

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

**COMMISSION AGENDA**

**Item No.** 5e

**ACTION ITEM**

**Date of Meeting** February 26, 2013

**DATE:** February 19, 2013

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

**FROM:** Stephanie Jones Stebbins, Director Seaport Environmental and Planning  
Kathy Bahnick, Manager, Seaport Environmental and Planning

**SUBJECT:** First Amendment to the Lower Duwamish Waterway Group Administrative Order on Consent

**Amount of This Request:** N/A

**Source of Funds:** Environmental Remediation  
Liability Non Ops

**ACTION REQUESTED:**

Request Commission authorization for the Chief Executive Officer to execute an amendment to the Lower Duwamish Waterway Group (LDWG) Administrative Order on Consent (Order) to provide for additional studies being required by the U.S. Environmental Protection Agency (EPA) and the Washington State Department of Ecology (Ecology) to further the agencies' decision-making process for Lower Duwamish site remediation actions. No new funding is requested. Funds to perform this work will be included in the Environmental Remediation Liability annual authorization.

**SYNOPSIS:**

The original Order was signed by the LDWG parties (City of Seattle, King County, The Boeing Company and the Port of Seattle) in 2000. The purpose of the Order was to perform a river wide Remedial Investigation/Feasibility Study (RI/FS) for the Lower Duwamish Waterway Site. The LDWG parties have produced the final Remedial Investigation and the conditionally approved the final Feasibility Study. EPA is requiring the LDWG parties to perform additional studies under an amendment to the existing RI/FS Order to further the agency's decision-making process for site remedial actions. The scope in the amendment includes performance of a fisher study which we plan to have performed by the RI consultant, Windward Environmental Inc.

**BACKGROUND:**

The EPA and Ecology have approved the Remedial Investigation (RI) and conditionally approved the Feasibility Study (FS), which are the two major studies leading to the development of the proposed cleanup plan. However, EPA needs additional information in order to finalize its final remedy decision and is therefore requiring that additional work be conducted by the LDWG parties.

The current schedule is for the conditionally-approved final FS, the EPA-developed Proposed Plan and the EPA-developed Environmental Justice report to be released for public comment in

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late February 2013. A briefing on the Proposed Plan will occur after release of the EPA documents. The Record of Decision (ROD) is expected to be issued in early-to-middle 2014.

The additional work consists of a fisher study that will help formulate the type of institutional controls that will be required by the ROD or a ROD amendment if the ROD is finalized before the fisher study is complete

The fisher study is not part of the RI but builds upon the work done as part of the RI, specifically the Human Health Risk Assessment, Human Access Study, and the Food Web Model that was performed by Windward Environmental Inc. Windward Environmental Inc. is still under contract to perform any new RI related tasks requested by EPA or Ecology through the Record of Decision (ROD) negotiations. The fisher study is expected to take approximately two years to perform and is expected to cost approximately \$500,000 with the cost being shared by the LDWG parties. Windward Environmental Inc.'s contract has budget capacity for this work. They are in the best position to perform this work efficiently and expeditiously and they have the trust and confidence of the regulators and our partners. This work will be triggered by signing the Order amendment. If a new consultant is proposed to perform this work, this change would need to be coordinated and jointly approved by our partners, who have approved the use of the current consultant.

### **PROJECT JUSTIFICATION:**

The amendment will allow the parties to continue to carry out the work being required by the agencies in support of their decision-making process for selection of a Lower Duwamish Site remedy. Having the work performed by Windward Environmental is cost effective due to their knowledge of the human health risk, public access/use of the Lower Duwamish, and food web model and will enable us to meet the stringent implementation schedule required by EPA.

### **FINANCIAL IMPLICATIONS:**

#### **Budget Status and Source of Funds:**

There is no funding request as part of this authorization. Funding for the associated costs is included in the annual Environmental Remedial Liability (ERL) authorization. The costs are also partially reimbursed by our partners and are eligible for state grant recovery when it is available.

### **ECONOMIC IMPACTS AND BUSINESS PLAN OBJECTIVES:**

By signing the Order amendment, the Port will be legally obligated to do the additional work as directed by EPA and Ecology. The Port and the other LDWG parties continue to carefully control costs associated with the effort to minimize overall economic impact.

### **STRATEGIC OBJECTIVES:**

This work supports the Century Agenda goal of being the greenest, most energy efficient Port in North America by moving toward cleanup of the Lower Duwamish Waterway. Meeting our obligation for this cleanup is a critical component of the Green Gateway strategy of meeting our legal obligations.

### **ENVIRONMENTAL SUSTAINABILITY:**

Addressing unacceptable levels of environmental risk caused by the presence of contaminants in soil, groundwater and sediment is not only the goal of numerous state and federal laws, it reflects

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the Port's commitment to environmental stewardship, from the perspectives of both the surrounding communities and the customers the Port serves. This study is a critical step for EPA and Ecology to create a cleanup plan for the LDW. The fisher study will be used to develop more efficient controls to protect the public from exposure to contamination.

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

1. Do not authorize the CEO to enter into the Order amendment. Absent entry into the Order amendment, the Port would not be able to participate in the additional work being required by the agencies. Non-participation would subject the Port to a potential enforcement action. This is not the recommended alternative.
2. Authorize the CEO to enter into an Order amendment along with the City, Boeing and the County to allow for Port participation in carrying out the additional studies being required by the agencies using Windward Environmental to perform the required fisher study. **This is the recommended alternative.**

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

- Administrative Order on Consent for Remedial Investigation/Feasibility Study

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

- March 14, 2000 – Port Commission approved the 1) expenditure of \$1,000,000 in funds which had been previously reserved for aquatic sediment management; and 2) the Managing Director, Marine Division, to enter into a contract with Windward Environmental Inc. to provide a variety of services to assist the Port in participating in the development and implementation of federal and state laws and regulations relating to the disposition of contaminated aquatic sediments
- June 11, 2002 – Port Commission approved spending \$1,500,000 previously reserved for aquatic sediment management and to revise the existing contract with Windward Environmental, Inc. to provide services required by the Environmental Protection Agency's Order on Consent to continue work on the Lower Duwamish Sediments Superfund site and the East Waterway Sediment Operable Unit of the Harbor Island Superfund site
- November 6, 2007 – Briefing on Lower Duwamish Sediment Superfund site
- November 4, 2008 – Briefing on the Lower Duwamish Waterway Remedial Investigation and Feasibility Study
- May 5, 2009 – Briefing on the Lower Duwamish Waterway Feasibility Study
- August 11, 2009 – Commission approved amendment to four professional service contracts to support investigations for the Lower Duwamish Waterway and Harbor Island superfund sites
- October 12, 2010 – Briefing on the Lower Duwamish Waterway Feasibility Study
- January 22, 2013 – First Amendment to the Lower Duwamish Waterway Group Memorandum of Agreement approved by Commission