



PORT OF KENNEWICK REGULAR COMMISSION MEETING

JANUARY 26, 2021 MINUTES

Commission Meeting recordings, with agenda items linked to corresponding audio, can be found on the Port's website at: <https://www.portofkennewick.org/commission-meetings-audio/>

Commission President Commissioner Don Barnes called the Regular Commission Meeting to order at 2:00 p.m. via GoToMeeting Teleconference.

ANNOUNCEMENTS AND ROLL CALL

The following were present:

Board Members: Commissioner Don Barnes, President (via telephone)
Skip Novakovich, Vice-President (via telephone)
Thomas Moak, Secretary (via telephone)

Staff Members: Tim Arntzen, Chief Executive Officer (via telephone)
Tana Bader Inglima, Deputy Chief Executive Officer (via telephone)
Amber Hanchette, Director of Real Estate and Operations (via telephone)
Nick Kooiker, Chief Finance Officer (via telephone)
Larry Peterson, Director of Planning and Development (via telephone)
Lisa Schumacher, Special Projects Coordinator
Bridgette Scott, Executive Assistant (via telephone)
Lucinda Luke, Port Counsel (via telephone)

PLEDGE OF ALLEGIANCE

Commissioner Barnes led the Pledge of Allegiance.

APPROVAL OF THE AGENDA

MOTION: Commissioner Novakovich moved to approve the Agenda; Commissioner Moak seconded. With no further discussion, motion carried unanimously. All in favor 3:0.

PUBLIC COMMENT

No comments were made.

CONSENT AGENDA

- A. ***Approval of Direct Deposit and E-Payments Dated January 19, 2021***
Direct Deposit and E-Payments totaling \$76,310.34.
- B. ***Approval of Warrant Register Dated January 26, 2021***
Expense Fund Voucher Number 102635 through 102671 for a grand total of \$174,628.23.
- C. ***Approval of Regular Commission Meeting Minutes January 12, 2021***

MOTION: Commissioner Novakovich moved to approve the Consent Agenda as presented; Commissioner Moak seconded. With no further discussion, motion carried unanimously. All in favor 3:0.

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EMERGENCY DELEGATION UPDATE

Ms. Hanchette reported that she has not received any rent deferral requests from tenants, but she has been working with the tenants on the carbon dioxide monitoring so that they can open their indoor spaces to the public.

REPORTS, COMMENTS AND DISCUSSION ITEMS

A. *Vista Field*

Mr. Peterson reported Phase 1A construction at Vista Field by Total Site Services has been completed and we are finishing up final paperwork to accept the improvements. Additionally, DPZ is working on refining the conceptual drawings and summaries of each design standard from the December 11, 2020 Special Commission Meeting.

Commission and staff discussion ensued regarding acceptance of the project and opening Azure Drive and Crosswind Boulevard to the public.

1. Vista Field Owner's Association

Mr. Arntzen and Mr. Peterson have been working on the next phase of the Owner's Association. The Port continues to contract with Doris Goldstein and Ben Floyd of White Bluffs Consulting on setting up and implementation the Owner's Association. Mr. Arntzen stated this will be a lengthy process that will involve port staff.

Commissioner Barnes stated Vista Field is a huge undertaking for the small organization at the Port of Kennewick and Phase 1A involves a lot of the initial groundwork that is integral to the entire development. Commissioner Barnes thanked staff for their efforts and inquired about forming lots, setting boundaries, and lot legal descriptions.

Mr. Arntzen stated Mr. Peterson will be able to provide Commissioner Barnes with additional detail regarding lots and legal descriptions; however, he wanted to remind the Commission that there have been some challenges with COVID 19 and setbacks with the recent cyber incident, and staff is not able to meet our previous sequencing of events at this time.

Mr. Peterson indicated that the roads need to be dedicated to the City of Kennewick before the Port can move forward on the administrative details and begin the process of setting lots and boundaries.

B. *Kennewick's Historic Waterfront*

Mr. Peterson reported Makers Architecture and Urban Design are compiling information from the December 8, 2020 Commission input for the third public open house. The open house is planned for February 4-16, 2021 and Makers will be utilizing a similar format previously used. Mr. Peterson reported that the document will fold in the City's planned improvements at Washington Street and the general concept of traffic calming for Highway 397 and Columbia Drive.

Ms. Bader Inglima has been working with Makers on the advertising and public outreach for the February 4-16, 2021 open house. Makers will be making a virtual presentation on February 8, 2021 at 3:00 p.m. and this video will be uploaded to www.Kennewickhistoricwaterfront.org.

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C. 1135 Shoreline Deadline Update

Ms. Bader Inglima shared the status of 1135 Shoreline Restoration project and stated there is not a lot of movement to report on the federal funding. The U.S. Army Corps of Engineers (USACE) continues to work on the division questions regarding the final design and need for additional federal funding. Ms. Bader Inglima hopes that the project will go out to bid by June 2021, because the Port utilized an RCO grant through the aquatic funds for \$500,000 for our federal match. The grant has already been extended through June 2021 and if the Port were to go to bid in June, we would be able to show movement and a new construction timeline. In addition to the RCO grant, the Port received \$1,000,000 in Rural Capital County Funding (RCCF) from Benton County and the City of Kennewick. Port staff and Ms. Luke are working diligently to move the project forward.

Commissioner Novakovich recently spoke to Congressman Dan Newhouse and discussed the USACE federal funding and the 1135 project. Congressman Newhouse is aware of the Port project and is very supportive.

D. Oak Street/Verbena Auction

Ms. Hanchette stated at the November 10, 2020 Commission Meeting, it was the consensus of the Commission to surplus three parcels in east Kennewick owned by Port. Ms. Hanchette has been working with Ms. Luke on the legal process and Scott Musser of Musser Brothers Auction on the process. Ms. Hanchette stated the 26 acres are zoned for industrial use and she anticipates the auction will be held this spring.

E. Citizen Complaint Decision and Investigation Cost Inquiry

Mr. Arntzen stated the Commission discussed the Citizen Complaint and Investigation Cost Inquiry at the January 12, 2021 Commission Meeting. Mr. Arntzen has been working with Mr. Kooiker to gather the raw data to provide an accurate and detailed cost analysis regarding the Investigation Cost Inquiry. Due to the recent cyber incident and the impact to the finance department, the Port contracted with an accounting firm to assist with this report/request. Finance has been involved in rebuilding the accounting system. Mr. Arntzen estimated that the report may be completed by the February 9, 2021 Commission Meeting.

Commissioner Barnes expressed his disappointment and believed the request was straight forward. Commissioner Barnes understands there was a cyber incident that disabled our systems; however, the citizen's request was made in December. Commissioner Barnes asked staff to make every effort to have this information available at next the next Commission Meeting.

F. Quarterly Financial Presentation Update

Mr. Kooiker stated the last quarterly financial update was in August 2020, which was followed by the approval of the 2021-2022 Budget in November. Mr. Kooiker anticipates presenting a quarterly financial update at the February 23, 2021 Commission Meeting. Mr. Kooiker stated the finance department is currently working through the year-end processes, which is incredibly time consuming. This is another reason why we have contracted extra bookkeeping help, in addition to what we already have.

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G. Electronic Signature Policy

Ms. Luke stated before the Commission is Resolution 2021-01, which allows the Port to place digital or electronic signatures on many of the official Port documents. Washington State approved the use of digital signatures on June 11, 2020. Ms. Luke stated the fiscal impact is the cost of the Port to purchase the necessary software for the electronic signatures and the cost savings will be significant to the Port in staff time.

Commission and staff discussion commenced regarding the electronic signature policy.

PUBLIC COMMENT

No comments were made.

MOTION: Commissioner Novakovich moved to approve the Resolution 2021-01 adopting the use of the Electronic Digital Signature Policy; Commissioner Moak seconded. With no further discussion, motion carried unanimously. All in favor 3:0.

H. Governance Audit

Commissioner Barnes requested that this item be placed on the agenda at the January 12, 2021 Commission Meeting. Commissioner Barnes believes many people follow the Port of Kennewick and are aware that the Port received an anonymous citizen complaint filed. As it turned out, Commissioner Novakovich wrote the anonymous citizen complaint against Commissioners Moak and Barnes. Commissioner Barnes stated it was a two-year process that was a distraction. He had hoped to learn the Port's legal cost for the citizen complaint and investigation and subsequent appeal and associated public records request; however, those figures are not available yet and he hopes to receive them at the next Commission Meeting. Commissioner Barnes believes this was not a wise or sound or prudent use of Port resources and Judge Kallas found the citizen complaint was unsubstantiated in its entirety. Commissioner Barnes stated there was no opportunity for the Commission to discuss the issue before moving forward, according to the Commission Rules of Policy and Procedure. Commissioner Barnes believes it would be in the best interest of the Port, the citizens, voters, and taxpayers to review the Rules of Policy and Procedure, review the governing processes and procedures, and review some other aspects or elements. Commissioner Barnes believes this is an opportunity to learn from what has happened over the last two years and take this opportunity to review the Rules of Policy and Procedures and make appropriate and necessary adjustments, so we do not experience something like this again. Commissioner Barnes reiterated that he did not believe this was a sound use of Port resources. Commissioner Barnes has heard comments from the public that were less diplomatic in their opinions about Port expenditures for this. Commissioner Barnes understands this is not an autocracy and the Commission needs to make the decision, but he is asking the Commission to request staff to generate a Request for Qualifications (RFQ) for qualified parties with experience in municipal governance and processes. Commissioner Barnes would like to see an RFQ issued to hire a consultant to review the Rules, processes, and practices and any other areas deemed appropriate. Furthermore, he would like this to happen as soon as possible and that all proposals be brought to the Commission for review and consideration. Additionally, the consultant would report to the Commission. Commissioner Barnes requested that staff prepare an RFQ for the next Commission Meeting for potential consideration by the Commission. If approved by the Commission, he would like to see it issued

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and interested parties have an appropriate amount of time to respond and for the Commission to move forward.

Commissioner Moak stated we have not received the final cost, but it will be in the hundreds of thousands of dollars and that is just the hard costs, not soft costs including the impact on other projects. When you review Judge Kallas' decision, she totally dismissed the Port's position, how it was reading the Port's Rules of Procedure. We have tried to work on and update the Rules since he was elected in 2013 and it never went anywhere. Commissioner Moak stated there was no discussion and most of the items discussed in Judge Kallas' hearing were things that took place were decisions and policies and procedures that were adopted before he came on the Commission. Commissioner Moak stated there has never been a discussion about the Rules and that the CEO believed in the procedures and Commissioner Moak truly believes the CEO was trying to follow the Rules. However, that was not necessarily shared with the Commission and there was never a discussion on the Rules or procedure, and yet we have a complaint that centered on Rules of Procedure. Commissioner Moak believes this was out of place and handled poorly and mulled if it is because the Rules were wrong, maybe; because people were wrong, maybe; because we have not had something like this, maybe. Commissioner Moak stated, to spend two years and hundreds of thousands of dollars for what would amount to a slap on the wrist like he received, would do nothing. Commissioner Moak would like to do something, because someone should have said "time out"; this is not something that is worth the hundreds of thousands of dollars, because somebody violated a Rule of procedure by making two phone calls or not following Robert's Rules of Order correctly. Commissioner Moak stated the Rules are supposed to be for serious matters, such as fraud or misuse of public trust. This is not the way a government should operate and when we had our first inquiry, there was no personnel assistance for the CEO. The CEO should have been able to go to someone with personnel problems if there were issues with a Commissioner or Commissioners; likewise, the Commissioner should be able to consult with someone if they were having problems with other Commissioners or staff. Commissioner Moak believes we should not have gone to this length for such a minor violation of some Rule. Commissioner Moak believes there is something wrong and it needs to be fixed. Commissioner Moak thinks the world of the Port of Kennewick and the world of our staff, and we have made great strides in so many areas, but there are issues with the governance that deal with the Rules. Commissioner Moak thinks someone needs to review the Rules, from an outside perspective, who is not tied to the staff or the Commission, someone who can help us get better collectively. Commissioner Barnes is on the right track in that we need some outside assistance, and Commissioner Moak is unsure how to go about that, but it needs to be someone the Commission and staff agree on and have confidence in. Commissioner Moak stated this is not one sided, it is not just a Commission issue and he believes this has been tough on staff as well for the past two years. The next time someone stumbles, the Port does not need to spend two years and hundreds of thousands of dollars because someone made a mistake. Commissioner Moak agrees that the Port needs an outside consultant to review the Rules to help make us better in the governance issue, so that we can be as good there as we are in so many areas.

Commissioner Novakovich shared that he was on the Commission when the Rules were developed, and they were developed to hold the Commission to a high standard of honesty, integrity, and public transparency and accountability. The initial investigation, by an independent counsel, found

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that two Commissioners were guilty in violation of these policies. It is Commissioner Novakovich's opinion that Judge Kallas developed a conclusion and then interpreted the policies in such a manner to justify her conclusion. Commissioner Novakovich believes the process was flawed; however, he agrees with Commissioner Moak in that it never should have gone on as long as it did. Commissioner Novakovich stated had an appeal not been filed it would not have gone on this long. Commissioner Novakovich thinks having a review of the Rules of Policy and Procedures is important but questioned if it is the right time. Commissioner Novakovich stated Commissioner Barnes commented on not receiving information he wanted, and now he wants to put something on staff to do even more. Commissioner Novakovich agrees that policies and procedures need to be reviewed but asked if the right time is now.

Commissioner Barnes appreciates Commissioner Novakovich's input, but he disagrees wholeheartedly and cannot see the justification of resources for these alleged violations against two Commissioners. Commissioner Barnes stated there are deep flaws in the Rules of Policy and Procedure and how they are being utilized by the people that put them in place, how they are being interpreted, and enforced, and in his opinion, are not in the best interest of the Port, taxpayers, and voters. This has been a two-year distraction that cost hundreds of thousands of dollars for what amounted to two phone calls and raised voices. Commissioner Barnes cannot see the justification of this level of expenditure and level of resources for alleged violations that Judge Kallas found unsubstantiated in its entirety. Commissioner Barnes stated that there are flaws and there is no better time than now to address these flaws because this could happen again. Commissioner Barnes believes this requires a response, an evaluation, and what he is offering is fair and reasonable. He is not asking to rewrite the Rules as he sees fit but requesting an outside professional with experience in municipal governance, functions, and operations to review our Rules. The last two years have highlighted the flaws and we have every reason to have a deeply divided Commission over what amounts to two phone calls, raised voices, and a buyback clause. Commissioner Barnes reiterated his request for an outside independent consultant to review the Rules of Policy and Procedure, our governing practices and processes, the organization chart, or anything else they see that needs to be corrected as soon as possible.

Commissioner Moak stated there needs to be a defined scope of work and boundaries set for an RFQ. The goal is to review the inadequate rules and correct them. We need to move forward and address these issues, because there will never be a time when staff is not busy.

Commissioner Novakovich suggested staff produce a list of projects for the Commission and the Commission prioritize the list, and then staff can provide a reasonable timeframe for the projects. Commissioner Novakovich stated it should not be put off, but it needs to be done correctly and not thrown together for next Commission Meeting.

Commissioner Barnes hears what Commissioner Novakovich is saying, and stated staff has a lot of work to do and he understand that. Commissioner Barnes stated as the President, he has the ability to appoint a committee and suggested appointing a committee of one to develop an RFQ for the next meeting and he would be happy to do that.

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Commissioner Moak stated Commissioner Barnes may have the power to appoint a committee, but he thinks it needs to be a team effort involving staff.

Commissioner Barnes is not inclined to exercise the power of the president to appoint himself and would rather have consensus agreement if we are going to go that route. Commissioner Barnes agrees that if we are going to bring in a professional to work with the Port, it goes without saying that they would work with the Commission, staff, and Ms. Luke.

Mr. Arntzen has been listening carefully to the discussion amongst the Commission and understands that pursuing this endeavor would be beneficial. Mr. Arntzen suggested staff have an opportunity to review the Commission comments and follow the same process we utilize whenever we start working on a new project. Mr. Arntzen would like the opportunity to discuss it with staff and Ms. Luke and come back with suggestions, as this is the first time hearing the request and Commission discussion. Mr. Arntzen feels as though there needs to be some level of process and was surprised by the expectation that an RFQ should be presented at the next Commission Meeting. Mr. Arntzen believes putting together an RFQ would be beyond our resources at staff level and it would be disjointed and thrown together. Mr. Arntzen understands this is an important project for the Commission and he believes there needs to be a process that would allow us to come out with a thorough and accurate review. Mr. Arntzen stated it is a complicated issue and he would like to be able to bring the Commission some thoughts. Additionally, staff would work with the Commission to define a scope of work, which needs to be completed before advertising an RFQ. Mr. Arntzen stated in his 18 years with the Port, staff has not and will not be sandbagging this or any other project, but he does feel it will take time and thought to process.

Commissioner Barnes thanked Mr. Arntzen for his comments and has spoken to people in the port industry about the challenges facing the Port. Commissioner Barnes stated there may be ways to approach this that would be less of a burden on the staff, for example, hire a consultant like Jim Darling, who has worked for several ports, including the Port of Kennewick. Commissioner Barnes stated this is an ambitious undertaking and perhaps the Port could bring in a knowledgeable, experienced consultant to spearhead the effort to assist the Commission and staff.

Commissioner Moak agrees with Mr. Arntzen about staff having time to review the request and discuss what issues they might see and how to steer this process based on the Commission comments today. Additionally, Commissioner Moak would like for Commissioner Barnes and Mr. Arntzen to talk about their concerns related to moving forward on this. Commissioner Moak feels Commissioner Barnes may want to steer this project more than what is appropriate, from a policy standpoint. Commissioner Moak thinks Commissioner Barnes may want to do more than just policy, and he cautioned against that, as he cautioned against staff getting into the policy issue. Commissioner Moak believes staff needs to review the request and come back to the Commission with their thoughts and ideas and how to approach the request. Commissioner Moak does not think it needs to be someone with port experience, but rather someone who understands municipalities. Commissioner Moak cautioned Commissioner Barnes on taking on more at this point, even though Commissioner Moak agrees with Commissioner Barnes perspective. Commissioner Moak would rather we move forward with this project sooner rather than later.

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Commissioner Novakovich agrees with Commissioner Moak's comments and believes staff should have the opportunity to review Commission Barnes request and that is where it should originate.

Commissioner Barnes appreciates the comments of his fellow Commissioners, and he wants to stay at the appropriate policy level. He is not inclined to work through the Rules of policy and procedures and would like to stay at the appropriate policy level on this. Additionally, Commissioner Barnes is not inclined to make changes to the Rules that he believes would be in order, based on recent his experience. Commissioner Barnes believes it is important to have outside professional help. Commissioner Barnes has no confidence in Ms. Luke doing this work for us. He thinks Ms. Luke is in a conflicted position, as she reports to Mr. Arntzen, was hired by Mr. Arntzen, and works closely with Mr. Arntzen. Commissioner Barnes thinks the Commission needs outside legal representation and outside professional help in this matter other than Ms. Luke.

Mr. Kooiker outlined a few items for the Commission in preparation for the next several meetings:

1. This item was not budgeted; therefore, the Commission will need to determine where the funding will come from and how much will the funding be. Mr. Kooiker is happy to provide suggestions to the Commission.
2. There are bid laws compliance that the Port needs to follow. The Port has 24 years of clean audits because we follow procedures. Bid Law or RCW or WAC's have specific statutes and what guides the threshold for an RFQ is the estimated dollar amount. Those are the bid thresholds for any public entity.

Commissioner Barnes appreciates Mr. Kooiker's input and inquired if the anonymous citizen complaint, the subsequent investigation, and appeal was ever in the budget.

Mr. Kooiker stated no, it was not.

Commissioner Barnes stated the long-term health and well-being of the Port of Kennewick are one of the most important things to him. Commissioner Barnes does not believe the Port is in a good place and this two-year process is his exhibit A, and strong support of the opinion he just made. The Port of Kennewick is not in good health and the sooner we can get some things corrected, the better for everyone.

Commissioner Novakovich appreciates Mr. Kooiker's comments. As far as Commissioner Barnes comments regarding Ms. Luke, Commissioner Novakovich would like to apologize to Ms. Luke, and stated he does not share the same view.

Commissioner Barnes reiterated that it is his opinion that the Port of Kennewick has some flaws, and he would like to apologize to Ms. Luke for being placed in an almost impossible situation by the Port of Kennewick. Commissioner Barnes thinks Ms. Luke is in a conflict of interest and she has been placed there by the Port of Kennewick.

Commissioner Moak inquired where we go from here.

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Mr. Arntzen has somewhat of an optimistic viewpoint after listening to the robust debate and he heard some similarities amongst Commission comments. Mr. Arntzen is getting a clearer picture of what staff might bring to the Commission for further input. One of the things Mr. Arntzen heard Commissioner Barnes say, it should not be a process where staff has its fingerprints all over it, and he agrees with that wholeheartedly. Mr. Arntzen cited the Clover Island Master Plan as an example of a process we might employ where there are some opportunities for input by staff, individual Commissioners, and the Commissioners as a unit and is driven by a third-party consultant. Mr. Arntzen appreciates the opportunity to discuss this; however, he believes staff will discuss the procedure of bringing the process forward in an expedient and efficient manner. Mr. Arntzen does not think staff will be making substantive comments regarding policies, rather staff would follow the procedure and move things along. Mr. Arntzen envisions an outside third party will do the heavy lifting on this project, whether it is Jim Darling or any other firm. Mr. Arntzen would like to put this topic on the Agenda for the next Commission Meeting to share staff thoughts regarding the procedure.

Commissioner Moak believes that is the right approach and appreciates Mr. Arntzen's comments and optimism. The Commission can move forward with this once we hear back from staff.

I. Director Reports

Mr. Peterson reported that the City of Kennewick is updating the shoreline management plan update, which is due every eight years. The City is only adding elements to address the changes in state law. Mr. Peterson shared a positive story regarding Ice Harbor, Cedars, and Clover Island Inn and their teamwork through these trying times.

Ms. Luke reported at the last Commission Meeting there was a question regarding insurance coverage related to the citizen complaint and appeal. Ms. Luke spoke with Frank Andres of Clear Risk Solutions, who is reviewing the policy as it relates to coverage. Clear Risk originally looked at the coverage issue early in the complaint process, but not recently. Ms. Luke sent over several requested documents to Mr. Andres and is awaiting his response.

J. Commissioner Meetings (formal and informal meetings with groups or individuals)

Commissioners reported on their respective committee meetings.

K. Non-Scheduled Items

Commissioner Moak stated this has been a very difficult discussion today and he appreciates the comments and passion. Commissioner Moak believes Commissioner Barnes has shown more passion for Vista Field and the Port of Kennewick than anyone. It is hard to have these discussions and Commissioner Moak appreciates the way Commissioner Barnes listened to the Commission and staff. Commissioner Moak appreciates staff and stated it is not easy on staff to listen to some of the things the Commission says, but staff is also passionate about what the Port of Kennewick does and handles themselves in a very professional manner in working to support the policy direction of the Commission. Commissioner Moak would like to be optimistic like Mr. Arntzen and he believes we can get through this and hopefully we can all do better, and the Port can do better. Commissioner Moak is sorry we went through some of this stuff, and he holds very dear the Port of Kennewick and wishes to see it continue to do great things. The Port is involved in or

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has been involved in many great things and he looks forward to the next four years.

Commissioner Barnes offered his condolences to the family of Greg McConnell, the former publisher of the *Tri-City Herald*. Mr. McConnell was a strong friend and advocate of the Port of Kennewick.

No further comments were made.

PUBLIC COMMENTS

No comments were made.

COMMISSION COMMENTS

No comments were made.

ADJOURNMENT

With no further business to bring before the Board; the meeting was adjourned 4:09 p.m.

APPROVED:

PORT of KENNEWICK BOARD of COMMISSIONERS

DocuSigned by:
DN Barnes
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Don Barnes, President

DocuSigned by:
Skip Novakovich
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Skip Novakovich, Vice President

DocuSigned by:
Thomas Moak
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Thomas Moak, Secretary

*The January 26, 2021 Commission Meeting Minutes were Approved by the Port of Kennewick Commissioners on February 9, 2021 at the Regular Commission Business Meeting and signed with an Electronic Signature Per Resolution 2021-01, Adoption of Electronic & Digital Signature at the Port of Kennewick.

PORT OF KENNEWICK

Resolution No. 2021-01

***A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE
PORT OF KENNEWICK AUTHORIZING THE USE OF ELECTRONIC AND DIGITAL
SIGNATURES IN THE PORT OF KENNEWICK; AND ADOPTING AN ELECTRONIC
AND DIGITAL SIGNATURE POLICY***

WHEREAS, in Chapter 19.360 RCW, the Washington State Legislature, to the extent not already authorized by federal or state law, authorized electronic dealings for governmental affairs and established the implementation framework for electronic governmental affairs and governmental transactions; and

WHEREAS, in March 2020, through Engrossed Substitute Senate Bill 6028 (“ESSB 6028”), the Washington State Legislature repealed Chapter 19.360 RCW and adopted the Uniform Electronic Transactions Act, which is intended to facilitate use of electronic transactions consistent with other applicable law, and to bring consistency to reasonable practices concerning electronic transactions and with the continued expansion of those practices; and

WHEREAS, ESSB 6028 took effect on June 11, 2020; and **WHEREAS**, ESSB 6028 defines an “electronic signature” as “an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record”; and

WHEREAS, ESSB 6028 defines an “electronic record” as “a record created, generated, sent, communicated, received, or stored by electronic means”; and

WHEREAS, ESSB 6028 provides that “[a] record or signature may not be denied legal effect or enforceability solely because it is in electronic form; a contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation; if a law requires a record to be in writing, an electronic record satisfies the law; and if a law requires a signature, an electronic signature satisfies the law”; and

WHEREAS, the method and process for electronic submissions and the use of electronic signatures must be established by ordinance, resolution, policy, or rule; and

WHEREAS, to promote social distancing during the COVID-19 pandemic, and to increase the effectiveness and efficiency of the Port of Kennewick’s business processes, the Port desires to leverage technology solutions which are in compliance with the Uniform Electronic Transactions Act to apply authenticated electronic signatures to legally enforceable electronic records as allowed by ESSB 6028.

NOW, THEREFORE, THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

- Section 1. The foregoing recitals are incorporated and fully made a part of this Resolution.
- Section 2. The Port Commission finds it to be in the public interest to allow the use of electronic records and electronic signatures for Port business to the fullest extent allowed by law.
- Section 3. The Port Commission hereby adopts the Electronic and Digital Signature Policy attached hereto as Exhibit "A".
- Section 4. This resolution and policy shall take effect immediately.

ADOPTED by the Board of Commissioners of the Port of Kennewick on the 26th day of January, 2021.

PORT of KENNEWICK
BOARD of COMMISSIONERS

DocuSigned by:
DN Barnes
By: _____
DON BARNES, President

DocuSigned by:
Skip Novakovich
By: _____
SKIP NOVAKOVICH, Vice President

DocuSigned by:
Thomas Moak
By: _____
THOMAS MOAK, Secretary

ELECTRONIC AND DIGITAL SIGNATURE POLICY

State law has codified the authority to execute documents remotely. Streamlining processes that require wet signatures and replacing them with electronic signatures, when practicable, is consistent with the intent of State law to promote electronic transactions and remove barriers that might prevent the use of electronic transactions by governmental entities. By transitioning to a policy of executing documents remotely, the Port will reduce its reliance on paper-based transactions and will further improve information security and sharing. Further, such transition will facilitate more efficient approval of and access to documents and reduce costs and environmental impact.

PURPOSE: The intent of this policy is to establish a policy to allow for the acceptance and submission of electronic and digital signatures.

SCOPE: All Authorized Signers for the Port of Kennewick.

REFERENCES: ESSB 6028 codified at RCW 19.360.

DEFINITIONS:

Authorized Signer: The Port Commissioners, Chief Executive Officer, Deputy Executive Officer, Chief Financial Officer, Department Directors, Port Counsel, and any other Port employee who has been granted authority to sign certain records on behalf of the Port either by the nature of their position in relation to the record or by direct authorization from the Port Commission.

Digital Signature: One type of electronic signature that contains a digital certificate, issued by a licensed certificate authority, behind the signature and offers authentication when sending a “signed” electronic document.

Electronic Record: A record created, generated, sent, communicated, received, or stored by electronic means.

Electronic Signature: An electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

Facsimile Signature: A reproduction of a hand written signature that has been saved electronically or by engraving, imprinting or stamping.

POLICY:

1. Pursuant to Resolution 2021-01, the Port authorizes electronic transactions and the use of electronic, digital, or facsimile signatures in accordance with this Policy.
2. A Port document that is required by law to be signed in non-electronic media may not be electronically or digitally signed.

3. An electronic, digital or facsimile signature is an acceptable substitute for a wet signature on records requiring the signature of any record whenever the use of a wet signature is authorized or require, except as provided herein.
4. If an electronic or digital signature is used for interstate transactions or for documents required by the US Federal government, the signature shall comply with the requirements of the Electronic Signatures in Global and Electronic Commerce Act.
5. A document signed electronically, digitally or via facsimile shall be deemed the equivalent of an original signed document if the individual or entity signing the document has complied with the provisions of this Policy.
6. This Policy in no way affects the Port's ability to conduct a transaction using a physical medium and shall not be construed as a prohibition on the use of wet signatures.

PROCEDURE

A. Authorization for Use of Electronic Transactions and Electronic, Digital, and Facsimile Signatures

1. Authorized Signers are authorized to sign records using a facsimile signature or via an electronic signature platform to affix electronic or digital signatures to Port records as provided in this Policy.
2. Authorized Signers may affix electronic, digital, or facsimile signatures to the following records: Minutes of all Port Commission meetings, retreats, and workshops, Resolutions adopted by the Port Commission, Accounts Payable records (including but not limited to invoices, warrants, vouchers, and expenditure approvals), and any and all Contracts and Agreements to which the Port is a party.
3. Electronic, digital or facsimile signatures may be used on Port records requiring execution by a third party.

B. Security of Electronic Transactions and Electronic, Digital, and Facsimile Signatures

1. A valid digital signature that is issued by a certificate authority provides the following protections:
 - i. Verifies the Authorized Signer is who they represent themselves to be because the person had to prove their identity to a certificate authority to obtain the digital signature.
 - ii. Confirms the signature was applied to the document and not copied from another document because the signature file is cryptographically bound to the document.
 - iii. Ensures the document was not altered after it was signed.
2. The private key used to create a digital signature is the personal property of the subscriber and is exempt from public inspection and copying under Chapter 42.56 RCW.

3. Authorized Signers may sign Port documents digitally if such an option is available, providing the following:
 - i. The digital certificate utilized by the Authorized Signer in connection with the digital signature is obtained from a certification authority in compliance with state law;
 - ii. The digital certificate is not expired when the Authorized Signer signs the document digitally;
 - iii. The Authorized Signer does not provide information to the certification authority they know to be untrue; and
 - iv. The digital signature contains the following information:
 - a) A hand-written representation of the Authorized Signer's signature;
 - b) A typed representation of the Authorized Signer's name and title; and
 - c) The date and time of the signature.
4. Electronic or digital signatures cannot be applied using Authorized Signer's name. Records signed by an Authorized Signer shall use their own electronic or digital signature.
5. Authorization to use or accept facsimile signatures shall be limited to instances where the authenticity of the signatures is deemed reliable and secure. In order to accept a facsimile signature in lieu of a wet signature, the authenticity of the facsimile signature must be verified by the receiving party. Such means of verification may include:
 - i. The receipt of a faxed signature from a facsimile number verified as belonging to or traceable to the party that did so sign and transmit the document.
 - ii. The receipt of an emailed signature from an email address verified as belonging to the party that did so sign and transmit the document.
6. Information that is necessary to verify the authenticity of a facsimile signature should be retained and transmitted to the Port with the document. This retained information may include but it is not limited to an electronic file with metadata saved from an email to which a facsimile signature was attached or a fax coversheet verifying who sent the record.

C. Transmission and Storage of Electronic Transactions and Signatures

1. Electronically or digitally signed electronic records shall be stored in such a way as to ensure their preservation, disposition, integrity, security, confidentiality, and auditability.
2. Electronic records shall only be transmitted via secure services including, but not limited to, email, drop box, and cloud-based digital signature platforms.