



**Commissioners**

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Commission President  
Bill Bryant  
John Creighton  
Courtney Gregoire

Tay Yoshitani  
Chief Executive Officer

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**APPROVED MINUTES  
COMMISSION REGULAR MEETING APRIL 23, 2013**

The Port of Seattle Commission met in a regular meeting Tuesday, April 23, 2013, in the International Auditorium at Seattle-Tacoma International Airport, Seattle, Washington. Commissioners Albro, Bryant, Creighton, and Gregoire were present. Commissioner Bryant was absent after 2:44 p.m.

**1. CALL TO ORDER**

The regular meeting was called to order at 12:00 noon by Tom Albro, Commission President.

**2. EXECUTIVE SESSION pursuant to RCW 42.30.110**

The regular meeting was immediately recessed to an executive session estimated to last approximately 60 minutes to discuss matters relating to sale or lease of real estate, potential litigation, and qualifications of an applicant for appointment to elective office. Following the executive session, which lasted approximately 60 minutes, the regular meeting reconvened in open public session at 1:10 p.m.

**PLEDGE OF ALLEGIANCE**

**3. APPROVAL OF MINUTES**

Please refer to the Unanimous Consent Calendar.

**4. SPECIAL ORDERS OF BUSINESS**

**4a. Seattle City Light Incentive Check Presentation to Port of Seattle for the Consolidated Rental Car Facility.**

Presentation document(s): Commission agenda [memorandum](#) dated April 15, 2013, provided by Michael Ehl, Director Airport Operations, and George England, Program Leader, Project Management Group.

Presenter(s): Mr. England and Jorge Carrasco, Superintendent of Seattle City Light.

Mr. England commented on the energy efficiencies of the new Consolidated Rental Car Facility at Seattle-Tacoma International Airport, including LEED silver certification, and noted the Port's 2010 agreement with Seattle City Light for participation in the utility's Energy Smart Services Program. Mr. Carrasco described key energy efficient features of the new facility, noted annual energy

savings at the facility of 1.5 million kWh (kilowatt hours), roughly equivalent to the annual energy use of 167 homes. He explained that it is more cost effective for Seattle City Light to conserve energy than to purchase additional, more expensive power from other sources, and presented an incentive check to the Port of Seattle for \$408,275.

**4b. Recognition of the Winners of the 2012 Seattle-Tacoma International Airport Green Gateway Environmental Excellence Awards Program.**

Presentation document(s): Commission agenda [memorandum](#) dated March 19, 2013, and [presentation slides](#) provided by Elizabeth Leavitt, Director Aviation Planning and Environmental Programs, and Jeremy Webb, Environmental Management Technician.

Presenter(s): Mr. Webb.

Mr. Webb reported that the Environmental Excellence Awards Program is designed to recognize accomplishments of Airport partners toward reaching ongoing environmental goals. He introduced the following award recipients, noting their specific achievements: FedEx in the Environmental Performance Category; Concessions International, also in the Environmental Performance Category; and Keeney's Office Supply in the Environmental Education and Outreach Category.

**4c. Motion to Appoint a New Commissioner to Fill Vacant Position No. 3.**

Presentation document(s): [text of motion](#) provided by Mary Gin Kennedy, Commission Services Director.

Commissioner Albro commented on the process of selecting an appointee from among a pool of three dozen applicants and seven highly qualified finalists. He commented on the Port's core mission of economic development and trade and on the opportunity to constitute a Commission that reflects the community it serves.

Commissioner Bryant read the motion into the record as follows:

**The Seattle Port Commission, in accordance with RCW 42.12.070 and Article III, Section 4, of the Commission Bylaws, hereby selects Stephanie Bowman to serve as a Seattle Port Commissioner in Position No. 3 until the successor to the office has been elected and qualified at the general election on November 5, 2013. The appointment will be effective after the administration of the Oath of Office at a time to be announced later.**

**Motion to appoint Stephanie Bowman to serve as Port of Seattle Commissioner in Position No. 3, to be effective at a time to be determined – Bryant**

**Second – Gregoire**

**Motion carried by the following vote:**

**In Favor: Albro, Bryant, Creighton, Gregoire (4)**

*[Clerk's Note: Commissioner Bowman was administered the oath of office on May 3, 2013.]*

**RECESSED AND RECONVENED**

*The regular meeting was recessed at 1:39 p.m. and reconvened at 1:57 p.m., chaired by Commissioner Albro.*

**5. UNANIMOUS CONSENT CALENDAR**

*[Clerk's Note: Items on the Unanimous Consent Calendar are considered routine and are not individually discussed; however, Port Commissioners receive the request documents prior to the meeting and may remove items from the Consent Calendar for separate discussion and vote in accordance with Commission bylaws.]*

*At the request of Port staff, agenda items 5b and 5c were removed from the Unanimous Consent Calendar for separate discussion and vote.*

**5a. Approval of the minutes of the regular meetings of March 5, 2013, and March 12, 2013.**

*As noted above, the following agenda item –*

**5b. Authorization for the Chief Executive Officer to issue Change Order Number 085 for Contract MC-031568, Offsite Roadway Improvements and SR-99 Bridge Seismic Upgrade project, to extend the contract completion date 77 days from May 24, 2012, to August 9, 2012, for concurrent delays and for the amount of \$492,000 to settle all open claims by the contractor on matters related to this project. The existing construction contingency will be used to pay for this change order. No additional funds are requested.**

*– was temporarily postponed.*

*As noted above, the following agenda item –*

**5c. Authorization for the Chief Executive Officer to issue Change Order Number 097 for Contract MC-0316219, East Marginal Way Grade Separation project in the amount of \$492,000 and a time extension of 126 working days to the contract duration. The existing construction contingency will be used to pay for this change order. No additional funds are requested.**

*– was temporarily postponed.*

**5d. Authorization for the Chief Executive Officer to advertise and execute a major construction contract for the Laptop Power in the Concourses project at Seattle-Tacoma International Airport. This authorization is for \$1,667,500 out of a total estimated project cost of \$2,070,000.**

Request document(s): Commission agenda [memorandum](#) dated April 15, 2013, provided by Jim Witzman, Manager, Airport Operations Passenger Experience, and Wayne Grotheer, Director, Aviation Project Management Group.

**5e. Authorization for the Chief Executive Officer to advertise for construction bids, execute a construction contract, utilize in-house staff to do portions of work, and fund the construction phase to complete the Maritime Industrial Center Building A-1 Roof**

**Replacement in an amount not to exceed \$1,318,000 for a total estimated project cost of \$1,456,000.**

Request document(s): Commission agenda [memorandum](#) dated April 16, 2013, provided by Rod Jackson, Capital Project Manager, Seaport/Real Estate Project Management, and Rebecca Schwan, Real Estate Manager, Portfolio and Asset Management.

**5f. Authorization for the Chief Executive Officer to proceed with deferred maintenance at Fishermen's Terminal Building C15 (Fishermen's Center) to hand wash and paint the exterior of the building (Paint Exterior project), including authorization for Marine Maintenance to self-perform the work required to clean the exterior, prep, and repaint, for a total cost not to exceed \$458,000.**

Request document(s): Commission agenda [memorandum](#) dated April 12, 2013, provided by Beth Britz, Project Manager, Marine Maintenance, and Rebecca Schwan, Real Estate Manager.

**Motion for approval of consent items 5a, 5d, 5e, and 5f – Creighton**

**Second – Bryant**

**Motion carried by the following vote:**

**In Favor: Albro, Bryant, Creighton (3)**

**Absent for the vote: Gregoire**

## **PUBLIC TESTIMONY**

As noted on the agenda, public comment was received from the following individual(s):

- Karen Gruen, Vice President of Corporate Real Estate, Alaska Air Group. Ms. Gruen commented in opposition to agenda item 6a, regarding airline rates and charges. She stated that Alaska Air Group represents over half the flights at the Airport and that rates based on activity rather than square footage would unfairly disadvantage Alaska and would punish airlines that use Airport facilities efficiently.
- Roy Goldberg, Partner with Sheppard Mullin representing Southwest Airlines. Mr. Goldberg commented on agenda item 6a, noting that activity-based costing punishes airlines that use Airport space efficiently and disincentivizes frequent flights, a condition that the Airport should reward rather than penalize.

## **6. DIVISION, CORPORATE, AND COMMISSION ACTION ITEMS**

**6a. First Reading of Resolution No. 3677: A Resolution of the Port Commission of the Port of Seattle establishing a rates and charges methodology and other policies for the use of facilities at Seattle-Tacoma International Airport; and authorizing the Managing Director, Aviation Division, to calculate Airline rates and charges in accordance with said methodology, and implement all other provisions of this Resolution.**

Request document(s): Commission agenda [memorandum](#) dated April 16, 2013, [Resolution No. 3677](#), and [Exhibits A-J](#) provided by Mark Reis, Managing Director, Aviation. Presentation slides were provided by Mr. Reis at the time of the meeting. A copy of the presentation is, by

reference, made a part of these minutes, is marked [Exhibit A](#), and is available for inspection in Port offices.

Presenter(s): Mr. Reis.

Mr. Reis summarized the history of negotiations since late in 2011 with airlines to develop a new signatory lease and operating agreement (SLOA), including negotiations from December 2011 through May 2012, development of a preliminary rates and charges resolution between June and August 2012, pursuit of a one-year extension of the existing SLOA from August through October 2012, and the assertion by Alaska Air Group of the legal requirement for the Port to set airline rates by resolution in October 2012. He described preparation of a rates and charges resolution between October 2012 and February 2013 and Alaska's indication in February of its preference to negotiate a lease. Mr. Reis stated that discussion of possible lease terms has continued between February and April 2013, but that a conceptual agreement on possible lease terms has not been reached.

Mr. Reis explained that in the absence of a lease agreement, airports are required to establish airline rates for use of the Airport consistent with policies of the Federal Aviation Administration (FAA), which include the following:

- Rates must be reasonable and not unjustly discriminatory;
- Charges for fairly allocated costs of Airport facilities used by the airlines are allowed;
- Non-airline revenue may be retained by the Port;
- Control of the Airport's capital program may be retained by the Port; and
- The Port bears vacancy and enterprise risk if its facilities are unused.

Mr. Reis presented the following provisions of Resolution No. 3677:

- Rates would be retroactive to January 1, 2013;
- Rates would be established for multiple cost centers, including segregation of movement, apron, and commercial areas of the airfield and separate terminal cost centers for ticketing, gates, federal inspection services, baggage make-up, etc., such that those using space would be the parties paying for the space as opposed to the previous arrangement in which all terminal costs were allocated across all Airport square footage;
- Rates would fully, but only, recover aeronautical costs, including operating costs for aeronautical facilities and services, debt service coverage of 1.3 times debt service, and amortization of Port cash investment since 1992;
- The Port will assume the risk for vacant aeronautical and non-aeronautical space; and
- Staff would be authorized to calculate the rates and charges in accordance with the resolution and to take the steps necessary to implement the resolution.

Mr. Reis reported that the Airport has been collecting rates based on the 2012 rates effective under the previous SLOA and that because 2013 costs are expected to be \$30 million or more above 2012 costs, collection of fees established under the resolution retroactive to January will be required to balance actual costs. He noted that staff is hopeful that continuing negotiations will yield a new lease, but explained that the time required to execute a new lease agreement makes it

unlikely the lease would be executed by the end of 2013. Since the holdover 2012 rates will not recover 2013 costs, adoption of the resolution ensures the Port's ability to be fully compensated for 2013 costs if further lease negotiations are unsuccessful. Mr. Reis stated that adoption of the resolution, in and of itself, does not automatically result in application of the new rates and charges outlined by it, nor would adoption *per se* trigger legal challenges to the resolution, and that approval of the resolution for first reading would not preclude continued lease negotiations.

Commissioner Creighton commented on the unique nature of airport lease agreements and stated that although he would support the first reading of the resolution, he was concerned that implementing rates and charges by resolution could lead to further disagreement between the Port and its airline partners.

Commissioner Albro stated that the Port Commission values its relationships with its partners but also has to consider the interests of the Airport's public owners and said that he would support adoption of the resolution so rates and charges could be established, regardless of the outcome of lease negotiations.

**Motion for first reading of Resolution No. 3677 – Creighton**

**Second – Bryant**

**Motion carried by the following vote:**

**In Favor: Albro, Bryant, Creighton, Gregoire (4)**

**6b. First Reading of Resolution No. 3681: A Resolution of the Port Commission of the Port of Seattle establishing a revised Code of Ethics for Port Commissioners and repealing all prior resolutions dealing with the same subject, including Resolution No. 3583.**

Request document(s): Commission agenda [memorandum](#) dated April 18, 2013, [Resolution No. 3681](#), and [Code of Ethics](#) provided by Mary Gin Kennedy, Commission Services Director.

Commissioner Bryant commented on the series of reforms over the past five years, of which the revised Code of Ethics is the culmination.

**Motion for first reading of Resolution No. 3681 – Bryant**

**Second – Creighton**

**Motion carried by the following vote:**

**In Favor: Albro, Bryant, Creighton, Gregoire (4)**

**6c. Public Hearing and Second Reading and Final Passage of Resolution No. 3679, as amended: A Resolution of the Port Commission of the Port of Seattle declaring surplus and no longer needed for port district purposes approximately 5.39 acres of Port-owned real property located in the City of Seattle, commonly known as the T-91 West Yard; amending the Comprehensive Scheme to reflect that the property is surplus**

**to the needs of the Port and is deleted from Unit No. 1; and further authorizing the sale of said real property to the City of Seattle and King County.**

Request document(s): Commission agenda [memorandum](#) dated April 12, 2013, [Resolution No. 3679, as amended](#), and [Exhibits A-H](#) provided by Joe McWilliams, Managing Director, Real Estate Division.

There was no presentation at this time. The Port Commissioners received presentations on Resolution No. 3679 on April 2, 2013, and during its consideration on April 9, 2013, and the request documents were distributed for review prior to the meeting of April 23, 2013.

**Motion for second reading and final passage of Resolution No. 3679, as amended – Bryant  
Second – Creighton**

**PUBLIC HEARING on Resolution No. 3679, as amended**

Commissioner Albro declared the public hearing for Resolution No. 3679, as amended, open.

Public comment was received from the following individuals:

- Don Harper, member of the Neighborhood Advisory Council and the Queen Anne Community Council. Mr. Harper commented in support of the sale of the West Yard to the City of Seattle to become a park.
- Nancy Rogers, resident of the Magnolia neighborhood and member of the Neighborhood Advisory Council. Ms. Rogers commented in support of the sale of the West Yard, noting the benefits to the Port, King County, and the City of Seattle.

Following conclusion of public comment, the public hearing on Resolution No. 3679, as amended, was closed.

The question recurred on the motion by Commissioner Bryant, seconded by Commissioner Creighton, for second reading and final passage of Resolution No. 3679, as amended.

**Motion carried by the following vote:**

**In Favor: Albro, Bryant, Creighton, Gregoire (4)**

**6d. Authorization for the Chief Executive Officer to expand the scope of the sound insulation program, increase funding by \$8,800,000, and execute all documents, including consulting contracts and Job Order Contracts necessary to complete the sound insulation program for approximately 90 single family homes, located between the current noise remedy boundary and the proposed smaller Part 150 boundary. The estimated cost of this request is \$8,800,000, to bring the total project budget up to \$13,747,395. This request is for additional funding and scope change within the existing CIP C200093.**

Request document(s): Commission agenda [memorandum](#) dated April 16, 2013, provided by Stan Shepherd, Manager, Airport Noise Programs.

Presenter(s): Mr. Shepherd.

The Commission received a presentation that included the following relevant information:

- The goal of the single-family sound insulation program, underway since 1985, is to provide quieter interiors for homes in communities affected by aircraft noise by replacing windows and doors and making similar modifications;
- To date, over 9,400 homes have been sound-insulated;
- With revision of the Airport's Part 150 study, the noise remedy boundary for programs like this will become smaller, largely due to advancements in newer, quieter aircraft;
- As a result of the shrinking mitigation boundary, staff is encouraging homeowners who will no longer be eligible after the boundary shifts and who have not taken advantage of the sound-insulation program to participate before they become ineligible;
- Over 300 certified letters were sent as part of this effort, and of the responses received, approximately 90 appear to be eligible to participate in the program, which would require a budget of about \$8.8 million to complete the insulation of eligible homes; and
- A job order contract, involving a prime contractor and subcontractors, is the vehicle to perform the insulation work, with oversight by the Port's Central Procurement Office.

Commissioner Creighton noted his concerns over recourse for homeowners in the event of faulty installation when an installer is no longer in business, which Mr. Shepherd stated is a scenario with specific legal implications that is becoming a concern nationally for sound-insulation programs.

In response to Commissioner Gregoire, Mr. Shepherd described the budgeting process for determining a dollar amount for additional sound-insulation installation.

**Motion for approval of item 6d – Creighton**

**Second – Gregoire**

**Motion carried by the following vote:**

**In Favor: Albro, Bryant, Creighton, Gregoire (4)**

*Without objection, the Commission advanced to the following agenda item, which was removed from the Unanimous Consent Calendar for separate discussion and vote, as noted above –*

**5b. Authorization for the Chief Executive Officer to issue Change Order Number 085 for Contract MC-031568, Offsite Roadway Improvements and SR-99 Bridge Seismic Upgrade project, to extend the contract completion date 77 days from May 24, 2012, to August 9, 2012, for concurrent delays and for the amount of \$492,000 to settle all open claims by the contractor on matters related to this project. The existing construction contingency will be used to pay for this change order. No additional funds are requested.**

Request document(s): Commission agenda memorandum dated April 18, 2013, provided by Ralph Graves, Managing Director, Capital Development Division, and Janice Zahn, Assistant Engineering Director. A corrected copy of the Commission agenda memorandum dated May 20, 2013,



reflecting the changes described in the amendment below and a contract number correction, was subsequently provided by Mr. Graves and Ms. Zahn. A copy of the corrected memorandum is, by reference, made a part of these minutes, is marked [Exhibit B](#), and is available for inspection in Port offices. In addition, an email explaining the relationship of concurrent and non-concurrent delays described in the corrected memorandum was circulated by Mr. Graves on May 21, 2013. A copy of the email is, by reference, made a part of these minutes, is marked [Exhibit C](#), and is available for inspection in Port offices.

Presenter(s): Mr. Graves and Ms. Zahn.

Mr. Graves reported that agenda items 5b and 5c both deal with closeout change orders for road projects. He explained that the items were removed from the Unanimous Consent Calendar in order to correct administrative errors in the versions distributed to Commissioners and the public prior to the meeting of April 23, 2013.

Ms. Zahn described a number of unforeseen site conditions encountered in the Offsite Roadway Improvements project and explained that when considering the number of days required to extend the contract, staff failed to include a second extension of 76 days, which in addition to the extension of 77 days, results in the need to extend the contract completion date by 153 days. She noted that the change orders for this project have been significant at 33 percent prior to this request and that the \$492,000 will be funded from construction contingency. Upon approval of this change order, Ms. Zahn stated changes for the project will amount to 39 percent.

In response to Commissioner Albro, Mr. Graves stated that cost and time growth in the contract is a trade-off between effort during the design phase and consequences encountered during the construction phase. He stated that additional effort during the design phase might have revealed the circumstances that lent to the change orders before the construction contract was issued, but added that the extra effort takes time and might have delayed beginning of construction. He also stated that the target for cost growth during a contract is five percent for mandatory changes and five percent for discretionary changes. Ms. Zahn noted that the nature of soil contamination is such that initial site investigation does not necessarily reveal the isolated areas of contamination encountered during construction.

Mr. Graves commented on an alternative contracting approach in which a unit price is established in the contract bid schedule for removal of unsuitable or contaminated material, which controls cost increases for this situation.

## **AMENDMENT**

Without objection, the requested action for agenda item 5b was amended to read as follows:

**Authorization for the Chief Executive Officer to issue Change Order Number 085 for Contract MC-0316568, Offsite Roadway Improvements and SR-99 Bridge Seismic Upgrade (ORI) project, to extend the contract completion date 153 days from May 24, 2012, to October 24, 2012, for concurrent delays and for the amount of \$492,000 to settle all open claims by the contractor on matters related to this project. The existing construction contingency will be used to pay for this change order. No additional funds are requested.**

*[Clerk's Note: As noted above, a corrected memorandum and explanatory email are included as part of these minutes as [Exhibit B](#) and [Exhibit C](#), respectively.]*

*Commissioner Bryant was absent after 2:44 p.m.*

**Motion for approval of item 5b, as amended – Creighton**

**Second – Gregoire**

**Motion carried by the following vote:**

**In Favor: Albro, Creighton, Gregoire (3)**

**Absent for the vote: Bryant**

*Without objection, the Commission advanced to the following agenda item, which was removed from the Unanimous Consent Calendar for separate discussion and vote, as noted above –*

- 5c. Authorization for the Chief Executive Officer to issue Change Order Number 097 for Contract MC-0316219, East Marginal Way Grade Separation project in the amount of \$492,000 and a time extension of 126 working days to the contract duration. The existing construction contingency will be used to pay for this change order. No additional funds are requested.**

Request document(s): Commission agenda memorandum dated April 17, 2013, provided by Ralph Graves, Managing Director, Capital Development Division, and Janice Zahn, Assistant Engineering Director. Presentation slides were provided by Mr. Graves and Ms. Zahn at the time of the meeting. A copy of the presentation is, by reference, made a part of these minutes, is marked [Exhibit D](#), and is available for inspection in Port offices. A corrected copy of the Commission agenda memorandum dated May 31, 2013, and reflecting the changes described in the amendment below was provided by Mr. Graves and Ms. Zahn. A copy of the corrected memorandum is, by reference, made a part of these minutes, is marked [Exhibit E](#), and is available for inspection in Port offices.

Presenter(s): Mr. Graves and Ms. Zahn.

Mr. Graves reported that the requested action is the result of negotiation to close out the current phase of the East Marginal Way Grade Separation project. He stated an increase in project funding is necessary in order to execute the change order, although this was not understood at the time of submission of the original action request. Mr. Graves added that scrutiny of the project finances revealed that the project was already over budget. He reported that the request amount of \$55,456,171 is intended to ratify the amount over-spent on the project, execute the change order, and provide for remaining projected costs to complete the project. Mr. Graves stated the proximate cause of the project budget variance was that two separate project teams each independently planned for use of the \$2.7 million construction contingency. He explained that the length of the more than 10-year project and the multiple sources and uses of funds were too complex for the accounting tools in use for the project.

There was a discussion surrounding the complexities of the project, project delays, and the merits of the Port's serving as the project lead for improvements that will ultimately be transferred to another agency. In response to Commissioner Creighton, Mr. Graves noted the motivation on the part of the Port to see the project implemented, despite interests and contributions toward the project by various agencies.

In response to Commissioner Gregoire, Mr. Graves summarized the technology used to manage phase I of the project and noted that phase II will be tracked using new Skire Unifier™ software.

Commissioner Albro commented on the complexities of the transportation projects that will be required if the proposed sports arena in the SoDo area of the Duwamish Manufacturing and Industrial Center is built and compared them to the complexity of the East Marginal Way Grade Separation project.

Ms. Zahn reported on the changes to the project on the south and west intersections to satisfy the Union Pacific Railroad and Ash Grove Cement and to correct design deficiencies that resulted in the \$492,000 change order and project delays of 126 working days. She noted that changes for the project, following approval of this change order, will come to 11 percent.

#### **AMENDMENT**

Without objection, the requested action for agenda item 5c was amended to read as follows:

**(1) Ratification of \$232,159 for costs already incurred in excess of current authorization for the East Marginal Way Grade Separation project; (2) additional authorization in the amount of \$1,637,841 to complete outstanding work on the project for a total project authorization of \$55,456,171; and (3) authorization for the Chief Executive Officer to issue Change Order Number 097 for the project's Contract MC-0316219 in the amount of \$492,000 and for a time extension of 126 working days to the contract duration.**

**Motion for approval of item 5c, as amended – Creighton**

**Second – Gregoire**

**Motion carried by the following vote:**

**In Favor: Albro, Creighton, Gregoire (3)**

**Absent for the vote: Bryant**

#### **ANNOUNCEMENT**

Commissioner Albro announced that the Port Commission would travel in Eastern Washington between April 24 and 26 to meet with other institutions on subjects relevant to tourism and agriculture in pursuit of the Port's Century Agenda strategies and objectives.

#### **7. STAFF BRIEFINGS**

None.

**8. NEW BUSINESS**

None.

**9. POLICY ROUNDTABLE**

None.

**10. ADJOURNMENT**

There being no further business, the regular meeting was adjourned at 3:19 p.m.

Tom Albro  
President

Minutes approved: June 4, 2013.