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MEMORANDUM

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TO: Executive Committee
AIRPORT COMMUNITIES COALITION

FROM: CUTLER & STANFIELD

DATE: April 19, 1993

SUBJECT: Strategy Options and Recommendations

I. INTRODUCTION

This memorandum summarizes the alternative means by which the Airport Communities Coalition and its member cities ("ACC Cities") may influence to their advantage the outcome of the proposed expansion of Seattle-Tacoma International Airport ("SEA") and recommends certain immediate and longer-term courses of action for the ACC Cities. This memorandum supplements and is based upon the legal analysis contained in the April 1993 report prepared by Cutler & Stanfield regarding legal issues which will arise in connection with the proposed expansion of Seattle-Tacoma International Airport.

The memorandum is organized in four parts. Specific recommendations in the first two sections appear in bold type.

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The ACC Cities should recognize from the beginning that the present endeavor is a difficult one. While we are confident that the ACC Cities can successfully prevent the construction of a third runway at SEA, there is no silver bullet which alone would be enough to absolutely prevent construction of the runway. Instead, the ACC Cities' best opportunity for success in this controversy is through a series of incremental actions which build a case (both legal and political) against the third runway.

II. STRATEGIC CONSIDERATIONS

It is important for the ACC Cities to establish clear objectives early in this process. The seven goals set forth in the ACC Interlocal Agreement provide a guide for the objectives which the ACC Cities intend to achieve:

1. To stop the construction of any additional runways at SeaTac International Airport;
2. To limit or reduce the number of flight operations in King County to a specific level and to eliminate night flights from 10:30 pm to 7:00 am;
3. To limit airport facilities expansion in King County in order to prevent a significant increase in the number of flight operations which is likely to have substantial, adverse environmental impacts;
4. To revoke the "Four Post Plan";
5. To develop and promote viable regional transportation needs solutions on a regional basis;
6. To improve mitigation of airport impacts in the cities; and
7. Such other and further goals as may be determined by the Executive Committee.

While these goals provide a useful starting point, it is neither practical nor desirable to focus equal attention on all seven goals. Now is the appropriate time for the ACC Cities to prioritize their goals. This process is crucial both for establishing a budget and allocating resources to the ACC and for determining where compromises, negotiation, and tradeoffs will be feasible or desirable. In addition, not all seven goals would be equally practical to achieve; for example, while revocation of the Four Post Plan may be one of the

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ACC's goals, it would be difficult, time consuming, and possibly the least beneficial of the objectives.

We recommend that the ACC establish as its principal goal the prevention of the construction of a third runway at SEA. Secondary goals should focus on mitigation of the impacts which current and future operations at SEA have and would have on residents of the ACC Cities. We further recommend that the remaining goals (including implementation of a nighttime curfew and other limitations on flights, revocation of the Four Post Plan, and development of regional transportation solutions) be emphasized and remain part of the debate, but will serve as secondary considerations. Our recommendation as to priorities of goals is based in part on the stated desires of the ACC Cities and in part upon our assessment of which goals have the greatest chance for success. The recommendations we set forth in this memorandum are premised upon these priorities.

As the ACC considers its priorities, budget considerations cannot be ignored. Attached to this memorandum at Tab 1 is our March 11, 1993 memorandum setting forth our budget recommendations for calendar year 1993. Since preparation of those recommendations, (but prior to Tukwila's decision to join the ACC), we understand that the ACC Executive Committee adopted a budget for the present calendar year of \$450,000. While we understand that that budget will be increased as a result of Tukwila's participation, the assumptions and projections in our March 11 memorandum will have to be revisited in light of the budget.

Perhaps the most critical element of the ACC Cities' strategy will be to obtain sufficient leverage that the ultimate airport expansion decisions cannot practically be made without the ACC Cities' participation. This is the overarching objective which informs all our recommendations.

In building leverage, it will be desirable to pursue actions which may not directly lead to one of the Cities' objectives but which indirectly help the Cities establish their legitimacy and authority over the decisionmaking. To this end, this memorandum recommends that the ACC Cities take actions which are designed to demonstrate to the Port and regional decisionmakers that

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- ▶ the Cities are resolute in their desire to prevent construction of a third runway at SEA;
- ▶ the Cities can seriously impede -- and eventually prevent -- construction of any new facilities (and potential growth of existing facilities); and
- ▶ the Cities can effectively build political support for their position at the expense of the Port.

Establishing the ACC as a legitimate participant is one of the first key elements of the strategy. In part because of the efforts of the Regional Council on Airport Affairs ("RCAA") and through the Cities' involvement to date in the PSRC process, the Cities already have established their seriousness and resolve to pursue this controversy to an acceptable solution. **Beyond opposing the expansion (and continued growth) of SEA, however, we recommend that it is absolutely crucial that the ACC Cities be prepared to offer a solution to the long-term air transportation needs of the region.**

Under the principle that one can't beat something with nothing, the legitimacy of the ACC Cities' position would be strengthened if they can offer a regional solution. (Presenting a solution offers the additional advantage of placing the Port on the defensive.) It is not obvious, moreover, that the solution necessarily need include additional airport construction (either at SEA or at a new facility). Considerably more information is needed on the capacity of the existing facility, on known and contemplated technological improvements, and on air traffic projections for the nation and region. The solution offered by the ACC Cities must consider innovative solutions, including demand management and new technology, to the extent that such measures are compatible with the ACC Cities' goals. **We recommend that we retain Hockaday Associates to assist the ACC Cities in developing a technically sound alternative to construction of a third runway at SEA.** A proposed scope of work for Hockaday Associates is attached at Tab 2.

The ACC Cities also should consider carefully the role which they want the Regional Commission on Airport Affairs to play. Of course, the ACC Cities cannot control the RCAA, but the position they take with respect to the proper role (or continued existence of) the RCAA is likely to be influential.

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As a grassroots umbrella organization, RCAA can be an effective tool in building and maintaining community support for the Cities' efforts and can be a useful source of volunteer labor. **For several reasons, however, we recommend that the ACC Cities exercise extreme caution in their relationship with RCAA.** First, disclosures of litigation strategy to the RCAA may result in loss of the confidentiality privileges which are available for attorney-client communications. Absolute confidentiality is key to the success of this effort. (Confidentiality is one of the reasons that we recommended creation of the ACC Executive Committee so that inadvertent leaks of strategic advice could be prevented.) Second, it will be important for the Cities to maintain control over strategic decisionmaking. Finally, if the RCAA is intimately involved in such matters, it may be difficult or impossible to secure timely decisions on crucial issues.

At times, it may be to the Cities' advantage for the ACC and the RCAA to take complementary positions on key issues. Arguments or tactics which may not be appropriate for municipal elected officials may be both appropriate and effective if pursued by a grassroots organization such as the RCAA. (This is the so-called good cop/bad cop scenario which can be very effective in portraying the ACC as a moderating force.)

For these reasons, we recommend that the ACC continue to maintain close contact with leaders of RCAA but share strategic plans and other confidential matters with the RCAA only in extraordinary situations upon the specific advice of counsel. **In addition, we recommend that the ACC continue in efforts to maintain a public separation between the organizations and to stress their separation in appropriate press or other public statements.**

III. PROPOSED STRATEGIC PLAN

We believe that the linchpin of the Cities' strategy is two-fold: asserting control over land use planning and proving that there exists a feasible substitute to the construction of a third runway at SEA. As to the first element, the Growth Management Act provides unique opportunities for the Cities to influence the Port's plans and can provide a valuable tool for using other state and federal environmental review processes which must be satisfied before construction of a new runway may begin. The PSRC's probable decision

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to defer a final decision on a third runway affords the Cities valuable time for preparing its case on alternatives to a third runway.

The strategic plan is based upon the discussion in this memorandum and analysis which appears in the accompanying report. In addition, it assumes that the PSRC General Assembly will approve a resolution substantially similar to that recommended by the PSRC Executive Board at its meeting on April 8. (A copy of the Executive Board resolution is attached at Tab 3.) We recommend a strategic plan which contains the following essential elements:

- ▶ The ACC Cities should publicly criticize the General Assembly resolution for being biased in favor of a third runway. This criticism should precede the April 29 General Assembly meeting so that the Cities are not portrayed as sore losers after the General Assembly vote. It is useful in this regard to compare the PSRC Executive Board's resolution with that offered by the ACC Cities. Both resolutions are attached at Tab 3.
- ▶ In the intervening three years until PSRC must choose between a new airport and a third runway at SEA, the Cities should be harsh in their criticism of the Port but should avoid direct criticism of PSRC or other regional leaders.
- ▶ The Cities should immediately begin an unrelenting political, public, and press relations campaign designed around the fiscal folly of a third runway. As data becomes available through the Cities' planning process, the campaign should be broadened to include arguments related to the environmental wisdom of pursuing an alternative other than the third runway. Such information should not be released until the Cities' consultants have completed their work and have prepared a substantively defensible work product.
- ▶ Notwithstanding their public opposition to the General Assembly resolution, the ACC Cities should use that resolution to their maximum benefit: the resolution does not approve the third runway but defers the decision for three years, which time the Cities should use for developing an acceptable substitute for a third runway.
- ▶ The Cities should dismiss the City of Normandy Park v. Port of Seattle lawsuit under the State Environmental Policy Act challenging the programmatic environmental impact statement (the so-called Flight Plan report). Taking this action will enable the ACC Cities to create a substantive

record which will support subsequent legal actions based upon different strategies which have a much greater likelihood of success.

- ▶ The Cities immediately should evaluate their existing comprehensive plans (both pre- and post-Growth Management Act) and amend those plans to provide maximum protection to properties in the Cities which would be affected by a third runway in order to establish the foundation for later legal challenges asserting that an amendment to the Regional Transportation Plan or Port comprehensive plan is inconsistent with the Cities' comprehensive plans. These amendments should be adopted as soon as practicable and should be based upon evidence and reports which confirm the impacts of the third runway on the ACC Cities. CITY
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- ▶ In the process of amending their comprehensive plans, the Cities should assemble data on substantive environmental impacts necessary to take advantage of the protections offered by federal and state law for parks and historic properties, wetlands, floodplains, and surface waters. CITY
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- ▶ The Cities should adopt amendments to their zoning codes to provide maximum protection over Port-owned land within their jurisdiction. CITY
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- ▶ The ACC Cities should immediately begin drafting and then adopt ordinances which provide special protection for environmentally sensitive areas in the Cities and which regulate water pollution caused by airport operations. Ordinances also should adopt land use compatibility standards to counteract those used by the FAA. CITY
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- ▶ The Cities should assemble a factual case to prove that an alternative other than a third runway is feasible and provides a reasonable substitute for a third runway. This data should be used as the basis for a challenge under the Growth Management Act (and the Interlocal Agreement which created the PSRC) to any finding by the PSRC in 1996 that a third runway can be approved.
- ▶ If the PSRC, the Port, or any other jurisdiction approves any element of the third runway plan (or approves necessary environmental documentation), the Cities should challenge that approval in court.
- ▶ The Cities should participate in commenting on, and (if necessary) challenge aggressively, through administrative appeals and litigation, any neighboring jurisdiction's comprehensive plan which is incompatible with the Cities' plans and compatible with construction of a third runway. Such jurisdictions will likely include the City of SeaTac, the Port, and the PSRC. PLANNING
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- ▶ We should maintain a continuing dialogue with FAA officials and officials at other relevant federal agencies (including the Department of Transportation, EPA and Advisory Council on Historic Preservation) in an effort to drive a wedge between the federal decision makers and the Port regarding the desirability of and need for a third runway at SEA.
- ▶ Because it is apparent that the Washington State Department of Transportation and the AIRTRAC commission will be intimately involved in planning for a new airport, the ACC Cities should participate actively in, and support those efforts.
- ▶ The Cities should monitor closely the actions of the Port and the FAA (through public documents, Open Records Act and Freedom of Information Act requests) on all airport development matters in the event that unforeseen actions apparently unrelated to a third runway could provide a fertile basis for the Cities to exercise leverage.

While these recommendations may appear to be wide-ranging, they are designed so as to present a comprehensive yet coordinated approach. For example, the work which is done to support a revised comprehensive plan for the ACC Cities will be equally useful to support adoption of environmental ordinances, challenges to environmental impact statements, potential lawsuits challenging the actions of the PSRC and other actions under the Growth Management Act, and substantive state and federal environmental law.

IV. BACKGROUND AND ANALYSIS OF STRATEGIC PLAN

A. Parties

It is an essential truism of controversies such as this that the political leadership of the region will not be your friends. The ACC Cities should not lose sight of the fact that, no matter what apparent compromises are offered, they will not be successful without an aggressive, adversarial approach to those who favor expansion of SEA. We recommend that the ACC Cities be highly skeptical of any apparent allies in this endeavor.

The ACC Cities have three principal opponents: the Port of Seattle (Port), the Puget Sound Regional Council (PSRC) and the Federal Aviation Administration (FAA).

The Port has a vested interest in the expansion of SEA and, unless it were to operate a new airport, will want to ensure that no airport is built to compete with SEA for air traffic. Although the law is clear that the Port has the authority to own and operate

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another airport -- even one located outside King County -- our experience is that airport proprietors are notoriously short-sighted. The common wisdom for most airport proprietors is that the best way for them to increase their air traffic (and hence revenues) is to build a new runway at their existing facility. It is extremely difficult to persuade an airport proprietor that it may be in its long term interests to promote new airport construction.

It must be remembered that only one major new airport has been built in this country in the last twenty years -- the new Denver airport, slated for opening at the end of this year. In the last twenty years, however, most major airports in the United States have increased their capacity by building or lengthening runways. It is, therefore, hardly surprising that airport proprietors such as the Port have come to believe that the only practical way to increase aviation system capacity is through runway construction.

The Port -- again, like most airport proprietors -- will have considerable support for its position among the financial and political leaders in the region, no matter what position is taken by the Port. As one of the largest employers in the region and as an important tool for economic development, the Port can count on virtually unquestioned support from the business community and most private sector opinion leaders including the major daily newspapers and television stations. The difficulty of undermining that support should not be underemphasized. The ACC Cities also must be chary of attempting to discredit the Port as an institution. While recent political shifts suggest that the Port may not be monolithic in its ability to control political opinion about airport issues, there is no need, and it is not desirable, to attack the Port with respect to its other activities.

The second important actor is the FAA. At the present time, the FAA is not an active player, though it has been in the past and will be so in the future. For all intents and purposes, the Port and the FAA should be considered to have identical interests, at least for the time being. In the future, the FAA can be divided from the Port only if it becomes convinced (for political and/or legal reasons) that construction of a third runway at SEA is an extremely unlikely event. Only then would the FAA evidence sympathy for the idea of building a supplemental airport while either capping operations at SEA or

phasing out the airport altogether. For bureaucratic reasons (and historical reluctance to confront airline pilot and air traffic interest groups), the FAA will be similarly reluctant to consider technology-pushing solutions to the region's air capacity needs.

The FAA's perspective on expansion of SEA and possible construction of a new supplemental airport was epitomized by a sharply critical comment letter which the Manager of the FAA's Seattle Airport District Office recently sent to the PSRC regarding the proposed General Assembly resolution.^{1/} In that letter, the author explained that federal funding for a new airport site would be severely restricted, that "a substantial local revenue source will be required" for a new airport, and that the FAA will not participate directly with the PSRC in funding a planning effort because the agency believes that it "needs to be dealing with an eligible sponsor such as a city, county, port authority or state." As further indication of its skepticism of the PSRC planning process, the FAA reminded the PSRC that the "sponsor must be established prior to an in-depth site selection study." Lest there be any doubt that it believes that the Port would have to consent to the development of a new airport, the FAA stated that it "will neither fund efforts that duplicate the Flight Plan, nor efforts that are not the product of cooperative agreement among interested agencies."^{2/}

The PSRC has been an important player in lending legitimacy to the planning for a new airport. Because it and its planning processes are new, it is difficult to predict its future role in the debate. If the past several months are any indication, however, it will continue to be an influential participant in the process, though it is not likely to be a leader in favor of either the third runway or a new airport. Instead, it is likely to attempt to forge a compromise; if that becomes impossible, the PSRC likely will become deadlocked by its unwillingness to take an assertive position. (For example, the PSRC's willingness to embrace the concept of dynamic strategic planning is a strong indication that the body does

^{1/} Letter from J. Wade Bryant, Manager FAA Seattle Airports District Office to Jerry Dinndorf, Director Growth Management Planning, PSRC (Apr. 5, 1993).

^{2/} Id.

not want to have to be the leader in making the difficult decision between a third runway and a new airport.)

The only parties that have been left out of this equation are the air carriers, both cargo and passenger. They, too, will stand with the Port as long as possible, and are likely to be even more reluctant than the FAA to agree to construction of a supplemental airport and will oppose vehemently a new airport because of the cost and uncertainty of such a project. Their interest is almost exclusively financial: recent experience in Denver suggests that, even if the Port and the FAA eventually become convinced that a new airport is desirable, the carriers may continue to fight that move.

B. Using State and Local Laws to Obtain Leverage Over Airport Expansion Decisions

The Washington Growth Management Act imposes considerable legal hurdles which the Port must overcome if it is to construct a third runway at SEA. These hurdles principally concern issues regarding the consistency of the third runway proposal with local and regional land use plans, and the manner in which any inconsistency is resolved. The PSRC planning process, including the amendment to the Regional Airport System Plan, is mandated by the Growth Management Act, and any defects in that process could be subject to administrative and judicial challenge. One of the most important features of the Growth Management Act is its novelty. As explained in our accompanying report, there are myriad legal issues -- including ones of pivotal importance to the present controversy -- for which there are no clear answers. This lack of clarity, however, can work to the advantage of the ACC Cities: the Cities will have an opportunity to create new law unencumbered by precedent.

The ACC Cities should begin building a case that

- ▶ amendment of the Regional Airport System Plan to allow construction of a third runway would be inconsistent with local and regional land use plans; and
- ▶ the PSRC planning process and General Assembly resolution were not pursued in compliance with the requirements of the Growth Management Act.

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In order to develop this case, the ACC Cities should consider the following recommendations:

- ▶ Develop or modify city comprehensive plans so that they are inconsistent with development of a third runway and with the proposed amendment to the Regional Airport System Plan.
 - ▶ Specify airport operations and airport-related businesses as incompatible with residential character of the community.
 - ▶ Specify residential use as the land use designation for all properties that are close to the airport.
 - ▶ Specify other land use designations close to the airport (e.g., siting of essential public facilities that are noise-sensitive -- schools, hospitals, nursing homes) that are incompatible with airport operations.
 - ▶ Specify extremely stringent protections for all critical areas (wetlands, aquifer recharge areas, frequently flooded areas, fish and wildlife conservation areas) in the Cities that would be affected by runoff from or would be taken by construction of a third runway.
 - ▶ Specify extremely stringent protections for historic properties, open space and parks.
 - ▶ Specify that no new high volume transportation corridors may be developed (e.g., South Airport Access Road) through incompatible land use areas.
- ▶ Consult and coordinate with other jurisdictions (including especially the other ACC Cities) to oppose plans developed by the PSRC, Port and City of SeaTac to the extent that such plans identify a third runway as consistent with each of those entities' plans.
- ▶ Contest PSRC, Port and/or City of SeaTac plans at Growth Planning Hearings Board, as inconsistent with the Cities' plans.
- ▶ Participate aggressively in any EIS and Growth Management Act review of amendments to comprehensive plans by neighboring jurisdictions to ensure that their plans are inconsistent with construction of a third runway.

C. Exercise of Municipal Authorities by ACC Member Cities

Under Washington law, the Port exercises exclusive control over airport property and is not subject to local ordinances. In addition, because very little Port-owned property lies within the geographic boundaries of the ACC Cities, the Cities have limited opportunities to use zoning and land use powers to control development at SEA. As explained in the accompanying report, the precise scope of the Cities' municipal powers vis a vis the Port is not clear. Further research on this issue is warranted, since the identification of even a small gap in the Port's exclusive authority could be extremely beneficial for the Cities.

Using the municipal authorities which more clearly survive the Port's exclusive control over airport property, the ACC Cities should consider the following recommendations:

- ▶ Develop a program to control the Port's Part 150 land acquisition program. A word of caution is appropriate: such a program may be controversial because it may conflict with individual property owners' desire to be bought out.
- ▶ Specify zoning for land to be acquired to ensure that the zoning is compatible with land uses deemed desirable by Cities and to limit the Port's ability to convert it to other uses (e.g., allow open land, protect critical areas, prohibit construction of South Access Road, prohibit high density commercial development, require exhaustive environmental site investigations prior to new construction on site, etc.).
- ▶ Prescribe procedures under which the Port may take possession of property and may demolish or remove structures (e.g., site investigations, exhaustive safety requirements prior to demolition, exhaustive site restoration/reclamation requirements).
- ▶ Impose limitations on the Port's ability to close or barricade streets within acquisition areas.
- ▶ Parcels proposed for acquisition by the Port for construction of a third runway or other airport development projects should be protected with whatever zoning and land use restrictions may be appropriate, including protection of wetlands or critical areas.

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- ▶ Implement comprehensive zoning and land use restrictions that would limit or prevent the Port's ability to acquire property beyond the 110 acres currently identified (i.e., that would prevent the relocation of SR 509 further west into Burien). For example, zoning should ensure that restrictive protections apply to the large wetlands site along S. 176th Street between SR 509 and Des Moines Memorial Drive (within Burien). ANNEXATION
- ▶ Exercise the Cities' authority to protect water quality and prevent contamination that originates from outside municipal boundaries by adopting ordinances that authorize severe penalties for discharges, spills or other airport-based contamination that may impair the water quality of Miller Creek and Des Moines Creek.
- ▶ Exercise the Cities' authority to control airport hazard zoning. (This measure may apply only to Burien, given the proposed runway location.) Such property should be zoned consistent with Burien's land use priorities. (Note, however, that Burien ultimately could not prevent the runway clear zones from being established, or airport hazards from being prohibited.)

D. Leverage Available Through Federal and State Environmental Protection Laws

Federal environmental laws require that the Port and the FAA identify and analyze the environmental impact of the proposed expansion of SEA before any federal funds can be committed to the construction of a third runway. State law imposes similar restrictions which prevent construction without mitigating or preventing certain environmental impacts.

1. National Environmental Policy Act and State Environmental Policy Act

The Port and the FAA will be required to prepare a site-specific environmental impact statement (EIS) for the third runway proposal which complies with the National Environmental Policy Act (NEPA) and the State Environmental Policy Act (SEPA). This obligation is independent of the preparation of a programmatic EIS under SEPA, which is the subject of the litigation in City of Normandy Park et al. v. Port of Seattle.

Although these two statutes are slightly different, they both provide exclusively procedural protections. Communities similarly situated to the ACC Cities have used NEPA successfully to publicize the negative impacts of an airport expansion proposal, to delay its

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implementation, to uncover liabilities which could cripple the proposal's ability to survive scrutiny under substantive state and federal environmental laws, and to reduce or eliminate the sense of political inevitability which often accompanies such projects.

The ACC Cities should actively participate in the NEPA/SEPA review process for a new runway, including the following actions:

- ▶ The ACC Cities should prepare and submit detailed scoping comments to ensure that the EIS includes a discussion of all of the significant impacts of the proposal, the alternatives to it, and cumulative and connected actions.
- ▶ The ACC Cities should monitor closely the Port's and the FAA's compliance with the procedural requirements of SEPA and NEPA. Procedural errors which are not corrected will provide grounds for a later challenge to the EIS which could delay significantly -- or even effectively stop -- the proposed third runway. In this case, a delay can have considerable beneficial effects because of the April 1, 1996 deadline which is likely to appear in the PSRC General Assembly resolution; if the EIS is not completed by that date, there may be new opportunity to revisit the desirability of a new airport.
- ▶ The ACC Cities should scrutinize through expert analysis the draft EIS discussion of potential impacts to floodplains, water quality, air quality, noise sensitive receptors, and wetlands.
- ▶ The ACC Cities should provide detailed comments on the draft EIS which aggressively criticize the analysis and conclusions contained in the document and detail the alternatives, connected actions and environmental impacts which we expect the draft EIS will fail to disclose or will improperly consider.

Most actions which are available to the ACC Cities in the NEPA and SEPA context will be taken in response to actions by the Port or the FAA. Consequently, the specific timetable for these actions will remain largely under the control of the Port and the FAA. The Cities should be aware that, in order to increase the sense of political inevitability of the project, it is likely that those agencies will announce a tentative timetable for preparation of a draft and final EIS which will be extremely optimistic. The FAA and airport proprietors rarely are able to adhere to their original timetable for completion of environmental reviews. It is not unusual for the environmental review process to take several years.

Defects in the final EIS can provide the basis for a lawsuit challenging the adequacy of the Port's and the FAA's compliance with SEPA and NEPA.

2. Section 4(f) Issues

Section 4(f) of the Department of Transportation Act and similar provisions of other federal laws (including section 2208 of the Airport and Airway Improvement Act) which protect park and historic properties prohibit the FAA from approving or funding a third runway at SEA if the effect of the expansion project would be to impair substantially the use of nearby parks or historic properties. In order to be eligible for protection under those statutes, the park or historic property must have been determined to be significant by federal, state, or local officials. To take best advantage of the protections of section 4(f), the ACC Cities should consider the following recommendations:

- ▶ The ACC Cities should organize citizen and technical advisory groups to gather information on the use and importance to the community of potentially affected parks and historic properties. The RCAA could assist in this effort.
- ▶ Each ACC City should adopt officially and publish a report concerning the use and significance of potentially affected parks and historic resources to help build the case for the significance of the resources and the effect of an expansion of SEA on those facilities.

While the FAA ultimately may disregard the determinations of significance and impacts made by the ACC Cities, the law requires that the agency give some deference to such findings. Failure to do so would provide a potentially powerful legal basis for a substantive challenge to a new runway.

3. Land Use Compatibility Issues

Section 2208 of the Airport and Airway Improvement Act requires that the Port assure the FAA that the proposed airport expansion project is consistent with local land use plans before it can receive federal funds. Although we expect that the Port will argue that that requirement applies only to the PSRC's plans and not to those of the ACC Cities, the

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Cities should position themselves so as to limit the Port's ability to make this assurance by taking the following actions:

- ▶ As soon as practical, the Cities should analyze and report upon the general compatibility or incompatibility of a third runway with the Cities' land use plans. This analysis should be completed simultaneously with any amendments to the Cities' plans, pursuant to the Growth Management Act, and prior to announcement by the Port or the FAA of a decision on the scope of the EIS for the third runway.
- ▶ The ACC Cities should continue efforts to educate members of the PSRC General Assembly regarding the negative impacts which the third runway would have not only on the ACC Cities but on the entire south King County area. As the regional clearinghouse for environmental approval of transportation projects, the PSRC will be an important participant in the federal approval process.

When analyzing noise issues, the FAA can be expected to take the position that it need not examine any impacts if the projected average noise level is less than 65 decibels (measured using the DNL metric). The FAA will base its position upon its Part 150 Regulations, which contain guidelines on land use compatibility. While those guidelines have been applied uniformly in EISs on airport projects for several years, there is increasing inter-agency and Congressional pressure for the FAA to examine additional noise impacts. The ACC Cities may have an opportunity to force the FAA to examine additional impacts because of a provision in the Part 150 Regulations which suggests that the FAA's noise compatibility guidelines can be overridden by local ordinance. In order to take advantage of this loophole, the ACC Cities should consider the following actions:

- ▶ The ACC should prepare a report on land use compatibility, analyzing potential noise metrics and thresholds of compatibility. The report should consider but reject the FAA guidelines and should recommend adoption of local guidelines which are more stringent than those which appear in the FAA's Part 150 Regulations.
- ▶ Following preparation of the report (and using the report as legislative history), each ACC City should adopt an ordinance establishing land use compatibility guidelines for maximum acceptable noise exposure.

4. Wetlands and Clean Water Issues

Section 404 of the Clean Water Act requires that the Port obtain a federal permit before it can fill or dredge any waters or wetlands of the United States. The proposed expansion of SEA almost certainly would require the filling of significant wetlands on the west side of the airport and the destruction or alteration of adjacent wetlands in the Miller Creek and Des Moines Creek drainages. The Port can be expected to file an application for a wetlands permit with the Army Corps of Engineers simultaneously with, or immediately subsequent to, the publication of the federal EIS. Once the application is filed, the ACC Cities will have an opportunity to examine the legal adequacy and the environmental implications of the requested permit and to comment on the adequacy of the application. (The Port's difficulty in obtaining a wetlands permit is likely to be a highly political issue; the issue of wetlands impacts was a controversial political issue during the Bush administration and is likely to be similarly controversial in the Clinton administration. Several national environmental organizations have focused national campaigns on the issue of wetlands destruction. It is too early to predict with any certainty whether the standards for issuing a wetlands permit will be made more stringent, though that is undoubtedly a possibility.)

To increase its leverage to prevent the issuance of a wetlands permit, the ACC Cities should consider the following actions:

- ▶ Develop an alternative to construction of the third runway which meets the needs articulated by the Port but which does not involve the destruction or alteration of wetlands.
- ▶ Develop data on the probable wetlands impacts of the third runway proposal; use this data to interest environmental advocacy organizations in opposing the runway project.
- ▶ Participate aggressively in the comment and review process for the section 404 wetlands permit application.

It appears likely that the Port will need to renew its Clean Water Act NPDES discharge permit in connection with the proposed expansion. Because it is unclear at this point whether there are any significant defects in its existing operations which would

warrant denial of a permit renewal, the ACC Cities should obtain information about the Port's existing NPDES permit, including permit terms and expiration date. If this data reveals serious compliance problems, the ACC Cities should consider the following actions:

- ▶ Participate in Port's permit renewal process, urging that effluent limitations be added to the permit that are adequate to protect against the discharge of toxic pollutants associated with airport operations.
- ▶ Urge environmental advocacy organizations (especially those concerned about water quality issues) to participate in opposing renewal of the Port's NPDES permit.

5. Federal Funding Issues

The Port presently levies a passenger facility charge of \$3 per passenger, which tax is used to finance airport facilities. The Port's authority to levy that charge expires on January 1, 1994. In order to continue to have authority to levy the tax, the Port will have to file a new application and seek FAA approval. The FAA's procedures for approval of applications to levy passenger facility charges provide considerable opportunity for comment and an opportunity to challenge any use of such funds which is not in compliance with the law. The ACC Cities should ensure that the Port does not use this authority to obtain advance funding for third runway-related projects prior to completion of an EIS. (Other airport proprietors have tried such a tactic.). We recommend that the Cities consider the following actions:

- ▶ Scrutinize carefully any projects which are included in any Port application for authority to levy a passenger facility charge and participate aggressively in commenting on such projects.
- ▶ If third runway-related projects are included in any application, the Cities should consider challenging the propriety of levying a passenger facility charge for projects which have yet to receive mandatory environmental approvals.

E. Use of Litigation as a Strategic Tool

As we have explained in our meetings with the ACC Cities, we view litigation as an option which always should be considered, but not chosen lightly. One of the reasons that litigation is so effective is also the reason that it is so costly: the outcome of all litigation

is speculative, and its difficulty often is determined not just by the parties' respective legal positions but also by their willingness to engage in procedural maneuvers designed to drive up the cost and complexity for the opponent.

It appears probable that the present litigation -- City of Normandy Park et al. v. Port of Seattle and Puget Sound Regional Council -- will not be the last lawsuit filed in connection with the proposed airport expansion. If the ACC Cities attempt to exercise authority which would circumscribe the Port's powers, or if the ACC challenges the propriety or adequacy of the environmental review process and decisions reached therein, the ACC Cities could initiate or become party to such litigation. The important strategic decision for the ACC Cities will be whether to initiate litigation or to await litigation against it initiated by another party. That decision, however, cannot and should not be made in the abstract and constantly should be reevaluated in light of the progress in this endeavor and budgetary considerations.

1. Litigation Over Flight Plan EIS

As explained in our February memorandum regarding potential SEPA litigation over the Flight Plan EIS, we recommended pursuing that litigation as a protective matter in light of (a) the statute of limitations which would have prohibited filing litigation over the EIS after February 16, 1993 and (b) uncertainty about what action the PSRC would take on April 29 regarding an amendment to the Regional Airport System Plan. The purpose of filing that litigation was to preserve the ACC Cities' ability to challenge the Flight Plan EIS in the event that the PSRC amended the Regional Airport System Plan (and allowed the Port to proceed with construction of a third runway) without further environmental analysis.

We now expect that the PSRC General Assembly will not amend the Regional Airport System Plan to allow construction of a third runway but, instead, will direct a series of studies leading ultimately to a choice in 1996 between a third runway and a new airport. While those studies may not necessarily duplicate the results of the Flight Plan, it is now clear that the Flight Plan itself will not form the sole basis for an amendment to

the Regional Airport System Plan and, even more importantly, for development of a third runway at SEA.

For these reasons, we recommend that the Cities voluntarily dismiss the litigation in City of Normandy Park et al. v. Port of Seattle et al.³⁷ This recommendation is based upon our conclusion that even success in the litigation is not likely to produce substantial beneficial results for the ACC Cities. There will be additional environmental studies (including at least a site-specific EIS under state and federal law) which must be completed before a decision is made on a third runway. In addition, if the General Assembly adopts the resolution proposed by the Executive Board, there will be an opportunity to challenge any decision by the PSRC approving runway construction based upon findings that a new airport is not feasible or cannot substitute for a third runway.

Instead of litigating over the adequacy of the programmatic EIS, we recommend that the ACC Cities focus attention during the next three years on building a factual (and legal) case to prove that, under the terms of the General Assembly resolution and the requirements of the Growth Management Act, the PSRC cannot approve a third runway.

2. Other Potential Litigation

The most fertile ground for potential litigation is the PSRC and Port's compliance with the requirements of the Growth Management Act. As explained in section IV. B. of this memorandum, litigation under the Growth Management Act essentially starts with a clean slate. Because of considerable ambiguities in the statute and the procedural complexities which it imposes on the planning process, we believe that there is a considerable risk that the Port and the PSRC will be found lacking in their procedures to amend the Regional Airport System Plan and in the consistency of their respective plans with those of King County, the ACC Cities, and other relevant jurisdictions.

³⁷ We recommend seeking a dismissal without prejudice, meaning that the ACC Cities would not be prevented from asserting the same claims in a later lawsuit. Even if the court forces the Cities to dismiss with prejudice, we believe that Cities would not be precluded from later litigating any significant issues.

We recommend that the ACC Cities consider the following litigation measures at the appropriate time in this endeavor:

- ▶ Litigate a SEPA challenge to any modification of the City of SeaTac's zoning/land use plan that would make a third runway consistent with its comprehensive plan.
- ▶ Litigate a SEPA challenge to the Port's adoption of a comprehensive plan for the airport.
- ▶ Litigate a NEPA/SEPA challenge to a site-specific EIS for the third runway project. Such litigation should include substantive claims for violations of section 4(f), wetlands protection, historic properties protection, and other relevant federal and state substantive environmental laws.
- ▶ Seek judicial review of a Growth Planning Hearings Board decision that upholds PSRC/Port/City of SeaTac plans in which a third runway is identified as consistent with the Growth Management Act.
- ▶ Seek judicial review of a Growth Planning Hearings Board decision that overturns plans adopted by an ACC City that includes elements that are inconsistent with a third runway at SEA.
- ▶ If current NPDES permit violations are discovered, initiate a Clean Water Act citizen's suit seeking the assessment of civil penalties for the Port's failure to comply with the Clean Water Act and its NPDES permit.

V. ASSEMBLY OF TEAM TO ACCOMPLISH OBJECTIVES

As we have discussed with each of the ACC Cities, and as outlined in our meeting in Washington, D.C. in early March, we recommend that the ACC assemble a team of experts who, under our direction, will assemble the factual case against the third runway and in favor of an alternative solution to the regional air transportation needs. We believe that it is crucially important that the ACC Cities develop a factual case which is credible - - politically, legally and technically. While nit-picking of PSRC or Port reports and analyses may provide short-term gains, it will not provide the key to success in this controversy. Instead, the Cities must be as technically prepared as the Port, not only in their critique of the third runway but also in their data supporting an alternative regional solution. The three-year window before the PSRC must decide between a new airport and a third runway

affords the Cities a valuable opportunity to assemble a factual case which often is not available in such disputes.

For confidentiality as well as ease of coordination, we recommend that the team work under the direction of Cutler & Stanfield but that the team members report regularly to the Executive Committee as needed. At this time, we recommend that the ACC Cities add two more members to the team and consider adding additional members as the need arises.

A. Development of Alternatives: Hockaday Associates

As explained earlier in this memorandum, we believe that presenting a credible, technically defensible alternative to the expansion of SEA, as well as offering a sound critique of the Port's plans are key elements of this strategy. The ACC Executive Committee already has met and been briefed by Dr. Stephen L. M. Hockaday, a principal of Hockaday Associates. We recommend that Dr. Hockaday be requested to prepare a critique of the Port's plans and beginning work on an alternative plan. We further recommend that Dr. Hockaday's work remain confidential until such time as it is completed and other developments in this controversy indicate that it is strategically advantageous to release his findings. Attached at Tab 2 is a proposed scope of work which Dr. Hockaday has prepared.

B. Public Relations and Press Strategy

It hardly need be repeated that the present controversy is as likely to be resolved through political and legislative channels as it is to be resolved through a victory in the courts. Both the political and legal strategies must be precisely coordinated, because success in either arena is unlikely unless the ACC Cities have been successful in bringing pressure to bear in the other. Consequently, the second important addition to the team should be an experienced consultant in public relations, political strategy, and press relations. This team member would provide practical advice on matters such as media relations, optimum timing for release of ACC positions on key issues, political leverage points, and effective communications with the grassroots and other local government leaders. The consultant would also assist in preparing public documents such as brochures,

advertisements, or other materials designed to disseminate the ACC Cities' positions on key issues.

We believe, moreover, that it is crucial that the ACC retain this consultant as soon as possible since a public and press relations strategy should be developed in tandem with the legal and political strategy.

We have discussed this issue with the ACC Cities individually and have expressed our confidence in the work of Allyn & Co. of Dallas, Texas. At the direction of the Executive Committee, we are interviewing potential consultants in the Seattle area as a replacement or supplement to Allyn & Co. We expect to report our recommendations to the Executive Committee within the next several weeks. In the meantime, we understand that Allyn & Co. has been directed to assist in preparing a series of newspapers advertisements which would appear in the Times and Post-Intelligencer during the week of April 25 to rebut anticipated press coverage favorable to the Port's proposal.

C. Noise and Economic Impact Issues

It should be obvious that noise issues -- the impact of the third runway on residential communities in the ACC Cities -- will be one of the most important issues in this controversy. While it may become necessary to add a noise consultant to the team, we recommend that a decision on that matter await further development of the factual case. At this time, we do not have even the most basic data necessary to develop an assessment of noise impacts, including a precise location of the runway, runway use characteristics, and other data which is used as input for the standard computer model used to predict noise impacts.

A similar situation prevails with regard to the negative economic impacts which a third runway would have on the ACC Cities. Because much of the negative economic impact of the third runway would be attributable to noise impacts, it would be necessary to have basic data on noise impacts in order to prepare such an analysis.

We recommend that the ACC Cities not expend resources at this time on noise, economics, or other substantive experts until the Port has developed more definite information about its third runway plans.

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M E M O R A N D U M

THIS DOCUMENT CONTAINS PRIVILEGED ATTORNEY WORK PRODUCT AND ATTORNEY - CLIENT COMMUNICATIONS

TO: Executive Committee
AIRPORT COMMUNITIES COALITION

FROM: Cutler & Stanfield

DATE: March 11, 1993

RE: Calendar Year 1993 Budget

At our meeting on March 8, 1993, several Councilmembers requested that we prepare a budget for our anticipated services to be rendered on behalf of the Airport Communities Coalition ("ACC") for the remainder of calendar year 1993. In order to provide you with optimum understanding of how we reached our estimate, we have set forth below certain statements regarding our expectations and strategies. This document should, therefore, be considered PRIVILEGED and be handled accordingly.

Basis for Budget Estimate

One should be cognizant that the budget described herein is an estimate, and a rough one at that. Preparing a budget for a project like the present effort is particularly difficult. As in any battle which involves adversary parties, the actions and reactions of one's opponents can not be controlled and can have a significant influence on the magnitude of our own efforts. While we can gauge our own work on behalf of the cities, the level of activity needed to react swiftly and comprehensively to the actions of our opponents is an unknown. We simply can not estimate how aggressively or what manner they will pursue their positions. This is particularly true when litigation is involved, as it is here. We have no control over how many motions the Port and PSRC will file, how they will approach document production and review, or

what type of requirements the Court will place on us. Indeed, a very central part of the Port's strategy may be to force the cities to spend a great deal of funds on nonsubstantive matters, e.g., responding to procedural motions and otherwise taking actions calculated to drag out the dispute as long as possible.

In preparing this budget we have endeavored to use our experience in other cases as well as our experience in the Seattle situation to develop our best estimate of all these variables. The budget figures represent our best assumptions and expectations about the progress of this matter and include an estimate for contingencies which sometimes develop in similar cases. We believe, therefore, that the budget outlined below represents a realistic estimate of the likely costs to be incurred during 1993. One should remain aware, however, that although the actual costs may be considerably lower than our budget estimate, we cannot eliminate the possibility that they may exceed that estimate.

Budget Assumptions

Our budget is based upon the following assumptions regarding division of responsibilities:

- ▶ Cutler & Stanfield will continue to provide strategic direction for the effort and will be responsible for directing legal work on behalf of the ACC.
- ▶ Cutler & Stanfield will communicate for the most part with the Executive Committee of the ACC, through its Chair or his or her designated representative, and will not be called upon to spend a great deal of time briefing individual representatives or employees of each of the member cities of the ACC.
- ▶ The Executive Committee will authorize the hiring of Dr. Stephen Hockaday, Allyn & Company, an additional local public relations consultant, and possibly a consultant on noise issues and/or other environmental issues, although some of these consultants may not be retained in calendar year 1993. The budget includes our estimate of their fees.
- ▶ The individual city attorneys will provide occasional assistance on procedural matters relating to the individual cities, including matters necessary to enact resolutions or ordinances. The fees of the individual city attorneys (if any) are not included in this budget since we understand that the cities contemplate

that those fees generally will be the responsibility of each individual city.

In arriving at this budget, we also have made several critical assumptions about the pace and direction of the airport expansion battle. We have made these assumptions based upon our understanding of the Port's and PSRC's planning process as well as based upon our experience in other similar cases:

- ▶ The PSRC will approve a resolution calling in some manner for construction of a third runway at Sea-Tac at its May 29 General Assembly meeting.
- ▶ The present litigation against the Port and the PSRC will resume in May 1993 but no additional litigation will be filed in 1993.
- ▶ The draft federal environmental impact statement for a third runway will not be issued until 1994 at the earliest.
- ▶ The state legislature's involvement and the AIRTRAC process will continue but not be completed until late 1993 at the earliest.

The budget includes myriad short and medium-term tasks and work products. The principal categories of work include the following:

- ▶ Preparation of a comprehensive strategy report setting forth the legal, practical and political considerations affecting the cities' strategy and recommending a long-term strategic plan.
- ▶ Prosecution of the litigation against the Port and PSRC challenging the Flight Plan Report.
- ▶ Preparation of a report analyzing alternatives to the construction of a third runway at Sea-Tac and offering a reasonable alternative plan.
- ▶ Participation in the PSRC process through the General Assembly vote (and later, if necessary).
- ▶ Coordination of public relations and preparation of press materials to support the cities' effort.
- ▶ Preparation of local ordinances which could assist the cities in gaining leverage over the airport expansion decision.
- ▶ Participation in all significant federal and state

environmental, land use, and policy reviews of the airport expansion proposal.

Budget Figures

Our best estimate of the budget for calendar year 1993 is \$875,000.

This budget estimate includes the fees already incurred by the Airport Communities Coalition for the services of Cutler & Stanfield since January 1, 1993, which presently total approximately \$125,000. It also includes approximately \$175,000 for anticipated consultant services.

Although the cities have requested that we also provide estimates of cash flow needs, we believe that it is impossible to provide any realistic prediction of month-to-month expenses and that a month-to-month budget would unnecessarily restrict our ability to use strategic considerations to dictate timing of particular actions. With those caveats, we estimate that the total fees through the end of April (filing of the litigation, the completion of our overall strategic review, preparation of the strategy report, and completion of the PSRC General Assembly process) will total approximately \$250,000. That would leave \$625,000 for the remainder of calendar year 1993, or approximately \$75,000 per month (including consultant fees).

We are quite hopeful that the work to be performed throughout 1993 can be completed for considerably below the budgeted amount. Given, however, the uncertainties involved with a matter such as this one, particularly in light of the litigation, we would not feel comfortable providing a budget below \$875,000.

Peter Kirsch, Perry Rosen and Eliot Cutler are, of course, available to address any questions you may have or to otherwise discuss budgetary issues.

Stephen L.M. Hockaday
P.O. Box 551
San Luis Obispo
California 93406-0551

(805) 528-6622

Telephone and Fax

April 16 1993

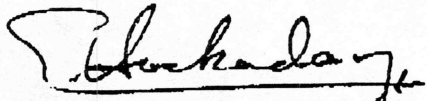
Peter Kirsch
Cutler and Stanfield
700 Fourteenth Street, NW
Washington D.C. 20005

Re: Airport Planning Studies Related To Expansion of
Seattle-Tacoma International Airport, and
Long-Term Regional Air Transportation Planning for Puget Sound

In response to your letter dated February 26 1993, and to follow up on my recent fax and our recent telephone conversations, attached is a work scope for the Seattle work. Please call with any questions or comments.

As noted in your letter, services will be performed on a time and materials basis, charged in 1993 at standard billing rates of \$118 for my services and those of senior staff, \$75 per hour for staff, and \$20 for student assistants; with reimbursement for out-of-pocket expenses.

Sincerely,


Stephen L.M. Hockaday

WORK SCOPE

Airport Planning Studies Related To Expansion of Seattle-Tacoma International Airport, and Long-Term Regional Air Transportation Planning for Puget Sound

Background. The Puget Sound Regional Council has prepared a Final Environmental Impact Statement, dated October 1992, concerning The Flight Plan Project. Recommendations included:

- A dependent air carrier runway at Seattle-Tacoma International Airport (SEA-TAC) before the year 2000,
- Introduction of scheduled air carrier service to Paine Field before the year 2000, and
- Identification of a two-runway supplemental airport site in Pierce County for development by the year 2010 in collaboration with the military, and failing that the identification of a suitable location in Thurston County.

Other alternatives were evaluated, including a no-action alternative, demand management, high speed ground transportation, development only at SEA-TAC, and a replacement for SEA-TAC.

Addition of a dependent runway at SEA-TAC will permit an increase in the number of aircraft operations at the airport, and also increase noise exposure in the surrounding communities.

An assessment is required of the operational benefits and impacts of the dependent air carrier runway at SEA-TAC and alternatives to the construction of this runway at SEA-TAC and in the Region.

Work Scope. The work to be performed consists of six tasks that assess the operational benefits and impacts of the dependent air carrier runway at SEA-TAC and of alternatives to this runway at SEA-TAC and in the Puget Sound Region.

Factors to be considered include runway demand, capacity, and delay; airspace operations, aircraft operations on the taxiways and in the terminal area airspace; operating costs; alternative configuration and operation of the SEA-TAC airfield; and alternative means of accommodating projected demand at other locations in the Puget Sound region.

Task 1 -- Assemble and Review Technical Materials

(e.g. Flight Plan Project Reports, Port of Seattle Airport data, FAA weather and other data, client materials, Airport Capacity Enhancement Plan)

Information required to support the assessment in later tasks will be identified and compiled.

Task 2 -- Assess SEA-TAC Airfield Operations

(e.g. Do-nothing, proposed expansion, alternatives).

Estimates of runway capacity for different wind, ceiling, and visibility conditions obtained from available sources will be reviewed and compared. Comparisons will be made between runway capacity and peak hour demand forecast for the year 2010. Available estimates of delays and operating costs (e.g. Section 4 of the Airport Capacity Enhancement Plan) will be reviewed to assess the quantifiable benefits associated with alternative means for accommodating the 2010 demand.

Task 3 -- Assess Alternatives to Facility Development

(e.g. Demand Management, New Technology, High Speed Ground Transportation).

Accommodation of part of the regional air travel demand by means of demand management techniques or high speed ground transportation will also reduce the need for additional capacity at SEA-TAC. Application of new technologies, such as advanced air traffic control systems, have the potential to increase the capacity of SEA-TAC without constructing the proposed dependent runway. In each case, these alternatives will be assessed with respect to the operational changes that they would cause at SEA-TAC.

Task 4 -- Assess Alternative Locations to Accommodate Demand

(e.g. Arlington, Paine Field, Central Pierce County, McCord Air Force Base, Loveland, Thurston County (Olympia Black Lake), Fort Lewis).

Accommodation of part of the regional air travel demand at alternative locations such as those identified in the flight plan project reduces the need for additional capacity at SEA-TAC. The alternatives will be assessed with respect to both their own operational characteristics and the changes that they would cause at SEA-TAC.

Task 5 -- Document Summary of Results of Work.

A report will be prepared that summarizes the results of the work performed and draws conclusions based on the available data concerning the benefits and impacts of the dependent air carrier runway at SEA-TAC and alternatives to the construction of this runway. In addition, brief interim reports will be prepared at the conclusion of Tasks 2, 3, & 4.

Task 6 -- Attend Meetings With and/or on Behalf of Client.

A total of four meetings are planned, with up to four one-day meetings will be attended in the Seattle region to meet with the client and/or other parties designated by the client, and no more than one meeting in Washington DC to meet with Cutler & Stanfield and FAA Headquarters personnel.

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February 26, 1993

Dr. Stephen L. M. Hockaday
HOCKADAY ASSOCIATES, LTD.
P.O. Box 1140
Morro Bay, California 93443-1140

Dear Steve:

This letter confirms that Cutler & Stanfield desires to retain you as its consultant in connection with our representation of the Legal Expense Fund for Transportation and Environmental Matters ("Legal Fund"). The Legal Fund has been established pursuant to the Washington Interlocal Cooperation Act as the result of an interlocal agreement among several Washington cities including the cities of Normandy Park, Des Moines and Burien. Cutler & Stanfield represents the Legal Fund in connection with matters relating to the proposed expansion of Seattle-Tacoma International Airport, proposed changes in operations at that Airport, and long-term planning for the Puget Sound's regional air transportation needs.

As we discussed, the precise services for which we have retained you will be worked out with you in the coming weeks. We will send you background materials as well in the next week or two. Until we have agreed on the parameters for your services, you should not engage in any services on behalf of the Legal Fund without authorization from Cutler & Stanfield.

It is our understanding that you will charge us according to your normal hourly rates (which are \$118 for your services, \$75 per hour for your staff, and \$20 per hour for student assistants) in connection with this engagement. These terms are acceptable to us. You also will be reimbursed for actual, reasonable out-of-pocket expenses related to this matter.

Dr. Stephen L. M. Hockaday
February 26, 1993
Page 2

All work performed under this engagement would be conducted under our direction. Any reports or other communications on this matter which you prepare should be prepared only in connection with a specific request from our firm and should be submitted directly to Cutler & Stanfield. Unless we otherwise instruct (or as required by law), all communications on this matter should be treated as confidential attorney-work product and attorney-client communications. We therefore would appreciate your including the following legend on the first page of any document which you prepare (including correspondence, reports, and formal or informal memoranda): **"THIS DOCUMENT WAS PREPARED AT THE DIRECTION OF COUNSEL AND CONTAINS PRIVILEGED ATTORNEY WORK PRODUCT AND ATTORNEY - CLIENT COMMUNICATIONS."**

Please submit monthly bills for services to my attention. I will promptly submit such bills to the Legal Fund for direct payment to you.

Please refrain from undertaking any other representation which might be in any way adverse to the interests of the Legal Fund or the cities of Normandy Park, Burien, Tukwila, and Des Moines, Washington, which are (or projected to be) the members of the Legal Fund. Please do not discuss this matter with any other person (other than another attorney from our firm, one of the city attorneys, or a representative of the Legal Fund). If you are contacted by anyone else regarding this matter, please advise them that you are not at liberty to discuss this matter and advise us of the name of the person who contacted you.

We look forward to working with you on this matter and having the benefit of your substantial expertise in this area.

Sincerely,


Peter J. Kirsch

cc: Legal Expense Fund Executive Committee

Dr. Stephen L. M. Hockaday

Dr. Hockaday has more than 20 years of experience in many aspects of air and surface transportation research, planning, design, and operations for government, industry and universities. Dr. Hockaday is a Professor in the Civil and Environmental Engineering Department at California Polytechnic State University, San Luis Obispo (Cal Poly); where his responsibilities include teaching and research in air and surface transportation. He is also Director of the School of Engineering Applied Research and Development Facility.

Dr. Hockaday has extensive practical experience in the field of airport and airspace planning and design, both as an individual consultant and as manager of an airport planning group for a major U.S. consulting firm. He has had a wide range of responsibilities and provided consultation services at numerous airports, including those in the following communities:

United States

Anchorage	Atlanta
Boston	Charleston
Chicago	Dallas
Denver	Detroit
El Paso	
Honolulu	Houston
Kansas City	Los Angeles
Louisville	Memphis
Miami	Minneapolis
Monterey	Nashville
New York (JFK, LGA)	Ogden
Orlando	
Pensacola	Phoenix
Philadelphia	Portland
Raleigh-Durham	Sacramento
San Francisco	Santa Fe
San Jose	Seattle
St. Louis	Tampa
Washington DC (IAD)	

International

Australia	Japan
Germany	Malaysia
Greece	Mexico
Hong Kong	Philippines
Great Britain	

His technical areas of responsibility have included:

- Airport Site Selection Studies
- Airport Systems Planning
- Airport Access and Parking
- Airport Land-Use and Master Plans
- Airfield and Airspace Capacity and Layout Plans
- Passenger Terminal Area Plans
- Aviation Safety Analysis
- Environmental Assessment and Impact Studies

Representative Projects

For the Director General of Airports of the Government of Mexico, Dr. Hockaday was project manager for the development of plans for improvements to the existing Mexico City International Airport and the development of a new airport for Mexico City. The analyses included economic analysis and forecasting of aviation demand, capacity and delay analyses, establishment of requirements for new airport facilities, planning of airfield layout, terminal building concept, access and parking facilities, and airport land-use.

For the US Navy, Dr. Hockaday participated in a study to update the naval aviation system plan for the helicopter and fixed-wing aircraft bases that provide basic aircrew training for all Navy pilots.

For the Federal Aviation Administration, Dr. Hockaday conducted an assessment of the avionics capabilities of the rotorcraft fleet, and their impact on the demand for instrument operations by helicopters.

For the Denver Regional Council of Governments and the City and County of Denver, Dr. Hockaday had major technical responsibilities for elements of (a) the Site Selection and Master Plan studies performed to identify and develop the new major air carrier airport to serve the Denver region, and (b) the Master Plan to develop the existing Stapleton International Airport. The studies involved detailed assessment of the alternative future roles of the two airports, and development of plans for their development. Plans were also developed for a new short runway for commuter aircraft operations.

In connection with the planning project for developing new terminal

facilities at Orlando International Airport, Dr. Hockaday evaluated the potential of alternative terminal sites by analyzing geometric, land-use, economic, environmental, and financial factors. He also organized and supervised a comprehensive airport data gathering program that involved passenger, vehicular traffic, and operations surveys; investigated alternative modes for airport access, and airfield and airspace capacity analyses.

For the Federal Aviation Administration, Dr. Hockaday was involved in several elements of the development of a Master Plan for Dulles International Airport, Washington, D.C., including airfield layout, terminal building development, access and parking, and airspace analysis.

He acted as project manager for an Air Force Communications Command project to develop new control procedures to improve air traffic control procedures. This project involved the use of a combination of live field tests and computer modeling to demonstrate the feasibility of reduced separations between aircraft. The project included the development and documentation of pilot and controller procedure handbooks and training syllabuses, and coordination of ATC procedures with the command-control function in a wartime environment. The procedures have now been approved for implementation worldwide.

Dr. Hockaday was project manager for a five year FAA airport improvement program which examined and recommended major development programs to improve the efficiency of operations at the nation's ten busiest airports, including revisions to air traffic control procedures. The program resulted in significant fuel and operating cost savings at San Francisco International Airport, Dallas-Fort Worth Regional Airport, John F. Kennedy International Airport and LaGuardia Airport (New York), William B. Hartsfield Atlanta International Airport, Los Angeles International Airport, O'Hare International Airport (Chicago), Stapleton International Airport (Denver), Lambert St. Louis International Airport, and Miami International Airport.

For NASA (National Aeronautics and Space Administration), Dr. Hockaday was project manager for a study of ways to improve airport runway use and operation. The study included analysis of operational, physical, and technological improvements to the airport, airspace, and aircraft.

In a major project for the Federal Aviation Administration, Dr. Hockaday was technical manager of research and development performed for the FAA in which procedures were designed to determine airport capacity and improve airfield configurations. This project resulted in an airfield capacity handbook and mathematical models of airfield operations. The handbook and models were published by the FAA as approved airfield analysis techniques.

Dr. Hockaday also conducted research for the US Department of

Transportation and the Federal Aviation Administration concerning the potential for automation of elements of the air traffic control system, particularly with reference to the possibility of incorporating artificial intelligence techniques. As part of this activity, he investigated the feasibility of incorporating expert systems into the FAA national air traffic central flow control facility. He also recently chaired a NASA/FAA workshop on the use of artificial intelligence in air traffic control.

Background

Prior to his current appointment, Dr. Hockaday was an Associate Research Engineer and Lecturer at the University of California, Berkeley. In this role he was responsible for developing course materials and teaching three different courses in the field of air transportation.

Dr. Hockaday holds the B.Sc. (Engineering) degree from the University of London with first class honours in civil engineering. As a result of study and research at the University of California at Berkeley, he received both the M.S. and Ph.D. degrees in transportation engineering. Dr. Hockaday's thesis, supervised by Professor Robert Horonjeff, concerned a model to investigate the separation of landing aircraft with special reference to collision risk.

Dr. Hockaday is a Chartered Engineer in Great Britain, a registered professional Traffic Engineer in California, and a registered professional Civil Engineer in Oregon. He is a fellow of the American Society of Civil Engineers, and a member of the Institute of Transportation Engineers and the Institution of Civil Engineers (Great Britain). He is also a member of the Transportation Research Board and the American Association for Artificial Intelligence.

Regional Airport System Plan Resolution

Approved by the Regional Council Executive Board
April 8, 1993

WHEREAS, the Puget Sound Regional Council, designated under federal and state laws as the Metropolitan Planning Organization and Regional Transportation Planning Organization for the central Puget Sound region, is responsible for adopting and maintaining regional growth management and transportation strategies for the region; and

WHEREAS, the Regional Council has adopted VISION 2020: Growth and Transportation Strategy for the Central Puget Sound Region, to guide growth management and transportation decisions and actions in King, Kitsap, Pierce and Snohomish counties; and

WHEREAS, VISION 2020 seeks to assure that the people of this region continue to enjoy an outstanding and improving quality of life that includes a vibrant economy, a healthy environment, and livable communities connected by a multimodal, transit-oriented transportation system that emphasizes accessibility and enables the efficient movement of people, goods and freight; and

WHEREAS, with respect to assessments of commercial air transportation needs, the Regional Council acknowledges long term forecasting uncertainties, and the reduction on a day-to-day basis of current airport capacity at Sea-Tac Airport during bad weather conditions; and

WHEREAS, VISION 2020, as the Regional Transportation Plan for the region, includes the 1988 interim Regional Airport System Plan with language that called upon the region to "proceed expeditiously with the detailed evaluation and selection of a preferred regional air carrier system alternative," and which now needs to be amended to reflect the Regional Council's recent planning and deliberations regarding the long-term commercial air transportation capacity needs of the region; and

WHEREAS, jurisdictions in the region agree to site regional transportation facilities in a manner that reduces adverse societal, environmental and economic impacts; seeks equity and balance in siting and improving the region's transportation system; and addresses regional growth planning objectives; and

WHEREAS, the Regional Council, through the Flight Plan Project, has sought to address policy, environmental, and procedural concerns through a variety of products and processes, including the following:

- (a) the Regional Council, acting jointly with the Port of Seattle, completed a non-project Final Environmental Impact Statement evaluating various system alternatives for meeting projected demands and their noise and other environmental impacts, and
- (b) the Regional Council conducted a series of workshops, decision meetings, open houses, and a public hearing, to listen to the concerns and suggestions of community groups, individuals and interests that could be affected by a regional commercial air transportation capacity decision; and

WHEREAS, as a part of this effort, the Regional Council finds that commercial air transportation is important to the region's economy, and that additional commercial air transportation capacity needs to be identified and preserved, and implemented when needed at some point in the future; and

WHEREAS, the Regional Council finds that there is no perfect air transportation capacity solution, but that whatever solution is adopted must be part of an integrated transportation system that includes air and marine transportation as well as roadways and rail, that demand management and system management should be utilized to make the most efficient use of the existing system, and that any solution must not result in a decrease in safety and must address noise; and

WHEREAS, the Regional Council further finds that the adopted solution should be flexible, must be consistent with the growth management planning that is occurring in the region, and should be financially feasible; and

WHEREAS, the Regional Council Transportation Policy Board and Executive Board have developed and refined this recommendation to the Regional Council General Assembly; and

WHEREAS, this amendment to the interim Regional Airport System Plan is consistent with the VISION 2020 Final Environmental Impact Statement;

NOW, THEREFORE, BE IT RESOLVED that the Regional Council Executive Board recommends that the General Assembly adopt the following elements of a Regional Airport System Plan amendment:

That the region should pursue vigorously, as the preferred alternative, a major supplemental airport and a third runway at Sea-Tac.

1. The major supplemental airport should be located in the four-county area within a reasonable travel time from significant markets in the region.

2. The third runway shall be authorized by April 1, 1996:

a. unless shown through an environmental assessment, which will include financial and market feasibility studies, that a supplemental site is feasible and can eliminate the need for the third runway; and

b. after demand management and system management programs are pursued and achieved, or determined to be infeasible, based on independent evaluation; and

c. when noise reduction performance objectives are scheduled, pursued and achieved based on independent evaluation, and based on measurement of real noise impacts.

3. The Regional Council requests consideration by the Federal Aviation Administration of modifying the Four-Post Plan to reduce noise impacts, and the related impacts on regional military air traffic.

4. Evaluation of the major supplemental airport shall be accomplished in cooperation with the state of Washington.

5. Proceed immediately to conduct site-specific studies, including an environmental impact statement, on a Sea-Tac third runway;

6. Eliminate small supplemental airports, including Paine Field, as a preferred alternative.

BE IT FURTHER RESOLVED that the Board is directed to:

1. Take all necessary steps to assure efficient, effective and economical implementation of this resolution.

2. Negotiate with the Port of Seattle, the Washington State Department of Transportation and other responsible agencies, as necessary, to assure the implementation of this resolution.

3. Assure that implementation of this resolution is at all times in compliance with the requirements of all applicable federal, state and local laws and regulations.

4. Report to the General Assembly on the results of its actions at the next regularly scheduled Assembly meeting or at such special meeting of the Assembly as the Board may call.

DRAFT - Regional Airport System Plan Resolution
REVISED VERSION PROPOSED BY AIRPORT COMMUNITIES COALITION
March 22, 1993

WHEREAS, the Puget Sound Regional Council, designated under federal and state laws as the Metropolitan Planning Organization and Regional Transportation Planning Organization for the central Puget Sound region, is responsible for adopting and maintaining regional growth management and transportation strategies for the region; and

WHEREAS, the Regional Council has adopted VISION 2020: Growth and Transportation Strategy for the Central Puget Sound Region to guide growth management and transportation decisions and actions in King, Kitsap, Pierce and Snohomish counties; and

WHEREAS, VISION 2020 seeks to assure that the people of this region continue to enjoy an outstanding and improving quality of life that includes a vibrant economy, a healthy environment, and livable communities connected by a multimodal, transit-oriented transportation system that emphasizes accessibility and enables the efficient movement of people, goods and freight; and

WHEREAS, jurisdictions in the region have agreed to site specifically defined regional facilities in a manner that reduces adverse societal, environmental and economic impacts; balances new or existing regional facilities needs with equity consideration through distributional or mitigation solutions; and addresses regional growth planning objectives; and

WHEREAS, VISION 2020, as the Regional Transportation Plan for the region, includes the Regional Airport System Plan, which was last updated in 1988, with language that called upon the region to "proceed expeditiously with the detailed evaluation and selection of a preferred regional air carrier system alternative," and now needs to be updated again to reflect the Regional Council's resulting planning and deliberations regarding the long-term commercial air transportation capacity needs of the region; and

WHEREAS, the Regional Council, through the Flight Plan Project, has evaluated future commercial air transportation demand together with forecasting uncertainties, completed a non-project Final Environmental Impact Statement evaluating various system alternatives for meeting projected demand, and conducted a series of workshops, decision meetings, and open houses to listen to the concerns and suggestions of community groups, individuals and interests that could be affected by a regional commercial air capacity decision; and

WHEREAS, as a part of this effort, the Regional Council finds that commercial air transportation is important to the region's economy, and that additional commercial air transportation

capacity needs to be identified and preserved, and implemented as and if needed at some point in the future; and

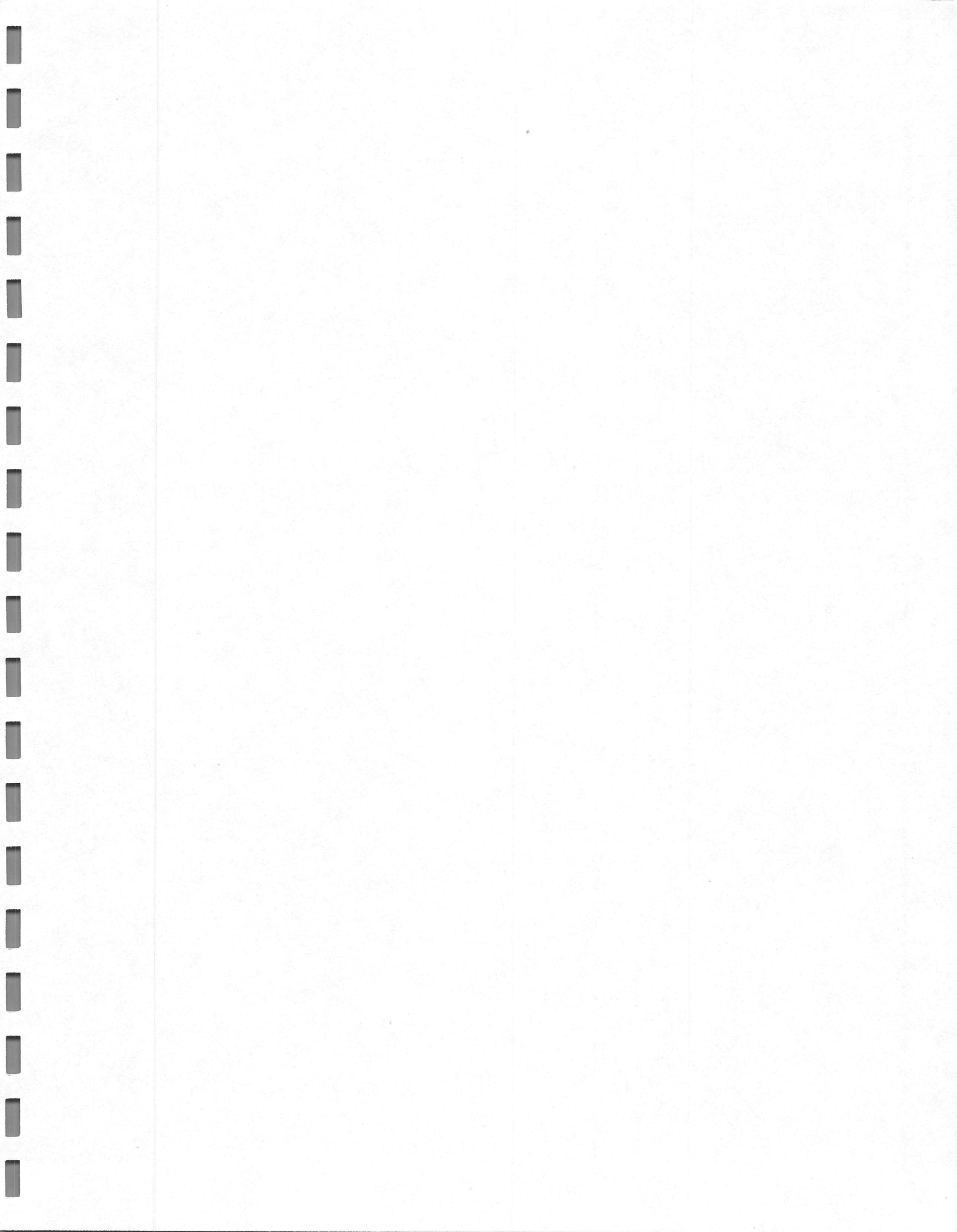
WHEREAS, the Regional Council finds that there is no perfect air capacity solution, but that whatever solution is adopted must be part of an integrated transportation system that includes air and marine transportation as well as roadways and rail, that demand management and system management should be utilized to make the most efficient use of the existing system, and that any solution must not result in a decrease in safety; and

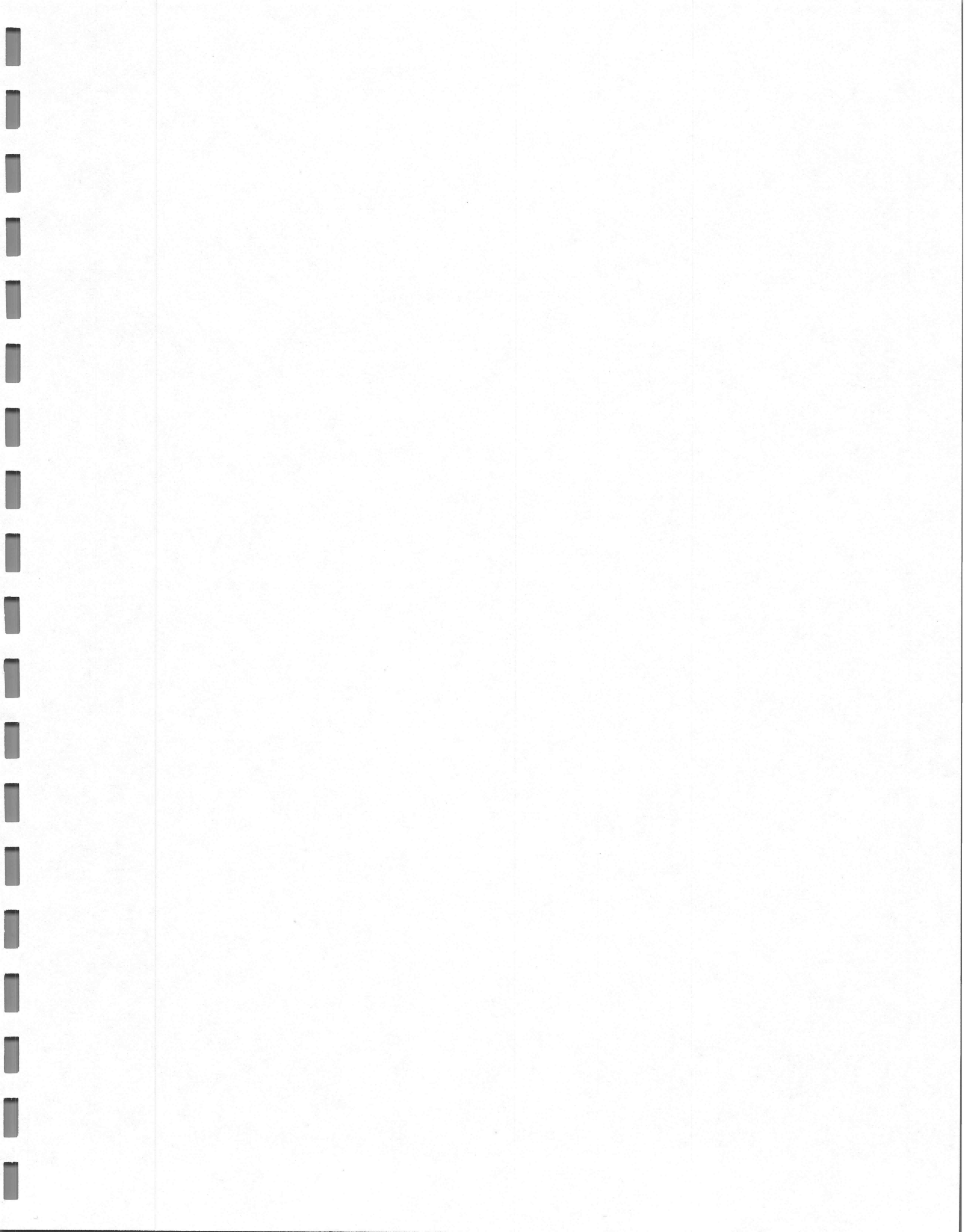
WHEREAS, the Regional Council further finds that the adopted solution must be consistent with the growth management planning that is occurring in the region, and should be flexible and financially feasible;

NOW, THEREFORE, BE IT RESOLVED that the Regional Council General Assembly adopts the following elements of a Regional Airport System Plan amendment:

That the region should pursue vigorously, as an amendment to the Regional Transportation Plan and as the preferred alternative, both the development of a major supplemental airport and the continued use of Seattle-Tacoma International Airport.

1. The major supplemental airport should be located within a reasonable travel time from significant markets in the region.
2. Planning for a major supplemental airport is a major undertaking; while that planning is proceeding, actions should not be taken which would prejudice the outcome of the planning process. Site-specific studies, including an environmental impact statement, should be prepared for a new supplemental airport.
3. In the meantime, the following measures should be pursued at Sea-Tac:
 - a. Demand management and system management programs, based upon independent evaluation, should be implemented;
 - b. Noise reduction performance objectives, based on independent evaluation and based on measurement of real noise impacts, should be scheduled, pursued and achieved.
4. Evaluation of the major supplemental airport shall be accomplished in cooperation with the state of Washington and in accord with the Growth Management Act.





5. The Regional Transportation Plan shall not be amended to allow for the construction of a third runway at Sea-Tac, and the PSRC shall not certify site-specific studies for such construction under the Growth Management Act before January 1, 2000 unless

a. the measures identified in (3) have been implemented and;

a. the studies identified in (2) show that a supplemental airport cannot adequately serve regional transportation needs through the year 2020.

6. Small supplemental airports, including Paine Field, should not be recommended elements of the Regional Transportation Plan.