

P O R T O F O L Y M P I A C O M M I S S I O N
M I N U T E S O F R E G U L A R M E E T I N G

September 22, 2008

CALL TO ORDER

President McGregor called the meeting of September 22, to order at 5:30 p.m. at the LOTT Board Room in Olympia. Commissioners Barner and Telford were also in attendance.

Staff in attendance were: Executive Director Ed Galligan, Administrative Manager Jeri Sevier, Airport Director Rudy Rudolph, Engineering Director Jeff Lincoln, Marine Terminal Director Jim Amador, Acting Finance Director Kim Peterson, Harbor Director Bruce Marshall, Property and Business Development Manager Mike Reid, Sr. Manager Property Development Heber Kennedy, Public Works Project Manager John Thompson, and Front Desk Coordinator Jessie Bensley. Bob Goodstein and Carolyn Lake, Port's Legal Counsel, was also in attendance.

Public in attendance were as follows: Patty Belmonte, Doug Mah, Sam Lantow, Farrell Presnell, Richard Wolf, Harold Clark, Steve Wilcox, Bill Pilkey, Arthur West, and Mike Strub.

APPROVAL OF AGENDA

The agenda was approved as revised. Commissioner Barner asked if he could add a discussion on electric cars and the letter from Steve Wilcox to the agenda. President McGregor suggested he cover those items under his commissioner report. President McGregor asked to move the City of Olympia presentation by Mayor Mah to the beginning of the meeting to follow the legal counsel report. Move city's presentation to follow the legal counsel report.

COMMISSIONERS REPORTS

Commissioner Barner reported he attended his first Visitor Convention Bureau meeting last Tuesday. He also noted that he had an airport briefing by the Airport director, Rudy Rudolph last week. Commissioner Barner thanked staff for moving the barriers in the Farmers Market parking lot.

Commissioner Telford reported he provided a presentation to the Tumwater Chamber of Commerce meeting last Tuesday. Commissioner Barner asked for a copy of the powerpoint.

President McGregor noted he attended a meeting with other local jurisdictions to discuss shared legislative priorities.

EXECUTIVE DIRECTOR REPORT

Mr. Ed Galligan reported that the garnet filtration operation inside the warehouse is finishing this week. The vessel from February added 3,034 additional longshore hours outside of the vessel discharge and truck loading. We expect another garnet ship in December.

Mr. Galligan also reported that Weyerhaeuser is expected to bring in a mobile office this week and begin brining in equipment and logs mid-October.

Mr. Galligan also reported that we have a vessel set for auction October 15th at the Swantown Marina. If this matter is not resolved, the auction resolution will come to the next Commission meeting.

He asked Mr. Bruce Marshall, Harbor Director, to give a brief report on the boat relocation program during construction. Mr. Marshall provided the Commission with an overview on how the boats would be moved during construction and the communication process with tenants.

Mr. Galligan noted that current ground water testing is occurring at East Bay.

He also noted that the auction of the aircraft parts at the airport has been completed. We received a bid for \$3,500 and the Port was owed \$2,732.

Mr. Galligan noted that the Port is currently holding off on filling four positions in an attempt to cut costs.

LEGAL COUNSEL REPORT

Ms. Carolyn Lake provided the Commission with a legal update on the activity since September 8, 2008.

She reported on the 9th Circuit Federal Court issued Order Denying Stay of Airport Line of Sight Project & Rejecting West Brief. She reported that on Friday September 12, 2008 the 9th Circuit Federal Court of Appeals in San Francisco issued an Order denying Mr. West's 2nd motion to stay construction of the Olympia Regional Airport Line of Sight Project. The stay request was denied without comment by the Court.

The Federal Court also denied a Motion for Default filed by Mr. West. The Court further rejected the Reply Brief file by Mr. West for not complying with federal rule requirements. The Court set a deadline of September 24 for Mr. West to file a corrected Brief, and indicated that the matter should thereafter be set for hearing.

Ms. Lake reported that on Monday Sept 15, 2008, the Court of Appeal denied Mr. West's Motion for Reconsideration of the Court's Order remanding the "deliberative process exemption" and denying Mr. West's appeal issue that SEPA trumped all public record exemptions. The effect of the Order is that parties now have 30 days from the date of the order to appeal the Court of Appeal ruling to the Supreme Court.

In other developments on this case, the Port also provided Notice to the parties that the Port made the decision to waive any further judicial review and or determination of the status of records previously deemed exempt under the Deliberative process exemption by the Trial Court and which are the subject of an Order of Remand from the Court of Appeals in Cause No. 60723-5-I.

Ms. Lake indicated in relation to the dredge suit, on Thursday 9/18/08 Mr. West filed an appeal to the 9th Circuit Court of Appeals for review of the final Order issued by Federal District Court Judge Ronald Leighton on July 21, 2008, which had dismissed all of Mr. West challenges to the DNR permits which allowed the Port of Olympia to dispose of dredge materials at the Anderson / Ketron Open Water Disposal site, and permits issued by the City to the Port for alterations to the cargo yard which will serve the Weyerhaeuser log operation.

You may recall that in dismissing the case, the Federal Judge ruled, "Mr. West's attempt here to transform a battle over construction permits into a constitutional issue is meritless".

This is the case in which Mr. West has named the United States Secretary Of Defense, U. S. Army Corps Of Engineers, Washington State DNR, Douglas Sutherland, The City Of Olympia, as well as the Port of Olympia.

In the matter of the West Dierker appeal to SHB Appeal re: City of Olympia Shoreline Substantial Development permits for East Bay, Ms. Lake reported that previously, the Port and City filed Motions to Dismiss the West Dierker appeal of East Bay Shoreline permits. On Thursday Sept 18, 2008 the Board granted our Protective Order, which has the effect of narrowing Mr. West broad request for records review under this case. On Friday Sept 19, 2008 the Board issues a letter advising us of the Board intention to grant our motions to Dismiss as to 10 of the issues raised by Mr. West & Dierker in this appeal. The Hearing is set for October 9 and 10th.

Ms. Lake reported on the Appeal of City of Olympia Land Use approval for Weyerhaeuser Company Site Plan (Approval of Buildings & Parking lot). , Appeal No. 08-0044-1. Last week the Hearing Examiner dismissed all issue of the Weyerhaeuser Land Use appeal except for one narrow issue as stated below:

- A. Except for the issue described in Section B, below the appeal is dismissed.
- B. The claim that that the stormwater drainage elements of the four buildings and their associated parking do not comply with the Olympia Stormwater Manual is not dismissed. To be clear, this claim is confined to the Stormwater Manual, and does not involve claims based on SEPA or any other law. The geographic scope of the "associated parking" is that parking designed to serve the four buildings. It does not include any other part of the proposed log export facility. Any issue of contamination involves only whether the "associated parking" provides the stormwater treatment, if any, required by the Manual. Issues regarding existing contamination from prior industrial activities on Port property have been thoroughly argued and decided in other proceedings and are not relevant to this claim.

Also, Ms. Lake noted that on Saturday 9/20, the Examiner responded to Mr. West's Motion to continue the Weyerhaeuser LUA appeal hearing set for 9/24 due the Port's records release. At this point, the issue in the LUA hearing is narrowed to only whether the four buildings and parking lot comply with the City's Storm water manual. Given the limited scope the Examiner has declined to move the hearing date of 9/24; instead he will allow Mr. West the opportunity to file by 9/26 any documents he believes are relevant to this appeal issue from the released records. The hearing will be held this Wednesday 9/24.

She also reported the today 9/22/08, we received a 60 day Notice of citizen's intent to sue notice under the Clean Water Act, alleging continuing stormwater violations at the Port of Olympia.

East Bay Presentation by the City of Olympia – Mayor Doug Mah

Mayor Doug Mah provided the Commission with a report on the status of the East Bay Re-development project.

PUBLIC COMMENT

Steve Wilcox commented on a letter he wrote to the Commissioners about organic farming and the possibility of using land around the Olympia Regional Airport for farming.

Bill Pilkey commented on the community report that was sent out from the Port. He indicated the report is inaccurate. He also made comments about the Marine Terminal business and the budget deficit.

Arthur West thanked the Port for admitting they were wrong and releasing records regarding the Weyerhaeuser records. He indicated that he has found documents that prove the Port is guilty of a criminal activity relating to the Clean Water Act.

Commissioner Telford indicated that he personally responded to the letter from Steve Wilcox today. He indicated that there are many issues with the proposal; however, a re-look at the land uses at the airport is currently being thrown out for discussion.

Commissioner Barner indicated that several months ago he asked about the possibility of a parcel of land at the airport for this type of use. He said he never envisioned this as a free-bee and the users would be paying for the right to use the land to raise crops.

President McGregor commented that Mr. West continues to spout off information that is incorrect and have yet to be found correct in 34 cases brought forth already.

President McGregor encouraged Mr. Pilkey to refer a citizen to the Port Commission or to the Executive Director if they have concerns or questions. He also responded to his questions about the Marine Terminal business.

Commissioner Barner indicated that we need to dredge, we have not dredged in 31 years. We advertise 40 foot of draft, we are at 36-37 feet at the berth. We need to get it back to 40 in order to bring in any type of cargo ship that wants to come to the Port.

CONSENT CALENDAR

Bills and Voucher Approval

The bills and vouchers batches 32-35 were unanimously approved in the amount of \$1,656,742.95. General Fund Checks Issued: 0470920 - 0047327. Voided Checks Issued: 047156 - 047157.

Parsons Lease Amendment

The Port and M. Parsons Plaza II, LLC signed an option agreement November 20, 2007. Option Amendment No. 1 set the initial fair market value of the property and was signed April 22, 2008.

The Parson's option parcel site is located adjacent and south of the Port tenant, UPS. The City of Tumwater requires that access to the Parson's site from NewMarket Street occur on the UPS leased parcel at a single location. The Port has worked with UPS and Parsons to provide an access point off NewMarket that can be used by both tenants. (See attached map.) This amendment provides for expansion of the Parson's optioned premises through relocation of their northern property line 60' to the north of the original line and provides for a 20' easement for

ingress and egress along the northern property line that will be used jointly by UPS and Parsons. With an expansion of the optioned premises, the option fee is increased by \$3,531.50.

The amendment also includes the above-described easement between Optionee and UPS and Optionee responsibilities to construct and maintain the easement to the North. In addition Optionee is required to construct a city street to West of the Property, subject to release from the Port 's tenant, Equilon.

The Commission unanimously ratified the Option Amendment No. 2 with M Parsons Plaza II, LLC.

UPS Lease Amendment

The Port and UPS entered into an Amended and Restated lease April 23, 2007. Subsequently, the Port discovered that the City of Tumwater decided that the access to Port parcels between Tumwater Blvd. and 73rd would be at a single point along NewMarket Street. The selected point only accessed the UPS parcel. With the Port optioning the property to the south to M Parsons Plaza II, LLC, a common access point was need.

The Port has worked with both UPS and Parsons to find a single point of access that both parties could use. This amendment provides that solution by relocating UPS's southern property line to the north by 60' and requiring the southern 20' of their property to be a part of 40' easement for joint use by both Parsons and UPS. (See attached map.) The property relinquished by UPS will be included in the Parsons premises. UPS will receive a rent credit in the amount of \$17,388.12 for relinquishing the property and agreeing to modify the lease. The amendment also includes an Easement that will be signed by all parties providing for ingress and egress to both parcels.

The Commission unanimously ratified the UPS Lease Amendment No. 1.

Simpson Lease Assignment

Tumwater Acquisition LLC was formed as a subsidiary of Simpson Timber Company, and Tumwater Acquisition became a Port tenant in 2005 at NewMarket Industrial Campus. Simpson Timber Company has merged with Simpson Lumber Company and as part of the legal process, the leases and subleases with Simpson Timber are being assigned to Simpson Lumber. The attached agreement is a representation of such assignment and it is noted that the all terms and conditions specified in the lease with the Port are not affected as a result of the assignment.

The Commission unanimously ratified the Assignment of the lease from Simpson Timber to Simpson Lumber.

ACTION CALENDAR

Intermodal Infrastructure Enhancement – Award Bid

Mr. John Thompson indicated that on February 25, 2008, Commission authorized the Executive Director to call for bids for the Intermodal Infrastructure Enhancement Project, contingent on receiving the second of two grant contracts with WSDOT. The second grant was executed May 8, 2008.

Mr. Thompson indicated that the scope of this project will increase the Marine Terminal's rail storage capacity by an additional 2300 linear feet of rail siding and increase pedestrian and vehicular safety in the vicinity of the Farmer's Market by the addition of RR crossing gates and cantilever lights at the Market Street RR crossing. In addition, this project includes the purchase of 4 used flatbed railcars, a railcar mover (i.e. Track-mobile) and ramps for loading rail cars.

Mr. Thompson explained that the 2008 Capital Investment Plan adopted November 26, 2007, allocates \$2.8 million for this project. The Port's total share of costs is anticipated to be \$146,000.

Mr. Thompson announced that a public opening of all Bid Proposals was held on September 17th at 10:00 am. He provided a summary of bids received. Two bids were received from Granite Northwest and Railworks Track Systems, Inc. The lowest bidder was Granite Northwest.

Mr. Thompson indicated that due to budget constraints, staff is recommending awarding the base bid, without alternates. The alternatives were for automated security fence gates, submerging the switch handles, and cross-over between new siding.

Mr. Thompson indicated that the Executive Director requests Commission approval to award Contract No. 2008-0003, Intermodal Infrastructure Enhancement Project, to Granite Northwest dba Wilder Construction Company in the amount of \$1,779,175.00 plus tax for a total of \$1,906,943.12 for the base bid amount not including the alternatives.

Commissioner Telford asked if this included replacing existing railroad ties. Mr. Thompson indicated that this does include replacing damaged or old railroad ties not currently covered with asphalt.

Commissioner Barner moved the approval to award Contract No. 2008-0003, Intermodal Infrastructure Enhancement Project, to Granite Northwest dba Wilder Construction Company in the amount of \$1,779,175.00 plus tax for a total of \$1,906,943.12 for the base bid amount not including the alternatives. Commissioner Telford seconded the motion. The motion passed unanimously.

Heartland Contract – Expanded Scope

Mr. Mike Reid indicated that authorization is requested to expand the scope of an existing marketing and consulting Contract No 2007-1 with Heartland, LLC, for marketing and consulting services associated with the East Bay Redevelopment, Project No. PRP004.

He noted that on July 26, 2006 the Port staff issued a Consulting Service Agreement to Heartland, LLC to provide comprehensive support services including strategic planning advice with respect to the predevelopment plan, market and financial analysis, and master plan development. This contract was for an amount not to exceed \$70,000. On August 16, 2007 this contract was extended and increased an additional not to exceed amount of \$42,000.

Mr. Reid indicated that Heartland is a Seattle-based real estate consulting and investment firm with 24 years of experience designing, analyzing, and implementing strategies for complex, multi-disciplinary real estate projects. Heartland has consulted on over 450 projects, and have covered all major product types, including residential, commercial, mixed-use, office, retail, lab, medical office, industrial, natural resource land, and vacant land. Their project experience has been evenly distributed between public sector clients, including numerous local and regional ports and municipalities, and private sector clients, including major corporations, non-profits, and tribes.

He noted that the expanded scope of work would increase Heartland's contract \$100,000 (from \$112,000 to \$212,000) and extend through December 31, 2009. Description of assistance and tasks to be provided by Heartland, LLC for this expanded scope of work:

- Task 1: Assist Port in the creation of Request for Qualifications (RFQ), and Request for Proposals (RFP) for the East Bay Redevelopment project, this includes the creation of marketing graphics to be used in related RFQ and RFP.
- Task 2: Market Outreach, publishing of RFQ and RFP materials, distribution of materials, and management of proposal solicitation.
- Task 3: Assist Port staff with review and evaluation of the responses to the RFQ and RFP.
- Task 4: Deal Negotiation Support

Mr. Reid requested that the scope of work for Contract No. 2007-1 with Heartland, LLC be expanded in the amount of \$212,000.00.

Original Contract (7/26/06)	\$ 70,000.00
First Expansion of Scope (8/16/07)	\$ 42,000.00
This Increase Request	\$100,000.00
Total Revised Authorization:	\$212,000.00

Commissioner Barner asked what input the Commission would have in the decision of this process. Mr. Reid indicated that the process has continuous interaction with the Commissioners. Commissioner Barner asked if the City of Olympia would be involved in this process. Mr. Reid indicated that the Port continues to have regular meetings with the East Bay Team that includes LOTT, Hands on Children's Museum, and the City of Olympia. The Port will also be gathering input from many other interested parties.

Commissioner Telford moved approval for the Executive Director to expand the scope of work for Contract No.2007-1 with Heartland, LLC in an amount not to exceed \$100,000.00 for a total authorization of \$212,000.00. Commissioner Barner seconded the motion. The motion was unanimously approved.

Agreed Order on Interim Berth Clean Up

Mr. Lincoln indicated that on August 25, 2008, Joanne Snarski provided an advisory to the Commission on this issue.

He reported that the Port of Olympia is working to cleanup contamination at the marine terminal berths 2 & 3 Site ("Site"). In January 2009, the Port is planning to perform a portion of the necessary maintenance dredging in front of berths 2 & 3. In 2006, the Port was required to do sediment characterization for dioxins in order to dispose of the material into an open water disposal site. The sampling results showed that the berth area sediment concentrations were above the background concentrations found at the Anderson-Ketron disposal site and therefore was not approved for open-water disposal. This decision by the Dredge Material Management Program required the Port to review and revise alternative sediment disposal options. Due to the elevated levels of dioxin (no other contaminants were found above cleanup standards) at the Site, the maintenance dredge project necessarily has a significant cleanup component that now requires involvement of the Toxics Cleanup Program at the Washington State Department of Ecology ("Ecology").

Mr. Lincoln indicated that the Port and Ecology are collaborating to finalize an Interim Action Agreed Order consistent with the Model Toxics Control Act ("MTCA") to accomplish the Infrastructure Project in compliance with MTCA cleanup Sediment Management Standards. The work will be conducted under an Interim Action Plan what will be attached as an exhibit to the Order. Although it is not part of this Agreed Order, the Port anticipates that Ecology will require additional sediment characterization to determine the extent of contamination around the berth area and develop a Cleanup Action Plan to address any additional areas of concern. We anticipate these negotiations to be initiated following completion of this Interim Action Plan.

Summary of Port Obligations Under the Interim Agreed Order:

- 1) Conduct the Berth Area Pilot Project consistent with the Interim Action Plan developed in coordination with Ecology, to be attached as an exhibit to the Order;
- 2) Perform pre- and post- construction sediment monitoring;
- 3) Conduct water quality monitoring during construction activities;
- 4) Prepare a final report that summarizes all data collected at the Site.

Mr. Lincoln noted that the current working estimate is \$5.5 million. The benefit of the agreed order is to allow the berth to be dredged sooner and the order under a MTCA project provides access to MTCA grants in the range of 50%.

Mr. Lincoln indicated that this project has been prioritized as the number one project for the past six months. Staff has been working diligently with the Department of Ecology. The Port Commission provided funding for the project in the bond sale.

Commissioner Telford asked Mr. Lincoln to explain the funding for this project. Mr. Lincoln indicated this order obligates the Port to complete this project. However, the funding will not be spent until 2009. We will be budgeting \$3 million dollars that was identified in the bond sale.

Commissioner Barner asked about the project moving forward in a timely fashion. Mr. Lincoln indicated staff is moving forward very quickly with this project and cooperatively with the Department of Ecology at this time.

Commissioner Barner moved to authorize the Executive Director to execute an Interim Action Agreed Order with Washington Dept. of Ecology concerning the Berth Area Dredging Pilot Project. Commissioner Telford seconded the motion. President McGregor complimented the Port staff for moving this project forward as this is no easy task. The motion passed unanimously.

Mr. Lincoln indicated that the Washington State Department of Health issued a report on the Health Consultation of Budd Inlet in July 2008. He provided the Commissioners with a copy of the report and noted the conclusions of the report as follows:

1. Dioxins and PCB's represents a "no apparent public health hazard" for children or adults exposed in a one-day-per-week or 52 days per year exposure scenario to contaminants present in sediments.

2. Dioxin represents a “no apparent public health hazard” for the general population and the Squaxin Island Tribe (children or adults) consuming bottom fish or shellfish in Budd Inlet.

Commissioner Barner asked that a link to this report be put on the Port’s website.

ADVISORY

Hydrogeologic Consultant Services Contract for East Bay Advisory

Mr. Lincoln indicated that staff issued a Request for Qualifications (RFQ) on August 21, 2008, for on call geologic consulting service order contract to be administered by the Port of Olympia Engineering Department to support planning, site testing and construction of the East Bay Infrastructure project.

He noted that the Port established criteria upon which a selection could be based. These criteria included that the firm or individual have demonstrated experience working in the Budd Inlet area with similar projects that involve analyzing monitoring wells, artesian wells, and other data to predict sources and quantities of ground water and construction effluent likely to be encountered during construction, as well as the ability to work with other scientists and engineers, DOE, Port staff and contractors to develop water treatment protocols and treatment equipment plans & specifications to comply with the NPDES individual permit process. Familiarity with local tidal influence, artesian wells, local soil conditions, and other sources of ground water in this area is essential.

Mr. Lincoln indicated that each on-call service order will be discussed to determine scope of work & deliverables; and the total contract will not exceed \$200,000.

He noted that the Request for Qualifications was issued to four consultants chosen from our consultant roster. Three of the firms submitted qualifications responses. A Port staff team of 3 members is currently reviewing and rating the submittals. Interviews may be conducted with 1 or more of the respondents, and a final selection will be made.

Mr. Lincoln reported that it is anticipated that Port staff will be requesting Commission authorization to award an Architectural/Engineering Services Contract for Hydrogeologic consulting services to the selected consultant, at the meeting of October 13, 2008.

PUBLIC COMMENTS ON ADVISORY ITEMS

Steve Wilcox commented on the rail crossings further south on Olympia streets. Mr. Jim Amador indicated that the gates on Market Street are on rails owned by the Port, but that the rails further south are owned by Union Pacific Railroad.

Richard Wolf commented about the conclusions in the Department of Health report. He indicated that he has been told that living on East Bay not to eat shellfish. Does this report only address Dioxin? Mr. Lincoln indicated that this report is only referring to Dioxins. There may be other risks and other contaminations to shellfish that would make eating shellfish risky.

ANNOUNCEMENTS

President McGregor announced that the Commission would hold a Work Session with staff on September 25th from 2:00 –4:00 p.m. and on October 8th from 1:30 – 4:00 at the Port Offices.

ADJOURNMENT

President McGregor adjourned the meeting of September 22, 2008 at 7:30 p.m.

PORT OF OLYMPIA COMMISSION

President

Vice President

Secretary-Treasurer