



**RESOLUTION NO. R2010-14**

**Purchase and Sale Agreement with The BNSF Railway Company for the Seattle-to-Tacoma Sounder Segment**

<b>MEETING:</b>	<b>DATE:</b>	<b>TYPE OF ACTION:</b>	<b>STAFF CONTACT:</b>	<b>PHONE:</b>
Board	07/22/10	Final Action	Ahmad Fazel, Executive Director <b>Roger Hansen, Real Property Manager, Right of Way</b> Jordan Wagner, Senior Legal Counsel	206-398-5389 <b>206-689-3366</b> 206-398-5224

**PROPOSED ACTION**

Authorizes the chief executive officer to 1) execute a Purchase and Sale Agreement with The BNSF Railway Company (BNSF) for the acquisition of four perpetual commuter rail easements in BNSF's right of way between Seattle and Tacoma in the amount of \$41 million for Easement 1, \$44 million for Easement 2, \$52 million for Easement 3, and \$48 million for Easement 4, 2) make a deposit of \$5 million for Easement 2, and 3) close on the purchase of Easement 1 in July 2010 and Easement 2 in January 2011.

**KEY FEATURES**

- In November 2009 the Board authorized the acquisition, by condemnation if necessary, of certain BNSF property interests needed for additional commuter rail service in the Sounder Seattle to Tacoma corridor. The Board resolution required staff to return for approval of a negotiated agreement or settlement if one was reached.
- Acquisition of the easements under this Purchase and Sale Agreement permits Sound Transit to add four weekday peak-direction round trips between Seattle and Tacoma. This will allow Sound Transit to operate up to 13 round trips between Lakewood and Seattle as Sound Transit closes on the purchase of each easement.
- Staff will seek Board authorization to make deposits and close on Easements 3 and 4 upon completion of NEPA/SEPA environmental documentation in the future.
- The Board will consider two additional actions concurrent with this action to amend the existing Service Agreement with BNSF for the operations of the additional four round trips and approve a joint use agreement that will govern operations of the four round trips upon the expiration of the forty-year Service Agreement.

**PROJECT DESCRIPTION**

The Seattle-to-Tacoma Sounder segment is a 40-mile long BNSF railroad corridor between Seattle and Tacoma that includes seven Sounder commuter rail stations – King Street (Seattle), Tukwila, Kent, Auburn, Sumner, Puyallup, and Tacoma. The Tacoma-to-Lakewood segment is eight miles long, including over one mile of new track to be constructed by Sound Transit and seven miles of track purchased from BNSF that will be upgraded for commuter rail by Sound Transit. This segment will serve stations in South Tacoma and Lakewood. It will connect to the Seattle to Tacoma segment at the Tacoma Dome Station.

BNSF owns the right-of-way between Everett and Tacoma. Tacoma Rail owns an approximately one-mile segment between BNSF's tracks in Tacoma and the Tacoma Dome Station. Sound Transit owns the right of way between M Street in Tacoma, and Lakewood. Sound Transit has acquired the necessary property interests over the approximately 1.2 mile segment between the Tacoma Dome Station and M Street for the construction of the D Street – M Street Track and Signal Project. Construction on the Tacoma to Lakewood corridor is being completed in two phases; the M Street to Lakewood phase began in 2009 and the D Street to M Street phase is tentatively scheduled to begin in 2010.

Extensive track and signal improvements throughout the 40-mile Seattle-to-Tacoma corridor were completed under the May 2000 Construction Agreement and Service Agreement between Sound Transit and BNSF. These improvements increased the rail capacity of the corridor to support nine round trip Sounder trains each weekday without compromising freight mobility in the Puget Sound area.

**FISCAL INFORMATION**

**Summary for Board Action (Year of Expenditure \$000)**

**Project: 510 - Sounder South Expanded Service**

	2010 Board Adopted Budget <sup>1</sup> (A)	Committed To Date <sup>2</sup> (B)	This Action (C)	Total Committed & Action (D)	Uncommitted (Shortfall) (E)
Agency Administration	\$ 5,544	\$ 5,544	\$ -	\$ 5,544	\$ -
Preliminary Engineering	\$ 225	\$ 61	\$ -	\$ 61	\$ 165
Final Design	\$ -	\$ -	\$ -	\$ -	\$ -
Right of Way	\$ 184,991	\$ 69	\$ 185,000	\$ 185,069	\$ (78)
Construction	\$ -	\$ -	\$ -	\$ -	\$ -
Vehicles	\$ -	\$ -	\$ -	\$ -	\$ -
Contingency	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total Current Budget</b>	<b>\$ 190,761</b>	<b>\$ 5,674</b>	<b>\$ 185,000</b>	<b>\$ 190,674</b>	<b>\$ 87</b>

**Phase Budget Detail**

Right of Way	184,991	69	185,000	185,069	(78)
Misc. Activity	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total Phase</b>	<b>\$ 184,991</b>	<b>\$ 69</b>	<b>\$ 185,000</b>	<b>\$ 185,069</b>	<b>\$ (78)</b>

**Contract Budget**

	Current Approved Contract Value (F)	Committed To Date <sup>2</sup> (G)	Proposed Action (H)	Proposed Total Contract Value (I)
BNSF Railway Company	\$ -	\$ -	\$ 185,000	\$ 185,000
Contingency	\$ -	\$ -	\$ -	\$ -
<b>Total</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 185,000</b>	<b>\$ 185,000</b>
Percent Contingency	0%	0%	0%	0%

**Budget Shortfall**

Level	Shortfall Amt (J)	Potential Funds (K)	Funding Source (L)
Right of Way	\$ (78)	\$ 165	Preliminary Engineering
<b>Total</b>	<b>\$ (78)</b>	<b>\$ 165</b>	

**Notes:**

- <sup>1</sup> Project budget is located on pages 68 and 69 of the Adopted 2010 Transit Improvement Plan budget book.
- <sup>2</sup> Committed to date amount includes actual outlays and commitments through April 30, 2010.

**BACKGROUND**

ST2 expands Sounder service between Seattle and Lakewood by adding the rights to four, perpetual weekday round trips per day through the acquisition of four commuter rail easements.

Board authorization is being sought to acquire four commuter rail easements over BNSF's Seattle-to-Tacoma mainline corridor to enable Sound Transit to add four additional round trips per weekday. Acquisition of these easements will leave BNSF with full authority and capacity to operate its freight lines and will not impact any of BNSF's common carrier rights or obligations under federal law.

Under this resolution, the Board authorizes the deposit of \$5 million toward the acquisition of Easement 2, \$41 million for the closing of Easement 1 (on or after July 27, 2010) and \$39 million for the closing of

Easement 2 (on or after January 7, 2011). The Board will consider the acquisition of Easements 3 and 4 in the future, subject to completion of NEPA and SEPA documentation and FTA approval. The schedule of deposits, operations and closing are as follows:

Easement	Deposit or Closing Date	\$ (in millions)	Earliest Operation Date
E1	7/10	41	7/12
E2 deposit	7/10	5	
E3 deposit	12/10 <sup>1</sup>	5	
E2	1/11	39	9/14 <sup>2</sup>
E4 deposit	1/11 <sup>1</sup>	5	
E3	7/12 <sup>1</sup>	47	7/15 <sup>2</sup>
E4	7/13 <sup>1</sup>	43	7/16 <sup>2</sup>

<sup>1</sup> Payment of deposit and closing are subject to authorization of the board for these easements after consideration of completed NEPA and SEPA documentation of BNSF-proposed mitigation for track and signal work. The Joint Use Agreement provides deadlines for BNSF to provide levels of design for their proposed track and signal work and for Sound Transit to complete environmental documentation or acquire necessary permits for such work. The dates for the deposits are estimates. The dates for the closings assume environmental documentation and permits acquired on schedule.

<sup>2</sup> Operations may start on the later of the date shown or 2 years after necessary permits and approval have been acquired by Sound Transit.

In order to preserve the ability to use federal funds on the project, Sound Transit has obtained FTA concurrence for the appraisal of the four additional roundtrip easements. Sound Transit will seek additional FTA approval if the final settlement exceeds the approved appraisal as required by FTA guidelines.

**ENVIRONMENTAL COMPLIANCE**

Required environmental documentation under NEPA and SEPA has been completed by Sound Transit for Easements 1 and 2. A NEPA Documented Categorical Exclusion (DCE) was approved the Federal Transit Administration on November 4, 2009 for Easements 1 and 2. Sound Transit issued a SEPA Determination of Nonsignificance (DNS) on November 13, 2009 for Easements 1 and 2. For Easements 3 and 4, Sound Transit will complete required NEPA and SEPA environmental documentation and staff will then return to the Sound Transit Board for authorization to make deposits and close.

SSK 7-15-20

**PRIOR BOARD/COMMITTEE ACTIONS**

Resolution No. R2009-20 – Authorizing the chief executive officer to acquire, dispose, or lease certain real property interests by negotiated purchase, by condemnation (including settlement), by condemnation litigation, or by administrative settlement; and to pay eligible relocation and re-establishment benefits to affected parties as necessary for the Sounder Commuter Rail ST2 Seattle to Tacoma Track & Signal Project.

**TIME CONSTRAINTS**

A delay in acquiring easement rights could result in a delay in implementing the additional Sounder commuter rail round trips between Lakewood and Seattle. BNSF will not commit to a schedule of acquisition and implementation beyond July 2010 because of the risk of the loss of a construction season.

**PUBLIC INVOLVEMENT**

Not applicable to this action.

**LEGAL REVIEW**

JW 7/16/10

**RESOLUTION NO. R2010-14**

A RESOLUTION of the Board of the Central Puget Sound Regional Transit Authority authorizing the chief executive officer to 1) execute a Purchase and Sale Agreement with The BNSF Railway Company (BNSF) for the acquisition of four perpetual commuter rail easements in BNSF's right of way between Seattle and Tacoma in the amount of \$41 million for Easement 1, \$44 million for Easement 2, \$52 million for Easement 3, and \$48 million for Easement 4, 2) make a deposit of \$5 million for Easement 2, and 3) close on the purchase of Easement 1 in July 2010 and Easement 2 in January 2011.

WHEREAS, the Central Puget Sound Regional Transit Authority, commonly known as Sound Transit, was formed under RCW Chapters 81.104 and 81.112 for the Pierce, King, and Snohomish Counties region by action of their respective county councils pursuant to RCW 81.112.030; and

WHEREAS, Sound Transit is authorized to plan, construct, and permanently operate a high-capacity system of transportation infrastructure and services to meet regional public transportation needs in the Central Puget Sound region; and

WHEREAS, in general elections held within the Central Puget Sound Regional Transit Authority district on November 5, 1996 and November 8, 2008, voters approved local funding to implement a regional high-capacity transportation system for the Central Puget Sound region; and

WHEREAS, the ST2 plan provides for the expansion of high capacity commuter rail service between Seattle and Tacoma with four additional round trips per weekday; and

WHEREAS, the Board authorized the acquisition of property interests determined to be necessary for the operation and maintenance of the Sounder South Expanded Service project; and

WHEREAS, in Resolution 2009-20, the Board required that a negotiated agreement or settlement for the purchase of the property interests in the BNSF Railway Company's Seattle-to-Tacoma corridor be subject to further Board approval and be accompanied by any necessary environmental review and documentation.

NOW, THEREFORE, BE IT RESOLVED by the Board of the Central Puget Sound Regional Transit Authority as follows:

SECTION 1. The chief executive officer is authorized to (a) execute the Purchase and Sale Agreement for the acquisition of four perpetual commuter rail easements in the BNSF Railway Company's right of way between Seattle and Tacoma in the amount of \$41 million for Easement 1, \$44 million for

Easement 2, \$52 million for Easement 3, and \$48 million for Easement 4; (b) make a non-refundable deposit of \$5 million toward the purchase of Easement 2; and (c) close on the purchase of Easement 1 in July 2010 or later and Easement 2 in January 2011 or later.

SECTION 2. The chief executive officer will return to seek Board authorization to pay earnest money or purchase Easement 3 and Easement 4 once necessary environmental review and documentation is completed.

ADOPTED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on July 22, 2010.

  
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Aaron Reardon  
Board Chair

ATTEST:

  
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Marcia Walker  
Board Administrator