

August 14, 2009

Manager,  
Navigable Waters Protection Program,  
Transport Canada, Suite 820 – 800 Burrard St.,  
Vancouver, BC V6Z 2J8

Re: Community Marine Concepts revised plan -Victoria International Marina Land Titles Deposit FB281292 advertised in the July 15<sup>th</sup>, 2009 edition of Victoria Times-Colonist.

In responding to the amended application, South Island Sea Kayaking Association (SISKA) relies on our earlier submissions and offers the following observations:

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 designated for the use of non-powered vessels. Signs on buoys indicate that powerboats are prohibited in this area. The revised marina plan does not address concerns that the marina may eliminate unimpeded access and safe passage for non-powered vessels.

On the revised plan, there is no detailed reference to what the specific changes are between the original plan and the amended plan, however it appears that the changes proposed by the developer are minor. These changes do not address the concerns raised in earlier submissions about access to navigable waters and about marine safety, particularly as it relates to passage of outrigger canoes that are typically up to 45 feet in length and almost nine feet wide. Minor adjustments to the arched bridge do not permit reasonable access for large outrigger canoes. There is no evidence that potential impacts of tidal fluctuations on the utility of this arched bridge have been considered.

The revised plan is not detailed enough for the impacts of this project on non-powered vessels to be properly examined. SISKA anticipated that in the interests of full disclosure, the revised marina plan would be overlaid on a marine navigation chart, a requirement suggested last month by Mr. Jim Schellenberg. The aerodrome taxiway and its proximity to the perimeter of the marina structure are of material interest to operators of non-powered vessels, yet this information is not shown on the revised plan. Outriggers and group kayak excursions may be forced to paddle between this active taxiway and the perimeter of the marina. This restricted area is not adequate to ensure safety or avoid collisions between moving aircraft and these non-powered vessels. The revised plan does not adequately address concerns about adding marina operations to an already congested mix of marine traffic involving aircraft, harbour ferries, and non-powered vessels on the north side of the harbour.

The revised plan does not address concerns expressed by paddlers, rowers and a wave attenuator expert about the potential safety issues caused by exposing operators of non-powered vessels to the severe effects of the reflected wave energy and chaotic sea conditions caused by the operation of wave attenuators. The proponent's proposal for non-powered vessels to transit through this private marina does not constitute reasonable

access to these navigable waters. The proposal establishes a private traffic management scheme that restricts access to these waters when yachts using the private marina are underway. This subordinates the rights of operators of non-powered vessels to the rights of powerboat operators and substantially impedes navigation by non-powered vessels.

This private traffic management plan requiring paddlers to transit through an operating marina raises safety issues that were identified in earlier submissions. Yachts have extremely restricted (and often obstructed) sightlines of vessels close aboard. Another hazard presented to paddlers is the discharge current of the yachts' thrusters while they are maneuvering within the proposed marina. The revised plan does not mitigate the safety issues with respect to transiting through the marina or navigating the narrow area between the perimeter of the marina and the taxiway. Transport Canada has yet to engage in meaningful consultation with identified marine stakeholders groups with respect to the impact of this project on the public right to access and navigate these waters safely. The paddling community has not been given a place at the table where potential changes to the Port of Victoria harbour scheme are taking place. The concerns from the public have yet to be adequately addressed by the decision-makers.

Another issue is whether Transport Canada has conducted a proper risk analysis in terms of the potential increase in negative impacts (environmental and safety) if the marina use were to change from moorage for 50 mega yachts to moorage for 90 smaller boats after the permit is approved. Current restrictions ensure that vessels under 65 feet (that are required to use the traffic lanes on the south side of the harbour) do not cross the traffic lane in the center of the harbour reserved for larger vessels and seaplanes. Transport Canada officials are on record as stipulating that if the marina use was for moorage for smaller boats, additional safety issues would need to be addressed. SISKA seeks assurance that Transport Canada will act with due diligence to manage this risk.

It is not in the public interest to approve a marina structure of this scope and nature on navigable waters (the enjoyment and recreational value of which is now shared by hundreds of residents) for private use by a relatively few number of (potentially foreign) yacht owners. The Victoria Harbour has been acclaimed as 'one of the best urban paddling venues in the world'. In a letter dated July 6, 2009, Minister Baird stated that all Canadians should be able to safely experience the natural and breathtaking beauty of our nation's waters. Approval of this project would not be a prudent decision and is inconsistent with the Minister's statement. Government has the duty to hold public waters "in trust" for the public. Granting a permit for this project could in practice eliminate the public's right to safe navigation of these waters; a right that is reflected in the NWPP Act and common law. I may be contacted at [gd.allen@shaw.ca](mailto:gd.allen@shaw.ca)

Yours truly,

Gary Allen,  
President  
South Island Sea Kayaking Association

August 14, 2009

Section Head, Crown Land Adjudication,  
Integrated Land Management Bureau,  
Suite 142, 2080 Labieux Rd., Nanaimo, BC V9T 6J9

RE: File # 1405848 Amended Application for a Disposition of Crown Land (water lot) by  
Community Marine Concepts LP for a commercial marina. Fax: 250 – 751-7224

South Island Sea Kayaking Association (SISKA) relies on our earlier submissions including a brief to the Honourable Ron Cantelon, Minister Agriculture and Lands, dated April 14, 2009 requesting the Minister to act in the public interest and deny the licence of occupation. Regarding the amended application, SISKA offers these observations:

Currently the area comprised of the Crown water lot experiences a high level of use and enjoyment by the public both on the waters and on the adjacent walkway. 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 designated for the use of non-powered vessels. The signs on the buoys indicate that powerboats are prohibited in this area. The revised plan does not address concern that the marina may eliminate public access to safe passage for non-powered vessels.

On the revised plan, there is no detailed reference to what the specific changes are between the original plan and the amended plan, however it appears that the changes proposed by the developer are minor in nature. These changes do not address the concerns raised in earlier submissions about access to navigable waters and about marine safety, particularly as it relates to passage of outrigger canoes that are typically up to 45 feet in length and almost nine feet wide. Minor adjustments to the arched bridge still do not permit reasonable access for large outrigger canoes. There is no evidence that impacts of tidal fluctuations on the utility of this arched bridge have been considered.

The revised plan is not detailed enough for the impacts of this project on non-powered vessels to be properly examined. For example, the aerodrome taxiway and its proximity to the perimeter of the marina structure are of material interest to operators of non-powered vessels, yet this information is not shown on the revised plan. Outriggers and other non-powered vessels may be forced to paddle between this active taxiway and the perimeter of the marina. The width of this space is significant in terms of marine safety, especially with the presence of chaotic seas caused by wave attenuators. The restricted area provided for operators of non-powered vessels in the original plan was not adequate to ensure safety or avoid collisions between moving aircraft and outriggers or other non-powered vessels. There is no evidence that these safety issues have been mitigated by the amended plan.

The proposal for non-powered vessels to transit through this private marina does not constitute reasonable access to these navigable waters. The proposal establishes a private traffic management scheme that restricts access to these waters when yachts using the

private marina are underway. This subordinates the rights of non-powered vessels to the rights of powerboats, substantially impeding navigation by non-powered vessels.

This private traffic management plan requiring paddlers to transit through an operating marina raises safety issues that were identified in earlier submissions. Yachts have extremely restricted (and often obstructed) sightlines of vessels close aboard. Another hazard presented to paddlers is the discharge current of the yachts' thrusters while they are maneuvering within the proposed marina. The revised plan does not mitigate the safety issues with respect to transiting through the marina or navigating the narrow area between the perimeter of the marina and the taxiway. The concerns from the public have yet to be adequately addressed by the decision-makers.

Another issue is whether ILMB has conducted a proper risk analysis in terms of the potential increase in negative impacts (environmental and safety) if the marina use were to change from moorage for 50 mega yachts to moorage for 90 smaller boats after the license of occupancy is approved. Current restrictions ensure that vessels under 65 feet (that are required to use the traffic lanes on the south side of the harbour) do not cross the traffic lane in the center of the harbour reserved for larger vessels and seaplanes. Transport Canada officials are on record as stipulating that if the marina use were for smaller boats, additional safety issues would need to be addressed. SISKKA seeks assurance that ILMB will act with due diligence to manage this risk.

Converting the Crown water lot from public use by operators of non-powered vessels engaged in environmentally friendly, sustainable activities to private use for moorage of fossil-fuel-burning mega-yachts is not consistent with the BC "Green Initiatives Policy". Expropriating public access from recreational users is not consistent with the BC "Healthy Living" initiatives policy. We urge ILMB to act in the public interest and not to approve the application for a license of occupancy.

It is not in the public interest to grant occupancy of a large Crown water lot (the enjoyment and recreational value of which is now shared by hundreds of residents) to a developer for private use by a relatively few number of (potentially foreign) yacht owners. This is not a prudent use of a Crown asset in an area that has been deemed as one of the best urban paddling areas in the world. Government has the duty to hold public waters "in trust" for the public. Granting a license of occupancy for the provincial water lot could in practice eliminate the public's right to safe navigation of these waters; a right that is reflected in both the common law and section 11 of the Land Act. This Act requires that the Minister not grant tenures to Crown property (water lots) unless it is in the public interest. I may be contacted at [gd.allen@shaw.ca](mailto:gd.allen@shaw.ca)

Yours truly,

Gary Allen,  
President, South Island Sea Kayaking Association