

December 19<sup>th</sup> 2005

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**Please Read Into the Minutes of the December 21<sup>st</sup> 2005 Port of Tahuya Public Meeting and Discuss with Commission as Appropriate.**

Gentlemen:

Subject: **New Business - Conflicts of Interest & Related Matters**

**Authority:**

On July 25<sup>th</sup> 2004 Christine Gregoire stated, and I quote:

*"Citizens can control their government only if they can remain informed about the decisions their government officials are taking."*

Christine Gregoire goes on to say, and I quote:

*"That important principle underlies Washington's open public records and meeting laws. The laws, which are now more than two decades old, are intended*

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*to give us (the People – inserted by author) an informed electorate which can evaluate the performance of our elected officials and provide us with an honest, competent and responsive government.”*

Continuing to quote Christine Gregoire who goes on to quote **RCW 42.30 Open Public Meetings Act; RCW 42.30.010 - Legislative declaration:**

Here is how the Legislature stated the purpose of these two laws:

“The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.”

The basis from which RCW 42.17 was formulated into law is spelled out in RCW 42.17.251 and follows:

*“The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy.”*

## **BACKGROUND:**

Since August 2003, I have been in favor of identifying violations of law and ethics by Port of Tahuya Commissioners, Port of Tahuya vendors, Port of Tahuya legal counsel and various members of the public that were engaged in illegal conduct in their support of Commissioners Olsen and Gilbert. Further, I have been in favor of the Port of Tahuya conducting internal investigations and making all alleged violations public. I have been in favor of having the Port of Tahuya legally pursue these alleged violators for recovery of damages and removal from office where warranted. In coming to this position, I relied mostly upon Jim Christen. These were his goals.

It was Jim Christen that began investigating the goings on in the Port of Tahuya sometime during May/June of 2003. It was Jim Christen who shared his findings of illegal conduct and wrong doings with Brad Carey, others and me. It was Jim Christen that made the commitment to Brad Carey, others and me to expose and bring to justice all those that betrayed their public trust. It was Jim Christen that was the primary force behind the creation of **“Residents for Preserving Quality of Life on Hood Canal”**. **It was Jim Christen that shared with Brad Carey, others and me dozens, if not over one hundred, violations of law by our Port of Tahuya Commissioners as well as others.** It was Jim Christen that promised Brad Carey, others and me that if elected, he would lead the effort to expose and bring to justice anyone associated with the Port of Tahuya that had violated one or

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more laws. It was Jim Christen that promised Brad Carey, others and me, that he, if elected, would make the changes necessary to prevent violations of law occurring on his watch. It was Jim Christen who induced me and others into assisting him in the accomplishment of his stated goals.

It is because of Jim Christen's commitments that I agreed to support his goals and subsequently invest well over 1000 hours of time and treasure in effort, to date, toward the accomplishment of his goals. I believe others, such as Commissioner Brad Carey, were also motivated by Jim Christen to help him clean up the mess and subsequently invested their time and personal treasure towards that end. However, they will have to speak for themselves.

As of today, Chairman Christen's most important goals have not been met. His most important promises have not been kept.

To the best of my knowledge, it was never Jim Christen's goal or Brad Carey's goal to dissolve the Port of Tahuya. It was never my goal to dissolve the Port of Tahuya; that is, until early 2005.

Since early 2005, I have been in favor of dissolving the Port of Tahuya. I am still in favor of dissolving the Port of Tahuya. However:

I am not in favor of dissolving the Port of Tahuya if it involves foregoing the very reasons (goals & objectives) I became involved with Jim Christen and the Port of Tahuya in the first place

and

I am not in favor of dissolving the Port of Tahuya if it involves ignoring the management principles and activities essential to any organization that is planning on, and in the process of, going out of business

and

I am not in favor of dissolving the Port of Tahuya if it involves one or more of our sitting Commissioners violating one or more laws to do so

and

I am not in favor of dissolving the Port of Tahuya if it involves the utilization of processes, methods and procedures that are unethical

and

I am not in favor of dissolving the Port of Tahuya if it involves one or more commissioners with one or more conflicts of interest, or one or more commissioners who have the appearance of having one or more conflicts of interest, directly or indirectly related to the dissolution of the Port of Tahuya

and

I am not in favor of dissolving the Port of Tahuya if it involves use of counsel that has one or more conflicts of interest, or use of counsel that has the appearance of having a conflict of interest, relative to providing advice and counsel to the Commission of the Port of Tahuya

and

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I am not in favor of dissolving the Port of Tahuya if it involves use of counsel that has one or more conflicts of interest, or use of counsel that has the appearance of having a conflict of interest, relative to providing work product(s) produced for the Commission of the Port of Tahuya

and

I am not in favor of dissolving the Port of Tahuya if it involves the cover-up of violations of law related to Port of Tahuya matters performed or executed by past and present commissioners, past and present Port of Tahuya's suppliers, former and/or current legal counsel, various past and present citizens of the Port District of Tahuya

and

I am not in favor of dissolving the Port of Tahuya if it involves Commissioners forfeiting their fiduciary duty and responsibility they have to the People

and

I am not in favor of dissolving the Port of Tahuya if it involves Commissioners forfeiting their due diligence duty and responsibility they have to the People

and

I am not in favor of dissolving the Port of Tahuya if it involves dereliction of duty, or gives the appearance of dereliction of duty by any sitting Commissioner

and

I am not in favor of dissolving the Port of Tahuya if it involves not fully and accurately disclosing in the Petition for Dissolution why the Port of Tahuya needs to be dissolved

and

I am not in favor of dissolving the Port of Tahuya if it involves "fast tracking" the creation and content of the 9 page Petition of Dissolution - and Commissioners Christen and Smith doing so in private with the Port of Tahuya's counsel - in other words, doing in private what should have been a public process.

or

I am not in favor of dissolving the Port of Tahuya if it involves "fast tracking" the creation and content of the 9 page Petition of Dissolution - and Commissioner Christen doing so in private with the Port of Tahuya's counsel - in other words, doing in private what should have been a public process while mostly, if not totally, excluding Commissioner Smith.

and

I am not in favor of dissolving the Port of Tahuya if it involves a scheme whereby Commissioner McPhee is induced to resign, with the agreed understanding with Chairman Christen that Brad Carey is to immediately thereafter be appointed to fill out the remainder of Commissioner McPhee's term, and then Chairman Christen repeatedly reneges on his agreement once Commissioner McPhee has resigned. I believe an investigation of the matter will establish that Chairman Christen never had any intention of appointing Brad Carey if Commissioner McPhee resigned. Rather it was a scheme whereby he could neutralize both Commissioner McPhee and Brad Carey - two people who were each committed to creating a process that would be just and that would identify, bring to justice, penalize and punish those guilty of violations of law before the Port of Tahuya

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was dissolved. **I believe that the resignation of Commissioner McPhee, and not filling the vacant position with Brad Carey, made it possible for the Commission to ignore all other issues and commitments and allowed for the “fast tracking” of the Petition For Dissolution.** I believe that an investigation will show that Chairman Christen had reasons for “fast tracking” the dissolving of the Port of Tahuya – reasons that have not yet been made public.

I believe a public discussion between the members of the Commission is in order regarding the process required for Brad Smith to be appointed a Tahuya Port Commissioner to fill out Cynthia Olsen’s term vs the process required for Brad Carey to be appointed Commissioner to fill out Dan McPhee’s term. Sample questions that need to be asked and answered:

Was the appointment process the same for each commissioner?

What was the appointment process for Brad Smith?

What was the appointment process for Brad Carey?

If the process was not the same for each commissioner, why was it not the same?

Does the Commission’s appointment process show any bias or partiality toward either commissioner?

If so, which commissioner?

If the appointment process involved, or appeared to involve, partiality, is that a violation of a Commissioner’s oath of office?

If there appears to be bias or partiality, could it be the result of one or more conflict of interest issues?

What might be a conflict of interest issue that could cause one commissioner to be appointed in 3 days and the other commissioner to not be appointed at all?

To date, what was the impact on the Port of Tahuya by Commissioner McPhee resigning and his position not being filled?

Etc.

## **DEFINITIONS:**

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**Conflict of Interest** – “*A conflict between the private interests and the official responsibilities of a person in a position of trust (as a government official)*”. Source - Merriam-Webster Unabridged On-Line Dictionary.

**Conflict of Interest** – “*Refers to a situation when someone, such as a lawyer or public official, has competing professional or personal obligations or personal or financial interests that would make it difficult to fulfill his duties fairly.*” Source - Lectric Law Library On-Line Dictionary.

## **OBSERVATION:**

I believe that there is a high degree of probability that Chairman and Commissioner Jim Christen and Commissioner Smith each have one or more issues that may prove to be bona fide conflict of interest violation(s).

I believe that there is a high degree of probability that current Port of Tahuya legal counsel, Robert Goodstein, has a bona fide conflict of interest in representing the Port of Tahuya.

I believe that the process taken by the Commission (Commissioners Christen and Smith) to dissolve the Port of Tahuya, including, but not limited to:

what has been done and what has not been done in the process of dissolving the Port of Tahuya to date,

how the process of dissolving the Port of Tahuya has been done to date,

and the structure and content of the Commission approved Petition of Dissolution,

etc.

is prima facie evidence of bias – bias which is the result of one or more conflicts of interest. (prima facie evidence - “*evidence sufficient in law to raise a presumption of fact or establish the fact in question unless rebutted.*” By Merriam – Webster Unabridged On-Line Dictionary”.)

## **REQUEST:**

Acknowledge the issues raised herein are serious.

If the allegations and/or issues raised herein have plausibility, then formally withdraw or delay the Port of Tahuya’s Petition of Dissolution currently before the Court. Do this immediately.

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Acknowledge that improper handling of the issues raised in this document by the Commission may lead to additional potential violations of law and ethics that in turn may lead to still additional issues being raised.

Acknowledge that those individuals listed herein as having potential conflicts of interest and/or dereliction of duty issues are not the ones to have the final say on whether or not an investigation should be launched, who should or should not be involved, who should or who should not perform the investigation, who should or who should not oversee the investigation, etc. Those listed as having potential conflicts of interest and/or dereliction of duty issues need to recuse themselves from all activities and decisions related to these matters so as to avoid even the slightest hint of a potential conflict of interest.

Acknowledge that those listed as having potential conflicts of interest and/or dereliction of duty issues cannot be the ones to determine the final validity or non-validity of the allegations raised herein.

Then determine how to go about coming up with an objective organizational approach and investigative process that will determine the accuracy or inaccuracy of the allegations of conflicts of interest and/or dereliction of duty issues without violating the law or creating ethics violations such as conflicts of interest.

Perhaps a Private Attorney General Action could be a part of the solution?

Thank you,

  
Harold Carey