



## Legislation Text

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Clerk 05/05/2008

AN ORDINANCE approving and authorizing the county executive to participate with the Port of Seattle in a transaction to acquire the BNSF Eastside Rail Corridor; and declaring an emergency.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

**SECTION 1. Findings:**

A. On April 14, 2008, the King County executive transmitted to the King County council an interlocal agreement, a proposed purchase and sale agreement and a proposed donation agreement involving Burlington Northern Santa Fe Railway Company ("BNSF"), the Port of Seattle, and King County. Among other things, these agreements provide that the Port of Seattle at closing will grant the county a Public Multipurpose Easement for the county's use of the railbanked portion of the corridor; and that the county will serve as the "Interim Trail User" in accordance with 49 C.F.R. 1152.29 and Section 8(d) of the National Trails System Act (also known as the "Rails-to-Trails Act").

B. The proposed purchase and sale agreement and the donation agreement require the county to obtain necessary authorization for the transactions from its governing body by May 15, 2008, or the county may terminate the agreements by written notice given to BNSF by that date. Enactment of this ordinance as an emergency ordinance is necessary to make this authorization legally effective before that date.

C. In 2003, BNSF announced its intent to divest itself of the Woodinville Subdivision and Redmond Spur, which together are referred to as the Eastside Rail Corridor ("ERC"), a one-of-a-kind forty-two-mile corridor vital to the economic future of King County and six separate eastside jurisdictions.

D. On May 16, 2005, the King County executive announced that King County had entered into exclusive negotiations with BNSF to acquire this vital corridor into public ownership for use as a trail and to preserve its potential for additional transportation options in the future.

E. Since 2006, King County councilmembers, the Port of Seattle and the executive have been in discussions to find a collaborative and mutually beneficial way to acquire this vital transportation corridor through a regional partnership.

F. On December 17, 2007, the county council approved Ordinance 15995 by a vote of eight ayes, no nos and one excused, authorizing and requesting the King County executive to negotiate agreements with the Port of Seattle and BNSF that contained the following elements:

1. Waiver of the county's exclusive right to negotiate a purchase and sale agreement with BNSF to allow the Port of Seattle to negotiate a purchase and sale agreement for the ERC with BNSF;
2. The port's execution of a purchase and sale agreement for the ERC by December 31, 2007;
3. A right of first refusal for King County in the event the Port of Seattle determined to sell any or all of the ERC, and a subsequent right of first refusal to any other public agency authorized by Washington state to provide transit, rail services, or trails;
4. Agreement between the Port of Seattle and the county on the principle of dual usage; and
5. Agreement between the port and the county to create a formal multiagency process to plan for dual uses of the corridor.

G. King County recognizes and expresses gratitude to BNSF for its willingness to make a valuable donation to the public of a substantial portion of the ERC, thus enabling this transaction to move forward.

H. King County further recognizes the participating parties' efforts to forge a collaborative approach to protect the interests of the citizens of King County in acquiring the ERC and to provide new transportation options for our region.

I. King County and the Port of Seattle have many mutual interests and shared goals, such as:

infrastructure improvements that make the region more globally competitive; improved freight mobility and public transportation; the promotion of tourism and recreational activities in the region; and enhancement of mobility, air quality and healthy lifestyles through development of additional alternative transportation modalities.

J. King County sincerely appreciates the Port of Seattle's efforts to acquire this unique and vital transportation corridor to ensure it is preserved in public ownership, and the Port of Seattle's interest in providing King County the opportunity to develop a public trail that complements potential future commuter and non-interstate freight rail uses of the corridor.

K. The county desires the railbanked portion to be used for commuter and non-interstate freight rail purposes and a public trail that provides both recreational and alternative transportation uses. Since the proposal was transmitted, the King County council and executive have collaborated with the Port of Seattle's leadership to ensure that the terms of the easement and an interlocal agreement appropriately recognize the value of accommodating both commuter and non-interstate freight rail use and trail use, recognizing that a trail promotes alternative transportation modalities in the corridor.

L. The King County council further appreciates the opportunity to work in a collaborative manner with the Port of Seattle and the King County executive to develop a formal, multiagency Regional Process to recommend appropriate uses of the corridor.

## SECTION 2.

A. The King County council hereby approves King County's participation with the Port of Seattle in the transaction to acquire the ERC consistent with agreements in substantially the form of the Interlocal Agreement, the Purchase and Sale Agreement and the Donation Agreement, and their exhibits, all as attached to this ordinance as Attachments A through C to this ordinance.

B. The King County executive is hereby authorized to execute agreements in substantially the form of the Interlocal Agreement, the Purchase and Sale Agreement and the Donation Agreement, all as attached to this

ordinance, and to implement the terms of these agreements and to execute any documents necessary to carry out the transaction authorized by these agreements.

C. The Interlocal Agreement and Easement have a number of joint determinations to be made by the port and the county.

D. Agreement between the county and the port on the essential elements of the Regional Process, including its timeframe, participants, and the resources to be provided by each agency for the process, shall be contingent upon authorization by county ordinance. It is the county's intent to negotiate such an agreement and to enact such an ordinance, all no later than July 15, 2008.

E. Agreement with the port on the joint determination of the appropriate location and size of the Trail Area shall be contingent upon authorization by county ordinance.

F. Agreement with the port on the joint determination of the appropriate timeline for development of the trail shall be contingent upon authorization by county ordinance.

G. The King County executive shall provide quarterly reports to the council on any proposed trail relocations or realignments that may be contemplated pursuant to Section 2.2.2 of the Public Multipurpose Easement.

H. Any election by the county under Section 2.1.2 of the Public Multipurpose Easement not to proceed with Trail Development and to take action to terminate this agreement shall be contingent upon authorization by county ordinance.

SECTION 3. It is the intent of King County to consider seeking to renegotiate certain terms of the Multipurpose Public Easement with the Port of Seattle, particularly the terms related to the allocation of costs associated with relocation of the Trail Area under Section 2.2.2 of the easement, and to do so following the conclusion of the joint determination of the appropriate location and size of the trail and prior to commencement of Trail Development, but no later than five years after Closing.

SECTION 4. The council acknowledges that the executive intends to acquire the easement from the

Port of Seattle using CFT funds previously appropriated in the 2007 Adopted Budget (Ordinance 15652) for project 315758 (MUL - Eastside Rail Trail). The council wishes to consider other potential funding sources that may not carry the same conditions as CFT, and will explore and consider the use of other funding sources prior to closing. The council requests that the executive cooperate with the council to explore the potential use of other funding sources.

SECTION 5. For the reasons set forth in section 1 of this ordinance, the council finds as a fact that an emergency exists and that this ordinance is necessary for the immediate preservation of public peace, health or safety or for the support of county government and its existing public institutions.