



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

December 05 2016 3:14 PM

KEVIN STOCK
COUNTY CLERK
NO. 16-2-10303-6
Dept 17 Hon. Ronald E. Cupper
Hearing date set: Friday, December 9, 2016
Time: 1:30 PM

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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

PORT REPLY IN SUPPORT OF
PORT MOTION TO DISMISS OF
PORT DEFENDANTS & PORT
DEFENDANTS' MOTION FOR
OVERLENGTH REPLY &
SUBJOINED DECLARATION OF
LEGAL COUNSEL

The issue before this Court is simple: does RCW 42.17A.555's prohibition on use of public facilities for campaign purposes apply when no campaign or election ever occurred? The answer is equally simple: No, it does not apply. The State's (herein after "AG") response concedes that the only way that campaign law can be stretched to support the AG's overreaching prosecution, is if this Court is willing to ignore a literal construction of the statues at issue, and create new law. This Court should decline to do so.

I. ANALYSIS

1
2 The AG prosecutes this claim despite the fact that no campaign or election, as those
3 terms are defined in law, ever occurred. This is impermissible and unjust and the Court
4 should dismiss this action in its entirety.

5 Here, the Port (1) filed a declaratory judgement lawsuit to request a neutral fact
6 finder to make a judicial determination on the legal validity of the Initiative Petitions
7 (“Petitions”), and (2) held a public vote to ratify that action during a properly noticed,
8 public meeting where public comment for and against was received, consistent with
9 RCW 42.17A.555(1). The AG alleges the Port violated RCW 42.17A.555, use of public
10 facilities for campaign purposes, even though as a result of a Superior Court ruling, the
11 Petitions never became ballot propositions.

12
13 The Petitions, subject of this suit, were products of the City of Tacoma local initiative
14 process.¹ The AG describes that “In (sic) June 15, 2016, Save Tacoma Water filed 391
15 petition pages with 5,957 signatures for Initiative 6,” and that “The [Pierce County
16 Auditor] website further states that Initiative 6 would not be on the ballot based on a
17 court ruling.”² Accordingly, the Petitions were never sent to the ballots nor did a
18 campaign ever occur.

19 Despite the fact that neither of the local Petitions was ever submitted to the voters,
20 the AG argues that the Port violated RCW 42.17A.555- use of public facilities for
21 campaign purposes. The AG is simply wrong: the statutes on which the AG's complaint
22

23 ¹ See *Zeck Decl.*, Ex 13., and the Tacoma local initiative City Charter provision 2.19 is set forth at AG
Response to Port Motion to Dismiss (“*Response to Port*”), page 12-13.

24 ² AG's Response to First Motion to Dismiss (“AG Response”) at 8:5-10. *In re Recall of Reed*, 156 Wn.2d
53, 58, 124 P.3d 279 (2005), emphasis added.

1 is based are inapplicable to the facts and issues in this matter. The AG's complaint
2 must be dismissed for failure to state a claim upon which relief can be granted.

3 **A. The Tacoma Petitions were never "Ballot Propositions" as that term is**
4 **defined in RCW 42.17A.005(4).**

5 The prohibition on use of public facilities for campaign purposes on which the AG
6 relies for this enforcement action applies to ballot "measures" and "propositions" which
7 are legal terms of art under Washington law. None of the statutes relied upon by the AG
8 are relevant to the instant case, because the local Petitions never became "measures" or
9 "propositions" as defined under state law. The AG cites to RCW 42.17A as its primary
10 authority. However, the statutory reporting obligations of RCW 42.17A.255 only apply
11 to a "ballot proposition" meeting the statutory definition, to-wit:

12 (4) "Ballot proposition" means any "measure" as defined by RCW29A.04.091,
13 or any initiative, recall, or referendum proposition proposed to be submitted to
14 the voters of the state or any municipal corporation, political subdivision, or
15 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."

16 RCW 42.17A.005(4) (emphasis added). First, a "ballot proposition" may be a
17 "measure" as defined by RCW 29A.04.091, to-wit: "*Measures*. 'Measure' includes
18 any proposition or question submitted to the voters." RCW 29A.04.091 (emphasis
19 added). Second, a "ballot proposition" may be an "initiative... proposed to be submitted
20 to... any municipal corporation" from and after' the time when it is filed with the
21 appropriate election officer.

22 The Tacoma Petitions were not "ballot propositions" under either definition in RCW
23 42.17.005(4). When construing statutory provisions, this Court should begin with the
24

25

1 basic principle that the statutory text means what it says. A Court's "fundamental
2 objective in construing a statute is to ascertain and carry out the legislature's intent... In
3 doing so, we cannot simply ignore express terms... We must interpret a statute as a
4 whole so that, if possible, no clause, sentence, or word shall be superfluous, void, or
5 insignificant." *Ralph v. State Dep't of Nat. Res.*, 182 Wn.2d 242, 248 (2014) (internal
6 quotations and citations omitted). To succeed in convincing the Court that the Port's
7 activity fits into the regulated activity of RCW 42.17A, the AG must impose a reading
8 that statute that either adds additional provisions or materially alters the law as enacted
9 by the people and amended by the Legislature. This it may not do.

10 **1. The Petitions were never "measures" pursuant to RCW 29A.04.091.**

11 The Tacoma Petitions were never "measures" as defined in RCW 42.17A.005(4) and
12 RCW 29A.04.091. Because the Superior Court invalidated both of the Petitions, they
13 were never referred to the voters and, accordingly, never became "measures" as
14 defined in RCW 29A.04.091 inasmuch as a measure is defined in state law to be "any
15 proposition or question submitted to the voters." In other words, submission to the
16 voters is a statutory condition precedent to becoming a "measure". The prohibition
17 on "use of public facilities" under RCW 42.17A was not and is not applicable where the
18 local Petitions were never submitted to the voters.

20 **2. Tacoma has no "local election officer"; the Petitions are not ballot
21 propositions under RCW 42.17A.005(4).**

22 The Petitions were also not "ballot propositions" under RCW 42.17A.005(4) because
23 the Tacoma local initiative process does not define or include any submission to any
24 Tacoma "elections officer". The statute at the heart of the State's complaint is clearly
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1 inapplicable to the facts of this case.

2 State initiatives follow procedures described in RCW 29A.72. The statutory definition
3 of "ballot proposition" in RCW 42.17A.005(4) fits within the statewide initiative
4 framework, wherein a "ballot proposition" may circulate for signatures only after the
5 state code reviser has certified review and provided suggested revisions to the sponsor
6 and after the state elections officer, the Secretary of State gives the proposed measure a
7 serial number. Accord RCW 42.17A.005(4) with RCW 29A.72.010 et seq. There is no
8 direct parallel of this process in the local initiative process set forth in Tacoma's Charter
9 at 2.19, because that process does not include a local election officer.³ Nowhere in the
10 City Charter or Code is a "local elections" officer defined. Compare: King County's
11 charter expressly provides for the appointment of an election officer by the King County
12 executive. *In re Recall of Reed*, 156 Wn.2d 53, 58, 124 P.3d 279, at 282 (2005), ("In
13 King County, the elected county executive appoints the county election officer. *King*
14 *County Charter* 320.10 (election of county executive), 920.20.40 (establishment of
15 election office).")
16

17 Tacoma's local initiative process is defined in its Charter. *Id.*⁴ Here the step required
18 by RCW 29A.72.010 either: (1) never happened, because there is no Tacoma election
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20 ³ Tacoma City local initiative Charter provision 2.19 is set forth at AG "Response to Port, page 12-13.

21 ⁴ The definition of "ballot propositions" under RCW 42.17A.005(4) also do not apply to the local initiative
22 process either, as that process is defined in RCW 35.17. 240-360. On the contrary, under the state-
23 defined local initiative process, signatures are gathered to support an ordinance petition before it is
24 submitted to a local official. Further, upon confirmation of the sufficiency of signatures in a local
25 initiative process, the petition is referred to the city governing body which may either adopt or refer the
petition to the citizens at an election. See RCW 35.17.260 The statutes governing the power of local
initiative vary slightly depending upon whether the local jurisdiction is a non-charter code city, a
commission city, a first class city or a charter county. See RCW 35.17.240 35.17.360; RCW 35A.11.100.

1 officer in Tacoma's Charter or local initiative process, or (2) the closest analogy to a local
2 election officer under these facts is the Pierce County Auditor. In the latter case, this AG
3 enforcement action is still wrong. The AG concedes that Defendants Port, EDB and
4 Chamber filed the Declaratory Judgement action prior to when the Petitions were
5 submitted to the Pierce County Auditor. ⁵Thus, even under the AG's strained
6 interpretation, at the time the lawsuit was filed, the Petitions were not "ballot
7 propositions" because they had not yet been filed with the elections officer.

8 Because a 'ballot proposition' is defined under RCW 42.17A.005(4) as an issue
9 which is submitted to the secretary of state prior to the gathering of signatures (RCW
10 29A.72.010), a local initiative can never qualify as a 'proposition.' And only when the
11 petition is submitted to the voters does it become a 'measure' under RCW 29A.04.091.
12 That is the plain language of the statute.

13
14 **3. The fact that The LOCAL Initiative Petitions do not meet STATE law**
15 **definition of ballot propositions is consistent with other differences**
between LOCAL and STATE initiative processes.

16 The AG spends much of its Response briefs on a dissertation about the evolution of
17 campaign law. A brief history of Washington state (vs. local) initiative law is also
18 instructive, and more relevant to this case.

19 With Amendment 7 to the Washington Constitution adopted in November 1912, the
20 rights of the citizens of the state of Washington to act as the legislature through
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23 ⁵AG Response at 8:12-17: "Prior to Save Tacoma Water submitting the gathered signatures to the Pierce
24 County Auditor, on June 6, 2016, Defendants Economic Development Board of Tacoma-Pierce County
and Tacoma-Pierce Chamber of Commerce along with the Port of Tacoma filed a lawsuit against Save
Tacoma Water, the initiative sponsor, the City of Tacoma, and the Pierce County Auditor."

1 initiative and referendum were created. But the initiative rights conferred on the people
2 of Washington in Amendment 7 to act as the state legislature do not extend by its terms
3 to local political subdivisions. As stated by the Washington Supreme Court in *City of*
4 *Port Angeles v. Our Waster-Our Choice*, 170 Wn.2d 1, 7-8, 170 P. 3d 589 (2010): "The
5 people of the state of Washington are entitled to engage in direct legislation. *Wash.*
6 *Const. art. II, §1; Ruano v. Spellman*, 81 Wn.2d 820, 823,505 P. 2d 447 (1973).
7 However, Amendment 7 does not apply to municipal governments, which under our
8 constitution, are not fully sovereign. Wash. 9 Const. art. II, §1; *1000 Friends*, 159
9 Wn.2d at 167, 149 P.3d 616; *Lauterback v. City of Centralia*, 49 Wn.2d 550, 554, 304
10 P.2d 656 (1956)..."

11 In fact, RCW 42.17A is replete with areas where it treats campaign finance activity
12 differently at state versus local, municipal level - there is no regulation whatsoever of
13 municipal lobbying, either grassroots or direct (RCW 42.17A.600 *et seq*) and the law
14 completely exempts from all of its provisions cities smaller than 5,000 people (RCW
15 42.17A.200).

16 The AG asks the Court to disregard these very different local versus state procedures,
17 to ignore the plain language of the statutes and to create entirely new campaign law
18 requirements that were never intended to apply to the facts here. This Court should
19 decline to do so.
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21 The AG's attempt to blur the lines between statewide and local initiative powers is
22 also apparent from the statute governing independent expenditure reporting which the
23 AG argues the Defendants Chamber and EDB have violated:
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1 RCW 42.17A.255 Special reports- Independent expenditures. (1) For the purposes of
2 this section the term "independent expenditure" means any expenditure that is
3 made in support of or in opposition to any candidate or ballot proposition...

4 (Emphasis added.) Because there was never a "ballot proposition" as defined in the
5 statute, the independent expenditures reporting is not triggered.

6 Further, state law clearly envisions that a "ballot proposition" is one that is
7 submitted to the voters for consideration, because the reporting described in the statute
8 relates specifically to an "election campaign," to-wit:

9 (2) Within five days after the date of making an independent expenditure that by
10 itself or when added to all other such independent expenditures made during
11 the same election campaign by the same person equals one hundred dollars or
12 more... "

13 RCW 42.17A.255(2) (emphasis added). The Ninth Circuit confirmed that the statute's
14 "[d]isclosure requirements are triggered if, in a given election, such an expenditure
15 equals more than \$100 or if its value cannot reasonably be estimated." *Human Life of*
16 *Washington, Inc. v. Brumsickle*, 624 F.3d 990, 998 (9th Cir. 2010) (emphasis added).
17 Thus, the *Brumsickle* Court concluded that reporting requirements are triggered only if
18 an entity makes independent expenditures during an "election campaign". In this case,
19 there was never an election campaign -because the Superior Court found the Petitions
20 invalid prior to the Petitions' submission to the voters.⁶

21 **B. In Its Zealous Pursuit of Expanded Enforcement Powers, AG Misstates
22 Law & Contradicts Itself.**

23 In attempting to construct a reading of RCW 42.17A that fits its novel theory of the

24 ⁶ The AG concedes that, "**Prior to Save Tacoma Water submitting the gathered signatures to
25 the Pierce County Auditor**, on June 6, 2016, Defendants Economic Development Board of Tacoma-
Pierce County and Tacoma-Pierce Chamber of Commerce along with the Port of Tacoma **filed a lawsuit**
against Save Tacoma Water, the initiative sponsor, the City of Tacoma, and the Pierce County Auditor."
AG's Response at 8:12-17.

1 Case, the AG repeatedly mischaracterizes and, at times, plainly misstates the law. For
2 example, the AG argues, that “In *Herbert v. Public Disclosure Commission*, the Court
3 of Appeals held that RCW 42.17A.555's restriction (in the former RCW 42.17.130) is
4 unambiguous, 136 Wn. App. 249, 265, 148 P.3d 1102 (2006)... No different result is
5 called for in the present case.”⁷ But the *Herbert* ruling was confined to the very narrow
6 issue of whether RCW 42.17A.555 contains a de minimus use exception. The Court
7 found it did not.⁸ This is not the issue here.

8 Further, at other places in its *Reponses to Motions*, the AG repeatedly and
9 inconsistently argues that the Court should look to “intent,” a concept only permissible
10 when a statute is ambiguous. “[i]n an unambiguous statute, a word is given its plain and
11 obvious meaning.” *Addleman v. Bd. of Prison Terms & Paroles*, 107 Wn.2d 503, 509,
12 730 P.2d 1327 (1986); see *Young v. Estate of Snell*, 134 Wn.2d 267, 279, 948 P.2d 1291
13 (1997) (the meaning of a statute must be derived from the wording of the statute itself
14 where the statutory language is plain and unambiguous). Only if the meaning of the
15 language is ambiguous or unclear, do Courts look at the statute as a whole, or a
16 statutory scheme as a whole, as the appropriate inquiry into what the Legislature
17 intended. See, e.g., *Addleman*, 107 Wn.2d at 509; *Sebastian v. Dep't of Labor & Indus.*,
18 142 Wn.2d 280, 285, 12 P.3d 594 (2000).

19 These are revealing examples of the AG’s problem with this case: at times the AG's
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23 ⁷ Response to Port at 27:4-7.

24 ⁸ “We reject Herbert's argument that such an exception should be implied, particularly in light of the fact
25 that the PDC repealed a de minimus use exception in its administrative regulations, and the fact that
Herbert has not shown a clear way to define a de minimus exception”. *Herbert* at ¶ 10.

1 enthusiasm for its sweeping application of campaign finance laws exceeds its
2 understanding of plain language and appropriate limits.

3 **C. Absent Any Actual Supporting Statute or Case Law, AG Cites Primarily To**
4 **Its Self**

5 With no actual case law to support its novel interpretation that seeking judicial relief
6 is a prohibited campaign use of public facilities, the AG repeatedly cites primarily to its
7 self, in the guise of Attorney General Opinions (AGO). But the AG's Response admits
8 that the AG has been wrong.

9 In the very frequently cited AGO 1 (2006), the AG opined that a special purpose
10 district could not adopt a motion or resolution to support or oppose a ballot
11 proposition, and such activity would not be "normal and regular" for the district. AGO 1
12 (2006), (analyzing the RCW 42.17A.555 restrictions). In response, the Legislature
13 immediately amended subsection (1) (actions taken at public meetings by elected
14 bodies) to include special purpose district elected officials. Laws of 2006, Ch. 215 § 2. In
15 the intent section, the Legislature made clear that contrary to the AG, these special
16 purpose districts had long enjoyed this authority: "...for twenty-five years these
17 discussions have included the opportunity for elected boards, councils, and
18 commissions of special purpose districts to vote in open public meetings in order to
19 express their support of, or opposition to, ballot propositions affecting their
20 jurisdictions". *Id.*

21
22 Notwithstanding that the legislature's swift and emphatic action to "overturn" AGO 1
23 (2006), the AG in this present action cites to that Opinion as authority no less than six
24 times, all of which should be disregarded:

25

- 9:23 – to argue prohibition on use of government resources
- 10:1 – to argue use of public resources for political purposes
- 10:2 – to argue RCW 42.17A.555 to be narrowly interpreted
- 10:5 – to argue that port as special purpose district may not rely on “normal and customary” exemption
- 20:3 – to argue special purpose districts can not endorse ballot measures using RCW 42.17A.555 process – this, despite the Laws of 2006, Ch. 215 § 2 action that expressly allows special purpose districts to do so.
- 20:18-22 to argue that RCW 42.17A.555's 'normal and regular' conduct exception applied only to home rule cities and counties ⁹

Further, once it is properly recognized that the Petitions here were not “measures” or “ballot proposition” as defined in law,¹⁰ then all eight of the Atty. Gen. Opinions cited as “authority” simply do not apply.¹¹

D. AG Cites More Selectively To Its Client, the PDC.

The AG cites more selectively in this case to declarative (and selective) opinions of its own client, the PDC, which unsurprisingly usually takes a liberal and sanguine view of the expansion of state regulatory power into the speech.¹² However, significantly, despite the various cited PDC Declaratory Rulings and PDC Interpretations, the AG fails to cite to any authority that even implies that filing a lawsuit challenging the constitutionality of a ballot proposition is a prohibited use of public funds. If such ruling exists, it was incumbent upon the AG to provide them. The AG failed to do so, and it

⁹ There, the Court "resolved the case entirely under the pre-existing 'normal and regular' conduct exception" and to the extent it was analyzing the "normal and regular" exception, the Court "clearly limited its holding to home rule cities and counties." **AGO 2006 No. 1.**

¹⁰ See Section A herein.

¹¹ See Att'y Gen. Op. 14 (1973); Att'y Gen. Op. 26 (1973); Att'y Gen. Op. 23 (1975); Att'y Gen. Op. 43 (1976); Att'y Gen. Op. 45 (1977); Att'y Gen. Op. 3 (1979); Att'y Gen. Op. 20 (1994); Att'y Gen. Op. 1 (2006).

¹² "In total, the Commission has issued six declaratory orders addressing the authorized use of public facilities under RCW 42.17A.555 (and its former version, RCW 42.17.130)." See *Response to Port* at 8:3-5.

1 must be presumed that no such authority exists.¹³

2 Instead the AG resorts to sophistry: “No Washington Court has ruled that a person is
3 shielded from the reach of RCW 42.17A.555 if their ...efforts take place within the state
4 court system, as opposed to the airwaves or the Internet.”¹⁴ In truth, no Washington
5 Court has ruled that a public agency **violates** RCW 42.17A.555 by actions within the
6 state court system.¹⁵ This is the burden that the AG cannot overcome.

7 Instead, the PDC has ruled exactly opposite as the AG argues in this enforcement
8 action. After the AG referred the matter to the Public Disclosure Commission to seek its
9 expertise in determining whether the Port, Chamber and EDB had violated the FCPA,
10 the PDC Staff undertook an investigation, after which they found as follows no violation
11 of RWC 42.17A 555 by the Port:

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

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

19 See Exhibit 5, *PDC Staff Report to PDC Commission*, (first) Dec of Lake, at ¶ 18 & 19.

20 ¹³ See, e.g., *PacifiCorp v. Washington Utilities & Transp. Comm'n*, 194 Wn. App. 571, 616, 376 P.3d 389
21 (2016) (“Where no authorities are cited in support of a proposition, the court is not required to search out
22 authorities, but may assume that counsel, after diligent search, has found none.”) (quoting *DeHeer v.*
Seattle Post–Intelligencer, 60 Wash.2d 122, 126, 372 P.2d 193 (1962).)

23 ¹⁴ *Response to Port*, 23:18-20.

24 ¹⁵ The AG glides over the lack of PDC ruling on the centerpiece issue here, by vague reference to PDC
25 website, as opposed to any actual PDC case on point in support. There simply is none. “The Commission
also adjudicates alleged violations of RCW 42.17A.555 and can impose penalties. Examples of use
include use of emails, land, staff time, and the money necessary to fund those items. See Commission
website at www.pdc.wa.gov.” *Response to Port* at 8: 19-22.

1 And, thereafter, the PDC Commission by unanimous vote found no violation by any
2 party and recommended that the Attorney General not file suit.¹⁶ The PDC Commission
3 also expressly took note of the vagueness of the statutes in question, and discussed the
4 need for and their intention to undertake “rulemaking to provide clearer guidance to the
5 regulated community and the public regarding what actions constitute activity
6 reportable under RCW 42.17A for ballot propositions, as they are being considered for
7 placement on the ballot and at each stage thereafter.” The Commission expressed its
8 intent to work with PDC staff to pursue such rulemaking and asked that all parties
9 (EDB, Chamber and Port) plan to participate and offer input. ¹⁷

10 The AG concedes, as it must, that the PDC has authority to enforce RCW 42.17A.¹⁸
11 “The legislature has empowered the PDC to interpret, implement, investigate, and
12 determine violations of the State's campaign finance requirements and contribution
13 limits, and to adopt rules to carry out these tasks”. ¹⁹ Courts give an "agency's
14 interpretation of the law great weight where the statute is within the agency's special
15 expertise."²⁰ The AG offers no compelling or any explanation at all, why its enforcement
16 decision should be elevated over the PDC’s. It should not.

17
18 **E. PDC Was Correct To Find Port Judicial Activity Meets the “Normal And
19 Customary” Exemption to RCW 42.17A.555.**

20 RCW 42.17.130 is an important exemptions to what otherwise would be a campaign
21 law violation, for “Activities which are part of the normal and regular conduct of the
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23 ¹⁶ See *PDC Commission letter to AG. (first) Dec of Lake*, at ¶ 20, Exhibit 6.

24 ¹⁷ *(first) Dec of Lake*, at ¶ 21.

25 ¹⁸ Response to Port at 7:4-7.

¹⁹ *Edelman v. State ex rel. P.D.C.*, 152 Wn.2d 584, 588, 99 P.3d 386 (2004).

²⁰ *Cornelius v. Dep't of Ecology*, 182 Wn.2d 574, 585, 344 P.3d 199 (2015). Emphasis added.

1 office or agency”²¹. The PDC properly found no violation occurred because the Port
2 judicial action was part of the Port’s normal and regular conduct.²²

3 The AG’s contention that the judicial action was not “normal and customary”
4 because Ports lack the power to sue or be sued is absurd, and to be avoided. ²³ A court
5 construes a statute to effect the statute's purposes, and to avoid an unlikely or strained
6 consequence.²⁴ Ports are granted explicit powers (Chapter 52 RCW) and by implication,
7 the authority to carry out those powers.²⁵ The Port pursued the judicial action here, as
8 part of its normal and regular activity, because the Petitions had the potential to impact
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11

12 ²¹ [RCW 42.17.130](#) No elective official nor any employee of his [or her] office nor any person appointed to
13 or employed by any public office or agency may use or authorize the use of any of the facilities of a public
14 office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to
15 any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or
16 agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of
17 employees of the office or agency during working hours, vehicles, office space, publications of the office or
18 agency, and clientele lists of persons served by the office or agency. However, this does not apply to the
19 following activities: ... (3) Activities which are part of the normal and regular conduct of the office or
20 agency.

21 ²² The Port’s legal action is consistent with the long list of legal cases in which public agencies have
22 properly sought judicial review of the legal sufficiency of a proposed Initiative; in no case were these
23 actions found to violate RCW 42.17A.555.

24 ²³ See *Response to Port* at p14, fnt 16.

25 ²⁴ *State v. Mierz*, 127 Wash. 2d 460, 480, 901 P.2d 286 (1995), as quoted in *Teamsters Union Local 117 v. Port of Seattle*, 1996 Wash. App. LEXIS 403, 1996 WL 523973 (Wash. Ct. App. Sept. 16, 1996).

26 ²⁵A municipal corporation acts within its implied proprietary powers if (1) the act is an exercise of a
27 proprietary power; (2) the act is within the purpose and object of the enabling statute; (3) the act is not
28 contrary to express statutory or constitutional limitations; and (4) the act is not arbitrary, capricious, or
29 unreasonable. *Okeson v. City of Seattle*, 159 Wn.2d 436, 150 P.3d 556, (2007). One of the statutorily
30 approved purposes of port districts is economic development. “It shall be in the public purpose for all
31 port districts to engage in economic development programs.” RCW 53.08.245(1). In the years since
32 Huggins [1917], the statutory powers of port districts have grown.” *Lane v. Port of Seattle*, 178 Wn. App.
33 110, (2013); review denied by *Lane v. Port of Seattle*, 180 Wn.2d 1004, 321 P.3d 1207, 2014 Wash. LEXIS
34 250 (Wash., Apr. 2, 2014) Further, for example, ports have powers of eminent domain. RCW 53.08.010.
35 That action expressly requires litigation. Applicable to Ports, RCW 53.08.047 provided “Neither this
chapter nor anything herein contained shall be construed as a restriction or limitation upon any powers
which a district might otherwise have under any laws of this state, but shall be construed as cumulative.”

1 the Port's legislatively bestowed economic development mission within its District.²⁶

2 There can be no question that litigation is a "normal and regular" means employed by
3 the Port. From 2000-2016, the Port of Tacoma engaged in litigation in Pierce County
4 Superior Court 66 times, King County Superior Court 6 times, Thurston County
5 Superior Court 3 times, Lewis County Superior Court 2 times, and U.S. District Court
6 for the Western District of Washington 15 times. ²⁷This is why the PDC found that the
7 Port's judicial action was normal and customary, exempt and **not** a FCPA violation.²⁸

8 And, contrary to AG claim²⁹, ports have been involved in legal challenges to
9 Initiatives. See: *City of Seattle v. Yes for Seattle*, 122 Wn. App. 382, 93 P.3d 176, (2004),
10 where the city and others, including Port of Seattle, filed a declaratory judgment on
11 basis that a local initiative exceeded the initiative power. The Court agreed and struck
12 the initiative from the ballot, exactly as occurred here. No charge of campaign violation
13 was levied there. Copy at **Exhibit 1** to subjoined Dec of Lake.

14
15 **F. PDC Correct That Port Public Vote Met RCW 42.17A.555(1)'s Exception
To Use Of Public Office Or Agency Facilities In Campaigns.**

16 The PDC found: ".on June 18, 2016, the Port of Tacoma Commissioners held a
17 properly noticed public meeting, and provided notice that the Commission intended to
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19
20 ²⁶ The Court should reject the AG's "parade of horrible" and straw man argument in its Port Response
21 at 23, fn 20, "Taking the Port Officials' arguments to their logical conclusion, the Port Officials could
22 contend, for example, that they could file suit in Walla Walla, or Kennewick, or Spokane Valley, to halt an
23 election on a local ballot measure in those jurisdictions when they believe those propositions might
24 impact the Port in some way, no matter how remote.

25 ²⁷ (See Exhibit 7, *List of Port litigation*, attached to Dec of Wolfe).

²⁸ *PDC Staff Report to Commission*, Exhibit 5 to Dec of Lake, at page 1 & 2. Emphasis added, and See
Exhibit 6 to Dec of Lake, *PDC Commission letter to AG*.

²⁹ See AG Response at 25:6-8, (AG claims no cases cited where port uses public facilities regarding a ballot
proposition). Further, in responding, the Port does not concede that the invalid Petitions ever were "ballot
propositions".

1 vote to "ratify the Port's action of filing a Declaratory Judgment and Injunctive
2 challenge of two proposed initiatives filed with the City of Tacoma- Charter Amendment
3 5 and Code Initiative 6." ³⁰ As a result, the PDC Staff & Commission found the Port
4 meeting notice and process satisfy the RCW 42.17A.555(1) criteria; no violation
5 occurred. With no authority in support, the Attorney General is the only out layer. The
6 AG's Complaint should be dismissed pursuant to CR 56.

7 **G. Very Recently, State Has Twice Failed to Expand Its Strained Definition**
8 **of Campaign Activity. This Third Time is NOT a Charm.**

9 The PDC action in this case (finding no violation) is contrasted to two other recent
10 and questionable PDC /AG enforcement actions where the PDC/AG seeks to re-caste
11 legal action as some sort of campaign activity. The AG's *Response to Motion* refers to
12 only one: *State of Washington v. Evergreen Freedom Foundation*, Washington
13 Supreme Court No. 93232-8.³¹ There, the State alleged that the Freedom Foundation's
14 legal services provided to several local ballot measure proponents was reportable
15 campaign activity. *Dalton Decl., Ex. U.* Notably, in 2016, the Thurston County superior
16 court disagreed and **dismissed** that case; the matter is pending on direct review to the
17 Washington Supreme Court. *Dalton Decl., Ex. V.*

18
19 Closer to home is the other similar and also unsuccessful State action to unilaterally
20 re-write definitions in the FCPA: *Institute for Justice v. State of Washington*, Pierce
21 County Case No. 13-2-10152-7. In February 2015, the Pierce County Superior Court
22

23 ³⁰ PDC Staff Report to Commission, Exhibit 5 to Dec of Lake, at page3, Finding 2.6. and see Exhibit 6 to
24 Dec of Lake, PDC Commission letter to AG.

25 ³¹ *Response* at 1, fnt 1.

1 ruled, that “Defendants' treatment of free legal assistance to a political committee in a
2 federal civil rights lawsuit as a "contribution," as that term is defined in RCW
3 42.17A.005(13), is unconstitutional under the U.S. Constitution”. See true and correct
4 copy of *Order Granting Summary Judgment*, attached as **Exhibit 2** to subjoined
5 *Declaration of Lake*. In that Pierce County case, where Ms. Dalton also represented the
6 State and the PDC, the Court ordered the State and PDC to pay the accused \$424,999 in
7 attorney fees and costs. See true and correct copy of *Order on Attorney Fees*, attached
8 as **Exhibit 3**.

9 Having twice lost in the last two years, it is not surprising that the PDC in this
10 present matter chose to avoid a similar, third legal overreach, and declined to find that
11 judicial action constituted a prohibited campaign use of public facilities. The PDC
12 instead chose the proper, reasonable, and fair pathway of pursuing rulemaking to
13 provide clearer guidance to the regulated community.

14 Further, the PDC’s pronouncement that additional rule making is required for clarity
15 is strong support that the AG’ s unique interpretation of the FCPA, as applied to the
16 Port, EDB and Chamber, is unconstitutional. The AG’s “interpretation of the FCPA is
17 unconstitutional in that, inter alia, such a reading would render the statute
18 unconstitutionally vague and such a reading does not survive exacting scrutiny. In order
19 to avoid these constitutionally murky waters, the Court should employ the doctrine of
20 constitutional avoidance and reject the constitutionally suspect interpretation advanced
21 by the Attorney General. See, e.g., *State ex rel. Morgan v. Kinnear*, 80 Wn.2d 400, 402,
22 494 P.2d 1362 (1972). The Court should instead embrace a reading of the statute which
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24
25

1 is free from constitutional defect..."³² The AG's matter should be dismissed, in favor of
2 the rulemaking process.

3 **H. When Law Applied as Written, Judicial Action is NOT Campaign Activity**
4 **Prohibited by RCW 42.17A.**

5 The AG argues that because the statutes in question are vague and ambiguous, the
6 Court should strain to give the benefit of the doubt to the AG and this misguided action
7 should survive. This turns constitutional jurisprudence regarding the First Amendment
8 and campaign finance regulations on its head. In fact, the Supreme Court repeatedly
9 has held that campaign regulations must be clear and unambiguous to survive the strict
10 scrutiny applied to all government restrictions on speech.³³

11 In *Federal Election Commission v. Wisconsin Right to Life*, 551 U.S.449, (2007), the
12 US Supreme Court held:

13 "The freedom of speech ...guaranteed by the Constitution embraces at the least the
14 liberty to discuss publicly and truthfully all matters of public concern without
15 previous restraint or fear of subsequent punishment." *Bellotti*, 435 U. S., at 776
16 (internal quotation marks omitted). See *Consolidated Edison Co. of N Y v. Public*
17 *Serv. Comm'n of N Y*, 447 U. S. 530, 534 (1980). To safeguard this liberty, the proper
18 standard for an as-applied challenge to BCRA §203 must be objective, focusing on
19 the substance of the communication rather than amorphous considerations of intent
20 and effect. See *Buckley, supra*, at 43----44. It must entail minimal if any discovery,
21 to allow parties to resolve disputes quickly without chilling speech through the threat
22 of burdensome litigation. See *Virginia v. Hiebert*, 539 U. S. 113, 119 (2003). And it must
23 eschew "the open-ended rough-and-tumble of factors," which "invit[es] complex
24 argument in a trial court and a virtually inevitable appeal." *Jerome B. Grubart,*
25 *Inc.v. Great Lakes Dredge & Dock Co.*, 513U. S. 527, 547 (1995). In short, it must
give the benefit of any doubt to protecting rather than stifling speech. See *New York Times Co. v. Sullivan, supra*, at 269-270.

32 *Defendants' Reply in Support of Dismissal* at 13-14.

33 *Fla. Bar v. Went for It, Inc.*, 515 U.S. 618,634, 115 S.Ct. 2371, 132 L. Ed. 2d 541 (1995) ("There are circumstances in which we will afford speech by attorneys on public issues and matters of legal representation the strongest protection our Constitution has to offer.")

1 [Emphasis added]. The AG simply cannot ignore words in a statute, and it is not
2 permissible to prosecute for violating a law that is facially vague. As the Court held in
3 *Wisconsin Right to Life*, this Court "must give the benefit of any doubt to protecting
4 rather than stifling speech." *Id.*

5 **I. Judicial Action Is Not "Use Of Public Facilities For Campaign Purposes".**

6 Rather than invent new law, this Court is urged to apply the law as written, and not
7 as the AG seeks to expand it. In trying to argue that the Declaratory Judgement action is
8 "use of public facilities for campaign purposes," the AG fails to respond to most of the
9 Port's legal analysis. See *Port Motion* at 25-30. Instead the AG seeks to add words to the
10 definition of "Facilities of a public office or agency" at RCW 17A.555, relying on an
11 argument that the Statute restricts "directly or indirectly the use of public facilities
12 which includes *but is not limited to*..."³⁴ In doing so the AG would have this Court ignore
13 the (1) that even under the most cursory statutory construction, "funds" are not "public
14 facilities" and (2) that the Fair Campaign Practices Act³⁵ includes a precise definition of
15 campaign "expenditures", which definition (1) does not include legal fees for a
16 Declaratory Judgement action, and (2) relates solely to "benefiting or honoring any
17 public official or candidate, or assisting in furthering or opposing any election
18 campaign".

20 "Expenditure" includes a payment, contribution, subscription, distribution, loan,
21 advance, deposit, or gift of money or anything of value, and includes a contract,
22 promise, or agreement, whether or not legally enforceable, to make an
23 expenditure. "Expenditure" also includes a promise to pay, a payment, or a transfer

24 ³⁴ *Response to Port* at 26:11-13.

25 ³⁵ ("FCPA" or "Act")

1 of anything of value in exchange for goods, services, property, facilities, or anything
2 of value for the purpose of assisting, benefiting, or honoring any public official or
3 candidate, or assisting in furthering or opposing any election campaign. For the
4 purposes of this chapter, agreements to make expenditures, contracts, and promises
5 to pay may be reported as estimated obligations until actual payment is made.
6 “Expenditures” shall not include the partial or complete repayment by a candidate or
7 political committee of the principal of a loan, the receipt of which loan has been
8 properly reported.

9 RCW 42.17A.005(20). Emphasis added.

10 Funds spent for a judicial determination plainly is not “assisting, benefiting, or
11 honoring any public official or candidate, or assisting in furthering or opposing any
12 election campaign.” This FCPA “expenditure” definition list is finite. This specific
13 definition of “expenditure” does not include the elastic phrase: “*including but not*
14 *limited to*” that the AG pins its hopes on.

15 Washington Courts have long recognized a “maxim” of statutory construction: “The
16 expression of one thing is the exclusion of another”. *In re Estate of Sherwood*, 122
17 Wash. 648, 656, 211 P. 734 (1922). “Under the maxim *expressio unius est exclusio*
18 *alterius*—where a statute specifically designates the things or classes of things on which
19 it operates—an inference arises in law that the legislature intentionally omitted all
20 things or classes of things omitted from it”. *Mason v. Ga.-Pac. Corp.*, 166 Wn. App.
21 859, 864, 271 P.3d 381 (Div, 2, 2012); *citing Wash. Natural Gas Co. v. Pub. Util. Dist.*
22 *No. 1 of Snohomish County*, 77 Wn.2d 94, 98, 459 P.2d 633 1969). Following that
23 principle, this Court must conclude that if the legislature had intended to include fees
24 for declaratory lawsuits in the definition of prohibited “expenditures”, it would have
25 included that type of activity in the explicit list of actions that define “expenditures” in
the FCPA Act. RCW 42.17A.005(20). They did not.

1 In concession to the Port’s analysis that use of public facilities for campaign
2 purposes does not include funds for judicial actions, the AG over-reaches yet again – to
3 argue that the Court should find a violation based on “defendant Wolfe’s time (in
4 addition to other Port employee time) spent working with the attorneys...”.³⁶ This fails
5 for at least three reasons: (1) the AG has no proof in this record of any time spent by
6 CEO Wolf, and (2) the Petitions were never a “campaign election” or a “ballot
7 proposition” to which the RCW 42.17A 555 prohibition applies, and (3) the AG has
8 charged only that the alleged misuse is: “the use of Port attorneys and funds”.³⁷

9 **J. RCW 42.17A 555 is a punitive statute since it imposes penalties – and thus**
10 **should be construed favorably to accused.**

11 Curiously, the AG admits is seeks penalties in this enforcement action,³⁸ but denies
12 without citation to legal authority, that defendants are “entitled to have the prohibition
13 in RCW 42.17A555 construed in their favor”.³⁹ The AG is wrong.

14 The FCPA provides for a penalty, and is therefore punitive in nature. This Court
15 must construe the RCW 42.17A.555 narrowly as a punitive statute, and not read into this
16 statute matters that are not there. “As befits a penal statute, our decisions have
17 interpreted this punitive damages provision narrowly”⁴⁰. “We literally and strictly
18 construe punitive statutes in favor of the accused”.⁴¹ “Such statutes are construed
19 "according to the plain meaning of their words to assure that citizens have adequate
20

21 ³⁶ *Response to Port* at 26, fnt. 21.

22 ³⁷ *Response to Port* at 16:20-21.

23 ³⁸ The Court should summarily reject their arguments and find that they violated the law. The Court can
then simply move to assessing a penalty against them for their violations. *Response to Port* at 27:12-14.

24 ³⁹ *Response to Port* 17:22-24

24 ⁴⁰ *Birchler v. Castello Land Co.*, 133 Wn.2d 106, 110, 942 P.2d 968 (1997).

25 ⁴¹ *State v. Hursh*, 77 Wn. App. 242, 246, 890 P.2d 1066 (Div. 1, 1995), cases cited.

1 notice of the terms of the law.... However, we do not read into a statute matters which
2 are not there, nor do we modify a statute by construction or read into the statute things
3 which we may conceive that the Legislature unintentionally left out”. *Id.*

4 **K. No Public Policy Offended Here By Dismissal in Deference to PDC Rule-**
5 **making.**

6 This Court should take comfort here that dismissal of the AG’s misplaced
7 enforcement action will not offend any public policy or the intent of the FCPA. First, as
8 the combined Defendants point out, the Petitions at issue here were found by the Court
9 to be “facially unconstitutional and outside the scope of the initiative process, that is,
10 they were void ab initio....” Thus “there was no legitimate political question for the
11 electorate to consider” in any subsequent election campaign.⁴² Including invalid
12 initiatives on the ballot does not vindicate or protect any rights, rather it undermines
13 the integrity of a system intended to enact laws. The Port’s action in pursuing a legal
14 determination from the neutral judicial system was not campaigning but instead was
15 consistent with the underlying purpose of Washington campaign laws to protect the
16 integrity of the voting process. Further, the legal process was very public. And, contrary
17 to the AG claim that the amount of public expenditures was not known,⁴³ the Port in
18 fact disclosed at its public meeting exactly the amount of the Port’s expenditure.⁴⁴
19

20 *

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22 ⁴² Defendants’ Reply at 3:1-5.

23 ⁴³ “It was simply not enough to satisfy the campaign finance laws that the existence of Defendants’ legal
24 action was generally known, because the amount of their expenditures in the litigation was not disclosed”.
AG Response at 22:12-14,

⁴⁴ See *Port Commission Memo*, Exhibit 2 of (first) *Dec of Lake*.

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II. MOTION FOR OVERLENGTH

The Port seeks permission to file this over length reply brief in support of their Motion to Dismiss. The Port has worked diligently to prepare a reply brief that answers the AG’s Response. However, in order to accurately and adequately address the facts and law, the Port believes it is necessary to file an over length reply brief. ⁴⁵ “Trial courts possess considerable latitude in managing their schedules to ensure the orderly and expeditious disposition of cases. Thus, we review trial court rulings regarding the amount of time allowed for argument and the striking of briefs for abuse of discretion.” *Pacific Topsoils, Inc. v. Washington State Dept. of Ecology*, 157 Wn. App. 629, 649, 238 P.3d 1201 (2010) (cites omitted.) Here, the Port respectfully suggest that its over length reply brief will not impose undue burden on the Court or upon the AG. To the contrary, it will assist the Court’s review and determination of the issues addressed in the Port’s motion and the AG’s Response.

15

III. CONCLUSION.

- 16
- There are no Washington statutes, cases or any authority which holds that judicial review of a local initiative is improper campaign use of public facilities. The Court should reject the AG’s attempt to create new law.
 - The Tacoma Petitions were never "ballot propositions" as that term is defined in RCW 42.17A.005(4). The fact that the LOCAL initiative Petitions do not meet STATE law definition of ballot propositions is consistent with other differences between LOCAL and STATE initiative processes.
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⁴⁵ PCLR 7(a)(8) states that “Provided, however, for Motions for Summary Judgment pursuant to CR 56 the parties’ moving and opposing memoranda shall not exceed twenty-four (24) pages without authorization of the court; reply memoranda shall not exceed twelve (12) pages without authority of the court...”

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- 1 • In its zealous pursuit of expanded enforcement powers, the AG misstates law &
2 contradicts itself. And, absent any actual supporting statute or case law, AG cites
3 primarily to its self, and selectively to its client, the PDC.
4 • The PDC is correct to find Port judicial activity meets the “normal and customary”
5 exemption to RCW 42.17A.555. The PDC is also correct that Port’s public vote met
6 RCW 42.17A.555(1)’s exception to use of public office or agency facilities in
7 campaigns.
8 • Very recently, the State has twice failed to expand its strained definition of campaign
9 activity. This Court should rule in accord. When the law is applied as written,
10 judicial action is not campaign activity prohibited by RCW 42.17A, and judicial
11 action is not “use of public facilities for campaign purposes”.
12 • RCW 42.17A 555 is a punitive statute since it imposes penalties. It should be
13 construed favorably to accused.
14 • No public policy offended here by dismissal in deference to PDC rule-making. The
15 Court should dismiss this action, and defer to the PDC’s more reasonable pathway of
16 rulemaking to bring clarity to these issues.

17 The Port respectfully urges the Court to find that the Port did not commit a violation
18 of the Fair Campaign Practice Act and to dismiss the Complaint.

19 DATED this 5th day of December, 2016. GOODSTEIN LAW GROUP PLLC
20 s/Carolyn A. Lake
21 s/Seth S. Goodstein
22 Carolyn A. Lake, WSBA # 13980
23 Seth S. Goodstein, WSBA No. 45091
24 Attorney for John Wolfe, Connie Bacon, Don
25 Johnson, Dick Marzano, Don Meyer, and Clare
Petrich (Port).

DECLARATION OF COUNSEL

- 1 I, Carolyn A. Lake, and Legal Counsel for the Port of Tacoma (“Port”). I have
served in this position since 2010. I am over the age of 18, am competent to testify

and make this Declaration based on personal knowledge.

2. Attached hereto attached as **Exhibit 1** is a true and correct copy of *City of Seattle v. Yes for Seattle*, 122 Wn. App. 382, 93 P.3d 176, (2004), where the city and others, including Port of Seattle, filed a declaratory judgment on basis that a local initiative exceeded the initiative power. The Court agreed and struck an initiative entitled "Save Seattle Creeks Initiative" from the ballot, exactly as occurred here.
Copy
3. See true and correct copy of *Order Granting Summary Judgment*, from *Institute for Justice v. State of Washington*, Pierce County Case No. 13-2-10152-7, attached as **Exhibit 2**.
4. In that Pierce County case, where Ms. Dalton also represented the State and the PDC, the Court ordered the State and PDC to pay the accused \$424,999 in attorney fees and costs. See true and correct copy of *Order on Attorney Fees*, attached as **Exhibit 3**.

I certify the foregoing to be true and correct under penalty of perjury under the laws of the State of Washington.

DATED this 5th day of December 2016 at Tacoma, Washington.

/s/Carolyn A. Lake
Carolyn A. Lake
Port of Tacoma Legal Counsel

User Name: Seth S Goodstein

Date and Time: Nov 29, 2016 18:41

Job Number: 40257753

Document (1)

1. [City of Seattle v. Yes for Seattle, 122 Wn. App. 382](#)

Client/Matter: Port Tacoma PDC

Search Terms: "political campaign"

Search Type: Natural Language

Narrowed by:

Content Type
Cases

Narrowed by
Court: Washington

City of Seattle v. Yes for Seattle

Court of Appeals of Washington, Division One

June 1, 2004, Filed

No. 53662-1-1

Reporter

122 Wn. App. 382 *; 93 P.3d 176 **; 2004 Wash. App. LEXIS 1151 ***

THE CITY OF SEATTLE, ET AL., *Respondents*, v. YES FOR SEATTLE, *Appellant*.

Subsequent History: Reported at *City of Seattle v. Yes for Seattle*, 121 Wn. App. 1070, 2004 Wash. App. LEXIS 3566 (2004)

Prior History: [***1] Appeal from Superior Court of King County. Docket No: 03-2-28774-1. Date filed: 08/01/2003. Judge signing: Hon. James a Doerty.

Core Terms

initiative, creeks, regulations, ordinances, restoration, initiative power, provisions, severable, trial court, referendum, ballot, argues, controls, enact, legislative authority, requirements, portions, invalid, preelection review, legislative body, land use, Sections, election, cities, courts, rights, voters, valid portion, ballot title, creekside

Case Summary

Procedural Posture

Appellant group sought review of the decision of the Superior Court of King County (Washington), which found in favor of respondents, the city and others, and struck an initiative entitled "Save Seattle Creeks Initiative" from the ballot.

Overview

The group submitted an initiative to the city and the city, along with the other respondents, filed an action to enjoin placement of the initiative on the ballot. The city moved for a declaratory judgment stating that the initiative exceeded the initiative power and the trial court granted the city's motion. The group sought direct review with the supreme court, which denied direct

review and transferred the case to the court, which affirmed the decision. The trial court's review of the initiative was not premature because there would not have been time after the election for the trial court to review the initiative before it took effect. Under those circumstances, pre-election review, limited to whether the initiative was beyond the initiative power, was appropriate. Further, because citizens could not use the initiative process to enact development regulations under the Growth Management Act (GMA), Wash. Rev. Code ch. 36.70A, the issue was whether the initiative was a GMA development regulation, Wash. Rev. Code § 36.70A.030(7). The court concluded that because the initiative placed control on development and land use, the initiative, as a whole, was a development regulation.

Outcome

The judgment was affirmed.

LexisNexis® Headnotes

Governments > Legislation > Initiative & Referendum

Business & Corporate Compliance > ... > Real Property Law > Zoning > Comprehensive Plans

Business & Corporate Compliance > ... > Real Property Law > Zoning > Growth Control

Business & Corporate Compliance > ... > Real Property Law > Zoning > Initiative & Referendum

HN1 Courts, while generally hesitant to conduct pre-election review, may review an initiative to determine whether it is beyond the scope of the initiative power before it is presented to the voters. Initiative rights do not exist when the legislature delegates the power to act exclusively to the legislative authority of a city, as opposed to the city as a corporate entity. The legislature delegated the power to act under the Growth Management Act (GMA), Wash. Rev. Code ch. 36.70A, to the legislative authorities of counties and cities.

Therefore, regulations under the GMA are not subject to the initiative process.

Governments > Legislation > Initiative & Referendum

Business & Corporate Compliance > ... > Real Property Law > Zoning > Initiative & Referendum

HN2 Generally, courts will not review initiatives before they are adopted by voters because courts do not want to interfere with the political process or issue advisory opinions. But an established exception to the general rule is that a court will review an initiative to determine if it is within the scope of the initiative power. The idea that courts can review proposed initiatives to determine whether they are authorized by [Wash. Const. art. II, § 1](#) is nearly as old as the amendment establishing the initiative power itself.

Governments > Legislation > Initiative & Referendum

Governments > Local Governments > Administrative Boards

Business & Corporate Compliance > ... > Real Property Law > Zoning > Initiative & Referendum

HN3 To determine whether a city ordinance is subject to the initiative power, the court must determine whether the measure is a legislative or administrative act and whether the power exercised in the initiative was granted to the city as a corporate entity or exclusively to the legislative authority of the city. The initiative process is not available when the legislature delegates power to act exclusively to the legislative authority of a city, as opposed to the city as a corporate entity.

Governments > Legislation > General Overview

Governments > Legislation > Initiative & Referendum

Governments > Local Governments > Elections

Business & Corporate Compliance > ... > Real Property Law > Zoning > Comprehensive Plans

Business & Corporate Compliance > ... > Real Property Law > Zoning > Initiative & Referendum

HN4 Referendum rights do not exist under the Growth Management Act (GMA), Wash. Rev. Code ch. 36.70A. Duties assigned to the legislative authority under the GMA cannot be carried out by initiative or referendum. The absence of any mention of referenda indicates the GMA's rejection of referendum rights.

Public Health & Welfare Law > Social Services > Community & Economic Development

Business & Corporate Compliance > ... > Real Property Law > Zoning > Comprehensive Plans

Business & Corporate Compliance > ... > Real Property Law > Zoning > Growth Control

HN5 The legislature enacted the Growth Management Act, Wash. Rev. Code ch. 36.70A to address growth and implement comprehensive land use planning. The legislature finds the uncoordinated and unplanned growth, together with a lack of common goals expressing the public's interest in the conservation and the wise use of lands, pose a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by residents of the state. It is in the public interest that citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning. Further, the legislature finds that it is in the public interest that economic development programs be shared with communities experiencing insufficient economic growth, [Wash. Rev. Code § 36.70A.010](#).

Governments > Legislation > Initiative & Referendum

Business & Corporate Compliance > ... > Real Property Law > Zoning > Comprehensive Plans

Business & Corporate Compliance > ... > Real Property Law > Zoning > Growth Control

HN6 The Growth Management Act (GMA), Wash. Rev. Code ch. 36.70A, applies to counties that meet population and growth requirements or that choose to subject themselves to the GMA, Wash. Rev. Code § 39.70A.040(1), (2). The GMA requires the counties, and the cities within them, to develop comprehensive growth plans and development regulations to meet the comprehensive goals, § 36.70A.040(3), (4). The GMA also requires coordination with other counties, [Wash. Rev. Code § 36.70A.100](#).

Governments > Legislation > Initiative & Referendum

Governments > Local Governments > Ordinances & Regulations

Business & Corporate Compliance > ... > Real Property Law > Zoning > Comprehensive Plans

Business & Corporate Compliance > ... > Real Property Law > Zoning > Initiative & Referendum

HN7 Citizens cannot use the referendum process to repeal Growth Management Act (GMA), Wash. Rev. Code ch. 36.70A, ordinances. Under the same rationale,

citizens cannot use the initiative process to enact GMA development regulations.

Business & Corporate Compliance > ... > Real Property Law > Zoning > Comprehensive Plans

HN8 See [Wash. Rev. Code § 36.70A.030\(7\)](#).

Environmental Law > Natural Resources & Public Lands > Fish & Wildlife Protection

Business & Corporate Compliance > ... > Real Property Law > Zoning > Comprehensive Plans

HN9 See [Wash. Rev. Code § 36.70A.030\(5\)](#).

Business & Corporate Compliance > ... > Real Property Law > Zoning > Comprehensive Plans

HN10 See [Wash. Rev. Code § 35.21.090](#).

Governments > Legislation > Enactment

Governments > Legislation > Initiative & Referendum

Governments > Local Governments > Ordinances & Regulations

Business & Corporate Compliance > ... > Real Property Law > Zoning > Comprehensive Plans

Business & Corporate Compliance > ... > Real Property Law > Zoning > Growth Control

HN11 The legislature specifically granted the power to enact development regulations to the legislative bodies of cities and counties, and therefore, the enactment of development regulations cannot be accomplished by initiative. Allowing cities to enact development regulations outside the requirements of the Growth Management Act (GMA), Wash. Rev. Code ch. 36.70A would defeat the comprehensive nature of the GMA and could serve to frustrate its purposes. All enactments that fall under the GMA definition of development regulations are subject to the requirements of the GMA.

Governments > Legislation > Initiative & Referendum

Business & Corporate Compliance > ... > Real Property Law > Zoning > Initiative & Referendum

HN12 Generally, if portions of an initiative are valid, the valid portions must be put on the ballot. The initiative may not be severed, however, if the valid and invalid portions are so connected that the valid portions would be useless to accomplish the legislative purpose. A city is not required to place the entire proposal on the ballot if some of the provisions are valid.

Governments > Legislation > Expiration, Repeal & Suspension

Governments > Legislation > Severability

HN13 Severability clauses are not dispositive: A severability clause may provide the assurance that the legislative body would have enacted remaining sections even if others are found invalid. It is not necessarily dispositive on that question, though. The unconstitutional and constitutional portions may be so interrelated that, despite the presence of a severability clause, it cannot reasonably be believed that the legislative body would have passed the latter without the former. Under this test, the invalid provisions must be grammatically, functionally, and volitionally severable.

Environmental Law > Land Use & Zoning > Initiative & Referendum

Governments > Legislation > Initiative & Referendum

Business & Corporate Compliance > ... > Real Property Law > Zoning > Initiative & Referendum

HN14 The ballot title of an initiative is important because voters will often make their decision based on the title of the act alone, without ever reading the body of it.

Headnotes/Syllabus

Summary

Nature of Action: A city and other parties sought an injunction to keep a local initiative measure off the ballot. The plaintiffs also sought a declaration that the initiative is invalid. The initiative measure specified development restrictions over creeks or their buffers and required certain creek restoration activities.

Superior Court: The Superior Court for King County, No. 03-2-28774-1, James A. Doerty, J., on August 1, 2003, entered a judgment in favor of the plaintiffs.

Court of Appeals: Holding that portions of the initiative were invalid, that the valid portions could not be severed from the invalid portions, and that the entire measure must be kept off the ballot, the court *affirms* the judgment.

Headnotes

WASHINGTON OFFICIAL REPORTS HEADNOTES

[WA\[1\]](#)[1]

Statutes > Initiatives > Validity > Time of Determination
> Before Submission to People > Scope of Initiative
Power

Although courts generally will not rule on the validity of initiatives before they are adopted by the voters, a court may review an initiative before a vote to determine whether it is within the scope of the initiative power of the people.

[WA\[2\]](#) [2]

Statutes > Initiatives > Validity > Time of Determination
> Before Submission to People > Factors > Effective
Date

It is appropriate for a court to review an initiative before a vote to determine whether it is within the scope of the initiative power of the people if the initiative would take effect soon after its enactment and its provisions are retroactive.

[WA\[3\]](#) [3]

Statutes > Initiatives > Local Initiatives > Administrative
or Legislative Nature > Nature of Municipal Power

Whether a municipal ordinance is subject to the initiative power of the people depends on whether the measure is a legislative or administrative act and on whether the power exercised in the initiative was granted to the municipality as a corporate entity or was granted exclusively to the municipality's legislative authority.

[WA\[4\]](#) [4]

Statutes > Initiatives > Local Initiatives > Delegation to
Legislative "Body" or "Authority "

The citizens of a municipality may not, by initiative, legislate on a matter concerning which the legislature has delegated power exclusively to the municipality's legislative authority.

[WA\[5\]](#) [5]

Municipal Corporations > Land Use Controls > Growth
Management Act > Powers > Delegation to Local
Legislative Authority

The Growth Management Act (chapter 36.70A RCW) delegates land use regulatory authority exclusively to the legislative authorities of the local governments that are subject to the Act's requirements.

[WA\[6\]](#) [6]

Municipal Corporations > Land Use Controls > Growth
Management Act > Initiative > Validity

The citizens of a municipality that is subject to the Growth Management Act (chapter 36.70A RCW) may not use the initiative process to enact a "development regulation."

[WA\[7\]](#) [7]

Municipal Corporations > Land Use Controls > Growth
Management Act > Development Regulation > What
Constitutes > Test

For purposes of the Growth Management Act (chapter 36.70A RCW), a "development regulation" is a control placed on the development or use of land.

[WA\[8\]](#) [8]

Municipal Corporations > Land Use Controls > Growth
Management Act > Development Regulation > What
Constitutes > Restrictions on Developments Over Creeks
> Creek Restoration

Legislation that controls development over and the uses that may be made of creeks or their buffers and that requires developers to engage in creek restoration activities constitutes a "development regulation" within the meaning of the Growth Management Act (chapter 36.70A RCW).

[WA\[9\]](#) [9]

Municipal Corporations > Land Use Controls > Growth
Management Act > Development Regulation >
Compliance With Act > Necessity

All enactments constituting "development regulations" within the meaning of the Growth Management Act (chapter 36.70A RCW) must comply with the Act in those jurisdictions that are subject to the Act's requirements. Municipalities that are subject to the Act may not enact development regulations outside of the Act's requirements as that would defeat the comprehensive nature of the Act and could frustrate its purposes.

[WA\[10\]](#) [10]

Statutes > Initiatives > Validity > Invalidity > Partial
Invalidity > Severability > Test

The valid portions of an initiative measure cannot be severed from its invalid portions and separately placed on the ballot if the valid and invalid portions are so connected that the valid portions would be useless to accomplish the legislative purpose.

[WA\[11\]](#) [11]

Statutes > Initiatives > Validity > Invalidity > Partial Invalidity > Severability > Unseverability > Effect

The fact that the valid portions of an initiative measure cannot be severed from the invalid portions does not mean that the entire measure, including the invalid portions, must be placed on the ballot for a vote of the people.

[WA\[12\]](#) [12]

Statutes > Validity > Invalidity > Partial Invalidity > Severability > Severability Clause > Effect

A severability clause in an enactment is not dispositive of whether the valid portions thereof may stand after the invalid portions have been severed. The valid and invalid portions may be so interrelated that, despite the presence of a severability clause, it cannot reasonably be believed that the valid portions would have been passed without the portions found to be invalid. To effectively sever the valid portions from the invalid portions, the invalid portions must be grammatically, functionally, and volitionally severable.

[WA\[13\]](#) [13]

Statutes > Initiatives > Validity > Invalidity > Partial Invalidity > Severability > Factors > Ballot Title

In determining whether the valid portions of an initiative measure are severable from the invalid portions, a court may consider the ballot title, as voters will often make their decision based on the title of the act alone without ever reading the body thereof.

Counsel: *Eric D. "Knoll" Lowney, Paul A. Kampmeier, and Davida Finger* (of *Smith & Lowney*) and *Philip A. Talmadge* (of *Talmadge Law Group, P.L.L.C.*), for appellant.

Thomas A. Carr, City Attorney, and Laura B. Wishik and Robert D. Tobin, Assistants, for respondent City of Seattle.

Susan M. Ridgley and Traci M. Goodwin, for respondent

Port of Seattle.

Robert D. Johns (of *Johns Monroe Mitsunaga, P.L.L.C.*), for respondent Master Builders Association of King and Snohomish Counties.

David A. Crowell, for respondent Seattle-King County Association of Realtors.

Judges: Authored by H Joseph Coleman. Concurring: Mary Kay Becker, William W. Baker.

Opinion by: H Joseph Coleman

Opinion

[*385] [**177] Coleman, J. -- [HN1](#) Courts, while generally hesitant to conduct preelection review, may review an initiative to determine whether it is beyond the scope of [***2] the initiative power before it is presented to the voters. Initiative rights do not exist when the legislature delegates the power to act exclusively to the legislative authority of a city, as opposed to the city as a corporate entity. In [Snohomish County v. Anderson, 123 Wn.2d 151, 868 P.2d 116 \(1994\)](#) and [Whatcom County v. Brisbane, 125 Wn.2d 345, 884 P.2d 1326 \(1994\)](#), the Washington State Supreme Court held that the legislature delegated the power to act under the [Growth Management Act](#) (GMA), chapter 36.70A RCW, to the legislative authorities of counties and cities. Therefore, regulations under the GMA are not subject to the initiative process. We affirm the trial court's decision striking the initiative from the ballot because (1) preelection review was proper to determine if the initiative was within the scope of the initiative power, (2) the initiative is a development regulation under the GMA, and (3) the invalid provisions of the initiative are not severable from the valid provisions.

FACTS

On July 11, 2002, Yes for Seattle submitted Initiative 80 (I-80) to the city of Seattle. On July 18, 2002, the city attorney issued the ballot title "Save Seattle [***3] Creeks Initiative" for I-80. In November 2002, Yes for Seattle submitted the necessary signatures to King County records and elections for verification. The Seattle City Council reviewed the initiative and held public meetings concerning the measure. Under the city charter, the council had three options: (1) accept the [**178] initiative and enact it into law, (2) reject the initiative and submit it to the voters, or (3) enact an alternative measure and present both its version and

the [*386] initiative to the voters. On February 24, 2003, the city council passed Resolution 30577 to place I-80 on the September 16, 2003 primary election ballot.

The city of Seattle, together with the other respondents, filed suit to enjoin placement of I-80 on the September 2003 ballot. Yes for Seattle moved to dismiss or to stay the suit until after the election. Yes for Seattle also moved for a [CR 56\(f\)](#) continuance. The trial court denied Yes for Seattle's motions.

On July 2, 2003, the City moved for a declaratory judgment declaring that I-80 exceeded the initiative power. In an oral decision, the trial court granted the City's motion, striking I-80 from the ballot. The court entered final judgment on August 1, 2003. Yes [***4] for Seattle sought direct review with the Washington State Supreme Court. The Supreme Court denied direct review and transferred the case to the Court of Appeals, Division One.

ANALYSIS

[1][1] We first address whether the trial court erred in conducting preelection review to determine if I-80 was beyond the scope of the initiative power. [HN2](#) Generally, courts will not review initiatives before they are adopted by voters because courts do not want to interfere with the political process or issue advisory opinions. [Phila. II v. Gregoire, 128 Wn.2d 707, 716, 911 P.2d 389 \(1996\)](#). But an established exception to the general rule is that a court will review an initiative to determine if it is within the scope of the initiative power. [Phila. II, 128 Wn.2d at 717](#). "The idea that courts can review proposed initiatives to determine whether they are authorized by [article II, section 1, of the state constitution](#) is nearly as old as the amendment [establishing the initiative power] itself." [Phila. II, 128 Wn.2d at 717](#). Therefore, preelection review was proper for the limited purpose of determining whether I-80 was within [***5] the initiative power.

[*387] [2][2] Notwithstanding this well-established exception, Yes for Seattle, relying on [Washington State Labor Council v. Reed, 149 Wn.2d 48, 65 P.3d 1203 \(2003\)](#), argues that the court's review of I-80 was premature. In *Reed*, the Washington Supreme Court declined to conduct preelection review of a referendum because there was "insufficient time to engage in the deliberations that a case of this magnitude demands" and because an immediate decision was not required by the dates of implementation." [Reed, 149 Wn.2d at 53](#) (quoting Wash. State Supreme Court Order (Sept. 23,

2002)). In *Reed* no provisions of the initiative were to take effect until six weeks after the election. Yes for Seattle's initiative, on the other hand, would take effect within five days after the election. See Seattle City Charter, art. IV, § I.F. The initiative would also apply retroactively to permits already issued. See I-80 § 13(B). Thus, there would not be time after the election for the court to review the initiative before it took effect. Under these circumstances, preelection review, limited to whether the initiative was beyond the initiative power, was appropriate.

[3][3] [4][4] Next, we address whether the [***6] trial court erred in finding that I-80 was beyond the scope of the initiative power. [HN3](#) To determine whether a city ordinance is subject to the initiative power, the court must determine whether the measure is a legislative or administrative act and whether the power exercised in the initiative was granted to the city as a corporate entity or exclusively to the legislative authority of the city. [Lince v. City of Bremerton, 25 Wn. App. 309, 311, 607 P.2d 329 \(1980\)](#). The initiative process is not available when the legislature delegates power to act exclusively to the legislative authority of a city, as opposed to the city as a corporate entity. [State ex. rel. Guthrie v. City of Richland, 80 Wn.2d 382, 384, 494 P.2d 990 \(1972\)](#). The parties agree that I-80 is legislative. Thus, the issue is where the legislature granted the power to act.

[*388] [5][5] [6][6] The trial court determined that I-80 was in conflict with the GMA.¹ In *Anderson* and [***179]

¹ [HN5](#) The legislature enacted the GMA to address growth and implement comprehensive land use planning. [Brisbane, 125 Wn.2d at 347](#).

"The legislature finds the uncoordinated and unplanned growth, together with a lack of common goals expressing the public's interest in the conservation and the wise use of our lands, pose a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by residents of this state. It is in the public interest that citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning. Further, the legislature finds that it is in the public interest that economic development programs be shared with communities experiencing insufficient economic growth." [RCW 36.70A.010](#).

[HN6](#) The GMA applies to counties that meet population and growth requirements or that choose to subject themselves to the GMA. [RCW 36.70A.040\(1\), \(2\)](#). The GMA requires the counties, and the cities within them, to develop comprehensive

Brisbane, the Washington State Supreme Court held that the legislature delegated the authority to act under the GMA to county legislative bodies. In *Anderson*, a citizens' group filed a referendum to repeal an ordinance adopting [***7] countywide planning policies pursuant to the GMA. The Supreme Court held that [HN4](#) referendum rights do not exist under the GMA. The court concluded that duties assigned to the legislative authority under the GMA "cannot be carried out by initiative or referendum. For example, the statute directs the 'legislative authority' to convene meetings and establish processes. These responsibilities cannot be performed by the exercise of a 'yes/no' vote." [Anderson, 123 Wn.2d at 156](#). The court also held that that "[t]he absence of any mention of referenda indicates the [GMA's] rejection of referendum rights." [Anderson, 123 Wn.2d at 157](#).

[***8] In *Brisbane*, the Supreme Court again addressed referendum rights under the GMA. There, a citizens' group attempted to repeal a temporary critical areas ordinance under the GMA by referendum. The Supreme Court held that the legislature granted the power to act under the GMA to the county legislative body and, therefore, acts under the GMA are not subject to referendum. The court noted that "it would be difficult to balance the various [*389] interests contemplated by the Legislature" through the referendum process. [Brisbane, 125 Wn.2d 345 at 351](#). The court concluded:

The Whatcom County Home Rule Charter may grant the people the right of referendum over ordinances enacted by the County. However, allowing exercise of that right over ordinances enacted pursuant to the [Growth Management Act](#) would run counter to and frustrate the declared purposes of the Act to prevent uncoordinated and unplanned growth and to encourage conservation and wise use of land.

[Brisbane, 125 Wn.2d at 355](#).

Yes for Seattle urges us to distinguish this case from *Anderson* and *Brisbane* because in those cases, the referenda were attempting to repeal ordinances enacted [***9] under specific requirements of the GMA. The City argues that this is a distinction without a difference. We agree with the City. Under [Anderson](#) and [Brisbane HN7](#) citizens cannot use the referendum

growth plans and development regulations to meet the comprehensive goals. [RCW 36.70A.040\(3\), \(4\)](#). The GMA also requires coordination with other counties. [RCW 36.70A.100](#).

process to repeal GMA ordinances. Under the same rationale, citizens cannot use the initiative process to enact GMA development regulations.²

Because citizens cannot use the initiative process to enact development regulations under the GMA, the issue is whether I-80 is a GMA development regulation. Under the GMA,

[HN8](#) "Development regulations" or "regulation" means the controls placed on [***10] development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. A development regulation [**180] does not include a decision to approve a project permit application, as defined in [RCW 36.70B.020](#), even though the decision may be expressed [*390] in a resolution or ordinance of the legislative body of the county or city.

[RCW 36.70A.030\(7\)](#). The GMA also defines critical areas: [HN9](#) "'Critical areas' include the following areas and ecosystems: (a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas." [RCW 36.70A.030\(5\)](#).

[7] [7] [8] [8] Yes for Seattle argues that while some portions of I-80 are aimed at development, development regulation is only incidental to creek restoration and I-80 therefore does not fall under the definition of [***11] the GMA. While the GMA does not list creek restoration specifically, the definition of a development regulation is sufficiently broad to encompass the provisions of I-80. Under the GMA, a development regulation is a control placed on development or land use. The precise issue, therefore, is whether I-80 places controls on development or land use. The trial court provided a good summary of the development and land use impacts of I-80:

² Yes for Seattle also argues that if the GMA governs I-80, the Growth Management Hearing Board (GMHB), and not the courts, has jurisdiction to determine if the initiative is appropriate. The GMHB, however, has jurisdiction only over *adopted* ordinances and not proposed ordinances. Additionally, the GMHB does not have jurisdiction to review the scope of initiative powers. See [RCW 36.70A.280](#).

The initiative places controls of development both directly and indirectly. It controls development directly by:

. Prohibiting future development over creeks or their buffers or over the historic corridors of creeks that have been diverted into pipes. I-80, Sections 3, 7D and E.

. Requiring developers to "assist in creek restoration when building a major creekside development," and making that requirement a condition on any development approval issued for the project. Section 4A.

. Requiring an applicant for a major development on creekside property to submit a "creek restoration plan as part of its application," which must include a City approved engineering plan for the restoration. Section 4B.

. Requiring specific actions as [***12] part of restoration efforts, including such things as, "Planting native vegetation and removing invasive species," "removal of fish barriers," and "daylighting the creek . . . if the creek presently flows through a pipe or culvert. . . ." Section 6A.

[*391] . Changing what is required for a permit applicant to have vested rights, and doing so retroactively. Section 13.

3. The initiative controls development near creeks indirectly by:

. Requiring the City to adopt a "Long-Term Creek Restoration Plan," which must include prohibiting development over creeks, their buffers, or the historic corridors of creeks that have been diverted into pipes. Sections 3, 7D & E, 8.

. Requiring that the City "ensure that development potential on the site is not lost due to the restoration project" and mandating that the City, "shall grant open space credit." Section 4C.

. Requiring the City to "ensure that creeks are restored concurrently with major creekside development." Section 5B.

. Directing that, when a creek has been "directed though a pipe" or "contains a fish passage barrier," then "the City shall require a property owner to daylight such creek and/or remove such barrier(s) [***13] during a major creekside development, or

after giving required notice shall carry out the same and bill the costs to the property owner." Section 5B.

. Establishing mandatory policies for the City and barring the City from granting a development approval that is inconsistent with those policies. Sections 7 and 8.

. Requiring the City to "adopt regulations to further reduce stormwater pollution and impacts to creek ecosystems," and to "update Seattle's existing creek protection regulations including its critical areas regulations and shoreline master program." Section 10.

Clearly, much of I-80 places controls on development and land use, and consequently, I-80 as a whole is a development regulation under the GMA. The holdings of *Anderson* and *Brisbane* are thus controlling. We conclude that I-80 is beyond the initiative power [**181] and the trial court did not err in striking it from the ballot.³

[***14] [*392] [9] [9] Yes for Seattle argues that even if I-80 is a development regulation, Seattle, as distinct from its legislative authority, has both statutory and constitutional authority to regulate creeks. Yes for Seattle points to *RCW 35.21.090*, which delegates the authority to construct dikes, levees, and embankments:

HN10 Any city or town shall have power to provide for the protection of such city or town, or any part thereof, from overflow, and to establish, construct and maintain dikes, levees, embankments, or other structures and works, or to open, deepen, straighten or otherwise enlarge natural watercourses, waterways and other channels, including the acquisition or damaging of lands, rights-of-way, rights and property therefore, within or without the corporate limits of such city or town,

³Yes for Seattle relies heavily on the recent decision in *Maleng v. King County Corrections Guild, 150 Wn.2d 325, 76 P.3d 727 (2003)*, to argue that any doubts about the scope of an initiative must be resolved in favor of allowing the citizens to initiate the legislation and, therefore, the trial court should have allowed the initiative to be presented to the voters. Courts "liberally construe initiative proposals so as to give them effect, and a hypertechnical construction which deprives them of effect is to be avoided." *Maleng, 150 Wn.2d at 334*. This does not change our analysis, however, because I-80 is clearly a development regulation under the broad definition of the GMA.

and to manage, regulate and control the same.

Additionally, Yes for Seattle points to the police powers derived from the state constitution and cites [RCW 35.21.090](#), which gives the city power to regulate the pollution of streams, to argue that the people of Seattle have the authority to regulate creeks through initiatives. Yes for Seattle argues [***15] that I-80 falls clearly within these powers because it aims at protecting the city from flood damage and reducing pollution in the city's creeks. The City, on the other hand, argues that citing additional powers of the city cannot circumvent the GMA requirements. [HN11](#) The legislature specifically granted the power to enact development regulations to the legislative bodies of cities and counties, and therefore, the enactment of development regulations cannot be accomplished by initiative. Allowing cities to enact development regulations outside the requirements of the GMA would defeat the comprehensive nature of the GMA and could serve to frustrate its purposes. Thus, Yes for Seattle's reliance on alternative [*393] statutory authority is misplaced.⁴ All enactments that fall under the GMA definition of development regulations are subject to the requirements of the GMA. The trial court, therefore, properly concluded that the initiative was in conflict with the GMA and an invalid exercise of the initiative power.

[***16] [\[10\]](#) [10] [\[11\]](#) [11] The final issue we address is whether the trial court erred in finding that the valid portions of the initiative were not severable. [HN12](#) Generally, if portions of an initiative are valid, the valid portions must be put on the ballot. [Priorities First v. City of Spokane, 93 Wn. App. 406, 412, 968 P.2d 431 \(1998\)](#). The initiative may not be severed, however, if the valid and invalid portions are so connected that the valid portions would be "useless to accomplish the legislative purpose." [Priorities First, 93 Wn. App. at 412](#). Here, Yes for Seattle argues that the City was required to place the entire proposal on the ballot. In support of its contention, Yes for Seattle cites several out-of-state cases that conclude that if portions of the initiative are valid, the entire proposal must be placed on the ballot. See [In re Initiative Petition 362, 1995 OK 77, 899 P.2d 1145, 1152-53 \(Okla. 1995\)](#); [Wyo. NARAL v. Karpan, 881 P.2d 281, 289 \(Wyo. 1994\)](#); [In re Initiative Petition 358, 1994 OK 27, 870 P.2d 782, 787 \(Okla. 1994\)](#);

⁴The City also contends that I-80 conflicts with the [State Environmental Policy Act](#) (SEPA), chapter 43.21C RCW. Because we conclude that I-80 conflicts with the GMA, it is not necessary to determine whether it is in conflict with SEPA.

[Town of Hilton Head Island v. Coalition of Expressway Opponents, 307 S.C. 449, 415 S.E.2d 801, 805 \(S.C. 1992\)](#); [***17] [Dade County v. Dade County League of Muns., 104 So. 2d 512, 515 \(Fla. 1958\)](#). The City contends that these cases are inapposite. Indeed, no Washington case supports this proposition, and in fact, the Washington courts' discussion of the severability of initiative provisions is contrary to the rule proposed by Yes for Seattle. Therefore, a [**182] city is not required to place the entire proposal on the ballot if some of the provisions are valid.

[\[12\]](#) [12] [\[13\]](#) [13] Yes for Seattle also argues that the City was a least required to put the valid portions of the initiative on [*394] the ballot. Yes for Seattle points to I-80's severability clause:

The provisions of this ordinance are declared to be separate and severable. The Citizens of Seattle declare that they support each of the provisions of this Initiative independently, and their support for this Initiative would not be diminished if one or more of its provisions were to be held invalid. Thus, if any one or more of the provisions of this Initiative is declared to be contrary to law, then such provision or provisions shall be null and void and severed from the rest of this ordinance, and all other provisions of this Initiative shall [***18] remain valid and enforceable.

I-80 § 14. [HN13](#) Severability clauses, however, are not dispositive:

A severability clause may provide the assurance that the legislative body would have enacted remaining sections even if others are found invalid. It is not necessarily dispositive on that question, though. The unconstitutional and constitutional portions may be so interrelated that, despite the presence of a severability clause, it cannot reasonably be believed that the legislative body would have passed the latter without the former.

[McGowan v. State, 148 Wn.2d 278, 294-95, 60 P.3d 67 \(2002\)](#) (citations omitted). Under this test, "the invalid provision[s] must be grammatically, functionally, and volitionally severable." [McGowan, 148 Wn.2d at 295](#). As discussed previously, the development aspects of I-80 are pervasive, with most sections of the initiative dealing with development. The nondevelopment sections on their own would not accomplish the goals of the initiative, as development and land use controls play the central role in the initiative. Additionally, the ballot title,

which described the initiative to those signing the [***19] proposal, characterizes the initiative as primarily concerning development. [HN14](#) The ballot title of an initiative is important because "voters will often make their decision based on the title of the act alone, without ever reading the body of it." [Citizens for Responsible Wildlife Mgmt. v. State, 149 Wn.2d 622, 639, 71 P.3d 644 \(2003\)](#). Here the ballot title stated:

[*395] Initiative Measure Number 80 concerns

Restoring Seattle's creeks through permitting conditions, mandates, and other measures.

This measure would:

require developers of "major creekside development" to daylight waterways, remove fish barriers, and take other restoration measures. It provides exemptions and incentives. Development is prohibited over creeks, creek "buffers," and "historic corridors" if piped creeks cannot be restored at their location. The measure changes the vesting rule and is retroactive in some circumstances. City mandates include: adopting a plan; maintaining current restoration efforts; and restoring creeks and funding creek restoration on public and private properties.

Given the nature of the initiative and the ballot title, the valid portions of the initiative [***20] are not severable from the invalid portions.⁵

The decision of the trial court is affirmed.

Baker and Becker, JJ., concur.

Review denied at [153 Wn.2d 1020 \(2005\)](#).

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⁵Our decision does not preclude the citizens of Seattle from bringing another initiative to enact the nondevelopment portions of the initiative.

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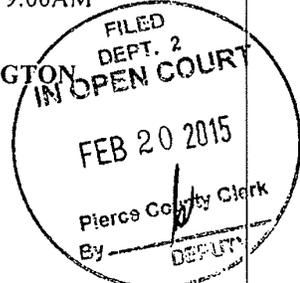
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The Honorable Katherine M. Stolz
Hearing Date: February 20, 2015
Hearing Time: 9:00AM

**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

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EXHIBIT 2

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Summary Judgment” and the exhibit thereto;

d. “Declaration of Robin Farris in Support of Plaintiffs’ Motion for Summary Judgment” and the exhibits thereto;

e. “Declaration of Jeffrey Paul Helsdon in Support of Plaintiffs’ Motion for Summary Judgment” and the exhibits thereto; and

f. “Affidavit of Paul V. Avelar in Support of Plaintiffs’ Motion for Summary Judgment” and the exhibits thereto;

4. “Defendants’ Opposition to Plaintiffs’ Motion for Summary Judgment” and the accompanying

a. “Declaration of Linda Dalton in Opposition to Plaintiffs’ Motion for Summary Judgment” and the exhibits thereto;

b. “Declaration of Tony Perkins in Support of Defendants’ Response to Plaintiffs’ Motion for Summary Judgment” and the exhibits thereto;

c. “Declaration of Lori Anderson in Support of Defendants’ Response to Plaintiffs’ Motion for Summary Judgment” and the exhibit thereto; and

d. “Declaration of Marcus S. Owens in Support of Defendants’ Opposition to Plaintiffs’ Motion for Summary Judgment” and the exhibits thereto;

5. “Plaintiffs Reply to Defendants’ Response in Opposition to Plaintiffs’ Motion for Summary Judgment” and the accompanying

a. “Reply Declaration of Barnaby Zall in Support of Plaintiffs’ Motion for Summary Judgment” and the exhibits thereto;

b. “Reply Declaration of Steven Anderson in Support of Plaintiffs’ Motion for Summary Judgment”; and

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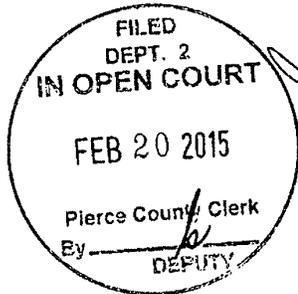
c. "Affidavit of Paul V. Avelar in Support of Plaintiffs' Reply to Defendants' Response in Opposition to Plaintiffs' Motion for Summary Judgment" and the exhibits thereto; and

6. The filings and pleadings herein.

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

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

SO ORDERED this 20th day of Feb. 2015.



[Handwritten Signature]
Judge Katherine M. Stolz

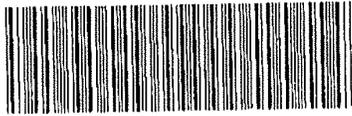
~~PROPOSED~~ Order Granting Plaintiffs' Motion for Summary Judgment- 3

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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,

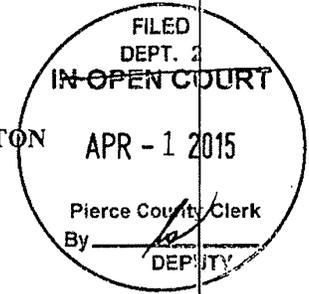
v.

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 3

0078

6190

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 **INSTITUTE FOR JUSTICE**

5
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 *auth. 3/31/2015 9:00 am*
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
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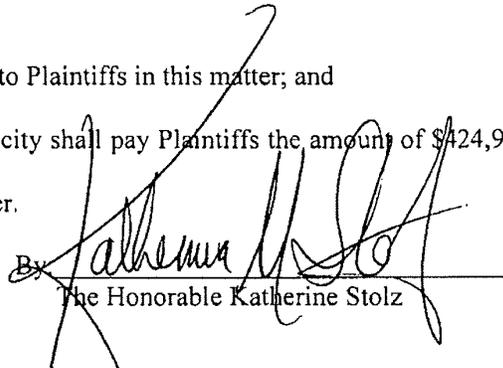
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II. ORDER

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.

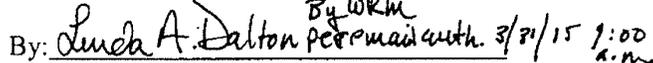
By: 
 The Honorable Katherine Stolz

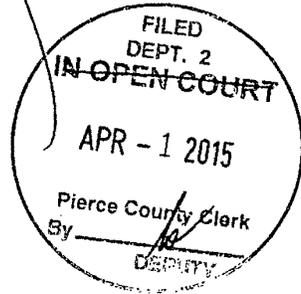
PRESENTED BY:

INSTITUTE FOR JUSTICE

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

ROBERT W. FERGUSON
 Attorney General

By:  ^{By WRM}
 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

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 10500 NE 8th Street, Suite 1760
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4/2/2015

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PROOF OF SERVICE

I, Casey Dainsberg, hereby certify:

That on March 31st, 2015, I submitted this **Stipulation and [Proposed] Order Regarding Award of Attorneys' Fees and Costs** to be filed with the Pierce County Superior Court by messenger service to the following address:

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

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

Linda Dalton
lindad@atg.wa.gov
Assistant Attorney General

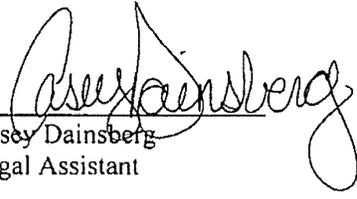
And

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

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

DATED this 31st day of March, 2015.

INSTITUTE FOR JUSTICE

By: 
Casey Dainsberg
Legal Assistant

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



Staying ahead of the challenges

Strategic Plan (2012 – 2022)

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



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

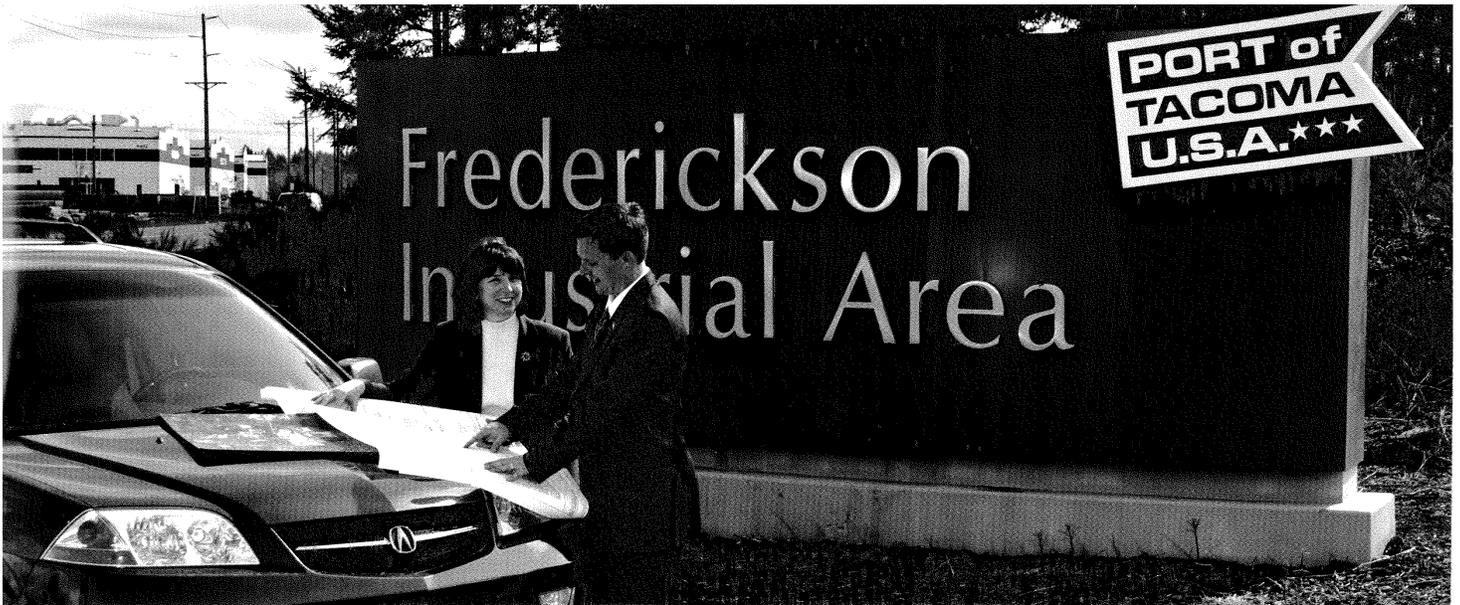


What's next

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 Tidelands 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?’”

For more information about the Port of Tacoma’s Frederickson Industrial Area, contact Derrick Urquhart at 253-383-9407.

Frederickson: Community Effort Brings a Hot Property to Market



Wood products are manufactured at the Ostermann & Scheiwe, U.S.A. plant at Frederickson Industrial District.

In order to develop Pierce County to its greatest potential, a cooperative effort is needed between the County, the Port, and the City of Tacoma. This team has been successful in bringing many new businesses to the area, and is currently at work again to develop the Port's Frederickson Industrial District.

The Port purchased 537 acres of the industrially zoned Frederickson property, located 13 miles south of Commencement Bay, in 1968 for use by companies which don't need direct

access to marine terminals. Some of the companies currently located in the Frederickson area include Olympic Pipeline, Spanaway Lumber, Ostermann & Scheiwe, U.S.A., Inc., Puget Sound Power, and A.M.A. Timber Products Ltd.

Unlike other Port property, which cannot be sold, the Frederickson area is for sale or lease. Since acquisition by the Port, some 200 acres have been sold.

In order to make the remaining property more attractive to potential

businesses, Frederickson is now being improved with water and sewer service. A major County road also is being extended to provide greater access to the property.

The total cost of extending Canyon Road will be \$4.7 million, of which the Port will pay 48% and the County will pay the remaining 52%. The project, which extends Canyon Road from 166th Street to 192nd Street, is expected to be completed by the Fall of 1988.

"It is really helpful when public agencies are able to cooperate for the greater good of the community," said Port of Tacoma Commissioner Jack Fabulich. "Improving the Frederickson property benefits everyone: the Port benefits by revenue from selling or leasing the land; the County benefits by taxes paid on such development; and the citizens of Pierce County benefit by the increased job opportunities such developments create."

In addition to the road, the Port is also joining with the County on an \$8.2 million sewer project that will include the Frederickson area. It is also cooperating with the City of Tacoma on installing a water line. Puget Sound Bank and another private developer are also involved in the utilities

'It is really helpful when public agencies are able to cooperate for the greater good of the community,' said Port of Tacoma Commissioner Jack Fabulich.

improvements, making the project a public/private partnership as well.

"Frederickson is a very important

piece of property, because it is the only large industrially zoned area of land in Pierce County," Fabulich said. "Because the Port is interested in creating the kind of development that will be an asset to the County, we belong to the Clover Creek Community Council, which meets monthly to ensure good communication between developers and the local community."

Frederickson has many advantages, he noted. "First of all, it's ready to go; other properties in the area would need to be re-zoned. Another advantage is that a developer has a choice in the size of land parcels. Add to that the fact that Frederickson is serviced by Tacoma City Light, which is the lowest-cost utility in the U.S., and you have one highly attractive piece of property." ■



An aerial view shows portions of Frederickson, with Ostermann & Scheiwe in the foreground and Spanaway Lumber in the background.

PORT HISTORY, PART II

1960 - present



“Progress’ was the word in every aspect of the Port of Tacoma’s Industrial development program.”

~A.E. Blair, Port Commissioner, 1961 Annual Report



1961 aerial view of the Port

Milestones

- Port Industrial Yard activated (former Tacoma Naval Station, purchased by the Port in 1959 for \$2 million from the federal government as surplus property)
- The Port's Industrial Park Addition open for business (60 acres, southwest of Milwaukee Way and Lincoln Ave)
- The pioneer channel for the 3,800-foot extension of the Hylebos Waterway completed. Dredge material used as fill at present day Arkema, Weyerhaeuser Log, and Pony Lumber
- 1,200-foot Sitcum Waterway pier completed (Pier 7), two 45-ton cranes moved from the Port Industrial Yard
- United Grain Terminal pier reconstructed to support new elevator and vessel capacity



1963 aerial view of the Port Industrial Waterway

1962

Revenues	Port Assets	Port Liabilities
\$1,400,000	\$17,100,000	\$7,000,000

Milestones

- Port begins “cutting down” Hylebos Hill for fill material for over 100 acres of industrial development along the expanded Hylebos Waterway
- Hylebos Waterway widening and straightening completed to allow the passage of the Puget Sound’s largest ship ever to enter regular service – the *Argyll*, a 106-foot beamed bulk carrier delivering salt to chemical plants
- Pacific Lime plant operational on the Port-Industrial Waterway (later named the Blair Waterway)
- Port begins negotiations and preliminary engineering with the City of Tacoma for utility relocations anticipating the 6,000-foot extension of the Port Industrial Waterway and the 3,800-foot extension of the Hylebos Waterway



“The Port, with a \$5,233,000 budget for 1963, looks forward to continued progress, including the dredging of additional waterways to provide more deep-water frontage for new industry, the filling of more low-lying lands so that industry may find more and better property here, the development of better terminal facilities in order that new industry may receive its raw materials and ship its products across Port of Tacoma piers.”

~Conclusion from the 1962 Port of Tacoma Annual Report

Milestones

- Puyallup River dredged to provide enough fill to create a 50-acre tract of land northwest of Lincoln Avenue
- Port of Tacoma Road opened to traffic from Highway 99
- Fire at Terminal 7 results in a “crash” program of repairs on the pier’s two berths
- Plans completed for a third berth of 600-feet at Terminal 7 on the Sitcum Waterway
- Federal Government announces it will participate in the extension of the Hylebos and Port Industrial Waterways, adding almost four miles of industrial waterfront to the Port
- The Tacoma Tideflats landfill, a municipal landfill of household and industrial waste north of the Puyallup River between Lincoln Ave and Highway 99, is closed

“In the Port’s Industrial Development District, dredging of extensions to the Hylebos and Port-Industrial (Blair) Waterways continued apace...(w)hen the job is done, almost four miles of deepwater industrial frontage will have been added to the district, plus approximately 1,500 acres of highly valued industrial land, reclaimed from sub-marginal areas by filling with dredged material to bring the property up to a suitable grade.”

~Maurice Raymond, 1965 Annual Report



1966 aerial view expanding the Port Industrial Waterway

1967

Revenues	Port Assets	Port Liabilities
\$4,300,000	\$35,400,000	\$19,100,000

Milestones

- Comprehensive Scheme of Harbor Improvements modified to include the “Nisqually Flats”, a 2,500-acre site at the Nisqually River delta, where the river meets the Puget Sound, to provide terminal facilities large and deep enough to handle the “ever-growing size of the world’s merchant ships”. This project is later dropped.
- Hylebos and Port Industrial Waterway extensions are completed, creating 1,500 acres of highly valued industrial land reclaimed from “sub-marginal areas by filling with dredged material”
- 80,000 SF of warehouse development occurred on Piers One and Seven
- Bulk Cargo facility at Terminal 7 completed



1967 aerial view of the Sitcum Waterway

Milestones

- Began reclaiming 20 acres of land behind Terminal 7
- The first alumina storage dome completed on Terminal 7 in 1967
- Terminal 4 on the Port Industrial Waterway combination container and general cargo operations completed
- Completed construction of 6.5 miles of new road, 6.75 miles of new storm drainage and water lines underway to promote industrial district growth around the expanded Port Industrial and Hylebos Waterways
- Port establishes the Frederickson Industrial Development District, by purchasing a 510-acre area south of the Tideflats
- Terminal 4 dedicated, featuring a 1,242-foot concrete pier, 150,000 square foot warehouse and 27-acres of paved container storage



*1967 aerial view of the expanded Port Industrial Waterway,
soon after renamed the Blair Waterway*

Milestones

- Capacity at the bulk liquid terminal doubled
- Port Industrial Waterway renamed the “Blair Waterway” in honor of long-time Port Commissioner A.E. “Archie” Blair, who passed away in 1969
- Completed the Port’s 450-car railroad marshalling yard and tracks, totaling over 13.5 miles in length between the Sitcum and Blair Waterways (present day North Intermodal Yard)

“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



1973 view of the Pierce County Terminal's construction

1972

Revenues	Port Assets	Port Liabilities
\$7,600,000	\$81,400,000	\$49,000,000

Milestones

- Construction of the second alumina storage dome at Terminal 7 completed
- Container crane at Terminal 4 (“Big Red”) completed and goes into active service
- Sold \$16 million in Pollution Control bonds. The Port was the first port authority in Washington State to finance an environmental control facility for local industry
- The City-County-Port coordinating coalition was formed to facilitate infrastructure and land development
- The Pierce County Terminal Complex opens at the southeastern end of the Blair Waterway, featuring an 800-foot wharf, 100,000 square foot warehouse, 50,000 square foot manufacturing building and 12 acres of paved cargo area



1973 aerial view of the Port's Sitcum Waterway and Terminal 7

Milestones

- Began the 900-foot extension of Terminal 7's wharf to a 2,700-foot total length. The water depth of the Sitcum is -50 feet at low tide
- Issued \$44 million in pollution control bonds to assist Kaiser Aluminum and Chemical Company and the St. Regis Paper Company
- Port purchased 41 acres of waterfront property from the Milwaukee Railroad adjacent to the Sitcum Waterway after eight years of negotiations
- Two high-speed cranes were installed at Terminal 4 on the Blair Waterway capable of handling 20 containers per hour
- The "Big Red" crane was moved from Terminal 4 to Terminal 7's berth D



1976 aerial view of the Port's Sitcum Waterway and Terminal 7

1977

Revenues	Port Assets	Port Liabilities
\$17,400,000	\$123,500,000	\$73,300,000

Milestones

- The Tideflats booms with its industrial connection to the Alaska pipeline project. A barge slip was created in the Blair Waterway turning basin to efficiently load pipe destined for Alaska by barge
- Continental Grain Company Terminal completed on Schuster Parkway– the first shipload sets a world's record for the largest load ever from one facility
- TOTE begins Tacoma operations at Terminal 7
- Chrysler Corporation began importing Dodge Colts and Plymouth Arrows at Pierce County Terminal
- West Coast Orient Lumber Company sets up a facility in Tacoma on 65 acres of land
- Port moves its offices to Slip Two on the Blair Waterway



1976 aerial view of the Port's Blair-Hylebos Peninsula

"The manpower required for this activity, along with the continued progress of shipbuilding in the area, turned the traffic situation into a headache, but one borne easily because of the aspirin of prosperity and high employment".

~from the Port of Tacoma 1975 Annual Report

Milestones

- 1978, Puyallup Tribe of Indians claim title to 12 acres of land occupied by the Port since 1950
- Terminal 7's Berth A and B rehabilitated with pre-stressed concrete
- Port develops the "Alaska Terminal" for TOTE at Terminal 7, featuring a roll-on/roll-off berth and 28 acres of paved yard
- A new container crane was installed at berth D to accommodate containerized cargos at Terminal 7
- Port purchased 114.7 acres of waterfront acres from the Milwaukee Railroad
- Fredrickson land sales were in high demand. Port, City and County began cooperative efforts to provide major road access, water and sewer services to the area

We are ushering in a period of change for the Port of Tacoma

~Richard Dale Smith, Executive Director, 1976 Annual Report



1982 aerial view of the Port's new Administration Building and Sitcum Waterway

1982

Revenues	Port Assets	Port Liabilities
\$29,400,000	\$176,500,000	\$69,200,000

Milestones

- The 52-acre East Blair Terminal was completed, and Mazda began importing vehicles through the Port
- Port pioneers the intermodal rail concept by opening the North Intermodal Yard, the west coast's first dockside rail facility
- 55-acre terminal backup land was developed at the 128-acre PCT
- Construction completed on a 43,000 square foot Port administrative office building at the head of the Sitcum Waterway
- Slip 2 was filled for Terminal 4 expansion, its moorage relocated
- Port awarded contract for the 47-acre fill west of Milwaukee Way
- ITS leased Terminal 7-D from the Port
- "The Tacoma Advantage" is coined by the Port

“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



1982 aerial view of the Port's new Administration Building and Sitcum Waterway

1982

Revenues	Port Assets	Port Liabilities
\$29,400,000	\$176,500,000	\$69,200,000

Milestones

- The 52-acre East Blair Terminal was completed, and Mazda began importing vehicles through the Port
- Port pioneers the intermodal rail concept by opening the North Intermodal Yard, the west coast's first dockside rail facility
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- Slip 2 was filled for Terminal 4 expansion, its moorage relocated
- Port awarded contract for the 47-acre fill west of Milwaukee Way
- ITS leased Terminal 7-D from the Port
- "The Tacoma Advantage" is coined by the Port



1983 aerial view of Terminal 4

Milestones

- Port established Foreign Trade Zone #86
- Sea-Land (Tacoma Terminals, Inc), signed a 30-year terminal operating and lease agreement with the Port
- TOTE relocated to a 33-acre terminal on the Blair Waterway
- Terminal 4 expanded to 30 acres
- Panasonic begins operations at a new 151,000 square foot warehouse and distribution center
- The Tacoma Dome is completed and the Tacoma-Pierce County Chamber of Commerce launched its “New Beginnings” campaign to aggressively market the area for new business and industry
- EPA declares Commencement Bay a Superfund site
- Cranes arrived for Sea-Land; the first time fully-built cranes were shipped across the Pacific Ocean

“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



1985 aerial view of the Port

1987

Revenues	Port Assets	Port Liabilities
\$39,400,000	\$262,400,000	\$205,300,000

Milestones

- Sea-Land opened its 76-acre site on the Sitcum Waterway and container growth booms by 495%
- Maersk Line starts calling at the Port
- Port developed the 9.5-acre estuary Gog-le-hi-te in 1985
- North Intermodal Yard expanded
- The South Intermodal Yard opened on 25-acres, adjacent to the Sea-Land site
- Free Trade Zone #86 expanded to 620-acres
- Port opened the World Trade Center (the 38th WTC in the world) to capitalize on the Port's growing opportunities in international markets
- A Port-Private partnership with Northwest Building Corporation builds an industrial park on more than 100 acres of Port property



1987 view of Terminal 3 construction

Milestones

- Maersk Line moved its operations to Terminal 4 from Terminal 7
- Terminal 3 begins construction featuring 950-foot pier, 25-acre container yard and access to the North Intermodal Yard
- Tribal Agreement allowed for construction of Terminal 3, and extension of Sea-Lands' 1,600-foot pier by 1,100-feet
- In 1987, United Grain Terminal demolished to make way for the North Intermodal Yard expansion
- The "Milwaukee Fill" began environmental cleanup and expansion of Sea-Land's terminal
- Four-lane road extension completed to Frederickson Industrial Area completed
- President George H.W. Bush signed the 1988 Puyallup Indian Land Claims Settlement Agreement

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

~John McCarthy, Port Commissioner, 1991 Winter Pacific Gateway



1992 aerial view of Terminals 3 and 4 on the Blair Waterway

1992

Revenues	Port Assets	Port Liabilities
\$52,500,000	\$348,500,000	\$123,500,000

Milestones

- In 1991, Evergreen Line started calling at the Port's Terminal 4
- Port topped a million TEUs for the first time in 1991
- The Blair Waterway 2010 Plan is finalized and its findings published in the Winter edition of the Port's *Pacific Gateway* magazine. The plan identified opportunities for Port growth along the Blair Waterway, including terminals, waterway modifications, road and rail infrastructure, and other industrial development supporting the Port's mission.

“There are two ways to paint the Port of Tacoma in the dying light of the 20th century: "We're in big trouble," and "The future never looked brighter.”

~Tacoma News Tribune, *1999 and Beyond: Port's Vision of 21st century is a double image*, December 26, 1999, Al Gibbs



1999 aerial view of the Port

1997

Revenues	Port Assets	Port Liabilities
\$57,800,000	\$466,700,000	\$174,200,000

Milestones

- 1995, Tacoma became the first port in the United States to launch an Internet web site
- SR 509 route opened in January 1997, and the Blair Bridge was closed two days later marking a milestone for "unlocking" the potential development on the Blair Waterway
- The Puyallup Tribe opened its Emerald Queen Casino on the Blair Waterway in 1996
- Hyundai Merchant Marine signed a 30-year lease with the Port for a new terminal on the upper Blair Waterway. The \$100 million, 60-acre terminal, complete with a dockside intermodal yard, was opened in May 1999
- Port completed its Vision 2020 Study in 1999, predicting by the year 2020, containerized cargo volumes through Puget Sound could reach 6 million TEU

“Like the Port, our region is working hard to invent its future. Look no farther than the City of Tacoma’s Thea Foss Waterway. Today, the area is emerging as a textbook illustration of urban revitalization...The Port of Tacoma is proud to help shape our region’s future as we continue to invent our own.”

~Dick Marzano, Port Commissioner, 2002 Annual Report



2001 aerial view of the Port of Tacoma Road Overpass

Milestones

- Port completed the 20-acre expansion of Washington United Terminals. With the expansion, the terminal is 80-acres and on-dock rail with 52 double-stack car capacity
- The \$33 million Port of Tacoma Road Overpass opens—the first FAST Corridor project to be completed
- APM Terminals opened the new \$9.2 million pier extension that lengthens the pier by 600 feet-- from 1,600 to 2,200 feet
- The Port started clean up under EPA order of about two-thirds of the three-mile long Hylebos Waterway
- The Port completed a \$4 million upgrade of its North Intermodal Yard
- The Port began dredging Sitcum Waterway to a depth of 51 feet

2002

Revenues	Port Assets	Port Liabilities
\$72,900,000	\$534,700,000	\$157,800,000



2003 aerial view of the Blair Waterway

Milestones

- Kaiser closes its Tacoma plant
- The Port of Tacoma Commission approved a contract with Kaiser Aluminum to purchase the company's closed aluminum smelter located on 96 acres
- Port invested in the establishment of the University of Washington Tacoma Institute of Technology and creates the Port of Tacoma Endowed Chair
- The \$12 million terminal expansion TOTE terminal is completed, making room for the line's two new ships that entered service in 2003
- Port and Auto Warehousing Company (AWC) opened the new \$40 million, 144-acre Marshall Avenue Auto Facility
- Port dedicates the 'Auto Bridge', connecting the Blair Terminal to the Marshall Avenue Auto Facility



2004 arrival of Pierce County Terminal's first four cranes

Milestones

- The Port and the Puyallup Tribe of Indians signed a cooperative economic development agreement
- Port industrial building space under lease broke the 1,000,000 square foot threshold
- Four of the world's largest container cranes destined for Pierce County Terminal arrive fully assembled
- Operational gridlock strikes LA/LB ports as vessels stack up at anchor and steamship lines seek alternative gateways
- The Comprehensive Tideflats Transportation Study is finalized, providing road and rail infrastructure recommendations for capital improvements to the rail and roadway systems that will meet the Port's capacity and future growth needs

“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



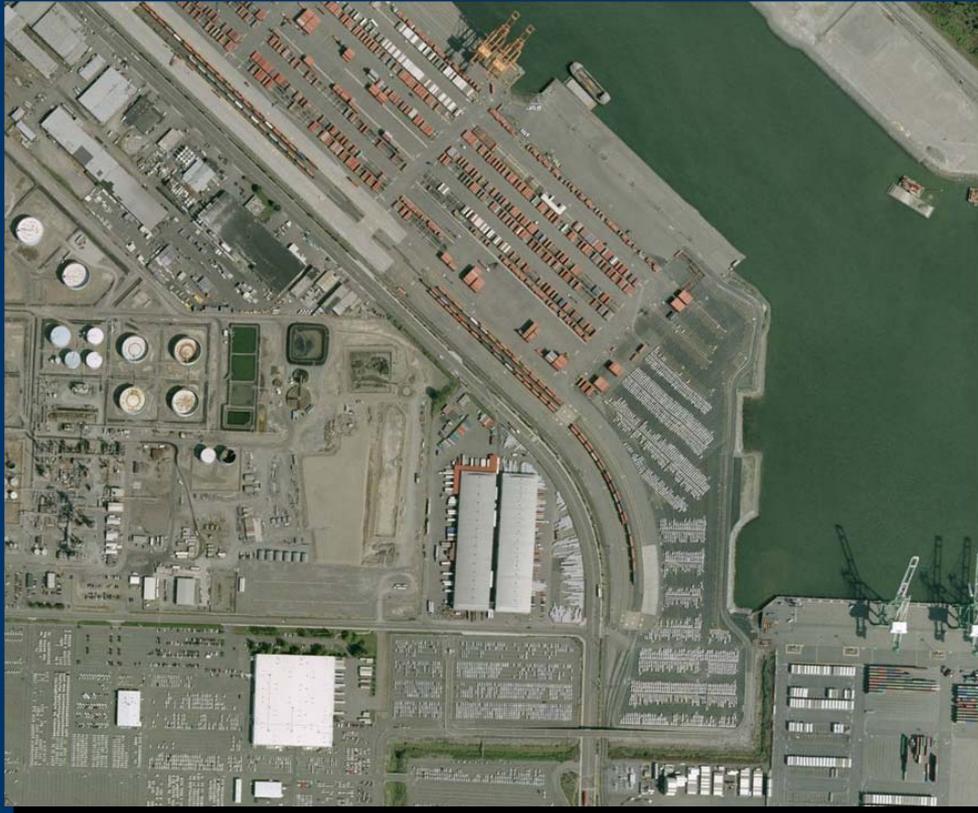
2007 aerial view of the Blair Waterway

2007

Revenues	Port Assets	Port Liabilities
\$97,800,000	\$1,038,800,000	\$590,100,000

Milestones

- Pierce County Terminal opened as a 171-acre container terminal featuring on-dock rail and two berths at the head of the Blair Waterway
- International Transportation Service, Inc (ITS) moved from Terminal 7 to a refurbished Husky Terminal 93-acre facility on Terminals 3-4
- Olympic Container Terminal opened for Yang Ming Lines on the Sitcum Waterway's Terminal 7, with 54 acres and on-dock intermodal at the Port's North Intermodal Yard
- Slip One was filled and capped with Hylebos Waterway dredge material
- Carlile Transportation Systems, one of Alaska's largest trucking companies, moved to the Port



2007 Washington United Terminal's 20-acre expansion near the Blair Waterway Turning Basin

Milestones

- The Port Commission directed that all Port-operated terminal activity use ultra-low sulfur diesel fuel (ULSD).
- The Port of Tacoma breaks the 2-million TEU milestone.
- Capacity improvements at Bullfrog Junction and Chilcote Junction completed.
- Washington United Terminals exercises their 20 acre expansion, but upon its delivery subleases the expansion area for auto storage.
- The Tribe's economic development arm, Marine View Ventures (MVV) announces a partnership with SSA; a terminal operating company that had previously purchased the Reichhold property.



2007 aerial view of the Port of Tacoma

Milestones

- WUT announces purchase of a 7th crane triggering a 1000' non-preferential wharf extension under their lease option. The Port and WUT subsequently agree on a 600' preferential berth extension.
- Port announces the NYK Lines lease for the YTTI Terminal.
- The Port Commission authorizes eminent domain action as respects 22 property owners on the Blair Hylebos Peninsula
- Port announces the TOTE lease for the expanded and relocated terminal at the northern end of the Blair-Hylebos Peninsula.
- Port, Puyallup Tribe of Indians, Marine View Ventures, and SSA announce four agreements focusing on cooperation and coordination of marine terminal development on the Blair-Hylebos Peninsula.

Milestones

- Initial 30% cost estimates for the Blair-Hylebos redevelopment program are delivered in mid April 2008. The refined estimates are substantially higher than anticipated.
- Environmental review under a SEPA EIS begins for the Blair Hylebos redevelopment program
- The D Street Overpass opens, de-conflicting the at-grade rail crossing at the southern end of the Foss Waterway and opening up the Foss Peninsula to unimpeded traffic.

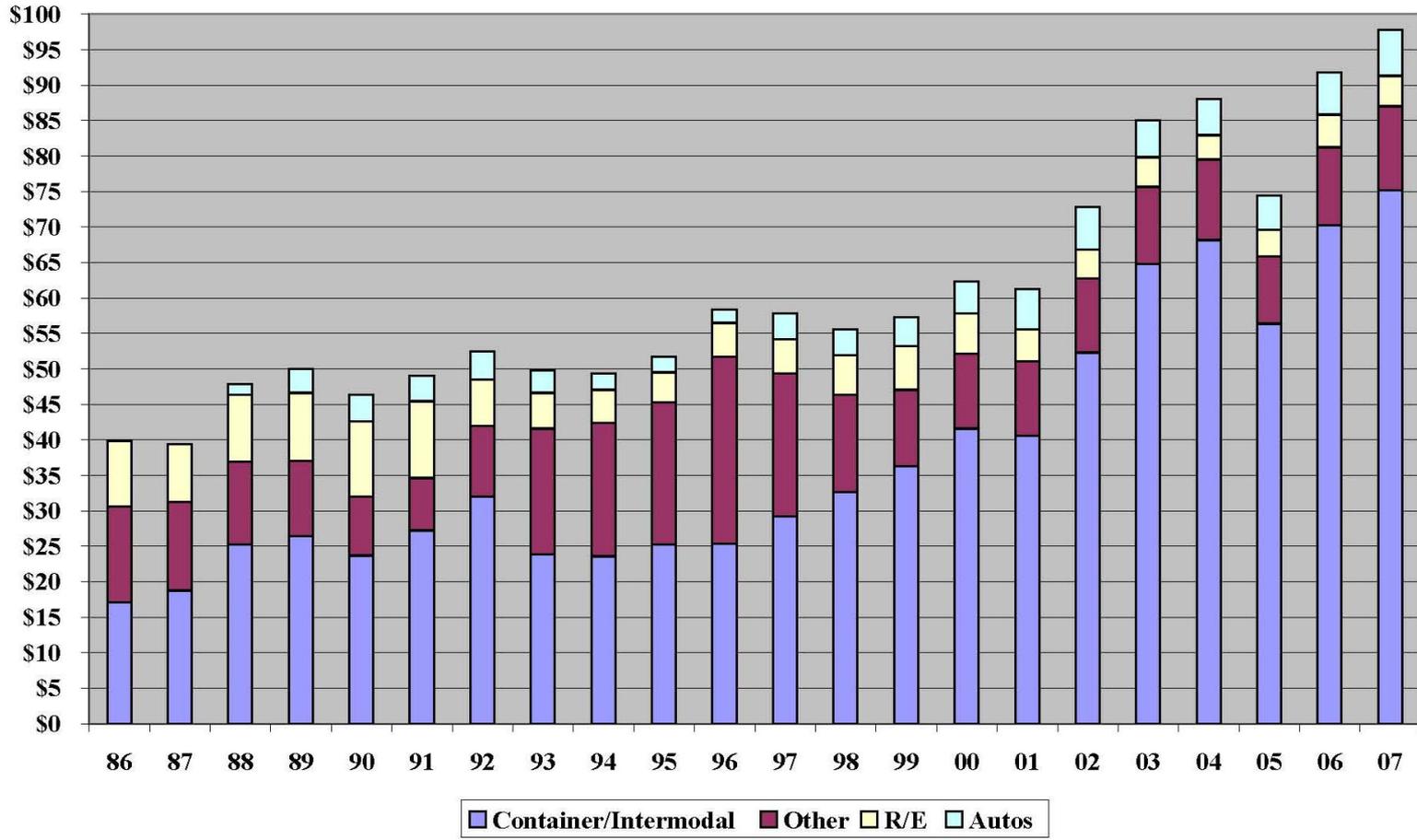


2008 opening of the D Street Overpass

Port of Tacoma Financial History

Port of Tacoma - Revenue by Major Groups

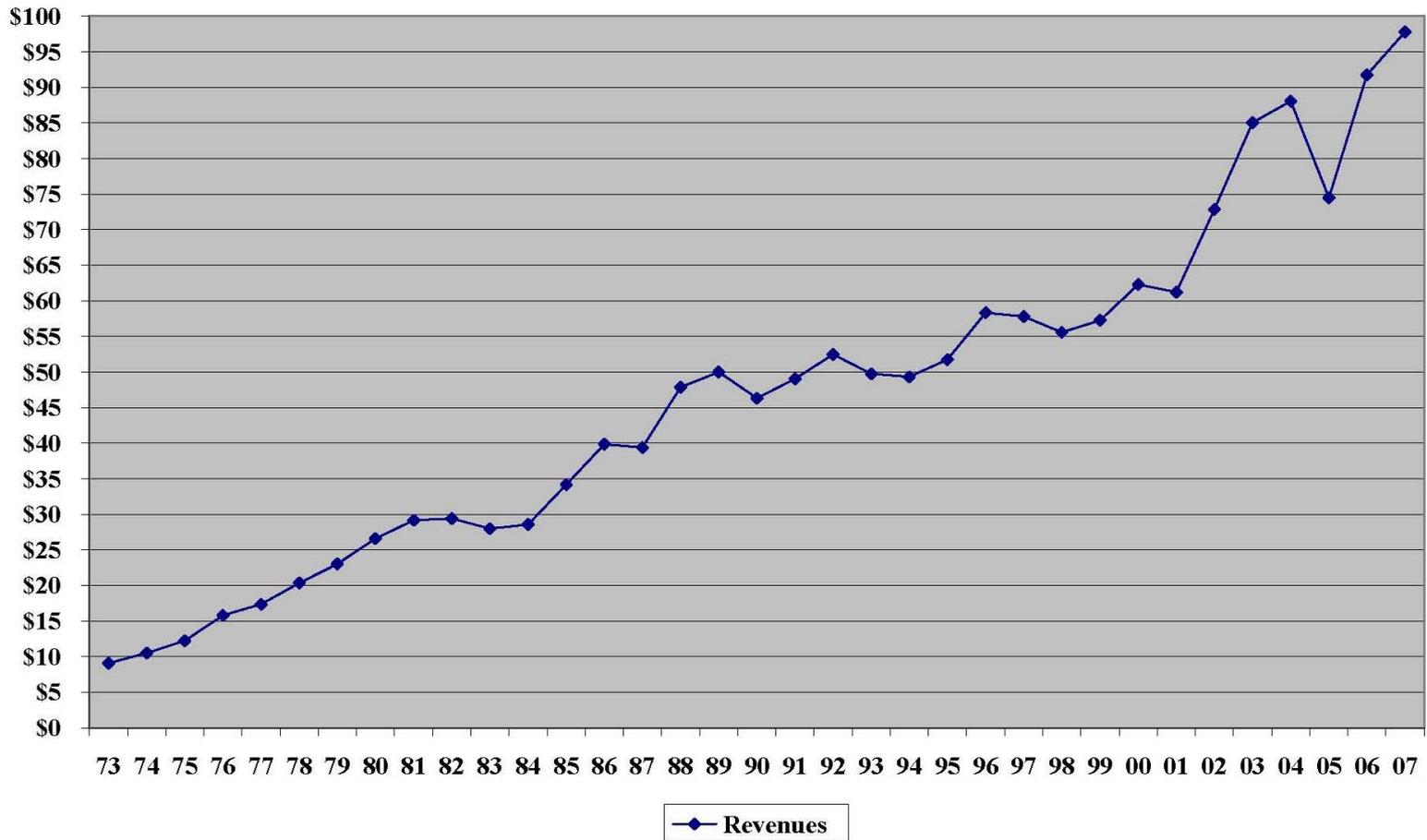
\$ millions



Port of Tacoma Financial History

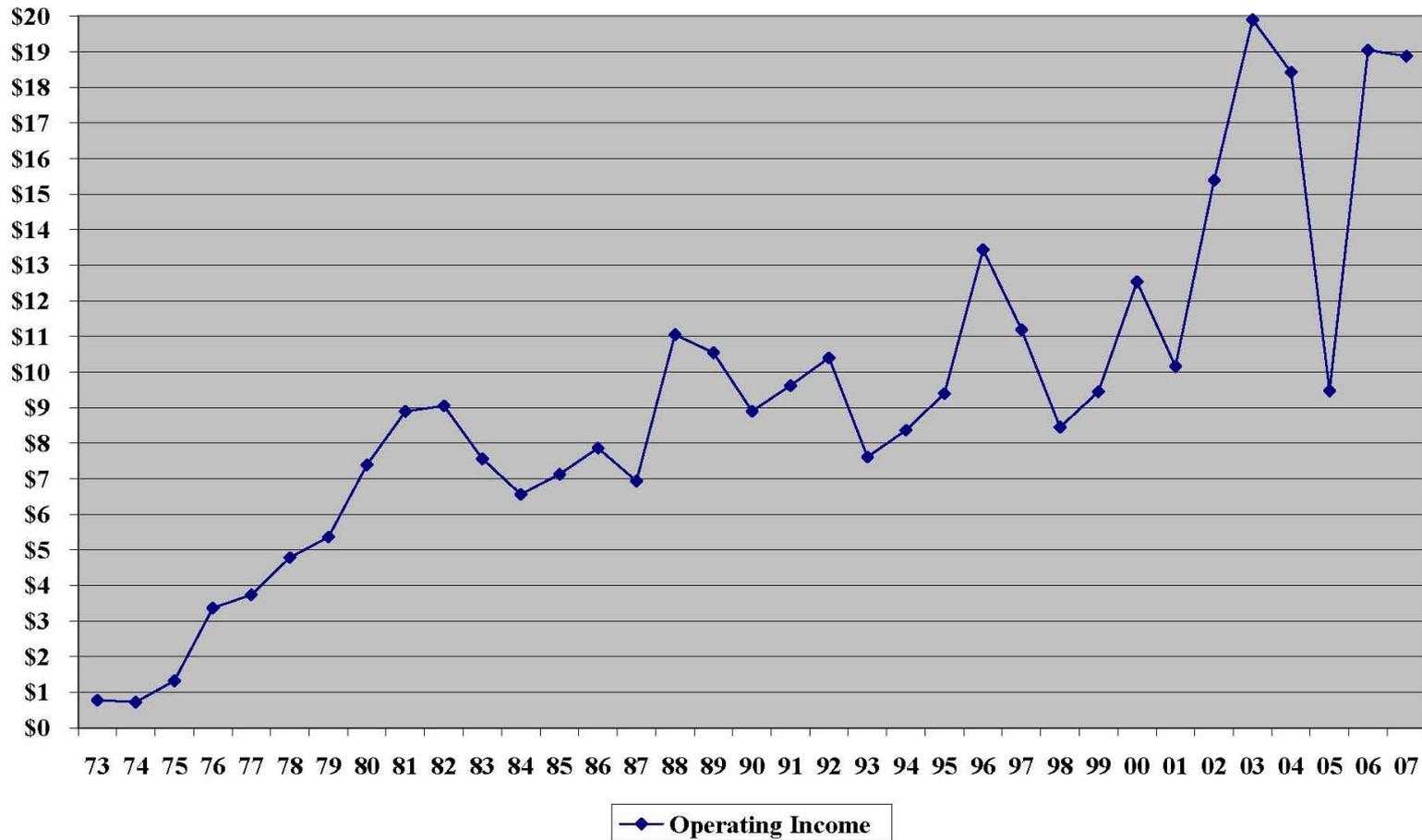
Port of Tacoma - Revenues

\$ millions



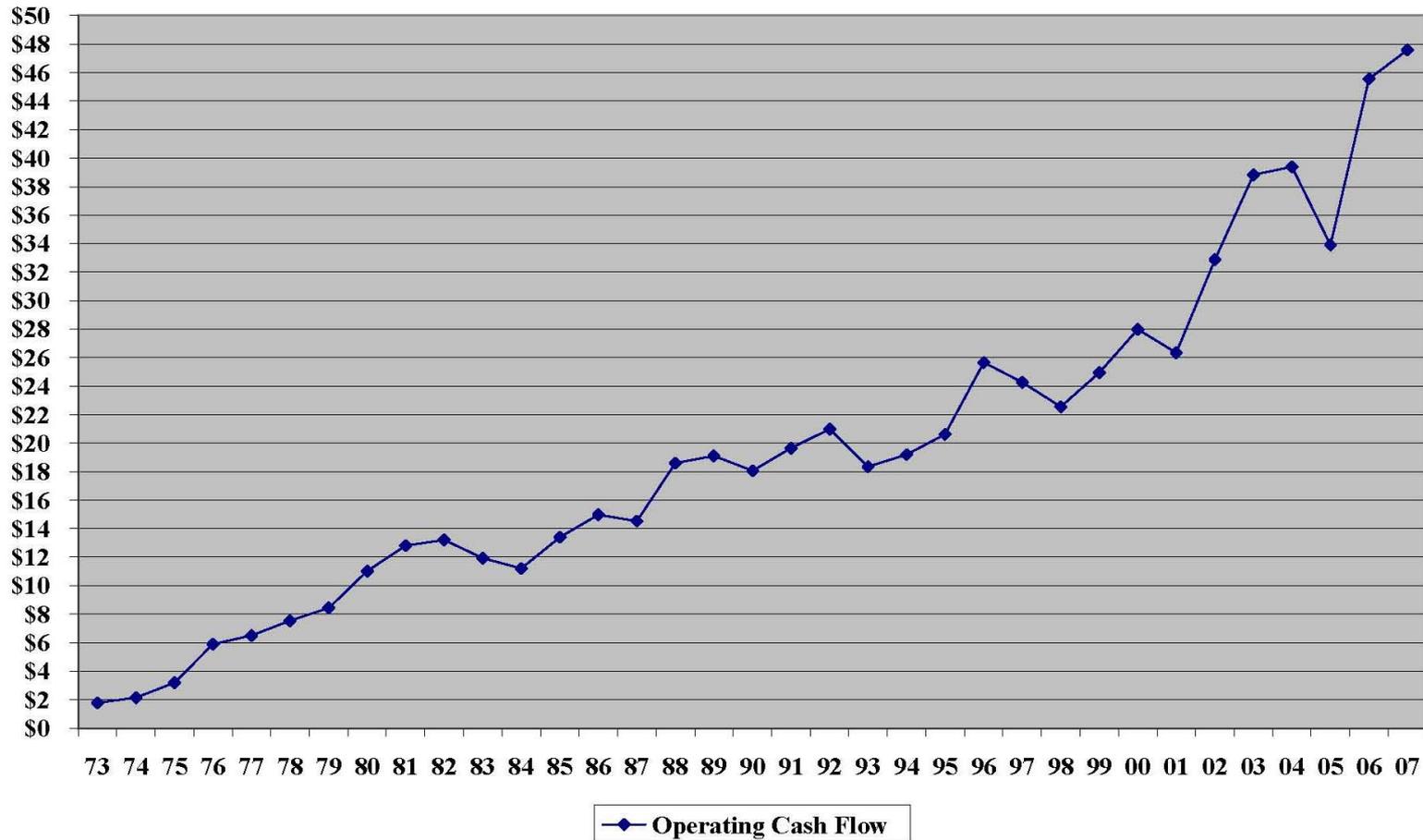
Port of Tacoma Financial History

Port of Tacoma - Operating Income (Includes Depreciation)



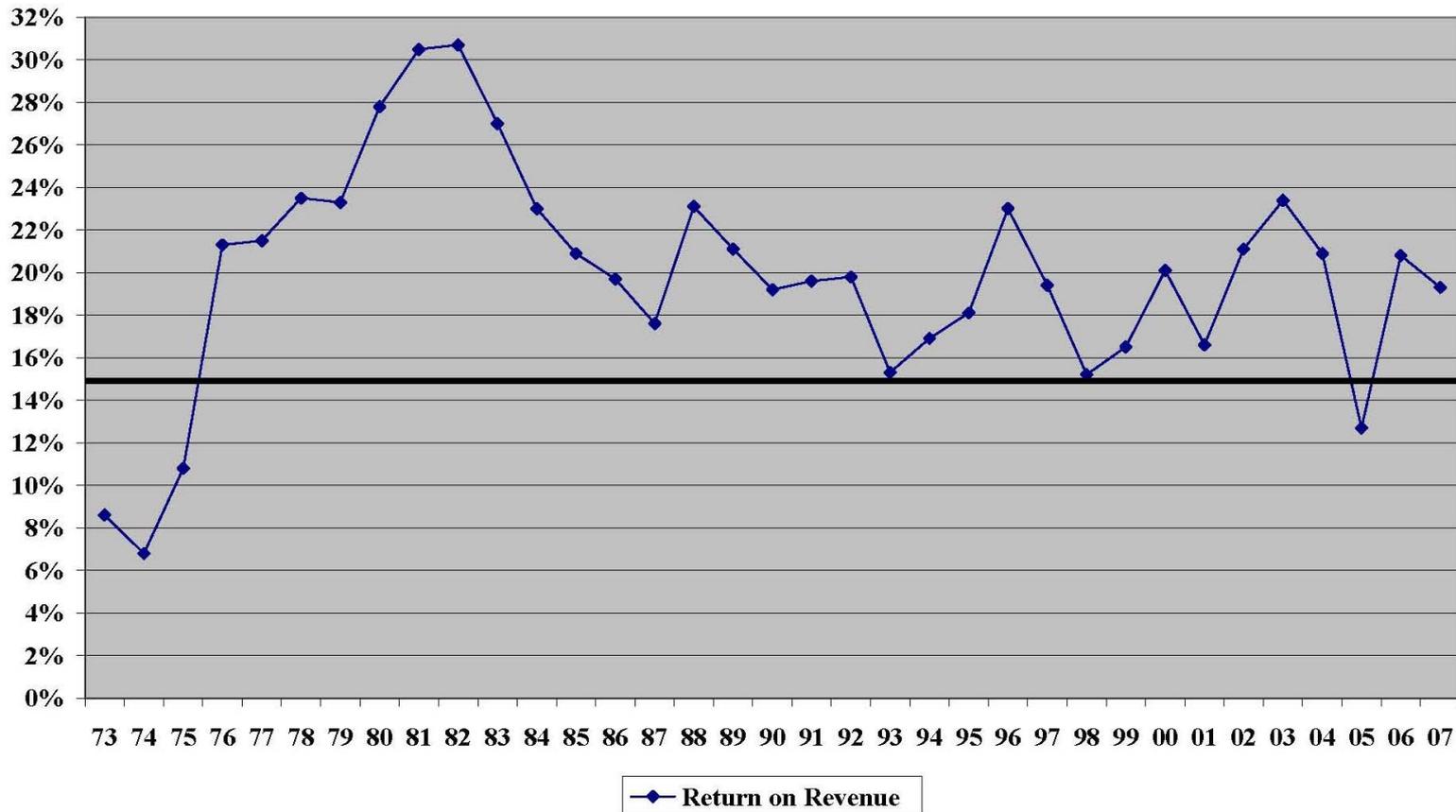
Port of Tacoma Financial History

Port of Tacoma - Operating Cash Flow (Excludes Depreciation)



Port of Tacoma Financial History

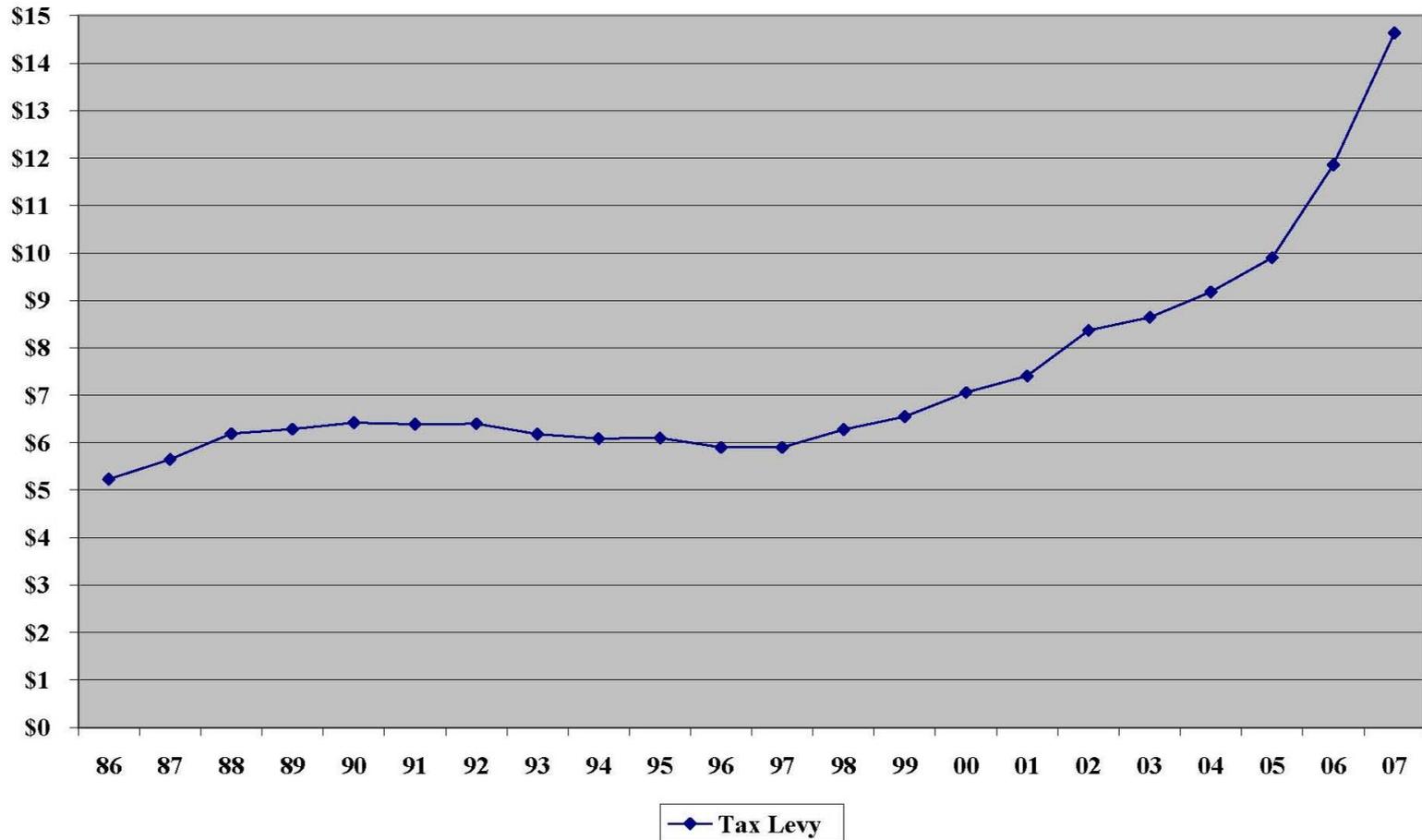
Port of Tacoma - Return on Revenue (Operating Income Divided by Revenue)



Port of Tacoma Financial History

Port of Tacoma - Tax Levy

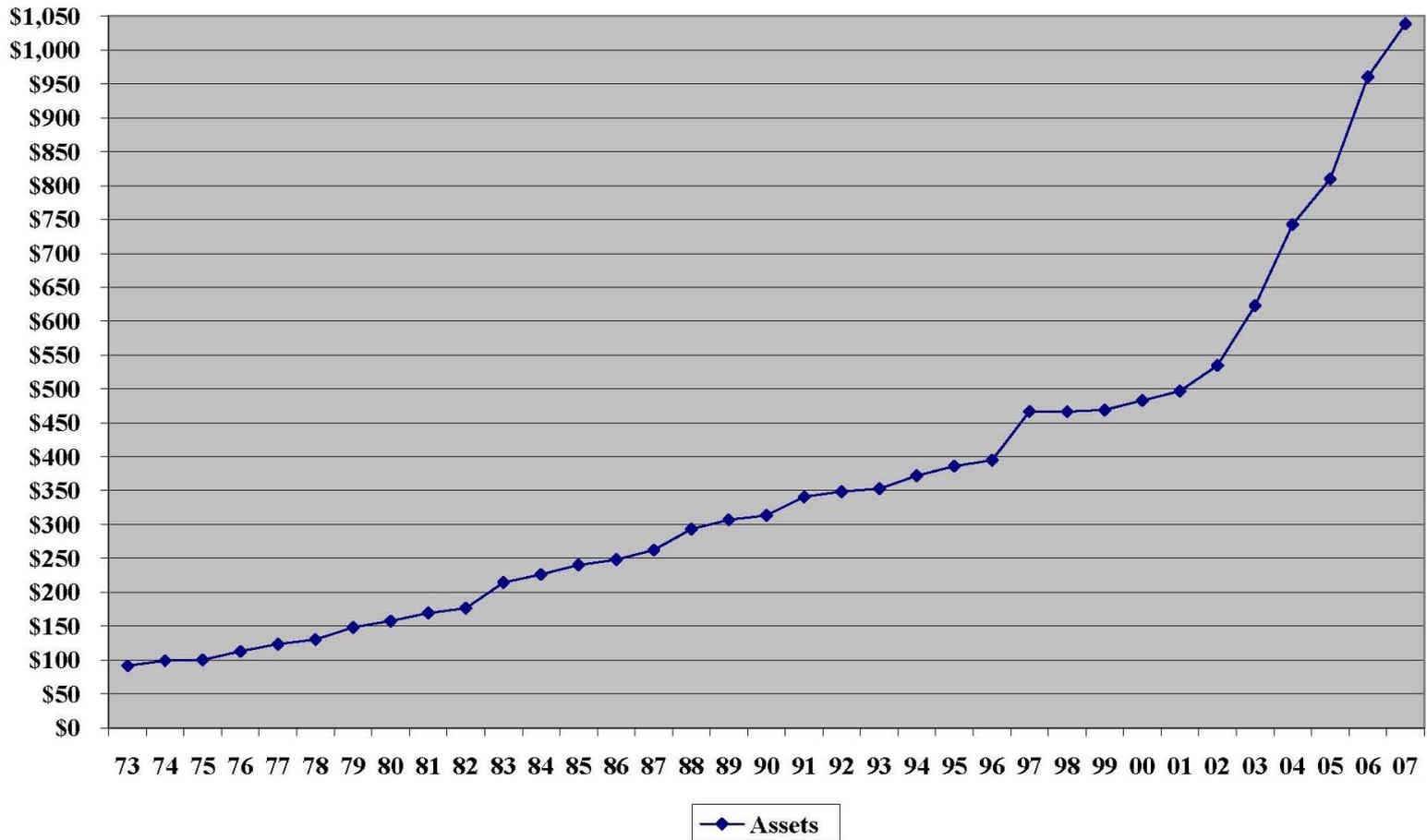
\$ millions



Port of Tacoma Financial History

Port of Tacoma - Assets

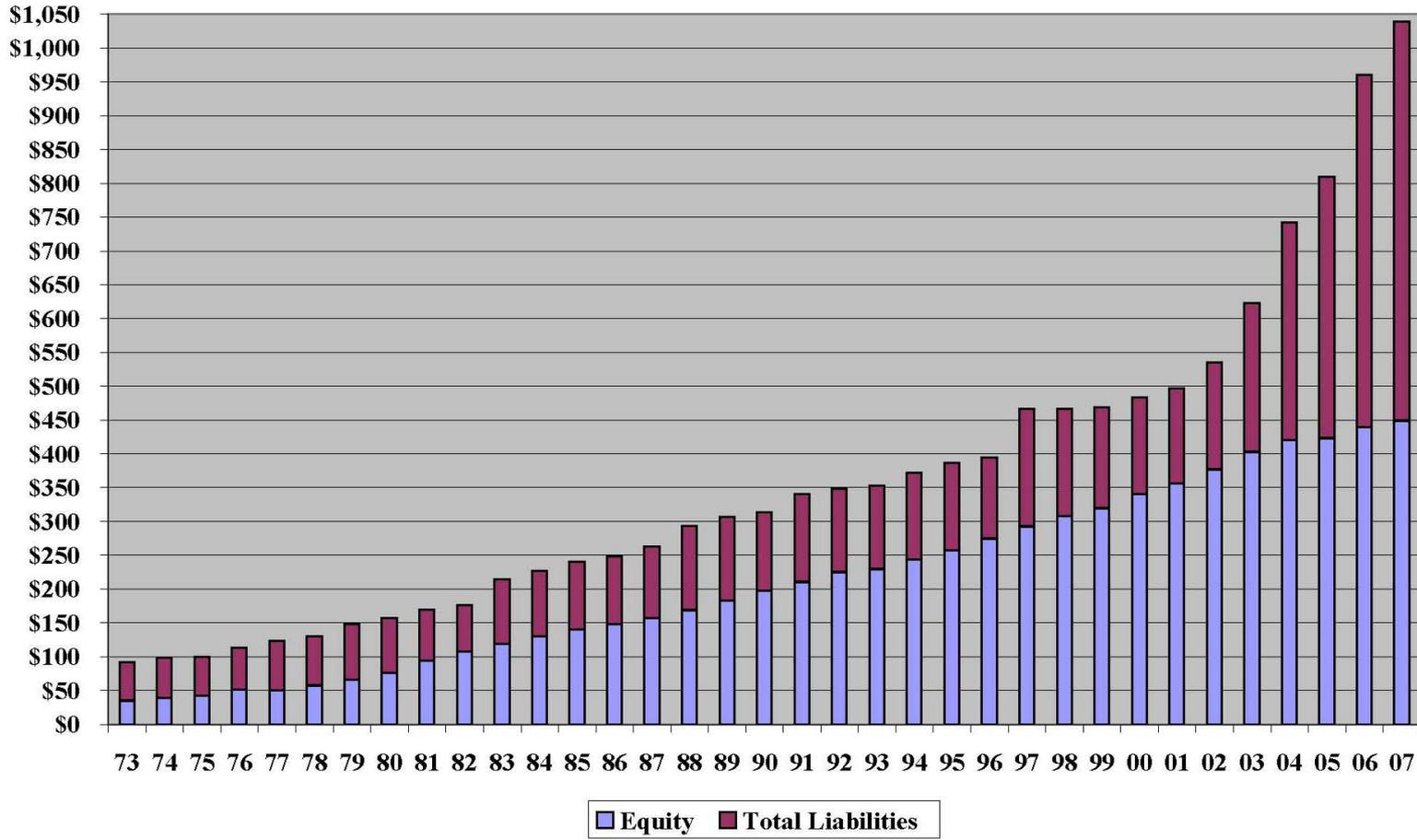
\$ millions



Port of Tacoma Financial History

Port of Tacoma - Total Liabilities & Equity

\$ millions



FOR IMMEDIATE RELEASE
February 22, 2010

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

Port of Tacoma intends to dispute threatened EPA paperwork penalty

The Port of Tacoma intends to dispute a penalty the U.S. Environmental Protection Agency wants to impose over paperwork related to cleanup of the former Kaiser Aluminum & Chemical Corporation smelter site.

The dispute focuses on a half-acre former waste-handling area cleaned up by Kaiser in 2002 before the Port purchased the Tacoma Tideflats property.

The Port bought the shuttered aluminum smelter in early 2003 from Houston-based Kaiser. The sale included about 96 acres of land and related structures next to the Blair Waterway.

The land and buildings were contaminated from more than 60 years of aluminum production. Kaiser completed cleanup of the half-acre hazardous waste-handling area in 2002 and filed a report with the state Department of Ecology to close out the cleanup.

During the past seven years the Port has removed thousands of tons of waste from the site, demolished buildings and cleaned up significant portions of the property. About 80 of the 96 acres so far have been returned to Port-related use to generate jobs and income.

Federal hazardous waste laws require private property owners to file financial assurance letters each year to demonstrate they have the means to complete their cleanup and monitoring responsibilities. In Washington, the state Department of Ecology administers this federal mandate.

Since 2003, the Port has worked cooperatively with Ecology to meet financial assurance requirements at the former Kaiser site, estimated to cost about \$300,000 for cleanup-related monitoring during the next 20 to 30 years. Prompted by an audit of Ecology's program, the EPA began to pursue the Port in 2008 for a settlement over missed paperwork deadlines.

The Port worked with the EPA for more than a year to find a reasonable way to settle this matter, including an offer to put the money the Port likely would spend on legal fees into an environmental project that provides obvious public benefit. The two parties could not reach agreement, and last month the Port notified the EPA of its decision to decline EPA's \$232,000 settlement offer.

"We are disappointed that the EPA is pursuing any penalties in the face of our demonstrated leadership and commitment to clean up our community and put these once-contaminated properties back into productive use," said Port Commission

President Don Johnson. “We are proud of our work to clean up a contaminated industrial site and divert more than 100 million pounds of material from landfills through recycling and reuse.”

About the Port of Tacoma

The Port of Tacoma is an economic engine for South Puget Sound, with more than 43,000 family-wage jobs in Pierce County and 113,000 jobs across Washington state connected to Port activities. A major gateway to Asia and Alaska, the Port of Tacoma is among the largest container ports in North America. The Port is also a major center for bulk, breakbulk and project/heavy-lift cargoes, as well as automobiles and trucks. To learn more about the Port of Tacoma, visit www.portoftacoma.com.

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EPA penalty backgrounder July 2010

Key points

- The Port of Tacoma has agreed to pay \$137,000 to settle a dispute with the EPA over paperwork related to the former Kaiser aluminum smelter site.
- We bought the former Kaiser aluminum smelter site in 2003 with the express intent to demolish the facility, finish cleaning up the site and place it back into productive use.
- And we delivered on that promise. About 80 of the 96 acres so far have been returned to Port-related use to generate jobs and income.
- Federal hazardous waste laws require private property owners to file financial assurance letters each year by March 31 to demonstrate they have the means to complete their cleanup responsibilities. The state Department of Ecology administers the mandate in Washington.
- The Port worked cooperatively with Ecology since 2003 to meet these financial assurance requirements in early April in conjunction with our annual financial reports. Prompted by an audit of Ecology's program, the EPA began to pursue the Port in 2008 for a settlement to cover what it considered paperwork violations.
- We worked with the EPA for about a year to find a reasonable way to settle this matter, including an offer to put the money we likely would spend on a legal fight into an environmental project that provides obvious public benefit.
- We declined the EPA's \$232,000 settlement offer in February as excessive.
- We acknowledge that EPA had a valid claim about missed paperwork deadlines and agreed to settle the dispute for \$137,000.
- We are still disappointed that the EPA is pursuing *any* penalty in the face of our demonstrated commitment to clean up our community, but we recognize that costs related to a legal fight could equal or exceed this \$137,000 settlement.
- We are ready to settle this matter and focus on a more cooperative relationship with the EPA in our commitment to create economic opportunities for our community in a way that protects the environment.

Background

The Port of Tacoma bought the aluminum smelter in 2003 from Houston-based Kaiser Aluminum & Chemical Corporation. The sale included about 96 acres and related structures in the Tacoma Tideflats industrial area next to the Blair Waterway.

Activity at Kaiser's Tacoma facility stopped in 2002 after more than 60 years. At full operation, the facility employed 350 people and was capable of producing about 73,000 metric tons of aluminum annually.

Kaiser completed cleanup of a half-acre hazardous waste-handling area on the site in 2002 and filed a report with the state Department of Ecology to close out the cleanup. The Port expected that future monitoring of the site would be required.

Federal hazardous waste laws require private property owners to file financial assurance letters each year to demonstrate they have the means to complete their cleanup responsibilities. In Washington, the state Department of Ecology administers this federal mandate.

During the past seven years the Port has removed thousands of tons of waste from the site, demolished buildings and cleaned up significant portions of the property. About 80 of the 96 acres have been returned so far to Port-related use to generate jobs and income.

Since 2003, the Port worked cooperatively with Ecology to meet financial assurance requirements at the former Kaiser site, estimated to cost about \$300,000 for cleanup-related monitoring during the next 20 to 30 years. Prompted by an audit of Ecology's program, the EPA began to pursue the Port in 2008 for a settlement over missed paperwork deadlines.

The Port worked with the EPA for more than a year to find a reasonable way to settle this matter, including an offer to put the money the Port likely would spend on legal fees into an environmental project that provides obvious public benefit. The two parties could not reach agreement, and in February the Port notified the EPA of its decision to decline EPA's \$232,000 settlement offer.

The Port found the settlement offer excessive, given that penalties for similar cases generally range from \$500 to \$25,000. Generally, only cases of hazardous spills, environmental harm or willfulness and negligence rise to higher penalty levels.

In May, the EPA filed a formal complaint, and the two agencies resumed negotiations.

While the Port is disappointed the EPA pursued any penalties in the face of demonstrated commitment to clean up the community, the Port recognizes that costs related to a legal fight could equal or exceed this \$137,000 settlement.

The Port is ready to settle this matter and focus on a more cooperative relationship with the EPA to create economic opportunities and jobs in a way that protects the environment.

Maytown gravel permit five-year review appeal process February 2011

What's happening:

- Thurston County commissioners are scheduled March 3 to hear an appeal of the Hearing Examiner's Dec. 30 approval of the five-year review of a gravel mining permit on property the Port once owned.
- Friends of Rocky Prairie, Black Hills Audubon Society and Thurston County filed the appeals.
- Maytown Sand & Gravel, the owners of the property since April 2010, asked Thurston County Jan. 26 to issue requested permits to begin pre-mining activities.
- The County refused to issue the outstanding permits until legal appeals are exhausted.
- The Port remains interested in the permit's legal status because terms of the property sale included a combination of cash, sand and gravel, long-term interest revenue and proceeds from any future property sales.
- We will continue to focus on protecting the investment we made in that property—and its legal permits—on behalf of the citizens of Pierce County.

Legal process

Two legal issues remain on separate tracks:

- the five-year review of the property's gravel mining permit, and
- amendments to two conditions of the gravel mining permit.

[outline separate legal tracks, schedules and strategies]

Background

The Port of Tacoma bought the 745-acre piece of property near Maytown in 2006 as a potential site for rail system enhancements. The Maytown site was one of several regional sites evaluated for this purpose through a joint effort between the Port of Tacoma and the Port of Olympia. Since the property was larger than needed for rail staging, the Port of Olympia and Port of Tacoma explored adding revenue-generating, rail-dependent industries to the site.

Purchase of property within the Port of Olympia's jurisdiction required an interlocal agreement between the two ports.

After purchasing the site, which once housed an explosives manufacturing plant, the Port of Tacoma assumed responsibility for environmental cleanup under an Agreed Order with the state Department of Ecology. The Port completed a cultural resource inventory, cleaned or removed contaminated soils, pulled invasive weeds by hand, removed unsafe structures and continued monitoring groundwater for contamination.

During this time, the Port also vested the property's existing gravel mining permit. This special use permit, issued by Thurston County, designates the property as "mineral lands of long-term commercial significance." It also includes a reclamation plan to build and maintain habitat after the approved amount of gravel is removed during the permit's 20-year life. The reclamation plan

was based on an agreement among several groups with conservation interests, including Capitol Land Trust and Black Hills Audubon Society.

A slowing economy, reduced container imports and uncertainty about the timing and location for mainline railroad capacity investments reduced the immediate need for the originally envisioned development. Nearby Thurston County residents also expressed concern about the potential for expanded industrial activity at the Maytown site. Both port commissions decided to allow their interlocal agreement to expire June 30, 2008, and the Port of Tacoma announced its plans to sell the property, as required by the agreement.

The Port sold the property in April 2010 to Maytown Sand & Gravel, a limited liability corporation made up of principals from California-based Southwind Realty Group and Lloyd Enterprises, based in Federal Way.

Terms of the property sale included \$8.5 million in cash, \$8.5 million in sand and gravel at current market prices, interest income at 7 percent over the term of the sale contract, and proceeds from any future sale of smaller pieces of the property.

The sale is expected to recoup somewhere between \$23 million and \$30 million over the 20-year term of the sales contract. The total depends on gravel market fluctuations and any future property sales.

To date, the Port has invested about \$27.5 million in purchasing and enhancing the Maytown site.

The Port intends to join Maytown Sand & Gravel in protecting the investment in that property—and its legal permits—on behalf of the citizens of Pierce County.

FOR IMMEDIATE RELEASE
March 31, 2011

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

Port of Tacoma files lawsuit over Thurston County land use challenges

The Port of Tacoma filed a [lawsuit](#) today against Thurston County for “unlawful, arbitrary and capricious” land use challenges to the Port’s former Maytown property.

The current property owner, Maytown Sand & Gravel, has filed a similar lawsuit against Thurston County.

The lawsuits, filed in Lewis County Superior Court, also name the Friends of Rocky Prairie and Black Hills Audubon Society as “additional respondents.”

The 745-acre property in southern Thurston County holds a valid special use permit for gravel mining, confirmed by Thurston County Hearing Examiner Sharon Rice’s [Dec. 30 decision](#) during the permit’s five-year review.

The Friends of Rocky Prairie and Black Hills Audubon Society appealed that decision to the Thurston Board of County Commissioners. The board, in their [March 14 decision](#), again confirmed most of the hearing examiner’s ruling.

The board, however, directed the hearing examiner to require new studies of critical area designations and reopened parts of the unappealed 2005 gravel mining permit for additional field investigations. This action violates Washington Supreme Court rulings on the finality of land use decisions.

Further delays to Maytown Sand & Gravel’s mining operation could jeopardize the Port’s sale of the property to the company.

The lawsuit seeks damages to protect the investment made on behalf of Pierce County citizens.

Background on the Port’s property ownership

The Port bought the property near Maytown in 2006 for \$21.25 million as a potential site for rail system enhancements.

The Maytown site was one of several regional sites evaluated through a joint effort between the Port of Tacoma and the Port of Olympia.

After purchasing the site, which once housed an explosives manufacturing plant, the Port of Tacoma assumed responsibility for [environmental cleanup](#) under an Agreed Order with the state Department of Ecology. The Port completed a cultural resource inventory, cleaned or removed contaminated soils, pulled invasive weeds by hand, removed unsafe structures and continued monitoring groundwater for contamination.

The Port also took steps needed to keep the property's existing gravel mining permit in place. The permit, which notes the property contains "mineral lands of long-term commercial significance," includes a reclamation plan to build and maintain habitat after the approved amount of gravel is removed during the permit's 20-year life. The reclamation plan was based on an agreement among several groups with conservation interests, including Capitol Land Trust and Black Hills Audubon Society.

A slowing economy reduced immediate need for port- or rail-related development. Nearby Thurston County residents also expressed concern about expanded industrial activity on the property.

Both port commissions decided to allow their agreement to expire in 2008, and the Port of Tacoma announced plans to sell the property.

Maytown Sand & Gravel, a limited liability corporation made up of principals from Southwind Realty Group and Lloyd Enterprises, bought the 745-acre property in March 2010.

About the Port of Tacoma

The Port of Tacoma is an economic engine for South Puget Sound, with more than 43,000 family-wage jobs in Pierce County and 113,000 jobs across Washington state connected to Port activities. A major gateway to Asia and Alaska, the Port of Tacoma is among the largest container ports in North America. The Port is also a major center for bulk, breakbulk and project/heavy-lift cargoes, as well as automobiles and trucks. To learn more about the Port of Tacoma, visit www.portoftacoma.com.

About Maytown Sand & Gravel

For more information about Maytown Sand & Gravel, contact John Hempelmann with Cairncross & Hempelmann at (206) 972-3333.

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FOR IMMEDIATE RELEASE
July 26, 2011

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

Lewis County judge rules gravel mining may go forward at Maytown site

A Lewis County judge sided with the Port of Tacoma and Maytown Sand & Gravel, LLC (MSG) about the finality of a gravel mining permit on a Maytown site formerly owned by the Port.

Superior Court Judge Richard L. Brosey granted a summary judgment to the Port and MSG Wednesday, reversing the decision of the Thurston County Board of Commissioners to require extensive and duplicative new habitat surveys. The judge's ruling reinstates Hearing Examiner Sharon Rice's [Dec. 30 decision](#) that confirmed the property holds a valid and final special use permit for gravel mining.

In its March 14 decision, the Thurston Board of County Commissioners affirmed most of the hearing examiner's ruling, but directed the hearing examiner to require MSG to prepare new studies of critical areas. The board's decision effectively reopened parts of the unappealed 2005 gravel mining permit for additional field investigations.

In March, the Port and MSG, the current property owner, appealed the board's decision because it violated Washington state law on the finality of land use decisions.

The court's ruling means MSG may begin mining as soon as the remaining pre-mining conditions of the permit are met.

The Port and MSG have also filed a separate action for damages against Thurston County, which remains pending. Delays to MSG's mining operation continue to jeopardize the Port's sale of the property to the company.

Background on the Port's property ownership

The Port bought the 745-acre property near Maytown in 2006 for \$21.25 million as a potential site for rail system enhancements.

The Maytown site was one of several regional sites evaluated through a joint effort between the Port of Tacoma and the Port of Olympia.

After purchasing the site, which once housed an explosives manufacturing plant, the Port of Tacoma assumed responsibility for [environmental cleanup](#) under an Agreed Order with the state Department of Ecology. The Port completed a cultural resource inventory, cleaned or removed contaminated soils, pulled invasive weeds by hand, removed unsafe structures and continued monitoring groundwater for contamination.

The Port also took steps needed to keep the property's existing gravel mining permit in place. The permit, which designates the property's mine areas as "mineral lands of

long-term commercial significance” under the Growth Management Act, allows extraction of 20.6 million cubic yards of gravel over 20 years and requires implementation of a Department of Natural Resources-approved reclamation plan to build and maintain habitat after mining is complete. The reclamation plan was based on an agreement among several groups with conservation interests, including Capitol Land Trust and Black Hills Audubon Society.

Because the slowing economy reduced immediate need for port- or rail-related development, both port commissions decided to allow their agreement to expire in 2008. The Port of Tacoma subsequently announced plans to sell the property as a permitted mine.

Maytown Sand & Gravel, a limited liability corporation made up of principals from Southwind Realty Group and Lloyd Enterprises, bought the 745-acre property in April 2010.

About the Port of Tacoma

The Port of Tacoma is an economic engine for South Puget Sound, with more than 43,000 family-wage jobs in Pierce County and 113,000 jobs across Washington state connected to Port activities. A major gateway to Asia and Alaska, the Port of Tacoma is among the largest container ports in North America. The Port is also a major center for bulk, breakbulk and project/heavy-lift cargoes, as well as automobiles and trucks. To learn more about the Port of Tacoma, visit www.portoftacoma.com.

About Maytown Sand & Gravel

For more information about Maytown Sand & Gravel, contact John Hempelmann with Cairncross & Hempelmann at (206) 972-3333.

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FOR IMMEDIATE RELEASE
October 20, 2011

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

Friends of Rocky Prairie drops appeal of Maytown gravel mining permit

A Thurston County group on Tuesday dropped its appeal of a gravel mining permit on a Maytown site formerly owned by the Port of Tacoma.

Friends of Rocky Prairie had appealed a Lewis County Superior Court decision in July that sided with the Port and the property's current owner, Maytown Sand & Gravel, LLC (MSG), about the finality of a gravel mining permit on the Thurston County property.

Friends of Rocky Prairie also had appealed a Thurston County Board of Commissioners decision to grant an amendment to the permit's conditions. A Thurston County Superior Court judge ruled last week that the group lacked standing to challenge the county's land use decision.

Within days of the Thurston County judge's dismissal of its appeal, Friends of Rocky Prairie dropped its challenge in the Court of Appeals to the overall validity of the gravel mining permit.

"We are thankful finally to put this matter behind us," said Port Commission President Connie Bacon. "While we're satisfied that courts have agreed with our legal assertions at each step, it's discouraging how much unnecessary time and money these legal challenges have cost Thurston County and Pierce County citizens, as well as the private property owner that sought to use the site for its permitted purpose."

Background

The 745-acre Maytown site was one of several regional sites evaluated for rail system enhancements through a joint effort between the Port of Tacoma and the Port of Olympia.

After the 2006 purchase of the \$21.25 million site, which once housed an explosives manufacturing plant, the Port of Tacoma assumed responsibility for environmental cleanup under an Agreed Order with the state Department of Ecology. The Port completed a cultural resource inventory, cleaned or removed contaminated soils, pulled invasive weeds by hand, removed unsafe structures and continued monitoring groundwater for contamination.

The Port also took steps needed to keep the property's existing gravel mining permit in place. The permit, which designates the property's mine areas as "mineral lands of long-term commercial significance" under the Growth Management Act, allows extraction of 20.6 million cubic yards of gravel over 20 years and requires implementation of a state Department of Natural Resources-approved reclamation plan to build and maintain habitat after mining is complete. The reclamation plan was based

on a prior agreement among several groups with conservation interests, including Capitol Land Trust and Black Hills Audubon Society.

Because the slowing economy reduced immediate need for port- or rail-related development and Thurston County residents expressed concern about expanded industrial activity on the property, both port commissions decided to allow their agreement to expire in 2008. The Port of Tacoma subsequently sold the property, including the area permitted for mining.

Maytown Sand & Gravel, a limited liability corporation made up of principals from Southwind Realty Group and Lloyd Enterprises, bought the 745-acre property in April 2010.

Since the sale, Friends of Rocky Prairie has continued to challenge the gravel mining permit.

“Maytown Sand & Gravel looks forward to mining the site in the near future,” said John Hempelmann, MSG’s attorney. “The Maytown Mine will provide very high quality, well located aggregates for public and private projects in the region, and will help rebuild our economy.”

About the Port of Tacoma

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About Maytown Sand & Gravel

For more information about Maytown Sand & Gravel, contact John Hempelmann with Cairncross & Hempelmann at (206) 972-3333.

###

Seaport Alliance Final Agreement Communications and Outreach Plan May - June 2015

Objective: To inform employees, customers, labor partners, community members and other stakeholders about the Seaport Alliance draft of the final agreement and seek their feedback.

Key messages

- A draft of the final agreement—a key milestone—between the ports of Tacoma and Seattle to unify management of their marine cargo terminals and business is available for review.
- This bold proposal is a strategic response to the competitive pressures reshaping the global shipping industry.
- The Northwest Seaport Alliance will manage the two ports' marine cargo terminal investments, operations, planning and marketing to strengthen the Puget Sound gateway and attract more marine cargo for the region.
- The Alliance is the outgrowth of talks held under the sanction and guidance of the Federal Maritime Commission, the independent federal agency responsible for regulating the U.S. international ocean transportation system.
- The agreement outlines The Northwest Seaport Alliance's governance charter, management and financial structures, a transition plan and a business development strategy.
 - While the ports will remain separate organizations that retain ownership of their respective assets, they will form a port development authority (PDA) to manage the container, breakbulk, auto and some bulk terminals in Seattle and Tacoma.
 - The airport, cruise business, marinas, such as Fisherman's Terminal, grain terminals and industrial real estate facilities, such as Northwest Innovation Works, Puget Sound Energy and Terminal 91 uplands, will remain outside the Alliance.
 - The PDA will be governed jointly by the two port commissions.
 - The commissioners expect to hire John Wolfe, current Port of Tacoma chief executive officer, as the CEO of the Seaport Alliance following the FMC's approval of the agreement.
 - Wolfe would lead both organizations through a transition period of up to five years before handing over his Port of Tacoma duties.
- We will seek feedback from citizens and stakeholders throughout May.
- The two port commissions expect to formally move to submit a final agreement to the FMC at a joint public meeting June 5 at Auburn City Hall.

Situation and background

In response to the fierce competitive challenges facing the shipping industry, the ports of Tacoma and Seattle in October announced intentions to form a Seaport Alliance to jointly manage marine cargo facilities and business. The initial announcement involved presentations to a broad group of community and industry stakeholders. Presentations included information about the ports' joint economic impact, competitive pressures facing the industry and outline of next steps in forming the alliance.

The response from customers, media outlets and community and business leaders was universally positive, although some expressed “cautious optimism” until the details were worked out. They will be interested to hear the results of the due diligence work.

Engaging Port employees, customers and tenants, labor and rail partners, Pierce and King County residents, business and opinion leaders, elected officials and other stakeholders will be an essential part of the rollout.

Strategy

We have rolled out details of the Seaport Alliance at public work sessions as they’ve become available. This communications and outreach plan focuses on the May-June rollout of a draft of the final agreement for feedback before submittal to the FMC. Because of the ongoing release of information, we envision public meetings in place of a news conference.

Commissioners and staff members have done extensive presentations since the October announcement of plans to form a Seaport Alliance. The rollout of the agreement brings a greater level of detail to the plan to form the Alliance, and we want to make it readily available to stakeholders for feedback.

- Communicate with employees prior to May 8 release of draft agreement through face-to-face meetings and emails with links to documents and video replays of joint commission meetings.
- Proactively communicate with stakeholders in public meetings at various locations and times to be accessible to as many people as possible.
- Host roundtables in each county for invited stakeholders who have been engaged in the process since the October announcement of the Seaport Alliance.
- Reach out to customers and tenants by phone, email or letter to inform them of progress toward a final agreement.
- Reach out to elected officials and business leaders by phone, email or letter to inform them of progress toward a final agreement.
- Proactively contact reporters and editorial boards about the May 8 release of draft agreement.
- Present details of the proposal at industry gatherings, such as WPPA spring meeting in May.

Tactics

- **Joint public meetings:**
 - May 8 at the Fabulich Center to introduce the agreement for feedback
 - June 5 at Auburn City Hall for vote to advance agreement to FMC
- **Regular commission meetings:**
 - May 12 and 26 in Seattle
 - May 21 and June 4 in Tacoma
- **News release** May 8 right after meeting with links to documents on website
- **Phone interviews** May 8 afternoon with Jon Talton of Seattle Times, Bill Virgin of The News Tribune and Bill Mongelluzzo of the Journal of Commerce
- **Editorial boards** May 7 and the week of May 18

- The News Tribune
- Seattle Times
- Puget Sound Business Journal
- Wenatchee World
- Yakima Herald-Republic
- Spokesman Review
- **Town Hall meetings:**
 - May 20 7 p.m. in King County
 - May 21 7 p.m. in Pierce County
- **Stakeholder roundtables** (similar to the one held in October):
 - May 20 9 a.m. in Pierce County
 - May 20 2 p.m. in King County
- **Existing events:**
 - WPPA spring meeting May 13-15
- **Customer/stakeholder letter**
- **Calls/emails to targeted stakeholders**
- **Employee emails** (ongoing, as information is available, and summary when agreement is introduced to the public)
- **Employee meetings** (April 29 and ongoing all-hands meetings)

Materials (based on commission-approved key messages)

- Talking points for presentations, ed boards, calls to targeted stakeholders (external)
- Letter to customers, stakeholders (external)
- Emails to employees (internal)
- Fact sheet (external)
- Web page w/link to feedback form (external)
- FAQ with links to summary memos (internal)
- Final agreement for FMC (external):
 - Cover letter
 - PDA charter summary
 - Exhibit A of property maps
 - Transition plan
 - Strategic business plan

[A list of outreach contacts will be added soon.]

Next steps

After this initial outreach plan to introduce the Seaport Alliance details, a more concentrated, focused effort will be developed to coincide with the business plan and introducing the CEO to key King County audiences.

FMC and outreach schedule

May 2015

Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1 FMC meeting	2
3	4	5 FMC meeting & public work session	6 Agenda, documents on websites Outreach to media, stakeholders, employees	7 TNT ed board	8 FMC meeting & public work session News release, fact sheet	9
10	11	12 POS commission meeting	13	14	15	16
17	18	19 Ed boards	20 9 am PC stakeholder roundtable 2 pm KC stakeholder roundtable 7 pm KC town hall	21 7 pm PC town hall POT commission meeting	22	23
24	25	26 FMC meeting & public work session POS commission meeting	27	28 Eastern WA ed boards	29 Eastern WA ed boards	30
31						

June 2015

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3	4 POT commission meeting	5 Joint commission meeting w/vote	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

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February 06, 2017

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(no Assigned Number) – Port of Tacoma Response to West
2nd Amended Complaint dated July 20, 2016.

Dear Mr. Lemp:

We represent the Port of Tacoma (“Port”) and submit this response to the Public Disclosure Commission (“Commission”) in PDC investigation instituted as a result of the (Second) (original) Citizen Action Complaint (“West Complaint”) filed by Arthur West with the Washington State Attorney General’s Office (AG) on December 19 16, 2016.

I. Procedural Facts

We understand that the AG forwarded Mr West’s Complaint to the PDC Staff and Commission. The PDC Staff initially requested a response from the Port by January 20, 2017 for consideration at a January Commission meeting. On January 13, 2017, the PDC Staff updated the Port to advise that Mr. West initially filed his complaint on December 19, 2016, but later submitted a slightly amended complaint on December 20, 2016, along with 20 pages of attachments. The 12/20/16 complaint has minor edits to correct his 12/19/16 complaint, such as including the statute citation of RCW 42.17A.255 on Page 1, and the names of all three Respondents in various parts of the complaint. The attachments are selected pages from Mr. West's public records request 16-89 (the Port of Tacoma Bates No(s) 324, 274, 266-273, and the Port’s Privilege Logs of Exempt Records, which accompanied the Port’s Third and Fourth Incremental Release to the PRR 16-89). The PDC advised the Port to please respond to West’s 12/20/16 complaint (“Amended Complaint”).

The PDC also advised that Staff had asked Mr. West for additional time to review this matter, and advised that Mr West does not intend to file a 10-day final notice letter unless the Commission has not acted by its 3/23/17 meeting. Accordingly, the PDC

extended the time for the Port to submit a written response to the to 1/31/17. The PDC also invited to be notified if additional time would be needed. In late January, the PDC agreed to the Port's request to extend the submittal date to February 6, 2017.

Originally, the PDC by email correspondence sent 1/11/17 stated that this matter was classified as "a formal investigation". On January 13, 2017, the PDC changed that classification from a formal investigation to the PDC conducting an initial review of the complaint to determine what action will be taken.

Per WAC 390-37-060, an initial review is a preliminary investigation to determine whether the allegations are limited to minor or technical violations of RCW 42.17A or if there is sufficient ground indicating that a material violation of RCW 42.17A may have occurred so as to warrant a formal investigation.

Although Mr. West provided the PDC with a courtesy copy of the complaint, he filed it with the Attorney General's Office, and the Attorney General's Office asked PDC staff to review and possibly investigate the allegations as needed. Per WAC 390-37-041 when that happens, the Commission may: (1) Initiate an investigation; (2) Submit a report to the Commission that may include a recommendation; (3) Schedule the matter for an adjudicative proceeding before the commission following investigation; and/or (4) Take any other steps consistent with the agency's authority and resources. On January 13, 2017, the PDC advised that it expected to complete its review of the matter and report back to the Commission with a recommendation.

II. SUMMARY RESPONSE

The Port of Tacoma responds to Mr West's (second) Amended Complaint, wherein he alleges two primary campaign violations:

- RCW 42.17A.255(2) - failure to register or report campaign related expenditures made as a political committee, ("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. *West Amended Complaint* at page 3).
- RCW 42.17A.555- use of public facilities for campaign purposes, specifically West complains that "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". *West Amended Complaint* at page 3.

After consideration of the Complaint and our information provided herein, the Port respectfully urges the PDC Staff to recommend and 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.

This is Mr West's second bite of an unsuccessful apple. His first Citizen Complaint led to an investigation by this PDC Staff that determined the Port violated no campaign laws, and a vote of this PDC Commission that recommended no action by the Attorney General. When the Attorney General ignored the Commission's recommendation and filed suit anyway, that lawsuit was summarily dismissed by the Court in favor of the Port, EDB and Chamber. The same facts which underpinned that unsuccessful AG lawsuit are being re-spun by West in this second Amended Complaint and should be dismissed out right. The Port did not violate RCW 42.17A.255. 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 violate RCW 42.17A.555, because the Port did not "wage a media and public relations campaign to oppose Tacoma Citizen's Initiatives 5 and 6" and thus did not use public facilities for campaign purposes.

Judicial review is not use of public funds for campaign purposes. See Order from Pierce County Superior Court No. 16-2-10303-6, dated 28 December 2016, where exactly this issue was litigated, **Exhibit 1**.¹

Here, just as in West's First Complaint - 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

¹ Please also see related Order in *State of Washington v. Evergreen Freedom Foundation*, Washington Supreme Court No. 93232-8. There, the State alleged that the Freedom Foundation's legal services provided to several local ballot measure proponents was reportable campaign activity. Notably, in 2016, the Thurston County superior court disagreed and **dismissed** that case; the matter is pending on direct review to the Washington Supreme Court. See **Exhibit 2**. See also *Institute for Justice v. State of Washington*, Pierce County Case No. 13-2-10152-7. In February 2015, the Pierce County Superior Court ruled, that "Defendants' treatment of free legal assistance to a political committee in a federal civil rights lawsuit as a "contribution," as that term is defined in RCW 42.17A.005(13), is unconstitutional under the U.S. Constitution". See true and correct copy of *Order Granting Summary Judgment*, attached as **Exhibit 3**. In that Pierce County case, the Court ordered the State and PDC to pay the accused \$424,999 in attorney fees and costs. See true and correct copy of Order on Attorney Fees, attached as **Exhibit 4**.

the legal sufficiency of a proposed Initiative; in no case were these action found to violate RCW 42.17A.555.

As a prudent step directly connected to the decision to file the declaratory judgement lawsuit, the Port developed talking points and press materials specifically to explain to the public the fact that the lawsuit was being filed and why the lawsuit was being filed. The Port met with the Tacoma News Tribune Editorial Board for exactly that same purpose: to disclose the fact that the lawsuit was being filed and why the lawsuit was being filed. For that reason, the sole Editorial Board meeting was deliberately scheduled and occurred on exactly the day the declaratory lawsuit was filed (June 6, 2016).

The Port took no campaign action to influence the vote on a ballot measure. Here, any expenditures at issue including any related to the media actions related to announcing the fact of the lawsuit 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 Petitions were facially unconstitutional. If proposed local initiative Petitions are facially beyond the local initiative power and unconstitutional, they 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 and media action which announced that judicial action 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 PDC Staff and Commission with background facts regarding the Port, as well as facts related to the Port's legal action and related media information.

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.

As a prudent step directly connected to the decision to file the declaratory judgement lawsuit, the Port developed talking points and press materials specifically to explain to the public the fact that the lawsuit was being filed and why the lawsuit was being filed. The Port met with the Tacoma News Tribune Editorial Board for exactly that same purpose: the fact that the lawsuit was being filed and why the lawsuit was being filed. For that reason, the Editorial Board meeting was deliberately scheduled and occurred on exactly the day the lawsuit was filed, June 6, 2016. The media materials created by the Port all were specific to the judicial challenge, and consisted of: one communication plan, (which consist of one news release, one backgrounder and one set of talking points), and one meeting with the News Tribune Editorial Board, all of which announce the Port’s action of filing the Declaratory Judgement matter lawsuit. See attachments to West Amended Complaint, Bates Stamped Nos 324, 274, 266-73.

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 5**. Staff provided a Commission Memo which was publically available. **Exhibit 6**. 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 7**.

On July 1, 2016, the Pierce County Superior Court granted Plaintiffs' Motion for Declaratory Judgement, finding the two Petitions invalid and granting an injunctive relief to prevent the Pierce County Auditor from placing the measures on the ballot. See **Exhibit 8**.

On June 16, 2016 after the Port, Chamber and EDB filed their complaint, but before the Superior Court's ruling, Arthur West filed his first citizen's complaint asserting that the Port, Chamber and EDB had violated the FCPA by operating as a "political committee" and failing to report contributions and expenditures in violation of the FCPA, RCW 42.17A. ("First Complaint") **Exhibit 9**. West also claimed the Port had spent public resources on campaign activity in violation of RCW 42.17A.555. Id. West filed his complaint with the Attorney General's office, which referred the matter to the Public Disclosure Commission to seek its expertise in determining whether the Port, Chamber and EDB had violated the FCPA.

The PDC Staff undertook an investigation, after which they found as follows:

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.

See **Exhibit 10**, PDC Staff Report to PDC Commission.

After hearing on August 8, by unanimous vote, the PDC Commission recommended that the Attorney General not file suit. See **Exhibit 11**, PDC Commission letter to AG.. The PDC Commission also expressly took note of the vagueness of the statutes in question, and discussed the need for and their intention to undertake "rulemaking to provide

clearer guidance to the regulated community and the public regarding what actions constitute activity reportable under RCW 42.17A for ballot propositions, as they are being considered for placement on the ballot and at each stage thereafter.” The Commission expressed its intent to work with PDC staff to pursue such rulemaking and asked that all parties (EDB, Chamber and Port) plan to participate and offer input.

Nonetheless, the Attorney General ignored the recommendation of the very entity charged with addressing FCRA issues and filed a lawsuit in Pierce County Superior Court against the Chamber, the Port and the EDB. The Attorney General based its claim for civil penalties and injunctive relief on the assertion that paying legal fees to determine the legality of a local ballot measure is an “expenditure that is made in support of or in opposition to any ... ballot proposition,” and that by failing to report the legal fees expended to challenge the STW Initiatives, the Chamber and EDB violated RCW 42.17A.255. The lawsuit further asserted that by paying legal fees to challenge the STW Initiatives, the Port violated RCW 42.17A.555 which prohibits the use of public facilities for the purpose of opposing ballot propositions. **Exhibit 12.**

The defendants quickly moved to dismiss the AG’s lawsuit. **Exhibits 13-16.** And, on December 23, 2016 the Pierce County Court issued its ruling granting the Port, EDB and Chamber Motion to Dismiss the AG’s Complaint. See Order, **Exhibit 1.**

The Court expressly ruled that

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 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.

West apparently filed his second Citizen action Complaint with the PDC and AG on December 19, 2016. Although the Complaint refers to various “attachments,” none were provided to the Port. The AG requested the PDC investigate. On January 11, 2017, the PDC contacted the Port to advise it had opened a “formal investigation”, and set a due date of January 20, 2017 (giving the Port six business days).

Later on January 13, 2017, the PDC contacted the Port, provided an amended Complaint filed by West on December 20, 2016, along with the Exhibits. The PDC amended the status of its review from a “formal investigation, to an “investigation”, and extended the Port’s due date to respond to January 31, and later to February 6, 2017.

III. RESPONSE TO ALLEGATIONS

A. First Allegation:

The Port did not violate RCW 42.17A.255. 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.255- Special reports—Independent expenditures.**

(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. "Independent expenditure" does not include: An internal political communication primarily limited to the contributors to a political party organization or political action committee, or the officers, management staff, and stockholders of a corporation or similar enterprise, or the members of a labor organization or other membership organization; or the rendering of personal services of the sort commonly performed by volunteer campaign workers, or incidental expenses personally incurred by volunteer campaign workers not in excess of fifty dollars personally paid for by the worker. "Volunteer services," for the purposes of this section, means services or labor for which the individual is not compensated by any person.

(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.

- **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 17** is one was given to the Propeller Club.
- The Port's Gateway stories about Frederickson's industrially-zoned property, attached as **Exhibit 18 and 19**.
- The Port's presentation PowerPoint that shows the Port's role in economic and industrial growth over the years, attached as **Exhibit 20**.

The Port's PowerPoint presentation **Exhibit 20** 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).

Notably – even the Attorney General did not reach so far as to claim that the Port violated RCW 42.17A.255 by being a “political action committee” in its recent unsuccessful lawsuit following West’s first Citizen Action Complaint. Instead the AG

claimed only (and unsuccessfully) that the Port used public facilities for a political purpose.² The Judge disagreed.

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

²AG Complaint in Cause No : **Exhibit 12** at page 1-2: I. NATURE OF ACTION

The STATE OF WASHINGTON (State) brings this action to enforce the State's campaign finance disclosure law, RCW 42.17A. The State alleges that Defendants, the ECONOMIC DEVELOPMENT BOARD FOR TACOMA-PIERCE COUNTY (EDB) and the TACOMA-PIERCE COUNTY CHAMBER (Chamber) violated provisions of RCW 42.17A by failing to properly report independent expenditures they made in opposition to certain local ballot propositions. The State further alleges that Defendant JOHN WOLFE, in his official 2 capacity as Chief Executive Officer of the PORT OF TACOMA, and CONNIE BACON, DON 3 JOHNSON, DICK MARZANO, DON MEYER, and CLARE PETRICH, in their official capacities as Commissioners for the PORT OF TACOMA, violated provisions of RCW 42.17A by authorizing the use of public facilities in opposition to certain local ballot propositions. The State seeks relief under RCW 42.17A.750 and .765, including penalties, costs and fees, and injunctive relief.

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, including the preparation of a communication plan the purpose of which was to announce the judicial challenge to the two Tacoma Petitions. Judicial review and a press release which announces that action 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, (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), and (3) created a communications plan to help inform the public about the Port's intention to file the judicial challenge. 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's creation of a communications plan is part of the Port's normal and regular conduct of communication to the public of significant action it undertakes, and there is exempt pursuant to RCW 42.17.130.

As the Superior Court agreed, 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.

West's Amended Complaint includes expansive and hyperbolic descriptions of what he

claims to a “a deliberate and calculated media and public relations "Campaign" to oppose ballot measures”(page 2); “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,”(page 2); and “media and public relations campaign, where the port, in collusion with the EDB and Chambe1; composed and executed a "Communications Plan", met with media representatives to express opposition to a ballot measure, prepared and distributed anti-initiative propaganda to port employees, the public and the media was archetype "Campaign" activity that was directed at opposing ballot propositions 5 and 6” (page 2-3).

Yet in truth, the list of “press-related” materials is small finite, and most significantly- each and every one has as its purpose to communicate the fact of the Port’s participation in the Declaratory Judgement matter lawsuit. The Court has ruled that:

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, and
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 validity of Tacoma Initiatives 5 & 6.

Order , **Exhibit 1**. Accordingly by direct extension, one communication plan, (which consist of one news release, one backgrounder and one set of talking points), and one meeting with the News Tribune Editorial Board, all of which announce the Port’s action of filing the Declaratory Judgement matter lawsuit also (1) is not opposition to a campaign or ballot issues as meant in RCW 42.17A.255 or RCW 42.17A.555, and (2) RCW 42.17A.555 prohibition on use public facilities for campaign purposes does not apply to these actions.

2.1 Port Materials Themselves Conclusively Demonstrate All Were Directly for the Purpose of Announcing the Port’s Filing of the Declaratory Judgement Action.

West tries to establish his Complaint via attachments to his Amended Complaint, which are selected pages from Mr. West's public records request 16-89 (the Port of Tacoma Bates No(s) 324, 274, 266-273, and the Port’s Privilege Logs of Exempt Records, which accompanied the Port’s Third and Fourth Incremental Release to the PRR 16-89). He fails.

The materials consist of one communication plan, (which consist of one news release, one backgrounder and one set of talking points), and an email referencing one

meeting with the News Tribune Editorial Board, timed to take place the date the judicial challenge was filed. See Bates Stamped 266-273, attached to Amended Complaint.

The timeframe of these materials span just over one week – from creation to posting. See Bates Stamped 324 dated May 26, 2016 (with reference to “...my initial thoughts around a communications plan, talking points and a news release,...” to June 6, 2016 – the date the Judicial Challenge was filed with the Court. See June 6, 2016 Bates Stamped 266: “The new release will be posted at 4 PM to coincide with the filing”.

The communication plan materials expressly relate to the judicial challenge and are intended to help inform the public about the Port’s intention to file the judicial action. How each record relates to the litigation is described below.

- **Bates stamped 324-** Is Email labeled as “Attorney Client Litigation,” from the Port’s Attorney to Port Media Relations Tara Mattina, dated May 26, 2016 (with reference to “...my initial thoughts around a communications plan, talking points and a news release,...” and describes that the redacted portions are exempt due to attorney client privilege based on the litigation. ³
- **Bates Stamped 274-** is Email dated June 2, 2016 Entitled JDA and Confidential, from Port Attorney with attachment “Complaint”, referring to the Judicial challenge, and describes that the redacted portions are exempt due to attorney client privilege based on the litigation. ⁴
- **Bates Stamped 266** – is email dated June 6, 2016, where in Port Communications Director transmits the “communications plan, backgrounder and news release for today's filing against the water ballot initiatives. And refers to covering this material at “today's 2:30 p.m. TNT editorial board”, and that “The news release will be posted at 4 p.m. to coincide with the filing”, referring to the filing of the lawsuit.
- **Bates Stamped 267-** is the one page “Communications Plan”. On its face, the Plan announces its “**Objective**”: “To communicate our request that Pierce

³See October 11, 2016 Privilege Log attached to *West's Amended Complaint*: “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 *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 *Hangartner v. City of Seattle*, 151 Wn.2d 439, 90 P.3d 26 (2004) and RCW 5.60.060(2).”

⁴See October 11, 2016 Privilege Log attached to *West's Amended Complaint*: “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 *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 *Hangartner v. City of Seattle*, 151 Wn.2d 439, 90 P.3d 26 (2004) and RCW 5.60.060(2).”

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,” and “**Key messages**”, the first and foremost of which is: “The Port of Tacoma has filed a lawsuit in Pierce County Superior Court to invalidate two initiatives currently gathering signatures”.

- **Bates Stamped 269-271-** is the one page Port Backgrounder, which includes the “**Key Point**”: “The Port of Tacoma has filed a lawsuit in Pierce County Superior Court to invalidate two initiatives currently gathering signatures”, followed by “Legal Arguments”
- **Bates Stamped 272-3** – is the Press Release, dated the same date the Port filed the judicial challenge. The Pres Release has as it clear purpose the announcement of the filing of the judicial challenge:

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.

These materials are all directly part of the Port’s judicial challenge as they announce the Port’s action of filing the Declaratory Judgement matter lawsuit. The PDC and Commission should find that they (1) are not opposition to a campaign or ballot issues as meant in RCW 42.17A.255 or RCW 42.17A.555, and (2) RCW 42.17A.555 prohibition on use public facilities for campaign purposes does not apply to these actions.

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

The Port’s action was confined to press materials which explained the Port’s judicial action and were not spent on any campaign or electioneering. No funds were raised or spent to campaign in support or opposition of the Initiatives.

The Port’s declaratory judgement action and small handful of media materials which relate directly to that judicial 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 and releasing lone press release to explain it 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.⁵ 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.⁶

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.,

⁵ *Voters Educ. Comm. v. Washington State Pub. Disclosure Comm'n*, 161 Wn.2d 470, 488, 166 P.3d 1174 (2007).

⁶ *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);

Seattle Bldg. & Constr. Trades Council v. City of Seattle, 94 Wn.2d 740, 746 (1980) (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.

2.3 Even if the Port was engaging in support of or opposition to the STW Initiatives (which it was not), the Port's Actions are Exempt Pursuant to RCW 42.17.130.

RCW 42.17.130 is an important exemptions to what otherwise would be a campaign law violation, for "Activities which are part of the normal and regular conduct of the office or agency". In the first West Citizen Complaint related to the Tacoma Petitions, the PDC Staff properly found no violation occurred because the Port judicial action was part of the Port's normal and regular conduct.

The Port pursued the judicial action here, as part of its normal and regular activity, because the Petitions had the potential to impact the Port's legislatively bestowed economic development mission within its District. There can be no question that litigation is a "normal and regular" means employed by the Port. 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. This is why the PDC Staff in West's first Citizen Complaint (PDC Matter No. 6626) found that the Port's judicial action was normal and customary, exempt and not a FCPA violation.⁷

Ports have been involved in legal challenges to Initiatives. See: *City of Seattle v. Yes for Seattle*, 122 Wn. App. 382, 93 P.3d 176, (2004), where the city and others, including Port of Seattle, filed a declaratory judgment on basis that a local initiative exceeded the

⁷ Any contention that the judicial action was not "normal and customary" because Ports lack the power to sue or be sued is absurd, and to be avoided. A court construes a statute to effect the statute's purposes, and to avoid an unlikely or strained consequence. Ports are granted explicit powers (Chapter 52 RCW) and by implication, the authority to carry out those powers.

initiative power. The Court agreed and struck the initiative from the ballot, exactly as occurred here. No charge of campaign violation was levied there.

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 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 activity⁸:

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.

2.4. Port Regularly Uses Communication Plan to Announce its Significant Actions

Another part of the Port's normal and regular conduct is to prepare Communications Plans as a tool to advise the public of significant Port actions.

Attached as **Exhibit 21** are a variety of Port issued press releases and "backgrounders," many of which were issued to announce/explain the Port's role in litigation matters. For example, see:

- Excerpt from the February 22, 2010 Port release announcing Port lawsuit with the EPA:
FOR IMMEDIATE RELEASE
February 22, 2010
Contact: Tara Mattina, (253) 428-8674, tmattina@portoftacoma.com
Port of Tacoma intends to dispute threatened EPA paperwork penalty
The Port of Tacoma intends to dispute a penalty the U.S. Environmental Protection Agency wants to impose over paperwork related to cleanup of the former Kaiser Aluminum & Chemical Corporation smelter site.
- Excerpt from the March 31 2011 Port Press release announcing its decision to file a lawsuit against Thurston County based on the County's unlawful treatment of the Port during permit processing:⁹
FOR IMMEDIATE RELEASE
March 31, 2011
Contact: Tara Mattina, (253) 428-8674, tmattina@portoftacoma.com
Port of Tacoma files lawsuit over Thurston County land use challenges
The Port of Tacoma filed a lawsuit today against Thurston County for "unlawful, arbitrary and capricious" land use challenges to the Port's former Maytown property, and,

⁸ 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.

⁹ The Court ultimately awarded the Port 8 million dollars in damages, and its tenant and additional \$4 million dollars. The matter is on appeal.

- Excerpt from the July 26, 2011 Port Press release announcing the Court's decision in one phase of the Maytown litigation:

FOR IMMEDIATE RELEASE

July 26, 2011

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

Lewis County judge rules gravel mining may go forward at Maytown site

A Lewis County judge sided with the Port of Tacoma and Maytown Sand & Gravel, LLC (MSG) about the finality of a gravel mining permit on a Maytown site formerly owned by the Port.

All are part of Exhibit 21, attached. There can be no question that Port press releases issued to announce or explain litigation affecting the Port is a "normal and regular" means employed by the Port.

2.4 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 exception¹⁰ to use of public office or agency facilities in campaigns.

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

¹⁰ 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;"

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 5** Staff provided a Commission Memo which was publically available. **Exhibit 6**. 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 7**. The Port meeting notice and process satisfy the RCW 42.17A.555(1)criteria; no violation occurred.

In the first West Citizen Complaint related to the Tacoma Petitions, (PDC matter 6626) the PDC found: ".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." ¹¹ As a result, the PDC Staff & Commission found the Port meeting notice and process satisfy the RCW 42.17A.555(1)criteria; no violation occurred.

2.5 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 former PDC Cases 6627 (EDB) and Case 6628 (Chamber), and all defendants briefing in Pierce County Cause No. 16-2-10303-6 (Exhibits 13,N14, 15 and 16). 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 RCW42. 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

¹¹ PDC Staff Report to Commission, Exhibit 10, at page3, Finding 2.6, and see Exhibit 11 PDC Commission letter to AG.

initiative is facially beyond the local initiative power and unconstitutional, it can logically never become part of a legitimate "ballot initiative campaign."

2.6. 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*¹², Initiative sponsors argued that they had a First Amendment right to have their initiative appear on the ballot. There, the defendant relied on *Coppernoll*¹³ 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

¹² *City of Longview v. Wallin*, 174 Wn. App. 763, 301 P.3d 45 (Div. 2 2013), *cert denied*, 178 Wn.2d 1020 (2013).

¹³ *Coppernoll v. Reed*, 155 Wn.2d 290, 299 (2005).

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 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 1-21

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

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February 7, 2017

Via email: pdc@pdc.wa.gov

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Public Disclosure Commission
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Olympia, WA 98504-0908

Re: EDB's Response to 45-Day Citizens Action Complaint (as Amended)
filed by Arthur West, December 20, 2016
No PDC Case Assigned

Dear Mr. Stutzman:

This firm represents the Economic Development Board For Tacoma-Pierce County ("EDB"). This letter serves as the EDB's response to your email of Friday, January 13, 2017 requesting a response to the Citizens Action Complaint filed by Arthur West, dated December 20, 2016 (as amended from West's December 19, 2016 Complaint forwarded to the Attorney General's Office)("West Complaint").

While your email referenced a preferred response date of January 31, you invited us to request additional time, as needed. Since you provided an extension to February 6 for the Port and February 7 for the Chamber, I advised you, by separate email, that the EDB's response would be provided by the same date.

For the reasons set forth below, there is no legal or factual basis for this latest West Complaint. As such, the EDB respectfully requests that the PDC find no violations of RCW 42.17A and close its preliminary investigation.

Because the issues raised in this latest West Complaint are similar to those in the first West Complaint, our response, in part, is duplicative on those issues.

The EDB is Not a Public Office or Agency.

As an initial response to your letter, the EDB is not a public office or agency subject to the restrictions of RCW 42.17A.555. RCW 42.17A.005 (2) defines "Agency" as including all state agencies and all local agencies. A "state agency" is defined to include "every state office, department, division, bureau, board, commission, or other state agency. A "local agency"

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includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

By definition, the EDB is not a public agency, subject to the restrictions of RCW 42.17A.555. To the contrary, the EDB is a private Washington non-profit corporation, actively incorporated in the State of Washington since 1977. As plainly stated on the front page of the EDB website (www.edbtacomapierce.org), the EDB has a two prong mission: retention and recruitment of existing primary businesses in Tacoma-Pierce County. The EDB's work plan to accomplish its stated mission is developed by a volunteer board of directors. The work plan is executed by private staff members. The EDB's work plan for business recruitment and retention is funded by its member investors, both private and public. The EDB 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.

The EDB Sought a Legal Determination of the Propriety of a Proposed Local Initiative.

Because the EDB's stated mission is to recruit and retain primary businesses in Tacoma-Pierce County, the EDB demonstrated the requisite legal standing to pursue a *pre-election review* of the legal sufficiency of the proposed local initiatives, identified in your letter as Tacoma Citizen's Initiatives 5 and 6 ("Initiatives"). As such, the EDB was a Co-Plaintiff in the legal action filed in the Pierce County Superior Court under Case No. 16-2-08477-5, which sought declaratory and injunctive relief given that the Initiatives were beyond the proper scope of the initiative power (the "Pierce County Legal Action"). On July 1, 2016, the Honorable Jack Nevin concurred and granted the Plaintiffs' (and the City of Tacoma's) requested declaratory and injunctive relief, which precluded placement of the Initiatives on the ballot.

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 a 9-0 decision, in February 2016 in Spokane Entrepreneurial Center v. Spokane Moves to Amend the Constitution, 185 Wn.2d 97; 369 P.3d 140 (2016). As the Court noted, the petitioners who filed the declaratory judgment action challenging the validity of the Spokane initiatives included Spokane County, individual residents of Spokane, for-profit corporations and companies in Spokane, and nonprofit associations, including the Spokane Association of Realtors, the Spokane Building Owners and Managers Association, the Spokane Home Builders Association and the local chambers of commerce. Spokane Entrepreneurial, 185 Wn.2d at 101-102.

Like the EDB, the Spokane Entrepreneurial petitioners **demonstrated legal standing** to challenge the initiatives in the context of a pre-election declaratory judgment action in the superior court. Ultimately, the Washington Supreme Court agreed with the petitioners in that case and held that the proposed initiative exceeded the scope of local legislative authority and thus "should not be put on the ballot." Id., at 110.

In the pursuit of a legal determination of the validity of the Initiatives in this case, the EDB paid for legal services directly to this firm, as its legal counsel, from its operating budget. The EDB has not received, nor does it expect to receive, “contributions” toward any “electoral goals” as its focus was solely to obtain a pre-election legal ruling on the merits of the proposed Tacoma Citizen’s Initiatives.

As you are aware, the EDB’s participation as a Co-Plaintiff in the Pierce County Legal Action was not tantamount to action as a “Political Committee” and any claim that the EDB violated RCW 42.17A by failing to report its legal fees incurred as “independent expenditures” was recently rejected by the Pierce County Superior Court in State of Washington v. Economic Development Board for Tacoma-Pierce County, et al., Pierce County Superior Court Case No. 16-2-10303-6.

The EDB’s Participation in the Pierce County Legal Action was Not Campaign Activity by a “Political Committee.”

Mr. West’s latest complaint also alleged violations of RCW 42.17A.205, .235, and .240 by failing to register and/or independently report “campaign-related” expenditures (allegedly the conduct of a “media and propaganda campaign”) as a “political committee.” As you are well aware, those referenced sections of the Act are dependent on a determination that the EDB was a “political committee.”

As previously argued, the EDB’s pursuit of a legal determination, as a Co-Plaintiff with the Port of Tacoma and the Tacoma-Pierce County Chamber of Commerce, does not make the EDB part of a “political committee” subject to the Fair Campaign Practices Act.

RCW 42.17A.005(37) defines a “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.” See also Utter v. Building Industry Ass’n of Washington, 182 Wn.2d 398, 416, 341 P.3d 953 (2015)(discussing the “contribution” prong as requiring evidence that an organization “expects to receive or receives contributions toward electoral goals.”).

“Expenditure,” as defined in RCW 42.17A.005(20), includes a payment, contribution, subscription, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a promise to pay, a payment, or a transfer of anything of value in exchange for goods, services, property, facilities, or anything of value for the purpose of assisting, benefitting, or honoring any public official or candidate, or assisting in furthering or opposing any election campaign.

Pursuing legal rights (and paying legal fees to do so), under established Washington Supreme Court precedent does not fall within any reasonable definition of an “expenditure” by a “political committee.” As the Court of Appeals held in State ex rel. Evergreen Freedom Foundation v. Washington Educ. Ass’n., 111 Wn. App. 586, 599, 49 P.3d 894 (Div. II 2002), in determining whether an organization is a “political committee,” the organization making the 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.” As the Court noted in this case, “. . . if electoral political activity is merely one means the organization uses to achieve its legitimate broad nonpolitical goals, electoral political activity cannot be said to be one of the organization’s primary purposes.” Id. At 600.

It is undisputed that the EDB was a Co-Plaintiff in the Pierce County Legal Action. The EDB’s stated mission is to recruit and retain primary businesses in Tacoma and Pierce County. While the EDB was concerned that the Initiatives, if passed, would irreparably harm the EDB’s work plan and efforts to attract business in our region, seeking a legal determination on a purely legal issue in which the EDB (and the other Co-Plaintiffs) had legal standing, is a far cry from the requisite electoral political activity necessary to be deemed a “political committee” with the other Co-Plaintiffs.

After conclusion of the Pierce County Legal Action and following the filing of a lawsuit by the State of Washington on issues raised in Mr. West’s initial complaint, the Pierce County Superior Court rejected the State’s claims and dismissed the lawsuit, finding no basis to support the State’s argument that the EDB had violated any provision in RCW 42.17A.

The EDB’s communication of its participation in the Pierce County Legal Action was related to its involvement in the litigation and had nothing to do with campaign activity.

Now, Mr. West asserts, without legal or factual support, that the EDB somehow expended resources in a “public relations campaign” separate and independent from the Pierce County Legal Action and that those resources were to be reported as independent expenditures under RCW 42.17A.255.

First, the documents attached to the West Complaint demonstrate that they were not prepared by or distributed from the EDB staff:

- Pages “Bate Stamped” 324 and 274 are emails which do not indicate they are “to” or “from” anyone at the EDB.
- Pages 266 to 271 are the cover email and the “Water Ballot Initiative Communications Plan,” both of which were prepared by the Port, not the EDB, and were disseminated (Page 266) within the Port staff and its Commissioners. This cover email does reference the additional “Backgrounder” and “Water Ballot Initiative” documents, both of which appear to have been prepared by the Port, not the EDB.
- Pages 272-273 appears to be a press release, issued on June 6, 2016, the date of the lawsuit filing in the Pierce County Legal Action. The information contained therein is factual and related to that litigation, which the EDB joined as a co-plaintiff.
- The “September 16, 2016 Response & Privilege Log” from Mr. West’s public records request contains a number of document entries, most of which appear to be dated June 6, 2016. There are references in May (May 24, 2:11:05 pm) referencing a copy to Bruce Kendall and Deborah Kelly with the EDB, but the Document subject matter plainly references the “Litigation.”

Second, while the EDB ultimately received a copy of the Port's "Water Ballot Initiative Communications Plan (attached to the West Complaint), the short "Backgrounder," explaining the basis for the legal action, and the "Water Ballot Initiative" documents (referenced in the emails), the EDB did not participate or engage in a "communications campaign" separate and apart from its participation in the Pierce County Legal Action. No resources, other than internal staff time, were expended on internal or external communications (e.g., press release or communication to EDB investors) about the lawsuit filing.

While the EDB, through its CEO Bruce Kendall, attended a TNT editorial board briefing on or around the filing date of the Pierce County Legal Action, the EDB's activity in this regard was solely to communicate to the public and its investors the fact of the EDB's involvement in the lawsuit *and the rationale behind the legal action*. The EDB made no expenditures of funds or other resources on any "public relations campaign" in opposition to the Initiatives other than staff time (including that of Mr. Kendall) to communicate its involvement in the litigation.

In your email to me of Friday, January 13, you asked the EDB to address "why the Water Ballot Communications Plan, Water Ballot Initiative backgrounder, and Potential questions ***address the merits*** of Tacoma Initiatives 5 and 6 in addition to the Port's court request that Pierce County Superior Court declare the two initiatives invalid."

First, because the EDB did not prepare these documents, the EDB is not in the best position to answer the question.

Second, because the EDB had to articulate the requisite "standing" to be a co-plaintiff in the Pierce County Legal Action, the EDB had to explain how the interests that the EDB (and the Port and Chamber) were seeking to protect were within the zone of interests that the Initiatives would regulate. Additionally, the EDB (and the Port and the Chamber) also had to "show some injury in fact, economic or otherwise" that would be suffered if the Initiatives were to pass. See, e.g., Spokane Entrepreneurial Center v. Spokane Moves to Amend Constitution, 185 Wn.2d 97, 105-107, 369 P.3d 140 (2016). As the Court held in Spokane Entrepreneurial Center, the petitioners in that case demonstrated such injury in fact: "The clearest examples arise from the provisions of the initiative that (1) assign water rights that conflict with water rights held pursuant to state law and (2) create a new zoning approval process. . . . [T]he petitioner builders and developers would suffer harm by having to go through an additional zoning approval process. Regardless of whether these harms might be justified or offset by other societal benefits, these petitioners will suffer harm." Id. at 107.

In the lawsuit, the EDB had to demonstrate standing. See, e.g., Paragraph 13 of Amended Complaint, filed in the Pierce County Legal Action. ¹ As part of that requirement, the

¹ Plaintiff EDB is a nonprofit Washington corporation headquartered in Tacoma, Washington. The EDB receives funding by its member investors, including businesses, individuals, municipalities, and other governmental entities. The EDB's mission is to retain, expand and recruit primary company jobs in, to, and within Tacoma-Pierce County. To accomplish its mission and annual work plan, the EDB actively engages in public advocacy, business and

EDB (as well as the Port and the Chamber) had to articulate how its mission, and the mission of the EDB investors, would be unduly impacted by the facially illegal Initiatives if they came to fruition. The “Communications Plan” and the other documents simply articulated those issues and concerns that were communicated in the Pierce County Legal Action as part of the standing arguments. It is impossible to separate what you describe as a discussion on the “merits” from what was required by law for the EDB to articulate.

In sum, the EDB participated in a legal process, and incurred legal fees, to bring an action for declaratory relief before the Pierce County Superior Court on the sole issue as to whether the Tacoma Citizens Initiatives were beyond the proper scope of local initiative power. The Superior Court found that the EDB and the other Co-Plaintiffs had standing and were entitled to the declaratory relief requested. Clearly, the lawful pursuit of declaratory relief in the Superior Court, and communication about that lawful activity, is not the kind of activity that is subject to the requirements of RCW 42.17A.555, or the other provisions cited in Mr. West’s Complaint.

We trust that the information presented addresses the concerns and complaints alleged. As you will likely receive similar responses from the Port of Tacoma and the Pierce County Chamber of Commerce, we ask that you view the facts and analysis provided in their entirety and conclude that there is no merit to the latest Citizen’s Action Complaint filed by Mr. West. We look forward to notification that the “informal investigation” has been closed with no findings.

economic development, physical improvement projects, public safety, beautification, and marketing programs. Each of these programs is intended to ensure the continued success of Tacoma and Pierce County's economic vibrancy. The EDB’s member investors have pledged approximately \$500,000 toward the EDB’s five-year work plan, which necessarily includes active engagement of elected officials, as well as businesses and industrial entities that may use over one million gallons of water a day. The EDB and its member investors have interests they are seeking to protect that are within the zone of interests (determination of water availability and interests) that the proposed Initiatives seek to protect or regulate. Moreover, the EDB and its member investors would suffer economic impact and injury should the Initiatives pass and serve to restrict the EDB’s funded work plan to recruit, expand, and retain primary company jobs in Tacoma-Pierce County. Further, individual members of the EDB include Tacoma residents who are eligible to vote. As such, the EDB has standing to challenge the Initiatives because the mission of the EDB and the economic interests of its member investors would be adversely affected by the passage of legislation in any form which interferes with Tacoma’s administration of its longstanding program to provide necessary water service to industrial and commercial users throughout Pierce County. *Amended Complaint, Paragraph 13; See also Declaration of EDB Senior Vice President Susan Suess, filed in support of Plaintiffs’ Motion for Preliminary Injunction.*

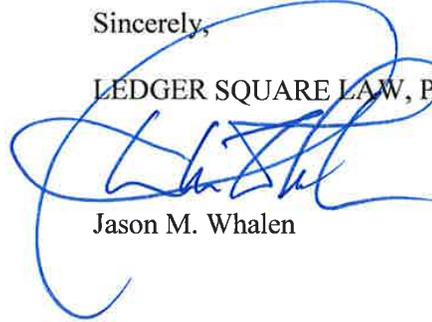
February 7, 2017
Page 7

Reservation of Rights. Because of the limited time the EDB was provided to respond to this latest Citizen's Complaint, the EDB reserves the right to provide additional authority with respect to all issues involved.

If you have any further questions or need further information, please feel free to call me.

Sincerely,

LEDGER SQUARE LAW, P.S.



Jason M. Whalen

JMW:mjr
Encls

cc: Client
Carolyn Lake, Counsel for Port of Tacoma
Valerie Zeeck, Counsel for Tacoma-Pierce County Chamber of Commerce



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February 8, 2017

Phil Stutzman
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RE: Response of Tacoma-Pierce County Chamber to West Complaint of 12/20/16

Dear Mr. Stutzman:

This letter will respond on behalf of the Tacoma-Pierce County Chamber (“Chamber”) to the above-referenced complaint. I appreciate the courtesy extended in permitting me until today to file this response.

Please note three initial points that I hope will make your review of this letter easier. They are:

- This letter incorporates by reference all arguments presented by the Economic Development Board for Tacoma-Pierce County (“EDB”) in its response of February 7, 2017.
- This letter also includes some information from the Chamber’s response filed on July 21, 2016, to Mr. West’s first complaint.
- For our mutual ease of reference, I have Bates numbered Mr. West’s 12/20/16 complaint. It is attached as Exhibit A. I will refer to the pages by these Bates numbers as I go into detail below.

Factual Background to the Second Complaint.

The Chamber is a Washington non-profit corporation. Its President and Board of Directors are not elected by a public vote, but rather are selected by a process outlined in its duly adopted bylaws. Its resources are not public resources, but are rather private in nature,

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consisting of membership dues, event admission fees, etc. The Chamber's primary purpose is supporting local businesses in the South Sound. Its mission is stated as "leading the way to exceptional business & community growth so that Tacoma - Pierce County is a vibrant community where economic growth is encouraged and sustained."

On March 7, 2016, a citizens' group called Save Tacoma Water filed two initiatives (the "STW Initiatives") with the Tacoma City Clerk. The STW initiatives were facially illegal, at least in part, because, by their own language, they asserted that they were superior to the Federal and Washington State Constitutions and to Washington State law. They further stated that no state or federal court could determine they were illegal.

In June 2016, the Chamber, with other plaintiffs, brought a declaratory judgment action in the Superior Court of Pierce County to determine whether the STW Initiatives exceeded the scope of local initiative power. The City of Tacoma, named as a defendant, agreed with the plaintiffs that the STW Initiatives could never become part of the Tacoma City Code and City Charter because they were facially illegal. The Court agreed with the plaintiffs and the City. It determined that, in fact, the STW Initiatives were illegal and permanently enjoined their placement on the ballot.

Also in June 2016, Arthur West filed his first complaint. The allegations in the second complaint, before the PDC now, are very similar to those in the first complaint. After an investigation of the first complaint, the PDC recommended that no legal action be pursued. Nonetheless, the Attorney General chose to sue the Chamber, the EDB and the Port. The Superior Court of Pierce County dismissed that lawsuit in December 2016, holding that filing a lawsuit to determine the validity of a local ballot measure is not election campaign activity under the Fair Campaign Practices Act.

A critical fact with respect to West's second complaint and the documents attached to it is that the Chamber did not make any expenditures of any size related to these documents - or to the alleged "media campaign" they discuss. It also did not participate in the development, drafting, or editing of any of these documents.¹

¹ One email referenced on the privilege log is a possible exception. In the log, item 2, The Chamber's legal counsel responds to an email sent that day, on the day the Complaint in the legal action was filed. That email is by all indications directly about the lawsuit. It was sent to other lawyers and one legal assistant. It is possible the Chamber paid legal fees for that email communication, but that payment would have been covered by the Superior Court's December 2016 Order dismissing the lawsuit.

Alleged Violation of RCW 42.17A.555

In relevant part, RCW 42.17A.555 prohibits elected officials or public employees from using public facilities and resources to promote or oppose any ballot proposition. As a private, not public, organization, the Chamber cannot have violated this statute, and the Chamber requests that the PDC determine that the Chamber has not violated RCW 42.17A.555, consistent with its finding on Mr. West's first complaint,

Alleged Violation of RCW 42.17A.255

This statute requires the reporting of "independent expenditures" made in support of or opposition to a ballot proposition. The Chamber made no expenditures with respect to the documents produced, as detailed in the table below. Mr. West presents absolutely no proof to the contrary.

Bates No.	Comment	Funds Expended by Chamber with respect to document
Chamber 000005	Exchange of three emails between Employee for Port and lawyer for Port. No Chamber involvement of any kind.	0
Chamber 000006	Email in which legal counsel for Port transmits a clean copy of the complaint to legal counsel for Chamber. Communication is directly related to the lawsuit.	0
Chamber 000007	Email from Port employee to Port Commissioners transmitting Chamber 000008-14. No Chamber involvement of any kind in the drafting, preparation, or planning associated with these documents. Only identification of Chamber is as a party to the lawsuit.	0
Chamber 000008-000014	See note above	0

Bates No.	Comment	Funds Expended by Chamber with respect to document
Chamber 000015-000024	This is a privilege log related to documents produced by the Port to Mr. West. All entries related to the Chamber are directly related to the litigation, most are redacted as privileged communications. All but one are from the Port to either the Chamber's legal counsel or CEO or both. One is from the Chamber's legal counsel to lawyers and one legal assistant, and directly relates to the lawsuit. Please see footnote 2.	0

Specific inquiry from the PDC on January 13, 2017 on these documents.

In an email from the PDC dated January 13, 2017, you asked that the Chamber “please address why the Water Ballot Communications Plan, Water Ballot Initiative backgrounder, and Potential questions address the merits of Tacoma Initiatives 5 and 6 in addition to the Port's court request that Pierce County Superior Court declare the two initiatives invalid.” The Chamber responds that it drafted none of those documents, and received them from the Port only shortly before the complaint was filed in Court. To be clear, the Chamber did not draft, edit, or have involvement in those documents other than to receive them. Thus this question is best answered by the Port.

The Chamber specifically incorporates the EDB's argument at page 5 of its response as further explanation for the need for such documents. As the PDC has recognized, the Chamber and EDB did have a need to act to file the lawsuit in this situation to protect their primary interests (the enhancement, development and protection of the business environment in the Tacoma Pierce County area.)² To do that, they had to establish legal “standing” in that lawsuit. Stated simply, the Chamber and EDB had to communicate to the Court that their primary purposes were sufficiently aligned with the legal relief sought that they had a legal basis to participate in the lawsuit. The Chamber, EDB and Port certainly discussed the factual basis for their legal standing to determine whether they were proper

² See PDC Report of Investigation, paragraphs 2.39 and 2.40.

parties to this suit, and these documents are consistent with those facts. But the Chamber did not draft or edit these documents, title them, or otherwise produce them. It expended zero resources on these documents, except as mentioned in footnote 1. This is clear from the documents produced by Mr. West, and he presents no proof to the contrary.

The Chamber did not draft these documents or participate in their creation, but it also recognizes the wisdom of being prepared, upon filing this lawsuit, to respond to the immediate “blowback” created among those who were actively campaigning for the invalid STW Initiatives. While the Chamber and the EDB are private organizations, the Chamber can assume the Port drafted these documents because it is a public agency, and as such is responsible to the public. It has a usual and customary practice of communicating with the public about its actions. In any event, the Port, as the creator of these documents, is the party who can best answer the PDC’s January 13 question.

Alleged Violation of RCW 42.17A. 205 - 240

Mr. West’s second complaint broadly asserts that the Chamber, the EDB and the Port violated RCW 42.17A.205–.240. While it is unclear, it appears that Mr. West is reasserting the claim made in his first complaint that the three organizations were acting as a “political committee” to opposed the STW ballot initiatives. In reviewing Mr. West’s first complaint, the PDC has already examined the underlying facts and made a determination that no evidence was found that the Chamber, Port and EDB were acting as a political committee in the filing of this lawsuit. Nothing in the attachments to the second complaint changes that.

RCW 42.005(37) states that a “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. In determining whether an organization is a “political committee,” the organization making the expenditures must have as its “primary or one of the primary purposes... to affect, directly or indirectly, governmental decision making by supporting or opposing...ballot propositions. *State ex rel. Evergreen Freedom Foundation v. Washington Educ. Ass’n*, 111 Wn. App. 586, 599, 49 P.3d 894 (Div. II 2002). The Chamber’s actions were taken to further its stated goals and mission, because they were taken to protect and enhance the economic environment of Tacoma and Pierce County for business. The Chamber uses means other than political activity to achieve this goal. It has never pooled funds with the EDB or Port to engage in political activity. The Chamber was concerned that the proposed initiatives, which it believed to be clearly and correctly believed to be illegal, would irreparably harm its efforts to further its primary goal.

The Chamber had no expectation of receiving contributions (it neither solicited nor received any) or of making expenditures in opposition to a ballot proposition until the illegality of the STW Initiatives became apparent. The Chamber not only had *no expectation* of making

Gordon Thomas Honeywell^{LLP}
February 8, 2017
Page 6

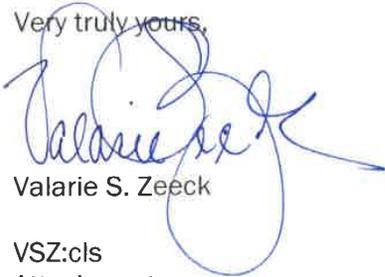
expenditures with respect to the documents Mr. West now files, the Chamber *literally made no expenditures* with respect to any of those documents. The Chamber used funds from its normal operating budget to pay legal fees related *only* to the lawsuit, and the Superior Court has already determined that fees related to the filing of the lawsuit are not covered by the FCPA.

Further, there is nothing in these documents that indicate that the Chamber, the EDB and the Port acted together as a political committee. Just as with the individual parties, the plaintiffs as a group certainly did not have the expectation of receiving contributions or making expenditures in support of or opposition to, any candidate or any ballot proposition. No funds were pooled, no contributions were sought and none were received.

For the reasons set out in this letter, the Chamber requests that the PDC respond to the inquiry from the Attorney General with a firm recommendation that no violation has occurred and no legal action be taken.

If I can be of further assistance, please let me know.

Very truly yours,



Valarie S. Zeeck

VSZ:cls
Attachment

[4845-3939-5650]

EXHIBIT A

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 spoliatorem*. See Edward v. Mcfarland, 10 Wn.2d 81, (1941)
COMPLAINT RE UNLAWFUL CAMPAIGN ACTIVITY BY THE PORT OF TACOMA, TACOMA-PIERCE COUNTY CHAMBER AND TACOMA-PIERCE COUNTY ECONOMIC DEVELOPMENT BOARD 1

CHAMBER 000001

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.

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.

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.



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CHAMBER 000005

From: Carolyn Lake
To: vzeck@ghl-law.com
Cc: turner@tacnchamber.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] 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 C.](#); [Marzano, Dick](#); [Meyer, Don](#); [Petrigh, Clare](#)
Cc: [Wolfe, John](#); [Esterbrook, Don](#); [Beckett, Kurt](#); [Lava, 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.

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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: 160806.f, Complaint with Attachments: SIGNED.pdf 160803.pldg, Summons.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: Zeesk, Valerie To: Jason Whalen; Lake, Carolyn; Mattina, Tara Cc: Deana Pindkney; 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 Hangartner v. City of Seattle, 151 Wn.2d 439, 90 P.3d 26 (2004) and RCW 5.60.050(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>Hargarten 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>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 If Any
6. Email with Subject: FW: Lawsuit docs Attachments: 160606.f. Complaint with Attachments.SIGNED.pdf 160603.pldg.Summons.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.Summons.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; vzeeck@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.Summons.pdf Importance: High	From: Carolyn Lake To: Mattina, Tara; vzeeck@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	Pages Page Nos	Status & Basis For Redaction If Any
11. Email with Subject RE: ATTY CLIENT - Final version -changes NOW made and Attachments: 160606.Summary Memo on Initiative Challenge.pdf 160606.f. cont. Complaint.docx	From: Carolyn Lake To: Mattina, Tara	Monday, June 6, 2016 1:39:15 PM	190-192, 193-222 Redactions: 191	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). Public
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	
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).

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Document	From/To	Date	Pages Page Nos	Status & Basis For Redaction If Any
14. Email with Subject: F/W: 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: vzeeck@gth-law.com Cc: tompp@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

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Document	From/To	Date	Bates Page Nos	Status & Basis For Redaction If Any
17. Email with Subject: atty-client: Litigator - CONFIDENTIAL and Attachments: BallotInitiative- CommunicationsPlan- June2016.doc Background- BallotInitiative- June2016.docx WaterBallotInitiative- June2016.docx	From: Martina, Tara To: Lake, Carolyn	Thursday, May 25, 2016 12:15:08 PM	300 301-305 Redacted: 300, 301, & 303	The redacted portions of these records refer to 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. 15-2-08477-5 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).
18. Email with Subject: RE: Atty Client - Litigator- CONFIDENTIAL	From: Carolyn Lake To: Doremus, Judi Cc: Martina, Tara	Tuesday, May 24, 2016 2:12:00 PM	307-309 Redacted: 307, 308	The redacted portions of these records refer to 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

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Document	From/To	Date	Pages, Page Nos.	Status & Basis For Redaction if Any
19. Email with Subject: RE: Atty Client - Litigation- CONFIDENTIAL	From: Doramus, Judi To: Lake, Carolyn Cc: Mattina, Tara; Deborah Kelly (Deborah@edbtacommapierce.org); Bruce Kendall (Bruce@edbtacommapierce.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>Hangerfener 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-Ballofinitiative-June2016.docx Attachments: Backgrounder-Ballofinitiative-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>Hangerfener v. City of Seattle</i> , 151 Wn.2d 439, 90 P.3d 26 (2004) and RCW 5.60.060(2).

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Document	From/To	Date	Pages 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. 18-2-08477-5 and Court of Appeals No. 49263-6-II. See <i>Hangartner v. City of Seattle</i> , 151 Wn.2d 439, 90 P.3d 28 (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 4:25:37 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>Hangartner v. City of Seattle</i> , 151 Wn.2d 439, 90 P.3d 28 (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

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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 et al</i> , Pierce County Superior Court No. 16-2-08477-5 and Court of Appeals No. 49263-6-II. See <i>Hengstenberg 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>Hargarten v. City of Seattle</i> , 151 Wn.2d 439, 90 P.3d 26 (2004) and RCW 5.60.060(2).
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