

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA

Item No. 6b

Date of Meeting November 30, 2009

DATE: November 13, 2009

TO: Tay Yoshitani, Chief Executive Officer

FROM: Stephanie Jones, Senior Manager, Seaport Environmental Programs
Elizabeth Leavitt, Director, Aviation Planning and Environmental

SUBJECT: Authorization to spend reserve funds in the amount of \$13,141,000 for the environmental remediation program for Seaport, Real Estate and Airport for 2010.

ACTION REQUESTED

Request authorization for the Chief Executive Officer to complete contract documents; execute, award, and amend outside professional services agreements; execute Service Directives, advertise, award and execute construction contracts; perform construction services; perform testing services; perform contract administration and execution; and perform pollution remediation activities, relating to environmental reserve funds in 2010 including environmental investigations, studies, and cleanups on Port properties for a total authorization of \$ 13,141,000. This authorization is for the Environmental Reserve component, which totals \$7,548,000, plus the portion obtained from cost-sharing agreements where the Port holds contracts on behalf of others, which totals \$5,593,000.

SYNOPSIS

As a major industrial and commercial land owner, the Port has significant environmental cleanup liabilities due to historic contamination of its properties. Since 1993, the Port has reserved funds to insure that these obligations are met. While Port environmental cleanup projects typically span several years, more complex projects have been active for over 10 years. This \$13,141,000 authorization for 2010 will allow us to continue ongoing environmental testing, analysis, design, cleanup, and monitoring for our active sites and will initiates similar activities for new sites, as noted in this memorandum.

BACKGROUND

The Port has identified a number of contaminated sites on Seaport, Real Estate and Aviation properties that must be investigated and remediated in compliance with federal and state environmental laws and regulations. In some cases, the Port has been designated by the federal government as a "Potentially Responsible Party" (PRP), and/or by the state government as a "Potentially Liable Party" (PLP) for the investigation and cleanup of properties owned by the Port or where the Port may have contributed to site contamination.

Although the Port may not bear ultimate liability for the contamination, under federal and state law the Port is presumptively liable as the property owner, and it is often practically and financially beneficial for the Port to take initial responsibility to manage and pay for the cleanup.

COMMISSION AGENDA

Tay Yoshitani, Chief Executive Officer

November 13, 2009

Page 2

In many cases the Port has successfully recovered and/or will seek recovery from other responsible parties for Port-incurred investigation and cleanup costs. The Port also has been successful in receiving Model Toxics Control Act (MTCA) grant funds to pay part of the cleanup costs. The Port's goals are to cost-effectively complete this environmentally responsible work and to maximize work accomplished by or paid for by, the parties responsible for the conditions encountered (or others, such as insurance companies, who represent them).

To mitigate such environmental expenditures, the Port also encourages, coordinates with, and oversees the investigation and cleanup of sites by other responsible parties, to assure that legal requirements are met and that Port liabilities are minimized. Regardless of whether the Port conducts the investigation and remediation directly, or oversees the proper performance of that work by other responsible parties, the Port provides a valuable public benefit by acting as a catalyst in expediting appropriate environmental management of these sites.

Accounting rules require that the Port establish reserves for environmental liabilities when the Port's obligation meets specified definitions of certainty and the liability amount can be reasonably estimated. When an Environmental Reserve is established, an expense is recorded in the current period for the future liability. The Port develops its environmental reserve forecasts in compliance with Government Accounting Standards Board (GASB) issued Statement No. 49 "Accounting and Financial Reporting for Pollution Remediation Obligations".

The spending of environmental reserves is authorized in one of two ways. If the environmental costs are incurred in the course of or incidental to a construction project, then the Commission authorization occurs as part of the authorization for the overall construction project. Examples of this include asbestos removal, offsite soil disposal during construction, or upland dredge material disposal.

If the environmental cost is not associated with a construction project, but is a stand-alone pollution remediation project, then the expenditure is authorized through one annual environmental reserve action. Since 1993, the Commission has approved an environmental reserve and associated annual expenditures. Today's Commission action, authorizing the expenditure of \$13,141,000 in 2010, is such an action. It authorizes Port staff to perform non-construction related, pollution remediation activities including environmental investigations, studies, and cleanups on Port properties during 2010.

BUSINESS PLAN OBJECTIVES

Activities funded by Environmental Reserves define and minimize to acceptable levels threats to the environment caused by prior Port operations, prior tenant operations, and by the historical effects of industrial activity on properties acquired by the Port. Generally, the product of these efforts, as well as the attendant compliance with regulatory mandates, management of Port liabilities, and support of the local community, aligns with the goals and objectives of the Seaport, Aviation, and Real Estate Division Business Plans.

COMMISSION AGENDA

Tay Yoshitani, Chief Executive Officer

November 13, 2009

Page 3

ALTERNATIVES CONSIDERED / RECOMMENDED ACTION

The following alternatives were considered for accomplishing the work described in the Scope of Work:

Alternative 1

Do not complete the work. If the Port chose to not complete the work, federal and/or state regulatory agencies could mandate the work be accomplished, either by the Port under an enforcement or similar order, or by the agency. In many cases, such arrangements already exist between the Port and regulatory agencies. In either case, the Port would lose the opportunity to employ the flexibility contained in the controlling regulations, to define and direct the work, and to manage costs.

Alternative 2

Complete the work using Port staff. Port staff is already heavily involved in project direction, legal analysis, and project management, and will continue to perform these services. The nature and extent of the technical and legal work required to complete this work is substantial, and would require a large number of additional staff with additional expertise. In addition contracts would still be required for such work as laboratory analysis.

Alternative 3

Complete the work using outside consultants and contractors. Outside consultants and contractors have sufficient numbers and types of specialists necessary for timely and cost effective completion of this work; however the work would be more costly than if some Port staff were also involved.

Alternative 4

Complete the work using a combination of Port staff (Alternative 2) and outside consultants and contractors (Alternative 3) that maximizes the ability for the Port to direct cleanup efforts and maximize the effectiveness of staff. **Alternative 4 is recommended.**

SCOPE OF WORK

The environmental investigation and remediation actions described in this Scope of Work section are required under federal and/or state law. Remedial actions that are supported by Environmental Reserve funds continue to focus on cost-effective study, analysis, and implementation of cleanup actions; coordination with capital planning, design, and construction; and negotiation with agencies, tenants, other PRPs and insurance companies.

Seaport Sites/Projects

Lower Duwamish Waterway Superfund – The Lower Duwamish Waterway is a Federal Superfund Site. The Lower Duwamish Work Group (LDWG), consisting of the Port, the City of Seattle, King County and Boeing are conducting a Remedial Investigation and Feasibility Study (FS) of the Waterway under an Administrative Order on Consent (AOC) with the Environmental Protection Agency (EPA) and the Department of Ecology (DOE). The Port is the contracting agent for the LDWG. A draft FS was submitted to the agencies in 2009 with the submittal of the draft final FS scheduled for 2010. Based on comments received on the draft FS, additional sampling may be required.

COMMISSION AGENDA

Tay Yoshitani, Chief Executive Officer

November 13, 2009

Page 4

Terminal 117 Sediments, Bank and Uplands – As part of the Lower Duwamish Waterway Superfund effort, the LDWG identified several sediment hot spots that warranted early cleanup action, including this site, which is owned in part by the Port. In 2005, the Commission authorized the signing of an Administrative Settlement Agreement and Order on Consent (ASAOC) with EPA for the final design and construction of the sediment and bank cleanup. However, the extensive contamination discovered during the 2006 upland investigation necessitated a re-evaluation of the T117 Sediments and Bank Project, with the outcome being to combine the Terminal 117 Uplands Project with the T117 Sediments and Bank Project. The Port, along with the City of Seattle, signed a new Statement of Work (SOW) for the 2005 ASAOC, providing for the revision of the Engineering Evaluation and Cost Analysis (EE/CA). The work required under the 2005 ASAOC is continuing. In 2008, the Port entered into a settlement agreement with the City of Seattle, King County and the former owners and operators of the upland property (Malarkey Asphalt and Duwamish Manufacturing) which resolved litigation related to past and future claims for T117 cleanup costs between all parties. The draft EE/CA is expected to go out for public comment during the first quarter of 2010. The schedule has been delayed due to discovery of dioxin.

Terminal 108 – As mentioned above, LDWG is conducting the Lower Duwamish Remedial Investigation/Feasibility Study. As part of this work, the LDWG identified hot spots that may require early cleanup action, one of which is located in the sediments adjacent to Terminal 108. The DOE requested, and the Port voluntarily agreed, to perform additional investigation of the groundwater. The groundwater study determined that the groundwater is not a source of contaminants to the river. However, Ecology is requiring additional bank, shoreline, and upland assessment of potential river recontamination sources. Some engineered mitigation measures may be necessary to control potential recontamination sources. On October 13, 2009, Commission approved moving forward with this source control work as an independent action.

Terminal 115 Contamination – The Port is conducting a continuing program to remove small amounts of free product (petroleum) from groundwater caused by two leaking underground tanks that were removed from the southwest portion of the terminal. Investigative groundwater monitoring is also continuing. Soils are marginally contaminated at the site but cleanup at this time is not required by regulatory agencies.

T-5 DOE State Cleanup Sites – In the past, as part of the T-5 site redevelopment, the Port completed remediation at four sites under three Consent Decrees with the DOE. Current obligations include an investigation and long term ground water monitoring program, on-going cap inspection and maintenance of the four areas.

T-5 Pacific Sound Resources (PSR) EPA Superfund Site – Under a Supplemental AOC with EPA, the Port has completed three years of groundwater monitoring and product recovery. The Port is continuing to perform required cap inspection and maintenance and monitor EPA activities related to the groundwater and the off shore sediments. EPA is currently performing a 5 year review on this site. In 2008, the Port reached settlement with Burlington Northern Santa Fe Railway to recover cleanup monies previously expended by the Port and ending litigation for this site.

Harbor Island Superfund Site Soil and Groundwater Operable Unit – Long term groundwater monitoring has begun. Long term cap maintenance and inspections have been initiated as required under the Record of Decision. EPA is currently performing a 5 year review of this site.

COMMISSION AGENDA

Tay Yoshitani, Chief Executive Officer

November 13, 2009

Page 5

Harbor Island Superfund Site East Waterway Sediments Operable Unit – Sediment cleanup via dredging in the East Waterway navigational channel began in early January 2004, and was completed in March 2005. Some of the areas within the cleanup boundary required additional post-dredging capping due to deeper-level contamination. Post remediation sampling continues. Negotiations with EPA, the City of Seattle, King County, and Seattle Iron and Metal (SIM), regarding future investigations and additional cleanup actions resulted in the Port signing an ASAOC with EPA for a final Supplemental Remedial Investigation and Feasibility Study (SRI/FS), and a Memorandum of Agreement with the City and the County to share costs and cooperate in the SRI/FS process. The Port is acting as the contracting agent for this work. A settlement agreement with SIM was negotiated for their contribution to the SRI/FS costs. We are currently conducting the SRI/FS tasks identified in the ASAOC and subsequent work plans.

Terminal 18 Jet Fuel Pipeline – This pipeline, which was owned by the Port and operated by Kinder Morgan, failed the tightness test in November 2003. A release of jet fuel to the soil has been documented. The area of the leak was identified and repaired and an investigation was performed to identify those areas that may require cleanup. Cleanup of this area has been delayed due to access issues. Cleanup, if still required, will occur towards the end of the North Apron upgrade project in 2010 or 2011.

Terminal 30 Oil Cleanup – This is the former Chevron site. The Port has removed significant amounts of free product and conducted an intensive groundwater-monitoring program. This project is currently being re-evaluated with DOE to determine steps needed to reach agreement on a closure plan and close out the existing Agreed Order. The Port is in the process of negotiating final site remedy and compliance monitoring for the site.

Terminal 10 Lockheed – Lockheed has performed the upland and sediment cleanup required at the site. The Port's continuing obligation is to maintain the upland cap and the habitat restoration area, manage any contaminated soil and groundwater encountered or removed during redevelopment or maintenance activities, and to protect Lockheed's groundwater monitoring wells. The site's storm water drainage and upland cap is proposed to be installed and/or replaced under the Terminal 10 Uplands capital project.

T106 Warehouse Building – The former warehouse building contains five underground storage tanks (USTs) and some cement kiln dusts (CKD) fill material. During future site development or improvements, UST decommissioning and limited soil remediation will be required. If site development encounters or disturbs underlying CKD fill, generated material will be profiled, handled, and disposed of offsite.

Natural Resource Damages (NRD) Habitat Planning – Superfund liability for LDW also may involve some habitat restoration due to injury to natural resources from contamination. The Port is negotiating with the NRD Trustees to allow creation of habitat now and to receive credit for the habitat when a settlement agreement is finalized. The Port is looking at designing habitat at T117 under this approach.

New Seaport Sites

Terminal 115 North (former tin recycling facility) – In late January 2009, the Port received from DOE a Notice of Potential MTCA Liability and a Notice of Intent to Conduct a Site Hazard

COMMISSION AGENDA

Tay Yoshitani, Chief Executive Officer

November 13, 2009

Page 6

Assessment. DOE identified this site as a result of their source control activities related to one of the high priority sediment sites (Glacier Bay) within the Lower Duwamish Superfund site. Glacier Bay is located north of Terminal 115. The Port is conducting an initial assessment of the environmental contamination at the site, and evaluating potential future courses of action.

Terminal 104 – The Port will be conducting an initial assessment of the environmental contamination and potential future course of action for this site. The site is being targeted as a result of DOE's source control activities related to the Lower Duwamish Waterway Superfund site.

Real Estate Sites

Terminal 91 Cleanup – Investigation and cleanup of this site is being administered by the DOE under the State Dangerous Waste Program and an Agreed Order. The draft Feasibility Study (FS) will go out for public comment this December. After the FS is finalized, a cleanup action plan will be developed which will identify the cleanup approach selected by DOE. At that time, a new Order will be negotiated for performance of the cleanup.

Fishermen's Terminal – The Port has removed contaminated soils in the upland, capped the uplands as a voluntary cleanup measure, and is conducting a continuing program of investigative groundwater monitoring at and near the Fishing Vessel Owners (FVO) tenant site. Some dredging of contaminated sediments occurred as part of the Docks 5-10 renewal and replacement and berth dredging project.

T-5 DOE State Cleanup Sites (Old West Seattle Landfill) Site – In addition to the 4 sites listed under Seaport sites, as part of the T-5 redevelopment, the Port purchased the old West Seattle Landfill and installed an environmental cap and a methane collection system. These systems require long term operation and maintenance, inspection and reporting.

Aviation Sites/Projects

Aircraft Fuel Farms and Fueling Systems – Five underground aircraft fueling systems were constructed and operated by individual airlines beginning in the early 1960s. As of January 2007, each of these systems has been decommissioned. Appropriate environmental cleanup has been achieved for three of the systems and is in progress for two others. Long term monitoring continues as noted below:

- Investigation and remediation of an area impacted by operations of the former United Airlines and Continental Airlines fuel farms are anticipated to continue for an additional two to three years. The Port is a member of the PLP group for this multiple-source site.
- The Northwest Airlines and Pan Am Airlines systems are closed and have been appropriately remediated, but continue to require monitoring. In 2010 the Port will oversee monitoring of the former Northwest system performed by Delta Airlines (post-merger), and will perform monitoring associated with the Pan Am system. (The Port has been designated as the PLP as a result of Pan Am bankruptcy). These monitoring activities will be conducted in the context of the STIA Ground Water Study, described below

STIA Ground Water Study – In May 1999, the Port and the DOE executed a MTCA Agreed Order that required the Port to conduct a study of ground water conditions in the uppermost regional aquifer in the vicinity of the airport. The study has been completed. The results demonstrate that

COMMISSION AGENDA

Tay Yoshitani, Chief Executive Officer

November 13, 2009

Page 7

there is little potential for airport operations to impact ground water conditions beyond the airport boundary, and threaten local ground water receptors (public drinking water supplies, creeks, etc.). DOE has accepted the study findings and designated the Port's obligations under the Agreed Order as complete. DOE and the Port have agreed to a plan for long term ground water monitoring to confirm the results of the models used in the study. The Port will implement the monitoring plan on a voluntary basis, either independently, or as part of a PLP group. PLP negotiations are ongoing. We anticipate commencing long term monitoring in 2010.

Lora Lake Apartments – Under the terms of the agreement settling the King County Housing Authority condemnation of the Lora Lake Apartment complex, the Port retained responsibility for future contamination remediation of the property. On July 10, 2009, the Port and the DOE executed a MTCA Agreed Order that requires the Port to conduct a Remedial Investigation and Feasibility Study (RI/FS) for the cleanup of the Lora Lake Apartment Property. A Draft RI/FS Work Plan is being prepared and will be submitted for comment to the DOE on November 20th, 2009. Once a final RI/FS Work Plan is approved by DOE, the Port will initiate additional investigations. We anticipate that the bulk of the field work for the RI will be conducted during the spring and summer of 2010. A report that presents the findings of the RI and analysis of clean up alternatives will be submitted to DOE in mid 2011. Actual clean up will be accomplished under a follow-on order negotiated after the completion of the RI/FS.

SeaTac Fuel Facilities Fuel Farm – Groundwater contamination was discovered at this facility, the former Olympic Fuel Farm, during an investigation to define post-construction conditions as required by the lease between the Port and the SeaTac Fuel Facilities LLC. The extent of the contamination has been determined, and pilot testing of remediation systems has been completed. Remediation, consisting of passive collection of free product and ground water monitoring, continues.

FINANCIAL IMPLICATIONS

Cost Estimate

The estimated expenditures in 2010 for the environmental remediation projects described in the Scope of Work totals \$13,141,000. This authorization is for the Environmental Reserve component, which totals \$7,548,000, plus the portion obtained from cost-sharing agreements where the Port holds contracts on behalf of others, which totals \$5,593,000.

Source of Funds

Environmental cleanup projects have two types of funding sources. The first is the Port's Environmental Reserve, which is funded by the Port's Tax Levy and the Airport's operating budget. The second is supplementary outside sources including the following:

- Cost sharing agreements with other PLPs (or PRPs), wherein the Port functions as a funding conduit for the other PLPs and the Port holds contracts on behalf of these other PLPs
- Invoicing and payment directly from other PLPs, such as tenants
- Litigation settlements with other PLPs
- Insurance recoveries from both the Port's insurers and other PLPs' insurers

COMMISSION AGENDA

Tay Yoshitani, Chief Executive Officer

November 13, 2009

Page 8

- Grant funding from the Washington DOE and the U.S. Environmental Protection Agency

The following projects received grant funding in 2009 for existing projects: T30 and the Lower Duwamish Superfund site including early action sites T117 and T108.

New grants were received in 2009 for T91 and East Waterway Superfund sites. A grant application was submitted for Lora Lake.

This authorization is for the Environmental Reserve component, which totals \$7,548,000, plus the portion obtained from cost-sharing agreements where the Port holds contracts on behalf of others, which totals \$5,593,000.

COMMUNITY / CUSTOMER / ORGANIZATION IMPACTS

Elimination of unacceptable levels of environmental risk caused by the presence of contaminants in upland soil, in marine sediments, and groundwater is not only required by state and federal law, it is the hallmark of responsible environmental stewardship, from the perspectives of both the surrounding residential and business communities and the customers that we serve.

The environmental authorization will fund a mix of Port staff and outside consultant services that maximizes the effectiveness of staff.

PROJECT SCHEDULE

This authorization is for funds forecasted to be spent in 2010.

PREVIOUS COMMISSION ACTION

On July 13, 1993, the Commission approved the expenditure of \$1,050,000 for eight projects during 1993.

On March 8, 1994, the Commission approved the expenditure of \$776,000 for eleven projects during 1994.

On March 28, 1995, the Commission approved the expenditure of \$1,875,000 for nine projects during 1995.

On February 27, 1996, the Commission approved the expenditure of \$2,325,000 for eleven projects during 1996.

On February 25, 1997, the Commission approved the expenditure of \$1,100,000 to conduct the STIA Ground Water Study required by a Washington DOE Model Toxics Control Act (MTCA) Agreed Order.

On June 8, 1999, the Commission approved the expenditure of \$300,000 to conduct the Industrial Waste System Hydrogeological Study required by the DOE as a performance condition of the 1998 National Pollution Discharge and Elimination System Permit.

On August 24, 1999, the Commission approved the expenditure of \$800,000 for environmental cleanup of Port property adjacent to the Malarkey Asphalt Co. site.

On March 14, 2000, the Commission approved the expenditure of \$1,000,000 for aquatic sediment management for participating in the development and implementation of federal and state laws and

COMMISSION AGENDA

Tay Yoshitani, Chief Executive Officer

November 13, 2009

Page 9

regulations relating to the disposition of contaminated aquatic sediments, and the expenditure of \$2,000,000 for cleanup-related investigations at the former Chevron Oil Terminal site at Terminal 30.

On July 10, 2001, the Commission approved the expenditure of \$5,100,000 for nine Aviation projects and six Seaport projects during 2001.

On June 11, 2002, the Commission approved the expenditure of \$1,500,000 and contract amendments for the Environmental Protection Agency's (EPA) 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.

On March 11, 2003, the Commission approved the project-wide authorization expenditure of \$4,999,000 for environmental cleanup action on Port properties and for potential environmental liabilities during 2003. Actual expenditures for 2003 were ultimately limited to \$2,459,870.

On March 23, 2004, the Commission approved the project-wide authorization expenditure of \$8,081,000, for environmental cleanup action on Port properties during 2004. Actual expenditures for 2004 were ultimately limited to \$2,136,943.

On March 23, 2005, the Commission approved the project-wide authorization expenditure of \$8,102,222, for environmental cleanup action on Port properties during 2005. Actual expenditures for 2005 were ultimately limited to \$6,255,791.

On December 13, 2005, the Commission approved the project-wide authorization expenditure of \$8,705,760 for environmental cleanup action on Port properties during 2006.

On June 27, 2006, the Commission approved an increase in the 2006 project-wide authorization for environmental cleanup action on Port properties, to increase the authorization in the amount of \$6,000,000 to \$14,705,760. Expenditures for 2006 were ultimately limited to \$11,087,873.38.

On December 12, 2006 the Commission approved the project-wide authorization expenditure of \$7,756,549 for environmental cleanup action on Port properties during 2007. Expenditures for 2007 were ultimately limited to \$7,537,286.

On December 1, 2007 the Commission approved the project-wide authorization expenditure of \$11,833,000 for environmental cleanup action on Port properties during 2008. Expenditures for 2008 were ultimately limited to \$11,322,258.

On December 9, 2008 the Commission approved the project-wide authorization expenditure of \$10,396,000 for environmental cleanup action on Port properties during 2009. Expenditures for 2008 through September 30, 2009 were \$4,781,000.