



**PORT OF OLYMPIA COMMISSION
MINUTES OF REGULAR MEETING**

May 26, 2009

CALL TO ORDER

President McGregor called the meeting of May 26, 2009, to order at 5:31 p.m. at the Lacey Community Center in Lacey. Commissioners Barner and Telford were also in attendance.

Staff in attendance were: Executive Director Ed Galligan, Administrative Manager Jeri Sevier, Airport Director Rudy Rudolph, Marine Terminal Director Jim Amador, Finance Director Kevin Ferguson, Communications Manager Kathleen White, Harbor Director Bruce Marshall, Environmental Program Manager Joanne Snarski, Project Manager John Thompson, and Special Project Coordinator Jennie Foglia-Jones. Carolyn Lake, Port's Legal Counsel, was also in attendance.

Public in attendance who filled in the sign-in sheet were as follows: Brenda Hood, Stewart Lloyd, John Newman, Keith Bausch, Jim Lengenfelder, Earl Hughes, Robert Connolly, Pat Brower, Nick Brower, Mark Williams, John DeMeyer, Tom Fell, Bob Wubbena, and Dave Peeler.

APPROVAL OF AGENDA

The agenda was approved as revised. Two items under action calendar were removed from the agenda: Resolution 2009-06 Real Estate Commissions Policy, and Cascade Pole Supplemental Site Expanded Scope. Commissioner Barner indicated he would like to discuss the letter from the tribe. President McGregor suggested we add that item to the upcoming work session as the other commissioners have not read the letter yet.

COMMISSIONERS REPORTS

Commissioner Barner indicated that he attended the WPPA Annual meeting last week in Pasco. He thought it was a very productive meeting and he brought back as much information as he could. He had some handouts that he would like to discuss at a work session. He noted that he attended the East Bay open house and some meetings with staff.

Commissioner Telford indicated he attended the Transportation Policy Board meeting for Commissioner Barner.

Commissioner Telford also indicated that he would like to discuss the length of the commission meetings. He noted that the last meeting adjourned at 11:00 p.m., which is way too long and too late. He suggested that executive sessions take place before meetings. He noted that staff, TCTV staff, and legal council should be home with family at that time of the night, we need to make the meetings more efficient and more business like. He suggested there were too many advisories with too much detail. If a commissioner needs more information on an advisory maybe it can be obtained later. He suggested that the Commissioners study the materials before the meeting and get answers before hand. Maybe Monday afternoons before the meetings, staff should be available for questions. He suggested that we need to stay on subject and keep costs in mind to try and shorten meetings. President McGregor indicated that he couldn't agree more.

Commissioner Barner indicated that he is probably the one stretching out the meetings because he asks a lot of questions. He feels that it is beneficial to the public to hear the answers to those questions. He said that the citizens call into the Port and do not get an answer. However, he noted that the point Commissioner Telford is making has been received. President McGregor suggested that the Commissioners let the staff complete the presentation before asking questions, because the question may be answered within the presentation.

President McGregor reported that he provided Sen. Frasier a tour of a vessel at Port. He spoke at the VCB Sports Tourism breakfast where Jay Buhner was the Keynote Speaker; he attended a meeting at CTED, the East Bay Open house where over 150 people attended, the CLAMP meeting where they reviewed 3 of reports that are being summarized now. He noted that public work shops will be held for the CLAMP, focus group meetings have been scheduled, and the steering committee will discuss the final recommendation in June. President McGregor also

noted that he spoke at a Veterans Memorial Service on Memorial Day, and attended the Port EDC meeting earlier in the day.

Commissioner Barner indicated he would like to see the CLAMP budget over the past few years it would be interesting to see how much money has been spent on this project. He asked if Commissioner McGregor could get that information on behalf of the Port.

EXECUTIVE DIRECTOR REPORT

Mr. Ed Galligan noted that if any citizen calls into Port and has not gotten a response that needs to be reported to the Executive Director so we can respond to anyone that has questions.

Mr. Galligan reported that the Dry Storage at Marina was recently created with 38 spaces. Of those, 32 have already been committed for leaving only 6 left. The new area has lighting and locked gates.

Mr. Galligan reported that the KGY Tower is up and the switch to the new tower operation is planned for early July. The existing tower will be torn down later in July. The new tower is two feet shorter than the existing tower but is 15 - 20 feet higher due to its location on top of the Cascade Pole cap which should result in an improved signal. The next steps include: installation of a building to house its transmission equipment, relocation of the equipment from inside the present studio, fence the area and install barriers to prevent people from driving under the antenna guide wires, run tests and receive approval from the FCC before it can begin broadcasting using the new tower.

Mr. Galligan reported that Port hosted an open house May 20 where potential developers presented concepts and described the community benefit from activities they are considering viable at the East Bay site. Over 150 public participants had an opportunity to both ask questions and provide input to the Port and potential developers. Staff will provide a presentation to the Port Commission at the June 8 meeting highlighting the concepts, questions raised and public input gathered prior to bringing forward recommendations to the Port Commission on selecting partner(s) for an exclusive negotiating agreement on the properties.

Mr. Galligan noted that the Port has been hosting Port tours, over 1000 students have toured the Port Marine Terminal over the past few weeks and more are scheduled this week, 20 are from North Thurston High School marketing class, 40 from McLane Elementary, and the rest from the Komachin Middle School science program.

Jennie Foglia-Jones has coordinated the tours. Leading the tours are Jennie, Jim Amador, Mike Crawford, Kim Kawada and Sherman Will, a longshoreman volunteer.

The Komachin teacher prepared questions for the kids to ask about the various cargos, their destinations, and their uses. Kim prepared the answers for all the tour guides to use. The Komachin science program is having a blade building competition to see whose blades generate the most energy.

Mr. Galligan announced that he recently conducted a customer service survey for the Marina and Airport business units. He indicated that the input and comments were very valuable and helped us to identify where we are doing well and where we are not. He noted that he appreciates the customers responding to the surveys to help us improve our service levels.

Mr. Galligan noted that the Paul Bunyan barge is due in Wednesday to discharge logs to the Weyerhaeuser log yard. The next vessel is the Dry Beam due in June 11th. Twelve windmill blades will be going to Wyoming the first week in June; the remainder will be going into storage.

LEGAL COUNSEL REPORT

Ms. Carolyn Lake reported on the West Appeal of Industrial Storm water permit to the PCHB. On May 20th the PCHB issued a series of rulings. The Port had pursued a three prong strategy to terminate the appeal, filing a Motion for Summary Judgment (Lack of witnesses disclosed by West), Motion for default (based on Mr. West's failure to participate in the appeal), and Motion to Dismiss (for failure to state a claim). The Board denied the Motion for Summary Judgment finding that Mr. West filing his disclosures after the Motion was filed was sufficient), denied the Motion for default (finding that although his record of participation was not "creditable", it did not yet rise the standard that warranted dismissal on this basis).

However, the Board granted both the Port and Weyerhaeuser Company's motions to be dismissed from this appeal filed by West in which he challenges Department of Ecology's issuance of the general storm water permit. The Board agreed that West fails to raise an actionable claim against either the Port or Weyerhaeuser because only Ecology can issue the permit, which is a general permit of area wide application.

Ms. Lake reported on the West vs. Universe Case No. C08-687RSM - Order on Motion for Sanctions. She reported that after the Court dismissed the suit against the Port where Mr. West pursued a RICO claim against the Port, the Port sought to recapture moneys spent by the taxpayers in defending against the suit and filed a motion for sanctions. The Court DENIED the motion, but did state in the Order that the Port may, however, be entitled to costs as the prevailing party in this matter, and upon proper submission of a motion to tax costs to the Clerk.

Ms. Lake reported on the West v. Puget Sound Partnership (appeal of the MTCA Dredge Order). She noted that we followed up the March 27th recusal by Judge Hirsh in response to actions taken by Mr. West. The Court advises that due to budget cuts, there has not yet been a re-assignment to a visiting judge to this case. The case remains on hold.

PUBLIC COMMENT

Tom Fell commented on the Sea Scout Ship, he noted that he wanted to thank the Port for their support; the Port has provided moorage for two boats. He also wanted to recognize a generous donation from a citizen to improve the sail boat.

John Newman, affiliated with Olympians for Accountability, indicated that detailed monitoring reports to be filed with Department of Ecology (DOE) have not been filed. He indicated that no reports have been filed with DOE for 2008 or 2009. He noted that DOE has fined the Port for not submitting and has ordered the Port 30 days to get caught up.

Keith Bausch noted that he attended meeting last Wednesday on the East Bay redevelopment. He suggested that Marine Drive is a dedicated truck route and is not a compatible use for residential. He suggested that residential should be reconsidered at East Bay unless an alternate route is created.

Commissioner Telford indicated that it is pretty clear that the truck route would need to be moved, we need to use this as an opportunity to press that issue with the City of Olympia. President McGregor indicated that he agrees. He noted that we will have a joint meeting with the City and that would be a good time for discussion. He indicated the City is also concerned about the truck route and compatibility with the development. Commissioner Barner indicated that he thinks residential housing should not be considered as we are a working waterfront. We should look long and hard before we agree that residential housing is the answer. We should not set in motion a plan that would be in conflict with a working Port.

Mr. Jeff Lincoln indicated that the permits that Mr. Newman mentioned, for 2008 two reports were not submitted on time, in fact they were just submitted. Of the two reports, one had no data and the other report was due when the Port was in the middle of a lawsuit regarding this issue. He noted that the 2009 report was due on May 15, 2009 and was submitted on time. Mr. Lincoln noted that we have reassigned the filing of these reports to another staff person that will be accountable for getting all of the reports filed in a timely manner.

ADVISORY CALENDAR

Capitol Lake Adaptive Management Plan

Mr. Jeff Lincoln indicated that at the meeting of May 11, 2009 staff presented a draft resolution for the Commission's consideration regarding the Capitol Lake Adaptive Management Plan. After a brief discussion of that draft resolution, two revisions were requested by the Commission and were subsequently prepared by the staff which is attached herein as Attachment 1, dated May 13, 2009.

Brenda Hood testifying on behalf of Olympia Yacht Club, she provided a position paper for the record. She indicated that they strongly support maintaining Capitol Lake through the Managed Lake Alternative. She noted that there will be huge implications to the entire watershed, our economy, and our entire way of life if any other decision is made. She noted that the Yacht Club supports the proposed Commission resolution with one amendment. The Commission agreed with her suggested revision and asked staff to incorporate it.

Earl Hughes indicated that he was an active user of Olympia Waterfront and he is very concerned about the economic impact that the removal of the dam would have on the waterfront businesses. The cost of dredging would be shifted to the businesses, the city and the port. The private marinas would go out of business. There are many waterfront events that would not happen if Percival landing was filled with sediment. He noted that there needs to be full economic impact by a third party. He commented that he does not have the faith that the state will come through with the funding even if it is promised. He also noted that the economic impact with social boating that will be lost if they remove the dam.

Bob Wubbena, Fiddlehead Marina, indicated they are working on a position paper from the Olympia Working Waterfront. He noted that people in Olympia are interested in a healthy waterfront. The estuary option does not appear that it will be properly managed. The community benefits from Capitol Lake and there should be a broader responsibility. He encouraged the Port to move forward with the resolution with amendments suggested by Olympia Yacht Club.

Jim Lengenfelder indicated that 30,000 cubic yards is a lot of dump trucks, this is simply passing it down the responsibility. Capitol Lake was built for this reason and should be maintained. He suggested planting trees upriver to cool the water down and make the water quality better. He asked the Commission to accept the recommendation by the Olympia Yacht Club and to amend the resolution.

Stewart Boyd indicated that he is an old timer in the community and has attended some CLAMP meetings over the years and very concerned about the length of time and cost that this project has taken. He noted that he recognizes the benefits of this being a lake and it is the right thing for the Capitol City and should be continued. The sedimentation is a problem; General Administration has not managed the lake. He suggested that we get CLAMP to make a decision and settle this and get back to manage this as a lake and maybe General Administration is not the right agency to manage the lake. He suggested the Commission make a stronger statement in the resolution.

President McGregor indicated that the draft recommendation by CLAMP is due July 2nd.

Commissioner Barner noted that he is concerned that we are tiptoeing on this resolution and we need to be sharper and firmer on our recommendation. The state has not managed the lake and has not dredged on a regular basis. We should come down on this with both feet. We should be threatening the state with a potential lawsuit because they have not managed the lake over the years.

President McGregor indicated that the Port Commission needs to have a recommendation formed that he can take on behalf of the Port to the CLAMP. He noted that we just took out 8,000 cubic yards, 140 rail cars of material out of Budd Inlet for the Marine Terminal dredge costing us 2.8 million dollars, times that by 4 if the dam is removed. In water disposal is probably not an option. Budd Inlet needs to be cleaned up before you add any other material into the bay otherwise you just compound the problem.

Commissioner Telford suggested some changes to the resolution. President McGregor asked Commissioners to submit changes to Ed for consideration and action at the next meeting.

CONSENT CALENDAR

Minutes. The minutes from the March 18, 2009, April 21, 2009, and April 27, 2009 were unanimously approved.

Bills and Voucher Approval. The bills and vouchers in the amount of \$ 1,668,270.77 were unanimously approved. General Fund Checks Issued: 048959 – 049199. Voided Checks: 040468, 040553, 043603, 046103, 049082, and 049104 – 049106.

Pacific Lumber & Shipping LLC Lease Amendment

Mr. Jim Amador reported that the lease amendment increases the lease area from 4.4 acres to 5.0 acres and modifies the location of the lease area. The lease also adds an additional provision that designates a flex area on the marine terminal. This area gives both the Port and tenant the ability and flexibility to expand land on short notice and for short durations of time. He noted that the amendment also provides a pro-rata share reimbursement for terminal security costs. Commissioner Barner recognized Jim Amador for his creative approach to work with the private entities that benefits the private businesses as well as the Port. These lease amendments reflect that creativity.

The Commission unanimously ratified the lease amendment with Pacific Lumber & Shipping.

Holbrook, Inc. Lease Amendment

Mr. Jim Amador reported that the lease amendment modifies the location of the lease area. The lease also adds an additional provision that designates a flex area on the marine terminal. This area gives both the Port and tenant the ability and flexibility to expand land on short notice and for short durations of time. The Commission unanimously ratified the lease amendment with Holbrook, Inc.

ACTION CALENDAR

Berth Dredge Interim Action – Expanded Scope for Anchor Environmental

Ms. Joanne Snarski indicated that authorization is requested to expand the scope of an existing Architect and Engineering Contract No. 2008-1022 with Anchor QEA, LLC, for engineering services associated with the Berths 2 and 3 Dredging Interim Action, Project No. MTO601.

She noted that on July 9, 2008, the Port staff issued an Architect/Engineer Services Agreement to Anchor QEA, LLC to provide regulatory support and preliminary engineering design services for an interim cleanup action of the Port's Marine Terminal Berths 2 and 3. This contract was for an amount not to exceed \$25,000. On August 11, 2008, September 8, 2008, and January 12, 2009, Commission authorized increases to this contract in the combined amount of \$487,248, bringing the authorized total amount to \$512,248.00.

Ms. Snarski reported that the scope of work was broken up into three separate Phases (1, 2 and 3) for Port tiered approval purposes. Phase 1, covered by the previous scope of work, included review and assessment of existing information, initial planning and permitting support, and conceptual level engineering design. Phase 2, also covered by the previous scope of work, included support engineering design activities to produce bid documents, and ongoing permitting support work, and additional testing and analysis required by the Department of Ecology (Ecology). Phase 3 scope of work included water quality monitoring and reporting, post-dredge sediment sampling collection, testing and reporting, and construction support, as required by Ecology and the Army Corps of Engineers (Corps) permit.

This expanded scope (Phase 4) is intended to fulfill the long-term post dredge monitoring required by the Ecology and the Corps and includes:

- 4 rounds of sediment and bathymetry monitoring
- 4 rounds of analytical testing
- 4 rounds of data reporting memos
- Dredge and disposal design (if necessary)

She noted that the total costs for all of the above requested tasks is \$280,130. The monitoring events are planned for June and December both in 2009 and 2010.

Ms. Snarski indicated that staff is requesting that the scope of work for Contract No. 2008-1022 with Anchor QEA, LLC be expanded in the amount of \$280,130 for a total revised authorization of \$792,378.

Commissioner Barner asked if we knew we were going to be spending this much more money. Ms. Snarski indicated that we knew there would be post dredge monitoring, in fact, Department of Ecology (DOE) has indicated that we need to do two full years of monitoring, which is more than we would have expected. However, Ms. Snarski reported that 50% is reimbursement by DOE. Commissioner Barner noted that he was unhappy about the increase in the cost. Ms. Snarski agreed that this is a substantial amount of monitoring, these levels were a result of the public comment that DOE received.

President McGregor indicated that this is all part of the agreed order with DOE for the dredge project.

Commissioner Telford asked how this impacts the budget. Mr. Lincoln noted that we have spent \$1.9 million on contracting, which is 50% reimbursable. Mr. Lincoln indicated we are pretty close to where we thought we would be on this project. We estimated the total project to be \$2.7 million, and the Port bonded \$1.4 million.

Commissioner Telford moved to authorize the Executive Director to expand the scope of work for Contract No. 2008-1022- with Anchor QEA, LLC in an amount not to exceed \$280,130, for a total authorization of \$792,378, for Project No. MT0601. Commissioner Barner seconded the motion. The Motion passed unanimously.

ACTION CALENDAR - OTHER

Misc. Paving & Road Maintenance – Approval to Call for Bids

Mr. John Thompson reported that at the Commission meeting of May 11, 2009, Commission was advised that staff would be requesting authorization to call for bids for miscellaneous paving and road maintenance on various Port properties.

He noted that during the 2009 Capital Improvement Plan budget cycle, asphalt paving and road maintenance needs were identified on the Airport properties, and incorporated into the 2009 budget. These included taxiway intersection repair, and taxiway section repair. In addition, Property Management included approximately \$10,000 in the operational budget for repairs to roadways in the New Market District.

Mr. Thompson indicated that individually, the identified paving projects are less than \$100K each, allowing for approval at the Executive Officer level. However, by combining projects, we benefit from economy of scale, streamlined contracting and avoid the appearance of dividing the projects to avoid Commission approval.

He noted that RCW 53.08.120 authorizes Port Districts to let contracts that are estimated at \$200,000 or less using the small works roster process under R.C.W. 39.04.155. This process allows staff to solicit bids from the contractors registered on the roster in lieu of advertising for bids.

Mr. Thompson noted that the scope of work is to provide labor, equipment, materials and incidentals to perform multiple work-order paving projects which include grading, paving, tack coat, seal coating, crushed surfacing base course, bank-run gravel, grinding asphalt, asphalt overlay, painted traffic lines, adjustment of structures embedded in asphalt, and shoulder restoration. This work will be accomplished as directed by the Project Manager utilizing a work order system for each task assigned. The contract will expire once the total of the work has reached \$200,000, or June 30, 2009, whichever occurs first.

He reported that the work shall occur at various Port owned property locations, included but not limited to the Olympia Airport and industrial properties in Tumwater and port properties in Olympia, and the Marine Terminal areas.

Mr. Thompson noted that for bid comparison purposes, a hypothetical project has been developed, utilizing several of the unit priced bid items. This hypothetical project will be disclosed to bidders at bid time. Staff will prepare the bid tabulation worksheet using unit prices as bid to determine the low responsible bidder. Bid results and recommendation to award to the lowest responsive/responsible bidder will be presented at the Commission meeting.

Estimated Schedule:

Commission Advisory	May 11, 2009
Commission Authorize Call for Bids	May 26, 2009
Open Bids	June 12, 2009
Commission Authorize Award	June 22, 2009
Notice of Award	June 23, 2009
Notice to Proceed	July 3, 2009

Payment will be made on a unit-priced basis per work order. The contract will expire when the work orders total \$200,000, or June 30, 2010, whichever occurs first. This contract does not include any new funding. No Work Orders will be assigned that do not include identified funding in the adopted 2009 and 2010 capital or operational budgets.

Mr. Thompson indicated that the 2009 Capital Investment Plan allocates \$150,000 to pavement repair projects on the airport property. In addition, Property Management has \$10,000 in the operations budget for road maintenance this year. This contract has room for emergency pot-hole repair; however some department will have to provide the funding from their operational budgets. This contract will also include part of 2010, so work identified in the 2010 Capital budget can be included in this contract.

Mr. Thompson indicated that staff recommends that the Commission authorize the staff to call for bids for Contract 2009-1018, to accomplish the Miscellaneous Paving and Road Maintenance.

President McGregor moved to authorize the staff to Call for Bids for Small Works Contract 2009-1018, to accomplish the Miscellaneous Paving and Road Maintenance. Commissioner Barner seconded the motion. The motion passed unanimously.

ANNOUNCEMENTS

President McGregor recognized Mr. Jeff Lincoln for his commitment to the Port for the past 2 years. He noted that this will be his last meeting as he is leaving at the end of the month to pursue other opportunities.

Commissioner Barner indicated that when he came on board he had questions about the Engineering at the Port, but over time he has confidence in our engineering staff. The staff does an excellent job under the leadership of Mr. Lincoln. He noted that he appreciates the effort he has put forth on behalf of the citizens and the Port; we have been well served by Mr. Lincoln.

Commissioner Telford wished Mr. Lincoln luck. He commented that since his arrival and what he brought with him is light years ahead of where we were, and he would like to recognize him for that and he appreciates what he has brought to the Port.

President McGregor indicated that this is their gain and our loss, Mr. Lincoln has done a terrific job at the Port, wish best in future endeavors.

President McGregor announced that the Port Advisory Committee will hold a meeting on May 27th at 7:00 p.m. at the Port offices.

ADJOURNMENT

President McGregor adjourned the meeting of May 26, 2009 at 7:52 p.m.

PORT OF OLYMPIA COMMISSION

President

Vice President

Secretary-Treasurer