



Legislation Text

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Clerk 12/06/2010

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

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Findings:

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

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

C. Various owners have mined the site since the 1940s, with peak production occurring in 1978. A barge-loading facility/dock was built in 1968 which allowed the aggregates to be exported off the island. The mine operators stopped using the barge-loading facility/dock in 1978 and it fell into disrepair. Since 1978, little has been extracted from the mine. Active mining has occurred on approximately 40 acres of the property.

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

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

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

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

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

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

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

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

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

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

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

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

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

Q. The twenty-six-acre area was purchased by the county in 1994 along with three hundred acres of

adjacent property. The acquisition was for the purpose of eventually establishing a park on the acquired property. The property acquired by the county in 1994 is known as the Maury Island marine park.

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

S. The gravel agreement allows the mine operator to extract sand and gravel until the earlier of 2020 or until all the sand and gravel has been removed from the property to the depths specified in the permits that regulate the mining and the reclamation of the property. If King County gives timely notice, it may terminate the gravel agreement before 2014.

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

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

1. Eliminate the royalty payment to the county for the first one hundred thousand tons of sand and gravel removed from the twenty-six-acre parcel each year. Payment would be made at the then-current royalty rate for any amount over one hundred thousand tons in a year;
2. Eliminate the county's ability to terminate the lease before its expiration; and
3. Amend the time limit for removing the sand and gravel from 2020 to 2030.

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

X. Under K.C.C. chapter 4.56, the sale of real property shall be made to the highest responsible bidder

at public auction or by sealed bid except when the county council, by ordinance, has determined circumstances make a negotiated direct sale in the best interests of the public.

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

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

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

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

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

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

CC. The appraised value of the property is \$39.9 million. NWA has stated that the opportunity to purchase the property at the price of \$36 million is only available this year. NWA has also indicated that if the county does not purchase the property, NWA will resume its actions to complete the construction of the barge loading dock facility and reactivate the mine, with the intent of fully developing all one-hundred and fifty to one-hundred and ninety acres of minable area. The purchase of this property will bring into public ownership

almost a mile of relatively undisturbed marine shoreline, as well as approximately two hundred acres of undeveloped open space. It also brings into public ownership approximately forty million tons of aggregate. If this sales transaction does not close by the end of 2010, it will result in the county's failure to preserve for the public's interest one of the last large waterfront pieces of property on Vashon-Maury Island. Emergency enactment of this ordinance is necessary to preserve the public peace, health, and safety associated with the existing marine shoreline and undeveloped open space.

SECTION 2. The King County executive is hereby authorized to purchase the NWA property located on Maury Island from NWA, consistent with a purchase and sale agreement substantially in the form of Attachment A to this ordinance, to implement the purchase and sale agreement and execute any documents necessary to carry out such conveyance and, if necessary, to amend the agreement with terms more favorable to the county based on the information that is discovered during the due diligence period.

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

SECTION 4. The county council finds as a fact and declares 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.