

Kenny, Ann

From: Kenny, Ann
Sent: Monday, September 10, 2001 10:24 AM
To: Hart, Curt
Subject: FW: Latest Draft of Port 401 Appeal Document
Importance: High

-----Original Message-----

From: Marchioro, Joan (ATG)
Sent: Monday, September 10, 2001 7:19 AM
To: Hellwig, Raymond; Kenny, Ann
Subject: FW: Latest Draft of Port 401 Appeal Document
Importance: High

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FYI - The proposed appeal.

-----Original Message-----

From: Thomas Walsh [mailto:WalsT@foster.com]
Sent: Sunday, September 09, 2001 5:48 PM
To: Marchioro, Joan (ATG); Tom Newlon (E-mail); Traci Goodwin (E-mail); Jay Manning (E-mail); Gill Reavis (E-mail)
Cc: Elizabeth Leavitt (E-mail); Michael Cheyne (E-mail); Roger Pearce
Subject: Latest Draft of Port 401 Appeal Document

Confidential - For Settlement Purposes Only/Exempt from Disclosure Under ER 408

Here is the latest draft of the Port's Notice of Appeal of the 401 Certification, revised to track the draft Settlement Agreement.

<<TXJH105!.DOC>>



STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

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POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON

THE PORT OF SEATTLE,

Appellant,

v.

STATE OF WASHINGTON, DEPARTMENT
OF ECOLOGY,

Respondent.

No. 01-133

NOTICE OF APPEAL

(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)

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I. INTRODUCTION.

STATE OF WASHINGTON

On August 10, 2001, the Washington State Department of Ecology ("Ecology") issued its certification under §401 of the Clean Water Act and concurrence under §307(e)(3) of the Coastal Zone Management Act (the "§401 Certification"). The §401 Certification was required because the Port of Seattle ("Port") has applied for a federal permit under §404 of the Clean Water Act from the U.S. Army Corps of Engineers ("COE") for certain projects at the Seattle Tacoma International Airport ("STIA"). Ecology's decision certified that the work proposed by the Port will comply with applicable provisions of the Clean Water Act, with other appropriate requirements of state law, and with Washington's coastal zone management plan, subject to the extensive conditions included in the §401 Certification.

Ecology's issuance of the §401 Certification was the latest chapter in a lengthy and thorough review of the Port's proposal to build a third runway and other improvements at Seattle Tacoma International Airport ("STIA"). The overall third runway project has been planned and intensely scrutinized for more than a decade, and has been the subject of numerous quasi-judicial and judicial proceedings – all of which have approved permits and planning for the new third runway project. Prior to the permitting phases of the project, the Puget Sound region, through the Puget Sound Regional Council (and its predecessor the Puget Sound Council of Governments) spent years planning for the best way to meet the region's growing commercial air transportation needs, and determined that the best way to meet those needs is a third runway at STIA.

Like the earlier planning and permitting processes, which began in the late 1980s, Ecology's review of the project was the subject of intense scrutiny from adjacent municipalities, federal and state agencies, citizens groups and members of the public. Ecology's review of the project has been extremely thorough. Ecology's §401 Certification fully protects Washington's water resources and other aspects of the surrounding environment, and clearly provides reasonable assurance that the project will comply with state water quality laws.

1 The Port is committed to complying with all applicable environmental regulations and to
2 constructing the third runway and other Master Plan Update improvements in a manner that
3 protects Washington's environmental resources. The Port has cooperated with Ecology and
4 other environmental agencies and will continue to do so. The project is one of the most
5 thoroughly studied and intensively regulated construction projects ever undertaken in the state
6 of Washington. Likewise, the §401 Certification is probably the broadest and strictest
7 certification ever issued by Ecology.

8 In this appeal, the Port is not challenging the breadth of the §401 Certification.
9 However, there are some conditions in the §401 Certification that are not clear and need
10 clarification. There are also some internal inconsistencies in the §401 Certification that need to
11 be modified. Finally, there are some conditions that are impracticable to implement or
12 unnecessary to assure that the project complies with state water quality laws. The Port raises
13 these issues with the intention of obtaining necessary clarification or modification in the
14 conditions imposed in Ecology's §401 Certification.

15 II. BACKGROUND TO THE PORT'S PROPOSED MASTER PLAN 16 UPDATE PROJECTS.

17 A. Description of the Project.

18 The purpose of the Port's Master Plan Update projects was succinctly stated by the
19 Federal Aviation Administration (FAA) in its 1997 Record of Decision on this project:

20 "As documented in ... the Final Environmental Impact Statement, ... the present runway
21 configuration, with two closely-spaced runways, is currently responsible for significant
22 airside delays, particularly during poor weather conditions, and is forecast to be
23 responsible for increasing such delays in the future."

24 As approved by both the Puget Sound regional planning authorities and by the FAA, the Port is
25 proposing to reduce existing and future airport delays by constructing improvements pursuant to
26 a Master Plan Update adopted by the Port and the FAA in 1997. These improvements include
the following: a new 8,500-foot parallel air-carrier runway located west of the existing



1 runways; a 600-foot extension of Runway 34R, extension of runway safety areas ("RSAs") at
2 the ends of the existing runways; terminal improvements and expansion including the
3 development of a new terminal, parking, and access improvements north of the existing
4 terminal; the South Aviation Support Area (SASA) to accommodate aircraft line maintenance
5 and air cargo facilities; and relocation, redevelopment, and expansion of support facilities.

6 Some of the Master Plan Update projects will involve the discharge of fill material into
7 waters of the U.S., which requires a §404 permit from the COE. This, in turn, triggers the need
8 for a §401 certification from Ecology. It is important to note that the Port's planned
9 improvements at STIA include a wide range of projects, only some of which involve discharges
10 into waters of the U.S. For example, the Port is implementing extensive terminal, ground
11 transportation, and other improvements that involve no discharge of fill material into waters of
12 the U.S., and thus do not require §404 approval or §401 certification.¹

13 With regard to those aspects of its improvements that do involve discharges of fill
14 material into waters of the U.S., the Port has proposed extensive mitigation to restore and
15 enhance existing wetlands, to improve and protect streams, to develop new wetlands, and to
16 construct stormwater facilities that will detain and treat stormwater. For example, the Port
17 proposes to restore and enhance wetlands at the Vacca Farm site just west of the new runway
18 and at the Tyee Valley Golf Course just south of the runways, and to establish and preserve
19 vegetated riparian buffers on Miller and Des Moines Creeks to protect instream habitat and
20 water quality. Mitigation actions at the Vacca Farm site are designed to enhance approx. 17
21 acres of aquatic and riparian habitats, including 6.60 acres in wetland restoration; 5.70 acres in
22 wetland enhancement; and 4.85 acres of buffer enhancement. Projects in the Des Moines Creek

23
24 ¹ Pursuant to the FAA-approved Master Plan Update, the Port has begun improvements at STIA in upland areas
25 where §404 permit or §401 approvals are not required. Some of these improvements, such as expansion of the
26 parking garage, are unrelated to any projects that require §404 approval. Others improvements, such as the
placement of fill in upland areas for the Third Runway, are related to projects that require §404/401 approval. In
beginning these improvements, the Port recognizes that this construction is being done at the Port's risk. The need
for these improvements is so great, and the time constraints so severe, that the Port concluded that construction
must begin without delay.



1 basin are designed to restore wetlands and stream functions. Approx. 4.5 acres of wetland
2 enhancement will occur in the Tyee Valley mitigation area and approx. 1.0 acres will occur in
3 the west branch Des Moines buffer. ~~Approximately 5 acres of buffers will be established along~~
4 Des Moines Creek at the Tyee Valley site.

5 The Port will enhance the Miller Creek aquatic habitat, by providing instream habitat
6 and increased channel length, and will create a trust fund for improvements to the Miller and
7 Des Moines Creek watersheds. In addition, the Port will eliminate residential, commercial, and
8 agricultural uses in the Miller, Walker, and Des Moines Creek basins that are currently
9 contributing pollutants to those creeks.

10 The Port will also construct wetland mitigation off-site on a 67-acre parcel in the City of
11 Auburn, especially for mitigation of wildlife habitat functions. Approximately 17.2 acres of
12 forested wetlands, 6 acres of shrub wetlands, 6.2 acres of emergent wetlands, 0.6 acres of open
13 water, and 19.5 acres of enhanced emergent wetland habitat will be created or restored. Overall
14 habitat functions of these wetlands will be enhanced by providing approximately 11.9 acres of
15 forested buffers around the perimeter of the site and approximately 4.0 acres of upland habitat
16 within the inner portion of the Auburn site.

17 In addition, the Port proposes to replace the water storage function of the impacted
18 wetlands, as well as replace the water quality treatment functions of those wetlands. The Port
19 also proposes to construct the third runway embankment in a manner that includes an internal
20 drainage layer to maintain recharge and natural groundwater flow. The Port will maintain
21 existing low stream flows using stored stormwater and provide new floodplain storage to
22 replace any storage eliminated for construction of the third runway embankment.

23 In addition to the extensive stormwater, water quality and wetland mitigation, and as
24 specifically recognized in the earlier court decisions regarding the Port's overall Master Plan
25 Update projects, the Port is providing extensive mitigation for noise impacts, air quality
26



1 impacts, construction impacts, land use impacts, transportation impacts, and other mitigation for
2 the impacts of the planned development at STIA.

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4 **B. Public Process Leading to Project Recommendation.** The proposal to construct a
5 third runway and other improvements at STIA was arrived at after years of study, debate, and
6 decision-making by governmental bodies and elected officials in the Puget Sound region.

7 In 1989, the Puget Sound Regional Council and the Port appointed the 39-member Puget
8 Sound Air Transportation Committee ("PSATC"), with representatives from cities and counties
9 throughout the region, aviation industry experts, citizens, and the State of Washington. The
10 purpose of the PSATC was to develop a regional solution to the region's worsening air traffic
11 capacity problem. The PSATC reviewed a wide range of options, including replacement
12 airports, supplemental airports, new technologies, demand management, and high-speed rail.
13 The PSATC prepared a programmatic environmental impact statement ("EIS") examining the
14 potential environmental impacts of the studied alternatives.

15 In 1992, the PSATC issued its final report and final EIS, recommending a multiple
16 airport system that included a third air carrier runway at STIA. In accordance with the PSATC
17 recommendation, the Port prepared a comprehensive update to its Master Plan to address the
18 long-term facility needs at the airport.

19 At the same time, the Port and the FAA entered into a memorandum of agreement to
20 jointly prepare a project-specific EIS that would meet the requirements of both the National
21 Environmental Policy Act and the State Environmental Policy Act. The Draft EIS for the
22 Proposed Master Plan Update Development Actions at STIA was issued in April 1995, and the
23 Final EIS was issued in February 1996. Subsequently, in response to new and higher forecasts
24 of aviation demand, the Port and the FAA prepared and issued a supplemental EIS. The Draft
25 Supplemental EIS for Proposed Master Plan Update Development Actions was issued in
26 February 1997, and the Final Supplemental EIS was issued in May 1997.

1 Simultaneously with these EIS processes, the Puget Sound Regional Council undertook
2 a review and decision process culminating in the adoption of PSRC Resolution A-93-03 which
3 stated: "That the region should pursue vigorously, as the preferred alternative, a major
4 supplemental airport and a third runway at Sea-Tac." The PSRC then conducted, over the
5 course of a year, an evaluation and public review of twenty-six existing and potential new
6 airport sites. The PSRC concluded in October 1994 that a supplemental airport was not
7 feasible. Following further deliberations, in July 1996, the PSRC amended the Metropolitan
8 Transportation Plan to include a third runway at STIA.

9 In 1996, the Port submitted to the COE a Joint Aquatic Resources Permit Application
10 (JARPA) for a §404 permit and §401 certification and, in 1997, the COE issued a public notice
11 of the Port's application. In April 1998, the COE and Ecology conducted the first of three joint
12 public hearings on the application. A significant number of public comments were submitted to
13 the COE and Ecology, and the Port prepared detailed written responses to the comments. In
14 July 1998, following in-depth review of the permit application, Ecology issued a §401
15 certification for the project subject to a 19-page list of conditions.

16 During this time period, the Port was acquiring properties on the west side of STIA
17 necessary for construction of the new runway. After acquiring the properties and conducting
18 on-the-ground wetland delineations, the Port discovered more wetlands than previously
19 estimated from aerial photos and distant observations from nearby rights-of-way. Accordingly,
20 in September 1999, the COE issued a revised public notice, which reinitiated Ecology review of
21 the §401 certification request. The COE and Ecology conducted another public hearing. Again,
22 extensive public comments were submitted, and the Port again prepared detailed written
23 responses to those comments.

24 Ecology's reinitiated §401 review was even more extensive than its original review.
25 Ecology contracted with King County to review the Port's proposed stormwater management
26 plan in accordance with the requirements of the King County Surface Water Design Manual.

1 King County conducted a multi-year review of the plan, involving thousands of hours of
2 hydrologic modeling and expert review, culminating in King County's recent approval of a
3 revised stormwater management plan. Ecology also contracted with Pacific Groundwater
4 Group to conduct a study of the potential impacts of the proposed runway embankment on
5 aquifers, wetlands and streams in Miller, Walker, and Des Moines Creeks basins, culminating in
6 the *Sea-Tac Runway Fill Hydrologic Studies Report (2000)*. During this period, the Port was
7 also required to prepare numerous expert reports regarding wetlands and aquatic resources,
8 including but not limited to the following:

- 9 • *Biological Assessment, Master Plan Update Improvements, Seattle-Tacoma International*
10 *Airport (Parametrix 1999)*
- 11 • *Seattle-Tacoma Airport Master Plan Update Low Streamflow Analysis (Earth Tech, Inc.*
12 *2000)*
- 13 • *Wetland Functional Assessment and Impact Analysis, Master Plan Update Improvements,*
14 *Seattle-Tacoma International Airport (Parametrix 2000)*
- 15 • *Natural Resource Mitigation Plan, Master Plan Update Improvements, Seattle-Tacoma*
16 *International Airport (Parametrix 2000)*
- 17 • *Subsurface Conditions Data Report 404 Permit Support Third Runway Embankment (Hart*
18 *Crowser, July 1999)*
- 19 • *Stability Review of RECo 30% Design Third Runway Embankment Project (Draft*
20 *Memorandum Hart Crowser, November 2000)*
- 21 • *Geotechnical Engineering Analyses and Recommendations Third Runway Embankment*
22 *(Draft Memorandum Hart Crowser, December 2000)*
- 23 • *Revised Methods and Results of Liquefaction Analysis Third Runway Embankment (Draft*
24 *Memorandum Hart Crowser, March 2001)*

22 In December 2000, the COE issued another revised public notice, inviting further public
23 comment on the application and studies. In January 2001, the COE and Ecology conducted a
24 third public hearing and accepted additional public comments. Over the life of this permit
25 application, Ecology and the Port have each held numerous public meetings and studied
26

1 hundreds of issues, resulting in the most extensively reviewed §401 certification ever issued by
2 Ecology.
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6 III. APPEALING PARTY.

7 The appealing party is:

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11 Seattle, Washington 98111
12 Tel. (206) 728-3000
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IV. ADDITIONAL PARTIES

The only other party to this appeal is the Washington State Department of Ecology,
which issued the decision for which review is sought. Ecology's address is:

Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600



V. ORDER OR DECISION APPEALED FROM

STATE OF WASHINGTON

The Port is appealing portions of Ecology's August 10, 2001 Clean Water Act Section
DEPARTMENT OF ECOLOGY

401 Certification No. 1996-4-02325 and the accompanying Coastal Zone Management Act

Section 307(c)(3) concurrence statement (the "\$401 Certification"), the caption of which reads:

Order #1996-4-02325; 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.

A copy of the §401 Certification is attached to this Notice of Appeal as Exhibit A.

VI. GROUNDS FOR APPEAL

The Port is appealing only a limited number of the conditions imposed in the §401 Certification. Those conditions appealed are listed in the order they appear in the original §401 Certification.

A. Condition B(1) – Permit Duration.

Without clarification, conditions in the §401 Certification could be read to extend indefinitely, without any termination date. This will create potential inconsistencies between §401 Certification conditions and the airport's National Pollutant Discharge Elimination System (NPDES) permit issued by Ecology, and the potential for inconsistencies will increase as the NPDES permit changes over time. It is important that the §401 Certification be as clear as possible as to which conditions continue in effect following construction, to minimize ambiguity as to on-going Port and Ecology responsibilities.

The Port has agreed that some of the §401 Certification conditions should remain in force long-term – such as the conditions requiring low flow mitigation and restrictive covenants for wetland mitigation. But for many conditions, clarification is needed in order to make clear which conditions apply only during the construction, and which conditions remain in effect for a longer period of time.

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1 **B. Condition B(4) – Future Construction Activities.**

2 Some of the conditions in the body of the §401 Certification could be read out of context
3 to apply to Port Master Plan Update projects that did not and do not require a §401 permit/§401
4 certification, or other Ecology approval. In particular, condition B(4) could be read (the Port
5 believes incorrectly) to require a new written approval, pursuant to this §401 Certification, for
6 any future activity that could conceivably have any impact on state waters, whether or not it is
7 associated with the projects subject to this §401 Certification, covered by any subsequent permit
8 requirement, or covered by the NPDES permit for STIA. The Port has no intention to
9 negatively impact waters of the state with these or other projects at the Airport, but this
10 condition should be clarified to apply only to activities requiring a new §401 certification or that
11 otherwise fit within Ecology's statutory jurisdiction.

12 **C. Condition D(1)(g) – Monitoring of Wetland Hydrology Prior to Construction.**

13 The requirement for bi-monthly monitoring of hydrologic conditions of wetlands
14 downslope of the third runway embankment is unclear. Depending on how the condition is
15 read, the required activity may also be unnecessary in light of the monitoring that has occurred
16 and is otherwise scheduled to occur. The Port has already provided Ecology with baseline data
17 on existing wetland conditions. The condition should be modified to clarify when and under
18 what circumstances additional monitoring must occur.

19 **D. Condition D(6)(f) – Increased Buffer Area at Borrow Site 3.**

20 Condition D(6)(f) increases the property to be included in the buffer area required for
21 Borrow Site 3. See Attachment D to the §401 Certification. A literal reading of the condition
22 would require buffer area, and a restrictive covenant, on right of way owned by both the City of
23 Sea-Tac and the Washington State Department of Transportation. As written, the condition is
24 impracticable to comply with. This condition, and the accompanying drawing, should be
25 revised to apply to property currently owned by the Port.

1 E. Conditions E(1), E(1)(a) and E(1)(b) – Documentation Regarding Fill Criteria and
2 Fill Sources. STATE OF WASHINGTON

3 Ecology has required the Port to submit to Ecology documentation certifying that fill
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5 materials used for the embankment for the third runway meet the criteria set forth in the §401
6 Certification. The §401 Certification requires extensive investigation, sampling and
7 documentation by the Port of fill material and its sources. The documentation requirements and
8 fill criteria set forth in the §401 Certification should be modified for several reasons, including
9 the following.

10 First, it should be clarified that the fill criteria are applicable only to construction of the
11 projects for which the fill criteria are of concern – for example, the third runway embankment,
12 the runway safety area work, and the South Aviation Support Area construction. It should be
13 clarified that other airport projects, e.g., those located in the central airport operations area and
14 far-removed from Miller, Walker, and Des Moines creeks, are not of concern and should be
15 subject to ordinary fill requirements rather than the extraordinary limitations of this condition.

16 Second, requiring the Port to obtain Ecology's written approval before acceptance of fill
17 is unreasonable for a number of reasons including the fact that this requirement will make it
18 extremely difficult for the Port to maintain a reasonable and practicable construction schedule.
19 The Port does not object to protective fill criteria, and is already imposing strict criteria for any
20 fill accepted for the Port's upland construction – as determined in consultation with Ecology
21 and with the federal resource agencies through the Endangered Species Act consultation. Water
22 quality standards are adequately protected by less burdensome conditions, such as certification
23 to Ecology regarding fill criteria, but without advance written approval.

24 Third, the numeric limits in the §401 Certification, standing alone without any
25 appropriate "contaminant leachability" test procedures, and without clarification as to there
26 applicability, should be modified. As written, they are impractical, inconsistent with Ecology's
standard Model Toxics Control Act procedures, not necessary to protect water quality, and

1 inconsistent with the site-specific criteria established by federal agencies through the
2 Endangered Species Act consultation process as protective of threatened salmonid species.

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3 **F. Condition J(1)(c) – Retrofit of Stormwater Facilities Tied to Construction of**
4 **Impervious Surface.**

5 As part of its Master Plan Update improvements at STIA, the Port has agreed to retrofit
6 the stormwater facilities at STIA utilizing AKART. The Stormwater Management Plan
7 submitted by the Port includes, at Table A-3 and elsewhere, schedules for implementation of
8 retrofitting. Implementation of the Stormwater Management Plan is required by condition J(1)
9 of the §401 Certification.

10 Condition J(1)(c) in the §401 Certification outlines a retrofit schedule related to the
11 construction of new impervious surfaces. The condition states that for every 10% of new
12 impervious surface constructed, the Port must demonstrate that 20% of retrofitting has occurred.
13 As written, condition J(1)(c) is likely to be inconsistent with the Stormwater Management Plan,
14 and it is also impracticable. Clarification is needed to insure that if inconsistencies arise
15 between the approved Stormwater Management Plan schedules and Condition J(1)(c), that these
16 inconsistencies will be addressed and resolved in a practicable manner.

17 **G. Condition J(2)(a) – Requirement of Completion of a Water Effects Ratio Prior to**
18 **Discharge of Stormwater from Facilities Approved by the §401 Certification.**

19 This condition requires the completion of a Water Effects Ratio Study (WERS) prior to
20 allowing discharge of any stormwater generated by facilities covered by the §401 Certification.

21 The Port does not object to the development of site-specific water quality standards. A
22 number of methods, including a WERS, may be appropriate. This condition should be clarified
23 accordingly to indicate that site-specific standards will be developed and that development of
24 those standards may include but is not limited to a WERS. This condition should also be
25 modified to provide greater clarity as to the timing of the site-specific studies, i.e., to clarify the
26 projects to which the site-specific standards will apply. Also, because the site-specific studies
will occur prior to construction of new impervious surfaces, this condition should also be

1 clarified to authorize the use of existing impervious surfaces at STIA as a surrogate for
2 conditions on the new impervious surfaces to be constructed.

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3 **H. Condition J(2)(f) – Identification of Methods to Prevent Overtopping of**
4 **Stormwater Facilities.**

5 The second component of condition J(2)(f) requires the Port to “identify methods to
6 prevent overtopping of stormwater facilities and the Industrial Wastewater Treatment System to
7 streams during storm events.” The stormwater facilities proposed by the Port are designed to
8 accommodate a 100-year storm peak discharge pursuant to standard stormwater facility design
9 and in consultation with Ecology.

10 The only way to prevent overtopping would be to increase the design standard beyond
11 the 100-year peak flow. Increased design standards would result in the construction of immense
12 facilities without any significant increase in environmental protection. Proposed facilities are
13 already designed with emergency overflow systems to limit any damage from overtopping.

14 The enlarged IWS system is designed to the 25-year storm with construction of the MPU
15 projects. However, the Port has demonstrated that the system, with the MPU projects, would
16 not overtop within the 50-year rain record. Again, the only way to prevent any conceivable
17 overtopping, as condition J(2)(f) could be read to require, would be to design new stormwater
18 management facilities that would be difficult to site, expensive, and of little environmental
19 value.

20 The Port does not believe this condition intended no overtopping in any possible storm
21 event. The condition should be clarified to require the Port to identify methods to prevent
22 overtopping during design storm events.

23 **I. Condition K(2) – Prohibition of Visible Change in Turbidity, Color or Oil Sheen in**
24 **Detention or Retention Ponds.**

25 This condition seems to prohibit visible changes in turbidity, color or oil sheens within
26 stormwater detention or retention ponds. These ponds are designed and built as part of STIA’s
stormwater management system. They are designed to receive stormwater that requires

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1 detention expressly for the purpose of dissipation of turbidity, the settling out of sediment, or
2 the collection of other contaminants before the stormwater is transmitted to other portions of the
3 stormwater management system. ~~The Port believes that Ecology intended this condition to be~~

4 directed at stormwater discharges from detention and retention ponds to area surface waters.

5 The wording of the condition should be changed accordingly.

6 **VII. RELIEF SOUGHT**

7 The Port respectfully requests that the Board approve the §401 Certification with the
8 proposed clarifications and changes requested in Section VI of this Notice of Appeal.

9 DATED this 10th day of September 2001.

10 PORT OF SEATTLE

11
12

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