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PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA
ACTION ITEM

Item No.: 6a
Date of Meeting: November 13, 2012

DATE: November 12, 2012
TO: Tay Yoshitani, Chief Executive Officer
FROM: Joe McWilliams, Managing Director, Real Estate Division
Craig Watson, General Counsel
SUBJECT: Stipulated Order for Immediate Possession and Use of easements over portions of the West Yard at Terminal 91 for the South Magnolia Combined Sewer Overflow Project

Amount of This Request: N/A **Source of Funds:** N/A
Est. State and Local Taxes: N/A **Est. Jobs Created:** N/A
Est. Total Project Cost: N/A

ACTION REQUESTED:

Request Port Commission authorization for the General Counsel to enter into a Stipulation and Agreed Order for Immediate Possession and Use (Order) of Port property consisting of easements over portions of the West Yard at Terminal 91 for King County's construction and operation of the South Magnolia Combined Sewer Overflow (CSO) Project.

SYNOPSIS:

Staff proposes to stipulate to an Order that will grant King County immediate possession and use of easements over portions of the Port's Terminal 91 West Yard parcel to allow for the County's construction of South Magnolia CSO Project. This Order is entered into as part of ongoing condemnation proceedings brought by the County based on their permitting schedule. The Port is also simultaneously negotiating to sell the West Yard property to King County and prefers that outcome.

BACKGROUND:

A National Pollutant Discharge Elimination System ("NPDES") Waste Discharge Permit issued to King County by the Washington State Department of Ecology requires that the County commence construction of the South Magnolia CSO by 2013. The CSO will include construction of a subsurface storage tank along with surface access for hatches, an above ground ancillary building, and a subsurface conveyance pipeline. Construction of the CSO is required to prevent the uncontrolled overflow of stormwater and sewage into Puget Sound from the South

COMMISSION AGENDA

Tay Yoshitani, Chief Executive Officer

November 12, 2012

Page 2 of 4

Magnolia basin, which is currently served by the County's West Point wastewater conveyance and treatment system.

King County has identified portions of the Terminal 91 West Yard property as necessary for the construction and operation of the South Magnolia CSO. To complete the project, the County has determined that it needs to acquire (i) a permanent easement of approximately 34,254 square feet for the subsurface storage tank and above ground ancillary building; (ii) a permanent easement of approximately 3,878 square feet for the subsurface conveyance pipeline; (iii) a temporary construction easement of approximately 108,900 square feet for construction staging and removal of spoils from construction; and (iv) a permanent access easement.

On June 5, 2012, the County began condemnation proceedings in King County Superior Court in order to meet the NPDES Permit schedule. To this end, the County is requesting possession of the property through an Agreed Order for Immediate Possession and Use. The County is requesting possession of all permanent easements by no later than December 28, 2012. The County may delay possession of the temporary construction easement until August 1, 2013. Once the Port agrees to the County's request for immediate use and possession, the only item to be resolved in the condemnation action is the value of the easement interests requested by the County. If the Port and the County reach agreement on the value of the easements, staff will return to the Commission for authorization to execute the permanent and temporary construction easements. If the County and the Port do not reach agreement on value, the condemnation trial will ultimately determine the value of the easement interests.

Concurrent with the County's condemnation action, staff are negotiating a potential fee simple sale of the entire West Yard parcel to the County that would facilitate the City of Seattle's and local community's interest in development of a park on the parcel. If such agreement is reached within the County's permitting timeline, the County will dismiss the condemnation suit. If possible, sale of the West Yard is preferable to granting easements for the CSO project. Staff will return to the Commission for authorization to execute a purchase and sale agreement if these negotiations are successful.

FINANCIAL IMPLICATIONS:

Consistent with state law requirements, once the parties sign the Order, the County will deposit into the court's registry compensation for the easement rights based on the County's appraised value. The County's appraised compensation totals **\$3,095,912**, computed as follows:

- | | |
|---|--------------------|
| ▪ Tank, Pipeline and Access Easements | \$2,077,700 |
| ▪ Temporary Construction Easement (2 years) | \$509,100 |
| with a possible extension of up to 24 months at | \$21,213 per month |

The Port will be entitled to withdraw the funds from the court registry immediately after entry of the Order. To the extent the Port disagrees with the County's appraised value, the Port retains the right under the Order to challenge the easement valuation.

COMMISSION AGENDA

Tay Yoshitani, Chief Executive Officer

November 12, 2012

Page 3 of 4

ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS:

- **Alternative 1: No action**

The Port does not stipulate to the Order. This alternative delays the CSO project. This is not the recommended alternative.

- **Alternative 2: Stipulate to immediate use and possession**

This alternative allows the condemnation process to continue. This is the recommended alternative.

OTHER DOCUMENTS ASSOCIATED WITH THIS REQUEST:

- Map.

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS:

December 7, 2010 – Staff briefing on King County’s need to construct to the South Magnolia CSO project.

COMMISSION AGENDA

Tay Yoshitani, Chief Executive Officer

November 12, 2012

Page 4 of 4

