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

CITY OF DES MOINES, et al.,

 Plaintiffs,

 v.

PUGET SOUND REGIONAL COUNCIL, et al.,

 Defendants.

No. 96-2-20357-2 KNT
No. 97-2-13908-2 KNT
No. 97-2-22276-1 KNT
No. 98-2-04911-1 KNT

(CONSOLIDATED)

CITY OF DES MOINES, et al.,

 Plaintiffs/Petitioners,

 v.

PORT OF SEATTLE, et al.,

 Defendants/Respondents.

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND FINAL ORDER**

CITY OF DES MOINES, et al.,

 Plaintiffs,

 v.

CENTRAL PUGET SOUND GROWTH
MANAGEMENT HEARINGS Board, et al.,

 Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW - 1

**Judge Robert H. Alsdorf
King County Superior Court
Regional Justice Center
Kent, WA 98032
(206) 205-2620**

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1 AIRPORT COMMUNITIES COALITION, et al.,

2 Plaintiffs,

3 v.

4 PORT OF SEATTLE, et al.,

5 Defendants.
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8 This consolidated actions in this lawsuit challenge: (1) the legislative decisions of the
9 Commissioners of the Port of Seattle adopting Port Resolution 3212 and Port Resolution 3245.
10 which approved the Master Plan Update development actions at the Seattle-Tacoma International
11 Airport. including construction of a new runway; (2) the Final Decision and Order ("FDO") of the
12 Central Puget Sound Growth Management Hearings Board ("Board") in CPSGMHB Case No. 97-3-
13 0014, which determining that the comprehensive plan of the City of Des Moines does not comply
14 with the Growth Management Act ("GMA") and invalidating two plan provisions; and (3) the quasi-
15 judicial Findings, Conclusions And Decision of the Port of Seattle Hearing Examiner upholding the
16 adequacy of the Port's Master Plan Update environmental impact statement ("EIS") and
17 supplemental environmental impact statement ("SEIS"). The court has read and considered the
18 briefs of the parties and the administrative record as filed with the Court and as supplemented by
19 order of the Court. On June 23, 1998, the court heard oral argument on all of the remaining claims
20 in these four consolidated actions. On July 1, 1998, the Court received and reviewed supplemental
21 briefing on HB 1487.

22 At oral argument, the petitioner Airport Communities Coalition and its constituent member
23 cities ("Coalition") were represented by Cutler & Stanfield, L.L.P., and Perry Rosen, and by
24 Cairncross & Hempelmann, P.S., and John Hempelmann. Respondents Port of Seattle, the Port of
25 Seattle Commissioners, the Port of Seattle Responsible SEPA Official, and the Port of Seattle
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FINDINGS OF FACT AND CONCLUSIONS OF LAW - 2

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1 Hearing Examiner were represented by Foster Pepper & Shefelman PLLC and Tayloe Washburn and
2 Roger Pearce. Respondent Central Puget Sound Growth Management Hearings Board was
3 represented by the Washington Attorney General and Marjorie Smitch, and respondent Puget Sound
4 Regional Council ("PSRC") was represented by Bricklin & Gendler, LLP, and Jennifer Dold.

5 Based on the its review of the administrative record and the briefs of the parties, and its
6 rulings entered today concerning the application of WAC Ch. 365-195, the Court enters the
7 following Findings of Fact, Conclusions of Law and Final Decision.

8 I. FINDINGS OF FACT

9 1. The Seattle-Tacoma International Airport ("STIA") is the primary commercial service
10 airport for the Pacific Northwest region. STIA is the only airport that provides scheduled commercial
11 air carrier service to the 2.8 million residents of the four-county Central Puget Sound area.

12 2. The Port of Seattle ("Port"), which operates STIA, is a special district unit of
13 government under state law and is governed by an elected commission. The Port's governing
14 commission is elected by the voters of King County.

15 **The Background Regional Planning Studies Address the Region's Need for Improved 16 Commercial Air Transportation Facilities at STIA.**

17 3. In the mid-1980s, the Port completed the Airport Comprehensive Planning Review
18 And Airspace Update Study, which concluded that the existing runway system at STIA would not be
19 capable of efficiently serving the increasing demand for air traffic past the year 2000. The Federal
20 Aviation Administration ("FAA") initiated an Airport Capacity Enhancement Study, which
21 concluded that there was extensive delay at STIA, primarily in poor weather conditions, as a result of
22 the close spacing of the two existing runways. In 1995, the FAA conducted a Capacity Enhancement
23 Update Study, which confirmed the results of the earlier capacity study.

24 4. In 1989, the Port and the Puget Sound Regional Council of Governments initiated the
25 Flight Plan Project to study alternatives and recommend solutions for meeting the region's long-term
26 air transportation needs. As part of the Flight Plan Project, the Flight Plan programmatic EIS was

FINDINGS OF FACT AND CONCLUSIONS OF LAW - 3

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1 prepared and issued in October 1992. The Flight Plan EIS analyzed 34 alternative strategies for
2 meeting the region's air transportation needs. At the conclusion of the Flight Plan studies and public
3 process in 1992, the Flight Plan Report recommended implementation of a multiple airport system,
4 including the addition of a new air carrier runway at STIA.

5 5. In April 1993, the PSRC General Assembly adopted Resolution A-93-03, amending
6 the Regional Transportation Plan ("RTP") to authorize development of a third runway at STIA: (1)
7 unless a supplemental airport site was proven to be feasible to eliminate the need for a new runway
8 at STIA, (2) after demand management and system management programs are achieved or proven
9 not to be feasible, and (3) when noise reduction performance objectives were scheduled, pursued,
10 and achieved based on independent evaluation and measurement of noise impacts. PSRC established
11 a detailed process to implement Resolution A-93-03, including studies of supplemental airport sites.
12 demand/system management, and existing noise management measures at STIA.

13 6. After these studies, PSRC concluded that there are no feasible sites for a major
14 supplemental airport within the four-county region.

15 7. An independent panel reviewed demand/system management programs and noise
16 reduction performance at STIA. That panel concluded that demand/system management would not
17 eliminate the need for a third runway. The panel determined that the noise reduction standards of
18 Resolution A-93-03 had not been met, however, and suggested additional noise reduction measures.
19 The panel noted that the Port has been a national leader in efforts to reduce noise impacts on
20 residents surrounding STIA. The Port's SeaTac Communities Plan, the Part 150 Noise
21 Compatibility Plans, and the innovative Noise Mediation Project have collectively resulted in a
22 series of measures expected to significantly reduce aircraft noise by the year 2001.

23 8. On July 11, 1996, the PSRC General Assembly passed Resolution A-96-02, which
24 amended Resolution A-93-03 and included a third runway at STIA, with additional noise reduction
25 measures. in the region's RTP.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW - 4

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1 9. On January 23, 1998, this Court dismissed with prejudice the Petitioners' claims
2 challenging PSRC Resolution A-96-02 and the SEPA review for that resolution.

3 **The Port of Seattle's Master Plan Update for STIA and Preparation of the Master Plan
4 Update Environmental Impact Statement.**

5 10. In 1993, the Port initiated an Airport Master Plan Update for STIA, which identified
6 and studied alternative means of meeting the following needs at the Airport: (1) improve the poor
7 weather airfield operating capacity to an acceptable level of delay, (2) provide sufficient runway
8 length to accommodate warm weather operations without restricting passenger load factors or
9 payloads, (3) provide Runway Safety Areas that meet current FAA standards, and (4) provide
10 efficient and flexible landside facilities to accommodate future aviation demand.

11 11. Also in 1993, pursuant to the National Environmental Policy Act ("NEPA") and the
12 State Environmental Policy Act ("SEPA"), the FAA and the Port initiated preparation of a joint
13 Master Plan Update EIS to analyze the alternatives to, environmental impacts of, and possible
14 mitigating measures for the Master Plan Update improvements at STIA.

15 12. In 1995, the FAA and Port issued the Master Plan Update Draft EIS, conducted two
16 public hearings, accepted and responded to voluminous written and oral comments, conducted
17 additional studies, and prepared project revisions in response to public comments. The Coalition
18 cities submitted detailed comments on the Draft EIS. Throughout the preparation of the Master Plan
19 Update Final EIS, the Port coordinated with numerous agencies with technical expertise to ensure
20 that the most appropriate methodologies for measuring impacts was followed. In particular, the issue
21 of aviation demand forecasting was coordinated on an ongoing basis with the FAA.

22 13. On February 9, 1996, the Port issued the Master Plan Update Final EIS, which
23 included all comments on the DEIS and the Port/FAA responses to each comment. Among other
24 impact areas, the EIS identifies the quantity of fill needed for construction of the third runway and
25 the various locations where the fill might be obtained. The EIS identifies numerous haul routes that
26 could be used for transportation of fill. While there may be some flexibility in where the dirt is

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1 obtained and how it is transported to the Airport, the EIS recognizes that securing dirt and
2 transporting it to the Airport is a necessary support activity for the expansion of STIA.

3 **Port Adoption of Resolution 3212.**

4 14. On August 1, 1996, the Port Commission adopted Resolution No. 3212, which
5 attached and adopted the Airport Master Plan Update for STIA and granted approval to develop the
6 third runway at STIA. Included with Resolution 3212 was a commitment to mitigate the impacts of
7 the improvements at STIA based on the impacts identified in the Master Plan Update EIS. This list
8 of mitigation measures was in addition to the noise reduction measures called for by the PSRC in its
9 Regional Transportation Plan, which the Port also committed to in Resolution 3212. The mitigating
10 measures are found at Attachment D to Resolution 3212. The PSRC noise mitigation measures are
11 included as Attachment E to Resolution 3212. The mitigation measures included in Resolution 3212
12 addressed noise, land use, water quality, wetlands, plants and animals, earth, and construction
13 impacts.

14 **The Port's Preparation of the Master Plan Update Supplemental EIS.**

15 15. After publication of the FEIS, the FAA Office of Aviation Policy and Plans in
16 Washington, D.C., issued its fiscal year 1996 Terminal Area Forecast ("TAF") for the nation's
17 airports, including STIA. The fiscal year 1996 FAA TAF predicted levels of aircraft operations and
18 passenger enplanements at STIA that exceeded the numbers of operations and enplanements in the
19 Master Plan Update Final EIS.

20 16. When the FAA's 1996 TAF was released, a review of the aviation forecasts at STIA
21 was initiated to identify why the forecast was higher and how it would affect the Master Plan
22 Update. P&D Aviation, the Port's Master Plan Update contractor, evaluated the FAA 1996 TAF and
23 supported its general conclusions that activity could grow faster than identified by the Master Plan
24 Update aviation forecasts. This evaluation led to the development of new Port aviation forecasts that
25 showed aircraft operations and passengers estimated to be approximately 17 percent greater (for
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1 planning year 2010) than the primary Master Plan Update FEIS forecast. To fully evaluate the
2 possible project-level impacts (and potential mitigation measures) based on the new Port forecasts.
3 the FAA and the Port commissioned a Supplemental EIS ("SEIS").

4 17. The Draft SEIS (containing a draft Clean Air Act Conformity Analysis) was released
5 in February 1997. In the SEIS, the horizon for the project-specific impact analysis was revised from
6 the year 2020 to 2010 for a number of reasons, including the following: aviation demand had
7 become impossible to forecast with substantial accuracy beyond 2010, airline ticket prices (the
8 primary prediction of aviation demand) had become impossible to reasonably forecast beyond 2010,
9 airline fleet mix and engine mix were not reasonably predictable beyond 2010, new aviation engine
10 technology was not predictable beyond 2010, and background surface traffic was not reasonably
11 predictable beyond 2010 because major transportation projects in the STIA vicinity had been
12 recently and drastically revised.

13 18. Although the SEIS concluded that detailed impacts could not be meaningfully
14 predicted and analyzed beyond 2010, in order to aid the decision makers using the SEIS, the SEIS
15 contained at Appendix D projections of impacts (based on assumed steady growth rates) to the year
16 2020, as well as a higher growth rate scenario. Appendix D also contained a projection of impacts
17 based on a higher assumed growth rate.

18 19. The Coalition cities commented extensively during the comment period following
19 issuance of the Draft SEIS. After reviewing and responding to the Coalition cities' comments and
20 extensive agency and public comments, the Final SEIS (and final-Clean Air Act Conformity
21 Analysis) was published on May 13, 1997. The Coalition cities appealed the adequacy of the
22 EIS/SEIS under SEPA to the Port's Hearing Examiner, but have not challenged it under NEPA.

23 **The Master Plan EIS/SEIS Shows the Unique Situation at the Seattle-Tacoma
24 International Airport.**

25 20. The Master Plan EIS/SEIS shows the special circumstances at STIA, which do not
26 affect most U.S. airports. First, STIA is the only commercial airport in the region and is the primary

FINDINGS OF FACT AND CONCLUSIONS OF LAW - 7

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1 air transportation hub of Washington state and the northwestern United States. As measured by total
2 passengers, STIA is the 21st busiest airport in the country. It is the 18th busiest cargo airport.
3 Because of the central Puget Sound's relative isolation from other parts of the country, there are no
4 other commercial airports within a reasonable driving distance from STIA. Second, the primary
5 problem affecting air transportation at STIA is delay. Although delay is currently a problem during
6 bad weather conditions, those conditions occur 44 percent of the time at STIA. It is not
7 unreasonable to conclude that STIA currently operates at an unacceptable level of delay during bad
8 weather conditions, and that, if the Port does nothing, such delay will dramatically increase in the
9 upcoming decade.

10 21. Regional planning studies document a critical need to improve the central Puget
11 Sound region's ability to meet the increasing demand for air transportation services. The regional
12 planning body has decided that "there are no feasible sites for a major supplemental airport within
13 the four-county region." Thus, after 10 years of planning, it is not unreasonable to conclude that
14 improvements at STIA are the region's only feasible solution for its air transportation needs.

15 **Port Adoption of Resolution 3245.**

16 22. On May 27, 1997, the Port Commission reaffirmed the approvals and commitments
17 made in Resolution 3212, including the adoption of the revised STIA Master Plan Update and the
18 commitment to undertake the noise reduction measures called for in PSRC Resolution A-96-02.
19 Resolution 3245 included both a summary of the Commissioners' decision-making process
20 (Attach. A) and an updated and expanded list of mitigating measures (Attach. D to Resolution 3245).
21 The Resolution noted that the Final EIS and SEIS included a more complete list of possible
22 mitigating measures. The list of mitigation measures included in Resolution 3245 was subject to
23 further refinement and revision as plans were finalized and permitting processes were completed.
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FINDINGS OF FACT AND CONCLUSIONS OF LAW - 8

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1 **The FAA's Record of Decision.**

2 23. On July 3, 1997, the regional administrator for the FAA's Northwest Mountain
3 Region issued a Record of Decision ("ROD") approving the Master Plan Update at STIA. In
4 accordance with the requirements of the Airport and Airways Improvements Act, the ROD provides
5 comprehensive mitigation for the impacts of the third runway project. The ROD includes at
6 Appendix B a June 30, 1997 letter from Washington State Governor Gary Locke on behalf of the
7 Washington State Department of Ecology to the Secretary of the U.S. Department of Transportation
8 which provides "reasonable assurance that the proposed airport development project involving the
9 SeaTac Airport third runway will be located, designed, constructed and operated so as to comply
10 with applicable air and water quality standards." The ROD concluded that "all practical means to
11 avoid or minimize environmental harm have been adopted through appropriate mitigation planning."

12 24. The ROD also contains an analysis of the impacts of the project and a list of
13 mitigation measures required by the FAA. There are comprehensive federal mitigation requirements
14 under the Airport and Airway Improvement Act ("AAIA") and the Clean Air Act. The ROD
15 mitigation measures include noise, land use, archeological, cultural and historic resources, social and
16 induced socio-economic impacts, air quality, water quality, construction, erosion and sedimentation
17 control, wetlands, flood plains, surface transportation, plants and animals, services/utilities, earth,
18 hazardous substances, and construction impacts.

19 **Port/SeaTac Interlocal Agreement.**

20 25. Before the adoption of the Port resolutions, the City of SeaTac ("SeaTac") and the
21 Port were pursuing discussions concerning the regulatory authority of the two jurisdictions on airport
22 and airport-related projects. These negotiations culminated in an Interlocal Agreement dated
23 September 4, 1997 ("ILA"), which resolved the outstanding jurisdictional issues. Because SeaTac is
24 the host jurisdiction for the STIA expansion, the ILA contains proposed land use policies to ensure
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FINDINGS OF FACT AND CONCLUSIONS OF LAW - 9

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1 the consistency of the SeaTac Comprehensive Plan with the STIA expansion. The ILA also included
2 additional mitigation measures committed to by the Port to address the impacts of STIA expansion.

3 **The Port's Commitment to Comprehensive Mitigation of the Impacts of the Master
4 Plan Update Development Actions.**

5 26. The Port of Seattle, in Resolution 3245, committed to comprehensive mitigation for
6 the impacts of the Master Plan Update development actions, as disclosed in the EIS and SEIS.
7 Those mitigation measures are set forth in Appendix D to Resolution 3245. Most of the Port's
8 mitigation measures are also required by the FAA, pursuant to the Airport and Airways
9 Improvement Act, and outlined at Appendix F to the FAA's ROD.

10 27. With respect to noise impacts, mitigating measures include:

- 11 • acoustical insulation of noise sensitive facilities such as schools, multi-family residences, and
12 institutional uses;
- 13 • acoustical insulation of nine significantly impacted buildings;
- 14 • acoustical insulation of all eligible single family residences on the Port's waiting list prior to
15 operation of the new runway;
- 16 • acoustical insulation of all single family residences that become eligible, based on the Master
17 Plan Update development actions, prior to the operation of the new runway;
- 18 • directional soundproofing for homes already insulated;
- 19 • acquisition of residences in the Approach Transition Area;
- 20 • continuation of the existing noise abatement and noise remedy program at STIA;
- 21 • updates of the FAA Part 150 noise studies;
- 22 • continued work with local communities in locating compatible land uses near the airport;
23 upgrading the noise monitoring equipment at STIA;
- 24 • work with the FAA to reduce reverse thruster use, to voluntarily reduce night flights, and to
25 minimize the number of variances to the noise limitations program;
- 26 • work with foreign airlines to ensure the use of Stage 3 aircraft;

FINDINGS OF FACT AND CONCLUSIONS OF LAW - 10

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- 1 • work with operators to reduce the number of Stage 2 aircraft and to minimize night engine
- 2 testing;
- 3 • design and implement a noise compatible land use plan for properties in the acquisition zone;
- 4 • complete the public buildings insulation pilot studies; and
- 5 • seek FAA commitment to preventing violations of north flow nighttime departure procedures.

6 28. With respect to mitigation of air quality impacts, the air quality agencies have
7 determined that the Master Plan Update development actions will be in conformance with the State
8 Implementation Plan (SIP) and will meet National Ambient Air Quality Standards (NAAQS). Thus,
9 no mitigation is required. Nevertheless, to ensure conformity, the Port, pursuant to a Memorandum
10 of Agreement with the air quality agencies, has committed to fund air measurement studies by DOE
11 in the vicinity of STIA. The Port has also committed to detailed Best Management Practices during
12 construction to ensure that significant air pollution levels do not occur during construction. In
13 addition, the number of annual heavy-duty diesel trips during construction has been limited by the
14 FAA in its ROD.

15 29. With respect to mitigation of impacts to wetlands, the Port has committed to avoiding
16 and minimizing fill of wetlands whenever possible. For required wetland fill and creek relocation,
17 the Port has committed to no net loss of wetlands and wetland functions. The EIS and SEIS propose
18 replacement of the wetland functions and values in the vicinity of STIA, to the extent such
19 replacement is compatible with safe aircraft operations. The Port has proposed to replace all wildlife
20 attractant values by constructing compensatory wetlands in Auburn. Compensatory mitigation for
21 creek relocation is also proposed.

22 30. With respect to mitigation of water quality impacts, the Port has proposed a
23 stormwater management plan for the new runway that includes the following:

- 24 • detention criteria based on DOE standards;

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- 1 • stormwater outlets designed to reduce channel scouring, sedimentation and erosion, and to
- 2 improve water quality;
- 3 • stormwater outlets with flow dispersion compatible with stream mitigation;
- 4 • an ongoing maintenance plan for existing and proposed new stormwater facilities.
- 5 Water quality mitigation also includes compliance with the mitigating conditions in the Port's
- 6 National Pollution Discharge Elimination System (NPDES) permit, which is re-examined and
- 7 revised from time to time by the Department of Ecology. In addition, a construction erosion and
- 8 sedimentation control plan will be prepared for the construction of the Master Plan Update
- 9 improvements, which will incorporate Best Management Practices, including:
- 10 • erosion control measures such as mulching, silt fencing, sediment basins and check dams;
- 11 • spill containment areas to capture and contain any spills at construction sites and prevent their
- 12 entry into surface or ground water;
- 13 • installation of temporary fuel storage and maintenance areas to reduce the potential for spills and
- 14 contamination;
- 15 • phasing of construction activities to minimize the amount of area that is disturbed at any one
- 16 time;
- 17 • use of temporary and permanent terraces for fill slopes and cut slopes to reduce erosion and to
- 18 reduce transport of eroded materials; and
- 19 • installation of gravel and wheel wash facilities on construction equipment access roads to
- 20 minimize transport of sediment onto nearby roadways.

21 31. With respect to mitigation of construction impacts, the Port has committed to prepare

22 a construction and earthwork management plan to govern acquisition and placement of fill material

23 for the Master Plan Update development actions. The plan will address the methods for acquiring

24 and transporting fill material, including designation of haul routes, hours of operation, traffic control

25 and route mitigation. The final content of the plan will depend on the methods of transport

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FINDINGS OF FACT AND CONCLUSIONS OF LAW - 12

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1 ultimately selected. The Port has also committed to a construction acquisition plan in order to
2 mitigate the disruption that could occur in the general vicinity of the proposed new runway
3 construction. The Port has also committed to the extensive Construction Best Management Practices
4 identified in the Final SEIS at Table 5-4-8 (SEIS at pp. 5-4-37 through 5-4-41).

5 32. With respect to mitigation of land use impacts, the Port has committed to the
6 mitigating conditions for noise discussed above. In addition, the Port has committed to work with
7 surrounding communities to develop compatible land use plans with the airport uses, to prepare a
8 compatible land use plan for the acquisition areas acquired by the Port for noise mitigation, and to
9 evaluate the acquisition of properties in the approach transition areas.

10 33. With respect to mitigation of transportation impacts, many of the transportation
11 improvements and parking improvements are included in the Master Plan Update proposal itself. In
12 addition, the Port has agreed to support and share in the costs of developing the 28th/24th Avenue
13 South arterial and airport link roadway, to support the planned development of SR-509 by the State
14 of Washington, to develop the south airport access solution if SR-509 does not proceed for any
15 reason, to plan jointly with the City of SeaTac on transportation issues, and to construct roadway
16 improvements at the intersections of 24th Ave. S./S. 154th St. and at SR-99/S. 160th St.

17 **Growth Management Hearings Board Decision on City of Des Moines' Plan.**

18 34. In February 1997, the Port filed a petition with the Central Puget Sound Growth
19 Management Hearings Board ("Board") challenging numerous policies in the Comprehensive Plan
20 of the City of Des Moines ("Des Moines Plan") as violative of the GMA. CPSGMHB Case No. 97-
21 3-0014.

22 35. On August 13, 1997, the Board entered a Final Decision and Order ("Board FDO"),
23 unanimously ruling that the Des Moines Plan did not comply with the GMA and invalidating two
24 plan policies. The Board ruled that STIA was an essential public facility ("EPF"), protected by
25 RCW 36.70A.200. The Board also held that the expansion of an existing EPF, including necessary
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FINDINGS OF FACT AND CONCLUSIONS OF LAW - 13

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1 support activities associated with that expansion, was protected by RCW 36.70A.200. The Board
2 determined that the Des Moines Plan unlawfully precluded, by making impossible or impracticable,
3 expansion of STIA.

4 36. The Board ruled that the Des Moines Plan violated the GMA because the Plan
5 expressed the City's clear intent to exercise its municipal authority to prevent expansion of STIA.
6 not to mitigate its impacts. The policies at issue in the Des Moines Plan did not require mitigation,
7 but instead directed the City to oppose any new facilities at STIA that increased the impacts to the
8 City of Des Moines. The Board did not rule that the Port could avoid reasonable mitigation of
9 adverse impacts associated with the expansion of STIA.

10 37. Two members of the Board decided that it was unnecessary to reach the issue of
11 whether the Des Moines Plan also violated the interjurisdictional plan consistency and countywide
12 planning policy consistency requirements of RCW 36.70A.100 and .210. One Board member
13 decided that the Plan violated these provisions as well and wrote a concurring opinion to that effect.

14 38. In addition to finding the Des Moines Plan not in compliance with GMA, the Board
15 invalidated two Des Moines Plan policies because those policies substantially interfered with
16 GMA's transportation goal which requires local governments planning under GMA to "[e]ncourage
17 multimodal transportation systems that are based on regional priorities and coordinated with county
18 and city comprehensive plans." Those invalidated policies are strategy 1-04-05 and strategy
19 5-04-04:

- 20 • Strategy 1-04-05: Intergovernmental Cooperation/Annexation: (1) When decisions
21 are made by state, county, regional agencies, tribes, or special purpose districts, and those
22 decisions are clearly in the best interests of the state, county or region, take appropriate
23 measures to implement those decisions within Des Moines and the Planning Area, unless the
24 decisions unfairly or negatively affect the residences or businesses in the Des Moines area.
(Emphasis added.)
- 25 • Strategy 5-04-04: Adopt development regulations as needed that provide a process for
26 the identification and possible siting of essential public facilities. Cooperatively work with
surrounding municipalities and King County during the siting and development of facilities

FINDINGS OF FACT AND CONCLUSIONS OF LAW - 14

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1 of regional significance. Oppose new facilities associated with Sea-Tac International Airport
2 that increase adverse impacts to the City of Des Moines. (Emphasis added.)

3 39. The record before the Board shows that in order to construct the STIA improvements
4 planned for in the Port's Master Plan Update, it is necessary for trucks hauling fill dirt to travel
5 through the streets of one or more of the cities of SeaTac, Des Moines, Burien, Tukwila and
6 Normandy Park.

7 40. The record before the Board shows that the City of Des Moines developed and
8 adopted certain comprehensive plan policies and development regulations which would permit it to
9 stop trucks moving fill, and thereby to directly or indirectly prevent STIA expansion.

10 41. Since 1993, the Coalition cities have entered into a series of interlocal agreements
11 with the primary stated purpose being to "stop the construction of any additional runways" at STIA.

12 42. Under the GMA, airports such as STIA are expressly included in the definition of
13 essential public facilities.

14 **The Decision of the Port of Seattle Hearing Examiner Finding the EIS and SEIS to be
15 Legally Adequate.**

16 43. The Master Plan Update Final EIS was issued in February 1996. In Port Resolution
17 3212, the Port determined that EIS was legally adequate for its decision to approve the Master Plan
18 Update development actions. Because of the changed forecasts of aviation activity at STIA, the Port
19 and FAA prepared the Master Plan Update SEIS. The Master Plan Update Final SEIS was issued on
20 May 13, 1997. In Port Resolution 3245, the Port determined that the SEIS was legally adequate for
21 its decision to approve the Master Plan Update development actions as amended. Both EISs were
22 administratively appealed by the Coalition cities to the independent Hearing Examiner of the Port of
23 Seattle.

24 44. The Hearing Examiner reviewed the extensive record on the EISs, reviewed written
25 testimony submitted by all parties, and heard five days of testimony and legal argument on
26 December 1 through 5, 1997. On January 30, 1998, the Examiner issued a detailed Findings,

FINDINGS OF FACT AND CONCLUSIONS OF LAW - 15

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1 Conclusions And Decision ("Examiner's Decision"), which held that the EIS and SEIS are legally
2 adequate.

Findings Relating to the EIS Forecast Methodology and Analysis.

3
4 45. The Coalition argues that the EIS is inadequate because the forecasts on which it is
5 based show the same number of enplanements (passengers) under both the With Project and No
6 Action alternatives.

7 46. When the Port and the FAA began preparation of the Master Plan Update EIS, they
8 retained P&D Aviation to prepare the forecast that served as the basis for the Master Plan Update
9 EIS (the "1994 forecast"). Later, in 1996, when a decision was made to update the forecast, the Port
10 again retained P&D Aviation to prepare the updated forecast (the "1996 forecast"). P&D Aviation
11 had experience in preparing aviation forecasts for the Puget Sound region, having prepared the
12 forecast that served as the basis for the Flight Plan EIS issued by the Port and the PSRC in 1992.

13 47. The forecasting expert at P&D Aviation primarily responsible for the preparation of
14 the STIA forecasts was Stephen L. Allison, Senior Aviation Planner. Mr. Allison has 30 years
15 experience in the aviation planning and consulting field, having served as project manager or lead
16 aviation planner on the development of over 30 airport master plans and regional aviation system
17 plans. While he functions as project manager or lead aviation planner on a variety of airport
18 planning assignments, his specialty is the preparation of forecasts of aviation activity for individual
19 airports and multiple-airport regions.

20 48. The approach used in preparing the STIA forecasts is widely accepted and used
21 throughout the aviation industry. Mr. Allison generally described the process utilized as consisting
22 of the following steps:

- 23 • Analyze historic airport activity data and trends (such as passengers, air cargo, and aircraft
24 operations).

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- 1 • Assess the conditions and factors which influence the demand for aviation activity, including
2 the local and national economies, air fares, changes in airline service, competing airports,
3 technological advances in telecommunications, and international economic growth and
4 bilateral agreements.
- 5 • Obtain input from the aviation community, particularly the airlines serving STIA, to obtain
6 their opinions regarding the future of aviation demand in general and at STIA.
- 7 • Develop a mathematical relationship between a component of airport activity (e.g., domestic
8 passengers) and the factors (explanatory variables) which are historically shown to strongly
9 affect it. Evaluate this mathematical relationship, or "model," to ensure that it is logical for
10 forecasting aviation demand and passes key statistical tests.
- 11 • Obtain projections of the factors in the model affecting airport activity, then use the model
12 with the projected factors to derive a forecast of the airport activity.
- 13 • Evaluate the probable effects on the forecast of factors not explicitly accounted for in the
14 model, such as telecommunications, demand management techniques, and high speed rail.
- 15 • Develop alternative forecast approaches as a check against the results of the model.
- 16 • Prepare upper-range and lower-range forecasts based on the alternative approaches to
17 illustrate the potential range of outcomes.
- 18 • Compare the master plan forecast with forecasts prepared in other studies (such as flight
19 plan) and by the FAA and evaluate differences in the purpose for the forecast, the forecast
20 approach, and assumptions.

21
22 49. The evidence showed that three factors stand out as having the greatest correlation
23 with aviation demand at STIA and the greatest predictive value for estimating future aviation
24 demand at STIA. These three factors are (a) the population of the airport's service area, (b) personal
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1 income in the service area, and (c) average air fares. Higher population and personal income have a
2 positive effect on demand for air travel, and higher air fares influence demand negatively.

3 50. The models used by P&D Aviation for the 1994 and 1996 forecasts were tested
4 against actual aviation activity at STIA from 1973 through 1993. The 1994 model showed a 99.6%
5 correlation with domestic passenger variation, and the 1996 model showed 99% correlation. These
6 statistics indicate that the factors used in the P&D forecasting models are excellent in explaining past
7 variations in numbers of passengers at STIA.

8 51. The forecasts prepared by P&D Aviation were reviewed by the FAA's Northwest
9 Mountain Region. The FAA reviewed the forecasts in terms of the methodology, forecast variables
10 used, statistical measures, and reasonableness of the overall results. The FAA accepted the P&D
11 forecasts and approved their use for the preparation of the EISs.

12 52. The forecasts were also reviewed by Landrum & Brown, Inc., the prime consultant
13 selected by the Port and the FAA to prepare the Master Plan Update EIS and SEIS. The individual at
14 Landrum & Brown primarily responsible for the review of the forecasts was Douglas F. Goldberg,
15 Vice President and Leader of the firm's Facilities and Operations Practice. Mr. Goldberg has 14
16 years of experience in aviation and airport planning, has been involved in the planning of over 30
17 airports in the U.S. and abroad, and has participated in demand forecasts at a variety of major U. S.
18 airports.

19 53. Mr. Goldberg reviewed the forecasts prepared by P&D Aviation and found them
20 consistent with the industry standard accepted methodology and properly prepared. He testified that
21 the methodology used by P&D Aviation has been used to provide the basis for implementing
22 improvements at most of the major airports throughout the U.S. Landrum & Brown has applied this
23 technique to develop aviation forecasts for many airport clients around the world, including the City
24 of Chicago Department of Aviation and its two primary airports O'Hare and Midway.
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1 54. The ACC presented the testimony of economist Dr. Clifford Winston. in support of
2 its challenge to the aviation forecasts. Dr. Winston stated that expanded airport facilities, including a
3 third runway, would themselves cause a growth in demand for air travel. It was his position that, by
4 not taking this factor into account, the STIA forecasts understated the actual demand that will occur
5 once the improvements are constructed.

6 55. In response to Dr. Winston, the Port presented the testimony of expert Mr. Allison,
7 Mr. Goldberg and Ms. Mary Vigilante, all of whom disagreed with Dr. Winston's positions. The
8 Examiner found the testimony of the Port's witnesses to be credible that aviation demand at STIA is
9 not caused by expanded airport facilities and not constrained by the delay characteristics as STIA, so
10 long as there is sufficient airport capacity to serve the passengers who wish to fly. Thus, aviation
11 demand at STIA can be adequately predicted by using population and income characteristics of the
12 market area, along with air fares. This is particularly true for STIA, because there are no other
13 airports in the region that can meet the demand and because the delays occur during poor weather
14 conditions which are not predictable.

15 56. Mr. Allison and Mr. Goldberg disagreed with Dr. Winston's position. The Hearing
16 Examiner found the testimony of Mr. Allison and Mr. Goldberg credible that delay at STIA occurs in
17 poor weather conditions and poor weather primarily affects arrivals rather than departures. Because
18 poor weather, particularly on arrivals, is not predictable, the delay is not likely to have a significant
19 impact on travelers' decisions. Moreover, airlines can incorporate delay into their flight schedules
20 and incorporate sophisticated flight consolidation procedures. There are no other airports in the
21 Puget Sound Region that provide an alternative to STIA. Moreover, even with the average delays
22 projected for STIA during the planning horizon, alternative modes of travel (such as automobile
23 travel) will still be considerably longer than air travel. For all these reasons, it is unlikely that
24 reductions in delay at STIA caused by the Master Plan Update will result in substantial additional
25 demand for air travel.
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1 57. In response to the ACC's argument that increasing delay at STIA without the project
2 will reduce demand, the Examiner found the testimony of Mr. Goldberg and Mr. Allison to be
3 credible that there will be sufficient capacity at STIA to accommodate passenger demand through the
4 Master Plan Update's planning horizon (beyond the year 2010). That is, through modest
5 adjustments in the number of passengers per airplane and the size of aircraft, as well as the hours of
6 operation, STIA has the capacity to accommodate all the projected passenger demand through the
7 planning horizon. This available capacity at STIA would likely accommodate the demand even as
8 average delays increased, because that has been the experience at other congested airports. Other
9 airports in the U.S. currently operate with levels of delay at or greater than the delay levels projected
10 for STIA beyond 2010. At some of these airports, such as O'Hare, the level of activity is such that
11 the FAA has imposed limits on the number of operations during most of the day. Despite the high
12 levels of delay and the limits on operations, the activity levels at these airports have continued to
13 increase in response to the demand. Therefore, it is not likely that increasing delays at STIA will
14 significantly constrain demand between now and 2010.

15 58. Dr. Winston hypothesized that an increase of runway capacity and an expansion of
16 terminal and ground transportation facilities would enable the airport to expand the number of
17 aircraft operations. However, as testified to by Mr. Goldberg and as found by the Examiner, the
18 addition of the proposed third runway will not add significant new capacity at STIA during good
19 weather conditions, which occur approximately 56% of the time. The purpose of the new runway is
20 to improve efficiency in poor weather conditions, i.e., to provide two streams of aircraft traffic
21 during poor weather conditions, the same as occurs now in good weather conditions. Because poor
22 weather is not predictable, the addition of capacity in poor weather conditions should not have a
23 significant effect on the demand for air travel.

24 59. Based on Dr. Winston's testimony, the ACC also argued that expansion of the airport
25 facilities will lead to greater airline competition and reduced operating costs, thereby reducing air
26

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1 fares and inducing more air travel. Again the Examiner found the testimony of the Port's witnesses
2 more credible that the improvements at STIA will not result in greater airline competition because
3 airlines add flights in response to increasing demand not in response to increased airport capacity.
4 STIA already enjoys a high level of airline competition and comparatively lower air fares than the
5 rest of the country. In addition, reduced airline delay costs will not likely result in lower air fares.
6 Savings from delay costs will be partially offset by the airlines' share of the capital improvement
7 expenses. Also, the savings from reduced delay costs, when spread among all airline passengers,
8 represents a small percentage of air fares and will not likely have a major impact on travel demand.

9
10 60. Dr. Winston also argued that more efficient and reliable air service would be a
11 stimulant to regional economic growth which, in turn, would generate increased demand for air
12 travel. As the testimony of the Port's witnesses showed, however, for economic growth in a region
13 to be affected by airport improvements, there would have to be a major change from extremely
14 inadequate service to adequate or better service. STIA already provides adequate or better air
15 service, so the STIA improvements will not result in significant new economic growth in the region.
16 In addition, as Mr. Goldberg testified, the EIS aviation forecasts did not assume any constraints in
17 airport capacity, so it would be illogical to include in the forecasts a factor for increased aviation
18 activity resulting from the airport improvements. Also, Mr. Goldberg testified that Denver, which
19 recently constructed a new five-runway modern airport, actually has experienced a decline in the
20 number of passengers and operations following completion of the new airport.

21 61. Finally, Dr. Winston testified that he developed a model to test whether the addition
22 of a runway fuels growth in aviation demand. Applying his model to the top 150 airports in the
23 country, he concluded that there is a statistical correlation between the number of runways and the
24 amount of aviation activity at an airport. This, he argued, is evidence that an additional runway at
25 STIA would cause additional growth. Again, the Examiner found the testimony of Mr. Allison and
26 Mr. Goldberg more credible on this point. As they testified, Dr. Winston's analysis did not test for a

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1 cause and effect relationship and can only show that a correlation exists between airports with high
2 demand and airports with multiple runways. That is, the Winston analysis demonstrated that airports
3 with greater aviation activity generally have more runways than airports with less activity. This does
4 not demonstrate that the additional runways were the cause of greater activity levels, and it could
5 demonstrate nothing more than that busy airports build runways. In addition, the statistical
6 correlation found by Dr. Winston was weak.

7 62. As Mr. Allison testified, the addition of the second runway at STIA did not result in
8 increased aviation demand. The second runway was built after a period of rapid growth at the
9 airport, but this growth was not sustained after the construction of the runway. The number of
10 passengers grew at an annual average rate of 14.8 percent in the five years before the runway was
11 completed and at an average rate of 3.8 percent in the three years after the runway was completed. A
12 similar pattern occurred with regard to the number of operations. The Examiner found Mr. Allison
13 testimony credible that this is not an unusual occurrence. Airport activity is typically cyclical
14 (reflecting economic cycles), with activity growing rapidly for several years then growing more
15 slowly for several years, and is not dependent on the construction of new runways.

16 63. The Final EIS included at Appendix R, and the Final SEIS included at Appendix D,
17 analyses of certain "what if" scenarios that respond to the comments that growth in aviation activity
18 might be higher than forecast. In these appendices, the Port considered the possible impacts if added
19 airport capacity results in higher aviation activity. In Appendix D of the SEIS, the Port even
20 considered the potential differences in impacts between (a) a With Project scenario in which
21 operations and enplanements grew at a 10% faster rate than forecasted and (b) a Do Nothing scenario
22 in which it was assumed that the number of operations and enplanements would be limited to their
23 2010 levels.

24 64. The ACC asserted that if Dr. Winston's theory is correct, that air pollution and noise
25 would increase with the number of operations. However, increased number of operations under the
26

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1 With Project scenario does not necessarily translate to a comparable increase in air pollution.
2 Eugene R. Peters is a Director with Landrum & Brown. He has over 10 years of environmental
3 planning experience and has conducted the analysis of airport-related activity on regional air quality
4 on airports throughout the country. Mr. Peters provided a detailed analysis in his written testimony
5 that was consistent with the SEIS conclusion that NOx will decrease even as the number of
6 operations increases out to 2010, due to the impact of the reductions in delay which accompany the
7 construction of the 3rd Runway.

8 65. With respect to noise, the Port presented credible testimony from Mr. Jon Woodward.
9 Mr. Woodward has more than 25 years experience in program design and noise assessment and land
10 use analysis. He has prepared over 1500 noise contour studies in his career. He has worked on noise
11 studies at major airports throughout the country, including Dallas-Ft. Worth, Los Angeles
12 International, Cincinnati, St. Louis, Chicago O'Hare and Toledo. Mr. Woodward was in charge of
13 preparing the noise contours for the EIS. Mr. Woodward corroborated analysis in the EIS which
14 demonstrated the declining size of the 65 DNL noise contours under a do-nothing scenario between
15 1994 and the year 2010. Despite the anticipated increase in operations at STIA, noise impacts are
16 expected to decline in the future relative to existing conditions. As Mr. Woodward testified, even if
17 the operations forecast projected by Dr. Winston were to occur, the resulting effect would be an
18 expected increase of 7/10 of one decibel (0.7 dBA) on average noise levels. Based on the FAA
19 threshold of significant impact of 1.5 DNL, the 0.7 dBA would not be significant. If any of the
20 current technological initiatives now under way by NASA achieve even 10% of their goals (i.e., one
21 decibel reduction), this would more than offset the increased noise levels associated with the
22 difference in forecasted operations alleged by Dr. Winston.
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1 **Findings of Fact on the Port and FAA's of Decision To Limit Detailed Analysis in the**
2 **SEIS to 13 Years (to the Year 2010).**

3 66. At the time the Master Plan Update EIS was prepared in 1994, the airfares nationally
4 and at STIA were relatively stable. Thus, those charged with preparing long-term airport forecasts
5 believed they could consider larger planning horizons than normal.

6 67. Several factors came together in the time period between the MPU EIS in 1994 and
7 the SEIS in 1996, each of which added significant uncertainty to the planning efforts of those
8 professionals charged with attempting to meaningfully evaluate long-term impacts under SEPA and
9 NEPA. The EIS consultants agreed with the EIS Project Manager Mary Vigilante that these factors
10 made it very difficult to meaningfully evaluate the environmental impacts of the Master Plan Update
11 beyond the year 2010.

12 68. The testimony of the professionals participating in the SEIS establishes that in various
13 key areas, the SEIS- period of analysis of 13 years falls squarely within the typical range for studies
14 of this type throughout the country. Mr. Peters testified that the air quality studies varied the study
15 period from 5-15 years in the future. In the noise area, Mr. Woodward testified that noise contour
16 studies for new runways typically run on a 10-12 year planning horizon.

17 69. While the Coalition emphasizes the relationship of the planning period to the
18 anticipated construction date, the runway in the year 2004, a more proper context is to review the
19 length of the planning period from the date of the SEIS in 1996. The planning period evaluated by
20 the Port and FAA was 13 years.

21 70. One of the principal decision makers in the determination of the planning horizon in
22 SEIS was the EIS Project Manager Mary Vigilante. In addition to extensive airport project
23 management experience, Ms. Vigilante has specialized experience in both air quality and noise
24 analysis fields. She conducted much of the original analysis, as well as the response to comments in
25

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1 all of the project level environmental documents. In addition to the reasons set forth in Appendix D
2 of the SEIS, she testified credibly that there were rapid changes in aviation activity during the mid-
3 1990s at STIA, which made forecasting aviation activity very difficult. Ms. Vigilante and all the
4 experts on the SEIS team concluded that detailed analysis of the years beyond 2010 in the EIS would
5 be speculative and could lead to a substantially inaccurate evaluation of environmental effects. The
6 quantification of project-level environmental impacts is dependent on factors such as total aviation
7 activity, the time of day the activity occurs, the aircraft types, and the engines on the aircraft. Even
8 slight changes in aircraft types and their associated engine types, for instance, can result in
9 substantially different impact analysis. Due to the various volatile factors identified and because
10 aircraft fleet mix and air fares are could not be reasonably predicted beyond 2010, the SEIS
11 concluded that impacts could not be reasonably evaluated beyond this time period. 13 years into the
12 future. Ms. Vigilante also described in detail the different forms of future environmental review,
13 both state and federal, which will analyze possible adverse environmental impacts of the Master Plan
14 Update during the period after 2010.

15 71. One of the greatest changes following issuance of the Master Plan EIS was the 1996
16 change in projected airfares announced by the FAA. With respect to the Port's updated aviation
17 demand forecast prepared for the SEIS, after calibrating for local data, this resulted in an 17%
18 increase in the number of operations anticipated at STIA for the year 2010 over the number of
19 operations anticipated under the 1994 Master Plan forecasts. The volatility in projected airfares
20 represented by the FAA's changed airfare projections makes it more difficult to reasonably estimate
21 long-term trends in number of aircraft operations, fleet mix, or day/night operations. Moreover,
22 when the SEIS was prepared, the FAA only estimated airfares to the year 2010 and not beyond.

23 72. The forecasting uncertainty that surfaced in 1996 significantly changed the ability to
24 analyze long-term forecasts, fleet mix, day/night operations, and created a corresponding uncertainty
25 for the professionals charged with evaluating long-term air quality and noise impacts. This level of
26

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1 uncertainty did not exist two and one-half years earlier, when the Master Plan EIS was being
2 prepared.

3 73. The preparation of the air quality analysis in the SEIS was the product of
4 collaboration among the three agencies with regulatory authority in this area, the Puget Sound Air
5 Pollution Control Agency ("PSAPCA"), the Washington State Department of Ecology ("DOE") and
6 the U.S. Environmental Protection Agency ("EPA"). DOE retained an independent consultant to
7 assist in detailed review and preparation of comments in its review of the SEIS. All three agencies
8 participated in the air quality analysis which found that the year 2010 was the logical planning
9 horizon for air quality impacts. Although the three agencies had many questions during the process
10 and in their comments on the draft SEIS, all three approved the final air quality analysis contained in
11 the final SEIS.

12 74. As Mr. Gene Peters testified, the volatility in airfares, forecasts, fleet mix, and other
13 areas in the period following 1994 made it difficult in 1996 to predict with substantial accuracy or to
14 reasonably foresee air quality impacts beyond the year 2010.

15 75. The uncertainty of long-term airfare projections and the resulting fluctuation in
16 aircraft operation forecasts at STIA added a significant element of uncertainty in the ability of the
17 noise measurement professionals to prepare reliable long-term noise contours in the SEIS. While it
18 is theoretically possible to run noise contours, as testified by the experienced noise professionals
19 Paul Dunholter and Jon Woodward, the reliability of this modeling diminishes significantly as one
20 goes further out in time. Their unrebutted expert testimony was that, while a range of assumptions
21 or alternatives is theoretically possible, the usefulness of such an exercise is questionable because it
22 is not likely to lead to meaningful evaluation.

23 76. Because of the lack of reliable data beyond the year 2010 to input into the standard
24 noise model (the INM model), the noise professionals in the SEIS limited detailed analysis to
25 thirteen years, because noise impacts analysis beyond that time would be speculative and not likely
26

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1 to lead to meaningful evaluation. In the future, there will be several additional steps of
2 environmental review which will be completed when those impacts are more capable of being
3 meaningfully evaluated. These include Part 150 Noise Compatibility Program, future chapters of the
4 Port's Master Plan Update process, and any future planning and environmental review required
5 under the terms of the FAA Record of Decision

6 77. The advent of Southwest Airlines to STIA has since 1994 had a significant impact on
7 the fleet mix at the Airport by Southwest and its airline competitors. There has been a significant
8 change from three and four-engine aircraft to medium-sized two-engine jet aircraft. The change in
9 fleet mix translates directly into significant changes in the resulting air pollution emissions. This
10 recent volatility made long term analysis of air quality impacts more difficult in 1996 than in 1994

11 78. The inability to reasonably forecast aviation demand beyond 2010 made it impossible
12 to reasonably model intersection-by-intersection traffic impacts beyond 2010. In addition, there
13 were also independent changes following issuance of the Master Plan EIS which made meaningful
14 evaluation of surface transportation impacts speculative in and around STIA beyond 2010. The
15 long-term analysis of background surface traffic depends to a large extent of the PSRC's regional
16 model, which was used by traffic expert Jim Edwards and INCA Engineers as the foundation for its
17 analysis of background traffic in the Master Plan EIS and the SEIS. When the SEIS was getting
18 underway, there were three major changes affecting arterials and intersections in the vicinity of
19 STIA, none of which was included in the PSRC model.
20

21 79. First, the state's largest public infrastructure project, the Regional Transportation
22 Authority ("RTA") dramatically changed in scope following issuance of the EIS, from a \$13 billion
23 project to a \$3-4 billion project. This change would radically alter the impact at intersections and
24 arterials in and around STIA after 2010 in ways that could not be fully understood in 1996, because
25 the impacts of this change were not yet known or included in the PSRC model.
26

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1 80. Second, the state highway adjacent to STIA. SR 509, also experienced major planning
2 changes following issuance of the Master Plan EIS. The route and connections for the proposed
3 extension of SR 509 to Interstate 5 was changed. Given its proximity to the Airport, this change
4 would also have very significant impacts on the analysis of traffic intersections in the area after the
5 year 2010. As explained by Mr. Edwards, the specifics of this new proposal was not known in 1996
6 and was not included in the PSRC traffic model on which INCA relied to conduct its analysis.

7 81. Third, the City of SeaTac's proposed Personal Rapid Transit system, which was very
8 conceptual in 1994 when the EIS was issued, was two years further into the planning process by
9 1996. As this was proposed in the jurisdiction surrounding STIA, if constructed it too would have
10 significant impacts on traffic in the area, which impacts were able to be evaluated and not included
11 in the PSRC model.

12 82. In addition to showing the uncertainties of forecasting project-specific, intersection-
13 by-intersection impacts in 1996 for longer than 13 years, the record reflects numerous examples of
14 ongoing environmental review, to be conducted by the Port and other agencies, of the impacts of the
15 Master Plan Update improvements after the year 2010, at a time when those impacts can be
16 meaningfully analyzed. Those future reviews include:

- 17 • Additional Master Plan-related SEPA review by the Port. The Port Director of STIA, Gina
18 Marie Lindsay, testified this process would likely get underway in the next several years,
- 19 • The Port's portion of the Part 150 Noise Compatibility Program. While this is a FAA-
20 authorized activity, the testimony outlined the Port's role in approving a plan for FAA
21 consideration. The Port decisions will be subject to SEPA requirements. The scope of this
22 review includes consideration of noise impacts on affected schools. The Port has a well-
23 established track record of conducting Part 150 review at regular intervals, and is currently
24 collecting data for the Part 150 process now underway.
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- 1 • Port Review and Action Mandated by the FAA in its Record of Decision. This will be
2 required prior to 2010 and must include a review of the "adequacy, accuracy, and validity of
3 the final statement." Under the terms of the ROD, "if this review identifies additional
4 significant adverse environmental impacts, the Port will be required to adopt further noise
5 and land use measures designed to minimize any significant adverse effects found in that
6 evaluation."
- 7 • Supplemental Environmental Review for Projects Not Underway by June 2000. Because
8 many of the Master Plan Update improvements will not be initiated until after the year 2000,
9 it is likely that a new or updated environmental analysis will occur to cover these projects.
- 10 • Air Quality Conformity Review. Air quality conformity is required under state law (although
11 the state is applying the duties of the federal Clean Air Act, which have been delegated to the
12 state and regional agencies.) Under federal law, any action in the Port's Master Plan Update
13 which is not commenced within five years must undergo environmental review again.
- 14 • NPDES Permit Renewal Process. Although not directly included in the ACC appeal, the
15 future SEPA review will include consideration of stormwater and water quality impacts
16 associated with the Master Plan Update, as the Port must every five years submit a detailed
17 application for renewal. WAC 173-220-180 (1), (2).

19 II. CONCLUSIONS OF LAW

20 Conclusions Relating to the Appeal of the Port Commissioners' Decisions.

- 21 1. In Case Nos. 96-2-20357-2KNT and 97-2-13908-2KNT, the Coalition is challenging
22 the legislative decisions of the Port Commissioners adopting Port Resolution 3212 and Port
23 Resolution 3245. The adoption of these two resolutions were legislative decisions reviewable only
24 under a constitutional writ of review.

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1 2. Under a constitutional writ, the Court's review is limited to a determination of
2 whether the Port Commissioners' legislative actions were arbitrary and capricious or illegal. Under
3 the arbitrary and capricious standard of review, the Coalition must show that the Port's action was
4 willful and unreasoning, taken without regard to or consideration of the facts and circumstances
5 surrounding the action. An action by an agency is not arbitrary and capricious when there is room
6 for two opinions, even though a reviewing court may believe it to be erroneous, if taken after due
7 consideration.

8 3. The Coalition claims that the Port has a legal duty under the GMA to comply with
9 each individual comprehensive plan of the Coalition cities. The Coalition relies exclusively on the
10 procedural criteria enacted by the state Department of Community Trade and Economic
11 Development ("CTED") at WAC ch. 365-195 in making this argument. Chapter 36.70A RCW sets
12 forth the planning requirements for cities and counties subject to GMA. The GMA statute does not
13 contain any requirement that port districts comply with local comprehensive plans, and there are no
14 planning or compliance requirements in Chapter 36.70A RCW for special districts, including port
15 districts.

16 4. For reasons set forth in a separate Memorandum Ruling entered this day, the Court
17 has concluded that even if WAC Ch. 365-195 were read to apply to the Port, its provisions in fact
18 undercut the challenges by the ACC to the Port's actions.

19 5. In the 1990 legislative session, the Washington Legislature passed a provision for
20 inclusion in Chapter 36.70A RCW that would apply GMA plan consistency requirements to special
21 districts. 1990 Wash. Laws, 1990 1st Ex. Sess. Ch. 17, § 18. This provision explicitly exempted port
22 districts from its requirements. The Governor vetoed this provision, in part because it did not apply
23 GMA plan consistency requirements to port districts. The Legislature had intended that the GMA's
24 requirements not extend to port districts. The Governor's veto does not and cannot act as an
25 affirmative enactment of the philosophy or rationale behind his veto. The Court's decision in this
26 case is therefore based on its reading of the law apart from this legislation and veto.

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1 6. Petitioners suggest that the legally binding nature of the CTED procedural criteria is
2 demonstrated by their use by the Growth Management Hearings Board. However, the Board
3 decisions show that the Board has consistently held that the procedural criteria are "purely advisory"
4 and have no regulatory effect. See, West Seattle Defense Fund v. Seattle, CPSGMHB Case No. 96-
5 3-0003 (Final Decision and Order March 24, 1997); Children's Alliance v. Bellevue, CPSGMHB
6 Case No. 95-3-0011 (Order Granting Dispositive Motion); Pilchuck v. Snohomish County,
7 CPSGMHB Case No. 95-3-0047 (Final Decision and Order December 6, 1995).

8 **Conclusions of Law Regarding 47.80.030(3).**

9 7. While the GMA does not contain any legally binding provisions governing port
10 districts as port districts, a portion of the GMA does apply to major transportation projects.
11 irrespective of what type of agency is the project sponsor. In particular, RCW 47.80.030(3) provides
12 that:

13 (3) All transportation projects, programs and transportation management measures within the
14 region that have an impact upon regional facilities or services must be consistent with the
plan and with the adopted regional growth and transportation strategies.

15 The "plan" referred to in this case is the Regional Transportation Plan ("RTP") adopted by
16 PSRC. The "adopted regional growth and transportation strategies" in this case refers to the
17 general policies in VISION 2020, also adopted by the PSRC, of which the RTP is a part.
18 Therefore, RCW 47.80.030(3) requires that a project such as the STIA expansion, which is a
19 transportation project with impacts upon regional facilities or services, must be consistent
20 with the RTP and with VISION 2020.

21 8. The Port's Master Plan Update development actions are consistent with the
22 RTP. Plans for a third runway at STIA are expressly incorporated into the RTP, if the Port
23 agrees to the additional mitigation measures specified by the PSRC. In Resolution 3212, and
24 again in Resolution 3245, the Port committed to those mitigation measures.

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26 FINDINGS OF FACT AND CONCLUSIONS OF LAW - 31

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1 9. The Court has reviewed the broad, general planning policies of VISION 2020.
2 including the policies regarding the siting of essential public facilities (RF-3 and RF-3.3)
3 although the Court recognizes that these policies are not to be read in isolation from all other
4 applicable policies in VISION 2020. The Court has also thoroughly reviewed the Port
5 decisions in Resolution 3212 and Resolution 3245, including the mitigation committed to by
6 the Port in those resolutions and elsewhere, and the mitigation required under federal law.
7 The Port decisions appropriately considered the range of additional local, state and federal
8 permitting requirements, as authorized by RCW 36.70A.420. The Coalition has not shown
9 that the Port Commissioners' decision violates RCW 47.80.030(3) or is inconsistent with
10 either the RTP or VISION 2020.

11 10. Based on the record before the Court and the mitigation to which the Port has
12 committed, the Coalition has not met its burden of proving that the Port Commissioners
13 adoption of Resolutions 3212 and 3245 was either arbitrary and capricious or illegal.

14 **Conclusions Regarding the Growth Management Hearings Board Decision.**

15 11. The Court also is reviewing a final decision and order of the Central Puget
16 Sound Growth Management Hearings Board under the Washington Administrative
17 Procedures Act ("APA"). That case is King County Case No. 97-2-22276-1KNT.

18 12. Under the APA, the Coalition has the burden of proving that (1) the Board
19 erroneously interpreted or applied the law, (2) the GMA Board's FDO is not supported by
20 substantial evidence, or (3) the GMA Board's FDO is arbitrary or capricious. RCW
21 34.05.570(3).

22 13. The substantial evidence standard is a deferential standard of review that
23 requires the Court to view the evidence in the light most favorable to the party prevailing in
24 the highest forum that has fact-finding authority. Freeburg v. Seattle, 71 Wn. App. 367, 371,
25 859 P.2d 610 (1993). The substantial evidence test requires that the Court accept the fact
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1 finder's views regarding the weight to be given competing inferences from the evidence.
2 Department of Corrections v. Kennewick, 86 Wn. App. 521, 529-30, 937 P.2d 1119 (1997).

3 14. On purely legal matters, the Court should give considerable deference to the
4 Board's interpretation of the law, if it is an area in which the Board has special expertise.
5 Northwest Steelhead & Salmon Council v. Department of Fisheries, 78 Wn. App. 778, 786-
6 87, 896 P.2d 1292 (1995); Peter Schroeder Architects v. Bellevue, 83 Wn. App. 188, 191,
7 920 P.2d 1216 (1996). Because the Board is the expert agency created by the Legislature to
8 determine issues of GMA compliance, the Board's legal interpretation of any ambiguous
9 GMA provisions should be given substantial deference by the Court. King County v.
10 Central Puget Sound Growth Management Hearings Board, ___ Wn. App. ___, 951 P.2d
11 1151, 1157 (March 2, 1998).

12 15. Under the arbitrary and capricious standard, the Coalition must show that the
13 challenged agency action was willful and unreasoning, taken without regard to or
14 consideration of the facts and circumstances surrounding the action. Saldin Securities, Inc. v.
15 Snohomish County, 134 Wn.2d 288, 296, 949 P.2d 370 (1998). An action by an agency is
16 not arbitrary and capricious where there is room for two opinions, even if a reviewing court
17 believes it to be erroneous. Abbenhaus v. Yakima, 89 Wn.2d 855, 858-59, 576 P.2d 888
18 (1978).

19 16. The Board correctly ruled that the requirements of RCW 36.70A.200(2) apply
20 to all essential public facilities (EPFs), whether or not the EPF was in existence prior to the
21 GMA. The Board also correctly determined that STIA was an EPF subject to the protections
22 granted by RCW 36.70A.200. The GMA refers simply to essential public facilities, which
23 include airports, not to "proposed" or "future" or "new" essential public facilities. This plain
24 language employed in RCW 36.70A.200 provided the GMA Board with no basis for
25 distinguishing between existing and future EPFs
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FINDINGS OF FACT AND CONCLUSIONS OF LAW - 33

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1 17. The Board did not deviate from, or violate, any statutory rule of construction
2 when it decided that RCW 36.70A.200 protects all EPFs, including those existing prior to the
3 enactment of the GMA.

4 18. The Board's classification of STIA, and its proposed expansion as an EPF, did
5 not require retroactive application of the GMA. Bavless v. Community College Dist.
6 No. XIX, 84 Wn. App. 309, 315, 927 P.2d 254 (1996). The key time for application of RCW
7 36.70A.300 was not when STIA first came into existence, but when the City of Des Moines
8 amended its GMA plan.

9 19. The Board properly construed RCW 36.70A.200(2) to prohibit local
10 preclusion of activities necessary to construct and operate an EPF. The legislative purpose of
11 RCW 36.70.200(2) would be defeated if local governments could prevent the siting of an
12 EPF by preventing an activity essential to the EPFs construction or operation.

13 20. Substantial evidence in the record supports the Board's determinations that (1)
14 fill dirt hauling is essential to the construction of the third runway and (2) trucks hauling fill
15 dirt will have to travel through Des Moines or other adjacent cities to reach the construction
16 site of the third runway.

17 21. The Board's jurisdiction is limited to deciding whether city and county
18 comprehensive plans and development regulations, as adopted in the abstract, comply with
19 the requirements of the GMA codified in RCW Ch. 36.70A. When comprehensive plan
20 provisions are appealed to the Board, review never relates to any specific project because
21 comprehensive plans have no regulatory effect. Citizens for Mount Vernon v. City of Mount
22 Vernon, 133 Wn.2d 861, 873, 947 P.2d 1208 (1997). In deciding whether comprehensive
23 plan policies and development regulations comply with GMA requirements, the Board
24 necessarily must consider potential consequences based upon the terms and scope of the
25 challenged local enactment.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW - 34

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1 22. The Board's discussion of and findings related to specific activities which are
2 reasonably likely to occur. The Board properly decided that the Des Moines Plan violated
3 RCW 36.70A.200(2). The exact amount of cost or delay did not have to be conclusively
4 established for the GMA Board to determine that the Des Moines Plan policies in question
5 would as drafted be capable of precluding necessary support activities, such as fill dirt
6 hauling, and directly or indirectly stopping construction of the third runway, because the
7 policies at issue in the Des Moines plan unequivocally committed the City to opposing any
8 activity supporting the expansion of STIA. The Board's holding is consistent with the
9 purpose and intent of RCW 36.70A.200, and is not arbitrary or capricious. The Board did
10 not have to wait for that plan to be so applied.

11 23. The Board properly ruled that because the Des Moines Plan had the effect of
12 making STIA expansion incapable of being accomplished by means at the Port's command,
13 it violated RCW 36.70A.200(2). Under RCW 36.70A.200(2), a city or county is not
14 permitted to "preclude" the siting of an essential public facility. The verb "preclude" means
15 to "render impossible or impracticable." Children's Alliance v. Bellevue, supra.
16 Impracticable is defined as that which cannot be accomplished by the means at the party's
17 command. Merriam Webster's Collegiate Dictionary. The Board properly determined that
18 the Port would be precluded from constructing the third runway because, under numerous
19 Des Moines Plan policies, the Port could not proceed with construction by the means at the
20 Port's command. The Board's holding is consistent with the purpose and intent of RCW
21 36.70A.200, and is not arbitrary or capricious.

22 24. Based on the record before the Board, the Board's decision in CPSGMHB case
23 97-3-0014 was not an error of law, was supported by substantial evidence, and was not
24 arbitrary and capricious.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW - 35

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1 **Conclusions Related to the Hearing Examiner Decision that the Master Plan**
2 **Update EIS and the Master Plan Update SEIS Are Legally Adequate.**

3 **General Conclusions Of Law.**

4 25. In Case No. 98-2-04911-1KNT, the Coalition has appealed the Hearing Examiner's
5 decision that the EIS and SEIS are legally adequate. EIS adequacy has been characterized as a
6 question of law. Questions of law generally are subject to a de novo standard of judicial review.
7 Leschi Improvement Council v. Washington State Highway Commission, 84 Wn.2d 271, 280-87,
8 525 P.2d 774 (1974). However, the de novo standard of review is specifically qualified by SEPA's
9 statutory requirement that agency determinations of EIS adequacy are entitled to substantial weight
10 in administrative and judicial appeals. RCW 43.21C.090. OPAL v. Adams County, 128 Wn. 2d
11 869, 913 P.2d 793 (1995).

12 26. The legal standard by which EIS adequacy must be determined is the "rule of reason."

13 27. Washington courts consistently have articulated the "rule of reason" as a "broad,
14 flexible cost-effectiveness standard." Citizens Alliance v. Auburn, 126 Wn.2d 356, 362, 894 P.2d
15 1300 (1995). Under this standard, an EIS is not to be a "compendium of every conceivable effect or
16 alternative to a proposed project." Toandos Peninsula Ass'n v. Jefferson County, 32 Wn. App. 473,
17 483, 648 P.2d 448 (1982). Rather, an EIS is required to include only a "reasonably thorough
18 discussion of the significant aspects of the probable environmental consequences" and provide
19 "sufficient information to make a reasoned decision." OPAL v. Adams County, 128 Wash. 2d at
20 875; Citizens Alliance v. Auburn, 126 Wash. 2d at 362.

21 28. Under the "rule of reason," an EIS is not required to identify or analyze impacts that
22 are "remote and speculative." Cheney v. Mountlake Terrace, 87 Wash. 2d 338, 344, 552 P.2d 184
23 (1986).

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26 FINDINGS OF FACT AND CONCLUSIONS OF LAW - 36

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1 29. The lead agency's determination that potential environmental impacts are remote or
2 speculative and need not be addressed in an EIS is entitled to substantial weight in an appeal of EIS
3 adequacy. RCW 43.21C.090. OPAL v. Adams County, supra.

4 30. Under the rule of reason, an agency has broad discretion in deciding what potential
5 mitigation measures should be included in an EIS. SWAP v. Okanogan County, supra; Robertson v.
6 Methow Valley Citizens Coun., 490 U.S. 332, 359, 109 S.Ct. 1835, 104 L.Ed.2d 351 (1989).
7 Neither SEPA nor NEPA require that an EIS include a complete or detailed mitigation plan. Id., 66
8 Wn. App. at 447.

9 31. An agency determination of the nature and extent of potential mitigation to include in
10 an EIS is entitled to substantial weight. RCW 43.21C.090. SWAP v. Okanogan County, supra, 66
11 Wn. App. at 447-448.

12 **Conclusions Of Law Relating to the Aviation Forecast Issue.**

13 32. Washington courts have followed federal NEPA cases when construing similar
14 provisions of SEPA. Eastlake Community Council v. Roanoke Associates, 82 Wn.2d 475, 488 (fn.
15 5, 513 P.2d 36 (1973).

16 33. The Port and the FAA are agencies with expertise in forecasting aviation demand and
17 should be granted deference in choosing the appropriate methodology for forecasting aviation
18 activity. City of Grapevine v. Dept. of Transportation, 17 F.3d 1502, 1507 (D.C. Cir. 1994) (court
19 deferred to the agency's expertise in choosing the appropriate way to measure noise); Seattle
20 Community Council Federation v. Federal Aviation Administration, 961 F.2d 829, 833-34 (9th Cir.
21 1992) ("[I]t is within an agency's discretion to determine which testing methods are most
22 appropriate."); Citizens Against Burlington, 9308 F.2d at 200-201 (FAA's choice of methodology to
23 measure the impacts of noise on the environment was an informed decision to which the court should
24 defer); Sierra Club v. Dept. of Transportation, 753 F.2d 120, 128 (D.C. Cir. 1985) (it is within the
25 expertise and discretion of the FAA to determine the proper method to measure airport noise);
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1 Florida Wildlife Federation v. Goldschmidt, 506 F. Supp. 350, 376-77 (1981) (the traffic forecasting
2 methodology used in an EIS was adequate where the modeling was consistent with the state of the
3 art at the time). The United States Supreme Court has agreed that a reviewing court must be its most
4 deferential when examining the decision of an expert agency which is making predictions within its
5 area of special expertise. Baltimore Gas and Electric Co. v. Natural Resources Defense Council, 462
6 U.S. 87, 103, 76 L.Ed.2d 437, 103 S.Ct. 2246 (1983).

7 34. When an agency is presented with conflicting expert opinion on an issue, it is the
8 agency's job and not the job of the reviewing appellate body, to resolve those differences. Webb v.
9 Gorsuch, 699 F.2d 157, 160 (4th Cir. 1983).

10 35. The Port and the FAA used a forecasting methodology for the SEIS that was
11 consistent with industry-accepted standards and proven reliable over time. The Master Plan Update
12 forecasts were reviewed and approved by the FAA's Northwest Mountain Region and the Forecast
13 Branch of the FAA Headquarters in Washington, D.C. The decision to measure aviation demand by
14 the aviation forecast methodology chosen is legally adequate under the rule of reason.

15 36. Under the rule of reason, the Port and FAA reasonably exercised their discretion in
16 determining that, during the planning horizon for the Master Plan Update, (a) the construction of the
17 proposed improvements, including the third runway, would not cause significant new growth in
18 aviation demand and (b) not constructing the proposed improvements would not cause significant
19 decrease in demand. Therefore, the aviation demand forecasts that served as the basis for the SEIS
20 analysis did not understate aviation activity under the With Project scenario and did not overstate
21 activity under the Do Nothing scenario.

22 37. The EISs analyzed the potential impacts of a higher aviation forecast and compared
23 these impacts to those of a constrained forecast in Appendix R to the FEIS and Appendix D to the
24 FSEIS. Based on the difficulty to reasonably conduct aviation demand forecasting beyond the year
25 2010, this analysis was sufficient under the rule of reason.

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1 38. The difference of opinion between the ACC's expert witness and the Port's expert
2 witnesses was discussed in the EISs, which allowed the decision-makers to be informed on this issue
3 prior to making their decisions. The lead agency's decision of which expert opinion to follow and
4 which forecasting methodology to adopt was legally sufficient under the rule of reason.

5 **Conclusions of Law Relating to the Lead Agency's Decision to Limit Detailed
6 Environmental Impact Analysis to the 2010 Planning Horizon.**

7 39. Under SEPA, the contents of environmental review depend on the lead agency's
8 existing planning and decision-making process, and on the time when alternatives can be most
9 meaningfully evaluated. WAC 197-11-060(2)(a)

10 40. SEPA's provisions relating to analyzing the long-term impacts of a proposal over the
11 life-time of the project must be viewed and applied in the context of related SEPA provisions such as
12 WAC 197-11-060(4), which require consideration of impacts that are "likely, not merely
13 speculative."

14 41. SEPA only requires a reasonably thorough discussion of the probable environmental
15 consequences of an agency's decision. OPAL v. Adams County, 128 Wn.2d 869, 875, 913 P.2d 793
16 (1996).

17 42. When discussing potential impacts, an EIS is only required to consider impacts that
18 are "likely, not merely speculative" and remote or speculative impacts need not be discussed.
19 WAC 197-11-060(a); Mentor v. Kitsap County, 22 Wn. App. 285, 289, 588 P.2d 1226 (1978);
20 Cheney v. Mountlake Terrace, 87 Wn.2d 338, 346, 552 P.2d 184 (1976).

21 43. The decision in the SEIS to limit the detailed analysis of impacts to the 13-year
22 planning horizon, or the year 2010, was a reasonable decision and was legally sufficient under the
23 rule of reason.

24 44. The conclusion in the SEIS that detailed analysis of environmental impacts beyond
25 the year 2010 would not be capable of meaningful evaluation was a reasonable decision and
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1 sufficient under the rule of reason, particularly given the extent to which subsequent environmental
2 review and additional mitigation, if appropriate, would take place under both state and federal
3 processes.

4 45. The purpose of SEPA was well served with the SEIS. Even though detailed
5 evaluation beyond the year 2010 was speculative and thus not likely to lead to meaningful
6 evaluation, the drafters of the SEIS included at Appendix D an extrapolated estimate of possible
7 impacts in the year 2020 in order to provide decision-makers with the analysis of possible impacts
8 through the year 2020 prior to their taking action. The confirmation in Port Resolution 3245 by the
9 Port Commissioners of the information in the EIS through the year 2020 indicates that this goal was
10 accomplished. Moreover, the discussion of the information contained in the EIS at Attachment A to
11 Resolution No. 3245 shows that SEPA's goal of providing decision-makers with information to
12 ensure an informed decision was well served in this case.

13
14 **III. ORDER**

15 Based on the foregoing Findings of Fact and Conclusions of Law, and on the Court's
16 Memorandum Ruling on Application of WAC Ch. 365-195, it is ORDERED, ADJUDGED and
17 DECREED as follows:

- 18 1. The plaintiffs' claims brought in King County Case No. 96-2-20357-2KNT, in King
19 County Case No. 97-2-13908-2KNT, in King County Case No. 97-2-22276-1KNT, and
20 in King County Case No. 98-2-04911-1KNT should be, and hereby are, DISMISSED
21 WITH PREJUDICE.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW - 40

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2. The Port of Seattle and the Central Puget Sound Growth Management Hearings Board are the prevailing parties in this action and are entitled to costs and attorney fees to the extent provided by law. The prevailing parties shall file a Cost Bill and any other appropriate documentation and briefing related thereto within ten days of receipt of this order.

DATED this 9th day of July, 1998.



HON. ROBERT H. ALSDORF
Superior Court Judge

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