

Mark C. Rutzick, P.C.

ATTORNEY AT LAW  
870 Pioneer Tower  
888 S.W. Fifth Avenue  
Portland, Oregon 97204

PHONE: (503) 243-2710 • FAX: (503) 243-2717 • E-MAIL: RUTZICKPC@AOL.COM

Mark C. Rutzick  
Admitted to practice in  
Oregon, Washington and New York

June 11, 2001

RE:

JUN 12 2001

Stoel Rives LLP

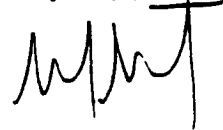
Ms. Cathy Catterson  
Clerk, U.S. Court of Appeals  
for the Ninth Circuit  
95 Seventh Street  
San Francisco, California 94103-1526

Re: *Airport Communities Coalition, et al. v. Federal Aviation Administration and Port of Seattle*, No. 00-70848

Dear Ms. Catterson:

Enclosed for filing are the original and four copies of Petitioners' Motion for Voluntary Dismissal. Counsel for the Federal Aviation Administration and the Port of Seattle have been served.

Very truly yours,



Mark C. Rutzick

Enclosures  
cc: Counsel

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JUN 12 2001

Stoel Rives LLP

No. 00-70848

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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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AIRPORT COMMUNITIES COALITION, et al.,

Petitioners,

vs.

FEDERAL AVIATION ADMINISTRATION and PORT OF SEATTLE,

Respondents.

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PETITION FOR REVIEW OF  
FEDERAL AVIATION ADMINISTRATION ORDER

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PETITIONERS' MOTION FOR VOLUNTARY DISMISSAL

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Petitioners Airport Communities Coalition (ACC), City of Des Moines, City of Normandy Park, City of Burien, City of Federal Way, City of Tukwila, and Highline School District No. 401 move for voluntary dismissal pursuant to Fed. R. App. P. 42(b) on the ground that petitioners have achieved substantially all the relief they sought in this case through issuance of a biological opinion by the U.S. Fish and Wildlife Service (FWS) in May 2001 addressing the effects of the ongoing implementation of the Master Plan Update Development Actions (MPU) for Seattle-Tacoma International Airport on threatened Coastal/Puget Sound bull trout and endangered marbled murrelets; and by the issuance of a letter of concurrence by the National Marine Fisheries Service (NMFS) on May 31, 2001 addressing the effects of the MPU on Puget Sound chinook salmon.

Before ACC filed this case and the related pending action in the Western District of Washington, respondents Federal Aviation Administration (FAA) and Port of Seattle, Washington

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(Port of Seattle) had completely ignored their duties under the Endangered Species Act (ESA), 16 U.S.C. §§1531 et seq. They had never conducted any biological review on the bull trout and chinook salmon, and had never performed any consultation with FWS or NMFS on the bull trout, chinook salmon or marbled murrelet. They had completely disregarded the interests of endangered species as they relentlessly pushed ahead with their Third Runway project.

By filing this case and the related district court case, ACC compelled the FAA and the Port of Seattle to comply with the Endangered Species Act. The FAA prepared a biological assessment on the effect of the entire Master Plan Update actions, including the Third Runway, on all the protected species, which was then substantially revised and expanded at the request of the wildlife agencies – exactly as ACC had demanded. The FAA enlarged the “action area” it studied in the biological assessment to encompass the terrestrial, estuarine and near-shore marine environments in the watersheds near the airfield – exactly as ACC had demanded. On June 15, 2000, in response to ACC’s motion for a preliminary injunction in the district court case, the FAA initiated formal consultation with FWS and NMFS on the protected species – exactly as ACC had demanded. The FAA extracted from the Port of Seattle a promise to obey §7(d) of the ESA during those consultations – exactly as ACC had demanded.

The FWS biological opinion and NMFS concurrence letter contain a list of commitments by the FAA and Port to modify the Third Runway project to protect the affected species, which are incorporated as conditions of the opinion and letter. The failure of the FAA or Port to honor these commitments could trigger a reinitiation of consultation. The commitments include strict toxicity and monitoring standards in the fill dirt for the runway embankment, erosion control, sediment retention and cover practices during and after construction, compliance with the turbidity standard for Class AA waters, and improved treatment and handling of stormwater runoff at the airfield. The

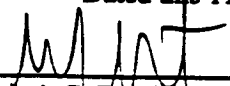
biological opinion also includes a set of 13 conservation recommendations to additionally enhance the level of protection for the species, and the concurrence letter has eight further recommendations.

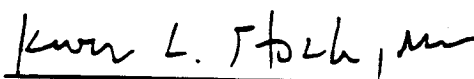
The effect of the biological opinion and concurrence letter is exactly what ACC had sought to achieve in this case and the related district court case – to provide substantial additional protections for bull trout, chinook salmon and marbled murrelets. These administrative actions have rendered this case largely moot. ACC therefore seeks voluntary dismissal of this petition under Fed. R. App. P. 42(b).

#### Conclusion

The motion for voluntary dismissal should be granted, with each party to bear its own attorney fees and costs.

Dated this 11<sup>th</sup> day of June, 2001.

  
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Mark C. Rutzick  
MARK C. RUTZICK, P.C.  
870 Pioneer Tower  
888 S.W. Fifth Avenue  
Portland, Oregon 97204  
(503) 243-2710

  
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Peter J. Eglick  
Kevin L. Stock  
HELSELL FETTERMAN LLP  
1500 Puget Sound Plaza  
1325 Fourth Avenue  
Seattle, WA 98101-2509  
(206) 292-1144  
Attorneys for Petitioners

**Certificate of Service**

I certify that on June 11, 2001 I served one copy of PETITIONERS' MOTION FOR VOLUNTARY DISMISSAL, by FedEx, to the following counsel of record:

**Kathryn E. Kovacs**  
Attorney, Appellate Section  
Environment & Natural Resources Division  
U.S. Department of Justice  
Room 8929  
601 D Street, N.W.  
Washington, D.C. 20004

**Mr. Karl B. Lewis**  
Office of Regional Counsel  
Federal Aviation Administration  
1601 Lind Avenue, SW  
Renton, WA 98055-4099

**Beth S. Ginsberg**  
Stoel Rives LLP  
600 University Street  
Suite 3600  
Seattle, WA 98101-3197

**Thomas A. Newlon**  
Traci M. Goodwin  
POS  
P.O. Box 1209  
Seattle, WA 98111

**Attorneys for Port of Seattle**

**Attorneys for Federal Aviation Administration**

  
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Mark C. Ruzick