

**THE NORTHWEST SEAPORT ALLIANCE**  
**MEMORANDUM**

**MANAGING MEMBERS**  
**ACTION ITEM**

<b>Item No.</b>	<u>5A</u>
<b>Date of Meeting</b>	<u>August 6, 2019</u>

**DATE:** July 8, 2019

**TO:** Managing Members

**FROM:** John Wolfe, CEO

**Sponsor:** Jason Jordan, Director, Environmental and Planning Services

**Project Manager:** Elizabeth Black, Sr. Port Counsel, Port of Seattle

**SUBJECT:** Settlement with Puget Soundkeeper Alliance and TTI

**A. ACTION REQUESTED**

*As referenced in NWSA Resolution No. 2018-01, Exhibit A, Delegation of Authority Master Policy, Section 10(d)(ii): Settlement of litigation matters with a potential claim by or against the Alliance greater than \$300,000 requires Managing Member authorization.*

- a. Request authorization from the NWSA Managing Members to enter into the Consent Decree, which may entail future costs in excess of \$300,000 if it becomes necessary to upgrade or replace the existing stormwater treatment system at Terminal 46. Any future spending pursuant to the Consent Decree, if any, will be brought back for Managing Member consideration as appropriate.
- b. Request authorization from Port of Seattle Commissioners for Port of Seattle Executive Director Stephen Metruck to sign the proposed Consent Decree.

**B. SYNOPSIS**

This request is to enable final settlement of the lawsuit by Puget Soundkeeper Alliance against NWSA's tenant Total Terminals International (TTI) and the Port of Seattle by way of the attached consent decree.

The consent decree obligates NWSA to take certain actions with regard to stormwater management at Terminal 46 depending on the nature of future cargo operations at the terminal. It also obligates the Port of Seattle to perform certain best management practices associated with cruise operations, in the event that a portion of Terminal 46 is used for a cruise terminal. TTI will be obligated to make a \$\_\_\_\_ payment-in-lieu-of-penalty donation to the Rose Foundation and will pay Puget Soundkeeper's attorneys' fees in the amount of \$\_\_\_\_. Pursuant to the lease termination agreement with TTI, NWSA will reimburse TTI \$300,000.

**C. BACKGROUND**

Soundkeeper sued NWSA's tenant TTI on April 12, 2018. Soundkeeper added the Port of Seattle to the lawsuit on October 31, 2018. NWSA Managing Members approved an agreement to terminate TTI's lease on March 29, 2019, which included settlement of potential claims between TTI and the Port/NWSA. TTI provided notice of its intent to cease operations at Terminal 46 on August 31, 2019. NWSA, the Port, TTI, and Soundkeeper have now negotiated a proposed consent decree to resolve all claims in the lawsuit.

**D. PROJECT DESCRIPTION AND DETAILS**

There is no additional project work associated with this request.

**E. FINANCIAL IMPLICATIONS**

***Financial Impact***

No immediate new costs will be incurred as a result of this settlement. The lease termination agreement between NWSA and TTI provides that NWSA will reimburse TTI \$300,000 for costs associated with this settlement agreement.

Future costs may be incurred if the requirement to upgrade or replace the existing stormwater treatment system is triggered. If this occurs and costs are anticipated to exceed \$300,000, project staff will request approval and funding from Managing Members at that time.

**F. ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS**

Alternative 1) Do not settle; proceed with litigation.

Alternative 2) Proceed with settlement via Consent Decree.

**Alternative 2 is the recommended course.**

**G. ENVIRONMENTAL IMPACTS/REVIEW**

**Permitting:**

There are no direct permitting implications as a result of this settlement, but future permits may be required of NWSA or NWSA tenants depending on the nature of future operations.

**Remediation:**

There are no remediation impacts.

**Stormwater:**

This settlement impacts how the Port will manage operations and stormwater permits for future operations at Terminal 46. Additionally, depending on site operations, certain uses may trigger a requirement to upgrade or replace the existing stormwater treatment system.

Air Quality:

There are no identified impacts to air quality.

**H. ATTACHMENTS TO THIS REQUEST**

- Computer slide presentation.
- Proposed consent decree.

**I. PREVIOUS ACTIONS OR BRIEFINGS**

<u>Date</u>	<u>Action</u>	<u>Amount</u>
August 2018	Executive authorization for litigation funds	\$250,000
March 29, 2019	Managing Members authorization of TTI lease termination agreement	\$300,000
May 7, 2019	Managing Members authorization for additional litigation funds	\$350,000
<b>TOTAL</b>		<b>\$900,000</b>

**J. NEXT STEPS**

Once all parties have signed the consent decree, it will be submitted to the court for approval. The U.S. Department of Justice has the opportunity to review and comment on the consent decree. It will likely be finalized and ordered by the court to take effect in early fall 2019.