

COMMISSION AGENDA

Item No: 4C

Meeting: 06/15/17

DATE: May 31, 2017

TO: Port Commission

FROM: John Wolfe, Chief Executive Officer

Sponsor: Jason Jordan, Director, Environmental and Planning Services

Project Manager: Scott Hooton, Environmental Project Manager II

SUBJECT: Commission Authorization to Enter into an agreed order with the Washington Department of Ecology – Parcel 95 (1514 Taylor Way, Tacoma)

A. ACTION REQUESTED

Master Policy Resolution 2015-05 requires Commission authorization for remediation legal agreements (VI. D.). This is an authorization request enabling the Chief Executive Officer to enter into an agreed order with the Washington Department of Ecology with terms substantially as set forth below, for implementation of an interim action plan associated with Parcel 95 (1514 Taylor Way), Master Identification No. 101082.01.

B. BACKGROUND

On January 10, 2008, the Port acquired the 11-acre site, located at 1514 Taylor Way for \$4,323,300. An element of the purchase and sale agreement provides for the assumption, by the Port, of all environmental cleanup obligations associated with the property. Environmental remediation is required to convert the property into a performing asset for the Port.

The property was subject to an Agreed Order No. DE 04TCPSR-1160 (Agreed Order), dated January 19, 2005, between the seller (Prologis Development Services Inc.) and the Department of Ecology (Ecology). The Agreed Order required Prologis to complete a Remedial Investigation (RI) and Feasibility Study (FS). The FS identified capping of contaminated soils by either pavement or building -- as part of redevelopment -- as the preferred remedy.

On October 12, 2016, Commission authorized a lease agreement with Avenue 55, LLC for the premises located at 1514 Taylor Way and 3401 Lincoln Avenue. Avenue 55, the Port and Ecology have been engaged in the development of an Interim Action Work Plan (IAWP) for implementation of the preferred remedy identified in the Prologis FS. Avenue 55 will implement the remedy, at Avenue 55's cost, during construction of site improvements later this year. The lease provides for the Port to enter into an agreed order for implementation of the IAWP upon Avenue 55 being bound to the Lease. Once executed by Ecology, Avenue 55 is obligated under the lease to implement the IAWP and fully comply with all agreed order provisions, at Avenue 55's expense. Full Base Rents will commence and deposits become non-refundable after the agreed order is executed by Ecology.

C. PREVIOUS APPROVALS

<u>Action</u>	<u>Date</u>	<u>Amount</u>
Commission Authorization to Sign Avenue 55, LLC lease agreement	October 20, 2016	Not Applicable

D. TERMS OF AGREEMENT PROJECT DESCRIPTION

This Agreed Order obligates the Port to:

- Cooperate in Ecology's public participation process.
- Implement and complete the remedial activities described in the IAWP, including:
 - Capping contaminated soil with asphalt pavement and/or warehouse buildings constructed during property redevelopment;
 - Abandon existing monitoring wells that are incompatible with site improvements;
 - Methane survey and vapor intrusion assessment report;
 - Interim Action Report;
 - File environmental covenant for the property with the Pierce County Recorder's Office.
- Reimburse Ecology for oversight costs.
- Provide at least 30 days' notice prior to property transfer/Lease Start Date and provide for the continuing implementation of the order after transfer.
- Renegotiate the schedule and scope of work in the event of default by Avenue 55.

E. REQUESTED AUTHORIZATION

Staff requests Commission authorization to enter into an agreed order to facilitate Avenue 55's implementation of the IAWP, under the lease agreement for the redevelopment of the property as accorded by the lease approved by Commission action on October 20, 2016.

F. PROJECT SCHEDULE

Approval of IAWP by all parties	May 30, 2017
Approval of AO by all parties	May 30, 2017
Receipt of Avenue 55 Waiver	May 30, 2017
Agenda Meeting for June 15, 2017 Commission Meeting	May 30, 2017
Commission Authorization to enter in 1514 Taylor AO	June 15, 2017
Beginning of Ecology 30-day Public Comment Period	June 29, 2017
Ecology Execution of AO & Rent Commencement	July 31, 2017

G. FINANCIAL SUMMARY

Actual Cost of Project

The total project cost incurred to date is \$43,624.

Source of Funds

The 2017-2021 Capital Improvement Plan allocates \$150,000 for this effort (MID No. 101082.01). Funding was approved by Executive Authorization for the following related business purposes:

1. Facilitate Avenue 55's execution of a long-term lease agreement at 1514 Taylor Way by entering the Port into an Agreed Order with Ecology for implementation of an Interim Action Plan by Avenue 55 during property redevelopment in 2017 (this request).
2. Support agreed order negotiations between Ecology, other Potentially Liable Parties (Occidental Petroleum, Schnitzer Steel and Stericycle) and the Port for historical contamination for the Taylor Alexander Avenue Fill Area (TAAFA). 1514 Taylor Way is part of the TAAFA, and this action is expected to reduce the Port's TAAFA liability. However, future Commission authorization will be required as a separate action to enter into an agreed order for the TAAFA.

Cost Details

Item	Budget Estimate	Cost to Date	Remaining Cost
DESIGN STAGE			
Attorney(s)	\$50,000	\$18,998	\$31,002
Port Staff	\$75,000	\$24,626	\$50,374
Permitting	\$0		\$0
Purchase Orders	\$0		\$0
Miscellaneous	\$25,000		\$25,000
DESIGN STAGE TOTAL	\$150,000	\$43,624	\$106,376
CONSTRUCTION STAGE			
CONSTRUCTION STAGE TOTAL	\$0	\$0	\$0
PROJECT TOTAL	\$150,000	\$43,624	\$106,376

¹

¹ The Port's Master Policy requires an estimate or range of estimated costs for the overall future environmental remediation associated with the agreement at the time of the request for authorization. Under the lease agreement associated with this agreed order, all development costs and remediation costs will be borne by the lessee, Avenue 55. In the event of default, the agreed order contains provisions for the renegotiation of the scope and schedule for remediation. If this occurs, Port staff will return to update Commission on the outcome and associated costs for implementing the amended scope.

Port staff estimates that remediation construction costs for capping the site under an amended scope of work would be comparable to the \$4M costs of installing stormwater conveyances and pavement at Lot M (12-inch subgrade and 4-inch pavement for medium-duty loads).

Financial Impact

The costs related to this project will be expensed as incurred and are included in the 2017 operating budget. Long-term routine monitoring costs related to the agreed order will be expensed as incurred. It is noted that costs would be incurred irrespective of the Avenue 55 redevelopment action as a consequence of the underlying liability for the TAAFA. The implementation of this interim action by Avenue 55 is expected to reduce the Port's ultimate liability for the TAAFA.

The lease to Avenue 55 will provide revenue of \$580,000 per full year and CPI increases once the agreed order is executed.

H. NEXT STEPS

With Commission approval to enter into the contemplated agreement, the following actions will occur:

- Ecology will initiate a 30-day public review and comment period, after which they will finalize the Agreed Order. If the public comments result in a substantive change to the Port's obligations under the Agreed Order, Port staff will bring those changed before the Commission and Avenue 55 for approval. If no substantive changes are made, the Agreed Order will be effective upon execution by Ecology.
- Avenue 55 will implement the IAWP and commence payment of rents required under the lease.