



**KING COUNTY**

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**Signature Report**

**December 19, 2007**

**Ordinance 15995**

**Proposed No.** 2007-0605.2

**Sponsors** Patterson and Phillips

1 AN ORDINANCE approving a memorandum of  
2 understanding between the county, the Port of Seattle and  
3 the BNSF Railway Company relating to the acquisition of  
4 the Woodinville Subdivision Eastside Rail Corridor.

5

6 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

7 SECTION 1. Findings. The council makes the following findings:

8 A. In 2003 Burlington Northern Santa Fe Railroad ("BNSF") announced its intent  
9 to divest itself of the Woodinville Subdivision and Redmond Spur, which together are  
10 referred to as the Eastside Rail Corridor ("ERC"), a one-of-a-kind forty-two-mile corridor  
11 vital to the economic future of King County and six separate Eastside jurisdictions;

12 B. In 2005, the Puget Sound Regional Council in partnership with Washington  
13 state Department of Transportation obtained federal grant funds to conduct a study of this  
14 vital corridor, which was released in 2007;

15 C. In June 2005, the county council appropriated 3.8 million dollars to further the  
16 acquisition of this corridor;

17 D. On May 16, 2005, the King County executive announced that King County  
18 entered into exclusive negotiations with BNSF Railway to acquire the ERC for use as a  
19 trail and preserve its potential for future transportation;

20 E. 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 F. In 2006, the Puget Sound Regional Council ("PSRC") established a broadly  
24 representative BNSF Corridor Advisory Committee to review, discuss and deliberate on  
25 the technical analysis of the Eastside Rail Corridor and identify its most desirable and  
26 feasible uses. In 2006, the PSRC BNSF Corridor Advisory Committee held six intensive  
27 public meetings in various communities all along the corridor from March 2006 through  
28 January 2007;

29 G. On October 25, 2006, the King County executive and Port of Seattle chief  
30 executive officer announced the Connections for Our Future proposal, the central element  
31 of which was the purchase by the Port of the ERC from BNSF in exchange for King  
32 County International Airport, with the aim of publicly acquiring the corridor while  
33 minimizing costs to the taxpayers;

34 H. On January 19, 2007, the PSRC BNSF Corridor Advisory Committee found  
35 that the unique corridor should be preserved for future regional transportation uses and  
36 publicly acquired for the benefit of the public and that cost-effectiveness of trail  
37 development should be optimized;

38 I. On February 26, 2007, the chief executive officer of the Port of Seattle, the  
39 chairman, president and chief executive officer of BNSF and the King county executive

40 signed a memorandum of understanding stating their intent to enter into a definitive  
41 transaction regarding the land and infrastructure elements of a purchase and sale  
42 agreement within one hundred eighty days;

43 J. On February 26, 2007, the county executive, the Port of Seattle and the BNSF  
44 Railway Company entered into a memorandum of understanding setting forth the  
45 proposed principal elements of Connections for Our Future involving the acquisition by  
46 the county of the ERC from the BNSF Railway Company;

47 K. On June 13, 2007, the King County executive, Cascade Land Conservancy,  
48 Transportation Choices and the Cascade Bike Club signed a statement of principles for  
49 dual-use supporting both rails and trails;

50 L. At a July 25, 2007, Seattle Rotary Club Meeting, the Port of Seattle through its  
51 new Chief Executive Officer rejected the proposal as originally envisioned but proposed  
52 that alternative partnership and transaction was possible;

53 M. King County and the Port of Seattle have many mutual interests and shared  
54 goals, such as: infrastructure improvements which make the region more globally  
55 competitive; improved freight mobility for commerce; collaborating on airport operations  
56 to ensure preservation and cohesiveness of business models without the county having to  
57 divest itself of its airport asset – Boeing Field; and enhancement of mobility, air quality  
58 and healthy life-styles through development of additional alternative transportation  
59 modalities;

60 N. King County councilmembers, the Port of Seattle and the executive have since  
61 been in discussions to find a collaborative and mutually beneficial way to acquire this  
62 vital transportation corridor through a regional partnership;

63 O. A revised proposal could involve the purchase of approximately forty-two  
64 miles of BNSF railroad right-of-way to be preserved in public ownership, improvements  
65 over time to the rail corridor, construction of a trail or parallel trail;

66 P. The Port, the county executive and councilmembers are moving toward  
67 completion of a purchase and sale agreement with BNSF by December 31, 2007, when  
68 the county's exclusive right to negotiate expires, that will meet the above stated goals of  
69 preserving public ownership and the principle of "dual usage" for rails and trails;

70 Q. Preserving this critical transportation corridor for public ownership for future  
71 transportation needs, protecting the county's general aviation airport, and providing an  
72 opportunity for the port to secure an asset to ensure global competitiveness subsequent to  
73 identifying an alternative solid waste waste-export site, is definitely in the region's  
74 interest;

75 R. The parties to that February 26, 2007, memorandum of understanding have  
76 diligently negotiated to carry out its terms, and in so doing have restructured the  
77 transaction to better achieve their shared goals;

78 S. King County desires to preserve this unique and vital transportation corridor in  
79 public ownership in perpetuity; and

80 T. The King County council appreciates all the hard work of the participating  
81 parties in forging a collaborative approach that protects the interests of the citizens of  
82 King County prior to the December 31, 2007, expiration of the county's exclusive  
83 negotiating agreement with BNSF.

84           SECTION 2. The council of King County hereby requests and authorizes the  
85 King County executive to negotiate and execute agreements with the Port of Seattle and  
86 BNSF that contain the following elements:

87           A. King County will waive its exclusivity rights with BNSF for purchase of the  
88 ERC to allow the Port of Seattle ("the Port") and BNSF to negotiate and execute a  
89 purchase agreement at the Port's sole expense, and King County will be entitled, at a  
90 minimum, to a return of the deposit made under its exclusive negotiating agreement with  
91 BNSF, and half the interest earned thereon, as set forth in that agreement;

92           B. The Port will execute a purchase and sale agreement with Burlington Northern  
93 Santa Fe by December 31, 2007, for purchase and sale of the ERC;

94           C. Should the Port in good faith determine in the future to offer or agree to  
95 transfer ownership of any or all of the ERC, the Port shall provide King County with one  
96 hundred twenty days' notice of such determination and offer King County the right to  
97 purchase such property at an amount equal to the Port's purchase price plus interest from  
98 the date of acquisition at a rate equal to three percent per annum. If King County does  
99 not exercise the right to purchase such property within that period, the right to purchase at  
100 that price may be exercised within one hundred twenty days thereafter by any other  
101 public agency of the state of Washington authorized to provide transit, rail services or  
102 trails;

103           D. Agreement between the Port and the county on the principle of dual usage of  
104 this unique and vital corridor which allows trails and rails to be developed; and

105           E. Agreement between the Port and the county to create a formal multi-agency  
106 process to plan and produce decisions for dual uses of the corridor.

107            SECTION 3. The executive is requested to consider negotiating an agreement  
108 with the Port of Seattle to provide as follows:

109            The county may prior to June 30, 2008, at its option, require the Port to assign its  
110 rights under the purchase and sale agreement to acquire the segment of the ERC between  
111 approximately Mile Post 5.0 in Renton to a point just north of the Wilburton Trestle or  
112 just north of the Wilburton Tunnel and the segment of the ERC that includes most of the  
113 Redmond Spur just south of N.E. 145th Street in Woodinville, such that at closing the  
114 county could acquire ownership of those segments at a price allocated proportionately  
115 relative to the total purchase price for the ERC. This section shall not be deemed to be a

116 policy determination by King County to enter into such agreement or to acquire such  
117 property.

118

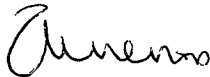
Ordinance 15995 was introduced on 11/5/2007 and passed as amended by the Metropolitan King County Council on 12/17/2007, by the following vote:

Yes: 8 - Mr. Gossett, Ms. Patterson, Ms. Lambert, Mr. von Reichbauer, Mr. Dunn, Mr. Ferguson, Mr. Phillips and Mr. Constantine  
No: 0  
Excused: 1 - Ms. Hague

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

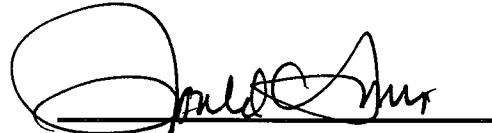
  
Larry Gossett, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this 27 day of December, 2007.

  
Ron Sims, County Executive

Attachments      A. Memorandum of Understanding

RECEIVED  
2007 DEC 31 AM 11:47  
KING COUNTY COUNCIL  
CLERK



(15995) 2007-0605  
Attachment A

**MEMORANDUM OF UNDERSTANDING**

This MEMORANDUM OF UNDERSTANDING is made by and among King County, Washington, a Washington Municipal Corporation ("King County"), the Port of Seattle, a Washington Municipal Corporation ("Port"), and BNSF Railway Company, a Delaware corporation ("BNSF"), as of the \_\_\_ day of November, 2007 (collectively, the "Parties").

**WHEREAS:**

- (A) A critical element to the competitiveness of the Port and King County, Washington in general, as well as the region, is the velocity and capacity of facilities and infrastructure for the transfer of international cargo from ships to freight trains and its movement to the ultimate customer;
- (B) The Port desires to acquire and preserve the Woodinville Subdivision as a rail and transportation corridor; and
- (C) Consistent with federal railbanking requirements, King County has an interest in developing a recreational trail within the Woodinville Subdivision.

**NOW, THEREFORE, the parties have reached the following understanding:**

**SECTION 1. Purpose.** The Parties have envisioned and are working to complete a 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 (referred to hereafter as "MOU") with respect to the major deal points of the transaction. This MOU replaces the previous memorandum of understanding among the Parties dated February 26, 2007 concerning the Woodinville Subdivision. This MOU is a non-binding document that creates no rights and imposes no obligations on any Party. However, the Parties are committed to working cooperatively, expeditiously and efficiently to document the components of the transaction through binding agreements, using this MOU as a guide.

**SECTION 2. Key Transaction Elements.** The key elements of the transaction are as follows:

- Subject to the approval of, and conditions imposed by, the STB the Port will acquire all of BNSF's title and interest in the real and personal property and any reactivation rights and obligations comprising the portion of the Woodinville Subdivision between Renton and Snohomish (approximately mile posts 5.0 and 37.61), and the portion of the Redmond Spur between Woodinville and Redmond (approximately mile posts 0.0 and 7.3) (collectively, the "Woodinville Subdivision"). The portion of the Woodinville Subdivision north of Woodinville and the Redmond Spur shall together be referred to as the "Northern Portion." The portion of the Woodinville Subdivision south of Woodinville shall be referred to as the "Southern Portion." The specific line segments and designated portions will be further defined in the agreements.



- BNSF will be paid \$103 million in cash in total for the Northern and Southern Portions of the Woodinville Subdivision as described in Sections 3.1 and 3.2.
- King County will convey that property commonly referred to as the Fisher Flour Mill site to the Port pursuant to a separate agreement that will be negotiated solely between King County and the Port.
- The Port and King County will negotiate a long term lease for all or a portion of the Woodinville Subdivision.
- King County and the Port shall develop a consultative process for considering major capital improvements at King County International Airport that would substantially affect the Airport's regional impact, which process will be set forth in a separate agreement that will be negotiated solely between King County and the Port.

### **SECTION 3. BNSF – PORT OF SEATTLE COMPONENTS**

#### ***3.1. The Northern Portion of the Woodinville Subdivision***

BNSF will transfer to Port, subject to the approval and conditions of the Surface Transportation Board (the "STB"), all of BNSF's title and interest in the real and personal property comprising the Northern Portion. At the closing, the Port will pay BNSF an amount equal to the lesser of \$103 million or the fair market value of the Northern Portion. To the extent that the fair market value of the Northern Portion exceeds \$103 million, BNSF will make a charitable contribution to the Port of such excess.

#### ***3.2. The Southern Portion of the Woodinville Subdivision***

BNSF will transfer to Port, subject to the approval and conditions of the STB, all of BNSF's title and interest in the real and personal property comprising the Southern Portion. At the closing, the Port will pay BNSF an amount equal to the difference, if any, between \$103 million and the amount the Port paid BNSF for the Northern Portion. BNSF will make a charitable contribution to the Port of the Southern Portion to the extent the fair market value of the Southern Portion exceeds the amount paid for the Southern Portion.

**3.3.** The Parties will establish a procedure for the appraisal of the fair market value of the Woodinville Subdivision based upon a mutually acceptable basis.

**3.4.** No later than December 11, 2007, the Port and King County will submit the transactions contemplated in this MOU for approval by the Metropolitan King County Council and the Port Commission of the Port of Seattle. The Parties anticipate final closing of the transactions in the second quarter of 2008.

**3.5.** The agreements shall permit BNSF to assign its rights under the agreements to a qualified intermediary for the purpose of effecting a like-kind exchange.

**3.6.** The portion of the Woodinville Subdivision that is included in the contemplated transaction begins at approximately milepost 5.0 in Renton, Washington. If BNSF ever determines to abandon the remaining portion of the Woodinville Subdivision between approximately mile posts 0.0 and 5.0 in Renton, King County will have the right of first refusal to acquire that portion of the line at its fair market value.

3.7. The Parties anticipate that trail use will be established under the federal railbanking statute, 16 U.S.C. 1247(d), on at least the Southern Portion. The Parties recognize that for any such portion, future local, regional or national transportation needs may require reconstruction and reactivation of the right-of-way for rail service by the acquirer, its assignee, or any third party requesting reactivation.

3.8. 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.

**SECTION 4. KING COUNTY – PORT OF SEATTLE COMPONENTS.**

4.1. King County and the Port will partner in the negotiations with BNSF for the acquisition of the Woodinville Subdivision. The Port will not unreasonably delay or object to the preliminary understandings already reached between King County and BNSF during prior negotiations for conveyance of the Woodinville Subdivision.

4.2. The Port will receive title to the Northern and Southern Portions of the Woodinville Subdivision at closing. The Port and King County will enter into a long term lease for the Woodinville Subdivision.

4.3. Both the Port and King County support the ongoing freight rail use now operating on the Northern Portion.

4.4. King County shall convey all of its rights, title and interest in the property commonly referred to as the Fisher Flour Mill site to the Port for no additional cost pursuant to a separate agreement that will be negotiated solely between King County and the Port.

4.5. King County and the Port shall develop a consultative process for considering major capital improvements at King County International Airport that would substantially affect the Airport's regional impact, which process will be set forth in a separate agreement that will be negotiated solely between King County and the Port. That agreement may be subject to any approval or conditions as may be required by the Federal Aviation Administration.

**KING COUNTY, WASHINGTON**

By: \_\_\_\_\_  
Ron Sims  
King County Executive

**BNSF RAILWAY COMPANY**

By: \_\_\_\_\_  
Matthew K. Rose  
Chairman, President and Chief Executive  
Officer

**PORT OF SEATTLE**

By: \_\_\_\_\_  
Tay Yoshitani  
Chief Executive Officer