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POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON

AIRPORT COMMUNITIES COALITION,)
Appellant,)
v.)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY; and)
THE PORT OF SEATTLE,)
Respondents.)

No. 01-160

DECLARATION OF MICHAEL P.
WITEK IN SUPPORT OF ACC'S
RESPONSE TO MOTIONS TO
COMPEL AND LIMIT ENTRY

(Section 401 Certification No.
1996-4-02325 and CZMA concurrency
statement, Issued August 10, 2001,
Reissued September 21, 2001, under No.
1996-4-02325 (Amended-1))

Michael P. Witek declares as follows:

1. I am over the age of 18, am competent to testify, and have personal knowledge of the facts stated herein.

2. Attached to my declaration as Exhibit A is a true and correct copy of ACC's November 26, 2001, Request for Entry upon Port Property.

3. Attached to my declaration as Exhibit B is a true and correct copy of The Port's December 24, 2001, Objections to ACC's Request for Entry.

DECLARATION OF MICHAEL P. WITEK IN
SUPPORT OF ACC'S RESPONSE TO
MOTIONS TO COMPEL AND LIMIT ENTRY - 1

HELSELL FETTERMAN LLP
1500 Puget Sound Plaza
1325 Fourth Avenue
Seattle, WA 98101-2509

Rachael Paschal Osborn
Attorney at Law
2421 West Mission Avenue
Spokane, WA 99201

ORIGINAL

AR 004801

1 4. Attached to my declaration as Exhibit C is a true and correct copy of a December
2 12, 2001, letter from ACC counsel to Port counsel.

3 5. Attached to my declaration as Exhibit D is a true and correct copy of a December
4 12, 2001, email from ACC counsel to Port counsel.

5 6. Attached to my declaration as Exhibit E is a true and correct copy of a December
6 18, 2001, email from Port counsel to ACC counsel.

7 7. Attached to my declaration as Exhibit F is a true and correct copy of a December
8 28, 2001, email from Port counsel to ACC counsel.

9 8. Attached to my declaration as Exhibit G is a true and correct copy of an email
10 obtained pursuant to the Public Disclosure Act from Ann Kenny, forwarded to Andrea Grad
11 regarding a site visit by Rod Thompson.

12 9. Attached to my declaration as Exhibit H is a true and correct copy of an excerpt
13 from the Kevin Fitzpatrick, January 16, 2002, deposition transcript.

14 10. Attached to my declaration as Exhibit I is a true and correct copy of an excerpt
15 from the Gordon White, January 16, 2002, deposition transcript.

16 11. Attached to my declaration as Exhibit J is a true and correct copy of a January 8,
17 2002, letter from ACC counsel to Port counsel.

18 12. Attached to my declaration as Exhibit K is a true and correct copy of a January 16,
19 2002, letter from Port counsel to ACC counsel.

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DECLARATION OF MICHAEL P. WITEK IN
SUPPORT OF ACC'S RESPONSE TO
MOTIONS TO COMPEL AND LIMIT ENTRY - 2

HELSELL FETTERMAN LLP
1500 Puget Sound Plaza
1325 Fourth Avenue
Seattle, WA 98101-2509

Rachael Paschal Osborn
Attorney at Law
2421 West Mission Avenue
Spokane, WA 99201

AR 004802

1 13. Attached to my declaration as Exhibit L is a true and correct copy of a January 17,
2 2002, letter from ACC counsel to Port counsel.

3 14. Attached to my declaration as Exhibit M is a true and correct copy of an email
4 dated August 6, 2001, obtained pursuant to the Public Disclosure Act, from Ann Kenny to Port
5 personnel regarding comments of Dr. John Strand.
6

7 15. Attached to my declaration as Exhibit N is a true and correct copy of the Port's
8 Interrogatories and Requests for Production of Documents, dated November 9, 2001.

9 16. Attached to my declaration as Exhibit O is a true and correct copy of an October
10 2, 2001, letter from Port counsel to ACC counsel.

11 17. Attached to my declaration as exhibit P is a true and correct copy of a December
12 18, 2001, email from Port counsel to ACC counsel.
13

14 18. Attached to my declaration as exhibit Q is a true and correct copy of the Port's
15 Answers and Objections to ACC's Interrogatories and Requests for Production of Documents.

16 19. Attached to my declaration as exhibit R is a true and correct copy of a January 7,
17 2002, email and attached word document (draft discovery stipulation) from ACC counsel to Port
18 counsel.
19

20 20. Attached to my declaration as exhibit S is a true and correct copy of a January 14,
21 2002, letter from Port counsel to ACC counsel.
22
23

24 DECLARATION OF MICHAEL P. WITEK IN
25 SUPPORT OF ACC'S RESPONSE TO
MOTIONS TO COMPEL AND LIMIT ENTRY - 3

HELSELL FETTERMAN LLP
1500 Puget Sound Plaza
1325 Fourth Avenue
Seattle, WA 98101-2509

Rachael Paschal Osborn
Attorney at Law
2421 West Mission Avenue
Spokane, WA 99201

AR 004803

1 21. Attached to my declaration as exhibit T is a true and correct copy of a January 16,
2 2002, letter from ACC counsel to Port counsel.

3 22. Attached to my declaration as exhibit U is a true and correct copy of ACC's
4 Answers and Responses to the Port's Interrogatories and Requests for Production of Documents.

5 23. Attached to my declaration as exhibit V is a true and correct copy of a December
6 10, 2001, Notice of Deposition and Subpoena Duces Tecum served by the Port.

7 24. I participated in a December 12, 2001, telephone conference, in which ACC
8 reiterated the position stated in its Answers to the Port's Interrogatories and Requests for
9 Production; that the things its experts relied on in forming their opinions were the plans and reports
10 submitted by the Port to the Department of Ecology, and that those plans and reports were
11 identified in the various comment letters from ACC's experts and in the declarations submitted by
12 those experts in support of ACC's Motion for Stay.

13 25. During the December 12, 2001, telephone conference, ACC asserted that any
14 communications between counsel and its experts and experts' drafts were protected from disclosure
15 under the work product doctrine. ACC informed Port counsel that it was not seeking comments
16 exchanged between Port counsel and Port experts or draft reports from experts, but that ACC did
17 want data and test results obtained by Port experts whether or not such data or test results were
18 relied upon or discarded by those experts.
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24 DECLARATION OF MICHAEL P. WITEK IN
25 SUPPORT OF ACC'S RESPONSE TO
MOTIONS TO COMPEL AND LIMIT ENTRY - 4

HELSELL FETTERMAN LLP
1500 Puget Sound Plaza
1325 Fourth Avenue
Seattle, WA 98101-2509

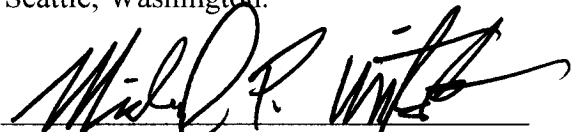
Rachael Paschal Osborn
Attorney at Law
2421 West Mission Avenue
Spokane, WA 99201

AR 004804

1 26. During the telephone conference, Port counsel agreed to prepare a draft discovery
2 stipulation.

3 I declare under penalty of perjury under the laws of the State of Washington that the
4 foregoing is true and correct.

5 DATED this 17th day of January, 2002, at Seattle, Washington.

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8 Michael P. Witek

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24 DECLARATION OF MICHAEL P. WITEK IN
25 SUPPORT OF ACC'S RESPONSE TO
MOTIONS TO COMPEL AND LIMIT ENTRY - 5

HELSELL FETTERMAN LLP
1500 Puget Sound Plaza
1325 Fourth Avenue
Seattle, WA 98101-2509

Rachael Paschal Osborn
Attorney at Law
2421 West Mission Avenue
Spokane, WA 99201

AR 004805

EXHIBIT A

AR 004806

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POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON

AIRPORT COMMUNITIES COALITION,

Appellant,

v.

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

Respondents.

PCHB No. 01-160

ACC'S CR 34(a)(2) REQUEST FOR
ENTRY UPON PORT PROPERTY
FOR INSPECTION AND OTHER
PURPOSES

TO: PORT OF SEATTLE ("Port");

AND TO ITS COUNSEL: Jay Manning and Gillis Reavis, Marten Brown, Inc.;
Roger Pearce and Steven Jones, Foster Pepper &
Shefelman;
Linda Strout and Traci Goodwin, Port of Seattle

**REQUEST FOR ENTRY UPON LAND FOR INSPECTION AND OTHER
PURPOSES.**

Pursuant to the PCHB's October 30, 2001, Prehearing Order and CR 34(a)(2),
ACC requests that the Port permit ACC and its experts to enter upon Port property
for the purpose of "inspection and measuring, surveying, photographing, testing or
sampling the property." CR 34(a)(2).

AR 004807

1 **Scope of Request.** ACC requests that the Port permit ACC and its experts to
2 enter upon the portions of the Port property upon which the Port proposes to
3 construct the Third Runway and Related Projects as described in the October 25,
4 2000, JARPA application (as amended).
5

6 **Time, Place and Manner of Inspection.** ACC requests for itself and its
7 experts entry to the Port property on three dates between mid-December 2001 and
8 mid-January 2002. ACC will coordinate scheduling with its experts.

9 **Time for Response.** Pursuant to CR 34(b) you must serve a written response
10 to this request within 30 days after this request is served upon you. Space for your
11 response is provided below. If you object to this request, please provide sufficient
12 information regarding the basis for your objection to allow ACC to make a motion
13 to compel pursuant to Civil Rule 37.
14

15 **RESPONSE:**
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AR 004808

1 Request to permit entry upon land or property dated this 26th day of
2 November, 2001.

3 HELSELL FETTERMAN LLP

4 By: 
5

6 Peter J. Enck, WSBA No. 8809
7 Michael P. Witek, WSBA No. 26598
8 Attorneys for Appellant Airport
9 Communities Coalition

10 G:\LU\ACCPCHB\Discovery\CR34req for entry.doc

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AR 004809

ACC'S CR 34(a)(2) REQUEST FOR ENTRY
UPON PORT PROPERTY FOR INSPECTION
AND OTHER PURPOSES - 3

HELSELL
FETTERMAN
A Limited Liability Partnership

1500 PUGET SOUND PLAZA PO BOX 21846
SEATTLE, WA 98111-3846 PH: (206) 292-1144

1 SIGNED on behalf of Port of Seattle

2 By: _____
3 Signature

4 _____
5 Printed Name

6
7 STATE OF WASHINGTON)
8) ss:
9 COUNTY OF _____)

10 _____, being first duly sworn, on oath deposes
11 and says:

12 That _____ is the _____ for the
13 Respondent named herein, has read the request for entry upon Port property
14 contained herein and the answers and responses thereto; believes the response to
15 be true and correct; and has not interposed any objection for any improper purpose,
16 such as to harass or to cause unnecessary delay or needless increase in the cost of
17 litigation.

18 SUBSCRIBED AND SWORN to before me this _____ day of _____, 2001.

19 _____
20 NOTARY PUBLIC in and for the State of
21 Washington residing at _____
22 _____
23 My commission expires _____

24 _____, attorney for Port of Seattle, certifies that (s)he
25 has read the response and objection (if any) to the foregoing request for entry upon
Port property and, to the best of her/his knowledge, information, and belief formed
after a reasonable inquiry they are (1) consistent with these rules and warranted by
existing law or a good faith argument for the extension, modification, or reversal of
existing law; (2) not interposed for any improper purpose, such as to harass or to
cause unnecessary delay or needless increase in the cost of litigation; and (3) not

1 unreasonably or unduly burdensome or expensive, given the needs of the case, the
2 discovery already had in the case, the amount in controversy, and the importance
3 of the issues at stake in the litigation.

4 By: _____
5 (WSBA No. _____)
6 Attorney for Port of Seattle

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AR 004811

ACC'S CR 34(a)(2) REQUEST FOR ENTRY
UPON PORT PROPERTY FOR INSPECTION
AND OTHER PURPOSES - 5

**HELSELL
FETTERMAN**
A Limited Liability Partnership

1500 PUGET SOUND PLAZA P.O. BOX 21846
SEATTLE, WA 98111-3846 PH. (206) 292-1144

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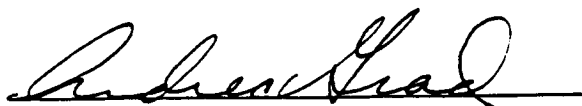
CERTIFICATE OF SERVICE

I hereby certify that I have on this 26th day of November, 2001, served ACC's CR 34(a)(2) Request for Entry Upon Port Property for Inspection and Other Purposes on the following persons, by legal messenger:

Jay J. Manning
Gillis E. Reavis
Marten & Brown LLP
1191 Second Avenue, Suite 2200
Seattle, WA 98101

Roger Pearce
Steven Jones
Foster Pepper & Shefelman
1111 Third Avenue, Suite 3400
Seattle, WA 98101

Linda J. Strout, General Counsel
Traci M. Goodwin, Senior Port Counsel
Port of Seattle, Legal Dept.
Pier 69
2711 Alaskan Way
Seattle, WA 98121


Andrea Grad

AR 004812

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HELSELL FETTERMAN LLP

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POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON

AIRPORT COMMUNITIES COALITION,

Appellant,

v.

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

Respondents.

) PCHB No. 01-160
)
) ACC'S CR 34(a)(2) REQUEST FOR
) ENTRY UPON PORT PROPERTY FOR
) INSPECTION AND OTHER PURPOSES
) AND RESPONSES AND OBJECTION
) OF RESPONDENT PORT OF SEATTLE

TO: PORT OF SEATTLE ("Port");

AND TO ITS COUNSEL: Jay Manning and Gillis Reavis, Marten Brown, Inc.;
Roger Pearce and Steven Jones, Foster Pepper & Shefelman;
Linda Strout and Traci Goodwin, Port of Seattle

REQUEST FOR ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES.

Pursuant to the PCHB's October 30, 2001, Prehearing Order and CR 34(a)(2), ACC requests that the Port permit ACC and its experts to enter upon Port property for the purpose of "inspection and measuring, surveying, photographing, testing or sampling the property." CR 34(a)(2).

Scope of Request. ACC requests that the Port permit ACC and its experts to enter upon the portions of the Port property upon which the Port proposes to construct the Third Runway and Related Projects as described in the October 25, 2000, JARPA application (as amended).

ACC'S CR 34(a)(2) REQUEST FOR ENTRY UPON PORT PROPERTY FOR INSPECTION AND OTHER PURPOSES AND RESPONSES AND OBJECTIONS OF RESPONDENT PORT OF SEATTLE - 1

FOSTER PEPPER & SHEFELMAN PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
206-447-4400

50296593.01

COPY

AR 004814

1 **Time, Place and Manner of Inspection.** ACC requests for itself and its experts entry to
2 the Port property on three dates between mid-December 2001 and mid-January 2002. ACC will
3 coordinate scheduling with its experts.

4 **Time for Response.** Pursuant to CR 34(b) you must serve a written response to this
5 request within 30 days after this request is served upon you. Space for your response is provided
6 below. If you object to this request, please provide sufficient information regarding the basis for
7 your objection to allow ACC to make a motion to compel pursuant to Civil Rule 37.

8 **RESPONSE:**

9 **OBJECTIONS:**

10 1. Respondent Port of Seattle ("Port") objects to the above request to the extent
11 it attempts to impose requirements beyond the Superior Court Civil Rules or the Prehearing
Order entered by the Pollution Control Hearings Board in this action.

12 2. The Port objects to the above request because it is vague and ambiguous,
13 overbroad and unduly burdensome.

14 3. The Port objects to the above request to the extent it seeks discovery not
15 relevant to this action and beyond the scope of CR 26. In particular, the scope of the present
16 appeal involves whether the Washington Department of Ecology had reasonable assurance
17 that the planned improvements requiring a §404 permit under the Clean Water Act will
conform to state water quality standards. ACC's request to test existing improvements at
the Port in an attempt to collaterally attack the Port's existing §402 permit for existing
permitted facilities is neither relevant to the present appeal nor permitted by controlling
law.

18 4. The Port objects to the above request because it fails to specify any reasonable
19 time, place and manner for the proposed inspection and fails completely to specify the items
20 to be inspected with any reasonable particularity. Even after repeated requests for
21 clarification by the Port of Seattle, ACC has failed to specify precisely who the persons are
22 that it wishes to have access to Seattle Tacoma International Airport property, precisely
23 where those persons want to go, what they want to test, and where they want to test.
24 Instead, ACC has merely stated that it wants all of its "experts" to come onto STIA and test
wetlands, dirt and water at the existing STIA operation, without specifying any locations or
25 rationale for the proposed inspections. This overbroad request does not conform to the
26 requirements of CR 34. The request is also unduly burdensome because STIA is a secure
facility and, particular after the events of September 11, 2001, security issues at STIA are of
paramount concern, especially in the area of the operational airfield, which is included in
the scope of ACC's request.

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Request to permit entry upon land or property dated this 26th day of November, 2001.

HELSELL FETTERMAN LLP

By: _____
Peter J. Eglick, WSBA No. 8809
Michael P. Witek, WSBA No. 26598
Attorneys for Appellant Airport Communities
Coalition

SIGNED on behalf of Port of Seattle

DATED this 24th day of December 2001.

PORT OF SEATTLE

Linda J. Strout, General Counsel, WSBA No. 9422
Traci M. Goodwin, Senior Port Counsel, WSBA No.
14974

FOSTER PEPPER & SHEFELMAN PLLC

Roger A. Pearce, WSBA No. 21113
Steven G. Jones, WSBA No. 19334

MARTEN & BROWN LLP

Jay J. Manning, WSBA No. 13579
Gillis E. Reavis, WSBA No. 21451

Attorneys for Port of Seattle

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OBJECTION: The verification or affidavit signature called for below is not required under either the Superior Court Civil Rules or the prehearing order governing the conduct of discovery in this action.

By: _____
Signature

Printed Name

STATE OF WASHINGTON)
COUNTY OF _____) ss.

_____, being first duly sworn, on oath deposes and says:

That _____ is the _____ for the Respondent named herein, has read the request for entry upon Port property contained herein and the answers and responses thereto; believes the response to be true and correct; and has not interposed any objection for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

_____ SUBSCRIBED AND SWORN to before me this _____ day of _____, 2001.

NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires _____

_____, attorney for Port of Seattle, certifies that (s)he has read the response and objection (if any) to the foregoing request for entry upon Port property and, to the best of her/his knowledge, information, and belief formed after a reasonable inquiry they are (1) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonably or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

By: _____
(WSBA No. _____)
Attorney for Port of Seattle

EXHIBIT C

AR 004818

Law Offices
HELSELL
FETTERMAN
A Limited Liability Partnership

December 12, 2001

Michael P. Witek
Attorney At Law

Mr. Steven G. Jones
Foster Pepper & Shefelman
1111 Third Ave., Suite 3400
Seattle, WA 98101

Re: PCHB No.01-160 Discovery Matters

Dear Steve:

We were surprised by the contentious tone in your December 10 letter, and disappointed that you did not bother to telephone before sending it. Scheduling depositions in this case is a complex mosaic, and we are doing our best to make it work for all concerned. Since the December 10 letter calls that into question, we are forced to offer a written response, below. Once you have read it, we suggest a conference call so that we can work constructively on the discovery schedule rather than on letters about it.

The letter's recitation of our efforts to schedule depositions omits reference to many of the exchanges that took place prior to our telephone conference on December 3, 2001, which was the first time ACC was provided notice of the dates you proposed for taking the depositions of ACC's witnesses. On November 14, 2001, during a telephone conference regarding agreed issues, we informed Ecology and Mr. Pearce that we intended to take the depositions of Ecology witnesses first, and that we would make every effort to do so in December. Mr. Pearce suggested that we have a telephone conference after Thanksgiving to discuss discovery issues and asked that we copy him on our e-mail list of proposed Ecology deponents.

On November 21, 2001, I sent an e-mail to Joan Marchioro, with a copy to both you and Mr. Pearce, listing the Ecology witnesses that ACC sought to depose and asking Ecology to provide dates for the availability of the requested deponents. On November 29, 2001, Ecology provided a list with only one possible date and time for most of the proposed deponents. Mr. Pearce was copied on the November 29, 2001, e-mail from Ecology. Upon receipt of this e-mail, I conferred with ACC's attorneys and experts to determine which proposed dates would work, and what alternate dates ACC could propose. On that same day, I sent an e-mail to you and Mr. Pearce, reminding you of the post-Thanksgiving conference Mr. Pearce suggested earlier. We have continued to work informally and cordially with Ecology to agree on deposition scheduling.

AR 004819

Mr. Steven G. Jones
December 12, 2001
Page 2

On Monday, December 3, 2001, we had a telephone discovery conference, with Mr. Stock and Mr. Reavis, to discuss discovery matters. In that conference you asked whether I had reviewed your letter dated November 30, 2001. I told you that we had not received any letter.¹ You then e-mailed to us the proposed dates for the depositions of ACC's experts. Thus, ACC's first notice of the dates proposed for the depositions of its experts was not until the afternoon of December 3, 2001, during our telephone conference. By that time, ACC was already scheduling alternative deposition dates for Ecology witnesses in response to the November 29, 2001, e-mail from Ecology. I copied you on my December 4, 2001, response to Ecology's proposed deposition dates. Some of the alternative dates, by happenstance, overlapped with the dates you proposed for the deposition of ACC's experts.

In light of this, it is unreasonable to assume that the Port's deposition dates, first proposed on December 3, 2001, would take priority and be inviolate. Similarly, the Port's unilateral issuance of deposition notices, without prior consultation with ACC, is unwarranted and not in keeping with the process that had been followed by the parties to date which the Presiding Officer admonished all parties to follow in discovery matters. We are making every effort to schedule depositions of ACC's experts, some of whom are out of state, and will provide you with available dates when they are known. This requires some cooperation on the Port's part as well. For example, we requested from the Port some time ago pursuant to CR 34 dates for site visits by our experts. In our December 3, 2001, telephone conference, you asked for a description of the activities proposed for a site visit. We are providing you with this information via e-mail today. However, knowing the activities proposed should have no bearing upon scheduling the visit and to date, no dates have been offered. It would be more convenient, and probably more informative for all the parties, to arrange those depositions for a time immediately after a site visit, which we have requested pursuant to CR 34. It would also be more convenient to do so for out-of-state experts who should not have to make the trip twice.

Enclosed with the December 10, 2001, letter were deposition notices and subpoenas duces tecum for various ACC witnesses. The scope of those subpoenas is overbroad. It is unreasonable, for example, to ask ACC witnesses to bring with them "all documents . . . reviewed (in full or in part) or drafted (in full or in part) that refer to, relate to, address or reflect the subject matter of the Port of Seattle's ("Port") Master

¹ The facsimile cover sheet accompanying your letter of November 30, 2001, was directed to John E. Ederer, another attorney at Helsell Fetterman who has nothing to do with the Third Runway case and who was out of the office. Mr. Ederer forwarded your letter to me on Friday, December 7, 2001, after he returned to the office. A copy of your facsimile cover sheet is attached.

AR 004820

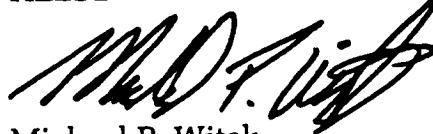
Mr. Steven G. Jones
December 12, 2001
Page 3

Plan Update." The overwhelming majority—if not all—of these materials are in the Port's possession and on the public record as well.

The subpoenas' demand for drafts is particularly inappropriate given the position the Port has already asserted with regard to draft documents in this matter. As you will recall, as a professional courtesy, counsel for ACC sent Mr. Pearce a letter informing him that pleadings and declarations he sent electronically on October 1, 2001, had Microsoft Word's "track changes" function enabled, showing the revisions to the Port's pleadings and the supporting declarations of its experts. Mr. Pearce responded with a letter on October 2, 2001, unequivocally stating that "the changes, of course, are privileged and/or protected work product. Please delete all of the electronic copies." A copy of Mr. Pearce's letter is attached. Consistent with Mr. Pearce's request, electronic copies were deleted, and no reference was made to the revisions in any ACC pleadings or correspondence with the PCHB. The Port's demand from ACC witnesses of the same types of materials which Port counsel has acknowledged "of course, are privileged and/or work product protected" is troubling. It should be withdrawn without further discussion. We look forward to conferring with you further about what materials should be available at depositions without unreasonable hardship to witnesses and the attorneys involved. We also look forward to speaking with you about the discovery (including deposition) schedule. Meanwhile, the Port should not assume that the documents transmitted with the December 10 letter establish any priority for deposition dates or for what items will be brought to depositions.

Sincerely,

HELSELL FETTERMAN LLP



Michael P. Witek

MPW:mpw
encs

cc: Joan M. Marchioro / Thomas J. Young / Jeff B. Kray w/encs
Linda Strout / Traci Goodwin w/encs
Jay J. Manning / Gillis E. Reavis w/encs
Rachael Paschal Osborn w/encs

GALU\ACC\PCHB\JONES121201

AR 004821

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AR 004822

Witek, Michael P.

From: Witek, Michael P.
Sent: Wednesday, December 12, 2001 1:25 PM
To: Steven G. Jones (E-mail)
Subject: Site Visit Activities

Dear Steve:

Per our discussion of December 3, 2001, here is a description of the types of activities ACC may pursue during the site visit requested in our November 26, 2001, CR 34 request for entry. We are providing this as a courtesy: there is no obligation to provide such detail in order to obtain a site inspection under the Rule. In any event, discussion of this description should not delay further the Port's response to our request for dates for the site visits, since these need to be coordinated with the deposition schedule.

Persons attending would include one or two client representatives, counsel, paralegal(s), and the experts identified in ACC's November 15, 2001, Witness List.

The site visit would include general inspection and observation including but not limited to the following activities.

Observe and photograph wetland complexes in the Master Plan area and in the Miller, Walker and Des Moines Creek watersheds, and take samples by hand auger.

Observe, photograph and take samples of the streams within the Master Plan area, including existing stormwater outfalls and discharge gauging stations, any stations downstream of Port outfalls and proposed locations for flow augmentation outfalls.

Observe and photograph the area proposed for construction of the embankment and MSE wall.

Observe, photograph and take samples of the stockpiled fill material and any areas cleared, graded or otherwise disturbed in anticipation of construction.

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AR 004824

Witek, Michael P.

From: Steven Jones [JonesS@foster.com]
Sent: Tuesday, December 18, 2001 10:29 AM
To: Witek, Michael P.
Cc: Traci Goodwin (E-mail); Roger Pearce; Gillis Reavis (E-mail)
Subject: RE: response to voicemail from earlier today

Mike, please give me a call as soon as you have completed your meeting so we can talk about the stipulation and remaining scheduling issues. I would like to patch Gil Reavis in on that call so we can talk about scheduling Tom Luster.

With respect to the site visit, we still need some more detail from you. You have not specified precisely who will be visiting. There are a number of security concerns that require that the Port know specifically who will be coming, specifically where they want to go and specifically what they want to do. I also need to know from you why you cannot rely on reports of stormwater or other samples that are routinely provided to Ecology. If there is a reason that you need to verify those sampling reports, or if you have a basis for contending that they are inaccurate, then please provide it to us. Please understand that we are not trying to deny you your legitimate discovery, but the Airport is a secured area, with security requirements mandated by the FAA. This is not a normal site visit to private property or a commercial business site.

-----Original Message-----

From: Witek, Michael P. [mailto:mwitek@helsell.com]
Sent: Monday, December 17, 2001 5:30 PM
To: Steven Jones
Subject: response to voicemail from earlier today

Steven:

my direct dial is 689-2137. email is mwitek@helsell.com. I go by Mike unless signing a letter or pleading.

I believe Andrea Grad sent an email to you earlier today proposing dates for most of the people referenced in your email. I am hopeful that we can schedule dates for others this week. I am meeting with the other ACC attorneys tomorrow at 10:00am and will get back to you on the stipulation after the meeting. Also, we are very interested in getting dates for site visits.

thanks,

Mike

AR 004825

1/17/02

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AR 004826

Witek, Michael P.

From: Steven Jones [JoneS@foster.com]
Sent: Friday, December 28, 2001 4:14 PM
To: Witek, Michael P.
Cc: Traci Goodwin (E-mail); Elizabeth Leavitt (E-mail); Roger Pearce; Gillis Reavis (E-mail)
Subject: Response to your message on site visit

Mike:

I am writing in response to your voice-mail of this afternoon regarding ACC's request for a site visit to Sea-Tac International. I think that your suggestion that we try to establish any points of agreement between the Port and ACC with respect to a site visit by your clients and experts is a good one. Accordingly, Roger Pearce and I have been in contact with officials at the Port today regarding the security issues and other constraints that would be applicable to any site visit. I have outlined them below:

First, the Port needs to know specifically who will be visiting. Security at the airport requires that all persons must be escorted. This means that the group be of a manageable size (e.g. 4-5 people). Your generic request that all of ACC's experts, some attorneys and client representatives is unreasonable.

Second, we need to know specifically where ACC wishes to go. The Port must notify any contractors who are working in an area of a site visit, so that appropriate hold harmless provisions can be executed. Appropriate hold harmless agreements will also be required from those ACC representatives (or experts) undertaking the site visit.

Third, if sampling is to be conducted, the Port needs to have an appropriate expert there to review any sampling or to conduct its own sampling as a control. I have been informed that on a previous occasion, Port and ACC representatives split samples so as to avoid conflicts over sampling protocols or sampling techniques. We believe this is a good approach and would offer that as an option that is acceptable to the Port.

Fourth, we need to know specifically what ACC wishes to sample or photograph. This will allow us to arrange for appropriate Port personnel to accompany any site visit and assure that appropriate releases are obtained from contractors.

Finally, the Port will not allow access onto the airfield. This is not reasonable given the impact to airport operations that this would entail.

Within those parameters, we would be happy to discuss any reasonable requests for a site visit by ACC experts or representatives. Both Roger and I will be here on Monday (I will be here until 12:00 -- Roger will be here in the afternoon). We will not be in on Tuesday, but will be available on Wednesday, January 2. Please let me know when you would like to schedule a call on these issues.

AR 004827

Steven G. Jones

Foster Pepper & Shefelman PLLC
1111 Third Avenue, Suite 3400
Seattle, WA 98101

Direct phone: 206-447-8902
Direct fax: 206-749-1962
Mobile: 206-226-2897

E-mail: jones@foster.com
Web: www.foster.com

AR 004828

1/17/02

EXHIBIT G

AR 004829

Witek, Michael P.

From: Grad, Andrea E.
Sent: Tuesday, January 15, 2002 10:54 AM
To: Eglick, Peter J.; Stock, Kevin L.; Witek, Michael P.
Cc: Isaacson, Michelle L.
Subject: FW: PDA request re: documents required for access to Port property

-----Original Message-----

From: Kenny, Ann [mailto:AKEN461@ECY.WA.GOV]
Sent: Tuesday, January 15, 2002 10:52 AM
To: Grad, Andrea E.
Subject: FW: PDA request re: documents required for access to Port property

-----Original Message-----

From: Thompson, Rod
Sent: Friday, January 11, 2002 8:26 AM
To: Kenny, Ann
Subject: RE: PDA request re: documents required for access to Port property

I have only been to the Port, and Third Runway, one time and that was with you and Ed just before Christmas. I have only been allowed access via the company of Port personnel. I do not have any, nor have I signed or reviewed any, documents that were required by the Port of Seattle to execute prior to being allowed access to the area proposed for construction of the third runway project. No documents were withheld due to a claimed exemption.

Rod Thompson
Water Quality Program
NWRO, Department of Ecology
3190 - 160th Ave SE, Bellevue, WA 98008-5452
Ph: 425-649-7133, Fx: 425-649-7098
rtho461@ecy.wa.gov

-----Original Message-----

From: Kenny, Ann
Sent: Thursday, January 10, 2002 12:26 PM
To: Abbasi, Ed; Thompson, Rod; Devitt, Ron; Wang, Ching-Pi; Drabek, John
Cc: Hellwig, Raymond
Subject: FW: PDA request re: documents required for access to Port property

Do any of you have any documents responsive to this request?

Have any of you been allowed unrestricted access to Port property or are you always accompanied by Port staff?

Thanks.

Ann

-----Original Message-----

From: Grad, Andrea E. [mailto:agrad@helsell.com]
Sent: Thursday, January 10, 2002 11:27 AM
To: Kenny, Ann
Cc: Perkins, Sally; Wright, Sarah (ECY)
Subject: PDA request re: documents required for access to Port property

Pursuant to the Public Disclosure Act and O'Connor vs. Washington State Dept. of Social & Health Services, Washington Supreme Court Case No. 69177-1 (June 21, 2001), please provide us with copies of any and all documents Ecology personnel have been required by the Port of Seattle to execute prior to being allowed access to the area proposed for construction of the third runway project.

If any documents are withheld due to a claimed exemption, please provide a log of such documents in accordance with the Act.

Thank you in advance for your assistance. Please call me when the documents are ready to be picked up. If you have any questions about this request, please let me know.

Sincerely,

Andrea Grad
Paralegal
Helsell Fetterman
Tel. (206) 292-1144
agrad@helsell.com

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AR 004832

DEPOSITION UPON ORAL
EXAMINATION OF

Kevin Fitzpatrick

Date: January 16, 2002

Case: ACC v. State of WA, et al.

Diane Mills, CCR, RMR, CRR
Yamaguchi Obien & Mangio

Phone: (206) 622-6875
Fax: (206) 343-4110
Email: dmills@yomreporting.com
Internet: yomreporting.com

AR 004833

1 CONTINUING EXAMINATION

2

3 BY MR. POULIN:

4 Q. It's 1:06. Let's recap one or two matters.
5 Before we get into that, have you ever done a site
6 visit at the Seattle-Tacoma International Airport?

7 A. Yes.

8 Q. How many times have you done site visits?

9 A. I'd have to say over the years, six to eight
10 times.

11 Q. Six to eight times?

12 A. Uh-huh.

13 Q. Let's say in the past two years, how many
14 site visits?

15 A. In the past two years, I believe it's been
16 three times.

17 Q. What were the circumstances of those visits?

18 A. I believe the circumstance of one of the
19 visits was to show our deputy director the types of
20 sediment erosion control facilities that the Port of
21 Seattle had in place for some of their construction
22 activities.

23 The other was to follow up on a complaint
24 that we had received about one of the construction
25 activities. I think the other was to follow up on a

1 concern that a citizen had. Brett Fish was the citizen
2 who had a concern about what he was observing as
3 presporum mortalities in Miller Creek. And so while I
4 was visiting with him, I also did a drive-by inspection
5 of some of the construction activities at the Port of
6 Seattle.

7 Q. Where were those construction activities or
8 which construction sites did you visit?

9 A. The construction sites that we visited for --
10 the most recent visit with our deputy director were in
11 and around the developing embankment area and also in
12 and around the interchange construction on State Route
13 509.

14 Q. Has the Port ever placed any restrictions on
15 your access to any part of the airport grounds or
16 facility?

17 A. The only restrictions we have is because of
18 the security nature that the Port has, but we've never
19 been denied access to areas that we wanted to have
20 access to.

21 Q. What were those security conditions that you
22 recall?

23 A. We have to check in with Port personnel and
24 be accompanied onto the secure areas of the facility.

25 Q. So did they identify -- verify your

1 identification, make sure you were Kevin Fitzpatrick?
2 Is that one of the things?

3 A. Yes.

4 Q. And did you have an escort from the Port
5 throughout your visit?

6 A. Yeah. There's certain areas of the Port
7 where escort's required, certain parts of the facility
8 where an escort's required.

9 Q. And how did it work -- how did you move about
10 the facility physically? Did you use your own vehicles
11 or did the Port provide a vehicle?

12 A. It's been different on different occasions.
13 At times we have followed in our own vehicle.

14 Q. Followed the Port?

15 A. Yeah. And at other times we've gone in a
16 Port vehicle for convenience.

17 Q. What was the group size that you had? Well,
18 I guess you said you had six to eight different visits.
19 What was the largest entourage or group you ever did a
20 site visit with?

21 A. Are you referring to the number from
22 Department of Ecology?

23 Q. The total number of people present.

24 A. Both Port personnel and Ecology personnel?

25 Q. Yes.

1 A. And I should say, and Port consultants?

2 Q. Yes.

3 A. The largest number I can recall is all total,
4 I think there were about ten of us.

5 Q. And excluding Port and its personnel and
6 consultants, what was the largest group of non-Port
7 people that you did a site visit with?

8 A. What do you mean by non-Port people?

9 Q. Everyone other than Port staff employees or
10 consultants.

11 A. Are you referring to the largest number of
12 Ecology personnel?

13 Q. Well, you could tell me the largest number of
14 Ecology personnel. I would also be interested to hear
15 Ecology plus. If you had other people with you that
16 were not Ecology people, I'd like to get their numbers.

17 A. Well, I guess exclusive of Ecology
18 personnel -- I'm sorry, if you're talking about the
19 largest group of Ecology personnel, I think including
20 myself that would number about four.

21 Q. And if you expanded that to include people
22 that were not Ecology?

23 A. I don't ever recall being on an inspection
24 where we had folks from other agencies other than Port
25 of Seattle or Port of Seattle and its consultants. I

1 just don't recall right now.

2 Q. Did you ever do a site visit with King County
3 personnel?

4 A. Well, I'm including in that group King County
5 personnel because the King County person who was along
6 with us -- I should say one of the King County persons
7 was not under contract to Ecology, so I guess that
8 would be one King County person.

9 When I was talking about Ecology personnel
10 before, and here I'm referring specifically to Kelly
11 Whiting because Kelly was under contract to Department
12 of Ecology, I considered him Ecology personnel even
13 though he works for King County.

14 Q. So on the site visit when Kelly Whiting
15 accompanied you, there were no more than four non-Port
16 people, as you recall?

17 A. As I recall.

18 Q. Did the Port ever place any restrictions on
19 where you could go?

20 A. No.

21 Q. Did they require any background checks?

22 A. They required that we submit our ID and then,
23 you know, when we -- especially when we were in secure
24 areas of the airport, we had to have the necessary
25 badges to show that we were being accompanied by Port

1 personnel into those areas.

2 Q. Did the Port require the Department to
3 identify in advance where it would be going?

4 A. No.

5 Q. And did it require Ecology to identify in
6 advance who would be among the Ecology group?

7 A. No, I don't recall doing that in advance, you
8 know. They may have asked what number of people are
9 coming from Ecology so that they could make vehicle
10 arrangements, but I don't recall where we had to
11 identify them by name who was coming.

12 Q. Who is the deputy director that you
13 mentioned?

14 A. Linda Hoffman.

15 Q. And what's she a deputy director of?

16 A. She's deputy director of the Department of
17 Ecology.

18 Q. How many deputy directors does Ecology have?

19 A. One.

20 Q. Just one?

21 A. Yeah.

22 Q. So she's an assistant to Director
23 Fitzsimmons?

24 A. Yes.

25 Q. And what prompted her visit?

AR 004841

EXHIBIT

AR 004841

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POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON

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4 AIRPORT COMMUNITIES COALITION,)
5 Appellant,)
6 vs.) PCHB No. 01-160
7 STATE OF WASHINGTON,)
8 DEPARTMENT OF ECOLOGY; and)
9 THE PORT OF SEATTLE,)
10 Respondents.)
11

12 EXCERPT TO THE DEPOSITION UPON ORAL EXAMINATION

13 OF

14 GORDON WHITE

15
16 10:05 A.M.

17 JANUARY 16, 2002

18 2425 BRISTOL COURT SW

19 SECOND FLOOR

20 OLYMPIA, WASHINGTON
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25 CARLA R. WALLAT, CRR, RPR, CCR #WALLACR346BE

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A P P E A R A N C E S

FOR THE AIRPORT COMMUNITIES COALITION:

KEVIN L. STOCK
Attorney at Law
Helsell Fetterman
1325 Fourth Avenue, Suite 1500
Seattle, Washington 98111-3846

FOR THE DEPARTMENT OF ECOLOGY:

JOAN MARCHIORO
Attorney at Law
Assistant Attorney General
2425 Bristol Court SW, 2nd Floor
P.O. Box 40117
Olympia, Washington 98504-0117

FOR THE PORT OF SEATTLE:

TANYA BARNETT
Marten Brown
421 South Capitol Way, Suite 303
Olympia, Washington 98501

ALSO PRESENT: NONE

1 OLYMPIA, WASHINGTON; JANUARY 16, 2002

2 10:05 A.M.

3 --oOo--

4
5 GORDON WHITE,
6 sworn as a witness by the Notary
7 Public, testified as follows:

8
9 (Beginning of excerpt.)

10

11

EXAMINATION

12

13 BY MR. STOCK:

14 Q. Prior to signing the August 10 401
15 Certification, had you met with anyone from the Port of
16 Seattle with respect to the reasonable assurance
17 decision?

18 A. I met with Port officials. I'm not sure of
19 the date. We -- it was an on site visit so I could
20 see -- I wanted to see the footprint. I had been there
21 before, probably a year, a year and a half before that,
22 but that was -- you know, I'm not sure when that
23 meeting was. I'm sorry, I can't recall it.

24 Q. In July of 2001?

25 A. That rings a bell in terms of a time -- the

1 timing. It would be -- it was certainly a month prior
2 to my -- or, you know, 20 to 30 days prior to the
3 decision, that's how it feels like, or my recollection.

4 Q. So you wanted to see the footprint of the
5 project site before you signed the 401 Certification?

6 A. Before I made up my mind.

7 Q. Made up your mind with respect to what?

8 A. We had internally discussed -- the
9 application was before us, we were lining out, okay,
10 here are the different issues we have to think about,
11 make determinations on. I was meeting with the panel
12 of experts or the group of experts within Ecology who
13 were studying those issues, reviewing the documents and
14 I -- so as part of that process, we went to visit the
15 site and look at it to get a feel for the physical
16 dimensions and --

17 Q. My question is why did you want to see the
18 footprint of the project site before you made up your
19 mind?

20 A. So I could see what wetlands were being
21 impacted, what streams were being impacted and see the
22 things that I was seeing on maps and in descriptions,
23 written descriptions, and things that were being
24 discussed and described to me by the Ecology experts so
25 I could see it firsthand.

1 Q. Were you accompanied by Port personnel on
2 this site visit?

3 A. Yes, I was.

4 Q. Who accompanied you?

5 A. I don't remember all the names of the people
6 who were there, but I'll tell you who I remember being
7 there.

8 Now I can't remember, I'm sorry, but I will
9 remember them.

10 Q. How many people went on this site visit?

11 A. There were, oh, ten.

12 Q. How many from Ecology?

13 A. Three or four people from Ecology, five or
14 six from the Port of Seattle. They had their
15 stormwater lead person there.

16 Q. This was in addition to people from the Port
17 of Seattle?

18 A. I'm including them in the group, whether they
19 were a Port employee or a consultant. There were four
20 or five people from the Port of Seattle.

21 Q. How did you get around the site?

22 A. In a van.

23 Q. Were you all in the same van?

24 A. I think it was just one van, yes.

25 Q. Driven by Port personnel?

1 A. Yes.

2 Q. Did you get to go where you wanted to go?

3 A. Every place I asked to go I was able to go.

4 Q. So you got to see what you wanted to see?

5 A. Yes.

6 Q. Did you have to sign any paperwork before you
7 went?

8 A. I can't remember. I don't remember. There
9 may have been something we signed, signing in. I know
10 there was a lot of security in terms of going to
11 different gates and had to be very careful.

12 Q. Other than signing a visitor's sheet, was
13 there any other paperwork that you had to sign?

14 A. I don't think so.

15 MS. MARCHIORO: Are you going to stay on this
16 subject or are you going to move to another one?

17 MR. STOCK: We can take a break.

18 (Recess taken.)

19 (End of excerpt.)

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1 REPORTER'S CERTIFICATE

2
3 I, CARLA R. WALLAT, the undersigned Certified Court
4 Reporter and Notary Public, do hereby certify:

5 That the testimony and/or proceedings, a transcript
6 of which is attached, was given before me at the time
7 and place stated therein; that any and/or all
8 witness(es) were by me duly sworn to tell the truth;
9 that the sworn testimony and/or proceedings were by me
10 stenographically recorded and transcribed under my
11 supervision, to the best of my ability; that the
12 foregoing transcript contains a full, true, and
13 accurate record of all the sworn testimony and/or
14 proceedings given and occurring at the time and place
15 stated in the transcript; that I am in no way related
16 to any party to the matter, nor to any counsel, nor do
17 I have any financial interest in the event of the
18 cause.

19 WITNESS MY HAND AND SEAL this 16th day of
20 January 2002.

21
22 CARLA R. WALLAT, RPR, CRR, CCR #WALLACR346BE
23 Notary Public in and for the State
24 of Washington, residing in King
25 County. Commission expires 1/17/06.

Law Offices
HELSELL
FETTERMAN
A Limited Liability Partnership

January 8, 2002

Michael P. Witek
Attorney At Law

Sent via FAX and Mail

Mr. Steven G. Jones
Foster Pepper & Shefelman
1111 Third Ave., Suite 3400
Seattle, WA 98101

Re: PCHB No. 01-160
CR 34 Request for Entry (Site Visits)

Dear Steven:

This is in response to your letter of January 4, 2001, regarding ACC's CR 34 Request for Entry. We had hoped that our telephone conference on January 3, 2002, would have resulted in progress on this request. Instead, the January 4 letter reflects that the conference was used as a springboard for letter writing rather than problem solving.

Worse yet, the letter continues the Port's pattern of adding new conditions to make the site visit goal unattainable, and materially distorts some points ACC made in explaining how the site visit ought to be conducted while overlooking others. And, despite our repeated requests, the Port still has not offered any dates when such site visits by our experts could occur, despite our repeated requests in writing and by phone, in light of the substantial lead time necessary to schedule experts for such activities. It therefore appears likely that this dispute over the Request for Entry will impact the discovery schedule, including the schedule for deposition of our experts and possibly the hearing schedule in this matter. This appears especially likely in light of your January 7 telephone call which offered no solutions - and no dates - and instead essentially encouraged ACC to file a Motion to Compel before the Board.

We have requested, beginning with my email of December 12, 2001, my email of December 27, 2001, and in our telephone conferences of December 12, 2001, and January 3, 2002, that the Port immediately provide three dates for site visits, so that we can begin to make scheduling arrangements with our experts while negotiations on the terms of the visits continue. Now, in light of the Port's obstructionism ACC's experts have not had the opportunity to inspect the site. The Port should not expect to depose any of ACC's experts prior to resolution of the dispute over the Request for Entry. As we have explained numerous times, it makes little sense for the Port to depose ACC's experts prior to a site visit and it would put ACC's experts at an unfair disadvantage to depose them prior to such a visit. We hope, however, that the Port

AR 004850

will reconsider its position and avoid unnecessary discovery disputes and consequent delay in the proceeding. Meanwhile, in light of your call on January 7, which asserted that the Port would be unwilling to further change its position, ACC will likely be forced to bring the matter before the Board.

To assist the Port in reconsidering its position, we offer below partial responses to the five apparently nonnegotiable "conditions" demanded in your letter as bases under which the Port will comply with the discovery rules concerning entry:

1. Who Will Attend. As we have stated a number of times, ACC is requesting that the experts identified in its November 15, 2001 witness list, the ACC attorneys and our paralegal, Ms. Grad, and two client representatives from the ACC be permitted on the site. As we discussed on the phone on January 3, 2002, you know the specific names of all persons that will attend, with the exception of the client representatives, and we can provide you with the two additional names shortly after we know the dates for the site visits. This is not an extraordinary number of persons: we understand that the Port has in fact offered site visits specifically in connection with the Third Runway project for far larger groups. As we stated in our telephone conference of January 3, 2002, ACC is willing to work with the Port in organizing the visits into smaller groups if the Port thinks it is necessary although we understand that the Port has previously conducted site visits using a bus. Of course, we will know more about what the group sizes will be after the Port proposes three dates for site visits and we poll our experts for their availability.

2. Where ACC Wishes To Go. As we have stated, ACC is requesting the same access that was provided to the Department of Ecology, as well as to other agencies and entities. For example, during her deposition, Ecology's Ms. Kenny testified that she has been to the site at least three times, including one visit with counsel for Ecology and the Port, which extended to any and all portions of the site. Please consider the following exchange between Ms. Kenny and Mr. Stock during the December 20, 2001, deposition:

Q. But prior to going to the site visit you didn't go through any sort of security clearance?

A. No, no.

Q. Or give your social security number or anything like that?

A. I don't believe so.

Q. Were you required to do anything in advance of these site visits?

A. No.

Q. Where you allowed to see whatever you wanted to see?

A. Yes.

Q. Were you always escorted?

A. Yes.

Q. By a Port person, I'm talking about?

A. Right. We went in Port vehicles and they drove, primary consideration there being sure that you don't cross the pathway of a jet that's taking off or landing.

Q. Sure. Other than that, though, there weren't any restrictions on where you could go or what you could see?

A. No, it was whatever we wanted to go. We'd stop, We'd get out, we'd look around. Whatever we wanted to do was fine.

Q. So if you wanted to see a particular outfall, you told them and you were taken there?

A. Yeah, we went, that's correct.

See, Deposition Transcript of Ann Kenny, December 20, 2001, pages 59-61.

ACC is agreeable to having its site visit parties escorted by Port personnel and is asking for the same access provided to Ecology and others.

Your letter of January 4, 2002, makes a demand that all those visiting the site sign a "hold harmless agreement" a copy of which has not been provided in any event. This demand well illustrates the Port tactic of progressively placing new obstacles in the way of agreement on a site visit even while ACC attempts to address older ones. No mention was made of any need for a hold harmless agreement in any of the Port's correspondence, or in our telephone conferences, or even in the Port's formal objection to the Request for Entry, dated December 24, 2001. In fact, it was not until your email of December 28, 2001, that the Port first insisted that any hold harmless agreement would be required. The PCHB has not been required to sign a hold

harmless agreement for its site visit nor was Ecology for its visits, nor were others not associated with the PCHB case. In our discussion you also were unable to tell us that you signed such an agreement prior to going on the site. Rather, it appears that this requirement is merely another obstacle generated late in the discussion by the Port in order to keep ACC experts off the site.

3. Sampling. Again, this is another issue the Port did not raise until late in the game, even after the Port's December 24, 2001, Objection to ACC's Request for Entry and even though we specifically informed you of the sampling ACC seeks to perform at the site in my email to you of December 12, 2001. You have requested that we agree to "split samples." Rather than take weeks to work out the appropriate protocols for such split samples, the simple solution seems to be for ACC to allow the Port's experts to take their own samples at the same time and at the same location as ACC's experts take samples during the site visits. The specific sampling protocols that ACC's experts may choose to employ to collect samples at the site may be the proper basis for questions during depositions, but it is not a legitimate objection to deny access to the site.

4. What ACC Wishes To Photograph Or Sample. As we have stated, for example, in our email to you on December 12, 2001, ACC and its experts want to observe and photograph wetland complexes in the Master Plan area and in the Miller, Walker and Des Moines Creek watersheds, and take samples by hand auger; observe, photograph and take samples of the streams within the Master Plan area, including existing stormwater outfalls and discharge gauging stations, any stations downstream of Port outfalls and proposed locations for flow augmentation outfalls; observe and photograph the area proposed for construction of the embankment and MSE wall; and observe, photograph and take samples of the stockpiled fill material and any areas cleared, graded or otherwise disturbed in anticipation of construction. ACC cannot reasonably be expected to be more specific than this, particularly given that ACC's experts have not yet been given access to the site. What the Port has **not** credibly explained is why this explanation does not suffice.

5. Access To Airfield. As we have discussed, ACC is **not** requesting access onto the airfield itself. The statement in the January 4, 2002, letter that "this is not reasonable given the impact to airport operations that this would entail" therefore makes no sense except in the context of the Port's resort to any excuse, however farfetched, to deny access to ACC.

We hope that the Port will reconsider its position on ACC's Request for Entry. However, as stated above, unless the Port agrees to provide entry without the current

Mr. Steven G. Jones
January 8, 2002
Page 5

preconditions and provides the requested dates by the close of business on January 8, 2002, we will pursue our remedies and meanwhile will not make ACC experts available for deposition.

Sincerely,

HELSELL FETTERMAN LLP



Michael P. Witek

MPW:mpw

cc: Jay J. Manning / Gillis E. Reavis
Joan M. Marchioro / Thomas J. Young / Jeff B. Kray
Linda Strout / Traci Goodwin
Richard A. Poulin
Rachel Paschal Osborn

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FOSTER PEPPER & SHEFELMAN PLLC

ATTORNEYS AT LAW



1111 THIRD AVENUE, SUITE 3400
 SEATTLE, WA 98101
 FAX: (206) 447-9700
 PHONE: (206) 447-4400

FACSIMILE TRANSMITTAL SHEET

January 16, 2002

| TO: | FAX NUMBER: | VOICE CONTACT: | VOICE CONFIRM: |
|----------------------|----------------|----------------|---|
| Mr. Mike Witek | 340-0902 | 292-1144 | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| Mr. Gillis E. Reavis | (206) 292-6301 | (206) 292-6300 | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| Ms. Traci M. Goodwin | (206) 728-3205 | (206) 728-3212 | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |

From: Steven Jones
 Direct Dial: (206) 447-8902
 Direct Return Fax: (206) 447-9700

Number of Pages (Including this cover page): 4

User & Client/Matter Number: 487 7155-24

Return to/Location: 34-15

Message:

AR 004856

**IF YOU HAVE QUESTIONS REGARDING THE TRANSMISSION OF THIS FAX,
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THE INFORMATION CONTAINED IN THIS FACSIMILE COMMUNICATION IS PRIVILEGED AND/OR CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF EACH INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS COVER PAGE IS NOT AN INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION OR THE INFORMATION CONTAINED IN THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE AND RETURN THIS FACSIMILE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

FOSTER PEPPER & SHEFELMAN PLLC
ATTORNEYS AT LAW



Direct Phone
(206) 447-8902

Direct Facsimile
(206) 749-1962

E-Mail
JoneS@foster.com

January 16, 2002

VIA FACSIMILE

Mr. Michael P. Witek
Helsell Fetterman
1500 Puget Sound Plaza
1325 Fourth Avenue
Seattle, WA 98101-2509

Re: Port of Seattle's Offer On Site Visit

Dear Mike:

I am writing as a follow-up to the exchange of correspondence and the parties' cross-motions with respect to ACC's requested site visit. The Port would like to narrow the issues that need to be resolved by the Board as much as is practicable. In an attempt to do so, the Port proposes the following parameters for a site visit by ACC representatives, counsel and witnesses:

1. Attendees

The Port will agree to all 17 persons that ACC has requested visit the site, consistent with the conditions outlined in this letter. The Port has a van that will seat approximately 10 adults. We believe that ACC's representatives and accompanying Port personnel and consultants can be accommodated in two separate site visits. For efficiency, we would suggest that the wetlands experts be grouped together in one group and the water quality experts in another group.

2. Dates and Duration of Visit

We propose that the site visits take place on Friday January 25 and Monday January 28, 2002. Tuesday January 22 would also be feasible if we get resolution prior to that date. Each site visit will last three to four hours. These dates should give ACC sufficient time to prepare, but we request the ACC to suggest alternate dates.

1111 THIRD
AVENUE
SUITE 3400
SEATTLE
WASHINGTON
98101-3499

Telephone
(206) 447-4400
Facsimile
(206) 447-9700
Website
WWW.FOSTER.COM

ANCHORAGE
Alaska

PORTLAND
Oregon

SEATTLE
Washington

SPOKANE
Washington

Mr. Michael P. Witek
January 16, 2002
Page 2

3. Locations Visited

The Port proposes that the same route that was used for Ecology personnel and other public officials that ACC has referred to in its correspondence regarding the site visit. This route encompasses portions of the wetlands on site, Miller Creek, the embankment area and areas where fill material has been stockpiled. It does not encompass the airfield, which we understand is not within the scope of ACC's site visit request in any event. We will forward a map to you showing the proposed route.

4. Photographs

The Port would agree that ACC representatives, counsel or experts were free to take photographs of any portion of the Port's property or facilities during the site visit.

5. Observance of Outfalls

The Port will accommodate requests by those on the site visit to go to any stormwater outfall that is not located within the secured area of the Airport.

6. Sampling

The Port reiterates its offer to split samples with ACC, pursuant to an agreed sampling protocol.

7. Hold Harmless Agreements

The Port has recently established an owner controlled insurance program (OCIP). Under those insurance arrangements, it is generally necessary for any person going on to a contractor-controlled work site to sign a release and hold harmless. This applies to Port personnel as well as to other individuals, but does not apply to those portions of the site that are not contractor controlled (i.e., sites that are not active construction sites).

We hope that this letter can form a framework within which an agreement can be worked out that narrows the range of issues that require resolution by the Board. After you have reviewed this letter, please get back to me at your earliest convenience so that we can discuss these issues.

AR 004858

Mr. Michael P. Witek
January 16, 2002
Page 3

Sincerely,

FOSTER PEPPER & SHEFELMAN PLLC



Steven G. Jones

Attachment

cc: Traci Goodwin
Roger Pearce
Gillis Reavis

EXHIBIT

AR 004860

Law Offices
HELSELL
FETTERMAN
A Limited Liability Partnership

January 17, 2002

Kevin L. Stock
Attorney At Law

Sent via Fax

Mr. Steven G. Jones
Foster Pepper & Shefelman
1111 Third Ave., Suite 3400
Seattle, WA 98101

Re: ACC v. DOE, Port of Seattle, PCHB No. 01-160

Dear ~~Mr. Jones~~^{Steve}:

This is in response to your letter to Mike Witek dated January 16, 2002. We are pleased that the Port now acknowledges that many of its prior positions on the site visit were untenable. However, the letter still asserts old preconditions and imposes new ones which must be addressed to make the Port's offer of access something more than illusory:

- i) **Limits on Personnel.** We are pleased that the Port now agrees that site visits need not be limited to only four or five persons. As for who goes on what date, that will have to depend on scheduling as well as the discretion of ACC's counsel.
- ii) **Dates.** In a letter received on the afternoon of January 16, 2002, the Port proposes site visits on January 25 and January 28. This leaves precious little lead time for scheduling our experts. We are sure you can understand this concern: we have already received today two phone calls from offices of Port experts who were apparently directed by someone at your firm to call and complain about the depositions which we noted for them, with more lead time than the Port has offered for site access. Our original suggestion two months ago was for three dates to ensure that an expert who could not make one date, could make the other - particularly a concern with out-of-town experts. Contingent upon our reaching agreement on the other issues or the matters being resolved by the Board, we will poll our experts to determine who might be available to participate in a site visit on January 28. We suggest that the Port also look at and propose dates in February. We can make inquiries for the same.

AR 004861

- iii) **Locations visited.** The deposition testimony of Ecology personnel has indicated that there is not a set route as your letter suggests and that, particularly for those involved in the 401 decision, they were permitted to go anywhere and see anything they wanted to see. We're certainly willing to take a look at the Port's maps of a proposed route when you send it (none was included with your letter). Until then, we cannot comment further. Of course, it would have to be understood that ACC could stop, inspect, observe, etc. at any location along the way (of course, with the exception of locations on the airfield itself) and to go off of the route if one of ACC's experts was unable to observe or sample an area that was of interest to the expert. We also want to make clear that if both Port counsel and experts attend the site visit, ground rules will need to be established regarding communications between counsel and opposing party experts.
- iv) **Photographs.** The Port's "agreement" to allow photographs, as it must under CR 34, is noted.
- v) **Observance of outfalls.** The Port's limitation of the site visit "to any stormwater outfall that is not located within the secured area of the Airport" is unclear. Absent a definition of secured area, it is not clear what exactly the Port is offering and what it is restricting, and whether these restrictions are consistent with the access provided, for example, to the Department of Ecology.
- vi) **Sampling.** The Port's "offer" to allow ACC to take samples only if ACC agrees to split them and agrees in advance on a sampling protocol is an invitation to more delay. It would require negotiations to agree on the protocol and on how samples would be taken and split. There has already been delay enough in arranging the site visit. CR 34 and the case law both authorize independent sampling. If the Port has questions about how it was conducted, it may pursue them through discovery (e.g. depositions). That is just one (but not the only) reason that we have consistently noted that site visits need to occur before depositions. Particularly in light of the Port's concern about the passage of time, we suggest once again that the Port reconsider.
- vii) **Hold Harmless Agreements.** The letter re-raises the Port's demand for execution by all site visit attendees of a release and hold harmless agreement. For the first time, it cites a "recently established . . . owner

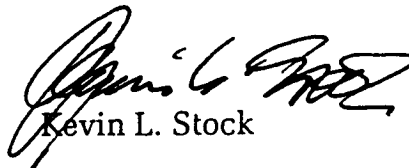
Mr. Steven G. Jones
January 17, 2002
Page 3

controlled insurance program (OCIP)" as prompting this precondition. Yet, although we have asked for it before, the Port has still not provided a review copy of the document. Ecology staff have indicated that they were on the site without the need to execute such an agreement less than a month ago. Further, the demand for execution of such agreement will inevitably cause delay and raise problems, since each expert and other person going on site will have to consult their own legal counsel about whether execution of such a "release and hold harmless" is appropriate. ACC will also have to review such a "release and hold harmless" to determine whether or not it is appropriate under the circumstances or seeks to give the Port some advantage in the litigation or otherwise. The persistent failure of the Port to provide a copy for review, after weeks of asserting that execution of such an agreement is necessary, suggests that the release and hold harmless may not even exist and that assertion of the need for it is unique as to ACC.

In light of the disruption of the discovery schedule we've already experienced and the outstanding fundamental issues (lead time for scheduling, location/route, "secured area" outfalls, sampling, and release/hold harmless), it is clear that the Board will still need to address the pending motions, particularly those with regard to the case schedule. These are not mentioned in the Port's letter. Still, we appreciate the Port's belated communication suggesting that it has started to realize that its position refusing site access has been untenable.

Very truly yours,

HELSELL FETTERMAN LLP



Kevin L. Stock

cc: Jay J. Manning / Gillis E. Reavis
Joan M. Marchioro / Thomas J. Young / Jeff B. Kray
Linda Strout / Traci Goodwin

EXHIBIT

AR 004864

Kenny, Ann

From: Kenny, Ann
Sent: Monday, August 06, 2001 4:43 PM
To: 'Keith Smith'; 'Elizabeth Leavitt'; 'Paul Fendt'; 'Wendy Clement'; 'Michael Cheyne'
Subject: FW: Sea-Tac Third Runway: Comments on Port of Seattle's New Low Streamflow Analysis by Dr. John Strand



Strand-080601-lowf
low.doc

Additional comments.

-----Original Message-----

From: Grad, Andrea E. [mailto:agrad@helsell.com]
Sent: Monday, August 06, 2001 4:34 PM
To: White, Gordon; Kenny, Ann; Hellwig, Raymond; Muffy Walker (E-mail); Gail Terzi (E-mail)
Subject: RE: Sea-Tac Third Runway: Comments on Port of Seattle's New Low Streamflow Analysis by Dr. John Strand

Attached please find comments dated August 6, 2001, by Dr. John Strand of Columbia Biological Assessments regarding the Port of Seattle's July 23, 2001, Low Streamflow Analysis.

We appreciate your consideration of these comments, which are submitted on behalf of the Airport Communities Coalition. We will also be faxing and mailing signature copies to you for your convenience.

Sincerely,

Andrea Grad
Paralegal
Helsell Fetterman
Tel. (206) 292-1144
agrad@helsell.com

AR 004865

EXHIBIT

AR 004866

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ORIGINAL

POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON

AIRPORT COMMUNITIES COALITION,

Appellant,

v.

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

Respondents.

PCHB No. 01-160

RESPONDENT PORT OF SEATTLE'S
FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION
DIRECTED TO APPELLANT AIRPORT
COMMUNITIES COALITION

TO: AIRPORT COMMUNITIES COALITION ("ACC")

AND TO: PETER J. EGLICK, Helsell Fetterman LLP; and
RACHAEL PASCHAL OSBORN, ACC's attorneys of record

INSTRUCTIONS

Interrogatories. Pursuant to Civil Rules 26 and 33, you are requested to answer the following interrogatories in writing and under oath and, after you and your attorney sign them below, to serve a copy upon the undersigned counsel at the offices of Marten Brown Inc., 1191 Second Avenue, Suite 2200, Seattle, Washington 98101. You must serve your answers within thirty (30) days after the interrogatories are served on you.

AR 004867

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2 These interrogatories are continuing interrogatories, and require you to provide
3 supplemental answers which set forth any information within the scope of the interrogatories
4 acquired or discovered by you following service of your original answers, as required by Civil
5 Rule 26(e).

6 Space for your answers has been provided after each interrogatory. If the space
7 provided for the answer is not sufficient, please attach additional pages to the page on which
8 the answer is set forth.

9 In answering these interrogatories, you are to furnish all information that is available to
10 you, not just information that is of your own knowledge. This means that you are to furnish
11 information which is known by or in the possession of you and your employees or agents.

12 **Requests for Production of Documents.** Pursuant to Civil Rules 26 and 34, you are
13 also requested to produce for inspection and copying the documents described in each request
14 made below at the offices of Marten Brown Inc., 1191 Second Avenue, Suite 2200, Seattle,
15 Washington 98101. True and accurate copies of the requested documents may be produced
16 with the answers to these interrogatories, but in any event shall be provided within thirty (30)
17 days after these requests are served on you. These requests for production are directed to you
18 and to your employees and agents, including all persons acting on your behalf. You are
19 required to produce all documents within your care, custody or control, including but not
20 limited to documents maintained by an employee, agent or representative, and documents
21 maintained by any third party from whom you have a contractual or other right to require
22 production.

23 These requests for production are intended to encompass the original document and all
24 copies that differ from the original in any respect, for example, by reason of notations made on
25 the copy.

26 These requests are also intended to encompass all documents of any nature which are
27 now or have at any time been within your care, custody, or control. If a document is no longer
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1 within your care, custody, or control, state what disposition was made of it, who disposed of
2 it, the reason for such disposition, and the date upon which it was so disposed.
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4 **Privilege Log Required by Civil Rule 26(b)(5)**: If you contend that any document
5 encompassed by any request is privileged, in whole or in part, or if you otherwise object to its
6 production, then with respect to each such document:

7 1. state with particularity the reason or reasons for your objection and/or the
8 nature of any privilege asserted;

9 2. identify each person having knowledge of the factual basis, if any, upon which
10 the privilege or other objection is asserted; and

11 3. state the following:

12 a. the date of the document;

13 b. the nature or type of the document (e.g., whether letter, memorandum,
14 etc.);

15 c. identify each individual who prepared the document;

16 d. identify each person to whom the document, or a copy thereof, has
17 been at any time provided;

18 e. identify each person from whom the document has been obtained by
19 you;

20 f. identify each person or entity having possession of the original of the
21 document (or if the whereabouts of the original are unknown, identify each person or entity
22 known or believed to have a copy or copies thereof); and

23 g. all other information necessary to identify the document with sufficient
24 particularity to meet the requirements for its inclusion in a motion for production pursuant to
25 Civil Rule 37.

26 If you believe that any of these discovery requests are vague, ambiguous or overbroad,
27 please contact the attorney who sent the requests, who will make every effort to cure these

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2 perceived defects. Please contact such attorney to discuss any such objections prior to
3 responding at the expiration of the thirty-day period.

4 DEFINITIONS

5 Included below are definitions of the terms used in these interrogatories and requests
6 for production. Please read these definitions carefully, because some of the terms used in
7 these interrogatories and requests for production are given definitions which may be more
8 expansive than the definitions which those terms are given in common usage.

9 1. **"401 Certification"** shall mean, unless otherwise specified, the Department of
10 Ecology's certification of the Port of Seattle's ("Port") **Third Runway Project** pursuant to the
11 provisions of 33 U.S.C. 1341 (FWPCA § 401) and shall include the 401 Certification for the
12 Third Runway Project issued September 21, 2001, the 401 Certification for the Third Runway
13 Project issued August 10, 2001, all applications submitted in support of 401 certification of
14 the Third Runway Project (including but not limited to applications for the aforementioned
15 401 Certifications and any prior applications for 401 Certification of the Third Runway
16 Project), all hearings conducted on any 401 Certification application for the Third Runway
17 Project, and all submittals supporting any of the 401 Certification applications for the Third
18 Runway Project.

19 2. **"And"** shall also mean **"or,"** and **"or"** shall also mean **"and."**

20 3. **"Communication"** means any writing or any oral conversation including, but
21 not limited to: telephone conversations, meetings, letters, telegraphic and telex
22 communications, electronic communications, and all documents concerning such writing or
23 such oral conversation.

24 4. **"Describe,"** when used in reference to matters of fact or contention, means to
25 state every material fact and circumstance specifically and completely (including, but not
26 limited to, date, time, location, and the identity of all participants), and whether each such fact

1
2 or circumstance is stated on knowledge, information, or belief, or is alleged without
3 foundation.

4 5. **"Document"** includes, but is not limited to, the original as well as any copies of
5 any agreement, appointment book, blueprint, book, brochure, cassette, chart, check, check
6 stub, computer disc or index thereto, computer printout, computer program, computer tape or
7 disc, contract, correspondence, declarations, desk calendar, drawing, e-mail message, graph,
8 index, invoice, lease, ledger, letter, log book, manual, map, memorandum, message, minutes,
9 minute book, model, note, periodical, phonorecord, photograph, pleading, purchase order,
10 report, reproduction, schedule, sketch, statement, study, summary, survey, tape, telegram,
11 telex, time sheet, working paper, and any and all other written, printed, typed, taped,
12 recorded, transcribed, punched, filmed, digitized, or graphic matter, however produced or
13 reproduced.

14 If a document has been prepared in several copies or additional copies have been
15 made, and the copies are not identical, each non-identical copy is a separate "document," and
16 should be produced for inspection and copying.

17 6. **"All Related Documents"** means any document that refers to, relates to,
18 addresses, or reflects the subject matter of the interrogatory.

19 7. **"Identify"** or **"identity,"** when applied to a **person,** requires that you give the
20 person's full name, residence address, residence telephone, business or occupation, employer,
21 job title or description, business address, and business telephone. If you do not have current
22 information on the person being identified, then give the last known information.

23 8. **"Identify"** or **"identity,"** when used in reference to a **business, organization,**
24 **or other entity,** means to give the legal name of the entity, a description of its nature (e.g.,
25 corporation, partnership, joint venture, etc.), any business or assumed names under which it
26 does business, its principal place of business, and the address of the office(s) of such entity

27 AR 004871

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2 which are involved in the transaction about which the interrogatory or request is seeking
3 information.

4 9. "Person" shall include any individual, corporation, partnership, association, or
5 any other entity of any kind.

6 10. "State with particularity," when used in reference to a matter of fact or
7 contention, means to state every material fact and circumstance specifically and completely
8 (including but not limited to date, time, location, and the identity of all participants), and
9 whether each such fact or circumstance is stated on knowledge, information, or belief, or is
10 alleged without foundation.

11 11. "Third Runway Project" shall mean, for purposes of these Interrogatories and
12 Requests for Production, the Port's proposal and efforts to construct a third runway at the
13 Seattle Tacoma International Airport and any related Master Plan Update projects, including
14 but not limited to all projects included in the October 25, 2000 Joint Aquatic Resources
15 Permit Application for the project, as amended.

16 12. The plural shall include the singular, and the singular shall include the plural.

17 **INTERROGATORIES AND REQUESTS FOR PRODUCTION**

18 **INTERROGATORY NO. 1:** For each person who supplied information for or
19 answered each Interrogatory or Request for Production:

- 20 a. identify the person;
21 b. identify which Interrogatory or Request for Production the person answered or
22 supplied information for; and
23 c. state with particularity what information each person provided.

24 **ANSWER:**

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27 **AR 004872**

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INTERROGATORY NO. 2: For each person who has knowledge regarding any matter which is relevant to the subject matter involved in the pending action:

- a. identify that person; and
- b. describe in detail the knowledge possessed.

ANSWER:

REQUEST FOR PRODUCTION NO. 1: Please produce all documents within your control supporting or otherwise pertaining to facts stated in your answer to the preceding interrogatory.

RESPONSE:

INTERROGATORY NO. 3: Identify each person you intend to use as an expert witness in this matter.

ANSWER:

AR 004873

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INTERROGATORY NO. 4: For each person identified in the preceding interrogatory, state with particularity:

- a. the subject matter on which the expert is expected to testify;
- b. the substance of the facts and opinions to which the expert is expected to testify; and
- c. a summary of the grounds for each opinion.

ANSWER:

REQUEST FOR PRODUCTION NO. 2: Please produce all documents relied on or reviewed to form the basis of the opinions, facts or other testimony referenced in the preceding interrogatory.

RESPONSE:

INTERROGATORY NO. 5: For each person identified as an expert witness in Interrogatory No. 3, identify each instance in which the person provided opinions or other

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2 written or oral testimony before a court of any jurisdiction, the Pollution Control Hearings
3 Board, or any other administrative review panel/board/officer, such identification to include:

- 4 a. the case/matter name;
5 b. the client/party represented;
6 c. the date the opinion or testimony was provided;
7 d. the form of testimony, including but not limited to deposition, trial/hearing
8 testimony, declaration, or affidavit;
9 e. a description of the nature of the testimony/opinion; and
10 f. each document in your control describing or recording this testimony.

11 ANSWER:

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16 REQUEST FOR PRODUCTION NO. 3: Please produce all documents in your
17 control relating to the 401 Certification or the Third Runway Project.

18 RESPONSE:

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24 REQUEST FOR PRODUCTION NO. 4: Please produce all documents in your
25 control that both (a) relate to the 401 Certification or the Third Runway Project, and (b)
26 constitute or relate to communications between two or more of the following persons: ACC
27

1
2 (including its attorneys); the City of Burien; the City of Des Moines; the City of Federal
3 Way; the City of Normandy Park; the City of Tukwila; the Highline School District; public
4 officials, employees, or agents of any of the aforementioned entities; and any other members
5 of the ACC (including but not limited to private individuals).

6 RESPONSE:

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12 REQUEST FOR PRODUCTION NO. 5: Please produce all documents in your
13 control that both (a) relate to the 401 Certification or the Third Runway Project, and (b)
14 constitute or relate to communications between one or more of the persons identified in
15 Request for Production No. 4 and one or more of the following entities: the Department of
16 Ecology; King County; the U.S. Army Corps of Engineers; the National Marine Fisheries
17 Service; the U.S. Fish and Wildlife Service; the City of Burien; the City of Des Moines; the
18 City of Federal Way; the City of Normandy Park; the City of Tukwila; the Highline School
19 District; elected public officials/representatives; any other state, federal, or local government
20 entity; or public officials, employees or agents of any of the aforementioned entities.

21 RESPONSE:

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AR 004876

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REQUEST FOR PRODUCTION NO. 6: Please produce all documents in your control that both (a) relate to the 401 Certification or the Third Runway Project, and (b) constitute or relate to communications between one or more of the persons identified in Request for Production No. 4 and news media entities (including daily newspapers, radio or television news stations, periodicals, news journals) or their representatives, employees or agents.

RESPONSE:

INTERROGATORY NO. 6: State with particularity all facts upon which you base your assertion that the 401 Certification issued on September 21, 2001 is inconsistent with or is in violation of the requirements or the intent of the Coastal Zone Management Act or Washington's Coastal Zone Management Program.

ANSWER:

INTERROGATORY NO. 7: Identify all persons known to you who have knowledge of facts set out in your answer to the preceding interrogatory and describe in detail the knowledge possessed.

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ANSWER:

REQUEST FOR PRODUCTION NO. 7: Please produce all documents within your control supporting or otherwise pertaining to facts stated in your answer to the two preceding interrogatories.

RESPONSE:

INTERROGATORY NO. 8: Is it your contention that the 401 Certification issued on September 21, 2001 is inconsistent with the Clean Air Act §§ 7401 to 1767, one of the enforceable policies under Washington's Coastal Zone Management Program?

ANSWER:

INTERROGATORY NO. 9: State with particularity all facts upon which you base your answer to the preceding Interrogatory.

AR 004878

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ANSWER:

INTERROGATORY NO. 10: Identify all persons known to you who have knowledge of facts set out in your answer to the prior two interrogatories, and describe in detail the knowledge possessed.

ANSWER:

REQUEST FOR PRODUCTION NO. 8: Please produce all documents within your control supporting or otherwise pertaining to facts stated in your answer to Interrogatories 8 through 10.

RESPONSE:

INTERROGATORY NO. 11: Identify with particularity those structures related to the Port's Third Runway Project and the 401 Certification that you believe are subject to Dam

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2 Safety requirements, and identify the Dam Safety requirements applicable to each such
3 structure.

4 ANSWER:

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10 INTERROGATORY NO. 12: For each structure identified in the preceding
11 interrogatory, please state with particularity which Dam Safety performance standards apply
12 to each structure.

13 ANSWER:

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19 INTERROGATORY NO. 13 : Do you contend that Condition G of the 401
20 Certification issued on September 21, 2001 is insufficient to provide reasonable assurance of
21 compliance with state or federal water quality standards?

22 ANSWER:

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27 **AR 004880**

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2 INTERROGATORY NO. 14: If the answer to the preceding interrogatory is not an
3 unqualified no, state with particularity all facts that you believe support your answer to the
4 preceding interrogatory.

5 ANSWER:
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11 INTERROGATORY NO. 15: Identify all persons know to you who have knowledge
12 of facts set out in your answer to Interrogatories 11 through 14, and describe in detail the
13 knowledge possessed.

14 ANSWER:
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20 REQUEST FOR PRODUCTION NO. 9: Please produce all documents within your
21 control supporting or otherwise pertaining to facts stated in your answer to Interrogatories 11
22 through 15.

23 RESPONSE:
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AR 004881

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INTERROGATORY NO. 16: Is it your contention that the Port undertook activities prior to August 10, 2001 that could not have been undertaken lawfully prior to certification of the Third Runway Project under Section 401 of the Federal Clean Water Act?

ANSWER:

INTERROGATORY NO. 17: If the answer to the preceding interrogatory is not an unqualified no, state with particularity all facts that you believe support your answer to the preceding interrogatory.

ANSWER:

INTERROGATORY NO. 18: Identify all persons know to you who have knowledge of facts set out in your answer to Interrogatories 16 and 17, and describe in detail the knowledge possessed.

ANSWER:

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REQUEST FOR PRODUCTION NO. 10: Please produce all documents within your control supporting or otherwise pertaining to facts stated in your answer to the Interrogatories 16 through 18.

RESPONSE:

INTERROGATORY NO. 19: Is it your contention that the 401 Certification issued on September 21, 2001 fails to address the potential structural failure of the Mechanically Stabilized Earth wall and embankment structures, and that such failure to address such a contingency constitutes a violation of Section 401 of the Clean Water Act?

ANSWER:

INTERROGATORY NO. 20: If the answer to the preceding interrogatory is not an unqualified no, state with particularity all facts that you believe support your answer to the preceding interrogatory.

ANSWER:

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INTERROGATORY NO. 21: Identify all persons know to you who have knowledge of facts set out in your answer to Interrogatories 19 and 20, and describe in detail the knowledge possessed.

ANSWER:

REQUEST FOR PRODUCTION NO. 11: Please produce all documents within your control supporting or otherwise pertaining to facts stated in your answer to Interrogatories 19 through 21.

RESPONSE:


REQUEST FOR PRODUCTION NO. 12: Please produce all documents in your control that both (a) relate to the 401 Certification, the Port's Third Runway Project, or this appeal (including but not limited to matters related to acceptance of service of process) and (b) were transmitted between, or otherwise constitute or relate to communications between

1
2 Thomas R. Luster and one or more of the following persons: ACC (including its attorneys);
3 the City of Burien; the City of Des Moines; the City of Federal Way; the City of Normandy
4 Park; the City of Tukwila; the Highline School District; public officials, employees, or agents
5 of any of the aforementioned entities; or any other members of the ACC (including but not
6 limited to private individuals). As "documents" is defined for purposes of these
7 Interrogatories and Requests for Production, this request includes but is not limited to draft
8 declarations, draft comment letters, and other draft documents.

9 RESPONSE:

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15 Interrogatories and Requests for Production dated this 9TH day of November, 2001.

16 **MARTEN BROWN INC.**

17 By: 
18 Gillis E. Reayis, WSBA No. 21451
19 Joshua M. Lipsky, WSBA No. 25304

20 Attorneys for Respondent Port of Seattle.

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26
27 **AR 004885**

1 SIGNED on behalf of Airport Communities Coalition.

2 By: _____
3 Signature

4 _____
5 Printed Name

6 STATE OF WASHINGTON)
7) ss.
8 COUNTY OF _____)

9 _____, being first duly sworn, on oath deposes and says:

10 That _____ is the _____ for the
11 appellant named herein, has read the interrogatories and requests for production contained
12 herein and the answers and responses thereto; believes the answers and responses to be true
13 and correct; and has not interposed any answers or objections for any improper purpose,
14 such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

15 SUBSCRIBED AND SWORN to before me this _____ day of _____,
16 2001.

17 _____
18 NOTARY PUBLIC in and for the State of Washington,
19 residing at _____
20 My commission expires _____

21 _____, attorney for Airport Communities Coalition., certifies
22 that (s)he has read the answers, responses, and objections (if any) to the foregoing
23 interrogatories and requests and, to the best of her/his knowledge, information, and belief
24 formed after a reasonable inquiry they are (1) consistent with these rules and warranted by
25 existing law or a good faith argument for the extension, modification, or reversal of existing
26 law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary
27 delay or needless increase in the cost of litigation; and (3) not unreasonably or unduly
28 burdensome or expensive, given the needs of the case, the discovery already had in the case,
the amount in controversy, and the importance of the issues at stake in the litigation.

By: _____
(WSBA No. _____)

Attorney for Airport Communities Coalition.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I have on this 9th day of November, 2001, served Port of
3 Seattle's First Set of Interrogatories and Requests for Production to ACC, on the
4 following persons, in the manner indicated:

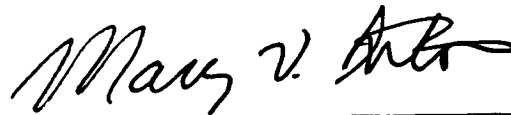
5 **Via Legal Messenger:**

Via Facsimile & U.S. Mail:

| | |
|---|--|
| 6 7 8 9 10 Original to: Peter Eglick Kevin Stock Helsell Fetterman LLP 1500 Puget Sound Plaza 1325 Fourth Avenue Seattle, WA 98111-3846 | with copy to: Rachael Paschal Osborn Attorney at Law 2421 West Mission Avenue Spokane, WA 99201 |
|---|--|

11 **Via U.S. Mail:**

| | |
|---|--|
| 12 13 14 15 16 with copy to: Joan M. Marchioro Thomas J. Young Assistant Attorneys General Ecology Division P.O. Box 40117 Olympia, WA 98504-0117 | with copy to: Roger Pearce Steven G. Jones Foster, Pepper & Shefelman PLLC 1111 Third Avenue, Suite 3400 Seattle, WA 98101 |
| 17 18 19 20 with copy to: Linda Strout Traci Goodwin Port of Seattle 2711 Alaskan Way P.O. Box 1209 Seattle, WA 98111 | |

21 

22 Mary V. Liton

23
24
25
26
27 **AR 004887**

EXHIBIT O

AR 004888

FOSTER PEPPER & SHEFELMAN PLLC
ATTORNEYS AT LAW



MPW

October 2, 2001

VIA FACSIMILE

Ms. Rachael Paschal Osborn
2421 West Mission Avenue
Spokane, WA 99201

Direct Phone
(206) 447-4676

Direct Facsimile
(206) 749-1997

E-Mail
PearR@foster.com

Dear Ms. Osborn:

Thank you for the courtesy of telling me about the track changes issue. I was unaware that any of our documents had that function turned on, because I never use the function myself. Thus, the disclosure of that information was totally inadvertent and unintentional. The changes, of course, are privileged and/or protected work product. Please delete all of the electronic copies of our brief and all declarations which I sent you electronically on October 1, 2001. Please inform all the persons to whom you forwarded the document to delete those electronic copies. I am making the same request to Peter with a copy of this letter. I will send you new copies of the brief and declarations that do not have any track changes function in them. I apologize for any inconvenience from this inadvertent disclosure.

1111 THIRD
AVENUE
Suite 3400
SEATTLE
Washington
98101-3299

Telephone
(206) 447-4400
Facsimile
(206) 447-9700
Website
WWW.FOSTER.COM

Very truly yours,

Roger A. Pearce

- cc: Mr. Peter Eglick
- Ms. Joan Marchioro
- Mr. Gillis Reavis
- Mr. Jay Manning
- Ms. Traci Goodwin
- Mr. Steve Jones
- Mr. Thomas Walsh

ANCHORAGE
Alaska

BELLEVUE
Washington

FORTLAND
Oregon

SEATTLE
Washington

SPOKANE
Washington

AR 004889

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AR 004890

Witek, Michael P.

From: Steven Jones [JonesS@foster.com]
Sent: Tuesday, December 18, 2001 4:25 PM
To: Witek, Michael P.
Subject: Electronic copy of Stipulation on Document Discovery

Mike:

Pursuant to your request, here is an electronic copy of the stipulation on document discovery. The only change that has been made relative to the document that I sent you last week was that this document now shows Richard Poulin as counsel for ACC, instead of CASE, based on his association of counsel and based on the fact that there has been no action on the motion to intervene.

We look forward to your response.

Steven G. Jones

Foster Pepper & Shefelman PLLC
1111 Third Avenue, Suite 3400
Seattle, WA 98101

Direct phone: 206-447-8902
Direct fax: 206-749-1962
Mobile: 206-226-2897

E-mail: jones@foster.com
Web: www.foster.com

<<Stipulation on documentary discovery.doc>>

AR 004891

1/17/02

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Draft: for discussion purposes only

POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON

Airport Communities Coalition,

Appellant,

v.

Department of Ecology and
The Port of Seattle,

Respondents.

PCHB No. 01-160

STIPULATION AND ORDER RE: SCOPE
OF DISCOVERY OF DOCUMENTS

STIPULATION

Appellant Airport Communities Coalition, Respondents Department of Ecology and the Port of Seattle, and Intervener Citizens Against SeaTac Expansion, through their respective counsel of record, enter into the following stipulation with respect to the parties' discovery of documents in this case:

1. This stipulation shall be applicable to all witnesses designated by the parties in their Preliminary Witness and Exhibit lists filed on November 15, 2001, whether those witnesses were designated as expert witnesses, fact witnesses, third-party witnesses or other witnesses ("Witness"). This stipulation shall also apply to any discovery of witnesses designated by CASE, irrespective of the date or form of such designation.
2. The parties stipulate that, with respect to documents sought pursuant to requests for production filed under CR 34 or any other discovery request, subpoena duces tecum or other means

1 (“Discovery Requests”), the only documents required to be produced in response to such requests
2 are:

3 a. any data obtained from sampling in the field, or samples taken in response to
4 regulatory requirements imposed by an agency with competent regulatory jurisdiction;

5 b. calculations, models, modeling reports, reports produced by others, scientific treatises
6 or publications, journals, manuals, rules, regulations, laws, regulatory guidance, or any other
7 information upon which a Witness formed conclusions, made projections, founded assumptions or
8 that otherwise formed the bases for a Witness’ conclusions;

9 c. the parties stipulate that documents produced in response to Discovery Requests need
10 not include preliminary drafts of reports, studies, declarations, opinions, comment letters, or any
11 other document reflecting a Witness’ opinion, whether that opinion was offered in this case, or in
12 comments submitted to third parties, and whether or not those opinions were formed and submitted
13 for use in this case or in connection with another proceeding or in comments on the actions of the
14 Port or Ecology submitted to third parties, viz, the U.S. Army Corps of Engineers;

15 d. the date range of documents required to be produced in response to Discovery
16 Requests will be from the date of the first Port’s first JARPA application, December 18, 1996,
17 through January 31, 2002.

18 3. The parties stipulate that, notwithstanding the limits on document discovery outlined
19 above, nothing in this Stipulation and Order will be deemed to limit any party’s ability to pursue
20 through deposition questions or through cross-examination a Witness’ basis for his or her opinions
21 and/or conclusions, whether those opinions or conclusions were presented to a party or its counsel
22 prior to the time they were formally presented in this case, and what, if any, comments were received
23 by any person to whom they were presented.

24 4. This Order is be applicable to the parties in proceedings in his case only, and does not
25 limit the scope of discovery in any other proceedings between these parties, or restrict the parties
26

1 from inquiring of any Witness regarding the basis for a Witness' opinions or conclusions, apart from
2 documents produced within the scope of this Order.

3 5. The parties stipulate that no party will seek to circumvent the intent of this Stipulation
4 and Order through submitting Public Disclosure Act requests, issuing subpoena duces tecum, or
5 submitting other forms of requests for documents that would fall outside the scope of this Stipulation
6 and Order.

7 So Stipulated:

8 HELSELL FETTERMAN LLP

9
10 _____
10 Peter J. Eglick, WSBA No. 8809
11 Kevin L. Stock, WSBA No. 14541
11 Michael P. Witek, WSBA No. 26598
12 Attorneys for Appellant Airport Communities Coalition

13 SMITH & LOWNEY, P.C.

14 _____
15 Richard A. Poulin, WSBA No. 27782
15 Attorneys for Airport Communities Coalition

16 CHRISTINE GREGOIRE
17 Attorney General

18 _____
19 Joan M. Marchioro, WSBA No. 19250
19 Thomas J. Young, WSBA No. 17366
20 Jeff B. Kray, WSBA No. 22174
20 Attorneys for Respondent Department of Ecology

21 PORT OF SEATTLE

22
23 _____
24 Linda J. Strout, General Counsel, WSBA No. 9422
24 Traci M. Goodwin, Senior Port Counsel, WSBA No. 14974

25
26
STIPULATION AND ORDER RE: DOCUMENT DISCOVERY - 3

FOSTER PEPPER & SHEFELMAN PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
206-447-4400

1 FOSTER PEPPER & SHEFELMAN PLLC

2
3 _____
4 Roger A. Pearce, WSBA No. 21113
5 Steven G. Jones, WSBA No. 19334
6 Attorneys for Respondent Port of Seattle

7 MARTEN & BROWN LLP

8 _____
9 Jay J. Manning, WSBA No. 13579
10 Gillis E. Reavis, WSBA No. 21451
11 Attorneys for Respondent Port of Seattle

12
13 **ORDER**

14 Based on the stipulation of the parties, the Board enters the following ORDER:

- 15 1. The scope of documents that are subject to discovery in this proceeding is limited by
16 Order of the Board to the following:
- 17 a. any data obtained from sampling in the field, or samples taken in response to
18 regulatory requirements imposed by an agency with competent regulatory
19 jurisdiction;
 - 20 b. calculations, models, modeling reports, reports produced by others, scientific
21 treatises or publications, journals, manuals, rules, regulations, laws, regulatory
22 guidance, or any other information upon which a Witness formed conclusions,
23 made projections, founded assumptions or that otherwise formed the bases for
24 a Witness' conclusions;
 - 25 c. the parties stipulate that documents produced in response to Discovery
26 Requests need not include preliminary drafts of reports, studies, declarations,
opinions, comment letters, or any other document reflecting a Witness'
opinion, whether that opinion was offered in this case, or in comments
submitted to third parties, and whether or not those opinions were formed and

STIPULATION AND ORDER RE: DOCUMENT DISCOVERY - 4

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submitted for use in this case or in connection with another proceeding or in offering comments on the actions of the Port or Ecology to third parties, viz, the U.S. Army Corps of Engineers;

d. the date range of documents that shall be produced in response to Discovery Requests will be from December 18, 1996, through January 31, 2002.

2. This Order is be applicable to the parties in proceedings in his case only, and does not limit the scope of discovery in any other proceedings between these parties, or restrict the parties from inquiring of any Witness regarding the basis for a Witness' opinions or conclusions, over and apart from documents produced within the scope of this Order.

3. Consistent with the parties' stipulation, all parties are prohibited from seeking to circumvent this Order by submission of Public Disclosure Act requests, issuing subpoena duces tecum, or submitting other forms of requests for documents that would fall outside the scope of this Order.

Dated this _____ day of December, 2001.

POLLUTION CONTROL HEARINGS BOARD

Kaleen Cottingham, Presiding Officer

Jointly presented by;
Notice of Presentation Waived:
HELSELL FETTERMAN LLP

Peter J. Eglick, WSBA No. 8809
Kevin L. Stock, WSBA No. 14541
Michael P. Witek, WSBA No. 26598
Attorneys for Appellant Airport Communities Coalition

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SMITH & LOWNEY, P.C.

Richard A. Poulin, WSBA No. 27782
Attorneys for Airport Communities Coalition

CHRISTINE GREGOIRE
Attorney General

Joan M. Marchioro, WSBA No. 19250
Thomas J. Young, WSBA No. 17366
Jeff B. Kray, WSBA No. 22174
Attorneys for Respondent Department of Ecology

PORT OF SEATTLE

Linda J. Strout, General Counsel, WSBA No. 9422
Traci M. Goodwin, Senior Port Counsel, WSBA No. 14974

FOSTER PEPPER & SHEFELMAN PLLC

Roger A. Pearce, WSBA No. 21113
Steven G. Jones, WSBA No. 19334
Attorneys for Respondent Port of Seattle

MARTEN & BROWN LLP

Jay J. Manning, WSBA No. 13579
Gillis E. Reavis, WSBA No. 21451
Attorneys for Respondent Port of Seattle

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Draft: for discussion purposes only

POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON

Airport Communities Coalition,

Appellant,

Citizens Against SeaTac Expansion,

Intervenor-Appellant,

No. 01-133
PCHB No. 01-160

STIPULATION AND ORDER RE: SCOPE
OF DISCOVERY OF DOCUMENTS

v.

Department of Ecology and
The Port of Seattle,

Respondents.

STIPULATION

Appellant Airport Communities Coalition, Respondents Department of Ecology and the Port of Seattle, and Intervener Citizens Against SeaTac Expansion, through their respective counsel of record, enter into the following stipulation with respect to the parties' discovery of documents in this case:

1. This stipulation shall be applicable to all witnesses designated by the parties in their Preliminary Witness and Exhibit lists filed on November 15, 2001, and in their Final Witness Lists to be filed on February 8, 2002, whether those witnesses were designated as expert witnesses, fact witnesses, third-party witnesses or other witnesses ("Witness"). This stipulation shall also apply to any discovery of witnesses designated by CASE, irrespective of the date or form of such designation.

1 2. The parties stipulate that, with respect to documents sought pursuant to requests for
2 production filed under CR 34 or any other discovery request, subpoena duces tecum or other means
3 (“Discovery Requests”), the only documents required to be produced in response to such requests
4 need not include are:

5 a. ~~any data obtained from sampling in the field, or samples taken in response to~~
6 ~~regulatory requirements imposed by an agency with competent regulatory jurisdiction;~~

7 ~~b. calculations, models, modeling reports, reports produced by others, scientific treatises~~
8 ~~or publications, journals, manuals, rules, regulations, laws, regulatory guidance, or any other~~
9 ~~information upon which a Witness formed conclusions, made projections, founded assumptions or~~
10 ~~that otherwise formed the bases for a Witness’ conclusions;~~

11 ~~ae. the parties stipulate that documents produced in response to Discovery Requests need~~
12 ~~not include preliminary drafts of prior iterations of reports, studies, declarations, opinions, comment~~
13 ~~letters, or any other document reflecting a Witness’ preliminary opinion (“Preliminary Drafts”)~~
14 ~~where the latest version of such document is produced (regardless of whether the latest version is~~
15 ~~denominated a “draft”~~), whether that opinion was offered in this case, or in comments submitted to
16 third parties, and whether or not those opinions were formed and submitted for use in this case or in
17 connection with another proceeding or in comments on the actions of the Port or Ecology submitted
18 to third parties, viz, the U.S. Army Corps of Engineers, or in correspondence between witnesses and
19 attorneys regarding Preliminary Drafts; or

20 ~~bd. the date range of documents required to be produced in response to Discovery~~
21 ~~Requests will be from the dated prior to of the first Port’s first JARPA application, December 18,~~
22 ~~1996. Responses will be supplemented as required under CR 26(e). ~~through January 31, 2002.~~~~

23 3. The parties stipulate that, notwithstanding the limits on document discovery outlined
24 above, nothing in this Stipulation and Order will be deemed to limit any party’s ability to pursue
25 through deposition questions or through cross-examination a Witness’ basis for his or her opinions
26

1 and/or conclusions, whether these opinions or conclusions were presented to a party or its counsel
2 prior to the time they were formally presented in this case, and what, if any, comments were received
3 by any person (except counsel) to whom they were presented. Nor does this stipulation and order
4 restrict in any way Public Disclosure Act Requests by ACC and/or CASE to the Department of
5 Ecology regarding matters related to the Port's § 401 Applications and Certifications or Ecology's
6 obligation in responding thereto.

7 4. This Order ~~applies is be applicable~~ to the parties in proceedings in this case only, and
8 does not limit the scope of discovery in any other proceedings ~~amongbetween~~ these parties, or
9 restrict the parties from inquiring of any Witness regarding the basis for a Witness' opinions or
10 conclusions, apart from documents produced within the scope of this Order.

11 5. The parties stipulate that no party will seek to circumvent the intent of this Stipulation
12 and Order through submitting Public Disclosure Act requests, issuing subpoena duces tecum, or
13 submitting other forms of requests for documents not required to be produced under this
14 stipulation that would fall outside the scope of this Stipulation and Order. Notwithstanding the
15 foregoing, nothing in this stipulation shall be deemed to limit Public Disclosure Act Requests by
16 ACC and/or CASE to the Department of Ecology regarding matters related to the Port's § 401
17 applications and Certifications or Ecology's obligation in responding thereto.

18 So Stipulated:

19 HELSELL FETTERMAN LLP

20
21 _____
Peter J. Eglick, WSBA No. 8809
22 Kevin L. Stock, WSBA No. 14541
Michael P. Witek, WSBA No. 26598
23 Attorneys for Appellant Airport Communities Coalition

24 LAW OFFICES OF RACHAEL PASCHAL OSBORN

25
26 _____
STIPULATION AND ORDER RE: DOCUMENT DISCOVERY - 3

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206-447-4400

1 Rachael Paschal Osborn, WSBA # 21618
2 Attorney for Appellant ACC

3
4 SMITH & LOWNEY, P.C.

5 Richard A. Poulin, WSBA No. 27782
6 Attorneys for Airport Communities Coalition
7 and Citizens Against SeaTac Expansion

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CHRISTINE GREGOIRE
Attorney General

Joan M. Marchioro, WSBA No. 19250
Thomas J. Young, WSBA No. 17366
Jeff B. Kray, WSBA No. 22174
Attorneys for Respondent Department of Ecology

PORT OF SEATTLE

Linda J. Strout, General Counsel, WSBA No. 9422
Traci M. Goodwin, Senior Port Counsel, WSBA No. 14974

1 FOSTER PEPPER & SHEFELMAN PLLC

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3

Roger A. Pearce, WSBA No. 21113
Steven G. Jones, WSBA No. 19334
4 Attorneys for Respondent Port of Seattle

5 MARTEN & BROWN LLP

6
7

Jay J. Manning, WSBA No. 13579
Gillis E. Reavis, WSBA No. 21451
8 Attorneys for Respondent Port of Seattle

9 **ORDER**

10
11 Based on the stipulation of the parties, the Board enters the following ORDER:

12 1. The scope of documents that are subject to discovery in this proceeding is limited by
13 Order of the Board to ~~the~~ and need not include the following:

14 a. ~~any data obtained from sampling in the field, or samples taken in response to~~
15 ~~regulatory requirements imposed by an agency with competent regulatory~~
16 ~~jurisdiction;~~

17 ~~b. calculations, models, modeling reports, reports produced by others, scientific~~
18 ~~treatises or publications, journals, manuals, rules, regulations, laws, regulatory~~
19 ~~guidance, or any other information upon which a Witness formed conclusions,~~
20 ~~made projections, founded assumptions or that otherwise formed the bases for~~
21 ~~a Witness' conclusions;~~

22 ae. ~~the parties stipulate that documents produced in response to Discovery~~
23 ~~Requests need not include preliminary drafts prior iterations of reports,~~
24 ~~studies, declarations, opinions, comment letters, or any other document~~
25 ~~reflecting a Witness' preliminary opinion ("Preliminary Drafts") where the~~
26 ~~latest version of such document is produced (regardless of whether the latest~~

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version is denominated a "draft"), whether that opinion was offered in this case, or in comments submitted to third parties, and whether or not those opinions were formed and submitted for use in this case or in connection with another proceeding or in offering comments on the actions of the Port or Ecology to third parties, viz, the U.S. Army Corps of Engineers, or in correspondence between witnesses and attorneys regarding Preliminary Drafts; or

bd. the date range of documents that shall be produced in response to Discovery Requests will be from dated prior to December 18, 1996, Responses will be supplemented as required under CR 26(e) through January 31, 2002.

2. This Order ~~applies is be applicable~~ to the parties in proceedings in this case only, and does not limit the scope of discovery in any other proceedings ~~amongbetween~~ these parties, or restrict the parties from inquiring of any Witness regarding the basis for a Witness' opinions or conclusions, over and apart from documents produced within the scope of this Order.

3. Consistent with the parties' stipulation, all parties are prohibited from seeking to circumvent this Order by submission of Public Disclosure Act requests, issuing subpoena duces tecum, or submitting other forms of requests for documents not required to be produced under this stipulation. that would fall outside the scope of this Order. Notwithstanding the foregoing, nothing in this stipulation shall be deemed to limit Public Disclosure Act Requests by ACC and/or CASE to the Department of Ecology regarding matters related to the Port's § 401 Applications and Certifications or Ecology's obligation in responding thereto.

Dated this _____ day of December, 2001.

POLLUTION CONTROL HEARINGS BOARD

Kaleen Cottingham, Presiding Officer

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Jointly presented by;
Notice of Presentation Waived:

HELSELL FETTERMAN LLP

Peter J. Eglick, WSBA No. 8809
Kevin L. Stock, WSBA No. 14541
Michael P. Witek, WSBA No. 26598
Attorneys for Appellant Airport Communities Coalition

LAW OFFICES OF RACHAEL PASCHAL OSBORN

Rachael Paschal Osborn, WSBA # 21618
Attorney for Appellant ACC

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SMITH & LOWNEY, P.C.

Richard A. Poulin, WSBA No. 27782
Attorneys for Airport Communities Coalition
and Citizens Against SeaTac Expansion

CHRISTINE GREGOIRE
Attorney General

Joan M. Marchioro, WSBA No. 19250
Thomas J. Young, WSBA No. 17366
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Attorneys for Respondent Department of Ecology

PORT OF SEATTLE

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Traci M. Goodwin, Senior Port Counsel, WSBA No. 14974

FOSTER PEPPER & SHEFELMAN PLLC

Roger A. Pearce, WSBA No. 21113
Steven G. Jones, WSBA No. 19334
Attorneys for Respondent Port of Seattle

MARTEN & BROWN LLP

Jay J. Manning, WSBA No. 13579
Gillis E. Reavis, WSBA No. 21451
Attorneys for Respondent Port of Seattle

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HELSELL FETTERMAN LLP

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POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON

| | | |
|--------------------------------|---|---------------------------------|
| AIRPORT COMMUNITIES COALITION, |) | PCHB No. 01-160 |
| |) | |
| Appellant, |) | ACC'S INTERROGATORIES NOS. 1-19 |
| |) | AND REQUESTS FOR PRODUCTION |
| v. |) | NOS. 1-6 TO PORT OF SEATTLE AND |
| |) | PORT OF SEATTLE'S OBJECTIONS |
| |) | AND RESPONSES THERETO |
| STATE OF WASHINGTON |) | |
| DEPARTMENT OF ECOLOGY, and |) | |
| THE PORT OF SEATTLE, |) | |
| |) | |
| Respondents. |) | |

The Port of Seattle ("Port"), by and through its counsel of record, submits the following objections and responses to ACC's Interrogatories Nos. 1-19 and Requests for Production Nos. 1-6 to Port of Seattle ("ACC's First Requests"). To set off the Port's objections and responses from the text of the ACC's First Requests, the Port's objections and responses will be set forth in bolded and single-spaced text.

The Port will interpose its General Objections to ACC's First Requests prior to providing particularized objections and responses to any individual interrogatory or request for production propounded by ACC. The fact that a particular general objection is not identified in response to a particular interrogatory should not be interpreted as a waiver of any general objection; furthermore, nothing set out in specific objections constitutes a waiver of any general objections.

TO: PORT OF SEATTLE ("Port");

AND TO ITS COUNSEL: Jay Manning and Gillis Reavis, Marten Brown, Inc.;
Roger Pearce and Steven Jones, Foster Pepper & Shefelman;
Linda Strout and Traci Goodwin, Port of Seattle

ACC'S INTERROGATORIES AND REQUESTS FOR
PRODUCTION NOS. 1-6 TO PORT OF SEATTLE AND
PORT'S OBJECTIONS AND RESPONSES

FOSTER PEPPER & SHEFELMAN PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
206-447-4400

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INSTRUCTIONS

Interrogatories. Pursuant to the PCHB's October 30, 2001, Prehearing Order and to Civil Rules 26 and 33, you are requested to answer the following interrogatories in writing and under oath and, after you and your attorney sign them below, to serve a copy upon the undersigned counsel at the offices of Helsell Fetterman LLP, 1500 Puget Sound Plaza, 1325 Fourth Avenue, Seattle, Washington 98111. You must serve your answers within thirty (30) days after the interrogatories are served on you.

These interrogatories are continuing interrogatories, and require you to provide supplemental answers which set forth any information within the scope of the interrogatories acquired or discovered by you following service of your original answers, as required by Civil Rule 26(e).

Space for your answers has been provided after each interrogatory. If the space provided for the answer is not sufficient, please attach additional pages to the page on which the answer is set forth.

In answering these interrogatories, you are to furnish all information that is available to you, not just information that is of your own knowledge. This means that you are to furnish information which is known by or in the possession of you and your employees or agents.

Requests for Production of Documents. Pursuant to the PCHB's October 30, 2001, Prehearing Order and Civil Rules 26 and 34, you are also requested to produce for inspection and copying the documents described in each request made below. True and accurate copies of the requested documents may be produced with the answers to these interrogatories, but in any event shall be made available within thirty (30) days after these requests are served on you. These requests for production are directed to you and to your employees and agents, including all persons acting on your behalf. You are required to produce all documents within your care, custody or control, including, but not limited to documents maintained by an employee, agent or

1 representative, and documents maintained by any third party from whom you have a contractual
2 or other right to require production.

3 These requests for production are intended to encompass the original document and all
4 copies that differ from the original in any respect, for example, by reason of notations made on the
5 copy.

6 These requests are also intended to encompass all documents of any nature which are now
7 or have at any time been within your care, custody, or control. If a document is no longer within
8 your care, custody, or control, state what disposition was made of it, who disposed of it, the
9 reason for such disposition, and the date upon which it was so disposed.

10 **Identification of Privileged Documents:** If you contend that documents encompassed by
11 any request are privileged, in whole or in part, or if you otherwise object to production of such
12 documents, then with respect to such documents:

- 13 1. state with particularity the reason or reasons for your objection and/or the nature of
14 any privilege asserted; and
- 15 2. state all other information necessary to identify the documents to meet the
16 requirements for inclusion in a motion for production pursuant to Civil Rule 37.

17 **DEFINITIONS**

18 Included below are definitions of the terms used in these interrogatories and requests for
19 production. Please read these definitions carefully, because some of the terms used in these
20 interrogatories and requests for production are given definitions which may be more expansive
21 than the definitions which those terms are given in common usage.

- 22 1. **“401 Certification”** shall mean, unless otherwise specified, the Department of
23 Ecology’s certification of the Port of Seattle’s (“Port”) **Third Runway Project** pursuant to the
24 provisions of 33 U.S.C. 1341 (FWPCA § 401) and shall include the 401 Certification for the Third
25 Runway Project issued September 21, 2001, the 401 Certification for the Third Runway Project
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1 issued August 10, 2001, all applications submitted in support 401 certification of the Third
2 Runway Project (including but not limited to applications for the aforementioned
3 401 Certifications and any prior applications for 401 Certification of the Third Runway Project),
4 all hearings conducted on any 401 Certification application for the Third Runway Project, and all
5 submittals supporting any of the 401 Certification applications for the Third Runway Project.

6 2. "And" shall also mean "or," and "or" shall also mean "and."

7 3. "Communication" means any writing or any oral conversation including, but not
8 limited to: telephone conversations, meetings, letters, telegraphic and telex communications,
9 electronic communications, and all documents concerning such writing or such oral conversation.

10 4. "Describe," when used in reference to matters of fact or contention, means to state
11 every material fact and circumstances specifically and completely (including, but not limited to,
12 date, time, location, and the identity of all participants), and whether each such fact or
13 circumstance is stated on knowledge, information, or belief, or is alleged without foundation.

14 5. "Document" includes, but is not limited to, the original as well as any copies of
15 any agreement, appointment book, blueprint, book, brochure, cassette, chart, check, check stub,
16 compute disc or index thereto, computer printout, computer program, computer tape or disc,
17 contact, correspondence, declarations, desk calendar, drawing, e-mail message, graph, index,
18 invoice, lease, ledger, letter, log book, manual, map, memorandum, message, minutes, minute
19 book, model, note, periodical, phonorecord, photograph, pleading, purchase order, report,
20 reproduction, schedule, sketch, statement, study, summary, survey, tape, telegram, telex, time
21 sheet, working paper, and any and all other written, printed, typed, taped, recorded, transcribed,
22 punched, filmed, digitized, or graphic matter, however produced or reproduced.

23 If any document has been prepared in several copies or additional copies have been made,
24 and the copies are not identical, each nonidentical copy is a separate "document," and should be
25 produced for inspection and copying.

1 6. **“All Related Documents”** means any document that refers to, relates to, addresses,
2 or reflects the subject matter of the interrogatory.

3 7. **“Identify”** or **“identity,”** when applied to a **person**, requires that you give the
4 person’s full name, residence address, residence telephone, business or occupation, employer, job
5 title or description, business address, and business telephone. If you do not have current
6 information on the person being identified, then given the last known information.

7 8. **“Identify”** or **“identity,”** when used in reference to a **business organization, or**
8 **other entity**, means to give the legal name of the entity, a description of its nature (e.g.,
9 corporation, partnership, joint venture, etc.), any business or assumed names under which it does
10 business, its principal place of business, and the address of the office(s) of such entity which are
11 involved in the transaction about which the interrogatory or request is seeking information.

12 9. **“Person”** shall include any individual, corporation, partnership, association, or any
13 other entity of any kind.

14 10. **“State with particularity,”** when used in reference to a matter of fact or
15 contention, means to state every material fact and circumstance specifically and completely
16 (including but not limited to date, time, location, and the identity of all participants), and whether
17 each such fact or circumstance is stated on knowledge, information, or belief, or is alleged without
18 foundation.

19 11. **“Third Runway Project”** shall mean, for purposes of these Interrogatories and
20 Requests for Production, the Port’s proposal and efforts to construct a third runway at the Seattle
21 Tacoma International Airport and Master Plan Update projects, including but not limited to all
22 projects included in the October 25, 2000 Joint Aquatic Resources Permit Application for the
23 project, as amended.

24 12. The plural shall include the singular, and the singular shall include the plural.
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1 PORT'S GENERAL OBJECTIONS TO ACC'S FIRST REQUESTS

2 The Port interposes the following general objections to the ACC's First Requests,
3 including the foregoing "definitions," and to each and every request. Each of these General
4 Objections applies to each discovery request, in addition to specific objections asserted to
5 particular requests, and nothing set out in specific objections constitutes a waiver of the
6 general objections.

7 1. The Port objects to each and every interrogatory and request for production
8 contained in ACC's First Requests on the grounds that the Port has not completed its
9 discovery, factual investigation or preparation for hearing on the merits in this matter, and
10 these activities are ongoing. The Port has conducted a diligent search and has made a
11 reasonable inquiry in an effort to respond to ACC's First Requests, subject to the objections
12 set forth below. However, these responses are based only upon information available to and
13 specifically known to the Port as of the date of these responses. The Port's responses are at
14 all times subject to such additional and different information as may be disclosed during
15 ongoing discovery and factual investigation. On that basis, the Port reserves its right, as to
16 each and every interrogatory, to supplement, amend, change and/or modify its responses as
17 new, additional and/or different information and/or documents may become known to it,
18 and to introduce at any hearing, trial or other proceeding relating to this matter facts,
19 documents and other tangible things not identified as of the date of these responses.

20 2. The Port objects to ACC's First Requests, and each of them, to the extent that
21 they seek the disclosure of information or documents protected from disclosure by the
22 attorney-client privilege, the work product doctrine and/or any other recognized privilege or
23 immunity. The inadvertent disclosure of any such information or documents shall not
24 constitute a waiver of any privilege or of any right that the Port may have to object to the
25 use of any such information or document. The Port will interpret each Request in a manner
26 that the request does not seek privileged information or documents.

1 The Port objects to ACC's First Requests, and each of them, to the extent that
2 they seek materials that are beyond the scope of discovery permitted on the grounds that
3 ACC's First Requests are overbroad, unduly burdensome, oppressive, and seek information
4 that is neither relevant to the subject matter of the pending litigation nor reasonably
5 calculated to lead to the discovery of relevant and/or admissible evidence.

6 4. The Port objects to ACC's First Requests, and each of them, to the extent that
7 they seek information that is private, confidential, or proprietary business information on
8 the grounds that such information is privileged and that no protective order has yet been
9 entered in this case that would protect confidential or proprietary information in the event it
10 was disclosed in response to one of ACC's First Requests.

1 5. The Port objects to ACC's First Requests, and each of them, to the extent that
2 in the context of this case, they are overbroad, unduly burdensome, oppressive, vague and/or
3 ambiguous.

4 6. The Port objects to ACC's First Requests, and each of them, to the extent that
5 the information and/or documents requested are so overbroad that it is impractical and
6 burdensome for the Port to provide a complete response, although the Port has and will
7 continue to make reasonably diligent, good faith efforts to provide as complete a response to
8 each interrogatory as is practicable.

9 7. The Port objects to requests for production contained in ACC's First Requests
10 to the extent that any of the requests for production call for production that exceeds the
11 bounds set by Civil Rule 34. To the extent practicable, and as required by Civil Rule 34, the
12 Port will produce responsive documents as they are kept in the usual course of business or
13 segregated by request for production, at the Port's option. Subject to these General
14 Objections, the Port will produce copies of documents as required by the Civil Rules.

15 8. Insofar as certain requests for production in ACC's First Requests are vague
16 and ambiguous, or employ terms that the Port cannot define or understand, the Port will
17 object on the grounds that the requests are vague and ambiguous. Subject to and without
18 waiver of these General Objections, the Port will make reasonable assumptions, where
19 possible, as to ACC's intended meanings and will respond accordingly. If ACC
20 subsequently asserts an interpretation of any discovery request that differs from that
21 assigned by the Port, then the Port reserves the right to supplement these objections and
22 responses.

23 9. The foregoing general objections are hereby incorporated in full in the
24 response to each separate discovery request set forth below, and any information or facts
25 disclosed in these responses is subject to the limitations and objections set forth herein.

INTERROGATORIES AND REQUESTS FOR PRODUCTION

26 INTERROGATORY NO. 1: For each person who supplied information for or answered
each Interrogatory or Request for Production:

- a. identify the person;
- b. identify which Interrogatory or Request for Production the person answered or
supplied information for; and
- c. state with particularity what information each person provided.

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ANSWER:

Steven Jones, Roger Pearce, Tom Walsh, Jay Manning, and the experts listed in the answers to interrogatories below.

REQUEST FOR PRODUCTION NO. 1: Please produce all documents within your control relating or otherwise pertaining to facts stated in your answer to the preceding interrogatory.

RESPONSE:

In addition to and without waiving its General Objections, the Port objects to this request as unintelligible. There are no documents relating to the question of who was consulted in connection with the preparation of these responses.

INTERROGATORY NO. 2: Identify each person you intend to use as an expert witness in this matter.

ANSWER:

- 1. Paul Agid
Port of Seattle
Aviation Project Management Group
17900 International Blvd., Suite 301
SeaTac, WA 98188
- 2. Barry R. Christopher, Ph.D. PE
210 Boxelder Lane
Roswell, GA 30076
- 3. James C. Kelley, Ph.D.
Parametrix, Inc.
5808 Lake Washington Blvd. NE, Suite 200
Kirkland, WA 98033-7350
- 4. Dr. James K. Mitchell, Ph.D., PE
Geotechnical Engineer
209 Mateer Circle
Blacksburg, VA 24060

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5. **William Stubblefield, Ph.D.**
ENSR Toxicology
4303 West LaPorte Avenue
Ft. Collins, CO 80521

6. **Donald E. Weitkamp, Ph.D.**
Parametrix, Inc.
5808 Lake Washington Blvd. NE, Suite 200
Kirkland, WA 98033-7350

7. **Paul S. Fendt, P.E.**
Parametrix, Inc.
5808 Lake Washington Boulevard Northeast
Kirkland, Washington 98033

8. **Michael Bailey, P.E.**
Hart Crowser, Inc.
1910 Fairview Ave. E.
Seattle, WA 98102-3699

9. **Norman Crawford, Ph.D.**
Hydrocomp, Inc.
2386 Branner Dr.
Menlo Park, CA 94025

10. **John Strunk**
Associated Earth Sciences Inc.
179 Madrona Lane N.
Bainbridge Island, WA 98110

11. **Joseph Brascher**
Aqua Terra Consultants
Olympia, Washington

12. **Charles Ellingson**
Pacific Groundwater Group
2377 Eastlake Avenue E.
Seattle, WA 98102

13. **Jan Cassin, Ph.D.**
Parametrix, Inc.
5808 Lake Washington Blvd. NE
Kirkland, Washington 98033

14. **Charles Wisdom, Ph.D.**
Parametrix, Inc.
5808 Lake Washington Blvd. NE
Kirkland, Washington 98033

ACC'S INTERROGATORIES AND REQUESTS FOR
PRODUCTION NOS. 1-6 TO PORT OF SEATTLE AND
PORT'S OBJECTIONS AND RESPONSES - 9

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1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
206-447-4400

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15. **Mary Vigilante**
Synergy Consultants, Inc.
4742 42nd Ave. SW, Suite 9
Seattle, WA 98116

 16. **William Dunlay, Ph.D.**
Leigh Fisher Associates
P.O. Box 8007
San Francisco International Airport
San Francisco, CA 94128

 17. **Mike Riley, P.E.**
S.S. Papadolpolous & Associates, Inc.
222 Kenyon Street, N.W.
Olympia, WA 98502

 18. **Steve Swenson, P.E.**
R.W. Beck, Inc.
1001 4th Avenue, Suite 2500
Seattle, WA 98104

12 **The Port may name additional experts as necessary to rebut claims and allegations**
13 **raised by ACC experts and to rebut and/or address issues uncovered during the process of**
14 **discovery, including depositions of ACC's proposed witnesses.**

15 **INTERROGATORY NO. 3:** For each person identified in the preceding interrogatory,
16 state with particularity

- 17 a. the subject matter on which the expert is expected to testify;
- 18 b. the substance of the facts and opinions to which the expert is expected to testify;
- 19 and
- 20 c. a summary of the grounds for each opinion.

21 **ANSWER:**

22 **See all General Objections. In addition to, and without waiving any of those General**
23 **Objections, the Port responds as follows:**

24 1. **Paul Agid. Mr. Agid will testify regarding the Agreed Order entered into**
25 **between the Port and the Department of Ecology regarding the clean up of contaminated**
26 **sites within the Airport Operation and Maintenance Area, the likelihood of migration of**
that contamination, particularly in light of the Port's construction of Master Plan Update
projects. Mr. Agid will testify that the Port is currently abiding by the terms of the Agreed
Order, is currently working on identification and clean up of contaminated sites and that

1 there is no likelihood of migration of contamination based on the construction of MPU
2 projects. The grounds for Mr. Agid's opinions are the Agreed Order, his supervision and
3 work on testing of sites at the Airport, his ongoing work with Ecology on the implementation
4 of the Agreed Order and his familiarity with the Master Plan Update projects, including the
5 third runway embankment.

6
7 2. Barry Christopher, Ph.D. Mr. Christopher is one of the members of the
8 Technical Review Panel who have reviewed the design of the MSE wall. Mr. Christopher
9 will testify regarding the design of the MSE wall. He will testify that the MSE wall design is
10 sound, complies with appropriate engineering standards and is appropriately designed to
11 withstand likely seismic disturbances. His testimony will be based on his own review of the
12 wall design as part of the Technical Review Team.

13 3. James C. Kelley, Ph.D. Mr. Kelley was the project lead at Parametrix, Inc. on
14 the delineation of wetlands, assessment of wetland function and design and implementation
15 of the Port's Natural Resources Mitigation Plan ("NRMP"). He will testify that the Port's
16 NRMP will provide complete mitigation of all wetland functions for wetlands that will be
17 impacted in connection with the Port's proposed MPU projects, the design of the NRMP,
18 and the mitigation proposed for those wetlands. Mr. Kelley may also provide testimony
19 regarding other impacts of the project on wildlife habitat and the mitigation of those
20 impacts. His testimony will be based on his own observations and sampling, as well as his
21 review of field data and samples collected by others supervised by him or by other Port
22 consultants, the scientific literature and his own expertise and experience as a wetlands
23 biologist.

24 4. Dr. James K. Mitchell, Ph.D., P.E. Dr. Mitchell is a member of the Technical
25 Review Panel who have reviewed the design of the MSE wall. Dr. Mitchell will testify
26 regarding the design of the MSE wall. He will testify that the MSE wall design is sound,
27 complies with appropriate engineering standards and is appropriately designed to withstand
28 likely seismic disturbances. His testimony will be based on his review of the wall design as
29 part of the Technical Review Team for the MSE wall.

30 5. William Stubblefield, Ph.D. Dr. Stubblefield will testify regarding the
31 application of numeric water quality standards in the context of the Port's stormwater
32 management system and the construction and operation of the Port's proposed MPU
33 projects. He will also testify regarding the preparation of a Water Effects Ratio and
34 development site-specific water quality standards at the Port, consistent with the
35 requirements imposed in the 401 Certification. The substance of Dr. Stubblefield's
36 testimony will be that the Port can comply with applicable water quality standards and that,
37 once a WER has been completed, the Port will be able to comply with any site-specific water
38 quality standards. Dr. Stubblefield's testimony will be based on his own review of Port
39 records, sampling conducted for the preparation of the WER, and his professional
40 experience as a practicing professional in the field of water quality.

1 6. Donald E. Weitkamp, Ph.D. Dr. Weitkamp will testify regarding wildlife
2 habitat in Miller, Walker and Des Moines Creeks and the impact of the Port's proposed
3 MPU projects on that habitat. The substance of Dr. Weitkamp's testimony will be that the
4 construction of the MPU projects will not have a deleterious effect on aquatic habitat,
5 resources and fauna in those creeks. His testimony will be based on his review of
6 precipitation records, review of the proposed improvements, the NRMP and Low Flow
7 Mitigation Plan, the Biological Assessment prepared for the federal resource agencies, along
8 with his professional experience as a working professional in the field of water quality,
9 fisheries biology and wildlife habitat.

10 7. Paul S. Fendt, PE. Mr. Fendt is the project manager at Parametrix, Inc. for
11 the design of the Port's Comprehensive Stormwater Management Plan and the Port's Low
12 Flow Mitigation Plan. The substance of Mr. Fendt's testimony will concern the design of the
13 CSMP and the Low Flow Mitigation Plan, and the fact that both of those plans will be
14 effective in managing and mitigating stormwater impacts arising from the Port's proposed
15 MPU projects so that the stormwater can meet state water quality standards. Mr. Fendt
16 will also testify regarding the modeling of the low flow impacts arising from the Port's MPU
17 projects. His testimony will be based on data collected by him or by those he supervised or
18 by other Port consultants, his own work or the work of those he supervised and his
19 professional experience.

20 8. Michael Bailey, P.E. Mr. Bailey is the project manager on the design of the
21 embankment and the MSE wall at Hart Crowser. The substance of Mr. Bailey's testimony
22 will concern the design of the embankment and MSE wall. Mr. Bailey will testify that the
23 design of the embankment and the MSE wall is sound, complies with appropriate
24 engineering standards and is appropriately designed to withstand likely seismic
25 disturbances. His testimony will be based his own review of data collected by himself or
26 those he supervises, as well as review of data and design materials collected and produced by
other Port consultants.

 9. Norman Crawford, Ph.D. Dr. Crawford is a principal at Hydrocomp, Inc. He
was engaged by the Port to undertake an independent review of modeling done for the Low
Flow Mitigation Plan and to make recommendations on that modeling based on his review.
The substance of Dr. Crawford's testimony will be that the modeling undertaken for the
Low Flow Mitigation Plan represents an accurate depiction of the likely impacts of the
Port's MPU projects on Des Moines, Miller and Walker Creeks. His testimony will be based
on the modeling data supplied to him by the Port's consultants and his own application of
the HSPF model to that data.

 10. John Strunk. Mr. Strunk is a professional geologist with Associated Earth
Sciences, Inc. He was engaged by the Port in connection with an in-depth groundwater
evaluation at the Airport. Mr. Strunk will testify regarding the likelihood of any existing
contamination to migrate from the isolated, contaminated sites on the Airport, particularly
in the AOMA area, to any area water resources as a result of the construction activities

1 associated with the MPU projects. Mr. Strunk will testify that there is no reasonable threat
2 of any such migration. Mr. Strunk's testimony will be based on his extensive work at the
3 Airport, the documents and studies described in his September 28, 2001 declaration, and his
4 professional experience.

5 11. Joseph Brascher. Mr. Brascher is employed by AquaTerra Consultants. He
6 was one of the principal modelers for the HSPF modeling done in connection with the Port's
7 Low Flow Mitigation Plan. The substance of Mr. Brascher's testimony will concern how
8 that modeling was conducted, revisions to the modeling based on Mr. Brascher's own
9 internal review of the model and calibration of the model with existing stream data, as well
10 as conclusions reached in joint sessions with representatives from Parametrix, Ecology and
11 King County. His testimony will be based on his own review and modeling of data supplied
12 to him by Parametrix and the Pacific Groundwater Group.

13 12. Charles Ellingson. Mr. Ellingson is employed by Pacific Groundwater Group.
14 Mr. Ellingson was one of the principal modelers for the Hydrus and Slice modeling done in
15 connection with the Port's Low Flow Mitigation Plan. The substance of Mr. Ellingson's
16 testimony will concern how that modeling was conducted, revisions to the modeling based on
17 the calibration of the model with existing stream data, as well as conclusions reached in joint
18 sessions with representatives from Parametrix, Ecology and King County. His testimony
19 will be based on his own review and modeling of data supplied to him by Parametrix and
20 Aqua Terra Consultants.

21 13. Jan Cassin, Ph.D. Dr. Cassin is a wetland ecologist. She has worked on
22 elements of the Natural Resources Mitigation Plan prepared by the Port of Seattle's
23 consultants for the Washington Department of Ecology and the U. S. Army Corps of
24 Engineers. She will testify that the NRMP will mitigate all wetland functions impacted by
25 the projects for which a Clean Water Act §404 permit and the §401 Certification is
26 required. Her testimony will be based on the NRMP, the wetland studies conducted by Port
27 consultants on which that NRMP is based, and on her professional experience.

28 14. Charles Wisdom, Ph.D. Dr. Wisdom is a water chemistry expert. He will
29 testify regarding ACC's allegations regarding the quality of stormwater discharges from the
30 proposed projects for which a Clean Water Act §404 permit is required. He will testify that
31 there is reasonable assurance that those projects will be able to meet state water quality
32 standards. His testimony will be based on the representative monitoring conducted for the
33 WER study, on his own review of Port records, and on his professional experience as a
34 practicing professional in the field of water quality.

35 15. Mary Vigilante. Ms. Vigilante is a principal at Synergy Consultants, Inc. and
36 is an expert in airport operations and management. Ms. Vigilante will provide testimony on
37 the environmental review undertaken pursuant to SEPA and NEPA for the Port's Master
38 Plan Update development projects, including the projects for which a §404 permit and §401
39 certification is required. Ms. Vigilante will provide rebuttal testimony, if needed, to address

1 issues raised by Stephen Hockaday, who was originally listed as a witness by ACC,
2 regarding the legal adequacy of the NEPA and SEPA review done for the project. Ms.
3 Vigilante's testimony will be based on her review of SeaTac International's operations data,
4 on the EISs, RODs, re-assessments, and addenda conducted by the FAA and Port, and on
5 her experience as a working professional in the field of airport operations and management.

6 16. Dr. William Dunlay. Dr. Dunlay is a principal in the firm of Leigh Fisher
7 Associates and is an expert on airport operations and management. Dr. Dunlay may
8 provide rebuttal testimony, if required, on the legal adequacy of the environmental review
9 conducted pursuant to NEPA and SEPA by the FAA and Port of Seattle for the Port's
10 Master Plan Updated development projects. The substance of Dr. Dunlay's testimony will
11 concern the impact on demand generally within the aviation industry in light of the events of
12 September 11, general testimony regarding the ongoing health and financial strength of the
13 aviation industry, delay measurement, the possibility of addressing bad weather operating
14 delay at SeaTac International through technology and demand management measures, and
15 the adequacy of the forecasts. Dr. Dunlay may also provide rebuttal testimony, if needed, to
16 address issues raised by Stephen Hockaday, who was originally listed as a witness by ACC.
17 Dr. Dunlay's testimony will be based on his review of SeaTac International's operations
18 data and on his experience as a working professional in the field of airport operations and
19 management.

20 17. Mike Riley, P.E. Mr. Riley is a professional engineer with the firm of
21 Papadopolous & Associates. Mr. Riley will provide testimony regarding the hydrologic
22 modeling for the proposed embankment and third runway portion of the Port's Master Plan
23 Update projects. His testimony will be that the modeling is appropriate and provides a
24 reasonable estimate of the effects of the proposed projects. His testimony will be based on
25 the modeling information provided to him by the other water quality professionals who
26 conducted the modeling. Mr. Riley may also provide testimony regarding the potential for
any contaminant transfer from the fill associated with the embankment project. His
testimony will be that the project conditions are sufficient to protect water quality. His
testimony will be based on project specifications and conditions and on his professional
expertise and experience.

18 18. Steve Swenson, P.E. Mr. Swenson is a professional engineer and an expert in
19 the field of stormwater management. Mr. Swenson will testify regarding the proposed
20 stormwater management plan and offset mitigation proposal for the summer low
21 streamflow impacts. He will testify that the project is feasible to site and construct as
22 planned. His testimony will be based on the project plans and specifications and on his
23 professional expertise and experience.

24 REQUEST FOR PRODUCTION NO. 2: Please produce all documents relied on or
25 reviewed to form the basis of the opinions, facts or other testimony referenced in the preceding
26 interrogatory. In lieu of producing the documents requested in this request for production, you

1 may provide a list of responsive documents provided that the actual documents will be made
2 available upon one business day's notice.

3 **RESPONSE:**

4 See all General Objections. In addition to, and without waiving those General
5 Objections, the Port objects to this request on the grounds that, in many instances, the work
6 on which the witness will be providing testimony is ongoing, and so identification of all
7 documents which may form the basis of the expert's opinion is impossible. The Port
specifically objects to ACC's request that the "actual documents will be made available
upon one business day's notice."

8 As stated by ACC in its discovery responses, the documents in this case are in the
9 public domain and are readily accessible to the parties and need not be produced in
10 discovery. The Port also notes that negotiations are ongoing between ACC and the Port on a
11 stipulation regarding document discovery. The Port will comply with any stipulation
12 ultimately agreed to by the parties and produce documents in accordance with that
13 stipulation. Pursuant to CR 33(c), non-privileged documents will be produced for inspection
and copying in the same manner as they are kept within the ordinary course of business, at a
mutually convenient time and place.

14 **INTERROGATORY NO. 4:** For each person identified as an expert witness in
15 Interrogatory No. 2, identify each instance with in the last ten (10) years in which the person
16 provided opinions or other written or oral testimony before a court of any jurisdiction, the
17 Pollution Control Hearings Board, or any other administrative review panel/board/officer, such
18 identification to include:

- 19 a. the case/matter name;
- 20 b. the client/party represented;
- 21 c. the date the opinion or testimony was provided;
- 22 d. the form of testimony, including but not limited to deposition, trial/hearing
23 testimony, declaration or affidavit;
- 24 e. a description of the nature of the testimony/opinion; and
- 25 f. each document in your control describing or recording this testimony.
- 26

1 ANSWER:

2 **See General Objections. The Port is assembling this information from its designated**
3 **expert witnesses and will supplement this response as soon as that information has been**
4 **received.**

5
6
7 INTERROGATORY NO. 5: Describe with particularity all supporting materials
8 submitted with the Coastal Zone Management Act (16 U.S.C. §§ 1451-1464) ("CZMA")
9 consistency certification for the Third Runway Project.

10 ANSWER:

11 **The Port's certification of consistency with the Coastal Zone Management Act was**
12 **included as part of the Port's JARPA application and is readily available to ACC. The**
13 **Port's certification of compliance is supported by numerous materials contained within both**
14 **the Port's files and Ecology's files.**

15 **The enforceable policies under the CZMA are the Clean Air Act, Clean Water Act,**
16 **and SEPA/NEPA. Consistency with the Clean Air Act has been found by the FAA on two**
17 **different occasions when the FAA has issued its Record(s) of Decision. Ecology's review and**
18 **approval of CZMA certifications is categorically exempt under SEPA, WAC 197-11-885(3).**
19 **Although SEPA and NEPA compliance is not an appropriate topic for this appeal, the Port**
20 **notes that the Puget Sound Regional Council (and its predecessor Puget Sound Council of**
21 **Governments, the FAA and the Port have conducted extensive review pursuant to NEPA**
22 **and SEPA, including several EISs (all of which have been appealed by the ACC and held to**
23 **be legally adequate). The Port's SEPA/NEPA compliance is documented in the FEIS and**
24 **FSEIS. The Port and FAA have also conducted a number of environmental reassessments**
25 **and environmental addenda to those EISs, all of which are in the possession of ACC, which**
26 **has commented on each and every document to Ecology and/or the Army Corps of**
Engineers. With respect to compliance with the Clean Water Act, all elements of the project
that were addressed in Ecology's §401 Certification and all files pertaining to that
certification support the Clean Water Act determination. Accordingly, the Port objects to
this portion of the interrogatory as being unnecessarily broad and unduly burdensome.

24 REQUEST FOR PRODUCTION NO. 3: Please produce all documents within your
25 control upon which you rely in your answer to the proceeding interrogatory. In lieu of producing
26

1 the documents requested in this request for production, you may provide a list of responsive
2 documents provided that the actual documents will be made available upon one business day's
3 notice.

4 RESPONSE:

5 Without waiving its General Objections, the Port states that both of the FAA's
6 Record of Decisions are already in the possession of ACC and have been cited by ACC in
7 comments provided to both Ecology and the Corps of Engineers. Likewise, ACC has a copy
8 of Ecology's §401 Certifications issued August 10, 2001 and September 21, 2001. Both of
9 those Certifications outline the compliance of the MPU projects with the Clean Water Act.
10 The other documents that have a bearing on compliance with the CZMA are referred to in
11 the Port's two-volume Response to Comments, which ACC already has a copy of, or in the
12 publicly disseminated reports that ACC also has within its possession.

13
14 The Port notes that negotiations are ongoing between ACC and the Port on a
15 stipulation regarding document discovery. The Port will comply with any stipulation
16 ultimately agreed to by the parties and produce documents in accordance with that
17 stipulation.

18
19 INTERROGATORY NO. 6: Identify with particularity each structure related to the Port's
20 Third Runway Project or master plan improvements that may impound ten acre-feet or more of
21 water (or any substance in combination with water such as, but not limited to, liquid or slurry).

22 ANSWER:

23 The structures to which dam safety regulations would be applicable are identified in
24 Appendix D of the Port's Comprehensive Stormwater Management Plan.

25
26 INTERROGATORY NO. 7: For each structure identified in the preceding interrogatory,
please state with particularity which Dam Safety performance standards (in Ch. 173-175 WAC)
you contend apply and do not apply to each structure.

1 **ANSWER:**

2 **See General Objections Nos. 1, 3 and 4. Without waiving these objections, the Port**
3 **notes that, under WAC 173-175-020(1), dam safety permits are required for structures that**
4 **impound 10 acre feet of water above the normal ground level “on either an intermittent or**
5 **permanent basis” with certain exceptions. For those structures that do not have a berm that**
6 **exceeds 6 feet in height, those facilities may be excluded by Ecology from compliance with**
7 **dam safety regulations, on a case-by-case basis. WAC 173-175-020(2). The Port believes**
8 **that Ecology will apply all applicable regulations to the structures that are ultimately**
9 **covered by those regulations.**

10 **INTERROGATORY NO. 8: For all work described in the October 25, 2000, JARPA**
11 **submitted for the Third Runway and related projects (as amended), identify each activity or**
12 **project you contend is a “Port 404 project” as that phrase is used in the 401 Certification (see, e.g.,**
13 **Condition E, page 33).**

14 **ANSWER:**

15 **See General Objections Nos. 2, 3 and 4. The Port also objects to this interrogatory on**
16 **the basis of relevance. The projects to which Condition E applies are to be determined by**
17 **Ecology, not the Port. Accordingly, the Port’s views on the term, if any, are not relevant.**

18 **Without waiving those objections, the Port notes that the October 25, 2000 JARPA**
19 **application describes the projects for which a §404 permit was necessary, i.e., projects that**
20 **would require discharge of fill material into waters of the U.S. This includes, e.g., the third**
21 **runway, runway safety areas and the South Aviation Support Area. As used in the 401**
22 **Certification’s Condition E, the term “404 Project” is broader than the projects for which a**
23 **§404 permit is required.**

24 **The Corps’ public interest review of the projects described in the October 25, 2000**
25 **JARPA may extend beyond the scope of the specific projects described in that application**
26 **and for which a §404 permit is required. Similarly, Ecology’s review under 33 U.S.C. §1341**
27 **may extend beyond the specific projects described in that application and for which a §404**
28 **permit is required. In fact, both the Corps and Ecology have reviewed projects and imposed**
29 **conditions that go beyond the scope of the Port’s proposed projects requiring discharge of**
30 **fill material into the waters of the United States.**

31 **INTERROGATORY NO. 9: For all work described in the October 25, 2000, JARPA**
32 **submitted for the Third Runway and related projects (as amended), identify each activity or**

1 project you contend is not a "Port 404 project" as that phrase is used in the 401 Certification (see,
2 e.g., Condition E, page 14).

3 ANSWER:

4 See response to Interrogatory No. 8.

5
6
7 INTERROGATORY NO. 10: Describe in detail the difference between the scope of the
8 phrase "Port 404 project" as used in the amended 401 Certification (see, e.g., Certification E,
9 page 14) and the scope of the phrase "Port's Master Plan Update Improvements" as used in the
10 August 10, 2001, 401 certification (see, e.g., Condition E, page 14).

11 ANSWER:

12 See response to Interrogatory No. 8. There is not a significant difference between the
13 two terms. The amended §401 Certification merely includes more examples in an effort to
14 provide greater clarity.

15
16 INTERROGATORY NO. 11: Is it your contention that there are activities or projects
17 described in the October 25, 2000, JARPA submitted for the Third Runway and related projects
18 (as amended), for which you need not seek certification pursuant to § 401 of the Clean Water Act
19 (33 U.S.C. § 1341)?

20 ANSWER:

21 See response to Interrogatory No. 8.

1 INTERROGATORY NO. 12: If the answer to the preceding interrogatory is not an
2 unqualified no, state with particularity which activities or projects you contend do not require
3 certification pursuant to § 401 of the Clean Water Act (33 U.S.C. § 1341).

4 ANSWER:

5 See response to Interrogatory No. 8.

6
7
8 REQUEST FOR PRODUCTION NO. 4: Please produce all documents within your
9 control supporting or otherwise pertaining to facts stated in your answer to the preceding
10 interrogatory.

11 RESPONSE:

12 Without waiving any General Objections, ACC has a copy of the Port's October 25,
13 2000 JARPA application, has copies of the reports submitted by the Port and its consultants
14 with respect to the Corps' and Ecology's review of those projects, and has access to the
15 Corps' and Ecology's files with respect to those agency's review of those projects. As ACC
16 noted in its response to the Port's First Set of Interrogatories and Requests for Production,
17 ACC has already obtained records from Ecology, including records indicating the ongoing
18 exchange of materials between the Port and Ecology. With respect to documents in the
19 Corps' record, the Port is aware of ACC's ongoing exchange of materials with the Corps.
20 Accordingly, the Port responds to this request in the same manner as ACC responded to the
21 Port's Request for Production No. 6: the documents requested "are obtainable from some
22 other source (the identified governmental agencies) that is more convenient, less
23 burdensome, or less expensive.' CR 26(b)(1). To the extent this request for production
24 seeks public record obtained from Ecology [or the Corps] under the public record act,
25 [ACC] may obtain them directly from Ecology [or the Corps]."

26 In addition, the Port notes that negotiations are ongoing between ACC and the Port
on a stipulation regarding document discovery. The Port will comply with any stipulation
ultimately agreed to by the parties and produce documents in accordance with that
stipulation.

1 **INTERROGATORY NO. 13:** Is it your contention that there are activities or projects
2 related to the Third Runway Project (beyond those included in your answer to Interrogatory
3 No. 12), for which you need not seek certification pursuant to § 401 of the Clean Water Act
4 (33 U.S.C. § 1341)?

5 **ANSWER:**

6 See answer to Interrogatory No. 8. See General Objection Nos. 3, 5, 6 and 8. The
7 Port objects to this interrogatory specifically on the grounds that the range of “activities or
8 projects related to the Third Runway Project” is so large as to make response to this
9 interrogatory unduly burdensome and cumulative. “Related” projects would include
10 planning for terminal improvements, navigation improvements or other projects associated
11 with the Port’s Master Plan Update that have no direct connection with any requirement to
12 discharge fill material into waters of the United States. In addition, the Corps’ review of
13 cumulative impacts of projects surrounding the Airport encompasses numerous projects
14 that are being proposed or undertaken by third-party project proponents completely
15 unrelated to the Port. While all of those projects might be reviewed by the Corps or
16 considered by Ecology pursuant to the Corps’ public interest review or under 33 U.S.C.
17 §1341(d), they do not require discharge of fill material into the waters of the United States
18 and therefore may proceed in the absence of a certification under 33 U.S.C. §1341.

19 **INTERROGATORY NO. 14:** If the answer to the preceding interrogatory is not an
20 unqualified no, state with particularity which activities or projects you contend do not require
21 certification pursuant to § 401 of the Clean Water Act (33 U.S.C. § 1341).

22 **ANSWER:**

23 See response to Interrogatory No. 13.

24 **REQUEST FOR PRODUCTION NO. 5:** Please produce all documents within your
25 control supporting or otherwise pertaining to facts stated in your answer to the preceding
26 interrogatory.

1 RESPONSE:

2 See response to Request for Production No. 4.

3
4 INTERROGATORY NO. 15: For each activity or project identified in your answers to
5 Interrogatory Nos. 12 and 14, identify each activity or project undertaken or commenced prior to
6 August 10, 2001, and each activity or project commenced since August 10, 2001.

7 ANSWER:

8 See response to Interrogatory No. 13.

9
10
11 INTERROGATORY NO. 16: Identify all conditions or mitigation proposed for the Third
12 Runway Project which you contend will not apply or may not be enforced over the operational life
13 of the third runway project.

14 ANSWER:

15 See General Objections Nos. 3, 5, 6 and 8. The Port specifically objects to this
16 interrogatory on the grounds that it is vague as written and, as a result of that vagueness,
17 unduly burdensome and cumulative. The terms "all conditions or mitigation proposed"
18 does not specify the person or body that has proposed the conditions or mitigation and many
different conditions and mitigation have been proposed by many different persons or
organizations for the Third Runway Project.

19 Consistent with General Objection 8, and without waiving its prior objections, the
20 Port will assume that this Interrogatory has reference to conditions or mitigation proposed
21 by Ecology in the 401 Certification and respond to the interrogatory accordingly. Using that
22 assumption, the conditions and mitigation that are applicable to the projects are specified in
the 401 Certification, and the Port intends to comply with those conditions.

23 As to enforcement of those conditions or mitigation, the Port objects to this portion of
24 the interrogatory on the grounds that it seeks information that it is not within the Port's
25 custody or control and on the grounds that it would require speculation. While the Port
intends to comply with the conditions in the 401 Certification, enforcement of those
26 conditions rests with Ecology and the Corps, to the extent that the Corps issues a §404

1 permit that adopts and incorporates the conditions in the 401 Certification. The Port
2 cannot respond as to which conditions may be enforced by third-parties.

3
4 INTERROGATORY NO. 17: Describe in detail the contents of any meeting or committee
5 action in which Joan Marchioro, Port Counsel Jay Manning and Tanya Barnett, Megan White,
6 Dan Swenson, Steve Hirschey and Bob Barwin (or others) participated, addressing in whole or in
7 part the need or potential use of a water right for implementation of flow mitigation for the Third
8 Runway Project, which took place on March 22, 2001.

9 ANSWER:

10
11 On or about March 22, 2001 and April 2, 2001, representatives of the Port of Seattle,
12 including Port attorneys Jay Manning and Tanya Barnett, discussed with representatives of
13 Ecology whether a water right would be needed in order to implement the Port's proposal to
14 mitigate summer low streamflow impacts. The Ecology representatives agreed with the Port
15 representatives that a water right was not necessary because the management of stormwater
16 proposed by the Port was directly related to the low streamflow impacts actually created by
17 the project itself. As a result, the summer low streamflow offset proposal was no different
18 than other stormwater management routinely required by Ecology, including mitigation for
19 peak flow impacts, such as impoundment and release, and mitigation for low flow impacts,
20 such as impoundment and infiltration.

21
22 INTERROGATORY NO. 18: Describe in detail the contents of any meeting or
23 communication in which Joan Marchioro, Tom Fitzsimmons and/or Port Counsel Jay Manning (or
24 others) participated, addressing in whole or in part the need or potential use of a water right for
25 implementation of flow mitigation for the Third Runway Project, which took place on April 2,
26 2001.

ANSWER:

See response to Interrogatory No. 17.

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INTERROGATORY NO. 19: Identify each communication between the Port and Tom Fitzsimmons subsequent to April 2, 2001, addressing in whole or in part the need or potential use of a water right for implementation of flow mitigation for the Third Runway Project.

ANSWER:

See response to Interrogatory No. 17.

REQUEST FOR PRODUCTION NO. 6: Please produce all documents within your control supporting or otherwise pertaining to facts stated in your answers to the three preceding interrogatories.

RESPONSE:

Negotiations are ongoing between the Port and ACC on a stipulation regarding document discovery. Upon completion of those negotiations, responsive documents, if any, will be produced in accordance with that stipulation.

Interrogatories and Requests for Production dated this 26th day of November, 2001.

HELSELL FETTERMAN LLP

By: _____
Peter J. Eglick, WSBA No. 8809
Michael P. Witek, WSBA No. 26598
Attorneys for Appellant Airport Communities Coalition

1 SIGNED on behalf of Port of Seattle

2 By: _____
3 Signature

4 _____
5 Printed Name

6 STATE OF WASHINGTON)
7 COUNTY OF _____) ss.

8 _____, being first duly sworn, on oath deposes and
9 says:

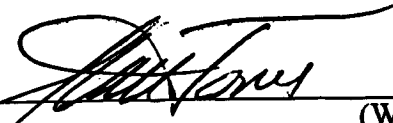
10 That _____ is the _____ for the
11 Respondent named herein, has read the interrogatories and requests for production contained
12 herein and the answers and responses thereto; believes the answers and responses to be true and
13 correct; and has not interposed any answers or objections for any improper purpose, such as to
14 harass or to cause unnecessary delay or needless increase in the cost of litigation.

15 SUBSCRIBED AND SWORN to before me this _____ day of _____, 2001.

16 _____
17 NOTARY PUBLIC in and for the State of
18 Washington, residing at _____.

19 My commission expires _____

20 STEVEN G. JONES, attorney for Port of Seattle, certifies that (s)he has read the
21 answers, responses and objections (if any) to the foregoing interrogatories and requests and, to the
22 best of her/his knowledge, information, and belief formed after a reasonable inquiry they are
23 (1) consistent with these rules and warranted by existing law or a good faith argument for the
24 extension, modification, or reversal of existing law; (2) not interposed for any improper purpose,
25 such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and
26 (3) not unreasonably or unduly burdensome or expensive, given the needs of the case, the
discovery already had in the case, the amount in controversy, and the importance of the issues at
stake in the litigation.

By: 
Attorney for Port of Seattle (WSBA No. 19334)

ACC'S INTERROGATORIES AND REQUESTS FOR
PRODUCTION NOS. 1-6 TO PORT OF SEATTLE AND
PORT'S OBJECTIONS AND RESPONSES - 25

FOSTER PEPPER & SHEFELMAN PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
206-447-4400

AR 004933

EXHIBIT

Witek, Michael P.

From: Witek, Michael P.
Sent: Monday, January 07, 2002 6:26 PM
To: Steven G. Jones (E-mail); Roger A. Pearce (E-mail)
Subject: Discovery stipulation

Steve/Roger:

Here are our comments on the discovery stipulation. I have left on MS Word's track changes function so you can see the changes we have proposed. Please call me if you have any questions, or want to discuss further.

Mike
689-2137 direct



Stipulation on
documentary dis...

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Draft: for discussion purposes only

POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON

Airport Communities Coalition,

Appellant,

Citizens Against SeaTac Expansion,

Intervenor-Appellant,

v.

Department of Ecology and
The Port of Seattle,

Respondents.

No. 01-133
PCHB No. 01-160

STIPULATION AND ORDER RE: SCOPE
OF DISCOVERY OF DOCUMENTS

STIPULATION

Appellant Airport Communities Coalition, Respondents Department of Ecology and the Port of Seattle, and Intervener Citizens Against SeaTac Expansion, through their respective counsel of record, enter into the following stipulation with respect to the parties' discovery of documents in this case:

1. This stipulation shall be applicable to all witnesses designated by the parties in their Preliminary Witness and Exhibit lists filed on November 15, 2001, and in their Final Witness Lists to be filed on February 8, 2002, whether those witnesses were designated as expert witnesses, fact witnesses, third-party witnesses or other witnesses ("Witness"). This stipulation shall also apply to any discovery of witnesses designated by CASE, irrespective of the date or form of such designation.

1 2. The parties stipulate that, with respect to documents sought pursuant to requests for
2 production filed under CR 34 or any other discovery request, subpoena duces tecum or other means
3 (“Discovery Requests”), the only documents required to be produced in response to such requests
4 need not include are:

5 a. ~~any data obtained from sampling in the field, or samples taken in response to~~
6 ~~regulatory requirements imposed by an agency with competent regulatory jurisdiction;~~

7 ~~b. calculations, models, modeling reports, reports produced by others, scientific treatises~~
8 ~~or publications, journals, manuals, rules, regulations, laws, regulatory guidance, or any other~~
9 ~~information upon which a Witness formed conclusions, made projections, founded assumptions or~~
10 ~~that otherwise formed the bases for a Witness’ conclusions;~~

11 ~~ae. the parties stipulate that documents produced in response to Discovery Requests need~~
12 ~~not include preliminary drafts of prior iterations of reports, studies, declarations, opinions, comment~~
13 ~~letters, or any other document reflecting a Witness’ preliminary opinion (“Preliminary Drafts”)~~
14 ~~where the latest version of such document is produced (regardless of whether the latest version is~~
15 ~~denominated a “draft”), whether that opinion was offered in this case, or in comments submitted to~~
16 ~~third parties, and whether or not those opinions were formed and submitted for use in this case or in~~
17 ~~connection with another proceeding or in comments on the actions of the Port or Ecology submitted~~
18 ~~to third parties, viz, the U.S. Army Corps of Engineers, or in correspondence between witnesses and~~
19 ~~attorneys regarding Preliminary Drafts; or~~

20 ~~bd. the date range of documents required to be produced in response to Discovery~~
21 ~~Requests will be from the dated prior to of the first Port’s first JARPA application, December 18,~~
22 ~~1996. Responses will be supplemented as required under CR 26(e) through January 31, 2002.~~

23 3. The parties stipulate that, notwithstanding the limits on document discovery outlined
24 above, nothing in this Stipulation and Order will be deemed to limit any party’s ability to pursue
25 through deposition questions or through cross-examination a Witness’ basis for his or her opinions
26

1 and/or conclusions, ~~whether those opinions or conclusions were presented to a party or its counsel~~
2 ~~prior to the time they were formally presented in this case, and what, if any, comments were received~~
3 ~~by any person (except counsel) to whom they were presented. Nor does this stipulation and order~~
4 ~~restrict in any way Public Disclosure Act Requests by ACC and/or CASE to the Department of~~
5 ~~Ecology regarding matters related to the Port's § 401 Applications and Certifications or Ecology's~~
6 ~~obligation in responding thereto.~~

7 4. This Order ~~applies is be applicable~~ to the parties in proceedings in this case only, and
8 does not limit the scope of discovery in any other proceedings ~~amongbetween~~ these parties, or
9 restrict the parties from inquiring of any Witness regarding the basis for a Witness' opinions or
10 conclusions, apart from documents produced within the scope of this Order.

11 5. The parties stipulate that no party will seek to circumvent the intent of this Stipulation
12 and Order through submitting Public Disclosure Act requests, issuing subpoena duces tecum, or
13 submitting other forms of requests for documents not required to be produced under this
14 stipulation that would fall outside the scope of this Stipulation and Order. Notwithstanding the
15 foregoing, nothing in this stipulation shall be deemed to limit Public Disclosure Act Requests by
16 ACC and/or CASE to the Department of Ecology regarding matters related to the Port's § 401
17 applications and Certifications or Ecology's obligation in responding thereto.

18 So Stipulated:

19 HELSELL FETTERMAN LLP

20
21 _____
22 Peter J. Eglick, WSBA No. 8809
23 Kevin L. Stock, WSBA No. 14541
24 Michael P. Witek, WSBA No. 26598
25 Attorneys for Appellant Airport Communities Coalition

26 _____
LAW OFFICES OF RACHAEL PASCHAL OSBORN

1 Rachael Paschal Osborn, WSBA # 21618
2 Attorney for Appellant ACC

3
4 SMITH & LOWNEY, P.C.

5 Richard A. Poulin, WSBA No. 27782
6 Attorneys for Airport Communities Coalition
7 and Citizens Against SeaTac Expansion

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STIPULATION AND ORDER RE: DOCUMENT DISCOVERY - 4

FOSTER PEPPER & SHEFELMAN PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
206-447-4400

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CHRISTINE GREGOIRE
Attorney General

Joan M. Marchioro, WSBA No. 19250
Thomas J. Young, WSBA No. 17366
Jeff B. Kray, WSBA No. 22174
Attorneys for Respondent Department of Ecology

PORT OF SEATTLE

Linda J. Strout, General Counsel, WSBA No. 9422
Traci M. Goodwin, Senior Port Counsel, WSBA No. 14974

1 FOSTER PEPPER & SHEFELMAN PLLC

2
3

Roger A. Pearce, WSBA No. 21113
4 Steven G. Jones, WSBA No. 19334
Attorneys for Respondent Port of Seattle

5 MARTEN & BROWN LLP

6
7

Jay J. Manning, WSBA No. 13579
8 Gillis E. Reavis, WSBA No. 21451
Attorneys for Respondent Port of Seattle

9
10 **ORDER**

11 Based on the stipulation of the parties, the Board enters the following ORDER:

12 1. The scope of documents that are subject to discovery in this proceeding is limited by
13 Order of the Board to ~~the~~ and need not include the following:

14 a. ~~any data obtained from sampling in the field, or samples taken in response to~~
15 ~~regulatory requirements imposed by an agency with competent regulatory~~
16 ~~jurisdiction;~~

17 ~~calculations, models, modeling reports, reports produced by others, scientific~~
18 ~~treatises or publications, journals, manuals, rules, regulations, laws, regulatory~~
19 ~~guidance, or any other information upon which a Witness formed conclusions,~~
20 ~~made projections, founded assumptions or that otherwise formed the bases for~~
21 ~~a Witness' conclusions;~~

22 ae. ~~the parties stipulate that documents produced in response to Discovery~~
23 ~~Requests need not include preliminary drafts prior iterations of reports,~~
24 ~~studies, declarations, opinions, comment letters, or any other document~~
25 ~~reflecting a Witness' preliminary opinion ("Preliminary Drafts") where the~~
26 ~~latest version of such document is produced (regardless of whether the latest~~

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version is denominated a "draft"), whether that opinion was offered in this case, or in comments submitted to third parties, and whether or not those opinions were formed and submitted for use in this case or in connection with another proceeding or in offering comments on the actions of the Port or Ecology to third parties, viz, the U.S. Army Corps of Engineers, or in correspondence between witnesses and attorneys regarding Preliminary Drafts; or

bd. the date range of documents that shall be produced in response to Discovery Requests will be from dated prior to December 18, 1996.; Responses will be supplemented as required under CR 26(e). through January 31, 2002.

2. This Order ~~applies is be applicable~~ to the parties in proceedings in this case only, and does not limit the scope of discovery in any other proceedings ~~amongbetween~~ these parties, or restrict the parties from inquiring of any Witness regarding the basis for a Witness' opinions or conclusions, over and apart from documents produced within the scope of this Order.

3. Consistent with the parties' stipulation, all parties are prohibited from seeking to circumvent this Order by submission of Public Disclosure Act requests, issuing subpoena duces tecum, or submitting other forms of requests for documents not required to be produced under this stipulation. that would fall outside the scope of this Order. Notwithstanding the foregoing, nothing in this stipulation shall be deemed to limit Public Disclosure Act Requests by ACC and/or CASE to the Department of Ecology regarding matters related to the Port's § 401 Applications and Certifications or Ecology's obligation in responding thereto.

Dated this _____ day of December, 2001.

POLLUTION CONTROL HEARINGS BOARD

Kaleen Cottingham, Presiding Officer

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Jointly presented by;
Notice of Presentation Waived:

HELSELL FETTERMAN LLP

Peter J. Eglick, WSBA No. 8809
Kevin L. Stock, WSBA No. 14541
Michael P. Witek, WSBA No. 26598
Attorneys for Appellant Airport Communities Coalition

LAW OFFICES OF RACHAEL PASCHAL OSBORN

Rachael Paschal Osborn, WSBA # 21618
Attorney for Appellant ACC

1 SMITH & LOWNEY, P.C.

2

3 Richard A. Poulin, WSBA No. 27782
4 Attorneys for Airport Communities Coalition
5 and Citizens Against SeaTac Expansion

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12 PORT OF SEATTLE

13

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20 Attorneys for Respondent Port of Seattle

21 MARTEN & BROWN LLP

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23 Jay J. Manning, WSBA No. 13579
24 Gillis E. Reavis, WSBA No. 21451
25 Attorneys for Respondent Port of Seattle

26

STIPULATION AND ORDER RE: DOCUMENT DISCOVERY - 9

FOSTER PEPPER & SHEFELMAN PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
206-447-4400

EXHIBIT

AR 004944

FOSTER PEPPER & SHEFELMAN PLLC
ATTORNEYS AT LAW

01-14-02 11:30 AM



1111 THIRD AVENUE, SUITE 3400
SEATTLE, WA 98101
FAX: (206) 447-9700
PHONE: (206) 447-4400

FACSIMILE TRANSMITTAL SHEET

January 14, 2002

| TO: | FAX NUMBER: | VOICE CONTACT: | VOICE CONFIRM: |
|----------------------------|----------------|----------------|---|
| Mr. Peter J. Eglick | (206) 340-0902 | (206) 292-1144 | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| Mr. Michael P. Witek | (206) 340-0902 | (206) 689-2137 | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| Mr. Kevin L. Stock | (206) 340-0902 | (206) 689-2137 | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| Ms. Rachael Paschal Osborn | (509) 328-8144 | (509) 328-1087 | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| Cc: Ms. Traci M. Goodwin | (206) 728-3205 | (206) 728-3212 | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| Cc: Gillis E. Rcavis, Esq. | (206) 292-6301 | (206) 292-6300 | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |

From: Steven G. Jones
Dirct Dial: (206) 447-8902
Direct Return Fax: (206) 749-1962

Attachments:

Number of Pages (Including this cover page): 2

User & Client/Matter Number: 424 7155-24

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Message:

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FOSTER PEPPER & SHEFELMAN PLLC
ATTORNEYS AT LAW



Direct Phone
(206) 447-8902

Direct Facsimile
(206) 749-1962

E-Mail
Jones@foster.com

January 14, 2002

VIA FACSIMILE

Mr. Peter J. Eglick
Mr. Kevin L. Stock
Mr. Michael P. Witk
Helsell Fetterman, LLP
1325 Fourth Avenue
Suite 1500
Seattle, WA 98101

Ms. Rachel Paschal Osborn
2421 West Mission Avenue
Spokane, WA 99201

Re: Depositions Noted by ACC

Dear Counsel:

In anticipation of the depositions that ACC has noted for the remainder of the month, I wanted to inform you that, consistent with the Port of Seattle's responses to ACC's discovery requests, we can make documents available for review and copying at your convenience. Please contact me directly at the numbers shown above if you would like to set up a time to come to our offices and review documents.

Sincerely,

FOSTER PEPPER & SHEFELMAN PLLC

Steven G. Jones

cc: Traci Goodwin
Roger Pearce
Gillis Reavis

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ANCHORAGE
Alaska

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Washington

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Law Offices
HELSELL
FETTERMAN
A Limited Liability Partnership

January 16, 2002

Peter J. Eglick
Attorney At Law

Via Facsimile

Mr. Roger A. Pearce
Mr. Stephen G. Jones
Foster Pepper & Shefelman
1111 Third Ave., Suite 3400
Seattle, WA 98101

Re: *ACC v. DOE*, PCHB No. 01-160

Dear Messrs. Pearce and Jones:

Below is a transcribed voice mail I received today from Linda Logan at Parametrix:

“Peter, this is Linda Logan, Parametrix, calling regarding the deposition notice. I’m scheduled for January 22 and unfortunately cannot make that so wanted to give you some options. January 28 in the afternoon, January 31, February 4, 6 or 7. You can reach me at (425) 822-8880. Thank you.”

I understand we’ve also received another call from one of your experts (or his or her assistant) regarding a similar matter. That person advised that someone at Foster Pepper had told them to call here. We will not return any calls to your experts, because we understand that deposition arrangements are to be made through counsel. If you have a different understanding of this, please advise immediately. Your experts should also be advised accordingly.

This is to also confirm the telephone conversation I just had with you both to the following effect:

- i) You are aware that some documents our paralegal has reviewed today are labeled attorney-client privilege, but advise that this label was placed on the documents for another case and that the documents “are no longer privileged.”
- ii) The bulk of the documents which your letter of January 14 said were then available for review in your office (Hart Crowser CDs and

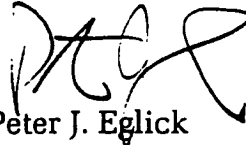
AR 004948

Mr. Roger A. Pearce
January 16, 2002
Page 2

Parametrix documents) are actually not available. You expect them to arrive tomorrow.

- iii) Such documents will not include documents involving, e.g., communications between Parametrix and Foster Pepper (Port counsel) or similar privileged or work product items. You advised that the withholding of these items was "pursuant to an agreement reached with Kevin Stock." (As you may know, Mr. Stock is in Lacey today taking Gordon White's deposition.)

Sincerely,

A handwritten signature in black ink, appearing to read 'Peter J. Eglick', with a stylized flourish at the end.

Peter J. Eglick

cc: Jay J. Manning / Gillis E. Reavis *(via fax)*
Joan M. Marchioro / Thomas J. Young / Jeff B. Kray *(via fax)*
Linda Strout / Traci Goodwin *(via fax)*
Rachael Paschal Osborn *(via fax)*
Richard A. Poulin *(via fax)*

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AR 004950

Law Offices
HELSELL
FETTERMAN
A Limited Liability Partnership

December 10, 2001

RECEIVED

Michael P. Witek
Attorney At Law

DEC 11 2001

**FOSTER PEPPER &
SHEFELMAN PLLC**

By Hand Delivery

Mr. Steven G. Jones
Foster Pepper & Shefelman
1111 Third Ave., Suite 3400
Seattle, WA 98101

Re: ACC's Answers and Objections to Port Interrogatories

Dear Mr. Jones:

Enclosed please find ACC's answers and objections to the Port's first set of Interrogatories and Requests for Production of Documents. We will send you a signature page from ACC when it is provided to us.

Sincerely,

HELSELL FETTERMAN LLP



Michael P. Witek

MPW:mpw

Enclosure

AR 004951

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6 POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON

7 AIRPORT COMMUNITIES COALITION,

8 Appellant,

PCHB No. 01-160

9 v.

10 STATE OF WASHINGTON
11 DEPARTMENT OF ECOLOGY, and THE
12 PORT OF SEATTLE,

13 Respondents.

**RESPONDENT PORT OF SEATTLE'S
FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION
DIRECTED TO APPELLANT AIRPORT
COMMUNITIES COALITION
AND ANSWERS AND RESPONSES
THERETO**

14
15 TO: AIRPORT COMMUNITIES COALITION ("ACC")

16 AND TO: PETER J. EGLICK, Helsell Fetterman LLP; and
17 RACHAEL PASCHAL OSBORN, ACC's attorneys of record

18 **INSTRUCTIONS**

19 **Interrogatories.** Pursuant to Civil Rules 26 and 33, you are requested to
20 answer the following interrogatories in writing and under oath, and, after you and
21 your attorney sign them below, to serve a copy upon the undersigned counsel at the
22 offices of Marten Brown Inc., 1191 Second Avenue, Suite 2200, Seattle,
23 Washington 98101. You must serve your answers within thirty (30) days after the
24 interrogatories are served on you.
25

AR 004952

PORT'S FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION TO ACC
PAGE 1

**HELSELL
FETTERMAN**
A Limited Liability Partnership

1500 PUGET SOUND PLAZA P.O. BOX 21846
SEATTLE, WA 98111-3846 PH: (206) 292-1144

1 These interrogatories are continuing interrogatories, and require you to
2 provide supplemental answers which set forth any information within the scope of
3 the interrogatories acquired or discovered by you following service of your original
4 answers, as required by Civil Rule 26(e).

5 Space for your answers has been provided after each interrogatory. If the
6 space provided for the answer is not sufficient, please attach additional pages to the
7 page on which the answer is set forth.

8 In answering these interrogatories, you are to furnish all information that is
9 available to you, not just information that is of your own knowledge. This means
10 that you are to furnish information which is known by or in the possession of you
11 and your employees and agents.

12 **Requests for Production of Documents.** Pursuant to Civil Rules 26 and 34,
13 you are also requested to produce for inspection and copying the documents
14 described in each request made below at the offices of Marten Brown Inc., 1191
15 Second Avenue, Suite 2200, Seattle, Washington 98101. True and accurate copies
16 of the requested documents may be produced with the answers to these
17 interrogatories, but in any event shall be provided within thirty (30) days after
18 these requests are served on you. These requests for production are directed to you
19 and to your employees and agents, including all persons acting on your behalf.
20 You are required to produce all documents within your care, custody or control,
21 including but not limited to documents maintained by an employee, agent or
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1 representative, and documents maintained by any third party from whom you have
2 a contractual or other right to require production.

3 These requests for production are intended to encompass the original
4 document and all copies that differ from the original in any respect, for example, by
5 reason of notations made on the copy.
6

7 These requests are also intended to encompass all documents of any nature
8 which are now or have at any time been within your care, custody, or control. If a
9 document is no longer within your care, custody, or control, state what disposition
10 was made of it, who disposed of it, the reason for such disposition, and the date
11 upon which it was so disposed.
12

13 **Privilege Log Required by Civil Rule 26(b)(5)**: If you contend that any
14 document encompassed by any request is privileged, in whole or in part, or if you
15 otherwise object to its production, then with respect to each such document:

16 1. state with particularity the reason or reasons for your objection and/or
17 the nature of any privilege asserted;

18 2. identify each person having knowledge of the factual basis, if any,
19 upon which the privilege or other objection is asserted; and
20

21 3. state the following:

22 a. the date of the document;

23 b. the nature or type of the document (e.g., whether letter,
24 memorandum, etc.);
25

AR 004954

- 1 c. identify each individual who prepared the document;
- 2 d. identify each person to whom the document, or a copy thereof,
- 3 has been at any time provided;
- 4 e. identify each person from whom the document has been
- 5 obtained by you;
- 6 f. identify each person or entity having possession of the original
- 7 of the document (or if the whereabouts of the original are unknown, identify each
- 8 person or entity known or believed to have a copy or copies thereof); and
- 9 g. all other information necessary to identify the document with
- 10 sufficient particularity to meet the requirements for its inclusion in a motion for
- 11 production pursuant to Civil Rule 37.
- 12
- 13

14 If you believe that any of these discovery requests are vague,

15 ambiguous or overbroad, please contact the attorney who sent the requests, who

16 will make every effort to cure these perceived defects. Please contact such attorney

17 to discuss any such objections prior to responding at the expiration of the thirty-

18 day period.

19 DEFINITIONS

20

21 Included below are definitions of the terms used in these interrogatories and

22 requests for production. Please read these definitions carefully, because some of

23 the terms used in these interrogatories and requests for production are given

24

25 **AR 004955**

1 definitions which may be more expansive than the definitions which those terms
2 are given in common usage.

3 1. **"401 Certification"** shall mean, unless otherwise specified, the
4 Department of Ecology's certification of the Port of Seattle's ("Port") **Third Runway**
5 **Project** pursuant to the provisions of 33 U.S.C. 1341 (FWPCA § 401) and shall
6 include the 401 Certification for the Third Runway Project issued September 21,
7 2001, the 401 Certification for the Third Runway Project issued August 10, 2001,
8 all applications submitted in support of 401 certification of the Third Runway
9 Project (including but not limited to application for the aforementioned 401
10 Certifications and any prior applications for 401 Certification of the Third Runway
11 Project, and all submittals supporting any of the 401 Certification applications for
12 the Third Runway Project.
13
14

15 2. **"And"** shall also mean **"or,"** and **"or"** shall also mean **"and."**

16 3. **"Communication"** means any writing or any oral conversation
17 including, but not limited to: telephone conversations, meetings, letters,
18 telegraphic and telex communications, electronic communications, and all
19 documents concerning such writing or such oral conversation.
20

21 4. **"Describe"** when used in reference to matters of fact or contention,
22 means to state every material fact and circumstance specifically and completely
23 (including, but not limited to, date, time, location, and the identity of all
24
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AR 004956

1 participants), and whether each such fact or circumstance is stated on knowledge,
2 information, or belief, or is alleged without foundation.

3 5. **“Document”** includes, but is not limited to, the original as well as any
4 copies of any agreement, appointment book, blueprint, book, brochure, cassette,
5 chart, check, check stub, computer disc or index thereto, computer printout,
6 computer program, computer tape or disc, contract, correspondence, declarations,
7 desk calendar, drawing, e-mail message, graph, index, invoice, lease, ledger, letter,
8 log book, manual, map, memorandum, message, minutes, minute book, model,
9 note, periodical, phonorecord, photograph, pleading, purchase order, report,
10 reproduction, schedule, sketch, statement, study, summary, survey, tape, telegram,
11 telex, time sheet, working paper, and any and all other written, printed, typed,
12 taped, recorded, transcribed, punched, filmed, digitized, or graphic matter,
13 however produced or reproduced.
14
15

16 If a document has been prepared in several copies or additional copies have
17 been made, and the copies are not identical, each non-identical copy is a separate
18 “document,” and should be produced for inspection and copying.

19 6. **“All Related Documents”** means any document that refers to, relates
20 to, addresses, or reflects the subject matter of the interrogatory.
21

22 7. **“Identify”** or **“identity,”** when applied to a **person**, requires that you
23 give the person’s full name, residence address, residence telephone, business or
24 occupation, employer, job title or description, business address, and business
25

1 telephone. If you do not have current information on the person being identified,
2 then give the last known information.

3 8. **"Identify"** or **"identity,"** when used in reference to a **business,**
4 **organization, or other entity,** means to give the legal name of the entity, a
5 description of its nature (e.g., corporation, partnership, joint venture, etc.), any
6 business or assumed names under which it does business, its principal place of
7 business, and the address of the office(s) of such entity which are involved in the
8 transaction about which the interrogatory or request is seeking information.
9

10 9. **"Person"** shall include any individual, corporation, partnership,
11 association, or any other entity of any kind.

12 10. **"State with particularity,"** when used in reference to a matter of fact
13 or contention, means to state every material fact and circumstances specifically and
14 completely (including but not limited to date, time, location, and the identity of all
15 participants), and whether each such fact or circumstance is stated on knowledge,
16 information, or believe, or is alleged without foundation.
17

18 11. **"Third Runway Project"** shall mean, for purposes of these
19 Interrogatories and Requests for Production, the Port's proposal and efforts to
20 construct a third runway at the Seattle Tacoma International Airport and any
21 related Master Plan Update projects, including but not limited to all projects
22 included in the October 25, 2000 Joint Aquatic Resources Permit Application for
23 the project, as amended.
24
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AR 004958

1 12. The plural shall include the singular, and the singular shall include
2 the plural.

3 **GENERAL OBJECTIONS:** ACC objects to the Port's "instructions" to the extent
4 they impose obligations on ACC or would require discovery beyond the scope of
5 CR 26 and CR 34. ACC also objects to the definition of "Third Runway Project" in
6 that the reference to "any related Master Plan Update projects" is vague.
7

8
9 **INTERROGATORIES AND REQUESTS FOR PRODUCTION**

10 **INTERROGATORY NO. 1:** For each person who supplied information for or
11 answered each Interrogatory or Request for Production:

- 12 a. identify the person;
13 b. identify which Interrogatory or Request for Production the person
14 answered or supplied information for; and
15 c. state with particularity what information each person provided.
16

17 **ANSWER:**

18 Michael P. Witek, Peter J. Eglick, Kevin L. Stock and Rachael Paschal Osborn
19 supplied information for or answered each interrogatory or request for production.
20 Dr. John Strand, Dr. Peter Willing, William Rozeboom, Dr. Malcom Leytham, and
21 Dr. Pat Lucia supplied information for Interrogatory No. 5.
22

23 **INTERROGATORY NO. 2:** For each person who has knowledge regarding
24 any matter which is relevant to the subject matter involved in the pending action:
25

- 1 a. identify that person; and
2 b. describe in detail the knowledge possessed.

3 ANSWER:

4 Objection: Interrogatory No. 2 is overbroad, unduly burdensome and
5 beyond the scope of permissible discovery under CR 26(b)(1). "Each person who
6 has knowledge regarding any matter which is relevant to the subject matter
7 involved in the pending action" includes any person who has read newspaper
8 articles relating to the Third Runway or any person who watches TVW.

9
10 Notwithstanding the foregoing and without waiver, see ACC's October 10, 2001,
11 Preliminary list of Legal Issues, Witnesses and Exhibits and the November 15,
12 2001, updated Preliminary Witness Lists of ACC, the Department of Ecology
13 ("Ecology"), and the Port of Seattle ("Port").
14

15
16 REQUEST FOR PRODUCTION NO. 1: Please produce all documents within
17 your control supporting or otherwise pertaining to facts stated in your answer to
18 the preceding interrogatory.

19
20 RESPONSE: Objection: Request for Production No. 1 is overbroad, unduly
21 burdensome and not reasonably calculated to lead to the discovery of admissible
22 evidence. Notwithstanding the foregoing and without waiver, see ACC's Notice of
23 Appeal dated August 23, 2001; Notice of Appeal dated October 1, 2001; pleadings
24 and declarations in support of ACC's Motion for Stay; and ACC's October 10, 2001,
25

1 and November 15, 2001, Witness and Exhibit Lists, all of which have already been
2 provided to the Port. The Port continues to generate reports and other documents
3 regarding the Third Runway, which ACC and its experts have not had time to
4 review. ACC's discovery in this matter is ongoing.
5

6
7 INTERROGATORY NO. 3: Identify each person you intend to use as an
8 expert witness in this matter.

9 ANSWER: Objection: pursuant to the Prehearing Order, final witness lists
10 are not due until February 8, 2002, at which time ACC will identify each person it
11 intends to use as an expert witness in this matter. Notwithstanding the foregoing
12 objection and without waiver, see ACC's List of Witnesses, November 15, 2001,
13 p. 2.
14

15
16 INTERROGATORY NO. 4: For each person identified in the preceding
17 interrogatory, state with particularity:

- 18 a. the subject matter on which the expert is expected to testify;
19 b. the substance of the facts and opinions to which the expert is
20 expected to testify; and
21 c. a summary of the grounds for each opinion.
22

23 ANSWER: See the pleadings filed in ACC's Motion for Stay and the
24 declarations filed in support of ACC's Motion for Stay. See also the comment
25

1 letters submitted to the Department of Ecology on behalf of ACC, which are
2 identified in ACC's November 15, 2001 Exhibit List. Subsequent to November 15,
3 NHC has also submitted an additional comment letter to the Corps of Engineers
4 regarding the Port's Low Flow analysis.

5 Mr. Wingard has only recently returned from an extended trip out of the
6 country and has been unavailable. ACC will seasonably supplement its response to
7 Interrogatory No. 4 with Information regarding Mr. Wingard's testimony. The
8 declarations of ACC's experts have already been served upon the Port. As the Port's
9 two-volume "Response to Comments, Master Plan Improvements at Seattle-Tacoma
10 International Airport" dated April 2001, and submitted to the Department of
11 Ecology, responds to the comment letters provided by ACC experts referenced
12 above, it is apparent that the Port already has these comment letters. The Port
13 continues to revise and release information relating to the Third Runway Project.
14 ACC's experts are continuing to review documents. As a result, the facts and
15 opinions to which ACC's experts are expected to testify continue to be developed.

16
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20 REQUEST FOR PRODUCTION NO. 2: Please produce all documents relied
21 on or reviewed to form the basis of the opinions, facts or other testimony
22 referenced in the preceding interrogatory.

23 RESPONSE: The documents relied upon or reviewed by ACC's experts are
24 referenced in the comments and declarations of ACC's experts and are in the public
25

1 domain. See the documents identified in response to Interrogatory No. 4, which
2 have already been provided to the Port. The Port continues to revise and release
3 information relating to the Third Runway Project. ACC's experts are continuing to
4 review documents. As a result, the facts and opinions to which ACC's experts are
5 expected to testify continue to be developed.
6

7
8 INTERROGATORY NO. 5: For each person identified as an expert witness
9 in Interrogatory No. 3, identify each instance in which the person provided
10 opinions or other written or oral testimony before a court of any jurisdiction, the
11 Pollution Control Hearings Board, or any other administrative review
12 panel/board/officer, such identification to include:
13

- 14 a. the case/matter name;
- 15 b. the client/party represented;
- 16 c. the date of the opinion or testimony was provided;
- 17 d. the form of testimony, including but not limited to deposition,
18 trial/hearing testimony, declaration, or affidavit;
- 19 e. a description of the nature of the testimony/opinion; and
- 20 f. each document in your control describing or recording this testimony.
21

22 ANSWER:

23 Objection: Interrogatory No. 5 is not reasonably calculated to lead to the
24 discovery of admissible evidence, is overbroad, and is unduly burdensome.
25

1 Interrogatory No. 5 is not reasonably calculated to lead to the discovery of
2 admissible evidence because it seeks information about former testimony without
3 regard to relevancy to the subject matter of the pending action. For the same
4 reason, it is overbroad. Interrogatory No. 5 is unduly burdensome in that it is
5 unlimited with respect to time and seeks information regarding such matters as oral
6 testimony for which records are not maintained in the ordinary course of business.
7 Notwithstanding the foregoing and without waiver, information responsive to this
8 request is provided below:
9

10
11 **Dr. John Strand, Columbia Biological Assessments**

12 *Case:* Citizens Against SEATAC Expansion v. Department of Ecology; and Port of
13 Seattle. *Matter Name:* Legality of Major Modification to the Port of Seattle's
14 National Pollution Discharge Elimination System (NPDES) Permit for Stormwater
15 Discharge at Seattle-Tacoma International Airport. Declaration was submitted to
16 emphasize that Walker and Miller Creeks (project creeks) were valuable resources
17 worthy of protection, and that the Pollution Control Hearings Board (PCHB) needed
18 to review the Department of Ecology's (Ecology) handling of the Port of Seattle's
19 (Port) requested major modification of the NPDES permit.

20 *Case:* Airport Communities Coalition v. State of Washington, Department of
21 Ecology; and Port of Seattle. *Matter Name:* Stay of Section 401 Certification No.
22 1996-4-02325 and CZM Concurrency Statement, Issued August 10, 2001, Reissued
23 September 21, 2001, under No. 1996-4-02325 (Amended-1). Declaration was
24 submitted in support of ACC's appeal and motion for a stay of the Section 401
25 Water Qualification Certification for the Port's proposed Master Plan Update
Improvements at Seattle-Tacoma International Airport granted by Ecology. The
Declarer's opinion was that the approved Section 401 Certification did not protect
the valuable and remaining aquatic resources inhabiting the project creeks from the
proposed construction.

Case: Airport Communities Coalition v. State of Washington, Department of
Ecology; and Port of Seattle. *Matter Name:* Stay of Section 401 Certification No.
1996-4-02325 and CZM Concurrency Statement, Issued August 10, 2001, Reissued

1 September 21, 2001, under No. 1996-4-02325 (Amended-1). Submitted Declaration
2 that replied to certain comments made by the Department of Ecology and the Port
3 in response to Declarer's initial Declaration in the above matter (see Declaration 01-
4 133). Declarer's reply said that the Department of Ecology and the Port were
incorrect when they denied that violations of the State's Water Quality Criteria
occur in the project creeks as a result of stormwater discharges.

5 **Bill Rozeboom and/or Malcolm Leytham, Northwest Hydraulic Consultants**

6 *Case: Heller v. City of Sammamish (Crossings Plat)*

7 *Attorneys: Helsell Fetterman LLP*

8 Retained by appellant of 132 unit subdivision to give testimony regarding
stormwater impacts.

9 *Case: Heller v. City of Sammamish (Chestnut Lane Plat)*

10 *Attorneys: Helsell Fetterman*

11 Retained by appellant of 35 lot residential subdivision to give testimony regarding
storwater impacts.

12 *Case: Murphy v. City of Seattle*

13 *Attorneys: Stoel Rives LLP*

14 Retained by plaintiff in case involving flooding of single family residence during the rain-on-
snow flood of December 1996/January 1997. Provided deposition and trial testimony.

15 *Case: DiBlasi v. City of Seattle*

16 *Attorneys: Karen Willie*

17 Retained by plaintiff in case involving the role of storm drainage in triggering a landslide.
Provided deposition testimony.

18 *Case: Okanagon Highlands Alliance et al v. Washington State Department of
Ecology and Battle Mountain Gold Company*

19 *Attorneys: Earth Justice Legal Defense Fund*

20 Retained by plaintiff in appeal of water rights and water quality certification for
21 proposed gold mine in north-central washington. Provided deposition testimony,
and written and oral testimony before the washington state pollution control
hearings board.

22
23 *Case: Rainey et al v. PacifiCorp*

24 *Attorneys: Stoel Rives LLP*

25 Retained by defendant in class action case related to operation of hydropower
projects on the Lewis River during the extreme flood of February 1996.

1 Case: *Covert v. Stowe*

2 Attorneys: *Carney Badley Smith and Spellman*

3 Retained by defendant in case involving failure of an impoundment during a severe
4 storm. Provided detailed analysis of storm rainfall depths and an assessment of
storm return period.

5 Case: *Traverso v. City of Kent*

6 Attorneys: *Bucklin, Keating and McCormack*

7 Retained by defendant in case involving flooding of commercial property during
severe storms in 1990.

8 Case: *Baydo et. al. v. Pierce County, City of Tacoma, City of Fircrest*

9 Attorneys: *Rush Hannula and Harkins*

10 Retained by plaintiffs in case involving severe erosion along the lower reaches of
Leach Creek in Pierce County. Provided analysis and trial testimony on the effects
of upstream urban development on streamflow rates and volumes.

11 Case: *Troutlodge Inc. v. Pierce County*

12 Attorneys: *Brown and Burns*

13 Retained by plaintiffs in case involving impacts of increased high flows and
increased stream turbidity on the operations of a fish hatchery on Clear Creek,
14 Pierce County. Provided input on the effects of urban development on streamflow
rates and volumes; identified sources of high stream turbidity; analyzed the
15 effectiveness of Pierce County stormwater control standards.

16 Case: *Day Island Yacht Club v. Pierce County and City of Tacoma*

17 Attorneys: *Office of the Prosecuting Attorney, Pierce County*

18 Retained by defendant in case involving sediment accumulation in a marina.
Investigated impacts of urban development and construction practices on delivery
of stormwater and sediment to the marina.

19 Case: *Pepper et. al. v. Welcome Construction*

20 Attorneys: *Foster Pepper and Shefelman*

21 Retained by plaintiff in case involving impacts of residential development on high
flows and severe sediment accumulation on downslope property. Analyzed the
22 impacts of development on streamflow rates and volumes; estimated sediment
accumulation on plaintiff's property; evaluated the defendant's stormwater control
23 system; and provided trial testimony.

24 Case: *Phillips v. Lozier Homes and King County*

25 Attorneys: *Richard Aramburu*

1 Retained by plaintiff in case involving flooding of plaintiff's property as a result of
2 the discharge of water from upslope residential development. Reviewed
3 development's drainage plans; analyzed impacts of development on stormwater
4 rates and volumes; analyzed the effectiveness of the development's stormwater
5 control facilities.

6 *Case: Welch v. Landmark Homes*

7 *Attorneys: Peter J. Eglick*

8 Retained by plaintiff in case involving increase in stormwater discharges and
9 discharge of sediment laden water from upslope residential development into
10 wetland and ornamental lakes on plaintiff's property. Reviewed development's
11 drainage plans; reviewed as-built conditions; analyzed effectiveness of
12 development's stormwater control facilities; and analyzed effectiveness of the
13 development's erosion control measures.

14 *Case: Queen City Farms v. King County*

15 *Attorneys: Office of the Prosecuting Attorney, King County*

16 Retained by defendant in case involving discharge of stormwater from a county
17 land fill into a lake adjacent to a superfund site at Queen City Farms. Conducted
18 detailed state-of-the-art hydrologic modeling of stormwater runoff from the land fill
19 both for its current level of development and for the pre-development condition;
20 evaluated the impact of runoff from the land fill on lake levels and overflows from
21 the lake; analyzed aerial photographs to identify work done by the plaintiff which
22 adversely affected spill from the lake.

23 *Case: Bjarnason et. al. v. Province of Manitoba*

24 *Attorneys: Office of the Attorney General, Province of Manitoba*

25 Retained by defendant in case involving an alleged increase in the severity and
duration of flooding of low lying agricultural land brought about by the Provincial
government's promotion of upstream land drainage projects. Provided hydrologic
and hydraulic analyses of historical flood events and a critique of engineering
reports produced by plaintiff's experts.

Case: Riley v. City of Mill Creek and Snohomish County

Attorneys: Keating, Bucklin and McCormack

Retained by defendant in case involving flooding of residential property. The
plaintiff alleged that flooding (in this case water backing up from a storm sewer
system) was caused by inadequate control of stormwater originating from a new
area of residential development just upstream from the plaintiff's property.
Provided hydrologic and hydraulic analyses of the storm drainage system in

1 question and identified critical errors in the design of both upstream stormwater
2 detention facilities and the storm sewer itself.

3 **Dr. Peter Willing, Water Resources Consulting, Inc.**

4 Watershed Defense Fund v. Whatcom County Water Dist. No. 10 (W. District WA
5 1999). Witness for State of Washington, gave deposition testimony and filed
6 declaration in support of stay, testimony concerned water quality impacts of sewer
7 plant expansion.

8 San Juan Co. Hearing Examiner (1998). Witness for Shoal bay residents. Gave
9 hearing testimony and technical report regarding hydrology, aquifer recharge and
10 potential for sea water intrusion.

11 San Juan Co. Hearing Examiner (1997-99). Witness for Parks Bay residents. Gave
12 hearing testimony and technical report regarding hydrology, aquifer recharge and
13 potential for sea water intrusion.

14 San Juan Co. Hearing Examiner (1999). Witness for neighboring property owners
15 appealing Conditional Use Permit for shopping mall. Gave hearing testimony and
16 technical report regarding hydrology, aquifer recharge and interpretation of 72-hour
17 pump test results.

18 PCHB No. 93-320, 94-7, 94-11 (1994). Witness for water rights holders. Gave hearing
19 testimony regarding hydrology, interference between wells and sufficiency of DOE
20 hydrologic analysis.

21 Whatcom Co. Hearing Examiner (1993). Witness for neighboring wells owners
22 opposing permit for wood waste landfill. Gave hearing testimony regarding
23 hydrology and potential for well contamination.

24 PCHB No. 87-14 (1987). Witness for Water district. Gave hearing testimony regarding
25 hydrology of lake Whatcom watershed.

Seattle City Council (1981). Witness for City of Seattle. Gave hearing testimony and
filed report regarding environmental aspects of coal fired power plant construction.

Seattle City Council (1981). Witness for City of Seattle. Gave hearing testimony and
filed report regarding environmental aspects of FERC permit to construct Copper
Creek dam.

1 Kitsap County Superior Court (1981). Witness for landowners affected by dredge and
2 harvest of shellfish. Gave testimony regarding adequacy of environmental impact
statement.

3 King County District Court (1981). Witness for School parent's association affected by
4 school closure. Gave testimony regarding adequacy of environmental impact
5 statement for school closure.

6 **Dr. Patrick Lucia**

7 Dr. Lucia does not keep records in such a manner as to provide detailed information
8 bout his former testimony, but recalls that he has been an expert witness
9 approximately 40 times in the past 15 years, and has given trial testimony
approximately 7 times.

10 Information responsive to Interrogatory No 5. has been requested from Dr.
11 Ed Kavazanjian, GeoSyntec Consultants; Amanda Azous, Azous Environmental
12 Sciences; Dyanne Sheldon, Sheldon & Associates; and Greg Wingard, Waste Action
13 Project. ACC will seasonably supplement its response to Interrogatory No. 5.

14
15 REQUEST FOR PRODUCTION NO. 3: Please produce all documents in your
16 control relating to the 401 Certification or the Third Runway Project.

17
18 RESPONSE: Objection: Request for Production No. 3 is not reasonably
19 calculated to lead to the discovery of admissible evidence, is unreasonably
20 cumulative or duplicative, overbroad, and requests production of documents that
21 are subject to the attorney-client privilege and/or work product doctrine. Request
22 for Production No. 3 goes far beyond the scope of discovery permitted under CR
23 26(b). As stated in ACC's August 23, 2001, Notice of Appeal (p. 2), ACC is an entity
24 established by interlocal agreement and composed of the Cities of Burien, Des
25

1 Moines, Federal Way, Normandy Park, and Tukwila, and the Highline School
2 District. ACC was formed for the purpose of, *inter alia*, participating in the
3 governmental review process related to the Port of Seattle's proposed third runway
4 project. Thus, your request for production of "all documents in [ACC's] control
5 related to the 401 certification or the third runway project" could be construed to
6 include nearly every document ever in ACC's "control" and accordingly, the
7 request is not reasonably calculated to lead to the discovery of information relevant
8 to whether or not the Department of Ecology had the requisite reasonable assurance
9 for issuance of a 401 certification and whether or not the Coastal Zone Management
10 Act concurrence was appropriately issued. Such a catch-all request is beyond the
11 scope of discovery permitted under CR 26(b)(1).
12
13

14 Under the circumstances, your Request for Production No. 3 is also
15 unreasonably cumulative or duplicative and unduly burdensome. Unlike a typical
16 civil action, where discovery is the first opportunity for the parties to learn about
17 the contentions of an opposing party, the Port already has volumes of materials and
18 detailed comments from ACC and its experts explaining the basis for ACC's
19 challenge to the issuance of the 401 certification and CZMA concurrence. Public
20 records produced by Ecology show that it has been Ecology's practice to forward
21 comments from ACC to the Port, sometimes within nine minutes of receipt. See
22 attached e-mail dated August 6, 2001, from Ann Kenny to Port of Seattle regarding
23 comments from Dr. John Strand. Moreover, the Port's two-volume "Response to
24
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1 Comments" dated April 2001, and submitted to the Department of Ecology,
2 discusses at length the comments and opinions of ACC and its experts. Given the
3 volume of ACC materials the Port already has, a request for "all documents in
4 [ACC's] control relating to the 401 certification or the third runway project" is
5 clearly unreasonably cumulative or duplicative and needlessly burdensome.
6

7 The scope of your Request for Production No. 3 is particularly overbroad and
8 objectionable given the scope of jurisdiction of the Pollution Control Hearings
9 Board. See RCW 43.21B.110. Environmental boards, such as the Pollution Control
10 Hearings Board, Shorelines Hearings Board, and Forest Practices Appeals Board,
11 have appropriately limited such overbroad discovery requests. See, e.g., *Bowers v.*
12 *Southwest Air Pollution Control Authority*, PCHB No. 98-3 & 31, Order Regarding
13 Discovery, June 23, 1998; *Seaview Coast Conservation Coalition v. Pacific County*
14 *and Larry Phelps*, SHB No. 99-020, Order on Request for Clarification and
15 Reconsideration, November 23, 1999; and *Washington Environmental Council and*
16 *Washington Trout v. Department of Natural Resources and Weyerhaeuser*, FPAB No.
17 01-007, Protective Order, March 26, 2001.
18
19

20
21 REQUEST FOR PRODUCTION NO. 4: Please produce all documents in your
22 control that both (a) relate to the 401 Certification or the Third Runway Project, and
23 (b) constitute or relate to communications between two or more of the following
24 persons: ACC (including its attorneys); the City of Burien; the City of Des Moines;
25

1 the City of Federal Way; the City of Normandy Park; the City of Tukwila; the
2 Highline School District; public officials, employees, or agents of any of the
3 aforementioned entities; and any other members of the ACC (including but not
4 limited to private individuals).

5 RESPONSE:

6
7 Objection: See objections stated in response to Request for Production No. 3.
8 Additionally, Request for Production No. 4 is objectionable in that it calls for the
9 production of documents subject to the attorney client privilege and work product
10 doctrine. The issue in this case is whether or not the Department of Ecology had
11 the requisite reasonable assurance for issuance of a 401 certification. A request for
12 documents that relate both to the 401 Certification or the Third Runway Project
13 constituting or relating to communications between the entities comprising the
14 ACC is not reasonably calculated to lead to the discovery of admissible evidence
15 relevant to whether or not Ecology had the requisite reasonable assurance to issue
16 the 401 certification. Request for Production No. 4 is particularly objectionable in
17 that it specifically seeks communications between the entities comprising the ACC
18 and its attorneys where such communications are clearly subject to the attorney-
19 client privilege. Request for Production No. 4 seeks communications among or
20 between "any other members of the ACC (including but not limited to private
21 individuals)." As stated in response to Request for Production No. 3, ACC is an
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1 entity composed of governmental entities and no entity or individual participates in
2 a private capacity.
3

4 REQUEST FOR PRODUCTION NO. 5: Please produce all documents in
5 your control that both (a) relate to the 401 Certification or the Third Runway
6 Project, and (b) constitute or relate to communications between one or more of the
7 persons identified in Request for Production No. 4 and one or more of the following
8 entities: the Department of Ecology; King County; the U.S. Army Corps of
9 Engineers; the National Marine Fisheries Service; the U.S. Fish and Wildlife
10 Service; the City of Burien; the City of Des Moines; the City of Federal Way; the
11 City of Normandy Park; the City of Tukwila; the Highline School District; elected
12 public officials/representatives; any other state, federal, or local government entity;
13 or public officials, employees or agents of any of the aforementioned entities.
14
15

16 RESPONSE:

17 Objection: See objections to Request for Production No. 3 and No. 4.
18 Request for Production No. 5 is cumulative and duplicative--records obtained by
19 ACC from Ecology under the Public Records Act demonstrate that it is and has
20 been Ecology's practice to forward communications from ACC to Ecology to the
21 Port. As to the request for communications between ACC and King County, the
22 U.S. Army Corps of Engineers, the National Marine Fisheries Service, and the U.S.
23 Fish & Wildlife Service, these requested communications are "obtainable from
24
25

1 some other source (the identified governmental agencies) that is more convenient,
2 less burdensome, or less expensive." CR 26(b)(1). To the extent this request for
3 production seeks public records obtained from Ecology under the public records
4 act, the Port may obtain them directly from Ecology.
5

6
7 REQUEST FOR PRODUCTION NO. 6: please produce all documents in your
8 control that both (a) relate to the 401 Certification or the Third Runway Project, and
9 (b) constitute or relate to communications between one or more of the persons
10 identified in Request for Production No. 4 and news media entities (including daily
11 newspaper, radio or television news stations, periodicals, news journals) or their
12 representatives, employees or agents.
13

14 RESPONSE:

15 Objection: See objections stated in response to Request for Production No. 4.
16 Request for Production No. 6 is not reasonably calculated to lead to the discovery of
17 evidence relevant to whether or not the Department of Ecology had the requisite
18 reasonable assurance to issue the § 401 certification. Thus, this request is clearly
19 outside the scope of discovery pursuant to CR 26(b)(1). If anything, Request for
20 Production No. 6 appears calculated to have a chilling effect upon ACC's
21 communications with the media and thus is also objectionable based upon First
22 Amendment grounds. *See e.g., Washington Environmental Council and Washington*
23
24
25

1 *Trout v. Department of Natural Resources and Weyerhaeuser*, FPAB No. 01-007,
2 Protective Order, March 26, 2001.

3
4 INTERROGATORY NO. 6: State with particularity all facts upon which you
5 base your assertion that the 401 Certification issued on September 21, 2001 is
6 inconsistent with or is in violation of the requirements or the intent of the Coastal
7 Zone Management Act or Washington's Coastal Zone Management Program.

8
9 ANSWER:

10 See ACC's Notice of Appeal, dated August 23, 2001, pages 44-46, and Notice of
11 Appeal dated October 1, 2001, page 2. ACC's discovery in this matter is
12 continuing.

13
14
15 INTERROGATORY NO. 7: Identify all persons known to you who have
16 knowledge of facts set out in your answer to the preceding interrogatory and
17 describe in detail the knowledge possessed.

18 ANSWER: Interrogatory No. 7 is overbroad and unduly burdensome and
19 beyond the scope of permissible discovery under CR 26(b)(1) as it is not reasonably
20 calculated to lead to the discovery of admissible evidence. "All persons known to
21 you who have knowledge of facts set out in your answer to the preceding
22 interrogatory" includes any person who has read newspaper articles regarding the
23 Third Runway. Notwithstanding the foregoing and without waiver, see the
24
25

1 November 15, 2001, updated Preliminary Witness Lists by ACC, the Department of
2 Ecology ("Ecology"), and the Port of Seattle ("Port").
3

4 REQUEST FOR PRODUCTION NO. 7: Please produce all documents within
5 your control supporting or otherwise pertaining to facts stated in your answer to
6 the two preceding interrogatories.
7

8 RESPONSE: Objection: To the extent Request for Production No. 7 seeks
9 documents pertaining to "all persons known to you who have knowledge of facts
10 set out in your answer to [Interrogatory No. 6]" it is overbroad and unduly
11 burdensome. Notwithstanding the foregoing and without waiver of the objection,
12 See ACC's November 15, 2001, Exhibit List.
13

14
15 INTERROGATORY NO. 8: Is it your contention that the 401 Certification
16 issued on September 21, 2001 is inconsistent with the Clean Air Act §§ 7401 to
17 1767, one of the enforceable policies under Washington's Coastal Zone
18 Management Program?
19

20 ANSWER: For purposes of this PCHB appeal of the 401 Certification and
21 CZMA concurrence issued by Ecology in Order No. 1996-4-02325 (Amended-1),
22 ACC does not intend to argue before the PCHB that the Third Runway Project is
23 inconsistent with the Clean Air Act, 42 U.S.C. §§ 7401 to 7671.
24
25

AR 004976

1 INTERROGATORY NO. 9: State with particularity all facts upon which you
2 base your answer to the preceding interrogatory.

3 ANSWER: See answer to Interrogatory No. 8.
4

5 INTERROGATORY NO. 10: Identify all persons known to you who have
6 knowledge of facts set out in your answer to the prior two interrogatories, and
7 describe in detail the knowledge possessed.
8

9 ANSWER: See answer to Interrogatory No. 8.
10

11 REQUEST FOR PRODUCTION NO. 8: Please produce all documents within
12 your control supporting or otherwise pertaining to facts stated in your answer to
13 Interrogatories 8 through 10,
14

15 RESPONSE: See answer to Interrogatory No. 8.
16

17 INTERROGATORY NO. 11: Identify with particularity those structures
18 related to the Port's Third Runway Project and the 401 Certification that you
19 believe are subject to Dam Safety requirements, and identify the Dam Safety
20 requirements applicable to each such structure.
21

22 ANSWER: Objection: as the Port has yet to produce complete and final
23 plans and specifications for the Third Runway Project, ACC cannot answer
24 Interrogatory No. 11 at this time. ACC's discovery regarding Dam Safety
25

1 requirements is ongoing and ACC will respond after final plans and specifications
2 for the Third Runway Project are provided. Notwithstanding the foregoing and
3 without waiver, see the February 15 and June 25, 2001 comment letters from
4 Northwest Hydraulic Consultants.
5

6
7 INTERROGATORY NO. 12: For each structure identified in the preceding
8 interrogatory, please state with particularity which Dam Safety performance
9 standards apply to each structure.

10 ANSWER: See answer to Interrogatory No. 11. Dam Safety performance
11 standards are set forth in Ch 173-175 WAC.
12

13
14 INTERROGATORY NO. 13: Do you contend that Condition G of the 401
15 Certification issued on September 21, 2001 is insufficient to provide reasonable
16 assurance of compliance with state or federal water quality standards?

17 ANSWER: See answer to Interrogatory No. 11.
18

19
20 INTERROGATORY NO. 14: If the answer to the preceding interrogatory is
21 not an unqualified no, state with particularity all facts that you believe support
22 your answer to the preceding interrogatory.

23 ANSWER: See answer to Interrogatory No. 11.
24
25

AR 004978

1 ANSWER: Yes.

2
3 INTERROGATORY NO. 17: If the answer to the preceding interrogatory is
4 not an unqualified no, state with particularity all facts that you believe support
5 your answer to the preceding interrogatory.
6

7 ANSWER: Objection: ACC's discovery regarding the scope of activities
8 commenced by the Port prior to issuance of the § 401 Certification is ongoing and
9 ACC has a pending CR 34 request for entry to the Third Runway Project area to
10 conduct further investigation. To date, ACC has identified what the Port calls
11 "stockpiling" of fill material as an activity undertaken by the Port, which ACC
12 contends "could not have been undertaken lawfully prior to certification of the
13 Third Runway Project under Section 401 of the Federal Clean Water Act." Other
14 activities include site clearing, grubbing and/or grading.
15

16
17 INTERROGATORY NO. 18: Identify all persons know to you who have
18 knowledge of facts set out in your answers to Interrogatories 16 and 17, and
19 describe in detail the knowledge possessed.
20

21 ANSWER: Objection: See response to Interrogatory No. 17. Additionally,
22 Interrogatory No. 18 is overbroad and unduly burdensome in that "all persons with
23 knowledge" of the Port's activities would include any person who has read
24 newspaper articles regarding the third runway. Notwithstanding the foregoing and
25

1 without waiver, See Declaration of Amanda Azous in support of ACC's Motion for
2 Stay. Port and Department of Ecology personnel may have such knowledge.

3
4 REQUEST FOR PRODUCTION NO. 10: Please produce all documents
5 within your control supporting or otherwise pertaining to facts stated in your
6 answer to the Interrogatories 16 through 18.

7
8 ANSWER: Objection: See answer to Interrogatory No 17. Notwithstanding
9 the foregoing and without waiver, See Declaration of Amanda Azous in support of
10 ACC's Motion for Stay, which has already been provided to the Port.

11
12 INTERROGATORY NO. 19: Is it your contention that the 401 Certification
13 issued on September 12, 2001 fails to address the potential structural failure of the
14 Mechanically Stabilized Earth wall and embankment structures, and that such
15 failure to address such a contingency constitutes a violation of Section 401 of the
16 Clean Water Act?
17

18 ANSWER: Yes.

19
20
21 INTERROGATORY NO. 20: If the answer to the preceding interrogatory is
22 not an unqualified no, state with particularity all facts that you believe support
23 your answer to the preceding interrogatory.
24

25 **AR 004981**

1 ANSWER: Objection: ACC's discovery in this matter is ongoing, and the
2 Port continues to revise and release additional information, such as the November
3 2, 2001 Hart Crowser Geotechnical report to the Army Corps of Engineers, which
4 ACC and its experts continue to review. Notwithstanding the foregoing and
5 without waiver, see ACC's Notice of Appeal, dated August 23, 2001, pages 37-38;
6 and the comment letters by Dr. Patrick Lucia and Dr. Edward Kavazanjian,
7 regarding embankment fill and west MSE wall identified in ACC's November 15,
8 2001, Exhibit List.

11 INTERROGATORY NO. 21: Identify all persons know to you who have
12 knowledge of facts set out in your answer to Interrogatories 19 and 20, and describe
13 in detail the knowledge possessed.

15 ANSWER: Objection: Interrogatory No. 21 is overbroad and unduly
16 burdensome in that "all persons with knowledge" of the potential for structural
17 failure of the Mechanically Stabilized Earth wall and embankment structures
18 would include any person who has read newspaper articles about the Third
19 Runway and personnel at the Port and Department of Ecology. Notwithstanding
20 the foregoing and without waiver, see ACC's Notice of Appeal, dated August 23,
21 2001, pages 37-38; and the comment letters by Dr. Patrick Lucia and Dr. Edward
22 Kavazanjian, regarding embankment fill and west MSE wall identified in ACC's
23 November 15, 2001, Exhibit List.

AR 004982

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REQUEST FOR PRODUCTION NO. 11: Please produce all documents within your control supporting or otherwise pertaining to facts stated in your answer to Interrogatories 19 through 21.

RESPONSE: see ACC's Notice of Appeal, dated August 23, 2001, pages 37-38; and the comment letters by Dr. Patrick Lucia and Dr. Edward Kavazanjan, regarding embankment fill and west MSE wall, identified in ACC's November 15, 2001 Exhibit List. ACC's notice of Appeal has already been provided to the Port. As the Port's the Port's two-volume "response to comments" dated April 2001, discusses at length the February 16, 2001, comment letter from Dr. Pat Lucia and Dr. Edward Kavazanjan, it is apparent that the Port already has that document. ACC's discovery in this matter is continuing.

REQUEST FOR PRODUCTION NO. 12: Please produce all documents in your control that both (a) relate to the 401 Certification, the Port's Third Runway Project, or this appeal (including but not limited to matters related to acceptance of service of process) and (b) were transmitted between, or otherwise constitute or relate to communications between Thomas R. Luster and one or more of the following persons: ACC (including its attorneys); the City of Burien; the City of Des Moines; the City of Federal Way; the City of Normandy Park; the City of Tukwila; the Highline School District; public officials, employees, or agents of any of the

Kenny, Ann

From: Kenny, Ann
Sent: Monday, August 06, 2001 4:43 PM
To: 'Keith Smith'; 'Elizabeth Leavitt'; 'Paul Fendt'; 'Wendy Clement'; 'Michael Cheyne'
Subject: FW: Sea-Tac Third Runway: Comments on Port of Seattle's New Low Streamflow Analysis by Dr. John Strand



Strand-080601-lowf
low.doc

Additional comments.

-----Original Message-----

From: Grad, Andrea E. [mailto:agrad@helsell.com]
Sent: Monday, August 06, 2001 4:34 PM
To: White, Gordon; Kenny, Ann; Hellwig, Raymond; Muffy Walker (E-mail); Gail Terzi (E-mail)
Subject: RE: Sea-Tac Third Runway: Comments on Port of Seattle's New Low Streamflow Analysis by Dr. John Strand

Attached please find comments dated August 6, 2001, by Dr. John Strand of Columbia Biological Assessments regarding the Port of Seattle's July 23, 2001, Low Streamflow Analysis.

We appreciate your consideration of these comments, which are submitted on behalf of the Airport Communities Coalition. We will also be faxing and mailing signature copies to you for your convenience.

Sincerely,

Andrea Grad
Paralegal
Helsell Fetterman
Tel. (206) 292-1144
agrad@helsell.com

AR 004986

POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON

| | | |
|--------------------------------|---|--|
| AIRPORT COMMUNITIES COALITION, |) | |
| |) | No. 01-160 |
| Appellant, |) | |
| |) | CERTIFICATE OF SERVICE |
| v. |) | |
| |) | |
| STATE OF WASHINGTON, |) | (Section 401 Certification No. |
| DEPARTMENT OF ECOLOGY; and |) | 1996-4-02325 and CZMA concurrency |
| THE PORT OF SEATTLE, |) | statement, issued August 10, 2001, |
| |) | Reissued September 21, 2001, under No. |
| Respondents. |) | 1996-4-02325 (Amended-1)) |
| _____ |) | |

I, Rachel Parks, an employee of Helsell Fetterman LLP, attorneys for the Airport Communities Coalition, certify that:

I am now, and at all times herein mentioned was, a citizen of the United States, a resident of the State of Washington, and over the age of eighteen years.

On December 10, 2001, I caused to be delivered a true and correct copy of Respondent Port of Seattle's First Set of Interrogatories and Requests for Production Directed to Appellant Airport Communities Coalition and Answers and Responses Thereto in the above-captioned case to:

Via FAX and Mail

Joan Marchioro
Thomas Young
Jeff B. Kray
Assistant Attorneys General
Ecology Division
P.O. Box 40117
Olympia, WA 98504-0117
Fax: (360) 586-6760

Via Messenger

Roger Pearce
Steven Jones
Foster Pepper & Shefelman
1111 Third Avenue, Suite 3400
Seattle, WA 98101
Fax: (206) 447-9700

Via Mail

Linda Strout, General Counsel
Traci Goodwin, Senior Port Counsel
Port of Seattle
P.O. Box 1209
Seattle, WA 98111

Via Mail

Jay Manning
Gillis Reavis
Marten & Brown LLP
1191 Second Avenue, Suite 2200
Seattle, WA 98101
Fax: (206) 292-6301

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 10 day of December, 2001, at Seattle, Washington.



Rachel Parks

g:\lu\acc\pchb\certserv-121001.doc

CERTIFICATE OF SERVICE - 2

HELSELL FETTERMAN LLP
1500 Puget Sound Plaza
1325 Fourth Avenue
Seattle, WA 98101-2509

Rachael Paschal Osborn
Attorney at Law
2421 West Mission Avenue
Spokane, WA 99201

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HELSELL FETTERMAN LLP

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POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON

AIRPORT COMMUNITIES COALITION,

Appellants,

v.

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

Respondents.

PCHB: No. 01-160

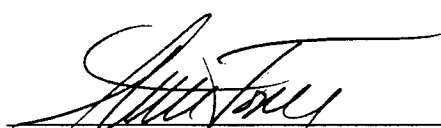
NOTICE OF DEPOSITION
AMANDA AZOUS

TO: Amanda Azous
AND TO: ALL COUNSEL OF RECORD

PLEASE TAKE NOTICE that, pursuant to Washington CR 30, Respondent Port of Seattle will take the deposition upon oral examination of Amanda Azous, on Monday, January 7, 2002 beginning at 9:30 a.m. The deposition will be held at the offices of Foster Pepper & Shefelman PLLC, 1111 Third Avenue, Suite 3400, Seattle, Washington 98101 and will be subject to continuance from time to time and plan to place until completed.

DATED this 10th day of December, 2001.

FOSTER PEPPER & SHEFELMAN PLLC



Roger A. Pearce, WSBA No. 21113
Steven G. Jones, WSBA No. 19334
Attorneys for respondents Port of Seattle

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POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON

AIRPORT COMMUNITIES COALITION,

Appellants,

v.

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

Respondents.

PCHB: No. 01-160

SUBPOENA DUCES TECUM FOR
AMANDA AZOUS

THE STATE OF WASHINGTON TO: Amanda Azous

AND TO: ALL COUNSEL OF RECORD


YOU ARE HEREBY COMMANDED to appear at the offices of Foster Pepper & Shefelman
PLLC, 1111 Third Avenue, Suite 3400, Seattle, Washington 98101 on January 7, 2002, at the hour of
9:30 a.m., then and there to testify at the request of respondents' counsel in the above-entitled cause,
and to remain in attendance until discharged.

Pursuant to Rule 45(b), Civil Rules for Superior Court, State of Washington, you are to produce
any and all documents described on Attachment A to this Subpoena Duces Tecum.

HEREIN FAIL NOT AT YOUR PERIL

DATED this 10th day of December, 2001.

FOSTER PEPPER & SHEFELMAN PLLC



Roger A. Pearce, WSBA No. 21113
Steven G. Jones, WSBA No. 19334
Attorneys for respondents Port of Seattle

AR 004991

FOSTER PEPPER & SHEFELMAN PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
206-447-4400

; 10 2001

1 ATTACHMENT A

2 This Attachment A specifies the documents in the possession, custody or control of the
3 deponent to be produced pursuant to the Subpoena Duces Tecum. For the purposes of this
4 Subpoena, the following definition of document shall apply.

5 Definition of Document:

6 The term "document" includes, but is not limited to, the original as well as any copies of any
7 agreement, book, brochure, CD, cassette, chart, computer disc or index thereto, computer printout,
8 computer program, computer tape or disc, contract, correspondence, declarations, desk calendar,
9 drawing, e-mail message, facsimiles, graph, index, invoice, lease, ledger, letter, log book, manual,
10 map, memorandum, message, minutes, model, note, periodical, phonorecord, photograph, pleading,
11 report, reproduction, schedule, sketch, statement, study, summary, survey, tape, telegram, telex, time
12 sheet, working paper, and any all other written, printed, typed, taped, recorded, transcribed, filmed,
13 digitized, or graphic matter, however produced or reproduced.

14 This definition includes, without limitations, all draft documents.

15 The plural of document shall include the singular, and the singular shall include the plural.

16 Documents to be Produced.

17 All documents that you have reviewed (in part or in full) or drafted (in part or in full) that
18 refer to, relate to, address, or reflect the subject matter of the Port of Seattle's ("Port") Master Plan
19 Update or any projects undertaken in connection with the Port's Master Plan Update, any JARPA
20 application filed by the Port in connection with the Port's Master Plan Update, any environmental or
21 other review of those projects, environmental conditions at or around the Seattle-Tacoma
22 International Airport ("STIA") including, but not limited to, documents that relate, pertain, or in any
23 way reference impacts, potential impacts, or future impacts of any project undertaken in connection
24 with or as part of the Port's Master Plan Update on environmental conditions in STIA and/or the
25 surrounding area.

26 **AR 004992**

1 Any document supplied to you by any member of the Airport Communities Coalition
2 (“ACC”), its counsel, consultants, agents or any other person working on behalf of the ACC,
3 including, documents produced by or reviewed by the Port, its employees, agents, attorneys or any
4 other employee or agent of the Port, the Washington State Department of Ecology, its employees,
5 agents, attorneys or any other employee or agent of the Department of Ecology.

6 Any document you reviewed, any analysis or report of other collection of information or data
7 that you reviewed or produced in connection with your work as a consultant, agent, employee,
8 declarant, witness or expert witness on behalf of ACC or for its counsel or agents.

9 Any document that you reviewed, commented on or produced in connection with this case,
10 the §401 Certification process undertaken by the Department of Ecology in connection with the
11 Port’s §404 permit application, the §401 Certification ultimately issued by the Department of
12 Ecology on August 10, 2001 or the Amended §401 Certification issued by the Department of
13 Ecology on September 21, 2001.

14 All documents reviewed in preparation for or in support of your deposition.
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AR 004993

FOSTER PEPPER & SHEFELMAN PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
206-447-4400

Received by FAX

1-17-02

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JAN 17 2002

ENVIRONMENTAL
HEARINGS OFFICE

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POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON

AIRPORT COMMUNITIES COALITION,)
)
Appellant,)
)
v.)
)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY; and)
THE PORT OF SEATTLE,)
)
Respondents.)
_____)

No. 01-160
CERTIFICATE OF SERVICE

I, Rachel Parks, an employee of Helsell Fetterman LLP, attorneys for the Airport
Communities Coalition, certify that:

I am now, and at all times herein mentioned was, a citizen of the United States, a resident of
the State of Washington, and over the age of eighteen years.

On January 17, 2002, I caused to be hand-delivered a true and correct copy of ACC's
Response to Motion to Compel Production of Documents and Response to Subpoenas Duces
Tecum, ACC's Response to Port Motion to Compel Depositions and For Limitation on Entry Onto
Land, Declaration of Michael P. Witek in Support of ACC's Response to Motion to Compel and
Limit Entry, and Notice of Appearance in the above-captioned case to:

HELSELL FETTERMAN LLP Rachael Paschal Osborn
1500 Puget Sound Plaza Attorney at Law
1325 Fourth Avenue 2421 West Mission Avenue
Seattle, WA 98101-2509 Spokane, WA 99201

CERTIFICATE OF SERVICE - 1

1
2
3 Joan M. Marchioro
4 Thomas J. Young
5 Jeff B. Kray
6 Assistant Attorneys General
7 Ecology Division
8 2425 Bristol Court S.W.
9 Second Floor
10 Olympia, WA 98504-0117

Linda J. Strout, General Counsel
Traci M. Goodwin, Senior Port Counsel
Port of Seattle
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2711 Alaskan Way
Seattle, WA 98111

8 Jay J. Manning
9 Gillis E. Reavis
10 Marten & Brown LLP
11 1191 Second Avenue, Suite 2200
12 Seattle, WA 98101

Roger Pearce and Stephen Jones
Foster Pepper & Shefelman
1111 Third Avenue, Suite 3400
Seattle, WA 98101

11 Richard A. Poulin
12 2317 East John Street
13 Seattle, WA 98112

14 I certify under penalty of perjury under the laws of the State of Washington that the
15 foregoing is true and correct.

16 DATED this 17th day of January, 2002, at Seattle, Washington.

17 

18 Rachel Parks

19 G:\u\p\ch\certserv-011702

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21
22
23
24
25 CERTIFICATE OF SERVICE - 2

HELSELL FETTERMAN LLP
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2421 West Mission Avenue
Spokane, WA 99201

AR 004995