

# COMMISSION AGENDA

Item No: 9B

Meeting: 5/20/21

**DATE:** May 5, 2021

**TO:** Port Commission

**FROM:** Eric D. Johnson, Executive Director  
Sponsor: Jason Jordan, Director, Environmental and Planning Services  
Project Manager: Sarah Weeks, Environmental Project Manager I

**SUBJECT:** Project Authorization for work associated with the Parcel 40 Insurance Recovery

## A. ACTION REQUESTED

*As referenced in Resolution No. 2021-08-PT, Exhibit A, Delegation of Authority Master Policy, Paragraph IV.B.(2), states project costs exceeding \$300,000 require approval from Port Commission.*

Request project authorization in the amount \$670,000 for a total authorized amount of \$1,274,000, for work associated with the Parcel 40 Environmental Cleanup, Master Identification No. 101486.03.

## B. SYNOPSIS

Port Parcel 40 is impacted by a historical petroleum release. Additional investigation and cleanup work are required to address impacts in soil and groundwater. Costs to date have been borne by the Port of Tacoma. Port staff are exploring funding the investigation with historical insurance policies and in 2020, engaged an insurance archeology firm, Restorical Research LLC (Restorical). Restorical has identified some potential policies which could provide coverage for investigation efforts. The next step is for the Port to engage an insurance coverage attorney evaluate available coverage and issue an opinion. If the opinion is favorable and the Port wishes to proceed with claims, the coverage attorney would then provide the following services on a contingent fee basis: analyze insurance policies, submit claims to insurers, and negotiate settlements. If this effort is successful, insurance carriers will fund some or all of the Port's costs for environmental investigation.

## C. BACKGROUND

Petroleum contamination in soil and groundwater was first identified by the Port during property development in the 1980s. Some investigation and cleanup work was conducted by the Port in the late 1990s and early 2000s following the discovery of contaminated soil and groundwater in a waste oil tank excavation. The property is listed on Washington State Department of Ecology's Confirmed and Suspected Contaminated Sites List. The site is not under an Order or enrolled in the Voluntary Cleanup Program (VCP). Potential sources of

petroleum contamination include a 1.25 million diesel aboveground storage tank (AST) located on the property from the 1930s to 1981, a 3,000-gallon waste oil tank active from 1984 to 1998, a leaky lube oil line discovered in the late 1990s and abandoned product pipelines.

In 2019, the Port sampled the monitoring well network installed in the late 1990s as part of assessing the last two active Port-owned underground storage tanks (USTs). The assessment found an exceedance of groundwater vapor intrusion screening criteria that appeared to be from the known historical release. Follow-up sampling of indoor air at nearby Building 600 found indoor air to be impacted above acceptable risk levels prescribed by the State (MTCA). In March 2021 Commission approved project authorization for \$604,000 to install a vapor mitigation system in Building 600 to prevent subsurface vapors from entering the interior space.

In August 2020, the Port engaged Restorical to assist the Port in identifying insurers which may provide coverage for the costs of environmental investigation and/or remediation at Port Parcel 40. Restorical's business model works on a contingent fee basis totalling ten percent (10%) of any successful recovery. However, if no viable coverage is identified, Restorical is not compensated. Restorical's preliminary research leads them to believe there are historical insurance policies that may be a source of investigation funds. The next step is to engage an insurance coverage attorney to analyze the insurance policies, submit claims to insurers, and negotiate settlements. Port staff proposes engaging Matthew W. Cockrell & Associates, P.C. (Cockrell) as coverage counsel. Cockrell works frequently with Restorical and specializes in environmental insurance coverage law and cost recovery. Like Restorical, Cockrell works on a contingent fee basis and will be paid ten percent (10%) of the total recovery. If no coverage is obtained, then Cockrell is not paid. To illustrate how the contingent fee payment will work the following example is provided: Say that in 2022 the environmental consultant bills \$100,000 for covered investigation costs, the insurance carrier would pay \$100,000 to the consultant and the Port would each pay \$10,000 to Restorical and \$10,000 to Cockrell (\$20,000 total in contingency fee payments). Any payments to Restorical and Cockrell is potentially recoverable via future efforts to recover costs from the potentially liable parties.

#### **D. PROJECT DETAILS**

##### ***Scope of Project:***

- Preliminary investigation work (completed)
- Interim Action: Installation of a vapor extraction system (in progress)
- Insurance recovery (this authorization)
- Planning Phase: Remedial Investigation, Feasibility Study and Cleanup Action Plan (RIFS and CAP, future authorization)
- Cleanup Implementation (future authorization)
- Cost Recovery (future authorization)

**Scope of Work for This Request:**

- Lay the groundwork to fund the investigation via historical insurance coverage.
  - Engage an insurance coverage attorney.
  - Procure an environmental consultant to complete the RIFS and CAP.

**Schedule:**

Engagement of legal services with Cockrell will begin upon Commission authorization. Once engaged, Cockrell will issue an opinion of probable coverage for the Port’s review. If the opinion is favorable, the Port will procure a consultant prior to tendering claims (to avoid the carrier naming the consultant). Once a consultant is selected, Cockrell will tender the Port’s claims to applicable carriers. Cockrell expects carriers to respond within three months of claim submittal. After consultant selection, Port staff will return to Commission to update the status of the coverage claims and request additional authorization to begin the investigation.

**E. FINANCIAL SUMMARY**

**Estimated Cost of Project**

The total project cost that is currently estimable is \$1,274,000. This amount includes a maximum \$600,000 contingent fee to Restorical and Cockrell that will only be paid if funds are recovered. Compensation to each party will not exceed \$300,000 (this limit would only be met if the Port successfully recovers \$3,000,000 in insurance coverage). Contingency fee payments will be paid as insurance recovery is accrued. The RIFS and CAP and cleanup implementation costs are not currently estimable.

**Estimated Cost for This Request**

The total estimated cost to lay the groundwater for insurance recovery is \$670,000. As explained above, this includes the \$600,000 to account for the contract commitment to pay a contingent fee to Restorical and Cockrell, up to \$300,000 each. An additional \$70,000 is requested for the investigation to fund staff time and development of the investigation work plan. If the cost of this estimate is anticipated to exceed the authorized amount, additional Commission authorization will be requested.

**Cost Details**

Item	MID	This Request	Total Previous Requests	Total Request to Date	Cost to Date	Remaining Cost
Preliminary Investigation	101486.01	\$ 70,000	\$ 160,000	\$ 230,000	\$ 135,362	\$ 94,638
Interim Action: VI Mitigation	101486.02	\$ -	\$ 444,000	\$ 444,000	\$ 93,218	\$ 350,782
Insurance Coverage Contingency Fee	101486.03	\$ 600,000	\$ -	\$ 600,000	\$ -	\$ 600,000
RIFS & CAP *Not estimable*	TBD	\$ -	\$ -	\$ -	\$ -	TBD
Cleanup Implementation *Not estimable*	TBD	\$ -	\$ -	\$ -	\$ -	TBD
<b>TOTAL</b>		<b>\$ 670,000</b>	<b>\$ 604,000</b>	<b>\$ 1,274,000</b>	<b>\$ 228,580</b>	<b>\$ 1,045,420</b>

Notes: Historical environmental assessment work was completed from 1999-2003, \$92,498 was spent (E1909/E1845).

**Source of Funds**

The current Capital Investment Plan (CIP) allocates \$670,000 for this project. It will be updated during the 2022 budget process.

**Financial Impact**

Project costs will be expensed as incurred.

**F. ECONOMIC INVESTMENT/JOB CREATION**

No permanent jobs will be created.

**G. ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS**

Alternative 1) Do Nothing.

Alternative 2) Port of Tacoma funds the investigation.

Alternative 3) This request. Pursue potential insurance coverage to fund the investigation.

**Alternative 3 is the recommended course.**

**H. ENVIRONMENTAL IMPACTS/REVIEW**

Permitting: Not Applicable

Remediation: This is a remediation project

Water Quality: Not Applicable

Air Quality: Not Applicable

**I. PREVIOUS ACTIONS OR BRIEFINGS**

<u>Date</u>	<u>Action</u>	<u>Amount</u>
March 16, 2020	Environmental Investigation Work Plan Development Executive Authorization	\$30,000
May 21, 2020	Environmental Investigation Work Plan Implementation Executive Authorization	\$130,000
October 5, 2020	Mitigation System Design Executive Authorization	\$128,000
March 18, 2021	Project Authorization by Commission	\$316,000
<b>TOTAL</b>		<b>\$604,000</b>

**J. ATTACHMENTS TO THIS REQUEST**

- Contract between Port of Tacoma and Restorical Research LLC.
- Draft contract between the Port of Tacoma and Matthew W. Cockrell & Associates, P.C.

**K. NEXT STEPS**

Engage Cockrell, return to Commission in Q1 2022 to update status of coverage and request funding to begin the investigation.



Item No.: 9B  
Date of Meeting: May 20, 2021

# Project Authorization for Parcel 40 Insurance Recovery

Sarah Weeks  
Environmental Project Manager



# Project Authorization Parcel 40 Insurance Recovery



*As referenced in Resolution No. 2021-08-PT, Exhibit A, Delegation of Authority Master Policy, Paragraph IV.B.(2), states project costs exceeding \$300,000 require approval from Port Commission.*

Request project authorization in the amount \$670,000, for a total authorized amount of \$1,274,000, for the Parcel 40 Environmental Cleanup.

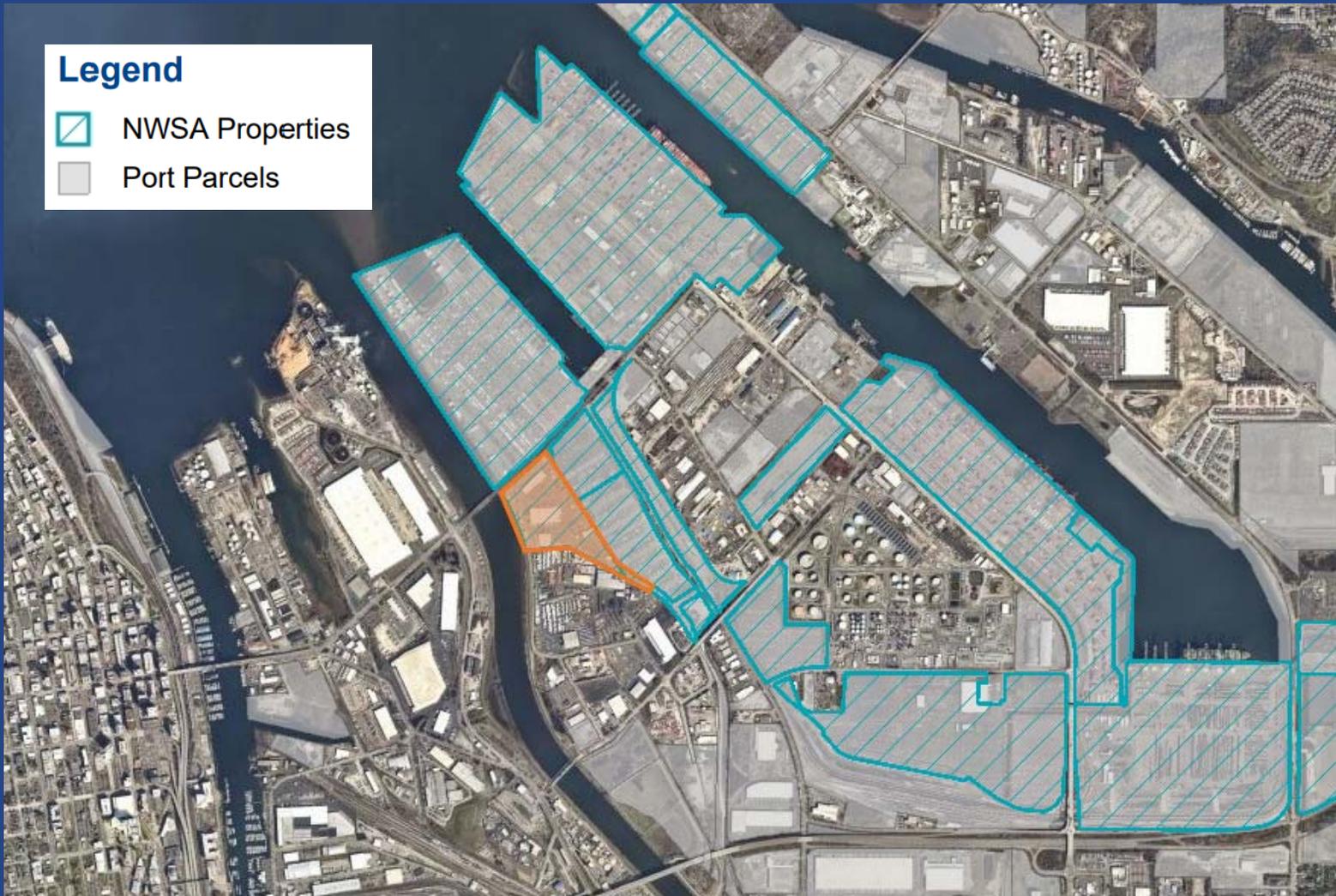
Master Identification No. 101486.03

# Project Location Parcel 40



## Legend

-  NWSA Properties
-  Port Parcels



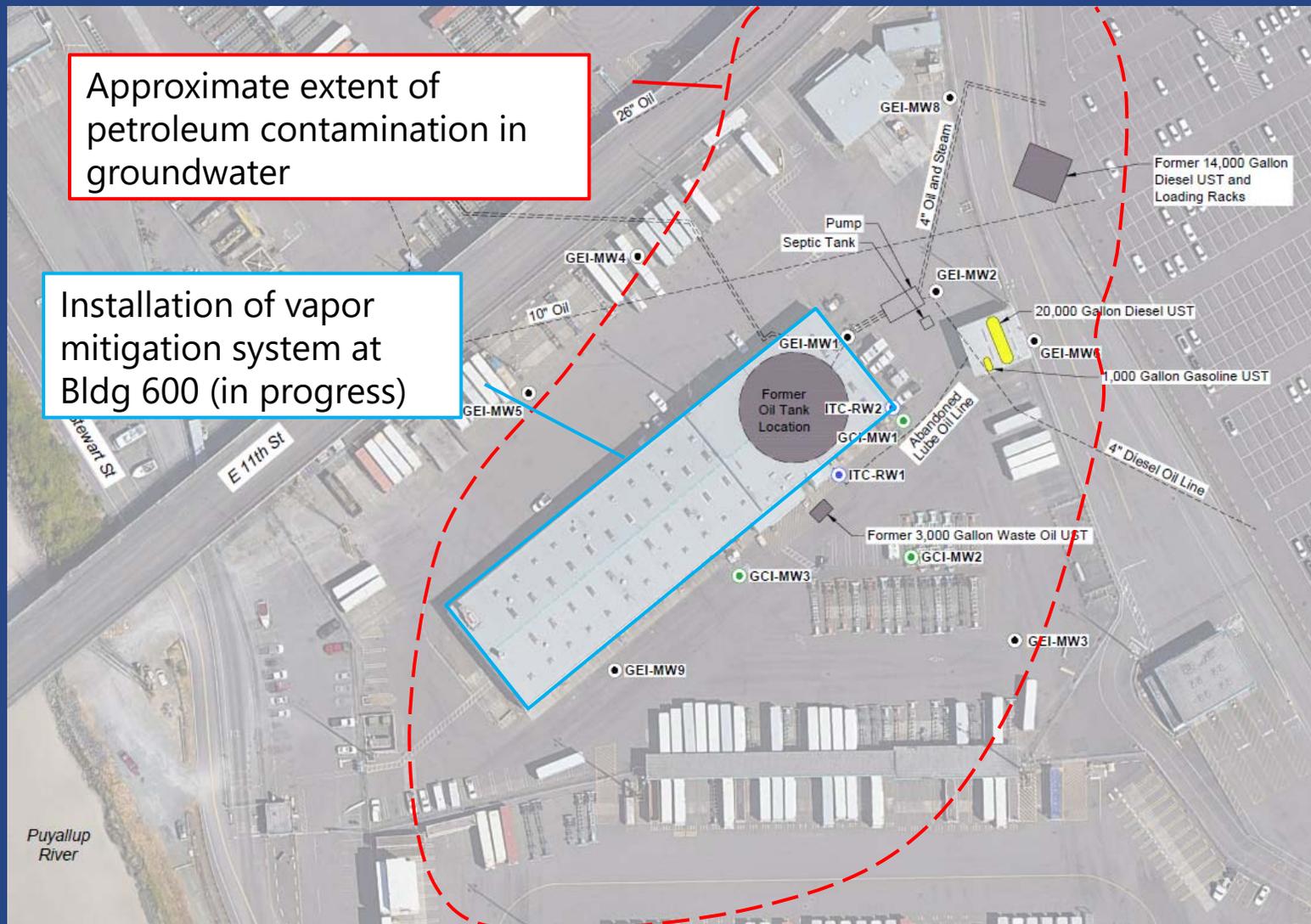
# Synopsis

## Parcel 40 Insurance Recovery



- Parcel 40 is impacted by a historical petroleum release.
- Investigation and cleanup costs to date have been borne by the Port of Tacoma.
- Port staff are exploring funding the investigation with historical insurance policies.
- If this effort is successful, insurance carriers will fund some or all of the Port's costs for environmental investigation.

# Background Parcel 40 Insurance Recovery



# Project Description

## Parcel 40 Insurance Recovery



***Scope of Work for This Request:*** Lay the groundwork to fund the investigation via historical insurance coverage.

- Engage an insurance coverage attorney.
- Procure an environmental consultant to complete the RIFS and CAP.

### ***Scope of Project:***

- Preliminary investigation work (completed)
- Interim Action: Vapor extraction system (in progress)
- Insurance recovery (this authorization)
- Planning Phase: RIFS and CAP (future authorization)
- Cleanup Implementation (future authorization)
- Cost Recovery (future authorization)

# Pay structure

## Parcel 40 Insurance Recovery



To complete the scope of work the Port needs to engage the services of an insurance archeologist and an insurance coverage attorney.

- Both parties work on a contingent fee basis totalling ten percent (10%) of any successful recovery.
- For example, if the carrier pays for \$100,000 of investigation costs, the Port pays \$10,000 to each party (\$20,000 total).
- If no coverage is obtained the parties are not compensated.
- Compensation to each party will not exceed \$300,000.
- Payments are potentially recoverable via future efforts to recovery costs from the potentially liable parties.

# Tentative Project Schedule

## Parcel 40 Insurance Recovery



- Engage coverage attorney, return to Commission in Q1 2022 to update status of coverage and request funding to begin the investigation

# Source of Funds

## Parcel 40 Insurance Recovery



- The estimable cost of the for this project is \$1,274,000. This includes the \$600,000 to account for the contract commitment to pay a contingent fee to the insurance archaeologist and the insurance coverage attorney.
- RIFS/CAP and cleanup implementation are not currently estimable.
- The current Capital Investment Plan (CIP) allocates \$670,000 for this project. It will be updated during the 2022 budget process.

# Financial Summary Parcel 40 Insurance Recovery



Item	MID	This Request	Total Previous Requests	Total Request to Date	Cost to Date	Remaining Cost
Preliminary Investigation	101486.01	\$ 70,000	\$ 160,000	\$ 230,000	\$ 135,362	\$ 94,638
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<b>TOTAL</b>		<b>\$ 670,000</b>	<b>\$ 604,000</b>	<b>\$ 1,274,000</b>	<b>\$ 228,580</b>	<b>\$ 1,045,420</b>

Notes: Historical environmental assessment work was completed from 1999-2003, \$92,498 was spent (E1909/E1845).

# Environmental Impacts/Review Parcel 40 Insurance Recovery



Permitting: Not applicable

Remediation: This is a remediation project.

Stormwater: Not applicable.

Air Quality: Not applicable.

# Conclusion

## Parcel 40 Insurance Recovery



Request project authorization in the amount \$670,000, for a total authorized amount of \$1,274,000, for the Parcel 40 Environmental Cleanup.

Master Identification No. 101486.03