

ORIGINAL

HONORABLE PETER D. JARVIS
Noting Date: December 18, 1998 at 9:00 AM

SMITH & LOWNEY, P.L.L.C.
Richard A. Poulin, Of Counsel
WSBA #27782
506 Second Avenue, Suite 1108
Seattle, Washington 98104
(206) 624-0893

Attorneys for Plaintiff

FILED
98DEC-8 PM 11:37
SUPERIOR COURT
KING COUNTY
CLERK

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

CITIZENS AGAINST SEATAC EXPANSION,)

Petitioner/Plaintiff,)

v.)

PORT OF SEATTLE,)

Respondent.)

No. 98-2-23944-1SEA

SUPPLEMENTAL DECLARATION OF
LAWRENCE CORVARI SUPPORTING
PLAINTIFF'S CONSOLIDATED
OPPOSITION BRIEF

I, Lawrence Corvari, declare as follows:

1. I declare the following to be true under penalty of perjury under the laws of the State of Washington. I declare the following from personal knowledge and am competent to testify thereto in court if necessary.

2. I am a member and Co-President of plaintiff Citizens Against Seatac Expansion, ("CASE"), an organization which, among other things, protects the local environment and communities from the impacts of Seatac Airport.

3. CASE has appealed the Port of Seattle's decision to proceed with the Auburn Mitigation Plan, and its related SEPA Determination of Non-Significance (DNS). CASE believes this litigation advances the organization's purposes of protecting the local environment and using legal means to limit the Port's adverse environmental impacts.

4. I was CASE's designated spokesperson at the November 18, 1998 deposition conducted by the Port of Seattle pursuant to CR 30(b)(6). I was prepared, at the time of the deposition, to testify at length about the various ways in which CASE and its members were injured by the Port's adoption of the Auburn Mitigation Plan and its issuance of the SEPA DNS.

5. I have read the Port's arguments supporting its "Motion to Dismiss for Lack of Standing." I believe the Port's arguments misstate and/or misconstrue my deposition testimony in several significant respects, which I would like to correct for the record. First, contrary to the Port's assertions on page 6 of its Standing Brief, I did not admit that the creation of new wetlands in Auburn would not have any material effect or impose any injury on CASE. The Port's lawyer asked me to answer "without consideration at all of filling wetlands next to the airport" (*see*, Tr. at 23, lines 22-23) and "apart from any other bigger action that you believe this is a part of." (Tr. at 24, lines 17-19). In response, I stated, "*Irrespective of the DNS*, building wetlands somewhere in Auburn has no, I believe, material effect on CASE." (Tr. at 24, lines 21-22 (emphasis added)). What I meant by that response was "Ignoring the filling of wetlands near the airport, disregarding other, bigger actions that I believe the Auburn Mitigation Project is part of, and ignoring the CASE's claims regarding the Port's adoption of the DNS, I believe building wetlands somewhere in Auburn has no material effect on CASE." I believe that is a fair reading of

the colloquy leading up to my response. In fact, I believe – and it is CASE’s position – that the Port’s building of replacement wetlands in Auburn *instead of building them in the Miller Creek or Des Moines Creek Basins* absolutely does injure CASE, its members, and the environment in the vicinity of Sea-Tac Airport. It does so by leaving the adverse environmental impacts of the wetlands destruction un-mitigated in the affected watersheds. As a result, we will have (among other things) diminished environmental quality and reduced opportunities to enjoy wildlife.

6. The Port’s Brief also misrepresents my statements concerning CASE’s claims in this litigation. The two sentences preceding footnote 23 on page 6 misleadingly summarize about two and a half pages of deposition transcript. If you read the transcript at the pages cited, it is clear that the Port’s lawyer was asking me about the potential injuries *to the environment* – not about “potential adverse impacts on CASE or any of its members” as the Brief asserts. *See*, Standing Brief at 6, lines 15-16. As discussed below, I believe there are other injuries to CASE and its members, but the Port’s lawyer did not ask me about them.

7. I also did not say – nor was I asked whether – the harms caused by filling wetlands are the “only” alleged harms on which CASE bases its claim to standing. *See*, Standing Brief at 6, text at n.24 and Tr. passage cited. The Port’s lawyer asked me a general, “summing up” question, and I gave him a general, “for the most part” answer.

8. On the top of Standing Brief page 7, the Port misleadingly omits half of the statement I agreed to. As the transcript reveals, I agreed that the Port’s decision was “to create approximately 30 acres of new wetlands on a 69-acre parcel near the Green River in Auburn, *to mitigate environmental impacts of wetlands filled as a result of the master*

plan update development actions at the SeaTac Airport.” Tr. at 11, lines 1-6 (emphasis added to indicate the part that the Port left out). As I stated repeatedly in the deposition, I believe – and it is CASE’s position – that the Auburn Mitigation Project cannot be viewed in isolation because it is directly related to the Port’s plans to fill wetlands and it is intended to mitigate those wetlands impacts.

9. During the deposition, I was surprised that the Port’s lawyer did not ask me any open-ended questions about CASE’s procedural or substantive injuries. Instead, he focused exclusively on such matters as where CASE’s members live, whether any of CASE’s members actually use the Auburn Mitigation site, and whether the actual construction of the mitigation would harm CASE or its members.

10. Of course, CASE has never argued that the mere construction of wetlands in Auburn will harm CASE or its members. Rather, the harm to CASE and its members comes from the fact that the Port is locating some of its wetlands mitigation in Auburn *instead of* in the Miller and Des Moines Creek basins, where the actual environmental damage is occurring. The Port’s approval of the plan to locate mitigation in Auburn means that there will be less mitigation of adverse environmental impacts, and thus a net increase in the amount of unmitigated harm, in the vicinity of Sea-Tac, where the vast majority of CASE’s members live. Some of these injuries are described in the Declaration of Helen Kludt, attached to CASE’s initial Petition for a Writ of Review. I was not asked about these injuries during the deposition.

11. The Port’s Decision and SEPA DNS also inflict procedural injuries on CASE. One significant procedural injury and SEPA violation is the Port’s failure to adequately evaluate the possibility of mitigating wetland habitat impacts within the Miller Creek and

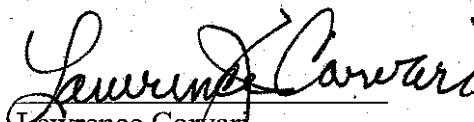
Des Moines Creek watersheds. Instead of exploring the possibility of getting an exception from the FAA's 10,000 foot advisory, and trying to find a suitable place in the impacted watersheds where wetlands habitat mitigation could safely be located, the Port simply decided to place the mitigation in Auburn.

12. Another procedural injury and SEPA violation involves the Port's premature adoption of a mitigation plan before the extent of the impacted wetlands is known. The Auburn Mitigation Plan was designed to compensate for the loss of approximately 12 acres of wetlands. But the Port has admitted that 20 acres of wetlands may be destroyed by the 3rd Runway expansion. (*See*, Wingard Dec. Exhs. 2-4). The Port has also admitted that it doesn't know the precise quantity of wetlands at issue. (*Id.*) Because of the minimum mitigation ratios imposed by the State Department of Ecology and the Army Corps of Engineers, this means that the Auburn Mitigation Plan, as designed, is not big enough to mitigate the loss of wetlands functions in the Miller and Des Moines Creek Basins.

13. The Port's lawyer did not ask me about CASE's procedural injuries in the deposition.

Declared under penalty of perjury in Seattle, Washington on this 8th day of December, 1998.

CITIZENS AGAINST SEATAC EXPANSION,
by


Lawrence Corvari
Co-President,
Citizens Against Seatac Expansion