

# COMMISSION AGENDA

Item No: 7A

Meeting: 10/15/20

**DATE:** September 30, 2020

**TO:** Port Commission

**FROM:** Eric D. Johnson, Executive Director

Sponsor: Tong Zhu, Chief Commercial Officer & Chief Strategy Officer

Project Manager: Sarah Weeks, Environmental Project Manager I

**SUBJECT:** Settlement Agreement and Additional Project Authorization – Parcel 103 Steam Plant Environmental Cleanup

## **A. ACTION REQUESTED**

1. Request authorization for the Executive Director or his delegate to execute a Settlement and Cost-Sharing Agreement with Tacoma Power to settle past costs incurred addressing historical releases of hazardous materials and share future remedial costs.
2. Request project authorization in the amount \$30,000 for a total authorization amount of \$755,000, for work associated with Parcel 103 Steam Plant Site Investigation, Master Identification No. 101243.01.

## **B. SYNOPSIS**

Two years of recent negotiations between Tacoma Power and the Port of Tacoma (Port) are now complete. With Commission Authorization of this Agreement, Tacoma Power shall pay to the Port the amount of \$661,263 for reimbursement of past costs, and fund 84% of future cleanup activity costs. Additional project authorization will fund procurement for an environmental consultant to support the next phase of the project - completion of the cleanup investigation.

## **C. BACKGROUND**

The Port purchased the Steam Plant property from Tacoma Power in 2007 and the parties have been in a dispute over costs since 2012. Port staff has been seeking reimbursement from Tacoma Power for costs related to characterization and disposal of hazardous waste abandoned by Tacoma Power at the Steam Plant property, and for cost-incurred investigating impacts to soil and groundwater from historical releases. Initial efforts at resolution reached a stalemate in 2014.

In March 2015, Commission approved project authorization to complete a remedial investigation (RI) and entry into Ecology's Voluntary Cleanup Program (VCP). Following

acceptance into the VCP, the Port planned to complete a Feasibility Study (FS) and draft Cleanup Action Plan (DCAP). In tandem, Port staff intended to pursue a cost-sharing agreement with the City. When Port staff discussed the Site's VCP enrollment with Ecology, the agency opined that the Site is likely too complicated for cleanup under the VCP.<sup>1</sup> Ecology also indicated that the Site is not an agency priority. Given contamination does not currently pose an ongoing or significant threat to human health and the environment, and the absence of an immediate development driver or regulatory driver, Port staff began to shift the focus of the project toward cost recovery. In April 2018 Commission approved a change in scope of work, to defer the cleanup investigation and focus on resolving the sizable claim against Tacoma Power.

In April 2018, the Port submitted an updated claim to the City for costs then totaling \$938,121 and 100% of future investigation and cleanup costs. Between April 2018 and January 2020 Tacoma Power and Port staff and legal teams met on multiple occasions to discuss both technical and legal issues and shared multiple offers and counter offers. Tacoma Power submitted their latest counteroffer on January 29, 2020, of \$661,263 for past costs and proposed cost-sharing of 84/16 (Tacoma Power/Port) through implementation of the cleanup regardless of the remedy ultimately selected.

#### **D. TERMS OF THE AGREEMENT**

The basic terms of the agreement include:

- Allocation of Future Costs:
  - Allocation to Tacoma Power is 84% of all future consultant and Ecology oversight costs through implementation of the cleanup, including post-cleanup costs for long-term monitoring. The cost allocation is not subject to reallocation and is final.
  - Tacoma Power will pay the Port a lump sum of \$20,000 a year for Port staff costs through implementation of the cleanup.
- Allocation of Past Costs: Past costs include waste disposal costs arising from the demolition of the Steam Plant, and subsequent remedial action costs (including attorney fees) to investigate Steam Plant environmental impacts up to this point. Total due from Tacoma Power at settlement = \$661,263<sup>2</sup>
- Grant Funding: Grant funds received by either party for remedial action activities will be applied to the project costs. If funds are recovered after work is complete, the funds shall be shared according to the 84/16 Tacoma Power/Port allocation.
- Mutual Releases: Parties will give mutual releases for all environmental claims applicable to the upland area of the property. This settlement will not affect respective liabilities of the

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<sup>1</sup> The VCP is intended for simple sites with routine cleanup.

<sup>2</sup> Waste disposal costs: 50/50, 50% x \$372,816 = \$186,408; and Environmental Investigation/Attorney Fees: 84/16 split Tacoma Power/Port, 84% x \$565,304 = \$474,855.

Parties for sediment impacts related to the upland Steam Plant property subject to this Agreement.

- Agreed Order: The Parties agree to jointly enter into an AO with the Dept. of Ecology to implement remedial actions as necessary to attain cleanup standards at the property.

#### **E. COST DETAILS**

	<b>This Request</b>	<b>Total Previous Requests</b>	<b>Total Request</b>	<b>Total Project Cost</b>	<b>Cost To Date</b>	<b>Remaining Costs</b>
<b>Total</b>	<b>\$30,000</b>	<b>\$725,000</b>	<b>\$755,000</b>	<b>\$755,000*</b>	<b>\$702,378**</b>	<b>\$52,622</b>

\* Cost for completion of the cleanup investigation and cleanup implementation are not currently estimable and are not included under Total Project Cost.

\*\* \$575,730 spent on environmental investigation (MID No. 098075) and \$126,648 spent on cost recovery to date (MID No. 101243.02).

#### **Estimated Cost for This Request**

Additional funds in the amount \$30,000 are requested to support procurement of an environmental consultant to support the next phase of the project – completion of the cleanup investigation (remedial investigation, draft a feasibility study, and a draft cleanup action plan). Cost for completion of the cleanup investigation and cleanup implementation are not currently estimable. Port staff will return to Commission when a proposal has been received and request additional project authorization to complete the investigation.

#### **Source of Funds**

The current Capital Investment Plan allocates \$446,000 for the cleanup investigation (MID No. 101243.01).

#### **Financial Impact**

The settlement is a reimbursement for future and past costs and will have no impact to the income statement.

Project costs associated with the environmental and cleanup investigations (MID Nos. 098075 and 101243.01, respectively), reduced by settlement proceeds, will be capitalized as a land improvement. There will be no depreciation since this will be a land asset. Project costs associated with cost recovery (MID No. 101243.02) have been expensed.

#### **F. ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS**

Alternative 1) Reject Tacoma Power's offer and pursue litigation. The Port could potentially end up with less favorable terms, in addition to taking on the additional time and expense of litigation.

Alternative 2) This request.

**Alternative 2 is the recommended course.**

**G. PREVIOUS ACTIONS OR BRIEFINGS**

<b><u>Date</u></b>	<b><u>Action</u></b>	<b><u>Amount</u></b>
May 20, 2010	Contract Authorization – Cleanup Investigation	\$267,000 (\$427,000 spent)*
March 10, 2015	Project Authorization Increase – Cleanup Investigation	\$298,000
April 19, 2018	Authorization of change in scope from Cleanup Investigation to Cost Recovery	\$0
September 26, 2020	Executive Session Briefing – Steam Plant Cost Recovery	NA
April 16, 2020	Executive Session Briefing – Steam Plant Cost Recovery	NA
September 17, 2020	Executive Session Briefing – Steam Plant Cost Recovery	NA
<b>TOTAL</b>		<b>\$725,000</b>

\* Contract authorization of \$267,000 for environmental consulting provided by Dalton, Olmsted & Fuglevand, Inc. (DOF). Between May 2010 and October 2014, \$250,000 was spent on the DOF contract, and \$177,000 was spent on Port staff, legal, and miscellaneous costs, bringing the project total over this period to \$427,000. The scope of the 2010 authorization was to assess contamination at the property in preparation for filing a claim under the PSA indemnity. Between November 2014 and March 2015, the project was fairly quiet due to the unresponsiveness of Tacoma Power to the Port's claim, \$1,600 was charged to the project for staff time.


**H. ATTACHMENTS TO THIS REQUEST**

- Computer slide presentation.
- Settlement and Cost Sharing Agreement

**I. NEXT STEPS**

Execute the Settlement and Cost-Sharing Agreement with Tacoma Power, receive past cost payment of \$661,263. Begin procurement for an environmental consultant to support the next phase of the project, resumption of the cleanup investigation. Port staff will return to Commission when a proposal has been received and request additional project authorization.





Item No.: 7A  
Date of Meeting: October 15, 2020

# Settlement Agreement and Additional Project Authorization – Parcel 103 Steam Plant Environmental Cleanup

Sarah Weeks  
Environmental Project Manager



# Project Authorization

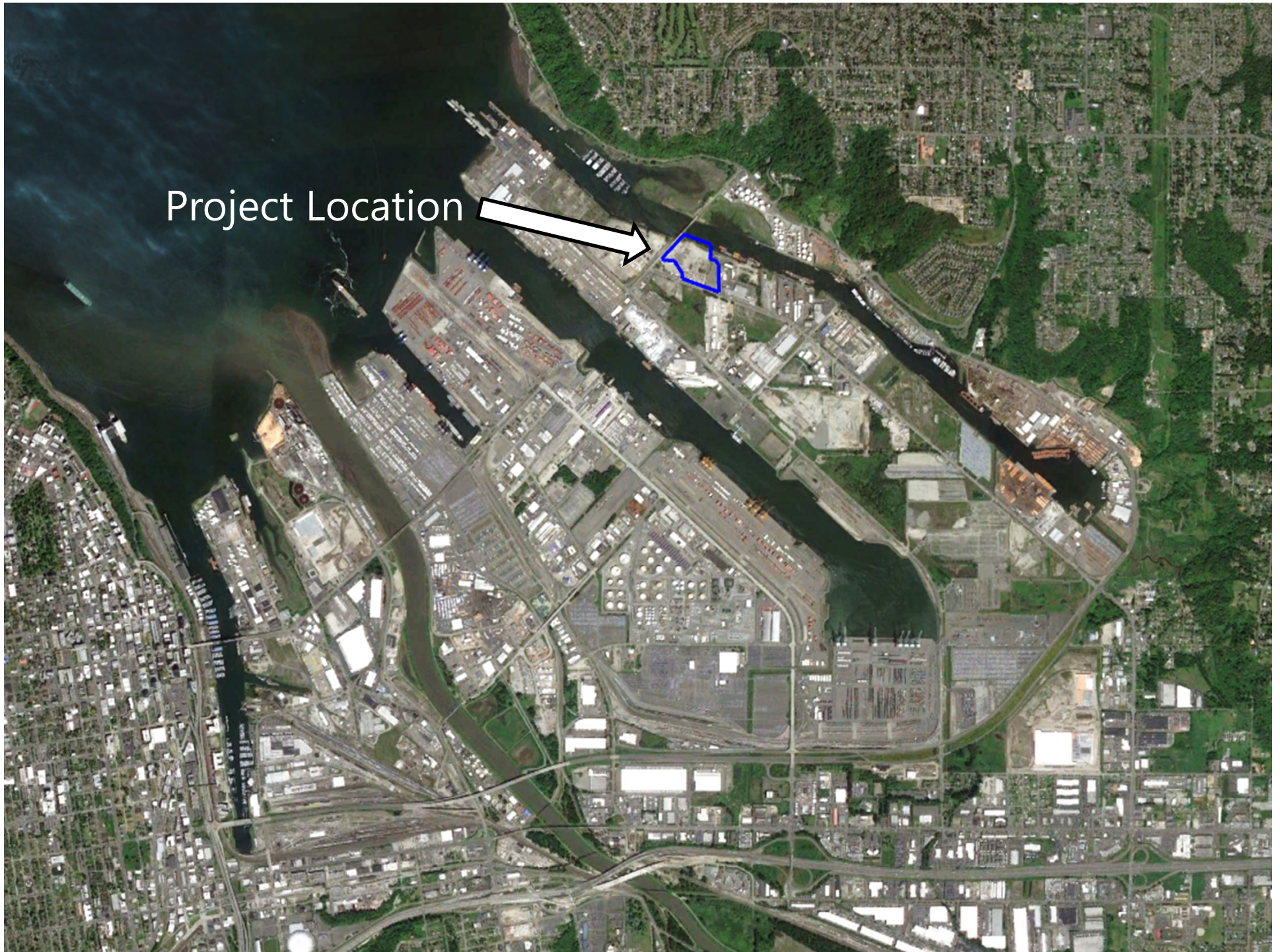
## Parcel 103 Steam Plant Property Cleanup



Port of Tacoma

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Project Location



1931



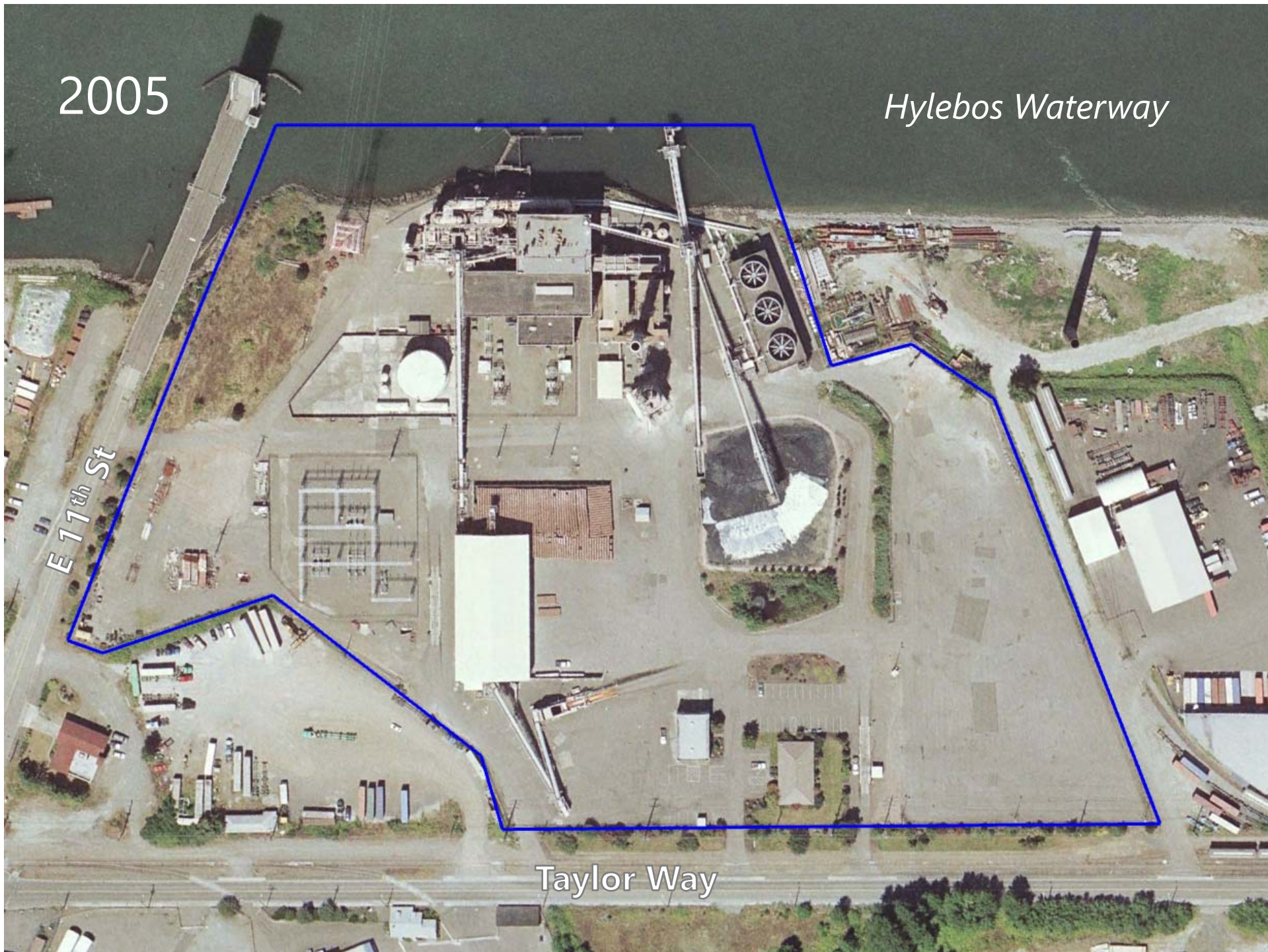


2005

*Hylebos Waterway*

*E 11<sup>th</sup> St*

*Taylor Way*







# Background Steam Plant Property Cleanup



## Property Sale



Tacoma Power indemnified POT for costs incurred addressing the release of hazardous substances. 5 years to submit a claim.

2007

## Demolition



\$373 K spent on hazardous waste disposal.

2008 -2009

## Preliminary Investigation



2010 –Contract authorization approved to complete an environmental investigation, \$267 K

2010 – 2012 Investigations. Soil and groundwater impacted by elevated pH, metals and petroleum.

2010 - 2012

2012 – The Port submitted a claim to Tacoma Power for \$676K. Tacoma Power countered with \$200K conditional on the Port agreeing to hold Tacoma Power harmless for any future claims. The Port did not accept the offer. The parties have been in a dispute over costs ever since.

# Commission Action Steam Plant Property Cleanup



2010 – Contract authorization approved to complete environmental investigations (\$267,000).

2015 – Project Authorization (\$725,000)

Scope:

- Enroll in Ecology's Voluntary Cleanup Program (VCP)
- Complete investigation and draft a cleanup action plan

2018 – Authorization to change the project scope from Cleanup Investigation to Cost Recovery.



# Cost Recovery – 2018 to 2020

## Steam Plant Property Cleanup



- April 2018 – The Port submitted an updated claim to Tacoma Power for past costs totaling \$938,121 and 100% of future investigation and cleanup costs.
- April 2018 through January 2020 – Tacoma Power and Port met on multiple occasions to discuss technical and legal issues and shared multiple offers and counteroffers.
- January 2020 – Tacoma Power submitted a counteroffer of \$661,263 on January 29, 2020, for past costs, and proposed cost-sharing of 84/16 (Tacoma Power/Port) through implementation of the cleanup regardless of the remedy ultimately selected.

# Settlement Terms

## Steam Plant Property Cleanup



- Past Costs: \$661,263 is due from Tacoma Power 30 days after the execution of the Settlement.
- Future Costs: Allocation to Tacoma Power is 84% of all future consultant and Ecology oversight costs through implementation of the cleanup, including post-cleanup costs for long-term monitoring costs. Tacoma Power will pay the Port a lump sum of \$20,000 a year for Port staff costs through implementation of the cleanup.
- Grant Funding: Grant funds received by either party for remedial action activities will be applied to the project costs. If funds are recovered after work is complete, the funds shall be shared according to the 84/16 Tacoma Power/Port allocation.

# Settlement Terms

## Steam Plant Property Cleanup



- Applies to upland property only: The settlement will not affect respective liabilities of the Parties for sediment impacts related to the upland Steam Plant property.
- Agreed Order: The Parties agree to jointly enter into an AO with the Department of Ecology to implement remedial actions as necessary to attain cleanup standards at the property.

# Financial Summary

## Parcel 103 Steam Plant Cost Recovery



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Additional funds are requested to support procurement of an environmental consultant to support the next phase of the project.

## What's Next? Steam Plant Property Cleanup



- Execute the Settlement and Cost-Sharing Agreement with Tacoma Power, receive past cost payment of \$661,263.
- Begin procurement for an environmental consultant to support the next phase of the project, resumption of the cleanup investigation.
- Return to Commission to request additional Cleanup Investigation authorization.

# Conclusion

## Steam Plant Property Cleanup



1. Request authorization for the Executive Director or his delegate to execute a Settlement and Cost-Sharing Agreement with Tacoma Power to settle past costs incurred addressing historical releases of hazardous materials and share future remedial costs.
2. Request project authorization in the amount \$30,000 for a total authorization amount of \$755,000, for work associated with Parcel 103 Steam Plant Site Investigation, Master Identification No. 101243.01.