

ORDINANCE 3333
CITY OF PORT ANGELES, WASHINGTON

AN ORDINANCE creating the Port Angeles Harbor Works Public Development Authority; authorizing a charter and bylaws therefor; establishing a Board of Directors to govern the affairs of the PDA; and describing how the PDA shall conduct its affairs.

PASSED: May 20, 2008

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AN ORDINANCE creating the Port Angeles Harbor Works Public Development Authority; authorizing a charter and bylaws therefor; establishing a Board of Directors to govern the affairs of the PDA; and describing how the PDA shall conduct its affairs.

THE CITY COUNCIL OF THE CITY OF PORT ANGELES DO HEREBY
ORDAIN, as follows:

Section 1. Findings and Recitals. The City Council makes the following findings and determinations:

(a) The City is authorized, in RCW 35.21.730 through 35.21.759, to create public corporations, commissions and authorities to receive and administer private funds, goods or services for any lawful public purpose in order to improve the administration of authorized federal grants or programs, to improve governmental efficiency and services, and to improve the general living conditions.

(b) The City Council finds that:

- (1) The former Rayonier mill site (the "Rayonier Site") is located within the corporate boundaries of the City.
- (2) The Washington State Department of Ecology ("DOE") is currently responsible for cleanup of the former Rayonier mill site (the "Rayonier Site") located in Port Angeles, which was closed in 1997. DOE has sought participation from local government agencies in the final stages of the cleanup, to facilitate redevelopment of the site, and the City desires to redevelop and enhance this site to provide economic, cultural and community benefits and resources to improve the lives of the citizens of the City.
- (3) The DOE is currently investigating the entire Port Angeles harbor for the existence of toxic materials in the marine environment. Depending on the outcome of that investigation, DOE will formulate plans and strategies for responding to toxic substances in the marine environment. DOE seeks participation from local government agencies on these issues as well.
- (4) Both the City and the Port might be potentially liable parties for toxic materials within the marine environment.

- (5) Cleanup and redevelopment of the Rayonier Site and the Port Angeles Harbor are vital to the health and economy of the community and in the best interest of the City and its taxpayers.
- (6) The City Council finds that it is in the best interest of the City and its taxpayers to participate with the Port (a) in the implementation of appropriate measures to remediate and redevelop the Rayonier Site and the Port Angeles Harbor so that they may contribute to the economic development and general welfare of the region; and (b) in the investigation of the nature and extent of hazardous waste and wood waste in Port Angeles Harbor and the development of reasonable, necessary and feasible remediation measures for such conditions
- (7) The City and the Port are authorized by Chapter 39.34 RCW to contract with each other in order to effectively and efficiently operate, administer and carry out their programs and public projects, and pursuant to this authorization and Resolution 2-08 of the City Council, the City and the Port have entered into an interlocal agreement whereby the City has agreed to exercise its powers under RCW 35.21.730-.759 to create a public development authority
- (8) The City and the Port are further authorized to cooperate in the exercise of certain powers relating to community renewal under Chapter 35.81 RCW and RCW 53.08.400, and certain community revitalization activities under Chapter 39.89 RCW and RCW 53.08.049.

Section 2. Definitions. The following terms shall have the following meanings unless the context clearly indicates otherwise:

“*PDA*” means the Port Angeles Harbor Works Public Development Authority created under this ordinance.

“*Bonds*” means any bonds, promissory notes, interim certificates, debentures, certificates of indebtedness or other short-term or long-term obligations issued by the PDA.

“*Bylaws*” means the rules adopted under this ordinance for regulating or managing the PDA’s affairs, as they may be amended from time to time.

“*Charter*” means the PDA’s articles of organization as adopted under this ordinance or as amended from time to time.

“*Director*” means a member of the PDA Board.

“*PDA Board of Directors*” or “*PDA Board*” means the governing body of the PDA vested with the management of its affairs.

Section 3. PDA Created - City Liability Limited.

(a) PDA Created. In order to administer and execute federal grants or programs; receive and administer private funds, goods or services for any lawful public purpose; and perform any lawful public purpose or public function within the limits of City of Port Angeles, the Port Angeles Harbor Works Public Development Authority, a public corporation, is hereby created for the purposes as set forth in its Charter and this ordinance.

(b) City Liability Limited. The PDA is an independent legal entity exclusively responsible for its own debts, obligations and liabilities. All liabilities incurred by the PDA shall be satisfied exclusively from the assets and credit of the PDA; no creditor or other person shall have any recourse to the assets, credit or services of the City on account of any debts, obligations, liabilities, acts, or omissions of the PDA.

Section 4. Charter; Bylaws.

(a) Charter. The Charter of the Port Angeles Harbor Works Public Development Authority, attached as Exhibit A and incorporated by reference, is approved. Upon the effective date of this ordinance, the Charter shall be issued in duplicate originals, each bearing the City's seal attested by the City Clerk. The City Clerk shall retain one original on file as a public record and shall deliver the second duplicate original to the PDA. The City Clerk shall give notice of the issuance of the Charter to the Secretary of State.

(1) *Charter Amendments*. Except if the City is required to intervene under Section 8 of this ordinance or as otherwise may be required by law, any amendment to this Charter must be approved by an ordinance of the City Council and by 80% of the PDA Board.

- (i) *Amendments Initiated by PDA Board*. Any PDA Board member may introduce a proposed Charter amendment at any regular or special meeting of the PDA Board. Upon approval of a Charter amendment proposal by 80% of the Members of the PDA Board, the PDA shall file the proposed amendment with the City Clerk for consideration by the City Council at the Council's earliest convenience.
- (ii) *Amendments Initiated by City Ordinance*. If the City Council adopts an ordinance to amend the Charter, the PDA Board shall consider and vote on the proposed amendment at its next regular meeting. If no regular meeting is to be held within 30 days of the adoption of the City ordinance, the Secretary of the PDA Board shall call a special meeting within 45 days of the adoption of the City ordinance to consider the proposed amendment. If the PDA Board fails to vote upon the proposed amendment within 45 days, the PDA Board shall be deemed to have concurred and the amendment shall become effective.

(2) *Notice of Meeting to Consider Charter Amendment*. Notice of a PDA Board meeting during which action is to be taken on a proposed Charter amendment shall be given

in writing to each Director and to all other persons entitled to receive notice at least 7 days before the meeting. The notice shall specifically state that a Charter amendment is to be considered and shall include a statement of its purpose and effect. The notice to be given to each Director shall also include a copy of the proposed amendment.

(3) *Effective Date of Charter Amendments.* Except if the City is required to intervene under Section 8 of this ordinance or as otherwise may be required by law, a Charter amendment shall become effective only upon adoption by the City Council and concurrence by the PDA Board.

(b) Commencement of Corporate Existence. The PDA shall commence its existence upon the issuance of the Charter and shall conduct its affairs in accordance with the Charter. Except as against the State or the City in a proceeding to cancel or revoke the Charter, delivery of a duplicate original Charter shall conclusively establish that the PDA has been established in compliance with the procedures of this ordinance.

(c) Bylaws. The PDA Board is vested with the power to adopt, amend or repeal Bylaws so long as those bylaws are consistent with the Charter and this ordinance. The PDA Board, at its organizational meeting shall adopt Bylaws. Thereafter, the Bylaws may be amended or repealed as necessary by the PDA Board consistent with the Charter and this Ordinance. Upon adoption, amendment or repeal of the Bylaws, the PDA shall place one true and complete copy on file as a public record with the City Clerk, and shall retain a true and complete copy in its files.

Section 5. Powers of the PDA.

(a) Generally. Except as otherwise limited by state law, an ordinance of the City or the Charter, the PDA shall have and may exercise within the territorial boundaries of the City all lawful power necessary or convenient to effect the purposes for which the PDA is organized and to perform authorized corporate functions as provided in the Charter. Such powers shall include:

- (1) All powers that may be exercised by a public corporation under RCW 35.21.735 and the Public Corporations Act generally;
- (2) All powers that may be assigned to it or conferred on it by the City or by the Port of Port Angeles.

(b) Limitation of Powers. The PDA shall be limited in all activities and transactions in the following respects:

(1) *No power of eminent domain.* The PDA shall have no power of eminent domain nor any power to levy taxes.

(2) *No recourse to City for debts.* The PDA may not incur or create any liability that permits recourse by any party or member of the public to any assets, services, resources or credit of the City. All liabilities incurred by the PDA shall be satisfied exclusively from

the assets and credit of the PDA; no creditor or other person shall have any recourse to the assets, credit or services of the City on account of any debts, obligations, liabilities, acts or omissions of the PDA.

(3) *Transfer or encumbrance of certain real estate subject to RCW 35.21.747.* The PDA may sell, transfer or encumber any real property transferred to the PDA by the City only in accordance with the requirements of RCW 35.21.747.

(4) *Activities must serve public purpose.* As long as the principal object of an activity is to enhance the public mission of the PDA and not to generate a profit, the PDA may: (i) sell assets for a consideration greater than their reasonable market value or acquisition cost; (ii) charge more for services than the expense of providing them; or (iii) carry out any other activity that is consistent with its purpose and applicable law.

Section 6. PDA Board of Directors.

(a) PDA Board of Directors. The Port Angeles Harbor Works Public Development Authority Board of Directors (the "PDA Board") is established to govern the PDA's affairs. The PDA Board shall be composed and its officers chosen as set forth in the Charter. The directors' qualifications, terms of office and the filling of vacancies shall be as set forth in the Charter

(b) Appointment of Directors. The initial Directors shall be as follows:

1. Karen McCormick (City Nominee) – Group II;
2. Bart Irwin (Port Nominee) – Group II;
3. Howard Ruddell (City Nominee) – Group III;
4. Jerry Hendricks (Port Nominee) – Group III;
5. Orville Campbell, President.

(c) Organizational Meeting. The City Council shall call an organizational meeting of the initial directors within 60 days of the effective date of this ordinance, and shall cause at least 7 days advance written notice to be given to each director, unless waived in writing. At such meeting, the PDA Board shall organize itself, appoint officers, adopt Bylaws, and take such other action as may be necessary.

(d) Removal of Directors By City Council. The City may remove any or all directors from office by resolution adopted after 30 days notice to all of the directors. Any director removed pursuant to this section shall cease to be a director upon adoption of the City Council resolution. A director appointed to fill a vacancy created under this Section shall serve out the remainder of the term and shall be eligible for reappointment.

Section 7. Exercise of Corporate Powers.

(a) Exercise of Corporate Powers. All corporate powers of the PDA shall be exercised by or under the authority of the PDA Board or its Officers; and the PDA's business, property, and other affairs shall be managed under the direction of the PDA Board or its Officers, except as may be otherwise provided for by law or in the Charter. Any person who assumes to act for the PDA without actual authority to do so shall be liable for the debts and liabilities incurred or arising as a result thereof.

(b) Deposit of Funds. All moneys belonging to or collected for the use of the PDA, coming into the hands of any corporate official or officer of the PDA, shall be deposited in a qualified public depository as determined by the Washington Public Deposit Protection Commission. Such moneys may be invested at the direction of the PDA Board, by resolution, in investments that would be lawful for the investment of City funds.

(c) Actions Requiring Authorization. In addition to such transactions, duties or responsibilities as the Charter or the PDA Board may reserve, the following actions require specific authorization by a PDA Board resolution:

(1) *Budget Adoption.* Adoption of an annual operating budget and a separate capital budget;

(2) *Real Estate Transactions.* Transfer or conveyance of an interest in real estate other than release of a lien or satisfaction of a mortgage after payment has been received and the execution of a lease for a current term more than one year;

(3) *Contracting or Guaranteeing Debts.* The contracting of debts, the issuing of bonds, and the mortgaging or pledging of PDA assets or credit to secure the same or any action by the PDA as a surety or guarantor;

(4) *Major Transactions or Expenditures.* Capital expenditures that are not contained in the adopted budget and are in excess of \$10,000, and all other transactions involving:

- (i) An amount greater than one percent of the previous year's operating budget;
- (ii) A commitment by the PDA extending over more than one year from the date of execution of the agreement; or
- (iii) The transfer or assignment of duties or responsibilities to or from a governmental entity.

(5) *Certification of Annual Reports.* Certification of annual reports and statements to be filed with the City Treasurer as true and correct in the opinion of the PDA Board and of its members except as noted.

Section 8. City Oversight and Intervention.

(a) *Oversight by the City Council.* In order to correct any deficiency and to assure that the purposes of the PDA are reasonably accomplished, the City may audit the PDA's books and records, modify the Charter consistent with this ordinance, intervene in an appropriate case, or remove directors.

(b) *Reports and Information.* At least once each year, the PDA Board shall review statements of monthly income and expenses that compare budgeted expenditures to actual expenditures and shall file a report summarizing this review with the City Council. The PDA Board shall review all such information at a regular or special meeting, the minutes of which shall specifically note such reviews and include such information.

(c) *Audits and Inspections.* To assist the City or any state agency in its review and oversight functions, the PDA shall make available for examination all of its financial and other records during normal business hours.

(d) *City Intervention.* Under the following circumstances, the City may intervene in and exercise control over the affairs of the PDA to the extent necessary and appropriate to correct any deficiency or to assure that the purposes of the program undertaken may reasonably be accomplished:

- (1) The PDA Board has requested such intervention by resolution;
- (2) The PDA has failed to set forth the statement required by its charter to be included in written contracts, bonds or other documents;
- (3) The PDA has represented to the public or to creditors that recourse may be had to the assets, property or credit of the City on account of acts or omissions of the PDA, unless such secondary or direct liability has expressly been authorized by the City Council by ordinance in the form of a contingent loan agreement or other guaranty;
- (4) The PDA has failed to file an annual report with the City Council;
- (5) A deadlock has occurred on the PDA Board, or the membership of the PDA Board is insufficient to constitute a quorum for conduct of affairs so that the PDA is unable to conduct its operations or perform its projects or activities;
- (6) The PDA Board has continuously failed to conduct meetings at least annually, or no regular or special meetings have been held for the preceding 12 months;
- (7) The PDA Board has unreasonably impaired public participation in the conduct of projects and activities;
- (8) The assets of the PDA have been or are committed to being misapplied, wasted or illegally expended;

- (9) The PDA has committed or is about to commit a material violation of its charter.

Section 9. Dissolution; Procedure for Dissolution. Dissolution shall be accomplished as provided in this Section, and shall not take effect until proper provision has been made for the disposition of all PDA assets.

(a) City Council Determination. If the City Council makes an affirmative finding, in accordance with this ordinance, that dissolution of the PDA is warranted for good cause, the existence of the PDA may be terminated by ordinance of the City Council adopted after public hearing held upon 30 days' notice to the Directors and affording them a reasonable opportunity to be heard. Good cause for the purposes of dissolution shall include only:

- (1) A majority of the PDA Board has in writing requested dissolution;
- (2) The PDA has discontinued all activities for which it was chartered or has remained inactive for 12 successive months;
- (3) The PDA becomes insolvent or otherwise unable to carry out its contractual obligations;
- (4) The charter or an amendment to the charter was procured through fraud or misrepresentation of any material matter that has an effect upon the projects or activities to be undertaken;
- (5) The PDA has filed an annual report with the City Council that contains false or misleading representations of material facts;
- (6) The PDA is incompetent or ineligible to carry out the public purposes for which it was chartered;
- (7) The PDA has repeatedly misused, abused or exceeded the grant of authority conferred upon it by the Ordinance or other law, or committed repeated violations of the Ordinance or this charter;
- (8) The PDA Board has authorized the misapplication, waste or illegal expenditure of PDA funds or assets;
- (9) Other circumstances under which the City Council would be warranted in intervening, if the City Council affirmatively finds that extraordinary circumstances require immediate dissolution and that intervention would be insufficient to correct the problem.

(b) Statement of Dissolution. Upon the effective date of an ordinance by the City Council for termination of the PDA, the PDA shall file a dissolution statement with the Secretary of State and the City Clerk setting forth: (i) the name and principal office of the PDA; (ii) the debts, obligations and liabilities of the PDA, including conditions of grants and donations, and the property and assets available to satisfy the same; the provisions to be made

for satisfaction of outstanding liabilities and performance of executory contracts; and the estimated time for completion of its dissolution; (iii) any pending litigation or contingent liabilities; and (iv) a list of persons to be notified upon completion of dissolution.

(c) Winding Up of PDA Affairs. The City Council shall review the statement filed and oversee the dissolution to protect the public interest, or if so authorized by law, authorize or initiate proceedings in the Superior Court for the appointment and supervision of a receiver for such purposes.

(d) Disposition of Assets. The City Council shall provide for the transfer of the rights, assets and property of the PDA to the Port of Port Angeles, as provided pursuant to interlocal agreement between the Port and the City, and may transfer additional rights, assets and property to any other qualified entity or entities which will fulfill the purposes for which the PDA was chartered. Otherwise, title to all remaining property or assets of the authority shall vest in the City upon the dissolution of the PDA.

(e) Termination of Corporate Existence. Upon satisfactory completion of dissolution proceedings, the City Council shall indicate such dissolution by inscription of "Charter Canceled" on the original Charter of the PDA, on file with the City Clerk and, when available, on the duplicate original of the PDA, and the existence of the PDA shall cease. The City Clerk shall give notice thereof to the Secretary of State and other persons requested by the PDA in its dissolution statement.

Section 10. Miscellaneous Provisions.

(a) Establishment and Maintenance of Office and Records. The PDA shall maintain a principal office at a location within the limits of the City; shall file and maintain with the City Clerk a current listing of all PDA officials, their positions and their business telephone numbers, the address of its principal office, and a current set of its Bylaws; and shall maintain all of its records in a manner consistent with the Public Records Act, RCW 42.56, as amended from time to time. The PDA shall keep an official journal containing the minutes of proceedings at all PDA Board meetings and ordinances. Any person shall have access to records and information of the PDA to the extent required by State law.

(b) Public Meetings. The PDA Board shall be the governing body of a public agency as defined in the Open Public Meetings Act, and all meetings of the PDA Board shall be held and conducted in accordance with the Open Public Meetings Act. It shall hold a regular meeting at least one time each year; and may hold such special meetings as may be required to conduct PDA business, in accordance with such notice and other requirements as are contained in the Charter, the Bylaws and applicable law.

(1) All PDA Board meetings, including executive Committee meetings, all other permanent and ad hoc committee meetings shall be open to the public to the extent required by the Open Public Meetings Act or otherwise by law. The PDA Board and committees may hold executive sessions to consider matters enumerated in the Open Public Meetings Act, or privileged matters recognized by law, and shall enter the cause therefor upon its official journal.

(2) The Charter or Bylaws shall establish the requirements for a quorum. The act of a majority of directors present at a meeting at which a quorum is present shall be the act of the PDA Board; provided, however, that a quorum to commence a PDA Board meeting shall be no fewer than a majority of the PDA Board's total membership.

(c) Code of Ethics - Conflict of Interest. No member of the PDA Board or any officer or employee of the PDA shall derive a personal profit, direct or indirect, from any contract or in the sale to the PDA or to a contractor supplying the PDA of any land or rights or interests in any land, material, supplies, or services except as provided in Chapter 42.23 RCW. The PDA Board may adopt additional conflict of interest and ethical rules it considers appropriate within its bylaws.

(d) Insurance. The PDA shall maintain in full force and effect public liability insurance in an amount sufficient to cover potential claims for bodily injury, death or disability and for property damage, which may arise from or be related to projects and activities of the PDA, naming the City as an additional insured. The City may, pursuant to a lease or other contract with the PDA, agree to provide all or part of such insurance.

(e) Ancillary Authority. The City Manager and the City Clerk are each granted all such power and authority as reasonably necessary or convenient to enable him or her to administer this ordinance efficiently and to perform the duties imposed in this ordinance.


Section 11. Construction. This ordinance shall be liberally construed so as to effectuate its purposes and the purposes of this ordinance, RCW 35.21.730 – .759. The provisions of this ordinance are controlling as to the Port Angeles Harbor Works Public Development Authority, and any provision of Port Angeles Municipal Code, Title 4 (Public Corporations), that is in conflict with this ordinance is declared to be inapplicable and of no effect whatsoever as to the Port Angeles Harbor Works Public Development Authority.

Section 12. Severability. In the event any one or more of the provisions of this ordinance shall for any reason be held to be invalid, such invalidity shall not affect any other provision of this ordinance, but this ordinance shall be construed and enforced as if such invalid provisions had not been contained herein; and any provision which shall for any reason be held by reason of its extent to be invalid shall be deemed to be in effect to the extent permitted by law.

Section 13. Effective Date. This ordinance shall take effect and be in force from and after its passage and five days following its publication as required by law. This


ordinance is an exercise of an administrative function. As such, this ordinance is not subject to referendum.

PASSED by the City Council of City of Port Angeles, Washington, at a regular open public meeting held on May 20, 2008.




Mayor Gary Braun

ATTEST:



Becky J. Upton, City Clerk

APPROVED AS TO FORM:



William E. Bloor, City Attorney

PUBLISHED: May 25, 2008

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**CHARTER OF THE
PORT ANGELES HARBOR-WORKS
DEVELOPMENT AUTHORITY**

ARTICLE I.

NAME

Section 1.01 - Name. The name of this authority shall be the Port Angeles Harbor-Works Development Authority (hereinafter referred to as the "Authority").

ARTICLE II.

AUTHORITY AND LIMIT ON LIABILITY

Section 2.01 - Authority. The Authority is a public authority organized pursuant to RCW 35.21.730-.759, as amended (the "Act") and Ordinance No. 3333 of the City Council of the City of Port Angeles (the "Ordinance").

Section 2.02 - Limit on Liability. All liabilities incurred by the Authority shall be satisfied (a) in the case of obligations or liabilities of the Authority which are not limited recourse in nature, exclusively from the assets, credit, and properties of the Authority, or (b) in the case of obligations or liabilities of the Authority which, by their terms, are limited recourse obligations, from such assets, properties or revenues of the Authority as shall be specifically pledged thereto or otherwise identified as being the source of payment of such limited recourse obligations or liabilities, and no creditor or other person shall have any right of action against or recourse to the City of Port Angeles, Washington (the "City") or the Port of Port Angeles (the "Port") or their respective assets, credit, or services, on account of any debts, obligations, liabilities or acts or omissions of the Authority.

Section 2.03 - Disclaimer. The following disclaimer shall be posted in a prominent place where the public may readily see it in the Authority's principal and other offices. It shall also be printed or stamped on all contracts, bonds, and other documents that may entail any debt or liability by the Authority:

The Port Angeles Harbor-Works Development Authority is a public authority organized pursuant to the Ordinance and the laws of the State of Washington, RCW 35.21.730 through RCW 35.21.759. All liabilities incurred by the Authority, commission, or authority shall be satisfied exclusively from the assets and properties of the Authority; and no creditor or other person shall have any right of action against the City of Port Angeles or the Port of Port Angeles on account of any debts, obligations, or liabilities of such public corporation, commission, or authority.

In the case of any obligations or liabilities of the Authority which, by their terms, are limited recourse in nature, in lieu of the foregoing disclaimer, the following disclaimer shall be printed or stamped on all contracts, bonds and other documents relating to or evidencing such limited recourse obligations or liabilities of the Authority:

The obligations of the Authority with respect to **[describe the contract, bond or other limited recourse obligation]** shall be and remain limited recourse obligations of the Authority payable solely and only from **[describe the particular properties, assets or revenues of the Authority from which the limited recourse obligation is payable]**. In no event shall such obligations be payable from or by recourse against any properties, assets or revenues of the Authority (other than those described in the proceeding sentence), nor shall such obligations be payable from or by recourse against any properties, assets or revenues of the City of Port Angeles, Washington, the Port of Port Angeles, the State of Washington or any other political subdivision of the State of Washington. No person to whom such obligations are owed shall have any recourse or right of action against the Authority, the City of Port Angeles, Washington, the Port of Port Angeles, the State of Washington or any other political subdivision thereof on account of such obligations or any liabilities, of whatsoever nature, arising in connection therewith except to enforce for the payment thereof out of **[describe the particular properties, assets or revenues of the Authority from which the limited recourse obligation is payable]**.

ARTICLE III.
DURATION

The duration of the Authority shall be perpetual, subject to termination as provided in the Ordinance.

ARTICLE IV.
PURPOSE

Section 4.01 - Purpose. The purpose of the Authority is to carry out the Project (as defined below), administer and execute federal grants or programs, receive and administer private funds, goods or services for any lawful public purpose and perform any lawful public purpose or public function of a public development authority within the City.

Section 4.02 – The Project. The Project is defined to include, but is not limited to:

- (a) undertaking, assisting with, and otherwise facilitating the remediation and redevelopment of property known as the former Rayonier Mill, currently an underutilized and blighted waterfront area of the City;
- (b) facilitating shoreline and harbor planning; and
- (c) evaluating and facilitating planning and methods for remediation of toxic substances or wood waste in and around the Port Angeles Harbor within the corporate limits of the City.

To carry out this Project, and in addition to any other powers it may possess, the Authority may acquire, operate and control any real property for the purpose of remediation and redevelopment of blighted property; acquire, manage, and resell real property (or interests therein); renovate,

remediate or redevelop of real property; enter into agreements with governmental and other entities for the redevelopment of real property; secure financing for the foregoing; and otherwise undertake and accomplish all activities necessary or convenient for the development, operation and implementation of the Project. To the extent that such activities require the exercise of powers delegated to the authority under chapter 35.81 RCW (the "Community Renewal Law"), all such activities shall be consistent with the community renewal plan approved by the City pursuant to RCW 35.81.060.

The Project is an essential governmental function to be carried out on behalf of the City of Port Angeles.

Consistent with applicable law and utilizing all lawful means, the Authority shall work to facilitate and maximize private sector participation in such projects. As desirable and appropriate, the Authority shall serve as a vehicle to undertake or assist with the establishment, development and operation and maintenance of cultural institutions and public facilities in or near the property.

For the sole purpose of securing the exemption from Federal income taxation for interest on obligations of the Authority, the Authority constitutes an authority and instrumentality of the City of Port Angeles (within the meaning of those terms in regulations of the United States Treasury and rulings of the Internal Revenue Service prescribed pursuant to Section 103 and Section 145 of the Internal Revenue Code of 1986, as amended).

ARTICLE V.
POWERS

Section 5.01 - Powers. Subject to the Ordinance and the laws of the State of Washington, the Authority shall have the power to:

(a) Own, acquire, dispose of, exchange, sell, purchase, lease, improve, encumber (including granting deeds of trust), use, or transfer real or personal property or any interest therein; grant or acquire options on real and personal property; and contract regarding the income or receipts from real property.

(b) Contract for any Authority purpose with individuals, associations and corporations, municipal corporations, any agency of the State government or its political subdivisions, and the State and the United States or any agency or department thereof.

(c) Sue and be sued in its corporate name.

(d) Lend its funds, property, credit or services for Authority purposes, or act as a surety or guarantor for Authority purposes, borrow money, issue negotiable bonds, notes and other evidence of indebtedness in conformity with applicable provisions of the Uniform Commercial Code and State law, in such principal amounts, with such covenants, interest rates, maturities and options of redemption as in the discretion of the Authority Board of Directors shall be necessary or appropriate to provide sufficient funds for achieving any Authority purposes or to secure financial assistance from the United States or other sources for Authority projects and activities.

- (e) Control the use and disposition of Authority property, assets and credit.
- (f) Invest and reinvest its funds.
- (g) Contract for and accept gifts or loans of funds or property from the United States, the State, the City, other corporations, associations, individuals or any other source and to comply with the terms and conditions thereof not in conflict with this Charter.
- (h) Provide advisory, consultative training, educational and community services or advice to individuals, associations, corporations or governmental agencies, with or without charge.
- (i) Donate money, property or services on such terms and conditions, as the Authority may in its discretion deem advisable to individuals, associations or corporations for Authority purposes.
- (j) Fix and collect charges for services rendered or to be rendered and establish the consideration for property transferred.
- (k) Conduct Authority affairs, carry on its operations, use its property as allowed by law, its charter, and its rules and regulations; and to name Authority officials, agents and employees; secure the services of consultants for professional services, technical assistance or advice; and prescribe the duties, qualifications and compensation therefor.
- (l) Perform and undertake all manner and type of community services and activities in furtherance of the carrying out of the purposes or objectives of any program or project heretofore or hereafter funded in whole or in part with funds received from the United States or any agency or department thereof, or any other program or project, whether or not funded with federal funds, which the Authority is authorized to undertake by Federal or State law, City ordinance, City Council resolution, by agreement with the City or as may otherwise be authorized by the City.
- (m) Exercise any power granted to the Authority under the Ordinance or any other applicable ordinance, except as expressly limited by the terms of this Charter.
- (n) To the extent such powers may be assigned to the Authority by the City, exercise any and all additional powers available to it pursuant to an appointment by or contract with the City to act as a community renewal agency under chapter 35.81 RCW.
- (o) Exercise any and all additional powers available to it pursuant to lawful contract or appointment by the Port.
- (p) Exercise and enjoy such additional powers as may be authorized by general law.

Section 5.02 – Indemnification. To the extent permitted by law, the Authority may protect, defend, hold harmless and indemnify any person who becomes a director, officer, employee or agent of the Authority, and who is a party or threatened to be made a party to a proceeding by reason

related to that person's conduct as a director, officer, employee or agent of the Authority, against judgments, fines, penalties, settlements and reasonable expenses (including attorney's fees) incurred by him or her in connection with such proceeding, if such person acted in good faith and reasonably believed his or her conduct to be in the Authority's best interests and if, in the case of any criminal proceedings, he or she had no reasonable cause to believe his or her conduct was unlawful. The indemnification and protection provided herein shall be not deemed exclusive of any other rights to which a person may be entitled as a matter of law or by contract or by vote of the Board of Directors. The Authority may purchase and maintain appropriate insurance for any person or occurrence to the extent provided by the applicable law.

ARTICLE VI.

LIMITS ON AUTHORITY POWERS

Section 6.01 No part of the net earnings of the Authority shall inure to the benefit of, or be distributable to Directors or officers of the Authority or other private persons, except that the Authority is authorized and empowered to:

(a) Reimburse Directors or officers in a reasonable amount for services rendered, and reimburse reasonable expenses actually incurred in performing their duties;

(b) To the extent consistent with chapter 42.23 RCW, permit benefits to flow to Authority officials solely to the extent that such officials are members of a general class of persons to be assisted or benefited by a project or activity of an approved program to the same extent as other members of the class and as long as no special privileges or treatment accrue to such Authority official by reason of his or her status or position in the Authority;

(d) Sell assets for such consideration (and only consistent with RCW 35.21.747, as it may be amended from time to time), and charge such fees for services as determined by the Authority Board to be in its best interests consistent with its purpose. In general, consideration must be greater than or equal to the reasonable market value or acquisition cost or the expense of providing the service. However, such gains or increments secured in financing must be applied to or expended solely upon community services, projects and activities consistent with the purpose of the Authority.

Section 6.02 No part of the activities of the Authority shall include the carrying on of propaganda, or otherwise attempting to influence legislation, and the Authority shall not participate in, or intervene in (including by the publishing or distribution of statements) any political campaign on behalf of any candidate for public office.

Section 6.03 The Authority shall have no power of eminent domain nor any power to levy taxes or special assessments, except to the extent that it is delegated the authority to create local improvement districts within a community renewal area, pursuant to chapter 35.81 RCW.

Section 6.04 The Authority may not incur or create any liability that permits recourse by any contracting party or members of the public to any assets, services, resources or credit of the City of Port Angeles, the Port of Port Angeles, the State of Washington or any other political subdivision.

Section 6.05 Notwithstanding any other provision of this Charter, the PDA shall not transfer any property received from City except after complying with 35.21.747, or any successor statute.

Section 6.06 Notwithstanding any other provision of this Charter, the City at all times shall have the right to control and oversee the operation and funds of the Authority in order to correct any deficiency and to assure that the purposes of each program undertaken by the Authority are reasonably accomplished.

ARTICLE VII.

BOARD

Section 7.01 - Board Composition. Management of all Authority affairs shall reside in the Board. The Board shall be composed of five members, who shall be appointed by the City Council of Port Angeles following nomination in accordance with the following process:

(a) Two of the Board Members shall be nominated directly by the City Council.

(b) Candidates for two other seats on the Board shall be nominated by the Port Commission of the Port of Port Angeles, which shall provide written notice of its nominees to the City Council. The City Council shall then approve or reject such nominees. If a proposed nominee is rejected, the City shall promptly so notify the Port and the Port shall forthwith propose another nominee for the Board position. This process shall continue until the City Council approves a nominee from the Port to fill two positions on the Board.

(c) The four board members so appointed shall then meet and propose nominees for the fifth position on the Board. The nominee shall be determined by majority vote of the four Board members previously selected and his or her name shall be submitted in writing to the City Council for consideration and approval. If the City Council approves the nominee by majority vote, Board selection shall be deemed complete. If the nominee is rejected, the City shall promptly so notify the four Board members and the four Board members shall proceed in the same fashion to propose an alternative nominee, until a nominee is approved by the City Council. The fifth Board member (the individual nominated by the four Board members initially seated) shall serve as President of the Board.

Section 7.02 - Terms of Office. The terms of office of the initially appointed members of the Board shall commence on the effective date of this Charter and shall be staggered as follows:

- (a) Group I. One member for an initial two-year term;
- (b) Group II. Two members, including one nominated by the City and one by the Port, for initial three-year terms; and
- (c) Group III. Two members, including one nominated by the City and one by the Port, for initial four-year terms.

7.02.1 In making the appointments of the initial board members, the City Council shall designate which members are assigned to the three groups identified in subsection 6.02.1 above for purposes of determining the length of terms of such initial board members.

7.02.2 Except for the initial members of the board, each member shall be appointed to serve for a four year term. Each member shall continue to serve until his or her successor has been appointed and qualified unless removed pursuant to Section 7.04 of this Charter.

7.02.3 Terms shall expire at the end of the day prior to the anniversary of the effective date of the Charter of the year in which the respective group is scheduled to terminate. New appointees or reappointees shall be processed in the manner provided herein.

7.02.4 Members shall be civic or business leaders with experience relevant to the purpose of the Authority in such fields as finance, real estate development, law, brownfield redevelopment, or construction management. No member of the Authority Board of Directors shall hold any elected public office during his or her term on the Board or be an official or employee of the City or of the Port.

Section 7.03 - Consecutive Absences. Any Board member who is absent for three (3) consecutive regular meetings without excuse may, by resolution duly adopted by a majority vote of the whole Board, be deemed to have forfeited his or her position as Board member and he or she shall be removed and replaced as described in Section 7.04.

Section 7.04 - Removal of Board Members. The City Council may by resolution remove any or all Board members with or without cause, and the City Council shall proceed as soon as practicable to select and qualify an appropriate replacement. Appointees originally nominated by the Port of Port Angeles shall be replaced only by persons nominated in the same fashion. Any appointee originally nominated by the four Board members initially designated by the Port or the City shall be replaced only by persons nominated by the four Board members or their successors in the same fashion as set forth in Section 7.01 above. The term of any Board member removed pursuant to this section shall expire when the member receives a copy of the resolution removing him or her and a letter signed by the Mayor advising him or her that he or she has been removed pursuant to this section.

Section 7.05 - Actions Requiring 80% Supermajority Approval of Board. Board approval as to the following matters must be obtained at any regular or special Board meeting by an affirmative vote of at least 80% of the Board members (i.e. four out of five):

- (a) Conveyance of an interest in real estate, other than a release of a lien or satisfaction of a mortgage after payment has been received, or the execution of a lease for a term greater than one (1) year;
- (b) Selection of the Executive Director of the Authority, or the termination of same;
- (c) Proposal of amendments to this Charter, or the amendment of the Bylaws of the Authority;

(d) Approval of any proposed binding site plan or binding redevelopment plan for the property of the Authority, or property under its control;

(e) Approval of any agreed order or consent decree pertaining to the remediation of the Rayonier Mill property or the harbor;

(f) For any of the following actions in which the amount in question is in excess of One Hundred Thousand Dollars (\$100,000.00): contracting of debt, issuance of debenture notes or bonds, and the mortgaging or pledging of Authority assets to secure the same consistent with RCW 35.21.735, as it may be amended from time to time.

(g) In all transactions in which consideration provided or received by the Authority exceeds One Hundred Thousand Dollars (\$100,000.00), the performance by the Authority shall extend over a period of one (1) year from the date of execution of an agreement therefor, or where the Authority assumes duties or obligations of the City of Port Angeles, the Port of Port Angeles, the State of Washington or the United States;

As to any other matters requiring Board approval, such approval shall be obtained at any regular or special Board meeting by an affirmative vote of not less than three Board members.

Section 7.06 –Quorum. A quorum to commence a Board meeting shall be no fewer than four members. The Bylaws of the Authority may prescribe Board quorum restrictions that equal or exceed the quorum restrictions imposed in this Section. Board members present at a duly convened meeting may continue to transact business notwithstanding the departure of enough members to leave less than a quorum. Less than a quorum of members in attendance at duly convened meeting may adjourn the meeting and reconvene it within forty-eight (48) hours of the adjourned meeting without further notice.

ARTICLE VIII. **OFFICERS OF AUTHORITY**

Section 8.01 - Tenure of Officers. The Board members shall annually elect from among themselves the following Authority officers: Treasurer and Secretary. The President (who, in accordance with Section 7.01, shall be the Board member who was appointed after nomination by concurrence of the other four Board members) and the Secretary may not be the same person. The term of any officer shall expire at such time as such officer's membership on the Board ceases or terminates, or at such sooner time as the term of office expires and the office has been filled by appointment or reappointment. The Authority may adopt by-laws providing for additional officers, and, to the extent not inconsistent with this Charter, may adopt bylaws governing the corporate offices and tenure of officers; the number of positions, powers and duties, and term of each corporate office; the manner of appointment, selection, or election of office holders and the appointing, selection, or electing authority; performance of duties of the office upon illness, death, incapacity, or absence of the corporate officer; the filling of vacancies; and any qualification for the office and conditions upon exercising its powers.

Section 8.02 - Duties of Officers. The officers of the Authority shall have the following duties:

(a) President. The President shall lead and conduct the meetings of the Authority Board of Directors. On matters decided by the Authority, unless otherwise required under Title 4 of the Port Angeles Municipal Code or by this Charter, the signature of the President alone is sufficient to bind the corporation. The President shall be the agent of the Authority for service of process; the Bylaws may designate additional corporate officials as agents to receive or initiate process.

(b) Treasurer. The Treasurer shall receive and faithfully keep all funds of the Authority and deposit same in such bank or banks as may be designated by the Authority Board of Directors. The Treasurer shall discharge such other duties as prescribed by the Authority Board of Directors. Before taking office, the Treasurer shall file a bond in an amount determined by the Authority with the Secretary of the Authority and shall continue in office only so long as such bond continues in effect.

(c) Secretary. The Secretary shall keep or authorize others to keep a full and complete record of the meetings of the Authority Board of Directors, committees, when acting on behalf of the Board, and to the extent they are separate, the meetings of the officers with appropriate minutes; shall keep the seal of the Authority and affix the same to such papers and such instruments as may be required in the regular course of business, shall make service of such notices as may be necessary or proper, shall supervise the keeping of the books and other records and ledgers and other written documents comprising the business and purpose of the Authority, and shall discharge such other duties as pertain to the office as prescribed by the Authority Board of Directors.

Section 8.03 - Executive Director. The Board shall appoint and employ an Executive Director of the Authority, who shall be responsible for the administration of the affairs of the Authority.

8.03.01. The Executive Director is authorized to:

(a) Serve as an officer of the Authority and provide general supervision, direction, and control of the business and affairs of the Authority;

(b) Supervise and be responsible for the effective management of the affairs of the Authority;

(c) Employ such other personnel as the Executive Director determines to be needed from time to time to carry out the purpose of the Authority;

(d) Sign documents and contracts on behalf of the Authority; and

(e) On behalf of the Authority, enter into contracts, leases, and transactions and contract debt in amounts not to exceed one hundred thousand dollars (\$100,000.00).

(f) Perform such other duties as delegated or assigned by the Board.

The Board of Directors of the Authority may delegate to the Executive Director from time to time, by resolution, such duties, responsibility and authority, as the Board may deem appropriate.

8.03.02. The Executive Director shall:

- (a) Attend all meetings of the Board and serve as an *ex officio* member of the Board.
- (b) Assure that all agreements and programs of the Authority are faithfully executed;
- (c) Recommend for adoption by the Board such actions as he may deem necessary or expedient;
- (d) Prepare and submit to the Board such reports as may be required by that body or as he may deem it advisable to submit;
- (e) Keep the Board fully advised of the financial condition of the Authority and its future needs;
- (f) Prepare and submit to the Board a proposed budget for the fiscal year, and to be responsible for its administration upon adoption;
- (g) Perform such other duties as the Board.

Section 8.04 - Incapacity of Officers. In the event the President is unable to perform the duties of the office due to illness, death, or other incapacity, the Executive Director, and if he or she is unavailable then the Treasurer, of the Authority is authorized to perform such duties without further authorization. If the Secretary is incapacitated, the Treasurer is authorized to perform such duties without further authorization. If the Treasurer is incapacitated, the Secretary shall be authorized to perform such duties without further authorization. If the Executive Director is incapacitated, the President, and if he or she is unavailable then the Secretary, is authorized to perform such duties without further authorization. The Secretary is not authorized to perform the duties of the President, nor is the President authorized to perform the duties of the Secretary.

Section 8.05 - Administration. The Executive Director may appoint, designate, or employ (and remove) such additional personnel as may be necessary to assist in carrying out the activities of and administration of the affairs of the Authority, as may be authorized from time to time by resolution of the Board.

ARTICLE IX.
MEETINGS

Section 9.01 - Board Meetings.

- (a) The Board shall meet as necessary but not less than four (4) times a year.

- (b) Special meetings of the Board may be called as provided in the Bylaws.

Section 9.02 - Parliamentary Authority. The rules of *Robert's Rules of Order* (revised) shall govern the Authority in all cases to which they are applicable, where they are not inconsistent with the Charter or with the special rules or order of the Authority set forth in the Bylaws.

ARTICLE X.
BYLAWS

Within 30 days of the initial seating of the five-member Board of Directors of the Authority, the Board shall adopt initial Bylaws for the organization. The initial Bylaws may be amended by the Board to provide additional or different rules governing the Authority and its activities as are not inconsistent with this Charter. The Board may provide in the Bylaws for all matters related to the governance of the Authority, including but not limited to matters referred to elsewhere in the Charter for inclusion therein.

ARTICLE XI.
AMENDMENTS TO CHARTER AND BYLAWS

Section 11.01 - Proposals to Amend Charter and Bylaws.

(a) Proposals to amend the Charter or Bylaws shall be presented in a format that strikes over material to be deleted and underlines new material.

(b) Any Board member may introduce a proposed amendment to the Charter or to the Bylaws (which may consist of new Bylaws) at any regular meeting or at any special meeting of which ten (10) days' advance notice has been given to members of the Board.

Section 11.02 - Board Consideration of Proposed Amendments. If notice of a proposed amendment to the Charter or to the Bylaws, and information, including the text of the proposed amendment and a statement of its purpose and effect, is provided to members of the Board ten (10) days prior to any regular Board meeting or any special meeting of which fifteen (15) days' advance notice has been given, then the Board may vote on the proposed amendment at the same meeting as the one at which the amendment is introduced. If such notice and information is not so provided, the Board may not vote on the proposed amendment until the next regular Board meeting or special meeting of which fifteen (15) days' advance notice has been given and at least ten (10) days prior to which meeting such notice and information is provided to Board members. Germane amendments to the proposed amendment within the scope of the original amendment will be permitted at the meeting at which the vote is taken.

Section 11.03 - Vote Required for Amendments to Charter or Bylaws. Resolutions of the Board recommending to the City Council proposed amendments to the Charter or approving amendments to the Bylaws require an affirmative vote of at least 80% of the Board members.

Section 11.04 - City Council Approval of Proposed Charter Amendments. Proposed Charter amendments adopted by the Board shall be submitted to the City Council for approval. The

Authority's Charter may be amended only by ordinance as provided in the Ordinance.

ARTICLE XII.
COMMENCEMENT

The Authority shall commence its existence effective upon the issuance of its Charter as attested by the City Clerk and the holding of the initial board meeting.

Article XIII.
AUDITS, DISSOLUTION, OPERATIONS AND NONEXCLUSIVE CHARTER

Section 13.01 - Audits and Dissolution. In accordance with the City's responsibility under RCW 35.21.745 (as it may be amended from time to time) to retain oversight of the affairs of the Authority, the Authority shall submit to the City on or before March 31 of each year a report of its activities for the preceding calendar year, which report shall include a complete financial statement setting forth its assets, liabilities, income and operating expenses as of the end of such calendar year as well as such other reports required by applicable state and federal laws, applicable ordinances and by the City Council. Dissolution of the Authority shall be in the form and manner required by state law, City ordinance, and the Bylaws. At the time of filing the report, the Authority shall publish in a legal newspaper in the City a notice to the effect that such report has been filed with the City and that the report is available for inspection during business hours in the office of the clerk of the City and in the office of the Authority.

Upon dissolution of the Authority and the winding up of its affairs, title to all remaining property or assets of the Authority shall vest in the City of Port Angeles, subject to disposition under the Interlocal Agreement, dated May 21, 2008, by and between the City and the Port of Port Angeles, in proportion to their contributions to the PDA, for use for public purposes.

Section 13.02 - Operations. The Authority shall establish by resolution approved by the City manager and Finance Director procedures for the receipt, payment and investment of Authority funds. Such procedures may be amended by Authority resolution, subject to the approval of the City Manager and Finance Director.

Section 13.03 - Nonexclusive Charter. This Charter is nonexclusive and does not preclude the granting by the City of other charters to establish additional public corporations under authority of the Port Angeles Municipal Code or state law.

ARTICLE XIV.
CONSTITUENCY

There shall be no constituency of the Authority.

ARTICLE XV.
MISCELLANEOUS

Section 15.1 - Geographic Limitation. The Authority may conduct activities outside the City of Port Angeles upon determination by the Authority Board of Directors and the City Council that each such activity will further the purposes of the Authority, subject, however, to the applicable

limitations set forth in RCW 35.21.740, as it may be amended from time to time.

Section 15.2 - Public Records. The public shall have access to records and information of the Authority to the extent as may be required by RCW 35.21.759 and Ch. 42.56 RCW, as amended from time to time. To the extent that a public record contains private or protected information belonging to a private party, the Authority shall use its best efforts to contact the private party so that the private party may assert any defense to disclosure available to it.

Section 15.3 - Public Meetings. Meetings of the Authority shall be open to the public as required by state law and any special meetings shall be called and held in accordance with RCW 35.21.759 and Ch. 42.30 RCW, as amended from time to time. The City Manager or his or her designee; members of the City Council of the City of Port Angeles; and members of the Board of Commissioners of the Port are entitled to appear in person or by representative and speak at any meeting of the Authority called and held pursuant to law, regardless of whether public comment is scheduled at such meeting. An opportunity for public comment shall be provided at any regular meeting of the Authority.

Notice of meetings and proposed agendas shall be transmitted to the City Manager or his or her designee. The books and records of the Authority and agreements or contracts entered into by the Authority shall be available for inspection by the City Manager or his or her designee or other authorized official of the City of Port Angeles and the Executive Director or his or her designee or other authorized official of the Port of Port Angeles, and such documents shall be open for inspection by the public to the extent required by applicable laws, or as may be directed by the City Manger or his or her designee of the City of Port Angeles.


ARTICLE XVI.
APPROVAL OF CHARTER

ORIGINAL CHARTER APPROVED by Ordinance 3333 adopted by the Port Angeles City Council on May 20, 2008.

Certificate

I, the undersigned, City Clerk of the City of Port Angeles, Washington, DO HEREBY CERTIFY that the CHARTER OF THE PORT ANGELES HARBOR-WORKS DEVELOPMENT AUTHORITY is a true and correct original of that charter as authorized by Ordinance 3333 of the City of Port Angeles.

IN WITNESS WHEREOF, I have set my hand and affixed the official seal of the City of Port Angeles this 21st day of May, 2008.


Becky J. Upton, City Clerk
City of Port Angeles

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Summaries of Ordinances Adopted by the
Port Angeles City Council
on May 20, 2008

Ordinance No. 3333

This Ordinance of the City of Port Angeles, Washington, creates the Port Angeles Harbor Works Public Development Authority; authorizes a charter and bylaws therefore; establishes a Board of Directors to govern the affairs of the PDA; and describes how the PDA shall conduct its affairs.

Ordinance No. 3334

This Ordinance of the City of Port Angeles, Washington, adopts an Updated Comprehensive Plan and Land Use Map.

The full texts of the Ordinances are available at City Hall in the City Clerk's office or will be mailed upon request. Office hours are Monday through Friday from 8:00 a.m. to 5:00 p.m. These Ordinances shall take effect five days following the date of publication by summary.

Becky J. Upton, CMC
City Clerk

Publish: May 25, 2008