

MINUTES OF EVERETT PORT COMMISSION
REGULAR MEETING
February 2, 2016

PRESENT:	Glen Bachman	President
	Tom Stiger	Vice President
	Troy McClelland	Secretary
	Les Reardanz	Executive Director
	John Carter	Chief Finance Officer
	Brad Cattle	Port Attorney

CALL TO ORDER: The meeting was called to order at 5:06 p.m. Commissioner McClelland is on his way to the meeting and is participating via teleconference until he arrives. Commissioners Bachman and Stiger were in attendance.

1. CEO/EXECUTIVE DIRECTOR'S REPORT

Commission Retreat

CEO/Executive Director Les Reardanz reminded the Commission of the one-day Commission Retreat on March 7. The Commission concurred.

April Commission Meeting

The April 5th meeting has been cancelled due to the conflict with the American Association of Port Authorities (AAPA) Spring Meeting. Port Staff will keep the meeting on the 12th and then add another meeting as we get closer to the date if necessary.

Olympia Port Day Update

Les Reardanz reported that on January 27, the Washington Public Ports Association and the Washington Maritime Federation sponsored Port Day in Olympia. The Port of Everett participated and had specific meetings with folks in Olympia including meetings with the Governor and Ecology, and the Governor's maritime and military sector leads, along with 15 members of the legislature. The agenda had to do with the Model Toxics Control Act (MTCA). For a short term fix, Port Staff was supporting the Governor's bonding proposal to feed some more money back into MTCA. To get to a long-term solution, one of the things discussed was to implement a surcharge on the price per barrel of oil. Additional legislative fixes included discontinuing any future raiding of the MTCA account.

While in Olympia, Staff heard that a new revenue forecast would be coming out February 17, and based on the continuing price of oil that continues to drop, Staff is not expecting good news. The Governor's bonding proposal was to include \$25 million in bonding, and of that \$14 million was for the remedial action grants that the Port of Everett needs to continue its process. The bonding proposal was based on oil prices that were \$8 a barrel higher than what they currently are, and so Staff expects the revenue forecast to continue to drop. In talking to the legislators about the short and long-term aspects of things, many of them do not favor the bonding. As indicated, the legislators do not want to reward past behavior of transferring money out of MTCA to the general fund.

Port Staff's next steps will be to continue to work with Ecology on the prioritization, including working with the legislature on a bonding proviso that would provide them criteria by which they would make the prioritization decision. Staff will also submit a capital budget request as a fallback. After February 17, Staff will assess what the damage is for the revenue forecast and figure out how the Port will move forward.

Staff will keep the Commission apprised.

2. CHIEF FINANCE OFFICER'S REPORT

Requests for Proposals for Employee Benefit Broker

Chief Finance Officer John Carter reported that Staff is in the process of soliciting for new benefit brokers for all of the employee benefits. Staff anticipates having

a request for proposal out on the street later this week. The Port has given formal notification to its current broker, Hub International, that their services will be terminated effective the end of March. Hub International is able to participate in the Request for Proposal response. Staff will hopefully bring back a contract for a new benefit broker by May.

3. CHIEF, LEGAL AFFAIRS REPORT

Natural Resource Damage (NRD) – Weyerhaeuser Letter of Agreement

Chief of Legal Affairs Paul Brachvogel reported that Port Staff is requesting Commission approval of an allocation of responsibility between the Port and Weyerhaeuser for a Natural Resource Damages (NRD) claim associated with the Mill-A cleanup site. An offer letter for the settlement of the NRD claim was submitted to the Port by the Port Gardner Bay Natural Resource Damage Trustee Counsel (Trustee Counsel), and is attached hereto as Exhibit A. The letter between the Port and Weyerhaeuser that describes the allocation of responsibility is attached hereto as Exhibit B. This proposed Weyerhaeuser agreement is one critical step in a multi-step process with the Trustees and other Potentially Liable Parties (PLPs) that will result in the final settlement of the Port's NRD liability. Port Staff is working with this group in an attempt to reach a strategic settlement that utilizes Blue Heron Slough as part of the settlement package.

The Port understands from the trustees that there will be two federal Consent Decrees for NRD settlement purposes. One Consent Decree (aka Cash-Out Consent Decree) will be used for the other PLPs and will resolve their liability in exchange for a monetary settlement amount, including each parties respective cost for the number of allocated DSAYs (Discounted Service Acre Year) at \$9,873/DSAY, and for past and future Trustee Counsel administrative costs. The current concept of the other Consent Decree (aka Project Consent Decree) is for the Port and it will resolve the Port's liability in exchange for paying the allocated portion of the Trustee Counsel's administrative costs, ensuring that Blue Heron Slough is fully constructed over some specific timeframe and delivering the funds from the Cash-Out Consent Decree to be used for the construction of Blue Heron Slough. The Trustee Counsel must first complete a restoration plan as part of its required process to determine if Blue Heron Slough is a viable preferred project alternative. It is the Port's understanding that this process is now underway.

Staff respectfully asked the Commission to authorize the Executive Director to sign and approve the proposed Natural Resource Damage allocation of 130 Discounted Service Acre Years at \$9,873/DSAY for the Weyerhaeuser Company.

Les Reardanz added that this is part of the programmatic resolution of the total natural resource damage claim out in the Port Gardner Bay, including natural resource damages that the Port would have on the other sites throughout the bay. There are a few other PLPs involved with this as well, including JeldWen and Kimberly-Clark, in addition to the Port and Weyerhaeuser.

Commissioner Troy McClelland moved to approve the proposed Natural Resource Damage allocation of 130 Discounted Service Acre Years at \$9,873/DSAY for the Weyerhaeuser Company. There being no further discussion, a vote was called for:

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

Motion carried.

East Waterway Agreed Order

Paul Brachvogel reported that Port Staff is seeking Commission authorization to enter into the Department of Ecology Agreed Order for the East Waterway Model Toxics Control Act (MTCA) cleanup site as part of the State of Washington's Puget Sound Initiative. Under the Agreed Order, the Port is required to complete

a Remedial Investigation and Feasibility Study (RI/FS) and a Draft Cleanup Action Plan (DCAP) with other Potentially Liable Parties (PLPs).

Currently identified PLPs for this site that either have signed or are expected to sign the Agreed Order are Kimberly-Clark and the Department of Natural Resources. While the US Navy is identified as a PLP, it will likely enter into a separate order with Ecology that is more suitable for a state to federal government relationship.

Based upon a thorough analysis by Port Staff, legal counsel and expert consultants, it appears that entering into the Agreed Order is the recommended option for the Port at this time. Being a party to the Agreed Order provides the best opportunity to manage the potential cleanup liability exposure that the Port may have on this site, aligns with the Port's goals of environmental stewardship and mission of economic development, and allows the Port to continue its strategic partnership with Ecology and other parties on an important cleanup site. Because of the relatively large size and complexity of this site, the Agreed Order is expected to require approximately 5 to 10 years to complete.

The funding for the work under the Agreed Order would come from three sources: Port resources, other PLP resources and Ecology Remedial Action Grants. The Port is currently planning to share the workload of the Agreed Order with Kimberly-Clark on a 50/50 basis; whereby, the Port's Staff and consultant (Windward Environmental) are responsible for conducting approximately 50-percent of the work of the Agreed Order. The costs incurred under this arrangement would be subject to final allocation between the PLPs following the completion of the Agreed Order.

The Port also has signed and executed the Ecology Remedial Action Grant that will become activated once the Port signs the Agreed Order. The Remedial Action Grant, if fully funded throughout the project, will off-set the Port's eligible project costs by 50 percent. To help manage the risk that the grant funds become insufficient to support the pace of work, Port Staff obtained a letter from Ecology that indicates Ecology's commitment to provide flexibility in the process, allowing the pace of the project to be tailored to the available Ecology and Port resources. The Ecology letter is attached hereto as part of the record.

As a final work product of the Agreed Order, Ecology and the PLPs will derive an estimated scope, timeline and cost for the final cleanup action. This information will be generated by the RI/FS and DCAP.

Paul Brachvogel asked that the Commission authorize the Port's Executive Director to sign and enter into the East Waterway Agreed Order.

Upon discussion, Commissioner Troy McClelland moved to authorize the Port of Everett's Executive Director to sign and enter into the East Waterway Agreed Order as presented. A vote was called for:

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

Motion carried.

Department of Commerce Direct Appropriation Agreement – Marine Terminal Rail Investments

Paul Brachvogel reported that during the 2015 legislative session, the Port was awarded a direct appropriation of \$1,000,000 to help fund Phase 2 of the Marine Terminal rail upgrades, specifically, the construction of approximately 1,850 lineal feet of two, new, double ended siding tracks. This appropriation will be administered by the Washington State Department of Commerce, for a fee of \$30,000. In order to accept the net award of \$970,000, the Executive Director is

asked to sign specific certifications and assurances that must be reviewed and approved by the Commission, namely:

1. Scope of Work – Provide additional on-terminal rail storage capacity by constructing two new double ended siding tracks, approximately 1,850 LF, to the Port’s Marine Terminal. Costs may include, but are not limited to, design/engineering, environmental/cultural review, land/right-of-way acquisition, permits, material testing, construction and construction management. If the scope of work includes engineering, planning, or design activities, the Contractor shall make all plans and documents funded in whole or in part by this Contract available for Commerce’s review upon reasonable request.

2. All contractors and subcontractors performing work on the project described shall comply with prevailing wage laws set forth in the RCW’s and shall maintain records to evidence compliance with those laws;

3. The additional project funding (\$6,470,000) is fully committed in an amount sufficient to complete the project, or a distinct phase of the project that is useable to the public.

Both the scope of work and the additional funding are the same as the information the Commission approved in the 2016 CIP plan at the November 16, 2015 commission meeting.

Paul Brachvogel recommended that the Commission authorize the Executive Director to accept the terms by signing the Direct Appropriation Agreement with the Washington State Department of Commerce for a grant of \$970,000.

After discussion, Commissioner Tom Stiger moved that the Commission authorize the Executive Director to accept the terms by signing the Direct Appropriation Agreement with the Washington State Department of Commerce for a grant of \$970,000. A vote was called for:

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

Motion carried.

4. DEPARTMENT REPORTS

Marine Terminals – Cargo Handling Equipment Purchase

Chief of Operations Carl Wollebek reported that Staff is requesting that the Commission authorize the Executive Director to purchase 3 forklifts, 2 x 18-ton forklifts and 1 x 12-ton forklift in an amount not-to-exceed \$380,000. These are used forklifts which were originally rented by the Port in October and November 2014 from Pape’ Material Handling on a month-to-month basis (short term rental agreement) to respond to immediate needs of Seaport customers. These forklifts have been in continuous use since that time and the Port has need of them in the future.

Pape’ Material Handling has agreed to credit the Port 70% of the rental rates previously paid against the current purchase price. The total overall credit is \$175,769. The additional funds required for the purchase will be moved from the CIP for Marine Terminal Vehicles and Equipment to CIP MT11-2015 to cover the balance.

Staff believes this acquisition should be exempt from competition due to special market conditions. These conditions include the fact that the forklifts are used equipment, and because of the credit of 70% of the rental rates previously paid against the purchase price. The prices proposed by Pape’ before the credit are consistent with the marketplace.

Carl Wollbek recommended that the Commission exempt the acquisition from competition due to special market conditions, authorize the transfer of \$60,000 from the CIP for Marine Terminals Vehicles and Equipment to CIP MT11-2015, and authorize the Executive Director to purchase the equipment from Pape' Material Handling in the amount not-to-exceed \$380,000.

Commissioner Troy McClelland moved to exempt the acquisition from competition due to special market conditions, specifically used equipment and credit of rental payments against the purchase price, and authorize the Executive Director to purchase the equipment from Pape' Material Handling in the amount not-to-exceed \$380,000. A vote was called for:

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

Motion carried.

Commission President's Report

Commissioner Glen Bachman said that in Olympia, almost every Port entity - as well as cities and counties - are chasing after the MTCA money and there is a pretty small amount of money available.

Commissioner Bachman said he attended a round table session put on by the City of Everett having to do with the homeless. The Governor led with a presentation and pledge to Snohomish County for some money to come up with a housing program for the homeless. Statistically, in many of the cities, it costs over \$200,000 per homeless person for services provided. Snohomish County came up with 431 homeless people – 35 of which were families with children. Also statistically, when housing is provided to the homeless, the \$200,000 figure goes way down to \$11,000 because there is less need for emergency facilities, etc.

Commission Discussion

Commissioner Stiger said he recently worked the boat show with Jeff Lindhout and reported that several tenants were at the boat show, including ArrowCat, Performance Marine, Harbor Marine, Everett Yacht Club, and for the first time, the Mukilteo Yacht Club had a booth. The boat show continues through Saturday, February 6, 2016.

Commissioner McClelland thanked Staff for all of the preparation for the legislative visit even though things might be a bit discouraging right now with MTCA.

Citizen Comments

There were no Citizen comments.

THE REGULAR MEETING was recessed into Executive Session at 5:42 p.m. for approximately 30 minutes - to conclude by 6:15 p.m. The purpose of the Executive Session was to discuss with legal counsel 1) the acquisition of real estate for which public discussion could disadvantage the Port's negotiations; and 2) to consider the negotiations concerning a piece of real property which may be leased or sold when public discussions could disadvantage the Port.

At the request of the Commission President, Port attorney Brad Cattle, in the open public meeting, extended the Executive Session by 10 minutes – to 6:25 pm.

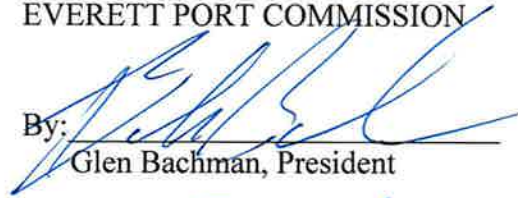
At the conclusion of the Executive Session, there was no action taken by the Commission and there were no announcements. The Regular Meeting was adjourned at the conclusion of the Executive Session.

THE REGULAR MEETING WAS ADJOURNED at 6:25 p.m.

APPROVED this 8th day of March, 2016.

EVERETT PORT COMMISSION

By:



A handwritten signature in blue ink, appearing to read 'Glen Bachman', written over a horizontal line.

Glen Bachman, President



A handwritten signature in blue ink, appearing to read 'Tom Stiger', written over a horizontal line.

Tom Stiger, Vice President



A handwritten signature in blue ink, appearing to read 'Troy McClelland', written over a horizontal line.

Troy McClelland, Secretary



EXHIBIT A

United States Department of the Interior

FISH AND WILDLIFE SERVICE

Washington Fish and Wildlife Office
510 Desmond Dr. SE, Suite 102
Lacey, Washington 98503



DEC - 4 2015

Mr. Les Reardanz, Chief Administrative Officer
Port of Everett
Everett, Washington 98201

RE: Early Settlement Opportunity for Natural Resource Damages in Port Gardner Bay

Dear Mr. Reardanz:

I am writing on behalf of the Port Gardner Natural Resource Trustees (Trustees) in our capacity as Lead Administrative Trustee for the Trustee Council. Thank you for participating in discussions with the Trustees for early settlement of your Natural Resource Damage liability in Port Gardner Bay. We are encouraged by the progress of our discussions and look forward to continuing our cooperative relationship.

In our initial discussions, the Trustees provided the Port of Everett with the option of a cash-out settlement. The purpose of this letter is to inform you that the early settlement cash-out option will expire on January 15, 2016. Based on the Trustees current assessment the Trustees have determined your currently-calculated liability to be \$6,320,570.

This cash-out value is based on the proportion of liability the Trustees' have allocated to you, the Trustees' current estimated cost of restoration for this site, and the Trustees' reasonable costs in performing this assessment. The breakdown of your liability includes:

- \$5,917,777 for 599.39 Discounted Service Acre Years (DSAYs) at \$9,873 per DSAY (see subsequent explanation of how this DSAY rate was determined).
- \$402,792 in past assessment costs allocated in proportion with your DSAY determination.

The Port of Everett would also be responsible for a portion of the costs related to developing and lodging a consent decree for this cash-out settlement with the Trustees. We are also providing, as you requested, some additional information regarding our computation of the "*dollar per DSAY*" rate that provides the basis for the current cash-out option:

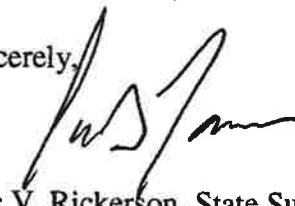
- The "*Dollar-per-DSAY*" value was calculated based on the costs of completing several local restoration projects in the Snohomish River estuary in Port Gardner. The number of restoration DSAYs provided by the project was calculated using information about the number of acres of habitat created for each site. Different habitat types receive different

values of restoration credit and depend on the habitat's relative value to injured natural resources as determined by the Trustees. In addition to this DSAY determination from completed projects, the Trustees also considered the potential for similar types of future restoration projects to be completed in the estuary. In arriving at a final "*Dollar-per-DSAY*" rate, the Trustees considered the costs associated with project design and construction, maintenance and monitoring, long-term stewardship, and Trustee oversight of the restoration project. For the Port Gardner/Snohomish River area, the "*Dollar-per-DSAY*" value, as determined from available information in 2013, was determined to be \$9,873 per DSAY.

We believe this early cash-out settlement offer provides a fair opportunity to quickly resolve your potential natural resource liability and moves forward restoration opportunities for Port Gardner Bay and the Snohomish estuary area. After this opportunity for early settlement expires, the Trustees may choose to update the injury assessment with current data, and/or update the cost per DSAY estimate based on more current costs estimates of conducting restoration in this area. We believe assessment costs are likely to increase, and the Port of Everett's estimated liability may change with the addition of more current data.

Please reply to the Trustees by close of business on **January 15th, 2016** as to whether you accept this cash-out offer so that the Trustees may proceed with the consent decree process for all interested settling parties. Should you have any questions regarding this letter or our proposed process toward finalizing settlement, please contact Jeff Krausmann, Lead Administrative Trustee, on behalf of the Port Gardner Trustee Council at (360) 753-6053.

Sincerely,



for

Eric V. Rickerson, State Supervisor
Washington Fish and Wildlife Office

cc:
Port Gardner Trustee Council

Corporate Headquarters • PO Box 9777 • Federal Way, WA 98063-9777

Telephone: 253 924 4154
Fax: 253 924 5291

January 12, 2016

Mr. Les Reardanz
Chief Executive Officer
Port of Everett
1205 Craftsman Way
Suite 200
Everett WA 98201

RE: CERCLA/MTCA Claim for Natural Resource Damages – Port Gardner Bay
United States Department of Interior and Resource Trustees
Port of Everett – Weyerhaeuser NR Company Preliminary Agreement
Weyerhaeuser Mill A Former site

Dear Mr. Reardanz,

By letter dated November 21, 2013, the Department of the Interior, represented by the Fish and Wildlife Service (DOI), notified the Port of Everett, and other entities DOI believed to be responsible, of a natural resource damages claim under CERCLA and Washington's Model Toxics Control Act. DOI provided notice on its own behalf and for Trustees DOI identified in its letter. DOI also offered, on the Trustees' behalf, to participate in negotiations to settle their damages claim. Weyerhaeuser received a copy of the DOI's letter from the Port.

Since that time representatives of the Trustees and the parties the DOI notified have engaged in settlement discussions. As part of these discussions the DOI wrote to the Port in December 2015 and proposed a cash-out settlement. Representatives of Weyerhaeuser and the Port have discussed the possibility of a joint response accepting the DOI's offer.

I believe Weyerhaeuser and the Port have reached a preliminary agreement which, when completed, will permit Weyerhaeuser and the Port to settle their respective liability exposures to the Trustees' resource damages claim. This letter is intended to set out the terms of our preliminary agreement and to ask, if the terms described in this letter are acceptable, that the Port's representative countersign to document the Port's agreement.

Terms and Conditions

Settling Parties. The Trustees identified by DOI include, in addition to the DOI, the National Oceanic and Atmospheric Administration, the Washington State Department of Ecology, the Suquamish Tribe and the Tulalip Tribe. Weyerhaeuser and the Port expect that all the Trustees will settle their claims.

Parties DOI identifies as responsible – other than the Port and Weyerhaeuser – may enter into resource damage settlements with the Trustees as well. The Port and Weyerhaeuser do not

Mr. Les Reardanz
Chief Executive Officer
Port of Everett
January 12, 2016
Page 2

condition their agreement to settle on the decisions of other responsible parties. Put another way, and subject to these terms and conditions, Weyerhaeuser and the Port will settle whether or not other responsible parties decide to settle as well.

Settlement Structure. We have been advised by counsel for the federal agency trustees (i.e., the United States Department of Justice) that their clients' resource damage claims will be settled – if final agreement is reached – by way of consent decrees entered and approved by the United States District Court.

Weyerhaeuser and the Port, however, each expects to receive a proposed consent decree with some dissimilar terms.¹ Weyerhaeuser expects to receive a “cash-out” settlement offer whereby Weyerhaeuser will make a settlement payment toward a resource restoration project. We understand that the Port expects to receive a settlement that requires the Port to construct and maintain a resource restoration project. While the project will be described in the consent decree, we understand the project site will be the Blue Heron Slough property the Port owns.

Consideration. The DOI's December 2015 letter offered to settle the Port's resource damage liability exposure in exchange for Discounted Service Acre Years (DSAYs) and payment of a portion of the Trustees' past and future expenses. The DOI's letter proposed that the Port contribute 599.39 DSAYs at a price/DSAY of \$9,873.

We understand that the Port is willing to accept the number of DSAYs and the price/DSAY proposed by DOI but that the Port wishes to have Weyerhaeuser contribute a portion of the DSAY cost in light of the Weyerhaeuser Mill A Former site. We understand further that the Port proposes that Weyerhaeuser's share be 130 DSAYs at \$9,873/DSAY, or \$1,283,490. We accept that proposal. Weyerhaeuser's representative will contact the lead Trustee to report that Weyerhaeuser and the Port reached a preliminary agreement with respect to DSAYs and that Weyerhaeuser wishes to receive a “cash-out” settlement offer for 130 DSAYs at \$9,873/DSAY.

With respect to the Trustees' past and future expenses, we understand they must be reimbursed to the Trustees as additional consideration and that the settling responsible parties will divide these expenses *pro rata* according to the number of DSAYs per party.

In return for the settlement payments described above, Weyerhaeuser expects to receive a cash-out consent decree which provides, among other things, a covenant not to sue from the Trustees and contribution protection as provided by CERCLA. Weyerhaeuser does not expect to receive, and is not likely to accept, consent decree terms that require Weyerhaeuser to be responsible for the construction and maintenance of the restoration project selected by the Trustees.

¹ We also recognize that many consent decree terms are standard and will be identical as between Weyerhaeuser and the Port.

Mr. Les Reardanz
Chief Executive Officer
Port of Everett
January 12, 2016
Page 3

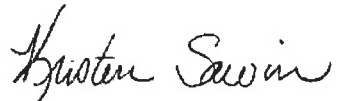
Weyerhaeuser does not agree to any other or further consideration as part of the settlement process.

Nature of this Agreement. We view this agreement as preliminary. By preliminary we mean that Weyerhaeuser and the Port have made binding commitments to each other although their fulfillment of their commitments is subject to conditions (above) and that several conditions will or will not be met depending on the activities and decisions by others, most notably the Trustees.

We believe that settling the Trustees' damages claim is in the interest of Weyerhaeuser and the Port and we will work to complete the NRD settlement process. We expect to continue to cooperate with the Port and we expect the same in return.

If you have any questions or wish to discuss this letter please call Ken Johnson at (253) 924-3426. And thank you and your colleagues at the Port of Everett for your help and your professionalism in the NRD process.

Very truly yours,



Kristen Sawin
Vice President, Corporate and Governmental Affairs
Weyerhaeuser NR Company

The preliminary agreement terms and conditions set out in this letter are accepted by the Port of Everett.
