



**Commissioners**

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Commission President  
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*Audio and video recordings of the meeting proceedings and meeting materials are available on the Port of Seattle web site – [www.portseattle.org](http://www.portseattle.org). The approximate point in the video recording for each agenda item is identified by hours, minutes, and seconds; example: 00:01:30.*

**APPROVED MINUTES  
COMMISSION REGULAR MEETING DECEMBER 13, 2011**

The Port of Seattle Commission met in a regular meeting Tuesday, December 13, 2011, at Port of Seattle Headquarters, Commission Chambers, 2711 Alaskan Way, Seattle, Washington. Commissioners Albro, Creighton, Holland, and Tarleton were present. Commissioner Bryant was absent.

**1. CALL TO ORDER**

The regular meeting was called to order at 1:05 p.m. by Rob Holland, Commission Vice President.

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

None.

**PLEDGE OF ALLEGIANCE**

**3. (00:02:10) APPROVAL OF MINUTES**

Special meeting of October 11, 2011.

**Motion for approval of minutes for the October 11, 2011, special meeting – Tarleton**

**Second – Albro**

**Motion carried by the following vote:**

**In Favor: Albro, Creighton, Holland, Tarleton (4)**

**Absent for the vote: Bryant**

**4. SPECIAL ORDER OF BUSINESS**

None.

**5. (00:02:44) UNANIMOUS CONSENT CALENDAR**

*At the request of Commissioner Tarleton, item 5h was removed from the unanimous consent calendar for separate discussion and vote.*

- 5a. Approval of [claims and obligations](#) for the period of November 1, 2011, through November 30, 2011, in the amount \$51,777,590.34.
- 5b. Authorization for the Chief Executive Officer to enter into an interlocal agreement with King County for emergency medical services effective March 1, 2012, through December 31, 2019, with two six-year options to extend the agreement for a maximum length of 20 years. The Port of Seattle will pay King County \$41,196 in 2012, and \$41,200 annually thereafter, subject to an annual Consumer Price Index adjustment, for services from January 1, 2013, through December 31, 2019.

Request document(s): Commission agenda [memorandum](#) dated December 2, 2011, and interlocal [agreement](#) provided by Randy Krause, Port of Seattle Fire Chief.

- 5c. Authorization for the Chief Executive Officer to execute a new collective bargaining agreement (CBA) between the Port of Seattle and the International Association of Firefighters Local 1257. The CBA covers the period from January 1, 2012, through December 31, 2013.

Request document(s): Commission agenda [memorandum](#) dated December 7, 2011, and collective bargaining [agreement](#) provided by Trish Murphy, Labor Relations Manager.

- 5d. Authorization for the Chief Executive Officer to issue Change Order #030 for the North Expressway Relocation (NER), Phase 1, Final Paving Landscaping and Reclamation Project, to grant a time extension of 163 days for a revised contract completion date of November 18, 2011, and in the amount of \$17,178. No new funding is requested as funds have been previously authorized in the NER Phase 1 program budget (MC-0316561).

Request document(s): Commission agenda [memorandum](#) dated December 6, 2011, provided by Ralph Graves, Managing Director, Capital Development Division.

- 5e. Ratification of the issuance of 1) Change Order #3 in the amount of \$186,000 and authorization for the Chief Executive Officer to issue a second as yet unnumbered change order for up to \$239,000 to install four new stainless steel enclosures under four main terminal skybridges at the Seattle-Tacoma International Airport for up to a total amount of \$425,000; and 2) as yet unnumbered change order(s) for up to \$640,000 to complete the North and South Satellite Transit System Station escalators in two phases at each location instead of one phase. Funds to cover the cost of the change orders are part of the project contingency funds that were included in the previously approved Terminal Escalators Modernization authorizations (MC-0316531/CIP #C800237).

Request document(s): Commission agenda [memorandum](#) dated December 2, 2011, provided by Ralph Graves, Managing Director, Capital Development Division.

- 5f. Authorization for the Chief Executive Officer to execute appropriate contract documents to renew our existing Microsoft enterprise software license agreement for another three years, through December 31, 2014, at a cost not to exceed \$2.5 million.

Request document(s): Commission agenda [memorandum](#) dated December 5, 2011, provided by Peter Garlock, Chief Information Officer.

- 5g. Authorization for the Chief Executive Officer to execute a new memorandum of agreement between the Port of Seattle and the International Longshore and Warehouse Union Local 9 Aviation Operations/Aviation Security, to provide for the temporary assignment of bargaining unit members to positions outside of the bargaining unit.**

Request document(s): Commission agenda [memorandum](#) dated December 7, 2011, and memorandum of [agreement](#) provided by Kim Ramsey, Labor Relations Manager.

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

**Second – Tarleton**

**Motion carried by the following vote:**

**In Favor: Albro, Creighton, Holland, Tarleton (4)**

**Absent for the vote: Bryant**

- 5h. (00:03:50) Authorization for the Chief Executive Officer to execute an agreed order with the Washington State Department of Ecology, related to the Seattle-Tacoma International Airport's National Pollutant Discharge Elimination Systems permit, to conduct an environmental investigation, and to implement corrective actions as needed, to address stormwater discharges with elevated pH (alkaline).**

Request document(s): Commission agenda [memorandum](#) dated December 2, 2011, and [Agreed Order No. 8755](#) provided by Elizabeth Leavitt, Director, Aviation Planning and Environmental; and Robert Duffner, Environmental Compliance Program Manager.

Presenter(s): Mr. Duffner.

Mr. Duffner explained the purpose of the agreed order in outlining and implementing corrective action to address elevated pH levels in stormwater discharges at the Airport. He summarized the National Pollutant Discharge Elimination Systems (NPDES) permit issued by the Department of Ecology requiring regular monitoring of all Airport water discharges for pollutants and pH levels prior to mixture with receiving waters, such as streams leading to Puget Sound. Mr. Duffner described allowable pH levels and explained that routine monitoring had detected elevated pH levels in three stormwater ponds on the west side of the Airport. He stated that testing showed the receiving waters of Miller and Walker Creeks had remained within the acceptable pH range.

Mr. Duffner reported that a likely cause of the increased pH might be algal growth during sunny periods associated with the sediment settling features built into the stormwater detention ponds and stated that the agreed order establishes the basis for corrective action to bring the Airport's facilities into compliance with the requirements of the NPDES permit. He distinguished between the agreed order presented and an action order, which would have required immediate action on the part of the Port and emphasized the collaborative nature of the agreed order.

Commissioner Tarleton commented on her interest in dealing with the agenda item transparently for the benefit of the public, especially the communities surrounding the Airport. She noted that

study of the causes of the elevated pH levels would continue through October 2012, with completion of mitigation actions by October 2013.

In response to Commissioner Albro, Mr. Duffner stated that the stormwater ponds are quite large and perform very well at draining stormwater runoff from the Airport's runways.

**Motion for approval of item 5h – Tarleton**

**Second – Albro**

**Motion carried by the following vote:**

**In Favor: Albro, Creighton, Holland, Tarleton (4)**

**Absent for the vote: Bryant**

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

- 6a. (00:12:50) Authorization for 1) the Chief Executive Office to execute the Argo Yard Truck Roadway memorandum of understanding with the Freight Mobility Strategic Investment Board, the City of Seattle, the Union Pacific Railroad, and Prologis L.P.; 2) approval of Port of Seattle funds of \$2,200,000 for the project; and 3) approval of the project, including initial steps of right-of-way acquisition and completion of design.**

Request document(s): Commission agenda [memorandum](#) dated December 2, 2011, [attachment A](#), [memorandum of understanding](#), and computer slide [presentation](#) provided by Dan Burke, Regional Transportation, Public Affairs; and Eric Hanson, Seaport Planning Manager.

Presenter(s): Mr. Hanson and Mr. Burke.

Mr. Burke described the project location south of Spokane Street and east of Terminal 106 and the congested traffic conditions at the location. He presented a graphic showing the project components, which are related to the East Marginal Way grade separation project and the southward relocation of an underpass of the East Marginal Way trestle.

Mr. Burke noted the overall project cost is \$7.8 million and outlined three project elements, including a new southbound 16-foot-wide truck roadway primarily on property owned by the industrial real estate company Prologis, movement of the roadway and other improvements in the current public right-of-way of Colorado Street, and installation by the Union Pacific Railroad of a new automated gate system to streamline traffic flow into the Argo Yard.

Mr. Burke outlined the project benefits including a safer route for trucks and general purpose traffic, reduced greenhouse gas emissions, and faster drayage route and faster gate processing that translates into increased drays per trucking shift.

Mr. Burke explained that, although it is a FMSIB project, the Port will be the project lead for the first two project elements. In response to Commissioner Creighton's question about responsibility for cost overruns, Mr. Burke stated that the Port is contributing \$2.2 million along with funding from FMSIB and the Union Pacific Railroad and that regulatory requirements for the private road portion

of the project are somewhat less than for a project involving public roads. He said the project is at about 10 percent design and that it is a candidate for grant funding, although there is some risk the Port would be expected to fund cost overruns.

Commissioner Creighton commented on his support for the project, which he said is important to expanding freight capacity of the Port and explained that because he is a FMSIB board member, he would abstain from the authorization vote in order to avoid any appearance of a conflict of interest.

Commissioner Albro stated that, in addition to contributing to freight capacity goals, the project also supports environmental goals of the Century Agenda by reducing diesel particulate matter emissions.

Public comment was received from the following individuals:

- Kent Christopher, President of Western Ports Transportation and President of the Intermodal Group of the Washington Trucking Association. Mr. Christopher commented on the importance of access to the Argo Yard and the safety and congestion concerns at the intersection and voiced support for the project.
- Karen Schmidt, Executive Director of FMSIB, submitted a letter dated December 7, 2011, expressing FMSIB's commitment to the project. A copy of the letter is, by reference, made a part of these minutes, is marked [exhibit A](#), and is available for inspection in Port offices.

**Motion for approval of item 6a – Albro**

**Second – Tarleton**

**Motion carried by the following vote:**

**In Favor: Albro, Creighton, Holland, Tarleton (3)**

**Abstaining: Creighton (1)**

**Absent for the vote: Bryant**

**6b. (00:32:08) Authorization for the Chief Executive Officer to execute a settlement agreement that grants the Boeing Company access to undertake environmental cleanup, bankline corrective measures, habitat restoration, and install/improve stormwater infrastructure on former Commercial Waterway District No. 1 property. In exchange, Boeing will provide \$1.5 million in compensation as well as allow the Port temporary access to a portion of the Boeing Developmental Center for construction of the Terminal 117 Natural Resource Damage Habitat Restoration project.**

Request document(s): Commission agenda [memorandum](#) with attachments dated December 5, 2011, provided by Joe McWilliams, Managing Director, Real Estate and Property Management; and Tom Tanaka, Senior Port Counsel. The attachments included a draft Boeing/Port agreement with exhibits 1 and 2; a Duwamish and Southwest Bank site access agreement with exhibits A, B, C, and D; a habitat restoration easement agreement with exhibits A, B, and C; a declaration of conservation easement with exhibit A; a stormwater outfall easement agreement with exhibits A and B; and a site access agreement for the Port of Seattle on Boeing property.

Presenter(s): Mr. McWilliams.

Mr. McWilliams reported that the Boeing Company has a restoration project underway on the Duwamish River but that the Port owns the bankline. He stated the authorization is the result of a year of negotiation to provide the necessary access. At the request of Commissioner Creighton, Mr. McWilliams explained that the settlement agreement aligns with Port objectives in the areas of stormwater management and habitat restoration along the Duwamish River. Commissioner Albro noted that the Commission is very familiar with the settlement agreement, on which he said the Commissioners had been briefed several times.

**Motion for approval of item 6b – Tarleton**

**Second – Creighton**

**Motion carried by the following vote:**

**In Favor: Albro, Creighton, Holland, Tarleton (4)**

**Absent for the vote: Bryant**

*At the discretion of the Chair, the Commission advanced to consideration of –*

**8. NEW BUSINESS**

**8a. (00:34:52) Authorization for the Chief Executive Officer to execute a purchase and sale agreement with the City of Kirkland for the sale of a portion of the Woodinville Subdivision (“Eastside Corridor”).**

Request document(s): Commission agenda [memorandum](#) dated December 13, 2011, and unexecuted purchase and sale [agreement](#) provided by Joe McWilliams, Managing Director, Real Estate and Property Management; and Isabel Safora, Deputy General Counsel.

Presenter(s): Mr. McWilliams.

Mr. McWilliams reported that the Port is working to close sale of a portion of the Eastside Rail Corridor to the City of Kirkland in the first quarter of 2012. He stated the transaction requires a 60-day due diligence period that would not commence until Commission approval of the terms of the purchase and sale agreement. He said that closer to the closing date, a property surplus resolution would be presented for Commission approval. Mr. McWilliams commented on the interest of the City of Kirkland in using this portion of the rail corridor to link newly annexed areas to the north with the rest of the community through the downtown area, and stated that the Kirkland City Council unanimously approved the transaction on December 12, 2011.

Commissioner Creighton commented on the Chief Executive Officer’s efforts to bring the critical asset of the Eastside Rail Corridor into public ownership. In response to Commissioner Albro, Mr. McWilliams confirmed that the City of Kirkland is purchasing the corridor segment in an as-is, where-is condition and assuming responsibility for environmental studies.

At the request of Commissioner Creighton, General Counsel Craig Watson announced that in the *Lane* taxpayer challenge to the Port's authority to purchase the rail corridor in the first instance, on December 9, 2011, the Port's motion was granted to dismiss the suit.

**Motion for approval of item 8a – Tarleton**

**Second – Albro**

**Motion carried by the following vote:**

**In Favor: Albro, Creighton, Holland, Tarleton (4)**

**Absent for the vote: Bryant**

*Following consideration of agenda item 8a, the Commission returned to consideration of –*

**7. STAFF BRIEFINGS**

*At the discretion of the Chair, the Commission advanced to consideration of –*

**7b. (00:43:30) Year-End Briefing – Update on the Consolidated Rental Car Facility Program.**

Presentation document(s): Commission agenda [memorandum](#) dated December 6, 2011, briefing [attachment](#), and computer slide [presentation](#) provided by Michael Ehl, Director Airport Operations; George England, Program Leader, Project Management Group; and Janice Zahn, Assistant Director Engineering Construction Services.

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

Mr. England described 2011 as a successful year for the rental car program. Ms. Zahn highlighted the following overall or 2011 accomplishments in the Consolidated Rental Car Facility program:

- Overall 1.5 million labor hours worked;
- Overall 4,200 new jobs created, which is higher than original projections;
- Over 97 percent recycling on RCF project in 2011;
- Submission of all LEED certification documentation, with a silver rating anticipated;
- Employment of two former veterans on the project through the Helmets-to-Hardhats program;
- Acceptance of 29 buses; and
- Better safety records than industrywide for lost time.

Ms. Zahn reported that the project is on track for opening in April and that costs are trending within the authorized budget. In response to Commissioner Creighton, Mr. England stated that the opening date is set for April 19, 2012. Mr. England described preparations for testing the capacity of the facility and the signage and wayfinding for the facility. He noted that all but one company are permitted for tenant improvements, and stated that LEED certification would be just shy of the Gold rating due to the decision not to buy points for the project.

Mr. England noted changes to program costs as of December 6, 2011, and reported that revenue from customer facilities charges is \$1.7 million ahead of forecast. He noted upcoming requests for Commission action on January 10, 2012, including an amendment to the Walker agreement relating to extension of the Turner contract and a request for authorization under critical work provisions to advertise an open-order major works contract to install furniture and close scope gaps in the Turner contract. He noted that a request for property surplus for water lines to be transferred to the Highline Water District will also be coming the Commission for future approval.

*At the discretion of the Chair, the Commission advanced to consideration of –*

**8. NEW BUSINESS**

**8b. (00:58:15) Port of Seattle Commission Motion to Retain Outside Counsel to Review a Worker Retention Policy for the Seattle-Tacoma International Airport Concessions Program.**

Request document(s): Text of motion and statement in support of [motion](#) presented at the meeting.

Commissioner Creighton explained that over the next three to five years, the Airport's master concessions process would be under consideration. He noted the variety of models for airport concessions programs with various legal considerations. Commissioner Creighton presented a motion to retain outside counsel to review a worker retention policy for the Airport concessions program and read a statement in support of the motion into the record.

The motion reads as follows:

- 1. The Port of Seattle Commission shall retain its own outside legal counsel to provide an independent review and analysis of the legal basis for a worker retention policy and any related issues as determined by the Commission.**
- 2. In retaining the services of outside counsel, the Commission would like to find an approach that addresses concerns of job security for workers currently employed at the Airport while providing meaningful business opportunities for DBE and other small concessionaires.**
- 3. The Commission may expend up to twenty-five thousand dollars (\$25,000) for these outside legal services. If further funding is required, the Commission will discuss the need for additional funding in open public session.**

Commissioner Tarleton spoke in support of the motion and commented in appreciation of the stakeholder process and assistance from staff. She remarked on the importance for the Commission to have a solid understanding of the implications of its decisions. Commissioner Albro also spoke in support of the motion, which he said would be the most effective way for the Commission to understand the legal matters from a fact-based perspective.

**Motion to retain outside counsel to review a worker retention policy for the Seattle-Tacoma International Airport concessions program – Creighton**



**Second – Tarleton**

**Motion carried by the following vote:**

**In Favor: Albro, Creighton, Holland, Tarleton (4)**

**Absent for the vote: Bryant**

*Following consideration of agenda items 7b and 8b, the Commission returned to consideration of –*

**7a. (01:06:30) Aviation Concessions Program Principles and Practices.**

Presentation document(s): Commission agenda [memorandum](#) dated November 28, 2011, computer slide presentation, and attachments concerning the concessions policy and principles stakeholder process ([exhibit A](#)), draft principles and practices guidance document ([exhibit B](#)), concessions focus group summary ([exhibit C](#)), outreach meeting summaries ([exhibit D](#)), concessions stakeholder process discussion summary ([exhibit E](#)), combined stakeholder meetings summary ([exhibit F](#)), best practices table ([exhibit G](#)), Airport Cooperative Resource Program resource manual section 8 excerpts ([exhibit H](#)), build-out costs and lease terms study ([exhibit I](#)), Airport Cooperative Resource Program resource manual section 9 excerpts ([exhibit J](#)), and order on motions for [summary judgment](#) in the case of *Flying Eagle Espresso Inc. v. Host International Inc.* provided by Mark Reis, Managing Director, Aviation Division; and Deanna Zachrisson, Manager, Aviation Concessions Business.

Presenter(s): Mr. Reis and Ms. Zachrisson.

Mr. Reis outlined the anticipated transition in the Airport concessions program in the 2015-2017 time frame noting 90 percent of the Airport's concessions leases will be available for renewal. He commented on the last major concessions transition at the Airport during 2004-2005, when the Airport shifted from having a single master concessionaire to its current hybrid model of prime concessionaires, subtenants, and direct leases. He noted the composition of the current program, in which 64 percent of units are operated by prime concessionaires, 13 percent by airport concessions disadvantaged business enterprise (ACDBE) subtenants, 18 percent by non-ACDBE direct leases, and 5 percent by ACDBE direct leases. In response to Commissioner Albro, Mr. Reis confirmed that selection of ACDBE subtenants and allocation of unit space to them is controlled by the prime concessionaires.

Between 2003 and 2010, Mr. Reis reported that sales rose approximately 75 percent, increasing Port revenue 82 percent, and concessions employment increased by more than 100 percent from 732 to 1,508, while enplanements rose only 10 percent. He outlined the current concessionaires at the Airport, identifying those that are locally owned and operated. Ms. Zachrisson identified four of the 11 locally owned and operated concessions that are subtenants of a prime concessionaire.

Mr. Reis described the goals driving the 2004-2005 redevelopment, including emphasis on local flavor, downward adjustment to street pricing, direct competition including shorter leases, use of direct leases, and promotion of small businesses, and outlined redevelopment outcomes, including higher sales, higher revenues, increased jobs, better customer service, and national program recognition.

In response to Commissioner Tarleton, Mr. Reis stated that the tiered structure of the concessions program was developed in discussions with the Port Commission to accommodate the recommendation of organized labor to retain more concessionaires that had labor contracts.

Ms. Zachrisson described the concessions stakeholder process, listing various stakeholder groups and outlining the process components. She stated that to ensure impartiality, experienced third-party public involvement professionals were engaged to facilitate and document the process, led by the community involvement firm PRR. Ms. Zachrisson reported that 56 individuals from a range of 36 companies participated in the stakeholder process and that three focus groups engaged the traveling public. She said the principles and practices for discussion included customer experience, social and environmental responsibility, financial stewardship, and selection process.

Ms. Zachrisson outlined areas of agreement and disagreement arising from the process. Areas of agreement included that there should be a mix of offerings; that it is important to encourage a strong sense of place; that environmentally sustainable practices should be encouraged; that the selection process should be efficient, fair, and reduce barriers to entry; and that the high cost of doing business at the Airport should be reflected in concessions policies.

Mr. Reis reported on five main areas of disagreement arising out of the stakeholder process, as follows, and elaborated on the factors to be considered for each area of disagreement:

- How best to balance the mixture of multi-unit, prime concessionaires with direct leases;
- How to maintain or increase participation by small or ACDBE businesses;
- How the Port can reduce high costs of investment and other barriers to its concessions program;
- Whether the Port should continue to require street pricing; and
- Whether the Port should place requirements on the labor practices of concessionaires.

Regarding balance of prime concessionaires with direct leases, Mr. Reis stated labor prefers a model in which two or three prime operators employ 90 percent of the concessions workers, whereas local businesses tend to prefer local ownership and a direct-lease structure. He added that none of the prime concessionaires are local companies.

Regarding participation by ACDBE businesses, Mr. Reis reported the dominant preference by ACDBEs voiced through the stakeholder process is to operate under direct leases, although the majority of current ACDBEs are subtenants. In response to Commissioner Tarleton, Mr. Reis stated that the Airport's access to federal funding attaches ACDBE requirements to the concessions program. In response to Commissioner Holland, Mr. Yoshitani explained that the ACDBE goals differ from airport to airport. Mr. Reis commented on factors affecting certifiability of ACDBE businesses and the small available pool of businesses from which to attract concessionaires. Commissioner Holland commented on the lack of a study on ACDBE business at the Airport and opined that the goal for ACDBE businesses should be higher than 20 percent of gross sales. Mr. Reis noted that ACDBE businesses are not necessarily local businesses.

Commissioner Creighton stated that promoting small business is a policy priority of the Port and noted that build-out costs at the Airport are high. He asked for clarification on the process for

identifying small or disadvantaged businesses to fill concessions opportunities at the Airport. Ms. Zachrisson said that a request for proposals process would not be necessary and that leasing directly to disadvantaged businesses is a more direct route.

Commissioner Albro noted that concessions sales volumes and jobs grew dramatically after terminating the master lease agreement previously in place at the Airport. He stated that focusing on job growth, increased sales, and reflecting the local community is important whether the vehicle is through a prime concessionaire or smaller direct leases.

In response to Commissioner Tarleton's questions about a large turnover of concessions leases, Mr. Reis stated that staff recommends staggering leases so they do not all end at the same time. Commissioner Creighton recommended adjusting lease terms so businesses located on poor performing concourses would be able to appropriately amortize their infrastructure investments.

Mr. Reis explained that a requests for proposal (RFPs) for a prime concessionaire are very explicit as to the mix of business concepts and locations desired by the Airport. He added that the RFP process is extensive and complex and by its nature poses a barrier to small business and reported that the trend in the industry is toward more direct leases and smaller prime concessionaire arrangements.

Regarding street pricing, Mr. Reis stated that some stakeholders prefer a model with higher-than-street pricing as a way to offset the high cost of development for direct lessees. He stated that local businesses operating the same concept at the Airport and in the community point out that they are restricted to using street pricing at both venues. He reported that labor representatives advocated higher-than-street pricing with the expectation that the additional revenue would be applied toward higher employee wages and benefits, and stated that customers in focus groups emphasized their preference for street pricing. He remarked that there are examples in the industry for both street-pricing and higher-than-street-pricing models. Mr. Reis suggested that higher-than-street pricing should not be used to correct the problem of high development costs, or other challenges to small business, that could be addressed through other means, such as progressive rate structures. Commissioner Albro voiced his support for continuing street pricing in the Airport concessions program.

Regarding labor practices and the Port's role in placing requirements for labor practices in the concessions program, Mr. Reis reported that labor representatives advocate worker retention or labor harmony programs, whereas most stakeholders did not favor the Port placing such requirements. In response to Commissioner Holland, Mr. Reis stated that staff is aware of worker retention requirements at the San Francisco, Oakland, Los Angeles, San Diego, Phoenix, Miami, and New York-New Jersey airports, many of which also have small businesses. He commented that many of those airports are run by general purpose governments, which have more flexibility regarding social policies. San Diego and New York-New Jersey are operated as special purpose districts, similar to the Port of Seattle, but those programs either do not aggressively pursue small business or exempt small business from their worker retention requirements. Commissioner Albro requested more discussion of the issues of worker retention and labor harmony as separate issues.

General Counsel Craig Watson reported that the Port has some unique circumstances that have to be taken into account and for which little guidance is available. He spoke in favor of outside counsel

having an opportunity to provide an opinion on the subject of worker retention and he characterized the legal debate over worker retention as a close question whenever it comes up. He mentioned the permanent injunction issued in connection with the *City Ice* decision and the fact that the Port is not a general purpose government with broader latitude where social policy is concerned. He said the Commission would have to decide what its appropriate level of risk is as it considers such policies. Commissioner Tarleton commented on the importance that the Port take a position early on labor practices rather than wait for the legal challenges elsewhere to be sorted out.

Mr. Reis noted that a worker retention requirement would introduce risk during pendency of litigation, would discourage small business participation, and would affect recruitment of concessionaires during pendency of litigation. He pointed out that during the last redevelopment of the concessions program, despite not having a worker retention requirement, jobs increased over 100 percent, and represented jobs increased by 47 percent. He also noted that employee turnover is about 20 percent annually and stated that about 75 percent of concessions employees became employed at the Airport since the last concessions transition. Mr. Reis stated that Airport concessionaires are interested in recruiting employees with experience working at the Airport, as shown during the recent closure of Borders Bookstore and the recent transition of the duty-free concession from HMS Host to Hudson.

Mr. Reis summarized the following recommendations for the Airport concessions program:

- Management of the program as a hybrid model with a 50/50 mix of multi-unit contracts of six or more units with small packages of three units or less;
- Meet or exceed the current 20-percent gross sales goal for ACDBE businesses and seek additional small and local business participation;
- Revise the tenant build-out review process to reduce capital costs with the Port providing all infrastructure to the lease line;
- Study the overall cost picture for concessionaires prior to finalizing a street-pricing policy for the 2015-2017 recruitment; and
- Encourage, but not require, new concessions employers to hire current employees.

Public comment was received from the following individuals:

- Cindy Richardson, Vice President of Unite HERE Local 8. Ms. Richardson commented that the opinions of Airport workers had been mischaracterized, that the Airport has been a union airport for decades, and that labor harmony and worker retention were widely accepted by the concessionaires who participated in the stakeholder process. She spoke of reorganizing the union following a concessions transition and criticized the stakeholder process for not inviting input from positive labor and small business relationships. Ms. Richardson submitted her comments in written form, and a copy of the document is, by reference, made a part of these minutes, is marked [exhibit B](#), and is available for inspection in Port offices.
- Julia Nottingham, employed by HMS Host. Ms. Nottingham commented on the importance of employee benefits and her satisfaction in working at the Airport. She stated she was shocked at staff's proposal to leave Airport workers completely unprotected when their employer's lease expires.

- Pascasie Mukaruziga, employed by HMS Host. Ms. Mukaruziga commented on her work at the Airport and her immigration to the United States. She spoke of the benefits of her employment at the Airport and stated she hoped the Commission would consider working people's needs, not just the interests of business.
- Grant McClamrock, employed by HMS Host. Mr. McClamrock spoke of working at the Airport for 37 years as an employee of HMS Host and the ability to transfer over the years due to working for a prime concessionaire with a worker retention policy. He stated the prime concessionaire model provides for a stable workforce by providing higher employee wages and benefits.
- Stefan Moritz, Director of Strategic Affairs for Unite HERE Local 8. Mr. Moritz stated staff ignored the needs and opinions of the represented employees who are the most important stakeholders in ensuring a successful concessions program. He said the recommendations were not in the best interest of the Port of Seattle or King County taxpayers and commented on labor harmony agreements at many airports around the country that do not mandate unionization. Mr. Moritz commented on the federally protected right of workers to organize, which he said is not at the discretion of employers.
- Michael Abate, Organizer with Unite HERE Local 8. Mr. Abate commented on the federally protected right of workers to organize, which he said is not at the discretion of employers. He stated that any business that cannot commit to a process of labor organization that maintains harmonious airport operations should not be considered for a lease at the Airport, regardless of the business's size. He stated stakeholder opposition to worker retention and labor harmony policies was misrepresented by Airport staff.
- Bruce Beckett, Vice President of the Washington Restaurant Association. Mr. Beckett commended the positive changes resulting from the 2004-2005 concessions program redevelopment. He provided various statistics relating to potential lessees of concessions spaces and stated that small local operators want flexibility in their lease arrangements. He spoke in favor of the hybrid concessions program model that provides for both large prime concessionaires and smaller direct leases.
- David Mendoza, Policy Analyst for Puget Sound Sage. Mr. Mendoza encouraged further study and eventual enactment of a worker retention/labor harmony policy, which he stated would provide security for concessions workers and help prevent them being forced to rely on public health care assistance. He stated that many airports around the United States with worker retention policies also have vigorous small business programs.
- LeeAnn Subelbia, Owner of Filo Foods/BK Foods. Ms. Subelbia spoke of the sacrifices she has made to conduct business at the Airport. She commented on legal and contractual difficulties arising from her business's status as a subtenant and advocated direct leases for small and disadvantaged businesses. She stated that in her 30 years operating a business at the Airport there has never been an issue with worker retention.
- Maxwell Heigh, Manager for Filo Foods/BK Foods. Mr. Heigh commented on the sacrifices made by his family to operate their business at the Airport. He commented on the cooperative relationship between the company and its employees and asked that their business practices not be dictated to them.
- William Hager, employed by Filo Foods/BK Foods. Mr. Hager contrasted his experience working for Filo Foods and HMS Host and spoke in support of Filo Foods.

- Dan Bent of Bent Burgers. Mr. Bent commented on his employment by HMS Host for 30 years and his ownership of his own small business. He complimented the stakeholder process and questioned why labor representatives attended meetings geared toward gathering feedback from business owners. Mr. Bent advocated a simplified request for proposal process. Mr. Bent submitted his comments in written form, and a copy of the document is, by reference, made a part of these minutes, is marked [exhibit C](#), and is available for inspection in Port offices.
- Heather Arceo, employed by Filo Foods/BK Foods. Ms. Arceo contrasted her employment for Filo Foods with that at HMS Host and stated she preferred the atmosphere of working for a family-oriented business.
- Leonard Lagmay, employed by Filo Foods/BK Foods. Mr. Lagmay commented on his employment by Alaska Airlines, HMS Host, and Filo Foods and stated he appreciated the opportunity to work for a small, non-union employer. He said his experience of being able to work for different concessions operators at the Airport showed that a worker retention policy was unnecessary. He added that if HMS Host had been the only prime concessionaire at the Airport, he would not have had the opportunity to continue to work at the Airport after leaving HMS Host.
- Cecilia Cordova of Connell Cordova Hunter & Gautschi, representing Filo Foods/BK Foods. Ms. Cordova presented a memorandum supporting the Aviation Concessions Program's recommendations regarding a worker retention policy. A copy of the document is, by reference, made a part of these minutes, is marked [exhibit D](#), and is available for inspection in Port offices. Ms. Cordova spoke in support of the Commission motion to seek outside legal counsel and stated that her client is not opposed to union organization, but that small companies want their protected right to assign work to their own workforce.
- Paul Lawson, District Manager for Ivars. Mr. Lawson commented on the importance of Ivars' employees at the Airport and Ivars' low employee turnover rate. He commented on employee benefits and better-than-minimum-wage pay at Ivars.
- Bob Donegan, President of Ivars. Mr. Donegan commented on his participation in concessions planning at the Airport for over 20 years. As a member of the board of directors of the Seattle Restaurant Association, Mr. Donegan commented on the association's role in identifying direct-lease tenants at the Airport. He pointed out that local operators provide local jobs and economic impact, revenues have increased at the Airport using local operators, direct leases are the most productive leases, Ivars prefers to maintain control over their business practices, street pricing at the Airport needs to be communicated better, the people who work at the Airport are also concessions customers, and build-out costs need to be reduced at the Airport.
- Kehala Ngiraidong-Omengkar, employed by Concourse Concessions. Ms. Ngiraidong-Omengkar commented on her work history and her favorable experience working for Concourse Concessions.
- Takara Smith, employed by Lupiva Café and Tully's Coffee. Ms. Smith spoke of her four years of nonunion employment and the good benefits provided by her employer.
- Emilie Antiporda, employed by Concourse Concessions. Ms. Antiporda commented on her work for Concourse Concessions since moving into the area following Hurricane Katrina in 2005. She spoke of the flexibility and benefits associated with her job and stated she preferred to work for a nonunion company.

- David Fukuhara, Managing Partner, Concourse Concessions. Mr. Fukuhara commented on the importance of his company's employees and spoke in support of the concessions stakeholder process. He stated his support for direct leases, which he said result in higher revenues and more jobs and would bring more efficient communication between disadvantaged businesses and the Port. He spoke in favor of increasing the goal of ACDBE revenues from 20 to 30 percent and commented on challenges facing the ACDBE businesses on Concourse A.
- Cariño Barragan Talancon, Lead Organizer for Casa Latina. Ms. Talancon commented on the challenges facing immigrant workers at the Airport. She spoke in support of a worker retention policy and commented on decreasing services provided by public assistance.
- Marques Warren, Vice President of Operations for Warren's News and Gift Inc. Mr. Warren commented on his company's partnership with Hudson News. He said the company's sales associates are union members, which was not the case when it started as a subtenant of HMS Host. He spoke of the challenges facing Concourse A and stated that a 50 percent increase in labor cost resulting from working with a union has a tremendous impact on the ability of small businesses to compete at the Airport.
- Rod O'Neal, Partner at Seatac Bar Group. Mr. O'Neal spoke in support of the staff concessions program recommendations and commented on the challenges facing disadvantaged businesses operating on Concourse A. He commented on the benefits provided to the employees of the Seatac Bar Group and stated the business wants to maintain control over its labor practices.

Commissioner Creighton commented on focusing on development of a policy that ensures employee security during concessions transitions without impeding promotion of small business at the Airport; the need to reflect the local community in the concessions program; and finding opportunities to provide small businesses an opportunity to amortize their investment, despite disparity in performance on different concourses.

Commissioner Albro stated there is a shared dedication to the workforce at the Airport on the part of represented labor and small business and noted his support of the right of workers to organize. He commented on the importance to find a compromise between the concerns of workers concerned they will be displaced that also creates meaningful business opportunities. He spoke in favor of direct leases and joint ventures as concessions models.

Commissioner Tarleton commented on the diversity of the Airport concessions program and the successes of the concessions program participants since 2004, including environmental sustainability and participation by immigrants.

Commissioner Holland commented on the importance of increased small business and minority participation in the Airport concessions program, including a higher goal of 30 percent gross sales from minority businesses. He stated he would like to see an example of a small business that is successful in an environment with a worker retention policy and that he is concerned about the difficulties faced at Concourse A.

*Agenda item 7b having been disposed of previously, the Commission advanced to consideration of –*

**7c. (03:23:25) Capital Improvement Projects for the Third Quarter, 2011.**

Presentation document(s): Commission agenda [memorandum](#) dated December 5, 2011, third quarter [report](#), and computer slide [presentation](#) provided by Ralph Graves, Managing Director, Capital Development.

Presenter(s): Mr. Graves.

Mr. Graves presented capital improvement project summary statistics for the third quarter of 2011, which showed comparable project status over a five-quarter period. He noted six Aviation projects that are behind schedule, including a water system isolation valve upgrade, parking system replacement, common use equipment expansion, Concourse D common use, South Satellite concessions physical layout project, and South Satellite additional gate lobby. He stated that the delays in these six projects are related to the reduction of the Aviation capital budget.

Mr. Graves reported that the roof replacement program anticipates a savings of approximately \$1 million. He commented on delays in the Seaport Security Round 7 schedule, additional funding required for the Terminal 86 grain facility modernization, and delays in the C-15 HVAC improvements. He noted other delays associated with the enterprise project cost system for the Capital Development Division and savings of \$150,000 anticipated to be saved from the ground transportation management system project.

Mr. Graves pointed out that agenda items 5d, 5e, and 5f on the consent agenda would not have required Commission authorization if the Commission operated under staff's proposal regarding revision to the Port's delegation of authority provisions for contracts. These three items would have been reported to the Commission, but would have been executed by the Chief Executive Officer.

*Agenda items 8a and 8b having been disposed of previously, no additional new business was considered.*

**9. POLICY ROUNDTABLE**

None.

**10. ADJOURNMENT**

There being no further business, the regular meeting was adjourned at 4:37 p.m.

Tom Albro  
Secretary  
Minutes approved: March 6, 2012.