

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA

Item No. 6a

CORRECTED COPY

Date of Meeting February 28, 2012

DATE: February 27, 2012

TO: Tay Yoshitani, Chief Executive Officer

FROM: Michael Campagnaro, Manager, Seaport Leasing and Asset Management
Christine Wolf, Transportation Program Planner, Seaport Leasing and Asset Management

SUBJECT: Possession and Use Agreement between Washington State Department of Transportation (WSDOT), the Port of Seattle and Total Terminals International LLC (TTI)

ACTION REQUESTED:

Request Commission authorization for the Chief Executive Officer to negotiate and execute a possession and use agreement between the Washington State Department of Transportation, the Port of Seattle, and Total Terminals International LLC for the partial taking of Port of Seattle Terminal 46 for Phase 3 of the S. Holgate Street to S. King Street Viaduct Replacement Project.

SYNOPSIS:

This request covers minor adjustments to a prior real estate transaction with the Washington State Department of Transportation (WSDOT). The adjustments are necessary to accommodate beneficial design changes to a new bridge across the BNSF Railway (BNSF) Seattle International Gateway (SIG) Yard tail track at S. Atlantic St. The new design is a major improvement in functionality for the movement of Port trucks. It also makes the bicycle crossing across the terminal truck entrance safer. The design changes affect less than 0.2% of leased area along the eastern boundary of Terminal 46, and require temporary construction easements that were not covered by prior agreements between the Port and WSDOT. WSDOT has proposed a possession and use agreement for the affected property to ensure timely construction of this beneficial structure.

The possession and use agreement would allow the project to move forward without requiring the Port to relinquish its underlying rights. Compensation would be negotiated following approval of the agreement.

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ADDITIONAL BACKGROUND:

WSDOT and its contractors have been working since 2009 on the S. Holgate Street to S. King Street Viaduct Replacement Project to:

- Relocate the existing BNSF Railway (BNSF) Seattle International Gateway (SIG) Yard tail track to the west (complete)
- Replace the viaduct's south end with a new facility (under construction, partially complete)
- Provide new SR-99 on and off-ramps near S. King Street, improving access to downtown (under construction)

When the project began construction in 2009, a fourth component of critical importance to the Port was construction of an underpass under the SIG Yard tail track to grade-separate the east-west movement of Port trucks between Port terminals and the SIG Yard and the freeway system on S. Atlantic Street. This project element was intended to solve a long-standing problem: Port-related rail switching on the tail track impeding the movement of drayage trucks serving Port terminals. In February of 2009, the Port Commission approved a possession and use agreement and on October 14, 2010, the sale of portions of Terminal 46 to support construction of these beneficial transportation improvements.

However, the design of the grade separation as an underpass, which at the time was preferred due to its ability to protect view corridors, meant that the existing direct north-south connection along S. Alaskan Way on the waterfront would be lost. Further analysis showed that the underpass would be more expensive, more risky, and take longer to build than a bridge. It also would have significantly higher life-cycle maintenance costs. Based on these considerations, WSDOT decided to build a bridge that provided a now grade-separated north-south connection on the waterfront and a grade separation of the new SIG Yard tail track in the east-west direction. The switch from an underpass to an overpass changed the project footprint, and the area of Terminal 46 that would be impacted.

Subsequent input by Port staff and trucking interests led to two important beneficial changes to WSDOT's initial design for the new bridge, both of which also impact Terminal 46:

- The addition of a north-to-east bound turn lane enables Port trucks to head for the SIG Yard or freeway without having to stop on the western uphill portion of the bridge (which pushes the western edge of the structure farther onto the eastern edge of Terminal 46); and
- A safer interface between T-46's truck entrance and the bike path crossing it. (The bike path on the north side of the truck entrance is curved to ensure that bicyclists approach the crossing at low speeds and enables bicyclists and truck drivers to see each other. Accommodating this design requires a small section of the former labor parking lot.)

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Port staff has worked closely with the Viaduct project team in the redesign of this critical project. The current design approach minimizes the land-in-fee needs on the eastern side of the operational area of Terminal 46, while providing significant long-term mobility benefits and guaranteeing truck access to the terminal during construction. Exhibit A contrasts the prior underpass design and the new bridge concept.

The Port has received a proposal for WSDOT's acquisition, in lieu of condemnation, of necessary property and/or property rights at Terminal 46. Based on the appraisal prepared for WSDOT, the combined offer to the Port and TTI is \$655,300. This offer consists of \$289,000 to the Port for fee property and air rights and \$366,300 to TTI temporary construction easements.

The property WSDOT needs for the project (comprising about 0.2% of the leased area) is shown in Exhibit B, and includes the following:

- Fee acquisition of 4,854 square feet of property from the Port. WSDOT has appraised the property at \$90.00 per square foot and has offered to pay the Port the appraised value for 3,188 (of the 4,854) square feet.
- Fee acquisition of 84 square feet of air rights from the Port at the WSDOT appraised value of \$20.00 per square foot.
- Donation by the Port for 1,666 square feet of fee property and 2,514 square feet of air rights. WSDOT agreed to expand the project bridge by adding a truck lane as described above at their sole cost and has proposed the Port donate the land needed for the extra truck lane as their traffic studies do not show this lane is needed. WSDOT estimates the cost of expanding the bridge at approximately \$2,000,000. As proposed, the appraised value of the fee and air rights for which the Port would not directly receive monetary compensation from WSDOT is \$200,200. RCW 39.33.010 permits a transfer of property or property rights between the State and other municipal corporations (such as the Port) on mutually agreed to terms and conditions (including price).

Under normal conditions, WSDOT would acquire property and property rights under a purchase and sale agreement or through condemnation prior to advertising the project. However, WSDOT currently has a mid-March 2012 advertisement date for the construction contract. That timeline cannot be met following normal acquisition procedures. The Port has an interest in timely completion of the bridge to eliminate the existing conflict at the at-grade crossing of the SIG Yard tail track. Currently, WSDOT expects to open the project to traffic at the end of 2013.

In order to proceed with the project, WSDOT has proposed a possession and use agreement for the property and property rights they wish to acquire. A possession and use agreement would allow WSDOT possession and use of the property without the Port having to relinquish the underlying property rights and without TTI having to relinquish its underlying leasehold rights. This approach enables the Port and TTI to carry out their own appraisals of

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the required land in fee, aerial and temporary easements, and other contract components and to negotiate appropriate compensation. At the same time, WSDOT can proceed with the project. Port staff and TTI staff have worked with WSDOT on the planning of this project and support this approach, which was also used in 2009 for the previous sale of Terminal 46 land to WSDOT to facilitate this project.

Subject to Port Commission approval, Port staff and TTI staff have reached agreement under the possession and use agreement on the allocation of the WSDOT offer. The Port would receive all of the value for the fee acquisition by WSDOT, and TTI has agreed to waive any rights to such compensation. The Port/TTI lease will be amended to reflect a reduction in the leased area with a corresponding reduction in rent. TTI would receive the value for the temporary construction easements as TTI is in possession of the premises. TTI would not be entitled to rent abatement under the Port/TTI lease for the temporary construction easement areas.

Preliminary plans show that surplus land area will be created as a result of the change from an underpass to a bridge. WSDOT previously acquired this area from the Port as part of its larger acquisition and proposes to surplus it back to the Port. WSDOT values this area at approximately \$127,550 and proposes to be reimbursed by the Port for this value. (It would be deducted from the amount WSDOT would pay for the new right-of-way that will be needed.) This surplus land area consists of approximately 718 square feet of fee land area with no encumbrances and 899 square feet of fee-encumbered land area with WSDOT retaining certain aerial rights. Pending completion of due diligence, Port staff is tentatively in agreement with accepting the proposed surplus land area.

Once agreement with WSDOT is reached on the final price, the Port will return to the Commission requesting adoption of a resolution to declare the fee area surplus, and delete it from the Comprehensive Scheme as well as authorize the sale. The Port will also return to the Commission requesting approval to amend the TTI lease reflecting the changes in leased area.

WSDOT will reimburse the Port up to \$750 for the cost of appraisal review. TTI has signed the possession and use agreement, and WSDOT will fully execute the agreement following Port approval.

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FINANCIAL IMPLICATIONS:

Source of Funds

No funds needed.

Financial Analysis Summary:

CIP Category	N/A																																										
Project Type	N/A																																										
Risk adjusted Discount rate	7.0%																																										
Key risk factors	<ul style="list-style-type: none"> • The Port may elect to obtain an independent appraisal of the value of the land and air rights identified in this proposed possession and use agreement. The cost of that appraisal would be borne by the Port, less the \$750 to be reimbursed by WSDOT. • If agreement on property value/selling price cannot be reached with the State, and mediation or litigation become necessary, the Port may incur significant legal costs to resolve this issue. This is deemed to be unlikely, as the proposed values are comparable to the prior T-46 land sale to WSDOT finalized in 2011. 																																										
Project cost for analysis	N/A																																										
Business Unit (BU)	Seaport Container Operations.																																										
Effect on business performance	<p>The proposed sale and donation of land at Terminal 46 will result in a reduction in lease revenue. It is expected that neither the sale nor the donation of air rights will reduce container terminal lease revenue.</p> <table border="1"> <thead> <tr> <th>in Acres</th> <th>Sold</th> <th>Donated</th> <th>Total</th> </tr> </thead> <tbody> <tr> <td>Land area</td> <td>0.073</td> <td>0.038</td> <td>0.111</td> </tr> <tr> <td>Air Rights area</td> <td>0.002</td> <td>0.058</td> <td>0.060</td> </tr> <tr> <td>Total area:</td> <td>0.075</td> <td>0.096</td> <td>0.171</td> </tr> </tbody> </table> <p>Following is the estimated impact to NOI over the next 5 years:</p> <table border="1"> <thead> <tr> <th>NOI (in \$000's)</th> <th>2012</th> <th>2013</th> <th>2014</th> <th>2015</th> <th>2016</th> </tr> </thead> <tbody> <tr> <td>NOI</td> <td>(\$11)</td> <td>(\$15)</td> <td>(\$15)</td> <td>(\$15)</td> <td>(\$16)</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>(\$11)</td> <td>(\$15)</td> <td>(\$15)</td> <td>(\$15)</td> <td>(\$16)</td> </tr> </tbody> </table> <p>This proposed sale was not anticipated in the 2012 Operating Budget, so the sale will create an unfavorable variance to the 2012 Budget. The gain of the sale of the land will be recorded as Non-Operating Revenue.</p>			in Acres	Sold	Donated	Total	Land area	0.073	0.038	0.111	Air Rights area	0.002	0.058	0.060	Total area:	0.075	0.096	0.171	NOI (in \$000's)	2012	2013	2014	2015	2016	NOI	(\$11)	(\$15)	(\$15)	(\$15)	(\$16)	Depreciation	\$0	\$0	\$0	\$0	\$0	NOI After Depreciation	(\$11)	(\$15)	(\$15)	(\$15)	(\$16)
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NPV	The estimated net sales proceeds of \$289K results in a negative NPV as shown below.	
	NPV (in \$000's)	(\$113)
	The NPV of the land and air rights <u>sold</u> is zero, which is then reduced by the loss of future rental income from the land and air rights to be <u>donated</u> . However, this overall negative NPV does not reflect the benefit to the Port of the expanded access bridge to Terminal 46, paid for exclusively by WSDOT.	

ECONOMIC IMPACTS AND BUSINESS PLAN OBJECTIVES:

Proceeding with this property transfer would enable WSDOT to construct a new bridge grade-separating both east-west traffic on S. Atlantic Street from the BNSF SIG Yard tail track. The new bridge would make drayage truck operations more efficient.

STRATEGIC OBJECTIVES:

WSDOT's project supports the Port's strategic objective to be a catalyst for regional transportation solutions and the Century Agenda's goal of positioning Puget Sound as a premier international logistics hub. It ensures long-term effective access to seaport facilities, provides access to future land development projects, supports freight mobility, and promotes regional economic competitiveness by improving access between Port container terminals, the regional freeway system and the North SIG Rail Yard.

ENVIRONMENTAL SUSTAINABILITY AND COMMUNITY BENEFITS:

The possession and use agreement allows WSDOT to proceed with a critical transportation link for the Port and the community. The project will improve air quality by eliminating drayage truck back-ups at the grade crossing of S. Atlantic St. and the SIG Yard tail track.

TRIPLE BOTTOM LINE:

WSDOT's project will improve the drayage operations supporting the Port's container terminals. Eliminating the wait time at the at-grade crossing will improve air quality, efficiency of drayage operations, and help Port truck drivers to earn a living.

ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS:

Alternative 1) Do not agree to the possession and use agreement and subsequent transfer of property rights to WSDOT. This is not the recommended alternative because Port and TTI staff supports the project and associated transportation improvements. An alternative refusing the

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property rights transfer would only serve to delay the proposed WSDOT project as WSDOT has the ultimate ability to use its power to condemn the property.

Alternative 2) Agree to the possession and use agreement and subsequent transfer of property rights to WSDOT. The transfer of property rights Terminal 46 Alaskan Way frontage will allow the State to eliminate a long-standing problem and construct an overpass grade-separating the Port's truck traffic from the SIG yard tail track and to re-establish a north-south connection along the waterfront that is unencumbered by the tail track. **This is the recommended alternative.**

OTHER DOCUMENTS ASSOCIATED WITH THIS REQUEST:

- Exhibit A – Comparison of the S. Atlantic Street SIG Yard Tail Track Grade Separation Concepts
- Exhibit B – Proposed T-46 Property Transaction for Stage 3 of the S. Holgate Street to S. King Street Viaduct Replacement Project
- Possession and Use Agreement
- PowerPoint Presentation

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS:

- October 5, 2010, Second Reading and Final Passage, as amended and restated, of Resolution 3642, amending Unit 20 of the Comprehensive Scheme of Harbor Improvements related to the Surplus and Transfer of Title of Certain Real Property to WSDOT.
- August 24, 2010, Second Reading and Final Passage of Resolution No. 3642, as amended, to add the proceeds to the sale to said property to the Port's Transportation and Infrastructure Reserve.
- August 10, 2010, First Reading of Resolution No. 3642 and public hearing.
- On March 9, 2010, the Commission authorized the Chief Executive Officer to execute the Eleventh Amendment to the Lease with TTI, which in part deleted from the lease the area covered under the possession and use agreement with WSDOT.
- On July 14, 2009, the Commission authorized the Chief Executive Officer to execute the First Amendment to the possession and use agreement between WSDOT, the Port of Seattle, and TTI for the partial taking of Port of Seattle Terminal 46 for the Holgate Street to S. King Street Viaduct Replacement Project.
- On February 10, 2009, the Commission authorized the Chief Executive Officer to execute a possession and use agreement between WSDOT, the Port of Seattle, and TTI for the partial taking of Terminal 46 for the S. Holgate Street to S. King Street Viaduct Replacement Project.