

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA
ACTION ITEM

Item No.	<u>6a</u>
Date of Meeting	<u>August 7, 2012</u>

DATE: August 2, 2012

TO: Tay Yoshitani, Chief Executive Officer

FROM: Michael Burke, Director, Container Leasing and Asset Management

SUBJECT: First Reading of Resolution No. 3665, Amending Unit 20 of the Comprehensive Scheme of Harbor Improvements of the Port of Seattle (Lower Duwamish Industrial Development District) by declaring Certain Real Property Surplus and No Longer Needed for Port District Purposes and deleting said property from Unit 20, and amending said Unit 20 to add certain real property transferred to the Port by BNSF; and to Fund Net Closing Costs Estimated to be \$51,000. (Pre-final estimate as of August 7, 2012 via draft Escrow Settlement Statement from Chicago Title.)

Amount of this Request: \$51,000

Source of Funds: General Fund

ACTION REQUESTED:

Request First Reading and Public Hearing of Resolution No. 3665: A Resolution amending Unit 20 of the Comprehensive Scheme of Harbor Improvements of the Port of Seattle (Lower Duwamish Industrial Development District) by: (i) declaring certain real property surplus and no longer needed for port district purposes; (ii) authorizing its transfer to BNSF Railway Company; (iii) deleting said property from Unit 20 of the Comprehensive Scheme; and (iv) adding to Unit 20 of the Comprehensive Scheme certain real property transferred by BNSF to the Port. Further requesting authorization for the Chief Executive Officer to take all necessary steps and execute all documents, including an Exchange Agreement necessary to accomplish the exchange of properties with BNSF Railway, Inc., in accordance with state law; and requesting authorization for Port staff to approve escrow settlement for the Port's net cost at closing of approximately \$51,000. The Port's obligation for closing costs of approximately \$167,000 will be partially offset by BNSF's \$97,000 reimbursement to the Port for BNSF's share of the survey costs incurred related to this land exchange transaction and offset by other prepaid credits. These offsetting payment obligations are reflected in the closing documents for the land exchange title transfer.

SYNOPSIS:

The Port of Seattle (the Port) and BNSF Railway Company (BNSF) entered into a Memorandum of Agreement (MOA) and a Letter Agreement (Agreement) on May 31, 1994. Pursuant to the Agreements, the Port and BNSF have certain obligations in connection with the exchange of property between the parties. Specifically, in exchange for BNSF's agreement to provide the property requested by the Port for the expansion of Terminal 5, the Port agreed to provide BNSF

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with replacement property and track of sufficient space and condition to support existing rail operations and required operating capacity to support shipping at BNSF's Buckley Yard. The Port and BNSF are now ready to enter into an Exchange Agreement (Exchange Agreement) and complete the exchange of property contemplated in the Agreements.

The Exchange Agreement includes the following:

- The Port will convey 10.97 acres (477,853 square feet) to BNSF together with all right, title and interest of the Port to those un-vacated streets and alleys abutting the Port property conveyed to BNSF. The Port will also grant BNSF an easement over a Port road on Terminal 5.
- BNSF will convey to the Port 9.33 acres (406,415 square feet), and will grant the Port two road access easements and a utility easement.

Escrow is expected to close on August 31, 2012.

BACKGROUND:

In the early 1990s, American President Lines (APL) put out a request for proposals (RFP) for an expanded gateway to complement their facility in Southern California. At that time the competition was between Oakland, Tacoma and Seattle. The existing configuration at Terminal 5 did not meet the requirements of the RFP due to the limitations of terminal size with the existing BNSF West Seattle yard. The Port developed a proposed terminal that met the requirements by proposing to relocate the BNSF yard west and making that yard parallel with the Terminal 5 dock. This proposed relocation put a bend in the BNSF yard reducing its efficiency. Since the Port had no condemnation rights over a railroad, it was necessary to reach agreement with BNSF on the land swap and yard relocation. Without this agreement there would have been no Terminal 5 expansion.

The executed agreements in 1994 were the starting point for a set of extremely complex business relationships between BNSF, competitor railway Union Pacific, and the City of Seattle requirements to accommodate the relocation by stipulating the terms for future street vacations to accommodate the improvements to Terminal 5. Due to the foregoing, including state mandated environmental impact review and the magnitude of the rail yard relocation, it is not unusual for railway relocations to take a long time to complete. A substantive and relevant issue embedded in the business relationships includes the fact that BNSF was not compelled to complete this transaction, and in fact, had little motivation or business requirements to pursue this change to their operating rail "footprint."

The value of land and easements that the Port will convey and grant to BNSF is \$8,814,000. The value of land and easements that BNSF will convey and grant to the Port is \$7,323,500. The net difference in the exchange value is due to providing BNSF the equivalent replacement area for a functional rail yard.

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The Port has also agreed to pay closing costs associated with the land exchange, as additional consideration to induce BNSF to complete the exchange. Specifically, the Port will pay the excise tax on the land being transferred from BNSF to the Port in the estimated amount of \$130,216 and the Port will pay BNSF's share of the escrow fee in the estimated amount of \$1,600. BNSF will reimburse the Port \$97,000 for half of the Port's survey related expenses associated with engineering and survey work.

Prior to the land exchange, the Buckley Yard was a long narrow strip of land with an average width of 200 feet extending in a northwest to southeast direction from just south of Salty's Restaurant to 26th Avenue Southwest just north of Spokane Street. The southern portion of the Buckley Yard ran diagonally through the proposed Terminal 5 expansion area.

The Port took the southern portion of the Buckley Yard (9.33 acres) and incorporated this land into its existing Terminal 5 along with other Port-owned land. The Port then rebuilt the southern portion of the Buckley Yard. The rebuilt portion of the Buckley Yard was moved to the outer edge of Terminal 5 just north of Spokane Street on the south and along the western edge of the Port's expanded Terminal 5 where it reconnected to the northern portion of the Buckley Yard. To rebuild the southern portion of the Buckley Yard, so that it and the remaining north portion of the Buckley Yard provided BNSF with a functionally equivalent rail yard to sustain its rail operations in West Seattle, required 10.97 acres of Port property.

Prior to the exchange of land and the Port's expansion of Terminal 5, BNSF was able to access the southern portion of the Buckley Yard via West Marginal Way Southwest which lay immediately east of and adjacent to this part of the Buckley Yard. This public roadway provided the access BNSF needed to perform maintenance in the south portion of the Buckley Yard. West Marginal Way Southwest was removed by the Port as a result of a street vacation petition filed with the City of Seattle. Vacation of this and several other streets was essential to the expansion of Terminal 5. The final ordinance needed to vacate these streets has not yet been passed by the Seattle City Council.

The only way BNSF can now access the rebuilt southern portion of the Buckley Yard for maintenance is via Port property. The Port will grant BNSF a perpetual, non-exclusive easement over a Port-owned road to provide a way for BNSF to access the rebuilt portion of the Buckley Yard for maintenance purposes.

After the reconfiguration of the southern portion of the Buckley Yard, it was also essential for BNSF to grant the Port easements that would allow it to cross over BNSF property to access certain portions of Terminal 5 and other property owned by the Port in the vicinity of Terminal 5. BNSF will grant the Port perpetual, non-exclusive easements for this purpose. As part of closing documents BNSF will also execute future easement agreements that will provide the Port vehicular access across BNSF property acquired in the future as a result of Port initiated street vacations within Terminal 5. These easements will be recorded once the terms of these future

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street vacations are completed, as stipulated in 1995 within the City of Seattle Conditions for the Terminal 5 Street Vacations.

The exchange parcels and easement areas were appraised by the Port. Following is a summary of the value of land and easements from the appraisal.

Appraisal dated: August 24, 2010

Transferred From	Transferred To	Interest	Size (s.f.)	Value
Port	BNSF	Fee Simple	477,853	\$ 8,600,000.00
Port	BNSF	Easement	118,919	214,000.00
Total Land/Value			596,772	\$ 8,814,000.00

Transferred From	Transferred To	Interest	Size (s.f.)	Value
BNSF	Port	Fee Simple	406,415	\$ 7,300,000.00
BNSF	Port	Easement	2,178	3,900.00
BNSF	Port	Easement	2,614	4,700.00
BNSF	Port	Easement	8,276	14,900.00
Total Land/Value			419,483	\$ 7,323,500.00

The fee value of the land being transferred between the parties is \$18.00 per square foot.

- The total value of Port fee simple land being transferred to BNSF equals \$8,600,000.
- The total value of Port easements being transferred to BNSF equals \$214,000 (the appraised value of easements is 10% of the value of fee ownership).
- The total value of BNSF land and easements being transferred to the Port equals \$7,323,500.00.
- The net difference in fair value of the land exchange is \$1,490,500 of combined fee and easement property in favor of BNSF.

The appraised difference in fair value does not reflect the operational impacts or benefits to either party. Irrespective of the valuation differential, BNSF is receiving property that provides equivalent operating requirements to their prior rail yard with no net gain in real terms, with the Port receiving more usable property with the exchange parcel allowing an assemblage that is more productive from a Port lease and operating standpoint.

PROJECT JUSTIFICATION:

Project Objectives:

- Finalize ownership exchange and terminate existing lease for operating properties currently occupied by the Port and BNSF.

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FINANCIAL IMPLICATIONS:

The Terminal 5 BNSF land exchange is essentially a non-cash transaction. For financial reporting purposes, the Port is expected to recognize a gain on sale for this land exchange transaction. Accounting treatment of this land exchange transaction compares the fair market value of the property that BNSF conveys to the Port, against the historic cost (book value) of the property the Port conveys to BNSF. Since the fair market value of the property being received in the land exchange is expected to exceed the historic cost of the property being conveyed to BNSF, the Port will likely to record a gain on sale from this exchange transaction. The amount of any such gain will be calculated when the transaction is booked, and will be recorded as Non-Operating Revenue/(Loss).

The proposed BNSF land exchange will have no impact to Terminal 5 lease revenues because the Terminal 5 acreage under lease to APL will not change as a result of this transaction. The APL lease was originally drafted to include the leasable area that will be conveyed to the Port from BNSF. A land lease currently in effect between the Port and BNSF for that acreage, will terminate simultaneously with the effective date of the proposed BNSF land exchange transaction.

The net cash obligation of the Port at closing is estimated to be \$51,000, which will be paid from the general fund. The Port's obligation for closing costs, of approximately \$167,000, will be partially offset by BNSF's \$97,000 reimbursement to the Port for BNSF's share of the survey costs incurred related to this land exchange transaction and offset by other prepaid credits. These offsetting payment obligations are reflected in the closing documents for the land exchange title transfer. No other funds are required for this request.

ENVIRONMENTAL SUSTAINABILITY:

As part of the Terminal 5 expansion project, the Port entered into several formal cleanup agreements with the Washington State Department of Ecology and the United States Environmental Protection Agency that apply to the areas of Terminal 5 included in this land exchange. The Port will retain its long-term reporting, monitoring, and maintenance obligations associated with these agreements and will continue to meet these obligations as it has in the past.

OTHER DOCUMENTS ASSOCIATED WITH THIS REQUEST:

- Resolution No. 3665, BNSF Exchange T-5
- Exhibit A: BNSF Exchange Surplus Resolution
- Exhibit B: BNSF Exchange Surplus Resolution
- Exchange Agreement

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS:

- July 24, 2012 – The Port Commission received a briefing on the proposed land exchange with BNSF.

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- June 22, 1993 – The Port Commission authorized the Executive Director to execute both, the Sixth Amendment to Lease No. L-1648 with American President Lines, Ltd, and the Memorandum of Agreement with Burlington Northern Railroad.