

**SOUND TRANSIT
STAFF REPORT**

MOTION NO. M2009-110

**Confirming Authority to Negotiate Terms of Transaction Regarding
Acquisition of BNSF Woodinville Subdivision**

Meeting:	Date:	Type of Action:	Staff Contact:	Phone:
Board	12/10/09	Action	Joni Earl, Chief Executive Officer	(206) 398-5450

Contract/Agreement Type:	✓	Requested Action:	✓
Competitive Procurement		Execute New Contract/Agreement	
Sole Source		Amend Existing Contract/Agreement	
Agreement with Other Jurisdiction(s)		Budget Amendment	
Real Estate		Property Acquisition	

PROJECT NAME

East Link Light Rail

PROPOSED ACTION

Confirming the chief executive officer's authority to negotiate transaction documents for Sound Transit's acquisition of property interests in the Southern Portion of the BNSF Woodinville Subdivision and the Redmond Spur, generally consistent with the terms of the Memorandum of Understanding Regarding Acquisition of the Woodinville Subdivision among Sound Transit, the Port of Seattle, King County, the City of Redmond, Puget Sound Energy and the Cascade Water Alliance, for a purchase price not to exceed \$14,000,000, and consistent with the general premises upon which the maximum purchase price was developed.

KEY FEATURES of PROPOSED ACTION

- The Port of Seattle anticipates purchasing the Southern Portion and the Redmond Spur of the Woodinville Subdivision from the BNSF Railway Company before the end of 2009, subject to an easement for regional trail purposes to be owned by King County. Sound Transit and the other parties to the Memorandum of Understanding (MOU) would negotiate transaction documents generally consistent with the MOU, with the objective that the Port of Seattle will transfer property interests to the other MOU parties in 2010.
- This action is consistent with the terms of the MOU signed by the chief executive officer in November, 2009 and attached to this Staff Report.
- Sound Transit needs property located in the Southern Portion for the alignments currently being considered for the East Link light rail project between downtown Bellevue and the Bel-Red corridor.
- The parties have established Sound Transit's maximum purchase price of \$14,000,000 based on the premise that Sound Transit would acquire approximately 1.1 miles of the Southern Portion in the Wilberton area of Bellevue. Acquisition would be subject only to encumbrances existing at the time of the MOU, the King County trail easement, and the utility interests of Puget Sound Energy (PSE) and the Cascade Water Alliance (CWA). In addition, Sound Transit would acquire an easement for transportation purposes throughout the remainder of the Southern Portion and the Redmond Spur.
- The final terms of the transaction require Sound Transit Board approval.

BUDGET IMPACT SUMMARY

Not applicable to this action.

BUDGET and FINANCIAL PLAN DISCUSSION

Not applicable to this action.

BUDGET TABLE

Not applicable to this action.

SMALL BUSINESS PARTICIPATION

Not applicable to this action.

PROJECT DESCRIPTION and BACKGROUND for PROPOSED ACTION

In May 2008, the Port of Seattle and King County entered into an agreement with BNSF whereby BNSF would sell the Woodinville Subdivision and Redmond Spur rail corridors to the Port, subject to an easement for freight purposes in the northern section of the right of way (the Northern Portion) and a trail easement to be owned by King County in the southern section (the Southern Portion), and in the Redmond Spur. The Southern Portion and the Redmond Spur have been railbanked, which means that under federal law, any property subject to potential reversionary interests in the event freight services cease does not revert to the owners of such interests. Federal law allows for this protection based on the proposed use for a trail and subject to the corridor being returned to freight use should the need arise in the future.

Due to changed circumstances, the Port of Seattle wishes to proceed with the acquisition of the Woodinville Subdivision and the Redmond Spur, retain the Northern Portion (subject to a freight easement), and then convey the railbanked Southern Portion and Redmond Spur to King County, Sound Transit, and the City of Redmond, subject to easements for utility purposes for PSE and the CWA. In November, 2009, the chief executive officer executed a non-binding Memorandum of Understanding for Acquisition of the Woodinville Subdivision that generally describes the proposed transaction.

Sound Transit has an interest in participating in the joint purchase of the Southern Portion and the Redmond Spur as a protective acquisition of property to be used for the East Link light rail project and for additional light rail storage track. Actual property interests would not be acquired until 2010 and would be subject to separate Board authorization and applicable requirements.

The MOU requires the parties to the proposed transaction to confirm authority to negotiate transactional documents consistent with the MOU by December 14, 2009. This action is intended to satisfy that requirement. The maximum purchase price of \$14,000,000 is based on the parties' general understanding of the property interests to be acquired.

PRIOR BOARD/COMMITTEE ACTIONS

Not applicable to this action.

CONSEQUENCES of DELAY

The MOU contemplates that the parties will confirm negotiation authority with their governing boards by December 14, 2009. If this action is delayed, the Port of Seattle closing on the acquisition of the Woodinville Subdivision and the Redmond Spur could be in jeopardy.

PUBLIC INVOLVEMENT

Not applicable to this action.

ENVIRONMENTAL COMPLIANCE

PW 12/8/09

LEGAL REVIEW

JB 12/10/09

SOUND TRANSIT

MOTION NO. M2009-110

A motion of the Board of the Central Puget Sound Regional Transit Authority Confirming the chief executive officer's authority to negotiate transaction documents for Sound Transit's acquisition of property interests in the Southern Portion of the BNSF Woodinville Subdivision and the Redmond Spur, generally consistent with the terms of the Memorandum of Understanding Regarding Acquisition of the Woodinville Subdivision among Sound Transit, the Port of Seattle, King County, the City of Redmond, Puget Sound Energy and the Cascade Water Alliance, for a purchase price not to exceed \$14,000,000, and consistent with the general premises upon which the maximum purchase price was developed.

Background:

In May 2008, the Port of Seattle and King County entered into an agreement with BNSF whereby BNSF would sell the Woodinville Subdivision and Redmond Spur rail corridors to the Port, subject to an easement for freight purposes in the northern section of the right of way (the Northern Portion) and a trail easement to be owned by King County in the southern section (the Southern Portion), and in the Redmond Spur. The Southern Portion and the Redmond Spur have been railbanked, which means that under federal law, any property subject to potential reversionary interests in the event freight services cease does not revert to the owners of such interests. Federal law allows for this protection based on the proposed use for a trail and subject to the corridor being returned to freight use should the need arise in the future.

Due to changed circumstances, the Port of Seattle wishes to proceed with the acquisition of the Woodinville Subdivision and the Redmond Spur, retain the Northern Portion (subject to a freight easement), and then convey the railbanked Southern Portion and Redmond Spur to King County, Sound Transit, and the City of Redmond, subject to easements for utility purposes for PSE and the CWA. In November, 2009, the chief executive officer executed a non-binding Memorandum of Understanding for Acquisition of the Woodinville Subdivision that generally describes the proposed transaction.

Sound Transit has an interest in participating in the joint purchase of the Southern Portion and the Redmond Spur as a protective acquisition of property to be used for the East Link light rail project and for additional light rail storage track. Actual property interests would not be acquired until 2010 and would be subject to separate Board authorization and applicable requirements.

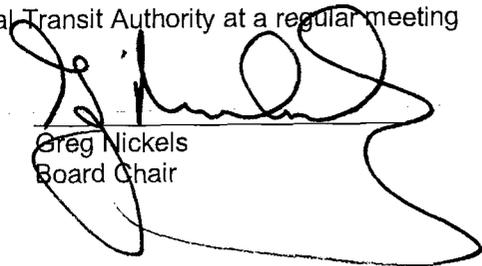
The MOU requires the parties to the proposed transaction to confirm authority to negotiate transactional documents consistent with the MOU by December 14, 2009. This action is intended to satisfy that requirement. The maximum purchase price of \$14,000,000 is based on the parties' general understanding of the property interests to be acquired.

The parties have established Sound Transit's maximum purchase price of \$14,000,000 based on the premise that Sound Transit would acquire approximately 1.1 miles of the Southern Portion in the Wilberton area of Bellevue. Acquisition would be subject only to encumbrances existing at the time of the MOU, the King County trail easement, and the utility interests of Puget Sound Energy (PSE) and the Cascade Water Alliance (CWA). In addition, Sound Transit would acquire an easement for transportation purposes throughout the remainder of the Southern Portion and the Redmond Spur.

Motion:

It is hereby moved by the Board of the Central Puget Sound Regional Transit Authority that the chief executive officer's authority to negotiate transaction documents for Sound Transit's acquisition of property interests in the Southern Portion of the BNSF Woodinville Subdivision and the Redmond Spur, generally consistent with the terms of the Memorandum of Understanding Regarding Acquisition of the Woodinville Subdivision among Sound Transit, the Port of Seattle, King County, the City of Redmond, Puget Sound Energy and the Cascade Water Alliance, for a purchase price not to exceed \$14,000,000, and consistent with the general premises upon which the maximum purchase price was developed is confirmed.

APPROVED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on December 10, 2009.



Greg Nickels
Board Chair

ATTEST:



Marcia Walker
Board Administrator

MEMORANDUM OF UNDERSTANDING
Regarding Acquisition of the
Woodinville Subdivision

This MEMORANDUM OF UNDERSTANDING is made by and among the Port of Seattle, a Washington municipal corporation ("Port"), Sound Transit, a regional transit authority ("Sound Transit"), King County, a political subdivision of Washington ("King County"), the City of Redmond, a Washington municipal corporation ("Redmond"), the Cascade Water Alliance, a Washington non-profit corporation ("Cascade"), and Puget Sound Energy, Inc., a Washington corporation ("PSE") (collectively, the "Parties") as of the 5th day of November, 2009.

WHEREAS:

(A) BNSF desires to sell in part and donate in part the Woodinville Subdivision, which is a railroad corridor extending from the City of Renton northerly to the City of Snohomish, and including a spur corridor extending from the City of Woodinville to the City of Redmond; and

(B) The Port, King County and BNSF previously executed a purchase and sale agreement and donation agreement for the acquisition and partial railbanking of the Woodinville Subdivision; and

(C) Additional regional partners have been identified to share in the cost of acquiring the Woodinville Subdivision for public ownership; and

(D) The alignments under consideration for Sound Transit's Eastlink light rail project require property rights within the Woodinville Subdivision; and

(E) Sound Transit, Redmond, Cascade and PSE have each expressed an interest in participating in the acquisition and preservation of the Woodinville Subdivision in public ownership for recreational trail use, as well as for use as a public transportation and utility corridor.

(F) It is the express purpose of Sound Transit, King County, and Redmond, that the Woodinville Subdivision be developed and operated to ensure that it is available for the dual purposes of recreational trail and public transportation use; and

(G) Consistent with federal railbanking requirements, King County and Redmond have interests in developing a recreational trail within the Woodinville Subdivision; and

(H) The financial contributions to be made by the Port, King County, Sound Transit and Redmond towards this collective acquisition may not be in proportion to the fair market value of the rights in the Woodinville Subdivision that are expected to be received by these entities and, in all instances, the fair market value of the rights to be received by each governmental entity in the Woodinville Subdivision may materially exceed the amount of such entity's respective financial contribution.

NOW, THEREFORE, the Parties have reached the following understanding:

SECTION 1. Purpose.

The Port intends to close its acquisition of the Woodinville Subdivision in 2009. The Parties have envisioned and are working to complete a future transaction for their mutual benefit and for the benefit of the public. The Parties wish to set forth their understandings in this Memorandum of Understanding ("MOU") with respect to their respective interests in the transaction. This MOU is a non-binding document that creates no rights and imposes no obligations on any Party. While the Parties are committed to working cooperatively, expeditiously and efficiently to document the components of the transaction through binding agreements ("Agreements") using this MOU as a guide, the allocation of interests described in this MOU are tentative and subject to review and modification as the Parties move forward with their discussions.

SECTION 2. Key Acquisition Elements.

The key elements of the proposed transaction are as follows:

2.1 This transaction concerns the portion of the Woodinville Subdivision main line corridor between Renton and Snohomish (approximately mile posts 5.0 and 38.4), and a spur corridor between Woodinville and Redmond (between approximately mile posts 0.0 and 7.3) ("Redmond Spur"). Collectively, the main line corridor and the Redmond Spur constitute the "Woodinville Subdivision." The portion of the Woodinville Subdivision north of mile post 23.8 in Woodinville to milepost 38.4 in Snohomish County is referred to as the "Freight Portion." The portion of the Redmond Spur between approximately mileposts 0.0 and 3.1 is referred to as the "County Portion of the Redmond Spur." The portion of the Redmond Spur between approximately mileposts 3.1 and 7.3 is referred to as the "City Portion of the Redmond Spur." Together, the Freight Portion and the Redmond Spur are referred to as the "Northern Portion." The portion of the Woodinville Subdivision south of Woodinville, excluding the Redmond Spur, is referred to as the "Southern Portion." The specific line segments and designated portions will be further defined in the Agreements.

2.2 The Parties have expressed a desire for the future allocation of interests in the Woodinville Subdivision as follows:

2.2.1 The Port will retain, subject to a freight rail easement granted by BNSF to a freight rail operator, all of the title, interest and obligations in the real and personal property of the Freight Portion.

2.2.2 Sound Transit is interested in acquiring a real property interest in the Southern Portion and the Redmond Spur.

2.2.3 King County is interested in acquiring a real property interest in the Southern Portion and the County Portion of the Redmond Spur.

2.2.4 Redmond is interested in acquiring a real property interest in the City Portion of the Redmond Spur.

2.2.5 Cascade is interested in acquiring a utility easement over the Southern Portion and will have the right to negotiate with the County and Redmond for utility easements over the Redmond Spur.

2.2.6 PSE is interested in acquiring utility easements throughout the entirety of the Woodinville Subdivision, except for the City Portion of the Redmond Spur, for PSE's existing and future facilities and infrastructure. For the City Portion of the Redmond Spur, PSE and Redmond anticipate a value for value exchange of perpetual easements for existing PSE facilities and infrastructure within the Redmond right-of-way and Redmond trail facilities on PSE properties, based on the appraised value of the properties in question. Provided, that PSE's new facilities and infrastructure shall be subject to otherwise applicable public approval, construction and permitting processes.

2.3 The identification of which entities will grant and which entities will receive these interests and the order in which these interests will be acquired will be further defined in the Agreements.

SECTION 3. Proposed Key Future Use Elements.

3.1 Freight rail service subject to the jurisdiction of the Surface Transportation Board ("STB") will continue on the Freight Portion.

3.2 Utility corridor uses by PSE and Cascade.

3.3 Interim trail use ("railbanking") will be established on the Southern Portion and the Redmond Spur under the National Trails Systems Act, 16 U.S.C. 1247(d) as of the closing of the Port's transaction with BNSF. The Parties recognize that for any portion subject to railbanking, future local, regional or national transportation needs may require reconstruction and reactivation of the right-of-way for freight rail service. King County will be the trail sponsor for the Southern Portion and the County Portion of the Redmond Spur. The Agreements will provide that in the event Redmond acquires an interest in the City Portion of the Redmond Spur, King County and Redmond will cooperate in seeking Surface Transportation Board authorization for Redmond to assume the role of trail sponsor for the City Portion of the Redmond Spur.

3.4 The Parties intend that the Agreements will provide that, consistent with railbanking, the Southern Portion and the Redmond Spur will, in addition to public trail use, be available for public transportation uses such as high capacity transit or bus transportation. The Freight Portion may be made available for public transportation purposes and recreational trail purposes to the extent consistent with ongoing freight rail operations. Should the Freight Portion ever be proposed for abandonment, the Parties with an interest in the Freight Portion shall cooperate to allow the Freight Portion to be railbanked.

3.5 Upon consummation of the Agreements, a process will be established for the entities with interests in the Southern Portion and the Redmond Spur to periodically meet in order to consult and coordinate activities related to the development, maintenance and use of those portions of the Woodinville Subdivision. Said entities agree to coordinate planning and development activities to the extent possible to ensure effective use of the Southern Portion and the Redmond Spur for the uses outlined in this MOU, based on the ownership interests acquired by

each, and consistent with the express goal of developing and operating a dual use corridor for recreational trail and transit purposes. The Agreements shall ensure that no party may frustrate dual use of the corridor for both public transportation and recreational trail purposes.

3.6 If the Port ever determines to offer or to agree to transfer any or all of the Freight Portion, then Sound Transit, King County and any other public agency in the State authorized to provide transit, rail services or public trails shall have a right of first refusal to acquire such property.

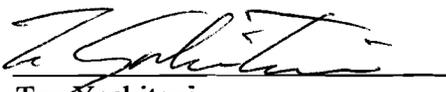
3.7 If BNSF ever determines to offer or to agree to transfer any or all of that portion of the Woodinville Subdivision between approximately mileposts 0-5.0, King County will have the right of first refusal to acquire that portion of such property. If King County acquires this property, it will make it available to the other Parties on terms similar to their interests in the acquired portions of the Woodinville Subdivision.

SECTION 4. Negotiation, Cooperation, and Timing.

4.1. The Parties shall cooperate to (i) reach agreement on press releases and other public announcements related to the transactions described herein, and (ii) make any filings with the STB to the extent such filings are necessary to effectuate the transactions contemplated by this MOU.

4.2 By no later than December 14,2009, the Parties shall seek any necessary authorizations from their respective boards or legislative bodies to negotiate the transactions contemplated in this MOU.

PORT OF SEATTLE

By: 
Tay Yoshitani
Chief Executive Officer

KING COUNTY, WASHINGTON

By: 
Kurt Triplett
County Executive

SOUND TRANSIT

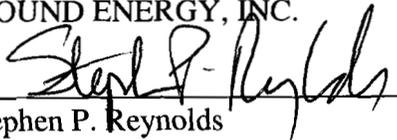
By: 
Joni Earl
Chief Executive Officer

CITY OF REDMOND, WASHINGTON

By: 
John Marchione
Mayor

PUGET SOUND ENERGY, INC.

By:



Stephen P. Reynolds
President and Chief Executive Officer

CASCADE WATER ALLIANCE

By:



Chuck Clarke
Chief Executive Officer