

**PORT OF SEATTLE**  
**MEMORANDUM**

**COMMISSION AGENDA**  
**ACTION ITEM**

**Item No.:** 6a  
**Date of Meeting:** April 9, 2013

**DATE:** April 1, 2013

**TO:** Tay Yoshitani, Chief Executive Officer

**FROM:** Joe McWilliams, Managing Director, Real Estate Division

**SUBJECT:** Resolution 3679, First Reading amending Unit 1 of the Comprehensive Scheme of Harbor Improvements to declare the Terminal 91 West Yard parcel surplus; authorize the sale of a portion of the West Yard to King County for construction of the South Magnolia combined sewer overflow facility, authorize the sale of the remainder of the West Yard to the City for expansion of park facilities; and delete the West Yard parcel from Unit 1 of the Comprehensive Scheme

**Net proceeds to the Port from sale of the entire West Yard parcel:** \$8,399,504

**Net proceeds to the Port from sale of the Tank Area and related easements:** \$3,203,614

**Net proceeds to the Port from the Terminal 91 easements:** \$55,083

**ACTION REQUESTED:**

Request First Reading of Resolution No. 3679: A Resolution of the Port Commission of the Port of Seattle declaring surplus and no longer needed for port district purposes approximately 5.39 acres of Port-owned real property located in the City of Seattle, commonly known as the T-91 West Yard; amending the Comprehensive Scheme to reflect that the property is surplus to the needs of the Port and is deleted from Unit No. 1; and further authorizing the sale of said real property to the City of Seattle and King County.

**SYNOPSIS:**

Staff proposes to enter into a tri-party purchase and sale agreement with King County (“County”) and the City of Seattle (“City”) pursuant to the Intergovernmental Disposition of Property Act. The proposed agreement will transfer a portion of the Port’s Terminal 91 West Yard parcel to the County to enable construction of its South Magnolia combined sewer overflow (“CSO”) facility. The City will purchase the remainder of the West Yard parcel for expansion of park facilities. The proposed agreement would be entered into based on a settlement agreement between the Port and County in lieu of the County proceeding with condemnation of the portion of the West Yard parcel it needs to construct and operate the CSO facility. The settlement agreement requires the Port to convey the property interests the County needs even if the proposed sale to the City is not completed. Prior to authorizing the sale of the property to the County and City, the Commission must first declare the property surplus.

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### **BACKGROUND:**

Throughout the City during periods of heavy rainfall, storm water flows can exceed system capacity. This leads to spills of untreated sewage into Puget Sound and other local waters. A National Pollutant Discharge Elimination System (“NPDES”) Waste Discharge Permit issued to the County by the Washington State Department of Ecology (“DOE”) requires that the County begin construction of the CSO facility by the end of 2013 as part of a larger mandate to control overflows from the older combined sewer and storm water systems across its network.

The County has identified portions of the Port’s Terminal 91 West Yard parcel as necessary for construction and operation of the CSO facility (the “Tank Area”), as follows:

- (i) A fee interest of approximately 34,254 square feet for the subsurface storage tank and above ground ancillary building, as depicted on **Exhibit A**;
- (ii) A permanent pipeline and access easement of approximately 5,285 square feet as depicted on **Exhibit B**;
- (iii) A permanent surface/aerial easement of approximately 20,206 square feet as depicted on **Exhibit C**; and
- (iv) A temporary construction easement of approximately 142,750 square feet as depicted on **Exhibit D**.

The remainder of the West Yard parcel, approximately 200,275 square feet (the “West Yard Remainder”) as depicted on **Exhibit E**, will be sold to the City, subject to the three West Yard easements to be conveyed to the County described above.

The County is also seeking three other related easements that affect other portions of Terminal 91 for construction and operation of the CSO facility. These three easements are:

- (i) A permanent pipeline easement of approximately 797 square feet on a portion of the Terminal 91 uplands, as depicted on **Exhibit F**;
- (ii) A temporary construction easement of approximately 10,523 square feet on a portion of the Terminal 91 uplands, as depicted on **Exhibit G**; and
- (iii) A temporary construction easement for pipe assembly on a portion of the shortfill area of Piers 90/91, as depicted on **Exhibit H**. This easement may not ultimately be needed depending on the drilling method chosen by the County’s contractor.

On June 5, 2012, the County began condemnation proceedings in King County Superior Court in order to meet the NPDES permit schedule. Pursuant to these proceedings, the Commission

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approved a stipulated order for immediate possession and use of the Tank Area on November 13, 2012.

Concurrent with the County's condemnation action, staff continued discussions with the County and City on a sale of the entire West Yard parcel. Such a sale would obviate the County's condemnation suit and would facilitate the City's and local community's interest in development of a park on the West Yard Remainder. Following a mediation conference on March 19, 2013, the Port, County and City reached agreement to sell the West Yard parcel. The settlement agreement requires that if the Seattle City Council does not approve acquisition of the West Yard Remainder, the Port will still convey the Tank Area to the County in fee and grant all the related easements. In return, the County will dismiss the condemnation action.

The proposed purchase and sale agreement would be entered into pursuant to Chapter 39.33 Revised Code of Washington, (Intergovernmental Disposition of Property Act) which permits a political subdivision of the State of Washington to sell real property interests to the State or any municipality or any political subdivision thereof on such terms and conditions as may be mutually agreed upon by the proper authority of the State and/or the subdivisions concerned.

### **PURCHASE AND SALE AGREEMENT PROVISIONS:**

The key terms of the proposed purchase and sale agreement include:

- **Purchase Price.** The Port will receive a total of \$8,454,587 assuming a sale of the entire West Yard parcel and granting of the related easements. If the Port conveys only the Tank Area and related easements to the County, the Port's total compensation will be \$3,258,587.
- **Environmental Release.** The County will release and discharge the Port from claims under \$400,000 arising from the presence of hazardous substances on the Tank Area identified in the environmental reports completed on the West Yard parcel. Similarly, the City will release and discharge the Port from claims under \$1,000,000 arising from the presence of hazardous substances on the West Yard Remainder identified in the environmental reports completed on the West Yard parcel. Any potential claims for remediating identified hazardous substances by the County and City against the Port above these amounts will be controlled by applicable environmental laws.

This provision provides the Port with a release from the known contaminants on the site identified in the Phase 2 environmental site assessment obtained by the County (Shannon & Wilson, Inc. dated May 11, 2012) and a related technical memorandum obtained by the Port (Landau & Associates dated November 9, 2012) that reviewed the results of the Shannon & Wilson report. The Port, however, does have exposure for potential claims that may arise for contamination not identified and/or above that identified in the two reports.

- **Removal of West Yard from Agreed Order.** The West Yard parcel is currently subject to and part of a DOE Agreed Order No. DE 8938 ("Agreed Order"). The Port reached agreement with DOE to remove the West Yard parcel from the Agreed Order effective upon fee

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conveyance of the Tank Area to the County and/or conveyance of the West Yard Remainder to the City.

### **FINANCIAL IMPLICATIONS:**

The proposed values of the various property interests resulted from negotiations during the mediation session between the Port and County and later agreed to by the City based on the appraisal prepared for the County by Anthony Gibbons, MAI dated March 6, 2013 and the appraisal prepared for the Port by Darrin Shedd, MAI dated March 6, 2013. Recognizing that both appraisals were prepared pursuant to the condemnation action in which the County would have condemned easements over a portion of the West Yard parcel, the parties agreed in the context of a fee simple sale on a total value of \$8,399,504 for the West Yard parcel. This value reflects a base land value of \$45 per square foot for the fully useable/developable portions of the West Yard parcel and discounts for those portions of the property (e.g., the riprap and the Port's Smith Cove Park) that are not fully useable/developable.

The value of the other Terminal 91 easements sought by the County total approximately \$55,083. However, the Port's total compensation for these easements will depend on whether the County's contractor actually needs the pipeline assembly temporary construction easement and on the actual duration of the temporary construction easement for the permanent pipeline.

Under Alternative 3 below, the Port will receive a total of approximately \$8,454,587 (\$8,399,504 + \$55,083) from selling the entire West Yard parcel to the County and City and granting the related easements to the County.

Under Alternative 2 below, the Port completes only the County portion of the proposed agreement (i.e., transfers the Tank Area fee interest and grants the related easements). The County's take of the West Yard parcel under this scenario is valued at \$3,203,614. This value reflects the damage to the Port's continuing ownership of the West Yard Remainder from the property interests to be conveyed to the County. When combined with the Terminal 91 easements, the Port will receive a total of approximately \$3,258,697 (\$3,203,614 + \$55,083) under Alternative 2.

### **ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS:**

#### **▪ Alternative 1: Proceed to a valuation trial with the County instead of the settlement agreement**

The Port grants the County possession and use but proceeds to trial to determine the value of the County's required property interests. This alternative results in additional legal expense. In addition, this alternative creates uncertainty regarding the sale of the West Yard Remainder. Development of the West Yard parcel becomes further restricted with the CSO facility in place, because the CSO facility is located within the area of the West Yard that can actually be developed given the shoreline setback provisions that apply to the site as a whole. The Port would be left with a significantly encumbered remainder parcel with limited future development options. This is not the recommended alternative.

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- **Alternative 2: Convey the Tank Area to the County per the settlement agreement but maintain ownership of the West Yard Remainder**

The Port avoids a valuation trial by complying with the terms of the settlement agreement in conveying the Tank Area fee and related easements to the County while maintaining ownership of the West Yard Remainder. Under this scenario, the Port does not incur the additional legal and other expenses associated with a valuation trial. However, like Alternative 1, the Port would be left with a significantly encumbered remainder parcel with limited future development options. This is not the recommended alternative.

- **Alternative 3: Sell the entire West Yard parcel**

The Port sells the entire West Yard parcel to the County and City. This alternative results in the greatest benefits for the Port (i.e., the most compensation, least uncertainty about future development options, and avoids additional legal and other expenses), enables the County's construction of a necessary public facility without additional delay, and facilitates the City's and community's interest in an expanded Smith Cove park on the site. This is the recommended alternative.

### **OTHER DOCUMENTS ASSOCIATED WITH THIS REQUEST:**

- Exhibits A – H: Depictions of the proposed fee and easement interests
- Resolution No. 3679 with Exhibit A

### **PREVIOUS COMMISSION ACTIONS OR BRIEFINGS:**

December 7, 2010 – Staff briefing on the County's need to construct to the CSO project.

November 13, 2012 – Stipulated Order for Immediate Possession and Use.