EXHIBIT P

Applicant's Technical Memo: "Response to Tribe's Comments"

(January 6, 2021)

Date: January 6, 2021

To: Marla Powers, Associate Planner, City of Poulsbo PED
Alison O'Sullivan, Suquamish Tribe

From: John Piccone, P.E., Soundwest Engineering Assoc.
Carol Tripp, Port of Poulsbo Manager

Subject: Response to Suquamish Tribe comments related to the Port of Poulsbo Breakwater Replacement Project

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The Port received additional Suquamish Tribe Comments on November 30, 2020 for the Port of Poulsbo Breakwater Replacement Project. The Port offers the following responses:

Tribe Comment. *Regarding the grating for Port of Poulsbo. I believe that during our call John had a different interpretation of "feasible" than what 220-660-400 implies.*

d) Whenever feasible, design marinas and terminals to allow light penetration to intertidal and shallow subtidal water areas.

My reading (and that concurs with what I understand from discussions with Nam who I have cc'd here) is that although marinas have necessary infrastructure needs that would preclude grating in areas (pump outs, utilities etc.) it is expected that remaining areas that can be grated should be grated and it is not based on economics i.e. how much the applicant desires to spend. In addition, those areas proposed for grating only have 35% grating and it is unclear if this is functional grating.

Port Response. The Port concurs with the Tribes assertion of applicability of WAC 220-660-400(3)(d). We apologize if the project intent regarding grating has not yet been made clear, but we are making every effort to provide functional grating where feasible. Additionally, we are not limiting the proposed grating based on economic considerations. The Port's goal and proposed design does not seem to conflict at all with the Tribes assertion and we are genuinely interested and motivated to provide light penetration. The following underlined text is a copy of our Nov. 6, 2020 response to Tribes comments regarding grating:

> The project design has made every effort to provide functional grating where feasible and seems to be in full compliance with WAC 220-660-400, Marinas and terminals in saltwater areas. Enclosed, please find the Port's correspondence with WDFW Biologist, Nam Siu, clarifying grating requirements for the proposed project.
>
> The design is providing grating to the extent feasible on all finger floats and the mainwalk connector; it's likely possible that it will even meet requirements for residential floats per WAC 220-660-380 (30% for 6' wide and less, 50% for 8' wide and less).
>
> It is not feasible from an engineering perspective to provide light passage within the footprint of the restroom float or floating breakwater.

We have stated "likely possible" because it will be challenging to provide 50% functional grating on the 8' wide mainwalk connector due to the utilities, fire safety, and lighting requirements; however, we are doing our best to provide as much light penetration as feasible.

Tribe Comment. *The Tribe still has not received information regarding construction activities that may impact Tribal fishery activities. How many barge trips are expected and will there be barges staged in Liberty Bay? I think John had said there would not be multiple trips but he was going to confirm and I do not have confirmation.*

Port Response. The following underlined text is a copy of the Port's prior response submitted in our Nov. 6, 2020 memo:

> It is expected that the construction contractor will mobilize a barge on site during construction and that the majority of the work will be staged from the barge. It is highly likely that the contractor will elect to keep the barge moored to components of the existing and new breakwater during construction, moving the barge only within the immediate area of proposed work. Due to the cost associated with mobilizing a construction barge, it is also highly likely the contractor will plan his work to minimize barge trips to the site.
>
> The related provisions and BMP's described in the mitigation plan related to use of a barge, pile driving, etc., and limiting project staging to remain within the Outer Harbor Line, will be a contractual requirement of the contractor's work.

This project must be publicly bid and as such we will not have certain knowledge of how many barges will be used or how many trips they will take in order to complete the work until the contractor is selected (which must occur after permitting). It is certain that there will be a barge staged in Liberty Bay to complete the work and staging will be confined to within the OHL. There may be more than one barge but it's unlikely there will be more than two barges. All staging will occur within the OHL and/or on Port property. The Port is not comfortable defining a maximum number of barge trips to and from the site because the means and methods of executing the work must be the responsibility of the contractor. If the Tribe can identify a specific concern related to a specific number of trips or specific navigation route the Port will make every effort to ensure the contract documents address the specific concern prior to bidding the project.

Tribe Comment. *The vessel traffic issues are still remaining and need to be resolved with the Tribe.*

Port Response. The following underlined text is a copy of the Port's prior response to this comment submitted in our Nov. 6, 2020 memo:

> Regarding sea plane traffic; the Port has elected to remove relocation of the seaplane base from the project as of October 2020. Revised permit application materials have been submitted to the City to reflect this change. Regarding vessel traffic; the goal of the project is to provide suitable moorage for transient boaters that frequent Poulsbo during the peak boating season. Currently, the Port reaches capacity at these times and the additional boaters are forced to anchor in the harbor just outside the marina and come ashore using dinghy's or otherwise. It's not clear that there will be additional vessel traffic, and if so, how that might be quantified in terms of impacts to fishery

activities. Based on the meeting between the Port and the Suquamish Tribe on October 14th, it is understood that the Tribe will be reviewing potential impacts internally and no further information is needed from the Port to conduct this review at this time.

The Port's position is that it is not possible to quantify additional vessel traffic that may be a direct result of this project post-construction. Vessel traffic in and out of Liberty Bay is currently numerous and common and results through a wide variety of factors; however, the popularity of Liberty Bay is not likely to be significantly affected by this project and it is very plausible that the project will not result in any increased vessel traffic. If however, the Tribe can offer specific and quantifiable concerns related to vessel traffic post-construction, the Port is very willing and eager to work with the Tribe to specifically resolve any concerns.

Tribe Comment. *As per Table 1 in the mitigation plan the 21, 491' of overwater coverage is minus the grating (I brought this up during the call). When looking at overwater coverage grating (to achieve current required standards) cannot be considered mitigation. Also, it appears that the removal of creosote piles are counted twice in the mitigation table as both substrate impact removal and creosote pile removal?*

Port Response. The quantity of 21,491 cited in the Tribes comment does not reflect the revised table 1 submitted to the City with the technically complete submittal package, this seems to imply that this comment is not based on the current mitigation plan?

The mitigation plan table 1 (both the original and revised version) includes four columns. The first column clearly identifies the total area (without any reduction resulting from grating) of each individual item removed and installed. The bottom of the table identifies a "Net Increase in Aquatic Habitat" of 37,573 sf; this is simply the total area of items removed (59,952 sf) minus the total area of items installed (22,379 sf). The additional three columns are provided for the reviewers' convenience so they may better understand the nature of that area. This is a common method for presenting this data so that different agencies and individuals will have a clear picture of the type of impact that area represents.

The Port is not attempting to represent grating as mitigation or to double count anything. The Port is in fact making its very best effort to accurately represent the mitigation data. The Port of Poulsbo is committed to ensuring that this project meets current no-net-loss standards and considerable attention and effort have been applied to the design in an effort to exceed that standard. It is the Ports position that this project significantly exceeds no-net loss and represents a considerable environmental improvement for Liberty Bay.

Date: November 6, 2020

To: Marla Powers, Associate Planner, City of Poulsbo PED

From: John Piccone, P.E., Soundwest Engineering Assoc.
Carol Tripp, Port of Poulsbo Manager

Subject: Response to Suquamish Tribe comments related to the Port of Poulsbo Breakwater Replacement Project

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The Port, City, and Suquamish Tribe held a video conference meeting on October 14th to discuss the Tribe's comments. The following responses addressing the Tribe's comments incorporate discussion at that meeting:

1) Proposed grating for the float extension, finger floats, recreational and restroom floats and sea plane base floats do not appear to have adequate grating.

The project design has made every effort to provide functional grating where feasible and seems to be in full compliance with WAC 220-660-400, *Marinas and terminals in saltwater areas*. Enclosed, please find the Port's correspondence with WDFW Biologist, Nam Siu, clarifying grating requirements for the proposed project.

The design is providing grating to the extent feasible on all finger floats and the mainwalk connector; it's likely possible that it will even meet requirements for residential floats per WAC 220-660-380 (30% for 6' wide and less, 50% for 8' wide and less).

There are no recreational floats proposed (please refer to Project Drawings).

It is not feasible from an engineering perspective to provide light passage within the footprint of the restroom float or floating breakwater.

Please note that the Port has elected to remove relocation of the seaplane base from the project as of October 2020.

The Port understands that WDFW will conduct a full review of the project per the State hydraulic code relative to light passage requirements for marinas and that the project may not be constructed without an HPA.

2) Grated areas should not be deducted from overwater coverage. Overwater coverage even with grating is still an impact and needs to be mitigated. Although locating the structures in deeper water reduces benthic habitat impacts there are still impacts to the photic zone.

The mitigation report quantity table includes total area and shaded area for each component of the demolition and installation in an effort to provide added clarity for the reviewer regarding the shading effect of each component. It is understood that WDFW and other reviewers will be looking at the total areas of overwater coverage.

As a means of evaluating the adequacy of the mitigation proposed for this Project (including minimization, restoration and compensation actions described in the project Mitigation Plan), the Port used the Regional General Permit (RGP) 6 calculator to estimate the mitigation "debits" generated by the proposed project and "credits" for the proposed project mitigation. Although this model is for use in determining mitigation requirements for the permitting of residential docks in Puget Sound, it does provide a framework with which to gauge the adequacy of the mitigation provided by the Project, both in terms of the design of the project and the additional actions proposed by the Port. It should be noted that the Port elected to remove relocation of the seaplane base from the project as of October 2020. The Mitigation Plan and RGP 6 calculation was updated to reflect this change and to demonstrate the mitigation debits resulting from the total area of new overwater coverage, including piling footprint, per RGP 6 instructions.

Based on RGP-6 calculator inputs, a total of 606.33 mitigation points (MPs) are required and 1,465.57 MPs are proposed for the project. While it is understood that there are significant caveats to using the RGP 6 calculator in this way, it does provide a rough comparison of the ecological value of removing the existing breakwater compared with construction of the proposed project. Furthermore, this analysis does not include significant mitigation measures including removal of scour rock and debris or removal of sunken vessel and debris. Incorporating these and the other mitigation actions proposed would result in a significant enhancement of water quality and habitat conditions at the site over the existing condition.

Based on this evaluation, the Port believes the proposed compensation provides a fairly significant net gain in water quality and habitat conditions at the site.

3) Additional vessel traffic and potential sea plane traffic may impact Tribal treaty fishery activities. It appears that the existing dock can accommodate one plane and the new proposed dock can accommodate two to four. Any impacts identified will have to be resolved prior to permit issuance.

Regarding sea plane traffic; the Port has elected to remove relocation of the seaplane base from the project as of October 2020. Revised permit application materials have been submitted to the City to reflect this change.

Regarding vessel traffic; the goal of the project is to provide suitable moorage for transient boaters that frequent Poulsbo during the peak boating season. Currently, the Port reaches capacity at these times and the additional boaters are forced to anchor in the harbor just outside the marina and come ashore using dinghy's or otherwise. It's not clear that there will be additional vessel traffic, and if so, how that might be quantified in terms of impacts to fishery activities. Based on the meeting between the Port and the Suquamish Tribe on October 14th, it is understood that the Tribe will be reviewing potential impacts internally and no further information is needed from the Port to conduct this review at this time.

4) Construction activities may impact Tribal treaty fishery activities. The Tribe would like information on barge staging areas and number of trips expected. Any impacts identified will have to be resolved prior to permit issuance.

It is expected that the construction contractor will mobilize a barge on site during construction and that the majority of the work will be staged from the barge. It is highly likely that the contractor will elect to keep the barge moored to components of the existing and new breakwater during construction, moving the barge only within the immediate area of proposed work. Due to the cost associated with mobilizing a construction barge, it is also highly likely the contractor will plan his work to minimize barge trips to the site.

The related provisions and BMP's described in the mitigation plan related to use of a barge, pile driving, etc., and limiting project staging to remain within the Outer Harbor Line, will be a contractual requirement of the contractor's work.

Based on the meeting between the Port and the Suquamish Tribe on October 14th, it is understood that the Tribe will be reviewing potential treaty impacts internally and no further information is needed from the Port to conduct this review at this time.

5) There has been no mention to the Tribe or in the materials regarding moving of the outer harbor line. There is one drawing that shows the proposed structure extending beyond the outer harbor line. If this is part of the project it needs to be included in the materials and rationale as to why this is needed. In addition, how would an adjustment of the outer harbor line affect the closure zone (shellfish harvest) associated with the marina?

Based on the meeting between the Port and Suquamish Tribe on October 14th, 2020, it was understood that this comment was meant to reference the PMA and not the OHL. As expressed during this meeting, the OHL was previously platted in 2007 and the Port is renewing the existing PMA with expansion out to the current OHL. There will be no changes on the shoreline side or any shoreline work in this project. It is expected that the City is likely to remain the SEPA lead on shoreline projects in future and will notify the Tribe of SEPA review.

6) It should be noted that prior to purchasing a used float both Elliott Bay Marina and the Port of Poulsbo should have contacted WDFW to ensure that it meets current code. In all replacement float HPAs there is a permit condition that states: Remove the existing float and associated materials from waters of the state. Do not relocate the structure within waters of the state without written authorization from Washington Department of Fish and Wildlife. If this structure does not meet current state code and is allowed to be installed additional mitigation must be required.

On July 26, 2019 we did meet on site with WDFW representative Nam Siu to discuss the project including the use of used breakwater pontoons that had been donated to the Port. The pontoons had not yet been disassembled in Elliot Bay or transported to Poulsbo at that time. Allison O'Sullivan was also present at that site meeting/discussion. The issue of the HPA requirements in the Tribes comments was discussed and Nam Sui commented that although not ideal it was not an issue WDFW would focus on since the floats could be removed from the water, transferred to a new owner, and subsequently re-installed under a separate HPA anyway.

The Port proceeded to locate an upland storage facility for the pontoons until construction could proceed; however, during that time the very poor condition and safety concerns of the existing breakwater also became more apparent. On December 23, 2019 WDFW issued an HPA for

temporary storage of the used pontoons at the Port of Poulsbo. The pontoons were moved to the project site ahead of the anticipated breakwater construction as an emergency measure to bolster the condition of the deteriorated existing breakwater.

During final construction, only the used concrete breakwater pontoons will be reused. They will be refurbished with new whalers, through rods, wave fence, bull rail, etc. The pontoons themselves are extremely similar in design to new breakwater pontoons currently being manufactured and installed in Washington for the purpose of a floating breakwater.

From: Siu, Nam (DFW)
To: John Piccone
Cc: Lauren Swanson
Subject: RE: Port of Poulsbo Breakwater Project
Date: Tuesday, November 3, 2020 6:07:30 PM

Hi John,

Thank you for contacting me to verify our understanding. Your email is correct, the code that applies to this project is WAC 220-660-400 Marines and terminals in saltwater areas. Per the following subsection of the code:

(4) ***Marina design:***

(c) The department may require a marina design to include grating to minimize impacts to juvenile salmonid migration corridors and native aquatic vegetation.

As it reads, although there is not a specific amount of functional grating required for floats in marinas, we have the discretion to require as much as possible/feasible. And as you note that I have previously mentioned, I typically use WAC 220-660-380 the rules for Recreational overwater structures in saltwater areas as a starting point for what amount of grating I would like to see achieved. Again at the end of the day, there is not a specific amount required in 220-660-400, but I would like to see the floats design with the most grating possible for the structures to still perform safely and as intended.

Hope this helps clarify, please let me know if you have any other questions.

Nam Siu
Area Habitat Biologist, North Kitsap and Bainbridge Island
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From: John Piccone <jpiccone@soundwesteng.com>
Sent: Tuesday, November 3, 2020 3:45 PM
To: Siu, Nam (DFW) <Nam.Siu@dfw.wa.gov>
Cc: Lauren Swanson <lswanson@soundwesteng.com>
Subject: Port of Poulsbo Breakwater Project

Good Afternoon Nam!

As we've discussed on previous occasions, the Port of Poulsbo is nearing final design of the planned breakwater replacement project. You and I have reviewed the project details in general terms on multiple occasions.

With regard to grating and light passage requirements for this project, I'd like to be certain I understand which section of the State hydraulic code applies to this project. Sections 380 and 400 both address grating and light penetration and It's my understanding that for this project WAC 220-660-400 is the applicable code. Further, I understand that the grating requirements outlined in WAC 220-660-380 do not specifically govern work on this project or other work within marinas.

I also understand that providing grating for this project where reasonably feasible is desired and encouraged by WDFW and that the grating requirements of 220-660-380 are considered a "good goal" for marina projects to strive to meet, even if not specifically required.

Can you please confirm my understanding stated above and/or provide any additional guidance on this question?

Thank you Nam!

John Piccone, P.E.

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