

**INTERLOCAL AGREEMENT
FOR
FACILITIES
WITHIN THE WATERFRONT DISTRICT**

THIS INTERLOCAL AGREEMENT (the “Agreement”) between the **PORT OF BELLINGHAM** (“Port”), a municipal corporation, and the **CITY OF BELLINGHAM** (“City”), a municipal corporation, is entered into and effective as of the last date of signature below.

I. RECITALS

WHEREAS, on January 4, 2005, the City and the Port executed the “Interlocal Agreement Regarding the New Whatcom Special Development Area” with subsequent amendments that, among other things, set forth respective commitments of the Port and of the City with regard to the Waterfront District, provided for the study of the environmental impacts of the redevelopment of the Waterfront District, and provided for the adoption of master planning documents for the redevelopment of the Waterfront District, see **Exhibit A**, Waterfront District Boundary; and

WHEREAS, the Port and the City have been working cooperatively since the execution of the New Whatcom Interlocal in 2005 to meet their respective commitments and plan for the redevelopment of the Waterfront District into a mixed-use urban waterfront with commercial, industrial, residential, public, and recreational uses within the Waterfront District; and

WHEREAS, the Port and the City recognize that Waterfront District is a Brownfield site. The upland properties were historically zoned and used for industrial purposes, including marine industrial uses, fish processing, paper and pulp mill uses, two municipal landfills, a deep water shipping terminal, and wood treatment facilities. The aquatic land uses included a process water treatment facility and two federal channels; and

WHEREAS, the Port and the City recognize that the Waterfront Redevelopment Project is a long-term effort, requiring a phased implementation as graphically depicted in **Exhibit B1-B5**; and

WHEREAS, the Port and the City each currently owns or manages certain real properties within the Waterfront District, including state-owned aquatic land managed by the Port or City under harbor area leases; and

WHEREAS, the Waterfront District currently includes six MTCA listed sites which require remedial action. The Port is the Designated Lead Party (as the term is defined below) for five of these sites: Cornwall Avenue Landfill Site; G.P. West Site; Whatcom Waterway Site; Central Waterfront Site; and I & J Waterway Site. The City is the Designated Lead Party for the cleanup of the RG Haley Site; and

WHEREAS, the Port and City have worked cooperatively to receive commitments from the Department of Ecology that it will provide Remedial Action Grants for the remediation of the six sites; and

WHEREAS, both the Port and City agreed to direct their increased property tax revenue from the Waterfront District and surrounding properties toward meeting the City's obligations under this Agreement through a state-authorized Local Infrastructure Financing Tool ("LIFT") for a 25-year period, leveraging up to an additional \$25 million in state funding; and

WHEREAS, the Port and City jointly completed an Environmental Impact Statement for the Waterfront District Redevelopment Project, including a Draft Environmental Impact Statement, Supplemental Draft Environmental Impact Statement, Addendum to the Supplemental Draft Environmental Impact Statement, and a Final Environmental Impact Statement, which evaluated a range of development alternatives, including a 2010 Updated Preferred Alternative and a 2012 Addendum, which evaluated a 2012 Updated Preferred Alternative; and

WHEREAS, SEPA compliance for the actions contemplated in this Agreement have been achieved through the publication of the Waterfront District Redevelopment Project EIS and adoption of mitigation measures in the City Planned Action Ordinance; and

WHEREAS, the Port adopted the Sub-Area Plan by Port Resolution No. _____ as part of the Port's series of comprehensive schemes of harbor improvements, and the City adopted the Sub-Area Plan by Ordinance No. _____ as part of the City's Comprehensive Plan; and

WHEREAS, the City has adopted City Development Regulations, as the term is defined below, by Ordinance No. _____, which are codified at BMC 20.37.400 through 20.37.490; and

WHEREAS, the City has adopted City Design Standards, as the term is defined below, by Ordinance No. _____, which are codified at BMC 20.25.80; and

WHEREAS, the City adopted a Shoreline Master Program update by Ordinance No. 2013-02-005 codified at BMC Title 22; and

WHEREAS, the City adopted a City Planned Action Ordinance No. _____ codified at BMC XXXX; and

WHEREAS, the City and the Port entered into a Development Agreement for the Waterfront District to vest certain land uses, facilitate redevelopment of the Waterfront District, provide predictability and certainty as to the Development Regulations, State Environmental Policy Act (SEPA) process, and impact fee credits related to the development of the Port Properties; and

WHEREAS, this Agreement is entered into pursuant to Chapter 39.34 RCW to: (1) allocate obligations for phased implementation of Facilities; (2) define the timing of property transfers between the City and the Port; and (3) establish a process for the City's and Port's ongoing management of the Waterfront District Project; and

WHEREAS, the Port and City recognize the importance of creating conditions in the Waterfront District, including construction of Facilities, in order to make the area attractive to further investment by public and private sector Developers, especially during Phase 1 of the redevelopment planning schedule; and

WHEREAS, the Port and City recognize that the phased approach set forth in this Agreement is designed to encourage development in certain areas of the Waterfront District and thereby providing a tax base to support funding of Facilities during subsequent phases; and

WHEREAS, The Port and the City recognize that the Facilities should be phased such that expenditures by the Port and the City are not unnecessarily stranded awaiting demand.

NOW, THEREFORE, the Port and the City agree as follows:

II. AGREEMENT

SECTION A **DEFINITIONS**

“Affordable Housing Unit(s)” means affordable owner-occupied housing or affordable renter-occupied housing which are ensured affordable for a period of not less than fifty (50) years, or for a lesser period established in an adopted state or federal affordable housing finance and monitoring program, and documented through deed restriction and/or covenant, and where such units’ affordability is ensured through enforcement and monitoring by a public agency.

“Affordable owner-occupied housing” means housing units sold at a price affordable to households earning no more than 100% of Bellingham’s median household income as published annually by the U.S. Department of Housing and Urban Development (“HUD”).

“Affordable renter-occupied housing” means housing units rented to households earning no more than 80% of Bellingham’s household income as published annually by HUD, provided that at least 60% of the affordable renter-occupied housing units in the Waterfront District must be rented to households earning no more than 60% of Bellingham’s median household income.

“AIG Policy” means the Pollution Legal Liability Select Clean-Up Cost Cap Policy purchased by the Port from AIG Environmental on January 27, 2005.

“Arterial Streets” means public street improvements made by the City in rights-of-way dedicated by the Port to the City or in existing City rights-of-way or City fee owned property, including paving, curbs, gutters, pedestrian facilities, street lighting, bicycle facilities, street trees, and traffic control devices, relocation and/or construction of street lights, traffic control devices, signage, City utility systems located within the rights-of-way, and other similar improvements that are constructed or improved consistent with BMC 20.37.460.

“ASB” means the former Georgia-Pacific Corporation aeration stabilization basin.

“BMC” means the Bellingham Municipal Code.

“Brownfield Site” means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. This definition is found in Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

“City Design Standards” means those standards adopted to govern building design review and approval within the Waterfront District found at BMC 20.25.080.

“City Development Regulations” means those regulations adopted to implement the Sub-Area Plan for the Waterfront District and found at BMC 20.37.400 through 20.37.490.

“City Planned Action Ordinance” or **“PAO”** means the ordinance adopted to designate certain types of developments and land uses as Planned Actions and establishes SEPA review procedures and SEPA mitigating measures based on the EIS to be applied to these projects.

“City Shoreline Master Program Update” means the City adopted a Shoreline Master Program update by Ordinance No. 2013-02-005 codified at BMC Title 22, which contains regulations for development of property within the jurisdiction of the Shoreline Management Act.

“City Sub-Area Plan” means the Waterfront District Sub-Area Plan adopted by City Ordinance No. _____ as part of the City's Comprehensive Plan. The Sub-Area Plan is the master plan for the Waterfront District.

“City Utilities” means public water, sewer, and storm drainage system improvements, including installation of improvements as required by the City and includes the following: (1) water system improvements including mains, valves, and fire hydrants; (2) sewer system improvements including mains; and; (3) storm sewer system improvements, including stormwater collection and conveyance facilities.

“Cleanup Action” means any remedial action, except interim actions, taken at a site to eliminate, render less toxic, stabilize, contain, immobilize, isolate, treat, destroy, or remove a hazardous substance that complies with Chapter 173-340 WAC.

“Construction Completion Report” means the report submitted by the engineer responsible for the oversight of construction including: as built drawings and documentation of all aspects of facility construction; an opinion from the engineer, based on testing results and inspections, as to whether the Cleanup Action or Interim Action has been constructed in substantial compliance with the plans and specifications and related documents, all pursuant to WAC 173-340-400(6)(b)(ii).

“Department of Ecology” or **“Ecology”** means the Washington State Department of Ecology.

“Designated Lead Party” is the party identified in an Agreed Order or Consent Decree that will undertake the work required therein. The Designated Lead Party shall implement a Site Cleanup that is consistent with the land uses required to implement the Waterfront District Sub-Area Plan.

“Developer” means the Port, the City, or anyone else who will undertake development within the Waterfront District.

“Development Agreement” means that agreement entered into by the Port and the City pursuant to RCW 36.70B.170.

“Development Ready” means that: (i) within the boundaries of a MTCA Site the Port's Project Manager has determined that a portion of the Waterfront District does not require Site Cleanup and the Port and/or Ecology has attested to this in a certificate provided to the City; or (ii) in a portion of the Waterfront District a Site Cleanup meets all requirements of MTCA and its implementing regulations and any and all applicable Consent Decrees and/or Agreed Orders and attendant Cleanup Actions Plans and Interim Action Plans; and the engineer responsible for the oversight of Site Cleanup construction has prepared and submitted to Ecology as-built drawings and a report meeting all requirements of WAC 173-340-400(6)(b)(ii). Additional Remedial Actions, such as confirmational monitoring may be necessary.

“Development Ready Certificate” means a written certification for an area of the Waterfront District provided by the Port to the City which certifies that the area is Development Ready.

“Downtown Waterfront Area” is that portion of the Waterfront District depicted on Exhibit A.

“EIS” means the Port and City jointly completed Environmental Impact Statement for the Waterfront District Redevelopment Project, including a Draft Environmental Impact Statement, Supplemental Draft Environmental Impact Statement, Addendum to the Supplemental Draft Environmental Impact Statement, and a Final Environmental Impact Statement which evaluated a range of development alternatives, including a 2010 Updated Preferred Alternative and a 2012 Addendum, which evaluated a 2012 Updated Preferred Alternative.

“Facility” or **“Facilities”** means a MTCA Site Remedial Action, Arterial Street or Park project designed and constructed by either the Port or the City or jointly by the Port and the City.

“Facility Trigger” means an event or condition which requires the obligated party to construct a Facility.

“Floor Area” means the definition as codified at BMC 20.08.020.F.2.a.

“Historic Icons” means those industrial artifacts identified in Exhibit J.

“Historic Resources Plan” means a management plan that identifies historic resources located within the Waterfront District and describes the mitigation for the demolition of any such historic resources.

“Industrial Artifacts” means those inactive above ground industrial buildings, structures, and process equipment in the Waterfront District in existence as of the date of this Agreement.

“Interim Action” means a Remedial Action described in WAC 173-340-430 approved by Ecology pursuant to an Agreed Order or an amendment thereto.

“Institutional Controls” are measures undertaken to limit or prohibit activities that may interfere with the integrity of an Interim Action or Cleanup Action or result in exposure to hazardous substances at a site which and which are mandated by Ecology through deed restrictions.

“Interim Institutional Controls” are reasonable measures undertaken to limit or prohibit activities that may interfere with the integrity of an Interim Action or Cleanup Action or result in exposure to hazardous substances at a site and (i) are attached as an exhibit to the Development Ready Certificate or (ii) transmitted to the City by the Port in a separate certificate accompanying Ecology's approval of the Construction Completion Report. The Interim Institutional Controls shall exist until the recordation of formally mandated Ecology Institutional Controls.

“Major Modification” means a change or amendment to this Agreement which will result in significant changes in the financial commitments in this Agreement or a significant change in the timing of the delivery or location of the Facilities contemplated herein.

“Minor Modification” means a change or amendment to this Agreement which will not result in significant changes in the financial commitments in this Agreement or a significant change in the timing of the delivery or location of the Facilities contemplated herein.

“Model Toxics Control Act” or “MTCA” means Chapter 70.105D of the Revised Code of Washington and the regulations promulgated thereunder.

“MTCA Site(s)” means the MTCA sites designated by the Department of Ecology within the Waterfront District to wit: the Cornwall Avenue Landfill Site; the R.G. Haley Site; the Georgia-Pacific West Site; the Whatcom Waterway Site; the Central Waterfront Site; and the I & J Waterway Site. A map of these sites is attached as **Exhibit C**.

“New Whatcom Interlocal” means the Interlocal Regarding the New Whatcom Special Development Area by and between the City of Bellingham and the Port of Bellingham dated January 4, 2005.

“Overwater Walkway” means a proposed City project to construct an overwater walkway south from Cornwall Beach Park to Boulevard Park.

“Park” or “Parks” means any public park, open space, and/or trail improvement projects, made by the City including installation of any public improvement, such as, landscaping, paving, playgrounds, seating, art, water features, non-street related pedestrian and bike facilities,

parking facilities, community buildings, park ancillary structures, lighting, and other similar improvements as necessary to implement the Waterfront District Sub-Area Plan.

“Port Management Agreement” means the agreement mandated by RCW 79.105.420 by and between the Port and the Washington Department of Natural Resources (“**DNR**”) to manage certain state owned aquatic lands.

“Port Property” or **“Port Properties”** means those properties within the Waterfront District currently owned or managed by the Port including vacated rights-of-way which abut Port property. Port Property may include aquatic lands managed by the Port pursuant to its Port Management Agreement. The Port Properties are depicted in **Exhibit C**.

“Project Coordinators” means the individuals appointed respectively by the Port and the City to coordinate with each other concerning the terms of this Agreement and achievement of the goals contemplated herein.

“Remedial Actions” means the actions described in RCW 70.105D.020(26).

“Remedial Action Grant” means a matching grant provided by the Department of Ecology, which is typically 50% of eligible Remedial Action costs.

“SEPA” means the Washington State Environmental Policy Act, Chapter 43.21C RCW and the regulations promulgated thereunder.

“Site Cleanup” means the completion of all Remedial Actions necessary to make a particular Site or portion thereof Development Ready, other than confirmational monitoring and/or Institutional Controls, which may be performed in phases, including any related shoreline restoration, required under a Consent Decree or Agreed Order for a particular Site and the approved Cleanup Action Plan or Interim Action Plan for the Site.

“Unencumbered” means title free and clear except, Interim Institutional Controls, Institutional Controls, rights to cross Log Pond Shoreline Trail and/or and Breakwater Trail, as depicted in **Exhibit B**, rights reserved in federal patents or state deeds, building or use restrictions general to the district, existing easements not inconsistent with the City's intended use, and building or zoning regulations.

“Waterfront District” is the real property and aquatic lands from the southern end of the former Cornwall Avenue Landfill to the I & J Waterway, including the former Georgia-Pacific Corporation industrial properties, illustrated on **Exhibit A** attached hereto.

“Waterfront Redevelopment Project” means the cooperative effort by the Port and the City to redevelop a Brownfield Site into a mixed-use urban waterfront with commercial, industrial, residential, public, and recreational uses within the Waterfront District.

SECTION B **EXHIBITS**

The following exhibits are attached to this Agreement and incorporated herein by reference.

Exhibit A	Waterfront District Boundary
Exhibit B	Waterfront District Phasing Maps
Exhibit C	Port Properties
Exhibit D	MTCA Site Locator Map
Exhibit E	Phase 1 Obligations for Arterial Streets and Parks
Exhibit F	Phase 2 Obligations for Arterial Streets and Parks
Exhibit G	Phase 3 Obligations for Arterial Streets and Parks
Exhibit H	Street Vacations, Licenses and Transfers
Exhibit I	Park Land Dedications
Exhibit J	Historic Icons
Exhibit K	Form of Deed

SECTION C **OBLIGATIONS FOR PHASED IMPLEMENTATION OF FACILITIES**

1. **Obligations to Construct Facilities.** The parties acknowledge that redeveloping the Waterfront District in conformance with the Sub-Area Plan will require Facilities. The Port's and City's obligations for providing such Facilities and the phasing of such Facilities are set forth below. The obligation to construct a Facility pursuant to this Agreement is conditioned on the parties' receipt of all necessary permits and approvals. Except as set forth herein or as otherwise agreed by the Port and the City, all other infrastructure on development parcels is the responsibility of the Developer, who shall comply with the provisions of BMC 20.37.460.

2. **Phase 1 – Activate the Downtown Waterfront Area.** Phase 1 begins as of the date of this Agreement and continues until a total of 500,000 square feet of new Floor Area is constructed south of Whatcom Waterway. The term "south of Whatcom Waterway" includes only the Downtown Waterfront Area, Log Pond Area, Bellingham Shipping Terminal, and Cornwall

Beach Area. During Phase 1, obligations to design and construct Facilities may arise on either side of Whatcom Waterway.

2.1 **Site Cleanup.** The following Site Cleanups shall be completed during Phase 1. See **Exhibit D**, MTCA Site Locator Map, which is attached and incorporated herein, for locations of MTCA sites. Liability and contribution related to these sites is not the subject of this Agreement. Agreements and allocations of liability regarding the sites listed below is the subject of that certain Interlocal Agreement for the Acquisition of the Chevron Property and the Colony Wharf Property and the Remediation of the Cornwall Avenue Landfill Site and the Central Waterfront Site by and between the City and Port, dated December 14, 2005 (the "Remediation Agreement") and of that certain Interlocal Agreement for the Exchange of Real Property by and between the Port of Bellingham and the City of Bellingham, dated October 24, 2012 (the "Property Exchange Agreement"). The City and Port are not currently parties to any agreements regarding liability or contribution allocation for the Georgia-Pacific West Site, the R.G. Haley Site, or the I & J Waterway Site. Except as provided in Sections 13 and 26, this Agreement does not modify liabilities or contributions contained in other agreements. Nothing herein limits the ability of the Port or the City to enter into agreements regarding liability or contribution allocation in the future.

a) **Georgia-Pacific West Site.** The Port is the Designated Lead Party for conducting Remedial Actions for the Georgia-Pacific West Site.

b) **Whatcom Waterway Site Phase I.** The Port is the Designated Lead Party for conducting Remedial Actions for the Whatcom Waterway Site Phase.

c) **Cornwall Avenue Landfill Site.** The Port is the Designated Lead Party for conducting Remedial Actions for the Cornwall Avenue Landfill Site.

2.2 **Arterial Streets.** Phase 1 Arterial Streets are depicted on **Exhibit E**.

a) **Wharf Street Roundabout.** The City will design, permit, and construct a roundabout at the intersection of State, Forest, Boulevard, and Wharf streets.

Facility Trigger: Construction shall commence in 2013.

b) **Granary/Bloedel to Cornwall.** The City will design and construct, at its sole cost and expense, Granary Avenue and Bloedel Avenue to Commercial Street. From Commercial Street, the City will design and construct an interim Bloedel connection from Commercial Street to interim Laurel and interim Laurel to Cornwall Avenue, including installation of an at-grade rail crossing. If the Granary building physically remains at the time the City procures design services, this Facility will be designed to accommodate the building. Construction of this Facility includes the following on-site and off-site mitigation improvements as outlined in the Planned Action Ordinance: (1) installation of a traffic signal at the intersection at Granary Avenue and Roeder Avenue; and (2) installation of a temporary traffic signal at interim Laurel and Cornwall Avenue.

Facility Trigger: Construction shall commence within twenty-four (24) months of the date of execution of this Agreement, but no later than September 30, 2017, provided the following conditions are met:

(i) The Port executes a development agreement, purchase and sale agreement or equivalent contract with a developer(s) for the first parcel of the Downtown Waterfront Area.

(ii) The Port provides the City: (a) a Development Ready Certificate or (b) Ecology's approval of the Port's Construction Completion Report, pursuant to WAC 173-340-400(8) for the Georgia-Pacific West Site Cleanup or receives Ecology's approval of the Port's post-construction Interim Action Completion Report for the area necessary for construction of Granary/Bloedel to Cornwall; (c) in the event Granary/Bloedel will be built as part of an Interim Action, an executed amendment to the GP West Agreed Order incorporating Granary/Bloedel in an attached Interim Action Plan pursuant to WAC 173-340-430(7).

(iii) As required by the federal funding agency, funding for this Facility must be obligated in the form of a construction contract no later than September 30, 2017. If funding is withdrawn by the federal funding agency because conditions (1) and (2) above were not met by the September 30, 2017 deadline, the City shall not be liable to construct this Arterial Street.

c) **Commercial Street.** The City will design and construct, at its sole cost and expense, the portion of Commercial Street from Bloedel to interim Laurel Street.

Facility Trigger: Construction shall commence within twenty four (24) months of the City receiving notice from the Port that it has executed a development agreement, purchase and sale agreement or equivalent contract with a Developer(s) for the Downtown Waterfront Area parcels which are abutting Commercial Street, see **Exhibit E** for "Downtown Waterfront Properties Abutting Commercial Street #1." Provided, the City may delay construction of Commercial Street until a building permit application for a building abutting Commercial Street has been submitted and the following condition is met:

(i) The Port provides the City with (a) a Development Ready Certificate, or (b) Ecology's approval of the Port's Construction Completion Report, pursuant to WAC 173-340-400(8) for the Georgia-Pacific West Site Cleanup or Ecology's approval of the Port's post-construction Interim Action Completion Report for the area necessary for construction of Commercial Street from Bloedel to interim Laurel Street; (c) in the event Commercial Street from Bloedel to interim Laurel Street will be built as part of an Interim Action, an executed amendment to the GP West Agreed Order incorporating Commercial Street from Bloedel to interim Laurel Street in an attached Interim Action Plan pursuant to WAC 173-340-430(7).

(ii) Prior to commencing design of Commercial Street and/or Commercial Street Green, City staff, in coordination with adjacent property owners, shall re-evaluate the cross-section to determine if the transportation system could support modifications, including, but not limited to, alternatives to the one-way return drive lane.

2.3 **Parks.** Phase 1 Parks are depicted on **Exhibit E.**

a) **Cornwall Beach Park Site Preparation.** The City will conduct site preparation, which is limited to developing a grading plan, import, and placement of topsoil and seeding.

Facility Trigger: Construction shall commence following the Port's Cornwall Avenue Landfill Site Cleanup, provided the following conditions are met:

(i) The Port provides the City with (a) a Development Ready Certificate or (b) Ecology's approval of the Port's Construction Completion Report, pursuant to WAC 173-340-400(8) for the Cornwall Avenue Landfill Site Cleanup. If allowed by Ecology, the Port will incorporate the City's grading plan as part of the Site Cleanup, provided the grading plan is provided in advance of the Port's completion of final plans and specifications for bidding the Site Cleanup construction, including grading, to be conducted by the Port. The Port shall provide the City with a schedule, including deadlines for the City's submission of its grading plan.

(ii) The City has secured a lease or other approval from the State Department of Natural Resources to develop the property for public use, including park development.

b) **Whatcom Waterway Park.** The City will design and construct, at its sole cost and expense, a Park along Whatcom Waterway to Commercial Street, in the Downtown Waterfront Area. This project is anticipated to be completed in phases.

Facility Trigger: Construction shall commence within thirty-six (36) months of the City receiving notice from the Port that it has executed a development agreement, purchase and sale agreement or equivalent contract with a developer(s) for the first parcel in the Downtown Waterfront Area, which is adjacent to Granary and Bloedel Avenues, provided, the City may delay construction of Whatcom Waterway Park until a building permit application for a building is submitted to the City by the Developer and provided that the following conditions are met:

(i) Granary/Bloedel to Cornwall Arterial Street is complete.

(ii) The Port provides the City with (a) a Development Ready Certificate or (b) Ecology's approval of the Port's Construction Completion Report, pursuant to WAC 173-340-400(8) for the Georgia-Pacific West Site Cleanup or Ecology's approval of the Port's post-construction Interim Action Completion Report for the area necessary for construction of Whatcom Waterway Park; (c) in the event Whatcom Waterway Park will be built as part of an Interim Action, an executed amendment to the GP West Agreed Order incorporating Whatcom Waterway Park in an attached Interim Action Plan pursuant to WAC 173-340-430(7).

(iii) The Port provides the City with (a) a Development Ready Certificate, or (b) Ecology's approval of its Construction Completion Report pursuant to WAC 173-340-400 (8) for the Whatcom Waterway Site Phase 1 Site Cleanup.

c) **Commercial Street Green Park Site Preparation.** The City will conduct site preparation for Commercial Street Green Park. Site preparation is defined as import and placement of topsoil and seeding.

Facility Trigger: Construction shall commence within twelve (12) months of the City completing Commercial Street as described in Section 2.2c), above, or sooner. Provided, the City may delay construction of Commercial Street Green Park Site Preparation until a building permit application for a building located in the development area as identified in **Exhibit E** as "Downtown Waterfront Properties Abutting Commercial Street #1", is submitted by the Developer, and provided the following conditions are met:

(i) The Port provides the City with (a) a Development Ready Certificate or (b) Ecology's approval of its Construction Completion Report, pursuant to WAC 173-340-400(8) for the Georgia-Pacific West Site Cleanup or Ecology's approval of the Port's post-construction Interim Action Completion Report for the area necessary for construction of the Commercial Street Green Park. In the event Commercial Street Green Park will be built as part of an Interim Action, an executed amendment to the GP West Agreed Order incorporating Commercial Street Green Park in an attached Interim Action Plan pursuant to WAC 173-340-420(7).

3. **Phase 2 – Activate Cornwall Beach Area.** Phase 2 begins when new Floor Area constructed south of Whatcom Waterway has reached 500,000 square feet and continues until new Floor Area constructed has reached 1,000,000 square feet. During Phase 2, obligations to design and construct Facilities may arise on either side of Whatcom Waterway.

3.1 **MTCA Cleanup.** The following sites shall be remediated during Phase 2. See attached **Exhibit D**. Liability and contribution related to these sites is not the subject of this Agreement. Agreements and allocations of liability regarding the Central Waterfront Site, is the subject of the Remediation Agreement and the Property Exchange Agreement. The City and Port are not currently parties to any agreements regarding liability or contribution allocation for the R.G. Haley Site or the I & J Waterway Site. Except as provided in Sections 13 and 26, this Agreement does not modify liabilities or contributions contained in other agreements. Nothing herein limits the ability of the City or Port to enter into any such agreements in the future.

a) **R.G. Haley Site.** The City is the Designated Lead Party for conducting Remedial Actions at the R.G. Haley Site.

b) **Central Waterfront Site.** The Port is the Designated Lead Party for conducting Remedial Actions at the Central Waterfront Site.

c) **I & J Waterway Site.** The Port is the Designated Lead Party for conducting Remedial Actions at the I & J Waterway Site.

3.2 **Arterial Street.** None

3.3 **Parks.** Phase 2 Parks are depicted on **Exhibit F**.

a) **Cornwall Beach Park.** The City will design and construct, at its sole cost and expense, Cornwall Beach Park. Due to the scale of this Facility, it is likely the City will construct the improvements over two or more phases as funding allows.

Facility Trigger: The Park will be available for public use by the end of this Phase, provided the following conditions are met:

(i) The Port provides the City with (a) a Development Ready Certificate or (b) Ecology's approval of the Port's Construction Completion Report pursuant to WAC 173-340-400 (8) for the Cornwall Avenue Landfill Site Cleanup.

4. **Phase 3 – Commercial Green Connection to Downtown.** Phase 3 begins when new Floor Area constructed south of Whatcom Waterway has reached 1,000,000 square feet and for purposes of this Agreement, continues until obligations to construct Facilities as outlined below are complete. During Phase 3 obligations to design and construct Facilities may arise on either side of Whatcom Waterway.

4.1 **MTCA Site Cleanup.** None.

4.2 **Arterial Streets.** Phase 3 Arterial Streets are depicted in **Exhibit G**.

a) **Commercial Street Bridge.** The City will design and construct Commercial Street bridge, at its sole cost and expense, connecting downtown Bellingham to the Downtown Waterfront Area.

Facility Trigger: Construction commences when total square footage south of the Whatcom Waterway has reached approximately 1,400,000 square feet, provided the following conditions are met:

(i) Burlington Northern Santa Fe provides the City approval to construct the Facility.

(ii) An adequate land supply remains to support the 2,000,000 square feet of development anticipated at full build-out for the Downtown Waterfront Area. To determine if an adequate land supply remains to support the 2,000,000 square feet of development envisioned as of the date of this Agreement, the City and the Port will multiply undeveloped vacant land area (including land currently utilized for an interim use, as defined in the Development Agreement) in the Downtown Waterfront Area by the larger of (1) the floor-area ratio allowed per City Development Regulations in existence as of the date of this Agreement; or (2) the floor-area ratio allowed in existence as of the date of the calculation and then add that number to existing square footage in the Downtown Waterfront Area. The floor-area calculation shall utilize the base floor-area ratio ("FAR") and an additional 1.0 FAR as a FAR bonus option.

(iii) At least 10% of the total residential units built in the Waterfront District are Affordable Housing Units, as calculated prior to commencing construction of Commercial Street Bridge. This requirement does not apply to each individual building or development project but applies to the whole Waterfront District. To determine whether or not this condition has been met, the City will divide the total number of Affordable Housing Units built by the total number of housing units built within the Waterfront District. If the percentage falls short of 10%, the condition will be deemed met if the Port has transferred sufficient Port Property to a qualified affordable housing developer(s) reasonably acceptable to the City, to allow construction of the units to reach the 10% requirement. The term "sufficient Port

Property” means property which can be used to construct the required housing units given the floor area ratios established in the zoning.

b) **Extend Commercial Street.** The City will design, permit, and construct the extension of Commercial Street.

Facility Trigger: Construction shall commence within twenty-four (24) months of the City receiving notice from the Port that it has executed a development agreement, purchase and sale agreement or equivalent contract with a developer(s) for the Downtown Waterfront Area parcels, which are abutting Commercial Street, see **Exhibit G** for a depiction of “Downtown Waterfront Properties Abutting Commercial Street #2”, provided: (1) the City may delay construction of Commercial Street Green until a building permit application for a building abutting Commercial Street is submitted to the City by the Developer; and (2) the following conditions are met: The Port provides the City with (a) a Development Ready Certificate or (b) Ecology’s approval of the Port’s Construction Completion Report, pursuant to WAC 173-340-400(8) for the Georgia-Pacific West Site Cleanup or Ecology’s approval of the Port’s post-construction Interim Action Completion Report for the footprint of Commercial Street and Commercial Street Green Park; (c) in the event Commercial Street will be built as part of an Interim Action, an executed amendment to the GP West Agreed Order incorporating Commercial Street and Commercial Street Green Park in an attached Interim Action Plan pursuant to WAC 173-340-430(7).

c) **Adjust Interim Laurel Street to Accommodate WWU.** The City will design, permit, and complete construction of the adjustments to interim Laurel Street as needed to reasonably accommodate development for use by Western Washington University south of Laurel Street should Western Washington University redevelop the portion of the Waterfront District zoned for Institutional use in Phase 3.

Facility Trigger: Construction shall commence within twenty-four (24) months of the City receiving notice from the Port that it has executed a development agreement, purchase and sale agreement or equivalent contract with Western Washington University for a portion of the Downtown Waterfront Area within the Institutional Mixed-Use area as codified in BMC 20.37.400, provided: (1) the City may delay construction of Laurel Street until a building permit application for a building is submitted to the City by Western Washington University; and (2) the following condition is met: The Port provides the City with (a) a Development Ready Certificate or (b) Ecology’s approval of the Port’s Construction Completion Report, pursuant to WAC 173-340-400(8) for the Georgia-Pacific West Site Cleanup or Ecology’s approval of the Port’s post-construction Interim Action Completion Report for the area necessary for the construction of Laurel Street; (c) in the event Laurel Street will be built as part of an Interim Action, an executed amendment to the GP West Agreed Order incorporating Laurel Street in an attached Interim Action Plan pursuant to WAC 173-340-430(7).

4.3 **Parks**

a) **Commercial Street Green Park.** The City will design, permit, and construct the extension of Commercial Street Green Park.

Facility Trigger: Construction shall commence within twelve (12) months following the City's completion of Arterial Street Section 4.2.a and 4.2.b. above, provided the following condition is met:

(i) The Port provides the City with (a) a Development Ready Certificate or (b) Ecology's approval of the Port's Construction Completion Report pursuant to WAC 173-340-400 (8) for the Georgia-Pacific West Site Cleanup.

b) **Complete Cornwall Beach Park.** The City will complete Cornwall Beach Park by the end of Phase 3.

c) **Whatcom Waterway Park Extension.** The City will design, permit and construct the extension of Whatcom Waterway Park, provided the following conditions are met:

(i) The Port provides the City with (a) a Development Ready Certificate or (b) Ecology's approval of the Port's Construction Completion Report, pursuant to WAC 173-340-400(8) for the Georgia-Pacific West Site Cleanup or Ecology's approval of the Port's post-construction Interim Action Completion Report for the area necessary for construction of Whatcom Waterway Park; (c) in the event Whatcom Waterway Park will be built as part of an Interim Action, an executed amendment to the GP West Agreed Order incorporating Whatcom Waterway Park in an attached Interim Action Plan pursuant to WAC 173-340-430(7).

(ii) The Port provides the City with (a) a Development Ready Certificate, or (b) Ecology's approval of its Construction Completion Report pursuant to WAC 173-340-400 (8) for the Whatcom Waterway Site Phase 1 Site Cleanup.

5. **Developers Option to Construct.** If the City or the Port has not yet delivered a Facility required in this section, a Developer may construct the facility and receive a Transportation Impact Fee credit pursuant to the Development Agreement. The Port may, in consultation with the City, establish and administer a system to assess other developments a "latecomer's charge" to fairly compensate the developer or the Port for construction of the required Facility.

SECTION D

PROPERTY TRANSFERS.

6. **City Vacation of Existing Rights-of-Way, License to Use City Rights-of-Way and Transfer of City Fee Owned Streets.** The City has existing rights-of-way and fee owned streets within the Waterfront District, portions of which are no longer consistent with or required by the City Sub-Area Plan. See Exhibit H, "Street Vacations, Licenses and Transfers". The City Sub-Area Plan has identified property owned by the Port that is needed for Arterial Streets as depicted in Exhibits E, F and G. The Port and the City have each independently analyzed the property transfers occurring pursuant to Sections 6 and 7 of this Agreement and agree that the City's transfer of property to the Port (Section 6) and the Port's transfer of property to the City (Section 7) herein are equitable and have determined that each entity is receiving true and full value as that term is defined in RCW 43.09.210, relevant case law and attorney general opinions. In the event the Port does not dedicate the square footage required in Phase 1 depicted on Exhibit E, the Port shall remit to the City an amount equal to the undedicated square footage multiplied by Twenty-Five Dollars (\$25.00) per square foot.

6.1 Vacation of Certain Rights-of-Way. Pursuant to BMC 13.48 and consistent with the City Sub-Area Plan, the Port has petitioned for vacation of certain City rights-of-way within the Waterfront District. The process set forth in BMC 13.48 and RCW 35.79 has been completed. The City has approved the vacation ordinances concurrent with the approval of this Agreement except for certain rights-of-way within state owned harbor areas. These rights-of-way cannot be vacated by City ordinance until DNR approves petitions for these rights-of-way pursuant to the procedures and criteria set forth in RCW 79.125. The City and Port will reasonably pursue the required approval. The consideration for this transfer is included in the true and full value determination set forth above.

6.2 License to Use City Rights-of-Way. Certain City rights-of-way for platted streets run through: (i) the Port's Bellingham Shipping Terminal on property owned by the Port and property managed by the Port under a port management agreement with the Washington Department of Natural Resources; and (ii) the Port owned marine trades area along the Whatcom Waterway. Some of these City rights-of-way contain City and franchise utilities. These City rights-of-way will be licensed to the Port under the terms and conditions of an interlocal agreement, which is anticipated to be completed in the next sixty days. The interlocal agreement will provide the ability of the Port and Port tenants to utilize the City rights of way consistent with the protection of and access to the City and franchise utilities. In the interim the current status quo use of these City rights of way will continue. The consideration for this license is included in the true and full value determination set forth above.

6.3 Transfer of City Fee Owned Streets. Certain City fee owned streets are no longer consistent with or required by the City Sub-Area Plan. The City has completed the notification and hearing required under its surplus process codified in BMC 4.84 and RCW 39.33 and 43.09.210. The City approval of the surplus of these streets and execution of deeds, attached hereto as Exhibit K, for such streets has occurred concurrently with the approval of this Agreement. The consideration for this transfer is included in the true and full value determination set forth above.

7. **Port Dedication of New Rights-of-Way and Slope Easements.** Pursuant to RCW 53.20, the Port has completed the notifications and hearing required to amend its applicable Comprehensive Scheme of Harbor Improvements and surplus procedure to allow transfer of the rights-of-way and slope easements contemplated in this Agreement consistent with the terms of this Agreement. The consideration for this transfer is included in the true and full value determination set forth in Section 6 above.

7.1 Identification and Timing of Dedications. These dedications and easements shall be identified on the Subdivision Plat or Binding Site Plan for each phase of development and shall occur within six (6) months after the City has secured full funding for the construction of the Arterial Street in its adopted Transportation Improvement Plan or Capital Facilities Plan and upon written notification by the City. However, the City may reasonably require dedication sooner if required by certain grant applications or funding agencies. The City may, at its sole discretion, delay design, and/or construction of Arterial Streets if the Port fails to dedicate rights-of-way in a timely manner. Any and all applicable Institutional Controls shall be recorded on a restrictive covenant simultaneous with the recordation of the deed or easement.

7.2 Port Retention of Subsurface Use. The Port may reasonably retain the right to construct structures such as parking structures or pedestrian tunnels underneath the right-of-way that do not materially interfere with public use of the right-of-way.

8. **Park Land Dedication.** Pursuant to RCW 53.20, the Port has completed the notifications and hearing required to amend applicable Comprehensive Scheme of Harbor Improvements and the surplus procedure to allow the Port to dedicate the necessary Port Properties to the City for Parks as outlined in **Exhibit I** "Park Land Dedications." A portion of the Breakwater Trail crosses over Port managed state owned aquatic lands. This portion of the trail will be transferred to the City subject to approval of the DNR and/or consistent with the Port Management Agreement. The Port and the City have each independently analyzed the property transfers occurring pursuant to this Section 8 of this Agreement and agree that the Port's dedication of property to the City and the Park Impact Fee Credit received by the Port for such dedications as outlined below is an equitable exchange and both parties have determined that each entity is receiving true and full value as that term is defined in RCW 43.09.210, relevant case law and attorney general opinions.

8.1 Identification and Timing of Dedication. Park Land will be dedicated to the City in the form of an exclusive permanent public access easement for use as a park or fee simple Unencumbered statutory warranty deed unless otherwise specifically noted in Exhibit I as "Industrial Access Area." The Port shall have the right to temporarily close public access to the Industrial Access Area as needed, to support industrial or wharf related activities, including but not limited to cargo, moorage, material deliveries, vessel repairs, wharf maintenance and associated equipment and personnel movement with reasonable prior notice (either per event or series of events) to the City. At the time of dedication of Port Property, the Port Property shall have been remediated under MTCA to a level that is protective of human health and the environment for Park (as defined in the definition above) uses. Dedications shall be identified on the Subdivision Plats or Binding Site Plans for each phase of development and shall occur within six (6) months after the City has full funding for the construction of the first phase of the Park in its adopted Capital Facilities Plan and upon written notification by the City. However, the City may require dedication prior to receiving full funding if required by certain grant applications or funding agencies. In addition, the City may require dedication of the I & J Waterway Park and Log Pond Shoreline Trail at any time during Phase 3. At the time of dedication of the Port Property, the Port shall have completed a Site Cleanup such that the Port Property is Development Ready for a Park. Any and all applicable Institutional Controls shall be recorded on a restrictive covenant simultaneous with the recordation of the deed or easement. The City may, at its sole discretion, delay design, and/or construction of Parks if the Port fails to dedicate Port Property in a timely manner.

8.2 Credit for Park Impact Fee. The Port shall receive a Park Impact Fee Credit ("*Credit*") for the Port Properties dedicated to the City for public parks in accordance with BMC Chapter 19.04. This Credit is retained by the Port in perpetuity in the form of an exemption from the Park Impact Fee for development of a given number of housing units within the Waterfront District by the Port or Port's successors as outlined in the Development Agreement. The calculations of credit will be based on: (1) the appraised square foot value of the Port Properties as described below, (2) the total square footage dedicated to the City, and (3) the City's park impact fee rate of \$3,524 for a multi-family unit. However, the park impact fee credit shall not be

granted to the Port for purposes of applying such credit to Projects until the Port Property is dedicated.

a) For Port Properties within the Downtown Waterfront Area and outside of the 50' shoreline setback, the following square footage value shall be used: \$25 (twenty-five) per square foot.

b) For Port Properties within the Marine Trades and outside of the 50' shoreline setback, the following square footage value(s) shall be used:

- ASB Breakwater Trail shall be \$2.50 (two dollars and fifty cents) per square foot.

- Marina Park shall be \$33 (thirty-three dollars) per square foot so long as the property is adjacent to a Marina.

- Other properties within the Marine Trades Area shall be \$8 (eight dollars) per square foot.

- There shall be no value associated with property retained for use by the Port of Bellingham or their successors in interest needed access the Marina.

c) For Port Properties within the Log Pond Area and outside of the 50' shoreline setback, the following square footage value(s) shall be used: \$8 (eight dollars) per square foot. There shall be no value associated with Port Properties retained for use by the Port or their successors in interest which are required for access to Whatcom Waterway or the Marina.

d) For Port Properties within the 50' shoreline setback, as measured from Ordinary High Water Mark upland 50', shall be \$2 (two dollars) per square foot.

8.3 Total Square Footage Dedicated to the City. The Port shall dedicate properties as generally depicted on Exhibit H, provided total acreage shall not be less than the totals provided below per planning area. The Port may dedicate different configurations than depicted on Exhibit H at the sole discretion of the City.

a) Downtown Waterfront Area: 4.64 Acres

b) Marine Trades Area: 9.82 Acres

c) Log Pond Area: 4.74 Acres

9. Site Conditions Required for Park Land and Rights-of-Way Dedication. Prior to any property dedication, the Port shall remove all Industrial Artifacts, except for the Historic Icons, as depicted on Exhibit J, in advance of the construction of particular Arterial Streets and Parks, such that the Industrial Artifacts will not be an impediment to such Facilities, as mutually determined by the Port and the City. As of the date of this Agreement, the City has not determined whether or not it will elect to retain the Historic Icons and anticipates that such a decision will be made following the development of a park master plan for Commercial Green Park. In the event the City determines that it does not wish to retain the Historic Icons, it will promptly notify the Port in writing of such decision. In the event the Port desires to demolish a Historic Icon, it shall notify the City in writing. If the City has not yet made a determination about retention of the Historic Icon, it shall notify the Port of a retention decision within six (6) months of receipt of the Port's notice of desire to demolish. Given that the Waterfront District is a Brownfield Site, it is anticipated that the Port and the City may encounter underground obstructions or unknown conditions. The cost of constructing the Arterial Streets and Parks shall include actions necessary to address underground conditions provided the Port has delivered the property in a Development Ready condition. All properties dedicated by the Port to the City shall be above the Ordinary High Water Mark.

10. **Construction Staging.** To the extent property is available, the Port shall make it reasonably available to the City for construction staging pursuant to an access agreement for no additional cost.

11. **City Control of Design and Use of Parks.** The City shall seek reasonable input from the Port and any Developers, with property adjacent to the Park, concerning the park design with the City retaining decision on the final design. The final design shall be consistent with the Sub-Area Plan and the uses contemplated therein. The City shall be responsible for the policies governing the use of the Parks which shall be consistent with the Sub-Area Plan, the uses contemplated therein, and City-wide park use policies.

12. **Use of Development Ready Certificate.** If the Port chooses to submit a Development Ready Certificate and it later turns out that it had not completed the Cleanup or Interim Action to Ecology's satisfaction, the Port shall perform whatever work is necessary, at its sole expense, to correct the deficiencies Ecology has identified, including all costs associated with repairing or replacing City installed infrastructure and shall indemnify the City for any and all claims related to those deficiencies. Further, in the event the Development Ready Certificate was submitted to the City upon completion of an Interim Action, the Port shall be responsible for all costs associated with completing the Cleanup Action and will indemnify the City for all related claims, including but not limited to, repairing and replacing City installed infrastructure.

13. **Port's Liability for Historical Contamination.** Except as otherwise provided herein and to the extent allowed by law, the Port will indemnify the City and the Port will be solely responsible (as between the City and the Port only) for any environmental liability relating to historical environmental conditions and/or sources on land dedicated by the Port to the City for rights-of-way or Parks.

13.1 **Violation of Interim Institutional Controls or Institutional Controls.** To the extent allowed by law, the City will indemnify the Port and the City will be solely responsible (as between the City and the Port only) for any environmental liability resulting from any violation (by anyone other than the Port) of Interim Institutional Controls or Institutional Controls on the land dedicated by the Port to the City for Arterial Streets or Parks.

13.2. **City Responsibility During Construction of City Facilities.** The City shall be liable to properly remove, treat or dispose of contaminated soils and contaminated groundwater generated during the course of construction of the Arterial Streets or Parks by the City; however, the City will not be liable for Remedial Action associated with the contaminated soil or groundwater or for any hazardous substances not located in the area of construction of the Arterial Street or Park being constructed.

13.3 **Management of Contaminated Groundwater.** The proper management of groundwater is an important component of the Site Cleanups and redevelopment of the Waterfront District. During Site Cleanups and redevelopment construction, upon the approval of the Public Works Director and the Department of Ecology and any other necessary state or federal agencies and pursuant to such conditions as the Public Works Director requires, including rate charges, the Port may convey or discharge ground water into the City's sewer system. All such connections shall be temporary. The Port will, to the extent permitted by law,

indemnify the City and hold it harmless against any claims or suits arising from the City's acceptance of the groundwater under this provision, unless and to the extent the claim or suit arises from the City's negligence.

14. Payment In Lieu of Taxes by an Entity Not Subject to Property Taxes.

14.1. Sale of Port Property. Except as provided herein, Port Property that is sold within the Waterfront District shall be transferred with a deed restriction that provides that if the property qualifies for an exemption from property taxes during the first thirty years after its sale by the Port, the property owner must remit payment to the City in lieu of property taxes in an amount equal to the amount that would be due were the entity not exempt from such taxes. The payments shall be remitted semi-annually within thirty (30) days from the date of the City's invoice for such amount on or about April 1st and October 1st.

14.2. Lease of Port Property. Except as provided herein and for the first thirty years of any leasehold, if the Port leases Port Property to an entity which qualifies for a leasehold excise tax exemption, the Port will remit payment to the City an amount equal to that portion of the leasehold excise tax that the City would have received had the tenant not be exempt. The payments shall be made semi-annually within thirty (30) days from the date of the City's invoice for such amount on or about April 1st and October 1st.

14.3. Credits and Alternative Payment Methods. The City may provide credit for property tax payments or leasehold tax payments occasioned by a transaction which brings the tax exempt entity to the Waterfront District. By way of example, a tax exempt entity could sell tax exempt property within the City and move to the Waterfront District. In the event an entity not subject to property taxes prefers to remit the payment in lieu of taxes to the City in an alternative manner, whether through a different payment schedule or with consideration of equal value, it may negotiate with the City for such alternative. Such alternative payment method must be approved by the City to be effective.

14.4. Large Sale or Transfer. If the Port sells or leases more than six (6) acres of Port Property to a non-property tax paying entity, it will constitute a Major Modification.

SECTION E
PROCESS FOR MANAGING THE WATERFRONT REDEVELOPMENT PROJECT.

15. City and Port Management Resources. It is recognized that the successful implementation of this Agreement and the successful redevelopment of the Waterfront District will require an ongoing and significant commitment by the Port and the City. The Port and the City will each devote the resources necessary to implement the actions set forth in this Agreement and achieve a successful Waterfront District redevelopment. The following subsections set forth the current understanding of what will likely be required; however, the Port and the City will work cooperatively to refine the commitments to management as the redevelopment continues.

16. **City Financial Commitment.** Prior to the date of this Agreement, the City has invested over \$19,817,852.25 for planning, Site Cleanups, property acquisitions design and construction of Facilities and related expenditures within the Waterfront District. To meet its obligations outlined in this Agreement, the City shall commit an additional \$25,000,000 in local funding through 2037. Further, to meet its obligations, the City will rely upon receiving \$1,000,000 per year for twenty-five years (25) from the State of Washington LIFT program (for which the City and Port have pledged their tax revenues). The City also expects to rely upon receipt of additional state and federal grants to help offset costs incurred by the City as anticipated under this Agreement.

17. **Port Financial Commitment.** Prior to the date of this Agreement, the Port has invested over \$32,511,309 for planning, Site Cleanups, property acquisitions, demolition, permit and design of Facilities, capital maintenance and related expenditures within the Waterfront District, including \$22,916,818 used to purchase the AIG Policy from AIG Environmental. It is anticipated that the AIG Policy will be available to pay for 50% of the anticipated costs of the cleanups required under this Agreement. To further meet its obligations outlined in this Agreement, the Port has secured a commitment from the Department of Ecology to fund the other 50% of the anticipated costs of the cleanups required under this Agreement.

18. **Staffing.** The City and Port shall each assign staff and resources as appropriate to ensure successful implementation of this Agreement. Project management teams for the Waterfront Redevelopment Project will provide support in a variety of subject areas, including, but not limited to, project planning and analysis of concept feasibility, financial and budget accounting, design, permitting and construction management and agency oversight, and public and media communications. In this regard, the City and Port agree to designate a Project Coordinator. The Project Coordinators will meet on at least a quarterly basis to coordinate redevelopment activities in the Waterfront District. Topics covered in these meetings may include:

a) **Budget Planning:** Confirm priorities and schedules for Remedial Actions, Arterial Streets, and Parks. Develop budget recommendations to respective entity.

b) **Development Performance:** Evaluate the pace of development, including square footage by area, mix of uses, affordable housing inventory, and related development capacity.

c) **Project Status:** Provide updates on current projects in the Waterfront District and define next appropriate infrastructure needs and cost estimates.

d) **Monitor Facility Triggers:** Monitor status of Facility Triggers to ensure timely performance by the Port and the City.

e) **Outreach:** Develop priorities for legislative outreach and strategic policy issues for executive leadership and elected officials. Identify any significant budget, technical, or political issues that require attention.

19. **Development Monitoring.** The Port and the City shall cooperate in collecting appropriate data to aid in the evaluation of the Waterfront District.

19.1 Data Use. Among other uses, the data derived from monitoring and experience, including required biennial traffic monitoring, environmental clean-up progress, the pace of physical and economic development, the mix of uses, the success of mitigating measures, and public input and other analyses will be used by the Project Coordinators to propose amendments to this Agreement, including any needed changes in the sequence of Arterial Streets.

19.2 Two Year Review. Every two years, the Port and the City will jointly scope and conduct a study of the economic impact of the Waterfront District, including data concerning employment, wages, including living wages, and, if possible, benefits.

20. **Biennial Traffic Monitoring and Report**. The Port, at its sole cost and expense, shall be responsible for conducting the Biennial Traffic Monitoring program and submitting the Biennial Traffic Monitoring Report to the City's PAO Responsible Official pursuant to Section VII. B of the Planned Action Ordinance.

21. **Future Phases**. The Sub-Area Plan and **Exhibit B** set forth a plan for the later phases of the development of the Waterfront District. It is anticipated that (1) Phase 4 and Phase 5 will not begin for a significant period of time, (2) the development of the Facilities may require, as yet, unidentified funding sources, (3) additional investments in, as yet, unidentified, Facilities by both parties, may be needed in the future to support continued redevelopment of the Waterfront District, (4) Phases 4 and/or 5 will require an amendment of this Agreement, and (5) the City and the Port may likely agree to changes in the Sub-Area Plan that reflect the development to that date and the marketplace conditions. Therefore, the description of the actions in Phase 4 and Phase 5 are predicated on a future agreement between the Port and the City, potential addendum to the EIS, and identification of funding sources, including state and federal funding sources.

22. **Budget Planning**. Within this long-range perspective, financial commitments will be made on an annual basis, with the City's budget to be adopted by the City Council and the Port's budget to be adopted by the Port Commission in each calendar year. The updated budget will include project and budget estimates for the next six-year period, with an authorized budget for specific activities in the following calendar year.

23. **Coordination of Funding Efforts**. The Port and City will jointly prioritize and pursue outside funding assistance from federal, state, and other sources to further the goals of this Agreement and the specific projects outlined in the Six-Year Transportation Improvement Program and Capital Facilities Plan for the City and the Scheme of Harbor Improvement for the Port.

24. **Habitat**. In addition to the habitat benefit derived from the Remedial Actions contemplated herein, the Port and City agree to jointly prioritize and pursue outside funding for the habitat restoration opportunities delineated in Figure 3-2 of the Waterfront District Sub-Area Plan. The Port and City will jointly cooperate to grant or acquire any easements, licenses or other authorizations necessary to implement habitat projects. Where feasible, habitat restoration and remediation will be integrated.

25. **Utility Master Plan.** The City is currently undergoing a utility master planning process to determine the size and location of City Utilities and private utilities within the Waterfront District. As part of that project, the City will analyze the feasibility of Waterfront District scale utilities, including, but not limited to, non-potable water and energy systems. The Port, as the representative of future developers, will be invited to be a key stakeholder in the development of the Utility Master Plan.

26. **Cooperation with Regulatory Agencies.** The Port and City will cooperate and support one another's efforts with regulatory and funding agencies to achieve the goals of this Agreement.

27. **Payment for Installation of Arterial Streets and Parks When Incorporated Into a Site Cleanup.** When an Arterial Street or a Park is incorporated into a Site Cleanup, the Port and the City will reasonably cooperate to allocate the costs such that the Port pays the portion that is allocated to the Site Cleanup.

28. **Subsequent Ecology Actions.** In the event Ecology: (i) requires additional Site Cleanup at a site for which a Development Ready Certificate has been provided by the Port to the City; or (ii) a Construction Completion Report approval has been provided to the City by the Port which damage or destroy a Facility that the City constructed, the City shall not be liable for any costs associated with reconstruction of such Facility.

SECTION F **GENERAL TERMS**

29. **Modifications to this Agreement.** It is anticipated that over the life of this Agreement there will be Minor Modifications and Major Modifications. Minor Modifications may be agreed to in writing by the project management teams. Any Major Modifications to this Agreement will require written approval by both the City Council and Port Commission. The Port and the City will consider all proposed modifications Major Modifications unless both the Port and City project management teams determine that the proposed modification is a Minor Modification. Except as otherwise provided herein, this Agreement and portions hereof shall not be modified or amended except in writing signed by the City and the Port.

29.1 **Agreed Modification – Construction of Facilities.** The City and a Developer or the Port and a Developer may agree to enter into a separate development agreement to modify conditions or Facility Triggers and to provide greater clarity regarding certainty and timing; however, such an agreement shall not modify or amend this Agreement unless the modification procedure above is concluded.

29.2 **Construction of Facilities Out of Sequence.** The City and the Port intend to remain flexible over the years to modify the phased approach as needed to respond to market conditions and funding opportunities. The City and the Port may reasonably and mutually agree to construct Facilities referred to in this Agreement out of sequence in Phases 1, 2, and 3 to respond to grant and other funding opportunities or the needs of early phase development projects. A Major Modification of this Agreement will be required to construct a Facility planned for Phase 4 or Phase 5, if obligations to construct Facilities in Phases 1, 2, or 3 are outstanding.

30. **Agreement Replaces New Whatcom Interlocal, as Amended.** This Agreement, in combination with the Development Agreement, hereby replaces and supersedes the commitments and obligations made between the Port and City under the New Whatcom Interlocal, as amended.

31. **Term of Agreement.** The term of this Agreement is twenty-five (25) years or until the completion of Phase 3, whichever occurs later. Provided, Phase 3 must begin within the twenty-five year period. Beginning of Phase 3 is defined by reaching 1,000,000 square feet of new development south of Whatcom Waterway.

32. **Applicable Law.** This Agreement shall be governed by and be interpreted in accordance with the laws of the State of Washington.

33. **Severability.** If any provision of this Agreement is determined to be unenforceable or invalid by a court of law, then this Agreement shall thereafter be modified to implement the intent of the parties to the maximum extent allowable under law. If this Agreement for any reason is determined to be invalid, then the zoning of the property may revert to the zoning as it existed on the date this Agreement was recorded.

34. **Further Good Faith Cooperation.** Each party hereto shall cooperate with the other in good faith to achieve the objectives of this Agreement. The parties shall not unreasonably withhold, condition or delay requests for information, approvals or consents provided for, or implicit, in this Agreement.

35. **No Presumption Against Drafter.** This Agreement has been reviewed and revised by legal counsel for all parties and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

36. **Notices.** All communications, notices, and demands of any kind which a party under this Agreement is required, or desires to give to any other party, shall be in writing and be either: (1) delivered personally; (2) sent by facsimile transmission with an additional copy mailed first class; or (3) deposited in the U.S. mail, postage prepaid, and addressed as follows:

City: City of Bellingham
Mayor of Bellingham
210 Lottie Street
Bellingham, WA 98225

Port: Port of Bellingham
Executive Director
Port of Bellingham
1801 Roeder Avenue
Post Office Box 1677
Bellingham, WA 98227

Notice by hand delivery or facsimile shall be effective upon receipt. If deposited in the mail, notice shall be deemed received 48 hours after deposit. Any party at any time by notice to the other party may designate a different address or person to which such notice shall be given.

37. **Waiver**. No failure by any of the foregoing parties to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, agreement, term or condition. Any party hereto, by notice, and only by notice as provided herein may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party hereto. No waiver shall affect or alter this Agreement, and each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

38. **Dispute Resolution**. In the event of any dispute as to the interpretation or application of the terms or conditions of this Agreement, the Port and the City, through their Project Coordinators, shall meet within ten (10) days after the receipt of a written request from any party for the purpose of attempting in good faith to resolve the dispute. Such a meeting may be continued by mutual agreement to a date certain to include other persons or parties, or to obtain additional information. Either Project Coordinator may declare an impasse. Thereafter, the following procedure shall be utilized:

38.1 **Elevation to Mayor and Executive Director**. The Mayor and the Executive Director shall meet and resolve the dispute. If either the Mayor or the Executive Director declares an impasse then:

38.2 **Mediation**. In the event of a Mayor/Executive Director impasse, and prior to commencing any litigation, except for a request for a temporary restraining order and preliminary injunction, the parties shall first attempt to mediate the dispute. The parties shall mutually agree upon a mediator to assist them in resolving their differences. If the parties are unable to agree upon a mediator, the parties shall request from the Seattle office of JAMS a list of mediators experienced in matters pertaining to this Agreement. Each party may strike one name from the list until one name remains. A flip of a coin shall determine which party strikes the first name. Any expenses of the mediator shall be borne equally by the parties. However, each side shall bear its own costs and attorney fees arising from participation in the mediation.

38.3 **Waiver of Jury Trial and Jurisdiction**. Each party waives any right to a trial by jury in any action or proceeding to enforce or defend any rights under or relating to this Agreement or any amendment, instrument or other document delivered in connection with this Agreement.

38.4 **No Third Party Beneficiaries**. There are no third party beneficiaries of this Agreement.

39. **Entire Agreement**. This Agreement, including the recitals, definitions, and exhibits, represents the entire agreement of the parties with respect to the subject matter hereof. There are no other agreements, oral or written, except as expressly set forth herein. This Agreement supersedes all previous understandings or agreements between the parties concerning the subject matter of this Agreement.

Approved and executed in an open public meeting by the Port of Bellingham this _____ day of _____, 2013.

PORT OF BELLINGHAM

Commissioner

Commissioner

Commissioner

CITY OF BELLINGHAM

Kelli Linville
Mayor

Date: _____

ATTEST:

Finance Director

Date: _____

APPROVED AS TO FORM:

Office of the City Attorney

Exhibit A: Waterfront District Boundary

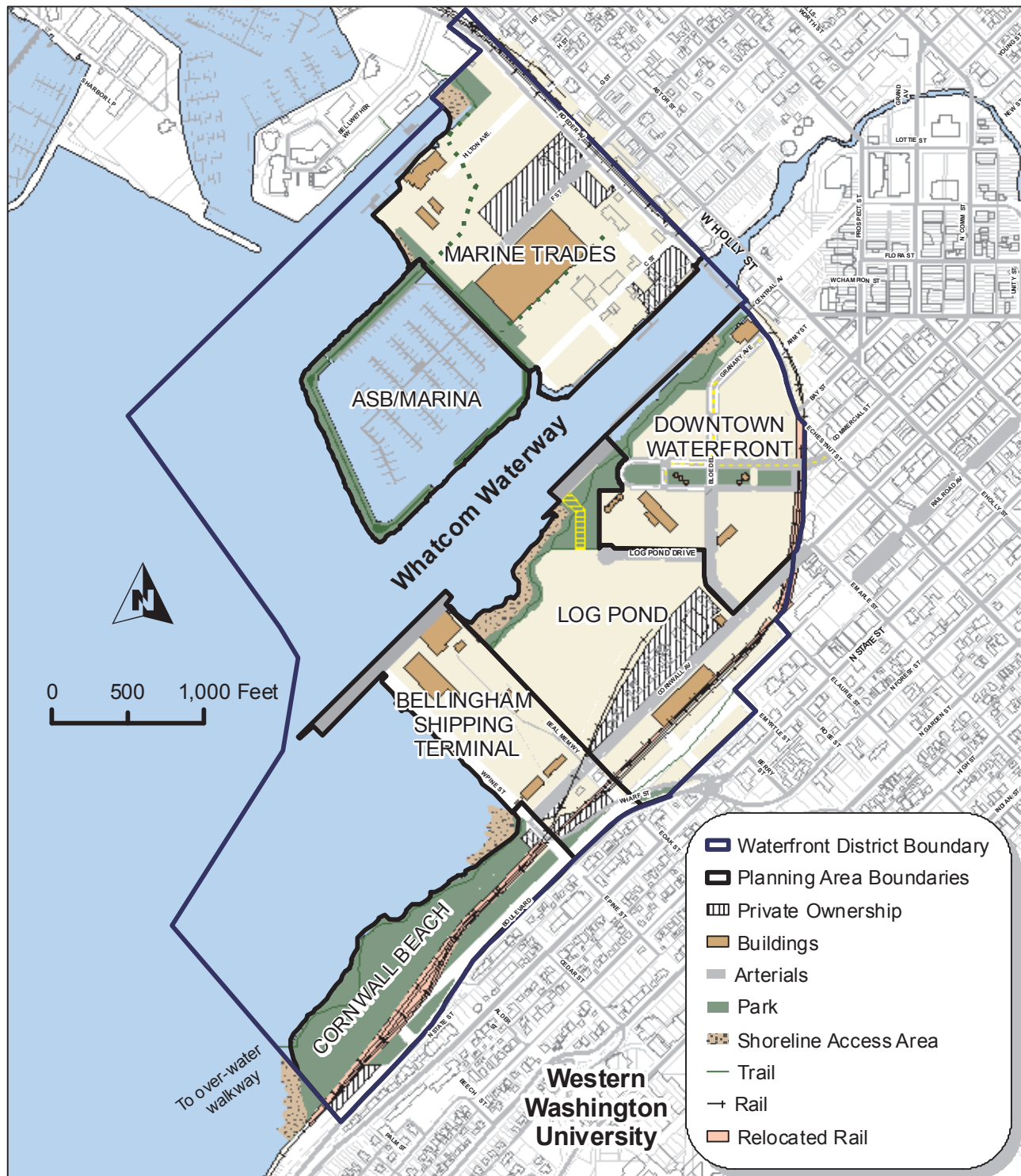


Exhibit B.1: Waterfront District Phasing Maps

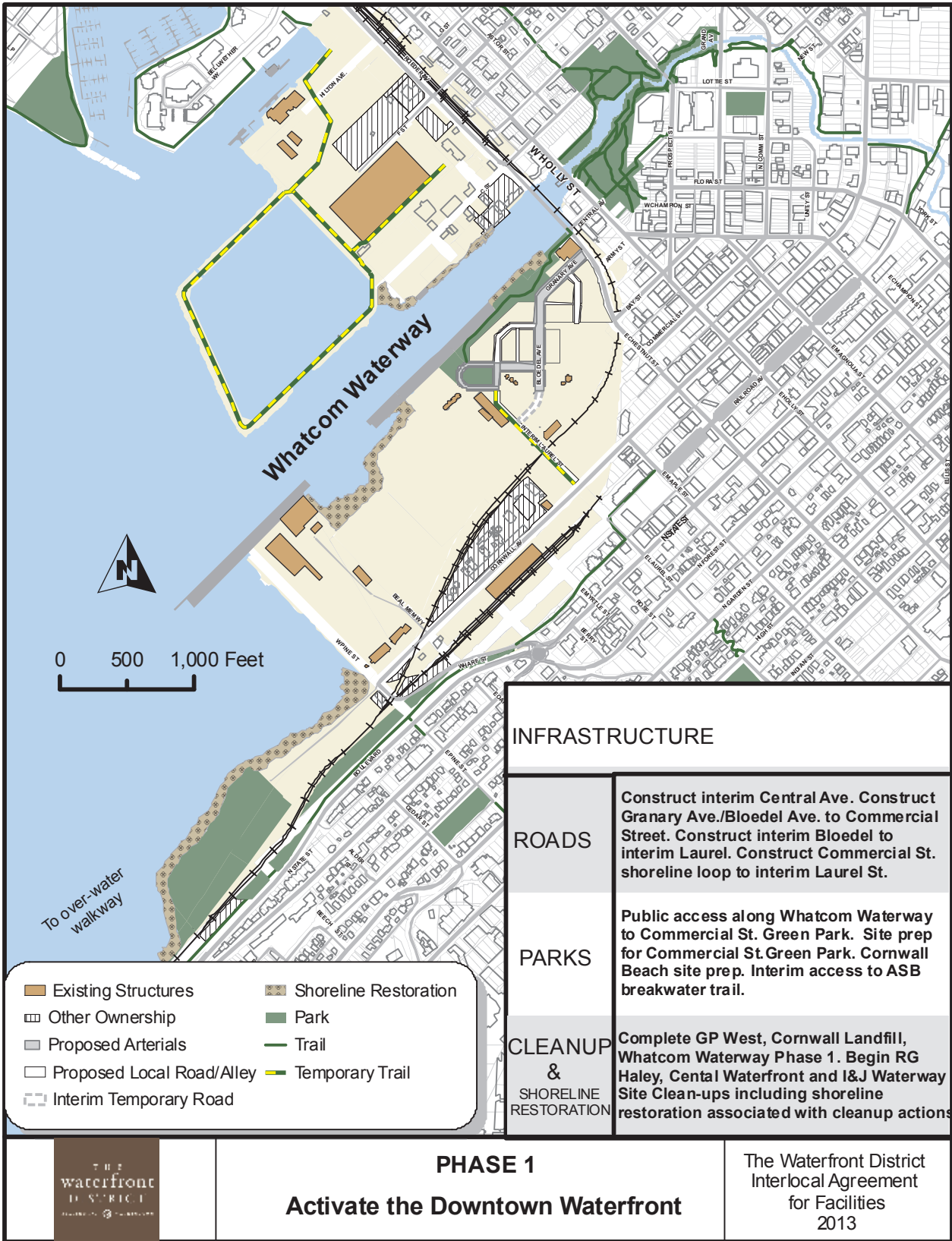


Exhibit B.2: Waterfront District Phasing Maps

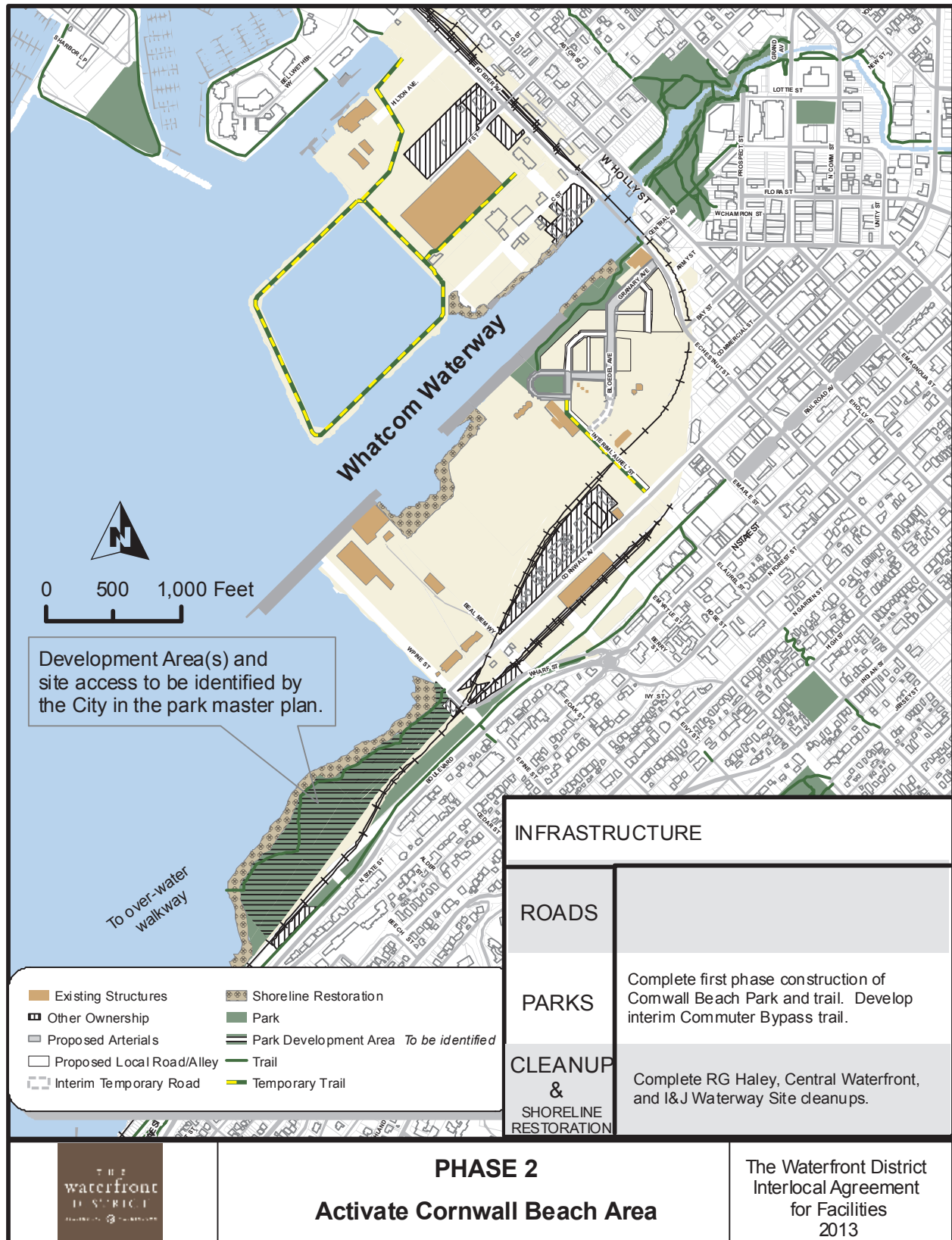


Exhibit B.3: Waterfront District Phasing Maps

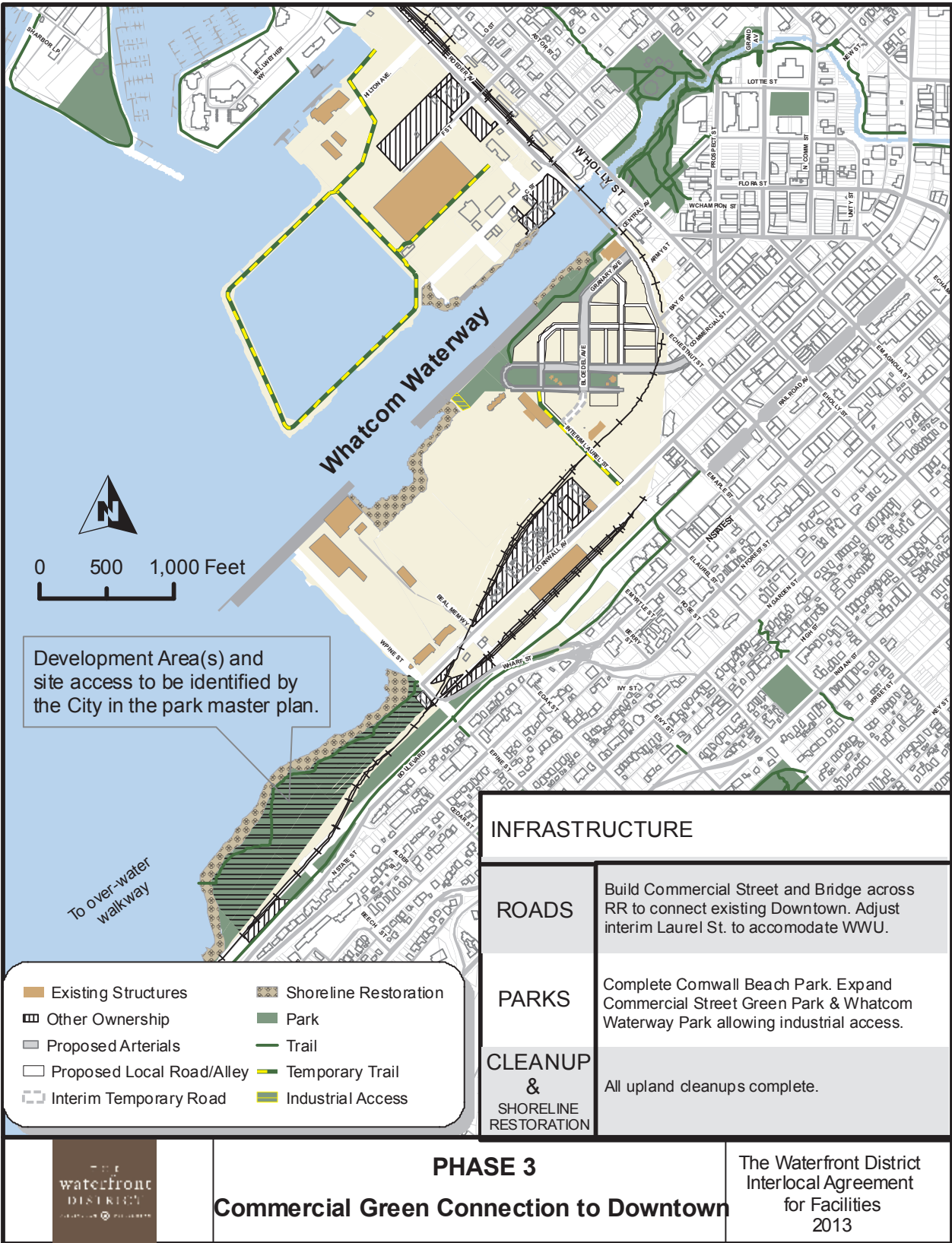


Exhibit B.4: Waterfront District Phasing Maps

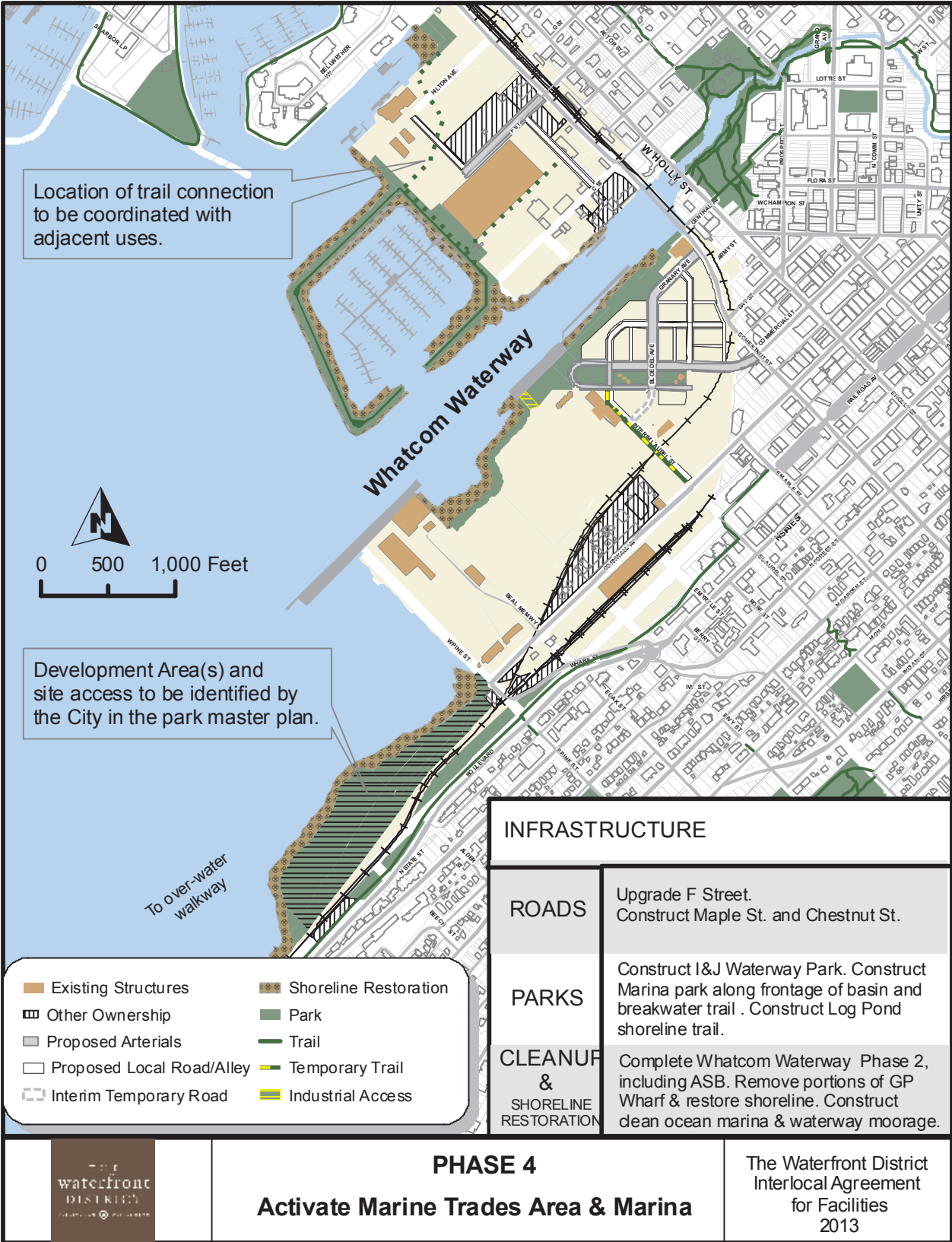


Exhibit B.5: Waterfront District Phasing Maps

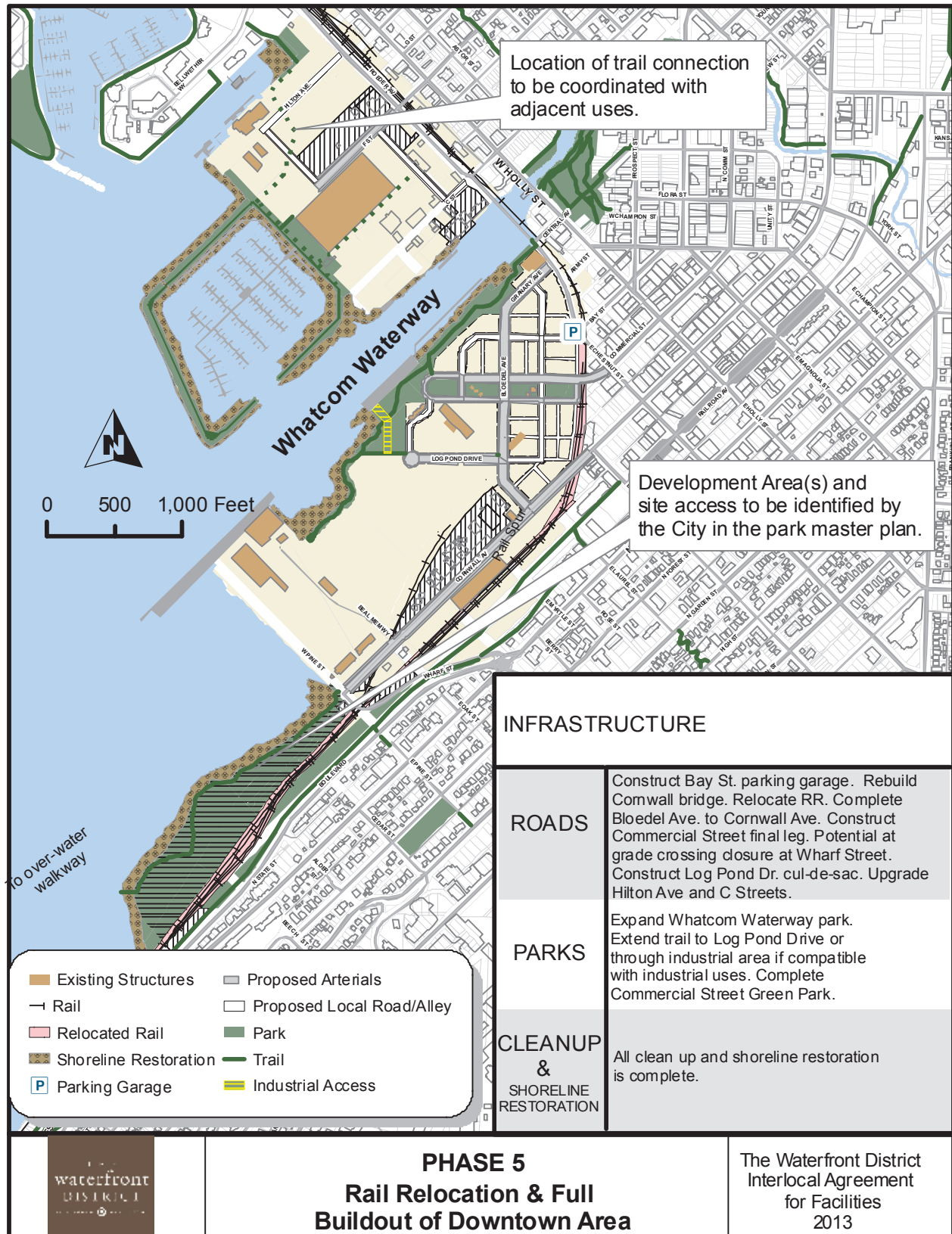


Exhibit C: Port Properties

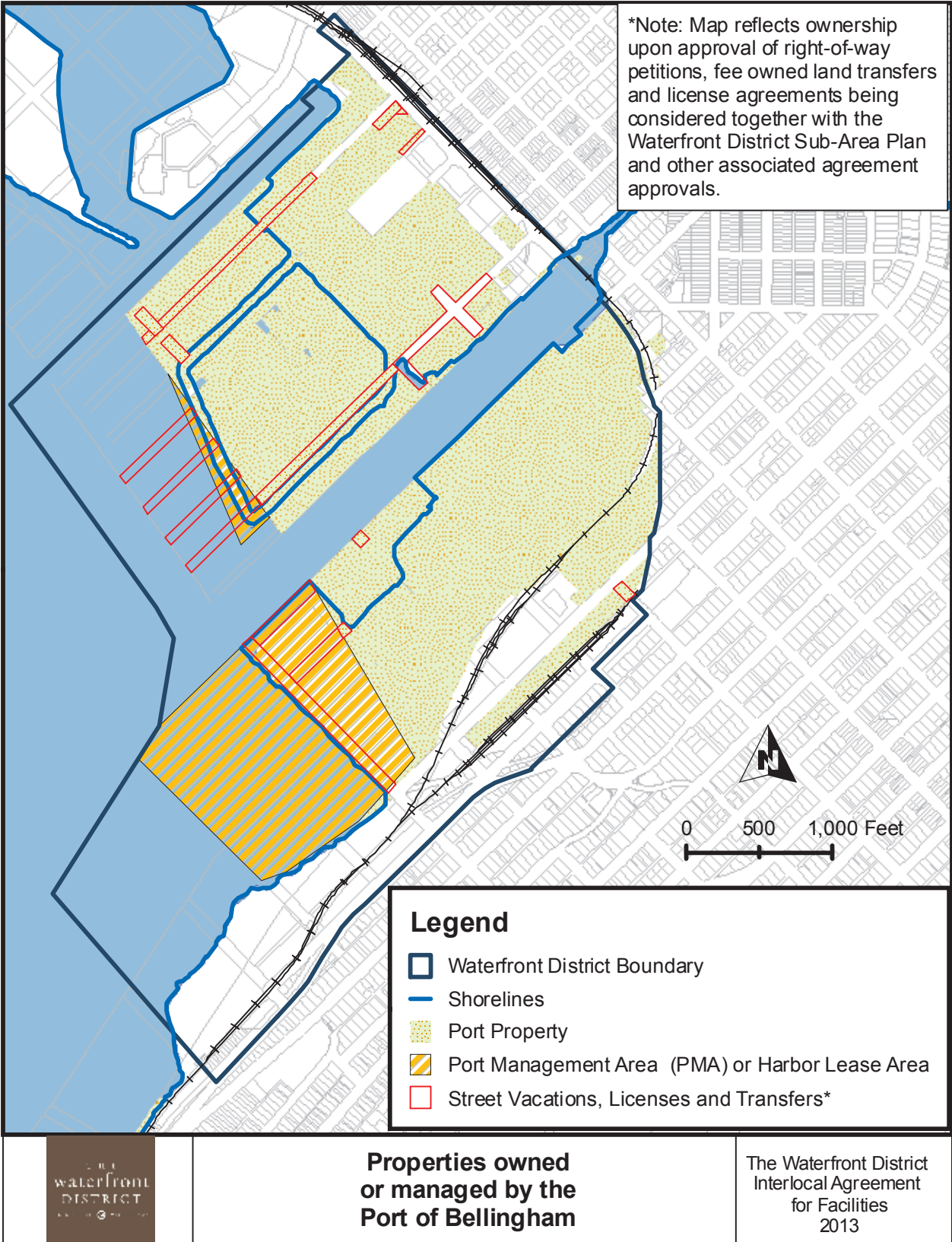


Exhibit D: MTCA Site Locator Map

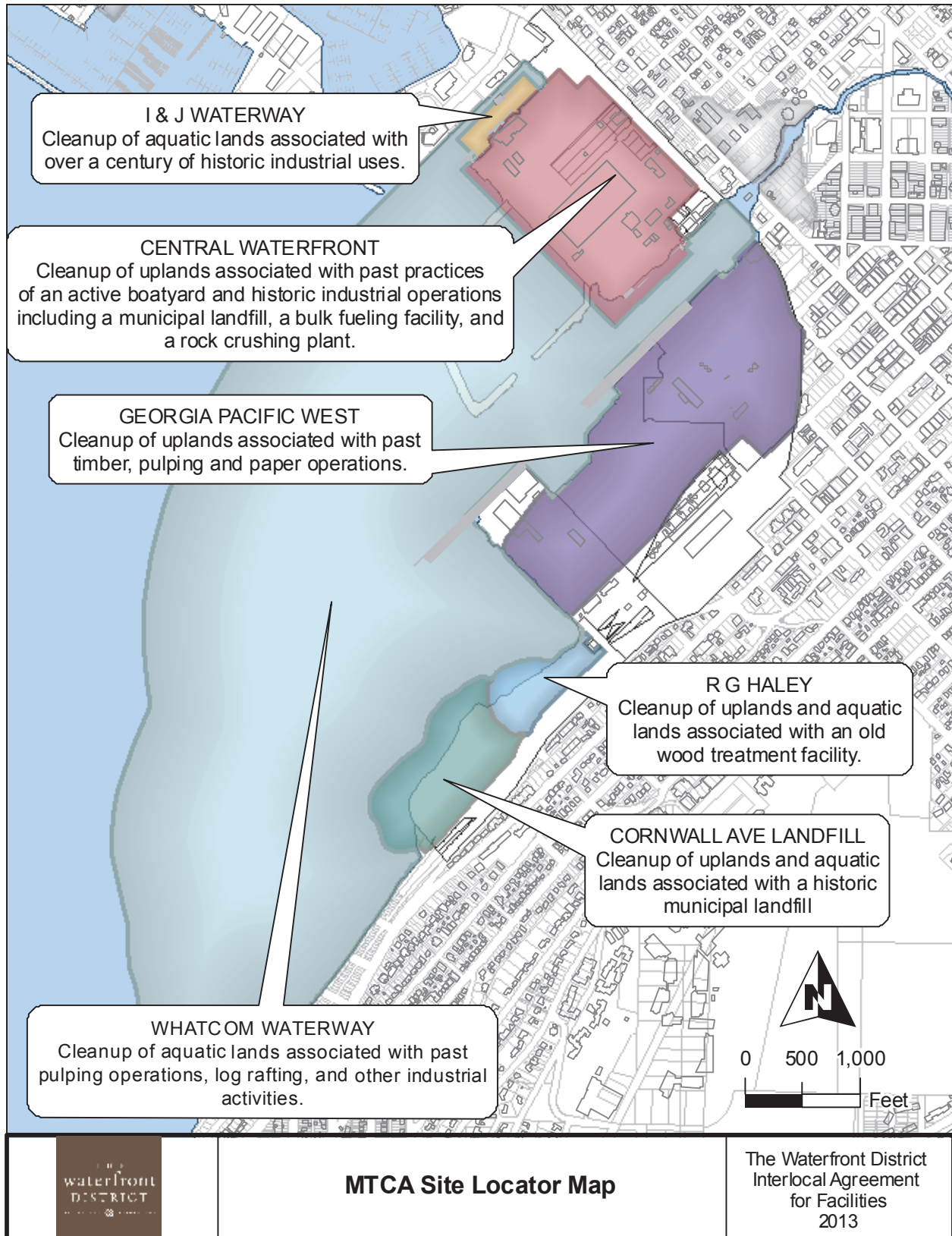


Exhibit E: Phase 1 Obligations for Arterial Streets & Parks

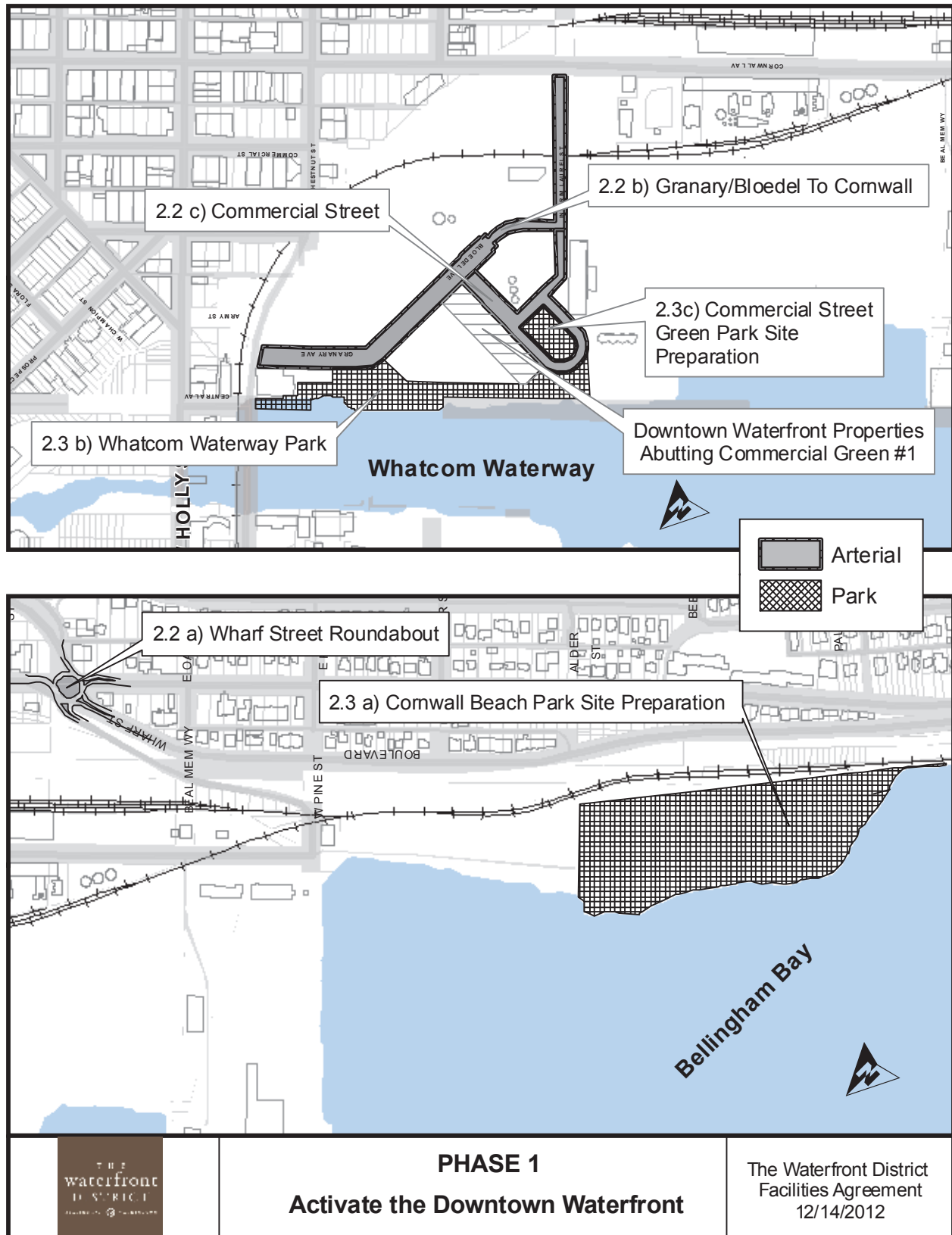


Exhibit F: Phase 2 Obligations for Arterial Streets & Parks

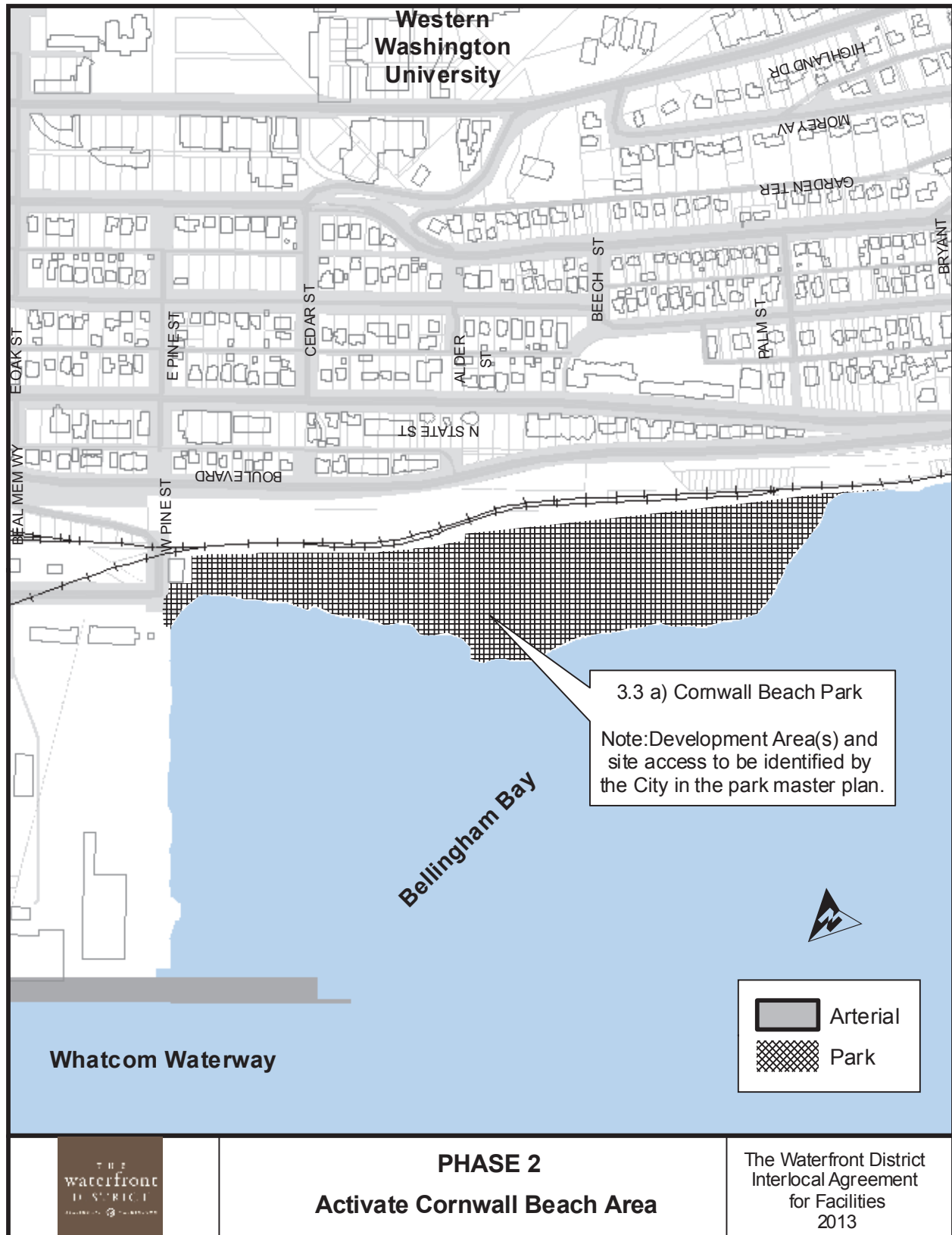


Exhibit G: Phase 3 Obligations for Arterial Streets & Parks

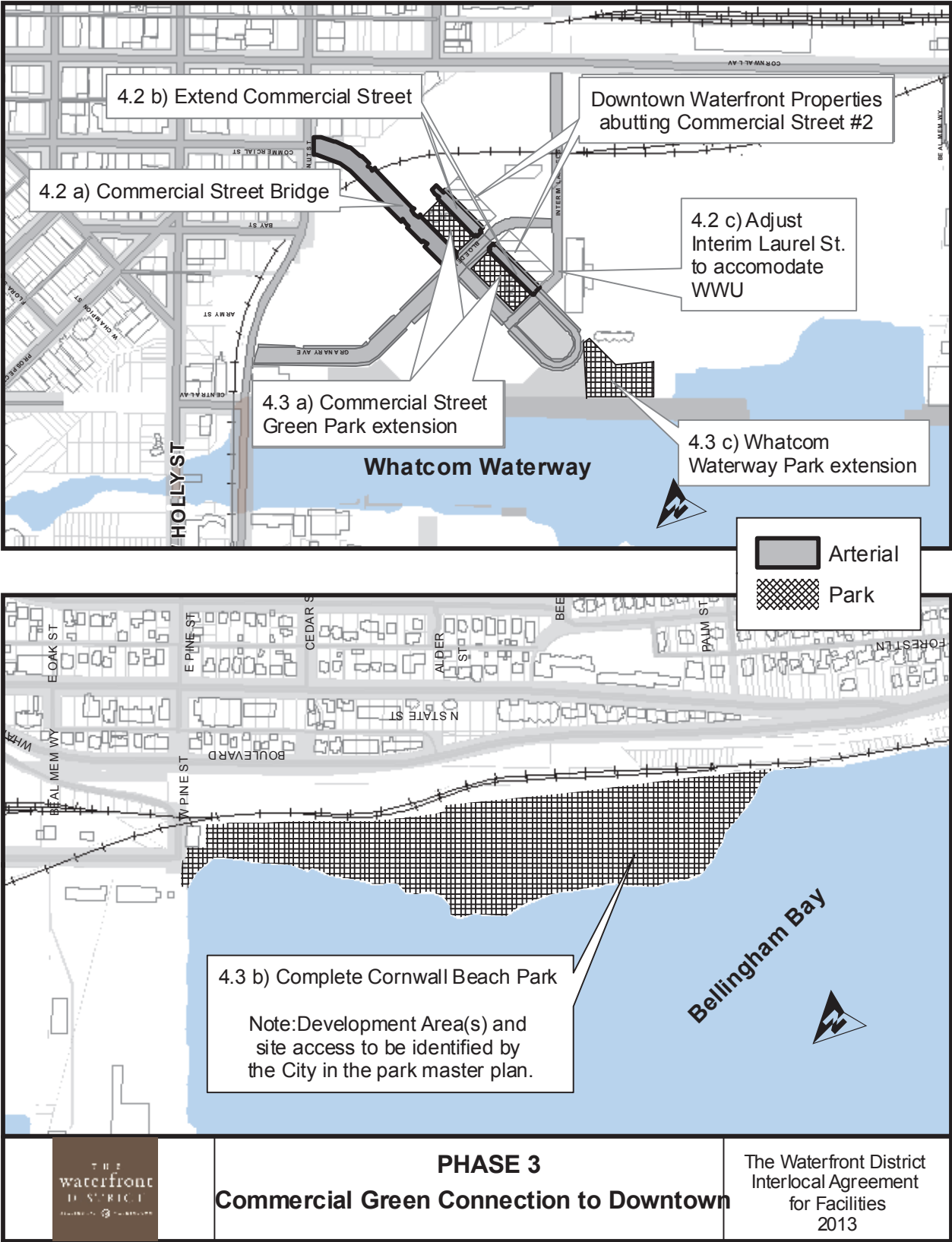


Exhibit H: Street Vacations, Licenses & Transfers

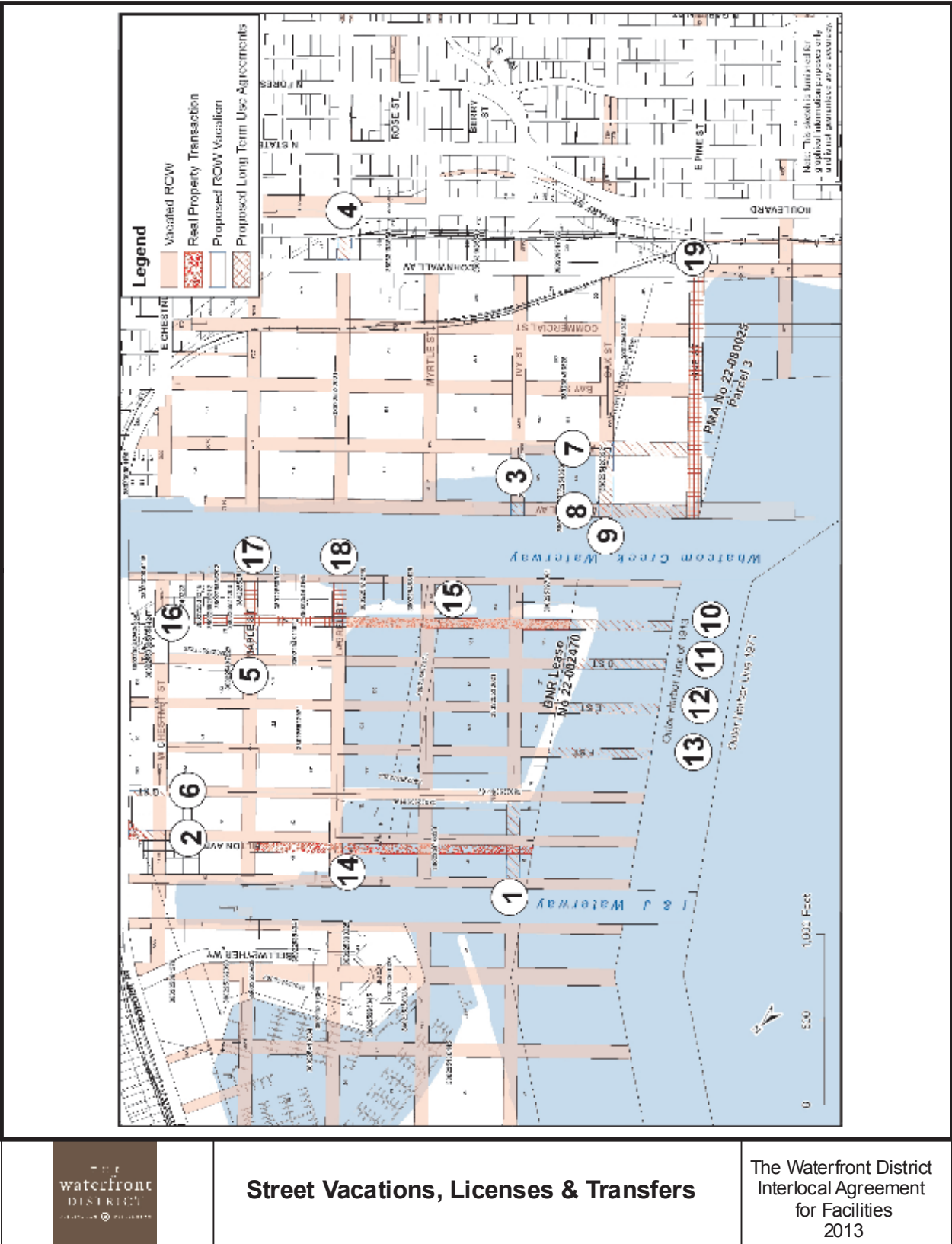


Exhibit I: Park Land Dedications

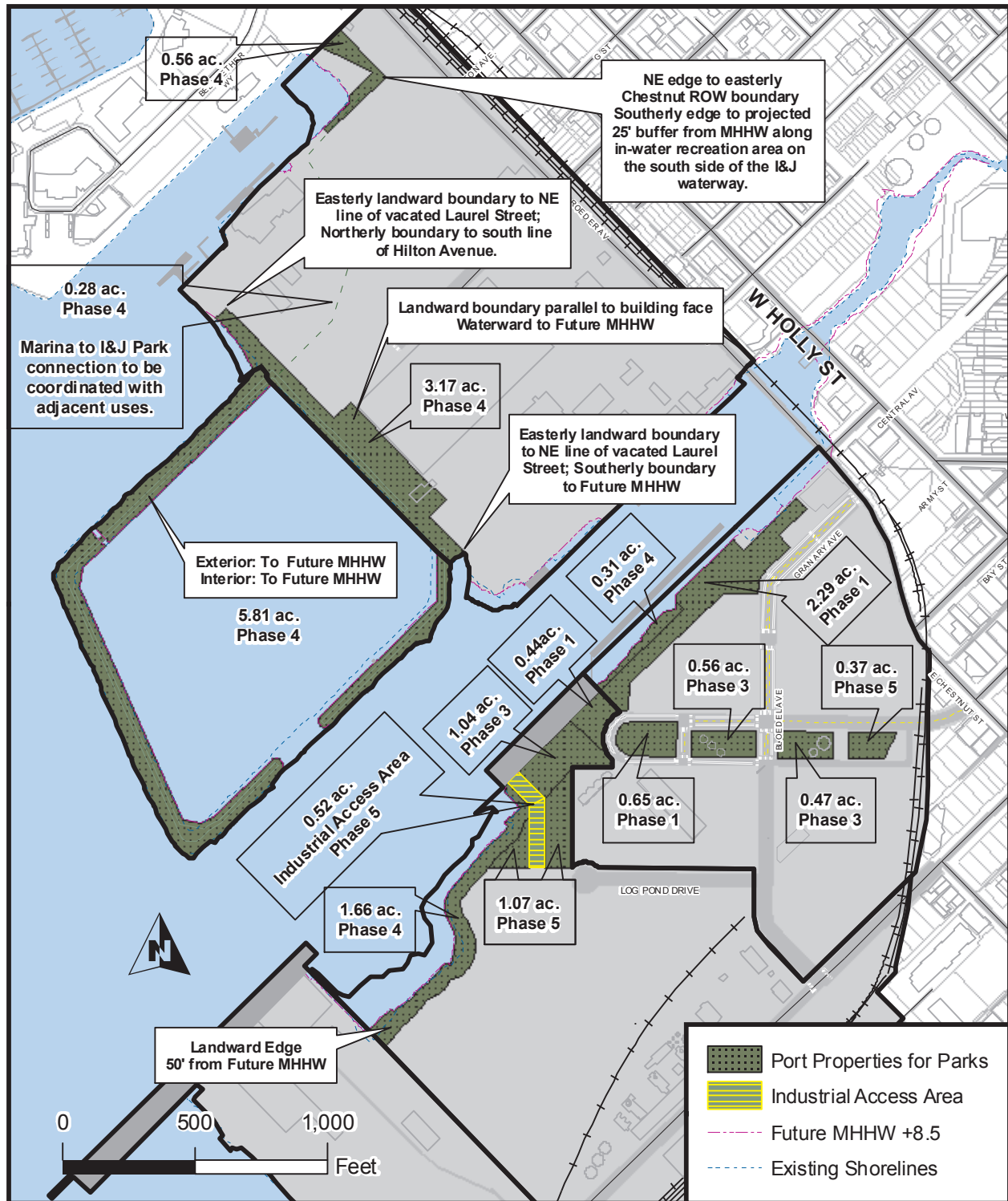


Exhibit J: Historic Icons

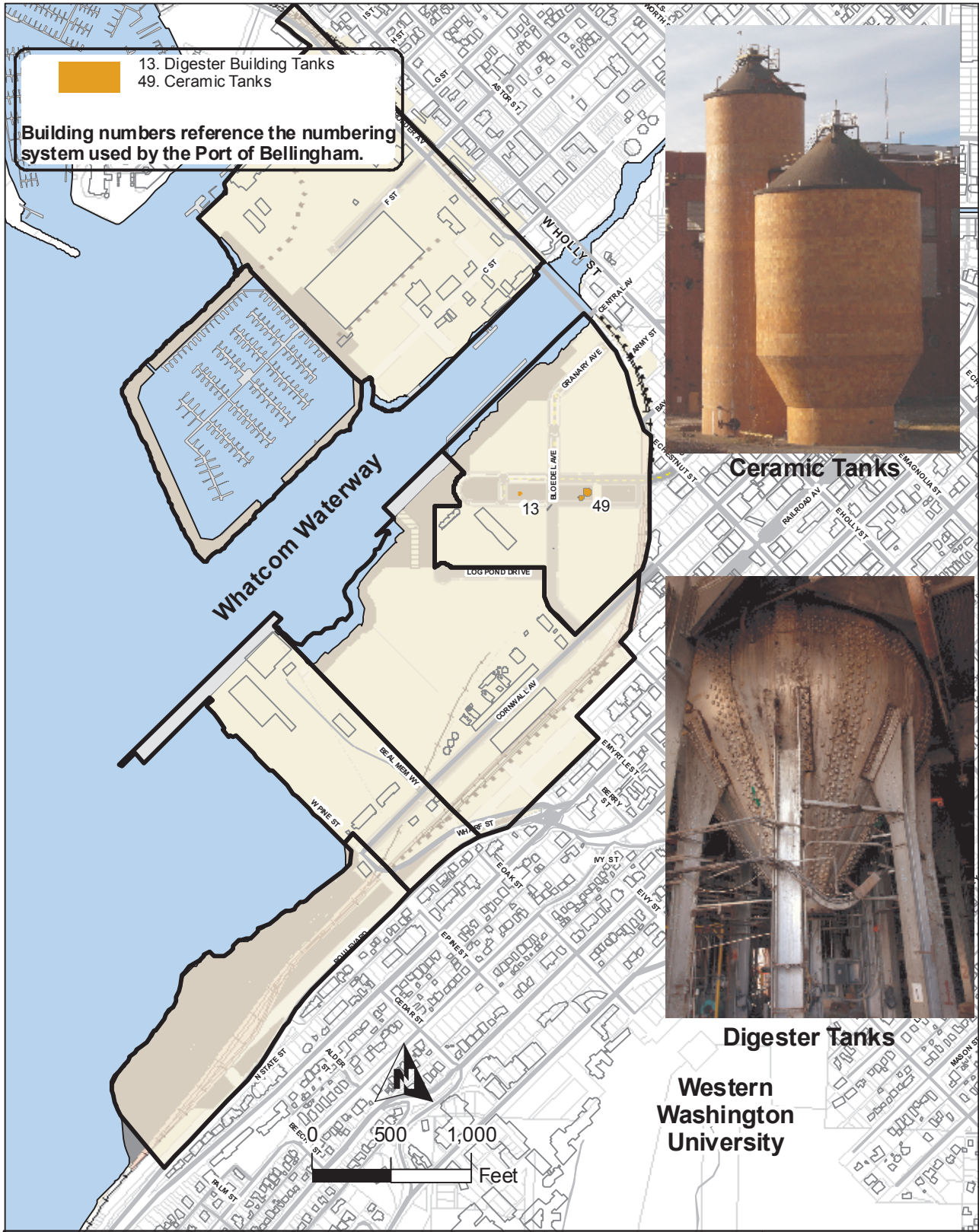


EXHIBIT K

Form of Deed

STATUTORY WARRANTY DEED

(Unimproved Property)

The City of Bellingham, a Washington municipal corporation ("Grantor"), hereby conveys and warrants to the Port of Bellingham, ("Grantee"), for and in consideration of the value recited in the Interlocal Agreement for Facilities Within the Waterfront District, the real property legally described in Exhibits A-1, A-2 and A-3 and respectively shown in Exhibits B-1, B-2 and B-3, attached hereto, situated in the City of Bellingham, Whatcom County, Washington.

THE CITY OF BELLINGHAM

Executed this ____ day of _____, 2013, for the CITY OF BELLINGHAM.

Approved as to form by:

Kelli Linville
Mayor

Office of the City Attorney

Attest:

Brian Henshaw
Interim Finance Director

Department Head

STATUTORY WARRANTY DEED

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that Kelli Linville is the person who appeared before me, and said person acknowledged that she signed this instrument and acknowledged it as the Mayor of the City of Bellingham to be the free and voluntary act and deed of said corporation, for the uses and purposes mentioned in the instrument.

DATED this ____ day of _____, 2013.

NOTARY PUBLIC in and for the State of Washington
Residing at _____
My commission expires: _____

EXHIBIT A-1

LEGAL DESCRIPTION

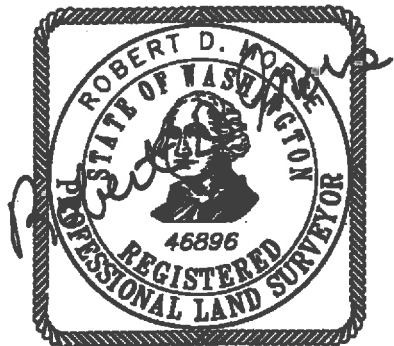
A STRIP OF LAND 60 FEET WIDE, BEING 30.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE OF C STREET IN THAT PORTION OF NEW WHATCOM TIDELANDS, RECORDED UNDER WHATCOM COUNTY AUDITOR'S VOLUME 4, PAGE 30 AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CITY MONUMENT AT THE INTERSECTION OF "C" STREET AND WEST MAPLE STREET; THENCE SOUTHWESTERLY ALONG THE RIGHT OF WAY CENTERLINE OF "C" STREET, SOUTH $45^{\circ}46'10''$ WEST, 561.40 FEET TO THE SOUTHWESTERLY MARGIN OF WEST LAUREL STREET AND THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH $45^{\circ}46'10''$ WEST, 1,315.91 FEET, MORE OR LESS ALONG SAID RIGHT OF WAY CENTERLINE TO THE INNER HARBOR LINE AS RECORDED UNDER RECORD OF SURVEY AF 1970604011. SAID STRIP OF LAND SHALL BE LENGTHENED OR SHORTENED WESTERLY SO AS TO TERMINATE IN SAID INNER HARBOR LINE.

CONTAINING 78,955 SQUARE FEET, MORE OR LESS

SITUATE IN WHATCOM COUNTY, WASHINGTON

SEE EXHIBIT "B-1"



11/05/13

STATUTORY WARRANTY DEED

EXHIBIT A-2

LEGAL DESCRIPTION

THAT PORTION OF NEW WHATCOM TIDELANDS, RECORDED UNDER WHATCOM COUNTY AUDITOR'S VOLUME 4, PAGE 30 AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF ROEDER AVENUE AND "G" STREET; THENCE SOUTHWESTERLY ALONG THE RIGHT OF WAY CENTERLINE OF "G" STREET, SOUTH 45°48'51" WEST, 80 FEET; THENCE ALONG THE SOUTHWESTERLY MARGIN OF ROEDER AVENUE NORTH 44°11'09" WEST, 170 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG THE SAID NORTHWESTERLY MARGIN, TO THE SOUTHWESTERLY MARGIN OF HILTON AVENUE, NORTH 44°11'09" WEST, 122 FEET; THENCE ALONG THE SOUTHWESTERLY SAID MARGIN, SOUTH 45°48'51" WEST, 122 FEET; THENCE SOUTH 89°11'09" EAST, 172.5 FEET MORE OR LESS TO THE TRUE POINT OF BEGINNING.

CONTAINING 7,414 SQUARE FEET, MORE OR LESS

SITUATE IN WHATCOM COUNTY, WASHINGTON

SEE EXHIBIT "B-2"



11/05/13

STATUTORY WARRANTY DEED

EXHIBIT A-3

LEGAL DESCRIPTION

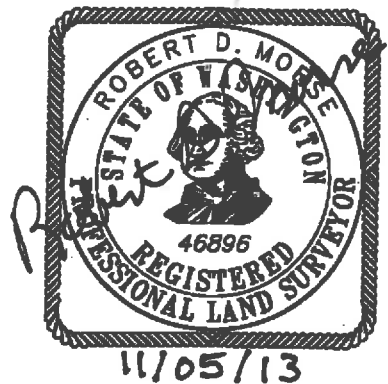
A STRIP OF LAND 60 FEET WIDE, BEING 30.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE OF HILTON AVENUE IN THAT PORTION OF NEW WHATCOM TIDELANDS, RECORDED UNDER WHATCOM COUNTY AUDITOR'S VOLUME 4, PAGE 30 AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CITY MONUMENT AT THE INTERSECTION OF ROEDER AVENUE AND "G" STREET; THENCE SOUTHWESTERLY ALONG THE RIGHT OF WAY CENTERLINE OF "G" STREET, SOUTH 45°48'51" WEST, 80 FEET; THENCE ALONG THE SOUTHWESTERLY MARGIN OF ROEDER AVENUE NORTH 44°11'09" WEST, 322 FEET TO THE RIGHT OF WAY CENTERLINE OF HILTON AVENUE; THENCE SOUTH 45°48'51" WEST, 742.08 FEET ALONG SAID RIGHT OF WAY CENTERLINE TO THE SOUTHWESTERLY MARGIN OF VACATED WEST MAPLE STREET AND THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH 45°48'51" WEST, 1,634.62 FEET, MORE OR LESS ALONG SAID RIGHT OF WAY CENTERLINE TO THE INNER HARBOR LINE AS RECORDED UNDER RECORD OF SURVEY AF 1970604011. SAID STRIP OF LAND SHALL BE LENGTHENED OR SHORTENED WESTERLY SO AS TO TERMINATE IN SAID INNER HARBOR LINE.

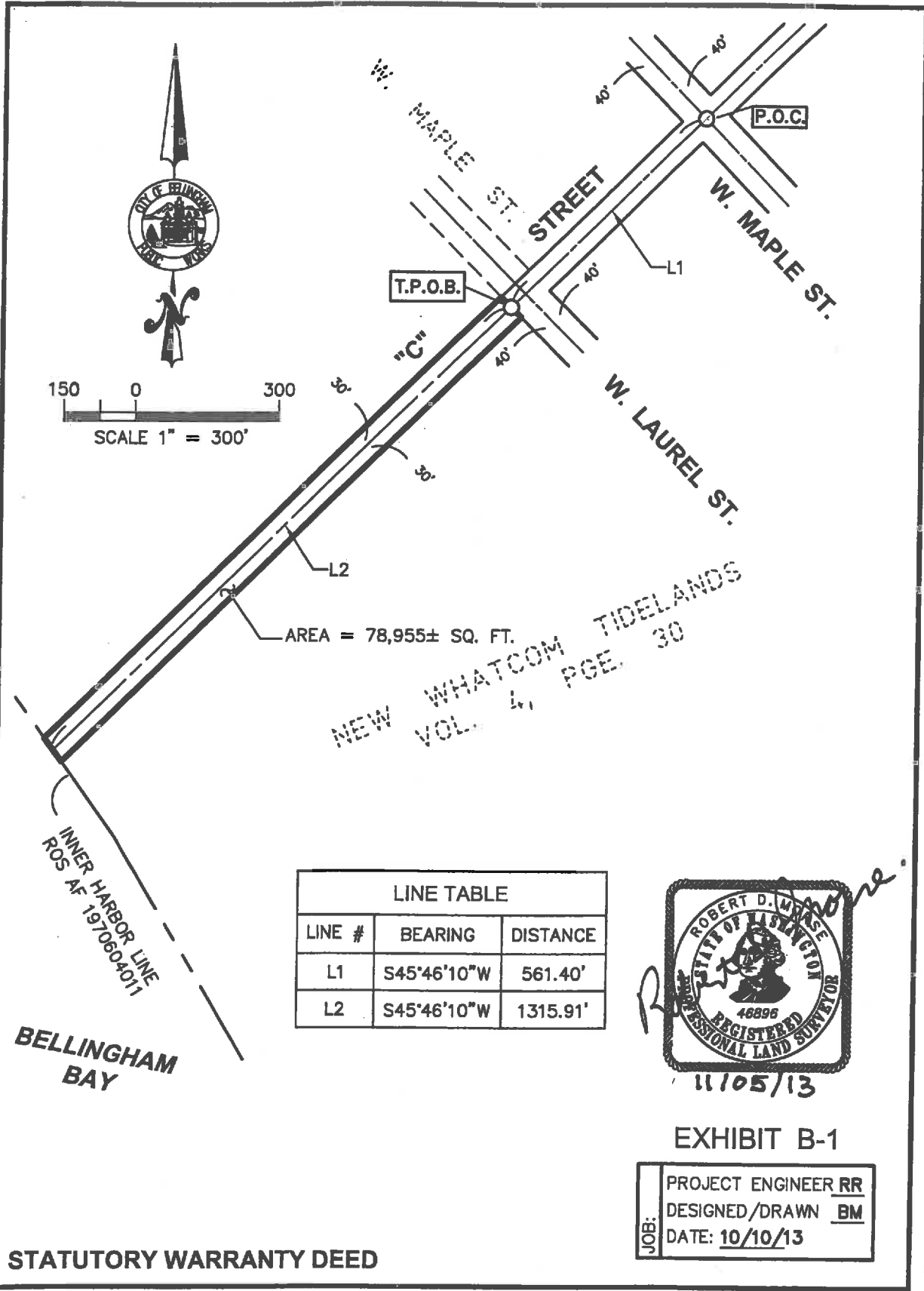
CONTAINING 98,076 SQUARE FEET, MORE OR LESS

SITUATE IN WHATCOM COUNTY, WASHINGTON

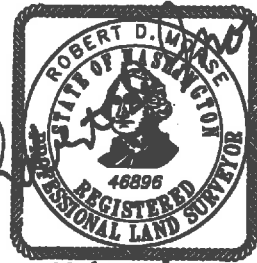
SEE EXHIBIT "B-3"



STATUTORY WARRANTY DEED



LINE TABLE		
LINE #	BEARING	DISTANCE
L1	S45°46'10"W	561.40'
L2	S45°46'10"W	1315.91'



11/05/13

EXHIBIT B-1

JOB:	PROJECT ENGINEER <u>RR</u>
	DESIGNED/DRAWN <u>BM</u>
	DATE: <u>10/10/13</u>

STATUTORY WARRANTY DEED

