



WPPA Port Management Agreement (PMA) Handbook

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WPPA Port Management Agreement (PMA) Handbook

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Table of Contents

Introduction	i
1. An Overview of Port Management Agreements	1-1
Term of the PMA	1-2
Exhibits and Maps	1-3
Delegation of Authority	1-4
Use Planning and Port Regulations	1-5
Leases	1-5
Audits and Compliance	1-6
Amendments and Supplemental Provisions	1-6
Disputes	1-7
General Provisions	1-7
2. Responsibilities of the Port	2-1
General Use Notices	2-1
Leases	2-3
Exhibits	2-4
Acceptable Surveys Standards	2-4
Insurance	2-6
Material Sales	2-7
Environmental Management	2-7
Additional Reporting and Notice	2-11
3. What Property is Eligible for a PMA	3-1
Adding Property to a PMA	3-1
Additional Details of Adding Property with a 1995 PMA	3-3
Removing Property from the PMA	3-3
Leasing State-owned land if a PMA is not available	3-4
4. Improvements and Fills	4-1
Improvements	4-1
Fills	4-3
5. Calculating Rent	5-1
Water-dependent Uses	5-1
Nonwater-dependent Uses	5-1
Determining the Type of Use	5-2
Calculating Water-dependent rent	5-5
Rate of Return	5-6
Rent for Filled Land	5-6
Rent for Public Access	5-7
Rent for Habitat Mitigation	5-8

Table of Contents

Calculating Nonwater-dependent Rent	5-9
Determining Full Fair-Market Rental	5-9
Appraisal Methodologies	5-10
Multiple Uses.....	5-12
Log Booming and Storage.....	5-13
Rent Example 1.....	5-15
Rent Example 2.....	5-20
6. Marinas	6-1
Finding the Boundary	6-1
Reporting Spills.....	6-1
Liveboards.....	6-2
7. Compliance & Audits	7-1
Audits by the State Auditor’s Office.....	7-1
Management Assertions Letter.....	7-2
Audits by the Department of Natural Resources	7-6
8. Disputes.....	8-1
Dispute Resolution Table	8-3

Table of Contents

Appendices:

Appendix A.	1995 Port Management Agreement.....	A-1
Appendix B.	1984 Port Management Agreement.....	B-1
Appendix C.	Aquatic Lands Laws and Regulations.....	C-1
Appendix D.	Finding Alternative Parcels	D-1
Appendix E.	Lease Checklist	E-1
Appendix F.	Port Notice Checklist.....	F-1
Appendix G.	DNR Notice Checklist.....	G-1
Appendix H.	Explaining a PMA to a Tenant	H-1
Appendix I.	Sample Assertions Audit Letter.....	I-1
Appendix J.	Checklist for Adding Property	J-1
Appendix K.	Guidance for Water-dependent and Nonwater-dependent Rents	K-1

Aquatic Lands Laws and Regulations may be found at www.access.wa.gov



Introduction

Port districts have been given the legal authority to manage certain aquatic lands that are owned by the state. These aquatic properties abut uplands that are owned, leased or managed by the port. The details of this management responsibility are set forth in a Port Management Agreement (PMA). The PMA is a document signed by both the port and the Department of Natural Resources (DNR).

The port manages these state-owned aquatic lands using the state's aquatic land management laws and regulations, in addition to the regular laws that govern port operations. The port and the DNR must work together to blend these state laws and regulations with the port district's powers and responsibilities. This requires the port to be aware of two basic concepts:

- The port has taken on the responsibility as the land manager for the people of the state of Washington. The port must strive to provide a balance of public benefits for all citizens of the state.
- The general goals of state-wide aquatic land management are to: encourage direct public use and access, foster water-dependent uses, ensure environmental protection, and utilize renewable resources. Generating revenue consistent with these goals is considered to be a public benefit.

These responsibilities are not a new concept in port management. The very idea of creating port districts sprang from the desire, almost one hundred years ago, to give the public a tool to buy back and control the harbors that had been sold to private interests.



WPPA Port Management Agreement (PMA) Handbook

Ports must also remember that nonwater-dependent uses of state-owned aquatic land are allowed, but they are not preferred.

When a port district accepts the management of state-owned aquatic land, the port also accepts a number of day-to-day responsibilities. These include leasing and collecting rent, as well as notifying the state of changes in use of the property that affect rent. In certain instances a percentage of these rents are remitted to the state.

These and other requirements are described in detail in this Handbook. This document is designed to help public officials understand and implement Port Management Agreements. It is a general guidebook, and it is NOT intended to substitute for the laws.

Good aquatic land management requires using judgment, and there will be many instances where a port will need to refer either to the statutes (Revised Code of Washington, or RCW), the regulations (Washington Administrative Code, or WAC) or the PMA document itself. These and other sources of information are contained in the Appendices.

This Handbook is a revised version of an earlier handbook that the WPPA published in 1995, and it is intended to replace that version.



1. An Overview of Port Management Agreements



It is a common mistake to think of a PMA as a lease between the DNR and a port. A PMA is NOT a lease.

State-Owned Aquatic Land

A key phrase that is used repeatedly throughout this Handbook is “state-owned aquatic land”. This is the aquatic land that the state obtained title to at statehood that is still in the state’s possession. It is commonly abbreviated by the Department of Natural Resources as “SOAL”. It can take the form of bedlands (those that are always submerged), tide-lands and shorelands (which are subject to the ebb and flow of the water), or uplands that have been created by the filling of state-owned aquatic land. Most, but not all, of these filled areas have been sold by the state, but the state still owns some of these areas.

When a port obtains a PMA it “steps into the shoes” of the Department of Natural Resources. The key to successful port management of aquatic lands is to remember that state-owned aquatic land managed by a port is subject to a different set of laws and policies than the laws that govern port-owned real estate. Port property managers must treat these lands as a special sub-set of the port’s property portfolio.

The legal instrument that binds the state and an individual port to a contract is a Port Management Agreement, which will be referred to throughout this Handbook as a PMA. The Board of Natural Resources approves a model PMA, which is used as the basis for all individual PMAs between a port and the Department of Natural Resources (DNR).

A PMA is a moderately complicated contract of less than fifteen pages, excluding the maps (which are called “exhibits”).

Over time, there have been two different “model” PMAs in use by ports. The first one was approved in 1984, and about half of the thirty-one ports with a PMA use this document. The Board of Natural Resources approved a new model agreement in 1995, which has been used by ports who have signed a PMA since that time.

The 1995 model PMA is reprinted in Appendix A. The 1984 model form is reprinted in Appendix B. The two documents are generally similar, and in fact are identical in many ways. There are key differences in several areas however, and this Handbook will explain the differences where they exist.

The first thing that anyone managing or auditing property under a PMA must do is to ascertain whether their PMA is the



The Board of Natural Resources

The Board of Natural Resources is part of DNR (RCW 43.30.030). The Board establishes policies on the management of lands and resources within DNR's jurisdiction. The Board approves the model PMA and serves as the Harbor Line Commission (RCW 43.30.150 (2) and RCW 79.92.010), which gives the Commission another important power in aquatic lands management. The Board is composed of six members: the governor (or a representative designated by the governor), the superintendent of public instruction, the commissioner of public lands, the dean of the College of Forestry of the University of Washington, the dean of the College of Agriculture at Washington State University, and a representative selected by the counties which contain state forest lands (RCW 43.30.040).

1984 or the 1995 form. The 1984 PMA has 27 sections. The 1995 PMA has 32 sections.

Your port's PMA addresses many of the basic property management issues familiar to any real estate manager. These include:

- The term of the agreement
- Management standards and responsibilities
- Leases and rents
- Insurance and security
- and other issues commonly found in real estate contracts.

Your PMA also addresses a number of areas that are not commonly dealt with in real estate contracts. These include:

- Valuation of aquatic land
- Classifications of use

The following pages describe the basic outlines of the PMA.

The Time Length of the PMA

Term

Each of the model PMAs begin with a statement of the term of the agreement. The 1984 PMA has an indefinite term. The 1995 PMA has a term of 30 years, with an explicit process for renewal.



A note on dates

There are two key dates to keep in mind with a PMA. The first is the **application date**, which is the date that the port first applied for the PMA.

The second important date is the **effective date**. This is the official date that the PMA begins. It is usually the date the PMA is signed, but it could be negotiated to be the date that the port applied for the PMA, or another date that the parties agree to.

For most ports with the 1984 PMA, the dates will probably be the same. For the 1995 PMAs they will probably be different. The **expiration date** is only found in the 1995 PMA, in Section 1.

Termination

The PMA may be terminated completely or partially by the state, if the port fails to meet its obligations. This process requires six months written notice by the state, and it automatically triggers the dispute resolution process described in chapter ten.

Exhibits and maps

One of the key parts of any PMA are the maps that are attached to the end of the document. These maps provide the legal description of the property.

- **Exhibit A** shows the parcels of state-owned aquatic land that are included in the PMA. Most of the 1984 PMAs use general legal descriptions and surveys. The state's survey guidelines have become more stringent over the years, and as a result most of the 1995 PMAs have more sophisticated maps and surveys. *Exhibit A is very important: this is the only place that shows the geographic boundary of the PMA.*
- **Exhibit B** shows state-owned improvements, if there are any.
- **Exhibit C** is unique to the 1995 PMA. It lists the location and ownership of any fills.

The port has a responsibility to keep these maps up-to-date, and also to make sure that the DNR keeps its records of the PMA current. This duty is described in more detail in Chapter 2.



Delegation of Authority and Standards of Management

One of the most important sections in the PMA is Section 2, which officially delegates authority to the port. The port is granted the authority to manage the parcels for port purposes.

The 1995 PMA adds several caveats to this delegation. The first is that the DNR retains the authority to set state-wide policy through the adoption of regulations or policy by the Board of Natural Resources. This language in the 1995 PMA is probably also applicable to the ports who have 1984 PMAs, because ports are obligated in the law to follow the applicable regulations adopted by the state. Any policies set by the Board of Natural Resources will also need to follow due process, with three months notice to the WPPA and an opportunity for public comment. At the time of publication of this document, the Board of Natural Resources had not adopted any land management policies under this provision of the PMA.

Additional delegation restrictions applicable to 1995 PMAs

The 1995 PMA also restricts the authority granted to those ports in some additional ways. First of all, the port is expressly prohibited from binding the state to any financial obligations, habitat mitigation or environmental remediation. This does not mean that the port cannot engage in mitigation or remediation – it just means that the port cannot bind the state to any of the obligations that flow from any mitigation or remediation agreements that the port enters into using PMA authority, unless the state agrees.



The Shoreline Management Act

The primary state law governing the planning and use of the state's shorelines is the Shoreline Management Act (SMA).

This law requires cities and counties to plan for uses—including water dependent uses—within 200 feet of the shoreline.

The local Shoreline Master Plan must be approved by the Department of Ecology.

Use Planning and Port Regulations

Ports have the clear authority under a PMA to develop long-range plans for the state-owned aquatic lands covered under the agreement. These plans can take several forms, although the most obvious is the comprehensive scheme of port harbor improvements that is referred to in RCW 53.20.020. In today's world of land use planning and environmental management, this comprehensive scheme needs to be integrated with the Shoreline Management Act, through the city or county Shoreline Master Plan (SMP). The SMP will also be integrated with the Growth Management Act, in those jurisdictions that are covered by its planning requirements.

Ports can use this long-range planning document to obtain state concurrence in advance for planned nonwater-dependent uses.

Leases

Ports have the authority to lease the property within a PMA to third parties, or to itself. (Ports under the 1995 PMA may not lease to themselves for a term that exceeds the expiration date of the PMA.)

Port leases under a PMA must follow certain notice, rent and other procedures, which are described in Chapter 1. Leases must also contain appropriate insurance and security requirements.

If any lease survives the cessation or termination of a PMA, then the lease automatically transfers to the state. This is why the lease notification, insurance and security requirements of the PMA are important to the state.



Audits and Compliance

The State Auditor’s Office will include port management of state-owned aquatic lands in its periodic review of port compliance with state law.

In addition, the Department of Natural Resources has the right to periodically review the port’s compliance with a PMA. The standard for compliance are the state’s aquatic lands laws, RCW 79.90 –79.96, and the implementing regulations and policies of the state. The port needs to provide the state with any records necessary to ensure this compliance, and the DNR is required to notify the port promptly if it believes that the port is not in compliance with the PMA.

Supplemental provisions are supposed to be reviewed by the WPPA for 60 days prior to their inclusion into a PMA. As of 2003, there have been no supplemental provisions included in any ports PMA.

Amendments and Supplemental Provisions

The 1984 PMA does not make any references to amending the agreement, or to the possibility of drafting supplemental provisions that will apply to the port’s management of the property.

The 1995 PMA does have a specific reference to a process by which the port can amend the agreement, with a tool called a *supplemental provision*. This is an amendment process that is agreed to by the port and the state, but these provisions are not to address issues of general port-wide interest.

If a new model PMA is approved by the Board of Natural Resources, any port may convert to the new model if it chooses.



Disputes are discussed in Section 23 of the 1984 PMA, and Section 24 of the 1995 PMA.

Disputes

Each form of the PMA contains a very detailed process for resolving formal disputes. Of course, most of the time any type of disagreement is resolved with informal discussions between the port and the DNR staff. From time to time, there may even be discussions directly between one or more Port Commissioners and the Commissioner of Public Lands.

Formal disputes are very rare; only one has occurred in the first twenty years of port management of state-owned aquatic lands. The two PMA models have slightly different procedures for formal dispute resolution, but each process involves a prescribed series of discussions that escalate from port and agency staff, up to port and agency elected officials. Chapter 9 of this handbook contains a detailed description of this process, for reference.

General Provisions and Boilerplate

As noted above, each model of the PMA contains a number of general provisions that will be completely familiar to any person familiar with real estate or property management. The major ones are very quickly outlined below:

- **Access.** Neither the port nor the state is supposed to have any of its non-PMA properties left without access as a result of the PMA.
- **Easements.** The port and DNR may grant easement, with notice and the approval of the other.
- **Entry.** The state has the right to enter the property with reasonable notice, and subject to reasonable se-



WPPA Port Management Agreement (PMA) Handbook

curity and safety precautions.

- **Liens and encumbrances.** The port accepts limitations on the liens and encumbrances that it can place on the property, subject to the other provisions of the agreement relating to delegation of authority, easements and LIDs

There are also a number of routine legal “boilerplate” provisions in the agreement, which are typical of most contracts. The 1995 PMA has a few more of these than the 1984 PMA does, but they do not alter the basic purpose of the PMA. These provisions relate to taxes, non-waiver of rights, notices, attorney’s fees, prohibition of assignment, severability, survival and “entire agreement” statements.



2. Responsibilities of the Port

A port has many responsibilities under a PMA, but the following three are the most important:

1. The port needs to notify the state if any uses of the property change from water-dependent to nonwater-dependent, or vice-versa. This requirement is described in detail later in this chapter, and also in Chapter 8 (which describes audits).
2. If the port leases any of the property, it must remember to calculate and distribute rent using the state aquatic lands laws. Chapter 6 describes this process in detail. Other lease requirements are also described later in this chapter, and there are lease checklists in Appendices E and F.
3. The port needs to ensure that the Exhibits (maps) that describe the PMA and are attached to it are accurate, have been officially recorded, and that the DNR's copy of the PMA Exhibit is up to date.

In addition to these, the port also has other responsibilities relating to leases, sand and gravel sales, and environmental management. All of these responsibilities are described in this chapter.

General notices on use of property

One of the most important responsibilities of the port under a PMA is keeping the DNR notified of changes in functional use of the PMA property that affect rent. When the port first applied for the PMA there was a general description of the



property uses given to the DNR. These uses were noted in the Exhibits.

Over time these uses may have changed, or there could have been significant events such as the installation of a dock or the construction of a building.

Assertions Letter

Each port with a PMA will be expected to complete an “assertions letter” when they are audited by the State Auditor’s Office. This letter is described in detail in Chapter 7 and in Appendix I.

The port must notify the DNR of any changes in the use of the PMA property that affect rent. The Management Assertions Letter that each port will need to complete for the State Auditor contains a statement describing any such changes in the use of the property over the past year. The easiest way to also notify the DNR annually of any changes in use would be to send the DNR the same description of uses that is provided to the State Auditor.

This description of use does not need to be complicated. It should contain the same level of detail as a port planning document would contain. Typical categories of use would include:

- Marine terminals
- Warehousing
- Moorage
- Public access
- Manufacturing
- Commercial
- Parking
- Etc.

If a general category of use changes or converts from a water or nonwater-dependent use, then a notice to the DNR referencing the PMA exhibit is required. For example, if a marine terminal area is being partially converted to public access, the



port should send a modification of its surveyed exhibit to the DNR indicating that the parcel noted is changing use. If a planned use is nonwater-dependent, then the DNR must also approve of the new use. This is described in more detail later in this chapter. Chapter 6 describes how to decide if a use is water-dependent or not.

Explaining a PMA to a Tenant

The concept of a PMA is often confusing to third-party lessees. For this reason a one-page explanation of a PMA for third-parties has been included in this Handbook in Appendix H. Ports might find this document useful as a cover page for PMA leases.

Leases

Ports have the clear authority to exclusively lease the property under a PMA to either themselves or to a third party. Ports also have the authority to issue use authorizations other than leases (such as moorage agreements). There are several requirements relating to leases of PMA property that the port needs to be aware of.

Lease Requirements:

1. All leases need to contain a clause that the DNR becomes the lessor upon the termination of the PMA.
2. All leases must have a copy of the PMA attached to the lease.
3. Calculate and distribute rent properly. If the port leases any property for a nonwater-dependent use, the port is responsible for sending 85 percent of the rent attributable to the state-owned aquatic land only to the state. Rent calculation under a PMA needs to be done carefully. A full description of how to calculate rent is contained in chapter 5 of this Handbook.



4. Provide for rent security according to the general standards and policies of the port. The port should not waive rent security for any lease under a PMA.

Exhibit A

Because this is the only place where a port customizes the model PMA to its own situation, Exhibit A is a very important document. Every property manager at the port should be aware of its existence, and become familiar with its details.

Exhibits

As mentioned in the earlier chapter, the extent of the property included in the PMA is only described in one place: Exhibit A. This is essentially a map, combined with a legal description and survey, of the property. DNR's current general exhibit requirements are reprinted in Appendix L.

Acceptable Survey Standards

The port should have property surveys of its PMA of a sufficient degree of accuracy and sophistication for the port property management staff to easily discern the boundaries of the PMA for day-to-day management. Knowing where this line is will help the port know when its reporting or notice requirements are triggered for something such as a spill, or for marina liveaboard requirements, for example. Neither the PMA nor state law specifically addresses standards for keeping surveys up to date.

1984 Ports

When the first PMA's were executed between 1984 and 1993, the state's survey guidelines were less precise than they are now. For this reason, the surveys and maps that make up Exhibit A for many of the 1984 PMA ports are not very useful from a property management perspective. This is because they consist of black-lined polygons on white paper, with survey coordinates or legal descriptions attached. They do not always show buildings or other landmarks that would enable



a property manager on the site to discern with accuracy where the PMA boundary is.

For this reason, the DNR places a high priority on getting ports with the 1984 PMA to update their survey standards to a system that uses a Geographic Information System, or Global Positioning System to create a survey that shows buildings, shorelines and major landmarks clearly, along with the PMA boundary. The laws and regulations relative to surveys can be found in RCW 58 and WAC 332-130.

Tip: *An accurate property survey is a valuable property management tool. It will help a port address many property management and permit issues.*

These surveys can be expensive (especially for the in-water portions), but they are generally a one-time expense that can minimize later questions relating to ownership or improvements. For this reason, over time ports are encouraged to update their surveys to the recent state guidelines. In instances where there is little use or revenue of the property, ports will need to use economic judgment about what to survey.

The question of survey methodology frequently arises, however, when any type of property management issue subsequently comes up between the port and the state. DNR often asks the port to include updated exhibits and an improved PMA survey in part of the “deal”. These negotiations are usually very site and situation-specific.

1995 PMA

Many ports with the 1995 PMA have already incorporated the recent DNR survey standards into their PMA exhibits. These ports should still make sure that their property management staff are aware of the location of the PMA boundaries for the same types of day-to-day property management reasons noted above.



Interim uses

If a port leases a PMA parcel on an interim basis for less than 90 days, the port may waive insurance and security for the lease if the port has its own insurance for comparable amounts, and if the state is named as an additional insured.

Insurance

The 1984 PMA does not discuss insurance requirements for the port, except to note that at the initiation of the PMA the port and the state are to meet and discuss whether and how the port is to require casualty insurance for any state-owned improvements.

If a 1984 PMA port adds to its PMA by acquiring new property that has a DNR lease associated with it, then the DNR will probably require that the port ensure that the amount of security required by the port will be at least as much as the DNR required under the old lease.

The 1995 PMA discusses insurance in more depth, and requires:

1. Liability insurance of at least one million dollars. If the port wishes to require an amount lower than one million, it must make a written request for a lower amount. The DNR has 45 days to respond. If no response is received within that time, the port may petition the DNR supervisor directly, and if there is still no response after ten days the lower amount is deemed approved.
2. The port must maintain fire and casualty coverage for the insurable replacement cost of any state-owned improvements listed on Exhibit B. (DNR must provide the insurable value within 60 days of the port's request.)
3. The state must be named as an additional insured in each of the situations described above.



DNR Material Sales Agreements

The DNR has a material sales agreement process that requires the port to not only report any sales, but also track their use in order to ensure that sand or gravel that claims the “public use” discount is in fact used for a bona fide public purpose.

Tip: *Dredging for navigation uses regular permit processes, if the material is disposed of at a disposal site. All other uses of the material require a Material Sales Agreement with the DNR.*

Material sales

Some ports may wish to sell valuable materials from the PMA parcel. The most common type of valuable material is obviously sand and gravel. If the port receives, uses or sells any state-owned material on any property—PMA or not—, the state has a prescribed process that the port must use. The language relating to valuable material sales is the same in both versions of the PMA, and is also found in Section 12 of each version.

There is a process outlined in the regulations that allows a port to obtain free use of state fill material if the material is put to a “public use”. As a practical matter, however, the recordkeeping requirements for this are very cumbersome: if the material is ever re-excavated or if the land is converted to a non-public use, the state must be reimbursed for the value of the material.

Environmental Management

Most ports will be tempted to treat the property under their PMA with the same environmental management program that the port uses for its other property. While this is understandable, it is important for a port to remember that it is actually managing this property on behalf of the state, and not for the port’s citizens alone. This might seem to be a meaningless distinction, but the PMA does contain a number of notice and approval requirements that distinguish these properties from the port’s regular property portfolio.

The most common environmental management issues for PMA property are:



WPPA Port Management Agreement (PMA) Handbook

1. Reporting of spills, discharges and releases
2. Cleanups and negotiations relating to hazardous substances
3. Habitat mitigation on state-owned aquatic land managed under a PMA
4. Disposal or capping of contaminated sediments on state-owned aquatic lands managed under a PMA

Spill Reporting

Regardless of which PMA a port uses, the port should include notification of the DNR in the official port response plan for any spill or release affecting the property.

Release reporting: The port and DNR should notify each other upon the discovery of any spill, discharge or release that is required to be reported to any federal, state or local regulatory agency.

1984 PMA

The 1984 PMA makes very little specific reference to environmental management, although it does reference long-range land use planning, and also references some statutes that either explicitly or implicitly refer to natural resource protection goals.

As discussed in Chapter 1 earlier, the 1984 PMA discusses the benefits of the port jointly engaging in long-range aquatic planning goals regarding the property.

In addition, the indemnification section of the 1984 PMA says that the DNR is not liable for any injury or damage to persons or property occurring on or about the property, other than through the negligence of DNR.



1995 PMA

The 1995 PMA contains more detail, and some additional restrictions and requirements, relating to environmental issues.

The most obvious difference is the existence of several new sections dealing exclusively with hazardous substances (Section 8), fills (section 13), and confined disposal of contaminated sediment (section 14). There are also several other specific parts of the PMA relating to these and other issues, including a sentence at the end of Section 2 that states:

“DNR’s delegation to the port does not include the authority to bind the State or DNR to any financial obligations, to any environmental remediation of the property, or to any habitat mitigation involving the property without DNR’s written consent.”

The practical effect of these sections is to make environmental and natural resource concerns much more obvious and detailed in the 1995 PMA.

Indemnity: As mentioned above, the 1995 PMA contains more specific language indemnifying the state for any imposition of liability for hazardous substances that arises out of the port or the port lessee’s use of the property. The language is carefully drafted to exclude pre-existing contamination, and its practical effect is probably not very different from the general indemnity language of the 1984 PMA.



A note on liability

Remember that regardless of any of the agreements or understandings reached between the port and the state through a PMA, state and federal hazardous substance laws impose strict liability requirements on any party who causes or contributes to the release or threatened release of a hazardous substance.

Tip: *A good reference to the suite of environmental laws and programs that affect ports is the WPPA Environmental and Land Use Handbook.*

Sediment cleanup and disposal

The 1995 PMA specifically excludes the confined disposal of contaminated sediments from the scope of the agreement. This does not mean that it is prohibited; it just means that this entire issue is “carved out” of the PMA, and any proposal involving the disposal of contaminated sediments will need to be reached separately between the port and the state. The 1995 PMA also prohibits the filling of PMA parcels without DNR approval – which amounts to the same thing.

Habitat Mitigation

As mentioned above, the 1995 PMA prohibits the port from binding the state to any habitat mitigation agreement involving the use of the property, unless the DNR agrees in writing. The 1984 PMA is silent on habitat mitigation.

Land Use Planning

By far the most important and relevant statute relating to aquatic lands planning and use in a land use context is the Shoreline Management Act. This Handbook will not discuss this Act at length, except to note that all ports are reminded of the importance of integrating their port comprehensive plans with the city or county Shoreline Master Program. These shoreline plans have the full force of land use planning law, are adopted by the local government, and approved by the Department of Ecology.



Additional Reporting and Notice to the State

Each of the versions of the PMA contain a number of additional reporting and notice requirements for both the port and the state. The port, as the day-to-day manager of the property, has more of these reporting and notice requirements than the state does.

The 1995 PMA also has a larger number of items that require notice to the state. As a practical matter, however, there are not big differences between the PMA versions on this point.

1984 PMA

The port is responsible for the following notices and reporting under the 1984 PMA:

DNR Notice to Port:

The DNR must also notify the port of several events.

DNR's responsibilities also vary depending on the PMA model used, and they are listed in Appendix G.

1. The port must send the DNR copies of all leases, at the request of the state. The port does not need to send these automatically to the state upon execution of the lease.
2. Any port policies and regulations that implement the PMA, or that direct the management of the property, before these policies or regulations are adopted. DNR is to be given an opportunity to comment on these policies and regulations. The PMA does not specify how much notice DNR is to have, but at least 30 days would be a good rule.



WPPA Port Management Agreement (PMA) Handbook

3. Any plan to lease a PMA parcel for a nonwater-dependent use, unless the port and the DNR have met and agreed to a long-range plan for the use of the PMA property. If the port and the DNR do agree to such a plan for the property, then the port may issue leases for nonwater-dependent uses without DNR comment, as long as the leases are consistent with the plan. If there is no such plan (and for most ports, there is not one), then DNR must be given notice “at the earliest practicable time”, and shall meet with the port to ensure that the proposal is consistent with the aquatic lands statutes and regulations.
4. Any request from a third party, or from the port, for a permanent easement on the PMA property. (The port may grant non-permanent easements, if they do not extend beyond the term of the PMA).
5. Any Eminent Domain proceeding that affects the property.
6. Any dispute involving the property. (The dispute process is described in detail in chapter 10.)
7. Any request to remove natural resources from the property, except for channel and harbor improvements or for flood control. (Valuable materials sales are described in detail on page 2-7.)

1995 PMA

The port is responsible for the following notices and reporting under the 1995 PMA:



WPPA Port Management Agreement (PMA) Handbook

1. The port must send DNR copies of all new leases, lease renewals, lease modifications, and surrenders of leaseholds.
2. The port must notify DNR of any planned additions to the PMA. These take the form of amendments to Exhibit A.
3. Any environmental actions affecting the property, including any spills, releases or discharges that require reporting to any agency. Also any environmental discovery that affects the property, or any cleanup negotiations, cleanups, habitat mitigation or resource restoration.
4. Any proposal to fill any part of the PMA parcel
5. Any request for third-party liability insurance of less than one million dollars.
6. Any port policies and regulations that implement the PMA, or that direct the management of the property, before these policies or regulations are adopted. DNR is to be given an opportunity to comment on these policies and regulations. The PMA does not specify how much notice DNR is to have, but at least 30 days would be a good rule.
7. Any plan to lease a PMA parcel for a nonwater-dependent use, unless the port and the DNR have met and agreed to a long-range plan for the use of the PMA property. If the port and the DNR do agree to such a plan for the property, then the port may issue leases for nonwater-dependent uses without DNR



WPPA Port Management Agreement (PMA) Handbook

comment, as long as the leases are consistent with the plan. If there is no such plan (and for most ports, there is not one), then DNR must be given notice “at the earliest practicable time”, and shall meet with the port to ensure that the proposal is consistent with the aquatic lands statutes and regulations.

8. Any request from a third party, or from the port, for a permanent easement on the PMA property. (The port may grant non-permanent easements, if they do not extend beyond the term of the PMA).
9. Any Eminent Domain proceeding that affects the property.
10. Any dispute involving the property. (The dispute process is described in detail in chapter 10.)
11. Any request to remove natural resources from the property, except for channel and harbor improvements or for flood control. (Valuable materials sales are described in detail on page **2-7**.)
12. Any purchase of third-party improvements from a bankruptcy trustee.

Official notices to the state may be made personally, or may be mailed to the address below. The 1984 PMA requires notice to be sent by registered or certified mail, but the 1995 PMA allows first class mail.



WPPA Port Management Agreement (PMA) Handbook

NOTE TO 1984

PMA PORTS:

The DNR has changed locations since your PMA was signed, and the address in Section 25 of the PMA is no longer correct.

All correspondence should be sent to:

Department of Natural Resources
Aquatic Resources Division
111 Washington St. SE
PO Box 47027
Olympia, WA 98504-7027

ATTN: Port Management Agreement Staff



3. What Property is Eligible for a PMA?

The “cove” rule

Shorelines are rarely straight. In those instances where multiple property owners own property along an indented shoreline such as a cove, there is a surveying principle called a “cove rule” that gives each upland property owner a pie-shaped wedge of leasehold option, out to an imaginary center point in the cove. This concept sounds simple at first, but there is often debate about where to place the imaginary point – and arguments frequently result that need to be negotiated amongst the parties.

The exact extent of the property that is included within a Port Management Agreement is a matter of great importance to both the state and the port, and as a result it is sometimes in contention – especially for those ports with the 1984 PMA.

To begin with, the eligibility for a parcel of property is straightforward. It consists of the aquatic lands that are:

“abutting, or used in conjunction with and contiguous to, uplands owned, leased or otherwise managed by a port district for port purposes as provided in Title 53 RCW.” [RCW 79.90.475]

The Department of Natural Resources regulations expand somewhat on this concept in WAC 332-30-114, subsection (1)(b). The general idea is that the port may apply for a PMA for the property that is directly waterward of upland property that the port owns, or leases or has operating management of.

Ownership means having the title. **Control** is a much broader phrase, and obviously can mean more than just ownership. In the past, the DNR has interpreted this to mean property that is either under lease, or under an agreement for “operating management”. This is defined in the regulations as the planning, organizing, staffing, coordinating, and controlling of all activities occurring on a property.

Adding property to a PMA

Adding property to the PMA is an important property management decision. For this reason, it is recommended that all ports use the following process to add property to their PMA. (Note: adding property is one area where there are important



differences between the 1984 and 1995 PMA. The additional factors listed for the 1995 PMA are noted at the end of this section.)

The most important thing to do for a port adding property to its PMA is to keep the DNR apprised of the process, and to make sure that the DNR records the changes properly. There is some difference in the degree of discretion that the DNR may use depending on which PMA version the port is using, but most of the basic steps are the same.

Adding property to the PMA is not an easy step: the port will still need to meet the same threshold of proof of ownership or control for the property to be eligible. In addition, the port will need to survey the property and make sure that the DNR has recorded the amendments to the Exhibit properly.

Adding Property Checklist

A checklist of the steps for adding property to the PMA is included as Appendix J of this Handbook. DNR's current exhibit requirements are shown in Appendix L.

The first step should always be to contact the DNR and notify them of the planned addition. This will give the state an opportunity to understand the port's proposal, and will also allow the port to learn about any pertinent factors that the DNR can share regarding the property's status. This is especially true for property that the DNR is currently leasing to a third party.

The goal of these interactions will be for the port to explain its proposal, provide the necessary survey documentation to the DNR, and gain the concurrence of the DNR.

For the ports with the 1984 PMA, at the end of these discussions the DNR has an administrative duty to approve of the addition of the property. The port needs to ensure that the DNR confirms in writing that the DNR has amended the exhibit properly so that there is no dispute later regarding exactly what property is in or out. There should be no dispute



from the DNR if the port has been meeting its management responsibilities.

Tip: *All ports should insist that the DNR initial or otherwise approve of any amendment to the PMA exhibit.*

Additional Details of Adding Property with 1995 PMA

The 1995 PMA has more details regarding how a port is to add property to a PMA. The basic process is that the port notifies DNR, and DNR must approve the addition of the parcel. However, DNR’s decision must be timely and approval cannot be unreasonably withheld. In particular, DNR may consider the following factors in its decision:

- Whether the port is meeting its current management obligations
- Whether DNR has invested in, planned for, or is legally committed to a specific use that is inconsistent with the port’s proposed use,
- Whether port acquisition of the parcel would release prior lessees or users to the detriment of the state, and
- Whether litigation is pending or threatened on the parcel.

There is also a very specific series of timelines (45 days for each side) regarding decisions and appeals. These are found in Section 3 of the 1995 PMA.

Removing property from the PMA

Any property that no longer meets the “owns or controls the uplands” criteria is to be removed promptly from the PMA. It is also possible for the two sides to agree jointly to remove



WPPA Port Management Agreement (PMA) Handbook

any parcel. If all the PMA properties are removed from a PMA, then the agreement lapses completely.

The port also is required to remit to DNR the pro-rata share of any rents pre-paid by a lessee for a parcel that is removed from a PMA.

Leasing state-owned land if a PMA is not available

There are sometimes instances where a port needs to control a portion of state-owned aquatic land and the port does not own or control the upland. In these instances, the port may be required to lease some state-owned aquatic land from the DNR.



4. Improvements and Fills

One of the most important things for a port property manager to understand about their PMA is the location, type and ownership of the various improvements, including fills. The location, type and ownership of the improvements and fills will partly determine the amount of rent owed to the port and to the state.

This Handbook will discuss this issue in two parts:

1. **Improvements other than fills.** These are the easier of the two, and refer to the type of improvement that is familiar to any property manager or appraiser. The most common improvements include buildings, roads, lights, docks, etc. These are usually the changes that have been made or added to the property in order to gain an economic use of the property. The 1984 PMA discusses improvements in Section 13, and the 1995 PMA in Section 15.
2. **Fills.** Fills are one of the most contentious areas between ports and the state, and even after years of discussions there are still several key areas of disagreement. Fortunately, many of these areas of disagreement are largely theoretical, and can be negotiated successfully case-by-case once a port's individual facts are on the table. The 1984 PMA does not explicitly discuss Fills. The 1995 PMA devotes all of Section 13 to it.

Improvements other than Fills

As noted above, these are the traditional type of improvements to property such as buildings and docks that give the



property a measurable amount of its actual economic value.

Both PMA versions treat these type of improvements in the following traditional manner: The ownership of improvements is noted at the time the PMA is applied for, non-owners agree to maintain the improvements in good condition, and the title to any improvements installed on the land passes to the landowner at the time the agreement expires (unless the agreement is renewed). This is a common custom in real estate management.

**Purchasing
Improvements
from a Trustee**

The 1995 PMA does contain one additional issue. This newer version of the PMA explicitly allows a port to purchase an improvement from a tenant for value or from a bankruptcy trustee at the termination of the PMA or lease. If the purchase is from a bankruptcy trustee, the port is obligated to give notice to the state.

The two PMA models differ slightly in the language dealing with traditional improvements, but most of the differences consist of the addition of more descriptive details in the later PMA. In both models of the PMA, any improvements owned by the state are to have been identified by the port in Exhibit B, and the state reserves its ownership of these. (In many PMAs, there are no state-owned exhibits listed in Exhibit B.) The port is obligated to maintain these in good repair at port expense.

If the port or its lessee installs improvements on the property, title to the improvements remains with the port or the lessee (whichever way the port has structured the deal) until the PMA terminates. If the PMA ends, the port or the third party owner is obligated to pass the title to the improvements to the state, or remove the improvement at its own expense. The state gets to choose either option.

All ports leasing a PMA parcel are advised to ensure that the lease conditions relating to the title and removal of improvements match their PMA conditions.

Both versions of the PMA also state that both the PMA and a



Fair Market Value

Under the 1984 PMA, the port is directed to charge similar rent for any state-owned improvement as the state would charge, if the state were leasing it to the lessee. This version of the PMA also directs that the fair-market value of any state-owned improvement is to be listed in Exhibit B.

Exhibit C

The 1995 PMA contains a requirement to create an exhibit C, which has no analog in the 1984 PMA. Exhibit C shows the location of all filled state-owned aquatic land with the PMA. If the ownership of the fill is severed from the state-owned land, then that fact is noted. Otherwise, the ownership of the fill is considered part of the aquatic lands, and it is owned by the state.

lease that is executed under the PMA are deemed to be continuous from one term to the next (even after the expiration date), as long as the port or the tenant remains in physical possession of the improvement and is diligently pursuing a new PMA or a new lease. This means that the improvement's removal or title transfer obligation does not kick in the moment a PMA or lease term ends, as long as occupancy and renewal intentions continue.

Fills

Determining the ownership status of fills is often difficult. This is because the fills are frequently old, and have incomplete records. Obviously, property titles and title insurance companies are the first place to look. Permits and historical lease documents are the second place to look.

Even these sources may not be of help, however. There are several areas within the statute that seem to say very clearly that a fill can be thought of separately from the aquatic land that lies beneath it. (That a fill is a type of improvement, in other words.) The WPPA and the DNR have never been able to agree on how to settle this issue.

The 1984 PMA does not explicitly address the issue of fills at all, and most of the areas where there is confusion is at the ports with the 1984 PMA.

Fortunately, most of the arguments relating to ownership of fills and any apportionment of rent attributable to them are theoretical, because most of the uses on fill are water-dependent and the ports keep the rent for water-dependent uses.



WPPA Port Management Agreement (PMA) Handbook

For nonwater-dependent uses however, the DNR is to be remitted 85 percent of the revenue attributable to the state-owned aquatic land only. The rent calculations need to be done carefully for nonwater-dependent activities.

This Handbook contains a thorough description of how to categorize activities and calculate rent in Chapter 5.



5. Calculating Rent

The calculation of rent is one of the most important single obligations that a port undertakes under a PMA.

The fundamental outline of the relationship between the port and the DNR works like this:

Water-dependent Uses

Why such a deal for water-dependent uses?

Remember the reason for this: In 1984 ports “traded” the revenue that they used to get from the state for harbor improvements. In exchange, the ports pay no rent for water-dependent uses. The two amounts of money balanced out in the state-wide calculation.

The port pays DNR no rent for a water-dependent use of a PMA parcel.

If the port uses the property for its own water-dependent operations (such as a marina), then no rent is due. If the port leases to a water-dependent user, then the port applies the statutory formula to the lessee, and the port keeps this rent for itself. (For cargo or passenger vessel facilities, see the note on page 5-7 regarding itemization of these costs.)

This is described in RCW 79.90.480 and WAC 332-30-123.

Nonwater-dependent Uses

If the port or one of its lessees engages in a non-water-dependent use, then 85 percent of the revenue attributable to the state-owed aquatic land only is paid to the state.

This is described in RCW 79.90.500 and WAC 332-30-125.



WPPA Port Management Agreement (PMA) Handbook

This sounds simple, and sometimes it is. There are many things that the port needs to do correctly with rent calculations, however. These include:

1. Assessing whether a use is water or nonwater-dependent.
2. Using the correct delineation of where the state-owned aquatic land is.
3. Applying the statutory formulas and appraisal methodologies correctly, in order to get the proper rent calculation. This usually requires judgment.

Remember this about rents under a PMA: **State-owned aquatic lands must be leased using the state's statutory rent formulas and procedures.** The Port property manager must remember that the pricing and leasing practices of the port must yield to these state laws and regulations.

Put another way, the port uses the same aquatic lands laws and regulations that the DNR does. This can require some getting used to on the part of the port property management staff.

In addition, the entire process of rent calculation needs to be transparent and auditable, so that a person checking up on these rental calculations can understand what statutes the port used, and what judgments it made in determining rent.

Determining the type of use

Except for appraising the value of the property itself, there is



WPPA Port Management Agreement (PMA) Handbook

probably no single area of aquatic lands management that causes more confusion than deciding which parts of a use are water-dependent and which parts are nonwater-dependent.

These are the three classifications of use, along with their exact statutory definitions from RCW 79.90.465.

Water-dependent use: means a use which cannot logically exist in any location but on the water. Examples include, but are not limited to, water-borne commerce; terminal and transfer facilities; ferry terminals; watercraft sales in conjunction with other water-dependent uses; watercraft construction, repair and maintenance; moorage and launching facilities; aquaculture; log booming; and public fishing piers and parks.

Water-oriented use: means a use which has historically been dependent on a waterfront location, but with existing technology could be located away from the waterfront. Examples include, but are not limited to, wood products manufacturing, watercraft sales, fish processing, petroleum refining, sand and gravel processing, log storage, and house boats. For the purposes of determining rent under this chapter, water-oriented uses shall be classified as water-dependent uses if the activity either is conducted on state-owned aquatic lands leased on October 1, 1984, or was actually conducted on the state-owned aquatic lands for at least three years before October 1, 1984. If, after October 1, 1984, the activity is changed to a use other than a water-dependent use, the activity shall be classified as a nonwater-dependent use. If continuation of the existing use requires leasing additional state-owned aquatic lands and is permitted under the shoreline management act of 1971, chapter 90.58 RCW, the department may allow reasonable expansion of the water-oriented use.



Nonwater-dependent use: means a use which can operate in a location other than on the waterfront. Examples include, but are not limited to, hotels, condominiums, apartments, restaurants, retail stores, and warehouses not part of a marine terminal or transfer facility.

While many activities are obviously one type of use or another, there are many activities where the classification is not obvious. Most of these fall into the category of “accessory uses”; that is they are uses which by themselves would be considered nonwater-dependent, but they support a water-dependent use.

Examples of accessory uses include the following:

- service delivery and handicapped parking for a ferry terminal,
- the maintenance unit of a marine terminal port,
- Restrooms and lunchrooms associated with a water-dependent use

These non-revenue producing uses require judgment and often negotiation with the DNR or the auditor in order to properly classify. The best guidance that WPPA can provide on this issue is:

A package of accessory activities that are integral to and directly related to a water-dependent use should be charged rent as water-dependent.

Appendix K contains additional guidance on this point.

True retail operations, such as gift stores, can be considered nonwater-dependent and be separated from the lease calcu-



The water-dependent Rent Rule:

The section of the regulations that explains water-dependent rent calculations is WAC 332-30-123. This section of the WAC is about three pages long, and is fairly easy to read and understand. Port property management staff should read it for themselves before calculating rent for a PMA.

lations. These operations should use the nonwater-dependent rent calculation section of this chapter.

Calculating water-dependent rent

There is a statutory formula that must be used when leasing state-owned aquatic lands for water-dependent uses (“carriers by water” do not need to itemize this formula). The formula is:

$$\text{Upland value} \times \text{lease acreage} \times .30 \times \text{real rate of return} = \text{annual rent}$$

Upland land value

Water-dependent uses take the assessed value of the abutting upland parcel exclusive of improvements to estimate the value of the aquatic property.

Assessed Valuation

Essentially, the statute presumes that the assessed valuation of the uplands is a quick, simple and accurate appraisal. Sometimes this is true, but because the uplands in these cases are nearly always publicly-owned, and because commercial and industrial aquatic property is often hard to appraise, the assessor’s numbers may not be accurate.

The statute and regulations make a very important caveat about using the assessed value of the adjoining upland: If the upland parcel is not assessed, or if it has an assessment more than four years old, or if it has an assessed valuation that is inconsistent with the purposes of the lease, then an alternate comparable parcel must be substituted. This means that the first step the port needs to take is to determine if the upland parcel’s county assessment is recent, and reflects a value that is consistent with the purposes of the lease. The parcel must also be waterfront of usable size, and it must have at least some portion that is upland. Appendix D provides important additional guidance on selecting alternative parcels.



Lease acreage

The lease area is expressed in either square feet or acres. If there are multiple uses on the upland parcel, then only the portion that is water-dependent is calculated with this formula. A nonwater-dependent portion is calculated separately using the guidance beginning on page **5-9**.

Rate of Return

The real rate of return for water-dependent uses is bounded in statute to be between 3.0 and 7.0 percent, and it cannot change by more than one percent per year. It is typically between 5 and 7 percent, and the DNR recalculates and publishes it annually. Contact the DNR or their web site at www.dnr.wa.gov in order to get this year's rate of return.

The real rate of return for nonwater-dependent uses is higher, and is based on a statutory formula that uses mortgage and inflation rates. This is also referred to as the *use rate percentage*.

Rent calculations for filled state-owned land

The statute says that state-owned aquatic lands that have been filled to the point of being uplands are not supposed to have the "thirty percent of the upland value" formula applied to them. Instead, the statute says that rent in these instances is to be calculated using the "fair market value" model that is also used for nonwater-dependent uses. This does not mean



that the uses that occur on these filled areas are necessarily nonwater-dependent. It just means that it makes no sense to take thirty percent of the next-most inland parcel's assessed valuation, and apply it to land that is already filled.

For the purposes of a PMA, the port will pay no rent to the state for water-dependent uses. The port should be able to calculate this rent, however, and be able to show transparently how it would obtain a rental amount for leases of state-owned aquatic land.

There is one singular exception to this rule. The law says that the port does not need to itemize the formula rent on leases to “carriers by water”. While this itemization burden is removed, it may still be a good idea for any port who leases state-owned aquatic lands for marine terminal/water carrier activities to be aware of what the rental rate for these properties would be using the formula, because the answer will provide the rental “floor” that the lease must at least match.

Rental reductions for public access areas

The state's aquatic lands policies encourage public use and access of shorelines wherever possible. Both the port and the state are supposed to encourage public access and use of the shorelines. The law allows a significant rent reduction for state-owned aquatic land that is open for public access. The DNR frequently charges lessees no rent at all for the portion of a leasehold that is open for unrestricted public use and access.



Rental rates for habitat mitigation

If a port creates aquatic habitat mitigation (such as fish enhancement, or eelgrass bed plantings) on property managed under a PMA, then no rent is due because this is a *water-dependent use*. If the port performs the same activity on state-owned aquatic lands that are not managed under a PMA (managed by the DNR, in other words), then the port will need to lease these lands from the DNR at the water-dependent rental rate, the same as any other non-port lessee would. It is sometimes a challenge to decide what upland site to use as an adjacent parcel for the purpose of calculating rent.

Mitigation that is integrated with a disposal site for contaminated sediments will have to negotiate the disposal site separately from the mitigation—at least for the ports with a 1995 PMA. (The 1984 PMA is silent on disposal).



Nonwater-dependent uses are a low state priority

Eighty-five percent of the revenue is sent back to the state because the state's policy is to discourage nonwater-dependent uses of state-owned aquatic land

Calculating nonwater-dependent rent

The fundamental principle governing the establishment of rent for nonwater-dependent uses is "full fair market rental". The statute requires that these uses pay this rate, and the law gives the DNR the authority by rule to establish the methods that may be used to calculate it.

The port is required to charge the full fair market rent, and must remit to the state 85% of the rent attributable to the state-owned aquatic land. (The port is allowed to keep 15% for administration of the parcel.)

The formula is:

(Fair Market Value) x (lease area) x (nonwater-dependent real rate of return) x (.85) = rent to DNR

The nonwater-dependent real rate of return is a higher number than the water-dependent real rate of return. It is based on a statutory formula that combines average mortgage rates and inflation. In the past it has been in the vicinity of nine or ten percent. Call the DNR to get the current value.

Nonwater-dependent Uses

The rules for calculating rents for nonwater-dependent uses are found in WAC 332-30-125. Any port attempting to establish these rental rates is encouraged to read it.

Remember, the rent is charged only for the aquatic land – not for the improvements or the fill (unless the state owns the improvements or the fill).

Determining full fair market rental

Full fair market rental for a nonwater-dependent use is to be determined in one of three ways:

1. **Comparable non-DNR market rents.** If the port



Tip: Remember – ownership of all improvements is shown on Exhibit B of the PMA, and for the 1995 PMA version ownership of fills is shown on Exhibit C.

Use Rate Percentage

The use rate percentage used by the state is a market rental rate of return for comparable properties leased on comparable terms in the locality.

If such a rate is not available, then the rate of return is based on the average rate charged by lending institutions for mortgages of a term equal to the term of the lease, for comparable uses of property. This rate is available from the DNR at www.dnr.wa.gov. Be sure to not mix up the water and non-water-dependent rates: they are different.

selects this method it will need to gather data showing comparable nearby uses and rents. *In addition, the statute requires that this data come from parcels that are not under a DNR lease or a port PMA lease.*

2. **A percent of gross revenues.** This percentage is not stipulated, and may be selected by the port based on documented gross revenue percentages for the lease type.
3. **Other appropriate basis.** The rule is silent on what another appropriate basis for a rental calculation would be, but if the rental rate is supported by recognized real estate management practices it is probably appropriate. A port establishing a rental rate under this authority should obtain an opinion from either the DNR or from the state auditor prior to calculating rent. In any case, a port selecting this method will need to carefully document its process, reasoning and decision.

If none of these three methods is appropriate or available, then the port is to calculate the “full market value of the property”, and multiply this by the state’s published nonwater-dependent use rate percentage. This means an appraisal.

Appraisal Methodologies

The state regulations list five appraisal methods that are appropriate, and indicates that any one of these methods may be chosen. Appraising publicly-owned waterfront and aquatic property can pose a challenge.

1. **Shore contribution.** This method assesses the difference in value between a waterfront property and a



comparable non-waterfront property. The rule states that it is best used for related land-water uses which are independent, or not needed for the upland use to exist.

Extension Method

Because there are many variables that affect a determination of “market rents”, most ports and the DNR have come to use the “Extension Method” as the way to value aquatic lands for nonwater-dependent uses. While other methods can be considered depending upon the circumstances, most ports will find that this method leads to the least confusion and the most straight-forward rental calculations. This method equates an aquatic parcel’s value for nonwater-dependent uses to be equal to the value of the adjoining upland parcel that supports it.

2. **Comparable upland use.** (Also called “substitution”). This method is used only for unfilled aquatic land, where the use is independent of the upland, but where the activity could also occur on dry land. Floating boat sales are probably the best example. This method takes the costs and variables of the upland version of the use, and translates (or “substitutes”) them to the aquatic parcel.
3. **Extension.** This is the method that is the most commonly used. It extends the assessed or appraised value of the adjacent upland parcel, as improved, directly into the aquatic parcel, on a unit-for-unit basis. The regulation states that this method is the best for aquatic land uses that are integrated with and inseparable from the adjacent upland use, such as an upland property that relies on the docks that sit on the land being leased.
4. **Market data.** This is simply using sales data between knowledgeable buyers and sellers of comparable property. This is an excellent method to use, if data for comparable properties exists.
5. **Income.** This method uses the net income of a property to assess its return on investment. It can result in an appraisal of a flat per acre rate, or a percentage of gross revenues. It is typically used for retail, not industrial, operations.



The Port chooses the method

Remember: the PORT gets to select which of these methods to use. The extension method is the one typically chosen by the DNR for the properties it manages. Because ports are managing a smaller number of properties and have a good knowledge of local markets, the port can use more sophisticated appraisal or rental methodologies.

These methodologies could include appraisal techniques that account for the amount of the value of state-owned land that is attributable to port owned improvements.

The rule goes on to state that for any method selected, **“Negotiation of rental amounts may occur when necessary to address the uniqueness of a particular site or use.”** This clause is self-explanatory, but if this clause in the rule is used – be sure to document the reasoning in the file for subsequent audits.

Once the port has established a fair market value for the state-owned aquatic land only, there are two more calculations to make.

1. There needs to be a check that the rental rate is higher than what would be charged if the use was a water-dependent use. If it turns out to be lower, then it must be raised to be at least one dollar more. This is an explicit requirement in the state law. (RCW 79.90.505)
2. The port needs to multiply the fair market value by the state capitalization rate, and send 85% of this amount to the DNR. The port should remit this amount on a monthly or quarterly basis, although a different remittance schedule can be negotiated with the DNR depending on the situation. An annual remittance may be more efficient for very small rental amounts. See RCW 79.90.530 for guidance on this point.

At the end of this chapter there are two examples of hypothetical port rent calculations for PMA parcels.

Multiple Uses occupying the same area

It is common for water-dependent and nonwater-dependent



uses to occupy separate portions of the same leasehold. When this occurs, the rent is required by law to be pro-rated proportionally. If the two types of uses occupy the same portion of the leasehold, then the rental rate is subject to negotiation with the department, taking into account the proportion of the improvements that each use occupies. (See RCW 79.90.505)

When a multiple story building has a mix of water-dependent and non water-dependent use the total square footage of all floors is used to calculate the percentage of each use. That percentage is then applied to the footprint of the building. Non water-dependent rent is calculated for the area of the footprint attributed to the percentage of non water-dependent use in the building.

Log booming and storage laws and rules

The section of the statute that explains log booming and storage is found in RCW 79.90.485.

The section of the rule that describes the rents and other restrictions is found in WAC 332-30-145.

WAC 332-30-106 contains the legal definitions of “log booming” and “log storage”.

Log Booming and Storage

The storage and booming of logs is an activity that has its own sections of the law and regulation. Any port that leases all or part of a PMA parcel for log storage or booming needs to become familiar with these special requirements.

There are three categories of log handling defined in the rules:

1. **Vessel loading.** The temporary holding of logs alongside a vessel for the purpose of loading the logs onto the vessel is not a “use” that requires any rent. It is not considered booming or storage.
2. **Log Booming.** Booming is defined as the placing of logs into and out of the water, assembling and disassembling log rafts, and sorting logs prior to processing. Log booming is considered to be a water-dependent use. A port leasing a PMA parcel for log



booming must use the water-dependent rental formula and process described in this chapter. If the storage area does not abut a log sort yard, this is likely to require judgment in order to find the appropriate upland parcel to use.

3. **Log Storage.** Storage is defined as the water storage of logs in rafts for shipment in water-borne commerce. No particular length of time is defined. Log storage uses a more complicated rental formula that consists of a “base unit” that is defined every four years by the DNR. Contact the regional DNR office to find out what this base unit is. There is also a substantial amount of guidance in the rule about how to use this base unit rule.

Public use of log storage areas

If a log storage area is vacant and open to the general public for use for three months or longer, then no rent is charged as long as the public use is accommodated in a plan approved by the port, and noted in the lease. This discount is applied on an annual pro-rated basis.

In addition, there are several special conditions for log rafting that a port should include in its lease. These include a prohibition on the grounding of the rafts, prohibition on free rolling into the water, and a requirement to prevent and clean up any log and bark debris. Any port that leases all or part of a PMA parcel for log booming or storage should read WAC 332-30-145 and become familiar with these special requirements.



Rent Example 1

-- Waterfront Industrial Leases --

The Port has two lease parcels in its PMA.

Parcel number 1

Lease parcel 1 is to the Pacific Stevedoring Company (PSC). PSC leases 30 acres from the port, of which 9 are within the PMA area. The lease is for marginal wharf and backup property. 21 acres of the backup property are on port-owned filled land. The port leases cranes, cargo-yard equipment and two warehouses to PSC. The warehouses are on the port-owned property.

The marginal wharf is on state-owned land, but the wharf itself was built by the port, and is owned by the port.

The port leases these 30 acres, including the two warehouses, for \$ 25,000 per acre per year. There is a separate charge for the cranes and equipment, based on their use. The crane and equipment rentals are a separate issue from the PMA.

Because a portion of the port's lease is actually for state-owned aquatic land under the wharf, the port needs to use the lease checklist in Appendix E as it prepares the lease.

The port makes the obvious determination that the lease for the PSC parcel is water-dependent. This means that the port keeps the rental payments from this portion of the lease. Furthermore, the port does not need to itemize its lease calculations, because PSC is a lease for a "carrier by water".

However, the port is obligated to charge at lease as much as the water-dependent rental formula, so the port decides to calculate what its rental rate would be for the PMA parcel for the file.

The port breaks the calculation into two parts:



1. The state-owned aquatic land that underlies the marginal wharf.
2. The filled state-owned aquatic land that abuts the marginal wharf.

Unfilled Wharf parcel:

Because this is a water-dependent use, the port turns to the formula that keys off of the upland use. The port determines that the upland parcel used in conjunction with the state-owned land is consistent with the purposes of the lease. The assessed value is also reasonably accurate. The assessed value is \$ 302,000 per acre.

The portion of property taken up by the wharf is 1.8 acres.

The water-dependent Real Rate of Return published by the DNR this year is 6.7 %, which the port obtains from the DNR web site at www.dnr.wa.gov.

The formula is therefore:

$$(\$302,000) \times (1.8 \text{ acres}) \times .30 \times .067 = \$10,926$$

This would be the rent for the aquatic land underlying the wharf. Because the port owns the wharf, it could still lease that for value separately.

The rent for the filled state-owned aquatic land is a little more complicated, because it has been “filled to the point of having upland characteristics”. This means that the value needs to be assessed using the “fair market value” process, even though it is a water-dependent use.

The port reviews the three options available to it for determining fair market value:

1. **Nearby comparable rents.** There are no nearby rents for marine terminals. The port essentially defines the market – so this method is not appropriate. The port could use rents from other marine terminals in other counties, but decides to hold off for now and see if another method can be used.



- 2. **Percentage of gross revenues.** This method is not really appropriate for industrial operations.
- 3. **Other methods.** The port holds off on this method until it sees what an appraisal of fair market value will yield.

Because neither of the first two methods yields an answer that the port believes will be sufficiently accurate or appropriate, the port needs to do an appraisal in order to determine the Fair Market Value (FMV).

The port reviews the five methods that are outlined in the WAC for determining FMV:

- 1. **Shore contribution.** This method is not appropriate.
- 2. **Comparable Upland Use.** This method is not appropriate for filled land.
- 3. **Extension.** If you extend value from the adjacent port-owned upland, then this method would yield \$302,000 per acre – the same as the port-owned property.
- 4. **Market data.** There is no comparable market data for marine terminals.
- 5. **Income.** This method would be difficult to use in this instance, because it is hard to separate out a portion of the property for income-generating purposes.

The port chooses the Extension method, which is the most commonly used method if the upland property is used in conjunction with the aquatic land. The port then checks its calculations to make sure that it is charging in its overall lease at least as much as the statutory formula:

Filled land lease: (\$302,000) x (9 acres) x (.095) = \$182,106

Wharf Lease (from above)	10,926
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TOTAL	\$ 193,032 per year
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The port’s overall lease with PSC is for over \$900,000 per year (including the warehouses and wharf), so there is no problem showing that the port is at least utilizing the



state's formula for the water-dependent portion of the PMA lease to the Stevedore.

Parcel number 2

The port's second lease parcel is to Clark's Boatyard. This lease consists of 20 acres, six of which are in the PMA.

Of the six acres in the PMA, 3.5 are filled state-owned land and 2.5 are open water dry-dock areas. There is also a 9,000 square foot warehouse on the filled portion. This facility is mostly used as equipment storage and maintenance for the boatyard. Four hundred square feet of the warehouse is a bathroom and lunchroom for the boatyard workers.

The port determines that all of this lease is also water-dependent. The maintenance shop, restroom and lunchroom could be considered nonwater-dependent, but because they support an activity which taken as a whole is a water-dependent one, the port decides that the entire package is charged water-dependent rent.

The port will also need to itemize its calculations clearly in the file, because this lease is not to a "carrier by water".

The wharf is owned by the port, so the port needs to first calculate the value of the state-owned land under the wharf only. The port extends the value of the upland property, which in this case is \$ 255,000 per acre. This makes the rent for the state-owned land under the wharf :

$$(\$ 255,000) \times (2.5 \text{ acres}) \times (.30) \times (.067) = \$ 12,814 \text{ per year}$$

For the filled state-owned land, the port will need to use the fair market value method, because the area has been filled to upland characteristics.

There are some nearby boatyard properties that have been sold within five years, and the port decides to use these as an indication of market data. The first boatyard sale was in a larger city 40 miles away. This property sold for \$ 390,000 per acre. The second boat-



WPPA Port Management Agreement (PMA) Handbook

yard was rural and 60 miles away, and it sold for \$ 195,000 per acre.

The port applies appraisal indices to adjust the value to the local economic conditions, and feels confident it can defend a value of \$ 295,000 per acre – which happens to be slightly more but still near to the assessed value.

The rent for the filled area will now be:

$$(\$ 295,000) \times (3.5 \text{ acres}) \times (.095) = \$ 98,087 \text{ per year}$$

Adding these two yields: (Wharf @ \$12,814) + (Fill @ \$ 98,087) = \$ 110,902 per year for the PMA parcel

The port's actual lease with Clark's Boatyard is of course much higher than this because the port is also leasing 14 additional acres it owns in fee. The port is also leasing the warehouse and the wharf, but the entire lease is for 20 acres, one warehouse and one wharf.

The port keeps these calculations for the PMA parcel separate in case of audit.



Rent Example 2

-- Mixed Uses at a Marina --

The port's marina area contains a mix of uses. The following are either wholly or partially within the PMA:

- A moorage basin for recreational boats, with breakwater
- A public boat launching area
- An aquatic habitat mitigation area at the inner-most part of the marina, which the port placed as part of a permit requirement when the marina was enlarged.
- A bait shop (Lefty's), which sells bait, boating supplies, snacks, ice, etc. and also rents pedal-boats.
- A small hotel (The Buccaneer Inn), with an associated parking lot. There is a public promenade on two sides of the Inn.
- A seasonal tenant with an ice cream stand, who negotiates with the port for exclusive rights to set up her stand on the promenade in the summer.

Step 1 is to determine which uses are water-dependent, and which are nonwater-dependent.

The port determines that the following are water-dependent uses, and documents its decisions in the PMA file:

- Marina moorage basin
- Boat launch ramp
- Breakwater
- Mitigation area
- All public access areas, including the promenade, to the extent that they are used for public viewing and general use. (Technically, not all public access is water-



dependent, but there is no charge so the rent calculation is the same.)

The port determines that the following are nonwater-dependent uses:

- Buccaneer Inn and parking lot
- Ice cream stand

The port determines that there is one mixed use:

- Lefty's Bait shop

Calculating Rent:

The port does not need to calculate rent for any of the water-dependent uses for this PMA, because none of them are leased – they are all operated or maintained directly by the port.

The non-water dependent uses will need to be calculated, because 85% of the rent attributable to the state-owned aquatic land must be remitted to the state. This means that the port will need to do careful rent calculations and remit the proper rent to the DNR.

DNR does not bill the port. The port must take the initiative in making use determinations and rent calculations. The port must also send any rent that is due for nonwater-dependent uses to the DNR without receiving an invoice or billing.

Buccaneer Inn:

The Inn sits on filled state-owned aquatic land. The entire lease parcel is 35,000 square feet. The Inn also has an exclusive right to 45 parking stalls, which makes up an additional 9,000 square feet of the parking lot, but only 4,000 square feet of this parking lot are on the PMA parcel. This makes the total Inn lease 44,000 square feet, of which 39,000 (or 0.89 of an acre) are within the PMA.

The port decides that it does not want to go through the time and expense of a formal



property appraisal for this parcel. Instead, the port chooses the typical Extension Method in order to calculate rent. The adjacent upland parcel was assessed two years ago at \$20 per square foot. The port uses this value for its rent calculations:

This results in:

$(\$20 \text{ per square foot}) \times (39,000 \text{ square feet}) \times (\text{DNR's published use rate percentage for nonwater-dependent uses of } 9.5 \%) = \$74,100 \text{ per year.}$

Eighty five percent of this number is \$ 62,985.

Remember – this value is for the land only, not for the improvements. The port's bigger lease with the Inn is for a much higher amount because it includes the improvements to the property.

Ice Cream Stand:

This is obviously a nonwater-dependent use, but it only takes up thirty square feet for three months of the year. The vendor pays the port a flat rate of \$500 per month for the three summer months. This means that the amount of rent is nearly de minimus, and no one wants to spend a lot of staff time figuring how much rent should be sent to the state.

The port makes a quick documentation that \$100 of the rent amount is for services such as maintenance of the general area, trash cans, etc. This leaves \$400 for the actual rent of the land.

$(\$1200 \text{ for three months rent}) \times .85 = \$1020 \text{ sent to the DNR.}$

Lefty's Bait Shop:

This is a mixed use, so the port will need to pro-rate the rent. To begin with, the footprint of the shop is 25 x 20, or 500 square feet. The port categorizes the activity as follows:

Bait, Ice, Beer, T-shirts – Nonwater-dependent



Pedal-boat rental – Water-dependent, since he needs to be near the boats to show how they work, etc.

Lefty says that 10% of his business is from the boats, and the rest is from the other retail sales.

The port takes the assessed valuation of the parcel abutting, which is \$18 per square foot, and applies it to the footprint of the shop:

$(\$18 \text{ square foot}) \times (500 \text{ square feet}) \times (9.5 \% \text{ use rate percentage for non-water-dependent uses}) = \$855/\text{year}.$

But only 90 % of the footprint is nonwater-dependent use, so this becomes: **$(.9) \times \$855 = \$770.$**

Of this, 85 percent is paid to the DNR: $(.85) \times \$770 = \655

Paying the State:

The port uses the following guidance for payment schedules, which is found in RCW 79.90.530:

Rental amounts less than \$4000: Pay annually

Rental amounts between \$4000 and \$12,000: Pay quarterly

Rental amounts over \$12,000: Pay monthly

The port pays the rent for the Buccaneer Inn in monthly installments of \$ 5249.

At the end of the port's fiscal year, it sends the DNR one annual payment of \$1675 to jointly cover the ice cream stand and the nonwater-dependent portion of the bait shop.

This payment is itemized to show which rent amount corresponds to each parcel.



6. Marinas

Many ports operate marinas, and many of the ports who have a PMA only have marina property within their PMA. Some state regulations apply uniquely to marina use of state-owned aquatic land, and a port which operates a marina under a PMA will need to understand these regulations.

Finding the boundary of the PMA

It is very common for only a portion of a port's marina to be within the PMA. For example, many ports have a strip of property on the most seaward part of the marina included in the PMA. Sometimes only the breakwater is in the PMA. Another common situation is for a wedge or "pie shaped" piece of property to be within the PMA.

Unfortunately, the PMA line usually will not conform neatly or logically to any of the dock or fairway configurations, and some docks and slips will end up being half in and half out of the PMA.

If this is the case at your port, it is very important for the port and marina staff to understand exactly where the PMA boundary within the marina is. This is because there are some state regulations (such as those for residential use, or "liveaboards") that will apply only on those portions of the marina that are on state-owned aquatic lands.

Reporting spills and discharges

Remember that the PMA contains a requirement to report any release, spill or discharge that must be reported to any regulatory agency. The threshold for reporting a fuel spill is essentially anything that causes a sheen. If a vessel sinks or spills fuel during a fire, for example, or if there is a spill from the fuel dock, then the port staff will need to include a notice to the DNR if the PMA portion of the marina is affected.



If your marina contains a boatyard within the PMA boundary, then it would also be a good idea to make sure that the DNR is included on the notification requirements that the port is already obligated to make to the Department of Ecology. If there is a tide grid within the PMA boundary, it is strongly advisable to adopt a policy that allows only simple activities such as hull/prop inspections or zinc changes. This policy should be sent to the DNR for comment prior to being officially adopted by the port commission, as described in the “Port Regulations” section of the PMA.

Liveboards

Some helpful explanatory accompanying material on the residential use rule can also be found at the DNR web page, www.dnr.wa.gov.

The Department of Natural Resources has adopted a regulation that applies to residential use of state-owned aquatic lands. This regulation is found at WAC 332-30-171.

The highlights of this rule are:

1. Defines a residential use as any use of a vessel for a residence for more than 30 days in any 40 day period or 90 days out of a 365 day period.
2. Prohibits more than 10% of the slips on state-owned aquatic land within a marina to be used for residential use,
3. Allows existing slips over the 10 % limit to be “grandfathered”, as long as the 10 % goal is met through attrition,
4. Allows the local city or county to adopt a different ceiling through a change to the Shoreline Master Program,

If the city or county adopts a residential use cap as part of its Shoreline Master Program, then this cap will apply to all of the marinas and slips within the city or county – not just the marinas that lease or operate on state-owned aquatic land.



WPPA Port Management Agreement (PMA) Handbook

5. Requires residential uses to use some type of upland sewage disposal, and
6. Requires marinas with residential uses to implement “best management practices” for gray water discharges.

The only part of the marina that these DNR requirements apply to is the part that is on state-owned aquatic land. This includes the portion that is within a PMA. If there are no residential uses on that part of the marina, then the rule does not apply.

This means that ports with a marina will usually find themselves in one of three situations with respect to the DNR residential use rule.

1. There are no slips at the marina with residential uses that lie over state-owned aquatic land. In this case the rule will not directly apply to that marina.
2. The port marina has slips with residential uses over state-owned aquatic land covered by a PMA, and leases the marina to an operator. In this case the port will need to ensure that the port lessee (which would be the marina operator) follows all of the reporting and management conditions of the rule. These include reporting the current number of residential users to the port, and ensuring that the lessee follows the requirements relating to sewage and gray water. It would probably save time to obtain the reporting form that the DNR uses for its lessees, and use that form as a model for the port.



The WPPA Marina Committee has developed some draft guidance for ports in the area of management practices for gray water discharges.

3. The port operates a marina under a PMA, and there are residential uses of the state-owned aquatic land. If this is the case, then the port still needs to ensure that it follows the intent of the residential use rule, because the port is managing the lands according to the same rules as the DNR. This would include adopting a policy that no more than 10 % of the slips within the PMA are to be used for residential uses, and addressing both black water and gray water discharges for residents of the marina. The port should send this policy to the DNR for comment prior to adopting it, as outlined in the “port regulations” section of the PMA. (See Section 9 of the 1985 PMA and Section 8 of the 1984 PMA.)

The DNR residential use rule contains a number of policies and definitions that the port should be aware of. They also include an opportunity for a local government to obtain a lease for a “remote” anchor-out area, which can contain residential uses as long as they abide by the requirements of the rule.



7. Compliance and Audits

Both versions of the PMA allow periodic audits by the DNR of the port, in order to verify that the port is complying with the agreement. In addition, both the DNR and the port are audited annually by the State Auditor's Office (SAO) in order to ensure that each of them is complying with all state laws, including the aquatic lands laws.

For the past twenty years of port management of state-owned aquatic lands, the process of auditing for compliance has been inconsistent. There have been several reasons for this, but the primary ones are:

1. The DNR and most ports have put insufficient emphasis on aquatic lands management training, especially after staff turnover.
2. The concept of port management of state-owned land is somewhat confusing and arcane, and as a result has not been well understood by many property managers and auditors.
3. The amount of public resources that have been in dispute have generally been very small.

Audits by the State Auditor's Office

Most audits of ports by the SAO have not focused on detailed compliance with the terms of the PMA. This is partly because the amounts of money have been small, and also because there has not been a concise tool that the port, the DNR and the SAO have all agreed upon as a PMA performance yardstick.



As part of recent negotiations, the WPPA and the DNR agreed to increase the auditing oversight role of the State Auditor for PMA compliance. This will result in a small increase in the auditing costs for the port, but all of the parties involved will gain more consistency, as well as better aquatic lands management.

Management Assertions Letter

The key for this SAO audit will be the **Management Assertions Letter** that the port's chief executive and auditor will each sign prior to the audit to assert to the state that the port is in compliance with the PMA.

There will be seven major points in the Assertions Letter. Each is listed in bold below, and followed by guidance.

- 1. All of the state-owned aquatic lands occupied by the port are either under a PMA or other legal use authorization. Exhibits to the PMA document the port's eligibility to manage the property, as well as the current use of the property. Any property under application to be included in the PMA is noted.**

In order to make this assertion, the port will need a copy of the finalized Port Management Agreement.

The Exhibits to the PMA should contain surveyed maps. The survey should be sufficiently accurate to clearly show the boundaries of the PMA in relationship to recognizable activities, landforms and structures. The survey should be made to standards that are recognized by either the American Congress of Surveying and Mapping (ACSM) or the American Land Title Association (ALTA).



New or updated surveys may be necessary from time to time, keeping in mind that the purpose of the survey is to produce information relevant for property management. Refer to the section in Chapter 2 titled, *Acceptable Survey Standards* (page 2-4) for more guidance on this topic.

A description of the current uses of the property should also be attached. This description should briefly explain the uses, leases or activities that occur on the property, and should reference the PMA Exhibits.

2. All upland parcels required for PMA eligibility are under the ownership or real property control of the port.

The port should have documentation of ownership or control of all upland parcels that are necessary for the port to retain eligibility for the PMA. This documentation should be either in the form of copies of property titles, or exclusive use authorizations such as leases from the owner of the property.

As a practical matter, the port should possess a drawing demonstrating the relationship between the aquatic and upland parcels.

3. There have been no changes in functional use of the state-owned land covered by the PMA since the last audit, except as noted.

If there have been no changes since the last audit or audit survey, then the port needs to simply state this fact.

If there have been any changes in use in the past year that affect rent these should be briefly noted and explained.



Be sure that these changes are reflected in the description of current use in Assertion 1 above.

- 4. The port is managing third-party use authorizations as required by the PMA. A copy of the PMA is attached to all leases. Leases and lease modifications have been sent to the DNR as required. Rent is calculated, collected and distributed according to the statutory requirements. The port has provided a copy of all port-issued easements to the DNR.**

For a detailed description of these requirements, see chapters 2 and 5 of this Handbook.

- 5. The port is maintaining required security (insurance) for all activities on state-owned aquatic land.**

The port should be able to provide copies, if requested, of casualty insurance policies required for any state-owned improvements that are listed on Exhibit B.

The port should be able to provide copies, if requested, of rent performance security for all port leases on PMA parcels to third parties. This rent security may be in the standard form and amount used by the port under RCW 53.08, but shall not be waived.

The port should be able to provide copies of liability insurance for third-parties leasing property under the PMA. For ports under the 1995 PMA, these shall be in an amount of at least one million dollars, unless the port has requested and received approval for a lesser amount from the DNR. If this



approval has been granted, documentation for it should be provided in the form a letter from the DNR.

6. Other than permitted dredged material, no state-owned valuable materials have been moved, used, sold, stored or transferred by or to the port since the last audit without a Material Sales Agreement with the Department of Natural Resources.

If there is a Material Sales Agreement with the DNR relating to material removed from or stored upon a PMA parcel, a copy of this agreement (with its accompanying sales and royalty records) should be available for review.

7. The port has notified the Department of Natural Resources of all spills, discharges or releases of any hazardous substance affecting the property known to the port which are required to be reported to any federal, state or local regulatory agency.

The port should be able to show its spill reporting plan, including documentation that if a spill or discharge occurs on or affects property within the PMA that the DNR is also notified. Any spills or discharges that have occurred in the past year should be noted.

A sample Management Assertions Letter for Port Management Agreements is printed in Appendix I.



Audits by the Department of Natural Resources

Both versions of the PMA allow the DNR the right of entry and audit for compliance with the terms of the PMA. This entry should be preceded with notice to the port, and DNR must respect all port security and safety regulations. The port must also make all records relevant to the PMA available for inspection by the DNR.

In addition to compliance with all applicable aquatic lands laws and regulations, the PMA also requires the port to comply with any policies adopted by the Board of Natural Resources that relate specifically to Port Management Agreements. If any of these policies have been adopted by the Board, with the full notice and comment requirements required, then these policies should also be added to the port's PMA file.

At the time of writing of this Handbook no Board of Natural Resources policies have been adopted under this provision.



8. Disputes

During the course of a port's management of state-owned aquatic lands under a PMA, there are many opportunities for disagreements to arise between the port and the state. Most of these will be small, and will probably involve a difference of opinion between the port and the DNR over something like a water-dependent use, or the appraisal of a particular property.

The detailed guidance in this Handbook, coupled with the annual audits of the port's management that will be performed by the State Auditors Office, are designed to minimize these disputes. *To put it another way, disagreements can almost always be negotiated between the port, the DNR and possibly the SAO.*

It is possible, however, that there will be large disputes between the two parties that cannot be addressed through guidance or an audit. These will probably involve major areas of property management, such as the addition of a parcel of property, or a cleanup or mitigation action on state land. This will result in a formal dispute. These types of disputes are very rare.

Section 23 of the 1984 PMA and Section 24 of the 1995 PMA create a formal contractual process of dispute resolution between the parties. The two processes are designed to accomplish the same thing, but they differ in the specific methods that they use to attain them.

Table 1, on page **8-3**, shows the dispute resolution processes that are established within the two versions of the PMA. The most important thing to realize about this formal process is



WPPA Port Management Agreement (PMA) Handbook

that it is designed to be rather unpleasant. This ensures that the line staff from each side of the dispute will work hard to settle the disagreement before the elected officials become involved.

Both the port and the DNR have equal rights to initiate a formal dispute. This requires a formal written statement from one party that a dispute exists, as well as that party's understanding of the factual circumstances of the dispute. This triggers a series of meetings, driven by review timelines that escalate up the port and DNR staff levels. The dispute may be resolved at any point along this formal discussion. Eventually the meetings reach the port commission and the Commissioner of Public Lands. From there they go to Superior Court.

The following items are automatically declared to be subject to formal dispute resolution:

1984 PMA

- A decision by the DNR to either terminate the PMA for cause, or to remove a portion of the property for default, as described in Section 24 of the PMA.

1995 PMA

- A decision by the DNR to either terminate the PMA for cause, or to remove a portion of the property for default, as described in Section 24 of the PMA.
- The allocation of leasehold revenues necessary to provide the port a fair return on investment upon the expiration of the PMA, as described in Section 2 of the PMA.



Table 1.

1984 Dispute Resolution	1995 Dispute Resolution
<p>DNR sends the port a written notice stating the following:</p> <ol style="list-style-type: none"> 1. A statement of the facts. 2. DNR’s interpretation of relevant sections of the PMA. 3. A declaration of DNR’s position. 	<p>DNR sends the port a written notice stating the following:</p> <ol style="list-style-type: none"> 1. A statement of the facts. 2. DNR’s interpretation of relevant sections of the PMA. 3. A declaration of DNR’s position.
<p>Once receiving the notice, a port has 15 days to respond.</p>	<p>Once receiving the notice, a port has 15 days to respond.</p>
<p>After DNR receives the port’s response, both parties have 15 days in which to meet and resolve the dispute.</p>	<p>After DNR receives the port’s response, both parties have 15 days in which to meet and resolve the dispute.</p>
<p>If the dispute is not resolved within 60 days of the first meeting, the issue moves to the dispute resolution committee.</p>	<p>If the dispute is still not resolved, either party may request an additional review.</p>
<p>The committee contains: The Chairman of the Board of Natural Resources The Supervisor of DNR The Port Commission President The Port’s Chief Administrative Officer</p>	<p>This request must occur within 15 days of the last meeting, and must be sent to the other party.</p>
<p>The committee shall meet at least once, within 60 days of receiving the dispute, to try and resolve the issue.</p>	<p>The Supervisor of Natural Resources and the Port’s Chief Administrative Officer will meet within 30 days of the request. If they cannot resolve the dispute within 60 days after their first meeting, they may request a review by the Commissioner of Public Lands and a member of the Port Commission.</p>
<p>If the committee cannot resolve the dispute, either party may appeal to the Superior Court.</p>	<p>Within 60 days of the request, the Commissioners shall meet. They have 60 days more to resolve the dispute; if they cannot, it may be appealed to the Superior Court.</p>
<p>Note: DNR is used as the initiating party in this example for the sake of clarity and short diagrams. A port has equal power to initiate dispute resolution.</p>	



Appendix A

1995 Model Port Management Agreement

TABLE OF CONTENTS

SECTION	PAGE
1. <u>Term</u>	1
2. <u>Delegation</u>	2
3. <u>Property</u>	3
4. <u>Access</u>	3
5. <u>Acceptance/Relinquishment of the Property Management</u>	3
6. <u>Standard of Management</u>	4
7. <u>Use/Planning</u>	4
8. <u>Hazardous Substances</u>	4
9. <u>Port Regulations</u>	6
10. <u>Rent</u>	6
11. <u>Insurance and Performance Security</u>	6
12. <u>Removal of Valuable Materials</u>	7
13. <u>Fills</u>	7
14. <u>Confined Disposal of Contaminated Sediments</u>	8
15. <u>Improvements</u>	8
16. <u>Easements</u>	9
17. <u>Local Improvement Districts</u>	9
18. <u>Taxes</u>	9
19. <u>Entry</u>	10
20. <u>Audits</u>	10
21. <u>Liens and Encumbrances</u>	10



Appendix A cont'd

22.	<u>Eminent Domain</u>	10
23.	<u>Non-Waiver</u>	10
24.	<u>Dispute Resolution</u>	10
25.	<u>Termination for Default</u>	11
26.	<u>Notices</u>	12
27.	<u>Attorney Fees</u>	12
28.	<u>Assignment</u>	12
29.	<u>Severability</u>	12
30.	<u>Amendments/Supplemental Provisions</u>	12
31.	<u>Survival</u>	13
32.	<u>Entire Agreement</u>	13



Appendix A cont'd

Port Management Agreement No. (SAMPLE) PORT OF CALL

This Port Management Agreement ("Agreement"), effective as of the day of, ("the Effective Date"), by and between the state of Washington ("the State"), through the Department of Natural Resources ("DNR"), and the PORT OF , a ("the Port"),

WITNESSETH:

Whereas, DNR is directed by law to manage aquatic lands owned by the state of Washington; and

Whereas, RCW 79.90.475 authorizes DNR and the port district, upon request of a port district, to enter into an agreement to manage state-owned aquatic lands as set forth in said law; and

Whereas, this agreement is in the form of the Model Port Management Agreement approved by the Washington Board of Natural Resources pursuant to RCW 79.90.475 and the implementing regulations; and

Whereas, the Port has requested such an agreement; and

Whereas, DNR has determined that it is in the best interest of the state of Washington to enter into such an agreement with the Port,

Now, therefore, the parties hereto hereby agree as follows:

1. Term.
 - a. Term. This Agreement shall commence on the effective date, inclusive, and shall continue in full force and effect until the day of _____ (Expiration Date), inclusive, a period of thirty (30) years referred to as the "Term."
 - b. New Port Management Agreement.
 - (1) If either party desires to enter into a new Port Management Agreement following the Expiration Date, the parties will meet (as often as necessary) during the two years prior to the Expiration Date to determine the feasibility of entering into a new Port Management Agreement. The parties may at that time, based on the laws of the state of Washington and in the form of the Model Port Management Agreement in effect as of that date, negotiate a new management agreement.



Appendix A cont'd

(2) If either party decides it is not in its best interest to enter into a new agreement, the parties shall decide on the fair and reasonable allocation of the leasehold revenues for those Port leases that are in existence on the Property as of the Expiration Date. Consideration will be given to the Port's need to receive a fair return on capital invested by the Port on the Property. If the parties are unable to agree on a reasonable allocation of leasehold revenues as stated above, then either party may invoke the dispute resolution procedures under Section 24(b) below. In this event this agreement will be extended until such time as the dispute resolution regarding allocation has been concluded.

2. Delegation. DNR hereby delegates management to the Port, and the Port hereby accepts this delegation and agrees to manage the parcels of state-owned aquatic lands listed on Exhibit A, which are attached hereto and incorporated by reference, (hereinafter referred to as the "Property"), as of the Effective Date of this Agreement in accordance with the provisions hereof.

The parties intend that this Agreement encompass all authority required for the Port to effectively manage the Property as contemplated by RCW 79.90.475. The parties acknowledge that the delegation by DNR and the management by the Port contemplated by this Agreement is subject to and in accordance with State Law and regulations, including but not limited to applicable provisions of the Washington Administrative Code, the State Environmental Policy Act, the Aquatic Lands Act, the Shoreline Management Act, and the Growth Management Act. DNR retains the authority to set state-wide aquatic lands policy through administrative code provisions or adoption of policy by the Board of Natural Resources, as provided by law. The Port is responsible for implementation of that policy.

If future circumstances indicate that additional authority is required to effectively manage the Property, the Port may request such authority from DNR, which approval shall not be unreasonably withheld.

The Port is hereby granted exclusive authority to enter into leases or other use authorizations, including leases or use authorizations to itself, for the Property or portions thereof, except as otherwise provided herein. All such leases and use authorizations shall be subject to this Agreement and shall have a copy of the Agreement attached thereto and incorporated by reference. Said leases and use authorizations shall survive this Agreement. Any such lease by the Port shall contain a clause which states that upon termination of this Agreement (or successors thereof), or removal of the leased property therefrom, the lessor of said lease shall become DNR. The Port shall furnish to DNR copies of new leases, lease renewals, lease modifications, and surrender of leaseholds on parcels included in this Agreement upon execution of said lease documents.

The Port may not execute a lease or use authorization with itself for the Property to the extent the term of the lease or use authorization extends beyond the term of this



Appendix A cont'd

Agreement.

DNR's delegation to the Port does not include the authority to bind the State or DNR to any financial obligations, to any environmental remediation of the Property, or to any habitat mitigation involving the Property without DNR's written consent.

3. Property. Exhibit A contains a common description, legal description, planned use (if known, or if not, so stated), and map identifying each parcel of the Property. The Port may request management of any additional parcel of state-owned aquatic lands which meets the criteria established by law. Additional parcels approved by DNR for Port management shall be added to this Agreement by amending Exhibit A. DNR's approval for such requests shall be timely made and shall not be unreasonably withheld; however, DNR may consider whether the Port is meeting its current management obligations; whether DNR has invested in, planned for, or is legally committed to, a specific use which is inconsistent with the Port's proposed use for the requested parcel; whether Port acquisition would operate to release prior lessees or users to the detriment of the State; or whether litigation is pending or threatened concerning the parcel.

DNR shall respond to the Port in writing within forty-five (45) days of request either (i) approving or denying the request or (ii) identifying that additional information is needed for a decision. Once that additional information has been provided DNR shall respond to the Port in writing within forty-five (45) days, either approving or denying the request. If the DNR denies a request, DNR shall submit in writing its reasons for denial of the request. If DNR fails to submit such written responses as provided herein, the Port shall have the right to appeal to the Supervisor of the Department of Natural Resources for a decision. If DNR fails to submit a written response within ten (10) days (excluding weekends and state holidays) of receipt of appeal, then request shall be deemed approved and Exhibit A shall be amended.

Any parcel which no longer meets the criteria established by law shall cease to be covered by this Agreement and the management thereof shall return to DNR. Any parcel may be deleted from this Agreement at any time by mutual agreement. The Port shall promptly notify DNR of such parcel no longer meeting the criteria and such notice shall be deemed to amend Exhibit A. If all subject property is deleted this Agreement shall terminate. If any parcel is no longer included in this Agreement for any reason, upon cessation the Port shall promptly remit to DNR its pro rata share of any prepaid rent received for that parcel.

4. Access. It is not the intent that any parcel owned by the State which is not covered by this Agreement, or any property owned by the Port should be left without access as a result of the Port's management of the Property. Provisions for access to such parcels shall be listed on Exhibit A or its amendments.



Appendix A cont'd

5. Acceptance/Relinquishment of the Property Management. Except as otherwise agreed in writing the Port hereby accepts management of the Property listed on Exhibit A in its condition existing as of the Effective Date of this Agreement, or with respect to parcels added to Exhibit A in the future, the date such parcel(s) becomes listed on Exhibit A, and agrees, at its sole expense, to conform to federal, state, and local laws and regulations governing and regulating the use of the Property. DNR has disclosed to the Port all conditions known to DNR which would adversely affect the use of the Property and the Port acknowledges that neither DNR nor DNR's agent has made any warranty as to the suitability of the Property for conduct of the Port's business.

At the termination of this Agreement the Port shall relinquish management of the Property which shall be in its condition existing as of the date identified in the paragraph above, or in a reasonable condition which would result from prudent management, except normal wear and tear as to improvements; provided, this section is not intended to address damages caused by contamination which shall be addressed under Section 8, Hazardous Substances, below.

6. Standard of Management. Management of the Property shall be consistent with Chapters 79.90 through 79.96 RCW, as amended, which state in pertinent part that: "[t]he manager of state-owned aquatic lands shall strive to provide a balance of public benefits for all citizens of the state." Management shall also be consistent with the implementing regulations adopted by the DNR or the Board of Natural Resources, and policies adopted by the Board of Natural Resources. Adoption of such policies shall be preceded by ninety (90) days notice to the Washington Public Ports Association, or its successor, with adequate opportunity for comment before the Board of Natural Resources. The DNR and the Washington Public Ports Association, or its successor, shall meet annually to review statutes, regulations and policies.

The administrative procedures for management of the Property shall be those of Title 53 RCW.

7. Use/Planning. The Port may use the Property for port purposes as authorized in Title 53 RCW so long as said use is consistent with the Washington State Constitution and laws of the state of Washington. In the event the parties develop and agree in writing upon a long-range plan for aquatic land use for the Property, the Port may enter into leases for nonwater-dependent uses consistent with that plan without DNR approval. In the absence of a long-range plan for aquatic use of a portion of the Property, if the Port contemplates the possible lease or use of that portion of the Property for non-water-dependent uses, it shall give DNR notice of its intentions at the earliest practicable time. DNR shall promptly meet with the Port to review the proposal for its consistency with the aquatic land policies of Chapters 79.90 through 79.96 RCW, as amended, and



Appendix A cont'd

the implementing regulations adopted by DNR.

8. Hazardous Substances.

a. Definitions.

(1) Hazardous Substances. For purposes of this Agreement, a Hazardous Substance is any substance that is or may be in the future:

(a) Designated as, or that contains components designated as, hazardous, dangerous, toxic, or harmful by applicable federal, state, or local law, regulation, statute or ordinance; and/or

(b) Subject to regulation by such laws.

(2) Application Date. For purposes of this Agreement, the Application Date is the date on which application was first made by the Port for entry into this Agreement, unless the parties agree in writing that control of properties subject to this Agreement is assumed by the Port at a later date.

(3) Liability. As used in this Section 8, "Liability" means any obligation or cost of any kind arising from the release or threatened release of Hazardous Substances, or from any alleged violation of or failure to comply with any law referenced in Subsection 8(b), where the release, threatened release, alleged violation, or failure to comply is related to or arises out of the use or control of the Property. Liability includes damages (including natural resource damages), claims, governmental investigations, proceedings or requirements, attorney fees in any investigation, administrative proceeding, trial or appeal, or witness or consultant costs.

b. Compliance. During the term of this Agreement, the Port shall comply, at its own expense, with all applicable governmental laws, regulations, permits, orders or requirements regarding the proper and lawful use, sale, transportation, generation, treatment, and disposal of Hazardous Substances related to or arising out of the Port's use or control of the Property. The Port, the lessees, and sublessees shall correct and remediate, if necessary, in accordance with applicable laws at their own expense any failure of compliance which occurs during the term of this Agreement.

c. Notice of Environmental Action.

(1) The Port shall promptly notify DNR, upon discovery of all spills, discharges or releases of any Hazardous Substances affecting the Property which are required to be reported to any federal, state, or local regulatory agency.

(2) DNR and Port shall promptly notify each other, upon discovery of any failure to comply with federal, state, or local laws or regulations with respect to the Property. Each shall promptly notify the other, upon discovery of any inspections on the Property by any regulatory entity, any fines, any regulatory orders for response or interim cleanup actions (actual or proposed), or any negotiations with any regulatory entity for a consent decree under any herein mentioned authority, or concerning any plans for any



Appendix A cont'd

independent cleanup or mitigation and restoration of natural resources on the Property. This provision shall apply to orders issued to DNR or the Port or any third party concerning the Property.

d. Indemnity. To the extent permitted by law, the Port agrees to defend, indemnify, and hold the State, as the owner of aquatic lands, and DNR, as manager of aquatic lands, harmless from any imposition or attempted imposition of Liability upon the State or DNR related to or arising out of the use and control of the Property by the Port or anyone acting under authority of the Port from the Application Date through the end of the Term. This indemnity shall not apply to any imposition or attempted imposition of Liability that is related to or arises out of the use and control of the Property by the State or anyone acting under the authority of the State, other than the Port or anyone acting under the authority of the Port. This indemnity applies to the State solely in its capacity as the owner of aquatic lands and to DNR in its capacity as the manager of aquatic lands and does not extend to other units of state government or to the State in any capacity other than as owner of aquatic lands. Notwithstanding this provision or any other provision of this Agreement, the Port shall not be precluded from seeking relief from any other agency of state government other than DNR under the State Model Toxics Control Act, CH. 70.105D RCW ("MTCA"), the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et. seq. ("CERCLA"), other similar statutes, or common law, for contribution, cost recovery, damages or other reimbursement for remediation of Hazardous Substance releases.

e. Pre-existing Contamination. The parties intend that this Agreement not alter or affect whatever Liability or responsibility either party may have for Hazardous Substance releases, or threatened releases, that occurred prior to the Application Date ("Pre-existing Contamination") under CERCLA, MTCA, or other laws that create cleanup obligations. In order to effectuate this intent, the parties agree that this Agreement will not be construed to be an indemnification or assignment of liability for any Pre-existing Contamination. Any determination of liability or responsibility for addressing Pre-existing Contamination shall be undertaken without regard to this Agreement.

9. Port Regulations. The Port may adopt written policies and regulations to implement this Agreement and to direct the management of the Property. All such policies and regulations shall be submitted to DNR for review and comment prior to becoming effective. Any such policies or regulations must be consistent with this Agreement.

10. Rent. The following shall apply:

a. Port Use. The Port shall pay to DNR no rent for use of any portion of the Property or any state-owned improvements. In the event the Port engages in a non-water-dependent use of any portion of the Property or any state-owned improvements, the Port shall establish the full fair market rental in dollars according to



Appendix A cont'd

WAC 332-30-125 and shall remit, in dollars, to DNR eighty-five percent (85%) of that amount.

b. Third Party Uses. If the use of any portion of the Property involves a lease or other use authorization to a third party, rent for such portion shall be collected and distributed according to law. In the event the use is nonwater-dependent, the Port shall establish the fair market rental in dollars and shall remit, in dollars, to DNR that portion required by law.

11. Insurance and Performance Security. When the Port uses or leases any portion of the Property (including state-owned improvements) to a third party, the Port shall require the following:

a. Insurance.

(1) Liability. Bodily injury liability, including death, and property damage liability in an amount of not less than one million dollars (\$1,000,000) or such lesser amount approved by DNR, which approval shall not be unreasonably withheld. If the Port makes a written request for a lower insurance amount, DNR has forty-five (45) days following receipt of the request to respond in writing either approving or rejecting the request. If DNR fails to respond within forty-five (45) day period, the Port shall have the right to appeal to the Supervisor of the Department of Natural Resources for a decision. If DNR fails to submit a written response within ten (10) business days (excluding weekends and state holidays) of receipt of appeal, the request shall be deemed approved.

(2) Casualty. Fire and extended coverage for the insurable replacement cost of any state-owned improvements identified in Exhibit B. DNR shall provide the Port with the replacement cost value within sixty (60) days of the Port's request.

(3) In each of the cases above the State shall be named as an additional insured.

b. Performance Security.

(1) Rent Security. For those portions of the Property leased to third parties the Port shall require the third party to provide to the Port a bond, rent insurance, or other security in accordance with the requirements of RCW 53.08.085; provided, the Port commission shall not waive the rent security requirement or lower the amount of such requirement.

(2) Other Security. In addition, as is appropriate for the use occurring on the Property, the Port may require security for the performance of other lease terms including removal of improvements, trade fixtures, personal property, and hazardous substances.

c. Interim Use. When the Port leases any portion of the Property (including state-owned improvements) to a third party for a period of ninety (90) days or less, the



Appendix A cont'd

third party shall not be required to provide insurance and performance security as stated in this Section 11 if the Port has its own insurance in the same amounts on the Property and the State is named as an additional insured.

12. Removal of Valuable Materials. Except as permitted by RCW 79.90.150 no valuable materials as referred to in Chapters 79.90 - 79.96 RCW shall be removed from any parcel subject to this Agreement without the prior written approval of DNR. If any approved removal requires payment to DNR for the value of the valuable materials removed, such payment shall be made within ninety (90) days of the removal.

13. Fills.

a. "Fill" defined. For the purposes of this Agreement, the term "Fill" means any material which has been added to increase the elevation of State-owned aquatic lands and includes rip rap, bulkheads, drainage systems or paving. "Fill" does not include confined disposal of contaminated sediments which is addressed under Section 14.

b. Adding or Removing Fill. If the Port or any of the Port's tenants proposes adding fill or removing fill from any portion of the Property, the Port shall give DNR notice of such intention at the earliest practical time. DNR shall promptly meet with the Port to review the proposal. If the proposed fill is consistent with Chapters 79.90 through 79.96 RCW, as amended, and implementing regulations, DNR shall issue written approval, which approval shall not be unreasonably withheld.

c. Rent. Except as provided for below in Subsection 13(d), rent for state-owned aquatic lands underlying the fill will be determined by the use occurring on the fill and distribution of rent will be in accordance with Section 10 of this agreement.

d. Fills with Upland Characteristics. The Port and DNR disagree as to whether filled state-owned aquatic lands with the characteristics of uplands are a non-water-dependent use of the underlying aquatic lands. Until and unless the legislature or a court of competent jurisdiction interprets RCW 79.90.480(6) to indicate the contrary, the Port and DNR agree that the following principles control the establishment and distribution of rent between the Port and DNR for filled state-owned aquatic lands:

(1) The aquatic lands policies of RCW 79.90 control the establishment and distribution of rent for filled state-owned lands.

(2) As provided in statute, rent for state-owned aquatic lands that have been filled to the point of having the characteristic of uplands will be the full fair market rental value of the filled land pursuant to WAC 332-30-125, or as amended, if the State owns the fill and has a right to charge for the fill.

(3) Rents for filled state-owned aquatic lands which have the characteristics of uplands will be distributed according to the use of the filled state-owned



Appendix A cont'd

aquatic lands. Rents for water-dependent uses shall be paid to the Port. Rents for non-water-dependent uses shall be divided between the Port and DNR. These understandings are set forth in detail in Section 10 of this Agreement.

e. Owner of Fill Identified. Fills placed on the Property prior to the Effective Date of this agreement and during the term of this Agreement shall be listed on Exhibit C. The owner of any fill which remains severed from the aquatic land shall be identified. Otherwise the fill shall be considered part of the aquatic lands, and shall be so identified.

14. Confined Disposal of Contaminated Sediments.

a. Definition. Confined Disposal of Contaminated Sediments means containment or isolation of contaminated sediments. This includes nearshore confined disposal, multi-user confined disposal, deep water confined aquatic disposal, and capping of contaminated sediments.

b. Exclusion from Agreement. Confined Disposal of Contaminated Sediments is not covered under this Agreement, and is not considered a Fill for the purposes of Section 13.

c. Agreement with DNR. A separate written agreement addressing Confined Disposal of Contaminated Sediments may be negotiated between the Port and DNR.

15. Improvements.

a. State-Owned Improvements. All state-owned improvements located on the Property are listed on Exhibit B. Improvements that become the property of the State during the term of this Agreement shall be listed on Exhibit B. These improvements shall remain the property of the State and shall be maintained at the Port's sole expense in a good condition and state of repair. Upon the cessation or termination of this Agreement as to any portion of the Property, the Port shall return said portion, together with the state-owned improvements, to DNR in a condition as good as when received, normal wear and tear excepted.

b. Non-State Owned Improvements. A management agreement or lease shall be deemed continuous from one term to the next (even after the expiration date) so long as the Port or the third party controls physical possession of the improvements and is diligently pursuing issuance of a new Agreement or lease.

(1) At any time during the continuous term of this, or any successor, Agreement(s), the Port shall determine whether improvements placed on the Property during the term of any lease are to be removed, and no compensation shall be due to the State for any such removal. DNR shall make such determination as to then existing improvements on final expiration or termination of this Agreement. The Port or the third party owner shall bear all costs of removal and of returning the parcel to the condition existing prior to placement of the improvements.



Appendix A cont'd

(2) Title to Improvements.

(a) Title to Port-constructed improvements shall remain with the Port so long as the parcel upon which they are located is continuously subject to a management agreement or lease with the State. Thereafter, title shall pass to the State.

(b) Title to third party-constructed improvements shall remain with the third party so long as the parcel upon which they are located is subject to a continuous lease. Thereafter, title shall pass to the State; provided, the Port may purchase the improvements from the third party for value; and further provided, the Port shall give notice to DNR if said improvements are being purchased from a bankruptcy trustee.

16. Easements.

a. Easements Granted by DNR.

(1) DNR may grant permanent easements across any portion of the Property. For purposes of this Agreement, outfalls of any type and sediment impact zones are considered permanent easements. DNR shall obtain the Port's written approval prior to making such grants, which approval shall not be unreasonably withheld. The Port has forty-five (45) days following receipt of the request to respond in writing either approving or rejecting the request. If the Port fails to respond within the forty-five (45) day period, the State shall have the right to appeal to the Port Commission for a decision. If the Port fails to submit a written response within ten (10) business days (excluding weekends and state holidays) of receipt of appeal, the request shall be deemed approved.

(2) Any request to DNR by the Port and its Lessee for a permanent easement across any portion of the Property shall be promptly considered and approval shall not be unreasonably withheld or delayed.

(3) If DNR grants any easements, DNR shall require the grantee to indemnify the Port to the same extent that the grantee indemnifies the State.

b. Easements Granted by Port. The Port may grant non-permanent easements without DNR approval so long as the term of each grant does not exceed the maximum term allowed by statute for leases of the burdened portion of the Property. Under no condition shall the term of any non-permanent easement exceed the Term of this Agreement unless approved by DNR.

17. Local Improvement Districts. Pursuant to RCW 79.44.040, the Commissioner of Public Lands (Commissioner) shall have the exclusive authority to consent or withhold consent to the inclusion of any portion of the Property in any local improvement district (LID). The Commissioner shall not withhold consent if the Port agrees to pay any assessment against the Property by such LID, regardless of when levied. The Port shall be responsible, during the term of this Agreement, for installments due on pre-existing LID assessments.



Appendix A cont'd

18. Taxes. Except for taxes and other governmental charges imposed by law on third parties, the Port shall be responsible for, and shall pay when due, all taxes, fees, licenses, and other governmental charges of whatever character or arising out of, or attributable to, the Property or to the Port's management, use and/or leasing thereof during the term of this Agreement.

19. Entry. Upon reasonable notice DNR shall have right of entry to the Property at reasonable times for any lawful purposes. Such entry, however, will be subject to reasonable security and safety regulations and shall not unreasonably interfere with the use of the Property.

20. Audits. DNR may periodically review the management of the Property by the Port for consistency with the Agreement, all applicable laws, chapters 79.90 through 79.96 RCW, policies adopted by the Board of Natural Resources, and administrative code provisions. DNR will promptly notify the Port if it believes the Port is not complying.

The Port shall make all records concerning the management of any portion of the Property available to DNR upon request.

21. Liens and Encumbrances. The Port shall keep the Property free from liens and other encumbrances (other than leases and other use authorizations authorized in Sections 2 Delegation, 16 Easements, and 17 Local Improvement Districts). Nothing in this Agreement shall be construed as authorizing the Port to obligate the State, directly or indirectly, to any costs, expenses, or financial liability on account of the management, use, lease, or other actions taken by the Port with respect to the Property.

22. Eminent Domain. If at any time during the term of the Agreement the Property or any part thereof is taken or condemned by any authority having the power of eminent domain, the Port, DNR, and any other person having a legal interest shall have the right to appear in such proceedings and be represented by their respective counsel, and each may claim just compensation for its respective loss or damage sustained by the taking or condemnation. Any award, compensation, damages, or payment by reason of such taking shall be apportioned within such proceeding and each party shall take such amount, if any, as may be awarded to it.

23. Non-Waiver. The failure of either party to insist upon the strict performance of any of the covenants or conditions of this Agreement in any one or more instances shall not be construed to be a waiver thereof. In the event that a default is for other than the payment of money, the acceptance by either party of payments required under the Agreement shall not be deemed as a waiver of such default.



Appendix A cont'd

24. Dispute Resolution.

a. Dispute. Means that whenever the Port and DNR cannot agree on the factual circumstances necessary to interpret this Agreement, or whenever the Port and DNR cannot agree on the application of any operative sections of this Agreement, either party may declare that a dispute exists concerning the Agreement.

b. Dispute Resolution.

(1) If either party declares the existence of a dispute concerning this Agreement, the declaring party shall so notify the other party and shall provide a written statement of the facts, its interpretation of the Agreement, and its position concerning such dispute. Within fifteen (15) days the other party shall provide to the declaring party a written statement addressing those same three elements. Within fifteen (15) days after the declaring party has received the other party's written statement, the parties shall meet and try to resolve the dispute.

(2) If the parties fail to resolve the dispute as provided in Subsection 24(1) above, then either party may request further review within fifteen (15) days by giving notice to the other party. Thereafter, the Supervisor of the Department of Natural Resources and the Port's Chief Administrative Officer (in the event the Port has no Chief Administrative Officer, then such person shall be designated by the Port Commission) shall meet within thirty (30) days of the request and try to resolve the dispute.

(3) In the event the dispute is not resolved within sixty (60) days after their first meeting as provided by Subsection 24(2) above, either party may request a meeting between the Commissioner of Public Lands and a member of the Port Commission empowered to represent the Port. Within sixty (60) days after such request, said two individuals shall meet and attempt to resolve such dispute. In the event they are unable to resolve the dispute within said sixty (60) day period, either party may petition the Superior Court for resolution of the dispute.

(4) During dispute resolution arising under Section 1(b)(2), the parties agree to extend the existing Agreement, as provided for in Section 1(b)(2).

25. Termination for Default. DNR may cancel this Agreement or remove any portion of the Property therefrom for any failure by the Port to perform its obligations under this Agreement on six (6) months written notice to the Port, unless, within that time, the Port cures such default. DNR's decision whether to cancel the Agreement or to remove any portion of the Property shall be reasonably exercised. If the default is of a character which cannot be remedied within six (6) months, the Port shall notify DNR and the parties shall agree on a reasonable period to remedy the default. In the event the parties cannot agree on a period, that shall be referred to resolution as provided in Section 24, Dispute Resolution. Failure to cure the default within such period may result in cancellation or removal of any portion of the Property upon notice. The decision by DNR to give no-



Appendix A cont'd

tice of its intention to cancel this Agreement, or to remove a portion of the Property for default after expiration of the period for cure, shall constitute a dispute and shall be appropriate for resolution under Section 24, Dispute Resolution, herein.

26. Notices. All notices required by law or this Agreement shall be in writing and may be personally served or sent by first class mail. If such notice is served personally, service shall be conclusively deemed made at the time of service. If service is by first class mail, service shall be conclusively deemed made three (3) days after the deposit thereof in the United States mail, postage prepaid, addressed to the parties to whom such notice is to be given. Any notice may be given at the following address (or such other address as either party may notify the other, in writing):

DNR: DEPARTMENT OF NATURAL RESOURCES
Aquatic Resources Division
1111 Washington Street SE
PO Box 47027
Olympia, WA 98504-7027

PORT: PORT OF _____

27. Attorney Fees. In the event either party shall be required to bring any action to enforce any of the provisions of this Agreement or shall be required to defend any action brought by the other with respect to this Agreement the prevailing party in such action shall be entitled to reasonable attorney's fees in addition to costs and necessary disbursements.

28. Assignment. No part of this Agreement may be assigned or otherwise transferred.

29. Severability. If any provision of this Agreement or its application to any person, or circumstance is held invalid, the remainder of the Agreement or the application of the provision to other persons or circumstances is not affected.

30. Amendments/Supplemental Provisions.

a. If, during the term of this Agreement, the Board of Natural Resources approves amendments to the Model Port Management Agreement pursuant to RCW 79.90.475, DNR shall give notice of that fact to the Port. Either party may request that this Agreement be amended to conform to the newly approved Model Port Management Agreement.



Appendix A cont'd

b. If unique conditions relating to management of the Property arise during the term of this Agreement, either party may request that a supplemental provision be added to this Agreement to accommodate those unique conditions. Such supplemental provisions shall not address issues of general port industry interest or interest to any other Washington port district, as determined by the Washington Public Ports Association (WPPA), or its successor organization. WPPA shall be given sixty (60) days to review the terms of any supplemental provision. WPPA shall give notice to DNR if WPPA determines the proposed terms are of general port district interest or of interest to any other Washington port district.

c. Acceptance of a subsequent Model Port Management Agreement or inclusion herein of a supplemental provision must be by mutual agreement of the parties.

31. Survival. All obligations of the parties to be performed under the terms and conditions of this Agreement, including but not limited to, obligations occurring after the termination of this Agreement or removal of any portion of the Property from this Agreement shall not cease upon termination or removal, and shall continue as obligations until fully performed.

32. Entire Agreement. This is the entire agreement between the parties. There are no other agreements, either oral or written, that have not been incorporated into this Agreement. No amendments to this Agreement shall be binding unless the amendment is in writing and signed by the parties.

Signed this _____ day of _____, 19_____.

STATE:

STATE OF WASHINGTON
DEPARTMENT OF NATURAL
RESOURCES

Supervisor

Signed this _____ day of _____, 19_____.

PORT:
PORT OF _____



Appendix B

1984 Model Port Management Agreement

AQUATIC LANDS MANAGEMENT AGREEMENT

Washington State Department of Natural Resources

and

Public Port Districts of the State of Washington

Port of Grays Harbor
Port Management Agreement
No. 22-080015



Appendix B cont'd

TABLE OF CONTENTS MANAGEMENT AGREEMENT

<u>Title</u>	<u>Page</u>
1. Term	1
2. Delegation	1
3. Property	1
4. Access	2
5. Acceptance of Property	2
6. Standard of Management	2
7. Use	2
8. Port Regulations	2
9. Planning for Aquatic Land Use	2
10. Rent	2
11. Security	2
12. Removal of Natural Resources	2
13. Improvements	3
14. Easements	3
15. Local Improvement Districts	3
16. Taxes	3
17. Entry	3
18. Audits	4
19. Liens and Encumbrances	4
20. Indemnification	4
21. Eminent Domain	4
22. Non-Waiver	4
23. Dispute Resolution	4
24. Termination for Default	5
25. Notices	5
26. Attorney Fees and Costs	5
27. Assignment	6
Signatures	6



Appendix B cont'd

MANAGEMENT AGREEMENT

No. 22-080015

Port of Grays Harbor

This Management Agreement, made as of the _____ day of _____ 1985, by and between the State of Washington, Department of Natural Resources, (hereinafter referred to as "DNR"), and the Port of Grays Harbor, a Washington municipal corporation, (hereinafter referred to as "the Port").

Witnesseth:

Whereas, DNR is directed by law to manage aquatic lands owned by the State of Washington; and

Whereas, Section 6, Chapter 221, Laws of 1984, authorizes DNR and the port district, upon request of a port district, to enter into an agreement to manage state-owned aquatic lands as set forth in said law; and

Whereas, the Port has requested such an agreement; and

Whereas, DNR has determined that it is in the best interest of the State of Washington to enter into such an agreement with the Port,

Now, therefore, the parties hereto hereby agree as follows:

1. Term. This Management Agreement shall commence as of the date first written above and shall continue in full force and effect so long as the laws of the State of Washington allow management of aquatic lands by port districts.

2. Delegation. DNR hereby delegates management to the Port, and the Port hereby accepts the delegation and agrees to manage the parcels of state-owned aquatic lands listed on Exhibits A, which are attached hereto and incorporated by reference, (hereinafter referred to as the "Property"), as of the date of this Management Agreement in accordance with the provisions hereof.

The parties intend that this Management Agreement encompass all authority required for the Port to effectively manage the Property as contemplated by Chapter 221, Laws of 1984. However, if future circumstances indicate that additional authority is required to effectively manage the Property, the Port may request such authority from DNR, which approval shall not be unreasonably withheld.

The Port is hereby granted exclusive authority to enter into leases or other use authorization, includ-



Appendix B cont'd

ing leases or use authorizations to itself, for the Property or portions thereof, except as otherwise provided herein. All such agreements shall be subject to this Management Agreement and shall have a copy of the Management Agreement attached thereto. Said leases shall survive this Management Agreement; PROVIDED, that any such lease by the Port shall contain a clause which states that upon termination of the Management Agreement, or removal of the leased property therefrom, the lessor of said lease shall become DNR. The Port shall furnish a copy of any lease to DNR upon request.

3. Property. Any parcel which meets the criteria established by law shall, upon requested of the Port, be covered by this Management Agreement and included on Exhibits A. Any parcel hereafter meeting those criteria shall be added to this Management Agreement upon request of the Port by amending Exhibits A.

Any parcel which no longer meets these criteria shall cease to be covered by this Management Agreement and the management thereof shall return to DNR upon six (6) months written notice. Any parcel may be deleted from this Management Agreement at any time by mutual agreement or by the Port upon six (6) months written notice to DNR. If all subject property is deleted from this Management Agreement, and if the Port requests, this Management Agreement shall terminate. If any parcel is no longer included in this Management Agreement for any reason, upon cessation the Port shall promptly remit to DNR its pro rata share of any prepaid rent received for that parcel.

4. Access. It is not the intent that any parcel owned by the State which is not covered by this Management Agreement, or any property owned by the Port should be left without access as a result of the Port's management of the Property. Provisions for access to such parcels shall be listed on Exhibits A or its amendments.

5. Acceptance of the Property. Except as otherwise agreed in writing the Port hereby accepts management of the Property listed on Exhibits A and any amendments in its present condition, and agrees, at its sole expense, to conform to federal, state, and local laws and regulations applicable to the holding or use of the Property.

6. Standard of Management. Management of the Property shall be consistent with the aquatic land policies of Chapters 79.90 through 79.96 RCW, as amended, and the implementing regulations adopted by DNR. These laws now state, in Sect. 2, Chapter 221, Laws of 1984 (RCW 79.90.455): "The manager of state-owned aquatic lands shall strive to provide a balance of public benefits for all." The administrative procedures for management of the Property shall be those of Title 53 RCW.

7. Use. The Port may use the Property for port purposes as authorized in Title 53 RCW so long as said use is consistent with the Washington State Constitution and laws of the State of Washington.

8. Port Regulations. The Port may adopt written policies and regulations to implement this Manage-



Appendix B cont'd

ment Agreement and to direct the management of the Property. All such policies and regulations shall be submitted to DNR for review and comment prior to becoming effective. Any such policies or regulations must be consistent with this Management Agreement.

9. Planning for Aquatic Land Use. The parties recognize that long-range planning for aquatic land use involving the Property, developed through consultation between the parties in cooperation with the planning authorities of appropriate local jurisdictions, is a desirable management objective. In the event the parties develop and agree upon a long-range plan for aquatic land use for the Property, the Port may enter into leases for nonwater dependent uses consistent with that plan without DNR approval.

In the absence of a long-range plan for aquatic use of a portion of the Property, if the Port contemplates the possible lease or use of that portion of the Property for nonwater-dependent uses, it shall give DNR notice of its intentions at the earliest practicable time. DNR shall promptly meet with the Port to review the proposal for its consistency with the aquatic land policies of Chapters 79.90 through 79.96 RCW, as amended, and the implementing regulations adopted by DNR.

10. Rent. The following shall apply:

(a) The Port shall pay DNR no rent for the Port's use of any portion of the Property, provided, in the event the Port engages in a significant nonwater-dependent use on other than a temporary basis which produces substantial income, 85% of the revenue attributable to the rent of the state-owned aquatic land only shall be paid to DNR.

(b) If the use of any portion of the Property involves a lease or other use authorization to a third party, rent for such portion shall be collected and distributed according to law. In the event the use is nonwater-dependent, the Port shall establish the fair market rental in dollars and shall remit, in dollars, to DNR that portion required by law.

11. Security. If the Port leases any portion of the Property to a third party, the Port shall require security as provided by law.

12. Removal of Natural Resources. Other as than provided by RCW 79.90.150 no natural resources shall be removed from any parcel subject to this Management Agreement without the prior written approval of DNR. If any approved removal requires payment to DNR for the value of the natural resources removed, such payment shall be made within 90 days of the removal.

13. Improvements.

(a) State-Owned Improvements. Any state-owned improvements existing on the Property shall be listed on Exhibit B. These improvements shall remain the property of the State and shall be maintained at



Appendix B cont'd

the Port's sole expense in a good condition and state of repair. Upon the cessation or termination of this Management Agreement as to any portion of the Property, the Port shall return said portion, together with the state-owned improvements, to DNR in a condition as good as when received, normal wear and tear excepted.

At the time any portion of the Property with state-owned improvements becomes subject to Management Agreement, the Port and DNR shall determine whether, in view of the character and value of the improvements, the financial condition of the Port, the likelihood of risk of loss or damage, and other relevant factors, fire and extended coverage insurance on state-owned improvements shall be obtained by the Port.

The current agreed fair market value of the existing state-owned improvements on the Property, is listed on Exhibit B. The Port agrees to pay for the use of these improvements an amount equal to that which would be charged lessees by DNR for the use of those improvements, as the same is billed to the Port by DNR from time to time during the term of this Management Agreement.

(b) Other Improvements. Other improvements existing on the Property, or subsequently installed on the Property, shall be owned by the Port or any third party contractually entitled thereto. If any parcel is not substantially continuously subject to this Management Agreement or a lease, then, upon the termination of the Management Agreement or such lease, such improvements shall become the property of the State, unless DNR elects to have the improvements removed, in which case they shall be removed by the Port at its sole expense. If the Port fails to so do, DNR may have them removed, and the Port agrees to pay for the total cost of that removal.

14. Easements. DNR may grant permanent easements across any portion of the Property. DNR shall obtain the Port's written approval prior to making such grants, which approval shall not be unreasonably withheld. Any request to DNR by the Port and its Lessee for a permanent easement across any portion of the Property shall be promptly considered and approval shall not be unreasonably withheld.

The Port may grant non-permanent easements without DNR approval so long as the term of such grant does not exceed the maximum term allowed by statute for leases of the burdened portion of the Property.

15. Local Improvement Districts. The Port shall have the exclusive authority to consent or withhold consent to the inclusion of any portion of the Property in any local improvement district (LID). The Port shall be responsible for all assessments levied against any portion of the Property after the date of this Management Agreement, whether installment payments are due during the term of this Management Agreement or otherwise. The Port shall be responsible, during the term of this Management Agreement, for installments due on pre-existing LID assessments.



Appendix B cont'd

16. Taxes. Except for taxes and other governmental charges imposed by law on third parties, the Port shall be responsible for, and shall pay when due, all taxes, fees, licenses, and other governmental charges of whatever character or arising out of, or attributable to, the Property or to the Port's management, use and/or leasing thereof during the term of the Management Agreement.

17. Entry. DNR shall have right of entry to the Property at reasonable times for any lawful purposes.

18. Audits. The Port shall make all records concerning the management of any portion of the Property available to DNR upon request.

19. Liens and Encumbrances. The Port shall keep the Property free from liens and other encumbrances (other than leases and other use authorizations authorized in Paragraphs 2 Delegation, 14 Easements and 15 Local Improvement Districts). Nothing in this Management Agreement shall be construed as authorizing the Port to obligate DNR, directly or indirectly, to any costs, expenses, or financial liability on account of the management, use, lease, or other actions taken by the Port with respect to the Property.

20. Indemnification. DNR shall not be liable for any injury or death to any persons, or for damage to any property occurring on or about any portion of the Property, regardless of how such injury or damage be caused other than through the negligence of DNR. The Port agrees to indemnify and to hold and save DNR harmless from all liability and expense, including the expense of litigation, in connection with any such actual or alleged injury or damage.

The Port shall indemnify and hold and save DNR harmless from all contractual liability and expense, including the expense of litigation arising by virtue of Port management of the Property.

21. Eminent Domain. If at any time during the term of the Management Agreement the Property or any part thereof is taken or condemned by any authority having the power of eminent domain, the Port, DNR, and any other person having a legal interest shall have the right to appear in such proceedings and be represented by their respective counsel, and each may claim just compensation for its respective loss or damage sustained by the taking or condemnation. Any award, compensation, damages, or payment by reason of such taking shall be apportioned within such proceeding and each party shall take such amount, if any, as may be awarded to it.

22. Non-Waiver

The failure of either party to insist upon the strict performance of any of the covenants or conditions of this Management Agreement in any one or more instances shall not be construed to be a waiver thereof. In the event that a default is for other than the payment of money, the acceptance by either party of payments required under the Management Agreement shall not be deemed as a waiver of such default.



Appendix B cont'd

23. Dispute Resolution.

a. Dispute: means that whenever the Port and DNR cannot agree on the factual circumstances necessary to interpret this Management Agreement, or whenever the Port and DNR cannot agree on the application of any operative sections of this Management Agreement, either party may declare that a dispute exists concerning the Management Agreement.

b. Dispute Resolution:

1. If either party declares the existence of a dispute concerning this Management Agreement, the declaring party shall so notify the other party and shall provide a written statement of the facts, its interpretation of the Management Agreement, and its position concerning such dispute. Within 15 days the other party shall provide to the declaring party a written statement addressing those same three elements. Within 15 days after the declaring party has received the other party's written statement, the parties shall meet and try to resolve the dispute. In the event the dispute is not resolved within 60 days after the first meeting the matter may be referred to the Disputes Resolution Panel by either party.

2. Disputes Resolution Panel. The Disputes Resolution Panel shall consist of the following members:

- a) The Chairman of the Board of Natural Resources (or some other member of the Board of Natural Resources designated by the chairman):
- b) The Supervisor of the Department of Natural Resources;
- c) The president of the port commission of the Port (or some other member of the port commission designated by the president);
- d) The chief administrative officer of the Port. (In the event the Port has no chief administrative officer, then such person shall be designated by the port commission.)

3. Consideration by Disputes Resolution Panel:

Within 60 days after the dispute is referred to the Disputes Resolution Panel it shall meet and attempt to resolve such dispute. In the event it is unable to resolve the dispute within said 60 day period either party may petition the Superior Court for resolution of the dispute.

24. Termination for Default. DNR may cancel this Management Agreement or remove any portion of



Appendix B cont'd

the Property therefrom for any failure by the Port to perform its obligations under this Management Agreement on six months written notice to the Port, unless, within that time, the Port cures such default. DNR's decision whether to cancel the Management Agreement or to remove any portion of the Property shall be reasonably exercised. If the default is of a character which cannot be remedied within six months, the Port shall so notify DNR and the parties shall agree on a reasonable period to remedy the default. In the event the parties cannot agree on a period, that shall be referred to arbitration as provided in Paragraph 23. Failure to cure the default within such period may result in cancellation or removal of any portion of the Property upon notice. The decision by DNR to give notice of its intention to cancel this Management Agreement, or to remove a portion of the Property for default after expiration of the period for cure, shall constitute a dispute and shall be appropriate for resolution under Paragraph 23 herein.

25. NOTICES

All notices required by law or this Management Agreement shall be in writing and may be personally served or sent by registered or certified mail, return receipt requested. If such notice is served personally, service shall be conclusively deemed made at the time of service. If service is by registered or certified mail, service shall be conclusively deemed made three (3) days after the deposit thereof in the United States mail, postage prepaid, addressed to the parties to whom such notice is to be given. Any notice may be given at the following address (or such other address as either party may notify the other, in writing):

DNR	Department of Natural Resources Division of Marine Lands Mail Stop QW-21 Public Lands Building Olympia, WA 98504
-----	--

Port	Port of Grays Harbor Post Office Box 660 Aberdeen, WA 98520
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26. Attorney Fees. In the event either party shall be required to bring any action to enforce any of the provisions of this Management Agreement or shall be required to defend any action brought by the other with respect to this Management Agreement the prevailing party in such action shall be entitled to reasonable attorney's fees in addition to costs and necessary disbursements.

27. Assignment. No part of this Management Agreement may be assigned or otherwise transferred.



Appendix B cont'd

Signed this _____ day of _____, 19____.

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Department Supervisor

Signed this _____ day of _____, 19____.

APPROVED BY GRAYS HARBOR PORT
COMMISSION:

President

ATTESTED TO:

Secretary

PORT OF GRAYS HARBOR
PO Box 660
Aberdeen, WA 98520



Appendix C

Aquatic Lands Laws and Regulations

The aquatic lands laws that ports are obligated to follow while managing property under a PMA are RCW 79.90-79.96.

The regulations are WAC.332-30.

The easiest link on the internet is www.access.wa.gov (look under Government, State, Laws and Rules)

The most commonly-used citations:

RCW 79.90.455	Management Guidelines
RCW 79.90.465	Definitions
RCW 79.90.475	Port Management
RCW 79.90.480	Water-dependent Rent
RCW 79.90.500	Nonwater-dependent Rent
RCW 79.90.505	Multiple Uses
WAC. 332-30-106	Definitions
WAC. 332-30-114	Port Management
WAC. 332-30-123	Water-dependent Rent
WAC. 332-30-125	Nonwater-dependent Rent



Appendix D

Finding an Alternative Upland Parcel for Water-dependent Uses

The priority of selection is:

1. The parcel structurally connected to the lease area,
2. The parcel that abuts the lease area, and finally
3. The parcel closest in distance to the lease area.

This guidance is found in WAC 332-30-23 (2)

If the parcel does not have an assessed value that is current or accurate, then the port needs to find a comparable property. The regulations add more detail than the statute, and list six particular factors that can render the assessment inconsistent with the purposes of the lease. These factors are:

1. The parcel is not assessed
2. The date of assessment is more than four years old
3. The parcel is classified at something less than full market value, such as forest lands or open space.
4. The parcel's valuation is under appeal (which is not likely for port property). In this case the old value is used until the appeal is resolved.
5. The majority of the parcel is not used for a water-dependent purpose, and
6. The parcel's small size results in a nominal valuation, such as an unbuildable lot.

The process of finding a comparable property is as much an art as a science, and most ports are familiar with the comparable property appraisal process. The state's regulations emphasize proximity, in the following order of priority:

1. Within the same city as the lease area,
2. Within the same county and waterbody as the lease area,
3. Within the same county and on a similar waterbody, and
4. Within the state.



Appendix D *cont'd*

In addition, within these locational priorities, the comparable property's use priority (in descending order of priority) shall be:

1. Within the same use class as the proposed lease area,
2. Any water-dependent use within the same zoning,
3. Any water-dependent use, and
4. Any water-oriented use.

The port should be sure to keep records documenting its decisions and reasoning of property selection.



Appendix E

1984 PMA Lease Checklist

- Lease clearly states that it is subject to PMA
- Lease contains clause that upon termination of PMA or removal of parcel from PMA, lessor becomes DNR
- PMA attached to lease
- Rent calculated according to state aquatic lands laws
- Rent calculations and decisions documented in file
- Security provided for according to port policy, but not waived

DNR notice by first class mail to:

Attn: Port Management Staff
Department of Natural Resources
Aquatic Resources Division
1111 Washington Street SE
PO Box 47027
Olympia, WA 98504-7027



Appendix E cont'd

1995 PMA Lease Checklist

- Lease clearly states that it is subject to PMA
- Lease contains clause that upon termination of PMA or removal of parcel from PMA, lessor becomes DNR
- PMA attached to lease
- Rent calculated according to state aquatic lands laws
- Rent calculations and decisions documented in file
- Security provided for according to port policy, but not waived
- Liability insurance provided for at least \$1 million, naming state as additional insured
- Casualty insurance provided for replacement cost of any state-owned improvements listed in Exhibit B
- Copy of new lease sent to DNR upon execution of documents
- Copy of lease renewal, modification, or surrender sent to DNR upon execution of documents

DNR notice by first class mail to:

Attn: Port Management Staff
Department of Natural Resources
Aquatic Resources Division
1111 Washington Street SE
PO Box 47027
Olympia, WA 98504-7027



Appendix F

Notice Checklist for 1984 PMA:

- Copies of leases, at the request of the DNR
- Official port policies or regulations directing management of the property
- Any intention to lease a PMA parcel for nonwater-dependent use (unless port and DNR have agreed to a long range plan)
- Any request by port of third party for a permanent easement
- Any eminent domain proceeding affecting property
- A dispute involving the property
- A request to remove natural resources (except for permitted channel, harbor of flood control projects)



Appendix F *cont'd*

Notice Checklist for 1995 PMA:

- Copies of all new leases, lease renewals, lease modifications, lease surrenders
- Request to add property to the PMA
- Any spills, discharges, cleanups, mitigation or environmental action affecting the PMA
- Any proposal to fill any part of the PMA
- Any request for third-party liability insurance less than one million dollars
- Any purchase of third-party improvements from a bankruptcy trustee
- Official port policies or regulations directing management of the property
- Any intention to lease a PMA parcel for nonwater-dependent use (unless port and DNR have agreed to a long range plan)
- Any request by port of third party for a permanent easement
- Any eminent domain proceeding affecting property
- A dispute involving the property
- A request to remove natural resources (except for permitted channel, harbor of flood control projects)



Appendix G

DNR must notify port of:

1984 PMA

- Plans to grant permanent easements
- Plans to enter property
- Plans to cancel PMA or remove any property from PMA

1995 PMA

- Plans to grant permanent easements
- Plans to enter property
- Plans to cancel PMA or remove any property from PMA
- Any condition known to DNR that could adversely affect the use of the property
- Discovery of any failure of any person to comply with any federal, state or local laws respect to the property
- Any inspections, fines, orders, cleanups or negotiations affecting the property
- Any mitigation or restoration plans affecting the property
- The replacement value of any state-owned improvements within 60 days of the port's request
- Any amendments to the model PMA adopted by the Board of Natural Resources



Appendix H

An Explanation of Port Management of State-owned Aquatic Lands

If you are a tenant or potential tenant of a Washington port district, you could be leasing or using land owned by the State of Washington, but managed by the port.

This is possible because port districts in Washington have the legal authority to manage certain state-owned aquatic lands that abut property owned directly by the port. When this occurs, the property comes under what is known as a “Port Management Agreement”, or PMA.

A copy of the PMA is attached to your lease, and you can review it for yourself. It contains a number of property management obligations that the port must, by state law, follow. None of these obligations are unusual or burdensome, but they could be slightly different from the property management practices that the port typically uses on its other properties. The PMA is incorporated by reference into the lease.

The PMA is not a lease with the state, and you are not a “sub-lessee” on this property. The port is managing the property on behalf of the entire State of Washington, and you are leasing the state’s property from the port. The port will remain your “landlord” as long as the PMA remains in existence.

The state laws that deal with state-owned aquatic land must be applied by the port on these properties. Everyone in the state who leases state-owned land comes under the same laws. Most of these lands are managed by the State Department of Natural Resources, but the portion that affects you with this lease is managed by the port.

For this reason, there are some lease rate issues that are prescribed in state law that the port is obligated to use when calculating rent for the state-owned land. The port’s property manager can explain these to you, as well as any other changes in port’s regular leasing practices.

It is possible that the property that you are leasing is only partly state-owned, and the rest is owned directly by the port. In this case, only that portion of your lease that sits on the state-owned land is covered by the PMA.

If you have questions about this legal relationship between the port and the state and how it affects your lease, please contact the port staff person listed below:

Port contact: _____



Appendix I

Sample Port Management Agreement (PMA) Assertions Letter

Dear State Auditor:

The Port of _____ certifies the following assertions. These assertions are made on the basis of a review of the Port's records and documentation in place regarding the administration of our Port Management Agreement (PMA) with the State of Washington, Department of Natural Resources.

1. The Port of _____ manages state-owned aquatic lands within its jurisdiction pursuant to an executed PMA. Exhibits to the PMA document port eligibility and use for all areas managed under the PMA. There are no additional properties in application to be included in the PMA (with the following exceptions).
2. All upland parcels necessary to include the adjoining aquatic lands within the PMA are under the ownership or real property control of the port.
3. There have been no changes in functional use on state-owned aquatic lands since the last audit (except for the following).
4. The Port is managing third-party use authorizations as required by the PMA. The Port has furnished copies of all port-issued easements to the DNR as required by the PMA. A copy of the PMA is attached to all port leases for state-owned aquatic lands. The Port is calculating, collecting and distributing rent for uses on state-owned aquatic lands according the statutory requirements of RCW 79.90.
5. The Port is maintaining required security (insurance) for all activities on state-owned aquatic lands.



Appendix I cont'd

Sample PMA Assertions Letter

Page two

- 6. Other than permitted dredged material, no state-owned valuable materials have been moved, used, sold, stored, or transferred by or to the Port since the last audit without a Material Sales Agreement with the Department of Natural Resources.

- 7. The Port has notified the Department of Natural Resources upon discovery of all spills, discharges, or releases of any hazardous substance affecting the property which are required to be reported to any federal, state, or local regulatory agency.

Respectfully submitted,

_____ Date: _____
 Chief Executive Officer
 Port of _____

_____ Date: _____
 Port Auditor
 Port of _____



Appendix J

Checklist for Adding Property to a PMA

- Port has proof of upland control of the parcel, in the form of one of the following:
 - Fee title ownership, with title report
 - Lease agreement or contract with private property owner for the exclusive management or possessory interest of the uplands.
 - A memorandum of agreement with a public entity if the agreement specifically states that the other public entity is delivering management control to the port.

- Port has surveyed the property with a degree of precision to allow a property manager to easily discern the boundaries of the parcel in relation to landmarks, shorelines or buildings. Any easements or outfalls should also be noted.

- Port has met with DNR, provided documentation of ownership and explained property addition proposal.

- Ports with 1995 PMA have notified DNR, sent the above items to the DNR, and instigated the property addition process outlined in Section 3 of the PMA. (This process is also described in Chapter 3 of this Handbook).

- Port has followed up with DNR to ensure that Exhibits are amended and initialed by both sides.



Appendix K

Rent Guidance for Water-Dependent and Nonwater-Dependent Uses

These lists are intended to provide additional guidance to ports on the definitions that are set forth in RCW 79.90.465

Uses that are charged as water-dependent :

- Aquaculture
- Aquatic habitat mitigation sites
- Ferry terminals
- Marine repair and maintenance facilities
- Marine terminal and transfer facilities
- Moorage and launching facilities
- Marine preservation and restoration areas
- Public piers and fishing areas
- Public use beaches
- Service areas such as lunchrooms and restrooms that serve a water-dependent use
- Service access areas that solely serve as access to a water-dependent use
- Underwater park and conservation areas
- Water-borne commerce infrastructure
- Watercraft construction dependent upon water access
- Watercraft sales in conjunction with other water-dependent uses

Uses that are charged as nonwater-dependent :

- Apartments, condominiums and hotels
- Bulkheads integral to a nonwater-dependent use
- Maintenance shops for nonwater-dependent uses
- Office Buildings
- Offices, unless necessary for the operation of a water-dependent use
- Outfalls for process water or storm drains (no fee for municipal, incl. port)
- Parking lots, except for handicapped parking associated with a water-dependent use
- Restaurants
- Retail stores
- Storage yards not used for vessel loading and unloading
- Vehicle storage and maintenance shops (except maintenance of cargo loading equipment)
- Warehouses not used for vessel loading and unloading



Appendix L

1995 Port Management Agreement DNR Exhibit Requirements

- ❑ A copy of a resolution of the port commission that directs the port district to seek a management agreement

- ❑ **Exhibit A - 1995 PMA Section 3**

Each category of data should be developed as a separate layer in electronic format. If multiple parcels are involved a macro view should demonstrate the relationship of the parcels within the area.

 - Exact legal descriptions and surveys for all PMA parcels
 - Three views of each parcel that clearly delineate:
 - View 1
PMA parcel boundaries
Existing physical shoreline
Assessors parcel numbers, boundaries and name of legal owner of the abutting upland parcel cited as eligibility for PMA.
 - View 2
Fill material locations and ownership
Outfall locations on state or abutting port land
 - View 3
Upland street names and addresses
Upland areas designations by Port, i.e. terminal numbers
Physical improvement locations, both state owned and port owned
Easement locations, size, purpose, and grantee within PMA parcel

- ❑ **Exhibit B - 1995 PMA Section 15**
 - List of any state owned improvements
 - List of Planned Improvements that includes square foot measurements of structures

- ❑ **Exhibit C - 1995 PMA Section 13**
 - List of fills placed on each parcel
 - Statement of ownership of fill material
 - Port ownership of fill documentation

- ❑ Most recent Port Master Plan, Strategic Plan or Harbor Area Improvement Plan
- ❑ List of all leases and sub-leases
- ❑ Copies of any discharge permits (NPDES) for outfalls on or adjacent to state land
- ❑ Current copies of the title and legal proof of current ownership or management control of all associated upland parcels