



**COMMISSION
AGENDA MEMORANDUM**

Item No. 6h

ACTION ITEM

Date of Meeting March 24, 2020

DATE: March 16, 2020

TO: Stephen P. Metruck, Executive Director

FROM: Laurel Dunphy, Director, Airport Operations
Wayne Grotheer, Director, Aviation Project Management
Clare Gallagher, Director, Capital Project Delivery/External Relations

SUBJECT: Flight Corridor Safety Program 2019 real property – adoption of Resolution 3771

ACTION REQUESTED

Request adoption of Resolution No. 3771: a resolution of the Port of Seattle Commission relating to the Flight Corridor Safety Program 2019; providing for the acquisition of certain easement and access interests in real property located in King County, Washington, for the program; authorizing negotiation or condemnation; and directing other actions consistent with the program and aviation safety.

EXECUTIVE SUMMARY

This request for adoption of Resolution 3771 follows the authorization obtained January 28, 2020, in support of the Port's Flight Corridor Safety Program 2019. The recurring program is intended to remove current and future obstructions consisting of different species of trees around Seattle-Tacoma International Airport, replant trees of compatible species in appropriate locations, and acquire property rights to perform obstruction management and prevent establishment of future obstructions. Obstructions include any objects penetrating Federal Aviation Administration (FAA)-designated approach and departure surfaces or expected to penetrate within five years. Obstructions in this case consist only of trees. Removal of obstructions will ensure the airport's compliance with FAA regulations, state laws regarding prevention of hazards to air navigation, and the airport's operating certificate requiring airport operators to protect safe and efficient flight operations into and out of the airport.

In implementing the Flight Corridor Safety Program 2019, the Port will need to memorialize or assert its rights to access non-Port properties for purposes of obstruction removal and replanting and will seek, in coordination with property owners, permanent easements or other lawful airport protection privileges that provide for unobstructed air space, for continued, long-term protection of the flight surfaces. Acquiring an easement from property owners will protect against future encroachments by establishing appropriate height limitations for any trees or other objects located on the property, and the easement would provide a clear mechanism for the Port to promptly and efficiently address any future obstructions, such as

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granting the right to access the property to address an obstruction, upon reasonable notice to the property owner.

The Port will make every effort to negotiate with property owners to acquire the property interests needed for near-term obstruction management and long-term flight corridor protection voluntarily; however, condemnation is available as a last resort if those efforts are unsuccessful. For example, voluntary negotiations may fail; there may be delays in securing the necessary property rights; title to the property may be unclear and require clarification; the property is abandoned; or the property owner is otherwise not available. Authorizing condemnation enables the Port to proceed in a timely manner, helps ensure that the Port meets its statutory and regulatory obligations as discussed below, ensures flight operations will not be impacted by obstructions, and uses Port resources for obstruction management responsibly and efficiently. The Port will obtain appraisals from a qualified appraiser as may be appropriate to determine the fair market value of property interests acquired or condemned, and as a benefit, the transfer will be exempt from real estate excise tax for the property owners.

DETAILS

The Commission authorized staff to proceed with the Flight Corridor Safety Program 2019, as requested at the January 28, 2020 Commission meeting. At that meeting, staff informed the Commission of the need for permanent easements and the ability to pursue condemnation. A resolution on the part of the Commission requires two public meetings; first, to introduce the resolution, and then to take up the item and vote at a subsequent meeting. The Commission authorized introduction of the Resolution 3771 on February 25, 2020. This request is for the Commission to adopt Resolution 3771.

Property Access and Easements

The Port may use a variety of methods to access non-Port properties for tree removal and replanting, and to acquire permanent easements or other lawful airport protection privileges for continued, long-term protection of the flight corridor. In all cases, the project team will negotiate directly with each landowner to acquire the property interests needed. If immediate tree removal is required, the Port may obtain temporary access rights while permanent rights are negotiated. The value of each easement or property interest will be site-specific, as determined by an appraiser as appropriate and in accordance with applicable standards for determining fair market value. The Port will recommend that landowners seek the advice of independent legal counsel. In some instances, voluntary negotiations may fail; the Port may face untenable delays in securing the necessary property rights; title to the property may be unclear and require clarification; the property is abandoned; or the property owner is otherwise not available. Authorization to proceed with filing a condemnation action where necessary is therefore requested, with the understanding that condemnation will be a last resort. Authorizing condemnation enables the Port to proceed efficiently and acquire the property rights needed for the project. Additionally, under WAC 458-61A-206, transfers of property rights to the Port under threat of condemnation (whether the landowner voluntarily

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grants the property interests or whether an actual condemnation proceeding is necessary to acquire the interests) exempt the landowner from paying otherwise applicable real estate excise tax.

ATTACHMENTS TO THIS REQUEST

- (1) Draft Condemnation Resolution 3771

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

February 25, 2020 – The Commission authorized the Executive Director to introduce Resolution 3771: a resolution of the Port of Seattle Commission relating to the Flight Corridor Safety Program 2019 at Seattle-Tacoma International Airport; providing for the acquisition of certain easement and access interests in real property located in King County, Washington, for the program; authorizing negotiation or condemnation; and directing other actions consistent with the program and aviation safety.

January 28, 2020 – The Commission authorized the Executive Director to (1) use existing job order contracts for removal of current and future flight path obstructions from non-Port properties and associated replanting of replacement trees; (2) advertise and execute construction contracts for replanting of replacement trees; (3) pay fees to the Washington State Department of Transportation (WSDOT) and local jurisdictions for them to perform replanting for certain obstructions removed from their properties; and (4) execute agreements with public agency and private property owners as needed for purposes of obstruction management; and (5) acquire those property rights necessary for obstruction management and preventing future creation or establishment of airport hazards, for a total estimated cost of \$5,895,000 representing a total project cost estimate of \$8,500,000.

November 14, 2017 – The Commission authorized the Executive Director to (1) increase the project budget for the Flight Corridor Safety Program – Phase 1 by \$2,600,000 for a new total of \$5,806,000; (2) execute change order(s) in excess of \$300,000 as necessary to complete the tree removal work and (3) advertise and execute a major works construction contract to remove obstructions and complete replanting for Flight Corridor Safety Program Phase 1 at Seattle-Tacoma International Airport.

July 25, 2017 – Commission briefing on Flight Corridor Safety Program Sites P-4 and P-5. The briefing provided a summary of the public engagement workshop that was held on June 5, 2017 to identify a preferred removal and replanting approach with the community's input.

February 21, 2017 – Commission authorized the Chief Executive Officer to prepare environmental, design and contract bid documents for the Flight Corridor Safety Program now-combined Phase 2 and Phase 3 at Seattle-Tacoma International Airport for \$2,373,000. The total estimated project cost is \$7,227,000.

November 22, 2016 – Commission authorized (1) to award and execute a major works construction contract to the lowest responsible bidder, notwithstanding the low bid exceeding the engineer's estimate by more than 10 percent; (2) change the contract

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duration as necessary and include additional scope that may be identified, including deferral of work on selected sites; (3) increase the project budget by an amount not to exceed \$475,000 for a total new project cost of \$3,206,000.

November 1, 2016 – Commission public meeting and briefing on the Flight Corridor Safety Obstruction Management program. The briefing provided an overview of state and federal laws/requirements, and staff's recommendation of options to modify the current program. The public meeting also included an extensive public comment period.

October 25, 2016 – Commission considered authorization to award the irregular bid exceeding 10 percent of the engineer's estimate to the lowest responsible bidder but took no action.

October 11, 2016 – Commission considered authorization to award the irregular bid exceeding 10 percent of the engineer's estimate to the lowest responsible bidder but took no action.

August 23, 2016 – A special announcement to Commission by Aviation Operations Director, Michael Ehl, in regard to the Port issuing the final environmental Mitigated Determination of Non-Significance (MDNS) for tree removal and replanting as part of the Flight Corridor Safety Program in Phase One.

August 9, 2016 – Commission authorized the advertisement and execution of a major works construction contract in the amount of \$1,831,000 for a total project cost of \$2,731,000.

February 9, 2016 – Commission authorized to design, advertise and execute a major works construction contract in the amount of \$750,000 for a total estimate project cost of \$900,000.

November 24, 2015 – Commission briefed on the Flight Corridor Safety Obstruction Management program. The briefing provided an overview of state and federal laws/requirements, and staff's recommendation of a phased delivery approach to complete the program.