

**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 SUBSTANTIAL DEVELOPMENT  
PERMIT AND A BINDING SITE PLAN  
WATERFRONT PLACE CENTRAL

SMA #16-011  
BSP #16-001

SUMMARY OF DECISION: A Shoreline Substantial Development Permit and Binding Site Plan, including reduction of the depths of Lots A8 and A12, are approved subject to conditions herein.

**INTRODUCTION**

The Port of Everett (Port) (Applicant) requested approval of a Shoreline Substantial Development Permit (shoreline permit) and a Binding Site Plan with reduced lot depth for proposed lots A8 and A12. The proposed project would be developed on property on the west side of West Marine View Drive, extending between the 1000 and 1600 Blocks in the City of Everett, Washington (subject property).

A hearing on the request was held before the Hearing Examiner of the City of Everett on March 23, 2017. At the hearing the following presented testimony and evidence:

John Jimerson, City of Everett Planning Department

Laura Gurley, Port of Everett  
1205 Craftsman Way #200  
Everett, WA 98201

Graham Anderson, Port of Everett  
1205 Craftsman Way #200  
Everett, WA 98201

Terrie Battuello, Port of Everett  
1205 Craftsman Way #200  
Everett, WA 98201

Brandon Whitaker, Port of Everett  
1205 Craftsman Way #200  
Everett, WA 98201

Joel Mezistrano, SeaLevel Properties  
9675 SE 36<sup>th</sup> Street  
Mercer Island, WA 98040

Kyle Weeks, SeaLevel Properties  
9675 SE 36<sup>th</sup> Street  
Mercer Island, WA 98040

John Shaw, SeaLevel Properties  
9675 SE 36<sup>th</sup> Street  
Mercer Island, WA 98040

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

1. Staff Report
  - 1a. Recommended Revised Condition #13 from Planning Department
2. JARPA Application
3. Project Narrative
4. Plan Set
5. Interim Parking Lot Screening Treatment
6. Binding Site Plan
7. BSP Variance Narrative and Graphic
8. BSP Alternative Weaver Street Configuration
9. Phase I Parking Management Plan
10. Notice of Application and Hearing
11. Planned Development Overlay Development Agreement
  - 11a. Development Agreement
  - 11b. Conceptual Site Plan
  - 11c. Parking Strategy
  - 11d. Height Zone Map
  - 11e. Open Space Diagram
  - 11f. Pathways and Public Access
  - 11g. Pedestrian Pathway and Width Diagram
  - 11h. Phasing Plan
  - 11i. Design Standards and Guidelines (on file with Planning Department and at <https://www.everettwa.gov/DocumentCenter/View/2706>)
  - 11j. SEPA Mitigation Summary
12. Planning Director Interpretation No. PDI 16-01
13. Final Environmental Impact Statement for the North Marina Redevelopment Project (on file with the Planning Department)

14. Biological Evaluation
15. Agency Comments:
  - 15a. Public Works
  - 15b. Fire Department
  - 15c. Snohomish County PUD
  - 15d. Everett School District
16. Powerpoint Presentation
17. email to John Jimerson, Planning Department, from Terrie Battuello, Port of Everett, regarding responses from Harbor Electric

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

18. Pedestrian Pathway Width information submitted by John Jimerson, Planning Department
19. Email from Allan Giffen, Director of Planning, to Laura Gurley and Terrie Battuello, Port of Everett, dated November 1, 2016, regarding RCW reference to timelines
20. Email dated March 27, 2017, to Sabrina Fandler, Public Works Department, from Hearing Examiner Office, requesting clarification of condition #9 of the staff report
21. Email dated March 28, 2017, to Hearing Examiner Office, from Sabrina Fandler, Public Works Department, with revised condition #9
22. Email dated March 29, 2017, to Hearing Examiner Office, from John Jimerson, Planning Department, and Laura Gurley, Port of Everett, stating they have no comment regarding revised condition #9

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.

### **FINDINGS OF FACT**

#### **General Findings**

1. The Port of Everett requested approval of a Shoreline Substantial Development Permit and Binding Site Plan with a reduced lot depth for proposed lots A8 and A12. The proposed project would be developed on the property on the west side of West Marine View Drive, extending between the 1000 and 1600 Blocks, Everett, Washington. The Port proposes a mixed-use on a 65-acre parcel that would include residential, retail, office, restaurants, lodging, recreation and open space, along with marina support uses. As part of its submittal, the Port included a Binding Site Plan that reflects a new Master Development Plan that was

approved by the Everett City Council in 2015. (*exhibit 1, staff report, page 1; exhibit 2, JARPA application; exhibit 3, project narrative, pages 1 through 3; testimony of Mr. Jimerson; testimony of Ms. Gurley; testimony of Mr. Anderson*)

2. Previous shoreline permits for the site were issued by the City of Everett. These shoreline permits remain valid if work has been commenced on them. The City determined that the proposed shoreline permit would facilitate the completion of the City approved goals envisioned, but not yet completed, by previous shoreline permits that have been issued. The instant shoreline permit would provide revisions and updates for the remaining proposed shoreline improvements. (*exhibit 3, project narrative, page 1; testimony of Mr. Anderson; testimony of Ms. Gurley*)
3. The revised plan reflects changes consistent with the scope and intent of two shoreline permits that were approved by the City of Everett Hearing Examiner that are to expire in the near future. (*exhibit 3, project narrative, page 1*) The Hearing Examiner approved SMA #05-009 on January 5, 2006 and SMA #05-013 on February 27, 2006.
4. The instant application provides a detailed description of portions of the proposed initial project, the Fisherman's Harbor. It provides a flexibility in mixed-use, multi-phased development and will be a cornerstone for the Port for attracting quality private development. The Port submitted that the level of detail and the proposed phasing for the remainder of the site within the shoreline jurisdiction is currently conceptual, but with an understanding that the future planning will be consistent with Section 4.2 of the Development Agreement between the City of Everett and the Port that was entered on January 7, 2015. (*exhibit 3, project narrative, page 1; exhibit 11, development agreement; testimony of Mr. Jimerson*)
5. Because of the close proximity to a significant shoreline within the State of Washington (Puget Sound) and because the proposed project exceeds the statutory threshold amount of \$5,000.00, the proposed project is subject to a shoreline permit. (*WAC 173-27-040(2); testimony of Mr. Jimerson*)
6. Shoreline permits in the City of Everett are reviewed pursuant to the Washington State Shoreline Act (RCW 90.58) and the ordinances of the City of Everett, including the Everett Shoreline Master Program (SMP).
7. Pursuant to the State Environmental Policy Act (SEPA) (RCW 41.21.C), the Port was designated as the lead agency for the environmental review of the impacts of the proposed project. On May 27, 2005, the Port issued a final Environmental Impact Statement (EIS). No appeals were filed of that EIS. The Port remains the lead agency, and it has incorporated the final EIS issued in 2005 as the environmental review. No appeals of this determination have been made.

*(testimony of Mr. Jimerson; exhibit 11j, SEPA mitigation summary; exhibit 13, final EIS)*

8. The project has been in development since 2005. Progress occurred but was later delayed as the result of the economic downturn in 2008. Since then, substantial improvements have been made on-site or are in the process of being made. They include site preparation with building demolition; soil remediation; bulkhead repair and replacement; site grading; construction of frontage improvements along West Marine View Drive; public access improvements to the shoreline, including installation of an esplanade along the south edge of the site, new public plaza and overwater floats and decks; new commercial development, including a boat storage facility and expansion and remodeling of buildings; and construction of roads, sidewalks and landscaping. Most of these construction activities were authorized by the previous issued shoreline permits and are consistent with the 2005 Development Agreement entered between the Port and the City. The requested shoreline permit is intended to cover most of the remaining development of the shoreline jurisdictions<sup>1</sup>. *(exhibit 1, staff report, page 2; testimony of Mr. Jimerson)*
9. The requested shoreline permit was submitted to implement appropriate updates to previously approved permits and to ensure consistency with the Waterfront Place Central Conceptual Site Plan that was approved by the Everett City Council on January 21, 2015.<sup>2</sup> Since the signing of the revised Development Agreement of January 21, 2015, certain activities have occurred, including the replacement of the Seiner Wharf and bulkhead and a variety of other City authorizations for infrastructure improvements in the Fisherman's Harbor District. These activities, approved by the Everett Planning Director on June 24, 2016, are indicative of the City's intent to implement the updates from the Waterfront Place Central Conceptual Site Plan approval of January 21, 2015. *(exhibit 3, project narrative, pages 1 and 2)*
10. The scope of shoreline jurisdictional review applies to aspects of the proposed project. There are seven small buildings on the site that are to be demolished, and four of these buildings are within shoreline jurisdiction. *(exhibit 1, staff report, page 2)*
11. Residential/mixed-uses, identified in red on the Conceptual Site Plan, include three buildings that are to be constructed subject to the shoreline jurisdiction. They are projected to be developed on parcels A9, A10 and B7. Two other residential/mixed-use buildings are located outside of the shoreline jurisdiction and not subject to review in the instant application. *(exhibit 1, staff report, page 2; exhibit 3, project narrative; exhibit 4, plan set, sheet #P1-01)*

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<sup>1</sup> The findings of this document will refer to the activities covered by the instant requested shoreline permit. If the activities are part of a previously issued shoreline permit, it will be so noted.

<sup>2</sup> The Waterfront Place Central project was previously known as "North Marina Redevelopment Project"

12. Three buildings designated for residential uses are depicted on the Conceptual Site Plan in purple. These buildings, all located on parcel C1, include the northern and southern buildings that are within the shoreline jurisdiction. The middle building is not within the shoreline jurisdiction<sup>3</sup>. (*exhibit 1, staff report, page 2; exhibit 3, project narrative; exhibit 4, plan set, sheet #P2.04*)
13. Fifteen buildings are projected to be developed for retail, restaurant, commercial, employment and/or hospitality uses and are depicted on the Conceptual Site Plan in dark blue. All but four of these buildings are projected to be subject to shoreline jurisdiction. Marine services, which are shown on the Conceptual Site Plan in light blue, are not within the shoreline jurisdiction. (*exhibit 1, staff report, pages 2 and 3; exhibit 3, project narrative; exhibit 4, plan set, sheet #P1.01*)
14. Areas within the proposal that are designated as courtyard/underground parking structure are depicted on the Conceptual Site Plan in light green. These areas are partially within the shoreline jurisdiction and are located on parcels B2 through B7. (*exhibit 1, staff report, page 3; exhibit 3, project narrative; exhibit 4, plan set, sheet #P2.13*)
15. Public uses that will be provided within the proposal include public paths; three marina restrooms plus a public restroom; a new outdoor stage connected to the existing Weyerhaeuser building and improvements to the Fisherman's Tribute plaza. These areas are depicted in yellow on the Conceptual Site Plan. (*exhibit 1, staff report, page 3; exhibit 4, plan set, sheets #P2.01 through #P2.14*)
16. Landscaping of the site is depicted in dark green on the Conceptual Site Plan. (*exhibit 1, staff report, page 3*)
17. The Applicant submitted an initial parking management plan. The plan is prepared to identify and address parking needs for the entire redevelopment site, rather than a parcel-by-parcel management plan. During the course of development, the specific parking needs and designs will be determined and reviewed by the City of Everett Planning Department and the City Traffic Engineer. (*exhibit 1, staff report, page 3; exhibit 9, phase I parking management plan; exhibit 4, plan set, sheet #P4.03*)
18. Factors to be considered for parking at the site include parking management techniques, such as shared parking, time limits, parking permits and other means. The Applicant submitted that the parking management plan is expected to evolve with future phases of development. The City has made the parking management plan the subject of recommended condition #6. (*exhibit 1, staff report, pages 3 and 13; exhibit 9, phase I parking management plan*)
19. A phasing plan submitted by the Applicant includes four phases. The level of parking detail and the parking data for the site are under the shoreline

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<sup>3</sup> Reference to color shades is to the colors as shown on the Plan Set that was admitted as exhibit 4.

jurisdiction. As noted in the previous finding, modifications to parking will be addressed administratively. (*exhibit 3, project narrative, page 2; testimony of Mr. Jimerson; testimony of Ms. Gurley*)

20. According to the Applicant, the proposed design changes reflected in the Waterfront Place Central Conceptual Site Plan provide more benefit than the original plan approved by the City in 2005. Among the benefits is an increase of over 100,000 square feet of additional public open space provided throughout the site. Much of the open space is reflected in the two large open space areas provided for public enjoyment on the eastern portion of the site in the Pacific Rim Plaza and Seiner Wharf and on the western portion of the site in the Boxcar Park and Weyerhaeuser Muse. (*exhibit 3, project narrative, page 2; testimony of Mr. Jimerson; testimony of Ms. Gurley*)
21. A significant number of improvements were completed pursuant to the previous shoreline permits. These improvements included demolition of buildings; extensive pre-loading ground improvements; environmental cleanup of nearly all of the site, both within and outside of the shoreline boundary; completion of the first phase elements of the Craftsman District and construction of the main site entry way off 13<sup>th</sup> Street. (*exhibit 3, project narrative, page 2; testimony of Mr. Jimerson*)

#### Shoreline Permit Findings

22. The subject property had significant environmental cleanup required by the State Model Toxic Control Act with Department of Ecology review. On November 14, 2007, the site was removed from the Voluntary Cleanup list of the Department of Ecology and was split into six sites pursuant to the Puget Sound Initiative. Three of the sites were addressed with the Voluntary Cleanup Plan and three of the sites were part of the Department of Ecology's formal cleanup program. (*exhibit 3, project narrative, pages 3 and 4*)
23. The Phase I Voluntary Cleanup Program site has received a "No Further Action Determination" letter. (*exhibit 3, project narrative, page 5*)
24. The West End Formal Cleanup Site done pursuant to direction of the Department of Ecology was completed. The restrictive covenant on this portion of the site includes restrictions on groundwater removal from a portion of the site. (*exhibit 3, project narrative, page 4*)
25. The Ameron/Hulbert Formal Cleanup Site is on-going under the direction of the Department of Ecology, and the final cleanup of the site is projected to occur in 2019. According to the Cleanup Action Plan, the remaining areas that require physical cleanup are located along the north fence line of the Ameron leasehold in the northeast portion of the subject property. Because contaminated soil will

be contained, a restrictive covenant on the property is required. (*exhibit 3, project narrative, page 4; testimony of Ms. Gurley*)

26. The Everett Shipyard Formal Cleanup Site was completed in 2015. This work, under the direction of the Department of Ecology, required the Port to conduct confirmatory groundwater monitoring and sediment testing. The work commenced in 2016 and when finished the Port will file a restrictive covenant restricting groundwater removal from the site for drinking water purposes. (*exhibit 3, project narrative, pages 4 and 5*)
27. The Port submitted that the project is a pedestrian oriented mixed-use development with extensive public access and open space throughout. Walkways have been designed to provide connections to the general physical site thereby creating a variety of special experiences for visitors, residents and workers. (*exhibit 3, project narrative, page 5; exhibit 11b, conceptual site plan; testimony of Ms. Battuello; exhibit 4, plan set, sheets #P2.01 through #P2.14*)
28. The proposed project is subject to the Everett Shoreline Master Program, Section 3, General Regulations, as well as Section 5, Use Regulations.

### Section 3, General Regulation Findings

29. The Development Standard for exterior lighting of a project requires the Applicant to provide direction of lights downward onto the site and away from other shoreline properties or nearby neighborhoods. The City's review of the proposed project recommended this regulation as condition #18. (*exhibit 1, staff report, page 4; recommended condition #18*)
30. The shoreline development proposed by the Applicant must comply with the City's Noise Ordinance (EMC 20.08) during and after construction. The Applicant submitted a noise study which has been accepted by the City of Everett. The details of noise control are set forth in condition 17b of the Development Agreement. The Applicant indicated that it will meet all noise requirements. (*exhibit 1, staff report, page 4; exhibit 11a, development agreement, page 16; testimony of Mr. Jimerson; testimony of Ms. Battuello*)
31. A landscaping plan is required for the proposed project. It must be in scale and harmony with the proposed structures and provide screening and buffering of activities, if appropriate. As part of the Development Agreement between the City and the Port, landscaping design guidelines and standards were adopted. Detailed landscape plans are required to be submitted with the building permit application to ensure the applicable standards are satisfied. (*exhibit 1, staff report, page 4; exhibit 11a, development agreement, page 21; testimony of Mr. Jimerson*)



32. As noted on the Conceptual Plans (exhibit 4) submitted by the Applicant, landscaping within development parcels is subject to all requirements of the Development Agreement. The landscaping must be consistent with the urban character of the development and must comply with City standards to provide shade, augment aesthetics and work to unify the character of the entire project. The Design Guidelines and Standards have been adopted by the City Council and referenced in the Development Agreement. A detailed landscape plan must be submitted with building permit applications to ensure all applicable standards are satisfied. *(exhibit 1, staff report, page 4; exhibit 4, plan set; exhibit 11a, development agreement)*
33. All shoreline permits must have provisions that require the Applicant to immediately stop work and notify the City and Tulalip Tribes if anything of possible archaeological interest is uncovered during excavation or development. If such items are discovered, the Applicant must consult a professional archaeologist to inspect and evaluate the site. The City determined that discovery of archaeological items of interest is not expected because the site consists mainly of fill. *(exhibit 1, staff report, page 4)*
34. Public access is required as part of a shoreline permit. Water enjoyment uses and nonwater oriented uses fronting the shoreline must provide continuous public access along the entire site's shoreline. The proposal provides public access as a significant feature of the proposed project. *(exhibit 1, staff report, pages 4 and 5; exhibit 4, plan set, sheets #P1.01 and #P1.03)*
35. The site to be developed is within the City of Everett's adopted shoreline public access plan. Upon review of the shoreline public access plan for the site that was submitted by the Applicant, the City determined that it would be consistent with the City's plan and would provide continuous access along the shoreline and along West Marine View Drive frontage with pedestrian linkages connecting the northern and southern esplanades throughout the interior of the development. The esplanades and other pedestrian ways will be designed to satisfy accessibility standards. *(exhibit 1, staff report, page 5; exhibit 16, powerpoint; testimony of Mr. Jimerson; testimony of Ms. Gurley)*
36. The Development Agreement between the City and the Port establishes time schedules for completion of public access improvements. Many of the improvements are currently under construction pursuant to previous permits. The Applicant indicated that it would satisfy this requirement. *(exhibit 1, staff report, page 5; exhibit 11f, pathways and public access; testimony of Ms. Gurley)*
37. The public access trail will be along the entire perimeter of the site and will have unobstructed views. While there will be partial view impacts, properties along the top of the bluff, east of the project, will be impacted minimally. The analysis submitted by the Port indicated that the partial view images will be towards the Snohomish River, Jetty Island and the Sound, but the majority of the views from

the top of the bluff will remain unobstructed. (*exhibit 1, staff report, page 5; testimony of Mr. Jimerson*)

38. A restriction on height of structures is set forth in the Public Access Standards of the Shoreline Master Program. Any building or structure within 200 feet of the ordinary high water mark, in excess of 35 feet in height, must provide data showing that the structure will not obstruct the view of a substantial number of residences on the areas adjoining such shorelines<sup>4</sup>. The Development Agreement standard agreed to by the City and the Port limits building heights within 200 feet of the shoreline to 35 feet in height. (*exhibit 1, staff report, page 5*)
39. A biological evaluation was conducted by the Port (see EIS Technical Appendix, exhibit 14). The conclusions of the report included comments that the proposal may have some effect on endangered species, but is unlikely to adversely impact the endangered species. The City submitted this conclusion was acceptable. No public comment or opposition was submitted. (*exhibit 1, staff report, page 6; exhibit 14, biological evaluation; testimony of Mr. Jimerson*)
40. All stormwater management on-site will be subject to City standards and the Washington State Department of Ecology best available management practices. Recommended conditions 8 through 10 address this issue. (*exhibit 1, staff report, pages 6, 13 and 14*)
41. The best available management practices and procedures will be employed for safe handling of fuel and toxic hazardous materials. All commercial uses on-site must practice these requirements relating to services and activities performed near the water. Operators shall take all actions necessary to ensure that contaminants do not enter the water or storm drainage system. All activity must comply with the City Drainage Ordinance and Stormwater Management Manual. The Everett Planning Department recommended conditions 8 through 10 and 25 to address these requirements. (*exhibit 1, staff report, page 7; recommended conditions #8 through 10 and 25*)

#### Section 5, Use Regulation Findings

42. The City of Everett's Shoreline Master Program only allows nonwater oriented commercial uses within 200 feet of the ordinary high water mark if the use provides substantial public access and ecological restoration. Further, the use is allowed only if it is appropriate and feasible and one of the following criteria is satisfied:
  - a. The site is physically separated from the shoreline by another property, public right-of-way, or significant environmentally sensitive area: or

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<sup>4</sup> This regulation does not apply to cranes, utility poles or other devices required to carry on water-dependent operations.

- b. The use is part of a mixed-use project or area that includes water-dependent uses; or
- c. The site is upriver from the SR 529 bridge, or is located along Union or Steamboat Sloughs.

*(exhibit 1, staff report, page 6; Shoreline Master Program, Use Regulations, 5.5 – Commercial Development)*

- 43. The Everett Planning Department reviewed the requirements for commercial development and the Use Regulations of the Shoreline Master Program and determined that the proposed development would provide significant shoreline public access in a mixed-use project involving water-dependent and water-oriented uses. *(exhibit 1, staff report, page 6)*
- 44. As part of the Use Regulations of the Shoreline Master Program, all commercial loading and service areas are to be located on the upland side of the commercial activity, and efforts must be made to screen the loading and service area from the shoreline and waterbody. The City recommended this requirement as a condition of approval. *(exhibit 1, staff report, pages 6, 7 and 15, condition #19)*
- 45. Parking facilities within the shoreline are to be designed and landscaped to minimize the adverse impacts on adjacent shorelines and abutting properties. The landscaping of the parking areas must be developed consistent with City of Everett zoning standards. According to the City, detailed landscape plans are required to be submitted with building permit applications to ensure these requirements are satisfied. *(exhibit 1, staff report, page 7)*
- 46. Apartment buildings are projected to be constructed on Lots A9 and A10. There will be parking provided on the parcels east of these buildings. As depicted in exhibit 11b, which is part of the Development Agreement, there are additional buildings along West Marine View Drive where parking is proposed. According to the Everett Planning Department, prior to the time this parking is constructed, parking can be placed on the east side of the site, if additional landscaping is provided along the West Marine View Drive. *(exhibit 1, staff report, page 7)*
- 47. Detailed parking lot designs will be provided with the submittal of building permit application. *(exhibit 1, staff report, page 7)*
- 48. The recreational uses, as depicted on the Plan Sets and the Applicant's narrative, indicate that recreational uses are a major component of the proposed redevelopment project. Both water-dependent and water-related uses have been included and addressed. The water-dependent uses include the marinas that straddle the site and supporting upland facilities. Water-related/oriented recreational uses include shoreline pedestrian paths, overwater public piers and a park oriented to the water. Recreational facilities will be provided with adequate sanitary facilities. Three restrooms will serve the marina and will be devoted to marina use. A fourth restroom will provide service to the general

public. (*exhibit 1, staff report, page 7; testimony of Mr. Jimerson; exhibit 4, plan set, sheets P1.01 and P1.02*)

49. Residential development on-site includes requirements that multiple-family buildings be oriented to views of the shoreline when feasible, while continuing to protect views of the shoreline for other properties. The City submitted that the rectangular shaped peninsula of the site affords development ample opportunity to meet these standards. (*exhibit 1, staff report, page 8; exhibit 4, plan set; testimony of Mr. Jimerson*)
50. Signs on-site must comply with the Development Agreement provisions, as well as the guidelines in the City of Everett. Sign permits will be reviewed for compliance with these standards. (*exhibit 1, staff report, page 8*)
51. Solid waste disposal and collection facilities in the shoreline area must be located and constructed and screened to prevent impacts related to health, sanitation and water quality. They will also be designed to control odor, provide aesthetic relief and public safety. (*exhibit 1, staff report, page 8*)
52. Placement of the utilities is governed by the Development Agreement, as well as conditions of this decision. (*exhibit 1, staff report, page 8; exhibit 1, staff report, page 15, conditions 21 and 22*)
53. A continuous public esplanade is projected to be constructed along the entire 1.5-mile shoreline of the project. A part of the esplanade has been developed, but the remainder will be constructed as part of the instant permit. The width of the esplanade will be for bikes and pedestrians. Per the Development Agreement between the City and the Port, each phase and district in the project requires the adjacent esplanade segments to be completed as part of the required amenities. (*exhibit 3, project narrative, page 5; testimony of Mr. Jimerson*)
54. As part of the esplanade there will be two vista areas (Weaver and Chamfer) as depicted in exhibit 4. Segments along the southern and western edges (adjacent to the Central Marina and Snohomish River) will be completed in the initial phases of work approved by this shoreline permit. In later phases of the development the esplanade on the north edge of Waterfront Place Central, adjacent to the North Marina and Timberman Vista, will be completed. The completed esplanade will include a variety of amenities, including street furnishings, landscaping, viewing areas and lighting. The entire esplanade and amenities are subject to conformity with the conditions in the Development Agreement. (*exhibit 3, project narrative, pages 5 and 6; exhibit 4, plan set, sheet #P1.02, sheet #P2.01, sheet #P2.09; exhibit 11a, Development Agreement; exhibit 13, EIS; exhibit 16, powerpoint*)

55. The existing interim shoreline perimeter walkway system will be retained, but will be periodically relocated as needed and dictated by project construction activities. It will be ultimately replaced with the permanent shoreline esplanade improvements. In the final buildout, the north/south pathways will connect the main esplanade corridor via crosswalks and sidewalks across the site. (*exhibit 3, project narrative, page 6*)

#### Binding Site Plan Findings

56. EMC 15.16.030.C sets forth the appropriate review for various applications within the City of Everett. The ordinance reads:

Applications processed in accordance with subsection "B" of this section that have the same highest numbered classification, but are assigned different hearing bodies, shall be heard by the highest decisionmaker. The City Council is the highest, followed by the Hearing Examiner or Planning Commission, as applicable, the Director, and then the Planning Department or other authorized City staff.

In the instant application, the Hearing Examiner has jurisdiction over shoreline permits, while the Planning Director has jurisdiction over binding site plans. However, because the shoreline permit and the binding site plan are part of the same application, the Hearing Examiner assumes jurisdiction. For a review of a binding site plan the criteria as set forth in EMC 18.28.020 are applicable. (*EMC 15.16.030.C*)

57. The Everett Comprehensive Plan designates the subject property as 4.5 Waterfront Commercial and requires development in this designation to result in a "distinct character associated with the shoreline location, and that combine commercial activities with recreational activities or promote a high level of public contact with Everett's shoreline". (Land Use Element Policy 2.2.6) The proposed uses, as requested with the instant application, are consistent with the land use designation and provide a mixture of commercial, residential and recreational facilities that promote the highest level of public contact with the shoreline. (*exhibit 1, staff report, page 9; exhibit 4, plan set, all sheets; testimony of Mr. Jimerson; testimony of Ms. Gurley*)
58. The subject property is zoned Waterfront Commercial with a Planned Development Overlay. The proposed lots exceed the zoning district's minimum lot area of 5,000 square feet, and, with the exception of lot depth, the development is consistent with all Development Standards. Lot depths for each lot will be reviewed at the time of submittal of construction permit applications. (*exhibit 1, staff report, page 9; testimony of Mr. Jimerson*)

59. The proposed Binding Site Plan has been submitted and admitted as exhibit 6. As depicted on the Binding Site Plan, the site has been designed to satisfy requirements and standards of Environmentally Sensitive Area regulations as defined in EMC, Title 20 and the State Environmental Policy Act and its administrative procedures as set forth in Washington Administrative Code (WAC) 197.11. *(exhibit 1, staff report, page 9; testimony of Mr. Jimerson)*
60. As previously set forth in these findings, an Environmental Impact Statement and a Biological Assessment have been prepared for this project and other projects in connection with the development of this site. *(exhibit 1, staff report, page 9; exhibit 13, final EIS; exhibit 14, biological evaluation)*
61. Public services are available to the site. There is adequate water supply to the site, and connections to the water mains are subject to the City of Everett Public Works standards. City staff has reviewed the project and determined that adequate sewer conveyance and treatment capacity is available to serve the site. Connections to the sewer main must be consistent with City Public Works standards. *(exhibit 1, staff report, page 10; exhibit 4, plan set, sheets P5.02 and P5.03)*
62. Stormwater management is subject to City standards and the regulations of the Department of Ecology best available management practices. *(exhibit 1, staff report, page 10; exhibit 4, plan set, sheets P5.01(a))*
63. The Fire Department identified applicable fire code standards. Compliance with these standards is required through review of construction plans. Compliance with these standards is to occur during construction and be approved by the Fire Department. Adequate fire protection and hydrants can be provided to meet City standards. *(exhibit 1, staff report, page 10; exhibit 15b, fire department comments)*
64. Site access onto West Marine View Drive requires consolidation. West Marine View Drive is a managed access State Highway at this location and must comply with Washington State Department of Transportation (WSDOT) Managed Access Requirements. Driveways directly to proposed Lots D4, A5 and A13 are not acceptable and must be consolidated with other access points.

The Binding Site Plan drawings shall be revised to include approaches in the West Marine View Drive right-of-way which connect to the interior roads. The Applicant shall work with the Public Works Department to determine the appropriate configuration and size of the approaches. The Applicant shall apply for vacation of right-of-way areas previously dedicated for approach purposes and that are rendered unneeded by this Binding Site Plan. Application for vacation does not have to be completed prior to recordation of the Binding Site Plan. *(exhibit 1, staff report, page 14, condition #13; testimony of Mr. Whitaker)*

### Variance Findings (Title 18)

65. Lot depth standard of lots fronting West Marine View Drive is 80 feet. The Applicant requested a lot depth reduction of Lot A8 to a depth of 76 feet and a reduction of Lot A12 to a depth of 71 feet. The City reviewed these requests pursuant to the variance criteria of the City of Everett. *(exhibit 1, staff report, page 11; testimony of Mr. Jimerson)*
66. The lot configurations of lots fronting West Marine View Drive are consistent with the approved master development concept that was set forth in the Development Agreement. With the reduced lot depths there is no change in the development footprint of the site or its relationship to adjacent buildings, pedestrian access, street network or any other aspect of the project. *(exhibit 1, staff report, page 12)*
67. The proposed lot configuration is consistent with zoning and subdivision standards. The proposed lot configuration is consistent with standards for Binding Site Plans. Consistency with zoning regulations is reviewed with land use permits such as the requested permit and future building permit applications. *(exhibit 1, staff report, page 12; testimony of Mr. Jimerson)*
68. The proposed lots meet the minimum frontage required in the zoning code and have at least 70 feet in depth. The proposed lots have frontages of approximately 150 and 200 feet, in excess of the minimum 50-foot wide width, and the proposed reduced depths are approximately 71 and 76 feet. *(exhibit 1, staff report, page 12; testimony of Mr. Jimerson)*
69. Public notice was given pursuant to the requirements of the State of Washington and the City of Everett. No public testimony or comments were received on this project.

### CONCLUSIONS OF LAW

#### Jurisdiction

**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:*

#### Criteria and Standards for Review

**Shoreline Permit** - The proposed project is subject to the requirements of the Washington Shoreline Act (RCW 90.58) and ordinances of the City of Everett, including the Everett Shoreline Management Program. The goals, policies, and regulations applicable to the development on the shoreline are set forth in these documents. The relevant goals, policies, and regulations have been addressed in the City of Everett's staff report *(exhibit 1)*. The City has correctly identified the sections that are

jurisdictional to the request. These include: Shoreline Master Program Elements - Section 3, General Regulations; Section 3.5, Cultural Resources; 3.7, Public Access; Section 3.9, Conservation Element; and Section 5, Use Regulations – Section 5.5, Commercial Development; Section 5.12, Parking; Section 5.13, Recreational Development; Section 5.14, Residential Development; Section 5.15, Signs, Outdoor Advertising; Section 5.16, Solid Waste Disposal and Collection; and Section 5.18, Utilities.

**Binding Site Plan** - EMC 18.28.020 - General Evaluation Criteria include:

1. Comprehensive Plan - The proposed Binding Site Plan, site plan and other application information proposed for development shall be consistent with the City's Comprehensive Plan policies and land use map;
2. Zoning - The proposed Binding Site Plan, site plan and other required application information shall meet the requirements of the Everett Zoning Code, except as permitted by the design and development provisions;
3. Natural Environment - The Binding Site Plan, site plan and other required application information shall meet the requirements of Environmentally Sensitive Area Regulations of the Everett Zoning Code, Title 20, Everett Municipal Code (Environmental Policies), and the State Environmental Policy Act, WAC 197.11.
4. Public Services - The proposed project shall be designed to meet the following:
  - a) Adequate water supply to City Standards;
  - b) Adequate sewage disposal to City Standards;
  - c) Appropriate surface water management to City Standards;
  - d) Adequate fire protection and hydrants to City Standards;
  - e) Appropriate access to City Standards for or to all anticipated uses within the project;
  - f) Provisions made for access to and maintenance of all common facilities.
5. Existing Public Facilities and Services - The proposed project shall be designed to not adversely impact the following public facilities and services:
  - a) Existing streets and other transportation systems;
  - b) Existing utilities system;
  - c) Police, Fire, Parks, and Schools.

**Title 18 Variance Criteria** - Section 18.32.010 provides for variances to be granted to a limited number of standards, one of which is lot depth. The approval criteria<sup>5</sup> are provided below.

1. The variance will not be detrimental to the public welfare or injurious to the property in the vicinity or zone in which it is located, or to lots within the subdivision for which the variance is granted.
2. A site development plan that complies with all other requirements of this title and the zoning code has been submitted and approved by the director.
3. The lot meets the minimum frontage required in the zoning code and has at least 70 feet in depth.

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<sup>5</sup> The zoning variance criteria of Title 19 do not apply.



## **CONCLUSIONS BASED ON FINDINGS**

1. The Port of Everett requested approval of a Shoreline Substantial Development Permit and Binding Site Plan with a reduced lot depth for proposed lots A8 and A12. The proposed project would be developed on the property on the west side of West Marine View Drive, extending between the 1000 and 1600 Blocks, Everett, Washington. The Port proposes a mixed-use on a 65-acre parcel that would include residential, retail, office, restaurants, lodging, recreation and open space, along with marina support uses. As part of its submittal, the Port included a Binding Site Plan that reflects a new Master Development Plan that was approved by the Everett City Council in 2015. (*finding 1*)
2. The City has identified sections that are applicable to the instant requests. They include the Shoreline Master Program Elements - Section 3, General Regulations; Section 3.5, Cultural Resources; 3.7, Public Access; Section 3.9, Conservation Element. Further, the City has reviewed Section 5, Use Regulations - Section 5.5, Commercial Development; Section 5.12, Parking; Section 5.13, Recreational Development; Section 5.14, Residential Development; Section 5.15, Signs, Outdoor Advertising; Section 5.16, Solid Waste Disposal and Collection; and Section 5.18, Utilities. All of these goals and policies of the Everett Shoreline Master Program have been addressed in the application review, and the proposed project is consistent with said regulations. (*findings 22 through 55*)
3. A Binding Site Plan that was submitted for the proposed project was reviewed and regulated pursuant to the provisions of EMC 18.28.020. The General Evaluation Criteria for a Binding Site Plan have been considered, and the portion of the proposed project that is to be developed pursuant to the Binding Site Plan satisfies all regulations. (*findings 57 through 64*)
4. The reductions of the lot depth of Lots A8 and A12 from the 80-foot standard to 76 feet for Lot A8 and 71 feet for Lot A12 have been reviewed. The reduction of the lot depths will not be detrimental to the public welfare or injurious to the properties in the vicinity or zone in which it is located, or to lots within the subdivision for which the variance is granted. The site development plan has been reviewed for compliance with the zoning and subdivision standards and is consistent with these standards. The lots satisfy the minimum frontage required. Each lot has at least 70 feet of depth. (*findings 65 through 69*)

## **DECISION**

Based upon the preceding Findings of Fact and Conclusions and testimony and evidence submitted at the public hearing, it is hereby ordered the Shoreline Substantial Development Permit and Binding Site Plan, including reduction of the depths of Lots A8 and A12, are approved subject to the following conditions.

#### Conditions based on Public Works Department submittals

1. All proposed development plans must clearly label all proposed roadways as either public or private.
2. Construction permits, inspections and final approvals will be required for the individual development projects from City of Everett Permit Services.
3. Temporary erosion control measures for construction activity must be operational prior to commencement of any construction related activities.
4. As each development project comes in for permit, a review will determine if the project is required to comply with the pretreatment code for grease control. If required, a review of the project's plumbing plans (i.e. for a restaurant and any other kitchen/food service facilities planned) will eventually need to be conducted to confirm compliance. These facilities in the complex will need to be served by a gravity grease interceptor properly sized and installed per 2012 UPC and COE ordinance criteria (#3071-08). In the meantime, designers and/or engineers working on the development plans may proactively contact the City's Industrial Pretreatment (IPT) Division at 425-257-8224.
5. When individual projects supported by this Shoreline Permit and Binding Site Plan are permitted for construction, Traffic Mitigation Fees and System Development Fees may be assessed at that time. Traffic Mitigation shall be due in accordance with Ordinance 3387-14 (codified as EMC 18.40) and subsequent revision. System Development fees for connection to the sewer and water systems shall be consistent with Ordinance 3095-08 (codified as EMC 14.08.135) and subsequent revision may be applicable. These charges are based on projected water usage and can be substantial. The Applicant is encouraged to obtain a copy of the Ordinances and determine estimated charges prior to building permit application. The actual charges shall be computed by the Public Works Department per the ordinances in effect and according to the information on the approved plans at the time of building permit issuance.
6. Parking for each phase shall be provided as identified in the Waterfront Place Center Parking Management Plan (WPC PMP) and approved by the City of Everett. The WPC PMP shall be updated for each new phase of construction and shall include a review of parking conditions for all previous phases of construction, including parking utilization counts and evaluation of parking demand calculations. Contact Michael Brick in Traffic Engineering at (425)257-7790 or [mbrick@everettwa.gov](mailto:mbrick@everettwa.gov) to discuss specific technical comments on the current draft WPC PMP.

With each new phase after Phase 1B, an updated parking management plan shall be provided to the City for approval prior to commencing construction of any

buildings within that phase. This plan shall be in accordance with the Development Agreement and Planning Director Interpretation No 16-01.

The Parking Management Plan shall address and adhere to mitigation measures, as applicable, identified in the SEPA mitigation summary (Exhibit 11j), such as accommodating transit stops and implementation of Commute Trip Reduction measures.

7. The Applicant shall meet with Everett Transit to negotiate an additional bus stop in addition to those proposed in the plans submitted at the hearing for the shoreline permit. According to the City Public Works Department, a bus stop shall be located near the northwest corner of the site (Boxcar Park) and is the largest Public Access location within Waterfront Place Central.
8. The project must comply with all requirements of the current City of Everett Stormwater Management Manual at the time of construction permit application. The City recently adopted the 2014 Washington State Department of Ecology Stormwater Management Manual for Western Washington as the City's Stormwater Management Manual, as augmented in the Design and Construction Standards and Specifications for Development.
9. All runoff from pollution generating surfaces must be routed to a City approved water quality treatment facility. The facility must, at a minimum, provide basic level treatment as defined in the Stormwater Management Manual. The design of the treatment facility should additionally take into account tidal fluctuations.
10. Stormwater conveyance systems within the project site will be owned and maintained by the Port of Everett and may be designed to previously established standards. However, any conveyance system that becomes the property of the City of Everett must be designed in accordance with the City's Stormwater Management Manual and in accordance with the City's Design and Construction Standards and Specifications for Development Manual that are current at the time of transfer.
11. Water mains and sewer mains shall be staked with an easement to the City of Everett. The easement(s) shall be submitted to the City prior to issuance of permits. All side sewers and water services downstream of the meters shall be private.

#### Binding Site Plan Specific Conditions

12. Lot design/configuration for this Binding Site Plan shall be as shown on the preliminary Binding Site Plan map on file with the Planning/Community Development Department, except Weaver Street may be modified per the alternative shown in Exhibit 8, provided that the City Council has approved a modification to the Development Agreement approving the revised street

configuration. Any other changes in lot design/configuration will require approval by both Planning and Public Works Departments.

13. Site access onto West Marine View Drive requires consolidation. West Marine View Drive is a managed access State Highway at this location and must comply with WSDOT Managed Access Requirements. Driveways directly to proposed Lots D4, A5 and A13 are not acceptable and must be consolidated with other access points.

The Binding Site Plan drawings shall be revised to include approaches in the West Marine View Drive right-of-way which connect to the interior roads. The Applicant shall work with the Public Works Department to determine the appropriate configuration and size of the approaches. The Applicant shall apply for vacation of right-of-way areas previously dedicated for approach purposes and that are rendered unneeded by this Binding Site Plan. Application for vacation need not be completed prior to recordation of the Binding Site Plan.

14. The final Binding Site Plan shall show all necessary utility, access, parking and utility easements and contain maintenance provisions for the common facilities that are privately owned. The proposed development plans must clearly label all proposed roadways as either public or private.

#### Conditions based on Planning Department submittals

15. 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.
16. 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 constructing 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.
17. 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.

18. 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.
19. 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.
20. Landscaping plans shall be provided at the time of building permit application with sufficient detail to demonstrate the plans comply with the applicable landscaping requirements of the Zoning Code, Shoreline Master Program and Development Agreement.

The landscaping plans shall also include sufficient detail to demonstrate that the parking lot landscaping and hardscape features are consistent with the Parking Lot Screening Treatment plan (exhibit 5).

21. All new utilities shall be placed underground and existing above-ground utilities shall be placed underground during normal replacement processes. If necessary, certain utilities may remain above-ground on an interim basis. As the development progresses, they shall be placed underground.
22. Above-ground utility appurtenances shall be avoided where feasible. When not feasible, they shall be designed, located, landscaped and/or screened to reduce their visual impact.
23. Prior to occupancy of any building in Phase 1B and any building in Phases 2, 3 or 4, the improvements identified in Section 4.4 of the Development Agreement shall be completed.
24. Prior to issuance of a certificate of occupancy in any building within Phases 2, 3 or 4, an esplanade shall be provided as shown in the Development Agreement unless either the Planning Director determines the proposed access plan is consistent with the Development Agreement or the Development Agreement is modified by the City Council.
25. 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.


Conditions based on Fire Department submittals

26. International Fire Code requires that all new structures shall provide Fire Department access roads to within 150 feet exterior walking distance of all portions of the ground floor. Fire Department access roads (Fire Lanes) shall provide a minimum of 20 feet in width of unobstructed, paved driving surface, exclusive of shoulders, with a minimum clear height of 13'6". Inside turn radii must be 35 feet. Outside turn radii must be 55 feet for ladder apparatus. Slope approach and departure angles must not exceed 8 degrees. Fire lane grade must not exceed 10 percent. Fire lane construction must comply with AASHTO H30 load capacity (74,000 GVW). Fire Lanes will be posted and maintained as required by the Fire Department. Unorthodox access which meets code requirements but is too unusual for crews, will not be allowed. Call Fire Marshal's Office for apparatus specifications.
27. Fire lanes shall be provided as required in Everett Municipal Code 46.44. Fire lanes shall be identified by red curbs with white stenciling stating "NO PARKING – FIRE LAND" and vertical signs stating "NO PARKING – FIRE LAND – TOW AWAY ZONE – EMC 46.26.130."
28. A fire hydrant is required within 200 driving feet, but not closer than 50 feet, of each structure. Location of the hydrant(s) shall be approved by the Fire Code Official.
29. A fire hydrant shall be located within 100 feet of a fire department connection or standpipe. 2015 IFC, 507.5.1.1. As structures are being built, adjustments to and/or additional hydrants to meet code may be required.
30. 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.
31. Fire apparatus access roads shall be marked whenever necessary to maintain the unobstructed minimum required width of roadways. Fire lanes shall be marked based on a field evaluation by the Fire Marshal's Office.

Conditions based on Everett School District submittals

32. The Applicant shall coordinate the provision of student waiting areas with the Everett School District.

Done and dated this 31<sup>st</sup> day of March, 2017.

  
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James M. Driscoll  
Hearing Examiner