

MINUTES OF EVERETT PORT COMMISSION COMBINED MEETING  
April 10, 2012

PRESENT:

Troy McClelland	President
Michael Hoffmann	Vice President
Tom Stiger	Secretary
John Mohr	Executive Director
Karen Clements	Chief Finance Officer
Brad Cattle	Port Attorney

CALL TO ORDER: The meeting of April 10, 2012 was called to order at 5:01 p.m. by Commission President Troy McClelland.

CONSENT AGENDA:

- Approval of Work Session Minutes of March 6, 2012 and Regular Meeting Minutes of March 13, 2012
- Approval of Bills for March 2012
- Blue Water Distillery Lease
- ArrowCat Marine Lease

Commissioner Michael Hoffmann moved to approve the items of the Consent Agenda for April 10, 2012. Commissioner Tom Stiger seconded the motion. A vote was called for:

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

Motion carried.

1. EXECUTIVE DIRECTOR'S REPORT

**Everett Fire Department**

Executive Director John Mohr received a letter of commendation from Murray Gordon, Fire Chief for the Everett Fire Department (EFD). The EFD was very pleased that the Port, through the assistance of Ed Madura and the maintenance staff, was able to make some of the buildings that are going to be demolished along West Marine View Drive available for the Fire Department to be able to practice their fire fighting techniques.

**Kimberly Clark Facility Tour**

John Mohr said that four Port staff members along with two representatives from Kidder Mathews went on a tour of the Kimberly Clark property last week. The focus of the tour was the general layout of the facility, particularly the waterfront area. Part of the tour took the group through the 380,000 square foot warehouse on the site which is in exceptional condition. It is a valuable asset and one that the Port is interested in learning more about. Some of the attributes of the building are that it has a 300 pound per square foot loading area, 20 foot ceilings on 25 foot centers and it is built very well. It also has up to 17 truck bays associated with it. It is an excellent building and one that the Port hopes will be retained as part of that facility.

The docks on the waterfront area provide a footprint for future docks and eliminate mitigation and permitting that might otherwise take place. In terms of the docks' condition, they are old wood creosoted pile supported docks that have exceeded their useful life but do provide an opportunity for future development.

**Marina District Master Plan Public Meeting**

Executive Director John Mohr reported that the public meeting for the Marina District Master Plan was held on April 5 and the turnout was impressive. There was great representation from people who live around the community, and great representation from the Everett Yacht Club as well as a number of other citizens in the community. The public meeting provided very good and insightful comments as to the direction that people want to go.

ORIGINAL

2. CHIEF ADMINISTRATIVE OFFICER'S REPORT  
Weyerhaeuser Cooperation Agreement for Mill A

Chief Administrative Officer Les Reardanz presented a request for the Commission to authorize the Executive Director to sign the Weyerhaeuser Cooperation Agreement for the Mill A cleanup project.

The Port acquired Weyerhaeuser's Mill A pulp mill site in 1983. The site has been determined to be a Puget Sound Initiative cleanup site and the Port was identified as a potentially liable party by the Department of Ecology in 2011. The Cooperation and Participation Agreement (CPA) was developed in anticipation that the Port and Weyerhaeuser will be required to enter into an Agreed Order with the Department of Ecology for this site. The CPA defines the terms of participation and cooperation between the parties during the Agreed Order process, which includes development of the Remedial Investigation and Feasibility Study and Draft Cleanup Action Plan.

Some of the highlights of the agreement are as follows:

- Cost sharing agreement: Weyerhaeuser is responsible for 60 percent and the Port is responsible for 40 percent of the project consulting costs (all technical costs) and costs associated with the Port's employee and project manager, Erik Gerking (salary, benefits and direct and indirect costs);
- Project leadership: Erik Gerking is the site's project coordinator, and the Port and its consultant are responsible for leading the technical and regulatory work in cooperation with Weyerhaeuser representatives;
- Standstill agreement: Parties agree to not initiate suit and to not actively pursue the litigation against the other party;
- Termination provision: Any Party may terminate its participation in this Agreement upon thirty (30) days written notice to the other Party.
- Final Cost Allocation: Final cost allocation will be determined by a separate agreement and at a later date, which will take place following successful completion of the Agreed Order work.

The Port's costs, excluding legal fees, are grant reimbursable with the Department of Ecology Remedial Action Grant at a rate of 50 percent.

Port staff and legal counsel request that the Commission consider authorizing the Port to enter into this agreement with the Weyerhaeuser Company.

Commissioner Stiger said he could not find this project in the capital improvement projects and inquired if it was a CLIP. Les Reardanz confirmed that it was a Contingent Liability Improvement Project (CLIP). Under the government accounting standards, it is treated differently than a capital improvement project so there is a separate standard – GASB 49 - that governs how these projects have to be accounted. Commissioner Stiger inquired what the Port's share would be for the entire project. Les Reardanz commented that at this point, the Port cannot answer that question. The Port has budgeted \$535,000 for this year, but part of the investigation is characterized to figure out where it is dirty, how much of it is dirty, what the cleanup actually entails and that is what the Remedial Investigation and Feasibility Study (RI/FS) does. After the RI/FS is complete, then the draft cleanup action plan is prepared and that is where the Port gets the cost range of how much it will actually be to clean up the property. Also, the Port has timed the project with any improvements necessary for the terminals and that is why it is important for the Port to be the lead in the cleanup project.

In response to Commissioner McClelland, Les Reardanz said the Department of Ecology has identified the Department of Natural Resources as a potentially liable party, in addition to the Port and Weyerhaeuser.

Commissioner Hoffmann moved to authorize the Port to enter into the Cooperation and Participation Agreement with Weyerhaeuser for completing the Ecology Agreed Order work at the Mill A site. Commissioner Stiger seconded the motion. A vote was called for:

Vote: 3-0

Yes: Hoffmann, Stiger, McClelland

No: None

Abstained: None

Motion carried.

**ESY, Inc. Settlement Agreement**

Les Reardanz reported that the Port has a Settlement Agreement with ESY, Inc. and as part of that agreement ESY has the responsibility to pay the Port \$4 million to take over the cleanup of their site. The payment is due 90 days from the day of signing which is essentially still a little over 30 days out. Part of the agreement also was that ESY would provide a certification that their five insurers have waived their subrogation rights, and ESY was to certify to the Port within 60 days of signing that those insurers had waived the subrogation rights. Port staff received word today that the insurers are taking longer to get the five subrogation waivers together, so ESY has asked to extend the period out to a point before the \$4 million is paid. Staff and counsel have reviewed the request and have determined that the request does not put the Port in a negative position. Working with five insurance companies is just taking longer than anticipated.

Les Reardanz asked the Commission to authorize the Executive Director to allow the extension of that time period to a period not later than the payment of \$4 million.

Commissioner Hoffmann moved to authorize the Executive Director to extend the time period for ESY to certify that its insurers have waived subrogation rights to a time that is no later than when ESY makes its payment to the Port. Commissioner Stiger seconded the motion. A vote was called for:

Vote:

3-0

Yes: Hoffmann, Stiger, McClelland

No: None

Abstained: None

Motion carried.

3. **CHIEF FINANCE OFFICER'S REPORT**

**Budget Schedule**

Chief Finance Officer Karen Clements presented the draft budget schedule for the 2013 Operating Budget and the 2013 - 2017 CIP Schedule and asked for comments from the Commission. Commissioner Stiger inquired if there was a schedule of periodic reports that the Commission receives during the current year. Karen Clements reported that Staff had a schedule similar to the one being presented to prepare the 2012 budget, and then Staff does quarterly reports on the Budget versus Actual during 2012.

In response to Commissioner Stiger's comments, Commissioner McClelland asked that Staff prepare a simple schedule for the 2012 quarterly review for the Commission to discuss after the 1<sup>st</sup> Quarter report has been presented.

After discussion, Commissioner McClelland suggested to Staff that the Commission will work with the draft budget schedule for 2013 and will entertain changes if and when they come up.

4. **DEPARTMENT REPORTS**

**Operations Report – Marine Terminals Report**

Chief Operating Officer Dave Madill provided the 2012 1<sup>st</sup> quarter results for the Marine Terminals. The Port has had 32 port calls this year versus 35 last year which is the result of some changes in the carrier market and also some of the scheduling of the vessels. For tonnage, the Port is about 9,000 tons ahead for the same period last year due to the log ship. For containers, the Port is ahead of last year's numbers and has handled 1,200 containers in the 1<sup>st</sup> quarter. The Port has had a good increase in the volumes on Westwood vessels that support aerospace and the car manufacturing businesses in Canada.

Port staff has once again established a 10 percent increase each for port calls, tonnage and containers handled (over last year's figures) for Marine Terminal 2012 goals. For port calls, the terminal has reached 19 percent of its goal. For tonnage, the terminal has reached 17 percent of its goal; and for containers handled, the terminal has reached 14 percent of its goal.

Dave Madill said there is a Ro-Ro carrier due at the Port the end of May.

### **Projects Update**

#### **Marina Maintenance Dredging Phase 1 Contract Closeout**

Chief of Engineering & Planning John Klekotka reported that the Marina Maintenance Dredging Phase 1 project was completed in February 2012. Staff was hoping to be able to have the final numbers and be able to close out the contract for Commission approval; unfortunately, staff is still in discussions with the contractor and engineer and will have to defer this project closeout to next month.

#### **Rail Access Recovery Project**

In response to Commissioner Stiger, John Klekotka reported that the Rail Access Recovery project was divided up into two bid schedules with an additive item for the schedule B, and the total for schedule A plus schedule B plus the additive item for Mid-Mountain was \$2,344,953. The engineer's estimate for that same work was \$2,307,970. The low bid was only \$36,983 over the engineer's estimate. The rail work is close to being substantially complete.

#### **Mill A and Baywood Consulting Contracts**

Erik Gerking, the Port's Environmental Cleanup Administrator, reported that the Port completed a combined competitive selection process for environmental consulting services for the Mill A and Bay Wood cleanup projects. Geo Engineers was selected through this process for both projects. The services are necessary to complete the environmental investigation and cleanup work as required by the Department of Ecology under the current Agreed Order for Bay Wood, and under the future Agreed Order for Mill A. The projects were tied together in the selection process for project and regulatory management efficiency.

There will be two separate professional service agreements; one for the Bay Wood project and one for the Mill A project. Each agreement is expected to exceed \$200,000 throughout the life of the project. The initial individual contracts for these projects are not expected to reach \$200,000. As a result, Staff wanted to inform the Commission that Staff has initiated contract negotiations with GeoEngineers for these projects, and to ask for Commission approval to enter into the initial contracts with GeoEngineers. Erik Gerking pointed out that these services are eligible for Ecology Remedial Action Grants at a reimbursement rate of 50 percent and that Potentially Liable Party (PLP) contributions are anticipated for the Mill A project.

The timing was one of the keys to combining these two projects with respect to engineering services. There was a need for new engineering services for each of the sites. Specifically at Bay Wood staff encountered a potential conflict of interest with the Port's prime consultant, SLR, who is involved in the adjacent Jeld-Wen site. There was a finding that there may be some cross site contamination issues and so staff felt it was prudent to have a consultant without that conflict of interest. At Mill A, staff had the environmental consultant working as a sub under Worley Parsons whose contract was coming to expiration in December of 2011. The timing was there for both of these projects to go out to bid at the same time.

A key aspect to staff's consideration of bringing these under one engineer was the strategic value and the cost efficiencies that can be gained from having the consultant at these two sites. There are similar regulatory issues that are being negotiated with Ecology between these two sites, and the Ecology team is the same. Essentially, it would be best to have one individual or team working with the Ecology team.

Port staff published a request for qualifications which was out for four weeks. The Port received nine responses from very highly qualified teams of consultants and in some cases individual firms. The selection committee narrowed the respondents to the top three firms which were then interviewed. Staff ultimately selected GeoEngineers under the leadership of John Herzog. Staff felt they had an efficient team that they had specifically put together for MTCA cleanup projects and they were able to demonstrate that they had significant experience working with Ecology on other Puget Sound Initiative projects that are very similar to what the Port is encountering now.

Commissioner Michael Hoffmann moved to authorize the Port to enter into the initial professional services agreements with GeoEngineers for the Bay Wood and Mill A cleanup projects. Commissioner Stiger seconded the motion. A vote was called for:

Vote: 3-0

Yes: Hoffmann, Stiger, McClelland

No: None

Abstained: None

Motion carried.

### **Marina District Master Plan Update**

Chief Administrative Officer Les Reardanz reported that during the March 27<sup>th</sup> Commission Retreat, the Marina District Master Planning team provided the Commission with some draft guiding principles that would be used to guide the team as they evaluate the project going forward. There was discussion on the guiding principles at that time and the team took that feedback and rewrote the principles to include that the development must be grounded in sound economic principles, have pragmatic expectations, and in the end is buildable; and then reorganize the guiding principles into four categories with subheadings:

- 1) Enhancing Core Values
  - Preserve the Value of Previous Planning
  - Synthesize Waterward and Upland Development
  - Maintain a Full-Service Marina Facility
- 2) Develop a Quality of Place
  - Job Creation and Sustainability
  - Connect the Community to its Waterfront
  - Create a Destination
- 3) Successful Implementation and
  - Early Action Development
  - Concentrate Development Phases
  - Identify Catalyst Uses
- 4) Set Conditions for On-Going Success
  - Create Certainty
  - Maintain Flexibility

Commissioner McClelland commented about the first category in preserving the value of previous planning efforts. The sentence states “Recognizing that the fundamentals of the previous master plan remain valid . . .”. Commissioner McClelland remembers discussions that described that many fundamentals of the master plan were valid and that was the purpose of the review, but there are some fundamentals that should be updated and suggested revising the sentence to read “many” of the fundamentals were valid. It’s important because the Port has hired Dykeman to validate the plan.

Les Reardanz said that Staff would make that change. Les Reardanz amended the requested action to include the modification proposed by Commissioner McClelland and asked the Port Commission to adopt the Project Intent and Guiding Principles for the Marina District Master Plan as amended.

Commissioner Stiger moved to adopt the Project Intent and Guiding Principles for the Marina District Master Plan as amended by Commissioner McClelland. Commissioner Hoffmann seconded the motion. A vote was called for:

Vote: 3-0

Yes: Stiger, Hoffmann, McClelland

No: None

Abstained: None

Motion carried unanimously.

### **COMMISSION PRESIDENT’S REPORT**

Commissioner McClelland commented that he read the letter from Fire Chief Gordon and said that putting the sites that are awaiting further action to productive use should be applauded.

Commissioner McClelland thanked the citizens that attended the public meeting for the Marina District Master Plan and specifically thanked the members of the Everett Yacht Club for their significant input for the project.

**COMMISSION DISCUSSION**

There was no further Commission discussion.

**CITIZEN COMMENTS**

Jerry Simicich, Vice Commodore of Everett Yacht Club and 30 year tenant of the Port of Everett Marina, complimented the Commission and Port staff on the efforts in trying to get input from everyone for the Marina District Master Plan. The staff has truly reached out to all stakeholders and the citizens of Everett and the community in their efforts to try to get as much input as possible. On behalf of the Everett Yacht Club, he thanked the Commission and Port staff for giving the stakeholders this opportunity.

THE MEETING WAS RECESSED into Executive Session at 5:49 pm for approximately 30 minutes to discuss with legal counsel a pending litigation matter and the acquisition of a parcel of real property for which public discussion could disadvantage the Port's negotiations. At the conclusion of the Executive Session no action was taken by the Commission and no announcements were made.

THE REGULAR COMMISSION MEETING WAS ADJOURNED at 6:30 p.m.

APPROVED: this 8<sup>th</sup> day of May, 2012.

EVERETT PORT COMMISSION

By:

  
Troy McClelland, President

  
Michael Hoffmann, Vice President

  
Tom Stiger, Secretary






ORIGINAL

**Port of Everett**  
**Voucher Approval List**  
for the month of  
**MARCH**  
**2012**

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 10th day of April, 2012:

Claims Voucher Nos	61985 - 62262	Total
Claims Wire Transfers:		\$1,761,532.62
3/1, 3/16	Wire Transfer - IRS	\$ 127,388.09
3/14	Wire Transfer - Hirofumi Oshio	\$ 1,515.00
3/13, 3/27	Wire Transfer - Union Bank	\$ 20,077.67
3/23	Wire Transfer - Wa St Dept of Rev	\$ 27,610.68
	Total Claims	\$1,938,124.06

Payroll Voucher Nos.	37870 - 38050	\$ 363,595.91
Payroll Wire Transfers:		
3/6, 3/13, 3/20, 3/27	PMA Payroll (Longshore Labor)	\$ 106,279.12
	Total Payroll	\$ 469,875.03

Total Expenditures	\$ 2,407,999.09	
		President
		Vice President
		Secretary

Attest:  Port Auditor