

COMMISSION AGENDA

Item No: 6B

Meeting: 7/21/22

DATE: June 30, 2022

TO: Port Commission

FROM: Eric Johnson, Executive Director

Sponsor: Dick Marzano

Project Manager: Sean Eagan

Presenter: Matthew Mauer and Jason Jordan

SUBJECT: ILA: WSDOT/Port of Tacoma, Phase 2, State Route 167 Completion Project

A. ACTIONS REQUESTED

1. Request adoption of Resolution 2022-13-PT, declaring two universal wetland bank credits surplus, pursuant to RCW 53.08.90.
2. Request authorization for the Executive Director to sign an interlocal agreement with the Washington State Department of Transportation regarding an in-kind contribution to Phase 2 of the State Route 167 Completion Project.

B. BACKGROUND

1. Puget Sound Gateway

In July 2015, the Washington State Legislature and Governor Inslee acted to fund the Puget Sound Gateway Program through the *Connecting Washington* statewide transportation package. The Puget Sound Gateway Program is comprised of two projects: the State Route 167 Completion Project and the State Route 509 Completion Project. These projects provide essential connections to the ports of Tacoma and Seattle and will help ensure people and goods move more reliably through the Puget Sound region.

The Washington State Department of Transportation (WSDOT) is the lead project sponsor and is responsible for the planning, design and construction of the Gateway Program, as well as for its overall financial management. The program has been guided from its beginning by a Joint SR 167/SR 509 Executive Committee, made up primarily of elected representatives of local jurisdictions served by the Puget Sound Gateway Program (Algona, Auburn, Burien, Des Moines, Edgewood, Federal Way, Fife, Kent, Milton, Pacific, Puyallup, SeaTac, Sumner and Tacoma) as well the Port of Tacoma, the Port of Seattle, Federal Highway Administration, Washington State Transportation Commission, WSDOT, the Puget Sound Regional Council, Sound Transit, King County Metro, Pierce Transit, and the Freight Mobility Strategic Investment Board. Commissioner Dick Marzano is the Port's representative on this committee.

Funding for the total Gateway Program will come from the state gas tax, tolls, local contributions, and potential federal and state grants. Total funding for the project from the 2015 *Connecting Washington* transportation funding package is \$1.875 billion. This includes a local match of \$130 million.

More recently, the state approved the *Move Ahead WA* transportation package which provided an additional \$433 million in state dollars to the program. The program has been funded over a 13-year timeline. Former House Transportation Committee chair Judi Clibborn developed the concept of the \$130 million local match in consultation with the SR 167 Completion Coalition. Commissioner Marzano was the Port's representative on the Coalition.

2. Memorandum of Understanding

The Legislature in 2017 passed legislation (Engrossed Senate Bill 5096 § 306(20)(b)) requiring a Memorandum of Understanding (MOU) be developed between the local agency partners and WSDOT. The Legislature directed that:

The secretary of transportation must develop a memorandum of understanding with local project stakeholders that identifies a schedule for stakeholders to provide local matching funds for the Puget Sound Gateway project. Criteria for eligibility of local match includes matching funds and equivalent in-kind contributions including, but not limited to, land donations. The memorandum of understanding must be finalized by July 1, 2018. The department must submit a copy of the memorandum of understanding to the transportation committees of the legislature and report regularly on the status.

On May 17, 2018, the Port of Tacoma Commission authorized John Wolfe to sign a MOU with WSDOT and other local government project stakeholders. The MOU summarizes the timing of their planned, future commitments to contribute to the Gateway Program.

The MOU lays out a local funding strategy, with a focus on projects in the Gateway Program that provide measurable benefits to local jurisdictions. In the Gateway Program, these are called "Local Nexus Projects," designed to:

- Create a positive business case for local partners by focusing on the parts of the program that are most relevant and important to local jurisdictions
- Leverage the potential to access significant grant funding to support local funding assumptions
- Participate, co-fund match, and submit grant applications with support from Subcommittee staff
- Combine local contributions and project funds to ensure fully funded applications
- Support the grant effort and avoid competition with the local projects in the year of application

If grant funds are received for these Local Nexus Projects, these dollars will contribute substantially toward the Legislative requirement for local match.

Following approval of the MOU, interlocal agreements (ILAs) between WSDOT and local jurisdictions were to be drafted for subsequent approval. Anticipated contributions contained in the MOU only become binding commitments when embedded in ILAs, and the conditions therein are approved by the proposed funding entity. ILAs must be in place prior to issuance of the request for qualifications for any proposed construction contract.

Signatories to this MOU consider that the local contribution requirement set forth in ESB 5096 will be fulfilled once the \$130 million requirement is achieved, via an ILA from each signing party that contains the commitment for project funding.

The MOU is identified as Exhibit A of the ILA.

3. SR 167 Phase 1A/70th Avenue East Bridge Relocation Project

In December 2018, the Port of Tacoma Commission approved an ILA with WSDOT to provide a \$3 million cash contribution to Phase 1A of SR 167—the 70th Avenue East Bridge Relocation Project. This project was identified as an example of a Local Nexus Project referenced in the MOU. The current bridge, which spans Interstate 5 in Fife, is located in the footprint of the proposed State Route 167/Interstate 5 interchange. Relocation of the 70th Avenue East bridge is a necessary pre-condition for this project. The bridge will also be widened, improving access to Fife’s industrial and warehouse sector which supports the Port’s marine terminal operations. WSDOT estimates that the project, which is currently under construction, will be completed in 2021.

4. Recognition of expense

Because anticipated contributions contained in the MOU only become binding commitments when embedded in ILAs, the full expense of the Port of Tacoma’s \$30 million commitment was not recognized in the organization’s profit and loss statement at the time the MOU was adopted.

The Port of Tacoma Commission in December 2019 adopted a resolution formally acknowledging the Port’s remaining financial commitment of \$27 million to the Puget Sound Gateway Program and allowing the contribution to be recognized as a Special Item expense and a deferred liability on the balance sheet in 2019.

5. SR 167 Phase 1B

In March 2021, the Port of Tacoma Commission approved an ILA with WSDOT to provide an in-kind contribution to Phase 1B of SR 167. The in-kind contribution consisted of real property for right-of-way, fill material and fencing. This project was identified as an example of a Local Nexus Project referenced in the MOU and will result in the construction of the segment from Interstate 5 to State Route 509. WSDOT, which has entered a design-build contract for the project, estimates will be completed in 2026.

6. Strategic Plan Goal TA-1

In 2022 the Port of Tacoma updated its Strategic Plan. Included in that plan is Goal TA-1 which identifies the completion of SR 167 as a strategic priority for the Port. SR 167 is one of only two projects identified by name in the Strategic Plan, highlighting its importance.

7. Local matches to date

To date, WSDOT has secured 98.8% of the \$130 million planned local match funding. This has been through a combination of direct contributions by local governments as well as grant funding from state and federal sources.

8. Current Port Mitigation Credit Balance vs. Anticipated Future Credit Needed

Potential projects identified within the visioning work being conducted by the NWSA for the Coordinated Course to 2035, in addition to supporting the Port's 2021-2026 Strategic Plan, staff project a need of approximately 16 wetland acre-credits; however, a more intense re-development scenario may require almost 21 wetland acre-credits. The Port's current mitigation credit portfolio includes an estimated 26 wetland acre-credits produced by 2027 from our current advance/bank mitigation sites (Place of Circling Waters, Upper Clear Creek Mitigation Bank, and LWCMS) for a potential of nearly 9 unused wetland acre-credits. Specific details are contained in the Port-Wide Habitat Mitigation Report.

Project	Wetland Acre-Credit
Place of Circling Waters	3.42
Upper Clear Creek	12.56
Lower Wapato Creek	10.00
Mouth of the Hylebos NRDA liability	(1.60)
Parcel 103 Steam plant shoreline	(0.71)
Parcel 99 Arkema shoreline	(0.74)
Parcel 99/106 Kaiser Ditch Crossing	(0.60)
Parcel 6/114/117 Snail Property	(3.09)
Parcel 72/85/87 Off Dock Container Yard	(8.84)
Parcel 24/25 WUT pier extension	(0.48)
Parcel 35B Fabulich Center	(1.00)
TOTAL	8.92

9. Port Master Policy

The Port Master Policy stipulates the Port Commission will only consider authorizing the sale of mitigation bank credits to third parties if such credits are determined to be surplus to the Port's needs pursuant to RCW 53.08.90 within a ten-year planning horizon (section VI, sub-paragraph B2). Furthermore, mitigation bank credits will only be sold upon Commission approval of a resolution to be surplus of the Port's needs pursuant to RCW 53.08.90.

C. SCOPE

1. Resolution

Two universal credits from the Port of Tacoma's mitigation bank are deemed surplus.

2. ILA with WSDOT

Phase 2 will include the eastern segment of the SR 167 Completion Project, travelling from I-5 to the current terminus of SR 167 in Puyallup. This will include the construction of a four-lane highway between SR 161 (North Meridian Avenue) and I-5, along with two new interchanges at Valley Avenue and I-5, improvements on several local streets such as Freeman Rd., N. Levee Rd., Valley Avenue, and 20th St., as well as the construction of riparian restoration sites in the Wapato Creek and Hylebos Creek. (See Exhibit B)

The Port would contribute up to 2 universal mitigation bank credits for construction mitigation of State 2. The credits were determined to be valued at \$1,933,333 per credit based on fair market value established through an analysis considering the market demand for credits within the relevant mitigation bank service area and within the nearby region as of 2022, per the conditions of the Port Master Policy (section VII, C1b2). The total value of the credits would be credited to the Port's total contribution to the Puget Sound Gateway under the MOU.

The ILA between the Port and WSDOT would be effective upon the signature of both parties and would terminate if WSDOT would fail to enter into a design-build contract by December 31, 2024 or should the credits fail to meet the permit conditions required for the project, unless mutually extended by the parties. Should the agreement terminate early, the credits would be returned to the Port.

D. TIMEFRAME/PROJECT SCHEDULE

SR 167 Project Development	
NEPA re-evaluation	2017-2018
Interchange Justification Report	2017-2018
Traffic and revenue analysis for tolling	2017-2018
Legislative authorization for tolling	2019
SR 167 Stage 1A (70th Avenue East Bridge Relocation)	
Design	2017-2019
Right-of-way	2017-2019
Construction	2019-2021
SR 167 Stage 1B (I-5 to SR-509)	
Design	2017-2021
Right-of-way	2017-2021
Construction	2022-2026
SR 167 Stage 2 (I-5 to SR-167)	
Design	2020-2024
Right-of-way	2020-2024
Construction	2024-2028

E. FINANCIAL SUMMARY

Value of Port Contribution: The final value of the Port's contribution will be up to \$3,866,666 assuming both credits are needed by WSDOT.

Item	Quantity Estimate	Unit Price	Anticipated Total Cost
Mitigation credits	2	\$1,933,333	\$3,866,666
TOTAL			\$3,866,666

Source of Funds: None. The above table represents the value of the Port's contribution to the project and reduces the Port's outstanding \$15.8 million commitment to the project.

Financial Impacts: The Port of Tacoma Commission in December 2019 adopted a resolution formally acknowledging the Port's remaining financial commitment to the Gateway Program and the contribution was recognized as a Special Item expense and a deferred liability on the balance sheet in 2019.

The \$3,866,666 cost of this ILA will be applied to the Port's remaining \$15.8 million commitment to the Puget Sound Gateway Program.

F. ECONOMIC INVESTMENT / JOB CREATION

The Puget Sound Gateway Program, of which Phase 1B of the SR 167 Completion Project is a component, is key to enhancing the state's economic competitiveness, both nationally and globally, by connecting the state's largest ports to key distribution centers in King and Pierce counties and to eastern Washington. Completion of the program will provide a direct link to the Green and Puyallup river valleys, home to the second largest distribution center complex on the West Coast; 44 percent of regional truck trips by the ports of Seattle and Tacoma are destined for this area. Travel time between Puyallup and Tacoma would improve by 15 percent, saving 13,915 person-hours. The economic benefit of saved travel time over 30 years along SR 167 is \$940 million.

A completed SR 167 could fuel job growth to the tune of \$10.1 billion, according to WSDOT. That is the size of the new payroll expected to be generated by an expansion of the Port of Tacoma's international cargo and other operations — an expansion that is contingent on good transportation connections to move the freight to and from the docks.

The Gateway Program is estimated to support 2,437 construction jobs throughout the life of the project.

G. ENVIRONMENTAL IMPACTS / REVIEW

According to an earlier WSDOT Record of Decision, the overall Puget Sound Gateway project will improve air quality by reducing congestion, improve truck mobility, and smooth traffic flow levels. CO emissions, for example, are projected to be reduced by an estimated 26 percent along the SR 167 corridor under the build alternative compared to the no-build alternative. Additionally, the proposed SR 167 project mitigation links multiple fragmented habitats together, providing over 1,000 acres of contiguous habitat and resulting in a cumulative 70 percent increase in ecological services in the area. Finally, the project's proposed mitigation enhancements will reduce predicted flooding along Hylebos Creek from 246 acres to 187 acres—a 50 percent reduction.

H. ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS

Alternative 1: Do nothing (i.e., do not sign the ILA and retain the mitigation bank credits):

WSDOT has explored a number of mitigation options and believes that obtaining mitigation bank credits would serve as the best way to meet permit obligations while remaining on schedule. Without the mitigation bank credits, the project could be delayed as WSDOT works to identify alternative properties to acquire and develop into mitigation. Project delay would also result in cost increases. Some lawmakers have indicated they would seek additional local match funding from the ports of Tacoma and Seattle should there be additional cost increases to the project.

Alternative 2: Do not sign the ILA and instead sell the credits to WSDOT: The Port of Tacoma is considered the most prominent proponent for a completed SR 167 and the largest single beneficiary of the overall project. If the Port were to decline to sign the ILA and insist on selling the credits, it would signal a lack of support for the SR 167 project. Other project supporters would be disinclined to financially contribute to the Puget Sound Gateway Program local match. Moreover, the local match has been identified as a funding component in various grant applications submitted by WSDOT (e.g., U.S. Department of Transportation's INFRA grant, Freight Mobility Strategic Investment Board, Puget Sound Regional Council's Surface Transportation Program grant); grant award institutions would be discouraged from investing in the project. This, in turn, would result in project scope reduction. The Port would have less influence on these scoping decisions than it would if it were a financial contributor. Finally, Port support is assumed in the MOU approved by the commission. Failure to approve the ILA would harm the credibility and reputation of the Port with fellow project funders, stakeholders, WSDOT, state and federal lawmakers.

Alternative 3: Contribute fewer credits: Without all the mitigation bank credits requested, the project could be delayed as WSDOT works to identify alternative properties to acquire and develop into mitigation. Project delay would also result in cost increases. Some lawmakers have indicated they would seek additional local match funding from the ports of Tacoma and Seattle should there be additional cost increases to the project.

Alternative 4: The recommended alternative.

I. ATTACHMENTS

- Attachment 1— Draft Resolution 2022-13
- Attachment 2— Draft ILA
- Attachment 3— Exhibit A
- Attachment 4— Exhibit B
- Attachment 5— Exhibit C
- Attachment 6— Exhibit D

J. NEXT STEPS

- July 2022 Eric Johnson and Roger Millar sign the ILA
- Q3 2022 WSDOT submits permit package to relevant regulatory agencies for Phase 2
- Q2 2023 WSDOT secures necessary permits
Transfer of mitigation bank credits to WSDOT closes
WSDOT goes to bid for Phase 2 of SR 167
- Q4 2022 WSDOT enters into design-build contract for Phase 2
- 2028 Phase 2 complete