

THE NORTHWEST SEAPORT ALLIANCE
MEMORANDUM

MANAGING MEMBERS
ACTION ITEM

Item No.: 8D
Meeting Date: August 6, 2024

DATE: July 30, 2024
TO: Managing Members
FROM: John Wolfe, CEO
Dana Henderson, General Counsel
SUBJECT: *Puget Soundkeeper Alliance v. Port of Tacoma et al.* ("West Sitcum Litigation")

A. DUAL ACTION NWSA AND PORT OF TACOMA REQUESTED

Request the Managing Members of The Northwest Seaport Alliance (NWSA) and the Port of Tacoma Commission direct legal counsel to file a petition for writ of certiorari in the U.S. Supreme Court (SCOTUS) of the U.S. Court of Appeals for the Ninth Circuit's decision in *Puget Soundkeeper Alliance v. Port of Tacoma et al.*, and further that the Managing Members authorize the NWSA to fund such effort in an amount up to \$250,000.

B. SYNOPSIS

On June 10, 2024, the U.S. Court of Appeals for the Ninth Circuit reversed certain favorable rulings on motions for summary judgement by the federal district court in *Puget Soundkeeper Alliance v. Port of Tacoma et al.* Legal counsel seeks direction from the Port of Tacoma Commission and the NWSA Managing Members regarding potentially petitioning SCOTUS for writ of certiorari in this case. The parties have attempted to reach resolution on this matter and have to date been unable to do so.

NWSA has assumed lead for this case as it involves Licensed Property, and has been paying for the Port of Tacoma's legal defense and any associated liability.

The funding requested is believed to be sufficient to cover legal fees through filing the petition for writ of certiorari. The amount requested reflects a commitment to share in the expense of this effort from interested tenant(s).

Counsel recommends petitioning for certiorari to the United States Supreme Court should the parties be unable to resolve their issues in dispute prior to the deadline to file such petition. Legal counsel will request the Managing Members authorize the

NWSA to fund the briefing and merits of the case at a later date if the parties are unable to resolve the issues being contested prior to the Court's decision to grant certiorari. Efforts to resolve the dispute should continue until the Court decides whether to hear the case.

C. FINANCIAL IMPLICATIONS

Source of Funds

This expense will be funded by earnings from NWSA operations.

Financial Impact

The additional legal expense will not have a material impact on the NWSA. The NWSA has earned over \$59.5 million through June 2024 and is budgeted to earn \$114.3 million in 2024.

D. PREVIOUS ACTIONS OR BRIEFINGS

The Managing Members have received multiple briefings over the course of this litigation including executive session discussions pursuant to RCW 42.30.110 (1)(i) and Managing Member authorizations in public session at the following Managing Member meetings:

- November 13, 2018
- May 7, 2019
- February 2, 2021
- December 21, 2021

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Dana Henderson
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