



MANAGING MEMBER REGULAR
Port of Seattle and Port of Tacoma Commissions Special
Wednesday, January 4, 2023
9:30 AM FMC Closed Session
11:30 AM Open Public Meeting
Fabulich Center 3600 Port of Tacoma Road, Tacoma, Washington
and streamed live at nwseaportalliance.com

1. CALL TO ORDER

Co-Chair Deanna Keller called the meeting to order at 9:30 a.m.

Port of Seattle Commissioners Present:

Ryan Calkins
Sam Cho
Fred Felleman
Toshiko Grace Hasegawa
Hamdi Mohamed

Port of Tacoma Commissioners Present:

Kristin Ang
Deanna Keller
John McCarthy
Dick Marzano
Don Meyer

2. RECESS CLOSED FEDERAL MARITIME COMMISSION SESSION

Immediately after calling the meeting to order, the Managing Members recessed for a closed and confidential session authorized under Federal Maritime Commission (FMC) regulations and laws pursuant to 46 U.S.C. § 40306, 46 C.F.R. § 538.608, 46 C.F.R. § 535.701(I)(1) and as authorized by Port of Seattle/Port of Tacoma Alliance Agreement, FMC Agreement #201228. The closed session was expected to last two hours. It was extended by 20 minutes.

3. RETURN TO ORDER

The Managing Members, Port of Seattle and Port of Tacoma Commissions reconvened in public session at 11:57 a.m.

4. FLAG SALUTE

The Pledge of Allegiance was recited.

5. REPORT BY CHIEF EXECUTIVE OFFICER

CEO, John Wolfe provided an overview of the action agenda. Assistant Director of Engineering of the Port of Seattle, Joanna Hingle, briefed the Managing Members regarding the December 28, 2022 emergency declaration by the Port of Seattle and the NWSA associated with Pier 17. Pier 17 is a Port of Seattle owned asset leased to the NWSA. The declaration was made in accordance with the Revised Code of Washington and allows expedited contracting for immediate repair work. That work is budgeted at approximately \$812,000. A separate but associated non-emergency, project will be needed in the future to secure the infrastructure long-term. A very rough estimate of that project budget is \$8 million.

6. PUBLIC COMMENT

Harold Ugles, President Local ILWU 19 informed the Managing Members of comments submitted in response to the U.S. Coast Guard's EIS and restated the ILWU's position of accommodating the Coast Guard with no net loss of cargo space at Terminal 46. He commented that additional scoping is needed and referred Managing Members to the Suquamish Tribe's comments.

7. WORK GROUP REPORTS

None.

8. CONSENT AGENDA

- A. Approval of the minutes of November 7 and December 6, 2022
- B. Approve the check certification approving the payment of checks 710444 through 710556 and wire transfers in the total amount of \$13,270,316.32 for the period of November 19, 2022 through December 15, 2022.
- C. Authorize the First Amendment to contract 071641 with Phillips Burgess Law adding \$50,000 to the contract authorization.

It was moved and seconded (Cho/ Mohamed) to approve the consent agenda.
The motion passed unanimously.

9. ACTIONS

- A. **Dual Action Port of Tacoma/NWSA:** Thorne Road Interlocal Agreement (ILA)
Presenter: Andree Elmaleh, Sr. Manager, Commercial

The NWSA is seeking to lease property owned by the Port of Tacoma, the “Thorne Road Property” to support its growing automobile line of business, accommodate expanding domestic rail business and to maximize use of the South Intermodal Yard.

It was moved and seconded (Meyer/McCarthy) that the Managing Members of the NWSA and the Port of Tacoma Commission, authorize their respective CEO and Executive Director, or their delegates, to enter into an interlocal agreement between the Port of Tacoma and the NWSA for the “Thorne Road Properties” in substantially the same form as presented. The ILA will memorialize compensation to be paid by the NWSA to the Port of Tacoma for its use and that it is the parties’ intention that the NWSA’s use is revenue neutral to the Port of Tacoma.

Discussion:

- Staff confirmed that the NWSA would be paying to lease the property from the Port of Tacoma for its use, not to compensate the Port for lost revenue from the lease payments of displaced tenants.
- Port of Tacoma Commissioner McCarthy commented that the Port, by leasing to the NWSA will experience a loss due to impacts to Distributable Cash.
- Commissioners Meyer and Ang commented that they support the ILA as they want the NWSA to succeed, however would not be support the action if it were long term. The lease terms are month-to-month and the ILA expires December 31, 2023 (unless earlier terminated).

The motions passed unanimously for the NWSA Managing Members and Port of Tacoma Commission.

Commissioners Keller and Felleman were excused at 12:37 p.m. Commissioner Ang chaired the remainder of the meeting.

B. Dual Action Port of Seattle/NWSA: Terminal 46 Substation No. 1 Replacement Request for Additional Funds and Bid Irregularity.

Presenter: Arthur Kim, Capital Program Manager III, Port of Seattle

In May 2022, NWSA approved alternative delivery design-build for Terminal 46 Substation No. 1 Replacement for with an overall project budget of \$6,700,000. The bid is greater than 10% above the engineer's estimate and the current project budget is not sufficient to complete the project. Substation No.1 benefits both the NWSA and Port of Seattle. This is one of the first design-build projects in the North Harbor and it consists of two components; substation replacement and replacement of a Seattle City Light transformer. Reasons given for the increase in cost include delays caused by massive staffing shortages at Seattle City Light, lead times of 18-24 months and phasing of the project. Staff noted that phasing typically increases costs by 15-20% but that Managing Members can expect the increase to be higher due to current market and escalations. The cost split between the NWSA and Port of Seattle is 80-20 respectively; \$6,400,000 and \$1,600,000.

It was moved and seconded (Cho/Mohamed) that:

the NWSA grant an increased project authorization in the amount of \$1,300,000 for a total authorized amount of \$8,000,000, 20% of which is to be allocated to the Port of Seattle (POS) for the replacement of Substation No. 1 located on Terminal 46 servicing both areas of Terminal 46 licensed to the NWSA and the Terminal 46 North Pier under Port of Seattle management, Master Identification No. U00671; and

the Port of Seattle Commission grant authorization for the Executive Director or their delegate to increase the total costs not to exceed from \$1,340,000 to \$1,600,000 for reimbursement to the NWSA for the replacement of Substation No. 1 located on Terminal 46 licensed to the NWSA and the Terminal 46 North Pier under Port of Seattle management, Master Identification No. U00671; and

the Port of Seattle Commission grant authorization to proceed with awarding the T46 Substation No. 1 Replacement project contract to the most responsive bidder, which is 13% (more than 10%) above the final Engineer Estimate.

Discussion:

- Commissioner McCarthy stated 60% of NWSA income is being spent in the North Harbor and expressed concern that this is the second substation to fail. He asked how values were set during the formation of the NWSA. Staff clarified that Substation No. 1 has not failed. It is nearing end-of-life but is functioning and active.
- CEO Wolfe recalled that during the formation of the NWSA, to create the 50-50 values, the 10-year income revenue streams of licensed properties were reviewed. Asset condition was a factor as well, however, to his recollection, substations were not contemplated. Additional analysis regarding spending between the North and South Harbors is forthcoming.
- Staff corrected an error in the materials presented. This project is an electrical project, not a stormwater project.
- Commissioner Hasegawa asked whether this investment will provide sufficient power to meet the needs of hypothetical future needs of Terminal 46. Staff responded that this investment supports the current marine cargo facility uses.
- Commissioner Mohamed requested an analysis of workforce development/job creation in the North and South Harbors.

The motions passed unanimously for the NWSA and the Port of Seattle Commission.
Commissioners Keller and Felleman were previously excused and not present for the vote.

- C. **Port of Seattle Action:** Terminal 5 Dredging ERL Disposal Increase Authorization.
Presenter: Arthur Kim, Capital Program Manager III, Port of Seattle

The Terminal 5 Dredging ERL Disposal project is part of the overall Terminal 5 Berth Modernization Program. A change order to the Orion Construction scope is needed to dispose approximately 3200 cubic yards of sediment at an uplands disposal facility as it is not suitable for in-water disposal. During the past 13 months, inflation has increased project work costs significantly and an additional \$400,000 is necessary to cover rising construction costs, contingency, sales tax, and internal soft costs. The work will be executed and completed during the 2022-2023 dredging window which is set to close on February 15, 2023.

Port of Seattle Commission President, Ryan Calkins called for a motion.

It was moved and seconded (Cho/Mohamed) that the Port of Seattle Commission grant authorization for the Executive Director to increase the total costs not to exceed from \$700,000 to \$1,100,000 for executing a change order for upland disposal of a portion of the T5 Dredging Project under Port of Seattle management, Master Identification No. U00680.

The motion passed unanimously.

- D. NWSA Charter Revisions to Address Tribal Agreements
Presenter: Dana Henderson, General Counsel

NWSA General Counsel, Dana Henderson presented proposed NWSA Charter revisions recommended by the NWSA's Internal Governance Work Group (IGWG). The revisions address how the NWSA and the Homeports handle payments under agreements with federally recognized Indian tribes. The types of agreements with tribes were defined as Operational Agreements and Project Agreements and examples were given. The proposal is that for Project Agreements, the NWSA pays 100% and for Operational Agreements, the Homeport and NWSA split payment 50-50. The proposal also allows for the Managing Members agree on a different approach.

The IGWG discussed and agreed to the proposal following its September and December 2022 meetings.

It was moved and seconded (Meyer/Hasegawa) to approve an addition to the NWSA Charter on the topic: Agreements with Federally Recognized Tribes in substantially the same form as presented.

Discussion:

- Commissioner Meyer expressed support for the addition to the Charter, noting the different set of circumstances and scenarios in tribal relations/agreements in the North and South Harbors.

- Commissioner Hasegawa shared that the Port of Seattle recently entered into a Memorandum of Understanding with the Muckleshoot Tribe which codifies how the Port of Seattle works with that the tribe.
- Commissioner Calkins acknowledged that though imperfect, the additions are a major improvement over the status quo. He noted the difficulty in putting into writing every potential scenario that the NWSA and Homeports may run into.

The motion carried unanimously.

Commissioners Keller and Felleman were previously excused and not present for the vote.

- E. First Reading: Macquarie, Inc. at Terminal 7.
Presenter: Curt Stoner, Sr. Real Estate Manager

Deputy CEO Esterbrook provided a history of the Terminal 7. The terminal has sat mostly idle since 2017 as a container terminal. It has been used for military, automobile discharge, breakbulk, high and heavy and overflow. The joint venture of Macquarie and Ports America approached the NWSA for a long-term lease targeting niche markets. Terminal 7 is a smaller terminal with three 65-gage cranes.

Staff provided an overview of the proposed lease terms. Staff will return in February for a second reading and to request the CEO or his delegate to execute an agreement in substantially the same form as presented.

Discussion:

- Staff confirmed for commissioners that the lease will provide the military with use the cranes and priority berthing.
- Commissioner Meyer asked staff to explain how it arrived at the rental rate of \$90,000 per acre per year. The rate was the subject of negotiation. Factors considered include the vintage state of the cranes as well as other terminals in the South Harbor and throughput on acreage. It is anticipated that there will be a need for capital investment within the first eight years of the lease. Commissioner Meyer stated he wants it to be clear to the customer that the priority is to keep the terminal operational. It may include upgrades or at the very least heavy maintenance he wants data points in the lease that address if upgrades, etc. cost more than "x" amount then the lease will be renegotiated.
- Commissioner Meyer requested a zero-emission policy for cargo handling equipment by 2030 be included in the lease. He stated the NWSA must be more aggressive in tying in its environmental objectives with lease terms, particularly with long-term leases.
- Commissioner Calkins said he was pleased with the term that requires the use of shore power once available. He stated the onus is on the NWSA to make it available as soon as possible.
- Compliance with the tariff, whatever it may be and as it relates to the Clean Truck Program as it evolves, is a requirement of the lease.

10. BRIEFING AGENDA

None.

11. GENERAL BUSINESS

A. CEO Announcements.

Deputy CEO Esterbrook attended a ribbon cutting of the Millersburg, Oregon inland rail hub. He commented 50,000 TEUs of export cargo go through that area and is currently trucked. Twenty percent is trucked to California. This opportunity will allow connection to rail to the NWSA gateway instead. He added that rail is more efficient and creates less emissions. The inland rail hubs benefit the exporters by providing empty equipment close to the source of the product. The cargo can then be loaded, moved and served by on-dock rail (exception at Terminal 46). This hub is an example of a public-private partnership. Of the \$35 million investment, the state of Oregon funded \$25 million.

B. Commissioner Comments.

- Commissioner Calkins commented on the United Nations Sustainable Development Goals and the World Sustainable Ports Program. He encouraged Commissioners and leadership staff to look at the reports. Through committee work with the Port of Seattle, he will work to advance such goals.
- Commissioner Hasegawa traveled to Kobe Japan in November with a delegation. She commented on disaster resiliency and the need to consider impacts of 'the big one' in considering capital investments by the NWSA. She noted the Port of Seattle's engagement with the Duwamish Valley community and its programs on such matters. She also commented on the NWSA's regional role in impacting new and emerging energy.
- Commissioner McCarthy expressed his concern over reported loss of cargo traffic to the East Coast ports, due in part to the lack of a labor agreement with the Pacific Maritime Association and labor. CEO Wolfe stated he is encouraged that both parties remain at the table. One of the sticking points that has been reported in the industry concerns jurisdictional issues at Terminal 5.
- Commissioner Ang is looking forward to her work on the Environmental Work Group this year including looking at on-shore investments for a clean energy transition and a review of the NWSA's vulnerability assessment.

12. ADJOURNMENT

There being no further business, the meeting is adjourned at 1:49 p.m.



John McCarthy
Co-Secretary, The Northwest Seaport Alliance
Secretary, Port of Tacoma



Toshiko Hasegawa
Co-Secretary, The Northwest Seaport Alliance
Secretary, Port of Seattle

ATTEST:

Leilani Berinobis

Leilani Berinobis, Acting Clerk
The Northwest Seaport Alliance