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ENVIRONMENTAL  
HEARINGS OFFICE

POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

AIRPORT COMMUNITIES  
COALITION,

Appellant,

CITIZENS AGAINST SEA-TAC  
EXPANSION,

Intervenor/Appellant,

v.

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY; and  
PORT OF SEATTLE,

Respondents.

PCHB No. 01-160

DECLARATION OF THOMAS J.  
YOUNG

Thomas J. Young, declares as follows:

1. I am one of the attorneys assigned to represent the Department of Ecology in the above-referenced matter.

2. Attached hereto are true and correct copies of the following:

Ex. 1. Excerpts from the Deposition of Thomas Luster;

Ex. 2. Cover page from Pre-Filed Testimony of Thomas F. Luster;

Ex. 3. Executive Ethics Board Advisory Opinion 97-06;

Ex. 4. Facilitated meeting notes dated October 2, 10, 13, 27, 2000;

AR 003061

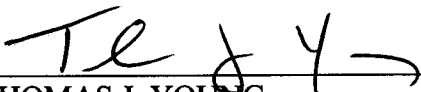
1 Ex. 5. Letter from Port of Seattle dated October 25, 2000 regarding renewal of  
Joint Aquatic Resource Permit Application.

2 Ex. 6. Memo from Tom Luster regarding list of issues to be resolved for  
3 SeaTac review, dated October 9, 2000;

4 Ex. 7. Email from Tom Luster regarding SeaTac, dated October 18, 200, with  
attached issues list.

5 I declare under penalty of perjury under the laws of the state of Washington that the  
6 foregoing is true and correct.

7 DATED this 11 day of March, 2002.

8  
9   
10 THOMAS J. YOUNG

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**AR 003062**

1 least a portion of that.

2 Near the top of that page, the natural  
3 resource mitigation plan and appendices, the wetland  
4 functional assessment, possibly some others on this  
5 page based on not that I remember the title exactly,  
6 but I know I reviewed some reports done by Hart  
7 Crowser, and they're listed as the author on some of  
8 these. I'm trying to remember if some of these may  
9 have been appendices to documents that I reviewed.

10 Q. Do you remember what the subject matter was  
11 of the Hart Crowser documents you reviewed?

12 A. I believe there was at least one document on  
13 a geotechnical report on the MSE wall. There may have  
14 been another one to do with a flow analysis. Again,  
15 it's kind of hard to tell without the stack in front of  
16 me.

17 Going to page 8, I believe I've seen a  
18 document that had to do with the abandoned wells. I'm  
19 not certain that this is the same document, but it  
20 might have been.

21 Q. Let me stop you there and ask you: Page 8  
22 seems to run in terms of document finish dates from  
23 September of 2000 to December of 2000, so I wanted to  
24 make sure that your answer now is confined to documents  
25 that you have reviewed since you left Ecology.

1 or certification?

2 A. Probably several dozen hours overall. That  
3 seems to be about right.

4 Q. Did you keep any record of the amount of time  
5 you've spent doing that?

6 A. No.

7 Q. Several dozen could be a pretty broad range.  
8 Can you tell me whether or not you believe it's more or  
9 less than 50 hours?

10 A. I would say over the course of the year, over  
11 50, yeah. It's hard to estimate exactly, because I  
12 would do it for two or three hours in an evening or a  
13 chunk of time on a weekend or things like that. I  
14 didn't dedicate like a solid week to reviewing  
15 documents, for instance.

16 Q. Do you believe that the amount of time you  
17 spent was less than a hundred hours?

18 A. Probably, yeah. I'd say between 50 and a  
19 hundred.

20 Q. Where did you obtain the documents that you  
21 reviewed that you've just testified about?

22 A. I think most of them were sent to me by ACC.

23 Q. By ACC directly or by ACC's attorneys?

24 A. That I'm not sure of. It may have been both  
25 in different instances. One may have sent them or the

1 A. Right. Yes. I believe -- well, for some of  
2 these that were issued before I left Ecology, I  
3 probably reviewed them at the time, and for some of  
4 them I've also looked at them over the past year.  
5 Other ones on this page, the low flow stream flow  
6 analysis, the stormwater -- the comprehensive  
7 stormwater management plan. I don't recall if I  
8 mentioned earlier the final wetland delineation report.  
9 Those are the ones that are apparent right now to me.

10 On page 7, I think we're getting into --  
11 well, at the top of that page, those may be documents  
12 that were before I left Ecology primarily, but let me  
13 just make sure. Right at this moment, I can't recall  
14 which of them on this page I reviewed in the last year  
15 versus before then, and the same for the ones on page  
16 6.

17 I think as we go back in this document, we're  
18 getting into documents that were made out of date by  
19 subsequent submittals by the Port, and so I think in  
20 the last year I focused on most recent versions of  
21 various plans and analyses, that sort of thing. I may  
22 have missed some, but --

23 Q. Do you have any estimate about the amount of  
24 time that you have spent in the last year reviewing  
25 documents related to the third runway 401 application

1 other. I'm not sure of the difference, I guess.

2 Q. In addition to the documents themselves that  
3 you've testified about, were there other materials that  
4 came along with the communications from ACC or its  
5 counsel relating to the 401 certification?

6 MR. EGLICK: Objection as to the form of the  
7 question; no foundation.

8 A. I also received from ACC or its counsel the  
9 notes from the meetings that occurred last -- in the  
10 fall of 2000. This was the series of meetings with  
11 Kate Snider facilitating. Those meetings included a  
12 number of notes, so I got a copy of those.

13 MR. EGLICK: Can I just clarify? We're  
14 talking about last fall?

15 THE WITNESS: Of 2000.

16 MR. EGLICK: Thank you.

17 A. I may have -- I think I received some e-mails  
18 that ACC had obtained from Ecology. That's all that  
19 comes to mind right now.

20 Q. (BY MR. REAVIS) Do you remember what the  
21 subject of those e-mails was?

22 A. In general, just having to do with the review  
23 for 401 of various aspects. I can't bring to mind  
24 specifically right now.

25 Q. Any particular e-mail stand out?

1 A. At the moment, no. I'm trying to -- I doubt  
2 very much that I got a complete set. From reading the  
3 various declarations and depositions, it appears there  
4 were a lot of e-mails that I haven't seen during the  
5 last year, but I was provided some subset of those.

6 Q. Were there any transmittal letters or  
7 memoranda forwarded to you by anyone in connection with  
8 the 401 issues at the Port since you left Ecology?

9 A. I think with each packet I think there was a  
10 cover memo saying here are and then a list of the  
11 documents, but nothing other than that.

12 Q. So no memoranda, for example, explaining the  
13 theory of the case or outlining the issues?

14 A. No. Nothing like that.

15 Q. To the best of your recollection, then, it  
16 was documents with a transmittal letter saying here are  
17 documents?

18 A. Correct.

19 Q. Who all have you talked to since you left  
20 Ecology that was either with ACC or representing ACC?

21 A. I've talked with Mr. Eglick a few times. I  
22 believe I talked with Mr. Stock once or twice. Let's  
23 see. Ms. Grad at Mr. Eglick's and Mr. Stock's office.  
24 That's all that comes to mind right now.

25 Q. How many times do you think you've talked to

1 don't we do this. Let's go ahead. You can ask subject  
2 to my motion to strike on the understanding that there  
3 will be absolutely no question that when similar  
4 questions are asked of Port witnesses that there will  
5 be no instruction not to answer similar questions of  
6 any Port witness.

7 MR. REAVIS: Let me do this. I'm going to  
8 move on for now.

9 MR. EGLICK: Well, no. I'm urging you to ask  
10 the question subject to that agreement.

11 MR. REAVIS: No. What I'm going to do is  
12 call co-counsel and ask them whether they have an  
13 understanding of a different agreement, and at a break  
14 I'll call them. If I get an answer, I'll go into this  
15 area or not. I'm doing that based upon my own volition  
16 and not as a result of your objection, but I do want to  
17 clarify it before I agree to waive some sort of  
18 privilege that co-counsel may have agreed to.

19 MR. EGLICK: I'm not waiving any, but what  
20 I'm saying is I'm not going to ask or instruct or  
21 request him not to answer. I'll leave it for a motion  
22 to strike, but only on the understanding, of course,  
23 that what's sauce for the goose is sauce for the  
24 gander.

25 MR. YOUNG: I have one question, which is is

1 Mr. Eglick since you left Ecology?

2 A. Probably half a dozen or so.

3 Q. And what was the substance of those  
4 conversations?

5 MR. EGLICK: Wait a minute. You're asking  
6 him what the subject matter was or the substance?

7 MR. REAVIS: Either one. I asked substance.

8 MR. EGLICK: So because I want to understand  
9 the Port's position on this, is it the Port's position  
10 that in this case it is not asserting that there is a  
11 work product protection or attorney/client privilege,  
12 however it's characterized, that applies to  
13 conversations between, for example, Port counsel and  
14 witnesses that the Port is going to call or has listed?

15 MR. REAVIS: Well, my understanding of this  
16 -- and let me say I wasn't involved in the details of  
17 it -- was that with regard to the production of  
18 documents that both parties were agreeing that those  
19 materials would not be produced; in other words,  
20 communication between counsel and experts. My  
21 understanding, though, was that in depositions those  
22 matters can be inquired about. I guess I would ask you  
23 if you have a different understanding to let me know  
24 now.

25 MR. EGLICK: Well, that wasn't mine, so why

1 it then your position, Peter, that Tom Luster is a  
2 retained expert on behalf of ACC?

3 MR. EGLICK: Well, I guess if you want to  
4 talk about that, we can go off the record and talk  
5 about it, but I'm not being deposed here. The word  
6 "retained" kind of implies some sort of commercial  
7 transaction, and I don't think that's applicable here.

8 MR. YOUNG: But you're saying he is your  
9 expert for purposes of asserting work product  
10 privilege?

11 MR. EGLICK: Well, he is going to testify on  
12 his opinions having been qualified as an expert by  
13 Ecology before we ever appeared on the scene. I think  
14 Exhibit 202, the third page, Ecology's description of  
15 Tom is that he, quote, serves as senior expert to the  
16 shorelands and environmental assistance program and the  
17 Department of Ecology on technical and policy issues  
18 related to section 401 of the Federal Clean Water Act,  
19 Coastal Zone Management consistency determinations, and  
20 coordinated state responses and so on. I guess --

21 MR. YOUNG: He's not working for Ecology now.

22 MR. EGLICK: Right. But you asked me --  
23 there are two parts to the question. One, is he an  
24 expert? As far as I know, Ecology described him as an  
25 expert -- how many years ago is this now, five? -- on

1 401, so, yes, he's an expert, and, yes, we have asked  
2 him to testify in the presentation that we will make to  
3 the board.

4 MR. YOUNG: That's what I was looking for.  
5 Thank you.

6 MR. REAVIS: And do you believe that  
7 conversations between you and Mr. Luster are  
8 privileged?

9 MR. EGLICK: Well, I think the question that  
10 I raised was whether or not there had been an agreement  
11 among counsel that conversations, communications with  
12 witnesses such as Mr. Luster were not going to be  
13 inquired into whether those communications were in  
14 writing or in some other way. I don't know whether  
15 that falls under attorney/client or work product. I  
16 believe that Mr. Pearce's letter from December suggests  
17 it falls under both, and that's the letter that I  
18 thought was the load star here. Have you seen  
19 Mr. Pearce's letter?

20 MR. REAVIS: I have.

21 MR. EGLICK: You know Mr. Pearce, right?  
22 He's the other counsel for the Port. What I've also  
23 said here again is please go ahead and ask your  
24 questions subject to my objection and motion to strike  
25 so long as it's understood that the Port will not

1 Q. Did you make changes after having sent it to  
2 them in draft form? Let me refer to both declarations  
3 for now.

4 A. Right. There were a few minor edits. The  
5 primary changes were formatting. I don't think I've  
6 written a declaration before these two, so I wasn't  
7 sure on the structure and format, that sort of thing.  
8 But the words are mine, and there were a couple minor  
9 edits or grammatical corrections, but nothing of  
10 substance.

11 Q. Have we covered, then, the list of people  
12 that you have talked to from ACC or representing ACC  
13 since you left Ecology? Are those three, Mr. Eglick,  
14 Mr. Stock, and Ms. Grad, the entire list?

15 A. As far as I know, yes. I'm not certain who  
16 all are members of ACC, but I don't recall  
17 conversations with other people from that general area.

18 Q. Let me exclude Ecology people from this  
19 question for now, but who else have you talked to since  
20 you left Ecology about the Third Runway Project or the  
21 401 certification in connection with that?

22 A. I've probably mentioned it to some of my  
23 friends just -- they knew it was a big part of my life  
24 for several years.

25 Q. You mean friends in California or friends up

1 interpose any instruction not to answer or anything  
2 else when our turn comes, and that way we can just move  
3 right ahead here.

4 MR. REAVIS: As I said a minute ago, I'm  
5 going to defer that and come back to it later.

6 MR. EGLICK: It's your choice.

7 Q. (BY MR. REAVIS) Do you have any recollection  
8 about the total amount of time you have spent in  
9 conversations with Mr. Eglick?

10 A. I don't remember any calls being more than 10  
11 to 20 minutes at most. Most were shorter, I think.

12 Q. How about Mr. Stock? And, again, the  
13 question being how much time have you spent in  
14 telephone calls or meetings with Mr. Stock?

15 MR. EGLICK: Object to the form of the  
16 question; compound question, no foundation.

17 Q. (BY MR. REAVIS) Let me ask you how much time  
18 have you spent in telephone calls with Mr. Stock?

19 A. Probably 15, 20 minutes total.

20 Q. Can you tell me who prepared the first draft  
21 of the two declarations that you submitted?

22 A. Oh, I did.

23 Q. And did you send that to counsel for ACC in  
24 draft form?

25 A. I did.

1 here in Washington?

2 A. Some of both, actually.

3 Q. Have you talked to Mr. Wingard about this  
4 project since you left Ecology?

5 A. I don't think Mr. Wingard and I have talked.  
6 I believe he and I exchanged an e-mail or two, but I  
7 don't believe it was anything about this project. He  
8 was working on something else having to do with the  
9 Clean Water Act, and I know at one point I forwarded  
10 him an article that I had read that I thought he might  
11 find of interest, but I don't think we had any exchange  
12 on the third runway in particular.

13 Q. Have you talked to Brett Fish since you left  
14 Ecology?

15 A. No.

16 Q. Who have you talked to or what Ecology  
17 employees have you talked to since you left Ecology  
18 with regard to the Third Runway Project?

19 A. I've talked with Ann Kenny I think three  
20 different times. I've talked with Erik Stockdale  
21 several times, probably half a dozen or less. I've  
22 talked with Gordon White once or twice. I talked with  
23 Dave Peeler. Those are all that come to mind right  
24 now.

25 Q. Some of the documents you brought with you

1 similar version, we started -- this became our  
2 guidance, yes.

3 Q. And were you evaluating the Port's project  
4 under section B1 of this memo; in other words, covered  
5 by an individual 402 permit and the project is in  
6 compliance with that permit as determined by the water  
7 quality program?

8 A. In part, yes.

9 Q. And what's the other part that would be no?

10 A. Well, elements of the Port's proposal that  
11 fell outside of the particular discharges mentioned  
12 here that were covered by the 402. The 401 included  
13 discharges that weren't yet covered by 402 or weren't  
14 under the regulatory purview of the 402, so 401 had a  
15 different set of discharges as part of its review. I'd  
16 have to reread this, but there may have been some other  
17 instances in here. I can't recall right now, though.

18 Q. Do you recall what discharges were outside  
19 the scope of the 402 for the airport?

20 A. Well, specifically the proposal to discharge  
21 fill into water bodies were outside the scope of the  
22 existing 402. Also at that time, I don't believe the  
23 issue of whether or not a major or minor modification  
24 to the existing 402 had been resolved, and so at the  
25 very least, section B4 of this policy may have been

1 Q. And it attaches an updated 401 permit matrix,  
2 and I guess I'm wondering what this document, the  
3 matrix, was intended to do. Let me first ask you: Is  
4 the matrix that you were referring to in your e-mail  
5 actually attached to Exhibit No. 222?

6 MR. EGLICK: Are you asking about the --  
7 you're saying there's a reference to this matrix in the  
8 e-mail that's on the first page of Exhibit 222?

9 MR. REAVIS: Correct. On the re line, it  
10 says "updated 401 permit matrix."

11 A. Right. I believe this matrix is what I'm  
12 referring to on the first page.

13 Q. (BY MR. REAVIS) Can you tell me if you know  
14 what the intent of that matrix was?

15 A. On page listed as page 51, there's a  
16 statement from Michael Cheyne at the Port listed on  
17 page 50 stating that the matrix is to act as an agenda  
18 for the Monday, May 17, meeting between the Port and  
19 Ecology.

20 Q. Maybe I'll have to try and find the document  
21 I was thinking about a minute ago, but I thought there  
22 was some sort of matrix or decision document that was  
23 set forth in table form relating to consideration of  
24 various projects and where they would fall within the  
25 401, 402 regulatory schemes. Does that ring a bell at

1 under consideration at that time, which would have  
2 required -- if Ecology determined that a modification  
3 to the existing 402 was needed for the work in the  
4 Walker Creek basin, then B4 would have applied.

5 I don't recall right offhand, but section C  
6 may have been a piece of that. Part 2 or 3 may have  
7 been under consideration. Part 4 may have been under  
8 consideration. I think the project was still in flux  
9 at that time, and so trying to determine the adequacy  
10 of the existing 402 may have put any of those into  
11 play.

12 Q. I've seen copies of a matrix that tries to  
13 sort all this out. Do you recall that? In other  
14 words, maybe that's a vague question, but I've seen  
15 copies of a matrix that relate to this issue. Do you  
16 recall having --

17 A. Not offhand.

18 (Deposition Exhibit No. 222 was marked for  
19 identification.)

20 Q. (BY MR. REAVIS) Exhibit 222, the first page  
21 of it appears to be an e-mail string. The second  
22 e-mail in that string at least on this page was from  
23 you to Ray Hellwig and some other folks on Friday, May  
24 the 14th, 1999?

25 A. Right.

1 all?

2 A. I have a vague recollection from your  
3 description, but I don't recall the details of it, no.

4 Q. Is that a document that you had any part in  
5 creating?

6 A. I don't remember.

7 Q. Maybe here in a little bit I'll look through  
8 the documents and see if I can find it.

9 As you mentioned a little while ago, your job  
10 duties changed in about October of 2000, correct?

11 A. Right.

12 Q. And as a result of that change, you were no  
13 longer responsible for working on the Port's Third  
14 Runway Project, correct?

15 A. I was no longer the lead project reviewer,  
16 correct.

17 Q. Did you continue to play a role after that  
18 date with regard to the project?

19 A. I continued my role as the lead 401 policy  
20 person for the state. I also had some interaction with  
21 Ann Kenny in handing off the project to her and making  
22 her familiar with the history and the documents, that  
23 sort of thing. I probably talked a time or two with  
24 the other people involved, Ray Hellwig and Kevin  
25 Fitzpatrick and Erik Stockdale. There may have been

1 some other people as well.

2 Q. After the 401 function was regionalized as we  
3 talked about this morning, did you maintain direct  
4 responsibility for evaluating any 401 applications  
5 besides that related to the Third Runway Project?

6 A. I believe during that period I had another  
7 number of projects. I'm trying to remember  
8 specifically what those might have been. I know at the  
9 very least I provided support for the regional staff.  
10 For instance, when they were gone on vacation, I would  
11 take on review of some of their projects while they  
12 were gone. I believe there were some others that came  
13 directly to headquarters rather than going to regional  
14 staff for one reason or another, and I would have  
15 provided the review for those.

16 Q. Prior to the regionalization or at the time  
17 of the regionalization, do you recall how many 401  
18 projects you were working on as the person primarily  
19 responsible for making recommendations or decisions?

20 A. Depending on workload and how many staff were  
21 there, I would say at any given time we each could have  
22 had 20 to 40 active projects, perhaps a few less or a  
23 few more. That included projects requiring individual  
24 401 certifications, some projects requiring nationwide  
25 permits, some requiring just coastal zone management

1 for the 404 permit, correct?

2 A. I believe that's the timing, yeah.

3 Q. And you worked on that 401 application that's  
4 necessary for the 404, correct?

5 A. Correct.

6 Q. During your work on that particular  
7 application -- strike that.

8 After the July 1998 401 was issued, it's my  
9 understanding that the Port appealed that  
10 certification, correct?

11 A. I believe so, yes.

12 Q. And then because of some issues related to  
13 additional wetland impacts, the Port withdrew the  
14 application?

15 A. Correct.

16 Q. And did the 401 evaluation continue after the  
17 withdrawal of that application or did you stop and wait  
18 for a new application to be filed in order to work on  
19 these issues related to the third runway?

20 A. I believe we continued to work with the Port  
21 during that period to clarify what their next  
22 application should include. I think the Port made it  
23 clear that they wanted to come back with a new revised  
24 project, and I believe there were some meetings between  
25 the withdrawal in '98 and the resubmittal in '99.

1 determinations, but within that range, I think.

2 Q. After the beginning of this regionalization,  
3 did you attempt to transition out of certain of those  
4 projects and transfer those to the regions?

5 A. I think for the most part the ones I was  
6 doing at the time of regionalization I kept. I saw  
7 those through to the end. I think some of them may  
8 have transitioned to the region. I think it largely  
9 depended on when we hired somebody in the regional  
10 office whether a project was in their region or not and  
11 their degree of knowledge and taking on projects on  
12 their own, so it was kind of a transitional period  
13 where I kept some and some may have gone directly to  
14 the regions.

15 Q. Do you recall when Ann Kenny first started  
16 doing 401 work for the northwest region?

17 A. Not specifically, no.

18 Q. But did you train her in 401 issues or had  
19 she previously been doing 401 proposals before the  
20 regionalization?

21 A. I trained her, and I don't think she was  
22 doing 401 before that. I believe she was doing  
23 shoreline permit review before she took the 401  
24 position.

25 Q. Now, in the fall of 1999, the Port reapplied

1 Q. Somewhere in the course of that work after  
2 the withdrawal of the 1998 application or after the  
3 withdrawal of the application in 1998, did you believe  
4 that Ecology's position on the Port's application was  
5 that Ecology was not going to say no to that  
6 application and that somehow Ecology was going to have  
7 to find a way to say yes?

8 A. Was that Ecology's position, are you asking?

9 Q. I'm asking was that your belief about what  
10 Ecology's position was; that no was not an acceptable  
11 option?

12 MR. EGLICK: Objection as to the form of the  
13 question.

14 A. My belief was that it was the same as any  
15 other proposed project for 401. If the applicant met  
16 the regulatory requirements, they got their permit, and  
17 if they didn't, we couldn't issue a permit. So if the  
18 Port met the requirements, they would get a 401, and if  
19 they didn't, we couldn't issue a 401.

20 (Deposition Exhibit No. 223 was marked for  
21 identification.)

22 Q. (BY MR. REAVIS) Showing you what has been  
23 marked as Exhibit 223. Down at the bottom half of the  
24 page it appears to be an e-mail from you to Ray Hellwig  
25 and Erik Stockdale and a copy to Paula Ehlers. Let me

**Pre-Filed Testimony of Thomas R. Luster**

**Submitted on behalf of Appellant  
Airport Communities Coalition**

**PCHB No. 01-160  
*ACC & CASE v. Dept. of Ecology & Port of Seattle***

**February 22, 2002**

**AR 003068**

**Exhibit 2**



June 13, 1997

**ADVISORY OPINION 97-06****RCW 42.52.080(5) - EMPLOYMENT AFTER LEAVING PUBLIC SERVICE - ASSISTING IN A TRANSACTION**

RCW 42.52.080(5) prohibits a former state officer or state employee from assisting another person in any transaction involving the state in which he or she at any time participated during state employment. A water right permit application is a transaction involving the state. If the former state officer or employee's participation in the transaction was both personal and substantial while employed by the state, assistance in the permit process after leaving state government is prohibited.

**QUESTION**

Does RCW 42.52.080(5) prohibit a former state employee from accepting employment assisting a person seeking a water right permit when the employee worked on the same permit application while employed by the state?

**ANSWER**

The answer is yes. RCW 42.52.080(5) prohibits a former state employee from assisting another person in a transaction involving the state in which the employee participated. The application for a water rights permit is a transaction involving the state, and the employee participated in that transaction while a state employee.

**ANALYSIS**

This request concerns employment after public service. The employee in question worked for the Department of Ecology (DOE) from 1989 to 1996. During that time the employee's duties included making decisions about applications for water rights permits. The job involved investigating water rights applications and drafting reports of examination. The report of examination summarizes all aspects of the water right investigation and provides conclusions and recommendations to a supervisor who makes the final decision on approving or denying the application.

In 1993, the employee worked on a particular application for a water right preparing three draft reports of examination. However, no permit was issued and the application was put on hold, pending litigation. The employee had no further involvement with the permit. After the employee left state service the application for the permit was denied. The applicant has appealed the denial and the employee asked the Board whether he may assist the applicant in appealing the denial.

This question involves the interpretation of RCW 42.52.080(5) which provides:

No former state officer or state employee may at any time subsequent to his or her state employment assist another person, whether or not for compensation, in any transaction involving the state in which the former state officer or state employee at any time participated during state employment. This subsection shall not be construed to prohibit any employee or officer of a state employee organization from rendering assistance to state officers or state employees in the course of employee organization business.

(Emphasis added.)

**AR 003069****Exhibit 3**

This question raises two separate issues. First, is the application for a water rights permit a "transaction involving the state"? Second, did the employee participate in that transaction?

Turning to the first issue, RCW 42.52.010(21) defines "transaction involving the state":

(a) "Transaction involving the state" means a proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other similar matter that the state officer, state employee, or former state officer or state employee in question believes, or has reason to believe:

(i) Is, or will be, the subject of state action; or

(ii) Is one to which the state is or will be a party; or

(iii) Is one in which the state has a direct and substantial proprietary interest.

(b) "Transaction involving the state" does not include the following: Preparation, consideration, or enactment of legislation, including appropriation of moneys in a budget, or the performance of legislative duties by an officer or employee, or a claim, case, lawsuit, or similar matter if the officer or employee did not participate in the underlying transaction involving the state that is the basis for the claim, case, or lawsuit.

(Emphasis added.)

It is clear that an application for a water rights permit is a transaction involving the state. It is an "application" that will be subject to "state action". RCW 42.52.010(17)(a) defines "state action" to include a "decision, determination, finding, ruling, or order". It is true that the employee was involved with the permit during only a part of the process and had left state service by the time the permit application was denied. Nevertheless, the Board concludes that the application for a permit is a single transaction that begins with the application and ends when the permit is finally granted or denied.

This is not to say that everything connected with the permit is a single transaction. After the permit is granted there may be other transactions connected with it, such as issues about compliance with terms and conditions of the permit. However, the Board views the application for a permit as a single transaction.

Since the application for a water rights permit is a transaction involving the state, the second issue is whether the employee's involvement during one stage of the permit process constitutes participation. RCW 42.52.010(13) provides that "participate" means:

"Participate" means to participate in state action or a proceeding personally and substantially as a state officer or state employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation, or otherwise but does not include preparation, consideration, or enactment of legislation or the performance of legislative duties.

(Emphasis added.)

The question of participation is primarily factual. RCW 42.52.010(13) requires that participation be personal and substantial. It is clear that the employee was personally involved with the permit application. The question is whether that personal involvement was substantial. After considering information submitted by both the Department of Ecology and the employee, the Board concludes that the employee's involvement was substantial and meets the definition of participate. The employee was the primary author of three draft reports of examination which summarize all aspects of the water right investigation and provide conclusions and recommendation. This is substantial

involvement in the permit process. The fact that additional work was done on the permit after the employee left state service does not lessen the employee's involvement.

In summary, RCW 42.52.080(5) prohibits a former state officer or state employee from assisting another person in a transaction involving the state in which the officer or employee participated. The application for a water rights permit is a transaction involving the state. Since the former employee participated in the processing of the application while in state service, the employee may not assist the applicant with regard to the permit application process.

**AR 003071**

# Sea-Tac Airport Third Runway 401 Permit Negotiations

## FINAL DRAFT MEETING NOTES

October 2, 2000  
9:00 – 4:00

These draft meeting notes have been prepared by Kate Snider, Floyd & Snider Inc. Please reply to Kate at (206) 292-2087, fax (206) 682-7867, [kates@floyd-snider.com](mailto:kates@floyd-snider.com) with comments on the accuracy of these notes by 5pm, Thursday 10/5/00.

### ATTENDEES

Ray Hellwig, Dept. of Ecology  
Kevin Fitzpatrick, Dept. of Ecology  
Tom Luster, Dept. of Ecology  
Michael Cheyne, Port of Seattle  
Elizabeth Leavitt, Port of Seattle  
Keith Smith, Port of Seattle  
Jim Thompson, Port of Seattle  
Kelly Whiting, King County

Mark Lampard, King County  
David Masters, King County  
Rick Schaefer, Earth Tech  
Paul Fendt, Parametrix  
Jim Dexter, Parametrix  
Jim Kelley, Parametrix  
Kate Snider, Floyd & Snider Inc.  
Rachel McCrea, Floyd & Snider Inc.

### MEETING AGENDA OVERVIEW

- Brief Introduction to process
- Technical discussion of King County Reviewer comments on Draft Storm Water Master Plan (SMP)
- Schedule and approach for future meetings

### TECHNICAL COORDINATION MEETINGS

A series of technical coordination meetings between Port and Ecology staff and their consultants is anticipated, with the goal of resolving technical concerns related to five key issues listed below. Meetings will be facilitated and documented by Floyd & Snider.

1. Storm Water Master Plan, detention sizing
2. Flow augmentation for Des Moines Creek
3. Potential South Access Road impacts to Tye Pond
4. Borrow Site #3 hydrology
5. HPA / 401 issuance relationship

ECY00001092

**DEFINITION OF TERMS USED IN THESE NOTES**

Resolution (general): The use of the terms "resolution" and "resolved" are for the purposes of these negotiations and refer only to the work of these technical negotiations between the Port of Seattle and the Department of Ecology. The terms are not intended to imply that, through these negotiations only, any issue has reached "final" resolution. Final resolution is subject to Ecology's receipt and approval of necessary documentation, subsequent public review and comment, evaluation of public comment and the final permit decision.

Resolved: The term "resolved" is used in these notes to mean that subsequent discussion of the issue is not necessary in these negotiations. This term assumes that subsequent documentation submitted on these issues will be consistent with the meeting discussions, and receive approval from Ecology.

Resolution Pending Review of Additional Information: This phrase is used to indicate that a possible or likely solution to the issue was identified in the meeting. Additional information will be submitted for review, and further discussion in these meetings will determine whether the issue is "resolved".

Action Items Defined for Further Discussion: This phrase is used to indicate that the issue was discussed, and action items defined for the production of additional information or documentation. Following submittal of such additional information, the issue requires further discussion.

ECY00001093

**SUMMARY OF TECHNICAL ISSUE DISCUSSION**

The following summary table has been developed to track discussion and resolution status of outstanding 401 Permit technical issues. Definition of these issues and actions to resolve are included in meeting notes.

401 Technical Issues Requiring Resolution	RESOLVED	RESOLUTION PENDING REVIEW OF ADDITIONAL INFORMATION	ACTION ITEMS DEFINED FOR FURTHER DISCUSSION	NOT YET DISCUSSED
<b>1. Stormwater Master Plan – Detention Sizing</b>				
• Basin Acreage Discrepancies		✓		
• Use of different Target Flow Regimes for different basins	✓			
• Permeability assumptions of Airport fill material	✓			
• Infiltration evaluation of existing pond locations	✓			
• Project effect on Base Flows			✓	
• Use and documentation of HSPF and KCRTS models		✓		
• North Employees Parking Lot		✓		
• SDW2 land use conditions	✓			
• SASA facility volumes	✓			
• SASA facility compliance with KC off-site flow restrictions		✓		
• SDS-7, SDS3-A, SDS-3, SDS-2, 5, 6 collection areas		✓		
• New information for Walker Creek calibration		✓		
• IWS model input consistency with SMP	✓			
• SDE-3 conditions	✓			
• <i>Other SMP issues, see Note 1</i>				
<b>2. Flow augmentation for Des Moines Creek</b>				✓
<b>3. Potential South Access Road impacts to Tye Pond</b>				✓
<b>4. Borrow Site #3 hydrology</b>				✓
<b>5. HPA / 401 issuance relationship</b>				✓

**Note 1:** Bulleted items listed under the Stormwater Master Plan category are 10 key issues for resolution (and some sub-issues) identified in an Ecology summary of King County Stormwater Master Plan review comments. Additional SMP issues identified by King County requiring discussion will be addressed during the next two meetings of this group.

**AR 003074**

**STORM WATER MASTER PLAN ISSUES**

*Following Draft SMP review by King County, Ecology compiled a list of major items of concern identified in the King County review. The items identified on the Ecology list were discussed at the 10/2 meeting. Issues were either resolved through discussion, or action items defined to reach resolution.*

**Issue: Basin Acreage Discrepancies**

RESOLUTION PENDING REVIEW: Parametrix provided a table describing how watershed areas were grouped that clarifies information and likely resolves discrepancy. Possible explanation is that Walker Creek acreages were double counted during review. King County will review table to confirm.

An additional 80-acre discrepancy is due to the difference between pre- and post- conditions for lakes and detention ponds. Parametrix will describe this discrepancy, as a table with annotations. King County will review.

**Issue: Use of different Target Flow Regimes for different basins**

RESOLVED: All detention facilities will be designed based on 75% Forested, 15% grass, 10% impervious surface target flow regime. This will result in re-design of basins such as SDW-3A, SDW-1A, SDW-1B, SDW-2, SDN-2X, SDS-2, SDS-5 and SDS-6.

**Issue: Permeability assumptions of Airport fill material**

RESOLVED: Permeability of fill material used for the Draft SMP is acceptable. However, artifacts remain in SMP text based on fill permeability assumptions from previous versions of the SMP. SMP text will be revised to remove discrepancies.

**Issue: Infiltration evaluation of detention ponds**

RESOLVED: Although the Port will evaluate the infiltration potential of detention ponds, detention volumes will not be reduced based on this evaluation, nor will the evaluation be used to request base-flow mitigation credit.

Designed infiltration into embankments will not be considered, based on Port geotechnical evaluation and long-term embankment stability concerns. Port will send memo documenting geotechnical evaluation to Ecology.

**Issue: Project effect on Base Flows**

ACTION ITEMS DEFINED FOR FURTHER DISCUSSION: Port will summarize modeling conclusions related to base flow. This work will include: 1) review allocation of mass balance re: component contributions to base flow; 2) convert HSPF model output to hydrograph form to better define base flow conditions during critical summer low flow periods.

Based on that documentation, Ecology, King County and Port will further discuss: 1) conclusions regarding potential negative impacts to base flow; 2) use of offset for other non-hydrologic factors; 3) contributions to base flow from embankment discharge.

**AR 003075**

**Issue: Use and documentation of HSPF and KCRTS models**

RESOLUTION PENDING REVIEW: All agreed that use of HSPF model is appropriate, and HSPF results are authoritative for detention decisions. The KCRTS model will continue to be used for preliminary sizing and definition of input parameters for HSPF.

Inconsistencies between the KCRTS results presented in Attachment F of Appendix A of the Draft SMP and HSPF input parameters will be resolved through the following action items: 1) King County will provide runoff files for use in running KCRTS model; 2) Parametrix will use runoff files to rerun KCRTS model, adjust HSPF input parameters (F tables) and re-run HSPF; 3) a revised Appendix A will be delivered to King County for review. Revised flow duration graphs will be plotted using a normal scale. Electronic files will additionally be delivered to King County.

Group assumptions are that resultant revisions will have the following characteristics: 1) KCRTS and HSPF input should be the same, with the exception of input regarding grading of detention ponds. Any additional discrepancies need documentation. 2) Output from the two models will be different because the models vary in approach. However, output from the two models should be very similar, and resultant stage/discharge curves should line up; 3) Performance goals for detention are unchanged.

SDN-1 (SDN-1, SDN-1LWR) was originally not modeled in HSPF. This modeling has been completed and will be included in the deliverables listed above.

The revisions described above should address specific King County questions regarding performance of Facility 3X and others. King County provided a written description of specific facility performance concerns that should be addressed by this work.

**Issue: North Employees Parking Lot (NEPL)**

RESOLUTION PENDING REVIEW: NEPL detention requirements will be re-evaluated based on the following changes in evaluation technique: 1) effect of new runoff files received from King County; 2) pre-condition soil parameters will be checked using site-specific soils information from NEPL design; 3) the NEPL and M6 basins will be combined to determine detention requirements.

**Issue: SDW2 does not meet King County requirement for 1979 land use conditions or better**

RESOLVED: Detention calculations will be revised using 1.71 acres of impervious surface (1994 conditions) to set the target flow regime, with the 2006 sub-basin boundary. Associated clarifying text will be added to the SMP.

**Issue: SASA facility model volume estimate vs. proposed storage volume**

RESOLVED: Revised modeling of the SASA area will include the following: 1) 1994 calibration will be used for offsite areas in existing conditions; 2) Onsite areas will be modeled with future landuse and 10-15-75 target flow regime, using proposed flow control facilities; 3) only the pond sizing that has been selected for construction will be modeled; 4) comparison at the evaluation point will only address port facilities, not whole watershed retrofit. Note: SASA facility

**AR 003076**



may require redesign if calculations described below re: off-site flow input do not show compliance with King County manual requirements.

**Issue: Is SASA facility, proposed as an in-stream, non-regional facility, in compliance with King County manual requirements restricting percentage of off-site flow?**

RESOLUTION PENDING REVIEW: Calculations will be made to determine compliance with this requirement. 100-yr off-site peak flows to the facility are required to be less than ½ 100-yr onsite peak flows to the facility - from SASA, SDS-1 and SDE-4.

**Issue: SDS-7, SDS3-A, SDS-3, SDS-2, 5, 6 demonstration of feasibly meeting flow control performance standard.**

RESOLUTION PENDING REVIEW: Parametrix will demonstrate feasibility of meeting flow control performance standard with point of compliance just upstream of NW ponds.

**Issue: New information for Walker Creek calibration**

RESOLUTION PENDING REVIEW: Port will evaluate new information regarding a culvert on Des Moines Way that reportedly drains the large wetland, and determine need for calibration adjustment and F table revision.

**Issue: IWS model input consistency with lagoon expansion proposed in SMP**

RESOLVED: HSPF modeling will be revised to be consistent with facilities actually planned for construction in the Des Moines Creek watershed. This will address a current inconsistency between the SMP and HSPF input. Note: there are additional comments on IWS modeling that have not yet been discussed.

**Issue: Is SDE-3 addressed properly?**

RESOLVED: SDE-3 was determined to be a mapping error.

### **Conclusions and Next Steps**

In general, the group determined that the discussions at this meeting addressed approximately 75% of the issues identified in King County and Ecology comments on the Draft Storm Water Master Plan. It was decided that a meeting would be scheduled shortly for review of revised materials based on action items defined at this meeting. At that time, additional comments on the Draft SMP will be reviewed to identify items needing further discussion.

Additional meetings of this group will be scheduled to occur shortly to both review status of SMP issue resolution and address the additional items identified as 401 permit issues of concern.

**AR 003077**

# Sea-Tac Airport Third Runway 401 Permit Negotiations

## FINAL DRAFT MEETING NOTES

October 10, 2000

9:00 – 4:00

These draft meeting notes have been prepared by Kate Snider, Floyd & Snider Inc. Please reply to Kate at (206) 292-2087, fax (206) 682-7867, [kates@floyd-snider.com](mailto:kates@floyd-snider.com) with comments on the accuracy of these notes by 1pm, Thursday 10/12/00.

### ATTENDEES

Ray Hellwig, Dept. of Ecology  
Kevin Fitzpatrick, Dept. of Ecology  
Tom Luster, Dept. of Ecology  
Chung Ki Yee, Dept. of Ecology  
Michael Cheyne, Port of Seattle  
Elizabeth Leavitt, Port of Seattle  
Keith Smith, Port of Seattle  
Kelly Whiting, King County

David Masters, King County  
Paul Fendt, Parametrix  
Jim Kelley, Parametrix  
Rick Schaefer, Earth Tech  
Michael Bailey, Hart Crowser  
Michael Kenrick, Hart Crowser  
Kate Snider, Floyd & Snider Inc.  
Rachel McCrea, Floyd & Snider Inc.

### MEETING AGENDA OVERVIEW

- Documentation of negotiations: Master List of issues
- Discuss issues regarding South Access Road/Tyee Pond, HPAs, Des Moines Creek flow augmentation, Borrow Site #3
- Status of Storm Water Master Plan (SMP) issues and tasks
- Schedule and process forward

### DEFINITION OF TERMS USED IN THESE NOTES

Resolution (general): The use of variations of the term "resolution" are for the purposes of these negotiations and refer only to the work of these technical negotiations between the Port of Seattle and the Department of Ecology. The terms are not intended to imply that, through these negotiations only, any issue has reached "final" resolution. Final resolution is subject to Ecology's receipt and approval of necessary documentation, subsequent public review and comment, evaluation of public comment and the final permit decision.

Resolved: The term "resolved" is used in these notes to mean that subsequent discussion of the issue is not necessary in these negotiations. This term assumes that subsequent documentation submitted on these issues will be consistent with the meeting discussions, and be adequate for public review.

Resolution Pending Review of Additional Information: This phrase is used to indicate that a possible or likely solution to the issue was identified in the meeting. Additional information will

be submitted for review, and further discussion in these meetings will determine whether the issue is "resolved".

Action Items Defined for Further Discussion: This phrase is used to indicate that the issue was discussed, and action items defined for the production of additional information or documentation. Following submittal of such additional information, the issue requires further discussion.

## DOCUMENTATION OF NEGOTIATIONS: MASTER LIST OF ISSUES

Ecology and the Port have agreed to maintain a single "master list of issues" that is updated at each meeting during these negotiations. It has been agreed that individual participants in these negotiations will not maintain other lists of issues separate from this master list. As new or revised issues are identified, they will be presented to the group for discussion and addition to this master list as applicable. The following summary table will be used to document this master list of 401 Permit technical issues. Note that Ecology has several issues that require internal discussion before being added to this list. Definition of these issues and actions to resolve are included in meeting notes. Any comment on this master list of issues should be directed to Kate Snider at Floyd & Snider.

401 Technical Issues Requiring Resolution	RESOLVED	RESOLUTION PENDING REVIEW OF ADDITIONAL INFORMATION	ACTION ITEMS DEFINED FOR FURTHER DISCUSSION	NOT YET DISCUSSED
<b>Administrative</b>				
• Documentation, master list of issues	✓			
<b>1. Stormwater Master Plan – Detention Sizing</b>				
<u>Key Issues Discussed 10/2</u>				
• Basin Acreage Discrepancies	✓			
• Use of different Target Flow Regimes for different basins	✓			
• Permeability assumptions of Airport fill material	✓			
• Infiltration evaluation of existing pond locations	✓			
• Project effect on Base Flows			✓	
• Use and documentation of HSPF and KCRTS models		✓		
• North Employees Parking Lot		✓		
• SDW2 land use conditions	✓			
• SASA facility volumes		✓		
• SASA facility compliance with KC off-site flow restrictions		✓		
• SDS-7, SDS3-A, SDS-3, SDS-2, 5, 6 collection areas		✓		
• New information for Walker Creek calibration		✓		
• IWS model input consistency with SMP	✓			

AR 003079

401 Technical Issues Requiring Resolution	RESOLVED	RESOLUTION PENDING REVIEW OF ADDITIONAL INFORMATION	ACTION ITEMS DEFINED FOR FURTHER DISCUSSION	NOT YET DISCUSSED
• SDE-3 conditions	✓			
<u>Add'l Issues Discussed 10/6</u>				
• IWS Pump station overflow modeling		✓		
• IWS Pump station land use values	✓			
• IWS Pump station routing of water quality design storm		✓		
• IWS Lagoon capacities	✓			
• Modeling of potential IWS Lagoon overflow			✓	
• Filter Strip BMPs	✓			
• IWS treatment performance			✓	
• SDN1-OFF	✓			
• SDN-6 Cargo	✓			
• SDW1B impacts to Wetland 39B		✓		
• Des Moines Creek Basin Plan consistency			✓	
• All items in the 9/14/00 King County comment letter not specifically listed above	✓			
<b>2. Flow augmentation for Des Moines Creek</b>		✓		
<b>3. Potential South Access Road impacts to Tye Pond</b>		✓		
<b>4. Borrow Site #3 hydrology</b>		✓		
<b>5. HPA / 401 issuance relationship</b>		✓		
<u>Add'l Issues Raised by Ecology on 10/10</u>				
• Potential impacts of SR 509 Interchange		✓		
• Potential aquitard breaches in Miller and Walker Creek basins		✓		
• De-icing/First Flush study			✓	
• Compliance with Kludt settlement	✓			
• Contaminated soil stockpile facility	✓			
• Structural feasibility of proposed big vaults	✓			
• NEPA /SEPA revision timing	✓			
<b>Natural Resources Mitigation Plan (specific NRMP issues to be defined, see discussion below)</b>			✓	

AR 003080

ECY00000855

## NATURAL RESOURCES MITIGATION PLAN

**ACTION ITEMS DEFINED FOR FURTHER DISCUSSION:** The final application to Ecology for the 401 permit will include four documents: Stormwater Master Plan (SMP), Wetland Functional Assessment & Impact Analysis, Wildlife Hazard Plan, and Natural Resource Mitigation Plan (NRMP). It is acknowledged by both the Port and Ecology that following resolution of SMP technical issues, the NRMP and Wetland Functional Assessment & Impact Analysis must be reviewed and revised as necessary to ensure consistency with the SMP.

At the 10/10 meeting, Ecology provided a memo authored by Erik Stockdale (NRMP Ecology reviewer) that lists issues related to the NRMP requiring resolution. A cursory review by the Port identified the need to review the list directly with Mr. Stockdale to determine whether previous Port submittals have adequately addressed many of the issues included on the list, and to clarify any remaining issues. Ecology will request Mr. Stockdale's attendance at the 10/13 meeting, at which issues related to the NRMP can be reviewed, and an agreed to list of remaining issues developed. Tom Luster will call Jim Kelley to provide several other wetland-related issues for the Port's review and response.

Prior to the 10/13 meeting, Parametrix will review the list of issues submitted by Ecology, identify documents already submitted to Ecology that may address the issues, and add any further issues to the list that warrant discussion with the Ecology reviewer. Ecology participants at the 10/10 meeting additionally raised the following issues (that may already be on the Stockdale list) to be included in an NRMP issues discussion:

- SDW1B potential impacts to Wetland 39B (included in SMP issues)
- Potential indirect impacts to Wetlands 18 and 37
- Potential wetland impacts from Lagoon #3 expansion
- Cumulative wetland impacts at the south end of airport

Ecology requested an independent consultant be engaged to assist Ecology with the review and tracking resolution of the NRMP, similar to the assistance that King County provides to review the SMP. Ecology will provide information to the Port regarding procedural contracting constraints. It was agreed that if Herrera has staff availability appropriate for this task, the existing Port contract with Herrera for third party independent review could be amended to include this scope.

## ADDITIONS TO THE MASTER LIST OF ISSUES / SUB ISSUES

Ecology requested that the following issues be added to the master list of issues to be tracked for technical resolution.

### **Issue: Potential wetland impacts of the proposed SR 509 Interchange**

**RESOLUTION PENDING REVIEW:** The Port has provided the Corps with the revised design of the SR 509 interchange that avoids impacts to the nearby wetland. King County requested a copy of the revised design, along with any revised hydrology report and changes to the erosion control plan. The Port will provide a copy of this report to Ecology and King County. The redesign of interchange alignment avoids direct wetland impact, and does not result in new information relative to indirect impacts to wetlands.

ECY00000856

**Issue: Potential aquitard breaches in Miller and Walker Creek basins**

RESOLUTION PENDING REVIEW: Earth Tech will review PGG documentation of issue. Use of a detention vault may negate the issue in Miller Creek basin.

**Issue: De-icing / First Flush study**

ACTION ITEMS DEFINED FOR FURTHER DISCUSSION: Ecology will internally discuss consistency between the 401 and 402 processes, and propose specific language for a 401 condition, or additional action items relative to this issue.

**Issue: Compliance with Kludt settlement**

RESOLVED: In the SMP, the Port will document that discharge conditions from the Lake Reba control structure are unchanged post-project. Additionally, the SMP will document compliance with the King County Manual regarding control of 100-year peak flow frequencies in areas of potential severe flooding.

**Issue: Contaminated soil stockpile facility**

RESOLVED: Ecology asked about the Decant/Chemical Accumulation Area described in a recently-submitted SWPPP and how those project elements fit in with the fill being brought to the airfield. The Port stated that these facilities were constructed to handle demolition material being removed from the airfield and that the facilities are not part of the expansion project.

**Issue: Structural feasibility of proposed big vaults**

RESOLVED: The Port will provide documentation regarding structural feasibility of vault construction.

**Issue: If NEPA changes are required by Corps or FAA, then SEPA must be revised and adopted for 401 approval**

RESOLVED: The Port acknowledged the statement and suggested no NEPA changes are required.

**SOUTH ACCESS ROAD / TYEE POND**

**Potential 401 condition: Tyee Pond will be protected in Third Runway project. If a subsequent project were to propose impact to Tyee Pond, appropriate permitting and mitigation would be required.**

RESOLUTION PENDING REVIEW: Ecology proposed a buffer around Tyee Pond and the East branch of Des Moines Creek be considered for implementation as a Restrictive Covenant. If a future project were to impact this buffer, the permit process and mitigation would be required. The Port will evaluate the logistics of a buffer for further discussion.

ECY00000857

## DES MOINES CREEK FLOW AUGMENTATION

**Potential 401 condition: No construction of runway pavement or SASA impervious surfaces would be allowed until a flow augmentation plan with an identified source of water is approved.**

RESOLUTION PENDING REVIEW: The Port has asked Ecology to consider using the Hillis Rule to prioritize approval of the Port well or SPU water as the source of flow augmentation. Port is also initiating search for additional water rights in the basin with potential for change in use applications. Flow augmentation plan has received initial Ecology review, and is being finalized. Tom Luster will call Keith Smith with additional comments. The plan focuses on SPU water as the primary source alternative and the Port well as the secondary alternative. Suggestion made by King County that Port and Des Moines Basin Plan Committee consider a joint application for use authorization of golf course well. Ecology will hold additional internal discussions about this potential 401 condition to determine if it provides reasonable assurance.

### HPAs

**Potential 401 condition: Projects will not be constructed without required HPAs.**

RESOLUTION PENDING REVIEW: Ecology will confirm with Fisheries what is needed relative to the SMP / 401 Permit in order to issue the HPAs. Reportedly, Fisheries is prepared to issue the required HPAs pending completion of the SMP. If HPAs are not acquired before 401 Permit issuance, proposed HPA conditions would be reflected in the 401 conditions.

### BORROW SITE #3

**Potential 401 condition: Port would not excavate Borrow Site #3 until Ecology received and approved a plan addressing potential hydraulic impact on nearby wetlands.**

RESOLUTION PENDING REVIEW: Port consultants from Hart Crowser presented design concepts for a potential swale to be built on the cut slope to collect and route seepage to the higher elevations of the upper wetland. Volumes discharged would be controlled by a weir and lower wetlands would be maintained through existing hydraulic mechanisms. Port will provide Ecology and Corps with a concept design report and engineering feasibility analysis for the proposed swale mitigation measure. Ecology will hold additional internal discussions about this potential 401 condition to determine if it provides reasonable assurance.

## CONCLUSIONS AND NEXT STEPS

Procedurally, Port and Ecology agreed that 4 copies of deliverables from these negotiations will be provided to Ecology (Luster: 3, Fitzpatrick: 1) to expedite review and receipt of comments. For submittals requiring King County review, King County will receive a copy at the same time. Hard copy submittals will be accompanied by email transmittals.

ECY00000858

**Schedule for Deliverables related to SMP issue resolution:**

Port will submit packages to Ecology and King County for review by close of business on the following target schedule:

- 10/11 SR 509 redesign report
- 10/13 Des Moines Watershed revised Appendix A package
- 10/13 Other SMP deliverables not in Appendix A
- 10/13 IWS Lagoon overtopping analysis
- 10/16 Walker Watershed revised calibration appendix
- 10/16 Walker Watershed revised Appendix A package
- 10/18 Miller Watershed revised Appendix A package (10/18 submittal is goal, pending resolution of KCRTS/HSPF model discrepancies identified by King County and Parametrix during the last week)
- 10/20 Base flow deliverables

Based on the schedule above for submittals, the King County reviewer will prioritize review and feedback with the goal of reaching resolution (per definition of "resolved") of all SMP technical issues by 10/31. The Port and Ecology agreed to support a review schedule that would allow the King County Reviewer to maintain vacation plans for 11/1 – 11/15.

**Schedule Goals for 401 Permit Technical Negotiations**

The following schedule goals were discussed, based on current understanding of Corps proposal for joint 404/401 public hearing dates in early January.

10/31	SMP issues resolved to allow production of Final Draft SMP and corresponding NRMP update and review
11/15	Final Draft SMP submitted to Ecology/King County
11/15	All documents in final form to be produced for public comment
11/15 – 12/4	King County review of Final Draft SMP
12/4	King County final comment letter to Ecology
Early December	All documents released for public comment
12/15	All 401 issues resolved between Port and Ecology, pending public comment
1/5 & 1/6	Public hearing dates identified by Corps

**AR 003084**

ECY00000859



# Sea-Tac Airport Third Runway 401 Permit Negotiations

## FINAL DRAFT MEETING NOTES

October 13, 2000

9:00 – 4:00

These draft meeting notes have been prepared by Kate Snider, Floyd & Snider Inc. Please reply to Kate at (206) 292-2078, fax (206) 682-7867, [kates@floyd-snider.com](mailto:kates@floyd-snider.com) with comments on the accuracy of these notes by 1pm, Wednesday 10/18/00.

### ATTENDEES

Ray Hellwig, Dept. of Ecology  
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Tom Luster, Dept. of Ecology  
Erik Stockdale, Dept. of Ecology  
Michael Cheyne, Port of Seattle  
Elizabeth Leavitt, Port of Seattle (by phone)  
Keith Smith, Port of Seattle  
Kelly Whiting, King County

David Masters, King County  
Mark Lampard, King County  
Paul Fendt, Parametrix  
Jim Kelley, Parametrix  
Rick Schaefer, Earth Tech  
Jim Dexter, Parametrix  
Kate Snider, Floyd & Snider Inc.  
Rachel McCrea, Floyd & Snider Inc.

### MEETING AGENDA OVERVIEW

- Natural Resource Mitigation Plan issues
- Status of Master List; comments on 10/10 draft notes
- Stormwater Master Plan task status report

### DEFINITION OF TERMS USED IN THESE NOTES

**Resolution (general):** The use of variations of the term "resolution" are for the purposes of these negotiations and refer only to the work of these technical negotiations between the Port of Seattle and the Department of Ecology. The terms are not intended to imply that, through these negotiations only, any issue has reached "final" resolution. Final resolution is subject to Ecology's receipt and approval of necessary documentation, subsequent public review and comment, evaluation of public comment and the final permit decision.

**Resolved:** The term "resolved" is used in these notes to mean that subsequent discussion of the issue is not necessary in these negotiations. This term assumes that subsequent documentation submitted on these issues will be consistent with the meeting discussions, and be adequate for public review.

**Resolution Pending Review of Additional Information:** This phrase is used to indicate that a possible or likely solution to the issue was identified in the meeting. Additional information will be submitted for review, and further discussion in these meetings will determine whether the issue is "resolved".

ECY00007580

Action Items Defined for Further Discussion: This phrase is used to indicate that the issue was discussed, and action items defined for the production of additional information or documentation. Following submittal of such additional information, the issue requires further discussion.

## DOCUMENTATION OF NEGOTIATIONS: MASTER LIST OF ISSUES

Ecology and the Port have agreed to maintain a single "master list of issues" that is updated at each meeting during these negotiations. It has been agreed that individual participants in these negotiations will not maintain other lists of issues separate from this master list. The following summary table is used to document this master list of 401 Permit technical issues. Following an internal Ecology meeting on 10/17, all potential issues (except those new issues yet to be identified through public comment) will be defined and the list will be updated as necessary.

Definition of these issues and actions to resolve are included in meeting notes. Any comment on this master list of issues should be directed to Kate Snider at Floyd & Snider.

401 Technical Issues Requiring Resolution	RESOLVED	RESOLUTION PENDING REVIEW OF ADDITIONAL INFORMATION	ACTION ITEMS DEFINED FOR FURTHER DISCUSSION	NOT YET DISCUSSED
<b>Administrative</b>				
• Documentation, master list of issues	✓			
<b>1. Stormwater Master Plan – Detention Sizing</b>				
<u>Key Issues Discussed 10/2</u>				
• Basin Acreage Discrepancies	✓			
• Use of different Target Flow Regimes for different basins	✓			
• Permeability assumptions of Airport fill material	✓			
• Infiltration evaluation of existing pond locations	✓			
• Project effect on Base Flows		✓		
• Use and documentation of HSPF and KCRTS models		✓		
• North Employees Parking Lot		✓		
• SDW2 land use conditions	✓			
• SASA facility volumes		✓		
• SASA facility compliance with KC off-site flow restrictions		✓		
• SDS-7, SDS3-A, SDS-3, SDS-2, 5, 6 collection areas		✓		
• New information for Walker Creek calibration		✓		
• IWS model input consistency with SMP	✓			
• SDE-3 conditions	✓			

AR 003086

Sea-Tac Airport Third Runway 401 Permit Negotiations

Floyd & Snider Inc.

October 13, 2000

401 Technical Issues Requiring Resolution	RESOLVED	RESOLUTION PENDING REVIEW OF ADDITIONAL INFORMATION	ACTION ITEMS DEFINED FOR FURTHER DISCUSSION	NOT YET DISCUSSED
<b>Add'l Issues Discussed 10/6</b>				
• IWS Pump station overflow modeling		✓		
• IWS Pump station land use values	✓			
• IWS Pump station routing of water quality design storm		✓		
• IWS Lagoon capacities	✓			
• Modeling of potential IWS Lagoon overflow		✓		
• Filter Strip BMPs	✓			
• IWS treatment performance	✓			
• SDN1-OFF	✓			
• SDN-6 Cargo	✓			
• SDW1B impacts to Wetland 39B	✓			
• Des Moines Creek Basin Plan consistency	✓			
• All items in the 9/14/00 King County comment letter not specifically listed above	✓			
<b>2. Flow augmentation for Des Moines Creek</b>		✓		
<b>3. Potential South Access Road impacts to Tye Pond</b>		✓		
<b>4. Borrow Site #3 hydrology</b>		✓		
<b>5. HPA / 401 issuance relationship</b>	✓			
<b>Add'l Issues Raised by Ecology on 10/10</b>				
• Potential impacts of SR 509 Interchange		✓		
• Potential aquitard breaches in Walker Creek basin		✓		
• Runway De-Icing / Dissolved Oxygen study		✓		
• Compliance with Kludt settlement	✓			
• Contaminated soil stockpile facility	✓			
• Structural feasibility of proposed big vaults	✓			
• NEPA /SEPA revision timing	✓			
<b>Natural Resources Mitigation Plan (Issues raised by Ecology on 10/10, discussed 10/13)</b>				
• NRMP consistency with SMP	✓			
• Maintenance of wetland 18, 37, 39B hydrology	✓			

AR 003087

401 Technical Issues Requiring Resolution	RESOLVED	RESOLUTION PENDING REVIEW OF ADDITIONAL INFORMATION	ACTION ITEMS DEFINED FOR FURTHER DISCUSSION	NOT YET DISCUSSED
• NRMP incorporation of technical responses to previously identified issues		✓		
• S. Access Road/Tyee Pond Impacts		✓		
• Vacca Farm floodplain habitat design elements	✓			
• Stormwater pond cross sections	✓			
• Performance standards	✓			
• Documentation of indirect impacts	✓			
• Wetland delineation west of Miller Creek	✓			
• Documentation of Miller Creek buffer	✓			
• Fencing/signage for buffers/mitigation areas	✓			
• Restrictive Covenant for Auburn mitigation site	✓			
• Buffer planting in area of potential RDF	✓			
• Wetland impact analysis of IWS expansion	✓			
• Source of irrigation water for mitigation areas	✓			
• Mitigation Fund	✓			
NPDES Major Modification	✓			

### NATURAL RESOURCES MITIGATION PLAN (NRMP)

Issues discussed include items documented by Erik Stockdale in an Ecology Internal Memo dated October 9, 2000, and additional items identified by T. Luster.

In summary, it was determined that technical issues related to the NRMP have been negotiated and resolved previously between the Port and Ecology. It was agreed that a revised NRMP will be developed that will: 1) update all information to be consistent with technical decisions that have been made; 2) include material prepared in response to public comments; 3) confirm consistency with the SMP; 4) add additional detail to drawings as requested below. It was determined that the Port could proceed with development of the revised NRMP, to be completed mid-November. Ecology final review of the NRMP can proceed concurrent with public comment.

AR 003088

**Issue: NRMP consistency with the SMP**

**RESOLVED:** Once the SMP is finalized, the NRMP will be revised if necessary to be consistent. Detention pond sizing and/or depths could potentially be changed during completion of the SMP. NRMP review following SMP completion must confirm that ponds still fit within impact footprints. Port will ensure that documents submitted to Ecology and the Corps are consistent. Ecology will coordinate with the Corps regarding technical consistency within and among all documents produced for public comment, including the SMP and NRMP.

**Issue: Maintenance of wetland hydrology (e.g. 18, 37, 39B)**

**RESOLVED:** Parametrix will clarify in the NRMP and in the Wetland Functional Assessment & Impact Analysis (impact assessment) how the seepage swale at the base of the embankment will be routed and discharged maintain wetland hydrology. Existing SMP and NRMP figures showing the swale will be clarified and notes added. Drawings used in multiple deliverables should be consistent.

**Issue: Technical details included in response to comments letters and addenda need to be included in NRMP revision.**

**RESOLUTION PENDING REVIEW:** Parametrix has previously provided technical information to Ecology responding to comments received from A. Azous, however, the Port has not received feedback from Ecology on those materials. Parametrix requested a brief meeting with E. Stockdale to discuss the response to comments documents before that material is incorporated into the NRMP revision. Ecology will confirm whether such a meeting is necessary. However, all agreed that the Port may incorporate that material into the NRMP. Implementation Addenda will also be incorporated into the revised NRMP.

**Issue: S. Access Road/Tyee Pond Impacts**

**RESOLUTION PENDING REVIEW:** This issue relates to the South Access Road/Tyee Pond issue discussed initially at 10/10 meeting (updated below in these notes). Any Tyee Pond/east Des Moines Creek buffer described in a restrictive covenant will be added to the NRMP (drawing C-2 from Appendix C to the Implementation Addenda). Ecology proposed a 100' buffer for Tyee Pond/east Des Moines Creek. The Port will re-evaluate the buffer proposal on Tyee Pond and the East and West Branches of Des Moines Creek and report back to Ecology. Material regarding South Access Road realignment and temporary interchange indirect impacts will be updated in the revised NRMP.

**Issue: Vacca Farm floodplain habitat design elements**

**RESOLVED:** Parametrix will show more specificity in drawings, text and notes relative to microtopography, wood placement, etc. to provide assurances to Ecology that more complex habitat structure will be added in the floodplain.

**Issue: Stormwater pond cross sections****AR 003089**

**RESOLVED:** Parametrix will provide cross section drawings of all open ponds adjacent to wetlands that will include elements such as pond, drainage channels, buffer, wetland, creek, and groundwater table elevation. The ponds, drainage channels, creeks, etc. relative to the buffer mitigation will be shown in the NRMP. Evaluation of the cross sections, groundwater

issues, etc. for potential indirect wetland impacts will be provided in the wetland assessment report.

**Issue: Performance standards**

RESOLVED: Parametrix will add a table and/or text in the revised NRMP to describe the performance standards used for particular wetlands. Ecology will check with the Corps regarding the ability of the performance standards to be measured in the field. Port will help to make this communication happen.

**Issue: Documentation of indirect impacts**

RESOLVED: The revised wetland impact assessment will include more technical information and documentation regarding indirect impacts to wetlands. This information is largely contained in letters responding to comments provided by A. Azous. The revised wetland impact assessment will also address stormwater ponds, borrow area 3, wetland 39b, and SR-509 temporary interchange issues.

**Issue: Wetland delineation west of Miller Creek**

RESOLVED: The wetlands west of Miller Creek have been delineated, will be described in the Wetland Delineation Report and accounted for in the revised NRMP. The Wetland Delineation Report will be a part of the re-notice for public comment. These wetlands have not yet been verified by the Corps, and wetland enhancement credits are not currently incorporated in the documents. If the Corps verifies these wetlands prior to public notice, mitigation credits will be calculated for wetlands within the Miller Creek buffer and included in the revised NRMP.

**Issue: Documentation of Miller Creek buffer**

RESOLVED: Parametrix will clarify Map C-3 of Appendix D relative to temporary construction line and buffer. This sheet will be revised to indicate the location of the Miller Creek Buffer relative to the temporary construction impacts and the stormwater management features.

**Issue: Fencing and signage for buffers / mitigation areas**

RESOLVED: Revised NRMP will identify fencing and signage for long-term protection of buffers/mitigation areas from public access (i.e. Auburn mitigation site). Port will review placing fencing and/or signage around protected mitigation areas within secured airport property to prevent encroachment by construction and maintenance activities. Restrictive covenants should address potential need for revised fencing/signage requirements based on future land use.

**Issue: Restrictive Covenant language for Auburn mitigation site**

RESOLVED: Ecology will check with their Attorneys about Restrictive Covenant language regarding long-term wetland mitigation use of the Auburn site to be certain that the language restricts use for stormwater management by others, consistent with King County and Ecology manuals.

**AR 003090**

**Issue: Planting plan and timing of planting in area of potential RDF**

**RESOLVED:** NRMP drawings will be revised to eliminate planting exclusion zone for a potential future RDF. This area will be planted by the Port before the end of 2004. Sheet C-2 of Appendix C will be revised to show buffer plantings.

**Issue: Wetland impact analysis of IWS lagoon expansion**

**RESOLVED:** Assessment of direct/indirect wetland impacts from IWS lagoon expansion will be included in the revised Wetland Functional Assessment & Impact Analysis. This was provided to Ecology in a Memo from Jim Kelley on 9/5/00. The IWS lagoon expansion is not a Stormwater Master Plan project, but is "reasonably foreseeable".

**Issue: Source of irrigation water for mitigation areas**

**RESOLVED:** Text explaining the source of irrigation water for mitigation areas will be included in the revised NRMP. The sources included will be from existing providers.

**Issue: Mitigation Fund**

**RESOLVED:** The revised NRMP will reflect the Port's commitment to a \$150K mitigation fund for the Des Moines and Miller Creek watersheds. The sunset clause will be modified to provide for the identification of projects by 2002. Permitting and implementation may occur after that date.

**STORMWATER MASTER PLAN ACTION ITEM UPDATES****Issue Update: Project Effect on Base Flows**

**RESOLUTION PENDING REVIEW:** All base flow action items documented in 10/6 meeting notes are underway. Consultation held with Norm Crawford, PGG, Hart Crowser, Earth Tech and Parametrix regarding correlation between HSPF stormwater modeling and PGG modeling determined that: 1) embankment fill is expected to behave as reported in the PGG report and as observed on-site, delaying water discharge; and 2) HSPF model not suited for analysis of this condition due to small area of embankment fill influence, aggregate inflow parameter, the short duration of storage in the upper fill zone, and insufficient data to calibrate HSPF to represent condition of embankment fill soils. Results of the consultation recommend that the Hydrous model used by PGG be rerun using HSPF output for initial infiltration as input to the Hydrous model in order to analyze all components effecting base flows. In addition, other non-hydrologic affects (i.e. septic tanks) will be evaluated but not "modeled" in Hydrous. The results of this analysis will be documented in a technical memo as late summer (low-flow period) hydrographs (or table of this information) at specific performance points with an accounting sheet of considered contribution/reduction sources. This technical memo will be referenced in both the SMP and the NRMP. Ecology's Dave Garland will review this deliverable.

**Issue Update: Use and documentation of HSPF and KCTRS models**

**RESOLUTION PENDING REVIEW:** The Miller Creek runoff file error/inconsistency was found, and work is underway to model this basin. Parametrix submitted the revised Appendix A material for Des Moines Creek basin to King County and Ecology.

**AR 003091**

**Issue Update: SASA facility compliance with King County off-site restrictions**

RESOLUTION PENDING REVIEW: Parametrix requested and received clarification from King County. Based on this information, Parametrix will provide material to King County and Ecology on 10/16.

**Issue Update: New information for Walker Creek calibration**

RESOLUTION PENDING REVIEW: King County and consultant Joe Brasher will meet and perform a field check on 10/16 to support Walker Creek calibration. Results of this work will be submitted to King County and Ecology on 10/19.

**Issue Update: IWS Pump Station overflow modeling**

RESOLUTION PENDING REVIEW: The Port reported that pump station overflows to the stormwater system are connected in series. The Miller Creek basin model will be rerun based on this information.

**Issue Update: IWS Pump Station routing of water quality design storm**

RESOLUTION PENDING REVIEW: Confirmation of pump station piping configuration (discussed above) will likely resolve this issue.

**Issue Update: Modeling of potential IWS Lagoon overflow**

RESOLUTION PENDING REVIEW: The Port will provide to King County and Ecology a previously completed report by Kennedy Jenks that addresses this issue.

**Issue Update: IWS treatment performance**

RESOLVED: Port reported that influent data and evaluation is available from Kennedy Jenks material. Parametrix will include language in the SMP addressing this issue.

**Issue Update: Des Moines Creek Basin Plan consistency**

RESOLVED: Port and Ecology agreed that the SMP is a stand-alone document that can receive approval without any reliance on a potential future RDF. If the Port proposes use of the RDF in the future, review and approval of an amended SMP would be necessary. The 401 Permit may reference this requirement.

**Issue Update: Runway De-icing / Dissolved Oxygen Study**

RESOLUTION PENDING REVIEW: Ecology and Port discussed the timing and potential phased review of the Runway De-icing / Dissolved Oxygen Study, as well as its relationship to the 401 permit. The Runway De-icing / Dissolved Oxygen Study will be submitted to Ecology prior to final 401 decision. Target date for submittal is early to mid November. Ecology determined that the following statement characterizes the relationship of this study to the 401: "Ecology and the Port have agreed that the 401 Permit will be conditioned as necessary to address any water quality concerns identified in the Runway De-icing / Dissolved Oxygen Study, while recognizing that the 402 NPDES Permit process will address ongoing monitoring and BMP requirements".

AR 003092



**UPDATE: SOUTH ACCESS ROAD / TYEE POND**

**RESOLUTION PENDING REVIEW:** The Port highlighted that the existing Tyee Pond provides a stormwater management spill control function, a function overlooked in discussions at the 10/10 meeting. The Des Moines Creek Basin Plan envisions Tyee Pond's continued use for spill containment. The SMP does not propose any change to the use or maintenance of the pond. Ecology and the Port will confirm that the Corps is fully informed of the spill containment function to factor into decision-making. During evaluation of a potential buffer at Tyee Pond, restrictive covenant language will be checked re: acknowledgement of the stormwater management spill control function. The Port is reviewing the feasibility of a 100-foot buffer around the Tyee Pond.

**UPDATE: HPA ISSUANCE**

**RESOLVED:** Ecology confirmed with Fisheries that a letter from either King County or Ecology stating that the SMP document is "approvable" pending public review and a copy of the SMP is required in order to issue the HPAs.

**NPDES MAJOR MODIFICATION**

**RESOLVED:** The NPDES major modification application process underway is not related to the 401 permit process. Notification and potential public hearing decisions will be coordinated with Ecology if necessary.

**CONCLUSIONS AND NEXT STEPS**

The scope of work for review of the NRMP was generally defined as review of the revised final draft NRMP for consistency with the SMP and the issues defined above. This review will be performed on the same final draft that is released for public comment. Therefore, Ecology review of the NRMP will not delay the public comment process. Following Ecology's internal meeting on 10/17, staffing for review will be discussed further.

**Schedule Status for Deliverables related to SMP issue resolution:**

The following list shows a target schedule for Port submittal of deliverables to Ecology and King County for review. Dates refer to submittal by close of business (cob) on that day. Deliverables completed are followed by actual submittal date in parentheses.

10/11	SR 509 redesign report (10/10)
10/13	Des Moines Watershed revised Appendix A package (10/13)
10/13	Other SMP deliverables not in Appendix A (text revisions per King County comments 10/13)
10/13	IWS Lagoon overtopping analysis (answer to question 10/13; analysis performed by Kennedy Jenks to be submitted by cob 10/16)
10/19	Walker Watershed revised calibration appendix (following 10/16 field visit by King County and consultant Joe Brasher)
10/20	Walker Watershed revised Appendix A package (following 10/19 Walker re-calibration)
10/20	Miller Watershed revised Appendix A package (based on 10/13 resolution by King County, consultant J. Brasher and Parametrix of problem with input files)
early Nov	Base flow technical memo (does not require review by King County)

**AR 003093**

# Sea-Tac Airport Third Runway 401 Permit Negotiations

## DRAFT MEETING NOTES

October 27, 2000  
9:30 – 3:30

<i>Luster</i>
EXHIBIT NO. <u>218</u>
<i>2-1-02</i>
M. Green

These draft meeting notes have been prepared by Kate Snider, Floyd & Snider Inc. Please reply to Kate at (206) 292-2078, fax (206) 682-7867, [kates@floyd-snider.com](mailto:kates@floyd-snider.com) with comments on the accuracy of these notes by 5pm, Wednesday, 11/1/00.

### ATTENDEES

Ray Hellwig, Dept. of Ecology  
Kevin Fitzpatrick, Dept. of Ecology  
Ann Kenny, Dept. of Ecology  
Chung Ki Yee, Dept. of Ecology  
Tom Luster, Dept. of Ecology  
David Garland, Dept. of Ecology  
Michael Cheyne, Port of Seattle  
Elizabeth Leavitt, Port of Seattle  
Keith Smith, Port of Seattle

Kelly Whiting, King County  
David Masters, King County  
Paul Fendt, Parametrix  
Alan Black, HNTB  
Rick Schaefer, Earth Tech  
Charles (Pony) Ellingson, PGG  
Michael Bailey, Hart Crowser  
Kate Snider, Floyd & Snider Inc.  
Rachel McCrea, Floyd & Snider Inc.

### MEETING AGENDA OVERVIEW

- Stormwater Master Plan Update
- Base Flow Update
- Tye Pond buffer
- Ecology Staffing: 401, NRMP review, King County

### DEFINITION OF TERMS USED IN THESE NOTES

**Resolution (general):** The use of variations of the term "resolution" are for the purposes of these negotiations and refer only to the work of these technical negotiations between the Port of Seattle and the Department of Ecology. The terms are not intended to imply that, through these negotiations only, any issue has reached "final" resolution. Final resolution is subject to Ecology's receipt and approval of necessary documentation, subsequent public review and comment, evaluation of public comment and the final permit decision.

**Resolved:** The term "resolved" is used in these notes to mean that subsequent discussion of the issue is not necessary in these negotiations. This term assumes that subsequent documentation submitted on these issues will be consistent with the meeting discussions, and be adequate for public review.

**Resolution Pending Review of Additional Information:** This phrase is used to indicate that a possible or likely solution to the issue was identified in the meeting. Additional information will

be submitted for review, and further discussion in these meetings will determine whether the issue is "resolved".

Action Items Defined for Further Discussion: This phrase is used to indicate that the issue was discussed, and action items defined for the production of additional information or documentation. Following submittal of such additional information, the issue requires further discussion.

## DOCUMENTATION OF NEGOTIATIONS: MASTER LIST OF ISSUES

Ecology and the Port have agreed to maintain a single "master list of issues" that is updated at each meeting during these negotiations. It has been agreed that individual participants in these negotiations will not maintain other lists of issues separate from this master list. The following summary table is used to document this master list of 401 Permit technical issues.

All issues are included on the list that have been identified by the Port or Ecology for resolution prior to issuance of the 401 permit. Resolution of these issues is the purpose of these technical negotiations. It is recognized that additional issues requiring resolution may be identified through public comment.

Definition of these issues and actions to resolve are included in meeting notes. Any comment on this master list of issues should be directed to Kate Snider at Floyd & Snider.

401 Technical Issues Requiring Resolution	RESOLVED	RESOLUTION PENDING REVIEW OF ADDITIONAL INFORMATION	ACTION ITEMS DEFINED FOR FURTHER DISCUSSION	NOT YET DISCUSSED
<b>Administrative</b>				
• Documentation, master list of issues	✓			
<b>1. Stormwater Master Plan – Detention Sizing</b>				
<u>Key Issues Discussed 10/2</u>				
• Basin Acreage Discrepancies	✓			
• Use of different Target Flow Regimes for different basins	✓			
• Permeability assumptions of Airport fill material	✓			
• Infiltration evaluation of existing pond locations	✓			
• Project effect on Base Flows		✓		
• Use and documentation of HSPF and KCRTS models	✓			
• North Employees Parking Lot		✓		
• SDW2 land use conditions	✓			
• SASA facility volumes		✓		
• SASA facility compliance with KC off-site flow criteria		✓		
• SDS-7, SDS3-A, SDS-3, SDS-2, 5, 6 collection areas		✓		

401 Technical Issues Requiring Resolution	RESOLVED	RESOLUTION PENDING REVIEW OF ADDITIONAL INFORMATION	ACTION ITEMS DEFINED FOR FURTHER DISCUSSION	NOT YET DISCUSSED
• New information for Walker Creek calibration		✓		
• IWS model input consistency with SMP	✓			
• SDE-3 conditions	✓			
<b>Add'l Issues Discussed 10/6</b>				
• IWS Pump station overflow modeling	✓			
• IWS Pump station land use values	✓			
• IWS Pump station routing of water quality design storm	✓			
• IWS Lagoon capacities	✓			
• Modeling of potential IWS Lagoon overflow	✓			
• Filter Strip BMPs	✓			
• IWS treatment performance	✓			
• SDN1-OFF	✓			
• SDN-6 Cargo	✓			
• SDW1B impacts to Wetland 39B	✓			
• Des Moines Creek Basin Plan consistency	✓			
• All items in the 9/14/00 King County comment letter not specifically listed above	✓			
<b>2. Flow augmentation for Des Moines Creek</b>	✓			
<b>3. Potential South Access Road impacts to Tye Pond</b>	✓			
<b>4. Borrow Site #3 hydrology</b>		✓		
<b>5. HPA / 401 issuance relationship</b>	✓			
<b>Add'l Issues Raised by Ecology on 10/10</b>				
• Potential impacts of SR 509 Interchange		✓		
• Potential aquitard breaches in Walker Creek basin		✓		
• Runway De-icing / Dissolved Oxygen study		✓		
• Compliance with Kludt settlement	✓			
• Contaminated soil stockpile facility	✓			
• Structural feasibility of proposed big vaults	✓			
• NEPA /SEPA revision timing	✓			

401 Technical Issues Requiring Resolution	RESOLVED	RESOLUTION PENDING REVIEW OF ADDITIONAL INFORMATION	ACTION ITEMS DEFINED FOR FURTHER DISCUSSION	NOT YET DISCUSSED
<b>Natural Resources Mitigation Plan (Issues raised by Ecology on 10/10, discussed 10/13)</b>				
• NRMP consistency with SMP	✓			
• Maintenance of wetland 18, 37, 39B hydrology	✓			
• NRMP incorporation of technical responses to previously identified issues	✓			
• S. Access Road/Tyee Pond Impacts	✓			
• Vacca Farm floodplain habitat design elements	✓			
• Stormwater pond cross sections	✓			
• Performance standards	✓			
• Documentation of indirect impacts	✓			
• Wetland delineations	✓			
• Documentation of Miller Creek buffer	✓			
• Fencing/signage for buffers/mitigation areas	✓			
• Restrictive Covenant for Auburn mitigation site	✓			
• Buffer planting in area of potential RDF	✓			
• Wetland impact analysis of IWS expansion	✓			
• Source of irrigation water for mitigation areas	✓			
• Mitigation Fund	✓			
<b>NPDES Major Modification</b>	✓			
<b>Add'l Issues Raised by Ecology on 10/20</b>				
• Timing of Corps public notice	✓			
• Temp. const. staging area w/in SASA footprint		✓		
• Water quality BMPs (401/402)	✓			
• Lagoon #3 potential direct impacts	✓			
• Add'l wetlands on Auburn site	✓			
• 401 relationship to A.O./Gov. Cert. for MTCA GW study	✓			
• Potentially contaminated properties in S. Runway Protection Zone	✓			
• Soil Quality at Borrow Sites	✓			

AR 003097

401 Technical Issues Requiring Resolution	RESOLVED	RESOLUTION PENDING REVIEW OF ADDITIONAL INFORMATION	ACTION ITEMS DEFINED FOR FURTHER DISCUSSION	NOT YET DISCUSSED
• Potential confirmation of groundwater quality w/in embankment			✓	
• Construction stormwater management	✓			
• Clean Air and CZM	✓			
• Compatibility of potential RDF and Tyee mitigation	✓			
Add'l SMP Issues Identified on 10/27				
• SDW1A facility sizing		✓		
• SMP Clarification regarding water quality BMPs	✓			

### STORMWATER MASTER PLAN UPDATES

King County and Ecology will be discussing status of SMP review with the Corps at 3:30 on Monday, 10/30.

#### BASIN UPDATE: DES MOINES CREEK

RESOLUTION PENDING REVIEW: King County received and reviewed the materials provided for Des Moines Creek Basin. The materials were discussed at the 10/24 meeting, and items were identified to clean up the documentation. King County stated that based on the existing information in the SDS basins draining to the west branch of Des Moines Creek, the west branch mitigations are acceptable under King County standards. King County will review the hydrology of the east branch SASA facility and provide comments 10/30.

#### Issue Update: SASA facility compliance with KC off-site flow criteria

RESOLUTION PENDING REVIEW: King County received justification documentation for a waiver of these King County criteria. King County is willing to support the waiver of off-site flow criteria to leave the facility in-line as long as an evaluation shows cumulative flow conditions at 200<sup>th</sup> monitoring station are acceptable. This evaluation should be performed following changes to some land use values for the watershed, as defined on 10/24.

#### Issue Update: Structural feasibility of proposed big vaults

RESOLVED: Port submitted materials to Ecology and King County regarding the structural feasibility of big vaults.

#### BASIN UPDATE: WALKER CREEK

RESOLUTION PENDING REVIEW: Walker Creek Basin pond sizing / HSPF and KCRTS model runs (appendix A) and calibration documentation (revised Appendix B) have been submitted to King County.

**AR 003098**

**Issue Update: 509 Interchange**

RESOLUTION PENDING REVIEW: King County received the 509 interchange materials. These materials will be reviewed after 11/16 and annotated final comment will be provided to Ecology, per schedule and process discussion (see below).

**BASIN UPDATE: MILLER CREEK**

RESOLUTION PENDING REVIEW: Source of error in runoff files was found 10/25 in the fill parameters of the HSPF model. Pond sizing and model runs (Appendix A), except for NEPL and SDW1A, will be submitted to King County 10/27.

**Issue Update: North Employees Parking Lot**

RESOLUTION PENDING REVIEW: NEPL detention facility was constructed in 1997 based on the then-current 1990 KC manual requirements with City of SeaTac review. KC manual does currently vest facilities constructed under past requirements, although this policy is changing. Based on today's KC manual, if NEPL were to be constructed today by itself, it would require a Level 1 continuous flow model or a Level 2 if there were evidence of downstream erosion. Although this facility has already been constructed, it is included as a master plan project. Current modeling as a master plan project, with basin-specific parameters and consistent flow control requirements for all basins, yields an ever-increasing facility size, unable to be fully drained.

Options for addressing this subbasin that were discussed include:

- Accept existing NEPL facility, understanding that future potential facility alterations could be determined and required under the NPDES permit. The 401 would be conditioned to require monitoring at the NEPL vault outlet (concurrent with Miller Creek Detention/Lake Reba) and monitoring for downstream erosion. Potential impacts, if found, could be addressed through a basin plan project or a 402 amendment. This approach would allow recommendations of the Miller Creek Basin Plan to be taken into account, such as for target stream flow performance standards.
- Utilize regional soil parameters (rather than basin-specific); would likely result in requirement for approximately 18 additional ac/ft of storage
- Water re-use to augment summer Miller Creek flows, with appropriate storage volume
- High flow bypass to direct discharge to Puget Sound
- Infiltration (potentially restricted in aquifer protection area)

The Port and Ecology will further discuss options.

**New Issue: SDW1A facility sizing**

RESOLUTION PENDING REVIEW: SDW1A, one of 4 proposed Miller Creek facilities, is in a subbasin consisting of a large portion of fill. This is causing pond sizing difficulties similar to NEPL - ever-increasing facility size, unable to be fully drained. Parametrix will prioritize evaluation of infiltration or water reuse to address problem. If infiltration includes pumping,

pump maintenance would need to be addressed. A water reuse option would need to address quality of stored and released water. If low permeability or high groundwater underlies outwash soils, these soils may be modeled as till, which may change the pond sizing requirements.

**New Issue: SMP Clarification regarding water quality BMPs**

RESOLVED: Parametrix will clarify in the SMP text that proposed SMP facilities would not prevent implementation of Ecology's new Storm Water Manual (January 2001) water quality BMPs through the Port's NPDES permit.

**Issue Update: Modeling of Potential IWS Lagoon 3 Overflow**

RESOLVED: Material from the Kennedy-Jenks report, and additional modeling has resolved this issue. Modeling concludes lagoon will not overtop with current processing rates. This independent analysis will be added to the SMP, and does not need to be added in the SMP stream modeling. A minimum processing rate to prevent overtopping will be defined for reference to IWS lagoon operation manual. Parametrix will ensure volume used in model is consistent with volume presented in Feb 2000 Kennedy-Jenks report.

King County conversations with the Port have resolved additional questions that were identified on 10/24 regarding statements made in the Kennedy-Jenks report. Review of other SMP-related IWS issues concluded that they have been resolved.

**Issue Update: Project Effect on Base Flows**

RESOLUTION PENDING REVIEW: A summary of ongoing base flow work was presented. Modeling has been performed by both PGG and Hart Crowser to evaluate the effect of the embankment on creek base flows. Both studies support a delayed water discharge effect from the embankment fills to the creek, potentially augmenting late-summer Miller Creek low flows. Efforts are underway to extrapolate the unit-area results for the full fill footprint. Embankment behavior results will be integrated with HSPF results and nonhydrological effects to develop a combined evaluation of net project effect on base flows, focusing on the August/September low flow periods, at specific in-stream locations. The study does not currently take into account secondary infiltration of runway pavement runoff. This input could be evaluated if analysis without it identifies a potential base flow concern.

The product of this work effort will be a technical memo that can be referenced by both the SMP and NRMP. The base flow technical memo is expected to be submitted for Ecology review mid-November.

**Issue Update: Potential aquitard breaches in Walker Creek basin**

RESOLUTION PENDING REVIEW: Hart-Crowser will evaluate the proposed Walker Creek detention facility excavation relative to the integrity of the underlying confining "aquitard" layer.

**Issue Update: NRMP incorporation of technical responses to previously identified issues**

RESOLVED: Ecology reported that previously submitted technical responses should be incorporated into the NRMP without further internal review.

ECY00009150



**UPDATE: SOUTH ACCESS / TYEE POND**

RESOLVED: The Port evaluated the feasibility of a buffer for Tyee Pond and east and west Des Moines Creek, and provided Ecology with a map of the proposed buffer. Ecology feedback is requested, although the proposal may be included in the revised NRMP if no feedback is given within the time allowed. The Port will submit Restrictive Covenant language to Ecology.

**ECOLOGY STAFFING TRANSITION****401 Permit**

Approximately 2 years ago, Ecology's 401 function was regionalized, however T. Luster (headquarters) remained on the SeaTac 401 project because the project was thought to be close to completion. With the Port's decision to withdraw and re-submit the application, Ecology has chosen to be consistent with 401 regionalization and transition the project to Ann Kenny (NWRO). T. Luster's primary responsibilities are with policy and guidance development. T. Luster and A. Kenny will coordinate transition. T. Luster will be available to A. Kinney and R. Hellwig as needed for continued consultation regarding the project. A. Kenny reports to Jeannie Sommerhays. The Port will organize a site tour with A. Kenny. All deliverables and inquiries regarding the project are to be directed to A. Kenny.

**NRMP Review**

Ecology has selected Dianne Sheldon to provide contract assistance for NRMP final review. E. Stockdale will be available for internal consultation and backup review.

**King County participation**

King County will maximize comments on prioritized SMP items before 10/31 (SASA, Walker calibration and detention, Miller detention). Ecology and the Port do not expect need for KC review during 10/31-11/16 period. It was determined that King County review of 509 interchange material could wait until after 11/16. The final draft SMP and other documents for re-notice will be completed by the Port by 11/16. KC review of final draft SMP will occur 11/16-12/4. Final comments to Ecology are expected by 12/4. The expectation is that the same final draft SMP version proved to KC 11/16 will be the version that goes to public re-notice.

**AR 003101**



October 25, 2000

RECEIVED

OCT 25 2000

DEPT OF ECOLOGY

Jonathan Freedman  
Regulatory Branch, Seattle District  
U.S. Army Corps of Engineers  
P.O. Box 3755  
Seattle, WA 98124-2255

RE: Clean Water Act Section 404 Permit for Master Plan Update Projects, Seattle-Tacoma International Airport (Corps of Engineers Project No. 96-4-02325)

Dear Jonathan:

Recently, in response to a request from the Washington Department of Ecology for additional time with regard to its Clean Water Act (CWA) section 401 certification, the Port of Seattle agreed to withdraw and resubmit its CWA section 404 permit application to the U.S. Army Corps of Engineers. Enclosed is the Port's new Joint Aquatic Resources Permit Application (JARPA) that the Port is hereby submitting to the Corp.

Please feel free to contact me at (206) 433-7203 if you have questions concerning this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Leavitt", written over a horizontal line.

Elizabeth M. Leavitt  
Manager, Aviation Environmental Programs

Cc w/encl:

Ray Hellwig, Department of Ecology (3 copies)  
Phil Schneider, Department of Fish & Wildlife  
Lee Daneker, Environmental Protection Agency  
Dennis Ossenkop, Federal Aviation Administration  
Paul Krauss, City of Auburn

Seattle-Tacoma  
International Airport  
P.O. Box 68727  
Seattle, WA 98168 U.S.A.  
TELEX 703433  
FAX (206) 431-5912

AR 003102

Exhibit 5



Luster  
EXHIBIT NO. 214  
2-1-02  
M. Green

DRAFT  
October 9, 2000

TO: Ecology's SeaTac reviewers – Ray Hellwig, Gordon White, Kevin Fitzpatrick,  
Erik Stockdale, Dave Garland, Joan Marchioro

FROM: Tom Luster

RE: My most current list of issues to be resolved for SeaTac 401 review

Here is my latest draft list of issues. They are in the following categories:

- General Issues
- Stormwater Management Plan
- Streamflows and Flow Augmentation
- Natural Resource Mitigation Plan/Wetlands
- Clean Fill
- Other Issues
- Future Probable Issues (if 401 is issued)

You'll note some overlap between the various areas.

Also, I did not describe the various states of resolution of each issue. Some may just require some documents to be clarified or slightly modified, others may require significant new documentation or development of 401 condition language. And, of course, this list should be considered provisional pending future public comment and Ecology's evaluation of those comments.

**General Issues:**

Direct, indirect, cumulative impacts:

- Direct impacts:
  - SR 509 Construction Interchange – status of redesign? *part of next PN.*
- Indirect impacts:
  - Wetland 39b – hydrology interrupted from Stormwater Pond D?
  - SR 509 Construction Interchange – status of documentation regarding indirect impacts? – *status quo - no change in*
  - Wetlands 18/37 per PGG report
  - ~~X~~ Borrow Site #3 – wetland hydrology impact
  - IWS Lagoon #3 Expansion (wetland hydrology impact?)
- Cumulative impacts: current documentation does not adequately describe the likely cumulative of several related proposed projects, including:
  - South Access Road
  - RDF
  - x

AR 003103

Is there enough mitigation opportunity in the Des Moines Creek basin to allow these proposed interconnected impacts? Recommend either significantly improved

ECY00000147

Exhibit 6

documentation and analysis of cumulative impacts by Port, or a coordinated mitigation strategy between Port, WDOT, & DMCBPC, with concurrence of Ecology and Corps.

- Integration of SWMP and NRMP: does current SWMP result in additional impacts to NRMP elements (e.g., detention pond sizes/locations, streamflows, etc.)?
- Flow augmentation: location of treatment system, pipelines, wells, etc. – additional direct, indirect, or cumulative impacts? [Note: September 2000 proposal showed location of treatment system within Des Moines Creek buffer easement area.]

Are various plans and documents internally consistent and consistent with one another? Need to have this resolved as part of Public Notice documentation.

- SWMP: internal consistency being handled through Kelly's review?
- SWMP and NRMP
- SWMP, NRMP, and flow augmentation proposal: e.g., drainage channels shown in NRMP aren't included in SWMP(?)

Reasonable assurance: do we have adequate certainty about mitigation success?:

- Interaction of RDF design and Tyee Mitigation Site: grading, planting, hydrology? Also, site is proposed to provide five roles – mitigation, stormwater detention, emergency spill detention, Runway Object Free Area, and sewer easements.
- Auburn – interaction with other proposed projects – RDF, flood storage,

#### Stormwater Management Plan (SWMP):

##### General:

- Possible aquitard breach at MCRDF and Walker Creek retaining wall (PGG report, p. 23-24), resulting in uncontrolled water and sediment discharges. We'll need a 401 condition to address this. (Is Kelly weighing in on this?)
- Feasibility: are proposed wetvaults feasible; i.e., has anyone ever built a 86 acre-foot or 98 acre-foot wetvault?
- Is SWMP consistent with First Flush report and fate and transport study? – *check w/ Kevin - part of 402?*
- Do the release rates in the SWMP comply with the Kludt settlement?

##### Water Quality:

- What additional water quality BMPs do we need (above the County's basic menu) to meet water quality standards? [Note: see previous 401 – Lisa Austin recommended "doubling up" BMPs unless Port came up with acceptable alternative). Required differences between new and existing discharges – what does this include?

##### Construction stormwater:

- Likely uncontrolled sediment release even with properly implemented BMPs (per PGG report, p. 63-64): what additional 401 conditions needed?
- Contingency detention area for construction stormwater (PGG report, p. 63): status?
- Contingency response: some construction stormwater ponds require pumps – has the Port included contingency in case of pump failure (e.g., additional storage, backup pumps, etc.)?
- Does the current plan include Port's construction staging area and construction offices in acquisition area (new impervious surface)?

NPDES-related:

- Is Port currently in compliance with the NPDES permit (e.g., July TSS exceedance – corrected in August?; also see 9/22 letter from Richard Poulin).
- DMRs show continuing discharges of some metals at levels above water quality criteria: does this provide compliance with NPDES permit and/or water quality standards (especially given the 9<sup>th</sup> Circuit decision (Defenders of Wildlife v. Browner) stating that stormwater discharged under an industrial NPDES permit must meet toxic effluent limitations)?
- Are the currently required construction BMPs adequate to handle soil with contaminants up to MTCA Level A criteria?

Streamflows and Flow Augmentation:

Des Moines Creek flow augmentation:

- Status of confirmed source of water?
- Hydraulic continuity issues: 3 aquifers? (see 9/5/00 Willing letter, and 9/8 and 9/18 letters from Water District #54).
- Alternative source of water: apparently existing golf course well is not up to standards (per WACs 173-154 and 173-160) – this and other doubts about the alternative source make certainty about the confirmed source even more important.
- Is additional NEPA/SEPA required? No mention of augmentation/treatment in previous documents.
- Comments on Port's September 2000 Flow Augmentation proposal:
  - Needs to add description on how proposed treatment system will remove fluoride.
  - Should compare proposed system's design levels of treatment for chlorine (dissolved and total residual), fluoride, d.o., temperature, pH, etc., and compare with applicable water quality criterion or standard.
  - Should describe associated byproducts or breakdown components of proposed treatment method (i.e., sodium sulfite) and the fate and transport of such components into the stream channel and aquatic biota.
  - Should add information on necessary type and frequency of maintenance, how any byproducts described above would be removed and disposed of.
  - Proposed treatment system shown located within proposed stream buffer easement along south side of West Branch Des Moines Creek. System should be relocated out of the easement area or additional mitigation should be provided.
- Process question: does the 404/401 renounce re-open our timing re: water rights determination?

Miller Creek flows:

- Per ACC comments (Rachel P.), the Port's analysis of Miller Creek baseflow was arbitrary in that it assumed use rates that weren't verified (e.g., assumed that 50% of claimed water rights were used).
- Per ACC comments (Malcolm L.), Miller Creek baseflow estimate in error by 100%? – he estimated that the reduction was understated by half.

AR 003105

ECY00000149

- New SWMP (Vol. 2, Section 2.7, page A-16) doesn't reach same conclusion as PGG study for groundwater response – faster and less flow? [Note: I believe Kelly is looking into this.]
- What additional certainty can be provided re: the interaction of the retaining wall and the amount and timing of water provided to Miller Creek and nearby wetlands?

Walker Creek:

- PGG report identifies possible loss of flows to headwaters due to retaining wall – has this impact been further evaluated and/or mitigated for?

NRMP/Wetlands:

- See 8/11/00 letter from Corps for additional comments/concerns.
- The NRMP is based in part on the 11/99 SWMP – is this adequate or has the SWMP changed so that there are additional resource impacts and a need for additional mitigation?
- Additional impacts?: the acquisition area includes a Miller Creek tributary and associated wetlands that have not yet been delineated or evaluated? Also, per ACC comments, there are new wetlands identified on NRMP Implementation Plan that were not previously evaluated?
- Status of monitoring requirements: what additional information/detail do we need on monitoring requirements – e.g., frequency, type, location, etc. – and on performance standards? We'll need to turn these into 401 conditions.
- Per ACC comments (Amanda A.), Parametrix memo (from Jan C.) includes statements that are not backed up with data (Erik)?
- What is the hydrologic interaction of stormwater detention ponds with nearby/adjacent wetlands? Need site plans and cross-sections showing ponds in relation to Miller Creek and wetlands along with groundwater data. 10/37, 39, etc.
- Vacca Farms: need additional details/site plans on microtopography and placement of habitat features (per Erik).
- Wetlands 39b and 41a: Stormwater pond F will fill Wetland 41a – how will it affect downslope Wetland 39b? (per Erik)
- IWS Lagoon #3 Expansion: what effect will the IWS Lagoon #3 expansion have on Northwest Ponds / Wetland #28 – approximately 10 additional acres of impervious surface immediately north of the wetlands could reduce hydrologic support – flow direction identified in IWS hydrologic study as being towards wetlands.
- SR 509 Interchange: direct and indirect impacts to Walker Creek watershed – have these been included in NRMP? Also, the Port is redesigning the interchange to avoid direct impacts – if we are basing our 401 decision on no direct impacts in that basin, we need to see the revised design before we complete 401.
- Mitigation irrigation water: what is the source of irrigation water at the various mitigation sites, and does the Port have the necessary water rights for this water?
- Status of \$150K mitigation fund: what's the status? Is it still part of proposal? Need additional details, certainty about implementation.
- Tye Mitigation Site: it is a significant mitigation element in the Des Moines Creek basin; can it fulfill five roles – wetland mitigation, stormwater detention, FAA object free zone, emergency containment area, and two sewer easements?

*deferred*

*Provide to Jim*

*Card 10/13*

*discussed 10/13*

*discussed 12/13*

*10/13*

*12/13*

*10/13*

*10/13*

*10/13*

*ER 10/13*

ERIK?

- Auburn Mitigation Site: design is based on site providing approximately 60 acre-feet flood capacity for future development of adjacent parcels – has this additional project/impact been evaluated (or conversely, do we need to condition 401 to prevent use of the site for flood storage of future development?).
- Borrow Site #3: the Port recently added a conceptual mitigation element (the diversion ditch) to provide hydrologic support to nearby wetlands. We either need additional information on this element or avoidance of the impact by not removing borrow material below the 300' elevation (per Dave G.'s review). See also draft 401 condition that addresses this issue.

12/17

**Clean Fill:**

- Status of language for proposed clean fill 401 condition?
- Connections between clean fill, surface runoff from embankment, interflow through embankment, water quality/quantity in surface water bodies? Have we adequately evaluated these (per ACC comments)?
- Decant/Chemical Accumulation Area, soil segregation facility: these were included in a recent SWPPP (per 9/27 Wingard letter) – What are they? What's their role per the proposal? Where are they? Is the design adequate to meet water quality standards?
- Status of Port's soil sources: what issues still alive re: Hamm Creek soil? Was the 177 cy of high TPH soil used (Chung is looking into this)?
- Do we need to develop a 401 condition requiring surface soil samples from Port's onsite borrow sources? These areas may be within the Asarco plume and therefore may have elevated levels of arsenic in the surface layers that will require special handling.

AP

**Other Issues:***Has the Port completed SEPA?*Status of SEPA/NEPA: has adequate SEPA been done to allow us to issue a valid 401?

- Des Moines Creek Flow Augmentation
- Des Moines Creek RDF
- SR 509/South Access Road
- Per ACC comments (Barbara H.), the current design includes an expansion of the 150 noise contour; EIS said it would remain the same.

Clean Air Certification: is the previous certification re: Clean Air requirements still applicable? Still in effect?

**Cleanup Issues (per Supplement to Biological Assessment):**

- Buyout parcels within 3<sup>rd</sup> Runway Safety Area: part of RCRA, UST, etc. actions: status and connection with 401?
- IWS Lagoon #3 Expansion: contamination per 6/21/00 Port of Seattle Hydrogeographic Study?

Interaction with NPDES major modification?: does 401 re-notice change the timing of the NPDES major modification?

Retaining Walls: do we have adequate assurance about the eventual design of the retaining walls and their ability to provide hydrologic support to wetlands and Miller Creek?

**Future Probable Issues (if 401 issued):**

- 1) Compliance monitoring: Ecology's review of any necessary sampling and monitoring data will require significant resources. Can we do cost-recovery (all or part) or require the Port to hire a consultant to provide initial review of documentation?
- 1) Data and Reports: require Port to provide electronic copies of all monitoring information (and possibly some sort of web-based or CD documentation?). This would allow us to more efficiently determine project compliance and would also help with public disclosure requests.

**AR 003108**

ECY00000152



## DRAFT: Water Quality BMP requirements for SeaTac 401 review

**Issue:** any 401 certification issued for the proposed SeaTac expansion must include water quality BMPs beyond what is required through the County's stormwater manual and beyond the BMPs currently in place at the airport. This definitely applies to the proposed new discharges that are not on the current NPDES Permit, and may apply to the other existing discharges, some of which will receive additional stormwater due to the proposed expansion.

### **Reasoning:**

#### Additional BMPs/conditions needed to meet antidegradation requirements:

- Current modeling shows the Port's proposal will reduce stream baseflows.
- Current water quality monitoring shows the Port's existing water quality BMPs are resulting in high concentrations of several stormwater-related contaminants.
- Proposed new discharges will increase the amount of stormwater entering the stream.

If the proposed new discharges include only the water quality BMPs the Port currently uses, the result would be an increase in the concentration of contaminants in the receiving waters.

#### SEA/WQ Programs 401/402 Policy:

The A.G.'s Office provided guidance during development of this policy, including the following (per memo from Sandi Manning 3/28/00):

- a 401 cannot be issued with a requirement that a 402 be obtained in the future – the 402 permit has to be issued prior to the 401.
- If a parameter is not granted a waiver or exemption in a 402 permit, it must meet the criteria.

Condition B4 of the Policy (for when both 401 and 402 apply to a proposed project) states:

“For projects that have not yet obtained a required 402 Permit, the 401 Certification will be held in abeyance for a maximum period of one year, or denied without prejudice until the 402 Permit is received. A 401 Certification can not be approved if a required 402 Permit has not yet been received because reasonable assurance that the standards will be met can not be determined on a proposed future permit.”

The existing NPDES Permit does not authorize discharges from the proposed new discharges along Miller Creek; therefore, the required 402 permit has not yet been obtained.

Additionally, Sections 401 and 402 of the Clean Water Act have different requirements regarding effluent limitations. Under 401, a certification must ensure compliance with effluent limitations; however, under 402, a permit may either require compliance with effluent limitations or may take other actions as deemed necessary:

“Section 401(d) Limitations and monitoring requirements of certification. Any certification provided under this section shall set forth any effluent limitations and other

limitations, and monitoring requirements necessary to assure that any applicant for a Federal license or permit will comply with any applicable effluent limitations and other limitations, under section 1311 or 1312 of this title, standard of performance under section 1316 of this title, or prohibition, effluent standard, or pretreatment standard under section 1317 of this title, and with any other appropriate requirement of State law set forth in such certification, and shall become a condition on any Federal license or permit subject to the provisions of this section.”

“Section 402(a) Permits for discharge of pollutants. (1) Except as provided in sections 1328 and 1344 of this title, the Administrator may, after opportunity for public hearing issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 1311(a) of this title, upon condition that such discharge will meet either (A) all applicable requirements under sections 1311, 1312, 1316, 1317, 1318, and 1343 of this title, or (B) prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this chapter.”

However, I believe Ecology could issue a 401 before a 402 is issued if the 401 included the conditions necessary to ensure the applicable effluent limitations are

#### **Conditions of previous 401:**

Part of Ecology’s message to the Port and the public has been that the previous 401 certification issued to the Port established a baseline of environmental protection. Conditions of the previous 401 include the following:

#### **C. Stormwater Management:**

C1. The Port shall comply with a final comprehensive stormwater management plan approved by Ecology.

Within sixty (60) days of issuance of this Order, the Port shall submit to Ecology for review and written approval a Final Comprehensive Stormwater Management Plan for Sea-Tac International Airport Master Plan Improvements. This Final Plan shall contain a comprehensive plan for managing stormwater from the Master Plan projects in compliance with the stormwater source control, detention, treatment, and monitoring requirements in Condition #C4 below. It shall also identify the stormwater detention storage necessary for each major element of the Master Plan Improvements.

C2. Within ninety (90) days of issuance of this Order, the Port shall submit to Ecology a schedule for construction of all major elements of the Master Plan Development Project, and the stormwater detention storage necessary to meet the requirements of Condition #C4 of this Order. Subsequent changes to this construction schedule shall be submitted to Ecology.

C3. Within six (6) years of issuance of this certification, the Port shall complete construction of all facilities in compliance with the approved Final Comprehensive Stormwater Management Plan for Sea-Tac International Airport Master Plan Improvements referenced in Condition #C1 of this Order.

C4. Both Des Moines Creek and Miller Creek have been identified as having excessively high storm flows and levels of contaminants above state water quality criteria. These high storm flows and contaminant levels prevent some characteristic uses of Class AA waterbodies from being met. In order for the operation of the proposed project to meet

water quality standards, the following requirements related to stormwater detention and treatment shall be implemented:

C4a. Stormwater Detention: The Port shall design, construct, operate, and maintain stormwater facilities that control stream erosion by matching developed discharge durations for the range of predeveloped discharge rates from 50% of the 2-year peak flow up to the full 50-year peak flow and by matching the peak discharge rates for 2- and 10-year return periods for all stormwater discharges from Sea-Tac International Airport (STIA). For the purpose of calculating runoff characteristics, predeveloped conditions shall be as follows:

- For expansion areas, the 1994 land use condition shall be the predeveloped condition.
- For the existing facility, predeveloped conditions shall be 100% till-pasture, unless the Port can provide documentation that shows other predeveloped conditions were present before the development of STIA.

C4b. Stormwater Treatment: All stormwater discharges from Sea-Tac International Airport shall be in compliance with state of Washington surface water quality standards (Chapter 173-201A WAC), sediment management standards (Chapter 173-204 WAC), ground water quality standards (Chapter 173-200 WAC), and human health based criteria in the National Toxics Rule (Federal Register, Vol. 57, No. 246, Dec. 22, 1992, pages 60848-60923).

The Port shall design, construct, operate, and maintain stormwater treatment facilities that will not result in exceedances of state water quality criteria in receiving waters. All runoff from pollution-generating surfaces shall be treated using water quality treatment BMPs. Pollution-generating surfaces include, but are not limited to: surfaces that are exposed to and/or are subject to aircraft use, vehicular use, or leachable materials, wastes, or chemicals.

Water quality treatment BMPs for each stormwater treatment facility shall consist of no less than any one of the following:

- a large sand filter, a large sand filter vault, or a large linear sand filter.
- a biofiltration swale, followed by a basic sand filter, sand filter vault, or leaf compost filter.
- a filter strip, followed by a linear sand filter with no presettling cell needed.
- a basic wetpond, followed by a basic sand filter, sand filter vault, or leaf compost filter.
- a wetvault, followed by a basic sand filter, sand filter vault, or leaf compost filter.
- A combined detention and wetpool facility, followed by a basic sand filter, sand filter vault, or leaf compost filter.
- a basic sand filter or sand filter vault (preceded by a presettling cell if the sand filter is not preceded by a detention facility), followed by a leaf compost filter.

Any basic sand filters shall be sized so that 90% of the runoff volume will pass through the filter. Any large sand filters shall be sized so that 95% of the runoff volume will pass through the filter.

The Port may propose other BMPs for stormwater treatment if it can be demonstrated that they will result in stormwater discharges that meet the state water quality standards. Any proposed changes are subject to review and approval by Ecology.

C4c. Source Control Best Management Practices: The Port shall prepare and implement a Stormwater Pollution Prevention Plan for Airport Operations and a Stormwater Pollution Prevention Plan for Construction as required by Special Conditions S12 and S13 of NPDES Permit No. WA-002465-1.

C4d. The Port shall collect the washoff of pollutants from the runways and taxiways after anti-icing/deicing events to prevent violations of the water quality standards in Miller Creek and Des Moines Creek. The first 1.3 inches of runoff shall be collected from the runways and taxiways after deicing chemicals have been applied. This runoff shall either be discharged to the IWS system or treated separately so as to meet the criteria contained in the state water quality standards (173-201A WAC).

C4e. Receiving Water Monitoring Plan: The Port shall submit within one (1) year of issuance of this Order a monitoring plan to determine the effectiveness of the Port's stormwater management system. The plan shall be subject to Ecology's review and approval. The plan is meant to provide data on the levels of contaminants of concern in Miller Creek and Des Moines Creek after the Master Plan improvements have been constructed. At a minimum, the plan shall include the following:

- sampling parameters: types of samples – temperature, pH, dissolved oxygen, flow, fecal coliform, turbidity, copper, lead, and zinc. Detection limits shall be sufficient to determine compliance with the water quality criteria of 173-201A WAC.
- frequency – the minimum frequency shall be sufficient to verify compliance with the water quality standards.
- locations – samples shall be taken in Miller Creek and Des Moines Creek immediately downstream from each stormwater discharge point.

Data collected will be used to determine the level of treatment provided by the Port's stormwater facilities and whether the Port is in compliance with state water quality standards. Violation of the standards are subject to penalties under RCW 90.48.

Luster, Tom

---

From: Luster, Tom  
Sent: Wednesday, October 18, 2000 9:05 AM  
To: Hellwig, Raymond; Ehlers, Paula; Fitzpatrick, Kevin; Marchioro, Joan (ATG)  
Subject: SeaTac...

Hi all --

I want to provide you with a copy of the somewhat drafty notes I used for yesterday's discussion of the issues. I realize that mine is apparently the minority opinion on what the Port and Ecology need to do to meet 401 requirements, but I think it would be helpful for you to have these for a couple of reasons:

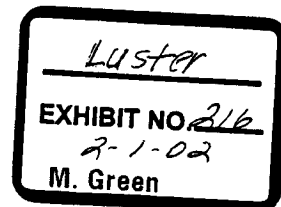
- \* perhaps they are clearer in writing than through my verbal explanations; and,
- \* while some of them may be "internally resolved through consensus (minus 1)", we are likely to hear these or similar issues raised during public review, and will need to respond to them later in our 401 process.



SeaTacRAIssues.doc

I do hope this helps us towards a defensible decision. Please let me know if you have questions.

Tom L.



DRAFT

October 17, 2000

TO: Joan Marchioro

FROM: Tom Luster

RE: Adequacy of Ecology's 401 review for proposed SeaTac expansion

I have identified several issues that need to be better resolved for Ecology to issue a defensible 401 certification that meets regulatory requirements. These issues involve two main 401-related concerns – ensuring that Ecology complies with state water quality standards and the federal Clean Water Act, and adequately identifying project-related impacts to ensure necessary mitigation is provided. The issues include the following:

**401 Regulatory Requirements and Policies –**

- **Interaction of 401 and 402:** Ecology's current approach does not mesh with Clean Water Act requirements and does not meet the Water Quality/SEA Program policy on 401/402 review.
- **Water Quality BMPs:** the Port's current proposed BMPs for new discharges are not adequate to meet requirements of the state water quality standards and the Clean Water Act. Per the above-referenced policy and the current draft Ecology Stormwater Manual, the 401 may need to require additional BMPs in order to ensure water quality standards will be met.
- **Timing of 402 major modification:** Ecology's current approach with the Port conflicts with the Water Quality/SEA Program policy on 401/402 review.

**Additional Impacts to be evaluated as part of 401 review –**

- **Flow Augmentation:** Ecology's current proposed condition does not provide the necessary reasonable assurance that impacts will be mitigated.
- **Additional Impacts to Tyee Pond:** recent information provided by the Port suggests there are potential additional impacts to Tyee Pond that have not been disclosed or evaluated as part of the project's EIS or permit applications.
- **Additional Wetland Impacts due to proposed Lagoon #3 Expansion:** the proposed IWS Lagoon #3 expansion apparently includes some direct and indirect wetland impacts that have not yet been evaluated.
- **Additional Impacts Identified in De-Icing Report:** the Port's report of last year identified impacts that have need to be further evaluated (and perhaps mitigated) as part of Ecology's 401 review.
- **Clean Fill criteria:** to be continued, pending further Ecology discussions...
- **Piecemealing:** several current proposed 401 conditions would piecemeal our project review and may result in inadequate mitigation for project-related impacts.
- **Governor's certification letter:** we still need to ensure the Port is complying with the Agreed Order (cleanup) and the Clean Air requirements.

AR 003114

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We need to resolve these issues in order for Ecology to have reasonable assurance that the Port's proposal will meet water quality standards. [Note: the two step "reasonable assurance" process requires that Ecology first have a "preponderance of evidence" that water quality standards will be met, and then that contingencies are in place (as 401 conditions) for any areas where there is remaining doubt about the ability of the project to meet water quality standards.]

Several of the current proposed conditions are dependent on the possible future availability of evidence showing that standards will be met. This approach would result in a highly provisional 401 certification – essentially, Ecology would be saying "we have certainty that your project will meet the standards and here's the permit to build your project; however you can't build the project until we have certainty about how you're going to mitigate for several impacts that would result in standards not being met."

If the issues identified in this memo are adequately addressed, we would be well on our way to issuing a defensible 401. If they are not adequately addressed through the 401 process, we could end up with a less-than-defensible 401 that falls short of meeting the regulatory requirements and would result in lower water quality in the nearby creeks and wetlands.

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#### **Interaction of 401 and 402:**

*Issue:* Ecology's current approach to the Port's 401 request does not reflect the requirements of the Clean Water Act, does not meet the requirements of the recent 401/402 policy between the Water Quality and SEA Programs or Ecology's draft Stormwater Manual, and does not reflect the findings of a recent Ninth Circuit decision.

#### **Reasons:**

1) Clean Water Act requirements: the Clean Water Act includes different requirements for permit review under 401 and 402. The essential difference is that 401 must include all necessary effluent limitations to ensure standards are met, and 402 may include either those limitations or other appropriate measures. The most pertinent language from the Act follows (emphasis added):

"Section 401(d): "Limitations and monitoring requirements of certification. Any certification provided under this section shall set forth any effluent limitations and other limitations, and monitoring requirements necessary to assure that any applicant for a Federal license or permit will comply with any applicable effluent limitations and other limitations, under section 1311 or 1312 of this title, standard of performance under section 1316 of this title, or prohibition, effluent standard, or pretreatment standard under section 1317 of this title, and with any other appropriate requirement of State law set forth in such certification, and shall become a condition on any Federal license or permit subject to the provisions of this section."

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“Section 402(a) Permits for discharge of pollutants. (1) Except as provided in sections 1328 and 1344 of this title, the Administrator may, after opportunity for public hearing issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 1311(a) of this title, upon condition that such discharge will meet either (A) all applicable requirements under sections 1311, 1312, 1316, 1317, 1318, and 1343 of this title, or (B) prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this chapter.”

2) Water Quality and SEA Program Policy Agreement: the Water Quality and SEA Programs recently adopted a policy on how to review projects that require both a 401 and 402 permit. One key component is that when a project's discharges are not covered by a 402 permit, the 401 may include necessary conditions.

Applicable sections of the policy include the following:

“When a project's discharges are covered by an Individual 402 Permit, and the project is in compliance with that permit as determined by the Water Quality Program, the 401 Certification will require compliance with the Individual 402 Permit as adequate for compliance with the water quality standards, however additional 401 Certification conditions may be necessary to address compliance for stormwater and other water quality impacts or project areas not covered by the 402 Permit.”

...and:

“For projects that have not yet obtained a required 402 Permit, the 401 Certification will be held in abeyance for a maximum period of one year, or denied without prejudice until the 402 Permit is received. A 401 Certification can not be approved if a required 402 Permit has not yet been received because reasonable assurance that the standards will be met can not be determined on a proposed future permit.”

In addition, Section 1.9.8 of Ecology's draft Stormwater Management Manual includes the following:

“For projects that require a fill or dredge permit under Section 404 of the Clean Water Act, Ecology must certify to the permitting agency, the U.S. Army Corps of Engineers, that the proposed project will not violate water quality standards. In order to make such a determination, Ecology may do a more specific review of the potential impacts of a stormwater discharge from the construction phase of the project and from the completed project. As a result of that review, Ecology may condition its certification to require:

- Application of the minimum requirements and BMPs in this manual; or
- Application of more stringent requirements.”

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AR 003116



**Water Quality BMPs:**

*Issue:* The Port's current proposed water quality BMPs for proposed new stormwater discharges do not provide adequate treatment to ensure required water quality standards will be met.

The Port's current proposed Stormwater Plan includes only the minimum BMPs required under the King County stormwater manual at the proposed new stormwater discharge points into Miller Creek. These are largely the same BMPs currently in place at existing discharges at the airport. Based on monitoring data, these BMPs are resulting in discharges of several contaminants at concentrations higher than the water quality criteria. Discharges from the Port's proposed new discharge points are expected to be similar to the existing discharges; therefore, the contaminant concentrations are likely to be similar as well. The proposed new discharges need to include additional water quality BMPs that will avoid criteria exceedances. Evaluation of these BMPs needs to either take place through 401 review, or 401 needs to be held in abeyance until a revised 402 permit is issued. [Note: I believe that early in the County's review process, we informed the Port that Ecology may need to add conditions to whatever plan the County might approve, but I don't think we've reminded the Port lately of that requirement.

**Reasons:**

Current proposal does not comply with water quality standards requirements for new discharges: WAC 173-201A-160(4)(a) states that Ecology may include a compliance schedule for existing discharges to meet water quality criteria; but does not allow Ecology to issue compliance schedules for new discharges.

Annual stormwater monitoring reports and recent Discharge Monitoring Reports (DMRs) for existing BMPs at the Port (which are what are being included in the current proposed Stormwater Plan) show concentrations for several contaminants above water quality criteria (including copper, lead, zinc, and TSS). In addition, the analysis done by the WQ Program two years ago (by Lisa Austin) showed that the Port's proposed BMPs were not adequate to meet several water quality criteria. Clearly, this does not result in Ecology having a preponderance of evidence that standards would be met; in fact, the data show the opposite – the preponderance of evidence is that these BMPs, whether monitored at Port discharges or as described in much of the literature on urban stormwater runoff, result in regular exceedances of the water quality criteria

Using these same BMPs at the Port's new discharges would likely result in similar levels of contaminants, resulting in unallowable discharges from new discharge points.

Stormwater discharges associated with an industrial NPDES permit are subject to water quality based standards: a recent Ninth Circuit Court decision (*Defenders of Wildlife v. Browner*, December 7, 1999) states that the Clean Water Act requires stormwater associated with an industrial NPDES permit to meet water quality based standards. While not conclusive (since the case was primarily about municipal stormwater permits), the Court's decision provides strong support for requiring BMPs above and beyond the minimum requirements of the County's stormwater manual. Since the decision was issued after Ecology issued the current NPDES

permit to the Port, the 401 review provides the opportunity and obligation to upgrade the Port's BMPs.

The Court's decision includes the following passages:

"When a permit is required for the discharge of storm water, the Water Quality Act sets two different standards:

(A) Industrial discharges

Permits for discharges associated with industrial activity shall meet all applicable provisions of this section and section 1311 of this title.

(B) Municipal discharge

Permits for discharges from municipal storm sewers --

(i) may be issued on a system- or jurisdiction-wide basis;

(ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and

(iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator . . . determines appropriate for the control of such pollutants.

33 U.S.C. S 1342(p)(3) (emphasis added)."

...and:

"As is apparent, Congress expressly required industrial storm-water discharges to comply with the requirements of 33 U.S.C. S 1311. See 33 U.S.C. S 1342(p)(3)(A) ("Permits for discharges associated with industrial activity shall meet all applicable provisions of this section and section 1311 of this title.") (emphasis added). By incorporation, then, industrial storm-water discharges "shall . . . achiev[e] . . . any more stringent limitation, including those necessary to meet water quality standards, treatment standards or schedules of compliance, established pursuant to any State law or regulation (under authority preserved by section 1370 of this title)." 33 U.S.C. S 1311(b)(1)(C) (emphasis added); see also Sally A. Longroy, *The Regulation of Storm Water Runoff and its Impact on Aviation*, 58 J. Air. L. & Com. 555, 565-66 (1993) ("Congress further singled out industrial storm water dischargers, all of which are on the high-priority schedule, and requires them to satisfy all provisions of section 301 of the CWA [33 U.S.C. S 1311]. . . . Section 301 further mandates that NPDES permits include requirements that receiving waters meet water quality based standards.") (emphasis added). In other words, industrial discharges must comply strictly with state water-quality standards."

Previous 401 certification included additional BMPs to serve as Ecology's baseline: Ecology's previous 401 included a condition requiring more stringent water quality BMPs than are currently being proposed by the Port. Part of our message to the Port and to the public has been that the previous 401 established Ecology's environmental baseline. If we do not require at least the same level of water quality BMPs in any future 401, we would be stepping back from that commitment.

ECY00000829

AR 003118

**Timing of 402 Major Modification:**

*Issue:* We erred in telling the Port that the timing for the 402 major modification had no connection with our 401 review.

*Reason:*

Compliance with Water Quality/SEA Program Policy: Per the policy cited in the above section, the major modification must either be completed before Ecology issues a 401, or the discharges proposed for coverage under the major modification need to be conditioned under a 401.

**Flow Augmentation:**

*Issue:* Ecology's latest proposed flow augmentation agreement with the Port does not provide reasonable assurance. This latest proposal states that the Port must provide certainty about the source of augmentation water before it can build impervious surfaces in the Des Moines Creek watershed (e.g., SASA). This does not adequately address the project's impact to stream baseflows, and represents a significant change from Ecology's previously considered 401 condition, which would have required the Port to provide certainty about the source of water before 401 certification could be issued.

*Reason:*

Baseflows reduced by placing fill, redirecting construction-related stormwater, as well as new impervious surfaces: Lower baseflows in the Des Moines Creek basin are predicted not only due to new impervious surface associated with the proposed project, but would also result from placing fill and detaining/rerouting stormwater from the construction area. The latest proposed condition addresses only the impact associated with new impervious surface, and if included as a 401 condition, could result from several years of lower streamflow (because of fill being placed) without mitigation.

The previous proposed condition provided the necessary level of certainty missing from the current proposed condition – the Port was to provide certainty about the source augmentation water and the ability of its proposed treatment system before the 401 could be issued. This was a negotiated position based on Ecology's recognition that the water rights decision on the Port's preferred source of water could take some time.

**Clean Fill:** pending further Ecology discussion...

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AR 003119

**Additional Impacts to Tyee Pond:**

*Issue:* The Port recently informed Ecology that the Tyee Pond was to be used as a spill containment site. This impact had not been included on previous documentation related to the Port's proposal (EIS, application to Corps, Wetland Functional Analysis, etc.), has not yet been evaluated as part of our 401 review, and mitigation has not yet been provided. This is a potentially significant impact to almost 5 acres of Category II forested/scrub-shrub/emergent wetland.

*Response:* The Port needs to provide further evaluation of this impact and propose any necessary mitigation. Also, at the very least, Ecology needs to coordinate with the Corps to determine how this impact fits into the 404/401 Public Notice and permit evaluations.

**Additional Wetland Impacts due to proposed Lagoon #3 Expansion:**

*Issue:* The proposed expansion of IWS Lagoon #3 will result in about 10 acres of additional impervious surface being added just north of Wetland 28. This indirect hydrologic impact has not yet been evaluated. In addition, Appendix D of the 1998 Lagoon #3 Expansion Hydrologic Report (which I received yesterday, October 16, 2000) identifies several deficiencies in the current lagoon that must be corrected as part of the expansion, including reconstructing the eastern containment dike and relocating stormwater piping in the ravine to the east of the lagoon. The area immediately east of the lagoon consists largely of wetlands that have so far been described elsewhere in Port documents as not being impacted by the Port expansion project.

*Response:* The Port needs to provide additional documentation showing the possible direct wetland impacts associated with the stormwater piping relocation and the indirect impacts associated with the loss of pervious surface in the area. If there is an impact, it needs to be identified in the upcoming 404/401 Public Notice, and both impacts need to be evaluated as part of our 401 review.

**Additional Impacts Identified in De-Icing Report:**

*Issue:* the previous Port report on de-icing identified several impacts to waters of the state that have not yet been addressed through either the 401 review or the 402 permitting process. Pending receipt and review of the Port's next report, these impacts may need to be evaluated and mitigated through the 401 review process.

*Reason:*

- the previous Port report showed levels of dissolved oxygen and metals in some parts of Des Moines and Miller Creeks that result in water quality criteria being exceeded. These impacts have not yet been evaluated.

**Response:**

- the Port needs to provide an updated report for Ecology's 401 review that addresses the issues raised in Ecology's October '99 letter. Based on Ecology's review of that report, we may have to come up with 401 conditions that will result in those impacts being avoided or mitigated (e.g., additional water quality BMPs, additional mitigation to make up for the loss of wetland functions in NW Ponds, etc.).

**Avoid Piecemealing:** Several of Ecology's current potential conditions would result in approval of the project provisional upon future actions which should be identified now in order to avoid piecemealing of impacts and mitigation.

Examples include:

- Borrow Site #3: the current proposed condition states that Borrow Site #3 could not be used until Ecology approved a mitigation plan.
- Flow Augmentation: the current proposed condition would allow impacts to streamflow without any mitigation in place that addresses the impact.

In the example above, the resulting 401 would be issued acknowledging known impacts but not including mitigation necessary to address those impacts.

**Compliance with Governor's certification letter:**

**Issue:** the Governor's certification letter requires the Port to meet the requirements of the Clean Air Act and an Agreed Order regarding groundwater cleanup at SeaTac. Ecology needs to determine compliance with the Clean Air Act as part of its CZM review, and needs to determine the status of the Agreed Order and any interrelationship with 401 requirements. For example, if there are cleanup sites or potential cleanup sites within the footprint of various SeaTac Master Plan Expansion Project elements being reviewed for 401, we would need to ensure the 401 adequately evaluates potential impacts to aquatic resources.