

COMMISSION AGENDA

Item No: 7G

Meeting: 3/17/22

DATE: March 2, 2022

TO: Port Commission

FROM: Eric D. Johnson, Executive Director

Sponsor: Jason Jordan, Director, Environmental and Planning Services

Project Manager: Jenn Stebbings, Environmental Project Manager I

SUBJECT: ILA with Pierce County and convey easements for the Clear Creek Flood Gate Retrofit Project and the Clear Creek Habitat Restoration Project

A. ACTIONS REQUESTED

1. Request authorization for the Executive Director or his designee to enter into an Interlocal Agreement (ILA) with Pierce County pursuant to the Interlocal Cooperation Act (Chapter 39.34 RCW). This Agreement is for the Port of Tacoma and Pierce County to cooperatively enhance salmon habitat, reduce flood risk, and improve fish access at Lower Clear Creek Habitat Mitigation Site. Total financial commitment by the Port of Tacoma shall not exceed \$25,000.
2. Request authorization for the Executive Director or his designee to convey a temporary access easement and a permanent access easement to Pierce County on Port Parcel 67, the Lower Clear Creek Habitat Mitigation Site, necessary to implement the ILA.

B. BACKGROUND

Pierce County Planning and Public Works – Surface Water Management (Pierce County SWM) was awarded grant funding from the Commencement Bay Natural Resource Damage Assessment (NRDA) Trustees to make ecological improvements within the Clear Creek basin. During the alternatives analysis, the Port's Lower Clear Creek Habitat Mitigation Site (Lower Clear Creek) was identified as the preferred location to conduct restoration activities.

The proposed project has been separated into two components:

- 1) Reconfigure the existing flood gate system into a new, integrated flood gate system
- 2) Construct a habitat enhancement project that removes portions of the existing access road to increase hydraulic connectivity between the Clear Creek channel and the Port's wetland areas.

Flood Gate: The existing twin barrel concrete culverts that convey Clear Creek under River Road (SR-167) have two separate flood gates to control and manage flood risk in the Clear Creek basin. The Port owns a motorized metal sluice gate on the east barrel culvert that is a default-open system to allow fish passage between Clear Creek and the Puyallup River. The motorized gate closes when the river elevation rises, triggering a float which closes the gate.

The west barrel culvert has a default-closed wooden flap gate of unknown origin that is deteriorated, damaged, and well beyond its useful life. The wooden flap gate acts a fish passage barrier to Clear Creek. Pierce County SWM proposes to remove the wooden flap gate and replace it with a motorized metal sluice gate, similar to the Port's flood gate. Pierce County SWM also proposes to integrate the two flood gates into one system. Both flood gates will be operated by one programmable logic controller (PLC) and new generator for emergency power outages. Pierce County will operate and maintain this new integrated system, as well as maintain the debris barrier on the upstream side of the culverts.

Restoration Area: The Port's Lower Clear Creek site consists of two separate mitigation actions (Phases I and II) to offset and compensate for unavoidable adverse impacts to aquatic resources resulting from remediation activities conducted under the Superfund Program. These two mitigation actions resulted in approximately 12.5 acres of wetland and off-channel habitat for salmonid rearing and foraging. Pierce County SWM proposes to remove the gravel access road that bisects the Clear Creek main channel from the Port's wetland areas. The project will completely remove the road prism at six strategic locations to create direct hydraulic connectivity between the creek channel and the Port's wetlands. Currently, there is only one direct connection between the creek channel and the Port wetlands. These six additional connections will allow water to move back and forth that was otherwise prevented by the access road. The project also includes installation of large woody material, habitat brush piles, and native plantings. The project will result in the enhancement of the wetland system and increase the opportunity for migrating fish to access the highly productive wetland areas for rearing and foraging.

Pierce County SWM requested the Port pay for deficiencies identified at the flood gate during inspections before taking over operational control of the system. The deficiencies identified obligate the Port for an amount not to exceed \$25,000.

Pursuant to RCW Chapter 39.34 (the Interlocal Cooperation Act), two public entities may cooperate to preserve and enhance surface water resources and provide flood risk reduction improvements to the Clear Creek area, to temporarily transfer certain real property interests to Pierce County, and to transfer ownership and responsibility for certain equipment from the Port to Pierce County.

The Master Policy Resolution (Res. 2021-08-PT) requires Commission approval of Interlocal Agreements (IV.A) as well as easements and covenants extending beyond two years (III.D). Both easements contemplated by the ILA extend beyond two years.

C. SCOPE OF THE ILA

The scope of the ILA includes the following components:

- Pierce County will construct both the Clear Creek Flood Gate Retrofit Project and the Clear Creek Habitat Restoration Project.
- The Port will convey a temporary easement to Pierce County to access portions of the Port's property to complete the construction, and post-construction monitoring and habitat maintenance work for a period of at least five years after construction is complete.
- The Port will convey a second, permanent access easement to Pierce County to allow ingress and egress through Port property to the upstream debris barrier on the Clear Creek main channel to facilitate maintenance of the debris barrier.

- Following construction of the Flood Gate Retrofit Project, Pierce County will take over ownership, operations, and maintenance of the Port's motorized flood gate, its appurtenances, and the upstream debris barrier attached to WSDOT's twin-barrel concrete culverts. Any new equipment installed as part of the Flood Gate Retrofit Project will belong to Pierce County.
- The Port will transfer an amount not to exceed \$25,000 for deficiencies identified during an inspection on May 12, 2021, of the Port's existing flood gate system, as partial consideration for Pierce County to assume responsibility and ownership of the Port's flood gate.
- Pierce County will operate and maintain the new integrated flood gate system in a manner consistent with the flood control and fish passage parameters required by the consent decree with EPA (No. C93-5462 RJB) for so long as required by the consent decree or until the culverts are replaced, whichever is sooner.
- Following construction of the Clear Creek Habitat Restoration Project, Pierce County and the Port will collectively monitor project elements for an initial five-year monitoring period according to the post-project monitoring plan mutually developed and agreed to by Pierce County and the Port.
- Pierce County will be responsible for monitoring project performance and maintenance within the habitat project area during the initial five-year monitoring period. The Port will maintain responsibility of habitat areas outside the project limits of the Habitat Restoration Project.
- Following the five-year monitoring period, if the Port and Pierce County agree that the Habitat Restoration Project has met the goals of the performance monitoring period, the project area will be reincorporated into the Port's long-term monitoring and stewardship program to ensure the habitat benefit is preserved.

D. SCOPE OF THE EASEMENTS

The scope of the temporary easement includes the following:

- The Port will convey access to Pierce County to construct and monitor the restoration project for a period of five (5) years.

The scope of the temporary easement includes the following:

- The Port will convey access to Pierce County to maintain the upstream debris barrier on Clear Creek in perpetuity or until such a time the upstream debris barrier is no longer needed.

E. DURATION OF ILA

The ILA is effective upon the last date of execution of both parties and will continue through the completion of the projects and the transfer of property (equipment). The maintenance, operation, and monitoring obligations are continuing obligations and survive expiration of the Agreement.

F. DURATION OF EASEMENTS

The temporary easement is effective upon the last day of execution of both parties and will continue through the completion of project construction, the monitoring period, and the transfer of property (equipment). The monitoring period will be for five (5) years.

The permanent easement is effective upon the last day of execution of both parties and will continue in perpetuity or until such time the upstream debris barrier is no longer needed, whichever comes first.

G. FINANCIAL SUMMARY FOR ILA ELEMENTS

Pierce County, on or after the effective date of the ILA, will request funds from the Port for equipment identified in the Clear Creek Flood Gate Facility Deficiencies List, in an amount not to exceed \$25,000. The Port will agree to transfer the funds to Pierce County on or before June 1, 2022. Pierce County agrees to apply the funds exclusively to the expenses incurred from purchasing the replacement equipment to operate the flood gate system.

Cost Details

Item	Budget Estimate	Expenditure to Date	Anticipated Future Expenditures
Pierce County ILA	\$0	\$0	\$25,000

Source of Funds

There is no funding for the ILA. It will be treated as an unplanned non-operating expense. Commission approval for this ILA would be considered authorization for the unplanned expense.

Financial Impact

Long-term savings include not paying for maintenance on an aging flood gate system. While not a direct financial impact, transferring the flood gate ownership and responsibility to Pierce County reduces the Port's spill response liability associated with the generator and fuel tank's proximity to the Puyallup River. Re-incorporating the habitat restoration project into the Port's long-term stewardship program after the 5-year monitoring period will not significantly alter the stewardship budget.

H. ECONOMIC INVESTMENT/JOB CREATION

This ILA does not have direct economic investments or create employment opportunities directly; however, the improvements to the flood gate system will significantly reduce the flood risk potential to Pierce County stakeholders living and working in the Clear Creek floodplain, and both the Flood Gate Retrofit Project and the Habitat Restoration Project will create temporary construction jobs.

I. ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS

Alternative 1: Do Nothing.

Alternative 2: Enter into the ILA with Pierce County; transfer ownership, operation, and maintenance responsibilities for the flood gate system to Pierce County; and improve and enhance juvenile salmonid rearing and foraging opportunities in the Port's Lower Clear Creek Habitat Mitigation Site.

Alternative 2 is the recommended course.

J. ENVIRONMENTAL IMPACTS/REVIEW

Permitting: Pierce County will be responsible for all permitting obligations for both projects. Port technical staff will provide assistance if necessary.

Remediation: No impacts.

Stormwater: Pierce County will be responsible for obtaining and implementing the conditions of the Department of Ecology's Construction Stormwater General Permit and the Section 401 Water Quality Certification, if applicable.

Air Quality: No impacts.

K. ATTACHMENTS TO THIS REQUEST

- Slide presentation
- Clear Creek Improvement Interlocal Agreement
- Draft Pierce County Resolution
- Draft Temporary Access Easement and Aerial
- Draft Permanent Access Easement
- Permanent Access Easement

L. NEXT STEPS

Pierce County SWM technical staff will request similar authorization from Pierce County Council for Executive Director to sign and execute the ILA. Once the ILA is signed and executed, Pierce County SWM technical staff will finalize design with support from Port technical staff and other stakeholders, go out to bid, and construct both projects. Current timeline for both projects is contingent upon NRDA Trustees issuing grant agreements, material availability and permitting timelines.