

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA

Item No. 5d

Date of Meeting December 7, 2010

DATE: December 1, 2010

TO: Tay Yoshitani, Chief Executive Officer

FROM: Stephanie Jones Stebbins, Director, Seaport Environmental Programs
Paul Meyer, Environmental Program Supervisor, Seaport Environmental Programs

SUBJECT: Authorization for the Chief Executive Officer to enter into an interlocal agreement with Port of Tacoma for NOAA personnel.

Amount of This Request: No new funds requested

Source of Funds: Annual operating budget or future individual project authorizations

Estimated Workers Employed: 1

ACTION REQUESTED:

Request authorization for the Chief Executive Officer (CEO) to enter into an interlocal agreement with Port of Tacoma to share costs for Port of Tacoma staff on assignment from the National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service. The assigned individual will assist with fish and wildlife habitat evaluations required for federal authorization of port development, operation, and maintenance projects and actions. The proposed agreement for the next biennium is substantially consistent with the attached agreement.

No new funding is requested. Funds for NOAA staff assistance would come from the annual operating budget or future individual project authorizations. Some funds for programmatic funding will be provided from the Seaport Environmental operating expense budget.

The Seaport Environmental Department has requested authorization for the continuation of these agreements every five years since 2001 and is requesting commission authorization for continuing these agreements until December 31, 2015, as the services provided enhance Port competitiveness and efficiency. Staff will brief the commission on these agreements every five year term.

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SYNOPSIS OF AGREEMENT:

The Seaport Environmental group is requesting Commission approval for the CEO to enter into an interagency agreement between Port of Seattle and Port of Tacoma to share the services and the related costs of the assigned individual from NOAA for permit liaison support. Attachment A is the substantially completed agreement proposed for the next biennium. The agreement sets out the mutual framework governing the respective responsibilities of the parties for the acceptance and expenditure of funds contributed by the Port of Seattle to support Port of Tacoma staff that will provide consultation and expedite the evaluation of permits requiring NOAA consultation.

The Port of Tacoma staff personnel assigned to Port projects is a NOAA staff biologist on assignment to the Port of Tacoma. The staff member:

- Conducts ESA natural resource effect consultations pursuant to applicable federal laws;
- Reviews proposed port projects requiring federal authorization, funding or approval;
- Provides analysis of the effects of proposed Port activities on listed species occurring in marine and estuarine environments;
- Writes biological opinions, evaluations, concurrence letters, and other technical analyses as part of formal or informal project effect consultations;
- Assists in coordination of project mitigation issues with local, state, federal, and Treaty tribe representatives;
- Interprets regulatory and technical information, laws and guidelines;
- Recommends project-specific solutions relating to fish and wildlife habitat and species of concern; and,
- Assists with preparation of programmatic biological evaluations relating to particular categories of port operation and maintenance actions.

With experienced NOAA staff assigned to port projects, project review and decision-making is expedited and more efficient. Early and meaningful collaboration on federal agency requirements and resource issues reduces adverse impacts, avoids costly and time consuming design changes, and define appropriate mitigation requirements. The time required to obtain permits from federal agencies is reduced. In addition, the ports receive guidance for advance planning and are alerted to new issues affecting federal agency review of port operations and permitting. Our competitiveness is improved because we can set review priorities and access agency resources to achieve timely permit decision-making.

Relation of Port of Tacoma to Agency Personnel and the Interlocal Agreement

The Ports of Seattle and Tacoma have been cooperating to provide staff support to NOAA to assure timely and efficient permitting since 2001. At the time of the original agreements, the Port of Tacoma agreed to take on the role of cooperating agency to establish an agreement with NOAA to provide services for permitting review and coordination. The Port of Tacoma and the Port of Seattle have a separate interlocal agreement administered by the Port of Tacoma that defines the obligations of each port to support the Assigned Individual from NOAA. Each Port

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is responsible for paying its share of time on which the Assigned Individual works on its port's project. The Port of Seattle also pays the Port of Tacoma a management fee of 35% for consideration of the expenses incurred by the Port of Tacoma.

FINANCIAL IMPLICATIONS:

Source of Funds

No funds are requested as part of this authorization. Funds for these staff resources are available as part of design, permitting and construction funding costs related to capital and expense projects approved by commission for which the federal fishery services (NOAA/NMFS, and U.S. Fish and Wildlife) Endangered Species Act (ESA) consultation is required. Some funds are provided from Seaport Environmental expense budget contributed for programmatic consultation on ESA and clean Water issues on which the assigned individual has expertise.

Costs

Program costs for the assigned individual at POT since 2001 has totaled \$173,604.

Costs per year is expected to average \$40,000/year for the NOAA assigned individual based on projected level of assistance needed for future Port projects. Cost will vary year by year depending on number and complexity of permitting actions submitted to the agencies.

ENVIRONMENTAL SUSTAINABILITY AND COMMUNITY BENEFITS:

- Projects designed to meet regulatory guidelines from state, city, and federal agencies fulfill the responsibility of the port to provide satisfactory protection to the environment.
- Permit processes often provide community input to design features and environmental impact analysis.
- Assistance from individuals at the regulatory agencies provides timely, cost effective advice and prioritized analysis reducing permitting, design costs and schedule.

ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS:

- Authorize the CEO to enter into interlocal agreement(s) with Port of Tacoma to fund staff resources on assignment from National Oceanic and Atmospheric Administration (NOAA). **This is the recommended alternative.**
- Eliminate agreements with Port of Tacoma to fund staff resources at NOAA. Permitting time will increase, knowledge of pending changes in regulations will decrease and the likelihood of unanticipated new and costly mitigation and monitoring will increase. This alternative is not recommended.

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PREVIOUS COMMISSION ACTIONS OR BRIEFINGS:

The Port of Seattle Commission since 2001 has authorized the CEO to enter into agreements with Port of Tacoma and federal agencies to fund or provide additional staff resources at federal resource and regulatory agencies charged with the enforcement of federal law regarding but not limited to the Clean Water Act and The Endangered Species Act (ESA).

- 6/21/01 - The Port Commission authorized the CEO to execute agreements to fund or provide additional staff resources at the permit agencies (USFWS, USACOE, NOAA) with the costs to be shared with the Port of Tacoma up to \$300,000.
- 12/09/03 - The original authorization was increased to \$600,000 and extended for two years on 12/9/03
- 2/22/05 - The commission authorized the CEO to execute agreements and amendments for the Port of Tacoma, NOAA, and USFWS to fund staff resources at permit agencies to assist with permits requiring Endangered Species Act consultation. The commission also increased the total expenditure for agency support for an additional \$375,000 for a total of \$975,000.

OTHER DOCUMENTS ASSOCIATED WITH THIS REQUEST:

Attachment A is the substantially completed Interlocal Agreement proposed for the next biennium for federal agency permit staffing support by and between the Port of Tacoma and the Port of Seattle.