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LAW OFFICES
J. RICHARD ARAMBURU

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The Honorable Dean S. Lum

KING COUNTY
SUPERIOR COURT

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

PORT OF SEATTLE, a municipal corporation,

Petitioner,

No. 99-2-26788-5 KNT

v.

RST ENTERPRISES, INC., a Washington
corporation; and KING COUNTY,

Defendants.

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

CLERK'S ACTION REQUIRED

Trial in this eminent domain action commenced before the Court on June 4, 2001,
and concluded on June 18, 2001. Based on the evidence presented, the Court makes the
following findings of fact and conclusions of laws:

I. FINDINGS OF FACT

THE PROPERTY

1. The Port of Seattle is constructing a Third Runway at Seattle-Tacoma Airport.
2. The property at issue in this litigation is approximately 2.44 acres of undeveloped land located at 15416 Des Moines Memorial Drive in the City of SeaTac ("Property"). Respondent RST Enterprises, Inc. ("RST") owns the Property, which is also

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER - 1

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PRESTON GATES & ELLIS LLP
701 FIFTH AVENUE
SUITE 5000
SEATTLE, WASHINGTON 98104-7078
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

1 referred to as Parcel 92. The Port will use the Property for part of its Third Runway
2 project, specifically, the Port will use the Property for a flood plain.

3 3. The Port of Seattle ("Port") took possession of the Property on March 2,
4 2000, in exchange for the Port's payment of their offer to RST into the Court's registry.

5 4. The Property has been used for farming purposes for at least 50 years.

6 5. To the south of the Property are four additional parcels owned by RST
7 ("Parcels 93-96"). The Port is not condemning those parcels at this time.

8 6. Parcels 93 through 96 have had a variety of nonfarming uses, including a
9 tax agency office, rental residences, storage facilities, an automotive repair shop, and a
10 garbage business. At no time did the Property and Parcels 93-96 share a common use. In
11 fact, the uses of the Property compared to Parcels 93-96 are different in nature.

12 7. Miller Creek is located near the Property to the east.

13 8. The Property is approximately 7.5 feet lower than Des Moines Memorial
14 Drive, which it fronts.

15 ZONING OF THE PROPERTY

16 9. The Property has been zoned UL-7200, Urban Low Density Residential,
17 under the SeaTac zoning code for many years. This single-family zoning precludes
18 commercial development.

19 10. In the fall of 1996, RST attempted to rezone Parcels 92-96 from single
20 family residential to industrial or commercial business. On December 17, 1996, the
21 SeaTac City Council decided not to take action on any land use changes for the Westside
22 neighborhood during the City's 1996 Comprehensive Plan Amendment Process, but
23 instead to consider RST's proposed changes in the context of an overall Westside Plan at
24 some time in the future. Exhibit 52. The City Council subsequently granted a request to
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FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER - 2

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PRESTON GATES & ELLIS LLP
701 FIFTH AVENUE
SUITE 5000
SEATTLE WASHINGTON 98104-7078
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

1 In 1994, City planners recommended that portions of the west side, potentially including
2 the Property, be rezoned. The Property was close to ^(and portions were within DSL) the 65 LDN noise contour and
3 relatively close to the 70 LDN noise contour. Financing for new residential purposes in
4 that area was difficult if not impossible, although there continues to be residential use on
5 the west side of SeaTac, and refinancing of existing residences is possible.

6 17. Many of the residents on the west side of SeaTac objected to commercial
7 zoning. These residents did not want piecemeal rezones. These residents wanted to live
8 in their residences and did not want nearby properties zoned commercial. Polls showed
9 that at times in the 1990s more than fifty percent of the residents opposed commercial
10 rezones. However, the West SeaTac Ad Hoc Committee appointed by the City looked
11 closely at different uses that would be compatible with the airport. At one time, the West
12 SeaTac Ad Hoc Committee decided that a business park would be most compatible for
13 this area. Exhibit 62.

14 18. Other residents wanted property in the area, including Parcel 92, to be
15 converted into a park rather than commercial use. In late 1994, the Planning Commission
16 recommended that a park would be the most compatible use, based on a plan proposed by
17 a member of the Commission. Exhibit 62.

18 19. Rezoning the west side of SeaTac, which includes the Property, was a
19 long-term process that could take more than twenty years. Exhibits 45 and 62. A rezone
20 of the Property to commercial use is likely at some point, but not reasonably likely in the
21 near future.

22 20. Even if a commercial rezone were likely in the near future, the Court finds
23 that such a rezoning would only occur due to the presence of the Third Runway.

24 THE PORT APPRAISAL AND DEVELOPMENT PROPOSAL

25 FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER - 4

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PRESTON GATES & ELLIS LLP
701 FIFTH AVENUE
SUITE 5000
SEATTLE, WASHINGTON 98104-7078
TELEPHONE: (206) 623-7380
FACSIMILE: (206) 623-7022

1 21. The Port's witnesses, including its appraiser, engineer, and other experts,
2 identified a plausible, credible and responsible development proposal assuming single
3 family residential use.

4 22. The Port's appraisal of the Property, conducted by Christopher Eldred on
5 March 17, 2000, is credible. Exhibit 1.

6 23. Mr. Eldred's appraisal identified comparable residential properties in
7 reaching his opinion regarding the Property's fair market value. The Court finds that
8 these comparable properties were appropriately related to the Property and served as a
9 useful tool for estimating the Property's fair market value.

10 24. The Port's appraisal placed a fair market value of the Property at \$200,000
11 with a highest and best use of the Property as a single-family residence and working farm.

12 25. There was a market for residential properties within the area surrounding
13 the Property. There are numerous residential properties still existing on the west side of
14 SeaTac Airport, including multifamily uses and apartments across the street from the
15 Property.

16 26. The Property's value as undeveloped wetlands is \$100,000.

17 27. The Property's fair market value as farmland is \$40,000.

18 RST'S DEVELOPMENT SCENARIO

19 28. RST argued that a commercial development was feasible on the Property,
20 but this development scenario lacked significant factual support and was not credible.
21 RST's witnesses, including its appraiser and other experts, failed to identify a plausible,
22 credible and responsible commercial development proposal.

23 29. The Court rejects RST's commercial development scenario for a number of
24 reasons. As an initial matter, the commercial development scenario is wholly dependent
25

1 on a rezone of the Property from single family to commercial business, but such a rezone
2 was not reasonably probable in the near future. Under single-family zoning, construction
3 of a commercial building is not permitted. For this reason, the Court finds that RST's
4 commercial rezone scenario must be rejected.

5 30. Even if a rezone to commercial business were reasonably likely in the near
6 future, the Court would still reject RST's commercial development proposal, because
7 there were substantial limitations and significant barriers to development on the Property.

8 31. RST's development proposal is impacted by state (Washington Department
9 of Ecology, the Washington State Fish and Wildlife Department) and federal (Corps of
10 Engineers) permitting. In addition, the SeaTac city code applies to the Property.

11 32. RST's commercial development proposal is rendered economically
12 impractical by a variety of factors, none of which were adequately addressed by any of
13 RST's witnesses or exhibits. These factors include (1) Prior Converted Cropland; (2)
14 wetlands and associated buffers; (3) the 100 year flood plain; (4) a steep slope along the
15 fronting road; and (5) access from the Property to the street.

16 33. Each of these five factors was considered and analyzed by the Port's
17 engineering expert Don Scarberry. The Court finds Mr. Scarberry's Report dated March
18 28, 2001 to be credible. Exhibit 4.

19 34. The Court also finds that the Property contains wetlands consistent with the
20 testimony of Mr. James Kelley, the Port's wetlands biologist expert. The Court finds Mr.
21 Kelley's analysis regarding the presence of wetlands on the Property to be credible.

22 Wetlands

23 35. Mr. Kelley testified that the Property contained Class I wetlands under the
24 SeaTac Code. The wetland delineation done by Parametrix under Mr. Kelley's
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1 supervision indicated that the Property contained only 0.27 acres of wetland for purposes
2 of a United States Army Corps of Engineers permit for construction of the third runway.
3 The remainder of parcel 92 was delineated by Parametrix as "Prior Converted Cropland"
4 ("PCC"), a designation not considered wetland for the Corps of Engineers permit. "Prior
5 Converted Cropland" is not a designation found in the SeaTac Code, however.

6 36. The Property is contiguous with other diverse wetlands, as well as a lake,
7 with a total area of over 16 acres.

8 37. There are at least three classes of vegetation on the Property as defined by
9 the SeaTac City Code.

10 38. The soil types located on the Property, which includes peat soils, are
11 consistent with a Class I wetland. Exhibit 14 There are hydric soils on the Property.

12 39. The Property contains the necessary criteria which indicate that it is a Class
13 I wetlands under the SeaTac City Code. At a minimum, the Property is a Class II wetland
14 under the SeaTac City Code.

15 40. Even if Parcel 92 were zoned commercial, the Court would reject RST's
16 commercial development scenario because it failed to consider the impact of either a Class
17 I or a Class II wetland.

18 **Prior Converted Cropland or Agricultural Wetlands**

19 41. The Court finds that most of the Property constitutes a Prior Converted
20 Cropland ("PCC") under federal law. PCC is a type of wetland that has been manipulated
21 for agricultural production.

22 42. The Property was farmed for over 50 years.

23 43. There are agricultural wetlands pursuant to the SeaTac city code on the
24 Property independent of whether there are PCCs was defined by federal law. No
25

1 determination concerning the existence of wetlands on the Property has been done by the
2 City of SeaTac.

3 44. The Property contains approximately 90,985 square feet of agricultural
4 wetlands. Exhibit 4.

5 45. Even if the Court determined that a commercial rezone was reasonably
6 probable in the near future and that the Property was not a Class I wetland, the Court
7 would still reject RST's commercial development proposal because of the Property's
8 status as agricultural wetland. As a result, there would be severe limitations on
9 development. These limitations include setback, buffers, required enhancements, and that
10 no more than 25 percent of agricultural wetland may be filled for development. SeaTac
11 Code Section 15.30.310 (Exhibit 26).

12 46. None of these restrictions were adequately accounted for in RST's
13 proposed development scenarios. In fact, these restrictions were not a part of the
14 development plan at all.

15 **100-Year Floodplain**

16 47. The Property contains a 100-year flood plain because of its proximity to
17 Miller Creek. The City of SeaTac considers this area a zero-rise flood plain. Section
18 15.10.273. Development within the flood plain is also governed by City Code. Section
19 15.30.230.

20 48. The existence of a flood plain triggers a variety of requirements for
21 development purposes. Mr. Scarberry testified in detail regarding such requirements,
22 which would be costly to a potential developer. The Court finds this testimony to be
23 credible. For example, the flood plain requires that new building lots shall contain at least
24 5,000 square feet of buildable land outside the zero-rise floodway and within the required
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FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER - 8

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AR 024542

PRESTON GATES & ELLIS LLP
701 FIFTH AVENUE
SUITE 5000
SEATTLE, WASHINGTON 98104-7078
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

1 building setbacks, the lowest floor of new structures shall be elevated above the official
2 flood plain elevation, and utilities shall be floodproofed to or elevated above the flood
3 protection elevation. Exhibit 4.

4 49. Additionally, the parking lot in RST's development scenarios impinges
5 upon the floodplain. Mr. Jack Dodge of the City testified that the City would not allow
6 such a parking lot. Mr. Dodge's testimony was credible.

7 **Steep Slopes along Des Moines Memorial Way**

8 50. The Property is approximately 7.5 feet lower than Des Moines Memorial
9 Parkway, which it fronts. Thus, it has slopes of forty percent or higher.

10 51. Under the SeaTac Code, a developer must either fill to bring building sites
11 up to road level or construct a long driveway (approximately sixty feet) in order to reach
12 the lower ground level. Section 15.30.280.

13 52. Both choices are costly and would need to be considered by a potential
14 developer.

15 **Access to the Property**

16 53. The City of SeaTac adopts, in relevant part, King County Road
17 Construction Rules. Section 11.05.0040-050.

18 54. Under these standards, Des Moines Memorial Drive and 8th Avenue South
19 would require a 250-foot stopping sign distance and a 490 foot entering sight distance.

20 55. The Property's location at this particular intersection limits the placement
21 of driveways to achieve the required stopping and entering sight distances.

22 56. Construction of access to a newly-developed building site on the Property
23 is limited by the Property's location at the intersection of the Parkway and 8th Avenue
24 South. Constructing access to the Property under City code would be costly.
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FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER - 9

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AR 024543

PRESTON GATES & ELLIS LLP
701 FIFTH AVENUE
SUITE 5000
SEATTLE, WASHINGTON 98104-7078
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

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RST'S APPRAISAL

57. RST presented an appraisal expert, Mr. Ronald Fogg. Mr. Fogg completed an appraisal of the Property dated September 17, 1999. Exhibit 32. Mr. Fogg twice supplemented that appraisal. Exhibits 33-34. Mr. Fogg's appraisal and supplements were of little relevance regarding the fair market value of the Property.

58. Mr. Fogg's appraisal incorrectly assumed that the wetlands on the Property posed no significant impact on the Property's fair market value. There is no evidence that Mr. Fogg's "comparable" properties faced wetlands issues similar to those on the Property.

59. Mr. Fogg did not address questions regarding how extensive were those wetlands, the cost to mitigate those wetlands, or what type of wetlands existed. Mr. Fogg did not discuss whether the Property contained Class I or Class II wetlands. Mr. Fogg did not discuss whether prior converted cropland or agricultural wetlands existed. The commercial comparables identified by Mr. Fogg do not discuss these important issues.

60. Some of the "comparable" properties used by Mr. Fogg in his appraisal were, in fact, not comparable at all to the Property. Some of these properties were level and paved. Exhibits 32-33. The Property is neither level nor paved. Exhibits 1, 4.

61. Other proposed comparables were of little relevance because they were not sales or they relied strictly on the assessor's tax value. Exhibits 33-34.

62. Mr. Fogg improperly adopted a quasi-development approach without any evidence of the cost of development.

63. The extent to which the Court needs to evaluate the reasonableness of development would depend upon the cost of development, and there was no evidence here as to the cost of any particular development scenario.

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER - 10

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AR 024544

PRESTON GATES & ELLIS LLP
701 FIFTH AVENUE
SUITE 5000
SEATTLE WASHINGTON 98104-7078
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

1 64. Mr. Fogg considered the effect of the Third Runway in his appraisal report.

2 65. The larger parcel "unity of use" analysis heavily influenced his appraisal
3 and resulted in an inappropriately high assessment of the Property's fair market value.
4 Exhibit 32.

5 **RST DEVELOPMENT PLANS**

6 66. RST also presented testimony from James Miller regarding the possible
7 commercial development of the Property. The Court finds Mr. Miller's testimony
8 regarding this development of little relevance.

9 67. Mr. Miller failed to account for PCC or wetland restrictions of any type,
10 even though the presence of Class I wetlands would completely prohibit development.

11 68. There are not enough parking spaces per the city's code in Mr. Miller's
12 plan.

13 69. Mr. Miller did not account for the significant density problems related to
14 RST's proposed development. There would be a thousand people descending on this
15 particular project and RST's development proposal does not take into account support
16 services such as bus stops or the impact of such a large project on this particular site.
17 There is nothing like this development near the Property now.

18 70. Mr. Miller provided no dollar figures regarding cost of development.

19 71. Even if the Property were to be rezoned commercial in the near future, and
20 even if there were no wetlands on the Property of any kind, the Court would still reject
21 RST's commercial development proposal because RST failed to present adequate
22 evidence of costs for such construction.

23 72. The Court finds that a developer would have faced significant barriers to
24 development that would not maximize the fair market value of the property.
25

1 "COLLUSION" ARGUMENT

2 73. RST argued that the Port and City of SeaTac improperly maintained or
3 froze the Property's zoning in the single family residential category. The evidence is clear
4 that the City, and only the City, maintained ultimate control over the Property's zoning.
5 There was no evidence of any inappropriate collusion or bad faith by the Port in
6 connection with the zoning on Parcel 92.

7 **II. CONCLUSIONS OF LAW**

8 1. The Court has jurisdiction over the parties and the subject matter of this
9 action.

10 2. The only issue in this condemnation action is the fair market value of the
11 Property. WPI 150.03; 150.05 (1997). The fair market value must be calculated as of
12 March 2, 2000—the date of the taking. RCW 8.04.092. The Court must determine what a
13 well informed buyer, willing but not obligated to buy the property, would pay, and what
14 a well informed seller, willing but not obligated to sell it, would accept, taking into
15 consideration all uses to which the property is adapted or may be reasonably adaptable.
16 WPI 150.08 (1997).

17 3. In determining fair market value, the Court does not consider project
18 influence (i.e. the Third Runway) either positive or negative. Consequently, the Court did
19 not consider the ILA, the subsequent AVO or AVC zoning, the subsequent CB or business
20 park rezones of nearby properties, including Parcels 93 through 96, and all testimony
21 relating to those issues. All of this activity was a result of the Third Runway. To the
22 extent that RST's appraiser, Mr. Fogg, and other RST experts and witnesses relied on
23 these rezones and the ILA in reaching their conclusions, the Court does not consider those
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FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER - 12

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PRESTON GATES & ELLIS LLP
701 FIFTH AVENUE
SUITE 5000
SEATTLE, WASHINGTON 98104-7078
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

1 portions of the opinions and the testimony and does not rely on any stricken evidence
2 relating to the influence of the Third Runway.

3 4. The Port and the City of SeaTac did not act to improperly maintain or
4 freeze the Property's zoning at the single family residential category. Even if such
5 collusion did exist, any evidence of such conduct is irrelevant in this case because the Port
6 did not have zoning authority over the Property. That power was vested exclusively with
7 the City of SeaTac.

8 5. The Court cannot consider severance damages to parcels 93-96 by reason
9 of the Port's taking, unless Parcel 92 is part of a "larger parcel" consisting of parcels 92-
10 96. In order for a "larger parcel" to exist, there must be a "unity of use" between the
11 property taken and the remaining parcel that is not taken. Since there was no current
12 "unity of use" between the Property and Parcels 93 through 96 and the parcels utterly
13 lacked a contemporaneous unity of use during the relevant time period, the Court does not
14 consider any damage to Parcels 93-96.

15 6. In fixing a value of the Property, the Court must consider all reasonable
16 uses under the existing zoning unless there is a reasonable probability of a rezone in the
17 near future. Because there was not a "reasonable probability" that the Property would be
18 rezoned "in the near future" for commercial purposes, the Court must consider the value
19 of the Property in a single family zone.

20 7. Even if a rezone of the Property for commercial purposes were to occur in
21 the near future, such a rezone would be due to the Third Runway -- an impermissible
22 consideration. Thus, the Court evaluates the Property's highest and best use under the
23 existing zoning as of March 2, 2000: single family residential.
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FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER - 13

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AR 024547

PRESTON GATES & ELLIS LLP
701 FIFTH AVENUE
SUITE 5000
SEATTLE, WASHINGTON 98104-7078
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

1 8. The SeaTac City Code permits some development on Class II agricultural
2 wetlands. Section 15.30.310. Exhibit 26. No more than twenty-five percent of the
3 wetland may be filled, with the remainder of the wetlands to be enhanced as approved by
4 the City. The City of SeaTac Code applies to the Property, including the definitions of
5 wetlands (15.675.10), development constraints on wetlands (15.30.310), and the
6 "reasonable use" exception (15.30.070).

7 9. If there are Class I wetlands on the Property, the City of SeaTac Code
8 precludes the development scenario proposed by RST.

9 10. Because of the Class II agricultural wetlands on the Property, the
10 development scenario proposed by RST is not permissible under the City of SeaTac Code.

11 11. The extent to which the Court needs to evaluate the reasonableness of a
12 development scenario depends in part upon the cost of development. It is a fatal flaw that
13 RST presented no evidence regarding such costs for its commercial development scenario.

14 12. Mr. Fogg's level and paved comparable sales properties are not properly
15 comparable to the Property, and the Court gave them little weight..

16 13. Mr. Fogg also relied upon proposed comparables that were only listings,
17 not sales. Listings are not appropriate comparable properties.

18 14. Mr. Fogg also relied upon proposed comparable properties by using the
19 assessor's tax value. The assessor's value is not an appropriate comparable value and the
20 Court gave it little weight.

21 15. Based upon all the testimony and exhibits, and the legal principles
22 applicable to this matter, the total fair market value of the Property is \$200,000.00.

23 16. Because the Port previously deposited the amount of \$370,475.00 into the
24 registry of the Court pursuant to a Stipulation for Immediate Possession and Use, which
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FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER - 14

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PRESTON GATES & ELLIS LLP
701 FIFTH AVENUE
SUITE 5000
SEATTLE, WASHINGTON 98104-7078
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

1 funds were withdrawn by RST on March 2, 2000, the Port is entitled to a judgment against
2 RST in the amount of \$170,475.00, plus prejudgment interest of twelve percent per annum
3 from March 2, 2000, until the date of judgment and to postjudgment interest from the date
4 of judgment until paid.

5
6 **III. ORDER**

7 The Court having made the above Findings of Fact and Conclusions of
8 Law, IT IS NOW ORDERED that:

9 1. RST will be granted judgment against the Port for the fair market value of
10 the Property as of March 2, 2000, or \$200,000.00. The sum of \$200,000.00 represents the
11 just compensation amount for the Property.

12 2. The Port will be granted judgment against RST in the amount of \$170,475,
and to post-judgment interest from the date of judgment until paid.
~~plus interest of \$30,153.06, for a total judgment of \$200,628.06 as of August 20, 2001.~~ (DSL)

13 3. Petitioner, Port of Seattle, will be granted the right to appropriate, use, and
14 take the Property hereinafter described:

15 That portion of the southeast quarter of Section 20, Township 23 North,
16 Range 4 East, W.M., in King County, Washington, described as follows:

17 Beginning at a point on the west line of said southeast quarter, 264 feet
18 south of the northwest corner of said subdivision;
19 thence east 330 feet;
20 thence south, parallel with the north and south center line of said section, a
21 distance of 379.5 feet;
22 thence west 330 feet to the north and south center line of said section;
23 thence north 379.5 feet along said north and south center line to the point
24 of beginning;

25 EXCEPT that portion lying westerly of the easterly margin of Des Moines
Highway and 8th Avenue South as conveyed to King County by deed
recorded under King County Recording Number 935229.

4. All of the right, title, and interest of the defendant RST in and to the above-
described property shall be vested in the Port of Seattle in fee simple absolute upon

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER - 15

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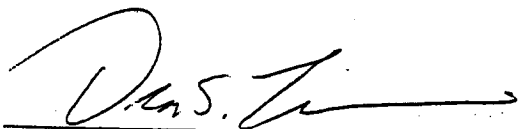
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PRESTON GATES & ELLIS LLP
701 FIFTH AVENUE
SUITE 5000
SEATTLE, WASHINGTON 98104-7078
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

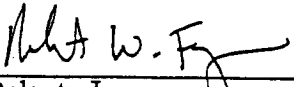
1 payment of the amount of \$200,000.00, which represents the fair market value of the
2 Property and has already been paid by the Port into the registry of the Court.

3 5. A certified copy of the Judgment, Decree, and Order shall be filed in the
4 Office of the King County Auditor and shall be recorded by such Auditor like a deed of
5 real estate with like effect.

6 DATED this ^{23rd} DSC 6th day of August, 2001.

7 
8 Dean S. Lum, Judge

9 Presented by:
10 PRESTON GATES & ELLIS LLP

11 By 
12 Susan Delanty Jones, WSBA # 09529
13 Robert W. Ferguson, WSBA #26004
14 Attorneys for Petitioner, Port of Seattle

15 Copy Received; Approved as to Form:
16 LAW OFFICE OF J. RICHARD ARAMBURU

17 By _____
18 J. Richard Aramburu, WSBA # 466
19 Attorney for Defendant RST Enterprises, Inc.
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FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER - 16
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PRESTON GATES & ELLIS LLP
701 FIFTH AVENUE
SUITE 3000
SEATTLE, WASHINGTON 98104-7078
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022