

ACTION ITEM MEMO

Port of Tacoma Commission



Item No: 6A
Meeting Date: 2/1/24

DATE: January 24, 2024
TO: Port of Tacoma Commission
FROM: Eric Johnson, Executive Director
Sponsors:
Jason Jordan, Director, Environmental and Planning Services
Heather Burgess, Dickson Frohlich Phillips Burgess PLLC, Port General Counsel
Project Manager: Scott Hooton, Environmental Project Manager II
SUBJECT: TWAAFA Project Authorization Increase and Approval to File Complaint Against Burlington Environmental LLC (Master ID # 101082.01)

A. ACTIONS REQUESTED

1. Request additional project authorization in the amount of \$600,000 for a total authorized amount of \$2,267,000 for the Taylor Way and Alexander Avenue Fill Area (TWAAFA), Master Identification No. 101082.01, for contract legal services from NW Resource Law Group PLLC for cost recovery litigation under the Model Toxics Control Act, RCW 70A.305 against potentially liable parties.
2. Request Commission authorization pursuant to Master Policy Resolution Section VI for NW Resource Law Group PLLC to file a complaint in U.S. District Court for the Western District of Washington against Burlington Environmental, LLC, seeking recovery of past and future remedial action costs incurred by the Port under the Model Toxics Control Act, RCW 70A.305 at Port Parcel 111.

Strategic Plan Initiative:

- **EL-1** Remediate contaminated Port properties in a manner that ensures protection of human health and the environment while enabling economic development.
- **OS-2** Protect the public's investment by maintaining existing assets and positioning them for future growth.

B. BACKGROUND

The Port's overarching goal has been to effectively manage the legacy contamination associated with three Port Parcels (Parcels 95, 111, 117) while also returning 30.48 acres of underutilized land assets to productive use.

On March 21, 2023, the Commission approved an increased TWAAFA project authorization which included, among other elements, funding for outside counsel (NW Resource Law Group PLLC) to issue a demand letter and pursue alternative dispute resolution with Burlington Environmental for the Port's past and future remediation costs at Port Parcel 111.

Efforts to resolve the cost recovery with Burlington Environmental LLC short of litigation, including mediation, have not been successful. An increase in project authorization for NW Resource Law Group PLLC to pursue cost recovery litigation against Burlington Environmental LLC and to develop cost recovery strategies against other potentially liable parties is required. Additionally, Section VI of the Master Policy Resolution requires Commission approval prior to the Port initiating litigation as a party plaintiff in state or federal court.

C. SCOPE OF WORK

The scope of work for outside counsel litigation services requested with this authorization is based on NW Resource Law PLLC's litigation budget to trial (defined as written discovery, document production, witness depositions, and dispositive motions) which has been reviewed by Port staff and Port General Counsel and discussed with the Commission in Executive Session.

D. FINANCIAL SUMMARY

Cost The cost of outside contract legal services for NW Resource Law Group PLLC requested with this authorization increase is based on an estimated total budget of \$600,000. If the cost is anticipated to exceed the authorized amount, additional Commission authorization will be requested.

Source of Funds The current Capital Investment Plan allocates \$280,000 for this project.

Item	This Request	Total Previous Requests	Total Request	Total Project Cost	Cost to Date	Remaining Cost
TOTAL	\$600,000	\$1,667,000	\$2,267,000	\$2,267,000	\$1,485,353	\$781,647

Financial Impacts In addition to past and future remediation costs, the Port will seek attorneys' fees associated with cost recovery litigation as part of the suit against Burlington Environmental LLC pursuant to RCW 70A.305.080.

E. NEXT STEPS

Litigation against Burlington Environmental LLC will be initiated upon receipt of Commission approval.