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ENVIRONMENTAL
HEARINGS OFFICE

POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON

THE PORT OF SEATTLE,

Appellant,

v.

STATE OF WASHINGTON, DEPARTMENT
OF ECOLOGY,

Respondent.

AIRPORT COMMUNITIES COALITION,

Appellant,

v.

DEPARTMENT OF ECOLOGY and THE
PORT OF SEATTLE,

RespondentS.

PCHB No. 01-150
PCHB No. 01-133

AGREEMENT AND ORDER RE
RESCISSION OF 401 CERTIFICATION

(CERTIFICATION UNDER §401 OF
THE CLEAN WATER ACT AND
COASTAL ZONE MANAGEMENT
ACT CONCURRENCE; ECOLOGY
ORDER NO. 1996-4-02325 RE:
CONSTRUCTION OF A THIRD
RUNWAY AND RELATED PROJECTS.
COMPONENTS OF THE PROJECT
INCLUDE CONSTRUCTION OF A
8,500-FOOT-LONG THIRD PARALLEL
RUNWAY WITH ASSOCIATED
TAXIWAY AND NAVIGATIONAL
AIDS, ESTABLISHMENT OF
STANDARD RUNWAY SAFETY
AREAS FOR EXISTING RUNWAYS,
RELOCATING S. 154TH STREET
NORTH OF THE EXTENDED
RUNWAY SAFETY AREAS AND THE
NEW THIRD RUNWAY,
DEVELOPMENT OF THE SOUTH
AVIATION SUPPORT AREA AND THE
USE OF ON-SITE BORROW SOURCES
FOR THE THIRD RUNWAY
EMBANKMENT)

This matter came before the Pollution Control Hearings Board (the "Board") on the
Stipulation And Agreed Order Of Dismissal filed jointly by the respondent Department of

ORDER - 1

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1 Ecology ("Ecology") and appellant Port of Seattle ("Port"). The Board has considered the
2 agreed order and the arguments of counsel in both this case and in the related case of *Airport*
3 *Communities Coalition v. Department of Ecology and Port of Seattle*, PCHB No. 01-133. The
4 Board finds as follows:

5 On August 10, 2001, Ecology issued Ecology Order No. 1996-4-02325, which included
6 a water quality certification under Section 401 of the Federal Water Pollution Control Act and a
7 concurrency statement under Section 307 of the Coastal Zone Management Act of 1972 (the
8 "401 Certification").

9 On August 23, 2001, the Airport Communities Coalition ("ACC") filed a Notice Of
10 Appeal of that 401 Certification with the Board. That appeal has been given PCHB Case No.
11 01-133.

12 On September 12, 2001, the ACC filed with the Board a Motion For Stay of the 401
13 Certification, along with an accompanying memorandum of authorities and supporting
14 declarations.

15 On September 10, 2001, the Port filed a Notice of Appeal of the 401 Certification with
16 the Board. That appeal has been given PCHB Case No. 01-150.

17 At the same time as the Notice Of Appeal was filed in Case No. 01-150, the Port and
18 Ecology filed with the Board a Stipulation And Agreed Order Of Dismissal, in which Ecology
19 and the Port agreed to certain changes in the 401 Certification. ACC objected to the stipulation.

20 On September 17, 2001, the Board held two status conferences with all parties in both
21 cases on how best to proceed with the ongoing matters. As an alternative to approval by the
22 Board of the Stipulation And Agreed Order of Dismissal, counsel for Ecology stated that
23 Ecology would be willing to rescind the existing 401 Certification and issue a new 401
24 Certification incorporating the changes in the proposed Stipulation And Agreed Order Of
25 Dismissal.

26
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1 **AGREEMENT OF THE PARTIES**

2 Ecology may rescind the 401 Certification (Ecology Order No. 1996-4-02325). Upon
3 notification of rescission of the existing 401 Certification, the parties will request the Board to
4 dismiss the appeals brought under Cases No. 01-133 and No. 01-150.

5 Should Ecology issue a new 401 Certification incorporating the changes in the proposed
6 Stipulation And Agreed Order Of Dismissal, and should ACC file a notice of appeal with regard
7 to that new 401 Certification within ten days of receiving the new 401 Certification, the parties
8 will request ACC's Motion For Stay and accompanying pleadings to be transferred by the
9 Board to the new ACC appeal, and the schedule outlined below shall apply to the Motion For
10 Stay. All briefs and supporting declarations will be filed under PCHB Case No. 01-133 unless
11 and until the Board assigns a new case number for the new appeal, and upon assignment of a
12 new case number, all motion for stay briefing from all parties, including supporting
13 declarations, will be transferred to that new case number. Any appeal that ACC may file with
14 respect to a new 401 Certification may incorporate by reference ACC's first Notice Of Appeal,
15 in PCHB Case No. 01-133, together with its supporting exhibits and papers filed under that case
16 number without ACC having to re-file and serve copies of its first Notice Of Appeal. Ecology
17 and the Port agree to accept service through their undersigned counsel of any new appeal ACC
18 may file with respect to a new 401 Certification.

19 Any responding briefs on the motion for stay from Port of Seattle and Ecology, not to
20 exceed 30 pages each, shall be filed and served by 5:00 PM on October 1, 2001.

21 Any reply brief from the ACC, not to exceed 30 pages, shall be filed and served by 5:00
22 PM on October 8, 2001. The ACC may address changes between the existing 401 Certification
23 and, if issued, any new 401 Certification in its reply brief, and the sur-reply briefs and sur-
24 rebuttal briefs allowed below will be limited to said changes.

25 Sur-reply briefs, not to exceed 4 pages, are permitted and shall be filed and served by
26 5:00 PM on October 9, 2001, by the Port and Ecology.

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1 A sur-rebuttal brief, not to exceed 4 pages, is permitted and shall be filed and served by
2 5:00 PM on October 10, 2001 by ACC.

3 A hearing has been scheduled for October 15, 2001 at 9:00 AM should the Board wish
4 to hear oral argument on the motion for stay. A secondary setting is set for October 12, 2001.

5 PORT OF SEATTLE

6 Roger A Pearce for

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

9 FOSTER PEPPER & SHEFELMAN PLLC *per permission*

10 Roger A Pearce

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

13 MARTEN & BROWN LLP

14 Roger A Pearce for

15 Jay J. Manning, WSBA No. 13579
16 Gillis E. Reavis, WSBA No. 21451 *per permission*
17 Attorneys for Port of Seattle

18 HELSELL FETTERMAN LLP

19 Peter J. Eglick, WSBA No. 8809
20 Kevin L. Stock, WSBA No. 14541

FAXed signature page attached

21 Rachael Paschal Osborn, WSBA No. 21618
22 Attorneys for Airport Communities Coalition

FAXed signature page attached

23 CHRISTINE O. GREGOIRE, Attorney General

24 Joan M. Marchioro, WSBA No. 19250

25 Thomas J. Young, WSBA No. 17366

26 Assistant Attorney General
Attorneys for Department of Ecology

FAXed signature page attached

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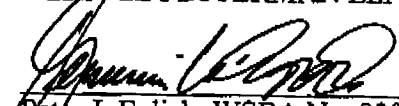
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1 **ORDER**

2 Having reviewed the foregoing Agreement and the file and pleadings herein, and
3 following two status conferences with the parties signatory to this agreement,

4 IT IS HEREBY ORDERED that the foregoing Agreement Re: Rescission Of 401
5 Certification is entered as an Order of this Board.

6 DATED this _____ day of September 2001.

7
8
9 KALEEN COTTINGHAM, Presiding