



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

December 15, 2009

Ordinance 16738

Proposed No. 2009-0644.2

**Sponsors Phillips, Hague, Ferguson,
Patterson and Lambert**

1 AN ORDINANCE requesting the executive negotiate
2 contracts for up to \$26,500,000 in additional property
3 interests in the Burlington Northern Santa Fe Eastside Rail
4 Corridor that are generally consistent with the terms of the
5 Memorandum of Understanding Regarding Acquisition of
6 the Woodinville Subdivision among the Port of Seattle,
7 King County, Sound Transit, the city of Redmond, Puget
8 Sound Energy and the Cascade Water Alliance.

9 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

10 **SECTION 1. Findings:**

11 A. The Burlington Northern Santa Fe ("BNSF") East Side Rail corridor ("ERC")
12 is a forty-seven-mile railroad line within King County that extends through the cities of
13 Renton, Newcastle, Bellevue, Kirkland, Redmond, Woodinville and unincorporated King
14 County, in part along Lake Washington and adjacent to several public park facilities, into
15 Snohomish county to the city of Snohomish.

16 B. Since 2003, when BNSF announced its intent to sell the corridor to either
17 public or private entities, King County has been negotiating with BNSF to preserve this
18 vital corridor in public ownership for transportation, recreational trail and other
19 compatible uses.

20 C. On July 11, 2005, the metropolitan King County council unanimously
21 approved Ordinance 15233, authorizing the ERC acquisition project for the preservation
22 of transportation right-of-way in eastside King County cities.

23 D. On December 17, 2007, the metropolitan King County council approved
24 Ordinance 15995, finding in part that King County desires to preserve this unique and
25 valuable transportation corridor in public ownership in perpetuity, and authorizing the
26 King County executive to negotiate and execute agreements with the Port of Seattle to
27 accomplish that end.

28 E. In May 2008, the metropolitan King County council approved Ordinance
29 16084, authorizing the King County executive to execute real estate transactions with
30 BNSF and the Port of Seattle for the corridor. An element of these real estate
31 transactions includes King County purchasing a Multipurpose Public Easement over part
32 of the corridor from the Port of Seattle for \$1,903,000 for trail uses, and receiving
33 \$500,000 in reimbursement for the county's due diligence efforts. Before the adoption of
34 Ordinance 16084, the Port advised the council that in the future the Port would be
35 seeking additional funding partners for this vital corridor.

36 F. As authorized by Ordinance 16084, the county and the Port of Seattle are
37 preparing to close these real estate transactions in December 2009 in accordance with the
38 approved and executed agreements.

39 G. The county received notice that the Port of Seattle's business model no longer
40 could sustain the overall purchase of the ERC and, therefore, before closing these real
41 estate transactions, the county and the Port identified additional regional partners,
42 including the city of Redmond, Sound Transit, Puget Sound Energy and Cascade Water

43 Alliance, who could contribute funds to preserve the ERC for mutual shared interests
44 such as: infrastructure improvements that make the region more globally competitive;
45 improved freight mobility and public transportation, both motorized and non-motorized;
46 the promotion of tourism and recreational activities in the region; and the enhancement of
47 mobility, air quality and healthy lifestyles through development of additional alternative
48 transportation modalities.

49 H. The partners, King County, the Port of Seattle, the city of Redmond, Sound
50 Transit, Puget Sound Energy and Cascade Water Alliance, have negotiated a
51 memorandum of understanding ("MOU"), which establishes a new vision to preserve the
52 BNSF corridor after the Port acquires it from BNSF. The MOU is Attachment A to this
53 ordinance. Pursuant to the MOU, after the Port acquires the ERC from BNSF, the
54 partners will negotiate to acquire distinct real property interests in the corridor in a
55 subsequent set of transactions. It is expected that the partners will agree to contracts to
56 acquire such interests. Following the completion of negotiations, approval by the King
57 County council will be sought by the executive to carry out the proposed transactions.

58 I. It is in the best interest of King County to take such steps as are necessary to
59 bring the BNSF corridor into public ownership under such terms and conditions as will
60 preserve the corridor in perpetuity for transportation, recreational trail use and other
61 compatible uses.

62 J. King County is using \$1,903,000 of conservation futures tax revenue to obtain
63 the Multipurpose Public Easement for nonmotorized transportation and recreational trail
64 purposes, as authorized by Ordinance 16084. The acquisition of this easement will

65 enable King County to fulfill its functions as the federally designated "Trail Sponsor" for
66 the corridor.

67 K. The King County conservation futures tax levy fund has financial capacity
68 sufficient to acquire additional property interests in the ERC.

69 L. King County operates local and express bus, trolley and streetcar, passenger-
70 only ferry and fixed-guideway and variable-route high capacity transit services
71 throughout the county.

72 M. King County public transportation funds have fund capacity sufficient to
73 acquire transit interests in the corridor without adversely affecting the delivery of transit
74 service.

75 N. It is in the interest of King County to preserve remaining interests in the
76 corridor without specific predetermination of the uses. However, a regional planning
77 process as envisioned under Ordinances 15995 and 16084 is of critical import to the
78 success of the corridor acquisition and operation, and is to be agreed to by the partners.

79 SECTION 2. The King County executive is requested to negotiate contracts to
80 acquire additional property rights in the BNSF Eastside Rail corridor as contemplated in
81 the MOU that is Attachment A to this ordinance, for an amount up to \$26.5 million, and
82 to transmit to the metropolitan King County council an ordinance approving such
83 contracts. The ordinance shall contain a regional planning process as identified in
84 Ordinances 15995 and 16084.

85 SECTION 3. Before transmitting to the metropolitan King County council an
86 ordinance to approve contracts for King County to acquire additional property rights in
87 the BNSF Eastside Rail Corridor, the King County executive shall evaluate whether the

88 additional property rights in the corridor may be acquired with a mix of funding sources
89 that would better provide for dual uses, such as a regional trail and county transportation
90 uses. Such an evaluation will consider the property rights to be acquired and the manner

91 in which the county may use those property rights. The ordinance shall include an
92 appropriation of up to \$26.5 million from the funding sources identified by the executive.

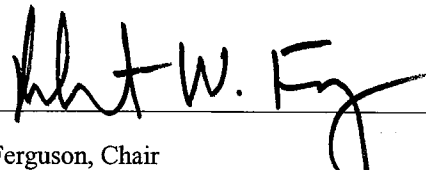
Ordinance 16738 was introduced on 11/23/2009 and passed by the Metropolitan King County Council on 12/14/2009, by the following vote:

Yes: 7 - Mr. Phillips, Mr. von Reichbauer, Mr. Gossett, Ms. Hague,
Ms. Patterson, Mr. Ferguson and Mr. Dunn

No: 0

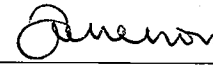
Excused: 1 - Ms. Lambert

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON




Bob Ferguson, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this 22nd day of December, 2009.



Dow Constantine, County Executive

RECEIVED
2009 DEC 22 PM 4:11
CLERK
KING COUNTY COUNCIL

Attachments: A. Memorandum of Understanding Regarding Acquisition of the Woodinville Subdivision, B. Adopted Ordinance 16312, Section 125: General Government Capital Improvement Program

MEMORANDUM OF UNDERSTANDING
Regarding Acquisition of the
Woodinville Subdivision

This MEMORANDUM OF UNDERSTANDING is made by and among the Port of Seattle, a Washington municipal corporation ("Port"), Sound Transit, a regional transit authority ("Sound Transit"), King County, a political subdivision of Washington ("King County"), the City of Redmond, a Washington municipal corporation ("Redmond"), the Cascade Water Alliance, a Washington non-profit corporation ("Cascade"), and Puget Sound Energy, Inc., a Washington corporation ("PSE") (collectively, the "Parties") as of the 5th day of November, 2009.

WHEREAS:

(A) BNSF desires to sell in part and donate in part the Woodinville Subdivision, which is a railroad corridor extending from the City of Renton northerly to the City of Snohomish, and including a spur corridor extending from the City of Woodinville to the City of Redmond; and

(B) The Port, King County and BNSF previously executed a purchase and sale agreement and donation agreement for the acquisition and partial railbanking of the Woodinville Subdivision; and

(C) Additional regional partners have been identified to share in the cost of acquiring the Woodinville Subdivision for public ownership; and

(D) The alignments under consideration for Sound Transit's Eastlink light rail project require property rights within the Woodinville Subdivision; and

(E) Sound Transit, Redmond, Cascade and PSE have each expressed an interest in participating in the acquisition and preservation of the Woodinville Subdivision in public ownership for recreational trail use, as well as for use as a public transportation and utility corridor.

(F) It is the express purpose of Sound Transit, King County, and Redmond, that the Woodinville Subdivision be developed and operated to ensure that it is available for the dual purposes of recreational trail and public transportation use; and

(G) Consistent with federal railbanking requirements, King County and Redmond have interests in developing a recreational trail within the Woodinville Subdivision; and

(H) The financial contributions to be made by the Port, King County, Sound Transit and Redmond towards this collective acquisition may not be in proportion to the fair market value of the rights in the Woodinville Subdivision that are expected to be received by these entities and, in all instances, the fair market value of the rights to be received by each governmental entity in the Woodinville Subdivision may materially exceed the amount of such entity's respective financial contribution.

NOW, THEREFORE, the Parties have reached the following understanding:

SECTION 1. Purpose.

The Port intends to close its acquisition of the Woodinville Subdivision in 2009. The Parties have envisioned and are working to complete a future transaction for their mutual benefit and for the benefit of the public. The Parties wish to set forth their understandings in this Memorandum of Understanding ("MOU") with respect to their respective interests in the transaction. This MOU is a non-binding document that creates no rights and imposes no obligations on any Party. While the Parties are committed to working cooperatively, expeditiously and efficiently to document the components of the transaction through binding agreements ("Agreements") using this MOU as a guide, the allocation of interests described in this MOU are tentative and subject to review and modification as the Parties move forward with their discussions.

SECTION 2. Key Acquisition Elements.

The key elements of the proposed transaction are as follows:

2.1 This transaction concerns the portion of the Woodinville Subdivision main line corridor between Renton and Snohomish (approximately mile posts 5.0 and 38.4), and a spur corridor between Woodinville and Redmond (between approximately mile posts 0.0 and 7.3) ("Redmond Spur"). Collectively, the main line corridor and the Redmond Spur constitute the "Woodinville Subdivision." The portion of the Woodinville Subdivision north of mile post 23.8 in Woodinville to milepost 38.4 in Snohomish County is referred to as the "Freight Portion." The portion of the Redmond Spur between approximately mileposts 0.0 and 3.1 is referred to as the "County Portion of the Redmond Spur." The portion of the Redmond Spur between approximately mileposts 3.1 and 7.3 is referred to as the "City Portion of the Redmond Spur." Together, the Freight Portion and the Redmond Spur are referred to as the "Northern Portion." The portion of the Woodinville Subdivision south of Woodinville, excluding the Redmond Spur, is referred to as the "Southern Portion." The specific line segments and designated portions will be further defined in the Agreements.

2.2 The Parties have expressed a desire for the future allocation of interests in the Woodinville Subdivision as follows:

2.2.1 The Port will retain, subject to a freight rail easement granted by BNSF to a freight rail operator, all of the title, interest and obligations in the real and personal property of the Freight Portion.

2.2.2 Sound Transit is interested in acquiring a real property interest in the Southern Portion and the Redmond Spur.

2.2.3 King County is interested in acquiring a real property interest in the Southern Portion and the County Portion of the Redmond Spur.

2.2.4 Redmond is interested in acquiring a real property interest in the City Portion of the Redmond Spur.

2.2.5 Cascade is interested in acquiring a utility easement over the Southern Portion and will have the right to negotiate with the County and Redmond for utility easements over the Redmond Spur.

2.2.6 PSE is interested in acquiring utility easements throughout the entirety of the Woodinville Subdivision, except for the City Portion of the Redmond Spur, for PSE's existing and future facilities and infrastructure. For the City Portion of the Redmond Spur, PSE and Redmond anticipate a value for value exchange of perpetual easements for existing PSE facilities and infrastructure within the Redmond right-of-way and Redmond trail facilities on PSE properties, based on the appraised value of the properties in question. Provided, that PSE's new facilities and infrastructure shall be subject to otherwise applicable public approval, construction and permitting processes.

2.3 The identification of which entities will grant and which entities will receive these interests and the order in which these interests will be acquired will be further defined in the Agreements.

SECTION 3. Proposed Key Future Use Elements.

3.1 Freight rail service subject to the jurisdiction of the Surface Transportation Board ("STB") will continue on the Freight Portion.

3.2 Utility corridor uses by PSE and Cascade.

3.3 Interim trail use ("railbanking") will be established on the Southern Portion and the Redmond Spur under the National Trails Systems Act, 16 U.S.C. 1247(d) as of the closing of the Port's transaction with BNSF. The Parties recognize that for any portion subject to railbanking, future local, regional or national transportation needs may require reconstruction and reactivation of the right-of-way for freight rail service. King County will be the trail sponsor for the Southern Portion and the County Portion of the Redmond Spur. The Agreements will provide that in the event Redmond acquires an interest in the City Portion of the Redmond Spur, King County and Redmond will cooperate in seeking Surface Transportation Board authorization for Redmond to assume the role of trail sponsor for the City Portion of the Redmond Spur.

3.4 The Parties intend that the Agreements will provide that, consistent with railbanking, the Southern Portion and the Redmond Spur will, in addition to public trail use, be available for public transportation uses such as high capacity transit or bus transportation. The Freight Portion may be made available for public transportation purposes and recreational trail purposes to the extent consistent with ongoing freight rail operations. Should the Freight Portion ever be proposed for abandonment, the Parties with an interest in the Freight Portion shall cooperate to allow the Freight Portion to be railbanked.

3.5 Upon consummation of the Agreements, a process will be established for the entities with interests in the Southern Portion and the Redmond Spur to periodically meet in order to consult and coordinate activities related to the development, maintenance and use of those portions of the Woodinville Subdivision. Said entities agree to coordinate planning and development activities to the extent possible to ensure effective use of the Southern Portion and the Redmond Spur for the uses outlined in this MOU, based on the ownership interests acquired by

each, and consistent with the express goal of developing and operating a dual use corridor for recreational trail and transit purposes. The Agreements shall ensure that no party may frustrate dual use of the corridor for both public transportation and recreational trail purposes.

3.6 If the Port ever determines to offer or to agree to transfer any or all of the Freight Portion, then Sound Transit, King County and any other public agency in the State authorized to provide transit, rail services or public trails shall have a right of first refusal to acquire such property.

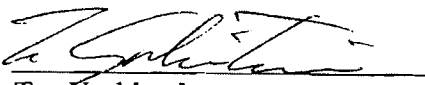
3.7 If BNSF ever determines to offer or to agree to transfer any or all of that portion of the Woodinville Subdivision between approximately mileposts 0-5.0, King County will have the right of first refusal to acquire that portion of such property. If King County acquires this property, it will make it available to the other Parties on terms similar to their interests in the acquired portions of the Woodinville Subdivision.

SECTION 4. Negotiation, Cooperation, and Timing.

4.1. The Parties shall cooperate to (i) reach agreement on press releases and other public announcements related to the transactions described herein, and (ii) make any filings with the STB to the extent such filings are necessary to effectuate the transactions contemplated by this MOU.

4.2 By no later than December 14, 2009, the Parties shall seek any necessary authorizations from their respective boards or legislative bodies to negotiate the transactions contemplated in this MOU.


PORT OF SEATTLE

By: 
Tay Yoshitani
Chief Executive Officer

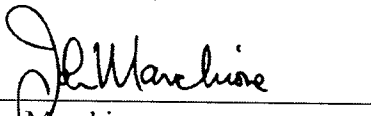
KING COUNTY, WASHINGTON

By: 
Kurt Triplett
County Executive

SOUND TRANSIT

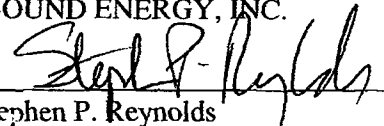
By: 
Joni Earl
Chief Executive Officer

CITY OF REDMOND, WASHINGTON

By: 
John Marchione
Mayor

PUGET SOUND ENERGY, INC.

By:


Stephen P. Reynolds
President and Chief Executive Officer

CASCADE WATER ALLIANCE

By:


Chuck Clarke
Chief Executive Officer

Adopted Ordinance 16312, Section 125: General Government Capital Improvement Program 16738

<u>Fund</u>	<u>Project</u>	<u>Description</u>	2009	2010	2011	2012	2013	2014	Total 2009 - 2014
3151	315758	Conservation Futures Subfund Eastside Rail Trail	26,500,000						26,500,000
Total Fund 3151			26,500,000						26,500,000