



**COMMISSION  
AGENDA MEMORANDUM**

**Item No.** 80

**ACTION ITEM**

**Date of Meeting** December 14, 2021

**DATE:** November 22, 2021

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

**FROM:** Tina Soike, Director Engineering Services  
Janice Zahn, Assistant Engineering Director, Construction Services

**SUBJECT: Sites 23/25 Habitat Restoration Change Order Over \$300K**

**ACTION REQUESTED**

Request Commission authorization for the Executive Director to execute a change order to Contract MC-032036 Sites 23/25 Habitat Restoration (Heavy Civil GC/CM) in the amount of \$1,941,446.60 due to costs related to the unanticipated Subtitle D disposal of soils on Site 23.

**EXECUTIVE SUMMARY**

This change order adjusts the Contract Value by the amount of \$1,941,446.60 for a new value of \$15,942,343.38. This action is required under the General Delegation of Authority because the Change Order includes a cost impact greater than \$300K and is greater than 10% of the Contract value. No additional project funding is included with this request.

**Description of Change Order**

This change order compensates the Contractor for the additional soil handling and management and disposal costs related to Subtitle D disposal requirements associated with potentially contaminated material found during the excavation of the Terminal 117 site.

**Background**

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, intertidal 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.

On August 12, 2020 the Port executed a construction contract with Scarsella Brothers, Inc. in the amount of \$14,211,077. On May 17, 2021 while excavating below the site's finished clean-up elevation, "suspect" soil was identified in 2 locations and the Contractor was directed to move

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elsewhere while the Port chemically profiled the soil. Two days later, two more locations were identified as “suspect”. While three of the four locations had soil profiles consistent with the soil profiles for the site, one sample contained elevated levels of contamination. Discovery of the contamination was unexpected as this material was found below the elevation grade of the EPA approved clean-up. Port Staff from Environmental, Legal, and Construction Management engaged the Environmental Protection Agency (EPA) to advise them of this discovery. Meanwhile, the Port issued Change Order #007 for the not-to-exceed amount of \$273,750 to begin removal and disposal of the contaminated material in suspect locations. Negotiations with the EPA concluded with their decision to over-excavate beyond the design, finished habitat grade and dispose all generated soil at an EPA Subtitle D regulated landfill. The over excavated, finished grades were backfilled with clean, imported sand creating an increased fill layer thereby capping or separating the lower, native soil layer from the finished habitat surface. Factors contributing to this decision was the presence of elevated contamination in some but not all “suspect” locations. The decision to do this allowed the Contractor to quickly progress with their work minimizing the impact to the progress of the project, which is weather and tide dependent, however it would incur considerably higher than expected soil disposal costs. As this was determined to be a “Differing Site Condition” (i.e., the final T-117 upland soil cleanup was deemed complete by EPA, confirmed with final surface soil sampling results) the Port is responsible for these additional costs. The execution of this Change Order will result in a new Contract Value of \$15,942,343.38. Most of the work is now completed, there is no expectation of further cost growth.

**FINANCIAL IMPLICATIONS**

There is no additional funding being requested with this action.

**ALTERNATIVES AND IMPLICATIONS CONSIDERED**

**Alternative 1** – Do not authorize the issuance of the Change Order.

**Pros:**

- (1) Properly disposes potentially contaminated material

**Cons:**

- (1) Creates a risk potential for litigation.
- (2) Additional staff soft costs, potential legal expenses.

This is not the recommended alternative.

**Alternative 2** – Authorize the issuance of the Change Order in the amount of \$1,941,446.60.

**Pro:**

- (1) Properly compensates the Contractor for the additional expense related to Subtitle D disposal of potentially contaminated soil.

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Cons:

(1)

**This is the recommended alternative.**

**ATTACHMENTS TO THIS REQUEST**

None

**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”).

April 28, 2020 – the Commission authorized the execution of the GC/CM Construction Contract to complete the restoration of the Terminal 117 Habitat Restoration and Duwamish Shoreline Access Project, which includes fish and wildlife habitat restoration and public shoreline access improvements (Sites 23/25 Habitat Restoration Project).