

RESOLUTION NO. R2012-12

Execute Purchase of and Payment for Easements 3 and 4 to BNSF for Additional Sounder Commuter Rail Roundtrip Easements

| MEETING: | DATE: | TYPE OF ACTION: | STAFF CONTACT: | PHONE: |
|---------------------------------------|--------------|-------------------------|---|---------------|
| Operations & Administration Committee | 06/07/12 | Recommendation to Board | Ahmad Fazel, Executive Director | 206-398-5389 |
| Capital Committee | 06/14/12 | Recommendation to Board | Eric Beckman, Project Director | 206-398-5251 |
| Board | 06/28/12 | Final Action | Roger Hansen, Real Property Director | 206-689-3366 |

PROPOSED ACTION

Authorizes the chief executive officer to purchase two perpetual commuter rail easements in The BNSF Railway Company's right of way between Seattle and Tacoma in the amount of \$52,000,000 for Easement 3 and \$48,000,000 for Easement 4, consistent with a Purchase and Sale Agreement with The BNSF Railway Company.

KEY FEATURES

- In July 2010, the Board adopted Resolution No. R2010-14 authorizing the chief executive officer to 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.
- Resolution No. R2010-14 requires further Board authorization to purchase Easements 3 and 4 upon completion of environmental review of track and signal improvements associated with Easements 3 and 4 that BNSF may construct. Environmental review is required to comply with the National and State Environmental Policy Acts (NEPA and SEPA).
- Upon authorization of the Board, Sound Transit will close on Easement 3 in the amount of \$52,000,000 and make a \$5,000,000 deposit on Easement 4. Sound Transit will close on Easement 4 in July 2013 with the payment of an additional \$43,000,000.

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. It connects to the Tacoma to Lakewood segment at the Tacoma Dome Station.

Extensive track and signal improvements on the portion of the Seattle-to-Tacoma Sounder segment owned by BNSF 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

Consistent with the current estimate at completion for real property acquisition, this action and acquisitions of remaining certified properties are affordable within the adopted project budget.

Project Budget

| Sounder South Expanded Service | 2012 TIP | Board Approvals | This Action | Board Approved Plus Action | Uncommitted/ (Shortfall) |
|--------------------------------|-------------------|------------------|-------------------|----------------------------|--------------------------|
| Agency Administration | 5,650 | 670 | - | 670 | 4,980 |
| Preliminary Engineering | 563 | 190 | - | 190 | 373 |
| Final Design | 400 | - | - | - | 400 |
| 3rd Party | 110 | - | - | - | 110 |
| Right of Way | 187,196 | 85,135 | 100,000 | 185,135 | 2,061 |
| Construction | - | - | - | - | - |
| Construction Management | - | - | - | - | - |
| Vehicles | - | - | - | - | - |
| Contingency | 50 | - | - | - | 50 |
| Total Project Budget | \$ 193,968 | \$ 85,995 | \$ 100,000 | \$ 185,995 | \$ 7,973 |

Phase Detail

Right of Way

| | | | | | |
|----------------------|-------------------|------------------|-------------------|-------------------|-----------------|
| BNSF Railway Company | 100,000 | - | 100,000 | 100,000 | - |
| Other Phase Activity | 87,196 | 85,135 | - | 85,135 | 2,061 |
| Total Phase | \$ 187,196 | \$ 85,135 | \$ 100,000 | \$ 185,135 | \$ 2,061 |

Contract Detail

| BNSF Railway Company | Board Approvals to Date | Current Approved Contract Status | Proposed Action | Proposed Total for Board Approval |
|------------------------------|-------------------------|----------------------------------|-------------------|-----------------------------------|
| Contract | | | 100,000 | 100,000 |
| Contingency | | | | - |
| Total Contract Amount | \$ - | \$ - | \$ 100,000 | \$ 100,000 |
| Percent Contingency | 0% | 0% | 0% | 0% |

Notes:

Amounts are expressed in Year of Expenditure \$000.

Board Approvals = Committed to-date + Contingency, and includes pending Board Actions.

Project budget is located on page 79 of the Proposed 2012 Transit Improvement Plan.

SMALL BUSINESS PARTICIPATION

Not applicable to this action.

EQUAL EMPLOYMENT WORKFORCE PROFILE

Not applicable to this action.

BACKGROUND

ST2 provides for the expansion of Sounder service between Seattle and Lakewood by purchasing rights from BNSF for four, perpetual weekday round trips per day through the acquisition of four commuter rail easements over the BNSF-owned corridor between Seattle and Tacoma. The Board previously authorized the purchase of Easements 1 and 2 under the 2010 Purchase and Sale Agreement. The purchase of Easements 3 and 4 will allow Sound Transit to operate two more round trips, for a total of 13 weekday round trips between Seattle and Lakewood. Acquisition of these easements will not affect BNSF's full authority and capacity to operate its freight lines, common carrier rights or obligations under federal law.

Under Resolution No. R2010-14, the Board authorized the deposit of \$5,000,000 toward the acquisition of Easement 2, \$41,000,000 for the closing of Easement 1 and \$39,000,000 for the closing of Easement 2. The decision on whether to purchase Easement 3 and 4 was to occur in the future, subject to completion of NEPA and SEPA documentation and FTA approval. NEPA and SEPA documentation were completed after the schedule anticipated in the Purchase and Sale Agreement. The schedule of deposits, operations and closing below reflect BNSF's agreement to postpone deposit dates for Easement 3 and 4 to July 1, 2012:

| Easement | Date of action | \$ (in millions) | Earliest Operation Date |
|------------|------------------------------------|------------------|-------------------------|
| E1 closing | 7/10 | 41 | 7/12 |
| E2 deposit | 7/10 | 5 | |
| E3 deposit | 12/10 7/12 ¹ | 5 | |
| E2 closing | 1/11 | 39 | 9/14 ² |
| E4 deposit | 1/11 7/12 ¹ | 5 | |
| E3 closing | 7/12 ¹ | 47 | 7/15 ² |
| E4 closing | 7/13 ¹ | 43 | 7/16 ² |

¹ 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.

² Per the joint-use agreement, 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.

Following purchase of the easements, Sound Transit will be obligated to mitigate any environmental impacts caused by the planned construction activities associated with the easements. Separate actions will be brought to the Board for funding and implementation of these mitigations.

ENVIRONMENTAL COMPLIANCE

A Documented Categorical Exclusion (DCE) was prepared in compliance with the National Environmental Policy Act and approved by the Federal Transit Administration on April 27, 2012. An Environmental Checklist was prepared pursuant to the State Environmental Policy Act (SEPA), and Sound Transit issued a Determination of Non-Significance (DNS) on April 17, 2012. The City of Auburn filed an appeal of the DNS and has requested additional environmental review and mitigation related to the BNSF's proposed track and signal improvements and Sound Transit's increased passenger train service. A hearing will be held before a hearing examiner this summer.

Staff recommends proceeding with the purchase and sale of the easements at this time, and will continue to coordinate with the Board on the hearing examiner's decision with respect to the environmental review.

PW 6/1/12

PRIOR BOARD/COMMITTEE ACTIONS

Resolution No. R2010-14: Authorized 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.

Resolution No. R2009-20: Authorized 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.

PUBLIC INVOLVEMENT

Not applicable to this action

LEGAL REVIEW

JW 6/1/12



RESOLUTION NO. R2012-12

A RESOLUTION of the Board of the Central Puget Sound Regional Transit Authority authorizing the chief executive officer to purchase two perpetual commuter rail easements in The BNSF Railway Company's right of way between Seattle and Tacoma in the amount of \$52,000,000 for Easement 3 and \$48,000,000 for Easement 4, consistent with a Purchase and Sale Agreement with The BNSF Railway Company.

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 4, 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 No. R2009-20, 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; and

WHEREAS, in Resolution No. R2010-14, the Board authorized 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; and

WHEREAS, in Resolution R2010-14, the Board directed staff to seek Board authority to make deposits and close on Easements 3 and 4 upon completion of NEPA/SEPA environmental documentation and that environmental documentation has been completed.

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 purchase two perpetual commuter rail easements in The BNSF Railway Company's right of way between Seattle and Tacoma in the amount of \$52,000,000 for Easement 3 and \$48,000,000 for Easement 4, consistent with a Purchase and Sale Agreement with The BNSF Railway Company.

ADOPTED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on June 28, 2012.



Julia Patterson
Board Vice Chair

ATTEST:



Marcia Walker
Board Administrator