

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA

Item No. 5b
Date of Meeting November 8, 2011

DATE: October 27, 2011

TO: Tay Yoshitani, Chief Executive Officer

FROM: *N.C.* Mike Campagnaro, Manager, Leasing and Asset Management
Paul Meyer, Manager, Environmental Programs *[Signature]*

SUBJECT: Terminal 10 Stormwater Outfall Easement Agreement

Amount of This Request: \$45,750

Source of Funds: Operating Revenues

Est. State and Local Taxes: N/A

Est. Construction Jobs Generated: N/A

Total Project Cost: N/A

ACTION REQUESTED:

Request Commission authorization for the Chief Executive Officer (CEO) to execute an easement agreement with the Washington State Department of Natural Resources (DNR) for an initial term of 10 years and the potential for two additional 10-year terms for the use of State-owned aquatic land at Terminal 10 to install a connection to a new stormwater conveyance system, improve an existing upland cap, and install an outfall structure.

SYNOPSIS:

The construction of Terminal 10 utility improvement project was previously authorized by the Commission on June 22, 2010. The Port desires to use State-owned aquatic lands for the purpose of installing a connection to a new stormwater conveyance system, improving an existing upland cap and installing an outfall structure. The State is willing to grant an easement for these purposes for a term of 10 years, with potential to renew the easement for two additional terms of 10 years each. The Port would agree, among other things, to construct and operate the stormwater conveyance system and outfall in compliance with all laws and permits and in the manner as described in all regulatory authorizations. The cost for the 10-year easement is \$45,750. The cost was set by DNR in accordance with RCW 79.110.240.

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EASEMENT AGREEMENT:

The agreement is made by and between the State of Washington, acting through the Department of Natural Resources ("State"), and Port of Seattle, a municipal corporation ("Port").

The Port desires to use approximately 0.09 acres (4,039 square feet) of these State-owned aquatic lands for the purpose of installing a connection to a new stormwater conveyance system, improving an existing upland cap installed under a separate consent decree and installing an outfall structure.

The Port coordinated its plans with Lockheed Martin Corporation ("Lockheed") and the U.S. Environmental Protection Agency (EPA) and has obtained Lockheed's waiver for any claims against the State for granting an easement to the Port for this outfall.

The State is willing to grant an easement for a term of 10 years, with potential for two 10-year renewal terms, to the Port in reliance upon Lockheed's waiver and the Port's promises to construct and operate the stormwater conveyance system and outfall in compliance with all laws and permits and in the manner as described in all regulatory authorizations.

Future grants of easement rights will depend on the Port's satisfactory progress toward implementation of reasonably practical disposal alternatives, if any.

JUSTIFICATION:

Access to the State-owned parcel is necessary to complete and operate the Terminal 10 utility improvement project previously approved by Commission.

FINANCIAL IMPLICATIONS:

Budget/Authorization Summary:

| | |
|--|----------|
| Previous Authorizations | \$0 |
| Current request for authorization | \$45,750 |
| Total Authorizations, including this request | \$45,750 |
| Remaining budget to be authorized | \$0 |

Project Cost Breakdown:

| | |
|--------------------|----------|
| Easement Fee | \$44,520 |
| Administration Fee | \$1,230 |
| Total | \$45,750 |

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Budget Status and Source of Funds:

The funding associated with this easement was not included in the 2011 Operating Budget. The proposed funding required of \$45,750 will result in an unfavorable operating expense variance as noted below. However, this amount will be offset by savings in other areas.

The easement cost will be funded from operating revenues.

Financial Analysis and Summary:

| CIP Category | N/A | | | | | | | | | | | | | | | | | | | | | | | | |
|---------------------------------------|---|--------------------------------|--------------------|--------------------|--------------------|--------------------|--------------------|-----|-------|-------|-------|-------|-------|--------------|-----|-----|-----|-----|-----|------------------------|-------|-------|-------|-------|-------|
| Project Type | N/A | | | | | | | | | | | | | | | | | | | | | | | | |
| Risk adjusted Discount rate | N/A | | | | | | | | | | | | | | | | | | | | | | | | |
| Key risk factors | <ul style="list-style-type: none">• Renewal of easement conditioned upon DNR's approval and Port's ability to conduct stormwater management alternatives investigation and analysis.• Upon expiration of the easement the Port is required to remove improvements. | | | | | | | | | | | | | | | | | | | | | | | | |
| Project cost for analysis | \$45,750 | | | | | | | | | | | | | | | | | | | | | | | | |
| Business Unit (BU) | Seaport Industrial Properties | | | | | | | | | | | | | | | | | | | | | | | | |
| Effect on business performance | <p>Upon execution of the easement the Port will pay DNR \$45,750. The easement fee (\$44,520) will be amortized throughout the 10-year term of the easement. The impact to Net Operating Income (NOI) and NOI After Depreciation resulting from the initial five-year term of the easement is shown below.</p> <table border="1"><thead><tr><th><u>NOI (in \$000's)</u></th><th><u>2011</u></th><th><u>2012</u></th><th><u>2013</u></th><th><u>2014</u></th><th><u>2015</u></th></tr></thead><tbody><tr><td>NOI</td><td>(\$2)</td><td>(\$4)</td><td>(\$4)</td><td>(\$4)</td><td>(\$4)</td></tr><tr><td>Depreciation</td><td>\$0</td><td>\$0</td><td>\$0</td><td>\$0</td><td>\$0</td></tr><tr><td>NOI After Depreciation</td><td>(\$2)</td><td>(\$4)</td><td>(\$4)</td><td>(\$4)</td><td>(\$4)</td></tr></tbody></table> | <u>NOI (in \$000's)</u> | <u>2011</u> | <u>2012</u> | <u>2013</u> | <u>2014</u> | <u>2015</u> | NOI | (\$2) | (\$4) | (\$4) | (\$4) | (\$4) | Depreciation | \$0 | \$0 | \$0 | \$0 | \$0 | NOI After Depreciation | (\$2) | (\$4) | (\$4) | (\$4) | (\$4) |
| <u>NOI (in \$000's)</u> | <u>2011</u> | <u>2012</u> | <u>2013</u> | <u>2014</u> | <u>2015</u> | | | | | | | | | | | | | | | | | | | | |
| NOI | (\$2) | (\$4) | (\$4) | (\$4) | (\$4) | | | | | | | | | | | | | | | | | | | | |
| Depreciation | \$0 | \$0 | \$0 | \$0 | \$0 | | | | | | | | | | | | | | | | | | | | |
| NOI After Depreciation | (\$2) | (\$4) | (\$4) | (\$4) | (\$4) | | | | | | | | | | | | | | | | | | | | |
| IRR/NPV | N/A | | | | | | | | | | | | | | | | | | | | | | | | |

LEGAL REVIEW AND APPROVAL:

The easement agreement has been reviewed and approved as to form by Port legal counsel.

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OTHER DOCUMENTS ASSOCIATED WITH THIS REQUEST:

- Aquatic Lands Outfall Easement Terminal 10 Stormwater Outfall between the State of Washington and Port of Seattle, with Exhibits A, B and C.

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS:

- May 20, 2010 – The Commission approved an additional \$180,000 to continue work necessary for final approvals essential to the Terminal 10 utility improvement project due to the need for extended review and response by federal, state, and local government agencies.
- April 14, 2009 – The Commission approved an additional \$270,000 to include a new stormwater outfall in the permit and design and to accommodate increased costs associated with EPA and City of Seattle coordination on construction issues.
- September 2, 2008 – The Commission was advised by staff that design and permitting cost may exceed the authorized amount of \$530,000 by up to several hundred thousand dollars.
- March 25, 2008 – The Commission approved \$530,000 for staff to complete 100% design and permitting for the redevelopment of Terminal 10 uplands into truck parking.