

PORT OF NEWPORT
MINUTES
March 24, 2009
Combined Work Session and Regular Meeting

I. CALL TO ORDER

Commission President Ginny Goblirsch called the combined work session and regular meeting of the Port of Newport Board of Commissioners to order at 6:00 p.m. in the Port Conference Room, the same being within the boundaries of the Port District.

II. INTRODUCTIONS

Commissioners Present: Ginny Goblirsch, President; Dean Fleck, Vice-President; Joann Barton, Secretary; Don Mathews, Treasurer; and David Jincks, Assistant Secretary-Treasurer.

Port of Newport Management and Staff: Don Mann, General Manager; Patti Britton, Director of Finance; Pete Dale, Projects Manager; Kent Gibson, Port Operations; Maureen Keener, Special Projects Manager; Gina Nielsen, Marina Office Supervisor; Patty Benjamin, Administrative Assistant.

Others Present: Dan Avery and Doug Cottam, Oregon Department of Fish & Wildlife; John Berger and Roman Geigle, NWFF Environmental; John Crawford, John Edstrom, Lee Fries, Larry Johnson, Eileen Obteshka, and Bridget Wolfe, Newport residents; Wayne Hoffman, Midcoast Watersheds Council; Terry Obteshka, Newport City Council; Mike Pettis, commercial fisherman; Fran Recht, Pacific States Marine Fisheries Commission, Depoe Bay; Pat Ruddiman, ILWU Local 53; Mike Schmid, KPFF Consulting Engineers; Jim Shaw, South Beach resident.

III. MINUTES

A. Work Session and Regular Meeting—February 24, 2009.

Commissioner Mathews moved, Fleck seconded, to approve the minutes of the Combined Work Session and Regular Meeting of February 24, 2009 as submitted. The motion passed 5-0.

IV. FINANCIAL STATEMENTS

A. Financial Reports. Finance Director said she would resend the e-mail she had sent out to the commissioners requesting information that was needed for new signature cards on the Port's bank accounts. She hoped to have the cards ready for signatures at the next commission meeting. She then asked for questions or comments on the financial statements, which included the Current Assets and Liabilities Statement, Revenue Statement, and Expense Statement. In answer to a question from Commissioner Jincks, Britton explained that the capital expenditure at the terminal was for a forklift. In answer to a question from Commissioner Barton, Britton and General Manager Mann explained that the Port had made up the difference that was left after contributions and grants towards the cost of assembling and shipping the NOAA proposal. Britton explained that the difference between marketing and promotion totals for 2008 and 2009 (about \$57,000) was also related to the NOAA proposal. Britton said she would get back to Commissioner Goblirsch on her question about \$340,000 for grants in the appropriated budget.

B. Accounts Paid. Commissioner Barton moved to approve the Financial Statements and Accounts Paid, Check Nos. 11272-11277/Construction Fund and Check Nos. 28545-28630/Operating Account. Commissioner Jincks seconded the motion and it passed 5-0.

V. PUBLIC COMMENT

Jim Shaw, South Beach resident: Shaw described a course he had taken called "Informed Consent". The course was on how to "deal with the opposition". He suggested that was a philosophy the Port could use in dealing with controversial projects.

Wayne Hoffman, Midcoast Watersheds Council: Hoffman said he was in favor of the Port applying for the NOAA Coastal and Marine Habitat Restoration Project Grant, as a way to “get beyond the rancor” and get the terminal rebuilt. He said he was also in favor of bringing in a new independent third party project manager to take the lead on interactions with the permitting agencies. He felt a “new face” would repair relationships with agencies that “don’t want to be and should not be enemies of the Port.”

Fran Recht, Pacific States Marine Fisheries Commission, Depoe Bay: Recht said she was in support of ODFW helping the Port to write an application that would “result in restoration of the estuary as well as removal of the vessels, and reduce the controversy that been so damaging to all our communities.” Recht took issue with a newspaper article that referred to the Pasley and Hennebique as “marine debris” and said the ships did not fit that description. Recht distributed some information that she and Wayne Hoffman had put together on efforts that had been made to conserve and restore the Yaquina estuary and the watersheds that drain into it. She said the Port had been invited to take part in those efforts in the past and she hoped this would be a “new era, where the Port would be involved in ecological benefits to the estuary as well as development.”

Terry Obteshka, Newport City Council: Obteshka stated that he was not speaking as a representative of the City Council but as a private citizen who was in favor of the NOAA grant application and thanked ODFW for their help. He felt this would be a step toward relocating the NOAA fleet to Newport. Obteshka added that he hoped NOAA realized that Newport now had air service.

John Crawford, Newport resident: Crawford spoke in favor of the grant opportunity, calling it a “win-win”.

VI. STAFF REPORTS (* Indicates no questions or additional comments.)

A. Department Reports.

- **Kevin Bryant, Commercial Marina Harbormaster***
- **Pete Dale, Project Manager***
- **Maureen Keeler, Special Projects Manager***
- **Gina Nielsen, Marina Office Supervisor**—Commissioner Goblirsch noted that the marina was down only about 10% this year, which she said was not bad given the current economic climate. In answer to a question from Commissioner Mathews, General Manager Don Mann said spring break occupancy at the RV Park was about the same as last year. Commissioner Fleck suggested that the Port consider advertising in some of the publications targeting “outdoor tourists” because fishing opportunities this year were going to be good. He said he would have specifics after the PFMC meeting in mid-April but it looked positive. Mann said he would follow up.
- **Ron Smith, Terminal Manager***
- **Chris Urbach, South Beach Marina Harbormaster***

B. General Manager.

General manager Don Mann introduced John Berger and Roman Geigle from NWFF Environmental, to discuss a plan for removing the residual oil from the Pasley. Berger gave a brief profile of his company, which is located in Philomath. He said he had made a site visit to the Pasley the week before and had done research since then about the best way to extract oil from a fuel tank that has been flooded with water. Part of the plan would be to deploy a 24-inch hard boom around the vessel and also around inlets across the bay at the Oregon Coast Aquarium and Hatfield Marine Science Center. He said he was still working on an anchoring system for the boom, which would have to withstand currents and tides. He said a composite test would have to be done on the water in the tank to determine how the water could be disposed of after it is pumped out. He said the concrete from the vessel would have to be tested as well, before any drilling was done, to determine if it contained asbestos. Berger said they could test concrete from various areas of the ship at the same time, or just the area they would use to open the tank since the oil removal wouldn’t disturb any other sections of the ship. He explained the process of taking the oil out, once the water is removed, and the method they would use for cleaning the tank. He estimated that it would take a week to ten days, depending on unknown factors, to get the job done, and the hard boom would stay in place for an additional four days after that. Berger said one concern was whether the displacement of 250,000 of water from one section of the ship to another would cause the ship to

move and crack even more than it already was. He said a naval engineer could be brought in to sign off on a structurally safe plan for transferring the water, but said in his opinion it would be better to put the water into a rented tank. He added that with salt water sitting on top of bunker oil, he thought it likely that there were some contaminants in the water. Commissioner Goblirsch asked if there would be more risk involved in taking the oil off now than there would be in leaving it where it was in anticipation of getting the money to remove the ships. Berger responded that the longer the Port waits to remove the oil, the more risk and liability it incurs. He said he felt the oil could be removed safely because of the precautionary measures that would be taken in doing the job, so he recommended "getting the stuff out of there". A discussion followed about the water in the tank and whether sea water still flows through it. Commissioner Barton pointed out that if the Port won the NOAA grant, the oil would have to be removed anyway, so this was an expense that the Port would incur one way or another. She said she would like to see the proposal on paper in detail. A discussion followed about a letter the Port had received from Oregon Department of Environmental Quality (DEQ) about a Nationwide Permit that would be required from the US Army Corps of Engineers (USACE) for removal of the oil from the Pasley. Berger questioned whether the permit requirement would actually apply to removing oil from the Pasley. He said NWFF Environmental was well known to DEQ and USACE, and he offered to talk to those agencies as a non-interested third party on the Port's behalf, to come up with an acceptable plan. Commissioner Jincks asked how long the concrete testing would take and Berger said standardized testing could take one to two weeks, or the Port could pay more to have it done in 48 hours. General Manager Mann said he agreed with Commissioner Barton that the oil would have to be removed as part of the remediation plan for the terminal renovation project, and he proposed as a next steps to determine if a permit was needed, and if it was to start the process, and then put a plan together to get the oil out. Berger said NWFF could write a plan and a detailed time line for the Port, and take the necessary samples to get started. He pointed out that an asbestos sample was not required to pump the water into a tank, so the testing and pumping could be done at the same time. Commissioner Jincks asked Project Manager Pete Dale and Berg about disposal options for the water and said NWFF could look to the Yaquina Bay Response Plan, which is already in place, for guidance on the inlets to the Oregon Coast Aquarium and Hatfield Marine Science Center. He said he would like to move ahead in no less than a week on a cost estimate, time line, and work plan. A brief discussion followed about directing the General Manager to move forward.

Commissioner Jincks moved that the Port of Newport should proceed with a written action plan and hire a contractor to remove the residual oil from the Pasley. Commissioner Fleck seconded the motion. By way of discussion, Commissioner Barton said she wanted to confirm that there would be a detailed plan containing a time line and with contingency measures including protection of the inlets for the Oregon Coast Aquarium and the Hatfield Marine Science Center following the Yaquina Bay Response Plan. A brief discussion followed about anchoring issues with the 24-inch hard boom. The chair called for a vote and the motion passed 5-0.

John Berg said that NWFF would draw up the plan and get it to General Manager Don Mann for distribution to the commissioners within a week.

VII. OLD BUSINESS

A. Terminal Renovation – KPFF Consulting Engineers. Mike Schmid, KPFF Consulting Engineers, reported that the Joint Permit Application (JPA) for the Terminal Renovation Project was ready to be submitted but had been put on hold for the NOAA Coastal and Marine Habitat Restoration Project Grant Application. He said if the NOAA grant did not come through, the JPA would be only a day away from being submitted for the project as originally proposed. The terminal project would be discussed as part of the NOAA grant application agenda item under New Business.

VIII. NEW BUSINESS

A. Weber/Port Dock 5 Fuel Dock—Lease Renewal. General Manager Don Mann said that a copy of the draft lease had been provided to the lessees, Dale and Kathy Weber, and they had no specific comments or changes. He said the major changes in the lease renewal were a rate increase of 11%, an annual CPI increase, and some wording referring to space rather than premises. He said the lease was for five years with an option to renew for another five years. In answer to a question from Commissioner Barton, Mann said the lease had been reviewed by the Port's legal counsel.

Commissioner Jincks moved to adopt the lease renewal for the Port Dock 5 Fuel Dock. Commissioner Mathews seconded and the motion passed 5-0.

B. NOAA Coastal and Marine Habitat Restoration Project Grant Application—Doug Cottam, ODFW. Doug Cottam, ODFW, described and explained the NOAA stimulus grant proposal, through which NOAA Restoration Center was given \$170 million to offer in grants for restoration projects that would generate jobs. When the information came through about the grant opportunity, Cottam said, local ODFW fish biologists Bob Buckman and Dan Avery thought it would be a good solution to the problem of dealing with the Pasley and Hennebique. ODFW proposed acting as the Port's consultant through the process of applying for \$11 million to remove the ships. Cottam explained that if the grant were awarded, the funds would be managed by the Oregon Wildlife Heritage Foundation (OWHF), a fiduciary agent. The application process was already moving forward, with ODFW working alongside the Port and the Port's contractors, Natt McDougall Company and KPFF Consulting Engineers, to gather information and letters of support for the application, which had to be in NOAA's hands by April 6. Cottam said competition for the grant funds was intense; however, the application was top priority for the State of Oregon, ODFW, and NOAA Fisheries.

Cottam went on to describe the separation that was required between the restoration aspects of the project and the construction of the new terminal dock, which for purposes of the grant application could not overlap. He explained the reporting requirements and monitoring of the biological effects that would have to be done if the grant were awarded. A discussion followed about the cash and in-kind matches the Port would have to provide, which could not include money already spent on the terminal renovation project but could include money the Port anticipated spending in dealing with the ships after the grant award date of May 1.

Dan Avery, ODFW, said his agency was committed to helping the Port through the permitting process, which would have to begin before the award was made in order to meet the time line. Terms of the grant included starting work on the project within 60 to 90 days of the award, but that work could be engineering and design. Avery said the in-water work would begin November 1, 2009 and he expected it to take until October of 2009 to get the eight or nine permits that would be necessary. He said parts of the Joint Permit Application the Port had already prepared for the terminal renovation project could be modified for use to compress the time line.

Cottam said he and Avery had met prior to the commission meeting with General Manager Mann and Mike Schmid, KPFF, to go over some of the details in the application, including bringing in an independent third party project manager. Mann suggested that the position could be a liaison between the project and the agencies in reporting and monitoring the progress of the project, while leaving the construction manager and general contractor the Port had already hired in place. Referring to a meeting he had attended on Monday, Commissioner Jincks asked about ODFW's suggestion that the Port would need a new RFP for both a specialized environmental cleanup firm with ship removal experience and a separate project manager, and asked how important that was to the grant. Cottam said it was very important because there was such intense competition for the grant funds and the Port was asking for a large amount of money to complete a very unusual project. Therefore, the project was likely to receive intense scrutiny. Cottam said it was clear in his discussions that NOAA Restoration was very concerned about a construction project being so closely linked to the removal of the ships that it "looked like mitigation", which was one of the criteria that would automatically end the grant process. The three critical recommendations that ODFW had made were for a cash match; an independent environmental company to remove the ships; and a third party project manager to preserve a clean distinction between the restoration project and the building of the docks. He said those recommendations would be the best way to make it obvious that the project was for restoration, not mitigation for a construction site, but he added that it was the Port's decision. In answer to a question from Commissioner Goblirsch, Dan Avery said his initial inquiries revealed that there were many professional companies that do large scale cleanup of contaminated ships and structures. Commissioner Jincks said he felt the grant was of high importance and the Port needed to do whatever was possible to make a positive approach to obtaining it. He asked if the firm with ship removal experience would include in-water demolition, and Avery said he thought it would. Commissioner Goblirsch said she understood the need to keep the two projects separate but went on to say that Natt McDougall Company (NMC) specializes in that kind of demolition so the Port already has a contractor on board that could do the job. Commissioner Jincks pointed out that NMC was hired for construction, not ship removal, and said he felt it was important to follow the lead of the people who were writing the grant to give it the most positive chance of succeeding. He said another concern was

that the Port depends on a facility at the terminal for year around moorage and offloading and unloading of gear for the commercial fishing fleet, so he wondered if it would be possible for the project to be a two-part procedure. Cottam said the plan now was to work on the Pasley first and keep the Hennebique open while completing a portion of the new dock behind the sheet pile wall, so there would be a working dock available through the entire project. In summary, Cottam said the demolition/ship removal and dock construction could proceed simultaneously but would have to be kept entirely separate. He added that building the dock behind the sheet pile wall would avoid some very difficult permitting because the construction site would be de-watered. Commissioner Barton said she felt very strongly that the Port should follow the lead of the people who were helping with the grant application, and if they recommended a cash match and putting out RFP's for an independent environmental company and a third party project manager, the Port should follow that recommendation in order to position itself as best it can to win the grant. Commissioner Mathews said, "If that's what it takes to drive the train, we need to do it." Commissioner Fleck responded, "I'm on board."

In offering his opinion, General Manager Don Mann said he had discussed the project management position with Cottam and Avery and it had been agreed that a liaison would probably work, if that was how the Port wanted to handle it. Mann's concern was that he did not want to alienate NMC and KPFF. He said they had been hired for their expertise and he would match their experience and credentials with anyone's. He emphasized that NMC had been hired partially for their demolition expertise, because one of the original proposals was to remove part or all of the ships, until that option looked to be over budget. He said NMC and KPFF had been extremely loyal and noted that they had worked with the Port and ODFW to put the grant proposal together, going above and beyond the terms of their contracts. Based on that, he said it would not be fair to say, "Thank you very much", and move on to someone else. "That's not how you do business", he added, and he urged the commission to take that into consideration.

A discussion followed between the General Manager, the commission, Cottam, and Mike Schmid. Cottam said he thought the important thing for a successful grant was to identify a full time project manager who was experienced in that kind of construction work. Mann expressed concern about the effect putting out a new RFP would have on the working relationship that was already established between the Port, NMC, and KPFF. Schmid said he felt the Port would have to spend significantly more money to bring in two major contractors to work on the same site at the same time, because of the risk associated with scheduling the demolition versus construction of the new dock on an 18 - 24 month schedule. Commissioner Barton said she didn't want to underestimate the devotion and energy that NMC and KPFF had put into the project, but she felt nothing was being taken away from anybody and KPFF and NMC could still do the work. She thought what Schmid said buttressed the argument for having a third party project manager, rather than diminishing it. Commissioner Goblirsch said she thought two different conversations were going on—one about hiring an independent third party manager and another about bringing in new construction and engineering firms. She said the topic under discussion was an independent third party manager, and Commissioner Jincks said that was what he was referring to when he recommended following ODFW's lead in putting together the strongest possible grant application. Commissioner Goblirsch asked Cottam if there was a job description for the independent third party manager and he said there was not; however, a project manager needed to be identified in the grant application as full time and on site, and there would have to be a line item for that expense in the budget. There was further discussion about the difference between a liaison, as described by the General Manager, and a project manager.

Wayne Hoffman, Midcoast Watersheds Council: Hoffman said he thought separation could be built into the existing framework. NMC could do the "whole thing" under two separate contracts: one for demolition and one for construction, with separate project names, invoices, and reports. Further, project management could probably be done within the framework of the agreement with KPFF, again with two different names: one as project manager for demolition and one as project manager for construction.

Avery said ODFW was neutral on the question of a third party manager but it was clear in discussions with NOAA Restoration that there had to be clean division between the two projects. He said it was the Port's decision whether to use a complete third party or a sub-entity of NMC or KPFF, but there was an associated risk in the second option because it might lessen the chances of winning the grant. He said nothing had been written into the grant application about the third party manager as yet. If there were

someone on board in that capacity, they would identify that person and attach a resume to show references. He added that NOAA, in handing out millions of dollars in grant money, would want to know that qualified people were going to undertake the project. Commissioner Mathews suggested that Mike Schmid's qualifications were unquestionable. Mann talked about "separate disciplines" for a distinct and clean division between the construction and restoration projects. He said Schmid had been overseeing the work through design and permitting and said suggested that if ODFW was comfortable with that, perhaps there could be another conversation with NOAA Restoration to assure them that the third party manager would be someone who was not specifically involved in the project but still part of the existing firm. Avery reminded Mann that ODFW doesn't have to be comfortable with it because they were simply working as a consultant and would write the grant however the Port asked them to. He said he would be happy to put that question to NOAA Restoration again but it was unlikely they would give a different answer, other than the need to show as much separation as possible between those two activities.

Commissioner Barton said she didn't know why everyone was "so hung up on this because it ought to be simple." She said she understood where Mann was coming from but felt what he was saying supported the argument for having someone completely separate, who was not already associated with a project. She said she felt the Port should follow the advice of NOAA Restoration and make the application as clean as possible, and write in the application that there would be an independent third party manager and provide whatever evidence it took to support that. She said she didn't want to find out later that the Port's grant had been rejected and have to wonder why.

Commissioner Goblirsch said she agreed that a third party manager, separate from the overall project, was needed. Mann asked for clarification that it would be a third party manager for the restoration project only, and Schmid asked, after some additional discussion, if the third party manager would manage his design effort on the restoration and construction projects. Commissioner Goblirsch said no—just the restoration project, and probably not even the design element but just to provide oversight to see that the projects were running separately. Schmid summarized by saying, "We do the design work and I assume the third party manager does the permitting?" Commissioner Mathews responded by saying, "What it really means is we need a slipper skipper in the wheelhouse but you're still going to set the gear and haul it back, okay?"

Commissioner Jincks stated that what he wanted as a Port Commissioner was to follow the suggestion of the consultants and submit a letter in the grant application that there would be a third party manager to keep the restoration and the construction projects separate, with NMC and KPFF still on board. The third party manager would make sure that no restoration dollars accidentally get spent on construction and that everything is separate in the very unique and complex project. Commissioner Goblirsch added that, thinking on the positive side, the third party manager would actually make Schmid's job easier by keeping the projects separate, dealing with the agencies, and taking over the paper trail.

Moving on to the subject of the cash match, Mann said he was working to "pull out every number" and that it would probably not be a large amount but he was hoping at minimum to come up with 10% of the total project cost. Cottam explained the difference between "cash" and "in kind" and said his conversations with the Restoration Center indicated that hard cash was better but he expected a combination of both. Mann said the cash would come from the Port's construction fund for work that would have to be done in order to accomplish the restoration project. Cottam said he anticipated that there wouldn't be many projects asking for the amount of money the Port would need, nor would there be many projects able to offer a big cash match, so whatever the Port could provide would increase the chances of an award. Mann said the portion of the construction fund that was made up of bond revenue and Connect Oregon grant money that had been "pre-spent" could not be used, but money from the construction fund that had been earmarked for remediation, demolition of buildings on the site, and removal of old docks and pilings within the restoration area would qualify as a cash match toward the restoration project. A discussion followed about the logistics of transferring the cash to the Oregon Wildlife Heritage Foundation (OWHF) where it would be held in escrow.

Wayne Hoffman, Midcoast Watersheds Council: Hoffman suggested a method of arriving at a cash match number by eliminating all money that would be used for construction and also the amount being asked for in the grant application; but including

all money that would be spent on oil removal, removing fill from the ships, and driving temporary sheet piles, while leaving a small contingency fund as a cushion.

Special Projects Manager Maureen Keeler reported that the Port had a pending application for a US EPA Brownfields Cleanup Revolving Loan Fund grant in the amount of \$746,000 but it could not be used as cash match because the money is from a federal source.

In answer to a question from Commissioner Goblirsch, General Manager Don Mann said he would appreciate a motion relating to a third party manager for the project.

Commissioner Jincks moved that the Port follow the suggestion of its consultants, Oregon Department of Fish & Wildlife, and submit a letter in the grant application stating the Port will supply a third party manager for the project. Commissioner Fleck added that the third party manager would keep the restoration project separate from the construction project and that the Port would continue working with its current consulting engineer. Commissioner Mathews seconded the motion. Speaking to the motion, Commissioner Barton asked General Manager Mann if that was enough clarification for him, and he said it was. The Chair called for a vote and the motion passed 5-0.

Commissioner Barton moved that the Port of Newport, in conjunction with the relevant regulatory agencies, pursue the stimulus money that is being offered through NOAA to remove the Pasley and Hennebique, and that General Manager Don Mann be appointed as contact person and given authority to sign the grant application. Commissioner Jincks seconded the motion and it passed 5-0.

Commissioner Jincks thanked Doug Cottam and Dan Avery, ODFW, for their work on the grant opportunity and the other commissioners agreed their efforts were much appreciated.

Maureen Keeler said the letter of support from the commission would be sent in draft form to the commissioners as soon as it was ready.

IX. OTHER

Commissioner Jincks noted the Pacific Coast Congress of Harbormasters and Port Managers conference April 14-17. General Manager Mann said the Port of Newport was hosting the conference this year and he would send out notices and encouraged the commissioners to participate.

X. UPCOMING MEETINGS

- A. Fishermen's Forum, April 8
- B. 35th Annual Pacific Coast Congress of Harbormasters & Port Managers Conference, Best Western Agate Beach Inn, Newport, April 14-17,
- C. Port Commission Work Session and Regular Meeting, April 28, 6:00 p.m.

XI. ADJOURNMENT

The combined work session and regular monthly meeting of the Port of Newport Board of Commissioners was adjourned at 8:15 p.m.

ATTEST:

Ginny Goblirsch, President

JoAnn Barton, Secretary

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