

MINUTES OF EVERETT PORT COMMISSION REGULAR MEETING  
September 14, 2010

PRESENT:	Michael Hoffmann	President
	Mark Wolken	Vice President
	Troy McClelland	Secretary
	John Mohr	Executive Director
	Karen Clements	Chief Finance Officer
	Brad Cattle	Port Attorney

CALL TO ORDER: The meeting was called to order at 5:00 p.m. by Commission President Michael Hoffmann.

APPROVAL OF MINUTES:

Commissioner Mark Wolken moved to approve the Work Session Minutes of August 3, 2010, and the Regular Meeting Minutes of August 10, 2010. Commissioner Troy McClelland seconded the motion. A vote was called for:

Vote: 3-0  
Yes: Wolken, McClelland, Hoffmann  
No: None  
Abstained: None

Motion carried unanimously.

1. COMMISSION PRESIDENT'S REPORT

Commission President Michael Hoffmann provided an outline to the Commission in consideration of his request to have an open economics discussion with the community.

Commissioners Wolken and McClelland asked for additional information as it relates to format and discussion points. Commissioner Hoffmann said he would work to provide the information.

2. EXECUTIVE DIRECTOR'S REPORT

**North Marina Redevelopment**

Executive Director John Mohr reported that Port staff is in the process of gathering the available information on permitting, zoning, and land use reports for the North Marina Redevelopment planning process and anticipates having the information available for the Commission to review during the month of January 2011.

The Commission agreed with the process and timeline.

Jeff Lalone, Bayside Marine, said he hopes the North Marina Redevelopment planning process becomes the Port's top agenda item in January.

**Coho Fishing Derby**

Joel Starr of the Everett Fourth of July Foundation thanked the Commission for its continued support to the Foundation. He reported that the Foundation will be hosting a beer garden at the Everett Coho Derby on September 17-19, 2010 to raise funds for the Fourth of July festivities. Joel Starr and Jeff Lalone of Bayside Marine outlined the events planned for this year's Coho Derby, including poker games, live music and the beer garden. \$100,000 in prizes will be given away during the event.

**Bauer Evans Purchase and Sale Agreement**

Executive Director John Mohr reported that Bauer Evans, as required by the agreement for the purchase of the Bond Street Administration Building, have a letter of credit that secures the down payment for the purchase of the building. The letter of credit expires in October. The building actually transfers to Bauer Evans at the end of 2010. Port staff has been approached by Bauer Evans with a proposal that the letter of credit be substituted by a personal promissory note from Brian Evans and substituting the note for the letter of credit to bridge the gap between early October to December 31, 2010 to get

ORIGINAL

to closing, at which time they would fund the \$125,000 down payment on the building. Port attorney Brad Cattle stated that the Commission would need to authorize an addendum to the purchase and sale agreement to authorize the Executive Director to sign the addendum and substitute it for the addendum that allowed the letter of credit. Brian Evans is financially capable of servicing a \$125,000 promissory note and staff would indicate that there is not any risk in making that adjustment. When the Port previously requested flexibility for the date of entering into the real estate contract from October to December 2010, Bauer Evans was cooperative and extended that courtesy to the Port.

Commissioner Mark Wolken moved to authorize staff to amend the Bauer Evans agreement to substitute a personal promissory note for the letter of credit. Commissioner Troy McClelland seconded the motion. A vote was called for:

Vote:	3-0
Yes:	McClelland, Hoffmann, Wolken
No:	None
Abstained:	None

Motion carried.

### **10<sup>th</sup> Street Boat Launch – Commercial Use**

John Mohr reported his concerns regarding commercial haul-out usage at the 10<sup>th</sup> Street Boat Launch facility for which the Port has a partnership interest with Snohomish County and the City of Everett. His concerns were supported by a historical overview of the designated recreational use of the facility as well as state grant funding requirements, and the fact that the Port does not have a policy in place for commercial use of the facility.

Lauren Bivens of Harbor Marine responded that many of the areas of concern raised by John Mohr can be addressed, and his proposed use of the facility would involve smaller boats and enhance the benefit that the Port provides to the public. The proposed haul-out activity would be limited to a smaller size vessel, and a specified timeframe to avoid interfering with public activities. There are currently other commercial users of the facility that run boats for testing and launching. There is an established commercial activity with LCM from Hat Island that loads gravel trucks. Lauren Biven said his proposed activity is for occasional use of the facility and he is considering a smaller version of haul-out equipment.

Commissioner Wolken suggested that if the details can be worked out ahead of time such as the fee for using the facility that would cover the use and wear and tear, he indicated that there might be a potential that something could be worked out. However, if the Port does not have a policy in place, things can get out of control before the activity moves forward.

John Mohr said there is an exception that is called out by the Washington State Recreation and Conservation Office (RCO) for situations where there is no alternative. LCM is allowed to use the facility during a restricted time and by appointment, but it is because of the limitation that there is no alternative to offer the services. John Mohr said that LCM's commercial use of the facility was done with a great deal of consideration and recognition that there was not a viable alternative.

Lauren Bivens indicated that most concerns can be addressed by procedure.

Richard Cook, Marina tenant, commented that maneuvering and hauling a boat out of the water at the boat launch would be "dicey" and said it would not be worth the risk to allow this type of commercial use.

Commissioner Wolken stated it would be reasonable to consider a clear operational plan and an analysis that demonstrated that the impacts from the proposed use would not have an adverse effect for the boat launch. These requirements would be incumbent upon an individual to bring that information to the Port for consideration.

Commissioner McClelland said the boat launch facility was created for access and recreation and it was funded that way. He would be in favor of operating the boat launch as originally designed, but by exception, consider other uses. Use and undermining are

key considerations. The boat launch is operating at a loss and was funded separately. There would have to be a strong case for public benefit.

John Mohr said there is no formal policy that has been established to date. John Mohr asked the Commission to establish a formal policy that commercial use of the facility should only be done on an exception basis. Troy McClelland said that unless information comes to the Commission and it is decided otherwise, the Port should maintain the current tradition that commercial use would be by exception only, and as approved by Commission.

Commissioner Hoffmann said that this proposal might be a means of mitigating for additional boat yard space.

Commissioner Mark Wolken moved that unless adopted otherwise by the Commission, staff is directed to deny the use of the 10<sup>th</sup> Street Boat Launch for commercial haul out operations. Commissioner Troy McClelland seconded the motion. A vote was called for:

Vote:	3-0
Yes:	McClelland, Hoffmann, Wolken
No:	None
Abstained:	None

Motion carried.

3. CHIEF ADMINISTRATIVE OFFICER'S REPORT

**PSI – Baywood RIFS Consulting Agreement**

Erik Gerking, the Port's Environmental Cleanup Administrator, presented a modification to the Professional Services Agreement (PSA) with SLR International Corp for the Remedial Investigation and Feasibility Study (RI/FS) and Draft Cleanup Action Plan (DCAP) in advance of entering into a Consent Decree with Ecology for the final clean up of the Port's Bay Wood property. SLR and Anchor QEA, subcontractor to SLR, completed remedial investigation services required by Ecology under the Agreed Order, including some unanticipated services. The agreement recognized that additional phased work scope would require future contract modifications to the original contract as the clean-up activity progressed.

The modification includes estimated costs for Anchor QEA to provide sediment expertise required as a result of the contamination identified at the site, including completion of the scope of work required by the Agreed Order (RI/FS and DCAP), negotiation of the consent decree, finalization of the CAP, pre-design data collection, engineering design report, and project permitting. The Port anticipates services to be complete by late 2011, with the engineering design documents to be incorporated directly into the construction bid documentation for cleanup contractor selection. The clean up construction is anticipated to be conducted in 2012.

The modification for these services is estimated at \$261,567, and anticipates additional future scope of services to include unanticipated services subsequently required by the Department of Ecology as part of the Agreed Order or Consent Decree, and remediation construction monitoring. The existing PSA for these services has a current limitation of \$272,295. The requested modification to SLR's agreement will add an additional \$261,567 for a new total of \$533,862. The Port's costs for this work are reimbursed at a rate of 50 percent through grant funds from the Department of Ecology, and sufficient grant funds are currently allocated for this project in the Port's grant agreement.

Port staff believes that the competitive solicitation process would not be cost effective – the current scope of services will build upon the previous work completed by SLR (and Anchor QEA) conducted under Port direction.

Staff recommends that the Commission approve the modification to the existing Professional Services Agreement, and further recommends that the Commission approve an exemption from the competitive solicitation process for the work identified in the modification and for possible future modifications necessary to complete the work required under the Agreed Order or future Consent Decree.

Commissioner Mark Wolken moved to approve the request for the SLR Contract Modification No. 3 as recommended by staff in the amount of \$261,567, and waiver of the competitive solicitation process for clean up of the Baywood property. Commissioner Troy McClelland seconded the motion.

Vote: 3-0  
Yes: McClelland, Hoffmann, Wolken  
No: None  
Abstained: None

Motion carried.

#### **Everett Maritime Bankruptcy**

Chief Administrative Officer Jerry Heller reported that Everett Maritime has filed a motion in the bankruptcy court to dismiss its bankruptcy proceedings. The matter will be brought before the court on October 6 for hearing. A more complete report will be provided to the Commission during the October meetings.

#### **Puget Sound Initiative – Consultant Contracts**

Jerry Heller presented information regarding the Model Toxics Control Act (MTCA) cleanups and the consultant contract process. The Port is currently involved in four designated Puget Sound Initiative cleanup sites under MTCA and three Voluntary Cleanup projects. Of the three Voluntary Cleanup program sites, two are completed. Of the four designated sites, the Port has the West End site, the Ameron/Hulbert site, the ESY site and the Baywood site. The West End site is soon to be concluded, and the other sites are still work in progress.

Jerry Heller described the 15 steps associated with the formal MTCA cleanup process and indicated that the work product builds as knowledge is gained during each step. As a result, it is not possible to determine total project costs at the outset of the project.

Options for managing the MTCA Consultant Contracts include going out for a competitive selection process for each step of the project, or to hire a qualified single consultant at the beginning of the project for the entire project.

The characteristics of the multi-consultant ongoing competitive selection process are that it is labor intensive, it is difficult to meet agreed order deadlines, different consultants may lead to inconsistent data management and data interpretation, and inefficiency of the process. The Port has not historically followed this approach.

The characteristics of the single consultant process are that the Port hires a consultant at the beginning of the project and it would be assumed that the consultant would take the project all the way through to completion. Within the context of this approach, the Port has the right to terminate the contract for inadequate performance and at completion of each benchmark. Task orders are presented as the different aspects of the cleanup process evolves.

One approach for cost management of the single consultant contract process would be to have the consultant approximate a range of cost to take the project to completion, and then have the consultants provide updated estimates as the project is refined. MTCA projects take five to seven years to complete. The Port typically has not followed this approach.

What the Port has done in the past is to require individual scopes and tasks for the steps within a cleanup project with an individual dollar amount. Port staff is recommending that the individual scopes, tasks and dollar amounts be peer reviewed. The cost of the peer review should not be significant, and it would provide the Port with a second opinion by another professional within the industry. Additionally, and when the process is concluded, the Port will be seeking contribution from the other potentially liable parties (PLPs) that are associated with the contamination. Typically, the PLPs argue that the fees that the consultants have been charged are unreasonable and are unnecessary. The peer review process would be beneficial in substantiating that the fees were reasonable and necessary.

Port staff would like Commission input for the recommended peer review approach for management of the MTCA projects.

Commissioner Wolken said the suggestion that the individual task orders with work scopes and costs be peer reviewed is a very well thought out approach, and provides the Commission and staff with a means of being able to be sure that the Port is getting the best deal and heading in the best direction. The ability to establish the reasonableness of the costs when dealing with the other PLPs is an outstanding way to minimize the cost and struggles that occur at the later stages of the projects.

Commissioner Troy McClelland said it was a good first step but benchmarking should be done in conjunction with the peer review, and asked staff to provide additional information on best practices from other agencies as to their review processes.

Jerry Heller stated that staff would provide additional information for Commission review.

#### 4. OPERATIONS REPORT

##### Marina Report

Acting Marina Director Scott Grindy reported that the main distribution panel went out at P&Q docks in the South Marina and it is estimated that power will be out for approximately two weeks. The cause is unknown at this time, but the PUD suspects that a honeycomb bee hive may have gotten into the panel.

The Everett Coho Fishing Derby is scheduled for September 17 – 19 at the Port's 10<sup>th</sup> Street Boat Launch.

On September 30 – October 5, the Schooner Adventuress arrives at the south visitor guest dock. Tours and boat trips will be offered.

Scott Grindy also reported on the summer outreach events and marketing efforts to promote the marina. The events included a booth at the Tulalip Boat Show, Jetty Jam, Farmer's Market, Summer Concert Series, representation at Klahaya Days, the Customer Appreciation Event, the Cruise-In with Everett Yacht Club, and a booth at the Seattle Boat Show. The Port also had a booth at the Mukilteo Lighthouse Festival and will have a booth at the upcoming Coho Fishing Derby.

Commissioner Troy McClelland commented that during the budget process, he would like to understand some of the marketing events related to the 2011 budget and the assumptions related to occupancy as it relates to the different activities that are proposed.

Commissioner Hoffmann said customer service programs geared toward current users of the Marina, instead of trying to fill a few slips, would be of benefit to the long-term health of the Marina.

Commissioner Wolken commented that the Commission needs to understand the business plan and the revenue assumptions from the business plan during the budget process.

#### 5. APPROVAL OF BILLS

For the month of August 2010, Claims Voucher Nos. 56503 - 56771, in the amount of \$2,828,483.31, Claims Wire Transfers, IRS, in the amount of \$146,268.35, Union Bank of California in the amount of \$8,849.26, Wash. St. Dept. of Revenue in the amount of \$48,573.72, and Payroll Voucher Nos. 33843 - 34082, in the amount of \$381,719.94, and Payroll Wire Transfers, PMA Payroll (Longshore Labor) in the amount of \$182,507.48, with the total amount of \$3,596,402.06, were presented to the Port Commission for approval of payment by Chief Finance Officer Karen Clements.

Commissioner Mark Wolken moved to approve payment of the vouchers for the month of August 2010. Commissioner Troy McClelland seconded the motion. A vote was called for:

Vote: 3-0  
Yes: Wolken, McClelland, Hoffmann  
No: None  
Abstained: None

Motion carried.

6. COMMISSIONER COMMENTS

Commissioner Troy McClelland commented that the North Marina Redevelopment discussion is a focal point for the Commission, and that the information gathered by staff will be beneficial in beginning the planning process.

Commissioner Hoffmann commented that the information gathered by staff will help to establish reasonable parameters, and help in the development of a plan that would be a sustainable project.

7. CITIZEN COMMENTS

Jeff Lalone, Bayside Marine, noted the importance of reviewing the Marina occupancy when considering options for the North Marina Redevelopment. He said if the right things are happening at the North Marina, the Marina will be full.

THE MEETING WAS RECESSED to the Executive Session at 6:54 pm for approximately 25 minutes to discuss with legal counsel the consideration of the minimum price at which real estate may be offered for sale, public discussion of which could disadvantage the Port's negotiation.

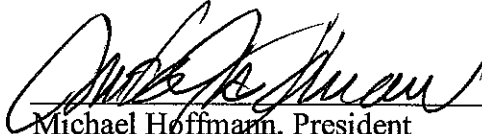
No action was taken by the Commission, and no announcements were made.

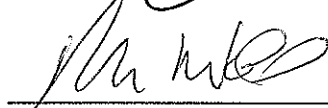
THE REGULAR COMMISSION MEETING WAS ADJOURNED at 7:20 p.m.

APPROVED: this 12<sup>th</sup> day of October 2010.

EVERETT PORT COMMISSION

By:

  
Michael Hoffmann, President

  
Mark Wolken, Vice President

\_\_\_\_\_  
Troy McClelland, Secretary



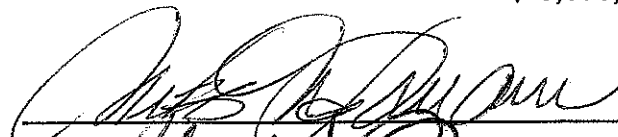
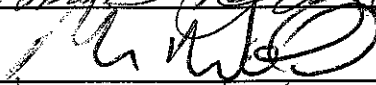
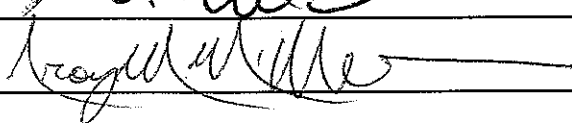
Port of Everett

**ORIGINAL**

**Port of Everett  
Voucher Approval List  
for the month of  
August  
2010**

We, the undersigned Commissioners of the Port of Everett, Snohomish County, Washington, do hereby certify the following vouchers/warrants have been certified and approved for payment this the 14th day of September, 2010:

	<b>Total</b>
Claims Voucher Nos 56503 - 56771	\$2,828,483.31
Claims Wire Transfers:	
8/2, 8/16                      Wire Transfer - IRS	\$ 146,268.35
8/26                              Wire Transfer - Union Bk of Calif	\$ 8,849.26
8/24                              Wire Transfer - Wa St Dept of Rev	\$ 48,573.72
 Total Claims	 \$3,032,174.64
 Payroll Voucher Nos. 33843 - 34082	 \$ 381,719.94
Payroll Wire Transfers:	
8/3,8/10,8/17,8/24,8/31      PMA Payroll (Longshore Labor)	\$ 182,507.48
 Total Payroll	 \$ 564,227.42
 Total Expenditures	 <b>\$ 3,596,402.06</b>

 \_\_\_\_\_ President  
 \_\_\_\_\_ Vice President  
 \_\_\_\_\_ Secretary

Attest: Karen R A Clements Port Auditor