

**PORT OF SEATTLE**  
**MEMORANDUM**

**COMMISSION AGENDA**  
**ACTION ITEM**

**Item No.:** 6f

**Date of Meeting:** January 25, 2011

**DATE:** January 18, 2011

**TO:** Tay Yoshitani, Chief Executive Officer

**FROM:** Craig Watson, General Counsel

**SUBJECT:** Declaring surplus approximately 3,350 square feet, 25 feet in width, of Port-owned real property formerly owned by BNSF, commonly known as the Woodinville Subdivision, located in Bellevue, Washington; transfer of title to said property as part of settlement of adverse possession lawsuit filed on December 11, 2009 by plaintiffs Ao-Zhou

**ACTION REQUESTED:**

Resolution No. 3649, First Reading. Declaring surplus and no longer needed for Port District purposes approximately 3,350 square feet, 25 feet in width, of Port-owned real property formerly owned by BNSF, commonly known as the Woodinville Subdivision, located in Bellevue, Washington, and authorizing the Chief Executive Officer to execute all documents necessary to transfer title of the property to plaintiffs Ao-Zhou via quitclaim deed as part of settlement of adverse possession lawsuit filed on December 11, 2009.

First Reading

**Estimated Value of Adverse Possession Property:** \$95,374.50 to \$222,607.50.

**SYNOPSIS:**

The Port owns the real property legally described in Exhibit A (“BNSF/Port Property”) to Resolution No.3649. The Port acquired the BNSF/Port Property from BNSF, as part of the Port’s acquisition of the Woodinville Subdivision rail corridor, on December 18, 2009. Jie Ao and Xin Zhou (“Ao-Zhou”) own real property located at 6333 Hazelwood Lane, Bellevue, Washington 98006 in King County, on the eastern shore of Lake Washington. Ao-Zhou filed an adverse possession lawsuit on December 11, 2009, claiming 1) an ownership interest in a 35-foot wide portion of the BNSF/Port Property and 2) a prescriptive easement interest in the roadway (Hazelwood Lane) serving the Ao-Zhou Property. Plaintiff alleged, among other things, in its lawsuit that: 1) The Ao-Zhou parcel abuts the western boundary of the BNSF/Port Property north and south of SE 64<sup>th</sup> Street; 2) To the north of SE 64<sup>th</sup> Street in Bellevue, the Ao-Zhou Parcel is currently developed with Ao-Zhou’s home; 3) Ao-Zhou and their predecessors have maintained a detached single-story garage, a concrete driveway, rockery, and other improvements within

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that portion of the BNSF/Port Property abutted by SE 64<sup>th</sup> Street for over ten years; and 4) They and their predecessors have also maintained a concrete driveway, rockery and other improvements (namely a retaining wall) within that portion of the BNSF/Port Property abutting the Ao-Zhou Parcel to the north of SE 64<sup>th</sup> Street.

Settlement of the adverse possession lawsuit would be justified for reasons consistent with the Commission's delegation of authority to settle claims filed against the Port. .

The Port wishes to convey as part of the settlement of Ao-Zhou's lawsuit, a portion of the BNSF/Port Property that is 25 feet in width (east-west) and approximately 3,350 square feet in area as legally described in Exhibit B and as depicted in Exhibit C to the Resolution (the "Adverse Possession Property"). Based on sales data of adjacent properties, the market value of the Adverse Possession Property is estimated to range between \$28.47 and \$66.45 per square foot. The value of the Adverse Possession Property thus ranges from approximately \$95,374.50 to \$222,607.50, which amount falls under the \$300,000 settlement authority delegated to the CEO.

The Port has not used or needed the Adverse Possession Property since the Port's acquisition of the former BNSF property, and sees little practical use for it. The eastern boundary of the Adverse Possession Property lies at the toe of a fairly steep slope down from existing railroad tracks in the Bellevue section of the Woodinville Subdivision rail corridor. Ao-Zhou originally claimed 35 feet, including part of the property to the east of the top of the slope toward the tracks, but plaintiffs will agree to accept 25 feet beginning at the top of the slope and running westward. Any agreement to settle Ao-Zhou's lawsuit will have acknowledgment and agreement by Ao-Zhou that under the Rails-to-Trails Act (16 U.S.C. Section 1247(d)), the Quit Claim Deed from BNSF to the Port and that certain Donation Agreement dated May 12, 2008, the BNSF/Port Property is "railbanked" which means that rail service may be reactivated over the Property, which means that Ao-Zhou may be required to remove or relocate Ao-Zhou's improvements, if any, in or on the BNSF/Port Property at Ao-Zhou's sole cost and/or negotiate with the person or entity that reactivates rail service to make other arrangements for Ao-Zhou's continued use of the BNSF/Port Property.

### **JUSTIFICATION:**

A resolution declaring surplus the Adverse Possession Property is necessary to settlement of the Ao-Zhou adverse possession lawsuit.

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**OTHER DOCUMENTS ASSOCIATED WITH THIS REQUEST:**

The surplus resolution, Resolution No. 3649 and its exhibits A (legal description of BNSF/Port Property”; B (legal description of Adverse Possession Property); and C (depiction of Adverse Possession Property).

**PREVIOUS COMMISSION ACTION OR BRIEFING:**

None.