

Kenny, Ann

From: White, Gordon
Sent: Wednesday, September 27, 2000 3:32 PM
To: Luster, Tom; Hellwig, Raymond; Fitzpatrick, Kevin; Marchioro, Joan (ATG); Stockdale, Erik

ATTORNEY CLIENT PRIVILEGED DELIBERATIVE DOCUMENT

Ray and company
Here are my suggestions for this letter as attached.

I tend to agree with Tom's comments and my additions attempt to tighten up our language so we are not committing to a permit, but a rigorous review of future submittals on a project we think has the "potential" to meet the standards for 401 certification. I also agree that the 60 days starts after the public comment period and the list of issues will have to reflect comments we get in the process.



POWithdrawdraft.
doc

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12/ 1-16-02
White

AR 017920

DRAFT

[Tom L's comments in ~~strikeout~~, underline, and *bracketed italics*.]

(Kevin's edits, deletions and additions appear in red)

(Gordons edits are in this shade of red)

9/26/00

Mr. M.R. (Mic) Dinsmore, Executive Director
Port of Seattle
Address

Dear Mr. Dinsmore:

This letter is submitted pursuant to our ongoing discussions regarding the status of the Department of Ecology (Ecology's) review of the Port of Seattle (Port) application for a 401 Water Quality Certification for the Third Runway project. It is intended to describe in general terms the immediate situation from Ecology's perspective, and to offer a new project review process with intentions to render a decision on the Port's project within a reasonable period of time.

The Port's runway project proposals are substantial and complicated. Unfortunately, ~~there is not recent Port of Seattle submittals have not provided Ecology~~ adequate time to properly review and assess all of the remaining and important project related issues prior to the end of the current 401 decision making timeframe. We appreciate the efforts Port staff and consultants have made to provide necessary information for agency review. However, there simply is not enough time to arrive at a legally defensible decision that protects ~~Ecology's~~ the state's environmental interests and therefore meets Ecology's responsibilities under Section 401 of the Clean Water Act. ~~Given the intense scrutiny by project opponent groups a legal challenge is almost certain, and it would not serve the Port or Ecology well to make hasty decisions.~~

Ecology staff believes that the Port's project has the potential to meet the standards for 401 Water Quality Certification ~~can be permitted~~ provided the Port submits adequate natural resource management and stormwater management plans. We anticipate that the Port ~~will be able~~ has the ability to adequately address remaining issues identified below. ~~In light of this perspective, we believe a 401 certification can~~ may be issued consistent with the note and provisions numbered below.

NOTE: ~~Once~~ After the Port's withdrawal of the current 401 request is properly executed, the Port reapplies for its 401 and 404 permits, and the necessary public comment period is completed, Ecology will meet with the Port to identify very specifically the remaining issues and requirements necessary for approval of a subsequent 401 application. Some project mitigation and plan elements proposed by the Port are nearly adequate now and may require only minor adjustments, while

AR 017921

DOE 8/28/01 00029

other elements require imposition of 401 conditions by Ecology, and/or significant submittal of information to Ecology by the Port.

1. ~~With the exception of the terms outlined in number 2 below,~~ Ecology is prepared to ~~issue a 401 certification with the inclusion of~~ include the following conditions if a 401 certification issued for the proposed project unless the Port provides additional information or acceptable alternative conditions for Ecology's review:

- ◆ Des Moines Creek Flow Augmentation: We understand ...Joan – insert terms articulated here re source etc. And you have notes for the bullets below...
- ◆ Tye Pond: Per our discussions, insert condition to protect against / provide mitigation for South Access Road (RDF too depending on what Erik says) [100' buffer around Tye Pond and East Branch of Des Moines Creek up to northeast border of SASA.]
- ◆ Borrow Site 3: Condition – can't use if unless we approve plan to address hydrology issue [or if we limit borrow site elevation to 300', per Dave Garland review]
- ◆ HPAs: this is an easy condition

2. Joan/Kevin – THIS IS THE KEY PIECE OF ALL THIS — The revised Stormwater Management Plan (SMP) will need to provide a consistent level of flow control to the receiving waters of Miller, Walker and Des Moines Creeks that will be sufficient to prevent continued or future degradation of these streams resulting from Port of Seattle's stormwater impacts. This level of consistent flow control protection is a target flow regime which matches a 10% impervious surface, 15% grass and 75% forested condition. The revised SMP will need to address errors, inconsistencies and omissions which were brought to light in King County's review of the August 2000 SMP. The revised SMP will also need to ensure and demonstrate that it is consistent with the mitigation requirements of the Port of Seattle's most recent Natural Resources Mitigation Plan (NRMP) and that all revisions to the SMP would not result in any additional adverse impacts to wetlands and the wetlands' hydrology which are not presently mitigated for in the NRMP. we describe here what we are requiring for stromwater, and how wetlands and hydrology needs to be protected. We tell the Port we will allocate 60 days of review of what they submit. Tell em the clock starts when we receive information/submittal. The clock stops if we have questions regarding adequacy etc. [Submittals for stormwater and mitigation must be coordinated and consistent.]

Ecology is committed to providing a thorough and fair review of Port proposals. It is our responsibility to ensure compliance with pertinent environmental laws and regulations. Consistent with this responsibility, our environmental objectives for the Port's runway and related projects have remained unchanged. We will only approve the Port's project if we are reasonably assured that the natural resource and stormwater management plans prevent further degradation to water quality and aquatic resources in the sub-basins surrounding SeaTac International Airport.

DOE 8/28/01 00030

AR 017922

I appreciate your attention to and consideration of the above offer and I look forward to working through relevant issues with you and your staff. If you have any questions regarding the above, please feel free to contact me at 360-407-7001 or Ray Hellwig at 425-649-7010.

Sincerely,

TF

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AR 017923