

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA

Item No.	<u>6b</u>
Date of Meeting	<u>June 7, 2011</u>

DATE: May 27, 2011

TO: Tay Yoshitani, Chief Executive Officer

FROM: Stephanie Jones Stebbins, Director, Seaport Environmental & Planning Programs
Kathy Bahnick, Manager, Seaport Environmental Programs
Ticson Mach, Capital Project Manager, Seaport Project Management

SUBJECT: Terminal 117 Expanded Habitat Design

Amount of This Request: \$3,021,000

Source of Funds: Settlement Proceeds

Est. State and Local Taxes: N/A

Est. Jobs Generated: N/A

Total Project Cost: TBD

ACTION REQUESTED:

Request 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.

SYNOPSIS:

This Commission memo is for design and permitting work associated with habitat restoration at an expanded Terminal 117. It should be noted that a separate Commission memo for the cleanup at Terminal 117 (an Early Action Area for the Lower Duwamish Superfund site) was on the Commission agenda for May 24th. At that meeting, the Commission approved execution of the Settlement Agreement and Order on Consent for Removal Action Implementation at Terminal 117. The cleanup project unlike the habitat restoration, is being performed jointly with the City of Seattle to offset both parties' cleanup liability. The habitat restoration, conversely, is being undertaken exclusively by the Port for the purpose of offsetting Natural Resource Damage liability or for other compensatory mitigation uses.

T-117 Cleanup

In 2001, the Lower Duwamish Waterway (LDW) Superfund site was named a National Priorities List cleanup site under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, the federal Superfund cleanup law). The Port, King County, the City of Seattle (City), and the Boeing Company are participating in the investigation of LDW sediment contamination under an administrative order issued by the U.S. Environmental Protection Agency (EPA). At this time, the scope and extent of the final cleanup for the LDW as a whole is undetermined.

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Terminal 117 is an “Early Action Area” (EAA) of the LDW. The T-117 EAA consists of LDW sediments adjacent to the Port’s T-117 facility, T-117 itself, and certain streets and yards in the South Park neighborhood of Seattle where T-117 is located. The Port and the City share responsibility for remediation of the sediment and upland facility portions of the T-117 EAA, and the City is solely responsible for the streets and yards portion of the required work. The Port, City and EPA are currently finalizing an agreed order to complete the remediation of the T-117 EAA.

LDW Habitat Plan

In 2009, the Commission adopted the Lower Duwamish River Habitat Restoration Plan (LDRHRP). The purpose of the Plan was to identify objectives and opportunities for habitat restoration on Port-owned properties along the river while supporting water dependent and water-related business uses. The T-117 project site was identified as Site 23 in the LDRHRP.

Natural Resource Damages (NRD) Liability and T-117

In addition to regulating Superfund cleanups, CERCLA also creates liability for damages to natural resources caused by “releases” of “hazardous substance” contamination into the environment. EPA administers the remediation of Superfund sites, but is not responsible for the NRD liability aspects of Superfund. That task falls to the Natural Resource Trustees (Trustees), who are designated federal, state and tribal governmental entities that have management responsibility for the wildlife and other resources that may have been damaged by hazardous substance releases at a cleanup site. The National Oceanic and Atmospheric Administration (NOAA) takes the lead Trustee role in instances when marine fish and wildlife are potentially affected, with participation from the other Trustees.

NRD settlements typically occur after EPA has issued a Record of Decision (ROD) establishing the actions required for remediation of an entire Superfund site, and after NOAA has completed a formal NRD “damage assessment.” If the typical Superfund process were followed, NRD settlement discussions would not begin in earnest until sometime after 2013, when EPA expects to issue the LDW ROD. NOAA encourages parties to settle earlier when possible.

NOAA generally allows settling parties to resolve their liability by either making a cash payment or by carrying out habitat restoration projects. NOAA’s preferred approach is to match up one or more habitat restoration projects with a party’s liability and settle on that basis, rather than negotiating a cash payment.

The Port’s remediation of T-117 presents an opportunity to carry out habitat restoration in conjunction with remediation in a way that will meet the needs of both EPA and the Trustees. In April 2008, the Commission approved moving forward with procuring a design consultant for the T-117 Habitat project, and also to enter into a Memorandum of Agreement (MOA) with the Trustees to establish a “credits agreement.” This “credits agreement” would be a legally binding commitment from the Trustees that any habitat restoration work the Port performed prior to entering into an NRD settlement would be given credit in the settlement.

Three things have happened since 2008. The first was the delay in the cleanup at T-117 that occurred as a result of certain dioxin-related issues. Second, NOAA informed the Port that they would prefer to pursue the final settlement agreement rather than spend time finishing the negotiation of the credit agreement. Third, the Gulf of Mexico oil spill in 2010 diverted much of the NOAA resources for NRD.

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In the meantime, Port staff conducted the selection process for the design consultant, and the consultant completed some preliminary work in preparing for the design of the T-117 Habitat project and conducting associated public outreach. Our intent is to coordinate the timing of the habitat project with the cleanup schedule, but that may not be feasible if settlement efforts with the Trustees continue to progress slowly. Continuing design would enable ongoing settlement discussions, targeting final settlement agreement in time to construct the habitat in conjunction with the T-117 cleanup.

During settlement discussions with NOAA, it has become clear that the type, size and configuration of restored habitat influence the ultimate value of the project. In particular, larger (or longer) sites with a diverse mix of habitat types are more valuable per unit of area. Because of this, staff is recommending that the bankline to the south of T-117 be added to the T-117 Habitat project. This bankline was identified as Site 25 in the LDRHRP. Including Site 25 in the T-117 project would effectively double the size of the restoration area, substantially increasing the overall value of the project towards resolving our NRD liability, without creating an equivalent (i.e., proportional) increase in cost.

PROJECT DESCRIPTION AND JUSTIFICATION:

The T-117 Early Action Area cleanup project consists of 3.3 acres of upland and 1.4 acres of submerged land and shoreline located on Dallas Avenue in South Park. This is the same area that was approved for the design of habitat in the May 13, 2008, Commission action. The property is currently unoccupied in anticipation of the cleanup.

The northern boundary of Site 25 is contiguous with portions of the T-117 habitat project at around River Mile 3.8 on the west shoreline of the LDW, adjacent to the Boeing Research Facility Campus. Adding Site 25 to the T-117 project would not only yield significantly more credit per unit of area, it would also minimize construction related impacts by concentrating work in one location.

If the T-117 habitat site is expanded to include Site 25, the Port will need to repeat the procurement process for the design and permitting support work. Staff is currently evaluating the option of using in-house resources to perform design and permitting work, in conjunction with specialized consultant support using existing IDIQ contracts, and possibly an interlocal agreement with King County. King County could provide technical support associated with river dynamics, hydraulics, shoreline stability and general design support. There is value in having a partnership with King County for this NRD habitat project. The Port is committed to supporting the Watershed Resource Inventory Area 9 (WRIA 9) process which is staffed by King County. In addition the County has recently constructed a very successful habitat similar to T-117 located immediately upriver. Involving King County in this project will help validate our project concepts and inspire confidence with the Trustees as well as further our WRIA 9 participation. If an interlocal agreement with King County is to be pursued, staff will come back to Commission with a request for authorization.

The purpose of this project is to complete the design and permitting for habitat construction. Staff will come back to Commission to request authorization to construct the designed habitat when a mechanism is in place whereby the Port will be compensated, either financially or as an offset for our liability, for the natural resource value of the habitat construction.

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PROJECT SCOPE OF WORK AND SCHEDULE:

- This project includes 100% design and permitting for habitat construction at LDRHRP Sites 25 and 23 (T-117).
- The design criteria and permits will meet state, local, and federal construction permit requirements, and construction requirements for a site located within a federal Superfund site.
- In May 2008, when Commission approved the funding for design and permitting, staff estimated this effort would take approximately 6 months to design and approximately 16 months to permit.
- Project permits, construction documents and estimates are scheduled for completion in March 2014.
- Staff will return to Commission at a later date with a request for construction funding.

STRATEGIC OBJECTIVES:

This project supports the Port's strategies to "Ensure Airport and Seaport Vitality" and "Exhibit Environmental Stewardship through our Actions."

- Habitat restoration in the Duwamish corridor is viewed as a key component of salmon recovery efforts. T-117 is located in the transitional zone where juvenile Chinook, chum, and other salmonids transition from freshwater to saltwater, making this a valuable area to increase habitat. Adding Site 25 to the existing authorization provides the opportunity to create a larger and more diverse habitat complex.
- The local community has expressed a preference for habitat creation at T-117.

BUSINESS PLAN OBJECTIVES:

- Develop a habitat project design that provides more habitat value at lower cost per unit of area.
- Possible cost savings if habitat can be constructed at the same time as or closely behind the cleanup.
- Refine competencies needed to capitalize on emerging restoration and ecological credit markets.

FINANCIAL IMPLICATIONS:

Budget/Authorization Summary

Funds spent through 04/30/2011	\$281,828
Current request for authorization	\$3,021,000
Estimated Costs, including this request	3,302,000

Cost Estimate

The actual cost for the expanded design will vary depending on the amount, timing and complexity of the comments and input from state, federal and local regulatory agencies, resource management agencies, the tribes, restoration experts and public input. However, based on engineering estimates, the cost of this design work is approximately \$3.021 million.

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Source of Funds

The cost to implement the expanded T-117 habitat design was included in this Commission's 2010 Environmental Remediation Liability (ERL) spending authorization, approved on December 7, 2010, for 2011 costs. The five-year forecast (April 2011 through June 2015) included an estimated cost of \$1.5 million. Additional funds required, an estimated \$1.5 million, are for incremental design costs. Any additional costs that might be required as the project moves forward will be recorded as a liability and a non-operating expense in accordance with Port Policy AC-9. These amounts will be reported annually to the Commission via routine environmental remediation liability reports and spending authorization requests.

The primary source of funds to pay the costs for design of the habitat project will be settlement funds the Port received in the July 30, 2008, settlement agreement with the City, King County and the Malarkey Parties.

Financial Analysis Summary

CIP Category	Not applicable
Project Type	Environmental Habitat
Risk adjusted Discount rate	Not applicable
Key risk factors	<ul style="list-style-type: none">• Increased costs of habitat construction due to uncoordinated remediation and restoration actions• Negotiation of an overall LDW settlement for NRD, without detailed restoration plans and value assessments for the expanded Terminal 117 site, will be less predictable, less timely, and subject to mistaken cost/resource assumptions.• NRD settlement negotiations are pending. The value that the expanded T-117 habitat will have as a component of that settlement is not known at this time.• There is some risk that no mechanism will be developed to enable compensation for the habitat, and that the Port will decide not to construct the habitat.• Delaying construction of habitat will marginally increase NRD liability for the Port.
Project cost for analysis	\$3,302,000
Business Unit (BU)	Terminal 117
Effect on business performance	<ul style="list-style-type: none">• Estimated cost and offsetting settlement money have previously been factored into Seaport's Environmental Remediation Liability Expense.• The additional costs that may be required will be recorded as a liability and a non-operating expense in accordance with Port Policy AC-9.
IRR/NPV	Not applicable

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SUSTAINABILITY AND LIFE CYCLE COSTS:

- Language incorporated in the specifications will encourage reuse of any excess soil to the extent practical.
- The design team will make every effort to design the site so that the habitat is self-sustaining to the extent practical.
- The design team will employ NRD guiding principles and triple bottom line objectives to balance social, environmental and economic benefits and costs.

ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS:

- Alternative 1 - No Action. Stop design and permitting work on a habitat site on T-117 proper until a mechanism is in place for the Port to be compensated financially or as liability offset for the value of the habitat. This option is the safest course, but the Port loses the present opportunity to efficiently create and integrate habitat at T-117 in conjunction with the T-117 EAA cleanup. Delaying the design until after the mechanism is in place will delay habitat construction for at least a year or more (while the project is designed and permitted) which will mean that the project likely could not be implemented immediately following remediation of the T-117 EAA. Alternative 1 is not recommended.
- Alternative 2 – Continue to design and permit a habitat site on T-117 proper but do not expand boundaries to include Site 25. Alternative 2 is not recommended.
- Alternative 3 – Perform the design and permitting for the habitat site at T-117 and expand the boundaries to include Site 25. Adding Site 25 to the T-117 project would yield more credits per unit of area and minimize construction related impacts. **This is the recommended alternative.**

OTHER DOCUMENTS ASSOCIATED WITH THIS REQUEST:

Site map of T-117 potential restoration area.

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS:

- On May 13, 2008, Commission approved entering into a MOA with the Trustees for crediting Habitat Restoration Projects in and near the LDW relating to future Settlement of Natural Resource Damages claims; for execution of a professional services agreement for environmental review and application of permit authorizations; and to prepare plans and specifications for design and permitting of a fish and wildlife habitat restoration project at T-117 under the MOA, for a total authorized expenditure of \$210,000.
- On October 27, 2008, Commission approved entering into a Settlement 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.
- On July 7, 2009, Commission adopted the Lower Duwamish River Habitat Restoration Plan, an inventory of Port of Seattle Properties.
- On May 24, 2011, the Commission approved execution of a Settlement Agreement and Order on Consent for Removal Action Implementation at Terminal 117.