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Port of Port Angeles

April 7, 1995

Port Commission
Port of Port Angeles
338 West First
Post Office Box 1350
Port Angeles, WA 98362-0251

RE: "JOHN WAYNE MARINA"

Gentlemen:

In January of 1981, Wayne Enterprises, a family owned California Limited Partnership, conveyed its interest in approximately 29 acres of Sequim Bay tidelands as a gift to the Port of Port Angeles to enable it to construct the above named public small boat marina.

Over the past six months, we heard that the Port has been exploring ideas and alternatives to improve the economic situation of the Marina. Late last week, our Consultant and local Representative, Mr. Louis Torres of Olympic Development Planning told us that the Port had definitely decided to put the Marina up for sale.

As you know, our gift to you was predicated on the fact that the Port with its public funds would build, operate and own (in perpetuity - our understanding) a marina for the use of the citizens in the State of Washington. The various agreements between us neither contemplated nor provided any provision for the Port to sell the Marina to outside private entrepreneurs or anyone. While we strongly believe in the concept of private property and the Port's right to do whatever with its own properties - we just as strongly believe that the proposed sale of this particular donated property violates the spirit and intent of your original understandings and relationship with the donors.

The Wayne Family did not give away millions of dollars (today's dollars) worth of their private beach front property for a public marina just so that the Port could sell it to some other private property owner. And, we are prepared to express our opposition to the sale, our disappointment and justified anger publicly.





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In any event, we have asked our attorney, Mr. Steven W. Andreasen of Davis Wright Tremaine Law Offices in Seattle, to send you and us an overview of our agreements in order to analyze the various areas of continuing obligation and responsibility of the Port to us now and after any proposed sale.

Also some structure must be set up for the Port to guarantee or bond the performance of all its future obligations to us with some unknown new operator or owner in place.

Ironically, despite our opposition to the marina sale, we will be forced to be a respondent should the Port issue a "request for proposal" as Wayne Enterprises retains a large and growing investment in the lands surrounding the Marina. We believe that this land may be placed at risk of significant damaging impacts if some unknown private owner, having no interest in the adjoining lands and potentially having less concern for or ability to maintain the Marina, allows that facility to deteriorate or become a blight upon the water front adjoining our land. We find it more than disappointing and very frustrating that we may have to **buy back** what we **gave to the public** just to protect ourselves and our land..

With this, plus Mr. Andreasen's comments to come, there appears to be much "up in the air" between the Port and Wayne Enterprises which should get "nailed down" before the Port goes out too far in its proposed sale program.

As soon as you gentlemen have had an opportunity to digest our letters and sometime before the Port decides whether to issue a "request for proposal", please give Louis Torres a call at [REDACTED]

Sincerely,

WAYNE ENTERPRISES

Michael A. Wayne

MAW/cb

cc: Louis A. Torres
Steven W. Andreasen

DAVIS WRIGHT TREMAINE

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Port of Port Angeles

STEVEN W. ANDREASEN
(206) 628-7613

April 7, 1995

VIA FEDERAL EXPRESS AND HAND DELIVERY

Port of Port Angeles
Port Commissioners
338 West First
Post Office Box 1350
Port Angeles, WA 98362-0251

Re: Wayne Enterprises - John Wayne Marina

Gentlemen:

Our firm represents Wayne Enterprises, a California limited partnership ("Wayne Enterprises"). We have represented Wayne Enterprises in various contractual matters with the Port of Port Angeles (the "Port") over a period of years.

I understand the Port is considering the possibility of a sale of the John Wayne Marina (the "Marina") to a private owner, at which time the Port would no longer be involved in the operation of the Marina. This possibility has been of some concern to Wayne Enterprises in light of the long and satisfactory relationship with the Port, and the fundamental assumption stretching back to the mid-1970's that the Port would own and operate the Marina.

Wayne Enterprises has asked me to forward this letter, the purpose of which is to advise the Port of the position of Wayne Enterprises on several issues which may be relevant in connection with your staff's current study of this matter and formulation of a Request for Proposals; in connection with possible subsequent hearings regarding the sale of the Marina; and in connection with a possible eventual sale of the Marina.

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Seattle

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Specifically:

1. Use of Name. Wayne Enterprises is the sole and exclusive grantee from John Wayne during his lifetime of all rights relating to the use of his name and likeness and is so registered as the successor-in-interest with the office of the Secretary of State of California in accordance with the requirements of California Civil Code Section 990.

Under the "Agreement Concerning the Sequim Bay Marina Property" dated December 16, 1980 and ratified under Commissioners' Resolution number 517, the Port agreed that it would name the Marina the "John Wayne Marina." There was, and has been, no grant or license by Wayne Enterprises to the Port of any right with regard to use of the name of John Wayne, other than the acquiescence of Wayne Enterprises in the Port's use of the name.

Rights regarding use of a deceased personality's name are defined and protected under California law. California was John Wayne's domicile during his lifetime and we believe California law will govern on this point, regardless of where an action may be heard. Wayne Enterprises maintains full ownership and control regarding the name of John Wayne. Therefore, Wayne Enterprises may, but is not obligated, to allow any purchaser from the Port to continue limited use of the name "John Wayne" to identify the Marina facility. Any continued use of the name "John Wayne" after a sale would be a matter of contractual agreement between Wayne Enterprises and the purchaser.

2. First-class Marina. As a part of the Agreement mentioned above, Wayne Enterprises obligated itself to, and did, release its reversionary interest, which had a value equivalent to the value of the Marina property, in light of the then-delay by the Port in commencing construction. In exchange, the Port obligated itself to operate the Marina as a "first-class" Marina, in accordance with the standards of the industry. In fact, the Port to date has done an excellent job with regard to construction and operation of the Marina. The possibility of a sale to a private owner, however, creates concern for Wayne Enterprises. If the Marina is not operated consistent with the prior Agreement, there exists the possibility of substantial economic loss to Wayne Enterprises, as the owner of adjacent property, in light of the long term objectives of Wayne

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Enterprises with regard to its land use. The Port is aware of the intent of Wayne Enterprises ultimately to develop its property, as a number of the contracts between Wayne Enterprises and the Port from time to time have taken into account various facets of possible ultimate development. The Port's commitment in 1980, and its continuing obligation to see that the Marina is operated as a first-class facility, are critical to Wayne Enterprises' long range objectives.

3. Water System. A complex arrangement has evolved regarding the Port's right to use water delivered to the Marina through the water system now owned by Wayne Enterprises. The Port currently operates the system within the context of existing contractual relationships. Of concern to Wayne Enterprises are the ongoing operational details of the water system. If the Marina were sold, Wayne Enterprises would be required to review carefully any proposed transfer of the operational aspects of the water system to another party. The system must be monitored daily. Numerous tests need to be made on a periodic basis. Those doing the testing and monitoring must meet certain qualifications. Maintaining the integrity and dependability of the water system is not only important for the Marina operation, but also to the use of Wayne Enterprises' own property.

4. Undeveloped Parcel. Further, as a part of the Agreement mentioned in paragraph 1 above, the Port acquired a .99 acre parcel westerly of West Sequim Bay Road for the purpose of a drainfield to serve the Marina. The Port obligated itself to keep that parcel as open space and landscaped subject to Wayne Enterprises' approval. Those commitments of the Port continue and are important to Wayne Enterprises.

I understand Wayne Enterprises and the Port anticipated the drainfield use to continue only until such time as municipal sewer service became available. The City of Sequim has now given construction approval to a sewer main extension serving a portion of southeasterly Sequim. Engineering work has begun on the necessary applications to allow further City sewer main extension to serve the Marina and property of Wayne Enterprises.

Upon completion of city sewer main construction and the Marina's connection, the need for the drainfield parcel "inholding" within the area of Wayne Enterprises ownership will end. Any sale of the Marina by the Port must clearly delineate

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the restricted use of the parcel because of the limitations of open space and landscaping approvals, which limitations run in favor of Wayne Enterprises. Given the anticipated termination of drainfield need and restriction on any use other than open space, Wayne Enterprises anticipated it was in the best position to reacquire that parcel from the Port. I understand this was consistent with the spirit of the negotiations and oral representations at the time of the original sale to the Port. Wayne Enterprises requests that if the Marina is sold, arrangements be made to accommodate the original intent for Wayne Enterprises to reacquire the parcel.

5. Cessation of Public Ownership. For a variety of reasons, Wayne Enterprises has always assumed the Marina would be owned and operated as a public facility. The Port assumed numerous obligations which may be beyond the capacity of a non-governmental owner/operator to fulfill. Has the Port given full consideration to other governmental entities which might own and operate the Marina for the benefit of Washington residents and others? State law (for example RCW 39.33.010) clearly anticipates the possibility of transfers from one governmental entity to another, as an alternative to the process of sale of "surplus" governmental property to private interests.

6. Prior Shoreline and Building Permits. Wayne Enterprises has raised the question with me whether any additional or different obligations or restrictions would exist for a private owner and operator than exist for the Port, arising from the fact that the original permitting process anticipated a public entity as owner and operator of the Marina. In light of the shortness of time, we have not had the opportunity to review the prior permits and determine whether any conditions or limitations were imposed, or excluded, which were a function of the public ownership for the Marina, and which might differ for a private owner and operator. I anticipate that Wayne Enterprises will ask us to undertake that review, although if your counsel has already done so, I would appreciate an indication of his or her conclusions, if you can share them prior to the public hearing process.

Conclusion. Set out above are several matters which Wayne Enterprises has initially identified as important to its interests and which the Port will want to have in mind as its review progresses. The list above is not meant to be exhaustive.

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There may well be other matters of concern which arise as the long term land use objectives of Wayne Enterprises continue to evolve, and as the Port's position on a sale and the details of such a sale become clear.

The purpose of this letter is to advise the Port of these current concerns and positions of Wayne Enterprises. In the event that a Request for Proposals is issued, Wayne Enterprises requests that these several matters clearly be delineated and, to the extent possible, be resolved prior to the Request for Proposals release, and that those delineations and resolutions be included within the Request for Proposals for the benefit of all potential respondents.

Wayne Enterprises has enjoyed an excellent working relationship with the Port and wants to be forthright on these matters at this early date.

If you have any questions regarding any of these points, I would be pleased to respond.

Very truly yours,

DAVIS WRIGHT TREMAINE



Steven W. Andreasen

SWA/dc

cc: Mr. Michael A. Wayne
Mr. Louis A. Torres II