

RESOLUTION NO. 2916

A RESOLUTION of the Port Commission of the Port of Seattle, King County, Washington, pertaining to the Redevelopment of Terminal 91, making certain findings and amending Resolution 2901 by adopting by reference the Terminal 91 SHORT FILL REDEVELOPMENT AGREEMENT.

WHEREAS, the Port of Seattle (the "Port") at its August 11, 1975, meeting deferred major redevelopment of Terminal 91 until the 1980's and adopted a Policy Statement calling for the preparation of an overall development plan for the Terminal, and

WHEREAS, following eight years of planning for the redevelopment of Terminal 91, the Port on July 12, 1983 adopted Resolution No. 2901 containing an overall redevelopment plan; and

WHEREAS, Section II, Paragraph C of Resolution No. 2901 makes environmental mitigation an integral component of the overall development plan by adopting as Appendix A the Terminal 91 Mitigation Program; and

WHEREAS, Section III of Appendix A of Resolution No. 2901, the Process for Resolving Community Environmental Concerns, set out a 90-day process for the Port, the Queen Anne Community Council and the Magnolia Community Club to reach agreement on further mitigation measures to respond to specifically identified concerns pertaining to noise, light, traffic, and aesthetics; and

WHEREAS, the Presidents of the Queen Anne Community Council and the Magnolia Community Club and members of their organizations specializing in Terminal 91 issues have met numerous times over the past ninety days with Port staff to discuss areas of concern and to develop a mutually beneficial agreement and have visited a Port terminal to inspect proposed lighting fixtures and have participated in a special noise study undertaken by Theodore J. Schultz, a noise consultant selected by the Port at the request of the communities. The noise study conducted by Mr. Schultz contained various suggestions for noise monitoring and controls, which suggestions the Port has agreed to; and

WHEREAS, as a result of the good faith efforts of the parties, agreement has been reached on further mitigating measures:

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


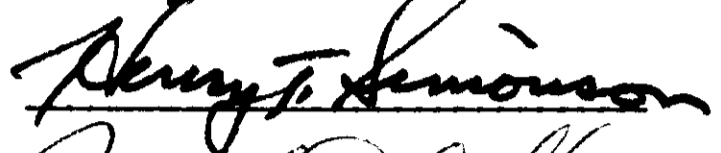
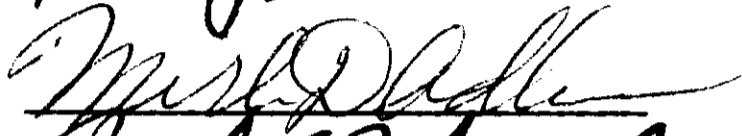
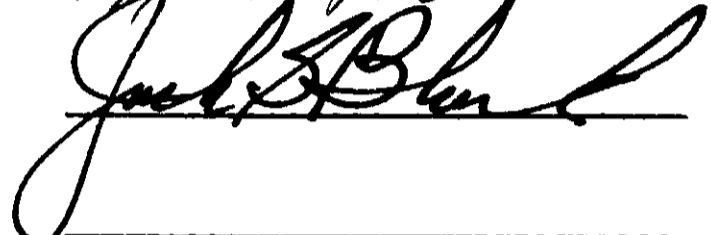
Section 1. Findings:

1. The Port Commission hereby finds that Redevelopment of Terminal 91 should be pursued in a manner which minimizes unnecessary environmental effects on neighboring residents.
2. The Port Commission hereby finds that the Terminal 91 SHORT FILL REDEVELOPMENT AGREEMENT, attached hereto, meets the intention of Section III of Appendix A of Resolution No. 2901 by developing further mitigation measures as well as processes for environmental monitoring and conflict resolution.

Section 2. Adoption of the Redevelopment Agreement:

1. The Terminal 91 SHORT FILL REDEVELOPMENT AGREEMENT which is attached hereto, having been approved by the Boards of the Queen Anne Community Council and the Magnolia Community Club, is hereby adopted by reference as an amendment to Resolution No. 2901.
2. The President of the Port Commission is hereby authorized and directed to execute the Terminal 91 SHORT FILL REDEVELOPMENT AGREEMENT on behalf of the Port of Seattle.

ADOPTED by the Port Commission of the Port of Seattle at a regular meeting held this 11th day of October, 1983 and duly authenticated in open session by the signatures of the Commissioners voting and the Seal of the Commission.

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Port Commissioners

# PORT OF SEATTLE

P.O. BOX 1209

SEATTLE, WASHINGTON 98111

October 6, 1983

Mr. Paul S. Friedlander, President  
Port of Seattle Commission  
P.O. Box 1209  
Seattle, Washington 98111

Dear Paul:

I will be unable to attend the Port Commission Meeting of October 11, 1983. However, I am familiar with Resolution No. 2916 declaring acceptance of Short-Fill Redevelopment Agreement - Terminal 91. I consent to that Resolution being placed on second reading and final passage.

Please enter this consent in the official minutes of the meeting.

Sincerely,



Henry L. Watkins  
Port Commissioner

Attachment to Resolution No. 2916

**SHORT FILL REDEVELOPMENT AGREEMENT**

Magnolia Community Club  
Queen Anne Community Council  
Port of Seattle

October 1983

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## SHORT FILL REDEVELOPMENT AGREEMENT

This Short Fill Redevelopment Agreement ("Agreement") is entered into by the Port of Seattle, a municipal corporation ("the Port"), the Magnolia Community Club and the Queen Anne Community Council (collectively referred to as "the Communities"). This Agreement shall become effective when executed by duly authorized representatives of the Port of Seattle Commission, the Magnolia Community Club and the Queen Anne Community Council. This Agreement is intended to be a comprehensive resolution of all disputes regarding the Port's "short fill" redevelopment of Terminal 91, as defined below. This Agreement also sets forth procedures which the parties pledge to use to resolve new issues which may arise out of short fill redevelopment.

### RECITALS

1. Since the reacquisition of Terminal 91 by the Port from the federal government, there has been concern among residents of the Communities that Port redevelopment might cause adverse impacts on the adjoining neighborhoods. Port redevelopment impacts the environment of the Port and its surrounding neighborhoods. In an attempt to resolve those concerns, the Port

Commission adopted a redevelopment policy in 1975 which called for, among other things, mitigation of impacts and citizen participation in planning for any major new development of the property. That policy included the establishment of the Neighbors Advisory Committee, which was intended to serve as a forum for sharing Port plans and community concerns as redevelopment went forward. The policy also called upon the Port to implement all reasonable mitigation measures to the extent adverse impacts from redevelopment were possible.

2. In 1980, the Port began a comprehensive planning process for redevelopment of Terminal 91. This planning process included a Report on Alternative Uses for Terminal 91 (August 1980) and an Environmental Impact Statement on Alternative Uses for Terminal 91 (January 1981) (the "Alternatives EIS"). This environmental and planning process included public hearings.

3. The Magnolia Community Club and certain individuals challenged the adequacy of the Port's Alternatives EIS and the legality of certain of the Port's actions in a lawsuit entitled Magnolia Community Club, et al. vs. Port of Seattle, et al., King County Superior Court, Cause No. 81-2-11775-9. That lawsuit is still pending.

4. On April 28, 1981, the Port Commission adopted specific guidelines and policies for the redevelopment of



Terminal 91. This action led to the preparation of a second environmental impact statement covering specific redevelopment plans. The Final Environmental Impact Statement: Terminal 91 Redevelopment ("Final EIS") was issued in March 1983. The Port also prepared a Terminal 91 Business Analysis (April 1983).

5. Following public hearings on the Final EIS, on July 12, 1983 the Port Commission adopted Resolution No. 2901, which stated that the ultimate objective for Terminal 91 was its development "as a first-class, modern cargo handling facility, utilizing the land provided by full fill of the waterway between Piers 90 and 91." The Communities believe that full fill is not a necessary component of that objective. The Resolution identified the planned uses for the facility and mitigation measures to which the Port was committed to minimize community impacts. The Resolution also recognized that redevelopment might occur in stages because of a variety of factors.

6. The Port's planning process was accompanied by continuing discussions between the Port staff and representatives of the Communities. There was a common feeling that good faith efforts by both sides could resolve contentious issues and that further litigation would not serve either the Port or the Communities well. Resolution No. 2901 reflected a tacit agreement between the Port and the Communities on redevelopment through the short fill phase and planned uses of Terminal 91

except for unresolved issues pertaining to noise, light, traffic and aesthetics. Further time was needed to resolve those concerns. Resolution No. 2901 reflected an understanding that the parties would negotiate for an additional period of ninety (90) days to develop further mitigation measures in those areas.

7. This Statement of Agreement contains the agreements reached during the negotiations described above. It is intended to:

(a) Settle all matters of dispute now existing over Terminal 91 short fill redevelopment, including any question regarding the adequacy of the Port's environmental review process insofar as it relates to short fill redevelopment.

(b) Commit the Port to undertake specific mitigation measures in connection with such redevelopment.

(c) Set forth methods to resolve new issues that may arise with the Communities over planned development and future operations at Terminal 91.

(d) Dismiss existing litigation with prejudice.

(e) Prohibit litigation among the parties over short fill redevelopment except as expressly provided herein to enforce

this Agreement. As explained in further detail below, the parties intend that this Agreement shall be legally enforceable to require the undertaking of mitigation measures specified in this Agreement. Where dispute resolution involves a process or choice of processes, however, the parties intend that this Agreement may be enforced to require the process to be undertaken, but not to compel the institution of any particular result of such process. This Agreement may also serve as a defense to a legal action.

(f) In lieu of opposition, proposed conditions to or comments by the Communities to Shoreline Substantial Development, Corps of Engineers or other permits needed for short fill redevelopment, the Port shall file an "Agreed Statement of Concern" (in the form of either Exhibit B or Exhibit C) with permitting agencies calling upon them to diligently exercise their regulatory oversight in review of the Port's permit applications.

8. This Agreement supersedes previous resolutions of the Port Commission as they pertain to the Neighbors Advisory Committee ("NAC") and sets forth a new charter for NAC. For ease of reference, this Agreement reiterates previous mitigation commitments by the Port. In case of a conflict as to a mitigation measure between this Agreement and previous resolutions, this Agreement controls. This Agreement does not supersede previous Port Commission resolutions as to any other matter.

9. Adoption of this Agreement signifies that the Communities agree to short fill redevelopment as described in Exhibit A.

10. Both parties are hopeful that the experience gained through successful implementation of this Agreement will resolve differences in their beliefs regarding full fill; however, the parties reserve the right to later disagree and the Communities retain their legal rights to challenge full fill redevelopment of Terminal 91 and the adequacy of the Port's SEPA documentation as it relates to full fill.

11. While the Final EIS identified steel transshipment as a potential use for Terminal 91 and assessed environmental impacts from such use, Resolution No. 2901 authorized only occasional steel project moves and steel as an incidental part of other cargo movements, excluding regularly scheduled steel shipments. The election by the Port to commence regularly scheduled steel shipments at Terminal 91 is defined below as "Further Redevelopment."

BASED UPON THE FOREGOING RECITALS, AND FOR GOOD AND VALUABLE CONSIDERATION, IT IS AGREED AS FOLLOWS:

A. GENERAL MATTERS

1. This Agreement is a comprehensive settlement of all disputes over the short fill redevelopment of and planned uses for Terminal 91. Short fill redevelopment means the physical redevelopment and those uses as described in Exhibit A. This Agreement does not cover:

(a) full fill redevelopment. Full fill redevelopment means redevelopment as described in alternatives D-E of the Final EIS and/or fill of the Smith Cove Waterway in excess of seven (7) acres (as described in the short and/or apron fill configurations in the Final EIS).

(b) the issuance of a new environmental impact statement covering any new physical development or change of use of Terminal 91 having a probable significant adverse environmental impact.

(c) institution of regularly scheduled steel shipments at Terminal 91.

(d) the sale, lease, acquisition by eminent domain or other conveyance of all or substantially all of the

property to the United States.

The action or actions described above in subparagraphs (a), (b) (c) and (d) shall be referred to as "Further Redevelopment."

2. This Agreement shall become effective as provided above and shall continue in effect unless terminated as provided below in paragraph 6.

3. The parties recognize the desirability of early discussion of Further Redevelopment, except in the case of a conveyance to the United States as provided for above in subparagraph 1(d). For such conveyance (if any), there is no utility in discussing further mitigation measures because decisions governing future redevelopment will be made by the United States. The Port shall give NAC the earliest reasonable notice of its intention to proceed with planning for Further Redevelopment, except as specified in paragraph 1(d), (the "intention notice") to allow for early discussion of ways to mitigate impacts which could result from such redevelopment.

4. The Port shall provide NAC with written notice of Further Redevelopment. Within seven (7) days of the authorization of any action described above in subparagraphs (a), (c) or (d) or the issuance of an EIS as provided above in subparagraph (b), such written notice shall be given to NAC. This notice

shall be referred to as the "action notice" and is different than the "intention notice" referred to above in paragraph 3.

5. The parties recognize the desirability of maintaining this Agreement in effect notwithstanding Further Redevelopment of Terminal 91. Upon the issuance of the action notice, the following steps shall be taken:

(a) The parties shall use their best efforts to negotiate a set of understandings covering Further Redevelopment, except in the case of the conveyance of Terminal 91 to the United States as provided above in paragraph 1(d). In particular, the parties should attempt to develop suitable mitigation measures for Further Redevelopment. It is the intention of the parties that the conditions contained in this Agreement should be retained to cover short fill uses to the extent short fill uses remain during Further Redevelopment. For such negotiations, the parties may employ NAC, mediation, private negotiations, or any other process agreed upon by the parties to be the most useful for that purpose.

(b) At the option of NAC, the NAC Chairperson may issue a report to the Port Commission on the progress of such negotiations.

(c) The Port shall not commence work on Further Redevelopment until the ninety (90) day period is concluded.

(d) If no written agreement is entered into by the parties by the conclusion of the ninety (90) day period, the negotiations shall be deemed unsuccessful.

(e) Only if the negotiations are unsuccessful shall the parties have the option of terminating this Agreement.

(f) None of these procedures shall apply in the case of the conveyance of Terminal 91 to the United States as provided above in paragraph 1(d).

6. This Agreement may be terminated by any of the parties by written notice, effective upon receipt, but such termination or notice shall not be made or given until after (a) the Port issues the action notice described above in paragraph 4, and (b) the parties are unable to conclude a new agreement under the process described above in paragraph 5(a) through (e). None of the obligations contained in this Agreement survive the termination of this Agreement.

7. The parties pledge their best efforts to work cooperatively to fulfill the letter and spirit of this Agreement.



The parties acknowledge that, in implementation of this Agreement:

(a) The Port staff cannot go beyond the authority delegated to them by the Port Commission. The staff will act in good faith to see that its recommendations for action reflect the purposes of this Agreement.

(b) The Magnolia Community Club and Queen Anne Community Council cannot act in a way to bind the freedom of their members to act in their individual capacities. The Magnolia Community Club and Queen Anne Community Council will act in good faith to educate their members and neighborhoods about this Agreement and use their best efforts to have community residents resolve their problems through the processes established herein, as opposed to litigation or other legal challenges to Port activity.

8. The Port represents that it has the power to and will compel its lessees and other users to observe the commitments contained in this Agreement.

9. This Agreement consists of a variety of different elements. The section entitled "General Mitigation Elements" reflects those committed mitigation measures identified in Resolution 2901. The section entitled "Neighbors Advisory

Committee" reflects matters agreed to since Resolution 2901 was adopted. The sections entitled "Noise," "Light," "Traffic" and "Aesthetics" consist of commitments made in Resolution No. 2901 plus additional matters agreed to during the course of negotiations. The sections entitled "Fill," "West Galer Street Improvements East of Elliott Avenue" and "Permits" and the "Agreed Statement of Concern" (Exhibits B and C) represent new matters agreed to since the Resolution was adopted. The "Covenant Not to Sue" section was identified in Resolution No. 2901 but is spelled out here.

10. On or after the effective date of this Agreement, the Port may issue a SEPA Notice of Action limited to short fill redevelopment as described in Exhibit A. The Port shall not issue a SEPA Notice of Action covering full fill redevelopment or the institution of regularly scheduled steel shipments until the procedures called for above in paragraph 5 are complied with.

#### B. NEIGHBORS ADVISORY COMMITTEE AND DISPUTE RESOLUTION

The Neighbors Advisory Committee ("NAC") was established in 1975 to enhance cooperation between the Port and the Communities. While NAC has performed a valuable service, the Port and the Communities agree that it could be strengthened and

take a more active role in improving Port-community relations. The following charter is hereby established for NAC:

1. The purpose of NAC is to foster a spirit of good will and neighborliness between the Port and the residents of Magnolia and Queen Anne. NAC shall have the prime oversight responsibility for monitoring this Agreement.

2. NAC shall serve as the prime conduit for information between the Port and the Communities. The Port shall provide NAC with prior disclosure of planned uses, physical changes, change of uses, change of activities, and property acquisitions at Terminal 91. The Communities shall use NAC as the prime vehicle to react both to Port plans and also to keep the Port well informed on current sentiment and any potential problems perceived in the Communities. NAC's usefulness should not be limited by an unwillingness of any party to fully and candidly discuss matters of mutual concern. All parties pledge their good faith best effort to achieve those ends.

3. NAC shall serve as the prime vehicle to resolve disputes regarding any matter arising out of this Agreement and any other matter involving short fill redevelopment.

4. Actual experience gained during short fill redevelopment shall be used by the parties to determine whether

specific mitigation measures are appropriate. Experience may show that certain commitments are too lenient (the Communities are experiencing unanticipated impacts) or too strict (traffic levels are exceeded with no major impact on the Communities). It is the intention of the parties to make a good faith effort to change those commitments (such as "trigger" levels) when such change is justified. Each party may request and all parties must agree to a modification of the commitments contained in this Agreement.

5. NAC shall consist of the following members: four (4) representatives from the Magnolia Community Club, one of whom shall be the President of the Magnolia Community Club; four (4) representatives from the Queen Anne Community Council, one of whom shall be the Chairperson of the Queen Anne Community Council; and a Chairperson who is neither a resident of Magnolia or Queen Anne nor an employee of the Port of Seattle. The Port shall designate four (4) non-voting representatives to attend NAC meetings, one of whom shall be the Director of Planning and Research. A non-voting representative of the City of Seattle shall be invited to NAC meetings.

6. The NAC Chairperson shall be chosen on the basis of his or her impartiality, objectivity and fairness, it being the intention of the parties that the Chairperson should be able to mediate differences between the parties. The Chairperson is

empowered to have discussions with one party outside the presence of the other parties, it being the intention of this Agreement that the Chairperson should use all tools at his or her disposal to maintain good relations between the parties. The Chairperson shall be nominated by the Port Commission and approved by the Communities. The Chairperson shall serve for a term of one (1) year and may be renominated and approved to serve an additional term or terms upon joint approval by the Port Commission and the Communities. The Chairperson shall be a non-voting member of NAC, except that he or she may vote in the case of a tie.

7. Regular meetings of NAC shall be held once a month at such time and place as NAC may decide from time to time. Notice shall be given to all parties of all NAC meetings.

(a) Special meetings may be called upon twenty-four (24) hours notice by the NAC Chairperson or any party.

(b) Any regularly scheduled or special meeting may be cancelled upon the concurrence of all parties. Each party shall designate one of its members to have the authority to so act.

(c) NAC meetings shall be open to the public and press.

(d) NAC may establish ground rules for its operation within the framework of this charter.

(e) The Port shall provide staff assistance to NAC:

(i) for agendas, minutes and mailings;

(ii) for providing technical and operating information.

8. Excepting disputes involving aesthetics (Section G), West Galer Street improvements (Section I) and permits (Section J), disputes arising under this Agreement shall be resolved as follows:

(a) The parties shall use their good faith efforts to resolve the dispute through NAC.

(b) In the event NAC determines by majority vote that the Port has violated the terms of this Agreement or that there is a substantial unresolved issue arising out of this Agreement, a report of such dispute shall be made either orally or in writing by the NAC Chairperson to the Port Commission. If the Port Commission responds to such report in a manner which is

deemed satisfactory by NAC, the dispute is at an end.

(c) In the event that the Port Commission takes no action within thirty (30) days of such report, or NAC deems the action taken to be inadequate, NAC shall so advise the Port Commission. In such event, the Port and the Communities shall utilize one of the following methods to resolve the dispute:

(i) The parties may engage the services of the Environmental Mediation Service, or any other qualified, objective and impartial mediator, to mediate the dispute. Any fees of the mediator shall be borne by the Port.

(ii) The parties may retain an independent consultant, at the expense of the Port, to review the dispute and make an independent report to NAC. The consultant shall be selected by the Port with the concurrence of NAC. If the consultant determines that the problem investigated is not causing a substantial impact to the Communities, the process is at an end. Substantial means more than a minimum effect upon those affected. If the consultant determines that the problem does cause substantial impacts on the Communities, the consultant shall recommend how such impacts could be lessened. The recommendations should focus on constructive action which could be taken by the Port to

solve the problem, but may consider how to involve other entities, such as the City, Metro, and third parties. Any action recommendations shall be presented to the Port Commission. The Port pledges to give the recommendations weight in its decision making process, but the Communities acknowledge that the Port cannot promise in advance to adopt the suggestions made. The Communities also acknowledge that not all problems are within the jurisdiction of the Port to solve.

(iii) The parties can appoint an independent arbitrator to conduct either binding or non-binding arbitration. The parties recognize that arbitration is appropriate mostly for issues which are quantifiable. Prior to embarking on binding arbitration, the process must be approved by the Port Commission.

In the event of the failure of the parties to agree upon a dispute resolution procedure, the parties shall engage in mediation as provided above in subparagraph (c)(i). The parties acknowledge that these procedures are intended to be their exclusive remedy for resolving disputes and that they have covenanted not to sue to resolve them, except as expressly provided.

9. The Port shall submit to NAC for advisory comment draft copies of planned permit applications and allow NAC a



period of fourteen (14) days for comment prior to submitting such applications to regulatory agencies.

10. Any dispute involving Terminal 91 not covered by this Agreement, except Further Redevelopment, shall be presented to NAC for resolution under the dispute resolution methods set forth above in paragraph 8, so long as this Agreement has not been terminated.

11. NAC has, in the past, also been used as a forum to discuss and resolve problems over Terminal 86. NAC may continue to discuss and resolve problems over Terminal 86, but Port operations at and development of Terminal 86 are not subject to any of the provisions of this Agreement. For instance, neither the dispute resolution procedures above in paragraph 8 nor the Covenant Not to Sue in Section K apply to Terminal 86.

#### C. GENERAL MITIGATION ELEMENTS

1. Development and operation of Terminal 91 shall comply with all existing applicable federal, state, local statutes, regulatory criteria and licenses. This commitment includes all specific requirements identified in the Final EIS.

2. Any sediments dredged at Terminal 91 will be tested and disposed of as required by EPA, the Corps of Engineers and the Washington Department of Ecology.

3. Demolition and construction contractors shall be required to control dust by following PSAPCA recommended practices.

4. All in-water construction will comply with migration timing restrictions to protect juvenile salmonids.

5. All new structures will comply with the applicable building code, including energy conservation requirements.

6. Existing intertidal habitat in the 89/90 slip will be replaced if affected by dredging.

7. A landscaped bikepath for commuting, recreational and weekend use, subject to Port operations, will be built as part of short fill redevelopment.

8. Energy conservation measures will be considered and designed into the development. Lighting, insulation, and reefer/heating linkages will be considered.

9. Heights of new buildings shall be limited to sixty-five (65) feet in elevation.

10. The Port shall construct a new gate and access utilizing West Galer Street. Such access shall be constructed as soon as is feasible; the Communities acknowledge that it is not feasible to proceed with this portion of the work until the U.S. Navy decides whether to acquire Terminal 91.

11. Upon completion of the West Galer Street access, the North Gate shall be closed, except for emergencies or labor difficulties.

12. The Port shall use its best efforts to see that any steel shipments (occasional steel project moves and steel as an incidental part of other cargo movements) shall not occur between ten (10) p.m. and seven (7) a.m.

#### D. NOISE

1. Terminal 91 shall be redeveloped in a way to minimize unnecessary noise impacts on neighboring residents. Although the Noise Study conducted pursuant to these negotiations indicates that Terminal 91 currently contributes a minimal amount to the total noise environment, this Agreement is intended to

monitor the noise environment closely and to establish preventative measures to protect the Communities from unwarranted noise caused by future operations. Such measures include:

(a) monitoring the equipment used at Terminal 91 on site and from the Communities;

(b) establishing specific noise limits for Terminal 91 noise sources;

(c) creating a complaint procedure for community residents to employ for noise problems; and

(d) taking acoustics into consideration while designing redevelopment plans.

2. In the redevelopment process, the Port shall consider acoustical aspects of the project. The Port shall also develop and seek the advisory comment of NAC on a program to review systematically the relevant, existing stationary sources which generate noise on the Terminal, including identifying feasible means, if any, to muffle or control such noise sources. The Port will implement noise control measures to the extent those measures do not significantly increase redevelopment costs or impair port operations.

3. The parties have cooperated in the selection of Mr. Theodore J. Schultz as a special noise consultant for Terminal 91. Mr. Schultz has reviewed existing noise studies, conducted noise monitoring and performed noise experiments. Mr. Schultz's report is entitled TERMINAL 91 NOISE PRACTICES AND PROCEDURES STUDY. Based upon the results of Mr. Schultz's report, the parties agree as follows:

(a) Existing noise sources which predominate in the Communities do not originate at Terminal 91 but come from such sources as aircraft flyovers, traffic, operations at Burlington Northern and community sources.

(b) The abundance of other noise sources makes it difficult to measure the contribution of noise from Terminal 91 to the total noise environment by actual monitoring in the Communities.

(c) It is nevertheless important to monitor noise at Terminal 91 to insure that it does not become a problem in the Communities. Based upon that recognition:

(i) Mr. Schultz has developed for typical conditions A-Weighted Sound Level Limits ( $L_A$  at 50 ft) ("noise limits") for various pieces of equipment likely to be used at Terminal 91, including unanticipated items. The parties expect

that adherence to the noise limits should assure that the City of Seattle Noise Ordinance is not violated.

(ii) The noise limits are as follows:

EQUIPMENT	A-WEIGHTED SOUND LEVEL LIMIT ( $L_A$ at 50 ft)
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Forklifts:

60,000#	80 dBA
30,000#	78
24,000#	76
12,000#	74
8,000#	72.5
3,000#	68

P91 Chiller facility	60
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CHEMPRO

Boiler	70
Oil Transfer Pump	65
Air Compressor	70

CITY ICE

Cooling System	70
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Unanticipated Items	90 daytime
	80 nighttime

(iii) Three types of items are governed by the noise limits on Unanticipated Items in paragraph 3(c)(ii) above. They are: short term/portable equipment; additional equipment at the Terminal; and non-construction sources exempt from City Ordinance.

(a) Short term/portable equipment (such as non-construction pumps, compressors, generators, and other non-permanent equipment). This equipment must comply with the noise limits for Unanticipated Items given in paragraph 3(c)(ii) above, except as provided in the next sentence. If an individual piece of such equipment operates on the Terminal for more than four (4) consecutive days, the Port shall either: (i) lower the noise limit for that piece of equipment to 80 daytime/70 nighttime; or (ii) immediately notify NAC of the reasons said lower limits are not appropriate, and establish appropriate noise limits for that item of equipment in discussion with NAC.

(b) Additional equipment. The Port will inform NAC of new or additional equipment, with a potential for creating more than 65 dBA ( $L_A$  at 50 ft), to be used at the Terminal. The Port will establish noise limits for such equipment in consultation with NAC. Whenever such a noise limit has

not been established, the new equipment shall comply with the noise limits for Unanticipated Items given in paragraph 3(c)(ii).

(c) Exempt non-construction sources.

The Port shall use its best efforts to insure that the noise of non-construction sources exempt from City Ordinance does not exceed the noise limits for Unanticipated Items given in paragraph 3(c)(ii) above, but the Communities acknowledge that compliance cannot be guaranteed at all times.

(iv) The Port shall insure that the noise limits are not exceeded. In furtherance of this goal, the Port shall:

(a) not operate or permit to be operated any equipment exceeding the noise limits;

(b) by January 15, 1984, monitor equipment in use at the facility to see that the noise limits are met;

(c) every six months, remonitor any equipment which in the past has exceeded 65 dBA to see that it does not exceed the noise limits;



(d) monitor every new type of equipment as soon as possible, but not later than six (6) months after its arrival at the Terminal;

(e) use its best efforts to do spot monitoring if requested by NAC for particular problems or if a piece of equipment appears to be unusually noisy; and

(f) consider the replacement or phase-in of electric forklifts, based on discussion with NAC, to the extent economically and operationally feasible.

4. In an effort to keep track of the overall noise impact from the Terminal, the Port shall keep an accounting of the total overall noise-making capability of the Terminal 91 operations, by means of a Noise Index ("the Noise Index") that includes the aggregate of all of the equipment as measured at the Terminal. The Noise Index is defined as the A-weighted sound level (in bels) that would be observed at a distance of 50 feet if all of the Terminal's equipment were to occupy the same location simultaneously, operating at full power. The formula for determining the Noise Index is set in Mr. Schultz's report.

(a) The parties acknowledge that the Noise Index is not, by itself, an indication of the actual noise received by

the Communities. The parties shall nevertheless use the Noise Index as a "trigger" level to investigate noise impacts further.

(b) The Noise Index shall be updated every six months; the first such index shall be dated January 15, 1984 and shall be the "base index."

(c) In the event that a future Noise Index exceeds the base index by 0.25 bels, the parties shall retain a qualified acoustical consultant under the procedures set forth in Section B, paragraph 8(c)(ii). The consultant's report shall be in two phases:

(i) Phase I. Does the increase in the Noise Index result, in fact, in greater noise impact in the Communities and create an apparent noise problem for the Communities? If not, the increased Noise Index shall become the new Base Index.

(ii) Phase II. If the impact is greater and results in an apparent noise problem for the Communities, what action can the Port take to mitigate the problem?

5. In addition to the above, the Port shall conduct monitoring in the Communities every six months to identify noise sources and to serve as an early warning system to see if the

noise environment is changing. Such monitoring shall be performed for one night, in each community, when Terminal 91 operations are being conducted, at locations selected by the Port with the concurrence of NAC. Monitoring shall be performed at one location on Queen Anne and one location on Magnolia. Observers from NAC shall be invited to participate in the monitoring. The monitoring shall consist of the use of a sound level meter with an observer who shall record sound "peaks" and note intrusive noise events, including the sound level and source, where possible. The results of the monitoring shall be presented to NAC.

6. The Port shall at all times adhere to provisions of the City of Seattle Noise Ordinance, as now exists or as hereafter amended, and any other applicable ordinance, regulation, or law. If there is a dispute over compliance with such ordinance, regulation, law, or any other provision of this Section, the parties shall, as with other disputes under this Agreement, complete the dispute resolution process contained in Section B, paragraph 8 prior to instituting any suit allowed under Section K.

7. The Port shall maintain a twenty-four (24) hour noise complaint monitoring system for Terminal 91. The system shall include the following elements:

(a) There shall be a 24 hour telephone line dedicated to noise complaints. The telephone number shall be advertised in the Communities on a periodic basis.

(b) There shall at all times be designated a Port employee to act as a duty officer for Terminal 91 noise problems. The duty officer shall be vested with authority to cure sudden or unanticipated noise problems on a prompt basis.

(c) Upon receipt of a complaint, the Port shall record time, date, name, address, phone number of the caller, and the nature of the noise and its apparent location.

(d) If the complained of noise appears to originate off the Terminal, the caller will be so advised.

(e) If the complained of noise appears to originate on the Terminal, the Port will promptly investigate the complaint. If the problem appears to be one which does affect the Communities and which can be resolved, the Port shall do so. The Port shall make every effort to identify and cure such problems within two (2) hours. The caller shall be advised by telephone or in writing of the action taken by the Port.

(f) The Port shall regularly report to NAC on noise complaints received and responses made thereto.

(g) If there are repeated complaints about a particular source or activity on the Terminal and NAC decides by majority vote that the Port has taken insufficient action to cure the problem, then a qualified acoustical consultant shall be retained under the procedure set forth in Section B, paragraph 8(c)(ii).

8. The following conditions govern construction noise:

(a) Construction/demolition work shall be limited to 7:00 a.m. to 8:00 p.m. Monday through Friday. No weekend work shall be performed except with the approval of the Project Engineer and then only from 9:00 a.m. to 6:00 p.m. The Port shall notify NAC in advance of any such work.

(b) All contractors will be advised that control and reduction of noise impacts is of particular importance at Terminal 91.

(c) All construction contracts shall contain the following provisions:

(i) gas/diesel engines shall be equipped with mufflers;

(ii) air compressors shall be equipped with silencing packages;

(iii) jack hammers shall have silencers on their air outlets;

(iv) electrically driven equipment shall be preferred over gas/diesel driven equipment, when feasible.

(v) the contractor shall use its best efforts to employ the quietest feasible pile drivers consistent with construction practices; and

(d) Sounds created by impact types of construction equipment, including but not limited to, pavement breakers, pile drivers, jack hammers, sand blasting tools, or any other types of equipment or device that creates impulse noise, impact noise, or is used as impact equipment, may exceed the maximum permissible levels of the Seattle Code in any one-hour period between the hours of 8:00 a.m. to 5:00 p.m. on weekdays. Construction operations are prohibited on weekends except under special dispensation. The noise levels are to be measured at the Terminal property line or at 50 ft distance from the equipment, whichever is greater, and may not exceed the following schedule of noise levels:

The basic permissible level is  $L_{eq} = 90\text{dBA}$  continuous for one hour.

Alternative allowances are permitted as follows:

$L_{eq} = 93 \text{ dBA}$  for 30 minutes;

$L_{eq} = 96 \text{ dBA}$  for 15 minutes;

$L_{eq} = 99 \text{ dBA}$  for 7.5 minutes.

Sound levels that exceed 99 dBA are prohibited.

For the purpose of monitoring the requirements of this clause, the values of  $L_{eq}$  may be measured for periods at least one minute in duration and these values may be used to project the hourly  $L_{eq}$ . (The preceding language is taken from the draft City Noise Ordinance. The Port agrees to abide by these or the adopted limits, whichever are more stringent.)

9. For items whose noise in the Communities does not exceed the City Ordinance, but which nevertheless give rise to repeated complaints in the Communities, the Port will take under consideration special noise control measures on a one-by-one basis, as recommended in Section 7 of the Schultz report (for

example, for occasional steel or "frequent visitors" like the Rose Marie oiler barge).

#### E. LIGHT

1. The overall objectives for Terminal 91 lighting is to minimize lighting impacts on the Communities while providing sufficient illumination to provide efficient operations, safe working conditions and to comply with applicable safety standards.

2. The Port and the Communities recognize that the best time to address lighting impacts is at the time of design. The Port has consulted with the Communities over the design and arrangement of proposed lighting. The following represents agreed upon elements for lighting during redevelopment:

(a) New lights installed at Terminal 91 shall be limited to sixty (60) feet in elevation (including base) above the yard or pier surface. Brackets will be of the "wagon wheel" type, equivalent type or better. Fixtures shall be "Hi Mast" area lights, with the exception of the lighting serving the bull rail (edge of the pier), which shall be high cut-off flood light fixtures. Direct source and reflectors shall not be visible at or above the elevation of the fixture at any point in the community. NAC will be consulted prior to the time that a final



decision on fixtures is made. These restrictions do not apply to existing lights.

(b) New lights associated with the W. Galer Street access shall be limited to thirty-five (35) feet in elevation above street level and will utilize flush-lens street light fixtures.

(c) Any new lighting in the area north of the W. Garfield Street viaduct shall be limited to thirty-five (35) feet elevation above street level and will utilize flush-lens street light type fixtures.

(d) All new lighting shall be zoned by working area and shall have a security mode. A zone shall be defined as illumination within a logical working area and shall be designed so as not to illuminate functionally unrelated areas. When no work is being done within a zone, the lighting shall be reduced to a security mode.

(e) The parties recognize that lighting levels for safe working conditions are regulated by the Occupational Safety and Health Administration (OSHA). In no event shall these commitments prevent compliance with standards promulgated by OSHA.

(f) Subject to changes in OSHA regulations, lighting levels for new lights installed at Terminal 91 shall be as follows (measurements are shown in foot candles):

	Bull rail	Yard area	Perimeter of North Yard
<u>Working levels</u> (in foot candles)			
Maximum*	7	7	1.5
Minimum**	3	5	.5
<u>Security Levels</u> (in foot candles)			
Maximum*	1.5	1.5	1.5
Minimum**	.5	.5	.5

\* Maximum levels are averages based on the entire area which is illuminated; spot levels may be much higher.

\*\* Minimum levels are averages based on the entire area which is illuminated, except in the case of the bull rail, where the minimum is for any given spot. Minimums are provided to show compliance with current OSHA regulations.

#### F. TRAFFIC

A monitoring program for traffic to and from Terminal 91 shall be established in consultation with the Communities. The

purpose of a monitoring program is to determine whether future traffic volumes and levels of service stay within estimated ranges. The Port and the Communities have established "trigger" levels for traffic volume which, if exceeded, will result in more intensive review by the Port and action if required.

### Monitoring

1. The Port will undertake the following monitoring program:

Gates: The Port will obtain daily (24 hour), a.m. and p.m. peak period gate counts of trucks and autos entering or leaving all Terminal 91 gates for one (1) week each quarter. Gate counts will be reported as trip ends. A trip end is an arrival or a departure. Thus, a single vehicle which enters and then leaves the terminal will generate two trip ends. The results of this monitoring shall be provided to NAC at the first meeting following each sampling week.

Intersections: Congestion and delay at intersections are measured in terms of Level of Service (LOS) under a system described in Interim Materials on Highway Capacity, Transportation Research Board (1980). Levels of Service range from A through F, with Level of Service (LOS) A representing congestion free service and LOS F representing jammed conditions. The Port will obtain LOS determinations for the peak hours at the

following intersections once a year: Elliott and Galer; Elliott/15th and Garfield; 15th and Dravus (until Galer access is completed), West Mercer Place and Elliott; and 20th and Dravus.

### Trigger Levels

2. The parties establish the following "trigger levels" for vehicle traffic at gates and intersections:

Gates:	<u>Trucks</u>	<u>Autos</u>
24 hour gate counts	325 trip ends	3500 trip ends
a.m. peak (7:15 to 8:30)	25	395
p.m. peak (3:45 to 5:30)	48	612
(total of all gates)		

If during any monitoring period for gate counts the auto or truck trigger levels are reached or exceeded on one or more days, then responsive action as described in paragraph 3 below will be taken.

Intersections:

For purposes of Levels of Service, exceeding the trigger level means attaining the stated level of service or a lower level of service.

<u>Intersection</u>	<u>Trigger Level</u>
Elliott and Galer	LOS E
Elliott/15th and Garfield	LOS C
15th and Dravus	LOS C
20th and Dravus	LOS C
W. Mercer Place & Elliott	LOS C

If the level of service for any intersection is determined to be at or exceeds that intersection's trigger level, then responsive action as described below will be taken.

Responsive Action

3. As a first response to a gate count or LOS determination reaching or exceeding a trigger level, the Port will promptly obtain a second week of daily gate counts or a new set of LOS determinations, as the case may be. If the results of the follow-up monitoring are below trigger levels, then no additional action by the Port is needed.

If the results of a follow-up monitoring effort reveal that any trigger level is met or exceeded, then as a second response an independent consultant shall be retained as provided above in Section B, paragraph 8(c)(ii).

#### Revision of Trigger Levels

4. Experience may show that either the traffic trigger levels or the level of service indicators are either too high or too low. NAC should periodically review the trigger levels.

5. The parties agree that the preceding monitoring and "trigger levels" do not apply to construction traffic. Construction traffic will be discussed at NAC and the Port will make a good faith effort to resolve construction traffic problems. Objectives for minimizing effects of construction traffic include the following:

(a) avoiding construction truck traffic during rush hours;

(b) routing construction truck traffic through the Galer corridor, except in the event of labor difficulties;

(c) using barges instead of trucks when economically and operationally feasible.

## Mercer Way and W. Mercer Place

6. The parties note that the City of Seattle has the prime responsibility for truck traffic, including construction truck traffic. The parties agree to jointly approach the City concerning ways to eliminate truck traffic from Mercer Way and W. Mercer Place. In addition, the Port will seek improvements in designation of appropriate truck routes to and from the terminal and will mail maps of truck routes to tenants and customers and have such maps available at gates.

### G. AESTHETIC ELEMENTS OF DESIGN

Terminal 91 shall be redeveloped in a way to minimize glare and create a visually pleasing facility so long as such aesthetic considerations do not interfere with planned uses for Terminal 91. The parties also acknowledge, however, that aesthetic judgments differ from person to person and that absolute aesthetic standards cannot be established. The following process and goals are designed to allow the parties to discuss Terminal 91 aesthetics during the final design stage of the project against certain broad, agreed upon criteria.

1. Any new gatehouse or employee and longshore parking areas shall be landscaped.

2. Engineering plans for both reconstruction and new construction shall be reviewed by NAC to allow NAC advisory comment on aesthetic elements of Terminal 91 redevelopment.

(a) NAC shall have a period of fourteen (14) days in which to conduct such review.

(b) Such review shall occur prior to the letting of contracts or bids.

(c) If NAC makes no comments at the conclusion of the review period, NAC is deemed to have no comments to such plans.

(d) If NAC has comments, the Port shall respond to them promptly.

(e) If, after such response, there is a serious, unresolved issue, the NAC Chairperson shall present such matter to the Port Commission for consideration as promptly as possible.

(f) This process of review for aesthetic elements of design is not intended to permit review of functional elements of design, that being reserved to the discretion of the Port.



The parties acknowledge that there is not sufficient time to resolve matters of aesthetics under the dispute resolution procedures set forth in Section B, paragraph 8 and that such procedures shall therefore not be utilized.

3. The parties recognize the following aesthetic goals for Terminal 91 redevelopment, to the degree that attainment of such goals does not constrain planned operations or significantly increase costs:

(a) a pleasing overall color scheme

(b) pitched roofs (minimum of twelve [12] horizontal to one [1] vertical)

(c) non-reflective surfaces

(d) incorporation of landscaping, especially trees, as part of building design, generally as shown in the Port's Public Access and Landscape Plan Drawing No. PE-8305.

4. New landscaping will be provided and maintained along the bikepath and around the new gatehouse. Landscape designs shall maximize the utilization of trees.

#### H. FILL MATERIAL

Filling the short fill portion of the Smith Cove Waterway shall be done under the following conditions:

1. An artificial reef shall be constructed at a site to be developed with permitting agencies to mitigate any subtidal habitat lost through fill.

2. Any dredged material proposed as fill will be tested and will be placed using methods developed with permitting agencies to prevent harmful effects. Fill will be placed behind berms.

3. If dredged material is proposed as fill, additional measures to control water quality will be considered including turbidity curtains and the location of dredged material in the fill.

4. If dredged material unsuitable for open water disposal is used as fill, leaching will be monitored to ensure no harmful concentrations of contaminants occur in the ground water. Any such unsuitable material shall be placed behind berms and covered with a cap of select fill no less than ten feet in thickness.

I. WEST GALER STREET IMPROVEMENTS EAST OF ELLIOTT AVENUE

1. Proposed plans call for a jug handle shaped reconfiguration of West Galer Street improvements east of Elliott Avenue, as shown in Figure V-19 of the Final EIS ("the improvements"). While the Port will construct the improvements in accordance with City of Seattle Engineering Department standards, the Communities have some concerns about the proposed design.

2. Forty-five (45) days prior to advertising for bids for work to construct the improvements, the Port shall submit engineering plans for such work to NAC for advisory comment.

3. The Communities, at their option and expense, may retain a civil engineer to review such plans.

4. NAC may make advisory comments to the Port, including any recommendations of a traffic engineer hired pursuant to the provisions of paragraph 3 above. Any such comments shall be made within forty-five (45) days of the submission of such plans to NAC as provided above in paragraph 2.

5. The Port shall promptly respond to such comments. If, after such response, there is a serious, unresolved issue,

the NAC Chairperson shall present such matter to the Port Commission for consideration as promptly as possible.

6. The parties acknowledge that there is not sufficient time to resolve matters concerning the improvements under the dispute resolution procedures set forth in Section B, paragraph 8, and that such procedures shall therefore not be utilized.

#### J. PERMITS

1. The Port shall provide to NAC copies of permit applications made to any governmental agency in connection with Terminal 91 short fill redevelopment to allow NAC advisory comment to the Port on environmental concerns.

(a) NAC shall have a period of fourteen (14) days in which to conduct such review.

(b) If NAC makes no comments at the conclusion of the review period, NAC is deemed to have no comments to such plans.

(c) If NAC has comments, the Port shall respond to them promptly.

(d) If, after such response, there is a serious unresolved issue, the NAC Chairperson shall present such matter to the Port Commission for consideration as promptly as possible.

(f) The Port has the discretion to file a permit application after the conclusion of the fourteen (14) review period, regardless of whether NAC has made any comments.

(g) The Port has the discretion to later amend its permit application to reflect any action taken by the Port in response to NAC comments.

(h) This process of review for environmental concerns is not intended to permit review of functional elements of design, that being reserved to the discretion of the Port.

(i) Nothing in this section shall be construed to permit the Communities to make comments, propose conditions or oppose any permits before the concerned agency (see Section K, paragraph 1(c)).

2. The Communities acknowledge that they will not contest permits before regulatory agencies and that the dispute resolution procedures set forth in Section B, paragraph 8 shall not be utilized in connection with such permits.

K. COVENANT NOT TO SUE

1. In consideration of the commitments made by the Port in this Agreement, the Magnolia Community Club and Queen Anne Community Council agree and covenant not to sue or institute any action at law or in equity against the Port, the Port Commissioners, any Port employee, agent, or contractor, or any governmental regulatory agency or in any way aid in the institution or prosecution of any suit, or action arising out of the following:

(a) The adequacy, completeness or sufficiency of the Alternatives EIS and Final EIS as it relates to short fill redevelopment (alternatives A, B and C), excepting only use of Terminal 91 for regularly scheduled steel shipments.

(b) Resolution No. 2901 of the Port Commission, including the overall Terminal 91 redevelopment plan, any Resolution or other action to authorize work pursuant to Resolution No. 2901 or any other resolution of the Port Commission regarding Terminal 91, but only insofar as those resolutions authorize short fill redevelopment.

(c) The issuance of any Shoreline permit, Corps of Engineers permit and any other permit, authorization, action, order, approval, concurrence, review, comment or consultation ("permit") by any regulatory agency in connection with short fill

redevelopment, including but not limited to permits issued by the following agencies: the City of Seattle, Washington State Department of Ecology, Department of Fisheries, Department of Game; United States Environmental Protection Agency, U.S. Army Corps of Engineers, National Oceanographic and Atmospheric Administration (Department of Commerce) and U.S. Fish and Wildlife Service (Department of Interior.)

(i) Because of the Communities concern regarding the use of fill which may be contaminated and unsuitable for open water disposal, the parties have executed an "Agreed Statement of Concern" which is attached to this Agreement as Exhibit B. The Port shall submit a copy of Exhibit B with any application it makes to a regulatory agency in connection with the proposed fill of the waterway. The communities agree that such statement of concern shall be in lieu of any opposition, proposed condition, or comment that they might otherwise have, offer or make to such regulatory agency, and agree not to oppose, propose conditions for, or make any comment regarding the issuance of such permits.

(ii) Because of the Communities concern regarding short fill redevelopment, the parties have executed an "Agreed Statement of Concern" which is attached to this Agreement as Exhibit C. The Port shall submit a copy of Exhibit C with any application it makes to a regulatory agency for work in

connection with short fill redevelopment, except where Exhibit B is to be filed as provided above. The Communities agree that such statement of concern shall be in lieu of any opposition, proposed condition, or comment that they might otherwise have, offer or make to such regulatory agency, and agree not to oppose, propose conditions for, or make any comment regarding the issuance of such permits.

2. This covenant may be used as a defense to any action or proceeding brought, instituted, or maintained by either or both of the Communities or on their behalf against the Port or any regulatory agency with permitting authority. It is the intention of the parties that a regulatory agency be permitted to rely upon this Agreement as a defense to any action brought against it by either or both of the Communities or on their behalf over short fill redevelopment.

3. This covenant shall not extend to, and shall not be construed to bar any proceedings:

(a) In connection with Further Redevelopment.

(b) To enforce any mitigation measure specified in this Agreement in Sections C, D, E, F and H. It is the intent of the parties that this agreement shall be specifically enforceable by injunctive relief by any party with regard to such



mitigation measures (example: suit would lie to enforce limitation in height of new light poles).

(c) To require the institution of any dispute resolution, monitoring or other process called for in this Agreement (example: suit would lie to compel hiring of a consultant in the event traffic trigger levels are exceeded). It is not the intention of the parties to permit suit or judicial enforcement of the result of dispute resolutions, excepting only the results of binding arbitration pursuant to Section B, paragraph 8 (c) (iii). (Example: suit would lie to compel the hiring of a consultant under Section B, paragraph 8 (c) (ii), but no suit would lie to compel the Port Commission to adopt the recommendations made by the consultant.)

4. Prior to the institution of any suit permitted under paragraph 3 above by either or both of the Communities, the dispute resolution process described in Section B, paragraph 8 shall be completed. This Agreement shall be a bar to any suit which is filed prior to the exhaustion of the dispute resolution procedures.

5. The Magnolia Community Club shall dismiss, with prejudice, its existing lawsuit against the Port (Magnolia Community Club, et al. vs. Port of Seattle, et al., King County Superior Court Cause No. 81-2-11775-9). The Magnolia Community

Club shall use its best efforts to obtain the dismissal with prejudice of said suit by the individual plaintiff.

L. EXECUTION

The parties have read this Agreement and understand its terms. The persons signing below represent that they have been duly authorized by their respective organizations to execute this document. This Agreement sets forth the entire understanding among the parties and supersedes any prior negotiations or understandings, whether oral or written. The Port Commission, the Magnolia Community Club and the Queen Anne Community Council all pledge active support to make this Agreement succeed, recognizing it as a major step towards establishing cooperative rather than contentious relationships between the Port and its Terminal 91 neighbors.

IN WITNESS WHEREOF, the parties have executed this document on the dates below indicated.

PORT OF SEATTLE

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

MAGNOLIA COMMUNITY CLUB

By Kenneth L. Schubert, Jr.  
President

Date \_\_\_\_\_

By John W. Cain, Jr.  
Chair, Piers 90-91 Committee

Date \_\_\_\_\_

QUEEN ANNE COMMUNITY COUNCIL

By Paige Miller, Chair

Date \_\_\_\_\_

Agreement  
10/10/83

## EXHIBIT A

### SHORT FILL REDEVELOPMENT

Short fill development consists of a series of options which are limited to the following actions:

#### Physical Redevelopment

Demolition of all existing warehouses.

Construction of up to two new chill warehouses on Pier 90.

Construction of up to 1800 feet of concrete apron on the east side of Pier 90 and up to 1500 feet of concrete apron on the west side of Pier 91. The remaining aprons would be maintained in timber.

Construction of a shed of up to 35,000 square feet on Pier 91 for breakbulk/neobulk operations.

Construction of a new Galer Access roadway with associated fill and gatehouse.

Construction of a landscaped bikepath along the east side of the Terminal.

Dredging of the Terminal 91 West slip to -50 feet and the Terminal 89/90 and Smith's Cove Waterway slips to -35 feet mllw.

Fill of up to seven acres of Smith's Cove Waterway that are now open water, in addition to the fill necessary for the new gatehouse and mitigation.

This acreage includes fill which could occur for the "short fill" and/or "apron fill".

Construction of a relieving platform between the "short fill" and the uplands.

Acquisition of fifteen (15) acres from Burlington Northern.

Installation of up to two whirley cranes.

Installation of a system of conveyors at the chill berths.

Construction of some additional small buildings and accessory structures or facilities as yard offices or to meet tenant requirements.

Lighting, utilities, paving, grading, draining, mitigation, and other accessory construction elements.

#### Uses

In addition to existing operations, the following uses could occur:

Auto transshipping, storage, and processing  
Warehousing and light industrial activities

Transshipment and storage of refrigerated and frozen  
breakbulk cargos

Miscellaneous berthage (Navy, Foss, Boeing, etc.)

Breakbulk and neobulk operations including occasional  
steel project moves and steel as an incidental  
part of other cargo movements

Maintenance of Physical Redevelopment

EXHIBIT B

AGREED STATEMENT OF CONCERN

This Statement of Concern is offered jointly by the Port of Seattle (the "Port"), the Magnolia Community Club and the Queen Anne Community Council (the "communities").

In October 1983, the parties entered into a Short Fill Redevelopment Agreement (the "Agreement") whereby they compromised their differences and agreed to certain mitigation measures to accompany the proposed short fill redevelopment of Terminal 91. The communities support the short fill redevelopment of Terminal 91 under the terms and conditions of the Agreement. As part of that Agreement, certain conditions relating to the use of fill in Smith Cove Waterway were agreed to. In addition, there was an acknowledgement that the communities are concerned about the use as fill of dredged material which would be unsuitable for disposal in open water.

The communities lack the expertise to provide technical comments on Port proposals for the use of such fill. The communities, as part of the overall settlement of their concerns at Terminal 91, have agreed not to oppose, propose conditions to, or to comment on any permit issued by a regulatory agency for

such fill. This statement of concern is presented to your agency in lieu of such comments.

The communities are entrusting to the expertise of your agency the safety of the use as fill of contaminated dredge material at Terminal 91. While the Port will submit a permit application which recognizes and tries to protect against any danger from the use of contaminated fill material, your agency is called upon to exercise its full technical expertise and regulatory oversight upon any application submitted by the Port with the goal of protecting the communities from adverse environmental impacts. The communities call upon your agency to conduct a diligent review of the Port's application.

PORT OF SEATTLE

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

MAGNOLIA COMMUNITY CLUB

By \_\_\_\_\_  
Kenneth L. Schubert, President

Date \_\_\_\_\_

By \_\_\_\_\_  
John W. Cain, Jr.  
Chair, Piers 90-91 Committee

Date \_\_\_\_\_

QUEEN ANNE COMMUNITY COUNCIL

By \_\_\_\_\_  
Paige Miller, Chair



EXHIBIT C

AGREED STATEMENT OF CONCERN

This Statement of Concern is offered jointly by the Port of Seattle (the "Port"), the Magnolia Community Club and the Queen Anne Community Council (the "communities").

In October 1983, the parties entered into a Short Fill Redevelopment Agreement (the "Agreement") whereby they compromised their differences and agreed to certain mitigation measures to accompany the proposed short fill redevelopment of Terminal 91 under the terms and conditions of the Agreement. The communities support the short fill redevelopment of Terminal 91 under the terms and conditions of the Agreement. The Agreement is intended to be comprehensive in nature and, among other things, the communities have agreed not to oppose the issuance of any permit needed for short fill redevelopment.

In lieu of any opposition, proposed conditions or comments on the issuance of a permit from your agency, the parties are submitting this Statement of Concern.

The communities are entrusting to the expertise of your agency a skilled analysis of the Port's application. While the Port will submit an application which tries to comply with all applicable guidelines and standards, your agency is called upon to exercise its full technical expertise and regulatory oversight

upon any application submitted by the Port with the goal of protecting the communities from adverse environmental impacts. The communities call upon your agency to conduct a diligent review of the Port's application.

PORT OF SEATTLE

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

MAGNOLIA COMMUNITY CLUB

By \_\_\_\_\_

Kenneth L. Schubert, Jr.  
President

Date \_\_\_\_\_

By \_\_\_\_\_

John W. Cain, Jr.  
Chair, Piers 90-91 Committee

Date \_\_\_\_\_

QUEEN ANNE COMMUNITY COUNCIL

By \_\_\_\_\_

Paige Miller, Chair

Date \_\_\_\_\_