

STATE OF WASHINGTON

City of Port Townsend

Port of Port Townsend

A Joint Resolution of the City Council of the)
City of Port Townsend, Washington and the)
Commission of the Port of Port Townsend,)
Washington, Authorizing and Delegating to)
the Executive Managers of Each Jurisdiction)
(the City Manager and Port Executive)
Director respectively) to Execute and)
Implement an Agreement that)
Addresses a Number of Issues of Mutual)
Concern, Including Port Owned Property at)
Kah Tai Lagoon, Resolution of Litigation)
Concerning Port Property at Kah Tai, City)
Dock and Union Wharf, and Other Matters)

City Resolution No. 12-022

Port Resolution No. 575-12

The City Council of the City of Port Townsend, Washington, and the Port Commission for the Port of Port Townsend, Washington, do hereby jointly resolve as follows:

RECITALS

A. This Resolution addresses and provides a framework for cooperatively resolving certain matters that mutually affect the City of Port Townsend and the Port of Port Townsend and which have been the subject of discussions over a number of years. The framework is set forth in a Summary Outline (attached as Exhibit A). As set forth below, the Summary Outline provides only a framework for the resolution of these matters. Before any Settlement becomes final, both the City Council and the Port of Port Townsend must undertake further review of these matters, which will include public input. Neither the City Council nor the Port Commission has predetermined the outcome of these matters.

B. The matters include the following:

1. The transfer of approximately 20 acres of property owned by the Port in the vicinity of Kah Tai Lagoon to the City for inclusion into the City's Kah Tai Lagoon Nature Park, subject to matters of record title and all applicable grant restrictions, continued maintenance of free public access to the property, and proper maintenance of the property and associated improvements. This property is described in Exhibit B, and referred to in this Resolution as the "Port Kah Tai property." This transfer implements the City's plans, including, ensuring the full 80-acre Kah Tai area remains a park (see Parks and Open Space Functional Plan). The Port Kah

Tai property is the subject of a lawsuit filed by the Port in Federal District Court for the Western District of Washington at Tacoma, Case No. 3:11-cv-05848-RBL (the "Lawsuit") contesting certain actions by the named Defendants and determinations by the UNITED STATES and the STATE OF WASHINGTON, by and through various agencies of those entities, with respect to the Port Kah Tai property. If the terms of the Summary Outline are implemented, the lawsuit would be dismissed without fees and costs to any party, and the Port property would transfer to the City and be incorporated into the City's Kah Tai Lagoon Nature Park and be subject to the LWCF's 6(f) encumbrance. The transfer is subject to the property and attendant improvements being properly maintained according to the applicable provisions as described in Exhibit A, section 1 (a)(i).

2. The City's transfer of City Dock and Union Wharf to the Port, subject to existing recorded covenants and encumbrances (i.e., RCO grant restrictions), continued free pedestrian public access to the structures (provided that allowed commercial uses of the docks will not be precluded), and proper maintenance of the docks according to the applicable provisions as described in Exhibit A, section 1(a)(ii). This transfer allows the Port to own and manage these facilities, which are more within the Port's expertise and mission than the City's. This action may require the vacation of those portions of right-of-way necessary to convey title to the docks, and would also be accompanied by the City's repeal of chapter 5.46 of the Port Townsend Municipal Code relating to City Dock and Union Wharf use regulations and charges, which matters would become Port responsibilities after the transfer.

3. The elimination of City stormwater fees in Boat Haven. This elimination recognizes that the Port's stormwater system is independent of the City's system, and the fact that the City system does not handle stormwater which originates on the Port property. This action would necessitate City Council amendments to Chapter 13.05 PTMC to exempt the M-II(A) Zoning District/Boat Haven from stormwater fees.

4. The City's transfer of deed and/or vacation of certain rights of way in Boat Haven to the Port, and transfer by the City of a portion of the former railroad line to the Port (which portion is not being used for the Larry Scott trail and which partially bisects the shipyard). The street vacation, if approved, would be subject to maintenance of traffic circulation in Boat Haven consistent with the conditions specified in street vacation Ordinance 2487 (1995). These rights-of-way and the railroad line are graphically depicted in Exhibit C. This completes a process of vacating rights-of-way in Boat Haven, last undertaken by Ordinance 2487 (1995) which vacated a number of rights-of-way in Boat Haven, and helps ensure efficient facility management and planning within Boat Haven.

5. Changes to the nonconforming use sections in the City's zoning code, Chapter 17.88 PTMC, to allow greater flexibility in Boat Haven for legal nonconforming uses to be replaced, relocated and expanded (within defined limitations). This allows the shipyard to function more efficiently (e.g., by moving nonconforming uses away from marine-related uses so that the marine-related uses can be better served by the haul-out). This action helps

implement both Port and City plans. For example, the City's Comprehensive Plan provides that the City should *"provide opportunities for manufacturing development and diversification of the local economy."* (Land Use, Goal 9.)

6. The City's docketing, with staff recommendation, and formal legislative consideration of an overlay zone or similar land use management technique to allow, subject to a use preference for marine-related uses, non-marine-related light industrial uses as well as the retailing and wholesaling of goods manufactured on site within a defined portion of Boat Haven (i.e., the 1.3-acre former lumberyard site within the Boat Haven). An overlay zone or similar land use management technique applied to this Boat Haven property, which was historically occupied by a non-marine use (i.e., the lumberyard), would allow for greater flexibility of uses. This action helps implement both Port and City plans. For example, the City's Comprehensive Plan provides that the City should *"provide opportunities for manufacturing development and diversification of the local economy"* (Land Use, Goal 9) and further provides that the City should *"work closely with the Port of Port Townsend to provide for the development of Boat Haven and Point Hudson properties in a way that ensures the viability of long-term marine uses, the vitality of the area for port-related uses and compatibility with surrounding areas"* (Land Use Policy 9.9).

7. Agreement by the Port to explore, as practicable, permitting for a mooring buoy field adjacent to Quincy Street Dock, a process the City initiated and that both the City and Port recognize to be of mutual interest.

8. Agreement by both jurisdictions to collaborate and mutually support each other in investigating and attempting to resolve a number of other Boat Haven issues, as follows:

- a. In coordination with the Washington State Department of Transportation (WSDOT) the potential to redirect Sims Way/SR 20 runoff to a location other than the Boat Haven;
- b. The potential to expand the developed portion of the Boat Haven to encompass the Balch Property (i.e., Blocks 32 and 33 of the Eisenbeis Addition), including the investigation of off-site wetland mitigation options; and
- c. The potential to relocate the Larry Scott trail to a "bluff" route alignment from the Boat Haven entrance, provided that the existing trail location, including the "spur" and restrooms are maintained.

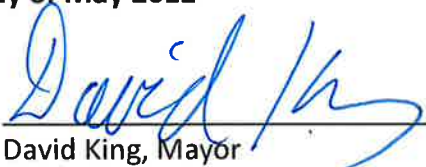
C. As set forth in the attached Summary Outline, a number of these actions are conditions to be fulfilled prior to the transfer of the Port's Kah Tai property to the City and the City's Union Wharf and City Dock transfer to the Port. The City Council decisions on code amendments, property exchanges, street vacations, and disposition of public property, and the Port decision on the disposition of the Kah Tai, have not been pre-determined and can only be made following required legislative processes including public input at public hearings. Only if the City Council approves, following applicable public processes, the conditions in the Summary Outline relating to street vacations, disposition of public property, nonconforming use code

changes, and elimination of stormwater fees, and only if the Port Commission approves the surplusing of the Port property, will the Port Kah Tai property be transferred to the City, and City Dock, Union Wharf, and property in Boat Haven be transferred to the Port, and other actions take place that are agreed to by the parties and set forth in the Summary Outline.

NOW, THEREFORE, BE IT JOINTLY RESOLVED AND ORDERED by the City Council of the City of Port Townsend and the Commission of the Port of Port Townsend as follows:

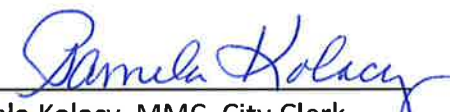
The City Council delegates to its City Manager and the Port Commission delegates to its Port Executive Director, the authority to execute and implement an agreement between the jurisdictions that is substantially consistent with the terms in the Summary Outline, attached as Exhibit A.


APPROVED AND SIGNED THIS 21st day of May 2012


David King, Mayor
City of Port Townsend

Attest:

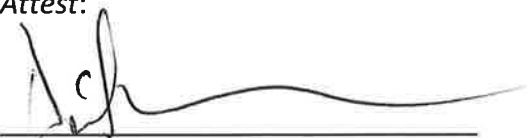
Approved as to form:



Pamela Kolacy, MMC, City Clerk


John P. Watts, City Attorney

APPROVED AND SIGNED THIS 21st day of May 2012

Attest:


David H. Thompson, Secretary


Leif W. Erickson, President


Stephen R. Tucker, Vice President

Approved as to form:



Carolyn A. Lake, Goodstein Law Group, PLLC
Port Attorney



EXHIBIT A

SUMMARY OUTLINE: Port/City Staff Recommended Settlement Agreement To Address Issues of Mutual Concern (May 21, 2012)

1. Escrow Account Established:

- a. Reciprocal Deeds. Reciprocal quitclaim deeds would be placed in an escrow account upon the fulfillment of the conditions detailed in item 2, below, closing would occur, and:
 - i. The Port would transfer the entirety of its Kah Tai property to the City subject only to the following: matters of record title and all applicable grant restrictions; continued maintenance of free public access to the property; and proper maintenance of the property and improvements;
 - ii. The City would transfer its entire ownership interest in City Dock (excluding the Pope Marine Building) and Union Wharf to the Port, subject only to the following: existing recorded covenants and encumbrances (i.e., RCO grant restrictions); continued free pedestrian public access to the structures, provided that allowed commercial uses of the docks will not be precluded; and proper maintenance of the docks; and
 - iii. The City would transfer the entirety of its abandoned railroad right-of-way and associated tidelands property not in use as part of the Larry Scott Trail (i.e., portions of Tax 34, APN 001104011, a vacated portion of Jefferson Street within the Boat Haven, and the old railroad "Y" south of the Boat Haven) to the Port.
- b. Estimated Duration of Escrow. To allow the fulfillment of the agreed upon conditions detailed in item 2 below, escrow would be anticipated to require approximately six months.

2. Conditions Prior to Closing:

NOTE: The actions detailed in this item 2(a)-(d) are not and cannot be guaranteed outcomes (due to legislative process). Council decisions on code amendments, property exchanges, and street vacations can only be made following required processes (including public hearings).

- a. Nonconforming (NC) Uses Code Changes. The City would undertake amendments to Chapter 17.88 PTMC and/or Chapter 17.22 PTMC to permit the following NC use changes by way a Type I administrative permit (Director could require Type II):
 - i. Allow a Similar or Less Intensive Use. Allow legal nonconforming uses of land to be changed to other nonconforming uses, as long as:
 - The change does not result in more intensive use or greater impacts than the existing use; and
 - This change would apply City-wide;

- ii. Allow an Existing NC Use to be Moved. Allow nonconforming uses within the M-II(A) Zoning District to be relocated within the district – such use relocations would be processed as Type II administrative permits, subject to the following limitations:
 - Only permitted uses would be allowed in the former NC use location (i.e., the NC status of former location would be abolished);
 - Displacement of an existing marine-related use would not be allowed, unless the marine-related use was relocated elsewhere within the M-II(A) District;
 - The new location of the NC use must be outside the 200' jurisdiction of the Shoreline Management Act; and
 - This change would apply only within the M-II(A) Zoning District, not city-wide;
- iii. Allow an Existing NC Use to be Expanded. Allow limited expansions of nonconforming uses within the M-II(A) Zoning District, subject to a Type II administrative process, and subject also to the following:
 - The size of the expansion would be limited (i.e., not to exceed an “upset” size limit; city staff would provide detailed recommendations based on a percentage of the existing NC use and/or a square footage cap);
 - A limit would be placed on the incremental expansion of NC uses (i.e., the ability to relocate from site “A” to “B” to expand, and then from site “B” to “C” to expand, would be limited or prohibited); and
 - This change would apply only within the M-II(A) Zoning District, not city-wide.

NOTE: There are three existing NC uses/sites (Skookum, Sunrise Coffee, and the Port Townsend Furniture Clinic. The Port will provide an inventory of existing NC uses that would be subject to the code changes detailed above.

- b. Boat Haven Stormwater Fees Exemption.
 - i. The City would process and approve amendments to Chapter 13.05 PTMC to exempt the M-II(A) Zoning District/Boat Haven from stormwater fees (i.e., the fee exemption would apply both to the Port and its Boat Haven tenants); the ordinance amendments would become effective only upon closing; and
 - ii. The Port would agree to maintaining and continuing to commit an appropriate level of funding for the operation and maintenance of its existing and separate Boat Haven stormwater system consistent with legal requirements.
- c. Street Vacations. The City would agree to process applications to vacate the remaining street rights-of-way within the Boat Haven, as well as those portions of right-of-way necessary to convey title to the docks as outlined in item 1(a)(ii), above, subject to the following conditions:
 - i. Maintenance of traffic circulation through the Boat Haven consistent with the conditions specified in Street Vacation Ordinance No. 2487 (1995);
 - ii. Dedication of sufficient right-of-way at the Haines Place entrance to the Boat Haven to enable the City to control all four corners of the intersection (i.e., to enhance opportunities for grant-funded intersection improvements);

- iii. The Street vacations and dedication would become effective only upon closing;
and
- iv. The City would bear all costs associated with the street vacations.
- d. Repeal of Dock Use and Fee Ordinance.
 - i. The City would agree to repeal, in its entirety, Chapter 5.46 PTMC, "City Dock and Union Wharf Use Regulations and Charges"; and
 - ii. The repeal ordinance would become effective only upon closing.
- e. Obtain all necessary third party approvals (e.g., United States National Park Service (NPS), Washington State Recreation and Conservation Office (RCO), Washington State Department of Ecology (DoE)).

3. Closing (Upon Fulfillment of Conditions in Paragraph 2):

- a. Deeds Transferred. The property exchanges would be completed (i.e., the City would transfer the docks, the railroad "Y"/vacated Jefferson Street property to the Port, and the Port would transfer its Kah Tai property to the City).
- b. Fees Split Evenly. The parties would evenly divide all fees and costs associated with the property transfers.
- c. Lawsuit is Dismissed. Promptly upon closing, the Port and City would jointly approach all defendants to obtain universal approval to file a Stipulated Order of Dismissal with Prejudice of the Port's lawsuit against the City, United States National Park Service and the Washington State Recreation Conservation Office, without fees or costs to any party.

4. Future Terms(i.e., terms reflected in the Settlement Agreement, but which would be effective into the future if the closing occurs (the property exchange and dismissal of lawsuit outlined in item 3, above):

- a. Overlay Zone. As part of 2014 mid-cycle assessment, the City Development Services Department (DSD) would docket and recommend the establishment of an overlay zone or similar land use management technique for the 1.3 acre lumberyard site at the Boat Haven that would:
 - i. Establish a preference for marine-related light industrial uses;
 - ii. Allow, subject to the use preference identified in item 4(a)(i), above, non-marine-related light industrial uses as well as the retailing and wholesaling of goods manufactured on site;
 - iii. Allow the relocation of NC uses (consistent with item #2(a) above); and
 - iv. Address consistency between the overlay zone and Port planning documents (i.e., the Port of Port Townsend Strategic Plan as well as the Comprehensive Scheme of Harbor Improvements).

NOTE: The proposed code amendments detailed in item 4(a), immediately above, are not and cannot be guaranteed outcomes (due to legislative process). Council

decisions on code amendments can only be made following required processes (including public hearings).

- b. Mooring Buoy Fields. The Port would agree to explore, as practical, permitting for a mooring buoy field adjacent to the Quincy Street Dock.
- c. Cooperation to Address Other Boat Haven Issues. The Port and City would agree to collaborate and mutually support each other in investigating and attempting to resolve the following Boat Haven issues:
 - i. The potential (in coordination with the Washington State Department of Transportation (WSDOT)) to redirect Sims Way/SR 20 runoff to a location other than the Boat Haven;
 - ii. Expanding the developed portion of the Boat Haven to encompass all or a portion of the Balch Property, including the investigation of off-site wetland mitigation options; and
 - iii. The relocation of the Larry Scott Trail to a "bluff" route alignment from the Boat Haven entrance, provided that the existing trail location, including the "spur" and restrooms would be maintained.

Note: There would be no obligation in this acknowledgment to contribute monies or resources unless agreed to in the future.

EXHIBIT B

Port Property in Vicinity of Kah Tai Lagoon

The "Port Kah Tai property" is the property the Port owns north of Sims Way in the vicinity of Kah Tai Lagoon, comprising approximately 20 acres.

It includes any interest in the following property (if located north of Sims Way):

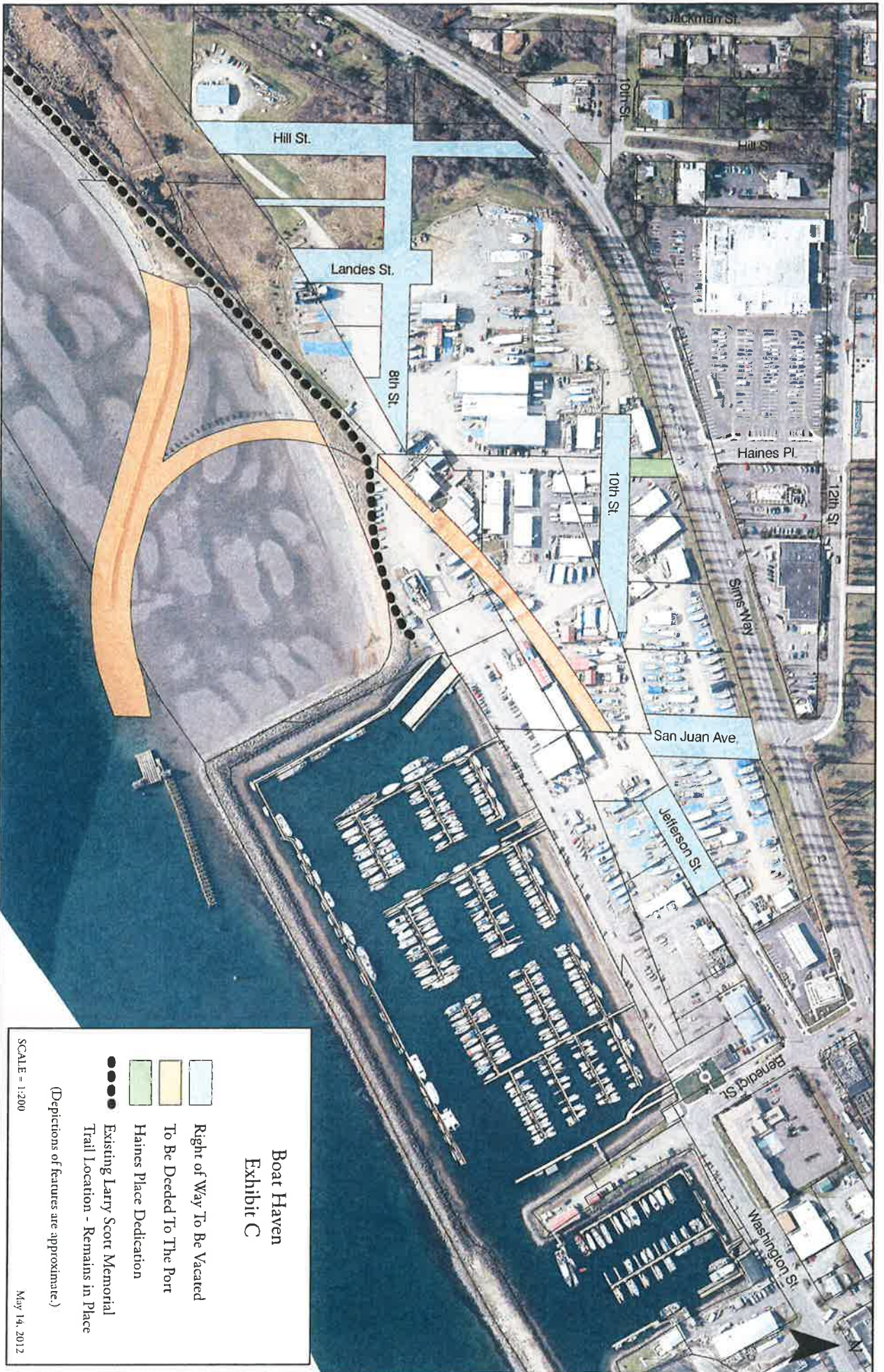
1. The property described in the lawsuit filed by the Port in Federal District Court for the Western District of Washington at Tacoma, Case No. 3:11-cv-05848-RBL.
2. The property shown in a map called Kah Tai Park Ownership (Attachment A to September 7, 2011 Letter from Kaleen Cottingham (Director, State of Washington Recreation and Conservation Office) to Heather Ramsey (Program Manager, National Park Service), a copy of which map is attached as Attachment A to this Exhibit.
3. Property encompassed in the following Jefferson County assessor parcel numbers:

991 400 601
991 402 501
991 403 303
991 403 501

Port and City authorize staff to insert correct legal descriptions.



ATTACHMENT A



AGREEMENT

THIS AGREEMENT ("Agreement") is made by and between the PORT of PORT TOWNSEND, a Washington special purpose district, (referred to as "Port") and the CITY OF PORT TOWNSEND, a municipal corporation, (referred to as "City"). The Port and City shall be referred to collectively as the "Parties." This Agreement is dated this 13th day of June, 2012 (last date of person signing below).

RECITALS

A. This Agreement addresses and provides a framework for cooperatively resolving certain matters that mutually affect the City of Port Townsend and the Port of Port Townsend and which have been the subject of discussions over a number of years. The framework is set forth in a Summary Outline (attached as Exhibit A).

B. The matters include the following:

1. The transfer of approximately 20 acres of property owned by the Port in the vicinity of Kah Tai Lagoon to the City for inclusion into the City's Kah Tai Lagoon Nature Park, subject to matters of record title and all applicable grant restrictions, continued maintenance of free public access to the property, and proper maintenance of the property and associated improvements. This property is described in Exhibit B, and referred to in this Agreement as the "Port Kah Tai property." This transfer implements the City's plans, including, ensuring the full 80-acre Kah Tai area remains a park (see, Parks and Open Space Functional Plan.) The Port Kah Tai property is the subject of a lawsuit filed by the Port in Federal District Court for the Western District of Washington at Tacoma, Case No. 3:11-cv-05848-RBL (the "Lawsuit") contesting certain actions by the named Defendants and determinations by the UNITED STATES and the STATE OF WASHINGTON, by and through various agencies of those entities, with respect to the Port Kah Tai property. If the terms of the Summary Outline are implemented, the lawsuit would be dismissed without fees and costs to any party, and the Port property

would transfer to the City and be incorporated into the City's Kah Tai Lagoon Nature Park and be subject to the LWCF's 6(f) encumbrance. The transfer is subject to the property and attendant improvements being properly maintained.

2. The City's transfer of City Dock and Union Wharf to the Port, subject to existing recorded covenants and encumbrances (i.e., RCO grant restrictions), continued free pedestrian public access to the structures (provided that allowed commercial uses of the docks will not be precluded), and proper maintenance of the docks. This transfer allows the Port to own and manage these facilities, which are more within the Port's expertise and mission than the City's. This action may require the vacation of those portions of right-of-way necessary to convey title to the docks, and would also be accompanied by the City's repeal of chapter 5.46 of the Port Townsend Municipal Code relating to City Dock and Union Wharf use regulations and charges, which matters would become Port responsibilities after the transfer.

3. The elimination of City stormwater fees in Boat Haven. This elimination recognizes that the Port's stormwater system is independent of the City's system, and the fact that the City system does not handle stormwater which originates on the Port property. This action would necessitate City Council amendments to Chapter 13.05 PTMC to exempt the M-II(A) Zoning District/Boat Haven from stormwater fees.

4. The City's transfer of deed and/or vacation of certain rights of way in Boat Haven to the Port, and transfer by the City of a portion of the former railroad line to the Port (which portion is not being used for the Larry Scott trail and which partially bisects the shipyard). The street vacation, if approved, would be subject to maintenance of traffic circulation in Boat Haven consistent with the conditions specified in street vacation Ordinance 2487 (1995). These rights-of-way and the railroad line are graphically depicted in Exhibit C. This completes a process of vacating rights-of-way in Boat Haven, last undertaken by Ordinance 2487 (1995) which vacated a number of rights-of-way in Boat Haven, and helps ensure efficient facility management and planning within Boat Haven.

5. Changes to the nonconforming use sections in the City's zoning code, Chapter 17.88 PTMC, to allow greater flexibility in Boat Haven for legal nonconforming uses to be replaced, relocated and expanded (within defined limitations). This allows the shipyard to function more efficiently (e.g., by moving nonconforming uses away from marine-related uses so that the marine-related uses can be better served by the haul-out). This action helps implement both Port and City plans. For example, the City's Comprehensive Plan provides that the City should "*provide opportunities for manufacturing development and diversification of the local economy.*" Land Use, Goal 9.

6. The City's docketing, staff recommendation, and formal legislative consideration of an overlay zone or similar land use management technique to allow, subject to a use preference for marine-related uses, non-marine-related light industrial uses as well as the retailing and wholesaling of goods manufactured on site within a defined portion of Boat Haven (i.e., the 1.3-acre former lumberyard site within the Boat Haven). An overlay zone or similar land use management technique applied to this Boat Haven property, which was historically occupied by a non-marine use (i.e., the lumberyard), would allow for greater flexibility of uses. This action helps implement both Port and City plans. For example, the City's Comprehensive Plan provides that the City should "*provide opportunities for manufacturing development and diversification of the local economy*" (Land Use, Goal 9) and further provides that the City should "*work closely with the Port of Port Townsend to provide for the development of Boat Haven and Port Hudson properties in a way that ensures the viability of long-term marine uses, the vitality of the area for port-related uses and compatibility with surrounding areas*" (Land Use Policy 9.9).

7. Agreement by the Port to explore permitting for a mooring buoy field adjacent to Quincy Street Dock, a process the City initiated and that both the City and Port recognize to be of mutual interest.

8. Agreement by both jurisdictions to collaborate and mutually support each other in investigating and attempting to resolve a number of other Boat Haven issues, as follows:

- a. In coordination with the Washington State Department of Transportation (WSDOT) the potential to redirect Sims Way/SR 20 runoff to a location other than the Boat Haven;
- b. The potential to expand the developed portion of the Boat Haven to encompass the Balch Property (i.e., Blocks 32 and 33 of the Eisenbeis Addition), including the investigation of off-site wetland mitigation options; and
- c. The potential to relocate the Larry Scott trail to a "bluff" route alignment from the Boat Haven entrance, provided that the existing trail location, including the "spur" and restrooms are maintained.

C. As set forth in the attached Summary Outline, a number of these actions are conditions to be fulfilled prior to the transfer of the Port's Kah Tai property to the City and the City's Union Wharf and City Dock transfer to the Port. The City Council decisions on code amendments, property exchanges, street vacations, and disposition of public property, and the Port decision on the disposition of the Kah Tai, have not been pre-determined and can only be made following required legislative processes including public input at public hearings. Only if the City Council approves, following applicable public processes, the conditions in the Summary Outline relating to street vacations, disposition of public property, nonconforming use code changes, and elimination of stormwater fees, and only if the Port Commission approves the surplus of the Port property, will the Port Kah Tai property be transferred to the City, and City Dock, Union Wharf, and property in Boat Haven be transferred to the Port, and other actions take place that are agreed to by the parties and set forth in the Summary Outline.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants set forth below, the Parties hereby agree as follows:

1. Property Exchange.

a. Transfer of Real Property. On Closing, the Parties agree to transfers of Real Property as follows:

- i. The Port would transfer the entirety of its Kah Tai property to the City subject only to the following: matters of record title and all applicable grant restrictions; continued maintenance of free public access to the property; and proper maintenance of the property and improvements. This property is described on attached Exhibit B.
- ii. The City would transfer its entire ownership interest in City Dock (excluding the Pope Marine Building) and Union Wharf to the Port, subject only to the following: existing recorded covenants and encumbrances (i.e., RCO grant restrictions); continued free pedestrian public access to the structures, provided that allowed commercial uses of the docks will not be precluded; and proper maintenance of the docks; and
- iii. The City would transfer the entirety of its abandoned railroad right-of-way and associated tidelands property not in use as part of the Larry Scott Trail (i.e., portions of Tax 34, APN 001104011, a vacated portion of Jefferson Street within the Boat Haven, and the old railroad "Y" south of the Boat Haven) to the Port. This property is depicted on the map attached at Exhibit C.

All property is transferred "as is" and each party is deemed satisfied with respect to the condition of the property and facilities it receives.

b. Property Transaction Processing - Escrow.

- (i) Promptly following the mutual execution of this Agreement, City and Port provide each other with a preliminary title report (and copies of all exceptions therein) for the properties to be exchanged.

- (ii) The policy shall contain no exceptions other than those encumbrances of record acceptable to the receiving Party that do not unduly interfere with receiving Party's ability to use the property. If title cannot be made so insurable prior to the date of the Closing, unless the receiving Party (through its legislative body or as expressly delegated) elects to waive in writing such defects or encumbrances, this Agreement shall be terminated.
- (iii) The Parties shall have ten (10) business days after receipt of exchange of preliminary title reports to notify the other in writing of any objections to title or survey matters. The Port and City agree to cooperate in the removal of objected to exceptions. This does not require any expenditure of monies to remove exceptions.
- (iv) The following are deemed exceptions that cannot be objected to:
 - (a) For the Port Kah Tai property, any restrictions arising out of the LWCF Act.
 - (b) For City Dock or Union Wharf, any restrictions arising out of any grant funding by the Department of Natural Resources (DNR), Department of Ecology (DOE), or the Recreation and Conservation Office (RCO, or its predecessor, Interagency Committee for Outdoor Recreation (IAC)).
- (v) Following review of title reports and the expiration of the period for removal of objections, properly executed quit claim deeds transferring the above properties shall be placed in escrow at First American Title Company, Port Townsend, with escrow instructions consistent with this Agreement. At the Closing, the Port and City shall cause the Title Company to issue to the other a standard owner's policy of title insurance subject only to the Permitted Exceptions.

2. Contingent Commitments - City Processing of Actions.

The following are Contingent Commitments and conditions to be fulfilled prior to Closing (and the dismissal of the Lawsuit and transfer of the properties described in Paragraph 1 - Port's Kah Tai property to the City, Union Wharf, City

Dock and portion of the Railroad line to the Port). As set forth in the Recitals, the outcome of these actions is not determined yet and cannot be made until the conclusion of the legislative process.

- a. Nonconforming (NC) Uses Code Changes. The City would undertake amendments to Chapter 17.88 PTMC and/or Chapter 17.22 PTMC to permit the following NC use changes by way a Type I administrative permit (Director could require Type II):
 - i. Allow a Similar or Less Intensive Use. Allow legal nonconforming uses of land to be changed to other nonconforming uses, as long as:
 - (a) The change does not result in more intensive use or greater impacts than the existing use; and
 - (b) This change would apply City-wide;
 - ii. Allow an Existing NC Use to be Moved. Allow nonconforming uses within the M-II(A) Zoning District to be relocated within the district – such use relocations would be processed as Type II administrative permits, subject to the following limitations:
 - (a) Only permitted uses would be allowed in the former NC use location (i.e., the NC status of former location would be abolished);
 - (b) Displacement of an existing marine-related use would not be allowed, unless the marine-related use was relocated elsewhere within the M-II(A) District;
 - (c) The new location of the NC use must be outside the 200' jurisdiction of the Shoreline Management Act; and
 - (d) This change would apply only within the M-II(A) Zoning District, not city-wide;
 - iii. Allow an Existing NC Use to be Expanded. Allow limited expansions of nonconforming uses within the M-II(A) Zoning District, subject to a Type II administrative process, and subject also to the following:

- (a) The size of the expansion would be limited (i.e., not to exceed an “upset” size limit; city staff would provide detailed recommendations based on a percentage of the existing NC use and/or a square footage cap);
- (b) A limit would be placed on the incremental expansion of NC uses (i.e., the ability to relocate from site “A” to “B” to expand, and then from site “B” to “C” to expand, would be limited or prohibited); and
- (c) This change would apply only within the M-II(A) Zoning District, not city-wide.

NOTE: There are three existing nonconforming uses/sites (Skookum, Sunrise Coffee, and the Port Townsend Furniture Clinic). The Port will provide an inventory of existing nonconforming uses that would be subject to the code changes detailed above.

- b. Boat Haven Stormwater Fees Exemption.
 - i. The City would process and approve amendments to Chapter 13.05 PTMC to exempt the M-II(A) Zoning District/Boat Haven from stormwater fees (i.e., the fee exemption would apply both to the Port and its Boat Haven tenants); the ordinance amendments would become effective only upon closing; and
 - ii. The Port would agree to maintaining and continuing to commit an appropriate level of funding for the operation and maintenance of its existing and separate Boat Haven stormwater system consistent with legal requirements.
- c. Street Vacations. The City would agree to process applications to vacate the remaining street rights-of-way within the Boat Haven, as well as those portions of right-of-way necessary to convey title to the docks as outlined in item 1(a)(ii), above, subject to the following conditions:

- i. Maintenance of traffic circulation through the Boat Haven consistent with the conditions specified in Street Vacation Ordinance No. 2487 (1995);
 - ii. Dedication of sufficient right-of-way at the Haines Place entrance to the Boat Haven to enable the City to control all four corners of the intersection (i.e., to enhance opportunities for grant-funded intersection improvements);
 - iii. The Street vacations and dedication would become effective only upon closing; and
 - iv. The City would bear all costs associated with the street vacations.
- d. Repeal of Dock Use and Fee Ordinance.
 - i. The City would agree to repeal, in its entirety, Chapter 5.46 PTMC, "City Dock and Union Wharf Use Regulations and Charges"; and
 - ii. The repeal ordinance would become effective only upon closing.
- e. Third Party Approvals for Transfer of Union Wharf and City Dock. The parties will cooperate to obtain all necessary third party approvals for the transfer of Union Wharf and City Dock (e.g., United States National Park Service (NPS), Washington State Recreation and Conservation Office (RCO), Washington State Department of Ecology (DoE)).

3. Closing; Dismissal of Lawsuit.

- a. Transfer Timing and Closing. Closing means the transfer of real property described in Paragraph 1. The Parties shall close on the real property transfers within 45 days of the fulfillment of the commitments made herein, specifically Paragraph 2 ("Contingent Commitments"), and pursuant to the approvals described in Paragraph 5(g). The Parties will make every effort to complete the Contingent Commitments and the above outlined real property exchanges before November 1, 2012. So long as the City is taking reasonable steps to process actions that would lead to the

completion of the Contingent Commitments, the Parties agree to cooperate if a later closing date is needed.

- b. Lease Extension. The Port Kah Tai Property is currently under lease to the City for use of the property for park purposes. The lease expires July 31, 2012. If closing has not occurred by that date, the parties by this Agreement agree the lease is extended to closing.
- c. Transfer Costs. The Parties shall split evenly between the Port and City any costs and fees associated with transfer of title to the exchanged real property. Each party shall be responsible for the policies of title insurance on the property it is transferring to the other.
- d. Dismissal of Lawsuit. Promptly upon closing, the Port and City would jointly approach all defendants to obtain universal approval to file a Stipulated Order of Dismissal with Prejudice of the Port's lawsuit against the City, United States National Park Service and the Washington State Recreation Conservation Office, without fees or costs to any party.

4. Future Terms.

If Closing occurs, then the following terms apply.

- a. Overlay Zone. As part of 2014 mid-cycle assessment, the City Development Services Department (DSD) would docket and recommend the establishment of an overlay zone or similar land use management technique for the 1.3 acre lumberyard site at the Boat Haven that would:
 - i. Establish a preference for marine-related light industrial uses;
 - ii. Allow, subject to the use preference identified in item 4(a)(i), above, non-marine-related light industrial uses as well as the retailing and wholesaling of goods manufactured on site;
 - iii. Allow the relocation of NC uses (consistent with item #2(a) above); and
 - iv. Address consistency between the overlay zone and Port planning documents (i.e., the Port of Port Townsend Strategic Plan as well as the Comprehensive Scheme of Harbor Improvements).

NOTE: The proposed code amendments detailed in item 4(a), immediately above, are not and cannot be guaranteed outcomes (due to legislative process). Council decisions on code amendments can only be made following required processes (including public hearings).

- b. Mooring Buoy Fields. The Port would agree to explore as practical permitting for a mooring buoy field adjacent to the Quincy Street Dock.
- c. Cooperation to Address Other Boat Haven Issues. The Port and City would agree to collaborate and mutually support each other in investigating and attempting to resolve the following Boat Haven issues:
 - i. The potential (in coordination with the Washington State Department of Transportation (WSDOT)) to redirect Sims Way/SR 20 runoff to a location other than the Boat Haven;
 - ii. Expanding the developed portion of the Boat Haven to encompass all or a portion of the Balch Property, including the investigation of off-site wetland mitigation options; and
 - iii. The relocation of the Larry Scott Trail to a "bluff" route alignment from the Boat Haven entrance, provided that the existing trail location, including the "spur" and restrooms would be maintained.

Note: There would be no obligation in this acknowledgment to contribute monies or resources unless agreed to in the future.

5. General Terms.

- a. **Dispute.** Any dispute arising out of this agreement shall first be attempted to be settled through negotiations by appointed representatives of the parties involved, which shall include the City Manager and one City Councilor and the Port Executive Director and one Port Commissioner. No

Party shall have recourse to the courts unless an attempt has been made to settle the dispute under the mechanism set forth herein.

b. Venue. This Agreement may be enforced only in federal or state courts having competent jurisdiction in Jefferson County, Washington.

c. Non-Waiver. A waiver of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition hereof.

d. Opportunity to Confer with Counsel. Each Party represents that their respective attorneys have fully advised them concerning their rights with respect to the execution of the Agreement and releases contained herein and that each Party fully understands the same.

e. Entire Agreement; Modification. The Agreement, including Exhibits, represents the full and complete agreement of the Parties hereto with respect to the subject matter of this Agreement, superseding all previous communications, representations, or agreements, whether written or oral, and may not be modified without the written agreement of all Parties hereto.

f. Warranty of Authority. Each person signing this Agreement represents and warrants that he or she has been duly authorized to enter into this Agreement by the Party on whose behalf it is indicated that the person is signing. Each Party acknowledges that the Parties' obligations to close under this Agreement are subject to and contingent on (a) the approval of this Agreement and all terms of this transaction by the Port of Port Townsend Commission in open public meeting prior to Closing and after all hearings and other actions required by applicable law, (b) the approval of this Agreement and all terms of this transaction by the City Council of the City of Port Townsend in open public meeting prior to Closing and after all hearings and other actions required by applicable law, (c) the successful conclusion of all hearings (including appeals) and other actions required by applicable law with respect to all zoning or other administrative actions which may be subject to appeal as contemplated by this Agreement.

g. Severance. If any provision in this Agreement is adjudicated to be unenforceable or voided for any reason, that part will be severed from the balance of this Agreement, and the validity and enforceability of the remainder of the Agreement shall in no way be affected or impaired unless the severed portion was essential to the intended purpose of the Agreement, provided however, the Parties stipulate that the real property transfers described in Paragraph 1 herein and the Contingent Commitments of Paragraph 2 are integrated, non-severable and essential to the intended purpose of the Agreement.

h. Voluntary Execution. The Parties represent that they understand and agree that the Agreement is made and entered into as their free and voluntary act.

i. Governing Law. The Agreement shall be interpreted, construed, and enforced in accordance with Washington law.

j. Counterparts. The Agreement may be executed in counterparts by the Parties named herein, and all such counterparts once so executed shall together be deemed to constitute one final Agreement, as if one document has been signed by all Parties hereto; and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding on the Parties to the Agreement.

k. Binding Effect. Unless otherwise provided, the Agreement and the terms, covenants, conditions, provisions, obligations, undertakings, rights, and benefits hereto shall be binding upon and shall inure to the benefit of the Parties and their respective representatives, successors, and assigns.

l. Parties defined. For purposes of this Agreement, the Port and City are defined to include their past and present respective Council, Commission, officers, directors, employees, agents, insurers, independent contractors, representatives, parent corporations, subsidiaries, affiliates, predecessors, successors, transferees, and assigns.

m. Disclaimer. None of the parties or their respective agents, employees, shareholders, officers or directors, by means of this Agreement, intend to make any specific admissions or representations concerning their liability, or the amount of damages which may or may not have been suffered by any party, all of which are hereby expressly disclaimed.

n. Headings. The headings contained in the paragraphs of the Agreement are for convenience of reference only and do not in any way limit, expand, or modify the terms or provisions of the Agreement.

o. Attorneys' Fees and Costs. In any action brought to enforce the terms of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs (including consultants' costs) incurred therein.

p. Remedy. The Parties agree that money damages would not be a sufficient remedy for any breach of this Agreement, and that either party may seek equitable relief, including injunction and specific performance, in the event of any such breach, in addition to all other remedies available at law or in equity.

q. Effective Date. This Agreement shall become effective as of the latest date of execution below.

WHEREFORE, the Parties have executed and entered into this Agreement as of the dates indicated below.

City of Port Townsend

Port of Port Townsend.

By [Signature]
David Timmons, City Manager

By [Signature]
Larry Crocket, Executive Director

Date: 6-6-12

Date: 6/13/12

Approved as to form

[Signature]
City Attorney

[Signature]
Port General Legal Counsel

STATE OF WASHINGTON)
COUNTY OF JEFFERSON)

ss.:

I certify that I know or have satisfactory evidence that Larry Crockett is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and Acknowledged it as Executive Director of the Port of Port Townsend to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: June 13, 2012



[Signature]
(seal or stamp) Susan M. Nelson
(Signature and Office of individual taking acknowledgement)
Residing in: Port Townsend, WA
Notary Expiration: 11-05-12

STATE OF WASHINGTON)
)ss.:
COUNTY OF JEFFERSON)

I certify that I know or have satisfactory evidence that David Timmons is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and Acknowledged it as the City Manager of the City of Port Townsend to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: June 6, 2012



Vanessa E. Ridgway
(seal or stamp) VANESSA E. RIDGWAY
(Signature and Office of individual taking
acknowledgement)
RESIDING AT: PORT TOWNSEND, WA.

EXHIBIT A

SUMMARY OUTLINE: Port/City Staff Recommended Settlement Agreement To Address Issues of Mutual Concern (May 21, 2012)

1. Escrow Account Established:

- a. Reciprocal Deeds. Reciprocal quitclaim deeds would be placed in an escrow account upon the fulfillment of the conditions detailed in item 2, below, closing would occur, and:
 - i. The Port would transfer the entirety of its Kah Tai property to the City subject only to the following: matters of record title and all applicable grant restrictions; continued maintenance of free public access to the property; and proper maintenance of the property and improvements;
 - ii. The City would transfer its entire ownership interest in City Dock (excluding the Pope Marine Building) and Union Wharf to the Port, subject only to the following: existing recorded covenants and encumbrances (i.e., RCO grant restrictions); continued free pedestrian public access to the structures, provided that allowed commercial uses of the docks will not be precluded; and proper maintenance of the docks; and
 - iii. The City would transfer the entirety of its abandoned railroad right-of-way and associated tidelands property not in use as part of the Larry Scott Trail (i.e., portions of Tax 34, APN 001104011, a vacated portion of Jefferson Street within the Boat Haven, and the old railroad "Y" south of the Boat Haven) to the Port.
- b. Estimated Duration of Escrow. To allow the fulfillment of the agreed upon conditions detailed in item 2 below, escrow would be anticipated to require approximately six months.

2. Conditions Prior to Closing:

NOTE: The actions detailed in this item 2(a)-(d) are not and cannot be guaranteed outcomes (due to legislative process). Council decisions on code amendments, property exchanges, and street vacations can only be made following required processes (including public hearings).

- a. Nonconforming (NC) Uses Code Changes. The City would undertake amendments to Chapter 17.88 PTMC and/or Chapter 17.22 PTMC to permit the following NC use changes by way a Type I administrative permit (Director could require Type II):
 - i. Allow a Similar or Less Intensive Use. Allow legal nonconforming uses of land to be changed to other nonconforming uses, as long as:
 - The change does not result in more intensive use or greater impacts than the existing use; and
 - This change would apply City-wide;

- ii. Allow an Existing NC Use to be Moved. Allow nonconforming uses within the M-II(A) Zoning District to be relocated within the district – such use relocations would be processed as Type II administrative permits, subject to the following limitations:
 - Only permitted uses would be allowed in the former NC use location (i.e., the NC status of former location would be abolished);
 - Displacement of an existing marine-related use would not be allowed, unless the marine-related use was relocated elsewhere within the M-II(A) District;
 - The new location of the NC use must be outside the 200' jurisdiction of the Shoreline Management Act; and
 - This change would apply only within the M-II(A) Zoning District, not city-wide;
- iii. Allow an Existing NC Use to be Expanded. Allow limited expansions of nonconforming uses within the M-II(A) Zoning District, subject to a Type II administrative process, and subject also to the following:
 - The size of the expansion would be limited (i.e., not to exceed an “upset” size limit; city staff would provide detailed recommendations based on a percentage of the existing NC use and/or a square footage cap);
 - A limit would be placed on the incremental expansion of NC uses (i.e., the ability to relocate from site “A” to “B” to expand, and then from site “B” to “C” to expand, would be limited or prohibited); and
 - This change would apply only within the M-II(A) Zoning District, not city-wide.

NOTE: There are three existing NC uses/sites (Skookum, Sunrise Coffee, and the Port Townsend Furniture Clinic. The Port will provide an inventory of existing NC uses that would be subject to the code changes detailed above.

- b. Boat Haven Stormwater Fees Exemption.
 - i. The City would process and approve amendments to Chapter 13.05 PTMC to exempt the M-II(A) Zoning District/Boat Haven from stormwater fees (i.e., the fee exemption would apply both to the Port and its Boat Haven tenants); the ordinance amendments would become effective only upon closing; and
 - ii. The Port would agree to maintaining and continuing to commit an appropriate level of funding for the operation and maintenance of its existing and separate Boat Haven stormwater system consistent with legal requirements.
- c. Street Vacations. The City would agree to process applications to vacate the remaining street rights-of-way within the Boat Haven, as well as those portions of right-of-way necessary to convey title to the docks as outlined in item 1(a)(ii), above, subject to the following conditions:
 - i. Maintenance of traffic circulation through the Boat Haven consistent with the conditions specified in Street Vacation Ordinance No. 2487 (1995);
 - ii. Dedication of sufficient right-of-way at the Haines Place entrance to the Boat Haven to enable the City to control all four corners of the intersection (i.e., to enhance opportunities for grant-funded intersection improvements);

- iii. The Street vacations and dedication would become effective only upon closing; and
 - iv. The City would bear all costs associated with the street vacations.
- d. Repeal of Dock Use and Fee Ordinance.
- i. The City would agree to repeal, in its entirety, Chapter 5.46 PTMC, "City Dock and Union Wharf Use Regulations and Charges"; and
 - ii. The repeal ordinance would become effective only upon closing.
- e. Obtain all necessary third party approvals (e.g., United States National Park Service (NPS), Washington State Recreation and Conservation Office (RCO), Washington State Department of Ecology (DoE)).

3. Closing (Upon Fulfillment of Conditions in Paragraph 2):

- a. Deeds Transferred. The property exchanges would be completed (i.e., the City would transfer the docks, the railroad "Y"/vacated Jefferson Street property to the Port, and the Port would transfer its Kah Tai property to the City).
- b. Fees Split Evenly. The parties would evenly divide all fees and costs associated with the property transfers.
- c. Lawsuit is Dismissed. Promptly upon closing, the Port and City would jointly approach all defendants to obtain universal approval to file a Stipulated Order of Dismissal with Prejudice of the Port's lawsuit against the City, United States National Park Service and the Washington State Recreation Conservation Office, without fees or costs to any party.

4. Future Terms(i.e., terms reflected in the Settlement Agreement, but which would be effective into the future if the closing occurs (the property exchange and dismissal of lawsuit outlined in item 3, above):

- a. Overlay Zone. As part of 2014 mid-cycle assessment, the City Development Services Department (DSD) would docket and recommend the establishment of an overlay zone or similar land use management technique for the 1.3 acre lumberyard site at the Boat Haven that would:
 - i. Establish a preference for marine-related light industrial uses;
 - ii. Allow, subject to the use preference identified in item 4(a)(i), above, non marine-related light industrial uses as well as the retailing and wholesaling of goods manufactured on site;
 - iii. Allow the relocation of NC uses (consistent with item #2(a) above); and
 - iv. Address consistency between the overlay zone and Port planning documents (i.e., the Port of Port Townsend Strategic Plan as well as the Comprehensive Scheme of Harbor Improvements).

NOTE: The proposed code amendments detailed in item 4(a), immediately above, are not and cannot be guaranteed outcomes (due to legislative process). Council

decisions on code amendments can only be made following required processes (including public hearings).

- b. Mooring Buoy Fields. The Port would agree to explore, as practical, permitting for a mooring buoy field adjacent to the Quincy Street Dock.
- c. Cooperation to Address Other Boat Haven Issues. The Port and City would agree to collaborate and mutually support each other in investigating and attempting to resolve the following Boat Haven issues:
 - i. The potential (in coordination with the Washington State Department of Transportation (WSDOT)) to redirect Sims Way/SR 20 runoff to a location other than the Boat Haven;
 - ii. Expanding the developed portion of the Boat Haven to encompass all or a portion of the Balch Property, including the investigation of off-site wetland mitigation options; and
 - iii. The relocation of the Larry Scott Trail to a "bluff" route alignment from the Boat Haven entrance, provided that the existing trail location, including the "spur" and restrooms would be maintained.

Note: There would be no obligation in this acknowledgment to contribute monies or resources unless agreed to in the future.

EXHIBIT B

Port Property in Vicinity of Kah Tai Lagoon

The "Port Kah Tai property" is the property the Port owns north of Sims Way in the vicinity of Kah Tai Lagoon, comprising approximately 20 acres.

It includes any interest in the following property (if located north of Sims Way):

1. The property described in the lawsuit filed by the Port in Federal District Court for the Western District of Washington at Tacoma, Case No. 3:11-cv-05848-RBL.
2. The property shown in a map called Kah Tai Park Ownership (Attachment A to September 7, 2011 Letter from Kaleen Cottingham (Director, State of Washington Recreation and Conservation Office) to Heather Ramsey (Program Manager, National Park Service), a copy of which map is attached as Attachment A to this Exhibit.
3. Property encompassed in the following Jefferson County assessor parcel numbers:
 - 991 400 601
 - 991 402 501
 - 991 403 303
 - 991 403 501

Port and City authorize staff to insert correct legal descriptions.



ATTACHMENT A

