

## MINUTES

*Tuesday, January 5, 2021*

### Managing Member Regular Meeting

Virtual/teleconference in accordance with Governor's Proclamation 20-28.

Dial in: 1 253 617 4257 | Conference ID: 467 507 334#

#### **CALL TO ORDER**

The meeting was called to order at 9:00 a.m. Port of Seattle Commissioners Stephanie Bowman, Ryan Calkins, Sam Cho, Fred Felleman and Peter Steinbrueck were all present. Port of Tacoma Commissioners Kristin Ang, Deanna Keller, John McCarthy, Dick Marzano, and Don Meyer were all present.

#### **RECESS TO EXECUTIVE AND FEDERAL MARITIME COMMISSION (FMC) CLOSED SESSION**

After calling the meeting to order, the Managing Members immediately recessed for an executive session pursuant to RCW 42.30.110(1)(i) and (iii) and a closed session as authorized under Federal Maritime Commission (FMC) regulations and related laws found at 46 U.S.C. section 40306, 46 C.F.R. section 538.608, 46 C.F.R. section 535.701(I)(1) and Port of Seattle/Port of Tacoma Discussion Agreement – Federal Maritime Commission Agreement Number 201228. The executive session lasted 58 minutes. The FMC closed session lasted 77 minutes.

#### **RETURN TO ORDER / PLEDGE OF ALLEGIANCE**

The Managing Members reconvened in public session at 11:30 a.m. Roll was called and all Commissioners were present. Commissioner McCarthy lead the Pledge of Allegiance.

#### **CHIEF EXECUTIVE OFFICER'S REPORT**

The Chief Executive Officer provided a summary of the agenda.

#### **LITIGATION AUTHORIZATION**

**It was moved and seconded** (McCarthy/Steinbrueck) to authorize and direct counsel for The Northwest Seaport Alliance to file suit on or before March 31, 2021, against CMA CGM America LLC CMA CGM SA and American President Line, LTD. to recover all amounts past due under the Terminal 5 lease termination agreement and the Terminal 18 conditional consent to sublease agreement.

**The motion passed unanimously.**

Discussion:

- Commissioner McCarthy stated that the NWSA is prohibited from lending credit, that the Port has the obligation to pursue all monies due it, are paid. The non-payment of the amounts owed have substantially impacted the budgets and disposable income of the NWSA and Homeports. He is encouraged to hear there is likelihood of resolution.
- CEO, John Wolfe, confirmed that the direction from the Managing Members if that the current negotiations continue to achieve an acceptable resolution on or before March 31, 2021.
- Commissioner Cho stated this is not a motion to file suite immediately. Rather it creates a timeline and that the hope and preference is to avoid litigation.

#### **CONSENT AGENDA**

**It was moved and seconded** (Ang/Keller) to approve the consent agenda:

- 3A: Approval of the minutes of the October 28, 2020 special meeting and the December 1, 2020 regular meeting.
- 3B: Approval of the payment of checks 707658 through 707729, and wire transfers in the total amount of \$15,315,793.69 during the period of November 14, 2020 through December 11, 2020.

- 3C: Authorization to extend the duration of the interlocal agreement with Washington State Department of Ecology regarding the 2018 Clean Diesel Grant from December 30, 2020 to June 2021.
- 3D: Authorization for the CEO to enter into the First Amendment to Access Agreement with Central Puget Sound Regional Transit Authority.

**The motion passed unanimously.**

**PUBLIC COMMENT**

- Brad Buckhalter, Gordon Thomas Honeywell, legal counsel for Associated Petroleum Products, Inc. (APP). Submitted written comments dated 12/21/2020 setting forth legal positions related to the Associated Petroleum Products, Inc. Lease at Terminal 115. Provided comments in support of the same (Agenda item 5A).

**ACTIONS**

**5A. SECOND READING: APP LEASE AT TERMINAL 115**

*Presenter: Curt Stoner, Senior Real Estate Manager*

**It was moved and seconded** (Cho/Marzano) to authorize the CEO or his delegate to sign the lease with Associated Petroleum Products, Inc. to operate an automated commercial vehicle fueling facility at Terminal 115.

**The motion passed unanimously.** (*Commissioner Ang was not present for the vote*)

**Discussion**

- Staff acknowledged the concerns raised by commissioners at first reading of this lease. Specifically, holdover status should be rare and, in the future, the Managing Members should be consulted first, requests should include back rent, consider how tenant improvements should be valued in determining fair market rent in the future.
- Commissioner Felleman commented regarding the environmental monitoring of the site and whether the lease sets forth who is responsible in the event there are changes. He noted that holding tanks are notorious for leaking and asked who is responsible. Staff responded that APP is not responsible for contamination before March 2014. Current or future contamination would be the tenant's responsibility. Jennifer Maietta, Interim Director of Alliance Real Estate noted that a baseline was produced by the Port of Seattle. Jason Jordan, Director of Environmental Programs, also noted that legacy contamination is an obligation of the Homeport (vs. the NWSA) he added that petroleum ages and with simple analysis is easy to determine whether the contamination is old or new.
- Brad Buckhalter, Gordon Thomas Honeywell, legal counsel for Associated Petroleum Products, Inc. (APP) agreed with staff's comments regarding the tenant's environmental obligations.

**5B. PROJECT AUTHORIZATION FOR WUT ADMIN AND MARINE BUILDING ROOF PROJECT**

*Presenter: Hughes Wike, Environmental Project Manager II*

**It was moved and seconded** (Meyer/Bowman) to grant project authorization in the amount of \$366,121 for a total authorized amount of \$440,000 for the WUT Admin & Marine Building Roof Project, Master Identification No. 201111.01.

**The motion passed unanimously.**

## Discussion

- If authorized, staff will proceed with advertising the contract and reviewing bids.
- Commissioner Felleman noted that project is a lease obligation and that the reason it is before the Managing Members is because the project is expected to exceed the original cost estimate.
- Staff confirmed that the expected life of the roof was 20years. To experience leakage now is not unexpected.

## 5C. FEDERAL AGENDA APPROVAL

*Presenter: Ryan McFarland, Federal Government Relations Manager*

**It was moved and seconded** (Bowman / Meyer) to approve the NWSA 2021 federal government affairs agenda, including the changes in language to the Harbor Maintenance Tax item as presented, and the changes proposed by Commissioners Felleman and Meyer. *(see amended language below)*

**The motion passed unanimously.**

## Discussion

- Staff included an overview of the 2021 political outlook as part of their presentation.
- Staff revised the requested revisions regarding Harbor Maintenance Tax (HMT) Reform since submitting the materials for this meeting. After materials were submitted, the Consolidated Appropriations Act of 2021 was signed into law by President Trump. It included the Water Resources Development Act of 2020, which included the major HMT reform measures the NWSA has been pursuing for years. Staff highlighted two items. 1. Donor Ports will receive 8% HMT Fund revenues beginning late 2022. 2. The HMT rebate program authorized under Section 2106 of the 2014 Water Resources Reform and Development program will continue and continue at increased levels. These two items meant eh NWSA is expected to receive approximately \$35 million to \$45 million annually. So the priority will be to keep up the work during implementation and defend progress made.
- Commissioner Felleman suggested revising the proposed language regarding Puget Sound Restoration as follows:

Puget Sound Restoration – Advocate for increased federal resources for Puget Sound and Southern Resident Killer Whale (SRKW) restoration, including funding to support habitat restoration and other strategies to sustain Chinook and other species critical to SRKW recovery and to reduce underwater noise from ships. ~~To help e~~ Cleanup legacy sources of contaminants ~~that affect SRKW~~ and to manage stormwater runoff. Support appropriations for the Puget Sound Nearshore Ecosystem Restoration Project, the National Estuary Program, the Puget Sound Geographic Program, and the Pacific Coastal Salmon Recovery Fund. Support reforms to federal regulatory processes to speed the approval and creation of NWSA and home port habitat sites.
- Commissioner Meyer suggested revising the proposed language regarding federal permitting as follows:

Federal Permitting – Support increasing regulatory staff funding for the U.S. Army Corps of Engineers, NOAA Fisheries and the U.S. Fish and Wildlife Service in order to reduce permit backlogs. Federal regulatory and permitting regimes should be applied consistently across the country. Significant modifications to the federal permitting regulations should be made only through an act of Congress or a formal rulemaking process. The NWSA opposes changes to the process for permitting projects that jeopardize the ports' ability to fulfill their economic, environmental, and ~~social~~ financial missions.

## **GENERAL BUSINESS**

### **6A. MANAGING MEMBER WORK GROUPS:**

Commissioners discussed the categorization of topics to be addressed in the various work groups. Combining of groups, and makeup of those groups.

The Audit Committee and six work groups were proposed. Certain previous work groups/topics were consolidated. The six proposed work groups are as follows:

1. Environment/Sustainability
2. Growing the Gateway
3. Internal Governance / Budget and Finance
4. Legislative / Gateway Competitiveness
5. Tribal Liaisons
6. Orca Task Force

Commissioners will review the workgroups and let staff know their preferences over the next couple of weeks. Commissioner Felleman would like to see strides to have the work group reports as a regular part of the Managing Member meetings.

### **6B. ANNOUNCEMENT, EVENTS, RECOGNITION**

CEO Wolfe provided a highlight of some of the 2020 NWSA accomplishments. A comprehensive list was provided to commissioners and included in the published materials.

CEO Wolfe highlighted the following:

- Implementation of the inland rail solution in Minot.
- IPI Rail incentive program which has resulted in additional discretionary cargo through the gateway.
- HMT reform.
- Collective effort of team resulting in the awarding of a \$10.5 million grant federal for Terminal 5 redevelopment and a \$10 million state level grant for shore power and stormwater.
- Green gateway initiative.
- TPU/Tacoma Rail partnerships
- Ability to keep the gateway moving due to the safe and effective practices of ILWU, labor, security, and other teams that cannot work from home during the pandemic.

Commissioner Steinbrueck reflected on 2020. Of note was the NASA's influence on the West Seattle Bridge issue. He is looking forward to 2021 opportunities.

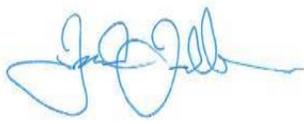
Commissioner McCarthy also reflected on 2020 focusing on items of internal governance. He noted progress on work groups, legislative and other significant issues. He is particularly proud of the work on the budgets and CPI noting there is a better understanding of the budget and interrelation between the NWSA and the Homeports.

### **6C. COMMISSIONER COMMENTS**

Commissioners provided brief comments reflecting on the past year and expressing enthusiasm for 2021. The co-chairs, executive leadership and staff were all thanked for their work during this most unusual year.

## **ADJOURNMENT**

With no further business before the Managing Members, the meeting adjourned at 1:34 p.m.



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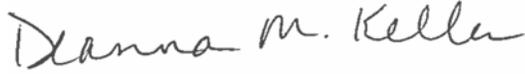
Fred Felleman, Co-Chair  
The Northwest Seaport Alliance



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Dick Marzano, Co-Chair  
The Northwest Seaport Alliance

ATTEST:



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Deanna M. Keller, Co-Secretary  
The Northwest Seaport Alliance



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Juliet Campbell, Clerk  
The Northwest Seaport Alliance



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Sam Cho, Co-Secretary  
The Northwest Seaport Alliance