

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

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

I. RECITALS

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

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

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

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

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

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

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

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

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

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

II. AGREEMENT

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

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

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

C. **Land uses:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. DISPUTE RESOLUTION

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

IV. GENERAL PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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


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

PORT OF SEATTLE

By: 
Gina Marie Lindsey
Managing Director, Aviation Division

Date 12/14/01

CITY OF SEATAC

By: 
for

Calvin P. Hoggard
City Manager

Date 12/5/01

Approved as to Form:

By Robert L. McAdams
Robert L. McAdams
City Attorney

Date 12/5/01