

Below are my comments in response to Commissioner Malcolm's commentary about the Port District's pending giveaway of 84 acres of Pond 20 to "mitigate" economic developments to the North. Bids to the Port District for the mitigation of Pond 20 are due November 4, 2015, and if it goes anything like the giveaway of the 9th & Palm Shopping center, they could issue a contract the very next day.

I want all to understand that I have the upmost respect for Commissioner Malcolm's work, and that of the San Diego Unified Port District. They are our stewards for representing the best interests of our community. I do not understand all the factors that make this system work.

It is my hope that the efforts with www.Pond20forUs.com are heard, and, the Port District gives the Citizens of the IB Area additional time for more public input before Pond 20 is given to mitigation.

Sincerely,

Roger Benham

Roger@Pond20forUs.com

Pond 20 - A Win - Win Approach

A commentary by Dan Malcolm, Chairman Port of San Diego - Eagle and Times – Oct 29, 2015

Comments by RBenham are **Underlined and Bold**

I would like to take an opportunity to clarify and correct the record regarding the Port of San Diego's recent land-use decision on the property located known as Pond 20. The decision on what to do with Pond 20 goes back a long time - over a decade and a half. My own long involvement with Pond 20 started in 1999, when I was a newly seated City Councilman on the Imperial Beach City Council. Around that time Pond 20 was acquired from Western Salt Corporation by the Port of San Diego as part of a larger land acquisition of almost 800 acres. Most of that acquired property was subsequently placed into the South San Diego National Wildlife Refuge, however, Pond 20 was excluded from the boundaries of the newly-formed refuge. The thinking at the time, 16 years ago, was that a proportion of Pond 20 may possibly be developed in the future.

(Don't mean to be too nitpicky, but, according to the Port Districts website, 836 acres were acquired in 1998, and 722 acres were used for the SD National Wildlife Refuge. What is important for the IB Area public to know is that this land was given to the Wildlife refuge to "mitigate" the economic and public amenities of Liberty Station, Pt Loma, and the airport expansion. The Ports website says "The remaining 114 acres were set aside for future development". I know additional Western Salt Land was used to mitigate the Poseidon desalination plant, and the current available Pond 20 is 95 acres.)

In a letter dated December 30, 1999 and signed by numerous regional stakeholders, the following objectives for Pond 20 we're stated: "While we expect that any fill or development of this pond will be fully mitigated, we understand the City of Imperial Beach's need for economic development and support evaluation of this area for appropriate development".

(A copy of this letter is attached below. This letter is signed by seven (7) individuals, all of who represent non-profit environmental organizations, who are either in the land mitigation business, or could directly benefit from the mitigation of Pond 20. Of these "numerous regional stakeholders" there are no community, citizen, or private enterprise parties representing the promised economic development of Pond 20. The citation of this letter indicates the bias of the Port District to disregard public and private enterprise input for the economic development of Pond 20. Of the seven

signatories, only Patricia McCoy of SWIA is based in the IB Area, was an on the IB City Council, and therefore has a conflict of interest to express recommendations for Pond 20.

The use of the expression “any fill or development of this pond will be fully mitigated” is controversial, and poses a substantially damaging situation to the economic aspirations of the communities of the IB Area. First, the IB Area has given more to the “mitigation” needs to offset rich developments to the North than any other community. This language is claiming that for the economic development of Pond 20, we need to mitigate the mitigation. This language is from nonprofit entities that are in the business of mitigation, indicating a clear conflict of interest.

The trading away of Pond 20 for mitigation puts the IB Area in a potentially desperate situation, where when it comes time for the need to mitigate projects in our own community, the value of Pond 20 for the local community will have been traded off to richer communities to the North. Since the IB Area has given disproportionately to the mitigation of rich developments to the North, the use of Pond 20 should be strictly limited to only mitigate habitat affected by economic development for our own immediate 91932 and 92154 zip codes. We owe this to the children of our community).

To further these objectives the City of Imperial Beach sought a very unusual agreement from the City of San Diego to place Pond 20 within the boundaries of the Imperial Beach Redevelopment Area. This was critical and necessary because Pond 20 is not within the legal jurisdiction of the City of Imperial Beach and never has been. In fact, the entire area of Pond 20 lies solely within the jurisdiction of the City of San Diego. Inclusion of the property into the Imperial Beach Redevelopment Agency and then those tax increment proceeds could be used by the Agency for economically beneficial projects in the immediate area. Imperial Beach was ultimately successful, an agreement with the City of San Diego was reached and Pond 20 was placed in the Imperial Beach Redevelopment Area. Great news - well not so fast. As the great Paul Harvey used to proclaim each day on the radio: “now you're going to hear the rest of the story.”

(It is time in the maturity of the discussions regarding what is best for Pond 20 that we no longer bring up that “Pond 20 is not in IB”. At this level of discussion, this is a nonessential and polarizing statement for our community, because Pond 20 has unprecedented economic and social significance to the “IB Area”, including 91932 and the surrounding 92154 zip codes. It is a fact that they are called the “IB Home Depot” and the “IB Walmart”, and the vast majority of people who live in the 92154 zip code west of highway 5 say they live in “IB”. We can't pit the interests of one over the other).

In 2011 the state of California ended redevelopment in California and with it, ended any tax increment benefits which may have accrued to a jurisdiction from the redevelopment of a property located within a jurisdiction's redevelopment project area - like Pond 20. If develop today, Imperial Beach would receive no direct money monetary economic benefit from a development on Pond 20. In other words, no property tax, no increment, no transient occupancy tax and no gross sales tax which may be generated from businesses locating on the site. Zip - zero - nada.

(I would be difficult to accept that with a Liberty Station development in Pond 20, as shown in the HYK model of Nov 20, 2014 – see “Pond 20 Options” at www.Pond20forUs.com - there would be no direct economic benefit to IB? Our specific proposal for the PCH Dinner Show would bring at least 7,000 tourists with fat wallets to the core of the Palm Corridor. This would have a tremendously positive economic impact to all sections of the “IB Area”, by means of increased revenue, jobs, tax base, and social status. I know it's not exactly a tangible monetary item, but the sense of accomplishment and

wellbeing provided by a Liberty-Station-like economic and public amenity would ripple through the entire economic fabric of our community, increasing tax revenues of every form.

Also, it is important for the community to understand that Governor Brown, and the State of CA, made "Redevelopment Agencies" illegal because of the type of exploitation and diversion of public assets that occurred with the 9th and Palm giveaway of the Shopping Center and NIFCU building. Here, after the City of IB RDA used about \$14million in public funds, they immediately gave the asset to Suddberry for \$1 dollar. Apparently Jerry Selby, Greg Wade, and the RDA Team did not get the deal done in time, and the State of CA came back to nix the deal, only to have it go just as bad with trumped up "drain" expense, where Suddberry received full title to the property for a paltry \$240,000.

Over the years the Port of San Diego has diligently studied potential and appropriate uses of Pond 20. We have engaged in a great deal of analysis of the property, have conducted two RFP's (Request for Proposals) and we have facilitated extensive public outreach regarding the ultimate land use of the property.

(Analysis conducted by the Port District states: "The Jurisdictional Wetland Delineation Report, Merkel & Assoc #02-010-03 states 'No wetland habitat was located within Pond 20'. Study #06-007-09 further describes that wetland and regulated non-wetland waterways by other regulatory agencies make up only a small percentage of the Pond 20 area (a literature search indicates 2% of Pond 20 is "wetland"). The geotechnical report submitted to the Port regarding Pond 20, Geotechnics Inc, Project No. 0298-019-00, states 'it is our opinion that site could be developed for proposed commercial, retail, industrial, or hotel use'". Note: I personally am not an advocate of homes and hotels for Pond 20.

A search of this very newspaper, one of the primary means of info exchange, will show no public outreach regarding options for Pond 20 or RFPs. I was directly involved, and eager to submit to an RFP, and can personally say that there was minimal effort for economic development, and the whole process was influenced and bullied by the land mitigation interests. For example, at the Dec 4, 2012 "Public Input meeting", of the 62 in attendance, 42 were Port Staff and mitigation company representatives – please see my comments dated Dec 14, 2012, attached).

After careful consideration over many years, the decision the Port has recently made is that Pond 20 will be environmentally restored and will be designated as the Port's first mitigation jurisdiction. Mitigation credits will be available to be purchased by third party developers. As the title of this letter suggest, this approach represents a Win-Win result for Pond 20.

(This is clearly a win for the communities and development interests to the North that will use Pond 20 to offset the destruction of the natural habitat for their own rich and recurring revenue economic development. I don't see how the communities of the IB Area will comparatively "win").

It is undeniably a win for the environment within almost 80 acres of environmentally degraded area which will be restored to high quality habitat.

(This would be a good time to thank the poorer people of the IB Area, that have already given about 90% of the Western Salt land, and untold amounts of the TJ River Valley, for mitigation and "high quality habitat" to offset the rich economic developments to the North. Most informed citizens of the IB Area know they are getting the short end of the stick, and the loss of Pond 20 is not really about the "environment", because if it was, then the 500 acres of the Western Salt land already given to mitigation in 1998 would not be sitting untouched and languishing to this day. Most informed citizens

of IB will realize they don't have the resources, influences, understanding, and are powerless to fight the disastrous decision by the Port to trade away their last hope for true economic prosperity.)

It is also, however, a win for regional economic benefit because the sale of mitigation credits from the Port's newly created mitigation bank is expected to result in millions of dollars of net profit. You read that right - net profit - as in net monetary gain. The Port by a unanimous vote, further decided that the net proceeds will be placed in a newly established and segregated fund entitled the "Pond 20 Economic Development Fund" and that these proceeds will be available to be expended exclusively within the adjacent jurisdictions of Imperial Beach and South San Diego for appropriate economic development related projects and economic benefit purposes.

(This sound amazingly like a circumvention of the "Redevelopment Agency" that Governor Brown and the State of CA made illegal. Who gets this money? How much? Would it be a similar deal to the 9th and Palm shopping center fiasco, where the public was ignored and left in the dark. Or would it be like the Bikeaway Village project where a LLC is formed and the public could never know who really owns the assets – yes, it is true that with an LLC there is no way for the public to know the current or future ownership unless the ownership wants you to know.)

We have even set aside to strategically located parcels within Pond 20 itself for actual later development - exactly as was originally contemplated 16 years ago.

(So, we lose a once-in-a-lifetime opportunity to develop 84 acres of prime bayfront property that could completely transform the currently blighted Palm Corridor into the most prideful economic and public amenity in our history, for "two small" parcels. I suppose the "later development" will include the "low impact" park bench described in the Wildcoast and SWIA "vision" of April, 2014. And, I suppose this will include the formation of another LLC with unknown ownership, or go to the existing Bikeway Village LLC, and require more public funds from bonds, SANDAG, taxes, etc.

My question is this: what if instead of giving Pond 20 away to mitigation first, we gave the public the actual amounts of revenue available from "net profits", and, had the revenue and benefit models for all options of economic development? Then a rational decision could be made of what benefits the IB Area most. For example, we could determine if the one time payoff of \$X dollars from a mitigation deal "Pond 20 Economic Development Fund", is better than the public amenities and recurring revenue of specific economic development concepts. Of course, this would be hard work, but are not the Citizens of the IB Area deserving of this extra effort? Also, the Port District would have to be serious about offering genuine RFPs for economic development, not allowing land mitigation interests to submarine the effort.

The upshot of this is that the Port of San Diego has adopted a land use policy where sound environmental stewardship will also result in real and tangible economic development opportunities within the jurisdiction of Imperial Beach and South San Diego. This represents a new paradigm where good environmental policy can literally be profitable and beneficial to the South San Diego region in myriad ways.

This is a result everyone should applaud.

(Considering the historic magnitude of this, we are asking the Port of San Diego to delay the use of any portion of Pond 20 until there has been more public input, to make sure the best interests of the notoriously under-represented Citizens of the IB Area are met).

December 30, 1999

Mr. Barry Johnson, City Manager
City of Imperial Beach,
825 Imperial Beach Blvd.
Imperial Beach, CA 91932

Re: Position Regarding Development Opportunities in Pond 20 of the former Western Salt Ponds

Dear Mr. Johnson:


The undersigned groups would like to take this opportunity to clarify our position related to the Pond 20 area of the former Western Salt Ponds. When the San Diego Bay National Wildlife Refuge was established in June of 1999, we supported the exclusion of certain, less productive, areas of Pond 20 understanding that those areas would be evaluated for possible development. Particularly, we understood that there was the desire to develop a portion of the pond adjacent to the highway. While we will expect that any fill or development of this pond will be fully mitigated, we understand the City of Imperial Beach's need for economic development and support evaluation of this area for appropriate development.

The areas closest to the Bay we understand have been reserved for restoration of the Otay River channel and we would request that areas immediately adjacent to that should also be considered and evaluated for restoration as possible mitigation. We urge that the design and construction on the developed portion incorporate measures to protect the viability of the portion that will be restored. We would appreciate being informed which portion is being considered for development and what buffering measures are being considered. We urge that benign public access for wildlife observation and passive recreation be considered for the buffer between the two portions. We also request that public access and nature viewing be considered in the development plans themselves.

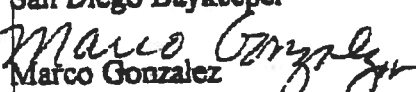
We hope that this clarifies our position relative to Pond 20. Please call Laura Hunter with any questions at (619) 235-0281.

Sincerely,


Laura Hunter
Environmental Health Coalition


James A. Peugh
San Diego Audubon Society


Bruce Reznik
San Diego Baykeeper


Marco Gonzalez
San Diego Chapter of the Surfrider


Patricia McCoy
Southwest Wetlands Interpretive Association


Ted Godshalk
Paradise Creek Educational Park


Michael Klein
Nature Festivals of San Diego County

RAB Note: All seven (7) signatories represent nonprofit environmental organizations. We already have given about 90% of Western Salt to their cause in 1998, of which only about 20% has been used for restoration. Also, they received vast amounts of TJ River Valley

Subject: Pond 20 Public Input Meetings – Additional Comments

From: Roger Benham

Date: December 14, 2012

Ms. White:

I would like to follow up on the December 4th, 2012, meeting with the following comments. This is in response to your offer during the meeting that further comments could be sent to the Port District by email. If there is another address I should send this information please let me know.

1. The record should show that during the meeting of December 4th there were approximately 20 local residents, and about 42 Port Staff and consultants. Is the attendee list available for this meeting, and all the meetings held to date, for analysis of the proportion of residents vs staff vs consultants? More needs to be done to obtain a true public opinion about the use of Pond 20.
2. Comments were received from at least three of the breakout tables that the residents did not understand what “Land Mitigation Banking” means. Despite your definition before the breakout sessions, there was a clear indication during the meeting that local residents did not understand the implications of land mitigation. More needs to be done to inform and educate what Land Mitigation Banking means, its costs, and its short and long term implications.
3. One of the breakout tables included Dr. Mike McCoy and Mr. Bob Miller (both board members of SWIA, a Land Mitigation Company) and Mr. Keith Merkel (a Land Mitigation Contractor), and another person from a land mitigation company (gentleman in a suit). The Port Staff person at their table handed the floor (microphone) over the Mr. Merkel, and he proceeded to speak about his specific plans about removing soil from one area of the Pond 20 and to fill another location. Why didn’t other individuals have the same opportunity to speak, even though I specifically made a request?
 - a. Mr. Merkel did not identify himself and in my opinion it was deceptive to the public that he was not speaking as a resident. The public was not aware that he could personally gain from his recommendations.
 - b. I disagree with Mr. Merkel that there would be a benefit from removing soil from one part of Pond 20 to fill another area. There are other more viable alternatives for filling areas of Pond 20 for future development. He clearly stands to personally profit from expensive wetland restoration work.
4. The Port Districts web page specifically states that the area of Pond 20 was “set aside for future development”. Michelle White also said during her Powerpoint presentation that the Pond 20 land was “set aside for development”. During our Breakout session, the Port Staff at my table said that land mitigation counts as “development”. This indicates that somewhere there was a

change in what was intended for the property. I also believe that this language (land mitigation counts as “development”) is confusing and deceptive to the local population.

5. Definition of “Public Access”. At the beginning of the December 4th meeting, Michele White’s Powerpoint presentation included a table that showed “public access” was one of the highest priorities conveyed by the public during prior meetings and workshops. During our breakout session the Port Staff that chaired our table said that “public access” was synonymous with “open space”. She implied that land mitigation banking created open space and therefore provides public access. In my opinion this is very wrong and deceptive. It has been shown, in practically all examples of land mitigation banking in the South Bay, that there are fences and “Keep out” signs restricting public access. Land mitigation banks are not “public access” and are the exact opposite. It was evident from the discussions that the local residents concerns and desires for “public access” were being downplayed, or squashed. I strongly feel that there is a biased toward land banking and the words are getting twisted resulting in confusion and deception.
6. The large number of proponents of Land Mitigation Banks, including powerful private non-profit and environmental groups, raises serious concerns that the best interest of the local public will not be fairly represented in the use of Pond 20. There is a serious concern that the disproportionate use of the area of land around the South Bay for land mitigation banks for development elsewhere is resulting in an unfair distribution of wealth. This could be illegal.
7. Requirement for further land mitigation to offset development for Pond 20 land should not be required. The Port District gave 722 acres to the San Diego Bay National Wildlife Refuge. This land giveaway should count as land mitigation for the Pond 20 acreage as well. Otherwise, giving away that substantial amount of land for development outside of the South Bay is a disproportionate distribution resulting in an unfair distribution of wealth. This could be illegal.

Please call me if you need any clarification on these points. I have copied other individuals that were interested in this information.

Respectfully submitted,

Roger Benham, P.E.
619-424-6226