

PROJECT ACTION MEMO

Port of Tacoma Commission



Item No: 6A
Meeting Date: 6/16/26

DATE: June 8, 2026
TO: Port of Tacoma Commission
FROM: Eric Johnson, Executive Director
Sponsor: Jason Jordan, Sr. Director, Environmental & Planning
Project Manager: Robert Healy, Director of Remediation and Water Quality
SUBJECT: Mouth of Hylebos – American Construction Habitat Area

A. **ACTIONS REQUESTED**

1. Request authorization for the Executive Director or his delegate to execute the first amendment to the October 2004 Agreement Regarding Hylebos Waterway Sediment Management Area 421-B RD/RA Activities and Excess NCD Site Capacity, to close out the Mouth of Hylebos mitigation requirements.
2. Request authorization for the Executive Director or his delegate to enter into an Agreement to Purchase Excess Hylebos Waterway Sediment Management Area 421-B Habitat Mitigation Acreage with the Hylebos Waterfront Property, LLC and American Construction Co., Inc.

Strategic Plan Initiative: EL-1 Remediate contaminated Port properties in a manner that ensures protection of human health and the environment while enabling economic development.

B. **SYNOPSIS**

On February 19, 2015, Commission last authorized funding for work associated with the Mouth of the Hylebos Consent Decree No. C-05-5103 FDB with US Environmental Protection Agency (EPA) for remediation actions associated with Port Parcel 56 and adjoining lands. All authorized project tasks have been completed, including cost recovery efforts for the completed remedy, baseline sediment monitoring, and construction of American Construction's habitat area. To complete and closeout the project requires EPA approval of American Construction's Habitat Remedial Action Construction Report. EPA's approval is anticipated in the fourth quarter of 2026.

C. **BACKGROUND**

In 2004, the owner of Hylebos Waterfront Property, LLC (HWP) Steve Brannon was negotiating terms to purchase the property located at 1501 Taylor Way, Tacoma, for future use by American Construction, a marine construction company also owned by Steve Brannon.

At that time, the Port and Occidental had completed remedial design and were beginning remedial construction for the Mouth of Hylebos problem area, under a Consent Decree with the EPA. The Port and Occidental were planning to cap the contaminated sediments in front of the property, designated as Sediment Management Area 421-B.

HWP approached the Port and Occidental, requesting permission to seek EPA's approval to alter the remedy from capping, to dredging with mitigation for compensation of impacts to habitat. EPA agreed to the change and in October 2004, the Port, Occidental, and HWP entered into the Agreement Regarding Hylebos Waterway SMA 421-B RD/RA Activities and Excess NCD Site Capacity. The Port and Occidental implemented the Mouth of Hylebos Sediment remedy between 2004 and 2006. HWP and American construction implemented the dredge in front of the property, with the contaminated sediment deposited in the Port's former Slip 1 confined disposal facility. Post remedy, the Port and Occidental continue to monitor sediment quality conditions in the Mouth of the Hylebos, while the Port and General Metals monitor sediment quality conditions in the Head of the Hylebos.

Since the mid-2000s, HWP and American Construction has been working with the EPA to develop a habitat mitigation area to address mitigation obligations under the Mouth of Hylebos Consent Decree. These obligations include 1.39 acres attributable to American Construction and 0.21 acres attributable collectively to Occidental Chemical (Oxy) and the Port of Tacoma. Key governing documents include the January 2005 *RD/RA Consent Decree for the Mouth of Hylebos Water Problem Area, Commencement Bay Nearshore/Tideflats Superfund Site (CO4-5103 FDB)* and the October 2004 *Agreement Regarding Hylebos Waterway SMA 421-B RD/RA Activities and Excess NCD Site Capacity*. As part of the 2004 agreement, American Construction posted a \$1 million performance bond in 2005 to ensure completion of its obligations; American has continued to pay annual renewal costs.

Over time, several potential mitigation sites were evaluated, including American Construction's Hylebos Waterfront Property (LLC), the Port's Place of Circling Waters (Parcel 88), and the Former Navy Dock (Parcel 4). In 2022, American Construction (through former owner Steve Brannon) and EPA advanced a mitigation approach at the Dune Peninsula Mitigation Area at Ruston Point. EPA approved the mitigation plan in March 2024. Construction was partially completed in 2024, with final construction completed in December 2024. EPA required a one-year monitoring period to evaluate fish-mix substrate erosion and determine whether additional material placement would be necessary. Monitoring was completed in 2025, and no corrective actions were required.

The constructed mitigation site totals approximately 1.6 acres, exceeding the 1.39 acres required to satisfy American Construction's obligation and leaving approximately 0.21 acres of excess capacity. Mr. Brannon has offered to sell this excess mitigation credit to the Port of Tacoma at his documented installation cost of \$320,058 (approximately \$1.5 million per acre credit).

This represents cost savings relative to the Port's recent average habitat replacement cost of approximately \$1.9 million per acre credit.

Port staff, in coordination with Mr. Brannon, met with EPA on April 2, 2026, to confirm administrative steps needed to close out remaining Consent Decree obligations. EPA's project manager provided informal concurrence that the full 1.6 acres of constructed habitat may be credited, contingent upon revisions to the draft Remedial Action Construction Report.

The report has been revised and will be resubmitted following Commission authorization of the two agreements. Formal EPA approval is anticipated in the fourth quarter of 2026.

Commission last authorized this project on February 19, 2015, for a total estimated cost of \$2,230,000 for work associated with the Mouth of the Hylebos Consent Decree No. C-05-5103 FDB with EPA for remediation actions associated with Port Parcel 56 and adjoining lands. Over the span of this project multiple MIDs were used to track costs, including 092134, 091934, 092135, 092653, 092685, 092836, and 101215.01. Cost to date for the project is \$1,492,386. Existing project authorization is sufficient to fund the purchase of HWP’s excess mitigation credits.

D. SUMMARY OF AGREEMENT TERMS

The Amendment to the 2004 Agreement and Agreement to Purchase Excess Hylebos Waterway SMA 421-B Habitat Mitigation Acreage include the following terms:

- The Port and Occidental shall execute a Release of Bond, attached as Exhibit A to the Amendment, and deliver the fully executed Release of Bond to HWP, not more than 20 days after the Effective Date of the Amendment and Purchase Agreement, as described above.
- Upon completion of the Remedial Action Construction Report and final approval of the same by the EPA, HWP and American shall have fully completed all the SMA 421-B RD/RA Activities as required under the Agreement and this Amendment.
- The Parties agree that upon completion of the Remedial Action Construction Report, HWP will promptly submit the report to the EPA for final approval to confirm that the Project satisfies the 1.39-acre mitigation requirement for SMA 431-B, and that the excess 0.21 acres of mitigation is credited to the Port to offset mitigation obligations for the Hylebos Waterway.
- Within 20 days after the Port’s receipt of EPA’s final written approval of the Remedial Action Construction Report, the Port shall pay HWP a total of \$320,058.

E. PREVIOUS ACTIONS OR BRIEFINGS

Date	Action	Amount
June 20, 2013	Executive Authorization - Initial Project Authorization	\$200,000
September 19, 2013	Commission Authorization – Project Authorization Increase	\$325,000
February 19, 2015	Commission Authorization – Project Authorization Increase	\$1,705,000
February 28, 2018	Commission Authorization – DOJ Cost Recovery Settlement	\$0
May 7, 2026	Executive Session Briefing – Mouth of Hylebos American Construction Habitat Area	\$0
TOTAL		\$2,230,000

F. **ATTACHMENTS TO THIS REQUEST**

- October 2004 Agreement Regarding Hylebos Waterway SMA 421-B RD/RA Activities and Excess NCD Site Capacity
- First Amendment to Agreement Regarding Hylebos Waterway SMA 421-B RD/RA Activities and Excess NCD Site Capacity
- Agreement to Purchase Excess Hylebos Waterway SMA 421-B Habitat Mitigation Acreage

G. **NEXT STEPS**

- Provide fully executed bond release to HWP
- Receive EPA approval of the Report
- Close out this long-standing CERCLA liability and the Mouth of the Hylebos project.