

Short Fill Redevelopment Agreement
As Amended 1985
Including 1998 Second Amendment

Magnolia Community Club
Queen Anne Community Council

January, 2000

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First Amendment to Terminal 91 Short Fill Redevelopment Agreement

Second Amendment to Terminal 91 Short Fill Redevelopment Agreement - 1998

CASE STUDY

A SUCCESSFUL NEGOTIATION - CASE STUDY AT TERMINAL 91

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 the 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).~~

REPLACED: See 2nd
Amendment to SFRA
¶ 3 (1),

(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's Executive Director shall designate four (4) non-voting representatives to attend NAC meetings. One such representative shall be designated as the Port's principal representative and shall be a Director or its equivalent. 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.

(f) NAC may not take action unless there is a quorum present at a NAC meeting. A quorum shall consist of two (2) representatives of the Magnolia Community Club and two (2) representatives of the Queen Anne Community Council.

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 a majority vote of all NAC members, whether present or not, 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

Noise Section
replaced - see
Exhibit D

1. Terminal 91 shall be redeveloped in a way to minimize unnecessary noise impacts on neighboring residents. Although the noise studies conducted pursuant to these negotiations indicate 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 has written two reports: TERMINAL 91 NOISE PRACTICES AND PROCEDURES STUDY and T-91 NOISE REVIEW. The parties have reviewed Mr. Schultz's reports and also made their own independent evaluation of how to control T-91 noise. Based upon that process, 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. Accordingly, the parties have established certain noise measurement procedures for T-91 noise sources in a document called the T-91 NOISE MEASUREMENT PROTOCOL ("the Protocol"). The parties agree to use the noise measurement procedures as now or

hereafter set forth in the Protocol to determine whether noise generated by T-91 equipment is in compliance with this Agreement. The Protocol may be amended, from time to time, by agreement between NAC and the Port, without amending this Agreement.

(i) Based upon Mr. Schultz's reports, the parties have 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)
Forklifts:	
60,000#	83 dBA
30,000#	81
24,000#	79
12,000#	77
8,000#	75.5
3,000#	71
P91 Chiller facility	60

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 70 dBA to see that it does not exceed the noise limits, except that it shall not be necessary to remonitor forklifts having a capacity of 18,000 lbs or less more often than once a year;

(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 operate at the same location simultaneously. The method for determining the Noise Index is set forth in the Protocol.

(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 method for determining the "base index" is set forth in the Protocol.

(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 not 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 $L_{eq} = 90$ dBA continuous for one hour.

Alternative allowances are permitted as follows:

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

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

$L_{eq} = 99$ 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 TERMINAL 91 NOISE PRACTICES AND PROCEDURES STUDY (for example, for occasional steel or "frequent visitors" like the Rose Marie oiler barge).

10. By September 1, 1987, NAC and the Port shall begin a joint review of T-91 noise issues. The purpose of the review is to determine whether there has been a significant increase in T-91 noise impacts in the communities, to examine the history of T-91 noise complaints and to evaluate whether the noise control provisions of this Agreement should be modified. The parties do not envision that it is necessary to retain a noise consultant as part of that review but may do so if all parties agree.

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 D
20th and Dravus	LOS D
W. Mercer Place & Elliott	LOS E

No Test. Gate Closed.

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) day 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. 81-2-1175-9). 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.

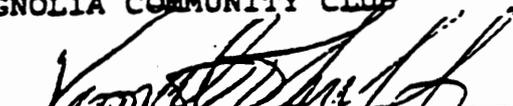
PORT OF SEATTLE

By 

Date 10-11-83

Paul S. Friedlander, President
Port Commission of the Port of Seattle

MAGNOLIA COMMUNITY CLUB

By 
Kenneth L. Schubert, Jr.
President

Date 10/11/83

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

Date 10/11/83

QUEEN ANNE COMMUNITY COUNCIL

By 
Paige Miller, Chair

Date 10/11/83

Agreement
10/10/83

Amended Agreement
11/27/85

WP Doc. 6421p/6424p

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.~~

DELETED: See 2nd
Amendment to SFRA
13 (2)

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").

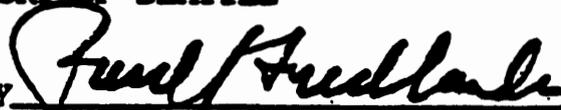
In October 1983, the parties entered into a Short Fill Redevelopment Agreement (the "Agreement") whereby they compromised their differences and agreed to certain mitigation measures to accompany the proposed short fill redevelopment of Terminal 91. The communities support the short fill redevelopment 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

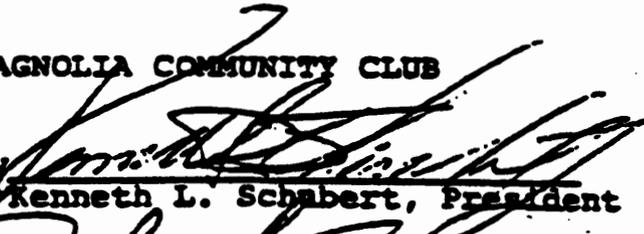
such fill. This statement of concern is presented to your agency in lieu of such comments.

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  Date 10-11-83
Paul S. Friedlander, President
Port Commission of the Port of Seattle

MAGNOLIA COMMUNITY CLUB

By  Date 10/11/83
Kenneth L. Schabert, President

By  Date 10/11/83
John W. Cain, Jr.
Chair, Piers 90-91 Committee

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 *Paul S. Friedlander* Date 10-11-83
Paul S. Friedlander, President
Port Commission of the Port of Seattle

MAGNOLIA COMMUNITY CLUB

By *Kenneth L. Schubert, Jr.* Date 10/11/83
Kenneth L. Schubert, Jr.
President

By *John W. Cain, Jr.* Date 10/11/83
John W. Cain, Jr.
Chair, Piers 90-91 Committee

QUEEN ANNE COMMUNITY COUNCIL

By *Paige Miller* Date 10/11/83
Paige Miller, Chair

EXHIBIT D

Attachment to Resolution No. 2971

T-91 NOISE MEASUREMENT PROTOCOL

As Revised in 1996

This T-91 Noise Measurement Protocol ("the Protocol") is entered into between the Neighbors Advisory Committee ("NAC") and the Port of Seattle, a municipal corporation ("the Port").

RECITALS

1. The Port, the Magnolia Community Club and the Queen Anne Community Council are parties to the Terminal 91 Short Fill Redevelopment Agreement ('the Agreement'). The Magnolia Community Club and the Queen Anne Community Council participate in the Neighbors Advisory Committee ("NAC"), which oversees implementation of the Agreement.
2. The Agreement contains noise monitoring and control requirements pertaining to Terminal 91.
3. The purpose of the Protocol is to set forth details about noise monitoring and control procedures needed to implement the Agreement. NAC and the Port may also, from time to time, clarify points of implementation under the Agreement by setting forth such items in the Protocol.
4. The content and format of this protocol were revised in 1996 after mutual review and consent of NAC and the Port.

Based Upon the Foregoing Recitals, and for Good and Valuable Consideration, It Is Agreed as Follows:

I. General Provisions

All references to noise measurements, noise monitoring, or noise limits in the Agreement refer to the noise level as measured under the procedures and standards contained in this Protocol.

II. Instrumentation and Basic Procedures for Equipment Noise Measurements

- A. The sound level meter(s) used to satisfy the requirements of this program shall satisfy Type I or SIA requirements of ANSI SI.4-1971 and subsequent revisions of that standard. All measurements will be made using the A-weighting network. All measurements shall be taken using a "fast" meter response.
- B. Measurements shall generally be made at a distance of 50 feet from the centerline of the subject equipment. If the equipment is enclosed by a building, structure, or barrier, the measurement will be made from the outside of the structure and far enough away from the structure to avoid a localized noise shadow. The reported noise level should be the noise level of the equipment as reduced by any building, structure, or barrier. If measurements cannot be made at exactly 50 feet from the equipment then measurements may be made at a distance from 25 to 150 feet from the subject equipment and the result adjusted to the equivalent value for 50 feet using the appropriate equation for attenuation due to divergence from a point or line source (-6 dB per doubling of distance for a point source).
- C. The microphone will be located 4 feet above the ground and oriented according to its operating instructions for measuring sound with a known source direction in a free field.
- D. A suitable measurement site should consist of a flat open space free of large reflecting surfaces, such as parked vehicles, signboards, buildings, or hillsides located within 100 feet of either the subject equipment or the microphone. The area should be surfaced with concrete, asphalt, or similar hard non-porous material and should be free of sound-absorbing materials. There should be no bystanders in the test area. The operator of the meter will make every effort to locate a measurement location that best meets these criteria.
- E. The ambient sound level, including wind effects, coming from sources other than the equipment being measured shall be at least 10 dB lower than the level of the tested equipment.

III. Noise Index: Definition, Schedule, and Tabulation

- A. The Noise Index is a tabulation of the inventory of all noise-producing equipment on the Terminal used or expected to be used for longer than six months, excluding small hand tools and devices. The index is to include a listing of all such equipment, along with the established noise limits and the latest sound level measurements for this equipment. The index equipment survey and noise measurements shall be completed twice each year, generally in the spring and fall.
- B. For each noise index, the Terminal shall be surveyed to ensure that all appropriate equipment is included. The index equipment list shall be updated to include any new devices or machines since the last index, and to note any equipment that is no longer in service. The noise limits specified in D.3.(c)(iii)(a) of the NAC agreement for short term/portable equipment expected to reside at the Terminal for more than four days (i.e., 80 dBA day/70 dBA night) shall be applied to any equipment except forklifts being included in the index for the first time. Subsequent index tabulations shall use the new equipment noise limits determined according to section 0.
- C. For each noise index survey, the sound level for every listed piece of equipment on the Terminal except forklifts shall be measured. Forklifts are to be measured during the springtime index only, except any that exceeded their noise limit during the spring measurement along with any newly identified forklifts shall be measured in the fall. For purposes of the noise energy compilation, the last measured sound level shall be used, so that the springtime measurements for forklifts complying with their noise limits shall be used as part of the fall index tabulation. The date of the latest measurement for forklifts shall be indicated in the index.
- D. The tabulation of the noise index shall list the equipment included, indicate any new sources, and present a side-by-side listing of the noise limits and the latest measured sound level for the equipment. The noise index shall compare the limit and the measured sound level for each source and calculate and compare the sound energy sum of the noise level limits and the noise level measurements. All sound levels shall be reported as A-weighted decibels.
- E. The original index was determined based on measurements in January 1984 and by noise limits specified in the NAC agreement. The forklift noise limits included in D.3.(c)(ii) of the agreement are superseded by the limits determined according to this protocol, as specified in 0.

IV. Noise Index: Measurement Method and Sound Level Limits for Forklifts

A. Measurements of forklifts will be conducted according to the following procedure recommended by T.S. Schultz in his 5/25/85 report to the NAC

1. Forklifts with internal combustion engines will be tested with the engine at maximum throttle
2. Sound level limits for forklifts will be based on the capacity of the individual units (expressed in pounds) and rounded to the nearest whole number. Limits will be calculated according to the following equation:

Install Equation Editor and double-click here to view equation.

B. In the following situations, one or more supplemental measurements (i.e., in addition to regularly scheduled Noise Index measurements) of forklift noise will be taken using the measurement procedure described above.

1. When the noise level of a forklift as determined in 0 has been found to exceed the applicable noise limit. Such supplemental measurements shall be taken within 60 days of the determination that the forklift is exceeding its noise limit.
2. When a forklift is the subject of noise complaints on three different days between routine measurements (6 or 12 months depending on the weight class).

V. Noise Index: Measurement Procedure and Sound Level Limits for Other Noise Sources

A. For noise sources other than forklifts, the measurement will be made while the equipment being tested is operating at its normal load. The objective is to obtain the loudest noise output that would routinely occur during normal operations. The measurement reported shall be a 10-30 second A-weighted L_{eq} (integrated equivalent noise level) in dBA.

B. Measurement will be made on the side of the subject equipment which is loudest. However, when a barrier or housing is present which does not totally surround the equipment but is meant to shield the communities, the measurement should be made from a point on a line of sight from the communities. The operator of the meter will exercise judgment to locate and measure the greatest noise level that may propagate to the communities.

C. Sound level limits for on-site noise sources other than forklifts shall be determined based on the levels specified in the NAC agreement, except as modified by this protocol.

D. Sound level limits for new sources shall be set in accord with the following procedures.

1. Any new forklift shall have a noise limit set according to 0, and shall be included in the first index in which it is identified.
2. Any new, installed, stationary equipment shall be assumed to be permanent unless it is specifically identified as temporary. For portable equipment, the index compiler will ascertain from the equipment's owner whether the equipment is expected to be in use for longer than six months. For all equipment expected to be used at the Terminal for longer than six months, a sound measurement will be taken during the first noise index survey in which the equipment is identified.
3. Based on the sound level measurement, calculate the expected sound level at the nearest property line, assuming -6 dBA per doubling of distance. The distance for portable equipment shall be based on the closest point to the property line at which it is intended to be used. From the calculated property line sound level determine how much additional noise could be emitted without exceeding 49 dBA (the nighttime limit -1) and add that amount or a maximum of 3 dBA to the measured sound level to determine the noise limit. For portable equipment, if the property line sound level exceeds 49 dBA, set the limit at the measured level plus 2 dBA and determine and specify the distance at which this equipment would not exceed 49 dBA as the allowable working distance during nighttime hours.
4. In the event circumstances require the use at the Terminal of equipment that, due to exceptional use, location, or noise emission may exceed the limits derived according to 0, where possible, the circumstances and the potential noise levels will be discussed in advance with NAC. In such cases, exceptional operating accords regarding noise limits may be developed.

E. Sound level limits for on-site sources shall be eliminated from further consideration when the equipment is permanently removed from service.

VI. Noise Measurements in Response to Complaints

- A. For the purposes of investigating a noise complaint due to the operation of equipment on, or activity at the Terminal, the duty officer or other designated responsible person will measure the sound emanating from the suspect equipment or activity as it is occurring. Measurements should be made from one or more points at least 50 feet from the equipment or activity, or 50 feet from the centerline of a forklift's or other vehicle's path or working position.
- B. Information pertaining to the measurement shall be recorded on a standard form developed for this purpose. The form shall include at least the following information, along with directions and suggestions for collecting these data:
1. The date and time of day of the measurement
 2. The location of the equipment or activity
 3. Identification of the equipment or activity, including vessel names, any numeric markings or designations, and the rated capacity of any forklift involved
 4. A description of the equipment and/or the activity making the noise
 5. The distance at which the measurement was taken
 6. A sketch of the relative positions of the noise-making activity and the measurement location, along with sufficiently detailed identifying landmarks that the locations of the activity and the measurement can be verified by others
 7. The type, identifying name or number, and factory calibration date of the sound level meter
 8. The setting(s) of the sound level meter (e.g., A-weighting, fast/slow response)
 9. The time and status of the calibration performed prior to the measurement
 10. The duration of the measurement
 11. The L_{eq} of the measurement (if the sound level meter is capable of this tabulation)
 12. The L_{max} of the measurement
 13. Estimates of the meteorological conditions during the measurement (e.g., wind speed and direction)
 14. Background noise sources and levels, excluding the "target" noise source, if possible
 15. The name of the person taking the measurement
- C. The noise measurement form shall be completed and submitted to the Port's Liaison to the Terminal 91 Neighbors Advisory Committee.

VII. Community Noise Monitoring

Community noise monitoring will be carried out for one night each year in each neighborhood (Queen Anne and Magnolia). These measurements shall be taken during a peak operating period for one or more of the T-91 tenants during a time of year when people would be most likely to be affected. The suggested time for the measurements is spring or summer when people are likely to spend time outdoors and/or have their windows open.

The measurements shall use a precision noise meter. The microphone shall be oriented according to its operating instructions for measuring ambient sound with an unknown source direction in a free field, with consideration for the direction of the Terminal. The A-weighted output of the meter shall be fed into a continuous chart recorder (graphic level recorder) or into a computer that can process digital data into useful summaries. An observer shall attend the meter and remain outside nearby during the entire measurement. The observer will attempt to subjectively identify the noise type(s) and source(s) related to each peak above background, where "background" is defined as the hourly L90. For example, buses, airplanes, trains, and T-91 noises should be differentiated. The report should indicate the percent distribution of these "discernible" noises by type and also indicate the total time each noise category was above background.

VIII. Reports

The report of the community noise measurements should indicate the percent distribution of "discernible" noise events (peaks above background) by type and also indicate the total time each noise category was above background. Hourly sound level statistics (L_{ns}) should be calculated and compared with the hourly L_{ns} that correspond to the limits in the Seattle noise ordinance (L2.5, L8.33, and L25). The report shall include the summary tabulation and results of the springtime equipment noise index. Each page of the report shall be numbered and dated.

EXHIBIT E

NAC QUORUM PROCEDURES

The NAC meetings of May 3, 1984 included discussion and agreement of the Committee concerning certain aspects of quorum procedure. Following is an excerpt from the minutes of the meeting (as corrected at the June 14, 1984 meeting).

It was decided that for votes which merely indicate the communities' position on an issue to Port staff, at least two members from each community must be present. A simple majority of those present represents the communities' position. On votes of whether or not an issue should be taken to the Commission, a majority vote of all voting NAC members is needed. If members are not present at the time of voting, they will be allowed to vote by proxy within two weeks of the date of the vote. The Chair is responsible for contacting those members not present to obtain their votes.

APPENDIX

Attachment to Resolution No. 2971

FIRST AMENDMENT TO TERMINAL 91
SHORT FILL REDEVELOPMENT AGREEMENT

This First Amendment ("the Amendment") to the Terminal 91 Short Fill Redevelopment Agreement ("the 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").

RECITALS

1. Section D of the Agreement, entitled "Noise," contains noise monitoring and control provisions for Terminal 91. Based upon the parties experience in implementing the noise provisions of the Agreement, the parties desire to make certain changes in Section D.

2. One of the changes desired by the parties is to set forth noise monitoring procedures in a separate document called the T-91 Noise Measurement Protocol ("the Protocol"). The parties desire to be able to amend the Protocol from time to time upon the agreement of the Neighbors Advisory Committee and the Port, without requiring further amendment of this Agreement.

3. Section F of the Agreement deals with vehicular traffic. Traffic at certain intersections monitored under the Agreement has increased, but T-91 traffic is not a significant contributor to the level of service observed at any intersection. The parties desire to change certain level of service "trigger

levels" in the Agreement to reflect current traffic levels.

4. Due to internal Port reorganization, the Agreement should be amended to identify the Port's principal Neighbors Advisory Committee representative.

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

1. Section D of the Agreement, entitled "Noise," is deleted in its entirety.

2. A new Section D, in the form attached hereto as Exhibit A, is substituted therefor.

3. Section F of the Agreement, entitled "Traffic," is hereby amended as follows: in subsection 2, at page 39, delete the table under the heading "intersections" and insert the following table therefor:

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

4. Section B of the Agreement, entitled "Neighbors Advisory Committee and Dispute Resolution," is hereby amended as follows:

A. In subsection 5, the second sentence is deleted and replaced by the following:

"The Port's Executive Director shall designate four (4) non-voting representatives to attend NAC meetings. One such representative shall be designated as the Port's principal representative and shall be a Director or its equivalent."

B. In subsection 7, a new paragraph (f) is added as follows:

"(f) NAC may not take action unless there is a quorum present at a NAC meeting. A quorum shall consist of two (2) representatives of the Magnolia Community Club and two (2) representatives of the Queen Anne Community Council."

C. In subsection 8(b), the first sentence is deleted and replaced by the following:

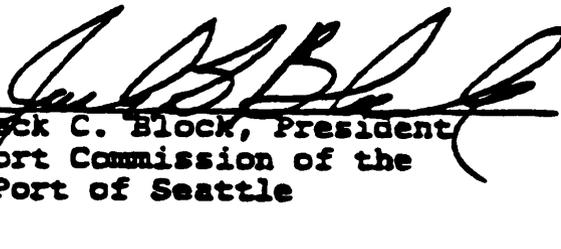
"(b) In the event NAC determines by a majority vote of all NAC members, whether present or not, that the Port has violated the terms of this Agreement or that there is a substantial unresolved issue arising out of this Agreement, a report of such dispute shall be made either orally or in writing by the NAC Chairperson to the Port Commission."

5. Except as expressly modified herein, the Agreement remains unchanged and in full force and effect.

6. The parties may, for their convenience, prepare a revised version of the Agreement containing these amendments. The title page of the Agreement may read as follows: "SHORT FILL REDEVELOPMENT AGREEMENT, as amended (1985)."

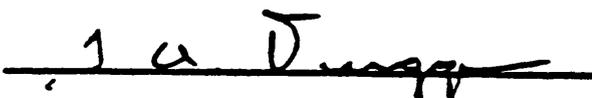
IN WITNESS WHEREOF, the parties have executed this document on the dates below indicated.

PORT OF SEATTLE

By 
Jack C. Block, President
Port Commission of the
Port of Seattle

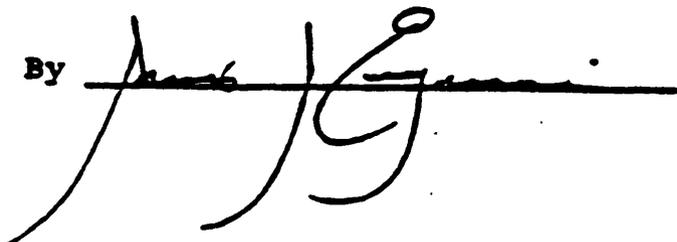
Date 8-13-85

MAGNOLIA COMMUNITY CLUB

By 

Date 8/9/85

QUEEN ANNE COMMUNITY COUNCIL

By 

Date 8/9/85

Second Amendment to Short Fill Redevelopment Agreement

The parties to this Second Amendment ("Amendment") are the Port of Seattle, a Washington municipal corporation, the Queen Anne Community Council, and the Magnolia Community Club.

In consideration of the mutually desired changes below, the parties agree to modify the Short Fill Redevelopment Agreement as follows:

1. Section A.1.(1) is deleted in its entirety and replaced with the following:

1. Full fill development or container terminal development. Full fill development 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). Container terminal development means development of Terminal 91 for use as a container terminal facility.

2. The following words shall be deleted from Exhibit A:

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.

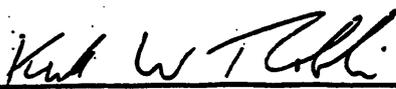
Except as expressly modified by this Amendment, all other provisions of the Short Fill Redevelopment Agreement remain in effect.

The parties signify their agreement to the foregoing by their signatures below and as of the dates indicated.

Port of Seattle:

 Date 4/1/99

Queen Anne Community Council:

 Date 11-5-98

Magnolia Community Club:

 Date 3-5-99

RESOLUTION NO. 3289

A RESOLUTION of the Port Commission of the Port of Seattle amending the Terminal 91 Short Fill Redevelopment Agreement.

WHEREAS, the Port of Seattle ("Port") adopted Resolution No. 2916 on October 11, 1983, adopting the Short Fill Redevelopment Agreement ("Agreement") between the Port, the Magnolia Community Club and the Queen Anne Community Council; and

WHEREAS, the parties amended the Agreement on August 13, 1985; and

WHEREAS, the parties now desire to amend further the Agreement to address certain issues regarding the Port's development activities at Terminal 91; and

WHEREAS, attached to this resolution is a copy of the Second Amendment to Short Fill Redevelopment Agreement ("Amendment") embodying the changes; and

WHEREAS, adoption of this resolution and the Amendment is in furtherance of the objective of this Commission to work in good faith with the representatives of the Magnolia and Queen Anne communities to jointly solve Terminal 91 related issues;

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

Section 1. The Second Amendment to Short Fill Redevelopment Agreement, in the form attached hereto as Attachment "A", is hereby adopted by reference as an amendment to resolution No. 2916.

ADOPTED by the Port Commission of the Port of Seattle at a regular meeting thereof, held this 27th day of October, 1998, and duly authenticated in open session by the signatures of the Commissioners voting in favor thereof and the seal of the Commission.

GARY GRANT

PATRICIA DAVIS

CLARE NORDQUIST

PAIGE MILLER

JACK BLOCK

Port Commission

A SUCCESSFUL NEGOTIATION:

CASE STUDY

at

TERMINAL 91

PREPARED FOR THE PORT OF SEATTLE

by

ALICE SHORETT

TRIANGLE ASSOCIATES

June 1984

PREFACE

This case study was prepared to give an historical record of the negotiations at Terminal 91 and to serve as a case for students of dispute resolution and government. I am indebted to the members of the negotiating team who gave me interviews and reviewed the draft: John Cain, Michael Crutcher, Paige Miller, Kenneth L. Schubert, Jr., and Lynn Taylor.

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SUMMARY

After more than a year of intensive negotiations, on October 11, 1983, an eight-year dispute between the Port of Seattle and two Seattle communities (Magnolia and Queen Anne Hill) ended in a productive agreement. Its title, "Short Fill Redevelopment Agreement," gives no hint that it contains an historic accord between a powerful public commission and two neighborhood organizations. The way the agreement was negotiated and the contents of the agreement should point the way for other public institutions' dealings with community groups.

The Queen Anne and Magnolia neighborhoods have lived in close proximity to Port activities, off and on, since 1912, when the Port purchased piers 90 and 91, which jut into Elliott Bay between the two communities. The Navy took the piers for World War II use; the Port leased them back in 1970 and repurchased them in 1975. The 1970s saw hostility and misunderstanding grow between the Port and the neighborhoods. In particular, the grain terminal which the Port built beside Queen Anne Hill in 1970 came to be a symbol of mistrust after the grain terminal turned out to be larger and noisier than anticipated.

In 1975 the Port made a policy statement intended to improve communications with the neighborhoods. Later nicknamed the "Treaty of Magnolia," the policy statement provided: (1) a Neighbors' Advisory Committee (NAC) to review the piers' development; (2) continuation of existing activities at the piers until the early 1980s; (3) donation to the City of Seattle title to land west of the piers for an open water park (Smith Cove Park); (4) no filling of any water surface before the early 1980s; and (5) an overall development plan, including environmental studies and citizen participation. In following this policy, the Port embarked on preparing a series of studies.

In 1981 the Port published a draft EIS on alternative uses for Terminal 91 which considered sixteen possible uses and four possible levels of fill. Later that year the Port requested the State Commissioner of Public Lands to vacate Smith's Cove Waterway between the piers and thus make it available to Port ownership.

The Magnolia Community Club Board of Trustees voted unanimously on July 28, 1981, to sue the Port. In order to retain the right to sue over the Port's 1981 EIS, the Community Club had to file at this time. The lawsuit filed in King County Superior Court charged inadequacies in the EIS and stated that the EIS did not cover a proposal to vacate the waterway.

In 1982 the Port issued an EIS for a specific project which considered full fill of the waterway by 1985. At a public hearing, the president of the Queen Anne Community Council, Paige Miller, urged the Port to meet with the communities and agree on guidelines. The lawsuit was still pending.

At this point, discussions began, leading to the negotiations.

The story of how the negotiations proceeded illustrates general principles for any negotiation—principles which could be a primer for discussions between public institutions and community groups. These principles were illustrated as the negotiations proceeded.

1. Separate the people from the problem. Identify people who are leaders in their respective groups, people who can communicate.

Although neither the Port nor the community councils were officially ready for trusting communication, certain individuals from both groups met informally as a small group, in the spirit of an experiment. Their findings laid a foundation for formal negotiations, which ultimately brought about a mutually satisfactory agreement. By exploring ideas and venting frustrations, the small group discussions led to positive personal relationships between Port and community officials. The people then could work on the issues that worried both sides.

2. Separate the non-negotiable issues from the negotiable issues.

Gradually, the issues that were non-negotiable for each side emerged. For the Port it was essential to improve the deteriorating piers and to redevelop the seven-acre "short fill" area of the waterway in order to provide more space for Nissan, a major tenant then negotiating its lease agreement. To the communities it was essential to have an agreed-upon set of standards governing noise, traffic, lighting and aesthetics and to be able to contest any redevelopment plans going beyond "short fill."

In early 1983 the Port issued a final EIS which reflected the influence of the small group discussions. It was a flexible plan which considered five alternative levels of fill for Terminal 91, ranging from "full fill" to "no fill." There were community meetings to discuss the EIS. Yet, after the public hearing in May, Port officials came away with the impression that the Magnolia Community Club would proceed with its lawsuit. The Port Commission prepared to plan for "full fill" of the waterway, even though its staff had recommended "short fill."

In June of 1983 the Port, the Magnolia Community Club, and the Queen Anne Community Council decided to enter into formal negotiations.

3. Develop a framework for negotiations with authority from the parties, a deadline, and an agenda acceptable to the parties.

The negotiating team, with representatives from both community groups and the Port, drafted a "Process for Resolving Community Environmental Concerns" which would guide the negotiations. It included:

- (1) agreement on negotiating goals; (2) deadline of 90 days;
- (3) identification of the negotiating parties; (4) statement of the issues (noise, lighting, traffic, aesthetics, dispute resolution); and
- (5) agreement that the Port would not begin a statute of limitations process and the communities would not sue before a settlement.

The negotiating team included Ken Schubert and John Cain from the Magnolia Community Club, Paige Miller from the Queen Anne Community Council, the Port's Lynn Taylor, and Port attorney Michael Crutcher. The Port's environmental planner, John Dohrmann, assisted throughout the negotiations. Joel Haggard, Magnolia Community Club attorney of record, and Jan Hauge, an acoustics specialist, assisted in the negotiations.

4. Identify a "keeper of the record," someone to draft a single negotiating text.

One of the negotiators, Port of Seattle attorney Michael Crutcher, prepared drafts as negotiations progressed. As participants summed up key points, Crutcher wrote down the points using the exact language of the negotiators. The drafts became a working document.

5. Identify at least one persistent person who believes in the negotiations process and who pays attention to detail.

Something beyond technical problem-solving was crucial to the eventual success of the negotiations. That something was the presence of people who believed in the process—Paige Miller, Queen Anne Community Council president, and Lynn Taylor, the Port's planning director. They undertook informal discussions and the persuasion necessary to keep the negotiations going. They kept to the middle ground within their constituencies and took the role of mediator, translating positions to one another and then explaining the other side's interests to their own people.

6. Maintain close contact with the constituencies represented by the negotiators. Keep checking back.

As the negotiations progressed, the participants in the direct discussions brought drafts and issues back to their respective boards. The negotiators set up a "checking back" process that fit each of their constituencies.

7. Assume a problem-solving stance towards the issues. Explore multiple approaches with creative technical assistance.

In order to establish overall concepts, the negotiators treated Terminal 91 as a "black box" from which, no matter what was inside, the emissions of light, noise and traffic would not exceed certain levels: (1) They set subjective and objective standards. For example, in the area of noise, there is a subjective noise-complaint procedure to deal with immediate, day and night complaints on specific noises. There is also an objective "noise index" which includes the aggregate of all equipment noise as measured at the terminal and specific noise limits for certain types of equipment. (2) They decided on a trigger level for activities, which, if exceeded, would set in motion definite procedures. Again, in the area of noise, the "noise index" formula is updated every six months. If a future "noise index" exceeds the base index by 0.25 bels, the Port will retain a qualified acoustical engineer to make a recommendation. (3) They developed a dispute resolution procedure, described by one participant as a gigantic decision tree in which we "talk, act, talk, act." (4) They agreed that the two community councils would sign a "statement of concern" pertaining to permits required for the short-fill development.

After setting the overall goals for discussion, the negotiators could take a closer look into the "black box." In an effort to go beyond abstractions, the negotiators assumed a problem-solving stance. They looked at measurements of noise, drawings for light poles, studies on truck traffic, etc. They consulted technical experts.

The negotiators agreed to hire a noise-review consultant, Theodore J. Schultz. For technical advice about lighting, they consulted the Port's chief engineer, Walt Ritchie. Absolute limits on traffic were not acceptable to the Port staff, so the group agreed on "trigger levels" and a monitoring system. They devised a dispute resolution process involving the Neighbors' Advisory Committee (NAC); in the event of a disagreement, the NAC and the Port could choose mediation, independent consultant counseling, or arbitration.

Final resolution of the all-important noise issue proved elusive until the noise consultant analyzed the probability of a "worst case" noise scenario. Its probability was three days in one thousand years. "These wild, unlikely events were the ones we'd been arguing about," said one negotiator. "We had to stop splitting hairs."

The resulting noise agreement included monitoring, specific noise limits, and a complaint procedure. On October 11, 1983, representatives of the Seattle Port Commission, the Magnolia Community Club, and the Queen Anne Community Council signed the "Short Fill Redevelopment Agreement." It had grown out of a winning combination of people, principles and planning—a combination that can exist for other public commissions and communities who need to resolve differences.

THE CASE STUDY

This report tells the story of a successful negotiation. On October 11, 1983, an eight-year dispute between the Port of Seattle and two Seattle communities (Magnolia and Queen Anne) ended in a productive agreement, after more than a year of intensive negotiations. Its unpretentious title, "Short Fill Redevelopment Agreement," gives no hint that it is an historic accord between a powerful public commission and two grassroots neighborhood organizations. The Port is a municipal corporation with boundaries equivalent to those of King County; whereas, the Queen Anne Community Council is a 21-member incorporated board elected by neighborhood residents, and the Magnolia Community Club is an incorporated club made up of dues-paying members and a Board of Trustees.

This report provides both an historical record of the negotiations and a case in dispute-resolution using face-to-face negotiations. The way the agreement was negotiated and the contents of the agreement should point the way for other public institutions' dealings with community groups.

BACKGROUND

At Terminal 91, Seattle's two longest piers jut into Elliott Bay between two established residential neighborhoods, Magnolia and Queen Anne Hill. The Port of Seattle purchased the piers, 90 and 91, from the Great Northern Railroad in 1912, for \$150,000. During World War II, the Navy condemned the piers for wartime use; then in 1970, the Port leased them back.

The Port that year completed construction of a 68-silo, 130-foot-high grain terminal beside Puget Sound on the south side of Queen Anne Hill. The grain terminal made the Port of Seattle preeminent in West Coast grain shipment, offering shippers the speed of 3,000 tons per hour, but it reaped hostility from the neighboring communities.

Some Queen Anne and Magnolia citizens charged that architectural renderings had misrepresented the view blockage and sheer size of the structure. This everyday presence was hard to forget; it became a symbol in the communities that Port authorities could not be trusted. The lack of trust built up over the years as misunderstandings developed between Port officials and Magnolia and Queen Anne community leaders over the current and future use of piers 90 and 91.

The U.S. Congress passed the National Environmental Policy Act in 1969. Washington State adopted a Washington State Environmental Policy Act (known as SEPA) in 1971. It required (1) that governmental decision-making consider environmental values, and (2) that major actions significantly affecting the environment include a detailed environmental impact statement (EIS).

The 1970s became the decade of the environment and citizen activism. In November 1971 an initiative passed in Seattle to make the Pike Place Market area an historical district. In subsequent elections voters defeated two proposed freeway lengths in the city. The controversy over piers 90-91 fit the trend toward public environmental concern.

The SEPA provided disclosure requirements for port planning and put new legal tools at the disposal of community groups. As both sides used the new procedures, the eight years between 1975 and 1983 would bring a series of actions, followed by misunderstandings and a breakdown in communication between Port and community leaders. The following story sets out the background of the controversy and describes the steps which reestablished communications, allowing successful negotiation between the Port and the two communities.

"TREATY OF MAGNOLIA"

In 1975 the Port purchased the piers from the General Services Administration for more than fifteen million dollars, after five years of negotiating price and procedures and preparing a lengthy EIS. Community concern about the EIS led to further study and, ultimately, the "Treaty of Magnolia," a first step for the Port in monitoring community opinion and granting concessions.

An early impetus for the "Treaty of Magnolia" came when Joel Haggard, attorney and Magnolia resident, outlined the Magnolia Community Club's concerns at a public hearing about developing the piers. The Port responded with a five-point policy statement adopted August 11, 1975:

- A Neighbors' Advisory Committee (NAC), composed of one appointee each from the Magnolia Community Club, the Queen Anne Community Council and the Port, would meet regularly and review the piers' development.
- The Port would continue the activities at existing piers 90-91 until the early 1980s.
- The Port would give the City of Seattle title to land for an open water park (Smith Cove Park) west of the piers, except for navigation and dredging rights.
- The Port would not fill in any water surface before the early 1980s, and then only subject to SEPA and State Shoreline Management Act rules.
- The Port would prepare an overall development plan, including environmental studies and citizen participation, before making any major development or acquiring land contiguous to piers 90-91.

In carrying out the policy statement (later nicknamed "Treaty of Magnolia"), the Port launched an eight-year-long series of studies and meetings with nearby citizens. It was about this time that the Port began to call the two piers a terminal, a title used for filled waterways. The community groups continued to use the old name: piers 90-91.

The following month, on September 30, 1975, the Port issued a draft environmental impact statement on alternative uses for Terminal 91. It considered sixteen possible uses, based on four possible levels of waterway fill. After another series of public workshops and hearings on the possible uses (which ranged from a large-crane container terminal to a fish-processing facility), the final EIS on uses came out on January 18, 1981.

THE SEATTLE PORT COMMISSION

The five members of the Seattle Port Commission are elected to six-year terms from King County at-large. In 1981, as the Terminal 91 controversy was brewing, the Seattle Port Commission consisted of: Jack Block, in his eighth year as a commissioner; Henry Simonson, Seattle native, University of Washington graduate in fisheries and president of Unitrade International (import/export); Merle Adlum, born in Friday Harbor of a Norwegian family, once president of the Inland Boatmen's Union of the Pacific and general manager of Local 6 of the Masters, Mates and Pilots Union; Paul S. Friedlander, member of an old Seattle family and owner of a large jewelry store in Seattle; and Henry Kotkins, Seattle native, self-made millionaire and aggressive salesman who built the family Skyway Luggage business into one of the largest in the world.

Two commissioners, Adlum and Kotkins, were to stand for election in November 1983. The blunt but flexible Commissioner Adlum was to play a key role in the negotiations over the Terminal 91 controversy.

AN EARLY PORT DECISION AND A LAWSUIT

After six years of review and environmental analysis about Terminal 91, on April 28, 1981, the Seattle Port Commission passed two resolutions:

- Resolution 2814 limited the uses at Terminal 91 to freeze/chill (apple, and fruit warehouses and shipping), neobulk (noncontainer ships carrying items like cars, steel, logs), and breakbulk (mixed cargo handled individually). The resolution eliminated other possible uses such as coal, marina, and container shipping. It set a policy in which the noncontainer uses of Seattle's harbor would be moved to Terminal 91. There would be no containers at Terminal 91 at least until 1990.
- Resolution 2815 requested the State Commissioner of Public Lands to vacate Smith Cove Waterway, the water between piers 90 and 91, making it available for Port ownership.

Mistrust of the Port and its plans was growing in the communities. During the state legislative session, winter of 1981, Port staff attempted to obtain a vacation of the Smith Cove Waterway. This move was made without public notice or communication with neighborhood groups. Community group leaders in Magnolia and Queen Anne interpreted this action as more evidence that the Port was not trustworthy.

The Magnolia Community Club Board of Trustees voted unanimously on July 28, 1981, to sue the Port. In order to retain the right to sue over the Port's January 1981 EIS, the Community Club had to file at this time. The statute of limitations was almost over. The legal brief, filed in King County Superior Court the next month by Joel Haggard, past president and attorney of record for Magnolia Community Club, charged that there were numerous inadequacies in the 1981 environmental impact statement: the EIS did not consider containers that would be used with breakbulk cargo; nor the order of priority for container terminals throughout the Port; nor traffic access to the terminal. The brief stated that the EIS did not cover a proposal to vacate the Smith Cove Waterway.

Nevertheless, the Port of Seattle staff were successful in promoting passage of the 1982 Washington State Senate Bill 4025, vacating the Smith Cove Waterway. In legislative hearings on the bill, Port officials faced community representatives, and both spoke in the adversarial language of litigation.

In this atmosphere of distrust, in January 1982 the Neighbors' Advisory Committee (NAC) began asking about possible dangers to the community from CHEMPRO, an oil-holding tank company which operates a boiler and transfer pumps under the viaduct leading to Terminal 91. The Neighbors' Advisory Committee had a charter to hold a "free and open discussion of all aspects of the use and development of Piers 90/91 property." The committee would be advised of, and could make recommendations about, proposed development projects, changes of use, and property acquisitions for Piers 90/91.

The membership of the NAC had become unclear—many people from both communities attended without clearly defined official representation.

Some NAC members believed that Port staff were not disclosing all available information on CHEMPRO safety. To community leaders, this was more evidence that Port officials were not forthright and were uncooperative.

The Port's next step was to publish a draft environmental impact statement in June 1982 for a project at Terminal 91, for uses outlined by Resolution 2814. This "project EIS," a term used in the State Environmental Policy Act for an EIS about a specific project, had a recommended plan: a two-phase operation to fill in the waterway between the two piers. During phase 1, there would be only rehabilitation of the piers, construction of a new warehouse for fruit chilling, and construction of a bicycle path—all to be completed in 1985. During phase 2, to be completed in 1990, there would be complete fill of the waterway and construction of breakbulk and neobulk facilities.

The following month there was a public hearing at the Port Commission chambers on Pier 66. Paige Miller, President of the Queen Anne Community Council, reported on a previous public hearing sponsored by the community groups. This meeting was not attended by Port staff. The consensus was that the Port should not fill in the waterway, Miller said. First, there was no need to fill in order to handle freeze/chill, neobulk and breakbulk cargo. Second, the cost of full fill of the waterway was not economically justifiable unless the terminal would some day be used as a container facility, with the unwelcome accompaniment of bright lights, increased noise and traffic, and 24-hour operation. The community feared development of a container facility.

Miller urged Port officials to meet with the two communities to establish guidelines for the terminal, as the communities believed the Port's August 1975 policy statement had implied it would do.

Privately, Miller was disturbed by the impending lawsuit. The past November 1981, the Queen Anne Community Council Board had voted to incorporate, and to authorize joining the lawsuit. Miller was concerned that the lawsuit would move forward and the communities would be left with no solution short of litigation.

THE NEGOTIATIONS

The story illustrates general principles for any negotiation—principles which could be a primer for discussions between public institutions and community groups.

These principles are:

1. Separate the people from the problem. Identify people who are leaders in their respective groups and who can talk.
2. Separate the non-negotiable from the negotiable issues.
3. Develop a framework for negotiations with authority from the parties, a deadline, and an agenda acceptable to the parties.

4. Identify a "keeper of the record," someone to draft a single negotiating text.
5. Identify at least one persistent person who believes in the negotiations process and who pays attention to detail.
6. Maintain close contact with the constituencies represented by the negotiators. Keep checking back.
7. Assume a problem-solving stance to the issues. Explore multiple approaches with creative technical assistance.

Illustrating Principle 1:
Separate the people from the problem.

"There must be another way," Paige Miller thought. She telephoned Lynn Taylor, then the Port's public information director.

Paige Miller, who grew up in Huntington, New York, was a Yale Law School graduate who had practiced law in Philadelphia and Seattle. She and Taylor knew each other from social gatherings, and, coincidentally, Taylor was also a Yale alumna.

"I can't hold off any more from joining the lawsuit," Miller said. "You may have good reasons for what you are doing, but people don't trust the Port. And they don't understand. We had better talk."

In early August, Lynn Taylor arrived at Paige Miller's house on Queen Anne Hill's north slope for lunch. They talked. They discussed the personalities in both camps, their perceptions of the issues, and concluded, "If only we could get everybody to talk to each other. So much of this is built of mistrust on both sides." Taylor said of this meeting, "We were able to talk very frankly...We connected, I guess." Despite the history of mistrust, they wanted to get people into the same room to talk, to begin searching for solutions.

Taylor scheduled a lunch at Girvan's to expand the discussion. The First Avenue eatery, a favorite for Port commissioners and staff, strategically overlooks the Seattle waterfront from Terminal 91 to the bright orange container cranes along the Duwamish. At lunch were Larry Killeen, Port senior director for facilities; Jim Dwyer, Port senior director for operations; Bobbie King, president of the Magnolia Community Club; and Miller and Taylor.

The Port officials talked about their need for reasonable development. The community people said they wanted a forum to resolve the dispute. At the end of the lunch, Jim Dwyer suggested continuing the discussions, and the idea for the Small Group was born.

THE SMALL GROUP

The Small Group was not official, a status which was to bring benefits as well as problems. It included everyone who attended the Girvan's lunch, plus Jim Smith (Queen Anne representative to the NAC), Michael Par (chairman of the Piers 90-91 Committee for the Magnolia Community Club), Port of Seattle Planning Director Cliff Muller, and occasionally Planning staffers John Dohrmann and Keith Christian.

The discussions began September 17, 1982, with a consensus on ground rules, designed, said one observer, "So no one would lose":

- The group agreed not to "cut any deals," recognizing that the Port Commission makes policy for the Port and the community councils make policy for the communities.
- They agreed not to make public statements until the whole group decided to. (This would allow individuals to explore ideas without fear of criticism. And it would put a stop to the groups' clash through strident positions in the press.)
- The group agreed that the discussions were off-the-record and, as one member said, "not to be used as a fishing expedition for lawsuits down the road."
- They agreed that no member could speak "officially" for the group. The discussions would be unofficial and off-the-record.
- The group agreed that even if the meetings failed to produce solutions, the only post-meeting statement would be "we tried, but reached no areas of agreement."

Even with this working agreement, proceeding into informal talks was risky for both Port officials and community group leaders. There was no clear signal from either side that negotiations would be authorized. While not formally asked for authorization, individual Port Commission members indicated disapproval. This placed Port staff in a difficult position. Community council participants were moving against the advice of some board members, as well.

The Small Group discussions opened. Community members expressed a fear of "hidden agendas" from the Port. They emphasized their concern about impacts if piers 90-91 were to become a container terminal; they questioned the financial practicality of filling Smith Cove Waterway for anything less than a container terminal. The Port staff explained why fill is necessary in any modern terminal, not just for containers. At another meeting the Port staff demonstrated "modern" wagon-wheel directional lights at Terminal 18 in West Seattle.

In later Small Group sessions, the participants reviewed financial comparisons between filling the waterway and maintaining the existing aprons. They discussed the redevelopment alternatives, exploring possible ways to mitigate their impacts. Each had logical reasons behind his positions.

By venting frustration and easing raw feelings, the Small Group discussions led to positive personal relationships between Port and community officials. The people then could work on the issues that worried both sides.

During this period the community members of the Small Group also met with three former presidents from the Magnolia Community Club. They included Joel Haggard, land-use attorney in the community club's lawsuit; Janet Anderson, member of NAC and personally named in the lawsuit; and Ed Mueller, a lawyer. The group considered ideas to present at informal discussions with the Port. For example, Joel Haggard explored the idea of a "black box" definition of the T-91 site: The Port, Queen Anne and Magnolia should define a "black box" listing of performance standards which would apply no matter what the development consists of. There were difficult discussions between the old-line members of the community groups, who had bitter past experiences with Port staff and were distrustful of any moves toward compromise, and the new-line members, who had begun to trust a few Port staff.

The Small Group expanded the "black box" idea to include a definition of "emissions" from the "black box" (such as noise, lights, traffic and other impacts on the quality of life nearby). The "black box" was a significant idea to negotiations progress. The idea was to focus on "emissions" or what comes out from the development (lights, noise) and not on the activities. One participant said, "The black box idea was critical. It meant the Port could do what they wanted to do, as long as the emissions were controlled."

The Small Group discussion progressed smoothly for three weeks. Then, on January 5, 1983, the Queen Anne/Magnolia News front-page headline proclaimed "Secret Meetings Held on Pier 91's Future: Community Duped?" The article quoted Magnolia's Janet Anderson as saying "Community leaders meeting secretly with Port of Seattle officials to discuss the Port's planned Pier 90 development, risk being duped in the process." The article cited "secret meetings" and "junkets to other port cities." The News later printed letters from Anderson and other Small Group members contradicting the article.

The Seattle Times and the PI were silent. The Small Group sessions became emotional and tense.

Illustrating Principle 2:

Separate the non-negotiable issues from the negotiable issues.

The discussions in the small group led to a sorting of the issues. Port officials stated that they had an EIS showing the impacts of the proposed development. The community representatives viewed the EIS as a prediction, not a promise. They stated, there is no guarantee the impacts will be as predicted. One community representative said, "If you believe the EIS impact predictions, then promise us and agree to standards." As a way of monitoring impacts, community members proposed a list of standards for operating the terminal, including:

- Traffic (gate counts, intersection counts, traffic monitoring and control)

- Noise (monitoring equipment noise levels)
- Lighting (standard height for shielding, dark surfaces, and overall ceiling)
- Landscaping
- Enforcing (duty officer, oversight organization, self-monitoring)

Although Port officials could not yet agree to standards, they were intrigued with the notion of "trigger numbers." If numbers in traffic, noise or lights were to go beyond a set point, then there would be steps to take to study and resolve the problem. The "black box" concept moved one square forward.

Gradually, the issues that were non-negotiable for each side emerged. For the Port, the redevelopment of the seven-acre "short-fill" area was non-negotiable. Port officials said the deteriorating piers needed immediate improvement. And the Port staff was negotiating a lease agreement for the space with Nissan, a major tenant. Nissan needed more space, which only could come with short fill.

To the communities, it was essential to be able to contest any redevelopment plans going beyond "short fill." A plan for full fill of the waterway would be unacceptable. And it was essential to have an agreed-upon set of standards for a maximum set of emissions from the black box for the development plan.

Now the small group had gone as far as possible in its unofficial, unauthorized status. It was time to go public.

On March 7, 1983, the group issued a three-page report. It concluded with the optimistic suggestion that public continuation of the Small Group talks might bring about "responsive" staff recommendations to the Port Commission.

The Small Group sessions made Queen Anne's Paige Miller an advocate for compromise and reason. Miller went on to pursue a negotiated agreement, in the face of some opposition from her own community. Magnolia's Ed Mueller, an attorney, former community club president and NAC member, shared her views. A Seattle P.I. business news article, called "A Chance of Peace in the Pier 90 Fight," reported on their statements before the Port Commission on March 22, 1983:

"Two community representatives said at a port commission meeting yesterday that the groups don't see eye-to-eye with the Port, but that they may agree not to oppose a Pier 90-91 redevelopment plan, depending upon what the plan is."

At this point, there were some changes in the people involved in negotiating. The Magnolia citizens in the Small Group took other positions. Michael Par withdrew from NAC and the Piers 90/91 committee. Kenneth L. Schubert, Jr. (partner in a law firm specializing in business and trust law, governmental regulation, litigation, and international law) became president of the Magnolia Community Club, replacing Bobbie King. "There was a leadership vacuum on the 90-91 issue," said Schubert, reflecting on this period. Schubert's firm (Garvey, Schubert, Adams, and Barer) had stopped working for the Port of Seattle, clearing a potential conflict of interest. Schubert then appointed John Cain (a sales manager for Burroughs) chair of the Piers 90-91 committee.

A Port of Seattle decision-maker also changed positions. In November 1982, Lynn Taylor became Director of Planning and Research, a key position, for now Taylor would direct Terminal 91 staff recommendations.

FIVE ALTERNATIVES AND A STAFF RECOMMENDATION

In March, soon after the Small Group discussions concluded, the Port issued a final environmental impact statement. Even the format of the EIS reflected the discussions. There was no preferred alternative (full fill had been the preferred plan in the Draft EIS). This EIS displayed an array of five alternatives ranging from "no fill," through three levels of fill, to "full fill." There was room for flexibility in a Port Commission decision.

There were public meetings in the communities to hear recommendations for mitigating environmental impacts, and the NAC held special meetings for community representatives.

After hearing the public comments, the Port staff decided to recommend the short-fill alternative. They presented their recommendation at the April 26, 1983, Port Commission meeting. In a slide presentation, Lynn Taylor reviewed the recommendation with the commissioners. At the same time, a Terminal 91 Business Analysis (supporting the recommendation) was released.

The staff recommended a plan that included short-fill (up to seven acres of fill in the Smith Cove Waterway), traffic access using a new West Galer Street entrance, and operations of auto transshipping, warehousing, oil storage tanks, and neobulk and breakbulk shipments. The recommendation also suggested that the Port make a development compact agreement with the Magnolia and Queen Anne communities. The staff outlined future topics for negotiation of the development compact, including noise, traffic, lighting, and port/community consultation. But neither the Port commissioners nor the communities were quite ready for this suggestion.

The Seattle Port Commission held a public hearing at the Seattle Center the evening of May 18, 1983. That night there were new faces and mixed messages.

Magnolia's John Cain, a Burroughs Corporation executive and the new Piers 90-91 chairman, spoke first, requesting that the Port postpone any decision on Piers 90 and 91: "The Navy is actively considering homeporting a carrier battle group at Piers 90-91. It was an excellent neighbor and could be a good neighbor again." Cain went on to say the community club opposed any fill of Piers 90-91. He did not mention the earlier negotiations, nor did he propose additional face-to-face meetings.

Paige Miller then spoke for the Queen Anne Community Council. She thanked the Port staff for its intensive effort. She said, "If we can work out acceptable, measurable standards for noise, light and traffic, monitoring and conflict resolution, then we will agree to go with short fill of the waterway..."

She closed by saying, "Many of us in both communities, even some long-time Port critics, have devoted long hours to seeking a compromise. We urge you to accept the staff proposal as a framework for discussion, and we invite you to sit down with us to resolve our differences. To quote the famous song, 'All we are saying is give peace a chance.'" The communities gave mixed signals that evening.

It appeared to Port officials after the hearing that the Magnolia Community Club was poised for another lawsuit.

THE PORT DECIDES

One week after hearing recommendations at the public hearing, the Port Commission directed its staff to prepare a resolution outlining overall development for Terminal 91: ultimate full fill of the waterway; flexible phased development; tanks, breakbulk and berthage. In short, the Port Commission was putting together a plan for future full fill of the waterway which did not include a compact with the communities.

Sometime during the same week Jim Dwyer, Port senior director for Operations, called Magnolia Community Club President Ken Schubert to say he thought the communities were missing an opportunity to settle the dispute. This puzzled Schubert. He reread the statements Magnolia people had given at the hearing; he thought that these indicated the group was prepared to negotiate but that Port officials seemed to have a different interpretation.

Schubert met twice with Port Commissioner Merle Adlum, in Adlum's Norton Building office with Joel Haggard, and on a Saturday morning by himself at Adlum's West Seattle house. Then Schubert, Veda Jellen (Magnolia Community Club vice president), and Paige Miller alerted the editorial boards of the Queen Anne/Magnolia News, the Seattle Times, and the Post Intelligencer that the communities would negotiate. These contacts resulted in editorials urging the Port to negotiate.

But it would take intensive selling to convince the Port Commissioners and senior port officials to negotiate a short-fill development and standards for light, noise, traffic and aesthetics. On June 21, 1983, Schubert, John Cain, Paige Miller, Veda Jellen and Joel Haggard met with Port Executive Director Richard Ford and other Port officials, including Lynn Taylor. Schubert explained that the communities did not mean to send a message of inflexibility; that they could agree to a short-fill proposal; that they would negotiate mutually agreeable mitigation standards.

PERCEPTIONS ABOUT ENTERING FORMAL NEGOTIATIONS

Port officials were concerned about binding future port commissions and restricting future use of the terminal. There was a fear that community council leadership, changing each year, might not support an agreement in the future. They questioned whether the Port Commission could legally sign a binding agreement with community organizations. Some Port officials were reluctant to negotiate with any community group, particularly two groups representing a small part of the King County population. Some Port commissioners felt the Port would win a lawsuit and preferred to litigate the project at one time.

Despite these reservations, there were compelling reasons to enter negotiations. Negative public opinion was building in the neighborhoods and the editorial boards of both Seattle papers (Times and P.I.) had recommended negotiation. The Port of Seattle had just completed negotiations with the Nissan Corporation (the producer of Datsun cars and trucks), a key tenant at Terminal 91. The Nissan lease called for the redevelopment of 102 acres on Terminal 91 by 1986. This time constraint could not withstand the delay of a lawsuit from the communities. Larry Killeen, Port Senior Director for Facilities, summed up the Port's position, "We had to negotiate. The piers out there are ready to fall into the water and the communities were scared they were going to get another grain elevator."

For the communities, the need to negotiate was equally strong. Community leaders recognized that another lawsuit would be expensive in dollars and human energy. Challenging the EIS might postpone development, but it was unlikely to produce a set of mitigation standards. With a lawsuit and delay, Nissan (a low impact tenant favored by the communities) might depart. Another factor for the communities was the forthcoming November Port commission election. The communities wanted to keep pressure on to obtain an agreement before the election and if the negotiations failed, make it an election issue. Kenneth L. Schubert, Jr. explained his goals as President of the Magnolia Community Club going into the negotiation, "I was trying to avoid protracted litigation and to get the legitimate concerns of the community handled and mitigated, which, in my view, were nighttime noise and light, traffic, and aesthetics." From the community clubs' perspective, the negotiations could be a forum to reach mitigation standards long hoped for since the 1975 "Treaty of Magnolia."

On June 29, 1983, the Port Commission held the first reading of Resolution No. 2901, to redevelop Terminal 91. Schubert presented a joint statement from the community groups, offering not to sue over a short-fill plan, if the Port would assure the communities there would be no adverse impacts. The communities also asked the Port not to file a SEPA statute of limitations notice, which would start the clock ticking on the time to file a lawsuit. The communities did not want to give up their right to sue on this action, if the negotiations broke down.

At this point, Port Executive Director, Richard Ford, proposed an amendment to allow the Port formal negotiations with the communities.

Commissioner Merle Adlum then moved that the staff be authorized to continue the dialogue, and the motion carried unanimously.

Illustrating Principle 3:
Develop a framework with
authority, a deadline, and an agenda

The Port Commission asked its legal counsel, Michael Crutcher, a partner in the Seattle law firm of Preston, Thorgrimson, Ellis and Holman, to guide the negotiations of writing the amendment. Crutcher felt a personal involvement in resolving the dispute. He was a one time Queen Anne resident, and the attorney who represented the Port's interests in environmental legal challenges at the time the Terminal 91 property was acquired.

Ken Schubert, Paige Miller, John Cain, and Lynn Taylor worked with Crutcher. Heartened that the Port Commission had finally sanctioned negotiations, the group drafted an amendment to the Terminal 91 Resolution 2901. Lengthily entitled: "Appendix A, Terminal 91 Mitigation Program, Section III, Process for Resolving Community Environmental Concerns," the amendment contained several key features:

- a formal agreement to negotiate and agreement of the negotiations' goals
- a deadline of 90 days (prior to November Port Commission elections and enough time to resolve the issues and allow additional research)
- identification of the parties (Port of Seattle, Queen Anne Community Council, Magnolia Community Club)
- a statement of the issues in negotiation and narrowing negotiations' scope to noise, light, traffic, aesthetics, dispute resolution process
- agreement that the Port Commission would not file a statute of limitations notice under SEPA nor would the communities sue prior to the settlement date
- agreement that upon adoption of a mutually agreeable resolution, the Magnolia Community Club would dismiss its lawsuit, and the two community organizations would not sue.

The second reading of Resolution 2901 to redevelop Terminal 91, on July 12, 1983, included the new amendment. The Port commission also approved engaging a noise consultant to obtain preliminary noise monitoring data during the 90 day negotiating period. Paige Miller and Ken Schubert read statements supporting the amendment and presented formal statements from their respective boards authorizing negotiations.

Merle Adlum moved second reading and final passage of Resolution No. 2901, and the motion unanimously carried. The negotiations began.

The press was positive.

A Seattle Times editorial entitled "Truce at Smith Cove" applauded the formal negotiations. The P.I. quoted Lynn Taylor, "It's a matter of whether we want to draw lines in the sand, or to work with each other," in an approving editorial called "No Lines in the Sand."

THE FORMAL NEGOTIATIONS

All the negotiators attended the first negotiating session on July 14: Ken Schubert and John Cain from the Magnolia Community Club, Paige Miller from the Queen Anne Community Council, the Port's Lynn Taylor and attorney Michael Crutcher. Port Executive Director Richard Ford gave an introduction from the Port and introduced other Port staff in attendance.

Ken Schubert presented an introduction from the communities and raised the issue of drafting agreement language and the problem of writing by committee. The group met around the large conference table in Room 4-F at the Port of Seattle, juggling vacation schedules through the summer months. In the meetings following the first session (over a period from mid-August to October, 1983) they planned a preliminary discussion of noise problems (the most difficult subject), followed by the issues of Traffic, Aesthetics, Dispute Resolution, Lights, Noise and More Noise.

Illustrating Principle 4:
Identify a keeper of the record to
draft a single negotiating text

Michael Crutcher, Port of Seattle attorney, prepared drafts as the negotiations progressed. When key points were summed up by Paige Miller or another participant, Crutcher would say, "write that down," using the exact language of the negotiators. The draft became a unified working document.

After an all day negotiating session, Crutcher would produce a text overnight and distribute it to the negotiators the next day. In personality, Crutcher is reflective and calm.

He said, "My role really was secondary to the actual participants. If they had not had the energy to pursue it, we could not have done it."

Others felt that Crutcher's unruffled approach and incisive thinking were one of the major forces that produced an agreement. Taylor said, "A lot of us were somewhat burned out toward the end, a little lost in the forest, and Michael's approach and wisdom won out."

The draft was refined and further refined. During the final days, the community representatives met with Crutcher in Joel Haggard's law office to go over last suggestions. Crutcher shuttled these back to the Port executive staff. At points where there appeared to be a stalemate, Crutcher sat back and tried out ideas, "How about this.....?" He said, "I had to be willing to be inventive in coming up with formulations which I thought both sides could live with."

Crutcher tried to invent new structural models that would carry out the desires of the participants in the negotiations. Examples of these models included a dispute resolution procedure that channels disputes through the Neighbors' Advisory Committee and statements of concern filed by the community groups rather than challenging the Port in the permitting process.

Illustrating Principle 5:
Identify one persistent person who believes
in the negotiations, and pays attention to detail

Something beyond technical problem solving was crucial to the eventual success of the negotiations. It was the presence of people who believe in the process. There was one on each side.

Both were women. Both were relative newcomers to the situation.

Paige Miller, Queen Anne Community Council president said, "I can't count the times I read it the last rites." For her the negotiations almost became an obsession. Her sense that the problems could be solved through talks carried her along.

Lynn Taylor, the Port's Planning Director, carried on all the informal discussions and persuasion necessary to keep the negotiations going. She prodded Port staff to find new ways to solve problems and to design mitigation measures. She continued to ask questions. With senior Port officials, she floated ideas about the negotiating issues to test where the Port was willing to move. As one Port official said, "She was always working it. You need that kind of person to make something successful."

Toward the end of the formal negotiations, the strong link between Miller and Taylor expanded to take in Ken Schubert. They had daily telephone conversations. There was a "trust circle going on," said Miller, in which one person would repeat something to the other, and by the last telephone conversation, it was the same as at the beginning.

Miller and Taylor, both of whom kept to the middle ground more than others in their respective constituencies, took on the role of the "medium" of communications, a role often played by a mediator. They translated positions to one another, and came away with an understanding of the other side's interests which they could explain to their constituencies.

Illustrating Principle 6:
Maintain close contact with
constituencies

The negotiations were officially authorized by the Port of Seattle Commission, the Magnolia Community Club Board of Trustees, and the Queen Anne Community Council Board. As the negotiations progressed, the participants in the direct discussions brought drafts and issues back to their respective boards. For the Queen Anne Community Council, Paige Miller reported upon emerging areas of agreement at each monthly Council meeting. She would obtain the assent of her

council for the direction of negotiations. Miller said, "People were willing to take my lead." Jim Smith, long active in the Terminal 91 activities and a Queen Anne member of NAC, was running for Port Commissioner so he did not take an active role in the negotiations until the last month.

In Magnolia, the checking back process was more complicated. Internal negotiations became heated. Many more individuals had been outspoken on issues involving the Port. Issues of particular difficulty were the fill (some were absolutely opposed to any fill), the monitoring and enforcement of the agreement (some wanted legal recourse through the courts on all issues), and the agreement not to contest agency permits on the short-fill redevelopment. Schubert formed a group of people who would review the drafts and materials as they were produced. This group was composed of the Piers 90-91 committee plus several past presidents including Joel Haggard and Janet Anderson. Joel Haggard, acting as attorney of record for Magnolia Community Club, made extensive changes in all drafts of the agreement. The group met frequently and toward the end of the negotiation, John Cain spent one Saturday morning delivering copies of the draft agreement to all Magnolia Community Club Board members so members could review the draft prior to a Sunday evening board meeting at Ken Schubert's house. In the end, Schubert and Cain were able to convince the full board of the merits of having an agreement with standards.

At the Port, officials participating directly in the negotiations (Taylor, Ritchie, Dohrmann) met with other senior staff (Executive Director Richard Ford, Lawrence Killeen, Carol Doherty, Jim Dwyer) to review negotiating progress. Informally, Port staff kept the Port Commissioners informed of the negotiations.

NEGOTIATING THE "BLACK BOX"

In order to establish overall concepts, the negotiators treated Terminal 91 as a "black box" from which, no matter what was inside, the emissions of light, noise, and traffic would not exceed certain levels.

- They set subjective and objective standards; for example, in the area of noise, there is a subjective noise complaint procedure to deal with immediate, day and night complaints on specific noises. There is also an objective "noise index" which includes the aggregate of all equipment noise as measured at the terminal and specific noise limits for certain types of equipment.
- They decided on trigger levels for activities, which, if exceeded, would set in motion definite procedures. Again, in the area of noise, the "noise index" formula is updated every 6 months. If a future "noise index" exceeds the base index by 0.25 bels, the Port will retain a qualified acoustical engineer to make a recommendation. For traffic, the Port will monitor each gate at set intervals, 24 hours a day; if the number of vehicles exceeds a set level, there will be additional monitoring. If the traffic continues to exceed the trigger level, the Port will bring in an independent consultant.

- They developed a dispute resolution procedure described by one participant as a gigantic decision tree, in which we "talk, act, talk, act."
- They agreed that the two community councils would sign a "statement of concern" pertaining to permits required for the short-fill development.

After setting the overall goals for discussion, the negotiators could take a closer look into the "black box."

Illustrating Principle 7:
Assume a problem solving stance
using creative technical assistance

In an effort to go beyond abstractions, the negotiators assumed a "problem solving" stance. They looked at measurements of noise, drawings for light poles, studies on truck traffic, and architectural plans for the terminal. They considered engineering methodology and state of the art technology. They included technical experts who could design alternative approaches to solving the problems.

NOISE

When the discussions began all the participants thought noise would be the most difficult issue. There was no basis for agreement on a data base. The Port had hired a noise consultant as part of its EIS preparation. The Magnolia Community Club had commissioned a different noise consultant to review the EIS noise analysis. Their consultant, Jan Hauge of the Seattle firm Towne, Richards, and Chaudiere, Inc., concluded that "the EIS consultant may have significantly underestimated the noise levels and impacts of the proposed facility."

So both Port and community negotiators agreed the Port should hire another noise review consultant. Joel Haggard set out to find an expert in the field of community noise, and found that all recommendations pointed to Theodore J. Schultz, recently retired from Bolt, Baronek and Newman, the firm which had prepared the noise analysis for the final EIS. The negotiators tracked Schultz to Paris. During one session, Michael Crutcher used Lynn Taylor's speaker telephone to call him at his hotel near the River Seine. Schultz agreed to make a study of Terminal 91.

The Port paid Schultz, but all the negotiators participated in designing his program for monitoring noise, setting noise level standards, and designing a complaint system. Ken Schubert reviewed the consultant contract, took one exception to the consultant contract section which says, "We do not believe the noise standards need to be tied to the Seattle Noise Ordinance." Schubert's point would come up again in the negotiations: He wanted the Terminal 91 noise standards to be even lower than the Seattle Noise Ordinance.

Theodore J. Schultz arrived in Seattle in late August. Of distinguished presence, he quickly gained the confidence of the participants in the negotiations. One commented, "He was an idea man. He was a fair person and a thoughtful man, which lent credibility to the results."

Schultz saw that the previous two noise experts had disagreed because they used different allowances for "excess sound attenuation." He conducted some measurements of his own in late August and early September, 1983. He used a large theatre loudspeaker system to generate sounds on the piers; he stationed people at specific locations in the communities to measure the sound; and he simultaneously measured the noise level at a 50-foot distance from the source.

Schultz also ran a 24-hour noise monitoring measurement in four residential locations near the piers. The results showed that the current operations at Piers 90-91 present a "negligible noise impact," and in no case violate the City of Seattle noise code. On the other hand, street noises, aircraft flyovers, and the railroad switching yard do generate noise exceeding the City code, for large portions of time both day and night.

John Cain found this very significant. Now the Port really could begin to negotiate. Since the Port was not violating the City noise ordinance, setting standards on the terminal would not be as difficult.

Now the negotiators turned their attention to ways of solving Terminal 91's one-time noise problems, which came to be known as the "stuck car horn" racket. One weekend afternoon on Terminal 91 a Datsun truck horn jammed. The noise disturbed a Magnolia resident who was having a picnic and who called the gate. The guard at the gate said that he did not have the authority to leave the guard house. The woman went down to Terminal 91, went through the lot filled with Datsun trucks, and unstuck the offending horn.

The community representatives used this example to show that someone on Terminal 91 should have the responsibility and authority to fix a problem 24-hours a day. The concept of a duty officer emerged. The subsequent agreement included a 24-hour noise complaint telephone line, prompt investigation, and attempt to resolve the problem within two hours.

Before the negotiations ended, the noise complaint procedure was implemented and appeared to be working. Said Ken Schubert, "I think the agreement is working quite well. The oil offshore rig that was tied up to the piers had its own generators going. Within four days the Port had wired them in for shore power."

But the negotiators still were a long way from agreeing on standards. They put off the final noise discussions until the last meetings.

LIGHTS

On August 11, 1983 at 9:00 p.m., five negotiators climbed into a Port of Seattle van at Pier 66 for a lighting tour led by John Dohrmann, Port Senior Environmental Planner. First stop was the Smith Tower outside observation deck to view the lights of Terminal 18 (on the west side of the Harbor Island East Waterway).

Terminal 18 has the latest technology lighting fixtures, with "wagon wheel" brackets which direct light downward, and "high mast" area lights. The group drove to Terminal 18 to see the fixtures up close. They saw that the new technology could provide more light at the ground, with less glare to surrounding neighborhoods, than lighting systems presently located at Terminal 91.

The two main issues in lighting were the height of the light fixtures (base plus pole), and the intensity of the light ("foot candle" power). For technical advice the negotiators drew upon the expertise of Port Chief Engineer Walt Ritchie. Ritchie described the types of light fixtures (flood lights, flush lens, street light) and he explained why the lighting levels for working conditions have to comply with the regulations from the Occupational Safety and Health Administration (OSHA). Ritchie used technical candor and gained the trust of negotiators.

Ken Schubert wanted to have the light poles as low as possible. He said, "I learned from Joel Haggard about a "penumbra" the halo created by lights. If the poles are lowered, you reduce the sphere of light," Schubert asked, "What's to keep you from making it a 25 foot base?" Engineer Walt Ritchie made further calculations, and designed a 60 foot light with 55 foot pole and 5 foot base.

The light poles became a joke as the negotiations wore on. When Schubert wanted to make an absurd request he would say, "Now how about the 10 foot light poles?"

The give and take between participants and technical experts on lighting for Terminal 91 illustrates the creative spirit of the negotiations.

TRAFFIC

The community participants were most concerned about the potential terminal generated traffic from the gates and at key intersections. The Port staff could not agree to absolute limits on traffic, so they explored the idea of trigger levels.

They discussed the traffic concepts of "trip end" (an arrival or departure of a truck or car) and the "level of service" (a way of measuring traffic congestion). John Dohrmann provided the technical assistance, using statistics gathered during the Final EIS work. Using this data, the group addressed the problem: what traffic levels should trigger monitoring? They proposed two points for monitoring—at the gates and at several intersections.

This was not a difficult issue to resolve. The Final EIS had not predicted traffic problems with redevelopment. There were easily understandable ways to monitor impacts (counting cars and trucks). The negotiators agreed on a monitoring program including 1) a quarterly gate count of trucks and autos entering Terminal 91 over a one-week, 24-hour a day period, and 2) a traffic analysis (level of service) of 5 intersections once a year. If traffic exceeds the agreed upon trigger levels, the Port will do another round of monitoring. If the second monitoring effort shows excess traffic levels, then it will trigger an investigation by an independent consultant. There is a method for revising trigger levels through the NAC.

DISPUTE RESOLUTION

All of the participants in the negotiations saw a need to design an ongoing dispute resolution process. The community participants hoped to get away from always going to court over their problems:

"I've practiced law long enough to know there is no way to anticipate all problems," said Ken Schubert. For Port officials the need for a dispute resolution process was tempered by their need to retain ultimate decision-making authority on any recommendation. The process design would have to give the Port commissioners the final word. Lynn Taylor compared this idea to an "asymptotic curve," solving the problems by walking next to a fine line of Port Commission authority, but never crossing over.

After several negotiating sessions discussing mediation, arbitration, and independent fact finding, the negotiating team prepared a draft section on dispute resolution which has the following elements:

- a re-structured and re-designed NAC with oversight responsibility for the agreement, conduit for information between Port and communities, vehicle for resolution of disputes arising out of the agreement.
- NAC membership defined as 4 Magnolia Community Club representatives, 4 Queen Anne Community Council representatives and 1 neutral chair, 4 non-voting Port officials.
- NAC holds regular meetings and hears reports on monitoring of noise, traffic, lights.
- NAC chairman reports to Port Commission on substantial unresolved issue or agreement violation and if Port Commission fails to respond or responds in way deemed inadequate by NAC the parties shall choose mediation, independent consultant, or arbitration.

AESTHETIC ELEMENTS OF DESIGN

The discussion of aesthetics in design drew on Port Engineer Walt Ritchie's technical expertise again. Ritchie reviewed specific design plans and engineering drawings for the Terminal 91 redevelopment. He explained the process for project design and the need to have an engineering "stamp" on the plan before it is seen by any outside group. Ritchie said he could not agree to giving the Neighbors' Advisory Committee veto power over his design drawings. The citizen negotiators expressed their preference for the non-reflective surfaces, pleasing paint colors, and certain roof heights and slope (pitch). The group then agreed that the Neighbors' Advisory Committee would have a 14-day comment and review period on engineering plans for reconstruction and construction. Aesthetic goals included pleasing overall color scheme, pitched roofs, non-reflective surfaces, and landscaping for Terminal 91.

NOISE AGAIN

In the last two sessions, the negotiators returned to the issue of noise. The first of these was on Wednesday, October 5. It included Ted Schultz, John Cain, Ken Schubert, Joel Haggard, Jan Hauge, John Dohrmann, and Michael Crutcher. The session deteriorated into bitter words. There were new personal dynamics at this meeting—two people not regularly attending negotiations were introduced (Haggard and Hauge) and two people present at the other meetings were absent (Taylor and Miller).

After many telephone discussions, the group decided to try one last meeting with the understanding that legal counsel would not participate in the meeting except as observers.

On Thursday, October 6, Ted Schultz and John Dohrmann crunched numbers all day. They worked through scenarios for noise levels at the Terminal. They analyzed the probability of simultaneous, 24-hour operation of all the redeveloped activities at Terminal 91.

At the meeting that night (including everyone from the previous session, plus Paige Miller and Lynn Taylor, and Ken Weiner from the Preston law firm. For once, Michael Crutcher was unavoidably detained elsewhere.) Ted Schultz presented a "worst case" future scenario for noise on Terminal 91, as redeveloped (simultaneous operation of 2 chill ships, 1 neobulk ship, 1 auto ship, and an oiler barge). Schultz predicted that this event could statistically occur on about 3 days in 100 years. His figures led to a breakthrough in reaching agreement on noise.

Paige Miller recalls, "These wild, unlikely events were the ones we'd been arguing about." John Cain said to Schubert, "We had to stop splitting hairs."

The resulting Noise section of the agreement contains measures including monitoring the equipment used at Terminal 91 on site and from the communities, establishing specific noise limits for each type of Terminal 91 noise source, creating a complaint procedure for community residents with noise problems, and taking acoustics into consideration while designing redevelopment plans. There is a specific section on construction noise, setting the time limits and provision for inclusion in construction contracts.

AGREEMENT IN SIGHT

On Thursday evening, October 7, 1983, at 11:30 p.m., Ken Schubert made a final request—he wanted the Port of Seattle to pay Magnolia's expenses in hiring experts to review the EIS materials—\$2,000 for a socioeconomic review and \$10,000 for an acoustics expert. Lynn Taylor explained why the Port officials could not accept that request: it would set a precedent for Port dealings with other community groups. Taylor described that moment, "It was midnight, you can taste the agreement. I said, "Ken, we can't do it."

Schubert said, "We'll have to caucus." The community negotiators left the room—Ken Schubert, John Cain, Paige Miller, Joel Haggard, and Jan Hauge. They were out for a half hour. Schubert returned, "We have a counter offer. One thing. You have to allow John Cain to sign the agreement as well as me." There was a sense of elation. An agreement at last.

The group went out for drinks. Schultz caught a late plane to Boston. Michael Crutcher put the finishing touches on the agreement (changes made that last evening) and the agreement was prepared for circulation to the Seattle Port commission as an attachment to Resolution No. 2916.

At the Seattle Port Commission regular meeting of October 11, 1983, well within the 90-day deadline, an agreement was signed. Taking pen in hand, Paul Friedlander, President of the Seattle Port Commission, signed in three places, executing the documents (the Short-Fill Redevelopment Agreement, an Agreed Statement of Concern About Issuance of Permits). Following Friedlander's signing, Kenneth L. Schubert, Jr. and John W. Cain, Jr. signed for the Magnolia Community Club. And finally, Paige Miller signed for the Queen Anne Community Council.

Said Merle Adlum, "This is a real first between a municipality and a community."

The Seattle Post-Intelligencer ran an editorial on Friday, October 14, 1983 with the heading, "Port, neighbors sign peace treaty," and stated, "After eight years of bickering over their collective back fence, the Port of Seattle and its Pier 91 neighbors, the Magnolia and Queen Anne communities, have found a better way to handle their differences."

