Truth in Aviation

Newsletter of the Regional Commission on Airport Affairs (RCAA)

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Port Financial Staff Has No Concrete Plan For Financing Third-Runway

PORTSPIN
our regular column examining the latest spin doctoring from the Port of Seattle's "public relations" machine.

The area outlined in red is the approximate area of the third runway fill. The area outlined in yellow is fill brought in during the past five years—approximately 5 million cubic yards of the eventual 19.84 million cubic yards needed for the runway and an additional 1.13 million cubic yards needed for the Runway Safety Areas.

Construction

The Port's contract with low bidder TTI Constructors, LLC, for third-runway work in 2004 and 2005 requires a total payment of $192.6 million. That far exceeds the Port's entire cash reserve. Financial staff at the Port of Seattle have not produced a concrete plan for finding the necessary cash. And that $192.6 million is just part of the total needed to complete the project ...more

Moving Runway Fill Not So Simple

One of the many difficult problems for the Port in moving forward on the third-runway project is finding millions of cubic yards of fill material that will be clean enough to meet the requirements laid down by the Department of Ecology, the PCHB, and the Supreme Court. Once found, the fill must be moved to Sea-Tac Airport, and that turns out to be not so simple, either...more

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ACC Says Ecology Violates Supreme Court Ruling, Seeks Clarification from Pollution Control Hearings Board

On July 8, attorneys for the Airport Communities Coalition (ACC) filed an appeal with the Pollution Control Hearings Board, seeking review & correction of the revised sec. 401 certificate issued by Ecology for third-runway construction as the result of the earlier Supreme Court decision. The appeal also challenges the Department's order implementing the certificate. Both documents were issued on June 7.

According to the Notice of Appeal, there are two key elements of the certificate and order from the Department of Ecology that violate the Supreme Court's ruling. The Court issued “a clear ruling that no soils contaminated with gasoline, diesel or heavy oil (“TPH”) may be used” – yet the Port plans to use such fill, & Ecology plans to allow such use. Further, the Court issued “clear directives ... that contaminated sites may not be used” as the sources of fill, yet “such sites are nonetheless proposed for use”.

Before filing their appeal, ACC wrote at length to the Port and Ecology, urging full compliance with the Court's ruling. That letter was ignored.

Arsenic-laden Fill Back in the Picture

Ecology still has not explained how they justify any possible use of arsenic-contaminated fill material from the Glacier pit on Maury Island. On May 19th, Ecology wrote the Port that Maury Island fill could indeed be used, if additional testing were done. This letter has not been rescinded. Yet, the Supreme Court said, “If the proposed borrow site was ever contaminated ... its dirt may not be used as fill for the third runway”. While the PCHB ruling was pending on appeal, the Port, Ecology, & various consultants were screening potential sources of runway fill. In its haste to OK renewed runway work, Ecology seems to have forgotten to back and re-examine the approvals previously given for various fill sources, in light of the requirements in the Supreme Court ruling. Rather, they seemed to assume that their own very loose criteria would apply, that all the new requirements from the PCHB would be overturned. That was not the case. In general, in deciding whether a site was ever contaminated, Ecology seems to be using a highly restrictive definition of “contaminated”, whereas the court's language is all-inclusive. You don't need a laboratory analysis to know that Glacier's site on Maury Island & many other sites as well have been previously contaminated with smelter fall-out.

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ACC Letter of May 28 **[.pdf file 199KB]**

ACC Appeal **[.pdf file 307KB]**

What's a 401 Permit?

A sec. 401 Certificate is an official determination by the State Department of Ecology that a project that might affect wetlands or "waters of the United States" won't violate State water-quality rules.

Anyone wanting to fill wetlands or otherwise affect streams, creeks, lakes, & other water must have approval from the U.S. Army Corps of Engineers under sec. 404 of the federal Clean Water Act. Before the Engineers act, the State has an opportunity to decide if the project can be completed "with reasonable assurance" that State water-quality standards will not be violated. Without that ruling from the State, in the form of the 401 Certificate, the Engineers are supposed to decline to issue their permit. Typically, before a sec. 401 Certificate is issued, Ecology lays down conditions in an accompanying "Order". These may include provisions for mitigation (replacement wetlands), for stream monitoring, for control and restoration of stream flow, for

A second arsenic issue has to do with testing. The Supreme Court said, even if the SPLP test was used to pass fill samples that would otherwise fail standard tests, the samples had to pass not one but two water-quality standards – surface waters and groundwater standards. Ecology has not incorporated this safeguard in its new order, according the ACC Notice of Appeal.

"If We Don't Look for It, It Doesn't Count"

Ecology also has resorted to a shady trick to try to give its OK to fill contaminated with petroleum by-products ("TPH"). It has carefully chosen soils-testing methods that are not good enough to detect significant TPH contamination. The Supreme Court upheld the Pollution Control Hearings Board's ruling that these by-products should not be allowed at all. The court's opinion says, , "we ... set fill criteria for TPH at zero". But Ecology's order says, "The limit of 0 [for TPH] means nondetectable, as determined by Ecology." In other words, "if we choose not to see it, it's OK, and poo-poo to the Pollution Control Hearings Board and the court."

The PCHB Appeal Process

Appeals to the PCHB usually result in either settlement of issues between the parties (which the Board strongly encourages) or a full-dress evidentiary hearing – one where witnesses are examined and cross-examined under oath, with the Board weighing evidence as judges do, rather than simply relying on paperwork from Ecology. Hearings usually are not held till several months after the appeal is begun. For example, the Board is just now hearing an appeal on another matter, filed by C.A.S.E. and ACC in September 2003.

plans to protect wildlife, to restore habitat, to restore native vegetation. In the case of the third-runway 401 certificate, the Order also sets criteria for testing of fill for the runway embankment, to prevent contamination of local water resources from toxic materials leaching out from the fill.

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Supreme Court Sets New Rules for Third-Runway Work

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Court's Decision, Filed May 14, 2004, No. 73419-4 [.pdf file 385kb]

On May 14, the State Supreme Court released its decision in the appeals of the Port of Seattle, Airport Communities Coalition (ACC), and Citizens Against Sea-Tac Expansion (C.A.S.E.) from various parts of an earlier ruling of the Pollution Control Hearings Board on water-quality requirements for the proposed third-runway at Sea-Tac Airport. Several of the restrictive conditions imposed by the Board were overturned by the high court, while others were upheld.

Though the Port of Seattle was quick to claim that the Court had removed all obstacles from construction of the runway, the fate of the project is still very much in doubt, according to leaders of the Airport Communities Coalition, C.A.S.E., and RCAA. Major problems include lack of funding for the project, a shortage of uncontaminated fill, & the logistics of hauling six millions tons of fill materials to the construction area.

In its lengthy opinion, the Supreme Court upheld three key requirements for protecting water quality. Fill material may not contain any petroleum by-products. Fill must not be brought in from previously-contaminated sites. And the lowest layer of new fill must be particularly free of contamination.

On the other hand, the court denied all challenges to the so-called "dirty fill bill", which, according to runway opponents, could allow the Port to bring in fill with levels of contamination (especially arsenic) above legal limits.

The court also struck down a provision in the PCHB's order that required the Port to acquire water rights for rain (“stormwater”) that it proposes to collect & store in huge vaults for gradual release in the dry season to maintain proper stream flow. The court ruled that this plan did not "use" or "appropriate" water but only "manages" it, & a water right is not required for "managing" water.

Numerous other, less-significant points raised by the parties were also resolved by the court. The over-all result favors the Port in some ways, but the core protections against use of contaminated fill remain nearly inact.

Next Steps

Given the large number of changes required by the court, the Department of Ecology was obliged to revise its certification under sec. 401 of the federal Clean Water Act, & to issue a revised order to implement the Court's rulings & the new certificate. The new certificate & order were

issued on June 9. The order governs the Port's procedures for testing & accepting fill materials, as well as details of wetlands mitigation. The new certificate & order are subject to review on appeal by the Pollution Control Hearings Board. A companion article describes the appeal that Airport Communities Coalition filed on July 8.

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Earlier, the Port had written to the Airport Communities Coalition (ACC) that it was free to start construction immediately. However, at that time the Port did not have a current, valid sec. 401 certificate, nor had the Port amended its Work Plan to come into compliance with the ruling from the Supreme Court.

Port Still Not in Compliance, Say Opponents

ACC responded, advising the Port and Ecology that the Port's Work Plan, construction bid documents & other materials "are premised on violations of the conditions which the Washington Supreme Court has imposed." ACC pointed out to Ecology and the Port several parts of the court's ruling that had not been taken into account. The Port in fact did not begin construction work "immediately", but waited for issuance of the new order.

After the revised order was released, ACC renewed its criticisms. Although the Supreme Court said that fill must completely free of petroleum by-products (TPH), Ecology plans to allow use of fill with some TPH contamination. Ecology has not yet required the Port's Work Plan to accept the contamination limits required for several toxic substances by the PCHB and the court. In fact, the Work Plan may violate State regulations that apply generally to arsenic, chromium, & barium (not part of the PCHB litigation). The court flatly forbad the use of fill from sites previously contaminated, but Ecology is willing to allow that.

Ecology Ignores Criticisms, PCHB Appeal Follows

Ecology did not respond to these criticisms, which led to ACC appealing the new certificate and order to the Pollution Control Hearings Board on July 8. See companion article.

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Ecology's Order and the Port's Work Plan, taken together, spell out how the Port & its contractors are supposed to meet the criteria for runway fill.

Potential sources of runway fill are to be pre-screened. If a source passes this pre-screening, then sampling & laboratory sampling are to be done by qualified independent consultants to determine whether the fill is in fact acceptable. Detailed records are to be maintained, to track all testing, to track all fill by source and by location in the embankment. Ecology is to be kept informed at every step of the way. Monthly summary reports are to be filed with Ecology by the Port. (By the way, these reports are readily available from the Port, & the intention is to post them on the Port website, as they are received.)

The idea of the plan is sound. The main difficulty is in the definitions of permissible upper limits for each contaminant. (In some cases, there are issues about the particular testing method to be used -- some simply don't do what's required.) It appears that the revised order was prepared in undue haste, failing to revise the Work Plan to match the section 401 order, which itself has to be in compliance with the rulings of the court, the Pollution Control Hearings Board, and other agencies. And the gaps between the Work plan and the rulings are *all* in favor of allowing more pollution than the court & others allowed. Thus, the Work Plan is flawed, because it would allow contamination forbidden by general State regulations, or Ecology, the Pollution Control Hearings Board, or the Court, even though there is apparently no remaining dispute about what the limits should be. Legally, a Work Plan cannot be allowed to override court orders, State regulations, & so on.

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Portspin: Blaming the Neighbors For Your Own Bad Planning

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Seattle Times Article

(note: electronic version does not include the cost estimate table in the print original.)

In a front-page article in the *Seattle Times* for July 4, the Port of Seattle announced (or admitted) that the third runway is a money pit. Costs have doubled since 1997, the Port says, and airlines don't want to pay.

Port spokespersons blamed the cost increases on their battle with opponents, said they were applying for more money from the feds, and were going ahead anyway. But for those of us given to dissecting Port spin–doctoring, the real story was in the chart showing the Port's cost estimate for the project in 1997 and today.

When Did The Port Know? In 1997

The big ticket cost "increases" were for items that the *Port knew about in 1997*, but failed to include in their 1997 cost estimate and never bothered to estimate until now. And the new cost estimate has more bad news for whoever the Port sticks with the bill (it never pays these bills itself). This money pit is a lot deeper than the Port is letting on.

	Cost of Land	Construction	Environmental Mitigation	Other
1997 Estimate	127.5 million	374.9 million	26.6 million	58 million
2004 Estimate	195.7 million	661.8 million	197.2 million	75.3 million

Source: Port of Seattle per *Seattle Times*

Only $26 million for *all* mitigation in 1997? On the largest fill dirt project in the State since the Grand Coulee Dam? For expanding a large airport into a densely built up area? The Port knew in 1997 that this was a ridiculously low estimate for mitigation and that the runway would do *billions* in damage to the communities around the airport.

The Port knew perfectly well when it estimated the costs in 1997 that environmental problems would be expensive, and the sheer quantity of fill would be a challenge, cost–wise.

Didn't Plan for Damages to Neighbors

In February 1997, the State paid for a study to estimate what the cost of mitigating damages from the third runway would be. This study, based on the Port's own environmental impact statement, identified over *$2.95 billion* in damages south and west of the airport and Tukwila *alone*, not

counting wetlands issues and a long list of issues where the Port's EIS did not contain enough information to be able to make an estimate. The State study also did not cover the area north of the airport.

The Port has never admitted to having any responsibility to the neighbors. In effect, it told people in the Highline area—"We've decided you can eat these costs." At the the same time, property values in Southwest King County are already lagging behind values in other parts of King County due to the runway proposal, reducing the resoures locals have to pick up the Port's unfunded costs. No wonder people rallied to oppose the project.

Wetlands Cost Estimate Never Revised

The State-funded study also did not include wetlands, although it was obvious that the runway, if built, would fill a large area of wetlands that form the headwaters of three large creeks flowing directly into Puget Sound. Port planners knew that their initial design would dam Miller Creek, and dealing with that would require heroic (translation=expensive) engineering. Indeed, within six months of the 1997 cost estimate, the Port "found" twice as many acres of wetlands, and tossed in the Great Wall of Sea-Tac as the solution to the Miller Creek problem. And for six years, until June 2003, the Port never revised its cost estimate to reflect these costs. Nor did it release estimates for the huge vaults in which it plans to store winter rain for release into local creeks in summer droughts.

New Estimate, New Bets

The 2004 cost estimate reported in the *Seattle Times* shows $197.2 million for "environmental mitigation" without telling the public what that $197.2 million is for. It clearly doesn't begin to cover the environmental damage. What about the $2.95 billion identified in the State-funded study? The estimate doesn't appear to include requirements for clean fill issued by the State Supreme Court in May. The Port is apparently counting on being allowed to violate those requirements. And there is still no recognition of the damages done to communities near the Airport. The Port apparently is betting that these people will not file a massive class–action lawsuit. And what about the Port's claim in its EIS that jets make no air pollution, backed up by a refusal to measure it. Those eyeing the brown cloud sitting in a bubble over the Airport might take issue with that. The Port has no plan for paying for the costs it has already listed, much less how to pay for all the unlisted costs. But the airlines, King County taxpayers, and the Airport communities better put their hands on their wallets. We know it won't be the Port who pays.

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Port Financial Staff Has No Concrete Plan For Financing Third-Runway Construction

The Port's contract with low bidder TTI Constructors, LLC, for third-runway work in 2004 and 2005 requires a total payment of $192,600,000. That far exceeds the Port's entire cash reserve. Financial staff at the Port of Seattle have not produced a concrete plan for finding the necessary cash. And that $192,600,000 million is just part of the total needed to complete the project – estimated as $767,980,000, in a Port document from late-March. RCAA President Larry Corvari said "After 10 or 12 years of study and planning, the sticker price for this project is now more than five times the original estimate [$229 million], and the Port of Seattle still has not figured out where the money will come from to pay for it."

Asking for Another Federal Hand-out

With cash running low, staff are talking another grant from the FAA. The Port has a lobbyist (McBee Strategic Consulting, LLC) on retainer, at $15,000 per month, to handle Federal issues. Getting more third-runway money is a "priority" for McBee, & the Port. As of early June, Port staff were hoping for a grant of $216 million (up from an earlier hope for $198.1 million). With the support of the local FAA office, the Port is asking for an "amendment" to its previous grant from FAA. Our understanding is that all funds under that grant have been received & expended. A new grant would be subject to new, tougher requirements for rigorous cost/benefit analysis, which this project cannot possibly satisfy. Hence, the tactic of calling a new request an "amendment".

More Passenger Fees?

Staff have also mentioned passenger-facility charges ("PFCs" or "head taxes") as a source of additional money. The existing PFCs at Sea-Tac are at the highest allowable amount, $4.50 per departure. Sea-Tac has already borrowed against its future PFCs into the next decade. There seems to be little hope of raising big money from PFCs in the near future.

Sock It to the Airlines

Landing fees & terminal rent from the airlines usually provide a large part of the money needed for major airport capital projects, like new runways or new or rebuilt terminals. But there is a limit to how much the airlines can afford to pay. Rents & fees at Sea-Tac are on a steep upward curve. Principal tenant Alaska Airlines has already told Airport staff that it cannot operate out of Sea-Tac at the cost-levels projected for 2007 & beyond. Alaska figures that in 2009 its costs for using Sea-Tac would have to be 22 percent lower in order to meet its business plan. No other airline tenant comes close to Alaska for efficiency in operations, so if Alaska

cannot make it here, none of the others can either.

Sea-Tac's Planned Charges To Its Airlines

(in millions, rounded to nearest hundred thousand)

2004	2005	2006	2007	2008	2009
151.6	195.5	233.7	264.7	296.7	378.0

Source: Staff Powerpoint presentation to Port Commission, 9 June 2004, slide 26

Thus, as the new rents & fees kick in, airline costs of operation into & out of Sea-Tac Airport will become unbearably high. At present, airlines are unwilling to pass on their true costs of operation to the passengers. And if airlines did pass on these new high rents & fees, passengers would soon figure out that it would be cheaper to drive to Portland or Vancouver to catch a flight. And some airlines – perhaps a regional start-up or two – would realize that the costs of operating out of Boeing Field or Paine Field were negligible, compared to Sea-Tac's costs. If costs are too high, customers will find other ways to meet their needs.

Of course, the new fees & rentals don't kick in this year, or next, so they can't be used directly to pay TTI Constructors. But the Port can issue more bonds, with the future revenues from the airlines identified as the source of repayment. Bonds like that would be risky, given that the airlines say that they cannot pay such high rents & fees. The Port could issue general-obligation bonds, which would be backed by future property-tax proceeds, as well as airline rents & fees. Wall Street would accept those bonds.

So, the true financing plan is simple.

Fall-back Plan: Sock It to King County Property Owners

Without enough income from airlines, the Port's only hope is to issue bonds that can be charged against future, higher, county property taxes. There is no-one else left to pay.

What will property owners have to pay in the years ahead to retire $500 - $700 million of additional bonds issued for runway work? That is a great unknown, depending on future, unforeseeable circumstances. Port staff have not analysed this issue.

It is known that in 2003, the Port paid out $95 million to service $3 billion in debt. In 2004, the figure for debt service is expected to be $111 million, growing to $392 million in 2013, when bonded indebtedness is projected at $4.7 billion. Of course, non-tax revenues will be available to cover portions of this debt service, but the over-all picture is that most of it will be met with tax money.

RCAA regards the estimate of $4.7 billion in debt by 2013 as being too low by somewhere between $500 million and $1 billion, because the figure does not include a realistic amount for runway construction. Part of the problem is that the Port has a habit of rolling-over its debt, rather

than retiring it. This strategy cannot continue forever, for people expect to be repaid. When interest rates return to normal, higher levels, the Port will pay much higher amounts for debt service on new bonds issued to roll-over old debt, & the risk is that then the cost of debt service will swallow any & all profits -- & more.

This is NOT the story that Port staff tell - they are assuming that there will be no significant loss of airline tenants or revenue from airlines; they assume that the airlines somehow will find ways to pay $378 million a year in 2009, & more in following years. And they assume that a few years from now the Airport will actually have a big net profit that can be used for debt service. RCAA does not accept that analysis, & we believe that most Sea-Tac airlines do not accept it either. But the airlines are perfectly happy to have the taxpayers of King County pay for the terminals & runways that the airlines use. The airlines' support of the runway project is based on confidence that they won't have to pay for it – at least not the full cost. Meanwhile, King County's taxpayers are unaware of this huge burden of debt that the Port plans to dump on them.

Who SHOULD Pay?

Most of this article is based on the presentation & discussion at the Port Commission retreat on June 9. Toward the end of the discussion, one Commissioner posed a question that stumped the other Commissioners, staff, & observers: Why should the taxpayers pay for these facilities that the airlines use, rather than the airlines & their passengers – what is the gain for the taxpayers in all of this?

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Moving Runway Fill Not So Simple

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One of the many difficult problem for the Port in moving forward on the third-runway project is finding millions of cubic yards of fill material that will be clean enough to meet the requirements laid down by the Department of Ecology, the PCHB, and the Supreme Court. Once found, the fill must be moved to Sea-Tac Airport, and that turns out to be not so simple, either.

Despite the Port's protests, the Supreme Court upheld a factual findings by the PCHB that fill material must be completely free of petroleum by-products - such as gasoline, Diesel fuel, oils, grease, & so on. This rules out a great amount of fill that might come from various sites, especially environmental clean-up sites. Also, the Court said, the fill must not come from sites known to be contaminated. That rules out many more sites.

After legal fill materials are found, they need to be moved to the site. The usual truck-trailer dump-truck combinations can haul up to 22 cubic yards per trip (up to 33 tons). Loads of this size are pushing it, especially when one needs to prevent spillage. RCAA estimates the actual average load at closer to 18 cubic yards (27 tons).

Imagine 22 Million Tons of Fill Moving by Truck

The Port now hopes to complete the runway project in 2007 or 2008. This means that the Port needs about 15 million additional cubic yards (or 22 million tons) of fill over the next four to five years. However one runs the numbers, the result is hundreds upon hundreds of truck trips per day. In just the next two years, the Port hopes to move in six million cubic yards of fill, in a period of 654 working days. That is 9174 cubic yards per day (or 417-510 truckloads per day) on average.

One published Port estimate calls for more than seven hundred trips a day. Trucks will be moving to & from gravel pits all up & down Puget Sound, most of them far removed from the Airport. In-bound, these trucks must all feed into south-bound SR 509, to reach the dedicated exit for the construction site, at So. 172nd. Most of these trucks will be clogging I-5 or I-405, or both, depending on their points of origination. What this will do to the existing traffic problems in & around SouthCenter, and the I-5/I-405 interchange in Renton, remains to be seen. The likelihood is that the contractor will fall behind in the delivery schedule during Summer & Fall 2004, & then will try to cram a huge amount of trucks onto the roads when the construction season begins in Spring 2005.

Enough Trucks? Enough Drivers?

Observers also note that the Port's contractors are faced with a potential shortage of suitable trucks - and drivers. Despite the slow recovery from the

post-dot.com recession, construction activity in the Central Puget Sound has continued at a very rapid pace, & most major construction involves fill. Anyone out on the highways & by-ways in this Summer of busy construction activity will see the haul rigs from many firms already hard at work, at many sites. How many additional truck-trailer rigs are actually available now? How many qualified (union) drivers will actually be available for the next two years? Is the Teamsters' hiring hall filled with out-of-work drivers? Will the contractors have to bring in rigs & crews from out-of-State? Are there surplus rigs & drivers in other parts of the country? Probably not, for most of the rest of the country is ahead of the Pacific Northwest in getting back to normal business levels.

Longer & Longer Trips; Slower & Slower Delivery

For that matter, how much fill is available? Inevitably, the problem of availability of rigs & drivers is compounded by the problem of legal fill. The most abundant sources of clean fill are far removed from Sea-Tac, so Airport Communities Coalition sources suggest that the Port will be lucky if each rig can make two round trips per day. At some point, as near-by fill sources are exhausted, they may be able only to make one trip a day unless the Port is willing to pay serious overtime (and at some point, Federal restrictions on drivers' hours of operation will kick in, requiring TWO drivers per rig!).

In very late June, the Port resumed some minor construction activity in the third-runway construction zone, but as of this time, our understanding is that the Port has not resumed hauling of fill for the actual runway embankment. The Port's report to the Department of Ecology for fill-haul activity for June shows that only 15,713 cubic yard of fill were delivered.

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