

**PORT OF SEATTLE**  
**MEMORANDUM**

**COMMISSION AGENDA**  
**ACTION ITEM**

<b>Item No.</b>	<u>6b</u>
<b>Date of Meeting</b>	<u>July 14, 2015</u>

**DATE:** July 7, 2015  
**TO:** Ted Fick, Chief Executive Officer  
**FROM:** Bob Duffner, Senior Manager, Environmental Programs  
Don Robbins, Senior Environment Program Manager  
**SUBJECT:** Execution of a Consent Decree for Remediation of the Lora Lake Apartments Site

<b>Amount of This Request:</b>	\$0	<b>Source of Funds:</b>	Airport Development Fund
<b>Est. Total Project Cost:</b>	\$19,514,000		
<b>Est. State and Local Taxes:</b>	\$1,292,0000		

**ACTION REQUESTED**

Request Commission authorization for the Chief Executive Officer to: (1) execute the Model Toxics Control Act (MTCA) Consent Decree for the design and implementation of the environmental remediation for the Lora Lake Apartments Site; (2) to design and prepare construction documents for the environmental remediation at the Lora Lake Apartments Site, and (3) to amend the Floyd|Snider Service Agreement to complete additional design work for an estimated amount of \$985,000.

**SYNOPSIS**

As a result of earlier industrial operations, the Lora Lake Apartments Site is contaminated with dioxin in the soil and groundwater. The contamination must be remediated for the Port to be in compliance with state law and for future site redevelopment. The Consent Decree and its exhibits describe in detail the agreement between the Port and the Washington State Department of Ecology (Ecology) on how and when the site will be remediated, requirements related to future land use, payment of agency oversight costs, and other conditions. Authorization to execute the Consent Decree along with the design and preparation of construction documents will allow remediation of the site to occur in 2017.

The Commission previously authorized entering into a Consent Decree for the remediation of the Lora Lake Apartments Site in September 2013, before the Consent Decree had gone out for public comment. As a result of comments received at that time, Ecology decided to revise the scope of work and re-issue the Consent Decree. The primary changes between the 2013 Consent Decree and the one presented today are:

- the removal of additional upland soil from the Lora Lake parcel

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- documenting that the City of Burien's stormwater is an ongoing release to the Lora Lake parcel
- clarifying that the Lora Lake wetland will be subject to MTCA soil standards rather than sediment standards

Funding for this work was included in the 2015-2019 Environmental Remediation Liability (ERL) Program. With this Consent Decree, the liability will increase by \$1.3 million due to added scope and increased costs of construction since the previous estimate.

In accordance with RCW 53.19.060, this memorandum is notification to the Port of Seattle Commission that this amendment, in conjunction with prior amendments, exceeds 50% value of the original contract amount of \$1,555,315. The new contract value, which includes all previous amendments, will be \$5,390,775. The Port structured this contract as a phased contract and indicated in the solicitation that "additional phases of investigation, and remediation of the site are included in the Scope of Work, but the value of those scope items and the duration of Work cannot be estimated at this Time."

## **BACKGROUND**

The Lora Lake Apartments, located on the west side of Des Moines Memorial Way in the City of Burien, was the site of a barrel cleaning facility in the 1940s and 1950s, and an auto wrecking yard in the 1950s through the 1980s. Both of these types of industrial uses are known to have had high potential for releasing contaminants to the environment. The Novak Barrel Washing Company ceased to exist sometime in the late 1940s or early 1950s. Burien Auto Wrecking went out of business when the property was purchased by the Mueller Development Company in the mid-1980s for the construction of the apartment complex.

During the construction of the apartment complex in 1986-87, the developer conducted environmental investigations and remediation that were approved by Ecology under standards in place at that time.

The Port acquired the Apartments property as part of the Third Runway project to meet Federal Aviation Administration (FAA) flight safety zone regulations. By 1999 all residents had vacated the property in anticipation of the construction of the Third Runway and redevelopment for airport and airport-compatible light industrial/commercial use. Due to delays in Third Runway construction, and prior to demolition, the Port sold the property to the King County Housing Authority for a limited period, for residential use. King County sold the property back to the Port in July 2007, at which time the Port demolished a sufficient number of structures to comply with FAA regulations for Airport runway operation. At that time, the Port conducted environmental sampling to define site conditions in support of future property redevelopment. Sample data indicated significant contamination remained at the site. Further investigations confirmed those findings.

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In July 2009, the Port and Ecology entered into an agreed order that required the implementation of a remedial investigation/feasibility study, and the development of a draft cleanup action plan. During the remedial investigation of the apartment site, Ecology ordered the Port to collect samples of sediment in the Lora Lake parcel. The Lora Lake parcel is located on the east side of Des Moines Memorial Way in the City of SeaTac. Those sediments contained dioxin contamination that is presumed to have migrated from the apartment parcel. It was also discovered that sediment had been dredged from the lake in 1982 and placed on Airport property located to the northeast of the lake in what is now called the dredge material containment area (DMCA).

The Apartment parcel of the Lora Lake Apartment Site is located within the City of Burien's Northeast Redevelopment Area (NERA). The city and Port have partnered to prepare a redevelopment strategy for the NERA. The redevelopment strategy identified the Lora Lake Apartment parcel appropriate for large-scale commercial or industrial uses such as auto dealerships or air cargo logistics.

To complete site cleanup, a City of Burien stormwater line that crosses the Apartment parcel and discharges into Lora Lake must be abandoned and relocated. The line currently conveys water from an 80-acre area of Burien located to the northwest of the former apartments and extends through the contaminated soil excavation zone in an alignment that would conflict with future site development. The City of Burien is considering relocating the pipe down 8<sup>th</sup> Avenue South and outside of the Apartment parcel with support from an Ecology grant. Alternately, the Port would relocate the pipe within the Apartment site in an alignment that would not conflict with future site development. Moving the pipe outside of the Apartment parcel is preferred as it would eliminate the introduction of stormwater to the Lake parcel which could complicate the lake remedy design and future compliance monitoring. Early pipe relocation would facilitate implementation of the Apartment and Lake parcel cleanup projects. Therefore it is possible that the pipe relocation schedule could delay the remediation implementation.

The Commission authorized the CEO to sign a previous version of the Lora Lake Apartment remediation Consent Decree in September of 2013. As a result of the input received during the public comment period, Ecology made changes to the Consent Decree language and the scope of the cleanup, and solicited a second round of public comments. This second public comment period ran from May 4, 2015 to June 17, 2015. A public meeting was held on May 13, 2015, where Ecology personnel presented the proposed cleanup. Because of these changes in the scope of the remediation discussed below, we are requesting Commission authorization for this revised Consent Decree.

## **PROJECT JUSTIFICATION AND DETAILS**

The overall goal of the site cleanup is to significantly reduce or eliminate the exposure of ecological and human receptors to soil contamination and thereby reduce or eliminate adverse effects on resources in the project site. In addition, cleanup of the apartment parcel will allow for its beneficial reuse.

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### ***Project Objectives:***

- Perform the remediation work at the site in accordance with the Consent Decree.
- Manage and perform the work, with project controls and contract systems in place.
- Identify and consider community values and concerns, as part of a formal public participation plan.
- Carry out the remediation design and implementation in a manner that considers the potential needs of future development on the Lora Lake Apartment parcel
- Remediate Lora Lake contaminated sediment in a manner that reduces wildlife hazard to aircraft operations and enhances ecological functions.

### ***Scope of Work:***

Cleanup of the Apartment parcel will consist of the removal of approximately 19,000 cubic yards of dioxin-contaminated soil with a concentration greater than 100 parts per trillion (pptr). This soil will be transported to a landfill permitted to accept this type of material. Soil remaining on the site with a concentration less than 100 pptr, but above the cleanup level of 13 pptr will be covered with a barrier to prevent direct contact with people or animals. The cleanup action plan will give the Port the option to relocate and consolidate the soil between 13 pptr and 100 pptr (approximately 30,000 cubic yards) to a nearby, secure portion of the Airport where it will be covered to prevent direct contact with people or animals. This option may improve conditions at the apartment parcel for redevelopment. The City of Burien stormdrain currently on the Apartment parcel will be abandoned as part of this excavation.

At the Lora Lake parcel, contaminated sediments will be capped by filling the lake with approximately 38,500 cubic yards of clean fill, and restoring it to a wetland similar to the adjacent Vacca farm wetland mitigation site. The fill will be engineered to immobilize the dioxin contained in the lake sediments. Converting the Lake to a wetland clarifies that it will be subject to MTCA soil standards rather than sediment standards. By converting the open water lake to a vegetated wetland, a bird attractant presenting an aircraft operations hazard will be greatly reduced. In addition, adverse water quality conditions in Miller Creek created by stagnating lake water will be eliminated.

In addition to capping the lake sediments, approximately 3500 cubic yards of upland soil containing low levels of dioxin will be removed from the Lora Lake Parcel. This material will likely be placed at the DMCA. This scope of work item was added to the Cleanup Action Plan by the Department of Ecology and is the reason for a new request for authorization to execute the Consent Decree.

After the Consent Decree has been executed, the Port will begin extensive pre-design sampling in late 2015 with design of the apartment site and lake parcel cleanup completed in 2016. The apartment site and lake parcel remediation is anticipated to be completed during the summer of 2017 if the Burien stormwater line has been relocated by this time.

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Staff will return to the Commission for authorization to enter into an agreement with the City of Burien to facilitate the relocation of the stormwater line.

### ***Schedule:***

2015, May-June – Public comment period on the revised cleanup action plan and Consent Decree.

2015, July-August – Final Consent Decree lodged with the Court.

2015, September-December – Complete extensive pre-design/confirmation sampling program.

2015, 4<sup>th</sup> Quarter and 2016 1<sup>st</sup> and 2<sup>nd</sup> Quarters – Prepare remedial design documents, plans and specifications.

2016, 3<sup>rd</sup>, and 4<sup>th</sup> Quarters – Seek Commission authorization to advertise construction contract.

2017 – Complete remediation of the Lora Lake Apartments Site (subject to relocation of Burien Stormwater line currently crossing the apartment site.)

2018- 2022– Compliance Monitoring.

## **FINANCIAL IMPLICATIONS**

There is no funding request as part of this authorization since the budget for this requested action will be authorized in the annual ERL program authorization requests. All costs will be accounted for as environmental remediation liabilities and charged to expense in accordance with Port Policy AC-9. The Airport Development Fund will be the funding source.

Total cost for the entire cleanup is currently estimated at \$19.5 million. This is an increase of \$1.3 million since the last authorization request in September 2013. Approximately half of this increase is due to the added scope of work at the Lake parcel. The remaining increase is due to increased costs of construction since the previous estimate. The cleanup costs of the Lora Lake Apartments parcel and the Lora Lake parcel will be accounted for differently. The \$6.3 million for cleanup at the Lake parcel will be accounted for as an operating cost (\$4.9 million recognized in 2013, and \$1.4 million in 2015) as the property is part of the object-free area within the runway protection zone, and therefore no development is permitted. The Lora Lake Apartments site is not necessary for airfield operations (although a corner is in the controlled action area of the runway protection zone). The Port's intent is to clean up the site in anticipation of sale. The \$13.2 million clean-up costs are being accounted for as non-operating costs (\$11.5 million recognized as non-operating expense in 2012, \$1.7 million recognized as non-operating expense in 2013).

The costs are eligible for Remedial Action Grants from Ecology if and when funds for such grants are available. Currently this project has been granted a \$5,000,000 grant. An application for additional grant funds has been submitted to Ecology for the 2015-17 biennium.

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### **STRATEGIES AND OBJECTIVES**

This project will achieve the strategic objective of accomplishing cleanup of the Port's property, with the intent of returning it to productive use.

Remediation of the Lora Lake Apartments Site will reduce to acceptable levels threats to the environment caused by historical property uses and operations, achieving compliance with regulatory mandates, management of Port liabilities, and support of the local community, all in alignment with the goals and objectives of the Century Agenda and Airport Strategies. Returning the property to productive use benefits both the Airport and the local community. Completion of the site remediation, moreover, is directly responsive to the Port's commitment to cooperative Port-City of Burien property redevelopment.

### **TRIPLE BOTTOM LINE**

#### ***Economic Development***

Cleanup of the contaminated site will allow it to be returned to productive use, and support the surrounding re-development plans of the City of Burien.

#### ***Environmental Responsibility***

State and federal laws require elimination of unacceptable levels of environmental risk caused by the presence of contaminants in soil, groundwater, and sediment. Project planning and design efforts will incorporate components of sustainable remediation when possible. Implementation of the cleanup remedy will include significant environmental controls and performance monitoring to ensure public health and safety.

#### ***Community Benefit***

From the perspective of the surrounding communities and the customers that we serve, the Port's participation in site remediation is the hallmark of responsible environmental stewardship. Cleanup returns contaminated land to a more productive state, supporting the City of Burien plans for the NERA redevelopment.

### **ALTERNATIVES AND IMPLICATIONS CONSIDERED**

As the property owner the Port of Seattle is responsible, under the Model Toxics Control Act, 173-340 WAC, to remediate the environmental contamination at the Lora Lake Apartments site.

**Alternative 1: Do not authorize execution of the Consent Decree and the design and preparation of construction documents.**

#### **Pros:**

- Staff could not identify positive aspects for this alternative.

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### **Cons:**

- Could result in the Department of Ecology taking enforcement action that could lead to the remedy being implemented by them with the Port being liable for three times the cost incurred by Ecology.
- Would not comply with Port's obligation to remediate the site.
- Would delay cleanup needed for redevelopment and placing the Apartment parcel back in productive use.
- Would eliminate the Port's eligibility for the 50% matching Grant.

### **Alternative 2) – Delay authorization for execution of the Consent Decree and attempt to renegotiate the terms of the Consent Decree.**

#### **Pros:**

- Small possibility that a less costly remedy could be renegotiated by the Port.

#### **Cons:**

- Existing remedy and agreement is the result of over 5 years of site investigation, feasibility study, and negotiations with the Department of Ecology. It is unlikely the Port would be successful in renegotiating this agreement.
- Would delay remediation of the cleanup necessary for the NERA redevelopment and productive use of the property.
- Could result in the issuance of a unilateral Ecology enforcement order to perform the existing scope work, which would eliminate Port control over the remediation activity and result in a significant increase in costs and loss of Grant eligibility.

### **Alternative 3) – Authorize execution of the proposed Consent Decree and the start of design and preparation of construction documents.**

#### **Pros:**

- This alternative fulfills the Port's environmental obligations for the Site.
- This alternative provides regulatory certainty for the remediation process, and a covenant not to sue from the Department of Ecology.
- The Port would retain its eligibility for 50% Grant funding from the Department of Ecology.
- This alternative would facilitate remediation of the site in 2017 and prepare the Apartment parcel for redevelopment and productive use.

#### **Cons:**

- The Consent Decree requires Court involvement for any amendments to the agreement.

**This is the recommended alternative.**

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## **ATTACHMENTS TO THIS REQUEST**

- Computer slide presentation.
- Consent Decree and Cleanup Action Plan

## **PREVIOUS COMMISSION ACTIONS OR BRIEFINGS**

- December 9, 2014 – The Port Commission approved the project-wide authorization of (1) a five-year spending plan of \$64,088,000 for the Environmental Remediation Liability (ERL) Program for the Seaport, Real Estate, and Aviation Divisions for 2015-2019; and (2) environmental remediation liabilities funds for 2015 in the amount of \$36,804,000, of which (a) \$16,804,000 is forecasted to be spent in 2015 and (b) an amount estimated not to exceed \$20,000,000 of the remaining funds approved in the five-year plan will be obligated during 2015 to be spent in future year The Lora Lake Apartments Property was included in that authorization request.
- September 24, 2013 – The Port Commission authorized execution of a Model Toxics Control Act (MTCA) Consent Decree for the design and implementation of the environmental remediation for the Lora Lake Apartments Site; and (2) design and prepare construction documents for the environmental remediation at the Lora Lake Parcel.
- December 4, 2012 – The Port Commission authorized (1) execution of an amendment to the 2009 Agreed Order for additional environmental investigation and remediation planning for the Lora Lake Apartments site; (2) design and preparation of construction documents for environmental remediation at the site; and (3) amendment of the professional services agreement for environmental remediation at the site to \$4.4 million, which was more than 50 percent over the original contract amount.
- December 4, 2012 – The Port Commission authorized 2013 expenditure of \$44,179,000 from Port Environmental Reserve funds, for environmental remediation of the various Port properties for which remediation funds have been reserved. The Lora Lake Apartments Property was included in that authorization request.
- December 6, 2011 – The Port Commission authorized 2012 expenditure of \$56,500,000 from Port Environmental Reserve funds, for environmental remediation of the various Port properties for which remediation funds have been reserved. The Lora Lake Apartments Property was included in that authorization request.
- June 9, 2009 – The Port Commission authorized execution of an agreed order with Ecology, issued under MTCA, for environmental investigation and remediation of the Lora Lake Apartments Site.
- May 5, 2009 – The Port Commission authorized procurement of environmental consulting services to support the Port's implementation of the Lora Lake Apartments Property remediation.