

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

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

**Item No.** 4h  
**Date of Meeting** September 11, 2014

**DATE:** September 2, 2014  
**TO:** Tay Yoshitani, Chief Executive Officer  
**FROM:** Joe McWilliams, Managing Director, Real Estate Division  
Kathy Bahnick, Manager Environmental Programs Seaport Environmental & Planning  
**SUBJECT:** Granting Easement to Seattle Public Utilities for Stormwater Drainage Facilities and Outfall across Terminal 117.

**ACTION REQUESTED**

Request Commission authorization for the Chief Executive Officer to grant a non-exclusive Stormwater Easement to the City of Seattle's Seattle Public Utilities (SPU) to accommodate the construction, operation, maintenance and monitoring of City-owned stormwater drainage facilities and an outfall located under, across and on Terminal 117 (T-117) and adjacent aquatic land.

**SYNOPSIS**

The stormwater outfall extends from Dallas Avenue across and under the T-117 uplands, and discharges on adjacent aquatic land. The City would pay nothing for the easement, but considerations are included that inure to the Port's benefit. The term of the Construction Easement is six months. The term of the Operation Easement is 30 years, and may renew for two additional 30-year terms to a maximum of 90 years.

**BACKGROUND**

***Remediation History***

Since 2000, the Port, King County, the City, and the Boeing Company have been conducting an investigation of sediment contamination in the Lower Duwamish Waterway (LDW) Superfund Site under an administrative order issued by the U.S. Environmental Protection Agency (EPA). Assessment activities identified a number of localized contaminated areas that EPA determined should be addressed through cleanup actions taken prior to a final EPA determination of cleanup requirements for the LDW as a whole ("Early Action Areas"). One such location is T-117 - specifically the sediments, adjoining bank and upland area at T-117, and the City streets and residential yards adjacent to T-117.

Following EPA's decision to list the LDW as a federal Superfund site and its subsequent designation of the T-117 sediment site as an "Early Action Area" in May 2003, the Port and the City entered into a Memorandum of Agreement to jointly fund the investigation and remediation

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of contamination within the sediments and in the adjoining bank area of this Early Action Area. In December 2005, the Port, the City and the EPA entered into an Administrative Settlement Agreement and Order on Consent for Removal Action at the T-117 Early Action Area (the “2005 Order”).

During the investigation of the bank area, areas of contamination above action levels (“hotspots”) were discovered on T-117 uplands that required immediate action. In June 2006, the Commission agreed to enter into a new Order (the “2006 Order”) to conduct a time-critical removal action. The cleanup of the hotspots required under the 2006 Order was performed that summer.

Subsequent investigations of the upland area by the Port and adjacent streets and residential yards by the City resulted in an expanded area of cleanup. These changes were formally established in a revised Statement of Work, which was approved by the EPA in September 2007, and which replaced the Statement of Work for the 2005 Order.

In July 2008, the Port entered into a Settlement, Indemnity and Release Agreement (“the T-117 Settlement Agreement”) with the City of Seattle, the Malarkey Asphalt Company, and other parties. As one part of this agreement, the City agreed to pay 100% of the costs for the cleanup of the adjacent streets and residential yards. The stormwater drainage facilities and outfall that are the subject of this Commission action are part of the cleanup of the adjacent streets and residential yards, and therefore are the sole financial responsibility of the City.

The final T-117 cleanup plan was formally approved by the EPA in an Action Memorandum dated September 30, 2010, and in 2011 the Port and the City formally committed to conducting the required cleanup, by entering into an Administrative Settlement Agreement and Order on Consent (the “2011 Order”). The 2011 Order requires that the City and Port cooperate with each other on the various cleanup projects.

### ***Stormwater Discharge System***

As part of the cleanup of the adjacent streets and residential yards, the City is required to design a permanent stormwater discharge solution. The option selected by the City and approved by the EPA was to construct an outfall located on the Port’s T-117 property. This option was selected for the following reasons:

- Lowest cost
- Outfall goes through T-117 property, which served as the predominant pre-existing natural stormwater overland flow path
- The outfall pipeline route traverses the recently cleaned T-117 property
- If the Port decides to construct habitat at T-117, outfall construction sequence and schedule will allow this
- The ability to maintain the outfall pipeline without significant obstacles

The implementation of the Port’s cleanup project at T-117 is projected to be completed by March 2015. The City will begin its adjacent streets and yards cleanup, and associated stormwater facility construction, in March 2015. The City’s stormwater construction is projected to be completed in August 2015.

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Port staff has completed its due diligence, and obtained and reviewed all relevant documentation relating to the proposed stormwater drainage facilities and outfall. Additionally, the Port's Legal Department drafted the Stormwater Easement, which was then reviewed by both the Environmental and Risk Management Departments.

### ***Easement Consideration to the Port***

In considering the Stormwater Easement, Port staff reviewed the plans for construction, operation, maintenance, and monitoring of the stormwater facilities and outfall with the interests of safety, environmental risk, and current and future uses of T-117 in mind. The easement is nonexclusive, thereby allowing appropriate future uses on the aboveground property. The City is indemnifying and holding the Port harmless from all environmental liabilities related to the City's use of the easement property. The Port has the ability to amend the conditions of the easement during the term under certain situations. These specific provisions, among others, are benefits that provide consideration for the grant of the easement.

If the request for an Easement is denied, the City does possess appropriate condemnation authority to acquire the property. Alternately, the EPA could order the Port to grant access. Given the need and public benefit of the project, and the legal protection provided in the easement language, staff recommends granting the easement request.

### **ATTACHMENTS TO THIS REQUEST**

- Stormwater Outfall Easement Agreement (drafted and fully negotiated)

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

- March 26, 2013 – The Commission authorization for the Chief Executive Officer to: 1) purchase southern portion of the South Park Marina float structure to accommodate habitat restoration in the estimated amount of \$194,000; and 2) complete permitting, and design for a public access viewpoint pier at Site 23 for an estimated cost of \$458,000.
- November 6, 2012 – The Commission authorized advertise and execute a major construction contract, and to execute a contract to provide environmental consultant services for a removal action (cleanup) at the T-117 Early Action Area cleanup site required under an Administrative Settlement Agreement and Order on Consent that the Port entered into on June 8, 2011.
- June 7, 2011 – The Commission authorization for the Chief Executive Officer to: 1) Complete permitting and design of an expanded fish and wildlife habitat restoration project at Terminal 117 (T-117) for an estimated cost of approximately \$3,021,000; and 2) execute a contract for outside professional services to complete the permitting and design of the habitat restoration project at T-117.

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- December 6, 2011 – The Commission authorized \$56,500,000 for the 2012-2016 Environmental Remediation Liability Program, including spending of \$23,600,000 for environmental liabilities in 2012.
- May 24, 2011 – The Commission authorized the Chief Executive Officer to execute an Administrative Settlement Agreement and Order on Consent for removal action implementation at Terminal 117, an EAA for the Lower Duwamish Waterway Superfund.
- June 1, 2010 – The Commission authorized the Chief Executive Officer to execute a Category III professional services contract to provide consultant services and support for planning and pre-design; design services, construction and monitoring support, and post-construction monitoring for the 2011 Order.
- May 24, 2010 – The Commission approved execution of an Administrative Settlement Agreement and Order on Consent for Removal Design/Removal Action at the T-117 Early Action Area.
- November 30, 2009 – The Commission approved the authorization to perform pollution remediation activities relating to environmental reserve funds in 2010.
- October 27, 2008 – The Commission authorized the Chief Executive Officer to Sign a Settlement, Indemnity and Release Agreement with the Malarkey Parties, the Duwamish Parties, the City of Seattle, and King County regarding T-117 Site and Lower Duwamish Site Cleanup Costs, and Natural Resource Damage Liability.
- June 27, 2006 – The Commission (1) approved execution of Administrative Settlement Agreement and Order on Consent for Time Critical Removal Action in the T-117 Upland Area; (2) directed staff to develop a work plan to expand the cleanup options in the T-117 Upland Area and (3) amended the 2006 project-wide authorization expenditure in the amount of \$6,000,000.
- October 11, 2005 – The Commission approved execution of (1) Administrative Settlement Agreement and Order on Consent for Removal Action T-117 Early Action Area; and, (2) Administrative Settlement Agreement and Order on Consent for the T-117 Upland Investigation.
- August 24, 2004 – The Commission approved execution of the Memorandum of Agreement (Cost Allocation) between the Port and the City of Seattle for Malarkey Early Action Area.

August 24, 1999 – The Commission approved the purchase and sale agreement for the acquisition of the Malarkey Asphalt Property at a cost of \$176,400 and implementation of required environmental cleanup measures on adjoining Port property at a cost not to exceed \$800,000.