

**THE PORT DISTRICT OF SOUTH WHIDBEY ISLAND
SPECIAL MEETING**

Location: Port Office Conference Room, 1804 Scott Rd, Freeland, WA
Thursday, April 25, 2013 at 9:00 a.m.

AGENDA

SPECIAL MEETING CALL TO ORDER and PLEDGE OF ALLEGIANCE

ACTION ISSUES** (9:00 – 11:00 A.M.)

South Whidbey Harbor

1. Project Permitting and Mitigation, with Joe Callaghan / GeoEngineers (9:00 – 10:00)
2. Adjacent Project Possibilities (10:00 – 10:30)
3. Phase 1 Construction update as needed (10:30 – 11:00)

Port Operations

1. Commission Discussion of Co-owned Facilities (until 11:00, if time permits)

ADJOURNMENT

NOTE: No topics related to the Possession facility will be addressed at this Special Meeting, but may be on the Agenda for the Regular Meeting on May 14, 2013.

** Includes Staff Presentation, Commission Discussion and Decision/Direction as applicable

PORT DISTRICT OF SOUTH WHIDBEY ISLAND

Minutes of the Special Meeting

April 25, 2013

Freeland, Washington

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

Others Present:

Port Staff: Ed Field (Port Operations Manager), Angi Mozer (Port Finance Manager), Molly MacLeod-Roberts (Port Clerk) and Julie James (Harbormaster) **Others:** Joe Callaghan (GeoEngineers), Jim Sundberg (Langley City Councilmember), Jim Larsen (South Whidbey Record); Paul Schell (Boatyard Inn Co-Owner) and Eric Richmond (Flat Rock Productions).

MEETING CALL TO ORDER: The Special Meeting of the Port District of South Whidbey Island's Board of Commissioners was convened on Thursday, April 25, 2013, 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, analysis and planning on permitting and mitigation issues at the South Whidbey Harbor, as well as other current Harbor issues, along with Commission discussion of co-owned facilities (if time permits). Although the Meeting was of course open to the public, it was specifically scheduled primarily for Commission and Staff consideration of detailed permitting and mitigation criteria and other project issues and to determine subsequent direction for Staff, and public participation was not on the Agenda.

Commissioner Gordon, President, called the Special Meeting to order at 9:05 a.m., followed by the Pledge of Allegiance.

ACTION ISSUES

South Whidbey Harbor

Project Permitting and Mitigation with Joe Callaghan of GeoEngineers: Callaghan was on hand to discuss the Mitigation Memorandum dated April 23, 2013 (**EXHIBIT A**) he prepared and to answer any Commission questions regarding mitigation. The Memorandum documented the Mitigation Sequence that was conducted for the original permit submittal in 2009 for the overall expansion of the South Whidbey Harbor and explained that during the mitigation planning process, GeoEngineers had looked at potential compensatory mitigation options within Saratoga Passage and in the nearby vicinity of Langley. One of the driving forces for mitigation options was to limit the cost of the mitigation and maximize the Port's existing holdings for potential mitigation. The then Port Commission agreed during the mitigation planning process that acquiring land and performing mitigation offsite would be cost prohibitive and agreed to proceed with the onsite mitigation ideas (removal of Hein Dock and sunken tire reef). The Memorandum also stated that since the development of the Mitigation Plan, the Corps has developed guidance for performing Advanced Mitigation (December 2012). Based on that new guidance, GeoEngineers recommends a discussion of the benefits from developing a Memorandum of Understanding with the Corps and Washington State Department of Fish & Wildlife (WDFW) for advanced mitigation related to the overall expansion of the Harbor. That would allow the Port to remove the derelict structures and debris during the Phase 1 build out and increase the value of that mitigation over time before starting the next phase.

Gordon confirmed that Commissioners Chris Jerome and Dennis Gregoire had received the Memorandum and asked if they had reviewed it. Jerome indicated that he had, but Gregoire said he was just in the process of doing so. Gordon noted that at the last meeting, Gregoire had questions about two separate issues, and Gordon would like them to be discussed. Those issues are: 1) Opportunities for off-site mitigation during development of sites such as the South Whidbey Harbor and 2) Possibility of enhancement of certain biological features (such as eelgrass beds) negating the Port's commercial opportunities in the long term. Gregoire said another issue is that none of the current Commissioners were present when the Mitigation Plan was developed. There have been significant changes to Shoreline

Management and at the Army Corps of Engineers since 2008/2009 when the Plan was developed and the original permit was submitted, and the Port is currently working on updating the Comprehensive Scheme. Gregoire summarized it as “the train was already running when we came on board, and none of us understand what is on board so we need to be briefed on what is on that train.”

The Memorandum explained that GeoEngineers used a modified watershed approach as required by the Corps and the Environmental Protection Agency (EPA). The watershed approach outlined in the Federal Register is focused on wetland and stream impacts within a watershed or basin setting. Marine waters, such as where the project is located, are not included in the watershed approach since they encompass an area that does not have definable boundaries.

Callaghan noted that offsite mitigation is not a new concept; it has been around for some time and it is not considered “unreasonable” by the agencies. At the time the Plan was developed, the Port had very limited holdings in the area, and in fact didn’t even have ownership of the Harbor until January 2009. He said they looked at Clinton Beach but there weren’t opportunities there to do mitigation that was meaningful and could be justified for the expansion in Langley. As they looked at potential opportunities, it became obvious that offsite mitigation is very costly when the property is not owned or under the control of the Port. Since offsite mitigation was cost prohibitive, they looked for onsite mitigation, which included removal of derelict features and debris – all of which needed to happen anyway to accommodate the project and to meet community/public safety needs. Since the derelict Hein dock was near shore, its removal was worth more than mitigation done offshore. Cleaning up the debris pile (sunken tire reef) was something that was going to be done in conjunction with the project, so the Port would be able to maximize the value of the mitigation and the holdings of the Port. Callaghan explained that the Hein dock had created a shadow that segmented the eelgrass areas, and part of the mitigation plan included the Port taking credit for what was probably going to occur naturally – once the dock is removed and light comes through, the eel grass will fill back in the gap between the areas.

As part of the process, the agencies required the Port to go through mitigation sequencing. First you must show effort to avoid impact. Once you’ve avoided what you can, you must attempt to minimize your impacts and then go toward mitigation. Callaghan explained that the Port was able to avoid impact through the design (pushing the docks further out) and minimized the impacts by pushing most of the project out in deeper waters. Then the mitigation for the remaining impacts became the derelict structures and debris piles.

Gregoire said, *“That’s an urban harbor. Less than 1% of Whidbey Island is designated as an urban harbor. Those are scarce resources. My experience on the other side is that we never did mitigation in an urban harbor – we always did it offsite.”* He said conditions have significantly changed in terms of doing things since the Mitigation Plan was submitted and there is a framework now that didn’t exist back then. Regarding the Hein dock, he stated that existing pier & pilings in an urban harbor is not derelict – it’s a resource that was used historically and can be used again. He stated, *“And the point is that the previous Commission did not talk about this at all, and there was no framework.”* Jerome didn’t believe that was true. He said, *“You might not have been here, but it has been discussed. There have been several different marina designs in the last 5 or 6 years and not one of them has come near that spot where the Hein dock currently sits. There is no question that the Hein dock has to come out – it is a safety hazard and the Port has significant liability. So for me, using a structure that has to go away anyway as mitigation is the equivalent of having our cake and eating it, too.”* Gordon added, *“As long as the enhancement of eelgrass doesn’t have a long term negative effect on that harbor development.”*

Port Operations Manager Ed Field noted that when the Port acquired the floating breakwater and tied it up outside of the existing marina, the permit for the temporary parking expired and the Port received a minor violation that required mitigation. WDFW didn’t want to hear about offsite mitigation – they wanted it done immediately. The eelgrass in that area existed long before the Port took over the Harbor, and by using eelgrass monitoring as mitigation for the temporary parking of the breakwater the Port was able to

clear that violation. Once eelgrass exists and has been identified, in order to build anything in that area, the Port would have to replace that eelgrass bed somewhere else. Field explained that the difference between doing it then and now is that there is an option to do advanced mitigation.

Callaghan said that having eelgrass in the area and increasing the eelgrass by removing the Hein dock does not preclude the Port from developing the Harbor – it just means you have to mitigate for it. If future development is wanted in that area, the Port would just have to do a different type of mitigation. It does not at all preclude the Port from redeveloping the area.

Gregoire said the Port needs to define its mitigation policy like the big ports do. The Port can't take what the agencies shove down our throats. He didn't know how a small port could do that, though. The big ports have done it because they have a lot of money, but small ports don't. He said the Corps has changed their policy for onsite mitigation vs. offsite mitigation and discarded their policy for onsite mitigation because it hasn't worked. He stated, *"The Corps has now stated that offsite mitigation in the watershed context is the way they want to go."* Callaghan interjected, *"That applies to wetlands. Marine waters do not constitute watershed process, because there are no boundaries. It says so right in the Federal Register, and so you have to come up with a different spatial scale. That's in the Federal Register."* Gregoire insisted that it states that permits for marine waters should use the watershed approach. Callaghan said, *"Not the watershed approach. It specifically calls it out in the Code of Federal Regulations (CFR)."*

Gordon asked if Callaghan sees the enhancement of the eelgrass (by removing the Hein dock) as a hindrance to future development. In his professional opinion based on his experience in monitoring similar sites, Callaghan said the impact from the removal will be the eelgrass will in-fill but the overall footprint will not get larger. Callaghan agreed to provide more definitive information and clarification regarding what is allowable. Gordon said that unless and until he sees something more compelling than the eelgrass scenario, he does not see the Port straying from the current path for mitigation. Both he and Jerome indicated that they were comfortable with the process up to this point and did not want to change direction.

Callaghan provided the Commission with a copy of the Corps' "Interagency Regulatory Guide: Advance Permittee-Responsible Mitigation" published December 2012 (**EXHIBIT B**). Although it is more focused toward wetlands, it does include fish habitat areas, which would encompass the marine waters under discussion. The advanced mitigation guidance is a way to do mitigation before you do the impact. He said, *"Where you get value out of it is by doing the mitigation two years before your impact. So if you know the marina build-out is not going to happen in the next two years, by doing the mitigation now, it will be worth more when you actually do the build-out (temporal value)."* Gordon expressed concern that the Port could somehow lose that mitigation and asked how it gets permanently banked. Callaghan explained that it gets banked by entering into an agreement with the Corps via a Memorandum of Understanding (MOU) or by the permit process (still in development). In the MOU, the Port would write out the Mitigation Use Plan and that identifies how much the credits are worth and the timeline. He noted that it applies to the Permittee only - it is tied to a location but it is not tied to a specific project, so if the design for the marina changes the Port can still tap into that mitigation that was done in advance. Field added that since it is not tied to a permit, if the Port got 100 units of mitigation credits for pulling the Hein dock and only needed 50 units for Phase 1, the remaining 50 units would remain available for the next phase (instead of going away with the Phase 1 project).

Gregoire reiterated that he had a problem with it, because it is an urban harbor and the Corps has one purpose in mind with this program: Expand the habitat everywhere, all the time. He said, *"That's not our direction – urban harbors are meant for man-related activities. So inherently there is this conflict that exists. And to me, the whole issue of advanced mitigation that they are proposing – tearing out old structures that function in an urban harbor when people think there's no longer a need for them – is against our goal and mission, in my opinion and experience from working at the Port of Everett."*

Gordon encouraged Gregoire to do what he can at the local level, but noted that much of what he was talking about required major change at the state level and it's unlikely to happen.

Gordon told Callaghan, *"This has been a good conversation. I think you can get us definitive information and it will help convince us all that we're going down the only path that is available to us and it's in the best interest in the short-term costs and long-term effects of the development ability of that harbor."*

Regarding the response to the Corps, Callaghan explained that the Corps believes the Port's current mitigation ratios (gains/losses) are not high enough (less than 1:1 except in the debris removal area, which is only 1.14:1. Rather than going back and looking for additional mitigation and planting eelgrass as the Corps recommended (an unreliable type of mitigation that can be very expensive), Callaghan suggests the Port should instead pursue the option of doing advanced mitigation to increase the ratios and avoid planting eelgrass. Gordon and Jerome said they were in favor of that response. Gregoire said he did not agree and could not support that. Callaghan was directed to prepare the response to the Corps within the 30-day required timeframe and provide additional clarification to the Commission as discussed.

Adjacent Property Possibilities: Paul Schell (Boatyard Inn Co-Owner) said he is in discussions with the owners of Drake's Landing regarding potential purchase of that property and he is currently in the feasibility stage. Schell also provided a status update of the current Boatyard Inn expansion project, and introduced Eric Richmond of Flat Rock Productions who designed that additional building. Construction will not start until sometime in the fall at the earliest.

Schell had also hired Flat Rock Productions to draft a design concept for Drake's Landing, including Public Access Elevator & Stair (**EXHIBIT C**). Copies of the draft concept were provided to the Commission, but Schell stressed that it is very preliminary. He explained they are trying to come up something that they can make work but is a minimal project. The first issue with the property is that there are live wires running across it, as well as cable TV connections. That easement was granted 80 years ago and you can't build underneath those wires. So the wires will need to be buried and he has asked Puget Sound Energy for a cost estimate to do that. Schell suggested that the Port should do the same on its property at the same time. The second issue is better access to the top of the hill. Their idea is to remove all the additions to Drake's Landing, leaving only the original salt box building, and then build a stair/elevator tower at the back of the site running up to the 75 ft. level with a bridge over to the bank. That would end about 10 feet below Fourth St. and then it would be an almost level walk to Second St. with a stairway in the other direction up to the parking lot. The elevator would also provide access to the 4 residences (900-1,000 SF units) on the 2nd and 3rd floors of the new building. The ground floor would have a public walkway right to the water and a café that serves breakfast and lunch. There would also be a space that the Port could lease and relocate the restrooms, opening up space that could be used for parking on the Port's property.

Schell noted that the City of Langley has \$250,000 set aside for a funicular, but it would not have a stairway and would involve "messing with the bank that ought not to be messed with any more than necessary" and it's not as tried and true technology as an elevator. This would be a standard office elevator and carry a 2,000 lb. load. Early pricing indicates it would cost \$140,000 for the elevator with a window in it and another \$80,000-\$100,000 for the bridge. He thinks the whole elevator/stair tower would be \$500,000-\$600,000, which is what the City estimates the funicular will cost by itself. The idea is that a public entity could own the elevator/stair tower, and Schell thinks it would be perfect for the Port to own as it would provide access to/from the Harbor and parking, etc. Schell thought a combination of the City's money and an LID (Local Improvement District) or a contribution formula among all of the property owners down there could pay for tower. He said there would not be much of an increase in taxes, but there would be significant increase in public access and improved parking.

He asked the Commission if this was something the Port would be interested in working with him on, because if not, he was going to walk away from it. He said, *"It will only happen if we can do it*

together.” The Commission agreed it was a great concept, and Gordon added that he was very much in favor of undergrounding the power after everything that happened with the landslides on Wharf St. last month. He said he is a big fan of private partnerships and as much private industry as possible should be used. He thinks the Port should support the utility side of it. Gordon pointed out that the City’s \$250,000 is actually RCEDF funds and changing the project would mean the City would have to re-apply. He noted that the City needs to stay focused on the public access as part of economic development.

Regarding Schell’s suggestion regarding relocation of the Port’s restrooms, Field noted that the restrooms were built with RCO grant funds and are therefore encumbered. A complicated RCO conversion process would be required, and Schell agreed it was not an option then. The Commission thanked Schell and Richmond for coming to the meeting and presenting the preliminary concept.

Phase 1 Construction Update: Field reported the Notice to Proceed was issued to Mike Carlson Enterprises effective April 22nd (**EXHIBIT D**), the contracts have been signed and today was Day 3 of the 280 calendar day contract. The kick-off meeting was held last week at the site and they talked through a pre-demolition plan for the work out on the wharf. The contractor will be mobilizing equipment tomorrow and he has an agreement with Nichols Bros. for some laydown space on their property. They plan to start work on the offshore demolition (removal of Hein dock decking) on Monday, and will be bringing in their workboats and small barges in the next few days for staging. A kick-off meeting with the City of Langley has been scheduled for Monday, April 29th from 9:00 until 10:00 a.m.

Port Operations

Commission Discussion of Co-owned Facilities: As agreed at the regular April meeting, the Port will have a special meeting with Makers on May 9th to discuss questions to include in the proposed survey. During the interviews, Makers had referred to the Port’s list of facilities and asked each Commissioner to share their views of each facility. Gordon noted that of course the list included all five properties that are wholly owned by the Port (South Whidbey Harbor, Clinton Beach and Dock, Possession Beach Waterfront Park, Bush Pt. Boat Launch and Humphrey Road Parking Lot). The list also included the Freeland Park, Maxwellton and Mutiny Bay boat launch facilities, which the Port co-owns with Island County. He would like to discuss how the Commissioners feel about each of those co-owned facilities. The InterLocal Agreements (ILAs) with Island County for those 3 facilities state that the Port owns 25% and the County owns 75%, and it expressly written in each of the ILAs that responsibility for maintenance for those facilities is with the County. Gordon asked, “*So should we consider those 3 facilities to carry the same weight as those properties that the Port has 100% ownership of?*” Gregoire responded, “*Yes, absolutely.*” But he added that during the interviews, Makers had asked if the Port needs six boat launches and Gregoire said that is legitimate question to put on the table. He said they should document how they are functioning now, what needs to be done to improve them, how much that will cost, and what are the options for carrying out those improvements in the context that they are a big part of the tourism package. They need to figure out if the Port’s constituents value the boat launches in a public process.

Jerome said, “I think we need to be realistic as to what we can afford. We have 5 facilities that we wholly own and the maintenance costs for those. We also have future maintenance costs and upgrades for those facilities. My sense is we’re already fully committed if not overcommitted. Secondly, the other 3 facilities are the subject of ILAs and unless and until those ILAs are changed (either by County instigation or Port instigation), I’m not interested in voluntarily taking on obligations that aren’t part of those ILAs. Thirdly, I think the Strategic Plan process we’re going through will give us some guidance as to what are our priorities.”


Gordon summarized that those 3 facilities are a sub-set and the Port needs to survey the public’s views of those 3 separately from the other 5 facilities. He suggested the survey could identify what the Port is currently doing (such as planning for replacement of the Possession boat ramp) and ask the public if improving those 3 co-owned facilities is a priority. Gregoire said the work at Possession will provide the Port with lots of information and analysis that can help answer a lot of the questions regarding those other

three facilities, so he thinks they can put off additional discussion and analysis on those for several years and that would avoid setting up realistic expectations with the public. Gordon agreed they should focus on what's practical and realistic over the next six years.

During his interview with Makers, Jerome brought up the need to answer the question: How many boat ramps do we need? Another question is: What kind of boat ramps do we need? Freeland, Maxwellton and Mutiny Bay are fine for launching kayaks, canoes and other human-powered craft. He said, "So it may be that we do need half a dozen boat launches, but they don't necessarily all need to be ramps for trailer boats." Gregoire said the Port needs to conduct a Boat Launch Facility Study once the Strategic Plan process is complete, and he would volunteer to head that up and drive it with five or six stakeholders.

ADJOURNMENT: The Special Meeting was adjourned at 11:07 a.m.

Approved:



Commissioner Curt Gordon, Clinton



Commissioner Dennis Gregoire, Freeland



Commissioner Chris Jerome, Langley

Minutes reviewed by:



Edwin S. Field, Port Operations Manager

- Exhibit A: GeoEngineers' Mitigation Memorandum dated 4/23/13
- Exhibit B: Corps' Interagency Regulatory Guide: Advance Permittee-Responsible Mitigation
- Exhibit C: Flat Rock Productions' draft design concept for Drake's Landing
- Exhibit D: Notice To Proceed on Project #2013-2 issued to Mike Carlson Enterprises