

South Island Sea Kayak Association
1581 – H Hillside Avenue
Victoria, BC
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Dec.22/08

Superintendent
Navigable Water Protection Program
620 – 800 Burrard Street
Vancouver, British Columbia
V6Z 2J8

Superintendent:

Re: Canada Gazette, November 29, 2008 Community Marine Concepts LP

The South Island Sea Kayaking Association (SISKA) is a non-profit organization dedicated to sea kayaking on Vancouver Island, particularly in the Greater Victoria area. Since we are based in Victoria, our members paddle the navigable waters in the vicinity of the marina development proposed by Community Marine Concepts. Currently our organization is comprised of over 140 members. We operate on the waters year round engaging in organized excursions for our members and individually on a recreational basis. On a regular basis SISKA organizes excursions down the Gorge waterway and along the north shore of the harbour, passing through the area where the proposed construction is to take place.

SISKA provides training and education on safe paddling skills through Paddle Canada and other national organizations. We are actively involved in issues pertinent to sea kayaking with respect to safety, environmental concerns and access to navigable waters. The navigable waters surrounding the City of Victoria have been acclaimed as the "best urban paddling in the world", the subject of a recent public presentation. Our organization has a vested interest in ensuring the continued and unimpeded use of these waters for non-powered vessels is protected, as shown on the current chart "Port of Victoria Traffic Scheme" published by Transport Canada.

The approval of the project proposed by Community Marine Concepts LP on the north shore of the Victoria harbour will effectively alter the use of this area from the current public use to private use. The approval of this project is counter to the stated mission of the Navigable Waters Protection Division "Preserve the public right of unimpeded safe navigation ". This applies equally to all vessels including small non-powered boats. The Victoria harbour and its approaches is already a

complex mixture of marine traffic ranging from the large and small commercial ferries, tugs and their tows, sightseeing vessels, private vessels, aircraft and non-powered vessels such as kayaks, canoes and outriggers. Subjecting non-powered boats through a private marina does not constitute public access and therefore is not consistent with the NWP Act. Forcing these vessels outside the marina into a restricted congested navigable waterway presents an inherent danger to all concerned and is also inconsistent with the Act for public access to safe navigation. Harbour ferries regularly transit this area creating further risk of collision to all concerned.

Transport Canada's Port of Victoria Traffic Scheme of June 24, 2008 clearly identifies the north shore of the harbour from Songhees Point to Coffin Island Point as an area for non-powered vessels. The proposed marina would eliminate an unimpeded safe corridor for non-powered vessels. Although the proponent has verbally stated that these vessels would be permitted to transit the proposed marina, this permission can be revoked at any time. With passage through the marina withdrawn, a right of the owner of this private marina, non-power boats are forced around the outside of the proposed marina. The other situation that would require non-powered vessels to extend around the marina occurs when vessels are maneuvering in the marina. Large yachts mixed with small often unseen craft may lead to a potentially tragic event. These yachts have extremely restricted and often obstructed sightlines of vessels close aboard. Another hazard presented to non-powered craft is the discharge current of these yachts thrusters while they are maneuvering within the proposed marina. That current presents yet another danger to these small light non-powered craft.

Two recent examples of a significant number of non-powered vessels utilizing the safe passage are as follows: On September 20, 2008 over 25 SSKA kayaks participated in such an event that transited the area under consideration. Another group of 20 plus paddlers from another organization transited this same area within a week of this event. This is typical of organized excursions that have occurred throughout the past years in the harbour. In addition to these organized excursions, there are hundreds of residents and visitors paddling these same waters independently. Paddlers also use these waters to attend special harbour events such as the Symphony Splash, the Classic Boat Festival and the Dragon Boat Festival. Today similar size groups can safely travel along the shore without the risk of motorized craft obstructing their passage. If the non-powered vessels are forced from their former safe navigable waters around the marina into the mainstream of mixed vessel traffic, there are additional unnecessary risks to safe navigation.

The site plan filed for this notice at BC Lands Title has numerous deficiencies making it extremely difficult for the reader to comprehend. This is the document the proponent has submitted with regard to the Gazette notice. The interpretation of the Community Marine Concepts site plan is difficult when addressing the southern edge of their proposal for this reason: The proposed dock with

attenuators appears to be adjacent to the taxiway. On the plan at the closest point to the taxiway, there is the number '7640'. The scale on the submitted plan is shown as 1:100. Applying this scale to the layout does not logically fit the features on the plan such as proximity to the runway and taxiway. The reader gets an erroneous view of the dimension of the marina, the clearances between the marina and the adjacent taxiway. If the scale was 1:1000, the distance between the edge of the marina and the closest point of the taxiway is only eight meters. This limited distance is correct when assuming the units associated with '7640' is millimeters. Therefore the 7640 millimeters would be twenty-five feet or eight meters! This lack of clearly defined units shows lack of attention to detail by the proponent and the reviewing officer. This leads to confusion to those trying to correctly interpret the plan and develop an effective response to the Gazette ad.

The site plan is also deficient in its detail with respect to the bridge at the opposite end to the entrance. The plan has a label "Arch Bridge 5'-0" clearance at centre". There is no indication of the width of the bridge so it is questionable that kayaks, canoes, hydro bikes or outriggers could safely transit under the bridge. The plan fails to provide sufficient details as to the distance and bottom conditions between the shoreline and the bridge and between the docks that extend parallel to the shoreline toward the open end to the harbour. For those who have transited the proposed marina and clear of the bridge, the dock appears to be an obstacle very close to the shore. This creates uncertainty as to the safety of vessels to pass especially at low tide. According to Canadian Hydrographic Services' chart 3412 plus a site inspection, the area in question to the open harbour is extremely shallow with a rock strewn foreshore. Therefore it is not possible to state or even suggest these waters are navigable for small non-powered vessels.

Although these are not shown on the plan, the developer indicated last September that his plan includes wave attenuators on the southwest side of the marina structure. The attenuators are needed by the marina primarily to dissipate the energy from high waves driven by strong southwest winds off the Strait of Juan de Fuca. These winds flow through the opening in the outer breakwater and are present year round. When the attenuators are operating they will deflect these waves with considerable mechanical force, causing sea conditions to become chaotic. Paddlers would experience the severe effects of the reflected wave energy under these conditions. Chaotic sea conditions caused by the operation of wave attenuators would pose a risk to sea kayakers. Aircraft transiting on the taxiway adjacent to the proposed marina structure would be forced to taxi through a narrow corridor in rough seas and strong winds, with the marina structure on their immediate starboard side. Pilots would be at risk of these winds and rough seas causing them to drift into the marina structure. Harbour ferries that currently transit to West Bay along the north shore near the white buoys would be forced into this narrow corridor under rough sea conditions as well. This potential for wave attenuators to create serious safety issues is clear.

The site plan does not address vessels being secured to the southern outside of the marina. A 100+ foot yacht will have a beam of 25 foot or more! If Community Marine Concepts uses this space on the outside, that narrow passage between the marina and the taxiway could be virtually eliminated. Non-powered boaters could be forced into the unsafe shared use of the taxiway. This should be clarified on the plan.

The site plan is obscure in its details as it shows three types of units: imperial (5'-0") at the arch centre of the bridge, metric 22.67 cubic meters for the building on the dock and simple numbers with no units as pointed out earlier on the lines between the south side dock and the edge and centre of the taxiway. Similar examples of numbers without units can be found on the site plan. The total depth of the proposed marina measured from the shore to the extreme outer edge into the harbour is not shown. Therefore, the magnitude of the marina and its potential for this project to impede navigation are not clear to the public at large and especially to those of us with special interest in the safe use of these waters.

The aircraft traffic on the taxiway appears to be grossly underestimated. According to the Victoria Harbour Master's data, the southbound runway "B" usage has increased dramatically in the last ten years. With the increased use of runway "B" there is a corresponding increase in the use of the taxiway adjacent to the proposed marina. The number of takeoffs on runway "A", the east – west runway have decreased from approximately 12,000 in 1998 to approximately 5,000 in 2007. Using 2007 figures provided by the Victoria Harbour Master, between May 1, 2007 and September 20, 2007 there was a monthly average of 356 aircraft taking off on runway "B". That is based on the following: of the 9746 total takeoffs in the Victoria harbour for this period, 7,115 of the takeoffs are on runway "B" for the period. The Harbour Master said 73% of all takeoffs now use runway "B". Victoria International Marina's own estimate is only 25% of the aircraft movements to runway "B" will use the taxiway. That translates and represents a hazard to vessels in navigable waters as between May and September 2007 an average of 32 aircraft per day used that taxiway. Marine safety would be seriously compromised by expecting kayaks, canoes, outriggers and harbour ferries to share this restricted navigable passage with a high volume of aircraft traffic. Contrary to statements made by the developer, our research shows that the north taxiway to runway "B" is usable by aircraft at times other than high tide. There are indicators on the navigational aids that the pilots use to determine sufficient water levels at times other than high tide. This allows aircraft the use of the taxiway at non high tide periods.

SISKA would like to express our disappointment that our organization was not notified of the public information session chaired by Lachlan MacLean on September 18th for recreational users of non-powered vessels to view and comment on the preliminary plans for the marina. Mr. Jim Schellenberg, a NWP officer, was in attendance and took notes. A member of our organization heard

from another stakeholder about this session just a few hours before it was scheduled to start but there was insufficient notice to contact members of our executive who would have appreciated an opportunity to attend this information session in order to report to our membership on the proposed plans, and to develop a response. However we did write to the developer with a copy of the letter to Mr. Schellenberg in mid October expressing serious concerns regarding how this proposed marina would impede navigation by non-powered vessels. In this letter we also stated that the developers plan for non-powered vessels to paddle through a private marina would be unsafe and unacceptable. In that letter, we shared our view that this would not constitute public access. The concerns in that letter were not adequately addressed by the developer or Mr. Schellenberg. Those concerns raised then remain today. We were waiting in good faith for our concerns to be addressed when the ad appeared in the Gazette, indicating that the NWPP officer allowed the project to proceed to the next stage.

There is good reason as to why there were only three attendees at the session on September 18, 2008. This is not to be interpreted as lack of interest or concern about how this proposed development will impact the use of these navigable waters. We have heard from other stakeholders that they were unable to arrange appropriate representation, given the lack of advance notice, the date and time of the session (mid-week, during regular business hours), at a time when recreational users are not likely able to attend. Not all user groups were notified. For these reasons, a low turnout was inevitable.

The plan announced at the meeting of September 18, 2008 was for non-powered users to paddle through the private marina between the rows of yacht slips, and concerns about this were raised at the meeting. Those present at the session made it clear that requiring non-powered users to paddle through a private marina will substantially impede our navigation of these harbor waters and also raises a number of safety issues. There is only one entrance / exit for the marina, and the plans presented at the meeting indicated that yachts entering and leaving will be required to turn almost 180 degrees and transit across the area now used by non-motorized users, aircraft and harbor ferries. Our organization is concerned about this potential traffic congestion and safety issues for all marine users. We would like to reiterate that a requirement for non-powered vessels to transit through a private marina does NOT constitute unimpeded public access and is therefore not consistent with the NWP Act.

It appears the guidelines of the Navigable Water Protection Program have not been followed. The application process in Table 1 clearly outlines the information to be provided such as the details of the work with supporting documentation, chart and topographical chart information, latitude and longitude of the site, environmental assessment documents if available. It is not clear how the proponent could have received approval from Transport Canada officials to proceed beyond the preliminary stage and submit this site plan to the Land Titles

Office given the document does not meet NWPP guidelines; and serious concerns raised by stakeholders had not been addressed. According to the NWP guidelines, the public is entitled to access a set of clear, accurate and complete plans and to participate in a fair and transparent public consultation process. In order to restore our trust in the review and approval process, integrity, transparency and accountability are of primary importance. It is SSKA's contention that Transport Canada has not met these obligations. It is our expectation that the serious concerns raised by SSKA on the project itself along with the review and approval process will be seriously considered and acted upon. This is how Transport Canada can demonstrate that the NWP program is carrying out its mandate to protect public access to these navigable waters.

Please respond to our association secretary Susan Duhamel at seduhamel@yahoo.ca Thank you.

Respectfully,

Gary Allen
President
South Island Sea Kayaking Association

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