

FILED

HONORABLE PETER D. JARVIS

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NOTING DATE: January 8, 1999, at 9:00 AM

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

CITIZENS AGAINST SEATAC EXPANSION,

Petitioner/Plaintiff,

v.

PORT OF SEATTLE,

Respondent.

No. 98-2-23944-1SEA

RESPONDENT PORT OF SEATTLE'S
MEMORANDUM SUPPORTING
PROPOSED ORDER

I. INTRODUCTION AND SUMMARY

This memorandum supports the Order Denying Respondent's Motion To Dismiss For Lack Of Standing And Staying Action proposed by respondent Port of Seattle ("Port"). The only issue is what language the Court should use in describing the length of the stay of proceedings ordered by the Court. The Court ordered a stay the proceedings in this lawsuit until the various agencies had determined how much wetland filling would be allowed for the new third runway at Seattle-Tacoma International Airport ("Airport") and how much mitigation would be provided in the affected creek basins near the Airport.

The Port's proposed order would stay all proceedings in this lawsuit until the U. S. Army Corps of Engineers ("Corps") issues a decision on the Port's application for a permit to fill wetlands pursuant to Section 404 of the Clean Water Act. As explained in more detail below, the date of the Corps' decision is the earliest date on which the parties will know (1) whether any wetland filling

PORT'S MEMORANDUM - 1

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ORIGINAL

1 will be allowed at the Airport and (2) what types and how much mitigation will take place in
2 affected creek basins near the Airport.

3 Plaintiff CASE's proposed order would stay all proceedings in this lawsuit until the Port has
4 made all Port environmental decisions required for the Section 404 permit process. The problem
5 with this proposed language is that the Port is not necessarily required to make *any* further
6 environmental decisions prior to filling wetlands at the Airport. Depending on the amount of
7 wetland fill (if any) allowed by the Corps and the mitigation required by the Corps, additional Port
8 decisions *might* be necessary. It is also possible that no new decisions by the Port will be necessary.
9 Therefore, the language suggested by CASE is completely indeterminate. On the one hand, CASE's
10 proposed order could mean there is no stay whatsoever (since the Port may not make any additional
11 decisions), and this action would commence again immediately without knowing what wetland fill
12 will be allowed and what in-basin mitigation will be provided. On the other hand, CASE's proposed
13 order could mean that the stay would last until well after the Corps' 404 decision (since the Port may
14 find it necessary to undertake additional review depending upon what the Corps decides). Neither
15 alternative would accomplish the Court's purpose – to stay this action until all parties know what
16 wetland fill will take place at the Airport and what in-basin mitigation will be provided.

17 II. DISCUSSION OF ISSUES

18 In this lawsuit, plaintiff CASE has challenged a Port decision to construct wetlands on a site
19 in Auburn near the Green River. CASE challenged that decision because CASE felt it was part of
20 the decision to fill wetlands near the Seattle-Tacoma International Airport. The construction of the
21 wetlands in Auburn will admittedly not damage CASE's members, but the filling of wetlands near
22 the Airport will arguably damage CASE's members.

23 On December 18, 1998, the Court heard oral argument on the Port's motion to dismiss
24 petitioner CASE's lawsuit for lack of standing. The Court denied the motion, because the extent of
25 the wetland filling impacts in creek basins near the Airport, and any required mitigation in the creek
26

1 basins near the Airport to mitigate for impacts caused by that wetland filling, is not known at this
2 time. The extent of wetland filling and the extent of in-basin mitigation will not be known until the
3 U. S. Army Corps of Engineers issues its decision on the Port's permit application under § 404 of the
4 Clean Water Act. The Court also determined that it is appropriate to stay all remaining proceedings
5 in this action until the pending agency actions regarding permits for wetland filling at the Airport are
6 complete. The stay would include a stay of the Port's pending motions to dismiss portions of
7 CASE's claims on ripeness grounds, to limit the scope of the administrative record, and to require
8 CASE to pay for the copying and assembly of the administrative record.

9 The Port and CASE have been unable to agree on a form of order regarding the length of the
10 stay imposed by the Court. The Port's proposed order is attached at Tab A to this memorandum.
11 The Port proposes the following language regarding the length of the stay:

12 All proceedings in this action, including the remaining motions pending before the Court, are
13 stayed until after the U. S. Army Corps of Engineers makes a final decision on the Port of
14 Seattle's permit application, pursuant to § 404 of the Clean Water Act, to fill wetlands at the
15 Seattle-Tacoma International Airport in order to construct the Master Plan Update
development actions, including wetland filling required for the proposed third air carrier
runway at the Airport.¹

16 The timeline for the stay proposed by the Port is the only appropriate timeline. As all the
17 evidence before the Court on the summary judgment motions showed, the Port has already decided
18 to fill wetlands near STIA. In order to do so, the Port must obtain a Section 404 permit from the U.
19 S. Army Corp of Engineers ("Corps"), which is the agency with plenary authority to determine if
20 any wetland filling will be allowed for the Port's third runway project, what mitigation must take
21 place to compensate for the wetland filling allowed by the Corps, and whether the mitigation of all
22 impacts to wetland functions caused by the filling allowed by the Corps must take place in the creek
23 basins near the Airport. Accordingly, until the Corps makes a decision on the Port's Section 404
24 permit application, it is not known (1) whether any wetland filling will be allowed at the Airport and
25 (2) whether all impacts from that wetland filling must be mitigated in the creek basins near the

26 ¹ Port's proposed order at p. 2, lines 18 – 22.

1 Airport. Until the Corps makes its decision on the 404 permit, it is also impossible to determine
2 whether CASE has actually suffered any legally cognizable injuries.

3 CASE proposes the following language, which makes it completely unclear how long the
4 stay would remain in place, if at all:

5 [T]he Court will also stay these proceedings, including the other pending motions in this
6 action, until the Port, as project proponent and lead agency under SEPA, completes all
7 environmental decisions with respect to the Third Runway, as necessary for administrative
8 actions under sections 401² and 404 of the Clean Water Act.³

9 The problem with CASE's proposed language is that the Port is not necessarily required to make any
10 additional environmental decisions with respect to wetland filling and the Section 404 permitting
11 process. In fact, the need for any additional environmental decisions by the Port will depend upon
12 what is decided by the Corps. As the Port's Senior Environmental Specialist Ms. Barbara Hinkle
13 explained in response to interrogatories in this action:

14 Whether any new [environmental] decisions are required in order to fill wetlands, and
15 whether the scope of the environmental impact is the same or different from that discussed in
16 the existing SEPA environmental review done by the Port for Resolution 3245, will depend
17 upon the scope of any wetland filling allowed by the Corps in the 404 permit and what
18 mitigation the Corps requires for any wetland filling authorized in the Corps' 404 permit
19 decision.

20 Detailed environmental review is being done as a part of the Corps' 404 permit process. If
21 the 404 permit process and decision show there will be changed circumstances, changed
22 impacts, or required changes to the proposal for which environmental review was done in the
23 Port's Master Plan Update Final Environmental Impact Statement (EIS) or in the Port's
24 Master Plan Update Final Supplemental Environmental Impact Statement (SEIS), the Port
25 will evaluate at that time whether the changed circumstances, changed impacts, or required
26 changes to the proposal require any additional review under SEPA by the Port.⁴

27 A copy of those interrogatory answers is attached at Tab B. As Ms. Hinkle also explained, it is
28 possible that no new formal administrative decisions will be required by the Port prior to filling
29 wetlands at the Airport, although that is impossible to determine until the Corps issues a decision on
30 the Port's 404 permit application.

31 ² Section 401 refers to conformity determination requested by the Corps from the State of
32 Washington Department of Ecology during the Corps' Section 404 permit process.

33 ³ CASE's proposed order at p. 2, lines 13 - 17.

34 ⁴ Respondent Port of Seattle's Answers to Interrogatories at p. 3, line 17 - p. 4, line 4.

1 At this time, it is not possible to determine whether any additional decisions will be required
2 from the Port in order to fill wetlands at the Airport. Depending on how many acres (if any)
3 of wetland fill is allowed by the Corps and what mitigation the Corps requires, it is possible
4 that additional decisions would be required to revise the Master Plan Update development
5 actions. It is also possible that no new decision by the Port would be required, since the
6 construction of the Master Plan Update development actions was already authorized by the
7 Commissioners in Resolution 3245.⁵

8 Thus, the timeline proposed by CASE is completely indeterminate, because it is not known whether
9 the Port will need to make additional environmental decisions regarding the proposed wetland filling
10 at the Airport.

11 The first date upon which this Court will know whether any wetland filling will be allowed
12 near the Airport, and what mitigation will take place in affected basins near the Airport, is the date
13 when the Corps issues a decision on the 404 permit application. As the evidence before the Court on
14 the summary judgment motions showed, the Port may begin construction of the Auburn mitigation
15 project in spring/summer 1999, before a Corps' 404 permit decision is issued. This construction will
16 not affect the U. S. Army Corps of Engineers' independent decision on the Port's proposed 404
17 permit application. In its decision, the Corps will determine, pursuant to the mitigation requirements
18 in the Corps' regulations, whether mitigation for all impacted wetland functions should be mitigated
19 near the Airport or whether some mitigation can occur at locations more distant from the Airport.

20 If the Corps decides that mitigation must be provided near the Airport for all impacted
21 wetland functions, the Port will have to decide whether the Auburn site will be used for "extra"
22 mitigation, over and above what the Corps requires, or whether the Auburn site should be used for
23 another purpose (e.g., possible mitigation for another project). If the Corps decides that some
24 mitigation may be provided outside the basins near the Airport, then the Corps could allow the Port's
25 Auburn site to be utilized as part of the mitigation for filling wetlands near the Airport. After the
26 Corps' 404 permit decision, if CASE feels the Corps decision is inappropriate (including the amount
of in-basin mitigation required by the Corps decision), CASE may challenge that decision in court.

⁵ Respondent Port of Seattle's Answers to Interrogatories at p. 3, lines 3 – 9.

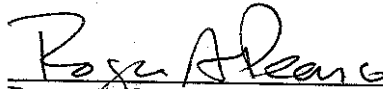
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III. CONCLUSION

The Port's proposed order fully addresses the Court's concerns and accurately reflects the Court's oral ruling, because the date of the Corps' decision on the Port's 404 permit application is the first date when we will know what wetland filling will be allowed at the Airport and how much mitigation will be provided in the affected creek basins near the Airport.

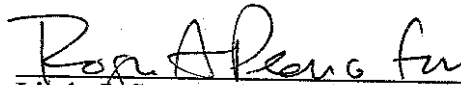
DATED this 6th day of January, 1999.

FOSTER PEPPER & SHEFELMAN PLLC



Roger A. Pearce, WSBA No. 21113
J. Tayloe Washburn, WSBA No. 13676

PORT OF SEATTLE



Linda D. Strout, General Counsel, WSBA No. 9422
Traci M. Goodwin, Senior Port Counsel, WSBA No. 14974
Attorneys for respondent Port of Seattle

A

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

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

CITIZENS AGAINST SEATAC EXPANSION,

Petitioner/Plaintiff,

v.

PORT OF SEATTLE,

Respondent.

No. 98-2-23944-1SEA

ORDER DENYING RESPONDENT'S
MOTION TO DISMISS FOR LACK OF
STANDING AND STAYING ACTION

This matter came before the Court on the Respondent Port Of Seattle's Motion To Dismiss For Lack Of Standing and on Respondent Port Of Seattle's Motion For Initial Hearing. The Court read and reviewed the respondent's motions, the Declaration Of Michael Feldman Supporting Respondent Port Of Seattle's Motions For Initial Hearing, the Declaration Of Roger Pearce Supporting Port Of Seattle's Motion To Dismiss For Lack of Standing, the Plaintiff Citizens Against Seatac Expansion's Consolidated Memorandum In Response To Respondent's Motions For Initial Hearing And Motion To Dismiss For Lack Of Standing, the Supplemental Declaration Of Lawrence Corvari Supporting Plaintiff's Consolidated Opposition Brief, the Declaration Of Greg Wingard Supporting Plaintiff's Consolidated Opposition Brief, the Declaration of Richard A. Poulin Supporting Plaintiff's Consolidated Opposition Brief, Respondent Port Of Seattle's Consolidated Reply Memorandum Supporting Motions For Initial Hearing And Motion To Dismiss For Lack Of Standing, and the Declaration Of Barbara Hinkle Supporting Port Of Seattle's Reply Memorandum.

ORDER - 1

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1 The Court finds that the Port's decision challenged in this action -- the Final Determination
2 Of Nonsignificance And Notice Of Decision regarding the creation of replacement wetlands in the
3 City of Auburn -- is interrelated to other decisions occurring at the Seattle-Tacoma International
4 Airport (Airport) regarding the proposed construction of the Port's Master Plan Update development
5 actions. Because the extent of the wetland filling impacts in creek basins near the Airport, and any
6 required mitigation in the creek basins near the Airport to mitigate for impacts caused by wetland
7 filling, is not known at this time, it is incorrect to dismiss this action for lack of an actual injury. It is
8 appropriate, however, to stay all remaining proceedings in this action, including the other pending
9 motions in this action, until the pending agency actions regarding permits for wetland filling at the
10 Airport are complete. Those matters should be complete after the U. S. Army Corps of Engineers
11 makes a final decision on the Port of Seattle's permit application, pursuant to § 404 of the Clean
12 Water Act, to fill wetlands at the Seattle-Tacoma International Airport in order to construct the
13 Master Plan Update development actions, including wetland filling required for the proposed third
14 air carrier runway at the Airport.

15 Accordingly, it is ORDERED, ADJUDGED, and DECREED as follows:

16 Respondent Port Of Seattle's Motion To Dismiss For Lack Of Standing should be, and
17 hereby is, DENIED.

18 All proceedings in this action, including the remaining motions pending before the Court, are
19 stayed until after the U. S. Army Corps of Engineers makes a final decision on the Port of Seattle's
20 permit application, pursuant to § 404 of the Clean Water Act, to fill wetlands at the Seattle-Tacoma
21 International Airport in order to construct the Master Plan Update development actions, including
22 wetland filling required for the proposed third air carrier runway at the Airport.

23 DATED this _____ day of January 1999.

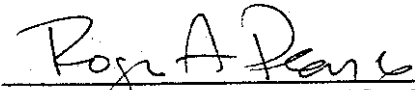
24
25 _____
26 The Honorable Peter D. Jarvis
Superior Court Judge

ORDER - 2

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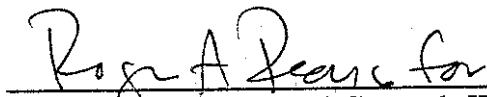
1 Presented by:

2 FOSTER PEPPER & SHEFELMAN PLLC

3 

4 Roger A. Pearce
5 Roger A. Pearce, WSBA No. 21113
6 J. Tayloe Washburn, WSBA No. 13676

7 PORT OF SEATTLE

8 

9 Linda J. Strout
10 Linda J. Strout, General Counsel, WSBA No. 9422
11 Traci M. Goodwin, Port Counsel, WSBA No. 14974

12 Attorneys for respondent Port of Seattle

B

HONORABLE PETER D. JARVIS

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

CITIZENS AGAINST SEATAC EXPANSION,

Petitioner/Plaintiff,

v.

PORT OF SEATTLE,

Respondent.

No. 98-2-23944-1SEA

RESPONDENT PORT OF SEATTLE'S
ANSWERS TO INTERROGATORIES

Respondent Port of Seattle ("Port") submits these answers to interrogatories in the above-referenced action. Pursuant to a written stipulation by the parties, the November 24 Notice Of Deposition Of Port Of Seattle's CR 30(b)(6) Representative ("Notice") has been stricken. Without waiving objections to any further discovery in this action, and without waiving any objections to further objections to further discovery on the issues discussed in these answers, the Port agreed to treat the six issues raised in the Notice as interrogatories and agreed to answer those interrogatories on an accelerated schedule so that the information would be available to respondent Citizens Against SeaTac Expansion ("CASE") by Friday December 4, 1998.

The Port objects to these interrogatories to the extent they call for answers protected by the attorney-client privilege. Issues raised in the Notice and answered herein as interrogatories are shown below in italics.

RESPONDENT PORT OF SEATTLE'S ANSWERS TO
INTERROGATORIES- 1

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1 I. *What additional actions the Port will need to take, upon receipt of a permit from the*
2 *Army Corps of Engineers under section 404 of the Clean Water Act, to authorize the draining and*
3 *filling of wetlands in the Miller Creek, Des Moines Creek, or Walker Creek Basins.*

4
5 ANSWER: On May 27, 1997, the Port Commission of the Port of Seattle passed Port
6 Resolution 3245. Resolution 3245 authorized the construction of the Port Master Plan Update
7 development actions, including the construction of a new third air carrier runway on the west side of
8 Seattle Tacoma International Airport (the "Airport"). As discussed in Resolution 3245 and the
9 accompanying appendices and environmental review, areas west of the current runways will need to
10 be filled in order to construct the new runway. This construction would include filling wetlands in
11 the construction area and relocating portions of Miller Creek along the west side of the Airport.

12 Resolution 3245 also authorized the Port staff to apply for all necessary permits to construct
13 the Master Plan Update development actions. These permits include the permitting required from
14 the U. S. Army Corps of Engineers under § 404 of the Clean Water Act. The Port has applied for
15 that 404 permit. The Corps permit process is ongoing. Because the Port is only now acquiring
16 access to properties west of the Airport on which fill is going to take place, the Port is continuing to
17 precisely identify the wetland areas necessary to be filled on the west side of the Airport. At this
18 time, no final determination has been made on the precise wetland acreage to be filled for the final
19 design of the new runway. The Port anticipates that, in the near future, it will have sufficient access
20 to properties and sufficient information to make this determination. At that time, the Port will
21 submit the updated information to the Corps. The Corps will issue a new public notice, and all
22 interested agencies and the public will have an opportunity to comment on the updated permit
23 application. After the Corps has received input from all interested agencies and the public, the Corp
24 will decide, in its discretion, (1) whether to allow filling of wetlands for the new runway and other
25 development actions at the Airport, including whether there are practicable alternatives to filling

1 wetlands at the Airport, (2) how many acres (if any) of wetland fill will be allowed at the Airport,
2 and (3) what mitigation will be required for the fill allowed by the Corps.

3 At this time, it is not possible to determine whether any additional decisions will be required
4 from the Port in order to fill wetlands at the Airport. Depending on how many acres (if any) of
5 wetland fill is allowed by the Corps and what mitigation the Corps requires, it is possible that
6 additional decisions would be required to revise the Master Plan Update development actions. It is
7 also possible that no new decision by the Port would be required, since the construction of the
8 Master Plan Update development actions was already authorized by the Commissioners in
9 Resolution 3245.

10
11 2. *What additional actions the Port will need to take, upon receipt of a permit from the*
12 *Army Corps of Engineers under section 404 of the Clean Water Act, to satisfy the requirements of*
13 *the State Environmental Protection Act (SEPA) with respect to identifying and evaluating the*
14 *potential adverse environmental impacts of draining and filling wetlands in the Miller Creek, Des*
15 *Moines Creek, or Walker Creek Basins.*

16
17 ANSWER. See answer to Interrogatory No. 1 above. Whether any new decisions are
18 required in order to fill wetlands, and whether the scope of the environmental impact is the same or
19 different from that discussed in the existing SEPA environmental review done by the Port for
20 Resolution 3245, will depend upon the scope of any wetland filling allowed by the Corps in the 404
21 permit and what mitigation the Corps requires for any wetland filling authorized in the Corps' 404
22 permit decision.

23 Detailed environmental review is being done as a part of the Corps' 404 permit process. If
24 the 404 permit process and decision show there will be changed circumstances, changed impacts, or
25 required changes to the proposal for which environmental review was done in the Port's Master Plan
26

1 Update Final Environmental Impact Statement (EIS) or in the Port's Master Plan Update Final
2 Supplemental Environmental Impact Statement (SEIS), the Port will evaluate at that time whether
3 the changed circumstances, changed impacts, or required changes to the proposal require any
4 additional review under SEPA by the Port.

5
6 3. *What additional actions will the Port need to take, upon receipt of a permit from the*
7 *Army Corps of Engineers under section 404 of the Clean Water Act, to satisfy the requirements of*
8 *SEPA with respect to mitigating any potential adverse environmental impacts of draining and filling*
9 *wetlands in the Miller Creek, Des Moines Creek, or Walker Creek Basins.*

10
11 ANSWER. See answers to Interrogatories No. 1 and No. 2 above. Whether any additional
12 SEPA review is required for mitigating the adverse environmental impacts of filling wetlands at the
13 Airport will depend upon (1) the mitigation proposed to and approved by the Corps as part of the
14 Port's 404 permit application and (2) the extent to which the impacts have already been considered
15 in previous environmental review processes. Generally, as discussed in Washington Administrative
16 Code Chapter 197-11, SEPA review is not required for the accomplishment of mitigation measures
17 unless those mitigation measures themselves involve substantial changes to the proposal causing
18 significant adverse impacts, or those mitigation measures will not be subsequently analyzed under
19 SEPA

20
21 4. *What appeal rights any aggrieved individual will have with respect to any future*
22 *actions (or decisions) the Port will need to take (or make) to drain or fill wetlands in the Miller*
23 *Creek, Des Moines Creek, or Walker Creek Basins.*

6

1 ANSWER. Generally speaking, Port actions are judicially reviewable by the Washington
2 Superior courts. The precise circumstances and bases for judicial review involve legal issues about
3 which petitioner should consult with its own legal counsel. In general terms, for agencies such as
4 the Port, agency actions that are quasi-judicial in nature are reviewable by the Superior Court
5 pursuant to RCW chapter 7.16, and agency actions that are administrative or legislative in nature are
6 reviewable by the Superior Court pursuant to a constitutional writ of review. Please also see the
7 answer to Interrogatory No. 5 below regarding potential appeals of Port SEPA determinations.

8
9 5. *What appeal rights any aggrieved individual will have with respect to any future*
10 *actions (or decisions) the Port will need to take (or make) to identify and authorize any remedial*
11 *measures needed to mitigate environmental impacts of draining and filling wetlands in the Miller*
12 *Creek, Des Moines Creek, or Walker Creek Basins.*

13
14 ANSWER. The Port provides certain administrative appeal remedies for some types of Port
15 SEPA determinations. The nature and availability of those administrative appeals varies depending
16 upon the nature of the SEPA determination made by the Port. Those administrative appeals are
17 disclosed in Port Resolution 3211, which is available from the Port's administrative offices.

18 With respect to judicial review of SEPA decisions, petitioner should consult with its legal
19 counsel. The Port refers petitioner to RCW 43.21C.075, RCW 43.21C.080, and to chapter 197-11 of
20 the Washington Administrative Code.

21
22 6. *What consideration the Port gave, in approving the out-of-basin mitigation, to the*
23 *potential adverse environmental, economic, and social impacts of performing mitigation outside the*
24 *Miller Creek, Des Moines Creek, and Walker Creek basins and the communities impacted by the*
25 *expansion of Sea-tac International Airport.*

1
2 ANSWER. In Resolution 3245 the Port identified problems with providing mitigation for
3 certain wetland functions within the creek basins near the Airport. In particular, the wetland
4 function of wildlife habitat function for birds and waterfowl is a potential problem for aircraft safety
5 when such wildlife attractants are located near an active runway. For all other wetland functions lost
6 due to the proposed wetland filling, the Port committed to provide mitigation within the creek basins
7 near the Airport. Because of the wildlife attractant problem, however, and because the FAA strongly
8 discourages location of wildlife attractants near active runways, the Port Commission in Resolution
9 3245 authorized the Port staff to execute a memorandum of understanding between the Port and the
10 City of Auburn regarding development of a wetland mitigation site in Auburn. A specific proposal
11 for development mitigation at that Auburn site has now been approved. As environmental review
12 for that action, the Port utilized the FEIS and the SEIS. As additional environmental review, the Port
13 utilized an enhanced environmental checklist that focussed particularly on the impacts at the Auburn
14 site.

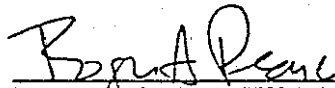
15 The impacts from wetland filling generally and from the mitigation measures pursued in
16 Auburn are discussed in the FEIS and SEIS and in the additional environmental review done for the
17 Auburn site. The particular sections of the FEIS and SEIS discussing wetland impacts and in-basin
18 versus out-of-basin mitigation are attached to the Declaration of Michael Feldman in this action.
19 Those EIS sections include FEIS chapter IV, § 11 (Wetlands), FEIS Appendix P (Natural Resource
20 Mitigation Plan), and SEIS § 5-5 (Biotic Communities, Wetlands and Floodplains). Those EIS
21 sections are too lengthy to be summarized here, but plaintiffs have been provided with copies of
22 those materials.

23 The Port wishes to emphasize that the Corps of Engineers will ultimately decide whether any
24 proposed wetland filling will be allowed at the Airport in the creek basins about which CASE has
25 expressed concerned. The Corps will also decide what mitigation is required for any wetland filling
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1 allowed by the Corps. One of the issues that has been raised in the Corps process is whether
2 mitigation for all impacted wetland functions and values should take place in the creek basins near
3 the Airport or whether some mitigation is appropriate outside those basins – especially given FAA
4 policy regarding wildlife attractants near active runways. The Port anticipates that the Corps' 404
5 permit process and the Corps' decision will fully and completely address those issues and will
6 provide even more detailed analysis than the FEIS and SEIS.

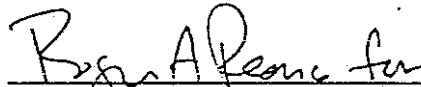
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8 SUBMITTED this 4th day of December 1998.

9 FOSTER PEPPER & SHEFELMAN PLLC

10 

11 Roger A. Pearce, WSBA No. 21113
12 J. Tayloe Washburn, WSBA No. 13676

13 PORT OF SEATTLE

14 

15 Linda Strout, General Counsel, WSBA No. 9422
16 Traci M. Goodwin, Senior Port Counsel, WSBA No. 14974

17 Attorneys for respondent Port of Seattle
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1 DECLARATION OF PORT REPRESENTATIVE

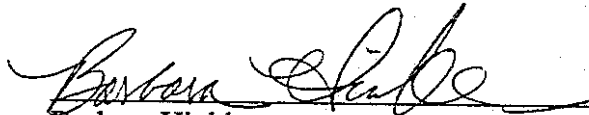
2 Barbara Hinkle declares as follows:

3 I am the representative of the Port of Seattle authorized to answer the foregoing
4 interrogatories. I have personal knowledge of the facts contained in this declaration and am
5 competent to testify to those facts.

6 I have read the answers to the foregoing interrogatories and know those answers to be true to
7 the best of my knowledge and belief.

8 I declare under the penalty of perjury under the laws of the state of Washington that the
9 foregoing is true and correct.

10 Executed at Seattle, Washington, this 7 day of December 1998.

11
12 
13 Barbara Hinkle