

THE NORTHWEST SEAPORT ALLIANCE
MEMORANDUM

MANAGING MEMBERS
ACTION ITEM

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|------------------------|--------------------|
| Item No. | <u>9A</u> |
| Date of Meeting | <u>May 4, 2021</u> |

DATE: April 28, 2021

TO: Managing Members

FROM: NWSA Internal Governance Work Group (Co-Chairs Marzano and Felleman and Commissioners Keller and Steinbrueck)

SUBJECT: Maritime Access and Impact Mitigation Agreements with the Muckleshoot Indian Tribe and the Suquamish Tribe

A. ACTIONS REQUESTED

Request Managing Members of NWSA and the Port of Seattle Commission authorization to execute the Maritime Access and Impact Mitigation Agreements with the Muckleshoot Indian Tribe and the Suquamish Tribe in substantially the same form as presented.

B. SYNOPSIS

Based on discussions and feedback from the April 2021 Managing Members' meeting, the NWSA Internal Governance Work Group (Work Group) has recently met twice to evaluate the question of whether costs related to tribal matters should be borne by a homeport, or shared, through the NWSA. Based on these discussions and additional information provided in those meetings, the Work Group recommends that the Maritime Access and Impact Mitigation Agreements ("Agreements") with the Muckleshoot Indian Tribe and the Suquamish Tribe for 2021 - 2025 be approved and funded by the NWSA. As briefed at the February and April Managing Members meeting, these Agreements seek to strengthen the

government-to-government relationships with two federally recognized tribes in the North Harbor. The core purpose includes:

1. Acknowledging federally recognized treaty fishing rights and resources in Elliott Bay, the East and West waterways, and in the Duwamish Waterway and
2. Ensuring vessel access to marine cargo facilities, cruise terminals, and commercial marinas by maritime sectors engaged in port-related business.

The original Agreements provided a five-year term, starting January 1, 2016. The presented Agreements seek to extend that term to December 31, 2025.

C. BACKGROUND

Recent Work of Internal Governance Work Group and Additional NWSA Valuation Information

The Work Group met on April 15 and 20, 2021 to discuss how tribal payments should be paid – whether through the NWSA or by the Homeports, or some other arrangement. Though the Work Group has not yet come to a final policy recommendation on how to handle tribal payments, facts regarding the history of the tribal Maritime Access and Impact Mitigation Agreements were discussed that commissioners who were not on the commissions at the formation of the Alliance may not know.

Staff previously shared details from the original NWSA membership interest valuation in 2015 with the Tribal Work Group and the Managing Members that included Port of Seattle operations costs from the Muckleshoot Indian Tribe but not the Suquamish Tribe. This is because in 2015, the membership interest valuation was reflecting 2015 Forecast and the original 2015 budget forecast for 2016 through 2019. As a reminder, it was in 2015 when the Suquamish Tribe sought the same vessel mitigation agreement and related payment that was made to the Muckleshoot.

In response to recent questions from commissioners and in preparation for the recent Work Group meetings, staff continued to search through files from the NWSA's formation. In doing so, the finance team found files reflecting that the March 2016 NWSA valuation update did in fact include operations costs from both tribes – a figure of approximately \$1M for the two tribes per year. The March 2016 valuation was a request from the Managing Members in 2015 that the valuation be updated with 2015 actual results with adjustments for changes in revenues and expenses based on the formation of the NWSA. It was in July 2016 that the Managing Members first authorized execution of the original Maritime Access and Impact Mitigation Agreements with both tribes. As supported by these valuation details, we believe these tribal agreements are in support of cargo operations in North Harbor and were included in the 2016 valuation update and should remain a NWSA responsibility.

This additional information was important and persuasive to the Work Group and is why the Work Group is asking the Managing Members to evaluate these Agreements again.

Agreements: Purpose and Intent

The Agreements establish orderly Treaty-protected fishing access and cargo vessel access to marine terminal facilities. Without these Agreements, prior experience was that fishing activity and cargo vessel access were in regular and constant conflict during seasonal fishing harvest periods.

The goals of these agreements include:

- Establishing a broader framework that confirms a mutual understanding, respect and commitment to our government-to-government relationship.
- Acknowledging operational impacts to Treaty-protected resources and reaffirm the NWSA/port mission that requires operational reliability and productivity.
- Continuing the more recently established principle that expenditure of any mitigation funds is more effectively prioritized and managed by each Tribe.
- Streamlining project permit reviews with process-clarity and review-timeframes that respect treaty rights and support port strategic competitiveness.
- Achieving a fair, sustainable level of mitigation compensation and creating additional value with the certainty of a longer-term agreement.

Since the 2016 Access Agreement was implemented, project-specific and operational relations with the Suquamish Tribe and Muckleshoot Indian Tribe have been productive and efficient. This framework has appropriately shifted responsibility to each tribe to manage their fishers accordingly and in turn resulted in no vessel movement delays in connection to fishing net moves. Further, NWSA-POS have appreciated both tribes have providing timely, helpful responses for permit authorizations for critical North Harbor infrastructure projects, including complex project schedule issues.

Basis of Tribal Rights

Each Tribe has federally recognized treaty rights and resources, including usual and accustomed fishing areas in Elliott Bay, the East and West Waterways, and the Duwamish Waterway. These fishing rights and resources have been recognized as essential and integral elements of federal treaties with native sovereign nations and must be sustained. These fishing and resource areas overlap NWSA/port marine terminal facilities. The Port has historically reimbursed Tribe members when cargo vessel operations either damage tribal fishing equipment (nets) or otherwise infringe on fishing activities.

Renewal of Agreements

As discussed at the February and April Managing Members' meetings, after five years of operating under this newer approach maintaining usual and accustomed treaty fishing access around North Harbor, staff is recommending that we continue in this manner. The Maritime Access and Impact Mitigation Agreement framework provides an equitable, long-term commitment with the Muckleshoot Indian Tribe and Suquamish Tribe, recognizing and providing for fishing access adjacent to and consistent with the needs of continuously operating marine cargo, passenger, and marina sites throughout Elliott Bay, the East and West waterways, and the Duwamish Waterway.

Further, the five-year Agreements avoid significant, costly operational disruptions for tenants at Port and NWSA facilities at a cost comparable to what the Port and NWSA would otherwise incur. The Agreements also limit costs incurred for Port and NWSA staff time administering vessel coordination and damages claims programs. Tenants and shippers face less resistance from tribal fishers and the Port and NWSA maintain efficient operations in the harbor, bolstering competitiveness vis-à-vis other ports. Costs associated with these agreements was contemplated as an indirect expense associated with the Port of Seattle licensed properties during the NWSA valuation.

These agreements focus on operations. The Tribes and the Port and NWSA typically enter into separate agreements for individual projects. Over the last five years, permits for individual projects have been reviewed and authorized on their own merits, though the agreements have helped facilitate efficient communication and expedited negotiations for projects.

D. FINANCIAL IMPLICATIONS

Source of Funds

The cost of these agreements is sourced through NWSA business operating funds.

E. ATTACHMENTS TO THIS REQUEST

- 2015 – 2016 POS POT Valuation
- Draft first amendment of Muckleshoot Indian Tribe, Port of Seattle, and Northwest Seaport Alliance Maritime Access and Impact Mitigation Agreement
- Draft first amendment of Suquamish Tribe, Port of Seattle, and Northwest Seaport Alliance Maritime Access and Impact Mitigation Agreement

F. PREVIOUS ACTIONS OR BRIEFINGS

- April 6, 2021 Authorization on behalf of the NWSA and the Port of Seattle on maritime access and impact mitigation with the Muckleshoot Indian Tribe and the Suquamish Tribe
- February 2, 2021 Briefing on Northwest Seaport Alliance (NWSA) and Port of Seattle (POS) Maritime Access and Impact Mitigation Agreements with the Muckleshoot Indian Tribe and the Suquamish Tribe
- July 12, 2016 Authorization on behalf of the NWSA and the Port of Seattle on maritime access and impact mitigation with the Muckleshoot Indian Tribe and the Suquamish Tribe
- June 7, 2016 Briefing on tribal agreements with the Muckleshoot Indian Tribe and the Suquamish Tribe

Seaport Alliance Business Valuation April 2015

| Net Present Value of 2015-2024 Gross Profit Contribution Summary (MMs) | | | | | | |
|--|--------------|--------------|--------------------------------------|---------------------|---------------|----------------------|
| Port | Container | Other | Non Allocated Capital Costs | Total (pre SG&A) | SG&A | Total (post SG&A) |
| Seattle | \$412 | \$44 | \$0 | \$456 | -\$126 | \$330 |
| Tacoma | \$412 | \$107 | -\$19 | \$500 | -\$184 | \$316 |
| Alliance Total | \$824 | \$151 | -\$19 | \$955 | -\$310 | \$646 |
| Seattle | 50% | 29% | 0% | 48% | 41% | 51.0% |
| Tacoma | 50% | 71% | 100% | 52% | 59% | 49.0% |

- ☐ Assigned assets reflect original ILA framework excluding grain terminals
- ☐ NPV discount rate at 8%

Estimated
gap in
valuation is
\$13.3 million

Reducing POS SG&A expenses would increase the gap

NWSA Business Valuation – Final March 2016

| Port | Container | Non-Container | Non Allocated Capital Costs | Subtotal | Selling, General & Admin | Total Contributed Value |
|-----------------------|--------------|---------------|-----------------------------|--------------|--------------------------|-------------------------|
| Seattle | \$396 | \$44 | \$0 | \$440 | -\$96 | \$345 |
| Tacoma | \$415 | \$115 | -\$9 | \$521 | -\$182 | \$339 |
| Alliance Total | \$812 | \$159 | -\$9 | \$962 | -\$278 | \$684 |
| Seattle | 49% | 28% | 0% | 46% | 34% | 50% |
| Tacoma | 51% | 72% | 100% | 54% | 66% | 50% |

- Final valuation supports a 50/50 equity ownership model
- Estimated variation in the valuation is less than 1% of the discounted cash flows over a 10-year period.
- On average the variance of \$5.5 million is less than \$600 thousand annually.
- The variance is considered reasonable based on the overall assumptions and time period of the estimated future cash flows.

