



# **Ports Partnering with Private Developers**

## *A Public Approach to Real Estate Deals*

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# **Port of Everett & K& L Gates**

## **Port Gardner Wharf Project:**

~ Jerry Heller, Port of Everett

## **About Public/Private Partnerships**

~ Shannon Skinner, K& L Gates: Legal Issues

Port of *EVERETT*

# Port of Everett's Port Gardner Wharf



Creating a new waterfront neighborhood on a 65 acre site located on the Puget Sound in Everett, Washington

Port of **EVERETT**

# Where is Everett?



# History of Site

- Created with fill in the 1940s, finished in 1970s
- Former industrial site
- Contaminated from years of industrial use
- Underutilized with tenant mix



# Port of EVERETT



# Commission's Vision

- The project must be buildable
- The project must be based on sound economic information
- The waterfront should be used as a year-round community asset
- The project should enhance maritime functions
- The entire process must have extensive involvement from the community and its stakeholders.

# Project Goals

- Enhancing shoreline access for the public
- Making the North Marina a center of activity 24-7
- Enhancing the historical maritime character and functions of the area
- Realizing the full economic potential for the property
- Achieving financial benchmarks for phases
- Completing cost-effective permanent cleanup of the site's hazardous wastes



# Project Description

- Up to 660 residential units
- Office, retail, craftsmen district, hotel and restaurant space
- Amphitheater/plaza
- 1.5 miles of continuous esplanade
- Approximately 18 acres of pocket parks and open space
- Surrounded by the largest marina on the West Coast



# Overall Site Plan



# Project Milestones

**1999:** The Port Commission authorized the staff to embark on the Master Planning and Feasibility study

**June 2000:** Port staff issued a Request For Qualifications (RFQ) for the project.

**October 2000:** Maritime Trust, based out of Chicago, was selected to lead the Master Planning phase for the redevelopment.

# Project Milestones

## **January 2001-January 2002:**

The Port of Everett attended more than 100 meetings with various groups, organizations, Neighborhood associations, small groups and with the city

## **September 2003:**

The Everett City Council approved the Port's land use and development agreement (planned development overlay) to redevelop the North Marina.

# Project Milestones

**May 2005:** Final Environmental Impact Statement (FEIS) issued

**August 2005:** Port Commission scheduled to choose the preferred development alternative.

**October/November 2005:** Everett City Council & Planning Commission Approves North Marina Redevelopment modifications.

# Project Milestones

**January 2007:** All permits secured

**February 2007:** Financing secured through Merrill Lynch and General Electric

**May 2007:** Port of Everett & Maritime Trust  
Break ground on Port Gardner Wharf

**June 2007:** Financial Market Collapses; project on hold.

**December 2007:** Amended Development Agreement

# Business Deal?

- Developer has exclusive option to purchase or lease land within the development site
- Project will go forward on a phased basis
- Purchase of residential pieces in each phase
- Leases of non-residential will be for 50 years with two 15 year renewal options

# **On-going benefits to the Port**

- Lease Revenue
- Property Taxes
- Community Profile
- Public Access Amenities



# On-Going Public Benefits

- Approximately 18 acres of the 65 acre project is devoted to public access and public spaces
- The project will provide more than 1.5 miles of new waterfront public walkway on the project site itself
- Public Plaza



# Port Gardner Wharf Employment

## **Jobs**

The project will create more than 4,100 new direct and indirect jobs in the area

## **Taxes**

Port Gardner Wharf will generate:

- \$14.3 million in state and local taxes of in 2005 dollars.
- \$3 million in annual taxes to the City of Everett
- \$0.6 million to Snohomish County
- \$10.7 million annually for the state of Washington, schools, and other taxing districts.

# Environmental Cleanup

- The Port has invested more than \$7 million in environmental cleanup to date
- Removed more than 85,000 tons of contaminated soil
- The Port is being reimbursed for the cleanup through Governor Christine Gregoire's Puget Sound Initiative, which vows to cleanup the Puget Sound by 2020.
- The Port is actively seeking contribution from current/past tenants.

# Construction Status

- Site preparation is nearing completion, with more than 22 buildings removed from the site
- Residential/retail construction on hold pending financing
- Port completed new Craftsmen District infrastructure in March 2008
- The Port is moving forward with its portion, and will begin infrastructure work in Summer '08



# Creating Effective Public Private Partnerships



The Making of Waterfront Developments

# **Public Private Partnerships ("PPP" or "Triple P")**

- PPP is used loosely to mean all kinds of development where public and private intersect.
- In these joint development projects, the Port is to develop the major infrastructure components and the public amenities, while the developer is to build the income-producing portions (e.g., office, commercial, residential)

# Public Entities – The Constraints

- U.S. Ports are public entities and usually cannot be partners (legally) with private entities.
- There are three basic ways to get money out of a real estate deal:
  1. As a partner with an equity interest (not permitted)
  2. As a lender (may be permitted); and
  3. Receipt of fees and proceeds for services, property sales and rental income (permitted).

# Other Constraints to Consider

- Lending of Credit
  - Legal constraints often prevent ports from lending credit or making a gift of public funds or property to a private developer
- Land Banking
  - It's a balancing act between encouraging developers to invest and take risks vs. tying up the land for a long time
- Open Public Meetings & FOIA
  - Developers need to understand that most details about the project, including financial information will be available to the public



# Other Constraints to Consider Cont.

- Property & Excise Taxes
- Public Works
- Staffing
- Condemnation
- Public Financing
- State Audit

# Request for Proposals

- Developers for PPP projects are often selected through a competitive process.
- Crafting a good RFP is worth the time and expense up front.
- The RFP should also provide the flexibility to address the inevitable changes the way as the planning for the project moves through the process.

# Sale vs. Lease

- Port policy makers need to have discussions at the outset about their philosophy on selling versus long term leasing
- Lenders will also have to be given ample opportunity to cure defaults and step into the shoes of defaulting developers.

# Environmental Issues

- Port property slated for redevelopment is often contaminated from years of heavy industrial uses.
- There needs to be a clear plan for addressing environmental issues and allocating appropriate responsibility.

# Other Issues to Consider

- Parking. Parking is always a problem in these redevelopments.
- Public Entity Blur. Developers often see all the public agencies involved in a redevelopment project as one—the city, county and port.
- Privacy. It is not unusual for developers to buy and sell properties under confidentiality clauses that prohibit public discussion of deal terms.
- Authority. A developer may have concerns that port has authority to do the deal.
- Media. Developers should have a strategy for presenting the project to the media and members of the public.

# Private Developers— Their Issues

- It's the Money: Developers are in business to make money.
- Because they are taking considerable risk, they need to make a sizeable return.
- The guiding principle of a real estate developer—to use as little of its own money as possible

# **Well, Really It's the Lender's Money**

- Developers **ALWAYS** have financing, they just need to make lenders happy or they do not have a deal
- If the economics simply no longer pencil, the project may sit half-built for years as the lender works to bring in a new developer.

# Who Goes First Risk or Sharing

- The first residential condominium project in former brownfield/industrial area is a highly risky proposition.
- The developer will be spending lots of its own money in the planning and entitlement process (the kind of money that does not get paid from financing until later) and will want firm port commitments.



# Promises, Promises

- Thought needs to be given to the remedies if the developer does not perform.
- Recorded development covenants are the preferred alternative.
- Future owners would be required to comply with development plans, unless the port agrees to changes.
- Without this, the port has no assurance that the development it has invested to support will occur (if it does) in the manner intended.

# Strategies for Tackling Public Private Partnerships

- Outside Counsel. Outside counsel should be experienced in both real estate development as well as schooled in the public issues.
- Hire Good Staff and Advisors. These projects are time sinks, so dedicate appropriate staffing.
- Beware Bedazzlement. Do not let the developer bamboozle the project proponents within the port, putting stars in their eyes with promises of great returns. Real estate development is highly risky.



**Thank you!**  
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