



1. CALL TO ORDER

Commissioner Marzano called the meeting to order at 9:00 a.m.

Roll was taken and a quorum confirmed.

Port of Seattle Commissioners:

Stephanie Bowman – 9:06 a.m.
Ryan Calkins – Present
Sam Cho – Present
Fred Felleman – Present
Peter Steinbrueck – Present

Port of Tacoma Commissioners:

Kristin Ang – Present
Deanna Keller – Present
John McCarthy – Present
Don Meyer – Present
Dick Marzano – Present

2. EXECUTIVE SESSION

The Managing Members immediately recessed into executive session pursuant to RCW 42.30.110(1)(i)(i) to discuss with legal counsel three items relating to litigation or potential litigation to which the agency is a party when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency. The executive session lasted one hour and 20 minutes. No votes or actions were taken during executive session.

3. CLOSED SESSION - FMC

Immediately following executive session, the NWSA Managing Members, Port of Seattle and Port of Tacoma, held a closed session pursuant to Federal Maritime Commission (FMC) regulations and related laws found at 46 U.S.C. § 40306; 46 C.F.R. §535.608; and 46 C.F.R. 535.701(i)(1) and as authorized by Port of Seattle/Port of Tacoma Alliance Agreement – Federal Maritime Commission (FMC) Agreement No. 201228. The closed session lasted one hour. No votes or actions were taken during this closed session.

4. RETURN TO ORDER AND FLAG SALUTE

The Managing Members reconvened in public session at 11:32 a.m. Roll was taken and a quorum confirmed.

Port of Seattle Commissioners:

Stephanie Bowman – Present
Ryan Calkins – Present
Sam Cho – Present
Fred Felleman – Present
Peter Steinbrueck – Present

Port of Tacoma Commissioners:

Kristin Ang – Present
Deanna Keller – Present
John McCarthy – Present
Don Meyer – Present
Dick Marzano Present

Commissioner Marzano led the Pledge of Allegiance.

5. CHIEF EXECUTIVE OFFICERS REPORT

- CEO, John Wolfe, summarized items on the agenda.
- Commissioner Keller reported that the NWSA Audit Committee voted to recommend the contract with the NWSA's external auditors, RSM US LLP, be extended for one year. This is due primarily to RSM's history and knowledge of the NWSA's organization. Staff will issue Request for Proposal for the Homeport auditors this fall when vetting can take place face to face.

- Thais Howard provided a report on a Notice of Emergency Declaration issued May 9, 2021 regarding the CanAm warehouse located at 3701 Taylor Way. Consultants and staff on sight for a separate project notices the damage. After further evaluation, the part of the building with the damaged trusses was deemed unsafe to be occupied. A contractor has been hired to provide temporary bracing. Even with the temporary bracing the damage appears to be worsening. There is not guarantee the building can be saved. The NWSA Engineering and Commercial teams are working with the tenant on next steps.

6. CONSENT AGENDA

Darren Arakaki, Director, Accounting and Port Auditor, provided clarification regarding item 6C. The Homeports have both elected to extend the contracts of their Homeport Auditors. Later this year, they will both issue Requests for Proposals (RFPs) for auditors of their respective Homeports. Then, the NWSA will issue an RFP for its auditor, which will be limited to the auditors selected by the Homeports.

It was moved and seconded (Meyer/Cho) to approve the consent agenda consisting of:

- 6A. Approval of the minutes from April 16 and May 4, 2021.
- 6B. Approval of the payment of checks 708159 through 708258, and wire transfers in the total amount of \$35,335,642.72 during the period of April 17, 2021, through May 14, 2021.
- 6C. Authorization to extend contract 070369 for financial audit services with RSM US LLP for one year in the amount of \$77,000 for a total contract value of \$322,500 for six years.
- 6D. Authorization for the CEO or his delegate to increase the contract amount and spending authorization for support services for the 2020 Industrial Stormwater General Permit Appeal project.

The motion carried unanimously.

7. PUBLIC COMMENT

None.

8. ACTION

- A. Maintenance Dredging at Piers 3 and 4 and Washington United Terminals (WUT)
Presented by Tom Bellerud, COO and Norman Gilbert, Engineering PM II

It was moved and seconded (McCarthy/Keller) to grant project authorization in the amount of \$747,900 for a total authorized amount of \$895,500, for work associated with the Maintenance Dredging at WUT, MID 201114.01; and in the amount of \$326,600, for a total authorized amount of \$384,000, for work associated with the Maintenance Dredging of Piers 3 and 4, MID 201114.02 for a combined project authorization of \$1,279,500.

The motion passed unanimously.

Discussion:

- Commissioner Meyer inquired about Evergreen Terminal and whether similar action will be needed and whether permits were being sought for that project. There are high spots at Evergreen/PCT. They were initially part of the permitting process. Sediment sampling showed dioxin levels in the sediment

that would not allow for open water disposal. Evergreen was removed from this project so staff could move forward with Husky and WUT which had a more imminent need for dredging as we worked through the process with the sediment at Evergreen/PCT.

- Commissioner Felleman asked when the last sampling was conducted. The most recent sampling was conducted in August 2020 as part of the permit effort. He asked whether there was a cap, or if this area was associated with the Superfund site. Jason Jordan, NWSA Director, Environmental and Planning Programs confirmed there is no cap, and no environmental restrictions or legacy contamination in this berth area. He added that at one time all of Commencement Bay was a Superfund site. The Blair waterway, in this portion has been delisted.
- Commissioner Marzano asked whether there are mitigation requirements for this project. Staff reported that mitigation is part of the issue that has delayed the permits. Staff is currently negotiating with the agencies and hopes that this will be resolved by the end of the month. The NWSA's position is that this is a baseline condition that no to minimal mitigation should be required.

B. First Amendment to Terminal 5 (T5) Term Lease Agreement

Presented by Dana Henderson, NWSA General Counsel

It was moved and seconded (Cho/Ang) to authorize the Chief Executive Officer to enter into and execute the First Amendment to the Terminal 5 Term Lease Agreement in substantially the same form as presented.

The motion passed unanimously.

Discussion:

- The three main issues in the proposed lease amendment were presented including crane delivery and related expectations, the gatehouse complex, and stormwater treatment system costs. The issues to be resolved and the proposed solutions were described.
- The amendment was requested by both parties. It is largely necessitated due to the timing of completion of Phase 1 against the delivery of cranes to T5, and the opening of T5 in January 2022.
- Significant crane delivery delay expenses could result if the amendment is not authorized. Approximately \$3000 / per day / per crane. Additionally, SSA could delay operations at T5 due to conditions of the gatehouse and without the amendment, the question of responsibility for excess stormwater treatment system cost beyond \$30 million remains.
- Commissioner McCarthy commented that in the original lease, SSA was obligated to use the existing gatehouse with whatever operational deficiencies it had. The lease did not contemplate building a new gatehouse at a cost of \$10+ million. He noted that SSA will benefit from the operational use of a new facility and will likely have input into the design and construction. That being the case, he asked whether SSA is providing additional consideration. NWSA legal counsel confirmed that there would be no additional financial consideration. That SSA would be partners in developing how that works and work through the transition from the old to the new gatehouse.
- Commissioner Meyer asked what the original assumption was as to when lease payment would begin versus what this lease amendment proposes, and the amount the NWSA is losing in lease payments. He also asked how this lease impacts the cost of the program.
- Before staff responded to Commissioner Meyer's questions, Legal counsel informed that in the existing lease, there would be a 60-day delay between crane deliver and lease commencement. With the amendment, crane delivery

is phased in such a way that cranes are able to be commissioned before the work is complete. Lease payments will begin January 2022 as soon as Phase 1 work is complete.

- Staff responded to Commissioner Meyers question regarding cost. Staff is still tracking project costs for the NWSA to be \$380 million. The original cost to the NWSA was assumed to be \$340 million.
- This action has not caused loss of revenue. Other actions have caused delays in the starting of revenue, for example engineering issues with the toe wall.
- Commissioner Meyer commented that a new gatehouse will help in terms of truck queueing.

C. First Reading – Resolution 2021-07, Third Amendment to The Northwest Seaport Alliance Bylaws

Presented by Dana Henderson, NWSA General Legal Counsel

It was moved and seconded (Keller/Meyer) to approve first reading and advance to a second reading, Resolution 2021-01 adopting proposed Third Amendment to NWSA Managing Member Bylaws.

The motion passed unanimously.

Discussion:

- Staff presented proposed housekeeping amendments to the NWSA Bylaws.
- The proposed amendments are:
 - To move public comment earlier in the Order of Business, before the consent agenda.
 - To move executive session earlier in the Order of Business, immediately following the Call to Order.
 - To change the regular meeting start time to reflect as start time of 11:30 a.m., when there is to be an executive session or closed session under 46 U.S.C. § 40306; 46 C.F.R. §535.608; AND 46 C.F.R. §535.701(I)(1) and as authorized by Port of Seattle/Port of Tacoma Alliance Agreement – Federal Maritime Commission (FMC) Agreement No. 201228 (FMC Session) is to be held, the regular meeting may convene at 9:00 a.m., immediately recess into executive and/or FMC Session that shall be closed to the public, after which the public session shall reconvene at 11:30 a.m.
 - To provide that if the regular meeting date falls on a legal holiday or on the day after a Monday regular holiday the meeting will be held on the next regular business day.
 - To change the verbiage from Sub Committees to Work Groups to align the Bylaws with current practice.
 - To update reference to Robert’s Rules of Order, Revised (5th Anniversary Edition) to reflect that except as the Managing Members shall otherwise approve, proceeding shall generally follow the rules contained in the current edition of Robert’s Rules of Order Newly Revised.
- Commissioner Meyer supports the amendments.
- Commissioner Keller suggested review by the Internal Governance Work Group as there may be other amendments the Managing Member Commissioners want. She added that she sees value in keeping minutes for committees and work groups.
- Commissioner Bowman, agreed with Commissioner Keller regarding minutes of work groups. She suggested changing Public Citizens’ Comments to Public

Comments to acknowledge there are non-citizen residence that provide valuable input.

- Commissioner Ang commented that conversations in work groups could be of a more sensitive nature. Minutes, if taken, should be general.
- Commissioner Calkins commented that he likes the conversation in this setting and suggested further discussion by the Internal Governance Work Group. He commented that creating an additional high bar to work groups creates a need for additional staffing support. He would like the Internal Governance Work Group to reflect on that particular consideration and on whether it is beneficial to raise work groups to the level of committee, knowing no decision can be made at those meetings and that any recommendation would be made in a full public setting.
- Commissioner Marzano would like to have minutes at work groups.
- Commissioner Meyer endorsed Commissioner Calkins' comments regarding work groups noting the possibility for sensitive topics.

D. Authorization of Defense and Indemnification for Individual Employee

Presented by Dana Henderson, NWSA General Legal Counsel

It was moved and seconded (Keller/Ang) that the Managing Members find that NWSA Deputy CEO, Don Esterbrook, was at all times relevant to the matters at issue, acting in good faith and within the course and scope of his employment by, and engaged in activities on behalf of, the Port of Tacoma and/or The Northwest Seaport Alliance, and further approve Mr. Esterbrook's costs of defense, attorney's fees, and any obligation for payment arising from the following lawsuits from the NWSA's funds: *Puget Soundkeeper Alliance v. APM Terminals Tacoma, LLC*, U.S. District Court of the W.D. of Washington, Cause No 3:17-cv-05016 and/or *APM Terminals Tacoma, LLC v. Esterbrook*, U.S. District Court for W.D. of Washington Cause No. 3:21-cv-05392, all subject to and consistent with the terms of RCW 53.08.208 and RCW 53.57.020(2)(c).

The motion carried unanimously.

Discussion:

- Item 8D was walked on with the permission of the presiding co-chair.
- Commissioner McCarthy stated it is appropriate to undertake the actions in terms of the cost of defense and indemnity. With regard to the Managing Members being asked to make a specific finding, he commented that any finding is based on the on information provided and what are understood to be the facts at the time.
- Legal counsel stated that the acts at issue were performed with full authority, in good faith, in the course and scope of employment, and in the furtherance of The NWSA's interests. In her legal opinion, the facts provide the underpinning of the legal finding that an employee acted in good faith under the RCWs presented for expenses of defense and indemnity.
- Commissioner Keller stated the Managing Members fully support employees working in good faith. She cautioned those out there from going after NWSA or Homeport employees as a bullying tactic.
- Commissioner Calkins stated that if the NWSA were to not vigorously defend its employees, that it would create a chilling effect where employees are concerned that when acting with authority and with full faith of the Managing Members and executive leadership, the put themselves at risk. The Managing Members need to communicate clearly that employees do not put themselves at risk and they will be defended. The Managing Members will attempt to make clear that external parties filing lawsuits like this is a waste of time and money on their part. He commented that Mr. Esterbrook could easily be in

private enterprise making more money, but he values public service. He has chosen public services as a career and this should be encouraged.

- Commission Ang supports very aggressive litigation as she feels suing the NWSA individually has crossed a line. By doing so they are undermining the Managing Members and harassing staff. She stated will not be tolerated.
- Commissioners Meyer and Felleman also expressed their support.

9. GENERAL BUSINESS

- A. Gateway Operating Performance. CEO Wolfe provided a status of gateway performance. Currently there are six vessels at anchor in the North Harbor waiting to call at Terminal 18. There are several reasons for the anchorages. Drivers of the situation include unprecedented volumes moving from Asia to the United States for this time of year. Heavy volumes are expected to continue until at least the third quarter, possibly into early next year. Also, the supply chain is feeling congestion at the inland hubs. Full, inbound trains are sitting, waiting to be discharged at the terminals causing dwell time growth.

This gateway has temporary relief using Terminal 5 in partnership with SSA and Labor. T5 has 2000 rail containers waiting for rail cars to be delivered to the SIG yard (or T18). Also, T5 is holding about 1300 empty containers that will ultimately find their way either to dispatch for an export load or a dray to T18 to a vessel for export. There are currently about 20 refrigerated export loads at T5 to be drayed to T18 as well. A similar temporary operation is being planned at Terminal 46.

Labor force is frustrated because they are not getting the number of working hours they normally would be due to the congestion.

Railroads are working the other end of the supply chain to free up rail cars to get them back to the NWSA gateway. CEO Wolfe reports that the BN and UP are taking steps with the ocean carries to find ways to get closer to a total match back.

Exporters continue to struggle because they don't have adequate windows for delivery to the terminals to meet up with vessels. Additionally, vessels are sometimes skipping port calls. The NWSA is providing space to exporters closer to the terminals.

Managing Member Commissioners were recently provided with the NWSA's proposed annual update to its tariff. Staff believes the tariff is more than adequate to cover the increase cost.

The potential merger/acquisition of the now CN Railroad and the Kansas City Southern Railroad. The time for response will be sometime early Fall. The NWSA is having conversations with its counterparts through the West Coast Coalition, and with rail partners and industry partners to get a sense of what this might mean competitively.

The PMA ground lease and office space lease at Terminal 46 were recently approved by the Managing Members. The crane use agreement at T46 is very close to having the crane agreement in place. PMA would like to sign the ground and office lease at the same time as the crane agreement. The remaining issue surrounds best management practices and surrounding potential issues triggering an ISGP.

Senators have reached out regarding earmarks for projects. Staff evaluated the criterial and recommend earmark for the South Harbor Banana Yard Rail Switch Area. The Banana Yard is major rail infrastructure in the Tacoma Tideflats where large trains can be received and held. The switch gear is failing. This project is in the CIP and any funds

received would offset costs. Although, the Banana Yard is a Port of Tacoma project, it has significant benefit for the NWSA.

The Port of Tacoma will be standing up an off dock facility at the former log dock area. That may later shift to an area around Terminal 7.

The temporary use of Terminal 46 for outgoing cargo is anticipated to be available the third or fourth week of June.

GLOVIS remains interested in consolidating its business. They are evaluating the opportunity and talking their existing customers about shared use of the facilities. The NWSA should know more in the next two to three months.

The Managing Members hope to have in-person meetings beginning July. Return to work discussion continues.

Commissioner Bowman emphasized the need to solve congestion problems in the North Harbor; the system is failing. She commented that it is counterintuitive that we have ships at anchor and people not working. She noted the impact of congestion to the community around Harbor Island. The NWSA wants to take advantage of the struggles Southern California and bring that cargo to this gateway and provide exceptional service. The NWSA is not providing that exceptional service.

Commissioner Felleman suggested considering the viability of using Terminal 46. Though cheaper for the vessels to sit at anchor, there is berth sitting vacant. He noted impact to the gray whales, and also that crab season opens for certain tribes on Thursday. Staff is evaluating the opportunity to reduce anchorage in sensitive areas by using underutilized areas. While there may be higher cost, pilotage may be more. Staff is working with vessel agents to see how the NWSA can accommodate vessels.

Commissioner Felleman added possibility of using Terminal 91 and noted that if and when cruise may arrive, they may seek to sit an anchor as well. He noted in addition to designated anchorages with limited use time, there are non-designated anchorages that are deemed safe, but not the map. The NWSA should consider anything it has available in the near future to alleviate the issue, understanding that there are other commercial priorities as well. The community should know the NWSA is doing all it can to reduce the negative impacts.

B. Commissioner Comments

Commissioner Ang wished a happy pride to all and especially her fellow LGBTQ. She thanked Lou Paulsen, Director, NWSA Strategic Operations Projects and Risk Management, The NWSA coordinating team, Discovery Health, Tacoma Seafarer Center and Mission to Seafarer Seattle for helping vaccinate seafarers and closing the vaccine equity gap. Seafarers are an important part of our supply chain. They often come from countries ravaged by coronavirus and lack access to vaccines. During this pandemic, seafarers have experienced a lot more than usual. They've served us and they deserve the opportunity for the shot.

Commissioner Keller thanked all the veterans, active duty service members and those that gave their lives for our great country. She commented that NWSA seeks to serve them as by ensuring goods and services are shipped to their family members and as strategic ports in the gateway.

Commissioner Felleman commented on Lynda Mapes article on the Killer Whale. He wished all a happy orca month. He noted the photography showed whales off the Port of Tacoma. He noted the role the ports play in transforming the habitat and doing their best to address what ports can to benefit the recovery of the killer whales and looks forward to more efforts to that cause.

Commissioner Marzano thanked staff of all their work.

10. ADJOURNMENT

There being no further business, the meeting adjourned at 1:15 p.m.



Fred Felleman, Co-Chair
The Northwest Seaport Alliance

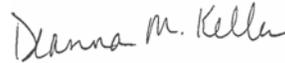


Richard Marzano, Co-Chair
The Northwest Seaport Alliance

ATTEST:



Sam Cho, Co-Secretary
The Northwest Seaport Alliance



Deanna Keller, Co-Secretary
The Northwest Seaport Alliance



Juliet Campbell, Clerk
The Northwest Seaport Alliance