



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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MEMORANDUM

Date: March 17, 2017

To: Public Disclosure Commission Members

From: Phil Stutzman, Sr. Compliance Officer

Subject: 45-Day Citizen Action Complaint

Port of Tacoma Officials (John Wolfe, CEO, and Commissioners Don Johnson, Connie Bacon, Dick Marzano, Don Meyer, and Clare Petrich), Case 11701

Economic Development Board for Tacoma-Pierce County, Case 11702

Tacoma-Pierce County Chamber, Case 11703

I. Background, Complaint Allegations, Request for PDC Review, and Statutes/Rules

Background: (Related Citizen Action Complaint filed by Arthur West on June 16, 2016) On February 19, 2016, a group calling itself Save Tacoma Water (STW) filed a Committee Registration (C1-pc) with the PDC for the stated purpose of supporting a ballot proposition on the November 8, 2016 general election ballot. The registration listed Sherry Bockwinkel as its campaign manager and Donna Walters as its treasurer.

On March 7, 2016, Save Tacoma Water filed Charter Initiative 5 with the Tacoma City Clerk, and on March 11, 2016, they filed Code Initiative 6 with the Tacoma City Clerk. Both initiatives were approved as to form, and on June 30, 2016, Save Tacoma Water submitted its signatures to the Tacoma City Clerk.

Code Initiative 6 sought to have the City Council enact changes to the Tacoma Municipal Code by imposing a requirement that any land use proposal requiring water consumption of one million gallons of water or more daily from Tacoma be submitted to a public vote prior to the City providing water service for such a project. A companion measure, Charter Initiative 5, repeated all the same provisions as Code Initiative 6.

On June 6, 2016, the Port of Tacoma (Port), the Economic Development Board for Tacoma-Pierce County (EDB), and the Tacoma-Pierce County Chamber (Chamber) brought a declaratory judgment action in the Superior Court of Pierce County to determine whether the two initiatives exceeded the scope of local initiative power. On June 8, 2016, the City of Tacoma, named as a

defendant, agreed with the plaintiffs that the initiatives exceeded the scope of the City's authority.

On June 16, 2016, Arthur West filed a Citizen Action Complaint (Complaint) under RCW 42.17A.765(4) alleging that Port of Tacoma Officials violated RCW 42.17A.555 by using or authorizing the use of public facilities to oppose Tacoma Code Initiative 6 and Tacoma Charter Initiative 5. The Complaint also alleged that the Port of Tacoma, the Economic Development Board for Tacoma-Pierce County, and the Tacoma-Pierce County Chamber violated RCW 42.17A.205, .235, and .240 individually, and as a group, by failing to register and report their expenditures for legal services to oppose Initiatives 5 and 6, as political committees. Mr. West alleged that Port of Tacoma officials used the Port's facilities, and the EDB and Chamber used their respective resources, to oppose Initiatives 5 and 6 by making expenditures to file a lawsuit to keep the initiatives off the ballot.

On June 18, 2016, the Port Commission held a public meeting, and provided advance notice that it intended to take up a vote to ratify the Port's action of filing a Declaratory Judgment and Injunctive challenge of Tacoma Code Initiative 6 and Tacoma Charter Initiative 5. Port staff provided a Commission Memo which was publicly available. The Commission heard public comment, and then voted unanimously to ratify the legal action it had taken.

On July 1, 2016, Superior Court Judge Jack Nevin agreed with the Plaintiffs, enjoining placement of the initiatives on the ballot. The initiatives did not appear on the ballot.

On July 13, 2016, the Attorney General's Office (AGO) sent a letter to the Public Disclosure Commission (PDC) asking staff to review the complaint, and as appropriate, investigate the allegations. The AGO asked that the PDC send with its recommendation a complete copy of any report of investigation or materials the Commission staff compiles.

On August 8, 2016, PDC staff reported to the Commission at a Special Commission Meeting, providing a Report of Investigation with Exhibits and an Executive Summary and Staff Analysis, detailing its findings and making a recommendation to the Commission. Staff concluded that: (1) Port of Tacoma CEO John Wolfe did not violate RCW 42.17A.555 by authorizing expenditures for legal services in seeking a declaratory judgement that Tacoma Code Initiative 6 and Tacoma Charter Initiative 5 exceeded the scope of local initiative power; and (2) The Port of Tacoma, the EDB, and the Chamber did not violate RCW 42.17A.205, .235, and .240 by failing to register and report as political committees, individually, or collectively, and disclose their respective expenses for legal services.

Staff recommended that the Commission recommend to the Attorney General that that office take no further action with respect to the allegations in the Complaint. Although not alleged in the Complaint, staff concluded that the EDB's and the Chamber's legal expenses incurred in challenging Tacoma Code Initiative 6 and Tacoma Charter Initiative 5 were reportable under RCW 42.17A.255 as independent expenditure activity opposing a ballot proposition. Staff recommended that the Commission recommend to the Attorney General that that office take appropriate action concerning the EDB's and the Chamber's apparent failure to disclose those expenses on C-6 reports of independent expenditure activity.

As reflected in staff's August 9, 2016 letter to Attorney General Ferguson, the Commission, having received staff's report and recommendation, unanimously adopted a motion to return this matter to the Attorney General with no recommendation for legal action, both concerning the two alleged violations that were set out in Arthur West's June 16, 2016 complaint, and the separate additional potential violations that were raised in the staff report. In adopting this motion, Commission members stated that the Commission has noted the issues raised by the petitioner and the respondents in this matter, and discussed the need for rulemaking to provide clearer guidance to the regulated community and the public regarding what actions constitute reportable activity under RCW 42.17A concerning ballot propositions, as they are considered for placement on the ballot and at each stage thereafter. The commission expressed its intention to work with PDC staff to pursue such rulemaking, and asked that all parties to this matter plan to participate and offer input.

The Attorney General filed a lawsuit in Pierce County Superior Court against the Port of Tacoma, the EDB, and the Chamber. The lawsuit was based on the assertion that paying legal fees to determine the legality of a local ballot measure is an expenditure made in support of or in opposition to a ballot proposition. The Attorney General alleged that the EDB and the Chamber violated RCW 42.17A.255 by failing to report legal fees to challenge Initiatives 5 and 6 as independent expenditures opposing ballot propositions, and that Port of Tacoma officials violated RCW 42.17A.555 by expending public funds to challenge Initiatives 5 and 6 to oppose ballot propositions. On December 23, 2016, Pierce County Superior Court issued a ruling granting the Port, EDB, and Chamber motion to dismiss the Attorney General's complaint. On January 26, 2017, the Attorney General appealed the Court's decision.

For additional details concerning Arthur West's Complaint filed June 16, 2016, PDC Cases 6626, 6627, and 6628, please see staff's Report of Investigation (**Exhibit 1**) and staff's Executive Summary and Staff Analysis (**Exhibit 2**).

Background: (Arthur West's December 20, 2016 complaint) Arthur West requested public records from the Port of Tacoma concerning activities related to the Port's declaratory judgement action in Pierce County Superior Court that sought a ruling on whether Tacoma Code Initiative 6 and Tacoma Charter Initiative 5 exceeded the scope of local initiative power. Following receipt and review of the requested records, Mr. West filed a second Citizen Action Complaint on December 20, 2016, based on what he described as new information obtained from his public records request. In his December 20, 2016 Complaint, Mr. West alleged that the same Respondents violated the same statutes as in his June 16, 2016 Complaint, except that he based the alleged violations on what he described as "a media communications and public relations campaign," rather than on the lawsuit filed by the Respondents on June 16, 2016 (**Exhibit 3**).

Complaint Allegations: Arthur West filed a Citizen Action Complaint (Complaint) with the Attorney General and the Pierce County Prosecutor under RCW 42.17A.765(4) on December 19, 2016. He then hand-delivered a slightly amended complaint on December 20, 2016. Mr. West provided a copy of his Complaint to the PDC. His Complaint alleged that:

1. Port of Tacoma officials (John Wolfe, CEO, and Commissioners Don Johnson, Connie Bacon, Dick Marzano, Don Meyer, and Clare Petrich) violated RCW 42.17A.555 by

using the Port's facilities to oppose Tacoma Code Initiative 6 and Tacoma Charter Initiative 5. The complaint alleged that the Port officials engaged in a previously unknown media communications and public relations "Campaign" that was in addition to, and separate from, a lawsuit initiated by the Port of Tacoma, the Economic Development Board of Tacoma-Pierce County and the Tacoma-Pierce County Chamber on June 6, 2016 to request a declaratory judgment in Pierce County Superior Court to determine whether the two initiatives exceeded the scope of local initiative power.

2. The Port, the EDB, and the Chamber violated RCW 42.17A.255 by failing to report these media communications and public relations "Campaign" expenditures as Independent Expenditures on PDC form C-6; and
3. The Port, the EDB, and the Chamber violated RCW 42.17A.205, .235, and .240 by failing to register and report these expenditures as a political committee.

Request for PDC Review: On January 5, 2017, the Attorney General's Office asked PDC staff to review and possibly investigate the allegations as needed, and provide any recommendation the Commission may have.

Statutes/Rules:

RCW 42.17A.555 states, in part: "No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency. However, this does not apply to the following activities: ... (3) Activities which are part of the normal and regular conduct of the office or agency."

WAC 390-05-273 states: Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW 42.17A.555, means conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner. No local office or agency may authorize a use of public facilities for the purpose of assisting a candidate's campaign or promoting or opposing a ballot proposition, in the absence of a constitutional, charter, or statutory provision separately authorizing such use.

RCW 42.17A.005(4) "Ballot proposition" means any "measure" as defined by **RCW 29A.04.091**, or any initiative, recall, or referendum proposition proposed to be submitted to the voters of the state or any municipal corporation, political subdivision, or other voting constituency from and after the time when the proposition has been initially filed with the appropriate election officer of that constituency before its circulation for signatures.

RCW 29A.04.091 "Measure" includes any proposition or question submitted to the voters.

RCW 42.17A.005(37) defines "political committee" as "any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition."

Interpretation 07-02 "Primary Purpose Test" Guidelines The Act sets forth two alternative prongs under which an individual or organization may become a political committee and subject to the Act's reporting requirements. "'Political committee' means any person ... having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition." RCW 42.17A.005(37) Thus, a person or organization may become a political committee by either (1) expecting to receive or receiving contributions, or (2) expecting to make or making expenditures to further electoral political goals. [Footnote: We use the phrases "electoral political goals" and "electoral political activity" to convey the statutory language "support of, or opposition to, any candidate or any ballot proposition."]

A requirement of the "making expenditures" prong states that the organization making expenditures must have as its "primary or one of the primary purposes ... to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions ..."

In addition, the Interpretation states that an appropriate framework for determining whether electoral political activity is one of the organization's primary purposes should include an examination of the stated goals and mission of the organization and whether electoral political activity is a primary means of achieving the stated goals and mission during the period in question.

A nonexclusive list of analytical tools that may be used to evaluate the evidence includes:

1. The content of the stated goals and mission of the organization;
2. Whether the organization's actions further its stated goals and mission;
3. Whether the stated goals and mission of the organization would be substantially achieved by a favorable outcome in any upcoming election; and
4. Whether the organization uses means other than electoral political activity to achieve its stated goals.

RCW 42.17A.205 – Statement of organization by political committees. States in part: Every political committee shall file a statement of organization with the commission. The statement must be filed within two weeks after organization or within two weeks after the date the committee first has the expectation of receiving contributions or making expenditures in any election campaign, whichever is earlier.

RCW 42.17A.235 and 240 require continuing political committees to file timely, accurate reports of contributions and expenditures. Under the full reporting option, until five months before the general election, C-4 reports are required monthly when contributions or expenditures exceed \$200 since the last report.

RCW 42.17A.255, states in part: (1) For the purposes of this section the term "independent expenditure" means any expenditure that is made in support of or in opposition to any candidate

or ballot proposition and is not otherwise required to be reported pursuant to RCW 42.17A.220, 42.17A.235, and 42.17A.240. ... (2) Within five days after the date of making an independent expenditure that by itself or when added to all other such independent expenditures made during the same election campaign by the same person equals one hundred dollars or more, or within five days after the date of making an independent expenditure for which no reasonable estimate of monetary value is practicable, whichever occurs first, the person who made the independent expenditure shall file with the commission an initial report of all independent expenditures made during the campaign prior to and including such date.

II. Staff Investigative Review, Analysis and Conclusions

A. Staff Review of Complaint

PDC staff reviewed the following documents:

- PDC Cases 6626, 6627, and 6628 (Port of Tacoma Officials, EDB, and Chamber) for Arthur West's related Citizen Action Complaint filed June 16, 2016.
- Arthur West's December 20, 2016 Citizen Action Complaint.
- Responses received from the Port of Tacoma, the EDB, and the Chamber to Arthur West's December 20, 2016 Citizen Action Complaint.

B. PDC Staff Investigative Review Findings, Analysis, and Conclusions

First Allegation: That Port of Tacoma officials (John Wolfe, CEO, and Commissioners Don Johnson, Connie Bacon, Dick Marzano, Don Meyer, and Clare Petrich) violated RCW 42.17A.555 by using the Port's facilities to oppose Tacoma Code Initiative 6 and Tacoma Charter Initiative 5. The complaint alleged that Port officials engaged in a previously unknown media communications and public relations campaign that was in addition to, and separate from, a lawsuit initiated by the Port of Tacoma, the Economic Development Board of Tacoma-Pierce County and the Tacoma-Pierce County Chamber on June 6, 2016 to request a declaratory judgment in Pierce County Superior Court to determine whether the two initiatives exceeded the scope of local initiative power.

On February 6, 2017, Carolyn Lake responded to the December 20, 2016 Complaint on behalf of the Port of Tacoma (**Exhibit 4 – Port Response**)¹. Ms. Lake stated that when the Port, along with Co-Plaintiffs the EDB and the Chamber, decided to seek a judicial determination that both Charter Initiative 5 and Code Initiative 6 were beyond the proper scope of local initiative power, and thus invalid, they decided to develop talking points and press materials to explain to the public that the lawsuit was being filed, and why it was being filed. She said the Port also

¹ In addition to "Exhibit 4 – Port Response," this memo includes 22 additional exhibits provided by the Port with its response that are also marked Exhibit 4, but with an additional number corresponding to an exhibit reference included in the Port's response.

decided to meet with the Tacoma News Tribune to explain that a lawsuit was being filed, and why it was being filed.

Staff found that the Port developed a one-page Water Ballot Initiative Communications Plan, a two-page Water Ballot Initiative Backgrounder, one set of talking points called Potential Questions, and a one-page News Release (**Exhibit 3, Pages 7-14**). The Port also held one meeting with the Tacoma News Tribune Editorial Board on June 6, 2016, the date the judicial challenge was filed in Pierce County Superior Court. The Port's Water Ballot Initiative Communications Plan covered a one-week period, and included materials related to the judicial challenge. Its purpose was to inform the public that the Port was participating in the Declaratory Judgement lawsuit, and to explain why the Port was participating in the lawsuit.

The Water Ballot Initiative Communications Plan was one-page and stated its objective as "To communicate our request that Pierce County Superior Court declare invalid two initiatives seeking to amend the Tacoma city charter and municipal code to require a public vote on any development using 1 million or more gallons of water per day." Its key messages included:

1. The Port of Tacoma has filed a lawsuit in Pierce County Superior Court to invalidate two initiatives currently gathering signatures.
2. The two ballot initiatives seek a public vote on potential developments that would use 1 million gallons of water or more per day.
3. These initiatives, similar to ones declared invalid in other parts of the state and country, are aimed at requiring public votes on industrial developments that create economic opportunities and family-wage jobs for our community.

The Communications Plan also included a section entitled, "Situation" which stated, "A political action committee is gathering signatures to put two separate initiatives on the fall 2016 ballot. The initiatives seek to amend the Tacoma city charter and municipal code to require a public vote on any new development using 1 million gallons or more of water each day. These initiatives were in response to Northwest Innovation Works' now-canceled natural gas-to-methanol facility, but they would have much broader consequences to manufacturing, industrial and technological developments within and outside Tacoma city limits. The initiatives and the hurdles they seek to impose send a bad message to economic investors that Tacoma/Pierce County no longer welcomes economic investors and new jobs."

The Port's two-page Water Ballot Initiative Backgrounder (**Exhibit 3, Pages 9-10**) included three statements under the heading Key Points that are identical to the three statements listed in the Water Ballot Initiative Communications Plan (**Exhibit 3, Page 8**) under the heading Key Messages. The Backgrounder listed three "Legal Arguments" for filing the declaratory judgement action, and six Port objections to the initiatives. Finally, the Backgrounder included three statements about Tacoma Public Utilities, its obligation to serve water and power demand in its service territories, its supply source availability, and its average available water supply and usage per day.

The talking points, called Potential Questions, (**Exhibit 3, Pages 11-12**) provided background information, three potential questions, and three suggested responses to those questions. The three potential questions were:

1. Why doesn't the Port want a public vote on the issue?
2. Tacoma Public Utilities asked residents last summer to conserve water because of a drought. Why shouldn't industry have to cut back on its water use as well?
3. Some say Tacoma should move past its industrial history and embrace a new future.

The News Release (**Exhibit 3, Page 13**) was released on June 6, 2016 and announced the filing of the judicial challenge. Its opening paragraph stated, "**Port, EDB and Chamber file lawsuit to invalidate proposed water initiatives.** The Port of Tacoma filed a lawsuit Monday asking Pierce County Superior Court to declare invalid two proposed initiatives currently gathering signatures." The News Release also included information from the Water Ballot Initiative Communications Plan, the Water Ballot Initiative Backgrounder, and the talking points for potential questions to explain why the Port, the EDB, and the Chamber joined together to file a lawsuit "to keep the legally flawed initiatives off the ballot."

The last three points of the News Release go beyond stating that a lawsuit has been filed, and attempt to explain why the Port, EDB, and Chamber had concluded that the proposed initiatives were a flawed attempt to implement policy detrimental to Pierce County. The three points were:

1. These initiatives attempt to thwart the missions of the Port, Economic Development Board and Chamber to create jobs and economic opportunity for Pierce County.
2. More than 29,000 jobs are generated by Port activity, which also provides \$195 million per year in state and local taxes to support education, roads and police and fire protection for our community.
3. The Tacoma-Puyallup industrial subarea's 21,300 jobs make up 4 percent of the region's industrial employment. These jobs pay an average \$80,000 per year.

The Port has a history of preparing communication plans to advise the public of significant Port actions. The Port supplied several examples of Port issued press releases and "backgrounders," many of which announced the Port's role in litigation matters (**Exhibit 4, Port Response, Page 24**).

The Port's creation of a communication plan for its judicial action concerning Tacoma Initiatives 5 and 6 was consistent with its normal and regular conduct for communicating to the public significant action it undertakes.

In Case 6626, Arthur West's June 16, 2016 Complaint against Port officials, PDC staff concluded that seeking a judicial declaration concerning the validity of Tacoma Code Initiative 6 and Tacoma Charter Initiative 5 was not a prohibited use of public facilities by Port of Tacoma officials in violation of RCW 42.17A.555 because the Port's expenditures were "normal and

regular” in that that they were lawful, and usual and customary. On December 23, 2016, when Pierce County Superior Court issued its ruling granting the Port, EDB, and Chamber motion to dismiss the Attorney General’s complaint, the Court found that action to seek a judicial declaration of invalidity of proposed Tacoma Initiatives 5 and 6 was not in opposition to a campaign or ballot issues as meant in RCW 42.17A.255 or RCW 42.17A.555. The Court also found that the prohibition in RCW 42.17A.555 concerning the use of public facilities for campaign purposes (to promote or oppose a ballot proposition) does not apply to the pursuit of a judicial Declaratory Judgement Action over the validity of Tacoma Initiatives 5 and 6. The Court ruling also stated that pursuing a judicial Declaratory Judgement Action over the validity of Tacoma Initiatives 5 and 6 does not trigger the campaign reporting requirements of RCW 42.17A.255, and that Defendants Port, Chamber, and EDB did not violate the Fair Campaign Practices Act (**Exhibit 4, Port Response, Page 9**) and (**Exhibit 4 – Port Exh 1.**).

If staff had been asked by the Port to review its Water Ballot Initiative Communications Plan before it was implemented, including its Water Ballot Initiative Backgrounder, Potential Questions, News Release, and proposed visit with the Tacoma News Tribune, we may have suggested that the Port refrain from commenting on the policy merits of the proposed initiatives, including its impact on the local economy, if implemented. However, because the Communications Plan (1) focused on explaining that a lawsuit had been filed and why it had been filed, and (2) was short in duration (one week), and because, although on appeal by the Attorney General, Pierce County Superior Court has ruled that seeking a declaratory judgement challenging the validity of a ballot proposition is not a violation under RCW 42.17A.555 and the expenses of such a challenge are not reportable under RCW 42.17A.255, staff does not believe the Port’s Water Ballot Initiative Communications Plan, including its Water Ballot Initiative Backgrounder, Potential Questions, News Release, and visit with the Tacoma News Tribune, warrants enforcement action under RCW 42.17A.555 or RCW 42.17A.255.

The critical question is whether the Port’s communication plan documents went beyond stating that a lawsuit had been filed and why it had been filed, in a manner or to a degree that constituted a prohibited use of public facilities to oppose Tacoma Initiatives 5 and 6. As in Case 6626, in Case 11701, Mr. West’s December 20, 2016 Complaint against Port officials, staff has likewise concluded that creating the communication plan documents at issue in the Complaint, to explain to the public the Port’s expenditures to seek a judicial declaration concerning the validity of Tacoma Initiatives 5 and 6, including the creation of related emails, did not constitute a prohibited use of public facilities by Port of Tacoma officials in violation of RCW 42.17A.555. Staff has concluded that the Port’s expenditures to create and implement its communication plan, in this instance, were “normal and regular” in that they were lawful, and usual and customary.

Second Allegation: That the Port, the EDB, and the Chamber violated RCW 42.17A.255 by failing to report these media communications and public relations “campaign expenditures” as Independent Expenditures on PDC form C-6.

On February 7, 2017, Jason Whalen responded on behalf of the EDB (**Exhibit 5**). He stated that while the EDB was a Co-Plaintiff with the Port of Tacoma and the Chamber in seeking a judicial declaration of invalidity of proposed Tacoma Initiatives 5 and 6, the EDB did not prepare or distribute the documents included in Mr. West’s Complaint that were described as a

communication plan. Mr. Whalen stated that while the EDB ultimately received a copy of the Port's "Water Ballot Initiative Communications Plan", the "Backgrounder," explaining the basis for the legal action, and the "Water Ballot Initiative" documents in the form of emails, the EDB did not participate or engage in a "communications campaign" separate and apart from its participation in the Pierce County Legal Action. Mr. Whalen stated that no resources, other than internal staff time, were expended on internal or external communications about the lawsuit filing. Mr. Whalen acknowledged that EDB's CEO, Bruce Kendall, attended a Tacoma News Tribune editorial board briefing when the legal action was commenced, but stated that this EDB activity was solely to communicate to the public and its investors the fact of the EDB's involvement in the lawsuit, and why the lawsuit had been filed.

On February 8, 2017, Valarie Zeeck responded on behalf of the Chamber (**Exhibit 6**). She stated that her response incorporated by reference all arguments presented by the Port and the EDB. In addition, Ms. Zeeck noted that the Chamber did not make any expenditures related to the alleged media campaign, nor did it participate in the development, drafting, or editing of any of the documents attached to Mr. West's December 20, 2016 Complaint that he described as a communication plan, with the possible exception of one email that appears to be directly related to the June 6, 2016 lawsuit requesting a declaratory judgement that Tacoma Initiatives 5 and 6 were invalid.

Consistent with staff's analysis that the Port's expenditures to create and implement the communication plan at issue in the Complaint was not a prohibited use of public facilities in opposition to a campaign or ballot issue in violation of RCW 42.17A.555, staff has concluded that in Case 11701 (Port of Tacoma), the communication plan was not in opposition to a campaign or ballot issue as meant in RCW 42.17A.255, and was therefore not reportable by the Port as an Independent Expenditure under RCW 42.17A.255.

For Cases 11702 (EDB) and 11703 (Chamber), staff has concluded that because neither the EDB nor the Chamber participated in the development, drafting, or editing of any of the documents described by Mr. West as a communication plan, and because neither the EDB nor the Chamber expended any resources for the development of the communication plan, and because staff has concluded that the communication plan was not in opposition to a campaign or ballot issue as meant in RCW 42.17A.255, neither the EDB nor the Chamber have any reporting requirements under RCW 42.17A.255.

Third Allegation: That the Port, the EDB, and the Chamber violated RCW 42.17A.205, .235, and .240 by failing to register and report the communication plan expenditures as a political committee.

For the same reason that the Port is not required to report its communication plan expenditures as Independent Expenditures under RCW 42.17A.255, it has no requirement to register and report these expenditures as a political committee under RCW 42.17A.205, .235, and .240. Likewise, because the EDB and the Chamber have no reporting requirement under RCW 42.17A.255, they have no requirement to register and report as a political committee under RCW 42.17A.205, .235, and .240.

The Port of Tacoma, the EDB, and the Chamber do not meet the definition of a political committee because they are not a “receiver of contributions” in support of or in opposition to candidates or ballot propositions, and because making expenditures to support or oppose candidates or ballot propositions is not one of the primary purposes for these entities. The Port of Tacoma’s primary purpose is to operate as a special purpose public port district under Title 53 of the Revised Code of Washington, the EDB’s mission is to retain and recruit existing primary businesses in Tacoma-Pierce County, and the Chamber’s vision and goal is to secure the economic future of the local business community, and to become the go-to-organization when there are tough issues that need to be addressed locally, statewide, and nationally.

No evidence was found that the Port of Tacoma, the EDB or the Chamber has, or could, substantially achieve its stated goals and mission through a favorable outcome of an election. The Port of Tacoma does not engage in campaign activity, and the EDB and the Chamber clearly use means other than electoral political activity to achieve their respective stated goals.

III. Summary of Conclusions

A review of Mr. West’s December 20, 2016 complaint, and documentation provided by respondents Port of Tacoma, the Economic Development Board for Tacoma-Pierce County, and the Tacoma-Pierce County Chamber, did not show evidence that the Port violated RCW 42.17A.555 by using public facilities to oppose Tacoma Initiatives 5 and 6. Likewise, no evidence was found that the Port, the EDB, or the Chamber violated RCW 42.17A.255 by failing to report Independent Expenditures, or that the Port, the EDB, or the Chamber violated RCW 42.17A.205, .235, or .240 by failing to register and report as a political committee.

Based on the factors identified in staff’s investigative review and described above, staff has determined that enforcement action would not be appropriate concerning the allegations in the complaint.

IV. Recommendation

For the reasons described above, staff recommends that:

For Port of Tacoma Officials (John Wolfe, CEO, and Commissioners Don Johnson, Connie Bacon, Dick Marzano, Don Meyer, and Clare Petrich), Case 11701, the Commission find there is no apparent violation of RCW 42.17A.555 by using or authorizing the use of public facilities to create a communication plan that opposed Tacoma Initiatives 5 and 6, and recommend to the Washington Attorney General that that office take no further action with respect to this allegation in the Complaint.

Staff recognizes that the Attorney General has appealed Pierce County Superior Court’s decision to grant the Port, EDB, and Chamber motion to dismiss the Attorney General’s complaint, and that because the communication plan at issue in this complaint is part and parcel of the activities at issue in the Attorney General’s complaint against the Port, if the Attorney General’s appeal is

successful and its complaint is litigated, the Attorney General could decide to include in its lawsuit the relevant factors concerning the Port of Tacoma's communication plan.

For the Port of Tacoma, Case 11701, the Economic Development Board for Tacoma-Pierce County, Case 11702, and the Tacoma-Pierce County Chamber, Case 11703, the Commission find there is no apparent violation of RCW 42.17A.255, by failing to report the cost of a communication plan as an independent expenditure in opposition to Tacoma Initiatives 5 and 6, and recommend to the Washington Attorney General that that office take no further action with respect to this allegation in the Complaint.

For the Port of Tacoma, Case 11701, the Economic Development Board for Tacoma-Pierce County, Case 11702, and the Tacoma-Pierce County Chamber, Case 11703, the Commission find there is no apparent violation of RCW 42.17A.205, .235, and .240 by failing to register and report the cost of a communication plan as political committee expenditures in opposition to Tacoma Initiatives 5 and 6, and recommend to the Washington Attorney General that that office take no further action with respect to these allegations in the Complaint.

Investigative Review Exhibits

- Exhibit 1** Report of Investigation, PDC Cases 6626, 6627, and 6628.
- Exhibit 2** Executive Summary and Staff Analysis, PDC Cases 6626, 6627, and 6628.
- Exhibit 3** Arthur West December 20, 2016 Complaint
- Exhibit 4** Port of Tacoma Response to December 20, 2016 Complaint
- Exhibit 4 – Port Exh 1.** Order Granting Summary Judgement
- Exhibit 4 – Port Exh 2.** Transcript of EFF Thurs County Dismissal
- Exhibit 4 – Port Exh 3 & 4.** Institute for Justice Order Granting Motion for Summ Judgement
- Exhibit 4 – Port Exh 5** Port of Tacoma 6/16/16 Agenda for Water Initiative Committee Meeting
- Exhibit 4 – Port Exh 6.** Port of Tacoma Ratification of Port Legal Challenge
- Exhibit 4 – Port Exh 7.** Port of Tacoma 6/16/16 Commission Meeting Minutes
- Exhibit 4 – Port Exh 8.** Port of Tacoma 7/1/16 Order Granting Declaratory Judgement
- Exhibit 4 – Port Exh 9.** Arthur West 6/16/16 Citizen Action Complaint
- Exhibit 4 – Port Exh 10.** PDC Staff Executive Summary, Report and Exhibits (6626,6627,6628)
- Exhibit 4 – Port Exh 10. Fu** Port of Tacoma Overview
- Exhibit 4 – Port Exh 10. Fu Part 2** Port of Tacoma History, Part II

Exhibit 4 – Port Exh 11. 8/9/16 PDC staff letter to AG Robert Ferguson (6626,6627,6628)

Exhibit 4 – Port Exh 12. AG lawsuit against Port, EDB & Chamber (6626,6627,6628)

Exhibit 4 – Port Exh 13. Defendants’ Motion to Dismiss

Exhibit 4 – Port Exh 14. Defendants’ Motion to Dismiss

Exhibit 4 – Port Exh 15. Reply of Defendants in support of Motion to Dismiss

Exhibit 4 – Port Exh 16. Port Reply in Support of Port Motion to Dismiss

Exhibit 4 – Port Exh 17. Port of Tacoma Strategic Plan

Exhibit 4 – Port Exh 18. Port of Tacoma – Frederickson Industrial Area

Exhibit 4 – Port Exh 19. Port of Tacoma – Frederickson-Gateway-Winter 1988

Exhibit 4 – Port Exh 20. Port of Tacoma History, Part II

Exhibit 4 – Port Exh 21. Press Materials

Exhibit 5 EDB Response to December 20, 2016 Complaint

Exhibit 6 Chamber Response to December 20, 2016 Complaint



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

In RE COMPLIANCE WITH
RCW 42.17A

Port of Tacoma Officials (John
Wolfe, CEO) and Port of Tacoma
(6626); Economic Development
Board for Tacoma-Pierce County
(6627); and Tacoma-Pierce
County Chamber (6628)

Respondents.

PDC Case 6626, 6627, 6628

Report of Investigation

I. Background and Allegations

- 1.1 On February 19, 2016, a group calling itself "Save Tacoma Water" filed a Committee Registration (C1-pc) with the PDC for the stated purpose of supporting a ballot proposition on the November 8, 2016 general election ballot. The registration listed Sherry Bockwinkel as its campaign manager and Donna Walters as its treasurer.
- 1.2 On March 7, 2016, Save Tacoma Water filed Charter Initiative 5 with the Tacoma City Clerk, and on March 11, 2016, they filed Code Initiative 6 with the Tacoma City Clerk. Both initiatives were approved as to form, and on June 30, 2016, Save Tacoma Water submitted its signatures to the Tacoma City Clerk.
- 1.3 Code Initiative 6 sought to have the City Council enact changes to the Tacoma Municipal Code by imposing a requirement that any land use proposal requiring water consumption of one million gallons of water or more daily from Tacoma be submitted to a public vote prior to the City providing water service for such a project. A companion measure, Charter Initiative 5, repeated all the same provisions as Code Initiative 6.

- 1.4 On June 6, 2016, the Port of Tacoma, the Economic Development Board for Tacoma-Pierce County (EDB), and the Tacoma-Pierce County Chamber (Chamber) brought a declaratory judgment action in the Superior Court of Pierce County to determine whether the two initiatives exceeded the scope of local initiative power. On June 8, 2016, the City of Tacoma, named as a defendant, agreed with the plaintiffs that the initiatives exceeded the scope of the City's authority.
- 1.5 On June 16, 2016, Arthur West filed a 45-Day Citizen Action Complaint (Complaint) with the Washington State Attorney General and the Pierce County Prosecutor under RCW 42.17A.765(4). The complaint alleged that Port of Tacoma Officials may have violated RCW 42.17A.555 by using public facilities to oppose Tacoma Code Initiative 6 and Tacoma Charter Initiative 5. The complaint also alleged that the Port of Tacoma, the EDB, and the Chamber may have violated RCW 42.17A.205, .235, and .240 by failing to register and report individually, and as a group, as political committees, their expenditures for legal services to oppose Initiatives 5 and 6. **(Exhibit 1)** The 45 days under RCW 42.17A.765 expired on July 31, 2016.
- 1.6 Mr. West alleged that Port of Tacoma officials used the Port's facilities to oppose Initiatives 5 and 6 by making expenditures to file a lawsuit to keep the initiatives off the ballot.
- 1.7 On July 1, 2016, Superior Court Judge Jack Nevin agreed with the Plaintiffs, enjoining placement of the initiatives on the ballot.
- 1.8 On July 13, 2016, the Attorney General's Office (AGO) sent a letter to the Public Disclosure Commission (PDC) asking staff to review the complaint, and as appropriate, investigate the allegations. The AGO asked that the PDC send with its recommendation a complete copy of any report of investigation or materials the Commission staff compiles. **(Exhibit 2)**
- 1.9 On July 15, 2016, PDC Staff sent a copy of the complaint to the Port of Tacoma, the EDB, and the Chamber, requesting responses by July 21, 2016.
- 1.10 On July 21, 2016, the Port of Tacoma, the EDB, and the Chamber submitted written responses to the complaint. **(Exhibits 3, 4, 5 & 6)**

II. Findings

Allegation that Port of Tacoma Officials may have violated RCW 42.17A.555 by using public facilities to oppose Tacoma Charter Initiative 5 and Code Initiative 6

- 2.1 Charter Initiative 5 and Code Initiative 6 became ballot propositions on March 7, 2016 and March 11, 2016, respectively. These were the dates Save Tacoma

Report of Investigation (45-Day Citizen Action Complaint)

Port of Tacoma officials (John Wolfe, CEO) and Port of Tacoma, Case 6626

Economic Development Board for Tacoma-Pierce County, Case 6627

Tacoma-Pierce County Chamber, Case 6628

Page - 3 –

Water initially filed the propositions with the Tacoma City Clerk before they were circulated for signatures.

- 2.2 On July 21, 2016, Carolyn Lake, an attorney representing the Port of Tacoma, provided a written response to the complaint. **(Exhibits 3 & 4)**
- 2.3 The Port of Tacoma said they understood that Code Initiative 6 expressly purported to elevate the proposed Charter amendment above state law, and overrule and or disavow the U.S. Constitution, along with international, federal, and state laws that interfered with the proposed amendment. The Port said they were aware that Initiatives 5 and 6 were nearly identical to initiatives recently found to be legally invalid by being outside the scope of local initiative powers by the Washington Supreme Court in a City of Spokane case.
- 2.4 On June 6, 2016, the Port of Tacoma, along with Co-Plaintiffs the EDB and the Chamber filed a declaratory judgment lawsuit to seek a judicial determination under Washington's Uniform Declaratory Judgment Act. The lawsuit asked the Pierce County Superior Court to (1) declare that the local initiatives exceed the proper scope of local initiative powers and therefore are invalid, and (2) enjoin the Initiatives' signatures from being validated, and enjoin the initiatives from being placed on the November 2016 ballot, or adopted by the City. The Port spent approximately \$45,000 in that legal effort. **(Exhibit 3, Page 5)**
- 2.5 On June 8, 2016, the City of Tacoma filed its Answer and Cross Claims, agreeing that the Initiatives were legally defective. The City of Tacoma filed a cross claim against the Initiative sponsors within the existing lawsuit.
- 2.6 Ms. Lake stated that on June 18, 2016, the Port of Tacoma Commissioners held a properly noticed public meeting, and provided notice that the Commission intended to vote to *"ratify the Port's action of filing a Declaratory Judgment and Injunctive challenge of two proposed initiatives filed with the City of Tacoma-Charter Amendment 5 and Code Initiative 6."*
- 2.7 On July 1, 2016, the Pierce County Superior Court granted the Plaintiffs' Motion for Declaratory Judgment, finding the two Initiatives invalid and granting injunctive relief to prevent the Pierce County Auditor from placing the measures on the ballot. **(Exhibit 4, pages 13-19)**
- 2.8 The Port stated that its actions were consistent with a long list of legal cases in which public agencies have properly sought judicial review of the legal sufficiency of a proposed initiative, and noted that in no case were these actions found to violate RCW 42.17A.555. **(Exhibit 3, Pages 13 & 14)**
- 2.9 The Port asserts that they took no campaign action to influence the vote on a ballot measure, stating that the expenditures at issue were made prior to a ballot initiative campaign, and were in fact related to challenging the initiation of such a

campaign on the grounds that the ordinance was facially unconstitutional. The Port argued that their action in pursuing a legal determination from the neutral judicial system was not campaigning, but instead was consistent with the underlying purpose of Washington campaign laws to protect the integrity of the voting process. **(Exhibit 3, Page 2)**

- 2.10 RCW 53.57.030(3) states that a port development authority, in managing maritime activities, may sue and be sued. Under this authority, the Port of Tacoma filed its declaratory judgment lawsuit concerning Initiatives 5 and 6. It was also usual and customary for the Port of Tacoma to engage in litigation concerning issues that affect the Port District. From 2000-2016, the Port of Tacoma engaged in litigation in Pierce County Superior Court 66 times, King County Superior Court 6 times, Thurston County Superior Court 3 times, Lewis County Superior Court 2 times, and U.S. District Court for the Western District of Washington 15 times. **(Exhibit 7)**

Allegation that the Port of Tacoma may have violated RCW 42.17A.205, .235, and .240 by failing to register and report individually as a political committee, and with the EDB and Chamber as a group, as a political committee

- 2.11 A political committee is defined as “any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.” In addition, Interpretation 07-02 “Primary Purpose Test” Guidelines, sets forth two alternative prongs under which an individual or organization may become a political committee and subject to the Act’s reporting requirements: (1) a “receiver of contributions” prong; and (2) a “making expenditures to further electoral political contributions” prong. A requirement of the “making expenditures” prong states that the organization making expenditures must have as its “primary or one of its primary purposes ... to affect, directly or indirectly, governmental decision making by supporting opposing candidates or ballot propositions ...”
- 2.12 The Interpretation states that an appropriate framework for determining whether electoral political activity is one of the organization’s primary purposes should include an examination of the stated goals and mission of the organization and whether electoral political activity is a primary means of achieving the stated goals and mission during the period in question.
- 2.13 The interpretation states that a nonexclusive list of analytical tools that may be used to evaluate the evidence includes:
1. The content of the stated goals and mission of the organization;
 2. Whether the organization’s actions further its stated goals and mission;
 3. Whether the stated goals and mission of the organization would be substantially achieved by a favorable outcome in any upcoming election; and

4. Whether the organization uses means other than electoral political activity to achieve its stated goals.
-
- 2.14 The Port of Tacoma is a special purpose public port district that operates under Title 53 of the Revised Code of Washington, and is classified as a special purpose district. The Port is a member of The Northwest Seaport Alliance, a marine cargo operating partnership with the Port of Seattle. Five Commissioners are elected to four-year terms, and serve as the Port's board of directors. The Commission hires the CEO, sets policy and strategic direction, and approves all major expenditures. The Port put in place a 10-year strategic plan in 2012 that it updates annually. The Plan focuses on four areas: (1) Strategic investments; (2) New business opportunities; (3) Customer care; and (4) Community Pride.
 - 2.15 The Port's mission is to "Deliver prosperity by connecting customers, cargo and community with the world." The Port's core values are: (1) Integrity; (2) Customer focus; (3) Teamwork; (4) Courage; (5) Competitive spirit; and (6) Sustainability. The Port has a legislative mandate to foster economic development in Tacoma and Pierce County. The Port also owns land, and as part of its mission, leases land to tenants.
 - 2.16 The Port of Tacoma is not a "receiver of contributions" in support of, or in opposition to candidates or ballot propositions. In addition, the primary purpose of the Port of Tacoma is to operate as a special purpose port district as described in its mission and legislative mandate. There is no evidence that the primary purpose, or one of the primary purposes of the Port is to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions.
 - 2.17 In addition, PDC Interpretation 91-02 addresses legal fees related to placing, or not placing, a proposition on the ballot. It says in Statement #2, "Expenditures made by a government agency to defend its official actions related to whether or not a measure should be placed on a ballot or to the wording of a ballot title are not reportable as campaign expenditures." Although the Port of Tacoma's declaratory judgment request was not to defend the act of placing an initiative on the ballot, it appears to be similar to such an action in that the Port appears to have acted in good faith in seeking judicial review of the legal sufficiency of the proposed initiatives.
 - 2.18 The PDC has never alleged or found that a public agency whose activities supported or opposed candidates or ballot propositions was a political committee subject to the Act's reporting requirements, or that a public agency engaging in such activities was subject to independent expenditures or electioneering communications reporting requirements. Rather, the Commission has always evaluated such alleged activities by public agencies as subject to the prohibitions that are presently codified in RCW 42.17A.555.

- 2.19 No evidence was found that the Port of Tacoma was part of a joint political committee with the EDB and the Chamber. In an email received July 29, 2016, the Port of Tacoma stated that it did not pool any funds with anyone, including the EDB or the Chamber, related to the legal action taken. In addition, the Port stated that it did not have any expectation to seek contributions to pay for its legal actions concerning Charter Initiative 5 and Code Initiative 6, and that it did not consider payment of legal fees an expenditure in support of, or in opposition to, any candidate or any ballot proposition as defined in RCW 42.17A.255. **(Exhibit 10)**

Allegation that that the EDB may have violated RCW 42.17A.205, .235, and .240 by failing to register and report individually as a political committee, and with the Port of Tacoma and the Chamber as a group, as a political committee

- 2.20 On July 21, 2016, Jason Whalen, an attorney representing the EDB, provided a written response to the complaint. **(Exhibit 5)** The EDB is a private Washington non-profit corporation, actively incorporated in the State of Washington since 1977. It is not a state government agency or a local government agency subject to the prohibitions and restrictions in RCW 42.17A.555. The complaint did not allege that the EDB is a public agency subject to the prohibitions of RCW 42.17A.555.
- 2.21 The EDB has a two-prong mission: (1) retention; and (2) recruitment of existing primary businesses in Tacoma-Pierce County. The EDB's website lists its vision and mission as:
- VISION 2040:** Tacoma-Pierce County is the most attractive location in the Pacific Northwest for local, national and global business investment and job creation.
- MISSION:** COMPETE EVERY DAY FOREVER – The EDB grows primary businesses by working with its partners to spur private capital investment and job creation in Tacoma-Pierce County.
- 2.22 The EDB work plan to accomplish its stated mission is developed by a volunteer board of directors, and the work plan is executed by private staff members. The EDB's work plan is funded by its member investors, both private and public. The EDB states that it does not seek, as its primary or one of its primary purposes, to affect, directly or indirectly, governmental decision-making by supporting or opposing candidates or ballot propositions.
- 2.23 The EDB stated that because of its stated mission, it had legal standing to pursue a pre-election review of the legal sufficiency of the proposed initiatives, and joined the Port of Tacoma and the Chamber as a Co-Plaintiff in the lawsuit that sought declaratory and injunctive relief to determine whether the initiatives were beyond the proper scope of initiative power. **(Exhibit 5, Page 2)**

- 2.24 The EDB stated, "The Washington Supreme Court has held that pre-election review is proper to determine whether such local initiatives are beyond the scope of the initiative power. See e.g. *City of Port Angeles v. Our Water-Our Choice!* 170 Wn.2d 1, 239 P.3d 589 (2010). This exact issue (pre-election review of local initiatives involving water rights) was recently reaffirmed by the Washington Supreme Court in February 2016 in *Spokane Entrepreneurial Center v. Spokane Moves to Amend the Constitution*. 185 Wn.2d 97; 369 P.3d 140 (2016)." **(Exhibit 5, Page 2)**
- 2.25 The EDB stated that it spent \$9,994 from its operating budget in pursuit of a legal determination of the validity of the Initiatives. The EDB stated that they have not received, and do not expect to receive, contributions toward any electoral goals. The EDB denied that its participation as a Co-Plaintiff made then a political committee. **(Exhibit 8)**
- 2.26 The EDB acknowledged that it had concerns that the proposed initiatives, if passed, would irreparably harm the EDB's work plan and efforts to attract business to the Puget Sound region, but claimed that seeking a legal determination on a purely legal issue in which the EDB and the other Co-Plaintiffs had legal standing was a far cry from engaging in political activity that would make them a political committee subject to reporting with the PDC. **(Exhibit 5, Page 3)**
- 2.27 When applying the Primary Purpose Test Guidelines in Interpretation 07-02, it appears that EDB's actions were done to further its stated goals and mission because they were done to protect the region's business environment. It does not appear that EDB's stated goals and mission would be substantially achieved by defeating the initiatives, or by keeping the initiatives off of the ballot. The EDB uses means other than electoral political activity to achieve its stated goals.
- 2.28 No evidence was found that the EDB was part of a joint political committee with the Port of Tacoma and the Chamber. The Port of Tacoma stated that it did not pool any funds related to the legal action taken with anyone, including the EDB or the Chamber. **(Exhibit 10)**
- 2.29 Although not alleged in the complaint, PDC staff looked at whether the expenditures by the EDB to seek a declaratory judgment to keep the initiatives off of the November 2016 ballot were required to be reported as an independent expenditure. RCW 42.17A.255 requires any expenditure of \$100 or more in the aggregate made in support of or in opposition to any candidate or ballot proposition that is not otherwise required to be reported pursuant to RCW 42.17A.220, 42.17A.235, and 42.17A.240 to be reported within five days after the date of making the expenditure.

- 2.30 Charter Initiative 5 and Code Initiative 6 were ballot propositions as of March 7 and March 11, 2016, respectively. On June 6, 2016, the EDB joined the Port of Tacoma's lawsuit as a Co-Plaintiff, spending \$9,994 on this effort. While the EDB states that its expenditures were to bring an action for declaratory relief before the Pierce County Superior Court on the sole issue of whether the Initiatives were beyond the proper scope of local initiative power, it appears that the EDB's expenditures were also for the purpose of opposing Initiatives 5 and 6 at a time when they were ballot propositions, even if an active campaign had not been started. Thus it appears that the EDB's expenditures may have been required to be reported as independent expenditures, pursuant to RCW 42.17A.255.

Allegation that the Chamber may have violated RCW 42.17A.205, .235, and .240 by failing to register and report individually as a political committee, and with the Port of Tacoma and the Chamber as a group, as a political committee

- 2.31 On July 21, 2016, Valarie Zeeck, an attorney representing the Chamber, provided a written response to the complaint. The Chamber is a Washington non-profit corporation whose President and Board of Directors are selected by a process outlined in its bylaws. It is not a state government agency or a local government agency. The complaint did not allege that the Chamber is a public agency subject to the prohibitions of RCW 42.17A.555. **(Exhibit 6)**
- 2.32 The Chamber's website does not include a formal Mission Statement, but does include a message from Mr. Tom Pierson, its President and CEO. The message states:
- "In recent years, we have worked to strategically transform the Tacoma-Pierce County Chamber. Our goal is to become the go-to-organization when there are tough issues that need to be addressed locally, statewide, and nationally. We are sought after by business and government leaders, contributing to solutions that affect the business community. The results of these efforts have been significant & measurable. Our commitment to our members continues through our strategic programming and advocacy efforts."
- 2.33 The Tacoma-Pierce County Chamber's vision, goal and focus are as follows:

VISION: "is to secure the economic future of our local and business community."

FOCUS: "is to build a healthy local economy by being the Voice for Business; uniting, advocating, and supporting economic growth in Pierce County."

GOAL: "is to become the go-to-organization when tough issues need to be addressed at the local, state, and federal level. We are considered leaders among stakeholders and contribute to solutions that impact the business community."

COMMITMENT: "to you, our members, continues through our strategic programming and advocacy efforts. We encourage innovation, entrepreneurial approaches, consensus, and collaboration."

- 2.34 The Chamber stated that it does not meet the definition of a "political committee" because when it acted as a Co-Plaintiff with the Port of Tacoma and the EDB, it was not receiving contributions or making expenditures "in support of or in opposition to" political activity as contemplated by the Fair Campaign Practices Act (FCPA). It further stated that Initiatives 5 and 6 were not "ballot propositions" as defined in the FCPA. **(Exhibit 6, Pages 3 & 4)** However, as explained above, this is not correct.
- 2.35 The Chamber stated that it filed a lawsuit not to "further electoral political goals," but rather to obtain a neutral judicial determination as to whether the initiatives were lawful. The Chamber states that no reported Washington case has held that seeking a judicial determination of the validity of a ballot measure is "political activity" or constitutes "promoting an electoral political goal." **(Exhibit 6, Page 4)**
- 2.36 The Chamber stated that filing a lawsuit to determine the legality of a local initiative is not advertising, communicating with voters, campaigning, lobbying or electioneering, and stated that because the Chamber engaged in legal activity - seeking a neutral, judicial decision of a Washington State Judicial Officer - rather than attempting to sway voters or promote or oppose an issue electorally, the PDC should dismiss the Complaint. **(Exhibit 6, Page 5)**
- 2.37 The Chamber also stated that even if the Chamber was engaging in support of or opposition to the proposed initiatives, it would not meet the definition of a "political committee" because the initiatives were not ballot propositions as defined in the FCPA. The Chamber stated that its expenditures as Co-Plaintiffs occurred before there was any "ballot issue campaign" but were related to challenging the initiation of such a campaign on the grounds that the ordinance was facially unconstitutional and beyond the scope of the initiative power. **(Exhibit 6, Page 5)**
- 2.38 The Chamber stated that it has spent approximately \$10,000 in legal fees on the court action. The Chamber said it used funds from its normal operating budget to pay the fees. The Chamber said it did not seek contributions for this purpose, or have an "expectation" of making expenditures for this purpose until the illegality of the initiatives became apparent. **(Exhibit 9)**

- 2.39 When applying the Primary Purpose Test Guidelines in Interpretation 07-02, it appears that the Chamber's actions were done to further its stated goals and mission because they were done to protect the region's business environment. It does not appear that the Chamber's stated goals and mission would be substantially achieved by defeating the initiatives, or by keeping the initiatives off of the ballot. The Chamber uses means other than electoral political activity to achieve its stated goals.
- 2.40 No evidence was found that the Chamber was part of a joint political committee with the Port of Tacoma and the EDB. The Port of Tacoma stated that it did not pool any funds related to the legal action taken with anyone, including the EDB or the Chamber. **(Exhibit 10)**
- 2.41 Although not alleged in the complaint, PDC staff looked at whether the expenditures by the Chamber to seek a declaratory judgment to keep the initiatives off of the November 2016 ballot were required to be reported as an independent expenditure. RCW 42.17A.255 requires any expenditure of \$100 or more in the aggregate made in support of or in opposition to any candidate or ballot proposition that is not otherwise required to be reported pursuant to RCW 42.17A.220, 42.17A.235, and 42.17A.240 to be reported within five days after the date of making the expenditure.
- 2.42 Charter Initiative 5 and Code Initiative 6 were ballot propositions as of March 7 and March 11, 2016, respectively. On June 6, 2016, the Chamber joined the Port of Tacoma's lawsuit as a Co-Plaintiff, spending approximately \$10,000 on this effort. While the Chamber states that its expenditures were to challenge the initiation of such a campaign on the grounds that the ordinance was facially unconstitutional and beyond the scope of the initiative power, it appears that the Chamber's expenditures were also for the purpose of opposing Initiatives 5 and 6 at a time when they were ballot propositions, even if an active campaign had not been started. Thus it appears that the Chamber's expenditures may have been required to be reported as independent expenditures, pursuant to RCW 42.17A.255.

III. Scope

- 3.1 PDC staff reviewed the following documents:
- The Citizen Action Letter filed with the Attorney General's Office and the Pierce County Prosecutor by Arthur West against the Port of Tacoma, the Economic Development Board for Tacoma-Pierce County, and the Tacoma-Pierce County Chamber on June 16, 2016. **(Exhibit 1)**

- Request from the Washington State Attorney General asking the PDC to review Mr. West's 45-Day Citizen Action Complaint, received at the PDC on July 13, 2016. **(Exhibit 2)**
- Response from the Port of Tacoma, received on July 21, 2016 **(Exhibits 3 & 4)**
- Response from the Economic Development Board for Tacoma-Pierce County, dated July 21, 2016 **(Exhibit 5)**
- Response from the Tacoma-Pierce County Chamber, dated July 21, 2016 **(Exhibit 6)**
- Port of Tacoma litigation (2000-2016) **(Exhibit 7)**
- Response from the EDB about litigation costs **(Exhibit 8)**
- Response from the Chamber about litigation costs **(Exhibit 9)**
- Response from the Port of Tacoma about pooling funds, and about expenditures reportable under RCW 42.17A.255 **(Exhibit 10)**

IV. Laws

- 4.1 **RCW 42.17A.555** states in part: (1) No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency. However, this does not apply to the following activities:

(1) Action taken at an open public meeting by members of an elected legislative body or by an elected board, council, or commission of a special purpose district including, but not limited to, fire districts, public hospital districts, library districts, park districts, port districts, public utility districts, school districts, sewer districts, and water districts, to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition so long as (a) any required notice of the meeting includes the title and number of the ballot proposition, and (b) members of the legislative body, members of the board, council, or commission of the special

purpose district, or members of the public are afforded an approximately equal opportunity for the expression of an opposing view; ...

(3) Activities which are part of the normal and regular conduct of the office or agency.

- 4.2 **WAC 390-05-273** states: Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW 42.17A.555, means conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner. No local office or agency may authorize a use of public facilities for the purpose of assisting a candidate's campaign or promoting or opposing a ballot proposition, in the absence of a constitutional, charter, or statutory provision separately authorizing such use.
- 4.3 **RCW 42.17A.005(4)** "Ballot proposition" means any "measure" as defined by RCW **29A.04.091**, or any initiative, recall, or referendum proposition proposed to be submitted to the voters of the state or any municipal corporation, political subdivision, or other voting constituency from and after the time when the proposition has been initially filed with the appropriate election officer of that constituency before its circulation for signatures.
- 4.4 **RCW 29A.04.091** "Measure" includes any proposition or question submitted to the voters.
- 4.5 **RCW 42.17A.005(37)** defines "political committee" as "any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition."
- 4.6 **Interpretation 07-02 "Primary Purpose Test" Guidelines** The Act sets forth two alternative prongs under which an individual or organization may become a political committee and subject to the Act's reporting requirements. "'Political committee' means any person ... having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition." RCW 42.17A.005(37) **Thus, a person or organization may become a political committee by either (1) expecting to receive or receiving contributions, or (2) expecting to make or making expenditures to further electoral political goals.** [Footnote: We use the phrases "electoral political goals" and "electoral political activity" to convey the statutory language "support of, or opposition to, any candidate or any ballot proposition"]

A requirement of the "making expenditures" prong states that the organization making expenditures must have as its "primary or one of the primary purposes

... to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions ...”

In addition, the Interpretation states that an appropriate framework for determining whether electoral political activity is one of the organization’s primary purposes should include an examination of the stated goals and mission of the organization and whether electoral political activity is a primary means of achieving the stated goals and mission during the period in question.

A nonexclusive list of analytical tools that may be used to evaluate the evidence includes:

1. The content of the stated goals and mission of the organization;
2. Whether the organization’s actions further its stated goals and mission;
3. Whether the stated goals and mission of the organization would be substantially achieved by a favorable outcome in any upcoming election; and
4. Whether the organization uses means other than electoral political activity to achieve its stated goals.

4.7 **RCW 42.17A.205 – Statement of organization by political committees.**

States in part: Every political committee shall file a statement of organization with the commission. The statement must be filed within two weeks after organization or within two weeks after the date the committee first has the expectation of receiving contributions or making expenditures in any election campaign, whichever is earlier.

4.8 **RCW 42.17A.235 and 240** require continuing political committees to file timely, accurate reports of contributions and expenditures. Under the full reporting option, until five months before the general election, C-4 reports are required monthly when contributions or expenditures exceed \$200 since the last report.

4.9 **RCW 42.17A.255**, states in part: (1) For the purposes of this section the term "independent expenditure" means any expenditure that is made in support of or in opposition to any candidate or ballot proposition and is not otherwise required to be reported pursuant to RCW **42.17A.220**, **42.17A.235**, and **42.17A.240**. ... (2) Within five days after the date of making an independent expenditure that by itself or when added to all other such independent expenditures made during the same election campaign by the same person equals one hundred dollars or more, or within five days after the date of making an independent expenditure for which no reasonable estimate of monetary value is practicable, whichever occurs first, the person who made the independent expenditure shall file with the commission an initial report of all independent expenditures made during the campaign prior to and including such date.

4.10 **Interpretation 91-02 – Legal Fees Related to Placing, or Not Placing, a Proposition on the Ballot.**

Statement #1 Expenditures made by a person or political committee to place a measure on a ballot, to influence the wording of a ballot title or to require that a government agency place a measure on the ballot are campaign expenditures reportable under RCW 42.17A.

Statement #2 Expenditures made by a government agency to defend its official actions related to whether or not a measure should be placed on a ballot or to the wording of a ballot title are not reportable as campaign expenditures.

Discussion: The proponents of a proposed ballot measure are clearly acting to support or advance that measure when they take an action to require that it be placed before the voters. It is also in their interest to have the measure stated in terms most favorable to them. The proponents, therefore, have discretion in the action they take regarding the issue. They are also not closely bound by law in the range of actions they may take. The government agency, on the other hand, is closely regulated by law in its actions regarding measures that are presented to it. It first of all is expected to remain neutral in its approach to ballot proposals. The way in which a measure is processed is specified and the government is given little leeway in its actions. If a government agency takes an official action (e.g., to write a ballot title or to refuse to place a measure on the ballot) it must be assumed that the agency is acting in good faith. If the government action is challenged, the agency then has little or no discretion in whether to defend its action. Thus, while the agency's act may serve the ultimate end of opposing a ballot proposal, since the agency lacks discretion in the situation, it has not made a campaign expenditure as envisioned by RCW 42.17A.

Respectfully submitted this 4th day of August 2016.


Philip E. Stutzman
Sr. Compliance Officer

List of Exhibits

- Exhibit 1** 45-Day Citizen Action Complaint to the Washington State Attorney General and the Pierce County Prosecutor, from Mr. Arthur West, received June 16, 2016
- Exhibit 2** Request from Washington State Attorney General to review Arthur West's 45-Day Citizen Action Complaint, received July 13, 2016,
- Exhibit 3** Response from Port of Tacoma, received July 21, 2016
- Exhibit 4** Attachments to Port of Tacoma response, received July 21, 2016
- Exhibit 5** Response from the Economic Development Board for Tacoma-Pierce County with attachments, received July 21, 2016
- Exhibit 6** Response from the Tacoma-Pierce County Chamber, received July 21, 2016
- Exhibit 7** Port of Tacoma litigation 2000-2016
- Exhibit 8** Email from the EDB stating litigation costs
- Exhibit 9** Email from the Chamber stating litigation costs
- Exhibit 10** Email from Port of Tacoma about pooling funds, and about expenditures reportable under RCW 42.17A.255

Executive Summary and Staff Analysis
Port of Tacoma Officials (John Wolfe, CEO) & Port of Tacoma (6626)
Economic Development Board for Tacoma-Pierce County (6627)
Tacoma-Pierce County Chamber (6628)
(45-Day Citizen Action Complaint)

This summary highlights staff's findings, conclusions, and recommendations regarding the allegations contained in PDC Cases 6626, 6627, and 6628. These cases resulted from a 45-Day Citizen Action Complaint (Complaint) filed on June 16, 2016 by Arthur West with the Washington State Attorney General and the Pierce County Prosecutor. Mr. West alleged that Port of Tacoma Officials, the Port of Tacoma, the Economic Development Board for Tacoma-Pierce County (EDB), and the Tacoma-Pierce County Chamber (Chamber) may have violated RCW 42.17A.

Background

The Attorney General's Office referred the Complaint to the PDC on July 13, 2016, for investigation and possible action. On July 15, 2016, PDC staff sent a letter to the Port of Tacoma, the EDB, and the Chamber, informing the respondents that staff had opened a formal investigation, and requesting a written response. On July 21, 2016, counsel for all Respondents provided a response to the allegations. Carolyn Lake responded on behalf of Port of Tacoma officials and the Port of Tacoma (Case 6626), Jason Whalen responded on behalf of the EDB (Case 6627), and Valarie Zeeck responded on behalf of the Chamber (Case 6628).

Allegations

The Complaint alleged that Port of Tacoma Officials may have violated RCW 42.17A.555 by using public facilities to oppose Tacoma Code Initiative 6 and Tacoma Charter Initiative 5. The complaint also alleged that the Port of Tacoma, the EDB, and the Chamber may have violated RCW 42.17A.205, .235, and .240 by failing to register and report their expenditures for legal services to oppose Initiatives 5 and 6, individually, and as a group, as political committees.

Investigative Findings and Conclusion

Based on the factors identified in the investigation, staff found and concluded as follows:

First Allegation: Port of Tacoma Officials (John Wolfe, CEO) did not use facilities of the Port of Tacoma to oppose Tacoma Code Initiative 6 and Tacoma Charter Initiative 5 in a manner prohibited by RCW 42.17A.555 because the Port's expenditures were "normal and regular" in that that they were lawful, and usual and customary.

Second Allegation: The Port of Tacoma, the EDB, and the Chamber did not violate RCW 42.17A.205, .235, and .240 because neither the Port of Tacoma, the EDB, nor the Chamber were a "receiver of contributions" in support of or in opposition to candidates or ballot propositions, and because making expenditures to support or oppose candidates or ballot propositions is not one of the primary purposes for these entities. The Port of Tacoma's primary purpose is to operate as a special purpose public port district under Title 53 of the Revised Code of Washington, the EDB's mission is to retain

and recruit existing primary businesses in Tacoma-Pierce County, and the Chamber's vision and goal is to secure the economic future of the local business community, and to become the go-to-organization when there are tough issues that need to be addressed locally, statewide, and nationally. The Port does not engage in electoral political activity. The EDB's and the Chamber's electoral political activity in this instance may have furthered their respective stated goals and mission, but the non-electoral activities of each entity are those most clearly designed to further each organization's stated goals and mission. No evidence was found that the EDB or the Chamber has, or could, substantially achieve its stated goals and mission through a favorable outcome of an election. The EDB and the Chamber clearly use means other than electoral political activity to achieve their respective stated goals. No evidence was found that the Port of Tacoma, the EDB, and the Chamber pooled funds to form a joint political committee.

The EDB's and the Chamber's expenditures, totaling \$9,994 and approximately \$10,000, respectively, appear to have been made for the purpose of opposing Tacoma Code Initiative 6 and Tacoma Charter Initiative 5 at a time when both initiatives were ballot propositions, even if an active campaign had not been started, and these expenditures were required to be reported as independent expenditures pursuant to RCW 42.17A.255.

Recommendation

For the reasons described above, staff recommends that:

For Port of Tacoma Officials (John Wolfe, CEO) the Commission find there is no apparent violation of RCW 42.17A.555, and recommend to the Washington Attorney General that that office take no further action with respect to this allegation in the Complaint.

For the Port of Tacoma, the Economic Development Board for Tacoma-Pierce County, and the Tacoma-Pierce County Chamber, the Commission find there is no apparent violation of RCW 42.17A.205, .235, and .240 by failing to register and report their respective expenditures for legal services to oppose Initiatives 5 and 6, individually, and as a group, as political committees, and recommend to the Washington Attorney General that that office take no further action with respect to these allegations in the Complaint.

For the Economic Development Board for Tacoma-Pierce County and the Tacoma-Pierce County Chamber, the Commission find there is an apparent violation of RCW 42.17A.255, and recommend to the Washington Attorney General that that office take appropriate action concerning the apparent failure of the EDB and the Chamber to report expenditures totaling \$9,994 and approximately \$10,000, respectively, as independent expenditures opposing Charter Initiative 5 and Code Initiative 6.

December 20, 2016

**TO: WASHINGTON STATE ATTORNEY GENERAL BOB
FERGUSSEN, PIERCE COUNTY PROSECUTOR MARK
LINDQUIST, AND THE WASHINGTON STATE PUBLIC
DISCLOSURE COMMISSION**

**RE: CITIZEN'S ACTION LETTER RE UNLAWFUL CAMPAIGN
ACTIVITY BY THE EDB, CHAMBER, COMMISSIONERS
AND PORT OF TACOMA, AND COMPLAINT FOR
VIOLATION OF RCW 42.17A.555 BY THE PORT OF
TACOMA IN EXPENDING PUBLIC FUNDS IN A PUBLIC
RELATIONS CAMPAIGN TO OPPOSE TACOMA BALLOT
MEASURES 5 AND 6**

**FROM: ARTHUR WEST
120 State Ave. NE #1497
Olympia, Washington, 98501**

Please consider this as a complaint for violation of RCW 42.17A.555 and RCW 42.17A.255, and a formal Citizen's Action Letter under RCW 42.17.460 concerning unlawful use of public facilities to oppose ballot measures, unregistered campaign activity, and unreported campaign related activity and campaign related receipts and expenditures by the Port, Chamber, and EDB to oppose City of Tacoma Citizens' Initiatives 5 and 6.

Subsequent to the filing of the previous Citizen Action Letter of June 16, 2016 concerning the maintenance of a lawsuit by the Port, Chamber and EDB, new evidence has become available, revealing a previously unknown comprehensive media and public relations "Campaign" waged by the Port, Chamber and EDB via actions taken in addition to, and separate from, the lawsuit initiated by the Port, Chamber, and EDB. (See attached true and correct (redacted) copies of records recently released in a redacted format¹ by the Port of Tacoma)

¹ It should also be noted that the Port has attempted to obstruct disclosure of and conceal the extent of their actions in conducting a public relations and media "Campaign" requiring West to institute a PRA suit for disclosure of the Port's records concerning these matters, and justifying all inferences to be drawn against them under the doctrine of *omnia praesumuntur contra spoliatores*, See Edward v. McFarland, 10 Wn.2d 81, (1941)

As the attached records demonstrate, the actions of the Port², Chamber and EDB in this case included a deliberate and calculated media and public relations “Campaign” to oppose ballot measures as defined by RCW 42.17A.005(4) that was not cabined within the four walls of the courthouse and which included, but was not limited to the use of public and private resources to create anti-initiative propaganda and a set of public relations marching orders, a meeting with the editorial Board of the Tacoma News Tribune, a temporary media “Embargo” and an (allegedly) attorney-client exempt “Communications Plan” and set of media and public “Talking Points”. (See attached exhibits).

This public relations “Campaign” was separate and independent from any lawsuit, nor was it necessary to the maintenance of a lawsuit, but was a separate series of actions designed to oppose and foment adverse public opinion to the two ballot measures, to induce voters to vote against them, and included, but was not limited to the use of “stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency” including the use of the services of Port Staff including Port Communications Director Tara Mattina and Port Counsel from the Goodstein Law Group to draft media “Talking Points”, a “Communications Plan” and “Backgrounder” and a “News Release”. All of these actions were traditional campaign related activities.

The port, Chamber and the EDB participated in and made expenditures of resources and funds on behalf of this media and public relations campaign without reporting these expenditures as required by law. This media and public relations campaign, where the port, in collusion with the EDB and Chamber, composed and executed a “Communications Plan”, met with media representatives to express opposition to a ballot measure, prepared and distributed anti-initiative propaganda

² For the purposes of this Letter, the “Port” is to be defined to include the port as well as John Wolfe, Don Johnson, Connie Bacon, John Marzano, Don Meyer, and Clare Petrich as the governing members of the port who were aware of and personally authorized the media campaign expenditures.

to port employees, the public and the media was archetype "Campaign" activity that was directed at opposing ballot propositions 5 and 6. These actions constituted "Opposition to a Ballot Proposition" involving conduct of the precise type that has commonly and correctly been recognized as political opposition to a Ballot Proposition. By expending public resources on this effort and failing to report such activities, the port, Chamber and EDB violated the FCPA.

RCW 42.17A.555 provides...

No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency...

RCW 42.17A.255(2) provides...

Within five days after the date of making an independent expenditure that by itself or when added to all other such independent expenditures made during the same election campaign by the same person equals one hundred dollars or more, or within five days after the date of making an independent expenditure for which no reasonable estimate of monetary value is practicable, whichever occurs first, the person who made the independent expenditure shall file with the commission an initial report of all independent expenditures made during the campaign prior to and including such date.

By using public funds to wage a media and public relations campaign to oppose Tacoma Citizen's Initiatives 5 and 6 in an extraordinary manner that was not part of the regular and ordinary conduct of the Port of Tacoma, the Port violated RCW 42.17A.555 and by not reporting independent expenditures taken as part of their media and public relations campaign, the Port, EDB and Chamber all violated RCW 42.17A.255.

The actions, which included but were not limited to publishing propaganda and press releases, as well as online postings and statements of the Port of Tacoma, the Economic Development Board of Tacoma-Pierce County (EDB) and the Tacoma-Pierce County Chamber clearly demonstrate that their intent was to wage a media and public relations campaign opposing Tacoma Citizen's Initiatives 5 and 6 that would discourage voters from voting for the measures, regardless of the results of any lawsuit.

The Port of Tacoma has speciously attempted to claim that one of its primary purposes is to oppose ballot measures such as Tacoma Citizen's Initiatives 5 and 6. Further, it is apparent that the organization created by the Port's joint efforts with the EDB and Chamber had no other purpose whatsoever than to oppose these measures.

By so acting, the Port, EDB and Chamber failed to register or independently report campaign related expenditures made to conduct a media and propaganda campaign to oppose ballot measures 5 and 6 and in addition failed to register or report as PACs as required by RCW 42.17A. 205-240 of organizations opposing a ballot proposition such as Tacoma Citizen's Initiatives 5 and 6

This violated the intent of RCW 42.17.0001, including section (1) That political campaign and lobbying contributions and expenditures be fully disclosed to the public and that secrecy is to be avoided.

Please investigate and take any necessary action in regard to this complaint and Citizen's Action Letter.

Done December 20, 2016, in Olympia. I, Arthur West, certify the factual assertions above to be correct and true under penalty of perjury of the laws of the State of Washington.


ARTHUR WEST

Carolyn Lake

From: Mattina, Tara <tmattina@portoftacoma.com>
Sent: Thursday, May 26, 2016 12:57 PM
To: Carolyn Lake
Subject: RE: atty-client: Litigaton - CONFIDENTIAL

From: Carolyn Lake [mailto:CLake@goodsteinlaw.com]
Sent: Thursday, May 26, 2016 12:38 PM
To: Mattina, Tara <tmattina@portoftacoma.com>
Subject: RE: atty-client: Litigaton - CONFIDENTIAL

Carolyn A. Lake.

Goodstein Law Group PLLC – 501 South "G" Street - Tacoma, WA 98405
253.779.4000 office -253.229.6727 cell -253.779.4411 fax

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Thank you.

"An appeaser is one who feeds a crocodile, hoping it will eat him last."

Sir Winston Churchill

From: Mattina, Tara [mailto:tmattina@portoftacoma.com]
Sent: Thursday, May 26, 2016 12:16 PM
To: Carolyn Lake
Subject: atty-client: Litigaton - CONFIDENTIAL

Carolyn, attached for your review are my initial thoughts around a communication plan, talking points and a news release.

Tara Mattina
Communications Director | Port of Tacoma
253.428.8674 | www.portoftacoma.com



All e-mail communications with the Port of Tacoma are subject to disclosure under the Public Records Act and should be presumed to be public.



From: Carolyn Lake
To: vzeck@uth-law.com
Cc: tomp@tacomachamber.org; Seth Goodstein
Subject: JDA & CONFIDENTIAL
Date: Thursday, June 2, 2016 6:39:17 PM
Attachments: 160602.PM. 2. clean Complaint.docx

Folks:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] . Many thanks,

Carolyn A. Lake.

Goodstein Law Group PLLC - 501 South "G" Street - Tacoma, WA 98405
253.779.4000 office -253.229.6727 cell -253.779.4411 fax

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Thank you.

"An appeaser is one who feeds a crocodile, hoping it will eat him last."
Sir Winston Churchill

From: Mattina, Tara
To: Bacon, Connie; Johnson, Don G.; Marzano, Dick; Meyer, Don; Petrich, Clare
Cc: Wolfe, John; Esterbrook, Don; Beckett, Kurt; Lake, Carolyn
Subject: atty-client: water ballot initiative news release, backgrounder
Date: Monday, June 6, 2016 10:26:00 AM
Attachments: BallotInitiative-CommunicationsPlan-June2016.pdf
Backgrounder-BallotInitiative-June2016.pdf
WaterBallotInitiative-June2016.pdf

Commissioners, attached are the communications plan, backgrounder and news release for today's filing against the water ballot initiatives. Commissioner Bacon, we'll cover this material at today's 2:30 p.m. TNT editorial board. Carolyn and I will join you, Bruce and Tom, as well as Kathleen from the EDB.

The news release will be posted at 4 p.m. to coincide with the filing. I'll also send an email to employees with a link to the news release.
Please let me know if you have any questions.

Tara Mattina

Communications Director | Port of Tacoma
(253) 428-8674 | www.portoftacoma.com

Water Ballot Initiative Communications Plan
Confidential and Pursuant to Joint Defense Agreement
June 2016

Objective: To communicate our request that Pierce County Superior Court declare invalid two initiatives seeking to amend the Tacoma city charter and municipal code to require a public vote on any development using 1 million or more gallons of water per day.

Key dates

June 6, 2016 Afternoon: TNT ed board with attorney Carolyn Lake, Commissioner Connie Bacon, Bruce Kendall and Tom Pierson
Afternoon: POT/et al file suit, post news release

June 7, 2016 Noon: City Council announces suit at study session
Evening: COT announces at City Council meeting

June 8, 2016 [REDACTED]

Partners

- Economic Development Board for Tacoma-Pierce County
- Tacoma-Pierce County Chamber
- Port of Tacoma

Key messages

- The Port of Tacoma has filed a lawsuit in Pierce County Superior Court to invalidate two initiatives currently gathering signatures.
- The two ballot initiatives seek a public vote on potential developments that would use 1 million gallons of water or more per day.
- These initiatives, similar to ones declared invalid in other parts of the state and country, are aimed at requiring public votes on industrial developments that create economic opportunities and family-wage jobs for our community.

Situation

A political action committee is gathering signatures to put two separate initiatives on the fall 2016 ballot. The initiatives seek to amend the Tacoma city charter and municipal code to require a public vote on any new development using 1 million gallons or more of water each day. These initiatives were in response to Northwest Innovation Works' now-canceled natural gas-to-methanol facility, but they would have much broader consequences to manufacturing, industrial and technological developments within and outside Tacoma city limits. The initiatives and the hurdles they seek to impose send a bad message to economic investors that Tacoma/Pierce County no longer welcomes economic investors and new jobs.

Water Ballot Initiative backgrounder
Confidential and Pursuant to Joint Defense Agreement
June 6, 2016

Key points

- The Port of Tacoma has filed a lawsuit in Pierce County Superior Court to invalidate two initiatives currently gathering signatures.
- The two ballot initiatives seek a public vote on potential developments that would use 1 million gallons of water or more per day.
- These initiatives, similar to ones declared invalid in other parts of the state and country, are aimed at requiring public votes on developments that create economic opportunities and family-wage jobs for our community.

Legal arguments:

- Initiatives cannot lawfully compel a vote on zoning or development projects, set conditions for the provision of water, interfere with existing city administrative management of water operations and city budgeting or conflict with local, state and federal laws.
- These initiatives fail on all fronts.
 - Tacoma has a legal obligation under state law to serve water demand in its service territories, which extends both within and outside Tacoma city limits, and to acquire supplies and develop facilities, if necessary, to do so.
 - The initiatives would require a vote of approval by city residents only, affecting hundreds if not thousands of customers outside the city.
 - State law considers zoning and development matters outside initiative power.
- The Washington Supreme Court struck down a similar Spokane initiative in February 2016, ruling that the measure:
 - cannot impose a “vote of the people” requirement on individual developments,
 - conflicted with state-established water rights law, especially where the city water system extends outside city limits,
 - improperly tried to expand city law into a constitutional issue, and
 - tried to strip the legal rights of a corporation.

Port objections:

- These initiatives attempt to thwart the Port of Tacoma’s mission to create jobs and economic opportunities for Pierce County.

- Many of the Port's tenants are industrial or manufacturing developers.
- More than 29,000 jobs are generated by port activity, which also provides \$195 million per year in state and local taxes to support education, roads and police and fire protection for our community. [Port economic impact study, 2014]
- The Tacoma-Puyallup industrial subarea's 21,300 jobs make up 4 percent of the region's industrial employment. [PSRC Industrial Lands Analysis, 2015]
- These jobs pay an average \$80,000 a year. [PSRC Industrial Lands Analysis, 2015]
- The environmental impacts, including water use, of specific developments are appropriately analyzed during the environmental review process under SEPA.

From Tacoma Water

- Tacoma Public Utilities has a legal obligation under state laws (RCW 80.28.110, 80.04.101, 80.04.380 and 80.04.385) to serve water and power demand in its service territories, and to acquire supplies and develop facilities, if necessary, to do so.

Tacoma Water use	
Proposed methanol plan demand (submitted by applicant)	Average: 10.4 MGD
Current total system average day demand	2015: 56 MGD Peak day: 97 MG
Historical and current Tideflats average industrial demand	1985: 35.4 MGD 2015: 16.9 MGD

- Tacoma Water's supply source availability varies throughout the year, depending on season, weather, snowpack, inflows and water storage. The maximum amount of water available by source is shown below.
- Our average available supply is 110 million gallons per day. The average use is 55 million gallons per day.

Water supply	
Green River	72 MGD
7 North Fork wells (alternative Green River supply)	84 MGD
Local wells	59 MGD max.
Interruptible Green River supply	27 MGD additional

Potential questions

Similar initiatives in other parts of the state and country have been ruled invalid. Zoning is a complex—and vitally important—function of our city, and protecting our industrial core, which creates family-wage jobs and tax revenues that support education, roads and police and fire protection for our community, is paramount to our economic vitality.

Citizens have many avenues to weigh in on proposed developments. Port commissioners consider leases during public meetings that are noticed in advance and provide for public comment. Large developments also go through an environmental review process under the State Environmental Policy Act (SEPA), which includes public hearings and comment periods.

Why doesn't the Port want a public vote on the issue?

The initiatives have numerous legal defects. Why should the community go through taxpayer expense of a vote when we know the initiatives are legally flawed?

Tacoma Public Utilities asked residents last summer to conserve water because of a drought. Why shouldn't industry have to cut back on its water use as well?

Industry already has cut back on its water use. Industrial users in the Tideflats averaged 35.4 million gallons of water per day in 1985. In 2015, it was down to 16.9 million gallons of water per day—less than half what it used to use.

Some say Tacoma should move past its industrial history and embrace a new future.

Tacoma is fortunate because we can have it all. Our geography allows us to maintain an industrial core on the Tideflats away from residential neighborhoods, keeping industrial lands in highly productive use. These are valuable, skilled, family-wage jobs that provide options for people who might not graduate from college. We also have a vibrant downtown, as well as several educational institutions to provide a pipeline of qualified people for all types of jobs.

People have incorrectly compared today's industry to Asarco's past contamination. Washington state has among the most stringent environmental regulations in the country, and the Port, City and other partners have spent hundreds of millions of dollars cleaning up legacy contamination that occurred before the regulations were

in place. A development that pollutes land, water or air would never be allowed either by us or the regulatory agencies.

This is our community. Port of Tacoma commissioners and employees live here, too. Over the past 100 years, we have grown businesses here, raised children here and helped build this community through sweat and pride. We intend to continue fighting for its future.

FOR IMMEDIATE RELEASE

June 6, 2016

Contact: Tara Mattina, (253) 428-8674, tmattina@portoftacoma.com

Port, EDB and Chamber file lawsuit to invalidate proposed water initiatives

The Port of Tacoma filed a lawsuit Monday asking Pierce County Superior Court to declare invalid two proposed initiatives currently gathering signatures.

The two ballot initiatives are spearheaded by a group calling itself Save Tacoma Water. The measures, which attempt to amend Tacoma's city charter and municipal code, seek a public vote on potential developments that would use 1 million gallons of water or more per day from Tacoma Water.

The Economic Development Board of Tacoma-Pierce County and the Tacoma-Pierce County Chamber also joined the suit to keep the legally flawed initiatives off the ballot.

These initiatives, similar to ones declared invalid in other parts of the state and country, are aimed at requiring public votes on manufacturing, industrial and technology water users that create economic opportunities and family-wage jobs for our community.

The Washington Supreme Court unanimously struck down an almost-identical Spokane initiative in February, declaring it invalid for many of the same reasons Tacoma's proposed measures should fail.

The City of Tacoma has a legal obligation under state law to serve water demands in its service territories, and to acquire supplies and develop facilities, if necessary, to do so. In addition, Tacoma Water's service area extends beyond city limits, affecting hundreds if not thousands of customers outside the city.

State law also considers zoning and development matters outside local initiative power.

The environmental impacts, including water use, of specific developments are appropriately analyzed during the environmental review process under the State Environmental Policy Act.

These initiatives attempt to thwart the missions of the Port, Economic Development Board and Chamber to create jobs and economic opportunities for Pierce County.

More than 29,000 jobs are generated by port activity, which also provides \$195 million per year in state and local taxes to support education, roads and police and fire protection for our community.

The Tacoma-Puyallup industrial subarea's 21,300 jobs make up 4 percent of the region's industrial employment. These jobs pay an average \$80,000 a year.

About the Port of Tacoma

The Port of Tacoma is an economic engine for South Puget Sound. More than 29,000 jobs are generated by port activity, which also provides \$195 million per year in state and local taxes to support education, roads and police and fire protection for our community. As a partner in The Northwest Seaport Alliance, the Port of Tacoma is also a major cargo gateway to Asia and Alaska.

###

September 16 2016 RESPONSE & PRIVILEGE LOG OF EXEMPT RECORDS
PORT OF TACOMA Public Records Request from
Arthur West – 16-89

This is the Port of Tacoma's Response and Privilege Log for your June 6, 2016 public records request as follows:

1. All communications between the Port of Tacoma and the Tacoma-Pierce County Chamber or the Economic Development Board, February of 2016 to present.
2. All communications concerning or related to Voter Initiatives, the initiatives proposed by Save Tacoma Water or any potential action or response to the initiatives for the same period.

Status of Records. The Port has determined that certain responsive records are public and or exempt or redacted as follows:

Document	From/To	Date	Bates Page Nos.	Status & Basis For Redaction If Any
1. Email with Subject: FW: JDA & ATTY CLIENT -we are filed Attachments: 160606.f. Complaint with Attachments: SIGNED.pdf 160603.pldg.Summmons.pdf	From: Mattina, Tara To: "ogleason@ci.tacoma.wa.us"	Monday, June 6, 2016 4:43:00 PM	1-36	Public
2. Email with Subject: RE: JDA & ATTY CLIENT -Update Attachments: image001.png	From: Zeek, Valerie To: Jason Whalen; Lake, Carolyn; Mattina, Tara Cc: Deena Pinckney; Seth Goodstein	Monday, June 6, 2016 4:35:47 PM	37-40 Redacted at 37 & 38.	The redacted portions of this/these records is/are exempt and attorney client confidential pursuant to the Attorney-Client Privilege, where legal advice between Port staff and attorneys for co-Plaintiffs including the Port are exchanged as part of a Joint Defense Agreement and ongoing litigation in the matter of Port of Tacoma, EDB and Chamber vs Save Tacoma Water et al, Pierce County Superior Court No. 16-2-08477-5 and Court of Appeals No. 49263-6-II. See <i>Hangartner v. City of Seattle</i> , 151 Wn.2d 439, 90 P.3d 26 (2004) and RCW 5.60.060(2).

September 16 2016 RESPONSE & PRIVILEGE LOG OF EXEMPT RECORDS
PORT OF TACOMA Public Records Request from
Arthur West – 16-89

Document	From/To	Date	Bates Page Nos.	Status & Basis For Redaction If Any
3. Email with Subject: RE: JDA & ATTY CLIENT -Update	From: Jason Whalen To: Lake, Carolyn; Mattina, Tara; vzeeck@gth-law.com Cc: Deena Pinckney; Seth Goodstein	Monday, June 6, 2016 4:33:17 PM	41-43 Redacted page 41.	The redacted portions of this/these records is/are exempt and attorney client confidential pursuant to the Attorney-Client Privilege, where legal advice between Port staff and attorneys for co-Plaintiffs including the Port are exchanged as part of a Joint Defense Agreement and ongoing litigation in the matter of <i>Port of Tacoma, EDB and Chamber vs Save Tacoma Water et al</i> , Pierce County Superior Court No. 16-2-08477-5 and Court of Appeals No. 49263-6-II. See <i>Hangartner v. City of Seattle</i> , 151 Wn.2d 439, 90 P.3d 26 (2004) and RCW 5.60.060(2).
4. Email with Subject: Port, EDB and Chamber file lawsuit to invalidate proposed water initiatives	From: Mattina, Tara To: ALL	Monday, June 6, 2016 4:33:00 PM	44	Public
5. Email with Subject: RE: JDA & ATTY CLIENT -Update	From: Carolyn Lake To: Mattina, Tara; vzeeck@gth-law.com; Jason@ledgersquarelaw.com Cc: Deena Pinckney; Seth Goodstein	Monday, June 6, 2016 4:29:11 PM Importance: High	45-46 Redacted page 45	The redacted portions of this/these records is/are exempt and attorney client confidential pursuant to the Attorney-Client Privilege, where legal advice between Port Staff and attorneys for co-Plaintiffs including the Port are exchanged as part of a Joint Defense Agreement and ongoing litigation in the matter of <i>Port of Tacoma, EDB and Chamber vs Save Tacoma Water et al</i> , Pierce County Superior Court No. 16-2-08477-5 and Court of Appeals No. 49263-6-II. See <i>Hangartner v. City of Seattle</i> , 151 Wn.2d 439, 90 P.3d 26 (2004) and RCW 5.60.060(2).

September 16 2016 RESPONSE & PRIVILEGE LOG OF EXEMPT RECORDS
PORT OF TACOMA Public Records Request from
Arthur West - 16-89

Document	From/To	Date	Bates Page Nos.	Status & Basis For Redaction
6. Email with Subject: FW: Lawsuit docs Attachments: 160606.f. Complaint with Attachments.SIGNED.pdf 160603.pldg.Summmons.pdf Importance: High	From: Mattina, Tara To: Martin, Kate	Monday, June 6, 2016 4:27:00 PM	47-82	Public
7. Email with Subject: RE: JDA & ATTY CLIENT -we are filed	From: Bruce Kendall To: Mattina, Tara; Kathleen Cooper; TomP@tacomachamber.org	Monday, June 6, 2016 4:26:29 PM	83-84	Public
8. Email with Subject: FW: JDA & ATTY CLIENT -we are filed and Attachments: 160606.f. Complaint with Attachments.SIGNED.pdf 160603.pldg.Summmons.pdf Importance: High	From: Mattina, Tara To: Bruce Kendall; Kathleen Cooper; TomP@tacomachamber.org	Monday, June 6, 2016 4:24:00 PM	85-120	Public
9. Email with Subject: FW: JDA & ATTY CLIENT -we are filed and Attachments: 160606.f. Complaint with Attachments.SIGNED.pdf Importance: High	From: Mattina, Tara To: Anderson, Megan	Monday, June 6, 2016 4:24:00 PM	121-153	Public
10. From: Carolyn Lake To: Mattina, Tara; vzeack@gth-law.com; Jason@ledgersquarelaw.com Cc: Deena Pinckney; Seth Goodstein Subject: JDA & ATTY CLIENT - we are filed and Attachments: 160606.f. Complaint with Attachments.SIGNED.pdf 160603.pldg.Summmons.pdf Importance: High	From: Carolyn Lake To: Mattina, Tara; vzeack@gth-law.com; Jason@ledgersquarelaw.com Cc: Deena Pinckney; Seth Goodstein	Monday, June 6, 2016 4:18:25 PM	154-139	Public

September 16 2016 RESPONSE & PRIVILEGE LOG OF EXEMPT RECORDS
PORT OF TACOMA Public Records Request from
Arthur West – 16-89

Document	From/To	Date	Bates Page Nos.	Status & Basis For Redaction
11. Email with Subject: RE: ATTY CLIENT - Final version --changes NOW made and Attachments: 160606. Summary Memo on Initiative Challenge.pdf 160606.f. conf. Complaint.docx	From: Carolyn Lake To: Mattina, Tara	Monday, June 6, 2016 1:39:15 PM	190-192, 193-222 Redactions: 191	If Any The redacted portions of this/these records is/are exempt and attorney client confidential pursuant to the Attorney-Client Privilege, where legal advice between Port Staff and attorneys for co-Plaintiffs including the Port are exchanged as part of a Joint Defense Agreement and ongoing litigation in the matter of <i>Port of Tacoma, EDB and Chamber vs Save Tacoma Water et al</i> , Pierce County Superior Court No. 16-2-08477-5 and Court of Appeals No. 49263-6-II. See <i>Hargarten v. City of Seattle</i> , 151 Wn.2d 439, 90 P.3d 26 (2004) and RCW 5.60.060(2).
12. Email with Subject: WaterBallotInitiative-June2016.docx Attachments: WaterBallotInitiative-June2016.docx	From: Mattina, Tara To: Anderson, Megan	Monday, June 6, 2016 1:28:00 PM	223-225	Public
13. Email with Subject: ATTY CLIENT - Final version with Attachments: 160606.f. Complaint.docx 160606. Summary Memo on Initiative Challenge.pdf Importance: High	From: Carolyn Lake To: Mattina, Tara	Monday, June 6, 2016 1:18:13 PM	226-227, and 228-257 Redacted: 226	The redacted portions of this/these records is/are exempt and attorney client confidential pursuant to the Attorney-Client Privilege, where legal advice between Port Staff and attorneys for co-Plaintiffs including the Port are exchanged as part of a Joint Defense Agreement and ongoing litigation in the matter of <i>Port of Tacoma, EDB and Chamber vs Save Tacoma Water et al</i> , Pierce County Superior Court No. 16-2-08477-5 and Court of Appeals No. 49263-6-II. See <i>Hargarten v. City of Seattle</i> , 151 Wn.2d 439, 90 P.3d 26 (2004) and RCW 5.60.060(2).

September 16 2016 RESPONSE & PRIVILEGE LOG OF EXEMPT RECORDS
PORT OF TACOMA Public Records Request from
Arthur West – 16-89

Document	From/To	Date	Bates Page Nos.	Status & Basis For Redaction
14. Email with Subject: FW: atty-client: water ballot initiative news release, backgrounder with Attachments: BallotInitiative-CommunicationsPlan-June2016.pdf Backgrounder-BallotInitiative-June2016.pdf WaterBallotInitiative-June2016.pdf	From: Mattina, Tara To: TomP@tacomachamber.org; Bruce Kendall, Kathleen Cooper Cc: Lake, Carolyn	Monday, June 6, 2016 10:28:00 AM	258 259-265 Redacted 259 & 262	The redacted portions of this/these records is/are exempt and attorney client confidential pursuant to the Attorney-Client Privilege, where legal advice between Port Staff and attorneys for co-Plaintiffs including the Port are exchanged as part of a Joint Defense Agreement and ongoing litigation in the matter of <i>Port of Tacoma, EDB and Chamber vs Save Tacoma Water et al</i> , Pierce County Superior Court No. 16-2-08477-5 and Court of Appeals No. 49263-6-II. See <i>Hangartner v. City of Seattle</i> , 151 Wn.2d 439, 90 P.3d 26 (2004) and RCW 5.60.060(2).
15. Email with Subject: atty-client: water ballot initiative news release, backgrounder Attachments: BallotInitiative-CommunicationsPlan-June2016.pdf Backgrounder-BallotInitiative-June2016.pdf WaterBallotInitiative-June2016.pdf	From: Mattina, Tara To: Bacon, Connie; Johnson, Don C.; Marzano, Dick; Meyer, Don; Petrich, Clare Cc: Wolfe, John; Esterbrook, Don; Beckett, Kurt; Lake, Carolyn	Monday, June 6, 2016 10:26:00 AM	266 267-273 Redacted 267 & 270	The redacted portions of this/these records is/are exempt and attorney client confidential pursuant to the Attorney-Client Privilege, where legal advice between Port Staff and its attorneys are exchanged as part of ongoing litigation in the matter of <i>Port of Tacoma, EDB and Chamber vs Save Tacoma Water et al</i> , Pierce County Superior Court No. 16-2-08477-5 and Court of Appeals No. 49263-6-II. See <i>Hangartner v. City of Seattle</i> , 151 Wn.2d 439, 90 P.3d 26 (2004) and RCW 5.60.060(2).
16. Email with Subject: JDA & CONFIDENTIAL Attachments: 160602.PM. 2. clean Complaint.docx	From: Carolyn Lake To: vzebeck@qth-law.com Cc: tomp@tacomachamber.org; Seth Goodstein	Thursday, June 2, 2016 6:39:17 PM	274 275-299 Redacted:274	The redacted portions of this/these records is/are exempt and attorney client confidential pursuant to the Attorney-Client Privilege, where legal advice between Port Staff and attorneys for co-Plaintiffs

September 16 2016 RESPONSE & PRIVILEGE LOG OF EXEMPT RECORDS
PORT OF TACOMA Public Records Request from
Arthur West – 16-89

Document	From/To	Date	Bates Page Nos.	Status & Basis For Redaction If Any
17. Email with Subject: atty-client: Litigation – CONFIDENTIAL and Attachments: BallotInitiative- CommunicationsPlan- June2016.doc Background- BallotInitiative- June2016.docx WaterBallotInitiative- June2016.docx	From: Mattina, Tara To: Lake, Carolyn	Thursday, May 26, 2016 12:16:08 PM	300 301-306 Redacted: 300, 301, & 303	The redacted portions of this/these records is/are exempt and attorney client confidential pursuant to the Attorney-Client Privilege, where legal advice between Port Staff and its attorneys are exchanged as part of ongoing litigation in the matter of <i>Port of Tacoma, EDB and Chamber vs Save Tacoma Water et al</i> , Pierce County Superior Court No. 16-2-08477-5 and Court of Appeals No. 49263-6-II. See <i>Hangartner v. City of Seattle</i> , 151 Wn.2d 439, 90 P.3d 26 (2004) and RCW 5.60.060(2).
18. Email with Subject: RE: Atty Client - Litigation- CONFIDENTIAL	From: Carolyn Lake To: Doremus, Judi Cc: Mattina, Tara	Tuesday, May 24, 2016 2:12:00 PM	307-309 Redacted: 307, 308	The redacted portions of this/these records is/are exempt and attorney client confidential pursuant to the Attorney-Client Privilege, where legal advice between Port Staff and its attorneys are exchanged as part of ongoing litigation in the matter of <i>Port of Tacoma, EDB and Chamber vs Save Tacoma Water et al</i> , Pierce County Superior Court No. 16-2-08477-5 and Court of

September 16 2016 RESPONSE & PRIVILEGE LOG OF EXEMPT RECORDS
PORT OF TACOMA Public Records Request from
Arthur West – 16-89

Document	From/To	Date	Bates Page Nos.	Status & Basis For Redaction If Any
19. Email with Subject: RE: Atty Client - Litigation- CONFIDENTIAL	From: Doremus, Judi To: Lake, Carolyn Cc: Mattina, Tara; Deborah Kelly (Deborah@edbiacomapierce.org); Bruce Kendall (Bruce@edbiacomapierce.org)	Tuesday, May 24, 2016 2:11:05 PM	310-311 Redacted 310	The redacted portions of this/these records is/are exempt and attorney client confidential pursuant to the Attorney-Client Privilege, where legal advice between Port Staff and attorneys for co-Plaintiffs including the Port are exchanged as part of a Joint Defense Agreement and ongoing litigation in the matter of <i>Port of Tacoma, EDB and Chamber vs Save Tacoma Water et al</i> , Pierce County Superior Court No. 16-2-08477-5 and Court of Appeals No. 49263-6-II. See <i>Hangartner v. City of Seattle</i> , 151 Wn.2d 439, 90 P.3d 26 (2004) and RCW 5.60.060(2).
20. Email with Subject: Atty-Client: & attachment Backgrounder-BalloInitiative-June2016.docx Attachments: Backgrounder-BalloInitiative-June2016.docx	From: Mattina, Tara To: Lake, Carolyn	Tuesday, May 24, 2016 11:00:16 AM	312 313-315 Redacted: 314	The redacted portions of this/these records is/are exempt and attorney client confidential pursuant to the Attorney-Client Privilege, where legal advice between Port Staff and its attorneys are exchanged as part of ongoing litigation in the matter of <i>Port of Tacoma, EDB and Chamber vs Save Tacoma Water et al</i> , Pierce County Superior Court No. 16-2-08477-5 and Court of Appeals No. 49263-6-II. See <i>Hangartner v. City of Seattle</i> , 151 Wn.2d 439, 90 P.3d 26 (2004) and RCW 5.60.060(2).

September 16 2016 RESPONSE & PRIVILEGE LOG OF EXEMPT RECORDS
PORT OF TACOMA Public Records Request from
Arthur West – 16-89

Document	From/To	Date	Bates Page Nos.	Status & Basis For Redaction If Any
21. Email with Subject: RE: ATTY CLIENT available to connect today or tomorrow?	From: Carolyn Lake To: Mattina, Tara	Thursday, May 19, 2016 4:29:01 PM	316-317 Redacted 316	The redacted portions of this/these records is/are exempt and attorney client confidential pursuant to the Attorney-Client Privilege, where legal advice between Port Staff and its attorneys are exchanged as part of ongoing litigation in the matter of <i>Port of Tacoma, EDB and Chamber vs Save Tacoma Water et al</i> , Pierce County Superior Court No. 16-2-08477-5 and Court of Appeals No. 49263-6-II. See <i>Hargarten v. City of Seattle</i> , 151 Wn.2d 439, 90 P.3d 26 (2004) and RCW 5.60.060(2).
22. Email with Subject: RE: ATTY CLIENT available to connect today or tomorrow?	From: Mattina, Tara To: Carolyn Lake	Thursday, May 19, 2016 4:26:37 PM	Redacted 318	The redacted portions of this/these records is/are exempt and attorney client confidential pursuant to the Attorney-Client Privilege, where legal advice between Port Staff and its attorneys are exchanged as part of ongoing litigation in the matter of <i>Port of Tacoma, EDB and Chamber vs Save Tacoma Water et al</i> , Pierce County Superior Court No. 16-2-08477-5 and Court of Appeals No. 49263-6-II. See <i>Hargarten v. City of Seattle</i> , 151 Wn.2d 439, 90 P.3d 26 (2004) and RCW 5.60.060(2).
23. Email with Subject: ATTY CLIENT available to connect today or tomorrow? Importance: High	From: Carolyn Lake To: Mattina, Tara	Thursday, May 19, 2016 1:15:34 PM	Redacted 319	The redacted portions of this/these records is/are exempt and attorney client confidential pursuant to the Attorney-Client Privilege, where legal advice between Port Staff and its attorneys are exchanged as

September 16 2016 RESPONSE & PRIVILEGE LOG OF EXEMPT RECORDS
PORT OF TACOMA Public Records Request from
Arthur West – 16-89

Document	From/To	Date	Bates Page Nos.	Status & Basis For Redaction If Any
###				part of ongoing litigation in the matter of <i>Port of Tacoma, EDB and Chamber vs Save Tacoma Water</i> et al, Pierce County Superior Court No. 16-2-08477-5 and Court of Appeals No. 49263-6-II. See <i>Hangartner v. City of Seattle</i> , 151 Wn.2d 439, 90 P.3d 26 (2004) and RCW 5.60.060(2).

October 11 2016 RESPONSE & PRIVILEGE LOG OF EXEMPT RECORDS
PORT OF TACOMA Public Records Request from
Arthur West – 16-89

This is the Port of Tacoma's FOURTH INCREMENTAL Response and Privilege Log
(Bates Stamped No.(s) 00320- 00359) for your June 6, 2016 public records request as follows:

1. All communications between the Port of Tacoma and the Tacoma-Pierce County Chamber or the Economic Development Board, February of 2016 to present.
2. All communications concerning or related to Voter Initiatives, the initiatives proposed by Save Tacoma Water or any potential action or response to the initiatives for the same period.

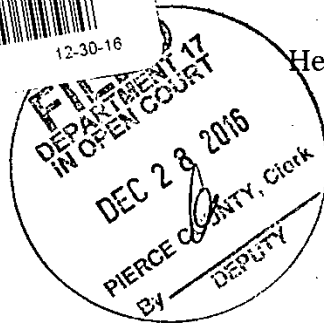
Status of Records. The Port has determined that certain responsive records are public and or exempt or redacted as follows:

Document	From/To	Date	Bates Page Nos.	Status & Basis For Redaction If Any
Email with Subject: atty-client Litigation – CONFIDENTIAL and	From: Mattina, Tara To: Lake, Carolyn	Thursday, May 26, 2016 12:57 PM	324 redacted	The redacted portions of this/these records is/are exempt and attorney client confidential pursuant to the Attorney-Client Privilege, where legal advice between Port Staff and its attorneys are exchanged as part of ongoing litigation in the matter of <i>Port of Tacoma, EDB and Chamber vs Save Tacoma Water et al</i> , Pierce County Superior Court No. 16-2-08477-5 and Court of Appeals No. 49263-6-II. See <i>Hengartner v. City of Seattle</i> , 151 Wn.2d 439, 90 P.3d 26 (2004) and RCW 5.60.060(2).
###				

0056

15308

1/3/2017



Dept 17 Hon. Ronald E. Culpepper
Hearing date set: Friday, December 23, 2016
Time: 10:30 AM

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

STATE OF WASHINGTON,
Plaintiff,

v.

ECONOMIC DEVELOPMENT BOARD
FOR TACOMA-PIERCE COUNTY,
TACOMA-PIERCE COUNTY CHAMBER,
JOHN WOLFE, in his official capacity as
Chief Executive Officer for the PORT OF
TACOMA, and CONNIE BACON, DON
JOHNSON, DICK MARZANO, DON
MEYER, AND CLARE PETRICH, in their
official capacities as Commissioners for the
PORT OF TACOMA,
Defendants.

No. 16-2-10303-6

ORDER GRANTING
DEFENDANTS' MOTIONS
TO DISMISS

THIS MATTER came before the Court upon the Motions to Dismiss the State's
Complaint brought by Defendants JOHN WOLFE, in his official capacity as Chief
Executive Officer for the PORT OF TACOMA, and CONNIE BACON, DON JOHNSON,
DICK MARZANO, DON MEYER, AND CLARE PETRICH, in their official capacities as
Commissioners for the PORT OF TACOMA (collectively the "Port"), THE ECONOMIC
DEVELOPMENT BOARD OF TACOMA PIERCE COUNTY ("EDB") and the TACOMA-

ORDER GRANTING
DEFENDANTS' MOTIONS TO DISMISS - 1

GOODSTEIN LAW GROUP PLLC
501 S. G Street
Tacoma, WA 98405
253.779.4000
Fax 253.779.4411

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15308

1/3/2017

PIERCE COUNTY CHAMBER ("Chamber"), which motions were noted for
 Consideration and heard on December 14, 2016. The Court considered the arguments
 of Counsels for all parties and has reviewed the following pleadings:

0/19/2016	<u>e</u>	<u>MOTION TO FILE OVERLENGTH BRIEF</u>	Public 3
10/19/2016	<u>e</u>	<u>DEFENDANTS' MOTION TO DISMISS</u>	Public 32
10/19/2016	<u>e</u>	<u>AFFIDAVIT/DECLARATION OF COUNSEL IN SUPPORT</u>	Public 123
10/19/2016	<u>e</u>	<u>PORT OF TACOMA MOTION TO DISMISS</u>	Public 35
10/19/2016	<u>e</u>	<u>DECLARATION OF JOHN WOLFE IN SUPPORT</u>	Public 69
10/19/2016	<u>e</u>	<u>DECLARATION OF PORT COUNSEL IN SUPPORT</u>	Public 187
10/19/2016	<u>e</u>	<u>AFFIDAVIT/DECLARATION OF SERVICE</u>	Public 3
10/27/2016	<u>e</u>	<u>STIPULATED ORDER TO FILE OVERLENGTH BRIEF</u>	Public 4
11/28/2016	<u>e</u>	<u>DECLARATION OF LINDA DALTON</u>	Public 5
11/28/2016	<u>e</u>	<u>AG RESPONSE TO PORT MOTION</u>	Public 27
11/28/2016	<u>e</u>	<u>DECLARATION OF LISA BOGGESS</u>	Public 180
12/05/2016	<u>e</u>	<u>DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS</u>	Public 14
12/05/2016	<u>e</u>	<u>PORT REPLY IN SUPPORT OF MOTION TO DISMISS</u>	Public 43
12/12/2016	<u>e</u>	<u>OBJECTIONS/OPPOSITION</u>	Public 5
12/12/2016	<u>e</u>	<u>OBJECTIONS/OPPOSITION</u>	Public 9
12/13/2016	<u>e</u>	<u>REPLY IN SUPPORT OF OVERLENGTH</u>	Public 3

Based on the Court's review of the records and pleadings filed and the argument of the
 parties, the Court finds:

1. Filing an action to seek judicial declaration of invalidity of proposed Tacoma
 Initiative 5 & 6 is not opposition to a campaign or ballot issues as meant in RCW
 42.17A.255 or RCW 42.17A.555.
2. RCW 42.17A.555 prohibition on use public facilities for campaign purposes does
 not apply to the pursuit of a judicial Declaratory Judgement Action over the

ORDER GRANTING
 DEFENDANTS' MOTIONS TO DISMISS - 2

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validity of Tacoma Initiatives 5 & 6.

3. Pursuing a judicial Declaratory Judgement Action over the validity of Tacoma Initiatives 5 & 6 does not trigger the campaign reporting requirements of RCW 42.17A.255.

4. The Defendants Port, Chamber and EDB did not violate the Fair Campaign Practices Act.

Now, therefore, it is hereby ORDERED:

5. Defendants' Motions for Summary Judgement are GRANTED, and the State's Complaint against all Defendants is DISMISSED.

DATED this 28 day of December, 2016.

Ronald E. Culpepper
Ronald E. Culpepper, Superior Court Judge

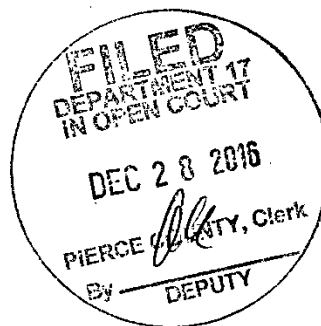
Presented By:
GOODSTEIN LAW GROUP PLLC
By /s/ Carolyn A. Lake
Carolyn A. Lake, WSBA #13980
Seth Goodstein, WSBA #45091
Attorneys for Defendant Port of Tacoma

LEDGER SQUARE LAW, P.S.
By: /s/ Jason M. Whalen per email authorization
Jason M. Whalen, WSBA #22195
Attorneys for Defendant EDB

GORDON THOMAS HONEYWELL LLP
By: /s/ Valarie S. Zeeck per email authorization
Valarie S. Zeeck, WSBA No. 24998
Daniel Richards, WSBA No. 47944
Attorneys for Defendant Chamber

WASHINGTON STATE ATTORNEY GENERAL'S OFFICE
By: /s/ Linda Dalton per email authorization
Linda Dalton WSBA #15467
SENIOR Assistant Attorney General
Attorney for Plaintiff State

ORDER GRANTING
DEFENDANTS' MOTIONS TO DISMISS - 3



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

STATE OF WASHINGTON)	SUPREME COURT NO.
)	93232-8
Plaintiff,)	
)	
vs.)	
)	
EVERGREEN FREEDOM FOUNDATION,)	SUPERIOR COURT NO.
)	15-2-01936-5
Defendant.)	
)	

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on May 13, 2016,
the above-entitled and numbered cause came on for
hearing before JUDGE GARY R. TABOR, Thurston County
Superior Court, Olympia, Washington.

Pamela R. Jones, Official Court Reporter
Certificate No. 2154
Post Office Box 11012
Olympia, WA 98508-0112
(360)786-5571
jonesp@co.thurston.wa.us

A P P E A R A N C E S

For the Plaintiff: LINDA DALTON
CHAD STANDIFER
Assistant Attorneys General
PO Box 40100
Olympia, WA 98504-0100

For the Defendant: MARK LAMB
Attorney at Law
12900 NE 180th Street #235
Bothell, WA 98011

1 same case with identical actions with two different
2 viewpoints to be treated in front of one case in the
3 law and to be able to, if the State prevails on their
4 unlikely theory, to be able to divide the costs of
5 the trial evenly. Thank you, Your Honor.

6 THE COURT: All right. Thank you. I intend
7 to rule in just a moment. I wanted to inquire as to
8 the folks who were getting an order.

9 * * * * *

10 THE COURT: All right, counsel. I am going to
11 issue my ruling on the pleadings and the arguments I
12 heard in this matter regarding whether or not this
13 Court will allow this matter to go forward or whether
14 I'm going to treat this as a 12(b)(6) or 12(b)(7)
15 motion or a summary judgment motion.

16 I've determined that 12(b)(6) appears to apply. I
17 am going to grant Evergreen Freedom Foundation's
18 motion to dismiss. My bases for doing so is I find
19 the statutes here to be ambiguous and vague, and I
20 had difficulty working through these and
21 understanding the position of the parties' because
22 there is not a clearly stated policy regarding this
23 kind of a situation which involves municipal courts.
24 I do not find that the State has sufficiently
25 established that this situation involved a ballot

1 measure that gave them the opportunity to require
2 that such be reported. And when I say "such," I'm
3 talking about legal services that were provided on a
4 pro bono basis before the matter ever went to any
5 kind of vote.

6 I believe that campaign finance regulations are
7 important. It is clear that there has been a great
8 deal of litigation over the last years in regard to
9 campaign finance. It's an important topic for the
10 people of this state and this court, and others like
11 it are often involved in litigation involving
12 campaign financing regulations; nevertheless, I
13 believe that unless there is clear and unambiguous
14 guidance in the statutes that people cannot be held
15 to have violated those regulations. I'm simply not
16 convinced that the statute means what the State says
17 that it does in regard to this particular type of
18 situation.

19 Now let me say several things that are dicta, and
20 that is, because I've ruled in this regard we're not
21 getting to the 12(b)(7) issue about whether or not
22 the Court would have required other parties to be
23 joined, but I'll tell you how I would have ruled on
24 that. I would have denied that motion.

25 Perhaps the best analogy I can give is hearkening

1 back to my almost 19 years as a deputy prosecutor. I
2 believe that prosecuting attorneys or their offices
3 as part of the executive branch have choices to make
4 that a court in the judicial branch does not step in
5 or interfere with; that is the type of charges that
6 are filed, who is charged, there can be a situation
7 involving several people in which they choose to file
8 against one person and not against others. While I
9 understand the arguments that in this case, why treat
10 some other folks differently, that's not really the
11 issue in front of the Court. And so, as I said, I
12 would have denied that.

13 I'll also tell you that while how another judge
14 has ruled is always somewhat interesting to this
15 Court, nothing that a superior court judge in another
16 county does or for that matter in this county is
17 binding on this Court. That's why we are independent
18 as judges and we make determinations based on our
19 best judgment. That might differ. Two judges with
20 courtrooms side by side might rule differently in
21 similar matters.

22 As far as precedent, this state makes clear that
23 you may not cite a final decision as precedent unless
24 there has been a reported decision. Some have
25 complained about that but that's still the rule in

1 this state. I do note that there is a move to have
2 available unreported decisions by courts, that would
3 be the court of appeals, available to the public and
4 that's a different thing than whether or not they can
5 be cited as precedent.

6 There was one other thing I was going to mention.
7 I'm just trying to get to that. Excuse me for just a
8 moment as I try to pull that back in.

9 That was the fact that I heard in argument that
10 there may be a case with similar issues in another
11 court in this jurisdiction. You've already heard, I
12 think you were all here when I talked about the first
13 case that I called today, judicial economy. This
14 Court does have the right to consolidate matters on
15 similar issues and we regularly do that to just use
16 our time wisely. And so when different matters are
17 filed that may be similar, I would like to know that,
18 and yet, I don't have any easy way of knowing that.
19 I don't sit down and look at other judge's dockets on
20 a regular basis to find out what's coming up. So if
21 there is another similar case, I don't know whether
22 the cases should have been consolidated or not. I'm
23 not saying that they should or should not have been,
24 but I would have liked the opportunity to know that
25 and to see whether or not that was appropriate.

1 Maybe it's already been decided, maybe it hasn't been
2 decided yet, I don't know, but I guess that goes to
3 what I told you earlier about what another judge does
4 doesn't control what I do.

5 I've called this as I see it, my understanding of
6 the issues. I understand that this type of situation
7 may have consequences in other regards, and that is
8 one other thing I did want to mention now that I've
9 gotten to that point, and that is that while there
10 may be consequences when this Court rules in any
11 case, that's not always even appropriate for me to
12 consider. Whether or not that opens the floodgates
13 to activities that the State feels are going to
14 weaken public disclosure matters in campaign issues,
15 I don't know. Sometimes parties tell me, well, Your
16 Honor, if you do this it's going to result in
17 millions of dollars' worth of damage to a party or
18 it's going to cost millions of dollars. Often that's
19 not something that I have any idea of as to how many
20 issues may arise.

21 In any event, the final thing I wanted to say in
22 dicta is that I note that this action was started by
23 the Public Disclosure Commission because of a
24 complaint. I note that the defendant in this case is
25 complaining about others. I don't know and I'm not

1 asking you to tell me why a complaint was not filed
2 as to those others by someone. That could have
3 happened, and again, that's dicta I guess. I'm not
4 fishing for cases to be filed, but I think that bears
5 everyone's thought.

6 So, Mr. Lamb, do you have a proposed order that
7 would grant --

8 MR. LAMB: I do, Your Honor.

9 THE COURT: -- your dismissal as you requested
10 and as I ordered?

11 MR. LAMB: I do, Your Honor.

12 THE COURT: Would you show that to the
13 opposing party?

14 MR. LAMB: I will, Your Honor.

15 THE COURT: Obviously, I'm not asking that you
16 agree with my decision, only if that order correctly
17 sets forth what my decision was.

18 MS. DALTON: It's a little abbreviated.

19 THE COURT: Do you want some time to work on
20 that?

21 MS. DALTON: I think so. I think we have to
22 outline the files that the Court considered. It's
23 not in here.

24 THE COURT: I do in a summary judgment motion.
25 I've treated it as a 12(b)(6) and I'm not sure that's

1 required but I don't object to that. Clearly, we
2 have a file that has different pleadings and if you
3 want to reference those, that's okay, but I don't
4 think that's a requirement of the court rule.

5 MR. LAMB: I don't believe so either, Your
6 Honor, but I have no objection to that.

7 THE COURT: So if you want to work on that,
8 the only thing I want you to understand is I'm
9 leaving Tuesday for three weeks, and I won't be here
10 for three weeks, so you either need to get any
11 proposed order to me before that time or it's going
12 to be awhile.

13 MR. LAMB: I appreciate that, Your Honor. The
14 only other than thing I would ask we would reserve
15 the issue of fees under 42.17(a).

16 THE COURT: I've not addressed that at all so
17 you can do as you choose to do in regard to
18 requesting fees.

19 MR. LAMB: Thank you, Your Honor.

20 THE COURT: Anything else I need to address?
21 Folks, I don't have a problem with writing in things,
22 and so if the State wants to have what I've
23 considered, you probably have those available to you.

24 MS. DALTON: I think what we might do is just
25 get a copy of the transcript and attach the

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transcript would seem to go with this.

THE COURT: Okay. Whatever you choose.

MR. LAMB: Thank you, Your Honor.

THE COURT: Are there any other matters that I
need to call on the calendar this morning? We'll be
in recess then.

(A recess was had.)

CERTIFICATE OF REPORTER

STATE OF WASHINGTON)

COUNTY OF THURSTON)

I, PAMELA R. JONES, RMR, Official Reporter
of the Superior Court of the State of Washington, in and
for the County of Thurston, do hereby certify:

That I was authorized to and did
stenographically report the foregoing proceedings held in
the above-entitled matter, as designated by counsel to be
included in the transcript, and that the transcript is a
true and complete record of my stenographic notes.

Dated this the 26th day of May, 2016.

PAMELA R. JONES, RMR
Official Court Reporter
Certificate No. 2154

0052

5636

2/24/2015



13-2-10152-7 44174236 ORGSJ 02-23-15

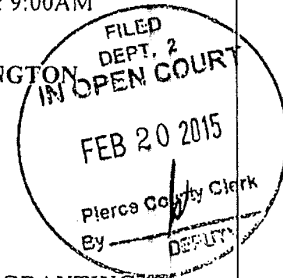
The Honorable Katherine M. Stolz
Hearing Date: February 20, 2015
Hearing Time: 9:00AM

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

INSTITUTE FOR JUSTICE, *et al.*,
Plaintiffs,
v.
STATE OF WASHINGTON, *et al.*,
Defendants.

No. 13-2-10152-7

~~PROPOSED~~ ORDER GRANTING
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT



ORDER

THIS MATTER came before the Court on Plaintiffs' Motion for Summary Judgment.
The Court reviewed the following materials submitted by the parties:

1. Plaintiffs' "Civil Rights Complaint for Declaratory and Injunctive Relief";
 2. Defendants' "Answer of Defendants and Affirmative Defenses";
 3. "Plaintiffs' Motion for Summary Judgment and Memorandum in Support Thereof"
- and the accompanying
- a. "Parties Stipulation as to Undisputed Facts" and the exhibits thereto;
 - b. "Declaration of Barnaby Zall in Support of Plaintiffs' Motion for Summary Judgment";
 - c. "Declaration of Steven Anderson in Support of Plaintiffs' Motion for

~~PROPOSED~~ Order Granting Plaintiffs'
Motion for Summary Judgment- 1

INSTITUTE FOR JUSTICE
10500 NE 8th Street, Suite 1760
Bellevue, Washington 98004
(425) 646-9300

EXHIBIT 3

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2/24/2015

- 1 Summary Judgment" and the exhibit thereto;
- 2 d. "Declaration of Robin Farris in Support of Plaintiffs' Motion for Summary
- 3 Judgment" and the exhibits thereto;
- 4 e. "Declaration of Jeffrey Paul Helsdon in Support of Plaintiffs' Motion for
- 5 Summary Judgment" and the exhibits thereto; and
- 6 f. "Affidavit of Paul V. Avelar in Support of Plaintiffs' Motion for Summary
- 7 Judgment" and the exhibits thereto;
- 8
- 9 4. "Defendants' Opposition to Plaintiffs' Motion for Summary Judgment" and the
- 10 accompanying
- 11 a. "Declaration of Linda Dalton in Opposition to Plaintiffs' Motion for Summary
- 12 Judgment" and the exhibits thereto;
- 13 b. "Declaration of Tony Perkins in Support of Defendants' Response to
- 14 Plaintiffs' Motion for Summary Judgment" and the exhibits thereto;
- 15 c. "Declaration of Lori Anderson in Support of Defendants' Response to
- 16 Plaintiffs' Motion for Summary Judgment" and the exhibit thereto; and
- 17 d. "Declaration of Marcus S. Owens in Support of Defendants' Opposition to
- 18 Plaintiffs' Motion for Summary Judgment" and the exhibits thereto;
- 19
- 20 5. "Plaintiffs Reply to Defendants' Response in Opposition to Plaintiffs' Motion for
- 21 Summary Judgment" and the accompanying
- 22 a. "Reply Declaration of Barnaby Zall in Support of Plaintiffs' Motion for
- 23 Summary Judgment" and the exhibits thereto;
- 24 b. "Reply Declaration of Steven Anderson in Support of Plaintiffs' Motion for
- 25 Summary Judgment"; and
- 26
- 27
- 28

~~PROPOSED~~ Order Granting Plaintiffs'
Motion for Summary Judgment- 2

INSTITUTE FOR JUSTICE
10500 NE 8th Street, Suite 1760
Bellevue, Washington 98004
(425) 646-9300

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2/24/2015

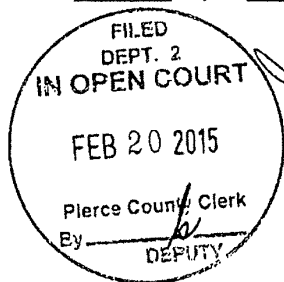
1 c. "Affidavit of Paul V. Avelar in Support of Plaintiffs' Reply to Defendants'
2 Response in Opposition to Plaintiffs' Motion for Summary Judgment" and the
3 exhibits thereto; and

4
5 6. The filings and pleadings herein.

6 The Court, having considered these admissions and hearing oral argument of the parties,
7 now ORDERS, ADJUDGES, AND DECREES that:

8 Plaintiffs' Motion for Summary Judgment is **GRANTED**. Plaintiffs present a justiciable
9 controversy and have standing to bring this action. Defendants' treatment of free legal
10 assistance to a political committee in a federal civil rights lawsuit as a "contribution," as that
11 term is defined in RCW 42.17A.005(13), is unconstitutional under the U.S. Constitution.
12 Defendants are permanently enjoined from applying any cap on the amount of free legal
13 services a political committee may receive in a federal civil rights case. Defendants are also
14 permanently enjoined from requiring Recall Dale Washam or any other political committee to
15 report free legal services provided by the Institute for Justice, Oldfield & Helsdon PLLC, or any
16 other attorney in a federal civil rights lawsuit as a campaign contribution. Plaintiffs are
17 prevailing parties for purposes of attorneys' costs and fees.

18
19 SO ORDERED this 20th day of Feb. 2015.



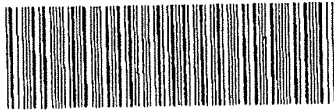
~~PROPOSED~~ Order Granting Plaintiffs'
Motion for Summary Judgment- 3

INSTITUTE FOR JUSTICE
10500 NE 8th Street, Suite 1760
Bellevue, Washington 98004
(425) 646-9300

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4/2/2015



13-2-10152-7 44408808 ORRE 04-02-15

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

INSTITUTE FOR JUSTICE, a non-profit,
public interest law firm; *et al.*,

Plaintiffs,

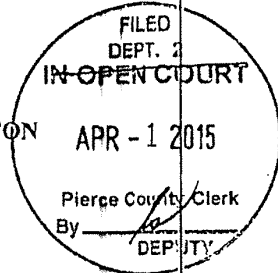
v.

STATE OF WASHINGTON; *et al.*,

Defendants.

No. 13-2-10152-7

STIPULATION AND ~~PROPOSED~~
ORDER REGARDING AWARD OF
ATTORNEYS' FEES AND COSTS



I. STIPULATION

The parties, by and through their respective counsel, hereby stipulate to the entry of an order awarding Plaintiffs the amount of \$424,999 in attorneys' fees and costs, and \$1.00 as damages as full and final resolution of this case.

On March 2, 2015, Plaintiffs filed a timely Motion for Attorneys' Fees and Costs for prevailing in this case. By agreement of the parties, Defendants' response to the Motion for Attorneys' Fees and Costs is due on March 31, 2015. This Stipulation and ~~Proposed~~ Order Regarding Award of Attorneys' Fees and Costs is being filed in lieu of a response.

Defendants reviewed the request for fees and costs. The parties then conferred and reached agreement. In accordance with that agreement, the parties agree and jointly request the Court enter

Stipulated Motion and ~~Proposed~~ Order Regarding
Award of Attorneys' Fees and Costs- 1

INSTITUTE FOR JUSTICE
10500 NE 8th Street, Suite 1760
Bellevue, Washington 98004
(425) 646-9300

EXHIBIT 4

0078

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4/2/2015

1 an Order providing attorneys' fees and costs to Plaintiffs from Defendants named in their official
2 capacity in the amount of \$424,999, and total damages in the amount of \$1.00.

3 DATED this 31st day of March, 2015.

4
5 INSTITUTE FOR JUSTICE

6
7 By: William R. Maurer
8 William R. Maurer, WSBA No. 25451
9 Attorney for Plaintiffs

10 ROBERT W. FERGUSON
11 Attorney General

12 By: Linda A. Dalton *By WRM via email*
13 Linda A. Dalton, WSBA No. 15467
14 Senior Assistant Attorney General
15 Callie A. Castillo, WSBA No. 38214
16 Assistant Attorney General
17 Attorneys for Defendants
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28 Stipulated Motion and [Proposed] Order Regarding
Award of Attorneys' Fees and Costs- 2

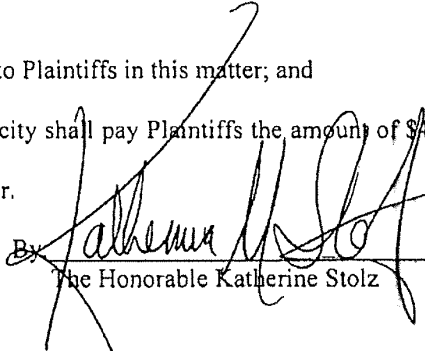
INSTITUTE FOR JUSTICE
10500 NE 8th Street, Suite 1760
Bellevue, Washington 98004
(425) 646-9300

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4/2/2015

II. ORDER

THIS MATTER came before the undersigned judge of the above-entitled Court upon the parties' Stipulation Regarding Award of Attorneys' Fees and Costs. The Court, agreeing that this is a just and proper resolution of the Plaintiffs' outstanding request for attorneys' fees and costs in this matter, ORDERS that:

1. Defendants shall pay \$1.00 in damages to Plaintiffs in this matter; and
2. Defendants named in their official capacity shall pay Plaintiffs the amount of \$424,999, as attorneys' fees and costs in this matter.

By: 
The Honorable Katherine Stolz


PRESENTED BY:

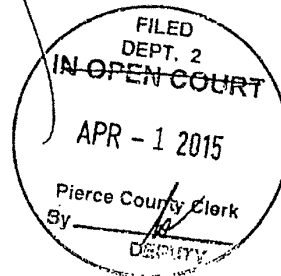
INSTITUTE FOR JUSTICE

By: 
William R. Maurer, WSBA No. 25451
Attorney for Plaintiffs

ROBERT W. FERGUSON

Attorney General

By:  ^{By WRM} per email with 3/21/15 1:00 a.m.
Linda A. Dalton, WSBA No. 15467
Senior Assistant Attorney General
Callie A. Castillo, WSBA No. 38214
Assistant Attorney General
Attorneys for Defendants



Stipulated Motion and ~~Proposed~~ Order Regarding
Award of Attorneys' Fees and Costs- 3

INSTITUTE FOR JUSTICE
10500 NE 8th Street, Suite 1760
Bellevue, Washington 98004
(425) 646-9300

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4/2/2015

1 **PROOF OF SERVICE**

2 I, Casey Dainsberg, hereby certify:

3 That on March 31st, 2015, I submitted this **Stipulation and [Proposed] Order**

4 **Regarding Award of Attorneys' Fees and Costs** to be filed with the Pierce County Superior
5 Court by messenger service to the following address:

6
7 The Chambers of the Honorable Judge Katherine M. Stolz
8 Pierce County Superior Court, Dept. 2
9 930 Tacoma Ave. S., Room 334
10 Tacoma, WA 98402
11 *ATTN: Linda Shipman, Judicial Assistant*

12 Copies of said documents have also been sent to the following parties by electronic mail
13 and U.S. First-Class mail.

14 Linda Dalton
15 lindad@atg.wa.gov
16 Assistant Attorney General

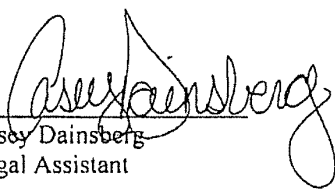
17 And

18 Callie Anne Castillo
19 calliec@atg.wa.gov
20 Assistant Attorney General

21 I certify under penalty of perjury under the laws of the state of Washington that the
22 foregoing is true and correct.

23 DATED this 31st day of March, 2015.

24 **INSTITUTE FOR JUSTICE**

25 By: 
26 Casey Dainsberg
27 Legal Assistant

28 Stipulated Motion and [Proposed] Order Regarding
Award of Attorneys' Fees and Costs- 6

INSTITUTE FOR JUSTICE
10500 NE 8th Street, Suite 1760
Bellevue, Washington 98004
(425) 646-9300



**PORT OF TACOMA
FINAL AGENDA
THURSDAY, JUNE 16, 2016
The Fabulich Center, Room 104
3600 Port of Tacoma Road
Tacoma, Washington**

9:30 AM: EXECUTIVE SESSION

1. CALL TO ORDER
2. RECESS INTO EXECUTIVE SESSION:
 - A. Two (2) Litigation Items-RCW 42.30.110 (i)
 - B. One (1) Personnel: Collective Bargaining Item-RCW 42.30.140 (4)(b)
 - C. One (1) Personnel: Performance Review Item-RCW 42.30.110 (g)

12:00 PM: COMMISSION MEETING

1. RETURN TO ORDER:
 - A. Flag Salute
2. CONSENT AGENDA:
 - A. Check Certifications
3. STAKEHOLDER UPDATES:
 - A. US Open Briefing: Denise Dyer, Pierce County

3A_Memo

3A Presentation

- B. Puyallup River Watershed Update: Harold Smelt, Pierce County

3B Presentation

4. STUDY SESSION:

A. Port of Tacoma Available Property Overview4A Memo4A PresentationB. Annual Port of Tacoma Master Policy Update Discussion4B Memo4B Attachment-2015 Master Policy Resolution4B Presentation

5. ACTION AGENDA:

- A. Request Commission vote to ratify the CEO's action of filing a "Declaration Judgement and Injunctive" challenge of two proposed local Initiatives filed with the City of Tacoma: Charter Amendment 5 and "Code Initiative 6," which asks the Pierce County Superior Court to (1) declare that local Initiatives exceed the proper scope of local initiative powers and therefore invalid and, (2) enjoin the Initiatives' signatures from being validated and enjoin the Initiatives from being placed on the November 2016 ballot, or adopted by the City.

5A Memo5A Presentation

- B. Request authorization for the CEO to execute a time-only amendment to existing Interlocal Agreement No. CC-78445 between Pierce County and the Port of Tacoma to extend the termination date from December 31, 2016 to December 31, 2017 to support the General Investigation Study on the Puyallup River.

5B Memo5B Attachment-ILA5B Presentation

- C. THIS ITEM HAS BEEN PULLED: Request authorization to issue a request for proposals for a personal services agreement for state lobbying services not to exceed \$264,000 over four years.
- D. THIS ITEM WAS POSTPONED DUE TO TIME CONSTRAINTS: Consider the annual CEO evaluation and any proposed change in compensation.

6. PUBLIC COMMENT
7. COMMISSIONER COMMENT
8. ADJOURNMENT

DATE: June 10, 2016

TO: Port Commission

FROM: John Wolfe, Chief Executive Officer
Project Manager: Tara Mattina, Communications Director

SUBJECT: Commission Ratification of Port Legal Challenge to two Tacoma Initiatives

A. ACTION REQUESTED

Request Commission vote to ratify the Port's action of filing a Declaratory Judgment and Injunctive challenge of two proposed local initiatives filed with the City of Tacoma—Charter Amendment 5 and Code Initiative 6 ("Initiatives"). The Declaratory Judgment asks the Pierce County Superior Court to:

- (1) Declare that local Initiatives exceed the proper scope of local initiative powers and therefore are invalid.
- (2) Enjoin the Initiatives' signatures from being validated and enjoin the Initiatives from being placed on the November 2016 ballot or adopted by the City.

B. BACKGROUND

1. The Initiative Actions

Signature gathering is underway for two proposed City of Tacoma Initiatives: Charter Amendment 5 ("Charter Initiative") **Attachment A** and "Code Initiative 6" ("Code Initiative") **Attachment B**. One Initiative seeks to amend the Tacoma Charter; the other to amend the Tacoma Municipal Code, but both are substantively the same. Both Initiatives seek: (1) to require a public vote on any land use proposal that consumes more than 1,336 CCF (1 million gallons) of water or more daily from Tacoma, (2) to overrule and/or disavow the United States Constitution, along with "international, federal [and] state laws" that "interfere" with the proposed amendment, (3) to curtail the jurisdiction of state and federal courts, and certain rights under the federal Constitution, including rights of corporations.

The Initiatives are driven by an entity called Save Tacoma Water (STW), a registered political committee.

2. Flawed Initiatives Provide Strong Basis for Successful Challenge

In Washington, local initiative and referendum powers may only be used to pass and repeal certain types of ordinances. Overall, local initiatives cannot compel a vote on zoning or development projects, set conditions for the provision of water, interfere with existing city administrative management of water operations and city budgeting, or conflict with local, state and federal laws. The two Tacoma local Initiatives contain all these defects.

3. Current Tacoma Water Operations

Tacoma has operated a municipal water system for more than 123 years. Under the Tacoma City Charter, Tacoma Water (TPU) is a regional water utility established in the City's Department of Public Utilities.

Tacoma has a legal obligation under state laws (RCW 80.28.110, 80.04.010, 80.04.380, and 80.04.385) to serve water and power demand in its service territories, and to acquire supplies and develop facilities (if necessary) to do so. The proposed Initiatives include pronouncements that go beyond the scope of Tacoma's city limits, affecting hundreds if not thousands of customers outside the Tacoma City limits.¹

Both the Charter and Chapter 35.33 RCW provide that the Tacoma city legislative authority (the City Council) alone is authorized to may make changes and adjustments to the budget. TPU, a division of the City of Tacoma accounts for **41 percent** of Tacoma's budget.

Tacoma has a lengthy history of administering the supply of water to commercial, manufacturing, technological and industrial consumers and has sufficient infrastructure, capacity and supply to serve future large water users:

Current Total System Average Day Demand	Water	2015:	56 MGD
		Peak Day:	97 MG
	Power	2015:	551 aMW
		Peak Day:	907 MW
Historical & Current Tide flats Average Industrial Demand	Water	1985:	35.4 MGD
		2015:	16.9 MGD
	Power	1985:	158.4 aMW
		2015:	53.7 aMW

The operation of the Tacoma City water system, including the authority to contract to provide for water service and what quantities and by what means, are all city administrative functions. These functions are beyond the scope of local initiative powers.

The local Initiatives which purport to allow a public vote on whether to grant or deny water service within TPU's water service area, conflicts with state water law. Tacoma cannot validly be compelled through local initiative to enact regulations that limit the rights of other jurisdictions to access Tacoma's water service.

Washington law holds zoning and development matters are not subject to initiative power. The two local Initiatives impermissibly attempt to require a public vote over what are essentially zoning/permitting decisions over developments that use a threshold amount of water, which would negatively impact the region's economy and send a negative message for business recruitment.

¹ Save Our Water concedes: "Residents of Tacoma, Fife, Milton, Kent, Covington, Lakewood, Bonney Lake, Federal Way, the Muckleshoot and Puyallup Reservations and portions of Auburn and Des Moines are dependent on fresh water from Tacoma Public Utility...." Petitions, **Attachments A & B**.

The Initiative would interfere with the budgeting power of the Tacoma City Council because the Initiatives would, outside of the statutory budget process, create a significant revenue impact upon the City.

4. Form of Challenge

The legal challenge takes the form of a “Declaratory Judgment and Injunctive” action, which asks the Court to (1) declare that Initiatives exceeds the proper scope of initiative power and therefore are invalid, and (2) enjoin the Initiatives’ signatures from being validated and enjoin the Initiatives from being placed on the November 2016 ballot, or adopted by the City.

The Economic Development Board for Tacoma-Pierce County (“EDB”) and the Tacoma-Pierce County Chamber (“Chamber”) joined the Port in the action as co-Plaintiffs, based on their shared concern of the Initiatives’ impact on their mission of economic development for the region.

The Port of Tacoma has a state legislative mandate to foster economic development in Tacoma and Pierce County. A critical Port mission is to lease lands to tenants, who can and do include manufacturing, commercial, technological and industrial entities that may and do use more than 1 million gallons a day from TPU.

The EDB and the Chamber serve as Tacoma/Pierce County economic advocates and each are dedicated to enhancing economic vitality and promoting efforts to attract investment in Tacoma and Pierce County, which can include manufacturing, commercial, technological and industrial entities that may use more than 1 million gallons of water a day. The Port, EDB and Chamber would be adversely affected by the Initiatives which, if adopted, would interfere with Tacoma’s longstanding program to provide necessary water service to technologic, manufacturing, industrial and commercial users throughout Pierce County.

The City of Tacoma agrees the Initiatives are defective and have filed a cross claim against the Initiative sponsors within the existing suit.

C. TIMEFRAME/PROJECT SCHEDULE

The legal challenge was filed June 6, 2016. The City filed its Answer and Cross Claims on June 8, 2016. The Port expects Plaintiffs to file preliminary Motions shortly, and seek resolution of the issues at the trial court level within 6 weeks.

D. FINANCIAL SUMMARY

The Port’s legal budget is \$60,000.00.

E. ECONOMIC INVESTMENT

The Port undertook this action in defense of its economic development mission, and on behalf of those residents and water users outside the Tacoma city limits, as well as on behalf of future technologic, manufacturing, industrial and commercial users throughout Pierce County, which are served by Tacoma Water, and who would be denied a voice in Tacoma’s provision of water under the Initiatives.

F. ENVIRONMENTAL IMPACTS / REVIEW

There are no environmental impacts associated with the Port's legal action.

G. NEXT STEPS

The Port's Legal Counsel will continue to work with its partners at the EDB and Chamber to pursue the challenge.

**BOARD OF COMMISSIONERS
THE FABULICH CENTER, ROOM 104
3600 PORT OF TACOMA ROAD, TACOMA, WASHINGTON**

COMMISSIONERS PRESENT:

1. Connie Bacon, President
2. Dick Marzano, Vice President
3. Don Meyer, Secretary
4. Clare Petrich, 1st Assistant Secretary
5. Don Johnson, 2nd Assistant Secretary

STAFF PRESENT:

1. John Wolfe, Chief Executive Officer
2. Carolyn Lake, Port Counsel
3. Judi Doremus, Executive Assistant
4. Sean Eagan, Director, Government Affairs
5. Jason Jordan, Director, Environmental Programs
6. Scott Francis, Director, Real Estate
7. Erin Galeno, CFAO
8. Mark Little, Director, Contracts & Purchasing

9:30 am: EXECUTIVE SESSION

Call to order and recess into Executive Session:

1. Two Litigation Items RCW 42.30.110 (i)
2. One Personnel-Collective Bargaining Item RCW 42.30.140 (4) (b)
3. One Personnel-Performance Review Item RCW 42.30.110 (g)

12:00 noon: REGULAR COMMISSION MEETING

1. RETURN TO ORDER:

- A. Flag Salute

2. CONSENT AGENDA:

- A. Voucher Certification: Checks #208715 through #209012 and wire transfers in the total amount of \$9,458,346.18 during the period of May 11, 2016 through June 7, 2016 were certified.

Motion was made by Commissioner Johnson, seconded by Commissioner Petrich:

“Approve the above Consent Agenda”.

VOTE: MOTION CARRIED 5-0

3. STAKEHOLDER UPDATES:

- A. U.S. Open Briefing - Denise Dyer, Pierce County Economic Development Director:
1. The economic benefits to the region were discussed.
 2. The coverage of the Pacific Northwest worldwide was discussed.
 3. Purchasing of flowers, food and HVAC system were local.
 4. The USGA respected the wishes of the community to include honoring the military, free kid days and donating all of the leftover food to the local foodbank. The USGA now has a policy that all leftover food will be donated each year.
- B. Puyallup River Watershed Update – Harold Smelt, Pierce County Surface Water Management:
1. Progress to date on this project was discussed.
 2. Proposed is one long setback levee (eight miles in length) from Tacoma to Puyallup.
 3. Planning and engineering will take approximately three years and construction is estimated to take approximately six years. This timeline includes property acquisition.
 4. Other approaches, including their pros and cons, were discussed.

4. STUDY SESSIONS:

- A. Port of Tacoma Available Property Overview-Scott Francis, Real Estate Director:
1. CEO Wolfe stated that, with Commission direction, future potential leases will be brought forward in two readings. The first reading will be a briefing for the Commission and public. During the second reading, if no changes occur, the action will be brought to the Commission for action. Commission requests that this be made a written policy.
 2. Port of Tacoma Real Estate goals for available properties were reviewed.
 3. Commissioner Meyer requests more visibility to the RFP process upfront, to include a public hearing to discuss the options for marketed properties.
 4. Commissioner Marzano requests a report showing the number of acres of Port-owned properties versus the number of acres owned privately.
 5. Ralph Ibarra, Diverse America Network: Asked about a foreign trade zone. Our FTZs can be established anywhere in the county. These do change based on user needs.
 6. Arthur West: Asked about the Port owning property in Thurston County (Maytown). Initially there was an ILA with Thurston County, but this has ended. The Port is in compliance for the property during this wind-down phase with the intent to sell the property.
 7. Dr. Linda Fortune: Reminded the Commission of their desire to have a dialogue with the public. She recommend that we have a dialog with the public regarding the types of industries that should be on each property.

8. Michael Lafreniere: Stated that he is interested in a subarea plan discussion between the Port of Tacoma and the City of Tacoma. He asked if the Port will be engaging with the City of Tacoma regarding subarea planning. Commission responded that there is a scheduled joint study session with the City of Tacoma on June 28th. The City of Tacoma is hosting this meeting and has a policy that public comment is not taken during study sessions.
9. Jan _____ (last name unknown, as not on public comment sign-up sheet) She asked why residents don't receive notices of cleanups or large proposed projects in the Tideflats. Staff responded that there are different statute requirements for different projects. Notices are given by the regulatory agency involved (not the Port), and each one has different notification requirements.
10. Billy Blattler: Requested that public meetings be listed on the website. Commissioner Bacon responded that all public meetings are listed on our website. Tara Mattina, Communications Director, suggested anyone who is interested go to www.Portoftacoma.com/subscribe to sign up for any distribution lists that are of interest.
11. Alan Oldstudent: Requested that the meetings be held at a time when "normal working people" can attend. Commissioner Bacon responded that we have held meetings in the evenings in the past and did not have any sizable community members attending. We moved the meetings to 12 noon so people could attend during the lunch hour. The meetings are also webstreamed live and available online at any time. They are also played multiple times on public TV. Since so many people work swing shifts or evening shifts, there really is no "normal working people" time.

B. Master Policy Update Discussion-Erin Galeno, CFO and Mark Little, Director, Contracts & Purchasing:

1. In Section III staff intends to add language regarding implementing two readings of leases to the Master Policy in 2016. Commissioner Marzano recommends that second readings be used in a broader sense.
2. Under Section III: Commissioner Meyer would like future dialogue on updates to the RFP process.
3. Small properties for nonprofits: Staff looks at documented economic value and market value of properties.
4. Commissioner Meyer suggested that under the Legal Section that, as elected officials, the Commission should not delegate legal action to the CEO.
5. Ralph Ibarra: Commended the Port of Tacoma for its support of small business. Economic empowerment through the Port of Tacoma is germane to the concerns that citizens state around transparency. With the Master Policy the Commission has an opportunity to be creative and innovative in keeping dollars collected by the Port of Tacoma circulating in our communities.
6. Arthur West: Stated that it important that before an agency takes legal action that their elected officials be in agreement.

5. ACTION AGENDA:

A. Challenge of Two Proposed Local Initiatives:

“Request ratification of the Port’s action of filing a Declaratory Judgment and Injunctive challenge of two proposed local initiatives filed with the City of Tacoma: (1) Charter Amendment 5 and (2) Code Initiative 6.”

Moved by Commissioner Johnson, seconded by Commissioner Petrich:

1. CEO Wolfe gave a brief introduction. Commissioner Bacon stated that because this an active litigation issue, our legal counsel cannot answer questions from the public that would violate the attorney-client privileged information.
2. The reasons the two initiatives are not legal actions were discussed.
3. Robert Mack, Tacoma Public Utilities (TPU), Public Affairs and Linda McCrea, Tacoma Water Superintendent, were in attendance and provided information on the legal requirements of TPU. If the City operated on the language in the initiatives they would violate state law. Mack stated that water use is down approximately 50% since 1985.
4. Claudia Reidener: Regarding the available water: She stated that Lake Haven Water District sold water to Tacoma last year. She asked why Tacoma is buying water while saying we have a surplus of water.
Robert Mack: Responded that last year was an exceptional year for high temperatures and lack of precipitation. Lake Haven is one of TPU's partners and they provide the Lake Haven area with water. There is a regional system in place so that when one partner needs water more than another they can borrow from the other partners. The system is designed for exchanges. He stated that TPU does not withdraw water above approved levels from the Green River. He stated that there is a law stating that TPU will provide water to all customers and cannot discriminate based on the amount used. The same law applies to electrical power. Public utilities cannot say that because there are low-flow months during a decade that they won't provide water to any customer. There is policy they must comply with. The law requires public utilities to serve the public and put in provisions for low-flow periods.
5. Judi Chelotti: She was unable to attend the meeting, but submitted a written statement, which is attached to these minutes.
6. As this is an active litigation issue, our legal counsel cannot answer questions from the public that would violate the attorney-client privileged information.
7. Carolyn Lake: Stated that the Port of Tacoma is not seeking damages from anyone. When the City of Tacoma filed a cross complaint they asked for attorney fees, but they filed an amended complaint withdrawing that. There will be a hearing to present positions in two to four weeks.
8. Michael Lafreniere: Stated that they filed with the City of Tacoma for a new standard to protect water. They have collected 16,000 signatures in 100 days. Both initiatives strive to protect the public from users who would use more than 1 million gallons per day. He spoke that he opposes the Port challenging the two initiatives. He feels it is undemocratic to keep the initiatives off of the ballot.

9. William Kupinse: He has concerns about the amount of money needed to subsidize the PSE LNG project. PSE has put \$5.5 million toward reopening the Tideflats fire station, but there is a \$5 to \$7 million gap. He also stated that PSE is looking to receive reimbursement for this money they invested in the fire station. He feels we should not develop any fossil fuel projects.
10. Alan Oldstudent: Stated that citizens of Tacoma are not in the mood to be told what they can do. They have tried to conserve water. He asked about showing respect to citizens. He added that the water belongs to the voters. He feels this challenge is an attack on voice of people.
11. Donna Walters, Save Tacoma Water: Stated that the group of citizens who elected the Commissioners have lost faith in their judgement. Walters is the Co-Chair and Sponsor of Save Tacoma Water. She stated that citizens must speak up when they disagree with actions taken by elected officials. This group wants to protect our resources. They are not against jobs. They want to protect our water. She stated that the Commission has not reached out to citizens since this initiative began four months ago. She asked that the Port of Tacoma withdraw from the lawsuit.
12. Rita Andreeva: Stated that water is a commodity with supply and demand. In other countries cities have run out of water. Climate change is a serious threat. Each year could be worse than the year before. She asked what will happen if we allow an industry to use large amounts of water and there is not enough for the public. She stated that the humane thing would be to give the water to the people and not industry. Citizens should be able to have a voice in their government. Even though we have enough water here we might need to give it to people south of us when they run out.
13. LaDonna Robertson: Stated she is speaking on behalf of Redline, Save Tacoma Water and We the People. She stated that the lawsuit brought against passage of the two water initiatives, which would put TPU against state law, wouldn't come to that. They only want to bring companies to our area that would use our resources responsibly.
14. Billie Blattler: Stated that she is concerned about decisions that have been made that seem unattractive to the people. She doesn't know why only City of Tacoma citizens could sign the water initiative petition since this would affect people outside of the city. She stated that it is our water and you need to listen to the voters.
15. Christina Brown: Stated that we need to craft a different vision for Pierce County. Money and law are very dry, but businesses are made up of people. We need to craft a future together instead of butting heads. We are in a dire emergency with the climate. We need to pay attention and look at what we can do to conserve water. We need more efforts. We want a clean environment. LNG Plant: In the EIS it is described as a marine bunkering facility. She is confused at this point how the Port can make this happen. She has safety issue concerns for an LNG plant and a bunkering facility. It is not recommended to put this in a dense urban environment and in an active port.
16. Scott McNabb, Tacoma Longshore: Stated that he spent over 2,000 hours working in port last year. He feels that the PSE LNG project is a progressive one. The shipping industry that is not going anywhere. Everyone in the maritime industry is switching to LNG. LNG is the cleanest way to power the ships. He stated that we are trying to do whatever we can to make it better. He asked people to consider that the only alternative is to continue with diesel, which is much worse for the environment and the workers.
17. Russ Higley: Stated that he feels it is disingenuous to say we have excess water when we had a water shortage last year and also to say that the Tacoma initiative would exclude people outside the city limits. The Port of Tacoma website states that the Commission sets policy. He feels that the Commission is going in the wrong direction. Referring to the EIS process: Commissioners have no decision power in the EIS.
18. Arthur West: Stated that the Port of Tacoma is using its power. He can identify with some of the frustrations vented today. He stated that the Port has a history of bullying citizens and withholding records. He is concerned about corporations and the government joining forces with the EDB and the Chamber. He has submitted a written complaint alleging illegal election practices. He feels that the Port is illegally spending funds to oppose ballot measures.
19. Bea Christopherson: Stated that she is fed up with entrenched corrupt government. Suits inflame voters. She feels that the "We the People" has been lost. She wants control over the government and stated that they need to stop steamrolling over us. She considers the challenge to the initiative wrong. In regard to the methanol versus LNG plant: LNG is fairly safe. In liquid form it is not a flammable risk. LNG is safer and cleaner than diesel. PSE is a good guy. She advised the public to pick their battles wisely.
20. Roxanne Murray: Stated that there is a misconception that LNG is a green form of energy. That is not true. LNG results in less carbon dioxide, but increases methane. We would be trading one greenhouse gas for another.
21. Grant Regal, PSE: Responded to the level of threat that the LNG project poses to downtown Tacoma: He stated that safety requirements are in the design. It poses no threat of explosion or fire to Tacoma. There are specific requirements to be addressed and contained to the project site in the permits. The design has confirmed this. He stated that the primary use of the facility would be for peak shaving. There are other facilities in this area that accomplish this. There is one in Gig Harbor. PSE also has a decades-old facility near Centralia. At these sites natural gas is inserted into the ground and withdrawn on peak use days. This is key to keeping natural gas coming to homes and businesses. The implication that we would export LNG from the Tideflats facility is not true. It is not big enough. It would take over a year to fill one tanker ship from this facility.
22. Dean McGrath, ILWU: Stated that we definitely are in some challenging times. He welcomes the public's interest. He is discouraged to see the accusations being made against the Commission stating that it is against the public. Commissioners don't make a lot of money and their decisions have made this community successful. However, people do bring up some good points. There is a lot of misinformation out there. I don't think anyone is maliciously trying to do anything in bad faith. He suggested that the Port, along with some of these groups, could form some kind of committee to get to the bottom of issues. Our community needs to be successful. We could form a committee to bring these issues forward with equal representation from many groups to move forward and make rational decisions.

23. Sue Clemmons: Regarding the LNG plant being a peak shave facility: She stated that Attachment J to the EIS shows the following use: 7% peak shaving, 18% other uses and 75% marine bunkering. However, Attachment J was not with the final document. There will be much more than 7% of that facility used on peak cold days. On other days it is there as a backup. Will check on Attachment J. Today there are two known uses: peak shaving and TOTE's ships. There are discussions underway regarding converting Washington State ferries over to LNG fuel, as well as over-the-road trucking discussions. Nothing is in place at this point, however.
24. Claudia Reidener: Asked why the Port waited several months before file this lawsuit. Why didn't they step in earlier? Contrary to what we heard, she stated that the Port and Chamber are asking for damages and attorney costs. You are supporting keeping the status quo by only requiring that three Commissioners approve a lease. Diesel is bad, but we are pushing pollution upstream with LNG. Regarding safety: This will be the first bunkering LNG facility in the nation and the permits are not yet in place.
25. Carolyn Lake: Stated that the City of Tacoma is deleting the section of the suit asking for financial damages. The Port's suit inadvertently asks for attorney fees, and an amended complaint is going out this afternoon that takes this language out.
26. Billie Blattler: Stated that she is not sure if anyone here today asked the Commission to withdraw their challenge. She is asking that they withdraw this challenge. She stated that we are talking about honest people who have concerns.
27. Commissioner Don Meyer: Stated that we have to get past reactionary thinking. He is looking forward to sitting down as a community to decide how we want to move forward. The Port needs to reestablish our community connections,
28. Commissioner Connie Bacon: Stated that we need to find a way to get together. She stated this suit is a democratic process, and that she is ready to stand by the court's response. She hopes the public is too.
29. Commissioner Dick Marzano: Stated that the Commission learned a valuable lesson during the methanol project. It should not be us against them. We should sit down and discuss projects. He added that the public may not always agree with the Commission, but we should sit down as a tri-party group. He also stated that when we used to hold meetings at 6:00 pm that it did not work for some citizens. There is a large majority of people who are not here today. Perhaps we could consider having alternating start times.
30. Commissioner Clare Petrich: She stated that over the years there has been very little activity from citizens. It is heartening to see the passion today. She also added that it is too bad to see the public walk away when it is the Commission's time to speak. We have listened to you. We need to expand our conversation on our strategic plan. She is looking forward to broader conversations with the public. Initiatives don't always benefit people. Someone said you have to have a challenge to have a decision on it. This process of challenging this initiative is to save the expense that would occur at a later time. Because of the legal issues with these initiatives, it would be more expensive to deal with them at a later time.
31. Commissioner Connie Bacon: Stated that we want to say we are a city that is open for business to the national and international customers. She also asked that the public please consolidate their comments into one speaking opportunity. Regarding the suit, she is ready to abide by whatever decision the court makes.

AMENDED MOTION: "Request ratification of the Port's action of filing a Declaratory Judgment and Injunctive challenge of two proposed local initiatives filed with the City of Tacoma: (1) Charter Amendment 5 and (2) Code Initiative 6, and no fees or other costs will be sought in conjunction with this challenge."

Moved by Commissioner Meyer, seconded by Commissioner Petrich:

VOTE TO AMEND MOTION: CARRIED 5-0

Moved by Commissioner Johnson, seconded by Commissioner Petrich:

VOTE ON AMENDED MOTION: CARRIED 5-0

B. ILA Extension: City of Tacoma/Port of Tacoma-Puyallup River General Investigation:

1. Staff is asking for an extension of the ILA for one additional year, as the general investigation will take seven years, rather than the expected six years.
2. This is a time-only extension. There will be no additional costs to the Port. Originally the Commission approved a not-to-exceed amount of \$300,000.

"Authorize the Chief Executive Officer to execute a time-only amendment to existing Interlocal Agreement No. CC-78445 between Pierce County and the Port of Tacoma, to extend the termination date from December 31, 2016, to December 31, 2017, to support the General Investigation Study on the Puyallup River, Project Master Identification No. 098191."

Moved by Commissioner Johnson, seconded by Commissioner Petrich:

VOTE: MOTION CARRIED 5-0

C. This item was pulled.

D. This item will be rescheduled to the July Commission Meeting.

Commissioner Petrich left the meeting at this point.

6. PUBLIC COMMENT:

Ralph Ibarra: Spoke on using minority state contracts for completing SR-167. Since state money is funding this project let's make sure that the money comes back to our minority communities. He encouraged the Commission to have a broader conversation about Connecting Washington, and ask themselves what the Port can do to make sure those dollars flow back to the community.

7. COMMISSIONER COMMENT:

Commissioner Comment:

Commissioner Johnson: Reported on the recent Audit Committee Meeting. The 2015 financial audit and State Auditor’s Office compliance audit were once again clean. We had our sixth internal compliance report. Annually, the department heads have to sign off on compliance issues.

8. ADJOURNMENT:

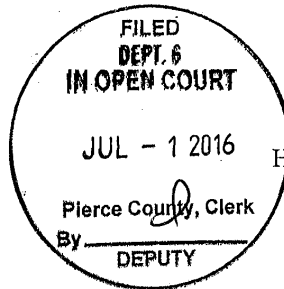
There being no further business, President Bacon adjourned the meeting at 3:39 pm.

Constance T. Bacon, President
Port of Tacoma Commission

ATTEST:

Donald G. Meyer, Secretary
Port of Tacoma Commission

Judi Doremus, Clerk of the Port
Port of Tacoma



JUDGE Nevin
HEARING DATE: Friday, July 1, 2016
TIME: 10:00 a.m.

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

PORT OF TACOMA, a Washington State
Municipal Corporation, ECONOMIC
DEVELOPMENT BOARD FOR TACOMA-
PIERCE COUNTY, a Washington State
Nonprofit Corporation,

Plaintiffs,

vs.

SAVE TACOMA WATER, a Washington
political committee, DONNA WALTERS,
sponsor and Treasurer of SAVE TACOMA
WATER, JON AND JANE DOES 1-5,
(Individual sponsors and officers of SAVE
TACOMA WATER), CITY OF TACOMA, a
Washington State Municipal Corporation,
and PIERCE COUNTY, a political subdivision
by and through JULIE ANDERSON, IN HER
CAPACITY AS PIERCE COUNTY AUDITOR

Defendants.

No. 16-2-08477-5

and City of Tacoma

[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR
DECLARATORY JUDGMENT &
PERMANENT INJUNCTIVE
RELIEF & *Dismissing*

STW's motion to Dismiss

ORDER GRANTING PLAINTIFFS' MOTIONS FOR
DECLARATORY JUDGMENT & PERMANENT
INJUNCTIVE RELIEF 1 of 7
160629.pldg.Port EDB Chamber PR/SD ORDER. PERMANENT Injunction &
DEC JUD

GOODSTEIN LAW GROUP PLLC
501 South G Street
Tacoma, WA 98405
253.779.4000

1 CITY OF TACOMA,

2 Third-Party Plaintiff,
3 vs.

4 SAVE TACOMA WATER, an Washington
5 political action committee, DONNA
6 WALTERS, Co-Chair and Treasurer SAVE
7 TACOMA WATER; SHERRY BOCKWINKLE,
8 Co-Chair and Campaign Manager of SAVE
9 TACOMA WATER; JOHN AND JANE DOES
1-5, (Individual sponsors and officers of SAVE
TACOMA WATER); and Julie Anderson, in
her official capacity as Pierce County Auditor

Third-Party Defendants.

10 THIS MATTER came before the Court upon the Plaintiffs' Motion for
11 Preliminary and Permanent Injunction and for Declaratory Judgment, noted for
12 + Motion to Dismiss
13 consideration on July 1, 2016. The Court has considered the arguments of Counsel and
has reviewed the following pleadings:

- 14 1. CITY MOTION FOR PRELIMINARY INJUNCTION
- 15 2. DECLARATION OF KYMBERLY K EVANSON
- 16 3. DECLARATION OF PETER HUFFMAN
- 17 4. DECLARATION OF ROBERT MACK
- 18 5. DECLARATION OF TC BROADNAX
- 19 6. PORT & EDB MOTION FOR PRELIMINARY, PERMANENT AND
DECLARATORY JUDGMENT
- 20 7. DECLARATION OF JOHN WOLFE
- 21 8. DECLARATION OF COUNSEL CAROLYN LAKE
- 22 9. DECLARATION OF SUSAN SUESS
- 23 10. PIERCE COUNTY'S ANSWER AND AFFIRMATIVE DEFENSES

24 ORDER GRANTING PLAINTIFFS' MOTIONS FOR
25 DECLARATORY JUDGMENT & PERMANENT
INJUNCTIVE RELIEF 2 of 7
160629.pldg.Port EDB Chamber PR'SD ORDER. PERMANENT Injunction &
DEC JUD

GOODSTEIN LAW GROUP PLLC
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11. CHAMBER MOTION FOR PRELIMINARY AND PERMANENT INJUNCTION
AND DECLARATORY JUDGMENT
12. DECLARATION OF TOM PIERSON
13. CITY RESPONSE TO MOTIONS FOR PRELIMINARY AND PERMANENT
INJUNCTION AND DECLARATORY JUDGMENT
14. AFFIDAVIT/DECLARATION OF COUNSEL
15. STW RESPONSE TO PRELIMINARY INJUNCTION MOTION
16. DECLARATION OF LINDSEY SCHROMEN-WAWRIN
17. DECLARATION OF SHERRY BOCKWINKEL
18. CHAMBER REPLY IN SUPPORT OF PRELIMINARY, PERMANENT AND
DECLARATORY JUDGMENT
19. PORT REPLY IN SUPPORT OF PRELIMINARY, PERMANENT AND
DECLARATORY JUDGMENT

20. STW's Motion To Dismiss

The Court finds as follows:

1. A justiciable controversy exists. There is an actual, present, and existing dispute between parties with genuine and opposing interests that are direct and substantial. Post-election events will not further sharpen the issue whether Tacoma Code Initiative 6 and Tacoma Charter Initiative 5 (the "STW Initiatives") are beyond the scope of the local initiative power.
2. Plaintiffs have standing. Plaintiffs fall within the zone of interests the STW Initiatives seek to regulate and have demonstrated sufficient injury in fact. Further, this case involves significant and continuing issues of public importance that merit judicial resolution.
3. The STW Initiatives exceed the local initiative power and are invalid.

ORDER GRANTING PLAINTIFFS' MOTIONS FOR
DECLARATORY JUDGMENT & PERMANENT
INJUNCTIVE RELIEF 3 of 7
160629.pldg.Port EDB Chamber PRSD ORDER. PERMANENT Injunction &
DEC JUD

GOODSTEIN LAW GROUP PLLC
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- 1 a. The requirement for a binding vote of Tacoma residents before providing
2 water utility service to an applicant that intends to use 1336 CCF (one
3 million gallons) of water daily from the City of Tacoma ("Water
4 Provision") is a land use and development provision and exceeds the
5 local initiative power because it is administrative in nature and involves
6 powers delegated under RCW Title 35 to the legislative bodies of
7 municipalities. STW Initiatives' Water Provisions also is administrative
8 because they seek to change or hinder Tacoma's pre-existing water utility
9 management and operations.
- 10 b. The Water Provisions exceed the local initiative power because they
11 conflict with state law, and are administrative in nature. The Water
12 Provisions seek to interfere with water utility service requirements that
13 are subject to Washington's state water rights and service laws, and the
14 Growth Management Act. STW Initiatives' Water Provisions would add
15 requirements to these pre-existing regulations, and would interfere with
16 pre-existing regulations. The Water Provisions therefore conflict with
17 state law and are outside the scope of the local initiative power. The
18 Water Provisions are also administrative because they seek to change or
19 hinder pre-existing water regulations. The Water Provisions are also
20 outside the scope of the local initiative power because they attempt to
21 impose rights on Tacoma residents regarding water usage outside the
22 boundaries of Tacoma City limits, and they attempt to create new

1 constitutional rights. The City of Tacoma lacks jurisdiction to enact such
2 legislation, ^{people of the} through the initiative.

- 3 c. STW Initiatives' provisions which seek to invalidate any conflicting
4 Washington and state agency laws and rules exceed the local initiative
5 power because they conflict with state law and seek to elevate city
6 code/charter above state law which is beyond the City of Tacoma's
7 jurisdiction to enact.
- 8 d. The STW Initiatives' corporate rights provisions exceed the local
9 initiative power because they attempt to change the rights of
10 corporations under federal and state law. The provisions therefore
11 conflict with federal and state law, and are outside the scope of the local
12 initiative power. The local initiative power does not include the ability to
13 limit U.S. Supreme Court precedent, including *Citizens United v. Federal*
14 *Election Commission*, 558 U.S. 310 (2010). The local initiative power
15 does not include the ability to override the "personhood" rights to
16 corporations under federal and state law, including under the First and
17 Fifth Amendments of the United States Constitution and Wash. State
18 Const. art. XII, § 5. The STW Initiatives exceed the local initiative power
19 because they attempts to strip corporations of their First and Fifth
20 Amendment rights, which would conflict with U.S. Supreme Court
21 precedent.
- 22 e. The STW Initiatives provisions that seek to limit a court's authority to

1 interpret the law or to determine whether a "permit, license, privilege or
2 charter" is valid are outside the scope of the local initiative power
3 because they conflict with federal and state law and seek to elevate city
4 code/charter above state law which is beyond the City of Tacoma's
5 jurisdiction to enact.

6 4. The STW Initiatives are not severable. All substantive provisions of both
7 Initiatives are invalid. Once the Initiatives' substantive provisions A-C are held
8 invalid, the enforcement, severability, and effect sections are moot.

9 5. Plaintiffs have established clear, legal or equitable rights to prevent invalid
10 Initiatives, which exceed the scope of local initiative power, from appearing on
11 the official ballot for the November 2016 election or any ballot thereafter;

12 6. Plaintiffs have established a well-grounded fear of immediate invasion of those
13 rights because the Pierce County Auditor, at the direction of the City, will place
14 the STW's Tacoma Code Initiative 6 on the official ballot in September 2016
15 absent contrary direction from this Court; and

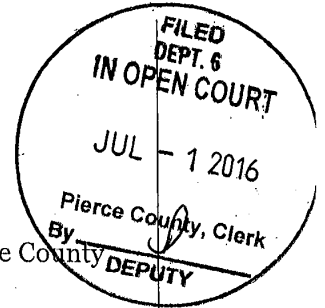
16 7. Plaintiffs have established that placing invalid initiatives on the ballot will
17 result in actual or substantial injury to Plaintiffs.

18 **Now, therefore, it is hereby ORDERED:**

- 19 1. Plaintiffs' Motion for Declaratory Judgment is GRANTED.
20 2. The Court DECLARES that the STW Initiatives are invalid as outside the scope
21 of the local initiative power.
22 3. The Court further DECLARES that neither STW Initiative shall appear on the

23 ORDER GRANTING PLAINTIFFS' MOTIONS FOR
24 DECLARATORY JUDGMENT & PERMANENT
INJUNCTIVE RELIEF 6 of 7
25 160629.pldg.Port EDB Chamber PR'SD ORDER, PERMANENT Injunction &
DEC JUD

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November 2016 election or any ballot thereafter, and directs the Pierce County

Auditor not to include them on that or any ballot.

4. Plaintiffs' Motions for Preliminary and Permanent Injunction is GRANTED.

5. The motion to consolidate the hearings on the motions for preliminary and permanent injunctive relief and the merits is GRANTED.

6. This Order shall serve as the Court's final Order and Judgement adjudicating the merits of this action.

7. The Pierce County Auditor is hereby enjoined from including the STW Initiatives on the ballot for the November 2016 election or any other election ballot.

3. Count has subject matter jurisdiction & STW's Motion to Dismiss is denied.

DATED this 1 day of July, 2016.

Jack Nevin
Jack Nevin, Superior Court Judge

Presented By:

GOODSTEIN LAW GROUP PLLC
By /s/ Carolyn A. Lake
By /s/ Seth Goodstein
Carolyn A. Lake, WSBA #13980
Seth Goodstein, WSBA #45091
Attorneys for Plaintiff Port of Tacoma

LEDGER SQUARE LAW, P.S.

By: /s/ Jason M. Whalen
Jason M. Whalen, WSBA #22195
Attorneys for Plaintiff EDB

GORDON THOMAS HONEYWELL LLP
By: /s/ Warren E. Martin
Warren E. Martin, WSBA # 17235
Shelly Andrew, WSBA # 41195
Attorneys for Plaintiff Chamber

ORDER GRANTING PLAINTIFFS' MOTIONS FOR
DECLARATORY JUDGMENT & PERMANENT
INJUNCTIVE RELIEF 7 of 7
160629.pldg.Port EDB Chamber PRSD ORDER. PERMANENT Injunction &
DEC JUD

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Counsel for City of Tacoma

MARK LINDQUIST, PROS. ATT
BY David Pratton #8292
DAVID PRATTONE, DEPUTY

Approved as to form:
by Lindsey Schreiner-Walton 46352

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Approved as to form
7. Michael Morris STW

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H.L.B.

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JUN 16 2016

June 16, 2016

2016 JUN 16 AM 9:33

Public Disclosure Commission

**TO: ATTORNEY GENERAL OF WASHINGTON
WASHINGTON STATE ATTORNEY GENERAL ROBERT
FERGUSON, PIERCE COUNTY PROSECUTOR MARK
LINDQUIST, AND THE WASHINGTON STATE PUBLIC
DISCLOSURE COMMISSION**

**RE: CITIZEN'S ACTION LETTER RE UNLAWFUL CAMPAIGN
ACTIVITY BY THE PORT OF TACOMA, THE ECONOMIC
DEVELOPMENT BOARD OF TACOMA-PIERCE COUNTY,
THE TACOMA-PIERCE COUNTY CHAMBER, AND THE
"THIRD TRIUMVIRATE" CREATED BY THEIR CONCERTED
ALLIANCE OPPOSING TACOMA CITIZENS' INITIATIVES
AND COMPLAINT FOR VIOLATION OF RCW 42.17A.555
BY THE PORT OF TACOMA IN EXPENDING PUBLIC
FUNDS TO OPPOSE A BALLOT MEASURE**

**FROM: ARTHUR WEST
120 State Ave. NE #1497
Olympia, Washington, 98501**

Please consider this as a complaint for violation of RCW 42.17A.555 and a formal citizen's action letter under RCW 42.17.765 concerning the continuing unregistered campaign activity, unregistered PAC activity, and failure to report campaign related receipts and expenditures to oppose Tacoma Citizen's Initiatives 5 and 6 by the Port of Tacoma, the Economic Development Board of Tacoma-Pierce County, the Tacoma-Pierce County Chamber, and by the "Third Triumvirate" formed by the organized political alliance of these three powerful and influential organizations.

RCW 42.17A.555 provides...

**COMPLAINT RE UNLAWFUL CAMPAIGN ACTIVITY BY THE PORT OF TACOMA, CHAMBER
EDC, AND THE THIRD TRIUMVIRATE FORMED BY THEIR JOINT ORGANIZATIONAL CABAL**

1

safely rely solely upon a determination of whether a particular act may be legal in a technical sense. The phrase "normal and regular" in the proviso thereto must be taken to denote some qualification of conduct over and above that of being merely lawful; otherwise, presumably, the proviso would have used that term. Every word and phrase of a statute must be given its full meaning, where possible, and no word or choice of wording should be regarded as insignificant. Murray v. Dept. of Labor & Industries, 151 Wash. 95, 275 Pac. 66 (1929).

Consequently, to give full effect to the proviso, the phrase must be construed to mean such activities as are not only lawful, but also to at least some extent, within the "usual" conduct of the office in question. Thus, an action by an elected official for a purpose prohibited by RCW 42.17.130 will not necessarily be saved by the proviso merely because the governing body of the agency ultimately ratified the expenditure or even gave the official in question special authority, in advance, to expend funds for the purpose in question.

In practical effect what this means is that the proviso must be strictly construed as provisos usually are. Tabb v. Funk, 170 Wash. 545, 17 P.2d 18 (1932). Generally, therefore, expenditures made in extraordinary cases, or authorized in some extraordinary manner or by some extraordinary process of reasoning, cannot be held to be "normal and regular conduct" of an office under the proviso with which [[Orig. Op. Page 9]] we are here concerned. AGO 1975, No. 23 cited in King County Council v. Public Disclosure Commission, 93 Wn.2d 559, 611 P.2d 1227, (1980), cited in Knowing the Waters, Basic Legal Guidelines for Port Districts, Robert Hauth (2007), at page 23-24.

By using public funds to oppose Tacoma Citizen's Initiatives 5 and 6 in an extraordinary manner that was not part of the "normal and usual" conduct of the Port of Tacoma, as these terms have been understood for over 40 years in Attorney General Opinions entitled to great weight, (See Citizens

purposes of each of the organizations it is composed of is to oppose ballot measures such as Tacoma Citizen's Initiatives 5 and 6.

As their websites demonstrate, the members of the Triumvirate all apparently believe that opposing ballot measures such as Tacoma Citizen's Initiatives 5 and 6 is one of their primary purposes, and it is apparent that the organization created by their joint efforts has no other purpose whatsoever than to oppose these two measures.

By so acting, the Port of Tacoma, the Economic Development Board of Tacoma-Pierce County, the Tacoma-Pierce County Chamber and the organization they created to oppose Tacoma Citizen's Initiatives 5 and 6 failed to register or report campaign related expenditures made to oppose a ballot measure, and in addition failed to register or report as PACs as required by RCW 42.17A.205-240 of organizations opposing ballot propositions such as Tacoma Citizen's Initiatives 5 and 6

This violated the intent of RCW 42.17.0001, including section (1) That political campaign and lobbying contributions and expenditures be fully disclosed to the public and that secrecy is to be avoided.

Please investigate and take any necessary action in regard to this complaint and Citizen's Action Letter. If you believe any further information would be helpful to your investigation, do not hesitate to ask.

Done June 16, 2016, in Olympia. I, Arthur West, certify the factual assertions above to be correct and true under penalty of perjury of the laws of the State of Washington.


ARTHUR WEST

1 SAVE TACOMA WATER, and JON AND JANE DOES (Individual sponsors and officers
2 of SAVE TACOMA WATER) 1-5 (collectively "STW") submitted what became "Charter
3 Amendment 5" ("Charter Initiative"). See Copy **Attachment A**. The Charter Initiative 5
4 seeks that any land use proposal requiring water consumption of 1336 CCF (one million
5 gallons) of water or more daily from Tacoma be submitted to a public vote prior to "the
6 City" "providing water service" for such a project. (Section 4.24 (A)). STW's Charter
7 Initiative expressly purports to elevate its proposed Charter amendment above state law,
8 by pronouncing that "all laws adopted by the legislature of the State of Washington, and
9 rules adopted by any state agency, shall be the law of the City of Tacoma only to the
10 extent that they do not violate the rights or mandates of this Article. (Section 4.24 (B)).
11 STW's Charter Initiative expressly also purports to overrule and/or disavow the United
12 States Constitution, along with "international, federal [and] state laws" that "interfere"
13 with the proposed amendment. (Section 4.24 (C)). STW's Charter Initiative further
14 expressly purports to curtail the jurisdiction of state and federal courts, and to eliminate
15 certain rights of corporations, in conflict with the Washington and Federal
16 Constitutions, as well as U.S. Supreme Court rulings. STW apparently seeks all of these
17 results by proclamations sought to be contained in the Tacoma City Charter.

18 2. On or around April 15, 2016, STW submitted what became "Initiative 6"
19 ("Code Initiative"). STW's Code Initiative seeks to amend the City of Tacoma Municipal
20 Code Title 12 to require that any proposal which will use 1336 CCF (one million gallons)
21 of water or more daily from Tacoma be submitted to a public vote prior to "the City"
22 "providing water service" for such a project. The Code Initiative repeats all the same

23 COMPLAINT FOR DECLARATORY JUDGEMENT
& INJUNCTIVE RELIEF -2 of 27

24 160606.f. complaint

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1 d. STW's Charter and Code Initiatives are flatly inconsistent with the plain terms
2 of Tacoma's Charter. Tacoma's Charter delegates the power to operate its
3 water utility to the Tacoma Public Utility ("TPU") Board. *Tacoma Charter*
4 4.10.

5 e. STW's Charter and Code Initiatives fail because their provisions are directly
6 contrary to the water rights system established by the State.

7 f. STW's Charter and Code Initiatives conflict with Washington law that holds
8 zoning and development matters are not subject to initiative power.

9 g. STW's Initiatives impermissibly seek to interfere with Tacoma's role as a
10 regional water service provider, which role extends beyond the territorial
11 jurisdiction of the City of Tacoma.

12 h. STW's Initiatives impermissibly seek to transfer grants of property rights from
13 Tacoma's water utility to the "people".

14 i. STW's Initiatives are an invalid attempt to interfere with the authority vested
15 in the Tacoma City Council to control Tacoma's budget.

16 j. STW's Initiatives conflict with state law by attempting to apportion between
17 classes of utility users.

18 k. STW's Initiatives seek to strip the legal rights of any corporation that
19 "violates" the "rights" sought to be established in Tacoma's Charter and Code
20 by these Initiatives, which directly conflicts with the US and Washington state
21 Constitutions and the United States Supreme Court's ruling in *Citizens United*

22 *v. Federal Election Commission*, 558 U.S. 310, 342-43, 130 S. Ct. 876, 175 L.
COMPLAINT FOR DECLARATORY JUDGEMENT
23 & INJUNCTIVE RELIEF -4 of 27

24 160606.f. complaint

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1 within and outside of Tacoma city limits. A critical segment of the Port's state
2 mandated mission, use of tax dollars and business is to lease lands to tenants, which
3 tenants can and do include industrial entities that may and do use over one million
4 gallons of water a day.

5 11. More than 29,000 jobs are generated by Port activity, which also provides
6 \$195 million per year in state and local taxes to support education, roads and police and
7 fire protection for our community. [Port Economic Impact Study, 2014]. The Tacoma-
8 Puyallup Industrial Subarea's 21,300 jobs make up 4 percent of the Puget Sound
9 Region's industrial employment. [PSRC Industrial Lands Analysis, 2015]. These jobs
10 pay an average \$80,000 a year. [PSRC Industrial Lands Analysis, 2015].

11 12. The state legislatively-mandated mission of the Port will be adversely
12 affected by the passage of the Charter Initiative and Code Initiatives which, if adopted,
13 would interfere with Tacoma's administration of its longstanding program to provide
14 necessary water service to industrial and commercial users throughout Pierce County.

15 13. Plaintiff EDB is a nonprofit Washington corporation headquartered in
16 Tacoma, Washington. The EDB receives funding by its member investors, including
17 businesses, individuals, municipalities, and other governmental entities. The EDB's
18 mission is to retain, expand and recruit primary company jobs in, to, and within
19 Tacoma-Pierce County. To accomplish its mission and annual work plan, the EDB
20 actively engages in public advocacy, business and economic development, physical
21 improvement projects, public safety, beautification, and marketing programs. Each of
22 these programs is intended to ensure the continued success of Tacoma and Pierce

23 COMPLAINT FOR DECLARATORY JUDGEMENT
& INJUNCTIVE RELIEF -6 of 27

24 160606.f complaint

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1 County. The Chamber is involved in public advocacy, business and economic
2 development, physical improvement projects, public safety, beautification, and
3 marketing programs, all of which contribute to building a prosperous community. Each
4 of these programs is intended to ensure the continued success of Tacoma and Pierce
5 County's economic vibrancy, growth and prosperity. The Chamber's membership
6 includes individuals and businesses throughout the City of Tacoma and Pierce County
7 and the surrounding area. On behalf of its membership, the Chamber engages elected
8 officials, (including elected members of the Tacoma City government and candidates for
9 elected office) and promotes efforts to attract and support investment in Tacoma and
10 Pierce County, which can include industrial entities that may use over one million
11 gallons of water a day. Further, individual members of the Chamber include Tacoma
12 residents who are eligible to vote.² The mission of the Chamber would be adversely
13 affected by the passage of legislation which interferes with Tacoma's administration of
14 its longstanding program to provide necessary water service throughout Pierce County.

15 15. Even in the unlikely event that the Court finds that one or more Plaintiffs
16 lack standing, the Court should still address the issues raised in the matter because the
17 issues of the validity of the two local initiatives involve significant importance that
18 merit judicial resolution. *American Traffic Solutions, Inc., v. The City of Bellingham*
19 *et al*, *Washington Campaign For Liberty et al* , 163 Wn. App. 427, 260 P.3d
20 245;(2011), see also *See Farris v. Munro*, 99 Wn.2d 326, 330, 662 P.2d 821 (1983)

21 _____
22 ² *Id.*

1 20. Defendant Tacoma is a first class charter city and a municipal corporation
2 organized and existing under the laws of the State of Washington and does business in
3 Pierce County, Washington.

4 21. Tacoma must be named as a defendant because a challenge concerning the
5 local initiative power necessarily involves the issues of the City's authority to consider
6 and enact legislation that conflicts with federal and state laws, and Tacoma's own
7 Charter.

8 22. This Court has personal jurisdiction over Tacoma because Tacoma
9 maintains offices and transacts business in the State of Washington.

10 23. Defendant Julie Anderson, in her capacity as Pierce County Auditor, must
11 be named as a defendant because the local initiative process involves the County
12 Auditor. Defendant Pierce County Auditor Anderson is responsible for certifying the
13 Initiatives for the election ballots. RCW § 35.09.020 requires the Auditor take certain
14 actions with regards to a petition for a city charter amendment petition. RCW §
15 35A.29.170 requires the Auditor take certain actions with regards to a petition for a city
16 ordinance initiative petition.

17 24. This Court has jurisdiction over the Pierce County Auditor because the
18 Auditor maintains offices and transacts business in Pierce County, Washington.

19 25. Because Plaintiffs seek a determination of the validity of the Charter and
20 Code Initiatives, the Court has subject matter jurisdiction over this matter under RCW
21 7.24 et seq.

22 26. The Court's grant of declaratory and injunctive relief to (1) declare the
COMPLAINT FOR DECLARATORY JUDGEMENT
23 & INJUNCTIVE RELIEF -10 of 27

24 160606.f. complaint

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—
From:

<http://www.tacomachamber.org/content/taking-political-action-business>

The Chamber promotes a pro-business agenda with political action programming. We study, analyze and make recommendations on a myriad of issues of interest to the Pierce County business community. When we take advocacy positions on those issues, we communicate the Chamber's viewpoint clearly and strongly to our membership, elected officials and the community at-large. The Chamber organizes events such as candidates forums and provide tools like an electronic listing of bills of interests during the legislative session. By providing strategic communication to our members, we keep them informed on upcoming elections, ballot measures and issues to help them make educated voting decisions.

People who work with their hands deserve the same support and investment opportunities as white-collar workers. Putting up barriers to private investment like these ballot measures put an entire sector of the economy – and the jobs it creates – at risk. The state, under the Environmental Policy Act, requires rigorous review of each development's environmental impact, including water use. Additionally, land-use and zoning issues are up for public debate regularly at the municipal level. There is no shortage of opportunity for public involvement on commercial development. Requiring a public vote on each one is unnecessary.

Executive Summary and Staff Analysis
Port of Tacoma Officials (John Wolfe, CEO) & Port of Tacoma (6626)
Economic Development Board for Tacoma-Pierce County (6627)
Tacoma-Pierce County Chamber (6628)
(45-Day Citizen Action Complaint)

This summary highlights staff's findings, conclusions, and recommendations regarding the allegations contained in PDC Cases 6626, 6627, and 6628. These cases resulted from a 45-Day Citizen Action Complaint (Complaint) filed on June 16, 2016 by Arthur West with the Washington State Attorney General and the Pierce County Prosecutor. Mr. West alleged that Port of Tacoma Officials, the Port of Tacoma, the Economic Development Board for Tacoma-Pierce County (EDB), and the Tacoma-Pierce County Chamber (Chamber) may have violated RCW 42.17A.

Background

The Attorney General's Office referred the Complaint to the PDC on July 13, 2016, for investigation and possible action. On July 15, 2016, PDC staff sent a letter to the Port of Tacoma, the EDB, and the Chamber, informing the respondents that staff had opened a formal investigation, and requesting a written response. On July 21, 2016, counsel for all Respondents provided a response to the allegations. Carolyn Lake responded on behalf of Port of Tacoma officials and the Port of Tacoma (Case 6626), Jason Whalen responded on behalf of the EDB (Case 6627), and Valarie Zeeck responded on behalf of the Chamber (Case 6628).

Allegations

The Complaint alleged that Port of Tacoma Officials may have violated RCW 42.17A.555 by using public facilities to oppose Tacoma Code Initiative 6 and Tacoma Charter Initiative 5. The complaint also alleged that the Port of Tacoma, the EDB, and the Chamber may have violated RCW 42.17A.205, .235, and .240 by failing to register and report their expenditures for legal services to oppose Initiatives 5 and 6, individually, and as a group, as political committees.

Investigative Findings and Conclusion

Based on the factors identified in the investigation, staff found and concluded as follows:

First Allegation: Port of Tacoma Officials (John Wolfe, CEO) did not use facilities of the Port of Tacoma to oppose Tacoma Code Initiative 6 and Tacoma Charter Initiative 5 in a manner prohibited by RCW 42.17A.555 because the Port's expenditures were "normal and regular" in that they were lawful, and usual and customary.

Second Allegation: The Port of Tacoma, the EDB, and the Chamber did not violate RCW 42.17A.205, .235, and .240 because neither the Port of Tacoma, the EDB, nor the Chamber were a "receiver of contributions" in support of or in opposition to candidates or ballot propositions, and because making expenditures to support or oppose candidates or ballot propositions is not one of the primary purposes for these entities. The Port of Tacoma's primary purpose is to operate as a special purpose public port district under Title 53 of the Revised Code of Washington, the EDB's mission is to retain

and recruit existing primary businesses in Tacoma-Pierce County, and the Chamber's vision and goal is to secure the economic future of the local business community, and to become the go-to-organization when there are tough issues that need to be addressed locally, statewide, and nationally. The Port does not engage in electoral political activity. The EDB's and the Chamber's electoral political activity in this instance may have furthered their respective stated goals and mission, but the non-electoral activities of each entity are those most clearly designed to further each organization's stated goals and mission. No evidence was found that the EDB or the Chamber has, or could, substantially achieve its stated goals and mission through a favorable outcome of an election. The EDB and the Chamber clearly use means other than electoral political activity to achieve their respective stated goals. No evidence was found that the Port of Tacoma, the EDB, and the Chamber pooled funds to form a joint political committee.

The EDB's and the Chamber's expenditures, totaling \$9,994 and approximately \$10,000, respectively, appear to have been made for the purpose of opposing Tacoma Code Initiative 6 and Tacoma Charter Initiative 5 at a time when both initiatives were ballot propositions, even if an active campaign had not been started, and these expenditures were required to be reported as independent expenditures pursuant to RCW 42.17A.255.

Recommendation

For the reasons described above, staff recommends that:

For Port of Tacoma Officials (John Wolfe, CEO) the Commission find there is no apparent violation of RCW 42.17A.555, and recommend to the Washington Attorney General that that office take no further action with respect to this allegation in the Complaint.

For the Port of Tacoma, the Economic Development Board for Tacoma-Pierce County, and the Tacoma-Pierce County Chamber, the Commission find there is no apparent violation of RCW 42.17A.205, .235, and .240 by failing to register and report their respective expenditures for legal services to oppose Initiatives 5 and 6, individually, and as a group, as political committees, and recommend to the Washington Attorney General that that office take no further action with respect to these allegations in the Complaint.

For the Economic Development Board for Tacoma-Pierce County and the Tacoma-Pierce County Chamber, the Commission find there is an apparent violation of RCW 42.17A.255, and recommend to the Washington Attorney General that that office take appropriate action concerning the apparent failure of the EDB and the Chamber to report expenditures totaling \$9,994 and approximately \$10,000, respectively, as independent expenditures opposing Charter Initiative 5 and Code Initiative 6.



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

In RE COMPLIANCE WITH
RCW 42.17A

Port of Tacoma Officials (John
Wolfe, CEO) and Port of Tacoma
(6626); Economic Development
Board for Tacoma-Pierce County
(6627); and Tacoma-Pierce
County Chamber (6628)

Respondents.

PDC Case 6626, 6627, 6628

Report of Investigation

I. Background and Allegations

- 1.1 On February 19, 2016, a group calling itself "Save Tacoma Water" filed a Committee Registration (C1-pc) with the PDC for the stated purpose of supporting a ballot proposition on the November 8, 2016 general election ballot. The registration listed Sherry Bockwinkel as its campaign manager and Donna Walters as its treasurer.
- 1.2 On March 7, 2016, Save Tacoma Water filed Charter Initiative 5 with the Tacoma City Clerk, and on March 11, 2016, they filed Code Initiative 6 with the Tacoma City Clerk. Both initiatives were approved as to form, and on June 30, 2016, Save Tacoma Water submitted its signatures to the Tacoma City Clerk.
- 1.3 Code Initiative 6 sought to have the City Council enact changes to the Tacoma Municipal Code by imposing a requirement that any land use proposal requiring water consumption of one million gallons of water or more daily from Tacoma be submitted to a public vote prior to the City providing water service for such a project. A companion measure, Charter Initiative 5, repeated all the same provisions as Code Initiative 6.

- 1.4 On June 6, 2016, the Port of Tacoma, the Economic Development Board for Tacoma-Pierce County (EDB), and the Tacoma-Pierce County Chamber (Chamber) brought a declaratory judgment action in the Superior Court of Pierce County to determine whether the two initiatives exceeded the scope of local initiative power. On June 8, 2016, the City of Tacoma, named as a defendant, agreed with the plaintiffs that the initiatives exceeded the scope of the City's authority.
- 1.5 On June 16, 2016, Arthur West filed a 45-Day Citizen Action Complaint (Complaint) with the Washington State Attorney General and the Pierce County Prosecutor under RCW 42.17A.765(4). The complaint alleged that Port of Tacoma Officials may have violated RCW 42.17A.555 by using public facilities to oppose Tacoma Code Initiative 6 and Tacoma Charter Initiative 5. The complaint also alleged that the Port of Tacoma, the EDB, and the Chamber may have violated RCW 42.17A.205, .235, and .240 by failing to register and report individually, and as a group, as political committees, their expenditures for legal services to oppose Initiatives 5 and 6. **(Exhibit 1)** The 45 days under RCW 42.17A.765 expired on July 31, 2016.
- 1.6 Mr. West alleged that Port of Tacoma officials used the Port's facilities to oppose Initiatives 5 and 6 by making expenditures to file a lawsuit to keep the initiatives off the ballot.
- 1.7 On July 1, 2016, Superior Court Judge Jack Nevin agreed with the Plaintiffs, enjoining placement of the initiatives on the ballot.
- 1.8 On July 13, 2016, the Attorney General's Office (AGO) sent a letter to the Public Disclosure Commission (PDC) asking staff to review the complaint, and as appropriate, investigate the allegations. The AGO asked that the PDC send with its recommendation a complete copy of any report of investigation or materials the Commission staff compiles. **(Exhibit 2)**
- 1.9 On July 15, 2016, PDC Staff sent a copy of the complaint to the Port of Tacoma, the EDB, and the Chamber, requesting responses by July 21, 2016.
- 1.10 On July 21, 2016, the Port of Tacoma, the EDB, and the Chamber submitted written responses to the complaint. **(Exhibits 3, 4, 5 & 6)**

II. Findings

Allegation that Port of Tacoma Officials may have violated RCW 42.17A.555 by using public facilities to oppose Tacoma Charter Initiative 5 and Code Initiative 6

- 2.1 Charter Initiative 5 and Code Initiative 6 became ballot propositions on March 7, 2016 and March 11, 2016, respectively. These were the dates Save Tacoma

Report of Investigation (45-Day Citizen Action Complaint)

Port of Tacoma officials (John Wolfe, CEO) and Port of Tacoma, Case 6626

Economic Development Board for Tacoma-Pierce County, Case 6627

Tacoma-Pierce County Chamber, Case 6628

Page - 3 –

Water initially filed the propositions with the Tacoma City Clerk before they were circulated for signatures.

- 2.2 On July 21, 2016, Carolyn Lake, an attorney representing the Port of Tacoma, provided a written response to the complaint. **(Exhibits 3 & 4)**
- 2.3 The Port of Tacoma said they understood that Code Initiative 6 expressly purported to elevate the proposed Charter amendment above state law, and overrule and or disavow the U.S. Constitution, along with international, federal, and state laws that interfered with the proposed amendment. The Port said they were aware that Initiatives 5 and 6 were nearly identical to initiatives recently found to be legally invalid by being outside the scope of local initiative powers by the Washington Supreme Court in a City of Spokane case.
- 2.4 On June 6, 2016, the Port of Tacoma, along with Co-Plaintiffs the EDB and the Chamber filed a declaratory judgment lawsuit to seek a judicial determination under Washington's Uniform Declaratory Judgment Act. The lawsuit asked the Pierce County Superior Court to (1) declare that the local initiatives exceed the proper scope of local initiative powers and therefore are invalid, and (2) enjoin the Initiatives' signatures from being validated, and enjoin the initiatives from being placed on the November 2016 ballot, or adopted by the City. The Port spent approximately \$45,000 in that legal effort. **(Exhibit 3, Page 5)**
- 2.5 On June 8, 2016, the City of Tacoma filed its Answer and Cross Claims, agreeing that the Initiatives were legally defective. The City of Tacoma filed a cross claim against the Initiative sponsors within the existing lawsuit.
- 2.6 Ms. Lake stated that on June 18, 2016, the Port of Tacoma Commissioners held a properly noticed public meeting, and provided notice that the Commission intended to vote to *"ratify the Port's action of filing a Declaratory Judgment and Injunctive challenge of two proposed initiatives filed with the City of Tacoma- Charter Amendment 5 and Code Initiative 6."*
- 2.7 On July 1, 2016, the Pierce County Superior Court granted the Plaintiffs' Motion for Declaratory Judgment, finding the two Initiatives invalid and granting injunctive relief to prevent the Pierce County Auditor from placing the measures on the ballot. **(Exhibit 4, pages 13-19)**
- 2.8 The Port stated that its actions were consistent with a long list of legal cases in which public agencies have properly sought judicial review of the legal sufficiency of a proposed initiative, and noted that in no case were these actions found to violate RCW 42.17A.555. **(Exhibit 3, Pages 13 & 14)**
- 2.9 The Port asserts that they took no campaign action to influence the vote on a ballot measure, stating that the expenditures at issue were made prior to a ballot initiative campaign, and were in fact related to challenging the initiation of such a

campaign on the grounds that the ordinance was facially unconstitutional. The Port argued that their action in pursuing a legal determination from the neutral judicial system was not campaigning, but instead was consistent with the underlying purpose of Washington campaign laws to protect the integrity of the voting process. **(Exhibit 3, Page 2)**

- 2.10 RCW 53.57.030(3) states that a port development authority, in managing maritime activities, may sue and be sued. Under this authority, the Port of Tacoma filed its declaratory judgment lawsuit concerning Initiatives 5 and 6. It was also usual and customary for the Port of Tacoma to engage in litigation concerning issues that affect the Port District. From 2000-2016, the Port of Tacoma engaged in litigation in Pierce County Superior Court 66 times, King County Superior Court 6 times, Thurston County Superior Court 3 times, Lewis County Superior Court 2 times, and U.S. District Court for the Western District of Washington 15 times. **(Exhibit 7)**

Allegation that the Port of Tacoma may have violated RCW 42.17A.205, .235, and .240 by failing to register and report individually as a political committee, and with the EDB and Chamber as a group, as a political committee

- 2.11 A political committee is defined as “any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.” In addition, Interpretation 07-02 “Primary Purpose Test” Guidelines, sets forth two alternative prongs under which an individual or organization may become a political committee and subject to the Act’s reporting requirements: (1) a “receiver of contributions” prong; and (2) a “making expenditures to further electoral political contributions” prong. A requirement of the “making expenditures” prong states that the organization making expenditures must have as its “primary or one of its primary purposes ... to affect, directly or indirectly, governmental decision making by supporting opposing candidates or ballot propositions ...”
- 2.12 The Interpretation states that an appropriate framework for determining whether electoral political activity is one of the organization’s primary purposes should include an examination of the stated goals and mission of the organization and whether electoral political activity is a primary means of achieving the stated goals and mission during the period in question.
- 2.13 The interpretation states that a nonexclusive list of analytical tools that may be used to evaluate the evidence includes:
1. The content of the stated goals and mission of the organization;
 2. Whether the organization’s actions further its stated goals and mission;
 3. Whether the stated goals and mission of the organization would be substantially achieved by a favorable outcome in any upcoming election; and

4. Whether the organization uses means other than electoral political activity to achieve its stated goals.
-
- 2.14 The Port of Tacoma is a special purpose public port district that operates under Title 53 of the Revised Code of Washington, and is classified as a special purpose district. The Port is a member of The Northwest Seaport Alliance, a marine cargo operating partnership with the Port of Seattle. Five Commissioners are elected to four-year terms, and serve as the Port's board of directors. The Commission hires the CEO, sets policy and strategic direction, and approves all major expenditures. The Port put in place a 10-year strategic plan in 2012 that it updates annually. The Plan focuses on four areas: (1) Strategic investments; (2) New business opportunities; (3) Customer care; and (4) Community Pride.
 - 2.15 The Port's mission is to "Deliver prosperity by connecting customers, cargo and community with the world." The Port's core values are: (1) Integrity; (2) Customer focus; (3) Teamwork; (4) Courage; (5) Competitive spirit; and (6) Sustainability. The Port has a legislative mandate to foster economic development in Tacoma and Pierce County. The Port also owns land, and as part of its mission, leases land to tenants.
 - 2.16 The Port of Tacoma is not a "receiver of contributions" in support of, or in opposition to candidates or ballot propositions. In addition, the primary purpose of the Port of Tacoma is to operate as a special purpose port district as described in its mission and legislative mandate. There is no evidence that the primary purpose, or one of the primary purposes of the Port is to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions.
 - 2.17 In addition, PDC Interpretation 91-02 addresses legal fees related to placing, or not placing, a proposition on the ballot. It says in Statement #2, "Expenditures made by a government agency to defend its official actions related to whether or not a measure should be placed on a ballot or to the wording of a ballot title are not reportable as campaign expenditures." Although the Port of Tacoma's declaratory judgment request was not to defend the act of placing an initiative on the ballot, it appears to be similar to such an action in that the Port appears to have acted in good faith in seeking judicial review of the legal sufficiency of the proposed initiatives.
 - 2.18 The PDC has never alleged or found that a public agency whose activities supported or opposed candidates or ballot propositions was a political committee subject to the Act's reporting requirements, or that a public agency engaging in such activities was subject to independent expenditures or electioneering communications reporting requirements. Rather, the Commission has always evaluated such alleged activities by public agencies as subject to the prohibitions that are presently codified in RCW 42.17A.555.

- 2.19 No evidence was found that the Port of Tacoma was part of a joint political committee with the EDB and the Chamber. In an email received July 29, 2016, the Port of Tacoma stated that it did not pool any funds with anyone, including the EDB or the Chamber, related to the legal action taken. In addition, the Port stated that it did not have any expectation to seek contributions to pay for its legal actions concerning Charter Initiative 5 and Code Initiative 6, and that it did not consider payment of legal fees an expenditure in support of, or in opposition to, any candidate or any ballot proposition as defined in RCW 42.17A.255. **(Exhibit 10)**

Allegation that that the EDB may have violated RCW 42.17A.205, .235, and .240 by failing to register and report individually as a political committee, and with the Port of Tacoma and the Chamber as a group, as a political committee

- 2.20 On July 21, 2016, Jason Whalen, an attorney representing the EDB, provided a written response to the complaint. **(Exhibit 5)** The EDB is a private Washington non-profit corporation, actively incorporated in the State of Washington since 1977. It is not a state government agency or a local government agency subject to the prohibitions and restrictions in RCW 42.17A.555. The complaint did not allege that the EDB is a public agency subject to the prohibitions of RCW 42.17A.555.
- 2.21 The EDB has a two-prong mission: (1) retention; and (2) recruitment of existing primary businesses in Tacoma-Pierce County. The EDB's website lists its vision and mission as:
- VISION 2040:** Tacoma-Pierce County is the most attractive location in the Pacific Northwest for local, national and global business investment and job creation.
- MISSION:** COMPETE EVERY DAY FOREVER – The EDB grows primary businesses by working with its partners to spur private capital investment and job creation in Tacoma-Pierce County.
- 2.22 The EDB work plan to accomplish its stated mission is developed by a volunteer board of directors, and the work plan is executed by private staff members. The EDB's work plan is funded by its member investors, both private and public. The EDB states that it does not seek, as its primary or one of its primary purposes, to affect, directly or indirectly, governmental decision-making by supporting or opposing candidates or ballot propositions.
- 2.23 The EDB stated that because of its stated mission, it had legal standing to pursue a pre-election review of the legal sufficiency of the proposed initiatives, and joined the Port of Tacoma and the Chamber as a Co-Plaintiff in the lawsuit that sought declaratory and injunctive relief to determine whether the initiatives were beyond the proper scope of initiative power. **(Exhibit 5, Page 2)**

- 2.24 The EDB stated, "The Washington Supreme Court has held that pre-election review is proper to determine whether such local initiatives are beyond the scope of the initiative power. See e.g. *City of Port Angeles v. Our Water-Our Choice!* 170 Wn.2d 1, 239 P.3d 589 (2010). This exact issue (pre-election review of local initiatives involving water rights) was recently reaffirmed by the Washington Supreme Court in February 2016 in *Spokane Entrepreneurial Center v. Spokane Moves to Amend the Constitution*. 185 Wn.2d 97; 369 P.3d 140 (2016)." **(Exhibit 5, Page 2)**
- 2.25 The EDB stated that it spent \$9,994 from its operating budget in pursuit of a legal determination of the validity of the Initiatives. The EDB stated that they have not received, and do not expect to receive, contributions toward any electoral goals. The EDB denied that its participation as a Co-Plaintiff made then a political committee. **(Exhibit 8)**
- 2.26 The EDB acknowledged that it had concerns that the proposed initiatives, if passed, would irreparably harm the EDB's work plan and efforts to attract business to the Puget Sound region, but claimed that seeking a legal determination on a purely legal issue in which the EDB and the other Co-Plaintiffs had legal standing was a far cry from engaging in political activity that would make them a political committee subject to reporting with the PDC. **(Exhibit 5, Page 3)**
- 2.27 When applying the Primary Purpose Test Guidelines in Interpretation 07-02, it appears that EDB's actions were done to further its stated goals and mission because they were done to protect the region's business environment. It does not appear that EDB's stated goals and mission would be substantially achieved by defeating the initiatives, or by keeping the initiatives off of the ballot. The EDB uses means other than electoral political activity to achieve its stated goals.
- 2.28 No evidence was found that the EDB was part of a joint political committee with the Port of Tacoma and the Chamber. The Port of Tacoma stated that it did not pool any funds related to the legal action taken with anyone, including the EDB or the Chamber. **(Exhibit 10)**
- 2.29 Although not alleged in the complaint, PDC staff looked at whether the expenditures by the EDB to seek a declaratory judgment to keep the initiatives off of the November 2016 ballot were required to be reported as an independent expenditure. RCW 42.17A.255 requires any expenditure of \$100 or more in the aggregate made in support of or in opposition to any candidate or ballot proposition that is not otherwise required to be reported pursuant to RCW 42.17A.220, 42.17A.235, and 42.17A.240 to be reported within five days after the date of making the expenditure.

- 2.30 Charter Initiative 5 and Code Initiative 6 were ballot propositions as of March 7 and March 11, 2016, respectively. On June 6, 2016, the EDB joined the Port of Tacoma's lawsuit as a Co-Plaintiff, spending \$9,994 on this effort. While the EDB states that its expenditures were to bring an action for declaratory relief before the Pierce County Superior Court on the sole issue of whether the Initiatives were beyond the proper scope of local initiative power, it appears that the EDB's expenditures were also for the purpose of opposing Initiatives 5 and 6 at a time when they were ballot propositions, even if an active campaign had not been started. Thus it appears that the EDB's expenditures may have been required to be reported as independent expenditures, pursuant to RCW 42.17A.255.

Allegation that the Chamber may have violated RCW 42.17A.205, .235, and .240 by failing to register and report individually as a political committee, and with the Port of Tacoma and the Chamber as a group, as a political committee

- 2.31 On July 21, 2016, Valarie Zeeck, an attorney representing the Chamber, provided a written response to the complaint. The Chamber is a Washington non-profit corporation whose President and Board of Directors are selected by a process outlined in its bylaws. It is not a state government agency or a local government agency. The complaint did not allege that the Chamber is a public agency subject to the prohibitions of RCW 42.17A.555. **(Exhibit 6)**
- 2.32 The Chamber's website does not include a formal Mission Statement, but does include a message from Mr. Tom Pierson, its President and CEO. The message states:
- "In recent years, we have worked to strategically transform the Tacoma-Pierce County Chamber. Our goal is to become the go-to-organization when there are tough issues that need to be addressed locally, statewide, and nationally. We are sought after by business and government leaders, contributing to solutions that affect the business community. The results of these efforts have been significant & measurable. Our commitment to our members continues through our strategic programming and advocacy efforts."
- 2.33 The Tacoma-Pierce County Chamber's vision, goal and focus are as follows:

VISION: "is to secure the economic future of our local and business community."

FOCUS: "is to build a healthy local economy by being the Voice for Business; uniting, advocating, and supporting economic growth in Pierce County."

GOAL: "is to become the go-to-organization when tough issues need to be addressed at the local, state, and federal level. We are considered leaders among stakeholders and contribute to solutions that impact the business community."

COMMITMENT: "to you, our members, continues through our strategic programming and advocacy efforts. We encourage innovation, entrepreneurial approaches, consensus, and collaboration."

- 2.34 The Chamber stated that it does not meet the definition of a "political committee" because when it acted as a Co-Plaintiff with the Port of Tacoma and the EDB, it was not receiving contributions or making expenditures "in support of or in opposition to" political activity as contemplated by the Fair Campaign Practices Act (FCPA). It further stated that Initiatives 5 and 6 were not "ballot propositions" as defined in the FCPA. **(Exhibit 6, Pages 3 & 4)** However, as explained above, this is not correct.
- 2.35 The Chamber stated that it filed a lawsuit not to "further electoral political goals," but rather to obtain a neutral judicial determination as to whether the initiatives were lawful. The Chamber states that no reported Washington case has held that seeking a judicial determination of the validity of a ballot measure is "political activity" or constitutes "promoting an electoral political goal." **(Exhibit 6, Page 4)**
- 2.36 The Chamber stated that filing a lawsuit to determine the legality of a local initiative is not advertising, communicating with voters, campaigning, lobbying or electioneering, and stated that because the Chamber engaged in legal activity - seeking a neutral, judicial decision of a Washington State Judicial Officer - rather than attempting to sway voters or promote or oppose an issue electorally, the PDC should dismiss the Complaint. **(Exhibit 6, Page 5)**
- 2.37 The Chamber also stated that even if the Chamber was engaging in support of or opposition to the proposed initiatives, it would not meet the definition of a "political committee" because the initiatives were not ballot propositions as defined in the FCPA. The Chamber stated that its expenditures as Co-Plaintiffs occurred before there was any "ballot issue campaign" but were related to challenging the initiation of such a campaign on the grounds that the ordinance was facially unconstitutional and beyond the scope of the initiative power. **(Exhibit 6, Page 5)**
- 2.38 The Chamber stated that it has spent approximately \$10,000 in legal fees on the court action. The Chamber said it used funds from its normal operating budget to pay the fees. The Chamber said it did not seek contributions for this purpose, or have an "expectation" of making expenditures for this purpose until the illegality of the initiatives became apparent. **(Exhibit 9)**

- 2.39 When applying the Primary Purpose Test Guidelines in Interpretation 07-02, it appears that the Chamber's actions were done to further its stated goals and mission because they were done to protect the region's business environment. It does not appear that the Chamber's stated goals and mission would be substantially achieved by defeating the initiatives, or by keeping the initiatives off of the ballot. The Chamber uses means other than electoral political activity to achieve its stated goals.
- 2.40 No evidence was found that the Chamber was part of a joint political committee with the Port of Tacoma and the EDB. The Port of Tacoma stated that it did not pool any funds related to the legal action taken with anyone, including the EDB or the Chamber. **(Exhibit 10)**
- 2.41 Although not alleged in the complaint, PDC staff looked at whether the expenditures by the Chamber to seek a declaratory judgment to keep the initiatives off of the November 2016 ballot were required to be reported as an independent expenditure. RCW 42.17A.255 requires any expenditure of \$100 or more in the aggregate made in support of or in opposition to any candidate or ballot proposition that is not otherwise required to be reported pursuant to RCW 42.17A.220, 42.17A.235, and 42.17A.240 to be reported within five days after the date of making the expenditure.
- 2.42 Charter Initiative 5 and Code Initiative 6 were ballot propositions as of March 7 and March 11, 2016, respectively. On June 6, 2016, the Chamber joined the Port of Tacoma's lawsuit as a Co-Plaintiff, spending approximately \$10,000 on this effort. While the Chamber states that its expenditures were to challenge the initiation of such a campaign on the grounds that the ordinance was facially unconstitutional and beyond the scope of the initiative power, it appears that the Chamber's expenditures were also for the purpose of opposing Initiatives 5 and 6 at a time when they were ballot propositions, even if an active campaign had not been started. Thus it appears that the Chamber's expenditures may have been required to be reported as independent expenditures, pursuant to RCW 42.17A.255.

III. Scope

- 3.1 PDC staff reviewed the following documents:
- The Citizen Action Letter filed with the Attorney General's Office and the Pierce County Prosecutor by Arthur West against the Port of Tacoma, the Economic Development Board for Tacoma-Pierce County, and the Tacoma-Pierce County Chamber on June 16, 2016. **(Exhibit 1)**

- Request from the Washington State Attorney General asking the PDC to review Mr. West's 45-Day Citizen Action Complaint, received at the PDC on July 13, 2016. **(Exhibit 2)**
- Response from the Port of Tacoma, received on July 21, 2016 **(Exhibits 3 & 4)**
- Response from the Economic Development Board for Tacoma-Pierce County, dated July 21, 2016 **(Exhibit 5)**
- Response from the Tacoma-Pierce County Chamber, dated July 21, 2016 **(Exhibit 6)**
- Port of Tacoma litigation (2000-2016) **(Exhibit 7)**
- Response from the EDB about litigation costs **(Exhibit 8)**
- Response from the Chamber about litigation costs **(Exhibit 9)**
- Response from the Port of Tacoma about pooling funds, and about expenditures reportable under RCW 42.17A.255 **(Exhibit 10)**

IV. Laws

- 4.1 **RCW 42.17A.555** states in part: (1) No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency. However, this does not apply to the following activities:

(1) Action taken at an open public meeting by members of an elected legislative body or by an elected board, council, or commission of a special purpose district including, but not limited to, fire districts, public hospital districts, library districts, park districts, port districts, public utility districts, school districts, sewer districts, and water districts, to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition so long as (a) any required notice of the meeting includes the title and number of the ballot proposition, and (b) members of the legislative body, members of the board, council, or commission of the special

purpose district, or members of the public are afforded an approximately equal opportunity for the expression of an opposing view; ...

(3) Activities which are part of the normal and regular conduct of the office or agency.

- 4.2 **WAC 390-05-273** states: Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW 42.17A.555, means conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner. No local office or agency may authorize a use of public facilities for the purpose of assisting a candidate's campaign or promoting or opposing a ballot proposition, in the absence of a constitutional, charter, or statutory provision separately authorizing such use.
- 4.3 **RCW 42.17A.005(4)** "Ballot proposition" means any "measure" as defined by RCW **29A.04.091**, or any initiative, recall, or referendum proposition proposed to be submitted to the voters of the state or any municipal corporation, political subdivision, or other voting constituency from and after the time when the proposition has been initially filed with the appropriate election officer of that constituency before its circulation for signatures.
- 4.4 **RCW 29A.04.091** "Measure" includes any proposition or question submitted to the voters.
- 4.5 **RCW 42.17A.005(37)** defines "political committee" as "any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition."
- 4.6 **Interpretation 07-02 "Primary Purpose Test" Guidelines** The Act sets forth two alternative prongs under which an individual or organization may become a political committee and subject to the Act's reporting requirements. "'Political committee' means any person ... having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition." RCW 42.17A.005(37) **Thus, a person or organization may become a political committee by either (1) expecting to receive or receiving contributions, or (2) expecting to make or making expenditures to further electoral political goals.** [Footnote: We use the phrases "electoral political goals" and "electoral political activity" to convey the statutory language "support of, or opposition to, any candidate or any ballot proposition"]

A requirement of the "making expenditures" prong states that the organization making expenditures must have as its "primary or one of the primary purposes

... to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions ...”

In addition, the Interpretation states that an appropriate framework for determining whether electoral political activity is one of the organization’s primary purposes should include an examination of the stated goals and mission of the organization and whether electoral political activity is a primary means of achieving the stated goals and mission during the period in question.

A nonexclusive list of analytical tools that may be used to evaluate the evidence includes:

1. The content of the stated goals and mission of the organization;
2. Whether the organization’s actions further its stated goals and mission;
3. Whether the stated goals and mission of the organization would be substantially achieved by a favorable outcome in any upcoming election; and
4. Whether the organization uses means other than electoral political activity to achieve its stated goals.

4.7 **RCW 42.17A.205 – Statement of organization by political committees.**

States in part: Every political committee shall file a statement of organization with the commission. The statement must be filed within two weeks after organization or within two weeks after the date the committee first has the expectation of receiving contributions or making expenditures in any election campaign, whichever is earlier.

4.8 **RCW 42.17A.235 and 240** require continuing political committees to file timely, accurate reports of contributions and expenditures. Under the full reporting option, until five months before the general election, C-4 reports are required monthly when contributions or expenditures exceed \$200 since the last report.

4.9 **RCW 42.17A.255**, states in part: (1) For the purposes of this section the term "independent expenditure" means any expenditure that is made in support of or in opposition to any candidate or ballot proposition and is not otherwise required to be reported pursuant to RCW **42.17A.220**, **42.17A.235**, and **42.17A.240**. ... (2) Within five days after the date of making an independent expenditure that by itself or when added to all other such independent expenditures made during the same election campaign by the same person equals one hundred dollars or more, or within five days after the date of making an independent expenditure for which no reasonable estimate of monetary value is practicable, whichever occurs first, the person who made the independent expenditure shall file with the commission an initial report of all independent expenditures made during the campaign prior to and including such date.

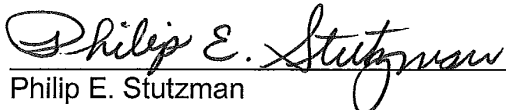
4.10 **Interpretation 91-02 – Legal Fees Related to Placing, or Not Placing, a Proposition on the Ballot.**

Statement #1 Expenditures made by a person or political committee to place a measure on a ballot, to influence the wording of a ballot title or to require that a government agency place a measure on the ballot are campaign expenditures reportable under RCW 42.17A.

Statement #2 Expenditures made by a government agency to defend its official actions related to whether or not a measure should be placed on a ballot or to the wording of a ballot title are not reportable as campaign expenditures.

Discussion: The proponents of a proposed ballot measure are clearly acting to support or advance that measure when they take an action to require that it be placed before the voters. It is also in their interest to have the measure stated in terms most favorable to them. The proponents, therefore, have discretion in the action they take regarding the issue. They are also not closely bound by law in the range of actions they may take. The government agency, on the other hand, is closely regulated by law in its actions regarding measures that are presented to it. It first of all is expected to remain neutral in its approach to ballot proposals. The way in which a measure is processed is specified and the government is given little leeway in its actions. If a government agency takes an official action (e.g., to write a ballot title or to refuse to place a measure on the ballot) it must be assumed that the agency is acting in good faith. If the government action is challenged, the agency then has little or no discretion in whether to defend its action. Thus, while the agency's act may serve the ultimate end of opposing a ballot proposal, since the agency lacks discretion in the situation, it has not made a campaign expenditure as envisioned by RCW 42.17A.

Respectfully submitted this 4th day of August 2016.


Philip E. Stutzman
Sr. Compliance Officer

List of Exhibits

- Exhibit 1** 45-Day Citizen Action Complaint to the Washington State Attorney General and the Pierce County Prosecutor, from Mr. Arthur West, received June 16, 2016
- Exhibit 2** Request from Washington State Attorney General to review Arthur West's 45-Day Citizen Action Complaint, received July 13, 2016,
- Exhibit 3** Response from Port of Tacoma, received July 21, 2016
- Exhibit 4** Attachments to Port of Tacoma response, received July 21, 2016
- Exhibit 5** Response from the Economic Development Board for Tacoma-Pierce County with attachments, received July 21, 2016
- Exhibit 6** Response from the Tacoma-Pierce County Chamber, received July 21, 2016
- Exhibit 7** Port of Tacoma litigation 2000-2016
- Exhibit 8** Email from the EDB stating litigation costs
- Exhibit 9** Email from the Chamber stating litigation costs
- Exhibit 10** Email from Port of Tacoma about pooling funds, and about expenditures reportable under RCW 42.17A.255

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H.L.B.

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JUN 16 2016

June 16, 2016

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Public Disclosure Commission

**TO: ATTORNEY GENERAL
OF WASHINGTON**
**WASHINGTON STATE ATTORNEY GENERAL ROBERT
FERGUSON, PIERCE COUNTY PROSECUTOR MARK
LINDQUIST, AND THE WASHINGTON STATE PUBLIC
DISCLOSURE COMMISSION**

**RE: CITIZEN'S ACTION LETTER RE UNLAWFUL CAMPAIGN
ACTIVITY BY THE PORT OF TACOMA, THE ECONOMIC
DEVELOPMENT BOARD OF TACOMA-PIERCE COUNTY,
THE TACOMA-PIERCE COUNTY CHAMBER, AND THE
"THIRD TRIUMVIRATE" CREATED BY THEIR CONCERTED
ALLIANCE OPPOSING TACOMA CITIZENS' INITIATIVES
AND COMPLAINT FOR VIOLATION OF RCW 42.17A.555
BY THE PORT OF TACOMA IN EXPENDING PUBLIC
FUNDS TO OPPOSE A BALLOT MEASURE**

**FROM: ARTHUR WEST
120 State Ave. NE #1497
Olympia, Washington, 98501**

Please consider this as a complaint for violation of RCW 42.17A.555 and a formal citizen's action letter under RCW 42.17.765 concerning the continuing unregistered campaign activity, unregistered PAC activity, and failure to report campaign related receipts and expenditures to oppose Tacoma Citizen's Initiatives 5 and 6 by the Port of Tacoma, the Economic Development Board of Tacoma-Pierce County, the Tacoma-Pierce County Chamber, and by the "Third Triumvirate" formed by the organized political alliance of these three powerful and influential organizations.

RCW 42.17A.555 provides...

**COMPLAINT RE UNLAWFUL CAMPAIGN ACTIVITY BY THE PORT OF TACOMA, CHAMBER
EDC, AND THE THIRD TRIUMVIRATE FORMED BY THEIR JOINT ORGANIZATIONAL CABAL**

1

No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency...

While there is an exemption in this for "normal and usual" activities of an agency, this exemption is limited in scope and strictly construed against actions of agencies such as the Port to influence legislative actions of another governmental body such as the City of Tacoma, which is what the Port is attempting to do in their present suit.

As a longstanding 1975 Opinion of the Attorney General has maintained for over 40 years now...

The possible authority of any public officer or employee to expend funds to influence legislative action by another governmental body is to be viewed with special strictness. In fact, as we have pointed out in previous opinions, the rule in this state has long been that such expenditures are contrary to public policy and illegal in the absence of express authority ...

This restriction has been most often applied to expenditures for influencing action of the state legislature. However a similar rule has been consistently applied to expenditures made by municipal corporations (such as school districts) for the purpose of influencing votes on ballot propositions. See, our opinion of January 20, 1972 [[an Informal Opinion, AIR-72598]], to Senator Rasmussen...

Finally, in determining whether an elected official is or is not in compliance with RCW 42.17.130, supra, one cannot

safely rely solely upon a determination of whether a particular act may be legal in a technical sense. The phrase "normal and regular" in the proviso thereto must be taken to denote some qualification of conduct over and above that of being merely lawful; otherwise, presumably, the proviso would have used that term. Every word and phrase of a statute must be given its full meaning, where possible, and no word or choice of wording should be regarded as insignificant. Murray v. Dept. of Labor & Industries, 151 Wash. 95, 275 Pac. 66 (1929).

Consequently, to give full effect to the proviso, the phrase must be construed to mean such activities as are not only lawful, but also to at least some extent, within the "usual" conduct of the office in question. Thus, an action by an elected official for a purpose prohibited by RCW 42.17.130 will not necessarily be saved by the proviso merely because the governing body of the agency ultimately ratified the expenditure or even gave the official in question special authority, in advance, to expend funds for the purpose in question.

In practical effect what this means is that the proviso must be strictly construed as provisos usually are. Tabb v. Funk, 170 Wash. 545, 17 P.2d 18 (1932). Generally, therefore, expenditures made in extraordinary cases, or authorized in some extraordinary manner or by some extraordinary process of reasoning, cannot be held to be "normal and regular conduct" of an office under the proviso with which [[Orig. Op. Page 9]] we are here concerned. AGO 1975, No. 23 cited in King County Council v. Public Disclosure Commission, 93 Wn.2d 559, 611 P.2d 1227, (1980), cited in Knowing the Waters, Basic Legal Guidelines for Port Districts, Robert Hauth (2007), at page 23-24.

By using public funds to oppose Tacoma Citizen's Initiatives 5 and 6 in an extraordinary manner that was not part of the "normal and usual" conduct of the Port of Tacoma, as these terms have been understood for over 40 years in Attorney General Opinions entitled to great weight, (See Citizens

Alliance for Property Rights Legal Fund v. San Juan County, ___ Wn.2d ___ (2015), citing Five Corners Family Farmers v. State, 173 Wn.2d 296, 308, 268 P.3d 892 (2011), the Port violated RCW 42.17A.555.

In addition, campaign and PAC reporting requirements appear to have been violated, in that PDC Interpretive letter 07-2 states...

- a person or organization may become a political committee by either (1) expecting to receive or receiving contributions, or (2) expecting to make or making expenditures to further electoral political goals.
- The organization making expenditures must have as its "primary or one of the primary purposes ... to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions...." State v. Dan J. Evans Campaign Comm., 86 Wash.2d at 509, 546 P.2d 75 (Pages 598-599)
- An organization is a political committee if one of its primary purposes is to affect governmental decision making by supporting or opposing candidates or ballot propositions, and it makes or expects to make contributions in support of or in opposition to a candidate or ballot measure.

The recent actions, pleadings, press releases and statements of the Port of Tacoma, the Economic Development Board of Tacoma-Pierce County (EDB) and the Tacoma-Pierce County Chamber clearly demonstrate that (despite the legal restrictions upon the use of public funds to oppose ballot measures) one of the actual primary purposes of each of these groups individually, and as their new incarnation as a tripartite political organization with a unified political agenda, is to affect governmental decision making by opposing ballot measures such as Tacoma Citizen's Initiatives 5 and 6.

Attached and incorporated by reference is a copy of a lawsuit and exhibits that demonstrate the nature of the organized concerted actions of this Third Triumvirate, and the circumstance that one of the primary

COMPLAINT RE UNLAWFUL CAMPAIGN ACTIVITY BY THE PORT OF TACOMA, CHAMBER EDC, AND THE THIRD TRIUMVIRATE FORMED BY THEIR JOINT ORGANIZATIONAL CABAL

purposes of each of the organizations it is composed of is to oppose ballot measures such as Tacoma Citizen's Initiatives 5 and 6.

As their websites demonstrate, the members of the Triumvirate all apparently believe that opposing ballot measures such as Tacoma Citizen's Initiatives 5 and 6 is one of their primary purposes, and it is apparent that the organization created by their joint efforts has no other purpose whatsoever than to oppose these two measures.

By so acting, the Port of Tacoma, the Economic Development Board of Tacoma-Pierce County, the Tacoma-Pierce County Chamber and the organization they created to oppose Tacoma Citizen's Initiatives 5 and 6 failed to register or report campaign related expenditures made to oppose a ballot measure, and in addition failed to register or report as PACs as required by RCW 42.17A.205-240 of organizations opposing ballot propositions such as Tacoma Citizen's Initiatives 5 and 6

This violated the intent of RCW 42.17.0001, including section (1) That political campaign and lobbying contributions and expenditures be fully disclosed to the public and that secrecy is to be avoided.

Please investigate and take any necessary action in regard to this complaint and Citizen's Action Letter. If you believe any further information would be helpful to your investigation, do not hesitate to ask.

Done June 16, 2016, in Olympia. I, Arthur West, certify the factual assertions above to be correct and true under penalty of perjury of the laws of the State of Washington.


ARTHUR WEST

1
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5
6 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
7 **IN AND FOR PIERCE COUNTY**

8 PORT OF TACOMA, a Washington State
9 Municipal Corporation, ECONOMIC
10 DEVELOPMENT BOARD FOR TACOMA-
11 PIERCE COUNTY, a Washington State Non-
12 profit Corporation, and the TACOMA-
13 PIERCE COUNTY CHAMBER, a Washington
14 State Non-profit corporation.

15 Plaintiffs,

16 vs.

17 SAVE TACOMA WATER, a Washington
18 political committee, DONNA WALTERS,
19 sponsor and Treasurer of SAVE TACOMA
20 WATER, JON AND JANE DOES 1-5,
21 (Individual sponsors and officers of SAVE
22 TACOMA WATER), CITY OF TACOMA, a
23 Washington State Municipal Corporation,
24 and JULIE ANDERSON, IN HER CAPACITY
AS PIERCE COUNTY AUDITOR

Defendants.

No.

**COMPLAINT FOR
DECLARATORY JUDGMENT
& INJUNCTIVE RELIEF**

19 **I. INTRODUCTION**

20 1. On or around March 7, 2016, Defendants SAVE TACOMA WATER, a
21 Washington political action committee, DONNA WALTERS, sponsor and Treasurer of

22 COMPLAINT FOR DECLARATORY JUDGEMENT
23 & INJUNCTIVE RELIEF --1 of 27

24 160606.f. complaint

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1 SAVE TACOMA WATER, and JON AND JANE DOES (Individual sponsors and officers
2 of SAVE TACOMA WATER) 1-5 (collectively "STW") submitted what became "Charter
3 Amendment 5" ("Charter Initiative"). See Copy **Attachment A**. The Charter Initiative 5
4 seeks that any land use proposal requiring water consumption of 1336 CCF (one million
5 gallons) of water or more daily from Tacoma be submitted to a public vote prior to "the
6 City" "providing water service" for such a project. (Section 4.24 (A)). STW's Charter
7 Initiative expressly purports to elevate its proposed Charter amendment above state law,
8 by pronouncing that "all laws adopted by the legislature of the State of Washington, and
9 rules adopted by any state agency, shall be the law of the City of Tacoma only to the
10 extent that they do not violate the rights or mandates of this Article. (Section 4.24 (B)).
11 STW's Charter Initiative expressly also purports to overrule and/or disavow the United
12 States Constitution, along with "international, federal [and] state laws" that "interfere"
13 with the proposed amendment. (Section 4.24 (C)). STW's Charter Initiative further
14 expressly purports to curtail the jurisdiction of state and federal courts, and to eliminate
15 certain rights of corporations, in conflict with the Washington and Federal
16 Constitutions, as well as U.S. Supreme Court rulings. STW apparently seeks all of these
17 results by proclamations sought to be contained in the Tacoma City Charter.

18 2. On or around April 15, 2016, STW submitted what became "Initiative 6"
19 ("Code Initiative"). STW's Code Initiative seeks to amend the City of Tacoma Municipal
20 Code Title 12 to require that any proposal which will use 1336 CCF (one million gallons)
21 of water or more daily from Tacoma be submitted to a public vote prior to "the City"

22 "providing water service" for such a project. The Code Initiative repeats all the same
COMPLAINT FOR DECLARATORY JUDGEMENT
23 & INJUNCTIVE RELIEF --2 of 27

24 160606.f. complaint

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1 defective provisions of the Charter Initiative, which conflict with the US and
2 Washington Constitutions and state and federal law.

3 3. The Plaintiffs Port of Tacoma ("Port"), Economic Development Board for
4 Tacoma-Pierce County ("EDB") and the Tacoma-Pierce County Chamber ("Chamber")
5 seek a declaration that both the Charter Initiative and Code Initiative are beyond the
6 proper scope of the local initiative power, and seek injunctive relief.

7 4. Local initiatives are limited in permissible scope.

8 5. The City of Tacoma's Charter provides that the "initiative shall be
9 exercised ... in accordance with the general laws of the state." *Tacoma Charter 2.19.*

10 6. Local initiatives that exceed the scope of the initiative power of a city in
11 any manner are invalid and should not be placed on the ballot. Pre-election challenges
12 to the scope of the initiative power are both permissible and appropriate.

13 7. STW's proposed Charter and Code Initiatives are beyond the scope of local
14 initiative power for one or more of the following reasons:

- 15 a. STW's Charter and Code Initiatives invalidly attempt to administer a
16 proprietary function of Tacoma, which exceeds the scope of initiative powers.
- 17 b. STW's Charter and Code Initiatives improperly attempt to oversee and classify
18 utility customers which delve into an expressly legislative matter and thus
19 exceed the valid scope of initiative powers.
- 20 c. The operation of Tacoma City utilities exceeds the scope of initiative power
21 given to the electorate.

22 COMPLAINT FOR DECLARATORY JUDGEMENT
23 & INJUNCTIVE RELIEF --3 of 27

24 160606.f. complaint

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1 d. STW's Charter and Code Initiatives are flatly inconsistent with the plain terms
2 of Tacoma's Charter. Tacoma's Charter delegates the power to operate its
3 water utility to the Tacoma Public Utility ("TPU") Board. *Tacoma Charter*
4 4.10.

5 e. STW's Charter and Code Initiatives fail because their provisions are directly
6 contrary to the water rights system established by the State.

7 f. STW's Charter and Code Initiatives conflict with Washington law that holds
8 zoning and development matters are not subject to initiative power.

9 g. STW's Initiatives impermissibly seek to interfere with Tacoma's role as a
10 regional water service provider, which role extends beyond the territorial
11 jurisdiction of the City of Tacoma.

12 h. STW's Initiatives impermissibly seek to transfer grants of property rights from
13 Tacoma's water utility to the "people".

14 i. STW's Initiatives are an invalid attempt to interfere with the authority vested
15 in the Tacoma City Council to control Tacoma's budget.

16 j. STW's Initiatives conflict with state law by attempting to apportion between
17 classes of utility users.

18 k. STW's Initiatives seek to strip the legal rights of any corporation that
19 "violates" the "rights" sought to be established in Tacoma's Charter and Code
20 by these Initiatives, which directly conflicts with the US and Washington state
21 Constitutions and the United States Supreme Court's ruling in *Citizens United*

22 *v. Federal Election Commission*, 558 U.S. 310, 342-43, 130 S. Ct. 876, 175 L.

23 COMPLAINT FOR DECLARATORY JUDGEMENT
& INJUNCTIVE RELIEF --4 of 27

24 160606.f. complaint

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1 Ed. 2d 753 (2010), which held corporations have rights under the federal
2 constitution.

3 l. STW's Initiatives must be invalidated because they expressly and
4 impermissibly purport to disavow such superior law as state laws, state rules,
5 federal laws, the United States Constitution, and the Washington State
6 Constitution.

7 m. STW's Initiatives are wholly invalid and cannot be severed, salvaged, or
8 salvaged in part.

9 8. The Plaintiffs seek resolution of these legal issues in accordance with the
10 Washington State Supreme Court ruling in *Philadelphia II v. Gregoire*, 128 Wash.2d
11 707 (1996), which held that the proper method for resolving whether a proposed local
12 initiative exceeds the scope of local initiative power as seeking a judicial determination
13 under Washington's Uniform Declaratory Judgment Act, RCW Ch. 7.24, before the
14 County Auditor validates signatures and or places the matters on a ballot.

15 9. The Court should declare the Charter and Code Initiatives invalid and
16 enjoin the County Auditor from (a) validating Petition signatures and (b) from placing
17 the Initiatives on the 2016 November general election ballot.

18 II. PARTIES, JURISDICTION AND VENUE

19 10. Plaintiff Port is a special purpose public port district organized under the
20 laws of the State of Washington. The Port has a legislative mandate to foster economic
21 development in Tacoma and Pierce County. The Port has standing to challenge

22 Defendants' Charter and Code Initiatives because the Port also is owner of land both
COMPLAINT FOR DECLARATORY JUDGEMENT
23 & INJUNCTIVE RELIEF --5 of 27

24 160606.f. complaint

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1 within and outside of Tacoma city limits. A critical segment of the Port's state
2 mandated mission, use of tax dollars and business is to lease lands to tenants, which
3 tenants can and do include industrial entities that may and do use over one million
4 gallons of water a day.

5 11. More than 29,000 jobs are generated by Port activity, which also provides
6 \$195 million per year in state and local taxes to support education, roads and police and
7 fire protection for our community. [Port Economic Impact Study, 2014]. The Tacoma-
8 Puyallup Industrial Subarea's 21,300 jobs make up 4 percent of the Puget Sound
9 Region's industrial employment. [PSRC Industrial Lands Analysis, 2015]. These jobs
10 pay an average \$80,000 a year. [PSRC Industrial Lands Analysis, 2015].

11 12. The state legislatively-mandated mission of the Port will be adversely
12 affected by the passage of the Charter Initiative and Code Initiatives which, if adopted,
13 would interfere with Tacoma's administration of its longstanding program to provide
14 necessary water service to industrial and commercial users throughout Pierce County.

15 13. Plaintiff EDB is a nonprofit Washington corporation headquartered in
16 Tacoma, Washington. The EDB receives funding by its member investors, including
17 businesses, individuals, municipalities, and other governmental entities. The EDB's
18 mission is to retain, expand and recruit primary company jobs in, to, and within
19 Tacoma-Pierce County. To accomplish its mission and annual work plan, the EDB
20 actively engages in public advocacy, business and economic development, physical
21 improvement projects, public safety, beautification, and marketing programs. Each of

22 these programs is intended to ensure the continued success of Tacoma and Pierce

23 COMPLAINT FOR DECLARATORY JUDGEMENT
& INJUNCTIVE RELIEF --6 of 27

24 160606.f. complaint

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1 County's economic vibrancy. The EDB's member investors have pledged approximately
2 \$500,000 toward the EDB's five-year work plan, which necessarily includes active
3 engagement of elected officials, as well as businesses and industrial entities that may use
4 over one million gallons of water a day. The EDB and its member investors have
5 interests they are seeking to protect that are within the zone of interests (determination
6 of water availability and interests) that the proposed Initiatives seek to protect or
7 regulate. Moreover, the EDB and its member investors would suffer economic impact
8 and injury should the Initiatives pass and serve to restrict the EDB's funded work plan
9 to recruit, expand, and retain primary company jobs in Tacoma-Pierce County. Further,
10 individual members of the EDB include Tacoma residents who are eligible to vote.¹ As
11 such, the EDB has standing to challenge the Initiatives because the mission of the EDB
12 and the economic interests of its member investors would be adversely affected by the
13 passage of legislation in any form which interferes with Tacoma's administration of its
14 longstanding program to provide necessary water service to industrial and commercial
15 users throughout Pierce County.

16 14. Plaintiff Chamber is a nonprofit Washington corporation headquartered in
17 Tacoma, Washington. The Chamber serves as a Tacoma/ Pierce County economic
18 advocate, and strives to lead the way to exceptional business and community growth. It
19 is dedicated to enhancing the quality and economic vitality of Tacoma and Pierce

20
21 ¹ *Mukilteo Citizens for Simple Government v. City of Mukilteo*, 174 Wn.2d 41, 46, 272 P.3d 227 (2012),
22 finding that an association of city residents had standing to challenge a proposed initiative because the
23 individual members had standing as "Mukilteo residents who are eligible to vote."

1 County. The Chamber is involved in public advocacy, business and economic
2 development, physical improvement projects, public safety, beautification, and
3 marketing programs, all of which contribute to building a prosperous community. Each
4 of these programs is intended to ensure the continued success of Tacoma and Pierce
5 County's economic vibrancy, growth and prosperity. The Chamber's membership
6 includes individuals and businesses throughout the City of Tacoma and Pierce County
7 and the surrounding area. On behalf of its membership, the Chamber engages elected
8 officials, (including elected members of the Tacoma City government and candidates for
9 elected office) and promotes efforts to attract and support investment in Tacoma and
10 Pierce County, which can include industrial entities that may use over one million
11 gallons of water a day. Further, individual members of the Chamber include Tacoma
12 residents who are eligible to vote.² The mission of the Chamber would be adversely
13 affected by the passage of legislation which interferes with Tacoma's administration of
14 its longstanding program to provide necessary water service throughout Pierce County.

15 15. Even in the unlikely event that the Court finds that one or more Plaintiffs
16 lack standing, the Court should still address the issues raised in the matter because the
17 issues of the validity of the two local initiatives involve significant importance that
18 merit judicial resolution. *American Traffic Solutions, Inc., v. The City of Bellingham*
19 *et al, Washington Campaign For Liberty et al* , 163 Wn. App. 427; 260 P.3d
20 245;(2011), see also *See Farris v. Munro*, 99 Wn.2d 326, 330, 662 P.2d 821 (1983)

21 _____
22 ² *Id.*

1 (addressing challenge to state lottery even though plaintiff lacked standing); *see also*
2 *Wash. Natural Gas Co. v. Pub. Util. Dist. No. 1 of Snohomish County*, 77 Wn.2d 94,
3 96, 459 P.2d 633 (1969).

4 16. Defendant SAVE TACOMA WATER by information and belief is a political
5 action committee, listing an address of 5020 South Asotin, Tacoma, WA 98408 on its
6 Washington state Political Committee Registration. STW claims to exist for the sole
7 purpose of advocating Tacoma Initiative No. 1 for the 2016 election year.³

8 17. Defendant Donna Walters is listed as the “sponsor” and “treasurer” of
9 SAVE TACOMA WATER.

10 18. Defendants Jon and Jane Does 1-5⁴ are the officers and/or responsible
11 leaders connected to the political committee SAVE TACOMA WATER. Under
12 Washington law, initiative drafters and sponsors are proper defendants in
13 challenges to the scope of an initiative.

14 19. This Court has personal jurisdiction over Defendants STW, Donna Walters
15 and Jon and Jane Does 1-5 because these Defendants have registered as a Washington
16 state Political Committee, or as Officer or Manager thereof and/or maintain offices and
17 transact business in Pierce County, and seek results within Pierce County.

18
19 ³ STW claims in its PDC Registration to handle less than \$5,000. (“No more than \$5,000 will be raised
or spent and no more than \$500 in the aggregate will be accepted from any one contributor”).

20 ⁴ State law requires SAVE TACOMA WATER to register with the Public Disclosure Commission, and
21 nominate “The names, addresses, and titles of its officers; or if it has no officers, the names, addresses,
and titles of its responsible leaders....” RCW 42.17A.025(9)(c). Plaintiffs may seek to name additional
Jon and Jane Doe defendants meeting the description set forth in RCW 42.17A.0255, as those persons
become known.

22 COMPLAINT FOR DECLARATORY JUDGEMENT
23 & INJUNCTIVE RELIEF --9 of 27

24 160606.f. complaint

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1 20. Defendant Tacoma is a first class charter city and a municipal corporation
2 organized and existing under the laws of the State of Washington and does business in
3 Pierce County, Washington.

4 21. Tacoma must be named as a defendant because a challenge concerning the
5 local initiative power necessarily involves the issues of the City's authority to consider
6 and enact legislation that conflicts with federal and state laws, and Tacoma's own
7 Charter.

8 22. This Court has personal jurisdiction over Tacoma because Tacoma
9 maintains offices and transacts business in the State of Washington.

10 23. Defendant Julie Anderson, in her capacity as Pierce County Auditor, must
11 be named as a defendant because the local initiative process involves the County
12 Auditor. Defendant Pierce County Auditor Anderson is responsible for certifying the
13 Initiatives for the election ballots. RCW § 35.09.020 requires the Auditor take certain
14 actions with regards to a petition for a city charter amendment petition. RCW §
15 35A.29.170 requires the Auditor take certain actions with regards to a petition for a city
16 ordinance initiative petition.

17 24. This Court has jurisdiction over the Pierce County Auditor because the
18 Auditor maintains offices and transacts business in Pierce County, Washington.

19 25. Because Plaintiffs seek a determination of the validity of the Charter and
20 Code Initiatives, the Court has subject matter jurisdiction over this matter under RCW
21 7.24 et seq.

22 26. The Court's grant of declaratory and injunctive relief to (1) declare the
COMPLAINT FOR DECLARATORY JUDGEMENT GOODSTEIN LAW GROUP PLLC
23 & INJUNCTIVE RELIEF --10 of 27 501 South G Street

24 160606.f. complaint

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1 and Chamber their fees, costs and disbursements in this action as allowed by law and
2 equity.

3 5. For such other relief as the Court may find appropriate.

4 DATED this __6th__ day of June 2016. GOODSTEIN LAW GROUP PLLC

5 By /s/Carolyn A. Lake
6 By /s/Seth Goodstein
7 Carolyn A. Lake, WSBA #13980
Seth Goodstein, WSBA #45091
Attorneys for Plaintiff Port of Tacoma

8 DATED this __6th__ day of June 2016. LEDGER SQUARE LAW, P.S.

9 By: /s/ Jason M. Whalen
10 Jason M. Whalen, WSBA #22195
Attorneys for Plaintiff EDB

11 DATED this __6th__ day of June 2016. GORDON THOMAS HONEYWELL LLP.

12 By: /s/Shelly Andrew
13 Shelly Andrew, WSBA # 41195
Attorneys for Plaintiff Chamber

22 COMPLAINT FOR DECLARATORY JUDGEMENT
23 & INJUNCTIVE RELIEF --27 of 27

24 160606.f. complaint

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From:

<http://www.tacomachamber.org/content/taking-political-action-business>

The Chamber promotes a pro-business agenda with political action programming. We study, analyze and make recommendations on a myriad of issues of interest to the Pierce County business community. When we take advocacy positions on those issues, we communicate the Chamber's viewpoint clearly and strongly to our membership, elected officials and the community at-large. The Chamber organizes events such as candidates forums and provide tools like an electronic listing of bills of interests during the legislative session. By providing strategic communication to our members, we keep them informed on upcoming elections, ballot measures and issues to help them make educated voting decisions.

EDB joins Port of Tacoma, Chamber in lawsuit to protect jobs and the environment

Today, the Economic Development Board for Tacoma-Pierce County, along with the Port of Tacoma and the Tacoma-Pierce County Chamber, filed a complaint asking a Pierce County Superior Court to invalidate two proposed ballot initiatives in Tacoma.

The two proposed measures seek to require a public vote on any development that would use more than 1 million gallons of water a day – a requirement that courts across the country have said is illegal, and one that risks the health and future of Pierce County's economy.

"Putting water use for commercial projects up for a public vote will interfere with the EDB's core mission: to recruit and retain those businesses that bring new jobs, and new dollars, into Pierce County," said Bev Losey, Economic Development Board chair and senior vice president of insurance firm Brown & Brown of Washington.

"Environmentally progressive businesses succeed here, because we have a rigorous permitting process to protect the natural resources we all hold dear," Losey said.

The EDB's Board of Directors voted last week to join the lawsuit.

These initiatives, whose backers are currently gathering signatures, are similar to initiatives that have been declared invalid in jurisdictions across the country. Just this February, the Washington State Supreme Court unanimously struck down an almost-identical Spokane initiative. It ruled, among other things, that the initiative improperly tried to expand a city law into a constitutional issue.

In fact, state law is clear: Initiative and referendum powers cannot be used this way. Utilities are required to meet water and power demand in their service territories, and to make sure the infrastructure exists to support any legal use of water or power. Moreover, Tacoma Public Utilities' water division serves several jurisdictions beyond the City of Tacoma.

"The EDB looks forward to helping shed light on the value of a balanced portfolio of primary companies in the South Sound, including industrial manufacturing," said EDB President & CEO Bruce Kendall. "The most successful regions in the world – with the highest quality of life, including environmental quality – are those that embrace the global economy and innovate better approaches to creating products and services across a variety clusters.

"Environmental quality suffers when economies are weak," Kendall said.

Beyond simple short-sightedness, the proposed initiatives don't reflect the reality of industrial water use. Tacoma Water's statistics show that the average demand for businesses on the Tideflats has dropped by more than half in the past 30 years.

Pierce County, along with Washington state, has long balanced high environmental standards with policies that encourage businesses to grow and innovate. That commitment has led to a robust industrial sector that employs tens of thousands of skilled workers and pays an annual wage much higher than the median.

People who work with their hands deserve the same support and investment opportunities as white-collar workers. Putting up barriers to private investment like these ballot measures put an entire sector of the economy – and the jobs it creates – at risk.

The state, under the Environmental Policy Act, requires rigorous review of each development's environmental impact, including water use. Additionally, land-use and zoning issues are up for public debate regularly at the municipal level. There is no shortage of opportunity for public involvement on commercial development. Requiring a public vote on each one is unnecessary.



Bob Ferguson

ATTORNEY GENERAL OF WASHINGTON

Government Compliance & Enforcement Division

PO Box 40100 • Olympia, WA 98504-0100 • (360) 664-9006

July 13, 2016

Evelyn Lopez, Executive Director
Public Disclosure Commission
PO Box 40908
Olympia, WA 98504-0908

RE: Citizen Action Notice – Port of Tacoma; The Economic Development Board of Tacoma-Pierce County; Tacoma-Pierce County Chamber of Commerce

Dear Ms. Lopez:

On June 16, 2016, the Attorney General received a notice from Arthur West alleging that the above-named entities had violated provisions of RCW 42.17A. Specifically, it alleged that they violated state laws by using public facilities to oppose a ballot measure. A copy of the notice was previously provided to you but is attached again with this letter. The 45 days under RCW 42.17A.765 will expire on July 31, 2016.

The Attorney General's Office is requesting that your agency review and as appropriate, investigate the allegations. My office will await the results of that review and any recommendation the Commission may have. I would request that when the Commission's recommendation is sent to the Attorney General's Office, a complete copy of any report of investigation or materials the Commission staff compiles also be forwarded.

Chad Standifer and I have been assigned the file in our office and are available to answer any legal questions you or the staff may have during the course of your review or investigation. If you have any questions, please do not hesitate to call me.

Sincerely,

LINDA A. DALTON
Senior Assistant Attorney General
(360) 753-0543

LAD:dg
Enclosure

cc: Shane Esquibel, Chief Deputy Attorney General
Darwin Roberts, Deputy Attorney General
Arthur West, Complainant
Mark Lindquist, Pierce County Prosecutor
John Wolfe, Port of Tacoma (w/encl.)
Bruce Kendall, Economic Development Board for Tacoma-Pierce County (w/encl.)
Tom Pierson, Tacoma-Pierce County Chamber of Commerce (w/encl.)

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Carolyn A. Lake
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July 21, 2016

VIA EMAIL

William A. Lemp, III
(William.lemp@pdc.wa.gov)
Lead Political Finance
Investigator State of
Washington
Public Disclosure
Commission PO Box 40908
Olympia, WA 98504-0908

RE: PDC Case 6626 – Port of Tacoma Response to Complaint

Dear Mr. Lemp:

We represent the Port of Tacoma (“Port”) and submit this response to the Public Disclosure Commission (“Commission”) in PDC Case 6626, as a result of the Citizen Action Complaint (Complaint) filed by Arthur West with the Washington State Attorney General’s Office (AG) on June 16, 2016. We understand that the AG forwarded the Complaint to the Commission on July 14, 2016. The Commission has requested a response from the Port by July 21, for consideration at the Commission’s July 28, 2016 meeting.

I. SUMMARY RESPONSE

The Port of Tacoma responds to Mr West’s Complaint, wherein he alleges two primary campaign violations:

- RCW 42.17A.205-240- failure to register or report campaign related expenditures made as a political committee,
- RCW 42.17A.555- use of public facilities for campaign purposes

After consideration of the Complaint and our information provided herein, the Port respectfully urges the Commission to find that there is no evidence to establish a material violation of any laws or regulations under the jurisdiction of the Commission and to dismiss the Complaint.

The Port did not violate RCW 42.17A.205, .235, and .240. The Port is not a political committee with a requirement to register and report with the PDC, because the Port is not a "receiver of contributions" in support of, or in opposition to candidates or ballot propositions, and because supporting candidates or ballot propositions is not one of its primary purposes.

The Port did not use public facilities for campaign purposes. Judicial review is not use of public funds for campaign purposes. The Port (1) filed a declaratory judgement lawsuit to request a neutral fact finder to make a judicial determination on the legal validity of the Initiatives, and (2) held a public vote to ratify that action during a properly noticed, public meeting where public comment for and against was received, consistent with RCW 42.17A.555(1). The Port's legal action also is consistent with the long list of legal cases in which public agencies have properly sought judicial review of the legal sufficiency of a proposed Initiative; in no case were these action found to violate RCW 42.17A.555.

The Port took no campaign action to influence the vote on a ballot measure. Here, any expenditures at issue were made prior to a ballot initiative campaign, and were in fact related to challenging the initiation of such a campaign on the grounds that the ordinance was facially unconstitutional. If a proposed local initiative is facially beyond the local initiative power and unconstitutional, it can logically never become part of a legitimate "ballot initiative campaign."

There is *no* First Amendment right to place an initiative on the ballot, much less an invalid one. Including invalid initiatives on the ballot does not vindicate or protect any rights, rather it undermines the integrity of a system intended to enact laws. The Port's action in pursuing a legal determination from the neutral judicial system was not campaigning but instead was consistent with the underlying purpose of Washington campaign laws to protect the integrity of the voting process.

Before we address each allegation in detail below, we first provide the Commission with background facts regarding the Port, as well as facts related to the Port's legal action.

II. BACKGROUND FACTS

A. The Port.

The Port is a special purpose public port district that operates under Title 53 of the Revised Code of Washington and is classified as a special purpose district. The Port is a member of The Northwest Seaport Alliance, a marine cargo operating partnership with the Port of Seattle. Under a port development authority, the ports manage the container, breakbulk, auto and some bulk terminals in the Seattle and Tacoma harbors. Today, the Port covers more than 2,700 acres in the Port industrial area. The Port is one of the top container ports in North America and a major gateway for trade with Asia and

Alaska. Five Commissioners are elected to four-year terms by the citizens of Pierce County to serve as the Port's board of directors. The commission hires the CEO, sets policy and strategic direction, and approves all major expenditures.

Port Strategic Plan. With input from community members, customers, business leaders and employees, the Port has in place a 10-year Strategic Plan in 2012 ("Plan"), found at <http://portoftacoma.com/sites/default/files/StrategicPlanBrochure.pdf>. The Plan is updated annually to provide further focus and clarity to the initiatives. The Plan focuses on four areas that build on the Port's specific strengths to make better connections:

- ***Strategic investments***
We will make strategic investments that enhance the Port's waterway, terminal, road, rail and industrial property infrastructure to create the most efficient, productive and cost-effective system possible to move our customers' freight to the marketplace.
- ***New business opportunities***
To create opportunity for future investments, we will focus attention on attracting new business opportunities with healthy income streams and increase the diversity of the Port's business portfolio.
- ***Customer care***
We're serious about our tagline "People. Partnership. Performance." We will continue to demonstrate great care for our business relationships with customers and key stakeholders.
- ***Community pride***
Business development, environmental stewardship and livable communities go hand in hand. We continually hear that our community's support of the Port and trade-related jobs is a key competitive advantage. We intend to grow the Port responsibly to ensure continued trust in our collective future.

Port Mission. The Port mission is to "Deliver prosperity by connecting customers, cargo and community with the world". The Port' Core values are as follows:

- ***Integrity***
Being ethically unyielding and honest; inspiring trust by saying what we mean and matching our behaviors to our words; acting in the public interest and in a manner to maintain public confidence.
- ***Customer focus***
Creating long-term relationships by consistently delivering value; helping customers to become high-performance businesses by understanding their business needs; establishing realistic expectations and meeting commitments.

- **Teamwork**
Focusing on the success of the entire organization; fully utilizing our collective skills, knowledge and experiences to achieve our goals; encouraging diversity, respect and full participation; being effective collaborators with a broad range of partners in the region; having fun together.
- **Courage**
Facing challenges with fortitude; setting aside fears and standing by personal principles; extending beyond personal comfort zones to achieve goals; taking responsibility for actions.
- **Competitive spirit**
Pursuing our goals with energy, drive and the desire to exceed expectations; going the extra mile for our customers and to differentiate ourselves in the market; demonstrating passion and dedication to our mission; constantly improving quality, timeliness and value of our work.
- **Sustainability**
Focusing on long-term financial viability; valuing the economic well-being of our neighbors; doing business in a way that improves our environment.

As a public port district, the Port has a legislative mandate to foster economic development in Tacoma and Pierce County. The Port also is owner of land both within and outside of Tacoma city limits. A critical segment of the Port's state mandated mission, use of tax dollars and business is to lease lands to tenants. More than 29,000 jobs are generated by Port activity, which also provides \$195 million per year in state and local taxes to support education, roads and police and fire protection for our community. [Port Economic Impact Study, 2014]. The Tacoma-Puyallup Industrial Subarea's 21,300 jobs make up 4 percent of the Puget Sound Region's industrial employment. [PSRC Industrial Lands Analysis, 2015]. These jobs pay an average \$80,000 a year. [PSRC Industrial Lands Analysis, 2015].

B. Port's Legal Challenge

The Port became aware of two potential City of Tacoma Initiatives, led by a committee called Save Tacoma Water (STW). STW's Code Initiative 6 seeks to have the City Council enact the changes to the Tacoma Municipal Code ("Code Initiative"). STW's Code Initiative 6 sought to impose a requirement that any land use proposal requiring water consumption of 1336 CCF (one million gallons) of water or more daily from Tacoma be submitted to a public vote prior to "the City" "providing water service" for such a project. (*Code Initiative at §A*). The Initiative would accomplish this by requiring developers seeking that water use to fund the "costs of the vote on the people" and only if "a majority of voters approve the water utility service application and all other application requirements may the City provide the service." *Id.*

STW's Code Initiative expressly purports to elevate its proposed Charter amendment above state law, by pronouncing that "all laws adopted by the legislature of the State of Washington, and rules adopted by any state agency, shall be the law of the City of

Tacoma only to the extent that they do not violate the rights or mandates of this Article. (*Id.*, §B). STW's Code Initiative expressly purports to overrule and/or disavow the United States Constitution, along with "international, federal [and] state laws" that "interfere" with the proposed amendment. (*Id.*, §C), and to curtail the jurisdiction of state and federal courts, and to eliminate certain rights of corporations, in conflict with the Washington and Federal Constitutions, as well as U.S. Supreme Court rulings. The Initiative deprives corporations of their right under the Washington state constitution to sue and defend against lawsuits in courts, "like natural persons." Wash. Const. art. I, § 12, and seeks to deprive the courts and other "government actors" from recognizing any "permit, license, privilege, charter or other authorizations" that would violate the Initiative. *Id.* The Initiative also gives "any resident of the city" the right to enforce the Initiative. *Code Initiative* § D. STW apparently sought all of these results through Tacoma Municipal Code provisions. The companion measure, STW's Charter Initiative 5, repeats all the same provisions of the Code Initiative.

The Port was aware that STW's Initiatives were near identical to Initiatives recently found to be legally invalid (outside the valid scope of local initiative powers) by the Washington Supreme Court in *Spokane Entrepreneurial Ctr. v. Spokane Moves to Amend the Constitution*, 185 WA 2d. 97 (Feb. 4, 2016).

The Port, along with co-Plaintiffs Economic Development Board for Tacoma-Pierce County ("EDB") and the Tacoma-Pierce County Chamber ("Chamber") filed a legal action on June 6, 2016 to seek judicial determination under Washington's Uniform Declaratory Judgment Act, RCW Ch. 7.24, that both the Charter Initiative and Code Initiative are beyond the proper scope of the local initiative power, and for injunctive relief. The Port spent approximately \$45,000 in that legal effort.

The City of Tacoma filed its Answer and Cross Claims on June 8, 2016. In its pleadings, the City agreed the Initiatives were legally defective and filed a cross claim against the Initiative sponsors within the existing suit.

On June 18, 2016, the Port Commission held a public meeting, which it noticed in advance the Commission's intention to take up a vote to "ratify the Port's action of filing a Declaratory Judgment and Injunctive challenge of two proposed local initiatives filed with the City of Tacoma—Charter Amendment 5 and Code Initiative 6 ("Initiatives"). The Declaratory Judgment asks the Pierce County Superior Court to (1) declare that local Initiatives exceed the proper scope of local initiative powers and therefore are invalid, and (2) enjoin the Initiatives' signatures from being validated and enjoin the Initiatives from being placed on the November 2016 ballot, or adopted by the City." See Port of Tacoma Commission Agenda for June 16, 2016, **Exhibit 1**. Staff provided a Commission Memo which was publically available. **Exhibit 2**. The Commission took public comment on the matter from over 20 persons, who spoke for and primarily

against the action. The Commission voted unanimously to ratify filing the legal action. See Minutes of June 16, 2016 Port meeting, **Exhibit 3**.

On July 1, 2016, the Pierce County Superior Court granted Plaintiffs' Motion for Declaratory Judgement, finding the two Initiatives invalid and granting an injunctive relief to prevent the Pierce County Auditor from placing the measures on the ballot. See **Exhibit 4**.

III. RESPONSE TO ALLEGATIONS

A. First Allegation:

The Port did not violate RCW 42.17A.205, .235, and .240. The Port is not a political committee with a requirement to register and report with the PDC, because the Port is not a "receiver of contributions" in support of, or in opposition to candidates or ballot propositions, and because supporting candidates or ballot propositions is not one of its primary purposes.

1. Relevant authority to be considered on this question includes the following:

- **RCW 42.17A.005(37)**

"Political committee" means any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.

- **Interpretation 07-02 "Primary Purpose Test" Guidelines**

Interpretation 07-02 is a summary of the "primary purpose test" Guidelines that relate to "political committees" under Washington State law. It sets forth two alternative prongs under which an individual or organization may become a political committee and subject to the Act's reporting requirements: (1) a "receiver of contributions" prong; and (2) a "making of expenditures to further electoral political goals" prong. A requirement of the "making of expenditures" prong states that the organization making expenditures must have as its "primary or one of its "primary or one of its primary purposes ... to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions ..." (WA Court of Appeals, EFF v. WEA, 2003). In addition, the Interpretation states that an appropriate framework for determining whether electoral political activity is one of the organization's primary purposes should include an examination of the stated goals and mission of the organization and whether electoral political activity is a primary means of achieving the stated goals and mission during the period in question.

A nonexclusive list of analytical tools that may be used to evaluate the evidence includes:

- (1) the content of the stated goals and mission of the organization;

- (2) whether the organization's actions further its stated goals and mission;
- (3) whether the stated goals and mission of the organization would be substantially achieved by a favorable outcome in an upcoming election; and
- (4) whether the organization uses means other than electoral political activity to achieve its stated goals.

- **RCW 42.17A.205**

Every political committee shall file a statement of organization with the commission. The statement must be filed within two weeks after organization or within two weeks after the date the committee first has the expectation of receiving contributions or making expenditures in any election campaign, whichever is earlier.

- **RCW 42.17A.235 and .240**

Every political committee is required to file ongoing reports of contributions and expenditures at specified intervals.

2. Analysis. The Committee should find that there is no evidence that the primary or one of the primary purposes of the Port is to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions, such that the Port is a political committee subject to the Public Disclosure Act's disclosure requirements.

The Commission's Interpretation 07-02, "Primary Purpose Test" Guidelines ("Interpretation"), sets forth two alternative prongs under which an individual or organization may become a political committee and subject to the Act's reporting requirements:

- (1) a "receiver of contributions" prong; and
- (2) a "making of expenditures to further electoral political goals" prong. A requirement of the "making of expenditures" prong states that the organization making expenditures must have as its "primary or one of its primary purposes ... to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions ...". *Evergreen Freedom Foundation v. Washington Education Association*, 111 Wn. App. 586, 49 P.3d 894 (2002), *review denied* 148 Wn.2d 1020, 66 P.3d 639 (2003).

In addition, the Interpretation states that an appropriate framework for determining whether electoral political activity is one of the organization's primary purposes should include an examination of the stated goals and mission of the organization and whether electoral political activity is a primary means of achieving the stated goals and mission during the period in question.

A nonexclusive list of analytical tools that may be used to evaluate the evidence includes: (1) the content of the stated goals and mission of the organization; (2) whether the organization's actions further its stated goals and mission; (3) whether

the stated goals and mission of the organization would be substantially achieved by a favorable outcome in an upcoming election; and (4) whether the organization uses means other than electoral political activity to achieve its stated goals.

Receiver of Contributions Prong: There is no evidence that the Port was a receiver of contributions under RCW 42.17A, nor has it been demonstrated that the Port has any expectation of receiving contributions reportable under RCW 42.17A.

Primary Purpose /Expenditure Test Prong: To address this allegation, PDC is urged to reviewed evidence relevant to the analysis recommended by the *EFF v. WEA* court , i.e., whether one of the Port's primary purposes is to support or oppose candidates or ballot propositions. ("If, after making these considerations, the fact finder determines that, on the whole, the evidence indicates that one of the organization's primary purposes was electoral political activity during the period in question, and the organization received political contributions as defined in the Act, then the organization was a political committee for that period and should comply with the appropriate disclosure requirements. (*Id* at 600)).

There is no evidence that one of the organization's primary purposes is electoral political activity. To the contrary, the Port is a special purpose district whose primary mission is to create economic development activity. The Port's Strategic Plan focus is to "create opportunity for future investments, we will focus attention on attracting new business opportunities with healthy income streams and increase the diversity of the Port's business portfolio". Its mission is to "Deliver prosperity by connecting customers, cargo and community with the world". Electoral political activity appears nowhere in the Port's mission statement, goals or stated purpose.

Instead, the Port has long been a public policy advocate on issues affecting industrial and manufacturing preservation and theses sector's role in economic vitality. Port communications regarding the need to preserve and protect industrial lands and jobs is part of the Port's normal and regular conduct of the Port. Examples of such communications include:

- The Port's standard presentation on the 2012-2022 Strategic Plan. Example attached as **Exhibit 5** is one was given to the Propeller Club.
- The Port's Gateway stories about Frederickson's industrially-zoned property, attached as **Exhibit 6 and 7**.
- The Port's presentation PowerPoint that shows the Port's role in economic and industrial growth over the years, attached as **Exhibit 8**.

The Port's PowerPoint presentation **Exhibit 8** includes excerpts of Port Annual Reports where its mission of economic development and industrial preservation is a constant theme:

“A major asset of the Port of Tacoma is our ownership of prime industrial land adjacent to deep water marine berths. The combination of excellent road and rail access, large vacant industrial tracts, and close proximity to deep water marine berths, gives the Port of Tacoma a competitive advantage in attracting industrial clients...”

~Ernest L. Perry, General Manager, 1974 Annual Report

“Through a combination of natural advantages, an emphasis on service and careful planning, the versatile Port of Tacoma expects to expand in the 1980s.”

~Richard Dale Smith, Executive Director, 1980 Annual Report

“In the last few years, the Port of Tacoma has become a major player in the shipping industry...The Port of Tacoma has accomplished this expansion by its innovativeness and its willingness to provide for its customers’ needs, whether those needs are in facilities, services or labor.”

~Robert G. Earley, Port Commissioner, 1987 Annual Report

“Tacoma and the Puget Sound Region will benefit from a dramatic expansion of the Pacific Rim and perhaps European trade throughout region because of the settlement with the Puyallup Tribe of Indians.”

~John McCarthy, Port Commissioner, 1991 Winter Pacific Gateway

“By taking care of our customers, building a foundation for growth and most importantly, being a good neighbor to our surrounding communities, the Port of Tacoma has succeeded in its mission of job creation, economic development and environmental stewardship. I am optimistic that the best is yet to come.”

~Jack Fabulich, Port Commissioner, 2006 Annual Report

Thus, under the *EFF v. WEA* test of whether a primary Port purpose is electoral political activity, the Committee should find that the Port is not a political action committee. *State v. Evans*, 86 Wn.2d 503, 546 P.2d 75 (1976) is in accord.

In *Evans*, the State Supreme Court considered whether a committee bearing the governor’s name that made a single contribution to the fund of the state Republican Central Committee became a political committee within the meaning of (former) RCW 42.17. **The Court held that in the absence of showing that such committee made expenditures for the purpose of supporting or opposing a specific candidate or ballot proposition, or contribution of similar nature, and in the absence of evidence that the committee solicited, received, or had the expectation of receiving contributions to be used in support of or opposition to candidates or ballot propositions, such a committee was not a**

political committee and not subject to the disclosure requirements of RCW (former) 42.17. The same is true here.

No evidence exists or has been provided showing that supporting candidates or ballot proposition campaigns is or was a top priority for the Port. No evidence exists or has been suggested that the Port has substantially achieved its stated goals and mission by a favorable outcome in an election or ballot measure. It is clear that Port uses means other than electoral political activity to achieve its stated goals. Thus, the Port does not meet the definition of a political committee under RCW 42.17A.005(37) (“Political committee’ means any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.”) (emphasis added).

The Committee should find that there is no evidence that the primary or one of the primary purposes of the Port is to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions, such that the Port is a political committee subject to the Public Disclosure Act’s disclosure requirements.

B. SECOND ALLEGATION. RCW 42.17A.555, use of public facilities for campaign purposes.

1. Relevant authority to be considered on this question includes the following:

- **RCW 42.17A.555 Use of public office or agency facilities in campaigns—Prohibition—Exceptions.**

No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency. However, this does not apply to the following activities:

(1) Action taken at an open public meeting by members of an elected legislative body or by an elected board, council, or commission of a special purpose district including, but not limited to, fire districts, public hospital districts, library districts, park districts, port districts, public utility districts, school districts, sewer districts, and water districts, to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or

oppose a ballot proposition so long as (a) any required notice of the meeting includes the title and number of the ballot proposition, and (b) members of the legislative body, members of the board, council, or commission of the special purpose district, or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;

(2) A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry;

(3) Activities which are part of the normal and regular conduct of the office or agency.

(4) This section does not apply to any person who is a state officer or state employee as defined in RCW 42.52.010.

2. Analysis. The Port did not use public facilities for campaign purposes. Judicial review is not use of public funds for campaign purposes. The Port (1) filed a declaratory judgement lawsuit to request a neutral fact finder to make a judicial determination on the legal validity of the Initiatives, and (2) held a public vote to ratify that action during a properly noticed, public meeting where public comment for and against was received, consistent with RCW 42.17A.555(1). The Port's legal action is consistent with the long list of legal cases in which public agencies have properly sought judicial review of the legal sufficiency of a proposed Initiative; in no case were these action found to violate RCW 42.17A.555. The Port took no electioneering or campaign action to influence the vote on the ballot measure. Including invalid initiatives on the ballot does not vindicate or protect any rights, rather it undermines the integrity of a system intended to enact laws. The Port's action in pursuing a legal determination from the neutral judicial system was not campaigning but instead was consistent with the underlying purpose of Washington campaign laws to protect the integrity of the voting process.

2.1 Judicial Review is Not Use of Public Funds for Campaign Purposes.

The Port's action was confined to the judicial and not the campaign/ electioneering arena. No funds were raised or spent to campaign in support or opposition of the Initiatives.

The Port's declaratory judgement action is nothing close to the advertising campaign analyzed in *Voter Educ. Comm. v. Pub. Disclosure Comm'n.*, 161 Wn.2d 470 (2007). There, the advertisement slammed a particular candidate and concluded that "Deborah Senn Let Us Down." Because Senn was not an incumbent, the Court held that the advertising "had contemporary significance only with respect to Senn's candidacy for attorney general." 161 Wn.2d at 791. Here, in contrast, the Port's request for judicial determination was not accompanied by any information that explicitly or implicitly asks

voters to cast their ballot for or against the measures.

Raising questions about the legal sufficiency of a measure does not constitute electoral communications and does not seek to support or oppose any measure. The Port sought to engage a neutral fact finder on the legal status of the measures so that the Pierce County Auditor (and City Council) would have the benefit of that judicial ruling.

Just as the Court found in *Seattle v. State*, 100 Wn.2d 232 668 P.2d 1266 (1983), that “An even-handed program of assistance available to *all* candidates based on objective minimum qualification criteria simply does not involve the abuses of public trust which inspired RCW 42.17.130.”, neither does a strictly judicial inquiry into the legal legitimacy of a measure offend the purpose for which RCW 42.17.130 was enacted. The purpose intended was to prohibit the use of public facilities for partisan campaign purposes. *Id.* at 248.

AGO 2006 No. 1 is in accord: “...the statute prohibits the use of public resources to aid one side or another of a ballot measure campaign; it does not prohibit efforts to provide information about a proposed measure where the office or agency providing the information would be affected, or where information is shared as part of its responsibilities. AGO 1994 No. 20, at 10 (citing *City of Seattle v. State*, 100 Wn.2d 232, 247-48, 668 P.2d 1266 (1983)); see also AGO 1975 No. 23, at 13 (noting that the statute does not prohibit the use of public resources to provide information simply to explain the measure in relation to the functions of a particular office or agency).”

The purpose of Washington’s campaign laws is to ensure that the financing of *political campaigns and lobbying* are fully disclosed to the public. RCW 42.17A.001. The laws are designed to let the voters know who is attempting to influence their vote.¹ Filing a lawsuit to determine the legality of a local initiative is not advertising, communicating with voters, campaigning, lobbying or electioneering.

Washington courts routinely exercise Declaratory Judgment power pursuant to Chapter 7.24 RCW in pre-election initiative challenges like that brought by the Port.²

Under the Uniform Declaratory Judgment Act, a Court has the “power to declare rights, status and other legal relations.” RCW 7.24.010. That power includes declaring the pre-election status of a local initiative as beyond the scope of the local initiative power and the right of the Auditor to refrain from placing invalid measures on the ballot. See, e.g., *Seattle Bldg. & Constr. Trades Council v. City of Seattle*, 94 Wn.2d 740, 746 (1980)

¹ *Voters Educ. Comm. v. Washington State Pub. Disclosure Comm’n*, 161 Wn.2d 470, 488, 166 P.3d 1174 (2007).

² *Spokane Entrepreneurial Ctr. v. Spokane Moves to Amend the Constitution*, 185 Wn. 2d 97 (Feb. 4, 2016), *See also City of Longview v. Wallin*, 174 Wn. App. 763, 301 P.3d 45 (Div. 2 2013), *cert denied*, 178 Wn.2d 1020 (2013); *Eyman v. McGehee*, 173 Wn. App. 684, 294 P.3d 847 (Div. 1 2013);

(affirming declaratory judgment for private plaintiffs declaring local initiative exceeded initiative power); *Ford v. Logan*, 79 Wn.2d 147, 151 (1971) (affirming declaratory judgment for private plaintiffs declaring local initiative exceeded initiative power); *Am. Traffic Solutions, Inc. v. City of Bellingham*, 163 Wn. App.427, 432-33 (2011) (upholding pre-election challenge to scope of initiative as exceeding initiative power and therefore invalid); *City of Seattle v. Yes for Seattle*, 122 Wn. App. 382, 386 (2004) (affirming declaratory judgment "striking [initiative] from the ballot").

The Port sought judicial, and not political or campaign, resolution of the legal issues in accordance with the Washington State Supreme Court ruling in *Philadelphia II v. Gregoire*, 128 Wash.2d 707 (1996), which held that courts should determine whether a proposed initiative exceeds the scope of local initiative power.

The Port's legal action also is consistent with the long list of legal cases in which public agencies have properly sought judicial review of the legal sufficiency of a proposed Initiative (below); in no case were these action found to violate RCW 42.17A.555.

- *Spokane Entrepreneurial Ctr. v. Spokane Moves to Amend the Constitution*, 185 Wn.2d 97, 101-105 369 P.3d 140 (2016) ("The petitioners include Spokane County....Applying those existing standing requirements, we hold that petitioners in this case have standing to bring their challenge".)
- *City of Sequim v. Malkasian*, 157 Wn.2d 251, 259-60, 138 P.3d 943, (2006) (Supreme Court of Washington described "it is well settled that it is proper for cities to bring challenges that the subject matter is beyond the scope of the initiative power & "In this case, like many other cases, the local officials had a valid concern that the proposed initiative was outside the scope of the initiative power" 157 Wn.2d at 269)
- *Whatcom Cty. v. Brisbane*, 125 Wn.2d 345, 346, 884 P.2d 1326 (1994) (Whatcom County Superior Court sustains "a challenge by Whatcom County to a referendum petition to amend portions of a critical areas ordinance")
- *Snohomish Cty. v. Anderson*, 124 Wn.2d 834, 836, 881 P.2d 240 (1994) ("The Snohomish County Council (County or Council) commenced an action against the citizens seeking and successfully securing a declaratory judgment the ordinance was not subject to a referendum")
- *City of Longview v. Wallin*, 174 Wn. App. 763, 783, 301 P.3d 45 (Div. 2, 2013) (Cities have standing to bring court challenges to local initiatives that exceed the scope of initiative powers)
- *City of Seattle v. Yes for Seattle*, 122 Wn. App. 382, 387, 93 P.3d 176 (Div. 1, 2004) (City challenge to local initiative, "limited to whether the initiative was beyond the initiative power, was appropriate".)
- *City of Port Angeles v. Our Water-Our Choice!*, 170 Wn.2d 1, 6-7, 239 P.3d 589 (2010) ("The city council declined to either enact the initiatives or refer them to the ballot.

Instead, the council sought declaratory judgment that the initiatives were beyond the scope of the local initiative power because they concerned administrative matters; because the Washington State Legislature had vested the responsibility to run the water system to the council, not the city; and because the initiatives were substantively invalid.”)

- *King Cty. v. Taxpayers of King Cty.*, 133 Wn.2d 584, 592, 949 P.2d 1260 (1997) (“The County filed a complaint seeking a declaratory judgment under RCW 7.25.020 validating the bonds. Specifically, the County sought a declaration...determining that Initiative 16 is inapplicable to the issuance of the Bonds as authorized by the Bond....”)
- *Pierce Cty. v. Keehn*, 34 Wn. App. 309, 311, 661 P.2d 594 (Div. 2, 1983) (“the County filed an action to declare Initiative 1 invalid. In September the trial court granted the County's motion for summary judgment, holding that the auditor (and County Executive) properly refused ‘to accept, verify, register, or file the initiative petition under Article V, Section 5.40 of the [Pierce] County Charter.’”)
- *Spokane v. Taxpayers of Spokane*, 111 Wn.2d 91, 94, 758 P.2d 480 (1988). (“In response to the filing of this initiative, the City began this declaratory action on October 6. Named as defendants were Spokane's taxpayers, the ratepayers of the City's refuse utility, and the City's qualified and registered electors. In its suit, the City sought a declaratory judgment that the initiative did not apply to the waste-to-energy project and that the City Council could proceed with the issuance and sale of the revenue bond” & “We hold a justiciable controversy exists as to the ratepayers and electors”. 111 Wn.2d at 96)
- *Clallam Cty. v. Forde*, No. 28487-1-II, 2003 Wash. App. LEXIS 47, 3 (Unpublished Div. 1, 2003) (“Clallam County commissioners voted against holding public hearings on the petition, concluding that the proposed repeal was not within the initiative power of the people. The county subsequently moved for and was granted relief on summary judgment”).)
- *City of Monroe v. Wash. Campaign for Liberty*, No. 68473-6-I, 2013 Wash. App. LEXIS 378, 5 (Unpublished Div. 1, 2013) (“In July 2011, the City filed a complaint for declaratory relief against Seeds of Liberty and the other sponsors of Monroe Initiative No. 1. The City sought a declaration that the initiative, ‘in its entirety, is invalid because it is beyond the scope of the local initiative power, and therefore null and void.’”)

The Washington Supreme Court case of *King County Council v. Public Disclosure Commission*, 93 Wn.2d 559; 611 P.2d 1227(1980) is also instructive. There, the Supreme Court reviewed and reversed the Public Disclosure Commission's (commission) decision that four members of the King County Council (council) violated RCW 42.17.130 by voting to endorse a ballot measure. That statute (predecessor to current RCW 42.17A.555) prohibited the use of the facilities of a public office to promote or oppose an individual's candidacy or a ballot proposition.

The Council to endorsed Initiative No. 335, a statewide anti-pornography ballot measure, after a public meeting where 12 citizens were heard. Some spoke for and

others against the motion. Council members debated and the motion passed by a 4-to-3 vote.

The Commission argued the county council's endorsement violated: (1) Const. art. 7, § 1 (amendment 14) because it amounts to an expenditure of public money for private purposes; (2) *Const. art. 1, § 19*, which states all elections shall be "free and equal"; and (3) the First Amendment and *Const. art. 1, § 4*, which guarantee the rights to petition and initiative. The Supreme Court disagreed as to all counts.

In rejecting the Commission's argument that the council action violated the prohibition against spending public money for a private purpose, the Court expressly found that the Council's vote (to support) the Initiative was **not** a campaign activity³:

A campaign was not waged in the instant case. The public hearing was not expenditure in support of the initiative so the constitution has not been violated.

2.2 Even if the Port was engaging in support of or opposition to the STW Initiatives (which it was not), the Port's public meeting and vote precisely complied with RCW 42.17A.555(1)'s exception⁴ to use of public office or agency facilities in campaigns.

³ The Appeals Court took into account (1) Const. art. 7, § 1 (amendment 14) which provides in part: ". . . All taxes . . . shall be levied and collected for public purposes only." The same limitation is imposed by this provision upon the *expenditure* of public money. *State ex rel. Collier v. Yelle*, 9 Wn.2d 317, 326, 115 P.2d 373 (1941), as well as (2) Attorney General opinions: "The Attorney General has advised that state expenditures for an individual's candidacy would not be for a public purpose. Attorney General Opinion, February 16, 1979, at 4; Attorney General Opinion, July 7, 1976, at 5-6. But these opinions evaluate the use of college facilities on behalf of candidates rather than ballot measure endorsements.

⁴ RCW 42.17A.555(1): "No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency. However, this does not apply to the following activities:

(1) Action taken at an open public meeting by members of an elected legislative body or by an elected board, council, or commission of a special purpose district including, but not limited to, fire districts, public hospital districts, library districts, park districts, port districts, public utility districts, school districts, sewer districts, and water districts, to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition so long as (a) any required notice of the meeting includes the title and number of the ballot proposition, and (b) members of the legislative body, members of the board, council, or commission of the special purpose district, or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;"

State campaign law provides an express exception to the otherwise express prohibition on use of public office or agency facilities in campaigns. The Port meeting notice and process satisfy the RCW 42.17A.555(1) criteria; no violation occurred.

RCW 42.17A.555(1) allows an elected legislative body or by an elected board, council, or commission of a special purpose district including, but not limited to, port districts to express a collective position and even vote to support or oppose a ballot proposition so long as (a) any required notice of the meeting includes the title and number of the ballot proposition and (b) public comments pro and against are allowed and taken.

On June 18, 2016, the Port Commission held a public meeting, which it noticed in advance the Commission's intention to take up a vote to "ratify the Port's action of filing a Declaratory Judgment and Injunctive challenge of two proposed local initiatives filed with the City of Tacoma—Charter Amendment 5 and Code Initiative 6 ("Initiatives").

See Port of Tacoma Commission Agenda for June 16, 2016, **Exhibit 1**. Staff provided a Commission Memo which was publically available. **Exhibit 2**. The Commission took public comment on the matter from over 20 persons, who spoke for and primarily against the action. The Commission voted unanimously to ratify filing the legal action. See Minutes of June 16, 2016 Port meeting, **Exhibit 3**. The Port meeting notice and process satisfy the RCW 42.17A.555(1) criteria; no violation occurred.

2.3 Even if the Port was engaging in support of or opposition to the STW Initiatives (which it was not), no violation occurred because the STW Initiatives are not "ballot propositions" as defined in Washington law.

The Port supports and adopts by reference as if fully set forth herein the analysis submitted by the Chamber and EDB, in PDC Cases 6627 (EDB) and Case 6628 (Chamber). This includes but is not limited to the analysis that because a "ballot proposition" is defined under RCW 42.17A.005(4) as an issue which is submitted to the secretary of state prior to the gathering of signatures (RCW 29A.72.010), a local initiative can never qualify as a "ballot proposition" as defined by RCW 42.17A.005(4). And only when the petition is submitted to the voters does it become a measure under RCW 29A.04.091.

Here, any expenditures at issue were made prior to a ballot initiative campaign, and were in fact related to challenging the initiation of such a campaign on the grounds that the ordinance was facially unconstitutional. If a proposed local initiative is facially beyond the local initiative power and unconstitutional, it can logically never become part of a legitimate "ballot initiative campaign."

2.4. Legal challenges to patently invalid Initiatives are consistent with the public purpose of Washington's Campaign laws designed to protect the integrity of the Voting process.

Here, the initiative sponsors freely exercised their rights to petition the government and speak. The Port's actions in no way interfered with signature gathering, and indeed the Port meeting where the Port's legal action was publically noticed arguably beneficially gave the public, both for and against, an additional forum of expression, as was favorably observed by the Supreme Court in *King County Council v. PDC*, *Id* at 1231, ("The endorsement also served beneficial purposes, including generation of public interest and debate, informing citizens of their elected representatives' stands on the ballot issue and furtherance of *local* antipornography policy")

At the same time, it must be emphasized that "[t]here is *no* First Amendment right to place an initiative on the ballot." *Angle v. Miller*, 613F.3d 1122, 1133 (9th Cir. 2012) (emphasis added) (citing *Meyer v. Grant*, 486 U.S. 414, 424 (1988)).

Initiative supporters have no right to use the ballot as a forum for political expression. The purpose of the ballot is to elect candidates and enact law -not for political expression. As the U.S. Supreme Court explained in the Washington Top 2 Primary case, "[b]allots serve primarily to elect candidates, *not as forums/or political expression.*" *Wash. Grange v. WA Republican Party*, 552 U.S. 442, 453 n.7 (2008) (emphasis added) (citation and internal quotation marks omitted).

Washington law is the same. In *City of Longview v. Wallin*⁵, Initiative sponsors argued that they had a First Amendment right to have their initiative appear on the ballot. There, the defendant relied on *Coppernoll*⁶ to argue a pre-election challenge to the scope of a local initiative violated his free speech rights. 301 P.3d at 59. The Court rejected the argument that a pre-election challenge infringed on the sponsor's free speech rights and explained there was no constitutional right at issue. The local initiative power derives from statute, **not** the constitution, so "local powers of initiative do not receive the same vigilant protection as the constitutional powers addressed in *Coppernoll* [a statewide initiative case]." *Id.*

The Court in *Wallin* also concluded that where, as here, "the petition sponsors were permitted to circulate their petition for signatures and to submit that petition to the county auditor *to* have the signatures counted," the sponsors suffered no impairment of their right to political speech. 301 P.3d at 60.

The Court rejected the sponsors' argument that the First Amendment affords initiative sponsors the "right to have any initiative, regardless of whether it is outside the scope of local initiative power, placed on the ballot." *Id.* As in *Wallin*, including invalid

⁵ *City of Longview v. Wallin*, 174 Wn. App. 763, 301 P.3d 45 (Div. 2 2013), *cert denied*, 178 Wn.2d 1020 (2013).

⁶ *Coppernoll v. Reed*, 155 Wn.2d 290, 299 (2005).

initiatives on the ballot does not vindicate or protect any rights, rather it undermines the integrity of a system intended to enact laws. The Port's action in pursuing a legal determination from the neutral judicial system was not campaigning but instead was consistent with the underlying purpose of Washington campaign laws to protect the integrity of the voting process.

C. Reservation of Additional Analysis. The Port understands that the PDC set a very short deadline for the Port's response based on pending statutory deadlines. The Port complied with that directive, but also respectfully reserves the opportunity to present additional analysis and authority as may be warranted.

IV. CONCLUSION.

After consideration of the Complaint and our information provided herein, the Port respectfully urges the Commission to find that there is no evidence to establish a material violation of any laws or regulations under the jurisdiction of the Commission and to dismiss the Complaint.

Sincerely,

Goodstein Law Group PLLC

Carolyn A. Lake.

Carolyn A. Lake
CAL:dkl
Enclosures : Exhibits 1-8

cc: John Wolfe, CEO, Port of Tacoma
Port of Tacoma Commissioners



**PORT OF TACOMA
FINAL AGENDA
THURSDAY, JUNE 16, 2016
The Fabulich Center, Room 104
3600 Port of Tacoma Road
Tacoma, Washington**

9:30 AM: EXECUTIVE SESSION

1. CALL TO ORDER
2. RECESS INTO EXECUTIVE SESSION:
 - A. Two (2) Litigation Items-RCW 42.30.110 (i)
 - B. One (1) Personnel: Collective Bargaining Item-RCW 42.30.140 (4)(b)
 - C. One (1) Personnel: Performance Review Item-RCW 42.30.110 (g)

12:00 PM: COMMISSION MEETING

1. RETURN TO ORDER:
 - A. Flag Salute
2. CONSENT AGENDA:
 - A. Check Certifications
3. STAKEHOLDER UPDATES:
 - A. US Open Briefing: Denise Dyer, Pierce County

3A Memo

3A Presentation

- B. Puyallup River Watershed Update: Harold Smelt, Pierce County

3B Presentation

Exhibit 1

4. STUDY SESSION:

A. Port of Tacoma Available Property Overview4A Memo4A PresentationB. Annual Port of Tacoma Master Policy Update Discussion4B Memo4B Attachment-2015 Master Policy Resolution4B Presentation

5. ACTION AGENDA:

- A. Request Commission vote to ratify the CEO's action of filing a "Declaration Judgement and Injunctive" challenge of two proposed local Initiatives filed with the City of Tacoma: Charter Amendment 5 and "Code Initiative 6," which asks the Pierce County Superior Court to (1) declare that local Initiatives exceed the proper scope of local initiative powers and therefore invalid and, (2) enjoin the Initiatives' signatures from being validated and enjoin the Initiatives from being placed on the November 2016 ballot, or adopted by the City.

5A Memo5A Presentation

- B. Request authorization for the CEO to execute a time-only amendment to existing Interlocal Agreement No. CC-78445 between Pierce County and the Port of Tacoma to extend the termination date from December 31, 2016 to December 31, 2017 to support the General Investigation Study on the Puyallup River.

5B Memo5B Attachment-ILA5B Presentation

- C. THIS ITEM HAS BEEN PULLED: Request authorization to issue a request for proposals for a personal services agreement for state lobbying services not to exceed \$264,000 over four years.
- D. THIS ITEM WAS POSTPONED DUE TO TIME CONSTRAINTS: Consider the annual CEO evaluation and any proposed change in compensation.

6. PUBLIC COMMENT
7. COMMISSIONER COMMENT
8. ADJOURNMENT

DATE: June 10, 2016

TO: Port Commission

FROM: John Wolfe, Chief Executive Officer
Project Manager: Tara Mattina, Communications Director

SUBJECT: Commission Ratification of Port Legal Challenge to two Tacoma Initiatives

A. ACTION REQUESTED

Request Commission vote to ratify the Port's action of filing a Declaratory Judgment and Injunctive challenge of two proposed local initiatives filed with the City of Tacoma—Charter Amendment 5 and Code Initiative 6 ("Initiatives"). The Declaratory Judgment asks the Pierce County Superior Court to:

- (1) Declare that local Initiatives exceed the proper scope of local initiative powers and therefore are invalid.
- (2) Enjoin the Initiatives' signatures from being validated and enjoin the Initiatives from being placed on the November 2016 ballot or adopted by the City.

B. BACKGROUND

1. The Initiative Actions

Signature gathering is underway for two proposed City of Tacoma Initiatives: Charter Amendment 5 ("Charter Initiative") **Attachment A** and "Code Initiative 6" ("Code Initiative") **Attachment B**. One Initiative seeks to amend the Tacoma Charter; the other to amend the Tacoma Municipal Code, but both are substantively the same. Both Initiatives seek: (1) to require a public vote on any land use proposal that consumes more than 1,336 CCF (1 million gallons) of water or more daily from Tacoma, (2) to overrule and/or disavow the United States Constitution, along with "international, federal [and] state laws" that "interfere" with the proposed amendment, (3) to curtail the jurisdiction of state and federal courts, and certain rights under the federal Constitution, including rights of corporations.

The Initiatives are driven by an entity called Save Tacoma Water (STW), a registered political committee.

2. Flawed Initiatives Provide Strong Basis for Successful Challenge

In Washington, local initiative and referendum powers may only be used to pass and repeal certain types of ordinances. Overall, local initiatives cannot compel a vote on zoning or development projects, set conditions for the provision of water, interfere with existing city administrative management of water operations and city budgeting, or conflict with local, state and federal laws. The two Tacoma local Initiatives contain all these defects.

3. Current Tacoma Water Operations

Tacoma has operated a municipal water system for more than 123 years. Under the Tacoma City Charter, Tacoma Water (TPU) is a regional water utility established in the City's Department of Public Utilities.

Tacoma has a legal obligation under state laws (RCW 80.28.110, 80.04.010, 80.04.380, and 80.04.385) to serve water and power demand in its service territories, and to acquire supplies and develop facilities (if necessary) to do so. The proposed Initiatives include pronouncements that go beyond the scope of Tacoma's city limits, affecting hundreds if not thousands of customers outside the Tacoma City limits.¹

Both the Charter and Chapter 35.33 RCW provide that the Tacoma city legislative authority (the City Council) alone is authorized to may make changes and adjustments to the budget. TPU, a division of the City of Tacoma accounts for **41 percent** of Tacoma's budget.

Tacoma has a lengthy history of administering the supply of water to commercial, manufacturing, technological and industrial consumers and has sufficient infrastructure, capacity and supply to serve future large water users:

Current Total System Average Day Demand	Water	2015:	56 MGD
		Peak Day:	97 MG
	Power	2015:	551 aMW
		Peak Day:	907 MW
Historical & Current Tide flats Average Industrial Demand	Water	1985:	35.4 MGD
		2015:	16.9 MGD
	Power	1985:	158.4 aMW
		2015:	53.7 aMW

The operation of the Tacoma City water system, including the authority to contract to provide for water service and what quantities and by what means, are all city administrative functions. These functions are beyond the scope of local initiative powers.

The local Initiatives which purport to allow a public vote on whether to grant or deny water service within TPU's water service area, conflicts with state water law. Tacoma cannot validly be compelled through local initiative to enact regulations that limit the rights of other jurisdictions to access Tacoma's water service.

Washington law holds zoning and development matters are not subject to initiative power. The two local Initiatives impermissibly attempt to require a public vote over what are essentially zoning/permitting decisions over developments that use a threshold amount of water, which would negatively impact the region's economy and send a negative message for business recruitment.

¹ Save Our Water concedes: "Residents of Tacoma, Fife, Milton, Kent, Covington, Lakewood, Bonney Lake, Federal Way, the Muckleshoot and Puyallup Reservations and portions of Auburn and Des Moines are dependent on fresh water from Tacoma Public Utility...." Petitions, **Attachments A & B**.

The Initiative would interfere with the budgeting power of the Tacoma City Council because the Initiatives would, outside of the statutory budget process, create a significant revenue impact upon the City.

4. Form of Challenge

The legal challenge takes the form of a “Declaratory Judgment and Injunctive” action, which asks the Court to (1) declare that Initiatives exceeds the proper scope of initiative power and therefore are invalid, and (2) enjoin the Initiatives’ signatures from being validated and enjoin the Initiatives from being placed on the November 2016 ballot, or adopted by the City.

The Economic Development Board for Tacoma-Pierce County (“EDB”) and the Tacoma-Pierce County Chamber (“Chamber”) joined the Port in the action as co-Plaintiffs, based on their shared concern of the Initiatives’ impact on their mission of economic development for the region.

The Port of Tacoma has a state legislative mandate to foster economic development in Tacoma and Pierce County. A critical Port mission is to lease lands to tenants, who can and do include manufacturing, commercial, technological and industrial entities that may and do use more than 1 million gallons a day from TPU.

The EDB and the Chamber serve as Tacoma/Pierce County economic advocates and each are dedicated to enhancing economic vitality and promoting efforts to attract investment in Tacoma and Pierce County, which can include manufacturing, commercial, technological and industrial entities that may use more than 1 million gallons of water a day. The Port, EDB and Chamber would be adversely affected by the Initiatives which, if adopted, would interfere with Tacoma’s longstanding program to provide necessary water service to technologic, manufacturing, industrial and commercial users throughout Pierce County.

The City of Tacoma agrees the Initiatives are defective and have filed a cross claim against the Initiative sponsors within the existing suit.

C. TIMEFRAME/PROJECT SCHEDULE

The legal challenge was filed June 6, 2016. The City filed its Answer and Cross Claims on June 8, 2016. The Port expects Plaintiffs to file preliminary Motions shortly, and seek resolution of the issues at the trial court level within 6 weeks.

D. FINANCIAL SUMMARY

The Port’s legal budget is \$60,000.00.

E. ECONOMIC INVESTMENT

The Port undertook this action in defense of its economic development mission, and on behalf of those residents and water users outside the Tacoma city limits, as well as on behalf of future technologic, manufacturing, industrial and commercial users throughout Pierce County, which are served by Tacoma Water, and who would be denied a voice in Tacoma’s provision of water under the Initiatives.

F. ENVIRONMENTAL IMPACTS / REVIEW

There are no environmental impacts associated with the Port's legal action.

G. NEXT STEPS

The Port's Legal Counsel will continue to work with its partners at the EDB and Chamber to pursue the challenge.

**BOARD OF COMMISSIONERS
THE FABULICH CENTER, ROOM 104
3600 PORT OF TACOMA ROAD, TACOMA, WASHINGTON**

COMMISSIONERS PRESENT:

1. Connie Bacon, President
2. Dick Marzano, Vice President
3. Don Meyer, Secretary
4. Clare Petrich, 1st Assistant Secretary
5. Don Johnson, 2nd Assistant Secretary

STAFF PRESENT:

1. John Wolfe, Chief Executive Officer
2. Carolyn Lake, Port Counsel
3. Judi Doremus, Executive Assistant
4. Sean Eagan, Director, Government Affairs
5. Jason Jordan, Director, Environmental Programs
6. Scott Francis, Director, Real Estate
7. Erin Galeno, CFAO
8. Mark Little, Director, Contracts & Purchasing

9:30 am: EXECUTIVE SESSION

Call to order and recess into Executive Session:

1. Two Litigation Items RCW 42.30.110 (i)
2. One Personnel-Collective Bargaining Item RCW 42.30.140 (4) (b)
3. One Personnel-Performance Review Item RCW 42.30.110 (g)

12:00 noon: REGULAR COMMISSION MEETING

1. RETURN TO ORDER:

- A. Flag Salute

2. CONSENT AGENDA:

- A. Voucher Certification: Checks #208715 through #209012 and wire transfers in the total amount of \$9,458,346.18 during the period of May 11, 2016 through June 7, 2016 were certified.

Motion was made by Commissioner Johnson, seconded by Commissioner Petrich:

“Approve the above Consent Agenda”.

VOTE: MOTION CARRIED 5-0

3. STAKEHOLDER UPDATES:

- A. U.S. Open Briefing - Denise Dyer, Pierce County Economic Development Director:
 1. The economic benefits to the region were discussed.
 2. The coverage of the Pacific Northwest worldwide was discussed.
 3. Purchasing of flowers, food and HVAC system were local.
 4. The USGA respected the wishes of the community to include honoring the military, free kid days and donating all of the leftover food to the local foodbank. The USGA now has a policy that all leftover food will be donated each year.
- B. Puyallup River Watershed Update – Harold Smelt, Pierce County Surface Water Management:
 1. Progress to date on this project was discussed.
 2. Proposed is one long setback levee (eight miles in length) from Tacoma to Puyallup.
 3. Planning and engineering will take approximately three years and construction is estimated to take approximately six years. This timeline includes property acquisition.
 4. Other approaches, including their pros and cons, were discussed.

4. STUDY SESSIONS:

- A. Port of Tacoma Available Property Overview-Scott Francis, Real Estate Director:
 1. CEO Wolfe stated that, with Commission direction, future potential leases will be brought forward in two readings. The first reading will be a briefing for the Commission and public. During the second reading, if no changes occur, the action will be brought to the Commission for action. Commission requests that this be made a written policy.
 2. Port of Tacoma Real Estate goals for available properties were reviewed.
 3. Commissioner Meyer requests more visibility to the RFP process upfront, to include a public hearing to discuss the options for marketed properties.
 4. Commissioner Marzano requests a report showing the number of acres of Port-owned properties versus the number of acres owned privately.
 5. Ralph Ibarra, Diverse America Network: Asked about a foreign trade zone. Our FTZs can be established anywhere in the county. These do change based on user needs.
 6. Arthur West: Asked about the Port owning property in Thurston County (Maytown). Initially there was an ILA with Thurston County, but this has ended. The Port is in compliance for the property during this wind-down phase with the intent to sell the property.
 7. Dr. Linda Fortune: Reminded the Commission of their desire to have a dialogue with the public. She recommend that we have a dialog with the public regarding the types of industries that should be on each property.

8. Michael Lafreniere: Stated that he is interested in a subarea plan discussion between the Port of Tacoma and the City of Tacoma. He asked if the Port will be engaging with the City of Tacoma regarding subarea planning. Commission responded that there is a scheduled joint study session with the City of Tacoma on June 28th. The City of Tacoma is hosting this meeting and has a policy that public comment is not taken during study sessions.
9. Jan _____ (last name unknown, as not on public comment sign-up sheet) She asked why residents don't receive notices of cleanups or large proposed projects in the Tideflats. Staff responded that there are different statute requirements for different projects. Notices are given by the regulatory agency involved (not the Port), and each one has different notification requirements.
10. Billy Blattler: Requested that public meetings be listed on the website. Commissioner Bacon responded that all public meetings are listed on our website. Tara Mattina, Communications Director, suggested anyone who is interested go to www.Portoftacoma.com/subscribe to sign up for any distribution lists that are of interest.
11. Alan Oldstudent: Requested that the meetings be held at a time when "normal working people" can attend. Commissioner Bacon responded that we have held meetings in the evenings in the past and did not have any sizable community members attending. We moved the meetings to 12 noon so people could attend during the lunch hour. The meetings are also webstreamed live and available online at any time. They are also played multiple times on public TV. Since so many people work swing shifts or evening shifts, there really is no "normal working people" time.

B. Master Policy Update Discussion-Erin Galeno, CFO and Mark Little, Director, Contracts & Purchasing:

1. In Section III staff intends to add language regarding implementing two readings of leases to the Master Policy in 2016. Commissioner Marzano recommends that second readings be used in a broader sense.
2. Under Section III: Commissioner Meyer would like future dialogue on updates to the RFP process.
3. Small properties for nonprofits: Staff looks at documented economic value and market value of properties.
4. Commissioner Meyer suggested that under the Legal Section that, as elected officials, the Commission should not delegate legal action to the CEO.
5. Ralph Ibarra: Commended the Port of Tacoma for its support of small business. Economic empowerment through the Port of Tacoma is germane to the concerns that citizens state around transparency. With the Master Policy the Commission has an opportunity to be creative and innovative in keeping dollars collected by the Port of Tacoma circulating in our communities.
6. Arthur West: Stated that it important that before an agency takes legal action that their elected officials be in agreement.

5. ACTION AGENDA:

A. Challenge of Two Proposed Local Initiatives:

“Request ratification of the Port’s action of filing a Declaratory Judgment and Injunctive challenge of two proposed local initiatives filed with the City of Tacoma: (1) Charter Amendment 5 and (2) Code Initiative 6.”

Moved by Commissioner Johnson, seconded by Commissioner Petrich:

1. CEO Wolfe gave a brief introduction. Commissioner Bacon stated that because this an active litigation issue, our legal counsel cannot answer questions from the public that would violate the attorney-client privileged information.
2. The reasons the two initiatives are not legal actions were discussed.
3. Robert Mack, Tacoma Public Utilities (TPU), Public Affairs and Linda McCrea, Tacoma Water Superintendent, were in attendance and provided information on the legal requirements of TPU. If the City operated on the language in the initiatives they would violate state law. Mack stated that water use is down approximately 50% since 1985.
4. Claudia Reidener: Regarding the available water: She stated that Lake Haven Water District sold water to Tacoma last year. She asked why Tacoma is buying water while saying we have a surplus of water.
Robert Mack: Responded that last year was an exceptional year for high temperatures and lack of precipitation. Lake Haven is one of TPUs partners and they provide the Lake Haven area with water. There is a regional system in place so that when one partner needs water more than another they can borrow from the other partners. The system is designed for exchanges. He stated that TPU does not withdraw water above approved levels from the Green River. He stated that there is a law stating that TPU will provide water to all customers and cannot discriminate based on the amount used. The same law applies to electrical power. Public utilities cannot say that because there are low-flow months during a decade that they won't provide water to any customer. There is policy they must comply with. The law requires public utilities to serve the public and put in provisions for low-flow periods.
5. Judi Chelotti: She was unable to attend the meeting, but submitted a written statement, which is attached to these minutes.
6. As this is an active litigation issue, our legal counsel cannot answer questions from the public that would violate the attorney-client privileged information.
7. Carolyn Lake: Stated that the Port of Tacoma is not seeking damages from anyone. When the City of Tacoma filed a cross complaint they asked for attorney fees, but they filed an amended complaint withdrawing that. There will be a hearing to present positions in two to four weeks.
8. Michael Lafreniere: Stated that they filed with the City of Tacoma for a new standard to protect water. They have collected 16,000 signatures in 100 days. Both initiatives strive to protect the public from users who would use more than 1 million gallons per day. He spoke that he opposes the Port challenging the two initiatives. He feels it is undemocratic to keep the initiatives off of the ballot.

9. William Kupinse: He has concerns about the amount of money needed to subsidize the PSE LNG project. PSE has put \$5.5 million toward reopening the Tideflats fire station, but there is a \$5 to \$7 million gap. He also stated that PSE is looking to receive reimbursement for this money they invested in the fire station. He feels we should not develop any fossil fuel projects.
10. Alan Oldstudent: Stated that citizens of Tacoma are not in the mood to be told what they can do. They have tried to conserve water. He asked about showing respect to citizens. He added that the water belongs to the voters. He feels this challenge is an attack on voice of people.
11. Donna Walters, Save Tacoma Water: Stated that the group of citizens who elected the Commissioners have lost faith in their judgement. Walters is the Co-Chair and Sponsor of Save Tacoma Water. She stated that citizens must speak up when they disagree with actions taken by elected officials. This group wants to protect our resources. They are not against jobs. They want to protect our water. She stated that the Commission has not reached out to citizens since this initiative began four months ago. She asked that the Port of Tacoma withdraw from the lawsuit.
12. Rita Andreeva: Stated that water is a commodity with supply and demand. In other countries cities have run out of water. Climate change is a serious threat. Each year could be worse than the year before. She asked what will happen if we allow an industry to use large amounts of water and there is not enough for the public. She stated that the humane thing would be to give the water to the people and not industry. Citizens should be able to have a voice in their government. Even though we have enough water here we might need to give it to people south of us when they run out.
13. LaDonna Robertson: Stated she is speaking on behalf of Redline, Save Tacoma Water and We the People. She stated that the lawsuit brought against passage of the two water initiatives, which would put TPU against state law, wouldn't come to that. They only want to bring companies to our area that would use our resources responsibly.
14. Billie Blattler: Stated that she is concerned about decisions that have been made that seem unattractive to the people. She doesn't know why only City of Tacoma citizens could sign the water initiative petition since this would affect people outside of the city. She stated that it is our water and you need to listen to the voters.
15. Christina Brown: Stated that we need to craft a different vision for Pierce County. Money and law are very dry, but businesses are made up of people. We need to craft a future together instead of butting heads. We are in a dire emergency with the climate. We need to pay attention and look at what we can do to conserve water. We need more efforts. We want a clean environment. LNG Plant: In the EIS it is described as a marine bunkering facility. She is confused at this point how the Port can make this happen. She has safety issue concerns for an LNG plant and a bunkering facility. It is not recommended to put this in a dense urban environment and in an active port.
16. Scott McNabb, Tacoma Longshore: Stated that he spent over 2,000 hours working in port last year. He feels that the PSE LNG project is a progressive one. The shipping industry that is not going anywhere. Everyone in the maritime industry is switching to LNG. LNG is the cleanest way to power the ships. He stated that we are trying to do whatever we can to make it better. He asked people to consider that the only alternative is to continue with diesel, which is much worse for the environment and the workers.
17. Russ Higley: Stated that he feels it is disingenuous to say we have excess water when we had a water shortage last year and also to say that the Tacoma initiative would exclude people outside the city limits. The Port of Tacoma website states that the Commission sets policy. He feels that the Commission is going in the wrong direction. Referring to the EIS process: Commissioners have no decision power in the EIS.
18. Arthur West: Stated that the Port of Tacoma is using its power. He can identify with some of the frustrations vented today. He stated that the Port has a history of bullying citizens and withholding records. He is concerned about corporations and the government joining forces with the EDB and the Chamber. He has submitted a written complaint alleging illegal election practices. He feels that the Port is illegally spending funds to oppose ballot measures.
19. Bea Christopherson: Stated that she is fed up with entrenched corrupt government. Suits inflame voters. She feel that the "We the People" has been lost. She wants control over the government and stated that they need to stop steamrolling over us. She considers the challenge to the initiative wrong. In regard to the methanol versus LNG plant: LNG is fairly safe. In liquid form it is not a flammable risk. LNG is safer and cleaner than diesel. PSE is a good guy. She advised the public to pick their battles wisely.
20. Roxanne Murray: Stated that there is a misconception that LNG is a green form of energy. That is not true. LNG results in less carbon dioxide, but increases methane. We would be trading one greenhouse gas for another.
21. Grant Regal, PSE: Responded to the level of threat that the LNG project poses to downtown Tacoma: He stated that safety requirements are in the design. It poses no threat of explosion or fire to Tacoma. There are specific requirements to be addressed and contained to the project site in the permits. The design has confirmed this. He stated that the primary use of the facility would be for peak shaving. There are other facilities in this area that accomplish this. There is one in Gig Harbor. PSE also has a decades-old facility near Centralia. At these sites natural gas is inserted into the ground and withdrawn on peak use days. This is key to keeping natural gas coming to homes and businesses. The implication that we would export LNG from the Tideflats facility is not true. It is not big enough. It would take over a year to fill one tanker ship from this facility.
22. Dean McGrath, ILWU: Stated that we definitely are in some challenging times. He welcomes the public's interest. He is discouraged to see the accusations being made against the Commission stating that it is against the public. Commissioners don't make a lot of money and their decisions have made this community successful. However, people do bring up some good points. There is a lot of misinformation out there. I don't think anyone is maliciously trying to do anything in bad faith. He suggested that the Port, along with some of these groups, could form some kind of committee to get to the bottom of issues. Our community needs to be successful. We could form a committee to bring these issues forward with equal representation from many groups to move forward and make rational decisions.

23. Sue Clemmons: Regarding the LNG plant being a peak shave facility: She stated that Attachment J to the EIS shows the following use: 7% peak shaving, 18% other uses and 75% marine bunkering. However, Attachment J was not with the final document. There will be much more than 7% of that facility used on peak cold days. On other days it is there as a backup. Will check on Attachment J. Today there are two known uses: peak shaving and TOTE's ships. There are discussions underway regarding converting Washington State ferries over to LNG fuel, as well as over-the-road trucking discussions. Nothing is in place at this point, however.
24. Claudia Reidener: Asked why the Port waited several months before file this lawsuit. Why didn't they step in earlier? Contrary to what we heard, she stated that the Port and Chamber are asking for damages and attorney costs. You are supporting keeping the status quo by only requiring that three Commissioners approve a lease. Diesel is bad, but we are pushing pollution upstream with LNG. Regarding safety: This will be the first bunkering LNG facility in the nation and the permits are not yet in place.
25. Carolyn Lake: Stated that the City of Tacoma is deleting the section of the suit asking for financial damages. The Port's suit inadvertently asks for attorney fees, and an amended complaint is going out this afternoon that takes this language out.
26. Billie Blattler: Stated that she is not sure if anyone here today asked the Commission to withdraw their challenge. She is asking that they withdraw this challenge. She stated that we are talking about honest people who have concerns.
27. Commissioner Don Meyer: Stated that we have to get past reactionary thinking. He is looking forward to sitting down as a community to decide how we want to move forward. The Port needs to reestablish our community connections,
28. Commissioner Connie Bacon: Stated that we need to find a way to get together. She stated this suit is a democratic process, and that she is ready to stand by the court's response. She hopes the public is too.
29. Commissioner Dick Marzano: Stated that the Commission learned a valuable lesson during the methanol project. It should not be us against them. We should sit down and discuss projects. He added that the public may not always agree with the Commission, but we should sit down as a tri-party group. He also stated that when we used to hold meetings at 6:00 pm that it did not work for some citizens. There is a large majority of people who are not here today. Perhaps we could consider having alternating start times.
30. Commissioner Clare Petrich: She stated that over the years there has been very little activity from citizens. It is heartening to see the passion today. She also added that it is too bad to see the public walk away when it is the Commission's time to speak. We have listened to you. We need to expand our conversation on our strategic plan. She is looking forward to broader conversations with the public. Initiatives don't always benefit people. Someone said you have to have a challenge to have a decision on it. This process of challenging this initiative is to save the expense that would occur at a later time. Because of the legal issues with these initiatives, it would be more expensive to deal with them at a later time.
31. Commissioner Connie Bacon: Stated that we want to say we are a city that is open for business to the national and international customers. She also asked that the public please consolidate their comments into one speaking opportunity. Regarding the suit, she is ready to abide by whatever decision the court makes.

AMENDED MOTION: "Request ratification of the Port's action of filing a Declaratory Judgment and Injunctive challenge of two proposed local initiatives filed with the City of Tacoma: (1) Charter Amendment 5 and (2) Code Initiative 6, and no fees or other costs will be sought in conjunction with this challenge."

Moved by Commissioner Meyer, seconded by Commissioner Petrich:

VOTE TO AMEND MOTION: CARRIED 5-0

Moved by Commissioner Johnson, seconded by Commissioner Petrich:

VOTE ON AMENDED MOTION: CARRIED 5-0

B. ILA Extension: City of Tacoma/Port of Tacoma-Puyallup River General Investigation:

1. Staff is asking for an extension of the ILA for one additional year, as the general investigation will take seven years, rather than the expected six years.
2. This is a time-only extension. There will be no additional costs to the Port. Originally the Commission approved a not-to-exceed amount of \$300,000.

"Authorize the Chief Executive Officer to execute a time-only amendment to existing Interlocal Agreement No. CC-78445 between Pierce County and the Port of Tacoma, to extend the termination date from December 31, 2016, to December 31, 2017, to support the General Investigation Study on the Puyallup River, Project Master Identification No. 098191."

Moved by Commissioner Johnson, seconded by Commissioner Petrich:

VOTE: MOTION CARRIED 5-0

C. This item was pulled.

D. This item will be rescheduled to the July Commission Meeting.

Commissioner Petrich left the meeting at this point.

6. PUBLIC COMMENT:

Ralph Ibarra: Spoke on using minority state contracts for completing SR-167. Since state money is funding this project let's make sure that the money comes back to our minority communities. He encouraged the Commission to have a broader conversation about Connecting Washington, and ask themselves what the Port can do to make sure those dollars flow back to the community.

7. COMMISSIONER COMMENT:

Commissioner Comment:

Commissioner Johnson: Reported on the recent Audit Committee Meeting. The 2015 financial audit and State Auditor’s Office compliance audit were once again clean. We had our sixth internal compliance report. Annually, the department heads have to sign off on compliance issues.

8. ADJOURNMENT:

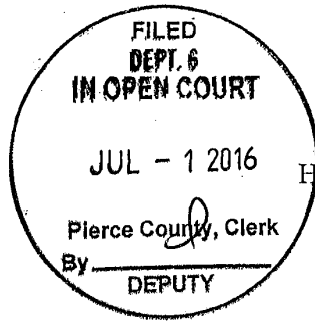
There being no further business, President Bacon adjourned the meeting at 3:39 pm.

Constance T. Bacon, President
Port of Tacoma Commission

ATTEST:

Donald G. Meyer, Secretary
Port of Tacoma Commission

Judi Doremus, Clerk of the Port
Port of Tacoma



JUDGE Nevin
HEARING DATE: Friday, July 1, 2016
TIME: 10:00 a.m.

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

PORT OF TACOMA, a Washington State
Municipal Corporation, ECONOMIC
DEVELOPMENT BOARD FOR TACOMA-
PIERCE COUNTY, a Washington State
Nonprofit Corporation,

Plaintiffs,

vs.

SAVE TACOMA WATER, a Washington
political committee, DONNA WALTERS,
sponsor and Treasurer of SAVE TACOMA
WATER, JON AND JANE DOES 1-5,
(Individual sponsors and officers of SAVE
TACOMA WATER), CITY OF TACOMA, a
Washington State Municipal Corporation,
and PIERCE COUNTY, a political subdivision
by and through JULIE ANDERSON, IN HER
CAPACITY AS PIERCE COUNTY AUDITOR

Defendants.

No. 16-2-08477-5
and City of Tacoma

[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR
DECLARATORY JUDGMENT &
PERMANENT INJUNCTIVE
RELIEF & *Dismissing*

STW's motion to Dismiss

23
24
25

ORDER GRANTING PLAINTIFFS' MOTIONS FOR
DECLARATORY JUDGMENT & PERMANENT
INJUNCTIVE RELIEF 1 of 7
160629.pldg.Port EDB Chamber PR/SD ORDER. PERMANENT Injunction &
DEC JUD

EXHIBIT 4
GOODSTEIN LAW GROUP PLLC
501 South G Street
Tacoma, WA 98405
253.779.4000

1 CITY OF TACOMA,

2 Third-Party Plaintiff,

3 vs.

4 SAVE TACOMA WATER, an Washington
5 political action committee, DONNA
6 WALTERS, Co-Chair and Treasurer SAVE
7 TACOMA WATER; SHERRY BOCKWINKLE,
8 Co-Chair and Campaign Manager of SAVE
9 TACOMA WATER; JOHN AND JANE DOES
1-5, (Individual sponsors and officers of SAVE
TACOMA WATER); and Julie Anderson, in
her official capacity as Pierce County Auditor

Third-Party Defendants.

10 THIS MATTER came before the Court upon the Plaintiffs' Motion for
11 Preliminary and Permanent Injunction and for Declaratory Judgment, noted for
12 + Motion to Dismiss
13 consideration on July 1, 2016. The Court has considered the arguments of Counsel and
has reviewed the following pleadings:

- 14 1. CITY MOTION FOR PRELIMINARY INJUNCTION
- 15 2. DECLARATION OF KYMBERLY K EVANSON
- 16 3. DECLARATION OF PETER HUFFMAN
- 17 4. DECLARATION OF ROBERT MACK
- 18 5. DECLARATION OF TC BROADNAX
- 19 6. PORT & EDB MOTION FOR PRELIMINARY, PERMANENT AND
DECLARATORY JUDGMENT
- 20 7. DECLARATION OF JOHN WOLFE
- 21 8. DECLARATION OF COUNSEL CAROLYN LAKE
- 22 9. DECLARATION OF SUSAN SUESS
- 23 10. PIERCE COUNTY'S ANSWER AND AFFIRMATIVE DEFENSES

24 ORDER GRANTING PLAINTIFFS' MOTIONS FOR
25 DECLARATORY JUDGMENT & PERMANENT
INJUNCTIVE RELIEF 2 of 7
160629.pldg.Port EDB Chamber PRSD ORDER. PERMANENT Injunction &
DEC JUD

GOODSTEIN LAW GROUP PLLC
501 South G Street
Tacoma, WA 98405
253.779.4000

11. CHAMBER MOTION FOR PRELIMINARY AND PERMANENT INJUNCTION
AND DECLARATORY JUDGMENT
12. DECLARATION OF TOM PIERSON
13. CITY RESPONSE TO MOTIONS FOR PRELIMINARY AND PERMANENT
INJUNCTION AND DECLARATORY JUDGMENT
14. AFFIDAVIT/DECLARATION OF COUNSEL
15. STW RESPONSE TO PRELIMINARY INJUNCTION MOTION
16. DECLARATION OF LINDSEY SCHROMEN-WAWRIN
17. DECLARATION OF SHERRY BOCKWINKEL
18. CHAMBER REPLY IN SUPPORT OF PRELIMINARY, PERMANENT AND
DECLARATORY JUDGMENT
19. PORT REPLY IN SUPPORT OF PRELIMINARY, PERMANENT AND
DECLARATORY JUDGMENT

20. STW's Motion To Dismiss

The Court finds as follows:

1. A justiciable controversy exists. There is an actual, present, and existing dispute between parties with genuine and opposing interests that are direct and substantial. Post-election events will not further sharpen the issue whether Tacoma Code Initiative 6 and Tacoma Charter Initiative 5 (the "STW Initiatives") are beyond the scope of the local initiative power.
2. Plaintiffs have standing. Plaintiffs fall within the zone of interests the STW Initiatives seek to regulate and have demonstrated sufficient injury in fact. Further, this case involves significant and continuing issues of public importance that merit judicial resolution.
3. The STW Initiatives exceed the local initiative power and are invalid.

ORDER GRANTING PLAINTIFFS' MOTIONS FOR
DECLARATORY JUDGMENT & PERMANENT
INJUNCTIVE RELIEF 3 of 7
160629.pldg.Port EDB Chamber PRSD ORDER. PERMANENT Injunction &
DEC JUD

GOODSTEIN LAW GROUP PLLC
501 South G Street
Tacoma, WA 98405
253.779.4000

- 1 a. The requirement for a binding vote of Tacoma residents before providing
2 water utility service to an applicant that intends to use 1336 CCF (one
3 million gallons) of water daily from the City of Tacoma ("Water
4 Provision") is a land use and development provision and exceeds the
5 local initiative power because it is administrative in nature and involves
6 powers delegated under RCW Title 35 to the legislative bodies of
7 municipalities. STW Initiatives' Water Provisions also is administrative
8 because they seek to change or hinder Tacoma's pre-existing water utility
9 management and operations.
- 10 b. The Water Provisions exceed the local initiative power because they
11 conflict with state law, and are administrative in nature. The Water
12 Provisions seek to interfere with water utility service requirements that
13 are subject to Washington's state water rights and service laws, and the
14 Growth Management Act. STW Initiatives' Water Provisions would add
15 requirements to these pre-existing regulations, and would interfere with
16 pre-existing regulations. The Water Provisions therefore conflict with
17 state law and are outside the scope of the local initiative power. The
18 Water Provisions are also administrative because they seek to change or
19 hinder pre-existing water regulations. The Water Provisions are also
20 outside the scope of the local initiative power because they attempt to
21 impose rights on Tacoma residents regarding water usage outside the
22 boundaries of Tacoma City limits, and they attempt to create new

1 constitutional rights. The City of Tacoma lacks jurisdiction to enact such
2 legislation, ^{people of the} through the initiative.

- 3 c. STW Initiatives' provisions which seek to invalidate any conflicting
4 Washington and state agency laws and rules exceed the local initiative
5 power because they conflict with state law and seek to elevate city
6 code/charter above state law which is beyond the City of Tacoma's
7 jurisdiction to enact.
- 8 d. The STW Initiatives' corporate rights provisions exceed the local
9 initiative power because they attempt to change the rights of
10 corporations under federal and state law. The provisions therefore
11 conflict with federal and state law, and are outside the scope of the local
12 initiative power. The local initiative power does not include the ability to
13 limit U.S. Supreme Court precedent, including *Citizens United v. Federal*
14 *Election Commission*, 558 U.S. 310 (2010). The local initiative power
15 does not include the ability to override the "personhood" rights to
16 corporations under federal and state law, including under the First and
17 Fifth Amendments of the United States Constitution and Wash. State
18 Const. art. XII, § 5. The STW Initiatives exceed the local initiative power
19 because they attempts to strip corporations of their First and Fifth
20 Amendment rights, which would conflict with U.S. Supreme Court
21 precedent.
- 22 e. The STW Initiatives provisions that seek to limit a court's authority to

1 interpret the law or to determine whether a "permit, license, privilege or
2 charter" is valid are outside the scope of the local initiative power
3 because they conflict with federal and state law and seek to elevate city
4 code/charter above state law which is beyond the City of Tacoma's
5 jurisdiction to enact.

6 4. The STW Initiatives are not severable. All substantive provisions of both
7 Initiatives are invalid. Once the Initiatives' substantive provisions A-C are held
8 invalid, the enforcement, severability, and effect sections are moot.

9 5. Plaintiffs ^{+City} have established clear, legal or equitable rights to prevent invalid
10 Initiatives, which exceed the scope of local initiative power, from appearing on
11 the official ballot for the November 2016 election or any ballot thereafter;

12 6. Plaintiffs ^{+City} have established a well-grounded fear of immediate invasion of those
13 rights because the Pierce County Auditor, at the direction of the City, will place
14 the STW's Tacoma Code Initiative 6 on the official ballot in September 2016
15 absent contrary direction from this Court; and

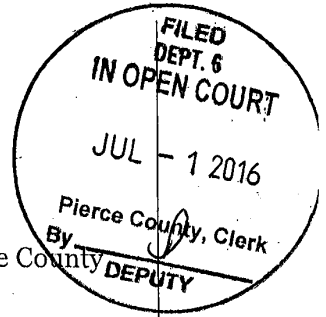
16 7. Plaintiffs ^{+City} have established that placing invalid initiatives on the ballot will
17 result in actual or substantial injury to Plaintiffs.

18 **Now, therefore, it is hereby ORDERED:**

- 19 1. Plaintiffs' ^{+City} Motion for Declaratory Judgment is GRANTED.
20 2. The Court DECLARES that the STW Initiatives are invalid as outside the scope
21 of the local initiative power.
22 3. The Court further DECLARES that neither STW Initiative shall appear on the

23 ORDER GRANTING PLAINTIFFS' MOTIONS FOR
24 DECLARATORY JUDGMENT & PERMANENT
INJUNCTIVE RELIEF 6 of 7
160629.pldg.Port EDB Chamber PR'SD ORDER. PERMANENT Injunction &
25 DEC JUD

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- 1 November 2016 election or any ballot thereafter, and directs the Pierce County
- 2 Auditor not to include them on that or any ballot.
- 3 4. Plaintiffs' ^{City} Motions for Preliminary and Permanent Injunction is GRANTED.
- 4 5. The motion to consolidate the hearings on the motions for preliminary and
- 5 permanent injunctive relief and the merits is GRANTED.
- 6 6. This Order shall serve as the Court's final Order and Judgement adjudicating
- 7 the merits of this action.
- 8 7. The Pierce County Auditor is hereby enjoined from including the STW
- 9 Initiatives on the ballot for the November 2016 election or any other election
- 10 ballot.

11 *B. Court has subject matter jurisdiction & STW's Motion to Dismiss is denied.*
DATED this 1 day of ^{July} ~~June~~, 2016.

12 *Jack Nevin*
13 Jack Nevin, Superior Court Judge

Presented By:

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23 ORDER GRANTING PLAINTIFFS' MOTIONS FOR
24 DECLARATORY JUDGMENT & PERMANENT
INJUNCTIVE RELIEF 7 of 7
160629.pldg.Port EDB Chamber PRSD ORDER. PERMANENT Injunction &
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Staying ahead of the challenges

Strategic Plan (2012 – 2022)

EXHIBIT 5

10 targets in 10 years



- 1  Double container volume to 3 million TEUs
- 2  Double dry bulk throughput to 12 million metric tons
- 3  Increase breakbulk volume by 30% to 200,000 short tons
- 4  Increase automobile import volume by 20% to 200,000 units
- 5  Improve the Port's operating margin by 30%

- 6  Increase net income by 50%
- 7  Increase return on assets by 35%
- 8  Clean up an additional 200 acres of Port-owned, contaminated property to industrial standards
- 9  Reduce diesel pollutants attributed to cargo operations by 85% from 2005 baseline
- 10  Increase Port-related direct jobs by 4,700 and Port-related indirect jobs by 2,000

Four areas of focus



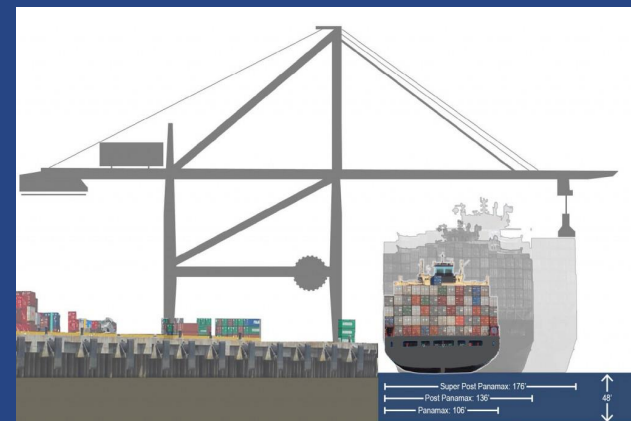
- Make **strategic investments** in Port infrastructure
- Attract **new business opportunities** that contribute to our financial stability
- Continue first-class **customer care**
- **Community pride** ensures continued support



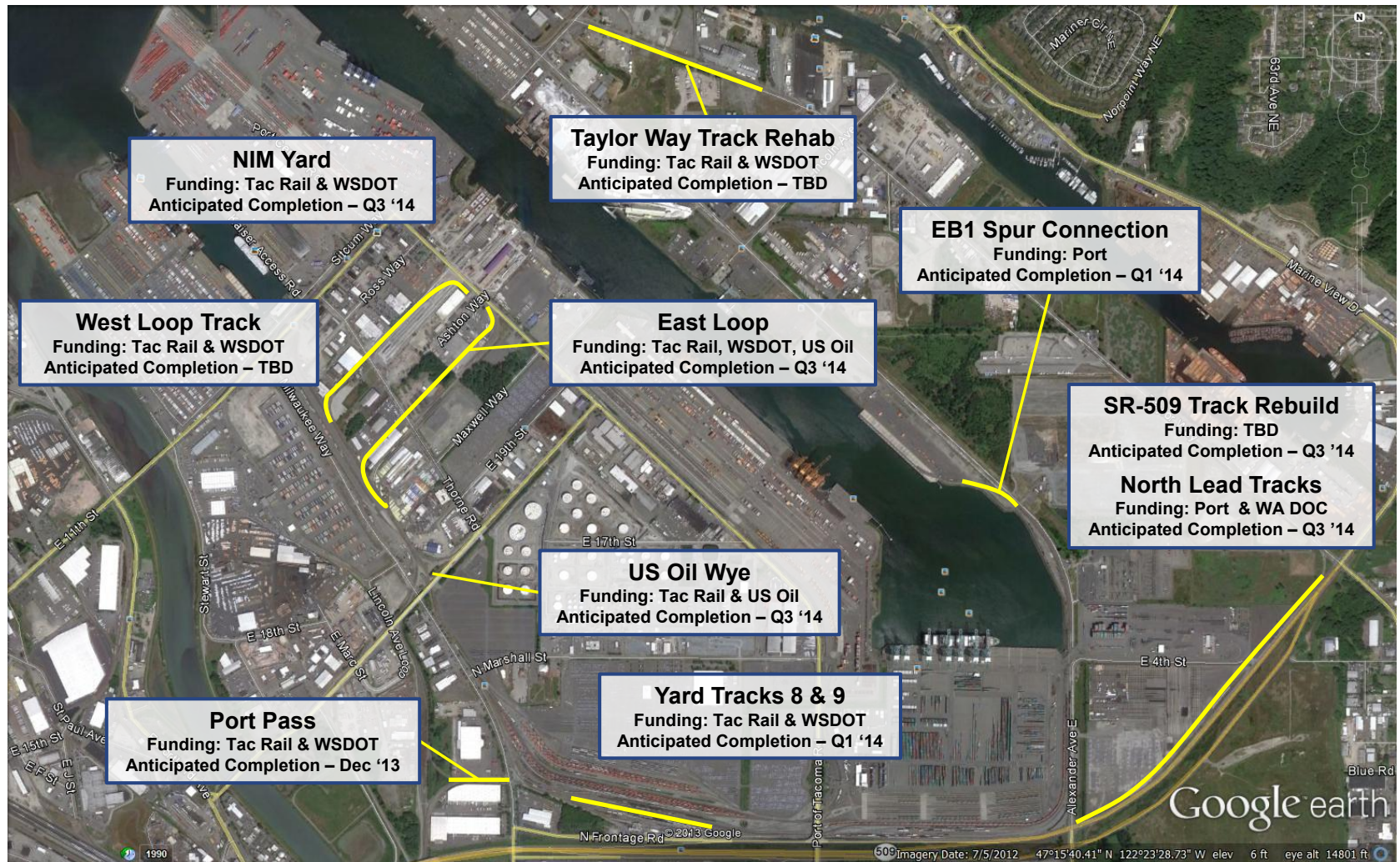
Strategic investments in infrastructure



Pier 3 upgrade - \$20 million



Strategic investments in infrastructure



Strategic investments in infrastructure



State Route 167 - \$1.5 billion



New business investment



- SAFE Boats: 100 jobs
- Former Kaiser site: adding rail capacity



New business opportunities



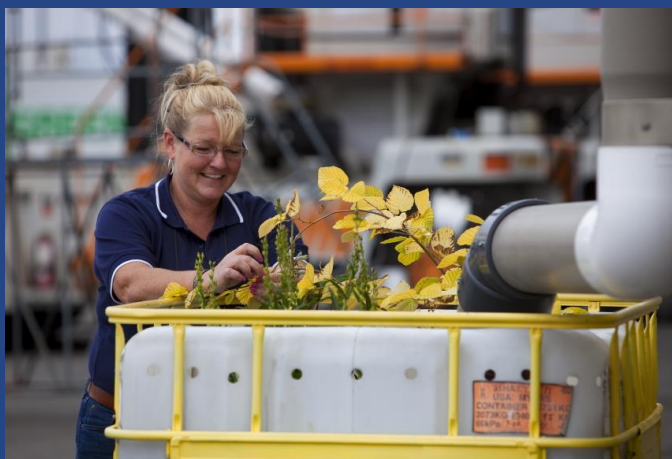
Grand Alliance calls Tacoma



Environmental stewardship



Northwest Ports Clean
Air Strategy



Develop stormwater
best management
practices

Customer care

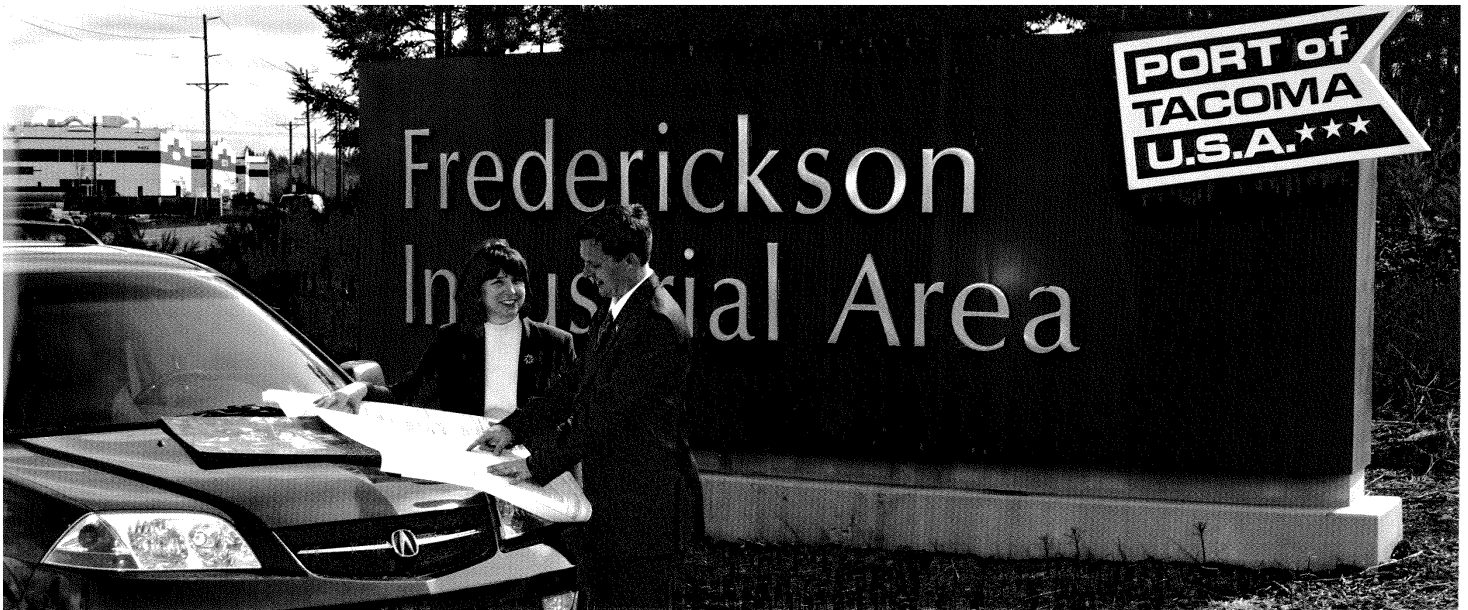


What's next

Updates every year to
measure progress

www.portoftacoma.com





GROWTH OPPORTUNITIES

Frederickson Industrial Area Offers Wide Open Space for Development

Forty years ago, growth-minded leaders at the Port of Tacoma imagined a day when cargo volumes would be so high that the Tideflats would no longer support businesses that did not need to be on the water. They envisioned a new employment center.

"Perhaps they got on the train and went east until they found plenty of flat land. Frederickson was it," speculates the Port's Manager of Industrial Real Estate, Derrick Urquhart.

From 1964 to 1981, the Port bought land in Frederickson and invested in industrial-strength infrastructure and utilities. Today, the Port of Tacoma's 553-acre Frederickson Industrial Area is the Puget Sound's single largest industrial site zoned for heavy manufacturing.

Frederickson is home to a number of companies, including The Boeing Company, Toray Composites America, Inc., Medallion Foods, Tacoma Guitars and others. These companies were recently joined by Northwest Door.

Running out of room at its South Tacoma site, Northwest Door looked in Thurston County and in Everett for a site large enough to construct its expanded operation – a 480,000 square-foot facility in two phases. Ultimately, the company chose to stay in Pierce County. "Frederickson was the only place in Pierce County where they could find a large site in one piece," said Urquhart.

Northwest Door will employ up to 300 people, including 70 new hires. According to Urquhart, the

company decided to stay in Pierce County, partly because of Frederickson's Employment Center (EC) zoning – a designation that allows qualified businesses to use streamlined permitting, taking valuable time off of the construction schedule.

With one of the nation's largest ports just 13 miles away, rail access, improved access to Interstate 5 via the Cross-Base Highway in the future and plenty of qualified workers – all in the shadow of Mount Rainier – Urquhart says Frederickson is an ideal site for businesses that are poised for growth.

While 24 industrial users already call Frederickson home, the Port still has sites available, the largest parcel able to accommodate a 1.5 million square-foot building with up to 1,000 employees. "As space is filling up, we're getting even more selective about the kinds of businesses we want to attract. We want tenants to contribute a minimum amount of traffic impact while maximizing employment opportunities," said Urquhart.

"With the success of Frederickson, the foresight of Port leadership decades years ago is paying dividends for the people of Pierce County today," says Urquhart. "Now as the Port's business grows, we're asking ourselves is, 'Where is our next Frederickson?'"

EXHIBIT 6

For more information about the Port of Tacoma's Frederickson Industrial Area, contact Derrick Urquhart at 253-383-9407.