

# *HarborWorks*

Port Angeles Harbor-Works Development Authority  
Board of Directors Meeting  
Vern Burton Conference Rooms, City Hall  
November 5, 2008

## MINUTES

### 1. Call to Order

The meeting was called to order by President Orville Campbell at 2:34 p.m.

### 2. Roll Call

Directors present: President Orville Campbell and Directors Howard Ruddell, Jerry Hendricks, Karen McCormick, and Bart Irwin  
Staff present: Karen Kilgore  
City Representatives Present: Betsy Wharton  
Others Present: Rebecca Paradis, Melanie Roed, John Ford, Rosemary Cockrill, Kathy Duff, Jack Markley, Jim McEntire, Mark Johns, Tom Callis, Larry Dunn, Darlene Schanfeld, Dick Goodman, Thom O'Dell, Ron Richard, Paul Perlwitz, Shirley Nixon, Martin Powers, Harry E. Grant, David Tamaki

### 3. Approval of Minutes: October 29, 2008 Special Board of Directors meeting\*

MOTION: It was moved by Jerry Hendricks and seconded by Karen McCormick to adopt the minutes of October 29, 2008 Special Board of Directors meeting. The motion carried unanimously.

### 4. Public Comment

Ron Richards made the following comments:

- After reviewing documents obtained by public disclosure requests, he thinks there were violations of the Open Public Meetings Act leading up to the creation of the PDA, the appointment of directors, and the appointment of city and port representatives.
- He is concerned that there may have been a violation of Title 4 of the Municipal Code.
- He feels that the board is not legally constituted and the PDA is not legally formed, and that therefore anything they do is void.
- He feels that there is an appearance of impropriety as a public organization and he requested that the board write a resolution to the City of Port Angeles requesting that the PDA be dissolved and that the process of formation be started anew.
- He thinks that PDAs are OK if they are legally constituted, and that they can provide benefits such as limiting liability and providing a way to obtain federal grants.

Shirley Nixon read from written comments:

- She is concerned about the appearance of impropriety in the formation of the PDA and questioned the use of the Executive Session exemption to the Public Open Meetings Act.
- She feels that if the PDA acquires the Rayonier Mill site, that it will be removed from the tax rolls resulting in a loss of tax revenues and the possible acquisition of unknown liabilities for environmental cleanup.
- She requested that the PDA board make audio recordings of all executive sessions.
- She invited all in attendance to an educational event on the topic of Open Government, to be held in Port Angeles on November 12.

Jack Markley made a brief statement questioning the necessity of creating a PDA. He asked why the city, the port, or an existing agency could not do the tasks the PDA is intended to do.

Dick Goodman stated that he sees in the PDA a group of people who have decided to do something after many years of talking and not getting anything accomplished. He congratulated the board for doing a good job of taking action and suggested that if it is necessary to re-form the PDA, then we should do so and move forward.

## **5. Presentation by Washington State Department of Ecology**

Jim Pendowski, who manages the Washington State Department of Ecology Toxics Cleanup Program, introduced Rebecca Lawson, Manager of the Southwest Regional Office of the Washington State Department of Ecology and Melissa Roark, Assistant Attorney General assigned to the Rayonier Mill site cleanup and other future projects in the Port Angeles harbor.

He stated that they have read the newspaper accounts, know the issues and concerns, and understand the ongoing current debate. Further, he explained that the purpose of their presentation is to talk about the process, resources, and the implications of choices that may be made.

Rebecca Lawson gave a PowerPoint presentation focusing on five major areas:

### **1. Model Toxics Control Act (MTCA).**

MTCA is the state cleanup law. Lawson provided definitions of many terms, and pointed out some key concepts:

- A cleanup site is any place where contamination is found. A site is not the same as a property. There can be multiple “interim actions” to clean up portions of a site, but a Cleanup Action Plan (CAP) applies to a whole site. For example, the Rayonier Mill is just one part of the Rayonier Cleanup Site.
- Strict liability - Ecology only needs to work with one Potentially Liable Person (PLP) to accomplish the cleanup, even though there might be multiple PLPs. Liability is not apportioned; if an organization or agency buys a part of a site, then they are responsible for cleanup of the whole site. This helps with the timeliness of accomplishing the cleanup.
- Administrative mechanisms – there are three legal mechanisms under which cleanup work is performed: agreed orders, consent decrees, and enforcement orders.

Jerry Hendricks asked for some insight into state vs. federal processes specific to the Rayonier site. Rebecca Lawson responded that the site is unique in that it is the only site that has a

deferral agreement from the federal EPA. Years ago there was discussion of making it a superfund site but the cleanup was deferred to the State of Washington because MTCA standards meet CRCLA requirements. EPA will accept cleanup done under MTCA standards because it meets the tests of both regulatory schemes.

Bart Irwin asked for a definition of concurrence of the Elwha, and how does the tribe connote concurrence. Melissa Roark responded that this is not as clear with ecology-led actions. The agreement is for the tribe to have a concurrence role regarding the Rayonier Mill site. Over the years, Ecology has worked with the tribe to gain concurrence.

Orville Campbell asked about the concept of prospective purchaser agreements, how they work, and if they have been done in the past. Melissa Roark responded that it is a way to settle liability "up front" so that the purchaser will not be in the same class as the other PLPs. They manage where the liability is assigned. These agreements have been negotiated with both private and public entities but they are not the only way contaminated property can be purchased. This can also be accomplished with side agreements that define who will take future liability. The State's interest is in getting things cleaned up. Ecology doesn't care who does the cleanup, but if a problem occurs, the original PLP is still liable.

Jerry Hendricks asked about how the Foss waterway and Bellingham projects were funded. Jim Pendowski responded:

For the Foss and Commencement Bay cleanup, Tacoma formed a PDA but they weren't eligible for grant funding because they couldn't come up with matching funds. The City of Tacoma outright purchased multiple pieces of property and has been working to clean up and develop them. This has been going on 15 years.

Bellingham did not form a PDA; the Port bought back a chunk of its waterfront. The commissioners bought the property from Georgia Pacific. Ecology negotiated orders and consent decrees for the \$60 Million cleanup. There is still a debate over the choices made. The biggest issue is what will happen once the cleanup is finished and there are issues of governance between the port and the city.

Pendowski concluded that each community has to come to its own conclusions.

## 2. Grant Funding for Cleanup

There are two types of specific grants for local governments who are PLPs and are doing cleanup under formal agreements (agreed orders or consent decrees) with Ecology: Remedial Action Grants (RGAs) or Integrated Planning Grants (IPGs). The grants provide for a 50% match of eligible project costs. IPGs are a new kind of grant for governments who are not yet PLPs but who are looking to purchase/redevelop contaminated property. They help look at the potential public benefit by supporting the exploration process to help understand risks. Lawson emphasized that these grants could potentially be available to the PDA but availability is not guaranteed.

## 3. Rayonier Mill Cleanup

Lawson explained that this is a very complicated project. There are two Agreed Orders -- upland and marine. She explained that Rayonier is not willing to look beyond the property boundaries, so Ecology is doing a separate off-property soil dioxin study. She described the timeline for investigation and clean-up phases. Final clean-up is expected after 2010.

Howard Ruddell asked when the property may be ready for redevelopment. Lawson responded that the archeological resources should be able to be implemented in 2012 for the upland portion, and the marine portion could follow in parallel but many things could slow the process. She further stated that Ecology is not waiting to see if the PDA or somebody else is going to buy the property. Whether the ownership is public or private doesn't change what the owner is responsible for. This is the most important point of the day.

#### 4. Port Angeles Harbor Sediments Study

Ecology felt that there were gaps in the data from Rayonier samples. Lawson showed a photograph of the harbor area with locations of samples delineated. The purpose of the study is to help define the extent of the contamination associated with the Rayonier site.

#### 5. Rayonier Mill Off Property Soil Dioxin Study

Ecology is conducting this separate study because Rayonier is not willing to look off-property for additional contamination. The purpose of the study is to help determine the magnitude of dioxin soil contamination in areas near Rayonier. Rayonier will be responsible for further studies if the former mill is identified as a source of contamination.

#### Next Steps

Ecology plans to work with the PLP to move forward with the study area. Studies and investigations planned for 2008-2010 will help to create an estimate of cleanup costs if the property is sold. Beyond 2010, Ecology envisions final cleanup and redevelopment of the Rayonier Mill property.

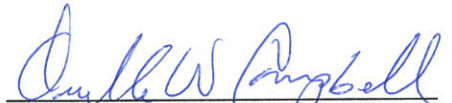
Jerry Hendricks asked whether the PDA might be served to explore cost cap insurance when they have a full-time director. Cost cap insurance could be a way to manage unknowns by putting a cap on costs so that if they go above a certain amount, the insurance would cover that. Melissa Roark replied that this insurance would be an eligible expense under a remedial action grant.

Bart Irwin asked whether the 2010 timeline is sensitive to Ecology's funding by the legislature? Lawson responded that they are committed to resource the project even if Ecology does not have funds. They will cut back other projects if they have to, to meet the needs of this project.

## 6. Adjournment

Orville expressed appreciation to Pendowski, Lawson and Roark for the visit and sharing good info that the Board can integrate in its thinking. They will be invited again. The presenters brought a copy of the MTCA, remedial actions grants/loans guidelines, copies of the presentation for today, and a booklet on the history of the Rayonier Mill (shared with newspaper reporter). It was agreed that they accomplished their purpose today.

There being no further business or comment, President Orville Campbell adjourned the meeting at 4:16 p.m.

  
Orville Campbell, President

  
Karen Kilgore, Clerk/Administrator