

July 22, 2011

230972

Ms. Cynthia T. Brown  
Chief of the Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 "E" Street, S.W.  
Washington, D.C. 20423-0001

**FEE RECEIVED**

SEP 19 2011

**TRANSPORTATION BOARD**

Re: Docket No. 1:10 35539  
Petition for Declaratory Order - Jie Ao and Xin Zhou

Dear Ms. Brown:

Enclosed for filing in the above-referenced proceeding are the original and ten copies of Petitioners Ao-Zhou's Petition for a Declaratory Order.

Pursuant to 49 C.F.R. § 1002(e)(2), Petitioners respectfully request a waiver of the \$1,400 filing fee for this Petition. Petitioners have incurred substantial fees in defending the jurisdiction of the Washington state court to decide their state property law quiet title action. The Port of Seattle contends that the STB has jurisdiction to decide these matters of state property law. However, the Port has not elected to file a Petition with the STB to decide this jurisdictional issue. If the Port had filed this Petition, the filing fee would have been waived pursuant to 49 C.F.R. § 1002(e)(1). Further grounds in support of Petitioners' request for a waiver of the filing fee are set forth in the attached Declaration of Keith Moxon, ¶¶ 40-43.

As set forth in the attached certificate of service, the Petition, the Declaration of Keith Moxon, and this letter have been served on the Port of Seattle, the only other party of record in this proceeding.

Please return a date stamped copy of this letter and the cover pages of the Petition and Declaration in the enclosed self-addressed, postage-paid envelope.

ENTERED  
Office of Proceedings

SEP 19 2011

Port of  
Seattle  
Public Records

**FILED**

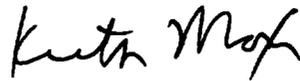
SEP 19 2011

**SURFACE  
TRANSPORTATION BOARD**

Please contact me if you have any questions regarding this matter.

Sincerely,

GORDON DIERRE LLP

A handwritten signature in black ink that reads "Keith Moxon". The signature is written in a cursive, slightly slanted style.

Keith Moxon  
Attorney for Petitioners  
Jie Ao and Xin Zhou

KEM/aka

Enclosures

cc: Craig Watson, General Counsel, Port of Seattle (w/enc)

John McDowall, Carney Badley Spellman, Attorney for Port of Seattle (w/enc)

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

Docket No. FD 35539

---

**FEE RECEIVED**  
SEP 19 2011  
SURFACE  
TRANSPORTATION BOARD

**JIE AO and XIN ZHOU  
PETITION FOR DECLARATORY ORDER**

---

ENTERED  
Office of Public Records  
SEP 19 2011  
Part of  
Public Record

**FILED**  
SEP 19 2011  
SURFACE  
TRANSPORTATION BOARD

Keith E. Moxon  
GORDONDERR LLP  
2025 First Avenue -- Suite 500  
Seattle, WA 98121-3140  
Phone: (206)-382-9540  
Facsimile: (206)-626-0675  
kmoxon@gordonderr.com

Attorneys for Petitioners Jie Ao and  
Xin Zhou

July 22, 2011

Attachments Contain Color Images  
Exhibits A - R and Appendix A

## TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
I. INTRODUCTION.....	1
II. FACTUAL BACKGROUND.....	1
A. Location of Ao-Zhou Property .....	1
B. Ao-Zhou Record Title Parcels.....	2
C. Ao-Zhou Adverse Possession Area – “Parcel D”.....	2
D. Ao-Zhou Prescriptive Easement Area- “Parcel E” .....	3
E. Ao-Zhou Property Purchase and State Court Quiet Title Action.....	3
F. Efforts to Resolve Ao-Zhou’s State Court Quiet Title Action.....	5
III. JURISDICTION .....	7
IV. ISSUES PRESENTED .....	8
A. Federal Preemption.....	8
B. STB Jurisdiction to Decide State Property Law Quiet Title Action.....	8
V. LEGAL AUTHORITY IN SUPPORT OF PETITION.....	8
A. Overview .....	8
B. Petitioners’ State Property Law Rights Were Established Prior to the STB’s Railbanking Decision and Prior to the Port’s Acquisition of the Rail Corridor.....	11
C. Ao-Zhou’s State Property Law Quiet Title Action Is Not Preempted by Federal Law.....	12
1. Petitioners’ State Property Law Quiet Title Action Is Not Preempted Under the Trails Act (16 U.S.C. § 1241, <i>et seq.</i> ).....	12
2. Petitioners’ State Property Law Quiet Title Action Is Not Preempted Under the ICCTA (49 U.S.C. § 10101, <i>et seq.</i> ).....	14
3. STB Decisions Do Not Support Federal Preemption of Petitioners’ State Property Law Quiet Title Action.....	19
VI. FUTURE PROCEEDINGS .....	21
VII. CONCLUSION .....	22
CERTIFICATE OF SERVICE.....	23

## I. INTRODUCTION

Petitioners Jie Ao and Xin Zhou (“Ao-Zhou”) have vested adverse possession and prescriptive easement property rights to two portions of a former Burlington Northern Santa Fe (“BNSF”) rail corridor located east of Seattle, Washington. The former BNSF rail corridor is currently owned by the Port of Seattle (the “Port”). Prior to the Port’s acquisition of the rail corridor in December of 2009, Petitioners Ao-Zhou had filed a state property law quiet title action in Washington State Superior Court for King County to perfect their record title ownership of these property interests that are vested under Washington law. The Port of Seattle moved to dismiss Ao-Zhou’s lawsuit, claiming that all state property law actions involving a rail corridor are preempted by federal law, regardless of whether there is any actual effect on the use of the rail corridor. The Port contends that only the Surface Transportation Board (“STB”) has exclusive jurisdiction to decide questions of state property law affecting railroad corridors, regardless of whether the state law action would adversely affect use of the rail corridor. Petitioners A-Zhou contend that their state property law action is not preempted by federal law. The superior court judge determined that the STB should decide the question of federal preemption. The quiet title action was dismissed “without prejudice” to allow the parties to petition the STB to resolve the federal preemption issue.

Petitioners Ao-Zhou request that this Board issue a declaratory order confirming that (1) this state property law quiet title action is not preempted by federal law because it will not have any adverse impact on the use of this rail corridor and (2) the dispute regarding the size and extent of the Petitioners’ and the Port’s respective property interests in this former rail corridor is a matter of state property law and should be decided by a Washington State court, not the STB.

## II. FACTUAL BACKGROUND

### A. Location of Ao-Zhou Property

Petitioners Ao-Zhou own property east of Seattle in unincorporated King County on the shoreline of Lake Washington. See **Exhibit A** (vicinity map). Lake Washington abuts the Ao-Zhou Property to the west. *Id.* The former Burlington Northern Santa Fe (“BNSF”) rail corridor

abuts the Ao-Zhou Property to the east. *See Exhibit B* (plat map); *Exhibit C* (aerial photo of Ao-Zhou Property). Access to the Ao-Zhou Property is via Hazelwood Lane, a private paved roadway lying entirely within the former BNSF railroad corridor. *See Exhibit D* (map of Hazelwood Lane).

### **B. Ao-Zhou Record Title Parcels**

Petitioners Ao-Zhou have record title to three parcels: Lots 35 and 36 of Block A (“Parcel A”), Lots 1, 2, and 3 in Block B (“Parcel B”), and a parcel 35 feet in width and 115 feet in length that was formerly part of the 100-foot BNSF railroad right-of-way until, it was sold by BNSF in 1998 (“Parcel C”). *See Exhibit E* (map of Parcels A, B, and C); *Exhibit F* (Ao-Zhou 2008 deed with record title legal description of Ao-Zhou Property).

“Parcel C” was originally part of the 100-foot wide former BNSF rail corridor, but this portion of the rail corridor was sold by BNSF in 1998 and was acquired by Ao-Zhou’s predecessor in interest in 1999. *See Exhibit G* (aerial photo depicting location of “Parcel C”); *Exhibit H* (1998 BNSF deed conveying portion of rail corridor, including Parcel C, to ANT, LLC); *Exhibit I* (1999 ANT, LLC deed conveying portion of rail corridor, including “Parcel C,” to former owner of Ao-Zhou Property).<sup>1</sup>

### **C. Ao-Zhou Adverse Possession Area – “Parcel D”**

In addition to these three record title parcels, the Ao-Zhou Property includes, based on adverse possession under Washington law, an additional portion of the former BNSF rail corridor that is 35 feet in width extending from the north line of “Parcel C” to the easterly extension of the north line of “Parcel A.” This portion of the former BNSF rail corridor is the

---

<sup>1</sup> BNSF conveyed the western 35 feet of its 100-foot railroad corridor abutting seven waterfront lots, including the adverse possession area, to ANT, LLC in 1998. *See Exhibit H* (deed); *Exhibit B and Exhibit E* (portion of BNSF rail corridor abutting waterfront lots 1-7 sold in 1998, depicted as “Parcel C” and Parcel “F”). In 1999, ANT, LLC conveyed this 35-foot wide parcel (abutting lots 1-7) to Steven Hazlerig, a prior owner of Ao-Zhou’s property. *See Exhibit I* (deed). Hazlerig sold a portion this 35-foot wide parcel abutting lots 4-7 to M-Hawk Construction, Inc. in 2000. *See Exhibit J* (deed). Petitioners purchased the Ao-Zhou Property, including the 35-wide portion of the rail corridor abutting lots 1-3 (“Parcel C”) in 2008. *See Exhibit F* (deed); *Exhibits B and G* (showing “Parcel C” acquired by Petitioners Ao-Zhou in 2008).

adverse possession area identified as “Parcel D” on **Exhibits B, Exhibit E, and Exhibit G**. Title to “Parcel D” was acquired by operation of law following a ten-year period of adverse possession under Washington law that was completed in April of 2000. This was during the ownership of Steven Hazlerig, a prior owner of the Ao-Zhou Property from April 25, 1990 to August 11, 2004.<sup>2</sup>

**D. Ao-Zhou Prescriptive Easement Area– “Parcel E”**

In addition to the above-described adverse possession area, the Ao-Zhou Property includes a prescriptive easement area for access and utilities. This prescriptive easement area generally coincides with the paved area of Hazelwood Lane, a private roadway over a portion of the former BNSF rail corridor that has been used for access and utilities by the owners of the Ao-Zhou Property and other waterfront properties to the north of the Ao-Zhou Property for many years. This portion of the former BNSF rail corridor is identified as “Parcel E” on **Exhibit D**. The ten-year period of adverse use to establish prescriptive easement rights under Washington law was also completed in April of 2000.<sup>3</sup>

**E. Ao-Zhou Property Purchase and State Court Quiet Title Action**

Petitioners Ao-Zhou purchased the Ao-Zhou Property on November 3, 2008. **Exhibit F**. They acquired all of the adverse possession and prescriptive easement property interests of the former owners of this property as allowed under Washington law.<sup>4</sup> *See Exhibits B, E, and G* (maps and aerial photo showing adverse possession area – “Parcel D”); **Exhibit D** (map showing

---

<sup>2</sup> Undisputed evidence establishes that for at least the past 20 years Ao-Zhou and their predecessors in interest used the adverse possession area without permission and without objection from BNSF or the Port. *See Exhibit K* (excerpt from Hazlerig deposition, April 18, 2011)

<sup>3</sup> Undisputed evidence establishes that for at least the past 20 years Ao-Zhou and the owners of other waterfront properties in this area used Hazelwood Lane without permission or objection from BNSF or the Port. *See Exhibit K* (Hazlerig deposition).

<sup>4</sup> “Where there is privity between successive occupants holding continuously and adversely to the true title holder, the successive periods of occupation may be tacked to each other to compute the required 10-year period of adverse holding.” *Roy v. Cunningham*, 46 Wn.App. 409, 413-14, 731 P.2d 526 (1986), citing RCW 4.16.020 and *El Cerrito, Inc v Ryndak*, 60 Wn.2d 847, 856, 376 P.2d 528 (1962).

prescriptive easement area -- "Parcel E"). In the fall of 2009, aware of the Port's proposed acquisition of the BNSF rail corridor, Ao-Zhou's attorney contacted BNSF's property manager to explain that Petitioners Ao-Zhou have adverse possession ownership rights and prescriptive easement rights to portions of the BNSF rail corridor abutting the Ao-Zhou Property. Moxon Decl., ¶ 22. Attempts to negotiate a stipulated quiet title agreement with BNSF to avoid litigation prior to BNSF's conveyance of the BNSF rail corridor to the Port were unsuccessful. *Id.*

Ao-Zhou filed a quiet title action against BNSF in King County Superior Court on December 11, 2009, prior to BNSF's conveyance of the rail corridor to the Port. The purpose of this quiet title action was to confirm record title ownership of the adverse possession area "Parcel D" and prescriptive easement rights to "Parcel F." *See Exhibits B and G* (showing adverse possession area -- "Parcel D"); *Exhibit D* (showing prescriptive easement area -- "Parcel E"). These ownership and easement rights had become vested by operation of Washington law in April of 2000 at the end of the ten-year period of adverse use under Washington law.<sup>5</sup>

When BNSF filed a Notice of Exemption with the STB in 2008 under 49 CFR 1152. Subpart F (Exempt Abandonments), to abandon the segment of the BNSF rail corridor adjacent to the Ao-Zhou Property, the rail corridor was already subject to the vested adverse possession ownership and prescriptive easement rights of Ao-Zhou's predecessors.<sup>6</sup> BNSF's Notice of

---

<sup>5</sup> Steven Hazlerig, the owner of the Ao-Zhou Property from April 25, 1990 to August 4, 2004, completed ten years of adverse use of the adverse possession area and the prescriptive easement area in compliance with all requirements of Washington law on April 26, 2000. *Exhibit K* (Hazlerig deposition). Ownership of "Parcel D" and easement rights to "Parcel F" passed to Hazlerig by operation of Washington law at that time. Ao-Zhou's quiet title action is not required for the purpose of transferring ownership rights to the adverse possession property ("Parcel D") or easement rights to the prescriptive easement area ("Parcel E"). These ownership and easement rights were transferred by operation of law at the end of the ten-year statutory period. *See El Cerrito, Inc. v. Ryndak*, 60 Wn.2d 847, 855, 376 P.2d 528 (1962); *Muench v. Oxley*, 90 Wn.2d 637, 644, 584 P.2d 939 (1978). A quiet title action simply confirms for public title records the ownership and easement interests that were previously transferred by operation of law.

<sup>6</sup> The STB issued a Decision and Notice of Interim Trail Use ("NITU") on October 27, 2008. *See* STB Docket No. AB-6 (Sub-No. 464X), Decision and Notice of Interim Trail Use or Abandonment, decided October 27, 2008.

Exemption and the STB's decision issuing the NITU were filed eight years after ownership of the adverse possession area had vested by operation of law in Ao-Zhou's predecessors in interest. The Port acquired the BNSF rail corridor on December 18, 2009, almost ten years after adverse possession ownership and prescriptive easement rights had vested in Ao-Zhou's predecessors. *See Exhibit L* (deed from BNSF to Port).<sup>7</sup>

#### **F. Efforts to Resolve Ao-Zhou's State Court Quiet Title Action**

For a full year after Ao-Zhou's quiet title action was filed in Washington state court, counsel for the Port and Ao-Zhou attempted to negotiate a settlement of Ao-Zhou's adverse possession and prescriptive easement quiet title lawsuit. Moxon Decl., ¶ 23. In January of 2011, the Port's General Counsel recommended a settlement to the Port Commissioners under which the Port would declare "surplus" a 25-foot wide portion of the former BNSF rail corridor and would confirm Ao-Zhou's ownership of this parcel.<sup>8</sup> Moxon Decl., ¶ 24; **Exhibit M** (transcript of portions of January 25, 2011, Port Commission meeting).

At a Port of Seattle Commission meeting on January 25, 2011, the Port's General Counsel testified in support of conveying the adverse possession area to Ao-Zhou and advised the Port Commission that Ao-Zhou's pending quiet title lawsuit in state court would be successful if litigated. Moxon Decl., ¶ 25. He advised the Port Commission that the portion of the former BNSF rail corridor subject to Ao-Zhou's adverse possession lawsuit "is on a slope

---

<sup>7</sup> The Port, BNSF and King County entered into a "Donation Agreement" on May 12, 2008, under which the parties agreed that BNSF would "donate and convey" to the Port a segment of the BNSF rail corridor 18.45 miles in length (from milepost 23.45 in Woodinville south to milepost 5.0 in Renton), including the portion of the rail corridor adjacent to the Ao-Zhou Property. Moxon Decl. At the time of this "Donation Agreement" the rail corridor was subject to the adverse possession ownership rights and the prescriptive easement rights that had vested in 2000 during the ownership of Ao-Zhou's predecessor in interest, Steven Hazlerig. Thus, BNSF had already lost ownership rights to the adverse possession area and easement rights to the prescriptive easement area at the time it entered into the "Donation Agreement."

<sup>8</sup> In the proposed settlement, Ao-Zhou agreed to reduce its ownership rights to adverse possession area from a width of 35 feet to a width of 25 feet as a compromise to avoid the cost and delay of proceeding with quiet title litigation in state court. Moxon Decl., ¶ 24.

and it's not useful for anything else other than holding up the rail bed.”<sup>9</sup> **Exhibit M**, p.3; Moxon Decl., ¶ 25.

He also stated that “this particular piece of property [the adverse possession area] doesn't have any viable use for the corridor.” Moxon Decl., ¶ 25. At the Port Commission hearing, the Port's Director of Real Estate also testified and informed the Port Commission that “there are eight or nine hundred known easements across the corridor.” **Exhibit M**, p.7; Moxon Decl., ¶ 25. The Port has never contended that any of these hundreds of easements would interfere with the present or future use of the rail corridor. Moxon Decl. Nor has the Port presented any evidence that confirming Petitioners' adverse possession ownership rights or prescriptive easement rights would interfere with the present or future use of the former BNSF rail corridor. Moxon Decl., ¶¶ 26, 38, 39.

The Port Commission's first reading of the resolution to proceed with the settlement was approved by a majority vote on January 25, 2011. **Exhibit M**, p.7; Moxon Decl., ¶ 27. However, shortly thereafter, the Port advised Petitioners that the Port would not agree to settlement and would oppose Petitioners' quiet title action in King County Superior Court. Moxon Decl., ¶ 27. At this point, Petitioners dismissed BNSF, the former owner of the rail corridor, from the state court quiet title lawsuit and filed an amended quiet title complaint against the Port on February 10, 2011. Moxon Decl., ¶ 28; **Exhibit N** (Ao-Zhou's state court quiet title action against the Port).

The Port filed a motion to dismiss Ao-Zhou's state court quiet title action on March 31, 2011, contending that Ao-Zhou's state property law action is preempted by federal law and is subject to the exclusive jurisdiction of the STB. Moxon Decl., ¶ 29. The Port's motion to

---

<sup>9</sup> Petitioners Ao-Zhou acknowledge that their continued possession and use of the adverse possession and prescriptive easement areas must not impair any lawful future use of the remainder of the rail corridor by the Port or its successors. The Port and its successors are entitled to the benefit of “lateral support” requirements of Washington law, including maintenance of the retaining wall in the adverse possession area. In addition, Petitioners are willing to commit to specific terms in a recorded title document that would confirm the right of the Port and its successors to use the remainder of the rail corridor without impairment arising from the use of the adverse possession and prescriptive easement areas.

dismiss failed to present any evidence that Ao-Zhou's state property law quiet title lawsuit would result in any interference with present or future use of the former BNSF rail corridor. *Id.*

A hearing on the Port's motion to dismiss was held on April 22, 2011. Moxon Decl., ¶ 30. In its oral ruling, the superior court judge concluded that the STB is better qualified to make a determination as to whether Ao-Zhou's quiet title claims are preempted by federal law: "But I still think they [STB] are the ones that will determine whether or not the subject property is within the federal statute seeking to preserve these right-of-ways." *See Exhibit O* (transcript of superior court oral ruling).

At the conclusion of the hearing on the Port's motion to dismiss, the superior court entered an order in a form proposed by the Port that purported to dismiss Ao-Zhou's quiet title lawsuit "with prejudice." Moxon Decl., ¶ 31. Ao-Zhou filed a motion for reconsideration, asserting that a dismissal "with prejudice" would adversely affect Ao-Zhou's right to file a petition to the STB to determine whether the state property law quiet title claims are preempted by federal law. *Id.* Ao-Zhou pointed out that a dismissal "with prejudice" would adversely affect the parties' rights to initiate STB proceedings to decide the federal preemption issue.

The superior court agreed with Ao-Zhou position, granted the motion for reconsideration, and entered a revised order of dismissal on May 23, 2011, which dismissed Ao-Zhou's quiet title claims "without prejudice." *See Exhibit P* (order of dismissal). This revised order preserved Ao-Zhou's (and the Port's) right to petition the STB to determine whether these quiet title state law property claims are preempted by federal law.

### III. JURISDICTION

The STB has discretionary authority under 5 U.S.C. 554(e) and 49 U.S.C. 721 to issue a declaratory order to eliminate a controversy or remove uncertainty. Petitioners and the Port - two adjacent landowners with conflicting ownership claims to the rail corridor - dispute whether Petitioners' state property law quiet title claims are preempted by federal law. The federal preemption issue is a present controversy that is appropriate for determination by the STB.

## IV. ISSUES PRESENTED

### A. Federal Preemption

Is Petitioners' state property law quiet title action preempted by federal law under either (1) the National Trails Systems Act (the "Trails Act"), codified at 16 U.S.C. § 1241, *et seq.* or (2) the Interstate Commerce Commission Termination Act ("ICCTA"), codified at 49 U.S.C. § 10101, *et seq.*?

### B. STB Jurisdiction to Decide State Property Law Quiet Title Action

Should Petitioners' state property law quiet title action, if not preempted by federal law, be decided by a Washington state court?

## V. LEGAL AUTHORITY IN SUPPORT OF PETITION

### A. Overview

Petitioners Ao-Zhou do not dispute the fact that the STB has issued a Notice of Interim Trail Use ("NITU") for the 5.6 mile portion of this rail corridor segment abutting the Ao-Zhou Property.<sup>10</sup> Petitioners also do not dispute that as a result of the NITU, the former BNSF railroad corridor is currently "railbanked" and is not abandoned. However, as set forth below in Section B of the Petition, Ao-Zhou's adverse possession ownership and prescriptive easement rights vested and took effect by operation of law in April of 2000, eight years before the STB's issuance of the NITU for this rail corridor in 2008.

Petitioners agree that the STB has jurisdiction over certain issues regarding this rail corridor so long as it is not abandoned. However, as set forth below in Section C of the Petition, state and federal court decisions and the STB's own decisions confirm that the STB's jurisdiction over this rail corridor is not unlimited. The federal preemption issue presented in this case is whether the scope of the STB's jurisdiction extends so far as to prohibit any and all state court quiet title actions to confirm adverse possession ownership and prescriptive easement rights under state property law, regardless of any adverse effect on railroad or other transportation uses

---

<sup>10</sup> See STB Docket No. AB-6 (Sub-No. 464X), Decision and Notice of Interim Trail Use or Abandonment, decided October 27, 2008.

of a railroad corridor. Based on federal and state court case law and STB decisions discussed below, Petitioners' state property law quiet title action is not preempted by federal law and should be decided by a Washington State court.

The jurisdiction of a state court to decide state property law matters is determined by reviewing the extent of authority granted to the STB by Congress and by reviewing the extent to which the application of state law (in this case, a quiet title action) would unreasonably interfere with railroad operations and other transportation uses. There is no evidence that use of the 35-foot wide adverse possession area or the prescriptive easement area by Ao-Zhou and prior owners of the Ao-Zhou Property has ever interfered with use of the rail corridor at any time in the past. Nor is there any evidence that the continued use of these areas will ever conflict with rail operations or other transportation purposes at any time in the future. A judgment quieting title in favor of Ao-Zhou will not prevent, interfere with, or have any adverse effect on rail operations or any other transportation uses of this rail line. Therefore, Petitioners' state property law quiet title action is not preempted by federal law.

The record in this case demonstrates that BNSF considered the western 35 feet of its railroad corridor abutting the Ao-Zhou Property to be unnecessary for rail operations. In 1998, BNSF sold off a 35-foot wide portion of the BNSF railroad corridor abutting seven waterfront lots.<sup>11</sup> The portion of the railroad corridor sold by BNSF in 1998 (depicted as "Parcel C" and "Parcel F" in **Exhibits B and G**) lies immediately south of the 35-foot adverse possession area that is the subject of Ao-Zhou's quiet title action. Petitioners Ao-Zhou own "Parcel C." The property owner to the south of the Ao-Zhou Property owns "Parcel F." Moxon Decl., ¶ 34.

BNSF's sale of this 35-foot wide portion of its 100-foot railroad corridor during the time of BNSF's active railroad operations is compelling and undisputed evidence that BNSF had no

---

<sup>11</sup> BNSF conveyed the western 35 feet of its 100-foot railroad corridor abutting the adverse possession area to AN1, LLC in 1998. *See Exhibit H*. In 1999, AN1, LLC conveyed this 35-foot parcel to Steven Hazlerig, a prior owner of Ao-Zhou's property. *See Exhibit I*. Petitioners purchased the Ao-Zhou Property in 2008. *See Exhibit F*. Petitioners Ao-Zhou currently own all of the western 35-foot portion of the former BNSF railroad corridor abutting the southern lots 1-3 of their property. *See Exhibit B and Exhibit E*.

interest in using or preserving the western 35 feet of its railroad corridor in this area for transportation or any other uses, even during the time of BNSF's active rail operations on this corridor. Moreover, the Port acquired the former BNSF railroad corridor in 2009 without making any objection regarding the reduced 65-foot width of the rail corridor adjacent to the Ao-Zhou Property, and the Port has made no objections to date regarding the unsuitability of the 65-foot right of way in this location for any and all future uses of the rail corridor. In fact, the Port's General Counsel has testified that the adverse possession area "doesn't have any viable use for the corridor" and functions only to provide physical support for the upper portion of the rail corridor.<sup>12</sup> **Exhibit M**, p.3; Moxon Decl., ¶ 25.

A number of important factual circumstances are undisputed in this case and are offered for the STB's consideration in making a legal determination that Ao-Zhou's quiet title action is not preempted by federal law:

- (1) The embankment in the 35-foot wide adverse possession area is steeply sloped and has never been used for railroad operations. *See Exhibit Q* (survey of Ao-Zhou Property showing topography of rail corridor embankment); **Appendix A** (photographs of adverse possession and prescriptive easement areas); Moxon Decl., ¶ 35.
- (2) A retaining wall, a garage, and a driveway have been located for many years on the adverse possession area. *See Appendix A* (photographs of adverse possession and prescriptive easement areas); **Exhibits C and G** (aerial photos); **Exhibit K** (transcript of Hazlerig deposition); Moxon Decl., ¶¶ 32, 36.
- (3) The owners of the Ao-Zhou Property and the owners of numerous other private properties abutting the former BNSF railroad corridor in this immediate vicinity have used Hazelwood Lane (the prescriptive easement area) to access their properties for many years, without any objection from BNSF that such use adversely affected use of the rail corridor. *See Exhibit K* (Hazlerig deposition).
- (4) The Port is not a party to the Trail Use Agreement setting forth the "railbanking obligations" applicable to the 5.6-mile segment of the railroad corridor that is the subject of Ao-Zhou's quiet title action. *See Exhibit R* (Trail Use Agreement dated December 18, 2009); Moxon Decl., ¶ 37.

---

<sup>12</sup> As set forth in footnote 9, Petitioners Ao-Zhou acknowledge their obligation to protect the remaining 65-foot wide rail corridor from loss of lateral support or other physical impairment.

- (5) BNSF and King County, the only two parties to the Trail Use Agreement applicable to this portion of the former BNSF railroad corridor, have never claimed that granting Ao-Zhou's quiet title action would prevent or unreasonably interfere with future rail operations or any other future uses of this former rail corridor. *See Exhibit R* (Trail Use Agreement dated December 18, 2009): Moxon Decl., ¶ 37.
- (6) The Port has never claimed that granting Ao-Zhou's quiet title action would prevent or unreasonably interfere with rail operations or any other uses of this rail corridor. Moxon Decl., ¶¶ 26, 38, 39.

The facts and law compel a determination by this Board that Ao-Zhou's state property law quiet title action is not preempted by federal law. This Board should enter a decision granting the Petition and should enter a declaratory order that Ao-Zhou's quiet title claims under state property law should be allowed to proceed to trial in Washington state court.<sup>13</sup>

**B. Petitioners' State Property Law Rights Were Established Prior to the STB's Railbanking Decision and Prior to the Port's Acquisition of the Rail Corridor.**

Under Washington law, "[t]itle acquired by an adverse possessor, although not recorded, is valid and enforceable." *Gorman v City of Woodinville*, 160 Wn.App. 759, 249 P.3d 1040, 1042 (2011). "Once an adverse possessor has fulfilled the conditions of the doctrine, title to the property vests in his favor." *Id.* "The adverse possessor need not record or sue to preserve his rights in the land." *Id.* Washington law is clear that title is acquired by adverse possession upon passage of the 10-year period. *El Cerrito, Inc v. Ryndak*, 60 Wn.2d 847, 855, 376 P.2d 528 (1962); *Muench v Oxley*, 90 Wn.2d 637, 644, 584 P.2d 939 (1978). A quiet title action merely confirms that title to the land has passed to the adverse possessor. *Halverson v City of Bellevue*, 41 Wn.App 457, 460, 704 P.2d 1232 (1985).

In this case, title to the adverse possession area passed to Ao-Zhou's predecessors in interest upon completion of the ten-year adverse possession period in April of 2000. Prescriptive easement rights to Hazelwood Lane also vested at the same time. Both the adverse possession ownership rights and the prescriptive easement rights were vested years before the NITU was

---

<sup>13</sup> This case was scheduled to proceed to trial on June 6, 2011, in King County Superior Court for the State of Washington. All discovery was completed prior to the order of dismissal except for three depositions and the Port's response to written discovery requests. Moxon Decl.

issued by the STB in October of 2008 and years before the Port acquired the rail corridor from BNSF in December of 2009.

**C. Ao-Zhou's State Property Law Quiet Title Action Is Not Preempted by Federal Law.**

The Port contends that Congress expressly intended under both the National Trails Systems Act (the "Trails Act"), codified at 16 U.S.C. § 1241, *et seq.* and the Interstate Commerce Commission Termination Act ("ICCTA"), codified at 49 U.S.C. § 10101, *et seq.* to grant exclusive jurisdiction to the STB over all claims involving railroad corridors. The Port contends that all state property law claims regarding the extent of adverse possession ownership and prescriptive easement rights under state property law are preempted, regardless of any adverse effect on use of the rail corridor. No legal authority supports such a broad and erroneous assertion.

**1. Petitioners' State Property Law Quiet Title Action Is Not Preempted Under the Trails Act (16 U.S.C. § 1241, et seq.)**

Petitioners do not dispute that the former BNSF railroad corridor abutting the Ao-Zhou Property is the subject of an NITU issued by the STB and that this segment is currently railbanked and is not abandoned. Petitioners do not challenge the NITU or the STB's jurisdiction to issue the NITU. However, the NITU did not determine BNSF's ownership rights. The NITU was issued subject to whatever adverse possession ownership and prescriptive easement rights were vested in adjacent property owners at the time. As this Board has stated, "the Board's grant of authority to acquire property is permissive, not mandatory, and cannot be viewed as conveying property rights to an applicant, as property ownership rights are determined by state law." *Allegheny Valley Railroad Company – Petition for Declaratory Order – William Fiore*, FD 35388, April 25, 2011, fn 4, citing *MVC Transportation LLC – Acquisition Exemption P&LE Properties Inc.*, FD 34462, Oct. 20, 2004.

The Trails Act does not establish state law property rights and does not confer any exclusive jurisdiction to the STB with respect to any of the state law property issues to be decided in Ao-Zhou's quiet title action. Petitioners have the right to proceed in state court to

preserve and protect their state law property interests that were vested before the rail corridor was railbanked.

The Port contends that federal court decisions should be broadly interpreted to mean that the Trails Act preempts Ao-Zhou's state property law quiet title action. However, federal case law on preemption supports Petitioners' position that state laws and regulations are not preempted by the Trails Act unless they prevent or unreasonably interfere with use of a rail corridor.<sup>14</sup> There is no evidence that granting the relief sought in Ao-Zhou's state property law quiet title action would prevent or interfere with any current or future use of the former BNSF rail corridor abutting the Ao-Zhou Property, especially in light of the fact that BNSF previously sold a 35-foot wide portion of the 100-foot wide former BNSF corridor immediately south of the adverse possession area with no adverse effect on the use of the rail corridor. **See Exhibits B and G** (map and aerial photo showing portion of rail corridor sold by BNSF in 1998 - "Parcel C" and "Parcel F"); Moxon Decl., ¶ 39.

There is simply no legal authority for the proposition that the Trails Act preempts Ao-Zhou's state property law quiet title action. Petitioners Ao-Zhou are not challenging the STB's authority to establish an interim use for this former BNSF corridor, and they are not contending that this rail line has been abandoned and is therefore beyond the jurisdiction of the STB. Ao-Zhou's state property law quiet title lawsuit is not a challenge to the Trails Act in any way, shape

---

<sup>14</sup> For example In *Friends of the East Lake Sammamish Trail v. City of Sammamish*, 361 F. Supp.2d 1260 (W.D. Wash. 2005), the court specifically agreed that state and local governments have the right to impose regulations on property within an inactive railroad right of way "to the extent they do not frustrate the development of a trail on the railbanked right of way." *Id.* at 1274. The court found that a city land use ordinance and decision requiring consideration of alternative locations for a proposed trail constituted an unreasonable obstacle to the purposes of the Trails Act and was preempted by federal law. In reaching this conclusion, the court cited and agreed with the reasoning of another federal court in *Blendu v. Friends of the Weiser River Trail, Inc.*, WL 3394426 (D. Idaho 1999) in which the court stated that "the STB has ... clearly indicated its intention to cede back to state and local governments the right to impose zoning and safety regulations on the trails *so long as those regulations do not interfere with* (1) the railroad's right to convert the corridor back into a railway at some point in the future and (2) *the trail manager's right and ability to maintain the right-of-way as recreational trail in the interim.*" 361 F. Supp.2d at 1274, fn. 11 (emphases in original).

or form. Moreover, because the Trails Act does not include any grant of jurisdiction to the STB that would support a claim of federal preemption in this case, the Port's arguments regarding federal preemption based on the Trails Act must be disregarded.

**2. Petitioners' State Property Law Quiet Title Action Is Not Preempted Under the ICCTA (49 U.S.C. § 10101, et seq.)**

Whether Ao-Zhou's quiet title action is preempted by federal law depends on the scope of jurisdiction granted to the STB in the Interstate Commerce Commission Termination Act ("ICCCTA"), codified at 49 U.S.C. § 10101(b), *et seq.* and the extent and effect of the asserted state law or regulation. The STB's jurisdictional authority is set forth in 49 U.S.C. § 10501, which provides:

*The jurisdiction of the [Surface Transportation] Board over--*

*(1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers, and*

*(2) the **construction, acquisition, operation, abandonment, or discontinuance** of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State,*

*is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.*

49 U.S.C. § 10501(b) (emphasis added).

Clearly the STB has exclusive jurisdiction over certain matters affecting railroad operations. The question in this case is whether the ICCCTA preempts Ao-Zhou's state property law quiet title action and prevents a trial of this action in state court to decide matters of state property law.

As set forth below, it is well established that determining whether a state property law action is preempted under the ICCCTA depends on whether there is evidence that granting the relief sought under state or local law will unreasonably interfere with rail service or other future transportation uses of the rail corridor. *See, e.g., Friends of the East Lake Sammamish Trail v*

*City of Sammamish*, 361 F. Supp.2d 1260, 1274 (W.D. Wash. 2005)(state and local laws apply “to the extent they do not frustrate the development of a trail on the railbanked right of way”).

In *City of Auburn v. United States*, 154 F.3d 1025 (9<sup>th</sup> Cir. 1998), the Ninth Circuit held that state and local environmental review and land use permit requirements applicable to the railroad’s Stampede Pass improvement project<sup>15</sup> were preempted by the ICCTA to the extent the “‘environmental’ permitting regulations” resulted in conditions where “the carrier is prevented from constructing, acquiring, operating, abandoning, or discontinuing a [rail] line.” *Id.* at 1031. No such interference will result from Ao-Zhou’s state property law quiet title action, and no such effect can be attributed to Ao-Zhou’s quiet title action, short of sheer speculation.

The Ninth Circuit’s reasoning in the *City of Auburn* case was cited with approval in a decision issued by the Court of Appeals for the State of Washington - *City of Seattle v. Burlington Northern Railroad Company*, 105 Wn.App. 832, 837, 22 P.3d 260 (2001). In that case, Seattle ordinances had been adopted in an attempt to regulate railroad switching operations within Seattle city limits. The Washington appeals court held that the city’s ordinances were preempted because they restricted railroad operations and “interfere[d] with the railroad’s ability to conduct the activity specifically set forth in 49 U.S.C. § 10501(b)(2) [ICCFTA].” *Id.* at 837. The court reasoned that “under the ICCFTA the actions or regulations of those governments may not have the effect of foreclosing or restricting the railroad’s ability to conduct its operation or otherwise unreasonably burden interstate commerce.” *Id.* There is no evidence in this case that granting the relief sought in Ao-Zhou’s quiet title action would have any such adverse effect on the activities specified in § 10501(b)(2) of the ICCFTA.

The Port will argue that an Arkansas state court decision, *Ouachita R.R., Inc. v. Circuit Court of Union County*, 361 Ark. 333, 206 S.W. 8112 (2005), supports its claim that all state property law actions based on adverse possession are preempted by federal law. However, the decision in *Ouachita R.R.* was based on specific evidence presented by the railroad that “any

---

<sup>15</sup> The proposed Stampede Pass improvements included the replacement of track sidings and snow sheds, tunnel improvements, and communications towers. 154 F.3d at 1028.

determination by the circuit court that the [plaintiffs] had acquired title by adverse possession would effectively equate to a permanent and total cessation of railroad service over the right-of-way." *Id.* at 341 (emphasis added). The court reasoned that "only the STB has the authority to discontinue rail service." *Id.* There is no evidence that Ao-Zhou's state property law quiet title action would result in a cessation of railroad service or any other adverse effect related to the use of the railbanked corridor adjacent to the Ao-Zhou Property.<sup>16</sup> BNSF's prior sale of a 35-foot wide portion of its right of way immediately adjacent to the 35-foot wide adverse possession area is irrefutable evidence the adverse possession area is not necessary for continued use of the rail corridor. Neither BNSF nor the Port has ever claimed to the contrary.

Numerous federal cases support Ao-Zhou's position that this state property law action is not preempted by federal law. For example, in *Island Park, LLC v. CSX Transportation*, 559 F.3d 96 (2d Cir. 2009), plaintiff landowners sought an injunction in federal district court to enjoin a rail crossing closure order issued by the State of New York to close a rail crossing determined to be unsafe. The district court ruled that the state's rail crossing closure order was preempted by the ICCTA. The Second Circuit reversed, holding that the state's rail crossing closure order was not preempted, even though it would allow the rail crossings to remain. Its reasoning supports Petitioners' position that their state property law quiet title action is not preempted by federal law:

ICCITA "preempts all state laws that may reasonably be said to have the effect of managing or governing rail transportation, while permitting the continued application of laws having a more remote or incidental effect on rail transportation." " *N.Y. Susquehanna & W. Ry. Corp. v. Jackson*, 500 F.3d 238, 252 (3d Cir. 2007) (quoting *Fla. E. Coast Ry. Co. v. City of W. Palm Beach*, 266 F.3d 1324, 1331 (11th Cir. 2001)). The

---

<sup>16</sup> Other state courts have applied the same "unreasonable interference" legal standard in holding that state property law actions without the potential to limit or restrict the use of railroad rights-of-way are not preempted. *See, e.g., Home of Economy*, 780 N.W. 2d 429 (N.D. 2010)(state property law claims based on "public road by prescription" and "easement by prescription" should be determined by state court and are not preempted by ICCITA, referring to previous decision remanding the case at 694 N.W. 2d 840, 2005); *Wolf v. Central Oregon & Pacific Railroad*, 230 Or.App 269, 216 P.3d 316 (2009)(rejecting railroad's federal preemption claims and deciding landowners' claims of prescriptive easement rights to allow continued use of a private rail crossing based on lack of evidence that the grade crossing would impose an unreasonable burden on rail transportation).

pre-emption inquiry focuses on “the degree to which the challenged regulation burdens rail transportation.” *N.Y. Susquehanna*, 500 F.3d at 252.

...

The appropriate questions are: what does the state seek to regulate and does the proposed regulation burden rail transportation?

...

We emphasize that this appeal does not require us to decide whether state regulation of rail crossings, as a general matter, is pre-empted under ICCTA. Because the limited state action in this case does not burden or interfere with rail transportation, it is not pre-empted. *See N.Y. Susquehanna*, 500 F.3d at 252.

...

We think it important to emphasize that although ICCTA's pre-emption language is unquestionably broad, it does not categorically sweep up all state regulation that touches upon railroads - interference with rail transportation must always be demonstrated.

559 F.3d at 102-04 (emphasis added).

There is no evidence in the present case that granting the relief sought in Ao-Zhou’s state property law quiet title action would result in any interference with rail transportation or any other uses of the railbanked corridor adjacent to the Ao-Zhou Property.

*PCS Phosphate Co., Inc. v Norfolk Southern Corp.*, 559 F.3d 212 (4th Cir. 2009) is another example of a federal appeals court refusing to find that the ICCTA preempts state law property claims. PCS and the railroad had entered into easement agreements that required relocation of the rail line to avoid interference with PCS’s mining operations. PCS sued the railroad for failing to relocate the rail line. The Fourth Circuit refused to find that the state law claims were preempted by ICCTA and reasoned that the express preemption clause in §10501(b)(2) of the ICCTA “focuses specifically on ‘regulation.’” The court agreed with the Eleventh Circuit’s reasoning in *Fla. E. Coast Ry. Co. v City of W. Palm Beach*, 266 F.3d 1324, 1331 (11<sup>th</sup> Cir. 2001) that the SIB’s jurisdiction is not unlimited:

Congress narrowly tailored the ICCTA preemption provision to displace only “regulation,” i.e., those state laws that may reasonably be said to have the effect of “managing” or “governing” rail transportation, while permitting the continued application of laws having a more remote or incidental effect on rail transportation.

559 F.3d at 218.

Like the state property law action in *PCS Phosphate*, Ao-Zhou's quiet title action will not result in managing or governing the former BNSF railroad corridor and is not preempted by federal law.

The Fifth Circuit has also adopted this approach to federal preemption claims – evaluating the degree of actual interference that would result from the application of state law. In *Franks v. Union Pacific R R.*, 593 F.3d 404 (5<sup>th</sup> Cir. 2010)(en banc), a landowner sued the railroad for closing two private rail crossings. The district court dismissed the action based on federal preemption under the ICCTA. The Fifth Circuit reversed, reasoning that the rail crossing dispute was a “possessory action” arising under state property laws that “are not meant to regulate railroad transportation, though at times they may have an incidental effect on railroad transportation.” *Id.* at 411. The court concluded:

For a state court action to be expressly preempted under the ICCTA, it must seek to regulate the operations of rail transportation. Franks's possessory action invokes only state property laws and is not expressly preempted.

*Id.* at 413.

The Fifth Circuit's decision in *Franks* includes an instructive discussion of the federal preemption doctrine, including an explanation of the “presumption against federal preemption” articulated by the United States Supreme Court. Portions of this discussion are excerpted below:

In determining the existence and reach of preemption, Congress's purpose is “the ultimate touchstone” to use. *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485, 116 S.Ct. 2240, 135 L.Ed.2d 700 (1996) (quoting *Retail Clerks v. Schermerhorn*, 375 U.S. 96, 103, 84 S.Ct. 219, 11 L.Ed.2d 179 (1963)). Congress can show its purpose in one of two ways. First, it may “indicate pre-emptive intent through a statute's express language.” *Altria Group, Inc. v. Good*, --- U.S. ---, 129 S.Ct. 538, 543, 172 L.Ed.2d 398 (2008). However, even when there is an express preemption clause in a statute, “the question of the substance and scope of Congress' displacement of state law still remains.” *Id.* Second, Congress may impliedly preempt state law “if the scope of the statute indicates that Congress intended federal law to occupy the legislative field, or if there is an actual conflict between state and federal law.” *Id.*; see *Friberg*, 267 F.3d at 442.

...

**There is also a presumption that the “historic police powers of the States [are] not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.”** *Altria Group*, 129 S.Ct. at 543 (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230, 67 S.Ct. 1146, 91 L.Ed. 1447 (1947)). The presumption is relevant even when there is an express pre-emption clause. That

is because “when the text of a pre-emption clause is susceptible of more than one plausible reading, courts ordinarily ‘accept the reading that disfavors pre-emption.’” *Id.* (quoting *Bates v Dow Agrosciences LLC*, 544 U.S. 431, 449, 125 S.Ct. 1788, 161 L.Ed.2d 687 (2005)). Thus, the presumption operates both to prevent and to limit preemption.

...  
This court has explained that the presumption against preemption is applicable to “areas of law traditionally reserved to the states, like police powers and property law ....” *Davis v. Davis*, 170 F.3d 475, 481 (5th Cir.1999) (en banc). More recently and topically, we discussed the presumption against preemption in another railroad crossing case. *New Orleans & Gulf Coast Ry Co. v Barrois*, 533 F.3d 321 (5th Cir.2008). We found the no-preemption presumption to apply “with full force to this generally applicable state property law, even if applied to permit a private, at-grade railroad crossing.” *Id.* at 334.

*Franks*, 593 F.3d at 407 (emphases added).

There is no legal authority for holding that a state law property action is preempted by federal law where there is no evidence of unreasonable interference with the use of the rail corridor. Moreover, the adverse possession and prescriptive easement issues at the heart of Petitioners Ao-Zhou’s quiet title action are precisely the type of property law matters “traditionally reserved to the states” where the presumption against federal preemption must be applied.

### **3. STB Decisions Do Not Support Federal Preemption of Petitioners’ State Property Law Quiet Title Action**

This Board has a well-established body of precedent requiring consideration of the degree of actual interference with rail operations that would result from Ao-Zhou’s quiet title action. As set forth below, these STB decisions support the Board’s issuance of a declaratory order that Petitioners’ state law property action is not preempted by federal law.

In a recent STB decision, this Board considered a petition filed by a railroad seeking a declaratory order to resolve a property dispute with an adjacent property owner, Fiore, who asserted easement and ownership rights to portions of the railroad right-of-way. *Allegheny Valley Railroad Company – Petition for Declaratory Order – William Fiore*, FD 35388, April 25, 2011. Fiore had filed a Pennsylvania state court action to determine “the width and location of the property rights of Fiore and AVRR.” This Board found that these claims involved

“questions of state property law that are best handled by local state courts” and denied the railroad’s claim that Fiore’s state law property lawsuit is preempted by federal law.

No STB decision has found a state court action to be preempted in the absence of evidence that the state court action would prevent or unreasonably interfere with railroad or other transportation uses of a rail corridor, *See, e.g., Lincoln Lumber Co -- Petition for Declaratory Order - Condemnation of Railroad Right-of-Way for a Storm Sewer*, STB Finance Docket No. 34915, August 13, 2007 (“Federal preemption can shield railroad property from state eminent domain law where the effect of the eminent domain law would have been to prevent or unreasonably interfere with railroad operations. ... But neither the court cases, nor Board precedent, suggest a blanket rule that any condemnation action against railroad property is impermissible.”); *CSX Transportation, Inc -- Petition for Declaratory Order*, STB Finance Docket No. 33388 (Sub-No. 101), August 27, 2008 (finding no federal preemption of New York state court proceedings to resolve property dispute concerning potential interference with rail operations due to private development project and declining to give credence to “speculative statements about future track use that do not appear grounded in the record”); *MVC Transportation LLC – Acquisition Exemption – P&LE Properties Inc.*, FD 34462, Oct. 20, 2004 (“we find it proper for the Pennsylvania court to resolve the dispute over ownership of the Yard track assets ... involv[ing] local property law, contract law, and mortgages, which are for a court to answer, not the Board.”

This Petition raises the same issue addressed by this Board noted in *Allegheny Valley Railroad Company – Petition for Declaratory Order – William Fiore*, FD 35388, April 25, 2011 (fn 5). That issue is “the determination of the size, location, and nature of the property interests under state law, which [the railroad] has acquired in the [railroad] right-of-way.” The only issues to be decided in Petitioners’ state property law quiet title claim are “the size, location, and nature of the property interests under state law,” which are issues properly decided by a Washington state court, not the STB. *Id.*

Moreover, any facts that might be presented by the Port regarding potential interference with future use of the rail corridor would be speculative and would not provide a factual basis for federal preemption, given the extent of undisputed facts relevant to the ownership and use of “Parcels C, D, E, and F” as depicted in **Exhibits B, E, and G**. “In deciding whether a declaratory order proceeding is needed to resolve uncertainty, the Board generally considers the facts as presented in the petition.” *CSX Transportation, Inc – Petition for Declaratory Order*, STB Finance Docket No. 33388 (Sub-No. 101), August 27, 2008, fn 10. This Board requires facts to support claims of potential interference with rail operations and will not give credence to “speculative statements about future track use that do not appear grounded in the record.” *Id.*

In this case, the Petition and supporting Declaration provide ample evidence that the adverse possession area and the prescriptive easement area have been used by Petitioners and their predecessors for over 20 years with no interference with railroad transportation or other uses of the rail corridor. In addition, the record shows that BNSF sold a 35-foot wide portion of this rail corridor in 1998 to private parties with no impairment to rail operations. Finally, in the absence of any objection by the Port or any other party regarding the existing 65-foot width of the remainder of the rail corridor at this location, there is no reasonable basis for any concern that Petitioners’ state court property law quiet title action would prevent or unreasonably interfere with railroad or other transportation uses of this rail corridor at any time in the future.

Given the record of undisputed facts showing the history of ownership and use of the former BNSF rail corridor and adjacent properties and given the absence of evidence of past, present, or future interference with the use of the rail corridor for rail or other transportation purposes, there is no factual basis for the Port to assert federal preemption.

## **VI. FUTURE PROCEEDINGS**

Under 49 C.F.R. § 1112.1, “when it appears that substantially all material issues of fact can be resolved through submission of written statements, and efficient disposition of this proceeding can be accomplished without written testimony,” the Board may resolve a matter pursuant to the modified procedures set forth in 49 C.F.R. § 1112.2. Under such procedures, the

Board may treat this Petition as Petitioners' opening statement, the Port's reply would be due within 20 days of a decision by the Board confirming use of such modified procedures, and Petitioners' rebuttal would be due 10 days after the due date for the Port's reply. Precedent for such an alternative procedure to resolve the question of federal preemption of matters involving state property law is set forth in the Board's decision in *Allegheny Valley Railroad Company -- Petition for Declaratory Order*, FD 35239, May 12, 2009.

Petitioners request that this Board issue a decision directing use of the modified procedures of 49 C.F.R. Part 1112 to decide this matter and setting out the schedule for filing verified statements by all parties.

## VII. CONCLUSION

Based on the facts and legal authority set forth above, Petitioners Ao-Zhou respectfully request that the Board commence proceedings under the modified procedure rules at 49 C.F.R. Part 1112, and thereafter issue a decision that Petitioners' state property law quiet title claims are not preempted by federal law and that their quiet title action under state property law should be allowed to proceed to trial in Washington State court.

DATED this 22<sup>nd</sup> day of July, 2011.

GORDON DERR LLP

By:   
Keith Moxon, WSBA # 15361  
Attorneys for Petitioners  
Jie Ao and Xin Zhou

**CERTIFICATE OF SERVICE**

I, Amanda Kleiss-Acres, certify that I have this day served copies of the following documents upon all parties of record in this proceeding, by U.S. Express mail:

- 1. Letter and Filing Fee Waiver Request;
- 2. Petition for Declaratory Order;
- 3. Declaration of Keith Moxon in Support of Petition for Declaratory Order with attachments;
- 4. Textual submission submitted on three compact discs.

Chief of the Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 "E" Street, S.W.  
Washington, D.C. 20423-0001

- ✓ By U.S. Express Mail
- By Legal Messenger
- By Facsimile
- By Email

Mr. John R. McDowall  
Carney Badley & Spellman  
701 Fifth Avenue, Suite 3600  
Seattle, WA 98104-7010

- ✓ By U.S. Express Mail
- By Legal Messenger
- By Facsimile
- By Email

Mr. Craig Watson  
General Counsel  
Port of Seattle  
2711 Alaskan Way  
Seattle, WA 98121-1107

- ✓ By U.S. Express Mail
- By Legal Messenger
- By Facsimile
- By Email

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED at Seattle, Washington on this 22<sup>nd</sup> day of July, 2011.

  
Amanda Kleiss-Acres

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

Docket No. FD 35539

---

**DECLARATION OF KEITH MOXON  
IN SUPPORT OF PETITION FOR DECLARATORY ORDER**

---

ORIGINAL

Keith E. Moxon  
GORDON DERR LLP  
2025 First Avenue – Suite 500  
Seattle, WA 98121-3140  
Phone: (206)-382-9540  
Facsimile: (206)-626-0675  
knoxon@gordonderr.com

Attorneys for Petitioners Jie Ao and  
Xin Zhou

July 22, 2011

Attachments Contain Color Images  
Exhibits A - R and Appendix A

I, Keith Moxon, declare as follows:

I am over 18 years of age. I am not a party to this action, and have personal knowledge and am competent to testify regarding the facts set forth below.

1. I am the attorney representing Petitioners Jie Ao and Xin Zhou ("Ao-Zhou") in submitting this Petition to the Surface Transportation Board ("STB"). I have represented Petitioners Ao-Zhou since 2009 regarding their adverse possession ownership and prescriptive easement rights to two portions of the former BNSF rail corridor abutting their three record title parcels of property in King County, Washington. I filed a state court property law quiet title action in King County Superior Court in the State of Washington in 2009 on behalf of Petitioners against BNSF, the then-current owner of the rail corridor.

2. Attached hereto as **Exhibit A** is a true and correct copy of a vicinity map downloaded from the Port of Seattle's website showing the location of the former BNSF rail corridor at issue in this proceeding, to which I have added a notation showing the location of Petitioners' property.

3. Attached hereto as **Exhibit B** is a true and correct copy of a portion of a plat map downloaded from the King County Department of Assessments' website showing the Ao-Zhou Property and the former BNSF rail corridor abutting Petitioners' property.

4. Attached hereto as **Exhibit C** are true and correct copies of two aerial photographs (**C-1** and **C-2**) showing the location of the Ao-Zhou Property and the former BNSF rail corridor abutting their property.

5. Attached hereto as **Exhibit D** is a true and correct copy of a scaled drawing prepared by Concept Engineering, Inc. showing the location of Hazelwood Road. The prescriptive easement area is depicted as "Parcel E." The adverse possession area is depicted as "Parcel D." Both "Parcel D" and "Parcel E" are entirely within the 100-foot wide former BNSF rail corridor.

6. Attached hereto as **Exhibit E** is a true and correct copy of a drawing prepared by Concept Engineering, Inc., which shows the location of the garage, retaining wall and other

improvements on the various parcels of property relevant to this Petition. "Parcel A" and "Parcel B" (both shaded in blue) and "Parcel C" (shaded in green) comprise the Ao-Zhou record title property. "Parcel D" (shaded in orange) comprises the adverse possession property. The former BNSF rail corridor (shaded in yellow) is located to the east of the Ao-Zhou Property.

7. Attached hereto as **Exhibit F** is a true and correct copy of a statutory warranty deed recorded on November 10, 2008, by which Jamal Crawford conveyed "Parcels A, B, and C" to Petitioners' Jie Ao and Xin Zhou.

8. Attached hereto as **Exhibit G** is a true and correct copy of an aerial photograph showing the location of the adverse possession area ("Parcel D" - shaded in orange) and the 35-foot wide portions of the 100-foot rail corridor sold by BNSF in 1998 ("Parcel C" and "Parcel F" - shaded in green).

9. Attached hereto as **Exhibit H** is a true and correct copy of a quitclaim deed recorded on July 28, 1998, by which BNSF conveyed to ANI, LLC a 35-foot wide portion of the BNSF rail corridor. The portion of the rail corridor sold by BNSF in 1998 quitclaim deed is depicted as "Parcel C" and "Parcel F" (both shaded in green) in **Exhibit B and Exhibit G**.

10. Attached hereto as **Exhibit I** is a true and correct copy of a quitclaim deed recorded on May 18, 1999, by which ANI, LLC conveyed to Steven Hazlerig a 35-foot wide portion of the BNSF rail corridor. The portion of the rail corridor conveyed by this quitclaim deed is depicted as "Parcel C" and "Parcel F" (both shaded in green) in **Exhibit B and Exhibit G**.

11. Attached hereto as **Exhibit J** is a true and correct copy of a quitclaim deed recorded on June 7, 2000, by which Steven Hazlerig conveyed to M Hawk Construction a 35-foot wide parcel formerly part of the BNSF rail corridor. The portion of the rail corridor conveyed by this quitclaim deed is depicted as "Parcel F" (shaded in green) in **Exhibit B and Exhibit G**. "Parcel C" is currently owned by Petitioners Ao-Zhou. "Parcel F" is currently owned by the owner of property to the south of the Ao-Zhou Property.

12. Attached hereto as **Exhibit K** is a true and correct copy of a portion of the deposition of Steven J. Hazlerig taken on Monday, April 18, 2011, in which Mr. Hazlerig testified about his use of the adverse possession area and prescriptive easement area during his ownership of the Ao-Zhou Property from April 1990 to August 2004. Relevant portions of this deposition are highlighted to demonstrate that during the time of Hazlerig's ownership, (1) Hazlerig used the adverse possession area within the BNSF rail corridor, (2) BNSF did not use the adverse possession area within the BNSF rail corridor, (3) Hazlerig used Hazelwood Lane (the prescriptive easement area), and (4) BNSF did not use Hazelwood Lane (the prescriptive easement area), except for the track crossing area of Hazelwood Lane.

13. Attached hereto as **Exhibit L** is a true and correct copy of a quitclaim deed recorded on December 18, 2009, by which BNSF conveyed a portion of the former BNSF rail corridor that is the subject of this petition to the Port of Seattle. The "Description of Property" attached to this deed as **Exhibit A** has been excerpted to include only the legal description of the portion of the rail corridor relevant to Petitioners' adverse possession ownership and prescriptive easement property rights.

14. Attached hereto as **Exhibit M** is a true and correct copy of a verbatim transcript of the Port of Seattle Port Commission meeting held on January 25, 2011, which was transcribed from an audio recording provided by the Port of Seattle.

15. Attached hereto as **Exhibit N** is a true and correct copy of the "Amended Complaint for Declaratory Judgment, Quiet Title and Injunction" filed by Petitioners Ao-Zhou in King County Superior Court against the Port of Seattle on February 10, 2011.

16. Attached hereto as **Exhibit O** is a true and correct transcript of the oral decision portion of proceedings before Judge Jay White in King County Superior Court for the State of Washington on April 22, 2011, in which Judge White explained his reasoning for ruling on the Port of Seattle's motion to dismiss Petitioners' quiet title action based on federal preemption and stated that "it's up to them [the STB] to make that determination."

17. Attached hereto as **Exhibit P** is a true and correct copy of a revised order entered by King County Superior Court to dismiss Petitioners' quiet title claim "without prejudice." This order was entered at Petitioners' request to allow further proceedings before the STB.

18. Attached hereto as **Exhibit Q-1** is a true and correct copy of a survey drawing of the Ao-Zhou Property prepared by Concept Engineering, Inc. dated September 3, 2009, depicting the Ao-Zhou Property and showing the location of various improvements within the adverse possession area, including the garage and retaining wall, and showing the steep topography of the embankment on the former BNSF rail corridor.

19. Attached hereto as **Exhibit Q-2** is a true and correct copy of the survey drawing of the Ao-Zhou Property prepared by Concept Engineering, Inc. dated September 3, 2009, highlighted to show the waterfront lots of the Ao-Zhou Property ("Parcel A" and "Parcel B" shaded in blue); the parcel conveyed by BNSF in 1998, which is currently owned by Petitioners Ao-Zhou ("Parcel C" – shaded in green); and the adverse possession area to which Petitioners Ao-Zhou have vested ownership rights ("Parcel D" – shaded in orange). The remainder of the 100-foot wide BNSF corridor is shaded in yellow.

20. Attached hereto as **Exhibit R** is a true and correct copy of a Trail Use Agreement entered into between BNSF railroad and King County dated December 18, 2009.

21. Attached hereto as **Appendix A** are photographs of the Ao-Zhou property and adjacent properties showing site conditions in 1987 (photographs 1, 2, and 3) and showing current site conditions (June 2011).

22. In the fall of 2009, I contacted Tim Sharmon, a Regional Manager at Jones Lang LaSalle Americas, Inc., a firm providing real estate services for BNSF, to discuss Petitioners' vested adverse possession ownership and prescriptive easement rights in the rail corridor abutting the Ao-Zhou property. For several weeks Mr. Sharmon and I exchanged emails in an effort to confirm BNSF's acknowledgement of Petitioners' property rights and to confirm BNSF's willingness to exclude the adverse possession area from the proposed sale of BNSF rail corridor to the Port of Seattle. Despite significant progress in these discussions, it became

apparent in early December 2009 that it would not be possible to obtain BNSF's formal confirmation of Petitioners' property rights in the rail corridor prior to the sale of the rail corridor to the Port of Seattle.

23. Just prior to the sale of the rail corridor to the Port of Seattle on December 18, 2009, Petitioners filed a quiet title action in state court against BNSF and recorded a lis pendens against the rail corridor property to provide formal notice of their property rights and the quiet title action. From that point on, and throughout 2010, I engaged in extensive negotiations with counsel for the Port of Seattle in an attempt to document a settlement of Petitioners' quiet title action and to confirm Petitioners' vested adverse possession and prescriptive easement property rights. These negotiations resulted in formal settlement documentation acknowledging Petitioners' vested adverse possession and prescriptive easement property rights.

24. In January of 2011, the Port's General Counsel presented the formal settlement proposal to the Port of Seattle Commissioners acknowledging Petitioners' ownership rights to a 25-foot wide portion of the former BNSF rail corridor. Petitioners agreed to this compromise of Petitioners' vested 35-foot wide adverse possession rights to avoid the expense and delay of proceeding with the quiet title litigation. A verbatim transcript of the Port Commission meeting discussing this proposed settlement of Petitioners' quiet title action is attached as **Exhibit M**.

25. At the Port Commission meeting on January 25, 2011, the Port's General Counsel recommended against litigating Petitioners' pending quiet title lawsuit and stated that the Port was likely to lose the quiet title litigation. He described the embankment portion of the adverse possession area as a parcel "on a slope and... not useful for anything else other than holding up the rail bed." He also stated that "this particular piece of property [the adverse possession area] doesn't have any viable use for the corridor." The Port's Director of Real Estate also testified at the Port Commission meeting that "there are eight or nine hundred known easements across the [former BNSF rail] corridor."

26. In the course of representing Petitioners Ao-Zhou in this matter, I have reviewed thousands of pages of title records, correspondence, real estate records, and other documents

related to Petitioners' vested adverse possession and prescriptive easement rights in the former BNSF rail corridor. I have also engaged in extensive communications with counsel for the Port of Seattle regarding Petitioners' property rights. There is no evidence in the record that the Port, King County, or BNSF have ever asserted or demonstrated that any of the eight or nine hundred known easements on the former BNSF rail corridor have the effect of preventing or interfering with use of the rail corridor or would do so in the future. In addition, there is no evidence that the Port, King County, or BNSF have ever asserted or demonstrated that Petitioners' vested adverse possession ownership or prescriptive easement rights would prevent or interfere with the present or future use of the former BNSF rail corridor.

27. Although the Port Commission approved on January 25, 2011, the first reading of the resolution agreeing to acknowledge Petitioners' adverse possession ownership rights, the Port's counsel soon thereafter advised me that the Port had decided to oppose Petitioners' quiet title action in King County Superior Court.

28. Although the Port and Petitioners had engaged in settlement negotiations throughout 2010, the original lawsuit against BNSF had not been amended to join the Port of Seattle as the new property owner. When the Port of Seattle terminated settlement discussions, Petitioners dismissed BNSF from the quiet title action and joined the Port of Seattle as the property owner defendant. The amended lawsuit against the Port of Seattle was filed on February 10, 2011, and is attached as **Exhibit N**.

29. The Port filed a motion to dismiss Petitioners' state court quiet title action on March 31, 2011, contending that all such state law property actions are preempted by federal law, regardless of the impact on use of the rail corridor. The Port's motion to dismiss was not supported by any evidence that Petitioners' adverse possession ownership or prescriptive easement rights would prevent or interfere with any present or future use of the former rail corridor.

30. A hearing on the Port's motion to dismiss was held on April 22, 2011. In his oral ruling, the Superior Court judge concluded that the STB is better qualified to determine whether

Petitioners' quiet title claims are preempted by federal law. A copy of the court's oral ruling is attached as **Exhibit O**.

31. Initially, the order of dismissal signed by the Superior Court Judge purported to dismiss the quiet title action "with prejudice." Petitioners filed a motion for reconsideration asserting that a dismissal "with prejudice" would adversely affect the parties' right to file a petition to the STB to decide the federal preemption issue. Petitioners also noted that a dismissal "with prejudice" was inconsistent with the Port's argument that the STB has exclusive jurisdiction to decide Petitioners' quiet title action. The court's original order of dismissal was modified to dismiss Petitioners' quiet title action "without prejudice" in order to allow the STB to consider the federal preemption issue.

32. The property that is the subject of Petitioners' quiet title action is situated near the shoreline of Lake Washington where a number of waterfront residential properties are served by a private roadway that has been located on the 100-foot rail corridor for more than 20 years. Petitioners' property is at the southern end of this private roadway and is the only property with a retaining wall, driveway, garage, and lawn/garden areas located entirely on the former rail corridor. These improvements have been in place and have been used exclusively by Petitioners and their predecessors for over 20 years in a manner that meets all requirements under Washington law for adverse possession ownership.

33. **Appendix A** contains photographs of the Ao-Zhou property and adjacent properties. Photographs 1, 2, and 3 in **Appendix A** are photographs that were taken in 1987, which were provided to Petitioners by the Port in the course of discovery in the Washington state court quiet title action. Photographs 4 through 25 were taken by me in June of 2011 and depict the current condition of the Ao-Zhou Property and adjacent properties, including the former BNSF rail corridor currently owned by the Port.

34. The property designated as "Parcel F" in **Exhibits B and G** is a portion of the 100-foot rail corridor sold by BNSF in 1998, which is currently owned by the property owner to the south of the Ao-Zhou Property.

35. The photographs in **Appendix A** and the survey attached as **Exhibits Q-1 and Q-2** clearly show that the embankment on the rail corridor to the east of the retaining wall and garage in the adverse possession area is steeply sloped. There is no evidence that this area has ever been used for railroad or other rail corridor purposes.

36. A retaining wall, garage, driveway, and lawn/garden areas have been located as depicted in the **Appendix A** photographs for over 20 years. These improvements within the adverse possession area and on the prescriptive easement area have been used by the current and prior owners of the Ao-Zhou Property continuously and to the exclusion of the owner of the rail corridor for over 20 years.

37. The Port is not a party to the Trail Use Agreement attached as **Exhibit R**, which sets forth “the railbanking obligations” applicable to the rail corridor adjacent to the Ao-Zhou Property. This Trail Use Agreement is between King County and BNSF. There is no evidence that BNSF or King County, the only parties to the Trail Use Agreement, have ever claimed that granting the relief sought in Ao-Zhou’s quiet title action would prevent or interfere with the current or future use of the rail corridor.

38. There is no evidence that the Port has ever claimed that granting the relief sought in Ao-Zhou’s quiet title action would prevent or unreasonably interfere with rail operations or any other current or future use of this rail corridor.

39. The most compelling evidence confirming that the adverse possession area is not needed for rail or other uses of the rail corridor is that BNSF sold a 35-foot wide portion of the 100-foot wide rail corridor immediately south of the adverse possession area in 1998, and there is no evidence that this narrowing of the remaining rail corridor had any adverse effect on the use of the rail corridor or would have any adverse effect in the future. In addition, the Port of Seattle acquired the rail corridor in December of 2009 and has never asserted any objection regarding the sufficiency of the 65-foot wide rail corridor in the vicinity of the Ao-Zhou Property for any and all future uses of the rail corridor. See **Exhibits B and G**.

40. With respect to the fee for filing the Petition for a Declaratory Order, Petitioners request that the \$1,400 fee be waived for several reasons. First, the Port, not Petitioners, asserted that Ao-Zhou's state property law quiet title action is preempted by federal law and must be decided by the STB, not a state court. Petitioners contend that STB decisions and federal and state court decisions confirm that (1) matters of state property law are properly decided by state courts and (2) such lawsuits are not preempted by federal law when there is no evidence of interference with use of a rail corridor. If the Port had filed this Petition to the STB to decide the federal preemption issue raised by the Port, the filing fee would have been waived pursuant to 49 C.F.R. § 1002.2(c). It is unfair to impose a filing fee on Petitioners to resolve a federal preemption issue raised by the Port, and which Petitioners expect will be decided against the Port.

41. Requiring a \$1,400 filing fee in this case would impose an undue and unnecessary hardship on Petitioners, who are private citizen taxpayers. The Port of Seattle is a tax-supported public entity with annual operating revenues of \$550.6 million, based on the Port of Seattle's published 2011 budget. The Port's General Counsel advised the Port Commission at a public meeting on January 25, 2011, that the Port should resolve Petitioners' state property law quiet title quiet action and stated several times that the Port would lose the litigation if it proceeded to trial. *See Exhibit M*. At least one Port Commissioner responded: "The financial cost to us [to litigate the quiet title action] is negligible given the size of our overall operating expenses ...." *Exhibit M*, page 6. Regrettably, the record demonstrates that the Port's decision not to resolve Petitioners' quiet title action and to require both parties to incur legal fees was contrary to the advice and recommendation of its General Counsel and was based on the Port's perception that it can use its vast public resources to the detriment of private citizens, whose legal fees are not supported by tax dollars.

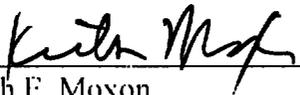
42. The Port could have filed a Petition with the STB to resolve the federal preemption issue that it raised, but it chose not to and imposed that burden on the private citizens

who had properly pursued state court quiet title litigation to decide matters of state property law issues.

43. Waiving the filing fee in this case is in the best interest of the public because it will facilitate the resolution of an issue raised by the Port without imposing a significant financial burden on private citizens.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. I certify that I am qualified and authorized to file this Declaration.

Executed on this 22<sup>nd</sup> day of July, 2011.

  
\_\_\_\_\_  
Keith E. Moxon

CERTIFICATE OF SERVICE

I, Amanda Kleiss-Acres, certify that I have this day served copies of the following documents upon all parties of record in this proceeding, by U.S. Express mail:

1. Letter and Filing Fee Waiver Request;
2. Petition for Declaratory Order;
3. Declaration of Keith Moxon in Support of Petition for Declaratory Order with attachments;
4. Textual submission submitted on three compact discs.

Chief of the Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 "E" Street, S.W.  
Washington, D.C. 20423-0001

- ✓ By U.S. Express Mail
- By Legal Messenger
- By Facsimile
- By Email

Mr. John R. McDowall  
Carney Badley & Spellman  
701 Fifth Avenue, Suite 3600  
Seattle, WA 98104-7010

- ✓ By U.S. Express Mail
- By Legal Messenger
- By Facsimile
- By Email

Mr. Craig Watson  
General Counsel  
Port of Seattle  
2711 Alaskan Way  
Seattle, WA 98121-1107

- ✓ By U.S. Express Mail
- By Legal Messenger
- By Facsimile
- By Email

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED at Seattle, Washington on this 22<sup>nd</sup> day of July, 2011.

  
Amanda Kleiss-Acres

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

Docket No. FD 35539

---

**EXHIBITS A - R  
and  
APPENDIX A**

---

ORIGINAL

Keith E. Moxon  
GORDON DERR LLP  
2025 First Avenue -- Suite 500  
Seattle, WA 98121-3140  
Phone: (206)-382-9540  
Facsimile: (206)-626-0675  
knoxon@gordonderr.com

Attorneys for Petitioners Jie Ao and  
Xin Zhou

July 22, 2011

Attachments Contain Color Images  
Exhibits A - R and Appendix A

- Exhibit A** Vicinity Map downloaded from the Port of Seattle’s website showing the location of the former BNSF rail corridor at issue.
- Exhibit B** Portion of a Plat Map downloaded from the King County Department of Assessments’ website showing the Ao-Zhou Property and the former BNSF rail corridor abutting Petitioners’ property.
- Exhibit C** Two aerial photographs (C-1 and C-2) showing the location of the Ao-Zhou Property and the former BNSF rail corridor abutting Petitioners’ property.
- Exhibit D** Scaled drawing prepared by Concept Engineering, Inc. showing the location of Hazelwood Road - the prescriptive easement area (“Parcel E”).
- Exhibit E** Drawing prepared by Concept Engineering, Inc. showing the location of various improvements on various parcels of property relevant to this Petition.
- Exhibit F** Statutory warranty deed recorded on November 10, 2008, by which “Parcels A, B, and C” were conveyed by deed from Jamal Crawford to Petitioners.
- Exhibit G** Aerial photograph showing the approximate location of the adverse possession area (“Parcel D”) and the 35-foot wide portion of the rail corridor sold by BNSF in 1998 (“Parcel C” and “Parcel F”).
- Exhibit H** Quitclaim deed recorded on July 28, 1998, by which BNSF conveyed to AN1, LLC a 35-foot wide portion of the BNSF rail corridor (“Parcel C” and “Parcel F”).
- Exhibit I** Quitclaim deed recorded on May 18, 1999, by which AN1, LLC conveyed to Steve Hazlerig a 35-foot wide portion of the BNSF rail corridor (“Parcel C” and “Parcel F”).
- Exhibit J** Quitclaim deed recorded on June 7, 2000, by which Steven Hazlerig conveyed to M Hawk Construction a 35-foot wide parcel formerly part of the BNSF rail corridor (“Parcel F”).
- Exhibit K** Portion of the deposition of Steven J. Hazlerig taken on Monday, April 18, 2011.
- Exhibit L** Quitclaim deed recorded on December 18, 2009, by which BNSF conveyed to the Port of Seattle title to the BNSF rail corridor that is the subject of this petition
- Exhibit M** Copy of a transcript of the Port of Seattle Commission Meeting held on January 25, 2011.
- Exhibit N** Amended Complaint for Declaratory Judgment, Quiet Title and Injunction filed on February 2, 2011.
- Exhibit O** Transcript of the oral decision portion of proceedings before Judge Jay White, King County Superior Court, on April 22, 2011.

- Exhibit P** Revised Order on Reconsideration Regarding Port of Seattle’s Motion to Dismiss (Order of Dismissal “Without Prejudice”). May 23, 2011.
- Exhibit Q-1** Survey Drawing prepared by Concept Engineering, September 3, 2009.
- Exhibit Q-2** Survey Drawing prepared by Concept Engineering, September 3, 2009, highlighted to show “Parcels A, B, C, D, and F.”
- Exhibit R** Trail Use Agreement, December 18, 2009, between King County and BNSF.
- Appendix A** 1987 Photographs and June 2011 Photographs.

# EXHIBIT A

### BNSF Woodinville Subdivision (N. Renton to Snohomish)

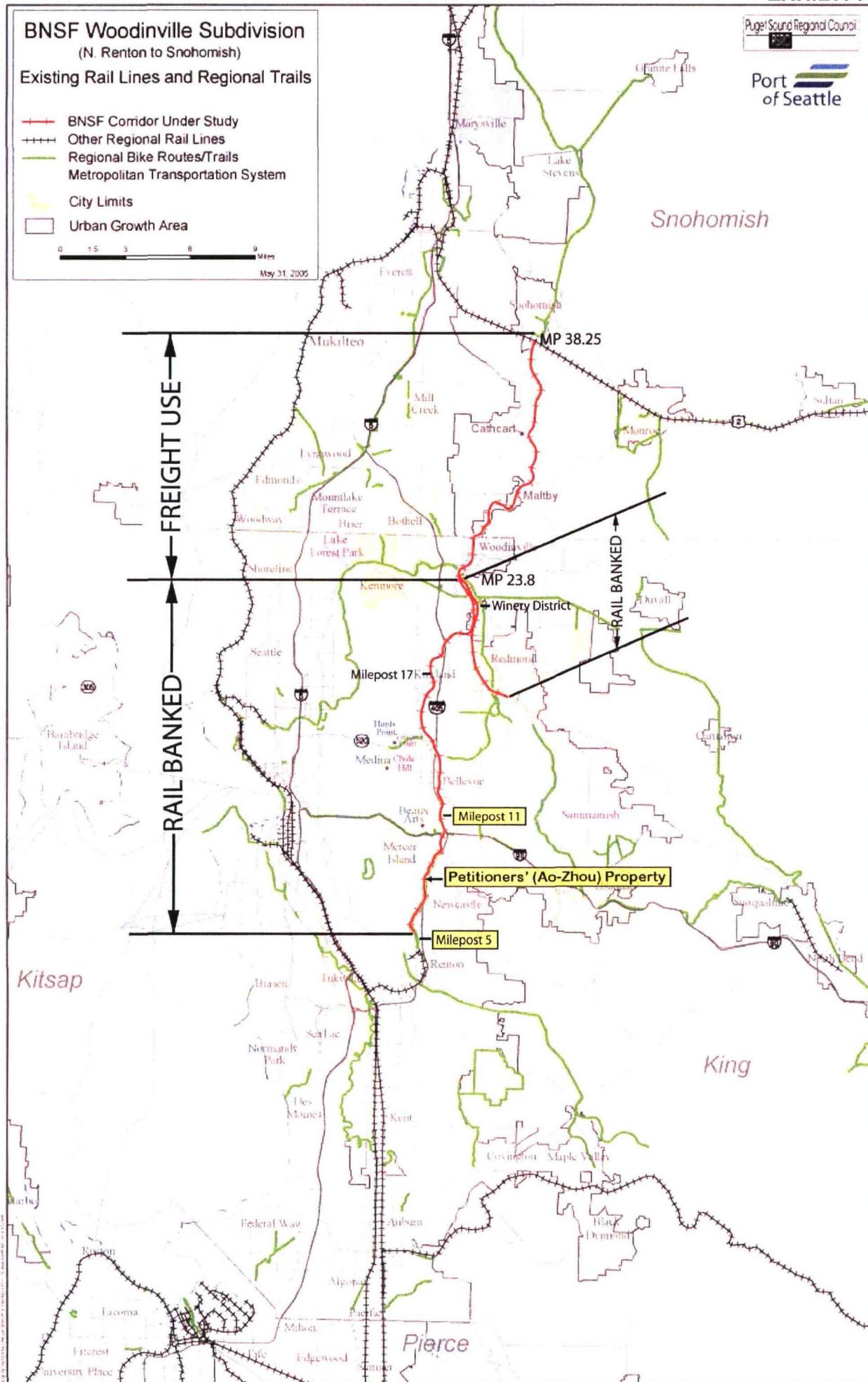
Existing Rail Lines and Regional Trails

-  BNSF Corridor Under Study
-  Other Regional Rail Lines
-  Regional Bike Routes/Trails  
Metropolitan Transportation System
-  City Limits
-  Urban Growth Area

0 1.5 3 6 9 Miles

May 31, 2005

Puget Sound Regional Council



**Petitioners' (Ao-Zhou) Property**

**Milepost 5**

**Milepost 11**

**MP 23.8**

**MP 38.25**

RAIL BANKED

RAIL BANKED

RAIL BANKED

Kitsap

King

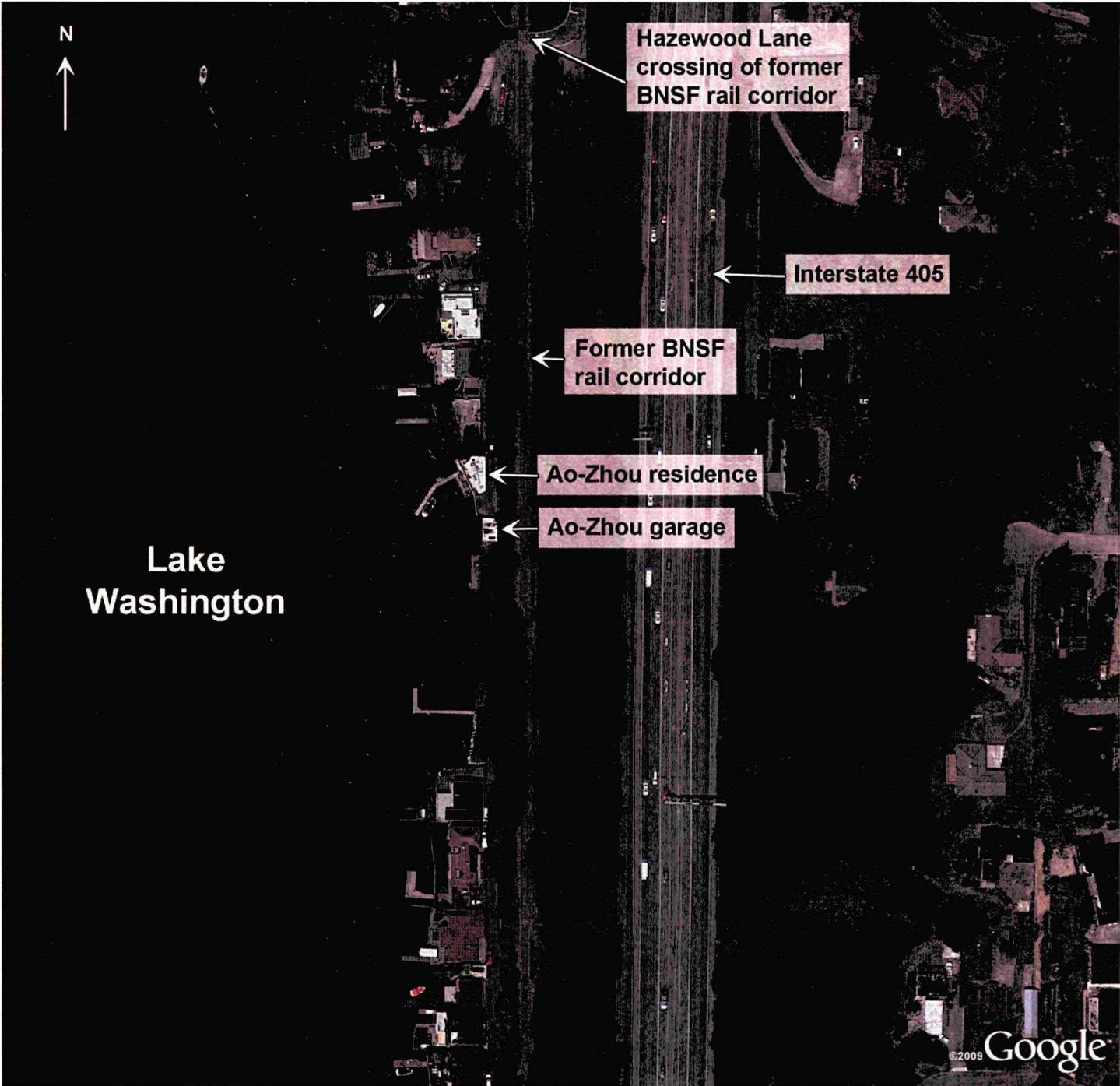
Pierce

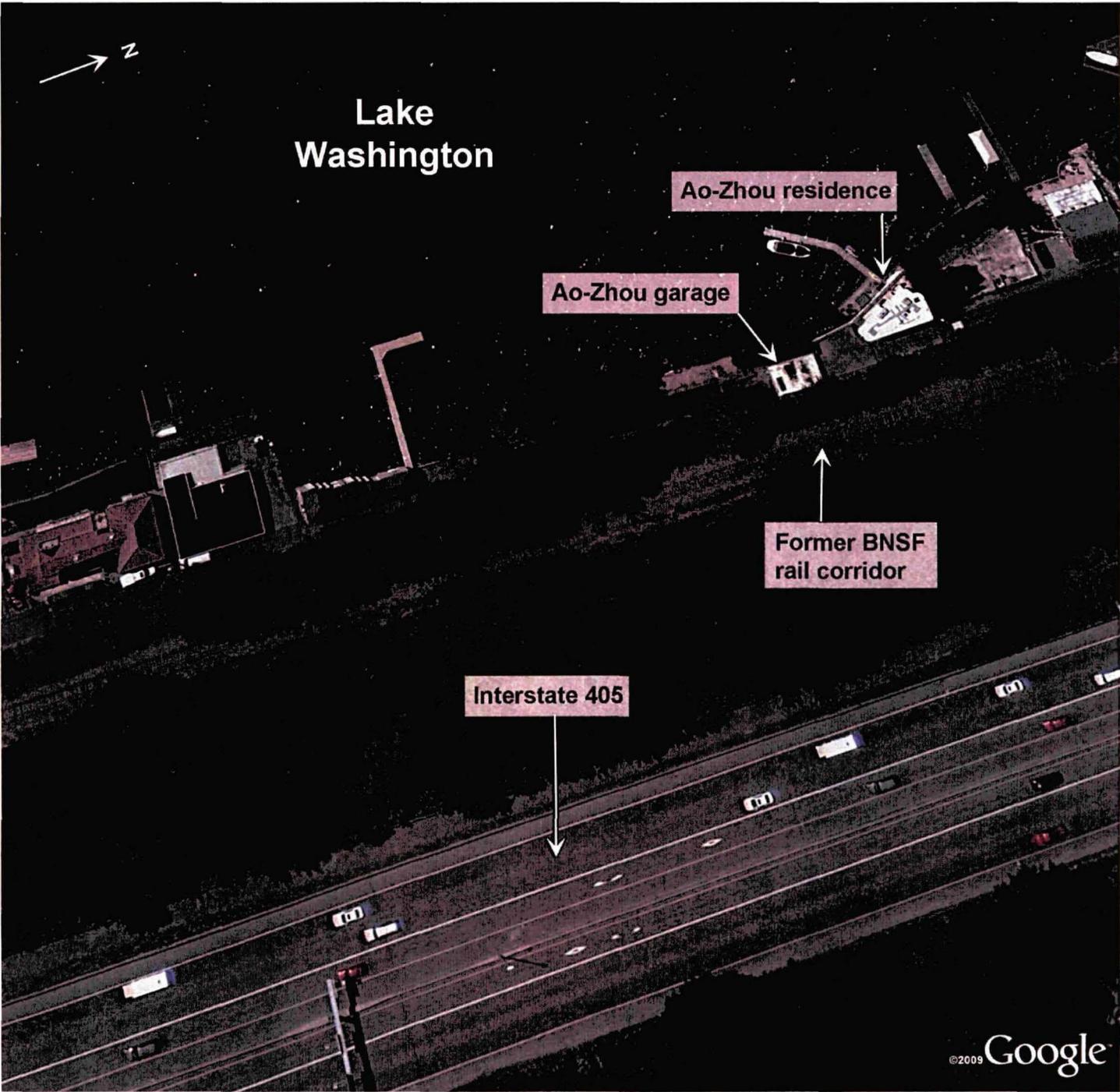
Snohomish

# EXHIBIT B



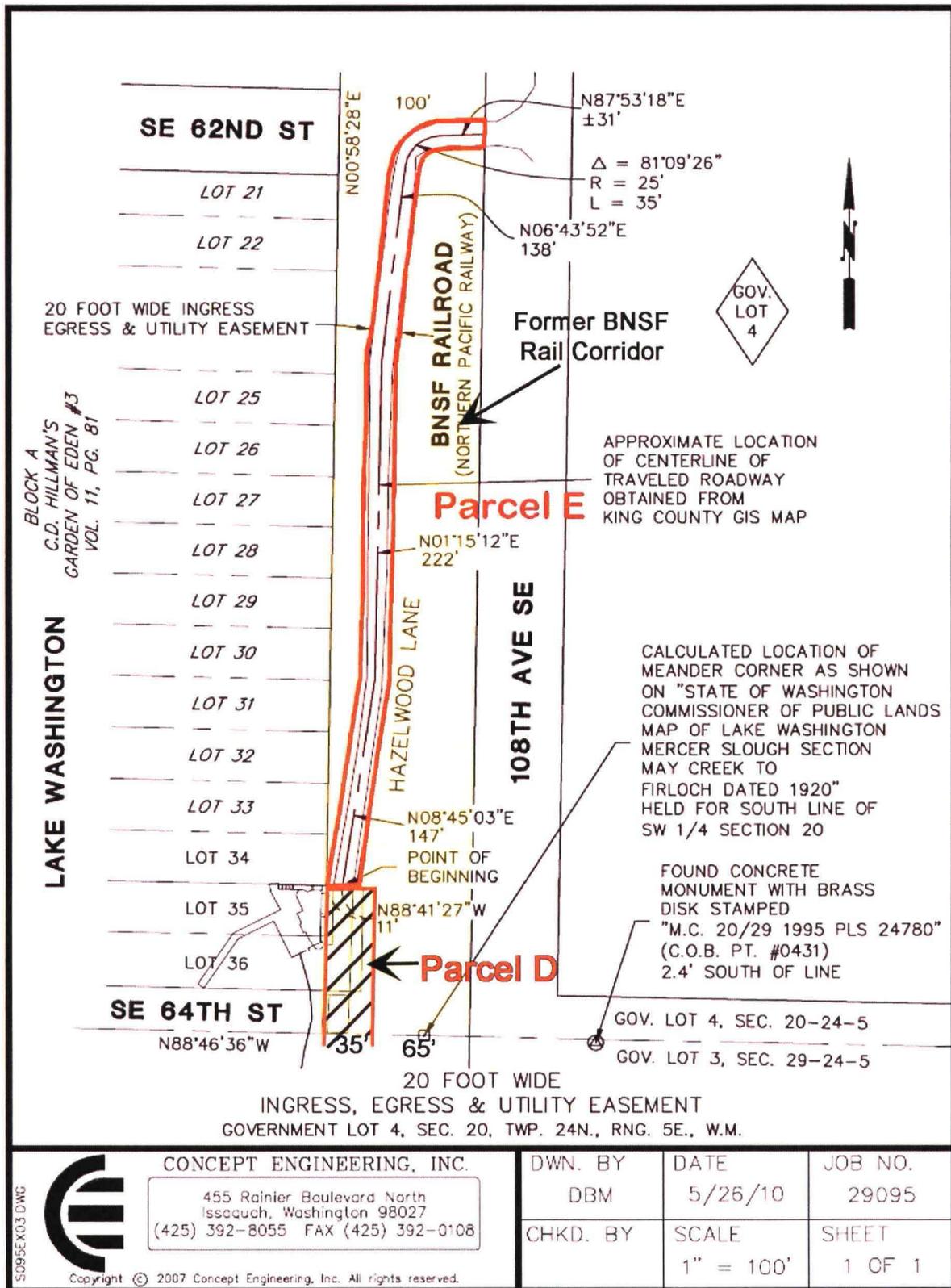
# EXHIBIT C





# EXHIBIT D

Map of Prescriptive Easement Area



**CONCEPT ENGINEERING, INC.**  
 455 Rainier Boulevard North  
 Issaquah, Washington 98027  
 (425) 392-8055 FAX (425) 392-0108

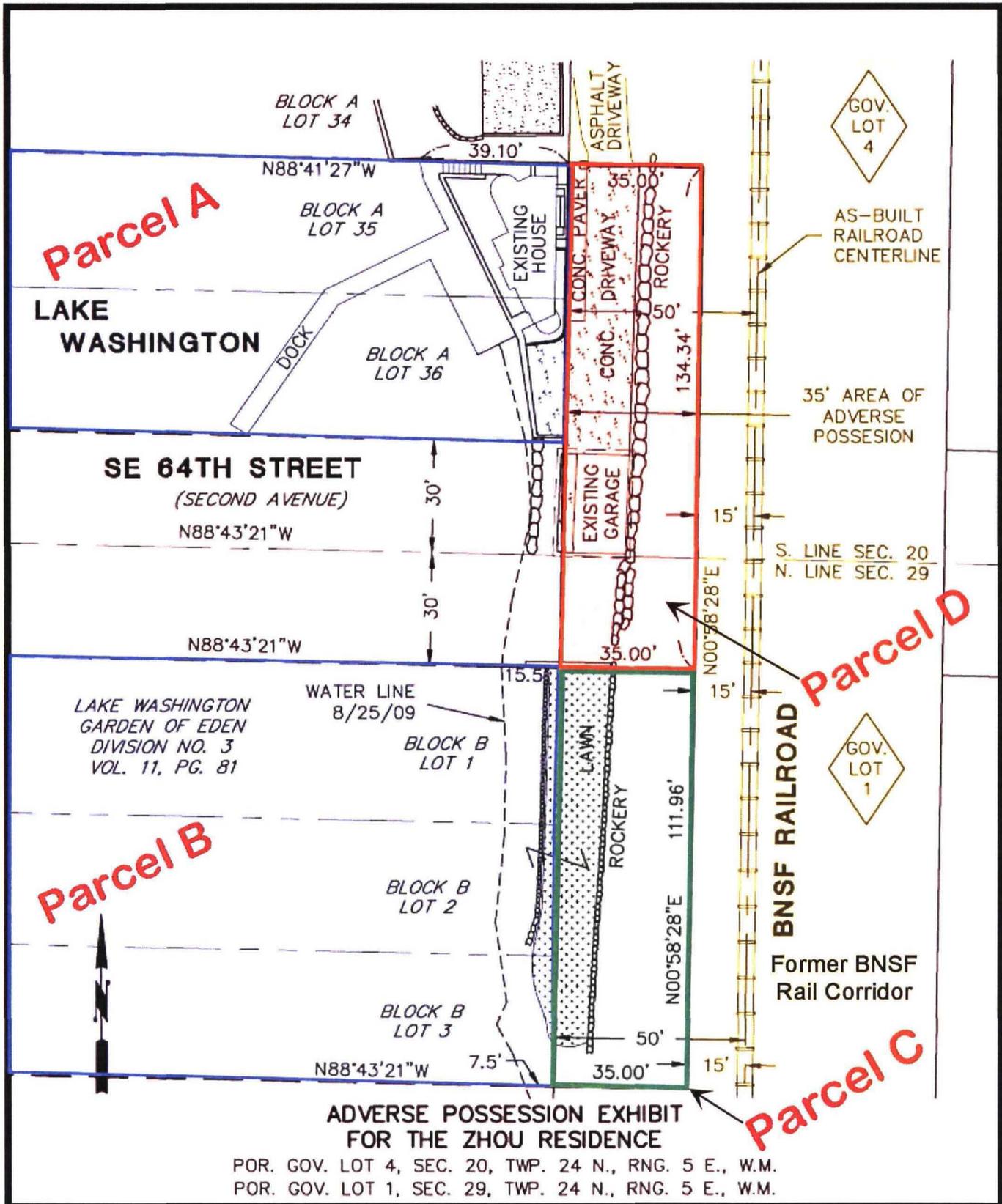
DWN. BY	DATE	JOB NO.
DBM	5/26/10	29095
CHKD. BY	SCALE	SHEET
	1" = 100'	1 OF 1

S095EX03.DWG



# EXHIBIT E

Map of Adverse Possession Area  
(Parcel D)



ADVERSE POSSESSION EXHIBIT  
FOR THE ZHOU RESIDENCE

POR. GOV. LOT 4, SEC. 20, TWP. 24 N., RNG. 5 E., W.M.  
POR. GOV. LOT 1, SEC. 29, TWP. 24 N., RNG. 5 E., W.M.

	CONCEPT ENGINEERING, INC. 455 Rainier Boulevard North Issaquah, Washington 98027 (425) 392-8055 FAX (425) 392-0108	DWN. BY DBM	DATE 12/11/09	JOB NO. 29095
	Copyright © 2007 Concept Engineering, Inc. All rights reserved.	CHKD. BY	SCALE 1" = 40'	SHEET 1 OF 1

# EXHIBIT F

When recorded return to:  
Jie Ao and Xin Zhou  
6333 Hazelwood Lane SE  
Bellevue, WA 98006



**E2370544**  
11/18/2008 12:07  
KING COUNTY, WA  
TAX \$32,838.00  
SALE \$1,856,000.00  
PAGE 001 OF 001

The Talon Group  
Escrow Number: 8-0809-002

**STATUTORY WARRANTY DEED**

THE GRANTOR(S) Jamal Crawford, an unmarried individual, on date of acquiring title for and in consideration of ten dollars and other good and valuable consideration in hand paid, conveys, and warrants to Jie Ao and Xin Zhou, husband and wife the following described real estate, situated in the County of King, State of Washington:

Legal description attached hereto and incorporated herein made reference as exhibit "A"

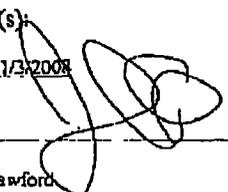
GRANTOR ACKNOWLEDGES THAT TITLE TO THE PROPERTY IS MARKETABLE AT THE TIME OF THIS CONVEYANCE. THE FOLLOWING SHALL NOT CAUSE THE TITLE TO BE UNMARKETABLE: RIGHTS, RESERVATIONS, COVENANTS, CONDITIONS, AND RESTRICTIONS, PRESENTLY OF RECORD AND GENERAL TO THE AREA; EASEMENTS AND ENCROACHMENTS, NOT MATERIALLY AFFECTING THE VALUE OF OR UNDULY INTERFERING WITH GRANTEE'S REASONABLE USE OF THE PROPERTY; AND RESERVED OIL AND/OR MINING RIGHTS

Abbreviated Legal: (Required if full legal not inserted above.)  
Lot 35-36, Block A, CD Hillman's 1 1/2 Wa Garden Eden Add Seattle, Division No. 3

Tax Parcel Number(s): 3343302140

*8-08090101 2/4/*  
**INSURED BY  
FIDELITY NATIONAL TITLE**

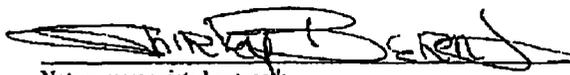
Dated: 11/3/2008

  
\_\_\_\_\_  
Jamal Crawford

STATE OF NEW YORK ss.  
COUNTY OF WESTCHESTER

I certify that I know or have satisfactory evidence that Jamal Crawford (is/are) the person(s) who appeared before me, and said person(s) acknowledged that (he/she/they) signed this instrument and acknowledged it to be (his/her/their) free and voluntary act for the uses and purposes mentioned in this instrument..

Dated: 11-6-08



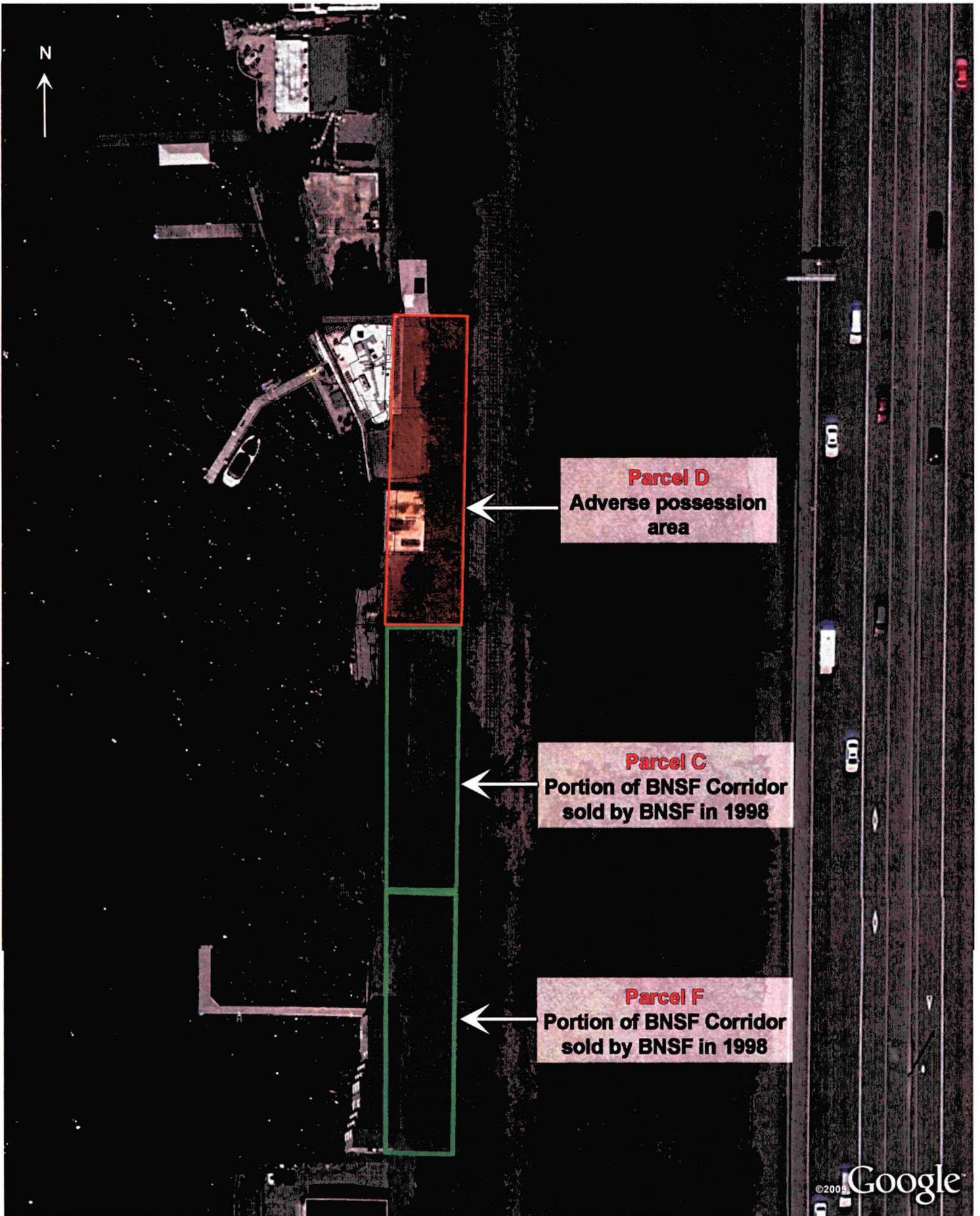
Notary name printed or typed:  
Notary Public in and for the State of  
Residing at  
My appointment expires:

SHIRLEY BEAMS  
Notary Public-State of New York  
No. 01BE6059816  
Qualified in Putnam County  
Commission Expires 5/29/2011

**EXHIBIT "A"**  
**LEGAL DESCRIPTION FOR PROPERTY LOCATED AT 6333 HAZELWOOD LANE SE**

- Parcel A* [ LOTS 35 AND 36, BLOCK "A", C. D. HILLMAN'S LAKE WASHINGTON GARDEN OF EDEN ADDITION TO SEATTLE DIVISION NUMBER 3, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 11 OF PLATS, PAGE 81, IN KING COUNTY, WASHINGTON;  
 TOGETHER WITH SHORELANDS OF THE SECOND CLASS, SITUATE IN FRONT OF, ADJACENT TO, OR ABUTTING THEREON;
- Parcel B* [ TOGETHER WITH LOTS 1, 2, AND 3, BLOCK "B", C. D. HILLMAN'S LAKE WASHINGTON GARDEN OF EDEN  
 ADDITION TO SEATTLE DIVISION NUMBER 3, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 11 OF PLATS, PAGE 81, IN KING COUNTY, WASHINGTON;  
 TOGETHER WITH SECOND CLASS SHORELANDS ADJOINING;  
 TOGETHER WITH THE WESTERLY 35.0 FEET OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY'S (FORMERLY NORTHERN PACIFIC RAILWAY COMPANY) 100.0 FOOT WIDE RENTON TO WOODINVILLE, WASHINGTON BRANCH LINE RIGHT OF WAY, BEING 50.0 FEET
- Parcel C* [ WIDE ON EACH  
 SIDE OF SAID RAILWAY COMPANY'S RELOCATED MAIN TRACK CENTERLINE, AS NOW LOCATED  
 AND CONSTRUCTED UPON, OVER AND ACROSS GOVERNMENT LOT 1 OF SECTION 29, TOWNSHIP 24 NORTH, RANGE 5 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, LYING CONTIGUOUS TO AND EASTERLY OF LOTS 1, 2 AND 3, BLOCK "B" OF C. D. HILLMAN'S LAKE WASHINGTON GARDEN OF EDEN ADDITION TO SEATTLE DIVISION NUMBER 3, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 11 OF PLATS, PAGE 81, IN KING COUNTY, WASHINGTON.  
 AND LYING WESTERLY OF A LINE DRAWN PARALLEL WITH AND DISTANT 15.0 FEET WESTERLY,  
 AS MEASURED AT RIGHT ANGLES FROM SAID RELOCATED MAIN TRACK CENTERLINE, BOUNDED ON  
 THE NORTH BY THE EASTERLY EXTENSION OF THE NORTH LINE OF SAID LOT 1, AND BOUNDED  
 ON THE SOUTH BY THE EASTERLY EXTENSION OF THE SOUTH LINE OF SAID LOT 3.

# EXHIBIT G



(NOT TO SCALE)

# EXHIBIT H

WHEN RECORDED MAIL TO.

ANT, LLC  
4545 Fuller Drive, Suite 100  
Irving, Texas 75038  
Attention: Title & Escrow Department

9807281543

QUITCLAIM DEED

1ST AM-S  
M11703-5

THIS INDENTURE WITNESSETH: That THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation, (formerly Burlington Northern Railroad Company), of 2650 Lou Menk Drive, Fort Worth, Texas 76131-2830, ("Grantor"), for and in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, in hand paid, conveys and quitclaims, without any covenants of warranty whatsoever and without recourse to the Grantor, its successors and assigns, to ANT, LLC, a Delaware limited liability company, and its successors and assignees, whose address is 201 Mission Street, Pacific Gateway Building, San Francisco, California 94105, ("Grantee"), all of Grantor's right, title and interest, if any, in real estate and improvements located in the County of King, State of Washington, together with all after acquired title of Grantor therein, as such real property ("Premises"), is more particularly described as follows:

Part of Government Lot 1 of Section 29, Township 24 North, Range 5 East, W. M., King County, Washington, being more particularly described in Exhibit "A", consisting of (1) page, attached hereto and made a part hereof

TOGETHER with all tenements, hereditaments and appurtenances, if any, on the Premises, and any reversions, remainders, rents, issues or profits on the Premises.

SUBJECT, however, to all valid existing interests of third parties in the Premises, including but not limited to, reservations, rights of way and other encumbrances of record

COURTESY RECORDING ONLY...  
NO LIABILITY FOR VALIDITY AND/OR  
ACCURACY ASSUMED BY FIRST AMERICAN  
TITLE INSURANCE COMPANY

AC: 392415-9005  
Assessor's Property Tax Parcel Account Number(s) No tax serial numbers - Railroad right of way.

980728-1543 03:45:02 PM KING COUNTY RECORDS 054 05

EXCEPTING AND RESERVING unto Grantor, its successors, assignees, lessees and/or licensees (hereinafter "Grantor") all coal, oil, gas, casing head gas and all ores and minerals of every kind and nature, and all water, underlying the surface of the Premises, except with no right of entry onto the surface, or above a depth 500 feet below the surface, of the Premises

ALSO RESERVING unto Grantor a nonexclusive permanent easement to operate, maintain, reconstruct and modify any and all fiber optic lines, communication lines used by Grantor, and facilities related to such fiber optic lines or communication lines, in the location where such lines or facilities exist on the date of delivery of this Deed, including related rights of ingress and egress, as necessary across the Premises for the sole purpose of operating, maintaining and, as necessary, reconstructing such lines in the same location as they exist on January 30, 1998, provided that all activities of Grantor in the exercise of rights under this Paragraph of this Deed shall occur in a manner that minimizes any interference with any activities or improvements then present on the Premises.

TO HAVE AND TO HOLD the same unto Grantee, and its successors and assignees, forever.

IN WITNESS WHEREOF, Grantor has caused this Deed to be executed by its authorized representative, and its corporate seal to be affixed hereto as of the 24<sup>th</sup> day of February, 1998

9807281543

THE BURLINGTON NORTHERN AND  
SANTA FE RAILWAY COMPANY

By *D. P. Schneider*  
D. P. Schneider  
General Director Real Estate



ATTEST:

By *Margaret R. Acclin*  
Margaret R. Acclin  
Assistant Secretary

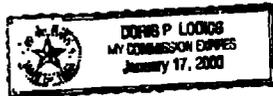
STATE OF TEXAS

§  
§ ss.  
§

COUNTY OF TARRANT

On this 13th day of May, 1998, before me, the undersigned, a Notary Public in and for the State of Texas, duly commissioned and sworn, personally appeared D P Schneider and Margaret R. Aclin, to me known to be the General Director Real Estate and Assistant Secretary, respectively, of **THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written



Doris P. Lodice  
Notary Public in and for the State of Texas

Residing at Fort Worth, Texas

My appointment expires: 1-17-2000

9807281543

**FORM APPROVED BY LAW**

**EXHIBIT "A"**

**Parcel 01741 (NP)**

The Westerly 350 feet of The Burlington Northern and Santa Fe Railway Company's (formerly Northern Pacific Railway Company) 1000 foot wide Renton to Woodinville, Washington Branch Line right of way, being 500 feet wide on each side of said Railway Company's Relocated Main Track centerline, as now located and constructed upon, over and across Government Lot 1 of Section 29, Township 24 North, Range 5 East, W. M., King County, Washington, lying contiguous to and Easterly of Lots 1, 2, 3, 4, 5, 6 and 7, Block B of Lake Washington Shore Lands, according to the recorded plat thereof, and lying Westerly of a line drawn parallel with and distant 15.0 feet Westerly, as measured at right angles from said Relocated Main Track centerline, bounded on the North by the Easterly extension of the North line of said Lot 1, and bounded on the South by the Easterly extension of the South line of said Lot 7.

9807281543

BNSF 01000 147 Kennydale, WA

# EXHIBIT I

WHEN RECORDED MAIL TO:

Steven J. Hazlerig  
6333 Hazelwood Lane SE  
Bellevue, Washington 98006



990518-388 02:22:00 PM KING COUNTY RECORDS 004 385

11:00

QUITCLAIM DEED

9905182388

**THIS INSTRUMENT WITNESSETH:** That ANI, LLC, a Delaware limited liability company, 201 Mission Street, Pacific Gateway Building, San Francisco, California 94102 (Grantor) for and in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, in hand paid, conveys and quitclaims, without any covenants of warranty whatsoever and without recourse to the Grantor, its successors and assigns to **STEVEN J. HAZLERIG**, whose address is 6333 Hazelwood Lane SE, Bellevue, Washington 98006 (Grantee) all of Grantor's right, title and interest if any, in real estate and improvements located in the County of King, State of Washington, together with all after acquired title of Grantor therein, as such real property or Premises, is more particularly described as follows:

Part of Government Lot 1 of Section 24, Township 24 North, Range 5 East, W.M., King County, Washington, complete legal description described on page four (4) of Exhibit A, consisting of one (1) page, attached hereto and made a part hereof.

SUBJECT, however, to all valid existing interests, including but not limited to, reservations, rights of way and other encumbrances of record or otherwise.

**TO HAVE AND TO HOLD** the same unto Grantees, his heirs and assigns, forever.

Assessor's Property Tax Parcel Account Number: 292405-0605

E1685563 05/18/99

284.90

285.00

IN WITNESS WHEREOF, Grantor has caused this Deed to be executed by its authorized representative on this 11 day of May, 1999.

ANI, LLC  
a Delaware limited liability company

By [Signature]  
Chris A. Sorenson  
Vice President

ATTEST:

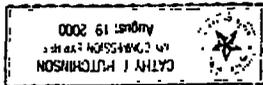
By [Signature]  
R. F. Wilhelm  
Assistant Secretary

STATE OF TEXAS §  
COUNTY OF DALLAS §

On this 11 day of May, 1999 before me the undersigned a Notary Public in and for the State of Texas duly commissioned and sworn personally appeared Chris Sorenson and R. F. Wilhelm to me known to be the Vice President and Assistant Secretary respectively of ANI, LLC, a Delaware limited liability company that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said company for the uses and purposes therein mentioned and on which stated that they are authorized to execute the said instrument.

Witness my hand and official seal hereby affixed the day and year first above written

[Signature]  
Cathy Hutchinson  
Notary Public in and for the State of Texas  
Residing at Fort Worth, Texas  
My appointment expires August 19, 2000



9905182368

ACCEPTED:

By [Signature]  
Name Steven J. Hazlerig

STATE OF WASHINGTON §  
COUNTY OF King §  
§  
§

On this 13<sup>th</sup> day of April, 1999 before me personally appeared Steven J. Hazlerig to me known to be the person that he accepted the foregoing instrument and acknowledged the said instrument to be his free and voluntary act and deed for the uses and purposes therein mentioned.

Witness my hand and official seal hereto affixed the day and year first above written



[Signature]  
Notary Public in and for the State of Washington

Residing at Renton, WA

My appointment expires 1-9-03

9905182368

**EXHIBIT "A"**

**Parcel 01741 (NP)**

The Westerly 35.0 feet of The Burlington Northern and Santa Fe Railway Company's (formerly Northern Pacific Railway Company) 100.0 foot wide Renton to Woodinville Washington Branch Line right of way being 50.0 feet wide on each side of said Railway Company's Relocated Main Track centerline as now located and constructed upon over and across Government Lot 1 of Section 29, Township 24 North, Range 5 East, Washington County, Washington lying contiguous to and Easterly of Lots 1, 2, 3, 4, 5, 6 and 7; Block B of Lake Washington Shore Lands according to the recorded plat thereof, and lying Westerly of a line drawn parallel with and distant 15.0 feet Westerly, as measured at right angles from said Relocated Main Track centerline, bounded on the North by the Easterly extension of the North line of said Lot 1 and bounded on the South by the Easterly extension of the South line of said Lot 7.

9905182368

# EXHIBIT J

WHEN RECORDED MAIL TO

M-Hawk Construction, Inc  
3248 W Lake Samm Pky, SE  
Bellevue, WA 98008



20000607000046

HOCHFELD QCD 9 00  
PAGE 001 OF 002  
06/07/2000 08 52  
KING COUNTY, WA

E1757603

06/06/2000 18.05  
KING COUNTY, WA  
TAX \$519.38  
SALE \$25,000.00

PAGE 001 OF 002

Quitclaim Deed

2009 060 7000046

**THIS INDENTURE WITNESSETH:** That Steven J Hazlerig, whose address is 6333 Hazelwood Lane SE, Bellevue, WA 98006 ("Grantor"), for and in consideration of Ten and No/100 Dollars (\$10 00) and other good and valuable consideration, in hand paid, conveys and quitclaims, without any covenants or warranty whatsoever and without recourse to the Grantor, its successors and assigns, to M Hawk Construction, Inc, whose address is 3248 W Lake Samm Pky, SE, Bellevue, Washington 98008 ("Grantee"), all of Grantor's right, title and interest, if any, in real estate and improvements located in the County of King, State of Washington, together with all after acquired title of Grantor therein, as such real property ("Premises"), is more particularly described as follows

Part of Government Lot 1 of Section 29, Township 24 North Range 5 East, W M King County, Washington, complete legal description described as Exhibit "A", consisting of one (1) page attached hereto and made a part hereof

LOT 4 ONLY OF 334330-2155-03 & (NP 101741

**SUBJECT,** however, to all valid existing interests, including but not limited to, reservations, rights of way and other encumbrances of record, or otherwise

**TO HAVE AND TO HOLD** the same unto Grantees, his heirs and assigns, forever

Lot 4 Blk B, C, D Hillmans Lake Washington Add of Eden No 3, Vol 11 Page 81

Signature Steven J Hazlerig *Steven J Hazlerig* Date 2/28/2000

Notary *Ginger A. McKenzie*

Stamp



EXHIBIT "A"

PARCEL 01741 (NP)

The Westerly 350 feet of The Burlington Northern and Santa Fe Railway Company's (formerly Northern Pacific Railway Company) 1000 foot wide Renton to Woodinville Washington Branch Line right of way, being 500 feet wide on each side of said Railway Company's Relocated Main Track centerline, as now located and constructed upon, over and across Government Lot 1 of Section 29, Township 24 North Range 5 East, W M King County, Washington, lying contiguous to and Easterly of Lots 4, 5, 6, and 7, Block B of Lake Washington Shore Lands, according to the recorded plat thereof, and lying Westerly of a line drawn parallel with and distant 150 feet Westerly, as measured at right angles from said Relocated Main Track centerline, bounded on the North by the Easterly extension of the North line of said Lot 4; and bounded on the South by the Easterly extension of the South line of said Lot 7

Together with Lot 4, Blk B, CD Hillmans Lake Washington Add of Eden No 3 Vol 11 Page 81

2000 060 7000046

Signature Steven J Hazleng *Steven J Hazleng* Date 2/28/00

Notary *Gina A McKenzie*

Stamp



# EXHIBIT K

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SUPERIOR COURT FOR THE STATE OF WASHINGTON  
IN THE COUNTY OF KING

-----

JIE AO and XIN ZHOU, husband and )  
wife, )  
) )  
Plaintiffs, )  
) )  
vs. ) No. 09-2-44773-0 KNT  
) )  
THE PORT OF SEATTLE, a port )  
district of the state of )  
Washington, )  
) )  
Defendant. )

-----

DEPOSITION UPON ORAL EXAMINATION OF  
STEVEN J. HAZLERIG

10:00 a.m.  
Monday, April 18, 2011  
701 - 5th Avenue, #3600  
Seattle, Washington

CARMEN L. LUNDY, CCR #2287, BA, RPR  
GROSHONG-QUAINTANCE COURT REPORTERS  
10116 - 36th Avenue Court S.W., Suite 207  
Tacoma, Washington 98499  
Tacoma (253) 627-7129 \* Seattle (206) 838-1282

1 we bought to the south here.  
 2 Q. Do you know what lease that was?  
 3 A. Well, it's referred to here but I -- you know, I don't  
 4 know what it is.  
 5 Q. Okay. Do you know if it's in your files?  
 6 A. I don't think so.  
 7 Q. Okay. And do you have any other -- other than Marty, or  
 8 his attorney asked you to write this, do you have any  
 9 inclination as to why he wrote that letter?  
 10 A. Well, he was trying to get a little driveway there so he  
 11 could park his car at his house -- or just beyond, just to  
 12 the north of his car actually, adjacent to Lots 5, 6, and 7.  
 13 I think that was his interest in buying 5, 6, and 7, and  
 14 getting the 35-foot easement from -- or a purchase from  
 15 ANT LLC so he could construct his driveway -- or his car --  
 16 park his car --  
 17 Q. Okay. Make sense.  
 18 A. -- on part that was beyond Ripley Lane. Ripley Lane is  
 19 going all the way up to between Lots 7 and 8. His house was  
 20 built on Lots 8 and 9. And, basically, he was trying to  
 21 build a driveway in this area so he could park his car not  
 22 on Ripley Lane but close to his house.  
 23 Q. Gotcha. So when you say "this area," you're referring  
 24 to Exhibit 4 and you're referring to just east of Lots 5, 6,  
 25 and 7?

1 A. Yes. And north of Ripley Lane.  
 2 Q. All right.  
 3 MR. MCDOWALL: Believe it or not, that's all the  
 4 questions I have for you. Thanks very much for your time, I  
 5 appreciate it.  
 6 THE WITNESS: Okay.  
 7 MR. MOXON: Can I just ask a few follow-up; that  
 8 way we went don't have to go through any continuation of the  
 9 dep.  
 10 THE WITNESS: Sure. Okay.  
 11 MR. MOXON: I've got to be at Sea-Tac by 1:00, so  
 12 hopefully I can get out of here in time. And thank you very  
 13 much for adjusting your schedule.  
 14 THE WITNESS: Sure.  
 15  
 16 EXAMINATION  
 17  
 18 BY MR. MOXON:  
 19 Q. You were asked about -- let me ask you, first of all, to  
 20 look at Exhibit 13, if you could find that in your file.  
 21 A. Okay.  
 22 Q. You had had -- there was a reference in that document to  
 23 property that you bought from Nichols; do you see that  
 24 reference? I think it's in the second paragraph.  
 25 A. Uh-huh.

1 Q. In fact, you didn't buy the property from Lee Nichols --  
 2 A. That's correct. I bought it from Dalco Construction.  
 3 And I don't know what the relationship with Dalco  
 4 Construction; I think they repossessed the property from Lee  
 5 Nichols.  
 6 Q. Then, there are maps on Exhibit 3; can you locate those?  
 7 A. Yep.  
 8 Q. You were talking about people who access the property  
 9 kind of on that line between the edge of the railroad  
 10 right-of-way and that planting area, correct -- it's  
 11 actually sort of--  
 12 A. Well, it was actually -- it was on the railroad  
 13 driveway. Yeah.  
 14 Q. And you said you weren't really concerned about that.  
 15 A. Right.  
 16 Q. Except for the security of your vehicle.  
 17 A. Right.  
 18 Q. So did you think that allowing people to go across your  
 19 property was just something you could allow as a neighborly  
 20 courtesy; is that your --  
 21 A. Yeah. I felt it had been there that way a long time  
 22 that clearly was a footpath; it went along Lots 1 through 7  
 23 and through the carport and next to the planting bed, so...  
 24 Q. So you didn't think by people stepping on your property,  
 25 if they walked on any portion of your property, that they

1 were making any legal claims against you for that when --  
 2 A. Well, they weren't --  
 3 Q. -- as a neighborly courtesy?  
 4 A. Well, they weren't walking on my property; they were  
 5 walking on the railroad right-of-way.  
 6 Q. Okay. All right.  
 7 A. Yeah.  
 8 Q. Okay. All right. You said -- let's look at Exhibit 16  
 9 real quickly, if you would.  
 10 A. Okay.  
 11 Q. That's not a signed document, is it?  
 12 A. No.  
 13 Q. And there's no evidence that that was ever recorded,  
 14 correct? There's no recording stamp on it.  
 15 MR. MCDOWALL: Object to the form, calls for  
 16 speculation.  
 17 A. No, I don't see any indications that the recorder  
 18 signed.  
 19 Q. You said you might have -- or maybe I think you said you  
 20 would have signed this, but let me draw your attention to  
 21 Paragraph 6, the indemnity language. Would that have been  
 22 acceptable to you as well?  
 23 A. Well, actually, now that you mention it, it looks pretty  
 24 similar to the one that I didn't like in the other lease.  
 25 Q. Okay. There were references in some of the letters that

Page 98

1 were written to BN about your intent to remodel the carport  
 2 and convert it to a garage; is that correct? Do you  
 3 remember?  
 4 A. Reference in my letters to the BNSF?  
 5 Q. You, in your letters -- in your attorney's letters -- we  
 6 can dig up the specifics, but was it your impression that  
 7 was -- your use of the garage was not known to the railroad  
 8 or do you think -- was it your understanding they were aware  
 9 of the presence of the garage?  
 10 A. Oh, I think they were aware of it. Yeah.  
 11 Q. And when you said that you had no legal access, are you  
 12 referring to like a recorded lease or an agreement or a  
 13 license of some kind from BN?  
 14 A. Yeah, yeah. There was no lease agreement for the  
 15 railroad crossing or any of Hazelwood Lane that I was party  
 16 to.  
 17 Q. And looking at Exhibit 5 -- we're almost done here.  
 18 Exhibit 5 is the 1984 lease with Lee Nichols.  
 19 A. Well, where did it go? If I'd known I was going to need  
 20 these again, I would have kept them neater.  
 21 Q. Are they marked -- there it is.  
 22 A. Okay.  
 23 Q. You had an opportunity to look at that at the time the  
 24 railroad was asking you to enter into the same lease  
 25 agreement, correct?

Page 99

1 A. Well, I'm not sure. I'm not sure when I got this one.  
 2 Q. And let me just assume this same language -- well, let  
 3 me draw your attention to Paragraph 12. Was it your  
 4 impression that Lee Nichols could simply give you or you  
 5 acquired his rights by virtue of buying that property; was  
 6 that your impression?  
 7 MR. MCDOWALL: Object to the form. Foundation.  
 8 Calls for speculation -- or a legal conclusion.  
 9 Q. You can answer.  
 10 A. Well, no.  
 11 Q. Okay. Did Burlington Northern ever consent in writing  
 12 to you being assigned the rights that Lee Nichols had for  
 13 access on --  
 14 A. No.  
 15 Q. Okay. Did you use Hazelwood Lane continuously during  
 16 your ownership of the property from 1990 to 2004?  
 17 A. Yeah. I took breaks to sleep and eat and other things  
 18 like that, but, yeah.  
 19 Q. To your knowledge, about BNSF ever use Hazelwood Lane at  
 20 any time during your ownership? Did you ever observe any  
 21 use of that lane by BNSF?  
 22 A. Not -- the lane up by the railroad crossing but not of  
 23 the lane.  
 24 Q. Okay. At any time during your ownership did you BNSF  
 25 give you permission to use Hazelwood Lane?

Page 100

1 A. No.  
 2 Q. Pardon me?  
 3 A. No.  
 4 Q. At any time during your ownership, did you sign a lease  
 5 or easement or license or any other access agreement with  
 6 BNSF to use Hazelwood Lane?  
 7 A. No.  
 8 Q. Did you use the garage continuously during your  
 9 ownership of the property?  
 10 A. Yes.  
 11 Q. Did BNSF ever use the garage or the garage area at any  
 12 time during your ownership?  
 13 A. No.  
 14 Q. Do you think you would have noticed if they would have  
 15 made any changes to the property in that area?  
 16 A. Oh, yeah. Absolutely.  
 17 Q. At any time during your ownership did BNSF give you  
 18 permission to use the garage or the property near the  
 19 garage?  
 20 MR. MCDOWALL: Object to the form.  
 21 A. No.  
 22 Q. At any time during your ownership did you sign any  
 23 lease, easement, or license of any kind with BNSF to use the  
 24 garage or the property near the --  
 25 MR. MCDOWALL: Same objection.

Page 101

1 A. No.  
 2 Q. Did you use the pavement in the retaining wall area  
 3 continuously during your ownership of the property?  
 4 A. Yes.  
 5 Q. I'm talking about the pavement between Hazelwood Lane  
 6 and --  
 7 A. The pavement adjacent to my property essentially.  
 8 Q. Was there an area south of the garage that you used  
 9 during your ownership of the property?  
 10 A. Yeah. There was a planting bed area which was in the  
 11 other half of the Southeast 64th right-of-way which my  
 12 ex-wife had planted some plants in.  
 13 Q. So with respect to the retaining wall area and the area  
 14 south of the garage -- any of that area that's been marked  
 15 as the adverse possession area on Exhibit -- I believe it's  
 16 3 -- it's the one -- you can use this copy if you like.  
 17 That area, the 35-foot wide area that included the garage;  
 18 did BNSF ever give you permission of any kind to use any of  
 19 the area within 35-foot wide adverse possession area?  
 20 A. No.  
 21 MR. MCDOWALL: Object to the form. Foundation.  
 22 Q. And did you sign any lease, easement, license, or other  
 23 access agreement or use agreement with respect to any of  
 24 that property?  
 25 A. With the BNSF?

1 Q. With the BNSF.  
 2 A. No.  
 3 Q. At any time during your --  
 4 MR. MCDOWALL: Did he sign one? Was that the  
 5 question? Did you sign one?  
 6 MR. MOXON: Yes.  
 7 MR. MCDOWALL: Okay.  
 8 A. No.  
 9 BY MR. MOXON (Continuing):  
 10 Q. Did anybody in the neighborhood ever tell you of any use  
 11 of the property that's subject to this litigation during the  
 12 time of your ownership like what BNSF was down there doing  
 13 some weeding or repairing the rockery or anything?  
 14 A. No. The only thing I was aware of them doing was mowing  
 15 from the railroad tracks with the track-mounted mower and  
 16 arms.  
 17 Q. And that's not within the area that's marked as the  
 18 adverse possession?  
 19 A. Well, I don't think they can reach 15 feet from the  
 20 track, but I don't know for sure.  
 21 MR. MOXON: Thank you very much. Nothing further.  
 22 MR. MCDOWALL: Two quick followup.  
 23 THE WITNESS: Sure.  
 24 ///  
 25 ///

1 A. No.  
 2 Q. The way you described it.  
 3 A. I mean, occasionally a maintenance truck would go on the  
 4 tracks and...  
 5 Q. Okay.  
 6 MR. MCDOWALL: Thanks very much for your time.  
 7 (The deposition concluded at 12:39 p.m.)  
 8 (Signature was reserved.)  
 9  
 10  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

1  
 2 EXAMINATION  
 3  
 4 BY MR. MCDOWALL:  
 5 Q. Dalco Construction, do you know who the principles were?  
 6 A. No, I don't. No.  
 7 Q. Or who owned it?  
 8 A. My impression was it was the builder who built the  
 9 house, and Nichols was indebted to him and lost the property  
 10 in short sale -- or -- actually, I don't know if it's  
 11 indebted to him or not but my impression was Dalco built it  
 12 and when it went up for short sell, Dalco bought it at a  
 13 bargain then sold it to me.  
 14 Q. At a healthy profit.  
 15 A. Oh, probably.  
 16 Q. And you mentioned earlier in an answer to a question by  
 17 Mr. Moxon that you saw BNSF using the area on Hazelwood Lane  
 18 up by the tracks where it crosses the tracks?  
 19 A. I don't know if using is the right word but maintaining  
 20 them. I know that they put those tubs in at one point.  
 21 Although, I don't know if I actually observed them doing it,  
 22 but one day they were there and the next day they were (sic)  
 23 so...  
 24 Q. Okay. But did you see them doing anything else, other  
 25 kind of maintenance stuff around the tracks?

1 CERTIFICATE  
 2 RESERVED SIGNATURE NOTICE  
 3 DATE: June 28, 2011  
 4 TO: Steven Hazlerig  
 5 33 Crescent Key  
 6 Bellevue, WA 98006  
 7 Case Name: Jie Ao and Xin Zhou vs. The Port of Seattle  
 8 Venue/Cause No: King County / 09-2-44773-0 KNT  
 9 Witness/Date Taken: Steven Hazlerig, 4/18/11  
 10 The above-captioned deposition must be read and signed  
 11 within 30 days or a statement must be made in writing which  
 12 includes the reason for refusal to sign or that signature is  
 13 waived. Failing to do so will result in signature being deemed  
 14 waived and the same filed with the court as is.  
 15 X Please call (253) 627-7129 to make arrangements to  
 16 come to our office listed below where your deposition transcript  
 17 will be presented to you to read and sign.  
 18 Upon receipt of your E-transcript of the  
 19 deposition, please print a Change of Signature sheet. Please  
 20 instruct the witness to review the transcript, record any changes  
 21 on that sheet and then sign and return the Change Sheet to this  
 22 office for filing.  
 23 Enclosed with your copy of the deposition is a  
 24 Change and Signature Sheet. Please instruct the witness to  
 25 review the transcript, record any changes and then sign and  
 return the Change Sheet to this office for filing.  
 Enclosed is a courtesy copy of your deposition and  
 a Change and Signature Sheet. Please review the transcript,  
 record any changes and then sign and return the Change Sheet to  
 this office for filing. \*\*Courtesy copy sent to doctors/experts  
 only when all sides have ordered copies.\*\*  
 23  
 24  
 25

ORIGINAL

COPY

CHANGE AND SIGNATURE SHEET

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I, the undersigned, Steven Hazlerig, do hereby certify that I have read this foregoing deposition and that, to the best of my knowledge, said deposition is true and accurate, with the exception of the following corrections listed below:

PAGE	LINE	CHANGE
44	4	Ingoberst not Englebert
44	9	Ingo not Engo
46	16	I have <u>no</u> idea
73	15	Mosner not Hillobury
92	13	proze not pros
93	3	given that I never signed a lease

7/10/2011  
Date

[Signature]  
Signature

Case Name: Jie Ao and Xin Zhou vs. The Port of Seattle

Cause No.: 09-2-44773-0 KNT

Date Taken: 4/18/11

Trial/Arb. Date: Unknown Change & Signature Sheet Due by 7/30/11

Court Reporter: Carmen Reporter, CCR #2287, BA, RPR

COPY

44:4, should be "Ingobert" not "Englebert"

44:9 should be "Ingo", not "Engo".

46:16 should be "I have no idea "

73:15 should be "Mosner". not "Hillsbury (phonetic)".

92:13, "pros" should be "prose".

93:3, should be "given that I never signed a lease."



# EXHIBIT L

CONFORMED COPY

After Recording Return To:  
Port of Seattle, Legal Department  
P. O. Box 1209  
Seattle, WA 98111  
Attn: Isabel R. Safora

20091218001535  
PACIFIC NW TIT QCD 77 00  
PAGE-001 OF 0:8  
12/18/2009 15:30

E2422283  
12/18/2009 15:19  
KING COUNTY, WA  
TAX \$10 00  
SALE 50.00

PAGE-001 OF 001

QUIT CLAIM DEED  
Woodinville South

Grantor: BNSF RAILWAY COMPANY ("BNSF")

Grantee: PORT OF SEATTLE ("Port")

Legal Description: See 24,26,5-1111 - Lev Code 1700  
See Exhibit A attached hereto and incorporated herein (the "Property").  
262505-1111 082505-1111-222605-1111 272605-1111

Grantor, for and in consideration of TEN AND NO/100 DOLLARS (\$10.00) conveys and quit claims to Grantee, the Property, situated in the County of King, State of Washington, together with all after acquired title of the Grantor therein;

Port, King County Washington ("County") and BNSF are parties to that certain Donation Agreement dated as of May 12, 2008, as amended, concerning the Property. Port, County and BNSF for themselves and their respective successors and assigns hereby covenant and agree that the provisions of Sections 6 and 7 of said Agreement, attached hereto as Exhibit B, are incorporated herein by reference and shall be covenants running with the land that are enforceable by Port, County, BNSF and their respective successors and assigns.

IN WITNESS WHEREOF, BNSF, Port and County have executed this Deed as of the 18 day of December, 2009

BNSF RAILWAY COMPANY

By Dain Rardin  
Its: Senior General Attorney

PORT OF SEATTLE

By [Signature]  
Its: Chief Executive Officer

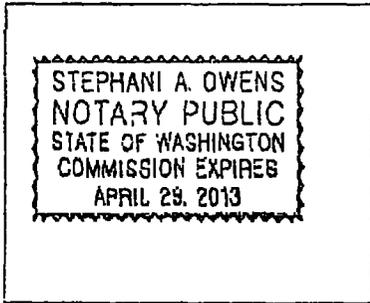
KING COUNTY, WASHINGTON

By [Signature]  
Its: EXECUTIVE

STATE OF Washington )  
 ) ss.  
COUNTY OF King )

I certify that I know or have satisfactory evidence that David T. Rankin is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the Senior General Attorney of BNSF RAILWAY COMPANY to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 12-17-2009



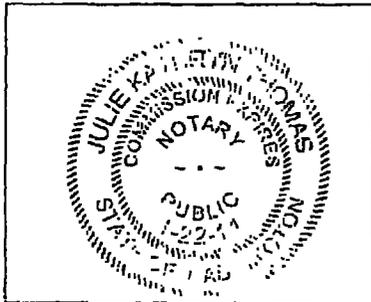
(Use this space for notarial stamp/seal)

Stephani A. Owens  
Notary Public  
Print Name Stephani A. Owens  
My commission expires 4-29-2013

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF King )

I certify that I know or have satisfactory evidence that Jay Yoshitani  
is the person who appeared before me, and said person acknowledged that he/she signed this instrument,  
on oath stated that he/she was authorized to execute the instrument and acknowledged it as the  
CEO of Port of Seattle to be the free and  
voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: Dec. 17, 2009



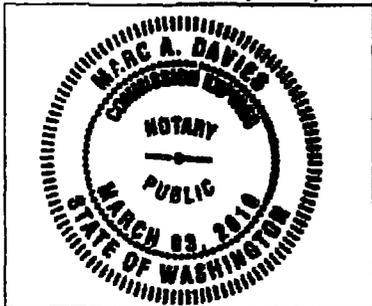
(Use this space for notarial stamp/seal)

Julie Kathryn Thomas  
Notary Public  
Print Name Julie Kathryn Thomas  
My commission expires 1-22-11

STATE OF WASHINGTON )  
 ) ss:  
COUNTY OF King )

I certify that I know or have satisfactory evidence that Daw Constantine  
is the person who appeared before me, and said person acknowledged that he/she signed this instrument,  
and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in the  
instrument.

Dated: 12/17/09



(Use this space for notarial stamp/seal)

Marc A. Davies  
Notary Public  
Print Name Marc A. Davies  
My commission expires 03/03/10

EXHIBIT A

DESCRIPTION OF PROPERTY

All that portion of BNSF Railway Company's (formerly Northern Pacific Railway Company) Woodinville (MP 23.45) to Kenneydale (MP 5.0), Washington Branch Line right of way, varying in width on each side of said Railway Company's Main Track centerline, as now located and constructed upon, over and across King County, Washington, more particularly described as follows, to-wit:

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the NE $\frac{1}{4}$  Section 16, and the W $\frac{1}{2}$  Section 15, all in Township 26 North, Range 5 East, W. M., bounded on the North by the North line of said NE $\frac{1}{4}$  Section 16, and bounded on the South by South line of said W $\frac{1}{2}$  Section 15; also,

That portion of that certain 50.0 foot wide Branch Line right of way, being 25.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$  and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  Section 22, Township 26 North, Range 5 East, W. M., bounded on the North by the North line of said Section 22, and bounded on the South by South line of said NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  Section 22; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the E $\frac{1}{2}$  Section 22, the NW $\frac{1}{4}$ NE $\frac{1}{4}$  and the NE $\frac{1}{4}$ NW $\frac{1}{4}$  Section 27, all in Township 26 North, Range 5 East, W. M., bounded on the North by the North line of said E $\frac{1}{2}$  Section 22, and bounded on the South by South line of said NE $\frac{1}{4}$ NW $\frac{1}{4}$  Section 27; also,

That certain 4.43 acre tract of land described in deed dated April 3, 1903 from Nellie Nelson to Northern Pacific Railway Company recorded April 3, 1903 in Book 342 of Deeds, Page 371, records of King County, Washington, said 4.43 acre tract being described in said deed for record as follows:

"All that portion of the Southeast Quarter (S.E. 1/4) of the Northwest Quarter (N.W. 1/4) of Section 27, Township 26 North, Range 5 East, lying between the easterly line of the present right of way of the Northern Pacific Railway Company, which line is 50 feet distant southeasterly from the center line of the railroad track of said company, as now located and constructed over and across said premises and a line drawn parallel to and 50 feet distant southeasterly from, when measured at right angles to the center line of the proposed railroad track as now staked out and to be constructed, over and across said premises;

"Also all that portion of said Southeast Quarter (S.E. 1/4) of the Northwest Quarter (N.W. 1/4) of Section 27, Township 26, lying within 50 feet of that certain straight line which connects the center line of the present track of the Northern Pacific Railway Company line with the center line of the proposed track of the Northern Pacific Railway Company line and being tangent to the curves of both of said center lines, containing in all 4.43 acres, be the same more or less." **EXCEPTING THEREFROM**, Lot 3, King County Short Plat Number 1078060, recorded under King County Recording Number 8003270855, being a subdivision of: That portion of the southeast quarter of the northwest quarter of Section 27, Township 26 North, Range 5 East, W. M., King County, Washington, lying northerly and westerly of the northerly and westerly right of way of the Northern Pacific Railway Company's "Seattle Belt Line", and south of the southerly right of way line of that road conveyed to King County by deed recorded under Recording Number 2695175 and northeasterly of a line described as follows: Beginning at the northwest corner of the southeast quarter of the northwest quarter of said Section 27; thence south 1°58'24" west along the west line of the southeast quarter of the northwest quarter of said Section 27, a distance of 265 feet; thence north 65°33'39" east 444.80 feet to the true point of beginning of the following described line;

\*\*\*

PORT-Z 0004

February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 28, 1998 as Document No 9807281537, records of King County, Washington, also;

That portion of that certain 100 0 foot wide Branch Line right of way, being 50 0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the W½ Section 4, Government Lots 1 and 4, E½W½ Section 9, Government Lot 1, SW¼NW¼, NW¼SW¼ Section 16, Government Lots 4 and 5 Section 17, Government Lots 1, 2, 3 and 4 Section 20, Government Lots 1, 2, 3, 4 and 5 Section 29, all in Township 24 North, Range 5 East, W. M., bounded on the North by the North line of W½ Section 4, and bounded on the South by the South line of said Government Lot 5, Section 29, together with such additional widths or strips of land as are necessary to catch the slopes of the cuts and fills of the roadbed of said Railway in the NW¼NW¼ of said Section 4, which said roadbed is to be constructed having a width at grade of 22 feet and the cuts to have a slope of one to one and the fills to have a slope of one and one half to one, as delineated in deed dated September 8, 1903 from Lake Washington Land Company to Northern Pacific Railway Company, recorded in Volume 386 of Deeds, Page 147, records of King County, Washington, EXCEPTING THEREFROM, that certain tract of land described in Correction Special Warranty Deed dated April 30, 2001 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 2001 as Document No 20010522000186, records of King County, Washington, ALSO EXCEPTING THEREFROM, that certain tract of land described in deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 28, 1998 as Document No. 9807281547, records of King County, Washington, ALSO EXCEPTING THEREFROM, that certain tract of land described in deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 28, 1998 as Document No. 9807281545, records of King County, Washington, ALSO EXCEPTING THEREFROM, that certain tract of land described in deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 28, 1998 as Document No. 9807281546, records of King County, Washington, ALSO EXCEPTING THEREFROM, that certain tract of land described in deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 28, 1998 as Document No. 9807281543, records of King County, Washington, ALSO EXCEPTING THEREFROM that certain tract of land described in deed dated June 26, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded April 30, 2001 as Document No. 20010430000977, records of King County, Washington, ALSO EXCEPTING THEREFROM that certain tract of land described in deed dated June 26, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded December 15, 1998 as Document No. 9812151238, records of King County, Washington; also,

\*  
portion of  
BNSF  
rail  
corridor  
abutting  
A0-Zhou  
Property

That certain Tract I and that certain Tract II described in deed dated September 19, 1967 from State of Washington to Northern Pacific Railway Company filed for record December 13, 1967 in Book 5023, Page 546, Auditor's No. 6278130, records of King County, Washington, said Tracts being described in said deed for reference as follows:

"Tract I: (Fee)

"All those portion of the Southeast quarter of the Northwest quarter and the Northeast quarter of the Southwest quarter, Section 9, Township 24 North, Range 5 East, W.M., lying Westerly of the existing 100 foot right of way of the Northern Pacific Railway Company and Easterly of a line described as follows: Beginning at a point opposite Station REL R.R. 737+00 on the Relocated Railroad Center Line (as hereinafter described) and 50 feet Westerly therefrom when measured radially thereto (which point also lies on the Westerly line of said existing railroad right of way); thence Southerly parallel with said relocated railroad center line to a point opposite REL R.R. 739+00 theteon, thence Southwesterly in a straight line to a point opposite REL R.R. 740+00 on said relocated railroad center line and 130 feet Westerly therefrom when measured radially thereto; thence Southerly parallel with said relocated railroad

\*  
portion  
sold  
by  
BNSF  
in  
1998  
("Parcel C"  
and  
Parcel F  
on  
Exhibit  
B & G.

EXHIBIT B  
COVENANTS

Section 6. Condition of Property.

(a) Port and County have been, or by Closing will have been, allowed to make an inspection of the Property. Subject to BNSF's express representations, warranties and obligations under this Agreement and the Deed, **PORT AND COUNTY ARE PURCHASING THEIR INTERESTS IN THE PROPERTY IN AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS, ARE NOT RELYING ON, AND HEREBY WAIVE ANY WARRANTY OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM BNSF WITH RESPECT TO ANY MATTERS CONCERNING THE PROPERTY** including, but not limited to the physical condition of the Property; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; compliance by the Property with Environmental Laws (defined below) or other laws, statutes, ordinances, decrees, regulations and other requirements applicable to the Property; the presence of any Hazardous Substances (defined below), wetlands, asbestos, lead, lead-based paint or other lead containing structures, urea formaldehyde, or other environmentally sensitive building materials in, on, or under the Property; the condition or existence of any of the above ground or underground structures or improvements, including tanks and transformers in, on or under the Property; the condition of title to the Property, and the Third Party Leases/Licenses permits, orders, or other agreements, affecting the Property (collectively, the "Condition of the Property").

(b) Port and County individually represent and warrant for itself to BNSF that except for BNSF's express representations, warranties and obligations under this Agreement and the Deed, Port and County each has not relied and will not rely on, and BNSF is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Property or relating thereto made or furnished by BNSF, the manager of the Property, or any real estate broker or agent representing or purporting to represent BNSF, to whomever made or given, directly or indirectly, orally or in writing.

(c) Subject to BNSF's express representations, warranties and obligations under this Agreement and the Deed Port and County assume the risk that Hazardous Substances or other adverse matters may affect the Property that were not revealed by Port's or County's inspection and except to the extent of BNSF's express representations, warranties and obligations under this Agreement and the Deed, Port and County each waives, releases and discharges forever BNSF and BNSF's officers, directors, shareholders, employees and agents (collectively, "BNSF Parties") from any and all present or future claims or demands, and any and all damages, losses, injuries, liabilities, causes of actions (including, without limitation, causes of action in tort) costs and expenses (including, without limitation fines, penalties and judgments, and attorneys' fees) of any and every kind or character, known or unknown (collectively, "Losses"), which Port or County might have asserted or alleged against BNSF Parties arising from or in any way related to the Condition of the Property or alleged presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal or other handling of any Hazardous Substances in, on or under the Property. Losses shall include without limitation (a) the cost of any investigation, removal, remedial or other response action that is required by any Environmental Law, that is required by judicial order or by order of or agreement with any governmental authority, or that is necessary or otherwise is reasonable under the circumstances, (b) Losses for injury or death of any person, and (c) Losses arising under any Environmental Law enacted after transfer. The term "Environmental Law" means any federal, state or local statute, regulation, code, rule, ordinance, order,

judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, the Model Toxics Control Act, the Water Pollution Control Act, laws concerning above ground or underground storage tanks, and any similar or comparable state or local law. The term "Hazardous Substance" means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, and includes without limitation petroleum oil and any of its fractions.

BNSF, Port and County acknowledge that the compensation to be paid to BNSF for the Property reflects that the Property is being conveyed subject to the provisions of this Section 6 which provisions shall be included in the deed and which shall be covenants running with the Land.

Section 7. Environmental Obligations.

(a) Consistent with Section 4.2 of this Agreement, if, prior to the expiration of the Review Period, the Port or County notifies BNSF in writing of an existing condition affecting the Property (an "Identified Condition") that is unacceptable to the Port or County, as determined by the Port and County in their respective sole and absolute discretion, and BNSF does not verify in writing by the earlier of: (i) fifteen (15) business days thereafter or the end of the Review Period, that such Condition is a condition that BNSF is obligated to Cure in a manner acceptable to the identifying Party pursuant to this Section 7, then the Port or County may terminate this Agreement and the South Agreement together, by written notice to BNSF in accordance with the provisions of Section 4.2 of this Agreement. If the Port or County timely notifies BNSF in writing of an Identified Condition, the Port, County and BNSF shall negotiate diligently and in good faith to reach agreement on Curing such condition. If the portion of the Property affected by an Identified Condition can be excluded from the sale without materially interfering with Port's and County's future use of the Property, as determined by the Port and County (as applicable) in their respective sole and absolute discretion, then BNSF may affect Cure prior to Closing by excluding such affected portion of the Property without any price adjustment and to the extent so excluded BNSF shall have satisfied its obligations under this Agreement to Cure the portion of the Property so excluded, provided, however, that any such Cure by exclusion must first be agreed to in writing by the Port (and County, if it relates to the Railbanked Portion ) If Port and County do not terminate this Agreement under Sections 4.2 and 7(a) and proceed to Closing, they shall not be deemed to have waived or released BNSF from any obligations to Cure set forth in Section 7(c), below.

(b) BNSF shall be responsible to investigate, remediate, respond to or otherwise cure (collectively, "Cure") as and when required by and in accordance with Environmental Laws any Identified Condition that concerns a release of Hazardous Substances on the Property occurring prior to the Closing or a violation of Environmental Laws concerning the Property occurring prior to the Closing to the extent that BNSF has agreed to Cure, and to the standards that BNSF has agreed to satisfy, in writing prior to the expiration of the Review Period. Notwithstanding the preceding sentence, BNSF shall not be responsible to Cure any such Identified Conditions to the extent Port or County or their respective agents, or contractors materially exacerbate such Identified Condition during construction performed by or for Port or County, excluding superficial or *de minimis* activity performed by Port or County. Further, BNSF shall not be responsible to Cure any Identified Condition that was not caused by BNSF or its agents, contractors or invitees. Port and County shall cooperate with BNSF in its efforts to Cure any Identified Condition concerning a release of Hazardous Substances on the Property.

(c) (i) For Hazardous Substances released on the Property that BNSF has not agreed to Cure prior to Closing, whether or not BNSF has been notified under Section 7 (a) that such releases are an Identified Condition, BNSF shall pay to the Port or County the costs to investigate, remediate, respond to

or otherwise cure (collectively "Remediate" or "Remediation") any such Hazardous Substance releases, or any violation of Environmental Laws prior to Closing, to the extent occurring as a result of the operations of BNSF or its corporate predecessors, or the agents, employees, invitees or contractors of BNSF or its corporate predecessors. BNSF shall pay to the Port or County such costs to Remediate as and when required by and in accordance with Environmental Laws to standards for the Property that the applicable regulatory agency would apply had the Property continued to be used as a freight railroad, and to standards for other affected properties that the applicable regulatory agency would apply for such properties. BNSF shall not be responsible for (1) any costs of Remediation to the extent the Port or County or their respective agents, contractors or invitees materially exacerbate the released Hazardous Substances during construction performed by or for Port or County (excluding superficial or *de minimis* activity performed by Port or County), or (2) any duplication of efforts by County or Port or their respective agents, contractors or invitees.

(ii) As among BNSF, Port and County, any Remediation for which this Section 7(c) applies would be carried out by the Port or County. BNSF shall cooperate with such Remediation.

(iii) The obligations of BNSF under this Section 7(c) apply only to Remediation ordered or approved by the applicable regulatory agency, provided that for Remediation approved by the applicable regulatory agency BNSF shall have agreed in writing to the Remediation prior to such approval, which agreement by BNSF shall not be unreasonably withheld, conditioned or delayed. The obligations of BNSF, Port and County under this Section 7(c) also apply regardless of which entity is issued an order by the applicable regulatory agency.

(d) Other than BNSF's obligations under this Section 7, as among BNSF, Port and County, Port and County will be responsible for the all other costs of Remediation of Hazardous Substances released on or from the Property or violations of Environmental Laws.

(e) The Section 7 obligations running from BNSF to the Port and County, and the Section 7 rights running to BNSF from the Port and the County, will be allocated as between the Port and County in the manner separately agreed to by the Port and the County.

(f) The provisions of this Section 7 shall be included in the Deed and shall run with the land.

EXHIBIT B  
COVENANTS

Section 6. Condition of Property.

(a) Port and County have been, or by Closing will have been, allowed to make an inspection of the Property. Subject to BNSF's express representations, warranties and obligations under this Agreement and the Deed, **PORT AND COUNTY ARE PURCHASING THEIR INTERESTS IN THE PROPERTY IN AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS, ARE NOT RELYING ON, AND HEREBY WAIVE ANY WARRANTY OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM BNSF WITH RESPECT TO ANY MATTERS CONCERNING THE PROPERTY** including, but not limited to the physical condition of the Property; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; compliance by the Property with Environmental Laws (defined below) or other laws, statutes, ordinances, decrees, regulations and other requirements applicable to the Property; the presence of any Hazardous Substances (defined below), wetlands, asbestos, lead, lead-based paint or other lead containing structures, urea formaldehyde, or other environmentally sensitive building materials in, on, or under the Property; the condition or existence of any of the above ground or underground structures or improvements, including tanks and transformers in, on or under the Property; the condition of title to the Property, and the Third Party Leases/Licenses permits, orders, or other agreements, affecting the Property (collectively, the "Condition of the Property").

(b) Port and County individually represent and warrant for itself to BNSF that except for BNSF's express representations, warranties and obligations under this Agreement and the Deed, Port and County each has not relied and will not rely on, and BNSF is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Property or relating thereto made or furnished by BNSF, the manager of the Property, or any real estate broker or agent representing or purporting to represent BNSF, to whomsoever made or given, directly or indirectly, orally or in writing.

(c) Subject to BNSF's express representations, warranties and obligations under this Agreement and the Deed Port and County assume the risk that Hazardous Substances or other adverse matters may affect the Property that were not revealed by Port's or County's inspection and except to the extent of BNSF's express representations, warranties and obligations under this Agreement and the Deed, Port and County each waives, releases and discharges forever BNSF and BNSF's officers, directors, shareholders, employees and agents (collectively, "BNSF Parties") from any and all present or future claims or demands, and any and all damages, losses, injuries, liabilities, causes of actions (including, without limitation, causes of action in tort) costs and expenses (including, without limitation fines, penalties and judgments, and attorneys' fees) of any and every kind or character, known or unknown (collectively, "Losses"), which Port or County might have asserted or alleged against BNSF Parties arising from or in any way related to the Condition of the Property or alleged presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal or other handling of any Hazardous Substances in, on or under the Property. Losses shall include without limitation (a) the cost of any investigation, removal, remedial or other response action that is required by any Environmental Law, that is required by judicial order or by order of or agreement with any governmental authority, or that is necessary or otherwise is reasonable under the circumstances, (b) Losses for injury or death of any person, and (c) Losses arising under any Environmental Law enacted after transfer. The term "Environmental Law" means any federal, state or local statute, regulation, code, rule, ordinance, order,

judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, the Model Toxics Control Act, the Water Pollution Control Act, laws concerning above ground or underground storage tanks, and any similar or comparable state or local law. The term "Hazardous Substance" means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, and includes without limitation petroleum oil and any of its fractions.

BNSF, Port and County acknowledge that the compensation to be paid to BNSF for the Property reflects that the Property is being conveyed subject to the provisions of this Section 6 which provisions shall be included in the deed and which shall be covenants running with the Land.

#### Section 7 Environmental Obligations.

(a) Consistent with Section 4.2 of this Agreement, if, prior to the expiration of the Review Period, the Port or County notifies BNSF in writing of an existing condition affecting the Property (an "Identified Condition") that is unacceptable to the Port or County, as determined by the Port and County in their respective sole and absolute discretion, and BNSF does not verify in writing by the earlier of: (i) fifteen (15) business days thereafter or the end of the Review Period, that such Condition is a condition that BNSF is obligated to Cure in a manner acceptable to the identifying Party pursuant to this Section 7, then the Port or County may terminate this Agreement and the South Agreement together, by written notice to BNSF in accordance with the provisions of Section 4.2 of this Agreement. If the Port or County timely notifies BNSF in writing of an Identified Condition, the Port, County and BNSF shall negotiate diligently and in good faith to reach agreement on Curing such condition. If the portion of the Property affected by an Identified Condition can be excluded from the sale without materially interfering with Port's and County's future use of the Property, as determined by the Port and County (as applicable) in their respective sole and absolute discretion, then BNSF may affect Cure prior to Closing by excluding such affected portion of the Property without any price adjustment and to the extent so excluded BNSF shall have satisfied its obligations under this Agreement to Cure the portion of the Property so excluded, provided, however, that any such Cure by exclusion must first be agreed to in writing by the Port (and County, if it relates to the Railbanked Portion ) If Port and County do not terminate this Agreement under Sections 4.2 and 7(a) and proceed to Closing, they shall not be deemed to have waived or released BNSF from any obligations to Cure set forth in Section 7(c), below.

(b) BNSF shall be responsible to investigate, remediate, respond to or otherwise cure (collectively, "Cure") as and when required by and in accordance with Environmental Laws any Identified Condition that concerns a release of Hazardous Substances on the Property occurring prior to the Closing or a violation of Environmental Laws concerning the Property occurring prior to the Closing to the extent that BNSF has agreed to Cure, and to the standards that BNSF has agreed to satisfy, in writing prior to the expiration of the Review Period. Notwithstanding the preceding sentence, BNSF shall not be responsible to Cure any such Identified Conditions to the extent Port or County or their respective agents, or contractors materially exacerbate such Identified Condition during construction performed by or for Port or County, excluding superficial or *de minimis* activity performed by Port or County. Further, BNSF shall not be responsible to Cure any Identified Condition that was not caused by BNSF or its agents, contractors or invitees. Port and County shall cooperate with BNSF in its efforts to Cure any Identified Condition concerning a release of Hazardous Substances on the Property.

(c) (i) For Hazardous Substances released on the Property that BNSF has not agreed to Cure prior to Closing, whether or not BNSF has been notified under Section 7 (a) that such releases are an Identified Condition, BNSF shall pay to the Port or County the costs to investigate, remediate, respond to

or otherwise cure (collectively "Remediate" or "Remediation") any such Hazardous Substance releases, or any violation of Environmental Laws prior to Closing, to the extent occurring as a result of the operations of BNSF or its corporate predecessors, or the agents, employees, invitees or contractors of BNSF or its corporate predecessors. BNSF shall pay to the Port or County such costs to Remediate as and when required by and in accordance with Environmental Laws to standards for the Property that the applicable regulatory agency would apply had the Property continued to be used as a freight railroad, and to standards for other affected properties that the applicable regulatory agency would apply for such properties. BNSF shall not be responsible for (1) any costs of Remediation to the extent the Port or County or their respective agents, contractors or invitees materially exacerbate the released Hazardous Substances during construction performed by or for Port or County (excluding superficial or *de minimis* activity performed by Port or County), or (2) any duplication of efforts by County or Port or their respective agents, contractors or invitees.

(ii) As among BNSF, Port and County, any Remediation for which this Section 7(c) applies would be carried out by the Port or County. BNSF shall cooperate with such Remediation.

(iii) The obligations of BNSF under this Section 7(c) apply only to Remediation ordered or approved by the applicable regulatory agency, provided that for Remediation approved by the applicable regulatory agency BNSF shall have agreed in writing to the Remediation prior to such approval, which agreement by BNSF shall not be unreasonably withheld, conditioned or delayed. The obligations of BNSF, Port and County under this Section 7(c) also apply regardless of which entity is issued an order by the applicable regulatory agency.

(d) Other than BNSF's obligations under this Section 7, as among BNSF, Port and County, Port and County will be responsible for the all other costs of Remediation of Hazardous Substances released on or from the Property or violations of Environmental Laws.

(e) The Section 7 obligations running from BNSF to the Port and County, and the Section 7 rights running to BNSF from the Port and the County, will be allocated as between the Port and County in the manner separately agreed to by the Port and the County.

(f) The provisions of this Section 7 shall be included in the Deed and shall run with the land.

# EXHIBIT M

PORT OF COMMISSIONER'S REGULAR MEETING  
January 25, 2011

---

[Agenda Item No. 6 (f) - Port of Commissioner's Regular Meeting]

Resolution 3649. First Reading.

*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; 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 an adverse possession lawsuit filed on December 11, 2009.*

---

[TRANSCRIPT OF PORT COMMISSION MEETING]

[Starting at Agenda Item No 6 (f)]

**Tay Yoshitani:**

This is Resolution 3649. This is the first reading and this is 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; and authorizing the CEO to execute all documents necessary to transfer title of the property to plaintiffs Ao-Zhou via quitclaim deed as part of the settlement of an adverse possession lawsuit filed on December 11, 2009, and Craig Watson will provide the details.

**Craig Watson [Port General Counsel]:**

Good afternoon Commissioners. I don't have a lot to add this is a – the ownership of this parcel, small parcel property, is in dispute. We have been litigating this for some time now, we have reached agreement with the plaintiffs to settle this matter, execute a quitclaim deed and transfer the disputed property to their ownership. We need you to pass this resolution in order to surplus the property in order to complete the settlement of that piece of litigation.

**Bill Bryant:**

Thank you Mr. Watson. This is a first reading of a quitclaim is there any discussion or questions?

**Tom Albro:**

I just had a question because I know that we are essentially by agreeing to this resolution and we would be settling the adverse possession claim which predates our acquisition of the corridor. Since I wasn't actually here for the decision to acquire the corridor I am a little less familiar with it then maybe the Commissioners that weighed in on it. So, it was described in here of course being 50 feet on either side of the center line of the track right-of-way at Burlington Northern had, so 100 foot right-of-way in total. I am just wondering, so we hear we would be ceding a 25 feet of that total 100 feet, so for this whatever the length of their parcel would be. Do we have other similar places along the corridor where we have these kinds of chunks out of it?

**Craig Watson:**

Yes, there – the corridor ownership this thing has been owned by the railroad for over 100 years and so, title to some parcels is foggy at best. There are – we have noticed encroachments here and there, nothing that I am aware of as fixed as this improvement was or is obvious or is permanent so, [cough] excuse me, I'm not aware of any other encroachment of this significance and we have not, as far as I know, gotten any notice – actually I take that back we have gotten notice from somebody else that they have a walkway or something nearby but that hasn't ripened yet to a full claim.

**Tom Albro:**

Mr. Watson I guess I wasn't very clear. I know that there has been a lot of probably people planting shrubbery and maybe rockery .

**Craig Watson:**

Right

**Tom Albro:**

... along the corridor What I mean is, do we have otherwise a 100 foot wide corridor from the south end all the way to the north end that now if we approve this that we have got deeded over a 25 foot chunk of it to this adjoining property owner. Would this be the only place where that's the case?

**Craig Watson:**

At the moment, yeah And I would say that we don't – I wish we had a 100 yard-foot wide corridor up the length of the thing, it narrows here and there, there are pinch points, it's not a uniform width but this is the only piece that we have that we are quitclaiming since we acquired the property. Other than what we have sold to other ..

**Tom Albro:**

Right. To other entities. In the briefing documents and it's also I think in the resolution itself too. There's this cause which I didn't quite understand, it just said, let me find it here. So it's saying that the property, it's the Ao-Zhou agreeing and understanding and recognizing that the property has been rail banked which means that the rail service may be reactivated over the property. So they own the property but we can go ahead and reactive it..

**Craig Watson:**

Everything is subject to the federal...

**Tom Albro:**

Yep. Right It's been railbanked but it means that we can reactivate it and they agree that it may require them to remove all the improvements which of course are the basis for their adverse possession claim. So I didn't quite understand the logic where we are deeding over and ceding our position and at the same time there recognizing that if rail service is ever reinstated they very well may be required to remove all of their improvements for the property that they just gained title to. I'm a little lost on the advisability of this.

**Craig Watson:**

Well the advisability is we're gonna probably lose the lawsuit if we don't settle it and they are going to get the ownership of the property and we're going to spend some more money on legal fees. If the reactivation under federal law comes forward it may or may not require the use of this property as – it is on a slope and it's not useful for anything else other than holding up the rail bed.

**Bill Bryant:**

Commissioner?

**Rob Holland:**

I was in real estate for a little bit but it always helped me to see things. Is there any opportunity – is there any pictures or anything – property, or a sketch or..?

**Craig Watson:**

There is a sketch on the resolution on the last page.

**Tom Albro:**

So I appreciate that one of the things that I think we have talked about Craig, you and I, that this is the only adverse possession claim along the corridor that predates our acquisition?

**Craig Watson:**

That's right.

**Tom Albro:**

I also appreciate it's your sense and probable that of our outside counsel that their claim is a strong one and the cost to continue to fight it doesn't necessarily justify it – it does not necessarily justified given the strength of our position which, you know, is probably disputable somewhat. With that I guess I just don't see it's in the public's interest necessarily to allow someone to gain adverse possession of a corridor that we – the corridor works if it is kept intact, it's more valuable to us, more valuable to those that we would pass it along to I recognize that there may be some additional legal costs and we may not prevail but I have to vote against this.

**Craig Watson:**

I would say that this particular piece of property doesn't have any viable use for the corridor but it did predate our purchase of it, we were aware of it. I just can't see – I mean it's not like we're letting them have adverse possession they have adversely possessed it and they have a colorable claim to the property that in our analysis will prevail when it is tried.

**John Creighton:**

Thank you Mr. President and Craig along those veins could you talk a little bit in terms of giving us comfort that, you know, this won't be the first of many in terms of what the railroad did before us or what we're doing in order to notify folks along the corridor who may be encroaching and then also you know, real estate law is not my area of expertise but I always thought that it's pretty much impossible to adversely possess government owned land and I

thought the railroads had a little bit stronger claim of land than say your normal private property owner but that's not true?

**Craig Watson:**

I thought that too and so we did a bunch of research and we talked to the railroad and I think they like people to think that but it's not true. So they were in no better position we have no better defenses than they did. So I am comfortable that this is the only one that was filed before we purchased the property you know, there is no presence out there on the corridor and I am confident that there aren't any there's no major encroachment, there's no shopping mall that's through the middle of this thing or anything like that this is the one major structure that we are aware of. So if any future claim comes forward will be in the context of our purchase the public process that led to that, the years of negotiation so on so forth. So I think it's a completely different situation for somebody coming forward particularly since we now have you know, surveyed and people have walked the corridor and we know what's out there so we're not particularly concerned that this is somehow gonna you know, going to open the floodgates of adverse possession claims. You have to be there in open use for a number of years in order to prevail on these claims and in this particular case, as I said, these are permanent fixtures that have a garage and a rockery that you know, apparently open and obvious to be in and they really didn't have that much to help us with in offering up defenses to their presence.

**Tom Albro:**

And to that end does – is BN as part of our acquisition to the corridor from them are they responsible to assist us in gaining background information on this claim or anything else?

**Craig Watson:**

Well the time of the transaction we certainly worked with them and they provided us everything they have. We've got you know, an enormous database of documentation of the property along this corridor but – so we were aware of this.

**Tom Albro:**

But they would still – are they required to assist us on the go forward basis with what information they have? The reason why I am asking that is because adverse possession requires – has to be hostile among other things. I'm not an attorney...

**Craig Watson:**

Yep, right.

**Tom Albro:**

But it has to be hostile and so if the owner of the parcel actually grants permission for the temporary use and construction of then it is not hostile and it is not adverse possession. So you know, it could be that there is some railroad employee sitting around there or some – from the past who is retired now or some letter sitting in a folder somewhere that said yeah, yeah, yeah go ahead we're not using it right now but you know, we might in the future so you gotta – we'll tear it down later. If that's there, that changes the whole thing.

**Craig Watson:**

Well I understand that and as I said we consulted with the railroad, they were already defending this thing when we were in there. If that existed we'd have it, it doesn't. So there is certainly no reason for BN to sandbag us on this thing they were defending the claim and we worked with them and you know we have exhausted I believe our efforts I mean we can certainly go into court and do our best but the advice I have been given by the supervising attorney and the outside counsel handling this is the best course for us to take in terms of us resolving this piece of litigation which is a stand alone piece of litigation.

**Rob Holland:**

Again, just to repeat. I guess my number one concern would be additional claims on adverse possession

**Craig Watson:**

You know there are going to be – if there are other adverse claims out there, there out there. Whether we settle this claim or litigate it, win or lose, that doesn't have any precedential value on some other property owner coming in with – other property owner coming in with a different set of facts and having to prove their claim. So each of these is taken on a case by case basis, you deal with the facts at hand in this particular case we believe the best resolution is to resolve it as we've proposed here. If there's some other case out there that hasn't arisen yet we will deal with those facts as we learn of them but we - as I said certainly unaware of any really open or obvious intrusion into the property that effects the use of the corridor.

**Gael Tarleton:**

My only question Craig is given the fact that there are structures and under ground as well as above ground on this property presumably the City of Bellevue had to grant some form of permitting for these structures and pipes to be built, they are involving stormwater and other water access points. To what title property ownership did the homeowners provide the City to suggest that they could build structures on this strip?

**Craig Watson:**

I cannot answer your question.

**Gael Tarleton:**

I would like to know that.

**Craig Watson:**

I'll get back to you.

**Gael Tarleton:**

Because if they weren't building these structures without permits, they have no claim

**Craig Watson:**

I will assume that our lawyers looked into those things as well. I don't have that information at hand at the moment.

**Gael Tarleton:**

Verify that for me. If they built without permits, they have no claim.

**Bill Bryant:**

Given Commissioner Albro's concerns and the requests that you have made for additional information shall we hold this over until a future meeting?

**Craig Watson:**

What I would request that you do the first reading and then if I can't satisfy you with the information before the second reading then that's the end of the story.

**Bill Bryant:**

OK.

**Gael Tarleton:**

I will move to approve first reading in order to initiate that series of exchanges.

**Bill Bryant:**

So it's been so moved.

**Bill Bryant:**

Seconded based on the fact that we may want to reconsider this and request additional information before second reading.

**Tom Albro:**

I would just like to speak against that if I may and I appreciate – I do recognize we do get two cracks at this and I appreciate the wise counsel of Mr. Watson but my feeling is that we are not worse off fighting and losing in a material way I think we are worse off conceding. It's probably the poorest choice of paths that we can take. The financial cost to us of legal fees is negligible given the size of our overall operating expenses not saying that I throw public dollars around for legal fees, nobody likes to but if this were a private matter and I was being asked how to proceed I would not enter into this settlement

**Craig Watson:**

I guess I have an ethical obligation to apply my best judgment to a case and recommend settlement as opposed to sort of fighting a scorched earth but inevitably losing battle so that's my recommendation.

**Rob Holland:**

I just have one more thing and this has probably been done Counsel Watson. Have we had the opportunity to go throughout the whole corridor and look at more potential issues that might come up with this because I just remember, and this is a very personal experience, but I do remember being on somewhat of the south end of the corridor in a neighborhood where – just like you were saying you know, people were parking on the right-of-way they were abusing it for all sorts of things this was a barbq that was happening. In fact at a state representatives house by the way So I am just wondering if we have had the opportunity to sort of go through this Commissioner Craig even mentioned provide any information or resource that there's new

ownership and that those opportunities will not be available for people to park or use the right-of-way at all for anything?

**Craig Watson:**  
That's been done.

**Rob Holland:**  
OK.

**Joe McWilliams:**  
Commissioners let me address that question as well. I think you are aware that – oh by the way for the record, Joe McWilliams, Director of Real Estate for the Port. I think as you are aware there are eight or nine hundred known easements across the corridor. We have done visual inspections but I will tell you that it is very likely that there will be something that surfaces that we are not aware of. Some of these documents go – date back to the mid 1800's and are candidly illegible. And so we are trying to move that calendar forward and many of the people that were there then certainly are not there now and as we get into some of the county records that dated back to those times we find that they are defined to the nearest quarter section of land. So it's hard for us to identify exactly where the right may exist but we do have an inventory of what the railroad has given us but we are not testifying to the veracity of all those records cause some of them are candidly illegible.

**Rob Holland:**  
But we have physically inspected the corridor, correct?

**Joe McWilliams:**  
That's correct in fact we have done it more than once but you have to find an encroachment sometimes you have –

**Bill Bryant:**  
We have a motion and a second, Commissioner Creighton has a schedule. Are there additional comments or questions on first reading? On first reading all those in favor say "Ay"

**Commissioners Creighton, Holland, and Tarleton:**  
Ay.

**Bill Bryant:**  
Opposed no.

**Commissioners Bryant and Albro:**  
No

**Bill Bryant:**  
The motion passes three to two with Commissioners Bryant and Albro voting in the negative.

C E R T I F I C A T E

I, AMANDA KLEISS-ACRES, Legal Assistant with GordonDerr LLP do hereby certify, that the foregoing transcription of proceedings was transcribed by me from an audio recording provided by the Port of Seattle; that the transcription is a full, true and complete transcript of proceedings under Agent Item No. 6 (f) at the Port of Commissioner's Regular Meeting on January 25, 2011.

I certify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

EXECUTED on July 19<sup>th</sup>, 2011.

  
Amanda Kleiss-Acres

# EXHIBIT N

HON. JAY WHITE

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR KING COUNTY

JIE AO and XIN ZHOU, Husband and Wife,	:	
	)	
Plaintiffs,	)	No. 09-2--4773-0 KNT
	)	
v	)	AMENDED COMPLAINT FOR
	)	DECLARATORY JUDGMENT,
PORT OF SEATTLE, a port district of the State	)	QUIET TITLE AND INJUNCTION
of Washington	)	
	)	
Defendant,	)	
	)	

Plaintiffs, Jie Ao and Xin Zhou, individually and on behalf of their marital community, by and through their attorneys, GordonDerr, LLP, claim against Defendant Port of Seattle with respect to any right, title, estate, lien or interest in the real estate described in this Complaint as follows:

**I. PARTIES**

1. Plaintiffs are residents of King County, Washington. Plaintiffs own real property located at 6333 Hazelwood Lane, Bellevue, Washington 98006 in King County, legally described as

Parcel A:

Lots 35 and 36, Block "A", C. D. Hillman's Lake Washington Garden of Eden Addition to Seattle Division Number 3. According to the plat

AMENDED COMPLAINT FOR DECLARATORY JUDGMENT,  
QUIET TITLE AND INJUNCTION - 1

**GordonDerr.**  
2025 First Avenue, Suite 500  
Seattle, WA 98101-3140  
(206) 462-9510

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

thereof recorded in Volume 11 of plats, page 81, in King County, Washington;

Together with shorelands of the second class, situate in front of, adjacent to, or abutting thereon.

Parcel B:

Lots 1, 2, and 3, Block "B", C, D Hillman's Lake Washington Garden of Eden Addition to Seattle Division Number 3. According to the plat thereof recorded in Volume 11 of plats, page 81, in King County, Washington;

Together with second class shorelines adjoining

Parcel C:

The westerly 35.0 feet of the Burlington Northern and Santa Fe Railway Company's (formerly Northern Pacific Railway Company) 100.0 foot wide Renton to Woodinville, Washington Branch Line right of way, being 50.0 feet wide on each side of said railway company's relocated main track centerline, as now located and constructed upon, over and across government lot 1 of section 29, township 24 north, range 5 east, Willamette Meridian, in King County, Washington, lying contiguous to and easterly of lots 1, 2, and 3, block "B" of C, D. Hillman's Lake Washington Garden of Eden Addition to Seattle Division Number 3. According to the plat thereof recorded in Volume 11 of plats, page 81, in King County, Washington, and lying westerly of a line drawn parallel with and distant 15.0 feet westerly, as measured at right angles from said relocated main track centerline, bounded on the north by the easterly extension of the north line of said lot 1, and bounded on the south by the easterly extension of the south line of said lot 3

Tax Parcel Nos 3343302140

(herein referred to as "Ao-Zhou Parcel").

12. The Port of Seattle (the "Port"), a port district of the State of Washington, owns the Seattle Belt Line Branch Line right of way located in King County, Washington and, in relevant part, legally described as:

The BNSF Railway Company's (formerly Northern Pacific Railway Company) 100.0 foot wide Renton to Woodinville,

1 Washington Branch Line Right of Way, being 50.0 feet wide on  
2 each side of said Railway Company's relocated main track  
3 centerline, as located and constructed upon, over and across  
4 Government Lot 4 of Section 20 and Government Lot 1 of  
5 Section 29, all in Township 24 North, Range 5 East, Willamette  
6 Meridian, Situate in the County of King and State of  
7 Washington.

8 Tax Parcel Nos. 2024059014 & 2924059005

9 (herein referred to as "BNSF Right of Way").

## 10 II. JURISDICTION AND VENUE

11 2.1 The court has jurisdiction over this matter under RCW Ch. 7.24 et seq  
12 (Uniform Declaratory Judgments Act), RCW Ch. 7.28 et. seq (Ejectment, Quieting Title) and  
13 RCW 2.08.010.

14 2.2. Venue is proper in King County pursuant to RCW Ch. 4.12 et seq, because this  
15 action involves quieting title to certain real property located in King County, Washington

## 16 III. FACTS

17 3.1. The Port is currently the fee owner of the BNSF Right of Way. In the  
18 alternative, the Port holds an easement over that property comprising the BNSF Right of Way.

19 3.2. The plat of C.D. Hillman's Lake Washington Garden of Eden, Addition to  
20 Seattle Division No. 3 (King County Recording No. 313824 (the "Plat") describes a tract of  
21 land on the eastern shore of Lake Washington, as further described in **Exhibit A**, including the  
22 Ao-Zhou Parcel. The Plat excludes that portion of the property occupied by the BNSF Right  
23 of Way and County roads as shown on the face of the Plat.

24 3.3. The Plat further dedicated the avenues, streets, and boulevards shown thereon  
25 This dedication included Second Avenue, currently SE 64<sup>th</sup> Street, which bisects a portion of  
26 the Ao-Zhou Parcel, as shown in **Exhibit B**. The avenues and streets dedicated on the Plat,  
including SE 64<sup>th</sup> Street, do not include property traversed by the BNSF Right of Way. The

1 Port retains a fee interest in the real property that comprises the BNSF Right of Way. In the  
2 alternative, the Port maintains an easement over this property

3 3.4. The BNSF Right of Way contains the BNSF main track and adjacent railroad  
4 property. The Ao-Zhou Parcel abuts the western boundary of the BNSF Right of Way north  
5 and south of SE 64<sup>th</sup> Street as shown in **Exhibit B**. To the north of SE 64<sup>th</sup> Street, the Ao-  
6 Zhou Parcel is currently developed with Plaintiffs' home. Plaintiffs and their predecessors  
7 have maintained a detached single-story garage ("Garage"), a concrete driveway, rockery, and  
8 other improvements within that portion of the BNSF Right of Way abutted by SE 64<sup>th</sup> Street  
9 for over ten (10) years. Plaintiffs also maintain a concrete driveway, rockery and other  
10 improvements within that portion of the BNSF Right of Way abutting the Ao-Zhou Parcel  
11 north of SE 64<sup>th</sup> Street.<sup>1</sup> The concrete driveway connects to Hazlewood Lane SE, which is the  
12 only means of access to the Ao-Zhou Parcel. As shown in **Exhibit B**, the Adverse Possession  
13 Disputed Area is approximately 35-feet east to west and 135-feet north to south.

14 3.5. Plaintiffs and their predecessors have openly and exclusively possessed and  
15 used the Adverse Possession Disputed Area on an actual and uninterrupted basis for over ten  
16 (10) years without the permission of the Port, BNSF, Washington Land, Hillman, or their  
17 predecessors or successors.

18 3.6. Plaintiffs are informed and believe and therefore allege that the Garage and  
19 driveway were erected before 1992. Plaintiffs and their predecessors have used, accessed,  
20 maintained, and improved the property within the Adverse Possession Disputed Area for over  
21 ten (10) years without permission.

22 3.7. For over eighteen years, Plaintiffs and their predecessors, as well as Defendant  
23 and its predecessors, have treated the Adverse Possession Disputed Area as the Property of  
24 Plaintiffs and their predecessors. Plaintiffs and their predecessors have for that period

25 \_\_\_\_\_  
26 <sup>1</sup> Collectively, these areas of the BNSF Right of Way are referred to as the "Adverse Possession  
Disputed Area."

1 continuously possessed and maintained the Garage, driveway, rockery, and surrounding  
2 property within the Adverse Possession Disputed Area to the exclusion of all other persons,  
3 including the Port and its predecessors.

4 3.8 Plaintiffs and their predecessors' continuous use of the Adverse Possession  
5 Disputed Area for over eighteen years includes accessing the Garage, maintaining vegetation;  
6 repair and improvement of the Garage, driveway and rockery; and other activities to the  
7 exclusion of Defendant and its predecessors.

8 3.9. During this time neither Defendant nor its predecessors, have undertaken any  
9 activities inconsistent with Plaintiffs' or their predecessors' possession or ownership of the  
10 Adverse Possession Disputed Area.

11 3.10. Plaintiffs hold fee title to the Adverse Possession Disputed Area based upon  
12 adverse possession against the Port and its predecessors in interest. In the alternative,  
13 Plaintiffs have extinguished the Port's easement within the Adverse Possession Disputed Area  
14 and hold fee title to the Adverse Possession Disputed Area based upon adverse possession  
15 against the Port's predecessors in interest.

16 3.11 Plaintiffs' adverse possession of the Adverse Possession Disputed Area has  
17 extinguished any easement rights of the Port or any other person or entity within the Adverse  
18 Possession Disputed Area.

19 3.12 Hazlewood Lane SE ("Hazlewood") is a private driveway that traverses the  
20 BNSF Right of Way north of the Ao-Zhou Parcel to a point at which the driveway connects  
21 with 106<sup>th</sup> Avenue SE ("Prescriptive Easement Disputed Area"). Plaintiffs and their  
22 predecessors have continuously and without permission used Hazlewood as their sole means  
23 of ingress and egress to the Ao-Zhou Parcel for over eighteen years. During this time neither  
24 Defendant, nor its predecessors, have undertaken any activities inconsistent with Plaintiffs' or  
25 their predecessors' use of Hazlewood for this purpose.  
26

AMENDED COMPLAINT FOR DECLARATORY JUDGMENT,  
QUIET TITLE AND INJUNCTION - 5

**GordonDerr.**

2600 11th Avenue, Suite 1000  
Seattle, WA 98121-3110  
(206) 362-5546

1           3.13. Plaintiffs have an easement by prescription and/or necessity over the concrete  
2 driveway and abutting property within the Adverse Possession Disputed Area and over the  
3 Prescriptive Easement Disputed Area for ingress and egress to their home.

#### 4                                   **IV. FIRST CLAIM FOR DECLARATORY JUDGMENT**

5           4.1       Plaintiffs hereby incorporate all facts and allegations set forth in the paragraphs  
6 above as if fully set forth herein.

7           4.2       There is an actual and presently existing controversy between Plaintiffs and  
8 Defendant regarding whether or not Plaintiffs hold fee title to the Adverse Possession Disputed  
9 Area and whether or not Plaintiffs have an easement over and upon the Prescriptive Easement  
10 Disputed Area.

11          4.3.       Plaintiffs' and their predecessors' possession of all of the Adverse Possession  
12 Disputed Area has been open and notorious, actual and uninterrupted, exclusive, and hostile  
13 for a period in excess of ten (10) years. Plaintiffs' adverse possession of the Adverse  
14 Possession Disputed Area has resulted in Plaintiffs' fee ownership of the Adverse Possession  
15 Disputed Area. Plaintiffs' adverse possession of the Adverse Possession Disputed Area has  
16 also resulted in the extinguishment of any easement or other rights of the Port, or any other  
17 person or entity, within the Adverse Possession Disputed Area.

18          4.4.       Plaintiffs' and their predecessors' actual use of the concrete driveway within  
19 the Adverse Possession Disputed Area and use of the Prescriptive Easement Disputed Area has  
20 been open and notorious, hostile, exclusive and continuous for a period in excess of ten (10),  
21 years. This route is the only means of ingress and egress to and from the Ao-Zhou Parcel.  
22 Plaintiffs have an easement by prescription and/or necessity over and upon the paved driveway  
23 within the Adverse Possession Disputed Area and within the Prescriptive Easement Disputed  
24 Area.

1           4.5.    A determination by the court of the respective rights of Plaintiffs and Defendant  
2 will provide a final and conclusive determination of the controversy between the parties with  
3 regard to title to the real property within the Adverse Possession Disputed Area and  
4 Prescriptive Easement Disputed Area. Pursuant to the Uniform Declaratory Judgment Act,  
5 RCW Ch. 7.24 et seq., Plaintiffs are therefore entitled to a declaration that: (1) by virtue of  
6 adverse possession Plaintiffs hold fee title to all of the area within the BNSF Right of Way that  
7 comprises the Adverse Possession Disputed Area, including but not limited to the Garage, as  
8 shown in **Exhibit B**; (2) Plaintiffs have an easement by prescription and/or necessity over and  
9 upon the area within the BNSF Right of Way that comprises the concrete driveway and over  
10 and upon the Prescriptive Easement Disputed Area; and, (3) any easement or other right of the  
11 Port, or any other person or entities, within the Adverse Possession Disputed Area is  
12 extinguished

#### 13                                   **V. CLAIM TO QUIET TITLE--ADVERSE POSSESSION**

14           5.1.    Plaintiffs hereby incorporate all facts and allegations set forth in the paragraphs  
15 above as if fully set forth herein.

16           5.2.    Plaintiffs' and their predecessors' possession of all of the Adverse Possession  
17 Disputed Area has been open and notorious, actual and uninterrupted, exclusive, and hostile  
18 for a period in excess of ten (10) years.

19           5.3.    By virtue of adverse possession Plaintiffs are entitled to a judgment quieting  
20 title in them to all of the area within the BNSF Right of Way that comprises the Adverse  
21 Possession Disputed Area, including but not limited to the Garage, as shown in **Exhibit B**.

#### 22                                   **VI. CLAIM TO QUIET TITLE--EASEMENT BY PRESCRIPTION 23                                   AND/OR NECESSITY**

24           6.1.    Plaintiffs hereby incorporate all facts and allegations set forth in the paragraphs  
25 above as if fully set forth herein.

26  
AMENDED COMPLAINT FOR DECLARATORY JUDGMENT,  
QUIET TITLE AND INJUNCTION - 7

**GordonDerr.**

1025 EAST AVENUE SUITE 111  
SEATTLE, WA 98102-3110  
206.382.6540





1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

8.3.1. Forever enjoining Defendant from having or asserting any right, title, estate, lien, or interest in or to the portion of BNSF Right of Way within the Adverse Possession Disputed Area, adverse to Plaintiffs:

8.3.2. Forever enjoining Defendant from taking any action inconsistent with Plaintiffs' easement rights:

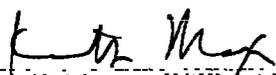
8.3.3. Forever enjoining Defendant from selling, leasing, bartering, alienating, or otherwise extinguishing Plaintiffs' rights and interests in the Adverse Possession Disputed Area and the Prescriptive Easement Disputed Area.

8.4. Attorneys' fees and costs to the extent allowed by law; and.

8.5. Further relief as may be just and equitable.

DATED this 10<sup>th</sup> day of February, 2011.

GORDONDERR LLP

By:   
Keith E. Moxon, WSBA #15361  
Attorney for Plaintiffs/Petitioners

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**EXHIBIT A**

This C.D. Hillmans Lake Washington Garden of Eden Addition to Seattle Division No. 3 comprises the following described tract of land. The (E $\frac{1}{2}$ ) east one half of the (N.E. $\frac{1}{4}$ ) northeast one quarter. The (E $\frac{1}{2}$ ) east one half of the (S.E. $\frac{1}{4}$ ) southeast one quarter. The (S.W. $\frac{1}{4}$ ) southwest one quarter of the (S.E. $\frac{1}{4}$ ) southeast one quarter and Lots (1) one (2) two and (3) three in Section (29) twenty nine and the (S.E. $\frac{1}{4}$ ) southeast one quarter of the (S.E. $\frac{1}{4}$ ) southeast one quarter and Lot (4) four in Section (20) Twenty and the (S. $\frac{1}{2}$ ) of the S.W.  $\frac{1}{4}$  of Sec. (21) all in Township (24) twenty four North of Range (5) five East, Willamette Meridian.

Except that portion occupied by the N.P.R.R. right of way and county roads as shown on face of said plat.

The dimensions of all lots and blocks and the width of all Streets Avenues Boulevards Driveways and Alleys are as shown on the face of said plat in feet.

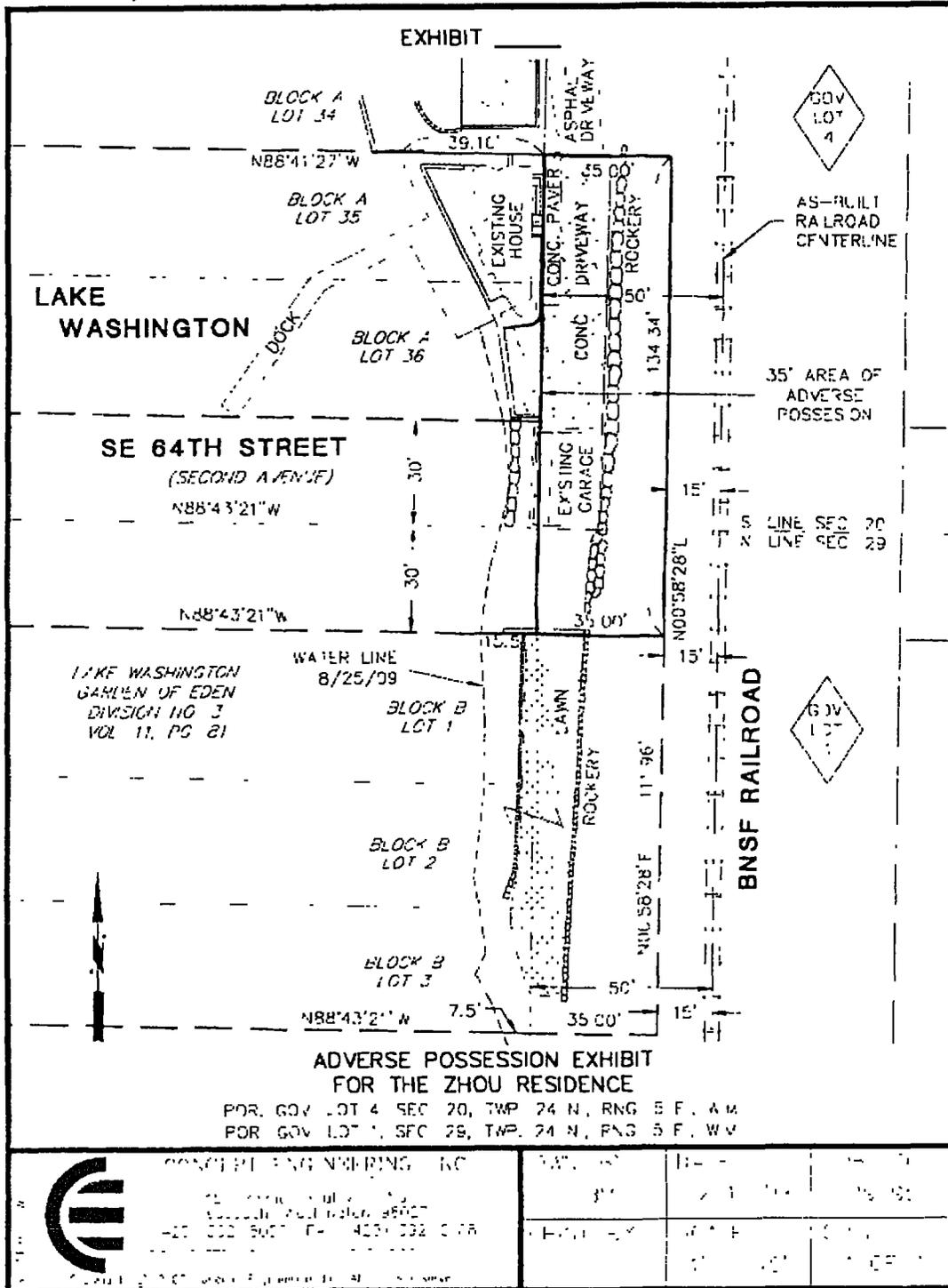
The (I.P.) Initial Point is the (S.E.) southeast corner of Block 133 one hundred and thirty three which is (30) thirty feet north and (30) feet west of of the (S.E.) southeast corner of the above described Sec. 29 twenty nine

AMENDED COMPLAINT FOR DECLARATORY JUDGMENT,  
QUIET TITLE AND INJUNCTION - 11

**GordonDerr.**

2025 - 1151 AVENUE SUITE 500  
SEATTLE, WA 98101-3100  
(206) 387-6119

**EXHIBIT B-1**



AMENDED COMPLAINT FOR DECLARATORY JUDGMENT,  
 QUIET TITLE AND INJUNCTION - 12

**GordonDerr**

2025 First Avenue, Suite 100  
 Seattle, WA 98101-3546  
 (206) 332-5510



# EXHIBIT O

042211 092447730 zhou vs port ORAL DECISION.txt

1

1 SUPERIOR COURT OF KING COUNTY, WASHINGTON  
2 JIE AO AND XIN ZHOU, )  
HUSBAND AND WIFE, )  
3 Plaintiffs, ) Case No.09-2-44773-0 KNT  
4 v. )  
5 April 22, 2011  
6 PORT OF SEATTLE, A PORT )  
DISTRICT OF THE STATE OF )  
7 WASHINGTON, )  
8 Defendants. )

9

10 VERBATIM REPORT OF PROCEEDINGS, ORAL DECISION,  
11 taken before the HONORABLE JAY WHITE, at the Maleng  
12 Regional Justice Center.

13

14 APPEARANCES

15 FOR THE PLAINTIFFS:

16 Mr. Keith Moxon  
Attorney at Law

17

18

19 FOR THE DEFENDANTS:

20 Mr. John McDowall  
Attorney at Law

21

22

23 JOSEPH T. RICHLING  
OFFICIAL COURT REPORTER  
24 MALENG REGIONAL JUSTICE CENTER  
KENT, WASHINGTON

25

E

2

1 (On April 22, 2011, with counsel for the  
2 parties present, the following proceedings were had:)

3

4

ORAL DECISION

5 BY THE COURT:

6

7

I am satisfied that the motion properly is granted.

8

9

10

11

12

The Court certainly has some understanding and empathy with homeowners here. They did acquire, through the railroad in the past, this one segment. They would like try to complete and perfect full title to the property they are currently using.

13

14

15

16

The Court is persuaded that some of the railroad crossing cases are distinguishable because those had to do with a prescriptive use or easement that the states do have. They do have a role to play there.

17

18

19

20

21

22

23

It just seems to the Court that the whole purpose of the federal structure, even if railroad lines are no longer used actively for railroad purposes and are being made available to the public for use as trails, that there's a clear intention to preserve the ability, if circumstances in the future warrant it, to go back and reassert use of the railroad right-of-way.

24

25

In terms of the subject matter, it's pretty clear that there is express preemption under 49 USC

┆

3

1

2

3

4

5

6

7

10501(b). It's up to the Surface Transportation Board, not this court, to address matters of whether rail lines have been abandoned or discontinued, and certainly whether or not there is some sort of viable adverse possession claim against property that's conceded to be part of the, I guess for a shorthand way of putting it, part of the federal railroad bank. So it's up to them

8 to make that determination.

9 Now, I've heard conflicting representations by  
10 counsel whether adverse possession claims have proceeded  
11 or not proceeded in front of the Surface Transportation  
12 Board. But I still think they are the ones that will  
13 determine whether or not the subject property is within  
14 the federal statute seeking to preserve these  
15 right-of-ways.

16 I hope that I haven't made any gross  
17 misstatement here, trying to oversimplify and extend the  
18 courtesy of some explanation. Of course, if there is a  
19 review, it's de novo in any event. I don't think the  
20 Court's oral remarks are determinative. I think  
21 basically the Court is relying upon what is before it.

22 I have taken the proposed order from the Port  
23 and added what appeared to be the missing things, the  
24 declaration of Mr. Moxon on the response and the  
25 supplemental declaration of Mr. McDowall, and I have

1 signed the order as presented.

2 Counsel can also sign it. The bailiff will  
3 provide you with copies.

4 Mr. Moxon, these are great pictures. I will  
5 give them back. I don't need to keep them, and you may  
6 have future use for them.

7 Thank you both for your hard work.

8  
9 PROCEEDINGS ADJOURNED

10  
11

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

3

5

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16

CERTIFICATION

I, Joseph T. Richling, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

\_\_\_\_\_  
Joseph T. Richling

\_\_\_\_\_  
Date

# EXHIBIT P

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Hon. Jay White

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR KING COUNTY

JIE AO and XIN ZHOU, Husband and Wife,	)	
	)	No. 09-2-44773-0 KNF
Plaintiffs,	)	
v.	)	ORDER ON RECONSIDERATION
	)	REGARDING PORT OF
	)	SEATTLE'S MOTION TO DISMISS
PORT OF SEATTLE, a port district of the State	)	PURSUANT TO CR 12(b)(1)
of Washington,	)	<del>PROPOSED (Revised)</del> <i>ORDER OF DISMISSAL WITHOUT PREJUDICE</i>
	)	<i>aw aw</i>
Defendant	)	Clerk's Action Required*

THIS MATTER having come came before the Court upon Defendant Port of Seattle's Motion to Dismiss Pursuant to CR 12(b)(1), and the Court having reviewed the records and files herein, including:

1. Defendant Port of Seattle's Motion to Dismiss Pursuant to CR 12(b)(1);
2. Declaration of John R. McDowall, including exhibits thereto;
3. Plaintiffs' Response in Opposition to Defendant Port of Seattle's Motion to Dismiss Pursuant to CR 12(b)(1);
4. Declaration of Keith Moxon;
5. Defendant Port of Seattle's Reply in Support of Motion to Dismiss Pursuant to CR 12(b)(1);
6. Supplemental Declaration of John McDowall;
7. Plaintiffs' Motion for Reconsideration and Declaration of Keith Moxon;

ORDER ON RECONSIDERATION REGARDING PORT OF SEATTLE'S  
MOTION TO DISMISS PURSUANT TO CR 12(b)(1) - 1

**GordonDerr.**

1000 4th Avenue, Suite 1000  
Seattle, WA 98101  
206.465.1111

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

8. Defendant Port of Seattle's Response to Plaintiffs' Motion for Reconsideration. Declaration of John McDowall, and Defendant's Appendix of Non-Washington Authority;

9. Plaintiffs' Reply in Support of Motion for Reconsideration, Declaration of Amanda Kleiss-Acres, and Plaintiffs' Appendix of Non-Washington Authority. \* ~

Based on the pleadings, evidence, and ~~and~~ <sup>the</sup> argument presented, this Court finds that Plaintiffs' claims are preempted by federal law. ~~the Surface Transportation Board ("STB") not this court should determine whether adverse possession or other state property law claims affecting "rail banked" property are preempted by federal law. This court heard conflicting representations by counsel whether adverse possession claims have proceeded before the STB and whether the STB would determine that such adverse possession claims are preempted under federal law. This court concludes that the Surface Transportation Board should determine whether or not the subject property is within the federal statute seeking to preserve these rail road corridors.~~ <sup>to the Interstate Commerce Commission Termination Act, 49 U.S.C. § 10101, et seq., and the National Trails System Act, 16 U.S.C. § 1247(d), but the court is persuaded that the dismissal granted on April 22, 2011, should be without prejudice.</sup> OW

Therefore, it is hereby ORDERED, ADJUDGED and DECREED.

1. Defendant Port of Seattle's Motion to Dismiss Pursuant to CR 12(b)(1) is

GRANTED and all of Plaintiffs' claims are hereby DISMISSED without prejudice.

<sup>Order Granting Defendant Port of Seattle's Motion to Dismiss</sup>  
2. The order of dismissal entered on April 22, 2011 is superseded by this order. <sup>The Court makes no ruling as to future proceedings.</sup> OW

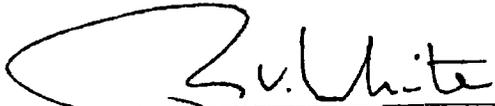
~~3. Either party shall have the right to petition the STB for a declaratory order on the question of whether Plaintiffs' state property law claims are preempted by federal law and/or to decide the merits of Plaintiffs' quiet title claims.~~

~~4. If the STB, or a federal court, determines that Plaintiffs' state property law claims are not preempted by federal law and if the STB, or a federal court, does not decide Plaintiffs' state property law claims on the merits, then Plaintiffs shall have the right to have their state property law claims decided in King County Superior Court.~~ OW

\* The Court had prepared this order prior to receiving Defendant Port of Seattle's Supplemental Response Regarding Motion for Reconsideration, submitted today by Gordon Berr. <sup>without leave of the court.</sup>  
ORDER ON RECONSIDERATION REGARDING PORT OF SEATTLE'S MOTION TO DISMISS PURSUANT TO CR 12(b)(1) - 2  
Accordingly the court did not consider that pleading in making this ruling.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

DATED this 23 day of MAY, 2011.

  
\_\_\_\_\_  
Judge Jay White

Presented by:

GORDONDERR LLP

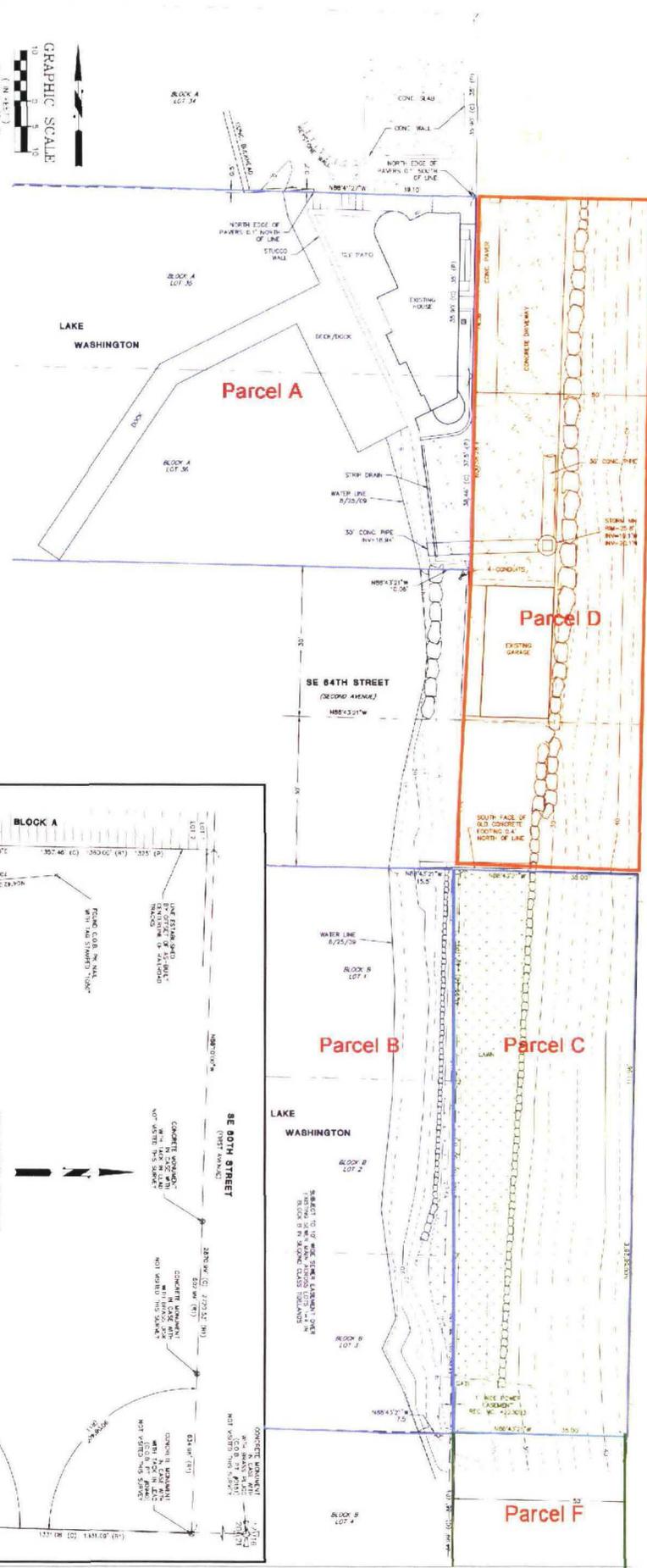
By: s/Keith Moxon  
Keith E. Moxon, WSBA #15361  
Attorney for Plaintiffs

# EXHIBIT Q



Former BNSF Rail Corridor

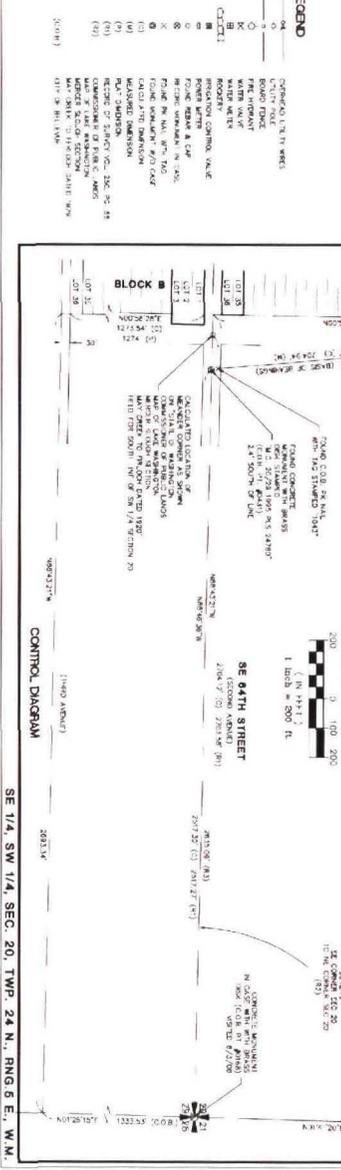
RIDGINGTON NORTHERN - SANTA FE RAILROAD



**GRAPHIC SCALE**  
1" = 10' FT.

**LEGEND**

1	CONCRETE
2	ASPHALT
3	GRAVEL
4	ROAD
5	PAVEMENT
6	WATER
7	SEWER
8	GAS
9	ELECTRIC
10	TELEPHONE
11	POLE
12	POST
13	ANCHOR BOLT
14	CONCRETE FOUNDATION
15	FOUNDATION
16	FOUNDATION
17	FOUNDATION
18	FOUNDATION
19	FOUNDATION
20	FOUNDATION
21	FOUNDATION
22	FOUNDATION
23	FOUNDATION
24	FOUNDATION
25	FOUNDATION
26	FOUNDATION
27	FOUNDATION
28	FOUNDATION
29	FOUNDATION
30	FOUNDATION
31	FOUNDATION
32	FOUNDATION
33	FOUNDATION
34	FOUNDATION
35	FOUNDATION
36	FOUNDATION
37	FOUNDATION
38	FOUNDATION
39	FOUNDATION
40	FOUNDATION
41	FOUNDATION
42	FOUNDATION
43	FOUNDATION
44	FOUNDATION
45	FOUNDATION
46	FOUNDATION
47	FOUNDATION
48	FOUNDATION
49	FOUNDATION
50	FOUNDATION



<p><b>BOUNDARY &amp; TOPOGRAPHIC SURVEY</b> AO &amp; ZHOU RESIDENCE 633 HAZELWOOD LANE SE BELLEVUE, WA 98006</p>	<p><b>CONCEPT ENGINEERING, INC.</b> 412 Main St. Bellevue, WA 98007 (425) 392-8933 Fax (425) 392-0105</p>	<p>DATE: 6/2/16</p>	<p>SCALE: AS SHOWN</p>	
		<p>SHEET 1 OF 1</p>	<p>JOB NO. 2002</p>	

# EXHIBIT R

TRAIL USE AGREEMENT

THIS TRAIL USE AGREEMENT (this "Agreement") is made as of December 18, 2009, by and between BNSF Railway Company, a Delaware corporation ("BNSF"), and King County, Washington, a political subdivision and body corporate and politic of the State of Washington ("County") (each, individually, a "Party" and, collectively, the "Parties").

RECITALS

WHEREAS, BNSF is the owner of that certain real estate known as the "Woodinville Subdivision", located in King County, Washington, and Snohomish County, Washington (the "Woodinville Subdivision" or "Subdivision") and conducts rail operations over the Subdivision from the City of Renton, Washington to the City of Snohomish, Washington; and

WHEREAS, the Port of Seattle ("Port") has negotiated with BNSF a purchase and sale agreement pursuant to which the Port intends to acquire the Subdivision, and the County is a party to those agreements and has contributed to the purchase price for the purpose of railbanking a portion of the Subdivision; and

WHEREAS, the Port does not desire to take on any rail operating responsibility with respect to the Subdivision, and, accordingly, BNSF sought abandonment of its rail common carrier obligation on three segments of the Subdivision, and will transfer its rail operating responsibility on the remainder to a short line operator; and

WHEREAS, the County desires to convert three segments of the Subdivision to public trail use and potentially other public purposes, and, accordingly, the County and BNSF desire to enter into this Agreement for railbanking and for public space pursuant to and in accordance with 49 C.F.R. 1152.29 and Section 8(d) of the National Trails System Act (also known as the "Rails-to-Trails Act"), 16 U.S.C. 1247(d) (collectively, and as any of the foregoing may hereafter be amended or interpreted by binding judicial or administrative authority, the "Railbanking Legislation"); and

WHEREAS, the purpose of this Agreement is to delineate the responsibilities of each of the Parties pursuant to the Railbanking Legislation, as such responsibilities may be appropriately allocated during each phase of the development and use of a trail or other facilities by the County; and

WHEREAS, the Parties acknowledge that any railbanking, trail use or other public purpose proposed by the County, including this Agreement, will be subject to the authorization and jurisdiction of the Surface Transportation Board ("STB" or the "Board"); and

WHEREAS, the Parties acknowledge that STB authorization has been obtained upon the issuance of a Notice of Interim Trail Use ("NITU") for each segment of the Subdivision being abandoned by BNSF in accordance with the Board's rules and procedures; and

WHEREAS, the Parties acknowledge that the County has applied for, obtained and is the holder of the NITUs, and, further, the County acknowledges that, pursuant to the requirements of the Railbanking Legislation, freight service may be reactivated on the three segments of the Subdivision and the County must make the three segments of the Subdivision available for such reactivation of freight service; and

WHEREAS, subject to the request of the Port or other requests for service reactivation, the Parties intend that the County is also obtaining the right and obligation to permit or effect reactivation,

which has been approved by the STB, and pursuant thereto to permit the person requesting reactivation to take such steps as may be required to permit or effect that reactivation; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and the County's contribution to the purchase price of the Subdivision and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, BNSF and the County agree as follows:

## AGREEMENT

### 1. RAIL LINES BEING RAILBANKED

The segments of the Subdivision being railbanked are located: (a) between milepost 5 and milepost 10.6; (b) between milepost 11.25 and milepost 23.90; and (c) between milepost 0.0 and milepost 7.3 of the Redmond Spur (collectively the "Railbanked Segments") A map of the Subdivision with an indication of the three Railbanked Segments is attached hereto as Exhibit B.

### 2. RAILBANKING OBLIGATIONS

(a) Unless otherwise defined in this Agreement, terms used herein will have the meanings defined in the Railbanking Legislation.

(b) For the purposes of this Agreement, authorization by the STB of the County's trail use will be referred to herein as the "NITUs".

(c) Pursuant to 49 C.F.R. 1152.29, the County assumes the following obligations in respect to the Railbanked Segments in accordance with the Statement of Willingness to Assume Financial Responsibility required as a condition precedent to the issuance of a NITU (the "SWAFR"), the form of which is attached to this Agreement as Exhibit A, and otherwise in accordance with the Railbanking Legislation: (i) all responsibility for the management of the Railbanked Segments; (ii) all responsibility for all legal liabilities arising out of or relating to the transfer, use, possession, management, operation or control of the Railbanked Segments; and (iii) all other obligations arising under the NITUs, the SWAFR, and/or the Railbanking Legislation as it applies to the Railbanked Segments.

(d) BNSF hereby transfers to the County the right and/or obligation to permit reactivation of the Railbanked Segments for rail service. King County has obtained authorization for the transfer of BNSF's right to restart rail service from the Surface Transportation Board.

(e) The Parties agree that this Agreement will constitute prima facie evidence of a valid and continuing purpose on the part of the County to initiate interim trail use along the Railbanked Segments.

### 3. TERMINATION OF NITU

It is the understanding and intent of the parties that all right and/or obligation to permit reactivation of the Railbanked Segments for rail service has been transferred by BNSF to County and that BNSF no longer retains any such right or obligation. If notwithstanding this the STB receives a request from BNSF that rail service be restored on all or portion(s) of the Railbanked Segments, the County agrees that it will make its interest in the corresponding portion(s) of the Railbanked Segments available for such restoration and BNSF will compensate the County for such interests and any improvements that have been made by the County on the Railbanked Segments at their then fair market value. If (a) the

County, after the date of this Agreement, has removed any railroad tracks or any railroad equipment or supporting apparatus within the portion(s) of the Railbanked Segments being reactivated pursuant to such a request by BNSF, or (b) any equipment or improvements ("Post-Railbanking Installations") installed on the portion(s) of the Railbanked Segments being reactivated pursuant to such a request by BNSF after the date of this Agreement would prevent or otherwise impede the restoration of rail service, then BNSF will either restore any required railroad infrastructure or remove any Post-Railbanking Installations at its sole expense, and will undertake at its sole expense any work necessary to restore rail service on the portion(s) of the Railbanked Segments. In the event of a request to reactivate service on any Railbanked Segment(s) pursuant to such a request by BNSF and of the receipt of any required approvals by the STB, the County will cause the NITUs to be vacated on the subject Railbanked Segment(s), in whole or in part, and will file at the STB any required notice and/or other information as may be necessary at that time.

#### 4. NOTICES

Except as otherwise expressly provided in this Agreement, all requests, notices, demands, authorizations, directions, consents, waivers or other communications required or permitted under this Agreement shall be in writing and shall either be: (i) delivered in person, (ii) deposited postage prepaid in the certified mails of the United States, return receipt requested, (iii) delivered by a nationally recognized overnight or same-day courier service that obtains receipts, or (iv) delivered via facsimile, with confirmation of receipt with an original deposited postage prepaid in the first class mails of the United States. Such notices shall be addressed to County at:

County  
King County Office of the Executive  
701 Fifth Avenue  
Suite 3210  
Seattle, WA 98104  
ATTN: Chief of Staff

With an additional copy to:

Office of the King County Prosecuting Attorney  
Civil Division  
400 King County Courthouse  
516 Third Avenue  
Seattle, WA 98102  
ATTN: Chief Civil Deputy

or to BNSF at:

BNSF Railway Company  
2500 Lou Menk Drive  
Fort Worth, Texas 76131  
ATTN: Rick Weicher  
Fax No.: 312-850-5677

With an additional copy to:

BNSF Railway Company  
2500 Lou Menk Drive  
Fort Worth, Texas 76131  
Attn: David Rankin

or to such person and at such other addresses as either Party may at any time or from time to time designate for itself by notice in accordance herewith. Each such request, notice, demand, authorization, direction, consent, waiver or other document shall be deemed to be delivered to a Party when received at its address set forth or designated as above provided.

## 5. GENERAL TERMS

(a) Entire Agreement. This Agreement, together with any amendments or exhibits, constitutes the entire agreement between the Parties with respect to the subject matter hereof, and may be modified only by a writing executed by the Parties.

(b) No Third Party Beneficiaries. Except as otherwise provided in this Agreement, nothing contained in this Agreement, in any provision or exhibit to this Agreement, or in any agreement or provision included in this Agreement by reference, will operate or be construed as being for the benefit of any third person.

(c) Parties. Wherever used in this Agreement, the terms "BNSF" and "County" shall be construed in the singular or plural as the context may require or admit, and shall include the permitted successors and assigns of such parties.

(d) Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any term or provision of this Agreement or the application thereof to any person or circumstance shall for any reason and to any extent be held to be invalid or unenforceable, then such term or provision shall be ignored, and to the maximum extent possible, this Agreement shall continue in full force and effect, but without giving effect to such term or provision.

(e) Governing Law; Headings; Rules of Construction. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, without reference to the conflicts of laws or choice of law provisions thereof. The titles of sections and subsections herein have been inserted as a matter of convenience of reference only and shall not control or affect the meaning or construction of any of the terms or provisions herein. All references herein to the singular shall include the plural, and vice versa. The Parties agree that this Agreement is the result of negotiation by the Parties, each of whom was represented by counsel, and thus, this Agreement shall not be construed against the maker thereof.

(f) No Waiver. Neither the failure of either Party to exercise any power given such Party hereunder or to insist upon strict compliance by the other Party with its obligations hereunder, nor any custom or practice of the Parties at variance with the terms hereof shall constitute a waiver of either Party's right to demand exact compliance with the terms hereof.

(g) Assignability. The County may assign this Agreement at its discretion, subject to regulatory requirements for transfer of the NTUs.

(h) Time is of the Essence. Time is of the essence in the performance of each Party's obligations under this Agreement.

(i) Incorporation of Exhibits. All exhibits attached to this Agreement will be incorporated by this reference and made a part of this Agreement for all purposes.

(j) Multiple Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

(k) Waiver of Trial by Jury, Venue and Personal Jurisdiction. BNSF AND THE COUNTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR COUNTERCLAIM ARISING IN CONNECTION WITH, OUT OF OR OTHERWISE RELATING TO, THIS AGREEMENT. King County Superior Court or the Federal District Court for the Western District of Washington, both in King County, Washington, shall be the sole and exclusive venues for any action or legal proceeding for an alleged breach of any provision of this Agreement or any representation, warranty, covenant or agreement herein set forth, or to enforce, protect, determine or establish any term, covenant or provision of this Agreement or the rights hereunder of either Party; and the Parties hereby agree to submit to the personal jurisdiction of said courts.

(l) Relationship. Nothing in this Agreement shall be deemed or construed by the Parties, nor by any other person, as creating the relationship of principal and agent or of partnership or of joint venture between the Parties.

(m) Authorization. BNSF represents and warrants that it has obtained all necessary corporate approvals authorizing the execution and delivery of this Agreement, and that the execution and delivery of this Agreement will not violate the articles of incorporation or bylaws of such corporation, and will not constitute a material breach of any contract by which such corporation is bound. The County represents and warrants that it has obtained all necessary legislative approvals authorizing the execution and delivery of this Agreement, and that the execution and delivery of this Agreement will not violate the County's Charter or code, and will not constitute a material breach of any contract by which the County is bound.

(n) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized signatory, effective as of the day and year first above written.

BNSF RAILWAY COMPANY

By: Richard E. Weischer  
Name: Richard E. Weischer  
Title: Vice President & General Counsel-Regulatory

KING COUNTY

By: Dow Constantine  
Name: Dow Constantine  
Title: King County Executive

**EXHIBIT A**  
**To Trail Use Agreement**  
**Form of Statement of Willingness to Assume Financial Responsibility**

**Statement of Willingness to Assume Financial Responsibility**

In order to establish interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29, King County, a political subdivision and body corporate and politic of the State of Washington (Interim Trail User) is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way. The property extends from: (1) railroad milepost 5.0 on the Woodinville Subdivision near \_\_\_\_\_ (Station Name), to railroad milepost 10.60, near \_\_\_\_\_ (Station name), a distance of 5.6 miles in King County, Washington; (2) railroad milepost 11.25 on the Woodinville Subdivision near \_\_\_\_\_ (Station Name), to railroad milepost 23.8 , near \_\_\_\_\_ (Station name), a distance of \_\_\_\_\_ miles in King County, Washington; and (3) railroad milepost 0.0 on the Redmond Spur near \_\_\_\_\_ (Station Name), to railroad milepost 7.3, near \_\_\_\_\_ (Station name), a distance of 7.3 miles in King County, Washington. The right-of-way described in item (1) is part of a line of railroad proposed for abandonment in STB Docket No. AB-6 (Sub-No. 464X). The right-of-way described in item (2) is part of a line of railroad proposed for abandonment in STB Docket No. AB-6 (Sub-No. 465X). The right-of-way described in item (3) is part of a line of railroad proposed for abandonment in STB Docket No. AB-6 (Sub-No. 463X).

King County acknowledges that use of the right-of-way is subject to the user continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service.

**EXHIBIT B**  
**To Trail Use Agreement**

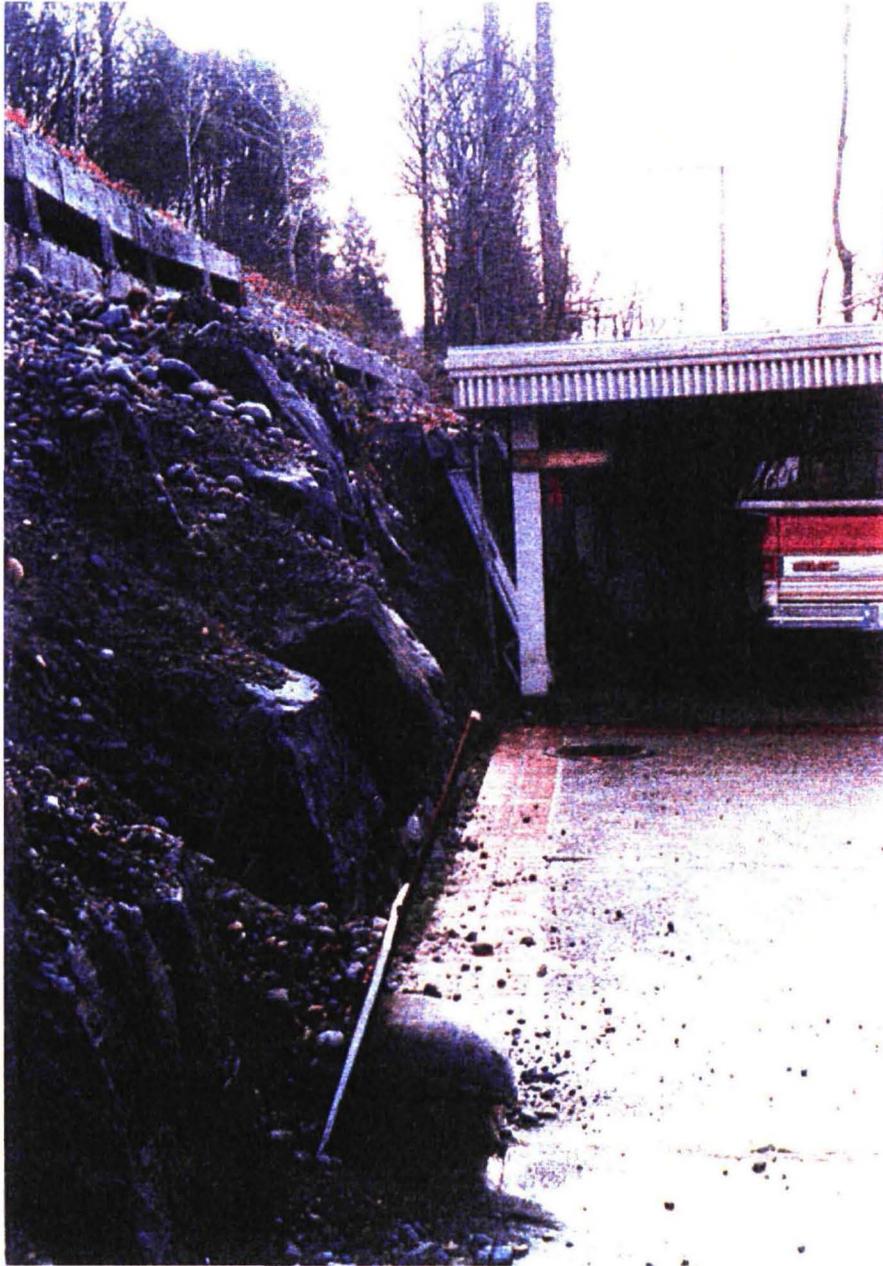
**Map of Three Railbanked Segments**  
**(Attached)**



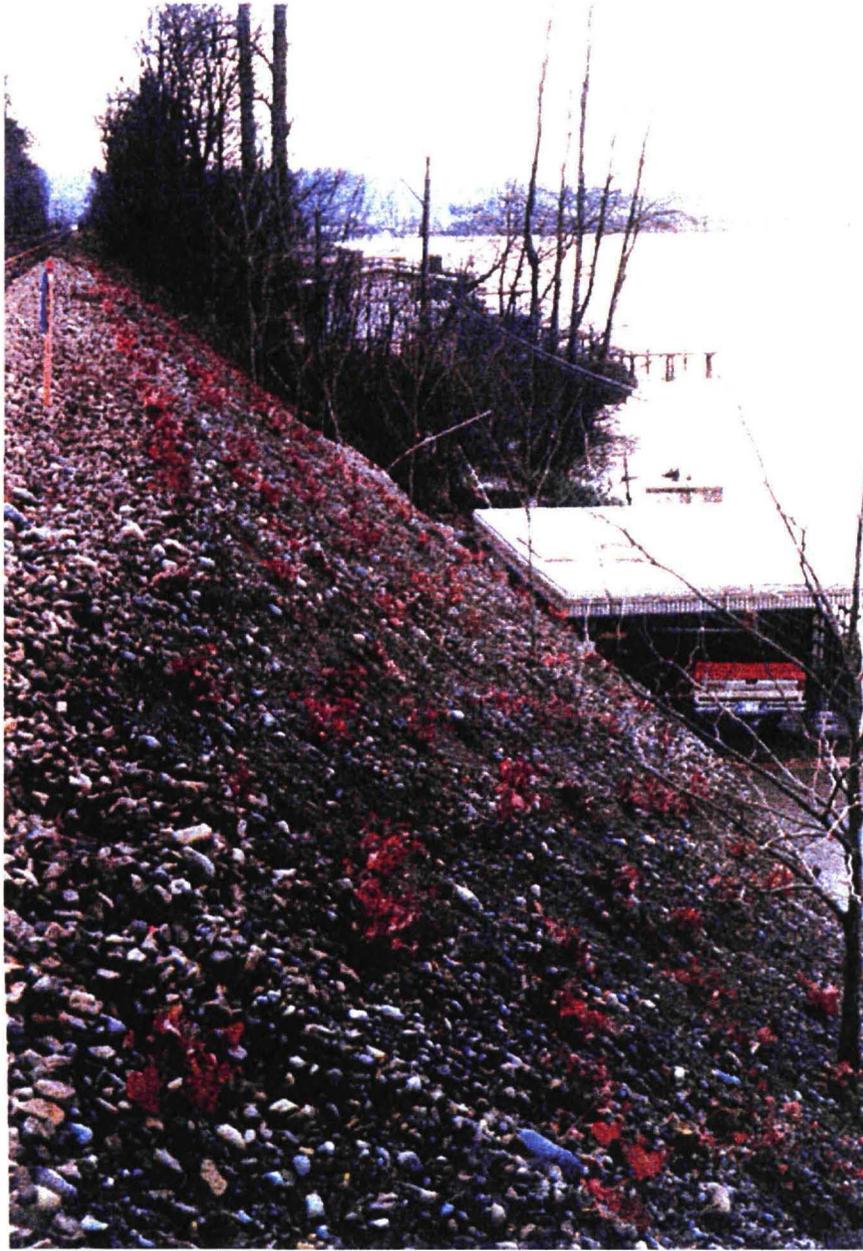
# APPENDIX A



1 - Looking toward Hazelwood Lane crossing; Ao-Zhou property on left



2 - 1987 photograph of garage retaining wall and timber crib wall on railroad embankment



3 - 1987 photograph looking south from railroad embankment above Ao-Zhou garage area



4 – View of Hazelwood Lane looking south before rail crossing, bike path entrance visible in background



5 – View of Hazelwood Lane rail crossing looking west; Lake Washington in background



6 – View of rail corridor looking north from Hazelwood Lane crossing



7 – View of rail corridor looking south from Hazelwood Lane crossing



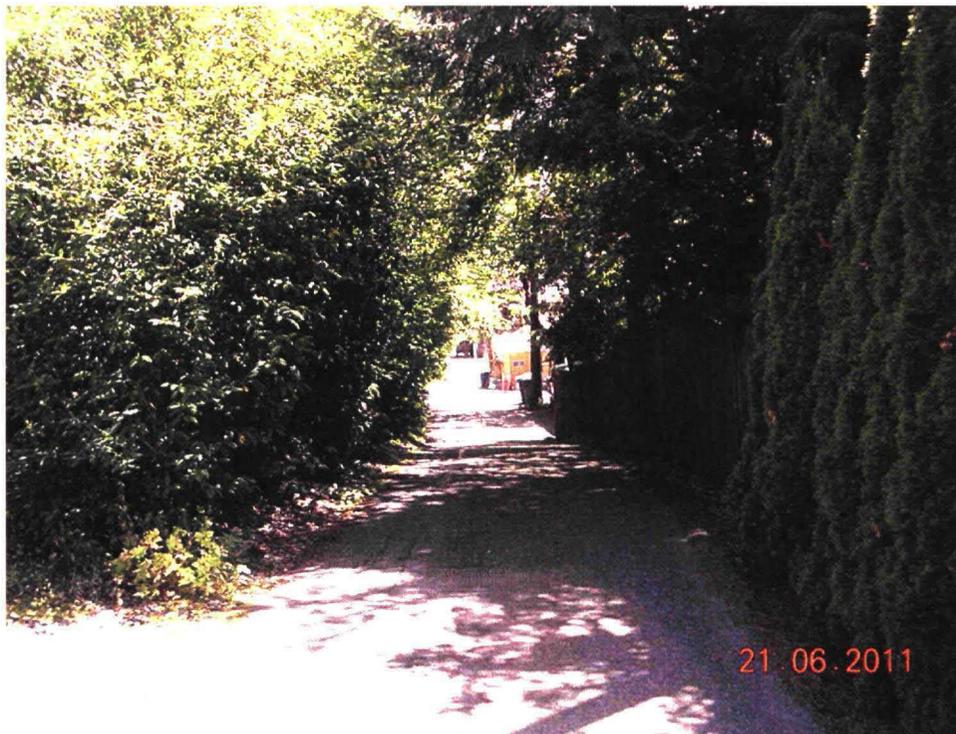
8 – View of rail corridor looking north from a point just west of Hazelwood Lane rail crossing



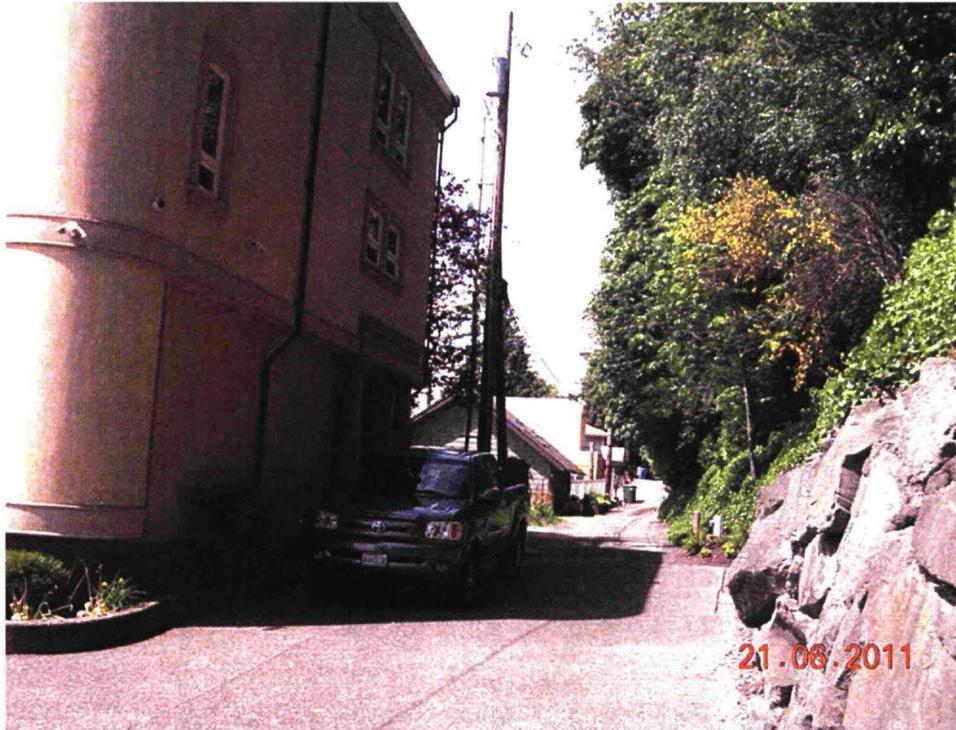
9 – View of rail corridor looking north from point just west of Hazelwood Lane rail crossing



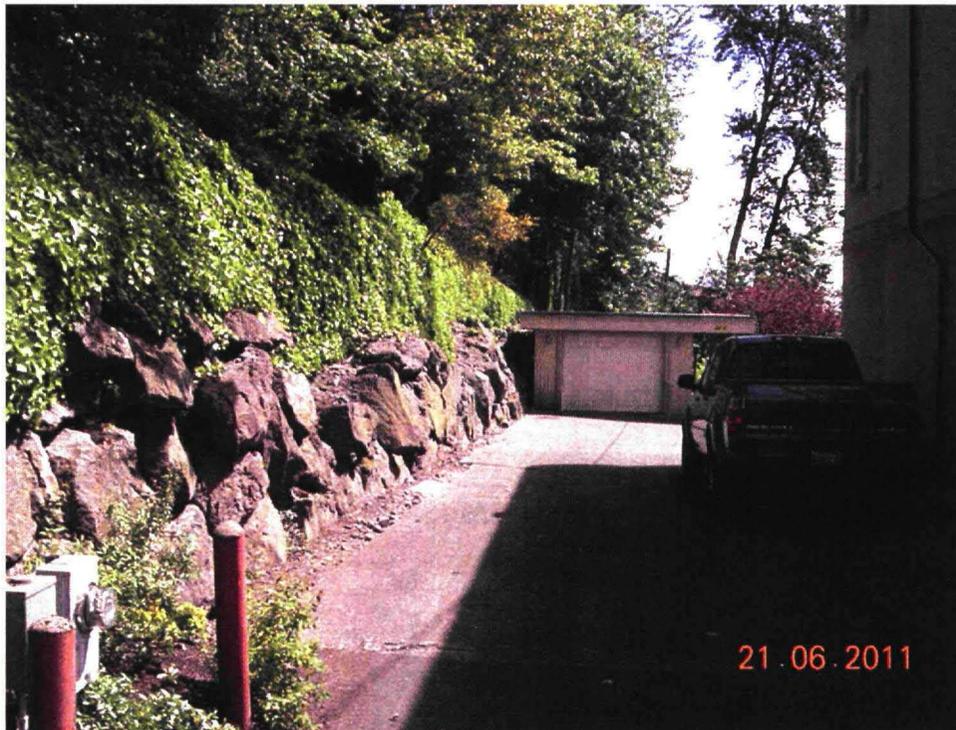
10 – View looking south on Hazelwood Lane



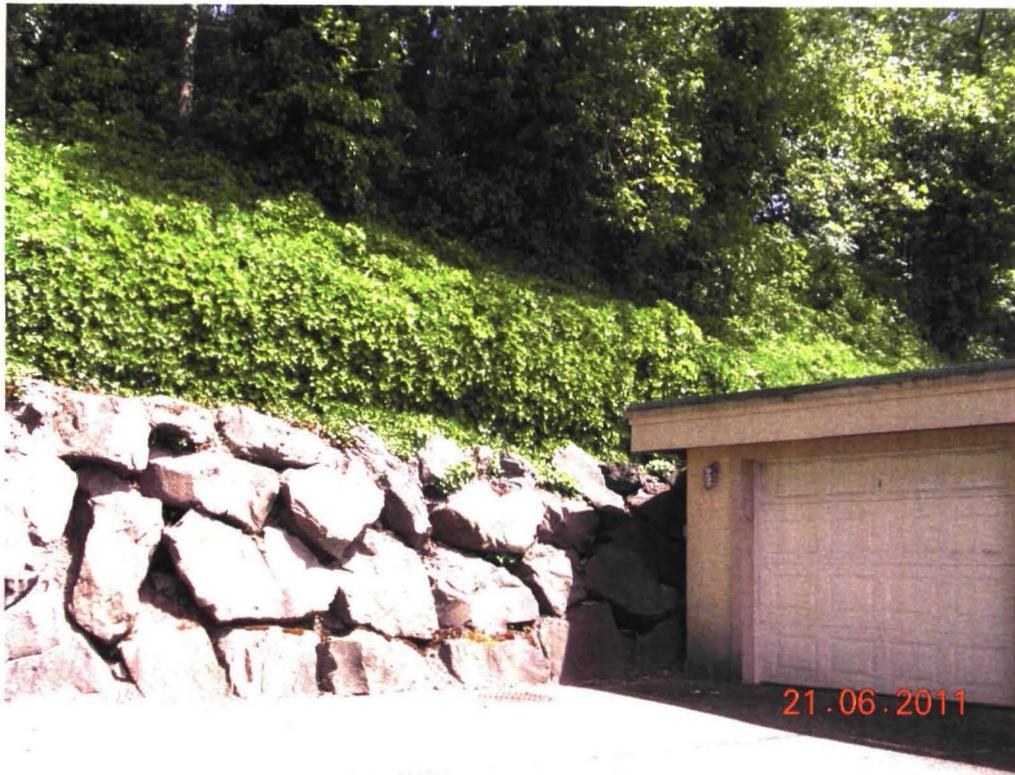
11 – View looking south on Hazelwood Lane (pickup truck at Ao-Zhou residence visible at end of Hazelwood Lane)



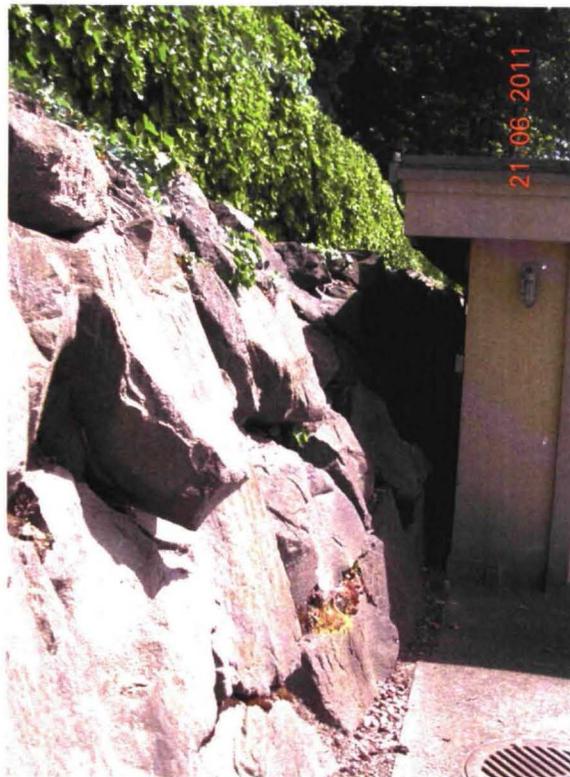
12 – View looking north to Hazelwood Lane from adverse possession area (Parcel D)



13 – View looking south to adverse possession area (Parcel D) – showing garage, retaining wall, and steep embankment; railroad tracks are on upper portion of former BNSF corridor in background



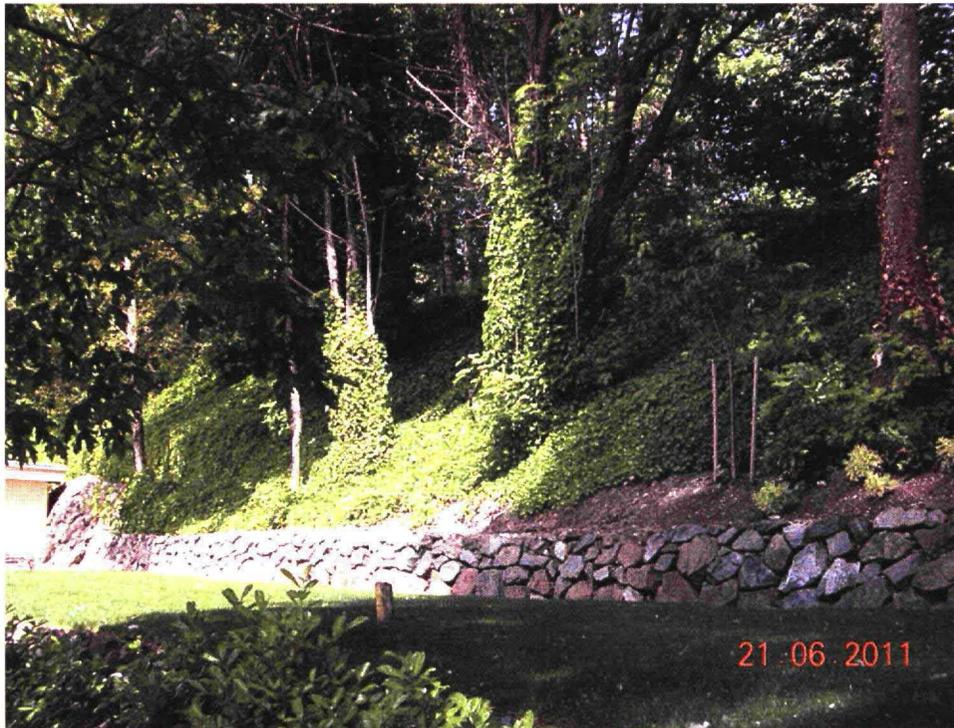
14 – View looking generally east toward retaining wall, garage, and embankment in adverse possession area (Parcel D); railroad tracks are on upper portion of former BNSF corridor to the left



15 – View looking south along retaining wall toward east wall of garage at bottom of railroad corridor embankment



16 – View looking north toward adverse possession area from Parcel C – showing Ao-Zhou residence (left), garage (center), railroad embankment (right), and on lawn area of Parcel C (foreground)



17 - View looking northeast from Parcel C – showing retaining wall and railroad embankment



18 - View looking generally east from Parcel C toward railroad embankment



19 - View looking south toward Parcel C - showing railroad embankment on left



20 – View looking south from tracks on railroad corridor from a point south of the Hazelwood Lane crossing and north of the Ao-Zhou residence



21 – View looking south and west from tracks on railroad corridor – showing pickup truck in adverse possession area (Parcel D) at ground level of Ao-Zhou residence



22 – View looking south and west from tracks on railroad corridor – showing top of garage in adverse possession area (Parcel D)



23 – View looking north and west from tracks on railroad corridor – showing top of garage in adverse possession area (Parcel D)



24 – View looking north and west from tracks on railroad corridor – showing garage in adverse possession area (Parcel D) and portion of Parcel C



25 – View looking northwest from tracks on railroad corridor near southern limit of Parcel C