



**COMMISSION  
AGENDA MEMORANDUM**

**Item No.** 8h

**ACTION ITEM**

**Date of Meeting** May 24, 2022

**DATE :** May 3, 2022

**TO:** Stephen P. Metruck, Executive Director

**FROM:** Sarah Ogier, Director-Maritime Environment & Sustainability  
Jon Sloan, Sr. Manager, Environmental Programs  
Laura Wolfe, Sr. Environmental Program Manager

**SUBJECT: Notification to Commission for Continuation of Interagency Agreement (IA) for Permitting Support between Port of Seattle (POS) and the U.S. Army Corps of Engineers (USACE)**

**Amount of this request:** \$0

**Total estimated project cost:** \$30,000 per year

**ACTION REQUESTED**

Request Commission authorization for the Executive Director to retain the existing agreement to expedite the evaluation of permits under the jurisdiction of the U.S. Army Corps of Engineers (USACE). No new funding is requested. Funding for the agency staff resources on specific projects will come from capital and expense projects approved by the Commission. Some programmatic planning funds will be provided from the Maritime Environmental operating expense budget.

**EXECUTIVE SUMMARY**

The Port of Seattle (POS) currently has a Memorandum of Agreement dated July 6, 2006 with the USACE for the acceptance and expenditure of funds contributed by the POS to expedite USACE evaluation of permits as allowed by Section 214 of the Federal Water Resources Development Act (WRDA 2000). The agreement can continue without interruption unless federal authorization for the program sunsets or the POS informs the USACE of a decision to not continue participation in the program. The 2014 Water Resources Reform and Development Act of 2014 amendment to WRDA 2000 made the Section 214 part of the permanent federal code.

The Maritime Environmental Department has requested authorization for the continuation of this agreement since 2001. Staff's last request for authorization to continue this agreement occurred in December 2015. Staff is notifying Commission of its intent to continue this agreement as the services provide enhanced competitiveness and efficiency. No new funding is requested. Funds for assistance would come from the annual operating budget or future individual project authorizations. Some funds for programmatic funding will be provided from the Maritime Environmental operating expense budget.

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Permitting coordination work performed with the USACE will be on behalf of the POS either for POS projects or for federal permitting work managed by POS as homeport on behalf of the Northwest Seaport Alliance (NWSA). Costs for projects needing federal approvals that are under NWSA management will come from capital and expense project design approved by the Managing Members.

### **JUSTIFICATION**

Permit review of port-related projects are more efficient with the aid of this agreement because of the regulatory and technical expertise of the USACE program managers. Early and meaningful collaboration on federal agency requirements and resource issues 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 alerts to new issues affecting federal agency review of port operations and permitting. Our competitiveness is enhanced because we can set review priorities and access agency resources to achieve timely permit decision-making.

### ***Diversity in Contracting***

A Diversity in Contracting goal has not been established for this Action since it is the continuation of an existing agreement between two specific agencies.

### **DETAILS**

POS currently has a Memorandum of Agreement dated July 6, 2006 with the USACE for the acceptance and expenditure of funds contributed by the POS to expedite the USACE's evaluation of permits under the jurisdiction of the USACE as allowed by Section 214 of the Federal Water Resources Development Act (WRDA 2000). The Maritime Environmental Department is requesting Commission authorization for the Executive Director to retain the existing agreement to expedite the evaluation of permits under the jurisdiction of USACE. No new funding is requested. Funding for the agency staff resources on specific projects will come from capital and expense projects approved by the Commission. Some programmatic planning funds will be provided from the Maritime Environmental operating expense budget.

### ***Scope of Work***

USACE Personnel assigned to POS projects:

- (1) Schedule and coordinate ESA consultations; Environmental Protection Agency (EPA) sediment management review; and Washington State Department of Ecology (DOE) water quality certifications; Sec 106 tribal consultation and historic properties pursuant to applicable federal laws;
- (2) Conduct reviews for proposed Port projects requiring federal authorization, funding or approval;
- (3) Mitigate biological and water quality issues with state, federal, tribal and private representatives;
- (4) Interpret federal regulatory and technical information, laws and guidelines; and

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- (5) 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.

### ***Cost Breakdown***

No new funding is requested. Funding for liaison staff resources will come from capital project design, permitting and construction cost budgets approved by the Commission for which approvals from USACE are necessary. It is expected that some of liaison costs will be provided from Maritime Environmental expense operating budget that is approved annually by the Commission. Liaison costs for projects needing federal approvals that are under NWSA management will be from capital and expense project design funds approved by the Managing Members.

Costs for permit liaison support with USACE vary year by year depending on number and complexity of permitting actions submitted to the agencies. Since the first agreement in 2001, the Port paid \$230,000 to the USACE between 2001 through 2010. Between 2011 through 2015, the Port has paid \$107,500 or an average of approximately \$21,500 per year. For the last five years (2016 to 2020), the Port has paid approximately \$100,000 or an average of \$20,000 per year. Costs will likely increase to approximately \$30,000 per year as several complex permit actions are pending in the coming years.

### **ALTERNATIVES AND IMPLICATIONS CONSIDERED**

#### **Alternative 1 – Terminate existing liaison agreement**

Cost Implications: Will save approximately \$30,000 per year, drawn from project budgets with inwater components, due to no funding of a liaison position, but this option could increase costs during the permitting process due to additional permit revision needs and potential design changes.

Pros:

- (1) Approximately \$30,000 a year saved against inwater projects.

Cons:

- (1) Permitting time and revision costs will increase.
- (2) Knowledge of pending changes in regulations will decrease.
- (3) Likelihood of unanticipated new and costly mitigation and monitoring will increase.

This is not the recommended alternative.

#### **Alternative 2 – Retain existing liaison agreement.**

Cost Implications: Will cost approximately \$30,000 per year, drawn from project budgets with inwater components, due to the funding of a liaison position, but will save money during the permitting process due to early design and streamlined agency coordination.

Pros:

- (1) Permitting time and revision costs will decrease.

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- (2) Knowledge of pending changes in regulations will increase.
- (3) Likelihood of unanticipated new and costly mitigation and monitoring will decrease.

Cons:

- (1) Approximately \$30,000 a year charged against inwater projects.

***This is the recommended alternative.***

**FINANCIAL IMPLICATIONS**

***Annual Budget Status and Source of Funds***

Costs will be approximately \$30,000 per year and will be charged back to the capital projects that are worked on. Funding for liaison staff resources will come from capital project design, permitting and construction cost budgets approved by the Commission for which approvals from USACE are necessary. It is expected that some of the liaison costs will be provided from Maritime Environmental expense operating budget that is approved annually by the Commission. Liaison costs for projects needing federal approvals that are under NWSA management will come from capital and expense project design funds approved by the Managing Members.

**ATTACHMENTS TO THIS REQUEST**

- (1) Agreement
- (2) Presentation

**PREVIOUS COMMISSION ACTIONS OR BRIEFINGS**

Since 2001, the Port of Seattle Commission has authorized the CEO/Executive Director to enter into agreements to support federal agencies by funding or providing 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 Endangered Species Act.

December 8, 2015 – The Commission authorized the CEO to retain existing liaison agreements for five additional years to expedite the evaluation of permits under the jurisdiction of the U.S. Army Corps of Engineers (USACE) and from National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service.

December 10, 2010 – The Commission authorized the CEO to continue interagency agreements with USACE to fund staff resources at that agency and enter an agreement with City of Seattle Department of Planning and Development.

January 10, 2006 – The Commission authorized the CEO to amend the original agreement between the POS and the USACE to fund staff resources at that agency expedite permit managed by agency.

February 22, 2005 – The Commission authorized the CEO to execute agreements and amendments for the POS with the Port of Tacoma (POT), NOAA, and the U. S. Fish and

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Wildlife Service (USFWS) to fund staff resources at permit agencies to handle ESA. The commission also increased the total expenditure for agency support for an additional \$375,000 for a total of \$975,000.

December 9, 2003 – The original June 21, 2001 authorization was increased to \$600,000 and extended for two years.

June 21, 2001 – The Commission authorized the CEO to execute agreements to fund or provide additional staff resources at the permit agencies (USACE, NOAA) with the costs to be shared between the POS and the POT up to \$300,000.