

To: RAA

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To: RCAA

Date: 3-1-97

From:

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Attention:

Debi

Please place these in Arlene's mailbox. Thanks.

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From

WHY THE PORT OF SEATTLE'S 3RD RUNWAY EIS FAILS ADEQUATELY TO EXAMINE IMPACTS TO
WETLANDS AND PRESCRIBES INADEQUATE MITIGATION

The FAA Must Comply With Federal Requirements for the Protection of Wetlands

Every federal agency is obligated "to minimize the destruction loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities for ... providing Federally undertaken, financed, or assisted construction and improvements." ¹ Federal agencies, including the FAA, are prohibited from providing funding or other assistance for the construction of projects in wetlands unless they find "(1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use." ² Each of the Master Plan Update "With Project" proposed alternatives would affect existing wetlands. ³ "Impacts on these wetlands would include: placement of fill material, dredging, removal of existing vegetation, and changes in hydrologic regimes as a result of increase impervious surface area and stormwater management system restructuring." ⁴

Section 404 of the Clean Water Act requires that anyone proposing to discharge dredged or fill material into navigable waters must first obtain a permit from the U.S. Army Corps of Engineers ('Corps'). ⁵ "Navigable waters" are defined as "waters of the United States," ⁶ which have been interpreted by the Corps to include "wetlands." ⁷

Since construction of the proposed third runway and associated Master Plan Update development actions would affect wetlands, these projects could not be undertaken unless the FAA has affirmatively determined

- a. that there is no practicable alternative to such construction; and
- b. that the proposed action includes all practicable measures to minimize harm to wetlands which may result. ⁸

The DEIS is required to contain a discussion of the basis for any such findings, along with a discussion of the various alternatives which have been considered. ⁹ As discussed in detail elsewhere in these Comments, ¹⁰ the DEIS fails to consider a reasonable range of alternatives which would satisfy the Port's purpose and need for the proposed Airport expansion project. The DEIS, therefore, cannot legally serve as the basis for a determination that there is no practicable alternative to the use of wetlands. In particular, the failure to consider alternatives which would reduce or eliminate the use of fill would prevent the FAA from making a legally-sufficient finding.

If a legally-sufficient finding were to be made, the Port would then be required to obtain a permit pursuant to Section 404 of the Clean Water Act ¹¹ in order to dredge or fill the affected wetlands. ¹² Corps regulations state that "a permit will be granted unless the district engineer determines that it would be contrary to the public interest." ¹³

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The public interest review requires the Corps' District Engineer to evaluate all probable impacts of the proposed activity, including cumulative impacts. The factors to be considered include:

conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people.
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Other factors to be considered include the need for the project, the practicability of using other alternatives and the extent of permanent damage to the environment from the project.¹⁵ In addition to complying with Corps regulations, the District Engineer must apply EPA standards for issuance of a wetlands permit.¹⁶ Notwithstanding Corps administrative control over the application process, EPA may veto any permit approved by the Corps if the project "will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas."¹⁷

EPA's veto authority particularly is important in the context of its ability to demand an evaluation of alternatives to the issuance of a wetlands permit. EPA regulations prohibit the issuance of a wetlands permit if there exists a "practicable" alternative to the proposal.¹⁸ "An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes."¹⁹ EPA Guidelines also require that where non-water dependent activities are involved (e.g., an airport) the Corps must determine whether a 'practicable' alternative site exists which would cause less environmental harm to wetlands.²⁰ The Guidelines further provide that, if a project is not water dependent, practicable alternatives are 1) "presumed to be available;" and 2) "presumed to have less adverse impact on the aquatic ecosystem."²¹

The Port Must Comply With State and Local Wetlands Protection Measures

In addition to complying with federal permitting requirements, the Port also will have to obtain a wetlands permit from the Washington State Department of Ecology ("DOE") and the Washington Department of Fisheries and Wildlife. The Washington Growth Management Act ("GMA") provides supplemental protection to wetlands by requiring cities and counties to designate critical areas -- including wetlands -- and to issue development regulations to protect these designated areas.²² The GMA requires cities and counties to exercise control over changes in land uses, new activities, or development that potentially could adversely affect critical areas. The GMA also requires cities and counties to prohibit clearly inappropriate activities, and restrict, allow or condition other activities, as appropriate.²³

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The cities of Normandy Park and Des Moines have adopted ordinances dealing with environmentally sensitive areas which regulate and restrict development activities.²⁴ Each of these ordinances includes wetlands in the definition of environmentally sensitive areas.²⁵ Both cities restrict development in areas where "significant and important wetlands and their buffers" are located.²⁶ The cities also require that where development is allowed, buffers of 100 feet and 35 feet must be maintained for significant and important wetlands, respectively.²⁷ The cities also regulate wetlands mitigation activities, specifying the replacement ratio and the replacement location.²⁸ A similar regulatory regime is found in Tukwila's Sensitive Areas Overlay Zone.²⁹

TABLE 5.6-1 sets forth the requirements adopted by the ACC cities and the City of SeaTac with which the Port will have to comply.

TABLE 5.6-1

City	Wetlands Types	Buffers (Feet)	Required Location of Mitigation
Burien	Class 1,2,3	100, 50, 25	Section 480F. "...that the off site location is in the same drainage sub-basin as the original wetland..."
Des Moines	Significant, Important	100, 35	18.86.107 "...if the compensation project is within the same subwatershed as the wetlands or stream to be altered..."
Normandy Park	Significant, Important	100, 35	13.16.120.9.A.(ii) "...if the compensation project is in the same sub-watershed within Normandy Park city limits as the wetlands to be altered. "
Tukwila	Type 1, 2, 3	100, 50, 25	18.45.089(c)(2)(ii) "Off-site compensation shall occur within the same watershed where the wetlands loss occurred. "
SeaTac	Class I, II, III	100,50,35	15.30.320F. "...that the offsite location is in the same drainage sub-basin as the original wetland..."

Because the local wetlands requirements would affect the Port's proposed Airport expansion plans, the DEIS must discuss how the Port proposes to address those wetlands requirements.

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**The DEIS Fails Adequately to Examine Impacts on Wetlands and to
Prescribe Appropriate Mitigation**

The biological components sections of the DEIS contain insufficient analyses to support assumptions relative to either wetlands mitigation or potential impacts to federal and state-listed wildlife species. The wetlands section provides data that is inconsistent with original wetlands delineation reports and lacks any discussion of why the initial premise of the FAA Draft Advisory Circular was bypassed. Without additional studies and more accurate data the analyses provided in the DEIS cannot be relied on by a responsible official evaluating the proposed Airport expansion project.

The DEIS does not explain the rationale behind assumptions and decisions made relative to FAA Draft Advisory Circular 150/5200, Wildlife Attractants on or Near Airports. Wetlands are considered major attractants to wildlife species that are assumed to be safety hazards to airport operations. The DEIS does not discuss how the existing wetlands habitat conditions impact past, ongoing or future Airport operations- There are currently 102 acres of wetlands habitat including open-water that will remain within 4,000 feet or less of existing runways and the proposed third runway location. Strict adherence to the Draft Advisory Circular would preclude development of additional facilities at any location within 10,000 feet of existing wildlife attractants.

Ordinances enacted by Des Moines and the City of SeaTac regulating wetlands habitat modification require there be no net loss within the drainage basin of impact.³⁰ In place of the DEIS's proposed 26.5-acre wetlands mitigation in the Kent Valley, creation of 19.2 acres of palustrine forested, scrub/shrub and emergent wetlands would be required if mitigation was performed under affected city jurisdictions. The assumption that insufficient land to perform wetlands mitigation is available within the drainage of impact completely overlooks availability of over 400 acres of undeveloped land within the project boundary. The DEIS particularly overlooks Borrow Areas 1, 2, 3 and 5 for which reclamation plans, if they exist, are not disclosed in the DEIS. Use of Borrow Areas 1, 2 or 3 for wetlands mitigation would place mitigation sites 6,000 to 8,000 feet away from the planned new runway. This would be a distance factor of two to five times further away than existing wetlands habitats.

A second unsupported assumption is that wetlands mitigation in the drainage or subbasin of impact cannot be accomplished without creating additional wildlife hazards. The DEIS fails to acknowledge the Record of Decision agreed to by the Airport and FAA officials that provides onsite wetlands mitigation plans for the SASA project. The approved SASA mitigation plan proposes to relocate Des Moines Creek and create forested and scrub/shrub wetlands within 1,000 feet of Runway 34R.