



KITSAP COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

PLANNING COMMISSION PUBLIC COMMENT MATRIX

Kitsap County Code Title 17 RHTW / SVC Code Changes
For the period October 4 - 25, 2011

| No | Comments | Summary | Staff Comments |
|----|---|---|--|
| 1 | Marie Hebert, 9-28-11 (received 10-6-11) | Concerns about stirred sediment, noise, loss of harvesting. | Specific project impacts would be addressed in project-level SEPA, Conditional Use Permit hearing(s), Critical Areas Ordinance (T 19) and Shoreline Master Program reviews. Staff has no comments. |
| 2 | Russell Perisho, 10-11-11 | Supports 'green' tourism economy and trickle-down effect. | Staff has no comments. |
| 3 | John Kuntz, 10-12-11 | Supports planned tourism economy and transformation of Port Gamble. | Staff has no comments. |
| 4 | OPG and Port Gamble tenants, 10-17-11 | Notes Port Gamble's future is in tourism. Notes currently limited access | Staff has no comments. |
| 5 | Gwenn Thomas, 10-25-11 | Frustrated by sea planes currently using bay. Concerned that tour boats will ruin shellfish harvesting, herring returns and more. | Specific project impacts would be addressed in project-level SEPA, Conditional Use Permit hearing(s), Critical Areas Ordinance (T 19) and Shoreline Master Program reviews. |
| 6 | Kanji & Katzen, on behalf of PGST, 10-25-11 | History of previous proposal has left environmental questions unanswered and demonstrated site is not suitable location for terminals. Cites 2006 dock application information and agency responses. Cites 2009 dock application information and agency responses. Rebutts Oct 13 OPG informational report, and raises concerns about bacterial shellfish contamination. Concerns about plane, gear, and animal/habitat conflict. | Specific project impacts would be addressed in project-level SEPA, Conditional Use Permit hearing(s), Critical Areas Ordinance (T 19) and Shoreline Master Program reviews. Staff can not expertly address seaplane/float plane conflict, but notes DOT has not expressed concerns to DCD and observes the bay is nearly a mile wide for much of its length. |

September 28, 2011

Kitsap County Planning Commission
Attn: Karen Ashcraft
614 Division St.
Port Orchard, WA 98366
KAshcraf@co.kitsap.wa.us

RE: LAMIRD Zone: Rural Historic Town Waterfront (Port Gamble), Use Table

Dear Kitsap County Planning Commissioners,

My name is Marie Hebert and I am a tribal member, and a concerned citizen as well as the Cultural Resources Director of the Port Gamble S'Klallam Tribe. I am writing to express my concerns regarding the proposed change to the zoning code (Title 17) to allow seaplane and tour boat facilities to be built at Port Gamble. I am very concerned that if the Kitsap County Planning Commission approves this change, it will create noise pollution, as well as stir up the sediments at the bottom of the bay. There is supposed to be clean-up happening on the bay and in Port Gamble but it isn't complete by a long shot!!! As Tribal people, culturally, the seafood is a huge part of our diet and we share seafood with other tribes as well as others and for these to be proposed would put an end to the Tribes enjoyment of shellfish as well as harming the tribal hatchery and possibly would be an end of our finfish coming back to the Tribe. If this happens, it would be devastation for all because the fish runs are already depleted.

I have never seen people so intent on harming the environment as some of the things that have been proposed for Port Gamble Bay! Why must there be anything in our front yard? Why must the tribal people sacrifice more and lose more than others? Why must we always be at war trying to protect what is rightfully ours? Have they considered looking to some other bay for this type of activities to happen? Who would be doing clean-up after these people regarding the sediments and oil and gas?

I do not want to lose our treaty right to harvest shellfish as well as finfish, as there are many tribal members whose livelihood depends on this way of life and for many, food on their table.

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OCT 06 2011
KITSAP COUNTY DEPT OF
COMMUNITY DEVELOPMENT

I hope you will take into consideration these concerns and think about all the tribal members whose lives depend on the bay and food that is harvested there year round. Perhaps you should think, would I want this in my front yard, would I want to listen to the seaplanes taking off and landing all day and on weekends - continuously? Would I want sediments stirred up so more people could possibly get cancer? Is this what I want for peoples in North Kitsap?

Respectfully,

A handwritten signature in cursive script that reads "Marie Hebert". A horizontal line extends from the end of the signature to the right.

Marie Hebert
33383 Hood Canal Lane NE
Kingston, WA 98346

RECEIVED
OCT 06 2014
KITSAP COUNTY
COMMUNITY DEVELOPMENT

Scott Diener

From: Russell Perisho [rperisho@gmail.com]
Sent: Tuesday, October 11, 2011 9:44 AM
To: Scott Diener
Subject: Comments regarding Port Gamble zoning (dock) issue

To the Planning Commission: and County staff:

This letter is written in support of OPG's request that the zoning code be clarified to permit the limited tourism activities (and dock) sought by OPG.

Most communities would be falling over themselves to thank a company like OPG that is proposing a new tourist-oriented business activity. Tourism jobs are the ultimate "green" job. The OPG proposal provides clear and direct benefit to the community.

My wife and I are small business people in Poulsbo. We understand that our customers and clients depend upon economic vitality in the region and amenities that attract visitors. Everyone gains from tourist activities. Obvious is the direct benefit to restaurants, motels, yarn shops, kayak outfitters, grocery stores, bakeries and the like. Less obvious, but just as real, are the indirect benefits that accrue to community banks, realtors, lawyers, accountants, financial planners and insurance agents when their customers and clients do better. That, in turn, means more customers and clients, as visitors increase and some of those folks stay and become contributing citizens to our community.

Also, we are a little selfish. We think that it's great to have activities and places of interest to show our visitors and family. Port Gamble is marvelous place to visit. OPG wants to make our community a little fuller, a little more interesting, and a little nicer place to live. As a community, we should be asking OPG how we can help. Their efforts ought to be applauded.

There are organizations seeking to vindicate their narrow interests who are opposing OPG. Some of those groups don't know how to say yes to an activity that is in the broader community's interest. Others are saying that OPG's proposal might - someday, somehow - harm the Port Gamble Bay. No realistic assessment of the proposed project is offered in support of pseudo-environmental concerns, but that doesn't seem to slow down those who shout "Don't let anything different happen." To this citizen, the "can't let it happen" wolf has cried once too many times, speculating about environmental damage without a legitimate fact-based concern. True environmentalists deal in facts, not emotion. The burden is on the naysayers to offer compelling facts, and that hasn't happened.

So the choices are pretty plain. Permit a good community company to conduct reasonable, limited tourist activity that provides direct and indirect benefits to the whole community. Or let the “do-nothings” win and support those who speculate and endlessly criticize, but don’t create. Let’s get out of OPG’s way and let them get on with making Kitsap County a better place to visit and live.

Russ Perisho

17630 Fjord Dr. NE

Poulsbo, WA 98370

--

(work/mobile) 206.713.6343
rperisho@gmail.com

Scott Diener

From: John Kuntz [jkuntz@kayakproshop.com]
Sent: Wednesday, October 12, 2011 12:11 PM
To: Scott Diener
Subject: Re: Recommendation for adoption of tour boat zoning for Port Gamble
Attachments: John Kuntz.vcf

John Kuntz
Olympic Outdoor Center
32379 Rainer Ave
Port Gamble, WA 98364
October 12, 2011

Kitsap County Department of Community Development
c/o Scott Diener

Re: Recommendation for adoption of tour boat zoning for Port Gamble

Dear Scott,

For those of us that make our living in Port Gamble the dock does matter and is desperately needed.

Olympic Outdoor Center came to Port Gamble from Poulsbo 2 years ago because of the promise of tourism. We are an eco-recreation company and employ a naturalist as well as teach an environmental ethic in our curriculum. Our company is exactly what OPG and the county had planned when they mapped out the future of the town which included the establishment of a dock to handle tour boats.

Now because of a clerical error which should be an easy fix we have to debate the merits of bringing tourists in a tour boat to Port Gamble!

The establishment of a tourism dock on Port Gamble bay is a win-win for everyone including the environment. It means jobs for the local economy, tax dollars to the county, and continued clean up of the Port Gamble mill site. The transformation from an industrial use to the eco-friendly tourism industry is a benefit to all. Yes, even the tribe now that they are exploring their own eco-recreation tourism.

I attended the last planning commission meeting where I spoke about Port Gamble. I am sorry that I did not make it clear that I am in favor of the zoning change to allow tour boats in Port Gamble.

For small business, the environment, and the future of Port Gamble I encourage the planning commission to move forward on approval.

John Kuntz
Owner, Olympic Outdoor Center

Scott Diener

From: Jon Rose [Jon@orminc.com]
Sent: Monday, October 17, 2011 2:01 PM
To: Scott Diener; baglio, robert; Foritano, Lou; jim.sommerhauser@comcast.net; karanne gonzales-harless; linda rowe; mbrown7017@msn.com; nevins, tom; Paralez, Linda; smiley, carol
Cc: Noel Higa; Sue Allison; Karen Ashcraft; David Greetham; Tallent, Geoff (ECY); Kmac461@ecy.wa.gov; tnor461@ecy.wa.gov; Burcar, Joe (ECY); Patty Charnas; Larry Keeton; Sue Allison; Dave Nunes
Subject: RE: Part 3 of 3--Supplemental Information to Staff Report for Planning Commission re SVC/RHTW code change
Attachments: DOC101711letter-10172011114045.pdf

All:

Since the zoning code was enacted, we have added over 35 small businesses in Port Gamble that employ over 130 people – many in tourism. Enclosed please find a letter signed by these businesses and many of our own employees requesting that the code error be corrected.

Sincerely,

Jon Rose
President,
Olympic Property Group
a Pope Resources Company
www.orm.com

(work): 360 394-0519
(cell): 360 509-0631
(fax): 360 697-1156

Assistant: Sarah Steffen
(work): 360 394-0564
ssteffen@orminc.com



From: Scott Diener [mailto:SDiener@co.kitsap.wa.us]
Sent: Monday, October 17, 2011 1:41 PM
To: baglio, robert; Foritano, Lou; jim.sommerhauser@comcast.net; karanne gonzales-harless; linda rowe; mbrown7017@msn.com; nevins, tom; Paralez, Linda; smiley, carol
Cc: Noel Higa; Sue Allison; Jon Rose; Karen Ashcraft; David Greetham; Tallent, Geoff (ECY); Kmac461@ecy.wa.gov; tnor461@ecy.wa.gov; Burcar, Joe (ECY); Patty Charnas; Larry Keeton
Subject: Part 3 of 3--Supplemental Information to Staff Report for Planning Commission re SVC/RHTW code change

All:

Additional information has been sent on behalf of OPG. This is the 3rd of 3 emails. Please consider these emails as part of the Staff Report record.

See you tomorrow night,

Scott Diener
Manager, Policy & Planning
Dept of Community Development
Kitsap County
614 Division St, MS-36
Port Orchard, WA 98366

sdiener@co.kitsap.wa.us

t: 360-337-5777

f: 360-337-4415

kitsapgov.com/DCD



Honorable Planning Commissioners:

We, the undersigned business, are writing to give our strong support for two subjects that are before you: The correction the Title 17 Code correction regarding tour boats and sea planes and the North Kitsap String of Pearls Trail plan. Port Gamble is an amazing historic and cultural asset for Kitsap County and both of these measures can potentially help the town survive into the future and help Kitsap County develop a real tourism business.

Title 17

Nearly all of us are small, family owned business that have staked our future and that of our families and employees on Port Gamble's future. Port Gamble sits isolated at the tip of Gamble Bay and functions in large part as a destination attraction. We work very hard to get local and out of town visitors to come and enjoy the town. Once they visit we see how enamored and charmed they are by both the town and the eclectic, independently owned businesses.

Currently, the only way out of town visitors can reasonably get to Port Gamble is by taking a ferry or long automobile trip across the Tacoma Narrows Bridge. Tour boats can help us link to the Seattle tourism, convention, and cruise industry and bring visitors who would never otherwise come to Kitsap County.

Please do not limit OPG's ability to plan for expanding tourism in Port Gamble.

North Kitsap String of Pearls Trails Plan

Every year we see the number of people using Pope Resource's lands for trails increasing. Users come from all parts of the country to enjoy these trails. Every single business in town benefits from them. All of Kitsap County benefits from this land that have been made available for public use for free. If the trail plan is not adopted, it will be much less likely that the county will take up OPG's offer to save the lands in open space. We have watched as OPG has tried for over 4 years to get political support to preserve its lands for the community and we know that time and their energy is running out.

Please don't risk this opportunity to support tourism and open space preservation that could soon be lost forever.

| <u>NAME</u> | <u>Signature</u> | <u>Business</u> |
|-----------------|------------------------|-------------------------------|
| Mollie Orbea | <i>Mollie Orbea</i> | Orbea Sign Company |
| Julie McFarrell | <i>Julie McFarrell</i> | Port Gamble Weddings & Events |
| Rhea Schneider | <i>Rhea Schneider</i> | Wish Merchandise |
| Rhea Schneider | <i>Rhea Schneider</i> | Port Gamble Guest Houses |



— Olympic Property Group —
P.O. Box 85, Port Gamble, WA 98364
(360) 297-8074 • Fax: (360) 297-7455

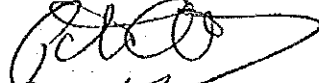


NAME

Signature

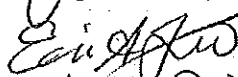
Business

Pete Orbea



Orbea Sign Company

Erin Flood



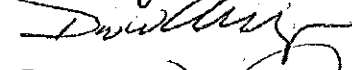
PG Weddings & Events

Kelly Joines



PG Weddings & Events

DAVID CHANDLER



PG. MUSEUM HOST

SEAN WESCOTT



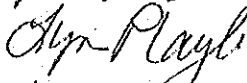
GAMBLE BAY Coffee

Scott Sively



Port Gamble Transfer Company

Lyn Playle



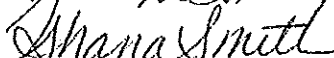
The Dauntless Bookstore

KRISTINA WESCOTT



GAMBLE BAY COFFEE

SHANA SMITH



Port Gamble - Historic
Museum + town mgr.

Milce Driscoll



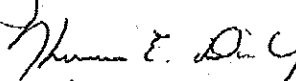
Hood Canal Nurseries

Janis E. Driscoll



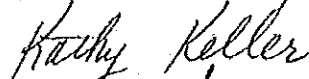
Hood Canal Nurseries

Thomas F. Daley




Port Gamble Maint.

Kathy Keller



PORT GAMBLE MAINTENANCE

Tracy Zhu



Tango Zulu Imports

John Kuntz



Olympic Outdoor Center

Spring Courtright



Olympic Outdoor Center

Forrest Wells

ANDREW PENNINGTON



olympic outdoor Center

Kim Campbell



Olympic Outdoor Center

René Green



PT GAMBLE General Store

Laura McCloskey



PT GAMBLE General Store

Rich Williams



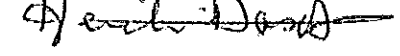
Port Gamble Post Office

Heidi Dascher



West Sound Tax & Accounting

Heidi DASCHER



The Artful Ewe

The Artful Ewe II



A Pope Resources Company

Michael Richman
Stefanie Richman
Mary L. Adams

Mike's Four Star BBQ
Mikes Four Star BBQ
Mary L. Adams Second Spring



— Olympic Property Group —
P.O. Box 85, Port Gamble, WA 98364
(360) 297-8074 • Fax: (360) 297-7455
(360) 297-7251 • Fax: (360) 297-5616



October 25, 2011

Gwenn Thomas
28737 ST Hwy 104 NE
Kingston WA 98346

Kitsap County Planning Commission
Mary Seals
614 Division St
Port Orchard, WA 98366
Karen Ashcraft <KAshcraf@co.kitsap.wa.us>

Re: LAMIRD Zone: Rural Historic Town Waterfront (Port Gamble), Use Table

Dear Kitsap County Planning Commission,

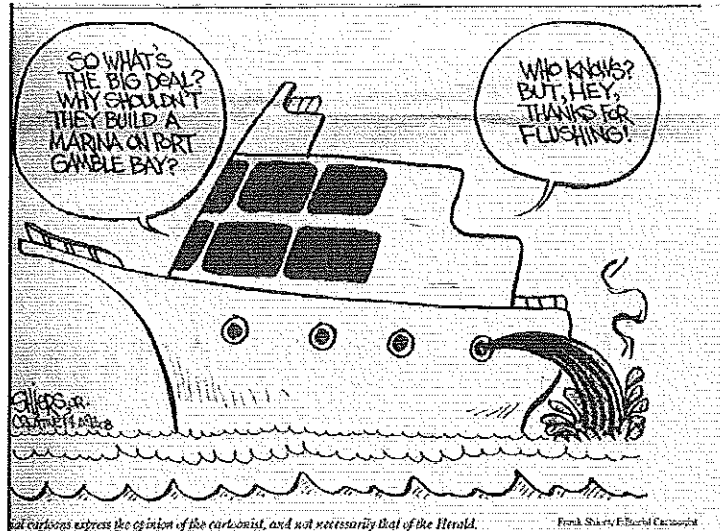
I am a resident adjacent to Port Gamble Bay, co-founder of Friends of Port Gamble Bay and a tax payer. Twenty years ago, my husband and I moved from Kent and built our home on a 7 acre parcel that has been in my family for over 40 years. I had been a weekend and summer resident of Port Gamble all of my life, I love this area and am willing to work hard to help protect it.

When we built our home, we wanted to make as little impact as possible to Port Gamble Bay. Instead of having a view, we built over 1000 feet back into the woods, to enjoy the tranquil life of the forest, and have removed very few trees. Although we still commute to Boeing, we chose this life style for the peace and tranquility, away from the airports, freeways, polluted beaches and the high stress life style that urban areas bring.

Shortly after moving into our home, we found that we are in the landing pattern for sea planes on Port Gamble Bay. During the summer period we have daily sea planes flights low over our home for the "touch and go" practice landings on the bay. One sea plane may make 5-10 practice landings before heading back to the urban areas, where the pilots in training call home. Our entire house rattles as the planes approach low over head. During the first summer, I would run outside. I was so sure that they would crash into our home, worrying about the safety of our infant son, who is now off to college. Little has changed over the years, except the constant interruption to our peace and tranquility by the sea planes. One benefit of fall and winter is the sea plane traffic ceases.

I am writing to express my concerns regarding the proposed change to zoning code (Title 17) to allow seaplane and tour boat facilities to be built at Port Gamble. I have been actively opposing this for many, many years. I am very concerned that if the Kitsap County Planning commission approves this change, it will bring more sea planes and commercial boats into Port Gamble Bay. What better place would there be to practice landings than Port Gamble Bay if you could stop for lunch after a session of practice landings? For my family, this proposal is like the 3rd run way at SeaTac, something that the city dwellers opposed for years. We moved to the rural area to get away from the noise and pollution, of the city. Although I loved to walk on Alki beach as a child, and enjoyed seeing clam holes, I would never even imagine eating a clam and never saw an oyster. I have enjoyed eating clams and oysters from our family beach on Port Gamble Bay for my entire life, something that will surely change if a commercial tour boat terminal is built in the Bay. Once the shellfish and herring are gone, and then will come the marina, because what is preventing it is the marine life in the Bay that will be gone for ever.

I oppose the staff recommendation to change the zoning code (Title 17) to allow seaplane and tour boat facilities at Port Gamble. I have been opposing this facility for over 5 years, every time it looks like the county has FINALLY determined it is a bad thing, this proposal comes back yet again. There are two paths for the Bay, the commercialization of the Town on Port Gamble including options such as the sea plane float, commercial tour boat dock and yes eventually a marina (picture one) , or protection of the pristine bay that is pictured below from my family's beach. The path that is taken for the Bay will be greatly influenced in this decision regarding zoning changes to Title 17.



Port Gamble Bay is one of the last pristine bays in Puget Sound and is classified as a Shoreline of State Wide Significance. It is likely the most important remaining spawning area for Pacific Herring South of the Strait of Georgia. Please protect Port Gamble Bay home to herring, salmon, clams, oysters, eagles and numerous other sea and shoreline creatures and turn down the zoning changes to code (Title 17).

Sincerely,

Gwenn Thomas
Friends of Port Gamble Bay

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PHILLIP E. KATZEN
JOHN C. SLEDD
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303 DETROIT STREET
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FAX: (734) 769-2701

October 25, 2011

Kitsap County Planning Commission
c/o Scott Diener
Kitsap County Dept. of Community Development
614 Division Street, MS - ##
Port Orchard, WA 98366-####

RE: Proposed Title 17 Permitted Uses Amendments – RHTW Zone

*** BY EMAIL ***

Honorable Planning Commissioners:

The Port Gamble S'Klallam Tribe submits this letter and its attachments regarding the proposed amendment of the Title 17 to allow float plane and tour boat terminals as conditional uses in the Rural Historic Town Waterfront (RHTW) zone at Port Gamble. The letter reviews past proposals for tour boat facilities at Port Gamble and summarizes concerns of permitting agencies that the location is not appropriate for such facilities. The letter also responds to certain material submitted to the Commission by OPG. The attachments consist of original permitting material and other supportive documents.

I. Permitting Agencies Have Expressed Concern That Port Gamble is an Inappropriate Location for Tour Boat and Float Plane Facilities.

There is a five year history of proposals for docks at Port Gamble that could serve float planes and tour boats. These proposals have resulted in permit denials and expressions of concern from state and federal agencies, based largely on the following:

- Herring spawning areas throughout the RHTW zone;
- Unresolved hazardous substance contamination;
- Effects on threatened salmon;
- Conflict with tribal fishing gear ; and
- Water quality degradation and shellfish harvest closures.

These concerns stem from the unsuitability of the locale for this proposed use, and would exist regardless of the details of the structure or the conditions attached to its operation. Because of these and other concerns, tour boat and float plane terminals should remain a prohibited use in the RHTW zone.

Letter to Planning Commission
RE: RHTW Permitted Use Amendments
October 25, 2011
Page 2

The remainder of this letter explains the permitting history and each of the major site-related concerns.¹

A. May, 2006 Application

In May, 2006, Caicos Corp., a tenant at Port Gamble, applied for permits for a large floating dock in the "north embayment," just inside the jetty at the mouth of Port Gamble Bay, at the northeast corner of the former mill site. The application quickly died. The State Department of Natural Resources (DNR) denied Caicos' request to lease submerged land (seabed) for the dock. The Washington Department of Fisheries and Wildlife (WDFW) denied an Hydraulic Project Approval (HPA) for the project.

B. August, 2006 Application

In August, 2006 Caicos submitted another application to install the dock at the same site. OPG asked to be substituted as the permit applicant in January, 2007. It submitted a revised project proposal in May, 2007.

In June, 2007, WDFW informed the County that the proposal would likely constitute a marina under WDFW's Hydraulic regulations, which prohibit marinas in documented herring spawning areas.² The entire RHTW zone at Port Gamble is designated herring spawning area.³

In September, 2007 the National Marine Fisheries Service, reviewing the project pursuant to the Endangered Species Act (ESA), determined that it was likely to adversely affect threatened salmon species and their critical habitat.⁴ NMFS also found that the project may affect essential herring habitat, protected under the Magnuson-Stevens Fishery Conservation Act. The primary concern of the NMFS was the project's location in a spawning area for herring, which are a key food for salmon and many other species. NMFS was concerned that the dock and prop wash from larger vessels could harm spawning habitat and damage herring eggs.

In October, 2007, WDFW issued an HPA for the project, despite its previously expressed opposition.

¹ The Tribe submitted many of the key permitting documents for the record on October 18, 2011.

² June 5, 2007 letter, Randi Thurston, WDFW to Dave Greetham, DCD (emailed with this letter). "Marina" may be defined differently by WDFW, the state department of Health (DOH), and the county's Shoreline Master Program (SMP). The fact that a facility is not deemed a marina by the County does not mean it is not a marina for HPA or DOH purposes.

³ *Id.*; Map, Groundfish (including herring) Spawning Areas, Kitsap County Shorelines Program (Item 11 on Index to Documents provided by Tribe 10/18/11). The Port Gamble herring stock is the second largest in Puget Sound. *See* May 28, 2010 letter from Phil Katzen, counsel for the Tribe, to Jess Jordan, Army Corps of Engineers, pp. 7-8 (emailed with this letter). The importance of the Port Gamble stock is magnified by severe declines in other major regional herring stocks. *See id.*

⁴ September 6, 2007 non-concurrence letter, Steven Landino, National Marine Fisheries Service (NMFS) to Michelle Walker, U.S. Army Corps of Engineers (Item 1 on Index to Documents provided by Tribe 10/18/11).

Letter to Planning Commission
RE: RHTW Permitted Use Amendments
October 25, 2011
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In April, 2008, the United States Army Corps of Engineers ("the Corps") cancelled the Joint Aquatic Resource Project Application (JARPA) because the proposal had changed and was no longer the same as the one described in the JARPA.

Also in April, 2008, the Board of County Commissioners upheld the shoreline permits for the project, subject to numerous conditions including a prohibition on overnight moorage and a requirement that OPG develop a plan, approved by DOH, to "ensure that the project does not result in shellfish closures."⁵

In May, 2008, the state Department of Ecology (DOE) appealed the issuance of the Shorelines permit to the Shorelines Hearings Board. DOE's concerns went well beyond the one issue of dock width, which was described in the October 17, 2011 (8:20 p.m.) Department of Community Development (DCD) e-mail to the Planning Commission. DOE also claimed that the proposal would be inconsistent with the county's Shoreline Master Program (SMP) because:

- It would constitute a marina, for which the SMP required additional studies and consideration;
- It would be inconsistent with the existing character of the area;
- It was a toxics cleanup site, and prop wash could disturb and redistribute contaminated sediment;
- It was not established that the facility would not harm species of concern, including salmon and herring, and their habitat.⁶

In July, 2008, WDFW revoked the HPA for the project because its primary purpose was to provide moorage for tour boats and other vessels, thus constituting a marina over a designated herring spawning area, in violation of the Hydraulic Project rules.⁷

In February, 2009, prior to the Shorelines Board hearing the case, OPG stipulated to withdraw its permit application, and all parties stipulated to dismiss their SHB appeals.⁸

⁵ April 29, 2008 letter from County Commission to Jon Rose, OPG, and attached decision. Under the National Shellfish Sanitation Program (NSSP) administered by the FDA, DOH, and treaty tribes, shellfish growing areas must be closed to commercial harvest when certain parameters for actual *or potential* fecal coliform contamination exist. Frank Meriwether, "Shellfish Closure Zone Estimates from the Proposed OPG Port Gamble Facility," May 28, 2010 (Item 6 on Index to Documents provided by Tribe 10/18/11).

⁶ DOE Petition for Review to the Shorelines Hearings Board, pp. 6-8 (Item 2 on Index to Documents provided by Tribe 10/18/11).

⁷ July 15, 2008 letter, Gregory Hueckel, Washington Department of Fisheries and Wildlife (WDFW) to Lauren Rasmussen, attorney for Port Gamble S'Klallam Tribe (Item 3 on Index to Documents provided by Tribe 10/18/11).

⁸ Signed Stipulation and Order of Dismissal, February 3, 2008, (emailed with this letter) (Unsigned Stipulation is Item 4, and the signed Order and cover letter were Item 5, on Index to Documents provided by Tribe 10/18/11).

C. December, 2009 Application

In December, 2009, OPG applied yet again for permits for a large dock at the north embayment site. The proposed uses included docking of four boats and float planes.⁹

In May, 2010, DNR suspended OPG's application for an aquatic lands lease on the grounds that the Bay and project site are a state hazardous waste cleanup site, and the cleanup investigation and study of cleanup feasibility are incomplete.¹⁰

In May, 2010 the Tribe submitted extensive comments to the Corps regarding the adverse effects of four boat and float plane traffic at this location upon tribal treaty fisheries.¹¹ The Tribe's concerns are inherent in this location, including harm to herring and spawning habitat; unresolved toxic cleanup and habitat restoration issues; risks of collision with tribal fishing gear; and the likelihood of shellfish closures.

In December, 2010, OPG requested that processing of its shoreline permits by DCD be suspended. DCD granted a suspension through December 31, 2011.¹²

In March, 2011 OPG withdrew its application to DOE for a Coastal Zone Management Act Consistency Determination and a Clean Water Act §401 Water Quality Certification.¹³

In April, 2011, OPG withdrew its application for Army Corps' permits.¹⁴

⁹ October 13, 2001 letter, Derek Koellmann, Anchor QEA to County Commission (previously forwarded to Planning Commission by DCD), Attachment D (December 2009 JARPA), p. 5, Item 6a.

¹⁰ October 17, 2010 letter, DNR to Jon Rose, OPG (emailed with this letter).

¹¹ May 28, 2010 letter from Phil Katzen, counsel for the Tribe, to Jess Jordan, Army Corps of Engineers (emailed with this letter). The Tribe is not attaching to this letter the voluminous supporting material that the Tribe filed with the Army Corps, with the exception of the Meriwether shellfish closure report referenced in footnote 5 above and previously provided to the Commission. All other supporting materials referenced in the Tribe's comment letter to the Corps are available from the Tribe on request.

¹² December 9, 2010. Letter, Larry Keeton, DCD, to Joseph Brogan, counsel for OPG (Item 3 on Index to Documents provided by Tribe 10/18/11). Under Kitsap County Code 21.04.050(J), this cessation of processing should have lasted no more than six months, after which the application should have been deemed withdrawn. DCD, however, decided in May, 2011 to *extend* the improper processing suspension, through December, 2012. May 16, 2011 letter, Larry Keeton, DCD, to Joseph Brogan, counsel for OPG (emailed with this letter).

¹³ March 21, 2011 letter, Jon Rose, OPG, to Rebekah Padgett, DOE (Item 8 on Index to Documents provided by Tribe 10/18/11). As this letter and others provided here make clear, OPG has not put its state and federal permit applications on hold. *Compare* OPG email contained in October 13, 2011 supplemental staff report ("OPG has placed its applications for a dock on hold with the permitting agencies").

¹⁴ April 7, 2011 letter, Jon Rose, OPG, to Jess Jordan, U.S. Army Corps of Engineers (Item 9 on Index to Documents provided by Tribe 10/18/11).

In May, 2011, the Corps confirmed that it had cancelled OPG application for Army Corps permits and DOE authorizations, at request of OPG.¹⁵ The Corps noted that substantial regulatory concerns had been raised concerning conflicts between the proposal and tribal treaty fishing.

II. MATERIAL SUBMITTED TO THE COMMISSION BY OPG DOES NOT DISPEL CONCERNS THAT THE RHTW ZONE IS AN INAPPROPRIATE LOCATION FOR TOUR BOAT AND FLOAT PLANE TERMINALS.

Olympic Property Group submitted materials before the October 18, 2011 Commission meeting in an effort to rebut the Tribe's showing that, regardless of any reasonable permit conditions, the Port Gamble waterfront is no place for tour boat and float plane terminals. The Tribe wishes to respond to key arguments by OPG which may mislead the Commission.

A. The Status of Commercial Shellfish Harvest at Other Locations Does Not Show That Closures Would Not Result at Port Gamble.

In an e-mail, reproduced in the October 13, 2011 supplemental staff report to the Commission, OPG noted that a large dock had been built at Suquamish and shellfish closures had not been imposed as a result of the dock.¹⁶ The dock, however, is within the shellfish closure zone for the existing Suquamish sewage plant outfall.¹⁷ Once closed, any added impacts from the dock cannot make the area "more closed." The Suquamish dock offers no lessons for Port Gamble.

OPG also noted that tour boats dock at Kiana Lodge just south of Agate Pass but there is no shellfish closure there. That, too, has no significance to Port Gamble. Port Gamble has multiple moorage structures, a history of use by multiple vessels and the potential to attract multiple users, and enclosed waters.¹⁸ Adding a tour boat terminal in that location is far more likely than the one, private dock at Kiana to meet the definition of a "marina" under the NSSP, and thus to trigger a mandatory shellfish closure zone.¹⁹ If the area is treated as a marina, it must be closed regardless of voluntary or permit conditions placed on its operation. Even "best management practices" (BMPs) would only diminish the size of the closure zone. The permit conditions proposed by OPG and mentioned in its email included in the October 13, 2011 supplemental staff report, fall short of BMPs.²⁰ Even if the Port Gamble waterfront

¹⁵ May 26, 2011 Letter, Jess Jordan, U.S. Army Corps of Engineers, to Jon Rose, OPG (Item 10 on Index to Documents provided by Tribe 10/18/11).

¹⁶ October 13, 2011 Memorandum, Scott Diener, DCD, to Planning Commission, p.13.

¹⁷ December 31, 2010 Port Madison shellfish growing area annual DOH review, p. 3 (map of Suquamish and other closures) (emailed with this letter).

¹⁸ See Meriwether report, n. 5 above, at page 8.

¹⁹ See June 3, 2010 letter from Mark Toy, DOH, to Karen Ashcraft, DCD (emailed with this letter) ([T]he intensity of use described in the [OPG] proposal appears to meet the definition of a marina, requiring establishment of a shellfish closure zone.")

²⁰ Meriwether Report, footnote 5 above, pp.11-12.

were not considered a marina, DOH could close the area based on the potential for bacterial contamination from either sewage or gray water discharge.²¹ Accidental and potentially large sewage spills from tour boats would also result in closures.

Port Gamble Bay is the last major inlet in Kitsap County that has no shellfish harvest restrictions due to bacterial contamination. Shellfish harvests in the Bay are crucial to the Tribe's economy and culture. The RHTW zone is barely a stone's throw from commercial geoduck tracts in the Bay, and not much further from the vital clam and oyster beds on Point Julia on the Tribe's Reservation. This is no place for a tour boat terminal that would put those shellfish resources at significant risk.²²

B. Float Planes and Tour Boats Pose Substantial Risk of Collision With Fishing Vessels, Gear, and Operators, and Substantial Risk of Harm to Marine Birds and Mammals.

The waters of Port Gamble Bay and adjacent Hood Canal adjoining the RHTW zone are intensively utilized by the Port Gamble Tribe, and other tribes, for harvest of salmon, crab, geoduck, and other fish and shellfish. These fisheries involve a variety of gear from nets affixed to the shore, to nets attached to drifting boats, to crab pots, to fixed dive gear (*i.e.*, where a diver is connected to the boat by an air hose and tether). The nature, density, and location of Port Gamble tribal fishing effort in these areas was detailed in the Tribe's comments to the Corps regarding the latest OPG dock proposal.²³ Gear conflicts are real. They occur regularly in crowded waters. They cause expensive damage and can endanger fishers. Dive boats with divers in the water are immobile and especially vulnerable. While float planes, landing in good daylight conditions, could see and avoid vessels, it would be much harder to avoid long monofilament nets tethered to shore, or for planes taking off to see small boats near the end of their "runway."

The noise and operation of float planes may also disturb marine life, including marine mammals at the haul out locations in the Bay. Eagles are also at risk from float plane collisions. There are several designated eagle perch or nest areas shown on county maps within the vicinity of the Bay. Collisions between small planes and eagles can cause serious injury and property loss to humans, as well.²⁴

III. CONCLUSION.

The extensive evidence presented to permitting agencies over the past five years has led key agencies to decide that tour boat and float plane facilities on the Port Gamble waterfront are inappropriate. These facilities should not be allowed as conditional uses. No permit condition can eliminate herring spawning habitat, or clean up contaminated sediment, or prevent all risk of shellfish closure. No permit condition

²¹ Tour boats generally do not retain or treat the gray water from such things as hand-washing and kitchens. Gray water can contain very high fecal coliform levels. *Id.* at 8-11.

²² Kitsap County planning policies are consistent with the current prohibition on tour boat and float plane terminals in this zone, stating that, "Proposals for development in Hood Canal ... that ... significantly degrade the resources of Hood Canal should be prohibited. Resource Policy 1, KCC 22.24.010(J).

²³ May 28, 2010 comment letter, footnote 11 above, at pp. 7-12, 14-16.

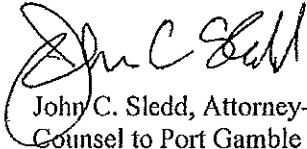
²⁴ U.S. Fish and Wildlife Service, Final EIS, Proposal to Permit Take (April 2009) (analyzing proposal to permit taking of bald and golden eagles where necessary to protect public safety).

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can insure that such facilities will not prevent habitat restoration activities that would be appropriate recompense for past pollution. No permit condition can relocate the RHTW zone to a place with fewer fisheries, less wildlife, or less significance to the Port Gamble people. No realistic set of permit conditions can make these facilities fit for their location

The Tribe therefore requests that the Commission recommend that float plane and tour boat terminals continue to be prohibited in the RHTW zone.

Very Truly Yours,



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