

RESOLUTION NO. 3469

A RESOLUTION of the Port Commission of the Port of Seattle authorizing the Director, Aviation Division to:
1) Execute an Agreement between the Port of Seattle and the City of SeaTac regarding the excavation of material from borrow areas on Port property within the City and eventual redevelopment of the areas; and 2) Execute an amendment to the September 4, 1997 Interlocal Agreement between the Port of Seattle and City of SeaTac regarding allowed uses within the Aviation Commercial and Aviation Operations zones.

WHEREAS, the Port of Seattle (“Port”) is planning to import approximately 14 million cubic yards of material as part of the Third Runway project, and

WHEREAS, obtaining material from onsite borrow areas will expedite construction, reduce air quality impacts, reduce construction traffic impacts on the neighboring communities, and avoid additional costs for the embankment, and

WHEREAS, the Port and the City of SeaTac (“City”) entered into an Interlocal Agreement on September 4, 1997 (“1997 ILA”) to establish a mutual and cooperative system for exercising their respective jurisdiction, and

WHEREAS, the Port and City contemplated use of onsite borrow areas within Exhibit C, paragraph 16 of the 1997 ILA, and

WHEREAS, the parties wish to enter into an agreement to provide additional detail concerning the operation of the borrow areas and the parameters guiding eventual redevelopment of the areas, and

WHEREAS, in order to clarify the intent of the 1997 ILA regarding the borrow areas and to implement the new agreement, the parties have determined that an amendment of the 1997 ILA is necessary,

NOW, THEREFORE, BE IT RESOLVED, by the Port Commission of the Port of Seattle as follows:

Section 1. The Director, Aviation Division is hereby authorized to execute an Agreement between the Port of Seattle and the City of SeaTac regarding the excavation of material from borrow areas on Port property within the City and eventual redevelopment of the areas, in substantially the form attached hereto as Exhibit "A" and by this reference incorporated herein.

Section 2. A copy of the final executed agreement shall be attached to this Resolution as Exhibit "C."

Section 3. The Director, Aviation Division is hereby authorized to execute an amendment to the September 4, 1997 Interlocal Agreement between the Port of Seattle and the City of SeaTac regarding allowed uses within the Aviation Commercial and Aviation Operations zones in substantially the form attached hereto as Exhibit "B" and by this reference incorporated herein.

Section 4. A copy of the final executed amendment to the 1997 ILA shall be attached to this Resolution as Exhibit "D."

ADOPTED by the Port Commission of the Port of Seattle at a regular meeting held this 13th day of November, 2001, and duly authenticated in open session by the signatures of the Commissioners voting in favor thereof and the seal of the Commission.

Clare Nordquist
Jack Block

CLARE NORDQUIST

JACK BLOCK

Patricia Davis

PATRICIA DAVIS

Paige R Miller

PAIGE MILLER

Port Commission

EXHIBIT A
TO PORT OF SEATTLE COMMISSION RESOLUTION NO. 3469

AGREEMENT BETWEEN THE PORT OF SEATTLE AND THE CITY OF SEATAC FOR THE DEVELOPMENT OF CERTAIN PORT-OWNED PROPERTIES

This agreement is entered into effective the ___ day of ____, 2001 between the Port of Seattle (Port), a Washington municipal corporation, and the City of SeaTac (City), a Washington municipal corporation in connection with the real property described herein, and referred to as the "Property" for the purposes and on the terms and conditions set forth in this agreement.

I. RECITALS

Whereas, the undeveloped real property (Property) which is the subject of this agreement is located south of South 200th Street and west of 18th Avenue South (known as Borrow Area #3) and north of South 200th Street and west and south of 18th Avenue South and South 196th Street (known as Borrow Area#4) and is more particularly depicted in Attachment "A" to this agreement; and

Whereas, the Port owns and operates Seattle-Tacoma International Airport (Airport) under the authority of the Revised Airports Act, Chap. 14.08 RCW, the Airport Zoning Act, Chap. 14.12 RCW and certain port district enabling statutes, Chap. 53.08 and .04 RCW; and

Whereas, the City is a non charter, code City organized pursuant to Title 35A RCW, the Optional Municipal Code; and

Whereas, the City and Port hereby agree that redeveloping the Property in an expedient manner and in accordance with the Master Development Plan attached to this agreement as Attachment "B", once soil extraction ("borrow") activities have been completed, is in the interest of both parties; and

Whereas, in 1997, the Port and the City entered into an Interlocal Agreement (1997 ILA) that settled litigation concerning their respective jurisdictional authorities over comprehensive planning, zoning, surface water management, critical areas, State Environmental Policy Act (SEPA) lead agency responsibilities and police jurisdiction as well as settled the City's appeal of the adequacy of the Port's environmental review under SEPA for the 1994-1997 Master Plan Update (Master Plan); and

Whereas, in 2000, the Port and the City entered into an Interlocal Agreement (2000 ILA) that settled litigation concerning surface water management fees and provided for the administration and implementation of the Uniform Codes by the Port; and

Whereas, the 1997 ILA and the Airport Master Plan provided for the use of the Property as borrow sites for the third runway and other Master Plan developments; and

Whereas, such excavation and grading activities are regulated in accordance with provisions of the 2000 ILA consistent with Chapter 13.11 SMC and Chapter 16.82 of the King County Code; and

Whereas, the Property is included in the Port's application for a section 404 permit from the Army Corps of Engineers and the section 401 water quality certification from the Department of Ecology; and

Whereas, by entering into this agreement, the Port and City intend to resolve any and all outstanding issues concerning the use of the Property as borrow sites and concerning the future redevelopment of the Property.

II. AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Port and City agree as follows:

A. **Use of the Property.** The Parties agree that the Property will be developed and used in accordance with the provisions set forth in this agreement including, but not limited to, provisions of the Master Development Plan as shown in Attachment B, and the list of permanent land uses listed in Section II (C) of this agreement, subject to any additional SEPA and permitting requirements as may be needed for such permanent uses. In the event that the Port does not use the Property as borrow sites, then it shall be developed in accordance with the allowed uses and development standards set forth in the 1997 ILA.

B. **State Environmental Policy Act (SEPA), Chap. 43.21C RCW Compliance.** The Master Plan final environmental impact statement (FEIS) and supplemental final environmental impact statement (SFEIS) and any subsequent SEPA environmental documents already adopted by the Port for use of the Property as borrow sites are adequate to satisfy the requirements of SEPA for the adoption of this agreement and interim uses of the Property. Proposed future redevelopment of the Property shall be subject to future SEPA review.

C. **Land uses:**

1. Future redevelopment land uses shall include only the following subset of uses allowed within the Aviation Commercial and Aviation Operations zones as set forth in the 1997 ILA, as amended:
 - Meteorological equipment
 - Communications equipment
 - Aviation navigation, communication and landing aids for airport and aircraft operations

- Designated airfield safety areas, clear zones, and runway protection zones
 - Airport access roadways and public transportation facilities
 - Infrastructure and utilities supporting uses permitted in the zone
 - Infrastructure and utilities serving other zones and areas
 - Other aviation activities or facilities whose location within the AVC zone is fixed by function by FAA requirements
 - Borrow /mining operations
 - Access and holding areas for public transit and shuttle busses.
 - Air cargo warehousing and customer service facilities
 - Airfield security facilities such as fencing, gates, guard stations, etc.
 - Airfield service roads and access improvements
 - Wholesale sales and distribution facilities
 - Warehousing and distribution facilities, excluding truck terminals
 - Those clean light industrial and manufacturing facilities permitted in the City's BP zone as it exists on the date of adoption of the 1997 ILA
 - Parking and storage for airline and airfield ground service equipment (GSE) as an ancillary use to other uses allowed in this agreement
 - Measures that provide environmental protection and/or mitigation of environmental impacts
 - Public access parks, trail or viewpoints but only in accordance with the Public Use Special Conditions listed in the 1997 ILA Attachment A-2 to Exhibit A for public access use, trails and viewpoints
 - Employee support facilities such as cafeterias, locker rooms, rest areas, restrooms, and exercise areas.
2. Use of the Property as borrow sites shall be subject to all applicable federal, state and local permits.

3. The Port shall develop the Property in accordance with the Master Development Plan attached to this agreement as Attachment B.
4. Building pad size and elevations shall be sufficient to serve future redevelopment needs of the agreed interim and permanent uses, and development standards, including internal access roads and parking.
5. Public access to adjacent recreational uses shall be allowed using Port rights-of-way where necessary, subject to agreed future redevelopment plans, the Port's 401 & 404 permit restrictions, future SEPA environmental review, and federal requirements governing the use of airport revenues.
6. Pedestrian access to Des Moines Creek trail from the trail to be constructed by the Washington State Department of Transportation (WSDOT) as an element of SR 509 improvements shall be provided to and through Borrow Area 4 using design standards consistent with or better than the existing Des Moines Creek Trail. All trail elements described herein shall be subject to the Port's 401 & 404 permit restrictions, future SEPA environmental review, and federal requirements governing the use of airport revenues. The Port or a future developer will provide pedestrian access from Borrow Area 3 to the Des Moines Creek Trail as an area amenity at no cost to the City.

D. Development Regulations and Conditions. The following development regulations and conditions shall apply to the Port's development of the Property for use as borrow sites and future redevelopment of the Property under this agreement:

1. All federal and state laws pertaining to grading, soil erosion and environmental concerns.
2. The 1997 ILA provisions, as amended, for development standards and processes including, but not limited to, the following:
 - a. Exhibit A – Regarding development, including Attachment A-2 except as modified by this agreement.
 - b. Exhibit C – Regarding grading, permitting and regulations, including section 16.
 - c. Exhibit D – Regarding hauling, including best management practices including Attachment D-1.
3. Landscaping Standards shall be in accordance with the adopted Interim Landscaping Standards, except that adjacent residential properties and S. 200th Street shall be buffered by a 50' landscaped area (equivalent to City Type I landscaping) on Port property at Port expense. Wetlands and buffer areas shall be counted toward this requirement. Existing vegetation shall be retained where consistent with provisions of these standards, and

additional plantings and improvements shall be made, at Port expense, where necessary to satisfy the required screening density.

4. Prior to the commencement of borrow activity at a given site (Borrow Area #3 or Borrow Area #4), the Port shall consider offering voluntary acquisition to adjacent residences. If the Port determines that such voluntary acquisition would be beneficial and if residents in contiguous parcels of property desire to be acquired, then Port staff shall recommend to the Port Commission the voluntary acquisition of such residences prior to the commencement of borrow activity at the adjacent borrow area.
5. The Port shall excavate the Property in accordance with the Best Management Practices (BMPs) included as Attachment C to this agreement.
6. The Port will process any necessary building and grading permits through the Port of Seattle Airport Building Department consistent with the 1997 and 2000 ILAs, and the adopted Permitting/Development Review Procedures.
7. Haul routes for transporting fill materials affecting City streets shall be processed under the terms of the 1997 ILA for haul permits. Haul permits shall not be required for grade-separated crossings. The preferred haul route to be used is identified in Attachment D. Other haul routes may be considered if, in the judgement of the City Public Work Director, such routes reduce impacts on traffic and/or adjacent residential uses.
8. Use and redevelopment of the Property shall be in accordance with the August 4, 1998 Memorandum of Understanding between the Port and Federal Aviation Administration (FAA) regarding Reuse of Noise Buy-Out Property at Seattle-Tacoma International Airport.

E. **Access to the Property.** The City of SeaTac and Port agree to jointly request that the Washington State Department of Transportation (WSDOT) coordinate with the City and Port to provide a minimum 2-lane access crossing of SR 509 for direct, secured vehicular access to the airfield.

F. **Reclamation.** Reclamation shall occur which leaves the Property with gently sloped or flat areas that would be compatible with future redevelopment of the site, or as deemed necessary for the SR 509 alignment by WSDOT. Reclamation requirements shall address erosion control, security, landscaping, and stormwater detention/treatment.

G. **Marketing.** Within six (6) months of the effective date of this agreement, the Port shall prepare redevelopment and marketing plans at its own expense and promote redevelopment of the site by actively making the site available for lease or purchase, provided that, in the judgement of the Port, the redevelopment activities shall not interfere with completion of the borrow activities. The Port shall accomplish this by one

or more of the following means at its discretion: 1) the Port marketing the Property through its Aviation Business Development Group or through its Port-wide Commercial Development Group, 2) hiring a commercial/industrial realtor to actively market the Property, 3) authorizing other realtors to market the Property, or 4) issuing requests for development proposals (the latter to be implemented within two years of the effective date of this agreement). Such redevelopment and marketing plans shall include at least the following: a description of the Property in map and photographs, including a potential simulated buildout schematic, address proposed interim and permanent uses of the Property, identify proposed access road(s), summarize site advantages and development requirements, and include a Port contact address and phone number to receive follow-up information.

H. Future Redevelopment. While the timing of redevelopment may depend on the completion of borrow activities, the plan and schedule for phases of the SR 509 extension and access roads, market conditions, conditions of subsequent SEPA mitigation, if any, and subsequent permit conditions, if any, the Port commits to actively market the Property until such time as they are redeveloped. The Port shall in good faith pursue having the redevelopment of the Property completed within 5 years of the date of this agreement.

I. Street Vacations. Street vacations for Borrow Area #4 shall be processed by December 31, 2001, and for Borrow Area #3 by July 31, 2002, under the terms of the 1997 ILA, as amended.

J. Neighborhood Open House(s). The Port will hold at least one Open House for nearby residents and property owners, prior to commencing excavation activities on each borrow site, in order to present the proposed borrow activities, associated BMP's and future development options. The Port shall provide adequate public notice of the Open House(s), which shall include but not be limited to publishing a notice in the "Seattle Times" and mailing a written invitation to all residents and owners of property within 1,000 feet of the borrow areas.

K. All Other Federal, State and Local Permits. Development of the Property shall be in accordance with conditions of all other federal, state and local permit requirements and conditions.

III. DISPUTE RESOLUTION

Party Consultation. In the event of any dispute as to interpretation or application of the terms or conditions of this agreement, dispute resolution provisions of the 1997 ILA shall apply.

IV. GENERAL PROVISIONS

Recording. This agreement, when approved by the City Council and Port Commission and executed by the parties, shall be filed by the Port as a matter of public record in the office of the King County Recorder. The parties intend to have this Agreement, so long as it is in force, to be considered, interpreted, and regarded as a covenant running with the land.

Applicable law. This agreement shall be governed by and be interpreted in accordance with the laws of the State of Washington.

Binding Effect. This agreement shall be binding upon and be construed to the benefit of the successors and assignees of each party to this agreement.

Severability. If any provision of this agreement is determined to be unenforceable or invalid by a court of law, then this agreement shall thereafter be modified to implement the intent of the parties to the maximum extent allowable under law.

Waiver. The Port, by entering into this agreement, does not waive any authority that it enjoys under the Revised Airports Act, Chap. 14.08 RCW, the Airport Zoning Act, Chap. 14.12 RCW, and certain port district enabling statutes, Chap. 53.08 and .04 RCW, as well as other applicable provisions of state and federal law to exclusive jurisdiction and control over the development of land and operation of facilities on its property.

The City, by entering into this agreement, does not waive any authority that it enjoys under to Title 35A RCW, the Optional Municipal Code, as well as other applicable provisions of state and federal law to exclusive jurisdiction and control over the development of land within the City.

Modification. This agreement shall not be modified or amended except in writing signed by the City and the Port.

City Authority. The City and the City Manager warrants that the undersigned City Manager has full authority to so enter into this Agreement pursuant to duly adopted Resolution No. _____ of the City Council.

Port Authority. The Port and the Managing Director of the Aviation Division warrants that the undersigned Managing Director of the Aviation Division has full authority to so enter into this Agreement pursuant to duly adopted Resolution No. _____ of the Port of Seattle.

Merger. This agreement represents the entire agreement of the parties with respect to the subject matter that is the subject of this agreement. There are no other agreements, oral or written, except as expressly set forth in this agreement.

Duty of Good Faith. Each party to this agreement shall cooperate with the other in good faith to achieve the objectives of this agreement. The parties shall not unreasonably

withhold requests for information, approvals or consents provided for, or implicit, in this Agreement. The parties agree to take further actions and execute further documents, either jointly or within their respective powers and authority, to implement the intent of this Agreement.

No Presumption Against Drafter. This Agreement has been reviewed and revised by legal counsel for all parties and no presumption or rule that ambiguity shall be construed against the party drafting the document shall apply to the interpretation or enforcement of this Agreement.

Notices. All communications, notices and demands of any kind which a party under this Agreement is required or desires to give to the other party shall be in accordance with the provisions of the 1997 ILA.

IN WITNESS WHEREOF, the undersigned have, on the date set next to their signatures, executed this agreement on behalf of the parties hereto.

PORT OF SEATTLE

By: _____
Gina Marie Lindsey
Managing Director, Aviation Division

Date _____

CITY OF SEATAC

By: _____
Calvin P. Hoggard
City Manager

Date _____

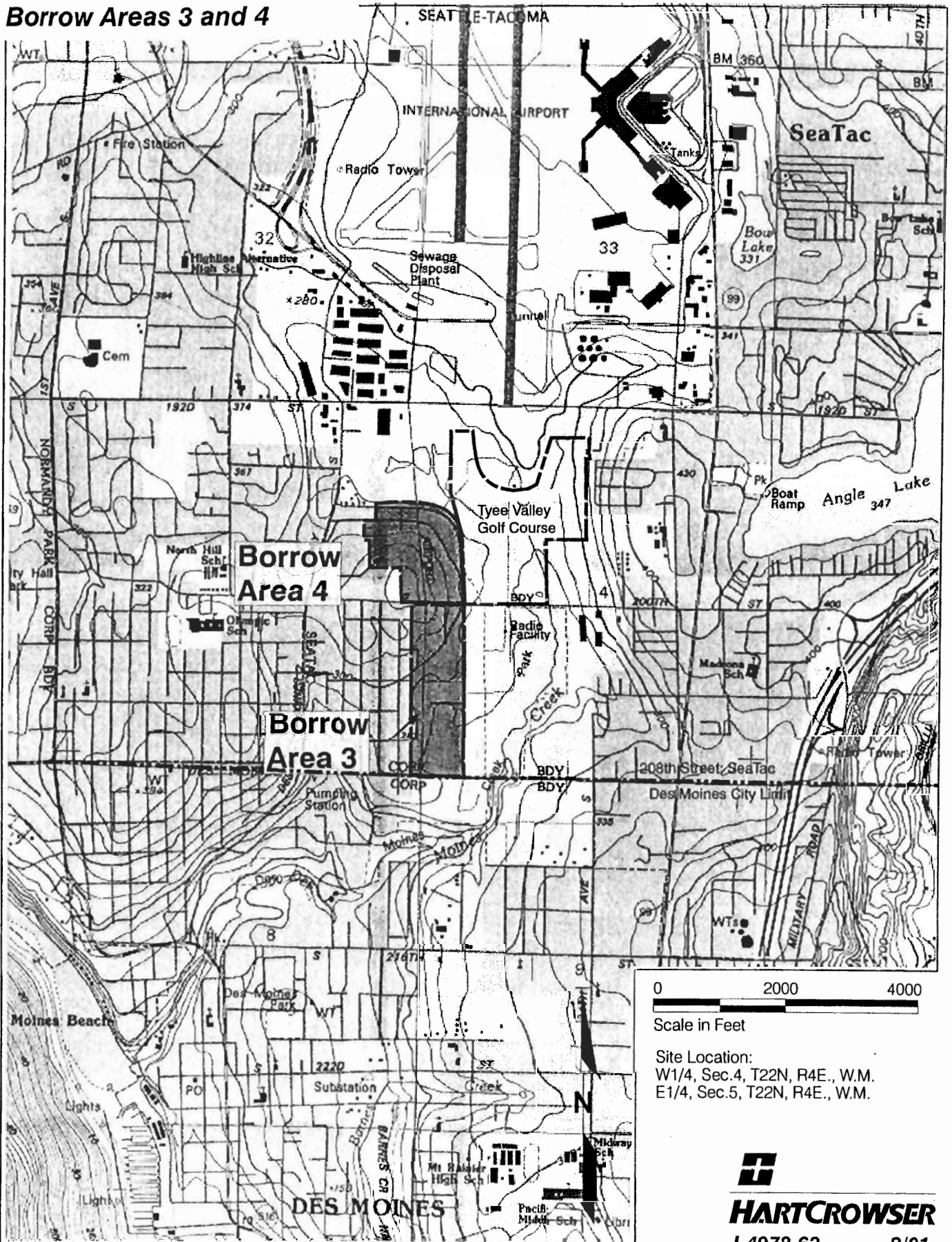
Approved as to Form:

Robert L. McAdams
City Attorney

Attachment A

Site Location Map

Borrow Areas 3 and 4



Site Location:
W1/4, Sec.4, T22N, R4E., W.M.
E1/4, Sec.5, T22N, R4E., W.M.

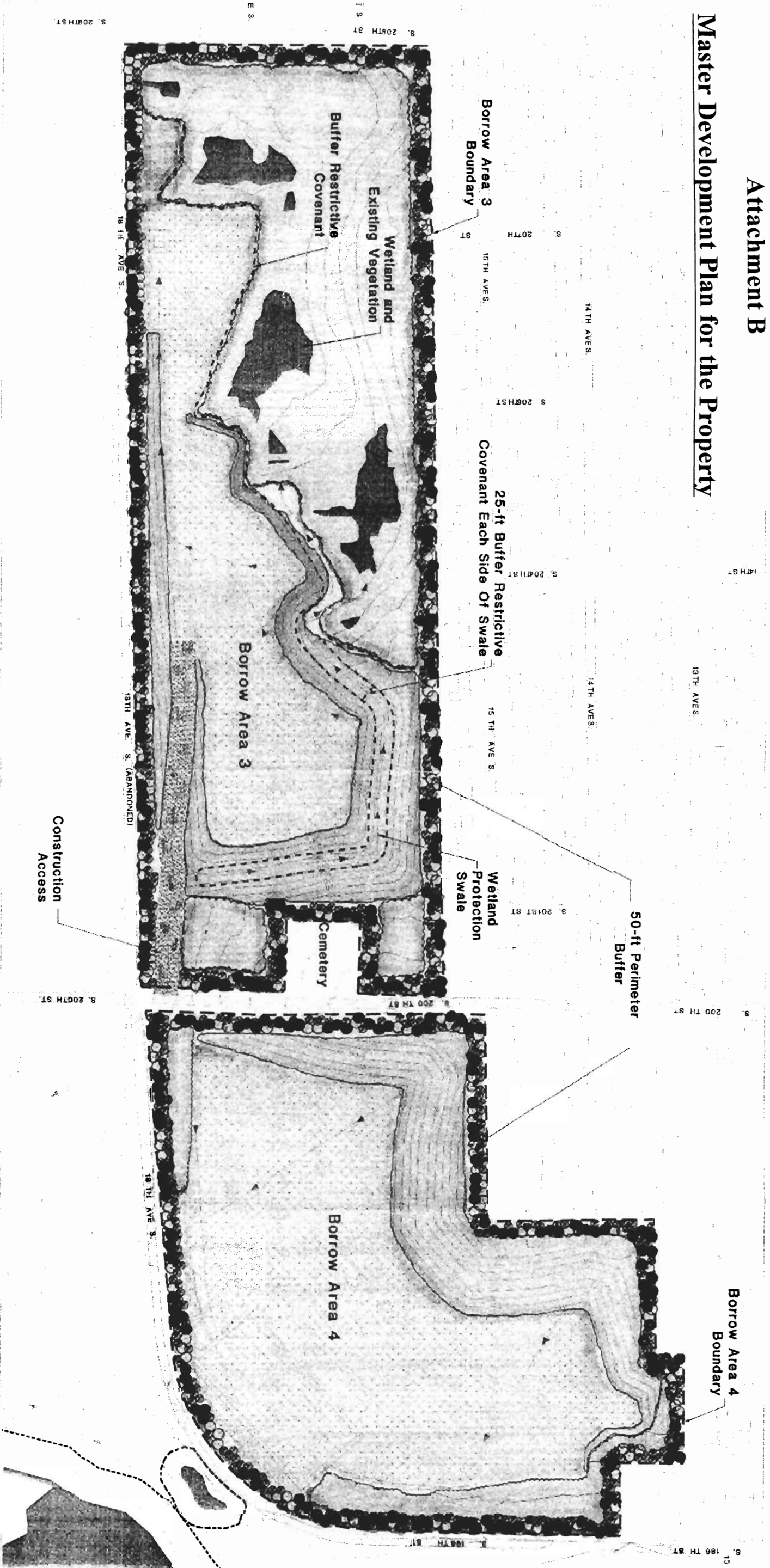
HARTCROWSER
J-4978-63 8/01

497863/497863A.cdr

Note: Base map prepared from USGS 7.5 minute quadrangle maps of Seattle South, Washington, revised 1995.

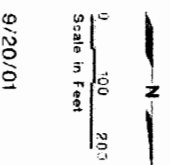
Attachment B

Master Development Plan for the Property



SEA-TAC THIRD RUNWAY BORROW AREAS 3 AND 4

- LEGEND**
- Restricted Covenant Boundary
 - - - Part of Seattle Property Line (Borrow Areas 3 and 4)
 - Wetlands
 - Stormwater Diversion Channels
 - Infiltration Ponds
 - Contours at 10ft Intervals



Attachment C

Best Management Practices for Borrow Site Excavation

General

1. The intent of the BMPs is to minimize impact to the surrounding community while allowing excavation of the borrow sites to occur. The BMPs listed below are a **minimum** and are not intended to limit the employment of additional measures or adjustments that will provide equal or better results towards minimizing community impacts.
2. All month-by-month work times are approximate and may overlap.

Residential and Community Impacts will be minimized by:

1) Excavation / Haul Activities

- a) Approximately June to October excavation and haul from the borrow sites.
- b) Material hauling on S. 188th St. shall comply with Exhibit D, “Material Hauling Provisions For Port Haul Projects” of the 1997 ILA. (Approved maximum of 45 one-way trips per hour, except 18 trucks per hour eastbound between 3:30 PM and 5:30 PM. Changes to hour, routes, or trip rates require approval of the Public Works Director.)
- c) A maximum of 70 one-way truck trips per hour will use City streets as part of the borrow sites excavation, subject to approval of the City Public Works Director.
- d) Restricting haul on City streets during peak traffic hours.
- e) Limiting daytime work hours from 7:00 AM to 5:00 PM, Monday through Saturday.
- f) Limiting nighttime work hour from 7:00 PM to 7:00 AM, Sunday through Friday.

2) Noise

- a) Using ambient noise sensitive backup alarms
- b) Selecting and using equipment to minimize noise generation (i.e., operate equipment to prevent loud, sudden noises, use forward-movement, circular routes for haul vehicles within the borrow sites, minimize backing of equipment).
- c) Limiting excavation at the top of excavation slopes, adjacent to residential areas, to only daytime.
- d) Allowing nighttime excavation to occur only after the excavation is below top of slope and creates a natural noise berm. (The estimated excavation level will be 15 to 20 feet below the top of slope before nighttime work begins with adjustment based upon proximity to residences and equipment type and use. Noise levels to be monitored to ensure acceptability.)
- e) Placing temporary topsoil stockpiles between the work activities and nearby residences to function as noise berms.

3) Dust

- a) Using measures to control fugitive dust.
- b) Using wheel washes to minimize tracking dirt onto streets.

- c) Keeping a water truck and sweeper on standby during all construction hours for dust and dirt control.
 - d) Reclaiming the borrow sites in the same year as excavation to avoid exposure in the wet season.
- 4) Lighting
- a) Performing the initial excavation during daytime hours and limiting nighttime excavation to after the excavation is below the top of slope.
 - b) Directing any lighting used for nighttime operations away from residential areas and use glare screens as necessary to shield adjacent residences from lighting.

Approximate work schedules and descriptions are:

1. Borrow Area 4
 - a. April 2002 – temporary erosion and sedimentation control, logging
 - b. May 2002 - staging area and haul route development, clearing and grubbing, topsoil stockpiling
 - c. June 2002 – daytime excavation
 - d. July 2002 – daytime and nighttime excavation
 - e. August 2002 - daytime and nighttime excavation
 - f. September - daytime and nighttime excavation, begin reclamation
 - g. October 2002 - daytime and nighttime excavation, continue reclamation
 - h. November 2002 – complete reclamation

2. Borrow Area 3
 - a. April 2003 – temporary erosion and sedimentation control, logging
 - b. May 2003 - access development, clearing and grubbing, topsoil stockpiling
 - c. June 2003 – daytime excavation
 - d. July 2003 – daytime and nighttime excavation
 - e. August 2003 - daytime and nighttime excavation
 - f. September - daytime and nighttime excavation, begin reclamation
 - g. October 2003 - daytime and nighttime excavation, continue reclamation
 - h. November 2003 – complete reclamation

Attachment D

Map of Preferred Haul Route

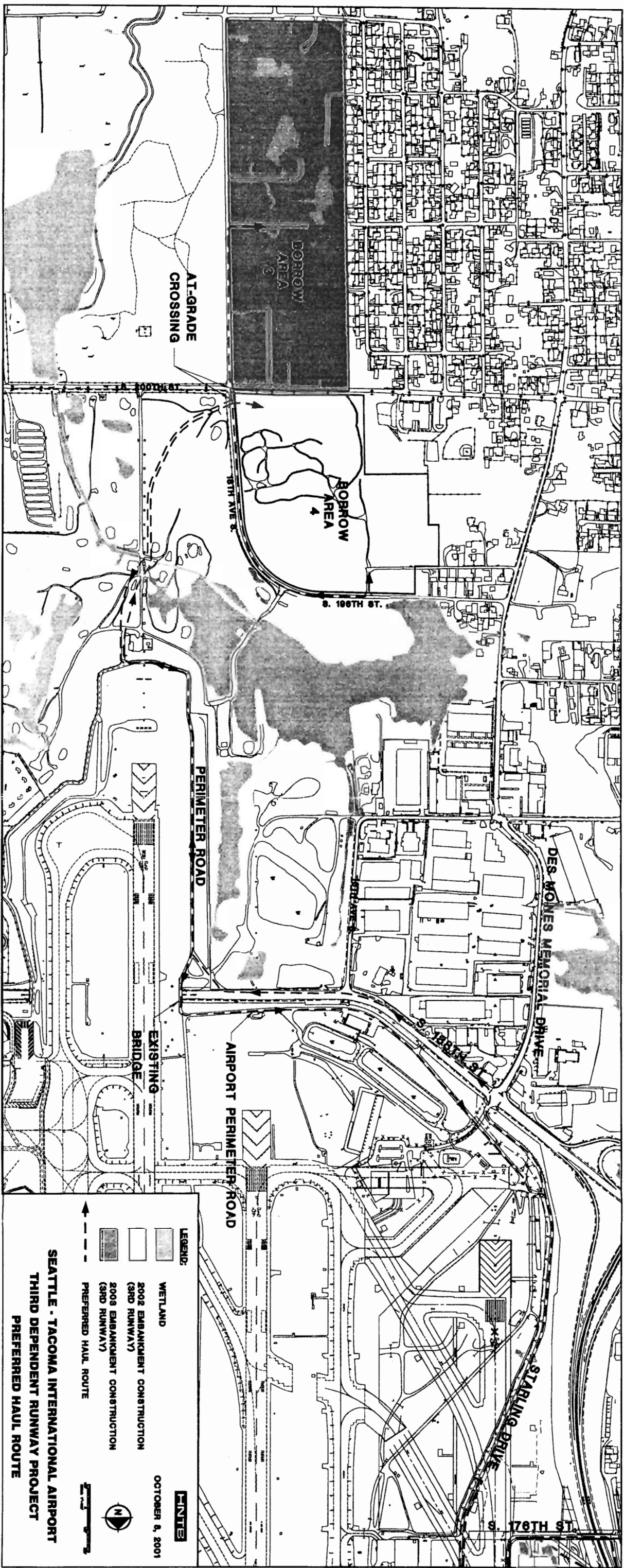


EXHIBIT B
TO PORT OF SEATTLE COMMISSION RESOLUTION NO. 3469

Amendment #4
to
Port of Seattle & City of SeaTac Interlocal Agreement
Entered into on September 4, 1997

In accordance with the provisions of the September 4, 1997 Port of Seattle and City of SeaTac Interlocal Agreement (ILA), including but not limited to ILA paragraph 12.2 "Amendment" and Exhibit A, section 2.4 "Expansion of Port Uses and Property," the Port and City hereby amend the ILA as follows:

Exhibit A, Attachment A-2, "Agreed Map and Land Uses on Port Property"

Add "Borrow / Mining Operations" to the list of Permitted Principal Uses within both the Aviation Operations (AVO) and Aviation Commercial (AVC) zones.

Add note that Borrow / Mining Operations are "Subject to Best Management Practices (BMP) and the protection of adjacent properties as agreed upon in advance between the City and the Port of Seattle."

This amendment #4 shall be effective on the date of the last signature below.

Dated: _____

PORT OF SEATTLE, a Washington
municipal corporation

By: _____
Director, Aviation Division

Dated: _____

CITY OF SEATAC, a Washington
municipal corporation

By: _____
City Manager

Approved as to form:

Robert L. McAdams, City Attorney

**AGREEMENT BETWEEN THE PORT OF SEATTLE AND THE CITY OF
SEATAC FOR THE DEVELOPMENT OF CERTAIN PORT-OWNED
PROPERTIES**

This agreement is entered into effective the 14th day of Dec., 2001 between the Port of Seattle (Port), a Washington municipal corporation, and the City of SeaTac (City), a Washington municipal corporation, in connection with the real property described herein, and referred to as the "Property" for the purposes and on the terms and conditions set forth in this agreement.

I. RECITALS

Whereas, the undeveloped real property (Property) which is the subject of this agreement is located south of South 200th Street and west of 18th Avenue South (known as Borrow Area #3) and north of South 200th Street and west and south of 18th Avenue South and South 196th Street (known as Borrow Area #4) and is more particularly depicted in Attachment "A" to this agreement; and

Whereas, the Port owns and operates Seattle-Tacoma International Airport (Airport) under the authority of the Revised Airports Act, Chap. 14.08 RCW, the Airport Zoning Act, Chap. 14.12 RCW and certain port district enabling statutes, Chap. 53.08 and .04 RCW; and

Whereas, the City is a non charter, code City organized pursuant to Title 35A RCW, the Optional Municipal Code; and

Whereas, the City and Port hereby agree that redeveloping the Property in an expedient manner and in accordance with the Master Development Plan attached to this agreement as Attachment "B", once Borrow/Surface Mining activities have been completed, is in the interest of both parties; and

Whereas, in 1997, the Port and the City entered into an Interlocal Agreement (1997 ILA) that settled litigation concerning their respective jurisdictional authorities over comprehensive planning, zoning, surface water management, critical areas, State Environmental Policy Act (SEPA) lead agency responsibilities and police jurisdiction as well as settled the City's appeal of the adequacy of the Port's environmental review under SEPA for the 1994-1997 Master Plan Update (Master Plan); and

Whereas, in 2000, the Port and the City entered into an Interlocal Agreement (2000 ILA) that settled litigation concerning surface water management fees and provided for the administration and implementation of the Uniform Codes by the Port; and

Whereas, the 1997 ILA and the Airport Master Plan provided for the use of the Property as borrow/surface mining sites for the third runway and other Master Plan developments; and

Whereas, such excavation and grading activities are regulated in accordance with provisions of the 2000 ILA consistent with Chapter 13.11 SMC and Chapter 16.82 of the King County Code; and

Whereas, the Property is included in the Port's application for a section 404 permit from the Army Corps of Engineers and the section 401 water quality certification from the Department of Ecology; and

Whereas, by entering into this agreement, the Port and City intend to resolve any and all outstanding issues concerning the use of the Property as borrow/surface mining sites and concerning the future redevelopment of the Property.

II. AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Port and City agree as follows:

A. **Use of the Property.** The Parties agree that the Property will be developed and used in accordance with the provisions set forth in this agreement including, but not limited to, provisions of the Master Development Plan as shown in Attachment B, and the list of land uses listed in Section II (C) of this agreement, subject to any additional SEPA and permitting requirements as may be needed for such uses. In the event that the Port does not use the Property as borrow/surface mining sites, then it shall be developed in accordance with the allowed uses and development standards set forth in the 1997 ILA.

B. **State Environmental Policy Act (SEPA), Chap. 43.21C RCW Compliance.** The Master Plan final environmental impact statement (FEIS) and supplemental final environmental impact statement (SFEIS) and any subsequent SEPA environmental documents already adopted by the Port for use of the Property as borrow/surface mining sites are adequate to satisfy the requirements of SEPA for the adoption of this agreement and interim uses of the Property. Proposed future redevelopment of the Property shall be subject to future SEPA review.

C. **Land uses:**

1. Future redevelopment land uses shall include only the following subset of uses allowed within the Aviation Commercial and Aviation Operations zones as set forth in the 1997 ILA, as amended:
 - Meteorological equipment
 - Communications equipment
 - Aviation navigation, communication and landing aids for airport and aircraft operations

- Designated airfield safety areas, clear zones, and runway protection zones
- Airport access roadways and public transportation facilities
- Infrastructure and utilities supporting uses permitted in the zone
- Infrastructure and utilities serving other zones and areas
- Other aviation activities or facilities whose location within the AVC zone is fixed by function by Federal Aviation Administration (FAA) requirements
- Borrow/surface mining operations
- Access and holding areas for public transit and shuttle busses.
- Air cargo warehousing and customer service facilities
- Offices for airline and aviation support
- Airfield security facilities such as fencing, gates, guard stations, etc.
- Airfield service roads and access improvements
- Wholesale sales and distribution facilities
- Warehousing and distribution facilities, excluding truck terminals
- Those clean light industrial and manufacturing facilities permitted in the City's BP zone as it existed on the date of adoption of the 1997 ILA
- Parking and storage for airline and airfield ground service equipment (GSE) as an ancillary use to other uses allowed in this agreement
- Measures that provide environmental protection and/or mitigation of environmental impacts
- Public access parks, trail or viewpoints but only in accordance with the Public Use Special Conditions listed in the 1997 ILA Attachment A-2 to Exhibit A for public access use, trails and viewpoints, and subject to FAA approval
- Ancillary employee support facilities such as cafeterias, locker rooms, rest areas, restrooms, and exercise areas

2. Use of the Property as borrow/surface mining sites shall be subject to all applicable federal, state and local permits.
3. The Port shall develop the Property in accordance with the Master Development Plan attached to this agreement as Attachment B.
4. Building pad size and elevations shall be sufficient to serve future redevelopment needs of the agreed interim and permanent uses, and development standards, including internal access roads and parking.
5. Public access to adjacent recreational uses shall be allowed using Port rights-of-way where necessary, subject to agreed future redevelopment plans, the Port's 401 & 404 permit restrictions, future SEPA environmental review, federal requirements governing the use of airport revenues, and FAA approval.
6. Pedestrian access to Des Moines Creek trail from the trail to be constructed by the Washington State Department of Transportation (WSDOT) as an element of SR 509 improvements shall be provided to and through Borrow Area 4 using design standards consistent with or better than the existing Des Moines Creek Trail. The Port or a future developer will provide pedestrian access from Borrow Area 3 to the Des Moines Creek Trail as an area amenity at no cost to the City. All trail / pedestrian access elements described herein shall be subject to agreed future redevelopment plans, the Port's 401 & 404 permit restrictions, future SEPA environmental review, federal requirements governing the use of airport revenues, FAA approval, and shall not be construed as parks under USDOT 4(f) restrictions.

D. Development Regulations and Conditions. The following development regulations and conditions shall apply to the Port's development of the Property for use as borrow/surface mining sites and future redevelopment of the Property under this agreement:

1. All federal and state laws pertaining to grading, soil erosion and environmental concerns.
2. The 1997 ILA provisions, as amended, for development standards and processes including, but not limited to, the following:
 - a. Exhibit A – Regarding development, including Attachment A-2 except as modified by this agreement.
 - b. Exhibit C – Regarding grading, permitting and regulations, including section 16.
 - c. Exhibit D – Regarding hauling, including best management practices including Attachment D-1.
3. Landscaping Standards shall be in accordance with the adopted Interim Landscaping Standards, except that adjacent residential properties and S.

200th Street shall be buffered by a 50' landscaped area (equivalent to City Type I landscaping) on Port property at Port expense. Wetlands and buffer areas shall be counted toward this requirement. Existing vegetation shall be retained where consistent with provisions of these standards, and additional plantings and improvements shall be made, at Port expense, where necessary to satisfy the required screening density.

4. In conjunction with the commencement of any borrow activity at a given site (Borrow Area #3 or Borrow Area #4), the City and Port shall mutually agree, in writing, whether or not acquisition of any residences near or adjacent to Borrow Area #3 or #4 will be necessary, and under what conditions any such acquisition could occur. The following factors will guide the City and Port in deciding whether or not voluntary acquisition of these residences is appropriate: 1) the effectiveness of the best management practices (BMPs) described in attachment C, 2) the probable adverse impacts of redeveloping the areas and 3) whether or not a comprehensive plan can be developed for acquisition that does not result in a "checkerboard" pattern of acquisition. If the City and Port mutually determine that such acquisition is beneficial, then Port staff shall recommend to the Port Commission that such acquisition be offered under the agreed terms. The use of the borrow areas by the Port shall not be delayed by this proposed acquisition, nor by the evaluation of whether acquisitions are appropriate.
5. The Port shall excavate the Property in accordance with the Best Management Practices (BMP's) included as Attachment C to this agreement.
6. The Port will process any necessary building and grading permits through the Port of Seattle Airport Building Department consistent with the 1997 and 2000 ILAs, and the adopted Permitting/Development Review Procedures.
7. Haul routes for transporting fill materials affecting City streets shall be processed under the terms of the 1997 ILA for haul permits. Haul permits shall not be required for grade-separated crossings. The preferred haul route to be used is identified in Attachment D. Other haul routes may be considered if, in the judgement of the City Public Work Director, such routes reduce impacts on traffic and/or adjacent residential uses.
8. Use and redevelopment of the Property shall be in accordance with the August 4, 1998 Memorandum of Understanding between the Port and Federal Aviation Administration (FAA) regarding Reuse of Noise Buy-Out Property at Seattle-Tacoma International Airport, and with all other applicable FAA guidelines, including those addressing restrictions to allowed land uses within Runway Protection Zones (RPZs) and Approach Transition Zones (ATZs).

E. **Access to the Property.** The City of SeaTac and Port agree to jointly request that the Washington State Department of Transportation (WSDOT) coordinate with the City and Port to provide a minimum 2-lane access crossing of SR 509 for direct, secured vehicular access to the airfield, subject to FAA approval.

F. **Reclamation.** Reclamation shall occur which leaves the Property with gently sloped or flat areas, that would be compatible with future redevelopment of the site, or as deemed necessary for the SR 509 alignment by WSDOT. Reclamation requirements shall address erosion control, security, landscaping, and stormwater detention/treatment.

G. **Marketing.** Within six (6) months of the effective date of this agreement the Port shall prepare redevelopment and marketing plans at its own expense and promote redevelopment of the site by actively making the site available for lease or purchase, provided that, in the judgement of the Port, the redevelopment activities shall not interfere with completion of the borrow/surface mining activities. The Port shall accomplish this by one or more of the following means at its discretion: 1) the Port marketing the Property through its Aviation Business Development Group or through its Port-wide Commercial Development Group, 2) hiring a commercial/industrial realtor to actively market the Property, 3) authorizing other realtors to market the Property, or 4) issuing requests for development proposals (the latter to be implemented within two years of the effective date of this agreement). Such redevelopment and marketing plans shall be subject to FAA review and shall include at least the following: a description of the Property in map and photographs, including a potential simulated buildout schematic, address proposed interim and permanent uses of the Property, identify proposed access road(s), summarize site advantages and development requirements, and include a Port contact address and phone number to receive follow-up information.

H. **Future Redevelopment.** While the timing of redevelopment may depend on the completion of borrow/surface mining activities, the plan and schedule for phases of the SR 509 extension and access roads, market conditions, conditions of subsequent SEPA mitigation, if any, and subsequent permit conditions, if any, the Port commits to actively market the Property until such time as they are redeveloped. The Port shall in good faith pursue having the redevelopment of the Property completed within 5 years of the date of this agreement.

I. **Street Vacations.** Street vacations for Borrow Area #4 shall be processed by January 31, 2002, and for Borrow Area #3 by July 31, 2002, under the terms of the 1997 ILA, as amended.

J. **Neighborhood Open House(s).** The Port will hold at least one Open House for nearby residents and property owners, prior to commencing excavation activities on each borrow/surface mining site, in order to present the proposed borrow/surface mining activities, associated BMP's and future development options. The Port shall provide adequate public notice of the Open House(s), which shall include but not be limited to

publishing a notice in the "Seattle Times" and mailing a written invitation to all residents and owners of property within 1,000 feet of the borrow/surface mining sites.

K. **All Other Federal, State and Local Permits.** Development of the Property shall be in accordance with conditions of all other federal, state and local permit requirements and conditions.

III. DISPUTE RESOLUTION

In the event of any dispute as to interpretation or application of the terms or conditions of this agreement, dispute resolution provisions of the 1997 ILA shall apply.

IV. GENERAL PROVISIONS

Recording. This agreement, when approved by the City Council and Port Commission and executed by the parties, shall be filed by the Port as a matter of public record in the office of the King County Recorder. The parties intend to have this Agreement, so long as it is in force, to be considered, interpreted, and regarded as a covenant running with the land.

Applicable law. This agreement shall be governed by and be interpreted in accordance with the laws of the State of Washington.

Binding Effect. This agreement shall be binding upon and be construed to the benefit of the successors and assignees of each party to this agreement.

Severability. If any provision of this agreement is determined to be unenforceable or invalid by a court of law, then this agreement shall thereafter be modified to implement the intent of the parties to the maximum extent allowable under law.

Waiver. The Port, by entering into this agreement, does not waive any authority that it enjoys under the Revised Airports Act, Chap. 14.08 RCW, the Airport Zoning Act, Chap. 14.12 RCW, and certain port district enabling statutes, Chap. 53.08 and .04 RCW, as well as other applicable provisions of state and federal law to exclusive jurisdiction and control over the development of land and operation of facilities on its property.

The City, by entering into this agreement, does not waive any authority that it enjoys under Title 35A RCW, the Optional Municipal Code, as well as other applicable provisions of state and federal law to exclusive jurisdiction and control over the development of land within the City.

Modification. This agreement shall not be modified or amended except in writing signed by the City and the Port.

City Authority. The City and the City Manager warrants that the undersigned City Manager has full authority to so enter into this Agreement pursuant to duly adopted Resolution No. 01-030 of the City Council.

Port Authority. The Port and the Managing Director of the Aviation Division warrants that the undersigned Managing Director of the Aviation Division has full authority to so enter into this Agreement pursuant to duly adopted Resolution No.3469 of the Port of Seattle.

Merger. This agreement represents the entire agreement of the parties with respect to the subject matter that is the subject of this agreement. There are no other agreements, oral or written, except as expressly set forth in this agreement.

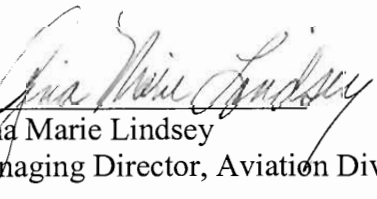
Duty of Good Faith. Each party to this agreement shall cooperate with the other in good faith to achieve the objectives of this agreement. The parties shall not unreasonably withhold requests for information, approvals or consents provided for, or implicit, in this Agreement. The parties agree to take further actions and execute further documents, either jointly or within their respective powers and authority, to implement the intent of this Agreement.

No Presumption Against Drafter. This Agreement has been reviewed and revised by legal counsel for all parties and no presumption or rule that ambiguity shall be construed against the party drafting the document shall apply to the interpretation or enforcement of this Agreement.

Notices. All communications, notices and demands of any kind which a party under this Agreement is required or desires to give to the other party shall be in accordance with the provisions of the 1997 ILA.

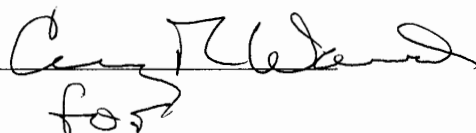
IN WITNESS WHEREOF, the undersigned have, on the date set next to their signatures, executed this agreement on behalf of the parties hereto.

PORT OF SEATTLE

By: 
Gina Marie Lindsey
Managing Director, Aviation Division

Date 12/14/01

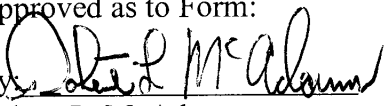
CITY OF SEATAC

By: 
for

Calvin P. Hoggard
City Manager

Date 12/5/01

Approved as to Form:

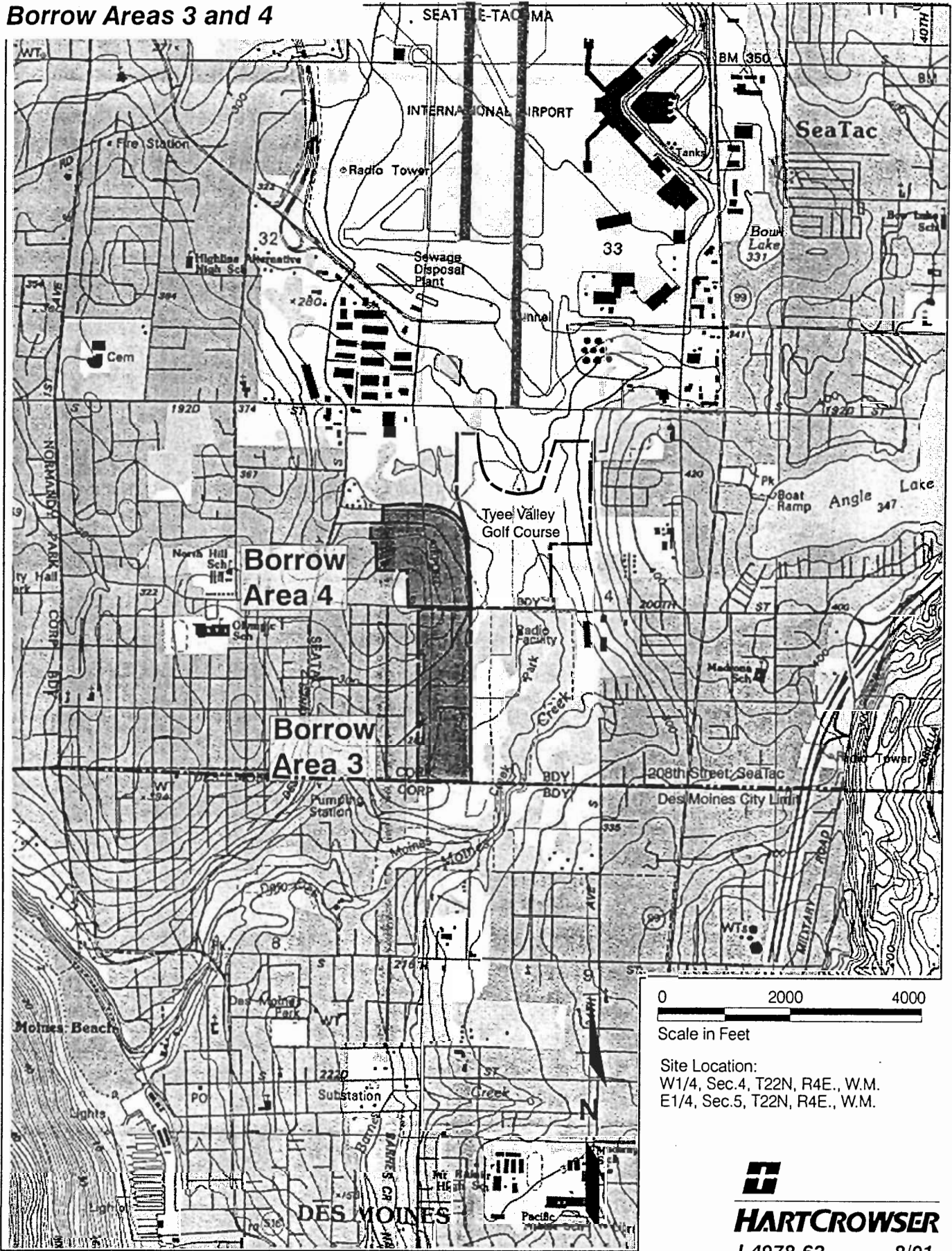
By 
Robert L. McAdams
City Attorney

Date 12/5/01

Attachment A

Site Location Map

Borrow Areas 3 and 4

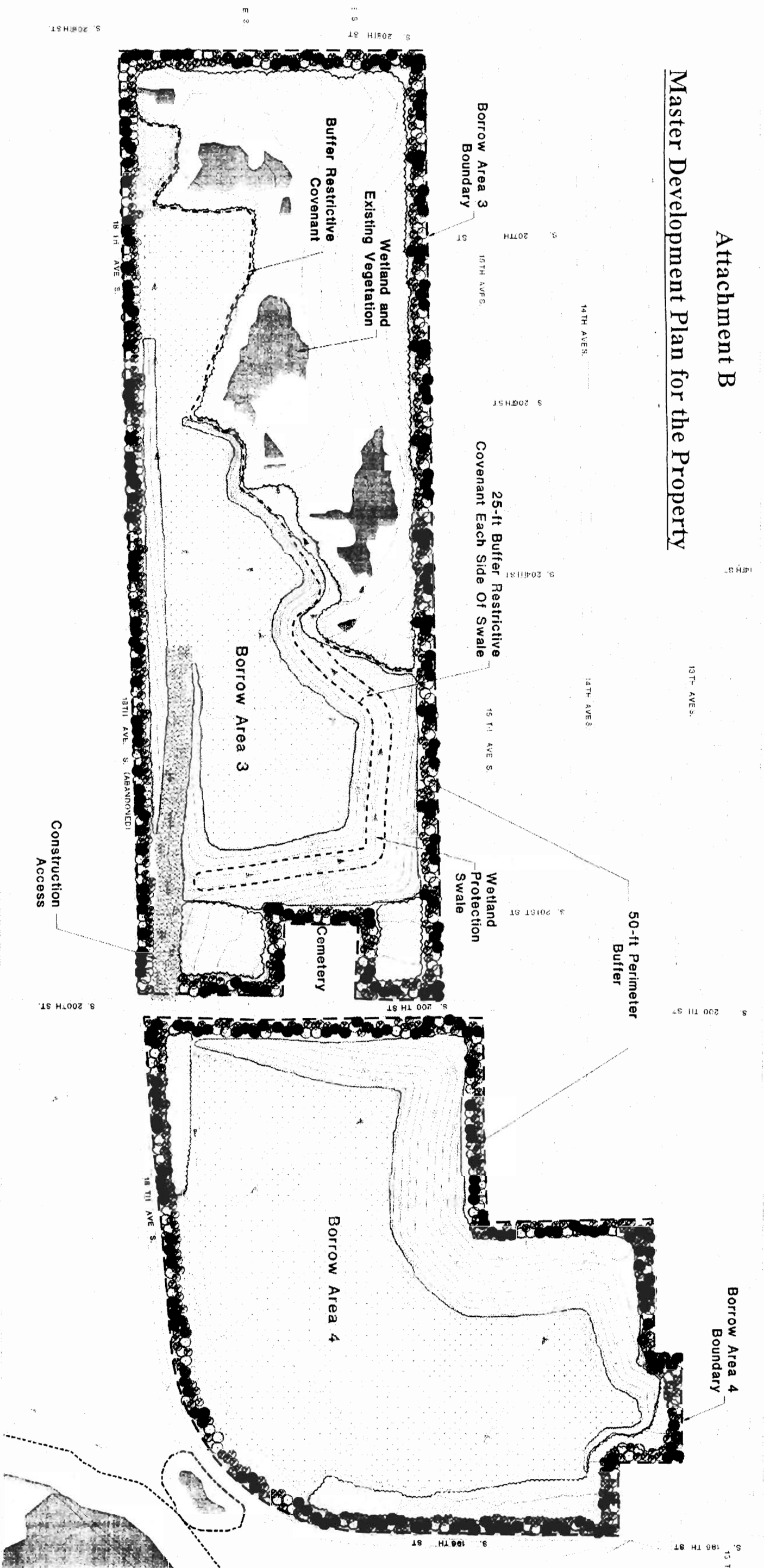


497863/497863A.cdf

Note: Base map prepared from USGS 7.5 minute quadrangle maps of Seattle South, Washington, revised 1995.

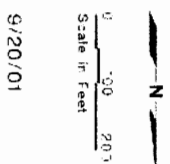
Attachment B

Master Development Plan for the Property



SEA-TAC THIRD RUNWAY BORROW AREAS 3 AND 4

- LEGEND
- Restricted Covenant Boundary
 - - - Part of Seattle Property Line (Borrow Areas 3 and 4)
 - Wetlands
 - Stormwater Diversion Channels
 - Infiltration Trenches
 - Contours at 10ft Intervals



Attachment C

Best Management Practices (BMP's) for Borrow/Surface Mining Site Excavation

General

The intent of the BMP's is to minimize impact to the surrounding community while allowing excavation of the borrow/surface mining sites to occur. The BMP's listed below are a **minimum** and are not intended to limit the employment of additional measures or adjustments that will provide equal or better results towards minimizing community impacts. The City and Port will monitor the effectiveness of the BMPs and will meet at regular intervals to consider potential adjustments for the purpose of further improving the results, as needed.

All month-by-month work times are approximate and may overlap.

Residential and Community Impacts will be minimized by:

1. Excavation / Haul Activities
 - a. Excavation and haul from the borrow/surface mining site(s) shall occur from approximately June to October.
 - b. Material hauling on S. 188th St., or other City streets, shall comply with Exhibit D, "Material Hauling Provisions For Port Haul Projects" of the 1997 ILA. Changes to hours, routes, or number of one-way trips are subject to approval of the City Public Works Director.
 - c. A maximum of 70 one-way truck trips per hour will use City streets as part of the borrow/surface mining site(s) excavation, subject to approval of the City Public Works Director.
 - d. Haul on City streets during peak traffic hours shall be restricted.
 - e. Daytime work hours shall be limited to 7:00 AM to 5:00 PM, Monday through Saturday.
 - f. Nighttime work hours shall be limited to 7:00 PM to 7:00 AM, Sunday through Friday.
2. Noise
 - a. All construction vehicles and equipment operating between 10:00 PM and 7:00 AM shall be equipped with an ambient noise sensing variable volume backup alarm system, in compliance with WAC 296-155-615.
 - b. Equipment shall be selected and utilized to minimize noise generation (i.e., operate equipment to prevent loud, sudden noises, use forward-movement, circular routes for haul vehicles within the borrow/surface mining site(s), minimize backing of equipment).
 - c. Excavation at the top of excavation slopes, adjacent to residential areas, shall be limited to daytime.

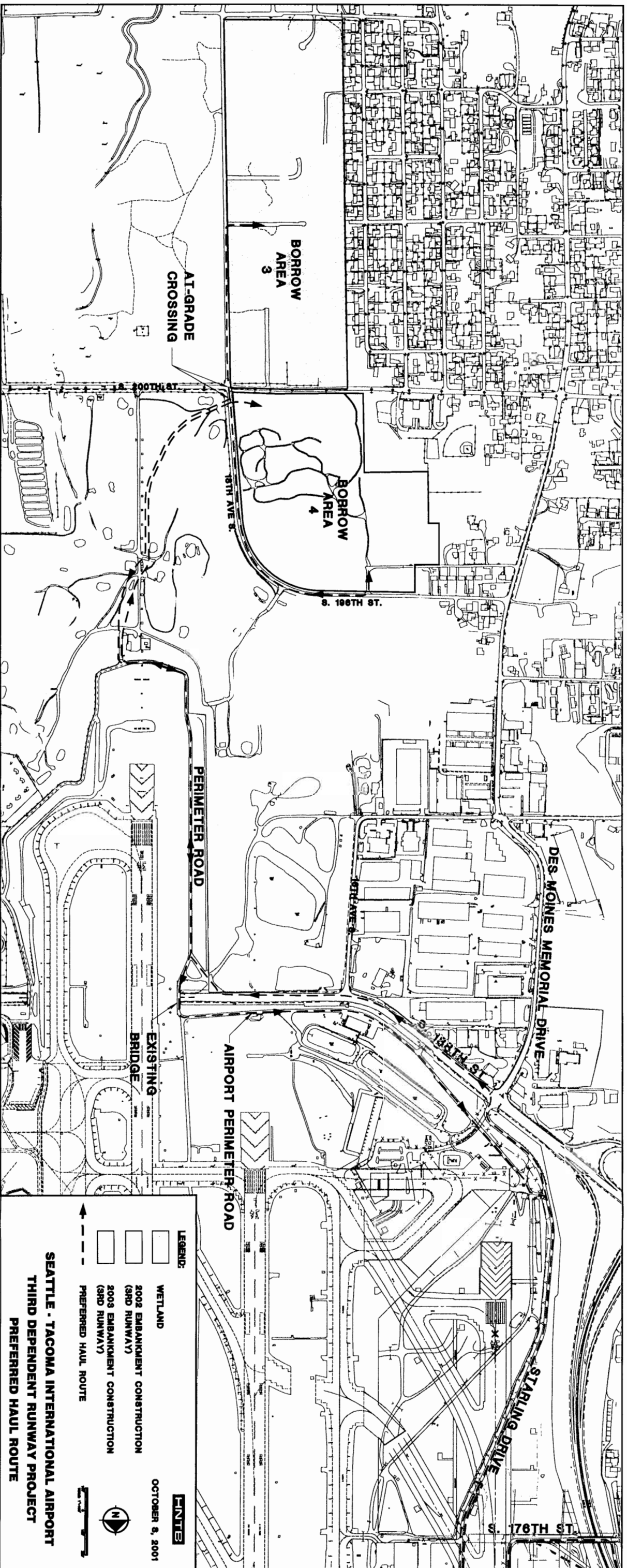
- d. Nighttime excavation shall occur only after the excavation is below top of slope and creates a natural noise berm. (The estimated excavation level will be 15 to 20 feet below the top of slope before nighttime work begins with adjustment based upon proximity to residences and equipment type and use. Noise levels to be monitored to ensure acceptability.)
 - e. Temporary topsoil stockpiles between the work activities and nearby residences will be employed to function as noise berms, where appropriate.
3. Dust
Measures shall be employed to control fugitive dust shall include, but not be limited to the following:
- a. Using wheel washes to minimize tracking dirt onto streets.
 - b. Keeping a water truck and sweeper on standby during all construction hours for dust and dirt control.
 - c. Reclaiming the borrow/surface mining site(s) in the same year as excavation to avoid exposure in the wet season.
4. Lighting
- a. The initial excavation shall be limited to daytime hours except as provided under section 2.d of this Attachment whereby nighttime excavation is permitted.
 - b. Lighting used for nighttime operations shall be directed away from residential areas and shall employ glare screens as necessary to shield adjacent residences from lighting.

Approximate work schedules and descriptions are:

- 1. Borrow Area 4
 - a. April 2002 - temporary erosion and sedimentation control, logging
 - b. May 2002 - staging area and haul route development, clearing and grubbing, topsoil stockpiling
 - c. June 2002 - daytime excavation
 - d. July 2002 - daytime and nighttime excavation
 - e. August 2002 - daytime and nighttime excavation
 - f. September 2002 - daytime and nighttime excavation, begin reclamation
 - g. October 2002 - daytime and nighttime excavation, continue reclamation
 - h. November 2002 - complete reclamation
- 2. Borrow Area 3
 - a. April 2003 - temporary erosion and sedimentation control, logging
 - b. May 2003 - access development, clearing and grubbing, topsoil stockpiling
 - c. June 2003 - daytime excavation
 - d. July 2003 - daytime and nighttime excavation
 - e. August 2003 - daytime and nighttime excavation
 - f. September 2003 - daytime and nighttime excavation, begin reclamation
 - g. October 2003 - daytime and nighttime excavation, continue reclamation
 - h. November 2003 - complete reclamation

Attachment D

Map of Preferred Haul Route



Amendment #4
to
Port of Seattle & City of SeaTac Interlocal Agreement
Entered into on September 4, 1997

In accordance with the provisions of the September 4, 1997 Port of Seattle and City of SeaTac Interlocal Agreement (ILA), including but not limited to ILA paragraph 12.2 "Amendment" and Exhibit A, section 2.4 "Expansion of Port Uses and Property," the Port and City hereby amend the ILA as follows:

Exhibit A, Attachment A-2, "Agreed Map and Land Uses on Port Property"

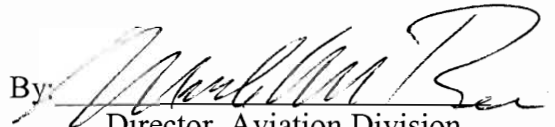
Add "Borrow / Surface Mining Operations" to the list of Permitted Principal Uses within both the Aviation Operations (AVO) and Aviation Commercial (AVC) zones.

Add note that Borrow / Surface Mining Operations are "Subject to Best Management Practices (BMP) and the protection of adjacent properties as agreed upon in advance between the City and the Port of Seattle."

This amendment #4 shall be effective on the date of the last signature below.

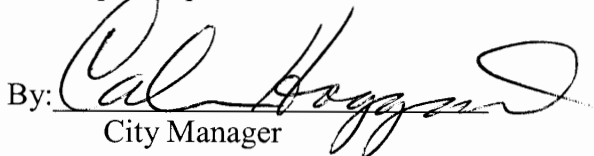
Dated: December 26, 2001

PORT OF SEATTLE, a Washington
municipal corporation

By: 
Director, Aviation Division
for Gina Marie Lindsey

Dated: DECEMBER 21, 2001

CITY OF SEATAC, a Washington
municipal corporation

By: 
City Manager

Approved as to form:

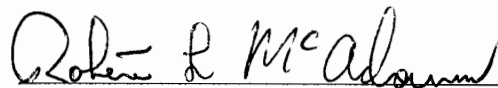

Robert L. McAdams, City Attorney

EXHIBIT "D"
Resolution No. 3469