



**COMMISSION  
AGENDA MEMORANDUM  
ACTION ITEM**

**Item No.** 8a  
**Date of Meeting** April 28, 2020

**DATE:** April 10, 2020

**TO:** Stephen P. Metruck, Executive Director

**FROM:** Sandra Kilroy, Director, Maritime Environment & Sustainability  
Jon Sloan, Sr. Manager, Environmental Programs  
George Blomberg, Sr. Environmental Program Manager  
Ticson Mach, Capital Project Manager

**SUBJECT:** Terminal 117 Habitat Restoration and Duwamish Shoreline Access Project

**Amount of this request:** \$0  
**Total estimated project cost:** \$25,921,000

**ACTION REQUESTED**

Request Commission authorization to execute General Contractor/ Construction Management (GC/CM) construction contract for the Terminal 117 Habitat Restoration and Duwamish Shoreline Access Project, which includes fish and wildlife habitat restoration and public shoreline access improvements. There is no funding requested; the total project cost will utilize previously approved Environmental Remediation Liability funding (tax levy) in addition to funds from a 2008 insurance settlement.

**EXECUTIVE SUMMARY**

The Terminal 117 Habitat Restoration and Duwamish Shoreline Access Project includes multiple coincident benefits: (1) restoration of 14 acres of critical estuarine fish and wildlife habitat; (2) establishing an innovative mitigation bank<sup>1</sup>, for use in habitat credit transactions; and, (3) providing important community public shoreline access and open space. Habitat restoration is the principal project focus, contributing to the port's Century Agenda and Long-Range goals. Establishing a 14-acre mitigation bank will generate marketable credits that can be reserved and/or sold to liable parties for purposes of resolving natural resource damage liabilities in the (1) Lower Duwamish Waterway, (2) Lockheed West, and (3) Harbor Island Superfund sites. The project may also provide compensatory mitigation credits under Section 404 of the Clean Water Act, as well as conservation offsets that can be used for compliance with the Endangered

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<sup>1</sup> A mitigation bank is a wetland, stream, or other aquatic resource area that has been restored for the purpose of providing compensation for current or past impacts to natural resources under the *Comprehensive Environmental Response, Compensation, and Liability Act* (CERCLA), *Clean Water Act* (CWA), or *Endangered Species Act* (ESA). A mitigation bank is created through an approval process with regulatory agencies, tribes, and natural resource stakeholders.

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Species Act. Revenue generated by credit transactions in the Terminal 117 mitigation bank may be re-invested in additional credit-generating habitat restoration projects needed to meet the Century Agenda goal to create 40 additional acres of habitat in the Green-Duwamish Watershed and Elliott Bay. The proposed project will also provide important shoreline public access in the South Park neighborhood for use by surrounding communities, including a view point pier, accessible pathways/trails, seating, environmental interpretation, and a hand-carry boat launch. The public use elements of the project will also be a significant element of the Duwamish Valley Community Equity Agreement. Finally, the project satisfies requirements associated with the TIGER grant which funded improvements at Terminal 46 and provides a shoreline public access site required by the City of Seattle Shoreline Master Program.

### **PROJECT INFORMATION**

The present Terminal 117 project includes area initially proposed for restoration in 1998 and subsequently included in the 2009 Lower Duwamish River Habitat Restoration Plan as two linked restoration areas, identified as Sites 23 and 25. Collectively, the two sites comprise the Terminal 117 Habitat Restoration and Duwamish Shoreline Access Project, with a combined area of approximately 14 acres and approximately ½ mile of shoreline.

The north portion of the project site (Site 23) was part of an “Early Action Cleanup” that was completed in 2014 under the oversight of the Environmental Protection Agency. The cleanup included removal of contaminated soil and sediments from approximately 3.3 acres of upland property and 2.1 acres of aquatic area. The southern portion of the present project site (Site 25) is not part of the Early Action cleanup area.

The project will convert degraded shoreline areas and marginal uplands to high-functioning estuarine habitat critical to migratory juvenile and adult salmon, as well as other resident and migratory fish and wildlife that use the Duwamish Waterway. The Terminal 117 project restores 14 acres of estuarine habitat, including sub-tidal aquatic area, inter-tidal sediment slopes, inter-tidal marsh, and native riparian/forested buffer. Estuarine habitat, once abundant in the Duwamish estuary, is now very rare. The project is strategically located in the estuarine transition zone in the Duwamish Waterway, where out-migrating juvenile salmon acclimate into saltwater environments further downstream. Their survival will be significantly improved by the high-quality transition zone habitat provided by the project.

The location and type of habitat included in the Terminal 117 project has been identified as a limiting factor for salmon production in the Green-Duwamish Watershed by the Watershed Resource Inventory Area #9 (WRIA-9) planning group. The site has also been identified by other local, state, tribe and federal officials as a high priority habitat restoration area. The project supports recovery of the endangered Southern Resident orca population in that it will increase estuarine habitat critical to the life history and abundance of Chinook salmon.

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Additional project elements, including a viewpoint pier, walkways, elevated viewpoints, and “hads-on” habitat area in the north portion of the restoration site, will contribute to public awareness, understanding, and provide important community open space benefits. These public access improvements will strengthen public constituency and support for future actions to restore and sustain critical habitat in the Lower Duwamish Waterway. The shoreline access and public open space improvements included in the present project are the result of nearly ten years of community involvement, including numerous collaborative design meetings with South Park and Georgetown neighborhood advocacy groups and citizens. The project design for the Terminal 117 project has been shaped by subject matter experts in both environmental restoration and public use/open space design. Public use areas include elements designed by a regionally acclaimed artist, Kristin Tollefson, who worked extensively with the community to create site-specific environmental and community meaningful art interpretations. The public access improvements will reflect carefully selected colors and themes, focusing on cultural relevance. The public use and open space features will emphasize safe, accessible, durable improvements, providing long-term community benefits. The project will be an important addition to the Port’s Duwamish Valley equity initiatives, providing a living classroom and community gathering space for South Park and surrounding area residents. To support this project, the Commission previously approved procurement of a General Contractor/ Construction Manager (GC/CM) Heavy Civil delivery method that provides for pre-construction planning, and eventual construction (if approved by Commission) starting in June 2020. Scarsella Brothers was selected for the GC/CM contract from a pool of seven firms.

The project is also supported by an agreement between the Elliott Bay Natural Resource Trustee Council (Trustees) and the Port of Seattle. The agreement memorializes a process by which the Terminal 117 Habitat Restoration and Duwamish Shoreline Access Project will be awarded natural resource damage (NRD) credits that can be reserved or sold. These credits, once realized, can be sold to other potential parties in the NRD action area that may require credits for their NRD settlements.

Staff has taken steps to also secure entitlements needed to allow the project to provide credits for Clean Water Act and Endangered Species Act offsets. These steps include submittal of a *Mitigation Bank Prospectus* to the U.S. Army Corps of Engineers and Washington State Department of Ecology (2019) which is now under review.

At present, the project is fully designed and scheduled to start construction in the third quarter of 2020. The Maximum Allowable Construction Cost (MACC) is not expected to exceed \$12 million, which is within the engineer’s construction cost estimate. Once completed, the Port will be awarded its first allotment of NRD credits, as described in the agreement with the Trustees, anticipated to occur before the end of the second quarter of 2021. Through sales of credits over a ten-year period, staff expects that all project costs can be recovered. Recovered costs are proposed to be reinvested in subsequent projects described in the Port’s *Mitigation Bank Prospectus*, if approved by Commission.

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Staff are working with the contractor to identify ways to leverage the project for community benefit, including development of a long-term stewardship program that will employ Duwamish Valley residents to participate in site maintenance and care. Similarly, the contractor will look for opportunities to hire locally, to the extent possible. The contractor is also developing a plan to integrate the project into area events such as Duwamish River Festival by making the construction site and pieces of earth-moving equipment available for outreach and interpretation.

### **JUSTIFICATION**

The project, over ten years in the making, is justified in that it supports the Port's triple-bottom line sustainability objectives: it achieves significant social, environmental, and financial goals.

The Terminal 117 Habitat Restoration and Duwamish Shoreline Access Project will achieve financial goals by supplying valuable credits to the NRD market. In addition to regulating Superfund cleanups, CERCLA creates liability for damages to natural resources caused by "releases of hazardous substances" into the environment. EPA administers the remediation of Superfund sites but is not responsible to bring NRD claims. That task falls to the Trustees, a group of federal, state and tribal government entities that have been designated management responsibility for natural resources in the action area. Potentially responsible parties for damages to natural resources generally settle out of court with the Trustees by:

- 1) Making a cash payment to the Trustees equivalent to the historic damages caused by the responsible party. The payment must eventually be used for restoration actions in the NRD action area.
- 2) Self-performing restoration in the action area. Responsible parties that own or have access to restoration sites in the action area can undertake a self-performed restoration project to offset their historic damages. Or,
- 3) Buying "credits" from a third-party mitigation bank in the action area, such as the Terminal 117 project.

The Port's proposed mitigation bank will generate credits that can be used for third-party NRD settlements. These credits have a substantial market value and will generate revenue for the Port that will offset the costs of the project and can be applied to development of additional mitigation bank sites.

In addition to NRD settlements, the Terminal 117 Mitigation Bank could also generate credits that can be available for other types of mitigation/offsets. The credits, once approved in the Port's Mitigation Banking prospectus, will be available to help entitle maritime waterfront developments in the Green-Duwamish watershed, satisfying compensatory mitigation needs under both the Clean Water Act and Endangered Species Act. By generating these credits in advance, the Port will be creating habitat at a critical time for the endangered Orca population, while creating an asset that increases in value over time.

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In 2009, the Commission adopted the *Lower Duwamish River Habitat Restoration Plan* (LDRHRP). The purpose of the LDRHRP was to identify opportunities for habitat restoration that are compatible with water-dependent and water-related uses in the Duwamish. The Terminal 117 project will implement restoration on Sites 23 and 25 in the LDRHRP. These sites were previously reviewed and determined to be compatible with adjacent uses.

In 2012, the Port of Seattle Commission adopted the Century Agenda, which establishes a goal to restore 40 additional acres of habitat in the Green-Duwamish Watershed and Elliott Bay. The Terminal 117 project will achieve 35% of the Century Agenda goal. It will increase critically important salmon habitat (particularly intertidal marsh) in the estuary by more than 40%. Revenue generated from the project will be invested in other mitigation bank projects that will make further progress towards the Century Agenda goal, while also helping achieve the region's salmon and Orca recovery objectives.

The project represents an important open space and shoreline access park for use by South Park and adjacent neighborhoods. The site will also provide educational and stewardship opportunities for all area residents, particularly youth.

Other justifications for promoting construction of the project include:

- (1) Compliance with Terminal 46 TIGER grant. The Port's grant applications to United States Maritime Administration (MARAD) highlighted social equity improvements at Terminal 117 as an important component of the application; specifically, it included that we would construct the Terminal 117 public shoreline access pier by June 2021. This deadline can only be met if we start construction this year.
- (2) Cost associated with EPA-required removal of a temporary steel sheet-pile wall in the Terminal 117 early action cleanup area. Following cleanup, the Port negotiated with EPA to retain the temporary sheet piling wall for construction of the habitat site. EPA allowed for retention of the temporary structure on the condition that it be removed immediately following the Terminal 117 habitat restoration action, which we believed at the time would occur immediately following the cleanup. EPA has indicated that the wall should be removed this year; and,
- (3) Compliance with public access requirements associated with the Terminal 46 operating license (City of Seattle Master Use Permit). The Terminal 46 Apron Strengthening and Electrical Upgrade that occurred in 2001 identified the Terminal 86 Fishing Pier as the required City of Seattle required shoreline public access site. With the closure of the Terminal 86 Fishing Pier in 2013, the Port then identified the future Terminal 117 viewpoint pier as the required public access site. If the Terminal 117 viewpoint pier is not constructed, the Port risks being out of compliance with the Terminal 46 operating permit.

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***Diversity in Contracting***

The Disadvantaged Business Enterprise (DBE) contracting goal for the Terminal 117 Habitat Restoration and Duwamish Shoreline Access Project is 6%. The Port’s Contractor is committed to local DBE subcontractors, as well as exploring work force opportunities and local-hiring from the South Park neighborhood to the extent feasible. The contractor will also participate with Port staff in community outreach events, including the Duwamish River Festival and “Duwamish Alive!” event.

***Scope of Work***

The Terminal 117 Habitat Restoration and Duwamish Shoreline Access Project consists of the following:

- (1) Excavation of approximately 35,000 CY of fill and native soils to create an off-channel tidal basin and shallow out existing steep bank line slopes;
- (2) Installation of natural shoreline stabilization structures using anchored large wood, soil lifts, and native vegetation;
- (3) Construction of upland rockery walls, rock steps, and passive in-water scour protection features;
- (4) Construction of approximately 185 ft long steel-framed pile-supported viewpoint pier;
- (5) Installation of individual piling for use in improving Treaty fishing access;
- (6) Installation of interpretive information, in coordination with and approved by Treaty tribes, to increase awareness of Puget Sound tribes and understanding of Treaty-reserved fishing access;
- (7) Refurbishment and installation of two Port-provided steel pedestrian bridge trusses and elevated steel platform viewpoint structures;
- (8) Construction of crushed rock trails, concrete sidewalks, and pervious pavers;
- (9) Planting of approximately 5 acres of riparian and marsh vegetation;
- (10) Construction of above- and below-ground irrigation system;
- (11) Construction of temporary features to protect estuarine vegetation from waterfowl grazing and to exclude invasive species;
- (12) Installation of solar-powered paths and pier lighting;
- (13) Installation of site-specific environmental interpretive signage and public art features;
- (14) Installation of bike racks and seating for public use;
- (15) Installation, maintenance, and management of temporary erosion control measures, construction stormwater management measures, and dewatering system; and,
- (16) Management of traffic control measures, including coordination with traffic control of neighboring coincident construction projects.

***Schedule***

*Activity*

Commission design authorization	2011
Design start	2011

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Design pause during “Early Action” CERCLA Cleanup and NRD negotiations	2012-2015
Design re-initiated	2016
Commission GC/CM Procurement authorization	2019
Authorization request to execute construction	2020 Q2
Construction start	2020 Q3
In-use date	2021 Q2

<b>Cost Breakdown</b>	<b>This Request</b>	<b>Total Project</b>
Design	\$0	\$3,496,000
Construction and operation <sup>2</sup>	\$0	\$22,425,000
<b>Total</b>	<b>\$0</b>	<b>\$25,921,000</b>

**ALTERNATIVES AND IMPLICATIONS CONSIDERED**

**Alternative 1** – Do not proceed with construction until buyers for mitigation credits have been secured.

Cost Implications: This would add substantial costs to the Port, and risk non-compliance with regulatory requirements. (1) Potential that we would need to return approximately \$11 million of federal grant funding due to lack of performance criteria, (2) estimated cost of \$300,000 for removal of temporary steel sheet-piling wall remaining from early action clean-up, (3) estimated yearly \$750,000 to \$1 million construction cost escalation; (4) failure to achieve Duwamish Valley Community Equity program expectations.

Pros:

- (1) Project costs would be available for investment in other Port projects;
- (2) Having a buyer for mitigation credits in advance ensures that project financing is secured.

Cons:

- (1) Project costs may escalate due to construction price increases in future years;
- (2) Removal of steel sheet-piling wall installed during EPA-directed clean-up may be necessary;
- (3) May not complete public access pier in time to meet TIGER grant deadline, affecting previously received federal grant funding for numerous projects;
- (4) Terminal 46 public access requirement may no longer meet City of Seattle land use requirements.

This is not the recommended alternative.

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<sup>2</sup> Includes consideration of administrative costs, construction, design contingency, adaptive management, site maintenance, performance monitoring, and initial maintenance.

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**Alternative 2** – Pending final approval of the design and maintenance plan from the Trustees, begin implementation of the Terminal 117 Habitat Restoration and Duwamish Shoreline Access Project and market/transact credits as they are released over time.

Cost Implications: \$24,331,800 total estimated project cost.

Pros:

- (1) Start construction Q3 2020, taking advantage of 2020 in-water construction season;
- (2) Cost saving in utilizing existing temporary steel sheet-pile wall as a beneficial element of the restoration project;
- (3) Stay on schedule to complete public access pier in time to meet TIGER grant deadline;
- (4) Support Port century agenda of creating 40 additional acres of habitat in the Duwamish watershed.

Cons:

- (1) Utilize Port funding source for other projects;
- (2) Uncertainty with respect to restoration credit sales.

***This is the recommended alternative.***

**FINANCIAL IMPLICATIONS**

<i>Cost Estimate/Authorization Summary</i>	Capital	Expense	Total
<b>COST ESTIMATE</b>			
Original estimate	\$22,425,000	\$3,496,000	\$25,921,000
<b>AUTHORIZATION</b>			
Previous authorizations	\$15,374,000	\$3,496,000	\$3,496,000
Current request for authorization	\$0	\$0	\$0
Total authorizations, including this request <sup>3</sup>	\$15,374,000	\$3,496,000	\$18,870,000
Remaining amount to be authorized	\$7,051,000	\$0	\$7,051,000

The funding sources will be the from the Tax levy and from a previous settlement agreement in 2008 that stipulates the funds to be used for habitat restoration at the Terminal 117 site. The current value of the settlement fund is approximately \$11,781,789.

***Future Revenues and Expenses***

Future revenues from the sale of credits generated by this project will be negotiated in future years, but it is anticipated that future credit sales may equal or exceed the cost of the project.

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<sup>3</sup> Includes consideration of administrative costs, construction, design contingency, adaptive management, site maintenance, performance monitoring, and initial maintenance.



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**ATTACHMENTS TO THIS REQUEST**

- (1) Presentation slides
- (2) Project flyer

**PREVIOUS COMMISSION ACTIONS OR BRIEFINGS**

July 25, 2006 – the Commission received public testimony regarding future uses for Terminal 117

May 13, 2008 – the Commission approved entering into a memorandum of agreement (MOA) with the Trustees for crediting habitat restoration projects in and near the Lower Duwamish Waterway relating to future settlement of NRD claims; for execution of a professional services agreement for environmental review and application of permit authorizations; and to prepare plans and specifications for design and permitting of a fish and wildlife habitat restoration project at Terminal 117 under the MOA, for a total authorized expenditure of \$210,000

October 27, 2008 – the Commission approved entering into a settlement agreement regarding the Terminal 117 Site and Lower Duwamish Site cleanup costs and NRD liability

July 7, 2009 – the Commission adopted the Lower Duwamish River Habitat Restoration Plan, an inventory of Port of Seattle properties eligible for habitat restoration

June 7, 2011 – the Commission approved 1) permitting and design of an expanded fish and wildlife habitat restoration project at Terminal 117 for an estimated cost of approximately \$3,021,000; and 2) execution of a contract for outside professional services to complete the permitting and design of the habitat restoration project at Terminal 117

March 26, 2013 – the Commission approved (1) purchase of the southern portion of the South Park Marina float structure to accommodate habitat restoration at Terminal 117 and (2) completing permitting and design for a public access viewpoint pier at Terminal 117

July 23, 2019 – the Commission authorized advertising and executing a contract with a General Contractor/Construction Manager (GC/CM) “Heavy Civil,” to assist with completion of design and permitting work associated with the Terminal 117 Habitat Restoration and Duwamish Shoreline Access Project (the “Project”)