

**MEMORANDUM OF AGREEMENT**  
**Between**  
**Washington State Department of Fish and Wildlife**  
**And**  
**The Port of Anacortes**  
**Regarding**  
**The Fidalgo Bay Eelgrass Project Mitigation Credit**

June 2003

**Background**

The Port of Anacortes (Port) proposes to improve and modernize portions of the Port's main industrial pier, Pier 1, and the adjoining Port properties currently occupied by the Port's tenant, Dakota Creek Industries. This Project (referred to hereafter as Project Pier 1) is being implemented to increase the capacity, efficiency and operational flexibility of the existing shipyard and Port uses on these properties, to meet the current and future operational needs of the Port and its tenants. Project Pier 1 is currently undergoing SEPA review and the Port intends to submit joint aquatic resources permit applications in 2003. The Port is also in the preliminary stages of planning to expand the Cap Sante Boat Haven to meet the growing demand for boat moorage in Fidalgo Bay. The permitting schedule for the Cap Sante Boat Haven Expansion Project has not yet been established but is expected to occur within the next 5-10 years. Both of these proposed Port-sponsored development projects would result in impacts to eelgrass habitat and require compensatory mitigation pursuant to state and federal law.

The Port proposes to work under the provisions of RCW 90.74 – *Aquatic Resources Mitigation* (see attached) to develop a habitat mitigation project that can be used to offset impacts associated with the above mentioned projects. RCW 90.74.005 “declares that it is the policy of the state to authorize innovative mitigation measures by requiring state regulatory agencies to consider mitigation proposals for infrastructure projects that are timed, designed, and located in a manner to provide equal or better biological functions and values compared to traditional on-site, in-kind mitigation proposals.”

In accordance with RCW 90.74, the Port proposes to offset a portion of the unavoidable adverse impacts associated with Project Pier 1 and the Cap Sante Boat Haven Expansion Project (Port-sponsored development projects) by implementing the Fidalgo Bay Eelgrass Project (Eelgrass Project). The Eelgrass Project would provide up to 6 acres of eelgrass habitat in an otherwise unvegetated portion of Fidalgo Bay that is currently too deep to support eelgrass. The project would be implemented by placing 3 to 4 ft of clean fill material to achieve a bottom elevation comparable to adjacent eelgrass habitat followed by planting and monitoring to assure eelgrass colonization. The permits for the Eelgrass Project are being obtained separately from the permits for Project Pier 1 and Cap Sante Boat Haven Expansion Project.

This Memorandum of Agreement (MOA) serves as the vehicle for the Port and the Washington Department of Fish and Wildlife (WDFW) to pursue an agreement, pursuant to RCW 90.74, that allows the application of mitigation credits from the Eelgrass Project for unavoidable impacts of Port-sponsored development projects, and that establishes how the credits will be calculated and assigned to Port-sponsored development projects.

## Purpose and Contents

This MOA establishes a number of mutual agreements between the Port and WDFW relating to how mitigation credits from the Eelgrass Project will be assigned to offset the impacts resulting from Port-sponsored development projects. Specifically, the MOA outlines the following items:

- 1) Application of Mitigation Credit
- 2) Basis of Mitigation Credit
- 3) Accounting of Mitigation Credit

The details of the Eelgrass Project will be addressed in a forthcoming habitat plan to be prepared for the Project. The habitat plan will provide project details appropriate for supporting the permit review process. An HPA will be required and obtained for the Eelgrass Project presented in the habitat plan. The habitat plan will contain all of the items normally required in a mitigation plan as described in RCW 90.74.020 (and defined in RCW 90.74.010) with the exception that it will not address the impacts of other Port-sponsored development projects. In addition, the habitat plan will establish a framework for applying mitigation credit from the Eelgrass Project to other Port-sponsored development projects, by incorporating negotiated rates of replacement for various types of potential impacts. The Port will prepare separate mitigation plans for both Project Pier 1 and the Cap Sante Boat Haven Expansion Project in support of the HPA review process for those projects. These mitigation plans will be prepared on a schedule appropriate for each project and will contain the information set forth in RCW 90.74.020 and RCW 77.55, including the impacts associated with the Port-sponsored development projects so that they can be correlated to and properly credited against the habitat plan for the Eelgrass Project. These mitigation plans shall also address avoidance and minimization of impacts for each Port-sponsored project as defined in RCW 90.74.010.

## Application of Mitigation Credit

The mitigation credit resulting from the Eelgrass Project can be applied as partial mitigation for impacts resulting from Project Pier 1 and the Cap Sante Marina Expansion Project. In the event that one of these projects is not pursued, or the Port decides that these are not its priority projects, then the Port and WDFW will make a good faith effort to pursue an agreement to allow credit to be assigned to another Port-sponsored development project. That agreement would be reflected in a new MOA.

This MOA does not quantify the impacts associated with Project Pier 1 or the Cap Sante Marina Expansion Project nor imply that mitigation credit provided at the Eelgrass Project will be adequate to offset all of the impacts to aquatic resources associated with these projects. A detailed analysis of project specific impacts to aquatic resources for the two Port-sponsored development projects covered herein will be addressed during the HPA review of the individual mitigation plans for Project Pier 1 and the Cap Sante Marina Expansion Project.

### Basis of Mitigation Credit

Eelgrass beds are recognized by the state of Washington as habitats of state-wide-significance. Due to the high ecological value placed on eelgrass habitat, eelgrass is used as a measurement of available mitigation credit within the Eelgrass Project. The basis for mitigation credit is a combination of the count of eelgrass shoots within the Eelgrass Project area and the total eelgrass acreage. The total number of acreage credits available is equal to the total acreage encompassed by the Eelgrass Project site. If all acreage credits have been assigned to Port-sponsored development projects, then no additional mitigation credit can be assigned from the Eelgrass Project even if excess eelgrass shoots are available. It is the Port's responsibility to demonstrate that mitigation credit exists at the site through monitoring the abundance of eelgrass shoots and total acreage of eelgrass at the Eelgrass Project site. This responsibility is not to be construed to require the Port to wait to obtain an HPA for a development project until after colonization of the Eelgrass Project site by eelgrass, as some mitigation may occur concurrent with project development.

Consistent with the intent of RCW 90 74, mitigation credit from the Eelgrass Project is available to offset impacts to habitat other than eelgrass as long as it is determined that the mitigation provides equal or better biological functions and values compared to the habitat affected by the development project. For example, for Project Pier 1, dredging would lead to loss of eelgrass habitat and conversion of non-vegetated intertidal and shallow subtidal habitat to subtidal habitat. The mitigation credit can be used to partially offset both of these types of impacts and several additional types of habitat impacts including, but not limited to, impacts of shading on intertidal and shallow subtidal habitat. However, the mitigation credit cannot be used to offset the impacts of converting aquatic habitat to upland (i.e., the sum of project impacts and mitigation actions cannot result in a net loss of aquatic habitat acreage).

### Accounting of Mitigation Credit

Mitigation credits will be accounted for within the HPAs for other Port-sponsored development projects. The mitigation rates will be negotiated separately for each Port-sponsored development project through the HPA process. The Project Pier 1 HPA, for example, will describe project impacts and the mitigation credits that have been agreed upon based on a combination of 1) eelgrass shoots, and 2) acreage credits. The Port will advise WDFW of any changes to project design or increased mitigation requirements that result from the federal permit review process for the Pier 1 Project. When the Port applies for an HPA to assign mitigation credits to a second Port-sponsored development project, like the Cap Sante Boat Haven Project, the Port will identify avoidance and minimization measures, project impacts, the mitigation credits that have been previously assigned, and the remaining mitigation credits to be applied from the Eelgrass Project. The Port will, again, advise WDFW of any changes to project design or increased mitigation requirements that result from the federal permit review process for the Cap Sante Boat Haven Project. This process will be repeated until all of the mitigation credits from the Eelgrass Project have been assigned to Port-sponsored development projects.

The negotiated mitigation rates of replacement for each Port-sponsored development will be based on consideration of a number of factors including but not limited to: habitat impact type, size and location, mitigation timing relative to project impacts, and pre- and post-project functions at the Eelgrass Project site.

A specific number of eelgrass shoots from the Eelgrass Project shall be assigned to each Port-sponsored development project based on the mitigation rates of replacement negotiated for each project. For example, if it is determined that the Port's Project Pier 1 will eliminate 100,000 shoots of eelgrass and the negotiated rate of replacement is 1.5:1, then 150,000 of the eelgrass shoots at the Eelgrass Project site would be assigned to offset adverse impacts associated with Project Pier 1. The entire mitigation site is available to achieve the target Project Pier 1 shoot requirement. However mitigation credit for a second development project, like the Cap Sante Boat Haven Expansion Project, would only be available when the total number of shoots at the Eelgrass Project site exceeds the number of shoots necessary to offset the impacts of Project Pier 1.

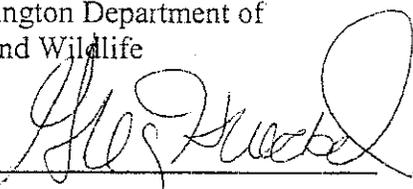
In addition to eelgrass shoot abundance, a specific acreage credit from the Eelgrass Project shall be assigned to a development project. The assignment of acreage shall be based on the negotiated rate of replacement. For example, if it is determined that the Port's Project Pier 1 will eliminate 1 acre of eelgrass and the negotiated rate of replacement of 1.5:1, then 1.5 acres of acreage credit from the Eelgrass Project would be assigned to offset adverse impacts associated with Project Pier 1. The acreage credit assigned for a development project is not a distinct geographic unit within the Eelgrass Project site. Instead, the total number of acreage credits available is equal to the total acreage encompassed by the Eelgrass Project site. If all acreage credits have been assigned to projects, then no additional mitigation credit can be assigned from the Eelgrass Project even if excess eelgrass shoots are available.

**Terms and Conditions**

This Memorandum of Agreement has been developed based on input and cooperation by the Port and WDFW. Adoption of this MOA requires the signature of both parties and is executed as of the date of the last signature below. The individuals signing below certify that they have the requisite authority to bind the respective parties. Any modifications to this Agreement must be in writing and signed by both parties. Applicants shall not be bound by any oral representations or statements.

STATE

Washington Department of  
Fish and Wildlife

By: 

Greg Hueckel

WDFW Habitat Program Assistant Director

Dated: 6/16/03

APPLICANT

Port of Anacortes

By: 

Dan Stahl

Executive Director

Dated: 30 June 2003

By: P. Birch

Peter Birch

WDFW Habitat Program Deputy Assistant Director

Dated: June 16, 2003

Washington Department of  
Fish and Wildlife

By: W.C. Brooks

William C Brooks

WDFW Contracts Officer

Date: JUN 19 2003