

MINUTES OF EVERETT PORT COMMISSION WORK SESSION
February 7, 2012

PRESENT:

Michael Hoffmann	Vice President
Tom Stiger	Secretary
John Mohr	Executive Director
Karen Clements	Chief Fin. Officer
Brad Cattle	Port Attorney

ABSENT: Commissioner Troy McClelland was absent due to out-of-town business travel.

CALL TO ORDER: Commissioner Michael Hoffmann called the meeting to order at 5:00 p.m.

CONSENT AGENDA FOR FEBRUARY 7, 2012:

- S. Marina Float Surface Restoration & Flotation Upgrades – Authorization to Bid as Small Works Contract

Commissioner Tom Stiger moved to approve the Consent Agenda for February 7, 2012. Commissioner Michael Hoffmann seconded the motion. A vote was called for:

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

Motion carried.

1. EXECUTIVE DIRECTOR'S REPORT

Commission Retreat

Executive Director John Mohr reported that Port staff was recommending that a two day Retreat be held the week of March 26 as there was a lot of material to cover having to do with the Marina District Master Plan, the Strategic Plan, the cleanups and the Port's position on the Kimberly Clark property. He asked the Commission to check their availability so that dates can be set at the Commission meeting on February 14, 2012.

Japan Trip

John Mohr and Carl Wollbek traveled to Japan on January 23, 2012 to meet with key customers of the Port of Everett involved in the manufacture and/or transport of aerospace parts to Everett. Port staff had a number of meetings with existing customers and representative companies from the aerospace industry in Japan, culminating with a meeting of aerospace suppliers in Tokyo that were involved with the 1000th 777. Staff also had the opportunity to spend some time with representatives of the Weyerhaeuser Company and had discussions about their future energy proposals and the log business. It was a very productive trip.

Executive Session

John Mohr announced that a short Executive Session will be held after tonight's meeting.

Executive Session of January 10, 2012

Port attorney Brad Cattle reported that consistent with the January 10, 2012 Executive Session Announcement, the Combined Commission meeting of January 10 was recessed into Executive Session at 6:35 pm for approximately one hour to discuss with legal counsel two pending litigation matters and the strategy to be taken by the Port Commission during the course of collective bargaining that is currently in process. At 7:30 pm, about one hour after the start of the Executive Session, Port counsel returned to the Commission meeting room and announced that the Executive Session would be extended to 8:00 pm. At 8:00 pm, Executive Director John Mohr returned to the Commission room and

announced that the Executive Session was to be extended another one-half hour to 8:30 pm. At the conclusion of the Executive Session at 8:30 pm, no action was taken by the Commission and no announcements were made and the meeting officially concluded at that time.

2.

CHIEF ADMINISTRATIVE OFFICER'S REPORT

Washington State Ferries Briefing – Mukilteo Tank Farm

Chief Administrative Officer Les Reardanz reported that the Washington State Ferries (WSF) has recently released their Draft Environmental Impact Statement (DEIS) for the Mukilteo Multimodal project for improved transportation between Whidbey Island and the mainland. The full DEIS is on the Washington State Ferries project website and a 45-day public comment period runs through March 12, 2012.

Nichole McIntosh, the Design Engineering Manager for Washington State Ferries, provided a briefing on the status of the DEIS and where the project stands today. WSF and the Federal Transit Administration (FTA) are evaluating four alternatives to upgrade or replace the Mukilteo ferry terminal. All four alternatives keep the terminal in Mukilteo. Two alternatives look at preserving or improving the existing terminal and two of the alternatives include relocating the terminal to the Mukilteo Tank Farm east of the existing site. The alternatives are 1) No-Build; 2) Existing Site Improvements; 3) Elliot Point 1; and 4) Elliot Point 2. The DEIS includes an analysis of impacts for each project alternative in regard to potential environmental effects.

The total project budget for the Mukilteo Multimodal project is \$90.1 million including a mix of state and federal funds. To date, WSF has secured \$29 million in federal grants and current federal funding will allow WSF to complete the Final Environmental Impact Statement (FEIS). This spring, WSF will identify a preferred alternative and begin preparing the FEIS. The FEIS will document and address all public, tribal and agency comments received on the DEIS. It is scheduled to be released in Spring 2013 and a Record of Decision is anticipated in mid-2013, which will allow WSF to move forward with final design and construction once funding becomes available.

ESY Settlement Agreement

Les Reardanz presented a proposed Settlement Agreement between the Port and ESY, Inc. for the remedial action costs and natural resource damages claims for the Everett Shipyard site. The site is a Model Toxic Control Act site under the Puget Sound Initiative for cleanup by 2020. The potentially liable parties (PLPs) identified were ESY, the Port of Everett, Bayside Marine and Everett Engineering. Bayside Marine and Everett Engineering have settled and those two entities are no longer part of proposed settlement with ESY. ESY and the Port entered into an Agreed Order with Ecology to do a remedial investigation and feasibility of the site in 2008 and also to develop a cleanup action plan. As part of the Agreed Order, ESY and the Port, as the two main PLPs, entered into a cost sharing agreement to pay for the cost of the investigation and development of the cleanup action plan. The Port would pay 1/3 of the costs and ESY would pay 2/3, with ESY as the lead party. As part of the cost sharing agreement, ESY posted \$1.5 million in security to make sure there was money for the cleanup. Moving forward, there was a public process during 2011, and the Department of Ecology approved the remedial investigation and feasibility study. The cleanup action plan is being incorporated into a Consent Decree that will be signed and filed. At the time Ecology was approving those issues, the Port and ESY began having discussions about ending the cost sharing agreement moving forward and creating an easier way to clean up the site without the inefficiencies of two parties going forward. A potential buyout was proposed where ESY would pay a lump sum to the Port and essentially the Port would take over the responsibility for the cleanup.

The Port and ESY have come to agreement as to implementation of the lump sum agreement whereby ESY would pay the Port \$4 million in a lump sum within 90

days of signing the Settlement Agreement. There are five insurance companies that need to have payment to ESY, and then ESY gets the payment to the Port. In exchange for the \$4 million lump sum payment, the Port will then take over the cleanup responsibilities and release ESY from the cleanup liabilities that are associated with the project. Also, the 2008 cost sharing agreement would be terminated. Within 10 days of ESY paying the Port the lump sum payment, then the \$1.5 million in security would be released.

One of the benefits is that this puts the Port as the lead entity in dealing with the cleanup. ESY would sign over any of their claims against other PLPs.

One contingency in the Agreement is that payment comes within 90 days of signing and a certification within 60 days of signing that the insurers would not be further involved. One of the issues is that within the 90 day period of signing until actual payment, there are some activities that need to move forward such as the work plan needs to be developed. If the contingency was not fulfilled and payment was not received within 90 days, the 2008 Agreement would resurrect and ESY would pay the Port 2/3 of the costs incurred during the time period.

The total estimated cost of the cleanup is \$7 million; with the ESY \$4 million lump sum contribution, the Port would have \$1.5 million and Ecology, through a grant, would be sharing \$1.5 million.

In 2012, the building demolition would occur and then the Port performs the upland permitting. Next year would be the upland cleanup and the in-water permitting. Then the in-water portion of the cleanup would occur in 2014 and cleanup would be completed in 2014.

By having the Port as the lead, there are efficiencies between the cleanup and the Marina District Master Plan in terms of permitting and cleanup. It allows the Port to coordinate and synchronize the Marina District Redevelopment plans as well as the marketing with the cleanup efforts. It allows the Port to take down the buildings due to cleanup and have it synchronize with the development plans and puts the Port in control in terms of scheduling going forward.

Les Reardanz said it was staff's recommendation to authorize the Executive Director to enter into the Settlement Agreement and Release of Claims with ESY in substantially the form presented.

Port attorney Brad Cattle said he has thoroughly reviewed the Settlement Agreement and both Les Reardanz and Steve Thiele have thoroughly reviewed the Settlement Agreement. Port counsel is recommending that the Commission move forward with the Settlement Agreement as it is in the best interest of the Port for the Commission to approve and should ESY not follow through within the two timetables, then it is reverted to the prior agreement and ESY would still be responsible for their 2/3 share of the costs and the Port would be responsible for its 1/3 share. There is a fall back position in the event they do not pay the \$4 million and provide the confirmation of the waiver of subrogation that they are required to do within 60 days.

Given the review and Port counsel's comments, Commissioner Tom Stiger moved to authorize the Executive Director to execute the Settlement Agreement and Release of Claims with ESY as presented. Commissioner Hoffmann seconded the motion. The vote was called for:

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

Motion carried.

3. BOATING ACCESS & PUBLIC FACILITIES PLAN

Resolution No. 968

Environmental & Safety Specialist Brandon Whitaker reported that in order to be eligible for future grants from the Washington State Recreation and Conservation Office (RCO), agencies are required to have a current Boating Access and Public Facilities Plan (BAPF) in place. Having a completed plan allows the Port to apply for grants for public facilities that allow greater or new access to boating. Potential projects include constructing or restoring public restrooms, visitor docks and refurbishments to public parks. Plans are expected to be updated every six years.

In order for the Port to be granted eligibility, the plan must reflect several aspects specified by the RCO. Those aspects include, but are not limited to goals and objectives, providing an inventory of current facilities and identifying future grant eligible projects. These plans also allow opportunities for the public to comment. Avenues for public comment include surveys, public meetings and mailing distributions. A successful plan that addresses these requirements must be formally presented at a public meeting and adopted by the Port Commission.

Port staff will request Commission consideration and adoption of the Port's Boating Access & Public Facilities Plan through Resolution No. 968 on February 14, 2012.

4. DEPARTMENT REPORTS

Projects Update

Terminal Lighting Improvements (ARRA) – Construction Contract Award

Chief of Engineering & Planning John Klekotka reported that in 2009, the Port received an American Recovery and Reinvestment Act (ARRA) Port Security Grant Program grant from the Department of Homeland Security (DHS) for lighting improvements at Hewitt Terminal and South Terminal, in the total amount of \$1,501,614. This is a 100 percent grant with no match required from the Port and will significantly improve lighting for security and safety in those two Terminal areas. Permitting and design were completed early in the fourth quarter of 2011, and in October the Port Commission authorized Staff to call for public works bids for the project.

On January 23, 2012, the Port received 11 bids for the project ranging from \$1.299 million to \$2.147 million, including Washington State Sales Tax (WSST), with an Engineer's estimate for the project of \$1.343 million, including WSST. The low bid was received from High Mountain Electric, Inc.

John Klekotka requested that the Commission award the construction contract for the ARRA Marine Terminal Lighting Improvements project to High Mountain Electric, Inc. in the total amount of \$1,299,170.96, including WSST.

Commissioner Stiger commented that the grant is \$1.5 million and the recommended contract is \$1.3 million and asked if the Port could keep the remaining grant dollars. John Klekotka said the grants are typically on a reimbursement basis and so the Port only gets what it spends. However, with the dollars spent to date, the figure will be very close to the \$1.5 million.

Commissioner Stiger inquired if the lighting will impact the neighbors on the hill. John Klekotka responded that there are some impacts and Staff is working hard to minimize the impacts by installing shielding that is being built into the lighting systems. All of the lights are being directed down and away from the hillside. Mechanical screening devices that will go toward the hillside to minimize the amount of glare and light intrusion that the folks on the hillside would be subjected are to be installed. There are view impacts in that the lights are 80 feet high in the South Terminal and they are all 80 feet high in the Hewitt Terminal with the exception of one that is 65 feet high. By way of comparison, the lights that are in the Pacific Terminal are approximately 60 feet high. The new lights

will provide better lighting and illumination in the terminals for security and safety purposes.

Commissioner Tom Stiger moved to award the the construction contract for the ARRA Marine Terminal Lighting Improvements project to High Mountain Electric, Inc. in the total amount of \$1,299,170.96, including WSST. Commissioner Michael Hoffmann seconded the motion. A vote was called for:

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

Motion carried.

Marina Maintenance Dredging – Phase 1

John Klekotka reported that the Port Commission authorized Port staff to call for public works bids for the Phase 1 dredging contract on September 6, 2011 and on November 1, 2011, awarded the dredging contract to Pacific Pile & Marine in the amount of \$888,560.40, including WSST.

In January 2012, staff informed the Commission that a significant volume of additional material had deposited in the northwest area of the Marina since the 2008 bathymetric survey, and that a change order would be needed to be authorized by the Port Commission in order for the contractor to dredge the newly projected volume of 37,700 cubic yards, up from the original planned quantity of 20,000 cubic yards.

Pacific Pile & Marine continues to diligently pursue completion of the dredging work, including all of the estimated additional material volume. Staff recommends Commission authorization of a change order for the entire estimated volume of 37,700 cubic yards, which Pacific Pile & Marine will perform at the original unit bid prices. The total cost (before tax) of dredging this additional 17,700 cubic yards is estimated to be \$308,700.

Commissioner Stiger inquired if Phase 2 and 3 of the project could be put off until a later date. John Klekotka said the Port has a combined budget of \$2.6 million which will pay for the Phase 2 and 3 dredging.

Executive Director John Mohr said that the Port has experienced some delays because of concerns raised by the Department of Ecology and some rule changes having to do with dioxin. Those issues are not completely settled at this point. The original plan was to dredge the entire facility at one time, but the Port had to break that up and dredge the areas that were most critical plus the areas that did not fall within the dioxin concern. There have been some pretty significant groundings in the areas, so staff has worked to find a way to most effectively address the boater's needs while still staying within the guidelines of the Department of Ecology.

Commissioner Hoffmann suggested it was the most efficient way because then the Port is just dealing with one round of setup costs.

Commissioner Stiger commented that in the Capital Improvement budget through 2016 there is nearly \$4 million in dredging planned, and inquired if the Port has ever considered buying a dredge and doing the maintenance dredging in-house. John Klekotka said he didn't think it had ever been a consideration that he was aware of. John Mohr said that Port management can study the possibility to see what the opportunities are. Typically the equipment is only used for very short periods of time because of the fish windows, and that has driven up the cost of dredging.

Commissioner Tom Stiger moved to approve Change Order No. 1 with Pacific Pile & Marine, LP for additional dredging under the Marina Maintenance Dredging, Phase 1 contract in the amount of \$337,100.40, including Washington State Sales Tax. Commissioner Hoffmann seconded the motion. A vote was called for:

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

Motion carried.

Storm Damage

John Klekotka reported to the Commission that a fairly significant windstorm recently occurred in combination with a high tide on January 26, and there was some damage that occurred. A small amount of damage occurred at the Mukilteo Public Access Dock but it was able to be repaired by Terminal Maintenance Staff and there was no down time at the facility. There was a somewhat significant amount of damage at the Mt. Baker Terminal public access area. Also, some erosion occurred at the South Terminal view point at the end of Pigeon Creek trail, and a small amount of undermining at the Maintenance Shop bulkhead.

Jon Houghton, Pentec Environmental, commented about the beach area at the Mt. Baker Terminal and said the beach did sustain some damage but essentially the beach is much more intact than first thought. Pentec monitored the beach area for five years and will do some more monitoring in year seven.

Commission President's Report

There was no President's report.

Commission Discussion

Commissioner Stiger reported that he covered the Marina Booth at the Seattle Boat Show on opening night and Wednesday night. The Port had a great location and a lot of information for boaters. There was a lot of interest from boaters who wanted to visit The Port of Everett Marina.

Citizen Comments

Former Commissioner Don Hopkins said he had the opportunity to meet the new Marina Director Jeff Bearman and congratulated the Port on a great hiring job. He said he has heard a lot of great comments at different harbors about the Port of Everett Marina staff. The Christmas decorations were amazing.

THE REGULAR MEETING WAS RECESSED into Executive Session at 6:48 pm for approximately 1 hour to discuss with legal counsel the sale of parcels of Port property for which public discussion could disadvantage the Port's negotiations, and the strategy to be taken by the Port Commission during the course of collective bargaining that is currently in progress.

At the conclusion of the Executive Session, no action was taken by the Commission and no announcements were made.

THE REGULAR MEETING was adjourned at 7:50 p.m.

APPROVED this 13th day of March, 2012. EVERETT PORT COMMISSION

By: 
Troy McClelland, President


Michael Hoffmann, Vice President


Tom Stiger, Secretary