

Law Offices

**HELSELL
FETTERMAN**

A Limited Liability Partnership

Peter J. Eglick
Kevin L. Stock
Attorneys At Law

February 16, 2001

Mr. Jonathan Freedman
U.S. Army Corps of Engineers
Seattle District
P. O. Box 3755
Seattle, WA 98124

Ms. Ann Kenny
Senior Environmental Specialist
Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008

Re: Comments of Airport Communities Coalition (ACC) on Port of
Seattle Application for Clean Water Act Section 401 Certification
and Section 404 Permit for Proposed Third Runway and Other
MPU Improvements at Sea-Tac International Airport,
Corps Reference No. 1996-4-02325

Dear Mr. Freedman and Ms. Kenny:

On February 28, 2001, culminating the bid and contract process initiated by the Port of Seattle some time ago, the Port will publicly open and read aloud all bids it received for construction of Phase 4 of the embankment for the third runway. According to the Port, Phase 4 of the embankment construction will cost \$31,000,000.00 to \$48,000,000.00, involve clearing and grubbing 50 acres, require importing, hauling and placement of over 2,300,000 cubic yards of fill, require subgrade improvements totaling 167,000 cubic yards and include construction of "drainage features" and "two major sedimentation ponds." Phase 4 will roughly double the 3 million cubic yards of fill already stockpiled on site and bring the total stockpiled fill to almost one third of the amount needed for the third runway. No one should be fooled. The Port is constructing the third runway and, to date, has spent close to \$300 million on the project even though your agencies have yet to decide whether a third runway will ever be built. The Port is gambling that the Army Corps of Engineers and the Department of Ecology will flinch from applying to the Port, without fear or favor, the requirements of the Clean Water Act.

As you know, we represent the Airport Communities Coalition ("ACC") comprised of the cities of Burien, Des Moines, Federal Way, Normandy Park, and Tukwila and the Highline School District. We are writing on ACC's behalf to ask that your agencies not succumb to the Port's pressure tactics. Instead, the agencies should

AR 023598

call a halt to the Port's unprecedented and unregulated construction by denying the Port's application for 401 certification and a 404 permit. Strong legal and factual arguments exist for rejecting the Port's application.

Review and analysis of the Port's application data by independent scientists and experts retained by ACC establish beyond doubt that Ecology does not have the "reasonable assurance" necessary to certify to the Corps that the project will comply with state water quality standards. Nor can the project pass 404 muster under the Corps' public interest review. The Port has failed to establish that there are no less environmentally damaging practicable alternatives for achieving the purported project purpose. Further, the impacts, individually and cumulatively, of the proposed project on the environment and with regard to safety and the public interest far outweigh any benefits that might accrue. In addition, the Port's application must be rejected because of substantial and serious procedural deficiencies. These flaws -- all fundamental -- are discussed below.

I. **Ecology Must Deny 401 Certification Because the Port's Engineered Solutions Fail to Prevent and Protect Against the Adverse Consequences of the Project.**

Despite an unprecedented third attempt to convince Ecology that its massive multi-billion dollar expansion will not violate state and federal water quality standards, the Port has failed once again to provide technically defensible, internally consistent, and legally sufficient plans and explanations upon which Ecology can rely to provide the necessary certification. Ecology cannot issue a legally defensible 401 certification where the project proponent's application is significantly incomplete, based upon technically questionable data, or posits unrealistic mitigation and treatment plans. As the PCHB held in *Okanogan Highlands Alliance, et al. v. Department of Ecology and Battle Mountain Gold Company*, PCHB Nos. 97-146, 97-182, 97-183, 97-186 and 99-019, (2000 WL 46743), at ¶¶ 58-59:

The proposed mitigation...is not legally sufficient to meet the criteria for approval of the water rights applications or providing reasonable assurance for the Sec. 401 Certification. The physical knowledge of the affected lands is limited in critical areas necessary to conclude that proposed mitigation is sufficient or that the water will be delivered in a timely manner to affected streams. The mitigation is therefore highly speculative and uncertain. The same must be said for the permanent, engineered solutions offered for the shift in a hydraulic divide. The proposal in essence calls for re-plumbing a watershed with facilities that must be maintained forever. The same is true for the pit lake. The response to predicted pollution in the pit lake is to construct a

water treatment plant on top of a mountain that will have to be powered and maintained forever. We are unable to say what will ultimately happen to the rock piles. We know that they will pollute the environment. How or in what manner the applicant and state will respond is unknown....

The focus of our environmental laws must be on preventing pollution and habitat degradation. It is not legally sufficient to proceed with the proposed mine without much more specific knowledge of the potential impacts from the development and meaningful means of preventing and protecting against the adverse consequences of the development. The long-term engineered solutions proposed in this case are legally insufficient.

The parallels between the flaws in the Port's application and the application in *Battle Mountain Gold* are too strong to be ignored:

- Inadequate Stormwater Management and Pollution Prevention. Like the proponent in *Battle Mountain Gold*, the Port proposes to "re-plumb the watershed with facilities that must be maintained forever" by moving a section of Miller Creek, building massive stormwater retention vaults, relocating sewer lines, adding acre upon acre of impervious surfaces, and filling over 18 acres of wetlands. Despite the scope of this undertaking and an opportunity to correct deficiencies previously identified by King County and Northwest Hydraulic Consultants, the Port's stormwater management plan still contains serious omissions, inconsistencies and deficiencies. See February 15, 2001, Comment Letter of Northwest Hydraulic Consultants; February 15, 2001, Comment Letter of Sheldon & Associates, and February 16, 2001, Comment Letter of Water Resources Consulting (Dr. Peter Willing). The Port's SMP relies upon inconsistent stormwater standards, lacks a clearly defined review process for this very complex project, omits explicit descriptions of the facilities and hydraulic controls to be constructed, and fails to provide a plan for ongoing, independent, competent review thorough design and construction. Moreover, the Port has significantly expanded the size of the stormwater facilities for the purported purpose of stream augmentation. The Port's hydrologic re-definition of the Sea-Tac area watersheds has the effect of concentrating a modestly reduced pollutant load into a greatly reduced annual runoff volume into the streams. Existing best management practices for stormwater at the airport have not been working, based on measured water quality parameters. Yet, the Port fails to demonstrate how proposed stormwater best management practices are adequate to treat retained stormwater to levels compliant with state water quality standards.

Without this information, Ecology cannot conclude that the Port's engineered stormwater facilities "will prevent and protect against the adverse consequences of the development."

- Speculative and Uncertain Mitigation. Like the mitigation proposed in *Battle Mountain Gold*, the Port's mitigation plan continues to lack essential data and analysis necessary for an accurate determination of the adversity of an impact and identification of commensurate acceptable mitigation to offset adverse impacts. See February 16, 2001, Comment Letter of Azous Environmental Services; February 15, 2001, Comment Letter of Sheldon & Associates. The Port has, once again, failed to recognize or mitigate the wetlands functions it proposes to eliminate, and offers a misplaced "mitigation" package in their stead. Its calculations of the extent of permanent and temporary wetland area losses remain unscientific and are contrary to common sense, while its analysis of cumulative effects is nonexistent. The PCHB's condemnation of the mitigation plan in *Battle Mountain Gold* is equally apt here: "The physical knowledge of the affected lands is limited in critical areas necessary to conclude that proposed mitigation water is sufficient or that the water will be delivered in a timely manner to affected streams."
- Lack of Secure Water Rights for Stream Flow Augmentation. The Port's mitigation plans include augmenting streamflow in Des Moines, Walker and Miller Creeks. Among the many flaws associated with mitigation plans for the airport expansion, the Port has failed to identify specific and credible sources of augmentation water to meet its mitigation goals. Despite significant water rights problems with its prior two applications, the Port still has yet to offer a valid water right or other credible source of water in support of its plans to augment flow in Des Moines Creek. See February 15, 2001, Comment Letter of Rachel Paschal Osborn; February 16, 2001, Comment Letter of Peter Willing/Water Resources Consulting. The Port's plan for augmenting stream flow in Miller Creek is no better, as the Port proposes a water right retirement strategy that raises concerns about beneficial quantities and relies upon stormwater releases in an improper attempt to bypass water permitting requirements. Without secure water rights to augment stream flow, the Port's mitigation proposal is no better than the "highly speculative and uncertain" mitigation in *Battle Mountain Gold*.
- Fate and Transport of Existing Contamination Is Unknown. Like the rock piles in *Battle Mountain Gold*, the Airport Operations and Maintenance

Area is a known source of contamination. Unfortunately, because the Port has failed to study whether third runway construction will facilitate the fate and transport of the contaminants in the AOMA to the streams, Ecology and the PCHB "will be unable to say what will ultimately happen" to the AOMA contaminants. Until the Port completes a comprehensive evaluation of contaminant fate and transport, as it promised to do under the May 1999 Agreed Order, there can be no assurance that transport of existing contaminants will not violate water quality standards or pose a threat of environmental harm to local receptors. See February 16, 2001, Comment Letter of Dr. Peter Willing/Water Resources Consulting.

- The Proposed MSE Retaining Wall Poses a Threat to Safety and to the Environment. One of the most startling aspects of the current project review has been the disclosure by Ecology and the Corps concerning the paucity of data submitted to them for the proposed MSE wall holding back millions of tons of fill necessary for construction of the Third Runway. To date, the agencies have appeared to rely on bland assurances by the Port and "peer reviews" by Port-paid consultants who offer superficially reassuring but essentially non-committal comments to the effect that, although the wall has not really been designed or the wall site properly investigated, the Port is probably "on the right track." In fact, as the team of independent geotechnical experts consulted by ACC has stated, the Port is not on the right track in the study of site/subsurface conditions and design of the wall itself. Instead, these experts have sounded an alarm which Ecology and the Corps should hear:

Given the unprecedented scale of the West MSE Wall, this project demands the utmost in care in all aspects of investigation, analysis, and design. We are very concerned that this care has not been taken and that the resulting deficiencies could lead to a design of the embankment and walls that could ultimately result in damage or failure of the wall, particularly under the influence of a strong seismic event in the Seattle area. This could have dire consequences on both the functionality of the airport and preservation of the creek and wetlands below.

GeoSyntec Comment Letter, February 16, 2001, at p.3. There is no demurring here under the Clean Water Act from the obligation by both Ecology and the Corps to examine the wall rigorously before approval is granted. The core purpose of the Clean Water Act is to protect waters (including wetlands) of the United States from degradation. Failure of the wall would inevitably cause such degradation -- in the most severe terms.

Failure of the wall would also pose a serious safety hazard. Yet, the agencies have not to date insisted upon rigorous site examination and mature, reviewable designs as part of the Port's application submissions. Particularly in light of the comments by GeoSyntec engineers, such insistence must occur now to avoid the harm which a wall failure would cause.¹

The cases are clear on what is necessary for Ecology to have "reasonable assurance" that state water quality standards will be met. Sound, case-specific science must underlie Ecology's more complex permitting decisions. *Marine Environmental Consortium, et al. v. Department of Ecology, et al.*, 1997 WL 709347 (PCHB Nos. 96-257 - 262, 96-293, 96-264 - 266, 97-110 (10/22/97). Ecology should not be pressured or lulled into issuing a certification for a palpably flawed project. It should not don blinders and issue a certification "comforted" by the thought that concerned citizens will ask the PCHB or a court to make it right. It should not make excuses for the Port's failure to support its application for a project of unprecedented scope with sufficient, detailed, realistic, scientifically defensible plans. Ecology should deny 401 certification.

II. Ecology Cannot Provide "Reasonable Assurance" Because of Ongoing Violations of the Port's Current NPDES Permit.

Pursuant to WAC 173-225-010 and RCW 90.48, before a federal license or permit issues which results in discharges into navigable waters in Washington, Ecology must provide its reasonable assurance -- via a "401 certification" -- that any such discharges will comply with Sections 301, 302, 306, and 307 of the CWA. CWA § 401 provides:

Any applicant for a Federal license or permit to conduct any activity...which may result in discharges into the navigable waters, shall provide...a certification from the state in which the discharge originates...that any such discharge will comply with the applicable provisions of sections 1311 (§ 301, Effluent Limitations), 1312 (§ 302, Water Quality Related Effluent Limitations), 1313 (§ 303, Water Quality Standards and Implementation Plans), 1316 (§ 306, National Standards of Performance), and 1317 (§ 307 Toxic Pretreatment and Effluent Standards) of this title.

¹ As noted in comments by Northwest Hydraulic Consultants, embankment wall failures are not unknown in airport construction. See NHC Comment Letter dated February 15, 2001 (citing Telluride Airport embankment wall failure).

Mr. Jonathan Freedman / Ms. Ann Kenny
February 16, 2001
Page 7

33 U.S.C. § 1341(a)(1) (§ 401) (emphasis supplied). The statute is clear: a Section 401 certification cannot issue where there is no compliance with Section 301, Effluent Limitations. Section 301 in turn indicates that there is no compliance if NPDES permit violations are occurring:

Except as in compliance with this section and sections 1312, 1316, 1317, 1328, 1342 (§ 402, NPDES), and 1344 (§ 404, Permits for Dredged or Fill Material) of this title, the discharge of any pollutant by any person shall be unlawful.

33 U.S.C. §1311(a) (emphasis added). In short, the CWA prohibits a state agency from issuing a Section 401 certification where the project proponent is not in compliance with other applicable CWA provisions, including effluent limitations regulated by an NPDES permit.

Pursuant to CWA Section 402, on February 20, 1998, DOE issued NPDES permit number WA-002465-1 to the Port for its airport operations, authorizing the discharge of limited types and quantities of pollutants (industrial wastewater and stormwater) into five receiving waters which are enumerated on the face of the permit, via fifteen discharge locations, also specifically enumerated within the permit. That permit was last modified on January 25, 1999, pursuant to a settlement agreement between the Port, DOE, and Citizens Against SeaTac Expansion (CASE). However, the Port continues in its ongoing history of non-compliance with the NPDES permit. See February 16, 2001, Comment Letters of Dr. Peter Willing/Water Resources Consulting, and Dr. John Strand/Columbia Biological Assessments. Absent compliance with the *existing* NPDES permit, Ecology cannot find reasonable assurance that the Third Runway project and all of the associated MPU improvements will meet or exceed applicable state and federal water quality standards. If anything, the current state of affairs suggests that Ecology could readily certify beyond a reasonable doubt that violations of the existing permit will continue.

Concurrent with its request for Section 401 certification, the Port is seeking a major modification of its existing NPDES permit to allow for further, unspecified discharges of unspecified pollutants to existing and new, unspecified receiving waters. See proposed, modified NPDES Permit.² The stated purpose of the modification is to "extend" existing permit coverage to "all construction projects for

² The inclusion of unnamed and unidentified tributaries on the proposed permit's list of permitted receiving waters exacerbates the current risk of harmful discharges occurring in sensitive areas, including discharges to salmon-bearing streams, critical habitat, and the wetlands that buffer and support them. These risks are untenable, particularly in light of recent ESA listings.

which the Port of Seattle, Seattle Tacoma International Airport has or acquires a real property interest during the terms of the permit including but not limited to areas of the Third Runway and Master Plan Update projects." Draft Permit Modification, Addendum to Fact Sheet: Major Modification, p. 2.

Many of the proposed MPU improvement projects would require new construction, new impervious surfaces, new discharges, new impoundment structures, and new outfalls. In fact, the Third Runway cannot be built, and many other MPU projects cannot proceed, without the major modification of the existing permit which the Port seeks. Even apart from the gross illegalities inherent in the proposed modified NPDES Permit, *there is no legal basis for Ecology to base a Section 401 certification upon future compliance with an as-yet-unapproved, modified NPDES permit, where violations currently exist.*

Given the history of chronic violations of the current permit, and the pending application for major modification of that permit, it would be meaningless -- and a violation of state policy and the Clean Water Act -- to condition a Section 401 approval upon compliance with the existing NPDES permit. It would be even more irresponsible for Ecology to condition a Section 401 approval upon compliance with an as-yet unapproved, modified permit.

III. The Corps Must Deny the 404 Permit.

The Corps must deny the 404 permit sought by the Port because the impacts of the project on the environment, both individually and cumulatively, and its detriments to safety and the public interest, far outweigh any benefits that might accrue and because the Port has failed to establish that there are no less environmentally damaging practicable alternatives for achieving the purported project purpose.³ A review of the facts and circumstances viewed in light of the applicable

³ Pursuant to 33 CFR § 320.4, *et. seq.*, the Corps' evaluation of the Ports' Section 404 application require a public interest review incorporating an evaluation of cumulative impacts, and a balancing of expected benefits against reasonably foreseeable detriments. 33 CFR 320.4(a). Relevant factors which must be considered, *including the cumulative effects thereof*, include conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, land use, recreation, water supply and conservation, water quality, energy needs, safety, considerations of property ownership, and the needs and welfare of the people. *Id.* The district engineer conducting the evaluation is directed to specifically consider, and to use discretion to accord appropriate weight to criteria including the extent of the public and private need for the work; the practicability of alternative locations or

Mr. Jonathan Freedman / Ms. Ann Kenny
February 16, 2001
Page 9

criteria the District Engineer must apply pursuant to 33 CFR 320.4, *et seq.*, dictate that the Section 404 permit should be denied.

a. The Project Substantially Impacts the Environment Without Appropriate Mitigation.

ACC experts in the areas of hydrology, water quality, wetlands, and fisheries all have concluded after careful review and analysis of the Port's application materials that the Port has failed to present sufficient, scientifically competent information that would allow the Corps to conclude that the project as planned will not do significant and lasting harm to the environment without commensurate mitigation. See February 2001 Comment Letters of Dr. John Strand/Columbia Biological Assessments; Dr. Peter Willing/Water Resources Consulting; and Dr. Tracy Hillman/BioAnalysts.

b. The Port Has Failed to Assess and Address Significant Safety Issues.

The Port proposes to construct the largest MSE retaining wall ever built, yet has failed to analyze properly how the wall will react in a major earthquake. GeoSyntec Consultants, a nationally recognized geotechnical firm retained by ACC, has uncovered significant deficiencies in the field and laboratory investigation, and in the analysis of the MSE wall. See February 16, 2001, Comment Letter of GeoSyntec Consultants. GeoSyntec concludes that the Port's documents do not support the conclusion that the project as conceived can withstand the static and seismic loads it will be subject to over its lifetime. The static and seismic analyses performed are not based on sound interpretation of either existing foundation conditions or the seismic conditions at the site. According to GeoSyntec the net result of these deficiencies is that the Port has yet to demonstrate either that a stable wall can be economically

methods to accomplish objectives of the project; and the extent and permanence of the beneficial or detrimental effects of the project on public and private uses of the area. 33 CFR § 320.4(a)(2),(3). The effect on wetlands must be specifically addressed, and the district engineer may undertake reviews in consultation with other agencies. 33 CFR § 320.4(b)(3). A permit sought to alter wetlands identified as important pursuant to 33 CFR § 320(b)(2) -- which includes wetlands functioning as critical habitat -- may not be granted unless the benefits of the proposed action outweigh the damage to the wetlands resource. 33 CFR § 320.4(b)(4). As part of this the Corps is required to require whenever possible adoption of alternatives which avoid modification or destruction of wetlands. 40 C.F.R. Part 6, Appendix A; 40 C.F.R. 6.032(a).

AR 023606

constructed or that the wall, if constructed, can withstand the seismic loads to which it may be subjected without large, unacceptable deformations.

The Port also fails to address a significant safety issue inherent in the operation of the Third Runway: increased risk of runway incursions. Both independent aviation system planning consultants retained by ACC, Dr. Geoffrey Gosling and Dr. Stephen Hockaday, warn that the increase in the number of runway crossings that will occur if the proposed Third Runway is constructed will increase the risk of runway incursions over present conditions, and will limit the operational benefits that can be obtained from the new runway. See February 15, 2001, Comment Letter of Geoffrey Gosling; and February 16, 2001, Comment Letter of Dr. Stephen Hockaday. These issues must be addressed by the Corps before it can consider issuance of a 404 permit.

c. The Port Has Failed to Establish That Less Environmentally Damaging Alternatives Do Not Exist.

According to the Public Notice, "the project purpose is to meet the public need for an efficient regional air transportation facility to meet anticipated future demand." The stated purpose for the Third Runway is "to allow Sea-Tac to operate two runways for landing during times of poor weather." Very recent developments in relevant communication, navigation and surveillance (CNS) and air traffic management (ATM) technologies have the potential to enhance the capacity of Sea-Tac in good and bad weather and, thus, render the Third Runway a "white elephant." The Port's previous analysis of technology-based alternatives to the proposed third runway described in the FEIS and FSEIS failed to address these recent developments in advanced air traffic management technologies, some of which have occurred since that analysis was undertaken, and thus fails to adequately reflect the potential of these technologies to enhance the capacity of the existing runways at Sea-Tac. Similarly, even if a new runway were to be built, there are alternative runway configurations which would result in less environmental impact (including fill of wetlands). Other feasible alternatives include use of several existing regional airports that have excess runway capacity available to accommodate aircraft operations, and construction of a new regional supplemental airport to meet future regional demand. See February 15, 2001, Comment Letter of Dr. Geoffrey Gosling; February 16, 2001, Comment Letter of Dr. Stephen Hockaday. In light of this array of alternatives, there is no justification for approval of the Port's extreme "solution," which requires wholesale destruction of wetlands and harmful replumbing of salmon streams and watersheds. The Corps should deny Section 404 approval on this basis alone.

IV. The Section 401/404 Application and the Attendant Public Notice Violate 33 C.F.R. 325, *Et. Seq.*, Because They Lack Sufficient Information to “Generate Meaningful Comments” as to Some MPU Projects, and Entirely Exclude Information on Other Projects and Activities Which Are “Reasonably Related” to the Third Runway Project or “Subject to Corps Control and Responsibility.”

Corps regulations specify that the public notice issued on a Section 404 application must “include sufficient information to give a clear understanding of the nature and magnitude of the activity to generate meaningful comments.” A new notice may be required where there are significant “changes in the application data that would affect the public’s view of the proposal.” 33 CFR §§ 325.3(a), 325.2(a)(2). Corps regulations also require submission of a complete Section 404 application, setting out “all activities which the applicant plans to undertake which are reasonably related to the same project and for which a DA permit would be required.” 33 CFR § 325.1(d)(2) (emphasis supplied). This regulation requires that the Port Section 404 application should either include or provide detailed information concerning every identifiable MPU project which may require a Section 404 permit. Furthermore, when the activity requiring a Section 404 permit is “one component of a larger project” -- as is the case with the proposed Third Runway, which is one component of the Port’s airport expansion plans -- the Corps must “address the impacts of the specific activity requiring a permit and those portions of the entire project over which the district engineer has sufficient control and responsibility to warrant Federal review.” *Wetlands Action Network v. Army Corps of Engineers*, 222 F.3rd 1105, 1115 (9th Cir. 2000) (citing 33 C.F.R. part 325, Appendix B § 7(b)); *see also Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 375-76, 104 L. Ed. 2d 377, 109 S. Ct. 1851 (1989).

The Corps’ broad interpretation of how these factors apply to its consideration of the Port’s application is clarified in the Corps’ comments concerning the mitigation proposal for the Sea-Tac Master Plan Update, emphasizing that the Corps will fully exercise its jurisdiction to review cumulative impacts:

Our concern is heightened when we consider that the entire acquisition area will likely involve additional Master Plan Update improvement projects in the relatively near future, further degrading the landscape and necessitating mitigation out of basin once again. While we recognize that those actions will receive independent review, the cumulative impacts of such actions, which would not occur but for the master plan updates, must be examined now. As defined in 40 CFR 1508.7, cumulative impacts are the impacts on the environment which result from the incremental impact of the action when

added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person takes such actions. Accordingly, the Corps will analyze all actions taken under the existing Master Plan Update improvements cumulatively with any future projects proposed by the Port within the three subject watersheds.

August 11, 2000, letter from Gail Terzi, ACOE, to Jim Kelly, Parametrix, at p. 2 (emphasis added). The Corps' comments reflect the regulatory expectation that impacts of all pending MPU improvements which will either require a Section 404 permit or otherwise fall under the Corps' "control and responsibility" should be considered in this application, and that to the extent possible the potential, cumulative impacts of future MPU improvements not yet at the permitting stage should be analyzed as well.

The Port's JARPA application acknowledges that elements of the project that will result in wetland, floodplain, stream, and drainage channel impacts include: construction of the 8,500-foot Third Runway; establishment of runway safety areas (RSAs) for existing runways; relocation of South 154th Street to an area north of the extended RSAs and the new Third Runway; development of the South Aviation Support Area (SASA); and excavation of borrow sites for Third Runway embankment fill. 10/26/00 JARPA application, p. 3. However, the JARPA application deftly side-steps the question of exactly which MPU projects should be subject to review during the Section 401/404 application process, stating only that the "proposed work includes Master Plan Update projects," and that these projects "are described in the 1997 FSEIS, the Stormwater Management Plan, the Natural Resources Mitigation Plan (1999), the Revised Implementation Addendum to the Mitigation Plan (2000), and the Biological Assessment (2000)." *Id.*, p. 2. Information sufficient to "generate meaningful comments" concerning the following Port/FAA-sponsored activities and projects -- which are either "reasonably related" to the airport expansion project or under Corps extended "control and responsibility" pursuant to 33 CFR 325 -- are not adequately set out in these documents, and have as a practical matter been excluded from the Section 401/404 application, public notice, and attendant cumulative impacts analysis:

- The Conveyor Belt: The Wescot Company (Environmental Materials Transport LLC) has submitted an application for construction of a conveyor belt consisting of an off-load pier for Third Runway fill material offshore of Des Moines Marina and a 4.8-mile conveyor belt transport system to move material through the City of Des Moines to the Port's construction site. The Corps is considering this application as a separate action, and has assigned this project File No. 2000-1-01481. However, the conveyor belt is not a separate action; it

has no independent utility apart from the Third Runway project -- its sole purpose would be to convey fill to the construction site, and it would be physically linked to the runway construction site. The Port's application and the Corps Notice must be revised to allow for proper agency and public review and analysis of the proposed conveyor belt project and the many environmental and socioeconomic impacts it may create.

- Expansion of IWS Lagoon No. 3: This project involves installing a liner and upgrading Industrial Wastewater System Lagoon No. 3 to a capacity keyed to the needs of the MPU projects.
- Construction of a temporary interchange to State Route 509: Like the proposed conveyor belt, the temporary interchange has no independent utility apart from Third Runway construction. See May 16, 2000, letter from Port of Seattle's Michael Cheyne to area residents (explaining purpose of proposed temporary interchange). The temporary and permanent environmental and socioeconomic impacts of the interchange project must be fully considered in the 401/404 decision-making processes.
- Control Tower and TRACON: The FAA plans navigation improvements, including a new air traffic control tower and Terminal Rader Approach Control (TRACON) facility, with potential impacts on the nearby Miller Creek buyout area and implications for the stormwater plan, as well as short-term construction impacts. The facility, integral to air travel operations, will be run by the FAA, but located upon Port property. Yet, they are not addressed as part of the overall applications.
- The Aircraft Hydrant Fueling System Project: This major airport expansion project is intended to provide a single source for delivery of Jet A fuel at the airport and a common infrastructure that would be used by all airlines.
- Temporary Aircraft Parking and Taxiway Stubs: This Port project proposes use of two taxiway stubs for aircraft parking in the vicinity of the Weyerhaeuser Hanger until the stubs are extended to connect with the proposed third runway.
- North Electric Service Upgrade: This project involves replacing Bow Lake Substation with a smaller facility consisting of electrical switchgear and installation of 12.5 kV underground cable system.

Mr. Jonathan Freedman / Ms. Ann Kenny

February 16, 2001

Page 14

- Water system Improvements at Host Road near 160th Street: The proposed system improvements include construction of a two million gallon reservoir, expansion of booster pump station and other improvements to fire and domestic water system at Sea-Tac Airport.
- Stormwater Facilities Requiring Dam Safety Permits. In a February 8, 2001, email to Helsell Fetterman, Ecology's Ann Kenny states that although IWS Lagoon #3 is the only facility that has been reviewed by Ecology under WAC 173-175, *et. seq.*, Washington's Dam Safety regulations, there are two other proposed stormwater facilities that "may require review under Chapter 173-175," namely a 25.5 acre-foot pond associated with SDW1A, and a 37.91 acre foot pond associated with SDW1B. It is not explained why Ecology is just now finding out that major stormwater facilities proposed by the Port may require dam safety permits, nor whether and how these new facilities can be legally permitted under the existing or the proposed, modified NPDES permit. Although it is noted that "Ecology will recommend to the Port of Seattle that they begin consultation with the Dam Safety Office concerning the design of the two proposed stormwater facilities," there is no explanation of why the Port's SEPA/NEPA documentation does not address these dam safety issues, nor how agency review can go forward in the absence of this information.

The Port's application also fails to take into consideration the cumulative impacts of nearby projects and activities sponsored by other entities. These include:

- SR 509 Extension and South Access Road: As a part of its long-planned SR 509 Extension project, the WSDOT plans to construct a "South Access Road," connecting I-5 to the airport from the south, via the planned SR 509 Extension. Although nominally a WSDOT project, WSDOT representatives have stated that the Port is subsidizing the cost of the project, and is closely involved with the design process. Furthermore, the South Access Road is an important aspect of the Port's overall airport expansion plans, and is "reasonably related" to the Third Runway project. Further, meeting notes compiled by Floyd & Snider, Inc., reflect that in the course of meetings between the Port and Ecology, potential impacts to Tyee Pond from the South Access Road were identified as a "401 Technical Issue Requiring Resolution." Sea-Tac Airport Third Runway 401 Permit Negotiations, Meeting Notes Summary, October 2nd through December 8th, 2000.

WSDOT's preferred alternative for the SR 509 Extension (Alternative C-2) would involve filling 3.9 acres of wetlands and 2.8 acres of wetland buffers in and adjacent to Des Moines Creek Park. See SR 509/South Access Road

AR 023611

Discipline Report: Section 4(f), prepared by Ch2MHill, August 2000, p. 11. Alternative C-2 would impact approximately 15.4% of Des Moines Creek Park property in SeaTac, and 8.5% of the total park. *Id.* Furthermore, total direct impacts to area wetlands and buffers for alternative C-2 would equal 8.5 acres and 14.5 acres, respectively. SR 509 Extension/South Access Road Discipline Report: Wetlands, p. 64 (April 2000). Although in-basin mitigation is the preferred strategy, mitigation for the impacts to wetlands from the SR 509 Extension/South Access Road project may have to be located out-of-basin, due to the 10,000-foot restricted zone for wildlife attractions. *Id.*, p. 69. Reports by CH2MHill concerning the potential impacts of Alternative C-2 on the Des Moines Creek basin acknowledge that water quality problems with Des Moines creek include: severe stress in benthic invertebrate communities during 1996 and 1998 monitoring periods, high temperatures, low dissolved oxygen concentrations, and fecal coliform levels high enough above acceptable DOE standards to place the creek on DOE's 2000 303(d) list. SR 509/ South Access Road EIS: Vegetation, Wildlife and Fisheries, CH2MHill, March 2000, p. 15.

SR 509 Extension/South Access Road Alternative C-2 would also involve construction of a retaining wall along the proposed South Access Road, to the southbound SR 509 mainline ramp. SR 509/South Access Road Discipline Report: Section 4(f), prepared by Ch2MHill, August 2000, p. 20. Alternative C-2 would also require construction of proposed roadway through the southern third of the FAA's extended object free area (XOFA), south of the end of Runway 16L/34R. SR 509/ South Access Road EIS: Vegetation, Wildlife and Fisheries, CH2MHill, March 2000, p. 12.

Perhaps most significantly, WSDOT's cumulative effects analysis acknowledges that projects reasonably certain to occur in the vicinity of the 509 Extension work include the SASA, the Third Runway, other airport MPU improvements, potential redevelopment within the airport's Noise Remedy Area, closure of the Tyee Valley Golf Course, 28th/24th Avenue, the SeaTac CBD and Aviation Business Center Developments. SR 509/ South Access Road EIS: Vegetation, Wildlife and Fisheries, CH2MHill, March 2000, p. 26. The Discipline report notes:

Cumulative impacts to fisheries resources in Miller Creek, Des Moines Creek, and Massey Creek basins, and Puget Sound, could result from increased stormwater runoff, pollutant loading, and water quality degradation throughout the affected watersheds. Such impacts could adversely affect fish populations by altering growth, disease resistance, and fecundity.

Mr. Jonathan Freedman / Ms. Ann Kenny
February 16, 2001
Page 16

When viewed as independent actions, projects may only affect the environment in minor ways. However, a combination of projects may create more substantial environmental impacts than any project would individually.

SR 509/South Access Road EIS: Vegetation, Wildlife and Fisheries, CH2MHill, March 2000, p. 30

Conclusion

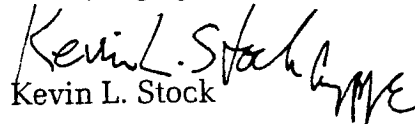
The key to agency analysis of the Port's application is not in the letters submitted by counsel for any party. The key is in the scientific and technical submissions which must address the requirements of the Clean Water Act. Here, the Port's submissions -- even on the third try -- fall far short of the mark. Clearly, the MPU projects including the Third Runway represent a substantial undertaking. However, size is not an excuse under the Clean Water Act for a poorly thought-out and environmentally harmful project. The Port hopes that the agencies have now had enough of the controversy and will simply wave the Third Runway through. The public hopes for more from officials entrusted with protection of fish, streams, and the health of our environment. Please deny the applications.

Sincerely,

HELSELL FETTERMAN LLP



Peter J. Eglick



Kevin L. Stock

Attorneys for Airport Communities Coalition