

**EXHIBIT 1**  
**ORDINANCE NO. 3451-15**



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**AN ORDINANCE** Making the Comprehensive Plan, Zoning and Shoreline Master Program Designations for the Port of Everett South Terminal Consistent, Amending Ordinance No's. 2705-03, 2706-03, 2021-94, 2600-02 and 1671-89, As Amended

**WHEREAS**, the State Legislature enacted the Shoreline Management Act requiring cities and counties throughout the state to adopt and amend from time to time shoreline master programs; and

**WHEREAS**, the Growth Management Act, RCW 36.70A.580, provides that the goals and policies of the shoreline master program shall be considered an element of the City's comprehensive plan, and the other portions of the shoreline master program shall be considered part of the City's development regulations; and

**WHEREAS**, the Growth Management Act, RCW 36.70A.130, authorizes the City to amend the comprehensive plan in order to adopt or amend shoreline master programs at any time; and

**WHEREAS**, the City Council adopted Ordinance No. 2600-02 adopted the updated Shoreline Master Program (SMP) in 2002; and

**WHEREAS**, in 2003, City Council adopted Ordinance No. 2705-03 and Ordinance No. 2706-03 amending the Comprehensive Plan and Zoning Code to provide consistency with the updated Shoreline Master Program; and

**WHEREAS**, Ordinance No. 2705-03 and Ordinance No. 2706-03 described the boundary for the Deep Water Port environment at the south end of the Port of Everett's South Terminal the same as the SMP but the maps showed a different boundary; and

**WHEREAS**, the text description of the boundary was based on distance from Pigeon Creek and the City subsequently updated stream maps with more accurate information and the actual location of Pigeon Creek No. 1 is approximately 100 feet south of where it was assumed in the SMP; and

**WHEREAS**, the City has new information on harbor lines and "land use and occupancy areas" in the East Waterway and on the west side of Naval Station Everett and the SMP text description of the Urban Deep Water Port boundaries are not consistent with the new information and the maps in the SMP; and

**WHEREAS**, the SMP maps show areas between the Mukilteo tank farm and the Port of Everett South Terminal as Urban Conservancy, but these areas were not designated in the SMP text as required; and

**WHEREAS**, the SMP text designating the Aquatic Conservancy area overlaps with the text designating the Urban Deep Water Port; and

**WHEREAS**, the Port of Everett requested a slight modification to the environment designation boundary waterward of the fence between the public access beach and the South Terminal to make that boundary parallel to the property line to the north; and

**WHEREAS**, a SEPA Determination of Non-Significance (DNS) was issued for the proposal to correct these errors and inconsistencies on October 31, 2014, no comments were submitted, and the DNS was finalized on November 17, 2014; and

**WHEREAS**, the Planning Commission held a public hearing on December 2, 2014 to consider public testimony and adopted Resolution No. 14-12 recommending that City Council approve amendments to the SMP maps and text, and to the Comprehensive Plan and Zoning maps to correct these errors, inconsistencies, and new information; and

**WHEREAS**, the City Council has conducted a public hearing to consider the recommendations of the Planning Commission; and

**WHEREAS**, the City Council finds the proposed amendments to the SMP and Comprehensive Plan map and text (description of boundaries for the Urban Deep Water Port, Aquatic Conservancy and Urban Conservancy shoreline environments):

1. Are consistent with the existing policies of the SMP and Comprehensive Plan; and
2. Are based on new information and / or will correct errors; and
3. Will not impact the current use of properties in the area or vicinity; and
4. Will not create pressure to change additional land use designations in the area; and

**NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:**

**SECTION 1:** Section 4.3 of Exhibit A to Ordinance No. 2600-02, as amended, and Chapter 3, Section II. Subsection C of Exhibit A to Ordinance No. 2021-94, as amended, which reads in part as follows:

### **4.3 Urban Deep Water Port**

#### **Purpose**

To provide areas for large scale water-dependent industries, port facilities, and supporting services that require proximity to navigable waters that can accommodate deep draft ocean-going vessels, and to ensure optimum use of shorelines that are presently industrial in nature while protecting and restoring ecological functions.-

### **Classification Criteria**

1. Areas proximate to navigable channels approximately 25' MLLW or greater in depth, with arterial roadway and/or rail services, and with sufficient space to support water-dependent or water-related industrial activities.
2. Areas currently developed with water-dependent and water-related industrial use, military use, and support facilities.

### **Area Designated (See Figure 4.2)**

That area beginning at a line perpendicular to the shoreline 200 feet northeast of Pigeon Creek and continuing north to the north boundary of the US Navy base. The waterward boundary is the outer harbor line/pierhead line. The landward boundary is a line 200 feet from the ordinary high water mark.

**BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:**

### **4.3 Urban Deep Water Port**

#### **Purpose**

To provide areas for large scale water-dependent industries, port facilities, and supporting services that require proximity to navigable waters that can accommodate deep draft ocean-going vessels, and to ensure optimum use of shorelines that are presently industrial in nature while protecting and restoring ecological functions.

#### **Classification Criteria**

1. Areas proximate to navigable channels approximately 25' MLLW or greater in depth, with arterial roadway and/or rail services, and with sufficient space to support water-dependent or water-related industrial activities.
2. Areas currently developed with water-dependent and water-related industrial use, military use, and support facilities.

### **Area Designated (See Figure 4.2, 4.10)**

That area in Section 25, Township 29 North, Range 4 East, W.M. contained within the following lines and a line located 200 feet landward from the ordinary high water mark. Beginning at a point 200 feet from the ordinary high water mark in a straight line with the fence separating the Port of Everett South Terminal from the public access beach to the south, then following the fence line to the northwest corner; thence North 49°36'22" West to the State Outer Harbor Line; thence following the Washington State Outer Harbor Line along the west side of the Port of Everett South Terminal, within the East Waterway and south of the Naval Station Everett piers; then on the west side of Naval Station Everett following the Washington State Side Harbor line; then the west boundary of

Parcel F1, the west boundary of the Land Use and Occupancy Area, the northern boundary of the Land Use and Occupancy Area, and the northern boundary of Parcel D1 to a point 200 feet landward of the ordinary high water mark as shown on the Record of Survey for US Navy recorded under Snohomish County Auditor's File No. 200811125002;

**SECTION 2:** Section 4.10 of Exhibit A to Ordinance No. 2600-02, as amended, and Chapter 3, Section II. Subsection K of Exhibit A to Ordinance No. 2021-94, as amended, which reads in part as follows:

#### **4.10 Urban Conservancy**

##### **Purpose**

The purpose of the Urban Conservancy use environment is to:

- provide public access for enjoyment of marine, lake and river shorelines, and to
- provide for protection of important ecological resources and rehabilitation of significant wetland and habitat areas,

##### **Criteria for Designation**

Areas which include one or more of the following characteristics:

1. Areas suitable for public access.
2. Areas not planned for intensive urban development that have the potential for ecological rehabilitation.
3. Areas with important ecological resources that should be protected from further development activities.
4. Areas along Port Gardner Bay modified by railroad activities.
5. Areas that ranked high in the 1997 SEWIP for water quality and wildlife functions.

##### **Areas Designated**

1. **Jetty Island (See Figure 4.16):** All of Jetty Island above the ordinary high water mark.
2. **Adjacent to Mulsby Swamp (See Figure 4.17):** All of the property within 200 feet of the ordinary high water mark of Mulsby Swamp located west of the east Burlington Northern right-of-way line, except for the properties zoned Residential or Park.
3. **The Port of Everett Property west of I-5 (See Figures 4.7 and 4.18):** Parcel 0429 053 005 00 and the portion of Parcel 0429 052 005 00 located south of a line connecting the north side of the pond and north side of the slough extension into the site. Along Union

Slough, the waterward boundary is the ordinary high water mark. The eastern boundary is the city limit.

4. **Langus Riverfront Park (See Figure 4.19):** The cutoff tidal channel below the ordinary high water mark.
5. **Ferry Baker Island and Weyco Island in the Snohomish River (See Figure 4.19):** All of Ferry Baker Island and Weyco Island above the ordinary high water mark.
6. **City-owned parcel located southwest of Weyco Island and north of I-5 (See Figure 4.19):** That area owned by the City of Everett contiguous to the west bank of the Snohomish River in the SW-1/4 of Section 16-29-5 (parcel number 1629 053 002 00) within 200 feet of the OHWM or 200 feet of the floodway, whichever is further inland.
7. **Simpson Site (Figure 4.14):** Bigelow Creek and the Category 1 wetlands and their buffers required by the SMP, along with the riparian corridor along the entire east edge of the property required by the SMP.

The waterward boundary is the ordinary high water mark of the Snohomish River provided that any portion of the northern Category 1 wetland between the OHWM and the Aquatic Conservancy area is also Urban Conservancy. The western boundary for the northern Category 1 wetland and Bigelow Creek is the line that corresponds to the existing west edge of the Burlington Northern right-of-way and any wetlands that extend beyond the west edge of the right-of-way. Interior boundaries are the edge of the buffers adjacent to Bigelow Creek and the Category 1 wetlands required by the SMP. The western/interior boundary for the riparian corridor along the River is 200 feet from the floodway, or 200 feet from the OHWM, or the buffer required by the SMP for the wetlands in the corridor, whichever is further west.

#### **Vision Statement**

The Category 1 wetlands and the riparian corridor on the Simpson site will be for conservation, except for transportation and utility access. The riparian corridor along the river will be preserved with public access including a trail.

8. **East of Rotary Park and north of Lowell-Larimer Road (See Figure 4.20):** The waterward boundary is the ordinary high water mark. The southern boundary is the north edge of the Lowell – Snohomish River Road. The west boundary is Rotary Park. The east boundary is the City limit.
9. **Portions of the Marshland Site (See Figure 4.20):** The Spane wetland mitigation site; the forested wetlands in 1997 SEWIP AUs numbered 193, 196, 202; and the Simpson Paper Co. landfill surrounded by SEWIP AU 196.
10. **Lake Stickney (See Figure 4.15):** All lands on the north and west portions of Lake Stickney between the west property line of parcel number 3740 000 027 00 (lot 27 of the

Replat of Lots 5 & 6 Block 7 Alderwood Manor No. 11) to the northwest property line of parcel number 4939 000 055 00 (lot 55 of Lake Stickney Tracts). The waterward boundary is the ordinary high water mark. The outer boundary is 200 feet of the ordinary high water mark of Lake Stickney or the edge of associated wetlands, whichever is greater.

11. **City-owned parcels located between SR 527 and the east shoreline of Silver Lake (See Figure 4.11):** The area on the lake side of SR527/19<sup>th</sup> Ave. SE extending from the east property line of parcel number 4943 005 001 00 to the north property line of parcel 3028 051 032 00 (Emory's Lakehouse Restaurant). The waterward boundary is the ordinary high water mark. The landward boundary is the south and west right-of-way line for SR 527/19<sup>th</sup> Ave. SE

**Is hereby amended to read as follows:**

#### **4.10 Urban Conservancy**

##### **Purpose**

The purpose of the Urban Conservancy use environment is to:

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- provide for protection of important ecological resources and rehabilitation of significant wetland and habitat areas,

##### **Criteria for Designation**

Areas which include one or more of the following characteristics:

1. Areas suitable for public access.
2. Areas not planned for intensive urban development that have the potential for ecological rehabilitation.
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4. Areas along Port Gardner Bay modified by railroad activities.
5. Areas that ranked high in the 1997 SEWIP for water quality and wildlife functions.

##### **Areas Designated**

1. **Jetty Island (See Figure 4.16):** All of Jetty Island above the ordinary high water mark.

2. **Adjacent to Maulsby Swamp (See Figure 4.17):** All of the property within 200 feet of the ordinary high water mark of Maulsby Swamp located west of the east Burlington Northern right-of-way line, except for the properties zoned Residential or Park.
3. **The Port of Everett Property west of I-5 (See Figures 4.7 and 4.18):** Parcel 0429 053 005 00 and the portion of Parcel 0429 052 005 00 located south of a line connecting the north side of the pond and north side of the slough extension into the site. Along Union Slough, the waterward boundary is the ordinary high water mark. The eastern boundary is the city limit.
4. **Langus Riverfront Park (See Figure 4.19):** The cutoff tidal channel below the ordinary high water mark.
5. **Ferry Baker Island and Weyco Island in the Snohomish River (See Figure 4.19):** All of Ferry Baker Island and Weyco Island above the ordinary high water mark.
6. **City-owned parcel located southwest of Weyco Island and north of I-5 (See Figure 4.19):** That area owned by the City of Everett contiguous to the west bank of the Snohomish River in the SW-1/4 of Section 16-29-5 (parcel number 1629 053 002 00) within 200 feet of the OHWM or 200 feet of the floodway, whichever is further inland.
7. **Simpson Site (Figure 4.14):** Bigelow Creek and the Category 1 wetlands and their buffers required by the SMP, along with the riparian corridor along the entire east edge of the property required by the SMP.

The waterward boundary is the ordinary high water mark of the Snohomish River provided that any portion of the northern Category 1 wetland between the OHWM and the Aquatic Conservancy area is also Urban Conservancy. The western boundary for the northern Category 1 wetland and Bigelow Creek is the line that corresponds to the existing west edge of the Burlington Northern right-of-way and any wetlands that extend beyond the west edge of the right-of-way. Interior boundaries are the edge of the buffers adjacent to Bigelow Creek and the Category 1 wetlands required by the SMP. The western/interior boundary for the riparian corridor along the River is 200 feet from the floodway, or 200 feet from the OHWM, or the buffer required by the SMP for the wetlands in the corridor, whichever is further west.

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9. **Portions of the Marshland Site (See Figure 4.20):** The Spane wetland mitigation site; the forested wetlands in 1997 SEWIP AUs numbered 193, 196, 202; and the Simpson Paper Co. landfill surrounded by SEWIP AU 196.
10. **Lake Stickney (See Figure 4.15):** All lands on the north and west portions of Lake Stickney between the west property line of parcel number 3740 000 027 00 (lot 27 of the Replat of Lots 5 & 6 Block 7 Alderwood Manor No. 11) to the northwest property line of parcel number 4939 000 055 00 (lot 55 of Lake Stickney Tracts). The waterward boundary is the ordinary high water mark. The outer boundary is 200 feet of the ordinary high water mark of Lake Stickney or the edge of associated wetlands, whichever is greater.
11. **City-owned parcels located between SR 527 and the east shoreline of Silver Lake (See Figure 4.11):** The area on the lake side of SR527/19<sup>th</sup> Ave. SE extending from the east property line of parcel number 4943 005 001 00 to the north property line of parcel 3028 051 032 00 (Emory's Lakehouse Restaurant). The waterward boundary is the ordinary high water mark. The landward boundary is the south and west right-of-way line for SR 527/19<sup>th</sup> Ave. SE.
12. **Mukilteo Tank Farm to Port of Everett South Terminal. (See Figures 4.2, 4.8, 4.9, 4.10):** Those areas between the Mukilteo Tank Farm (Urban Multi-Use Shoreline Environment) and the Port of Everett South Terminal (Deep Water Port Shoreline Environment) located between the ordinary high water mark and the south/southeasterly BNSF right-of-way line, along with all wetlands in shoreline jurisdiction along the streams draining to Port Gardner Bay.

**SECTION 3:** Section 4.14 of Exhibit A to Ordinance No. 2600-02, as amended, and Chapter 3, Section II. Subsection O of Exhibit A to Ordinance No. 2021-94, as amended, which reads in part as follows:

#### **4.14 Aquatic Conservancy**

##### **Purpose**

The purpose of this designation is to protect the unique characteristics and resources of the aquatic environment by managing use activities to prioritize preservation and restoration of natural resources, navigation, recreation, and commerce, and by assuring compatibility between shoreland and aquatic uses.

##### **Classification Criteria**

1. Aquatic areas seaward of the ordinary high water mark that ranked in the top quartile of assessment units within the Urban Growth Boundary for salmonid habitat in the 2000 SEWIP Salmon Overlay, and all assessment units, except the Maulsby mudflats, that ranked in the top quartile within Ecological Management Unit pairs for salmonid habitat.

2. The nearshore SEWIP assessment units areas along Port Gardner Bay south and west of the Port's south terminal.
3. The aquatic environment includes the water surface together with the underlying lands and the water column.

### **Area Designated**

(See Figure 4.23. More detail is provided on Figures 4.2 through 4.21.) Note that a map showing specific SEWIP assessment unit boundaries is available for review in the Planning and Community Development Department.)

1. **Maulsby Swamp (Also see Figure 4.17):** The western boundary is the east edge of the Burlington Northern right-of-way. The inland boundary is the ordinary high water mark.

For all of the following areas, the landward boundary is the ordinary high water mark, and the waterward boundary is the 2000 SEWIP Salmon Overlay assessment unit (AU) boundary.

2. **Nearshore:** AUs 7.04, 7.05, 7.06, 7.07, 7.08, 7.09

**Is hereby amended to read as follows:**

### **4.14 Aquatic Conservancy**

#### **Purpose**

The purpose of this designation is to protect the unique characteristics and resources of the aquatic environment by managing use activities to prioritize preservation and restoration of natural resources, navigation, recreation, and commerce, and by assuring compatibility between shoreland and aquatic uses.

#### **Classification Criteria**

1. Aquatic areas seaward of the ordinary high water mark that ranked in the top quartile of assessment units within the Urban Growth Boundary for salmonid habitat in the 2000 SEWIP Salmon Overlay, and all assessment units, except the Maulsby mudflats, that ranked in the top quartile within Ecological Management Unit pairs for salmonid habitat.
2. The nearshore SEWIP assessment units areas along Port Gardner Bay south and west of the Port's south terminal.
3. The aquatic environment includes the water surface together with the underlying lands and the water column.

### **Area Designated**

(See Figure 4.23. More detail is provided on Figures 4.2 through 4.21.) Note that a map showing specific SEWIP assessment unit boundaries is available for review in the Planning and Community Development Department.)

1. **Maulsby Swamp (Also see Figure 4.17):** The western boundary is the east edge of the Burlington Northern right-of-way. The inland boundary is the ordinary high water mark.

For all of the following areas, the landward boundary is the ordinary high water mark, and the waterward boundary is the 2000 SEWIP Salmon Overlay assessment unit (AU) boundary.

2. **Nearshore:** AUs 7.04, 7.05, 7.06, 7.07, 7.08, 7.09, except that portion of AU 7.04 designated Urban Deep Water Port.

**SECTION 4:** Exhibit A to Ordinance No. 2600-02, as amended, and Ordinance No. 1671-89 as amended and codified in Chapter 19.33D, Article IV Everett Municipal Code are hereby amended as follows:

Figures 4.1, 4.2, 4.3, 4.10, 4.16, 4.23 are hereby replaced with Figures 4.1, 4.2, 4.3, 4.10, 4.16, and 4.23 as contained in Exhibit 1 to this ordinance.

**SECTION 5: Severability.** Should any section, paragraph, clause or phrase of this Ordinance or its application to any person or circumstance be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulations, this shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

**SECTION 6: Conflict.** In the event there is a conflict between the provisions of this Ordinance and any other City ordinance, the provisions of this Ordinance shall control.

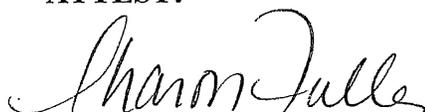
**SECTION 7: Corrections.** The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection number and any references thereto.

**SECTION 8: General Duty.** It is expressly the purpose of this Ordinance to provide for and promote the health safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provisions or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.

**SECTION 9:** The effective date of this ordinance shall be the date on which the Washington Department of Ecology approves the amendments to the Shoreline Master Program as provided by RCW 90.58.090.

  
Ray Stephanson, Mayor

**ATTEST:**

  
CITY CLERK

**Passed:** 10/07/2015

**Valid:** 10/13/2015

**Published:** 10/20/2015

**Effective Date:** 10/28/2015