

MINUTES OF EVERETT PORT COMMISSION WORK SESSION  
August 7, 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: Commissioner McClelland called the meeting to order at 5:08 p.m.

Commissioner McClelland announced that Commissioner Hoffmann has been detained and will be arriving at approximately 5:15 p.m.

CONSENT AGENDA FOR AUGUST 7, 2012

- Pacific Terminal Storm Drainage Improvements – Authorization to Bid
- Dolphin Berth Improvements – Authorization to Bid
- Mill A Cleanup: Authorization for Executive Director to sign Ecology Agreed Order

Commissioner Tom Stiger moved to approve the items of the Consent Agenda for August 7, 2012. Commissioner Troy McClelland seconded the motion. A vote was called for:

Vote: 2-0  
Yes: Stiger, McClelland  
No: None  
Abstained: None

Motion carried.

1. EXECUTIVE DIRECTOR'S REPORT

September Commission Meetings

Executive Director John Mohr reported that due to the Labor Day Holiday falling on September 3, the Port has cancelled its Work Session meeting on September 4, 2012. The rescheduled Work Session will occur on September 11, 2012 at 5:00 pm, and then the Port will hold a Special Commission meeting on September 18, 2012 at 5:00 pm. Both meetings will be held in the Blue Heron Room of the Port's Waterfront Center Facility.

Marina District Master Plan Public Meeting

On September 6, 2012, a public meeting will be held for the roll out of the Marina District Master Plan. The meeting is scheduled to begin at 5:30 pm in the Blue Heron Room.

Lorraine Jefferson

John Mohr also reported that the Port received word today that Lorraine Jefferson, who was a long-time employee at the Port, passed away this morning. John said he had the pleasure of working with Lorraine when he began his employment at the Port 15 years ago and Lorraine was very helpful to him and was a person who was deeply cared for by the Staff. Lorraine Jefferson worked for the Port for over 20 years, and worked with four Port directors during her tenure. Lorraine Jefferson was an outstanding person and will be greatly missed.

Mission Statement Workshop

Commissioner Tom Stiger inquired about the September 25<sup>th</sup> Commission Workshop. Les Reardanz reported that the workshop is for the Mission Statement discussion and will be held from 9am to 3pm on September 25, 2012 in the Blue Heron Room.

ORIGINAL

2. CHIEF ADMINISTRATIVE OFFICER'S REPORT

Legislative Update

Chief Administrative Officer Les Reardanz reported that on July 30, 2012 the Port hosted a legislative visit for the purpose of discussing the Port's priorities. Attendees included Senator Shin and Representatives Sells and Ryu. Also in attendance were Patrick Pierce from the Economic Alliance and Doug Levy representing the City of Everett. The group discussed ongoing Port operations and Staff provided the legislators an update on operations at the shipping terminal, real property issues related to the Marina District Master Plan, as well as information on the Port's environmental cleanups.

Staff also talked to the legislators about a potential capital budget request for the Port's roll/on-roll/off project at the South Terminal, preserving the Model Toxics Control Act funding going forward, and the value of the environmental cleanups in returning those properties back to productive use. Also discussed was preserving the Asarco settlement funds to make sure that the cleanup on the Asarco lowland and upland areas continues on unabated and that the funds be maintained in the settlement account. Other topics included the potential new guidelines that Ecology is working on with regard to dioxins and the effect that higher levels of dioxin cleanup would have on dredging disposal and cleanup costs.

3. CHIEF FINANCE OFFICER'S REPORT

Environmental Reserve Account Report

Chief Finance Officer Karen Clements provided the annual Environmental Reserve Account Report. Per Port Commission policy, 10 percent of the property tax levy is reserved in the Environmental Reserve Account for projects and/or programs that benefit the environment. The program began with tax collections in 1996. The 10 percent of property taxes placed in the Environmental Reserve Account from 1996 through 2011 totaled \$5,547,655; and the balance in the account was \$372,667 at December 31, 2011 before it was allocated against the Port's various environmental projects and programs. After the allocation, there was a zero balance in the account as of January 1, 2012. In 2012, 10 percent of the property tax levy will continue to be set aside in the Environmental Reserve Account.

In response to Commissioner Stiger, Karen Clements said that there is no carry over at the end of the year unless the Port has expended fewer dollars on environmental type projects than what has been collected. So far, the Port has used all of the funds every year.

Commissioner Stiger said that there are a lot of projects listed in the environmental reserve account that would also fit in the public access account. Commissioner Stiger suggested that the Port may be funding some projects that really are not the intent of the environmental reserve account but rather could be funded out of the capital improvement program so that at the end of the year, the environmental reserve balance could be carried forward so that some of the public access programs could be funded.

John Mohr added that there are two reserve account programs, there is the public access program and then there is the environmental reserve account program. When the account was originally created it was for the purpose of actually doing environmental upgrades. The public access account was separate from the environmental account. The Port has engaged in a number of environmental activities such as the funding of some of the public amenities at Union Slough that go well beyond what the Port is required to do as far as environmental programs, so Staff feels justified in putting those types of programs in the environmental reserve account where we exceed the requirements. In addition, it emphasizes the fact that the Port is involved in a number of environmental projects. When you total up the amount that the Port has spent, it greatly exceeds any amount that would have been funded by the environmental account by itself.

Commissioner Stiger suggested that perhaps Staff should review the resolution to better understand the intent of the Commission.

John Mohr said the environmental reserve account has been interpreted by the Commission since its inception in 1996, and it is an account that is clearly within the purview of the Commission to interpret as the Commission sees fit. The applications that Staff has made have been in keeping with the direction that Staff had received from the former Commission, and if this Commission wants to change the direction, it is the Commission's prerogative to do so.

Commissioner McClelland recommended that each Commissioner get a copy of the resolution that establishes the environmental reserve account, and then the Commissioners can coordinate with Staff as to their interpretation. As the Commission reviews this account in future years, the Commission will have the opportunity to have a clearer point of view.

#### **Seattle Northwest Securities**

Lindsay Sovde, Senior Vice President of Seattle Northwest Securities provided an overview for the Commission on utilizing the bonds process to finance large port projects and/or to refinance existing bond issues.

Lindsay Sovde emphasized that this would be a really good time to refinance the Port's 2004 LTGO bond issue as the interest rates are very good at the present time. Ms. Sovde also suggested that if the Port decides to move forward with the refinance, Seattle Northwest Securities would prefer to be in the market prior to the Presidential Election in November because interest rates could go both ways depending upon who is elected.

John Mohr added that Chief Finance Officer Karen Clements will make the recommendation on when to move forward with refinancing some time during the month of October.

Commissioner Stiger asked if both the GO and revenue bonds could be refinanced and what effect it would have on the bond holder. Lindsay Sovde said for purposes of saving money, the only issue that makes sense to refinance right now would be the 2004 LTGOs. The bonds that investors currently hold or the 2004 LTGO holders would have their bonds called away on the call date of June 1, 2014.

Seattle Northwest Securities monitors the Port's debt regularly to advise when there are opportunities to save money and currently it is the combination of the low interest rates and that the Port is less than two years from the call date that make this an opportunity that makes sense. Commissioner Stiger inquired if there were opportunities for new money. Karen Clements said Port staff needs to go through an evaluation process because if the Port was just going to refinance the 2004 issue, the Port could start right away. Karen indicated that she wanted to look at some new money or find a way to pay off the \$15 million balloon payment that is coming up.

#### 4. DEPARTMENT REPORTS

##### **Properties**

Properties Director Steve Hager provided an update on three new tenants at the Waterfront Center facility: ArrowCat Marine, Bluewater Distilling and Pacific Coast Bakery dba Seas the Day.

ArrowCat Marine is a local Everett company that manufactures powered catamaran boats ranging in sizes from 30 - 42 foot lengths. They also manufacture at two facilities they own in China and when the boats are completed, they are shipped to their headquarters here locally for the final commissioning and upgrading of amenities prior to delivery to their customers.

The space they are leasing is 2,340 square feet and is on a three-year lease in the shop area.

Bluewater is a craft distillery and they are focused on distilling organic vodka. They will be distilling and retailing their products on site, and are planning to expand their operation to include other spirits in the future. Bluewater is currently relocating the copper stills they own from their previous distillery in Colorado. The space is 2,592 square feet and is located at the south end of the Waterfront Center and they are on a five-year lease.

Pacific Coast Bakery dba Seas the Day Café opened two weeks ago in the space where Café at Marina was located. The space is 759 square feet with a five-year lease. Pacific Coast Bakery has an existing bakery and coffee shop in Redmond that serves breakfast and lunch and was recently named the best bakery in Redmond for 2012.

The Port recently finished tenant improvements for ArrowCat and Bluewater and substantial completion was done on July 27. Bluewater Distilling is in the process of completing its own final tenant improvements to the space and plans to open in the next couple of weeks.

Commissioner Stiger inquired if the payment to the contractor for the tenant improvements in the amount of \$100,000 was the Port's responsibility or the tenant's responsibility. Steve Hager responded that it was the Port's responsibility and was part of the leases for both Bluewater and ArrowCat Marine. As part of these tenant improvements, the Port was able to create another 4,400 square foot space and the improvements will stay for the life of the building.

#### Projects Update

#### Infrastructure Improvements and DHS Rail Access Recovery – Contract Closeout

Chief of Engineering & Planning John Klekotka reported that consistent with the Port's Marine Terminal Master Plan, the Port expanded rail service at the Marine Terminals. The project funding was a combination of three sources: the original DHS Port Security Grant Program grant, two Rail Bank Loans from the Washington State Department of Transportation Rail Office, and a federal transportation appropriation.

Port staff advertised for public works bids on May 18, 2011 and bids were opened on June 28. On July 12, 2011, the Commission awarded the contract to Mid-Mountain Construction, Inc. in the amount of \$2,344,953.26, including Washington State Sales Tax (WSST) for Parts A and B, plus a Bid Additive Item.

Mid-Mountain began work in September 2011, and the project reached physical completion on June 20, 2012. Six individual change orders were executed in the total amount of \$232,711.32 for a total contract amount of \$2,577,644.58, including WSST. Since the project was set up with unit price items, there were several substantial under-runs on the project, and the final contract cost was \$2,410,871.20, approximately 3 percent over the original contract award amount.

John Klekotka requested that the Commission accept the Infrastructure Improvements and Rail Access Recovery construction contract with Mid-Mountain Construction, Inc. as complete, and authorize Staff to close out the contract in the final total amount of \$2,410,871.20, including WSST.

Commissioner Stiger inquired about the Engineer's estimate. John Klekotka said the Engineer's estimate was less than the bid amount, but he did not have the exact amount. HDR was the engineer.

Commissioner Hoffmann moved that the Commission accept the Infrastructure Improvements and Rail Access Recovery construction contract with Mid-

Mountain Construction, Inc. as complete, and authorized Staff to close out the contract in the total amount of \$2,410,871.20, including WSST. 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**

Les Reardanz reported that Port staff and the Dykeman team are continuing work on the strategy for the Marina District Master Plan and are working on things such as the road grade, utilities, sea level rise, open spaces, public access, parking, slip mix and in-water uses, the interplay between the cleanup and the master planning and development efforts, the entitlement framework to compare what the new plan would be with the existing entitlements, new signage plan and also taking a look at the pro forma on the various options to realize the cost. The team has also begun discussions with the City of Everett on the entitlement framework and how that moves forward. The character of the new strategy is such that the Port may have to go back through the Planning Commission and City Council process to move forward.

The next steps are to continue the discussions with the City on the entitlement framework. A public meeting on the Marina District Master Plan is scheduled for September 6 to present to the public what was learned through the extensive public outreach program for the project. Staff will then introduce the work that has been done on the Marina District Master Plan at the September 18, 2012 Commission meeting, and then continue the discussion into October for final approval.

#### **Everett Shipyard Cleanup – Environmental Engineering Contract**

Les Reardanz reported that the Port is under a Consent Decree with the Department of Ecology for the final cleanup action of the Everett Shipyard site. The site is being cleaned up in accordance with the State’s cleanup regulations under the Model Toxics Control Act (MTCa) which is under the umbrella of the Puget Sound Initiative. The site is located in the heart of the early action area of the currently evolving Marina District Master Plan. On February 7, 2012 the Commission authorized the final settlement with ESY, Inc. On February 14, 2012, the Commission approved the Port to enter into the cleanup Consent Decree with Ecology. With these two agreements in place, the Port is responsible for the terms of the cleanup Consent Decree. Funding for this project will originate from three sources: 1) the settlement with ESY, Inc. (\$4 million), 2) Port funds, and 3) the Department of Ecology Remedial Action Grant Funds (50 percent of the Port’s costs greater than the \$4 million settlement).

In order to comply with the terms of the Consent Decree, the Port must carry out a number of tasks with the support of an environmental engineering firm over the next several years. Landau Associates has an existing contract with the Port to provide environmental engineering services for the site, but that scope of work was under the prior cost sharing agreement with ESY, Inc. With the Port assuming full control of the site, that scope of work substantially changes, necessitating a new contract. Port staff is currently seeking Commission approval of this new contract for the environmental engineering services with Landau Associates.

Staff believes that the competitive solicitation process would not be cost effective or timely given the Consent Decree schedule. The current scope of services will build upon the previous work completed by Landau Associates conducted under Port direction. In an effort to be measured and gain precision in the contracting of this project, the new contract being proposed contains some, but not all, of the

necessary tasks required for the project. Subsequent tasks can be more accurately estimated once the initial tasks are complete.

To assure that the proposed scope of work and fee are appropriate for the contract, the Commission authorized Port staff on March 13, 2012 to conduct a peer review of the proposed contract in accordance with the cleanup consultant due diligence process. The current proposal contains the following tasks:

- Pre-design Soil and Sediment Investigation
- Upland Cleanup Engineering Design Report
- Upland Cleanup Plans and Specifications
- Upland Cleanup Environmental Permitting
- North East Marina Reconfiguration Coordination (in-water moorage)

The contract for these services is estimated at \$568,000 which includes a contingency budget for unanticipated activities of \$36,000 (6.5%). Port staff completed a thorough due diligence process, including a detailed internal review of the contract proposal and a third party peer review. The basic conclusion of this process is that Landau Associates' proposal is appropriate and necessary.

Les Reardanz said that Staff recommends that the Commission approve an exemption from the competitive solicitation process and authorize the Port to enter into the professional services agreement with Landau Associates for the environmental engineering services associated with the Everett Shipyard Cleanup. Staff anticipates that this contract as presented will require future modifications to address subsequent tasks that are required under the Consent Decree.

Commissioner Stiger asked if the peer review included the dollar amount. Environmental Specialist Erik Gerking responded that the peer review was extensive and it included the review of the scope of work that is presented and ensuring that the scope of work is meeting the intent of the regulations in an efficient way, and then also reviewing the cost to make sure that they are reasonable and what one would expect from other firms performing work in this area.

Commissioner McClelland commented that the peer review included this cost and this is well below the amount budgeted. There is additional water work that is expected and the Commission should expect a change to this contract for the water work. Erik Gerking confirmed that this was correct.

Commissioner Michael Hoffmann moved that the Commission approve of an exemption from the competitive solicitation process for the proposed services, and approve the professional services agreement with Landau Associates in the amount of \$568,000. Commissioner Stiger seconded the motion. A vote was called for:

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

Motion carried.

#### **Commission President's Report**

There was no Commission President's report.

#### **Commission Discussion**

There was no further Commission discussion.

#### **Citizen Comments**

Jeff Lalone of Bayside Marine inquired about the wood shed at the Everett Shipyard site and also where the Port was in terms of the Kimberly Clark site.

John Mohr responded that the party that was interested in acquiring the wooden building at the old Everett Shipyard site was unable to develop any financing for their program. The building is scheduled to be demolished, but the contractor is focusing on demolishing the metal buildings first and once that process has been completed, the other buildings will come down.

For the Kimberly Clark property, the Port has been working with a real estate advisor to get some preliminary direction on Kimberly Clark. There has been no action from the Commission at this point to move specifically, but Staff is getting all of the information necessary so that the Port can make an informed decision as to whether or not Port staff would recommend to the Commission that the Port should or should not move forward with acquiring the property. The City's moratorium on the property both complicates the discussion and actually slows down the decision making. The Department of Ecology has yet to give us an indication as to what they think the total cleanup is other than they think it is big. The comment was made in a public meeting before the Planning Commission by a representative from the Department of Ecology that they were going to expedite the process and they thought they could give a no further action order in three years once they begin the process. There is still no price that has been put on the property.

The Planning Commission is scheduled to hold a public meeting on August 21, 2012 whereby the Planning staff will provide options to the Planning Commission.


No Executive Session was held.

THE WORK SESSION WAS ADJOURNED at 6:51 p.m.

APPROVED this 18<sup>th</sup> day of September, 2012. EVERETT PORT COMMISSION

By:   
Troy McClelland, President

  
Michael Hoffmann, Vice President

  
Tom Stiger, Secretary