



REGULAR COMMISSION MEETING
Tuesday, April 9, 2024, at 9:00 am
338 W. First St, Port Angeles, WA 98363
AGENDA

The Regular Commission Meeting will be available to the public in person and remotely. For instructions on how to connect to the meeting remotely, please visit <https://portofpa.com/about-us/agenda-center/>

I.	CALL TO ORDER / PLEDGE OF ALLEGIANCE	
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	No items	
XII.	AIRPORTS	
	No items	



XIII. OTHER BUSINESS

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XVI. PUBLIC COMMENT SESSION (TOTAL SESSION UP TO 20 MINUTES)

XVII. FUTURE AGENDA.....73

XVIII. NEXT MEETINGS

- A. April 22, 2024- Special Joint Commission Meeting
- B. April 23, 2024 – Regular Commission Meeting
- C. May 14, 2024 – Regular Commission Meeting
- D. May 28, 2024 – Regular Commission Meeting
- E. June 11, 2024 – Regular Commission Meeting

XIX. UPCOMING EVENTS

- A. Olympic Logging Conference – April 24-26, 2024 – Victoria, BC
- B. WPPA Spring Meeting – May 15-17, 2024 – Stevenson, WA
- C. Maritime Festival – June 8-9, 2024 – Port Angeles, WA
- D. Dept. of Commerce Forestry Trade Mission – June 8-15, 2024 - Finland
- E. WPPA Staff Retreat – July 16-17, 2024 – Port Angeles, WA

BROWN BAG LUNCH AND OPEN DISCUSSION WITH THE COMMISSION *(TIME PERMITTING)*

XX. EXECUTIVE SESSION

The Board may recess into Executive Session for those purposes authorized under Chapter 42.30 RCW, The Open Public Meetings Act.

XXI. ADJOURN



RULES FOR ATTENDING COMMISSION MEETING

- Signs, placards, and noise making devices including musical instruments are prohibited.
- Disruptive behavior by audience members is inappropriate and may result in removal.
- Loud comments, clapping, and booing may be considered disruptive and result in removal at the discretion of the Chair.

RULES FOR SPEAKING AT A COMMISSION MEETING

- Members of the public wishing to address the Board on general items may do so during the designated times on the agenda or when recognized by the Chair.
- Time allotted to each speaker is determined by the Chair and, in general, is limited to 3 minutes.
- Total time planned for each public comment period is 20 minutes, subject to change by the Chair.
- All comments should be made from the speaker's rostrum and any individual making comments shall first state their name and address for the official record.
- Speakers should not comment more than once per meeting unless their comments pertain to a new topic they have not previously spoken about.
- In the event of a contentious topic with multiple speakers, the Chair will attempt to provide equal time for both sides.

Investments & Cash held as of 3/31/2024

			3/31/23	6/30/23	9/30/23	12/31/23	3/31/24					
<u>Name</u>	<u>Type</u>	<u>Interest Rate</u>	<u>Face Value</u>	<u>Face Value</u>	<u>Face Value</u>	<u>Face Value</u>	<u>Face Value</u>	<u>Annual Interest</u>	<u>Maturity Date</u>	<u>Invst Rating</u>	<u>Call</u>	<u>Acquisition Date</u>
FHLB 9-month	Bond	4.00%	2,000,000	2,000,000	-	-	-	-	6/30/2023	Aaa	qtrly	9/30/2022
FHLB 1-year	Bond	5.10%	2,000,000	2,000,000	2,000,000	-	-	-	12/20/2023	Aaa	qtrly	12/20/2022
FNMA 1-year	Bond	5.40%	-	-	2,000,000	2,000,000	-	-	7/19/2024	Aaa	6-mo	7/19/2023
FHLMC 5-year	Bond	6.25%	-	-	-	2,000,000	-	-	10/26/2028	Aaa	qtrly	10/26/2023
FHLB 3-year doubler***	Bond	5.50%	2,000,000	2,000,000	2,000,000	2,000,000	-	-	3/28/2025	Aaa	qtrly	3/28/2022
FNMA 1-year	Bond	5.20%	2,000,000	2,000,000	2,000,000	2,000,000	-	-	3/30/2024	Aaa	qtrly	3/30/2023
FHLB 5-year step up**	Bond	3.00%	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	60,000	3/29/2027	Aaa	qtrly	3/29/2022
First Federal Invst	Cash	5.42%	6,219,047	6,366,009	6,450,758	4,576,212	6,691,760	362,693				
LGIP Balance	Cash	5.42%	2,617,694	3,656,204	3,457,341	4,743,218	11,750,568	636,881				
Umpqua Bank Account	Cash	0.30%	111,235	352,954	359,595	163,081	413,416	1,240				
			<u>18,947,976</u>	<u>20,375,167</u>	<u>20,267,694</u>	<u>19,482,511</u>	<u>20,855,744</u>	<u>1,060,814</u>				

5.09%

Investments Called or Matured in 2024

<u>Name</u>	<u>Type</u>	<u>Interest Rate</u>						<u>Maturity Date</u>	<u>Invst Rating</u>	<u>Call</u>	<u>Redemption Date</u>
FNMA 1-year	Bond	5.40%	-	-	2,000,000	2,000,000	-	7/19/2024	Aaa	6-mo	1/19/2024
FHLMC 5-year	Bond	6.25%	-	-	-	2,000,000	-	10/26/2028	Aaa	qtrly	1/26/2024
FHLB 3-year doubler***	Bond	5.50%	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	3/28/2025	Aaa	qtrly	3/28/2024
FNMA 1-year	Bond	5.20%	2,000,000	2,000,000	2,000,000	2,000,000	-	3/30/2024	Aaa	qtrly	3/30/2024

Outstanding Debt

		3/31/23	6/30/23	9/30/23	12/31/23	3/31/24	
<u>Rate</u>	<u>Amount</u>	<u>Amount</u>	<u>Amount</u>	<u>Amount</u>	<u>Amount</u>	<u>Amount</u>	
2015 PABH 2006 refi	2.29%	1,050,169	1,050,169	1,050,169	707,714	707,714	10 year note, final annual payment 12/01/2025
CERB Washdown	2.00%	673,324	673,324	673,324	673,324	639,678	20 year, 1st annual payment made Jan 2021
CERB Cofferdam	2.00%	70,530	70,530	-	-	-	Project delayed, loan repaid in Aug 2023
CARB Airport Utilities	2.00%	687,480	687,480	687,480	687,480	655,533	20 year, 1st annual payment made Jan 2022
		<u>2,481,503</u>	<u>2,481,503</u>	<u>2,410,973</u>	<u>2,068,518</u>	<u>2,002,925</u>	

* Cash balances shown do not include funds held as the Harbor Group treasurer or funds reserved for K-Ply monitoring activities.

* Cash and investments do include \$517,500 received from Shell for upcoming environmental cleanup at 220 Tumwater (former longshore parking lot)

** 5-year step up rates by year are 2%, 2.5%, 3%, 4%, 5%

*** 3-year doubler rates by year are 1.375%, 2.75%, 5.5%



REGULAR COMMISSION MEETING
Monday, March 26, 2024, at 9:00 am
338 W. First St, Port Angeles, WA 98363
MINUTES

The Regular Commission Meeting will be available to the public in person and remotely. For instructions on how to connect to the meeting remotely, please visit <https://portofpa.com/about-us/agenda-center/>

Connie Beauvais Commissioner	Chris Hartman, Dir. of Engineering
Colleen McAleer, Commissioner	Wilson, Easton, Public Works & FM Supervisor
Steve Burke, Commissioner	Caleb McMahon, Dir. of Econ. Development
Paul Jarkiewicz, Executive Director	John Nutter, Dir. of Finance & Admin

I. CALL TO ORDER / PLEDGE OF ALLEGIANCE (0:00-0:31)

Comm. Beauvais called the meeting to order at 9:00 am.

II. EARLY PUBLIC COMMENT SESSION (TOTAL SESSION UP TO 20 MINUTES) (0:32-1:50)

Randy Volker, Port Angeles, WA – Thanked the Port Commission for their support with their main fundraiser this last weekend, it was a success.

III. APPROVAL OF AGENDA (1:51-2:12)

- Motion to approve the agenda as presented: Comm. McAleer
- 2nd: Comm. Burke
- Vote: 3-0 (Unanimous)

IV. WORK SESSION (2:13-32:32)

- A. Port Angeles Yacht Club Presentation
- Presentation: Chris Boyd & Randy Volker
 - Discussion
 - No Action
- B. February Financial Report
- Presentation: John Nutter
 - Discussion
 - No Action

V. APPROVAL OF CONSENT AGENDA (32:33-38:33)

- A. Regular Commission Meeting Minutes, March 12, 2024
- B. Special Commission Meeting Minutes, March 18, 2024
- C. Vouchers in the amount of \$282,399.02
- Discussion
 - Motion to approve the consent agenda as presented: Comm. Beauvais
 - 2nd: Comm. McAleer
 - Vote: 3-0 (Unanimous)

VI. COMPLETION OF RECORDS

No items

VII. PLANNING AND CAPITAL PROJECTS

No items

VIII. LOG YARD

No items

IX. MARINE TRADES AND MARINE TERMINALS

No items



X. PROPERTY (38:34-45:02)

- A. CRTC 1050 Building Lease
- Presentation: Caleb McMahon
 - Discussion
 - Motion to approve the term lease as presented and outlined above to include submetering of utilities: Comm. Burke
 - 2nd: Comm. McAleer
 - Vote: 3-0 (Unanimous)

XI. MARINAS

No items

XII. AIRPORTS

No items

XIII. OTHER BUSINESS (45:03-49:18)

- A. Comm. Burke Travel to Finland
- Discussion
 - Motion to approve Comm. Burke to travel outside of the country to Finland for a DNR and Dept. of Commerce sponsored trade delegation regarding forestry and forestry products: Comm. Beauvais
 - 2nd: Comm. McAleer
 - Vote: 2-0 (Unanimous) **Comm. Burke abstained from voting*

XIV. ITEMS NOT ON THE AGENDA (49:19-1:03:49)

Comm. McAleer asked if someone from the Port would like to have a seat on the board of directors for NRIC. It was agreed that Chris Hartman will sit on the board as a Port representative.

Executive Director Paul Jarkiewicz shared with the commission that he was asked to apply for a seat on the Maritime Transportation System National Advisory Board. Being on the committee would require quarterly trips to Washington DC for meetings. The commission is supportive of Executive Director Jarkiewicz moving forward with applying for a seat on the board.

XV. COMMISSIONER REPORTS (1:04:00-1:08:51)

The entire Port Commission attended a legislative trip to Washington DC last week. They attended 4 meetings per day and felt that the trip went very well.

Comm. Beauvais shared that yesterday was the first meeting of the Revenue Advisory Committee. The group will be meeting quarterly and DNR will be at the next meeting with an educational presentation regarding the basics of forestry.

XVI. PUBLIC COMMENT SESSION (TOTAL SESSION UP TO 20 MINUTES) (1:08:52-1:09:08)

None.

XVII. FUTURE AGENDA

XVIII. NEXT MEETINGS (1:09:09-1:09:19)

- A. April 9, 2024 – Regular Commission Meeting
- B. April 23, 2024 – Regular Commission Meeting
- C. May 14, 2024 – Regular Commission Meeting
- D. May 28, 2024 – Regular Commission Meeting

XIX. UPCOMING EVENTS (1:09:20-1:10:01)



- A. AFRC Annual Conference – April 2-4, 2024 – Stevenson, WA
- B. Olympic Logging Conference – April 24-26, 2024 – Victoria, BC
- C. WPPA Spring Meeting – May 15-17, 2024 – Stevenson, WA
- D. Maritime Festival – June 8-9, 2024 – Port Angeles, WA

BROWN BAG LUNCH AND OPEN DISCUSSION WITH THE COMMISSION *(TIME PERMITTING)*

XX. EXECUTIVE SESSION (1:10:02-1:11:48)

The Board may recess into Executive Session for those purposes authorized under Chapter 42.30 RCW, The Open Public Meetings Act.

- Comm. Beauvais recessed the meeting to convene an executive session. The anticipated length of the executive session is 30 minutes. The Commission may take action in public sessions following the executive session.
- Discussion: One (1) item concerning real estate sale, purchase, or lease, discussing such matters in executive session are appropriate pursuant to RCW 42.30.110.(1)(b).
- Recess: 5 minutes
- Start Time: 10:15 am
- Extended: 45 minutes
- End Time: 11:30 am

Public Session of Commission Meeting Reconvened: 11:30 am

Commissioner Beauvais noted no action will be taken as a result of the executive session.

XXI. ADJOURN (1:11:49-1:11:51)

Comm. Beauvais adjourned the meeting at 11:30 am.

PORT OF PORT ANGELES
BOARD OF COMMISSIONERS

Connie Beauvais, President

Steven Burke, Secretary

**PORT OF PORT ANGELES
GENERAL FUND – LETTER OF TRANSMITTAL
VOUCHER APPROVAL**

We, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, the services rendered, or the labor performed as described herein, that any advance payment is due and payable pursuant to a contract or is available as an option for full or partial fulfillment of a contractual obligation, and that the claim is a just, due, and unpaid obligation against the Port of Port Angeles, and that we are authorized to authenticate and certify to said claim.

SUMMARY TRANSMITTAL March 21, 2024 – April 3, 2024

Accounts Payable

	Begin Check #	End Check #		
For General Expenses and Construction				
Accts Payable Checks (computer)	418077	418115	\$	117,235.37
VOIDED/ZERO PAYABLE CHECKS				
Accts Payable ACH	002571	002673	\$	101,316.86
VOIDED/ZERO PAYABLE ACH				
Wire Transfer – Excise Tax			\$	4,771.77
Wire Transfer - Leasehold Tax			\$	-
Total General Expenses and Construction			\$	223,324.00
Payroll				
Employee Payroll – Draws (Direct Deposit)			\$	-
Voided Payroll Check			\$	-
Employee Payroll Checks PPD (Direct Dep)	002587	002647	\$	181,154.21
Wire Transfer – (Payroll Taxes, Retirement, Deferred Comp, L&I, OASI, PMFL)			\$	123,400.82
Total Payroll			\$	304,555.03
Total General Exp & Payroll			\$	527,879.03

Date: April 9, 2024

Port Representative

Port Representative

Commissioner, Steven D. Burke

Commissioner, Connie Beauvais

Commissioner, Colleen McAleer

MONTHLY REPORT TO THE BOARD OF PORT COMMISSIONERS
March 2024

SUBJECT: REPORTS REQUIRED UNDER THE PROVISIONS OF THE DELEGATION OF AUTHORITY

REPORT	NO ACTION	ATTACHED
Lease Renewals/Options and 1 Year or Less Agreements at Market Rates; Leases, Assignments, Subleases, Berthage/Dockage, & Miscellaneous (Use, Equipment, Hangar, Marina Slips)		X
Lease Bond, Rental Insurance Deviations	X	
Work Contracts (\$50,000 or less) Executed	X	
Work Contracts Completed	X	
Change Orders Authorized	X	
Work by Port Crews or Day Labor (\$50,000 or less)	X	
Claims Settled	X	
Professional & Consulting Services Awarded and Architectural, Engineering & Technical Services Awarded	X	
Fees Waived	X	
Uncollectible Accounts Written Off	X	
Experts Engaged for Litigation	X	
Grant Applications/Award	X	
Travel Outside WA, OR, ID and BC, Canada		X
Surplus Personal Property (under \$10,000)	X	

**LEASES, RENEWALS, AMENDMENTS, MISC. AGREEMENTS and OPTIONS EXECUTED
of One Year or Less Approved by Executive Director
(In Accordance with the Delegation of Authority, Res. 20-1216*)**

March 2024

TENANT NAME	DOCUMENT	LOCATION	FORM OF SURETY	SQ FEET	TERM	MONTHLY RENT
Life Flight Network, LLC	2nd Lease Renewal. (Final Renewal)	1405, 1406, 1407 Fairchild Airport Rd, and 2530 W 19th St	Bond \$75,764.43	30,998 SF Total	1 year 3.01.2024- 2.28.2025	\$6,240.59

* New Leases, Amendments, Agreements of One Year or Less Approved by Executive Director in accordance with the Delegation of Authority (Res. 20-1216 dated 02-13-2020) Section 1C, and for Marine Terminal Services Agreements (Res. 20-1216 dated 02-13-2020) Section 1F, provided that such agreements shall be for a term of one year or less.

TRAVEL APPROVED BY THE EXECUTIVE DIRECTOR *
(In Accordance with Delegation of Authority)
March 2024

STAFF	LOCATION OF MTG.	DATE(S)	PURPOSE
Paul Jarkiewicz, Comm. Beauvais, Comm. Burke, Comm. McAleer	Washington D.C.	3/19-3/22	Legislative Meetings Trip

*

VIII. TRAVEL OF EMPLOYEES AND OTHER AUTHORIZED REPRESENTATIVES OF THE PORT:

In order to facilitate necessary normal Port operations, the Executive Director may authorize travel by Port employees and/or other Port representatives for Port business, in accordance with the Port's travel policy adopted pursuant to RCW 53.08.176 and RCW 42.24.090. Reimbursable personal travel expenses per trip shall not exceed \$5,000.00 per person.

The Commission shall be advised at the first regularly scheduled meeting of the following month of all such authorizations for travel outside of Washington, Oregon, Idaho and British Columbia, Canada.

**ITEM FOR CONSIDERATION
BY THE
BOARD OF PORT COMMISSIONERS**

April 9, 2024

**SUBJECT: MARINE TRADE CENTER PHASE 2 DEVELOPMENT -
BID AWARD**

STAFF LEAD: Chris Hartman, Director of Engineering

RCW & POLICY REQUIREMENT

Public works is defined within RCW 39.04.010 as “all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein”. The Port’s Delegation of Administrative Authority Section II.A requires all Public Works contracts over \$50,000 be approved by the Commission.

BACKGROUND:

The development of the Marine Trade Center (MTC) at the former Plywood Mill site has been a high-level priority in the Port’s Strategic Plan as a means to foster the growth of living wage jobs in Clallam County.

Phase 2 Site Development at the MTC will include installation of utilities (Water, sewer, power, stormwater, communication), asphalt and concrete paving and site grading throughout the 18-acre site. These improvements will provide the infrastructure necessary for future development of industrial buildings for boat maintenance and construction.

ANALYSIS

The bid documents for the Marine Trade Center Phase 2 Development were completed under a Professional Service Agreement with Kennedy Jenks Consultants. The Port advertised for bids in the Peninsula Daily News and the Seattle Daily Journal of Commerce on two separate dates: Friday, February 16 and Friday, February 23.

The bid opening was originally scheduled for March 26, but was delayed a week to April 2nd to allow the Port to respond to bidder questions. The Port received four bids with the results shown in the table below.

Bidder	Base (\$)	Alt. 1 ¹ Conc. Strip	Alt. 2 ² Conc. Strip	Alt. 3 ³ 6"CSBC	Alt. 4 ⁴ Landscaping	Total (\$)
DelHur	6,325,922.37	376,553.44	391,533.38	417,000.00	187,978.37	7,698,987.56
ICI	7,045,000.00	250,000.00	250,000.00	570,000.00	67,000.00	8,182,000.00
*B&B	7,992,430.00	413,610.00	413,610.00	555,200.00	141,460.00	9,516,310.00
Redpoint	9,500,170.00	465,000.00	465,000.00	120,000.00	100,000.00	10,650,170.00

* Burch and Bruch Construction, Inc.

¹ Concrete wheel strip and south side of Travelift Road

² Concrete Wheel strip and north side of Travelift Road

³ 6" layer of compacted crushed surfacing base course over ~ 15.5 acres

⁴ Installation of landscaping per plans within the stormwater treatment and riparian mitigation area

Staff reviewed the bid submitted by the apparent low bidder DelHur Industries ("DelHur") and determined that it is nonresponsive; the bid did not meet all bid submittal requirements. To award a public works contract, the Port must determine the lowest bidder as defined under RCW 39.04.010 which is both responsible and responsive. A bid is non-responsive if the bid form or any required supplemental documents are incomplete, contain any additions, deletions, conditions, or otherwise fail to conform to the Port's requirements.

The bid was timely submitted by uploading the required documents to QuestCDN on April 2, 2024, but the bid did not include signatures on three required documents: Certification on Lobbying, Certification of Compliance with Wage Payment Statutes, and Non-Collusion Affidavit.

Subsequently, staff reviewed the second lowest bidder, which is Interwest Construction, Incorporated ("ICI"). ICI submitted all required documentation, and those documents were completed, signed and notarized where required. Staff has also reviewed ICI's qualifications and determined the bidder to be responsible, or qualified to complete the work.

ENVIRONMENTAL IMPACT:

This project has been through stringent environmental reviews. The below list details the permits received and makes note of which ones are still under review.

- United States Army Corp of Engineers Nationwide Permit 7, including consultations with:
 - National Marine Fisheries Services
 - United States Department of Fish and Wildlife
- National Environmental Policy Act Review
- Section 106 – Protection of Historic Properties, including consultations with:
 - Wa. St. Dept. of Archaeology and Historic Preservation
 - Lower Elwha Klallam Tribe
 - Jamestown S'Klallam Tribe
 - Makah Tribe

- Port Gamble S’Klallam Tribe
- Hoh Indian Tribe
- Confederated Tribes of Warm Springs
- State Environmental Policy Act
- Washington State Department of Fish and Wildlife Hydraulic Project Approval
- Construction Stormwater General Permit - **pending**
- City of Port Angeles Shoreline Substantial Development Permit
- City of Port Angeles Building Permit - **pending**
- City of Port Angeles Clearing and Grading Permit - **pending**
- City of Port Angeles Right of Way Construction Permit – by the Contractor

FISCAL IMPACT:

The Port’s 2024 Capital Budget allocated a total of \$10,232,000 for this development project in 2024. \$3,500,000 was budgeted as Port funds and \$6,732,000 was budgeted as a U.S. Department of Commerce Economic Development Administration Grant. Below is a breakdown of anticipated costs by category.

Description	Estimated Cost (\$)
Bid Document Final Preparation & Bidding	\$ 174,000
Construction Administration	\$ 386,000
Archaeological Monitoring	\$ 50,000
Construction (+ wsst)	\$ 8,910,198
5% Construction Contingency	\$ 445,510
Total =	\$ 9,965,708

The total Port expenditure for this project is computed by taking all costs, except archaeological monitoring, and multiplying it by the Port’s grant cost share ratio, which is 34%. The archaeological monitoring is not grant eligible so the Port will pay for that separate of the grant. The total Port cost is $\$9,915,708 \times .34 + \$50,000 =$ **\$3,421,340.72.**

RECOMMENDATION:

Staff recommends that subject to an appeal process, if any, the Commission authorize the Executive Director to execute a contract with Interwest Construction, Inc. for the Marine Trade Center Phase 2 Development project that includes the Base Bid and all four additive alternate bid items for an amount not to exceed Eight Million One Hundred Eighty-Two Thousand Dollars and No Cents (\$8,182,000.00) plus applicable Washington State Sales Tax.

**ITEM FOR CONSIDERATION
BY THE
BOARD OF PORT COMMISSIONERS**

April 9, 2024

SUBJECT: Funding and Participation Agreement Terminals 5/6/7 Remedial Investigation Phase 1

PRESENTED BY: Jesse Waknitz, Environmental Manager

RCW & POLICY REQUIREMENTS:

Resolution 24-1290: Delegation of Authority Article V. Policy Governing Adjustment and Settlement Claims and Penalties.

BACKGROUND:

Per Agreed Order (AO) No. DE 21560 with Washington State Department of Ecology (Ecology), the Port is conducting a remedial investigation and source control evaluation at Terminals 5, 6 & 7 Site (Site). This Site is owned by the Port and operated as the Port's Log Yard. This investigation will determine if cleanup activities are needed to protect surface water or adjacent sediments in Port Angeles Harbor from potential contamination at the Site. Ecology has determined that the Port, Merrill & Ring (M&R), and Owens Corning are Potential Liable Persons or Parties (PLPs) at this site because of current and past ownership or operations.

ANALYSIS:

The Port's environmental consultant is conducting the remedial investigation at the Site under a \$1,064,000 contract. The Port and the other PLPs understand that they have a common interest relating to the Site and that the remedial investigation should be funded by all the parties involved. The PLPs have developed the attached Funding and Participation Agreement for the Remedial Investigation Phase 1 at the Terminals 5/6/7 Site (Agreement) to meet this goal.

Key elements of the Agreement:

- The Parties in the Agreement include the Port, M&R, and Owens Corning.
- The Port's consultant, Floyd Snider, will conduct the remedial investigation under the existing contract with the Port and per the Agreed Order.
- Each Party will pay one-third (\$400K) of the total remedial investigation costs, estimated at \$1.2 Million.
- Interim cleanup actions may be needed to control releases to Port Angeles Harbor. An amendment to the Agreement will be required to fund an interim action.

ENVIRONMENTAL IMPACT:

The Agreement will move the Port and the community forward in improving the harbor's ecological function by investigating potential upland contamination sources. This upland cleanup work is directly related to the future sediment cleanup in Western Port Angeles Harbor.

FISCAL IMPACT:

The Port is a signatory to the Agreement, and each party pays an equal share of \$400k. The Port's share is covered by insurance.

RECOMMENDED ACTION:

- (1) Upon a motion, second, and vote, approve the Funding and Participation Agreement.

- (2) Upon a motion, second, and vote, authorize the Executive Director to execute the Funding and Participation Agreement.

Attachments: Proposed Funding and Participation Agreement for Remedial Investigation Phase 1 at the Terminals 5/6/7 Site

**FUNDING AND PARTICIPATION AGREEMENT FOR
REMEDIAL INVESTIGATION PHASE 1 AT THE TERMINALS 5/6/7 SITE**

This Funding and Participation Agreement (“Agreement”) is made and entered into by and between the Port of Port Angeles (“Port”), Washington, a Washington port district, Merrill & Ring Inc. (“M&R”), a Washington corporation, and Owens Corning (“Owens Corning”), a Delaware corporation (collectively, “the Parties”).

RECITALS

A. The properties known today as Terminals 5 and 6 (1417 and 1608 Marine Drive) have historically been the location of a saw, shingle, and planing mill operations beginning in 1916. The Port purchased the properties in 1945. M&R operated a lumber mill on the Terminal 5 property from about 1955 until 1988. The property known today as Terminal 7 (1313 Marine Drive) was operated as a boxboard and pulp mill beginning in 1918. The Port purchased the Terminal 7 property in 2004. Owens Corning is a successor to Fibreboard, a corporation that operated a boxboard mill at the Terminal 7 property from about 1927 until about 1970. The Port currently uses the properties for log yard operations and lay berth, and has leased a portion of the properties for debarking operations and trailer storage. The Washington State Department of Ecology (Ecology) has categorized the properties known as Terminals 5, 6, and 7 together as a single site, the Terminals 5/6/7 Uplands Site (“Site”). The Parties have been identified as potentially liable persons by Ecology under the Model Toxics Control Act, Chapter 70A.305 RCW (“MTCA”).

B. Following a public comment period, the Port and Ecology executed Agreed Order No. DE 21560 (“Agreed Order”), with an effective date of June 1, 2023. The Agreed Order requires the Port to perform a Remedial Investigation in a Phase 1 Study Area described in Exhibit A of the Agreed Order.

C. The Scope of Work and Schedule is attached as Exhibit C to the Agreed Order and, together with the Remedial Investigation Work Plan – Phase I Sampling Plan Addendum dated November 2, 2023, comprises the work to be performed (“Work”). This Agreement is intended to provide a process for funding the costs of the Work.

D. The Parties have certain common interests relating to the Site. The Parties recognize that their common interests will be best served at this time through mutual cooperation and agreement. Without admitting any fact, responsibility, fault, or liability in connection with the Site, the Parties agree, in accordance with the terms and conditions in this Agreement, to cooperate with each other on an interim funding mechanism for the costs of the Work and on performance of the Work.

NOW, THEREFORE, in consideration of the mutual covenants and promises, the Parties agree as follows:

TERMS AND CONDITIONS

1. **Incorporation of Recitals.** The foregoing Recitals are incorporated herein as terms and conditions of this Agreement.

2. **Cooperation.** The Parties will cooperate in the conduct of all actions as provided in this Agreement to perform the Work for the Site.

3. **Access.** The Port will grant access to property it owns within the Site as reasonably necessary for representatives of M&R and/or Owens Corning, including their consultants and agents, to observe and cooperate in the performance of the Work pursuant to the Agreed Order. Such representatives will comply with applicable health and safety requirements. M&R and Owens Corning agree to defend, indemnify, and hold the Port harmless from and against any and all claims, costs, liabilities, and damages arising out of negligent or intentional misconduct by representatives of M&R and Owens Corning arising out of access to the Port's property.

4. **Use of Environmental Consultants.**

- a. The Port has retained Floyd|Snider as its consultant to assist with implementation of the requirements of the Agreed Order. Floyd|Snider will act as the Port's consultant to perform the Work required under the Agreed Order. Floyd|Snider will contract with the Port to perform Work under the Agreed Order, which shall be funded in accordance with Section 6 (Funding of the Work) below. Floyd|Snider will communicate with the Parties about interactions with Ecology regarding performance of the Work and on all deliverables to Ecology in accordance with Section 8 (Interactions with Ecology and Comment on Draft Documents) below. Floyd|Snider will identify for the Parties' approval which companies it intends to use as subcontractors and laboratories for Work under the Agreed Order, which approval shall not be unreasonably withheld by the Parties. Floyd|Snider will not include on its invoices to the Parties requesting payment any work that is outside of the Work to be performed under the Agreed Order. Disputes regarding Floyd|Snider invoices will be resolved pursuant to the Dispute Resolution provisions below in Section 22.
- b. In the event of litigation between the Parties regarding the Site, the Port may use Floyd|Snider as its expert, without objection on any basis such as attorney work product or other privilege.
- c. M&R and Owens Corning shall bear their own consultants' fees and costs incurred in connection with the Work, including those incurred for the purpose of independent review and comment to Ecology.

5. **Performance of the Work.** The Parties shall perform the Work in accordance with the schedule in the Agreed Order and as follows.

- a. **Scope of Work.** The Port has negotiated with Ecology a scope of work which is attached as Exhibit C to, and incorporated in, the Agreed Order. The Scope of Work includes a description of the Work to be performed under the Agreed Order. The Work includes the Remedial Investigation Work Plan – Phase I Sampling Plan Addendum dated November 2, 2023, including any amendments thereto.-
- b. **Remedial Investigation (RI) and RI Report.** Floyd|Snider will have the lead responsibility for conducting the Phase 1 RI and RI Report required for the Work under the Agreed Order and Exhibit B (Remedial Investigation Work Plan). The Phase 1 investigation will collect initial data necessary to determine the nature and extent of contamination in the Study Area exceeding preliminary MTCA cleanup levels, preliminary Sediment Management Standards (“SMS”) cleanup standards, and other regulatory requirements. The investigation will define potential pathways to Harbor sediments, support interim action and cleanup decisions; and inform next steps in the RI. The RI Report must include an Agency Review Draft and Public Review RI - Phase 1 Summary Report.
- c. **Interim Actions.** As detailed in the Agreed Order, interim action(s) may be needed to expedite control of releases to sediments or other environmental media pursuant to WAC 173-340-430. If proposed by the Port and approved by Ecology, Floyd|Snider will have the lead responsibility for preparing for and implementing the interim action. An amendment to this Agreement will be necessary for funding of an interim action.

6. Funding of the Work. The Parties shall fund the Work as follows:

- a. The Port shall manage the contracts required for preparation of the Phase 1 Remedial Investigation Report and performance of the Work.
- b. Each Party will pay one-third (1/3) of remedial investigation costs invoiced by Floyd|Snider for performance of the Work. The equal shares paid pursuant to this Paragraph 6.b are considered interim funding of the Work and are subject to future reallocation. The payment obligations herein are several and not joint and several. Unless expressly approved in writing by all Parties, the Work shall not exceed \$1.2 million.
- c. Unless all Parties agree in writing, the payment obligations in Paragraph 6.b are not subject to reallocation until Termination of the Agreement (Section 30). Any future reallocation of the payment obligations is outside the scope of this Agreement and is not subject to the provisions of Section 22. Dispute Resolution.
- d. Prior to performing the following phases of Work, the Port will request that Floyd|Snider submit proposed budgets and scopes of work to the Parties

for their review and comment. The phases of Work are: (i) conduct RI Phase 1 and (ii) prepare draft RI Report and finalize RI Report for Ecology approval. Each Party shall provide any comments on such scopes of work and budgets to Floyd|Snider within thirty (30) days of receipt. The Port will consider all comments in good faith.

- e. Once a month Floyd|Snider will provide M&R and Owens Corning invoices, and any information needed to support costs in the invoices, for services to perform the Work. M&R and Owens Corning will have thirty (30) days to object to costs in an invoice, and may request additional information reasonably necessary to review the invoice which Floyd|Snider will promptly furnish. If M&R or Owens Corning object to costs in an invoice, they will identify the costs and specific reasons for objecting to the costs. M&R and Owens Corning will reimburse Floyd|Snider for their one-third shares of all undisputed costs within forty-five (45) days of receipt of an invoice, and will reimburse Floyd|Snider within thirty (30) days of the resolution of their one-third shares of any disputed costs. The Parties shall cooperate in good faith to promptly resolve disputes concerning invoices pursuant to Section 22 (Resolution of Disputes) below.
- f. The payment obligations in this section are limited to performance of the Work as described in the Scope of Work and RI Work Plan, including the Preliminary Data Evaluation and Interim Action Assessment and the Final RI Phase I Summary Report. The payment obligations in this section do not apply to the development of an Interim Action Work Plan and implementation of an Interim Action. Any additional work required by Ecology under the Agreed Order shall be subject to the payment obligations in this section only if agreed to by the Parties and memorialized in an amendment to this Agreement.

7. Involvement by the Parties. M&R and Owens Corning shall have an equal opportunity to provide input on all decisions that have or may have a material effect on the cost and/or performance of the Work, including all budgets and scopes of work prior to the initiation of any Work described therein. The Parties will schedule regular conference calls and meetings among the Parties to manage the Work. The Port will consider all input and comments in good faith.

8. Interaction with Ecology and Comment on Draft Documents. The Port and Floyd|Snider will have the lead role, on behalf of the Parties, in completing the Work and in communicating with Ecology on performance of the Work, subject to the protocols in this Section 8.

- a. Meetings with Ecology. Following confirmation from Ecology of any meeting date/time addressing the Work, the Parties will receive advance notice of and may attend all meetings (in-person, telephonic, or video format) with Ecology, including any related entity, regarding any issue that has or may have a material effect on the cost and/or performance of the Work. The

Parties agree that Floyd|Snider may communicate with Ecology on non-material or emergency issues without involvement by Owens Corning or M&R.

- b. Communications and Status Reports. Floyd|Snider shall keep the Parties equally informed about the status of the Work and communications with Ecology. Floyd|Snider shall simultaneously provide the Parties an opportunity to comment on material communications with Ecology. Floyd|Snider shall simultaneously provide the Parties a copy of all emails with Ecology regarding performance of the Work. Floyd|Snider shall simultaneously provide the Parties a summary of their communications and meetings with Ecology on a regular basis.
- c. Laboratory Data Files. Floyd|Snider will provide all electronic data deliverable files to the Parties within 2 business days of receipt from the laboratory. Any data that is provided prior to validation will be subject to change during the validation process.
- d. Ecology Deliverables. The Parties shall have an equal opportunity to review and comment on any communication, letter, report, memorandum, figures, or deliverable relating to the Work and required by the Agreed Order prior to submission to Ecology (collectively "Documents"). The Parties will provide comments on draft Documents in a timely manner so that any deadlines for submission of Documents will be met. The Parties shall act in good faith to consider all comments and resolve any disagreements they may have with respect to any Documents submitted to Ecology prior to the Documents being submitted. For each draft Document, Floyd|Snider will prepare a brief record of the comments received and the action taken on the comments. This comment-response record will be provided as a simple response to comment (RTC) table as set forth below. To allow sufficient time for the Parties to comment and resolve disagreement on the content of draft Documents, the Port commits to requesting a schedule extension from Ecology to allow for the following process:
 - i. Within 30 calendar days of a draft deliverable due date in the Agreed Order, Floyd|Snider will simultaneously provide the draft Document to the Parties for review. Within 7 business days of receipt of the draft, the Parties will send Floyd|Snider comments with copy to the other Parties. Floyd|Snider will provide the RTC table within 5 business days of receipt of all comments. Within 5 business days of receiving the RTC table, the Parties will meet in good faith to resolve any disagreement on the draft Document. The RTC table will be revised and distributed to all Parties within 5 business days of the meeting.
 - ii. Within 30 calendar days of a draft final deliverable due date in the Agreed Order, Floyd|Snider will simultaneously provide the draft final Document with proposed responses to Ecology to the Parties for review. Within 5 business days of receipt of the draft final Document, the Parties will send Floyd|Snider comments with copy to the other

Parties. Floyd|Snider will provide a RTC table within 5 business days of receipt of all comments. Within 5 business days of receiving the RTC table, the Parties will meet in good faith to resolve any disagreement on the draft final Document.

- iii. For Progress Reports, the draft will be provided by the 5th day of the month following the reporting period. For other Documents that have 30 calendar days or less preparation time, the draft will be provided to all Parties simultaneously as soon as the agency review draft is complete. The Parties will send comments to Floyd|Snider with copies to the other Parties within 5 business days of receipt of the drafts. If time permits prior to the due date, the Parties will meet in good faith to resolve any disagreement on the draft Document.

Owens Corning and M&R expressly reserve their right to separately communicate in writing with Ecology (either independently or jointly) regarding the Work, provided that the Port is concurrently copied on the communication when transmitted to Ecology.

9. Interaction with the Lower Elwha Klallam Tribe. The Port will have the lead role, on behalf of the Parties, in communicating with the Lower Elwha Klallam Tribe (“Tribe”) on the matters addressed at the Site, including the performance of the Work. Notwithstanding the foregoing, the Parties shall have an equal opportunity, prior to release, to review and comment on, any letter, report, memorandum, figures, or other information prepared for communication with the Tribe and relating to the Work and to receive any communication, or a summary thereof if received verbally, received from the Tribe relating to the Work. The Port will consider any comments in good faith. All Parties will provide comments on draft documents in a timely manner so that any deadlines for submission of documents will be met. The Parties shall act in good faith to resolve any disagreements they may have with respect to any documents prepared for communication with the Tribe. The protocols of Section 8 above apply to any communication with Ecology addressing issues or concerns raised by the Tribe.

10. Limitation on Classes of Damages. Except as provided in this Section below, the Parties mutually waive and release to the fullest extent permitted by applicable law all of the following claims for damages arising out of the Work or this Agreement made in connection with a breach of any obligation under this Agreement: (a) indirect or consequential damage or loss, (b) loss of profits, loss of production, loss of economic advantage or benefit, or loss of business opportunity, in each case whether direct, indirect, prospective, or actual, (c) punitive or exemplary damages. The limitations provided in this Section only apply to damages or losses suffered by a Party to this Agreement.

11. Attorneys’ Fees and Costs. The Parties shall bear their own attorneys’ fees and costs incurred in connection with the Work and the negotiation of this Agreement.

12. Purpose of Funds. All monies paid by the Parties pursuant to this Agreement shall be used solely for the purposes of this Agreement and shall not be considered as payment for any fines, penalties, or monetary sanctions. The Parties agree that, to the extent possible, the monies paid to Floyd|Snider pursuant to this Agreement shall be viewed as necessary costs of remedial action and response under applicable federal and state law.

13. Reservation of Rights Against Third Parties. The Parties do not waive, and expressly reserve, all claims they may have against all third parties under MTCA and any other authority for recovery of all expenses and losses incurred by the Parties relating to the Site. Any Party that intends to seek recovery of costs incurred under this Agreement from a third party shall provide at least thirty (30) days' notice to the other Parties prior to filing a lawsuit to recover such costs.

14. No Admissions. By entering into this Agreement, the Parties do not admit or concede any liability or responsibility arising from the presence of any hazardous substance at or near the Site. No actions taken pursuant to this Agreement shall be construed as an admission of liability or equitable responsibility for the presence of any hazardous substance at or near the Site.

15. Admissibility. Pursuant to federal and state rules of evidence, this Agreement and all communications regarding this Agreement are inadmissible in any legal proceeding (including, without limitation, mediation or arbitration) for the purposes of proving liability associated with the presence of hazardous substances on, at, under, or emanating from the Site and are subject to ER 408. This Agreement is only admissible in an action to enforce the terms and conditions of this Agreement.

16. Confidential Information. Throughout the term of this Agreement, the Parties may disclose or transmit Confidential Information to each other, to each other's representatives, or to any common counsel or consultant retained by the Parties, pursuant to the provisions of this Agreement. Confidential Information may be disclosed to, or transferred among the Parties orally or in writing or by any other appropriate means of communication. No claim of attorney-client privilege, joint defense privilege, work product immunity, deliberative privilege, or any other privilege or protection shall be waived as a result of the exchange or transmittal of Confidential Information. Confidential Information shall have the same meaning as set forth in the April 14, 2013 Participation Agreement for the Western Port Angeles Harbor to which the Parties are signatories. If Confidential Information becomes the subject of an administrative or judicial subpoena or interrogatory or demand for production pursuant to litigation or order or public disclosure request requiring disclosure by a Party or its custodian of records, then he or she must satisfy confidentiality obligations hereunder by objecting to production of any such Confidential Information on grounds of confidentiality (or, for public disclosure requests, on any grounds that in the sole legal judgment of the Party to whom the request is directed are available under Chapter 42.56 RCW or other applicable law) and/or seeking an order for protection from disclosure. To the extent permitted by law, the Party subject to any

such disclosure request or demand shall notify the Party that generated the Confidential Information at least fourteen (14) days prior to any disclosure and shall inform the generating Party of all material information concerning such disclosure request or demand.

17. Third Parties. This Agreement is not intended for the benefit of any third party and is not enforceable by any third party, including, but not limited to, federal, state, and local regulatory agencies.

18. Notices. All notices and communications regarding this Agreement shall be directed to the following persons at the following addresses:

For the Port:

Chris Hartman
Director of Engineering
Port of Port Angeles
338 W. First Street
Port Angeles, WA 98362
Telephone: 360.417.3422
Email: ChrisH@portofpa.com

Allyson Bazan
Hillis Clark Martin & Peterson, P.S.
999 Third Avenue, Suite 4600
Seattle, WA 98104
Telephone: 206.470.7692
Email: allyson.bazan@hcmp.com

For M&R:

Maureen Mitchell
Fox Rothschild LLP
1001 Fourth Avenue, Suite 4400
Seattle, WA 98154
Telephone: 206.389.1773
Email: mmitchell@foxrothschild.com

For Owens Corning:

Ankur K. Tohan
K&L Gates LLP
925 Fourth Ave., Suite 2900
Seattle, WA 98104
Telephone: 206.623.7580
Email: ankur.tohan@klgates.com

Any Party may change its authorized representative upon written notice to the other Parties.

19. Successors and Assigns. The Agreement shall be binding upon the successors and assigns of the Parties, and no Party may assign or delegate its obligations under the Agreement without the prior written consent of the other Parties, which consent shall not be unreasonably withheld.

20. Relationship of the Parties. Nothing in this Agreement shall be deemed to create a partnership, joint venture, or principal and agent relationship between or among the Parties. No Party or authorized representative shall have authority to act as a general agent for the other Party or to bid for or undertake any contracts enforceable against the other Party.

21. Governing Law. This Agreement shall be governed by and interpreted in accordance with the law of the State of Washington, without regard to its choice of law rules.

22. Resolution of Disputes. The Parties shall exclusively and finally resolve any dispute, other than any reallocation of the payment obligations pursuant to Section 6 and the interaction with Ecology and comment on draft documents pursuant to Section 8, between them using direct negotiations and non-binding mediation. If a dispute arises, a Party seeking to initiate the dispute resolution process shall give notice to the other Parties setting out, in writing, and in detail, the issues in dispute, and the estimated value of the claim, if available. The Parties shall attempt to resolve the dispute through direct negotiations in a meeting between the Parties, attended by individuals with decision-making authority, which must take place within 60 days from the date the notice was sent. If the dispute cannot be resolved by direct negotiations, any Party may initiate non-binding mediation by giving notice to the other Parties. The Parties in dispute shall cooperate and act in good faith to select a mediator. Mediation must be attended by a representative from each Party with decision-making authority, and the proceeding must take place in Port Angeles or Seattle, Washington with a virtual video appearance option, if requested. All mediation fees and costs must be paid equally and each Party shall bear its own attorneys' fees and costs in connection with such mediation. If the Parties fail to resolve the dispute within 60 days of completion of mediation, the Parties reserve all rights and defenses.

23. Modifications. Any change, amendment, or alteration to this Agreement must be in writing and signed by all Parties to be effective.

24. Entire Agreement. This Agreement contains the entire understanding of the Parties and supersedes all prior agreements and understandings between the Parties

relating to the Site. Each Party warrants that it is not relying on any representations other than this Agreement, whether written or oral, in entering into this Agreement.

25. Headings. The headings used in this Agreement have been inserted for convenience only and shall not affect the interpretation of this Agreement.

26. Construction. This Agreement or any portion thereof shall not be construed against one Party or the other as drafter but shall be construed as if drafted by the Parties.

27. Unenforceable Provisions. If any provision of this Agreement is held to be unenforceable for any reason, it shall be adjusted, rather than voided, if possible, to achieve the intent of the Parties. If any portion of this Agreement becomes unenforceable, null, or void, the balance of the Agreement shall remain in full force and effect.

28. Representation. Each Party acknowledges and represents that it has relied on the legal advice of its attorney, who is the attorney of its own choice, that the terms of this Agreement has been completely read and explained to it by its attorney, and that the terms are fully understood and voluntarily accepted.

29. Counterparts. This Agreement, and any changes, amendments, or alterations thereto, may be executed in three counterparts. Each Party shall execute three signature pages, each of which shall be deemed an original.

30. Compliance with Law. The Parties shall, in the performance of this Agreement, comply with all applicable laws, ordinances, rules, and regulations of governmental and quasi-governmental agencies having jurisdiction over the Site.

31. Effective Date. The Parties intend to execute this Agreement in conjunction with signing the Agreed Order. This Agreement shall become effective as of the latest date of execution below.

32. Termination. This Agreement shall terminate upon Ecology approval of the RI Report submitted pursuant to the Remedial Investigation Work Plan, Exhibit B to the Agreed Order. No Party may withdraw from this Agreement prior to Ecology approval of the RI Report; provided however, that if total costs of the Work exceed \$1.2 million, the Parties will initiate direct negotiations and, if necessary, mediation pursuant to Section 22 above to reach agreement upon a revised budget for completion of the Work.

33. Joint Defense. It is expressly agreed that the matters undertaken by the Parties pursuant to this Agreement are undertaken as, and are intended to constitute, a joint and common defense in anticipation of litigation which could be expected with respect to the Site. The creation of a joint defense applies only to potential third party claims associated with performance of the Work.

34. Taxes. Each Party is responsible for all liabilities or claims for taxes that any taxing authority may assess or levy against that Party relating to this Agreement.

35. Authority to Sign. Each of the Parties signing this Agreement is legally authorized to enter into the terms and conditions of this Agreement and is legally authorized to bind such Parties thereto.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

PORT OF PORT ANGELES,
a Washington Port District

By: _____
Name
Title

Date: _____

MERRILL AND RING INC.
a Washington corporation

By: _____
Name
Title

Date: _____

OWENS CORNING,
a Delaware corporation

By: _____
Name
Title

Date: _____

EXHIBIT A – MAP DEPICTING TERMINAL 5/6/7 SITE



EXHIBIT B – EXECUTED AGREED ORDER

State of Washington
Department of Ecology

In the Matter of Remedial Action by:
Port of Port Angeles
Agreed Order
No. DE 21560

To: Geoffrey James
Port of Port Angeles
338 W. First Street
Port Angeles, WA 98362

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- Exhibit A Study Area Location Diagram
- Exhibit B Remedial Investigation Work Plan
- Exhibit C Scope of Work and Schedule
- Exhibit D ARARs and other Requirements

1. Introduction

The mutual objective of the State of Washington, Department of Ecology (Ecology) and Port of Port Angeles (Port) under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires the Port to conduct the first phase of a remedial investigation according to the Remedial Investigation Work Plan - Phase I (RI WP - Phase I) in Exhibit B for a Study Area shown in Exhibit A. Ecology believes the actions required by this Order are in the public interest.

2. Jurisdiction

This Order is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70A.305.050(1).

3. Parties Bound

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each Party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such Party to comply with this Order. The Port agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the Port's responsibility under this Order. The Port shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

4. Definitions

Unless otherwise specified herein, the definitions set forth in RCW 70A.305, WAC 173-204 and WAC 173-340 shall control the meanings of the terms in this Order.

4.1 Site

The Site is referred to as Terminals 5, 6 & 7 Uplands (a/k/a Port Angeles Harbor Source Control Project). The Site constitutes a facility under RCW 70A.305.020(8). The Site is defined by where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located. Based upon factors currently known to Ecology, the Site is generally located at the Study Area as shown in the Study Area Location Diagram (Exhibit A).

4.2 Study Area

The Study Area is located on property owned by the Port and formerly used for commercial and industrial purposes at 1313, 1417, and 1608 Marine Drive, commonly referred to as Terminals 5, 6 and 7, and the adjacent bank of Port Angeles Harbor as shown in the Study Area Location Diagram (Exhibit A).

4.3 Parties

Refers to the State of Washington, Department of Ecology and the Port.

4.4 Potentially Liable Persons (PLP(s))

Refers to Port, Owens Corning and Merrill & Ring (M&R).

4.5 Agreed Order or Order

Refers to this Order and each of the exhibits to this Order. All exhibits are integral and enforceable parts of this Order.

5. Findings of Fact

Ecology makes the following findings of fact, without any express or implied admissions of such facts by the Port:

5.1

Starting in 1914, the properties known today as Terminals 5 and 6 (1417 and 1608 Marine Drive) were the location of a saw, shingle, and planing mill. The Port purchased the properties in 1945. From about 1955 to 1988, the properties were leased to M&R, which operated a lumber mill on them. Structures and equipment on the Terminal 5 property included a sawmill, planer mill, a dip tank, spray booth, green chain lumber conveyor, sawing building, sorter and stacker building, machine shop, transformers, hog fuel boilers, and a dry kiln.

5.2

In 1973 a fire damaged the old planer mill on the Terminal 5 property and burned barrels of Permatox 180, a chemical M&R used for treating finished lumber. Permatox 180 is a fungicide used as a wood preservative and its active ingredients include potassium 2,3,4,6-tetrachlorophenolate and potassium pentachlorophenolate, which quantify analytically as pentachlorophenol (PCP) and tetrachlorophenol (TeCP).

M&R used Permatox 180 at several locations on the Terminal 5 property: near the green chain lumber conveyor, near the sawmill, and in an enclosed spray booth in the new planer mill. In 1975 M&R filled approximately 4 acres of harbor area along its shoreline.

5.3

In 1988, Daishowa (now Nippon Paper Industries USA Co., Ltd or Nippon) assumed M&R's lease on the Terminals 5 and 6 properties. Daishowa removed many of the buildings and used the properties for log storage. Daishowa ceased operations on these properties in 2002.

5.4

Starting in 1951 the Port leased harbor areas on the north end of the Terminal 5 and 6 properties from the Washington State Department of Natural Resources (DNR) and subleased them to Crown Zellerbach. Starting in 1967 the Port leased harbor areas adjacent to the south end of the Terminal 5 property from DNR and subleased them to M&R and Daishowa. In 1985 the Port negotiated a Port Management Agreement (PMA) with DNR which authorized the Port to manage aquatic lands belonging to the State. The harbor areas adjacent to Terminal 5 were consolidated into the PMA.

5.5

Environmental investigations conducted in 1988 and 1989 on the Terminals 5 and 6 properties identified PCP and TeCP contamination in surface soil, subsurface soil, and groundwater, primarily near the old planer mill. PCP was also detected in marine sediments adjacent to the property. PCP is a potential source of dioxins/furans. Mercury was generally detected at concentrations consistent with background. At that time, acceptable background soil concentrations for mercury included a range from 0.01 mg/kg to 0.3 mg/kg. Currently, the background concentration for mercury in Puget Sound area soil is 0.07 mg/kg and the 1988-89 data shows exceedances in five locations. In 1991 Ecology reviewed the environmental reports documenting the investigations and determined that the detected values of PCP in soil, surface water, groundwater, and marine sediments did not constitute a hazardous waste cleanup site; however, the screening levels considered for PCP in soil and groundwater (10 mg/kg and 0.074 mg/L, respectively) did not consider protection of marine surface water. Currently, preliminary cleanup levels for PCP in soil and groundwater (1.8×10^{-6} mg/kg and 0.002 µg/L, respectively) show these releases present a threat to human health and the environment.

5.6

In the early 2000s, the Washington State Department of Transportation (WSDOT) conducted environmental investigations in conjunction with its plan to redevelop the Terminal 5 property as a graving dock. Mercury and PCP were not identified above their respective detection limits in soil samples associated with these environmental investigations but were detected in offshore marine sediments.

5.7

After WSDOT's commencement of construction of a graving dock on the Terminal 5 property, excavation at the property revealed the upland area of the western part of Port Angeles Harbor, including the Terminal 5 property, was the site of a pre-European contact Klallam village and cemetery named Tse-whit-zen. Numerous human remains and over 100,000 artifacts were recovered during construction. The construction project was eventually terminated.

5.8

In 2006 a Settlement Agreement was reached by the LEKT, the State of Washington, the Port, and the City, which requires consultation with the LEKT if ground-disturbing work is to occur in an archeologically sensitive area with the goal of developing a proposed mitigation plan acceptable to all parties. The Settlement Agreement includes basic protocols for monitoring and reporting discoveries of archeological resources and/or human remains. The parties to the 2006 Settlement Agreement agreed these or comparable protocols will be used during future investigation and remediation activities that have the potential to disturb artifact-bearing middens containing shell, stone, and bone artifacts, projectile points, lithic debitage, and human remains. Based on the long history of Tribal presence in the Harbor, there is a high probability that archeological materials will be encountered during investigation and cleanup activities at Terminal 5 and surrounding properties, including the Terminals 6 and 7 properties.

5.9

The LEKT currently owns about 13.3 acres within the central portion of the Terminal 5 property. WSDOT owns approximately 5.5 acres, which it leases to the LEKT. The Port owns approximately 12.3 acres of the remaining areas of the Terminals 5 and 6 properties, which it uses as a log yard and storage area. The Port also owns Terminal 7 (20 acres), which it uses as a log yard.

5.10

Starting in 1918, the property known today as Terminal 7 (1313 Marine Drive) was operated as a boxboard mill by Paraffine Companies, Inc. (Paraffine) and was known as the Crescent Boxboard Company. In 1927, Paraffine and Crown Zellerbach formed Fibreboard. The Fibreboard mill produced groundwood pulp, sulfite pulp, re-pulped waste pulp, boxboard, and wood chips. Boxboard was used to make cartons for food products. The upland property owned by Fibreboard in 1945 covered approximately 12 acres. In 1958 and 1959, the shoreline along the eastern part of the property was filled in with dredged sediment from the Port's Boat Haven marina construction which expanded the size of the Fibreboard property by about 3 acres. M&R conducted another large fill event along the shoreline in the late 1970s. Following this fill event, the upland property covered approximately 23 acres.

5.11

Structures and equipment which were part of the Fibreboard facility included two large mill buildings, a chipping mill, cutoff mill, soda and sulfur storage building, acid tanks, pulp tanks, an engine room, a fuel area, and a paper warehouse. A 175-foot-tall smokestack was located adjacent to the boiler house and machine shop. Fibreboard used a hog fuel boiler that burned salt-laden wood which is a potential source of dioxins/furans. Starting in about 1949, a large fuel oil aboveground storage tank (AST) was located in the northwest corner of the property. In the late 1950s or early 1960s a large ammonia AST was added to the property. Fibreboard used a chlorine-based bleaching process. Fibreboard discharged untreated waste sulfite liquor and pulp mill waste through five outfalls directly into the Harbor. The estimated average waste volume discharged from the facility was 4.2 million gallons per day. Fibreboard ceased operations in 1970.

5.12

In 1972 M&R acquired the Terminal 7 property (1313 Marine Drive) and expanded its operations to that property. M&R constructed a new planer mill, chipping facility, chip loading facility, and truck maintenance shop on the Terminal 7 property. M&R removed many of Fibreboard's structures and constructed a new planer mill to replace the old planer mill on the Terminal 5 property destroyed by fire. The new planer mill included an enclosed spray booth to treat finished lumber with the wood preservative Permatox. In 1988 M&R sold the property to Daishowa. Daishowa operated a chipping plant, chip loading/unloading and storage area, and a truck wash area on the property. Daishowa sold the property to the Port in 2004 but continued to operate under a lease with the Port until 2014. The Port uses the property for log yard operations and lay berth, and has leased a portion of the property for debarking operations and trailer storage.

5.13

During their operations, Fibreboard, M&R, and Daishowa leased from DNR aquatic lands adjacent to the upland Terminal 7 property. In 2004, the harbor area off the Terminal 7 property became part of aquatic lands managed by the Port under the 1985 PMA.

5.14

Limited investigation data is available for the Terminal 7 property. Environmental investigations conducted in 1988-89 determined mercury in soil was generally consistent with background concentrations but that PCP concentrations in soil were detected. At that time, acceptable background soil concentrations for mercury included a range from 0.01 mg/kg to 0.3 mg/kg. Currently, the background concentration for mercury in Puget Sound area soil is 0.07 mg/kg. Petroleum hydrocarbons were also detected in surface soil at one sample location.

5.15

The Port is currently designing a stormwater treatment and conveyance system for the Terminal 7 property under amended Administrative Order Docket #19449, dated November 13, 2020, amending Order docket #15818, dated May 11, 2018, which amended Order Docket #12801, dated August 3, 2015, to address permit benchmark exceedances under Industrial Stormwater General Permit #WAR000314. The Port's stormwater discharge exceeded benchmark values and triggered Level 2 Corrective Action requirements for copper, total suspended solids, and chemical oxygen demand and Level 3 Corrective Action requirements for turbidity and copper under Permit Condition S8.

5.16

Based upon factors currently known to Ecology, the Study Area is located at 1313, 1417, and 1608 Marine Drive in Port Angeles, Washington and includes the adjacent bank of Port Angeles Harbor, as shown in the Study Area Location Diagram (Exhibit A). Based on available environmental reports and information about historical operations, it appears that TeCP, PCP, and related compounds may exceed applicable cleanup levels in soil and groundwater on the three Terminal properties.

6. Ecology Determinations

Ecology makes the following determinations, without any express or implied admissions of such determinations (and underlying facts) by the Port.

6.1

The Port is an “owner or operator” as defined in RCW 70A.305.020(22) of a “facility” as defined in RCW 70A.305.020(8).

6.2

Merrill & Ring is a person who owned or operated the facility at the time of disposal or release of hazardous substances within the meaning of RCW 70A.305.040(1)(b).

6.3

Owens Corning is a person who owned or operated the facility at the time of disposal or release of hazardous substances within the meaning of RCW 70A.305.040(1)(b).

6.4

Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70A.305.020(32), (13), respectively, has occurred at the Site.

6.5

Based upon credible evidence, Ecology issued a PLP status letter to the Port dated July 15, 2021, pursuant to RCW 70A.305.040, .020(26), and WAC 173-340-500. By letter dated July 30, 2021, the Port voluntarily waived its rights to notice and comment and accepted Ecology’s determination that the Port is a PLP under RCW 70A.305.040.

6.6

Based upon credible evidence, Ecology issued a PLP status letter to Merrill & Ring dated July 15, 2021, pursuant to RCW 70A.305.040, .020(26), and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that Merrill & Ring is a PLP under RCW 70.105D.040 and notified Merrill & Ring of this determination by letter dated December 22, 2021.

6.7

Based upon credible evidence, Ecology issued a PLP status letter to Owens Corning dated July 15, 2021, pursuant to RCW 70A.305.040, .020(26), and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that Owens Corning is a PLP under RCW 70.105D.040 and notified Owens Corning of this determination by letter dated May 19, 2022.

6.8

Pursuant to RCW 70A.305.030(1), .050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

7. Work to be Performed

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the Port take the following remedial actions at the Site. These remedial actions must be conducted in accordance with WAC 173-340 and 173-204. The Port shall address and incorporate all comments from Ecology in deliverables under this order.

7.1

Conduct the first phase of a remedial investigation in accordance with the RI WP - Phase I in Exhibit B, and the schedule and terms of the Scope of Work and Schedule, Exhibit C, and all other requirements of this Order.

7.2

If the Port learns of a significant change in conditions at the Site, including but not limited to a statistically significant increase in contaminant and/or chemical concentrations in any media, the Port, within seven (7) days of learning of the change in condition, shall notify Ecology in writing of said change and provide Ecology with any reports or records (including laboratory analyses, sampling results) relating to the change in conditions.

7.3

The Port shall submit to Ecology written quarterly Progress Reports that describe the actions taken during the previous quarter to implement the requirements of this Order. All Progress Reports shall be submitted by the tenth (10th) day of the month in which they are due after the effective date of this Order. Unless otherwise specified by Ecology, Progress Reports and any other documents submitted pursuant to this Order shall be sent by certified mail, return receipt requested, to Ecology's project coordinator. The Progress Reports shall include the following:

7.3.1

A list of on-site activities that have taken place during the quarter.

7.3.2

Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests.

7.3.3

Description of all deviations from the Scope of Work and Schedule (Exhibit B) during the current quarter and any planned deviations in the upcoming quarter.

7.3.4

For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule.

7.3.5

All raw data (including laboratory analyses) received during the previous quarter (if not previously submitted to Ecology), together with a detailed description of the underlying samples collected.

7.3.6

A list of deliverables for the upcoming quarter.

7.4

All plans or other deliverables submitted by the Port for Ecology's review and approval under the Scope of Work and Schedule (Exhibit C) shall, upon Ecology's approval, become integral and enforceable parts of this Order. The Port shall take any action required by such deliverable.

7.5

Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study, or design of a cleanup action plan. Any Party may propose an interim action under this Order. If the Parties are in agreement concerning the interim action, the Port shall prepare and submit to Ecology an Interim Action Work Plan, including a scope of work and schedule, by the date agreed to by the Parties. Ecology will provide public notice and opportunity to comment on the Interim Action Work Plan in accordance with WAC 173-340-600(16). The Port shall not conduct the interim action until Ecology approves the Interim Action Work Plan. Upon approval by Ecology, the Interim Action Work Plan becomes an integral and enforceable part of this Order, and the Port is required to conduct the interim action in accordance with the approved Interim Action Work Plan. If the Parties are not in agreement, Ecology reserves its authority to require interim action(s) under a separate order or other enforcement action under RCW 70A.305, or to undertake the interim action itself.

7.6

If Ecology determines that the Port has failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to the Port, perform any or all portions of the remedial action or at Ecology's discretion allow the Port opportunity to correct. In an emergency, Ecology is not required to provide notice to the Port, or an opportunity for dispute resolution. The Port shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.A (Payment of Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section 10 (Enforcement).

7.7

Except where necessary to abate an emergency situation or where required by law, the Port shall not perform any remedial actions at the Site outside those remedial actions required by this Order to address the contamination that is the subject of this Order, unless Ecology concurs, in writing, with such additional remedial actions pursuant to Section 8.11 (Amendment of Order). In the event of an emergency, or where actions are taken as required by law, the Port must notify Ecology in writing of the event and remedial action(s) planned or taken as soon as practical but no later than within twenty-four (24) hours of the discovery of the event.

8. Terms and Conditions

8.1 Payment of Remedial Action Costs

The Port shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under RCW 70A.305, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173 340 550(2). Ecology has accumulated \$35,899.56 in remedial action costs related to this Site as of January 31, 2023, including Attorney General remedial action costs through December 31, 2022. For all Ecology costs incurred, the Port shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project, including a description of the tasks performed by staff members charging time under this Order. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Ecology will provide copies of invoices for all contractor and other vendor costs included in an itemized statement. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

In addition to other available relief, pursuant to RCW 19.16.500, Ecology may utilize a collection agency and/or, pursuant to RCW 70A.305.060, file a lien against real property subject to the remedial actions to recover unreimbursed remedial action costs.

8.2 Designated Project Coordinators

The project coordinator for Ecology is:

Connie Groven
Washington State department of Ecology
Southwest Region Office/Toxics Cleanup Program
PO Box 47775
Olympia, WA 98504
360.584.7037
connie.groven@ecy.wa.gov

The project coordinator for the Port is:

Alison Geiselbrecht
Floyd|Snider
601 Union Street, Suite 600
Seattle, WA 98101
206.292.2078
allison.geiselbrecht@floydsnider.com

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and the Port, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Order.

Any Party may change its respective project coordinator. Written notification shall be given to the other Party at least ten (10) calendar days prior to the change.

8.3 Performance

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist or hydrogeologist licensed by the State of Washington or under the direct supervision of an engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43 and 18.220.

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43.130.

All construction work performed pursuant to this Order shall be under the direct supervision of a professional engineer or a qualified technician under the direct supervision of a professional engineer. The professional engineer must be registered by the State of Washington, except as otherwise provided for by RCW 18.43.130.

Any documents submitted containing geologic, hydrogeologic, or engineering work shall be under the seal of an appropriately licensed professional as required by RCW 18.43 and 18.220.

The Port shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s), subcontractor(s), and other key personnel to be used in carrying out the terms of this Order, in advance of their involvement at the Study Area.

8.4 Access

Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Site that the Port either owns, controls, or has access rights to at all reasonable times for the purposes of, inter alia: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the Port's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by the Port. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Study Area property owned or controlled by the Port unless an emergency prevents such notice. All persons who access the Site pursuant to this section shall comply with any applicable health and safety plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

The Port shall make best efforts to secure access rights for those properties within the Study Area not owned or controlled by the Port where remedial activities or investigations will be performed pursuant to this Order. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of the Port would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, as required by this Section. If, within 90 days after the effective date of this Order, the Port is unable to accomplish what is required through "best efforts," they shall notify Ecology, and include a description of the steps taken to comply with the requirements. If Ecology deems it appropriate, it may assist the Port, or take independent action, in obtaining such access and/or use restrictions. Ecology reserves the right to seek payment from the Port for all costs, including cost of attorneys' time, incurred by Ecology in obtaining such access or agreements to restrict land, water, or other resource use.

8.5 Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, the Port shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, the Port shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the Port pursuant to implementation of this Order. The Port shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the Port and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section 8.4 (Access), Ecology shall notify the Port prior to any sample collection activity unless an emergency prevents such notice.

In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory accredited under WAC 173-50 for the specific analyses to be conducted, unless otherwise approved by Ecology.

8.6 Public Participation

Ecology shall maintain the responsibility for public participation at the Site. However, the Port shall cooperate with Ecology, and shall:

8.6.1

If agreed to by Ecology, develop appropriate mailing lists and prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation/feasibility study reports, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.

8.6.2

Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before meetings related to remedial action work to be performed at the Site with the interested public and/or local governments. Likewise, Ecology shall notify the Port prior to the issuance of all press releases and fact sheets related to the Site, and before meetings related to the Site with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the Port that do not receive prior Ecology approval, the Port shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

8.6.3

When requested by Ecology, participate in public presentations on the progress of the remedial action at the Site. Participation may be through attendance at public meetings to assist in answering questions or as a presenter.

8.6.4

When requested by Ecology, arrange and maintain a repository to be located at:

Port Angeles Public Library
2210 South Peabody Street
Port Angeles, WA 98362

At a minimum, copies of all public notices, fact sheets, and documents relating to public comment periods shall be promptly placed in these repositories. A copy of all documents related to this Site shall be maintained in the repository at Ecology's Southwest Regional Office in Lacey, Washington.

8.7 Access to Information

The Port shall provide to Ecology, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within the Port's possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the work. The Port shall also make available to Ecology, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the work.

Nothing in this Order is intended to waive any right the Port may have under applicable law to limit disclosure of Records protected by the attorney work-product privilege and/or the attorney-client privilege. If the Port withholds any requested Records based on an assertion of privilege, the Port shall provide Ecology with a privilege log specifying the Records withheld and the applicable privilege. No Site-related data collected pursuant to this Order shall be considered privileged, including: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, biological, or engineering data, or the portion of any other record that evidences conditions at or around the Site; or (2) the portion of any Record that Respondents are required to create or generate pursuant to this Order.

Notwithstanding any provision of this Order, Ecology retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under any other applicable statutes or regulations.

8.8 Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of the work performed pursuant to this Order, the Port shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors.

8.9 Resolution of Disputes

8.9.1

In the event that the Port elects to invoke dispute resolution the Port must utilize the procedure set forth below.

8.9.1.1 Upon the triggering event (receipt of Ecology's project coordinator's written decision or an itemized billing statement), the Port has fourteen (14) calendar days within which to notify Ecology's project coordinator in writing of its dispute (Informal Dispute Notice).

8.9.1.2 The Parties' project coordinators shall then confer in an effort to resolve the dispute informally. The Parties shall informally confer for up to fourteen (14) calendar days from receipt of the Informal Dispute Notice. If the project coordinators cannot resolve the dispute within those fourteen (14) calendar days, then within seven (7) calendar days Ecology's project coordinator shall issue a written decision (Informal Dispute Decision) stating: the nature of the dispute; the [Subject PLP(s)'s] position with regards to the dispute; Ecology's position with regards to the dispute; and the extent of resolution reached by informal discussion.

8.9.1.3 The Port may then request regional management review of the dispute. The Port must submit this request (Formal Dispute Notice) in writing to the Southwest Region Toxics Cleanup Section Manager within seven (7) calendar days of receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a written statement of dispute setting forth: the nature of the dispute; the Port's position with respect to the dispute; and the information relied upon to support its position.

8.9.1.4 The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute (Decision on Dispute) within thirty (30) calendar days of receipt of the Formal Dispute Notice. The Decision on Dispute shall be Ecology's final decision on the disputed matter.

8.9.2

The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

8.9.3

Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

8.9.4

In case of a dispute, failure to either proceed with the work required by this Order or timely invoke dispute resolution may result in Ecology's determination that insufficient progress is being made in preparation of a deliverable, and may result in Ecology undertaking the work under Section 7.1 (Work to be Performed) or initiating enforcement under Section 10 (Enforcement).

8.10 Extension of Schedule

8.10.1

The Port's request for an extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:

8.10.1.1 The deadline that is sought to be extended.

8.10.1.2 The length of the extension sought.

8.10.1.3 The reason(s) for the extension.

8.10.1.4 Any related deadline or schedule that would be affected if the extension were granted.

8.10.2

The burden shall be on the Port to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but may not be limited to:

- 8.10.2.1 Circumstances beyond the reasonable control and despite the due diligence of the Port including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by the Port.
- 8.10.2.2 A shelter in place or work stoppage mandated by state or local government order due to public health and safety emergencies.
- 8.10.2.3 Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty.
- 8.10.2.4 Endangerment as described in Section 8.12 (Endangerment).

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of the Port.

8.10.3

Ecology shall act upon any the Port's written request for extension in a timely fashion. Ecology shall give the Port written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section 8.11 (Amendment of Order) when a schedule extension is granted.

8.10.4

At the Port's request, an extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of one of the following:

- 8.10.4.1 Delays in the issuance of a necessary permit which was applied for in a timely manner.
- 8.10.4.2 Other circumstances deemed exceptional or extraordinary by Ecology.
- 8.10.4.3 Endangerment as described in Section 8.12 (Endangerment).

8.11 Amendment of Order

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section 8.13 (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and the Port. Ecology will provide its written consent to a formal amendment only after public notice and opportunity to comment on the formal amendment.

When requesting a change to the Order, the Port shall submit a written request to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request is received. If Ecology determines that the change is substantial, then the Order must be formally amended. Reasons for the disapproval of a proposed change to this Order shall be stated in writing. If Ecology does not agree to a proposed change, the disagreement may be addressed through the dispute resolution procedures described in Section 8.9 (Resolution of Disputes).

8.12 Endangerment

In the event Ecology determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct the Port to cease such activities for such period of time as it deems necessary to abate the danger. The Port shall immediately comply with such direction.

In the event the Port determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment, the Port may cease such activities. The Port shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction, the Port shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the Port's cessation of activities, it may direct the Port to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, the Port's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section 8.10 (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

Nothing in this Order shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

8.13 Reservation of Rights

This Order is not a settlement under RCW 70A.305. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. Ecology will not, however, bring an action against the Port to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against the Port regarding remedial actions required by this Order, provided the Port complies with this Order.

Ecology nevertheless reserves its rights under RCW70A.305, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health or the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

By entering into this Order, the Port does not admit to any liability for the Site. Although the Port is committing to conducting the work required by this Order under the terms of this Order, the Port expressly reserves all rights available under law, including but not limited to the right to seek cost recovery or contribution against third parties, and the right to assert any defenses to liability in the event of enforcement.

8.14 Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by the Port without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to the Port's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the Port shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and at least thirty (30) days prior to any transfer, the Port shall notify Ecology of said transfer. Upon transfer of any interest, the Port shall notify all transferees of the restrictions on the activities and uses of the property under this Order and incorporate any such use restrictions into the transfer documents.

8.15 Compliance with Applicable Laws

8.15.1 Applicable Laws

All actions carried out by the Port pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits or approvals, except as provided in RCW 70A.305.090. The permits or specific federal, state, or local requirements that the agency has determined are applicable and that are known at the time of the execution of this Order have been identified in Exhibit D. The Port has a continuing obligation to identify additional applicable federal, state, and local requirements which apply to actions carried out pursuant to this Order, and to comply with those requirements. As additional federal, state, and local requirements are identified by Ecology or the Port, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order, and the Port must implement those requirements.

8.15.2 Relevant and Appropriate Requirements.

All actions carried out by the Port pursuant to this Order shall be done in accordance with relevant and appropriate requirements identified by Ecology. The relevant and appropriate requirements that Ecology has determined apply have been identified in Exhibit D. If additional relevant and appropriate requirements are identified by Ecology or the Port, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order and the Port must implement those requirements.

8.15.3

Pursuant to RCW 70A.305.090(1), the Port may be exempt from the procedural requirements of RCW 70A.15, 70A.205, 70A.300, 77.55, 90.48, and 90.58 and of any laws requiring or authorizing local government permits or approvals. However, the Port shall comply with the substantive requirements of such permits or approvals. For permits and approvals covered under RCW 70A.305.090(1) that have been issued by local government, the Parties agree that Ecology has the non-exclusive ability under this Order to enforce those local government permits and/or approvals. The exempt permits or approvals and the applicable substantive requirements of those permits or approvals, as they are known at the time of the execution of this Order, have been identified in Exhibit D.

8.15.4

The Port has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or the Port determines that additional permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other Party of its determination. Ecology shall determine whether Ecology or the Port shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the Port shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by the Port and on how the Port must meet those requirements. Ecology shall inform the Port in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The Port shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Pursuant to RCW 70A.305.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70A.305.090(1) would result in the loss of approval from a federal agency that is necessary for the state to administer any federal law, the exemption shall not apply and the Port shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70A.305.090(1), including any requirements to obtain permits or approvals.

8.16 Indemnification

The Port agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action (1) for death or injuries to persons, or (2) for loss or damage to property, to the extent arising from or on account of acts or omissions of the Port, its officers, employees, agents, or contractors in entering into and implementing this Order. However, the Port shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

9. Satisfaction of Order

The provisions of this Order shall be deemed satisfied upon the Port's receipt of written notification from Ecology that the Port has completed the remedial activity required by this Order, as amended by any modifications, and that the Port has complied with all other provisions of this Agreed Order.

10. Enforcement

Pursuant to RCW 70A.305.050, this Order may be enforced as follows:

10.1

The Attorney General may bring an action to enforce this Order in a state or federal court.

10.2

The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.

10.3

A liable party who refuses, without sufficient cause, to comply with any term of this Order will be liable for:

10.3.1

Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply.

10.3.2

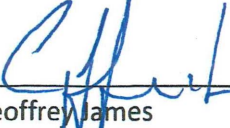
Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

10.4

This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under RCW 70A.305.070.

Effective date of this Order: June 1, 2023

Port of Port Angeles


4/11/23

Geoffrey James
Executive Director
Port Angeles, Washington
360.457.8527

State of Washington
Department of Ecology



Rebecca S. Lawson, P.E., LHG
Section Manager
Toxics Cleanup Program
Southwest Region Office
360.407.6241

Exhibit A – Study Area Location Diagram



Exhibit B – Remedial Investigation Work Plan
(Available separately from Ecology)

Exhibit C – Scope of Work and Schedule

Exhibit C — Scope of Work and Schedule

Scope of Work

Purpose

The work under this Agreed Order (AO) involves the Port of Port Angeles' (Port) performance of sampling and investigation work described in the Remedial Investigation Work Plan – Phase I (RI WP – Phase I), which is Exhibit B to this Agreed Order.

The purpose of the RI WP – Phase I includes providing initial data, analysis, and evaluations to meet three objectives:

- Characterize the nature and extent of contamination within the Study Area.
- Inform the scope of any potential future remedial actions to be performed at the Study Area, including interim actions.
- Prevent contamination or recontamination of sediment in Port Angeles Harbor from sources within the Study Area.

Full characterization of the site may not be possible due to limitations associated with known and potential archaeological resources, and restrictions on access to non-Port owned property.

The Port shall coordinate with Ecology throughout the performance of the RI WP – Phase I and shall keep Ecology informed of changes to the RI WP – Phase I or other project plans, and of any issues or problems as they develop.

The Scope of Work (SOW) is divided into five major tasks as follows:

Task 1. Remedial Investigation – Phase I

Deliverables: Data reports and updates; raw and validated laboratory analysis data; Agency Review Draft and Final RI - Phase I Summary Report

Task 2. Interim Actions (if required)

Deliverables: Agency Review and Final Interim Action Work Plan. Health and Safety Plan, Agency Review and Final Interim Action Report.

Task 3. SEPA Compliance

Deliverables: SEPA checklists, when required. Draft and final environmental impact statements, if necessary.

Task 4. Public Participation

Deliverables: Preparation of materials and support during public meetings if requested by Ecology

Task 5. Progress Reports

Deliverables: Quarterly Progress Reports

Task 1. Remedial Investigation – Phase I

The Port shall conduct the first phase of an RI that meets the requirements of WAC 173-340-350(7), WAC 173-340-430 and WAC 173-204-550 according to the RI WP – Phase I as approved by Ecology. The Phase I investigation will collect initial data necessary to determine the nature and extent of contamination in the Study Area exceeding preliminary Model Toxics Control Act (MTCA) cleanup levels, preliminary Sediment Management Standards (SMS) cleanup standards, and other regulatory requirements. The investigation will help define the potential to recontaminate remediated Harbor sediments, support interim action and cleanup decisions; and inform next steps in the RI.

Field sampling and analysis will be completed in general accordance with the SAP and QAPP in the RI WP – Phase I. Deviation(s) from the approved SAP and QAPP must be communicated to Ecology immediately and documented as required by Ecology.

The Port shall provide interim data reports and updates to Ecology as new Site data and information become available. Raw laboratory data and validated laboratory analysis data shall also be provided to Ecology in electronic format.

The Port shall prepare a RI – Phase I Summary Report summarizing the data collected during the Phase I investigation and proposing next steps.

The Port shall prepare three (3) copies of the Agency Review Draft RI – Phase I Summary Report and submit them, including one print and one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and comment. After incorporating Ecology’s comments on the Agency Review Draft RI – Phase I Summary Report, the Port shall prepare three (3) copies of a Final RI – Phase I Summary Report and submit them, including one print and one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for approval. Electronic survey

data for monitoring locations, electronic lab data, and GIS maps of contaminant distribution shall also be provided for both the Agency Review Draft RI – Phase I Summary Report and Final RI – Phase I Summary Report either in the report or as attachments.

Task 2. Interim Actions (if required)

Remedial actions implemented prior to completion of a Remedial Investigation/Feasibility Study (RI/FS), including those that:

- Are technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance.
- Correct a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed.
- Are needed to provide for completion of the remedial investigation/feasibility study or design of the cleanup action.
- Will be considered interim actions, will be implemented in accordance with WAC 173-340-430 and the AO, and will be designed in a manner that will not foreclose reasonable alternatives for any final cleanup action that may be required.

As detailed in the AO, if required by Ecology, or if proposed by the Port and approved by Ecology, the Port will implement an interim action. Based upon information in the Agency Review Draft RI Report, interim action(s) may be needed to expedite control of releases to sediments or other environmental media pursuant to WAC 173-340-430.

The scope of the interim actions may include, but not be limited to, typical source control or containment elements such as:

- Soil removal.
- Groundwater remediation.
- Repair, slip lining, replacement, or closure of stormwater conveyances or other structures such as conduit, vaults, catch basins, etc.
- Decommissioning of underground storage tanks and pipes.
- Removal of old drain fields or former surface impoundments.

- Proper abandonment of old wells.
- Removal of contaminated building or other structural material.
- Construction of a treatment facility.
- Shoreline stabilization such as bulkhead repair, erosion or seepage control, and grading or clearing.
- Capping

If an interim action is to be performed, the Port will prepare and submit for Ecology approval an Agency Review Draft Interim Action Work Plan (IAWP) with detail commensurate with the work to be performed. The Agency Review Draft IAWP shall include, as appropriate:

- Description of the interim action including its purpose, general requirements, and relationship to the (final) cleanup action (to the extent known).
- Summary of relevant RI/FS information, including at a minimum existing site conditions and alternative interim actions considered.
- Information regarding design and construction requirements, including a proposed schedule and personnel roles and responsibilities.
- Compliance Monitoring Plan.
- SAP/QAPP.
- Permits required.

The Port will also submit a copy of the Health and Safety Plan for the project. The Port will be responsible for complying with the State Environmental Policy Act (SEPA) Rules including preparing and submitting an environmental checklist for the interim action and, if requested, assisting Ecology with presentations at any additional meetings or hearings that might be necessary for SEPA compliance or as part of the Public Participation Plan. Any interim action implemented within the designated archeological site area (45CA523) would be required to go through the Washington State Department of Archaeology and Historic Preservation (DAHP) permit process.

The Port shall prepare two (2) copies of the Agency Review Draft Interim Action Work Plan and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review. The Port shall incorporate Ecology's comments and then prepare two (2)

copies of the Public Review Draft Interim Action Work Plan and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology. After a public notice and comment period for the Public Review Draft IAWP (and SEPA determination), Ecology will approve the IAWP (if appropriate) and the document will be considered Final. The Port shall prepare three (3) copies of the Final Interim Action Work Plan submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats. Once approved by Ecology and DAHP, if work is proposed in the archeological site area, the Port will implement the interim action according with the approved schedule.

Upon successful completion of the work, an Agency Review Draft Interim Action Report will be prepared as a separate deliverable. The Port shall prepare two (2) copies of the Agency Review Draft Interim Action Report and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and approval. After incorporating Ecology's comments on the Agency Review Draft Interim Action Report and after Ecology approval, the Port shall prepare three (3) copies of the Final Interim Action Report and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology.

Task 3. SEPA compliance

The Port shall be responsible for complying with the State Environmental Policy Act (SEPA) Rules including preparing and submitting an environmental checklist. If the result of the threshold determination is a determination of significance (DS), the Port shall be responsible for the preparation of Draft and final environmental impact statements. The Port shall assist Ecology with coordinating SEPA public involvement requirements with MTCA public involvement requirements whenever possible, such that public comment periods and meetings or hearings can be held concurrently.

Task 4. Public participation

The Port shall support Ecology in preparing materials and/or presenting the Public Review Draft RI – Phase I Summary Report, any interim action plans, the DCAP and SEPA evaluations at up to three public meetings or hearings, if required by Ecology. The Port will assist Ecology with presentations at any additional meetings or hearings that might be necessary for SEPA compliance or as part of the Public Participation Plan. The Port will assist Ecology in developing responses for public comments received, if requested by Ecology.

Task 5. Progress Reports

The Port shall submit Progress Reports in accordance with the schedule set out in the Agreed Order. Progress Reports shall be submitted electronically as an independent document to

Ecology until satisfaction of the AO in accordance with Section VII of the AO. Progress Reports shall be submitted to the Ecology project coordinator by the 15th of the month following the reporting period. If this day is a weekend or holiday, deliverables will be submitted to Ecology on the next business day. At a minimum, Progress Reports shall contain the following information regarding the preceding reporting period:

- A description of the actions which have been taken to comply with the AO
- Summaries of sampling and testing reports and other data reports received by the Port
- Summaries of deviations from approved Work Plans
- Summaries of contacts with representatives of the local community, public interest groups, press, and federal, state, or tribal governments relevant to the implementation of the AO
- Summaries of problems or anticipated problems in meeting the schedule or objectives set forth in the SOW and Work Plan
- Summaries of solutions developed and implemented or planned to address any actual or anticipated problems or delays
- Changes in key personnel
- A description of work planned for the next reporting period.

Progress reports will be submitted as separate documents or as an attachment to email.

Schedule of Deliverables

The schedule for deliverables described in the Agreed Order and the Scope of Work is presented below. If the date for submission of any item or notification required by this Schedule of Deliverables occurs on a weekend, state or federal holiday, the date for submission of that item or notification is extended to the next business day following the weekend or holiday. Where a deliverable due date is triggered by Ecology notification, comments or approval, the starting date for the period shown is the date the Port received such notification, comments, or approval by certified mail, return receipt requested, unless otherwise noted below. Where triggered by Ecology receipt of a deliverable, the starting date for the period shown is the date Ecology receives the deliverable by certified mail, return receipt requested, or the date of Ecology signature on a hand-delivery form.

Deliverables	Completion Times
RI WP – Phase I Field Work	Commence 90 calendar days following the effective date of the Agreed Order
Bank Soil and/or City Stormwater Sampling Work Plan Addendum, if necessary	Due 30 days following completion of the bank and City stormwater surveys.
Final Bank Soil and/or City Stormwater Sampling Work Plan Addendum, if necessary	15 days after receipts of Ecology’s comments on Draft Bank Soil and/or City Stormwater Sampling Work Plan Addendum.
Agency Review Draft Preliminary Data Evaluation and Interim Action Assessment	45 calendar days after completion of two quarters of groundwater monitoring data and receipt of final data validation package.
Final Preliminary Data Evaluation and Interim Action Assessment	30 calendar days after receipt of Ecology comments on the Agency Review Draft Preliminary Data Evaluation and Interim Action Assessment.
Agency Review Draft RI – Phase I Summary Report	45 calendar days following receipt of final data validation package
Final RI - Phase I Summary Report	30 calendar days following receipt of Ecology comments on the Agency Review Draft RI – Phase I Summary Report
Agency Review Interim Action Work Plan (IAWP) (if required)	If required by Ecology or if proposed by the Port and approved by Ecology, the Port will submit by a date agreed on by the parties.
Public Review Interim Action Work Plan (if required)	Within 60 days of receipt of Ecology’s comments on the Agency Review IAWP
Final IAWP (if required)	Within 30 days of receipt of Ecology’s comments following the public comment period
Implement IAWP (if required)	According to the schedule in the approved IAWP
Agency Review Draft Interim Action Report (if required)	Within 90 days of completion of IAWP
Final Interim Action Report (if required)	Within 60 days after receiving Ecology’s comments on the Agency Review Draft Interim Action Report
SEPA Compliance	As necessary for compliance with SEPA rules
Public Participation	As described above
Quarterly Progress Reports	Due quarterly on the 10 th of the month following the reporting period. Reporting periods shall be January –March, April –June, July – September and October through December. Submit first report on the 15 th of the month following end of the reporting period in which the Agreed Order becomes effective and continue reporting through Agreed Order.

Exhibit D – ARARs and other requirements

Exhibit D – ARARs and other requirements

Standard, Requirement, or Limitation ⁽¹⁾	Description
Federal Applicable or Relevant and Appropriate Requirements (ARARs)	
Clean Water Act, Section 401 (33 U.S. Code § 1341 and WAC 173-225)	Regulates any discharge into navigable waters of the U.S.
Clean Water Act, Section 402 (33 U.S. Code § 1342 and WAC 173-220)	Regulates any discharge of pollutants into navigable waters of the U.S during upland clearing, grading, or excavation activities in an area greater than 1 acre, with stormwater discharge from this area to surface waters of the state.
Endangered Species Act (16 USC 1531 et seq.; 50 CFR 17, 225, and 402) Migratory Bird Treaty Act (16 U.S. Code § 703-712)	Regulates the incidental take of migratory birds (such as Canada geese) and other endangered species by facility operations and construction activities.
Native American Graves Protection and Repatriation Act (25 USC 3001 through 3013; 43 CFR 10)	Prohibits the destruction or removal of Native American cultural items and requires written notification of inadvertent discovery to the appropriate agencies and Native American tribe.
Archaeological Resources Protection Act (16 USC 470aa et seq.; 43 CFR 7)	Sets forth requirements that are triggered when archaeological resources are discovered. These requirements only apply if archaeological items are discovered during investigation implementation.
National Historic Preservation Act (16 USC 470 et seq.; 36 CFR parts 60, 63, and 800)	Sets forth a national policy of historic preservation and provides a process that must be followed to ensure that impacts of actions on archaeological, historic, and other cultural resources are protected.
Resource Conservation and Recovery Act Title D, Solid Waste (RCRA; 40 CFR Part 268, Subtitles C and D)	Establishes requirements for the identification, handling, and disposal of hazardous and nonhazardous waste.
Solid Waste Disposal Act (42 USC Sec. 6901--6992; 40 CFR 257-258) Federal Land Disposal Requirements (40 CFR 268)	Establishes a framework for regulation of solid waste disposal and sets minimum safety requirements for landfills including limitations on storage and land disposal for hazardous substances.
Department of Transportation Hazardous Materials Regulations (49 CFR 172)	Regulates the safe and secure transportation of hazardous materials, including documentation and handling requirements for shipping.
Occupational Safety and Health Act (OSHA; 29 USC Chapter 15 and 29 CFR 1910)	Establishes requirements for employers that provide workers with a work environment free from recognized hazards including exposure to toxic chemicals, mechanical- and weather-related hazards, and environmental conditions.
National Recommended Water Quality Standards (40 CFR 131)	Defines the water quality goals of the water body by designating the use or uses for the water and by setting criteria necessary to protect the uses.
Federal, State, and Local Air Quality Protection Programs State Implementation of Ambient Air Quality Standards NWAPA Ambient and Emission Standards Regional Standards for Fugitive Dust Emissions Toxic Air Pollutants	Governs the release of airborne contaminants from point and nonpoint sources. Local air pollution control authorities such as PSCAA have also set forth regulations for implementing these air quality requirements. These requirements may be applicable to the site for the purposes of demolition or dust control. PSCAA requires notification prior to demolition of any building with asbestos-containing material. Both PSCAA (under Regulation III) and WAC 173-460 establish ambient source impact levels for arsenic.
State ARARs	
State Environmental Policy Act (RCW 43.21C and WAC 197-11)	Requires SEPA review for MTCA cleanup actions; Ecology is the lead agency for the SEPA review.
Washington’s Indian Graves and Records Law (RCW 27.44)	Prohibits the destruction or removal of Native American cultural items and requires written notification of inadvertent discovery to the appropriate agencies and Native American tribe.
Sediment Management Standards (WAC 173-204)	Establishes cleanup standards for the future quality of sediments adjacent to the Study Area.
Model Toxics Control Act (WAC 173-340)	Establishes Washington administrative processes and standards to identify, investigate, and clean up facilities where hazardous substances are located.
Water Quality Standards for Surface Waters of the State of Washington (WAC 173-201A)	Establishes water quality standards in order to protect aquatic life and human exposure from seafood consumption. Provides numeric and narrative criteria to protect existing and designated uses within the waterbody.
Water Quality Standards for Groundwaters of the State of Washington (WAC 173-200)	Implements the Water Pollution Control Act and the Water Resources Act of 1971 (90.54 RCW).
Washington State Maximum Contaminant	Establishes standards for contaminant levels in drinking water for water system

Standard, Requirement, or Limitation ⁽¹⁾	Description
Levels (WAC 246-290-310)	purveyors.
State ARARs (cont.)	
Washington Shoreline Management Act (RCW 90.58; WAC 173-14)	Establishes requirements for substantial development occurring within the waters of Washington or within 200 feet of a shoreline. Authorized under the federal Coastal Zone Management Act and implemented under the City of Port Angeles Shoreline Master Program.
Dangerous Waste Regulations (RCW 70.105; WAC 173-303)	Establishes regulations that are the state equivalent of RCRA requirements for determining whether a solid waste is a state dangerous waste and provides requirements for the management of dangerous wastes.
Washington Minimum Functional Standards for Solid Waste Handling (WAC 173-304) Washington Solid Waste Handling Standards (RCW 70.95 and WAC 173-350)	Establishes the minimum standards for handling and disposal of solid waste.
Washington Water Pollution Control Law (RCW 90.48; WAC 173-216, WAC 173-220) National Pollution Discharge Elimination System (CWA Part 402)	Washington has been delegated authority to issue NPDES permits. CWA Section 301, 302, and 303 require states to adopt water quality standards and implement a NPDES permitting process. The Washington Water Pollution Control Law and regulations address this requirement.
General Occupational Health Standards (WAC 296-62; 29 CFR 1952.4)	Approves state plans for enforcement of state occupational safety and health standards, which are equal to or more stringent than the federal standards.
Washington Industrial Safety and Health Act (WISHA; RCW 49.17)	Provides requirements for employers to provide a work environment free from recognized hazards including exposure to toxic chemicals, mechanical- and weather-related hazards, and environmental conditions.
Noise Control Act of 1974 (RCW 70.107, WAC 173-60)	Establishes maximum noise levels.
Washington State Underground Injection Control Program (WAC 173-218)	Administers a statewide Underground Injection Control program, under CWA Sections 144 through 147, to protect groundwater by regulating the discharge of fluid from injection wells including temporary injection points.
Local ARARs	
Flood Damage Prevention (PAMC 15.12)	Ensures that activities would not increase potential risk to public and private losses due to flood conditions and implements the state and federal requirements of the National Flood Insurance Program Regulations.
Noise Control (PAMC 15.16)	Sets permissible levels for construction-related noise and a process to obtain a variance for these noise levels, if needed.
Environmentally Sensitive Areas and Wetland Protection (PAMC 15.20, 15.24)	Defines environmentally sensitive areas as surface streams and flood hazards, geologic hazards, fish and wildlife habitat areas, locally unique features, and wetlands, and protects these features in accordance with requirements of the Washington State Growth Management Act.
Clallam County Critical Areas Regulations (27.12 CCC)	Establishes regulations pertaining to the development within or adjacent to critical areas, which include areas that provide a variety of biological and physical functions that benefit Clallam County and its residents, including water quality protection, fish and wildlife habitat, and food chain support.
Clearing, Grading, Filling, and Drainage Regulations (PAMC 15.28)	Regulates upland clearing, grading, or excavation within the City of Port Angeles.

Note:

1

Projects conducted under a consent decree are exempt from the procedural requirements of most state and local permits (RCW 70.105D.090); however, the remedial actions must still comply with the substantive requirements of the exempt permits. Therefore, for exempt permits, the statutory review timelines do not apply; actual timelines will be based on negotiations with the jurisdiction or agency, which should result in an expedited review timeline.

Abbreviations:

ARAR	Applicable or Relevant and Appropriate Requirement
CFR	Code of Federal Regulations
CUL	Cleanup level
CWA	Clean Water Act
Ecology	Washington State Department of Ecology
MCL	Maximum Contaminant Level
MTCA	Model Toxics Control Act
NPDES	National Pollutant Discharge Elimination System
NWAPA	Northwest Air Pollution Authority
PSCAA	Puget Sound Clean Air Agency
RCRA	Resource Conservation and Recovery Act
RCW	Revised Code of Washington
SEPA	State Environmental Policy Act
USC	U.S. Code
WAC	Washington Administrative Code

**ITEM FOR CONSIDERATION
BY THE
BOARD OF PORT COMMISSIONERS**

April 9, 2024

SUBJECT: PORT RESOLUTION TO SELL ABANDONED VESSEL

Presented by: John Nutter, Director of Finance & Administration

RCW & POLICY REQUIREMENTS :

The Port follows the Revised Code of Washington (RCW) statutes in selling vessels that have failed to pay outstanding marina charges. According to the RCW, such vessels are deemed to be abandoned and may be sold to recover outstanding charges.

RCW 53.08 requires a separate Port resolution before sales of such vessels occur.

Article VIII A. of the Commission Bylaws requires that resolutions be introduced at one meeting before they can be considered for adoption at the next meeting. This provision may be superseded by unanimous consent of Commission.

BACKGROUND:

In order to facilitate passage of boat sale resolutions, which are identical except for the names of the vessels, their owners, and the auction date, staff introduced a draft of boat sale resolutions on August 10, 1998. The Commission approved the form of these resolutions (first reading) and directed staff to fill in appropriate vessel, owner and auction date information in the final resolutions (second and final reading).

ANALYSIS:

The owner of the vessel listed in Resolution No. 24-1293 has failed to adequately respond to several notices regarding their delinquency. An auction will be held to sell the vessels. If the sale proceeds fail to reimburse the Port completely, then the account will be turned over to a collection agency.

ENVIRONMENTAL IMPACT:

None.

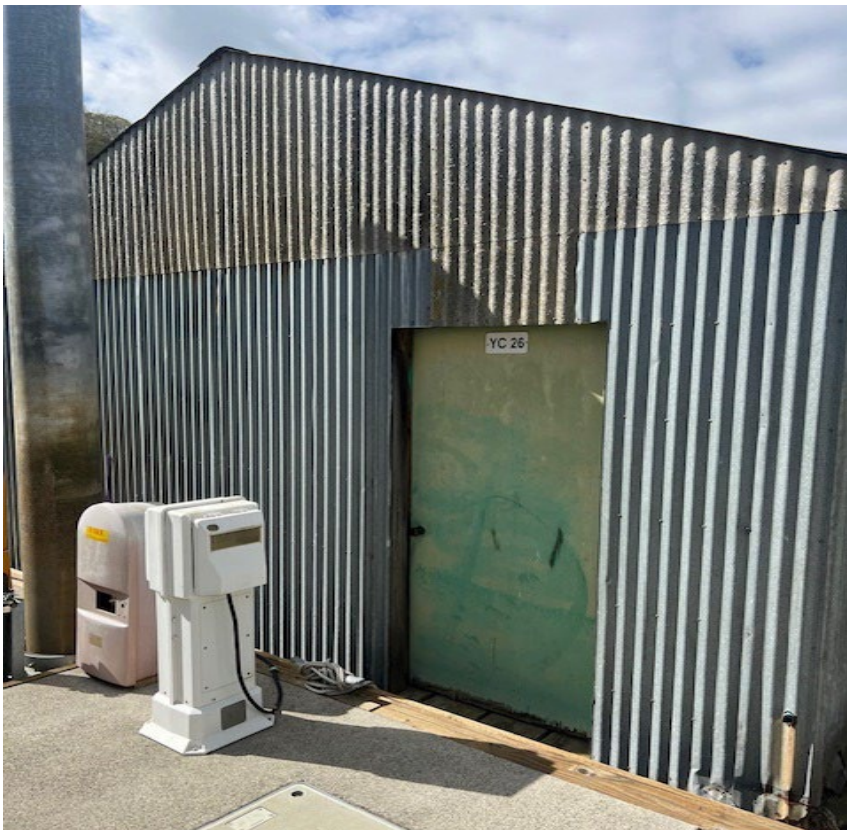
FISCAL IMPACT:

The charges accrued by the vessel have already been recognized as revenues in Port accounts. Conducting an auction enables the Port to begin the process of collecting on this receivable.

<u>Customer</u>	<u>Boat</u>	<u>Description</u>	<u>Moorage/ Storage</u>	<u>Other Charges</u>	<u>LHT</u>	<u>Current Balance</u>
Phil Wilson	VN7580KU / BH26	1964 27' Fairliner / Boathouse	4,547.72	715.79	583.92	\$5,847.43

RECOMMENDED ACTION:

Adopt Resolution No. 24-1293 and authorize the auction to proceed.



24-1293

A RESOLUTION DIRECTING SALE OF ABANDONED VESSEL.

WHEREAS, the Commission of the Port of Port Angeles has seized the vessel described below for failure to pay Port charges; and

WHEREAS, the owners of such vessel has failed to make satisfactory payment of such charges; and

WHEREAS, the Port has complied with provisions of Revised Code of Washington (RCW) 53.08 and the Port's Rules and Regulations adopted pursuant to such statute in notifying such owners of their delinquencies;

NOW THEREFORE BE IT RESOLVED that the Commission directs the following vessel be sold at public auction pursuant to procedures provided in RCW 53.08 and the Port's Rules and Regulations pursuant to such statute.

**“WN112K”
“Boathouse YC-26”**

The time and date of this auction will be scheduled in accordance with applicable statutes; public notice of these auctions will be made in conformity with RCW regulations.

ADOPTED this 9th day of April, 2024.

PORT OF PORT ANGELES
BOARD OF COMMISSIONERS

Connie L. Beauvais, President

Colleen M. McAleer, Vice President

Steven D. Burke, Secretary

**ITEM FOR CONSIDERATION
BY THE
BOARD OF PORT COMMISSIONERS**

April 9, 2024

SUBJECT: Recompete Pilot Program Letter of Commitment

STAFF LEAD: Katharine Frazier – Grants & Contracts Manager

BACKGROUND:

The Port is a member of the North Olympic Peninsula Recompete Coalition (NOPRC), which has been invited to submit an application to EDA's Recompete Pilot Program. NOPRC will apply for \$50 million to address the region's elevated Prime Age Employment Gap (PAEG) by the program deadline on April 25, 2024.

The Recompete Pilot Program requires entities involved in the application to submit Letters of Commitment. These are letters that outline an organization's commitment to certain activities, as well as the potential impacts of those activities. Commitment letters can include activities and impacts such as hiring or program management commitments and direct and induced job creation effects.

The Port will need to supply a letter of commitment relating to its barging project within the wider Recompete application.

ANALYSIS:

The Port has prepared a draft letter of commitment, but economic impact data (including direct and induced job creation) is not yet available. This data will be available later in April prior to the submission deadline. Staff are prepared to incorporate this data into the commitment letter as soon as it is available.

FISCAL IMPACT:

There will be no fiscal impact as a result of submitting a letter of commitment to the Recompete Pilot Program. Recompete requires no matching funds from applicants.

RECOMMENDED ACTION:

Staff recommends the Commission make a motion to approve the Letter of Commitment with minor changes and additions as necessary. Changes and/or additions will be based on ongoing economic analysis efforts.



Celebrating **100** years serving Clallam County

P.O. Box 1350
338 West First Street
Port Angeles, WA 98362
360.457.8527

Board of Commissioners
Connie Beauvais, President
Colleen McAleer, Vice President
Steven Burke, Secretary
Executive Director
Paul Jarkiewicz

April 25, 2024

The Honorable Alejandra Castillo
Assistant Secretary for Economic Development - U.S. Department of Commerce
1401 Constitution Avenue N.W., Suite 20230
Washington, DC 20230

Re: Port of Port Angeles's commitment to managing the North Olympic Peninsula Barging Network (NOPBN)

Dear Assistant Secretary Castillo:

The Port of Port Angeles (Port), a public port authority operating in Clallam County since 1922, is a key economic foundation underlying multiple sectors on the North Olympic Peninsula. We are pleased to partner with the North Olympic Peninsula Recompete Coalition (NOPRC) to secure a more prosperous future in our region by addressing the lack of high-quality jobs, training opportunities, and social supports that have contributed to our region's elevated Prime Age Employment Gap (PAEG).

With the Port's economic development mission, we have a long history of empowering the regional marine trades industry by providing space to major employers including Westport Yachts and Platypus Marine. The Port also underpins the forest products sector by providing wood chip, log, and finished dimensional lumber import and export services, allowing businesses to reach domestic and international customers. This major industry contributes \$5.6+ billion in wages across Washington State and supports more than 1,700 and 600 jobs in Clallam and Jefferson Counties respectively.

The Port is proud to support high-quality, family-wage jobs in not just Clallam County but across the entire region. Now, we are committed to expanding the transportation network through a new North Olympic Peninsula Barging Network, which will work to create jobs and economic opportunities in the North Olympic Peninsula's most under-resourced and isolated area, the West End of both counties.

The West End, stretching westward from the Crescent Lake area to the Pacific Ocean, is home to three Tribes (Hoh, Quileute, and Makah) as well as the City of Forks. This region has seen a dramatic economic decline in recent decades due to high transportation costs that limit business feasibility. Now, the area has the highest rates of unemployment and participation in Basic Food and Temporary Assistance for Needy Families (TANF) across the North Olympic Peninsula.

Barging and maritime transportation are lower-cost options that also reduce greenhouse gas emissions compared to the heavy-duty trucks currently traveling through our communities. Connecting the West End to markets in WA, OR, and CA via the NOPBN will address the high transportation costs and geographic isolation that have worsened the area's PAEG.

To support the success of the nascent North Olympic Peninsula Barging Network, the Port will:

WE BRING PEOPLE, RESOURCES AND INDUSTRY TOGETHER TO FOSTER LIVING WAGE JOBS

- Identify, contract with, and manage vessel leases with qualified tug and barge companies in the two-county region who will operate these three new vessels secured through the Recompete Pilot Program;
- Pursue business development opportunities along a new barge route connecting Neah Bay with the Port of Port Angeles, the Eastern Salish Sea, and Port of San Diego, including growing the sustainable forest products industry;
- Collaborate with the Makah Tribe to support new barge operations in Neah Bay, including Port staff time relating to cargo operations and grant writing to secure any additional funds or equipment needed for Tribal port expansion;
- Participate in the North Olympic Peninsula Recompete Coalition’s Resource Hubs when actively recruiting for hires as an employer providing high-wage, benefitted jobs in the maritime sector;
- Foster economic development in the West End by connecting existing and future businesses with barging options for importing and exporting materials;
- Support Peninsula College’s growing maritime workforce pathways by providing Port staff expertise to guide program development, as well as space for classes at the Port’s Airport Industrial Park.

The Port anticipates that the North Olympic Peninsula Barging Network will create 13-15 direct maritime operations jobs in the near-term (1-3 years). We also expect the NOPBN to induce 100 jobs spanning the forest products and manufacturing sectors in the long term (4 – 10 years) across the West End region and retain mill jobs in both counties as transportation costs fall, increasing sustainable harvests and stimulating business development. Each job, from on-water tug jobs to jobs in sustainable forestry, will provide a living wage accessible via short-term training opportunities expanded by NOPRC’s Recompete Plan.

These commitments represent a Peninsula-wide effort to move individuals into meaningful employment, particularly in the communities that have faced the most persistent distress. The Port is deeply dedicated to using the North Olympic Peninsula Barging Network as an economic development engine that will connect our isolated communities with opportunities for growth, climate benefits, and sustainable prosperity.

Sincerely,

Connie Beauvais
Commissioner
Port of Port Angeles

Steven Burke
Commissioner
Port of Port Angeles

Colleen McAleer
Commissioner
Port of Port Angeles

Future Agenda Items –Commission Meeting

4/9/2024

April 22, 2024 (Special Joint Commission Meeting)

- Joint Grants for Emergency Management Services

April 23, 2024 (Regular Commission Meeting)

- 1st Quarter Financial Report
- 1st Quarter Cash & Investment Report
- 1st Quarter Operations Report
- March Financial Report

May 14, 2024 (Regular Commission Meeting)

- Monthly DofA
- Brief – Legislative Wrap-Up

May 28, 2024 (Regular Commission Meeting)

- April Financial Report

June 11, 2024 (Regular Commission Meeting)

- Monthly DofA
- Month to Month Lease Update

June 25, 2024 (Regular Commission Meeting)

- May Financial Report

Upcoming Events/Announcements

- April 24-26: Olympic Logging Conference (Victoria, BC)
- May 15-17: WPPA Spring Meeting
- June 8-9: Maritime Festival
- June 26-28 WPPA Finance & Admin Seminar (Vancouver)
- July 16-17 WPPA Staff Retreat (Port Angeles)

Future

- Boatyard and Marina Rules & Regulations
- Port Emergency Response Plans and Activities
- Employee Handbook Update and Resolutions