Item No.: 9D
Date of Meeting: Nov. 2, 2021

THE NORTHWEST SEAPORT ALLIANCE
Gateway to Solutions

TERMINAL 103 - General Construction Term Lease

Presenter: Jennifer Maietta
Director, Real Estate

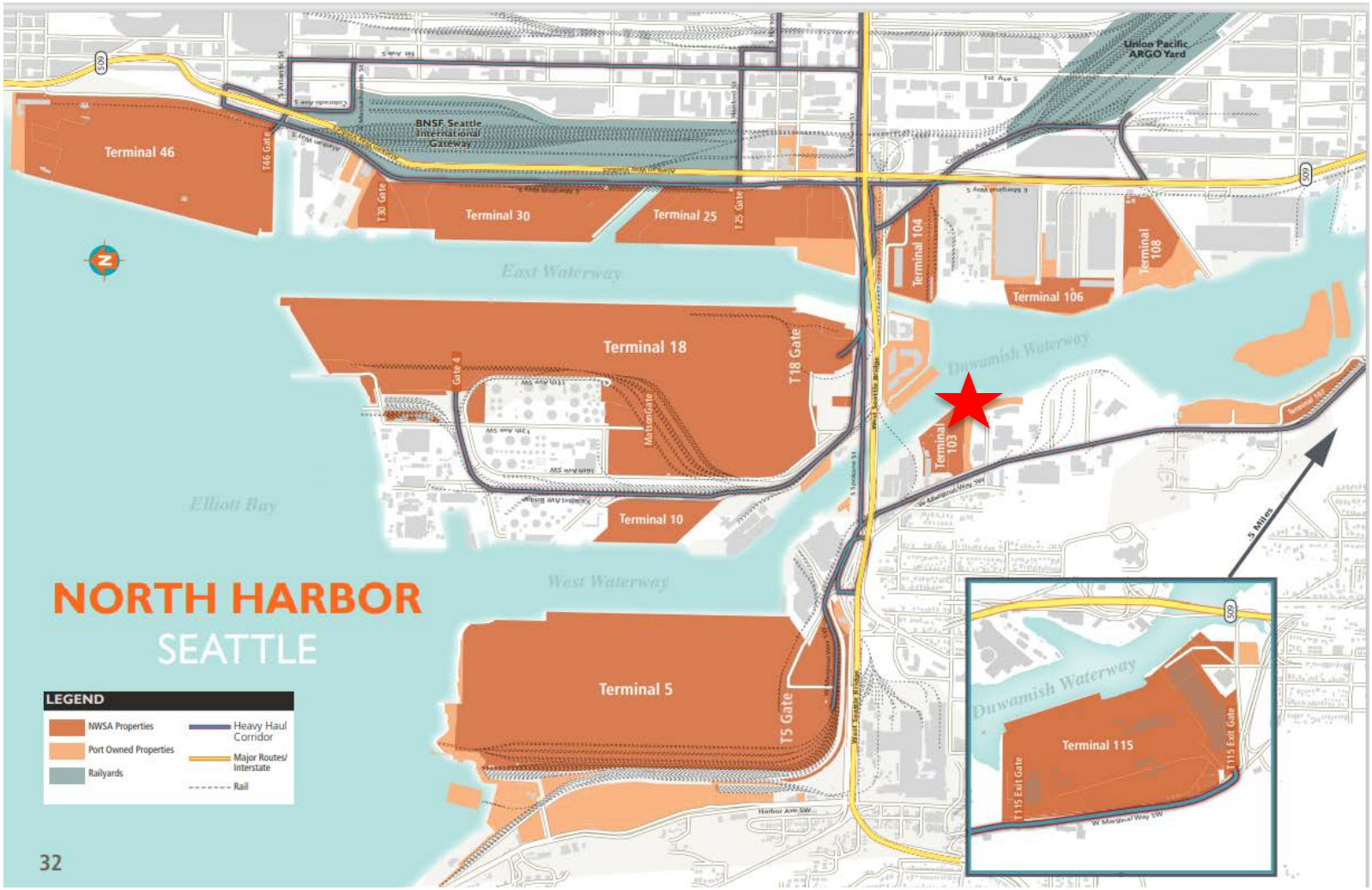
Action Requested

- Managing Members of the Northwest Seaport Alliance (NWSA) authorization for the Chief Executive Officer or their delegate to execute a new lease agreement with General Construction Company at Terminal 103.

Summary

- General Construction Company (GCCC) wishes to enter into a term lease with the NWSA with the understanding that the Aquatic Lands will be incorporated into the Port Management Agreement (PMA) by amendment and GCC will become responsible for the dock structure, all required upgrades for its use and its potential future removal under the Lease. The incorporation of the Aquatic Lands into the PMA will allow GCC to apply for review and approval by the Washington State Department of Natural Resources (DNR) to make the structural upgrades for stabilization of the dock for its continued use and future replacement which is pertinent for GCC to conduct its business.

Site Plan


Terminal 46
T46 Gate
BNSF Seattle International Gateway
Union Pacific ARGO Yard
Terminal 30
T30 Gate
Terminal 25
T25 Gate
Terminal 104
Terminal 108
Terminal 106
East Waterway
Terminal 18
T18 Gate
Gate 4
MatsonGate
Duwamish Waterway
Terminal 103
Elliott Bay
Terminal 10
5 Miles
West Waterway
NORTH HARBOR
SEATTLE
Terminal 5
T5 Gate
Terminal 115
T115 Exit Gate
LEGEND
NWSA Properties
Port Owned Properties
Railyards
Heavy Haul Corridor
Major Routes/ Interstate
Rail
32

Site Plan


BNSF
Current DOCK STRUCTURE
M-3
M-2
M-4
M-1
GENERAL
CONSTRUCTION
NW AGGREGATES
Shared
ingress/egress
TERMINAL 103
Public
Access
Duwamish Waterway

Terminal 103



Background

- Port of Seattle (POS) purchased Terminal 103 (T-103) from Fletcher General in June 1997, which included leases with both General Construction (GCC) and Northwest Aggregates (NW Ag).

- Both tenants are dependent upon and access the Aquatic Lands adjacent to the uplands for their business operations and both leases have continued on hold over status while the negotiations of the Aquatic Lands for incorporation into the PMA is completed.
  - The purchase of T-103 did not include the incorporation of Aquatic Lands nor the dock structure located within the Aquatic Lands currently used by GCC.
  - There is no historical or municipal record of who installed the dock
  - Dock is in a deteriorated state and unsafe to use
  - DNR is requiring the POS to take responsibility for the dock and its future removal through the incorporation of the Aquatic Lands by amendment to the Port Management Agreement.

Background

- GCC is a subsidiary of Kiewit Construction and provides maritime construction services. GCC's lease has been effect since 1996 with Fletcher General:
  - Transferred to the POS upon the property being purchased in 1997
  - Transferred to the NWSA as a licensed property in 2015

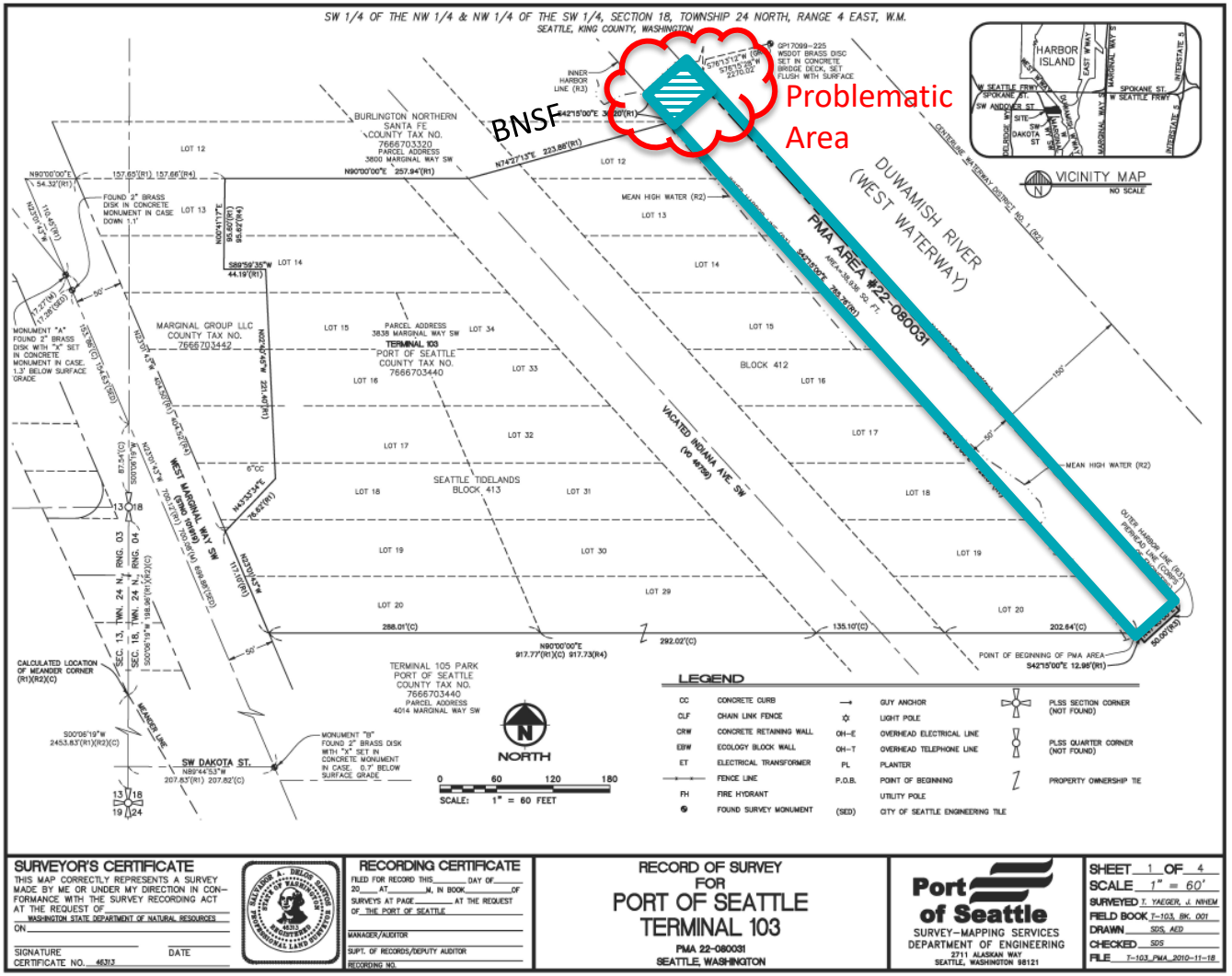
- Historically, POS negotiations for incorporation of the Aquatic Lands with DNR commenced in 2011 as well as lease negotiations with GCC (and NW Ag).
  - In 2012 the base terms for the draft amendment to the PMA were agreed upon except for from formalizing the site plan with DNR
  - In 2014 the initial base terms were agreed upon with GCC except for their resistance to take responsibility for the dock
  - POS negotiations were put on hold in 2015 due to management of T-103 being transferred to the NWSA
  - Subsequently several staff changes occurred affecting POS legal, NWSA real estate and DNR making it difficult to keep momentum in resolving complexities of these negotiations

Background

- Negotiations to incorporate the Aquatic Lands into the PMA has proven to be problematic primarily due to the dock structure
  - Early on GCC was very concerned with the potential environmental ramifications of the removal/replacement of the dock
  - Approximately forty feet of the dock extends northward past the T-103 adjacent uplands and adjacent to a BNSF parcel
  - Attempts have been made by POS to incorporate the additional forty feet of dock into the Aquatic Lands boundary
  - DNR had priorly considered this proposal, but within recent months formally declined the proposed boundary

- Additionally, the dock is located within the Duwamish waterway which has to take into account the existing environmental conditions
  - To remove/replace the dock would risk disturbance of contaminated sediments or a major contaminant clean-up requirements.
  - GCC has engaged POS Environmental in coordination of temporary upgrades to be completed by GCC in the interim to stabilize the dock without disturbing the waterway sediments.

Aquatic Lands Initially Proposed



Platform to be removed by GCC



Background

- Concerted efforts between the NWSA, POS, GCC and DNR including a recent site visit was conducted to come to an agreeable resolution:
  - The Aquatic Lands boundary will be contiguous with the T-103 uplands
  - GCC will remove the north 40’ of dock which is actually a metal platform extension that is not mandatory for GCC’s operations
  - In the interim GCC will work to stabilize the dock until a replacement or alternative option is approved by DNR
  - Site plan to be finalized and the PMA amendment anticipated to be executed by POS within the next couple of months

- Finalizing the GCC lease in tandem with the incorporation of the Aquatic Lands into the PMA allows:
  - GCC the time required to complete design, DNR review and approval, and permitting to complete the removal of the existing dock and construction of a new dock alternative to amortize these costs during the primary term of the lease.

Background

- The GCC lease has continued in holdover status as of June 2011 at the then current rate, while resolving issues with DNR as agreed upon by the parties which has continued through the transition into the NWSA. The current rental rate is $.15 psf/mo.

- An appraisal was conducted in 2019, which appraised the T-103 GCC portion of the property to have a fair market rental value of $.30 to $.31 psf/mo. Since the appraisal impacts to the property have/will occur:
  - The West Seattle Bridge closure resulted in a change in traffic flow along W Marginal Way affecting the ingress and egress to this property.
  - Terminal 5 will be commencing operations in 2022 with additional traffic on West Marginal way is anticipated.
  - Other future potential impacts include the premises being impacted by one of the Sound Transit Ballard to West Seattle light rail link (ST3) route options, and the proposed addition of a bike lane along W Marginal Way.
  - With these impacts affecting the valuation of the property and in consideration of GCC agreeing to take responsibility for the dock, it is agreed that doubling the rent from $.15 to $.30 in one year is burdensome and a step increase approach is reasonable.

Background

- The initial proposed lease terms negotiated with GCC in 2014, proposed a base rental rate of $.16 psf/mo. Had this lease been finalized:
  - Assuming a 2.5% annual increase the rental rate would be $.19 psf/mo in 2021 and if continued to be escalated through 2025, the rental rate would increase to $.21 psf/mo in 2025
  - The new proposed rental rate for this lease is $.20 psf/mo factoring the step increases, the rental rate will increase to $.32 psf/mo in 2025.

GENERAL CONSTRUCTION LEASE RATE COMPARISON

2014 Negotiated Rate				Proposed Current Rate		
Year	2.5% Increase			Year	Step-Incrase	
2021	$	0.19		2021	$	0.20
2022	$	0.19		2022	$	0.23
2023	$	0.20		2023	$	0.26
2024	$	0.20		2024	$	0.29
2025	**$**	**0.21**		**2025**	**$**	**0.32**

Background

- Additionally, upon incorporation of the Aquatic Lands into the PMA, GCC will be paying rent for the use of the Aquatic Lands calculated in accordance WAC 332-30-123.
    - GCC does not currently pay rent for the use of the dock and/or Aquatic Lands.
    - This will increase their monthly rental rate by an additional $1,022 per month to be increased by CPI annually.
    - This is equal to $.06 psf/mo for their portion of the Aquatic Lands area (17,703 sf).

Lease Terms

ITEM	TERMS
Premises	178,000 sf of Uplands Yard and 17,703 sf of Aquatic Lands
Term	10-Years Commencing Nov. 1, 2021 and terminating Oct. 31, 2031
Conditional Options to Extend	• If Lessee completes the installation of the New Dock, within the ten-year Term, Lessee will have two (2) five (5) Year Options to extend the Term at Lessee's discretion. • If Lessee is unable to replace the Current Dock with a similar dock structure, despite its use of commercially reasonable efforts to do so, within the ten-year Term, each of the two (2) five (5) Year Options to extend shall then be conditioned solely upon Lessor approval.

Lease Terms

ITEM	TERMS
Upland Yard Rent	Step Increases: $.20/SF effective Nov. 1, 2021 ($35,600 per month) $.23/SF effective Nov. 1, 2022 ($40,940 per month) $.26/SF effective Nov. 1, 2023 ($46,280 per month) $.29/SF effective Nov. 1, 2024 ($51,620 per month) $.32/SF effective Nov. 1, 2025 ($56,960 per month) Effective Nov. 1, 2026 Upland Yard Rent will be escalated by CPI-U each year through the end of the Lease Term.
Aquatic Lands Rent	Upon inclusion in the Port Management Agreement (PMA) with WA State Dept. of Natural Resources, the Aquatic Lands Rent will be calculated per WAC 332-30-123 • Currently estimated to be $1,022 per month. • Rent for the Aquatic Lands will be escalated by CPI-U each Nov. 1st through the Term of the Lease.

Lease Terms

ITEM	TERMS
Market Rate Adjustment	Rent for both the Upland Yard and Aquatic Lands will be adjusted to Fair Market Value prior to any Term Extension at Lessor discretion.
Security Deposit	• Lessee will provide a Security Deposit equal to 12 months Rent plus WA State Leasehold Excise Tax, initially $482,052. • Security for the Aquatic Lands will be added after they are included in the PMA.
Use of Premises	Lessee shall use the Premises for materials and equipment storage and administration and construction activities related to Lessee's business.
Utilities & Taxes	Lessee is responsible for all utilities and taxes.
Alterations	• Lessor is not responsible to make any Alterations. • Lessee intends to replace the Dock within the Aquatic Lands at Lessee cost. • If Lessee is unable to replace the Dock, after making good faith efforts, Lessee may terminate the lease upon 180 days written notice.

Lease Terms

ITEM	TERMS
Dock Structure	• **Upon the commencement of the lease acknowledges that the current dock structure is Lessee's responsibility and any liability arising from the presence of the dock or from Lessee's activities on or around the dock shall be Lessee's sole responsibility.**
Maintenance & Repair	• Lessee is responsible for all maintenance and repair. • Lessor has no maintenance & repair responsibility.
Insurance:	Lessee will provide proof of all insurance in compliance with NWSA Risk Management policy. • $5M General Liability • $3M Business Auto • $5M Protection and Indemnity
Major Capital Improvement	• Lessor may terminate the Lease upon 18-months' notice for a Major Capital Improvement Project. • Lessor will reimburse Lessee for the unamortized cost of the Dock.
Stormwater	Lessee is responsible for all Stormwater Management issues

Financial Implications

- The value of the revenue over 10 years is $4.5M including the combined rent for the uplands and Aquatic Lands. If both the 5-year options are exercised, for a total term of 20 years, the value of that revenue is $7.3M.

Recommended Action:

- At the November 3, 2021 meeting, request the Managing Members of the NWSA to advance authorization for the Chief Executive Officer or their delegate to execute a new Lease with General Construction Company for a 10-year Term at Terminal 103 approving, but not limited to, the following:
  - Step increases in the uplands base rent to current market rates over the first five years;
  - Upon inclusion of Aquatic Lands into the PMA GCC to pay additional rent for use of the Aquatic Lands in accordance with State WAC 332-30-123; and
  - And approve GCC to be responsible for the dock and proceed with plans towards stabilization of the dock in the interim while a replacement option is pursued to be completed at GCC's sole cost and expense.

Action Requested

- Managing Members of the Northwest Seaport Alliance (NWSA) authorization for the Chief Executive Officer or their delegate to execute a new lease agreement with General Construction Company at Terminal 103.