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POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON

| | | |
|--------------------------------|---|------------------------------|
| AIRPORT COMMUNITIES COALITION, |) | |
| |) | PCHB No. 01-160 |
| Appellant, |) | |
| |) | SUPPLEMENTAL STIPULATION |
| v. |) | REGARDING PROPOSED STATEMENT |
| |) | OF LEGAL ISSUES |
| STATE OF WASHINGTON, |) | |
| DEPARTMENT OF ECOLOGY; and |) | |
| THE PORT OF SEATTLE, |) | |
| |) | |
| Respondents. |) | |

Pursuant to the Pre-Hearing Order dated October 30, 2001, as amended orally on November 1, 2001, the parties stipulated to three proposed legal issues for the Board's consideration on November 2, 2001. Subsequently, on November 14, 2001, the parties reached agreement upon 18 additional proposed legal issues. As a result of this additional agreement, there remain only three legal issues separately proposed by ACC and one legal issue separately proposed by the Port.

For the Board's convenience, this Supplemental Stipulation includes the agreed issues from November 2, 2001 and the agreed issues from November 15, 2001. The remaining legal issues separately proposed by ACC and the Port are set forth in attached Exhibit A.

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Agreed Issues from November 2, 2001

1. Did Ecology violate applicable law pertaining to public and agency notice, hearing, comment and modification regarding the original 401/404 application and Amended Certification?
2. Does Ecology's concurrence with the Port's consistency certification, issued pursuant to the Coastal Zone Management Act ("CZMA"), fail to comply with the requirements of the CZMA and Washington's approved Coastal Zone Management Plan?
3. Do the stated limitations on the temporal, operational, and geographic scope of the Certification, including its limitation to "Port 404 projects," violate the requirements of Section 401 of the Clean Water Act and applicable state water quality law?

Agreed Issues from November 14, 2001

4. Is there reasonable assurance that the Third Runway and related projects, for which a Clean Water Act Section 401 ("§ 401") certification is required ("Third Runway Project"), will not violate § 401 and applicable water quality law?
5. Must there be reasonable assurance that a proposed project will not violate § 401 and applicable water quality law when a § 401 Certification is issued?
6. Is there reasonable assurance that § 401 and applicable water quality law will not be violated if the Certification relies on data, reports, and plans that were not in being at the time of issuance of the Certification?
7. Is there reasonable assurance that § 401 and applicable water quality law will not be violated if (1) the Certification relies on future monitoring; or (2) if the Certification fails to require adequate pre-construction monitoring?
8. Is there reasonable assurance that § 401 and applicable water quality law will not be violated as a result of low flow impacts (with the identified mitigation) of the Third Runway Project?
9. Must the Port obtain a water right to implement the low stream flow conditions in the certification and if so:
 - (a) is there reasonable assurance that § 401 and applicable water quality law will not be violated in the absence of such a water right; and
 - (b) Is there reasonable assurance that § 401 and applicable water quality law will not be violated in the absence of review of a water right application under the State Environmental Policy Act ("SEPA")?

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10. Is there reasonable assurance that § 401 and applicable water quality law will not be violated as a result of the stormwater impacts (with the identified mitigation) of the Third Runway Project?
11. Is there reasonable assurance that § 401 and applicable water quality law will not be violated if discharges from the airport have violated water quality standards or the Port's NPDES (§ 402) permit?
12. May a certification of reasonable assurance that § 401 and applicable water quality law will not be violated be based upon current and future NPDES (§ 402) permits?
13. Is there reasonable assurance that § 401 and applicable water quality law will not be violated if the certification authorizes a mixing zone without compliance with applicable procedural and substantive requirements for authorization of such a zone?
14. Did Ecology and the Port comply with SEPA?
15. Is there reasonable assurance that § 401 and applicable water quality law will not be violated as a result of the embankment and fill criteria, including:
 - (a) the method of determining compliance with the fill criteria;
 - (b) embankment and wall construction specifications; and
 - (c) groundwater discharges from the embankment and Mechanically Stabilized Earth ("MSE") wall.
16. Is there reasonable assurance that § 401 and applicable water quality law will not be violated as a result of the possibility of MSE wall and embankment failure?
17. Is there reasonable assurance that potential migration and discharge of existing groundwater pollutants originating from the airport (with the identified mitigation) will not violate § 401 and applicable water quality law?
18. Is there reasonable assurance that § 401 and applicable water quality law will not be violated if the Port is in violation of the terms of the MTCA Agreed Order for SeaTac International Airport (Ecology Order No. 97TC-N122, dated 5/15/99)?
19. Is there reasonable assurance that § 401 and applicable water quality law will not be violated as a result of wetland fill, stream alteration and identified mitigation activities?
20. Is there reasonable assurance that § 401 and applicable water quality law will not be violated if the Certification does not address water quality impacts to Gilliam Creek?

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21. Is there reasonable assurance that § 401 and applicable water quality law will not be violated where the Certification allows future amendment of its terms "by any future Ecology-approved NPDES (§ 402) permit for the Seattle-Tacoma international Airport (STIA) . . . as determined in that permit"? (See, e.g., amended Certification at P. 4, § 1.f.)

STIPULATED TO this 15 day of November, 2001.

HELSELL FETTERMAN LLP



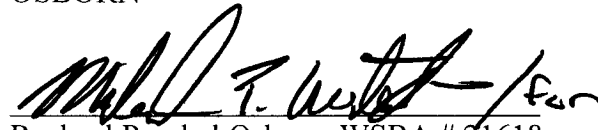
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SUPPLEMENTAL STIPULATION REGARDING
PROPOSED STATEMENT OF LEGAL ISSUES - 4

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EXHIBIT A
ISSUES PROPOSED SEPARATELY BY PARTIES

Issues Proposed Separately by ACC

1. Is there reasonable assurance that § 401 and applicable water quality law will not be violated where determination of compliance with dam safety requirements is deferred? [former ACC Issue 11]
2. Is there reasonable assurance that § 401 and applicable water quality law will not be violated if the Port has commenced activities impacting waters of the state prior to § 401 certification of the Third Runway project? [former ACC Issue 18]
3. Is there reasonable assurance that § 401 and applicable water quality law will not be violated if the Certification violates the requirements of WAC 173-201A-160 regarding implementation of the water quality standards for nonpoint source and stormwater pollution? [former ACC Issue 19]

Issues Proposed Separately by Port

1. Whether requiring facilities subject to dam safety regulations (Chapter 173-175 WAC) to obtain a dam safety permit prior to commencing construction provides reasonable assurance that water quality standards will be met? [former Port Issue 2]

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AR 006191

Witek, Michael P.

From: Witek, Michael P.
Sent: Thursday, November 15, 2001 1:26 PM
To: 'Marchioro, Joan (ATG)'; 'Tanya Barnett'
Cc: Steve Jones; Roger Pearce
Subject: RE: Port comments on stipulation

The edits are acceptable to ACC. I will sign for Port and Ecology and Fax and Mail to Board and all parties.

thank you

Mike

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

From: Marchioro, Joan (ATG) [mailto:JoanM2@ATG.WA.GOV]
Sent: Thursday, November 15, 2001 1:25 PM
To: 'Tanya Barnett'; Witek, Michael P.
Cc: Steve Jones; Roger Pearce
Subject: RE: Port comments on stipulation

The edits are fine with me. If those edits are acceptable to the ACC, I have no objection to Mike signing the stipulation for Ecology. Thanks, Joan

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

From: Tanya Barnett [mailto:tbarnett@martenbrown.com]
Sent: Thursday, November 15, 2001 1:17 PM
To: Mike Witek; Marchioro, Joan (ATG)
Cc: Steve Jones; Roger Pearce
Subject: Port comments on stipulation

Mike and Joan, I'm attaching the draft stipulation that Mike sent out today with just a few minor edits (shown in redline). If these changes are acceptable to everyone, we suggest that Mike sign the stipulation on behalf of the Port. Please let me know if any of the edits are not acceptable. Thanks.

--

Tanya Barnett
tbarnett@martenbrown.com

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Olympia, Washington 98501

This e-mail message may contain confidential and privileged information and is sent for the sole use of the intended recipient. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

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