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COMMISSION

AGENDA MEMORANDUM Item No. 10a

ACTION ITEM Date of Meeting May 28, 2024

DATE: May 21, 2024

TO: Stephen P. Metruck, Executive Director

FROM: Sarah Ogier, Director-Maritime Environment & Sustainability

Jon Sloan, Sr. Manager-Environmental Programs

Kathleen Hurley, Sr. Environmental Program Manager

SUBJECT: Request for Introduction of Resolution 3824 Authorizing the Sale of Surplus
Mitigation Bank Credits

Amount of this request: None

Total estimated project cost: Expected positive cash flow \$48 million

ACTION REQUESTED

Request Commission Introduction of Resolution No. 3824 to (1) determine 500 mitigation credits from the Port's Terminal 117 (T117) Mitigation Bank site are surplus in accordance with RCW 53.08.090 and EX-30; and (2) authorize the Executive Director to enter into a purchase and sale agreement to sell those credits at fair market value.

EXECUTIVE SUMMARY

This is the first transaction for the Port's mitigation bank, which was designed to support creation of important fish and wildlife habitat in the Green-Duwamish River Watershed. This will ultimately result in approximately \$48,000,000 cash flow that can support future restoration actions within the Port's Habitat Initiatives Line of Business.

In 2016, the Port developed its PORTfolio Restoration Plan and the Habitat Initiatives Line of Business, with the expressed intent to restore and/or create high-functioning habitat in the Green-Duwamish River Watershed and create a mitigation bank with marketable credits. The PORTfolio Restoration Plan identified 16 initial habitat projects, including both past and future restoration actions. In 2019, the Port further refined the PORTfolio Restoration Plan by preparing the Joint Wetland Mitigation and Habitat Conservation Bank Prospectus, which was submitted to Washington State Department of Ecology and the U.S. Army Corps of Engineers (the Agencies) for review. The Prospectus included conceptual designs for three primary sites to be constructed initially, including Terminal 117 and Terminal 25 under the Maritime Division portfolio, and the

Template revised January 10, 2019.

[Annotation] Lam, Lisa

Same comment as in the PowerPoint. Recommend to remove will offset costs and .

[Annotation] Lam, Lisa

Suggest First payment so we are consistent with the term sheet.

[Annotation] Lam, Lisa

Suggest Second payment so we are consistent with the term sheet.

COMMISSION AGENDA – Action Item No. 10a Page 2 of 6

Meeting Date: May 28, 2024

Aviation-owned Auburn Site. The site selection process used criteria for size, connectivity, distribution, and urgency to identify properties as appropriate for mitigation bank development; it also considered existing resources or liabilities preventing other uses. In parallel, the Port worked with the Elliott Bay Trustee Council to establish Terminal 117 as a Natural Resource Damage (NRD) credit bank.

Construction of the restoration and improvements at the Terminal 117 Site, which is now known as Duwamish River People's Park and Shoreline Habitat, or DRPP, was completed in 2022.

JUSTIFICATION

This transaction will be the first for the Habitat Initiatives Line of Business and is consistent with the Port's mission to support economic development and its Century Agenda goal to restore 40 acres of habitat. Credits associated with the DRPP Site Mitigation Bank are surplus to the Port's own needs for mitigation. Proceeds from the transaction may support future habitat restoration actions on Port properties. Finally, this transaction is consistent with the intent of the mitigation bank and the Port's Habitat Initiatives Line of Business and is consistent with Port Policy EX-30, "Habitat and Mitigation Banking: Surplus Sales."

Diversity in Contracting

No goal related to diversity in contracting was established because this item is related to the sale of mitigation credits generated by the Port's mitigation bank. The request does not involve contracting of services.

DETAILS

The subject mitigation credits were generated at the Terminal 117 Site Mitigation Bank, which is now known as Duwamish River People's Park and Shoreline Habitat, or DRPP. The Site is under a 10-year monitoring and maintenance plan and is protected by a conservation easement and the Port's commitment to provide stewardship in perpetuity. The proposed transaction includes the sale of 500 NRD credits for a total of approximately \$48 million to be paid in accordance with the terms of the purchase and sale agreement. The Port will retain ownership of the DRPP site and continue with use, maintenance and stewardship as currently planned.

Schedule

Activity

Commission meeting (first reading) 2024 Q2

Commission meeting (second reading) 2024 Q2

Execution of Purchase and Sale Agreement 2024 Q2/Q3

Initial Deposit 2024 Q3

First Payment 2025 Q1

Second Payment 2026 Q1

Final Payment 2027 Q1

Template revised June 27, 2019 (Diversity in Contracting).

[Annotation] Lam, Lisa

If Jon is going to avoid T25, just overall NRD liability, may want to update here as well

COMMISSION AGENDA – Action Item No. 10a Page 3 of 6

Meeting Date: May 28, 2024

ALTERNATIVES AND IMPLICATIONS CONSIDERED

The alternatives considered for this action were to either proceed with the transaction to sell 500 mitigation credits or not to pursue the sale of the credits.

Alternative 1 – Proceed with the sale of 500 mitigation credits from the DRPP Mitigation Bank Site.

Cost Implications: Generates approximately \$48,000,000 in cash flow over a four-year period.

Pros:

(1) Demonstrates proof of concept for the Habitat Initiatives Line of Business and the Port of Seattle would be the first port in Washington State to undertake this type of transaction.

(2) This alternative would result in approximately \$48,000,000 cash flow over a four-year period.

(3) Cash flow can contribute towards additional restoration in the Duwamish Valley – specifically at T25 allowing increased momentum and progress towards Century Agenda goal #4 objective 12: to restore, create, and enhance 40 additional acres of habitat in the Green/Duwamish

Cons:

(1) The sale of 500 mitigation credits would reduce the number of mitigation credits available for other potential future use.

This is the recommended alternative.

Alternative 2 – Do not proceed with the sale of 500 mitigation credits from the DRPP Mitigation Bank Site.

Cost Implications: No cash flow from sale. Retain asset for future use by Port or for sale to others.

Pros:

(1) Retain all DRPP mitigation credits for future sale to third parties or potential future use by the Port to resolve a portion of its NRD liability.

Cons:

(1) Foregoing opportunity to generate approximately \$48,000,000 cash flow over a four-year period for the Port's Habitat Initiatives Line of Business.

(2) Loss of cash flow that could impact future habitat restoration actions and achievement of the Century Agenda habitat restoration goal. May result lower total number of acres restored than Alternative 1.

(3) Soil cleanup and shoreline rehabilitation would still need to occur at Terminal 25.

This is not the recommended alternative.

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COMMISSION AGENDA – Action Item No. 10a Page 4 of 6

Meeting Date: May 28, 2024

FINANCIAL IMPLICATIONS

The sale will result in approximately \$48,000,000 cash flow over a four-year period. To ensure an ongoing supply for Port use and/or future sales, additional mitigation credits will be developed through projects at other sites within the mitigation bank (including Terminal 25 South).

ADDITIONAL BACKGROUND

The Port's Century Agenda Goal 4, to be the greenest and most energy efficient port in North America, includes Objective 12, to restore, create, and enhance 40 additional acres of habitat in the Green/Duwamish Valley. In pursuit of this goal, in 2016, the Maritime Division established the Habitat Initiatives Line of Business, including a mitigation bank, that would enable the Port to restore habitat and sell the intangible "credits" generated by the Port's restoration efforts. A mitigation bank includes natural resource areas (often a wetland, stream, marine nearshore area, or riparian zone) that have been created, re-established, rehabilitated, enhanced or, in certain circumstances, preserved for the purpose of providing compensation for impacts to natural resources. A Mitigation Bank can be, among other types, a "wetland mitigation bank," a "conservation mitigation bank," or an "NRD bank," within the context of current regulatory markets. A "wetland mitigation bank" is a site established pursuant to Washington State Department of Ecology guidelines where wetlands are created, re-established, rehabilitated, enhanced, or preserved for the express purpose of providing compensatory mitigation in advance of unavoidable impacts to wetlands or other aquatic resources. A "conservation mitigation bank" is a site established pursuant to federal agency guidelines administered by the National Marine Fisheries Service (NMFS) and/or United States Fish & Wildlife Service (USFWS), that through legal instruments such as conservation easements permanently protects lands that contain natural resource values for species that are endangered, threatened, candidates for listing as endangered or threatened, or are otherwise species-at-risk under the federal Endangered Species Act. An NRD bank is a site established through an agreement with the local NRD Trustee Council (in the Port's case, the Elliott Bay Trustee Council, comprised of representatives of the federal government, state government, Muckleshoot Indian Tribe, and Suquamish Tribe) to provide habitat restoration pursuant to an agreement with the Trustee Council.

By establishing the Habitat Initiatives line of business, the Port is able to sponsor and promote a multi-site, multi-benefit mitigation bank to restore fish and wildlife habitat in furtherance of Century Agenda Goal 4. Through the sale of surplus credits, the Port may recover some or all of the costs associated with the construction of such habitat and generate cash flow that can be applied to future restoration work or other Port initiatives.

Development of the 14-acre Terminal 117 site (also known as the Duwamish River People's Park and Shoreline habitat, DRPP) occurred over almost two decades, from Port acquisition of the site (2000) to cleanup of contamination (2012-2014), and construction of the habitat and public access (2020-2022). The site incorporates public access via the fishing pier and overlook, artwork, and interpretive signage alongside the restored habitat, consisting of riparian and

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COMMISSION AGENDA – Action Item No. 10a Page 5 of 6

Meeting Date: May 28, 2024

marsh vegetation and intertidal and subtidal habitats. The DRPP site generates public and environmental benefit in an environmental justice community.

The habitat components of the DRPP site generated 521.5 credits for compensation related to Natural Resources Damages (NRD), known as dSAYs (discounted service acre years). The project constitutes the Port's first mitigation bank project, and we believe the Port of Seattle would be the first port in Washington State to complete a transaction should this sale proceed. The Port does not need these credits for its own settlement purposes.

Since the Habitat Initiatives line of business was established in 2016, Port staff have been engaged in the mitigation bank market in Washington State, and, more locally in the Lower Green-Duwamish River service area. The novelty of mitigation markets in this geography and lack of predictability in regulatory timelines drive credit price uncertainty. However, based on limited publicly available prices of similar available mitigation credits, recent mitigation credit settlements, estimated costs to build new restoration sites within the service area, and market conditions, Port staff have determined this transaction price reflects fair market value,

consistent with Port Policy EX-30. Furthermore, transaction of mitigation credits provides an opportunity to generate benefits to the general public by expanding green space in a highly urbanized area, providing important fish and wildlife habitat, while advancing the Port's pursuit of its Century Agenda and equity goals.

ATTACHMENTS TO THIS REQUEST

- (1) Proposed Purchase and Sale Agreement
- (2) Resolution No. 3824
- (3) Presentation

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

- 1) July 23, 2019 – Commission authorized procurement of General Contractor/Construction Manager (GC/CM) for the Terminal 117 Habitat Restoration and Duwamish Shoreline Access Project
- 2) March 26, 2013 – Commission authorized purchase of the southern portion of the South Park Marina float structure to accommodate habitat restoration and complete permitting and design for a public access viewpoint pier at T117.
- 3) June 7, 2011 - Commission authorized design and permitting for Terminal 117 Expanded Habitat Design and execution of a professional services agreement to complete the design and permitting.
- 4) July 7, 2009 – Commission adopted the Lower Duwamish River Habitat Restoration Plan, an inventory of Port of Seattle Properties.
- 5) May 13, 2008 – Commission approved entering into a MOA with the Elliott Bay Trustee Council for crediting habitat restoration projects in and near the LDW relating to future settlement of natural resource damages claims: for execution of a professional services agreement for environmental review and application of permit authorizations; and to

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COMMISSION AGENDA – Action Item No. 10a Page 6 of 6

Meeting Date: May 28, 2024

prepare plans and specifications for design and permitting of a fish and wildlife habitat restoration project at T-117 under the MOA.

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