

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA
ACTION ITEM

| | |
|------------------------|----------------------|
| Item No. | <u>5d</u> |
| Date of Meeting | <u>June 26, 2012</u> |

DATE: June 18, 2012

TO: Tay Yoshitani, Chief Executive Officer

FROM: Craig Watson, General Counsel *CRW*
Elizabeth Leavitt, Director, Aviation Planning and Environmental Programs *EL*

SUBJECT: Purchase of four adjacent tax lots owned by Nick Properties LLC and located northwest of Sea-Tac International Airport in 15400 block of Des Moines Memorial Drive for fair market value of \$1,238,000.00, with closing contingent on release of claims filed against the Port by RST Enterprises Inc.

Amount of This Request: \$1,600,000 **Source of Funds:** Airport Development Fund

Est. State and Local Taxes: \$17,000 **Est. Jobs Created:** 10

Est. Total Project Cost: \$1,600,000

ACTION REQUESTED:

Request Commission authorization for the Chief Executive Officer to (1) settle claims filed by RST Enterprises Inc. through authorization of the purchase of four adjacent tax lots owned by Nick Properties LLC for fair market value of \$1,238,000.00, with closing contingent on release of claims; and (2) execute all documents necessary for purchase and conveyance of said property as well as authorize the post-acquisition costs related to demolition of existing improvements on said property and site stabilization/restoration in the amount of \$362,000 for total authorized amount of \$1,600,000. The terms of the purchase and sale agreement for which approval is requested shall be as substantially set forth in the attached agreement; the property proposed for purchase is described in exhibits A-1, A-2, A-3, and A-4 to the proposed agreement; and the terms of the release of claims shall be as substantially set forth in exhibit B to the proposed agreement.

SYNOPSIS:

This request for Commission authorization for purchase and post-acquisition costs arises out of the General Counsel's recommendation to settle claims filed by RST Enterprises Inc. The four tax lots that are the subject of the acquisition are adjacent to the Port-owned Vacca Farm Mitigation Site which the Port acquired more than eight years ago to meet wetland mitigation requirements related to construction of the third runway at the Airport. RST filed a tort claim and threatened to file a lawsuit complaining about flooding, drain pipe maintenance and drainage issues, as well as the Port's wetland mitigation activities related to the Port's Third Runway

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Project and issues outlined in the Cherry Creek Environmental Report of findings following a hydrologic evaluation in February 2008.

The General Counsel's recommendation is to settle the claims and obtain a release from RST Enterprises Inc. and Nick Properties LLC by purchasing the subject property for fair market value of \$1,238,000.00.

The cost of the settlement was included in the 2012-2016 capital budget and is being funded by an open Third Runway CIP.

BACKGROUND:

Over the last five-plus years, Port staff has evaluated RST's claims, considered alternatives to resolving RST's complaints and, since receiving RST's formal claim in February 2010, have also evaluated the Port's liability exposure and the potential cost of defending litigation. The Port obtained an updated appraisal from MAI appraiser Christopher Eldred for a valuation of the property at \$1,238,000 as of May 5, 2012. The Port has also completed environmental due diligence.

Until July 2010, RST owned the subject property, but RST conveyed the subject property to Nick Properties LLC, a related entity. James Terrile is the President and CEO of RST as well as the Managing Member of Nick Properties LLC and would have authority to sign on behalf Nick Properties LLC for sale of the subject property to the Port and would also have authority to sign on behalf of both entities to provide the release of claims. Closing of the real estate transaction would be contingent on the Port obtaining a release and documents establishing authority to sign and convey property. Closing is anticipated by or before August 31, 2012.

RST and Nick Properties LLC will provide notice to their tenants and the property will be acquired free of tenancies, or any encumbering leases or other agreements. The subject property is being acquired without environmental indemnification since the environmental due diligence did not find contamination of concern to the Port.

The Port anticipates that the subject property will be useful to meet wetland mitigation requirements for future projects in the event wetlands are affected and mitigation is required or to meet additional mitigation requirements arising out of past projects. Land for wetland mitigation is scarce in the Miller Creek basin so the subject property has value beyond its fair market value in that it serves the Port's strategic objectives of environmental stewardship.

In addition, the Port anticipates that some of the subject property could be useful as construction laydown area for materials and equipment and for staging future construction projects and may have development potential. This serves the Port's strategic objective of ensuring Airport vitality.

The subject property consists of four adjacent tax lots located along the east side of Des Moines Memorial Drive, in the 15400 block of this arterial, adjacent to the Port-owned Vacca Farm

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Mitigation Site. King County records indicate that the overall site area totals 148,892 square feet, or 3.42 acres. The existing structures are, or have been, used for recycling and vehicle maintenance as well as residential use.

A wetland technical report for most of the subject property was prepared by ESA Adolfson (ESA) in October 2010, which found that the property is in the upper portion of the Miller Creek drainage basin and that of the property's total area, approximately 66,330 square feet of the northern and eastern portions of the site is encumbered by wetland, wetland buffer, and stream buffer. The presence of these sensitive areas limits the site's potential for commercial development, but does not totally preclude development. Most of the property is located within the 100-year flood plain as established by the Federal Emergency Management Agency (FEMA). Under zoning, no structures may be built in the 100-year flood plain unless they conform with requirements in the zoning code.

The appraisal performed by Chris Eldred is based on 82,562 square feet of usable land (not counting the portions of the subject property encumbered by wetland, wetland buffer, and stream buffer). The value conclusion is thus 82,562 sf @ \$15 per sf or \$1,238,000.00.

PROJECT JUSTIFICATION:

Project Objectives:

- Settlement and release of claims while avoiding the cost of defending litigation.
- Purchase of subject property for fair market value.
- Environmental stewardship by acquisition of subject property useful to meet future wetland mitigation requirements.
- Ensuring Airport vitality by acquisition of subject property useful for construction laydown area for future construction projects.
- Preparing subject property for Port's intended uses by demolishing existing improvements, restoring and stabilizing the site by removing any weeds and doing any necessary planting.

PROJECT SCOPE OF WORK AND SCHEDULE:

Scope of Work:

Acquisition is pending based on Commission authorization. Demolition and site stabilization will follow.

Schedule:

| | |
|-------------------------------|-------------------------|
| Acquisition | August- 2012 |
| Demolition/Site Stabilization | September-December 2012 |

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FINANCIAL IMPLICATIONS:

Budget/Authorization Summary:

| | Capital | Expense | Total Project |
|--|-------------|---------|---------------|
| Original Budget | \$1,600,000 | \$0 | \$1,600,000 |
| Previous Authorizations | \$0 | \$0 | \$0 |
| Current request for authorization | \$1,600,000 | \$0 | \$1,600,000 |
| Total Authorizations, including this request | \$1,600,000 | \$0 | \$1,600,000 |
| Remaining budget to be authorized | \$0 | \$0 | \$0 |
| Total Estimated Project Cost | \$1,600,000 | \$0 | \$1,600,000 |

Project Cost Breakdown:

| | This Request | Total Project |
|------------------------------------|--------------|---------------|
| Acquisition | \$1,238,000 | \$1,238,000 |
| Construction | \$260,000 | \$260,000 |
| Construction Management | \$40,000 | \$40,000 |
| Design | \$0 | \$0 |
| Project Management / Environmental | \$40,000 | \$40,000 |
| Permitting | \$5,000 | \$5,000 |
| State & Local Taxes (estimated) | \$17,000 | \$17,000 |
| Total | \$1,600,000 | \$1,600,000 |

Budget Status and Source of Funds:

While the Third Runway became operational in November 2008, the Port has maintained open CIPs recognizing that not all project obligations have been met. CIP #C001760, New Runway Land Acquisition, was included in the 2012 – 2016 capital budget and plan of finance with adequate remaining budget to meet this requested action. The source of funding for this project is the Airport Development Fund (ADF).

Financial Analysis and Summary:

| | |
|---------------------------------------|---|
| CIP Category | Compliance |
| Project Type | Environmental |
| Risk adjusted discount rate | N/A |
| Key risk factors | N/A |
| Project cost for analysis | \$1,600,000 |
| Business Unit (BU) | Airfield |
| Effect on business performance | NOI after debt service will increase |
| IRR/NPV | N/A |
| CPE Impact | CPE will increase by less than \$.01, but no change to business plan forecast as this project was included. |

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STRATEGIC OBJECTIVES:

- Environmental stewardship by acquisition of subject property useful to meet future wetland mitigation requirements.
- Ensuring Airport vitality by acquisition of subject property useful for construction laydown area for future construction projects.

ENVIRONMENTAL SUSTAINABILITY:

Acquisition of the subject property promotes environmental sustainability in that most of the property will likely become wetland and be protected and preserved for wetland mitigation. It is adjacent to the Port's Vacca Farm Mitigation site and lies within the Miller Creek basin where land for wetland mitigation is scarce.

BUSINESS PLAN OBJECTIVES:

Not Applicable. This is an acquisition that is part of a settlement of claims so mainly addresses legal risk but has the benefit of an acquisition for wetland mitigation and other uses that are consistent with the Port's environmental stewardship objective.

TRIPLE BOTTOM LINE SUMMARY:

Legal risk is addressed, release of claims obtained, and defense of litigation costs are avoided. At the same time, the Port purchases for fair market value property that the Port anticipates will be useful to meet future wetland mitigation requirements associated with Port projects that ensure the vitality of the Airport. Port coincidentally protects and preserves the subject property for future wetland mitigation, exhibiting environmental stewardship.

ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS:

Alternatives have been considered as discussed in attorney-client privileged communications.

OTHER DOCUMENTS ASSOCIATED WITH THIS REQUEST:

- Purchase and Sale Agreement with legal descriptions of the four adjacent tax lots at exhibits A-1, A-2, A-3, and A-4.
- Terms of release [of claims] at exhibit B to purchase and sale agreement.
- Map of area showing property.

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS:

- None.