

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA
STAFF BRIEFING

Item No. 7a
Date of Meeting July 24, 2012

DATE: July 17, 2012
TO: Tay Yoshitani, Chief Executive Officer
FROM: Michael Burke, Director, Seaport Leasing and Asset Management
SUBJECT: Exchange of Real Property with the BNSF Railway Company at Terminal 5.

SYNOPSIS:

The Port of Seattle (Port) and BNSF Railway Company (BNSF) entered into a Memorandum of Agreement (MOA) and a Letter Agreement (Agreement) on May 31, 1994. Pursuant to the Agreements, the Port and BNSF have certain obligations in connection with the exchange of property between the parties. Specifically, in exchange for BNSF's agreement to provide the property requested by the Port for the expansion of Terminal 5, the Port agreed to provide BNSF with replacement property and track of sufficient space and condition to support existing rail operations and required operating capacity to support shipping at BNSF's Buckley Yard. The Port and BNSF are now ready to enter into an Exchange Agreement (Exchange Agreement) and complete the exchange of property contemplated in the Agreements. The value of land and easements that the Port will convey and grant to BNSF is \$8,814,000. The value of land and easements that BNSF will convey and grant to the Port is \$7,323,500. The net difference in the exchange is \$1,490,500 worth of property rights in favor of BNSF.

The Exchange Agreement includes the following:

- The Port will convey 10.97 acres to BNSF together with all right, title and interest of the Port to those un-vacated streets and alleys abutting the Port property conveyed to BNSF.
- BNSF will convey to the Port 9.33 acres.

BACKGROUND:

In the early 1990s, American President Lines (APL) put out a request for proposals (RFP) for an expanded gateway to complement its facility in Southern California. At that time, the competition was between Oakland, Tacoma, and Seattle. The existing configuration at Terminal 5 did not meet the requirements of the RFP due to the limitations of terminal size with the existing BNSF West Seattle yard. The Port developed a proposed terminal that met APL's requirements by proposing to relocate the BNSF yard west and making that yard parallel with the Terminal 5 dock. This proposed relocation put a bend in the BNSF yard reducing its efficiency. Since the Port had no condemnation rights over a railroad it was necessary to reach

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agreement with BNSF on the land swap and yard relocation. Without this agreement, there would have been no Terminal 5 expansion.

The executed agreements in 1994 were the starting point for a set of extremely complex business relationships between BNSF, competitor railway Union Pacific, and the City of Seattle requirements to accommodate the relocation by stipulating the terms for future street vacations to accommodate the improvements to Terminal 5. Due to the foregoing, including state-mandated environmental impact review and the magnitude of the rail yard relocation, it is not unusual for railway relocations to take a long time to complete. A substantive and relevant issue embedded in the business relationships includes the fact that BNSF was not compelled to complete this transaction, and in fact, had little motivation or business requirements to pursue this change to its operating rail “footprint.”

The \$1,490,500 worth of property rights in favor of BNSF represents the value of the additional land and easements needed to provide BNSF with operationally equivalent replacement property of sufficient space, track radius, and condition to support existing rail operations and future port capacity at BNSF's Buckley Yard in accordance with the Agreements. The imbalance in the amount of land being exchanged between the parties (an additional 1.64 acres of land in favor of BNSF) is a result of the reconfiguration of the rail yard within the Buckley Yard by the Port.

The Port has also agreed to pay closing costs associated with the land exchange, as additional consideration to induce BNSF to complete the exchange. Specifically, the Port will pay the excise tax on the land being transferred from BNSF to the Port in the estimated amount of \$130,000 and the Port will pay BNSF's share of the recording and escrow fee in the estimated amount of \$1,600. BNSF will reimburse the Port \$111,000 for half of the Port's survey related expenses associated with engineering and survey work.

OTHER DOCUMENTS ASSOCIATED WITH THIS BRIEFING:

- PowerPoint Presentation.

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS:

June 22, 1993 – the Port Commission authorized the Executive Director to execute both the Sixth Amendment to Lease No. L-1648 with American President Lines, Ltd, and the Memorandum of Agreement with Burlington Northern Railroad.