

**THE SEATTLE PORT COMMISSION:
CHALLENGES, RESOLUTIONS, AND PUBLIC ACCOUNTABILITY**

A League of Women Voters of Seattle Study

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I. INTRODUCTION

Looking out across Elliott Bay with its huge orange cranes off-loading boxy containers from ships from Asia, ferries arriving and departing from Pier 52, cruise ships slipping in and out of the new Smith Cove Cruise Terminal on Pier 91, and planes flying low as they prepare to land at Sea-Tac Airport, one realizes that the Port of Seattle is a major portal to the Pacific Rim. Seattle's port is an international port; as such it is a major player in the global economy, and in the economic life of King County, the region, and Washington State.

In 2008, the Port of Seattle provided over 200,000 jobs to the region and brought in \$12 billion in revenue as well as paying \$867 million in local and state taxes. It is listed as one of the top ten container ports in the U.S., handling 12.2 million metric tons of exports in 2008. The Port's cruise ship terminal served 875,000 passengers with 218 vessel calls last year and generated \$312 million in revenues.¹

Once only a maritime term, with the advent of flight the definition of a port expanded to include airports; since 1941, port districts in the state have operated both maritime and air ports. Sea-Tac airport serves more than 32 million passengers per year, and Seattle's cargo terminal is a major trade gateway from Asia to the rest of America. Clearly, the Port of Seattle is no small player on the economic stage; it is a complex, public, global mega-business.

Despite being such an important public entity, the Seattle Port District is poorly understood by many King County residents, although they pay property taxes to support it, and elect Port Commissioners to govern it. The relationship of most county residents to the Port* has been characterized by quiet periods of relative inattention punctuated by crises of public trust and confidence, the most recent having occurred with the findings of the 2007 State Auditor's performance audit, which was sharply critical of the oversight and contract management related to the airport's third runway project. This was followed by the McKay Report of 2008, detailing ten cases of civil fraud.

While the publicity related to the audit findings and the McKay Report raised public awareness and led to a number of changes in Port governance and operations, it did little to educate the residents of King County about the complexity of the Port and its critical role in the region, or about the oversight and governance necessary to ensure that the Port operates with the accountability and transparency expected from a public resource. Without a clear understanding of these issues, it is difficult for residents of King County to knowledgeably elect Port Commissioners and interact with their elected officials in ways that ensure that the Port District of Seattle is managed for the public good.

This League of Women Voters update on the Port was approved at the 2008 Annual Meeting of the League of Women Voters of Seattle and seeks to provide information to League members and the larger public on the Seattle Port District and Port Commission. In 2008 and 2009, Port Study Committee members attended meetings of the Port Commission, and of expert panels of stakeholders and community representatives as part of the Port Century Agenda. In addition, the committee interviewed Port Commissioners, senior Port staff members and relevant community

*"The Port" refers to the whole Seattle Port District; hereafter the seaport and airport will be so specified.

members, and reviewed Port Commission and Port staff documents and reports. Appendix A lists individuals who were interviewed. Washington Public Ports Association documents and staff members were also important sources of information. Four previous League studies of various aspects of Port Districts in Washington, in 1973, 1988, 1989, and 1992, have contributed to the state and local League Positions on Port Districts. These positions and the titles of all the earlier studies as well as the relevant positions of the League of Women Voters of Washington are available in Appendix B.

II. HISTORY OF PORT DISTRICTS IN WASHINGTON

Harbor Line Commission and Port District Act

The creation of port districts in Washington State began when Washington entered the Union in 1889. At that time, the state took title to all tidelands, beds and shore lands within its boundaries, with the exception of a few which had been sold by the United States prior to statehood. Up until that time, many of the tidelands were privately occupied and developed, primarily by the railroads, which held a monopoly over shipping rates and the products that passed over their wharves. At that time, many ports in the United States were in private hands, in contrast to Europe where waterfronts were publicly controlled.²

In 1890, against strong resistance from private owners and operators of tidelands (primarily railroad companies), the Washington legislature created the Harbor Line Commission in order to restrict the powers of private entities which had been occupying tidelands despite the state constitution, which reserves ownership and control over the lands to the state. This commission established permanent harbor lines throughout the state, within and in front of incorporated towns and cities. The harbor lines effectively served as the government's first land use zoning tool, as they delineated certain areas around harbors for industrial and trade use.

In 1911, as part of a populist reform reflecting a desire to give the public more control over its waterfronts, the Washington State Legislature passed the Port District Act (RCW Title 53.04.010), which put the state's ports under public ownership and management, allowing citizens to create port districts and elect their commissioners. The end purpose was to promote and protect all trade in Washington ports – as opposed to just that favored by specific business interests.

The Port District Act was significant, as it authorized the creation of public port districts in any county by approval of a majority of the voters. The Act created a unique hybrid: a “public entity with a profit motive.”³ The primary goal of port districts is fostering commerce, but unlike private commercial enterprises, they are also an arm of government which is accountable to the public. For their ninety-nine year history, port districts have wrestled with the tensions inherent in this hybrid identity.

Roles and Responsibilities of Port Districts

Currently, there are 75 public port districts in 33 counties in Washington, the earliest being Seattle and Grays Harbor, created in 1911, and the latest being Grapeview, created in 1990. Sixteen are engaged in international marine trade, with 90% of the trade moving through Seattle and Tacoma.⁴ Originally, most ports were located on bodies of water; thus, port districts were authorized to regulate shipping and provide facilities for shipping and industrial use. However, since those early days, their responsibilities have greatly expanded.

In 1941, port districts were authorized to acquire, maintain, and operate airports; in 1955 they were given the power to establish industrial development districts (IDDs) – special areas within port districts acquired specifically for industrial development; in 1959 port districts were authorized for areas lacking any bodies of water; in 1966, through a constitutional amendment, port districts were permitted to conduct promotional hosting to attract trade, and in 1984 such promotion was also allowed to attract tourism. In the 1960s port districts moved into the area of recreation, with authority to build and operate marine park and recreation facilities. Powers also extended to participating in world fairs and operating foreign trade zones (RCW 24.46), as well as to using public funds for industrial development and promotional hosting.

In the 1980s, port districts expanded into tourism and economic development. They were authorized to acquire and operate passenger vessels (RCW 53.08.295), engage in economic development programs, and establish export trading companies. The 1990s saw port districts investing in new infrastructure with authority to repair any street or road serving port facilities and to install sewer, water, and waste disposal systems. In 2000, port districts moved into the area of constructing, purchasing, or improving telecommunication systems in rural areas, watershed management (2003), and providing ferry service (2008).

In sum, public port districts' primary responsibilities are to plan, acquire, develop, operate, and maintain facilities for all forms of transfer— air, land, and marine— within the state of Washington. These facilities include: terminal facilities, airports, warehouses, elevators, canals, locks, tidal basins, rail and truck freight facilities, and passenger terminals. Under this mandate, port district powers include the power to:

- Acquire land by cash, condemnation or right of eminent domain;
- Improve district lands by dredging, filling, bulk heading, or developing such lands for sale or lease for industrial and commercial purposes;
- Improve navigable and non-navigable waters;
- Acquire and operate toll bridges, tunnels, railroads, and some highways;
- Acquire, build and operate airports;
- Install industrial waste disposal, sewer, water and other utilities in the absence of adequate municipal facilities;
- Install pollution abatement facilities for new or existing business firms;
- Create and maintain foreign trade zones;
- Establish local improvement districts and industrial development districts (IDD's);
- Develop and maintain marine related public parks and recreational facilities;
- Expend funds for promotional hosting;
- Advertise facilities and services to attract tourism and new industry;
- Fix the rates of wharfage, dockage, warehousing, port and terminal charges on all facilities owned by them;
- Levy property taxes;
- Sell general obligation and revenue bonds.⁵

All port districts are subject to local, state and federal regulations ranging from local building and zoning permits to the Shoreline Management Act, the National Environmental Policy Act (NEPA), and the State Environmental Policy Act (SEPA) regulations.

Port District Financing

The Port District Act of 1911 authorized port districts to impose property taxes of \$2 for every \$1,000 of assessed value to provide initial capital to construct facilities and create reserve funds. Since then, the legislature has reduced the rate to \$.45 per \$1,000 of assessed value for general purpose use by the port; this tax does not require voter approval. Additionally, the law authorizes special property tax levies, to be approved by the voters and not to exceed \$.45 per \$1,000 valuation, for dredging, canal construction, land-leveling and filling. Further special property tax levies, not to exceed \$.45 per \$1,000 of assessed value, can be imposed by the port for up to 12 years for the creation of an industrial development district. Such levies do not require voter approval.

Apart from levying taxes, port districts may issue general obligation bonds to finance capital improvements. The bonds are repaid with revenue from property taxes. Ports may also issue revenue bonds that are guaranteed by revenues from a particular activity. The bonds typically provide funds for long-term investment in infrastructure.⁶ Airport financing includes two additional sources: Federal Aviation Administration (FAA) grants for capital improvements and passenger facility charges (PFC) of \$4.50 per ticket. The use of FAA grants and PFC revenues must meet FAA requirements.

Taxes and bond issues derive from the public side of Port Districts – but their hybrid character is very important in considering funding. Lease rental payments and user fees provide substantial revenue streams from the business side of Port Districts. Look again at the list of activities in which Ports can engage, and the myriad sources of income they have is apparent.

Port District Governance

Port districts in Washington are governed by nonpartisan port commissioners who are elected in the district. In many cases three commissioners serve six-year staggered terms, but in districts with a population of more than 500,000 the law allows for five commissioners – which is what Seattle and Tacoma have. Port Commissions have a great deal of autonomy in establishing the mission, policies, and priorities that guide the development and operation of all port facilities and functions within the district.

Commissions hire the Port Chief Executive Officer (CEO), approve the operating budget and are responsible for ensuring that the mission and policies are implemented in all aspects of the Port operations. Washington is unusual in that few other ports in the United States operate with locally elected commissions. Most port governing bodies are appointed by the governmental unit responsible for ports—usually a state or municipality. A brief discussion of other governance models is available in Appendix C.

Port commissioners are accountable to the voters in the local community from which they are elected and from which the port draws some of its revenues. As ports have grown more complex and become major players in international trade, oversight by the electorate has declined. Many citizens do not know what their ports do or how they are governed. Many do not understand the hybrid nature of ports: that they are public entities which must comply with public disclosure laws and be transparent while at the same time they must operate as private businesses competing in a global economy. To avoid being at a competitive disadvantage, businesses sometimes make decisions in private, executive session—which is lawful, albeit not transparent. By contrast, public policy decisions must be made in the public eye. Obviously,

balancing the needs for privacy in business decisions and transparency in public policy can be a matter of tension within commissions as well as between commissions and the public they serve.

III. SEATTLE PORT DISTRICT

The Seattle Port District was created in September 1911 by a vote of the residents of King County, who at the same time approved a bond measure to develop the waterfront with the goal of stimulating economic growth in Seattle and the county. By 1916 Seattle was the leading port on the West Coast and the second largest in the country. The Port of Seattle remained an innovator throughout the 20th century as it became a major player in the North Pacific fishing industry, built Sea-Tac Airport in 1944, and became, in the 1960s, one of the first ports to move into the containerized cargo trade. In the 1990s the Port moved into the passenger cruise industry and led the redevelopment of Seattle's central waterfront and other properties.⁷

While these initiatives have made the Port a national leader in trade, transportation and tourism and a regional force that generates over 200,000 jobs and billions of dollars in business and tax revenues, they were not accomplished without significant public controversy. As the Port continues to address the present opportunities and challenges, public controversy remains an important part of the process. Now, as in the past, it is the responsibility of the Port governing body, the elected Port Commissioners, to address the conflicts in ways that balance competing interests and protect the sometimes difficult to define public good.

IV. SEATTLE PORT DISTRICT COMMISSION

Organization and Structure

The Seattle Port Commission is a five-member, nonpartisan body elected at-large by King County voters for four-year, staggered terms. In most Port Districts in Washington, commissioners are elected by districts rather than at-large, and the question of creating commissioner districts within the Seattle Port District has been raised several times by various groups, but the proposal has never received the support needed to bring it before the voters. Proponents of electing commissioners by districts argue that it would create a more representative body than the present at-large approach.

The commission elects a president, vice-president and secretary each January to serve one-year terms. Regular meetings are held on the first, second and fourth Tuesday of each month and special meetings may be called with appropriate public notice. All meetings must meet the requirements of the state Open Public Meetings Act. Closed executive sessions are limited to two per month and must be recorded electronically, with the records kept by the Port General Counsel.

Bylaws and Procedures

The commission has bylaws and rules governing the transaction of business. Major changes in the bylaws were made in 2008 and 2009 in response to the findings of the 2007 State Audit Report and growing public concern about commission practices and its oversight of the Port. The revisions directly addressed the public service responsibilities of the commission and instituted procedures to ensure public accountability and transparency in all commission business. The essence of these revisions is reflected in this statement from the preamble to the bylaws: "Commissioners shall abide by the principle that 'public service is a public trust.'

Commissioners shall uphold the integrity, impartiality and independency of the Commission and shall encourage and promote accountability, transparency and public confidence by their actions.”⁸ For the commission’s organizational chart refer to Appendix D.

Specific changes made to improve commission accountability and transparency include the following:

- All commission meetings must be public and meet all the requirements of the state Open Public Meetings Act. This ended the common practice of “working sessions” in which the commission met and transacted business without public notice.
- Executive sessions, closed to the public, are limited to two sessions per month and the sessions have to be recorded electronically and the recordings must be filed with the Port General Counsel.
- All official commission business must have a quorum of at least three members. Approval of any proposed action must have three affirmative votes.
- Commissioners must sign and abide by a newly implemented Commission Transparency Code of Conduct that affirms a commitment to transparency and expanding citizen participation in Port discussions.
- Membership on Port-related corporate or community boards is assigned by the commission president and reviewed annually with the expectation that membership on any board will not exceed four years.⁹

Role of the Commission

The commission establishes broad policies for the overall direction and long-term objectives of the Port. Ideally, the policies reflect the values, priorities and needs of the community as well as providing the direction the Port needs to be as competitive as possible. It hires a Chief Executive Officer (CEO) to implement Port policies and objectives, and to administer and operate the Port. The commission determines the type of business activity in which the Port engages; identifies short and long-term business strategies and sets financial policies; and approves labor agreements, adopts positions on legislation, and establishes the extent of use of powers of taxation and eminent domain.

Financial Management

The commission has a non-delegable fiduciary duty to provide oversight of the expenditure of public funds. The commission engages in long-term planning, including necessary capital expenditures. In doing so, the commission balances income vs. public benefit of any project and makes decisions based upon (a) financial return, (b) community issues and (c) environmental concerns. The commission adopts a finance plan, and then determines the amount of tax levy that will be adopted to support the plan. The annual budget reflects the commission’s priorities and financial policies.

Relationship of the Commission and the Port

While the commission is responsible for setting policy and providing oversight to ensure that the policies are implemented throughout the Port, the working relationship of the commission and the Port is through the CEO. Commissioners describe their relationship as, for the most part, that of a Board of Directors to the CEO of a large corporation. However, as elected officials charged with protecting the public interests and resources, commissioners are accountable to the public in ways a typical corporate board member is not. Corporate boards are responsible to the stockholders for the profitability of the company, while the commission’s responsibility is to ensure public benefit and the careful use of public dollars.

The relationship of the commission and the CEO is the crucial variable in how the Port District works. Maintaining the balance between their oversight responsibilities and ceding the authority and autonomy necessary for the CEO to function effectively is a constant challenge.

V. CHALLENGES FACING THE COMMISSION

1. **Accountability.** Accountability to the public is a principle as important as transparency. It has been addressed by the current commission and CEO in their response to the 2007 State Performance Audit and the 2008 McKay Investigative Report.

2007 State Auditor's Report

In 2007, the State Auditor's Office (SAO) audited the construction management program of the Port from 2004-2007, focusing primarily on the Third Runway Project at Sea-Tac airport. It revealed a Port culture of "get it done at all costs". The audit uncovered \$97.2 million in unnecessary costs, preferential treatment given to favorite vendors in terms of contracts, circumvention of Port Commissioners and stonewalling of the audit investigation by Port staff.¹⁰

The report recommended 51 changes, one of which was that the Port establish a Central Procurement Office headed by an officer reporting directly to the CEO. Other recommendations included revising its delegation of authority, reassigning the Port's Internal Audit Manager to report to the commission instead of to the CEO, implementing ethics reforms and training Port staff in these reforms.¹¹

Led by a commission sub-committee, the Port implemented the recommendations in a new Delegation of Authority Resolution (Resolution 3605), first passed by the commission in 2008 and revised in 2009. The resolution strengthened the commission's oversight of the Port's Capital Construction Program by requiring approval of any spending over \$200,000 and commission review of all projects three times prior to approval. Resolution 3605 is considered a major reform milestone for the Port. It created checks and balances and set in motion a new Port culture.¹²

At the same time, working with the commission, the new CEO reorganized the Port structure, adding six new leadership positions answering directly to the CEO. A new Real Estate Division focused solely on the Port's real estate—marinas, commercial properties and parks—and development. A Capital Development Division included the newly formed Central Procurement Office as well as Engineering Services, Port Construction Services, Airport and Seaport Management. Also new was the Office of Social Responsibility, which includes a Ship to Shelter Program that sends excess cruise ship supplies to shelters instead of landfills, the first such program operated by any port in the country. This office also oversees a Veteran's Fellowship Program which hires three new veterans every six months. The Port organizational chart is available in Appendix E.

2008 McKay Report

The Port Commission took further steps to investigate whether fraud had been committed by authorizing a thorough internal investigation of Port practices. The Special Investigative Report (the McKay Report), released in December 2008, found ten cases of civil fraud. It also found that Port staff tolerated suppressing information from Port Commissioners and an "arrogant disregard for open government."¹³

In response to the McKay report, CEO Yoshitani declared that he had “zero tolerance for fraud,” suspended four staff members and reprimanded three others. Two project managers resigned. Since that time, the Port has implemented the recommendations in the McKay report. They include:

- Develop a code of conduct, reporting mechanisms and whistleblower protection;
- Review the procurement process;
- Increase involvement by legal counsel in the procurement process;
- Document all requests for legal advice and the responses;
- Implement a centralized procurement document management system;
- Standardize project manual provisions used in construction contracts;
- Review small works roster program contracts; include enforceable audit provision;
- Take appropriate personnel action.¹⁴

2. **Competitiveness.** When considering the challenges faced by the Port and commission at this time, the restoration of public accountability following the damaging reports of 2007-08 looms very large. It goes to the heart of the Port as a public entity. But, as noted, the Port is a hybrid, and in the present harsh economic realities the business of the Port also faces challenges. International developments figure in: widening of the Panama Canal may divert cargo now coming from Asia to Pacific Rim ports to others in the Southeast U.S. and the Gulf of Mexico; and to the north, the development of the Port of Prince Rupert, Canada will also divert cargo.¹⁵

A domestic drain on revenue is a mandatory federal fee on every container unloaded at the Port, which subsidizes other U.S. ports that require extensive dredging.¹⁶ As the best natural deepwater port system on the west coast, Puget Sound does not need dredging, but Los Angeles-Long Beach does and so, via the federal fee, the Seattle Port District subsidizes a major competitor. Another challenge to the bottom line is the obligation for both the seaport and airport to adjust to stricter environmental standards. Both must respond to the traditional business demands of a bottom line that is at least somewhat profitable, while meeting the growing demands for environmental stewardship— demands that can be costly. And finally, there is the challenge of increasing both air and sea cargo as the recession eases.

In meeting these challenges, the Port of Seattle enjoys the benefit of having a diverse portfolio of maritime activities, including a major fishing facility alongside container, cruise and pleasure craft services. Public recognition, understanding and support of these resources will be necessary to maintain the Port’s competitive position – and this support needs cultivation. The seaport has few natural advocacy groups outside of the maritime industry itself. And the airport, while used by many residents throughout the year, shares with airports everywhere an uneasy relationship with those who resent living near a large, active transportation hub.

3. The Challenge of a Part-time Commission

A. *Commissioner Qualifications:* There are no formal qualifications for the position of Port Commissioner. Thus, any voter in King County is eligible to run for the position. Nor is there a commonly accepted set of qualifications or criteria that voters can use to evaluate candidates. Without some knowledge of the Port and the role and responsibilities of the Port Commission, voters have few objective criteria by which to evaluate candidates and make informed voting decisions.

When interviewed, commissioners identified both personal qualities and professional knowledge and experience as important qualifications. They also felt that the concept of public service and a commitment to protect the public interest were essential. Other personal attributes most commissioners considered important were:

- Open-mindedness;
- Willingness to learn and to consider multiple perspectives;
- Ability to work as a team member; and
- Willingness to dedicate the time the position required.

While the ability and willingness to work as a team member was consistently identified as an important quality, there was no mention of the critical importance of the ability to think independently and be willing to challenge a colleague as the commission deals with complex issues in which many conflicting interests and perspectives must be represented, explored and resolved. It is to be hoped that robust discussion among the commissioners and with the public characterizes the process of examining issues and reaching decisions.

Professional experience and knowledge the commissioners considered important were:

- Business experience (not necessarily related to maritime matters or aviation);
- Knowledge of corporate governance, fiduciary responsibility, corporate finance and budgets; and
- Experience with labor force issues and contract management.

Commissioners felt that the specific business of the Port could be learned on the job if an individual entered the position with the knowledge and skill sets identified above.

Commissioners considered diverse backgrounds and experiences among members important to the ability of the commission as a whole to represent the diverse public of the Port District.

Seattle Port Commissioners have had, and continue to have, diverse backgrounds.

Commissioners have brought experience in community activism; in marine-related activities such as trade, fishing, and labor; and in professions relevant to Port issues such as international trade and real estate. Some commissioners have come with an interest in public oversight and reform of the Port. Membership has, in the past, been relatively stable with significant longevity of several of the five members at any time.

By contrast, all of the present Port Commission members were elected in 2005 or later. Thus, this is a “young” commission with an opportunity and mandate to examine Port District priorities, make changes in commission practices including their oversight and governance of Port, and ensure public accountability and transparency. The mandate, in addition to fulfilling the basic mission of the Port to encourage the economic vitality of the region, is the job description of the part-time commission.

B. Time Requirements: Commissioners serve on a part-time basis with no clear guidelines for the time required to do the job. The minimal requirements include attendance at the three monthly commission meetings and appropriate participation on commission committees. The preparation time necessary for commission meetings and committee work varies with the issues under discussion, the tasks of the committee, and the experience of the commissioner. Beyond these requirements, the amount of time devoted to commission business is largely a matter of personal choice. The average time commissioners reported spending on commission business

ranged from 10 to over 40 hours per week. Most reported spending at least 20 hours weekly to meet the obligations of the position.

Those who spent the most time emphasized the legal aspect of the fiduciary responsibility the commission has for the use of public money and the time necessary to understand the complexity of Port businesses, knowledge they considered essential to provide appropriate fiduciary oversight. These commissioners also felt that community outreach was a critical responsibility of the role. Those who spent less time were concerned about the risk of micro-management of Port staff and projects if commissioners spent too much time and became “over-involved” in Port business and operations. They also pointed out that the Port had a Public Relations Department that was responsible for public education and outreach.

When commissioners were asked if a part-time commission could adequately discharge the responsibilities of the commission, most thought it possible *if* appropriate governance structures were in place and the Port CEO and the commission worked well together. However, several commissioners were concerned about the ability of a part-time commission to provide appropriate policy and fiduciary oversight of a complex, multi-million dollar business and ensure public accountability under any circumstances.

C. Reimbursement: Commissioners receive a base salary of \$500/month and a per-diem of \$90 for any day or portion of a day that is spent on official commission business. Per-diem payments are limited to \$16,000 annually. Other benefits include office space and staff support, as well as health and life insurance. Commissioners also receive a Port credit card for commission-related expenses and free travel for Port-related business.

The part-time nature of the position, combining uncertain time demands with modest compensation, influences who can “afford” to consider seeking election to the commission. As several commissioners pointed out, it would be difficult to serve as a commissioner without a primary source of income and/or support that allows the flexibility and time commitment the position demands. This raises an interesting question of representation on the commission that has received little public attention.

VI. CHANGES IN COMMISSION PROCEDURES

In addition to the bylaw changes discussed earlier, the commission made a number of other significant changes to address the relationship of the commission and the Port—issues that are central to the ability of the commission to provide oversight and governance. The most important changes included: (1) creating an independent commission staff, (2) clarifying the structure and duties of the commission committees, and (3) revising the commission’s delegation of authority throughout the Port organization.

1. Independent Commission Staff.

Until January 2008, when the commission transferred the Office of the Commission Clerk to the authority of the commission from Port administration, the Port Commission had no independent staff. Until this change, the commission had to depend on staff reporting to Port officials for such basic services as agenda management, notice and recording of meetings, and records management. The commission was also dependent on Port staff for the information about Port

District business they were supposed to oversee—a situation that left the commission poorly prepared to function independently and provide appropriate oversight.

The commission now employs five full-time staff members, including a research and policy analyst who reports to the commission president and investigates issues of concern to the commission related to the operation of the Port. Thus, the commission now controls its own business, and can independently investigate and access information. These changes enable the commission to more adequately oversee Port operations and ensure public accountability and transparency.

2. Committee Structure.

In 2008, in response to the state audit findings, major changes were made in the operation of the commission Audit Committee, which until then had functioned sporadically. The changes, formalized in a new Audit Committee Charter, granted the committee review and oversight authority on all matters related to the Port auditing and made all Audit Committee meetings public. Two commissioners serve on the committee along with one public member who is a non-voting advisor. The committee meets in open public meetings at least quarterly, reviews all Port audits and works with the Port's internal Auditor Manager, who reports jointly to the commission and the CEO, and external auditors. The committee also works with the State Auditor's Office on Port matters.¹⁷

3. Delegation of Authority.

The commission may also form temporary ad hoc committees to address more immediate, time-limited issues. In January 2008, an ad hoc committee was appointed to develop a new Delegation of Authority Resolution. As they developed the resolution, the committee sought input from a number of citizen panels and asked for public comment on how the commission could more effectively govern the Port. In November 2009, the commission adopted the final version of Resolution 3605 clarifying the authority of the commission. The resolution strengthened the commission's oversight of Port expenditures, clarified the duties of the Port CEO and the commission, and improved the quality and quantity of information available to the public so that spending priorities were clear.¹⁸

The last two years have been a period of substantial change for the commission, as commissioners have responded to the serious governance issues exposed by the State Performance Audit and the McKay Investigation. It has been a time of reexamination of commission practices and the relationship between the commission and the Port administration. The changes have clarified both the duty and the commitment of the commission to protect the public's interest in the Port, to be accountable to the public, and to make commission business transparent and accessible to the public. With a new CEO and a number of new commission members who were elected on the pledge to correct past practices, many of the governance issues have been addressed or are in the process of being addressed.

VII. RELATIONSHIP OF THE COMMISSION WITH THE PUBLIC

Who is the "public" the commission serves? It is diverse, comprised of groups with different interests and agendas, some of whom, such as customers, clients, and tenants, do business with the Port. These include airlines; terminal operators; cruise lines; truckers; unions; cold storage

and marina operators; the fishing industry, from large conglomerates to small family operators; and recreational boaters.

There are those who are interested in the Port's real estate, others in its environmental practices such as those which affect air and water quality. Some have concerns about its human rights issues such as ethnic diversity and equal opportunity for contracts among small and disadvantaged businesses; still others are concerned about the Port's financial discipline.

And then there is the large general public whose tax money helps to sustain the Port and whose votes decide who will sit on the Port Commission. Often this "public" knows little about how the Port works or what it actually does, and less about the qualifications needed for an effective Port Commissioner.

Given the diversity of interests and needs among the various "publics" that make up the voters of King County, the question of managing the Port for the public good becomes a complex and multi-faceted question. While there is not a clearly articulated, or broadly accepted, definition of the public good/public benefit in relation to the Port, the following parameters are usually part of the discussion: 1) creation of living-wage jobs; 2) environmental stewardship; 3) business practices that provide equal access to opportunity for all businesses; and 4) financial practices that ensure the appropriate use of public resources and do not unduly burden Port District taxpayers.

A number of groups with common concerns about the Port and its governance watch the Port closely and work diligently to inform the public of the issues and problems they see in the operation of the Port. These groups provide critical perspectives that can help citizens assess the many issues related to the Port and its governance. Information about some of the port watch groups can be found in Appendix F.

The challenge for Port Commissioners is to reach out to these different "publics," not only to provide transparency into the Port's activities, but to earn the public trust. As current commissioner Gael Tarleton stated in regard to the commission's responsibility to the public, "Go early. Go often. Go deep."¹⁹ Her sentiments were echoed by many of the other commissioners as well as by CEO Yoshitani, who stated at a Century Agenda panel meeting in 2008 that "everything the Port does revolves around public trust," and that the way to gain that, he felt, was to involve stakeholders in the process so they feel ownership of the final results.

This approach is quite different from that of the previous era, when public outreach and involvement was actively resisted and when the commissioners themselves had difficulty obtaining information on activities and contracts in which the Port was involved. Current commissioners are free to choose the extent and manner of their outreach to the public.

Engaging the Public

A. Public Meetings: Because the publics are so diverse, different strategies are required to engage them. Some commissioners sit on boards. Others feel that an essential part of being a commissioner is to go out to the community and hold town hall style meetings explaining what the Port does, or working collaboratively on particular issues. Such an approach was employed in the Highline Forums dealing with third runway issues at Sea-Tac airport. Port commissioners

met monthly with stakeholders addressing their concerns about noise and other matters. Similarly, a commissioner met with the Seattle City Council, the Seattle Police Department, and community groups to find a solution to idling trucks and diesel particulates in Georgetown and South Park.

Commissioners are expected to be the visible face of the Port and to work with the public to solve problems. One challenge in doing this is balancing competing interests. It is sometimes difficult for a group with a specific interest to understand the obligation of the Port to serve the greater good. The commissioners find themselves doing a delicate balancing act.

B. Port Website: Because the Port is a public entity, it is paramount that the commission's actions be transparent and accessible to the public. The Port website, www.portseattle.org, serves as one vehicle to accomplish this. All commission meetings are open to the public, but can also be viewed live on video. The briefing book provided to the commission prior to meetings is published on the website, as are minutes of all commission meetings. There are, however, exceptions to transparency, one of which arises during contract negotiations. Some commissioners feel that public input and transparency can jeopardize negotiations. During those times they feel that the commission should put on its business hat and meet behind closed doors.

C. Century Agenda Process: Another form of outreach to stakeholders has been the Century Agenda process. Because the Port will celebrate its 100th anniversary in 2011, the commission felt that it would be an opportunity to involve stakeholders collaboratively in the development of an updated Port-wide strategic plan for the next 25 years. The Port invited key expert stakeholders to a series of 11 workshops between July and December of 2008, with the goal of getting public input to develop guiding principles and policy recommendations in the areas of a green Port, social responsibility, real estate and land use, and funding strategies.

The panel members were chosen for their experience in certain areas, their leadership abilities, diversity and balance. The participants included representatives from such diverse groups as the Bullitt Foundation, REI, Puget Sound Clean Air Energy, University of Washington Business School, the Muckleshoot Tribe, Manufacturing Industrial Council, Teamsters Union, Seattle Chamber of Commerce, Queen Anne Community Council, Friends of the Earth and Puget Sound Energy.

The panels were asked to listen and learn from each other, and to give the Port Commission feedback on the Port's direction. In turn, Port Commissioners, who headed each topical discussion group, agreed to listen, to give the panelists information and support, and to document the proceedings. Final recommendations were given to the Port Commission in 2009, with promises to include review by the broader public through 2010. The commission adopted 22 guiding principles in August, 2009. One of the principles adopted was: The Port is obligated to sustain the public trust through an ongoing commitment to transparency, accountability and equity, and to effectively communicate its core activities to industry, the regulatory and environmental community and the people of King County.²⁰

Although the expert panels represented many important stakeholders, their selection by the commission and Port staff for their past Port involvement as well as their expertise limited the representation of the general public—individuals interested in the Port District who have had no formal connection to the commission or Port leadership. This seems a missed opportunity to

engage the general public early in building consensus about the mission and direction of the Port District. That said, overall the Century Agenda process demonstrates the intent of the commission and Port leadership to seek community input in setting the policies and priorities of the Port. Additional public input will be invited in public hearings as the new Strategy Plan is developed. A chart showing the Century Agenda stakeholders is available in Appendix G.

VIII. RESTORING PUBLIC TRUST

Historically, King County voters have been largely content to elect commissioners and trust the commission to oversee the Port in ways that protect the public interest and ensure the prudent use of taxpayer resources. The commission has depended on this reservoir of public trust and support to carry out their mission of overseeing the Port.

Public trust, however, began to erode early in 2007, when the proposed retirement compensation of the CEO became public and raised serious questions about the commission's transparency, decision making and team work, and the appropriate balance of power between the CEO and the Commission.^{21,22,23} Although the immediate problem was resolved and a new CEO was installed in March 2007, the aftermath included a fractured commission and a skeptical public. Voters replaced two commissioners with reform candidates in the November election.

Public trust was further challenged in December 2007 when a performance audit report by the State Auditor's Office (SAO) found that the commission had provided insufficient oversight of contracting practices and that the Port lacked adequate systems to protect taxpayer dollars. The auditor explicitly recommended that the Port Commission reassert its responsibility for Port management and take back much of the decision-making responsibility that had been delegated to Port management.²⁴

Rebuilding public trust with a commitment to put the public interest first and ensure the wise use of public resources was a high priority for the commission as they addressed these problems. Finding ways to help the public understand the complex nature of the Port and the work of the commission and to provide opportunities for real public engagement became an explicit part of the commission's agenda. To accomplish this agenda, the commission initiated a number of efforts to engage the public, including the previously discussed Century Agenda.

Working with the commission, the Port CEO finalized in December 2009 a new Workplace Responsibility Program which integrates accountability standards and a Code of Conduct for Port staff. A Workplace Responsibility Officer, reporting directly to the legal counsel, was hired to implement the program. Every Port employee is expected to learn about, understand and agree to the Code of Conduct policies by the spring of 2010.²⁵ The current leadership seems to be taking its accountability to the public seriously by systematically addressing the many problems that were prevalent during the previous decade.

Working with the Port staff, the commission has also supported a number of other efforts to educate and engage the public and to demonstrate their commitment to transparency and public accountability. These efforts are discussed below.

Port 101: To foster public engagement with the Port, the commission supports the Port staff in offering a number of community-based educational opportunities. Port 101 is a series of tours

of Port facilities including the airport, the Smith Cove cruise terminal, a container terminal and the Duwamish River. Residents of King County are invited to sign up for the educational tours and learn about the Port from the front line.

Citizens Academy: The Port Police offers a Citizens Academy, a ten-week series of lectures about the work of the Port Police in safeguarding the public in all of the Port facilities. Citizens can sign up and learn first-hand about the law enforcement and security challenges facing the Port.

Speakers Bureau: The Port sponsors a Speakers Bureau with services available to any community group. Senior Port staff members are available to speak about almost any topic of interest related to the Port.

Sea-Air School: In addition to these programs for adults, the Port offers a Sea-Air School for grades three through twelve. Any school in King County can participate in this program which introduces students to the Port and the role it plays in the County. The experience includes a seaport tour, a class on international trade, and an introduction to career possibilities related to ports. It is hoped that early exposure to the Port will foster an ongoing interest in and engagement with the Port.

Port of Seattle Website: Information about all of the above opportunities may be found on the Port website, www.portseattle.com. The Port's website is the citizen's guide to the Port. Citizens can follow commission business through meeting notices, agendas, and minutes. Staff briefing material for commissions is also available on the website which means that citizens, if they wish, can access the information necessary to understand the issues the Commissioners are confronting. All resolutions and motions considered by the commission are also available, with the associated briefing papers.

The website also makes the Port operations visible to the public with both immediate and archived information available about the major divisions of Port operations. Internal and external audits are available. Individuals are invited to sign up to receive Port emails on topics of interest.

While the question of what is not being disclosed can always be asked, at this point the commission and the Port appear to have a very strong commitment to reach out to the public and to provide the information the public needs to be an active and well-informed partner with the commission in making sure that the Port operates in the public interest.

IX. RESPONSIBILITY OF THE PUBLIC

The responsibility of the Port Commission to protect the interests of the residents of King County in all aspects of their oversight of the Port has been well established. The reciprocal responsibilities of King County residents to the commission and the Port are less clear and rarely considered. Given the ubiquitous presence of the Port in King County and the fact that it is a public entity governed by elected officials, residents have a civic duty to be informed about the Port and its governance.

Informed Participation

Given the large and complex nature of the Port and the many related policy and governance issues, what does an ordinary citizen need to know to be Port-literate? The basic Port primer would include:

- The mission of the Port District;
- The role and responsibilities of the Port Commission;
- The business of the Port and how the business supports the mission; and
- How the commission provides oversight and represents the public interest.

Knowing something about these basic aspects should prepare residents to be informed participants in matters related to the Port. Ways to access this information have previously been discussed and include the Port website, attending commission meetings, participating in Port outreach opportunities – or joining the League.

Electing Port Commissioners

Electing Port Commission is one of the most important civic responsibilities citizens have in relation to the Port District. Making well-informed voting decisions is complicated by the fact that there are neither formal qualifications for the position nor any well-articulated, commonly accepted criteria for candidate evaluation—which leaves voters vulnerable to campaign rhetoric. Given these challenges, how then should voters evaluate commission candidates? Arguably, the best criteria available are the characteristics and skills identified as important by Commissioners holding office. Those include

- Understanding and experience with public service;
- Understanding the role of the commission and the Port District;
- Ability to work as a team player;
- Experience with corporate finance and an understanding of fiduciary responsibility and corporate governance;
- Commitment to represent the diversity of King County.

Demanding Accountability

Finally, the citizens of King County have a civic responsibility to hold commissioners accountable for representing and protecting the public interest. To do this, citizens must keep themselves informed about the issues facing the Port and how the commission is representing the public interest. Among the many ways citizens can get the information necessary to evaluate commissioner's performance are:

- Attending commission meetings or following them on the Port website (www.portseattle.org);
- Local newspapers and their websites for public perspective on commission and Port issues (www.seattlepi.com, www.seattletimes.com, www.seattleweekly.com);
- The Port and other relevant websites such as the State Auditor Office (www.sao.wa.gov).

The ultimate way citizens hold commissioners accountable is with their vote. The 2007 and 2009 elections clearly demonstrated the willingness of King County voters to hold commissioners accountable as they voted for candidates whose campaigns promised reform of commission and Port District practices.

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APPENDIX A

PERSONS INTERVIEWED

AUGUST 2008-JULY 2009

Bryant, Bill – Seattle Port Commission President; elected 2007

Copass, Lucy – member, League of Women Voters of Seattle, past Port Study committee member

Creighton, John – Seattle Port Commissioner, elected 2005; reelected 2009

Davis, Patricia – Seattle Port Commissioner; 1985-2009

Hara, Lloyd – Seattle Port Commissioner; 2005-2009

Kenworthy, Lise – Seattle maritime attorney

Kirangi, Joyce – Internal Auditor, Port of Seattle

Miller, Paige – Seattle Port Commissioner; 1987-2005

Strout, Linda – Deputy CEO, Port of Seattle; 2004-

Tarleton, Gael – Seattle Port Commissioner; elected 2007-

Yoshitani, Tay – CEO Port of Seattle; 2007-

APPENDIX B

PREVIOUS LEAGUE OF WOMEN VOTERS PORT STUDIES

Puget Sound Leagues of Women Voters (1973). Puget Sound's Public Port Districts.

League of Women Voters of Washington. (1988, April). Washington State Public Port Districts, Part I Governance

League of Women Voters of Washington (1988, October). Washington State Public Port Districts, Part II – Regionalism.

League of Women Voters of Washington (1992, Summer). Washington State Public Port Districts: Governance Issues.

APPENDIX C

OTHER MODELS OF GOVERNANCE

Ports throughout the US are owned and operated under a variety of arrangements. The form of ownership affects how decisions are made, the level of public involvement, and the funding of port operations and capital improvements.

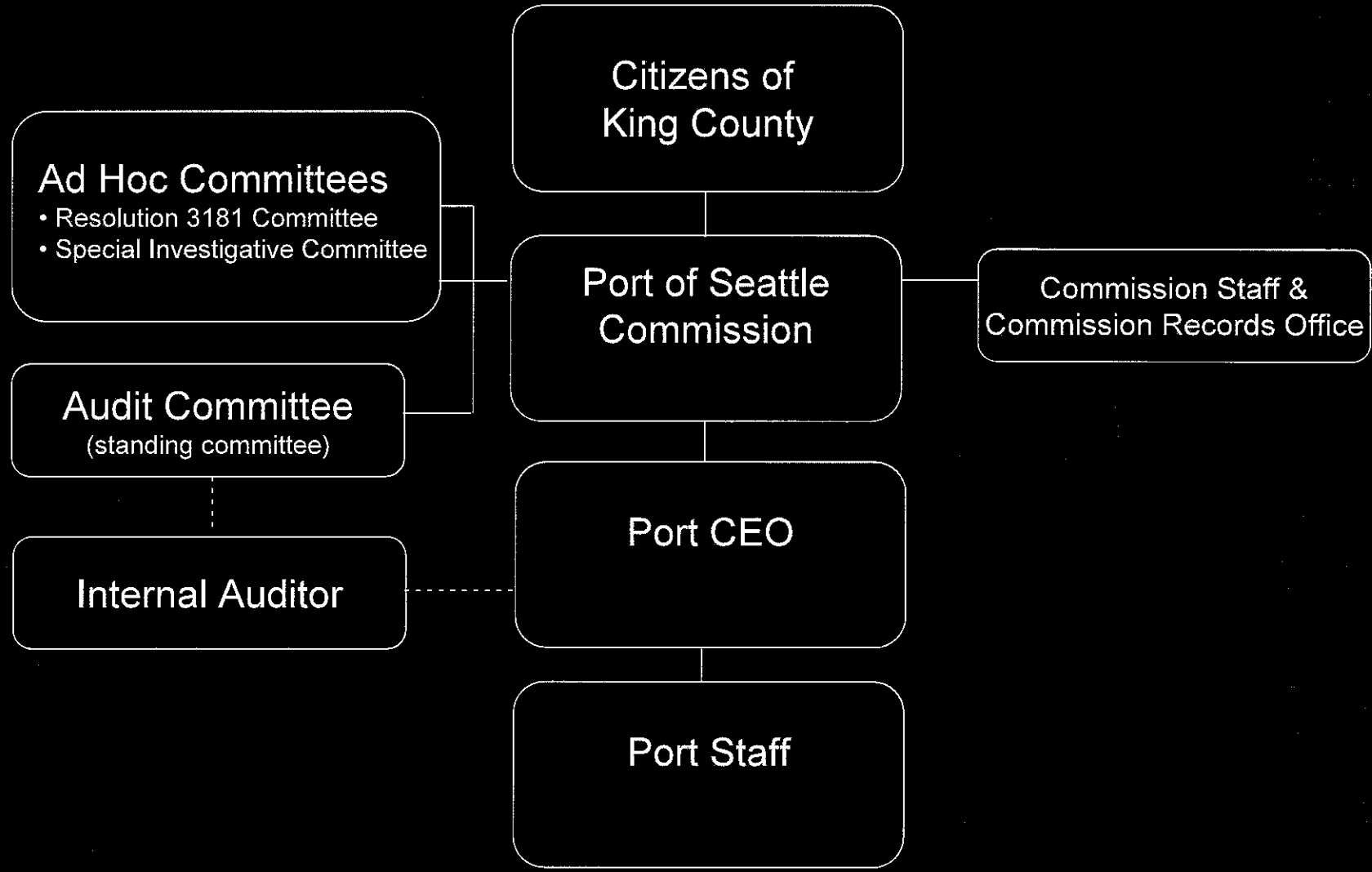
The most common form is as a department of government, usually a state. For example, all ports in Virginia and Maryland are responsible to a department of the State government as are all ports in Louisiana and Alabama.

Both municipal and county ownership is also common. The Ports of Huston, TX, Tampa and Port Everglades, FL, are responsible to departments of county government while the port of Anchorage, AK is part of the municipal government. Special port districts are found throughout the US including Albany, NY, Cleveland, OH and Duluth, MN. Special port districts are governed in a variety of ways.

Few ports in the US operate with elected commissioners who campaign for office, with Port issues being debated as a public function. In Washington State, this is the norm. To highlight the contrast, when the Port of Baltimore needs a capital improvement it submits a request to the Maryland legislature, which debates and assesses the request. In Seattle, capital improvements are debated by Port elected commissioners, and funded through local Port financing mechanisms.

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Commission Organization Chart





APPENDIX F

PORT WATCH GROUPS

Coalition for Clean and Safe Ports www.cleanandsafeports.org

This is a national organization with local affiliates, focused on promoting good jobs and green growth in ports, with a particular emphasis on clean air and the port trucking industry. This is a very pertinent issue in the Seattle Port District at this time.

King County Citizens for Port Reform

This local group has been active in promoting and supporting candidates for the Commission who are interested in reform and improved transparency and public accountability.

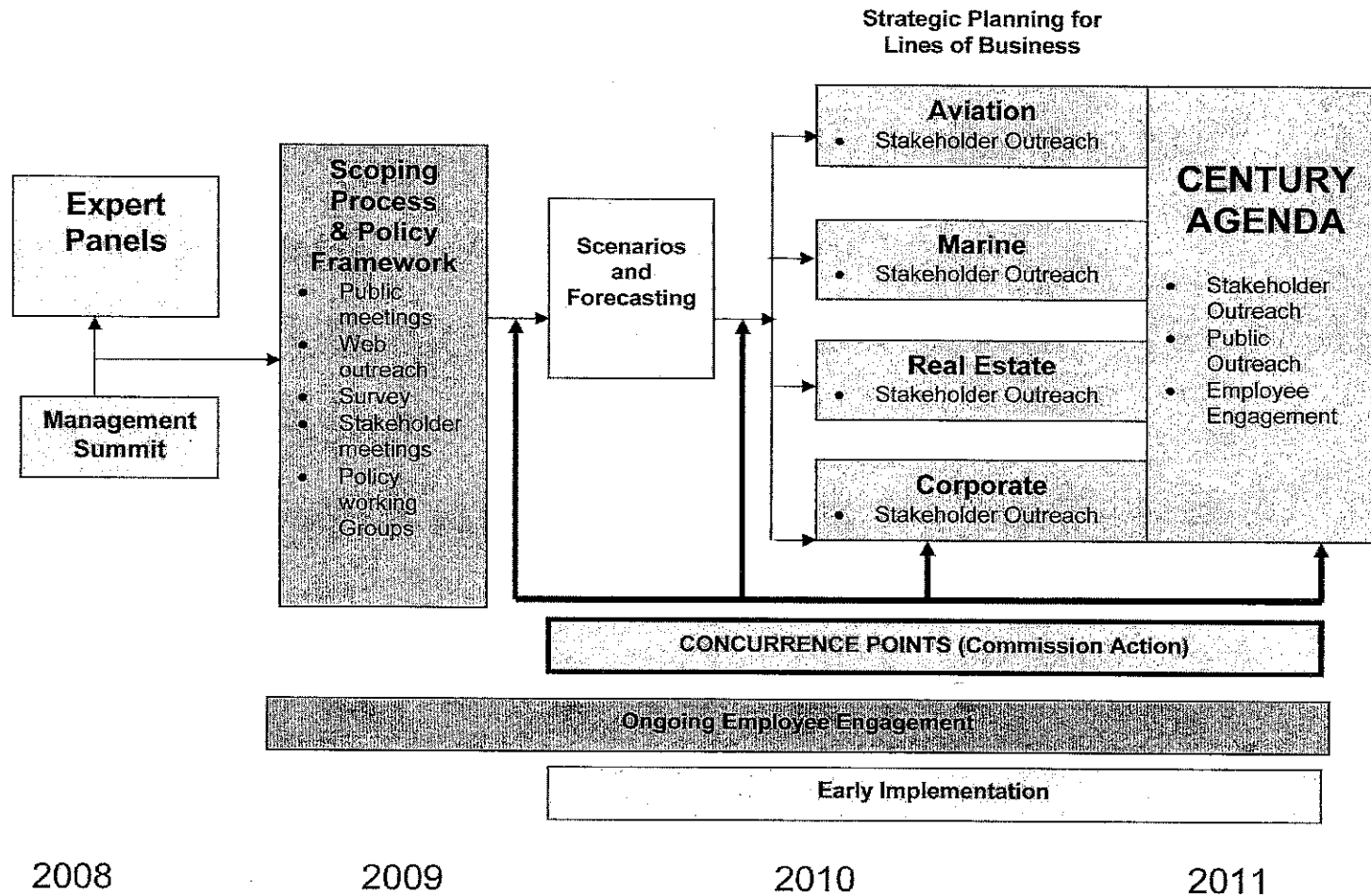
The Port Observer www.theportobserver.com

This local website was started in 2001 by Christopher Cain, an unsuccessful candidate for the Port Commission. A number of people contribute articles to the website on a broad range of issues related to Port businesses and the work of the commission.

Portwatchseattle.blogspot.com This wide-ranging blog devoted to Port issues requires individuals to register as blog members in order to access the website.

This is not intended to be an exhaustive list of web resources that provide critical perspectives on the Port and its governance, but should help citizens who are interested begin to explore the complex and always interesting subject of the Port.

Century Agenda Stakeholder Outreach Process



APPENDIX H

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