

8-142

AGREEMENT AND COVENANT CONSTITUTING
A CONTRACT REZONE

This Agreement contains the covenants entered into between THE PORT OF EDMONDS, a municipal corporation, hereinafter referred to as "THE PORT" and the CITY OF EDMONDS, a municipal corporation, hereinafter referred to as "THE CITY".

W I T N E S S E T H :

WHEREAS, THE PORT proposes the development of an approximately 14.6 acre parcel of real property in Edmonds, located at the southwest corner of Dayton Street and State Route 104, and being more specifically described as follows:

That portion of Government Lot 3, Section 23, Township 27 North, Range 3 East, W.M., described as follows: Commencing at the intersection of the south line of Section 23, and the easterly right of way line of the Burlington Northern Railroad; thence along said easterly right of way north 42* 34' 34" east 616.37 feet to the true point of beginning; thence continuing north 42* 34' 34" east 731.18 feet to the southerly right of way of Dayton Street; thence along said southerly right of way line south 58* 17' 06" east 12.54 feet; thence south 88* 42' 06" east 524.29 feet; thence south 41* 39' 17" east 110.49 feet to the right of way of SR-104 (as condemned under S.C.C. NO. 106375); thence south 1* 08' 54" west along said right of way a distance of 800.00 feet; thence south 73* 00' 00" west 240.00 feet; thence north 88* 30' 00" west 110.00 feet; thence north 66* 00' 00" west 140.00 feet; thence north 40* 00' 00" west 125.00 feet; thence north 1* 00' 00" west 200.00 feet; thence north 37* 00' 00" west 260.00 feet; thence south 71* 00' 00" west 401.09 feet to the true point of beginning; and

WHEREAS, THE PORT has applied for a change in the zoning of the subject property from its current IP classification to CG and OS and has tendered this agreement to the CITY; and

WHEREAS, THE CITY has caused the application in its entirety, including, but not limited to the Environmental Impact Statement, to be reviewed by its Planning and Engineering Departments and by its Planning Commission, and has fully considered recommendations made after such review; and

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WHEREAS, THE PORT has determined a willingness and ability to implement the terms of this agreement in the course of its proposed development; and

WHEREAS, THE PORT and THE CITY are willing to enter into an agreement for a contract rezone reclassifying the parcel from IP to CG and OS; now therefore,

IT IS HEREBY AGREED AS FOLLOWS:

1 In consideration of THE CITY reclassifying the subject property from IP to CG and OS, and for so long as the property remains so classified, THE PORT covenants as follows:

A To develop the subject property in substantial accord with the development plan set forth in Attachment "A" (including additions thereto) attached hereto and made a part hereof by this reference, subject to the right to make minor revisions including but not limited to the following:

- 1) The number, arrangement, and shape of buildings may be altered without increasing the gross floor area, general distribution of buildings, or significantly altering the looped circulation system;
- 2) Parking areas may be modified without reducing the number of spaces provided, the general distribution of spaces, or the amount of landscaping;
- 3) The number and arrangement of building service accesses (overhead doors, loading docks, etc.) may be altered so long as these service accesses are screened from both Dayton Street and State Route 104.

Such minor revisions shall be subject to approval by the Edmond's Department of Community Development.

B To develop the subject property in accord with the following development standards:

- 1) The minimum setback for buildings from Dayton Street and State Route 104 shall be twenty five (25) feet;
- 2) The minimum setback for parking from Dayton Street and State Route 104 shall be ten (10) feet;
- 3) All outdoor display of merchandise shall be subject to the same minimum setback as parking areas and the setback area shall be well landscaped;

4) All signs and advertising devices shall be subject to the requirements for signs located in a BC or IP zone pursuant to Title 20, SIGN CODE, of the Edmonds Land Use Guidelines as now exists or may be hereafter amended or recodified;

5) Outdoor storage and/or assembly areas shall be screened from Dayton Street and State Route 104 by a site obscuring fence or buffer pursuant to Section 12.14.050(i) of the Edmonds Land Use Guidelines as now exists or may be hereafter amended or recodified;

6) All structures, fences and other architectural features shall be compatibly designed to give the overall development of the subject property unity and continuity;

7) The maximum building height shall be thirty five (35) feet, and no building shall exceed two stories in height;

8) All buildings and structures shall be subject to Architectural Design Board (ADB) approval.

C To limit the land uses established on the subject property to those uses permitted by Section 12.13.270 of the Edmonds Land Use Guidelines as now exists or may be hereafter amended or recodified, and subject to the following:

1) The following uses shall be prohibited:

- A) Automotive wrecking;
- B) Automotive sales;
- C) Car washes;
- D) Drive-in Restaurants;
- E) Fuel storage yards;
- F) Kennels;
- G) Motels;
- H) Mobile home parks;
- I) Residences, except for a caretaker and/or guard;
- J) Service Stations.

2) The following uses permitted in the CG zone shall be limited as follows:

A) Small boat building, repair, and preparation shall be limited to boats not exceeding sixty five (65) feet in length;

B) Fabrication and sale of metal, wood, plastic, cloth, and similar products of light industry shall specifically exclude the fabrication of major structural steel forms, boiler making, and similar activities involving excessive noise, or major trucking in terms of over-standard dimensions per unit or over-standard weight of load, except for small boats.

D That the northwest portion of the subject property used by the Burlington Northern Railroad will be fenced off from the remainder of the development to eliminate indiscriminant access across the railroad right of way.

E That all leases entered into by THE PORT shall be conditioned upon the lessee meeting or exceeding the performance standards established by Section 12.14.050 of the Edmonds Land Use Guidelines as now exists or may be hereafter amended or recodified, and not conducting activities in such a manner as to become a nuisance to the surrounding neighborhood.

F That that portion of the subject parcel from the south property line located within the "Union Oil" marsh to a line twenty five (25) feet landward from the edge of the marsh should be zoned "Open Space" to protect the integrity of the marsh. The remainder of the property should be zoned CG.

G That in order to allow for future expanded access to the edge of the marsh, THE PORT agrees to construct the following walkway at such time as THE CITY constructs a connecting walkway across the marsh from the south;

A walkway paralleling S.R. 104 from the interior looped street to the south eastern corner of the subject parcel, and proceeding from there along the edge of the marsh to intersect with the existing path along the marsh in the central southern portion of the subject parcel.

2 If consistant with the public health and welfare, THE CITY will cause the necessary ordinances to be enacted to rezone the subject property from IP to CG and OS for those uses as defined and permitted by the Edmonds Land Use Guidelines, and for such uses as are contemplated and intended by this agreement and the Attachments

3 Amendments to the development plan (Attachment "A") or this Agreement may be made by either THE PORT or THE CITY upon application filed in the same manner as a rezone application. No applications shall be made by THE PORT or THE CITY or their successors or assigns to amend the underlying zoning of CG and OS for a period of two years from the date of this Agreement. Thereafter, either THE PORT or its successors or assigns, or THE CITY may, upon application filed in the same manner as a rezone application, apply to amend or terminate the provisions and covenants of the Agreement or to change the zoning on said property. Said application to change or terminate the provisions and covenants or to rezone said property shall be heard in the normal manner at appropriate public hearings as any other application for a rezone of property in the City of Edmonds.

4 THE CITY shall be under no obligation to issue THE PORT or its successors or assigns a building permit or other permits or approvals for improvements or expansions upon any of the subject property of THE PORT unless such improvements or expansions lie within the terms hereof and the applicable ordinances at the time of any application for building permit or other permits or approvals.

5 The Edmond's Department of Community Development is granted authority to interpret and apply this agreement. Where there is uncertainty and/or disagreement concerning any substantive term of this agreement, including the Attachments, THE PORT may request that the matter be put on the next available agenda of City Council for a hearing and resolution of the disagreement. If THE PORT disagrees with the decision of City Council, the matter may be filed in the Snohomish County Superior Court as a Request for a Declaratory Judgment or other appropriate action.

6 This agreement and each part of it shall be considered covenants running with the land covered hereby and shall be binding upon the successors and assigns of THE PORT and THE CITY. It shall be recorded with the Snohomish County Auditor in the grantor/grantee index with THE PORT being listed as grantor and THE CITY as grantee and all costs of such recordation shall be paid by THE PORT. Such recordation and payment of said costs shall be a condition precedent to THE PORT exercising any rights under the terms of the agreement.

7 The terms of this agreement may be specifically enforced. If either party shall bring suit to enforce any of the provisions of this agreement, the prevailing party may be awarded reasonable attorney fees and litigation costs in such amount as is set by the court.

IN WITNESS WHEREOF, the parties have executed this contract this 30 day of April, 1980.

THE PORT OF EDMONDS

By *Quinn A. Thompson*
PRESIDENT

ATTEST:

J P Chittenden
SECRETARY

CITY OF EDMONDS

By *W. W. Harrison*
MAYOR

ATTEST:

Ernest Charney Norwood
EDMONDS CITY CLERK

STATE OF WASHINGTON

SS.

County of Snohomish

On this day personally appeared before me Harve H. Harrison and Irene Varney known personally to me as the Mayor and City Clerk of the City of Edmonds, Wa. and who acknowledged that they signed the foregoing instrument as their free and voluntary act and deed for the uses and purposes therein mentioned.

Given under my hand and official seal this 30 day of April, 1980.



Jacqueline J. Parrott
NOTARY PUBLIC in and for the
State of Washington, residing
at Edmonds

STATE OF WASHINGTON

SS.

County of Snohomish

On this day personally appeared before me Gordon A. Maxwell and T. P. Chittenden known personally to me as the President and Secretary of The Port Commission of The Port of Edmonds, Wa. and who acknowledged that they signed the foregoing instrument as their free and voluntary act and deed for the uses and purposes therein mentioned.

Given under my hand and official seal this 24 day of April, 1980.

Gordon A. Maxwell
NOTARY PUBLIC in and for the
State of Washington, residing
at Edmonds



RECORDED

1980 MAY -6 PM 1:49

HENRY S. WILLEN, AUDITOR
SNOHOMISH COUNTY, WASH.

Gordon A. Maxwell