

**Port of Anacortes**  
**Regular Commission Meeting Work/Study Session**  
**& Executive Session**  
**October 16, 2008**

The Port Commission of the Port of Anacortes held its regular meeting and work/study session at 7:00 P.M. on the evening of October 16, 2008. This was a regularly scheduled Commission Meeting held at the Commission Meeting Room of the Main Port Warehouse building, 1<sup>st</sup> & Commercial Avenue, Anacortes, Washington.

In Attendance: Commission President Short, Commission Vice-President Rubin, Commission Secretary Niver, and Commissioner Hopley. Commissioner Mooney was present via speakerphone.

Also in attendance: Executive Director Hyde, Director of Engineering Elsner; Director of Finance & Administration Johnson; Director of Operations and Facilities Hachey; Marina Manager Fowler, Project Manager Estvold, and HR Generalist & Operations Assistant Herrick.

Others in attendance included Port legal counsel, Frank Chmelik.

**CALL TO ORDER**

At 7:00 P.M. Commission President Short called the regular meeting of October 16, 2008, to order and welcomed all in attendance. He noted that Commissioner Mooney was joining the meeting via speakerphone. Commissioner Short stated that following the second public comment period, the Commission would enter into an Executive Session for the purpose of discussing an environmental litigation matter. Commissioner Short explained the Executive Session was anticipated to last one hour and that action might or might not be taken.

**SPECIAL GUEST** – Partner Report – Shane Aggergaard, Island Adventure Charters

Executive Director Hyde introduced Mr. Shane Aggergaard, owner of Island Adventure Charters, operating out of the Cap Sante Boat Haven, describing him as mainstay of the community and bringing many tourists to Anacortes.

Mr. Aggergaard thanked the Commission and Port staff for asking him to report on his charter and whale watching business which is presently the largest in the State of Washington and continues to grow carrying over 25,000 people this year with its main office on Commercial Avenue and vessels moored at Cap Sante Boat Haven. Mr. Aggergaard explained that Island Adventures is primarily a wildlife business; he presented a series of photographs taken aboard his vessels. Island Adventures was started by he and his wife Jennifer in 1996, starting off with a 30-passenger boat. Their first lease with the Port was an 8'x8' ticket office at the Boat Haven. Eight boats later, their newest and now only whale watch vessel, the Island Explorer 3, is one of the nicest whale watch boats on the west coast, refit from its purchase in Hawaii, with an upper viewing deck and full walk around lower deck.

Island Adventures guarantees the siting of whales on every one of their trips. This area is truly the best place in the world to see Orca whales, and specifically the "Salish Sea" or Strait of Juan de Fuca, is the best area. People come from all over the world to see whales. The diversity of wildlife, incredible scenery and calm water all contribute to bringing tourists to their

programs. Island Adventures also runs a winter program in the Everett area when grey whales are in the south of Puget Sound. Their website maintains a whale report with sightings and other news, such as new births and other information.

Mr. Aggergaard thanked the Port for its volume discount on fuel purchases, a benefit to himself and other commercial operators, especially with the recent fuel prices.

The Commission and Executive Director Hyde thanked Mr. Aggergaard for his report.

### PUBLIC COMMENT PERIOD

Commissioner Short opened the floor for public comment pertaining to items on the regular agenda. Hearing no one with a desire to address the Commission, the floor was closed

### REGULAR AGENDA

#### ACTION ITEMS

#### Construction Authorization for the Project Pier 1 Offsite Utilities and Pier 2 Access Relocation Project, Project #PROP-01B – a JDF eligible project -

Executive Director Hyde introduced Director of Engineering Elsner, who presented the item to the Commission, requesting funding for offsite utilities construction and allowing current out of date public utilities on the Dakota Creek Industries (DCI) site to be abandoned.

Director Elsner explained that the Port received bids from eleven contractors with Interwest Construction, Inc. submitting the lowest responsive and responsible bid. Director Elsner explained the responsive and responsibility criteria involved in selecting a contractor. The contractor with the lowest bid did not meet the Port's requirements and the second lowest bidder Interwest, was then examined and subsequently selected. The lowest bidder has submitted an appeal and that will be examined by Executive Director Hyde before the contract can be awarded.

Director Elsner introduced Port legal counsel Frank Chmelik who further explained the relatively new RCW the Port follows. Mr. Chmelik explained that while the responsive criteria had been in place for some time, the legislature changed the responsibility criteria in June of this year to allow it to be tailored to different projects. The Port used it in selecting a contractor at the Cap Sante site earlier this year. A relatively new thing in Washington that gives the same authority to municipal governments that has existed for the state for a number of years.

Director Elsner introduced Project Manager Estvold who provided the Commission with details of the project elements, which includes treatment structures on two major City storm sewer lines prior to their entry into the Guemes Channel. The request also includes the relocation of the Pier 2 access from 3<sup>rd</sup> Street and R Avenue to just east of 4<sup>th</sup> Street and R Avenue, and improvements to the intersection at 4<sup>th</sup> Street and Q Avenue, allowing a better turning radius for large truck and trailer traffic entering and exiting the Pier.

All of the work, with the exception of asphalt repair at Pier 2, is eligible for a Job Development Fund (JDF) grant which will reimburse the Port for 100% of all eligible costs.

Commissioner Short called for any discussion. Questions from the Commission included placement of the storm sewer and other utility lines, work done with the City on the relocations. With discussion concluded, Commissioner Short called for a motion. Commissioner Rubin moved to authorize funding in the amount of \$1,635,232 to be paid from the General Fund, for construction of offsite utilities and relocation of Pier 2 access. Commissioner Niver seconded the motion. Commissioner Short requested any additional discussion by the Commission and hearing none, called for a vote on the motion, which carried unanimously.

Authorizing the Executive Director to Execute a Settlement and Release Agreement with Dakota Creek Industries, the DIL Trust, and other insurance carriers -

The Port is also conducting remedial action on the DCI site under the supervision of the WS Dept. of Ecology. Port legal counsel Chmelik briefed the Commission on this item, and provided background information. He noted that coverage counsel Marc Nadler of the Nadler Law group and the rest of the Port's environmental team, has been pursuing historical insurance coverage of the site wherein the Port was named as additionally insured on pre-1986 tenant insurance policies. There was a fair amount of dispute about the application of those policies. A lawsuit was filed and the Port has reached a settlement with the two carriers identified as Royal Globe, that insured a company called Dillingham, which is now in bankruptcy its successor in interest, is called the DIL Trust, and with the Hartford that wrote historic, pre—1986 insurance for DCI.

The settlement It involves a payment to the Port of \$1.5 million in exchange there are global and round robin releases with all parties, DCI, DIL, Royal, Port, Hartford releasing each other from any further claims on environmental issues.

Additionally, as part of the agreement, the Port agrees to indemnify the carriers up to the amount they paid in the unlikely event there is a third party claim

Before we settle these counsel will work closely with the technical side to make certain there are no surprises this involves the materials in the dredge channels and the DCI materials.

The settlement document will be ready next week. POA spent approx, \$137,000 in the recovery of this \$1.5 million. Counsel Chmelik noted the Port has not as yet released Port insurance carrier Safeco on past costs on this site.

Following questions by the Commission, Commissioner Short called for a motion. Commissioner Rubin moved to authorize the Executive Director to execute the Settlement and Release Agreement with DCI, the DIL Trust and various insurances carriers for recovery of the costs related to the cleanup of historic contamination at the DCI leasehold. Commissioner Hopley seconded the motion. Hearing no further discussion, Commissioner Short called for a vote on the motion, which carried unanimously.

STUDY SESSION

2009-13 Cash Flow

Executive Director Hyde introduced Director of Director of Engineering Elsner who briefed the Commission on the Cash Flow that was presented to the Commission last week. Staff has pulled together a cash flow analysis for five years 2009 through 2013, including the capital and environmental spending assumptions. All capital and environmental spending in the document is under the heading of Comprehensive Plan Expenditures. Assumptions include: In 2009 will

permit and in 2010 the Port and construct the Wyman's ramp repairs, will conduct environmental cleanup at the Scott Site, and we will reduce capital spending in 2010, 2011 and 2012 in order to generate cash for our large E & F Dock project. Our assumptions are the Scott site will be a three year project with two components, capital and environmental, beginning in 2009, and E & F Docks will begin with permitting and preliminary engineering in 2009 with purchasing of docks beginning in 2010, with completion projected for the 4<sup>th</sup> quarter of 2011. The cash flow calls for bonding up to \$7 million for E & F Docks. The Port projects using the tax fund each year over the next five years for environmental spending.

Director Elsner was joined by Director Johnson in responding to questions from the Commission. Staff will provide the Commission with updated cash flow sheets following the input from this meeting.

### 2009 Budget Discussions

Executive Director Hyde was accompanied by Director of Finance & Administration Johnson in responding to questions from the Commission, which centered on moorage rates at the Boat Haven, what the formerly used rate model might indicate for rates and accurate revenue and spending for capital projects projections. A full analysis of moorage rates is made each spring for presentation to the Commission in April of each year. The Commission supported no more than a 5% budget increase for permanent moorage rates, with a 10% increase in transient moorage.

### COMMUNICATIONS

Executive Director Hyde introduced Director Elsner who noted that the Port wished to publically acknowledge the contributions of Mark Nadler of the Nadler Law Group to the Port's environmental litigation – Mark was one of the Port's first environmental attorneys beginning in the 1990's. Mark's contributions in regards to obtaining settlements for the Port total approximately \$5 million. Mark will be presented with a framed certificate of the Port's appreciation.

Executive Director Hyde noted that Director Elsner recently traveled to Alaska to receive the Port's AAPA Environmental award, national recognition for the Port's eelgrass mitigation efforts.

Commissioner Rubin discussed a new date for policy governance for the Commission. Administrative Coordinator Lindsey will be arranging for the next meeting with Dr. Monte Bridges for the Commission. Commissioner Niver wished to see an informal meeting amongst the Commissioners prior to meeting with Dr. Bridges once more. Executive Director Hyde will ask Administrative Coordinator Lindsey to arrange both meetings.

Commissioner Niver reported that the Skagit Council of Governments has received 6 applications for the position of Energy Conservation Manager.

### UPCOMING MEETINGS

Executive Director Hyde reviewed the Commission's upcoming meeting schedule for November. The next Commission Regular Meeting will be November 6, 2008 at 7:00 p.m. and will include a Public Hearing on a possible adoption of the 2009 Budget. The Commission's November 20<sup>th</sup> Regular Meeting and work Study Session is cancelled as several of the Port

Commissioners will attend the Washington Public Ports Association (WPPA) Annual Meeting, held this year in Tacoma, November 19-21<sup>st</sup>.

### PUBLIC COMMENT PERIOD

Commissioner Short opened the public comment period for items not on the regular agenda.

1. *Ms. Boshie Morris, 1618 7<sup>th</sup> Street, Anacortes, addressed the Commission. Ms. Morris commented about the percentage of "local" boats in the Cap Sante Boat Haven. She had heard the number to be 25%. Ms. Morris wished to see more facilities to aid small boaters, rather than artistic efforts at the Boat Haven. She noted that the Citizens Advisory Committee for the Boat Haven unanimously supported the selection of ideas that were put forth in the 2008 Comprehensive Plan for the smaller boating public.*

Hearing no others with a desire to address the Commission, the floor was closed.

### EXECUTIVE SESSION

Commissioner Short announced that the Commission would take a brief recess and then enter into Executive Session for the purpose of discussing an environmental litigation matter. The Executive Session was anticipated to last for one hour, and he noted action might or might not be taken.

At 8:37 P.M. the Commission entered into Executive Session. At 9:40 P.M. the Commission came out of Executive Session and resumed the Regular Meeting. Commissioner Short announced that no action would be taken at this time regarding the litigation matter discussed

### ADJOURNMENT

With no further business to come before the Commission, Commissioner Rubin moved to adjourn, which was seconded by Commissioner Mooney. Commissioner Short called for the vote on the motion, which carried unanimously and at 9:41 P.M. the meeting was adjourned.

#### **Attest:**

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William L. Short, Commission President

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Keith Rubin, Commission Vice-President

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Ray Niver, Commission Secretary

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Steve Hopley, Commissioner

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Pat D. Mooney, Commissioner