

Item No.: 4D

Date of Meeting: March 15, 2018

Authorization for Settlement Agreement for Hylebos Waterway Cleanup Cost Overrun

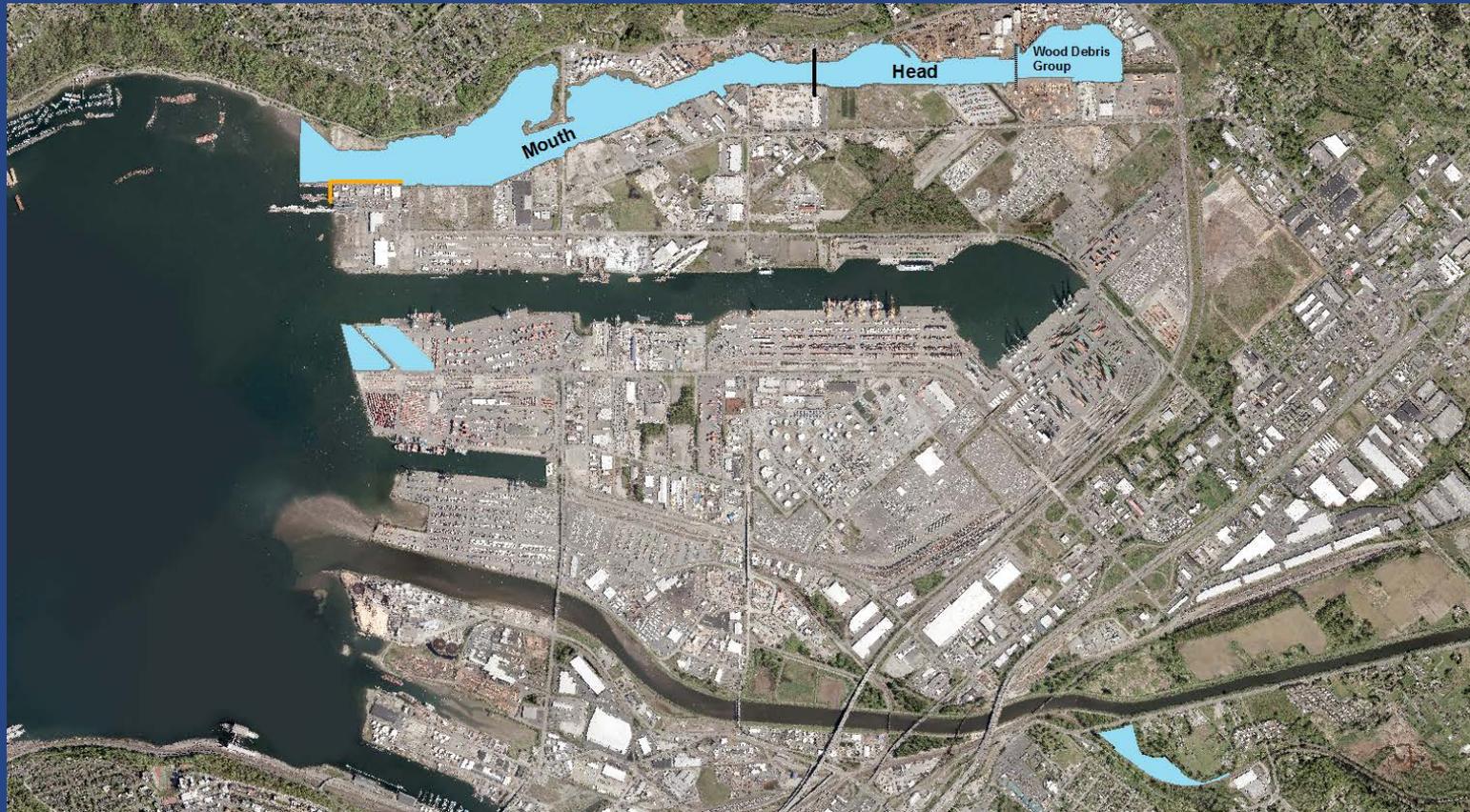


Hylebos Cleanup Cost Overrun



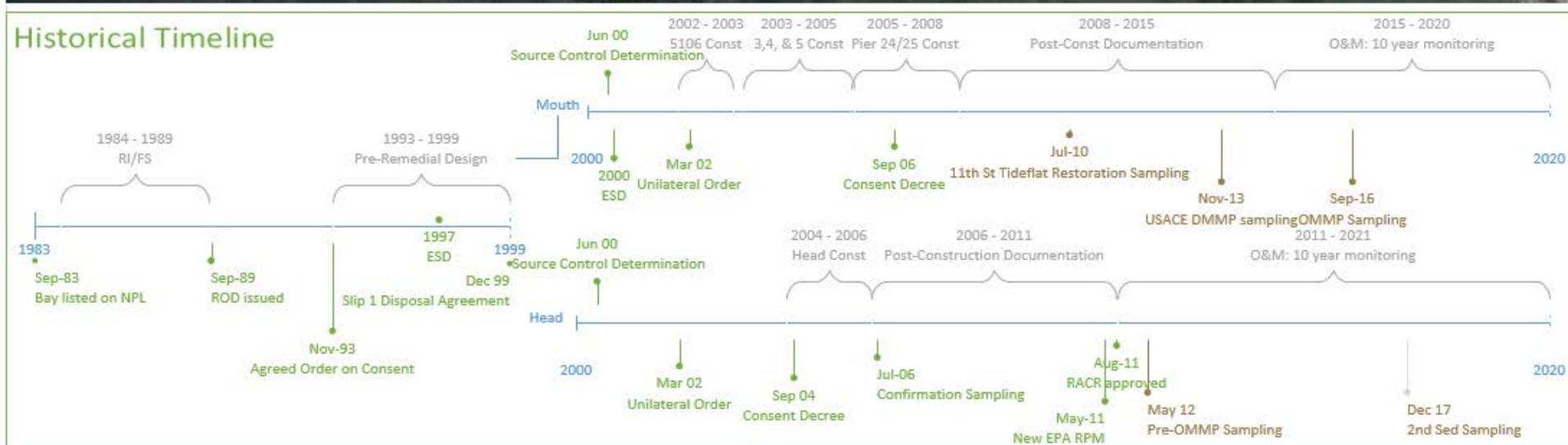
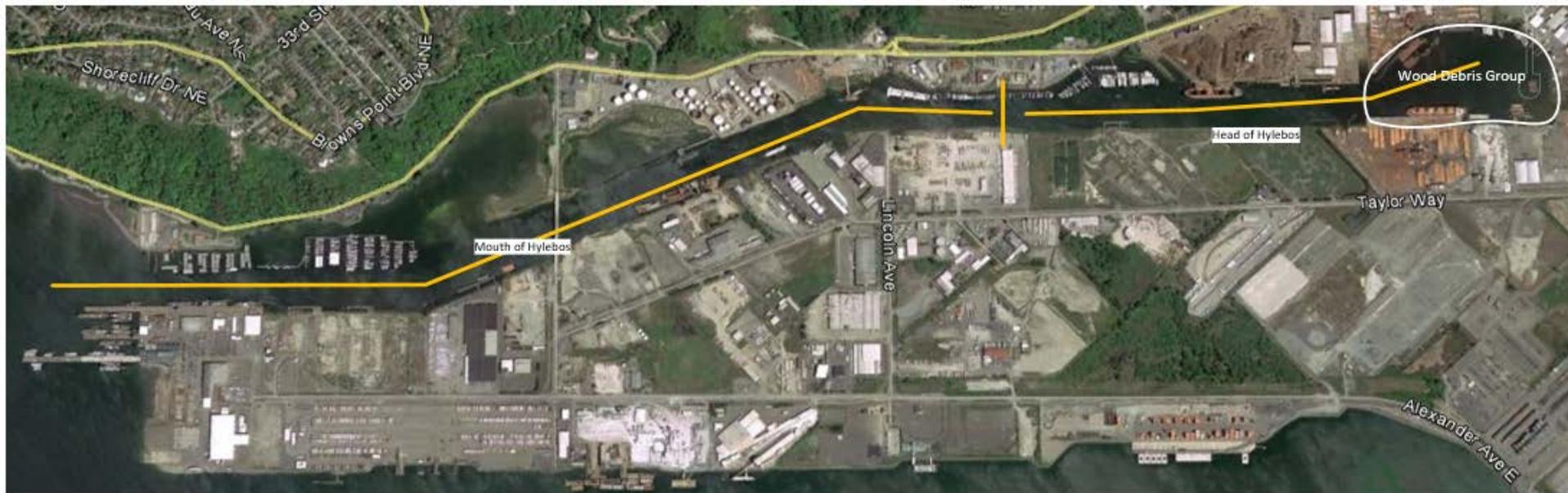
Request authorization for the CEO or his delegate to execute a Settlement Agreement with the U.S. Department of Justice (DOJ) for Hylebos Waterway Cleanup Cost Overrun, Master Identification No. 092135 – Mouth of Hylebos Project Authorization.

Hylebos Waterway Consent Decree Project Components



- Mouth of Hylebos Waterway Problem Area
- Head of Hylebos Waterway Problem Area
- Slip 5 Mitigation Site
- Clear Creek Mitigation Site – Phase 1 Area
- Slip 1 Confined Disposal Facility
- Piers 24 & 25 Environmental Cap

Background



Cleanup History of the Hylebos Waterway

Mouth of Hylebos Cleanup Program Description (1993-May 2013)



- Mouth of Hylebos Consent Decree Program costs through May 2013 were \$15,318,171
- Program costs include the Consent Decree Remedial Actions as approved by Commission by Contract Authorization
- Major milestones included remedial sediment dredging, construction of confined disposal facility, placement of the Piers 24 & 25 environmental cap, and construction of two habitat sites for mitigation

Mouth of Hylebos Project Project Description



Project Scope of Work Items	Status	Estimated Completion
Negotiate EPA approval of multiple OMMPs	complete	
Initiate long-term monitoring at Slip 1, Piers 24 & 25, and Segments 3-5 of the Waterway	complete	
Initiate source control monitoring on Port properties adjacent to the Hylebos	complete	
Completion of cost recovery efforts	ongoing	3Q 2018
Monitor design and construction of American Construction's habitat area	ongoing	targeting 4Q 2018
Obtain certification of completion on construction pursuant to the Consent Decree	ongoing	Contingent on previous
Issuance of quarterly reports	ongoing	Contingent on previous

- The total project cost to complete the remaining SOW items is estimated at \$1,300,000. Costs to date are \$1,199,285.

Cost Recovery Status



- To date the Port has received \$4.9M in total net settlement proceeds
- The remaining cost overrun claims are against Joseph Simon and Sons, the City, and the United States
 - Joseph Simon & Sons, Inc. settlement – \$710,380.05 – Commission approved 2015.02.19, with funds in an escrow account.
 - City of Tacoma settlement – \$287,999.71 – Commission approved 2015.02.19, with funds in an escrow account.
 - United States settlement – Commission approval requested under this action.
- Upon execution the US DOJ settlement will fund the escrow account and the four performing parties will mediate a final allocation

Details of Settlement



- United States' shall reimburse Performing Parties' Response Costs Incurred from October 1, 2001, through September 30, 2015.
 - The United States shall pay \$4,328,812, plus interest on that amount accruing from January 31, 2017, until the date of payment.
 - 97.1836% of the full amount due shall be paid directly to the Performing Parties.
 - 2.8164% of the full amount due shall be paid directly to the EPA.
- For Response Costs incurred by the Performing Parties after September 30, 2015, the Performing Parties may periodically submit an invoice for 7.74% of the total Response Costs incurred by the Performing Parties up to the date of that invoice.

Anticipated Next Steps



- The Port, Occidental, General Metals, and Arkema will mediate to apportion the funds in the escrow account
- Port staff will continue to monitor American Construction's progress on completing their habitat mitigation area

Conclusion



Request authorization for the CEO or his delegate to execute a Settlement Agreement with the U.S. Department of Justice (DOJ) for Hylebos Waterway Cleanup Cost Overrun, Master Identification No. 092135 – Mouth of Hylebos Project Authorization.