

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA

Item No. 5e

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: Interagency agreements between the Port of Seattle, the U.S. Department of Army, and the City of Seattle.

Amount of This Request: No new funds requested

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

Estimated Workers Employed: 3

ACTION REQUESTED:

Request Commission authorization for the Chief Executive Officer (CEO) to enter into the following agreements: 1) Memorandum of Agreement with the Department of the Army that establish the respective responsibilities of the parties for the acceptance and expenditure of funds contributed by the Port to expedite the evaluation of permits under the jurisdiction of the Army as allowed by Section 214 of the Federal Water Resources Development Act (WRDA 2000); 2) Memorandum of Agreement with the City of Seattle Department of Planning and Development (DPD) that establishes the respective responsibilities of the parties for the acceptance and expenditure of funds contributed by the Port to expedite the evaluation of land use actions under the jurisdiction of the City.

No new funding is requested. Funding for staff resources on specific projects at DPD and USACE will come from capital projects approved by the Commission. Some programmatic planning funds 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.

COMMISSION AGENDA

Tay Yoshitani, Chief Executive Officer

December 1, 2010

Page 2 of 4

SYNOPSIS OF AGREEMENTS:

Seaport Environmental is requesting that the Commission authorize the CEO to enter into interagency agreements between Port of Seattle and Department of Army, US Army Corps of Engineers (USACE) and the City of Seattle, Department of Planning and Development (DPD) for permit liaison support. The agreements set out the respective responsibilities of the parties for the acceptance and expenditure of funds contributed by the Port to support staff that will expedite the evaluation of permits under the jurisdiction of the Army and the City of Seattle.

Personnel assigned to Port projects for the USACE:

- Schedule and coordinate ESA consultations; Environmental Protection Agency (EPA) sediment management review; and Washington State Department of Ecology (DOE) water quality certifications; Sec 107 tribal consultation and historic properties pursuant to applicable federal laws;
- Conduct reviews for proposed Port projects requiring federal authorization, funding or approval;
- Mitigate biological and water quality issues with state, federal, tribal and private representatives;
- Interpret federal regulatory and technical information, laws and guidelines;
- Determine solutions and make recommendations to problems concerning water quality and biological resources, and participate in the preparation and development and authorization of work or structures within waters of the United States.

The DPD liaison is an experienced Senior Land Use Planner who reviews and/or coordinates land use review on Master Use Permits and construction permits for Port projects. The liaison:

- Monitors progress of permit review and work with management and staff to make permit decisions in a manner consistent with the agreed upon schedule
- Coordinates production needs within DPD;
- Coordinates with the Port on development priorities;
- Coordinates permit issues including those that cut across DPD programs and City department jurisdictions;
- Comments on the Port permit application during pre-submittal phases of development planning to identify issues;
- Provides guidance as to the applicability of shoreline exemption rules to a proposal;
- Assists in review and process of exemption requests.

Permit review of port-related projects are more efficient because of the regulatory and technical expertise of the USACE program managers and DPD land use planners serving as liaisons. Early and meaningful collaboration on federal agency requirements, resource issues and land use planning reduces adverse impacts, avoids costly and time consuming design changes, and defines appropriate mitigation requirements. The time required to obtain permits from the 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. The personnel assigned to the liaison functions are all genuinely interested in environmental protection and understand

COMMISSION AGENDA

Tay Yoshitani, Chief Executive Officer

December 1, 2010

Page 3 of 4

the need to make timely and informed decisions. Our competitiveness is improved because we can set review priorities and access agency resources to achieve timely permit decision-making.

There is a need for in depth assistance at the federal and local agencies as:

- The Corps are imposing increasingly conservative in establishing standards for protection of water quality and habitat and aquatic biota and;
- The Corps and agencies they coordinate for review have expanded and increased their scope of environmental review for even simple maintenance projects, and;
- Resource agencies continue to add new ESA listings (rockfish, July 2010, Orca, 2009) which require new analyses and consultation steps to federal USACE approvals.
- City shoreline land use regulations impose strict zoning and development standards that often require interpretation;
- City land use, stormwater and building codes are constantly evolving, particularly the shoreline code which is undergoing major revisions.
- Permit approvals often require inter-departmental consultation and approvals that are best handled with experienced staff familiar with port needs, and;
- City approvals often are the focus for local citizens' opposition.

FINANCIAL IMPLICATIONS:

Source of Funds

No new funding is requested. Funding for staff resources on specific projects will be from capital and expense project design, permitting and construction cost budgets approved by the Commission for which approvals from USACE or DPD are necessary. It is expected that some funds will be provided from budgeted Seaport Environmental expense actions requiring federal or local agency for programmatic consultation on clean water issues and interagency coordination functions.

Costs

Costs for permit liaison support will vary year by year depending on number and complexity of permitting actions submitted to the agencies. Since the first agreement in 2001, the Port has paid \$250,000 to the USACE. Since the first agreement in 2006, the Port has paid to the City of Seattle \$291,205.80. The most recent agreement with the city has reduced our expected expenditures to half of the original agreement. Over the next five year term expected costs for each agency should average \$40,000 per year per agency.

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.

COMMISSION AGENDA

Tay Yoshitani, Chief Executive Officer

December 1, 2010

Page 4 of 4

- Assistance from individuals at the regulatory agencies provides timely, cost effective advice and prioritized analysis reducing permitting and design costs and reduces schedule delays.

ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS:

- Continue interagency agreements between Port of Seattle and Department of Army and the City of Seattle to fund staff resources to expedite the evaluation of permits under the jurisdiction of the Army and the City of Seattle. **This is the recommended alternative.**
- Eliminate interagency agreements between Port of Seattle and Department of Army, and the City of Seattle to fund staff resources to expedite the evaluation of permits under the jurisdiction of the Army, and the City of Seattle. 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.

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 handle Endangered Species Act. The commission also increased the total expenditure for agency support for an additional \$375,000 for a total of \$975,000.
- 1/10/2006 – The commission authorized the CEO to amend the original agreement between the Port and the US Army Corps of Engineers to fund staff resources at that agency to handle Endangered Species Act for 5 years.

OTHER DOCUMENTS ASSOCIATED WITH THIS REQUEST:

Attachment A is the substantially completed agreement proposed for the next biennium between the Port and DPD.

Attachment B is the agreement currently in effect between the Port and USACE that will continue as is unless Sec. 214 of the federal Water Resources Defense Act expires.