

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA
ACTION ITEM

Item No.: 6A

Date of Meeting: December 7, 2010

DATE: November 19, 2010

TO: Tay Yoshitani, Chief Executive Officer

FROM: Joe McWilliams, Managing Director, Real Estate Division

SUBJECT: Sale of easements to Puget Sound Energy for north and south sections of Woodinville Subdivision Rail Corridor

PROCEEDS OF SALE: \$13,752,393 minus closing costs

ACTION REQUESTED:

Approve the sale and conveyance to Puget Sound Energy (“PSE”) of those certain permanent easement rights to the Woodinville Subdivision rail corridor substantially as described in Exhibit B and Exhibit C to the Easement Purchase and Sale Agreement and authorize the Chief Executive Officer to execute all documents necessary for sale and conveyance of said easement rights.

SYNOPSIS:

Commission authorization is requested to proceed with the sale and conveyance of certain easement rights in the north and south sections of the Woodinville Subdivision rail corridor to PSE for \$13,752,393. This request is consistent with the regional transaction between the Port, City of Redmond, King County, Sound Transit, Cascade Water Alliance and PSE (“Regional Partners”) to share in the costs of the acquisition of the Woodinville Subdivision rail corridor (aka “Eastside Corridor”). The Port and PSE will split the closing costs. Closing is anticipated by or before December 31, 2010. PSE staff has indicated that it is critical that the transaction closes by the end of the year as the funds budgeted for purchase of the easement rights in 2010 will not be available in 2011.

BACKGROUND:

The Port acquired the Eastside Corridor on December 18, 2009, from BNSF Railway. Prior to finalizing the acquisition, the Port and the Regional Partners agreed that they all had an interest in obtaining rights to use the Eastside Corridor and share in the cost of acquiring it for public ownership. This agreement was memorialized in a Memorandum of Understanding dated November 11, 2009. On February 23, 2010, the Commission authorized a Memorandum of Understanding between the Regional Partners regarding the appraisal of the Eastside Corridor.

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In June 2010, the Port and the City of Redmond reached agreement for the sale of a portion of the Redmond Spur segment of the Eastside Corridor for \$10,000,000. That segment of the Eastside Corridor is now owned by the City of Redmond and is not included in the easements for the north and south sections of the Eastside Corridor which the Port wishes to convey to PSE.

While the other Regional Partners are negotiating other aspects of the transaction that do not involve PSE, the Port and PSE staff have reached agreement for the sale of certain permanent easement rights in the north and south sections of the Eastside Corridor. The terms of the purchase and sale of said easement rights are set forth in the Easement Purchase and Sale Agreement. The Port-owned property, commonly known as the Woodinville Subdivision, is legally described in Exhibit A of the Easement Purchase and Sale Agreement. The easement rights to the north section are described in Exhibit B (referred to as the “North Rail Line Easement”). The easement rights to the south section are described in Exhibit C (referred to as the “South Rail Line Easement”).

NORTH RAIL LINE EASEMENT:

The easement would give PSE the right to use the Easement Area for construction, operation, maintenance, repair, replacement, improvement, removal, enlargement of one or more utility systems to transmit, distribute and sell electricity and gas.

The Port would be obligated to indemnify PSE for “any and all loss, liability, claim, damage and expense suffered or incurred by reason of” Port’s negligence; Port’s failure to make available its interests in the Easement Area to accommodate reactivated freight rail service; breach of any representation, warranty or agreement of Port set forth in the easement agreement; the Port’s failure to perform any obligation required by the easement agreement; and the class action lawsuit, *Lane v. Port of Seattle*, Case No. 10-2-25591-5.

SOUTH RAIL LINE EASEMENT:

The easement would give PSE the right to use the Easement Area for construction, operation, maintenance, repair, replacement, improvement, removal, enlargement of one or more utility systems to transmit, distribute and sell electricity and gas.

The Port would be obligated to indemnify PSE for “any and all loss, liability, claim, damage and expense suffered or incurred by reason of” Port’s negligence; Port’s failure to make available its interests in the Easement Area to accommodate reactivated freight rail service; breach of any representation, warranty or agreement of Port set forth in the easement agreement; the Port’s failure to perform any obligation required by the easement agreement; and the class action lawsuit, *Lane v. Port of Seattle*, Case No. 10-2-25591-5.

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SCOPE OF PURCHASE AND SALE AGREEMENT:

Anticipated Closing Date: On or before December 31, 2010.

Sale Price: \$13,752,393 to be paid to the Port

If at any time subsequent to closing, a final judicial decree (or similar judicial order or government action) and/or reactivation of freight (or similar action or process) nullifies all or any portion of the Port's acquisition of the Port-owned property, commonly known as the Woodinville Subdivision, and consequently, affects all or any portion of the easement rights, upon 15 days' written notice from PSE, the Port will reimburse PSE the full amount of the purchase price. If such action nullifies only a portion of the Port's acquisition of the Woodinville Subdivision, and consequently, only a portion of the easement rights, the full reimbursement will be reduced by the appraised value of the affected portion. Reimbursement by the Port of the purchase price would terminate the easement agreements and consequently the Port's indemnification obligations.

OTHER DOCUMENTS ASSOCIATED WITH THIS REQUEST:

Easement Purchase and Sale Agreement between Port and PSE – draft form.

- Exhibit A (legal description of the Property to which the Port is conveying easement rights) – to be prepared by PSE
- Exhibit B (North Rail Line Easement) – draft form
- Exhibit C (South Rail Line Easement) – draft form

PREVIOUS COMMISSION ACTION:

- November 5, 2009, Port Commission authorized execution of a Memorandum of Understanding between the Port and the Regional Partners Regarding Acquisition of the Woodinville Subdivision.
- February 23, 2010, Port Commission authorized a Memorandum of Understanding between the Regional Partners Regarding Joint Appraisal of the Woodinville Subdivision.
- June 8, 2010, First Reading of Resolution No. 3638 declaring certain real property located in the City of Redmond and unincorporated King County as surplus and no longer needed for Port purposes and authorizing the Chief Executive Officer to execute all documents necessary for the transfer to the City of Redmond.
- June 22, 2010, public hearing and Second Reading and Final Passage of Resolution No.

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3638, as amended declaring certain real property located in the City of Redmond and unincorporated King County (a portion of the Redmond Spur segment of the Woodinville Subdivision) surplus and no longer needed for Port purposes, and authorizing the Chief Executive Officer to execute all documents necessary for its transfer to the City of Redmond.