

16989

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6 December 2010

Council Meeting

khm

Sponsor: Joe McDermott

Proposed No.: 2010-0613

Joe MC Moved.
PASSED: 8-1 "YLL" NOY

1 **STRIKING AMENDMENT TO PROPOSED ORDINANCE 2010-0613**

2 On page 1, beginning on line 7, strike everything through page 5, line 81, and insert:

3 "BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

4 **SECTION 1. Findings:**

5 A. In March 2010, the Washington state Legislature appropriated \$15,000,000
6 solely for the Washington state Department of Ecology to assist King County in the
7 acquisition and remediation of property on Vashon and Maury Islands.

8 B. The Maury Island shoreline initiative project protects critical shoreline along
9 Maury Island in Puget Sound. As part of its Maury Island shoreline initiative project,
10 King County has negotiated the purchase of approximately two hundred fifty acres of
11 land on Maury Island owned by Northwest Aggregates Co., an Oregon corporation
12 ("NWA"). The property ("the NWA property") has been developed as a sand and gravel
13 mine, including a conveyor system and dock for loading gravel onto barges.

14 C. Various owners have mined the site since the 1940s, with peak production
15 occurring in 1978. A barge-loading facility/dock was built in 1968 which allowed the
16 aggregates to be exported off the island. The mine operators stopped using the barge-
17 loading facility/dock in 1978 and it fell into disrepair. Since 1978, little has been

18 extracted from the mine. Active mining has occurred on approximately 40 acres of the
19 property.

20 D. Over the course of the last several years, NWA has been pursuing the
21 necessary permits to replace the old dock and install a new one and reactivate the mine.
22 As part of that process, in 2008, it entered into a thirty year lease with the State for use of
23 the bedlands waterward of the shoreline. Pursuant to the terms of that lease, NWA is
24 authorized to construct and operate a barge loading dock facility in the area where
25 remnants of the old dock remain.

26 E. Currently NWA has both the grading permit and surface mining permits to
27 operate within the area previously mined. Mining permits for the proposed expanded
28 mining operation are awaiting Ecology's approval of a remediation plan associated with
29 the expanded mining. NWA also has the building and shoreline permits issued by the
30 County to construct the new barge loading dock facility. While NWA is currently
31 enjoined from completing the construction of that facility pursuant to a federal court
32 order, once an Environmental Impact Statement is complete, it is expected that the
33 injunction will be lifted and NWA will complete construction.

34 F. The NWA property has significant ecological value vital to the Puget Sound
35 ecosystem and recovery of species listed under the federal Endangered Species Act.

36 G. More than seventy percent of Puget Sound's coastal wetlands and estuaries
37 have been lost to development and other shoreline modifications and approximately fifty
38 percent of the shoreline of Vashon-Maury Island has been altered. Conservation of
39 the NWA property will protect this valuable nearshore habitat. The NWA property
40 includes nearly one mile of Puget Sound shoreline, most of which is unaltered.

41 H. Approximately four thousand two hundred feet of bluff abutting the property's
42 beach is classified either as exceptional feeder bluff or feeder bluff. The bluffs are
43 generally over three hundred feet tall. Along the bluffs there is approximately one
44 thousand feet of high quality dense overhanging trees, along with three hundred additional
45 feet of dense trees adjacent to the shoreline. The rest of the site's vegetation along the
46 beach is composed of shrubs and noxious weeds, providing both food and habitat for
47 fish, fowl and animal.

48 I. Large blocks of low elevation forest are increasingly rare in central Puget
49 Sound. The large, unfragmented madrona forest located on the NWA property provides a
50 protected wildlife corridor between Quartermaster Harbor and Puget Sound, including a
51 rich habitat for a wide diversity of birds, including priority species such as bald eagles,
52 pileated woodpeckers, band-tailed pigeons, and olive-sided flycatchers. Preserving this
53 forest will also provide increased protection for the sole source aquifer. Another benefit
54 of intact forests is they act to mediate both the flows and pollutants in stormwater to
55 Puget Sound.

56 J. The existing disturbed areas, which include the mined areas of the NWA
57 property, provide excellent opportunities for habitat restoration.

58 K. Negotiations between the executive and NWA has resulted in a proposed
59 purchase and sale agreement ("the agreement").

60 L. Closing of this transaction before the end of the year is a material term of the
61 agreement, required by NWA.

62 M. The Agreement establishes a purchase price for the NWA property at
63 \$36,000,000.00.

64 N. Part of the consideration to be given to NWA for the NWA property is an
65 amendment to a Gravel Purchase and Extraction Agreement ("the gravel agreement")
66 between King County and Vashon Sand and Gravel ("VSG"), which was authorized by
67 the King County council in Ordinance 14371.

68 O. VSG assigned the gravel agreement to Glacier Northwest, Inc., of which
69 NWA is a wholly owned subsidiary, with King County's consent, under an Assignment
70 and Assumption Agreement dated January 1, 2005.

71 P. The gravel agreement grants to the mine operator the right to extract gravel
72 from twenty-six acres of county-owned park property on Maury Island. Ordinance 14371
73 authorized the sale of approximately one million to one million five hundred thousand
74 cubic yards, which is one million seven hundred thousand to two million five hundred
75 and fifty thousand tons, of sand and gravel from the twenty-six-acre parcel.

76 Q. The twenty-six-acre area was purchased by the county in 1994 along with
77 three hundred acres of adjacent property. The acquisition was for the purpose of
78 eventually establishing a park on the acquired property. The property acquired by the
79 county in 1994 is known as the Maury Island marine park.

80 R. The twenty-six-acre area was being mined at the time King County acquired
81 the property, which was acquired subject to the right to continue mining until 2004. The
82 master plan for the Maury Island marine park, adopted by Motion 11047, states that
83 mining could continue on the twenty-six acres until 2020 or some other date established
84 by county officials.

85 S. The gravel agreement allows the mine operator to extract sand and gravel until
86 the earlier of 2020 or until all the sand and gravel has been removed from the property to

87 the depths specified in the permits that regulate the mining and the reclamation of the
88 property. If King County gives timely notice, it may terminate the gravel agreement
89 before 2014.

90 T. The gravel agreement provides for a royalty payment to the county of 1.55
91 dollars for each ton of gravel extracted ("the royalty rate"), subject to an annual escalation
92 based on the consumer price index. The current royalty rate is 2.17 dollars per ton.

93 U. As part of the transaction for the purchase of the NWA property, the gravel
94 agreement is to be amended to:

95 1. Eliminate the royalty payment to the county for the first one hundred
96 thousand tons of sand and gravel removed from the twenty-six-acre parcel each year.
97 Payment would be made at the then-current royalty rate for any amount over one hundred
98 thousand tons in a year;

99 2. Eliminate the county's ability to terminate the lease before its expiration; and

100 3. Amend the time limit for removing the sand and gravel from 2020 to 2030.

101 V. On December 3, 2010, the director of the facilities management division, in
102 accordance with K.C.C. chapter 4.56, declared the additional gravel and sand that could
103 be extracted under the gravel agreement, as authorized to be amended and extended by
104 this ordinance, to be surplus to the county's needs.

105 X. Under K.C.C. chapter 4.56, the sale of real property shall be made to the
106 highest responsible bidder at public auction or by sealed bid except when the county
107 council, by ordinance, has determined circumstances make a negotiated direct sale in the
108 best interests of the public.

109 Y. Because the amendment to the gravel lease makes it possible for the county to
110 acquire the NWA property, and because Glacier is currently the mine operator on the
111 twenty-six-acre area that is subject to the gravel agreement, unique circumstances make a
112 negotiated direct sale of any additional gravel and sand to Glacier under the gravel
113 agreement, as authorized to be amended and extended by this ordinance, in the best
114 interests of the public.

115 Z. NWA and the county agree that the value of this royalty concession is \$2.4
116 million.

117 AA. The remaining terms of the gravel agreement will remain in force, including
118 the limitations regarding the area that can be mined, responsibility for payment of any
119 leasehold excise tax that might be levied against the county as a result of the gravel
120 agreement, the authorization for Glacier to "utilize the Gravel extracted from the Mine
121 Property only for re-sale in the ordinary course of its business," and the limitation that
122 Glacier "shall not market the Gravel for use off of Vashon-Maury Island."

123 BB. If approved by the county council by separate legislation, the following
124 components will fund the cash portion of the purchase price for the NWA property:

125 1. \$14.5 million will come from \$15 million appropriated to the Washington
126 state Department of Ecology to assist King County in the acquisition and remediation of
127 property on Vashon and Maury Islands; and

128 2. \$19 million will come from the conservation futures tax levy fund.

129 CC. The appraised value of the property is \$39.9 million. NWA has stated that
130 the opportunity to purchase the property at the price of \$36 million is only available this
131 year. NWA has also indicated that if the county does not purchase the property, NWA

132 will resume its actions to complete the construction of the barge loading dock facility and
133 reactivate the mine, with the intent of fully developing all one-hundred and fifty to one-
134 hundred and ninety acres of minable area. The purchase of this property will bring into
135 public ownership almost a mile of relatively undisturbed marine shoreline, as well as
136 approximately two hundred acres of undeveloped open space. It also brings into public
137 ownership approximately forty million tons of aggregate. If this sales transaction does
138 not close by the end of 2010, it will result in the county's failure to preserve for the
139 public's interest one of the last large waterfront pieces of property on Vashon-Maury
140 Island. Emergency enactment of this ordinance is necessary to preserve the public peace,
141 health, and safety associated with the existing marine shoreline and undeveloped open
142 space.

143 SECTION 2. The King County executive is hereby authorized to purchase the
144 NWA property located on Maury Island from NWA, consistent with a purchase and sale
145 agreement substantially in the form of Attachment A to this ordinance, and to implement
146 the purchase and sale agreement and execute any documents necessary to carry out such
147 conveyance.

148 SECTION 3. The King County executive is hereby authorized to execute the
149 amendment to the Gravel Purchase and Extraction Agreement in substantially the form of
150 Attachment B to this ordinance, and to execute any documents necessary to carry out the
151 amendment.

152 SECTION 4. The county council finds as a fact and declares that an emergency
153 exists and that this ordinance is necessary for the immediate preservation of public peace,

154 health or safety or for the support of county government and its existing public
155 institutions."

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157 Attachment A: Real Estate Purchase and Sales Agreement, dated December 4, 2010.

158 Attachment B: Amendment #1 to Gravel Purchase and Extraction Agreement, dated

159 December 4, 2010.

Effect: declares an emergency; includes facts regarding the purchase and sale agreement for the NWA property and the recent surplus and direct negotiated sale of additional aggregate at the Maury Island Marine Park; authorizes the executive to execute the purchase and sale agreement and an amendment to the gravel purchase and extraction agreement

12/6/2010 Council Meeting

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Sponsor: Joe McDermott

Proposed No.: 2010-0613

Joe MC MOVED
PASSED: 9-0

1 **AMENDMENT TO STRIKING AMENDMENT TO PROPOSED ORDINANCE**

2 **2010-0613, VERSION 1**

3 On page 7, line 145, after "Attachment A to this ordinance," delete "and"

4 On page 7, line 147, after "conveyance" insert "and, if necessary, to amend the

5 agreement with terms more favorable to the county based on the information that is

6 discovered during the due diligence period"

7 **EFFECT: Provides the executive discretion to address information discovered**

8 **during the due diligence period.**

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PASSED: 9-0

1 **TITLE AMENDMENT TO PROPOSED ORDINANCE 2010-0613,**

2 On page 1, beginning on line 1, strike everything through page 1, line 6, and insert:

3 "AN ORDINANCE authorizing the King County executive
4 to execute a purchase and sale agreement, all necessary
5 conveyance documents, and an amendment to a gravel
6 purchase and extraction agreement to complete the
7 acquisition of the four parcels lots owned by Northwest
8 Aggregates Company located on Maury Island in council
9 district 8; and declaring an emergency."

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11 **Effect: Reflects revisions contained in the striking amendment.**