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Ray Tenorio  
Lieutenant Governor

**MINUTES OF THE  
REGULAR MEETING OF THE BOARD OF DIRECTORS  
Thursday, May 26, 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, May 26, 2011. Present at the meeting were:

Daniel Tydingco, Chairman  
Michael Benito, Vice Chairman  
Jovyna Lujan, Board Secretary  
Eduardo Ilao, Board Member  
Shelly Gibson, Board Member  
Pedro A. Leon Guerrero, General Manager  
Anisia B. Terlaje, Deputy General Manager  
Atty. Mike Phillips, Legal Counsel

Also present were Jimmy Camacho-Senator Tom Ada's office; Rick Bordallo-Phillips & Bordallo Law Office; AnnMarie Muna-AM Insurance; Jack Mowreader-PMT EA; Rizaldy Cortez-MARAD-Engineer; K. Vikramen-Tristar and Port Management staff.

**Addendum to Agenda:** The Chairman announced there are legislative measures that were added onto the agenda under communications. There were no objections.

**II. APPROVAL OF MINUTES**

a. **April 7, 2011:** Before the approval of minutes, Ms. Lujan referred to page 4, Pier F5 Findings and asked whether the assessment conducted by the engineering firm, Duenas, Camacho & Associates addressed the warranty of the wharf, expected lifespan, examination of craftsmanship, design integrity and so forth. Ms. AnnMarie Muna, AM Insurance said the engineering firm was task to determine whether the damage to F5 was earthquake related, and have concluded on its report that majority of the damages to F5 pier is not earthquake related and is mostly due to corrosion. The assessment on the earthquake damage is much less than the Port's insurance deductible to constitute a claim. She mentioned that the engineering firm can certainly look into the issues addressing warranty, lifespan and integrity of the pier should the Board desire. The Chairman asked whether the Port's insurance policy provides any provisions

relative to structural design flaws. Ms. Muna replied negatively, and said workmanship and structural design are standard exclusions in all insurance policies. However, in the event there is significant earthquake damage constituting an insurance claim, the insurance company then looks into whether it was strictly earthquake related or contributing factors in the design of the contractor. Ms. Muna said unless an insurance claim has been paid, the insurance company is not able to pursue the contractor. Mr. Ilao pointed out the Port then needs to look into whether there was faulty design/construction on the part of the contractor for any possible claim. The General Manager understands that the warranty for F5 pier is for a one year period.

After discussion, the Vice Chairman observed the discussions to be two separate issues: 1) known minor damage related to earthquake on F5 pier was determined not to be insurable; and 2) possible reimbursement on poor workmanship of the pier by the contractor. He mentioned the Port currently has its OAE consultant and asked whether an assessment to F5 addressing concerns of workmanship have been addressed. The General Manager said management is working with OAE on the design of F5 pier to determine the repair cost. The initial work performed on F5 pier by OAE was a compression test on the extent of the damage. At this time and without objection, the members allowed Mr. Jack Mowreader, PMT-EA to speak. Mr. Mowreader said it appears what is being suggested is the possibility of hiring a forensic engineer analysis to determine the root cause of the failure, structural integrity, construction materials used and so forth. The Chairman advised management to work with Legal Counsel to look into the warranty period of F5 pier; afterwards, it will be determined then whether a forensic analysis needs to be performed.

Without further discussion, the Vice Chairman made a motion to approve the minutes of April 7, 2011 subject to correction. The motion was seconded by Ms. Lujan and was unanimously passed.

b. **April 28, 2011 & May 4, 2011:** The Vice Chairman made a motion to approve the minutes of April 28, 2011 & May 4, 2011 subject to correction. The motion was seconded by Ms. Lujan and was unanimously passed.

### III. COMMUNICATIONS

1. **Appointment of Mary Michelle Gibson, Board Member:** The Chairman welcomed the newest member of the Port Authority Board of Directors, namely Ms. Mary Michelle Gibson. It was noted her legislative confirmation hearing is tentatively slated for July 2011.

The Chairman also welcomed to the Port Authority the Port's new legal counsel, Atty. Michael Phillips, Law office of Phillips & Bordallo.

2. **Bill No. 172-31 – Safe Harbor Exemption and Restrictions**
3. **Bill No. 186-31 – Redress of Grievance**
4. **Bill No. 184-31 – Supplemental Appropriations**
5. **Bill No. 145-31 – Biennial Appropriations**

As to items 2 thru 5, the Chairman advised the General Manager along with management to develop testimony for Board review. Specific to bills 184-31 and 145-31, Mr. Jose B. Guevara, Financial Affairs Controller was advised to provide the Board with the port financial impacts. After Board review, management will formulate the testimony accordingly and submit to the Legislature.

#### IV. OLD BUSINESS

1. **Appointment of Anisia B. Terlaje, Deputy General Manager:** The Vice Chairman made motion to ratify the appointment of Ms. Anisia B. Terlaje as the Port Authority Deputy General Manager. Motion was seconded by Mr. Ilao and was unanimously approved.
2. **Financial Report:** The financial report for March 2011 and April 2011 was presented to the Board for information.

The Chairman asked what is included under the operating expense of Repairs/Maintenance and Utilities. Mr. Guevara said the repairs and maintenance is mostly due to the repair of Gantry 3 (Subic Crane) as its year-to-date is about \$600K. As to the utilities, there still exist issues with water consumption over the past year which prompted the installation of a deduct meter to determine for possible leakage and actual usage. Mr. Guevara mentioned that a memorandum of understanding with the Port and Guam Waterworks Authority have been executed on the installation of the deduct meter and responsibilities of both parties. The Port and GWA are working closely to resolve the water consumption billings.

3. **Proposed Port Tariff:** As background information, Mr. Guevara mentioned that the Port's terminal tariff has not been adjusted since 1993. Since the passage of Public Law 30-52, the Public Utilities Commission having oversight of the Port Authority with respect to any rate increases, approved the Port's application for "interim" tariff rate at 3.4% which took effect February 2010. The Port later retained the consulting services of Cornell Group, Inc. to perform a comprehensive review and revision of the existing terminal tariff. The proposed tariff must be capable of generating sufficient revenue to cover operating costs of the Port and service the loans required for a proposed capital expansion of the Port. The primary objective is to develop an economically sustainable tariff that is equitable and reasonable for the Port as well as its users, consistent with the quality and level of services provided by the Port. This report will provide the basis and justification for the Port's application to the Commission for a change in tariff. Under Public Law 30-52, the Port is required to submit to the Commission the results from the study of existing rates, charges and cost of services by December 31, 2010; and has already done so on December 30, 2010. The proposed tariff rate increase is 3.95%.

Next steps in the petition process as required by the Public Utilities Commission is as follows:

- Publish the proposed tariff rate increase at 3.95% which was done on January 28, 2011.
- Prepare a Base Rate Petition which is already completed and packaged.
- Submit the Base Rate Petition to Public Utilities Commission at which time the Administrative Law Judge, Atty. David Mayer has 120 days to act upon receipt of the petition.
- Once PUC Consultant completes its review of the Port's rate petition, scheduling of public hearings will be made.

For Board's information, Mr. Guevara mentioned that tariff increase scenarios were presented to the previous Board back in November 23, 2010 which includes: 1) increase tariff at 3.95% that includes container, break bulk and cement – all increase with military buildup; 2) increase tariff at 4.26% that includes only container – increase with military buildup; and 3) increase tariff at 5.50% - no military buildup. It was then that the Board approved Scenario 1 at an increase tariff rate of 3.95% to be submitted to the Public Utilities Commission. The Board then felt it necessary to reassess the tariff on an annual basis, calibrate it to the level of activity, cost of living adjustments, inflations, and the general economic climate.

The Vice Chairman asked the reason to increase tariff rates annually if the debt service cost structure remains the same. Mr. Guevara said the proposed tariff rate was a study prepared by the tariff consultant using prior year actual revenues and expenditures for a 20 year term. If the Port's revenue increases then the initial revenue projection made that determined the 3.95% annual tariff increase will definitely decrease. The Public Utilities Commission will not approve any proposed rates that are not just and reasonable.

Mr. Guevara said the master plan identifies \$207M worth of projects for the port modernization program; however as of November 2010 the Port has only received so far \$103.5M which consists of \$53.5M from USDA loan and the \$50M federal grant. Additionally, \$10M was included for purposes of acquiring gantry cranes by December 2012 as mandated by Public Law 30-100. This totals a loan amount of \$63.5M which is the basis of the 3.95% proposed tariff rate increase. The Vice Chairman asked whether it is necessary to submit the base rate petition to the PUC at this time. Mr. Guevara replied positively, and said other than to ensure payment on the debt service and fund its capital improvement projects, the existing port tariff rates are outdated, needs to be aligned with cost of living, also the Port is still being guided by tariff rules and regulations dated back since 1993. The Chairman asked that if the base rate petition of 3.95% is PUC approved, would that same rate be applied every year thereafter or would it be necessary to continue annual assessments of the tariff rates. Mr. Guevara reiterated that what is being proposed by the tariff consultant is an annual rate increase of 3.95% for 20 years. If PUC approves the initial year tariff rate at 3.95% and the Port's revenue increases then the 3.95% rate will decrease. He said although proposed rates are submitted to PUC, it must be just and reasonable to gain their approval. It was noted that PUC may make adjustments on how the proposed tariff rates should be implemented or may just approve a lower rate than what is being proposed. Mr. Guevara said it is a requirement and protocol to submit the Port's actual

financial statements on an annual basis to the Commission. After some discussion, the Vice Chairman said he will further discuss this matter off-line with Mr. Guevara.

4. **Insurance Report:** The insurance report for April 2011 was presented to the Board for information. The Chairman advised Ms. Muna that the Directors Liability Coverage may need to be looked into to support, in the event of passage, Bill No. 186-31 relative to protecting the rights of persons to petition a public board, public commission or public corporation of the government of Guam for redress of grievances by requiring all public boards and commission to establish a grievance policy, rules and procedures.

5. **Port Modernization Program – Implementation Plan:** The General Manager said the Port Board and Management held a working session with MARAD, PMT-EA, USDA, Port Users Group and JGPO on May 18 & 19, 2011 on the port modernization implementation plan. Discussion included scale down of implementation plan, federal grants, loans, protocol manual, F5 Pier. He felt the working session provided good feedback and was productive. As a result of the working session, the General Manager understands that MARAD will be preparing an amended implementation plan estimated to be completed by next week for Port review.

6. **Tristar-Fuel Line Relocation:** The General Manager said the Port received a letter dated May 4, 2011 from Tristar regarding the Tristar terminal terms for fuel line relocation basically indicating that they are prepared in principal to accept the option of an Independent Tristar Project. It is now being requested from the Board to allow management to engage in discussions with Tristar on this matter. The Chairman advised management to come to a quick resolution amongst the parties on this issue.

7. **F5 Pier Repair Status:** As mentioned earlier, management is working with OAE consultant on the design for the F5 pier in order to determine the cost associated with the repair work. Mr. Simeon S. Delos Santos, Engineer Manager understands the repair work will be funded through the Port Enterprise Improvement Fund at \$5M; however, felt if the Port were to fund this project independently it will be done in a more expeditious manner. The General Manager commented that he was more inclined to use the grant funding for this project which was the general consensus at the working session. Ms. Lujan asked that if this project is to be performed by MARAD, what the completion date is. Mr. Mowreader said the repair work could be done very quickly as the PMT-EA already has the design and construction capability to perform this task. The Chairman advised the General Manager to expedite the repair work through the enterprise fund.

The Chairman wondered about the possibility of depositing the \$50M federal grant into a local bank which is an idea worth looking into.

8. **Board Ratification: Shell Pipeline Easement Agreement & F3 Pier Agreement:** It was agreed to table this item until the next meeting to allow new counsel to review the agreements.

9. **GFT-Negotiations on Terms of Contract:** The General Manager said the Port received a letter dated May 9, 2011 from Mr. Matthew Rector, GFT President requesting to resume union negotiations with the Port. As background information, the General Manager understands the Port and GFT has held numerous discussions since last year on this matter and had resulted in the Port waiting for GFT to respond; however, no response have been provided to date other than this letter now being presented. He yielded to Mrs. Vivian C. Leon, Corporate Services Manager to explain. Mrs. Leon said contact was made with Mr. Rector at that time to comment on the Port's version of the collective bargaining agreement and/or to advise whether both parties are at an impasse; but no response was provided. She mentioned because there is no agreement consummated by the Port and GFT within a year after the exclusive recognition was provided to GFT, the Department of Administration (DOA) sent a letter to the Port as to the status of that agreement and the number of membership, which the Port had already provided then. Back in August 2010, DOA was suppose to look into whether the exclusive recognition was still valid; however to date no response was provided. Mrs. Leon said should the Board wish to continue with the negotiations that a Chief Negotiator would need to be identified. The Chairman advised management to forward the GFT file to Legal Counsel for review.

10. **Cabras Marine-Estoppel Agreement re Casamar Guam:** Legal Counsel said he will engage Attorney William Blair, counsel for Cabras Marine and Mr. Joe Cruz, Cabras Marine President to attempt to resolve this matter expeditiously beneficial to both parties.

11. **Strategic Compensation Plan Overview:** As directed at the previous meeting, Mrs. Francine T. Rocio, Personnel Services Administrator presented the Board with the Port Strategic Compensation Overview that addresses the concerns of the members and the need to manage the Port's compensation strategies. The report provides the history of the Port's new compensation study; how and why there is a need to have the Port's benefits, compensation and positions reviewed; reasons as to why new creation of positions and pay determinations are brought before the Board. She mentioned that Mr. Alan Searle, Port's Compensation Consultant is slated to arrive on Guam next month and looks forward to meeting with the members for any additional questions or concerns. Ms. Lujan said the overview presented is helpful and clarified whether those positions are to be reclassified, purged or promoted. Mrs. Rocio mentioned that when creation of positions is brought before the Board, detailed information is provided which identifies position description, analysis, financial impact, and incumbents that may be affected. This is to also address the lack of positional series and to retain independence over the Port's compensation model. Unlike other agencies, the Port has a unique compensation plan and personnel rules and regulations codified into law, with all positions that are to be certified, technical and professional in nature, separate and apart from the government of Guam hay plan.

12. **Resolution No. 2011-05 – Designation of Signatories:** Mr. Ilaio made motion to approve Board Resolution No. 2011-05 relative to the Designation of Signatories for the Port Authority of Guam, seconded by the Vice Chairman. Motion was unanimously approved.

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

## V. NEW BUSINESS

1. **Resolution of Members for USDA:** The Vice Chairman made motion to approve the Resolution of Members, USDA Form RD 1942-8, subject to the certification reflecting four board members rather than five. Motion was seconded by Mr. Ilao and was unanimously approved.

2. **Legal Inventory:** Legal Counsel mentioned that a meeting was held with the Port and had addressed certain priority issues. He requested that his law firm be provided with those respective files.

3. **London Insurance Underwriters Annual Group Session, June 20-24, 2011, London:** Ms. Muna said as mentioned at the previous meeting, it is being recommended for the Port to attend the London Insurance Underwriters Annual Group Session slated for June 20-24, 2011 to basically showcase the Port on its mission, projects, most especially the port modernization program. In doing so, will help the Underwriters be acquainted with its clients and most of the times these visits helps to get better insurance rates. She mentioned that other agencies have attended and benefited in their insurance package. The Chairman advised the General Manager to look into what other autonomous agencies have done to render savings. Ms. Muna was advised to check the possibility of a closer region, hold the meeting to a later date and to provide feedback to the General Manager.

4. **2011 AAPA-Professional Port Manager Program (PPM) Certification: Maritime Economic Development Seminar, July 11-13, 2011, Portland, OR:** Mr. Ilao made motion to approve travel authorization request for Messrs. Jose B. Guevara, Financial Affairs Controller and Glenn B. Nelson, Commercial Manager to attend the 2011 AAPA Maritime Economic Development Seminar on July 11-13, 2011 in Portland, Oregon. Motion was seconded by the Vice Chairman and was unanimously approved.

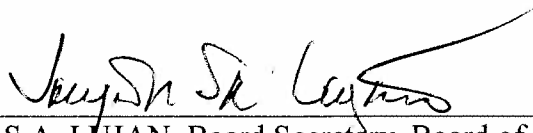
5. **2011 Annual Homeland Security UASI Conference, June 20-23, 2011, San Francisco, CA:** Mrs. Rocio said the Port has been invited to attend an annual conference that addresses all Homeland Security Grant Programs. This conference will be at no cost to the Port as it is a US Department of Homeland Security sponsored event. She said port participants include three employees from the Planning division. As the curriculum includes best management practice for first responders, the members felt it best to have Port Police division to attend as well. The Chairman advised the General Manager to make the determination on the number of port participation.

## VI. EXECUTIVE SESSION

No executive session discussed.

## VII. ADJOURNMENT

There being no further business to discuss, it was moved by Mr. Ilao and seconded by the Vice Chairman to adjourn the meeting at 1:52 p.m. The motion was unanimously passed.



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

APPROVED BY:



DANIEL J. TYDINGCO, Chairman, Board of Directors

