

THE NORTHWEST SEAPORT ALLIANCE
MEMORANDUM

MANAGING MEMBERS
ACTION ITEM

Item No.: 9B
Meeting Date: June 2, 2026

DATE: May 25, 2026
TO: Managing Members
FROM: Dana Henderson, General Counsel
SUBJECT: *Puget Soundkeeper Alliance v. Port of Tacoma and SSA Terminals* – Proposed Final Settlement

A. ACTION REQUESTED

Dual Action Vote: Request Port of Tacoma Commission and the Managing Members of The Northwest Seaport Alliance (NWSA) approve the final settlement of *Puget Soundkeeper Alliance v. Port of Tacoma* litigation, and authorize the execution and entry of a Consent Decree consistent with the terms of the agreed settlement.

B. SYNOPSIS

For the past several years, the Port of Tacoma and SSA Terminals, Tacoma, LLC (SSA) have been defending a federal Clean Water Act citizen suit brought against the Port and SSA by Puget Soundkeeper Alliance (PSA). This litigation has been directed and funded by the Northwest Seaport Alliance (NWSA) as the West Sitcum Terminal is a Licensed Property to the NWSA and the litigation involved both past and current NWSA tenants, including SSA. In December of 2021, the Port of Tacoma Commission and NWSA Managing Members approved a settlement of the Port's claims against former West Sitcum terminal tenant APMT (APMT Settlement).

After an in-person mediation between NWSA, Port of Tacoma, SSA (current tenant) and PSA, followed by six months of further negotiations with the mediator, the mediator made a proposal for resolution of the litigation. NWSA, the Port, SSA and PSA have all indicated agreement to the mediator's proposal to settle all remaining issues in this litigation, to be memorialized in a Consent Decree. The proposed settlement is subject to Port of Tacoma Commission and NWSA Managing Member

approval, and once approved by the parties, the Consent Decree is subject to review by the Department of Justice and entry by the federal District Court before it is final.

C. BACKGROUND

This matter arises out of claims by PSA that APMT, SSA, and the Port violated the Clean Water Act by, among other claims, not upgrading the stormwater treatment system at the terminal and failing to sample and treat stormwater runoff from wharfs. In 2019, the NWSA completed installation of an approximately \$13.5M stormwater treatment system at the terminal, which was found to be in compliance by the Washington State Department of Ecology, and has been effective in treatment of stormwater since its installation.

SSA and the Port dispute PSA's claims and dispute liability, in particular, because the requirement to sample and treat wharf runoff was not a requirement of the terminal's Industrial Stormwater General Permit during the applicable period. Nonetheless, this settlement would resolve disputed claims and does not constitute an admission of liability by the defendants. Settlement is recommended at this time in order to avoid the ongoing risk and expense of continued litigation, along with its attendant disruption and uncertainty.

The settlement as recommended by the mediator will be memorialized in a Consent Decree to be filed with the court, which will be in place until January 1, 2030. Key terms include:

- PSA would agree not to sue NWSA, the Port, or SSA for operations at the West Sitcum terminal through January 1, 2030.
- Defendants (specifically, the NWSA) would pay PSA's claimed attorneys' fees, potentially recoverable under the Clean Water Act, of \$2.1M.
- Defendants (again, the NWSA) would pay a penalty of \$500,000 to the Washington State University Stormwater Center to fund various studies and educational programming
- NWSA will purchase one Triverus sweeper for spill cleanup at W. Sitcum, with the potential for its use at other properties in the South Harbor.
- SSA has agreed to the following on-site demands (to be performed by SSA): updates to the Terminal's Stormwater Pollution Prevention Plan (SWPPP) relating to sampling; replace brake pads on vehicles; vacuum sweep the

terminal 2x p/mo.; not stage chassis on wharf for more than 48 hrs.; and quarterly: wash wheels and tires of their-owned vehicles.

- PSA is to withdraw all pending public records requests and not refile requests related to the West Sitcum Terminal through 2030.
- Defendants, again NWSA, will pay \$30,000 to PSA for its consent decree monitoring.
- Parties release all claims they may have against the other which were or could have been brought in this litigation, with no admission of fault or responsibility by any party, with the plaintiff paying half the mediator's fees, and the defendants paying the other half.

Together with the previously agreed APMT Settlement, this Final Settlement and Consent Decree would be a full and final settlement of all claims that could have been presented between the parties arising out of this case, each party to pay its own fees and costs, other than as required by the settlement.

D. SOURCE OF FUNDS

Funds for the settlement payment will come from NWSA operating income. Funds for the purchase of the sweeper will be provided by the Homeports through the normal capital funding process.

E. FINANCIAL IMPLICATIONS

The settlement payment will result in an unbudgeted non-operating expense of \$2.63M in 2026. The cost of the new sweeper (valued at approximately \$1M) will be capitalized and depreciated over an estimated 10-year period, resulting in \$100,000 annual depreciation. The depreciation and any ongoing maintenance and operating expenses associated with the sweeper will be included in the 2027 budget.

F. ATTACHMENTS TO THIS REQUEST

- Proposed Consent Decree (forthcoming)

G. PREVIOUS ACTIONS OR BRIEFINGS

- August 6, 2024 – Directing legal counsel to file petition for writ of certiorari, and funding authorization.
- December 21, 2021 – Approval of APMT Settlement.
- February 2, 2021 – Project authorization increase outside legal services.
- May 7, 2019 – Project authorization increase and extend legal contract.
- November 13, 2018 – Legal contract authorization.

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Puget Soundkeeper v. Port of Tacoma et al. ("West Sicum Litigation") – Final Settlement



THE NORTHWEST
SEAPORT ALLIANCE

SEATTLE + TACOMA

Presenters : Dana Henderson, General Counsel
Jason Jordan, Sr. Director, Environmental and Planning Services

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Action Requested

Dual Action Vote: Request the Port of Tacoma Commission and Managing Members of The Northwest Seaport Alliance approve the final settlement of *Puget Soundkeeper Alliance v. Port of Tacoma* litigation, and authorize the execution and entry of a Consent Decree consistent with the terms of the agreed settlement.



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Background

- Port of Tacoma and SSA Terminals, Tacoma, LLC (SSA) have been defending a federal CWA citizen suit brought by Puget Soundkeeper Alliance (PSA).
- Litigation has been directed and funded by The Northwest Seaport Alliance (NWSA).
- Parties previously settled claims against APMT.
- After a mediation and 6 mos. of further negotiations, the mediator made a proposal for resolution of the litigation.
- NWSA, the Port, SSA and PSA have all indicated agreement to the mediator's proposal to settle all remaining issues in this litigation.
- Settlement to be memorialized in a Consent Decree, subject to Port of Tacoma Commission and NWSA Managing Member approval.



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Litigation Overview

- PSA claimed that APMT, SSA, and the Port violated the CWA by not upgrading the stormwater treatment system and not sampling and treating stormwater runoff from wharfs.
- In 2019, the NWSA completed a \$13.5M stormwater treatment system at the terminal, which was found to be in compliance by Dept. of Ecology, and has been effective in treatment of stormwater since its installation.
- SSA and the Port dispute PSA's claims and dispute liability, in particular, because the requirement to sample and treat wharf runoff was not a requirement of the terminal's ISGP during the applicable period.
- This settlement would resolve disputed claims and does not constitute an admission of liability by the defendants.
- Settlement is recommended at this time in order to avoid the ongoing risk and expense of continued litigation, along with its attendant disruption and uncertainty.



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Key Terms of Mediator's Proposal for Consent Decree Through 1/1/2030

- PSA will not to sue NWSA, the Port, or SSA for operations at W. Sitcum through 1/1/30.
- NWSA to pay PSA's claimed attorneys' fees of \$2.1M.
- NWSA to pay \$500,000 to the WSU Stormwater Center for various studies and educational programming.
- NWSA will purchase one Triverus sweeper for spill cleanup at W. Sitcum, with the potential for its use at other properties in the South Harbor.
- SSA has agreed to several on-site demands (to be performed by SSA):
 - updates to the Terminal's SWPPP re: sampling;
 - replace brake pads on vehicles;
 - vacuum sweep the terminal 2x p/mo.;
 - not stage chassis on wharf for more than 48 hrs.; and
 - quarterly: wash wheels and tires of their-owned vehicles.
- PSA to withdraw all pending PRRs.
- NWSA to pay \$30,000 to PSA for its consent decree monitoring.
- Parties to release all claims, with no admission of fault or responsibility by any party.

Action Requested

Dual Action Vote: Request the Port of Tacoma Commission and Managing Members of The Northwest Seaport Alliance approve the final settlement of *Puget Soundkeeper Alliance v. Port of Tacoma* litigation, and authorize the execution and entry of a Consent Decree consistent with the terms of the agreed settlement.