



## **STOCKTON PORT DISTRICT**

Board of Port Commissioners

December 16, 2019

Pursuant to notice duly given, the regular meeting of the Board of Commissioners of the Stockton Port District was held on December 16, 2019, in Room 18 of the Port of Stockton Administration Building located at 2201 West Washington Street in Stockton, California.

COMMISSIONERS PRESENT: R. Jay Allen  
Anthony M. Barkett  
Elizabeth (Liz) Blanchard  
Gary Christopherson  
Stephen Griffen, Chairman

COMMISSIONERS ABSENT: None

COMMISSIONERS EXCUSED: Michael Patrick Duffy, Vice Chairman

OTHERS PRESENT: Richard Aschieris, Port Director  
Steve Escobar, Senior Deputy Port Director  
Michelle Bowling, Director of Finance  
Jason Katindoy, Director of Maritime Operations  
Jeff Wingfield, Director of Environmental and  
Public Affairs  
Sylvester Aguilar, Port Real Estate and Properties  
Development Manager  
Pete Grossgart, Marketing Manager  
Jef Beason, Maritime Accounts and Tariffs Manager  
Steven A. Herum, Port Counsel  
Melanie Rodriguez, Secretary to the Board

A quorum being present, the meeting was called to order by Chairman Stephen Griffen at 3:31 p.m. Chairman Griffen presided and Melanie Rodriguez, Secretary to the Board, acted as Secretary for the meeting.

CONSENT CALENDAR

In compliance with Port Policy Statement #003, the Consent Calendar items of business, having been provided to each member of the Board prior to this meeting, the Commissioners present acted upon all Consent Calendar items of business under one vote.

Commissioner Christopherson moved to adopt the following resolution:

MINUTES OF DECEMBER 2, 2019 MEETING

Resolution #8156: RESOLVED, that the minutes of the regular meeting of the Board of Commissioners of the Stockton Port District held on the 2nd day of December 2019, as the same are endorsed on Page No. 102 to Page No. 114, inclusive, of Minutes Book No. 61, be and they are hereby approved.

Resolution #8156 was passed by the following vote:

COMMISSIONERS IN FAVOR:	Allen, Barkett, Blanchard, Christopherson, Griffen
COMMISSIONERS AGAINST:	None
COMMISSIONERS ABSTAINING:	None
COMMISSIONERS ABSENT:	None
COMMISSIONERS EXCUSED:	Duffy

CONSIDERATION OF ITEMS REMOVED FROM THE CONSENT CALENDAR

Chairman Griffen acknowledged there were no items removed from the Consent Calendar.

COMMITTEE REPORTS

Ad Hoc Committee

On December 13, 2019 an Ad Hoc Committee comprised of Commissioners Allen and Barkett met with the Port Director and staff to review and discuss the Targa Downstream, LLC Fifth Amendment to the Lease and the Marine Terminal Services Agreement.

## PORT DIRECTOR'S COMMENTS

Port Director Aschieris provided an executive summary of recent Port activities.

- Current calendar year-to-date shipping reflects 226 ships. Shipping activity for the same period in 2018 reported 245 ships. Since the last Commission meeting, 8 ships have called at the Port.
- Current calendar year-to-date tonnage totaled 4,324,266 metric tons. Tonnage for the same period in 2018 totaled 4,578,408 metric tons. Since the last Commission meeting, 145,000 metric tons of sulfur from Mexico, food grade oil from Malaysia, cement from Vietnam and bagged rice, wood pellets, tire chips, beet pellets and dry bulk to Japan have been handled.

## COMMISSION COMMENTS

Commissioner Barkett shared that he and Port Director Aschieris toured the Nautilus barge on December 11, 2019 in the Bay Area. He also shared that the barge should arrive at the Port in March 2020 and should be open for business in the summer of 2020.

Chairman Griffen shared that the container counts at the larger California ports are down.

## PUBLIC COMMENTS ON NON-AGENDA ITEMS

Chairman Griffen acknowledged there were no requests to address the Commission.

## CLOSED SESSION PURSUANT TO GOVERNMENT CODE §54956.8 REAL PROPERTY TRANSACTION: RECEIVE REPORTS FROM, GIVE INSTRUCTIONS TO & CONFER WITH PORT NEGOTIATOR RICHARD ASCHIERIS REGARDING POTENTIAL REAL PROPERTY TRANSACTION RELATIVE TO 3034 NAVY DRIVE, STOCKTON, CA

At 3:45 p.m. Chairman Griffen announced that, in accordance with the Ralph M. Brown Act, an executive session would be conducted by the Board of Commissioners pursuant to Government Code §54956.8. The general public and other Port staff was excused from the meeting, and the closed session commenced at 3:46 p.m. Port Director Aschieris, Senior Deputy Port Director Escobar, Director of Finance Bowling, Director of Maritime Operations Katindoy, Director of Environmental and Public Affairs Wingfield, Port Real Estate & Properties Development Manager Aguilar, Marketing Manager Grossgart, Maritime Accounts and Tariffs Manager Beason and Attorney Herum remained for the executive session.

At 4:11 p.m., Chairman Griffen re-opened the meeting in public session. He reported that the Port Commission conferred with legal counsel and took no formal, reportable action during the closed session.

CONSIDERATION AND POSSIBLE APPROVAL OF AN AMENDMENT TO THE LEASE AGREEMENT AND ADOPTION OF BERTH AGREEMENT WITH TARGA DOWNSTREAM, LLC AT 3034 NAVY DRIVE, STOCKTON, CA

Senior Deputy Port Director Escobar presented an executive summary of this agenda item. The staff reports were provided to each member of the Board prior to this meeting.

The Fifth Amendment to the Targa Downstream, LLC Lease includes an increase to rent and wharfage, a rail traffic review process and an extension to the Inspection Period.

The Marine Terminal Services Agreement defines reasonable access to a berth and a dock and runs concurrently with Targa's Lease.

Port Commission consideration and approval was requested to adopt an ordinance approving the Fifth Amendment to Lease with Targa Downstream, LLC for the modification of certain lease provisions pertaining to a previously approved lease and adopt a resolution approving the Marine Terminal Services Agreement with Targa Downstream, LLC and authorization for the Port Director to execute the Marine Terminal Services Agreement.

Senior Deputy Director Escobar stated that in his professional opinion the Fifth Amendment to Lease and the Marine Terminal Services Agreement with Targa Downstream, LLC are administrative changes and do not involve a potential physical change to the environment.

Attorney Herum stated that Adams, Broadwell, Joseph and Cardozo sent written comments that stated the Port would violate California Environmental Quality Act (CEQA) by approving the lease amendment and/or adopting the berth agreement prior to completing an environmental review for the proposed Targa project.

Chairman Griffen acknowledged that there were no requests to address the Port Commission on this matter.

Attorney Herum submitted the following findings of the Stockton Port District concerning the approval of the Fifth Amendment to Lease and approval of a Marine Terminal Services Agreement with Targa Downstream, LLC:

- Previously on July 16, 2012 the Port Commission conducted a noticed public hearing concerning the approval of a lease with Targa. As part of the process to approve this lease the Port complied with the provisions of the California Environmental Quality Act (CEQA). The CEQA process was integrated into the lease approval process.
- The Port determined the action of approving the lease amendment could not result in either a direct physical change in the environment or a reasonable foreseeable indirect physical change to the environment. Therefore, the Port conducted and the Commission subsequently certified as legally adequate a review in accordance with the requirements of CEQA. The CEQA review was

performed in the form of a Mitigated Negative Declaration. No one appeared at the noticed public hearing to contest the legal sufficiency of the Mitigated Negative Declaration nor the Port's intention to certify the Mitigated Negative Declaration as legally sufficient under CEQA.

- Specifically, with respect to the Mitigated Negative Declaration, the Mitigated Negative Declaration incorporates by reference, in its entirety, the texts of the 2006 Pacific Ethanol Production and Transshipment Facility Environmental Impact Report (2006 Pacific Ethanol EIR) and the Findings and Overriding Considerations adopted by the Stockton Port District Board of Commissioners in connection with the 2006 Pacific Ethanol EIR. The Port prepared a Mitigated Negative Declaration evaluation pursuant to CEQA to determine whether the Pacific Ethanol EIR, certified by the Port in 2006, covered all potential significant impacts of the Proposed Targa Project and to determine whether additional environmental documentation was needed. The Mitigated Negative Declaration for the Proposed Targa Project had been prepared in accordance with CEQA, using Section 15152 which allows the Lead Agency to “tier” (utilize previous environmental analysis) from “separate, but related projects.” The Port evaluated the Proposed Targa Project to determine whether the project would meet the conditions in Section 15152 and provided the required environmental documentation, support and findings in the Targa Mitigated Negative Declaration.
- Mitigation measures identified in the 2006 Pacific Ethanol EIR that were applicable to the Proposed Targa Project were incorporated into the Proposed Targa Project to protect the environment. In addition, project-specific mitigation measures had been identified to reduce potential impacts to a less-than-significant level that were not called out in the 2006 Pacific Ethanol EIR.
- After approving the lease, a Notice of Determination was filed and no action challenging the sufficiency of the decision with respect to compliance with CEQA was filed during the designated statute of limitations period. It is now too late to challenge the Port's conclusion that the Mitigated Negative Declaration was certified and complied with the provisions of CEQA.
- Therefore, a conclusion that the Stockton Port District satisfied the requirements of CEQA with respect to the Project is a final and conclusive decision.

Based on written and oral testimony received at the noticed public hearing the Commission finds the Project—the Fifth Amendment to the Lease and a Marine Terminal Services Agreement—could not result in either a direct physical change to the environment or a reasonable foreseeable indirect physical change to the environment. This is because the terms and conditions of the Project involve commercial or business terms, marine operational protocols or applicable tariffs but do not grant permission for construction or other activities that could result in a direct or indirect change to the physical environment. The grant of permission for construction or other activities that could result in direct or indirect changes to the physical environment are found in the original lease which was approved in 2012.

The Commission finds the opinion of staff, who routinely and regularly evaluate and process the CEQA components of the Port's decision making over leases and berth agreements and who possess

training, education and skill in this area, that the Project presented does not involve a potential physical change to the environment.

The Commission finds the testimony against adopting the Project consists of written and oral testimony failing to identify what aspect of the approval involves physical changes to the environment from rights granted by the proposed lease and/or berth agreement. Furthermore, the writer of the letter did not identify his qualifications to offer opinions on the environmental consequences of the Project.

The only conceivable argument that the Amendment may result in a direct or indirect change to the physical environment is a revision to the timetable for construction. However, testimony in opposition to the action did not raise this issue, did not provide substantial evidence that a revised timetable for construction would produce new or more intense environmental effects and, to the contrary, the Commission received substantial evidence that the revised timetable for construction did not produce new or more intense environmental effects.

In the alternative the Commission finds it previously satisfied CEQA when the lease was originally approved at a noticed public hearing. To the extent the oral and written testimony raises a valid CEQA claim—a statement the Commission disagrees with—the oral and written testimony failed to provide substantial evidence or arguments based on substantial evidence that the Project requires preparation of a supplement or addendum. This is because no substantial evidence or arguments based on substantial evidence was presented to support the statutory and guideline mandated elements for requiring such supplement or addendum.

Commissioner Allen moved to adopt the following resolution:

Resolution #8157: RESOLVED, that the Stockton Port District Board of Commissioners approves the findings as submitted for the Fifth Amendment to Lease and the Berth Agreement with Targa Downstream, LLC.

RESOLVED FURTHER, that the Stockton Port District Board of Commissioners approves final adoption of Ordinance #251 for the Fifth Amendment to Lease with Targa Downstream, LLC for approximately 32.8 acres at/near 3034 Navy Drive that includes rent and wharfage increases, a rail traffic review process and extension of the Inspection Period; and

RESOLVED FURTHER, that Ordinance #251 shall take effect, and be in full force and effect, from and after its final adoption; and

RESOLVED FURTHER, that the Stockton Port District Board of Commissioners approves adoption of the Marine Terminal Services Agreement with Targa Downstream, LLC related to Berth 9 on the East Complex; and

RESOLVED FURTHER, that the Port Director is authorized, empowered and directed in the name of and as the act and deed of this Stockton Port District to make, execute and deliver all necessary documents in the accomplishment thereof, and to ensure that the provisions of this resolution are appropriately effected.

Resolutions #8157 was passed by the following vote:

COMMISSIONERS IN FAVOR:	Allen, Barkett, Blanchard, Christopherson, Griffen
COMMISSIONERS AGAINST:	None
COMMISSIONERS ABSTAINING:	None
COMMISSIONERS ABSENT:	None
COMMISSIONERS EXCUSED:	Duffy

#### ADJOURNMENT

There being no further business to discuss, the meeting was adjourned at 4:18 p.m. by Chairman Griffen.

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Melanie Rodriguez  
Secretary to the Board

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Chairman Stephen Griffen