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HEARINGS OFFICE

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POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON

Airport Communities Coalition,

Appellant,

No. PCHB 01-160

v.

PORT OF SEATTLE'S
SUBMITTAL OF RECORD
REFERENCES OPPOSING MOTION
FOR STAY

Department of Ecology and
The Port of Seattle,

Respondents.

In response to the Board's request at the hearing on October 15, 2001, the Port of Seattle submits the following references from the declarations. The declarations that the Port requests the Board to closely review are listed below in § I. The specific portions of the declarations that are important for each specific issue raised on the motion for stay are listed below in § II. Rather than list all the relevant exhibits, the Port asks the Board to consult the exhibits cited in those specific portions of declarations as it reads the declarations. The relevant exhibits are attached to each declaration.

I. DECLARATIONS

- Declaration of James C. Kelley, Ph.D., (filed 10/1/01) ("**Kelley Dec.**")
- Declaration of Katie Walter (filed 10/1/01) ("**Walter Dec.**")
- Declaration of Erik Stockdale (filed 10/1/01) ("**Stockdale Dec.**")
- Declaration of Paul S. Fendt (filed 10/1/01) ("**Fendt Dec.**")
- Declaration of Joseph Brascher (filed 10/1/01) ("**Brascher Dec.**")
- Declaration of Donald Weitkamp, Ph.D., (filed 10/1/01) ("**Weitkamp Dec.**")
- Declaration of Ann Kenny (filed 10/1/01) ("**Kenny Dec.**")

PORT OF SEATTLE'S SUBMITTAL OF RECORD REFERENCES
OPPOSING MOTION FOR STAY - 1

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ORIGINAL

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- 1 • Declaration of Edward O'Brien (filed 10/1/01) ("**O'Brien Dec.**")
- 2 • Declaration of Linda R.J. Logan, Ph.D. (filed 10/1/01) ("**Logan Dec.**")
- 3 • Declaration of Kevin Fitzpatrick (filed 10/1/01) ("**Fitzpatrick Dec.**")
- 4 • Declaration of C. Linn Gould in Support of the Port of Seattle's Response Opposing
5 ACC's Motion for Stay (filed 10/1/01) ("**Gould Dec.**")
- 6 • Declaration of John J. Strunk in Support of the Port of Seattle's Response Opposing
7 ACC's Motion for Stay (filed 10/1/01) ("**Strunk Dec.**")
- 8 • Declaration of Elizabeth Clark in Support of the Port of Seattle's Response Opposing
9 ACC's Motion for Stay (filed 10/1/01) ("**Clark Dec.**")
- 10 • Declaration of Pete Kmet (filed 10/1/01) ("**Kmet Dec.**")
- 11 • Declaration of Kelly Whiting (filed 10/1/01) ("**Whiting Dec.**")
- 12 • Second Declaration of Paul S. Fendt (filed 10/9/01) ("**2nd Fendt Dec.**")
- 13 • Second Declaration of C. Linn Gould Opposing ACC's Motion for Stay (filed 10/9/01)
14 ("**2nd Gould Dec.**")
- 15 • Second Declaration of James C. Kelley, Ph.D., (filed 10/1/01) ("**2nd Kelley Dec.**")
- 16 • Declaration of Michael Cheyne (filed 10/1/01) ("**Cheyne Dec.**")
- 17 • Declaration of Steven G. Jones (filed 10/1/01) ("**Jones Dec.**")

18 **II. PORTIONS OF DECLARATION RELATING TO SPECIFIC ISSUES.**

19 **A. EVALUATION AND MITIGATION OF WETLAND IMPACTS.**

20 **1. Process to Delineate Wetland Functions and Design Mitigation.**

21 Kelley Dec. ¶¶ 13 – 49; 103 – 104

22 Walter Dec. ¶¶ 8 – 17

23 Stockdale Dec. ¶¶ 12 – 14; 16 – 18

24 **2. Creation of New Wetlands Off-Site in Same WRIA.**

25 Kelley Dec. ¶¶ 44 – 45

26 Stockdale Dec. ¶¶ 15 – 16

Lindsey Dec. Ex. E (FAA's Record of Decision)

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3. Replacement of Wetland Functions On-Site.

Kelley Dec. ¶¶ 50 – 56, 57 – 62, 63 – 66, 67 – 70, 71 – 74, 75 – 85, 86, 87 – 90, 91 – 101

Walter Dec. ¶¶ 18 – 31

Stockdale Dec. ¶¶ 19 – 27

4. Monitoring Wetland Functions and Hydrology.

2nd Kelley Dec. ¶¶ 3 - 14

B. THE PORT’S LOW FLOW MITIGATION PLAN.

1. Appropriate Modeling of Low Flow Impacts.

Brascher Dec. ¶¶ 4, 5 – 19

Fendt Dec. ¶¶ 8 – 24, 27, 30 – 33, 36, 39 – 40

Weitkamp Dec. ¶ 14

Whiting Dec. ¶ 6

2. Feasibility of the Low Flow Mitigation Plan.

Fendt Dec. ¶¶ 28 – 29, 44 – 49, 84 – 87

Kenny Dec. ¶¶ 31 - 33

3. The Low Flow Mitigation Plan Will Not Degrade Water Quality

Fendt Dec. ¶¶ 28, 39 – 40, 41 – 44, 45 – 49

Weitkamp Dec. ¶¶ 8–11, 16–17

Kenny Dec. ¶¶ 36 – 39

Whiting Dec. ¶¶ 4 – 6, and Ex. 1

C. NO WATER RIGHT IS REQUIRED FOR LOW FLOW MITIGATION.

Fendt Dec. ¶¶ 8 – 29, 39 – 47

O’Brian Dec. ¶¶ 9 - 14

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1 **D. WATER QUALITY IMPACTS.**

2 **1. There are No Existing or Projected Water Quality Violations.**

3 Logan Dec. ¶¶ 5 – 9, 11 – 17, 19 – 22, 23 – 27

4 Fendt Dec. ¶¶ 41 – 43, 51 – 54

5 Weitkamp Dec. ¶¶ 6, 13

6 Fitzpatrick Dec. ¶¶ 3 – 6

7 Kenny Dec. ¶¶ 19 – 30

8 **2. Allegations re Glycol Toxicity**

9 Logan Dec. ¶¶ 34 – 46, 52 – 57

10 Fendt Dec. ¶¶ 55 – 58, 76 – 78

11 **3. No Projected Harm to Aquatic Resources.**

12 Fendt Dec. ¶¶ 41 – 43

13 Weitkamp Dec. ¶¶ 6 – 15

14 **4. Groundwater from MTCA Sites Will Not Migrate to Creeks.**

15 Strunk Dec. ¶¶ 3 – 9

16 **5. Retrofitting Is Assured and Will Improve Existing Conditions.**

17 Fendt Dec. ¶¶ 59 – 64, 65 – 73

18 2nd Fendt Dec. ¶¶ 4 – 9

19 Kelley Dec ¶¶ 56 – 61, 66, 80 – 89, 103

20 Weitkamp Dec. ¶¶ 8 – 11, 17

21 **E. PROTECTIVE FILL ACCEPTANCE CRITERIA PROTECT WATER QUALITY.**

22 Gould Dec. ¶¶ 6, 11, 12-15

23 2nd Gould Dec. ¶¶ 3 – 16

24 Fitzpatrick Dec. ¶¶ 7 – 15

25 Weitkamp Dec. Ex. C at 15-16

26 Jones Dec., Ex. E and Ex. F

Kmet Dec. ¶¶ 2 – 5

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Clark Dec. ¶¶ 3 – 15

F. ABSENCE OF IRREPARABLE HARM.

Cheyne Dec. ¶¶ 5, 9 – 12

Jones Dec., Ex. G (RGL 87-03)

Respectfully submitted this 18th day of October 2001.

PORT OF SEATTLE

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