

PORT of OLYMPIA
Serving All of Thurston County
Commission Work Session
Tuesday, Feb. 20, 2024
3:30 PM

Percival Plaza - Olympics Room
626 Columbia Street NW
Olympia, WA 98501

The meeting agenda is available on the Port's website as of Feb. 13, 2024.
<https://www.portolympia.com/commission>

The public may join the meeting from their computer, tablet or smartphone at:

<https://us02web.zoom.us/j/82228577847>

or Telephone: 1 253 215 8782

Webinar ID: 822 2857 7847

AGENDA

- A. Call to Order
- B. Approval of Agenda
- C. Advisory Calendar
 - 1. Small Cities Program and Resolution Update: Tad Kopf, Director of Finance
Public Comment on Advisory Item
 - 2. Aviation Fuel Tax Interlocal Agreement: Warren Hendrickson, Director of Operations
Public Comment on Advisory Item
 - 3. Weyerhaeuser Lease Amendment #9: Warren Hendrickson, Director of Operations
Public Comment on Advisory Item
- D. Adjourn

Port of Olympia Mission

Creating economic opportunities and building community for all of Thurston County through responsible resource use.

COVER MEMO

Briefing Date/Time: February 20, 2024

Staff Contact/Title: Tad Kopf, Director of Finance, 360.528.8043
tadk@portolympia.com

Subject: Small Cities Program Review with Future Resolution Change Recommendation

Purpose: Information Only Decision Needed

Background/Overview:

Review current Small Cities Program and examine potential expansion of program

Documents Attached:

Power Point Presentation, Draft Resolution 2024-XX

Summary & Financial Impact:

Expand Program from \$30K in 2023 to \$40K in 2024. Increase already budgeted.

Affected Parties:

Potential new unincorporated area(s) of Thruston County

Options with Pros & Cons:

Pro: additional community economic / program assistance. Con: small increase to budgeted costs from prior year.

Environmental Considerations:

None known.

Staff Recommendation:

Positive, existing Program has proven beneficial in past years.

Commission Recommendation: Pending

Next Steps/Timeframe: Pending presentation outcome and discussion.



PORT of OLYMPIA
Serving All of Thurston County

Small Cities Program Review

Tad Kopf
Director of Finance
Feb. 20, 2024

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Today's Presentation

Advisory Only

- Brief review of Small Cities Program
- Sample Resolution to expand Program



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Agenda

- Small Cities Schedule
- Process Examples
- Recent Distributions
- 2024 Budget
- Sample Resolution expanding program

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Program Schedule

Yearly

- End of February, application letters mailed out
- First week of April, deadline for applications
- Mid April, Commission Work Session review
- End of April, awards made
- Year end, deadline for cost submissions

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Application Example



City of Tenino

149 Hodgden St. 5
PO Box 4019
Tenino, WA 98589

[360] 264-2368
Fax [360] 264-5772
mayor@ci.tenino.wa.us

April 8, 2021

Ms. Sam Gibboney
Mr. Joe Downing
Mr. Bill McGregor
Ms. E.J. Zita
Port of Olympia
606 Columbia St. NW, Suite 300
Olympia, WA 98501

Dear Ms. Gibboney and Commissioners Downing, McGregor and Zita

Please accept our application for the Small City Economic Development Program.

We are applying to pave our City Parking lot that is located in the heart of our downtown and Creative District. The Tenino Creative District encompasses our downtown business area and includes the Tenino City Park, the Quarry House, the Quarry Pool, the Tenino Depot Museum, Tenino City Hall, and Tenino High School. The Creative District is home to the Master Stone Carvers and the Sandstone Historic Walking Tour. The District is also made up of small businesses such as restaurants, the winery & brewery, a chocolatier, pharmacy & gift shop, the grocery store, salons, photographers, metal and glass artists, boutiques and antique stores. Wooden hand carved way-finding signs lead the way around the Creative District. Our annual Festivals and Events including the Tenino Farmers Market take place within the Creative District. The District is the kickoff point to more than 20 miles of bike and nature trails.

The parking lot is a mixture of dirt, potholes and deteriorating asphalt. The existing parking arrangements are haphazard and inherently inefficient in the use of the space. We believe that fixing the parking lot will lead to additional residents and visitors staying and shopping in downtown Tenino and helping to retain existing businesses and jobs and the creation of new ones. Our City Council approved applying for the program at its February 23rd Council Meeting. We appreciate your program and the support you have given to us over the years.

Sincerely,

SMALL CITY ECONOMIC DEVELOPMENT PROGRAM PROJECT APPLICATION

1. Applicant Information

City:	Tenino
Address:	P.O. Box 4019, Tenino, WA 98589
Phone:	(360) 246-2368 Contact: Mayor Wayne Founier
Date:	04/08/2021 Amount Requested: \$ 10,000.00

2. Project Information

Title: Tenino City Parking Lot- Tenino Creative District Pilot Project

Description:
The city will pave the city owned parking lot that has not had any maintenance for many years. It is part dirt and the rest of it has many potholes and uneven surfaces.

Use of Funds: (e.g. professional services, site readiness, feasibility)
The funds will be for site readiness and paving.

3. Benefits / Needs of Project

1) Is project related to job expansion/retention, recruitment or feasibility? 2) Describe job creation: direct or potential impacts? 3) Is it consistent with local or area plans? 4) Is status "ready-to-go," "last-dollars-in," or will help secure other sources, 5) will it help meet developer/business need timeline?

The City has identified the downtown core and the new Certified Creative District as a top economic development priority to attract residents and visitors to downtown. Parking has been identified as a key issue in attracting and keeping residents and visitors in downtown. The funding will match other grants to have the project completed by 6/31/2021

4. Budget

Total cost:	\$ 75,000.00	Dollars committed from own/other sources (attach evidence):	\$ 36,000.00
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5. Schedule

Attach a timeline for the project.

6. Small City Economic Development Program Agreement

Project Application approval is contingent on execution of the Small City Economic Development Program Agreement.

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Recent Project Distributions

Participants by Year

Participants	2021	2022	2023
Yelm	\$ 10,000	\$ 10,000	\$ 10,000
Bucoda	\$ 9,415	\$ -	*-
Rainier	\$ 10,000	\$ 3,455	\$ 8,264
Tenino	\$ 10,000	\$ 6,000	\$ 9,251

* Presently working with Bucoda to reimburse for 2023

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Tax Levy	\$ 7,858	
Total Tax Levy Revenues	\$ 7,858	
Uses of Taxes:		
Principle & Interest Expense, Debt	(4,616)	
Environmental Expense:		
Cascade Pole	(729)	
Environmental Administration	(1,003)	
Budd Inlet Remediation (Port Share Only)	(500)	
Community Events	(63)	
Public Amenities	(65)	
Harbor Patrol	(33)	
Small Cities	(50)	
Special Projects	(50)	
Commission Expense	(1,010)	
Total Use of Taxes	\$ (8,119)	
Net Levy Funds	\$ (261)	
Funds Required From Operations	\$ 261	

Tax Levy Uses

(in 000's)

- 2024 adopted budget Tax Levy Uses slide
- Increase from \$40K in 2023 budget to \$50K in 2024

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Proposed Resolution Language Changes

- Extend the program to include 'unincorporated communities'
- Include language to ensure that new communities 'have sufficient government structure to accept and administer an award' from the program
- Added application question requesting the legal authority or statute under which the applicant is qualified to accept and administer Port awarded funds

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Suggested Motion

"...Move to approve Resolution No. 2024-XX Amending the Port's Small City Economic Development Program to add language extending the Program to include unincorporated communities that have sufficient governance structure, or are otherwise qualified, to accept and administer an award from the Small Cities and Communities Program."

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Questions and Comments



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COVER MEMO

Briefing Date/Time:	February 20, 2024
Staff Contact/Title:	Warren Hendrickson, Director of Operations 360.528.8050, warrenh@portolympia.com
Subject:	Aviation Fuel Tax Interlocal Agreement (ILA)
Purpose:	<input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Decision Needed

Overview:

This is an Advisory agenda item before the Commission. No action is required.

At the February 26, 2024 Commission meeting, Commission approval of this action is planned via the Consent agenda and will authorize the Interim Executive Director to execute the subject interlocal agreement with, and issue funding to, the Chelan Douglas Regional Port Authority.

Background:

- Since 2014, the State of Washington has not complied with certain Federal Aviation Administration regulations that require that "State taxes on aviation fuel ... are subject to use for a State aviation program or for airport-related purposes."
- The state has been diverting aviation fuel taxes, most significant among them Hazardous Substance Tax (HST) and Petroleum Products Tax (PPT), for non-aeronautical purposes. Regrettably, there is no clear path forward to the state becoming compliant, and FAA enforcement has been lacking. The estimated lost revenue to the state's airports exceeds \$56 million annually.

Compliance action plan:

- The Chelan Douglas Regional Port Authority (owner of four municipal airports) has agreed to coordinate a joint effort – in conjunction with multiple statewide airports – to bring the state into compliance.
- This effort will require participating airport sponsors to develop a legal action plan, draft a formal legal complaint against the state, and then initiate preliminary discussions with the state Department of Revenue and the Attorney General's Office to seek a financial settlement and future compliance.

Legal fund contribution request:

- Exhibit A to the attached interlocal agreement lists airports currently supporting the compliance action plan and their recommended minimum contribution levels. The minimum contribution for the Port of Olympia is \$1,000.00.
- To date, of airports in the Port of Olympia category, the Port of Moses Lake has contributed \$5,000.00 and the Port of Skagit has contributed \$3,000.00.

Documents Attached:

- ILA Fuel Tax Diversion with Exhibit A
- Diversion of Aviation Fuel Taxes Letter - Mr. Warren Hendrickson
- CSD Legal Services Letter
- PowerPoint Presentation

Summary & Financial Impact:

- \$3,000.00 one-time contribution
- Professional Services M&O Budget Category

Affected Parties:

- Port of Olympia
- Chelan Douglas Regional Airport Authority
- Federal Aviation Administration
- Washington Department of Revenue
- WSDOT Aviation
- Statewide airports

Staff Recommendation:

Port staff recommends that the Port of Olympia Commission:

- Authorize the Interim Executive Director to execute the Chelan Douglas Regional Port Authority ILA.
- Authorize a legal fee contribution of \$3,000.00 in lieu of the minimum \$1,000.00 requested.

**2024 INTERLOCAL AGREEMENT FOR
LEGAL SERVICES CONCERNING THE DIVERSION OF AVIATION FUEL TAX**

This Interlocal Agreement (the “Agreement”) is made and entered between the following municipal and county governments and airport sponsors, as evidenced by its signature below. Each shall be referred to herein as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the Interlocal Cooperation Act, RCW 39.34, authorizes public agencies to execute agreements on the basis of mutual advantage to provide services and facilities in the manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities; and

WHEREAS, the Parties to this Agreement are public agencies as defined by Chapter 39.34 RCW which seek to work cooperatively on the project described below on the basis of mutual advantage and efficiencies for the benefit of their respective jurisdictions; and

WHEREAS, under current Federal law and regulations, diversion of certain airport revenues from aviation fuel sales for non-aeronautical purposes is prohibited. The relevant FAA grant assurance provides, in pertinent part, that “[a]ll revenues generated by the airport and any local taxes on aviation fuel...will be expended by it for the capital or operating costs of the airport; the local airport system; or other facilities which are owned or operated by the owner or operator of the airport, and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport;” and

WHEREAS, grant assurances apply to airport sponsors, which are the owners or operator of the airports. Violation of assurances may result in an FAA administrative action or FAA initiated federal civil lawsuit against the airport sponsor; and

WHEREAS, Washington state has authorized cities and counties to collect and use tax on aviation fuel sales at FAA-grant assurance airports. Moreover, the Department of Revenue (“DOR”) collects a hazardous substance tax (“HST”) and petroleum products tax (“PPT”) on the sale of aviation fuel at FAA-grant assurance airports; and

WHEREAS, Washington state possesses no data on the actual amount of local sales/use tax, HST, and PPT collected specifically on aviation fuel. The state concedes that obtaining this data would be “expensive and administratively burdensome,” and the revenue is estimated to be in the tens of millions of dollars; and

WHEREAS, past efforts at bringing the state into compliance have been unsuccessful and effective regulatory remedies are lacking. Meanwhile, the relevant statute of limitations to recover diverted funds precludes the recovery of millions of dollars each year; and

WHEREAS, the Parties are joining together to explore legal and all other avenues available to bring the state into compliance; and

WHEREAS, the Chelan Douglas Regional Port Authority (“CDRPA”) has offered to serve as the lead agency by entering into a contract for legal services to evaluate and consider a range of options to prevent the diversion of aviation fuel tax for non-aeronautical purposes; and

WHEREAS, the estimated cost of the pre-litigation legal inquiry is \$125,000.00; and

WHEREAS, the Parties have determined that it would be in the public’s and each Party’s best interest to enter into an agreement for the sharing of costs for this effort so that the diverted funds may be used as contemplated by the FAA grant assurances; and

WHEREAS, the Parties and their counsel recognize that the Parties have common legal interests in evaluating and litigating issues raised in this matter;

NOW THEREFORE, the Parties, for and in consideration of the mutual covenants herein contained, hereby agree as follows:

AGREEMENT

1. **Purpose and Objectives.** It is the purpose of this Agreement to have the Parties collectively pay for the legal services (“Legal Services”) to represent the Parties’ interests in pre-litigation challenges to Washington state’s diversion of aviation fuel tax.
2. **Effective Date, Term, and Termination.**
 - a. The “Effective Date” of this Agreement shall be the day upon which the signing Party has executed this Agreement.
 - b. The “Term” of this Agreement shall begin on the Effective Date and end upon completion of the legal services contemplated herein, unless extended by written agreement of the Parties.
 - c. So long as the cost of Legal Services is covered by the Parties, this Agreement may be terminated prior to the end of the Term only upon agreement of all Parties and subject to Paragraph 4, below. In such an event, the Parties will agree on a reasonable termination date.
3. **Administration.**
 - a. The CDRPA shall contract with Legal Services to perform the following tasks:
 - i. To develop a legal framework memorandum that will evaluate and consider various legal theories and provide a solid foundation upon which future legal action may rely.
 - ii. Meet with appropriate parties, including Airport Sponsors and the FAA, and consider procedural issues for executing the Parties’ strategy.

- iii. If the Parties elect to litigate, prepare the necessary pleadings, and select the appropriate venue for legal action.
 - iv. Engage in preliminary settlement negotiations with the DOR and the Attorney General's Office, if appropriate.
 - v. If preliminary settlement negotiations are unsuccessful, file suit and pursue the matter through final judgment, settlement, or compliance.
- b. The CDRPA will provide periodic reports to the Parties on the status of the Legal Services and solicit input on strategies and other matters related to the Legal Services.

4. Cost and Payment.

- a. The CDRPA will engage Legal Services to perform pre-litigation tasks, as outlined in Paragraph 3(a)(i) through (iv), above, which will cost an estimated \$125,000.00. The CDRPA proposes to share in the total cost as set forth in Exhibit A (Aviation Fuel Tax—Funding Support). The Parties shall not be obligated to provide the proposed amount in Exhibit A.
- b. It is anticipated that private organizations and/or associations may provide additional funding support for Legal Services contemplated herein but in no event will such entity be considered a Party for purposes of this Agreement.
- c. The CDRPA shall be responsible for making payments to Legal Services upon the contract terms from the funds received pursuant to Paragraph 4(a).
- d. All money received by the CDRPA shall be kept in a separate, non interest-bearing account until such time payments to Legal Services are due. At all times, the CDRPA shall provide the Parties periodic updates on the work product from Legal Services as well as an accounting of revenue received, and expenses paid.
- e. Should the pre-litigation costs be less than the estimate, or should the Parties resolve this dispute with surplus funds, the Parties may be refunded their pro-rata share.
- f. Should costs for Legal Services exceed the estimate, the Parties may be asked—but will not be obligated—to contribute additional sums.

5. Maintenance and Audit of Records.

- a. Each Party shall maintain books, records, documents, and other materials relevant to its performance under this Agreement.

- b. These records shall be subject to inspection, review and audit by any party, the Washington State Auditor's Office, or any other entity as required by law. Nothing in this Agreement shall be construed to require a Party to disclose any privileged or work-product documents or information to the other Parties, which a Party, in its sole discretion, shall determine not to disclose.
- c. Each Party shall retain all such books, records, documents, and other materials for the longest applicable retention period under federal and Washington state law.

6. Legal Relations.

- a. The Parties are separate and independent governmental entities in all respects. Nothing in this Agreement shall be construed as creating any other relationship.
- b. Each Party agrees to defend, indemnify, and hold harmless the other Parties and its agents from and against claims, damages, losses, and expenses, including, but not limited to, attorney's fees and costs and expenses, arising out of or from its performance of this Agreement, except for injuries and damages caused by the actions of the entity being indemnified.
- c. Nothing in this Agreement shall be construed to permit anyone other than the Parties and their successors to rely upon the covenants and agreements contained in this Agreement, nor to give any such third party a cause of action, as a third-party beneficiary or otherwise, on account of any nonperformance of the provisions of this Agreement.
- d. No Party will have the power or authority to bind the others or incur any obligations on the others' behalf without each party's prior written consent.
- e. Any sharing of documents, things, and other information between or among that Parties and counsel for the Parties is intended to be in furtherance of the common legal interests described herein, and with the intention, expectation and understanding that they will be kept confidential and privileged, as applicable, under the terms of this Agreement.

7. Miscellaneous Provisions.

- a. Any notice, demand, or communication required or permitted under this Agreement shall be addressed to the respective Representative and deemed to have been duly given (i) on the date of delivery if delivered by courier, (ii) three business days after posting a postage pre-paid first class letter addressed to the mailing address of the Party, or (iii) upon confirmation by the intended recipient of the receipt of email addressed to the Party to whom directed at the relevant Party's email address specified below its signature.
- b. Pursuant to RCW 39.34.030 it is acknowledged that:

- i. This Agreement shall not be construed to create any entity.
 - ii. The CDRPA shall be the Administrator of this Agreement.
 - iii. No property--real, personal, or intangible--shall be acquired by the Parties collectively or individually pursuant to this Agreement.
- c. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. Any action to enforce the terms and conditions of this Agreement shall be brought either in Chelan County, Washington or in the county wherein the Party that is the subject of the enforcement action is located.
- d. This Agreement may not be amended except by the unanimous written agreement of all the Parties.
- e. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.
- f. The headings in this Agreement are inserted for convenience only and shall not affect the interpretations of this Agreement.
- g. The failure of any Party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.
- h. If any provision of this Agreement or the application thereof to any person, entity or circumstance shall be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.
- i. All covenants, promises and performances which are not fully performed as of the date of termination shall survive termination as binding obligations.
- j. Each of the provisions of this Agreement has been reviewed, negotiated, and represents the combined work product of all parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.
- k. This Agreement is not assignable absent written approval by all Parties, which approval shall be granted, withheld, or conditioned in the discretion of each party. Each of the covenants, terms, provisions, and agreements herein contained shall be binding upon and

inure to the benefit of the Parties hereto and, to the extent permitted by this Agreement, their respective legal representatives, successors, and assigns.

- l. This Agreement is not for the benefit of any individual or entity other than the Parties and shall not be enforceable thereby under any circumstances whatsoever.

- m. This Agreement may be executed by the Parties hereto in counterparts and once so signed by all Parties and posted to each Party's web site in accordance with RCW 39.34, shall have full force and effect. PDF copies of relevant signature pages or electronic signatures shall be treated as originals. Each of the undersigned warrant that they have authority to execute this Agreement.

- n. The entire Agreement (including the recitals and the amendments) between the Parties hereto is contained in this Agreement, and this Agreement supersedes all of their previous understandings and agreements, written and oral, with respect to this transaction. This Agreement may be amended only by written instrument executed by the parties subsequent to the date hereof.

CHELAN DOUGLAS REGIONAL PORT AUTHORITY

By: _____
Its: _____
Email: _____

Entity: _____
By: _____
Its: _____
Email: _____

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Its: _____
Email: _____

Entity _____
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Aviation Fuel Tax - Funding Support - \$110,000 goal

<u>Hub Airports</u>	<u>Contribution</u>
SEA	\$25,000
GEG	\$10,000

<u>Non-Hub</u>	
BLI	\$7,500
PAE	\$7,500
PSC	\$7,500
PUW	\$6,000
EAT	\$5,500
YKM	\$5,500
ALW	\$5,500
BFI	\$2,500
FHR (Friday Harbor)	\$2,500

<u>GA - Airports w/100LL & Jet-A</u>	
Anacortes	\$1,000
Arlington	\$1,000
Auburn	\$1,000
Bremerton	\$1,000
Chehalis	\$1,000
Chelan	\$1,000
Dallesport	\$1,000
Deer Park	\$1,000
Ellensburg	\$1,000
Hoquiam	\$1,000
Kelso	\$1,000
Kenmore	\$1,000
Moses Lake	\$1,000
Olympia	\$1,000
Omak	\$1,000
Port Angeles (Wm. Fairchild)	\$1,000
Renton	\$1,000
Richland	\$1,000
Shelton	\$1,000
Skagit	\$1,000
Snohomish (Harvey Field)	\$1,000
Spokane (Felts Field)	\$1,000
Tacoma Narrows	\$1,000
Thun Field	\$1,000

Vancouver (Pearson Field)	\$1,000
Wilbur	\$1,000
Winthrop	\$1,000

Associations

WA State Aviation Alliance - includes AOPA, WPPA, WAMA, WPA, NBAA and others

<u>\$8,000</u>
\$120,000

CHELAN DOUGLAS
Regional Port
AUTHORITY

One Campbell Parkway, Suite A | East Wenatchee, WA 98802 | Phone: 509.884.4700 | Fax: 509.662.5151 | www.cdrpa.org

December 1, 2023

Warren Hendrickson, Airport Director
warrenh@portolympia.com

RE: State of Washington – Diversion of Aviation Fuel Taxes
Violation of Federal Aviation Administration Grant Assurance 25

Dear Mr. Hendrickson,

Federal law requires, with limited exceptions, that “State taxes on aviation fuel (imposed by either an airport sponsor or a non-sponsor) are subject to use for a State aviation program or for airport related purposes.” The State of Washington is not in compliance with Federal Aviation Administration 14 CFR Chapter 1. There is no clear path forward to becoming compliant. FAA enforcement is lacking.

Our collective past efforts hoping for compliance have not been successful. The continued diversion and use of millions of dollars of aviation fuel taxes for non-aeronautical purposes in the State of Washington remains unchecked. It is time for a new direction.

Airports in the State of Washington need to demand compliance. The Chelan Douglas Regional Port Authority (owner of four municipal airports) has agreed to help coordinate this effort.

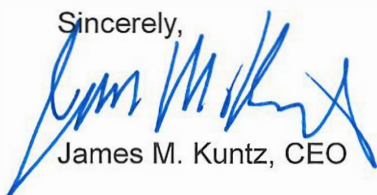
The new direction is largely legal, broken into four (4) phases:

- Task I: Develop a Legal Framework Memo
- Task II: Working with Airport Sponsors to Develop a Legal Action Plan
- Task III: Draft a Complaint
- Task IV: Preliminary Discussions with Department of Revenue and the Attorney General's Office seeking a settlement and compliance

I am hoping your airport is willing to participate. Please find attached the following documents:

- Information Sheet
- CSD Letter on Legal Plan
- Suggested Contribution from each Airport

Sincerely,



James M. Kuntz, CEO

BOARD OF DIRECTORS

Donn Etherington, Commissioner, Chelan County Dist. 1 | Jim Huffman, Commissioner, Douglas County Dist. 1 | JC Baldwin, Commissioner, Chelan County Dist. 2
W. Alan Loeb sack, Commissioner, Douglas County Dist. 2 | Richard DeRock, Commissioner, Chelan County Dist. 3 | Mark Spurgeon, Commissioner, Douglas County Dist. 3

October 19, 2023

VIA ELECTRONIC MAIL

jim@cdrpa.org

Jim Kuntz
Chelan Douglas Regional Port Authority
One Campbell Parkway, Suite A
East Wenatchee, WA 98802-9290

RE: State of Washington - Diversion of Tax on Aircraft Fuel Violation of Federal Aviation Administrations' Grant Assurance 25

SUBJECT TO ATTORNEY-CLIENT PRIVILEGE

Dear Jim,

In the capacity as general counsel for the Washington Public Ports Association, I have been tasked with outlining the steps necessary to undertake legal action to compel the State of Washington Department of Revenue (the "DOR") to comply with the federal legal structure that generally precludes diversion of Federal Aviation Administration ("FAA") grant funded airports from diverting airport revenue for non-airport uses.

This letter provides a cursory overview of the applicable federal and state laws followed by a task-based proposed course of action with a task assigned a preliminary budget. This letter will then form the basis of further discussion of a legal remedy to the DOR's inaction.

Please note that I am not presuming nor precluding the retention of our law firm to perform any of these tasks.

Federal Law and Regulation Brief Overview. In broad overview I note that 42 USC §47107(b)(1) allows the United States secretary of transportation to (with limited exceptions inapplicable here) require:

. . .written assurances, satisfactory to the Secretary, that local taxes on aviation fuel (except taxes in effect on December 30, 1987) and the revenues generated by a public airport will be expended for the capital or operating costs of (A) the airport; (B) the local airport system; or (C) other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property.

42 USC §47107(b)(1) provides the legal basis through the adoption of executive orders and federal regulations FAA Grant Assurance 25. It provides in pertinent part:

25. Airport Revenues.

a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport, and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport.

The grant assurances apply to airport sponsors which are the owners or operators of the airports. Violation of the assurances may result in an FAA administrative action and/or FAA initiated federal civil lawsuit against the airport sponsor.¹ A critical task is to understand the link between the obligations owed to the FAA by airport sponsors and an action against DOR.

Important to the discussion, there appears to be a six (6) year statute of limitations for actions to recover diverted funds.² Therefore, one may conclude that every year an implementation delay by the DOR results in millions of dollars of unrecoverable diverted funds. This may explain the reticence of the DOR to implement, in whole or in part, the necessary steps.

State Law and Inaction Brief Overview. First, it is important to note that cities and counties are creations of and subservient to the state. As such, cities and counties collect state-authorized sales and use tax on aviation fuel sales at FAA grant assurance airports. Moreover, the DOR collects a hazardous substance tax ("HST") and a petroleum products tax ("PPT") on the sale of aviation fuel at FAA grant assurance airports.

The 2015 "Washington Action Plan - FAA Policy Concerning Airport Revenue" was precise in its description of the Washington tax structure but vague as to the corrective action. The 2020 Washington State Supplemental Operating Budget at §135, subpart 8 required an update of the 2015 plan.

(8) Within amounts appropriated in this section, the department [the DOR] shall update the document titled "Washington Action Plan - FAA Policy Concerning Airport Revenue" to reflect changes to Washington tax code regarding hazardous substances. The department, in consultation with the aviation division of the Washington state department of transportation, shall develop and recommend a methodology to segregate and track actual amounts collected from the hazardous substance tax under chapter 82.21 RCW and the petroleum products tax under chapter 82.23A RCW as imposed on aviation fuel. The department must submit a report, including the recommended methodology, to the fiscal committees of the legislature by January 11, 2021.

¹ 42 USC §47107(k).

² 42 USC §47107(k)(5).

In December 2020, the DOR did submit an update which again was short on action steps to resolve the issue. Here again, the FAA regulatory statute of limitations may play a role in DOR's inaction.

Action plan

Washington possesses no data on the actual amount of local sales/use tax, HST, and PPT collected specifically on aircraft fuel. Obtaining this information would be expensive and administratively burdensome. Therefore, Washington plans to estimate the amount of local sales/use tax collected on aircraft fuel by each local jurisdiction subject to the FAA Policy's restrictions and the amount of HST and PPT collected on aircraft fuel by the state. The state will use this data to determine whether amounts the state spends on aviation programs at least equal the amount of HST and PPT revenues collected on aircraft fuel, which are dedicated by Washington law to non-aviation purposes.

The state will inform local jurisdictions of the FAA Policy's revenue use requirements, and advise those jurisdictions to offset their use of tax revenue on aircraft fuel put towards non-aviation purposes with an equal amount of spending on aviation. The state will provide information about what types of aviation spending qualify for the offset amount and will respond to complaints from airports. The state will also track state spending on state aviation programs to ensure it is sufficient to offset the HST and PPT collections on aircraft fuel.

I did hear in our meeting last month that the FAA had preliminarily approved a DOR plan to track diverted tax revenue and compare it against the budget of the aviation division of the Washington Department of Transportation (an allowable use of airport-generated funds). Those on the call calculated that such a comparison would show a surplus of approximately millions of dollars a year.³

Legal Tasks to Compel Compliance by the State of Washington. I have divided the legal effort into a series of tasks with a very rough order of magnitude cost estimate attached to each.⁴ These tasks need to be accomplished sequentially.

Task 1. Develop a Legal Framework Memorandum – Thirty Thousand Dollars (\$30,000)

Task 1 is to develop a comprehensive memorandum that establishes the unbroken chain from federal law, through executive order or federal code, through FAA policy, through state law and finally through Washington administrative code, that would provide airport sponsors and enforceable right against the DOR – in short, “standing”. The term standing is a condition that a party seeking a legal remedy must show they have, by demonstrating to the court, sufficient connection to and harm from the law or action challenged, to support that party's participation in the case. Standing must be determined by reference to federal and state laws and regulations and applicable federal and state case law.

³ One (1) proposal discussed was to provide these excess funds to the aviation division for use as grants to airport sponsors for their matching share of FAA grants.

⁴ Each task assumes an hourly billing rate of Three Hundred Thirty Dollars (\$330) per hour. Firms with different billing rates can then be compared against the estimate.

Without standing, no airport sponsor can survive a challenge to the court's jurisdiction. The legal framework memorandum confirming standing will necessarily lay out the case for the court action and be useful in future tasks.

Task 2. Working with Airport Sponsors to Develop a Legal Action Plan – Ten Thousand Dollars (\$10,000)

Once standing has been confirmed and informed by the legal framework memorandum, the appropriate committee of airport sponsors, together with the lawyers that developed the legal framework memorandum, would consider a range of options and court venues for litigation. Preliminary it is thought that federal court in either the Eastern District or Western District of Washington would be preferred venues for litigation against the State of Washington. This task would also involve locating appropriate airport sponsors to act as plaintiffs in the litigation. I note that standing may be created by the initiation by the FAA of an enforcement action against airport sponsors. This task includes a coordinating meeting with the FAA.

If standing was not established then other alternatives, including a complaint under Part 13 or Part 16 of the FAA regulations, legislative pressure, and/or withholding remittance of taxes could be considered.

Task 3. Draft a Complaint – Twenty Thousand Dollars (\$20,000)

If litigation was selected as a preferred course of action, then a complaint would be drafted seeking appropriate relief. Here standing would have to be carefully plead. I believe that this complaint would need to be very detailed. The legal framework memorandum would be useful for this task.

Task 4. Preliminary Discussions with DOR and the Attorney General's Office – Fifteen to Fifty Thousand Dollars (\$15,000 - \$50,000)

Once a complaint is drafted and approved, I recommend that a delegation of airport sponsors and the attorney seek a preliminary meeting with the DOR and its lawyers. The legal framework memorandum may be provided. The "draft" complaint will be provided. A range is presented here because the discussions may be productive, leading to a settlement.

Task 5. Litigation – Two Hundred Fifty Thousand Dollars (\$250,000)

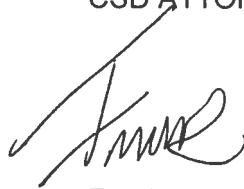
This task involves filing the lawsuit in the selected venue and taking the matter through trial. A lawyer with the appropriate trial experience and knowledge of law should be selected. Here again, the legal framework memorandum would provide a valuable starting point.

In summary, this effort from start to finish will be expensive. I did design this sequentially so that each

step would present an opportunity for compromise with the DOR. I am available to discuss this as needed.

Sincerely,

CSD ATTORNEYS AT LAW P.S.

A handwritten signature in black ink, appearing to read "Frank J. Chmelik". The signature is written in a cursive style with a large, sweeping initial "F".

Frank J. Chmelik

FJC/lrf
cc: Eric ffitc
effitch@washingtonports.org
Chris Herman
cherman@washingtonports.org

Washington State Diversion of Aviation Fuel Taxes

	<u>Projected Annual Revenue</u>
<input checked="" type="checkbox"/> <u>1. Aircraft Fuel Excise Tax (RCW 82.42.020)</u> <ul style="list-style-type: none"> ▶ Fuel tax levied on each gallon of aircraft fuel sold. ▶ Tax established in 1967. ▶ On December 30, 1987 tax rate was \$0.05 per gallon. ▶ Current tax rate is \$0.18 per gallon. ▶ Full \$0.18 per gallon tax deposited in State aeronautics account. 	\$ 9,178,650
<input checked="" type="checkbox"/> <u>2. State Retail Sales / Use Tax (Chapter 82.08 and 82.12 RCW)</u> <ul style="list-style-type: none"> ▶ Retail sales/use tax rate has remained at 6.5 percent since 1983. ▶ Imposed before 1987. Not subject to FAA revenue use requirements. ▶ Funds deposited in State General Fund. 	
<input checked="" type="checkbox"/> <u>3. Hazardous Substance Tax (Chapter 82.21 RCW)</u> <ul style="list-style-type: none"> ▶ HST was first imposed in 1989. Subject to FAA revenue use requirements. ▶ Revenue being diverted into toxic control accounts. ▶ July 1, 2023 the tax is \$1.40 per barrel. Per barrel rate adjusts for inflation, effective July 1 of each year. ▶ Department of Revenue 2023 3rd Quarter \$14,108,961 x 4. 	\$ 56,435,844
<input checked="" type="checkbox"/> <u>4. Petroleum Products Tax (Chapter 82.23A RCW)</u> <ul style="list-style-type: none"> ▶ PPT was first imposed in 1989. Subject to FAA revenue use requirements. ▶ Tax imposed on the first possession. Tax is equal to 0.3% of the wholesale value of petroleum product. ▶ Effective July 1, 2021 tax rate reduced to 0.15%. ▶ PPT scheduled to expire on July 1, 2030. ▶ Revenue is being diverted into the pollution liability insurance program. ▶ Department of Revenue 2023 3rd Quarter \$299,386 x 4. 	\$ 1,197,544

✗ **5. Local Sales / Use Taxes (Chapter 82.14 RCW and RCW 81.104.170)** \$ **Unknown**

- ▶ Aviation fuel sales occur in approximately 107 local taxing jurisdictions that either imposed or raised the rate on their local sales and uses taxes after 1987. Said local sales and uses taxes are subject to FAA Revenue use requirements.

✗ **6. Oil Spill Taxes** \$ **949,736**

- ▶ Tax first imposed in October 1991. Subject to FAA revenue use requirements.
- ▶ Revenue is being diverted into an Oil Spill Prevention account.
- ▶ 5 cents per 42-gallon barrel (1 cent per 42-gallon barrel for Response Tax and 4 cents per 42-gallon barrel for Administration tax).
- ▶ Current tax rate is 4 cents per 42-gallon barrel.
- ▶ Department of Revenue 2023 3rd Quarter \$237,434 x 4.
- ▶ When fund balance is less than \$8 million the tax is imposed and remains in effect until the fund balance exceeds \$9 million.

Total Amount of Revenue required to be deposited into State of Washington Aeronautics Account to comply with FAA Revenue Use Requirements: \$ **67,761,774**

Current Compliance Amounts: \$ **9,178,650**

Balance due to comply with FAA Revenue Use Requirements: \$ **58,583,124** Annually
Plus Local Sales / Use Taxes

- FAA Compliant**
- FAA Non-Compliant**

FAA Policy and Procedures Concerning the Use of Airport Revenue; Proceeds From Taxes on Aviation Fuel:
Federal Register, November 7, 2014

"...State taxes on aviation fuel (imposed by either an airport sponsor or a non-sponsor) are subject to use either for a State aviation program or for airport-related purposes..."

"...The policy amendment applies prospectively to use of proceeds from...new taxes...in effect on December 30, 1987..."

Note: This document was prepared by the Chelan Douglas Regional Port Authority. It represents our best estimation of aviation fuel tax diversions. More precise information can be obtained from the Washington Department of Revenue.




PORT of OLYMPIA
Serving All of Thurston County

Aviation Fuel Tax Interlocal Agreement (ILA)

Warren Hendrickson
Director of Operations
Feb. 20, 2024




1



Today's Presentation

Advisory Only – No Action Required

- Aviation fuel tax background
- Washington state non-compliance
- Compliance action plan
- Interlocal agreement
- Legal funding



2

Aviation Fuel Tax

Background

- 2015 WSDOT Aviation Airport Investment Study
 - Airport grant program shortfall \$12 million annually
- 2020 WSDOT Aviation Funding Need
 - \$76.9 million in funding requests
 - \$12.5 million state matching funds required
 - \$1.4 million available
- Washington state ranks *last* in funding per airport in NW Mountain Region
 - Oregon funding is triple that of Washington's

3



3

Aviation Fuel Tax

Background (cont'd)

- FAA Policy and Procedures Concerning the Use of Airport Revenue; Proceeds From Taxes on Aviation Fuel
 - Federal Register November 7, 2014

"...State taxes on aviation fuel (imposed by either an airport sponsor or a non-sponsor) are subject to use either for a State aviation program or for airport-related purposes..."

"...The policy amendment applies prospectively to use of proceeds from...new taxes...not...in effect on December 30, 1987..."

4



4

Aviation Fuel Tax

Washington State Revenue Diversion

- Washington state aviation fuel taxes
 - Aircraft fuel excise tax (RCW 82.42.020: \$.18 per gallon)
 - State retail sales / use tax (6.5% of retail price - pre-1987)
 - Hazardous Substance Tax (HST: \$1.40 per 42-gallon barrel)
 - Petroleum Products Tax (PPT: 0.15% of wholesale value)
 - Local sales / use taxes (25 different taxes by 107 local jurisdictions)
 - Oil spill taxes (\$.04 per 42-gallon barrel)

5



5

Aviation Fuel Tax

Washington State Revenue Diversion

- Washington state federal policy compliance
 - ✓• Aircraft fuel excise tax (RCW 82.42.020) 100% = Aeronautics Account
 - ✓• State retail sales / use tax (6.5% of retail price - pre-1987)
 - ✗• Hazardous Substance Tax (HST: \$1.40 per 42-gallon barrel)
 - ✗• Petroleum Products Tax (PPT: 0.15% of wholesale value)
 - ✗• Local sales / use taxes (25 different taxes by 107 local jurisdictions)
 - ✗• Oil spill taxes (\$.04 per 42-gallon barrel)

6



6

Aviation Fuel Tax

Washington State Revenue Diversion

- Annual Washington state revenue diversion
 - HST: \$ 56,435,844
 - PPT: \$ 1,197,544
 - Local sales / use taxes: Not known
 - Oil spill taxes: \$ 949,736

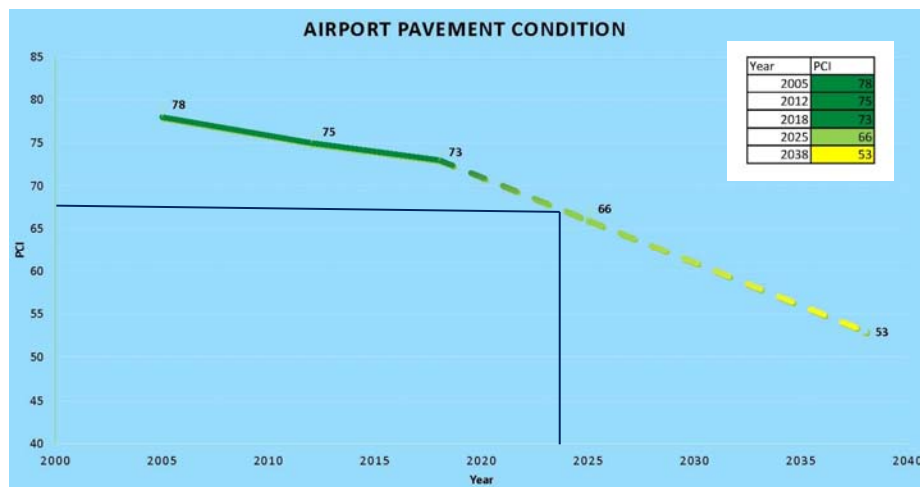
- Total non-compliant annual revenue: **\$ 58,583,124**

7



7

Why Important?



8



8

Aviation Fuel Tax

Compliance Action Plan

- DOR Report to State Legislature January 11, 2021
- First calculation of diverted revenue 3rd quarter 2023
- Correction to date: None

9



9

Aviation Fuel Tax

Compliance Action Plan (cont'd)

- Need has been established
- Funding already exists, with no new taxes (fuel taxes = user fees)
- Missing ingredient: Political will
- Enhancing agent: FAA forcefulness on compliance

10



10

Aviation Fuel Tax

Compliance Action Plan (cont'd)

- Airport sponsor obligation
 - Federal Register November 7, 2014

*"...For taxes imposed by non-sponsor State and local governments, **the airport sponsor will be expected** to advise those entities of Federal requirements for use of aviation fuel tax revenues, and to take action reasonably within the sponsor's power to tailor State and local taxation to conform to the requirements of §§ 47107(b) and 47133..."*

11



11

Compliance Action Plan

Interlocal Agreement (ILA)

- Chelan Douglas Regional Port Authority lead agency
 - Task I: Develop a legal framework memo
 - Task II: Work with airport sponsors to develop a legal action plan
 - Task III: Draft a formal complaint
 - Task IV: Hold preliminary discussions with Department of Revenue and the Attorney General's Office seeking a settlement and compliance
- Port General Counsel review completed
- Legal fund contributions now requested

12



12

Compliance Action Plan

ILA Partners

- 2 commercial service hub airports
 - Sea-Tac, Spokane
- 9 commercial service non-hub airports
 - Boeing Field, Paine Field, Bellingham, Friday Harbor, Yakima, Wenatchee, Tri-Cities, Walla Walla, Pullman-Moscow
- 26 general aviation airports
 - Olympia, Chehalis, Tacoma Narrows, Bremerton, Skagit, Grant County

13



13

Compliance Action Plan

Legal Fund Contributions Requested

- Hub airports: \$35,000 total
- Non-hub airports: \$2,500 to \$7,500
- 26 general aviation airports: \$1,000 each
 - Port of Moses Lake (Grant County) contribution: \$5,000
 - Port of Skagit contribution: \$3,000

14



14

Compliance Action Plan

Legal Fund Contributions Requested (cont'd)

- Hub airports: \$35,000 total
- Non-hub airports: \$2,500 to \$7,500
- 26 general aviation airports: \$1,000 each
 - Port of Moses Lake (Grant County) contribution: \$5,000
 - Port of Skagit contribution: \$3,000
- Port of Olympia staff recommendation: \$3,000

15




15

Current Status and Next Steps


- Execute ILA
- Port contribution to legal fund
- Consent agenda February 26, 2024



16



Questions and Comments



COVER MEMO

Briefing Date/Time: February 20, 2024

Staff Contact/Title: Warren Hendrickson, Director of Operations
360.528.8050, warrenh@portolympia.com

Subject: Weyerhaeuser Lease Amendment #9

Purpose: Information Only Decision Needed

Overview:

This is an Advisory agenda item before the Commission. No action is required.

At the February 26, 2024 Commission meeting, Commission approval of this action is planned via the Consent agenda and will authorize the Interim Executive Director to execute Lease Amendment #9 to the Weyerhaeuser Company Marine Terminal ground lease.

Background:

- Per the original 2005 ground lease between the Port and Weyerhaeuser, the Port is responsible for all paving repairs on Weyerhaeuser’s leased premises. Weyerhaeuser subsequently reimburses the Port for all such repairs outside the Cascade Pole area.
- This process is inefficient and slow to respond to the need for emergent repairs outside the Cascade Pole area, especially since such repairs are ultimately done at tenant expense per the terms of the lease.
- Port-Weyerhaeuser Lease Amendment No. 8 allowed a one-time exception to the maintenance and repairs of paving materials on the premises outside the Cascade Pole area. The repairs completed under this amendment proved to be both timely and more efficiently accomplished than previous.
- Both the Port and Weyerhaeuser now wish to make this paving repair authority permanent for the tenant, for leased premises outside the Cascade Pole area.

Preferred Solution:

- Amend the ground lease to authorize Weyerhaeuser to execute paving repairs on its premises outside the Cascade Pole area.

- The Port will continue be kept aware of such repairs by the following amendment provisions:
 - Notification of repairs in advance and in writing.
 - Detailed scope of work subject to Port approval.
 - Port maintains the right to observe and inspect the work to ensure compliance with the approved scope.
 - Tenant will provide the Port an as built to document in permanent record the nature of repairs completed.

Effectivity:

Immediately upon Commission approval on February 26, 2024. Weyerhaeuser has a need to complete emergent repairs on its premises before mid-March 2024. Both the Port and Weyerhaeuser would prefer to execute these repairs under this new lease amendment.

Documents Attached:

- Weyerhaeuser Lease Amendment #9 DRAFT
 - Subject to ongoing review by both Port and tenant counsel
 - Final language, if revised, will be provided prior to Commission action
- PowerPoint Presentation

Summary & Financial Impact:

- None

Affected Parties:

- Port of Olympia
- Weyerhaeuser Company

Staff Recommendation:

Port staff recommends approval of Weyerhaeuser Lease Amendment #9.

LEASE AMENDMENT NO. 9

**PORT OF OLYMPIA GROUND LEASE
OLYMPIA MARINE TERMINAL**

THIS LEASE AMENDMENT NO. 9 is made this ____ day of _____, 2024, by and between the **PORT OF OLYMPIA**, a Washington municipal corporation (the “**Port**”), and **WEYERHAEUSER NR COMPANY**, a Washington corporation (“**Tenant**”) (collectively, the “**Parties**”), on the following terms and conditions:

WITNESSETH:

WHEREAS, Port and Tenant’s predecessor in interest, Weyerhaeuser Company, entered into that certain Ground Lease dated August 22, 2005, as further amended by Lease Amendment No. 1 dated July 3, 2007, Letter Agreement dated March 12, 2008 (regarding occupancy date and Rent Commencement Date), Consent to Assignment dated December 30, 2008, Letter Agreement dated June 22, 2010 (regarding reconciliation of rent and Service & Facilities / Wharfage Fees), and Letter Agreement dated June 11, 2012, (collectively, the “**Lease**”), covering specific Premises described in the Lease; and

WHEREAS, Port and Tenant further amended the Lease through Lease Amendment No. 2 dated May 13, 2013 (“**Amendment No. 2**”), Lease Amendment No. 3 dated February 27, 2017 (“**Amendment No. 3**”), Lease Amendment No. 4 dated February 24, 2020 (“**Amendment No. 4**”), Lease Amendment No. 5 dated January 4, 2022 (“**Amendment No. 5**”), Lease Amendment No. 6 dated April 7, 2022 (“**Amendment No. 6**”), and Lease Amendment No. 7 dated January 3, 2023 (date of full execution for such amendment) (“**Amendment No. 7**”), Lease Amendment No. 8 dated September 20, 2023 (“**Amendment No. 8**”); and

WHEREAS, pursuant to Paragraph 16.1 of the Lease, the Port is solely responsible for and shall maintain and repair paving materials in all areas of the Premises, as that term is defined in the Lease; and

WHEREAS, Tenant agreed with Port approval – as a one-time exception to Paragraph 16.1 of the Lease – to conduct pavement repairs, grinding, and repaving in portions of the Premises as detailed and generally depicted in Lease Amendment No. 8; and

WHEREAS, Tenant and Port now wish to amend Paragraph 16.1 of the Lease to make permanent the tenant’s ability to conduct such pavement repairs, grinding, and repaving in portions of the Premises, as authorized in Amendment No. 8; and

WHEREAS, Tenant and Port wish to otherwise keep in place and not modify all other obligations under the Lease, and the Port’s Stormwater Pollution Prevention Plan; and

NOW THEREFORE, IT IS MUTUALLY AGREED that the Lease between the Parties shall be amended as follows:

1. Paragraph 16.1.1 – IMPLEMENTATION OF PAVEMENT REPAIRS BY TENANT (per Amendment No. 8) is deleted in its entirety.
2. Paragraph 16, MAINTENANCE AND REPAIR, subparagraph 16.1 shall have its second paragraph deleted in its entirety and replaced with the following:

The Port shall be solely responsible for and shall maintain and repair the paving materials within the Cascade Pole area. Unless otherwise agreed to in this Lease, the Port shall be solely responsible for the costs it may incur to maintain and repair the paving materials within the Cascade Pole area. The Tenant shall be solely responsible for and shall maintain and repair the paving materials – at the Tenant’s sole expense – in all areas of the Premises outside the Cascade Pole area, subject to the following constraints:

- a. Tenant shall advise the Port in advance, and in writing, of the need for maintenance and repair of paving materials in all areas of the Premises outside the Cascade Pole area, and
- b. Tenant shall provide a detailed scope of work to the Port for its approval prior to the initiation of any work, including but not limited to specific location(s), substructure repair(s), if any, and final paving thickness, such approval not to be unreasonably withheld, and
- c. Port shall have the right to observe and inspect the work to ensure compliance with the approved scope, and
- d. Tenant shall provide the Port an as built of the maintenance and repairs completed for the purposes of documenting a permanent Port record of such work on the Premises.

Nothing in this new paragraph shall alter Tenant’s or Port’s responsibilities under the Port’s Stormwater Pollution Prevention Plan as in effect at the time of this Amendment No. 9, or as that plan may be amended in the future. The Port shall also remain solely responsible for implementation of the terms of the Consent Decree dated January 8, 2020, entered in Case No. 3:17-cv-05445-BHS, *Waste Action Project v. Port of Olympia*.

THE REST AND REMAINDER OF THE LEASE shall remain in full force and effect and is affirmed and ratified by the signatures of the Parties below on the date first written above.

**PORT:
PORT OF OLYMPIA**

**TENANT:
WEYERHAEUSER NR COMPANY**

By: _____
Rudy Rudolph
Its: Interim Executive Director

By: _____

Its: _____

Date: _____

Date: _____

STATE OF WASHINGTON)
) ss:
COUNTY OF THURSTON)

I certify that I know or have satisfactory evidence that R. H. Rudolph Jr. is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the Executive Director of the Port of Olympia to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this _____ day of _____, 2023.

Print Name: _____
NOTARY PUBLIC in and for the State of
Washington, residing at: _____
My commission expires: _____

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as _____ of the Weyerhaeuser NR Company to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this _____ day of _____, 2023.

Print Name: _____
NOTARY PUBLIC in and for the State of
Washington, residing at: _____
My commission expires: _____



PORT of OLYMPIA
Serving All of Thurston County

Weyerhaeuser Lease Amendment #9

Warren Hendrickson
Director of Operations
Feb. 20, 2024



1



Today's Presentation

Advisory Only – No Action Required

- Weyerhaeuser ground lease amendment
- More quickly and more efficiently address Marine Terminal paving needs that are tenant responsibility



2

Weyerhaeuser Ground Lease

Background: Maintenance Provisions for Pavement Repair

- 2005 ground lease assigns paving responsibility to the Port
- Tenant reimburses Port for repairs outside the Cascade Pole site
- 2023 Lease Amendment #8 delegated a single repair to tenant
- Repair was completed quickly at tenant expense, benefitting both Port and tenant
- Port and tenant wish to make Lease Amendment #8 provisions permanent

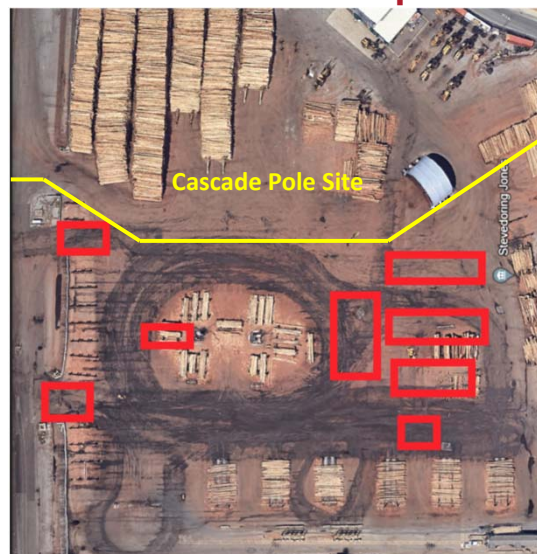
3



3

2024 Weyerhaeuser Pavement Repair

Repaving Needed



4



4

Current Status and Next Steps

- Joint Port-tenant legal approval of final amendment language
- Execute Lease Amendment #9
- Consent Agenda February 26, 2024



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Questions and Comments



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