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OCT 12 2001

ENVIRONMENTAL
HEARINGS OFFICE

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. 01-133
No. 01-160

DECLARATION OF ANDREA GRAD
IN SUPPORT OF ACC'S OPPOSITION
TO ECOLOGY'S MOTION TO STRIKE
ATTORNEY-CLIENT PRIVILEGED
DOCUMENTS

(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))

Andrea Grad 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. I am a paralegal with the law firm of Helsell Fetterman LLP, which represents the Airport Communities Coalition in this matter.
3. For the last year or more, I have submitted regular public disclosure requests to the Department of Ecology for documents relating to the Port of Seattle's third runway applications. As part of this task, I have communicated and pursued this task regularly by email

DECLARATION OF ANDREA GRAD IN
SUPPORT OF ACC'S OPPOSITION TO
ECOLOGY'S MOTION TO STRIKE - 1

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1325 Fourth Avenue
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2421 West Mission Avenue
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ORIGINAL

AR 006410

1 with Ann Kenny and Sally Perkins of Ecology's Northwest Regional Office, per Ecology
2 instructions as to how to submit requests.

3 4. Over the past year or more, on several occasions, responses to our requests
4 indicated that documents had been withheld on various bases. Some of those documents were
5 produced partially in redacted form, while others were withheld in their totality.
6

7 5. One document which was only produced in partial form consisted of two pages of
8 notes (one typewritten with hand-written notations, one completely hand-written) dated April 3,
9 2001, by Ray Hellwig, Director of Ecology's Northwest Regional Office (the
10 typewritten/annotated page of which was attached as Exhibit A to the Declaration of Peter Eglick
11 in Support of ACC's Reply on its Motion for Stay, and which is the subject of Ecology's Motion
12 to Strike). Both pages of the two pages of these notes which we received were labeled at the top
13 "Deliberative," in what I have come to understand (from handling thousands of pages of public
14 disclosure documents from Ecology's Northwest Regional Office) is Ray Hellwig's handwriting.
15

16 6. On August 10, 2001, after we received word of Ecology's issuance of the first 401
17 decision, I sent an email to Ecology personnel (including Ann Kenny, as usual) making my
18 regular request for public disclosure documents, but also including a request for:
19

20 all documents previously (or currently) withheld from ACC pursuant to the 'deliberative'
21 exemption in the PDA, since Ecology has now issued a decision on the 401. We request
22 these deliberative materials as soon as possible.

23 Ms. Kenny responded that she would release all such documents to us:

24 I have Deliberative documents that can be released to you in response to [my PDA
25 request] as soon as they are photocopied.

DECLARATION OF ANDREA GRAD IN
SUPPORT OF ACC'S OPPOSITION TO
ECOLOGYS MOTION TO STRIKE - 2

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AR 006411

1
2 I will ask all others involved in the project to compile all previously withheld documents
3 for release. It may take a week or two to get everything gathered up but we will send you
4 what we have when it becomes available.

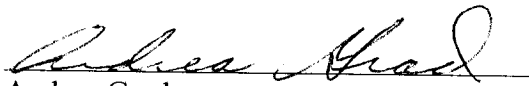
5 Email exchange between Ann Kenny and myself, dated August 10, 2001 (copy attached as
6 Exhibit A).

7
8 7. In response, we received a packet of documents from Ecology including various
9 items which had previously been withheld. One such item in the packet was a complete,
10 unredacted copy of the April 3 Hellwig notes with his "Deliberative" label at the top of the page
11 submitted as Exhibit A to the Eglick Reply Declaration.

12 8. I have reviewed the Declaration of Ray Hellwig in Support of Motion to Strike. It
13 is incomplete concerning the procedure and chronology which was followed by Ecology in
14 releasing this document in that it does not describe to the Board my post-decision request to
15 Ecology on August 10, 2001, upon issuance of Ecology's first 401 decision, for documents
16 previously withheld as deliberative, nor does it acknowledge that the document was released,
17 with many others, in response to that request.

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

20 DATED this 10th day of October, 2001, at Seattle, Washington.

21
22 
23 Andrea Grad

24 g:\lu\acc\pchb\grad-decl-surreply.doc

25 DECLARATION OF ANDREA GRAD IN
SUPPORT OF ACC'S OPPOSITION TO
ECOLOGYS MOTION TO STRIKE - 3

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AR 006412

Grad, Andrea E.

From: Grad, Andrea E.
Sent: Friday, August 10, 2001 2:27 PM
To: 'Kenny, Ann'
Subject: RE: PDA Request re: Third Runway, Agreed Order, AND Deliberative Documents

Thank you. Do you have a copy of the signed permit yet? I've left a message with Gordon White's secretary asking her to fax it to us, but haven't heard back from her, and haven't received it via email yet. If you have it, we'd really appreciate it if you could fax it to us, at 206-340-0902.

P.S. Have a great vacation!

Thanks,

Andrea

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

From: Kenny, Ann [mailto:AKEN461@ECY.WA.GOV]
Sent: Friday, August 10, 2001 2:21 PM
To: Grad, Andrea E.; Hellwig, Raymond; Alexander, Steve (ECY); Wang, Ching-Pi; Marchioro, Joan (ATG); Fitzpatrick, Kevin
Cc: Perkins, Sally; Stockdale, Erik
Subject: RE: PDA Request re: Third Runway, Agreed Order, AND Deliberative Documents

Dear Ms. Grad:

I have Deliberative documents that can be released to you in response to this as soon as they are photocopied.

I will ask all others involved in the project to compile all previously withheld documents for release. It may take a week or two to get everything gathered up but we will send you what we have when it becomes available.

I will be out of town next week, so if you have any questions please call or e-mail Ray Hellwig.

Thanks.

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

From: Grad, Andrea E. [mailto:agrad@helsell.com]
Sent: Friday, August 10, 2001 10:54 AM
To: Hellwig, Raymond; Kenny, Ann; Alexander, Steve (ECY); Wang, Ching-Pi; Marchioro, Joan (ATG); Fitzpatrick, Kevin
Cc: Perkins, Sally
Subject: PDA Request re: Third Runway, Agreed Order, AND Deliberative Documents

Pursuant to the Public Disclosure Act, please provide us with copies of all documents related to the Port of Seattle's proposed Third Runway, other STIA Master Plan Update projects, and the Port/Ecology May 1999 Agreed Order generated by the Department of Ecology or received by Ecology from the Port of Seattle, its contractors or representatives (e.g., Parametrix), King County, state agencies, or federal agencies (including but not limited to the Corps of Engineers) since the date of our last such PDA request (August 3, 2001). This includes but is not limited to letters, memos, reports, data, emails (including their attachments), notes of telephone conversations, meeting notes, other handwritten notes, briefing or meeting preparation materials, and any other form of data, documentation or communication.

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EXHIBIT A

This also includes the final, revised runway plans" which Ecology received last week, according to today's press release announcing Ecology's decision on the Port's 401 application.

If there are any documents responsive to this request which are dated or were received by Ecology prior to August 3, but which have not already been provided to us pursuant to our previous PDA requests, this request includes those documents as well.

This request also includes all documents previously (or currently) withheld from ACC pursuant to the "deliberative" exemption in the PDA, since Ecology has now issued a decision on the Port's 401. We request these deliberative materials as soon as possible.

This request includes documents received or generated by anyone at Ecology's Northwest Regional Office as well as its Lacey Office/Headquarters.

If any documents are withheld due to attorney-client privilege, 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 give me a call.

Sincerely,

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