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SUPERIOR COURT OF WASHINGTON FOR MASON COUNTY

In re:

THE PORT OF TAHUYA,
a Washington port district

NO. **05 2 01083 9**

DECLARATION OF JIM CHRISTEN
IN SUPPORT OF PETITION FOR
DISSOLUTION OF PORT DISTRICT

JIM CHRISTEN declares:

1. BACKGROUND

1.1. I am a member of the Port of Tahuya Board of Commissioners, and am one of the petitioners in this case.

1.2. The Port of Tahuya is located in Mason County, and is a municipal corporation organized pursuant to RCW Title 53, governing port districts.

1.3. Brad Smith and I constitute the majority of the Port of Tahuya Board of Commissioners, which is the governing authority of the Port of Tahuya Port District. Dan McPhee was the third member of the Board of Commissioners through October ^{19 JLL} ~~31~~, 2005, but has since resigned.

1.4. At a special meeting of the Port of Tahuya Board of Commissioners held on ^{August JLL} ~~October~~ 31, 2005, the Commissioners unanimously voted to seek the dissolution of the Port.

1.5. The following facts support the dissolution of the Port:

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1 **2. BACKGROUND FACTS - HISTORY OF THE PORT OF TAHUYA:**

2 **2.1.** The Port of Tahuya was created in 1925 to support the logging industry in the Tahuya area.

3 **2.2.** The Port of Tahuya was deactivated in 1953 and reactivated in 1973.

4 **2.3.** From 1953 to 1984, it is somewhat unclear what the activities of the Port were.

5 **2.4.** The Port's activities since 1973 have not resulted in any purchase of land nor the building of
6 any facilities that directly support any economic development, including any commerce
7 moving from the water inland or from inland to the water for transport to other destinations.

8 **2.5.** The Port of Tahuya developed a comprehensive plan in 1984. However, there is some doubt
9 regarding the validity of the plan. Based on information I have reviewed, it appears that the
10 Port failed to hold a public hearing, and did not advertise to alert the public that the Port was
11 considering adoption of a comprehensive plan. A draft plan was brought to the April 1984
12 regular meeting for review, and the Board voted to adopt the plan on the spot, without going
13 through proper procedures. Based on a review of the Port records, it is apparent that every
14 change to the plan was an amendment to a plan that was never formally or properly adopted.

15 **2.6.** The Port of Tahuya in 1993 amended the 1984 comprehensive plan to obtain grant funding for
16 a recreational facility called "Menard's Landing".

17 **2.7.** In looking back at the process used by the Port of Tahuya, there is a reasonable question as to
18 whether a proper process was used to establish the plan, and whether the building of the
19 facility was within the powers of the Port District, since Menard's Landing is strictly a
20 recreational facility and thus does not fall within the scope of a Port's duties as outlined by
21 Title 53 of the Revised Code of Washington. No documents have been found that show that
22 the Port complied with RCW 53.08.270, regarding approval by other agencies of park and
23 recreation facilities proposed by a port, prior to the construction of Menard's Landing.
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1 **3. PORT'S RECENT HISTORY**

2 **3.1.** In 2002 the Port of Tahuya Commissioners began developing a "Public Access Plan" to amend
3 the current comprehensive plan.

4 **3.2.** The Port Commissioners who were in office at the time placed the adoption of the plan on the
5 meeting agenda for the regular meeting on August 20, 2003.

6 **3.3.** Approximately 130 people attended the August 20, 2003 regular meeting. Over 90% of the
7 people attending were opposed to the Public Access Plan, and requested a more formal public
8 input process before adoption. However, the then-current Port Commissioners voted to adopt
9 the plan, in direct opposition to the expressed wishes of the public who were in attendance at
10 the meeting.

11 **3.4.** Since that action, one commissioner was voted out of office in a landslide vote; another
12 commissioner resigned just one day before his recall hearing in Mason County Superior Court,
13 and was replaced by a vote of the Mason County Commissioners; and another commissioner
14 has been recalled and replaced in a record turnout vote.

15 **3.5.** Also, two lawsuits have been filed and won by citizens in the district including an action to
16 nullify the Public Access Plan.

17 **3.6.** The Public Access Plan as originally adopted was un-adopted and removed from the Port of
18 Tahuya's Comprehensive Plan by Commissioners Christen and McPhee on 02/16/2005.

19 **3.7.** The significant events that lead up to this decision are as follows:

20 **3.7.1.** The Port of Tahuya's legal counsel recommended removal and un-adoption.

21 **3.7.2.** A motion was made, seconded and approved by Commissioners Gilbert and Christen on
22 03/17/2004 to begin the process to un-adopt and remove the Public Access Plan from the
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1 Port of Tahuya's Comprehensive Plan. However, the process of un-adoption was not
2 completed.

3 **3.7.3.** Two public hearings were held, at which over 120 people attended each hearing, and at
4 which the large majority (over 94%) were in favor of un-adoption and removal of the
5 Public Access Plan.

6 **3.7.4.** The Port of Tahuya's Citizen's Advisory Committee issued a report on October 16,
7 2004 that recommended un-adoption and removal of the Public Access Plan from the Port
8 of Tahuya's Comprehensive Plan as their number one recommendation. It should also be
9 noted that the Citizen's Advisory Committee vote for this recommendation was
10 unanimous, and that the Citizen's Advisory Committee was composed of 9 citizens who
11 were selected based on their position on the issue - being 3 for, 3 against, and 3 neutral.

12 **3.7.5.** A lawsuit was filed against the Port of Tahuya by Residents for Preservation of Quality
13 of the Hood Canal demanding formal un-adoption of the Public Access Plan and its
14 removal from the Port of Tahuya's Comprehensive Plan. Mason County Superior Court
15 issued an order on 11/15/2004 (Case # 04 2 00954 9) requiring nullification and removal
16 of the Public Access Plan from the Port of Tahuya's Comprehensive Plan.

17 **3.7.6.** The Port of Tahuya Commission complied with the court's order.
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19 **4. CURRENT OPERATING STATUS OF THE PORT:**
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21 **4.1.** The Port of Tahuya has approximately \$158,000 in an investment account and has annual
22 revenue of approximately \$26,000, of which \$25,000 comes directly from taxes.

23 **4.2.** Currently the tax rate is 12.5 cents per thousand dollars of property value with a current
24 authorized upper limit of 45 cents per thousand dollars of property value available to the
25 commissioners.

1 **4.3.** The Port has an annual operating expense of approximately \$27,000. The Port district does not
2 generate any operating revenue.

3 **4.4.** The Port has no office, no office hours, no phone, no current web site, no staff, no paper,
4 pencils, computers, or any other essentials for operating a port district. The cost of properly
5 equipping and staffing a Port office and bringing the Port in compliance with State statutes
6 would significantly increase operating expenses in an already burdensome budget. Since the
7 Port does not generate any revenue and has no intention of doing so, any increase in Port
8 expenses would result in an increase in the burden on taxpayers, without any significant
9 benefit to the community.

10 **4.5.** The Port is unable to obtain insurance coverage for its commissioners. This came about when
11 the Port's then-current insurance carrier, the Governmental Entity Pool, became aware of the
12 fact that the Port had not put in place many of the policies and procedures that are generally
13 accepted as necessary to effectively run a port business (or any business). The insurer also
14 was concerned that the Port was engaged in questionable business practices, based on local
15 media reports. Eventually, the Port was denied renewal of its policy, because the Port's
16 insurer believed that the Port represented too great a risk of potential liability. The insurer
17 informed the Port that the Port would have to demonstrate years of prudent financial
18 management before the Port would even be considered for membership in the pool again.
19 The Port enlisted the help of insurance broker Bratrud Middleton to obtain an insurer for the
20 Port Commissioners. After several months of attempts which included an inquiry to Lloyds of
21 London, it became apparent that no one was going to offer the Port coverage at any price.
22 Even if an insurer had been found, the estimate of the cost of coverage was \$15,000 - \$20,000
23 per year. This would have significantly increased the Port's annual expenses, and required a
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1 tax increase. Since it would be difficult if not impossible to secure and retain good
2 commissioners without insurance, it was necessary to indemnify the Commissioners when the
3 insurance lapsed so that the Commissioners would not immediately resign when the insurance
4 lapsed. The creation of indemnification reserves necessary to retain qualified Commissioners
5 ties up a significant portion of the Port's assets.

6 **4.6.** The Port of Tahuya has not acquired any land nor has it proposed any projects under its charter
7 except for the Public Access Plan discussed in the preceding section, which was ruled to be
8 beyond the Port's authority to create and implement.

9 **4.7.** The citizens of the Port District have not brought any potential projects forward to The Port of
10 Tahuya that would qualify as legitimate port purposes under the statute. The citizens have
11 been surveyed in the past regarding desired Port activities, and in response to such surveys it
12 has been suggested that the Port engage in the following: Construction and operation of tennis
13 courts; conducting art and crafts classes, and conducting archery classes. The Port was
14 reactivated approximately 32 years ago so that the area could more easily install a motorized
15 boat launch. After 32 years, and after hundreds of thousands of dollars in taxes collected and
16 spent, the Port still has not established a motorized boat launch. In addition with the
17 installation of several boat launches in the vicinity (including the Port of Allyn's facility and
18 Summer Tide in the City of Tahuya) it is no longer necessary for the Port of Tahuya to do so.
19 Moreover, even if the Port desired to construct and operate such a facility, it is unlikely that
20 the Port could do so at this time in any event.

21 **4.8.** There are no current legal actions against the Port of Tahuya.

22 **4.9.** Menard's Landing, the Port's sole property, is located at 18931 NE North Shore Road in
23 Tahuya, on an open public channel that empties onto Hood Canal at high tide. It includes a
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1 hand-carry boat launch, a gazebo, portable bathroom facilities, and a picnic table. The boat
2 launch is on property leased from the Department of Natural Resources, adjacent to the
3 property owned by the Port. It has no running water or electricity and hours of operation are
4 from dawn to dusk.

5 **4.10.** A map of the current Port of Tahuya District is attached for reference.

6 **5. PUBLIC INPUT ON THE FUTURE OF THE PORT**

7 **5.1.** The subject of the Port's dissolution was discussed at numerous recent port public meetings.

8 **5.2.** In addition to receiving public comments at its regular public meetings, the Port

9 Commissioners held a public hearing to collect additional public comment to determine
10 whether dissolution of the Port of Tahuya is in the public's interest.

11 **5.3.** Notice of the meeting was published and posted, and mailed to 2,140 addresses of residents
12 and voters within the port district.

13 **5.4.** At the hearing, 18 members of the public spoke in favor of dissolution, and two persons spoke
14 in favor of retaining the Port. It should be noted that the persons who spoke in favor of
15 retaining the Port stated that they wanted the Port to remain in existence solely for the purpose
16 of maintaining the Menard's Landing facility, and did not address the need for, function, or
17 effectiveness of the Port.

18 **5.5.** Based on the public comments received at the public meeting, the public hearing, and the other
19 comments received in writing by the Port, the Board of Commissioners voted to authorize their
20 legal counsel to commence dissolution proceedings.

21 **5.6.** The Petition filed with this Court carries out the direction of the Port Commissioners.
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1 **6. PETITION FOR DISSOLUTION OF PORT DISTRICT OF TAHUYA**

2 **6.1.** The Petitioners seek dissolution of the Port District of Tahuya.

3 **6.2.** The best interests of all persons concerned will be served by the proposed dissolution.

4 **6.3.** The Port District of Tahuya is solvent.

5 **7. REQUEST FOR RELIEF**

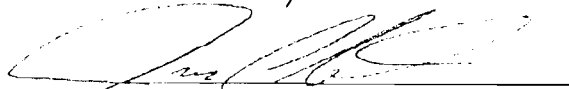
6 **7.1.** Petitioner requests that the Court enter an Order dissolving the Port.

7 **7.2.** The Court should find that the Port of Tahuya is solvent, and should order the sale of Port
8 assets, other than cash, by the sheriff of the county in which the board is situated, in the
9 manner provided by law for the sale of property on execution.

10 **7.3.** The Court should order that the Port shall pay the fees and costs of the dissolution
11 proceedings, including its legal fees and costs, prior to dissolution and any transfer of Port
12 funds to the school district.

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14 I declare under penalty of perjury under the laws of the State of Washington that the foregoing
15 is true and correct to the best of my knowledge and belief.

16 Dated this 7th day of November, 2005, at Tahuya, Washington.

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Jim Christen

