



Eddie Baza Calvo  
Governor of Guam

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Ray Tenorio  
Lieutenant Governor

**MINUTES OF THE  
REGULAR MEETING OF THE BOARD OF DIRECTORS  
Thursday, April 7, 2011**

**I. CALL TO ORDER**

There being a quorum, the regular meeting of the Board of Directors was called to order at 11:45 a.m., Thursday, April 7, 2011. Present at the meeting were:

Daniel Tydingco, Chairman  
Michael Benito, Vice Chairman  
Jovyna Lujan, Board Secretary  
Eduardo Ilao, Board Member  
Pedro A. Leon Guerrero, General Manager  
Felix R. Pangelinan, Acting Deputy General Manager

Also present were Nicole Santos-Senator Tom Ada's office; Matthew Smith-PB/OAE; Chip Brown/Robert Shambach-PMT EA; Tom Dillon-Matson; Joe Cruz/Paul Blas-Cabras Marine; AnnMarie Muna/Trish Granillo/Allan Rixon-AM Insurance and Port Management staff.

**II. APPROVAL OF MINUTES**

a. **March 4, 2011:** The Vice Chairman made a motion to approve the minutes of March 4, 2011 subject to correction. The motion was seconded by Mr. Ilao and was unanimously passed.

**III. COMMUNICATIONS**

1. **DOA Invoice DOA 2011-01 re Public Law 24-14, Section 3 & 4:** The General Manager said the Port received an invoice dated March 30, 2011 from Department of Administration (DOA) requiring payment in the amount of \$12,250,000.00 which they claim is the accumulative annual assessment in accordance with Public Law 24-14 Autonomous Agency Infrastructure Collection Fund for the periods of 1998 to 2011. On March 31, 2011 the Port responded to DOA indicating that in review of the law, specifically Section 3(b) which states in part that "...*The proportionate contribution of each of the above agencies which will in the aggregate make up of the \$3.5M transferred, shall be determined by a formula decided upon by the Governor in consultation with the Boards of Directors of the above agencies...*" The General Manager understands that other than the \$3.5M remittance into the fund by the Port back

in 1997, no Governor of Guam since has ever consulted with the Port Board of Directors in order to determine the proportionate contributions for any of the periods noted in the invoice, which is a requirement of this law. He mentioned that the position of the Port to DOA questions the validity of the invoice and as a result, formally disputed the invoice.

The Chairman asked whether any communications was made by the Director of DOA prior to the issuance of this invoice. The General Manager replied negatively. The Chairman expressed concern about this having implications with any financing the Port is pursuing or currently has. The General Manager said USDA has already expressed concern as a result of this as the Port is in its final stage of closing the guaranteed/direct loan to fund the port modernization program and is interested in knowing the outcome of the AAICF. The Chairman advised management to contact the other autonomous agencies to obtain their position on this matter, afterwards, collectively approach the front office.

2. **Cabras Marine Corporation: Letter dated March 28, 2011 re Casamar Guam Inc.:** Mr. Glenn B. Nelson, Commercial Manager mentioned that on March 28, 2011 Cabras Marine formally provided the Port with notice of intent to acquire and operate as Casamar Guam. In connection to this, Cabras Marine on March 31, 2011 rendered payment on behalf of Casamar Guam for a 12 month period beginning April 1, 2011. Party to the notice of acquisition of Casamar Guam is a request in place for the Port to consider entering into an Estoppel Agreement which is required as a financing measure for the acquisition. Mr. Nelson proposed the following recommendation for Board consideration.

1) Authorize management to enter into discussion with Cabras Marine to address matters related to the rental impasse as well as the draft Estoppel Agreement; or

2) Authorize management to proceed with negotiations with Cabras Marine for purpose of resolving the rental impasse as well as the Estoppel Agreement and vest the authority to the General Manager to enter into the Estoppel Agreement if negotiations are successful and determined to be beneficial to the Port.

Ms. Lujan asked whether there is an issue with rent. Mr. Nelson said basically it's a matter of lease interpretation addressing rents other than the 10% escalation. He mentioned that there is a provision in the lease agreement that stipulates if both parties are unable to agree on the rental that each party obtain an appraiser to determine the rates. The Port notified Casamar Guam that it has acquired an appraiser and provided a copy of the study. Casamar Guam, who did not agree with the rates, had been advised to obtain their own appraiser pursuant to the lease agreement. To date, Casamar Guam has not done so. Mr. Nelson expressed that one of the major challenge is trying to deal with Casamar representative who is off-island; there are no known local contacts and for all intense and purposes, the business appears to be shutdown. Ms. Lujan asked whether Legal Counsel looked into this matter. Mr. Nelson said Legal Counsel is currently reviewing the Estoppel Agreement, however, based on management review there are some concerns that if the Port enters into the estoppel in its present form it will impact Port's position on the rental impasse. Ms. Lujan understands that Cabras Marine has expressed urgency for Port to consider the estoppel and asked whether a timeline was provided. Mr. Nelson

mentioned that it would be in their best interest to execute the estoppel, but from the Port's perspective, more effort is required before a decision is made at this time especially when there are other issues that remain outstanding. However, if the Board is to consider either of the two options available as mentioned earlier will enable this matter to proceed forward. Ms. Lujan asked whether there were any discussions as to Cabras Marine's intended use of the property. Mr. Nelson said based on representation operating as Casamar Guam, the use will be incidental to lease, basically ship repair.

Ms. Lujan wondered whether Cabras Marine would be open to negotiations of a new lease that considers current operating environment, what is the intended use, the vision on growth and so forth. At this time, the members recognized the presence of Mr. Joe Cruz, Cabras Marine. Mr. Cruz thanked the members and said the acquisition would not be as Cabras Marine, but as Casamar Guam, so from a lease standpoint the desire is to maintain Casamar and Port relationship with the existing terms and conditions. As to the Estoppel Agreement, Mr. Cruz expressed to the Board the urgency for consideration because Cabras Marine is currently in its final phase of financing this transaction. He mentioned the difficulty part of this process is that technically Cabras Marine is not Casamar Guam. Mr. Cruz pointed out the contention is on the interpretation on the lease agreement relative to the 10% cap on any rent adjustments on subsequent terms. Mr. Nelson said the Port's appraisal came in excess of \$500K and Casamar Guam is currently being assessed \$38K.

After discussion, the Board advised management to expedite the review by Legal Counsel on the Estoppel Agreement as well as the lease agreement on the rate adjustments.

Mr. Cruz asked whether discussions with management can take place to address some of the issues and transactions and at the same time, the Port also continue its efforts in contacting Casamar representatives. The Chairman mentioned that he does not foresee any issues with discussing this matter with the General Manager.

#### IV. OLD BUSINESS

1. **Pier F5 Findings:** As background information, the F-5 investigative study was received on March 21, 2011 which was to provide a limited material engineering condition survey to evaluate the condition of material used in the construction of the pier utilizing destructive and non-destructive field investigative evaluation techniques. Findings include: concrete strength; concrete composition; concrete chemical testing; reinforcement; information on beam 63; impacts to POLA 17's tie down and also indicates that the majority of the damage observed is related to the structural elements that support the spur rail. The General Manager said a copy of the study has been submitted to the Port's insurance adjusters that is currently conducting an independent investigation. The Chairman asked what is the estimated timeframe the insurance adjusters will complete the assessment. Ms. AnnMarie Muna, AM Insurance mentioned that the Insurance has contracted the services of Duenas & Camacho Associates, an engineering firm for this project and understands that they have obtained information from the Port, such as the design and specifications of the wharf which is currently being reviewed.

However, information as to the specifications of the POLA cranes is still pending. The General Manager said management is working with Matson to obtain information on the cranes and will forward once received. Ms. Muna assured the members that the engineering firm and the insurance company understand the urgency of this matter.

2. **Legal Counsel Contract Services:** Mrs. Alma B. Javier, Procurement & Supply Manager said a Request for Proposal RFP No. 011-002 was issued on March 1, 2011 for professional legal services; deadline being March 23, 2011. Although three firms expressed interest, two firms officially submitted proposals. After having completed the evaluation process, the next step is to enter into fee negotiations with the highest rank offeror. As such, Board approval is being requested to approve the ranking results and authorize management to enter cost negotiations with the highest rank offeror.

Ms. Lujan made motion to approve the ranking results for RFP No. 011-002 Legal Services and authorize management to enter into cost negotiations with the Law firm of Phillips & Bordallo as the highest rank offeror, seconded by Mr. Ilao. Motion was unanimously approved.

3. **Federal Grants List:**

a) **OEA Grant \$1M** – The Chairman asked for the application status of this grant. The General Manager said ongoing discussions are being held with the front office to ensure the application is submitted in a timely fashion.

b) **USDA Loan \$14M** – The Vice Chairman wondered whether the \$14M loan for the acquisition of gantry cranes were specific to new or used. The General Manager said Public Law 30-100 mandates the Port to acquire two cranes no later than December 31, 2012, but is not specific as to new or used; however, understands that the former board directive was to purchase new cranes. Mrs. Javier said the draft specification was recently received from the consultant which is being reviewed by the Crane Acquisition Committee. As to new or used, Mrs. Javier said all are being considered as it depends on the funding which will determine what can be reasonably afforded. Mr. John B. Santos, Operations Manager recalled that the USDA loan application is specific to two new gantry cranes and if changes are made, may result in re-doing the loan application. Management was advised to forward the USDA loan application to the Board.

4. **Financial Report:** The financial report for February 2011 was presented to the Board for information.

5. **Insurance Report:** The insurance report for February 2011 was presented to the Board for information. Without objections, Ms. Muna introduced the presence of Mr. Alan Rixon, London Broker of Ropner Insurance Services that visits Guam twice a year to provide insurance quotations, updates on insurance industry and what can be expected with regard to the renewal terms of the policy. Mr. Rixon thanked the Board and mentioned that the market is in a total state of flux for the last seven or eight years. He said with the recent events of Japan

(earthquake and tsunami) has become a change for Underwriters, there are certainly a lot of discussions about increase in policy rates, especially in the Pacific region. There is a loss estimate of \$35B from the earthquake shock. This is actually the second largest insurance loss; Katrina being the first which was at \$65B. For planning purposes, Mr. Rixon suggested to budget up to 20% increase for the renewal rates for next fiscal year; but at the same time, London Broker will continue to make every effort to maintain the lowest rates possible.

Ms. Muna recommended that Board or management consider visiting the London Underwriters to simply familiarize them on the events of the port, such as the port modernization program, day-to-day operations, capital improvement projects as these may help to assist in the Port's insurance program.

## V. NEW BUSINESS

1. **Trip Report: Technical Exchange Seminar/AAPA Spring Conference/Washington DC Meetings:** The General Manager briefly presented the trip report by stating that the objectives basically included: briefing on the port modernization program (master plan history, terminal design and operations, TOS/GOS systems, PMC process, cargo forecast projections, financial feasibility model update, funding options and federal support); briefing sessions/meetings with all federal stakeholders: MARAD, JGPO, EDA, USDA, DOD-IG; strengthen and improve relationship with MARAD; attend AAPA's Spring Conference; courtesy visit with Assistant Secretary Anthony Babauta, Office of Interior for Insular Areas USDOl, and representatives of DC office of Congresswoman Bordallo and office of the Governor of Guam. He mentioned that the meeting with USDA, the main point addressed was the importance of closing the Port loan application.

2. **Board Policy No. 2011-03 Code of Ethics (As Amended):** The Chairman said because there were changes made to the Code of Ethics policy requires Board adoption.

The Vice Chairman made motion to approve Board Policy No. 2011-03 Code of Ethics, as amended, seconded by Ms. Lujan. Motion was unanimously approved.

3. **Policy Memorandum 92-03 Travel Rules & Regulations:** Tabled, until next meeting.

4. **Creation of Position-Port Tariff Administrator:** Mrs. Francine T. Rocio, Personnel Services Administrator said on October 13, 2009, the Port implemented the new compensation plan and presented all positions from the Port as certified, technical and professional positions. With this implementation came the opportunity and the need for the Port to create a specific position in the Corporate Services Department, Finance Division which will assist the Port properly and effectively meet the requirement of the buildup and provide advisory services to management on the Port Terminal Tariff. The position being requested is the Tariff Administrator that will be responsible for providing advisory services to management on the port terminal which includes collecting, analyzing, interpreting and developing specialized information; maintaining and updating the terminal tariff rate structure; developing policies

governing the application of the tariff. The Vice Chairman asked how this position differs from the Tariff Supervisor. Mrs. Rocio said the Tariff Supervisor oversees two Tariff Technicians and handles day-to-day operations. With the proposed creation of a Tariff Administrator is to oversee that division, administer the program, report to management and closely work with the consultant and the regulatory agency. Ms. Lujan said this is not the first request made by management to propose creation of positions towards the Port's staffing pattern, and recalled that when such positions were brought before the Board that it was asked what perspective did the Searle Study recommend on the overall position additions because the concern is the Board is being presented these position creations on a piecemeal basis and have not captured the overall picture in the scheme of moving towards future organizational structure. How many more bodies do the Port need so the Board is able to determine what is important and rank according to what is actually necessary. Mrs. Rocio said the approach process of the Human Resource department is assessing each division one at a time, conducting audits and as recommended by the consultant, creating positions that need to be in place based on the growth of the port modernization. She mentioned that at one point the tariff section was operated by a larger group of personnel as oppose to the three personnel currently in place; but was brought down to a smaller group. After the assessment and audit of the tariff section, and Searle Study it was determined that there was a need to expand that section, especially with the completion of the tariff study and the oversight of the Public Utilities Commission. Mrs. Rocio said similar to the Commercial division, after the audit, it was determined by the consultant to give the proper classification. Ms. Lujan said of all the recommendations that surface as a result of the Searle Study is this exercise completed across all departments. Mrs. Rocio replied negatively and said the most recent position from the Maintenance department is the creation of the Maintenance Planner which was approved by the Board at its previous meeting and is now in the transparency process. In line with the Port's Classification and Compensation Plan, the goal is to take the generic positions that are in place and change it into its proper class, which is what the Board has seen, and to keep those positions out of the hay study realm as well as create new positions to move with the modernization program. Departments that are completed are Planning, Commercial, and Maintenance. Mr. Ilao asked for the recommendation by the Searle Study relative to what positions should be created or reclassified and how that applies to the overall organizational structure.

The Chairman asked who is currently performing the duties of the Tariff Administrator. Mrs. Rocio said it is a collective effort from division heads and staff performing the work. Mrs. Vivian C. Leon, Corporate Services Manager said during discussions with the Tariff Consultant, Cornell Group, it was recommended that a Tariff Administrator position be created that will be charged with and responsible for the review of the new port terminal tariff and update the new rates annually rather than having to continue hiring consultants. The Chairman said since the duties and responsibilities are currently being worked on by staff, he was more inclined to increase the scope of their existing duties and responsibilities and commensurate with the Ports appropriate remunerations which would be more cost effective. Mr. Santos said the position of Tariff Administrator is necessary to also assist in dispute charges; develop standard operating procedures. He said the Port is currently experiencing new types of operations and there is a need to determine the billable process and cost associated with each service. The Chairman reiterated that if the existing staff is already performing the work prefers for their duties and

responsibilities to be adjusted to reflect those added responsibilities. Mr. Jojo B. Guevara, Financial Affairs Controller said the importance of creating the Tariff Administrator position is to prevent from pulling other internal management sources from their day-to-day functions, the Tariff Team which is comprised of himself, Corporate Services Manager, Operations Manager, Commercial Manager, Planning and Finance divisional staff. This position will allow for a concentrated body, key personnel to focus on the administration, implementation, and development of the program; also will closely be working with the PUC Commissioners, and PUC Consultant.

After discussion, Mrs. Rocio informed the Board that the Government of Guam positions are specific to what the person is entailed to do and anything outside that scope, the Human Resources division performs an audit of the position and if it is determined by the audit that the personnel is performing over their duties and responsibilities, then it becomes a mis-allocation based on an increment of job responsibility. This means that their title would change to commensurate with their new job specifications. In light of this, she mentioned that the creation of positions procedure applies to satisfy those job specification adjustments pursuant to the Port's Personnel Rules and Regulations. The Chairman felt that this would not be creating new positions, but merely tweaking the existing positions and allocating it properly so it is not mis-allocated. He said with the two Tariff Technicians, and Tariff Supervisor, suggested to modify their existing duties and responsibilities inclusive of what is contemplated for the Tariff Administrator position; unless, Mr. Guevara feels that this approach is not doable based on the personnel's workload that would then require the need to create this position. Mr. Guevara said there is a possibility for one position to absorb additional duties and responsibilities, but understands that in order for this to be effectuated, the title has to change following the creation of position process as mandated by the Port's Personnel Rules and Regulations. At this time, the members agreed to table this item to be addressed at the next meeting.

5. **Summary-Ongoing CIP Projects:** Mr. Simeon S. Delos Santos presented the ongoing CIP projects separate and apart from the port modernization program.

- a) **GDP Marine Renovation & Site Improvement Project, Phase I:** \$1,252,000.00 funded by DOI OIA. Notice to proceed issued February 14, 2011, pending GEPA permits. Funding for Phase II and III is secured for this project.
- b) Mobil Fuel Pipelines Repair, A/E at \$245K, design paid for by Mobil. Construction Manager is coordinating with Mobil for the designers (SPEC Consulting) specification and approval in order to reformat the Mobil specifications to conform with Government of Guam requirements.
- c) **Agat Marina Dock "A" Repairs:** \$253K funded by Sportfish Restoration/Boating Access Grant, Department of Agriculture at \$250K. Status: materials to arrive latter part of April 2011. Project completion by end of May 2011.
- d) **Agat Marina Dock "B" Repairs:** \$288,800.00 funded by Sportfish Restoration/Boating Access Grant, Department of Agriculture at \$180K. Notice to proceed will be issued upon completion of Dock "A".
- e) **Agat Marina Ramp Walkway Repair:** \$48,800.00 funded by Sportsfish Restoration/Boating Access Grant, Department of Agriculture at \$80K. Status: 100% complete.

- f) **Concrete Manhole Cover Repair in CY Area "R":** \$13,280.00 funded by Port. Status: concrete covers to be in place tentatively by this month.
- g) **Administration Building Spall Repairs, Phase I:** \$14,600.00 funded by Port. Status: 100% complete.
- h) **Administration Building Spall Repairs, Phase II:** \$15K estimate, funded by Port. Status: drafting of scope of work on-going.
- i) **Engineering/Safety/Stevedore Offices Relocation in Warehouse I:** \$5K funded by Port. Status: pending release of allocated CIP budget to fund materials.
- j) **Electrical Upgrades on Building's Secondary Distribution Sub-Panel Boards:** \$75K estimate, funded by Port. Status: design-build scope of work is being finalized by Engineering office for bid requirements.

6. **April 21, 2011 – 2<sup>nd</sup> Annual National Port Summit, Chicago, Illinois:** The General Manager said U.S. Department of Transportation Secretary Ray LaHood's 2<sup>nd</sup> Annual National Port Summit will be held Thursday, April 21, 2011 at the Sheraton Hotel & Towers in Chicago, Illinois. The summit will address important policy issues facing the port community as it enters the transportation reauthorization season, such as: developing a national port strategy; freight management and the role of the federal government; understanding the impacts of the Panama Canal expansion; and the potential of an infrastructure bank. The summit will conclude with a town hall meeting led by Secretary LaHood. The General Manager said this is an opportunity to meet with the Secretary of Transportation and recommended for the Port to participate.

Ms. Lujan made motion to allow for two participants, one being the General Manager, to attend the 2<sup>nd</sup> Annual National Port Summit, Chicago, IL scheduled for April 21, 2011, seconded by the Vice Chairman. Motion was unanimously approved.

## VI. PUBLIC COMMENT

- a. **Port Users Group Comment:** None.
- b. **General Public Comment:** None.
- c. **Employee Comment:** Mr. Santos informed the Board of PAGGMA Association support and participation for the Relay for Life. PAGGMA Association is comprised of Port employees. The most recent event held was the Kayak (Paddling) Competition on March 27, 2011 at Matapang Beach. This was the first year PAGGMA participated in this event and the Port did well. Another event taking place this Saturday, April 9, 2011 is the Airplane Pull. Also, he mentioned that the association is accepting donations for the Japan Relief Efforts.

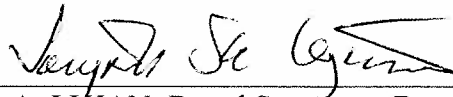


**VII. EXECUTIVE SESSION**

No executive session discussed.

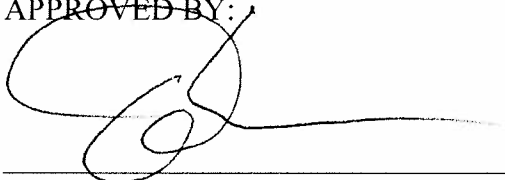
**VIII. ADJOURNMENT**

There being no further business to discuss, it was moved by the Vice Chairman and seconded by Ms. Lujan to adjourn the meeting at 2:10 p.m. The motion was unanimously passed.



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JOVYNA S.A. LUJAN, Board Secretary, Board of Directors

APPROVED BY:



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DANIEL J. TYDINGCO, Chairman, Board of Directors

