

Allan M. Furney
24718 Marine View Drive South
Des Moines, WA 98198
August 16, 1995

Just
copy
miller
Miller

Mr. Chester Beattie, Esq.
Airport Communities Coalition
City of Des Moines
21630 11th Ave South
Des Moines, WA 98198
Re: 3rd Runway DEIS
Dear Chester:

I am enclosing a copy of a settlement agreement between Mr. and Mrs. Kludt, representing a group of Normandy Park citizens, and other parties including representatives of King County and the Washington State Highway Commission. This settlement agreement titled Stipulation and Agreement for Settlement was signed in 1974 and filed in King County Superior Court under Case No. 726259. The settlement states:

"... the parties have reached agreement on the general direction and nature of future King county hydraulic planning and construction activity in the Miller Creek Drainage Basin." ¹

The settlement agreement between local citizens, King County and the State of Washington Highway Commission places conditions on any changes made to Miller Creek affecting water quality, drainage basins, maximum flow rates, etc. The provisions of the settlement include:

1. King County and the Washington State Highway Commission recognize that serious flooding and drainage problems have existed in Miller Creek drainage basin for a number of years, that such problems will increase in the future as development increases, and King County agrees that corrective programs and drainage facilities are required and should be implemented as promptly as possible. ²

1 Stipulation and Agreement for Settlement, Kludt et ux. v. King County and State of Washington Highway Commission, King County Superior Court, Case No. 726259 (1974) p.1, line 23

2 Ibid p.2, line 13)

3. King County agrees that it has abandoned the total channelization of Miller Creek and agrees that it will not in the future attempt the channelization of Miller creek except in limited amounts in connection with retention facilities." ³

4. Plaintiffs acknowledge and recognize there are numerous possible methods of maintaining the character and quality of Miller Creek and further recognize that there are other residents and property owners in the Miller Creek basin whose views as to project design and implementation will also be considered equally by King County. Plaintiffs also recognize that the King County council will have final approval as to the design, location, scope and nature of any project in Miller Creek Drainage basin. The division of Hydraulics will, however, recommend to the King County Council and will use its best efforts to achieve the programs, concepts and agreements contained herein. ⁴

5. King County acknowledges the long term and sincere concern of numerous citizens in the Miller Creek Basin in maintaining the quality and integrity of the creek and guarantees continued solicitation of citizen input in the final selection of a design solution. ⁵ ...

10. upon approval of the sewerage general plan and obtaining the necessary financing, King county will proceed with the construction of appropriate facilities, as set forth in said plan which will:

- a. improve the water quality of Miller Creek;
- b. prevent surface water form being collected and into Miller Creek in excess of its natural capacity.
- c. maintain or improve the present character and appearance of Miller Creek. ⁶ ...

3 Ibid p.2, line 28)
4 Ibid p.3, line 1)
5 Ibid p.3, line 13)
6 Ibid p.4, line 21)

16. King county will attempt to design and construct future public works, subject to technical considerations, and regulate private projects in the Miller Creek Drainage basin so that such projects will not adversely affect the present character of Miller Creek or increase the quantity of water which flows into Miller Creek. ⁷

17. In the event this agreement is not implemented, plaintiffs may refile said action, and defendants agree not to raise any defenses based on the statute of limitations. ⁸

19. A schedule of planned implementation of this agreement shall be provided to plaintiffs within five days of the date of the agreement by King County and King county shall use its best efforts to follow said schedule and shall advise the plaintiffs concerning any possible changes in said schedule and reasons therefore. ⁹

(emphasis added)

Finally, the settlement restates there is no statute of limitations placed upon the agreement:

It is understood by all signatories that breach of the terms of this settlement may result in a refiling of the lawsuit. ¹⁰

The SeaTac Master Plan Update Draft EIS suggests plans which violate the provision of this settlement agreement. Portions of the DEIS which discuss "With Project" alternatives state:

(B) "With Project" Alternatives (Alternative 2, 3 and 4)

Under the "With Project" alternatives, approximately 98 acres of new impervious surface area and 249 acres of fill area would drain to Miller Creek. Approximately 95 acres of new impervious surface area and 299 acres of fill area would drain to Des Moines Creek.

Stormwater leaving the Airport area would be detained according to Washington State Department of Ecology standards. To meet these standards, preliminary hydrologic modeling indicated that approximately 49 acre-feet of new stormwater detention volume would be needed on-site in the Miller Creek watershed, and 43 acre-feet would be needed on-site in the Des Moines Creek watershed.

7 Ibid p.5, line 28)
8 Ibid p.6, line 1)
9 Ibid p.6, line 8)
10 Ibid p.1, line 28)

A conceptual layout of the stormwater management facilities and discharge locations is shown in Exhibit IV.10-5. Hydrologic simulations indicate the peak flow rates in Miller Creek would be slightly higher in comparison to Alternative 1 for the 10-year and 100-year return periods as listed in Table IV.10-4. At Location B, for instance, the 100-year peak flow rate was projected to increase from 293 cfs under Alternative 1 to 308 cfs under Alternatives 2, 3, or 4. Such changes in peak flow rates would not appreciably increase the potential for flooding in the creek. By providing additional detention volume, it would be feasible to match the 100 year peak flow rates for the "With Project" alternatives with those of Do-Nothing. Peak flow rates for return periods of 1, 1 1/2 years and 2 years were noted to be lower for Alternatives 2, 3, or 4 compared to those of Alternative 1 (shown in Table IV.10-7). Reducing in-stream peak flow rates to this level would decrease the future erosion potential in Miller Creek. In Des Moines Creek, in-stream peak flow rates for Alternative 2, 3, or 4 were predicted to be slightly higher for the 100-year return period compared to those of Alternative 1 (see Table IV.10-8). For the 1-year, 2-year, and 10-year return periods, flow rates predicted for Alternatives 2, 3, and 4 were less than those for Alternative 1. On-site detention, combined with diverting 66 acres of impervious surface area at SASA from the stormwater system to the industrial waste system, caused the lower peak flow rates in Des Moines Creek for these return periods. Regulating peak flow rates to the 10-year return period and more frequently occurring flows would decrease future flooding and erosion potential in Des Moines Creek.

By adding impervious and compacted fill areas to the watersheds, the "With Project" alternatives would increase the annual runoff volumes in Miller Creek and Des Moines Creek. Annual runoff volumes would be increased by 5 to 11 percent at various locations in Miller Creek and 2 percent in Des Moines Creek (Table IV.10-9). However, 80 to 92 percent of the incremental volume in Miller Creek would occur at rates less than the 1.11-year return period flow rate, and 92 to 100 percent would occur at rates less than the 2-year return period flow rate. Approximately 94 to 100 percent of the incremental volume in Des Moines Creek would occur at rates less than the 1.11-year return period flow rate, and 100 percent would occur at rates less than the 2-year return period flow rate. The 1.11-year and 2-year return period flow rates are generally considered to be responsible for defining the shape of stream channels; therefore, most of the additional volume added to the creeks would pass downstream at rates having low erosion potential.

... These relatively small changes in flow rates would not appreciably alter the existing character of these stream channels. . . .

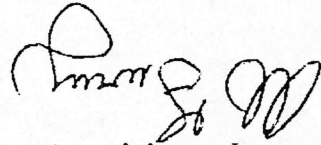
Mr. Chester Beattie, Esq.
August 16, 1995
Page 5

... Such impacts would be mitigated by implementation of an approved stormwater pollution prevention pan and erosion and sedimentation control plan, which are required conditions of the Port of Seattle NPDES permit for the Airport. These plans would be required before construction could begin and would include specific performance standards and contingency plans. 11
(emphasis added)

The existing settlement agreement, between King county, The Washington State Department of Highways and citizens thus appears to conflict with the Port's DEIS. The provisions of the settlement agreement which prohibit the channelization of Miller Creek contemplated in the DEIS, for example, seem to obviate all of the DEIS alternatives.

If the provisions of the settlement agreement are held to, the prospect of SeaTac expansion appears to be extremely difficult and probably impractical because all the alternatives disturb the Miller Creek basin to the extent that they would violate the settlement agreement. It seems necessary to identify and articulate specifically how the "With Project" alternatives in the DEIS would violate the settlement agreement. It seems from the terms of the settlement, that any similarly affected citizen would have standing as an intervenor in an action enforcing the provisions of this agreement. I am not certain if the above information has been shared recently with ACC's legal counsel, King County officials or local citizens. I do know that specific references to this settlement agreement were included in RCA's comments on the Water Quality Section of the DEIS. If you have any questions please call.

Zoomorphically yours,



Al Furney

encl: Stipulation and Agreement for Settlement, Kludt et ux. v. King County and State of Washington Highway Commission, King County Superior Court, Case No. 726259 (1974)

cc: RCAA

Cities of Burien, Des Moines and Normandy Park
Others

The: F:\Port\DEIS\950816.doc