

THE NORTHWEST SEAPORT ALLIANCE
MEMORANDUM

MANAGING MEMBERS
ACTION ITEM

Item No.: 8C
Meeting Date: January 7, 2025

DATE: December 20, 2025
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. ACTION REQUESTED

Request the Managing Members of The Northwest Seaport Alliance (NWSA) provide additional funding in the amount of \$300,000 for legal costs should the Supreme Court of the United States grant a writ of certiorari in *Port of Tacoma et al. v. Puget Soundkeeper Alliance, No. 24-350*.

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.*

In August of 2024, the NWSA Managing Members and the Port of Tacoma commission directed legal counsel to petition the Supreme Court of the United States for writ of certiorari to review the Ninth Circuit's decision and provided \$250,000 in funding to do so. The Port of Tacoma, funded by the Northwest Seaport Alliance, has now petitioned for certiorari on the question of whether Section 505 of the Clean Water Act (CWA) authorizes citizens to invoke the federal courts to enforce conditions of state-issued pollutant-discharge permits adopted under state law that mandate a greater scope of coverage than required by the CWA. There has been robust amicus support for the Port's petition.

Should the Supreme Court accept the case, additional funding will be needed to pay for the remaining work before the Supreme Court including briefing and argument. This additional funding is being requested now, as the parties expect to learn of the

Court's decision on review in early January, and counsel will need to be prepared to immediately commence work on briefing the case in chief.

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.

Counsel recommends funding the remaining effort at the Supreme Court should the case be accepted. As reflected in the robust support by amici, the issue presented is of fundamental importance to the Port of Tacoma, the NWSA, the Gateway's tenants and many other stakeholders. The amount requested reflects a commitment to share in the expense of this effort from the Port of Tacoma's co-petitioner, SSA Terminals, LLC and SSA Terminals (Tacoma), LLC.

C. FINANCIAL IMPLICATIONS

Source of Funds

The cost of this effort will be expensed as incurred. Funding for this will be provided by NWSA operations. Additionally, a prior settlement in this case resulted in a fund available to pay for legal costs associated with the *West Sitcum* matter until exhausted. Should SCOTUS accept the case, these settlement funds will be utilized in full and will be exhausted, necessitating additional funds for legal costs.

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
- August 6, 2024 – public action taken to authorize petition for writ of certiorari