PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA
ACTION ITEM

Item No. 6e

Date of Meeting November 11, 2014

DATE: October 30, 2014

TO: Ted J. Fick, Chief Executive Officer

FROM: Mark C. Griffin, Director, Real Estate Development

SUBJECT: Second Reading and Final Passage of Resolution No. 3697, surplusing and sale of the Tsubota Steel site

Net Proceeds to the Port: $7,200,000 minus closing costs

Anticipated Closing Date: Second Quarter of 2015

ACTION REQUESTED

Request Second Reading and Final Passage of Resolution No. 3697: A Resolution of the Port Commission of the Port of Seattle declaring surplus and no longer needed for port district purposes approximately 3.44 acres of Port-owned real property located in the City of Seattle and further authorizing the sale of said real property to TRF Pacific, LLC or its assigns.

SYNOPSIS

Staff proposes to enter into a purchase and sale agreement to sell the Tsubota site to TRF Pacific, LLC or its assigns. TRF Pacific presented the strongest offer from a competitive, request for offers process completed earlier this year. TRF Pacific's proposed purchase price of $7.2 million is consistent with the appraised fair market value of the site.

The Port acquired the Tsubota Steel site in April 2005 (See attached site map). The site has been under short-term lease since its acquisition. The site is considered "surplus" because it is not essential to any current or anticipated Port operational need.

BACKGROUND

The Port acquired the 3.44-acre Tsubota Steel site in April 2005. At the time, the Port was engaged in a large-scale redevelopment planning effort that encompassed the Terminal 91 uplands site due west of the Tsubota site and anticipated acquiring additional sites directly abutting the Tsubota site to include in that planning effort. Those additional acquisitions did not occur, and the Port is no longer pursuing large-scale planning in the area. As a result, the Tsubota site is an "island" in the Port's portfolio and can be considered surplus given its lack of a direct tie to the Port's operations. The Tsubota site has been under short-term lease since its acquisition.

The Port acquired the Tsubota site knowing some environmental remediation would be required based on the due diligence leading to the acquisition. The Port has not performed any remediation, because there has been no critical, Port-driven need to do so. At this point, the prospective buyer is best positioned to remediate the site as part of their site development work given that the nature of the required clean-up (i.e., soil excavation, grading and backfilling) can be easily folded into that work. Therefore, a key objective in considering a sale of the site has been to sell the site on an "as is, where is" basis with the prospective buyer factoring the required clean-up into their proposed purchase price and, as important, releasing the Port from all claims related in any way to the environmental condition of the site.

Since the rebound in the real estate market following the economic recession that began in 2008, staff has undertaken two competitive processes to dispose of the Tsubota site on an as is, where is basis. The first process began in February 2011 with a request for proposals (RFP) that invited offers to either buy or long-term lease the site. Two proposals—one acquisition and one lease—were received. The acquisition proposal (from Goodman Real Estate) proposed purchase of only the northern portion of the site or approximately 1.3 of the 3.44 total acres, which was not consistent with the RFP's terms to purchase the whole site. The lease proposal (from Swan Nets USA) requested the Port contribute as much as $1.8 million in site/tenant improvements—again contrary to the "as is, where is" requirement in the RFP. Both proposals were declined in favor of continuing the short-term leases on the site until further improvement in the real estate market.

Staff obtained an appraisal of the site in October 2013 before proceeding with the second competitive process earlier this year. The appraisal valued the site at $8.23 million assuming the site did not require any environmental remediation. After receiving the initial opinion of value, Port environmental staff prepared a likely remediation scope of work based on the existing environmental reports and prior clean-up estimate. Port project and construction management staff then reviewed the scope of work and estimated the clean-up cost to be between $1 million and $1.8 million depending on whether the Port performed the work or left it to a private sector buyer. The appraiser then considered the clean-up estimate and other pertinent data and issued an update to his earlier value in July 2014 valuing the site between $6.4 million and $7.2 million.

Staff issued a request for offers (RFO) in February to sell the site, prompted by the growing rebound in the real estate market and several unsolicited offers to purchase the site. The RFO generated five initial offers from Panattoni Development, TRF Pacific, Goodman Real Estate, Liane Tsubota, and Public Storage. Panattoni withdrew its offer shortly after the submission deadline. Liane Tsubota offered to purchase only the northern portion of the site. The other three offers were for the entire site.

After an initial evaluation of each of the offers based the proposed purchase price, the desire to sell the entire site as is, where is and other key offer terms, staff requested each bidder submit a "best and final" offer. Both TRF Pacific and Public Storage offered $6.2 million for the site. Goodman Real Estate offered $3.3 million. Liane Tsubota chose not to make a best and final offer over her initial offer of $800,000 for just the site's northern parcel. At this point, staff rejected all the offers, because none were deemed strong enough. All the offers were below the site's appraised value even when the needed environmental remediation was taken into account.

Two of the bidders (TRF Pacific and Public Storage) from the RFO process expressed continuing interest in the site upon learning their initial best and final offers were declined. Staff indicated a willingness to consider any new offers. Both TRF Pacific and Public Storage submitted new offers in June. TRF Pacific offered $7 million with closing contingent upon Department of Ecology (DOE) approval of an environmental clean-up plan for the site. Public Storage offered $7.2 million with three contingencies related to DOE's approval of an environmental clean-up plan, securing full land-use entitlements from the City of Seattle, and modification of an existing sewer easement. In addition, Public Storage's new offer was conditioned on the Port being responsible for environmental remediation costs exceeding $800,000.

Staff then requested that TRF Pacific and Public Storage submit a second best and final offer. Both bidders increased their proposed purchase price by $200,000 with TRF Pacific's offer at $7.2 million and Public Storage at $7.4 million. In addition, Public Storage deleted the provision making the Port responsible for clean-up costs above $800,000 but kept the three closing contingencies described above.

In the final evaluation of the second round of best and final offers, staff chose TRF Pacific's offer over Public Storage's offer. Both bidders were determined to be capable of performing and closing on the transaction. However, TRF Pacific's offer was deemed stronger because it contained two fewer contingencies that would have allowed the buyer to terminate the transaction and provided for a quicker closing. These factors, on balance, compensated for Public Storage's slightly higher proposed purchase price.

Staff executed a letter of intent with TRF Pacific to sell the site in July 2014. TRF Pacific is a local developer that owns and manages the Whole Foods-anchored shopping center immediately north of the Tsubota site among other properties in the region.

PURCHASE AND SALE AGREEMENT PROVISIONS

The draft purchase and sale agreement is attached as **Attachment 2.** The key terms of the proposed agreement include:

- **Seller.** Port of Seattle.

- **Buyer.** TRF Pacific, LLC and/or assigns. With Seller's prior written consent, Buyer may assign its interest to any entity in which it has a controlling interest.

- **Property.** An approximately 3.44-acre site located at 1819 15th Avenue West in Seattle's Interbay neighborhood (the "Property"). In addition to the real property, Buyer will also purchase all of Seller's rights, title and interest in all of the fixtures and improvements associated with the Property.

- **Property Condition - Release.** Seller will deliver the Property to Buyer at closing in its "as is, where is" condition, with all faults and defects, known and unknown, without warranty or representation of any kind or character by Seller. Buyer will release Seller from all claims related in any way to the environmental condition of the Property.

- **Purchase Price.** Buyer will pay Seller a purchase price of $7.2 million in cash for the Property.

- **Environmental Contingency.** Seller will enroll the Property in the voluntary cleanup program ("VCP") with the DOE. At Buyer's cost, Buyer will engage its environmental consultant to design an Independent Remedial Action Plan ("IRAP") for submission to DOE under the VCP. Buyer shall be solely responsible for all costs associated with DOE's services under the VCP. Buyer will waive the environmental contingency once DOE issues its opinion on the proposed IRAP.

- **Existing Leases.** Buyer acknowledges that two short-term lease agreements (Utilikilts and Clear Channel) currently encumber the Property. Buyer will accept assignment of all of Seller's rights and obligations under these leases as of Closing.

- **Closing.** The proposed transaction will close within 30 days of waiver or completion of any contingencies including the Environmental Contingency.

- **Default**. If there is a default by Seller, Buyer may (i) terminate the agreement and obtain return of its initial deposit of $25,000, (ii) waive such breach and proceed to Closing, or (iii) pursue specific performance. If there is a default by Buyer, Seller may (i) terminate the agreement and retain Buyer's initial deposit of $25,000, (ii) waive such breach and proceed to Closing or (iii) pursue specific performance.

- **Brokerage Commission.** Seller represents that it has not engaged a broker to assist with the proposed transaction. Buyer will be responsible for paying the commission of any broker it chooses to engage. Buyer will indemnify, defend and hold harmless Seller from and against any and all commissions and commission claims.

FINANCIAL IMPLICATIONS

The Port acquired the Tsubota site for approximately $6.1 million or approximately $41 per square foot. This amount included a purchase price of $5.5 million and related due diligence, assignment and closing costs of approximately $575,000. The site has been under short-term lease since its acquisition. It currently generates about $26,000 in annual revenue.

The proposed purchase price of $7.2 million equates to a sale at approximately $48 per square foot. As mentioned above, a current appraisal values the site between $6.4 million and $7.2 million. TRF Pacific's proposed purchase price of $7.2 million is at the top end of this range.

Financial Analysis and Summary

CIP Category	N/A
Project Type	N/A
Risk adjusted discount rate	N/A
Key risk factors	N/A
Project cost for analysis	Closing costs are to be determined
Business Unit (BU)	Portfolio Management – Commercial Properties
Effect on business performance	• A non-operating gain on sale of approximately $1.1 million (closing costs have not yet been finalized) will be recognized upon closing on the sale. • Incremental decreases to annual rental revenue of $26,000 and net operating income of $13,000.
IRR/NPV	N/A

STRATEGIES AND OBJECTIVES

This authorization aligns with the Real Estate Division's 2014 business plan strategy to manage our finances responsibly to increase the net operating income by, among other means, acquiring or disposing of assets as circumstances warrant. The proposed sale of the Tsubota site is consistent with this strategy. The sale proceeds provide a capital source to pursue potential acquisition of other assets that are more closely aligned with the Port's mission and operations.

TRIPLE BOTTOM LINE

Economic Development

Selling the Tsubota site would generate revenue that could be used to purchase new assets that are more directly connected to the Port's mission and operations. In addition, the proposed buyer intends to develop the site with retail uses that will generate jobs and local tax revenue above that of the Port's current use.

Environmental Responsibility

The Tsubota site is a brownfield that requires some environmental remediation. The proposed buyer will remediate the site as part of its development.

Community Benefits

The community will benefit from development of the Tsubota site with opportunities for jobs and additional services in the area and removing potential blight from the surrounding neighborhood.

ALTERNATIVES AND IMPLICATIONS CONSIDERED

Alternative 1) – Halt the proposed sale and continue short-term lease of the site. This alternative is inconsistent with the Real Estate Division's strategy of disposing of assets to generate new revenue as circumstances warrant such as when an asset is surplus to the Port's operations. Terminating the proposed sale at a time when market conditions are favorable, as is the case currently, would mean the loss of the expected sales proceeds with no guarantee that a comparable or better offer could be secured in the future. This alternative would also not permit the pursuit of other acquisitions, with the Tsubota sales proceeds, that are more closely related to the Port's operations. This is not the recommended alternative.

Alternative 2) – Competitively solicit new offers to buy the site. A new competitive process may not result in a comparable or better offer. Instead of a staff-driven process as was the case with the recent RFO, a real estate broker could be retained to list the Tsubota site in an attempt to generate greater market exposure and possibly additional prospective buyers with potentially higher offers. However, the Port would owe a commission to the broker upon any such sale. Assuming a commission at the Port's maximum permitted rate of 7.5% on the proposed sale price of $7.2 million, the commission due the broker would be $540,000. This approach would decrease the Port's net sales proceeds. This is not the recommended alternative.

Alternative 3) – Competitively solicit new offers to long-term lease the site. Long-term lease deals are almost always less attractive to the real development community because of the challenge of securing financing for the development. Consequently, long-term leases attract fewer interested developers and would not necessarily result in a better deal. While a long-term lease deal would preserve the Port's and the public's ownership of the site, there is no compelling strategic reason to maintain ownership, because the Tsubota site isn't essential to any current or anticipated Port operational need. This is not the recommended alternative.

Alternative 4) – Proceed with the proposed sale. The proposed sale aligns with the surplus status of the site. This alternative is consistent with the Real Estate Division's strategy of selling assets to secure new revenue when circumstances warrant. In this case, real estate market conditions are currently favorable, and there is no guarantee that they would be more favorable in the future such that a comparable or better offer could be secured. The Tsubota sales proceeds could be used to acquire other assets more closely aligned with Port's operations and objectives. **This is the recommended alternative**.

RESOLUTION NO. 3697

Resolution No. 3697 provides that the Tsubota Steel site located in the City of Seattle, King County and any improvements located thereon, is no longer needed for Port purposes, declares it surplus to Port needs and authorizes its sale to TRF Pacific, LLC or its assigns. The Resolution further delegates to the Port's Chief Executive Officer the authority to execute all documents necessary to complete the sale of the property. The complete resolution is attached.

ATTACHMENTS TO THIS REQUEST

- Attachment 1 – Resolution No. 3697
- Attachment 2 – Draft Purchase and Sale Agreement
- Attachment 3 – Site Map
- PowerPoint presentation

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

- October 14, 2014, First Reading and Public Hearing of Resolution No. 3697.
- May 24, 2011, Commission briefing on the offers received from Tsubota Steel request for proposals.
- January 25, 2005, Commission authorized acquisition of the Tsubota Steel site.