

Minutes of Port Commission Regular Meeting
December 8, 2022
In Person & Videoconference

A Regular Meeting of the Port Commission of Port Freeport was held December 8, 2022, beginning at 1:06 PM at the Administration Building, 1100 Cherry Street, Freeport, Texas.

This meeting agenda with the agenda packet is posted online at www.portfreeport.com

The meeting will be conducted pursuant to Section 551.127 of the Texas Government Code titled "Videoconference Call." A quorum of the Port Commission, including the presiding officer, will be present at the Commissioner Meeting Room located at 1100 Cherry Street, Freeport, Texas. The public will be permitted to attend the meeting in person or by videoconference.

The videoconference is available online as follows:

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Commissioners present in person:

Mr. John Hoss, Chairman
Mr. Rudy Santos, Vice Chairman
Mr. Dan Croft, Secretary
Mr. Rob Giesecke, Asst. Secretary
Mr. Ravi Singhania, Commissioner
Mr. Shane Pirtle, Commissioner

Staff Members Present:

Mr. Grady Randle, Legal Counsel
Ms. Phyllis Saathoff, Executive Director/CEO
Mr. Rob Lowe, Director of Administration/CFO
Mr. Al Durel, Director of Operations
Mr. Mike Wilson, Director of Economic Development & Freight Mobility
Mr. Jason Hull, Director of Engineering
Mr. Jason Miura, Director of Business & Economic Development
Mr. Brandon Robertson, Network Systems Manager
Ms. Mary Campus, Controller
Ms. Christine Lewis, Safety Coordinator
Mr. Tricia Vela, Public Affairs Assistant
Mr. Nick Malambri, Engineering Specialist
Mr. Jim Perouty – Safety Technician

Also, present:

Mr. Chris Moore, Texas Port Ministry
Ms. Megan Mikutis, Randle Law Office
Mr. Geoff Bowman, Van Scoyoc
Ms. Elise Gamez, Carriage House Partners
Mr. Rick Stephanow, Gulf LNG Services
Mr. Jason Foltyn, HDR
Ms. Barbara Fratila
Mr. Sammy Chambless
Mr. Benjamin Schulze
Mr. Delger Erdenesanaa

1. CONVENE OPEN SESSION in accordance with Texas Government Code Section 551.001, et. seq., to review and consider the following:
2. Invocation – Commissioner Shane Pirtle.
3. Pledge of Allegiance – U.S. Flag and Texas Flag
4. Roll Call – Commissioner Hoss noted that all Commissioners were present in the Board Room.
5. Safety Briefing – Ms. Christine Lewis provided a safety moment regarding holiday safety. Ms. Lewis also introduced Jim Perouty who joined the Port as a part-time safety technician.
6. Call to identify and discuss any conflicts of interest that may lead to a Commissioner abstaining from voting on any posted agenda item.

There were no conflicts noted from Commissioners.

7. Public Comment – There were no public comments.
8. Public Testimony – There was no public testimony.
9. Receive update from federal consultants Van Scoyoc.

Mr. Geoff Bowman with Van Scoyoc began with a little background information stating that the Presidential budget request are due to Congress every February with this year's budget request coming in late. This has compounded the delays in completing the fiscal year 2023 budget process. The President's annual budget requests continues the bipartisan trend of neglecting assets of the Army Corps of Engineers. Congress has 12 appropriations bills they have to enact annually. The House passed 6 of the bills July 20, including the Energy and Water account that funds the Army Corps of Engineers. The Senate made their bills public in July but took no further action. Mr. Bowman noted that the House Energy and Water Bill included approximately \$90 million in what is called community project funding for the Freeport Harbor Channel Improvement Project, which was done at the request of Congressman Randy Weber. He went on to discuss the difficulty of this achievement noting that after 10

years of abdicating their article 1 constitutional obligation of directing federal investment, Congress has returned to the practice of earmarking funds for specific projects. Mr. Bowman noted that Congress and the federal government are operating under a Continuing Resolution which expires December 16. Congress continues to try and wrap up work on the FY 2023 appropriations bills which the FHCIP is a part of. Mr. Bowman also noted that we may be looking at another Continuing Resolution to get us closer to December 23, maybe December 30. He is optimistic that a full year package will be completed before the holiday if not by calendar year end.

At this time, the connection with Mr. Bowman was lost. Ms. Saathoff reported on staff's trip to Washington, DC where they had the opportunity to meet with the Assistant Secretary of the Army, Mr. Pinkham, Major General Graham, Eddie Belk - new Civil Works Director at HQ, staff from Tab Brown's office as well as legislative directors from Congressman Weber, Senator Cornyn and Senator Cruz's offices.

Mr. Bowman rejoined the meeting at this time. He anticipates the package will include earmarks, including earmarks for our project. He expressed gratitude to Congressman Weber for promoting the project. Commissioner Croft expressed his appreciation to Mr. Bowman for his effort in explaining the layers of the government to help him understand. Commissioner Singhanian also expressed his appreciation to Mr. Bowman, Ms. Saathoff, Mr. Hull and others for their efforts to obtain funding for the project. Commissioner Croft asked Mr. Bowman to explain how Management and Budget determines how the funds are spent once through the House and Senate. Mr. Bowman stated that once the House and Senate enact a full year appropriations bill, if the Port's earmark is part of that, the Corps is responsible for writing a Work Plan within 60 days that includes the earmarks for projects. The OMB does have to sign off on the Work Plan. The Corps takes approximately 30 days to develop the Work Plan, the Pentagon then reviews for about 15 days and finally the OMB receives it for review for an additional 15 days. Work Plans sometimes release prior to 60 days but rarely do they get release after the 60 days shot clock. Commissioner Pirtle inquired about the National Defense Authorization Act (NDAA) trying to get passed at \$10 million more than Senate wanted and \$20 million more than House wanted and if there will be a national impact here. Mr. Bowman stated the House may take up the NDAA as early as today with an agreement in place. He understood the biggest issue was there needed to be an agreement on mandatory vaccines for service personnel believes they have reached a compromise. He noted there is one Senate hold on NDAA but should be easily overcome and expects the NDAA to pass within the next couple of weeks. Also included in the bill is reauthorization of the MARAD programs, reauthorization of the Coast Guard programs and the Water Resources Act of 2022. The WRDA bill is also close to being approved. Ms. Saathoff noted that one of items in the WRDA bill is the continuation of construction provision that gives the Secretary of the Army temporary authority to continue with water resources projects that may exceed the cost cap because of the recent escalation in fuel and construction prices.

10. Approval of minutes from the Regular Meetings held November 17, 2022.

Ms. Saathoff noted that a minor correction was made to the minutes but otherwise are ready for approval.

A motion was made by Commissioner Giesecke to approve the minutes as presented. The motion was seconded by Commissioner Croft with all Commissioners present voting in favor of the motion.

11. Receive report from Executive Director/CEO and/or Port staff on activities and matters related to COVID-19 health safety matters, administrative affairs, financial results, facility engineering matters, operations and vessel activity, port safety matters, port security matters, Port tenant updates, USCOE, and other related port affairs.

Ms. Saathoff followed up staff's trip to WDC noting it was a productive trip with meetings well received adding that with the changes in positions, it was good to meet with the new personnel face to face. The next opportunity to interact will come at the AAPA Spring Conference in March as well as the National Waterways Legislative Conference. By this time, staff will know the total funds available for the project and the Corps will have bids in for the package as well. With regard to the bid package staff was notified that there had been delays in completing and transmitting the package to Division for review due to the size of the package. After reinstating a sense of urgency, confirmation was received the package is, as of today, at Division and is expected to take approximately 40 days to review. Ms. Saathoff also reported on the delegation who visited the Port and the Volkswagen site earlier in the week. Representatives from Volkswagen, JLL, KDC, PRP, GAC as well as the lawyers who were involved in the transaction with Volkswagen were all present for a welcome reception. Ms. Saathoff thanked staff for organizing a nice welcoming event. Commissioner Singhania and Ms. Saathoff hosted Brad Morrison from BASF for a port tour and briefing November 30. Ms. Saathoff also reported attending the BCPC Meeting and CAP Meeting. Lastly, Ms. Saathoff stated that since this is the only board meeting this month and was moved up, staff reports will be distributed prior to the Christmas holidays.

12. Receive report from Commissioners on matters related to Port Commission meetings or conferences, Port presentations and other Port related matters.

Commissioner Pirtle reported attending BCCA Meeting, attending the meeting with Riviana regarding the investigation of the recent trash bin fire, and Airport Holiday Reception.

Commissioner Singhania reported on the BASF Port visit and noted attending the Boys & Girls Club Celebration. He also reported on the planning meeting held with staff with regard to infrastructure and sustainability strategy. He also noted an upcoming AAPA POWERS Expo & Summit in January that staff and commissioners will be attending.

13. Approval of a Permanent Road Access Agreement and Right-of-Way with The Dow Chemical Company.

A motion was made by Commissioner Santos to postpone this item for consideration at the first meeting in January. The motion was seconded by Commissioner Pirtle with all Commissioners present voting in favor of the motion.

14. Approval of a Transfer of Title and Ownership Agreement with Freeport LNG to transfer title of atmospheric and oceanographic sensing assets to Port Freeport.

Mr. Hull stated that this is the equipment Freeport LNG purchased for the NOAA PORTS System. This document transfers the title and ownership to Port Freeport. The equipment monitors and predicts ocean currents as well as monitors atmospheric temperature, wind, humidity, etc. To view current conditions, you can click a button on the Port's website which takes you to the NOAA site to view real time weather in Freeport. Legal counsel has reviewed, and staff recommends approval. Commissioner Hoss also noted that this equipment assists the Brazos Pilots to safely navigate in and out of the harbor.

A motion was made by Commissioner Pirtle approve the transfer to Port Freeport. The motion was seconded by Commissioner Singhania with all Commissioners present voting in favor of the motion.

15. Approval of a Government Liaison Services Agreement with Carriage House Partners, LLC for legislative consulting services.

Ms. Saathoff stated that the contract with CHP expires at the end of the month which currently aligns with the two-year legislative cycle. Staff is seeking approval of another two-year agreement to begin January 1, 2023. CHP has requested an increase to \$5,000 per month and are currently at \$4,250. Ms. Saathoff noted that CHP has done an excellent job in assisting the Port with communications at the state level at all offices. They attend committee meetings on behalf of the Port reporting weekly during session, monthly when not in session. Additionally, they monitor legislation for the Port and help staff identify items to closely watch so there aren't unintended consequences to prevent the Port from fulfilling its responsibilities as a port authority. Staff recommends continuing with these services for another two-year period noting there is a 30-day termination notice provision in the contract should there be reason to terminate.

Commissioner Giesecke inquired whether or not the monitoring of bills could or should be managed by the Texas Ports Association. Ms. Saathoff stated that Texas Ports Association only recently hired an executive director that is still getting established and in time they will be more thoroughly able to manage it adding it's one thing to monitor for the good of all ports, but you also monitor your local area and local district. Ms. Saathoff is not confident making that recommendation at this time. Commissioner Pirtle added that CHP has been instrumental in communicating with certain legislators since they are housed in Austin and can provide feedback on behalf of the Port. Commissioner Giesecke inquired whether our peer ports have the same lobbying arrangements. Ms. Saathoff stated they do, and some have multiple firms engaged. Commissioner Giesecke referenced an email from Ms. Saathoff where she mentioned legislation regarding eminent domain, asking if it was opposing an overall bill or a tweak noting he assumed from the context, it was related to time limits on when a property is taken on how quickly it needs to be put into public use. Ms. Saathoff noted that nearly every session something comes up and the Port has to work to get language back in because they are working with federal government, projects don't move as fast as some other entities. Commissioner Giesecke also inquired where CHP gets their direction from when they lobby on behalf of the Port for or against a bill. Ms. Saathoff stated that if its time sensitive and the bill is consistent with what the Port has supported, she gives direction. With regard to the TPA legislative package on the agenda; the board will make the decision whether or not the Port supports the package or not. If something comes up the Port is not supportive of, CHP will not advocate those bills on our behalf. The Commission will know what position the Port is taking and how they are being directed. CHP is not representing any other ports and has good relationships with the other port lobbyists which is helpful in trying to reach compromises.

A motion was made by Commissioner Santos to approve the agreement. The motion was seconded by Commissioner Pirtle with all Commissioners present voting in favor of the motion.

16. Discuss and consider Texas Ports Association legislative agenda and resolution in support thereof.

Ms. Saathoff stated that legislative counsel was supposed to have all the bills back this week however they have not been received. Staff suggested postponing this agenda item to January to allow staff and Commission to see the final bills before making a decision.

A motion was made by Commissioner Singhanian to postpone this item for consideration at the first meeting in January. The motion was seconded by Commissioner Giesecke with all Commissioners present voting in favor of the motion.

17. Discuss and consider setting the 2023 Port Commission meeting dates.

A motion was made by Commissioner Pirtle to approve the meeting dates as recommended by staff. The motion was seconded by Commissioner Singhanian with all Commissioners present voting in favor of the motion.

18. Discuss and consider rules and procedures for conducting Port Commission meetings.

Commissioner Hoss noted that a few Commissioners still have comments and questions about various segments of the procedures. He suggested discussing these items and if everyone is comfortable, vote on it. If not, it'll be postponed to the January meeting. Commissioner Pirtle started by stating that he recalled the Commission getting hung up on the term super majority. He added that if the Commission wants to do super majority, they need to be specific when it should apply and when it doesn't, just saying we want super majority could potentially put the Commission in a bind. An example is if one of the members was no longer available and the commission needed to reappoint someone new, you could end up locked in a 3-2 vote. If the Commission wants super majority with rule changes or policy changes, it needs to be specific to that. Commissioner Giesecke noted the current draft mentions it in Section 3.10 under Motion to Close Nominations, Motion to Object to Consideration of an Agenda Item and Motion to Suspend the Rules. Commissioner Pirtle doesn't have concern for super majority in those areas however he recalls discussion to go "across the board" with super majority. Commissioner Singhanian commented that he feels these rules should be adopted unanimously or by super majority because you don't want the rules to change every time the Commission changes. Second, he addressed Commissioner Pirtle's proposal for election of chair stating he liked it but would also offer another improvement when a commissioner may have a perceived conflict and must abstain but out of the five left, four have to vote yes. Commissioner Singhanian wants to see the same thing on an actual conflict adding that to make it even simpler, anything the Commission passes should get at least four votes. If a quorum isn't present, it can be postponed. He doesn't want a 3-2 vote when someone is absent because you can run into perceived problems. If two Commissioners have a conflict, the remaining four should vote. If three have a conflict, the remaining three should vote and one of the other three votes yes for it. He doesn't want to see any perception from the public and won't if we required four votes to pass anything. Again, Commissioner Pirtle stated super majority is good if voting on policy or rule changes. His concern is if you require four votes and run into a

situation where there are only five commissioners remaining, you could lock everything going forward if you always have to have four votes. Commissioner Giesecke noted that it states in Section 3.02 that for the purpose of calculating a simple majority the simple majority is four of the six Commissioners, no more no less even in consideration an abstention or absence so it takes four no matter what. If someone doesn't have a legal conflict but isn't comfortable voting on an issue, that doesn't count, you still need four votes. He noted Commissioner Pirtle's point in which you may have a vacancy, you would need to fill the vacancy and in this case, a simple 3-2 majority would be appropriate to fill the position. Commissioner Hoss commented that if we added language that if you were to fill a position, you follow the same policy procedure for election. If you have one name, he doesn't see a conflict, two names, you follow same procedure when electing officers. With regard to abstention by choice, Commissioner Giesecke noted the procedures count it as a no vote but feels that giving someone a little more nuanced approach to let them to make a vote by saying they aren't going to vote either way but not necessarily count as a no vote, but it is a vote not get to the four. We should keep letting someone say, "I abstain," if they choose to abstain for whatever reason. Mr. Randle clarified that they could abstain, we cannot make them vote but the effect of an abstention that's not a legal conflict is a no vote. It's recorded as a no vote. Commissioner Giesecke's preference would be that it doesn't help you get to the four, but it can still be a non-vote. As far as passing an item, the effect is a no vote. His big concern is in the case of a legal conflict where you're saying you need four votes to pass, except in the case of a legal conflict. In a legal conflict, you go from six commissioners with one conflicted out, you reduce the number needed from four to three. Mr. Randle stated that the way Section 3.03.b is currently written, it reduces the number. Commissioner Singhania wants it to where it never falls below a fourth vote. You can have one legal abstention and you're fine. Two legal abstentions, he still wants four votes. If there are three legal abstentions, by state law you've lost your quorum and lost your majority, therefore, all conflicts are waived, and everyone can vote. When you have two or more legal abstentions, you need to decide what vote you want to have. After further discussion, Mr. Randle stated that he will revise Section 3.03.b to read that its not reduced and four votes will always be required. If there are more than two legal conflicts of interest, you revert to state law where all conflicts are waived, and everyone votes. Commissioner Pirtle went back to Section 3.10 stating that he doesn't see a gain in any one of these three items as far as super majority being required but would like to add that if the Commission is making any change to policy or rules that it would require a super majority. Commissioner Giesecke also noted that he found Section 1.02 to be confusing where it states if the commission has less than a quorum physically present, the Port cannot transact business, and in b, it states if the remaining commissioners do not equal four (absent a legal conflict of interest). If we are going to require four votes, the "absent a legal conflict of interest" is not needed. Commissioner Croft asked for clarification on Section 3.07- multiple motions, asking if the second motion has something to do with the first motion on the floor - so the motions are related. Is that the intended purpose for the second motion? Does it need to be clarified that the second motion has to be applicable to the first motion? Mr. Randle replied that it does not and that usually the second motion is a motion to amend. Commissioner Croft also asked about Section 3.09 - Motions No Subject to Debate asking if these motions require a second vote, noting that he always heard motion to adjourn does not. Mr. Randle replied that typically they take a second, but you can change that. After a brief discussion, the Commission agreed to change Section 3.09 to read that motion to adjourn without objection. No vote necessary. Commissioner Hoss asked if there were any questions or comments related to the election process. Commissioner Giesecke suggested that in the case of a tie, rather than just having a drawing, he suggests that a second vote is taken among the highest vote getters. If there is still a tie, then you have a drawing.

A motion was made by Commissioner Singhanian to postpone approval of the procedures to the first meeting in January. The motion was seconded by Commissioner Giesecke with all Commissioners present voting in favor of the motion.

19. EXECUTIVE SESSION in accordance with Subchapter D of the Open Meetings Act, Texas Government Code Section 551.001, et. seq., to review and consider the following:
 - A. Under authority of Section 551.071 (Consultation with Attorney) for discussion regarding:
 1. Consultation with attorney under Government Code Section 551.071(1) (to seek or receive attorney's advice on pending or contemplated litigation or a settlement offer).
 2. Consultation with attorney under Government Code Section 551.071(2) (to seek or receive attorney's advice on legal matters that are not related to litigation).
 - B. Under authority of Section 551.087 (Economic Development Negotiations or Incentives):
 1. To discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations.
 2. To deliberate the offer of a financial or other incentive to a business prospect described by Subdivision (1).
 - C. Under authority of Section 551.072 (Deliberation Concerning Real Property Matters) for discussion regarding:
 1. Discussion regarding the potential exchange, lease, or value of real property located in Freeport, Texas, including but not limited to the are known as the East End of Freeport and bordered by or adjacent to the following streets: FM1495; East 2nd Street; Terminal Street and East 8th Street in Freeport, Texas.
 2. The potential purchase, exchange, lease, or value of real property located at Port Freeport, including but not limited to the real property located at and contiguous to Berths 1, 2, 5,7 and 8.
 3. The potential exchange, lease, or value of real property located at Port Freeport, including but not limited to Parcels 14, 19, 27, 34 and property on Quintana Island.
 - D. Under authority of Section 551.074 (Deliberation of Personnel Matters) for discussion regarding:
 1. Deliberation regarding the appointment, employment, evaluation, reassignment, duties of a public officer or employee, including but not limited to: Executive Port Director/CEO.
20. RECONVENE OPEN SESSION to review and consider the following.:
21. Discuss and consider action resulting from Executive Session for Executive Director/CEO.

Commissioner Singhanian began by congratulating Ms. Saathoff on an extraordinary year and leadership in moving the Port in the very right direction. He stated the Commission

proposes granting a \$14,000 raise bringing present salary of \$248,701 to \$262,701 with car allowance remaining the same and make it retroactive to October 2, 2022.

Commissioner Hoss added that Ms. Saathoff does an excellent job.

A motion was made by Commissioner Singhanian to approve the proposal by Commission. The motion was seconded by Commissioner Croft with all Commissioners present voting in favor of the motion.

22. Adjourn.

With no further business before the Commission, a motion was made by Commissioner Croft to adjourn the meeting, the motion was seconded by Commissioner Giesecke.

The meeting adjourned at 5:20 PM.