

**MEMORANDUM OF AGREEMENT
BY AND BETWEEN THE PORT OF PORT TOWNSEND AND THE CITY OF PORT
TOWNSEND REGARDING BEST MANAGEMENT PRACTICES TO REDUCE
NOISE IMPACTS GENERATED ON PORT PROPERTY LOCATED WITHIN THE
CITY OF PORT TOWNSEND**

This Agreement is executed on this 3 day of June, 2003, by and between the Port of Port Townsend, a municipal corporation ("Port") and the City of Port Townsend ("City"), a municipal corporation.

RECITALS

A. In connection with the City's formulation of a Citywide noise regulation (Chapter 9.09 PTMC), City and Port representatives have met to discuss issues relating to noise regulation as they relate to Port tenants and shipyard users. The City and Port desire to enter into this MOA to set forth certain understandings and undertakings in this regard. This MOA is intended to provide for best management practices, notification of larger projects to the City, and joint data gathering. It is not intended to give the City any right or ability to permit, condition or approve Port marine operations through noise regulations.

B. As background, the 1996 Port Townsend Comprehensive Plan (the "Plan") states: "The urban waterfront along Port Townsend Bay is anchored at either end by marinas and port areas devoted to the City's marine-related commerce and industry. These areas are essential to the character of Port Townsend as a working waterfront town." Community Direction Statement, page III-1.

C. The Comprehensive Plan's economic development strategy provides that marine trades are one of the major areas of emphasis for economic development. It directs the City to work with other entities, including the Port, to "develop and implement consistent strategies which promote the economic health and diversity of the areas." Economic Development Element, page VII-9. With regard to marine trades specifically, the Economic Development Element states:

"Marine Trades

The Community Direction Statement of this Plan (see Chapter III) describes the community we wish Port Townsend to become in the next 20 years. The statement makes clear that marine-related commerce and industry and maintenance of the "working waterfront" character of the City are central to the community's vision.

The potential for expansion of the marine trades sector of our local economy is considerable. The largest obstacles to growth of this industrial sector include: a lack of appropriately located and zoned vacant land; and a lack of Port infrastructure to service larger and increased numbers of boats. As long ago as 1985, the Economic Development Council's (EDC) economic development strategy indicated that added moorage, water side work space, large capacity lifts and haulout facilities and port area improvements were necessary to allow

expansion. Completion of the 200 ton enhanced haul-out facility will go a long way towards alleviating existing infrastructure needs.

The City should play a key role in encouraging the marine trades economy. One important step the City should take is to plan and zone to promote marine-related commerce and industry in specific shoreline areas. Equally important is the City's role in cooperating with the Port to develop and implement master plans for Port properties which are consistent and coordinated with City plans and programs. Finally, the City should take a leadership role in promoting the skills available in Port Townsend's marine trades force." Economic Development Element, VIII 11-12.

D. Concerning "Port Related Uses," the Comprehensive Plan further provides that the City:

"Work closely with the Port of Port Townsend to provide for the development of the Boat Haven and Point Hudson properties in a way that ensures the viability of long-term marine uses, the vitality of the area for port-related uses, and compatibility with surrounding areas." Manufacturing Lands Policy 9.8, IV-26.

Manufacturing Lands Policy 9.4 (IV-26) of the Comprehensive Plan states that development regulations should be reviewed and revised "to ensure that manufacturing development will be designed, built, landscaped and operated in a manner which maintains the value and desirability of surrounding lands."

Faced with a variety of land use goals and policies, which include both protecting and fostering established neighborhoods, and protecting and encouraging marine industry, the Plan identifies the "Overall Land Use Goal: To accommodate the City's expected population growth in a sustainable manner that maintains or improves the community's character, environment, employment base, and quality of life." (IV-16).

E. The 1995 Final Environmental Impact Statement ("EIS"), adopted by the City for the Heavy Haulout Facility, identified noise as an unavoidable adverse impact of the project. In addressing impacts and mitigations of the preferred alternative and unavoidable adverse impacts, the EIS states:

"6. Environmental Health.

Noise: An increase in the level, duration and frequency of noise is anticipated in both the construction and post-construction phases of this project. Pile-driving and earthmoving activities will generate noise during construction activity. Following completion of the project, noise will be generated by the expanded marine trades activities in the shipyard work areas. Activity of the Travelift, hull washdown and sandblasting facilities will contribute to the increase in noise. This noise will be typical of that for an industrial area, and will approximate the types of noise that currently exist in the Boat Haven. Travelift and hull washdown activities will be conducted between the hours of 7 AM and 6 PM.

Sandblasting activities will be conducted by private businesses in containment facilities that will muffle the blast noise. In addition, only Clean-Blast grits will be used. These environmentally sensitive grits do not product the level of noise that steel shot would. Sandblasting activities will be allowed only between the hours of 7 AM and 10 PM.

The effects of noise on residential areas to the west and northwest will be lessened by the presence of the 60 to 90 foot high bluffs above the Urban Wetland District. The native vegetation buffer around the work areas will also lessen the noise reaching the Urban Wetland District." Plan at, IV-10.

In the chapter on the affected environment, significant impacts and mitigations measures, the Plan further states:

"6. Environmental Health.

The major environmental health impacts that could potentially result form the Enhanced Haulout Project would be an increase in duration or frequency of noise and increased risk to public safety resulting form the increased industrial activities.

During construction, noise will be generated primarily by pile driving and earthmoving activities. Following completion of the project, noise will be generated by the expanded marine trades activities in the shipyard work areas. The types and levels of noises should be approximately the same as those existing in the Boat Haven at the current time, however the increased activity will mean greater durations and frequency of noise.

The two areas of particular concern for public safety are the haulout operations occurring in the vicinity of the lift and work docks and the potential vessel traffic congestion in the marina fairway and lift dock areas. These issues are discussed in the Transportation section (Section 8).

Other potential environmental health impacts resulting from the project are the risk of explosion and the release of toxic or hazardous materials. As with noise, the types of materials which will be used in the expanded shipyard are the same as those currently used in the Boat Haven, however the amounts may be larger.

Impacts:

The noise likely to have the greatest impact is that associated with hull sandblasting. Increased sandblasting activity is anticipated due to the increased numbers of steel vessels that will be brought to the facility for repairs or renovation. Unconfined sandblasting activity of the type conducted at the Boat Haven generates a noise level of approximately 120 decibels (db) at the sandblast nozzle; this level drops to 65 db within 150 feet of the site on open, level ground (data from Martinac Shipbuilding Corporation, Tacoma, WA).

Various pieces of shipyard equipment, including the Travelift and delivery trucks, are other sources of noise that will occur more often in the expanded shipyard. It

is anticipated that most of this noise will be generated during daylight business hours.

Mitigation:

Some increases in the occurrence and/or duration of noise is unavoidable due to the increased business activities at the site. This noise will be typical of that for an industrial area, and effects on residential areas to the west and northwest will be dampened by the presence of the bluffs above the Urban Wetland area. Effects of noise on the Urban Wetland District will be dampened by the installation of a native vegetation buffer between the workareas and the wetlands buffer area.

Noise from sandblast operations will be dampened by the fabric containment walls, by other buildings and structures around the work areas and by the native vegetation buffer that will be installed between the workareas and the wetlands buffer area. In addition, hours of operation will be restricted to between 7 AM and 10 PM.

Mitigation to minimize noise impact will include limiting the use of equipment such as the Travelift, workdock cranes and hull washdown facilities to the hours of 7 AM to 6 PM." Plan, at VI-26 – 27.

F. On July 15, 1996, the City Council conditioned approval of a shoreline substantial development permit for the Heavy Haulout Facilities on the following:

"19. The Port shall limit sandblast operations to the hours of 7:00 a.m. to 10:00 p.m. If noise complaints are received by the city, the Port shall be required to install or establish screening or vegetation buffers to minimize noise impacts or reduce operation hours from 8:00 a.m. to 6:00 p.m.

20. The Draft and Final EIS prepared for the Enhanced Haulout Facility identifies a number of unavoidable adverse impacts and recommends specific mitigation measures to address probable adverse impacts. These mitigation measures are incorporated by reference as conditions of approval." Port of Port Townsend, SDP 9602-02, page 18.

G. Proposed mitigations in Exhibit 7 to the heavy haulout permit included:

- Limit travelift and hull washdown activity to daylight hours.
- Locate washdown facility centrally rather than at west end of the Boat Haven.
- Limit sandblast operations to between the hours of 7 AM and 10 PM

H. The Port currently requires commercial and industrial work to meet the hour's restrictions in the 1995 EIS and the 1996 substantial development permit. The Port has established vegetation screening by planting approximately 50-60 trees in the vicinity of an existing wetland along the west perimeter of the Port. The full benefit of this vegetative screening will be realized as the trees grow to full height.

AGREEMENT

Now therefore, the parties agree as follows:

1. Rules and Best Management Practices. This Agreement sets forth the written operational practices the Port currently uses and agrees to use in the future with respect to activities under its operational control that generate noise at the Port. In addition, Port staff works with and offers advice to Port tenants and users of Port facilities concerning the need to be aware of noise generation activities and ways such activities might be accomplished in ways to lessen noise. The Port will implement the following additional operational practices:

A. **Map.** The attached map currently divides the Boat Haven property into general “zones,” with Zone “A” providing the most noise buffer protection due to physical distance and the buffering presence of buildings; Zone “B” providing the next best buffering protection because of its location farther into the shipyard; and Zone “C” providing the least buffer or distance protection.

B. **Location of Projects Generating Noise at the Boat Haven Boatyard and Shipyard.** Every effort will be made to locate all larger projects according to the following: (1) Every effort will be made to locate all larger projects first in Zone A; if Zone A is unavailable, in Zone B, and lastly in Zone C; (2) Where two or more larger projects overlap or occur at the same time, every effort will be made to locate the project of longer duration in Zone A or B before locating it in Zone C. Contractors or tenants with a fixed facility will not be required to move to a different zone. The Port is not required to re-locate projects once a project is initially located.

A “larger project” for purposes of this agreement: (1) is one in which a substantial component of the activity will generate noise of particular or significant intensity and duration during a period of at least seven (7) consecutive working days; or (2) is a project lasting at least seven (7) days which involves a substantial component of sandblasting, demolition or cutting of metal vessels.

C. **Use of Best Available Technology.** For all “larger” projects, the Port will work with contractors to encourage the selection of “noise friendly” equipment based on current technology and availability. The Port will develop literature for contractors containing recommendations for location of equipment and types of equipment to buffer noise impacts.

For projects involving sandblasting, the Port will continue to require 100% fabric containment for dust control, which also helps dampen noise. The type of containment will vary from job to job, depending on what is reasonably feasible. The Port will inform contractors that only blast media or similar environmentally sensitive techniques may be used, which do not produce the level of noise that steel shot would.

Upon execution of this MOA, Port will revise its operational documents as necessary to include general reference to the following:

- a. That the City has adopted a noise regulation based on public disturbance, and decibel readings based on state law. The documents will reference the hours of operations limitations contained in the ordinance. If activity occurs that necessitates a variance, the contractor or vessel owner should attempt to get a variance from the BCD Director pursuant to the City's noise ordinance.
- b. The best management practices identified above; and
- c. That contractors and vessel owners should attempt to minimize work on Sundays that generates excessive noise.

D. **Emergencies.** Emergencies that occur outside of the exempt hours set forth in the noise ordinance will not be enforced under the noise ordinance. The Port will provide information to the City on request concerning the emergency. An emergency is an occurrence that threatens imminent harm to life, property or the environment (such as the need to operate the travel lift in the middle of the night to rescue a sinking boat).

E. **Notification to the City.** As part of its best management practices, when larger projects (as defined by this Agreement) are scheduled Port staff will make every effort to identify potential noise impacts of the project in advance, and then generally notify the City BCD Department as soon as possible of the location and the expected duration and type of noise.

F. **Notification to Existing Tenants and Users.** Port will notify existing marine trades tenants who work on large projects of the City noise regulations and of the applicable best management practices of this MOA, in a manner deemed most appropriate by the Port to reach such tenants and owners.

G. **Complaints.** If either party receives complaints concerning noise, they shall telephone, email or fax notice of the complaint to the other party as promptly as possible, but in no event later than two (2) business days of receipt. The Port shall provide the City with information concerning the source of the activity generating the complaint. Information would include Port's estimate of likely duration of the noise generating activity and efforts (if any) that were taken to mitigate the noise. Both parties shall explain to persons complaining about noise the general terms of the noise exemption applied to the Port, and the MOA best managements practices and data tracking provisions.

H. **Data Gathering.** The Port will periodically take decibel-meter readings, both when loud noise-generating projects are occurring and when no such projects are occurring, and including locations off the Port premises. This is intended to gather data to help assess the actual noise generated by the working boatyard with these best management practices in place and to generate data for the Port and City concerning the amount of noise from activity at the Port property. By "periodically," the City and Port understand this could mean meter readings taken by the Port several times a month at various locations when a larger project is underway, including if possible with different weather conditions.

The parties will endeavor to work collaboratively to obtain noise data that is useful in reviewing the effectiveness of management practices, and to reasonably take a certain

number of readings when noise complaints are received by the City or Port. The parties understand the Port personnel taking the readings will not be certified. The parties understand that the Port's commitment to take decibel readings set forth in this paragraph is not to be construed to require that noise metering takes precedence over other Port matters or that it should unreasonably interfere with Port operations, but is rather a good faith commitment on the part of the Port to gather data concerning noise generated from marine trades at the Boat Haven property. All readings will be made available to the City on request.

Port and City will maintain a file or files of data gathered, including, but not limited to, decibel readings and complaints. Periodically, as agreed to by Port and City staff, the Port will provide the City with information concerning the Port's location of larger projects between Zones A, B, and C, and decibel readings taken by the Port, to allow the parties to review the effectiveness of management practices to reduce noise and noise complaints concerning project noise. The City will provide decibel readings taken by the City to the Port. The City and Port will cooperate in good faith to meet from time to time to review and assess the effectiveness of the Port's best management practices. Such review and re-assessment will first take place at the staff level, with modifications to this Agreement or the City noise regulations, if any, to be evaluated by the City Council (or appropriate Council committee). The review and re-assessment may include the Port providing its assessment of the effectiveness of management practices, and offering any suggestions concerning any additional practices or measures that the Port believes might be reasonable to reduce noise impacts, including any that might result from the Port's current comprehensive planning process for the Boat Haven and Point Hudson.

2. Enforcement. For the activities and times set forth below, City agrees that it will not enforce the City's noise ordinance, under either the public disturbance or WAC Maximum Environmental Noise Level provisions, for one year after the ordinance is adopted to give the parties time to review complaints, if any, and the data gathered under (1)(H) above. After that time, the noise ordinance will be enforced for the activities and times set forth below only if this MOA is terminated under No. 4 below.

Within property zoned M-II A (Boat Haven) and B (Point Hudson), sound from work done on or associated with recreational, commercial and industrial vessels, floats, barges, or marine-related works projects, and from commercial and industrial businesses, between the hours of

- Monday through Saturday, between the hours of 7:00 A.M. and 10:00 P.M., and
- Sunday and holidays, between the hours of 8:00 A.M. and 6:00 P.M. "Holidays" are legal holidays as defined by RCW 1.16.050.

3. Additional Collaborative Actions. Nothing in this Memorandum of Agreement shall preclude Port or City staff from initiating additional collaborative actions consistent with the spirit and intent of this Agreement throughout the term of this Agreement.

4. Termination. This Agreement shall be ongoing until terminated according to the terms of this Agreement. Neither party shall terminate this agreement for a period of one year

from its effective date. After one year from its effective date, this Agreement may be terminated with sixty (60) days written notice to the other party, provided that the City will not terminate this Agreement until after review of this Agreement by the Council Community Development /Land Use Committee (or other Committee to which review is assigned by the Council), and action taken by the Council at an open meeting on ten days written notice to the Port. Prior to termination by either party, the parties shall meet as mutually agreed and attempt to first work out differences.

5. Rights of City and Port. Nothing in this Agreement shall be construed as limiting in any the City's legislative or regulatory authority over public health, safety and welfare. Nothing in this Agreement shall be construed as limiting or waiving in any way the Port's right or ability to challenge the currently proposed noise ordinance or any ordinance amendment later adopted by the City, or to challenge an exercise of City authority on any grounds if the Port deems it appropriate to do so.

6. Enforcement – Port. Nothing in this Agreement shall be construed to create a right of enforcement against the Port for any violation of Chapter 9.09 for noise generated by project contractors and/or vessel owners or agents.

7. Counterparts. This signature page of this Memorandum of Agreement may be executed in any number of counterparts, each of which shall be an original. This Agreement shall become effective upon approval by the official action of the governing bodies of each of the parties and execution of the Agreement by their duly authorized representatives.

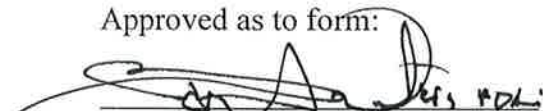
8. Assist in Accomplishing Objectives. Each party agrees to aid and assist the other in accomplishing the objectives of this Memorandum of Agreement.

**PORT OF PORT TOWNSEND, a
municipal corporation**


Larry Crockett, Executive Director

Date: June 2, 2003

Approved as to form:


Malcolm Harris, Port Attorney

**CITY OF PORT TOWNSEND, a municipal
corporation**

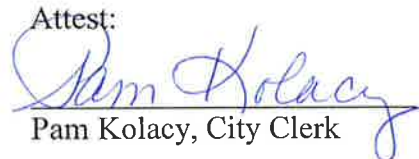

David Timmons, City Manager

Date: June 3, 2003

Approved as to form:


John Watts, City Attorney

Attest:


Pam Kolacy, City Clerk

