

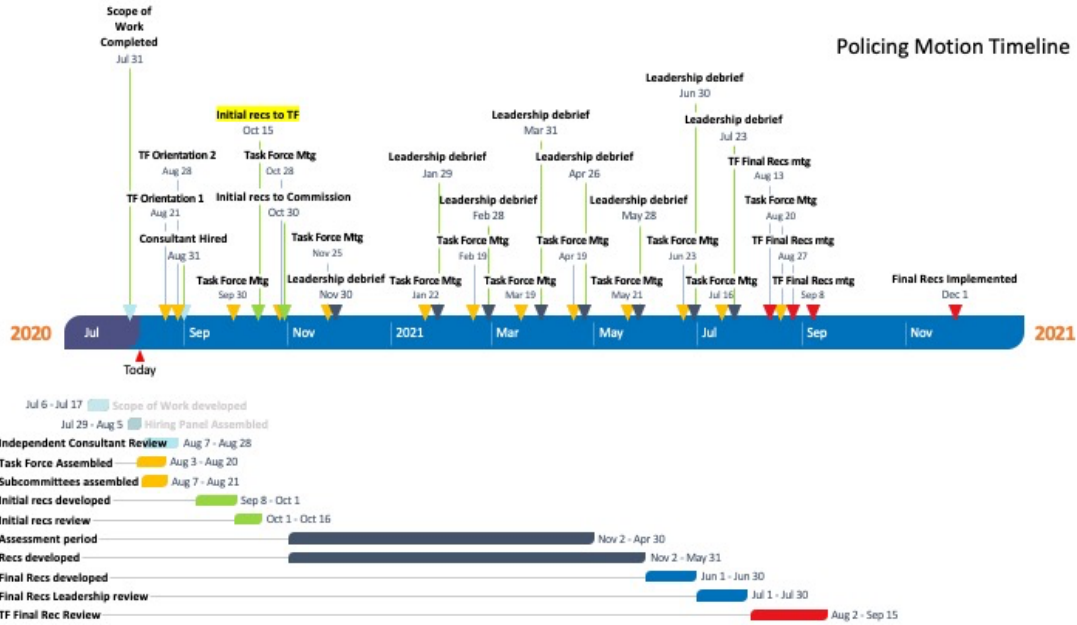
October 21, 2020

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### **Commission Task Force on Policing & Civil Rights Status Update**

21CP Solutions, LLC, is pleased to submit this first status report reflecting the initial six weeks of engagement with the Port of Seattle. While it has been a very busy time, this report must be prefaced by noting the very early stage of this process. Indeed, this report is being drafted on shifting sands – we received policy updates that related to some of our initial observations as we were finalizing the document. Accordingly, the purpose of this report is to provide an update on progress, identify potential barriers to success, and provide initial recommendations for areas to be further explored.

The timeline below was created by the Task Force, and, while not prescriptive due to the agile and developing nature of this project, it serves as an excellent frame for where we are.



## 1. Task Force Engagement

On September 8, 2020, the Port of Seattle had a “kick off” to formally begin the Task Force work and to introduce the Port Commissioners, the Task Force members, and the 21CP consultants.

On September 18, 2020, 21CP and the Task Force held a planning meeting to level-set and prepare for initial meetings with the subcommittee co-chairs. The Task Force and 21CP discussed the approach to the initial assessment stage for the three active subcommittees (Use of Force, Oversight, Accountability, Racial Equity, and Civil Rights (“Oversight”), and Mutual Aid). Key takeaways from that meeting include:

- The Oversight assessment should include: a review of how complaints by members of the public are handled, including internal processes, and outward facing resources (information, accessibility, language options); how internal complaints by officers – particularly racially-motivated conduct - are managed; whether additional external oversight is required; an inquiry into the disciplinary process and civil lawsuits; internal equity and procedural justice for all employees, particularly officers of color and other underrepresented demographics in the police service;<sup>1</sup> and across all protocols, how fear of (and actual) retaliation and reprisal is addressed and managed.

<sup>1</sup> 21CP discourages the use of “police force” as an operating term, preferring “police service,” which better represents the purpose of policing agencies.

- The Use of Force assessment should include a review of policy, specifically whether changes are needed to policies, practices or protocols regarding the use of weapons and tactics used to manage and disperse crowds, lethal force/restraint, and crisis situations. Additionally, the assessment should examine current training and opportunities to improve training to provide officers with alternative options to the use of force across contexts.
- The Mutual Aid assessment should include a review of when and how the Port Police engage in mutual aid, the protocols that guide those engagements, and the operating agreements; how often mutual aid agreements are reviewed and updated; and what accountability measures are in place during Mutual Aid engagements (recognizing this will have overlap with the Oversight subcommittee).
- Process and roles for Task Force Staff and 21CP were discussed at length, with a follow-up meeting with the Task Force held on September 30, 2020. Importantly, 21CP will take the lead in suggesting areas of exploration to each committee, with the goal of focusing on the most critical issues and ensuring that any “mission creep” is intentional. Inevitably, as this project progresses, there will be many areas that could be included, but it will be important to keep the process on task. As discussed, the priority will be on depth, not width, in keeping with the areas outlined in the motion creating the task force. Collateral issues will be flagged along the way.

To this end, 21CP will work on setting the substance for subcommittee agendas in collaboration with the committee co-chairs, will facilitate the subcommittee meetings, and will create minutes reflecting the subcommittee work, while preserving the anonymity of subcommittee members to encourage open dialogue. Placing this body of work on 21CP will also provide visibility across the subcommittees, allowing 21CP to help deconflict overlap issues.

On September 25, 2020, 21CP met with the co-chairs of the three active subcommittees: Mutual Aid, Use of Force, and Oversight. 21CP drafted work plans and initial agendas for each of the three subcommittees and later met separately with the co-chairs of each group to prepare for the first round of subcommittee meetings. Subcommittee co-chairs scheduled regular meeting dates for the upcoming months and communicated with their subcommittee members to update them on steps taken in the assessment, share the meeting schedules, and provide a copy of the work plan for each subcommittee and agendas for the initial three subcommittee meetings held between October 6th and 15th. At each meeting, the work of 21CP to date was discussed generally and more specifically where there was particular relevance to a subcommittee. Additionally, each subcommittee’s work plan was reviewed, meeting logistics were discussed, and the group identified next steps in their support of the overarching assessment. Topics discussed at the individual meetings included:

- The Mutual Aid Subcommittee discussed 21CP's initial document request for mutual aid agreements with jurisdictions contiguous to Port properties and with task forces, such as the Valley Civil Disturbance Unit. State law and POSPD policy on mutual aid were reviewed and the scope of mutual aid for purposes of the subcommittee's work was considered. The group discussed pro-immigration demonstrations in late January 2017 that involved mutual aid from other jurisdictions and the after-action review by the POSPD related to the event was sought by 21CP and posted on SharePoint for members to review and discuss at a later meeting.
- Prior to the first meeting of the Use of Force Subcommittee, 21CP made an extensive document request related to the issue, including a request for handbooks or other written procedures that supplement use of force policy, details about POSPD use of force review boards and any officer-involved shooting or fatality, and the training curriculum, including de-escalation training. The co-chairs noted that the work of the subcommittee, under Motion 2020-15 and initial direction from the Task Force, focuses on use of force related to crowd management and crisis response. They recommended that the subcommittee also consider more routine use of force – information that 21CP was indeed already in the process of pursuing – and Biased Policing. Both topics have been added to the subcommittee's work plan. During the first meeting of this group, 21CP provided an introduction to use of force legal concepts and summarized forward leaning, evidence based policies that create expectations for officers using force that are higher than the legal justification floor. The subcommittee expressed interest in connecting use of force subtopics and 21CP's observations/recommendations with specific values, including clarifying the focus of all police contacts on the respect for the sanctity of human life.
- The Oversight, Accountability, Racial Equity, & Civil Rights Subcommittee (Oversight Subcommittee) has a particularly broad scope of work and the co-chairs asked that 21CP identify various approaches to each topic (oversight, accountability, racial equity, and civil rights) that could be used to further prioritize the work and maximize contributions of the subcommittee to the assessment. 21CP provided an overview of POSPD's complaint and discipline system, along with a summary of the various policies and provisions that impact the system, including POSPD's Policy Manual and relevant procedural/training guidelines, the Port's Code of Ethics & Workplace Conduct, collective bargaining agreements and relevant attachments, and the Port of Seattle Police Civil Service Rules. While the issue of Qualified Immunity is assigned to this subcommittee, the co-chairs have suggested that subcommittee members consider referring the question of whether the Port should take a position on qualified immunity to the Advocacy Subcommittee. The co-chairs also suggested that, given relatively low numbers of use of force and other policing incidents for the POSPD and the difficulty of establishing racial inequities for each area of the assessment, the Task Force should make an assumption of racial impact of policies, procedures, and

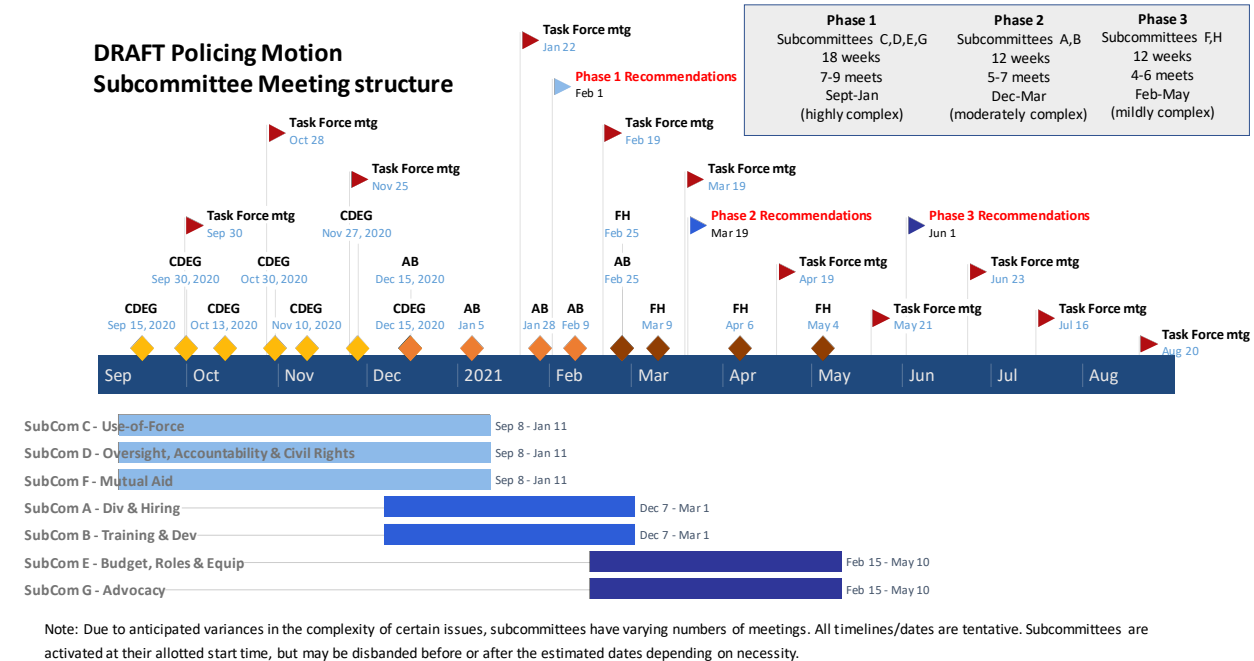
practices across the board, with the Task Force and subcommittees working to identify ways to mitigate the assumed racial disparities.

Regular meetings have been scheduled by the Task Force co-chairs with 21CP to discuss progress in the engagement, ensure that milestones are continually being met, and to address any concerns that may arise. Some of the meetings will involve the whole subcommittee and some will likely be planning sessions with smaller groups.

The subcommittee calendar includes past and future meetings as follows:

Use of Force	Oversight	Mutual Aid
10/15	10/9	10/14
10/29	10/20	10/30
11/12	11/3	11/13
12/10 <sup>2</sup>	11/17	11/24
	12/1	12/9
	12/15	12/16

This schedule is in alignment with the draft schedule created by the Task Force, set forth below.



<sup>2</sup> As the Use of Force Subcommittee meets every other Thursday, regular meetings fall on Thanksgiving, November 26<sup>th</sup>, and Christmas Eve, December 24<sup>th</sup>, and will be rescheduled.

## 2. Port of Seattle Police Department Engagement

On September 9, 2020, 21CP had initial discussions with Acting Deputy Chief Sean Gillebo about the role of 21CP, POSPD operations and systems, current POSPD Commission on Accreditation for Law Enforcement Agencies (“CALEA”) certification, and next steps forward. Importantly, the POSPD is engaged in recertifying with CALEA, with key dates for that process falling within the timelines of the Task Force work (December 2020, June 2021, and July 2021). Commander Gillebo immediately provided organizational structure documents and arranged for a POSPD tour and in-person discussion about POSPD functions.

On September 24, 2020, 21CP met with Acting Deputy Chief Sean Gillebo, toured Port facilities at the airport and surrounding properties, toured the northern properties, and discussed patrol work by the POSPD. 21CP was provided with maps of all Port properties as well.

The POSPD policy manual is available on-line [here](#), and Use of Force Reviews from 2017-2019, CALEA certification documents, Civil Service Rules and the POSPD organizational chart are available [here](#). 21CP was also provided with an Excel spreadsheet of UOF incidents, including date, time, call type, suspect race, age, gender, injury of officer or suspect, type of force used, whether arrested, location, and if involved official business. We also were provided annual Bias Policing Reports for 2017-2019 and a three-year executive summary on use of force.

On September 25, 2020, 21CP requested additional information from POSPD including handbook of procedures not included in the policy manual, schedule of past UOF Boards, Officer-involved-shootings or Officer-involved fatalities, mutual aid agreements, after action reports on missions/demonstrations (to include the 2017 ICE demonstration), training curricula (especially on force and de-escalation), and access to all UOF reports 2018-2020. Some of these requests are pending, but the POSPD has been very responsive. Even on the date of an earlier draft of this report was due to the Task Force, we were provided updated draft policies on Use of Force, Unusual Occurrences (which would include demonstrations), several emergency planning documents, the Valley CDU Policy Manual and Tactical SOP, the Valley Independent Investigative Team Organizational and Operational Guidelines (for OIS review), the Valley SWAT Interlocal Agreement as well as Seattle PD’s Basic Mountain Bike Course (which guides POSPD). In sum, there is a lot of information coming in that 21CP will work on digesting for the Task Force and subcommittees.

On October 14, 2020, 21CP met with Acting Chief Villa, Deputy Chief Thomas, and Acting Deputy Chief Gillebo to discuss the engagement to date and hear their feedback on an earlier draft of this report. All were engaged in the discussion, provided valuable insights, and were supportive of the overall work of the Task Force. Additionally, on October 20, 2020, 21CP attended a POSPD Use of Force training, including de-escalation.

### 3. Information Review and Initial Impressions

21CP has been working to understand POSPD operations, policies, organizational documents, as well as the many on-the-ground processes that may not be captured in policy. Because we are very early in this process, few of our early impressions have been discussed with the Task Force, any subcommittee, or the POSPD. As such, most of the below impressions are offered as a road-map for further exploration, rather than formal recommendations. At the same time, it is likely that some will become recommendations in the future as the issues are fleshed out. Additionally, as this project is developing rapidly, additional impressions will be shared in real-time with the Task Force and sub-committees even as this status update is under review.

We begin by addressing a critical question posed by the Task Force: *are there any immediate policy changes that need to be implemented to avoid unnecessary uses of force, especially lethal force?* Even as this Task Force was being designed, the Port Commission:

1. banned the use of vascular and airway neck restraints (chokeholds);
2. required diversity in hiring evaluation panels;
3. required disqualification for all applicants based on a sustained finding of excessive force;
4. ensured that training include de-escalation, intervention, and anti-bias training;
5. included a review of qualified immunity on the Port's legislative agenda;
6. continued the moratorium on facial recognition;
7. required that POSPD policies be public-facing; and,
8. ensured that names are clearly identifiable on any uniform worn on duty.

Again, we are very early in this process, and there is much to learn and discuss. However, 21CP initially identified a few areas in policies regarding use of force, accountability, and mutual aid that POSPD should address urgently. As those recommendations were drafted, we learned that POSPD, to its credit, was in the process of revising its Use of Force Policy. Those changes appeared to address many of 21CP's concerns regarding use of force, though the revisions have not been included in the Policy Manual as of yet, and we are gathering information on related training and will consider how the policies are put into practice. While none of the identified issues below, including those regarding accountability and mutual aid, are "quick fixes," like banning chokeholds, those identified are necessary components of sound policy and should be placed on the roadmap for change consideration.

#### a. Use of Force at POSPD

The context of POSPD use of force informs the policy analysis. Although 21CP has not yet reviewed force cases, we were able to pull some context from the department's annual reports. The department consistently has approximately 30 uses of force annually, the vast majority of which occur in the airport jurisdiction. Most involved weaponless force techniques, such as physical take

downs, punches and knee strikes. Between 2017-2019, there were seven Taser deployments, no 40mm less lethal launcher deployments, one use of a baton, and one use of OC spray<sup>3</sup> during the January 2017 protest against President Trump’s “Muslim Ban” policy, which was carried out by U.S. Customs and Border Protection (CBP).<sup>4</sup> Additionally, there was one officer-involved shooting while the officer was assigned to Valley SWAT for an Auburn, WA call-out. Media reports suggest the shooting was non-fatal.<sup>5</sup> By far, pointing of a firearm and application of leg restraints were the most frequent force events, accounting for between 6 to 11 of the approximately 30 annual use of force events.

The Vascular Neck restraint was introduced to the department in 2018, and two applications occurred in 2018 and seven applications in 2019. During these applications four subjects lost consciousness. This technique is now prohibited.

The reported race of suspects shifted significantly during the period 2017 through 2019. Although percentages are not particularly useful because of the relatively limited number of uses of force, they are useful for comparison across years.

<b>Suspect Race</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
<b>White</b>	51%	52%	60%
<b>Black</b>	44%	42%	30%
<b>Other</b>	5%	6%	10%

As with all analyses of disparate impacts, the proper denominator to use to determine whether a disparity exists can be elusive. The POSPD reports grapple with this issue by noting that the 2010 census indicates that the population of King County is 7% Black, but also repeatedly notes a 2012 study that described SeaTac as, “Among the county’s most diverse cities, with 61% persons-of-color and 31% foreign-born.” The study is not identified. It is clear that much work will need to be done to parse through data, with both quantitative and qualitative reviews to accurately measure what drives these numbers.

Finally, the 2019 Use of Force report identifies a trend of increasing officer injury rates during use of force events from 10% in 2017, to 24% in 2018, and to 50% in 2019. A 50% officer injury rate is concerning, even when only one injury over the three years resulted in an officer assigned to light duty, there were no officer hospitalizations, and the rest were “minor abrasions,

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<sup>3</sup> Oleoresin capsicum, or pepper spray.

<sup>4</sup> The 2017 UOF Report indicates a single OC event, however the after-action report for the January 2017 protest indicates there were five uses of OC. This apparent discrepancy is resolved in the after-action report, which indicates that the use of OC was as follows: “one by a sergeant for the Port of Seattle PD, one by a sergeant with the Renton PD, one by an officer with the Renton PD, and two by an officer with Kent PD.” Therefore, while the reporting is consistent, this incident may require consideration by all three active subcommittees.

<sup>5</sup> <https://komonews.com/news/local/major-police-operation-shuts-down-roads-in-auburn>



cuts, scratches, or soreness.” The reviewing Sergeant did not uncover any specific reasons for this increase, but hypothesized that sergeants are doing a better job documenting minor injuries.

However, the report did not discuss the corresponding increase in suspect injuries, from 13% (2017) to 18% (2018) to 23% (2019). This too could be explained by the better documentation theory, but an increasing number of injuries to both suspects and officers during use of force events over time warrants closer examination. 21CP will keep the issue of officer and subject injuries in mind during the review of the individual use of force cases and see if any patterns emerge.

## **b. Use of Force Policy**

Technically, “Use of Force Policy” is a misnomer. However, it is a useful term to refer generally to the comprehensive approach of providing guidance on using, reporting, investigating, and analyzing uses of force in a department. Therefore, the term “Use of Force Policy” refers to the amalgam of policies that provide guidance about the use of force, including (but perhaps not limited to):

- POSPD 300 – Use of Force
- POSPD 302 – Use of Force Review Boards
- POSPD 306 – Handcuffing and Restraints
- POSPD 308 - Control Devices and Techniques
- POSPD 309 – TASER Device Guidelines
- POSPD 310 – Officer-Involved Shootings and Deaths
- POSPD 312 – Firearms
- POSPD 313 – Edged Weapons
- POSPD 314 – Vehicle pursuits
- POSPD 318 - Canines
- POSPD 431 – Patrol Rifles

The Use of Force Policy is a set of boilerplate policies from Lexipol,<sup>6</sup> a private company that seeks to help to reduce liability for police departments, modified by the POSPD to better address its operations.<sup>7</sup> The policy does address many key areas that 21CP looks for in a use of force policy such as the duty to intervene, limitations on shooting from or at moving vehicles, and situating the appropriateness of force in objective reasonableness. However, even with an initial review, there are several areas immediately identified that should be improved.

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<sup>6</sup> *Lexipol, the Privatization of Police Policymaking*, Eagly, Ingrid, Schwartz, Joanna C., Texas Law Review Volume 96, Issue 5.

<sup>7</sup> As a general note, 21CP finds Lexipol designed policies to be overly complex and technical, hard to comprehend, disjointed, and poor at providing clear guidance to officers. While a comprehensive review of the whole policy manual is far beyond the scope of this project, at the outset we are compelled to note this comprehensive issue.

On October 1, 2020, 21CP received draft policies from POSPD that were apparently under legal review. We were informed that these policies are now “live” and they were trained in the October 20, 2020, Use of Force Training, but they do not yet appear on the website. These revised policies purport to address many of the policy deficiencies initially identified, including the lack of a de-escalation policy, the lack of a mandate to issue a warning, when feasible, before using lethal force, and the lack of an affirmative mandate to provide medical treatment and/or summon medical aid. Except as set forth below, we have not had time to fully analyze these policies thoroughly against best practices, but are encouraged that the department was already thinking about these necessary changes.

### **Issue 1: Lack of a de-escalation policy.**

The Use of Force policy lists factors to consider in determining the reasonableness of force, including critical issues such as subject’s mental state or capacity, officer/subject factors (age, size, relative strength, skill level etc.), and “availability of other options and their possible effectiveness.”<sup>8</sup> However, there is no de-escalation policy or specific requirement to de-escalate in the overall policy. The only reference to “de-escalation” in the policy is in connection with the deployment of a kinetic energy projectile “in an attempt to de-escalate a potentially deadly situation.”<sup>9</sup> Using a lower level of force when appropriate is consistent with de-escalation concepts, but this does not capture the full scope of the tactics, skills, and strategies that are part and parcel of de-escalation. Separately, there is a requirement that there be training in “De-escalation Techniques/Verbal Communication Skills.”<sup>10</sup>

The POSPD apparently trains on de-escalation. In initial conversations with POSPD, personnel asserted that “de-escalation is part of everything we do.” However, without a clear policy that mandates that de-escalation – the use of time, distance, shielding, resources, and communication – be utilized whenever safe and feasible, there is no mechanism to hold officers accountable who do not de-escalate when they should, or whose actions might affirmatively escalate a situation.

While we have not had a chance to fully review the new draft Lexipol policy, the totality of the guidance on de-escalation in that policy reads:

When circumstances reasonably permit, officers should use non-violent strategies and techniques to decrease the intensity of a situation, improve decision-making, improve communication, reduce the need for force, and increase voluntary compliance (e.g., summoning additional resources, formulating a plan, attempting verbal persuasion).

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<sup>8</sup> POSPD 300.3.2.

<sup>9</sup> POSPD 308.8.

<sup>10</sup> POSPD 386.4.

At the very least, we would expect the policy to be more mandatory than “when circumstances reasonably permit,” to include mandatory language of “shall” or “will” rather than “should,” and to provide more specific guidance about what techniques are expected and available. Additionally, “when circumstances reasonably permit” seems too vague and non-committal; officers should de-escalate when safe and feasible. But again, it is good to see that the department was already in the process of addressing this critical issue.

**Issue 2: The policy should more clearly indicate the Department’s commitment to valuing and upholding the sanctity of human life, and the connection of those values with its Use of Force policy.**

Current POSPD policy indicates that “[t]he department recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation and a careful balancing of all interests.”<sup>11</sup> This is a clear statement of values. The POSPD policy further states that the “ultimate objective of every law enforcement encounter is to avoid or minimize, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.”<sup>12</sup> This is likely an appropriate statement, although we would suggest that any “possible physical injury” is insufficiently precise.

Best practices could connect the two concepts:

Police Officers have the responsibility to use force, when necessary, to protect life and safety, to effect an arrest and/or keep the peace. It is the policy of the Port of Seattle Police Department to value and preserve human life when using lawful authority to use force. Therefore, officers of the Port of Seattle Police Department shall use only the amount of necessary and proportional force that the objectively reasonable officer would use in light of the circumstances to effectively bring an incident or person under control, while protecting the lives of the member or others. Members are advised that this Department places restrictions on officer use of force that go beyond the restrictions set forth under the Constitution or state law.<sup>13</sup>

**Issue 3. The Use of Force Policy should expressly require Reasonable, Necessary, and Proportional Force.**

POSPD 300.3 states that “Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event

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<sup>11</sup> POSPD 300.2.

<sup>12</sup> POSPD 300.3.

<sup>13</sup> Derived from a combination of the New Orleans and Las Vegas Metropolitan Police Department Use of Force policies.

to accomplish a legitimate law enforcement purpose.” The policy does not appear to define necessary, though RCW 9A.16.010 provides the following definition: “‘Necessary’ means that no reasonably effective alternative to the use of force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended.” As the language in RCW 9A.16.010 already incorporates the “no reasonably effective alternative to the use of force language,” it appears that “reasonably necessary” is likely redundant.

Many departments’ force policies specifically require that the nature or severity of the force that an officer uses be proportional to, or consistent with, the nature of the threat posed by the subject. As such, the best force policies expressly require that all force must be reasonable, necessary, and proportional. The Task Force should consider whether that is the direction the POSPD should go.

**Issue 4: The Use of Force Policy should require officers to provide a warning, when safe and feasible, before using lethal force.**

The Use of Force policy requires, consistent with legal standards, that officers issue a verbal warning, when feasible, before using deadly force to stop a fleeing suspect “when the officer has probable cause to believe that the person has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death, and the officer reasonably believes that there is an imminent risk of serious bodily injury or death to any other person if the subject is not immediately apprehended.”<sup>14</sup> This standard is consistent with the law. However, 21CP recommends that POSPD simply require that officers issue a verbal warning before using deadly force in any context so long as a reasonable officer, under the circumstances, would determine that issuing a warning would be safe and feasible.

**Issue 5: The Use of Force Policy should require officers to provide medical care within the scope of their training and immediately summon medical aid to the scene.**

POSPD 300.6 requires: “Prior to booking or release, medical assistance shall be obtained for any person who exhibits signs of physical distress, who has sustained visible injury, expresses a complaint of injury or continuing pain, or who was rendered unconscious.” Similarly, the updated draft Lexipol policy states “Once it is reasonably safe to do so, medical assistance shall be obtained for any person who exhibits signs of physical distress, has sustained visible injury, expresses a complaint of injury or continuing pain, or was rendered unconscious.” Other policies, such as POSPD 309.7 (Taser) and 308.6.2. (OC Spray), provide additional guidance for medical treatment following deployment of these tools. The Task Force should consider whether to mandate that officers provide medical care within the scope of their training and be required to summon medical aid to the scene for any person who requests it or is apparently in need of such aid after a use of force.

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<sup>14</sup> POSPD 300.4.

However, POSPD 466, which is not in the Use of Force policies, provides that “[w]henver practicable, members should take appropriate steps to provide initial medical aid (*e.g.*, first aid, CPR, and use of an automated external defibrillator (AED)) in accordance with their training and current certification levels. As such, officers already have a general duty to provide medical treatment, but that duty is confused by conflicting guidance in the Use of Force policy. The language in POSPD 466 is exactly the language that should be considered for incorporation into the use of force policy (or cross-referenced). Again, this may be another example where the department policy is correct, but overly complex and scattered so that clarity is lost.

### **c. Oversight, Accountability, and Transparency**

21CP is tasked with assessing POSPD’s oversight, accountability, and transparency measures. 21CP is looking for POSPD policies and protocols that clearly convey the mission and values of the Department so that officers and other employees have a clear understanding of expectations pertaining to conduct.<sup>15</sup> 21CP also is assessing POSPD’s complaint and discipline system to ensure that it processes complaints thoroughly, fairly, and in a timely manner and that the approach to discipline encourages changes to conduct when required and is appropriate to the circumstances involved. These types of benchmarks help ensure accountability, while others foster transparency and oversight. 21CP is only in the beginning stage of understanding the many individual policies involved and the relationships among different policies and other governing provisions in setting conduct expectations for POSPD officers and addressing allegations of misconduct, but can offer some early observations and share next steps that will be taken regarding the assessment of oversight, accountability, and transparency issues.

21CP’s assessment in this area, which will continually be informed by the work of the Oversight Subcommittee, has started with a review of misconduct complaint processing, discipline alternatives when a complaint is sustained, and protocols to address retaliation concerns.<sup>16</sup> The assessment related to these topics alone requires reference to applicable sections of the POSPD Policy Manual, up to seven (7) collective bargaining agreements,<sup>17</sup> the Police Officers’ Bill of Rights and Code of Conduct/Workplace Responsibility Handbook appendices attached to some of the agreements, Port of Seattle Police Civil Service Rules, and the Port of Seattle Code of Ethics & Workplace Conduct.<sup>18</sup>

Relevant sections of the Policy Manual identified at this early stage of the assessment include Standards of Conduct (Policy 340), Personnel Complaints (Policy 1020), and the Disciplinary System

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<sup>15</sup> See, e.g., IACP Model Policy -Standards of Conduct and related Concepts & Issues Paper (updated July 2019).

<sup>16</sup> 21CP is considering impacts on racial equity and civil rights throughout its assessment, though the Oversight Subcommittee has specific responsibility for input on these issues, along with considering oversight and accountability at the POSPD.

<sup>17</sup> 21CP has identified seven collective bargaining contracts for various groups of POSPD employees including Police and Fire Communications (Dispatch), Police Department Non-Sworn Supervisors, Police Department Traffic Support Specialists, Police Specialists, Police Officers, Police Sergeants, and Police Commanders.

<sup>18</sup> Other governing documents may yet be identified.

(Policy 341). There are specific policies in each section that 21CP would generally expect to find, including: a statement that the conduct standards listed are not intended to be exhaustive; both on- and off-duty conduct is subject to discipline; all complaints, regardless of the method conveyed, will be reviewed and investigated, including anonymous complaints; complaints are classified for handling and systematically tracked; complaint investigation protocols, disposition alternatives, and appeal rights are identified; unique complaint issues such as those involving criminal allegations are flagged; retaliation for filing a complaint is prohibited; and, discipline outcomes for sustained complaints are detailed.

However, similar to the observation regarding Use of Force, the POSPD's reliance on Lexipol boilerplate policy to define conduct expectations and processes for the complaint and discipline system results in specific policies that can be repetitive, overlapping, contradictory, or otherwise confusing. In addition, whether explicitly stated or not, some policies also require reference to other resources, such as the applicable collective bargaining agreement, which make the policies less useful guides to performance expectations for POSPD personnel.

21CP met with the Sergeant currently overseeing the Office of Professional Accountability (OPA). He assumed the assignment in May 2020, following an application and scenario based interview process. He received on-the-job training from his predecessor and sits on the Command Staff, which appears to facilitate information sharing and coordination concerning complaint processing. In addition to his OPA duties, the Sergeant also serves as the POSPD Public Information Officer (PIO) liaison to the Port's media office and is the Defensive Tactics Training Coordinator. The OPA Sergeant also serves on the Task Force Oversight Subcommittee.

21CP consultants are in the process of obtaining a Criminal Justice Information Services (CJIS) security clearance required prior to reviewing detailed use of force and complaint information. Meanwhile, based on 2015 – 2019 intake data provided by the OPA Sergeant, the POSPD receives an average of 31 inquiries and complaints each year, with an average of 23 per year (about 75%) of the contacts involving inquiries (a classification category used when the alleged facts, even if true, do not involve a policy violation). 21CP will provide more detailed information concerning complaint intake, investigations, and outcomes as the assessment moves forward.

**Issue 1: The complaint classification scheme is unnecessarily technical, terms used are not consistently well defined, and the assignment system does not serve quality control goals.**

POSPD classifies complaints alleging policy violations as either a Minor, Moderate, or Major Complaint (along with the inquiry classification, used when the complaint, even if true, does not involve a policy violation).<sup>19</sup> This scheme appears unnecessarily technical, given the relatively few complaints handled by the POSPD. 21CP will explore other costs and benefits to using Lexipol

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<sup>19</sup> POSPD 1020.3.

policies as the assessment continues, but for now, for illustration, note the circular nature of the definition used for “Minor Complaints”:

Complaints involving allegations against department members when the actions or behavior of the employee constitutes violations of department policy that are minor in nature. Discipline resulting from a sustained finding involving minor complaints will generally not result in any property loss...(i.e. suspension, demotion, termination, etc.). Minor complaint allegations may include...[complaints about courtesy, minor service issues, minor traffic violations], and complaints of actions committed by a department member deemed to be minor policy violations.”

Defining a “minor complaint” as one that involves a minor policy violation does not provide helpful guidance to POSPD officers, supervisors, and other staff, or for other Port employees and public stakeholders, and thus does not serve the goal of transparency and undercuts accountability.

POSPD provides that complaints are, at least initially, processed differently depending on whether they are in writing or oral.<sup>20</sup> Written inquiries and complaints are first forwarded to the administrative specialist of the Chief of Police, who confirms receipt with the complainant and then refers the matter to OPA for classification and assignment. In-person or telephoned complaints are forwarded to an on-duty supervisor for intake, and then the supervisor determines how to classify the complaint. It appears that the on-duty supervisor either handles or refers to the first-line supervisor any investigation of complaints deemed to be minor. If a moderate or major complaint is involved, they are to be referred to “the affected commander” for review, who then forwards it to OPA for assignment.

While an approach that sets up different processes based on whether a complaint is made in writing, in-person, or over the telephone presumably encourages thorough information gathering while a complainant is more immediately available and provides for up-front feedback to a complainant submitting a written complaint, the system appears unnecessarily complicated and confusing, given the relatively few complaints involved. While inquiries and complaints are entered and tracked through IAPro/BlueTeam, at this early stage of the assessment, it also is not clear that anyone involved is responsible for coordinating the overall complaint classification system. The lack of clear quality control for this one aspect of complaint processing calls into question whether internal accountability/oversight goals can be met by POSPD. Further assessment is needed before drawing final conclusions.

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<sup>20</sup> POSPD 1020.4.

**Issue 2: Timelines should be set for individual steps throughout the investigation process.**

POSPD policy states that administrative investigations should not extend over ninety- (90) calendar days, which can be extended if needed, with notice to the subject employee.<sup>21</sup> Department policy does not appear to set other timelines for completing the various steps involved with complaint intake, investigation, and disposition, contrary to what 21CP would expect to find. The team was referred to the POSPD Police Officers' collective bargaining agreement for deadlines related to complaint processing. Though the 21CP team has by no means assimilated the entire collective bargaining agreement, the only complaint related timeline evident was a requirement in Appendix B, Police Officer Bill of Rights, that an employee be notified within five (5) days if they are subject to an investigation by the Internal Investigations Section (presumably OPA). Other governing documents may reference specific timeline requirements such as seen regarding appeals and hearings under the Police Civil Service Rules. 21CP will continue to explore all relevant policies and procedures to determine if there is a system to ensure timely complaint processing.

**Issue 3: The Standards of Conduct incorporated into POSPD policy are disorganized and confusing, and are not placed into context with the Port's Code of Conduct.**

Administrative misconduct complaints are tied to a police department's policies and procedures that set out conduct expectations, both generally and specifically. POSPD Policy 340/ Standards of Conduct refers to CALEA 26.1.1, and it is not clear to 21CP, at this early stage, whether the policy relies primarily on CALEA model policies or also includes standards proposed by Lexipol or other references.

Although issues related to standards of conduct will continue to be explored as the assessment moves forward, 21CP offers some initial observations. First, as with some other policies discussed, Policy 340/Standards of Conduct is confusing to read, internally disorganized, and does not consistently serve the goal of articulating conduct standards in a way that promotes clear understanding by employees. In contrast, the Port of Seattle Code of Conduct is plainly written and well organized, clearly stating the Port's values that employees:

- Conduct business with the highest of standards;
- Honor their commitments to one another, the community, and the Port's customers;
- Recognize that employees are capable, high performing people who appreciate the privilege of public service; and,
- Encourage employees to embrace the richness of a diverse workplace and support employee development.

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<sup>21</sup> POSPD 1020.6.4.



These values are then individually delineated without unnecessary repetition and with clear guidance on where to direct questions concerning the conduct standards and the complaint investigation process when the conduct code is allegedly breached.

Second, while the Port's Code of Conduct offers easily understood guidance for employee conduct expectations, it is still necessary that the POSPD have a set of standards complimenting the Port's, but one that incorporates the unique values and ethics associated with police services. Finally, POSPD policy should clearly articulate how its Standards of Conduct relate to the Port's Code of Conduct, along with any collective bargaining agreement's attached MOU regarding the Code of Conduct/Workplace Responsibility Handbook, and any other governing documents. 21CP, with input from the Oversight Subcommittee, will continue to assess these issues.

**Issue 4. There is no clear protocol for handling conflict of interest issues that can occur with misconduct complaint processing.**

The POSPD policy that sets out guidelines for reporting and investigating misconduct complaints does not include a provision addressing potential conflicts of interest. POSPD does have a policy on Nepotism and Conflicting Relationships, with the purpose defined as, "to ensure equal opportunity and effective employment practices by avoiding actual or perceived favoritism, discrimination, or actual or perceived conflicts of interest by or between members of this department."<sup>22</sup> The policy includes "discipline" among the list of employment practices that are covered. However, there is no explanation in this policy or elsewhere concerning the identification of and protocols to address specific conflict of interest concerns in the complaint handling or discipline processes.

In all departments where sworn members are tasked with investigating complaints against other members in the same organization, unique issues of perceived or actual conflict of interest can crop up. Furthermore, since even those who have engaged in criminal activity should have an avenue to complain about officer misconduct, those engaged in investigating complaints cannot be swayed by any underlying alleged criminal behavior by the complainant. The goal is to ensure that everyone involved in the investigation and review process is capable of being objective, fair, and unbiased with regards to the subject officer, complainant, witnesses, and issues raised. Where there are questions of perceived or actual conflict of interest, the policy should explicitly state the steps to be taken to resolve any concerns.

21CP looks forward to working with the POSPD to further explore the issue of conflict of interest and other matters discussed throughout this report, along with discussions with the subcommittees and Task Force as it continues with the assessment and develops recommendations to enhance POSPD's service to the Port of Seattle community.

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<sup>22</sup> POSPD 1050.1.

#### d. Mutual Aid

Mutual Aid is a term that warrants definition. As discussed at the first subcommittee meeting, the term generally refers to assistance under RCW 10.93, the Washington Mutual Aid Peace Officers Powers Act and agreements defined by RCW 39.34, the Interlocal Cooperation Act. 21CP has reviewed POSPD policies and provided agreements governing cooperation with other law enforcement agencies. As with Use of Force and Oversight, the below considerations are early in this process and are offered as areas to explore, rather than formal recommendations. Additionally, these have been generated by initial review, so it is plausible that these issues are addressed in other policies or procedures and we look forward to discussing these further with the Task Force, the subcommittee, and the POSPD.

**Issue 1. It is not clear how broadly the term “mutual aid” is used by POSPD in its policies and enforcement practices.**

Identified POSPD agreements under the statutes noted above include:

1. The Interlocal Cooperative Agreement Valley Special Response Team (with the Cities of Auburn, Kent, Renton, and Tukwila, which provides “enhanced use of personnel, equipment, budgeted funds, and training” to respond to high-risk incidents such as “civil disobedience, barricaded subjects, hostage situations, gang member arrests, high risk felony arrests, and narcotic/high risk search warrants;”<sup>23</sup>
2. The Valley Independent Investigative Team (with the Cities of Auburn, Des Moines, Federal Way, Kent, Renton, and Tukwila), to “independently, thoroughly and objectively investigate the most serious Incidents involving police officers, including but not limited to:
  - Officer involved uses of deadly force that result in death, substantial bodily harm, or great bodily harm;
  - In-custody deaths or life-threatening injuries;
  - Death or life-threatening injuries of a police employee;
  - Other matters as directed by the Executive Board”<sup>24</sup>; and
3. The Valley Civil Disturbance Unit (with the Cities of Auburn, Federal Way, Kent, Renton, and Tukwila) to provide “South King County Cities with well-trained and equipped police response for effective crowd control and quelling civil disturbances.”<sup>25</sup>

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<sup>23</sup> Interlocal Cooperative Agreement Valley Special Response Team.

<sup>24</sup> Valley Special Response Team Operational Agreement.

<sup>25</sup> The Valley Civil Disturbance Unit (VCDU) Tactical Standard Operating Procedures.

However, the POSPD has a unique jurisdiction that is a patchwork across many other jurisdictions, and POSPD has many *ad hoc* relationships with neighboring jurisdictions. As such, the sub-committee is considering the scope of what “mutual aid” will mean for the work of the Task Force.

The review of mutual aid policies has just begun, as the documents were just received from POSPD (not implying any delay on the Department’s part – again, the POSPD has been very helpful). The agreement authorizing all Washington State Law Enforcement Agencies to operate in Port jurisdictions can be found [here](#). This is a common, boilerplate agreement without restrictions – the vast majority of WA agencies, if not all, have similar agreements.

**Issue 2. When the POSPD engages in mutual aid involving noticed events, at the Port or in other jurisdictions, incident planning documents and after-action reports should provide perspective in assessing these events.**

We are in the process of reviewing after-action reports, agreements around Valley CDU and Valley SWAT, and are interested in exploring instances of mutual training. For example, we were provided the Seattle Police Bicycle Training – we are interested in following up to see if physical, joint training occurred with Seattle.

Of particular interest to the sub-committee are the events and lessons learned from the January 28-29, 2017 demonstrations after “the President of the United States signed an Executive Order on Immigration, impacting travel from seven Muslim-majority countries”<sup>26</sup> Based on the magnitude of the protests and the call from protesters to “shut down the airport,” mutual aid was requested from agencies throughout King County. Many responded, with 116 officers responding as follows:

- Valley Civil Disturbance Unit (VCDU) consisting of officers from Tukwila PD,
- Renton PD, Federal Way PD, Kent PD, and Auburn PD (35)
- Valley SWAT Unit consisting of officers from the same departments (23)
- King County Sheriff’s Office and King County Metro (12)
- Bellevue Police Department (6)
- Normandy Park Police Department (3)
- Washington State Patrol (12)
- Seattle Police Department (25)<sup>27</sup>

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<sup>26</sup> Executive Order Protest After Action Report at 3.

<sup>27</sup> *Id.*

“By the end of the night, police had made a total of 34 arrests, one for assaulting an officer and 33 for Disorderly Conduct and Failure to Disperse” and there were “five instances where pepper spray was used on protesters: one by a sergeant for the Port of Seattle PD, one by a sergeant with the Renton PD, one by an officer with the Renton PD, and two by an officer with Kent PD.”<sup>28</sup> The POSPD issued a 50 page after-action report, which is consistent with best practices for analyzing any major event and cultivating lessons-learned. In the after-action report, the POSPD self-identified “what went well,” responded to “questions and answers regarding issues and perceptions relating to the protest” (anticipating questions of public interest and specifically answering questions from Port leadership), and conducted a use of force review on all of the identified uses of force, including the five pepper spray deployments. 21CP will continue to examine this incident and the after-action report with the sub-committee.

**Issue 3. Mutual Aid Agreements should clearly indicate that POSPD officers are bound by POSPD Policies.**

POSPD 106.1, Purpose and Scope, states: “The manual is a statement of the current policies, procedures, rules, and guidelines of this department. All employees are to conform to the provisions of this manual.” POSPD 352.3, Assisting Outside Agencies, states: “When another law enforcement agency requests assistance from this department, the on-duty shift supervisor may authorize, if available, an appropriate number of personnel to assist. *Members are reminded that their actions when rendering assistance must conform with applicable laws and be consistent with the policies of this department.*” These policies seem to clarify that POSPD officers are bound by POSPD policy even when assisting other agencies, but the language of “be consistent with the policies” should be considered for strengthening.

None of the agreements we reviewed clearly set forth the expectation that even though officers cooperating with area task forces are led by the primary agency that officers are bound by the POSPD policy. Even if true under POSPD policy expectations, the agreements themselves should make that clear to all participating agencies.

Two sub-issues in this area should also be examined: civil immigration enforcement and pre-text stops.

***Civil immigration enforcement***

In alignment with the Port of Seattle’s Welcoming Port Policy Directive (Resolution 3747), POSPD 427.2, Immigration Violations, states:

It is the policy of the Port of Seattle Police Department that officers will not initiate police action based solely on an individual’s immigration or alien status, nor shall

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<sup>28</sup> *Id.* at 4.

they ask for identification or documents to establish the person's immigration or alien status. Under ordinary circumstances, a general request for adequate identification as part of a criminal investigation is all that is necessary or appropriate.

Furthermore, it is this organization's intent to foster trust and cooperation with all people served by the Department. Complainants, witnesses and victims are encouraged to communicate with police officers without fear of inquiry regarding their immigration or alien status. Being an undocumented person in this country, barring any criminal activity, is a federal civil violation not enforced by officers of the Department.

While the POSPD policy is clear on expectations, consideration should be given to include express limitations on officers participating in enforcement activities with other agencies, prohibiting them from engaging in civil immigration enforcement while engaged with the other agency. This is likely covered under the mandate to follow all POSPD policies and other limitations set forth in RCW 10.93.160, Immigration and citizenship status—Law enforcement agency restrictions, however including a limitation on civil immigration enforcement in all Mutual Aid agreements clearly puts partner agencies on notice and makes a clear public statement.

### ***Pre-text stops***

Pre-text stops (initiating law enforcement activity for an observed minor violation with the intent of exploring different potential criminal activity) are permitted under the United States Constitution, but not permitted under Article I, Section 7 of the Washington Constitution. As such, federal law enforcement officers are permitted to use pre-text stops, but not Washington peace officers. There is some ambiguity about whether Washington officers assigned to federal task forces may use pre-text stops when supporting federal investigations. Consideration should be given to expressly forbid pre-text law enforcement activities by POSPD officers.

### **Issue 4. Mutual Aid agreements and requests should address limitations on less-lethal tools or other use of force tactics other jurisdictions can employ when working with the Port in response to a Port request for aid.**

RCW 10.93.050 (part of the Washington Mutual Aid Peace Officers Powers Act), specifically provides supervisory authority to the primary commissioning agency. As such, an agency requesting Mutual Aid can condition that aid on requirements about what tools, tactics, and use of force may be applied during that aid. Consideration should be given to tailoring the POSPD Mutual Aid agreements to specify what rules of engagement POSPD will permit when receiving assistance and when providing aid to other agencies.

#### **e. Conclusion**

In sum, 21CP is very encouraged by the early engagement with the Task Force and the POSPD, although it has been something of a whirlwind. We look forward to moving forward with the subcommittees, beginning community engagement, and continuing to work collaboratively with the POSPD.

Clearly, and as repeatedly stated, this is a preliminary status update and much of the information gathered to date may prove to be incorrect upon further exploration, but 21CP intends to keep exploring issues and presenting them to the Task Force and subcommittees for further discussion.