PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA
STAFF BRIEFING

Item No.: 7a

Date of Meeting: January 10, 2012

DATE: December 22, 2011

TO: Tay Yoshitani, Chief Executive Officer

FROM: Patricia Akiyama, Director of Public Affairs
Clare Gallagher, State Government Relations Manager
Ryan McFarland, Policy Analyst, Public Affairs

SUBJECT: Federal and State Government Relations Briefing for 2012

BACKGROUND:

FEDERAL GOVERNMENT RELATIONS

DECEMBER OVERVIEW

End-of-the-Year Tax and Unemployment Insurance Package

The congressional session ended on December 23rd when the House and Senate agreed to extend the payroll tax for an additional two months and appoint conferees to negotiate a compromise on the differing versions of legislation to enact a full year extension of the payroll tax deduction for employees. Included in this legislation is an extension of unemployment benefits until March 6, 2012 as well as the federal reimbursement formula for doctors. The bill offset is from an increase of loan guarantee fees charged by Fannie Mae, Freddie Mac, and the Federal Housing Administration. The bill includes provisions requiring the Administration to approve the Keystone XL pipeline within 60 days of enactment unless it is specifically deemed not in the U.S. national interest.

Fiscal Year (FY) 2012 Appropriations Process

In mid-December, Congress wrapped up consideration of a nine-part, $915 billion, “omnibus” FY2012 spending bill (H.R. 2055). There was initially debate over whether to include the end-of-the-year tax and policy extensions, but both chambers ended up settling for a clean spending bill. On Saturday, the “omnibus” bill was agreed to in the House by a vote of 296 to 121, while the Senate considered and passed the bill on Sunday by a vote of 67 to 32. The United States had previously run on a series of five Continuing Resolutions (CRs) since the start of FY2012 and seven CRs during FY2011. The passage of this funding measure marks a relatively rare moment of compromise during the 112th Congress.

This “omnibus” bill followed the funding levels set out in the Budget Control Act passed earlier this year, which provided for a total FY2012 discretionary funding level of $1.043 trillion. This marks the second year in a row that Congress set out a lower level of discretionary funding. In FY2011 such funding was set at $1.055 trillion and in FY2010 it was set at $1.091 trillion. However, it is important to note that this is not the full story on funding. These figures do not include mandatory spending required by programs such as Social Security, Medicare, and Medicaid, nor does it include spending provided through an emergency supplemental appropriation. In recent years, mandatory and supplemental spending has accounted for an additional $2 to $2.5 trillion in outlays.

REAUTHORIZATION OF FEDERAL SURFACE TRANSPORTATION PROGRAMS

The Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (or SAFETEA-LU) provides the funding and policy framework for the nation’s surface transportation programs. Technically, both the law and the $286 billion in funding it provides for highway and transit programs expired September 30, 2009; however, the reauthorization legislation has been extended several times. The current extension expires March 31, 2012. This year the six west coast container ports and two railroads under the auspices of the U.S. West Coast Collaboration (USWCC) prepared and presented to congressional leaders a unified position on key recommendations for the reauthorization legislation. The key principles presented to Congress focused on the following four principles: (1) National Freight Strategy, (2) Dedicated Freight Funding Program, (3) Expanded Eligibility under Title 23 for Projects that Facilitate Goods Movement, and (4) Expanded Innovative Financing Opportunities for Port/Freight Rail Projects.

This year, senior leaders of the USWCC traveled to Washington and met with congressional leaders to discuss the need for a freight-focused reauthorization based on the above principles. Throughout the year we have continued to work with other West Coast ports and railroads to drive our message on freight home to the members of delegations and key congressional committees.

Once again this year, the President, in an attempt to jumpstart investment, proposed a measure for $50 billion in immediate funding to transportation as a way to create jobs and begin to meet critical infrastructure priorities. This proposal was rejected by the Senate after leaders were unable to agree to a suitable offset for the new spending. Similarly, a proposal by Senate Republicans was also rejected due to controversy over the unidentified revenue offsets.
This fall there have been a number of developments related to moving forward with a surface transportation reauthorization prior to the expiration of the current extension in March of 2012. Most of this activity has focused on Senate action.

In November, following the defeat of the above two proposals, Senator Barbara Boxer (D-CA), Chairman of the Environment and Public Works Committee (EPW), with bipartisan support of

Senator James Inhofe (R-OK), Ranking Member, released the Moving Ahead for Progress in the 21st Century (MAP-21) bill.

MAP- 21 focuses on highways (Senate Banking has transit jurisdiction and Commerce has Rail, Freight Motor Carrier Safety, hazmat safety, and highway safety). The following points provide a high level summary of key takeaways:

- It is a two-year bill for fiscal year 2012 and fiscal year 2013.
- The bill funds the existing programs at current levels with a small increase for inflation -- $39,143,000,000 for fiscal year 2012; $39,806,000,000 for fiscal year 2013.
- According to Ranking Member Inhofe, the legislation increases funding to each state by .1 percent over current funding.
- It seeks to ensure that at least 95% of all money collected by a state through collection of the gas tax is returned to the state from where it was collected.
- It combines programmatic funding into five core programs as follows:
  - National Highway Performance – Interstate Maintenance, National Highway System, Highway Bridge program)
  - Transportation Mobility – replaces Surface Transportation Program existing formulas programs that are consolidated will be eligible activities in this section.
  - National freight program – formula program to the states for the improvement of goods movement at the regional and national level (intermodal activities eligible).
  - Congestion Mitigation and Air Quality Improvement Program (CMAQ) – particulate matter is included as a pollutant.
  - Highway Safety Improvement Program – existing program with increased funding.
- As it relates to formula distribution, the bill proposes to initially set-aside funding for each state that equals the amount received for both CMAQ and Metropolitan Planning.
- After this initial set-aside the other formula programs are funded as follows:
  - National Highway Performance – 58%
  - Transportation Mobility – 29.3%
  - Highway Safety Improvement Program – 7%
  - National Freight Program – 5.7%
- TIFIA – It adopts largely the "America Fast Forward" proposal to expand the program to $1 billion per year, increasing the maximum share of project costs to 49%, and sets aside funding for projects in rural areas at improved terms.
- Continues authorization for Projects of National and Regional Significance with an authorization for FY2013 of $1 billion (subject to appropriation).
- Further, the committee bill seeks to accelerate project delivery and improve performance management.

In December, the Senate Commerce Committee moved forward on legislation that will be merged with MAP-21 on the floor. As part of the Commercial Motor Vehicle Safety Enhancement Act, Subcommittee Chairman Lautenberg included the FREIGHT ACT (Focusing Resources, Economic Investment, and Guidance to Help Transportation). This legislation was co-sponsored by Senators Murray and Cantwell would, according to Senator Lautenberg:

> *Establish a freight transportation policy to ensure the nation's transportation system supports the United States' global economic competitiveness. The legislation would direct the federal government to develop and implement a strategic plan to improve the nation's freight transportation system and provide investment in freight transportation projects. The goals include reducing congestion and delays, increasing the timely delivery of goods and services, reducing freight-related transportation fatalities, and making freight transportation more efficient and better for the environment.*

Additionally, during mark-up Senator Cantwell offered an amendment also approved by the Committee that would create a new Office of Freight Planning and Development at the Department of Transportation.

TRANSPORTATION INVESTMENT GENERATING ECONOMIC RECOVERY DISCRETIONARY GRANT (TIGER) PROGRAM UPDATE

As we have discussed previously, in 2009 Congress provided $1.5 billion in the American Recovery and Reinvestment Act (ARRA) to create the Transportation Investment Generating Economic Recovery Discretionary Grant program (or TIGER grants). Unlike other funding provided in the bill that is tied to existing programs and distribution formulas, TIGER grants are targeted at those highway, transit, rail, or *port* projects that will have a significant impact in creating jobs and long-term economic growth. The competitiveness and popularity of the original TIGER grant program led Congress to provide an additional $600 million for TIGER II grants in its FY2010 Appropriations bill. For Fiscal Year 2011, Congress provided more than $500 million for TIGER III.

Although the Port did not submit its own proposals for TIGER I, II, or III it supported local projects in every round. This year the Port supported Sound Transit's $24 million proposal to extend Link Light Rail from the airport to South 200th creating a new southern terminus for the light rail system. The project was awarded a $10 million TIGER grant in December. In previous rounds the Port has supported the City of Seattle's TIGER I request for $50 million to complete phase one of the Mercer Corridor project to address a major freight and vehicular bottleneck that ultimately received $30 million for the project in February 2010; and King County's TIGER II request to replace the South Park Bridge, a connection for freight-heavy routes between the Port, Union Pacific rail yards, Boeing Field, and Sea-Tac Airport. USDOT awarded $34 million to fund the bridge replacement in October 2010. The Port's active support of these projects was influential, and the Puget Sound region has been a major winner in projects approved through three rounds of the TIGER grant program.

Congress has appropriated $500 million for a TIGER IV program in its FY2012 Transportation Appropriations bill that has been signed by the President. We anticipate the applications for TIGER IV will be released early in 2012.

FAA REAUTHORIZATION

Like the surface transportation legislation, the Federal Aviation Administration (FAA) programs have been extended a number of times and are extended through January 31, 2011. Currently the most controversial provision holding up resolution has to do with a House provision related to the National Mediation Board. Once that issue is resolved, it is believed that the other outstanding issue to include beyond the perimeter flights from Reagan National ("slots") will be quickly resolved. The priorities remain constant: ensure funding flexibility for the airport; allow local governmental entities like the Port Commission to determine and authorize the appropriate level of passenger facility charges (PFCs) at Sea-Tac; the acceleration of next generation air traffic control (*"NextGen"*) including airport-specific priorities around the "Greener Skies over Seattle" initiative; and land use issues, including joint planning and use of Port property to strengthen the Port's ability to partner with Sea-Tac's neighboring communities.

Outside of the FAA reauthorization process, this year a group of large airports joined together to create unified advocacy around three issues that are critical to Sea-Tac Airport: PFCs, Alternative Minimum Tax, and Customs and Border Protection issues in airports. Working together, the airports advanced position papers to Congressional committees and supporters and undertook a major push on the PFC issue during Super Committee negotiations. Although the PFC proposal would have transformed airport funding, it was unsuccessful due to the super committee's failure to reach agreement.

WATER RESOURCES DEVELOPMENT ACT

Congress continued its effort to reauthorize WRDA this year but was again unsuccessful. WRDA authorizes flood control, navigation, and environmental projects and studies by the Army Corps of Engineers. Funding for each project is done through the annual appropriations process. Members of Congress are required to provide comprehensive information on each WRDA authorization request. The Port of Seattle has identified four initiatives thus far in the legislation:

1. Requesting authorization to complete a reconnaissance-level study of deepening the federally-managed navigation channel in Elliott Bay serving Port of Seattle cargo terminals. The study will determine the federal interest in pursuing deepening the navigation channel to accommodate next-generation containerships with capacities in excess of 10,000 TEUs.

2. Supporting a City of Seattle request related to the completion of the study focused on the replacement of the Elliott Bay Seawall.

3. Continuing to support the efforts of the Pacific Northwest Waterways Association (PNWA) to ensure that all funds collected for the Harbor Maintenance Tax are spent annually.

4. Permanently extending Section 214 of WRDA 2000, which allows the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite the processing of environmental permits. The Section 214 provision has allowed local governments to move forward efficiently with vital infrastructure and ecosystem restoration projects while still ensuring appropriate permit reviews are completed first.

HARBOR MAINTENANCE TAX

Working in collaboration with the six west coast container ports we continue to press for relief from the Harbor Maintenance Tax (HMT) and the competitive disadvantage it imposes on the Pacific Northwest due to our proximity to the Canadian border, as well as the added impact of the Canadian government's national investment strategy into the ports of Vancouver, B.C. and Prince Rupert, B.C.

The USWCC, as part of its freight reauthorization principles, also supported a unified position on HMT focused on full expenditure of the Harbor Maintenance Trust Fund (HMTF) as highlighted above and eliminating U.S. law that serves to incentivize shippers of U.S. - bound international marine containers to ship away from U.S. gateways and through foreign ports. The Port's efforts have focused on correcting current federal law that is trade distorting and benefiting foreign countries to the detriment of U.S. commerce.

Coordinating most closely with the Port of Tacoma, the Port of Seattle has been aggressively seeking a legislative solution to ensure a level playing field for all U.S. –bound international containers. We are working with members of the Washington Delegation and the committees of jurisdiction in Congress. The Port, along with the efforts of the USWCC, has made significant progress this year in educating members about the trade distorting aspects of the underlying law. We continue to work with our champions on a solution that is trade compliant.

Further, we have been working closely with the Delegation and the Federal Maritime Commission (FMC). In November after receiving requests from Senators Patty Murray and Maria Cantwell and Representatives Rick Larsen, Jay Inslee, Norm Dicks, Adam Smith, Dave Reichert, Jaime Herrera Beutler, Jim McDermott and Congresswoman Laura Richardson (D-CA), the FMC issued a notice of inquiry seeking public input on "concerning factors" that may cause or contribute to the shift of containerized cargo destined for U.S. inland points from U.S. to Canadian and Mexican seaports. This effort has brought to light many of the Port's concerns regarding cross border traffic and we have been working closely with the members and our customers to ensure that the FMC study reflects the competitive situation facing West Coast ports.

FREE TRADE AGREEMENTS

This year, Congress moved forward on three free trade agreements (FTAs) that had been pending since the previous administration. Congress ratified South Korea, Columbia and Panama after a four year absence of new trade agreement ratifications. The White House estimates that the trade agreements collectively will result in $13 billion in new exports and tens of thousands of jobs. Members of the Washington Delegation worked specifically on the Korea FTA with Congressman Dave Reichert serving as the founder of the U.S.-Korea FTA Working Group of which Congressman Adam Smith was also a member. On the Senate side, the legislation was supported by both Washington State Senators. South Korea represents the fourth largest export market for Washington products.

2012 OVERVIEW

The Second Session of the 112th Congress convenes in January.

A number of Port priorities are carried forward into this session of Congress. Congressional gridlock was a consistent theme throughout 2010 and this was largely maintained in 2011 with a divided Congress resulting in few legislative accomplishments beyond appropriations legislation, setting the table for significant battles in 2012. In the months leading up to the 2012 Presidential election, early activity on core priorities will greatly increase the potential for successful resolution next year. Unlike most issues, transportation has traditionally served as a bi-partisan bridge in the nation's capital and members on both sides of the aisle are looking to capture some early wins on infrastructure in the early months of 2012.

Looking beyond core Port priorities, spending, fiscal austerity and tax reform promise to dominate the year as members struggle to rein in spending or face a more than $100 billion reduction in federal spending and address the expiration of the Bush tax breaks in 2013.

STATE GOVERNMENT RELATIONS

STATE LEGISLATIVE SESSION

The state legislative session will convene on Monday, January 9, 2012. This is a short-session year, with 60 official days in the session. It will be complete by mid-March and is the second year in the state's budget and legislative biennium. Legislation introduced in 2011 but not passed is still 'live' in the 2012 session. The state's official operating, capital and transportation budgets were adopted in the long session, but are often amended the next session year through supplemental budgets to accommodate changing conditions while maintaining a constitutionally-mandated balanced budget. Although the Legislature held two special sessions in 2011 to address budget shortfalls, a shortfall of approximately $1.5B is still to be addressed in the 2012 regular session in a supplemental budget.

State Budget

The decline in state revenues has created ongoing budget deficits, with the biennial budget passed in June already $2 billion in deficit by the September revenue forecast. The second special session, called by the Governor to make $2 billion in cuts so that the Legislature could focus on job growth and new revenue options in the upcoming session, only provided about one quarter of the cuts needed, with the remainder to be taken up again in January. The Governor and Democratic majorities in the House and Senate support new revenue, with the Governor proposing a temporary .5 increase in sales tax. Moderate Democrats in the House and Senate, along with Republicans, are signaling the need to implement reforms in state government before supporting any new revenue proposals. Because of the passage of I-1053 last year, tax increase measures require a two-thirds vote of the Legislature. A vote to put a tax increase measure on the ballot, however, only requires a simple majority, so that option is still available to leadership. Given that nearly all the recent revenue measures enacted by the Legislature were overturned by voters in 2010, a new ballot measure or measures in 2012 does not assure new revenue to the state.

Governor Gregoire has proposed a half-cent increase in sales tax, as well as adding sales tax to professional services and closing other tax exemptions in multiple areas, but two other revenue packages have received early consideration for 2012. The first is a 'jobs growth' package for the ballot based on bonding or other investment in infrastructure. Legislators also are considering whether the state should issue revenue bonds on certain dedicated revenue streams, such as the Public Works Trust Fund or hazardous materials fee (from the Model Toxics Control Act), to then fund projects, perhaps in those areas and beyond.

Revenue proposals affecting core Port businesses, such as changes in tax rates for freight handling or trade services, as well as proposals that raise costs overall, will be monitored so that the potential impact is clear, but at this time no specific proposals are available.

Transportation Funding and Stimulus Spending

Ongoing activity in this area includes both near-term spending and long-range planning for a new transportation funding package in the state. Regardless of federal stimulus monies received in the past few years, the funding stream for the state's adopted project list of transportation projects is largely spent by 2013 and completed by 2015. No new revenue exists to fund a new round of projects, since 100 percent of the current stream was bonded to pay for the project lists developed through the earlier packages. Future funds are declining, both with the overall revenue stagnation in the state, and purchasing power in major revenues sources (gasoline and diesel tax and licenses, permits and fees) causing the majority of the decline. Over the entire 16-year forecast horizon, transportation revenues remain down, so the work in long-range planning is very important to identify ways to stabilize the funding sources for transportation.

The last OFM forecast shows gas taxes as 50% of all transportation revenue in the 2011-13 biennium. Including diesel fuel taxes, motor vehicle fuel taxes comprise 62% of all transportation revenues. Licenses, permits and fee revenues comprise the second largest share at 21% of all transportation revenues. The largest three revenue sources (gasoline and diesel fuel taxes and licenses, permits and fees) are projected to provide 83% of state transportation revenues through the current biennium. The remaining 17% includes ferry fares, toll revenue, driver-related revenue and other transportation-related revenue.

The Governor convened the Connecting Washington task force to provide recommendations to her and the Legislature regarding future funding options and principles for investment. Commissioner Bryant served on the task force, and the Port's message of economic growth and support of transportation corridors throughout the region and the state resonated very strongly with members and with Governor Gregoire. The task force finished its work in December and a final report will be issued for the Legislature's consideration and possible action. Many possible funding options will be included in the report for consideration by legislators, but the task force's emphasis was on securing permanent funding for maintenance and preservation of roadways, as well as supporting local government investment in regional needs, including transit. Legislators likely will contemplate a range of policy options to update and increase transportation infrastructure funding, but it is unclear what kind of legislative action will occur in the 2012 session, even to put a funding package on the ballot in 2012. State lawmakers are tracking federal initiatives in this area as well, and we will continue the coordination between federal reauthorization and state policy activity.

Other Legislative Activity

In addition to the budget challenge and development of a platform for transportation infrastructure funding, there are other areas of great interest we will be managing during the session. We are collaborating with other ports and the Ports Association to keep funding for the Model Toxics Control Act (MTCA) account before the members, since this funding directly impacts our environmental clean-up projects. The fund is used by local governments, including ports, for toxic cleanup efforts, and a recent survey done by the state confirms that many areas across the state are relying on MTCA funds for ongoing or planned projects, including millions of dollars for many Port of Seattle cleanup sites. If MTCA funding is not continued, the Port will lose a significant source of funds for future clean-ups, despite having entered into Agreed Orders with Ecology to assure eligibility for the grant funds. Funds from the local MTCA account are available for 50% grant matches to clean up contaminated sites.

As a reminder with regard to the history with MTCA, the Legislature swept most of the funds from the account as part of the 2009 budget shortfall but the supplemental capital budget in 2010 allocated approximately $30 million in new money to projects in the state, including Lora Lake Apartments and Terminal 117 clean-up. Money for Terminal 91 was in last year's budget but the current budget shortfall may change the treatment of the MTCA fund yet again.

More specifics on all these topics will become available as the state legislative session begins.

OTHER DOCUMENTS ASSOCIATED WITH THIS REQUEST:

None.