

## WAWONA PRESERVATION MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("Agreement") is entered into on September 17, 2007, by and between the CITY OF SEATTLE ("City"), acting through its DEPARTMENT OF PARKS AND RECREATION ("Parks"), and NORTHWEST SEAPORT ("NWS").

WHEREAS, the *Wawona* was built in 1897 and, during her working career, sailed from Puget Sound and Seattle as a lumber carrier, a fishing vessel, and a military barge with links to the aircraft industry;

WHEREAS, the *Wawona* is one of the largest three-masted schooners ever built on the West Coast and is only one of two remaining Pacific schooners out of a fleet of over 500 sailing ships that engaged in coast-wide and transoceanic shipping and in fisheries;

WHEREAS, the *Wawona* was listed in the National Register of Historic Places in 1970, the first vessel to be placed on the list, designated as an official Seattle Landmark in 1977, and designated as a Historic Naval Vessel in 1999 by the Historic Naval Ships Association;

WHEREAS, the *Wawona* has served as a museum ship from 1964 to date and is presently berthed in Waterway No. 4, adjacent to Lake Union Park;

WHEREAS, Parks administers and is renovating Lake Union Park, which renovation will require moving the *Wawona* from its current berth in Waterway No. 4;

WHEREAS, in anticipation of moving the *Wawona*, NWS and Parks sponsored in 2005 the *Wawona* Summit that brought together a group of national experts in historic ship preservation and maritime heritage as well as local experts who were familiar with local heritage vessels and the political, funding and community support environments for maritime heritage;

WHEREAS, the Final Report of the *Wawona* Summit was issued in May 2006 and is available online at [www.nwseaport.org](http://www.nwseaport.org);

WHEREAS, the Final Report of the *Wawona* Summit summarizes two professional marine surveys of the *Wawona* in 2005, which surveys generally concluded that the *Wawona* is severely deteriorated;

WHEREAS, one of the preservation alternatives considered and addressed at the *Wawona* Summit was the on-land display of significant parts of the vessel; and

WHEREAS, the City, Parks, and NWS agree that their preferred alternative for preservation of the *Wawona* is an on-land display at the DNR site and an indoor display at the MOHAI site as generally depicted in Appendices B and C;

THEREFORE, in consideration of the mutual promises and undertakings hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

A. Definitions.

1. "City" means the City of Seattle.
2. "City Council" means the Seattle City Council.
3. "DNR site" means the property owned by the Department of Natural Resources ("DNR") located within Lake Union Park, for which the City is seeking a waterway use authorization agreement from DNR. The DNR site is identified in Appendix A.
4. "MOHAI site" means within the Naval Reserve Building located in Lake Union Park that the Museum of History and Industry ("MOHAI") may occupy as a heritage center.
5. "Northwest Seaport" or "NWS" means the Washington not-for-profit organization.
6. "Parties" means the City of Seattle and NWS.
7. "Selected vessel elements" means those portions of the *Wawona* selected by NWS for preservation potentially including but not limited to the keel, frames, knees, clamps, and aft cabin.

B. Vessel Preservation.

8. The parties agree the *Wawona* may be preserved by any of the following means:
  - a. First Alternative. Documenting the vessel as provided in paragraph 16 and displaying a restored skeleton of the vessel at the DNR site or other permanent non-City owned site in a manner substantially consistent with the illustration attached as Appendix B (the "*Wawona* Memorial"), together with an indoor display of selected vessel elements at the MOHAI site (or other permanent non-City owned site) in a manner substantially consistent with the illustration attached as Appendix C. This is the parties' first and preferred choice, and they agree that the DNR site is the intended site.
  - b. Second Alternative. Documenting the vessel as provided in paragraph 16 and displaying selected vessel elements indoors at the MOHAI site, or other permanent non-City owned site in a manner substantially consistent with the illustration attached as Appendix C. This is the parties' second choice if vessel preservation as proposed in the First Alternative is unsuccessful.
  - c. Third Alternative. Documenting the vessel as provided in paragraph 16. This is the parties' third and least preferred choice and applies only if NWS defaults under paragraphs 18 or 22h of this Agreement.
9. The parties agree these preservation alternatives may be incorporated into a Historic Preservation Act Section 106 Memorandum of Agreement and Seattle Landmarks Preservation Board approval.

10. This Agreement does not bind or commit any entity that is not a party to it, including but not limited to MOHAI and the Seattle Parks Foundation ("SPF"), to take any action whatsoever in connection with the possible preservation of the vessel as contemplated in this Agreement.

11. The parties shall cooperate and work together in good faith, including taking all actions necessary to support each of the preservation alternatives set forth in paragraph 8 through all reviews and approvals necessary to move, drydock, dismantle, or display the vessel, including those identified in paragraph 12.

C. Preservation Approvals.

12. Work to relocate the vessel shall begin on or after December 10, 2007 provided all of the following have occurred. The parties shall cooperate and work together in good faith to obtain the following:

a. Approval by the City Council of an ordinance removing a budget restriction in the 2007 Parks Capital Improvement Plan ("CIP") budget which prevents funds from being used to dismantle or demolish the vessel and authorizing use of the funds consistent with this Agreement (anticipated by November 30, 2007);

b. Execution of a U.S. Army Corps of Engineers ("COE") Historic Preservation Act Section 106 Memorandum of Agreement authorizing preservation of the vessel in a manner acceptable to the parties (anticipated by December 1, 2007);

c. Written approval from DNR consenting to the *Wawona* Memorial being located on the DNR site (anticipated by December 1, 2007);

d. SPF consent to preparation of a site plan and design for placement and display on the DNR site of the selected vessel elements for SPF's subsequent review and possible approval as provided in this Agreement (received September 12, 2007); and

e. Review by the City of Seattle Landmarks Preservation Board authorizing preservation of the vessel in a manner acceptable to the parties (anticipated by December 6, 2007).

13. Either of the parties may terminate this Agreement upon written notice to the other party if any of the approvals or consents required in paragraph 12 are not obtained by December 10, 2007. If reasonable progress is being made in obtaining the Preservation Approvals, either of the parties may unilaterally extend this deadline until January 25, 2008.

14. NWS shall not file any administrative or judicial appeal of any decision about any Preservation Approval set forth in paragraph 12 that is consistent with and necessary to fulfill the terms of this Agreement. If the City files an appeal to any Preservation Approval decision, NWS will support the City in its appeal, provided that the decision is inconsistent with this Agreement.

D. Moving, Documenting, and Disassembling the Vessel.

15. As soon as the approvals necessary to allow the vessel to be moved have been obtained, the vessel shall be moved from Waterway No. 4 to drydock.
16. The City shall, in consultation with NWS, document the vessel using the Historic American Buildings Survey (HABS) and the Historic American Engineering Record (HAER) Guidelines for Recording Historic Ships.
17. On or before October 15, 2007, NWS shall provide to the City a detailed list of selected vessel elements, which shall be attached to and incorporated into this Agreement as Appendix D, and which shall specifically describe the vessel elements NWS desires to preserve.
18. If NWS fails to identify the vessel elements within the time required by paragraph 17, the City may in its sole discretion, determine what elements will be preserved.
19. The vessel elements not selected by NWS for preservation shall be disposed of.
20. The vessel shall be dismantled and the selected vessel elements transported for storage as described in paragraph 22.
21. The City shall contract and pay for all costs associated with preparing and moving the vessel from Waterway No. 4 to drydock, drydocking, documenting, dismantling, transporting selected vessel elements for storage, and disposing of those vessel elements NWS has not selected for preservation.

E. Storing Selected Vessel Elements.

22. The selected vessel elements shall be stored at no charge to NWS at an open-air, City-owned site as determined by the City. When the City has determined the City-owned site where the vessel elements will be stored:
  - a. The City shall determine where the vessel elements may be located on the site;
  - b. NWS shall, within fourteen (14) days of the City identifying the site where the vessel elements will be stored, submit a storage footprint site plan to the City for its approval which the City will not unreasonably withhold;
  - c. NWS and its agents will, subject to any other terms of this Agreement, be allowed on the City site during normal operating hours to perform restoration and preservation work;
  - d. NWS and its agents shall be subject to all City ordinances or rules governing the City site;

e. NWS shall provide proof of property and liability insurance, in amounts acceptable to the City, insuring the City against all loss associated with NWS's activities while on the City site;

f. NWS shall pay for and erect fencing to surround the area where the selected vessel elements are stored. NWS shall also pay for and erect any covering or rain shelter it chooses in order to protect the selected vessel elements from the weather;

g. NWS's permission to store the selected vessel elements at a City site terminates on December 31, 2010 and, on or before that date, NWS shall, subject to the terms of this Agreement including paragraph 34, remove the selected vessel elements to a permanent site; and

h. If NWS fails to move the selected vessel elements as required by subparagraph (g), NWS relinquishes all ownership interest in the selected vessel elements to the City and the City shall have the right, in its sole discretion, to preserve and/or dispose of the selected vessel elements by any alternative identified in paragraph 8.

F. Financing, Restoring, Displaying, and Maintaining the Vessel.

23. NWS shall pay all costs associated with restoring or preserving the selected vessel elements, including all costs associated with installing and maintaining the selected vessel elements at the DNR and/or MOHAI sites, or at a permanent non-City owned site, except as provided in paragraph 24 below.

24. The City shall pay for the ordinary and routine maintenance of the *Wawona* Memorial as identified in the final maintenance plan required by paragraph 30.

25. If the City has any funds in the Parks' 2007 CIP budget for Project #K732352 after paying the costs identified in this Agreement, the City shall transfer the funds to NWS which shall use the funds for restoring and preserving the selected vessel elements.

26. The City shall work in good faith with NWS and MOHAI to obtain the MOHAI site as a location for an indoor display of selected vessel elements as contemplated in paragraph 8. This alternative is only possible if NWS enters into an agreement with MOHAI acceptable to MOHAI in its sole discretion to display the selected vessel elements.

27. On or before June 30, 2008, NWS shall provide the City with a preliminary project work plan for preserving and installing selected vessel elements at the DNR and/or MOHAI sites, which includes:

a. A time line for completing a detailed work plan;

b. A project budget, including up-to-date direct and indirect costs that will be incurred to preserve, move, display, and maintain the selected vessel elements;

c. A fundraising program which includes milestones for securing all financing necessary to preserve, move, display, and maintain the selected vessel elements;

d. A schedule for obtaining all permits or other authorizations, which may include, but not be limited to a City Master Use Permit, subleases, or other approvals necessary to move or display the selected vessel elements;

e. A schedule for completing the design and construction work necessary to display the vessel elements;

f. A preliminary site plan and design for locating the selected vessel elements at the DNR site. The preliminary site plan and design shall identify the proposed location and orientation where the vessel elements would be displayed and the materials and finishes used to display the vessel elements; and

g. A preliminary maintenance plan for the *Wawona* Memorial identifying: all required ordinary and routine maintenance items, a maintenance schedule, and the maintenance materials required.

28. On or before June 30, 2008, NWS shall provide the preliminary site plan and design to the SPF for review and comment. SPF comments will guide NWS in preparing a final site plan and design for SPF review.

29. On or before March 30, 2009, NWS shall file complete applications for all permits necessary to display the selected vessel elements at the DNR and/or MOHAI site.

30. On or before March 30, 2010, NWS shall provide the City with:

a. A financial plan with supporting documentation proving that NWS has secured pledges for fifty percent of the funds required to preserve, move, display, and maintain the selected vessel elements at the DNR and/or MOHAI site; and

b. A final site plan and design approved by SPF that specifically describes how the selected vessel elements will be exhibited in an outdoor display at the DNR site. The final site plan shall include complete design and construction drawings sufficient to allow NWS to award contracts for the installation of the selected vessel elements; and

c. A final maintenance plan which incorporates all of the elements of the preliminary maintenance plan required by subparagraph 27g; and

d. A copy of the contract allowing and providing for the display the vessel elements at the MOHAI site if selected vessel elements will be displayed there; or

e. Documentation establishing that NWS has secured, if necessary, a non-City owned site other than the DNR and/or MOHAI site for permanently displaying the selected vessel elements.

31. The financial, final site and maintenance plans, and design shall be subject to City approval which shall not be unreasonably withheld. The City shall approve or disapprove the financial and final site plans and design no later than June 30, 2010.

32. If NWS fails to provide all documents required in paragraph 30 by March 30, 2010:

a. All rights to install the selected vessel elements at the DNR site shall terminate as of that date; and

b. The City shall have no further obligations under this Agreement and NWS shall not seek assistance from the City to preserve or site the selected vessel elements.

33. If a final site plan and design is approved, the installation of the selected vessel elements at the DNR and/or MOHAI sites shall be substantially completed no later than December 31, 2010 at the DNR site or, in the case of the MOHAI site, upon the opening of the new MOHAI heritage center. If the installation is substantially complete by December 31, 2010, then NWS shall have until April 30, 2011, to complete the installation fully. If the DNR site is not ready to receive the installation of the selected vessel elements by December 31, 2010, then the installation of the selected vessel elements at the DNR site shall be completed nine (9) months after the site is ready. If the deadline to complete installation is extended for either reason, then the deadline under paragraph 22g for NWS to remove the selected vessel elements to a permanent site shall be likewise extended.

34. Before moving selected vessel elements to the DNR and/or MOHAI or other non-City owned permanent site, NWS shall provide the City with:

a. Executed contracts or commitments for moving and displaying the selected vessel elements;

b. Evidence that NWS has available funds or pledges necessary to: move; display; and, except as provided for in paragraph 24, maintain the selected vessel elements; and

c. Copies of the MUP, Park Use Permit and any other permit necessary to display the selected vessel elements at the DNR and/or MOHAI or other non-City owned permanent site.

35. If the DNR water use authorization agreement for Waterway No. 4 is terminated, NWS shall be responsible for removal of all selected vessel elements from the DNR site upon termination of that agreement.

G. Additional Terms.

36. The City will not file an unlawful detainer action or take other action against NWS to obtain removal of the vessel provided NWS complies with this Agreement.

37. NWS holds the City and its agents harmless for any and all liability for or damages to the vessel or vessel elements including damages caused by the vessel sinking during the course of: preparing, moving, documenting, or disassembling the vessel; transporting or storing the vessel elements; or disposing of the vessel elements, including any disposal of vessel elements the City takes under paragraph 22h.

38. NWS holds the City and its agents harmless for and indemnifies the City against any and all damages that may be incurred by NWS or its agents or claims that relate in any way to injuries to persons or property while NWS or its agents are on City property and engaged in any activity associated with any provision of this Agreement. The indemnification provided for in this section shall survive any termination or expiration of this Agreement.

39. The City agrees to indemnify, save harmless and defend NWS and its agents from any and all losses, claims, actions or damages suffered by any person or entity by reason of or resulting from any act or omission of the City or any of its officers, agents, employees, or invitees in connection with actions of the City involving the vessel or selected vessel elements; but only to the extent such claims, actions, costs, damages or expenses are caused by the negligence of the City, its authorized officers, agents, employees or invitees. The indemnification provided for in this Section shall survive any termination or expiration of this Agreement. This indemnification provision is the result of mutual negotiation.

40. The parties' obligations to each other under this Agreement shall be limited to the terms and conditions set forth herein. Notwithstanding any other provision in this Agreement to the contrary, in no event shall one party be liable to the other party, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

41. NWS shall provide evidence acceptable to the City that NWS and every contractor engaged by NWS to perform work on the vessel or activities in connection with moving, restoring, preserving or installing selected vessel elements maintains insurance policies in such amounts and offered by companies satisfactory to the City, including, but not limited to, policies for Worker's Compensation Insurance (including Employers' Liability Insurance) and insurance against liability for injury to persons and property arising out of NWS's or its contractor's operations, and the use of owned, non-owned or hired automotive equipment in the pursuit of all such operations. The City shall be named as an insured on all insurance policy required by this paragraph.

42. No elective or appointive board, commission, member, officer, employee or other agent of the City shall be personally liable to NWS, its successors, and assigns, in the event of any default or breach by the City or for any amount which may become due to NWS, its successors and assigns under this Agreement, or for any obligation of the City under this Agreement. Likewise, no board member, member, officer, employee or other agent of NWS shall be personally liable to the City, its successors and assigns under this Agreement, in the event of any default or breach by NWS or for any amount which may become due to the City, its successors and assigns, or for any obligation of NWS under this Agreement.



43. NWS represents and warrants to the City and covenants as follows:

a. NWS is a nonprofit corporation duly incorporated, validly existing and in good standing under the laws of the State of Washington. NWS shall at all times during the term of this Agreement maintain its tax-exempt status under Sections 501(c)(3) of the Internal Revenue Code.

b. NWS has full power and authority (corporate or otherwise) to enter into this Agreement and to consummate the transactions contemplated by it. This Agreement has been duly authorized by all necessary action on the part of NWS and no other corporate or other action on the part of NWS is necessary to authorize the execution and delivery of this Agreement. The individual executing this Agreement for NWS has full authority to do so and thereby to bind NWS to the terms of this Agreement.

c. To its knowledge, the execution and delivery by NWS of this Agreement and the performance by NWS of the transactions contemplated in it will not violate any federal, state or local law, rule or regulation, or conflict with or result in any breach or violation of, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or constitute an event or condition that would permit termination or acceleration of the maturity of, the Articles of Incorporation, bylaws or partnership agreement of NWS (as applicable) or any indenture, mortgage, lease, agreement or other instrument or obligation to which NWS is a party or by which it may be bound whose termination or acceleration would materially adversely affect the ability of NWS to perform its obligations under this Agreement. To its knowledge, no approval, authorization, consent or other order or action of, or filing or registration with, any person, entity or governmental authority is required for the execution and delivery by NWS of this Agreement.

d. To its knowledge, the execution and delivery by NWS of this Agreement will not conflict with any order, judgment or decree of any court, government, government agency or instrumentality, whether entered pursuant to consent or otherwise, by which NWS may be bound or affected.

e. To its knowledge, there is no litigation, action, arbitration, grievance, administrative proceeding, suit or claim filed and pending, nor is there any investigation by a governmental agency of NWS or any of its affiliates that, if adversely decided, could have a material adverse impact on NWS's ability to perform its obligations under this Agreement.

44. Any prevention, delay or stoppage in a party's performance hereunder due to Force Majeure shall excuse the performance of the party affected for a period of time equal to any such preventing, delay or stoppage; provided, however, that during the period of any such delay or stoppage, the party whose performance hereunder is excused shall take all reasonable steps to minimize the length of such delay or stoppage. As used in this Agreement, the term "Force Majeure" with respect to a delay in performance shall mean any delay that is attributable to:

a. Any strike, lockout or other labor or industrial disturbance (whether or not on the part of the employees of either party hereto), civil disturbance, future order claiming jurisdiction, act of the public enemy, war, riot, sabotage, blockade, embargo, inability to secure customary materials, supplies or labor through ordinary sources by reason of regulation or order of any government or regulatory body;

b. Any changes in any applicable laws or the interpretation thereof; or

c. Any lighting, earthquake, fire, storm, hurricane, tornado, flood, washout, explosion, or any other cause beyond the reasonable control of the party from whom performance is required and of its contractors or other representatives.

45. All notices required to be given hereunder shall be in writing and either delivered personally or sent by certified mail to the appropriate address listed below, or at such other address as shall be provided by written notice. Notice shall be deemed communicated two City business days from the time of mailing if mailed as provided in this Section. For convenience of the parties, copies of notices may also be given by other means; however, neither party may give official or binding notice except by personal delivery or by certified mail.

If to NWS:

Joe Shickich, President  
Northwest Seaport  
In care of Riddell Williams P.S.  
1001 - 4th Avenue Plaza, Suite 4500  
Seattle, WA 98154-1192

If to the City of Seattle:

Christopher Williams, Acting Superintendent  
City of Seattle Department of Parks and Recreation  
100 Dexter Avenue North  
Seattle, Washington 98109

46. As used herein, the term "agents" when used with respect to either party shall include the agents, employees, officers and representatives of such party. All approvals, consents or other determinations permitted or required by the City hereunder shall be made by or through the Superintendent of the Department of Parks and Recreation unless otherwise provided in this Agreement or unless the City gives notice otherwise to NWS.

47. In the event of a dispute between or among NWS and the City regarding any term of this Agreement, the parties shall attempt to resolve the matter informally through the following mechanism: the Superintendent and NWS, or their respective designee(s), shall meet to review and discuss the matter(s) in dispute; if the Superintendent and NWS are unable to reach a mutual resolution, NWS shall meet with the Superintendent and other City representatives, as appropriate, to review and discuss the matter(s) in dispute. If such persons are unable to resolve the matter informally, either party may submit the matter to a non-binding, structured mediation

procedure fashioned by persons or organizations experienced in alternative dispute resolution ("ADR") procedures. The mediation may be requested by any party and shall be initiated within thirty (30) days from the date of the request unless extended by agreement of both parties. The alternative dispute resolution procedures utilized for the mediation shall include the exchange of written claims and responses, with supporting information, at least seven (7) days prior to the actual mediation. The positions expressed and mediator's recommendations shall not be admissible as evidence in any subsequent ADR or legal proceeding. If the matter is submitted to mediation and the matter is not resolved, an affected party shall be entitled to pursue any legal remedy available.

48. No failure by either party hereto to insist upon the strict performance of any obligation of the other party under this Agreement or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues (except in cases where this Agreement expressly limits the time for exercising rights or remedies arising out of a breach), shall constitute a waiver of such breach or of that party's right to demand strict compliance such term, covenant or condition or operate as a surrender of this Agreement. No waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance, or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of either party hereto given in any instance under the terms of this Agreement shall not relieve the other party of any obligation to secure the consent of the other party in any other or future instance under the terms of this Agreement.

49. The terms, covenants and conditions contained in this Agreement shall bind and inure to the benefit of the City and NWS and, except as otherwise provided herein, their personal representatives and successors and assigns. There are no third party beneficiaries to this Agreement.

50. The activities engaged in by NWS pursuant to this Agreement are as an independent entity only and no relationship exists between NWS and the City. Nothing contained in this Agreement shall be construed to create a partnership, joint venture, or a relationship of employment or agency.

51. This Agreement contains all the agreements of the parties hereto relating to the subject matter addressed herein, and cannot be amended or modified except by a written agreement approved and mutually executed between each of the parties hereto.

52. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and same instrument.

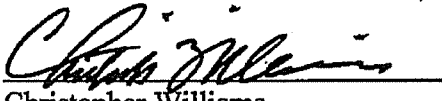
53. Time is of the essence of each provision of this Agreement.

54. Termination of this Agreement shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this


Agreement, nor shall it affect any provision of this Agreement that expressly states it shall survive termination hereof.

Dated this 17<sup>th</sup> day of September, 2007

The City of Seattle

By   
Christopher Williams  
Acting Superintendent of the Department of  
Parks and Recreation

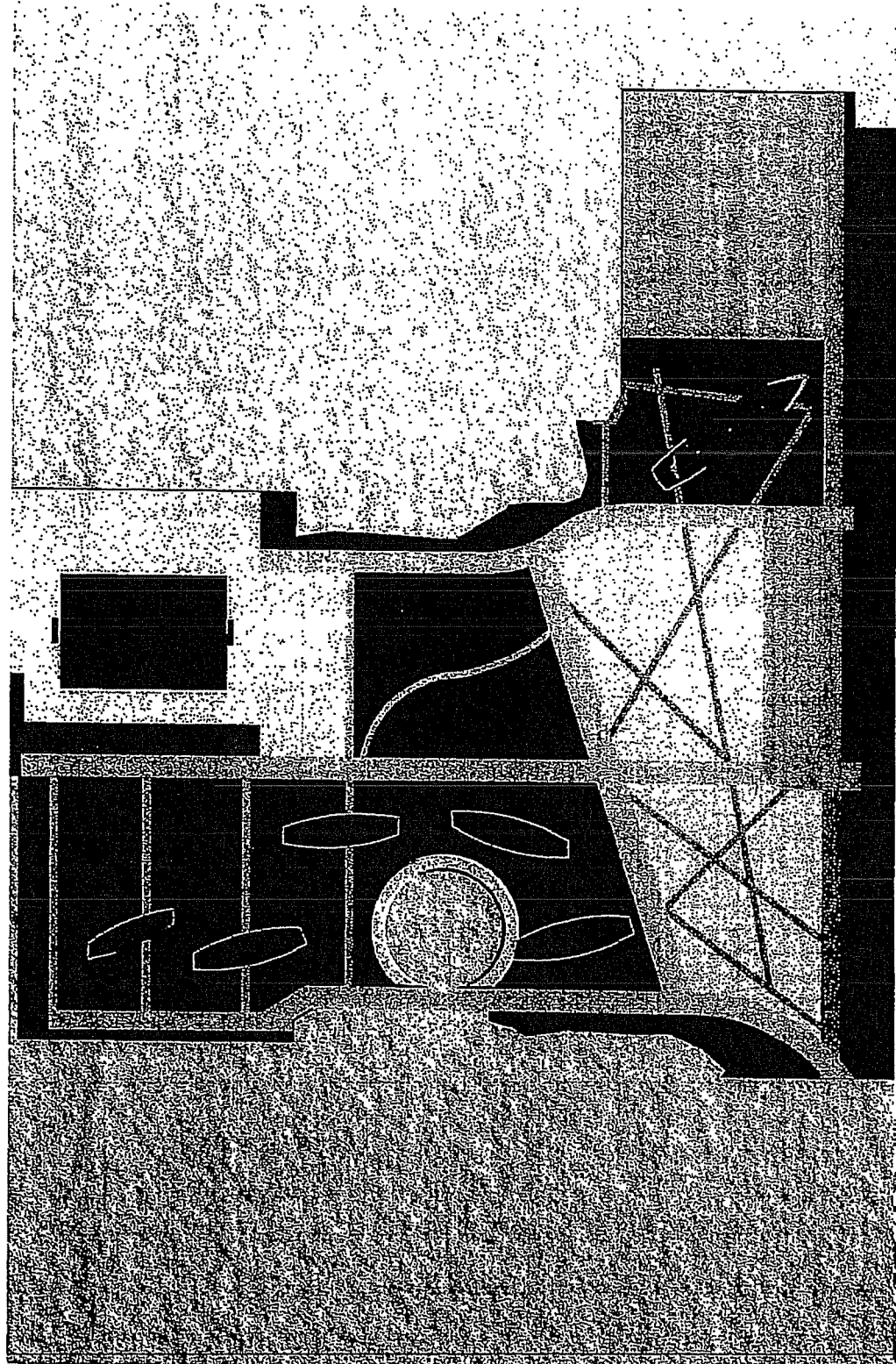
Northwest Seaport

By   
Joseph E. Shickich, Jr.  
President of Its Board of Directors

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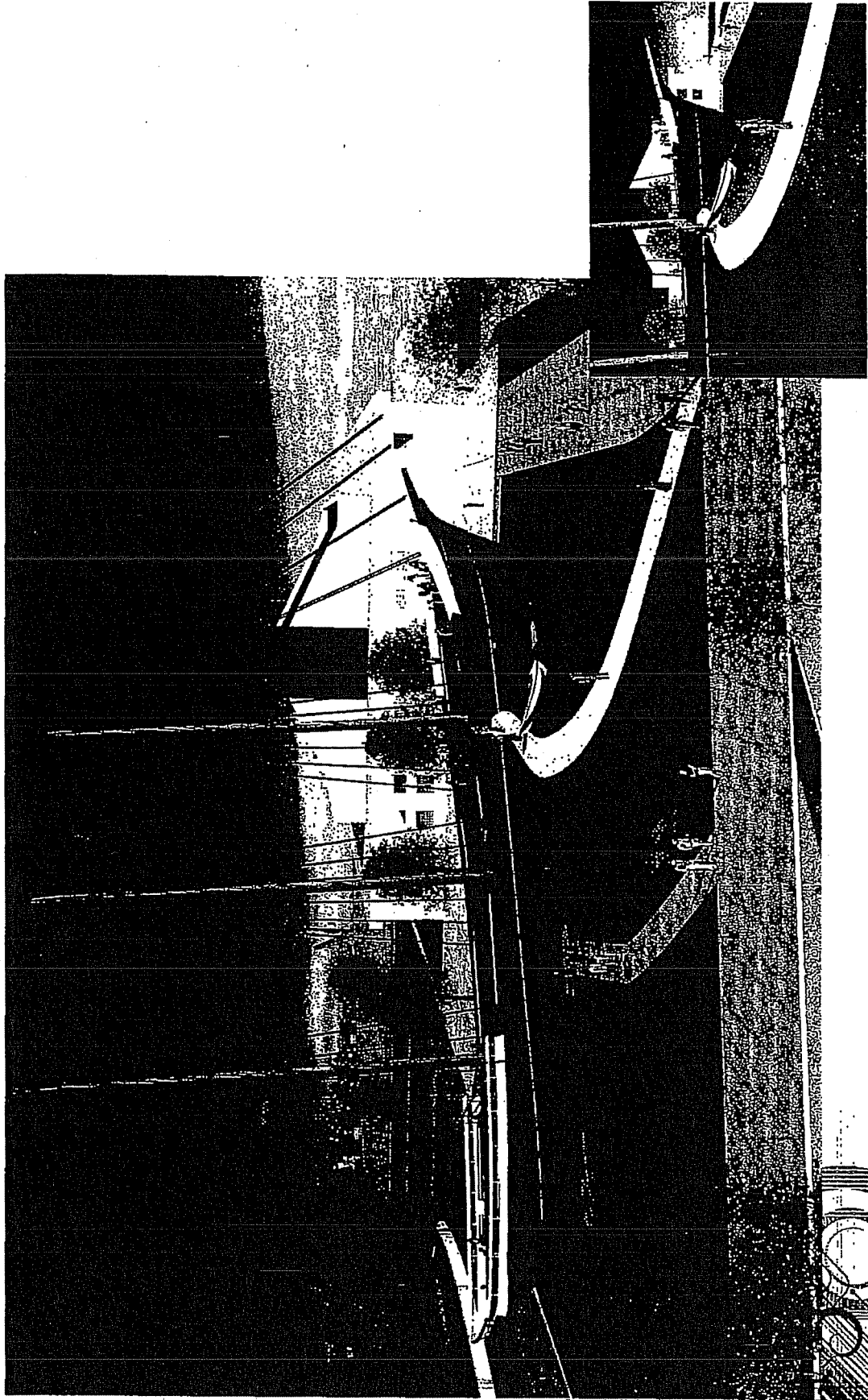
# APPENDIX A

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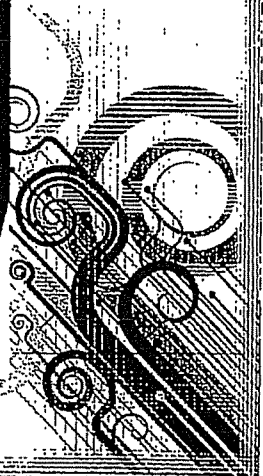
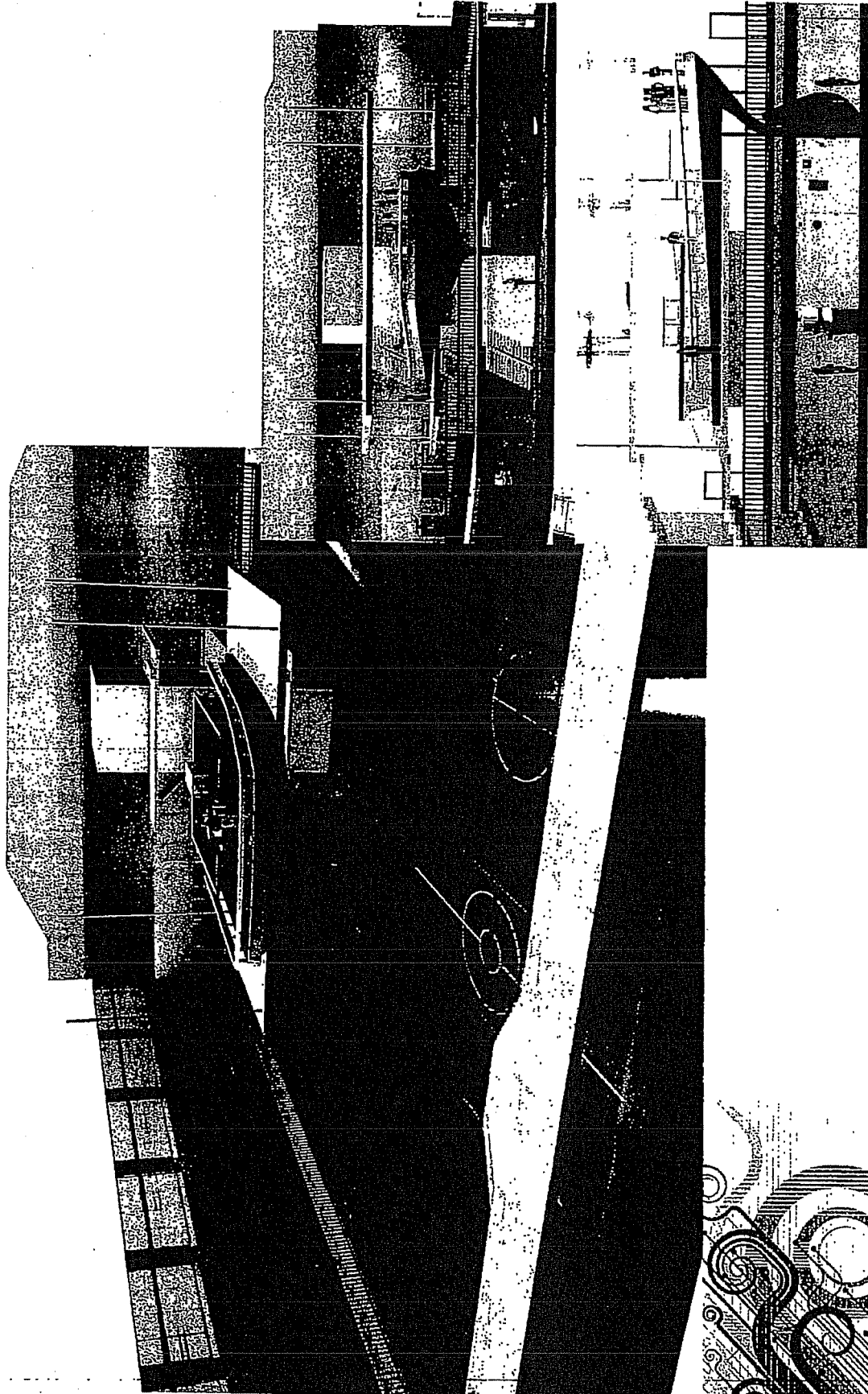
Foot of Boren Ave. N.  
(DNR site)

# **APPENDIX B**





# **APPENDIX C**



## APPENDIX D

Appendix D, the detailed list of vessel elements selected by NWS to be preserved, will be attached here as provided for in paragraph 17 of this Agreement.