

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA
STAFF BRIEFING

Item No. 7a
Date of Meeting November 27, 2012

DATE: November 15, 2012
TO: Tay Yoshitani, Chief Executive Officer
FROM: Beth Osborne, Manager, Federal Government Relations
Clare Gallagher, Manager, State Government Relations
SUBJECT: Federal and State Legislative Briefing

SYNOPSIS:

With the start of the new 113th Congress and state legislative sessions in January, Port staff will provide an overview of the dynamics at the federal and state level, ongoing policy areas and new priorities likely to appear in 2013.

FEDERAL GOVERNMENT RELATIONS

LOOK AHEAD FOR 2013

2013 Brings Change to Washington's Congressional Delegation

With President Obama's reelection and the Senate and House maintaining their split majorities, we can expect to see similar themes in federal politics. The start of 2013, however, brings significant change to Washington's congressional delegation. With the retirement of U.S. Representative Norm Dicks, Washington State loses a senior House Member serving on the powerful Appropriations Committee. After 36 years in office, Dicks was the "Dean" of Washington's delegation, always working behind the scenes to advance priorities in the Puget Sound region.

Washington's U.S. Senators will remain unchanged. For the first time in years, three freshmen Members from Washington State will be sworn in to the U.S. House of Representatives. Denny Heck will serve in the newly created Olympia-based 10th District, Derek Kilmer will serve in the seat vacated by Rep. Norm Dicks, and Rep. Suzan DelBene will serve in the seat left open by Rep. Jay Inslee. This transition means that new Members and staff will need to become educated on the Port's priorities.

Due to redistricting, Puget Sound Members will represent new constituencies. Rep. Dave Reichert's district extends to new rural areas East of the Cascades, Rep. Rick Larsen's district moved west to represent the I-5 corridor north of Seattle, Rep. Jim McDermott's district shifted north to include Edmonds, and Rep. Adam Smith's district shifted north to

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represent the first majority-minority congressional district in the state and includes Seattle, Bellevue and parts of Tacoma.

2012 Lame Duck and 2013 Overview

Congressional gridlock was a consistent theme for the 112th Congress resulting in few legislative accomplishments outside of the highway bill and Federal Aviation Administration (FAA) reauthorization, setting the stage for significant battles during the lame duck session and 2013.

Looking beyond core Port priorities, spending, fiscal austerity and tax reform promise to dominate the agenda. Due to lack of action from the “Super Committee,” Congress approaches the “fiscal cliff” at the end of the year, which includes \$100 billion of annual government-wide spending cuts as agreed to in a previous debt agreement and the expiration of the Bush tax cuts and could cause the nation to fall back into a recession. The U.S. Department of Treasury has recently announced that Congress must also deal with the controversial debt limit either by mid-January or face default.

Many federal Port priorities will be carried forward into 2013 and beyond. Despite obvious challenges, some Senators have been pushing to advance the Water Resources Development Act (WRDA) during this year’s lame duck session, which could include some Harbor Maintenance Tax reforms, but action in the House is extremely unlikely until at least 2013.

Fiscal Year 2013 Appropriations Overview

In mid-September, Congress passed and the President signed House Joint Resolution 117, a 6-month continuing resolution to fund the federal government through March 27, 2013. The temporary funding measure does not include “earmarks” and continues funding at the current rate of operations for federal agencies, programs and services. While appropriators would like to pass an omnibus appropriations bill during the lame duck session to complete fiscal year 2013 spending, it is more likely for appropriations bills to be dealt with by a newly elected Congress. Some legislators advocate for the revival of congressionally-directed spending known as “earmarks,” they are likely to remain banned in 2013. The earmark ban extends to projects in all legislation, including WRDA, which funds water-related infrastructure projects and is due for reauthorization.

ONGOING FEDERAL PORT PRIORITIES FOR 2013

Water Resources Development Act

Congress continued efforts to reauthorize WRDA this year but was again unsuccessful; however, Senator Boxer scheduled Senate Committee action during the lame-duck session. Sources say that the House would not act until next year, if at all, but the Port is

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highly engaged in the issue in case it is attached to a larger budget and tax package to address the fiscal cliff.

In general, 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. The Port of Seattle seeks to advance four previously identified WRDA priorities:

1. Authorizing 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. Continuing to support the efforts of the Pacific Northwest Waterways Association (PNWA) to ensure that all HMTF funds are spent annually, as well as advancing other HMT reforms.
3. Supporting a City of Seattle request related to the completion of the study focused on the replacement of the Elliott Bay Seawall.
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.

The bill released by Senator Boxer on November 7, 2012, gives the Army Corps full authority to determine which projects and studies to advance nationwide, which would likely have a positive impact to advance Port of Seattle's deepening study and possibly the Elliott Bay Seawall project. The bill does not address the issue of U.S.-bound maritime cargo entering the U.S. through land borders, but that issue is outside of the jurisdiction of Senator Boxer's committee. The bill allows for very limited expanded uses of HMT dollars for ports in HMT "donor" states.

Harbor Maintenance Tax

The Port continues work with Congress and the Administration to educate on needed reforms to the Harbor Maintenance Tax (HMT), which creates a competitive disadvantage to Pacific Northwest ports due to our proximity to the Canadian border. We believe that this is an increasingly national economic competitiveness issue as Mexico and Canada increasingly ramp up port and freight infrastructure strategies and spending. As mentioned above, this issue heats up with the Senate considering WRDA.

Over the last year, at the CEO's request, the American Association of Port Authorities (AAPA) created a HMT Task Force that developed policy recommendations to the

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Legislative Policy Council (LPC), including the principle that United States tax policy should not disadvantage U.S. ports. The HMT Task Force was established in June by the LPC and consisted of two port representatives from each of the six port regions. At AAPA's annual convention in October, the LPC approved this principle and AAPA staff will advocate this position to Congress.

Similarly, the Port worked with the United States West Coast Collaboration (USWCC) and Pacific Northwest Waterways Association, to build support for a unified position on HMT that focuses on full expenditure of the Harbor Maintenance Trust Fund (HMTF) and a fair tax structure for all U.S.-bound international maritime cargo.

Additionally, coordinating 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 cargo. We are working with members of the Washington delegation and the committees of jurisdiction in Congress. The Port has made significant progress this year in educating members about the trade distorting aspects of the underlying law and working with them to address the problem. In 2013, work must continue to educate other ports and stakeholders on these issues. Politically, it will be important that any solution be consensus-driven and widely supported by ports that have historically relied on HMTF for dredging, especially our partners in the Pacific Northwest.

To lay groundwork for this effort, the Port worked with the Washington delegation on a bipartisan basis to request a Federal Maritime Commission (FMC) study on the factors that contribute to cargo diversion of U.S.-bound cargo to Canadian and Mexican seaports. The FMC report was released in July 2012 and substantiated the concerns held by the Port and others that cost is a factor and that U.S. policy could be improved to prevent diversion. Using this independent study as a basis, the Port will continue throughout 2013 to educate key Members of Congress and Congressional committees of the study's findings and need for action.

Federal Aviation Administration Reauthorization

After 5 years and 23 extensions, Congress passed the "FAA Modernization and Reform Act of 2012" (H.R. 658), to reauthorize FAA programs through 2015. While reauthorization work will not begin on the bill for several years, Port of Seattle will stay engaged on implementation issues.

The FAA legislation included a \$5 million competitive pilot program supported by the Port to allow for joint planning and land-use redevelopment of Airport property. The Port of Seattle has entered into a joint-planning agreement with the neighboring City of Burien and intends to compete for funding to support development of almost 165 acres of under-utilized property adjacent to the Airport.

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Notably, the FAA bill maintained the current \$4.50 federal cap on Passenger Facility Charges (PFCs), which are passenger user-fees set by local airports and used for targeted infrastructure investments that benefit passengers such as airport capacity, safety, security, and improving the environment. While the decision to levy a fee is local, Congress has set a cap on PFCs, which has been level since 2000. Today, the maximum PFC is worth roughly half of its value from 12 years ago. In 2001, under the PFC framework, the Port Commission voted to collect the maximum amount of the PFC, which has helped build Concourse A, noise mitigation projects and reconstruct the satellite transit system at Sea-Tac. As FAA Reauthorization discussions begin over the next several years, we can expect ongoing policy discussions in the aviation industry and at airports about whether PFC policy should be adjusted to provide long-term infrastructure funding.

Finally, the bill also included language championed by Senator Cantwell to create an FAA Center of Excellence for Aviation Biofuels. In 2013, the Port of Seattle will continue to support partners in the Puget Sound Region who plan to apply through a competitive process to host this facility. The Port will continue to work with the FAA to compete for funding opportunities provided under the bill, and monitor implementation activities.

Trade

The pro-trade agenda continued to advance in 2012. Congress passed legislation to reauthorize the Export-Import Bank of the United States, and the Obama Administration engaged in negotiations for the Trans-Pacific Partnership (TPP), a multilateral trade deal involving eleven Pacific Rim nations. The TPP will be a key trade policy focus for the administration in 2013. In coming months, we are also likely to see federal action to establish permanent normal trade relations (PNTR) with Russia. Despite that Russia joined World Trade Organization in August, because Congress has not passed legislation to establish PNTR, U.S. businesses will not enjoy the same reduced tariffs as their competitors until legislation is passed.

In addition to advocating on these policy issues, the Port has sought to increase understanding among policy makers that freight issues should be considered part of the trade agenda, and that better federal freight planning and funding will help increase exports and U.S. global economic competitiveness.

Environmental Issues

As a Member of the Lower Duwamish Working Group (LDWG), the Port of Seattle will continue to engage at the federal level on the Lower Duwamish Waterway clean-up. At the time of this briefing, Environmental Protection Agency (EPA) Region 10 has provided EPA leadership, the tribes and Washington State Department of Ecology a draft Proposed Plan for review. They have also provided a detailed overview to the

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stakeholders and LDWG, during which they indicated they will be making changes before the Proposed Plan goes out for public comment in January. We understand the plan, as presented, to be consistent with a scenario that will reduce human health risks, optimize clean-up technologies, adaptively manage remaining risks, and provide certainty in the design phase of the project, and there are some important aspects of this plan that are very much “in-play”. EPA aims to post a proposed plan for public comment early next year, and the Port will stay engaged in the public process. Both before and after that time, the Port, along with our LDWG partners, City of Seattle, King County and Boeing, will continue to provide technical and other support to the EPA.

Federal Surface Transportation Programs

After multiple attempts to reauthorize the federal transportation bill, the “Moving Ahead for Progress in the 21st Century” (MAP-21) was signed into law. The bill authorizes transportation programs and funding through fiscal year 14 (only 27 months). Several policies supported by the Port were passed in the bill, including the creation of a national freight policy, development of a national freight strategic plan, and requirement for performance reports on the performance of the national freight network.

In the implementation phase of MAP-21, the Port of Seattle continues to work with partners and stakeholders on the execution of freight policy. Notably, Senator Maria Cantwell and U.S. Secretary of Transportation (USDOT) Ray LaHood asked the Port to assist with a press event to announce the creation of a Freight Policy Council to help with the legislation’s freight provisions. Senator Cantwell and Secretary LaHood were joined by Commissioner Rob Holland at PCC Logistics to make this announcement. The Port also attended the first Freight Roundtable in Washington, D.C., and provided formal comments to USDOT. Port staff continues to collaborate with regional stakeholders to make sure implementation benefits ports and freight infrastructure.

Additionally, it is worth highlighting that the MAP-21 bill did not extend the Transportation Investment Generating Economic Recovery Discretionary Grant (TIGER) program, which was created in the American Recovery and Reinvestment Act to provide significant federal assistance to highway, transit, rail, or *port* projects. However, funding for TIGER grants has been extended through the continuing appropriations legislation through March 2013.

STATE GOVERNMENT RELATIONS:

STATE LEGISLATIVE SESSION

The state legislative session will convene on Monday, January 14, 2013. There will be 105 official days in the session, which is scheduled to end on April 28. The Legislature must pass a balanced budget for the 2013-15 biennium, including capital and operating

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budgets, and transportation appropriations. There were incumbent losses in the November general election, but no shift in majority/minority party representation.

State Budget

Based on the September revenue forecast, the state expects to face a \$1 billion gap between revenues and budget, as well as \$1.1 billion to address the McCleary decision by the state Supreme Court regarding funding for K-12 education. The outgoing administration will propose a budget as it leaves office, including a proposed increase in revenue. The incoming administration will revise the proposed budget upon taking office, which will provide a better indication about new revenue and policy direction closer to the start of session.

The governor-elect has signaled minimal/no support for new revenue, as well as the need to implement reforms in state government as part of budgetary concerns. Because of the passage of I-1185, tax increase measures will still require a two-thirds vote of the Legislature, unless or until this measure is litigated. A vote to put a tax increase measure on the ballot only requires a simple majority, so that option is still available to leadership, but has not been proposed by the incoming administration.

Revenue proposals affecting core Port businesses, such as changes in tax rates for stevedoring services or freight movement, 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 2015 and completed by 2017. No new revenue exists to fund a new round of projects, since 100 percent of the current stream from the nickel tax and Transportation Partnership Program (TPA) was bonded to pay for the project lists developed through those 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). 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 Office of Financial Management (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

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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.

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 2013 session, even to put a funding package on the ballot in 2013. State lawmakers are monitoring the state's implementation of the federal MAP-21 transportation funding bill, and the move toward performance-based program investment.

Consistent with the Connecting Washington task force recommendations regarding future funding options and principles for investment, the Transportation Commission is reviewing alternatives or supplements to gas tax revenue, specifically a road user fee. The Port is serving on the committee that will prepare recommendations to the Legislature in early January. In any transportation budget or statewide package, the Port continues to advocate for funding of the I-5/SR-509 Completion Project, securing permanent funding for maintenance and preservation of roadways, and, following the focus on SoDo and the industrial area, the necessary transportation investments needed to support current and future maritime and industrial activity around the seaport.

Other Legislative Activity for Ports

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 affects 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.

The Legislature may also see bills related to marine tourism, liability and handling of derelict vessels and perhaps a proposal for tourism funding. Labor relations issues, along with use of in-state work force on public projects and at public facilities, continue to be brought forward for discussion and consideration.

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

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OTHER DOCUMENTS ASSOCIATED WITH THIS BRIEFING:

None.