



COMMISSION AGENDA
Special Meeting at Port of Port Angeles
March 6,
2017 9:00 am

- I. CALL TO ORDER/PLEDGE OF ALLEGIANCE**
- II. APPROVAL OF CONSENT AGENDA**
 - A. Commission Meeting Minutes
 - 1. February 21, 2017 Commission meeting minutes (pg. 1-5)
- III. EARLY PUBLIC COMMENT SESSION (total session up to 20 minutes)**
- IV. PLANNING**
 - A. Terminal 3 Headline Dolphin Bid Award (pg. 6-8)
- V. PROPERTY**
 - A. Real Estate Broker Commission Policy (pg. 9-15)
- VI. OTHER BUSINESS**
 - A. City of Sequim joint meeting agenda review (pg. 16)
- VII. FUTURE AGENDA TOPICS**
 - A. Work Session (pg. 17)
 - B. Business Meeting (pg. 18)
- VIII. PUBLIC COMMENT SESSION (total session up to 20 minutes)**
- IX. NEXT MEETINGS**
 - A. March 13, 2017 Joint Meeting with City of Sequim – 4:00 PM
 - B. March 21, 2017 Regular Work Session - 9:00 AM
 - C. March 21, 2017 Regular Business Meeting – 1:00 PM



X. UPCOMING EVENTS

A. March 21, 2017 - Community Partner Program Applicant Presentations and Awards

XI. EXECUTIVE SESSION - The Board may recess into Executive Session for those purposes authorized under Chapter 42.30 RCW, the Open Public Meetings Act.

XII. ADJOURN

RULES FOR ATTENDING COMMISSION MEETING

- Signs, placards, and noise making devices including musical instruments are prohibited.
- Disruptive behavior by audience members is inappropriate and may result in removal.
- Loud comments, clapping, and booing may be considered disruptive and result in removal at the discretion of the Chair.

RULES FOR SPEAKING AT A COMMISSION MEETING

- Members of the public wishing to address the Board on general items may do so during the designated times on the agenda or when recognized by the Chair.
- Time allotted to each speaker is determined by the Chair and, in general, is limited to 3 minutes.
- Total time planned for each public comment period is 20 minutes, subject to change by the Chair.
- All comments should be made from the speaker's rostrum and any individual making comments shall first state their name and address for the official record.
- Speakers should not comment more than once per meeting unless their comments pertain to a new topic they have not previously spoken about.
- In the event of a contentious topic with multiple speakers, the Chair will attempt to provide equal time for both sides.



COMMISSION MEETING MINUTES
February 21, 2017
Regular Meeting at Port of Port Angeles
1:00 PM.

- | | | | |
|---|--------------------------------------|---|--------------------------------------|
| 1 | Present: | 6 | Mike Nimmo, Operations Mgr. |
| 2 | Colleen McAleer, President | 7 | Jerry Ludke, Airport & Marina Mgr. |
| 3 | Connie Beauvais, Vice President | 8 | Susan Scott, Bus. Dev. Administrator |
| 4 | Steven Burke, Secretary | 9 | Holly Hairell, Admin Mgr. |
| 5 | John Nutter, Dir. of Finance & Admin | | |

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***TIME SPECIFIC at 1:10 PM – Port of Port Angeles Resolution 17-1147**

I. CALL TO ORDER / PLEDGE OF ALLEGIANCE (0:00 to 0:22)

Commissioner McAleer called the meeting to order at 1:01 PM and Airport and Marina Manager, Jerry Ludke led the pledge of allegiance.

II. APPROVAL OF CONSENT AGENDA (0:48 to 02:05)

A. Commission Meeting Minutes

1. February 6, 2017 Commission Meeting minutes

B. Vouchers in the amount of \$518,023.17

Commission Action: Commissioner Beauvais moved to approve the vouchers in the amount of \$518,023.17 and Commissioner Burke seconded the motion for discussion. Commissioner Burke briefly highlighted the vouchers and discussion followed. The vote was called for and the motion passed unanimously.

III. COMPLETION OF RECORDS - January 2017 Monthly Report (2:19 to 7:12)

Discussion followed amongst the Commission and questions were asked about the monthly report for January 2017.

Staff Item: The Commission asked staff to correct an error on the Operations Report (page 30) regarding the slip occupancy numbers at the Port Angeles Boat Haven.

IV. EARLY PUBLIC COMMENT SESSION (total session up to 20 minutes)

None Offered



43 **V. PLANNING**

44
45 No Items

46
47 **VI. PROPERTY**

48
49 A. Real Estate Broker Commission Policy follow-up (36:35 to 1:18:00)

50
51 Port Counsel, Chris Riffle began the discussion on the real estate broker commission policy
52 and highlighted the changes made to the policy since the last meeting. Discussion followed
53 and the Commission provided feedback on the proposed real estate broker commission policy.

54
55 **Staff Item:** The Commission requested that the staff bring back information on how other ports
56 are paying out broker commission fees for lease transactions.

57
58 B. Real Estate Marketing Plan follow-up (1:18:13 to 1:29:20)

59
60 Susan Scott, Business Development Administrator, presented the changes to the real estate
61 marketing plan to the Commission from the last Commission meeting. Discussion followed.

62
63 **VII. MARINAS**

64
65 A. Marina Advisory Committee (MAC) Procedures Revision (1:29:26 to 1:39:19)

66
67 Jerry Ludke, Airport and Marina Manager, presented the Marina Advisory Committee
68 procedures revision to the Commission and asked them to consider approval of the changes.
69 Discussion followed.

70
71 **Commission Direction:** The Commission decided not to move forward with changes the MAC
72 procedures.

73
74 **VIII. AIRPORTS**

75
76 A. FIA Fee Waiver Request: Clallam County and Army National Guard (1:39:24 to
77 1:41:00)

78
79 Jerry Ludke, Airport and Marina Manager, presented the FIA fee waiver request for the Clallam
80 County/Washington Army National Guard joint communication exercise and asked the
81 Commission to consider a fee waiver for Clallam County and WA Army National Guard
82 exercise on March 30th through April 2nd.

83
84 **Commission Action:** Commissioner Beauvais made a motion to approve the fee waiver for
85 Clallam County and the WA Army National Guard. Commissioner Burke seconded the motion.
86 With no discussion, the vote was called for and passed unanimously.

87



88 B. Airline Discussion (1:41:15 to 1:53:55)

89
90 Jerry Ludke, Airport and Marina Manager, discussed the Thursday, February 16th meeting with
91 Zephyr Air and community stakeholders at FIA. Discussion followed.

92
93 **Commission Direction:** The Commission directed staff to move forward with Zephyr Air and
94 seek answers regarding the grants.

95
96 **IX. OTHER BUSINESS**

97
98 A. Time Specific at 1:10PM – Port of Port Angeles Resolution 17-1147 (7:27 to
99 36:25)

100
101 Airport and Marina Manager, Jerry Ludke presented Port resolution 17-1147 to the
102 Commission and described its parameters. He asked the Commission to pass the resolution
103 as presented. Commissioner McAleer allowed for public comment regarding the topic.

104
105 Cherie Kidd (101 East 10th Street, Port Angeles) – Ms. Kidd voiced her concern over the
106 shortened halibut fishery and its devastating impact on the economic community. She stated
107 that the resolution is designed to take to other local governments and to Olympia. She wants a
108 fair fishing season so the community can thrive. Ms. Kidd also expressed her support for
109 passenger service at the William R. Fairchild International Airport.

110
111 Norm Metzler (225 West 10th Street, Port Angeles) – Mr. Metzler expressed his support for the
112 halibut resolution. He gave a copy of a letter to Representative Mike Chapman to the Port
113 Commission on the topic. Mr. Metzler then discussed the poundage limits given to commercial
114 long liners.

115
116 Dave Croonquist (Sequim) – Mr. Croonquist stated that he worked with Dept of Fish and
117 Wildlife for several years. He said that the economic impact of reduced fishing days is hurting
118 everyone and it makes people fish when they shouldn't be out on the water. He then
119 discussed statistics regarding recreational fishing.

120
121 Ralph Burba (473 West Silberhorn Road, Sequim) – Mr. Burba supports the resolution adopted
122 by the Port Angeles City Council. He stated that the halibut season is an injustice. As a tenant
123 at the Port Angeles Boat Haven, he has noticed that the smaller slips are empty due to the
124 shortened halibut season.

125
126 Mark Thomas (1743 Freshwater Bay Road, Port Angeles) – Mr. Thomas discussed the fishing
127 seasons being decreased and the changes to the fishery over the years. He stated that safety
128 is important on the water and the US Coast Guard has similar safety concerns. He asked the
129 Commission to support the resolution.

130
131 Discussion followed on who has the decision authority on the proposed changes to the halibut
132 fishery, the different fishing areas and the various area quotas.



133
134 **Commission Action:** Commissioner Burke made a motion to introduce resolution 17-1147.
135 Commissioner Beauvais seconded the motion for discussion and discussion followed. The
136 vote was called for and it passed unanimously.

137
138 Commissioner Burke made a motion to adopt resolution 17-1147. Commissioner Beauvais
139 seconded the motion for discussion. With no discussion, the motion passed unanimously.

140
141 **X. PUBLIC COMMENTS SESSION (total session up to 20 minutes) (1:54:00 to 2:06:16)**

142
143 Doug Sandau (164 Alice Road, Port Angeles) - Mr. Sandau discussed commuter airline
144 recruitment and the loss of it over the years. He stated that profit margins of commuter airlines
145 are very small. He gave his support in moving forward with Zephyr Air, but warned the
146 Commission of the domino effect if problems should arise.

147
148 Scott Jones (Pacific Northwest Regional Council of Carpenters of Ocosta, WA) – Mr. Jones
149 asked the Commission to include responsible bidder, apprenticeship and minority language
150 when putting out bids to contractors. Mr. Jones gave the Commission an example of a Port of
151 Seattle resolution supporting these efforts.

152
153 **XI. NEXT MEETINGS (2:06:30 to 2:07:15)**

- 154
155 ➤ March 13, 2017 Special Commission Meeting with City of Sequim at 4:00 PM

156
157 Director of Finance and Administration, John Nutter stated that the start time may change
158 to 3:00 PM for Port specific items.

- 159
160 ➤ March 21, 2017 Regular Commission Work Session at 9:00 AM
161 ➤ March 21, 2017 Regular Commission Business meeting at 1:00 PM

162
163 **XII. UPCOMING EVENTS (2:07:16 to 2:11:52)**

- 164
165 ➤ February 24, 2017 – Community Partner Program applications due

166
167 Commissioner Beauvais discussed KBTC coming to interview the Commission for their
168 “Northwest Now” segment on March 6th.

169
170 Commissioner Burke briefed the Commission on the EDC Executive Director search and the
171 Port Angeles Chamber of Commerce dunk tank at the Clallam County Fair.

172
173 **XIII. EXECUTIVE SESSION The Board may recess into Executive Session for those**
174 **purposes authorized under Chapter 42.30 RCW, the Open Public Meetings Act.**
175 (2:11:53 to 2:12:40)
176



177 Commissioner McAleer moved the meeting into executive session at 3:15 PM to discuss two
178 items concerning the lease of Port property and one item concerning potential litigation
179 expected to take 30 minutes. Action was not expected to be taken following executive
180 session.

181
182 At 3:45 PM, Commissioner McAleer extended the executive session for 15 minutes until 4:00
183 PM. At 4:00 PM, Commissioner McAleer extended the executive session for 5 minutes until
184 4:05 PM.

185
186 **XIV. ADJOURN**

187
188 With no further business to discuss, Commissioner McAleer adjourned the business meeting at
189 4:06 PM.

190
191 PORT OF PORT ANGELES
192 BOARD OF COMMISSIONERS

193
194
195 _____
196 Colleen M. McAleer, President
197

Connie L. Beauvais, Vice President

**ITEM FOR CONSIDERATION
BY THE
BOARD OF PORT COMMISSIONERS**

March 6, 2017

SUBJECT: TERMINAL 3 HEADLINE DOLPHIN – BID AWARD

STAFF LEAD: Chris Hartman, Director of Engineering

RCW & POLICY REQUIREMENT

Public works is defined within RCW 39.04.010 as “all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein”.

The Port’s Master Policy Section III.A requires all Public Works contracts over \$50,000 be approved by the Commission.

BACKGROUND:

The bid documents to complete the Terminal 3 Headline Dolphin were completed under a Professional Service Agreement with BergerABAM. The scope of work includes:

- Project mitigation: Removal of small portion of the Terminal 7 pier.
- Installation of ten (10) 24” diameter steel pipe piles.
- Construction of a concrete dolphin structure with associated mooring bollard.
- Installation of a walkway from Terminal 3 to the new dolphin.

(see attached figure)

On January 9, 2017, the Port Commission directed staff to move forward and advertise the project for bids. Advertisements were printed in the Peninsula Daily News and the Seattle Daily Journal of Commerce January 13 and 27th.

ANALYSIS:

The final engineer’s construction estimate was \$910,000. A total of eight (8) bids were received and opened on February 28, 2017 with the following results:

BIDDER	TOTAL BID AMOUNT Including WSST (\$)
1. Legacy Contracting, Inc.	908,272.76
2. American Construction Company, Inc.	928,717.00

3. Orion Marine Contractors, Inc.	946,874.00
4. Rognlin's, Inc.	957,594.76
5. Pacific Pile and Marine, LP	1,002,976.42
6. Bergerson Construction, Inc.	1,129,952.00
7. Quigg Brothers, Inc.	1,213,494.64
8. Manson Construction Company	1,367,886.59

The lowest bid received was submitted by Legacy Contracting, Inc. (Legacy). Their bid met all requirements of the bid documents and was free of mistakes and errors. The Port has deemed Legacy's bid responsive. Additionally, staff checked Legacy's bank, bond, prevailing wage compliance, and relevant projects. Port staff concludes that Legacy is a responsible bidder.

FISCAL IMPACT:

The Port's 2017 Capital Budget allocated \$950,000 for the Terminal 3 Headline Dolphin. The budgeted total was based off of a preliminary design completed by BergerABAM last summer. There is no outside funding for this project, so 100% of the funding will be from the Port's Capital Improvement Fund. The total estimated 2017 project cost includes:

- Construction - Low Bid (approx.) \$ 910,000
 - Construction Administration (estimated) \$ 80,000
- TOTAL = \$ 990,000** —
BUDGET = \$ 950,000
OVER BUDGET = \$ 40,000

There is two hundred thousand dollars (\$200,000) budgeted within the Port's Capital Budget as a contingency fund that can cover the additional project cost.

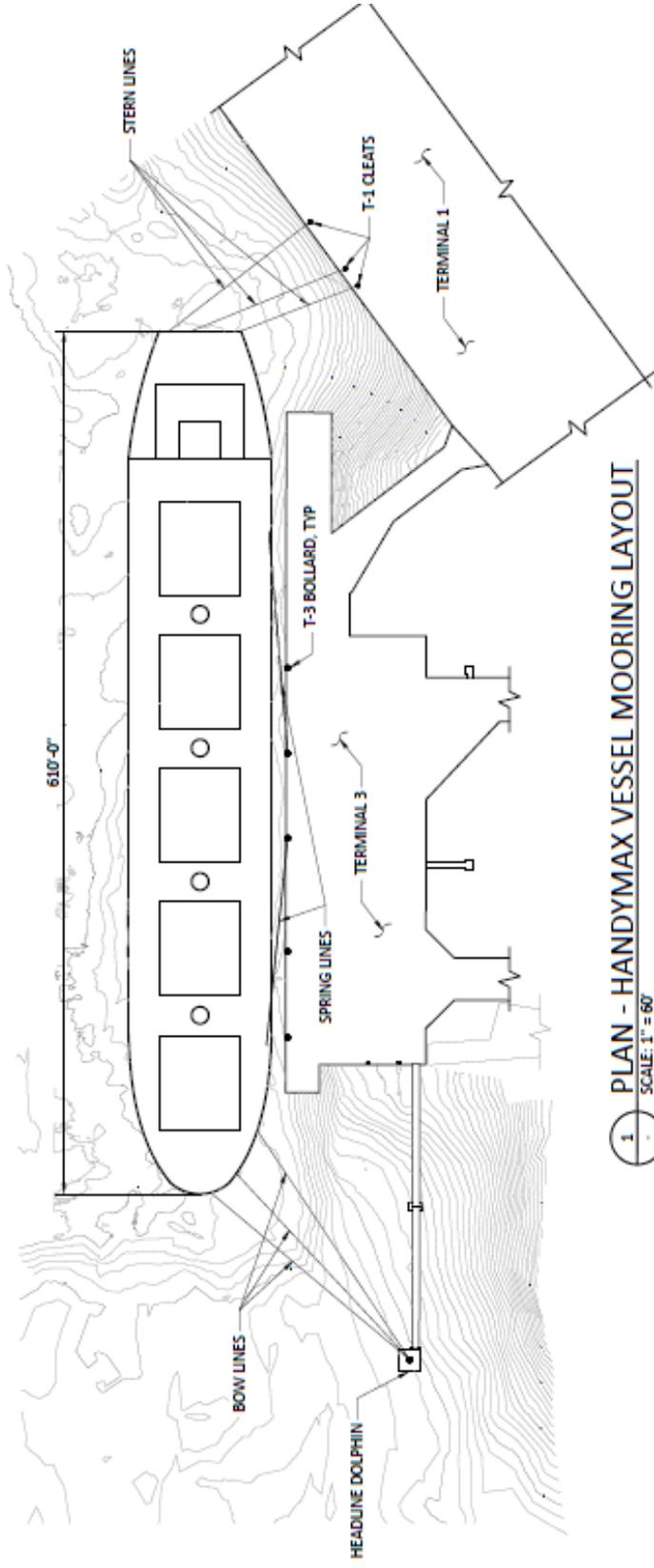
ENVIRONMENTAL IMPACT:

All environmental impacts associated with this project will be mitigated during construction. Mitigation activities include removal of existing creosote treated timber piles and pier structure adjacent to Terminal 7. All activities were permitted within the Port's Port Angeles Harbor Maintenance Permit through the U.S. Army Corp of Engineers.

RECOMMENDED ACTION:

Staff recommends the Commission authorize the Executive Director to execute a contract with Legacy Contracting, Inc. in the amount of Nine Hundred Eight Thousand Two Hundred Seventy-Two Dollars and Seventy-Six Cents (\$908,272.76).

PORT ANGELES HARBOR



1 PLAN - HANDYMAX VESSEL MOORING LAYOUT
SCALE: 1" = 60'

[Proposed] Broker Commission Policy

Port of Port Angeles

(February 21 ~~March 6~~, 2017)

1. **Port Staff Negotiations.** Port of Port Angeles (“**Port**”) staff will negotiate with prospective purchasers and tenants (collectively, the “**Prospective Customer**”) whenever possible and feasible. –However, the Port acknowledges that there may be circumstances in which a licensed real estate broker (a “**Broker**”) has been engaged by the Prospective Customer to assist with facilitating a sale or lease of Port property. In such circumstances, the terms and conditions for the Port’s agreement to pay a commission to a Broker are established by this Broker Commission Policy (“**Policy**”).

2. **Registration of a Licensed Real Estate Broker; Receipt of Broker Fee.** In order to qualify for receipt of a broker fee (thea “**Broker Fee**”) from the Port, a Broker must (i) be licensed in the State of Washington; (ii) register with the Port as the “**procuring cause**” of the sale or lease of Port-owned land or buildings; and (iii) have provided the Port a fully executed copy of the representation agreement between the Broker and Prospective Customer. –For a Broker to be considered the “procuring cause” of the sale or lease of Port property (and/or improvements) the Broker and Prospective Customer must both agree in writing in a form acceptable to the Port that the Broker is representing the Prospective Customer in the proposed transaction with the Port. –This written confirmation must (i) include acknowledgment that this Policy has been received and reviewed by both parties; (ii) **include** specific acknowledgement of, and agreement to the requirements of Section 4 of this Policy; and (iii) be received by the Port before any substantial discussions have occurred between the Prospective Customer and Port. The term “**substantial discussions**” shall mean that point in the negotiations where price and terms for a specific Port-owned property are being negotiated. It is the express intent of this Policy that the Port be made aware of any Broker involved in a transaction before price and terms are negotiated.

2.1. Multiple Brokers. –Multiple Brokers may register with regard to a Prospective Customer under this Policy.– In such an event the Port will only pay one Broker Fee. Prior to disbursement of any approved Broker Fee the Brokers and the Prospective Customer will provide a written agreement, acceptable to the Port and signed by all parties, indicating the exact division of the Broker Fee between the Brokers.

2.2. Prospective Customer's Discretion Concerning Brokers. It is the Prospective Customer's sole decision, prior to the point of substantial discussions, whether or not a Broker is representing the Prospective Customer in a real estate transaction with the Port. Notwithstanding the foregoing, if a ~~lengthy~~ period of time ~~(as determined by Port in its sole discretion)~~ **six (6) months** has elapsed since the initial registration of the Broker with no substantive activity from the Broker and/or Prospective Customer regarding the contemplated transaction, then updated written confirmation of the contractual relationship between the Broker and Prospective

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(February 21/March 6, 2017)

Customer may be requested by the Port.

2.3. Termination of Broker by Prospective Customer. If a Prospective Customer informs the Port, in writing, that the Prospective Customer has terminated the business relationship with the Broker prior to the execution of a binding and definitive lease or sale agreement then no compensation shall be paid by the Port.

3. **Fee Paid to Broker.** The amount of the Broker Fee the Port will pay a Broker is subject to the following:

3.1. ~~3.1.~~ Lease transactions. A Broker Fee will be paid to the Broker who is the procuring cause of the lease of Port property and who ~~and~~ has registered in accordance with this Policy. The Broker Fee will be negotiated for each transaction and will not exceed five percent (5%) of the net annual base rent for the initial term of the lease (not to exceed five (5) years ~~without the necessity of Commission approval~~). The Port will pay ~~Broker one-half (1/2) of the first year's~~ the lease related Broker Fee (based on net lease payments actually received) six (6) months after as follows:

a. If the total Broker Fee is \$10,000 or less, then such Broker Fee will be paid to Broker upon occupancy of the leased premises by the executed lease agreement. The Port will pay ~~the effective date of leased premises by the executed lease agreement. The Port will pay~~ Prospective Customer.

b. If the ~~Broker~~ total Broker Fee exceeds \$10,000, then such Broker Fee will be paid to Broker in installments, with the remaining one-half (1/2) initial installment of \$10,000 paid to Broker upon occupancy of the leased premises by the Prospective Customer; and the remainder of the first year's Broker Fee (based on net lease payments actually received) twelve (12) months after the effective date of the executed lease agreement. Thereafter, the Port will pay the Broker the Broker Fee annually Broker Fee to be prorated and paid in annual installments at the end of each year of the lease for up to the next five (5) years of such lease (as determined by the effective date of such lease) and calculated using the net base rent payments actually received from the tenant. ~~If the tenant terminates the lease early, payment of the Broker Fee will be paid through the lease termination date.~~

c. Calculations of Broker Fees for lease transactions shall be on the "**net base rent**" ~~(not including the exclusions described in Section 3.3 below)~~ for the original term of the lease, not to exceed five (5) years- and shall not include rent-free periods, Washington State leasehold tax, triple net charges, common area maintenance charges, gross receipts or any other fees or charges, options to extend leases, renewals, or expired leases or on expansion of lease areas. The Port's reasonable determination of the amount owed shall be final and binding.- All Broker

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Fee payments due hereunder will be paid by the Port within thirty (30) days of the date on which the calculation for such fee is to be determined.

~~3.2.~~ 3.2. Sale transactions. A Broker Fee will be paid to the Broker who is the procuring cause of the sale and has registered in accordance with this Policy. ~~The Broker Fee will be negotiated for each transaction, will not exceed three percent (3%) of the total sales price, and will be based upon, but not limited to, the following factors: the dollar value of the transaction, the due diligence period, the length of time to close the transaction, the financial terms, and existing market commission rates.~~ A sale-based Broker Fee calculation will not include options to purchase or similar options made available to the Prospective Customer. The Broker shall receive payment of the Broker Fee within thirty (30) days after the sale closes and all funds from the sale are received by the Port. ~~If the sale is an installment sale, payment terms for the Broker Fee will be negotiated between the Port and the Broker.~~

~~3.3. Items Not Included.~~ A Broker Fee will not be paid for rent-free periods, Washington State leasehold tax, triple net charges, common area maintenance charges, gross receipts or any other fees or charges. Nor shall a Broker Fee be paid on sale options, options to extend leases, renewals, or expired leases or on expansion of lease areas.

~~3.4.~~ 3.4. Variations May Be Considered^{[KG1][CJR2]}. In special circumstances, including transactions of unusual magnitude of size or value, or economic incentives, or if a Prospective Customer is seeking fiscal concessions as part of the lease or sale negotiation, the Port may, in its sole discretion, negotiate variations from the policies set forth herein.

4. Approval by Commission. ~~The determination of whether the Port will pay the Broker Fee shall be within the sole discretion of the Port Commission~~^{[KG3][CJR4]}. The amount of all All Broker Fees paid to Brokers in excess of \$50,000 shall be subject to the additional approval of the Port Commission.

5. Claims Against the Port. The Broker and Prospective Customer expressly acknowledge and agree that any dispute regarding a Broker Fee allegedly owed to Broker by the Prospective Customer is strictly between those parties. ~~The Port's agreement to pay a Broker Fee under this Policy is subject to and strictly limited by the requirement that the Broker and Prospective Customer provide written notice to the Port as required herein and further satisfaction of the terms and conditions of this Policy. The Broker and the Prospective Customer understand and agree that no claim, action, cause of action or proceeding, administrative or judicial, may be maintained against the Port, or its Commissioners, employees, agents or representatives, to collect any Broker Fee or other compensation allegedly due to the Broker.~~

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6. **Litigation; Attorneys' Fees and Costs.** In the event of any litigation arising from or related to this Policy, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs incurred including staff time, court costs, attorneys' fees, and all other related expenses incurred in such litigation. In the event of a non-adjudicative settlement of litigation between the parties or a resolution of a dispute by arbitration, the term "**prevailing party**" shall be determined by that process.

7. **Amendment of this Policy.** This Policy may only be amended by a written agreement approved by the Commission and executed by the Port.

8. **Annual Report to Commission.** Port staff shall report annually to the Port Commission regarding this Policy and make recommendations on whether this Policy should be amended from time to time.

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1. **Port Staff Negotiations.** Port of Port Angeles (“**Port**”) staff will negotiate with prospective purchasers and tenants (collectively, the “**Prospective Customer**”) whenever possible and feasible. However, the Port acknowledges that there may be circumstances in which a licensed real estate broker (a “**Broker**”) has been engaged by the Prospective Customer to assist with facilitating a sale or lease of Port property. In such circumstances, the terms and conditions for the Port’s agreement to pay a commission to a Broker are established by this Broker Commission Policy (“**Policy**”).

2. **Registration of a Licensed Real Estate Broker; Receipt of Broker Fee.** In order to qualify for receipt of a broker fee (a “**Broker Fee**”) from the Port, a Broker must (i) be licensed in the State of Washington; (ii) register with the Port as the “**procuring cause**” of the sale or lease of Port-owned land or buildings; and (iii) have provided the Port a fully executed copy of the representation agreement between the Broker and Prospective Customer. For a Broker to be considered the “procuring cause” of the sale or lease of Port property (and/or improvements) the Broker and Prospective Customer must both agree in writing in a form acceptable to the Port that the Broker is representing the Prospective Customer in the proposed transaction with the Port. This written confirmation must (i) include acknowledgment that this Policy has been received and reviewed by both parties; (ii) include specific acknowledgement of, and agreement to the requirements of Section 4 of this Policy; and (iii) be received by the Port before any substantial discussions have occurred between the Prospective Customer and Port. The term “**substantial discussions**” shall mean that point in the negotiations where price and terms for a specific Port-owned property are being negotiated. It is the express intent of this Policy that the Port be made aware of any Broker involved in a transaction before price and terms are negotiated.

2.1. Multiple Brokers. Multiple Brokers may register with regard to a Prospective Customer under this Policy. In such an event the Port will only pay one Broker Fee. Prior to disbursement of any approved Broker Fee the Brokers and the Prospective Customer will provide a written agreement, acceptable to the Port and signed by all parties, indicating the exact division of the Broker Fee between the Brokers.

2.2. Prospective Customer's Discretion Concerning Brokers. It is the Prospective Customer's sole decision, prior to the point of substantial discussions, whether or not a Broker is representing the Prospective Customer in a real estate transaction with the Port. Notwithstanding the foregoing, if a period of six (6) months has elapsed since the initial registration of the Broker with no substantive activity from the Broker and/or Prospective Customer regarding the contemplated transaction, then updated written confirmation of the contractual relationship between the Broker and Prospective Customer may be requested by the Port.

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2.3. Termination of Broker by Prospective Customer. If a Prospective Customer informs the Port, in writing, that the Prospective Customer has terminated the business relationship with the Broker prior to the execution of a binding and definitive lease or sale agreement then no compensation shall be paid by the Port.

3. **Fee Paid to Broker.** The amount of the Broker Fee the Port will pay a Broker is subject to the following:

3.1. Lease transactions. A Broker Fee will be paid to the Broker who is the procuring cause of the lease of Port property and who has registered in accordance with this Policy. The Broker Fee will be negotiated for each transaction and will not exceed five percent (5%) of the net annual base rent for the initial term of the lease not to exceed five (5) years. The Port will pay the lease related Broker Fee as follows:

a. If the total Broker Fee is \$10,000 or less, then such Broker Fee will be paid to Broker upon occupancy of the leased premises by the Prospective Customer.

b. If the total Broker Fee exceeds \$10,000, then such Broker Fee will be paid to Broker in installments, with the initial installment of \$10,000 paid to Broker upon occupancy of the leased premises by the Prospective Customer; and the remainder of the Broker Fee to be prorated and paid in annual installments at the end of each year of the lease for up to the next five (5) years of such lease (as determined by the effective date of such lease) and calculated using the net base rent payments actually received from the tenant. If the tenant terminates the lease early, payment of the Broker Fee will be paid through the lease termination date.

c. Calculations of Broker Fees for lease transactions shall be on the “**net base rent**” for the original term of the lease, not to exceed five (5) years and shall not include rent-free periods, Washington State leasehold tax, triple net charges, common area maintenance charges, gross receipts or any other fees or charges, options to extend leases, renewals, or expired leases or on expansion of lease areas. The Port's reasonable determination of the amount owed shall be final and binding. All Broker Fee payments due hereunder will be paid by the Port within thirty (30) days of the date on which the calculation for such fee is to be determined.

3.2. Sale transactions. A Broker Fee will be paid to the Broker who is the procuring cause of the sale and has registered in accordance with this Policy. The Broker Fee will be negotiated for each transaction, will not exceed three percent (3%) of the total sales price, and will be based upon, but not limited to, the following factors:

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the dollar value of the transaction, the due diligence period, the length of time to close the transaction, the financial terms, and existing market commission rates. A sale-based Broker Fee calculation will not include options to purchase or similar options made available to the Prospective Customer. The Broker shall receive payment of the Broker Fee within thirty (30) days after the sale closes and all funds from the sale are received by the Port. If the sale is an installment sale, payment terms for the Broker Fee will be negotiated between the Port and the Broker.

3.3. Variations May Be Considered. In special circumstances, including transactions of unusual magnitude of size or value, or economic incentives, or if a Prospective Customer is seeking fiscal concessions as part of the lease or sale negotiation, the Port may, in its sole discretion, negotiate variations from the policies set forth herein.

4. **Approval by Commission.** All Broker Fees in excess of \$50,000 shall be subject to the additional approval of the Port Commission.

5. **Claims Against the Port.** The Broker and Prospective Customer expressly acknowledge and agree that any dispute regarding a Broker Fee allegedly owed to Broker by the Prospective Customer is strictly between those parties. The Port's agreement to pay a Broker Fee under this Policy is subject to and strictly limited by the requirement that the Broker and Prospective Customer provide written notice to the Port as required herein and further satisfaction of the terms and conditions of this Policy. The Broker and the Prospective Customer understand and agree that no claim, action, cause of action or proceeding, administrative or judicial, may be maintained against the Port, or its Commissioners, employees, agents or representatives, to collect any Broker Fee or other compensation allegedly due to the Broker.

6. **Litigation; Attorneys' Fees and Costs.** In the event of any litigation arising from or related to this Policy, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs incurred including staff time, court costs, attorneys' fees, and all other related expenses incurred in such litigation. In the event of a non-adjudicative settlement of litigation between the parties or a resolution of a dispute by arbitration, the term "**prevailing party**" shall be determined by that process.

7. **Amendment of this Policy.** This Policy may only be amended by a written agreement approved by the Commission and executed by the Port.

8. **Annual Report to Commission.** Port staff shall report annually to the Port Commission regarding this Policy and make recommendations on whether this Policy should be amended from time to time.



**JOINT MEETING WITH PORT
OF PORT ANGELES and
SEQUIM CITY COUNCIL
REGULAR MEETING AGENDA
SEQUIM CITY COUNCIL**

**Sequim Civic Center
152 West Cedar Street
Sequim, WA
March 13, 2017
4:00 PM**

Times are approximate and subject to change. All agenda items including public hearings may be addressed at any time once the meeting begins.

4:00 PM STUDY SESSION

Joint Meeting with Sequim City Council and Port of Port Angeles Commission

Topic	Discussion Leader
Welcome and Introductions	Mayor Dennis Smith Commission President Colleen McAleer
Sequim City Council Goals	Mayor Smith/ City Manager, Charlie Bush
Port of Port Angeles Goals	Commission President, Colleen McAleer
Sequim Economic Development Plan	City Manager, Charlie Bush
Sequim Comprehensive Plan	Asst. City Manager, Joe Irvin
John Wayne Marina Discussion	?
Update on Composite Recycling Technology Center (CRTC)	Port Executive Director, Karen Goschen
Port Angeles Air Service	Port Director of Finance & Administration, John Nutter Port Airport & Marina Manager, Jerry Ludke

Future Agenda Items – Work Session

(9:00 a.m. unless otherwise noted)

3/6/2017 Commission Meeting

March 13, 2017 (Special Meeting) Sequim City Council 4pm to 6pm

- 2017 Port/City Goals, Economic Opportunity Zone, John Wayne Marina

March 21, 2017 (Regular Meeting)

- Prior Barge Studies Overview/State of Barging Industry Presentation—BST Associates
- Website redesign update
- Community Partner Program Applicant Presentations
- County MRC- JWM Oyster Restoration (time specific at 10am)

Future

- Governance: Delegation of Authority, Employee Handbook and resolutions
- Lease Policy Considerations (Chris Riffle)
- Lease rate setting process and publication of rates
- CLT Construction Event Planning (Timber Advisory Committee)
- Master plan "Vision" of different Port properties (purchase and sale opportunities)
- Consultant contract template review and process for commission guidance
- Analysis of Business Lines—Q1 or Q2 2017
- POPA Promotional Video (March 31, 2017 deadline)
- Commission meeting in Forks?

Future Joint Meetings

- Some meetings could be with staff and one commissioner.
- Special Meetings: Joint meeting with other public agencies in each district
 - Share strategic direction and key goals for each entity
 - Cross-public entity effort (Council of Governments); set 1 to 3 top community goals
 - Clallam County (4/24*, 7/17 and 10/16)
 - Quarterly Reports: EDC Report, SBDC Report, CRTC updates
 - Timber Advisory Committee, FIA Master Plan update, MTIP update, Emergency preparedness planning
 - City of Forks: Timber Advisory Committee, Timber Arrearages, CLT, invite DNR to meeting and to tour the forests, DNR report, ONRC update
 - Port of Port Townsend (host one meeting at each port): maritime efforts, marinas, airport (tour for POPA), CRTC (tour for POPT), NOP RC&D update

Future Agenda Items – Business Meeting

3/6/17 Commission Meeting

March 13, 2017 (Special Meeting with City of Sequim)

March 21, 2017 (Regular Meeting)

- Community Partner Program award announcements
- DelGuzzi lease
- Annual Lease Policy Report
- 4th Quarter Financial Report

April 24, 2017 (Special Joint Meeting with the County)

Announcements

Future

- Special Meetings: Joint meeting with Lower Elwha Klallam Tribe
- Environmental Management System (EMS)
- CRTC Term Lease 2220 W 18th Street
- Peninsula College Term Lease at 2220 W 18th Street