



King County

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CLERK
KING COUNTY COUNCIL

April 14, 2008

The Honorable Julia Patterson
Chair, King County Council
Room 1200
C O U R T H O U S E

Dear Councilmember Patterson:

As King County Executive, it is my great privilege to transmit an ordinance that allows our region to realize an once-in-a-lifetime opportunity to preserve the invaluable Eastside Rail Corridor (ERC). On April 9, 2008, I proudly signed the enclosed ERC Purchase and Sale Agreement and Donation Agreement with Burlington Northern Santa Fe, (BNSF) culminating a three year journey from when I first announced my intention to save this corridor and place it in public ownership in May of 2005. Born out of a partnership between King County and the Port of Seattle, this transaction represents a priceless opportunity to creatively address the region's growing transportation and ongoing freight needs, while at the same time allowing for an expanded regional trail system that will enhance the quality of life for the people of our region. The 1.8 million residents served by both King County and the Port of Seattle have every reason to be proud of their two regional governments working together to realize this vision.

The enclosed ordinance authorizes the execution of the documents needed for the sale of BNSF's Eastside Rail Corridor to the public. Assembled beginning in the 1800s, the corridor runs from Renton to Snohomish, connecting major urban centers on the eastside throughout its 42-mile route. Given its route and uninterrupted length, this corridor provides the backbone for our expanding region's transportation and regional trail system.

The enclosed agreements represent the culmination of years of negotiations with BNSF and the Port of Seattle. They are also the result of a thorough and thoughtful stakeholder process that you led for the Puget Sound Regional Council, including both public and private sector entities. During this process many stakeholders throughout the region came together to make this vision a reality. To each, I extend a heartfelt thank you.

Thank you to you and the other members of County Council for your support as we shaped an agreement that meets the needs of our citizens. Thank you to BNSF Chairman, Matt Rose, for his patience over the past three years in working with King County and the Port of Seattle. Finally,

a special thanks to the Port of Seattle staff and Commissioners, both past and present. I sincerely applaud them for their leadership in recognizing the importance of publicly acquiring this tremendous regional asset and committing the necessary dollars to acquire the 42 mile corridor.

The Transaction

Although the specifics of this acquisition have evolved over time, our focus on the ultimate goal has remained the same. That goal has been to preserve the Eastside Rail Corridor for public dual use, including a dramatic expansion of our regional trails network and a valuable corridor for future motorized transportation uses. In addition to these benefits, the transaction allows for the possibility of the resumption of service by the Spirit of Washington Dinner Train. Finally, the transaction also allows freight service to continue on the northern portion of the line.

The key elements of this multi-party transaction include the following:

- The Port of Seattle's purchase of the northern portion of the Eastside Rail Corridor.
- BNSF's donation of the southern portion of the Eastside Rail Corridor to the Port of Seattle.
- The county's application under the federal Rails-to-Trails Act to be an interim trail user for the southern portion of the Eastside Rail Corridor, including the Redmond Spur.
- The Port of Seattle's grant of a multipurpose public easement to the county along the southern portion of the Eastside Rail Corridor, including the Redmond Spur in return for King County's contribution of two million dollars towards the purchase of the ERC.
- An option for King County to acquire the fee interest in two segments of the corridor.
- A right of first opportunity for King County to acquire the corridor from the Port.
- A right of first refusal for King County to purchase from BNSF a segment of the Eastside Rail Corridor from milepost 0.00 to milepost 5.00.

Trail Easement Background

As you know, this rail corridor acquisition is very complicated. While there are many important elements to this transaction that warrant your consideration, you have indicated to us that the multipurpose public easement is especially important to you.

In order to complete our transaction with BNSF and the Port, two issues had to be resolved: 1) as mandated under the Federal Railbanking Statute, an "Interim Trail User" had to be assigned. The Port of Seattle has told us they are not a candidate for this role, and they asked King County to serve as Interim Trail User; and 2) an additional two million dollars was added to BNSF's purchase price as the result of the Port of Seattle and the County Council requiring that existing rails be left in place.

As King County Executive, I agreed that the county will serve as Interim Trail User. Given our expertise and experience in developing, managing and maintaining regional trails, this is a natural role for us. I also agreed the county will contribute the additional two million dollars to

the purchase price in exchange for an easement on the corridor. This easement will allow for the development of a regional trail that will in no way inhibit any future transportation uses in the corridor. One of our primary objectives is to ensure that both transportation and trail uses are possible. In this transmittal package, you will find a multipurpose easement that articulates the county's easement rights as well as the county's intentions to cooperate in partnership with the Port of Seattle and other potential transportation users of the corridor.

Moving Forward

Given the physical characteristics and the dual transportation and trail purpose of this corridor acquisition, future use conflicts may arise, especially in narrow "pinch points" or areas that make dual use challenging. Understandably, there are members of both the County Council and Port that find themselves more supportive of one use than the other. This perspective reflects the varied needs and opinions of citizens across our region, and therefore can serve us well as we work together to problem solve these challenges.

In partnership with the Port of Seattle, we have strived to develop an easement agreement that reflects the interests of all parties. We have attempted to anticipate the challenges that will present themselves, particularly in those areas of the corridor that make dual use difficult, and we have outlined a process for meeting these challenges. For example, the agreement specifies that the Port of Seattle and the county will jointly decide the proper size and location of the trail area, and that they must do so in a manner that will accommodate transportation use of the corridor. In addition, the King County Council must appropriate funds before any trail can be constructed. There would also be additional extensive public processes, master planning processes and budgetary processes that King County would complete prior to any trail construction. All of these processes assure both the County Council and the Port that no trail can proceed that does not protect the transportation uses. Even so, the easement agreement goes on to specify how and when the county's trail and trail improvements can later be reconfigured, relocated, and in some cases even rerouted off the corridor, in order to accommodate new or expanded transportation uses.

Despite these protections, members of the council expressed a desire for even stronger language to make clear that a transportation use could supersede the trail easement if necessary in the future. Executive staff drafted language that would accomplish this as long as any affected easement segment was purchased from King County, King County was reimbursed for any trail investments it had made, and a comparable trail connection was established to maintain the rails to trails obligation. This draft language was generally accepted by the council but has not been agreed to by the Port of Seattle. Therefore I am transmitting to you the original easement language that was agreed to and I urge the council to adopt it as written.

Nevertheless, I recognize that there are on-going discussions between the council and the Commission regarding the easement language. If the council changes any of the easement language, I would strongly suggest you keep the following guiding principles in mind. It is our hope and intention that these principles will guide future discussions and negotiations while protecting the interests of King County.

Guiding Principles

The corridor must accommodate multiple uses to include regional trail and regional transportation uses.

- **Joint Decision Making:** No trail investments should be made without joint approval of the Port and King County as to location and size of the trail area.
- **Cooperation:** The County should be a good partner in balancing the region's needs for transportation, freight, and regional trail use.
- **Dual Use:** The concept of dual use should guide all future development of the Corridor. Trail use and rail use should be coequal in principle, even if rail use ultimately occupies more space on the ground.
- **Regional Trail:** King County should develop a quality regional trail worthy of the best trail system in the nation.
- **Accommodation and Flexibility:** The regional trail area should accommodate and be flexible to transportation use.
- **Narrow Points:** Wherever there are "pinch points" on the corridor that make dual use a challenge, the county and the transportation use will be creative, reasonable, and cooperative in rerouting the trail and relocating trail improvements to accommodate transportation uses.
- **Compensation:** The county must receive fair, reasonable compensation for any displaced trail investments it has made, and for the costs incurred to relocate or replace any trail improvements displaced by rail use.
- **Responsibility:** King County needs to fulfill its responsibility to serve as the Interim Trail User in accordance with the federal Rails-to-Trails Act.
- **Rails to Trails Preservation:** Any displacement of a portion of the trail by a transportation use must be accomplished in such a way as to preserve the legal trail obligations necessary to maintain the rails to trails designation.

Agreements

The enclosed ordinance authorizes the documents necessary to carry out the transaction, including the following:

- Interlocal Agreement Between King County and the Port of Seattle Regarding Eastside Rail Corridor.
- Purchase and Sale Agreement (Woodinville Subdivision – North Rail Line).
- Donation Agreement (Woodinville Subdivision – South Rail Line).
- Public Multipurpose Easement.
- Trail Use Agreement.

Public Process

The Port of Seattle will be commissioning a process to engage the public and elected officials on recommending potential uses for the corridor. The public process will recognize the

upcoming study efforts of Sound Transit and the PSRC. While it is my intention that King County be a full partner in the Port's public process, over the next few weeks I may also propose some complementary public outreach in response to citizen input should that be necessary. The Port of Seattle has pledged to leave all existing rails in place along the entire corridor while these efforts are underway. There are no immediate plans to remove the rails.

Funding

Pursuant to the agreement, the county would pay \$ 1,903,000 to the Port of Seattle to secure the multipurpose easement. Funding would come from the balance remaining in the \$2,500,000 Conservation Futures Suburban Program Project 315758, appropriated in the 2007 Adopted Budget. The use of Conservation Futures for this purpose is consistent with the intent of the Conservation Futures Advisory Committee in recommending the appropriation and the Council's intent in approving it. As noted in the report and recommendation of the Conservation Futures Advisory Committee, "[t]he most significant recommendation for funding this year (2007) is \$2.5 million for the proposed rail/trail project extending through the heart of the east side cities of Renton, Newcastle, Bellevue, Kirkland, Redmond, Woodinville and a small portion of unincorporated King County. . . [T]his allocation would be a good initial step in the direction of making public acquisition of this corridor possible."

We are pleased that with the support of the Port of Seattle we are able to secure this easement using funding already approved and, given the county's strained financial condition, without having to incur additional expenses.

I understand that concerns have been raised by some councilmembers that the use of CFT for this purchase may in some way inhibit future transportation uses on the corridor. Clearly that is not my intent. I have requested a thorough legal review of this issue by the Prosecuting Attorneys Office. As a result of this review I believe that the risk of CFT revenue creating such a complication is minimal, and that if there ever were such a conflict, it could be resolved. Therefore I am recommending we continue to use already allocated CFT rather than tap another source such as REET which would require offsets from other projects and carries its own additional legal issues. Nevertheless, King County does not make the payment until closing. If the council wishes to identify a different funding source, it may do so anytime prior to closing in December.

Timelines and Projected Closing

BNSF has established a timeline to begin submitting the necessary documents to move this process forward. They desire to close this transaction by December 31, 2008. There is a great deal of work to accomplish by all three parties to meet that date. As you may know, the Federal Surface Transportation Board needs to approve this sale, as well as railbanking under the Rails-to-Trails statute, prior to closing. To help achieve this closing date, BNSF has required that King County and the Port of Seattle execute all the agreements necessary by May 15, 2008. The council has until May 15 to approve these documents or to decide not to approve them.

The Honorable Julia Patterson
April 14, 2008
Page 6

Financial Commitment

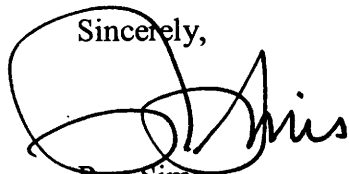
However, there are financial risks if the county council authorizes the county to participate in the transaction, purchase and sale and donation agreements by May 15, 2008, and then later revokes that authorization prior to closing. The transaction documents specify that if either the county or the Port initially commit to the deal and then walks away, then BNSF will receive \$5,000,000 in liquidated damages.

I want to thank you for taking the time to meet with staff over the past several weeks in preparation for this transmittal. Those meetings allowed my staff the opportunity to brief each of you on various details on the transactions as well as provide you with written copies of the draft agreements and excerpts.

I urge the council to adopt the enclosed ordinance to allow the public to benefit from this extraordinary opportunity. The acquisition of this corridor is an invaluable investment in the future quality of life for our region. If you need additional information, please feel free to contact Rod Brandon, Director of Environmental Sustainability, at 206 296-4039

Thank you for your consideration of this ordinance.

Sincerely,



Ron Sims
King County Executive

Enclosures

cc: King County Councilmembers
ATTN: Ross Baker, Chief of Staff
Saroja Reddy, Policy Staff Director
Anne Noris, Clerk of the Council
Frank Abe, Communications Director
Bob Cowan, Director, Office of Management and Budget
Theresa Jennings, Director, Department of Natural Resources and Parks, (DNRP)
Bob Burns, Deputy Director, DNRP
Kevin Brown, Division Director, Parks and Recreation Division, DNRP