

RECEIVED

OCT - 8 2001

ENVIRONMENTAL
HEARINGS OFFICE

POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON

1
2
3
4
5 AIRPORT COMMUNITIES COALITION,)
6 Appellant,) PCHB No. 01-133
7 v.) PCHB No. 01-160
8 STATE OF WASHINGTON,)
9 DEPARTMENT OF ECOLOGY; and) DECLARATION OF SENATOR JULIA
10 THE PORT OF SEATTLE,) PATTERSON, SENATOR DOW
11 Respondents.) CONSTANTINE, SENATOR TRACEY
12) EIDE, REPRESENTATIVE SHAY
13) SCHUAL-BERKE, REPRESENTATIVE
14) KAREN KEISER, REPRESENTATIVE
15) JOE MCDERMOTT,
16) REPRESENTATIVE ERIK POULSEN,
17) REPRESENTATIVE MARK MILOSCIA,
18) AND REPRESENTATIVE MARYANN
19) MITCHELL
20)
21) (Department of Ecology Orders No.
22) 1996-4-02325; No. 1996-4-02325
23) (Amended-1))
24)
25)

19 Senator Julia Patterson, Senator Dow Constantine, Senator Tracey Eide, Representative
20 Shay Schual-Berke, Representative Karen Keiser, Representative Joe McDermott, Representative
21 Erik Poulsen, Representative Mark Miloscia, and Representative Maryann Mitchell declare and
22 state as follows:
23

25 DECLARATION OF PATTERSON,
CONSTANTINE, EIDE, SCHUAL-BERKE,
KEISER, MCDERMOTT, POULSEN,
MILOSCIA, AND MITCHELL

HELSELL FETTERMAN LLP
1500 Puget Sound Plaza
1325 Fourth Avenue

Rachael Paschal Osborn
Attorney at Law
2421 West Mission Avenue

ORIGINAL

AR 007026

1 1. We are members of the Washington State Legislature. Among us, we have the
2 following committee responsibilities in the Legislature:

3 a. Senator Julia Patterson, 33rd District: Chair, State and Local Government
4 Committee; Environment, Energy & Water Committee; Labor, Commerce and Financial
5 Institutions Committee; Transportation Committee.
6

7 b. Senator Dow Constantine, 34th District: Vice Chair, Ways & Means
8 Committee; Vice Chair, Judiciary Committee; Natural Resources, Parks & Shorelines
9 Committee; Rules Committee.

10 c. Senator Tracey Eide, 30th District: Vice Chair, Education Committee;
11 Vice Chair, Environment, Energy & Water Committee; Transportation Committee; Rules
12 Committee.
13

14 d. Representative Shay Schual-Berke, 33rd District: Vice Chair, Healthcare
15 Committee; Appropriations Committee; Education Committee.

16 e. Representative Karen Keiser, 33rd District: Democratic Policy Chair;
17 Appropriations Committee; Education Committee; Financial Institutions & Insurance
18 Committee.
19

20 f. Representative Joe McDermott, 34th District: Education Committee;
21 Judiciary Committee; State Government Committee.

22 g. Representative Erik Poulsen, 34th District: Co-Chair, Technology,
23 Telecommunications & Energy Committee; Capital Budget Committee; Rules Committee.
24

25 DECLARATION OF PATTERSON,
CONSTANTINE, EIDE, SCHUAL-BERKE,
KEISER, MCDERMOTT, POULSEN,
MILOSCIA, AND MITCHELL

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

1 h. Representative Mark Miloscia, 30th District: Vice Chair, State
2 Government Committee; Children & Family Services Committee; Financial Institutions &
3 Insurance Committee.

4 i. Representative Maryann Mitchell, 30th District: Co-Chair, Transportation
5 Committee.
6

7 2. As can be seen from the above list, our responsibilities are state-wide, including
8 leadership positions for the Senate State and Local Government Committee, the Senate
9 Environment, Energy & Water Committee, the Senate Judiciary Committee, the House
10 Transportation Committee, and other committees with state-wide responsibilities and
11 importance.
12

13 3. We understand that the Port of Seattle has submitted statements from various Port
14 employees, from Alan Ralston (“Director of Northwest State and Local Government Relations for
15 The Boeing Company”), and from the Director of Airports for the Port of Pasco, all in support of
16 the argument that there is “an overriding public interest” which would justify denial by the
17 Pollution Control Hearings Board of the request by the Cities of Burien, Des Moines, Federal Way,
18 Normandy Park and Tukwila and the Highline School District for a stay of the Department of
19 Ecology’s recent Section 401 Certification of the Sea-Tac Airport third runway project. We
20 therefore submit this joint declaration to impress upon the Board that, while there are many
21 different public interests at work here, the public interests identified by the Port’s proponents are by
22 no means overriding, and, in some cases, simply do not exist.
23

24 DECLARATION OF PATTERSON,
25 CONSTANTINE, EIDE, SCHUAL-BERKE,
KEISER, MCDERMOTT, POULSEN,
MILOSCIA, AND MITCHELL

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

1 4. Certainly, many of our constituents are opposed to construction of the third
2 runway and the other projects proposed for Sea-Tac, and we sympathize with those views.
3 However, that is not the key question of overriding public interest. Rather, the issue before the
4 Board is whether a claimed need for haste in construction of the third runway can override what
5 must be the paramount public interest in ensuring a fair, open and deliberate process in
6 administration of our clean water laws. Our view as Legislators familiar with the competing
7 public interests asserted by all parties, and vitally concerned about the functioning of our state
8 government, is that there can be no overriding public interest in allowing the Ecology
9 Certification to take effect before the Board has conducted a trial to determine whether Ecology
10 made the right decision in the proper manner.
11

12 5. Prior to October, 2000, we had some confidence in the Department's ability to
13 maintain the integrity and appearance of fairness in its processing of the Port's application.
14 However, after Ecology removed its senior Clean Water Act expert, Tom Luster, from the
15 process, we noted a serious decline in the Department's performance. Since then, we have
16 become aware of more than one instance in which it appeared that Ecology was not addressing
17 legitimate water quality issues in an appropriate fashion, but was instead succumbing to Port
18 pressure for approval. Our concern in this regard was not enhanced when we learned recently
19 that the Department of Ecology had issued a Certification to the Port on August 10, 2001, and
20 then, based on Port complaints about it, agreed to revise it to the Port's satisfaction. This all
21
22
23

24
25
DECLARATION OF PATTERSON,
CONSTANTINE, EIDE, SCHUAL-BERKE,
KEISER, MCDERMOTT, POULSEN,
MILOSCIA, AND MITCHELL

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

1 occurred out of the public eye and without notice to or involvement of the scientists
2 commissioned by the local cities to comment to Ecology on Port proposals.

3 6. For all of these reasons, the overriding public interest here is one which militates
4 strongly against denial of a stay, and strongly in favor of granting one so that the public as a
5 whole can have confidence that the right environmental decision has been made, for the right
6 reasons, in the appropriate manner.

7 7. We are also aware of statements made in declarations submitted to the Board by
8 Gina Marie Lindsey, Michael Cheyne and Michael Feldman, all of the Port of Seattle, by former
9 Seattle Port Commissioner and outgoing Seattle Mayor Paul Schell, and by Pasco Director of
10 Airports James L. Morasch. These statements reflect striking tunnel vision with regard to the
11 public interest, particularly in light of recent events. They continue the Port's longstanding
12 theme that even a day's "delay" in moving ahead with construction of the third runway will cost
13 thousands of dollars and untold harm to the regional air transportation system. Yet, it was
14 commonly reported even before September 11 that air traffic at Sea-Tac was trending downward,
15 not upward, contrary to the Port's earlier predictions.

16 8. Now, in the wake of September 11's tragic events, there is general agreement --
17 except apparently by the Port -- that prior assumptions concerning air traffic and airport
18 utilization are no longer reliable and do not reflect the new, post-September 11 realities. These
19 realities include a drastic drop-off in air travel; severe financial instability in the airline industry;
20 and placement of several airport operators, including the Port of Seattle, on the Moody's Investor
21

22
23
24
25
DECLARATION OF PATTERSON,
CONSTANTINE, EIDE, SCHUAL-BERKE,
KEISER, MCDERMOTT, POULSEN,
MILOSCIA, AND MITCHELL

HELSELL FETTERMAN LLP
1500 Puget Sound Plaza
1325 Fourth Avenue

Rachael Paschal Osborn
Attorney at Law
2421 West Mission Avenue

1 Service watch list for various airport revenue bonds tied to passenger facility charges (a financing
2 mechanism which the Port proposes to use for substantial parts of its third runway and related
3 projects). Many of these new realities have the potential to directly affect whether the third
4 runway and other airport improvements will be needed, and whether they should be constructed
5 in their current forms and locations.
6

7 9. While confronting these questions, our constituents have been notified of layoffs
8 by The Boeing Company which far exceed any seen in this region in a generation. At the same
9 time, there have been drastic reductions in employment by the local airline industry. It therefore
10 borders on ludicrous for the Port to claim an overriding public interest in proceeding with haste
11 on its \$1 billion project. It is equally ludicrous for The Boeing Company to oppose a few
12 months' stay in the Ecology 401 decision, agreeing with the Port's demand for haste, while at the
13 same time it is rethinking its own business plan and shedding thousands of local employees.
14

15 10. September 11's tragic events have also brought into focus a concern which was
16 reported even earlier, that is, lax security arrangements at Sea-Tac Airport. This concern is
17 particularly acute for our constituents, many of whom live in the surrounding community and
18 could be on the front lines in the event of a tragic event in the airport environs. The concern
19 extends not just to the use of high-turnover, minimum-wage security personnel at the airport, but
20 to Sea-Tac's physical configuration without regard to security concerns (recent news reports have
21 described stop-gap security measures by the Port, for example, closing entire sections of parking
22 garages).
23
24

25 DECLARATION OF PATTERSON,
CONSTANTINE, EIDE, SCHUAL-BERKE,
KEISER, MCDERMOTT, POULSEN,
MILOSCIA, AND MITCHELL

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

1 11. Recent reports also point to an alarming lack of security for runways themselves,
2 with security currently being concentrated almost exclusively in passenger terminals. The
3 addition of a third runway with a steep drop-off on one side and uninhabited areas below only
4 adds more avenues for security breaches. There is no indication that any of these concerns were
5 taken into account in planning for the third runway projects. In particular, the Port's plan calls
6 for construction of the "Great Wall of Sea-Tac," a 160-foot high retaining wall extending
7 approximately 1,500 feet to hold back some of the 20-plus million cubic yards of fill which
8 would be imported onto the site. If the wall fails (due either to design flaws or deliberate attack),
9 the third runway fails, and the creek and environs below will be lost. Further, to import fill and
10 construct the wall, the Port plans to run large dump trucks literally continuously for a period of
11 years onto the airport site, creating yet another avenue for potential security problems.
12

14 12. While, in the end, the Port may decide to proceed with its plans (if the 401
15 Certification passes legal muster and any Corps 404 permit does likewise), there is -- and should
16 be -- no rush in doing so. This is a time for reexamination of how the air transportation industry
17 does business. The Port is not exempt from this obvious public need for reexamination, nor
18 should it be. There is no overriding public interest which would contradict the need for a stay to
19 preserve the Board's ability to review and act effectively on the Ecology certification.
20

21 //

22 //

23 //

24
25 DECLARATION OF PATTERSON,
CONSTANTINE, EIDE, SCHUAL-BERKE,
KEISER, MCDERMOTT, POULSEN,
MILOSCIA, AND MITCHELL

- 7

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 007032

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

3 DATED this 8th day of October, 2001, at King County, Washington.

4
5 

6 Senator Julia Patterson

7
8 DATED this 8th day of October, 2001, at King County, Washington.

9 

10 Senator Dow Constantine

11 DATED this 8th day of October, 2001, at King County, Washington.

12
13 

14 Senator Tracey Eide

15 DATED this 8th day of October, 2001, at King County, Washington.

16
17 

18 Representative Shay Schual-Berke

19 DATED this 8th day of October, 2001, at King County, Washington.

20
21 

22 Representative Karen Keiser

23
24
25 DECLARATION OF PATTERSON,
CONSTANTINE, EIDE, SCHUAL-BERKE,
KEISER, MCDERMOTT, POULSEN,
MILOSCIA, AND MITCHELL

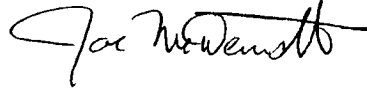
HELSELL FETTERMAN LLP
1500 Puget Sound Plaza
1325 Fourth Avenue

Seattle, WA 98101-2509

Rachael Paschal Osborn
Attorney at Law
2421 West Mission Avenue

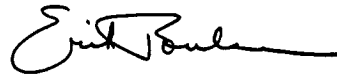
Spokane, WA 99201

1 DATED this 8th day of October, 2001, at King County, Washington.

2
3 

4 Representative Joe McDermott

5 DATED this 8th day of October, 2001, at King County, Washington.

6
7 

8 Representative Erik Poulsen

9
10 DATED this 8th day of October, 2001, at King County, Washington.

11
12 

13 Representative Mark Miloscia

14 DATED this 8th day of October, 2001, at King County, Washington.

15
16 Representative Maryann Mitchell

17
18
19
20
21
22
23
24
25 DECLARATION OF PATTERSON,
CONSTANTINE, EIDE, SCHUAL-BERKE,
KEISER, MCDERMOTT, POULSEN,
MILOSCIA, AND MITCHELL

HELSELL FETTERMAN LLP
1500 Puget Sound Plaza
1325 Fourth Avenue

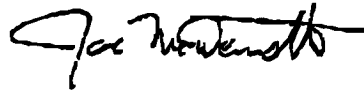
Seattle, WA 98101-2509

Rachael Paschal Osborn
Attorney at Law
2421 West Mission Avenue

Spokane, WA 99201

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

DATED this 8th day of October, 2001, at King County, Washington.



Representative Joe McDermott

DATED this 8th day of October, 2001, at King County, Washington.



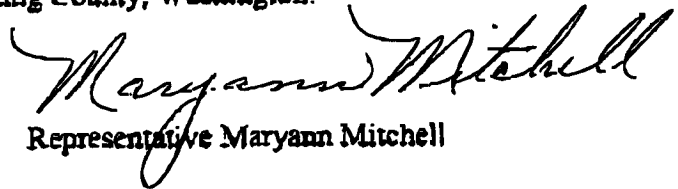
Representative Erik Poulsen

DATED this 8th day of October, 2001, at King County, Washington.



Representative Mark Miloscia

DATED this 8th day of October, 2001, at King County, Washington.



Representative Maryann Mitchell

25

DECLARATION OF PATTERSON,
CONSTANTINE, EIDE, SCHUAL-BERKE
KFISER, MCDERMOTT, POLLSSEN,
MILOSCIA, AND MITCHELL

HELSELL FETTERMAN LLP
1500 Puget Sound Plaza
1325 Fourth Avenue

Rachael Paschal Osborn
Attorney at Law
2421 West Main Street

Seattle, WA 98101-2500

Spokane, WA 99201