

PORT OF LONGVIEW, PORT OF WOODLAND, PORT OF KALAMA AND PORT OF VANCOUVER SEPA CO-LEAD AGENCY AGREEMENT: MEMORANDUM OF UNDERSTANDING FOR THE DEVELOPMENT OF THE ENVIRONMENTAL IMPACT STATEMENT FOR THE LOWER COLUMBIA RIVER FEDERAL NAVIGATION CHANNEL MAINTENANCE PLAN

The Port of Longview, Port of Woodland, Port of Kalama and Port of Vancouver (**Ports**) desire to share lead agency responsibilities under the State Environmental Policy Act, Ch. 43.21C RCW (**SEPA**), to conduct environmental review for the decisions necessary for the development of the Joint NEPA/SEPA Environmental Impact Statement (**EIS**) for the Lower Columbia River Federal Navigation Channel Maintenance Plan (**LCR FNC Project**). This SEPA Co-Lead Agency Memorandum of Understanding (**MOU**) delineates the duties of each co-lead agency under SEPA; how decisions will be made; how conflicts and disputes may be resolved; and other terms.

The Ports are also parties under the related Memorandum of Understanding Between the U.S. Army Corps of Engineers, Portland District, Port of Longview, Port of Woodland, Port of Kalama, Port of Vancouver, and Port of Portland for the Development of the Environmental Impact Statement for the Lower Columbia River Federal Navigation Channel Maintenance Plan dated June 15, 2017 and the Washington Ports Agreement recorded on December 5, 2001 under Clark County Auditor's File No. 3399153, as amended and restated (**WPA**). This MOU supplements and is consistent with these existing agreements, which continue to remain in effect. This MOU further defines the Ports' SEPA responsibilities for the LCR FNC Project.

RECITALS

A. The LCR FNC is 43 feet deep and generally 600 feet wide, and extends upstream of the mouth of Columbia River, River Mile (RM) 3 to Vancouver, WA, RM 105.5. The channel is maintained using a combination of dredging and hydraulic control works (pile dikes). Advanced maintenance dredging is currently approved up to five feet below authorized depth (-48 feet) and up to 100 feet outside the authorized channel width. For the past several years, between 6 and 8 million cubic yards of sand removal has been required annually to provide reliable service for deep draft navigation. Corps' policy requires all federally maintained navigation projects to demonstrate that there is sufficient dredged material disposal capacity for a minimum of 20 years. An updated Plan for the LCR FNC is needed now because the existing dredged material placement network is nearing capacity.

B. Before finalization and adoption of the Plan, the U.S. Army Corps of Engineers (**Corps**) and the Ports, as non-federal project sponsors for the LCR FNC Project, agree to prepare a joint EIS in accordance with both the National Environmental Policy Act (**NEPA**) of 1969, as amended, and SEPA. The Corps will serve as the lead federal agency for purposes of NEPA, and the Port of Longview will serve as the nominal lead agency under SEPA. The

Washington Ports will be cooperating agencies under NEPA, and co-lead agencies under SEPA, as further defined in this MOU.

C. Specifically, the Ports will be co-lead agencies under SEPA to share and divide the responsibilities of lead agency pursuant to WAC 197-11-942, and the Port of Longview will be the nominal lead agency under WAC 197-11-944, and shall be responsible for complying with the duties of the lead agency under SEPA.

D. The Ports intend that environmental review documents prepared under SEPA be made available for reference, use and incorporation in the federal NEPA environmental review, in which the Corps is the NEPA lead agency and the Ports are cooperating agencies.

E. The Ports desire to set forth, in this MOU, the terms of their co-lead agency status in order to clarify responsibilities, including without limit a description of each agency's duties, a statement as to which agency is nominal lead, how decisions will be made, how disputes are resolved, and other matters.

NOW, THEREFORE, the Ports agree to share the responsibilities regarding SEPA lead agency authority for the LCR FNC Project as follows:

1. Purpose. The Ports shall share the responsibilities of SEPA lead agency for the Project as follows: The Ports are co-lead agencies for the LCR FNC Project as permitted pursuant to WAC 197-11-944. The Port of Longview is designated as the nominal lead agency. As nominal lead, the adopted SEPA public notice and hearing procedures, and local appeal procedures and venue of the Port of Longview, as detailed in its local SEPA procedures in Resolution No. 2014-6, shall be used for the Project. The Port of Longview's Responsible Official, in conjunction with the officials of the other Ports identified in Section 9.2, shall have the shared duty to determine the adequacy of environmental analysis done under SEPA. The Ports shall share decision-making authority for the environmental analysis and responsibility for SEPA compliance, as well as preparation of the EIS.

2. The Ports' General Responsibilities:

2.1 The Port of Longview is designated as the nominal lead agency, which shall be responsible for complying with the duties of lead agency under Chapter 197-11 WAC. Specifically, as the nominal lead agency, the Port of Longview shall take the lead responsibility for complying with the requirements of SEPA and Port of Longview SEPA Resolution No. 2014-6, as may be amended.

2.2 The Ports will ensure the completeness and accuracy of the environmental documents prepared under SEPA. In discharging these duties, the Port of Longview has primary responsibility for compiling and assessing information on all the environmental aspects of the proposal for all agencies with jurisdiction with input from the other Ports.

2.3 The Port of Longview's SEPA Responsible Official is directly responsible for ensuring adequate environmental analysis is done and the SEPA procedural requirements are met. Based on her SEPA, environmental, land use planning and project experience, the SEPA

Responsible Official for the Port shall be delegated in writing by the Chief Executive Officer of the Port of Longview pursuant to Section 070(4) of the Port of Longview's SEPA Resolution No. 2014-6, as may be amended. This duty will be specifically assigned based on experience and qualifications, and the Responsible Official under this MOU shall not be changed without an amendment to this MOU.

2.4 The officials of the other Ports who will assist the Port of Longview in implementing this MOU are listed in Section 9.2.

2.5 The Ports have determined that consultant(s) are needed to assist in completing the required SEPA analysis and documentation for the Proposal. The Ports plan to retain Anchor QEA as the lead third-party environmental consultant for the SEPA analysis. The Ports may retain other qualified third-party environmental, engineering and legal consultants as necessary to assist the co-lead agencies in required SEPA analysis and documentation for the Proposal, and agree that a change to or addition of environmental consultants for the Proposal will not require an amendment to this MOU but that all Ports must agree to the change or addition. Financial responsibility for these third-party consultants' fees and costs is addressed in the WPA.

2.6 All SEPA document(s), including without limit, environmental checklists, technical reports, studies, agency and interested party comments, whether written or transcribed from oral presentation, shall be received by and maintained in the records of the Ports for a period of five years from the termination date in Section 9.1.

2.7 Each Port shall use best efforts to respond to any request for information, comments on draft documents, or other communications requiring a response within 10 business days of receipt, or by an applicable deadline, whichever is earlier. Information may be shared electronically, through mail or other delivery service, or by hand delivery, as appropriate, depending on the type and volume of the materials to be shared. The Port of Longview will be the primary repository for the records associated with this MOU, but the other Ports will maintain copies of any records, consistent with Section 2.6, if required by law, or as they deem necessary.

3. Procedural Compliance. The Port of Longview shall be responsible for preparing all notices required to discharge the SEPA co-lead agencies' procedural responsibilities under SEPA, and shall coordinate with the Corps on scheduling of all meetings, hearings, open houses and other SEPA events and matters.

4. Threshold Determination. It is expected that the Ports will receive plans and exhibits regarding the LCR FNC Project, including environmental studies and technical reports, proposed mitigation, and related materials in support of the Project.

4.1 The Ports shall be responsible for the review of the information provided. Based on comments it receives from the other Ports, the environmental consultants, and its own review, the Port of Longview shall be responsible for preparing an initial assessment of the materials received and, if necessary, create an itemized list of required supplemental information needed for adequate environmental review.

4.2 All supplemental SEPA environmental information received from the Corps or other parties shall be reviewed by the Ports.

5. Scoping and Alternatives of EIS. The Responsible Official of the Port of Longview and the Corps shall jointly be responsible for the determination of the scope and alternatives of any EIS, and all of the Ports shall review all environmental analysis and documentation prior to issuance of any Draft or Final EIS documents.

5.1 The Port of Longview and the Corps shall jointly draft a proposed scope and alternatives of the EIS after receiving the co-leads' input on the scoping in accordance with Section 4.1 and Section 4.2 above.

5.2 Following the completion of the responsibilities set forth in Section 5.1 above, the Port of Longview shall be responsible for transmitting the co-lead agencies' EIS scope and alternatives to the Corps for Corps input.

6. Determination of Significance. After receiving input from the Corps, the Port of Longview shall be responsible for preparing a Determination of Significance and designing and confirming the scope of the EIS and the alternatives to be considered in the EIS with the other Ports so that all agencies are satisfied that a range of reasonable alternatives is represented. The Port of Longview's Responsible Official shall sign and issue the final Determination of Significance.

7. Preparation and Issuance of Draft and Final EIS. The Corps and the Responsible Official of the Port of Longview, after input from the co-lead agencies, are responsible for the preparation and decision to issue any Draft or Final EIS, and shall review of all environmental analysis and documentation prior to issuance of Draft and Final EIS documents. After receiving input from the Corps and co-lead agencies, the Responsible Official from the Port of Longview shall sign the Draft and Final EIS documents prior to issuance. The signature of the Responsible Official for the Port of Longview shall represent approval of the document by the Corps and all Ports, including the adequacy of the environmental analysis it contains.

7.1 The Port of Longview shall be responsible for managing the EIS environmental consultants' work. Upon receipt of preliminary Draft EIS materials and preliminary Final EIS materials, the Port of Longview shall review and revise (in a manner that tracks and shows all parties' input to each document) the preliminary drafts, which revisions it shall transmit electronically to the co-lead agencies and the Corps. For the purposes of this Section, "preliminary" means any draft of a document prior to publication, issuance or distribution to the general public.

7.2 Costs of SEPA Compliance. The Ports have entered into the WPA that facilitates the Ports' ability to retain independent qualified responsible official, third-party environmental, engineering and legal support for the purposes of conducting and participating in the environmental review process regarding the Project. The Port of Longview will coordinate to collection of funds from the other Ports and payment of invoices for the Project.

8. Decision-Making and Dispute Resolution.

8.1 The Ports, as co-leads agencies, agree to try to make decisions by consensus throughout the SEPA process as pertains to scope, content and timing of all SEPA documents, events and related matters. The co-lead agencies recognize that the final SEPA environmental review document must contain sufficient environmental analysis for decision-making by all agencies with jurisdiction to issue permits and approvals related to the entire proposal. This MOU attempts to establish reasonably defined duties and time-periods for their completion, and the Ports have entered into this MOU in good faith.

8.2 If the Ports cannot agree on an issue that would prevent the joint approval of the scope of environmental review, any other draft or final SEPA document, or otherwise prevent them from sharing lead agency duties as outlined in this MOU, the Ports agree to resolve the dispute through the dispute resolution provisions of the WPA.

8.3 The Ports will both participate in any claims or challenges to the environmental review process, including without limit any challenges to the adequacy of any final environmental document issued under or pursuant to SEPA. In any such claim or challenge, the Ports will cooperate and share responsibilities and decision-making authority consistent with the principles outlined above, each bearing its own costs.

9. Other Terms.

9.1 Effective Date. The effective date of this MOU is the date appearing below. This MOU shall continue until terminated in accordance with the termination provisions of the WPA, withdrawal or cancellation of the LNR FNC Project prior to issuance of all its required permits, or upon completion of all SEPA environmental review processes, including conclusion of all appeals challenging the SEPA process or final environmental documents generated thereunder, whichever occurs first.

9.2 Notices. The following persons shall be the contact persons for all communications regarding this MOU.

Port of Longview	Port of Kalama
Lisa Hendriksen, Director of Planning and Environmental Services lhendriksen@portoflongview.com 10 Port Way - hand-delivery P.O. Box 1258 -U.S. Mail delivery Longview, WA 98632 (360) 424-3305	Tabitha Reeder, Environmental Manager treeder@portofkalama.com 110 W. Marine Drive Kalama WA 98625 – U.S. Mail Delivery 360-673-2325

<p>Port of Woodland</p> <p>Jennifer Keene, Executive Director <u>jkeene@portofwoodland.com</u> 115 Davidson Avenue – hand delivery P.O. Box 87 Woodland, WA 98674 360-225-6555</p>	<p>Port of Vancouver</p> <p>Patty Boyden, Director of Environmental Services PBoyden@Portvanusa.com 3103 NW Lower River Rd #5 Vancouver, WA 98660 360-693-3611</p>
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9.3 Construction. This MOU has been reviewed and revised by legal counsel for all of the Ports and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this MOU.

9.4 Calculation of Time. All time periods set forth in this MOU shall be calculated in actual calendar days, unless otherwise provided.

9.5 Severability. If any provision of this MOU or the application of any provision of this MOU to a particular situation is held by a court of competent jurisdiction to be invalid, void, or unenforceable, such provision shall be disregarded and this MOU shall continue in force and effect unless enforcement of this MOU without the invalidated provision would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this MOU.

9.6 Entire MOU. This MOU constitutes the entire MOU between the Ports with respect to the subject matter of this MOU. Except for the agreements referred to in the second paragraph of this MOU, which will continue to apply, this MOU is specifically intended by the Ports to supersede all prior draft MOUs, whether written or oral, related to the subject matter of this MOU which may exist between the Ports.

9.7 Duty to Act Reasonably and in Good Faith. Unless otherwise expressly provided, each Port shall act reasonably in giving consent, approval, or taking any other action under this MOU. The Ports agree that each of them shall at all times act in good faith in order to carry out the terms of this MOU.

9.8 Waiver. No provision or condition of this MOU shall be considered waived unless such waiver is in writing and signed by the party to be bound.

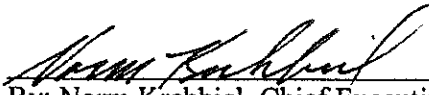
9.9 Washington Law/Venue. This MOU shall be construed and enforced in accordance with the laws of the State of Washington. The Ports agree that venue for any action instituted to enforce this MOU shall be in the Superior Court of Washington for Cowlitz County.

9.10 Time of the Essence. Time is of the essence in the performance of each and every covenant and obligation to be performed by the Ports hereunder. No provision or condition of this MOU shall be considered waived unless such waiver is in writing and signed by the party to be bound.

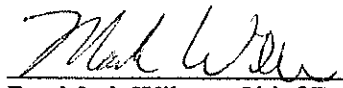
9.11 Counterparts. The Ports to this MOU agree that this MOU may be executed in duplicate originals, with faxed or electronically transmitted signatures acceptable and with each duplicate serving as an original.

IN WITNESS WHEREOF, this MOU has been executed by the Ports hereto as follows:

PORT OF LONGVIEW


By: Norm Krehbiel, Chief Executive Officer
Date: 15 June 2017

PORT OF KALAMA


By: Mark Wilson, Chief Executive Officer
Date: 29-June-17

PORT OF WOODLAND

By: Jennifer Keene, Executive Director
Date: _____

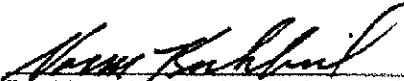
PORT OF VANCOUVER

By: Julianna Marler, Chief Executive Officer
Date: _____

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Date: 15 June 2017

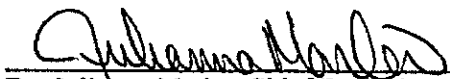
PORT OF KALAMA

By: Mark Wilson, Chief Executive Officer
Date: _____

PORT OF WOODLAND

By: Jennifer Keene, Executive Director
Date: _____

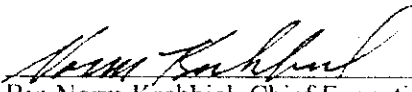
PORT OF VANCOUVER


By: Julianna Marler, Chief Executive Officer
Date: 6/30/2017

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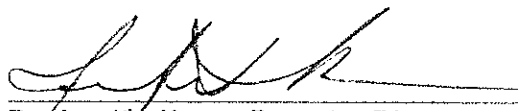
PORT OF LONGVIEW


By: Norm Krehbiel, Chief Executive Officer
Date: 15 June 2017

PORT OF KALAMA

By: Mark Wilson, Chief Executive Officer
Date: _____

PORT OF WOODLAND


By: Jennifer Keene, Executive Director
Date: 6/27/2017

PORT OF VANCOUVER

By: Julianna Marler, Chief Executive Officer
Date: _____