

Exhibit	<u>254</u>
Date	<u>2/05/02</u>
Witness	<u>SHELDON</u>
Diane Mills, Court Reporter	

POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON

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AIRPORT COMMUNITIES)	No. 01-133
COALITION,)	No. 01-160
)	
Appellant,)	DECLARATION OF DYANNE
)	SHELDON IN SUPPORT OF ACC'S
v.)	MOTION FOR STAY
)	
STATE OF WASHINGTON,)	(Section 401 Certification No.
DEPARTMENT OF ECOLOGY; and)	1996-4-02325 and CZMA
THE PORT OF SEATTLE,)	concurrency statement, Issued
)	August 10, 2001, Reissued
Respondents.)	September 21, 2001, under No. 1996-
)	4-02325 (Amended-1))

Dyanne Sheldon 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 an environmental scientist, with over 20 years of specializing in wetland ecology and management related issues. I have a Bachelor's of Science in Botany, and a Master's of Education and Curriculum Development. I have worked as a wetland ecologist and land-use planner in the Pacific Northwest for over 20 years, and as a naturalist and educator for over 25 years. In 1981 I was one of three biologist hired by King County to assist in conducting King County's wetland inventory: the first such effort ever undertaken in the Pacific Northwest by a local jurisdiction. From that position I was hired as the Wetland Planner at

DECLARATION OF DYANNE SHELDON IN
SUPPORT OF ACC'S MOTION FOR STAY

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1 King County, Washington, the first such 'local wetland planner' position
2 in the country. I created the precedent setting wetland management
3 program at King County: it established the first wetland rating system,
4 the first requirements for buffers and setbacks on wetlands from
5 development activities and the first requirements for compensatory
6 mitigation ever demanded by a local or state government in this region.
7 In my capacity as the only wetland planner for King County, I reviewed
8 and conditioned or denied, every single development permit application
9 that related to streams and/or wetlands submitted to the County between
10 1983 and 1988. In the intervening 17 years I have watched the
11 consequences of some of the actions I allowed to be permitted at that
12 time. As the first person to attempt to regulate wetlands for a local
13 jurisdiction, through the process of placing conditions on individual
14 permit applications, I did not have the benefit of any precedence,
15 scientific 'research', or the results of long-term studies to inform my
16 decision making process. The wetland rating system I helped develop in
17 1981 had never been used previously, no one in King County had ever
18 required a buffer before, and certainly no one had ever required or
19 attempted to create wetland mitigation in King County prior to the mid-
20 1980's. The entire *science* of wetland management in the Pacific
21 Northwest was barely in its conceptual stage: the Army Corps of
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25 DECLARATION OF DYANNE SHELDON IN
SUPPORT OF ACC'S MOTION FOR STAY - 2

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1 Engineers 404 permitting requirements allowed up to 10 acres of
2 wetland fill at that time. The wetland scientific and management
3 community of the Pacific Northwest has watched and learned the
4 lessons from those early attempts to 'protect' wetlands: the lessons
5 learned and the mistakes made have informed and influenced wetland
6 regulations and policies in this region for nearly the last two decades.

7
8 3. Based on my years of experience regulating wetlands and my knowledge
9 of wetland ecology I have often been solicited by State and Federal
10 agencies to actively participated in regulatory, policy and planning
11 activities related to wetland and habitat issues throughout the region. In
12 the mid-1980's I was asked frequently by the Washington State
13 Department of Ecology Wetlands Section staff to participate formally and
14 informally in processes to formulate State wetland management policy
15 and regulatory framework and guidance. At the Department of Ecology's
16 request I provided input on the original proposed State Wetland
17 Management Program, the Wetland Rating System for Western
18 Washington, the State Wetlands Integration Strategy, the State Model
19 Wetland Ordinance (modeled directly on the King County Critical Area's
20 Ordinance that I originally drafted in 1982 as King County's Wetland
21 Management Guidelines). The State Model Wetland Ordinance contains
22 requirements for buffers and building setbacks, rating systems, and
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25 DECLARATION OF DYANNE SHELDON IN
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1 replacement ratio's for compensatory mitigation: all issues for which
2 Ecology actively contacted me and sought my input based on my
3 professional experiences. As a consultant I've been hired by Ecology
4 numerous times to provide technical expertise in wetland management
5 related issues. In 1992 I was hired to conduct the field assessment
6 element, to provide technical review and oversight, and to write key
7 portions of the precedent setting study: Wetland Replacement Ratio's:
8 Defining Equivalency (available at:
9 <http://www.ecy.wa.gov/pubs/92008.pdf>). This was the first study
10 prepared by Ecology that identified some of the key re-occurring design,
11 implementation, maintenance and monitoring problems that resulted in
12 compensatory mitigation failures in the region.

- 13
14
15 4. I have worked as an environmental consultant since 1988, and for more
16 than 11 years as the Principal of Sheldon & Associates, Inc. At Sheldon
17 & Associates I have continued to provide technical assistance and
18 guidance to many local jurisdictions, functioning in an 'on-call' capacity
19 as their technical critical areas staff. I have reviewed and conditioned
20 many hundreds of permit applications and mitigation documents for
21 numerous local city and county governments from simple applications to
22 two of the largest single-owner development projects ever approved in
23
24 King County: Redmond Ridge and Trilogy, both more than 1000 acres in

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1 size. These two Urban Planned Developments (UPD's) have many
2 parallel issues to the STIA Third Runway project: they are large and
3 complex, they are very controversial, and there have been years of
4 permit submittals, negotiations, and conflicting expert testimony and
5 acrimonious public hearings. The two UPD projects were in planning
6 stages, permit application review and conditioning phases for over 10
7 years, and have now been in the construction phases for more than 3
8 years. The level of scrutiny and analysis of the applications, the
9 complexity and perceived 'bomb-proof' nature of the permit conditions,
10 and the subsequent reality of implementation, permit condition
11 'interpretation', and enforcement on these projects has strongly
12 influenced my opinions on the methods, means, and implications of
13 well-crafted and non-ambiguous conditions language. The harsh lessons
14 learned from attempting to implement what were then precedent-setting
15 permit conditions has been sobering, even with a relative willing
16 applicant. That ongoing experience has informed my professional
17 opinions on the need to grant ACC's request for a stay of the 401
18 Certification for STIA.
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- 22 5. I have designed successful wetland compensation projects for open
23 water, emergent, shrub and forested freshwater systems, as well as
24 several estuarine restoration projects. I have done the technical design,

25 **DECLARATION OF DYANNE SHELDON IN
SUPPORT OF ACC'S MOTION FOR STAY - 5**

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1 coordinating with civil and hydraulic engineers, as well as our on-staff
2 landscape designers. I have provided construction oversight and long-
3 term monitoring of our own designs and of compensation projects
4 designed by others. Observing the construction and installation of our
5 own work, and that of others, I have learned many crucial elements that
6 are often overlooked or not accounted for in compensation design. This
7 knowledge, along with 20 years of watching the impacts caused to
8 natural ecosystems despite the efforts of the best-intended permit
9 conditions, is reflected in my professional opinions of the effectiveness
10 of the 401 permit conditions crafted from Ecology for the STIA Third
11 Runway project.
12

13
14 6. I was asked by the Airport Communities Coalition (ACC) to review the
15 documentation provided by the Port of Seattle describing proposed
16 development at Sea-Tac Airport (STIA) for possible impacts to wetlands.
17 My review has included the Port's Wetlands Delineation and Wetland
18 Functional Assessment documents, the Natural Resources Mitigation
19 Plans (NRMP), the JARPA permit application and other documents and
20 engineering plans related to activities affecting wetlands. My comments
21 from previous reviews were sent to the U.S. Army Corps of Engineers on
22 February 20th, 2001. I have also reviewed Ecology's recent CWA Section
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25 **DECLARATION OF DYANNE SHELDON IN
SUPPORT OF ACC'S MOTION FOR STAY - 6**

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1 401 certification decision dated August 10, 2001, and amended
2 September 21, 2001.

3 7. I have reviewed declarations and briefs relating to the ACC request for
4 stay made by various Ecology staff persons, their consultants,
5 consultants for the STIA Third Runway project, and others providing
6 consultation to the ACC.
7

8 8. I understand that the ACC has filed an appeal with the Pollution Control
9 Hearing Board challenging the Section 401 Certification (No. 1996-4-
10 02325) and the CZMA concurrency statement, issued August 10, 2001,
11 and amended September 21, 2001 to the Port of Seattle, and that ACC
12 has requested a stay until the questions it has raised concerning
13 compliance with the Clean Water Act have been resolved by the
14 Pollution Control Hearings Board (PCHB). I am submitting this
15 declaration in support of ACC's appeal and motion for stay because I am
16 convinced that the Natural Resource Mitigation Plan (NRMP) and related
17 measures proposed by the Port of Seattle fail to accurately describe all
18 potential impacts to wetland resources associated with the STIA Third
19 Runway and that the conditions imposed by Ecology through the 401
20 Certification are inadequate to assure adequate compensation for the
21 identified losses in wetlands and wetland functions. Granting of a stay,
22 while the merits of ACC's appeal are considered by the Board, will
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25 DECLARATION OF DYANNE SHELDON IN
SUPPORT OF ACC'S MOTION FOR STAY - 7

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1 prevent the Port from permanently eliminating aquatic resources within
2 the Miller, Walker and Des Moines Creek watersheds. Dismissal of the
3 stay will result in irreparable harm to public resources: the documented
4 permanent loss of wetland and stream resources, without adequate
5 compensation that meets Ecology's own standards. It will also establish
6 conditions that will likely have undocumented secondary adverse effects
7 on wetlands and downstream resources.

9 9. One key issue of contention is the adequacy and efficacy of the proposed
10 compensatory mitigation for the documented impacts to wetlands from
11 the project. Speaking solely to the issue of quantifying compensation
12 (not at this point, to the ecological adequacy of what has been proposed)
13 I rely upon published guidance from Ecology^{1,2}. The Port has identified
14 18.37 acres of permanent impacts, and Ecology has identified an
15 additional 2.05 acres of 'long-term' impacts, resulting in 20.42 acres of
16 wetland requiring compensation.

17
18 10. Using information provided in the NRMP, Table 3.1-1, the following
19 acres of impacts to wetland vegetation types are anticipated:
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22 ¹ Mc. Millan, Andy. How Ecology Regulates Wetlands. April 1998. Ecology publication: 97-112,
23 available at: <http://www.ecv.wa.gov/pubs/97112.pdf>; copy attached.

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8.17 acres forested wetland
2.98 acres shrub wetland
7.22 acres emergent wetland

Using the replacement ratio's from "How Ecology Regulates Wetlands",

Category 2 and 3 wetlands require a variable ratio dependent upon the type of wetland vegetation community to be impacted and the type of compensation (creation or restoration) proposed. The total wetland compensation required (if all the compensation was done by using creation or restoration, not enhancement) using Ecology standards would be:

forested class: 3:1 ratio X 8.17 acres of impact = 24.51 acres
shrub class: 2:1 ratio X 2.98 acres of impact = 5.96 acres
emergent class: 2:1 ratio X 5.22 acres of impact = 10.44 acres
Type 4 wetlands: 1.25:1 X 2.01 acres of impact = 2.51 acres
TOTAL for 18.37 acres of impact = 43.42 acres

(Of the 18.37 acres of wetland impacts identified in Table 3.1-2 of the NRMP, 90% of them are Category 2 and Category 3 wetlands. A lower replacement ratio of 1.25:1 would be required for 2.01 acres of the Category 4 wetlands which were assumed to be emergent for these estimations). If one assumes that the additional 2.05 acres of additional wetland that Ecology has identified in the 401 Certification as required compensation are either shrub or emergent wetland, it would require an

² Castelle, A., et. al. Wetland Mitigation Replacement Ratios: Defining Equivalency. 1992. Ecology

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1 additional 4.1 acres of compensation. That means that the total required
2 acreage, per Ecology standards, would be:

3 **TOTAL Compensatory Mitigation: 47.52 acres**

4 For reasons that are not fully explained, Ecology in their 401
5 Certification has chosen a 1:1 replacement ratio for both wetland
6 creation and restoration (the Port would get 1 acre of credit for every acre
7 of wetland that they create or restore). From Ecology's own "How
8 Ecology Regulates Wetlands" (pg. 15): "...historically a replacement
9 ratio of 1:1 was common...In recent years the ratio has increased and
10 seldom is a 1:1 ratio acceptable to any regulatory agency. This increase
11 is due primarily to two factors: 1) the likelihood of success of the
12 compensatory mitigation, and 2) the length of time it takes to
13 successfully create or restore a wetland." Although the Ecology
14 publication identifies that the ratios are guidelines, subject to some
15 variability, it is unclear as to why the 401 Certification as issued by
16 Ecology gives the Port one acre of wetland 'credit' for every single acre of
17 wetland creation or restoration.

- 18
19
20
21 11. In addition, Ecology's "How Ecology Regulates Wetlands" (pg. 16), states,
22 "For wetland *enhancement* (emphasis added) the (replacement) ratios
23

24 _____
25 publication 92-08. available at: <http://www.ecy.wa.gov/pubs/92008.pdf>.

DECLARATION OF DYANNE SHELDON IN
SUPPORT OF ACC'S MOTION FOR STAY - 10

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1 are doubled. Enhancement as compensation for wetland losses results in
2 a net loss of wetland area and a net gain in wetland function from
3 enhancement is usually less than from creation or restoration.” That
4 means that for every acre of forested wetlands that the Port proposes to
5 fill and compensate by enhancing existing wetlands, they should be
6 providing 6 acres of enhanced wetlands . For just the 8.17 acres of
7 forested wetlands identified to be filled, that would require 49.02 acres
8 of enhancement compensation. Yet the 401 Certification allows the Port
9 to receive 1 acre of ‘credit’ for every 2 acres of wetland they enhance,
10 regardless of whether they are impacting forest, shrub or emergent
11 wetlands, with no clear scientific justification provided.
12
13

14 12. The Port is proposing 6.6 acres of in-basin restoration, and 29.98 acres of
15 out-of-basin wetland creation. Using an average ratio of a 2.5:1 ratio for
16 restoration/creation (averaging 3:1 and 2:1 for forest vs. shrub or
17 emergent) those numbers would only compensate for 14.63 acres
18 impacts. The 40.96 acres of total wetland enhancement would only
19 compensate for just over 9 acres of impacts. The total compensation
20 credit, as estimated, then would be roughly 23 acres, not 167 acres as
21 stated in the 401 Certification, to compensate for the identified impacts
22 of over 20 acres. Thus the 401 Certification would allow the Port to just
23 meet the acreage standards for compensatory mitigation for the *known*
24

25 DECLARATION OF DYANNE SHELDON IN
SUPPORT OF ACC'S MOTION FOR STAY - 11

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1 impacts by using in-basin and out-of-basin compensation. There are no
2 'extra mitigation credits' provided in the NRMP, there is no
3 compensation provided for the anticipated secondary impacts to
4 wetlands.

5
6 13. The 401 Certification identifies a whopping total of 167 acres of
7 compensatory mitigation for the project as "unprecedented". What also
8 appears to be unprecedented is Ecology granting mitigation "credit" for
9 simply *preserving* existing wetlands in the project area, and for
10 enhancing *upland* buffer habitats. The premise of all wetland
11 regulations (including Ecology's own Model Wetland Ordinance) is that
12 wetlands are to be preserved and only altered when reasonable use of a
13 property would be denied. I've never seen a written or implied public or
14 scientific policy that one should get *compensation credit* for not filling
15 wetlands: that implies that all wetlands are expected to be filled and an
16 applicant should get compensation credit for simply *not* filling them.

17
18 14. The 401 Certification identifies *preservation* as one aspect of 'mitigation',
19 and gives the applicant compensatory credit for it. However, the term
20 'mitigation', as defined in RCW 43.21C.110.84-05-020 for SEPA, is a
21 sequence of actions: avoidance of impacts, minimizing impacts,
22 rectifying impacts, reducing impacts, compensating for impacts, and
23 monitoring impacts. It in no manner implies that 'mitigation credit'

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25 DECLARATION OF DYANNE SHELDON IN
SUPPORT OF ACC'S MOTION FOR STAY - 12

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1 should be given for an applicant who preserves sensitive areas on their
2 properties. The law directs that an applicant (or an agency reviewing an
3 application) must proceed through the sequential steps of avoidance,
4 minimization, and rectifying impacts BEFORE getting to the option of
5 compensating for impacts. This jump to 'compensation' without going
6 through the preceding sequential steps is one of the most common
7 misinterpretations of 'mitigation'. Ecology mistakenly identifies
8 astoundingly high mitigation ratios as having been provided, and implies
9 substantial over-compensation on the part of the Port.
10

11 15. In a similar vein, providing compensation credit for wetland losses
12 through improvements to *upland* forest habitats on a calculated acreage
13 basis is not justified ecologically nor in Ecology's own guidance
14 documents. That is not to argue that upland habitats are not critical for
15 various life stages of some aquatic species, however, calculating over 50
16 acres of *wetland* mitigation acreage for improvement to *uplands* is not
17 justified. If Ecology feels that it is ecologically sound to provide wetland
18 credit for upland habitats, perhaps they should have required the Port to
19 first identify the total acreage of upland habitat proposed to be
20 eliminated by the project, and then compare relative functional loss to
21 functional gain. That might begin to provide a more accurate ecological
22 snapshot of the project impacts.
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25 DECLARATION OF DYANNE SHELDON IN
SUPPORT OF ACC'S MOTION FOR STAY - 13

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1 16. The 401 Certification should be stayed because Ecology has been unable
2 to make the Port clearly identify all permanent wetland impacts or for
3 the Port to provide adequate compensation for those identified losses.
4 Attachment B of the 401 Certificate contains five pages of corrections,
5 additional data needs, clarifications of Port submitted plans, and
6 revisions still required by Ecology of the applicant to the *approved* plans.
7 When there remains so many requests for revisions, requests for
8 additional data, and requests for explanation of plan sheets and
9 drawings, Ecology should not have deemed the analysis as complete. As
10 an example, on pg.3 of Appendix B of the 401 Certification, under the
11 item labeled Appendix D Sheet C3, Ecology is asking the applicant to
12 clarify how hydrologic support will be provided to two wetlands after
13 construction. If Ecology cannot determine how those wetlands will have
14 hydrologic support after construction, then Ecology cannot determine
15 that the wetlands won't be adversely affected by the project, and they
16 have not been able to accurately determine extent of likely impacts to
17 wetlands and therefore to downstream water quality. There are multiple
18 requests for clarifications in the 401 conditions from Ecology to the Port.
19 The Port has failed to adequately address wetland issues, and Ecology
20 acknowledges that in a *de facto* manner by requesting clarification and
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25 DECLARATION OF DYANNE SHELDON IN
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1 additional analysis specifically related to long-term wetland
2 sustainability which influences water quality.

3 17. One of the gravest concerns I have regarding the issuance of the 401
4 Certification is the ability of the Department of Ecology to implement
5 and enforce the conditions of the 401. Many conditions are ambiguous
6 and unclear, leaving the way for broad interpretation and
7 misrepresentation once the Port receives all their permits in hand. The
8 Port has not been a willing participant in this permitting review and
9 conditioning process, as is evidenced by the fact that there remain
10 significant issues that the Port refuses to willingly modify through the
11 years of Ecology's review. For example, the 401 Certification Condition
12 # 4, states that the Port has misidentified 2.05 acres of wetland impacts
13 as 'temporary' while Ecology has determined those losses as permanent.
14 This issue was raised by several reviewers of previous Port documents,
15 yet the Port retains the position that the impacts are temporal. Ecology
16 has not held the Port fully accountable, but only lists several options of
17 where the Port might consider developing additional in-basin
18 compensation. In reviewing and conditioning permits designed to
19 protect public resources, it is inappropriate for Ecology to accept flawed
20 analysis and to suggest to the applicant how the Port might provide a
21 more acceptable project. This kind of condition implies to me the state

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25 DECLARATION OF DYANNE SHELDON IN
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1 of this review and conditioning of this permit process: it appears that
2 Ecology staff has become weary of fighting with the Port and their
3 consultants, so conditions of the 401 are proffered as a means to
4 resolution, rather than assuring adequate analysis and resolution of all
5 potential adverse effects prior to issuance of the permit.
6

7 18. The scale of this project shifts into sharp focus when one realizes that
8 this seemingly minor contested issue of 2.05 acres of wetland fill would
9 require any other applicant to conduct a full Alternatives Analysis and
10 apply for a Section 401 Water Quality Certification and an Individual
11 Permit through Section 404 of the Corps. In the context of what the Port
12 is proposing with their proposal, that 'small issue' seems only a minor
13 detail. What would generate the need for a complete 401 Certification
14 and Individual Permit and Alternative Analysis process has been
15 regulated to a minor "housekeeping issue" through Ecology's 401
16 conditions.
17

18 19. In addition to the identified 20+ acres of wetland loss from the STIA
19 project, there remains the issue of how much additional acreage of
20 wetland will be adversely affected by the construction and permanent
21 conditions resulting from the construction of the project and its on-site
22 compensation. Although the 401 conditions and monitoring are
23 supposed to assure that unforeseen adverse impacts are rectified and/or
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25 DECLARATION OF DYANNE SHELDON IN
SUPPORT OF ACC'S MOTION FOR STAY - 16

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1 some contingency action is implemented, the reality is, for some
2 consequences, there is no appropriate contingency action, and the
3 damage will be irrevocable. As an example: I previously raised in
4 written comments the issue of placing the relocated Miller Creek
5 through Vacca farms peat bog by placing it on an impervious fabric
6 'substrate', thus hydrologically isolating the stream from the
7 groundwater in the wetlands (a source of late-season stream flow). In
8 their response comments, the Port's consultants identified the type of
9 geotextile fabric they were proposing to use as a liner, stating the degree
10 of permeability of the fabric. We subsequently did some research on the
11 fabric samples provided by the applicant to the Army Corps of Engineers
12 staff, and found first off that the product manufacturer that the Port
13 identified as a source no longer made the material. Further research
14 identified a new source for similar fabric. We described the proposed
15 use of the fabric (to line a stream channel on top of a peat substrate, then
16 back-filled with gravel, sands, and silts (sediment)) and asked the
17 National Sales and Technical Manager of the John Manville Corporation
18 (Mr. Dean Norman, July, 2001) how he thought the fabric would
19 function to allow the free exchange of water in perpetuity in such a
20 setting. Mr. Norman did not have any data, nor did his two technical
21 field experts at John Manville or Fluid Systems (suppliers of the fabric),
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25 DECLARATION OF DYANNE SHELDON IN
SUPPORT OF ACC'S MOTION FOR STAY - 17

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1 that the fabric, put to such use, would continue to remain pervious over-
2 time. He did state, that, "logically, the fabric would act as a filter and
3 over time might become less and less pervious". The point of this
4 description is not to argue whether or not fabric, placed under a created
5 stream channel will remain pervious or it won't, (neither the Port's
6 consultants nor I, nor the fabric's manufacturer can testify that it will or
7 that it won't: there is no data). The point is this: what will be Ecology
8 staff's response if the stream channel/wetland interflow function fails?
9 One of the functional gains the NRMP identifies is relocation and
10 restoration of Miller Creek into a floodplain setting: yet key elements of
11 that future condition are pure speculation (the fabric remaining
12 permeable). Although a monitoring plan and contingency actions have
13 been identified, how exactly will Ecology implement them? The Port
14 will have its permits, the runway will be built and operational, and there
15 will be no 'hammer' to encourage the Port to design and implement a 'fix'
16 (that begs the question of how one would propose to 'fix' a broken stream
17 channel bottom...). NRMP Table 5.2-12 does not identify a design
18 criteria or performance standard linked to creating and maintaining that
19 interflow. Although it is implied as a key element in increasing
20 stream/floodplain functions over existing conditions, there is no
21 performance standard, evaluation method or contingency plan if it fails.
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25 DECLARATION OF DYANNE SHELDON IN
SUPPORT OF ACC'S MOTION FOR STAY - 18

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1 20. Another key element of the Port's proposed enhancement and replication
2 of wetland functions in the project area is based on sophisticated models
3 of infiltration of groundwater through the fill, to discharge into
4 downslope wetlands. The infiltration models are as accurate as the
5 assumptions on which they are built: if the assumptions are found to be
6 in error, how would anyone begin to 'fix' the downslope wetlands?

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8 21. To assure the protection of the State's water quality, Ecology, through
9 the conditions of the 401 Certification has to assure the ability to enforce
10 the permit conditions, measure the outcomes, and require contingency
11 actions if they should become necessary. The manner in which many of
12 the 401 conditions are written will preclude Ecology's ability to enforce
13 them. I do not offer that observation lightly. I base that concern on my
14 professional experience for the last 10 years of attempting to help craft
15 and then enforce the most comprehensive and restrictive development
16 conditions ever imposed by King County on two land-use applications
17 (each project over 1,000 acres in size). Condition language that the
18 applicant agreed to at the time of permitting, and which seemed so clear
19 and unambiguous has been transformed over the years. Intention and
20 specificity has given way to interpretation and literal construction: even
21 with a *willing* applicant team at the time of permitting, the harsh reality
22 of attempting to enforce sparsely crafted conditions is daunting.

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25 DECLARATION OF DYANNE SHELDON IN
 SUPPORT OF ACC'S MOTION FOR STAY - 19

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1 Ecology's conditions are too often vague and assume a cooperative
2 collaborative environment in future conditions as the Port proceeds with
3 its project. Protection of public resources is at stake, from degradation of
4 water quality, changes in wetland hydroperiod, to discovering
5 unexpected realities from predicted modeling conditions bad
6 assumptions. Once the wetlands are filled and once the runway is
7 operational, the technical ability of Ecology staff, no matter how
8 qualified and how motivated, will not be sufficient to assure the
9 protection of public resources and preservation of water quality
10 standards in Miller, Des Moines, and Walker Creek once the Port has
11 their permits in hand. Without granting this stay and assuring that
12 adequate analysis has been completed, the Port will begin filling
13 wetlands in an unalterable path towards completion of their project.
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16 22. Granting of the stay is critical at this juncture, even if the Port states that
17 they only intend to fill 2.8 acres of wetland initially. The rationale for
18 the fill is logistics: to gain access to the surrounding non-wetland
19 landscape to continue the on-going filling operations. To justify denying
20 the stay because "only 2.8 acres of wetland would be immediately filled"
21 ignores the consequences of the ongoing filling operation within the
22 upstream contributing area to the existing wetlands on site. As long as
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24 the Port continues to fill uplands upslope of the wetlands, they continue

25 DECLARATION OF DYANNE SHELDON IN
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1 to cause likely changes to the contributing basins and shallow ground-
2 water interflow to those wetlands: filling the uplands *will* affect the
3 wetlands downslope by changing the size and configuration of their
4 contributing basins. In addition, pre-construction monitoring of wetland
5 hydroperiods has been requested by Ecology and the Corps in wetlands
6 identified to remain, post-project. The rationale for that hydrologic data
7 is to use pre-project data to establish pre-existing conditions as a means
8 to confirm "no adverse effects" in post-project conditions. If no "pre-
9 project" data exists (i.e., the Port has only collected hydrologic data since
10 the filling in the uplands has commenced), then it will be impossible for
11 Ecology or the Corps to determine if the STIA project has had an effect.
12 This may be a moot point: the 401 Certification conditions unbelievably
13 do not require the Port to match or even compare pre and post project
14 hydrologic conditions in the wetlands proposed to remain below the
15 project area. The Performance standard is related to the relative wetness
16 of the vegetation (the WIS rating per species) present in the wetlands,
17 plus a re-delineation of the wetland edge to confirm it has not shrunken.
18 This type of performance criteria fails to recognize that wetland soils,
19 perhaps the most important defining parameter of wetland delineation,
20 will not change as quickly as the vegetation and/or water: therefore
21 wetland soils will persist to the historic pre-project extent even if
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25 DECLARATION OF DYANNE SHELDON IN
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the Port fails to get adequate water to the wetland. A stay of the 401 Certification is justified in my opinion to allow/encourage Ecology to re-visit their proposed performance standards to establish parameters that have sufficient substance to assure the long-term protection of aquatic resources, including water quality.

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

DATED this 5 day of October, 2001, at Seattle, Washington.


Dyanne Sheldon

DECLARATION OF DYANNE SHELDON IN SUPPORT OF ACC'S MOTION FOR STAY - 22

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