



**BUSINESS OF THE CITY COUNCIL
CITY OF MERCER ISLAND**

**AB 6412
February 20, 2024
Consent Agenda**

AGENDA BILL INFORMATION

TITLE:	AB 6412: Luther Burbank Park Aquatic Lands Lease and Stormwater Outfall Easement	<input type="checkbox"/> Discussion Only <input checked="" type="checkbox"/> Action Needed: <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution
RECOMMENDED ACTION:	Authorize the City Manager to execute two property agreements with the Washington State Department of Natural Resources for Luther Burbank Park: a revised Aquatic Lands Lease and an Outfall Easement.	

DEPARTMENT:	Public Works
STAFF:	Jason Kintner, Chief of Operations Paul West, Senior CIP Project Manager
COUNCIL LIAISON:	n/a
EXHIBITS:	<ol style="list-style-type: none"> 1. Map of Luther Burbank Aquatic Lands Ownership 2. Aquatic Lands Lease 20-B09917 for Luther Burbank Park 3. Aquatic Lands Outfall Easement 51-106374 for Luther Burbank Park 4. Map of Stormwater Outfalls in Luther Burbank Leased Aquatic Lands
CITY COUNCIL PRIORITY:	2. Sustain and enhance our natural environment, especially parks and open spaces, to benefit this generation and others that follow.

AMOUNT OF EXPENDITURE	\$1,870
AMOUNT BUDGETED	\$223,211
APPROPRIATION REQUIRED	\$0

EXECUTIVE SUMMARY

The purpose of this agenda bill is to approve a revised Aquatic Lands Lease and a Stormwater Outfall Easement with the Washington State Department of Natural Resources for Luther Burbank Park and authorize the City Manager to execute and administer the lease agreement and easement.

- Luther Burbank Park is comprised of land that is owned by the City and land that is owned by Washington State Department of Natural Resources (DNR). See Exhibit 1.
- The City leases the DNR-owned land to provide public access to the shoreline. This is a no-cost lease, except for a small portion of the lease area that encompasses the Boiler Building, a non-water dependent use of the shorelands.
- The current lease is effective from 2016 to 2046.
- The City has grant agreements with Washington State for anticipated capital work at this site that require a minimum land tenure of 25 years from project completion. The current lease does not provide sufficient tenure to meet that requirement.

- In 2023, DNR offered the City a new 30-year lease to meet the grant requirement. City Council approved the new lease agreement on October 17, 2023 ([AB6352](#)).
- After City Council's approval, DNR informed the City that new Washington State policy required the separation of stormwater outfalls from the lease agreement. DNR provided a revised lease agreement (Exhibit 2) along with a new stormwater outfall easement (Exhibit 3).

BACKGROUND

The shorelands of Luther Burbank Park were first leased to King County by the Department of Natural Resources (DNR) in 1973 for a term of 30 years. The lease was to expire in 2003, the same year the City of Mercer Island acquired Luther Burbank Park from King County. To expedite the sale of the property, DNR granted an amendment to the lease to transfer tenancy to the City and extended the lease term for an additional ten years. That lease expired in 2013. DNR provided a letter extending the City's tenancy in the interim until the current lease could be negotiated. The current 30-year lease was executed in 2016.

The current lease from the Department of Natural Resources (DNR) for the Luther Burbank Park shorelands primarily concerns the second class shorelands adjacent to Government Lot 6, the eastern portion of the Luther Burbank Park waterfront (Exhibit 1). Additional information about the history and ownership of the shorelands for the three parcels that make up Luther Burbank Park is available in [AB 5144](#).

The Luther Burbank Dock and Waterfront Improvements Project (PA0122) includes grant funding through the Washington State Recreation and Conservation Office (RCO), which requires a minimum land tenure of 25 years from project completion. The current lease with DNR for the Luther Burbank shorelands does not provide sufficient tenure to meet that requirement. DNR has supported the RCO grant applications for the Luther Burbank Waterfront Improvements Project by offering a new 30-year lease to meet the grant requirement.

ISSUE/DISCUSSION

On October 17, 2023, City Council approved the new aquatic lands lease agreement that DNR offered ([AB6352](#)). In the process of drafting the agreement, DNR inadvertently overlooked a new DNR policy requiring it to permit stormwater outfalls separately from land leases. DNR subsequently provided a revised lease that removes the outfalls from the lease and provides a separate new stormwater outfall easement that complies with its new policy. The effective date and expiration date of the lease agreement have been revised to reflect the delayed execution of the agreements. The aquatic lands lease approved by the Council on October 17, 2023 was not executed by DNR.

The new agreements are beneficial to the City because they separate two property rights that have different functions and requirements. Stormwater outfalls have different habitat measures, construction requirements and insurance requirements than other in-water structures, such as docks. With this new arrangement, any future issues with the outfalls would not jeopardize the aquatic lands lease, and vice versa.

Three stormwater outfalls currently exist within the DNR lands adjacent to Luther Burbank Park (Exhibit 4). They are small and only drain runoff from within the park itself. The new easement agreement allows the City to operate, use, maintain, and repair these outfalls. Staff does not anticipate issues with the current outfalls. Any future renovation or replacement of these outfalls would require permitting through DNR.

NEXT STEPS

Following City Council approval, the City Manager will execute the aquatic lands lease agreement and the outfall easement. The lease will be signed by the DNR supervisor and recorded by the City. A one-time administrative fee of \$1,870 for the outfall easement will be paid from the Luther Burbank Park Minor Capital project (PA0123).

RECOMMENDED ACTION

Authorize the City Manager to execute Aquatic Lands Lease 20-B09917 and Aquatic Lands Outfall Easement 51-106374 with the Washington State Department of Natural Resources for Luther Burbank Park substantially in the form as set forth in Exhibits 2 and 3, and any future technical non-substantive amendments required to administer the property agreements.