



## Notice of Hearing Examiner Decision

01/29/2021

To: Interested Parties and Parties of Record

RE: **Project Name: Port Gamble Redevelopment Plan – Development Agreement**

Applicant: Olympic Property Group  
Attn: Linda Berry-Maraist  
19950 7<sup>th</sup> Avenue NE, Suite 200  
Poulsbo, WA 98370

Application: Development Agreement

**Permit Number: 20-05874**

The Kitsap County Hearing Examiner has **RECOMMENDED APPROVAL** of the land use application for Permit # **20-05874: Port Gamble Redevelopment Plan – Development Agreement, subject to the conditions outlined in this Notice and included Decision.**

**THE DECISION OF THE HEARING EXAMINER IS FINAL, UNLESS TIMELY APPEALED, AS PROVIDED UNDER WASHINGTON LAW.**

The applicant is encouraged to review the Kitsap County Office of Hearing Examiner Rules of Procedure found at:

<https://spf.kitsapgov.com/dcd/HEDocs/HE-Rules-for-Kitsap-County.pdf>

Please note affected property owners may request a change in valuation for property tax purposes, notwithstanding any program of revaluation. Please contact the Assessor's Office at 360-337-5777 to determine if a change in valuation is applicable due to the issued Decision.

The complete case file is available for review at the Department of Community Development, Monday through Thursday, 8:00 AM to 4:00 PM and Friday 9:00 AM to 1:00 PM, except holidays. If you wish to view the case file or have other questions, please contact [Help@Kitsap1.com](mailto:Help@Kitsap1.com) or (360) 337-5777.

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**KITSAP COUNTY HEARING EXAMINER  
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION**

**Development Agreement for Port Gamble Rural Historic Town  
File No. 20-05874**

**January 28, 2021**

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**1. FINDINGS OF FACT**

**1.1 Proposal.** Development Agreement between Kitsap County and OPG Port Gamble LLC, in accordance with the Port Gamble Redevelopment Plan. The Agreement covers 318.24 acres, including the historic town of Port Gamble, designated as a National Historic Landmark District.

**Applicant/Property Owner.** OPG Port Gamble LLC, c/o Linda Barry-Maraist, 19950 7<sup>th</sup> Avenue NE, Suite 200, Poulsbo, WA 98370.

**Generalized Location.** 4790 NE State Highway 104, Poulsbo, WA 98370. The Development Agreement identifies assessor parcel numbers and provides a legal description.

**1.2 Hearing.** An open record public hearing was held January 14, 2021. Due to COVID-19 restrictions, the hearing was conducted remotely, with the Examiner, Kitsap County Department of Community Development (“DCD”), and Applicant calling in. Access information was provided to the public to allow citizens to join via video link or telephone call-in. There were no reported technical difficulties during the call or afterwards. However, in case any citizens who wished to comment had difficulty calling in, the record was kept open for a week, through January 21.<sup>1</sup> At the hearing, DCD, through Mr. Smith, described the agreement. DCD found it consistent with requirements, and recommended approval. The Applicant, through its legal counsel, Mr. Graham, explained the proposal’s consistency with legal requirements. No member of the public indicated a wish to speak.

**1.3 Administrative Record.** The Hearing Examiner admitted Exhibits 1-16, which included the Staff Report, application materials, documentation of agency consultation, public notice documents, and a DCD Power Point presentation. The Applicant provided Exhibits 14-16 after the hearing, while the record remained open. These documents include a post-hearing memo, the final Draft Agreement, and an explanatory e-mail.

**1.4 SEPA.** DCD issued an unappealed Determination of Non-Significance.<sup>2</sup> This was besides DCD’s earlier issuance of an EIS.

**1.5 Comment.** One comment was received, requesting review of the WA-104 speed limit, which the comment identifies as being 50 MPH, and dropping to 25 on approaching Port

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<sup>1</sup> Temporary Emergency Rule to Address COVID-19 Situation (April 1, 2020).

<sup>2</sup> Exhibit 4; Exhibit 7 (Staff Report), p. 3.

Gamble.<sup>3</sup> Though the County can provide input, the Department of Transportation establishes state highway speed limits. The comment is also outside Development Agreement scope. The Agreement details vesting for future development, but does not approve that development. Development approvals are the subject of other decisions.

**1.6 Notice.** Hearing and application notice was provided consistent with KCC requirements.<sup>4</sup>

**1.7 Proposal Summary.** The Port Gamble redevelopment project has completed a lengthy review process, which included revisions to state law, environmental review, and permitting decisions.

The Washington State Legislature adopted RCW 36.70A.520, to enable the designation of national historic towns like Port Gamble. The County designated the Port Gamble area as a Limited Area of More Intensive Rural Development (LAMIRD), under RCW 36.70A.070(5)(d)(i) and classified it as a Rural Historic Town (Ord. 236-1999). In addition, the Applicant completed a two-year clean-up of the Mill Site, which had been used for over a century as a lumber mill and port for shipping logs.

Project review included an Environmental Impact Statement and most recently Hearing Examiner approval of a Performance Based Development/Preliminary Plat and Shoreline Substantial Development Permit on January 11, 2021 (File Nos. 13-00165 and 13-00164). The Examiner takes official notice of this Decision.

The Development Agreement's primary purpose is to address vesting and SEPA review. Complete applications for the approvals the Examiner just issued were submitted on January 17, 2013, the date the Development Agreement identifies for vesting. The Agreement identifies the scope of development proposed, and several vesting exceptions, including those related to:

- Construction Standards;
- Review Fees;
- Other Fees (for example, utility connection fees);
- Reserved Authority to Impose New Regulations to the Extent Required to Prevent a Serious Threat to Public Health and Safety; and,
- Mutual Consent.

The Development Agreement outlines SEPA Compliance Procedures for Implementing Approvals (Attachment D). As an EIS has been prepared, future development within project scope is expected to be covered by the earlier environmental review. Consistent with Ch. 43.21C RCW, exceptions are provided should the project substantially change or if new information indicates it is likely to have previously unanalyzed probable, significant adverse environmental impacts, which the development standards cannot mitigate.

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<sup>3</sup> Exhibit 11.

<sup>4</sup> Exhibits 3, 5, and 8; KCC 21.04.090, .210.

If there are previously unanalyzed probable significant adverse impacts which cannot be mitigated, then an SEIS would be required, as opposed to an Addendum. However, an Addendum can provide additional analysis if there is new information on impacts which falls short of the SEPA EIS trigger. The Agreement thus outlines alternative paths for addressing new information about project impacts. The Agreement term is 15 years from its effective date.

**1.8 Minor Corrections.** The List of Attachments on p. 9 should include Attachment D (SEPA Compliance Procedures for Implementing Approvals) and in the Table on p. 1, the parcel number list should be switched with the abbreviated legal description, to be in the correctly labeled rows.

## 2. CONCLUSIONS OF LAW

**2.1 Hearing Examiner Review Authority.** The Hearing Examiner has review authority for this Development Agreement. The Board of County Commissioners makes the final decision on a development agreement. But, the Board may delegate the responsibility for holding a public hearing and issuing a recommendation to the Hearing Examiner, which it has done.<sup>5</sup> Examiner review criteria are at KCC 21.04.220, which implement RCW 36.70B.170-.210.

**2.2 Ch. 36.70B RCW Review.** The Agreement, as required, “set[s] forth the development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development,” for agreement duration.<sup>6</sup> The Agreement provides for vesting,<sup>7</sup> but “reserve[s] authority to impose new or different regulations to the extent required by a serious threat to public health and safety.”<sup>8</sup> The Board of County Commissioners will review, and consider approving, the Agreement by resolution following the public hearing before the Hearing Examiner.<sup>9</sup> Following execution, the Agreement will be recorded in Kitsap County’s real property records, with the County Auditor.<sup>10</sup> The proposal meets Ch. 36.70B RCW requirements.

### 2.3 KCC 21.04.220 Review.

**2.3.1 Format Requirements.** The Agreement includes the party names, legal description, development standards, and its term (during which “all development proposed under the agreement shall be completed.”<sup>11</sup>). Recital J states the Agreement is consistent with KCC 36.70B.210. Though a technicality, the Recital should also state the Agreement “is compliant with RCW 36.70B.170-.210 and the KCC.”<sup>12</sup> Section 5.2 provides for the Agreement to be “binding on the parties and their successors, including a city that assumes jurisdiction [over the

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<sup>5</sup> KCC 21.04.220(C); KCC Chapter 2.10; Exhibit 1 (Kitsap County Board of Commissioners Resolution 191-2020).

<sup>6</sup> RCW 36.70B.170(1).

<sup>7</sup> See e.g., RCW 36.70B.180.

<sup>8</sup> RCW 36.70B.170(4).

<sup>9</sup> RCW 36.70B.200.

<sup>10</sup> RCW 36.70B.190; KCC 21.04.220(F) (“An approved development agreement must be recorded with the county auditor.”).

<sup>11</sup> KCC 21.04.220(B) and (B)(4).

<sup>12</sup> KCC 21.04.220(B)(6).

area] through incorporation or annexation.....”<sup>13</sup> The Agreement is consistent with KCC requirements.

**2.3.2 Decision Criteria.** The board may adopt a development agreement by resolution, which includes these findings:


1. The proposed agreement is consistent with the goals and policies of the Comprehensive Plan;
2. The proposed agreement is consistent with the local development regulations; provided, that standards may be modified only if the board makes further findings.....;
3. The proposed agreement provides for adequate mitigation of adverse environmental impacts; provided, that if the development is not defined at the project level, the agreement shall provide a process for evaluating and appropriately mitigating such impacts at the time of project development; and
4. The proposed agreement reserves the authority to impose new or different regulations to the extent required by a serious threat to public health and safety.<sup>14</sup>

The Agreement meets these criteria. The Comprehensive Plan provides for and encourages Port Gamble redevelopment through the assigned Plan designations,<sup>15</sup> which the Development Agreement supports by providing greater certainty on applicable requirements. The project follows the KCC so the KCC 21.04.220(D)(2) supplemental findings are not required. The Agreement lacks significant environmental impacts. An EIS assessed planned development, which is subject to extensive mitigation and code requirements. The Agreement itself is largely procedural, addressing vesting and SEPA review processes. Finally, the reservation of authority language for serious public health and safety threats is at Section 2.2.4. As the County’s procedural and substantive criteria have been met, Development Agreement approval would be consistent with County requirements.

### RECOMMENDATION

The Hearing Examiner, under the above Findings of Fact and Conclusions of Law, recommends approval of the proposed Port Gamble Development Agreement, with the two minor corrections Finding 1.8 identifies, and the recital addition Conclusion 2.3.1 identifies.

RECOMMENDATION entered January 28, 2021.

  
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Kitsap County Hearing Examiner  
Susan Elizabeth Drummond

<sup>13</sup> KCC 21.04.220(B)(5).

<sup>14</sup> KCC 21.04.220(D)(1-4).

<sup>15</sup> Comprehensive Plan, Appendix (Maps).