Industrial activity in the Craftsmen District shall employ BMPs concerning the various services and activities to be performed and their impacts on the surrounding water quality. Operators shall take all actions necessary to ensure that contaminants do not enter the water or storm drainage system. Development and operations shall comply with the City's Drainage Ordinance and Stormwater Management Manual.

Noise, Dust, Odors and Air

16. 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.
17. All shoreline activity shall comply with the City's noise ordinance (EMC 20.08), both during and after construction. Backup alarms may be eliminated if equipment can still satisfy all safety regulations without them. Otherwise efforts should be made to minimize the frequency and duration in which equipment will need to back up.
18. The following measures identified in the project EIS shall be taken to mitigate noise impacts during construction of the project:
 - a. Ensure all equipment has properly sized and maintained mufflers.
 - b. Use engine enclosures and intake silencers.
 - c. Use standard construction site noise reduction techniques including use of electric or hydraulic impact tools.
 - d. Use alternatives to impact pile driving where feasible.
 - e. Use pile driving sound absorbing barriers and/or other sound reducing measures.
 - f. Implement a phone/web hotline to field noise questions and complaints.
19. The hours of operation of the dry boat storage facility will be 7 AM to 7 PM, seven days a week.
20. Plans for public works construction approval and/or building permit approval shall show all solid waste collection facilities, which shall be located, constructed, and screened so as to prevent impacts related to health and sanitation, water quality, odor, aesthetics, and public safety. Containers shall be covered, and stormwater runoff shall be treated per City standards.

Parking and On-site Vehicular Circulation

21. Prior to issuance of a building permit, the Applicant or its agents shall provide calculations which demonstrate that the parking requirements of the zoning code and PDO overlay for that particular use are met. In addition, the Phase 2 parking management plan must meet the satisfaction of the Planning Director and City Engineer prior to the issuance of a building permit. Required parking may be located in an interim lot located within reasonable walking distance of the building or use it supports, provided that construction permits for subsequent conversion of the interim lot to another use shall not be issued until new interim or permanent parking is created to replace any required parking spaces that are eliminated as a result of the conversion.
22. Design of parking areas shall meet City Zoning Code and Design and Construction Standards. Temporary parking areas used for construction worker parking and other short-term needs (less than 12 month time periods) will typically be gravel surfaced. The interim parking for other early phase uses that are utilized during times greater than 12 months, but are not permanent, will be paved with 2-inch minimum compacted depth of class B asphalt over a sufficient subgrade and shall be striped. The interim parking will not be required to satisfy City Zoning Code and Design and Construction Standards. All required ADA accessible parking stalls shall comply with ADA regulations whether intended to be permanent, interim, or temporary. The number of ADA accessible parking stalls shall be consistent with Federal standards.
23. Fire vehicle access geometry shall meet Everett Fire Department standards.

Public Access

24. The site plan shall be revised to ensure the esplanade has a minimum width of fifteen feet around the proposed building (site of the existing conference center) located at the southwest corner of the site.

Cultural Resources

25. If anything of possible archaeological interest is uncovered during excavations or development, the Applicant must immediately stop work and notify the City and the Tulalip Tribes, and consult with a professional archaeologist who must inspect and evaluate the site. In the event that ground disturbing or other construction activities result in the inadvertent discovery of the archaeological resources, work shall be halted in the immediate area, and contact made with the City of Everett, the office of the State Archaeologist (OAHP), and cultural resources office of the affected Tribes. Work must be halted until such time as further investigation and appropriate consultation is concluded. In the unlikely event of the inadvertent discovery of human remains, work shall be immediately halted in the discovery area, the remains covered and secured against further disturbance, and communication established with project administrative personnel, local law enforcement, OAHP, and authorized Tribal representatives.

Landscaping

26. Prior to issuance of building permits or Public Works construction plan approval, the Applicant shall provide a detailed landscaping plan that is consistent with the documents titled Design Standards and Guidelines and the Port Gardner Wharf Design Guidelines, that were adopted by City Council and referenced in the Development Agreement, to the City for review and approval by the Planning Department. The plan shall be at an appropriate scale and identify species, size, quantity, location, and planting details and shall clearly demonstrate how the standards and guidelines are met.

Visual Impacts

27. Site lighting shall be designed to shield and focus light within the project site and minimize light and glare impacts to the residences to off-site properties.
28. The project shall comply with the mitigation measures adopted by the Applicant in the EIS, including use of non-reflective building materials and locating, orienting and designing buildings to minimize glare and shadow impacts on sensitive areas such as shoreline walkways and public open spaces.
29. Plans submitted for building permits shall ensure that all commercial loading and service areas are located on the upland side of the commercial activity unless provisions are made to screen the loading and service area from the shoreline and water body.

Utilities

30. As-builts of storm sewer, sanitary sewer, and water systems must be submitted per City Design and Construction Standards and Specifications for Development.
31. On-site water and sewer mains shall be staked within an easement to the City. The easement shall be submitted to the City prior to issuance of public works permits.
32. All new utilities shall be placed underground and existing aboveground utilities shall be placed underground during normal replacement processes. If necessary, certain utilities may remain aboveground on an interim basis. As the development progresses, they shall be placed underground.
33. Aboveground utility appurtenances shall be avoided where feasible. When not feasible, they shall be designed, located, landscaped, and/or screened to reduce their visual impact.
34. There is an existing City owned 18" combined sewer overflow and outfall in the 13th Street right-of-way. Portions of this facility will need to be replaced, upgraded and/or relocated due to the proposed development activity – all such work shall be at the expense of the Applicant. It shall be the Applicant's obligation to obtain the required permits relating to any relocation of the existing outfall.

Environmental Health

35. Best available management practices and procedures shall be employed for safe handling of fuels and toxic or hazardous materials.

Fees/Assurances/Guarantees

36. 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.
37. 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.
38. 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.
39. Special charges for connection to the sewer and water systems in accordance with Ordinance 1998-94 and subsequent revision are applicable. These charges are based on projected water usage and can be substantial. The Applicant is encouraged to obtain a copy of the Ordinance and determine estimated charges prior to building permit application. The actual charges shall be computed by the Public Works Department per the ordinance in effect at the time and according to the information on the approved plans at the time of building permit issuance.

Fire Prevention

40. All new structures shall provide Fire Department access roads to within 150 feet of all portions of the ground floor. Such roads shall provide a minimum of 20 feet in width of unobstructed, paved driving surface with a minimum clear height of 13' 6". Inside turn radii must be 35 feet. Slope approach and departure angles must not exceed ten degrees. Fire lane grade must not exceed 15%. Fire lanes shall be posted and maintained as required by the Fire Department.
41. Fire apparatus access roads shall be marked whenever necessary to maintain the unobstructed minimum required width of roadways. Fire lanes shall be marked as follows:
- a. Curbs shall be identified by red traffic paint with a 6-inch wide stripe on the top and front, extending the length of the designated fire lane.
 - b. Rolled curbs shall be identified by red traffic paint with a 6-inch wide stripe on the curb, extending the length of the designated fire lane.
 - c. Lanes without curbs shall be identified by red traffic paint with a 6-inch wide stripe on the pavement, extending the length of the designated fire lane.

- d. The words 'NO PARKING – FIRE LANE' shall be in 3-inch stroke white letters, 18 inches in height, and placed 8 inches, measured perpendicular, from the red paint strip on the pavement. In most cases, both sides of the access road shall be marked. Where long drives are to be marked, the repetitions shall be on alternating sides of the drive.
 - e. Markings shall also include the addition of metal signs stating 'NO PARKING – FIRE LANE – TOW AWAY ZONE' to be installed at intervals or locations designated by the fire code official. The signs shall be approximately 12 inches in width and 18 inches in height and have red letters on a white background. Metal signs shall be installed on either 2-inch metal pipes for private property or treated 4-inch by 4-inch wood posts for public property and shall be located so that the bottom of the sign is a minimum of 7 feet above the curb. Where fire lanes are adjacent to buildings or structures and when approved or directed by the fire code official, the signs may be placed on the face of the building or structure.
 - f. Where directed by the fire code official, specific areas shall be designated and those areas are to be marked with diagonal striping across the width of the fire lane. Diagonal marking shall be used in conjunction with painted curbs and/or edge striping and shall run at an angle of 30 to 60 degrees from one side to the other. These diagonal lines shall be in red traffic paint, parallel with each other, at least six inches in width and 24 inches apart. Lettering shall appear as in paragraph "d" above.
42. In situations in which access to or within a structure or an area is unduly difficult because of secured openings or where immediate access is necessary for life saving or fire-fighting purposes, the Fire Department is authorized to require a key box to be installed in an accessible location. A rapid entry system may also be desirable in order to avoid unnecessary damage while making entry to any building during an emergency situation.
 43. Premises shall be clearly identified by the correct address at the street entry. Buildings shall be clearly identified so as to be visible and legible from the access road. Individual apartments and suites, where applicable, shall be clearly and legibly identified from the access road.
 44. Premises identification and all required Fire Department access roads and fire hydrants shall be in service prior to commencement of construction.
 45. A fire hydrant is required within 200 driving feet, but not closer than 50 feet, of every structure. Location of the hydrant(s) shall be approved by the Fire Marshal.
 46. The City of Everett Fire Marshal has determined that based on the proposed square feet of Type V-B sprinklered construction in this permit, the fire flow requirement is 4,000 gpm for these areas.
 47. A portable fire extinguisher with a minimum U.L. rating of 2-A:10-B:C shall be provided within 75 feet of travel on all floors of each building during construction and prior to occupancy.
 48. A ventilating hood and duct system with an approved automatic fire-extinguishing system shall be provided in accordance with the Mechanical Code for commercial-type food heat-processing equipment that produces grease-laden vapors.

49. For commercial cooking occupancies, a K-type fire extinguisher shall be installed within 30 feet of grills and deep fryers.
50. An approved automatic fire detection system shall be provided in all buildings as required by City Ordinance No. 1902-92, Chapter 16.76, of the Everett Municipal Code. Plans for such system shall be submitted to the Fire Marshal for review and approval prior to installation. Submittal shall include cut sheets of all equipment intended for use. Appropriate trip tests, witnessed by a Fire Department Inspector, shall be performed, along with a certificate of completion, prior to final acceptance of the system. Fire alarm systems shall be installed according to NFPA Standard 72. Installation of fire alarm components, including basic wiring, may not commence before plans are approved by the Fire Department Plan Reviewer.

Fire alarm drawings must be professionally rendered, in sufficient detail, and must be internally consistent. Riser diagrams must match installation plans and load calculations. Components must be listed and approved for use together. Changes to plans must include new drawings and calculations and must be approved by the Fire Department Plan Reviewer prior to installation.

Fire alarm installation is subject to field inspection by a Fire Department Inspector. An approved set of plans and the Building Department electrical permit must be present for any installation inspection.

Fire alarm systems shall be installed under permit of the City of Everett Building Department. Electrical inspections and approval are required prior to calling for acceptance tests. Call (425) 257-8810 for permit information. The absence of working phone lines for the alarm system will be cause for postponing Fire Department inspection and testing and shall result in denial of occupancy.

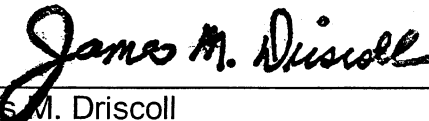
51. An approved automatic suppression system shall be provided as required by City Ordinance No. 1902-92, Chapter 16.76, of the Everett Municipal Code. The system must include a mechanical water gong bell. Plans for any such system shall be submitted to the Building Department for examination and approval. Such plans shall include plans for the underground mains that will supply the sprinkler system. The type of sprinkler to be installed will be determined by the Building Official. It may be an NFPA 13, NFPA 13R, or NFPA 13D system depending upon several factors. Sprinkler installation shall not begin without an approved and stamped set of plans from the Building Department. The Fire Department will also review the plans and shall field inspect the installation based only on approved plans that must be on site. Changes to plans must be approved by both the Building and Fire Departments. Aboveground sprinkler piping shall be hydrostatically tested as established in NFPA Standard 13. Underground piping shall be hydrostatically tested and flushed as established in NFPA Standard 24 for private fire mains. Below-ground piping must be installed by Washington State Patrol Licensed Underground Sprinkler line certified "U" installers. For further information, contact the State Fire Marshal's Office at (360) 570-3134 or contact the Everett Fire Department at (425) 257-8123. All such tests shall be witnessed by a Fire Department inspector. Call (425) 257-8124 to make an appointment for inspection. Contractors' materials and test certificates shall be submitted to the Everett Fire Department prior to issuance of any certificates of occupancy.

52. All fire alarm control panels (FACP) and sprinkler valves shall be in heated rooms or closets with standard man door access. Locations shall be approved by the Fire Marshal's Office.
53. Dumpsters over 1.5 cubic yards capacity shall be located a minimum of 5 feet from the building.

Overwater Structure

54. The existing non-conforming overwater building at the southwest corner of the site shall be brought into conformance with current standards prohibiting commercial buildings being located overwater unless the building is certified by the City as a legal non-conforming structure. If so certified, remodeling, reconstruction or other modifications to the building shall be done in a manner consistent with the relevant regulations contained in Chapter 19.38 EMC and the non-conforming provisions contained in WAC 173-27-080.
55. Alternative Materials and Methods. The provisions of the current City of Everett Fire Code, adopted by ordinance and used to review and assess fire and life safety-related plans for this Shoreline Permit, are not intended to prevent the installation of any material or to prohibit any method of construction not specifically prescribed by this code, provided that any such alternative has been approved by the City of Everett Fire Marshal who is the fire code official. He is authorized to approve an alternative material or method of construction where he finds that the proposed design is satisfactory and complies with the intent of the provisions of the code, and that the material, method, or work offered is, for the purpose intended, at least equivalent of that prescribed in the code in quality, strength, effectiveness, fire resistance, durability, and safety.

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



James M. Driscoll
Hearing Examiner