

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA

Item No. 6f
Date of Meeting June 2, 2009

DATE: May 15, 2009

TO: Tay Yoshitani, Chief Executive Officer

FROM: James R. Schone, Director, Aviation Business Development
W. Allan Royal, Manager, Port Real Estate Development

SUBJECT: Public hearing and First Reading of Resolution declaring surplus nine parcels of Port-owned real property needed by Washington State Department of Transportation (WSDOT) for future SR509 expansion to Interstate 5 and authorizing transfer of said parcels to WSDOT in exchange for WSDOT Properties and certain airspace leases needed for current and future Aviation projects.

REQUESTED ACTION:

1) Resolution No. 3617, declaring surplus and no longer needed for Port District purposes nine parcels of Port-owned real property located in SeaTac, Washington, including a 0.64 acre detention pond site; a 0.02 acre remnant off South 188th Street; a 0.24 acre parcel at 1205 South 196th Street; four noncontiguous parcels (0.68 acres, 18.76 acres, 3.24 acres and 1.13 acres) in vicinity of Tyee Valley Golf Course at 18th Avenue South and South 200th Street; and two noncontiguous parcels (0.08 acres, 0.45 acres) in an area bounded by 24th Avenue South, South 202nd Street and South 204th Street, (all parcels hereafter referred to as "Property") and authorizing the Chief Executive Officer (CEO) to execute all documents necessary to transfer the Property to Washington State Department of Transportation ("WSDOT") in exchange for WSDOT property and enter into airspace leases needed for current and future projects related to construction of the Rental Car Facility, improvements to the North Airport Expressway, maintenance and operation of the Third Runway approach lighting system, and construction of a bridge to the "L"-shaped parcel that would support future development of that land in support of airport cargo and operations.

- a. First Reading
- b. Public Hearing; and

2) Authorize the CEO to enter into a long-term ground lease for a total of 6.16 acres in the vicinity of Tyee Valley Golf Course.

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SYNOPSIS:

Information relating to requested action item 1 above:

The proposed Resolution would do the following:

- 1) Declare nine Port-owned parcels surplus; and
- 2) Authorize execution of all documents necessary to transfer the Port-owned property to WSDOT in exchange for both fee interest in three WSDOT-owned parcels and leasehold interest in three additional WSDOT-owned parcels.

The transfer and exchange of property by the parties would be accomplished by a Property Exchange Agreement, under which each party would obtain something from the other party as follows:

- 1) WSDOT would obtain fee title to nine non-contiguous parcels of land currently owned by the Port;
- 2) The Port would obtain fee title to three non-contiguous parcels of land currently owned by WSDOT; and
- 3) The Port would obtain leasehold interests in three additional parcels of WSDOT-owned land.

Information relating to requested action item 2 above:

The Port owns a 3.24 acre parcel of land in the vicinity of Tyee Valley Golf Course at 18th Avenue South and South 200th Street. The 3.24-acre parcel is part of a larger parcel of land that is currently leased to a golf-course operator under a concession agreement. The same 3.24-acre parcel is one of the nine parcels that would be transferred to WSDOT under the proposed Property Exchange Agreement. Once title to the 3.24-acre parcel transfers to WSDOT, the Port will lease back the 3.24 acre parcel in order to continue golf course operations. In addition, WSDOT owns a 1.79 acre sliver of land that lies in the southwest corner of the golf course. The Port wishes to lease from WSDOT that 1.79 acre sliver along with the 3.24 acre parcel. Also, there is a 1.13 acre Port-owned parcel to the southeast of the golf course that WSDOT is acquiring as part of the land exchange. The Port wishes to lease this parcel back for use either as part of golf course operations or other potential commercial developments. These three parcels combined total 6.16 acres.

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DESCRIPTION OF PROPOSED TRANSACTION AND JUSTIFICATION:

The Port owns nine parcels of land that WSDOT needs for the future State Route (SR) 509 expansion to Interstate 5. As full funding for this project remains uncertain, WSDOT is creatively and incrementally pursuing ways to make it more attractive in the competition for state and federal funding. Completion of this segment of SR 509 would enable the major redesign of access to the airport from the south as envisioned in the airport's Comprehensive Development Plan and would be of great benefit to the Port.

WSDOT owns six parcels of land that the Port needs for current and future aviation projects. These projects include construction of the Rental Car Facility, improvements to the North Airport Expressway, maintenance and operation of the Third Runway approach lighting system, and construction of a two-lane, four-span bridge from the airfield over SR 518 to the Port-owned "L"-shaped parcel. The bridge is intended to connect the Port's future North Freight Cargo Complex and the Port's future North Freight Cargo Hardstand.

The proposed property exchange ensures that all "budget" dollars attributable to the value of property the Port needs from WSDOT will provide direct benefit to the SR 509 extension project by reducing WSDOT's budget requirements for property acquisition. Under a normal acquisition by purchase and sale, funds paid to WSDOT for property acquired by the Port from WSDOT go to the Washington State Department of Transportation General Fund, not to specific projects such as the SR 509 extension. The proposed property exchange is designed to be a non-cash transaction.

The tables on the next page show that the cumulative value of the properties that the Port would convey to WSDOT is only \$758,072.00 greater than the cumulative value of the properties that WSDOT would convey to the Port. The table labeled "Rent Credits Per Lease" shows that WSDOT would compensate the Port for this difference by giving the Port lump sum rent credits for each of the three airspace leases that the Port needs from WSDOT. Please note that the tables on the next page also appear in Exhibit D in the package of Exhibits to the Property Exchange Agreement:

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POS to WSDOT		
IC #	Parcel #	Fee
1-17-08360	1-22568	\$ 235,400.00
1-17-08364	1-16884	\$ 500.00
1-17-08361	1-16852	\$ 100,700.00
1-17-08362	1-16827	\$ 15,826,000.00
1-17-08406		
1-17-08407		
1-17-08408		
1-17-08363	1-16825	\$ 356,800.00
1-17-08409		

\$ 16,519,400.00

WSDOT to POS			
IC #	Parcel	Fee	Lease/Year
1-17-03329	1	\$ 9,200,328.00	
1-17-07995	1A		\$15,618.00
1-17-07989	2	\$ 6,555,500.00	
1-17-07990	3		\$ 2,000.00
1-17-07993	6	\$ 5,500.00	
1-17-07206	7		\$ 10,200.00
		\$ 15,761,328.00	\$ 27,818.00

Fee Values	
POS to WSOT	\$16,519,400.00
WSDOT to POS	\$15,761,328.00
Fee Difference	\$ 758,072.00

RENT CREDITS PER LEASE	
Parcel 1A	\$ 465,074.03
Parcel 3	\$ 59,556.16
Parcel 7	\$ 233,441.81
Total Rent Credit	\$ 758,072.00

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Strategic Rationale

This transaction supports the Port's strategy to "Ensure Airport and Seaport Vitality" and to enhance regional transportation.

This transaction supports the long term economic vitality of the Airport by increasing the potential for extension of SR 509 freeway as well as by acquiring land needed for current and future Aviation projects at today's prices without an outlay of cash.

DETAILS OF PROPOSED TRANSACTION:

Requested Commission action would authorize the Port to acquire the following WSDOT-owned parcels at their respective fair market values (FMV):

- A. 2.32-acre parcel at SW corner of intersection of Pacific Highway South and SR 518; FMV = \$9,200,328.
- B. 3.76-acre parcel at NE corner of intersection of Airport Service Road and South 160th Street; FMV = \$6,555,500.
- C. 0.25-acre parcel at South 188th Street and 12th Place South; FMV = \$5,500.

Requested Commission action would authorize the Port to enter into three leases at their respective fair market rents:

D. Airspace Lease of 4,096 square foot (0.094 acres) Premises for a Soil Nail Retaining Wall that will reduce the cost of construction on the Rental Car Facility site; Rent = \$15,618 per year. Term = 20 years with options for two additional 10-year terms. The lease agreement also contains an option for the Port to acquire an easement over the 4,096 square foot Premises. It obligates WSDOT to use its best efforts to accomplish, within five years of the execution of the Exchange Agreement, all tasks preliminary to granting the Port a permanent easement in lieu of a lease.

E. Airspace Lease of 20,089 square foot (0.46 acres) Premises for maintenance and operation of Third Runway North Approach Lighting System; Rent = \$10,200 per year. Term = 20 years with options for two additional 10-year terms. The lease agreement also contains an option for the Port to acquire an easement over the 20,089 square foot Premises. It obligates WSDOT to use its best efforts to accomplish, within five years of the execution of the Exchange Agreement, all tasks preliminary to granting the Port a 50-year easement in lieu of a lease.

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F. Airspace Lease of 24,488 square foot (0.56 acres) Premises for bridge to “L”-shaped parcel; Rent = \$2,000 per year. Term = 20 years with options for two additional 10-year terms.

Rent credit from the proposed Property Exchange Agreement would be applied toward the above-referenced Rents as they become due.

Requested Commission action would authorize the Port to enter into an airspace lease of 6.16 acres to continue golf-course operations and other operations:

G. Ground Lease of 6.16 acres leasing back a 3.24-acre parcel in the vicinity of Tyee Valley Golf Course and 1.79 acres lying in the southwest corner of said golf course and a 1.13 acre parcel to the southeast of the golf course. Rent will be based on 5.24% percent of rental income received by the Port from its current tenant, a golf course operator. Term = 20 years, with options for two additional ten-year terms.

Requested Commission action, along with subsequent second reading and final passage of the surplus resolution, would allow the following Port-owned properties to be declared surplus and no longer needed for airport purpose:

1. 0.64-acre detention pond site lying at the intersection for S. 170th Street and 8th Avenue South; FMV = \$235,400.
2. 0.02-acre remnant off S. 188th Street; FMV = \$500.
3. 0.24-acre parcel at 1205 South 196th Street; FMV = \$100,700.
4. Four non-contiguous parcels in the vicinity of Tyee Valley Golf Course, including:
a) 0.68 acre parcel; b) 18.76 acre parcel; c) 3.24 acre parcel; and d) 1.13 acre parcel;
FMV = \$15,826,000.
5. Two non-contiguous parcels in the area bounded by 24th Avenue South, South 202nd Street and South 204th Street, including: a) 0.08 acre parcel; and b) 0.45 acre parcel;
FMV = \$356,800.

All of the above-referenced property interests have been appraised and “review appraised” to ensure each party receives fair market value.

Port staff has discussed the proposed transaction with the Federal Aviation Administration and are awaiting letter approval.

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EXHIBITS TO THIS MEMORANDUM:

Exhibit 1. Resolution 3617 (declaring Port-owned parcels surplus and authorizing execution of all documents necessary to exchange Port-owned Property for WSDOT-owned property and enter into airspace leases).

Exhibit 2. Four aerial photographs with superimposed drawings depicting locations of subject properties and their relative sizes:

Exhibit 2.1. South map (depicting Port-owned parcels, 0.24 acres, 0.68 acres, 18.76 acres, 3.24 acres, 1.13 acres, 0.08 acres and 0.45 acres).

Exhibit 2.2. North map (depicting WSDOT-owned parcels 1, 1A, 2 and 3).

Exhibit 2.3. Map depicting WSDOT-owned parcel 7 which the Port needs to lease for the Third Runway approach lighting system. **Exhibit 2.4.** Map showing WSDOT-owned Parcel 6, Port-owned remnant (0.02 acres) and Port-owned detention pond site (0.64 acres).

Exhibit 3. WSDOT-Port Property Exchange Agreement and its multiple exhibits: A, B, C-1, C-2, C-3, D, E-1, E-2, E-3, E-4, E-5, F-1, F-2, F-3,

Exhibit A. Legal Descriptions of Port-owned parcels to be surplus and conveyed in fee to WSDOT.

Exhibit B. Legal Descriptions of three WSDOT-owned parcels to be surplus and conveyed in fee to the Port.

Exhibit C-1. Lease for soil nail retaining wall and attached drawing. (The attached drawing depicts the Premises).

Exhibit C-2. Lease for approach lighting system and attached drawing. (The attached drawing depicts the Premises).

Exhibit C-3. Lease for bridge to L-shaped parcel and attached drawing. (The attached drawing depicts the Premises).

Exhibit D. Agreed Upon Values (tables).

Exhibit E-1. Quitclaim Deed from Port to WSDOT (conveying parcels of 0.08 acres and 0.45 acres identified by WSDOT Parcel #1-16825).

Exhibit E-2. Quitclaim Deed from Port to WSDOT (conveying parcels of 0.68 acres, 18.76 acres, 3.24 acres and 1.13 acres identified by WSDOT Parcel #1-16827).

Exhibit E-3. Quitclaim Deed from Port to WSDOT (conveying parcel of 0.24 acres identified by WSDOT Parcel #1-16852).

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Exhibit E-4. Quitclaim Deed from Port to WSDOT (conveying parcel of 0.02 acres identified by WSDOT Parcel #1-16884).

Exhibit E-5. Quitclaim Deed from Port to WSDOT (conveying parcel of 0.64 acres identified by WSDOT Parcel #1-22568).

Exhibit F-1. Quitclaim Deed from WSDOT to Port (conveying parcel of 2.32 acres identified as Parcel 1 in Table of Agreed Upon Values and by IC #1-17-03329).

Exhibit F-2. Quitclaim Deed from WSDOT to Port (conveying parcel of 3.76 acres identified as Parcel 2 in Table of Agreed Upon Values and by IC #1-17-07989).

Exhibit F-3. Quitclaim Deed from WSDOT to Port (conveying parcel of 0.25 acres identified as Parcel 6 in Table of Agreed Upon Values and by IC #1-17-07993).

Exhibit 4. Golf course-related lease of 6.16 acres, attaching marked-up right-of-way plan sheets and aerial depiction of Premises.

Key to looking at aerial photographs and distinguishing among the parcels:

The best way to distinguish between the Port-owned parcels is to pay attention to the size of the parcels. The Port-owned parcels are depicted in yellow in the aerial at Exhibit 2.1 and depicted in yellow in the aerial at Exhibit 2.4.

Please do not be confused by the WSDOT parcel number designations. We use WSDOT's number designations to refer to the Port-owned parcels in the Property Exchange Agreement and in the conveyance documents to accommodate WSDOT's need for these references.

Please also look to parcel size when distinguishing between the WSDOT-owned parcels. On the aerial at Exhibit 2.2, you will see in red or blue outline the following: WSDOT-owned 2.32 acre parcel (designated Parcel 1); WSDOT Premises (designated Parcel 1A); WSDOT-owned 3.76 acre parcel (designated Parcel 2); and WSDOT Premises (designated Parcel 3).

On the aerial at Exhibit 2.3, you will see in yellow and pink outline WSDOT Premises (designated Parcel 7) to be used for maintenance and operation of the Third Runway approach lighting system. On the aerial at Exhibit 2.4, you will see in red outline the WSDOT-owned 0.25 acre parcel (designated Parcel 6). The WSDOT-owned parcels that are the subject of the proposed transaction are not numbered consecutively. The parties are aware that numbers 4 and 5 are missing. The numbering was deliberate on the part of WSDOT.

LEGAL AUTHORITY:

Under state law, a port district may sell and convey any of its real or personal property valued at more than ten thousand dollars when the Port Commission has, by resolution, declared the property to be no longer needed for district purposes. RCW 53.08.090. See also Chapter 14.08 RCW. Under RCW 39.33.010, the Port "may sell, transfer, exchange, lease or otherwise dispose of any property, real or personal, ... to the state or any municipality or any political subdivision

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thereof, or the federal government, on such terms and conditions as may be mutually agreed upon ...” Under Washington common law, the courts are likely to defer to the Commission’s determination that consideration is adequate.

BUSINESS PLAN OBJECTIVES:

- Enable WSDOT to proceed with the SR 509 extension project on an incremental basis.
- Enable the Port to secure property and agreements for current and future projects while enhancing a needed regional transportation project.

FINANCIAL ANALYSIS AND IMPLICATIONS:

The swap is designed to be a non-cash transaction. The Port and WSDOT’s property interests will be exchanged at one time via fee title conveyances and leases. The total fair market value of the parcels that the Port would convey to WSDOT exceeds the total fair market value of the parcels that the Port would receive from WSDOT by **\$758,072** (“WSDOT’s payment obligation”).

Under the proposed comprehensive land exchange agreement and Airspace lease agreements identified above in items D, E, and F, WSDOT’s payment obligation would be satisfied by the application of rent credit toward the Port’s lease payment obligations. Upon the transfer of title of the land subject to the Property Exchange Agreement, the total rent credit available for allocation among the leases would be \$758,072, which equals WSDOT’s payment obligation. The rate of depletion of the available rent credit will depend on how frequently and by how much WSDOT chooses to readjust the rent. Under the proposed lease agreements, WSDOT may, at its option, adjust rent every year based on the change in the U.S. Consumer Price Index for All Urban Consumers or based on appraisal to determine change in comparable rents.

In the event that WSDOT terminates a lease before WSDOT’s payment obligation is satisfied, the rent credits may be extended on the remaining lease(s), or extended to the cost of acquiring easements over leased Premises, or WSDOT may choose to satisfy the remaining obligation by making cash payment. In any event, WSDOT’s payment obligation would be durable and would survive the proposed land exchange agreement.

With respect to the lease of 6.16 acres in the vicinity of Tyee Valley Golf Course, the funding source for the Port’s lease payment obligation would be the rental income received by the Port from the golf course operator/Concessionaire. That lease is structured as a concession with the golf course operator paying the Port 4% of Gross Revenues. Rent owed by the Port to WSDOT will be a percentage of the rental income paid to the Port by the Concessionaire equivalent to the ratio of the total acreage leased to the Concessionaire that is owned by WSDOT. Currently, the ratio of Leased Premises owned by WSDOT (6.16 acres) to total acres comprising the Tyee Valley Golf Course (117.5 acres) is 5.24%. As such, the rent owed to WSDOT would be 5.24 percent of the rental income paid to the Port. The rent could vary depending on changes to Gross

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Revenues, concession fees and the ratio of Leased Premises to total acres leased for golf course operations.

For accounting and financial reporting purposes, there will be a variance between the fair market value of the property that the Port will receive from WSDOT and the net book value of the property that the Port will convey to WSDOT. The Port will likely recognize a gain on the sale. The amount of any such gain will be calculated when the transaction is booked.

ALTERNATIVES CONSIDERED:

- Do-Nothing – Under this alternative the Port would not execute the documents necessary for the land swap with WSDOT. As a result, it would be less likely the SR 509 freeway expansion would be funded in the future and any parcels of land the Port needs from WSDOT would require cash payments. This is not the recommended alternative.
- Complete the Agreement – Under this alternative the Port would execute the necessary documents to exchange the property interests as described above and ensure maximization of the benefits for both the SR 509 project and Aviation projects. This is the recommended alternative.

ENVIRONMENTAL:

The Port's environmental consultants conducted Phase I Environmental Site Assessments on the three WSDOT-owned parcels that WSDOT would convey in fee to the Port under the proposed Property Exchange Agreement. The assessments did not reveal any recognized environmental conditions as defined by the American Society of Testing and Materials (ASTM). The assessments were conducted in accordance with the guidelines of ASTM as identified in its Standard Practice for Environmental Site Assessment Process, E 1527-05 (as currently applied in the state of Washington). This standard, while subject to changes, is recognized as generally meeting the due diligence provisions of the federal statute [Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)] and the Washington State Model Toxics Control Act (MTCA) in place at the time the assessments were performed.

TRIPLE BOTTOM LINE:

The land swap and lease agreements will reduce the Port's costs for a number of current and envisioned Aviation projects. The proposed transaction will result in reduced costs for the Rental Car Facility project, allow completion of the North Airport Expressway improvements, and will expand opportunities to develop property in the future for additional non-airline revenue. The proposed property exchange also includes the lease of Premises for the maintenance and operation of the Third Runway north approach lighting system. The swap will avoid the need to budget cash for these current and future projects. The environmental and community impacts review for each project will be identified and addressed as each project comes before the Commission.

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PREVIOUS COMMISSION ACTIONS OR BRIEFINGS:

- In October 2007, the Commission authorized the execution of a Memorandum of Understanding with WSDOT to negotiate the transfer of properties needed by WSDOT for the SR 509 extension in exchange for the properties and airspace leases needed by the Port for current and future Aviation projects.
- On May 12, 2009, the Commission held a public briefing by staff regarding the proposed transaction.