

EVERETT PORT COMMISSION  
REGULAR MEETING MINUTES  
May 14, 2019

|          |                 |                       |
|----------|-----------------|-----------------------|
| PRESENT: | Glen Bachman    | President             |
|          | Bruce Fingarson | Vice President        |
|          | Tom Stiger      | Secretary             |
|          | Les Reardanz    | Executive Director    |
|          | Eric Russell    | Chief Finance Officer |
|          | Brad Cattle     | Port Attorney         |

CALL TO ORDER: Commission President Glen Bachman called the meeting to order at 9:01 am.

**Recess to Executive Session**

Commission President Glen Bachman recessed the meeting into Executive Session at 9:02 am for approximately 60 minutes – to conclude by 10:00 am. Commissioner Bachman added that at 9:30 am, Port legal counsel will announce the progress of the Executive Session, and if it will conclude earlier than the anticipated 10:00 am timeframe. The purpose of the Executive Session is to discuss with legal counsel certain legal issues involved in an anticipated litigation matter for which discussion in the public meeting would disadvantage the Port District.

At the conclusion of the Executive Session, the regular business portion of the Commission Meeting will recommence; there may be action taken by the Commission based upon the matter discussed in the Executive Session, and there may be an announcement made.

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At 9:30 am in open session, Port legal counsel Brad Cattle announced that the Executive Session would be extended an additional 30 minutes – to conclude by 10:00 am.

At 10:00 am in open session, Port legal counsel Brad Cattle announced that the Executive Session would be extended an additional 15 minutes – to conclude by 10:15am.

The Regular Commission meeting was reconvened at 10:15 am.

CONSENT AGENDA

- Approval of Special Meeting Minutes of April 9, 2019;
- Approval of Bills – April 2019

Commissioner Tom Stiger moved to approve the items of the Consent Agenda. Commissioner Bruce Fingarson seconded the motion. A vote was called for:

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

Motion carried.

1. CEO/EXECUTIVE DIRECTOR'S REPORT

**July Commission Meetings**

CEO Les Reardanz reported that currently, the Port's commission meetings in July are scheduled for the 2<sup>nd</sup> and the 9<sup>th</sup> of July. Since the 2<sup>nd</sup> is just before the July 4<sup>th</sup> holiday, he asked the Commission to consider holding one meeting on July 9, 2019. Les Reardanz said he would bring back the matter during the June meetings.

**Washington Public Ports Association Environmental Award**

Les Reardanz announced that the Port of Everett has been awarded the Washington Public Ports Association (WPPA) Environmental Award for 2018. The award will be presented to the Port of Everett at the WPPA meeting on Friday morning and Erik Gerking will be at the meeting to accept the award along with the Commissioners. The award is for the effort that Erik led on managing the process

for getting the “go ahead” from the various regulatory agencies for the Marina dredging at the Port of Everett.

**Property Acquisition Discussion**

Les Reardanz said from the Executive Session, the Commission discussed property acquisition of the Kimberly Clark property and suggested they would like to set a date, time and place for a public meeting to discuss the possibility of using condemnation authority on the Kimberly-Clark property. Staff has drafted Resolution No. 1126 (2019) which is a Resolution that establishes the date, time and place for the public meeting to consider Planned Final Action for Acquiring Real Property by Condemnation, if necessary. Les Reardanz read the Resolution to the Commissioners and the public in attendance establishing that 1) Notice would be given that the Commissioners would at its regular public meeting on the 4<sup>th</sup> day of June, 2019 at 4:00 pm, consider taking the final action of authorizing legal proceedings, if necessary, to acquire by condemnation the real property interests in the Kimberly-Clark property identified by the parcel numbers set forth in Resolution No. 1126 (2019); and 2) The Port of Everett Executive Director and/or his designees is hereby authorized and directed to provide the notice as required by law for the public meeting to consider taking final action.

Les Reardanz recommended that the Commission move to approve Resolution No. 1126 (2019).

Upon discussion, Commissioner Bruce Fingarson moved that the Commission adopt Resolution No. 1126 (2019).

Commissioner Stiger inquired if there was a distinction between meeting and public hearing. Port attorney Brad Cattle asserted that the statute calls for a public meeting and that is why the resolution cites a public meeting. Les Reardanz added that at the public meeting, the public can come and provide input, and the property owner can make comments, etc.

Commissioner Tom Stiger seconded the motion. A vote was called for:

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

Motion carried.

**Events Overview**

Catherine Soper, Public Affairs Specialist, provided an overview of planned events at the Marina for 2019, including but not limited to the Sunday Waterfront Farmer’s Market beginning May 12, Music at the Marina Waterfront Concerts beginning June 20, July 4<sup>th</sup> Thunder on the Bay Firework Show, Classic Rock 4<sup>th</sup> of July Concert, Jetty Island Days beginning July 5, Sail-in Cinema Outdoor Movies beginning July 19, Fresh Paint Arts Festival, August 17-18, Wheels on the Waterfront Car Show August 24, Holiday on the Bay December 7 and others.

**2019 Community Sponsorships**

Catherine Soper reported that sponsorship requests received for 2019 totaled \$30,000, and the Port’s community sponsorship budget for 2019 is \$20,000. After reviewing and ranking the applications, Staff’s funding recommendations are as follows:

- Fresh Paint: Festival of Artists at Work - \$4,000
- Classic Rock 4<sup>th</sup> of July Concert - \$0 (in-kind only)
- Stars & Stripes Fourth of July Festival - \$10,000
- Mukilteo Lighthouse Festival - \$4,500
- Wheels on the Waterfront - \$1,500

After discussion, Commissioner Bruce Fingarson moved that the Commission authorize expenditure of the Port Commission’s \$20,000 community sponsorship

budget at the levels deemed appropriate for each sponsorship requestor, in the amounts as follows: \$4,000 to Fresh Paint; \$0 to Everett Music Initiative Classic Rock 4<sup>th</sup> of July Concert (in-kind only); \$10,000 to Everett's Stars & Stripes 4th of July Festival; \$4,500 to the Mukilteo Lighthouse Festival, and \$1,500 to Wheels on the Waterfront. Commissioner Stiger seconded the motion. A vote was called for:

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

Motion carried.

**Interlocal Agreement with Whatcom Transit: Purchasing**

Contracts & Procurement Administrator Maija Lampinen reported that Whatcom Transit Authority would like to establish an intergovernmental cooperative purchasing agreement with the Port of Everett. The agreement will establish the ability for either agency to use each other's eligible contracts in the future for operational needs as well as disaster recovery.

RCW 39.34 requires that the originating entity competitively bid the contract and include language allowing for other entities to utilize the contract. Cooperative contracts extend the same pricing and terms of the originating agencies' contract to the agency piggybacking on the contract. Benefits of cooperative purchasing are leveraging volume (economies of scale), delivery and supply chain advantages, best practices and reduction of administrative time and expense.

To utilize a particular contract, the procurement department will obtain copies of the solicitation documents, advertisements, award documentation and contract to ensure that it meets the Port's contracting requirements. Once the contract has been approved for use, the Port would work directly with the vendor to place the order. In the event of an emergency, the Port would most likely place the order with the vendor first and perform the due diligence after the fact

Upon discussion, Commissioner Tom Stiger moved that the Commission approve the Intergovernmental Cooperative Purchasing Agreement with Whatcom Transit Authority and authorize the Executive Director to sign the Agreement. Commissioner Bruce Fingarson seconded the motion. A vote was called for:

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

Motion carried.

**Interlocal Agreement with Whatcom Transit: Job Order Contracting (JOC)**

Maija Lampinen reported that Whatcom Transit Authority has additionally requested to piggyback on the Port's Job Order Contract with Forma Construction. The Port has sufficient contract capacity with Forma Construction to provide Whatcom Transit with their requested \$300,000 in contract capacity. The Port's current contract with Forma Construction expires March 30, 2020 with a one-year renewal option; therefore, Whatcom Transit would be able to utilize this contract through March 30, 2020 or March 30, 2021 if the Port renews Forma's contract. The Port would not need to provide any support for the contract once the interlocal has been approved.

Maija Lampinen explained that the Port has already provided Community Transit with \$1,000,000 and the City of Kirkland with \$1,000,000 of the Port's \$4,000,000/year contract capacity, and Port Staff anticipates that the Port will use less than \$1,000,000 this year, so there is sufficient contract capacity to assist Whatcom Transit Authority with their request.

After discussion, Commissioner Tom Stiger moved that the Commission authorize the CEO to sign the Interagency Agreement (Job Order Contracting with Forma Construction) with Whatcom Transit Authority. Commissioner Bruce Fingarson seconded the motion. A vote was called for:

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

Motion carried.

**Blue Heron Slough – Natural Resource Damage Consent Decree**

Environmental Director Erik Gerking reported that the Port is seeking authorization to enter into a Consent Decree with the U.S. Department of Justice (DOJ) and the Port Gardner Bay Trustee Council to settle Trustee claims for natural resource damages relative to the former Biringer Farms property on the east side of Highway 529 in unincorporated Snohomish County. The alleged natural resource damages are associated with the contamination found in the Port Gardner Bay area originating from historic industrial activities (Ecology cleanup sites). The Consent Decree represents the culmination of several years of intense work by many parties to reach a broad and comprehensive settlement between the Port and the Port Gardner Bay Trustees (Trustees), including the Tulalip Tribes, Suquamish Tribe, U.S. Department of Commerce acting through NOAA (US Fish and Wildlife), U.S. Department of Interior, and Washington State Department of Ecology. The Consent Decree settles all of the Port's natural resource damage liability for all of its past and current land holdings.

The Consent Decree also represents a ground-breaking achievement for the Port and its partner, Wildlands of Washington LLC (Wildlands), as it will facilitate the construction of Blue Heron Slough Conservation Bank – a 353-acre restoration site located in the Snohomish River estuary that will create a mosaic of channels, marsh, mud flat, and riparian habitats which will be reconnected to riverine and tidal influence by breaching existing agricultural dikes. When constructed, the bank will provide a significant environmental lift for the region, compensate the Trustees for all natural resource damage claims in Port Gardner Bay, and support future economic development activities for the Port and region for years to come through the additional environmental mitigation credits it will generate.

The Consent Decree requires the Port to guarantee the construction, monitoring, maintenance, and performance of the Blue Heron Slough project on certain timeframes, and the delivery bills of sale for mitigation credits equating to approximately 70 acres (20%) of the mitigation bank. The bills of sale are for the natural resource damages settlements of the Port, Navy, Kimberly-Clark, Jeld-Wen, and Weyerhaeuser. For the sales of credits to the non-Port settling parties, the Port and Wildlands will receive approximately \$4.7 million to put towards the project.

Under the Consent Decree, the Port has agreed to a total of 469.39 mitigation credits (32 acres) to resolve its alleged natural resource damage liability, worth a cash value of approximately \$4.6 million. In lieu of paying a cash settlement in this amount, the Port will deliver the 469.39 mitigation credits through the implementation of the Blue Heron Slough project. The Port will contribute \$725,080 to the construction effort and will receive the necessary 469.39 mitigation credits from the bank.

The requirements of the Consent Decree will be administered by the Port, and implemented by Wildlands through the parties' Mitigation Use Right Purchase Agreement (MUR) as amended. The Tulalip Tribes have agreed to hold the required conservation easement that will be filed on the deed of the property soon after the Consent Decree has been entered.

The terms of the Consent Decree are significant and the timelines are strict, including stipulated penalties and fees for missed deadlines, and in the extreme scenario, project implementation could be taken over by the Trustees for lack of

performance. The parties have worked to negotiate a Consent Decree that ensures delivery of the project consistent with the terms of the agreement with the Trustees, while allowing the Port (and Wildlands by extension) reasonable recourse for unanticipated issues.

The Consent Decree requires that construction be completed within 4 years of entry of the Consent Decree; intensive monitoring and maintenance for 10 years following construction completion, and less intensive monitoring and maintenance for 20 years following the 10-year establishment period.

Upon discussion, Commissioner Bruce Fingarson moved that the Commission authorize the Port to enter into the consent Decree for Natural Resource Damages in a form substantially as presented. Commissioner Tom Stiger seconded the motion. A vote was called for:

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

Motion carried.

**Fourth Amendment to Mitigation Use Rights Purchase Agreement (Wildlands)**

Erik Gerking reported that Port Staff seeks Commission authorization of the Fourth Amendment to the 2006 Mitigation Use Rights Purchase Agreement between the Port and Wildlands of Washington, LLC. The purpose of the Fourth Amendment is to align the Port and Wildlands Agreement consistent with the final terms of the Consent Decree. The parties had to account for additional settlement funds from the Navy that were not anticipated in an earlier Amendment. The Trustees and the Navy renewed their natural resource damage settlement negotiation, which resulted with the Navy being incorporated into the Port's Consent Decree with a requirement that they purchase 80 natural resource damage mitigation credits (DSAYs) from Blue Heron Slough for a total of \$789,840. The Fourth Amendment accounts for new settlement funds which resulted in changes in an equitable reduction of the Port's contribution to the construction costs, and an increase of Wildlands compensation for the construction and maintenance and monitoring escrow account.

Other items addressed in the Fourth Amendment unrelated to a Consent Decree alignment or Navy settlement include a time extension for Wildlands incentive to obtain the 404-wetland mitigation bank approval, and a mutual agreement between Wildlands and the Port that clarifies the costs for negotiating and implementing the terms of the Consent Decree are eligible costs for recovery under the waterfall distribution.

After discussion, Commissioner Bruce Fingarson moved that the Commission authorize the Port to enter into the Fourth Amendment to Mitigation Use Rights Purchase Agreement in a form substantially as presented. Commissioner Tom Stiger seconded the motion. A vote was called for:

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

Motion carried.

2. **INITIATIVE ONE: SEAPORT MODERNIZATION**

Deputy Executive Director Lisa Lefebber provided an update on the expected arrival of the cranes at the Port's terminals. The cranes are expected to arrive at the Port of Everett's Pier 3 on or about June 6 from the Port of Los Angeles. Port staff has been meeting with Port Gardner neighbors and providing notice to the neighbors about the arrival of the cranes via postcards. The Port has also notified its partners at Naval Station Everett and the city of Everett of the cranes expected arrival date. Staff has been working tirelessly to prepare the dock for the cranes arrival.

3. INITIATIVE TWO: WATERFRONT PLACE CENTRAL

Terrie Battuello, Chief of Business Development, reported the Biringers have been notified of their farm lease termination; Staff has been sending them termination notices for the past six months.

In the Waterfront Center Facility, Port Staff created a new exhibit commemorating the Cooperation Agreement that was entered into by and between the Port of Hiroshima and the Port of Everett on November 9, 2006.

The Hotel Indigo group is working hard on the hotel's opening – and they are leasing additional property for furniture, fixtures, and equipment for inside the hotel.

For the apartment project, the housing group (American Classic Homes) notified Port staff that they have not received their final commitment from HUD on their financing. American Classic Homes representatives have agreed to provide a progress report to the Commission at the June 4, 2019 Commission meeting. Of importance, June is the last month the housing group has to start the construction project before the Port considers a decision about whether or not the project should go forward.

Staff is also working on a parking management program for Waterfront Place Central. A Parking Oversight Committee has been formed and the Port is in negotiations with Diamond Parking Company to enforce the program. A \$2 parking fee will be implemented for all major events, including the Farmer's Market. Port staff has posted notices and distributed flyers about the parking fee. Staff will keep the Commission apprised of progress for the program.

**Commission President's Report**

Commissioner Bachman said that Julie Muhlstein of the Herald did a very nice story on the Biringers – the family that is moving out from the old berry farm. The article did not reflect any negativity on behalf of the Port of Everett.

**Commission Discussion**

Commissioner Fingarson thanked Erik Gerking and Staff for the incredible work on the Blue Heron Slough project.

**Citizen Comments**

There were no Citizen comments.


THE REGULAR MEETING WAS ADJOURNED at 11:40 am.

APPROVED this 11<sup>th</sup> day of June, 2019.

EVERETT PORT COMMISSION

By: 

Glen Bachman, President

  
Bruce Fingarson, Vice President

  
Tom Stiger, Secretary



Port of Everett

**Port of Everett**  
**Voucher Certification and Approval**  
**for the month of**  
**APRIL**  
**2019**


**ORIGINAL**


|  |   |    |                       |
|--|---|----|-----------------------|
| <b>Claims Voucher Nos</b>                  | <b>86761 - 86969</b>                            |    | <b>Total</b>          |
|  |   |    | \$4,908,495.07        |
| <b>Claims - PCard Transactions</b>         |   |    | \$60,195.25           |
| <b>Claims Electronic/Wire Transfers:</b>   |   |    |                       |
| 4/2, 4/3, 4/5, 4/8, 4/17, 4/19, 4/25, 4/26 | Electronic Transfer - Health Equity/Navia       |    | 12,794.08             |
| 4/2, 4/16                                  | Electronic Transfer - IRS                       | \$ | 189,547.51            |
| 4/23                                       | Electronic Transfer - WA St Dept of Rev         | \$ | 49,418.26             |
| 4/2  | Electronic Transfer - U.S. Bank                 | \$ | 6,459.34              |
| 4/25                                       | Electronic Transfer - ACH - Adv American Const. | \$ | 1,619,788.01          |
|  | <b>Total Claims</b>                             |    | <b>\$6,846,697.52</b> |
| <b>Payroll Voucher Nos.</b>                | <b>50019 - 50065</b>                            | \$ | <b>701,837.16</b>     |
| <b>Guardian - Dental Claims</b>            | <b>4/16, 4/19</b>                               | \$ | <b>10,319.84</b>      |
| <b>Payroll Wire Transfers:</b>             |   |    |                       |
| 4/2, 4/9, 4/16, 4/23, 4/30                 | PMA Payroll (Longshore Labor)                   | \$ | 132,991.64            |
|  | <b>Total Payroll</b>                            | \$ | <b>845,148.64</b>     |
| <b>Wire Transfers:</b>                     |   |    |                       |
| 4/1, 4/2                                   | Wire Transfer - US Bank LOC                     |    | 9,563.18              |
| 4/25                                       | Wire Transfer - LGIP                            |    | 2,000,000.00          |
| <b>Total Payments</b>                      |   |    | <b>\$9,701,409.34</b> |

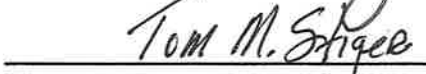
I, the undersigned, do hereby certify under penalty of perjury that the material have been furnished, the services rendered or the labor performed as described herein, that any advance payment is due and payable pursuant to a contract or is available as an option for full or partial fulfillment of a contractual obligation, and that the claim is a just, due and unpaid obligation against the Port of Everett and that I am authorized to authenticate and certify to said claim. Authorize signature

Attest:  \_\_\_\_\_ Port Auditor

We, the undersigned Commissioners of the Port of Everett, Snohomish County, Washington, do hereby certify the following vouchers/warrants have been certified and approved for payment this the 14th day of May, 2019:

 \_\_\_\_\_ President

 \_\_\_\_\_ Vice President

 \_\_\_\_\_ Secretary