

AGENDA
THE PORT DISTRICT OF SOUTH WHIDBEY ISLAND
WORKSHOP and SPECIAL MEETING of the BOARD OF COMMISSIONERS
Wednesday, March 7, 2012 at 6:00 pm
Port Office Conference Room
1804 Scott Road, Freeland, WA

6:00 PM - WORKSHOP

1. Informal discussion of recent correspondence and project status

6:30 PM - SPECIAL MEETING CALL TO ORDER

1. Shoreline Master Planning** (6:30 – 7:00)
(Refer to “Framework...” and “Discussion...” hand-outs from Commis. Gregoire)
2. South Whidbey Harbor Expansion Project Action Issues** (7:00 – 7:30)
 - A. Technical/Permitting Updates (Ed)
 1. *ESA Consultation kick-off*, 3/6/12 with Corps of Engineers, US Fish & Wildlife Svc & Nat. Marine Fisheries Svc, 3/6/12
 2. *City Permitting progress*: DNS issued 3/2/12, Public comments due by 3/19/12, Public Hearing scheduled for 6:30pm on 3/22/12 at City Hall
 - B. Finance Updates (Ron)
 1. *Bond Rating Teleconference*, 3/7/12
 2. *Port Security Grant Meeting*, 3/2/12
3. Planning for Harbormaster Office** (7:30 – 8:00)
4. Mukilteo WSF Terminal: Commission input to EIS Process**, due Mar. 12 (8:00 – 8:30)
5. Adjournment

PORT DISTRICT OF SOUTH WHIDBEY ISLAND

Minutes of the Special Meeting

March 7, 2012

Freeland, Washington

Commissioners Present: Curt Gordon (Clinton), Dennis Gregoire (Freeland) and Chris Jerome (Langley)

Others Present:

Port Staff: Ed Field (Port Operations Manager), Ron Rhinehart (Port Finance Manager) and Molly MacLeod-Roberts (Port Clerk); **Others:** Jim Sundberg, Langley City Council Member

MEETING CALL TO ORDER: The Special Meeting (in workshop format) of the Port District of South Whidbey Island's Board of Commissioners was convened on Wednesday, March 7, 2012, in the Port office conference room at 1804 Scott Rd. in Freeland, WA. As announced, the primary purpose of the Special Meeting was for Commission and Staff review, discussion and direction on listed planning priorities as well as detailed updates on recent permit and grant issues related to the proposed Harbor expansion. Although the Meeting was of course open to the public, it was scheduled primarily to continue briefing the new Commission on current/developing project issues and to determine scoping, prioritization and direction for Staff, and public participation was not on the Agenda.

Following a Workshop from 6:00 p.m. to 6:30 p.m. for informal Commission review and discussion of recent correspondence and project status, Commissioner Gordon, President, called the Special Meeting to order at 6:35 p.m., followed by the Pledge of Allegiance.

SHORELINE MASTER PLANNING: Prior to the meeting, the Commission had been provided with two documents prepared by Commissioner Gregoire: "Discussion Paper #1: Framework/Context for Discussion of Shoreline Master Program Updates" (**EXHIBIT A**) and "Discussion Paper #2: Discussion on Port's Role in Shoreline Master Plan Updates: Langley and Island County" (**EXHIBIT B**). Gregoire explained those documents were intended as supporting documentation for his Summary Comments (**EXHIBIT C**), which he then distributed. Gregoire explained that an opportunity for Port development activities exists within the regulatory environment in which the Port operates. Both the City of Langley and Island County are in the process of updating their Shoreline Master Programs (SMP), and those local SMPs provide the best support and framework for Port development activities. Gregoire stressed the importance of designating the South Whidbey Harbor as an "urban harbor" and having a specific Public Access Plan as part of the SMP, to facilitate the approval of a wide range of public and private shoreline projects. If the Port takes advantage of the local SMP comprehensive approach to shoreline development, the Port can make a stronger case at the state and federal levels.

Gregoire said two steps are needed: 1) Discuss with Langley the opportunity presented in the SMP update as it relates to developing a Public Access Plan within the SMP update. Contribute resources to collaborate with Langley to achieve this (this may involve discussion with legal counsel to clarify some issues). 2) Commit resources to assemble the biological and land use data to be assembled to include in the 'inventory' section of SMP update for Langley and Island County (this may require some consultant services). We need to revisit opportunities for habitat restoration and mitigation within watershed context of the Port District.

Gordon agreed that it would be beneficial for the Port to insert some of its needs into the structure of the SMPs for both Langley and County and that putting resources into it is a good idea, but there is nothing in the budget this year. He suggested Gregoire could be appointed to attend the SMP meetings as the Port's

liaison. The Commission agreed. Gordon said it would be totally appropriate to budget resources as needed for next year, because he agreed with Gregoire that “providing the science at the perfect time may win the argument of the day.” Jerome noted that there are funds in this year budget for the Port’s Comprehensive Scheme update. Gregoire added, “*I can build a pretty good case that this is part of the Comp Scheme process – this is critical to it, so I think it is very appropriate to allocate that money.*”

SOUTH WHIDBEY HARBOR EXPANSION PROJECT ACTION ISSUES

Technical/Permitting Updates:

- Endangered Species Act (ESA) Consultation kick-off meeting on March 6, 2012 at with U.S. Army Corps of Engineers (the Corps) and U.S. Fish & Wildlife Service and National Marine Fisheries Service (the Services): Field said the Port’s current Corps Project Manager Lori Lull, USF&WS representative Karen Meyers and NMFS representative Joel Maribe attended the meeting at the Harbor. Lull is the project manager for the big permit that’s been in since 2009 (for the full build-out project). Somehow, another project manager (Catherine Blackwell) was assigned the separate, small Phase 1 six-month programmatic permit, and that was all tied to the breakwater and the temporary parking for the breakwater. Blackwell told Lull she was concerned because the letter of permission for the temporary parking expired in 2010, so they were going to direct that the Port take the breakwater out of the water before the Corps proceeds with permitting! Field and Joe Callaghan of GeoEngineers briefly explained the issues with taking the breakwater out and noted that the temporary parking was tied to the permit submitted back in 2009 (the oldest permit on the Corps’ list). Also during the meeting, Meyers (USFWS) expressed deep interest in the Marbled Murrelet (very close to being endangered) and stressed the importance of having trained monitors during construction. She’s not nearly as worried if there is no impact driving.

Field said, “*We generally made good progress overall, but not on the small programmatic permit since that project manager (Blackwell) wasn’t there and Lull couldn’t talk about it. We see roughly a 1-2 year process on the big permit, with back & forth between the Port and Corps.*”

Immediately after the meeting, Callaghan communicated with Blackwell about the small project. Earlier in the day, although he was not able to get into technical issues, he got the project off her desk and it is being transferred to Lull. Hopefully, Lull will retroactively approve the extension for the temporary parking of the breakwater, which will then clear the way for the permitting of the smaller programmatic permit.

Field added that the Port is also talking with U.S. Senators Patty Murray and Maria Cantwell, and Murray’s aide (Uriel Ybarra) will meet with Staff at the Harbor on Tuesday. Rhinehart explained, “*We’ll give him a tour, explain what it is we’re trying to build and where we are in the process, and let him know we have some anxiety over the diminishing window between needing the last set of permits and the start date of construction to get it done this year. And that’s our major issue - we don’t have major technical or financial issues; what we have is a concern that this piece that has been dragging on for 2½ years will slip a month past the window have.*”

Gregoire said, “*I think you need to focus on getting the first phase built. And I think the offer to the Corps should be that the Port will drop the big permit that’s been in for 2½ years and get it off the Corps’ records if they get this programmatic permit for the smaller project through (Phase 1).*” Gordon disagreed, saying it’s important to keep the big permit process going, noting that the City of Langley is really attached to the next small phase (G-Dock). The only way to keep moving toward that G-Dock option as the next phase is to keep the big permit in the pipeline. Jerome said he was in favor of the parallel tracking of the permits that they are doing; he doesn’t see any reason not to proceed with the big permit as well as the small permit. He said the Port has invested so much in it, with all the design work, etc. and the process is moving along. He’s opposed to throwing it all away and starting the clock over again. Gordon said that given the lack of funds for the big project, his goal is to build this first phase and convince the public that the Port is doing something, and partner with the City so they can have some ownership in G-Dock and part of the next phase, and still continue to head for the big build-out in case funding becomes available. He is in favor of doing small phases on the way to the big project. Gregoire

said, *"The incremental approach is right – you pick off what you want and you build it. But you build it without having a bigger piece sitting in front of it. I have never seen it done this way. I would like someone to show me where somebody has processed a parallel permit on the same site plan with the Corps."* Gregoire said the Port needs to tell the Corps we want the first phase built and want it permitted and under construction this year, and in exchange we'll pull the big project and get it off their books. Gordon asked, *"Then how do we get to G-Dock – the next piece?"* Gregoire said that would be the next permit; to be submitted as soon as the other permit is issued. Gordon said that the permit for temporary parking of the breakwater expired in 2010, but the Port got an extension based on the fact that the big permit was in process and now the Corps is in violation of their own rules.

Langley City Councilmember Jim Sundberg said, *"What I've heard is that part of what's going on has nothing to do with the merits of the project – part of it has to do with whose desk it has been sitting on. It sounds like the problem might be halfway solved now that both permit packages are on the same desk."* Field agreed, and Rhinehart noted that in the last 2½ years, the Corps has had 5 different project managers and it's quite possible that the recurring handoffs and the separation across two different people have been disadvantageous. By having one person deal with both applications, we might finally get some progress.

Jerome said he was against throwing out the big project permit and the progress that has been made over the last 2½ years – the Port would look like a laughingstock. Field agreed and added, *"Another issue is that the Corps absolutely does not want to see a project piecemealed. They understand agencies might not have all the funding for the entire project. We are proceeding on the ultimate build-out plan; we're just taking several steps to get there."*

Gregoire said, *"But the (Phase 1) current configuration is under review by the City for a new shoreline permit, and we need to understand what that means."* Field disagreed, saying, *"No, we can just proceed on as-is without worrying about that and without worrying about the big project – we can proceed on two parallel tracks. That's what the City has indicated they want us to do, and that's what we intend to do."* With both Phase 1 and the big project on the same desk, he thinks the Port is going in the right direction.

The Commission agreed to keep going ahead with the current process (two separate permit applications) for the next couple of months and see how it goes.

- City of Langley permitting progress: Determination of Non-Significance issued 3/2/12. Public comments are due by 3/19/12 and the Public Hearing with the City's Hearing Examiner is scheduled for 6:30 p.m. on 3/22/12 at City Hall. The Commission agreed with Ed's plan to have permit specialist Joe Callaghan with GeoEngineers attend the Hearing to provide support on technical and project history issues.

Finance Updates:

- Bond Rating Teleconference on March 7, 2012 at 10:15 a.m.: Rhinehart and the bond underwriter spent 45 minutes speaking with two analysts from Standard & Poor's (S&P). He said the presentation included the demographics and geography of Island County, Whidbey Island and the Port District, and addressed questions like: What's the attraction? What's the business of the Port District? What facilities does the Port have? What are the Port's revenue sources? Rhinehart said they also discussed: What's the project the Port is trying to drive? What is it going to cost and where will that money come from? Where is the money going to come from to repay the bonds? Rhinehart and the bond underwriter both felt the teleconference went well. S&P asked a number of questions during the call and none of them were particularly adversarial. S&P had another call scheduled so they had to cut it off right at 11:00 a.m. S&P came back a couple of hours later with a set of 9 questions and 1 request. The questions were simple and have already been responded to. The request for 4 years of year-end compilation of financial statements will be sent tomorrow morning. The next step is for the analysts to

take it to their rating committee, and then it will take about a week for them to consider it and come back with our requested indicative rating on the requested amount of \$850,000.

- Port Security Grant Program (PSGP) Meeting on March 2, 2012: Marine Exchange of Puget Sound, the designated Fiduciary Agent for the PSGP held the meeting which was attended by approximately 40 sub-grantees. Rhinehart said they provided an update on the FY 08, 09, 10, 11, 12, and 13 versions of the grant. Our application is for the FY 09 funding, although we submitted it in 2010. He explained that each year's program is authorized as a 3-year program. If 60 days before the end of the 3 years, either of two conditions are met by any sub-grantee in the Puget Sound, then you get a 6-month extension. That extension cannot be granted more than 60 days in advance of the expiration of the original. At the end of that 6 months, 60 days before the end of it, you can do that process again. You can do that 4 times to make it a 5-year grant, but there is no guarantee at the beginning that the 3 years will become 5 years. He said the Fiduciary Agent characterized it as: "It's very, very likely all of these years become 5-year grants, but it is never guaranteed."

Rhinehart said, *"So there's a little element of risk in all of them. With that in mind, FY 08 is currently extended through September 2012, and will probably get one more extension through Spring of 2013. It will then go away and no funds can be expended after that. That means that FY 09 will probably get to Spring of 2014 and absolutely cannot go any further. So if were to get funds successfully allocated, under the FY 09 grant, we would have to completely expend them by Spring of 2014 or they would go away. Secondly, if you get Federal funds after you have begun construction – they go completely sideways."* Their conditions (not open to negotiation) include their approval before any construction is done and their approval of every voucher whether it is paid for out of their funds or not. Rhinehart said, *"So again, we would have some problems if we started the project and the funds came in late. But the critical point made by the Fiduciary Agent is that their Program Manager has absolute authority to approve invoices until the project is complete, and then the FEMA or Dept. of Homeland Security Auditor comes in, reviews them, and can disallow anything they feel is improper and require the agency to pay them back. The primary reason for that "claw back" is for anything you buy, contract for, put in place, etc. that is not exactly as stated in the original application (or with an allowance for adjustment). Obviously, we're talking about building things (Phase 1) that are not exactly as they are in the application."* The Fiduciary Agent's comment was, *"If the application says it is blue, it had better be blue. If it says it is at this GPS coordinate, it had better be exactly there. Because I don't want to get overruled – that's bad for all of us. So I am only approving minor variances."* Rhinehart said all of that in total says the Port has a huge problem with the FY 09 application (running out of time, substantially different version than original application, little or no likelihood of getting an exemption, and significant risk of a claw back). He said, *"But the good news is that the FY 12 program is accepting applications through May 5th, has \$1.4 billion in funding and there is no Fiduciary Agent – the Port would apply directly to FEMA. We could apply for G Dock, reset the clock and have until 2017 to expend all the funds, and expand the Consortium to include the Port, the Fire District, the Sheriff's Office and the City of Langley and probably gain points for having a more diverse partnership. It's a short time frame, but my recommendation is that we go down the FY 12 path because we have most of the application materials ready, we'll just be changing the design."* He explained they shouldn't wait until the FY 13 because there is a proposal to take 16 different security-related grant programs and mush them all together into one big pot of money so everyone can apply for them. The disadvantage is that the PSG Program is for ports only. In a 16 grant accumulation, ports in general and small ports in particular will likely get lost in the shuffle.

Jerome said it sounds like we should go ahead in May for the FY 12, but noted that the Port's Boating Infrastructure Grant (BIG) application is also due in May. Rhinehart said because they are different agencies, the Port could apply for either or both. He added, *"Either is probably a better answer. I'd rather do an A+ paper on one than a C+ paper on both."* He acknowledged that they would have a better chance of getting one if both were submitted, but the Port would really need some outside help to do both. Gordon said the City of Langley has indicated they are committed to helping with the process, and perhaps they could provide monetary help to hire a grant writer, etc.

The Commission agreed Staff should submit both the PSGP FY12 and the BIG applications in May and directed Staff to proceed in that direction.

PLANNING FOR HARBORMASTER OFFICE: Field explained that the permit package for Phase 1 includes a temporary construction office, which the Port is proposing to also serve as an administrative/storage office for the Harbormaster (not a public access space). He said the Port has proposed keeping it there for up to 2 years, but now the City is asking, "Then what?" Field said, "*The clear and obvious answer is that by the end of that 2 years, the Port could be in design and permitting to put a 2nd story on the existing restroom building to house the Harbormaster's admin/storage (non-public access) space.*" He thought that answer should be sufficient. Gordon suggested that they provide the City with two options – adding the 2nd story would be one option, and the other would be renting a space from another property owner on the waterfront (Drake's Landing, etc.). The Commission agreed.

MUKILTEO WASHINGTON STATE FERRIES (WSF) TERMINAL – Commission Input to Environmental Impact Statement (EIS) process: Field noted the due date for comments is March 12, 2012. Gordon reported that he and Langley Mayor Larry Kwarsick, Langley Director of Community Planning Jeff Arango, and Island County Transportation Planner Donna Keeler had visited with Mukilteo Mayor Joe Marine and Mukilteo Director of Planning & Community Development Heather McCartney. Mukilteo has revised their Comprehensive Scheme, and they want either Elliott Point 1 or Elliott Point 2 as the option for the terminal. Kwarsick, Keeler and Gordon much prefer the Elliott Point 2 option, but with "flipping" the location of the parking lot so that the parking garage could cross right over to the Sounder train station. Gordon also attended the WSF public hearing in Clinton and testified that he didn't believe that the State of Washington wasn't required to provide overnight or additional parking. The State's position seems to be that they are not expanding the facility, and they make it very clear that there is not one more parking place in the new facility than there is currently. That means there is no additional overnight or day parking. Gordon said, "*I would like to ask that the Port of South Whidbey send a letter to WSF before March 12th saying that we believe it is an inherent responsibility of the State of Washington as part of this terminal facility to address additional day use and overnight parking for visitors coming to Whidbey Island and for commuters coming off of Whidbey.*" The Commission agreed and Field said he would draft the letter.

ADJOURNMENT: The Special Meeting was adjourned at 8:34 p.m.

Approved:

Minutes prepared by:



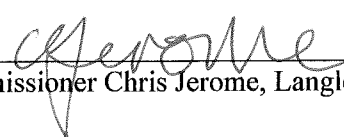
Commissioner Curt Gordon, Clinton



Edwin S. Field, Port Operations Manager



Commissioner Dennis Gregoire, Freeland



Commissioner Chris Jerome, Langley

- Exhibit A: Commissioner Gregoire's "Discussion Paper #1: Framework/Context for discussion of Shoreline Master Program Updates"
- Exhibit B: Commissioner Gregoire's "Discussion Paper #2: Port's role in Shoreline Master Plan Updates: Island County and Langley"
- Exhibit C: Commissioner Gregoire's Summary Comments for March 7