

# COMMISSION AGENDA

Item No: 5B

Meeting: 10/19/17

**DATE:** October 5, 2017

**TO:** Port Commission

**FROM:** John Wolfe, Chief Executive Officer

Sponsor: Jason Jordan, Director, Environmental and Planning Services

Project Manager: Mark Rettmann, Environmental Project Manager II

**SUBJECT:** Commission Authorization to Enter into the Upper Clear Creek Mitigation Bank Inter-local agreement (ILA) with the U.S. Army Corps of Engineers, Washington State Department of Ecology, and National Marine Fisheries Service.

## A. ACTION REQUESTED

As referenced in Resolution No. 2017-01-PT, Exhibit A, Delegation of Authority Master Policy, Paragraph IV.A. requires Commission authorization to enter into ILAs with other public agencies.

Request authorization enabling the Chief Executive Officer or his designee to enter into the Upper Clear Creek Mitigation Bank Inter-Local Agreement (ILA) with the U.S. Army Corps of Engineers, Washington Department of Ecology, and National Marine Fisheries Service with terms substantially as set forth below.

## B. SYNOPSIS

The Upper Clear Creek Mitigation Bank ILA, referred to as a Mitigation Banking Instrument or Instrument by regulators, will establish the Upper Clear Creek Mitigation Bank allowing the development, management, and use of wetland mitigation and fish conservation credits by the Port, or by a third party if the Port chooses to sell credits, for use as compensatory mitigation for unavoidable adverse impacts associated with future projects.

## C. BACKGROUND

The Port purchased Parcel 82 in 2000 and Parcel 73 in 2005 to create a restoration site and develop compensatory mitigation credits. Design began in 2012 and construction occurred over two years from 2014 to 2016. Performance monitoring of the site began in 2017 and will be conducted over ten years. The development of the mitigation bank began in 2014.

This Mitigation Bank supports the Port's Strategic Plan and the Port-Wide Habitat Strategy by developing wetland mitigation and fish conservation credits that can be banked for future use or sale. The credits could be used by the Port, or sold to a third party, for use as compensatory mitigation for unavoidable adverse impacts associated with future projects.

**D. AGREEMENT DETAILS**

This agreement obligates the Port to:

- Implement and complete the restoration activities described in the Mitigation Banking Instrument, including:
  - Construct the site (completed 2016) and submit an as-built report;
  - Establishment Period (performance) Monitoring for ten years (hydrology, vegetation, fish and wildlife habitat) and submit associated annual monitoring reports (started 2017);
  - Maintenance during Establishment Period (started 2017);
  - Remedial (contingency) actions during Establishment Period (as necessary);
  - Long term protection (conservation easement) recorded with Pierce County Auditor's Office and associated third party holder agreement; and
  - Long term management and maintenance.
- Management of the Mitigation Bank.

**E. FINANCIAL SUMMARY**

**Estimated Cost of Project**

Development of the Instrument was initiated under the design and construction authorization for the Upper Clear Creek Mitigation Site. Completion of the Instrument and long-term maintenance and management of the Mitigation Bank will be tracked under the Port of Tacoma's Capital Improvement Plan.

Site development (land purchases, permitting, design, construction, extended warranty/maintenance, and performance monitoring) occurred under separate Commission authorizations totaling \$8,049,840. This investment can be used as a credit for future Port projects avoiding the need to build the mitigation in the future at a higher mitigation ratio and cost. Additionally, if the Port does not use the credits, they could be sold for a potential market value of up to \$17.6 million.

**F. ECONOMIC INVESTMENT/JOB CREATION**

The Mitigation Bank will support future economic investments and job creation by making planning, permitting, and mitigation more efficient and cost-effective for future Port of Tacoma, Northwest Seaport Alliance, or partner development or re-development projects.

**G. ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS**

**Alternative 1) Do Nothing:**

Under this alternative, mitigation would be planned, permitted, and conducted concurrently with future impacting projects which may result in longer planning and permitting timelines and would require less favorable mitigation ratios resulting in more mitigation required for an impacting project (i.e., longer permitting timelines, more uncertainty, and higher costs for mitigation). The Port would not be able to sell mitigation credits to development partners and agencies.

**Alternative 2)** This request:

Under this alternative mitigation credits produced (banked) in advance of impacting projects would result in shorter planning and permitting timelines and would yield more favorable mitigation ratios resulting in less mitigation required for impacting projects (i.e., shorter permitting timelines, less uncertainty, and lower costs for mitigation). The Port would be able to sell mitigation credits to development partners and agencies. This action would allow the Port to more effectively and cost efficiently manage the Port's long-term mitigation needs and is consistent with the Port's Strategic Plan and the Port-Wide Habitat Strategy.

**Alternative 2 is the recommended course.**

#### **H. ENVIRONMENTAL IMPACTS/REVIEW**

Permitting: No impacts related directly to this non-project action. This action will make permitting and mitigation for future impact projects more efficient and cost-effective.

Remediation: No impacts related to this non-project action.

Water Quality: No impacts related to this non-project action.

Air Quality: No impacts related to this non-project action.

#### **I. PREVIOUS ACTIONS OR BRIEFINGS**

There are no previous actions directly related to approving the Instrument. Development of the Instrument was initiated under the design and construction authorization for the Upper Clear Creek Mitigation Site and the Port's Strategic Plan and the Port-Wide Habitat Strategy briefings.

#### **J. ATTACHMENTS TO THIS REQUEST**

- Draft Mitigation Banking Instrument

#### **K. NEXT STEPS**

Develop and record conservation easement, complete Establishment Period activities (monitoring, maintenance, and as necessary remedial/contingency actions), conduct long-term management and maintenance of the site and the Mitigation Bank.