

July 8, 2010

To all SWAG Members:

The Port issue is extremely complex and has been on the table with an inability to resolve it at the staff level. The first blush of it is a "white paper" dated May 18th, a copy of which is attached. The thrust of that paper is that the Port wants the City of Clarkston to take over the Port's streets, a contentious issue that has been ongoing for several years. The underlying current in this matter is whether or not the Port is a secondary permittee under Eastern Washington stormwater permits.

The parties recently came to some understandings:

- 1) The City of Clarkston was not willing or interested in accepting the Port's streets; and
- 2) The Port was, and will continue to be, responsible for the stormwater maintenance of its own roads and streets.

Once that position was reached there were several offers of compromise, the latest in a letter from Jim Martin dated June 21, 2010, a copy of which is also attached. The Port has chosen not to respond to either of those, either by accepting or rejecting.

It has become obvious that the issue is one that is not going to be resolved at staff levels or at SWAG level, but will have to be resolved by the elected officials of all four jurisdictions.

Sincerely,

Joel Ristau

July 8, 2010

Bruce Ensley  
Libey Ensley & Nelson, PLLC  
N. 409 Main Street  
Colfax, WA 99111

Re: Port of Clarkston's Comments on Stormwater Plan Utility Assessment  
dated July 1, 2010

Dear Bruce:

As I told you on the phone, all communication on this matter should be through Jane Risley. Jane is on vacation until July 12<sup>th</sup> and will respond to the July 1 comments at that time.

It appears that the Port has been confrontational on this issue since the beginning, further evidenced by the Port Manager lobbying elected officials of the City of Clarkston. It appears that this matter is beyond our ability to resolve at the staff level, with your folks choosing to ignore several offers of compromise in settlement. I suggest that we put this in the forum where it will do the most good, which is a meeting of the Port Chairman with a member of the Clarkston City Council and the Mayor, the County Commission Chair and the Mayor and a council member from the City of Asotin, and see if the electeds can resolve this.

Finally, it would seem that we could let the SWAG do their work, with the exception of discussing at a later time the Port's issue. However, if the Port's intent is to turn tonight's meeting into an examination of that issue, that is fine. Not good, but fine.

Sincerely,

Joel Ristau

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Bruce Ensley  
Gary J. Libey  
Guy C. Nelson\*  
Will Ferguson

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\*Also Admitted in Idaho

July 7, 2010

**SENT BY EMAIL TO:**  
**jristau@co.asotin.wa.us**

Joel Ristau

RE: SWAG Meeting

Dear Joel:

I am writing to follow up on our phone conversation of July 6, 2010.

As you recall, I called to discuss the question of circulating to all SWAG Members the Port's "Comments on the Stormwater Plan Utility Assessment," which were sent to Cheryl Sonnen, Jim Martin, Scott Broyles and Jane Risley on July 1, 2010.

It is my understanding the SWAG Meeting of July 8th will include discussions of a draft of a utility ordinance. I understand that SWAG has no authority to adopt an ordinance, but it appears to the Port that the public officials that will be making decisions on this matter will be interested in the information and recommendations coming from SWAG. This has led us to conclude that the Port's position with regard to the draft ordinance should be presented to all SWAG Members.

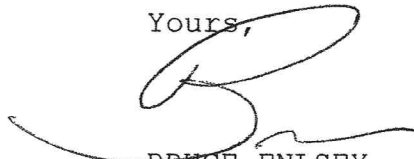
I realize there are philosophical and policy differences on this street exemption issue. It is not the intent of the Port of Clarkston to become "confrontational" on the issue. However, the draft Ordinance, which we just received, contains a specific

Joel Ristau  
July 7, 2010  
Page 2.

waiver under Section 140(3)(a) for "streets maintained by the jurisdictions that are signatories of the ILA [Interlocal Agreement]...". This language is language the Port cannot ignore.

The Port understands the necessity of meeting the stormwater permit obligations for the region. There is no argument that a public utility is a reasonable approach to fund the needs of this obligation. The Port can support the need for a utility ordinance, but it cannot support a waiver for public roads, streets, and rights-of-way that do not include the Port's streets.

Yours,



BRUCE ENLSEY

BE/kjk



# **White Paper**

## **The Creation of a Storm Water Utility by the City of Clarkston and Its Impact on the Port of Clarkston**

**Author: Wanda Keefer**

**Date: 5-18-2010**

### **At Issue:**

- Whether Port properties should be included in the City of Clarkston's municipal storm water utility district instead of an industrial storm water utility created and managed by the Port;
- Whether streets owned by the Port should receive benefit of sweeping and storm drain clean-out performed on other City streets to assure clean water discharge into the Snake River; and,
- Whether streets owned by the Port are considered exempt within the definition of other public roads and should not be factored into impervious surface calculations by the City of Clarkston for the purpose of distributing costs associated with complying with the municipal storm water permitting process.<sup>1</sup>

### **Assumptions:**

- The Port wishes to be a responsible community partner assuming its fair share (and no more) of the costs associated with meeting the new permitting requirements;
- In this regard, the Port is a willing partner in helping educate its tenants about the impact of their activities as it relates to the Clean Water Act;
- The Port recognizes that it can have a role in helping prevent and mitigate illicit discharges that might result in the City of Clarkston's non-compliance with Clean Water Act and municipal permitting goals;
- Interpretations of the rules such that Port streets are to be excluded from storm drain clean-out and sweeping of streets activities paid for by the storm water utility causes the Port to pay twice for activities associated with maintaining the physical storm water system; and,
- The City of Clarkston, in its creation of its storm water utility, could, according RCW 35.677.025 and 90.03.510, provide a credit to the Port for capital and maintenance investments made in storm water systems.

### **Port Perspective:**

To require the Port to pay a disproportionate (higher) amount of costs associated with managing the permitting process while denying the Port the benefits of being part of a storm water utility is untenable.

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<sup>1</sup> Assuming that numbers cited elsewhere in this white paper are correct, a determination that the Port's roads are not exempt and should be counted as impervious surfaces would result in an average cost to the Port of \$500 per month or \$6,000 per year. This amount would be added to calculations of ERUs on other Port owned property, either used by the Port or leased to tenants.

## Facts/Background:

- The Port owns roads that are 1.3 miles in length (see Map #1 and Attachment A)<sup>2</sup>:
  - Port Drive 13<sup>th</sup> to 15<sup>th</sup> Streets: 2,500 linear feet
  - Port Way—Cruise Boat dock to 9<sup>th</sup> Street: 1,324 linear feet
  - Port Way—9<sup>th</sup> to 13<sup>th</sup> Street: 2,313 linear feet
  - 9<sup>th</sup> Street from Port Drive to Port Way: 630 linear feet
  - Zirbel Lane—325 linear feet
- The Port does not own or control 100% the land surrounding its roadways. (Please see Map #2.) Private owners benefit, particularly Walmart and Costco, for traffic coming across Red Wolf Bridge to Walmart. (NOTE: 87% of respondents to the Port's Parks and Rec survey said they came regularly to the Port area to shop at Walmart and Costco.)
- Over the past decade, the Port has sought transfer of its roads to the City of Clarkston so the Port can be removed from the street ownership business and focus on creating new infrastructure and new jobs. Attachment A comes from a 2008 completed pavement condition survey performed by Strata and paid for by the Port at the City's request, but no ownership transfer occurred at that time.
  - The Port quit claimed Port Drive from 5<sup>th</sup> Street to 13<sup>th</sup> Street to the City of Clarkston June 2009 at Walmart's behest.
- The character of Port Drive from 5<sup>th</sup> to 13<sup>th</sup> did not change with this transfer of ownership. Port Drive was a public street at the time of Port ownership and both sections of Port Drive (from 5<sup>th</sup> to 13<sup>th</sup>, and from 13<sup>th</sup> to 15<sup>th</sup>) remain as public streets at the present time, even though two different public governmental (municipal) entities own and maintain them.
- Map 3 shows improvements to Clarkston city streets that were completed December 1987. The Port was eligible for EDA funding which paid in part for that comprehensive improvement project which made it possible for Costco to locate in Clarkston. The Port paid for the match on that project, along private business ownership helped with the credit line, which leads them to believe they are eligible, in perpetuity to place the billboard in the right-of-way near the Community Bank lot.
- The June 2009 quit claim leaves only 9<sup>th</sup> Street from Port Drive to Port Way of the Port's improvements to city streets in 1987 in the ownership of the Port (highlighted in yellow on Map 3).

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<sup>2</sup> Strata's numbers are used for this discussion as an illustration alone. The Port staff's measurements resulted in shorter measurements. Re-measurement to be observed by impacted parties should occur before any final determinations of lengths or surfaces are calculated.



- There are three residences served by the 1.3 miles of streets still owned by the Port:
  - The caretakers' quarters associated with Clarkston Rent-A-Space (2 persons);
  - The Murphys RV at Mursea Mission's aluminum sailboat project on the Clearwater Seed lease (2 persons); and,
  - The sometimes occupied trailer on private land in the 1300 block of Port Drive that is currently involved in an estate settlement (1 person). (People recognize the parcel as the junkyard nearly filled with old equipment.)
- The Port does not meet eligibility requirements for a municipal storm water permit—Phase II. Five people are not anywhere close to the 1,000 in population that is the target for municipal storm water Phase II systems. If the Port were subject to storm water permitting, it is as likely that it would fall under industrial, not municipal, storm water permits. Industrial permits pay attention to discharges of chemicals and minerals discharged in industrial processes. The Port has applied for a Conditional No Exposure Certificate relating to industrial permitting.
- There are two storm water outfalls in use along the bank of the Snake River, and in both instances, storm water runoff from city streets commingles with storm water from Port-owned streets before the water is released into the river (see Map 4 which consists of a map and details relating to storm water management):
  - Storm water traveling along Port Drive from 13<sup>th</sup> to 15<sup>th</sup> Street commingles with run-off from 14<sup>th</sup> & 13<sup>th</sup> (city streets) before joining near the waste water treatment facility and then entering the storm water outfall negotiated as a right-of-way with the Corps in 1972 (see Attachment B—13<sup>th</sup> Street outfall).
  - Storm water from the city-owned portion of Port Drive comes across two Port owned parcels and joins a storm water drain near the catch basin on Port Way by 900 Port Way before the water flows into the Snake River via the outfall by the grain terminal where transient people set up camp last February/March.
- Because Port owned streets are at lower elevations, they are logical collection points for storm water coming off City-owned streets. The Snake River outfalls were approved by the Corps of Engineers for the City of Clarkston's storm water management system (see Attachment B).
- Drywells are part of the storm water management system for Port-owned roadways. Only Port Drive and parts of Port Way are served by the outfalls into the river. The rest of the storm water goes through filtration before it enters into the general environment. Details follow:
  - 9<sup>th</sup> Street, where it intersects with Port Way, is served by a dry well.
  - Port Way east of 9<sup>th</sup> Street is served by a significant swath of retention basins (see Attachment C) and a dry well on the southeast end of the paved parking lot. These were either built or renovated since 2008.
  - Zirbel Lane is served by a dry well (see schematic in Attachment D).

- The City of Pullman created the impression of lack of desire to comply with storm water requirements; that public impression has resulted in notice of filing of a lawsuit. It would not serve our communities well to create an impression of a major division between public entities relating to the handling of storm water

**Alternative #1: City of Clarkston take over the Port-owned streets remaining within the city limits, putting the Port out of the road business and the storm water management business.**

Efficiencies: City has staff and equipment for handling roads. For the Port to have to also develop processes and equipment results in unnecessary duplication of services. In communities as small as ours, we do not have the luxury of duplication.

Rationale: The Port became owner of the roadways in part because they secured federal funding to build the roads shown in Map 3. Ports, however, are not typical owners of roadways and the majority of the ones who do own and manage roads do so within the airports that they also manage. Ports cannot access 1) gas tax revenues; 2) public works trust funds resources; and 3) miscellaneous other resources that counties and municipalities can access.

There is no compelling case for continued Port ownership of 9<sup>th</sup> Street, Zirbel Lane, Port Way, and Port Drive west of 13<sup>th</sup> Street.

There is a compelling case from a public interest perspective to consolidate like activities under a single entity and gain efficiency with regard to uses of public resources (i.e., taxes).

**Alternative #2: The Port retain ownership of the streets, but simultaneous to the creation of the storm water utility, the City will agree that the City's new storm water utility will provide services such as sweeping streets and cleaning out catch basins for those storm water management systems located on Port owned streets used regularly by the public. Under this Alternative, the Port-owned streets would be considered "public streets" and exempted like other public streets for the calculation of ERUs and storm water utility assessments.<sup>3</sup> As its role in this partnership, the Port will agree to help educate tenants, watch for illicit discharge and keep an eye out for other enforcement issues, and be responsible for registering dry wells and significant retention basins with the Department of Ecology.**

**FINAL COMMENT:** Under no circumstances should the Port's streets be considered private while they as open as they are presently for public uses.

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<sup>3</sup> Port owned streets are comparable to state roads. Therefore, under RCW 90.03.025, if the Port is assessed under this utility, the state should be assessed at 30% of the amount assessed to the Port.





April 8, 2008  
File: MP08035

Ms. Wanda Keefer  
Port of Clarkston  
849 Port Way  
Clarkston, Washington 99403

RE: **PROPOSAL**  
Geotechnical Engineering Evaluation  
Roadway Pavement Condition Survey  
Port of Clarkston  
Clarkston, Washington

Dear Wanda:

Strata Geotechnical Engineering and Material Testing, Inc. (STRATA) is pleased to present this proposal to accomplish a pavement condition survey of various roadways on Port of Clarkston (Port) property in Clarkston, Washington. The following text summarizes and describes our anticipated scope of services schedule and fee for accomplishing the requested pavement condition survey. The purpose of our evaluation will be to evaluate the condition of the existing paved roadways listed above, aid in the transfer of ownership and maintenance responsibility of these roadways from the Port of Clarkston to the City of Clarkston.

#### PROJECT UNDERSTANDING

Our understanding of the requested services is based on our discussions with you and Mr. Jim Martin with the City of Clarkston regarding the minimum desired geotechnical information. We have also reviewed of a summary of roads in the Port's property for which the pavement condition survey is requested. This summary was provided by the Port and is reproduced below.

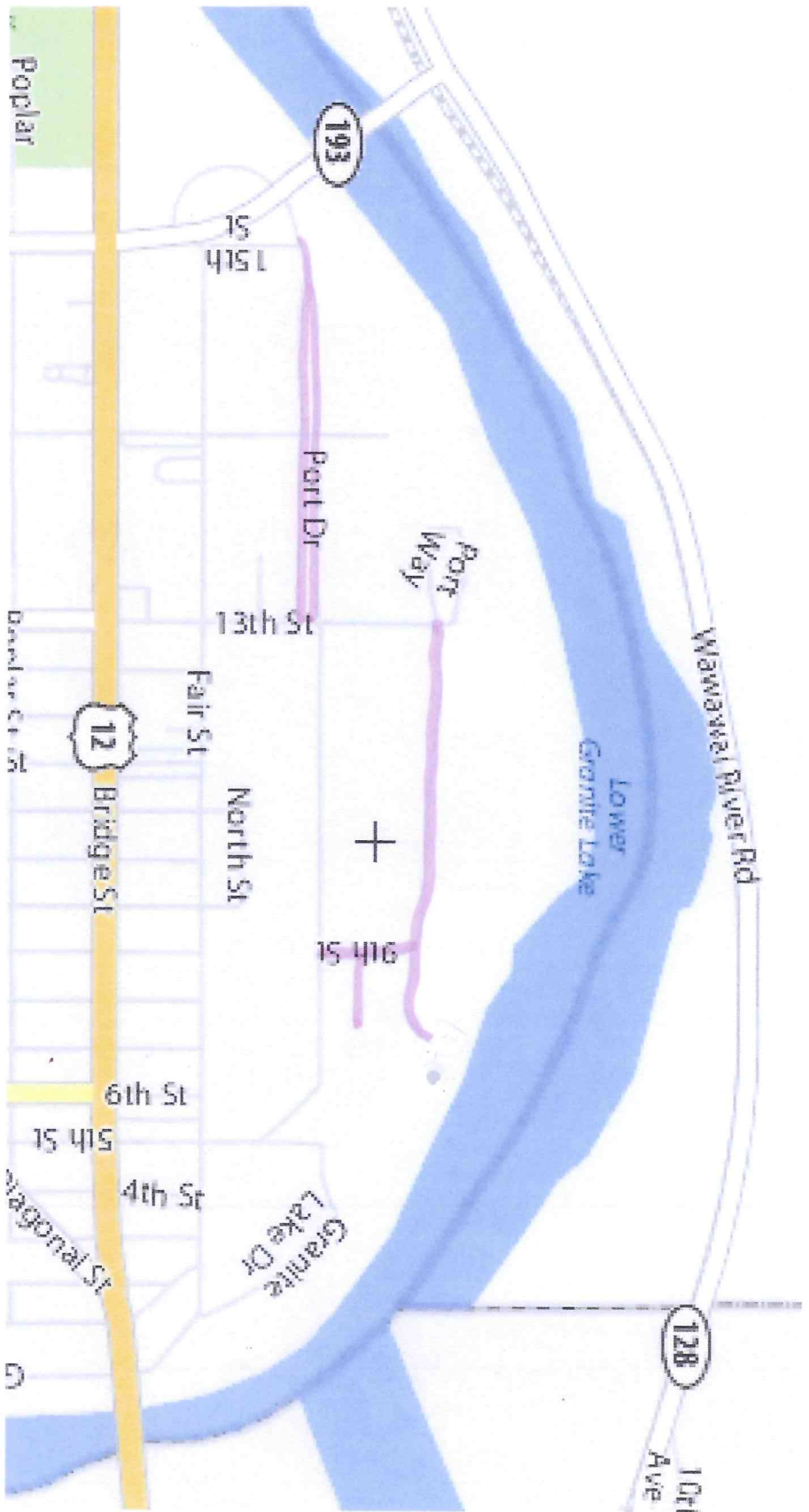
Road Name	Alignment Description	Alignment width (feet)*	Alignment Length (feet)*
Port Drive	13 <sup>th</sup> Street to end of 4 lane road east of 15 <sup>th</sup> Street.	34	2,500
Port Way	Port Office to Boat Dock	26	1,324
	Port Office to 13 <sup>th</sup> Street	60	2,313
9 <sup>th</sup> Street	Port Way to Port Drive	21	630
Zirbel Lane	9 <sup>th</sup> Street to Quality Inn	22	325

\*Values are approximate

We understand the City of Clarkston plans to take ownership and maintenance responsibility of the roads listed above in the Port of Clarkston property. As such, the City of Clarkston has requested the Port provide a condition survey of the existing pavements along these roads including, at a minimum, an evaluation of their general condition, foreseeable significant repair needs and projected remaining design life based on anticipated traffic loading.

IDAHO MONTANA NEVADA OREGON UTAH WASHINGTON WYOMING

[www.stratageotech.com](http://www.stratageotech.com) 1428 S. Main St. Moscow, Idaho 83843 P.208.882.1006 F.208.883.4750



Part owned streets



# *City of Clarkston*

City Hall: (509) 758-5541 • Police: (509) 758-1684 • Fire: (509) 758-8681 • Fax: (509) 758-1670

830 Fifth Street • Clarkston, WA 99403

June 21, 2010

Port of Clarkston  
849 Port Way  
Clarkston, WA 99403  
Attn: Wanda Keefer

RE: Storm Water Roadway Calcs

Dear Wanda,

With the difficulty of dealing with the new storm water requirements and our ongoing discussions of those difficulties, the City of Clarkston, Asotin County and the City of Asotin would like to create an opportunity to cut your anticipated utility fee approximately in half.

The discussions have centered around the exemptions of public roadways throughout the three jurisdictions and whether the Port streets could be considered in that exemption. It has also brushed on the attempt to administer the program with the Port's cooperation and support.

Following our discussions, we believe that without showing favoritism, Port Drive could be considered more of a legitimate public street serving as access into and out of the Port while the remaining streets serve the Port and its' tenants. We are prepared to exempt that portion of Port Drive from 13<sup>th</sup> Street to 15<sup>th</sup> Street thereby reducing the ERU measurement. This reduction creates a savings of more than one half the possible costs as calculated to date. Based on an estimated \$5.00 per ERU, the overall calculated utility fee for Port streets is \$8,596.06 annually. The exemption reduces that fee by \$4,825.38.

As discussed, the Port would still bear operation and maintenance costs for your streets and storm drain system. It would also be necessary to satisfactorily complete the needed interlocal agreement that would recognize the Ports cooperation and how the Port might fall within the umbrella of the City's Storm Water Permit along with other applicable details.





We believe that with all of us working to maintain our own infrastructure we will better meet the needs of the program. It will be a challenge for all of us to apply the requirements as directed when we are all in the same proverbial "boat" with little staff and little time. Even with the Storm Water Advisory Group's negative attitude toward credits, the exemption can be supported. We look forward to an ongoing healthy relationship with the Port and hope that this exemption helps ease the pain we all feel concerning this new program.

Sincerely,

A handwritten signature in black ink, appearing to read "James E. Martin", with a stylized, flowing script.

James E. Martin  
Public Works Director

cc: Cheryl Sonnen, Stormwater Coordinator  
Joel Ristau, Asotin County Public Works Director  
Scott Broyles, City of Asotin