IN THE WASHINGTON STATE SUPREME COURT

PORT OF OLYMPIA, et al., and	)	
WEYERHAEUSER CO.,	)	Supreme Court Case No. 90973-3
Petitioners, et al,;	)	COA II Case No. 43876-3-II
v.	)	Superior Court Case No. 07-2-01198-3
ARTHUR S. WEST, and	)	
JERRY L. DIERKER JR.,	)	Clerical Correction
Respondents.	)	and Certificate of Service
	)	

1. Pro se indigent aged Disabled CoRespondent Jerry Lee Dierker Jr., respectufully and humbly actin here, clerically corrects the Attachments to his Jan. 6, 2015 Answer to the Port's Dec. 15, 2014 "Notice of Voluntary Withdrawal of Petition and Motion to Dismiss Review" of the Port's Petition for Discretionary Review of the COA II's Unpublished Opinion in this case, since he did not discover until late Jan. 8, 2015 in his haste to complete file and serve this Answer by the Jan. 6, 2015 date in this Court's letter ruling, he had made a clerical error when photocopying the Answer's attached, referenced, and/or cited prior pleadings and exihibits, missing some he attached here.

2. Further, I served this pleading upon the Supreme Court and the parties in this matter.

I certify the foregoing to be true and correct to the best of my knowledge, beliefs and/or abilities, under penalty of perjury of the laws of the State of Washington and the United States of America, this 8th day of January, 2015 in Olympia, Washington.

Jerry Lee Dierker Jr., Appellant
2826 Cooper Point Road NW
Olympia, WA 98502
Ph. 360-866-5287

Correction to Attachments to
"Respondent Jerry Dierker's Answer to the
Port's Notice and Motion for Voluntary
Dismissal of Review"

Washington State Court of Appeals
Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454
David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)
General Orders, Calendar Dates, and General Information at http://www.courts.wa.gov/courts **OFFICE HOURS**: 9-12, 1-4.

June 27, 2013

Kimberly Arden Hughes
Weyerhaeuser Law Dept
PO Box 9777
Federal Way, WA 98063-9777
kim.hughes@weyerhaeuser.com

Stephanie M R Bird
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924 Capitol Way S
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StephanieBird@CushmanLaw.com

Carolyn A. Lake
Goodstein Law Group PLLC
501 S G St
Tacoma, WA 98405-4715
clake@goodsteinlaw.com

Jerry Dierker (via USPS)
2826 Cooper Point Rd. NW
Olympia, WA 98502-3876

CASE #: 43876-3-II
Arthur West, et al., Appellant v. Port of Olympia, et al., Respondents

Mr. Dierker & Counsel:

On the above date, this court entered the following notation ruling:

A RULING BY COMMISSIONER SCHMIDT:

Appellant Dierker's motion to file over-length brief of appellant is granted and the brief is accepted for filing. His motion to supplement the record is denied. He does not demonstrate that RAP 9.11 has been satisfied. The Respondents' briefs are due 30 days from the date of this ruling. Each Respondent may file a single brief responding to both briefs of Appellants.

Very truly yours,

David C. Ponzoha
Court Clerk

Washington State Court of Appeals
Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454
David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)
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June 10, 2013

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Jerry Dierker
2826 Cooper Point Rd. NW
Olympia, WA, 98502-3876

CASE #: 43876-3-II
Arthur West, et al., Appellant v. Port of Olympia, et al., Respondents
Case Manager: Christina

Mr. Dierker:

The brief you submitted to this court in this matter does not conform to the content and form requirements set out in the Rules of Appellate Procedure for one or more of the following reasons:

- ☐ Brief does not cite to the record. RAP 10.3(a)(5).
- ☐ Brief is not reproducible. RAP 10.4(a). This Court requires an original and a copy. Brief is not double spaced.
- ☐ Brief is overlength. RAP 10.4(b).
- ☐ Attachments to the brief are not part of the record on review and, therefore, this Court cannot consider them. RAP 9.1.

The Court will not file the brief as part of the official record but will stamp it and place it in the pouch without filing. Therefore, you must submit and re-serve a corrected brief by **June 20, 2013**.

If you have any questions, please contact this office.

Very truly yours,

David C. Ponzoha
Court Clerk

DCP:cm

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

ARTHUR WEST and JERRY L. DIERKER, JR., Appellants, v. PORT OF OLYMPIA; WEYERHAEUSER CO. d/b/a WEYCO; EDWARD GALLIGAN; BILL MCGREGGOR; ROBERT VAN SCHOORL; and PAUL TELFORD, Respondents.	No. 43876-3-II ORDER DENYING MOTION FOR RECONSIDERATION; GRANTING MOTION TO FILE OVERLENGTH BRIEF; AND DENYING REFUND OF SANCTIONS

Appellant, Jerry L. Dierker, filed a motion for reconsideration of this court's August 5, 2014 unpublished opinion in the above matter. Within this motion, Dierker moves this court to allow the filing of his over length brief ("Dierker's objections to and motion for reconsideration of the August 5, 2014 unpublished opinion in this case, and for other relief under CR 33 & GR 34). He further moves this court to "refund" the $200 sanctions a commissioner of this court imposed, and this court upheld in a motion to modify.

After review of the motion, we grant the filing of Dierker's over length brief and accept said brief for filing; we deny Dierker's motion to "refund" the $200 sanctions previously imposed; and we deny Dierker's motion for reconsideration.

Dated this 11th day of September, 2014.

FOR THE COURT:

Johanson, C.J.
Chief Judge

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

ARTHUR WEST, et al.,

Appellant,

v.

PORT OF OLYMPIA, et al.,

Respondents.

No. 43876-3-II

ORDER DENYING APPELLANT'S MOTION TO MODIFY AND REQUEST FOR SANCTIONS; AND GRANTING THE PORT'S MOTION FOR SANCTIONS

APPELLANT, Jerry Dierker, filed a motion to modify the commissioner's December 18, 2013 ruling, and requests CR 11 sanctions against the Port. The Port requests sanctions against Dierker. Following consideration of the motions and briefing, this court denies the motion to modify and because Dierker fails to show any reasonable legal basis for his repeated attempts to avoid complying with the Rules of Appellate Procedure, we deny his request for fees, grant the Port's request, and impose a $200 sanction for creating needless litigation and wasting precious judicial resources.

Accordingly, we deny appellant's motion to modify the commissioner's ruling and appellant's request for sanctions.

We grant the Port's motion to impose sanctions. This court will accept no further filings from Dierker until he has paid the $200 sanction to the Clerk of this court.

DATED this 21st day of March, 2014.

Panel: Jj. Worswick, Maxa, Lee.

FOR THE COURT:

CHIEF JUDGE

FILED
SUPERIOR COURT
THURSTON CO. WA

'08 APR 25 P12:41

BETTY J. GOULD

BY _____ DEPUTY

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

ARTHUR WEST AND JERRY DIERKER
Plaintiff/Petitioner,

vs.

PORT OF OLYMPIA, et. al
Defendant/Respondent.

NO. 07-2-01198-3

ORDER (OR)

I. BASIS

This matter came regularly before the court upon dispositive motions filed by the parties

II. FINDINGS

After reviewing the case record to date, and the basis for the motion, the court finds that:

(1) THE PLAINTIFFS HAVE NOT ALLEGED IMMEDIATE, CONCRETE, SPECIFIC INJURY REQUIRED TO ESTABLISH STANDING OR ANY INTEREST OR INJURY PARTICULAR TO THEM BEYOND ~~the~~ ANY OTHER MEMBER OF THE PUBLIC

(2) DEFENDANTS SHALL FILE A TRANSCRIPT OF THE COURT'S DECISION

III. ORDER

IT IS ORDERED that:

(1) THE CASE IS DISMISSED WITH PREJUDICE.

(2) DEFENDANTS SHALL FILE A COPY OF THE TRANSCRIPTS OF THE COURT'S DECISION.

DATED this 25 day of April, 2008

JUDGE/COURT COMMISSIONER

Presented by:

Eric Laschever
WSBA 13980

Carolyn Lake
WSBA 13969

ORDER

SCANNED

EXHIBIT 2

M:\WPDOC\ADMINIST\FORMS\ORDER.FRM, 4/1/01

Superior Court of the State of Washington
For Thurston County

2000 Lakeridge Drive SW • Building No. Two • Olympia WA 98502
Telephone (360) 786-5560 • Fax (360) 754-4060

April 23, 2012

206-812-3144

534-9183

Ms. Stephanie Bird
Cushman Law Offices, P.S.
924 Capitol Way South
Olympia, WA 98501

Jeffrey Beaver
Graham & Dunn
Pier 70, 2801 Alaskan Way
Suite 300
Seattle, WA 98121-1128

Mr. Jerry Dierker
1720 Bigelow Street NE
Olympia, WA 98506

Carolyn Lake
Goldstein Law Group, PLLC
501 South "G" Street
Tacoma, WA 98405

RE: West, et al v. Port of Olympia et al
Thurston County Superior Court Cause No. 07-2-01198-3

Dear Counsel and Mr. Dierker:

Due to conflicts and affidavits filed in the above matter, the eight judges of the Thurston County Superior Court are unable to hear any remaining issues in the above matter. The Honorable Sam Meyer, Elected Pro Tem Judge, of the Thurston County District Court has agreed to hear this matter

The parties are directed to work with both Trina Wendel, Judicial Assistant to Chris Wickham, Presiding Judge and Catherine Washington, Judicial Assistant, Thurston County District Court to determine the most convenient date and time for this matter to be heard. Ms. Wendel can be reached by e-mail wendlt@co.thurston.wa.us and Ms. Washington at Wasinc@co.thurston.wa.us

786-5557

Sincerely,

Marti Maxwell, Administrator

CC: Court File

Carolyn Lake

Subject: FW: West v. Port of Olympia Case No. 07-2-01198-3

-----Original Message-----
From: Bev Morgan [mailto:Morganb@co.thurston.wa.us]
Sent: Tuesday, April 26, 2011 3:42 PM
To: Deena Lazzareschi
Subject: RE: West v. Port of Olympia Case No. 07-2-01198-3

They checked for any docs re this case. Although Judge Wickham thought they would have been shredded after the hearing in May 2008, I was hopeful his JA had retained them because this issue was bifurcated from the rest of the case and was not resolved at the May 2008 hearing. She does not have them. I knew it was unlikely the clerk's office would accept anything that could not go in the court file, but I had folks look anyway, just in case. They also do not have them.

>>> "Deena Lazzareschi" <dlazzareschi@goodsteinlaw.com> 4/26/2011 3:33
>>> PM >>>
Thanks Bev. It was actually from April 2008.

Deena Lazzareschi
Legal Assistant to Carolyn A. Lake

Goodstein Law Group PLLC
)1 S. G Street
acoma, WA 98405
Phone: 253-779-4000
Fax: 253-779-4411

-----Original Message-----
From: Bev Morgan [mailto:Morganb@co.thurston.wa.us]
Sent: Tuesday, April 26, 2011 3:27 PM
To: Carolyn Lake; Deena Lazzareschi
Subject: RE: West v. Port of Olympia Case No. 07-2-01198-3

Deena,

Judge Wickham, his former civil judicial assistant and the clerk's office all advise they do not have the "Confidential Exempt Records"
from October 2008.

Bev Morgan
Sr. Judicial Assistant
(360)709-3232

EXHIBIT 7

SEP 2012

Sept. 14, 2012

To: Port of Olympia

from: Jerry Lee Dierker Jr., 2826 Cooper Point Road NW, Olympia, WA 98502
Ph. 360-866-5287

Re: Reply to the Port's Sept. 13, 2012 Reponse to my Sept. 6, 2012 Request for the Public Records unlawfully withheld by the Port from Mr. Arthur West and/or myself since at least June, 2007 which were part of the Public Record Act claims made in Thurston County Superior Court Case No. 07-2-001198-3, which have been again been requested by Mr. West since July 27, 2012, and my request for these public records is made pursuant to the July 27, 2012 Order and oral rulings of that case.

Dear Port of Olympia,

Thank you for your response to my request for these public records made pursuant to the July 27, 2012 Order and oral rulings of Judge Sam Meyer in Thurston County Superior Court Case No. 07-2-001198-3.

I will pick up copies of these public records being previously withheld by the Port that were noted in Mr. West's recent Request for these Public Records made sometime after the July 27, 2012 Order and oral rulings of that above noted case.

Further, thank you for your admission that although the Port failed to give me these documents when I requested them in Feb. 2006 about this Port project, and in fact the Port failed to ever even disclose to me the existence of these documents I requested, the Port has give other persons who requested copies of page 49 of the original Port lease of Marine terminal property to the Weyerhaeuser Company and copies of those other supporting documents which were "incorporated" into the terms of the Port's Lease of Marine terminal property to the Weyerhaeuser Company, which included but are not limited to the Floyd Snyder Environmental Site Assessment of the site of this Port project, (not the "Boyd" Snyder Environmental Site Assessment you refer to in your response), and these documents were also not given to the Superior Court or the Plaintiffs in Thurston County Superior Court Case No. 07-2-001198-3 West and Dierker v. Port of Olympia , et al., noted above.

Please respond in writing within 5 days to this reply to your response to the above noted request.

Thank you,

Jerry Lee Dierker Jr.

Date: Jan. 27, 2006

To: Port of Olympia Executive Director Ed Galligan and/or other responsible government officials in charge of the documents requested below, et seq., et al.

RE: Request to review any and all public information on the Port's various related projects and other actions done in support of and/or required by the Port's lease or other agreements, etc., with the Weyerhaeuser Company to allow a log and railroad tie processing and shipping operation on Port property, pursuant to the Freedom of Information Act Title 5 USC § 551a, Washington State Public Records Act RCW 42.17.250 et seq., the Washington State and U.S. Constitutions, and/or other applicable state, federal, international, or common law requiring the release of such information held by government to the public making such requests for information, especially when such information is required for petitioning the government for redress of grievances as it is here.

Dear Port of Olympia Executive Director Ed Galligan and/or other responsible officials:

I am requesting I be allowed to review certain information on any and all of the Port's projects, actions, etc., related to the Port's lease or other agreements, etc., with the Weyerhaeuser Company to allow a log and railroad tie processing and shipping operation on Port property, and I am requesting I be given copies of certain information I will designate after this review.

This request to review public information here includes inspection and copying by myself or someone acting in my behalf of any designated documents including but not limited to: writings; drawings; charts, photographs, phonorecords, audio tapes, computer storage devices, other electronic media, and other data compilations from which information can be obtained, translated, if necessary, by you through the appropriate devices into any reasonable usable form.

It also includes the ability by by myself or someone acting in my behalf to inspect and copy, test or sample, etc., any tangible things which constitute or contain matters within the scope of the laws noted above, which are in the possession, custody or control of the Port and its agents, et seq.

Further, in the event that you do not all me to review and copy certain of this public information or portion of this public information, I am also requesting you give me a specific written reason for not disclosing each and every portion of each documented withheld by you or the Port related to this request, and/or why you cannot promptly provide this information to me within the time period required by law. Thank you.

Sincerely

Jerry Lee Dierker
1720 Bigelow St. NE
Olympia, WA 98506
Tel. 360-943-7470

Date: Feb. 27, 2006

To: Port of Olympia Executive Director Ed Galligan and/or other responsible government officials in charge of the documents requested below, et seq., et al.

RE: Clarification of my first Request to review any and all public information on the Port's various related projects and other actions done in support of and/or required by the Port's lease or other agreements, etc., with the Weyerhaeuser Company to allow a log and railroad tie processing and shipping operation on Port property, including but not limited to all discoverable and disclosable documents, communications, maps, engineering designs, and other information requested by Arthur West, Jan Witt, Barnett Kalikow or others comprising about 2300+ documents of about 2407+ pages, et al, pursuant to the Freedom of Information Act Title 5 USC § 551a, Washington State Public Disclosure Act RCW 42.17 et seq., the Washington State Environmental Policy Act (SEPA) RCW 43.21C et seq., the National Environmental Policy Act (NEPA) Title 42, USC § 4321C et seq., the Washington State and U.S. Constitutions, and/or other applicable state, federal, international, or common law, regulation, statute, and/or case law, et seq., requiring the release of such information held by such government agencies like yours to the public making such requests for information, especially when such information is required for petitioning the government for redress of grievances as it is here.

Dear Port of Olympia Executive Director Ed Galligan and/or other responsible officials:

In reply to the Port's public records response of Feb. 21, 2006 to me, I am clarifying my prior Jan. 27, 2006 records request that I be allowed to review all of the above noted information on any and all of the Port's projects, actions, etc., related to the Port's lease and/or other agreements, etc., with the Weyerhaeuser Company, which are related to the Weyerhaeuser Company's proposed log and railroad tie processing and shipping operation on Port property, and I am requesting I be given copies of certain information I will designate after this review.

It clearly appears that the Port's two Feb. 1 and 10, 2006 public records responses from the Port's public records disclosure agent acting here, Carolyn Lake, were merely done to unlawfully delay disclosure to me of this requested disclosable material, since evidence of official and judicial notice within at least 3 Superior Court cases against the Port currently, clearly shows that the Port has already disclosed hundreds of pages of these same requested documents to the public and where the Port has refused to disclose about 2100 other of these same requested documents on the Weyerhaeuser Company's proposed log and railroad tie processing and shipping operation on Port property.

It also clearly appears from the Port's Feb. 21, 2006 public records response from the Port's public records disclosure agent acting here, Carolyn Lake, that the Port's public records disclosure agent has either completely misunderstood my prior Jan. 27, 2006 records request, or the Port's public records disclosure agent has deliberately acted to delay and deny disclosure to me of about 2300+ documents related to my records request for documents on the Weyerhaeuser Company's proposed log and railroad tie processing and shipping operation on Port property.

This clarification of my prior records request to review public information here includes inspection and copying by myself or someone acting in my behalf of any designated documents including but not limited to: all discoverable and disclosable documents, communications, maps, engineering designs, writings, drawings, charts, photographs, phonorecords, audio tapes, computer storage devices, other electronic media, and other data compilations from which information can be obtained, translated, if necessary, by you through the appropriate devices into any reasonable usable form.

It also includes the ability by by myself or someone acting in my behalf to inspect and copy, test or sample, etc., any tangible things which constitute or contain matters within the scope of the laws noted above, which are in the possession, custody or control of the Port and its agents, et seq.

Further, in the event that you do not all me to review and copy certain of this public information or portion of this public information, I am also requesting you give me a specific written reason for not disclosing each and every portion of each documented withheld by you or the Port related to this request, and/or why you cannot promptly provide this information to me within the time period required by law. Thank you.

Sincerely

Jerry Lee Dierker
1720 Bigelow St. NE
Olympia, WA 98506
Tel. 360-943-7470

August 29, 2012

To: Port of Olympia

from: Jerry Lee Dierker Jr., 2826 Cooper Point Road NW, Olympia, WA 98502

Re: Request for the Public Records unlawfully withheld by the Port from Mr. Arthur West and/or myself since at least June, 2007 which were part of the Public Record Act claims made in Thurston County Superior Court Case No. 07-2-001198-3, which have been again been requested by Mr. West since July 27, 2012, and my request for these public records is made pursuant to the July 27, 2012 Order and oral rulings of that case.

Dear Port of Olympia,

Pursuant to the July 27, 2012 Order and oral rulings of Judge Sam Meyer in Thurston County Superior Court Case No. 07-2-001198-3, I am again making a request for public records being withheld by the Port that were noted in Mr. West's recent Request for these Public Records made sometime after the July 27, 2012 Order and oral rulings of that case.

Further, since the Port failed to give me certain documents I requested in Feb. 2006 about this Port project, and in fact the Port failed to ever even disclose the existence of these documents I requested, I additionally request copies of page 49 of the original Port lease of Marine terminal property to the Weyerhaeuser Company and copies of those other supporting documents which were "incorporated" into the terms of the Port's Lease of Marine terminal property to the Weyerhaeuser Company, which included but are not limited to the Floyd Snyder Environmental Site Assessment of the site of this Port project.

Please respond in writing with 5 days to this request.

Thank you,

Jerry Lee Dierker Jr.

[ ] Expedite
[ ] No hearing is set
[ ] Hearing is set:
Date:
Time: 9:00 A.M.
Judge/Calendar: Judge _____

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

ARTHUR S. WEST, and	)	**No. 07-2-01198-3**
JERRY L. DIERKER JR.,	)	
Plaintiffs;	)	**AMENDED COMPLAINT FOR**
v.	)	**VIOLATIONS OF THE PRA,**
PORT OF OLYMPIA,	)	**DECLARATORY RELIEF,**
WEYERHAEUSER CO. d.b.a. WEYCO,	)	**JUDICIAL REVIEW OF VIOLATIONS**
EDWARD GALLIGAN, BILL	)	**OF SEPA, AND FOR**
MCGREGGOR, ROBERT VAN	)	**WRIT OF CERTIORARI/PROHIBITION**
SCHOORL, and PAUL TELFORD,	)	
Defendants.	)	

I INTRODUCTION AND STATEMENT OF THE CASE

1.1 This is an action for judicial review, declaratory relief and penalties for:

a) the improper denial of access to public records under the Public Records Act RCW 42.56 (PRA);

b) for violation of the terms of the City of Olympia Hearings Examiner's December 19, 2006 ruling on the Weyerhaeuser Office and log and cargo import/export yard project proposal, the Harbor Improvements Act RCW 53.20.010; and

c) for a Writ of Certiorari to compel production of a proper administrative record for review and review unlawful arbitrary administrative action that was taken without proper administrative process or a record subject to review in violation of SEPA and these other related land use and environmental law and precedent, and/or a Writ of Prohibition and other injunctive relief prohibiting

the Defendants from taking any further actions on these related projects without prior full compliance with law.

1.2 Plaintiffs maintains that the defendants' have a continuing pattern of violations of State and federal law, including SEPA, the PRA, and other laws noted above, concerning the Weyerhaeuser lease and the developments related thereto and the Port's various other physically and/or functionally connected and/or related Marine Terminal Improvement Projects and other projects in this area. This is in combination with the Port's established pattern of deliberate violation of the clear letter and intent of SEPA and due process makes all of their environmental determinations, including those issued for the related SEPA 07-2, SEPA 07-3 and SEPA 07-5 projects, constitutes impermissible arbitrary and capricious agency action.

1.3 Plaintiffs maintain that defendants have violated both SEPA and the PRA, and the Harbor Improvement Act, the requirement that governmental action and accompanying environmental determinations be reviewed in one proceeding (RCW 43.21C.075(6)(c), RCW 43.21C.075(3) as well as the binding terms of the December 19, 2006 ruling of City of Olympia Hearing Thomas Bjorgen on the Weyerhaeuser Office and log and cargo import/export yard project proposal, and they are entitled to the relief sought herein.

1.4 Plaintiffs allege that the inferior tribunal of the Port has exceeded it's jurisdiction and acted outside the course of common law and illegally and there is no appeal and no plain speedy and adequate remedy in the ordinary course of law. A Writ of Certiorari is therefore appropriate. Further, a Writ of Prohibition is necessary.

1.5 Plaintiffs also seeks relief under the uniform declaratory judgments Act, RCW 7.24 for: I) a determination that defendants have violated the terms of the December 19, 2006 ruling of the City of Olympia hearing examiner; II) That defendants project is violative of the Harbor Improvements Act or other relevant land use or environmental law; and III). That the failure of the Port to disclose SEPA related information during the comment period on SEPA 07-2, SEPA 07-3, and SEPA 07-5 have rendered these environmental determinations void.

1.6 Plaintiffs also seek an order of this court prohibiting the Port of Olympia from violating the express **Black Letter** terms of RCW 43.21C as expressed in the binding legal ruling of the Olympia Hearing Examiner on December 19, 2007 which was not appealed.

1.7 Finally, Plaintiffs seek a Writ of Prohibition and/or an order of this court staying or restraining the Port from further construction on or permitting of the project pending final determination of this action.

II PARTIES AND JURISDICTION

2.1.1 Plaintiffs West and Dierker are citizens living within about 1 mile from this project area. They travel through this area every day, with a particular special relationship established between themselves and the Defendants concerning the subject matters of this case. Plaintiffs West and Dierker are citizens with a particular established connection to the project location, including but not limited to a particular established connection to the animals and plants that inhabit the project area and the land and water in the vicinity, which they often act to protect by such legal actions as this one. They have standing to maintain this action.

2.1.2 Mr. Dierker is also a severely disabled person with certain serious life threatening "service-connected" disabilities from being exposed to airborne toxic materials in the Air Force, and foreseeably likely increased impacts to his disabilities leading from the construction and operation of these projects must be considered by the Port and other agencies with jurisdiction under the State Environmental Policy Act (SEPA) RCW 43.21C and WAC 197-11, under the Washington State Blind, Handicapped, and Disabled Persons "White Cane Law" RCW 70.84, and under the Americans with Disabilities Act (ADA) Title 42 USC § 12101, 12131, 12132, et seq.

2.2 The Port of Olympia is a Port District and municipal corporation located in Thurston County with a demonstrated history of withholding public records related to SEPA reviews of Port and others' projects on Port land, and a demonstrated history of "piecemealing" SEPA reviews of Port and others' projects on Port land.

2.3 Defendant Weyerhaeuser Company, d.b.a. WEYCO, is a corporation doing business in

Washington, who is acting "jointly" with the Port on the SEPA 07-2 project that is related and connected to the SEPA 07-3 and SEPA 07-5 projects in this case.

2.4 Defendants Galligan, McGreggor, Von Shoorl, Telford, are "persons" as defined in 42 USC 1983, 1985, and are subject to the provisions of various local, state, and federal laws and binding legal decisions relevant to this matter, including, but not limited to, RCW 56.20.010: "It shall be the duty of the port commission of any port district, before creating any improvements hereunder, to adopt a comprehensive scheme of harbor improvements in the port district, after a public hearing thereon, of which a notice shall be published once a week in a newspaper of general circulation in the port district, and no expenditure for the carrying on of any harbor improvements shall be made by the port commission ... unless and until the comprehensive scheme of harbor improvement has been so official adopted by the port commission."

III ALLEGATIONS

3.1 On March 19, 2007, Plaintiff West filed a public records disclosure request with the port. The Port failed to properly assert objections to disclosure, but instead illegally withheld records, including those pertaining to the SEPA 07-2 Marine Terminal Rail Improvement Project, the Port's the former "intermodal infrastructure enhancement project" now titled the "SEPA 07-3 Marine Terminal Rail Improvement Project", and the related and connected Swantown Marina dock improvement project SEPA 07-5. (See Plaintiff West's March 19, 2007 public records request). The Port has also unlawfully withheld other public records from inspection by Plaintiffs on other functionally or physically related or connected projects and actions concerning this area which will be shown.

3.2 No notice of the withholding was made until after the end of the comment, reconsideration, and administrative appeal periods for SEPA 07-2 and SEPA 07-3. (See attached Letter of June 12, 2007 and see the Port's two MDNSs issued for SEPA 07-2 and SEPA 07-3). The Port has also improperly and unlawfully identified other records as exempt in other communications within the last year and a half and has withheld them from inspection.

3.3 The Port of Olympia is a Port District, a municipal corporation, that has a demonstrated

history of withholding records and failing to disclose facts related to SEPA determinations, and of fraudulently misrepresenting projects in order to evade lawful review.

3.4 The port has a history of failing to afford proper administrative hearings of SEPA determinations and failing to maintain proper administrative procedures to the degree that all of its actions constitute arbitrary and capricious actions.

3.5 Uncertainty and a judicable controversy exists because the port has a pattern of issuing improper SEPA determinations and attempting to complete projects based upon inadequate and misleading descriptions of improperly piecemealed projects.

3.6 On April 16, 2007, an MDNS was issued by the Port for a project including a Weyerhaeuser log yard and port marine infrastructure improvements, under SEPA No 07-2.

3.7 On May 24, 2006, the Port issued a related MDNS for a subsequent, improperly segmented portion of the Port's Marine Terminal Improvement Project greater plan, under SEPA No. 07-3 the Port's Marine Terminal Rail Improvement Project.

3.8.1 On April 25, 2006 Plaintiff West filed a request for reconsideration of the MDNS issued for the SEPA 07-2 project.

3.8.2 On May 10, 2007 Plaintiff Dierker filed a May 9, 2007 Comment and Request for Withdrawal of the Mitigated Determination of Non-Significance (MDNS) for the joint, related and combined Port's Marine Terminal Improvement projects and the Weyerhaeuser Log Export facility project SEPA File No. 07-2, & a Request for Joinder with the April 25, 2007 Request for Reconsideration of Arthur West.

3.8.3 On May 10, 2007 Arthur West and Jerry Dierker made First Amended Request for Appeal/Reconsideration of the April 16, 2007 MDNS for Port-Weyerhaeuser Proposal No. SEPA 07-2 and Joinder of Appellants' Jerry Lee Dierker Jr. and other parties, et al.

3.8.4 On May 17 & 24, 2007 this joint request for reconsideration of Plaintiff West and Dierker was timely amended twice more on to consolidate a request for reconsideration of the MDNS issued for the related SEPA 07-3 project with that of SEPA 07-2 project. The Port did not complained about Plaintiffs' consolidation of the SEPA 07-2 and SEPA 07-3 related projects throughout the Port's entire reconsideration proceeding and the "non-appeal" proceeding, and thereby, the Port has waived it right to make such a complaint.

3.8.5 Patrisa DeFrancesca also joined with Mr. Dierker's joint requests for reconsideration of the Port's two MDNS SEPA decisions made on the SEPA 07-2 and SEPA 07-3 projects the Mr. Dierker had made with Mr. West, and Patrisa DeFrancesca and others also filed a separate request for reconsideration of the MDNS for the SEPA 07-2 project.

3.8.6 On June 4, 2007 the Port Defendant Executive Director Ed Galligan along with the Port's and Weyerhaeuser's Attorneys, conducted two "private" Reconsideration Meetings for these two groups of appellants requesting reconsideration of these Port SEPA actions, where these two "private" Reconsideration Meetings were based upon the Port's required illegal administrative appeal procedure, which involved a "private" meeting with the Port Executive Director Ed Galligan, who illegally failed to preserve a verbatim record of this required paid for proceeding, where no "open record" adjudicative hearing was conducted, where no testimony from witnesses was allowed, where no Port or Weyerhaeuser agents or their written pleadings or exhibits could be questioned or cross-examined, or distinguished, and where the Port Executive Director illegally made "findings of fact" and "conclusions of law" though he claims he does not act as a "quasi-judicial official" , the only official outside of a judge authorized to make legal "findings of fact" and "conclusions of law" on a matter, which violated the Appearance of Fairness Doctrine and its statute RCW 42.36. Plaintiffs note that Mr. Dierker participated in both of these Reconsideration Meetings.

3.8.7 On June 7, 2007 these consolidated, joined, and/or separate requests for reconsideration of the two MDNSs issued for the SEPA 07-2 and/or SEPA 07-3 related projects were all denied in the Port Defendant Executive Director Ed Galligan's single consolidated Response to the Requests for Reconsideration.

3.9 On June 14, 2007 Plaintiffs West and Dierker filed a joint administrative appeal of the Port's Ed Galligan Defendant's June 7, 2007 decision to deny the "private" reconsideration requests on the SEPA 07-2 and SEPA 07-3 projects, and Patrisa DeFrancesca and many others filed a joint administrative appeal of the Port's Ed Galligan Defendant's June 7, 2007 decision to deny the "private" reconsideration request on the SEPA 07-2 and SEPA 07-3 projects, where Ms. DeFrancesca "joined" or "incorporated by reference" the administrative appeal pleadings of Mr. Dierker on the SEPA 07-2 and SEPA 07-3 projects. All of the Port's review, reconsideration and administrative appeal procedures represent illegal, erroneous, and/or arbitrary and capricious agency actions, which violated the Appearance of Fairness Doctrine and its statute RCW 42.36.

3.10 On June 18, 2007, the Defendants Port Commissioners decided to deny Plaintiffs an "open record" administrative adjudicative hearing of their administrative appeals of the Port's SEPA MDNSs issued for the SEPA 07-2 and 07-3 projects, in a completely arbitrary and capricious manner. The Port's history and patterns of conduct make any Port administrative proceedings a foregone conclusion in that the procedures are deliberately designed to obstruct review and make the process cumbersome and burdensome without affording basic due process of law, and are designed to have consecutive administrative and judicial proceedings -- at least one set for the SEPA part and one set for the "land use permitting" parts. In addition, the Port repeatedly continues to fail to produce a proper administrative record, and continues to obstruct disclosure of necessary records. The Port's final determination on June 18, 2006 completed the Port's process for review of it's SEPA determination of the Port's SEPA 07-2 and SEPA 07-3 project proposals. The Port's abysmal history of making and conducting such defective environmental review processes makes any further administrative review futile, since the Port's SEPA appeal process is no more than a procedural morass which provides no procedural due process to those who attempt to use it.

3.11 The SEPA MDNS determinations by the Port on the SEPA 07-2 and 07-3 projects were contrary to law, done without observance of proper procedure, violated the Appearance of Fairness doctrines and statutes (RCW 42.36), and was legally and substantively incorrect. It was also unlawful in that it failed to include final permit approvals necessary to prohibit an "orphan" SEPA appeal. In addition, the impacts upon protected plants wildlife were not adequately evaluated.

3.12 On June 18, 2007 in a "public meeting" without proper timely prior notice to the appellants, the Port commissioners adopted the decision of the responsible official without any "open record" adjudicative appeal hearing having been conducted by a quasi-judicial official, without the making of a proper verbatim record of such proceeding, and without proper completion, disclosure and circulation of the entire administrative record and all evidence relevant and necessary to consider the impacts leading from the construction and operations of these projects for the Superior Court to review.

3.13 On July 5, 2007, the Port issued a SEPA DNS (MDNS) on the Swantown Marina, which is another Port project that is a physically and/or functionally related or connected part of the Port's SEPA 07-2 project, as this SEPA 07-5 project provides the "stormwater outfall" part of the Port's stormwater pond being built as part of the SEPA 07-2 project.

3.14 On December 19, 2006, as part of an earlier administrative appeal of a previous defective SEPA DNS environmental determination issued for the Weyerhaeuser portion of this new SEPA 07-2 project, the City of Olympia Hearing Examiner overturned and vacated that defective SEPA DNS environmental determination issued for the Weyerhaeuser portion of this new SEPA 07-2 project. The Port and Weyerhaeuser Co. were parties to that earlier administrative appeal action and did not appeal this December 19, 2006 decision of the City of Olympia Hearing Examiner. In the City of Olympia Hearing Examiner's decision, the Hearing Examiner ruled that the lease was not exempt from SEPA review and that SEPA's WAC rules and binding law required the Port to consider "the environmental impacts of both the buildings and the export operations under the lease". The Examiner further ruled that the SEPA review, and the project description were physically and/or functionally connected and/or related projects or actions which could not "piecemealed" from each other under SEPA.

3.15 These two SEPA determinations by the Port on the SEPA 07-2 and 07-3 projects are an unlawful attempt to unlawfully evade the terms of the December 19, 2006 ruling of the Hearing Examiner on the Weyerhaeuser portion of this new SEPA 07-2 project, and to do so without any lawful appeal of that binding decision on the Port and Weyerhaeuser ever being filed.

3.16 Despite the clear requirements of RCW 43.21C the Port has adopted an unlawful appeal procedure without the making of a verbatim official record and an illegal and extortionate fee schedule for the express purpose of obstructing the exercise of constitutional rights by Plaintiffs and others similarly situated under false color of law.

3.17 The Port's SEPA Appeal procedure also violates SEPA, RCW 42.56, due process, the Appearance of Fairness Doctrine, RCW 42.36, and the Washington State and U.S. Constitutions,

3.18 The Port has unlawfully and underhandedly "piecemealed" the Marine Terminal Improvement project under SEPA 07-2 from the Marine Terminal Rail Improvement project under SEPA 07-3, and "piecemealed" the SEPA 07-2 project from the SEPA 07-5 project and from other related and connected projects, which appear to be integral parts of larger Port project to expand the facilities of the Marine Terminal. The Port has unlawfully and underhandedly "piecemealed" the Marine Terminal itself to such a state that the Port's Environmental Checklist for the SEPA 07-2 project claims that **no** "Shorelines Management Act Substantial Use Permit" is needed for the SEPA 07-2 Marine Terminal Improvement project while the Port claims one **is needed** for the SEPA 07-3 Marine Terminal Rail Improvement project built in the middle of the the SEPA 07-2 Marine Terminal Improvement project, and claiming one **is needed** for the SEPA 07-5 project that has the "stormwater outfall" pipe for the Port's "stormwater pond" being constructed for the SEPA 07-2 project -- as if any project that is part of the Marine Terminal's facilities on Budd Inlet is not within 200 feet of the shoreline of Budd Inlet, or its "uplands", and/or as if any such project is not a "related or connected" part of the Marine Terminal's facilities.

3.19 Defendants Port, Galligan, McGreggor, Von Shoorl, Telford, are subject to the provisions of the Harbor Improvement Act RCW 53.20.010 "**Adoption of a harbor improvement plan**" which states "... It shall be the duty of the port commission of any port district, before creating any improvements hereunder, to adopt a comprehensive scheme of harbor improvement in the port district ...", yet no such "harbor improvement plan" for the Port of Olympia has been "adopted" by the port Commission, or the Port's SEPA 07-2 and/or 07-3 actions did not comply with the provisions of such a "harbor improvement plan" if it was done, and these Defendants have failed

to comply with the Harbor Improvement Act RCW 53.20.010.

3.20 By their actions, Defendants have unlawfully evaded required compliance with various other laws as noted herein and as noted in the comments and administrative pleadings of the Plaintiffs, other administrative appellants, agencies with jurisdiction, the Port and Weyerhaeuser within the agency record on these matters and within other evidence of official and judicial notice on these matters contained within newspaper reports, audio and video tapes of Port Executive Director Meetings, Port Commission Meetings and Olympia City Council Meetings, all of which Plaintiffs incorporate by reference into this pleading.

3.21 Defendants' course of action constitutes improper, unlawful, unconstitutional, arbitrary and capricious and/or clearly erroneous actions or omissions to properly act, and Defendants have acted without supporting legal authority, and/or in excess and/or in abuse of their legal authority.

3.22 Plaintiffs seek an order voiding the determinations or a Writ of Certiorari to compel production of all records related to the Weyerhaeuser project and the developments at the marine terminal and a remand to the Port with instructions to consolidate the Port's environmental review and determinations for the SEPA 07-2 project with those of the SEPA 07-3 and and SEPA 07-5 projects, and hold an "open record" recorded adjudicative administrative appeal hearing in compliance with due process of law.

3.23 Since no "open record" appeal hearing has bee conducted on these matters, Plaintiffs reserves the right to make further pleadings and submit further evidence related to this matters.

IV CAUSES OF ACTION

4.1 PUBLIC RECORDS ACT

By their acts and omissions, defendants withheld public records without making any proper exemptions and violated the PRA, for which Plaintiffs are entitled to the relief requested in Section V below.

4.2 HARBOR IMPROVEMENT ACT

By their acts and omissions, defendants violated the Harbor Improvement Act, for which Plaintiffs are entitled to the relief requested in Section V below.

4.3 UNIFORM DECLARATORY JUDGMENTS ACT

By their acts and omissions, Defendants created an uncertainty, in the conflict of interest of public officers, for which Plaintiffs are entitled to the relief requested in Section V below.

4.4 ARBITRARY AND CAPRICIOUS AGENCY ACTION

By their acts and omissions, Defendants acted arbitrarily and capriciously, for which Plaintiffs are entitled to the relief requested in Section V below.

4.5 JUDICIAL REVIEW OF SEPA DETERMINATION

By their acts and omissions, Defendants violated the intent, spirit, substance and procedure of the State Environmental Policy Act, and other related laws, for which Plaintiffs are entitled to the relief requested in Section V below.

4.6 WRIT OF CERTIORARI/PROHIBITION

By their acts and omissions, Defendants violated duties the intent, spirit, substance and procedure of the State Environmental Policy Act, and/or other laws and acted unlawfully and in excess of jurisdiction for which Plaintiffs are entitled to a writ of certiorari and prohibition granting the relief requested in Section V below. The ordinary course of the law is not adequate to deal with notorious malefactors such as those in control of the Port.

V REQUEST FOR RELIEF

1. That a declaratory Judgment issue declaring that the Port of Olympia has repeatedly conspired to evade both SEPA and the PRA by concealing records related to SEPA review and misrepresenting projects based upon such concealment.

2. That a show cause order issue under the terms of Public Records Act (PRA) RCW 42.56, to compel the Port to appear and show cause why the records identified in the June 12 letter, and all other relevant records being withheld from inspection not be immediately disclosed, and why

penalties and fees should not be assessed for their unlawful withholding of such records.

3. That a Writ of Prohibition, stay or preliminary injunction issue to restrain any further expenditure or construction on these projects pending a ruling in this case.

4. That the Port's SEPA determinations No. SEPA 07-2, SEPA 07-3, and SEPA 07-5 be declared unlawful, violative of the December 19, 2006 ruling of the City of Olympia Hearing Examiner, barred by res judicata or barred by equitable or collateral estoppel, and the Port's SEPA determinations No. SEPA 07-2, SEPA 07-3, and SEPA 07-5 are voided.

5. That, in the alternate a writ of certiorari issue to compel the production of all of the Port and Weyerhaeuser records and the Port's complete administrative record of all of Defendants' planned or proposed projects on the Port Peninsula related, and/or connected to the Port's Marine Terminal facilities like those of SEPA 07-2, SEPA 07-3, and SEPA 07-5 projects.

6. That a writ of prohibition issue to prohibit the Defendants from proceeding with any action or further development in violation of the relevant portions of the Dec 19, 2006 rulings of the City of Olympia Hearing Examiner, SEPA, NEPA, and the Harbor Improvements Act, forever barring Defendants from obstructing full public access to all SEPA related information on these projects.

7. That the Court grant Plaintiffs other appropriate relief.

We certify the foregoing to be correct and true under penalty of perjury of the laws of the State of Washington. Done this 6th day of July, 2007.

Arthur West, Plaintiff
120 State Ave. N. E.#1497
Olympia, WA. 98501

Jerry Lee Dierker Jr.
1720 Bigelow Ave. N.E.
Olympia, WA. 98506

[ ] Expedite
[ ] No hearing is set
[ ] Hearing is set:
Date:
Time: 9:00 A.M.
Judge/Calendar: Judge _____

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

ARTHUR S. WEST, and	)	**No. 07-2-01198-3**
JERRY L. DIERKER JR.,	)	
Plaintiffs;	)	**AMENDED PETITION AND**
v.	)	**VERIFIED STATEMENT FOR**
PORT OF OLYMPIA, et al,	)	**WRIT OF CERTIORARI/PROHIBITION**
Defendants.	)	

This is a petition for a writ of review of an unlawful and ultra vires act of an inferior tribunal or entity under color of State Environmental Policy Act. The Port of Olympia issued 2 MDNSs under SEPA No. 07-2 and 07-3 and issued a DNS (or MDNS) under SEPA 07-5, for improperly piecemealed portions of an integrated marine terminal expansion project, the major portion of which was included in the SEPA No. 07-2 project. Plaintiffs maintain that defendants have violated SEPA, NEPA, the Harbor Improvements Act and they are entitled to the relief sought herein.

Plaintiffs allege that by illegally issuing SEPA determinations on the SEPA No. 07-2, 07-3 and SEPA 07-5 projects, the inferior tribunal of the Port has exceeded it's jurisdiction and acted outside the course of common law and illegally and there is no appeal and no plain speedy and adequate remedy in the ordinary course of law. A writ of Certiorari is therefore appropriate. Further, the Port has failed to provide a record for review properly subject to certiorari, and acted in violation of clear duties, so a writ of prohibition is necessary.

By failing to follow the terms of the order of the Hearing Examiner, piecemealing their project and failing to make disclosure sufficient for prima facia compliance with SEPA, maintaining

convoluted procedure, denying due process of law in their administrative appeal process consisting of a "private meeting" with a Port agent who is not a "quasijudicial official" without any verbatim record of the "private meeting" and without conducting an "open record" adjudicative appeal hearing on the matter, and by maintaining a policy of willful transgression of all environmental law and RCW 53.20.010, the Port has exceeded it's jurisdiction, and a writ of review and/or prohibition should issue.

We certify and verify the foregoing to be correct and true under penalty of perjury of the laws of the State of Washington. Done July 9, 2007 in Olympia, Washington.

Arthur West, Plaintiff
120 State Ave. N. E.#1497
Olympia, WA. 98501

Jerry Lee Dierker Jr.
1720 Bigelow Ave. N.E.
Olympia, WA. 98506

[ ] Expedite
[ ] No hearing is set
[ ] Hearing is set:
Date:
Time: 9:00 A.M.
Judge/Calendar: Judge _____

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

ARTHUR S. WEST, and	)	**No. 07-2-01198-3**
JERRY L. DIERKER JR.,	)	
Plaintiffs;	)	
v.	)	**Affidavit of Service**
PORT OF OLYMPIA, and	)	
WEYCO, et al,	)	
Defendants.	)	

Comes now Plaintiffs Arthur West and Jerry Lee Dierker Jr., the undersigned, who declare and make the following Affidavit of Service.

On July 6, 2007, I, the undersigned, caused this Court and the following parties in this matter to be served at their addresses of record, with copies of the Amended Complaint and Petition for Writ of Certiorari/Prohibition:

1) Defendants Port of Olympia, et al, through personal service to the Port's agents at the Port's Office.

I certify the foregoing to be true and correct to the best of my knowledge, beliefs and/or abilities, under penalty of perjury of the laws of the State of Washington and the United States of America, this 6th day of July, 2007, in Olympia, Washington.

Jerry Lee Dierker Jr., Petitioner
1720 Bigelow Ave. NE
Olympia, WA 98506
Ph. 360-943-7470

[X] Expedite
[ ] No hearing is set
[X] Hearing is set:
Date: August 24, 2007
Time: 9:00 A.M.
Judge/Calendar: Judge Pomeroy

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

ARTHUR S. WEST, and JERRY L. DIERKER JR., et al,	)	**No. 07-2-01198-3**
Petitioners;	)	
v.	)	**Reply to Defendants' Responses to Petitioners' Motion to Amend**
PORT OF OLYMPIA, and WEYCO, et al,	)	
Defendants.	)	

Comes now Petitioners, the undersigned, who declare and make the following Reply to Defendants' Responses to Petitioners' Motion to Amend.

This pleading incorporates by reference all of the Petitioners' other court and administrative pleadings previously submitted in this matter.

Reply to Defendants' Responses to Petitioners' Motion To Amend

The Port at least is claiming in their Response to Petitioners' Motion to Amend that Petitioners have made "new" claims in the Petitioners' 1st Amended Complaint and Petitioners' Second Amended Complaint, when those "new" claims are on part of the Port's "underlying agency actions" that directly relate back to the Port's SEPA 07-2 and SEPA 07-3 SEPA determinations, and the Port has claimed that these "new" claims of Petitioners cannot be part of this case.

However, pursuant to CR 15(c) and SEPA' RCW 43.21C.075, these "new" claims of Petitioners must be part of this judicial review of a SEPA decision case, since those "new" claims are on part of the Port's "underlying agency actions" that directly relate back to the Port's SEPA 07-2 and SEPA 07-3 SEPA determinations.

Further, many of the "new" claims here are allowed under the Discovery Rule Doctrine and the Doctrine of Fraudulent Concealment provisions for the "tolling" of "statute of limitations of actions" since:

1) these "new" claims concern the Port's and Weyerhaeuser's related underlying agency actions on this project complained of in this matter, which occurred and which were disclosed by the Port **after** the Port's agency record on the SEPA administrative appeal process was "closed";

2) these "new" claims concern "new", "newly discovered", or "newly disclosed" relevant evidence of official and judicial notice concerning some of the issues already in Petitioners' administrative pleadings in the agency record and/or in the Petitioners 1st Amended Complaint and Second Amended Complaint on this matter, which were just recently disclosed by the Port and/or were just recently discovered by the Petitioners long **after** the Port's agency record on the SEPA administrative appeal process was "closed"; and/or

3) these "new" claims concern evidence of official and judicial notice concerning other related causes of action affecting these matters, which were just recently disclosed by the Port and/or were just recently discovered by the Petitioners long **after** the Port's agency record on the SEPA administrative appeal process was "closed"

Consequently, under CR 15(c), the Discovery Rule Doctrine and the Doctrine of Fraudulent Concealment provisions for the "tolling" of "statute of limitations of actions", and since the alleged "new" issues were in the Petitioners 1st Amended Complaint and Second Amended Complaint on this matter **before** the Defendants "answered" the Complaint, this Court should allow these and other reasonable amendments of the Complaint in this case to conform with the changes in circumstance in this case.

Further, the Court may need to allow other "relate back" amendments of this Complaint in the future, based upon other recent factual disclosures concerning the Port, Port Staff and Port Commissioners who worked, approved and/or voted on this project, its SEPA determinations, and/or the administrative appeal of these matters.

Finally, the Port's and Weyerhaeuser's Joint Reply to Plaintiff OPA's Response to Port's Motion to Set Case Schedule in a related case under Cause No. 07-2-01352-8, shows that Defendants are pleading that the "amendment" of the Petitioners West and Dierker's Complaint in this matter to include appeal of the Port's "Notice of Issue" was the proper manner to present these issues to this court under SEPA when dealing with the Port's July 10, 2007 SEPA Notice of

Action the Port's "underlying agency action".

Defendants' pleading in that related case notes that:

"The legislature created the Notice of Action to create certainty and avoid serial litigation over SEPA compliance. Wells v. Whatcom County Water District, 105 Wn. App 143, 153 (Div. I, 2001)("RCW 43.21C.080(2)(a) establishes that the Legislature intended to prohibit multiple challenges to proposals based on allegations of SEPA noncompliance.").

The Port's Notice of Action ..., has simplified this matter by clearly identifying the underlying actions on which the SEPA appeal should rest SEPA requires judicial reviews of environmental decisions to be brought together with a challenge of the underlying action. RCW 43.21C.075. The Port filed its Notice of Action to clearly notify parties that the Port had taken an underlying action and to avoid multiple challenges under SEPA as the Legislature intended.

Plaintiffs West and Dierker, plaintiffs in the parallel challenge to the Port's action pending before this Court, addressed the Port's Notice of Action by amending their earlier complaint. The (OPA) Plaintiffs in this case also could have simply amended their first complaint. ...". (See attached copies of pages 4-5 of the Port's and Weyerhaeuser's Joint Reply to Plaintiff OPA's Response to Port's Motion to Set Case Schedule in Cause No. 07-2-01352-8).

Therefore, despite claims made by the Defendants' Responses to Petitioners' Motion to Amend, at least for all issues related to the the Port's July 10, 2007 Notice of Action, defendants have plead to this Court that Plaintiffs West and Dierker's amendment of their judicial SEPA Appeal complaint in this case was proper and reasonable in light of the circumstances of the Port's July 10, 2007 Notice of Action.

Plaintiffs note that Defendants also now claimed the "Port's Notice of Action ... has simplified this matter by clearly identifying the underlying actions on which the SEPA appeal should rest SEPA requires judicial reviews of environmental decisions to be brought together with a challenge of the underlying action".

Therefore, this judicial SEPA appeal in this case must include the review of: 1) all of the Port's and Weyerhaeuser's actions referred to in and functionally and physically related to the Port's Notice of Action; 2) all of the Port's and Weyerhaeuser's actions referred to in the Port's agency records related to the Port underlying agency actions taken on July 9, 2007 by the Port Commissioners; and 3) all of the Port's SEPA actions on these projects; and all of the Port's other related actions on other related or connected projects on or near the Port's Marine Terminal

property.

As a review of the Port agency records still "missing" from the Agency Record filed and served by the Port in this case, is the "missing" portion of the agency record covering the Notice of Action and underlying agency actions taken on July 9, 2007 by the Port Commissioners.

This "missing" portion of the Port's agency record in this case concerns Defendants' actions covered by the July 10, 2007 Notice of Action, which are the following underlying agency and corporate actions taken on July 9, 2007 or before the Port Commissioners, Port Staff and/or Weyerhaeuser to make the improvements to the Port facilities reviewed under the SEPA 07-2 and SEPA 07-3, and other Port improvement projects like the Port's and the Corps' proposed Fall 2008 dredging improvements which is part of and related and connected to the Department of Ecology's environmental cleanup of Budd Inlet, recent dock improvements, and other improvements of the Port's Marine Terminal required by the Port's original August 2005 Lease to Weyerhaeuser of this property and any "amendments" to that Lease, like those of July 9, 2007 covered by this July 10, 2007 Notice of Action.

Therefore, the Port's Agency Record of this July 10, 2007 Notice of Action requires the Port to produce, file and serve copies of records of all of the Port's agency record the Port considered for all of these various related and/or connected projects, actions, environmental reviews, and administrative appeals comprising the Defendants "underlying actions" covered by the Port's Agency Record of this July 10, 2007 Notice of Action.

All Port records considered on all of the Defendants' "underlying actions" covered under the Port's July 10, 2007 Notice of Action would include, but would not be limited to, all of the Port records considered on all following "underlying actions" which must be reviewed in this case under the Defendants' own legal argument noted herein.

1) Defendants' "underlying actions" covered under the Port's July 10, 2007 Notice of Action would include the Port's and Weyerhaeuser's July 9, 2007 "amendment" and adoption of the Port's "Amended" Lease to Weyerhaeuser of most of the Port's Cargo Yard and Marine Terminal property.

However, like the August 2005 Lease, the Port's July 9, 2007 "Amended" Lease to Weyerhaeuser again requires the Port to pay for certain of the improvements to the Port facilities reviewed under the SEPA 07-2, SEPA 07-3, the berth dredging, the recent Marine Terminal dock, lighting and cargo yard improvements, including new large stormwater ponds and drainage

facilities, and other utility improvements, movement of certain hazardous waste site "monitoring wells", and only requires Weyerhaeuser to pay for construction of the two buildings housing Weyerhaeuser's office and lunch room facilities on Port Marine Terminal property. (See the Port's July 10, 2007 Notice of Action; the Port's July 9, 2007 "Amended" Lease to Weyerhaeuser; and see the Port's original August 2005 Lease to Weyerhaeuser).

A review of Defendants' "underlying actions" covered under the Port's July 10, 2007 Notice of Action would also require a disclosure and review of all Weyerhaeuser corporate records on all functionally or physically related and/or connected actions, constructions, or operations leading from Weyerhaeuser's portion of the joint Weyerhaeuser/Port Marine Terminal Improvement projects.

A review of Defendants' "underlying actions" covered under the Port's July 10, 2007 Notice of Action would necessarily require the Court and parties to be able to review all of Weyerhaeuser's related records on:

a) Weyerhaeuser's proposed logging operations and/or Weyerhaeuser's proposed log buying operations to supply "export grade" logs for Weyerhaeuser's log import/export operations at this Port facility;

b) Weyerhaeuser's shipping operations, hazardous materials handling operations, imported cargo operation, and other actions required for Weyerhaeuser's import/export log and cargo yard operations; and

c) this would also necessitate all of Weyerhaeuser's corporate records and other agencies with jurisdictions' agency records on any and all "impacts" to the Port of Tacoma or to the economy of the City of Tacoma, from the proposed movement of Weyerhaeuser's log export operation from Tacoma to Olympia, which has yet to be done.

2) A review of Defendants' "underlying actions" covered under the Port's July 10, 2007 Notice of Action would also necessarily require the Court and parties to be able to review all Port records the Port considered on all other related and connected projects and operations on the Port Peninsula and in Budd Inlet of Puget Sound, like the other projects which are "connected" to the Port's Marine Terminal and its operations, as noted in Petitioners' numerous administrative pleadings.

3) A review of Defendants' "underlying actions" covered under the Port's July 10, 2007 Notice of Action would also necessarily require the Court and parties to be able to review all Port

records the Port considered on the Port's Marine Terminal Rail Improvement Project, part of the Port's Intermodal Infrastructure Improvement Project review in the SEPA 07-3 case which Petitioners administratively appeal during both the Port's reconsideration and appeal process for the Port's SEPA MDNS decision in those two cases.

4) A review of Defendants' "underlying actions" covered under the Port's July 10, 2007 Notice of Actions would also necessarily require the Court and parties to be able to review all Port records the Port considered on proposed changes to the Port's gas mains never review in any Port environmental document;

5) A review of Defendants' "underlying actions" covered under the Port's July 10, 2007 Notice of Action would also necessarily require the Court and parties to be able to review all Port records the Port considered on all of the improvements to the Port facilities reviewed under the SEPA 07-2 Port/Weyerhaeuser Marine Terminal Improvement Project.

Further, Defendants have claimed that Weyerhaeuser's import/export log and cargo yard operations will be 25% larger than Weyerhaeuser's Tacoma log export yard operation, and will increase ship traffic in Budd Inlet and South Puget Sound from about 20 ships per year to about 80 ships per year, a quadruple increase with absolutely no review of the impacts from such shipping and the logging required for this shipping.

Also, the Port's Executive Director recently claimed that the Port's proposed improvements to the Marine Terminal for the Weyerhaeuser's import/export log and cargo yard operation move to Olympia from Tacoma would bring other ships and other cargo carriers to the Port of Olympia, and there has been no review nor agency records from the Port on this "increased shipping" leading from the Port's proposed improvements to the Marine Terminal for the Weyerhaeuser's import/export log and cargo yard operation.

Consequently, a review of the Port's Agency Record of this July 10, 2007 Notice of Action requires the Port to produce, file and serve copies of records on all of these Port and Weyerhaeuser actions to make these improvements to the Port facilities reviewed under the SEPA 07-2 and SEPA 07-3 project cases along with records on all of the other related and connected operations leading from this lease, and which requires review of other related and connected projects on the Port Peninsula and in Budd Inlet of Puget Sound.

Since a review of the Port's Agency Record of this July 10, 2007 Notice of Action requires the Port to produce, file and serve copies of all records considered on all other related and

connected operations leading from those "underlying actions", et al, and the Port has not done produce, file and serve copies of all such records for "completion" of the Port's "agency record" in this case, this case cannot legally or factually proceed until the Port produces, files and serves copies of all such records for "completion" of the Port's "agency record" in this case.

Until such time as the Port produces, files and serves a copy of all Port agency records used for the considerations of all of the Port's and Weyerhaeuser's action to make all of these various improvements on the Port's Marine Terminal property in the middle of Budd Inlet, this case cannot legally or factually proceed.

Clearly, due to the Defendants own pleadings noted above from a parallel case, the Defendants should be at least equitably estopped from claiming to this Court that Plaintiffs West and Dierker's amendment of their judicial SEPA Appeal complaint in this case was **not** proper and reasonable in light of the circumstances of the Notice of Action and other recent actions and information being disclosed by the Port and others relevant to the matters in this case.

CONCLUSION

Petitioners West and Dierker request that the Court allow their reasonable amendment of their Complaints to adjust for the Defendants changing of the circumstances relevant to this case and to adjust for the disclosure and discovery of all evidence relevant to these matter which have been brought forth in this Court case by Petitioners.

We certify the foregoing to be correct and true. Done August 21, 2007, in Olympia, Washington.

ARTHUR S. WEST

JERRY DIERKER

[X] Expedite
[ ] No hearing is set
[X] Hearing is set:
Date: April, 18, and 25, 2008
Time: 9:00 A.M.
Judge/Calendar: Judge _____

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

ARTHUR S. WEST, and	)	
JERRY L. DIERKER JR.,	)	**No. 08-2-00809-3**
	)	**No. 07-2-01198-3 and**
Petitioners;	)	**No. 07-2-02101-6**
v.	)	
CITY OF OLYMPIA,	)	**DECLARATION ON**
PORT OF OLYMPIA, and	)	**STANDING, et al.**
WEYCO, et al,	)	
Defendants.	)	
	)	

Comes now the undersigned Petitioners, who declare and make the following Declaration on Standing and other matters in Case No. 08-2-00809-3, Case No. 07-2-01198-3 and Case No. 07-2-02101-6.

Further, this should also be considered a Declaration on Standing and other matters in Support of Petitioners' Motion to Strike made in response to Defendants' various Motions to Dismiss and the scheduled hearings of said motions that have been improperly scheduled to be in front of Judge Wickham in Case No. 07-2-01198-3 and Case No. 07-2-02101-6.

DECLARATION ON STANDING AND OTHER MATTERS, et al.

1. There is evidence of judicial notice in the various "agency records" of the various underlying administrative review and administrative appeal proceedings in Case No. 08-2-00809-3, Case No. 07-2-01198-3 and Case No. 07-2-02101-6 showing that Petitioners have "standing" to proceed with their claims in these cases.

2. There is evidence of judicial notice in the various "agency records" of the various underlying administrative review and administrative appeal proceedings in Case No. 08-2-00809-3 and in the Court's own records of Case No. 07-2-01198-3 and Case No. 07-2-02101-6, where even

Defendants have produced evidence which shows that the same Petitioners have "standing" to proceed with their claims in these cases.

3. There is evidence of judicial notice in the underlying administrative appeal proceeding in Case No. 08-2-00809-3 and in the Court's own records of Case No. 07-2-01198-3, Case No. 07-2-02101-6 where Defendants have made claims that the same Petitioners have no "standing" to proceed with their claims in this case.

4. There is evidence of judicial notice in the Court's own records that shows these same Petitioners have been involved in various other cases against various projects being constructed, done or operated on the lands of the Port of Olympia, where the Port or other Defendants there have made claims that the same Petitioners have no "standing", and in one case

5. At a number of times in these various above noted cases against the Port of Olympia's , normally after the Petitioners comments and inquiries, and after Defendants conducting of various administrative reviews, determinations and appeals

6. Defendants' various Motions to Dismiss and the scheduled hearings of said motions that have been improperly scheduled to be in front of Judge Wickham in Case No. 07-2-01198-3 and Case No. 07-2-02101-6.

7. Petitioners' Motion to Strike made in response to Defendants' various Motions to Dismiss and the scheduled hearings of said motions that have been improperly scheduled to be in front of Judge Wickham in Case No. 07-2-01198-3 and Case No. 07-2-02101-6.

8. Defendants' various Motions to Dismiss and the scheduled hearings of said motions that have been improperly scheduled to be in front of Judge Wickham in Case No. 07-2-01198-3 and Case No. 07-2-02101-6, who has an apparently improper conflicts of interest in this case, similar to the various conflicts of interests in this case of several other Judges of the Washington State Superior Court for Thurston County who have already recused themselves from this case, as the agency record shows .

9. Other facts demonstrating that the petitioners have standing to seek judicial review are contained within the evidence of official and judicial notice in the Defendants/Respondents' agency records on these matters, and are generally as follows.

9.1. The record in this case shows that the Petitioners are persons aggrieved or adversely affected by the land use decision, or who would be aggrieved or adversely affected by a reversal or

modification of the land use decision. As noted herein, the relevant agency and Court records in this case shows that all of the following conditions are present:

a) the City's land use permitting actions have prejudiced or are likely to prejudice these Petitioners;

b) the Petitioners' asserted interests are among those that the local jurisdiction was required to consider when it made the land use decision;

c) a judgment in favor of that Petitioners would substantially eliminate or redress the prejudice to the Petitioners caused or likely to be caused by the land use decision; and

d) by their administrative appeals of this permit actions, the Petitioners have exhausted their administrative remedies to the extent required by law.

9.2. Petitioner Dierker is a single indigent severely Disabled Veteran living on a subsistence level VA Disability pension, who is a citizen of Thurston County living within the City of Olympia less than 1 mile from this project area for the Port's and Weyerhaeuser's joint project at the Port of Olympia's Marine Terminal for over a decade, and Petitioner Dierker's already fragile health will be impacted by pollution, traffic and other impacts leading from construction and operation of the Port's and Weyerhaeuser's joint project in this local area Petitioner Dierker lives and recreates in.

9. 2.1 Mr. Dierker, a disabled veteran with disabilities caused by exposure to contamination and the area where he has live for over 14 years and where he has a large organic garden he uses to feed himself his feeds himself and his many children and grandchildren in his family will foreseeably be impacted by increased amount of noise, noxious fumes, air, soil and water pollution of his home and garden, due to increased use of this Port Marine Terminal which are allowed by these Defendant agencies' approvals, permits, actions or omissions related to this project on the Port Marine Terminal area near Mr. Dierker's. (See also Transcript of June 1, 2007 Oral Ruling, at page 12 lines 5-12; Leschi v. Highway Commission, 84 Wn. 2d 271, at 280, 525 P. 2d 774 (19740 citing Loveless v. Yantis, citing Sierra Club v. Morton, 405 U.S. 727, 31 L.Ed 2d 636, 99 S.Ct. 1361 (1972).

9.3. Petitioner West is also a single person living within the City of Olympia less than 1 mile from this project area for the Port's and Weyerhaeuser's joint project at the Port of Olympia's Marine Terminal for several years, and Petitioner West will be impacted by pollution, traffic and other impacts leading from construction and operation of the Port's and Weyerhaeuser's joint project in this local area Petitioner West lives and recreates in.

9.4. Both Petitioners are living within the City of Olympia less than 1 mile from this project area for the Port's and Weyerhaeuser's joint project at the Port of Olympia's Marine Terminal for over a decade, where both Petitioners travel through this area impacted by this project almost every day, and thereby, both Petitioners will be impacted by increased amount of large truck and railroad traffic and air and water pollution leading from this project.

9.5. Both Petitioners have entered into and established a particular special relationship between myself and these Respondents concerning the subject matters of this case, by both Petitioners various administrative appeal and judicial appeal actions, testimony at other such administrative appeals and public hearings, etc., on the various Port Marine Terminal improvement projects and the related and connected Weyerhaeuser project at the Port where both Petitioners were parties to such matters or where both Petitioners were in privity with the parties in such matters and such matters are now res judicata, since no party "appealed" such matters.

9.6. Both Petitioners repeatedly gave notice of their interests in this project and requested for information about this project to the both City and the Port **before** the City's permitting decisions and **before** the Port's underlying decisions reviewed in this case.

9.7. Both Petitioners have complained that Petitioners' efforts to clean up toxic waste on the Cascade Pole toxic waste site and our other efforts to clean-up industrial pollution in Budd Inlet and Puget Sound, where Petitioners like or would like to recreate in these waters and on these shorelines of Puget Sound which will be adversely impacted by this project, once this toxic pollution has been cleaned up, but this project and its related and connected shipping and logging operations will prevent, obstruct or at least impede any such cleanup in Budd Inlet and other parts of Puget Sound, and the impacts leading from this project and its logging and shipping operations will "recontaminate" areas in Budd Inlet and other parts of Puget Sound that have been or are planned to be "cleaned up", adversely impacting water quality of Budd Inlet and Puget Sound which we along with the Governor, the Department of Ecology and others have been acting to protect.

9.8. This project will release toxic materials from this area of contamination into the local environment which will further adversely impact my already damaged health, as well as adversely impact our aesthetic and recreational interests in this area.

9.9. Petitioners are citizens with particular established connections to the project location,

including but not limited to a particular established connection to the animals and plants that inhabit the project area and the land and water in the vicinity of this project area, and the areas impacted by the shipping and logging operations which are functionally and/or physically related to this project, including but not limited to the forest lands of Southwest Washington and Southwest Canada, and Petitioners have often acted to protect by such legal actions as this one, by the filing of a such appeals, Endangered Species Act petitions, and by other actions.

9.10. Petitioners esthetically enjoy and recreate in the above noted waters and on the shorelines of Puget Sound as well as others, and in the forests of Southwest Washington which will be adversely impacted by this project, by the increased shipping through Puget Sound leading from this project, and/or by the logging operations in Southwest Washington and Southwest Canada leading from this project.

9.11. Petitioner Dierker has children and grandchildren living in this area of the South Sound in Shelton and on Harstsene Island in the middle of Puget Sound next to the shipping channel area of Puget Sound which the ships using this Port for this project will pass and foreseeably likely adversely impact due to this Port/Weyerhaeuser project, they recreate in Puget Sound, fish and eat fish from Puget Sound and the Pacific Ocean, and he has a right to act protect the health and welfare of his own children and grandchildren.

9.12. Petitioners would like to be able to watch and study wildlife and would like to be able to recreate in the waters and on the shorelines of Budd Inlet of Puget Sound at places like the City of Olympia's Priest Point Park, but due to contamination of this area by the actions and negligence of the Port and other wood products companies like Weyerhaeuser which used this same portion of the Port of Olympia for such industrial wood products operations in the past without any proper "cleanup" of massive amounts of toxic materials from such wood products companies operations, despite many years of effort by myself and others to get the port and other to actually "clean-up" and not just "cover-up" the serious pollution of this area of Puget Sound which is connected to and drains into and pollutes the rest of Puget Sound and the Pacific Ocean.

9.13. Both Petitioners have attempted to administratively appeal or judicially appeal the actions complained of in this case under various law or rules through various venues, in a reasonably timely manner as soon after the City had finally disclosed the City's "concealed" issuing of these City land use permits to the Petitioners as is reasonable under the law.

9.14. Now, this last set of City Hearing Examiner's decisions on Petitioners' administrative appeal of the City's issuing of these City land use permits, which deny Petitioners' and others' City Hearing Examiner appeals in Olympia Case No. 07-0209, 07-0210, and 07-0234 have now become final on March 17, 2008.

9.15. The rest of the facts demonstrating that Petitioners have standing to seek judicial review are contained within the evidence of official and judicial notice in the Respondents' agency records on these matters held by the City of Olympia and the Port of Olympia Respondents, or are held by this Court within the Court's records in Case No. 07-2-01198-3, Case No. 07-2-02101-6, No. 06-2-00002-9 and Case No. 06-2-00141-6, and at least Case No. 07-2-01198-3 and Case No. 07-2-02101-6 will need to be consolidated into this case No. 08-2-000809-3. (See also the Petitioners West and Dierker's Motion for Reconsideration of the City Hearing Examiner's February 14, 2008 Decisions, and Petitioners West and Dierker's Reply to Responses to Petitioners' Motion for Reconsideration of the City Hearing Examiner's February 14, 2008 Decisions in the City of Olympia Hearing Examiner Case No. 07-0209, 07-0210, and 07-02340 in the underlying agency record of the City of Olympia in the City's underlying administrative review and administrative appeal proceedings of Case No. 08-2-00809-3).

10.1 Further, Petitioners West and Dierker also appear to have "standing" to appeal in this case under the controlling law and legal precedents on standing in such environmental related cases which show the Washington Courts have adopted the very liberal "federal approach to standing" under National Environmental Policy Act (NEPA) cases. (See SAVE v. Bothel, 89 Wn. 2d 862, at 868, 574 P. 2d 401 (1978); Asarco Inc. v. Air Quality Coalition, 92 Wn. 2d 685, 709, 601 P. 2d 501 (1979); Kucera v. Department of Transportation, 140 Wn. 2d 200, 212 and 216, 995 P. 2d 663; Ocean Advocates v. U.S. Army Corps of Engineers, 402 F.3d 854, at 860 (Ninth Circuit); also Petitioner West's June 15, 2007 Memo on Standing in Case No. 06-2-02116-6).

10.2 Petitioners West and Dierker also appear to have "standing" to appeal in this case in this Superior Court since this Superior Court has recently adopted the liberal "federal approach to standing" for environmental case under the U.S. Ninth Circuit Court of Appeals' NEPA rulings made in the case of West v. Secretary of Department of Transportation, 206 F. 3d 920 (9th Cir. 2000), another of Mr. West's environmental cases attempting to protect the environment of this area of South Puget Sound. (See West v. Secretary of Department of Transportation; see also Court's

recent use of this West v. Secretary of Department of Transportation case in the Transcript of June 1, 2007 Oral Ruling of Judge Hicks, at page 8 lines 13-14 in Case No. 06-2-02116-6).

10.3 Further, it clearly appears to Petitioners that these Defendants and other officials failed to properly enforce these statutes in the manner prescribed by law, even after Petitioners have made numerous inquiries, requests, comments, and appeals about such actions of the agency Defendants and others, and this causes Petitioners harm which is different from the harm caused to the general public by the Defendants' actions here, although the public may share in some of this harm. (See Campbell v. Bellevue, 85 Wn. 2d 1, at 12-13, 530 P. 2d 234 (1975), Mason v. Bitton, 85 Wn 2d 321, at 326-327, 534 P. 2d 1360 (1975).

10.4 It clearly appears to Petitioners that these Defendants and other officials clearly failed in its duty to properly adjudicate the law in violation of common law, the Washington State Constitution, the First, Fourth, Fifth, Sixth, Ninth, Tenth, Fourteenth and the U.S. Constitution itself, etc., and such action appears to be arbitrary and capricious, clearly erroneous, unlawful, unconstitutional, improper, etc.

We certify that the foregoing to be true and correct, that it is made in good faith for no improper purpose, and that it is made under penalty of perjury of the laws of the State of Washington and the United States of America, this 14th day of April, 2008, in Olympia, Washington.

Arthur West, Plaintiff
120 State Ave. N. E.#1497
Olympia, WA. 98501

Jerry Lee Dierker Jr.
1720 Bigelow Ave. N.E.
Olympia, WA. 98506
Ph. 360-943-7470

Certificate of Service

On April 14, 2008, we, the undersigned Petitioners, had served this case parties with copies of the above noted pleading by personal service, electronic service, and/or U.S. Mail, as required.

Done April 14, 2008. We certify the foregoing to be correct and true.

ARTHUR S. WEST

JERRY L. DIERKER Jr.

[ ] Expedite
[ ] No hearing is set
[X] Hearing is set:
Date: August 17, 2007
Time: 9:00 A.M.
Judge/Calendar: Judge _____

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

ARTHUR S. WEST, and JERRY L. DIERKER JR., Petitioners; v. PORT OF OLYMPIA, and WEYCO, et al, Defendants.	)	**No. 07-2-01198-3** **Petitioner Jerry Lee Dierker Jr.'s Declaration on Standing and Service**

Comes now Petitioner Jerry Lee Dierker Jr., the undersigned, who declares and makes the following Declaration on Standing and Service of the Port's Motions to Dismiss and to Accept Overlength Brief.

Declaration on Service of the Port's Motions to Dismiss and to Accept Overlength Brief

1. I, Petitioner Jerry Lee Dierker Jr., was not "served" with a copy of the Port's alleged Motions to Dismiss and to Accept Overlength Brief until **after** 5:30 P.M. on Friday July 20, 2007.

2. Thereby, pursuant to the mandatory terms of LCR 5(b)(1), I was not "timely served" with a copy of the Port's alleged Motions to Dismiss and to Accept Overlength Brief for these Port Motions to be heard by this Court on August 17, 2007.

Declaration on Standing

1. I am a citizen of Thurston County living in the City of Olympia less than 1 mile from this project area for over a decade, and I will be impacted by this project and its operations, and under SEPA I have a fundamental right to healthful environment which will be adversely impacted by this project.

2. I travel through this area impacted by this project almost every day, and I will be impacted

by increased amount of large truck and railroad traffic leading from this project.

3. I have entered into and established a particular special relationship between myself and these Defendants concerning the subject matters of this case, by my various administrative appeal actions, testimony at other such administrative appeals and public hearings, etc., on the various Port Marine Terminal improvement projects and the related and connected Weyerhaeuser project at the Port where I was a party to such matters or where I was in privity with the parties in such matters and such matters are now res judicata, since no party "appealed" such matters, and by my former Federal Court action on the Cascade Pole toxic waste site and my other efforts to clean-up industrial pollution in Budd Inlet and Puget Sound, where I like or would like to recreate in these waters and on these shorelines of Puget Sound which will be adversely impacted by this project, once this toxic pollution has been cleaned up, but this project and its related and connected shipping and logging operations will prevent, obstruct or at least impede any such cleanup in Budd Inlet and other parts of Puget Sound, and the impacts leading from this project and its logging and shipping operations will "re-contaminate" areas in Budd Inlet and other parts of Puget Sound that have been or are planned to be "cleaned up", adversely impacting water quality of Budd Inlet and Puget Sound which I along with the Governor, the Department of Ecology and others have been acting to protect. This project will release toxic materials from this area of contamination into the local environment which will further adversely impact my already damaged health, as well as adversely impact my aesthetic and recreational interests in this area.

4. I am a citizen with a particular established connection to the project location, including but not limited to a particular established connection to the animals and plants that inhabit the project area and the land and water in the vicinity of this project area, and the areas impacted by the shipping and logging operations which are functionally and/or physically related to this project, including but not limited to the forest lands of Southwest Washington and Southwest Canada, and I have often acted to protect by such legal actions as this one, by the filing of a Endangered Species Act petition, and by other actions.

5. One of those areas of particular concern to myself is The Evergreen State College's (TESC) new Environmental Preserve in the waters and shorelines of Puget Sound's Eld Inlet, where Eld Inlet is connected to Budd Inlet and the rest of Puget Sound being impacted by this project, etc., since I went to The Evergreen State College, and I recently spent time petitioning TESC's executive staff to have the TESC Trustees formerly adopt by law and legal decision this new Environmental

Preserve in the waters and shorelines of Puget Sound's Eld Inlet, in order to protect this last undeveloped area of Puget Sound and it's wildlife from further harm, and this is one of the places in the South Puget Sound area where I recreate and watch and study such wildlife.

6. I aesthetically enjoy and recreate in the above noted waters and on the shorelines of Puget Sound as well as others, and in the forests of Southwest Washington which will be adversely impacted by this project, by the increased shipping through Puget Sound leading from this project, and/or by the logging operations in Southwest Washington and Southwest Canada leading from this project.

7. I have children and grandchildren living in this area of the South Sound in Shelton and on Harstsene Island in the middle of Puget Sound next to the shipping channel area of Puget Sound which the ships using this Port for this project will pass and foreseeably likely adversely impact due to this Port/Weyerhaeuser project, they recreate in Puget Sound, fish and eat fish from Puget Sound and the Pacific Ocean, and I have a right to act protect the health and welfare of my own children and grandchildren.

8. Further, I would like to be able to watch and study wildlife and I would like to be able to recreate in the waters and on the shorelines of Budd Inlet of Puget Sound at places like the City of Olympia's Priest Point Park, but due to contamination of this area by the actions and negligence of the Port and other wood products companies like Weyerhaeuser which used this same portion of the Port of Olympia for such industrial wood products operations in the past without any proper "cleanup" of massive amounts of toxic materials from such wood products companies operations, despite many years of effort by myself and others to get the port and other to actually "clean-up" and not just "cover-up" the serious pollution of this area of Puget Sound which is connected to and drains into and pollutes the rest of Puget Sound and the Pacific Ocean. (See attached). However, due to the standard business practice or procedure of the Port to "cover-up" this pollution, refuse or fail to "clean-up" this pollution, and to conceal information about this pollution from the public and agencies with jurisdiction, this area is too contaminated for a person with my disabilities to be able to get near it to watch such wildlife (if they existed) or to recreate in such waters or on such shorelands of Budd Inlet of Puget Sound, and, under the current Thurston County Health Department Advisory on Budd Inlet, even persons who have not been previously disabled by such chemical contamination like myself are not allowed to swim or wade in the waters of Budd Inlet and are not allowed to touch the shoreland soils or sediments, and if such exposure to

the waters or shoreland soils of Budd Inlet occurs, a person is supposed to immediately shower as part of a "decontamination" operation such as occurs in "Hazmat" situations. (See attached).

9. Part of my aesthetic interests in this area and part of my recreation in this area is to watch birds, fish and other wildlife in the waters and on the shorelines of Puget Sound and in the forests of Southwest Washington, and these birds, fish and other wildlife will be adversely impacted by this project, by the increased shipping through Puget Sound leading from this project, and/or by the logging operations in Southwest Washington and Southwest Canada leading from this project.

10. The quadruple increase in shipping to this Port from the current 20 ships per year to 80 ships per year leading from just the Weyerhaeuser portion of this project as reported by the Port's Engineering Director Jeff Lincoln at a recent Port Commission Meeting, as well as the increased shipping leading from the other Port Marine Terminal improvements that are part of this project, will clearly subject Budd Inlet and Puget Sound to adverse impacts from:

1) increased discharge of pollutants from such ships, including from the discharge of contaminated "bilge water" from these ships and increased risk of fuel spills from these ships, as well as increased rick of the pollution of this area from the accidental "sinking" of such ships;

2) the increased number of large "wakes" generated by these ships will clearly adversely impact "sand lance" habitat in this area of South Puget Sound where there is so many "bulkheads" will cause erosion of the "sand" when the large waves from the large "wakes" from the movement of these large ships through the water of Puget Sound will impact those areas, and this will adversely impact Endangered Species Act (ESA) protected Puget Sound Chinook Salmon, Puget Sound Steelhead Trout, Puget Sound Southern Resident Orca "Killer Whales" and Stellar Sea Lions, since "sand lances" provide much of the food for Chinook Salmon and Puget Sound Steelhead Trout which are much of the food for Puget Sound Southern Resident Orca "Killer Whales" and Stellar Sea Lions; and

3) the increased noxious toxic fumes and air pollution from the increased number of ships leading from this project will clearly impact this area near Petitioners' homes and near home environment as well as the rest of the Puget Sound region, and this will adversely impact Petitioners' health, aesthetic and recreational interests in this area.

11. The increased noxious toxic fumes and air pollution from the increased truck and rail traffic leading from this project will also impact this area near Petitioners' homes and near home environment as well as the rest of the Puget Sound region and the forests of Southwest Washington

and Southwest Canada, and this will adversely impact my already fragile health, as well as adversely impact my aesthetic and recreational interests in this area. This increased truck and rail traffic also increases the risk of me becoming involved in a traffic accident in the downtown Olympia area near the Port Marine Terminal area.

12. The increased logging operations in Southwest Washington and Southwest Canada leading from this project will clearly lead to increased soil erosion, increased stormwater run-off, increased downstream flooding, increased loss of salmon spawning habitat, lower water quality in the the streams and rivers in the watersheds logged to supply logs for just the Weyerhaeuser portion of this project, which will lead to lower water quality in Puget Sound that these streams drain into, impacting fish and wildlife which I watch and act to protect.

13. Due to medical dietary restrictions, I only eat fish as the meat portion of my diet for maintaining my health, and all of the fish I eat comes from the Puget Sound and the Pacific Ocean or from streams and rivers leading into it from Southwest Washington and Southwest Canada, and such areas and fish which will foreseeably likely be adversely impacted by the shipping and logging operations of this project.

14. I was "in privity" to the City of Olympia Hearings Examiners' Decision of Dec. 19, 2006 which I and Mr. West are attempting to enforce here, since I was one of the main witnesses who testified at the City of Olympia Hearings Examiners' Hearing which lead to the City of Olympia Hearings Examiners' Decision of Dec. 19, 2006, and thereby, I have interest in this action beyond that shared in common with other citizens. I note that the City of Olympia Hearings Examiners' Decision of Dec. 19, 2006 found that the parties in that matter had "standing" to bring such action, and since I was "in privity" to the City of Olympia Hearings Examiners' Decision of Dec. 19, 2006, I thereby have standing to bring this legal actions to enforce this City of Olympia Hearings Examiners' Decision of Dec. 19, 2006 with this legal action, and this is an interest in this action which goes beyond that shared in common with other citizens who were not parties or witnesses to such administrative appeal actions on this matter.

15. I was a party to two administrative appeal actions on this matter, and I thereby have a constitutional right to appeal such agency actions and decisions which concern me under the First Amendment to the U.S. Constitution's right to petition the courts for redress of grievances to protect my due process and other private constitutional rights, and this is an interest in this action which goes beyond that shared in common with other citizens who were not parties to such

administrative appeal actions on this matter.

16. The State Environmental Policy Act (SEPA) RCW 43.21C and WAC 197-11 is arguably supposed to protect and regulate the interests which I have in the SEPA portion of this action, and under SEPA, I and my children and grandchildren have a right to a healthful environment.

17. I also have a right to prevent crime in my community, especially when that crime is being committed under false color of law by agents of local governments impacting my daily life, and those other laws which I have noted were violated by the Defendants here are arguably supposed to protect and regulate the interests which I have in these portions of this action.

18. I clearly have standing to maintain this action to protect the environmental health of this area, to protect the wildlife of the area, to protect my interests in the health of that environment I live in, to protect my own health, and to protect my due process rights and other constitutional rights and interests in this action, and my interests in this action go well beyond the interests shared by all other citizens this area.

I certify the foregoing to be true and correct to the best of my knowledge, beliefs and/or abilities, under penalty of perjury of the laws of the State of Washington and the United States of America, this 9th day of August, 2007, in Olympia, Washington.

Jerry Lee Dierker Jr., Petitioner
1720 Bigelow Ave. NE
Olympia, WA 98506
Ph. 360-943-7470

[X] Expedite
[X] No hearing is set
[X] Hearing is set:
Date: Aug. 17, 2012
Time: 9:00 a.m.
Judge/Calendar: Judge Sam Meyer

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

ARTHUR S. WEST, and JERRY L. DIERKER JR., Plaintiffs; v. PORT OF OLYMPIA, et al, Defendants.	)	**No. 07-2-01198-3** **MOTION FOR RECONSIDERATION AND OBJECTIONS**

Comes now Plaintiff Jerry Lee Dierker Jr., the undersigned, and pursuant to CR 59 and/or CR 60, et seq.,

1) makes the following Objections to and Motion for Reconsideration of the Court's July 27, 2012 Order of Dismissal and Findings of Fact and Conclusions of Law based upon the Court's July 13, Oral Ruling that was based upon the Court's June 29, 2012 Hearing of the Port's two Motions to Dismiss in this case, for the following reasons;

2) since this is the "final order" in the Public Records Act part of this case, Plaintiff also makes the following Motion for Reconsideration of Judge Meyer's various underlying decisions on various issues in this case noted within Plaintiffs/Petitioners' prior pleadings submitted to Judge Meyer on these issues and decisions, for the reasons noted within Plaintiffs/Petitioners' prior pleadings submitted to Judge Meyer, which are incorporated by this reference hereinto this Motion for Reconsideration in the interests of judicial economy;

3) and, since this is the "final order" in the entire case, Plaintiff makes the following Motion for Reconsideration and/or Vacation of this Court's other various underlying decisions in this case noted within Plaintiffs/Petitioners' prior Motions for Reconsideration and/or for Vacation of this Court's various underlying decisions on the other than PRA issues in this case for the reasons noted within Plaintiffs/Petitioners' prior pleadings submitted to this Court on the other issues in

this case, which are incorporated by this reference hereinto this Motion for Reconsideration in the interests of judicial economy, and that ultimately resulted in the May 30, 2008 Order of Dismissal for Plaintiffs' alleged lack of standing, the subsequent refusals of access to the Court for filing and noting of hearing in this case for over 16 months, through no fault of Plaintiffs, and which delayed this PRA case hearing for over 4 years with the help of the Port and the mistakes of the Clerk's of this Court. (See Plaintiffs' prior arguments on the mistakes of the Clerk's of this Court denying access to the Court; see Lake's own Court Clerk/Judicial Assistant E-Mail Exhibits which are in reverse order within the Port's Motion to Dismiss; also see Mr. West's various Thurston County Tort Claims filed against the Thurston County Superior Court, its staff, or its Clerk's Office over his being "arrested" by bailiffs of the Thurston County Superior Court's "Family Court" and taken off the premises for Mr. West's attempts to get into and/or the Courtroom there to ask the judge's assistant when the Judge had time for a "special setting" for a hearing of our Motion to Show Cause in this Public Records Case in order so he could set a date and time for this hearing and his attempts to get into the the Court Clerk's Office to file a notice of issue on that hearing and file our new Motion to Show Cause in this Public Records Case).

Plaintiff Dierker also joins with any and all of the pleadings for reconsideration made by Plaintiff West's attorney in this matter now, which are incorporated by this reference hereinto this Motion for Reconsideration in the interests of judicial economy, and in the interests of judicial economy, all other pleadings in this case opposing dismissal of this case which were made by Plaintiff West's attorney in this matter are also incorporated by this reference hereinto Plaintiff Dierker's Motion for Reconsideration.

This Court grant his Motion for Reconsideration for the following reasons.

1. Pro Tem visiting District Court Judge Meyer's Order dismissing this Public Records Act case for lack a prosecution after it was set for trial is inconsistent with other recent decisions of regular Judges of the Thurston County Superior Court, is an abuse of judicial discretion, and must be reversed or vacated. (See July 20, 2012 Order denying Motion to Dismiss for lack a prosecution after it was set for trial in Mr. Arthur West's Public Records Act case West v. Washington Association of Counties, Case# 10-2-01756-6 in the Thurston County Superior Court, and see below).

2. Judge Meyer's Order dismissing this case for lack a prosecution for allegedly prejudicing

Defendant's interests in payment of alleged "mandatory" per day costs for failure to disclose public records under the Public Records Act, was based upon Courts abuse of discretion by Judge Meyer's failure to disclose his lack of knowledge about the Public Records Act and such cases in the Superior Court; his failure to review the actual wording of the Public Records Act statute that the Port's attorney misrepresented in a citation of the damages portion of the Public Records Act RCW 42.56.550(4); and due to the Port's misrepresentations that Public Records Act statue and/or case law required that the Port pay PRA damages for every single day the documents were withheld whether or not the delay was caused by the Port or Plaintiffs. (See attached copy of the Public Records Act's RCW 42.56.550, including RCW 42.56.550(4), Sentence 2, on public records per day damage awards; see also attached copy of Footnote 3 of Zink v. City of Mesa, 256 P. 3d 384, at 392 (Wash.App. Div. 3. 2011).

Footnote 3 of Zink clearly state

> "We note Substitute H.B. (House Bill) 1899, 62nd Leg., Reg. Sess. (effective July 22, 2011), amending RCW 42.56.550(4) eliminates the minimum penalty of $5 per day." (Zink v. City of Mesa, 256 P. 3d 384, at 392 (Wash.App. Div. 3. 2011)

RCW 42.56.550(4), Sentence 2, on public records per day damage awards and Footnote 3 of Zink clearly show that such damages are not "mandatory" but are within the Court's "judicial discretion" to award at all, and even if any are awarded to Plaintiffs, such damages are based upon the Court's "judicial discretion" with a proper judicial consideration of "bad faith" factors, etc. (See also Zink, supra at 392 393; Yousoufian, 2010, 229 P. 3d. 735, 168 Wash.2d at 260 -268, on judicial consideration of "bad faith" factors, etc.).

Clearly, if the judge has discretion whether or not to order award damages at all, there is no "mandatory" public records damages award from the Port to Plaintiffs with which they can show the necessary prejudice needed to grant the Port's Motion to Dismiss, and that Order must be vacated or reversed by granting this Motion for Reconsideration.

The Public Records Act's RCW 42.56.550 itself is titled **Judicial Review of Agency Actions**, and Judge Meyer appears to be unfamiliar with it at all by his claim that such public records costs are "mandatory" or cannot be reduced for reasonable reasons by judicial discretion, and this alone shows an abuse of discretion and a lack of even the due diligence of an attorney or pro se party in a Court case, since he should have at least read the 1/2 page in the RCW's on

Judicial Review of Agency Actions in the about 10 months he has had this Public Records Act case that he was the Judge who was supposed to be qualified and prepared to hear a **Judicial Review of the Port's Agency Actions** in this Public Records Act case.

Judge Meyer's failure to review even the 1/2 page of the Public Records Act's RCW 42.56.550 **Judicial Review of the Port's Agency Actions** in this Public Records Act case to prepare for hearing this case is an abuse of judicial discretion, since he bases his decision on mistaken view of the Public Records Act's RCW 42.56.550(4) a statute that he has never seen. Such an action to base a final order in a case upon a claim about the wording of a statute that a Judge has never seen would severely disturb the Court of Appeals or Supreme Court.

Clearly, since the attached copy of the Public Records Act's RCW 42.56.550(4) on public records damages in the clearly shows that Judge Meyer was in error when he found that payment of per day costs for failure to disclose public records under the Public Records Act, Judge Meyer's Order dismissing this case for lack a prosecution based upon his finding that delays in this case prejudiced Port Defendant's must be vacated by granting this Motion for Reconsideration.

A discussion of relevant case law is as follows.

A ruling is an abuse of discretion if it has the effect avoiding review of the underlying merits of this action by nullifying the express declaration of the intent of the law, as has occurred in this case. (United States v. Zerbst, 111 F.Supp. 807). A court abuses its discretion and its order is manifestly unreasonable and based upon untenable grounds if it based its ruling upon an erroneous view of the law, as has occurred in this case. (Physicians Insurance Exchange v. Fison Corp., 122 Wn.2d 299, 339; 858 P.2d 1054 (1993).

Generally, a statute's language is to be reasonably construed by giving consideration to all of the provisions of an Act in a reasonable manner and in furtherance of the intent of the legislation, and not by a narrow literal reading of only one portion of a statute excluding all other portions when to do so would result in illogical, absurd or strained conclusions. (In Re Horse Heaven Irrigation District, 11 Wn.2d at 225–226 (1941); Roza Irrigation District v. State, 80 Wn.2d 633, at 637–638 (1972); State v. Elgin, 118, Wn.2d 551, 555 (1992); Graham v. Bar Association, 86 Wn. 2d 624, 627, 548 P. 2d 310 (1976), citing State v. Rinkes, 49 Wn. 2d 664, 667, 306 P. 2d 205 (1957). The language of a statute must be read in context with the entire statute and construed in a manner consistent with the general purpose of the statute. (Nationwide Papers, Inc. v. Northwest

Egg Sales, Inc., 69 Wn.2d 72, 76, 416 P. 2d 687 (1966). Where statutory provisions concerning the powers and duties of public officers affect the public interest or are intended to protect a private citizen against loss or injury to his property, the provisions are "mandatory provisions" rather than "directory", but prime consideration is intent of the law, as well as its specific legislation on the subject. (Spokane County ex rel Sullivan v. Glover, 2 Wn.2d 162 (1940). The words in statutes are given their ordinary meaning, though the spirit or purpose of the law should prevail over the express but inept wording, especially in a statute originally written by the people as Initiative 276. (Discipline of Blauvelt, 115 Wn. 2d 735, 741 (1990); State v. Elgin, at 555; State v. Day, 96 Wn.2d 646, 648 (1981). Where construction of statutes is concerned, the error of law standard applies. Id.; RCW 34.05.570(3)(d). Under this standard, this court may substitute its interpretation of the law for the agency's. (R.D. Merrill v. Pollution Control Hr'gs Bd., 137 Wn. 2d 118, 142-43, 969 P. 2d 458 (1999). Ultimately, it is for the court to determine the meaning and purpose of a statute. (City of Redmond v. Central Puget Sound Growth Mgt. Hr'gs Bd., 136 Wn. 2d 38, 46, 959 P. 2d 1091 (1998). The burden of establishing invalidity of agency action is on the party asserting invalidity. (RCW 34.05.570(1)(a); City of Redmond, 136 Wn. 2d at 45).

It is also clear that in considering the statutes and statutory scheme in a case, the court has a duty to ascertain and give effect to the legislative intent and purpose, expressed by the statute, and the statutes and statutory scheme must be considered by the Court as a whole with all of its parts being harmonized to insure proper statutory construction, so as to give effect to the intent of the enacting body and to avoid inconsistent and absurd results. (See Nisqually Delta Association v. DuPont, 103 Wn. 2d 720, at 730-733, 696 P. 2d 1222 (1985).

Further, an agency is not allowed to "amend" a statute or regulation merely by the agency's unlawful interpretation of that statute or regulation, and an agency is not allowed to "amend" a statute by making a new regulations which is inconsistent with the terms of the controlling statute. (See In re Meyers, 105 W. 2d 257, Head note 3 (1986), citing In re Little, 95 Wn. 2d 545, at 549, 627 P. 2d 543 (1981), In re George, 90 Wn. 2d 90, at 97, 579 P. 2d 354 (1978), Baker v. Morris, 84 Wn. 2d 804, at 809, 529 P. 2d 1091 (1974) and Fahn v. Cowlitz County, 93 Wn. 2d 368, at 374, 610 P. 2d 857, 621 P. 2d 1293 (1980); see also Juanita Bay Valley Com. v. Kirkland, 9 Wn. App. 59 (1973).

It is also clear that the "spirit or purpose" of a statute or enactment "should prevail over

the express but inept wording" of a statute or enactment. (Nisqually Delta, supra at 733, citing State v. Day, 96 Wn. 2d 646, 648, 638 p. 2d 546 (1981).

Generally, a statute's language is to be reasonably construed by giving consideration to all of the provisions of an Act in a reasonable manner and in furtherance of the intent of the legislation, and not by a narrow literal reading of only one portion of a statute excluding all other portions when to do so would result in illogical, absurd or strained conclusions. (In Re Horse Heaven Irrigation District, 11 Wn.2d at 225–226 (1941); Roza Irrigation District v. State, 80 Wn.2d 633, at 637–638 (1972); State v. Elgin, 118, Wn.2d 551, 555 (1992); Graham v. Bar Association, 86 Wn. 2d 624, 627, 548 P. 2d 310 (1976), citing State v. Rinkes, 49 Wn. 2d 664, 667, 306 P. 2d 205 (1957). The language of a statute must be read in context with the entire statute and construed in a manner consistent with the general purpose of the statute. (Nationwide Papers, Inc. v. Northwest Egg Sales, Inc., 69 Wn.2d 72, 76, 416 P. 2d 687 (1966). Where statutory provisions concerning the powers and duties of public officers affect the public interest or are intended to protect a private citizen against loss or injury to his property, the provisions are "mandatory provisions" rather than "directory", but prime consideration is intent of the law, as well as its specific legislation on the subject. (Spokane County ex rel Sullivan v. Glover, 2 Wn.2d 162 (1940). The words in statutes are given their ordinary meaning, though the spirit or purpose of the law should prevail over the express but inept wording, especially in a statute originally written by the people as Initiative 276. (Discipline of Blauvelt, 115 Wn. 2d 735, 741 (1990); State v. Elgin, at 555; State v. Day, 96 Wn.2d 646, 648 (1981).

The rules of construction show:

"(3) Words of a statute, unless otherwise defined, must be given their usual and ordinary meaning. Foremost Dairies, Inc. v. State Tax Comm'n, 75 Wn. 2d 758 (1969). This is true regardless of the policy of enacting the law or the seeming confusion that may follow its enforcement. (State v. Houck, 32 Wn.2d 681, 685, 203 P.2d 693 (1949).

The safe way is to read its (the Constitution's) language in connection with the known condition of affairs out of which the conditions for its adoption may have arisen, and then construe it if there be therein any doubtful expressions, in a way so far as is reasonably possible, to forward the known purpose or object for which the amendment was adopted. (Maxwell v. Daw, 176 U.S. 581, 661). The courts are not bound by mere forms, nor are they to be mislead by mere pretenses.

They are at liberty- indeed, are under a solemn duty to look to the substance of things whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority. (Mugler v. Kansas, 123 U. S. 623, 661; State ex rel Mullen v. Howell, 107 Wash. at 171).

A useful key to the construction of a statute or a constitution is to inquire what were the evils to be removed, and what remedy did the instrument propose... Beall v. State of Maryland, 131 Md. 669 (1917). If any section be intricate, obscure, or doubtful, the proper mode of discovering its true meaning is by comparing it with the other sections... it is not to be supposed that any words have been employed without occasion, or without intent that they be given... (Beall, supra.)

In Beall v. State of Maryland the court found the following:

"It is a familiar principle in the construction of a constitution that the construction should be upon the whole instrument, and effect given to every part of it, if that be possible, and that, unless there be some reason to the contrary, no part of the fundamental law should be disregarded, or rejected as inoperative. In seeking for the meaning of a particular provision or Article, it must be examined in the light of its origin, the purpose it was intended to serve as well as the evils it was intended or supposed to remedy. It has been well said that a very- useful key to the construction of a statute or a constitution is to inquire what were the evils to be removed, and what remedy did the new instrument propose and that when any question arises requiring a judicial construction of any of its clause, it is important to back and ascertain the evil that was intended to be remedied. ...

It is an acknowledged rule in the construction of a Constitution that exceptions from its power are limitations upon the power, and it would be useless to declare certain exceptions to the general and unrestricted terms of the first section, if the excepted cases are not to be recognized as removed from the operation of the provisions of the Article." (Beall v. State of Maryland, 131 Md. 669 at 676-678 (1917).

The construction of regulations and statutes is also controlled by constitutional provisions.

Under Article 1 Section 29 of the Washington State Constitution:

"The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise."

The people themselves and all branches of the government, legislative, executive and judicial alike, are bound by the constitution and owe to it implicit obedience. (See Sears v. Treasurer and

Receiver General, 98 N.E. 2d 621 (Mass.).

All branches of the government, legislative, executive and judicial alike, are bound by the limitations on their jurisdiction under the U.S. Constitution. (See Sears v. Treasurer and Receiver General, 98 NE 2d 621 (Mass.).

"There is a distinct difference between the operative effect of the Federal constitution and that of a State constitution. The Federal Constitution is a *grant of power*, whereas the State constitution is a *limitation* on legislative power." (Spokane Arcades, supra, Note 10, referring to Moses Lake District v. Big Bend College, 81 Wash 2d 551, 503 P. 2d 86 (1972); Yelle v. Bishop, 55 Wash 2d 286, 347 P. 2d 1081 (1959).

The power of a branch of government is unrestrained except where, expressly or by fair inference, it is prohibited by the State or Federal Constitution. (See Pacific American Realty Trust v. Lonctot, 62 Wn. 2d 91, 381 P. 2d 123 (1963); State ex rel. Tattersall v. Yelle, 52 Wn. 2d 856, 329 P. 2d 841 (1958); Port of Tacoma v. Parosa, 52 Wn. 2d 181, 324 P. 2d 438 (1958). The Bill of Rights was provided as such a limitation, "to protect the individual against arbitrary exactions of majorities, executives, legislatures, courts, sheriffs, and prosecutors, and it is the primary distinction between democratic and totalitarian processes." (See Standler Supreme Court of Florida en banc, 36 So. 2d 443, at 445 (1948).

A motion for reconsideration should also be granted when errors of law or fact occur, which prejudices a party or that party's claims, or when it is reasonably clear that substantial justice has not been achieved and/or when justice so requires, or to allow the presentation of new evidence. (Madden v. Metropolitan Life Insurance Co., 127 F. 2d 837 (1942, 5th Cir.); Jamestown Farmers elevator, Inc. v. General Mills, Inc., 413 F. Supp 764 (1976, DC ND), (affirmed in part and reversed in part on other grounds) 552 F. 2d 1285 (8th Cir); Hannah v. Haskins, 612 F. 2d 373 (1980, 8th Cir.); Virginian R. Co. v. Armentrout, 166 F. 2d 400 (1948, 4th Cir.); Kaufman v. Atlantic Greyhound Corp., 41 F. Supp. 252 (1941, DC W Va); David v. Dixon, 386 F. Supp. 482 (1974, DC Del.), (affirmed) 529 F. 2d 511 (3rd Cir.); Call Carl, Inc. v. British Petroleum Oil Corp., 403 F. Supp. 586 (1975, DC Md), (affirmed in part and reversed in part on other grounds) 554 F. 2d 623 (4th Cir.), (cert. denied) 98 S. Ct. 400); Wyatt v. Interstate & Ocean Transport Co., 623 F. 2d 888 (1980, 4th Cir.); St. Clair v. Pipal, 611 F. Supp. 911 (1985, ED Wis).

As noted above, Judge Meyer's Order dismissing this case for lack a prosecution for

Plaintiffs' allegedly prejudicing Defendant's interests in not having to pay the alleged "mandatory" per day costs for failure to disclose public records under the Public Records Act, was based upon Court's abuse of discretion by Judge Meyer's failure to disclose his lack of knowledge about the Public Records Act and such cases in the Superior Court; his failure to review the actual wording of the Public Records Act statute that the Port's attorney misrepresented in a citation of the damages portion of the Public Records Act RCW 42.56.550(4); and due to the Port's misrepresentations that Public Records Act statue and/or case law required that the Port pay PRA costs for every single day the documents were withheld whether or not the delay was caused by the Port or Plaintiffs. (See attached copy of RCW 42.56.550(4); see also Zink, supra).

Clearly, for these reasons alone this Order of Dismissal must be vacated.

3. Judge Meyer's proceedings in this case have all been irregular proceedings of the Superior Court prejudicing Plaintiffs' due process rights, in that:

a) District Court Judge Meyer was only appointed by the Superior Court to ask the parties in an irregular unrecorded "Telephone Statue Conference" whether they would orally agree to allow District Court Judge Meyer to act as a "Visiting Pro Tem Superior Court Judge" to hear this Public Records Act case;

b) Judge Meyer failed to disclose then and failed to disclose through several other "recorded" hearings held in the Superior Court and District Court that he had never conducted a Public Records Act case in the Superior Court and he knew very little about the Public Records Act or its case or statute law at all, which he finally belatedly disclosed to the Plaintiffs during the Motion to Dismiss hearing **after** the date required for all written pleadings to be submitted to the Court, thereby denying Plaintiffs any time to research or prepare any very extensive written and oral pleadings to properly be able to educate Judge Meyer in all the legal nuances a Superior Court Judge was required to know and/or at least be able to independently research in order for that Superior Court Judge to be qualified to hear a case under the Public Records Act in the Superior Court, which would allow Plaintiffs to have a meaningful opportunity to be heard by this Court on issues they could make responsive pleadings to in order to properly oppose the Motions to Dismiss, etc., all while Judge Meyer allowed the Port's Attorney to hide issues of fact or law by so-called "sandbagging" until **after** Plaintiffs would be allowed to make responsive pleading opposing such factual or legal issues, by Judge Meyer's refusals to strike such pleadings and

Judge Meyer's refusals to allow Plaintiffs a meaningful opportunity to be heard on these "untimely" issues the Port belatedly brings up in these "sandbag" pleadings.

"Parties whose rights are to be affected are entitled to be heard; ...", and it is an abuse of discretion to deny parties the right to be heard. (Baldwin v. Hale, 68 U.S. (1 Wall.) 223 233 (1864). "The fundamental requisites of due process are the opportunity to be heard." (Grannis v. Ordean, 234 U.S. 385, 394, 58 L. Ed. 1363, 34 S. Ct. 779 (1914); Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306,314, 94 L. Ed. 865, 70 S.Ct. 652 (1950). Where an order adjudicates issues that were not presented by the pleadings the adverse parties are on notice of for the making of allowed responsive pleadings, and/or adjudicates issues which were not properly litigated by the parties, it denies that fundamental due process and must be reversed. (See Moody v. Moody, 23 Fla. L. Weekly, D1424, D1426 (Fla. 1st DCA June 3, 1998); Rankin & McCleod v. State of Florida, 711 S. 2d 11246, 1248 (Fla. 4th DCA 1998).

Plaintiffs' have civil and constitutional due process rights to have a "meaningful opportunity to be heard" in judicial proceedings. Boddie v. Connecticut, 401 U.S. 371, 379 (1971). Actions to abridge, violate or deny Plaintiffs' civil and constitutional due process rights to have a "meaningful opportunity to be heard" in judicial proceedings, as those complained of herein, constitute violations of Petitioner's fundamental rights to equal protection, due process, and liberty interests are legal questions for getting the Courts to control the excesses of government here. (Id.; see Kuzinich v. County of Santa Clara, 689 F. 2d 1345 (9th Cir. 1982); referring to Yick Wo v. Hopkins, 118 US 356, 6 S. Ct. 1064, 30 l. Ed. 220 (1886); Halperin v. Kissinger, 606 F. 2d 1192 (DC Cir. 1979); Hill v. Tennessee Valley Authority, 549 F. 2d 1064 (1977), affirmed 98 S. Ct. 2279 (1978); Haygood v. Younger, 769 F. 2d 1350 (9th Cir. 1985). "The Court stated many years ago that the Due Process Clause protects those liberties that are "so rooted in the traditions and conscience of our people as to be ranked as fundamental."' (Griswold v. Connecticut, 381 U.S. 479, 141 L. Ed. 2d 510, 85 S. Ct. 1678 (1965) quoting Snyder v. Massachusetts, 291 U.S. 97, 105, 78 L Ed. 674, 677, 54 S. Ct. 330, 90 A.L.R. 575).

"A court may not abdicate its responsibilities under the Constitution ..." as Judge Meyer has in this case. (See In Re Grand Jury Investigation, 600 F. 2d 420 (1979). "It is emphatically the province and duty of the Judicial Department to say what law is." (U.S. v. Richard Milhouse Nixon, 94 S. Ct. 3090, at 3093 Headnote 31 (1974). "A proper regard for separation of powers

does not require that courts meekly avert their eyes from presidential excesses while invoking a sterile view of the three branches of government entirely insulated from each other; such an abdication of the judicial role would sap the vitality of the constitutional rights whose protection is entrusted to the judiciary." (See Halperin v. Henry Kissinger, 606 F. 2d 1192(C. A. D. C., 1979), 100 S. Ct. 2915 (1980), 101 S. Ct. 3132 (1981), 102 S. Ct. 892 (1982). This invokes a public interest of the highest order: the interest in having government officials act in accordance with law. (See Olmstead v. United States, 277 U.S. 438, 485 (1928) (Brandeis, J., dissenting).

Any action required by Federal and State law "must be accomplished by procedures meeting the prerequisites of the Due Process Clause" and the failure of the government Respondents here to follow the procedures and provisions of State and Federal law here, violates the "due process" required for such laws and violates Petitioners' due process and equal protection rights thereby. (See Santosky v. Kramer, 102 S. Ct. 1388, 1394 (1982); see also Lassiter v. Department of Social Services, 101 S. Ct. 2153, 2165 (1981); Little v. Streater, 101 S.Ct. 2202, 2209 (1981).

"The function of a standard of proof, as that concept is embodied in the Due Process Clause and in the realm of fact finding, is to 'instruct the fact finder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication." (See Santosky v. Kramer, at 1395, quoting Addington v. Texas, 99 S. Ct. 1804, 1808 (1979), quoting In Re Winship, 90 S. Ct. 1068, 1075 (1970).

The "minimum requirements [of procedural due process] being a matter of federal law, they are not diminished by the fact that the State may have specified its own procedures that it may deem adequate for determining the preconditions to adverse official action. (See Santosky v. Kramer, at 1396, quoting Vitek v. Jones, at 491; see also Logan v. Zimmerman Brush Co., 455 US 422, 432 102 S. Ct. 1148 1155 to 1156 (1982).

The U.S. Supreme Court has found that the question facing triers of fact is both sensitive and difficult". (See Postal Service Bd. of Governors v. Aikens, 460 U. S. 711, 716 (1983); see also McDonnell Douglas Corp. v. Green, 411 U. S. 792, 802; St. Mary's Honor Center v. Hicks, 509 U. S. 502, 506 (1993); Texas Dept. of Community Affairs v. Burdine, 450 U. S. 248, 252-253 (1981).

"Evidence of judicial notice" is composed of facts capable of immediate and accurate demonstration by resort to easily accessible sources of indisputable accuracy and verifiable

certainty, since the Court can resort to "... any source of information that is generally considered accurate and reliable...". (See Spokane Arcades v. Eikenberry, 544 F. Supp. 1034 (1982), note 11, referring to State ex rel. Humiston v. Meyers, 61 Wn. 2d 772 at 779, (1963); see also Tyler Pipe Industries v. Dept. of Revenue, 96 Wn. 2d 785 at 796 (1982); ER 201; and see Federal Rules of Evidence (FRE) Rules 201, 301, 302, 401, 402, 403, 406, 901, 902, 1001, 1003, 1004, 1005, 1006, 1008 and 1101 et seq.).

The existence of facts cannot rest in guess, speculation or conjecture. Gardner v. Seymour, 180 P.2d 564, 27 Wn.2d 802; Helman v. Sacred Heart Hosp., 381 P2d 605, 62 Wn.2d 136, 96 A.L.R.2d 1193; Bland v. King County, 342 P.2d 599, 55 Wn.2d 902, adhered to 351 P.2d 153, 55 Wn.2d 902. Inferential denials are not accorded great weight in Washington Courts. (Hazard v. Warner, 211 P. 732, 122 Wn. 687, 31 A.L.R. 381). Washington case law has also held that conflicting testimony may not meet the preponderance of the evidence. (Sparks v. Bemis Bros. Bag Co., 114 P. 442, 62 Wash. 625. See also Ryan v. Ryan, 295 P.2d. 1111, 48 Wash. 2d 593).

In Washington, a false representation as to a material fact is actionable although made through an honest mistake, and such false representations constitute constructive fraud despite the presence of good faith. (Liner v. Armstrong Homes, 19 Wn. App. 921, 579 P. 2d 367 (1978), referring to Thompson v. Huston, 17 Wn. 2d 457, 135 P. 2d 834 (1943); Stanley v. Parsons, 156 Wash. 217, 286 P. 654 (193); McDaniel v. Crabtree, 143 Wash. 168, 254 P. 1091 (1927); Pratt v. Thompson, 133 Wash. 218, 233 P. 637 (1925); Haberman v. WPPSS, 109 Wn. 2d 107 referred to Hoffer v. State, 110 Wn. 2d 415, at 427, 755 P. 2d 781 (1988). A person or agency cannot make and/or rely upon a positive representation which is false and defeat recovery in a lawsuit, just because he did not know at the time that the representation was false, if he made the representation negligently, recklessly and carelessly without trying to find out if it was true or false. (Marc v. Cooke, 51 Wn. 2d at 340; Brown v. Underwriters At Lloyd's, 53 Wn. 2d at 150-152 (1958). A party cannot create a genuine issue of material fact by offering affidavits in opposition, like those of Ms. Lake here, which contradicts other clear evidence and/or sworn testimony to the contrary. (See Safeco Insurance Co. v. McGrath, 63 Wn. App. 170, 817 p. 2d 861).

Further, where the case and evidence is complicated and when it covers a field of expertise remote from the judge's experience, a Court should look more closely at a judgment in such cases. (See Rogers v. Exxon, 404 F. Supp. 324, (1975) 550 F. 2d 834 (3rd Cir.), 98 S. Ct. 749; Holiday

v. Ketchum, MacLeod & Grove, 584 F. 2d 1221 (3rd Cir.) (overruled on other grounds); Oscar Meyer & Co. v. Evans, 441 US 750, 99 S. Ct. 2066 (disapproved on other grounds), (on remand) 602 F 2d 183 (8th Cir.); Marshall v. Chamberland Manufacturing Corp., 601 F. 2d 100 (3rd Cir.); Smith v. Joseph Schlitz Brewing Company, 584 F. 2d 123` (3rd Cir.), (vacated on other grounds) 99 S. Ct. 2819, (on remand) 604 F. 2d 220 (3rd Cir.). The due process rights of litigants to have a "meaningful opportunity to be heard" in judicial proceedings are inviolate. (See Boddie v. Connecticut, 401 U.S. 371, 379 (1971).

In this case, just that portion of the record that has been submitted to the Court is very long, convoluted, and very complicated, also often requiring high levels of expertise of a Judge in a type of legal expertise remote from Judge Meyer's experience in the District Court with mostly misdemeanor and traffic cases. Further, long after accepting this case from the Superior Court and long after Judge Meyer had obtained the parties agreement to allow Judge Meyer to hear this case, Judge Meyer belatedly admitted at the beginning of the June 29, 2012 Hearing that he knew almost nothing about the Public Records Act or and that this was his first such case in the Superior Court. (Id). Petitioners have satisfied their burden here.

As the record in this case shows, Judge Meyer's Order of Dismissal of the Public Records Act case here he unlawfully abdicated his responsibilities under the Constitution, which continued the Court's prior continuous pattern of abridgment, violation or denial of Plaintiffs' civil and constitutional due process rights to have a "meaningful opportunity to be heard" in judicial proceedings against the Port in this case, by Judge Meyer's dismissing for lack of prosecution of this Public Records Act case that Plaintiffs have tried for 5 years to gain a "meaningful opportunity to be heard" in a judicial proceeding in this Court.

As the record in this case shows, Judge Meyer also took over 6 months after he accepted this case to even begin to start the pleading process on the Port's Motion to Dismiss this Public Records case, and the State Constitution requires a Judge to dispose of a case within 90 days of when it was assigned to him, so it appears Judge Meyer violated this portion of the State Constitution, further abridging Plaintiffs' due process rights, an abuse of discretion.

Clearly, for these reasons alone this Order of Dismissal must be vacated.

4. Judge Meyer's required impartiality in this case and the Appearance of Fairness Doctrine appears to have been violated in a way which prejudice Plaintiffs' due process rights in this case, by

Judge Meyer's blind acceptance of the Port's erroneous and misrepresented legal claims and citations, when the Port's erroneous and misrepresented legal claims and citation are **not** supported by any reasonable legal research of the actual standards of law controlling such matters that even the very minimum due process of Judge Meyer's due diligence as an attorney would appear to require, and this would constitute an abuse of discretion.

The State Supreme Court has held the provisions of the "Appearance of Fairness Doctrine":

"require a sensitive balance between individual rights and the public welfare"; and require that "the process by which such decisions are made must not only be fair but must appear to be fair to insure public confidence therein." (Fleming v. City of Tacoma, 81 Wn. 2d 292, 502 P. 2d 327 (1972), Smith v. Skagit County, 75 Wn. 2d 715, 453 P. 2d 832 (1969); Buell v. Bremerton, 80 Wn. 2d 518, at 523, 495 P. 2d 1358 (1972); Chrobuck v. Snohomish County, 78 Wn. 2d 858, 480 P. 2d 489 (1971).

In Smith, the State Supreme Court was "particularly disturbed" by Skagit County's violation of the Appearance of Fairness Doctrine by Skagit County's "refusal to allow opponents to present their views on certain occasions", finding that justice had not been done. (See Smith v. Skagit County, supra). In Buell, the State Supreme Court stated that under the Appearance of Fairness Doctrine, the person and/or agency making such decisions must be "capable of hearing the weak voices as well as the strong", since "it is important not only that justice be done but that it also appears to be done...". (Buell v. Bremerton, supra).

However, as noted in the record of this case, the "weak voices" of the none agency Plaintiffs, at least one of whom is pro se and disabled,:

a) were refused a proper hearing of their issues on the merits of their PRA claims at a proper Show Cause hearing where witnesses could testify and evidence could be produced;

b) were refused the opportunity to gain discovery of evidence necessary for a just adjudication of this case;

c) were refused the opportunity to have the Port's entire administrative record and other public records on this project and actions that is necessary for a just adjudication of this case;

d) were refused the opportunity to present certain of their evidence, pleadings and claims by the unreasonable, arbitrary and capricious actions and/or omissions to properly act of Judge Meyer

and/or others of this Court which allowed an overworked under qualified Judge Meyer to hear this Public Records Act case, by hearing only Respondents' Motions to Dismiss filed and noted **after** Plaintiff West's Notice of Issue for a Show Cause hearing was filed and noted, and their actions and/or omissions to properly act to ignore, misrepresent, misinterpret, and mischaracterize the agency record and Petitioners' pleadings and evidence in this case, to dismiss the PRA claims in this case, which followed blindly the Port Attorney's unreasonable, arbitrary and capricious actions to ignore, misrepresent, misinterpret, and mischaracterize the agency record and Petitioners' pleadings and evidence in this case;

e) were refused the opportunity to have adequate time to to present certain of their evidence, pleadings and claims made in this case, by the arbitrary and capricious actions of Judge Meyer and this Court to **not** properly consider Plaintiffs' pleadings against this Motion; and/or

f) were refused the opportunity to present their views in other ways enumerated herein and in their prior pleadings on these matters, etc.

A motion for reconsideration should be granted when the party has not had an opportunity to contest an issue that first appears in the Court's order, and/or the party has been unfairly surprised by the change in policy in the Court's order on that issue against the party. (See Farrell v. Pierce, 785 F. 2d 1372 (1986, 7th Cir.); Conway v. Chemical Leaman Tank Lines, Inc., 687 F. 2d 108 (1982, 5th Cir.); Knowles v. Mutual Life insurance Co., 788 F. 2d 1038 (1986, 4th Cir.); Pakech v. American Export-Isbrandsten Lines, Inc., 69 22 FRD 534, Serv. 2d 39 (1976, ED Pa); United States v. Kralmann, 3 FRD 473 (1943); United States v. Dittrich, 3 FRD 475 (1943).

As noted in the Court's records in this case on just Mr. Dierker's prior Motion to Strike, incorporated by reference herein, Plaintiffs were refused the right to have a meaningful opportunity to be heard in the written briefing of this case on the issues of fact and law the Port presented in those "sandbagged" issues, arguments and exhibits in the Port's overlength Reply to the Response to the Motion to Dismiss that were not properly a part of any "responsive pleading" allowed by CR 8(d), et seq., and in fact, the Port's Reply to the Response to the Motion to Dismiss specifically alleged that Plaintiffs could not legally "respond" or rebut the Port's new "sandbagged" issues, arguments and exhibits there, and Judge Meyer agreed with the Port that Plaintiffs would be denied the right to have a meaningful opportunity to be heard in the written briefing of this case on the issues of fact and law the Port presented in those "sandbagged" issues,

arguments and exhibits in the Port's overlength Reply to the Response to the Motion to Dismiss, clearly an improper judicial act prejudicing Plaintiffs.

Clearly, for these reasons alone this Order of Dismissal must be vacated.

5. Also, this Motion for Reconsideration should be granted for one or more of the following reasons. CR 59 provides "(a) Grounds for New Trial or Reconsideration. The verdict or other decision may be vacated and a new trial granted to all or any of the parties and on all or part of the issues when such issues are clearly and fairly separable and distinct on the motion of the party aggrieved for any one of the following causes materially affecting the substantial rights of such parties."

The reasons this Motion for Reconsideration should be granted are, but are not limited to the following.

(1) Irregularities in the proceedings of the court or adverse party, and in the various underlying orders of the court, and/or abuses of discretion, by which Petitioners were prevented from having a fair trial.

(2) Misconduct of prevailing party or trier of fact, in this case Judge Meyer for taking a case beyond his legal expertise and for failing to disclose the facts that he knew very little about the Public Records Act and this was his first PRA case in the Superior Court until long after he obtained an agreement from Petitioners and Respondent to hear this Public Records Act case, which he decided upon an improper and obsolete interpretation of the Public Records Act's damages statute that was fostered on Judge Meyer's by his following of the improper pleadings of the Port's attorney.

(3) Accident or surprise which ordinary prisoners could not a guarded against:

(4) Newly discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced at trial;

(5) Damage to petitioners' several unconstitutional rights of access to the courts to gain redress of grievances for illegal government action which is so excessive as unmistakably to indicate that the verdict must have been the result of passion or prejudice;

(6) That the evidence does not justify that the decision and it is contrary to law;

(7) That an error of law occurred at the trial, despite petitioner's objections;

4) Judge Meyer's Order was clearly erroneous, unlawful, arbitrary, and/or capricious under the

standards of review of such matters, or Judge Meyer and/or this Court unreasonably, arbitrarily and capriciously failed to properly follow the many legal standards for review of controlling such matters, despite Petitioners' objections.

5) Judge Meyer's Order would unduly prejudice Petitioners' civil and constitutional rights to redress of grievances, due process, and equal protection under the law if they were not reversed, despite Petitioners' objections.

6) Judge Meyer's Order was obtained by surprise, mistake, misconduct, misrepresentation, and/or irregular, erroneous and/or unlawful actions of defendants and/or the court in these proceedings, often despite Petitioners' objections.

7) Judge Meyer's Order would unlawfully burden Petitioners and the Courts in any appeal of this decision without having a proper record for review, and without having proper proceedings and orders to appeal, due in part to Respondents fraudulent concealment of the agency records related to this matter.

8) Judge Meyer's Order was unreasonably, arbitrarily and capriciously based upon Judge Meyer's unconstitutional, unlawful, unprofessional, unethical, incomplete and/or "edited" record or view of the record in this case, which is contradicted by the evidence in the actual records of this case and u the Port's illegal custom, policy, procedure or business practice of withholding public records from these and other requesters as noted by prior cases against the Port in this Court, and which is also shown by the Port's continued withholding of the actual records related to this matter are still being concealed by the actions of Respondents, this Court, and others, despite Petitioners' objections.

9) Judge Meyer's Order is contrary to law or in error of law, despite Petitioners' objections.

10) Judge Meyer's Order failed to consider the facts, the law and legal standards governing such actions, and failed to consider the "law of the case" for this case that was already laid down in the prior discretionary rulings of Judges Pomeroy, etc., in this case, despite Petitioners' objections.

11) Judge Meyer's Order failed to properly consider Petitioners' pleadings, incorporated exhibits, objections, et al, despite Petitioners' objections.

12) Judge Meyer's Order was obtained by Judge Meyer's unreasonable and improper failure to give Petitioners a proper opportunity for their claims to be heard on the merits in this case.

13) Judge Meyer's Order violated the civil and constitutional rights of the Petitioners as noted

herein and in the underlying pleadings in this case, despite Petitioners' objections.

14) Judge Meyer's Order was manifestly erroneous, unlawful, unconstitutional, prejudicial, unethical, clearly erroneous, arbitrary and/or capricious, and/or and abuse of discretion in other ways, despite Petitioners' objections.

15) Judge Meyer's Order was contrary to statute and clearly established legal precedent on such matters, as shown by RCW 42.56.550(4) and as shown by the July 20, 2012 ruling denying a similar motion to dismiss for lack of prosecution in West v. Washington Association of Counties.

16) Judge Wickham's Order was contrary to clearly established precedent on standing.

17) Substantial justice has not been done in this case, despite Petitioners' objections, etc.

STANDARDS OF REVIEW OF MOTIONS FOR RECONSIDERATION

A motion for reconsideration under Rule 59 will be considered by the Court as a motion for relief from judgment or order under Rule 60(b). (Venen v. Sweet, 758 F. 2d 117 (1985, 3rd Cir.).

The Superior Court also has the power under Rule 59 sua sponte to consider altering or amending a judgment that would otherwise be final. (See Burnam v. Amoco Container Company, 738 F. 2d 1230 (1984, 11th Cir.), 755 F. 2d 893 (later proceeding).

Since both Petitioners are or were acting pro se in this matter, Judge Meyer should have "liberally construed" the pleadings of both of the pro se Petitioners in this case, because under the law and under various Courts' decisions on such matters controlling such fundamental due process rights, these pro se litigants' pleadings "will be held to less stringent standards than formal pleadings drafted by lawyers", and even after a motion to dismiss is considered such pro se plaintiffs should be given "an opportunity to amend their pleadings to overcome any deficiency unless 'it clearly appears ... that the deficiency cannot be overcome by amendment'". (See Pena v. Gardner, 976 F. 2d 469 (9th Cir. 1992), at 471, 472, and 474; Gillespie v. Civiletti, supra, referring to Stanger v. City of Santa Cruz, slip opinion 2470 (March 24, 1980, 9th Cir.); Potter v. McCall, 433 F. 2d 1087, 1088 (9th Cir. 1970); see also Hutton v. Heggie, 454 F. Supp. 870 at 875 (1978), referring to Haines v. Kerner, 404 U.S. 519, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972); Cohen v. Genbro Hotel Co., 259 F. 2d 78 (9th Cir. 1958); Franklin v. State of Oregon, State Welfare Division, 662 F. 2d 1337 (9th Cir. 1980); Balistreri v. Pacifica Police Dept. 901 F. 2d 696 (9th Cir. 1988); see also Ninth Circuit Court of Appeals Circuit Rule 32-5, et seq.).

Further, since Petitioner Dierker here is a severely disabled persons whose disabilities include, but are not limited to, having brain damage from accidents which causes him problems communicating his thoughts to others at times like this, the Hearing Examiners Decision here should have "liberally construed" the pleadings of both of the pro se Petitioners in this case required under law and under various Courts' decisions on such matters, and should have made "reasonable accommodations" for the pleadings of the disabled and pro se Petitioner in this case under the provisions of the Americans With Disability Act (ADA). (See see Tennessee v. Lane, 124 S, Ct. 1978 (2004); Americans with Disabilities Act's (ADA) Title 42 USC § 12101, et seq., including but not limited to § 12112 Discrimination, § 12132 Discrimination in Public Services, § 12202 No State Immunity, et seq.; see also the Washington State's Blind, Handicapped, and Disabled Persons --"White Cane Law" RCW 70.84 et seq.).

The U.S. Supreme Court's recent decision in the case of Tennessee v. Lane, et al, determined that Title II of the Americans with Disabilities Act of 1990 (ADA), 104 Stat. 337, 42 U. S. C. §§12131-12165, provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any such entity." (§12132).

The Supreme Court in Lane cites four access-to-the-courts rights cases that Title II purportedly enforces: (1) the right of a party to be present at all critical stages of the trial, Faretta v. California, 422 U. S. 806, 819 (1975); (2) the right of litigants to have a "meaningful opportunity to be heard" in judicial proceedings, Boddie v. Connecticut, 401 U.S. 371, 379 (1971); (3) the right of a party to trial by a jury composed of a fair cross section of the community, Taylor v. Louisiana, 419 U. S. 522, 530 (1975); and (4) the public's right of access to legal proceedings, Press-Enterprise Co. v. Superior Court of Cal., County of Riverside, 478 U. S. 1, 8-15 (1986). (Id., at pages 11-12 of the Decision). The ADA's Title II provisions of 42 USC §12131(2) et seq., protect the fundamental due process of law rights of disabled litigants to have meaningful access to the courts for redress of grievances. (See Tennessee v. Lane, et al, 541 U. S. ____, Case No. 02-1667 (May 17, 2004).

However, as noted herein, the Judge Meyer's Order of Dismissal of this case failed to consider or follow these standards of review, an abuse of discretion.

When considering a dismissal, the Standards of Review in such matters requires that the Judge must accept as true the Petitioners' allegations and the Judge must consider the the Petitioners' allegations, facts, and reasonable inferences from the facts in the light most favorable to the non-moving party whose claim in being dismissed, which is the Petitioners for these several Consolidated Motions to Dismiss in this case. (See Postema v. PCHB, 142 Wn. 2d 68 (2000), citing Hertog v. City of Seattle, 138 Wn. 2d 265, 275, 979 P. 2d 400 (1999); Sheuer v. Rhodes, 416 U.S. 232, 236 (1974); Gillespie v. Civiletti, 629 F. 2d 637, at 640, (1980, 9th Cir.), referring to Ernest W. Hahn, Inc. v. Codding, 615 F. 2d 830. 834-835 (1980, 9th Cir.); Amfac Mortgage Corp. v. Arizona Mall of Tempe, Inc., 583 F. 2d 426, 430 (1978, 9th Cir.).

In considering whether to dismiss an appeal, the Judge and the party gaining dismissal must prove beyond a reasonable doubt that Petitioners are not entitled to relief, no matter what facts are proven within the context of the claims, that an appeal "should not be dismissed on the pleadings 'unless it appears beyond a reasonable doubt that the (Petitioners) can prove no set of facts in support of (Petitioners') claim which would entitle (Petitioners) to relief'", and Petitioners' judicial appeal in this case cannot be dismissed if the evidence, complaints and pleadings submitted by Petitioners are "found to adequately allege a claim based upon some other theory than that advanced by the" Petitioners after the Court's proper consideration of Petitioners claims and evidence on this matter. (See Postema, supra, at 76 et seq., and at 68, 69, and 71 et seq., Head notes 3, 4, 5, 6, 7, 8, and 20; Loger v. Washington Timber Products, 8 Wash. App. 921, at 924, 509 P. 2d 1009 (1973); Berge v. Gorton, 88 Wn. 2d 756, at 759 and 762, 567 P. 2d 187 (1977); referring to Lester v Percy, 58 Wn. 2d 501, 364 P. 2d 423 (1961); Tenore v. AT&T Wireless Servs., 136 Wn. 2d 322, 329-30, 962 P. 2d 104(1998); Pena v. Gardner, 976 F. 2d 469 (9th Cir. 1992), at 471; Estelle v. Gambel, 429 U.S. 97, 106, 97 S, Ct. 285, 50 Led. 2d 251 (1976); Gillespie v. Civiletti, 629 F. 2d 637, at 640, (1980, 9th Cir.), emphasis added, referring to Conley v. Gibson, 355 U.S. 41, 45-46, 78 S. Ct. 99 (1957); California ex rel. Younger v. Mead, 618 F. 2d 618, 620 (1980, 9th Cir.); Amfac Mortgage Corp. v. Arizona Mall of Tempe, Inc., 583 F. 2d 426, 429 (1978, 9th Cir.).

The Standards of Review when considering a motion to dismiss and/or for summary judgment requires that a Court must accept as true the Plaintiffs' allegations, must view them in the light most favorable to the Plaintiffs, and a Court "may consider hypothetical facts not included in the record" to support Plaintiffs' allegations. (Tenore, at 330; Village of Willowbrook v. Olech,

528 U.S. 1073, 120 S. Ct. 1073, 145 L. Ed. 2d 1060 (2000); Sheuer v. Rhodes, 416 U.S. 232, 236 (1974).

However, as noted herein, the Judge Meyer's Order of Dismissal of this case failed to have and consider a complete record for review, and failed to follow these and other such legal standards of review.

Judge Meyer's and/or the Court's or the Clerk's actions or omissions to properly act here also violate the Plaintiffs' rights to free speech, due process, and redress of their grievances on these issues by violating Appellants rights to equal protection "that all persons similarly situated should be treated alike." (City of Cleburne v. Cleburne Living Center, 105 S.Ct. 3249, 3254, 87 L.Ed.2d 313 (1985); Pollard v. Cockrell, 587 P.2d 1002, 1112–1113 (5th Cir. 1978); Oriental Health Spa v. City of Fort Wayne, 864 F.2d 486, 490 (7th Cir. 1988).

In the State of Washington, the law "must operate equally on every citizen or inhabitant of the state." (See State v. Zornes, 475 P. 2d. 109 at 119 (1970); see also the 5th and 14th Amendment to the U.S. Constitution and Article I Section 12 of the Washington State Constitution, et seq.). This State's case of Reanier v. Smith and its progeny recognize that the equal protection clause requires that all similarly situated individuals must be treated equally. (See Reanier v. Smith, 83 Wn. 2d. 342, 517 P. 2d. 949 (1974). "The guaranty of equal protection of the laws is a pledge of the protection of equal laws." (See Yick Wo v. Hopkins, 118 U.S. 356, at 369, 68 S. Ct. 1064, 30 L. Ed. 220). "When the law lays an unequal hand on those who have ... intrinsically the same quality ... it has made as invidious a discrimination as if it had selected a particular race or nationality for oppressive treatment." (See Yick Wo v. Hopkins, supra; State of Missouri Ex Rel Gaines v. Canada, 305 U.S. 337, 59 S. Ct. 232, 83 L. Ed. 208). Violations of equal protection are reviewed under both rational basis and strict scrutiny standards of review to determine state interest in its scheme. (See Griess v. State of Colorado, 624 F. Supp. 450 (1985). The state must prove that law furthers a substantial interest of the state. (Id; see also In Re Mota, 114 Wn. 2d 465, 477, 788 P. 2d 538 (1990); Plyler v. Doe, 457 U.S. 202, 72 L. Ed. 2d 786, 102 S. Ct. 2382, reh'g denied, 458 U.S. 1131, 73 L. Ed. 2d 1401, 103 S. Ct. 14 (1982).

These violations of Plaintiffs' rights to free speech, due process, and redress of grievances on these issues also violated their rights to equal protection "that all persons similarly situated should be treated alike." (City of Cleburne v. Cleburne Living Center, 105 S.Ct. 3249, 3254, 87

L.Ed.2d 313 (1985); Pollard v. Cockrell, 587 P.2d 1002, 1112–1113 (5th Cir. 1978); Oriental Health Spa v. City of Fort Wayne, 864 F.2d 486, 490 (7th Cir. 1988).

Plaintiffs were denied the right to be able to gain redress of grievances and to properly defend themselves here against the Port's actions here, by Judge, Meyer's, The Court's, the Clerk's or the Port's unlawful actions here, in violation of the 1st and 6th Amendments of the U.S. Constitution. (Id.; see also below).

Such claims involve violations of Plaintiffs' civil and constitutional rights to equal protection, due process, liberty interests, the Supremacy clause, the separations of powers doctrine, international treaties, and other such federal legal questions to control the excesses of government here. (Id.; see Kuzinich v. County of Santa Clara, 689 F. 2d 1345 (9th Cir. 1982); referring to Yick Wo v. Hopkins, 118 US 356, 6 S. Ct. 1064, 30 l. Ed. 220 (1886); Halperin v. Kissinger, 606 F. 2d 1192 (DC Cir. 1979); Hill v. Tennessee Valley Authority, 549 F. 2d 1064 (1977), affirmed 98 S. Ct. 2279 (1978); Haygood v. Younger, 769 F. 2d 1350 (9th Cir. 1985).

Whether and official is protected by qualified immunity turns of the objective legal reasonableness of the action assessed in light of the legal rules that were clearly established at the time the action was taken. (Anderson v. Creighton 483 U.S. 635, 639, 107 S. Ct. 3034, 97 L. Ed 2d 523 (1987); Harlow v. Fitzgerald, 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982). The Court found that his standard requires a two-part analysis: 1) Was the law governing the official's conduct clearly established? 2) Under the law, could a reasonable person have believed the conduct was lawful? (Act Up!/Portland v. Bagley, 988 F. 2d 868, 871 (9th Cir. 1993) citing Anderson v. Creighton, supra.)

Further, the Anderson Court found that "...the right to due process of law is quite clearly established by the Due Process Clause, and thus there is a sense in which any action that violates that Clause (no matter how unclear it may be that particular action is a violation) violates a clearly established right." (Id). "When government officials abuse their offices ..." a court must act to protect such constitutional guarantees. (Anderson v. Creighton, supra, referring to Harlow v. Fitzgerald, 457 U.S. 800, 73 L. Ed. 2d 396, 102 S. Ct. 2727 (1982).

As noted herein, Judge Meyer's conduct violates clearly established statutory and constitutional rights of which a reasonable person would have known. (See Buckley v. Fitzsimmons, supra, at 2612-2613, quoting Harlow v. Fitzgerald, 457 U.S. 800 at 818, 102 S. Ct.

2727 at 2738 (1982).

Judge Meyer, other Thurston County Superior Court staff and the Thurston County's Clerks here are public servants sworn to uphold the Constitution and the laws of Washington and to protect rights of the citizens of that state, et al. (Id.). It is this state agency's and/or its state agents' duty by law to follow the law in performance of their official capacities. This was not done in this case by the Court or Clerk's and/or their agents here. Those actions or omissions by this state agency and/or its state agents constitute at least deliberate indifference to Plaintiffs' due process rights and rights to equal protection of the law. (Supra).

This Judge, this Court and/or its agents, the clerk's office and/or its agents have lost any immunity of their office when they stepped outside their "Cloak of Office" by violating the public trust which resides in them, and thereby violating state law on abuse of office, misconduct of public officers, violation of oath of office, et al, which clearly acts to prejudice and/or violate Plaintiffs due process intierests in this matter. (See R.C.W. 42.56.550; R.C.W. 42.20, et seq.; R.C.W. 42.21, et seq.; R.C.W. 42.22, et seq.; R.C.W. 42.23, et seq.; R.C.W. 42.12.010; Washington State Constitution Article I § 33).

Judge Meyer's actions or omissions to properly act pursuant to the law here violates Plaintiffs' civil and constitutional rights to due process. (See Haygood v. Younger, 769 F. 2d 1350 (9th Cir. 1985); In Re Piercy, 101 Wn. 2d at 495, 681 P. 2d 223 (1984); Superintendent, Mass. Corr. Inst. v. Hill, 105 S. Ct. 2768 (1985); Wolff v. McDonnell, 418 U.S. 539, 41 L. Ed. 2d 935, 94 S. Ct. 2963 (1974); and In Re Reismiller, 101 Wn. 2d 291, 678 P. 2d 323 (1984)). The Fifth Amendment guaranty of due process is enforceable against the states through the Fourteenth Amendment. (See North Carolina v. Pearce, 395 U.S. 711, 23 L. Ed. 2d 656, 89 S. Ct. 2072 (1969).

This Court's, the County Clerks' and/or Judge Meyer's actions or omissions to properly act here also violated Plaintiffs' rights to due process, equal protection and to petition the government for redress of grievances. (See the 1st, 4th, 5th, 6th, 9th, 10th, and 14th Amendments and Article III to the U.S. Constitution). Under Hughes v. Kramer, 82 Wn.2d 537, 511 P.2d 1344 (1973), among the rights protected by the First and Fourteenth Amendments of the U.S. Constitution are the freedoms of political belief, expression, dissension, criticism, and the right to petition government for the redress of grievances.

Here, in just one example in this case of Judge Meyer's improper abridgment violation of the Plaintiffs' due process rights to petition government for the redress of grievances to gain relief from improper governmental actions, Judge Meyer stated that his decision did not prevent Plaintiffs' from making Public Records Requests even for the records withheld by the Port here, while he made his Oral Ruling dismissing Plaintiffs' Public Records Act case which thereby denied Plaintiffs the right to have an meaningful opportunity to be heard by denying Plaintiffs their due process rights to petition government for the redress of grievances to gain relief from the Port's improper governmental actions done to unreasonably withhold these public records as the Port continues to do even though Mr. West has already requested those records from the Port and the Port still is unreasonably withholding these public records from Mr. West. (See attached Summons and Complaint in the new West v. Port of Olympia Public Records Case, served on the Port last week).

Clearly, Judge Meyer's feeble attempts to hide or downplay his abridgments and violations of Plaintiffs' constitutional due process rights, by him simply claiming Plaintiffs' could file other public records requests in the future, does not excuse Judge Meyer's complete denial of the due process rights to be able to have any meaningful opportunity to be heard by this Court, by Judge Meyer's denying Plaintiffs' fundamental due process rights to get an impartial hearing of their petition to this Court by a qualified Judge for the redress of these PRA grievances in order for the Plaintiffs to gain reasonable relief from the Port's improper governmental actions done to unreasonably withhold these requested public records.

In the State of Washington, an essential corollary of freedom of speech is the public's right to receive information concerning actions of their governments, and that right is superior to the rights to privacy. (Fritz v. Gorton, 83 Wn. 2d 275 (1974). The State Supreme Court in Fritz quoted the U.S. Supreme Court's decision in the case of New York Times v. Sullivan, 84 S. Ct. 710 (1964), noting that, "The interest of the public here outweighs the interest of appellant and any other individual. The protection of the public requires not merely discussion but information." (Id.). Prior restraints of first amendment rights, like those for petitioning the government for redress of grievances, "must be narrowly drawn" or are prohibited. (See also Broderick v. Oklahoma, 413 US 601, 37 L. Ed. 2d 830 (1973); see also New York Times v. Sullivan, 376 US 254, 11 L. Ed. 2d 686 (1964).

Article I Sections 2, 4, 5, and 10 of the Washington State Constitution also protects those freedoms above.

Among the rights protected by Article I Sections 3 and 10 of the Washington State Constitution and the Fifth and Fourteenth Amendments of the U.S. Constitution are equal protection and due process of law.

Among the rights protected by Article I Sections 3, 7, and 16 of the Washington State Constitution and the Fourth Amendment of the U.S. Constitution, the County may not "take" a persons fundamental rights or property without due process of law.

Among the rights protected by Article I Sections 1 and 32 of the Washington State Constitution and the Ninth and Tenth Amendments of the U.S. Constitution are "fundamental" rights reserved to the people.

"The Court stated many years ago that the Due Process Clause protects those liberties that are "so rooted in the traditions and conscience of our people as to be ranked as fundamental."' (Griswold v. Connecticut, 381 U.S. 479, 141 L. Ed. 2d 510, 85 S. Ct. 1678 (1965) quoting Snyder v. Massachusetts, 291 U.S. 97, 105, 78 L Ed. 674, 677, 54 S. Ct. 330, 90 A.L.R. 575).

"The language and history of the Ninth Amendment reveal that the Framers of the Constitution believed that there are additional fundamental rights, protected from governmental infringement, which exist alongside those fundamental rights specifically mentioned in the first eight constitutional amendments." (Griswold v. Connecticut, supra).

"Without those peripheral rights the specific rights would be less secure." (Griswold v. Connecticut, supra; see also Pierce v. Society of Sisters, 268 U.S. 510, 69 L.Ed. 1070, 45 S. Ct. 571, 39 A.L.R. 468; Meyer v. Nebraska, 262 U.S. 390, 67 L. Ed. 1042, 43 S. Ct. 625, 29 A.L.R. 1446). 'The foregoing cases suggest that specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance." (Griswold v. Connecticut, supra).

Plaintiffs' state and federally created constitutional rights to due process of the law are defined under the Fifth and Fourteenth Amendments to the U.S. Constitution and Article I § 3 of the Washington State Constitution, et seq. (Id.; see also Wolff v McDonnell, 418 U.S. 539, 41 L. Ed. 2d 935, 94 S. Ct. 2963 (1974); Haygood v. Younger, 769 F. 2d 1350 (9th Cir. 1985).

Plaintiffs had a constitutional due process right to be granted discovery of correct

information concerning this case, which was denied by the Port and by Judge Meyer's narrowly constructed hearing schedule and such non–disclosure of relevant evidence constitutes bad faith and is sanctionable under CR 11, etc. (Draper v. Washington, 372 U.S. 487, 83 S. Ct. 774 (1963); Griffin v. Illinois, 351 U.S. 12, 76 S. Ct. 585, 100 L. Ed. 891 (1957); Physicians Insurance Exchange v. Fison Corp., 122 Wn.2d 299, 338–356; 858 P.2d 1054 (1993).

The common law right to have access to and inspect "correct" and "non-secret" governmental records for a person's petitioning the government for redress of grievances has been recognized as early as 1894. (See Ex parte Drawbaugh, 2 App D.C. 404, cited in U. S. v Mitchell, 551 F. 2d 1252 (D. C. Cir. 1976).

"Any attempt to maintain secrecy, ... would seem to be inconsistent with the common understanding of what belongs to a public court of record, to which all persons have the right of access...". (Mitchell, supra at 407). "What transpires in the courtroom is public property." (See Cohen v. Everett city Council, 85 Wn 2d 385, 535 P. 2d 801 (1975); Federated Publications v. Kurtz, 94 Wn 2d 51, 615 P. 2d 440 (1980). "There is no special prerequisite of the judiciary which enables it, as distinguished from other institutions of democratic government, to suppress, edit, censor events which transpire in proceedings before it." (See Craig v. Harney, 331 U S 367, 374 (1947); Strobles v California, 343 U S 181, 193 (1952); Estes v, Texas, 381 U. S. 532, 541 (1965); Shepard v. Maxwell, 384 U.S. 333, 350 (1966); State ex rel. Snohomish County, 79 Wn. 69, 77, 483 P. 2d 608 (1971).

The public and the Appellant have a civil and/or constitutional right to expect "conscientious service" from government agents, and Plaintiffs have not gotten such "conscientious service" from the government agents of this Judge, this Court, the Clerk's Office, or the Port or its attorney here, which thereby have violated Plaintiffs rights to equal protection and due process of law, et seq. (See Meza v. Washington State Dept. of Social and Health Services, 633 F. 2d 314 (1982, 9th Cir.); see also Physicians Insurance Exchange v. Fisons Corporation, 122 Wn. 2d 299, 858 P. 2d 1054 (1993).

"The Public Records Act "is a strong mandate for broad disclosure of public records". Hearst Corp. v. Hoope, 90 Wn.2d 123 127, 580 P.2d 246 (1978).

Any judicial review of public records matters is to be done under the "de novo" standard, especially where proper fact finding and specific determination that the documents are exempt from

disclosure have never been done by the agency or a lower court, as occurred here. (Ames v. Fircrest, 71 Wn.App. 284 (1993); Overlake Fund v. Bellevue, 60 Wn.App. 787 (1991); Progressive Animal Welfare Society v. University of Washington, (PAWS II) 125 Wn.2d 243, at 252–253 and 270–272 (1994). "Courts shall take into account that free and open examination of public records is in the public interest,...". (Former RCW 42.17.340(3).

In Fritz v. Gorton, 83 Wn.2d 275 (1974), the State Supreme Court found that RCW 42.17 is a statute made by the public's initiative powers to protect the public's rights to know and to petition to gain redress of grievances against the government under the First Amendment of the U.S. Constitution. The State Supreme Court in Fritz quoted the U.S. Supreme Court in the case of New York Times v. Sullivan, 84 S. Ct. 710 (1964), noting that, "The interest of the public here outweighs the interest of appellant and any other individual. The protection of the public requires not merely discussion but information." (Id.).

In this case, the Superior Court staff, the Clerk's office and Judge Meyer were significantly involved, and shows their actions or omissions to properly act pursuant to the standards of the law and their legal responsibilities aided, encouraged, and/or connoted approval of the Port's unreasonable withholding of public records from the Appellant here. (Long v. Chiropractic Society, 93 Wn.2d 757, 761–762, 613 P.2d 124 (1980). Any other finding would violate RCW 42.56's requirement for all courts to liberally construe the Act to promote disclosure and narrowly construe the acts exemptions to disclosure, and appellants rights to equal protection of the law under the Fourteenth Amendment to the U.S. Constitution. (Long, supra; Kuzinich v. Santa Clara, 689 F.2d 1345, 1349 (9th Cir. 1982); Yick Wo v. Hopkins, 6 S.Ct. 1064 (1886).

Clearly, "existing case law" and statute law on RCW 42.56 and prior restraint of First Amendment rights do not allow a Judge or a Court any discretion to aid agencies to withhold public records merely by the Judge's dismissing of a Public Records Act case while denying any "noting" of a Show Cause hearing for a PRA cases, which aids the Port to prevent the release of requested public records in violation of the state and federal laws and the state and federal Constitutions, and therefore, Judge Meyer's Order must be vacated. (Id.).

6. As noted above, since this is the "final order" in the entire case, Plaintiff also makes this Motion for Reconsideration and/or Vacation of this Court's May 30, 2008 Order of Dismissal along with its other various underlying decisions on those non PRA issues bifurcated previously in

this case, which were noted within Plaintiffs/Petitioners' prior Motions for Reconsideration and/or for Vacation of this Court's various underlying decisions on the other than PRA issues in this case for the reasons noted within Plaintiffs/Petitioners' prior pleadings submitted to this Court on the other issues in this case, which are incorporated by this reference hereinto this Motion for Reconsideration in the interests of judicial economy, which ultimately resulted in the May 30, 2008 Order of Dismissal for Plaintiffs' alleged lack of standing, the subsequent refusals of access to the Court for filing and noting of hearing in this case for over 16 months, through no fault of Plaintiffs, and which delayed this PRA case hearing for over 4 years with the help of the Port and the mistakes of the Clerk's of this Court. (See Plaintiffs' prior arguments on the mistakes of the Clerk's of this Court denying access to the Court; see Lake's own Court Clerk/Judicial Assistant E-Mail Exhibits which are in reverse order within the Port's Motion to Dismiss; also see Mr. West's various Thurston County Tort Claims filed against the Thurston County Superior Court, its staff, or its Clerk's Office over his being "arrested" by bailiffs of the Thurston County Superior Court's "Family Court" and taken off the premises for Mr. West's attempts to get into and/or the Courtroom there to ask the judge's assistant when the Judge had time for a "special setting" for a hearing of our Motion to Show Cause in this Public Records Case in order so he could set a date and time for this hearing and his attempts to get into the the Court Clerk's Office to file a notice of issue on that hearing and file our new Motion to Show Cause in this Public Records Case).

As an addendum to the Plaintiffs/Petitioners' prior Motions for Reconsideration and/or for Vacation of this Court's Orders dismissing this case for Plaintiffs alleged lack of "standing" under LUPA's strict standards on "standing", Plaintiff Dierker submits the follow new argument of this renewed CR 59/60 Motion on this Court's "final" dismissals of these non-PRA issues now that this whole case has been completed by the Court's July 27, 2012 Order of Dismissal.

Judge Wickham found that "standing" for all of Plaintiffs' Complaint's various issues besides the Public Records Act issues, must be determined by **only** the Land Use Petition Act (LUPA) RCW 36.70C.060(1)-(2) statute's very strict standards of review, even though no "Land Use" decision had been made by the Port, even though the Port had no legal power to make "Land Use" decisions under LUPA or any other law, and even though no LUPA petition had been filed in this case by Plaintiffs.

However, a review of recent case law occurring after the making of these decisions by Judge

Wickam, shows that the Uniform Declaratory Judgments Act (UDJA) and its more liberal "standing" requirements may still be be used in cases which might involve land use, such as this one did. (See Family Farmers v. State of Washington, 173 Wn. 2d 296 (Dec. 2011); see also the case law on a court's consideration of a statute noted above). The record in this case shows that Plaintiffs clearly would have met the more liberal "standing" requirements of the UDJA if Judge Wickham had not made an improper interpretation of law that LUPA and RCW 36.70C.060(1)-(2) standing requirements governed the Court consideration of all of the non-PRA issues in this case.

In the appeal of a similar case Judge Wickham dismissed for lack of standing, the Supreme Court found recently that Judge Wickham's interpretation of the strict "standing" requirements of the LUPA was in error, and the Supreme Court found the Plaintiffs in that case had standing. (See Knight v. City of Yelm 173 Wn.2d 325, at 340-347 (Dec. 2011); see also the case law on a court's consideration of a statute noted above). The record in this case shows that Plaintiffs clearly would have even met LUPA's "standing" requirements if Judge Wickham had not made an improper interpretation of LUPA's "standing" requirements in RCW 36.70C.060(1)-(2).

Finally, another recent Court of Appeals decision found a Plaintiff's have "standing" for Plaintiff's issues in this case attempting to protect the legal sanctity of one agency's administrative appeal decision on a defending agency party to prevent violation of that agency decision by prohibited actions of that defending agency party, exactly the same kind of administrative appeal decision like that of Plaintiffs' issue on protecting the sanctity of the City of Olympia Hearing Examiner's Dec. 2006 Decision denying the Port's Weyerhaeuser Log Yard project complained of in at least part of the non-PRA issues of this case. (See Stevens v. Washington State Growth Management Hearings Board, 163, Wn.App. 680 (June 2011).

For these reasons and those noted within Plaintiffs/Petitioners' prior Motions for Reconsideration and/or for Vacation, Plaintiff requests that the Court grant this Motion for Reconsideration and/or Vacation of this Court's May 30, 2008 Order of Dismissal along with its other various underlying decisions on those non PRA issues bifurcated previously in this case.

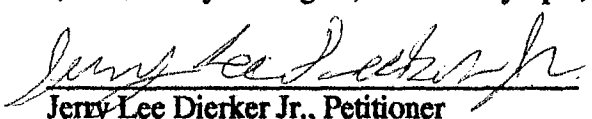
REQUEST FOR RELIEF

For the reasons noted herein and in the incorporated pleadings noted above, Plaintiff's Motion for Reconsideration of the July 27, 2012 Order of Dismissal, et al, in this case must be

granted, and the July 27, 2012 Order of Dismissal must be vacated.

For these reasons and those noted within Plaintiffs/Petitioners' prior Motions for Reconsideration and/or for Vacation, Plaintiff requests that the Court grant this Motion for Reconsideration and/or Vacation of this Court's May 30, 2008 Order of Dismissal along with its other various underlying decisions on those non PRA issues bifurcated previously in this case.

I certify the foregoing to be true and correct to the best of my knowledge, beliefs and/or abilities, under penalty of perjury of the laws of the State of Washington and the United States of America, this 6th day of August, 2012 in Olympia, Washington.



Jerry Lee Dierker Jr., Petitioner
2826 Cooper Point Road NW
Olympia, WA 98502
Ph. 360-866-5287

(17) Documents, materials, or information obtained by the insurance commissioner in the commissioner's capacity as receiver under RCW 48.31.025 and 48.99.017, which are records under the jurisdiction and control of the receivership court. The commissioner is not required to search for, log, produce, or otherwise comply with the public records act for any records that the commissioner obtains under chapters 48.31 and 48.99 RCW in the commissioner's capacity as a receiver, except as directed by the receivership court;

(18) Documents, materials, or information obtained by the insurance commissioner under RCW 48.13.151; and

(19) Data, information, and documents provided by a carrier pursuant to section 1, chapter 172, Laws of 2010. [2011 c 188 § 21. Prior: 2010 c 172 § 2; 2010 c 97 § 3; 2009 c 104 § 23; prior: 2007 c 197 § 7; 2007 c 117 § 36; 2007 c 82 § 17; prior: 2006 c 284 § 17; 2006 c 8 § 210; 2005 c 274 § 420.]

Effective date—2011 c 188: See RCW 48.13.900.

Severability—Effective date—2007 c 117: See RCW 48.17.900 and 48.17.901.

Severability—Effective date—2006 c 284: See RCW 48.135.900 and 48.135.901.

Effective date—2006 c 8 §§ 112 and 210: See note following RCW 42.56.360.

Findings—Intent—Part headings and subheadings not law—Severability—2006 c 8: See notes following RCW 5.64.010.

42.56.550 Judicial review of agency actions. (1) Upon the motion of any person having been denied an opportunity to inspect or copy a public record by an agency, the superior court in the county in which a record is maintained may require the responsible agency to show cause why it has refused to allow inspection or copying of a specific public record or class of records. The burden of proof shall be on the agency to establish that refusal to permit public inspection and copying is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records.

(2) Upon the motion of any person who believes that an agency has not made a reasonable estimate of the time that the agency requires to respond to a public record request, the superior court in the county in which a record is maintained may require the responsible agency to show that the estimate it provided is reasonable. The burden of proof shall be on the agency to show that the estimate it provided is reasonable.

(3) Judicial review of all agency actions taken or challenged under RCW 42.56.030 through 42.56.520 shall be de novo. Courts shall take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others. Courts may examine any record in camera in any proceeding brought under this section. The court may conduct a hearing based solely on affidavits.

(4) Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. In addition, it shall be within the discretion of the court to award such person an amount not to exceed one hundred dollars for each day that he or she was denied the right to inspect or copy said public record.

(5) For actions under this section against counties, the venue provisions of RCW 36.01.050 apply.

(6) Actions under this section must be filed within one year of the agency's claim of exemption or the last production of a record on a partial or installment basis. [2011 c 273 § 1. Prior: 2005 c 483 § 5; 2005 c 274 § 288; 1992 c 139 § 8; 1987 c 403 § 5; 1975 1st ex.s. c 294 § 20; 1973 c 1 § 34 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.340.]

Intent—Severability—1987 c 403: See notes following RCW 42.56.050.

Application of chapter 300, Laws of 2011: See note following RCW 42.56.565.

42.56.565 Inspection or copying by persons serving criminal sentences—Injunction. (1) A court shall not award penalties under RCW 42.56.550(4) to a person who was serving a criminal sentence in a state, local, or privately operated correctional facility on the date the request for public records was made, unless the court finds that the agency acted in bad faith in denying the person the opportunity to inspect or copy a public record.

(2) The inspection or copying of any nonexempt public record by persons serving criminal sentences in state, local, or privately operated correctional facilities may be enjoined pursuant to this section.

(a) The injunction may be requested by: (i) An agency or its representative; (ii) a person named in the record or his or her representative; or (iii) a person to whom the requests specifically pertains or his or her representative.

(b) The request must be filed in: (i) The superior court in which the movant resides; or (ii) the superior court in the county in which the record is maintained.

(c) In order to issue an injunction, the court must find that:

(i) The request was made to harass or intimidate the agency or its employees;

(ii) Fulfilling the request would likely threaten the security of correctional facilities;

(iii) Fulfilling the request would likely threaten the safety or security of staff, inmates, family members of staff, family members of other inmates, or any other person; or

(iv) Fulfilling the request may assist criminal activity.

(3) In deciding whether to enjoin a request under subsection (2) of this section, the court may consider all relevant factors including, but not limited to:

(a) Other requests by the requestor;

(b) The type of record or records sought;

(c) Statements offered by the requestor concerning the purpose for the request;

(d) Whether disclosure of the requested records would likely harm any person or vital government interest;

(e) Whether the request seeks a significant and burdensome number of documents;

(f) The impact of disclosure on correctional facility security and order, the safety or security of correctional facility staff, inmates, or others; and

(g) The deterrence of criminal activity.

¶ 13 The Zinks contend the trial court erred in (1) calculating the number of penalty days, (2) using a starting point at the low end of the penalty range, (3) failing to require Mesa to specifically identify which exemption applied to which record, (4) deciding that all communication between Mesa and the city attorney is privileged, and (5) deciding that a tape of a meeting and draft copies of the minutes were sufficient to satisfy record requests.

¶ 14 On cross-appeal, Mesa contends that (1) on remand, the trial court should limit the penalty period to 1,825 days and group certain requests together, (2) the Zinks are not entitled to penalties for those documents that were released before they filed their lawsuit or for Mesa's delay in producing copies of correspondence with the Zinks, and (3) the trial court erred in holding that Mesa was required to prepare minutes for a Board meeting.

ANALYSIS

I. *Remand—Yousoufian 2010*

[1, 2] ¶ 15 "The PRA is a strongly-worded mandate for broad disclosure of public records." *Rental Hous. Ass'n of Puget Sound v. City of Des Moines*, 165 Wash.2d 525, 535, 199 P.3d 393 (2009). It requires each agency to make available all public records for public inspection and copying unless the records fall within specific exemptions. Former RCW 42.17.260(1) (1997). Any person who prevails against an agency in an action seeking the right to inspect or copy public records or the right to receive a response to a public record request in a timely manner is entitled to an award of not less than $5 and not more than $100 for each day he or she was denied the right to inspect or copy the record. [703]Former RCW 42.17.340(4) (1992).[3] Generally, challenges to agency actions under the PRA are reviewed de novo. *O'Neill v. City of Shoreline*, 170 Wash.2d 138, 145, 240 P.3d 1149 (2010). But the trial court's imposition of the per-day penalty for PRA violations is reviewed for an abuse of discretion. *Yousoufian* 20(Wash.2d at 430–31, 98 P.3d 463.

[3, 4] ¶ 16 When determining the a of a PRA penalty, the existence or abse an agency's bad faith is the principal considered by the trial court. *Yous* 2010, 168 Wash.2d at 460, 229 P.3d 735 ing *Amren v. City of Kalama*, 131 W 25, 37–38, 929 P.2d 389 (1997)). Gen speaking, the penalty is increased bas an agency's culpability. *Id.* The Co Appeals in *Yousoufian*, struggling to pr the trial courts guidance in locating an cy's conduct within the PRA penalty r adopted the four degrees of culpability in the civil context: negligence, gross gence, wanton misconduct, and willful conduct. *Yousoufian*, 137 Wash.App. a 80, 151 P.3d 243. The trial court her remand, applied the four-tier culpal range and characterized each violation cordingly.

[5] ¶ 17 In *Yousoufian* 2010, how the Washington Supreme Court rejected four-tier culpability range as inadequate the complexity of PRA penalty analy *Yousoufian* 2010, 168 Wash.2d at 463, P.3d 735. To help trial courts deter whether a particular per-day penalty is portionate to the agency's misconduct, *soufian* 2010 identified seven mitigating tors and nine aggravating factors that serve to decrease or increase the pen *Id.* at 467–68, 229 P.3d 735. These fac are nonexclusive, "may not apply equall at all in every case," and "should not infri upon the considerable discretion of t courts to determine PRA penalties." *Id* 468, 229 P.3d 735.

[6] ¶ 18 Mitigating factors that may crease an agency's culpability include:

(1) a lack of clarity in the PRA requ
(2) the agency's prompt response or leg mate follow-up inquiry for clarification;
[704]the agency's good faith, honest, time and strict compliance with all PRA pro dural requirements and exceptions;
proper training and supervision of agency's personnel; (5) the reasonablen

3. We note SUBSTITUTE H.B. 1899, 62nd Leg., Reg. Sess. (Wash. 2011) (effective July 22, 2011), amending RCW 42.56.550(4), eliminates the n imum penalty of $5 per day.

of any explanation for noncompliance by the agency; (6) the helpfulness of the agency to the requestor; and (7) the existence of agency systems to track and retrieve public records.

Yousoufian 2010, 168 Wash.2d at 467, 229 P.3d 735 (footnotes omitted).

[7] ¶ 19 Aggravating factors include: (1) a delayed response by the agency, especially in circumstances making time of the essence; (2) lack of strict compliance by the agency with all the PRA procedural requirements and exceptions; (3) lack of proper training and supervision of the agency's personnel; (4) unreasonableness of any explanation for noncompliance by the agency; (5) negligent, reckless, wanton, bad faith, or intentional noncompliance with the PRA by the agency; (6) agency dishonesty; (7) the public importance of the issue to which the request is related, where the importance was foreseeable to the agency; (8) any actual personal economic loss to the requestor resulting from the agency's misconduct, where the loss was foreseeable to the agency; and (9) a penalty amount necessary to deter future misconduct by the agency considering the size of the agency and the facts of the case. *Id.* at 467–68, 229 P.3d 735 (footnotes omitted).

¶ 20 The court emphasized that the "factors may overlap, are offered only as guidance, may not apply equally or at all in every case, and are not an exclusive list of appropriate considerations." *Id.* at 468, 229 P.3d 735.

¶ 21 Originally, the Supreme Court adopted mitigating and aggravating factors and remanded the matter to the trial court for recalculation of the penalty. *Yousoufian v. Office of Ron Sims*, 165 Wash.2d 439, 458–59, 462, 200 P.3d 232 (2009), *on reconsideration*, 168 Wash.2d 444, 229 P.3d 735. The mandate was then recalled, however, and the Supreme Court decided to apply amended factors to the unchallenged findings of fact in the record. *Yousoufian* 2010, 168 Wash.2d at 450, 467–68, 229 P.3d 735. As the court noted, the usual procedure is to remand for the trial court's exercise of discretion in imposing the appropriate penalty. *Id.* at 468, 229 P.3d 735. But due to the "unique circumstances and procedural history of this case," the court decided to set the daily penalty amount "in order to bring this dispute to a close." *Id.* Even so, however, the court emphasized that this decision is not "an invitation from this court to trial courts to accede to having penalties set at the appellate court level," because it is "generally not the function of an appellate court to set the penalty." *Id.* at 469, 229 P.3d 735.

¶ 22 The Zinks urge this court to follow the lead in *Yousoufian* 2010 and to apply the *Yousoufian* factors to the record already established in this case. Mesa requests a remand to the trial court so that it can argue—with additional evidence—that the mitigating factors support lower penalties for various violations.

[8] ¶ 23 We agree that remand is appropriate. In *Yousoufian* 2010, the findings of fact were unchallenged, the requestor made only two requests involving multiple documents, and the grouping of the documents into 10 categories (based on subject matter and time of release) for 10 separate penalties was not challenged. *Yousoufian* 2010, 168 Wash.2d at 450–51, 456, 229 P.3d 735; *see Yousoufian v. Ron Sims*, 114 Wash.App. 836, 840–45, 849, 60 P.3d 667 (2003), *aff'd in part, rev'd in part*, 152 Wash.2d 421, 98 P.3d 463; *Yousoufian* 2004, 152 Wash.2d at 426–27, 436 n. 9, 98 P.3d 463. Accordingly, the *Yousoufian* 2010 court, compelled by the "unique circumstances and procedural history" of the case, applied the 16 factors and imposed an "appropriate penalty" of $45 per day for each grouping. *Yousoufian* 2010, 168 Wash.2d at 468–69, 229 P.3d 735.

¶ 24 Here, on the other hand, the findings of fact are strenuously challenged by both parties, the Zinks made from 68 to 172 record requests (many of them overlapping), and the trial court awarded penalties ranging from $5 to $100 per day for 31 separate violations, based on the now-rejected, four-tier culpability range. Due to the complexity and number of violations in this case, the trial court is better suited to exercise its discretion and to consider the appropriate

PORT OF OLYMPIA
AUG 0 2 2012

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

ARTHUR WEST,	)	
plaintiff,	)	**No.** 12-2-01629-9
Vs.	)	**PLAINTIFF'S SUMMONS**
PORT OF OLYMPIA,	)	
defendant	)	

TO THE DEFENDANT:

A lawsuit has been started against you in the above entitled court by Arthur West, plaintiff. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this summons.

In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and by serving a copy upon the person signing this summons within 20 days after the service of this summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where plaintiff is entitled to what he asks for because you have not

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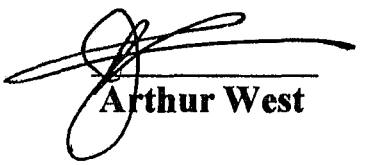
ARTHUR WEST
120 State Ave. NE #1497
Olympia, WA. 98501

responded. If you serve a notice of appearance on the undersigned person, you are entitled to notice before a default judgment may be entered.

You may demand that the plaintiff file this lawsuit with the court. If you do so, the demand must be in writing and must be served upon the person signing this summons. Within 14 days after you serve the demand, the plaintiff must file this lawsuit with the court, or the service on you of this summons and complaint will be void.

If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your written response, if any, may be served on time.

This summons is issued pursuant to rule 4 of the Superior Court Civil Rules of the State of Washington. Done August 2, 2012, in Olympia, Washington.



Arthur West

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PORT OF OLYMPIA
AUG 0 2 2012

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

ARTHUR WEST,	)	
plaintiff,	)	**No.** 12-2-01629-9
Vs.	)	**PLAINTIFF'S ORIGNAL**
PORT OF OLYMPIA,	)	**COMPLAINT**
defendant	)	

I INTRODUCTION

1.1 This is an action for and disclosure of public records and costs, fees, and penalties in regard to the Port of Olympia's unreasonable withholding of public records for over 5 years, aggravated by a pattern of obstruction of justice and violation of civil rights, including records compiled and collected by the Port over five years ago, which although identified in a privilege log and filed with the Superior Court for in camera review, are neither reasonably available for inspection, nor the subject of any recent reasonably interposed exemptions.

1.2 Aggravating the Port's five (5) year long pattern of denial and violation of the PRA is a related policy of invidious discrimination, retaliation for the exercise of civil rights, violation of civil rights, and a dogged policy of obstruction of justice. The Port has violated the PRA by withholding records for over 5 years,

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and has aggravated this unlawful conduct by a pattern of delay. denial, and retaliation and plaintiff is entitled to the relief requested and to the finding that aggravating factors were present in the Port's withholding of Public Records for over half a decade.

II PARTIES AND JURISDICTION

2.1 Plaintiff West is a citizen with standing to seek relief.

2.2 Defendant Port of Olympia is a public agency that has failed to comply with the Public Records Act, unreasonably and consistently withholding records unlawfuly for over 5 years and an agency that has acted pursuant to a retaliatory vendetta to obstruct justice and deny State created rights in order to enable it to continue to illegally withhold records.

2.3 The Thurston County Court has jurisdiction over the parties and subject matter of this claim. However, due to the deliberate refusal of the Court to adjudicate this matter for over 5 years, and the lack of even the appearance of fairness in the proceedings for disclosure of Port related records in Thurston County, a change of venue will be sought.

III ALLEGATIONS

3.1 On or about April of 2007, plaintiff West submitted a request to the Port of Olympia for disclosure of records about the Weyerhaeuser lease as well as other matters.

3.2 Despite clear, palpable, and manifest violations of the PRA by the Port, and the identification and filing with the court of records for in camera review, the Port, by means of the misconduct and vindictive, bellicose, and retaliatory conduct

of counsel Lake, has managed to obstruct and delay the due course of justice for over 5 years.

3.3 Again in July of 2012, West submitted a request for records that included the records identified in the privilege log provided in Thurston County Cause No 07-2-01198-3,

3.4 Despite the fact that the records identified in the privilege log have been located, reviewed, compiled, and even copied and filed in this court for in camera inspection for many years now, the Port refused to produce these same requested records for inspection or reassert the exemptions previously claimed. This was done as part of its continuing policy of delay, denial, and invidious retaliation, and as part of a unified course of conduct and a series of interrelated events that tolls the statute of limitations for the entire span of the Port's withholding.

3.5 The Port's use and retention of the Goodstein law firm and their massive expenditures of public resources to bury justice under a mountain of scurrilous and irrelevant diatribes composed by counsel Lake was knowingly done to further a pattern and custom of the Port's violation of State law, obstruction of public oversight of Port operations, and to deny any effective judicial review of their unlawful actions, which included a policy of publicly financed retaliation for the exercise of civil rights, aggravating the 5 year pattern of delay and denial and justifying a per diem penalty in the upper range of the scale for the entire 5 year period of illegal withholding.

3.6 Barner, Davis and McGreggor are the final policy making officials at the Port of Olympia responsible for the dogged and officious vendettas of their counsel taken in their name and with their encouragement and aid.

3.7 The Port of Olympia failed to respond to plaintiff's 2012 request as required by law, by failing to disclose the records in a reasonably timely manner,

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or assert particular identifiable exemptions in a reasonably specific privilege log, in regard to records that the Port has had over 5 years to collect, copy and review.

3.8 by illegally failing to disclose records for over five years, and by failing to respond to the plaintiff's 2012 request, the Port committed a series of interrelated actions tolling the statute of limitations back to the original records request in 2007, violated RCW 42.56, and contributed to further unreasonable delays and expenses in the disclosure of public records. This pattern of delay, denial, and retaliation continues to the present day and the requested relief is necessary to compel compliance with the Public Records Act.

3.9 All actions were taken as part of official policy of the Port of Olympia, and on behalf of the Commissioners, who personally ratified their policy of delay, denial, and retaliation, and approved the many thousands of tax dollars squandered on legal fees to the Goodstein Law Group to hide evidence and records from the public and evade judicial review of the Port's illegal actions by means of oppressive large law firm tactics and malicious and invidious vendettas maintained by the Port and its counsel aimed at denying due process of law and obstructing the due course of justice for over 5 years.

3.10 The Port's over the top policy of entombing justice beneath a conglomeration of irrelevant, prejudicial, bellicose, grossly unreasonable and incredibly immense pleadings (many of which were in violation of the length restrictions of the Court Rules) was done as part of a deliberate scheme to make enforcement of the PRA and environmental laws impossible, to vastly increase the cost of litigation beyond reason, to make retention of counsel difficult or impossible, and to reasonably create substantial mental and emotional distress upon the person of any counsel retained to attempt to make the Port follow the law.

IV CAUSES OF ACTION

4.1 PUBLIC RECORDS ACT CLAIMS

By their acts and omissions, as described above, the Port of Olympia violated the Public Records Act, RCW 42.56, constantly for over 5 years, damaging plaintiff and the public, for which they are liable for the relief requested below for the entire term of their illegal withholding.

V REQUEST FOR RELIEF

Wherefore, Plaintiff respectfully requests the following relief:

1. That a ruling issue under the seal of this Court finding the Port of Olympia to have violated the Public Records Act, continually, for over five years, and requiring the Port to immediately release the records requested, without redaction, or file a valid privilege log that specifically identifies exempt records and provides an explanation of how specific exemptions justify the withholding of the identified records along with copies of the allegedly exempt records for in camera review[1].

2. That plaintiff be awarded costs, attorney fees, and per diem penalties from the date of the original 2007 request[2] for: the Port of Olympia's refusal to comply with the PRA, failure to assert exemptions, and/or perform a valid search or produce a valid exemption log, as well as the Port's failure to reasonably disclose

[1] As has previously been done in Thurston County Cause No. 07-2-01198-3.

[2] This claim is made under protest and without waiver of any right of review and appeal of the ruling in Cause No. 07-2-01198-3, which the plaintiff believes to be erroneous.

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ARTHUR WEST
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Olympia, WA. 98501

records for each day each single public record is found to have been unlawfully withheld, and that plaintiff recover his costs and reasonable attorney fees.

3. That the court consider as an aggravating factor the Port's deliberate obstruction of justice and unlawful concealment of records for over 5 years by means of overzealous, overly lengthy, irrelevant, retaliatory, prejudicial and bellicose attorney filings, and issue any appropriate relief under CR 11 that may be necessary to restrain the Port's counsel from muddying the waters of this case as well with irrelevant, spiteful, malicious and prejudicial diatribes of counsel Lake that have nothing to do with the issue of this case, that the Port has illegally withheld records for over five years and has fought doggedly by tooth and nail, by all means foul and fair to deny adjudication of the issues, suppress relevant evidence of the Port's violation of State Law, and obstruct the due course of justice.

I, Arthur West, certify the foregoing to be correct and true. Done August 2, 2012, in Olympia, Washington.

Arthur West

SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY

Arthur West
Plaintiff/Petitioner,

vs.

Port of Olympia
Defendant/Respondent

NO. 12-2-01629-9

NOTICE OF ASSIGNMENT/ (NTAS)
NOTICE OF SCHEDULING CONFERENCE
(PUBLIC RECORDS ACT CASE)

TO: THURSTON COUNTY CLERK
ATTORNEYS/LITIGANTS

PLEASE TAKE NOTICE:

1. That the above-noted case is assigned to:

The Honorable Thomas McPhee

2. That the Scheduling Conference is scheduled for 9:00 a.m. November 09, 2012.

This is a Public Records Act case. Court procedures require:

1. The plaintiff shall provide this notice to all parties when the complaint or motion is served. If service of the complaint or motion is completed before the case is filed, plaintiff shall provide the notice by delivery, mail, facsimile, or e-mail within five days after filing the case.
2. If a defendant or intervenor has not been served by the time of the scheduling conference, the scheduling conference may be continued up to 21 days.
3. The scheduling conference will be held before the assigned judge and will be used to:
   a. Identify issues in dispute;
   b. Set a hearing date and briefing schedule for resolution of issues;
   c. Determine whether in camera review is likely to be needed and, if necessary, order the protocol for submission of the records to be reviewed;
   d. Refer to mediation if appropriate.
4. Nothing in these procedures affects the right of any party to schedule a hearing to show cause or enjoin, or any other hearing authorized by law or rule.

Dated this 6th day of August, 2012.

THURSTON COUNTY SUPERIOR COURT
2000 Lakeridge Drive SW
Olympia WA 98502
(360) 786 - 5560 Fax: (360) 754-4060

THURSTON COUNTY SUPERIOR COURT
OLYMPIA WA
BETTY J GOULD
THURSTON COUNTY CLERK

Rcpt. Date: 08/06/2012
Acct. Date: 08/07/2012
Receipt #: 2012-04-12239
Cashier ID: SCM
Time: 01:26 PM

Item	Case Number	Amount
01	12-2-01629-9	$240.00
1100: Fee-Civil Filing $FFR		
Total Due:		$240.00
Cash Tendered:		$250.00
Change Due:		$10.00

Paid By: west, arthur

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

JERRY DIERKER and ARTHUR WEST,

Appellants,

v.

PORT OF OLYMPIA, CITY OF TUMWATER, EDWARD GALLIGAN, STEVE POTTLE, ROBERT VAN SCHOORL, PAUL TELFORD, AND RALPH OSGOOD,

Respondents.

No. 36556-1-II

UNPUBLISHED OPINION

ARMSTRONG, J. — Jerry Dierker and Arthur West sued the Port of Olympia, requesting various declaratory judgments, a writ of certiorari, and a writ of mandamus relating to the Port's issuance of a Mitigated Determination of Non-Significance (MDNS) for a two-part project improving the Olympia Regional Airport. They now appeal from an order dismissing their claims for lack of standing, arguing that the MDNS was improperly issued and that the Port's administrative appeal procedures violate RCW 43.21C.075. We affirm.

FACTS

The Port of Olympia sought to repave and regrade two existing taxi lanes at the Olympia Regional Airport to comply with Federal Aviation Agency "line-of-sight" and strength requirements. After receiving public comment from several individuals and agencies including Dierker, the Port issued a MDNS for the project under the State Environmental Policy Act (SEPA).

West, Dierker, and others moved for administrative reconsideration of the MDNS. Under the Port's SEPA policies and procedures, which had been recently amended in 2006, such a

motion is a mandatory condition precedent to filing an administrative appeal of a SEPA threshold determination. The Port charged them a filing fee for the motion, which involved meeting between the challengers and the Port's "Responsible Official," or ultimate decision maker on SEPA issues. The Responsible Official denied the challengers' motions for reconsideration.

West and Dierker then filed administrative appeals with the Port and were charged another filing fee. The Port ultimately denied Dierker's and West's appeals.

Dierker and West then filed this action in Thurston County Superior Court seeking judicial review of the Port's SEPA decision, various declaratory judgments under the Uniform Declaratory Judgments Act (UDJA), and writs of certiorari and mandamus. West designated himself in the complaint as a landowner and a citizen residing in Tumwater and conducting business in Thurston County. Dierker asserted only that he was a resident of Olympia. But they also stated that they had "particularized standing" to bring this action because (1) of a "campaign of slander and defamation practiced by the commissioners, impugning their motives and the propriety of environmental review in general," and (2) they were involved in the administrative appeal of several other Port land use determinations. Clerk's Papers (CP) at 9.

The trial court denied Dierker's and West's appeal, ruling that neither Dierker nor West had standing to challenge the Port's SEPA decision because they had no "particularized injury" as required by *Trepanier v. City of Everett*, 64 Wn. App. 380, 824 P.2d 524 (1992). CP at 234. It also ruled that the Port's reconsideration and appeal process was "not improper in this case." CP at 234.

ANALYSIS

I. STANDING TO CHALLENGE THE MERITS

Because it is dispositive, we first consider whether either Dierker or West has standing. Dierker's and West's assertions of standing are based on (1) their status as landowners and citizens in Tumwater and Olympia and (2) their involvement in the administrative appeals of several other Port land use determinations.[1],[2]

"[C]ourts cannot be open to every citizen's objection to every action of our governmental representatives in the legislative or executive branches of government." *Coughlin v. Seattle Sch. Dist. No. 1*, 27 Wn. App. 888, 893, 621 P.2d 183 (1980). In SEPA actions, a challenger must meet a two-part standing test: (1) the alleged endangered interest must fall within the zone of interests protected by SEPA and (2) the party must allege an injury in fact. *Kucera v. Dep't of*

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[1] Dierker and West also alleged in their complaint that they had standing because of a "campaign of slander," but that allegation was regarding a slander and defamation claim against the Port. CP at 9. They do not challenge the disposition of that claim on appeal.

[2] At the administrative level, Dierker alleged that the runway project at issue in this case would cause "public health impacts" to him because (1) the runway project would result in an increase in the size and/or number of aircraft using the Olympia Airport and (2) he lives under the Olympia Airport's "flight path." Administrative Record at 3158. West also filed a declaration with similar allegations, specifically that the project would result in increased air pollution and release of toxic substances that would affect him as a resident of the area. Dierker and West state in their brief to this court that "Dierker's declarations stating his residence within the flight path, (and noise contour) as well as his particular susceptibility to toxic contaminants have not been controverted." Br. of Appellant at 24. But at no point in the *judicial* record did either Dierker or West repeat those assertions or substantiate them with any evidence. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992); *see Des Moines Marina Ass'n v. City of Des Moines*, 124 Wn. App. 282, 291, 100 P.3d 310 (2004) (plaintiff bears burden to establish that he has standing to sue). As a result, those reasons fail to establish standing for this judicial proceeding. Similarly, their assertion on appeal that they "have a special relationship and particularized standing based upon the Port and others failing to disclose records until after the filing of the suit and then charging him over $100 for public records disclosure" is also not supported by the record. Br. of Appellant at 26.

Transp., 140 Wn.2d 200, 212, 995 P.2d 63 (2000) (citing *Leavitt v. Jefferson County*, 74 Wn. App. 668, 678-79, 875 P.2d 681 (1994)). The party shows a claimed injury by alleging that the challenged action will cause the party "specific and perceptible harm." *Kucera*, 140 Wn.2d at 213 (quoting *Leavitt*, 74 Wn. App. at 679). We review a standing determination de novo. *Wolstein v. Yorkshire Ins. Co.*, 97 Wn. App. 201, 206, 985 P.2d 400 (1999).

None of Dierker's and West's alleged bases for standing meets the injury standard. First, being a citizen is insufficient to confer on a person standing to commence a lawsuit challenging a governmental decision of a public nature; indeed, if status as a citizen or consumer were sufficient to confer standing, the entire doctrine would be superfluous. *Cf. Am. Legion Post No. 32 v. City of Walla Walla*, 116 Wn.2d 1, 7, 802 P.2d 784 (1991) (to maintain an action, a taxpayer must show he has a unique right or interest that is being violated, in a manner special and different from the rights of other taxpayers). And a plaintiff's landowner status will confer standing only if the lawsuit involves some harm to the land or the owner's property rights. *See, e.g., Orion Corp. v. State*, 103 Wn.2d 441, 455, 693 P.2d 1369 (1985) (a landowner has standing if his property rights were allegedly infringed). West does not demonstrate how the Port's runway project affects his property rights. And the fact that West and Dierker often pursue *other* administrative appeals of Port decisions does not mean that they have any "specific and perceptible harm" from *this* Port decision.

Dierker and West also argue that we should be "less rigid and more liberal" in testing standing here because the controversy is of "serious public importance," will "immediately affect[] substantial segments of the population," and "will have a direct bearing on the commerce, finance, labor, industry or agriculture generally." Br. of Appellant at 25 (quoting

Wash. Natural Gas Co. v. Pub. Util. Dist. No. 1 of Snohomish County, 77 Wn.2d 94, 96, 459 P.2d 633 (1969)). In *Washington Natural Gas Co.*, the issues were of "statewide importance" involving the generation, sale, and distribution of electricity throughout the state, and affecting a substantial percentage of the population. *Wash. Natural Gas Co.*, 77 Wn.2d at 96. We acknowledge the possible public importance of the issues here, but they are not sufficiently analogous to those in *Washington Natural Gas Co.* to allow us to alter the legal requirements for standing.

Finally, Dierker and West argue that the Port conceded they had standing by failing to deny it in its answer to their complaint and in its response to a request for admission. They also suggest that the Port waived the standing issue by not raising it at the agency level. But a party or even the court can raise a standing issue at any time, including for the first time on appeal. *Branson v. Port of Seattle*, 152 Wn.2d 862, 875 n.6, 101 P.3d 67 (2004); *Int'l Ass'n of Firefighters, Local 1789 v. Spokane Airports*, 146 Wn.2d 207, 212-13 n.3, 45 P.3d 186 (2002). In short, the trial court did not err in ruling that Dierker and West do not have standing to challenge the Port's SEPA determination.[3]

II. PROCEDURES

Dierker and West also challenge the Port's procedures for hearing administrative appeals of its SEPA decisions. Specifically, Dierker and West argue that the Port's procedures requiring both a motion for reconsideration and an appeal violate RCW 43.21C.075(3)(a), which limits an agency's SEPA procedure to only one appeal. Dierker and West may be correct. But we are

[3] Because we hold that Dierker and West do not have standing to challenge the merits of the Port's SEPA determination, we need not consider their argument that the record is insufficient to review the issue.

unable to afford them any relief for the possible error because, having held that they lack standing, we are unable to address the merits of the dispute. *See Sprint Commc'ns Co., LP v. APCC Servs. Inc.*, __ U.S. __, 128 S. Ct. 2531, 2542, 171 L. Ed. 2d 424 (2008) (standing requires that alleged injury is likely to be redressed by a favorable ruling).

We affirm the trial court's dismissal of SEPA review for lack of standing.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Armstrong, J.

We concur:

Hunt, J.

Van Deren, C.J.

TO: **EDWARD GALLIGAN, PORT OF OLYMPIA**
RESPONSIBLE SEPA OFFICIAL
915 WASHINGTON STREET, N.E.
OLYMPIA, WA 98507-1967

FROM: **JERRY DIERKER**
1720 BIGELOW ST. N.E.
OLYMPIA, WA 98506

ARTHUR WEST,
120 STATE AVE N.E. #1497
OLYMPIA, WA 98501

RE: **REQUEST FOR APPEAL OF JUNE 7, 2007 DENIAL OF RECONSIDERATION RE APRIL 16, 2007 MDNS (AS "MODIFIED") FOR PORT-WEYERHAEUSER PROPOSAL No. 07-2**

Please regard this as a formal request for **appeal** of the denial of reconsideration of MDNS 07-2 issued by the Port of Olympia on April 16, 2006, issued by port executive director Galligan on June 7, 2007.

i The requestors' mailing addresses are stated above.

ii The requestor's present principle place of business are stated above, except for West, whose is 1313 Legion Street, Olympia Wa. 98501.

iii A copy of SEPA 07-2, and the June 7 denial is attached hereto.

iv Grounds

The grounds relied upon by the requestor are as follows;

The attached 12 page administrative appeal of Jerry Dierker, the previous comments, request for review, and exhibits filed by West, Dierker, and each of the "Di Francesca" requestors, as well as the full and correct administrative record of this project, SEPA 07-2, and the comments and record of the Port's SEPA 07-3, included by reference herein.

v. Comment on the project and aconcise statement of the factual and legal reasons for the appeal

The MDNS (and the procedurally defective modification thereto) is improper because the project has a reasonably foreseeable significant impact, and requires an EIS under the State Environmental Policy Act (SEPA), and the National Environmental Policy Act (NEPA).

The Environmental checklist is defective.

The mitigation measures are inadequate.

All of the effects of the project have not been adequately assessed.

The port has failed to follow the directions in the decision of the City of Olympia Hearing Examiner Tom Bjorgen as it relates tom portions of this project.

Proper procedure has not been followed amounting to prima facia compliance with the law.

Disclosure of records and Weyerhaeuser Lease related development has not been made sufficient to comply with SEPA or the PDA.

The Rail, dredging, Toxic waste cleanup, and other integral portions of this project have been "piecemealed" and do not appear in this analysis.

The cumulative, synergistic, and interrelated effects of other time and place related development in the area (Such as the City Hall, Children's Museum, and East Bay development project) have not been considered.

The impacts of increased Truck, Car, and Marine and Air traffic have not been accurately assessed, including the increased potential for degredation of air and water quality resulting from their normal operation as well as

any potential spills or accidents.

The entire project, including all marine terminal development has a reasonably foreseeable significant adverse impact.

Insufficient co-ordination has occurred with state, federal and local agencies, and required permits have not been aquired.

The project represents an "orphan" SEPA appeal due to the lack of final permit approval from various agencies.

vi **Request for relief:**

This most recent defective DNS issued by the Port of Olympia must be vacated or withdrawn, and an EIS conducted on the full interrelated and cumulative effects of the port's contemplated Marine terminal improvements including the Weyerhaeuser project, and the regional effects of Weyerhaeuser's relocation. This should be done in coordination with the review of the results of toxic testing of the inlet by Ecology and the review of the proposed channel dredging project by the Corps of Engineers. As a gesture of good faith, and in compliance with the

Norway Hill disclsure requirements, full disclosure of all Weyerhaeuser related records should be made by the port as an integral part of this process.

This comment and appeal is based upon The complete administrative record of this determination, all comments received (with the exception of those from union, Chamber and EDC representatives) including all relevant records presently being withheld from inspection and the entire record of **the City of Olympia's review of the JUNE 16, 2006 DNS FOR WEYERHAEUSER OFFICE AND SHOP PROPOSAL No. 05-2839**, including the ruling of hearing examiner Tom Bjorgen. I certify the foregoing to be true and correct under penalty of perjury.

ARTHUR S. WEST

Port of Olympia

June 7, 2007

Distribution List: Requestors for Reconsideration (See Attached)

Re: Port of Olympia Responsible Official's Decision on Reconsideration
SEPA 07-2 MDNS

Dear Requestor:

Attached please find the Port of Olympia's Responsible Official's Decision on Reconsideration for SEPA 07-2 MDNS.

A copy of the Decision is also posted on the Port's web site found at:
http://www.portolympia.com/current_environmental_review.asp

A copy of all public documents and comments received, as part of this environmental review is available for review at the Port's Administrative Offices.

The Deadline date for appeal of this decision is **June 14, 2007.**

Sincerely,

E.B. Galligan
Executive Director

Cc: File
Andrea Fontenot
Carolyn Lake

Appeal deadline:

Per the Port of Olympia Commission Resolution 2006-3, Any appeal of this Decision shall be filed with the Port no later then the close of business seven (7) days from the date the Reconsideration decision issues.

Content of the Reconsideration and Appeal. Section 8 (3)(c):
Requests for Reconsideration and Appeals shall contain:
(i) The name and mailing address of the Requestor/appellant and the name and address of his/her representative, if any;
(ii) The requestor's/appellant's legal residence or principal place of business;
(iii) A copy of the decision, which is appealed;
(iv) The grounds upon which the requestor/appellant relies;

(v) A concise statement of the factual and legal reasons for the appeal;
(vi) The specific nature and intent of the relief sought;
(vii) A statement that the requestor/ appellant has read the appeal and believes the contents to be true, followed by his/her signature and the signature of his/her representative, if any. If the requestor/appealing party is unavailable to sign, it may be signed by his/her representative, and
(v) The appropriate fee.

Sent via Email and mail

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difrancesca@comcast.net

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Gendler & Mann LLP
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Seattle, WA
98101-2217
gendler@gendlermann.com

June 14, 2007

TO: Port of Olympia Commissioners,
Port of Olympia Executive Director Ed Galligan,
Port of Olympia Engineering Director Jeff Lincoln, and
Port of Olympia Senior Manager of Environmental Planning Andrea Fontenot

RE: Administrative Appeal of the Port's SEPA 07-2 Response to Reconsideration, et al., and joinder of my appeal of this SEPA 07-2 MDNS, etc., with that of Arthur West, Ms. Patrisa DeFrancesca and any and all other person or organization appealing this matter.

I, Jerry Dierker, of 1720 Bigelow St. NE, Olympia, WA 98502, 943-7470, make the following Administrative Appeal of the Port's SEPA 07-2 Response to Reconsideration, et al., joinder of this appeal with that of Arthur West and others, and Request for Withdrawal of the Mitigated Determination of Non-Significance (MDNS) for SEPA File No. 07-2 pursuant to WAC 197–11–340(3)(a).

Pursuant to SEPA's WAC 197-11-635 and other relevant law, I incorporate by reference into this pleading:

1) my prior December 23, 2005 Administrative Appeal, Comment and Request for Withdrawal of the Mitigated Determination of Non-Significance (MDNS) for SEPA File No. 05-2 and all Port , U.S. Army Corps' of Engineers and other agencies environmental documents concerning the related and connected Berth Dredging and Shipping Channel Dredging projects noted in the May 3, 2007 Corps Public Notice, which are required by the Port's Lease with Weyerhaeuser for Weyerhaeuser's ships and barges of Weyerhaeuser's Westwood Shipping Line or other "chartered ships" and barges for import/export shipping operations for this Weyerhaeuser log, railroad tie and cargo import/export yard project;

2) the new information concerning dioxin contamination and toxic waste cleanup of Budd Inlet of Puget Sound from the Department of Ecology, the Department of Natural Resources, the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, and other agencies with jurisdiction who are members of the Dredged Materials Management Program (DMMP);

3) my written pleadings and/or oral testimony given to the Port and/or the City of Olympia Hearings Examiner in the Cargo Yard paving case, the Cargo Yard Electrical conduit case, and the Weyerhaeuser Cargo Yard and Office case which is City of Olympia Hearings Examiner Case No. 05-2839;

4) the relevant portions of the Dec. 19, 2006 City of Olympia's Hearings Examiner's Decision on the Weyerhaeuser project in City of Olympia Case No. 05-2839;

5) my relevant administrative and Superior Court pleadings and exhibits concerning the Port's SEPA Policy's administrative appeal provisions and its use by the Port in the administrative appeals of Port case numbers SEPA 06-2 and SEPA 06-3, which are the only two times that the Port's SEPA appeal process has been used by the Port;

6) my relevant administrative and Federal Court pleadings and exhibits concerning the Port's Cascade Pole industrial toxic waste site which most of this Port/Weyerhaeuser project is being constructed on;

7) my and other persons or organizations various relevant supporting written and oral comments, requests for reconsideration and administrative appeal pleadings and/or testimony given previously to the Port, the City of Olympia, the various agencies with jurisdiction, the various Court, etc., on the SEPA 07-2 case, the City of Olympia's Hearings Examiner's Decision on the Weyerhaeuser project in City of Olympia Case No. 05-2839, the berth and shipping channel dredging, the Marine Terminal Rail Improvement projects, the sampling and cleanup of toxic contamination in Budd Inlet and berth and shipping channel areas, and/or other integral, related and/or connected matters as I and others have previously noted to the Port during the proceedings of the SEPA 07-2 case;

8) Appellants Arthur West's and Jerry Lee Dierker Jr.'s May 24, 2007 Second Addendum to their Request for Appeal/Reconsideration of the April 16, 2007 MDNS for Port Marine Terminal and Weyerhaeuser Log and Cargo Import Export Yard Proposal No. SEPA 07-2 submitted to the Port's Executive Director Ed Galligan and the Port's Andrea Fontenot;

9) my and other persons or organizations various relevant supporting written and oral comments, requests for reconsideration and administrative appeal pleadings, statements to Port officials, and/or testimony given to the Port on our Request for Withdrawal and my prior Request for Reconsideration of the Port's SEPA MDNS issued for the related joint Port's Marine Terminal Improvement projects and the Weyerhaeuser Log and Cargo Import/Export facility project under Port Case No. SEPA File No. 07-2, such as those statements made to the Port's Ed Galligan during the the June 4, 2007 Reconsideration Meeting;

10) my June 6, 2007 Comment and Request for Withdrawal of the Port of Olympia's Mitigated Determination of Non-Significance (MDNS) issued for Port Case No. SEPA File No. 07-3, the Port of Olympia's Marine Terminal Rail Improvement project proposal being built on the Port's Marine Terminal Cargo Yard area in the middle of Budd Inlet of Puget Sound of the Pacific Ocean, et al;

11) my, Arthur West's, and other Requestors' June 4, 2007 oral pleadings at the Port of Olympia's Reconsideration Meeting;

12) my, Arthur West's, Patrisa DeFrancesca, Jim Lazar, Stanley Stahl, Olympians for Public Accountability (OPA), Marissa Cacciari-Roy, Harry Branch, Dorothy Jan Mykland, Walter R. Jorgensen, Anne Beck (Buck?), Suzanne Nott, and other persons or organizations various relevant supporting written and oral comments, requests for reconsideration and administrative appeal pleadings, statements to Port officials, and/or testimony given to the Port on this SEPA 07-2 project, on the related SEPA 07-3 project, and on other related, connected or integral projects in this area;

13) the audio-taped pleadings of the two sets of Requestors during the June 4, 2007 Reconsideration Meetings;

14) the videotaped information on this project and related projects given by the Staff and officials of the Department of Ecology, Thurston County, City of Olympia, and Port of Olympia at the Olympia City Council and the Port of Olympia Commissioners Joint Meeting of June 11, 2007;

15) any and all other relevant comments, requests for reconsideration, administrative appeals,

testimony, evidence, exhibits, opposition, etc., to this and other related, connected or integral projects in this area, et seq., et al. (Id.; supra, see the agency records on this matter; see audio tape of pleadings of the two sets of Requestors during the June 4, 2007 Reconsideration Meetings; see video tapes of the the Olympia City Council and the Port of Olympia Commissioners Joint Meeting of June 11, 2007).

I also join my appeal of this SEPA 07-2 MDNS, etc., with that of Arthur West, Ms. Patrisa DeFrancesca and any and all other person or organization appealing this matter to the Port Commissioners here.

Besides the above noted incorporated reasons, arguments, issues, and claims that this SEPA 07-2 proposal is improper that were previously noted in my, Arthur West's, Ms. Patrisa DeFrancesca's and other Commenters', Requestors' and Appellants' oral, written and/or incorporated pleadings and exhibits, et al, on this SEPA 07-2 proposal, the Port's Response to the Requests for Reconsideration on this SEPA 07-2 proposal is improper and must be withdrawn pursuant to SEPA's WAC 197-11-340(3) as follows.

Port's Response Failed to Respond to all of the Requestors' many issues and argument made in the Requests for Reconsideration

The Port's Response to the Requests for Reconsideration on this SEPA 07-2 proposal is improper since it does not respond to all of the issues of me and the dozen different parties in these two separate Requests for Reconsideration on this SEPA 07-2 proposal. (See the Port's Response to the Requests for Reconsideration on this SEPA 07-2 proposal, at pages 3-5).

The Port's the Response to the Requests for Reconsideration and pleadings in support on this SEPA 07-2 proposal are improper since it does not respond to my and other claims that the Port's SEPA action for this SEPA 07-2 proposal:

1) generally failed to mention or consider the legal arguments, findings of fact and conclusions of law of the Dec. 19, 2006 City of Olympia's Hearing Examiner's Decision on the Weyerhaeuser Office and Log Yard project in City of Olympia Case No. 05-2839, and the Port's Response to the Requests for Reconsideration on this SEPA 07-2 proposal and fails to even this City of Olympia's Hearing Examiner's Decision;

2) specifically stated that impacts from the Weyerhaeuser lease were "exempt" from review, in direct conflict to the legal arguments, findings of fact and conclusions of law in the Dec. 19, 2006 City of Olympia's Hearings Examiner's Decision on the Weyerhaeuser project in City of Olympia Case No. 05-2839;

3) failed to consider that the Port's Comprehensive Plan provisions for construction projects in the "Central District" of the Port's property of the Port Peninsula requires a Federal Clean Water Act Section 404 permit from the Army Corps of Engineers, and fails to consider that this Section 404 permit also requires a Federal permit under Section 10 of the Federal Rivers and Harbors Act and requires other "Joint Aquatic Resource Permits" required by the "Joint Aquatic Resource Permits Application" (JARPA) provisions of State and Federal law, including a required Shorelines Management Act Permit that the Port specifically claims the City of Olympia said would not be needed for this project, due to the Port's "piecemealing" actions and the Port's failures to disclose

material facts about all of the related, connected and integral parts of the Port's projects and plans for development of the Port's property of the Port Peninsula;
4) failed to consider and failed to disclose these required JARPA permits and/or other needed permits in permitting section of the project's Environmental Checklist actions;
5) failed to consider that the paving, lighting, stormwater, and construction of these and other portions of the Port's Marine Terminal facilities are within 200 feet of the shoreline for this SEPA 07-3 project and thereby this SEPA 07-2 project required a Shorelines Management Act Permit that the Port specifically claims the City of Olympia said would not be needed for this project;
6) failed to consider and failed to disclose relevant material facts about all of the related, connected and integral parts of the Port's and other's many "piecemealed" projects and plans for development of the Port's property of the Port Peninsula;
7) failed to consider that the "stormwater treatment facilities" being constructed for this SEPA 07-3 project will be directly connected by stormwater pipes to Budd Inlet and every single current and planned facility on the Port's property of the Port Peninsula, thereby making the "stormwater treatment facilities" being constructed for this SEPA 07-3 being an integral, related and connected part of every other already built facilities and currently planned or proposed projects on the Port's property of the Port Peninsula;
8) failed to consider that the other "utility extensions" being constructed for this SEPA 07-3 project for "future planned projects" on the Port's property of the Port Peninsula, makes this SEPA 07-3 project an integral, related and connected part for all of these "future planned projects" on the Port's property of the Port Peninsula;
9) failed to consider that the Port's "Project Description" of this SEPA 07-3 project, would include all planned or proposed integral, related and connected projects to improve the cargo handling and shipping facilities of the Port's Marine Terminal, like the dredging projects for the Shipping Channel and the Berths 2 and 3 in the West Bay of Budd Inlet, the various industrial toxic waste cleanup projects in the Budd Inlet and on surrounding Port property, the Port's Marine Terminal Rail Improvement projects, the cargo yard projects, the Berth 4 barge-to-rail project, the East Bay Redevelopment Program's "truck route" portion, etc.; and/or
10) otherwise failed to consider and failed to make material disclosures of relevant, integral, related and connected facts, impacts, projects and/or other information required for a proper review of the impacts of this SEPA 07-2 proposal and its relevant, integral, related and connected projects and impacts.

I also note that the Port's SEPA 07-2 actions here specifically ignored the fact that the Port and Weyerhaeuser did not "appeal" the the Dec. 19, 2006 City of Olympia's Hearings Examiner's Decision on the Weyerhaeuser project in City of Olympia Case No. 05-2839, which found that all related and connected impacts of the lease and the operations of the Weyerhaeuser project that is part of this "joint" SEPA 07-2 project must be considered in any SEPA review, so that the Port's SEPA review of this SEPA 07-2 project:
1) failed to consider foreseeable impacts to water quality, aesthetic beauty, fish, birds and other wildlife of Budd Inlet, Puget Sound and the Pacific Ocean from increased ship traffic and pollution generated by the Weyerhaeuser portion of this SEPA 07-2 project;

2) failed to consider foreseeable impacts to water quality, aesthetic beauty, plants, fish, birds and other wildlife of Southwest Washington, Southwestern Canada, Budd Inlet, Puget Sound and the Pacific Ocean leading from increased logging of Southwest Washington and Southwestern Canada leading from the Weyerhaeuser portion of this SEPA 07-2 project;

3) failed to consider foreseeable increased stormwater runoff and increased "downstream" flooding in Southwest Washington and Southwestern Canada leading from increased logging of Southwest Washington and Southwestern Canada leading from the Weyerhaeuser portion of this SEPA 07-2 project;

4) failed to consider foreseeable increased impacts to protected, threatened, or endangered species plants, fish, birds and other wildlife of Southwest Washington, Southwestern Canada, Budd Inlet, Puget Sound and the Pacific Ocean leading from increased logging of Southwest Washington and Southwestern Canada leading from the Weyerhaeuser portion of this SEPA 07-2 project;

5) failed to consider foreseeable increased impacts to protected, threatened, or endangered species plants, fish, birds and other wildlife of Southwest Washington, Southwestern Canada, Budd Inlet, Puget Sound and the Pacific Ocean leading from increased ship traffic and pollution generated by the Weyerhaeuser portion of this SEPA 07-2 project;

6) failed to consider foreseeable impacts to log prices in this Southwest Washington area from Weyerhaeuser's importing of "below grade logs" from Southwestern Canada, which will be "resorted" at this Port of Olympia facility by Weyerhaeuser and will be "dumped" on the local log market for use by local mills in this Southwest Washington area;

7) failed to consider the various foreseeably likely significant adverse impacts to this area from the importing of large amounts of cargo from Asia by the "chartered ships" which will be taking the Weyerhaeuser's "export logs" from this Port of Olympia facility, since such ships will not come all the way across the Pacific Ocean "empty" just to get these Weyerhaeuser "export logs" from Port of Olympia facility;

8) failed to consider the various foreseeably likely significant adverse impacts to this area from the exporting of large amounts of cargo from this Port of Olympia facility to Canada by "barge" since the "barges" bringing those "export and non-export grade" logs from Southwestern Canada to Weyerhaeuser's Port of Olympia facility here will not travel "empty" the whole length of Puget Sound between Olympia and Southwestern Canada;

9) failed to consider that the Port's "barge-to-rail" project at Berth 4 and the Port's Marine Terminal Rail Improvement project, will be required for this exporting of large amounts of cargo from this Port of Olympia facility to Canada by "barge" leading from the Weyerhaeuser portion of this SEPA 07-2 project, and failed to consider the various foreseeably likely significant adverse impacts to this area from this portion of this action;

10) failed to consider other various foreseeably likely significant adverse impacts leading from the Weyerhaeuser portion of this SEPA 07-2 project;

11) failed to consider the Hearing Examiners' legal argument and conclusions of law on "piecemealing" of this project from all of the various relevant, integral, related and connected facts, impacts, projects and/or other information required for a proper review of the impacts of this SEPA 07-2 proposal and its relevant, integral, related and connected projects and impacts; and/or

12) otherwise failed to consider and failed to make material disclosures of all of the various relevant, integral, related and connected facts, impacts, projects and/or other information required for a proper review of the impacts of this SEPA 07-2 proposal and its relevant, integral, related and connected projects and impacts.

Also, as noted by the Port's Ed Galligan at the Port's and City of Olympia's June 11, 2007 Joint Meeting, the shipping to and from the Weyerhaeuser portion of this SEPA 07-2 project will act as a "critical mass" to attract other cargo and freight shipping customers to and from the Port of Olympia, and, thereby, the Port has clearly failed to consider other various foreseeably likely significant adverse impacts which the Port knows will be leading from these foreseeable increases other cargo and freight shipping customers to and from the Port of Olympia leading from the Weyerhaeuser portion of this SEPA 07-2 project. (See video tape of the Port's and City of Olympia's June 11, 2007 Joint Meeting).

As previously noted in my and others' pleadings on this SEPA 07-2 project proposal, the Port has clearly failed to consider other various foreseeably likely significant adverse impacts which the Port knows will be leading from these and other foreseeable increases other cargo and freight shipping customers to and from the Port of Olympia leading from the Marine Terminal Improvement Project portion of this SEPA 07-2 project. (Id.; supra).

Further, as noted in my oral, written and incorporated pleadings and exhibits, the Port's Environmental Checklist (EC), the MDNS, Staff Reports, Addendum, Modified MDNS, and Response to the Requests for Reconsideration, et al, for this SEPA 07-2 proposal:

1) are clearly erroneous, incorrect, inadequate, unlawful, incomplete, and/or arbitrary and capricious;

2) contain contradictory and other improper claims constituting misrepresentations of fact and law;

3) failed to disclose important fact and documents related to this project and to other projects that this project was related and/or connected to as integral parts of the Port's overall connected and related plans for the use, operation and improvement of the Port Marine Terminal facilities by this and many other related and/or connected projects on the Port Marine Terminal area;

4) failed to consider impacts of certain related projects or parts of these related projects on the Port Marine Terminal area, since the Port improperly "piecemealed" this "part of the Port of Olympia's ongoing program of capital improvements and maintenance ... existing marine terminal facilities on the port peninsula ... to improve existing Marine Terminal facilities ... (and) Weyerhaeuser plans to (construct and) operate a log handling facility" on this area, and this project's impacts from various other related and connected projects and their impacts occurring the Port's Marine Terminal area which are other functionally or physically integral, related and/or connected "parts of the Port of Olympia's ongoing program of capital improvements and maintenance ... existing marine terminal facilities on the port peninsula ... to improve existing Marine Terminal facilities";

5) fails to consider direct, indirect, cumulative, regional, and other foreseeably likely significant adverse environmental impacts of this and these many other related and/or connected projects on the Port Marine Terminal area;

6) is inconsistent with the Port's SEPA Appeal policy's provision that the Request for reconsideration is an "informal" proceeding with the Port Executive Director who does not act a a

"quasi-judicial official";
7) violates Petitioners' rights to due process, equal protection of the law, and other civil and constitutional rights and provisions;
8) are illegal and unconstitutional ex post facto justifications for the Port's prior illegal agency actions;
9) otherwise fails to follow the requirements of SEPA and other laws controlling the proponents' actions to approve and construct this proposal and related proposals; and/or
10) are otherwise improper as follows or as previously noted to the Port in my prior incorporated pleadings.

Also, it is apparent from reading the Port's 84 page June 7, 2007 Response to Reconsideration that most if not all of the Port's June 7, 2007 Response to Reconsideration was written **before** the Port's June 4, 2007 two Reconsideration Meetings, since it did not take into account nor respond to many of my and others' oral pleadings made at the two Reconsideration Meetings.

Further, it is also apparent from reading the Port's 84 page June 7, 2007 Response to Reconsideration **that most if not all of the Port's June 7, 2007 Response to Reconsideration was written last year** as a response to only the Weyerhaeuser log yard portion of this current SEPA 07-2 project.

As an example, the portions of the Port's 84 page June 7, 2007 Response to Reconsideration responding to my and other claims of "piecemealing" of the two "dredging" projects and Marine Terminal Rail Improvement projects, etc., from this SEPA 07-2 project merely states that the dredging is not related to the Weyerhaeuser log yard portion of this current SEPA 07-2 project, and the portions of the Port's 84 page June 7, 2007 Response to Reconsideration responding to my and other claims of "piecemealing" of the two "dredging" projects and Marine Terminal Rail Improvement projects, etc., from this SEPA 07-2 project does not state that the dredging and rail improvement projects are not related to the Marine Terminal Improvement project portion of this current "joint" SEPA 07-2 project.

Clearly, while the Port's EC, MDNS, and pages 1-2 of the Port's 84 page June 7, 2007 Response to Reconsideration on this SEPA 07-2 project, shows that this is a "joint" project consisting of the Port's Marine Terminal Improvement project with the Weyerhaeuser log yard part of this current SEPA 07-2 project, the Port's "piecemealing" arguments in the Port's 84 page June 7, 2007 Response to Reconsideration on this SEPA 07-2 project again "piecemeals" the consideration of this joint project into only a "Weyerhaeuser log yard" project, without any "connection" to the Port's Marine Terminal Improvement project, and such actions and claims are clearly erroneous, arbitrary and capricious, since the conflict with the Port's Project Description" in the EC, MDNS and pages 1-2 of the Port's 84 page June 7, 2007 Response to Reconsideration on this SEPA 07-2 project.

Further, since the Port Commissioners have repeatedly refused to conduct any administrative appeal hearings of prior SEPA decisions of the Port, and since the Port Commissioners have recently claimed at a Port Commission Meeting that they do no feel qualified to consider any administrative appeals of any SEPA decisions of the Port, this appellant reserves the

right to submit further pleadings and evidence on this administrative appeal **when and if** the Port Commissioners decide to allow a "hearing examiner" to provide an administrative appeal hearing of this matter.

Piecemealing

While the "Project Description" of this SEPA 07-2 project notes that this SEPA 07-2 project is "part of the Port of Olympia's ongoing program of capital improvements and maintenance ... existing marine terminal facilities on the port peninsula ... to improve existing Marine Terminal facilities ... (and) Weyerhaeuser plans to (construct and) operate a log handling facility" on this area, the Port fraudulently, improperly, inconsistently and erroneously claims that this SEPA 07-2 project has not been "piecemealed" from other functionally and physically related, connected and integral "parts of the Port of Olympia's ongoing program of capital improvements and maintenance ... existing marine terminal facilities on the port peninsula ... to improve existing Marine Terminal facilities ... (and) Weyerhaeuser plans to (construct and) operate a log handling facility" on this area which I and other have described in our written and oral pleadings on this and related matters over the past 2 years.

Clearly, if this SEPA 07-2 project is a "part of the Port of Olympia's ongoing program of capital improvements and maintenance ... existing marine terminal facilities on the port peninsula ... to improve existing Marine Terminal facilities" etc., then all of the other "parts of the Port of Olympia's ongoing program of capital improvements and maintenance ... existing marine terminal facilities on the port peninsula ... to improve existing Marine Terminal facilities" are functionally and physically related, connected and integral parts of this SEPA 07-2 project and they all must be considered in a single environmental review, not in many "piecemealed" environmental reviews like the Port is doing here. (See my and others' "piecemealing" arguments in our Comments and Requests for Reconsideration; my and others' "piecemealing" arguments in our prior incorporated Comments and Appeals, etc., in prior SEPA cases).

Further, since the Port Commissioners feel unqualified to consider the legal ramifications of this appeal, I will use a simple analogy to describe what "piecemealing" of a project is.

The Port's Marine Terminal is like an "automobile", in that, like an "automobile", the Port's Marine Terminal has various functionally and physically related, connected and integral parts which are all required for the construction and operation of the "automobile" or the Port's Marine Terminal in this case.

However, based upon the "piecemealing" actions of the Port in this and other related cases, the Port simply claims that they do not need to have a "motor vehicle manufacturer's license", "motor vehicle operating license" or "motor vehicle registration" to permit the Port to build and operate this "automobile", since the Port merely claiming it is building only a "hub cap" or other individual part of this "automobile".

Like this "automobile", the Port Marine Terminal cannot be constructed or operated without all of the various functionally and physically related, connected and integral parts being "connected" together.

However, the Port's claims in this case constitute a Port claim that the Port Marine Terminal

can operate without any of these "other" parts of the Port Marine Terminal which are not listed or considered in the SEPA 07-2 project's review: this is clearly absurd and arbitrary and capricious.

The Port believes that it could make and operate this "automobile" merely by repeatedly going to the Department of Licensing over and over again and asking "Do I need a license for this hub cap", "Do I need a license for this tire", "Do I need a license for this wheel", "Do I need a license for this spark plug", until such time as the Port has a complete "automobile", which the Port does not have to have a "motor vehicle manufacturer's license", "motor vehicle operating license", or "motor vehicle registration" to permit the Port to build and operate this "automobile" which are all required for the construction and operation of the "automobile" of the Port Marine Terminal improvement project here.

Clearly, all of the various "parts" of an "automobile" like the Port Marine Terminal improvement project here must be considered at the same time in the same environmental review.

Further, as noted above, besides the "piecemealing" of various other functionally and physically related, connected and integral projects from this SEPA 07-2 project review, , while the Port's EC, MDNS, and pages 1-2 of the Port's 84 page June 7, 2007 Response to Reconsideration on this SEPA 07-2 project, shows that this is a "joint" project consisting of the Port's Marine Terminal Improvement project with the Weyerhaeuser log yard part of this current SEPA 07-2 project, the Port's "piecemealing" arguments in the Port's 84 page June 7, 2007 Response to Reconsideration on this SEPA 07-2 project again "piecemeals" the consideration of this joint project into only a "Weyerhaeuser log yard" project, without any "connection" to the "joint" Port Marine Terminal Improvement project, and such actions and claims in this Response to Reconsideration are clearly erroneous, arbitrary and capricious, since the conflict with the Port's Project Description" in the EC, MDNS and pages 1-2 of the Port's 84 page June 7, 2007 Response to Reconsideration on this SEPA 07-2 project.

Clearly, this part of the Port's 84 page June 7, 2007 Response to Reconsideration on this SEPA 07-2 project further unlawfully, erroneously, arbitrarily and capriciously "piecemeals" the consideration of this entire project.

Further, at the June 11, 2007 Port of Olympia Commission Meeting, the Port's "handout" for that meeting included a document these topic was titled "East Bay Redevelopment Program Site Plan Approval" the details that in the past four years the Port, the City of Olympia and LOTT have made decisions and plans for the development and use of a 14 acre parcel of Port property on the Port Peninsula in Budd Inlet, where the LOTT sewage treatment plant is located, and where the City of Olympia and Port have planned to construct a new City Hall, a Hands On Children's Museum and civic/open space. (See attached June 11, 2007 Port of Olympia Commission Meeting "handout" titled "East Bay Redevelopment Program Site Plan Approval").

I have previously noted that the stormwater pond and drainage facilities being constructed for this SEPA 07-2 project would also serve this new City Hall, Hands On Children's Museum and civic/open space area, and that this makes it so that this SEPA 07-2 project, this new City Hall, Hands On Children's Museum and civic/open space all appear to be an integral, connected, and/or related parts of the same project, but consideration of this new City Hall, Hands On Children's Museum and civic/open space set of projects and those projects' impacts had been improperly

"piecemealed" from this SEPA 07-2 project and its environmental review by the Port. (See attached June 11, 2007 Port of Olympia Commission Meeting "handout" titled "East Bay Redevelopment Program Site Plan Approval").

This new evidence on the "East Bay Redevelopment Program Site Plan" for these projects also includes consideration of the "truck route" to the Port's Marine Terminal and the Weyerhaeuser project's leased area, which provides more evidence to show that the "East Bay Redevelopment Program Site Plan" and its projects all appear to be an integral, connected, and/or related parts of the SEPA 07-2 project to improve the Port's Marine Terminal area facilities for increased shipping and cargo handling operations at Port's Marine Terminal and the Weyerhaeuser project's Log and Cargo Yard served by this "truck route" considered in the "East Bay Redevelopment Program Site Plan". (See attached June 11, 2007 Port of Olympia Commission Meeting "handout" titled "East Bay Redevelopment Program Site Plan Approval").

Further, the Port's map of the Port Peninsula included with the Port's Marine Terminal Rail Improvement Project SEPA 07-3, shows that the railroad line going into the Port's Marine Terminal is also adjacent to and the increased use of this rail line for movement of cargo leading from the increased marine vessel cargo shipping activity leading from the SEPA 07-2 project to improve the Port's Marine Terminal area facilities for increased shipping and cargo handling operations at Port's Marine Terminal and the Weyerhaeuser project's Log and Cargo Yard would clearly cause impacts to this new City Hall, Hands On Children's Museum and civic/open space set of projects end to anyone attempting to use those new facilities of the "East Bay Redevelopment Program Site Plan" projects. (Compare maps attached to the Port's Marine Terminal Rail Improvement Project SEPA 07-3 with site of this new City Hall, Hands On Children's Museum and civic/open space set of projects of the "East Bay Redevelopment Program Site Plan").

Also, other new evidence on this "piecemealing" issue was reported in the Tuesday June 12, 2007 newspaper article of The Olympian, at page A-2, titled "Members of the Olympia council, port commission spar at meeting", where during a yearly "Joint Meeting of the Olympia City Council and the Port of Olympia Commissioners" on June 11, 2007 at least one Olympia City Council member accused the Port of taking a "piecemeal" approach to its environmental reviews, use it as an example the Weyerhaeuser project which is a part of the Port's Marine Terminal facilities improvement project SEPA 07-2 here. (See attached newspaper article and see attached Agenda for the June 11, 2007 Joint Meeting of the Olympia City Council and the Port of Olympia Commissioners).

During this meeting, at least of four City Council Members got into a "sparing" match with port commissioners and staff, were the Olympia City Council members expressed concerns that the Port's "piecemealing" actions on the SEPA 07-2 project, all along with environmental contamination of the site, etc., could "bog down" and impact the City of Olympia's new City Hall and Children's Museum projects, to the point that at least one City Council member decided to change his position to vote against this city hall site at the first chance he gets.

As the Port is well aware, at that meeting one of the City Council members specifically noted that the Port's SEPA review of this SEPA 07-2 failed to follow many of the orders and requirements of the City of Olympia Hearing Examiner's Decision on the prior Weyerhaeuser

project which has become part of this new joint SEPA 07-2 project of the Port and Weyerhaeuser. As I noted then and as the City Council and City staff now knows, the Port's SEPA review of this SEPA 07-2 failed to follow or perverted the "piecemealing" conclusions of law of the City of Olympia Hearing Examiner's Decision on the prior Weyerhaeuser project, especially when the Port decided to exclude SEPA consideration of impacts of the Weyerhaeuser lease and exclude consideration of the impacts of the operation of the Weyerhaeuser log and cargo yard.

As I noted the Port's attorney, the Port's Executive Director and Weyerhaeuser's attorney at the Reconsideration Meeting, this SEPA 07-2 project requires development permits from the City of Olympia where an appeal of those development permits would be heard by the Olympia City Council, who clearly does not appear to be happy with the way the port has conducted itself during the SEPA environmental review of this SEPA 07-2 project, and as I noted then, the city of Olympia could decide not to issue such permits for this project.

I also note that other new evidence that the Port should do comprehensive consideration of impacts of the industrial toxic waste contamination and cleanup of the contamination of this area instead of "piecemealed" consideration of the impacts of industrial toxic waste contamination and cleanup of the contamination of this area was presented by Jay Manning, Director of the Department of Ecology, to the Port and the City at this same the June 11, 2007 Joint Meeting of the Olympia City Council and the Port of Olympia Commissioners. (See the Tuesday June 12, 2007 newspaper article of The Olympian, at page A-1 to A-2, titled "Olympia, port back action in Budd Inlet).

However, as I noted, the Port has deliberately piecemealed the dredging projects and the various industrial toxic waste and Budd Inlet cleanup projects from consideration in this environmental review of the SEPA 07-2 project, in direct contradiction to facts and the requirements of SEPA and other law controlling the Port's actions here.

Further, I note that I and others are also quoted in this article we were present, which shows that I am designated as a known "port critic and environmental activist" who has been trying to get this cleanup of contamination in Budd Inlet done for 20-30 years, and thereby, this presents evidence of official and judicial notice that I clearly have standing to complain about such projects like this SEPA 07-2 project which will impact this cleanup of contamination in Budd Inlet I have worked on all this time, besides the standing I have from living in the City of Olympia near Budd Inlet and the Port Marine Terminal where this SEPA 07-2 project is being constructed and operated. (See the Tuesday June 12, 2007 newspaper article of The Olympian, at page A-1 to A-2, titled "Olympia, port back action in Budd Inlet, at page A-2).

Clearly, this "piecemealing" noted by my and others' arguments in our pleadings, Comments and Requests for Reconsideration, is a clear misrepresentation of fact and law which has lead to a failure of the Port and Weyerhaeuser to make material disclosures of all of the relevant facts and evidence integral, related and/or connected to this SEPA 07-2 project, which requires withdrawal of the MDNS and Modified MDNS made for this SEPA 07-2 project under WAC 197-11-340(3) and requires the Port to issue a Determination of Significance (DS) with a request for "scoping" comments for the making of a project-type Environmental Impact Statement (EIS) for this project, which the Port staff may not know how to make since the Port has not done any

project-type EIS for any project that I know of during the past 12 years or so.

CONCLUSION

In conclusion, for the reasons noted herein and in the incorporated pleadings, I request that the Port withdraw this SEPA 07-2 MDNS, combine it with the Port's SEPA 07-1 project, SEPA 07-3 project, and other integral, related and connected projects on the Port's Marine Terminal area including but not limited to the Port Peninsula and adjacent portions of Budd Inlet, and combine the required SEPA and NEPA determinations and reviews for these various projects, and issue a single joint NEPA/SEPA DS with a request for scoping comments for a single joint NEPA/SEPA EIS to be made on all of the Port's and others' various integral, related, and connected projects, proposals, and plans in this Port area at one time, as required by the provisions of controlling law.

I certify the foregoing to be true and correct to the best of my knowledge, beliefs and/or abilities, under penalty of perjury of the laws of the State of Washington and the United States of America, this 14th day of June, 2007, in Olympia, Washington.

Jerry Lee Dierker, Jr.,
1720 Bigelow St. NE
Olympia, WA 98506
Tel. 360-943-7470

Port of Olympia

Commission Meeting

Topic: East Bay Redevelopment Program
Site Plan Approval

Date of Commission Meeting: June 11, 2007
Location of Meeting: LOTT Board Room

Type of Action Requested:
X **Action**
☐ **Resolution**
☐ **Advisory**

Presented By: Sally R. Alhadeff

Business Unit or Department: Marketing and Business Development

Director: Kari Qvigstad

Description/Background:

Since 2003 the Port has been working on its program to redevelop the approximately 14 acre parcel of property commonly known as East Bay. In the past 4 years this program has progressed from planning and discussion, to community and commission presentations, to pre-development and now on to the first steps of development.

Decisions made thus far by Commissioners include approval of a development framework adopted after a series of public meetings in 2003, as well as Capital Expense Authorizations to fund the work completed to date including preliminary land use planning, market studies, appraisals and environmental evaluations.

We are requesting formal approval of the conceptual site plan for the East Bay redevelopment program. The conceptual site plan includes specific uses and users for the first phase of development, identifies areas for future development and includes a road network. Once approved, the conceptual site plan will become the plan from which we can proceed to next steps.

The current users and uses are LOTT, City of Olympia for its new City Hall, Hands On Children's Museum and civic/open space. Future users will be identified as market outreach continues.

One of the refinements to the land use plan is the placement of the truck route. While the adopted framework contemplated relocating the truck route, the proposed site plan leaves the truck route in its current location. Several alternate truck routes were proposed by the Port and reviewed and studied in detail by our traffic consultant. After careful consideration of each alternative, its potential impacts on adjacent properties and a

discussion with City of Olympia staff, it was concluded the existing truck route remains the best alternative.

Staff is recommending adoption of the conceptual site plan. This recommendation is based upon a deliberative process over the past 4 years. This has included commission direction, community input and consideration of market demand, as well as input from consultants including examination of financial viability and performance of environmental site assessments.

Commission adoption of this plan formalizes the Port's intention to move into the development phase of the East Bay program.

Recommended Action:

Staff recommends Commission approval of the site plan.

Attachments:

Executive Director Approval:

Olympia, port back action on Budd Inlet

BY JOHN DODGE
THE OLYMPIAN

OLYMPIA — A community-driven bid to clean up and protect Budd Inlet got the support of officials from the City of Olympia and Port of Olympia on Monday.

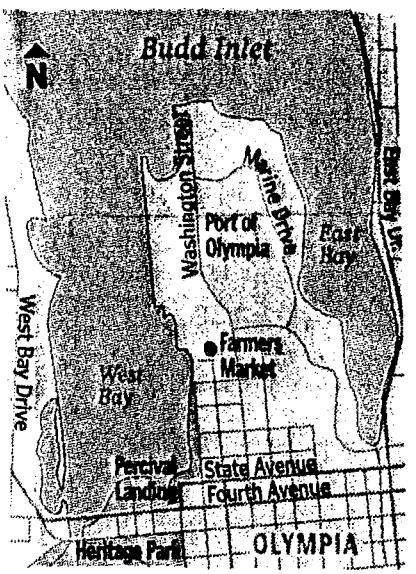
Rather than wait for the state Department of Ecology or the newly created Puget Sound Partnership to tell South Sound local governments and citizens what to do for the health of Budd Inlet, an action plan could be developed by the people who live, work and recreate here.

The idea of a community-based restoration plan has the strong support of Ecology Director Jay Manning, who attended a joint meeting of Port commissioners and Olympia City Council members Monday night to encourage them to try something new.

"This is one place in the Puget Sound region that could be ready to do this," Manning suggested. "If the community's not ready, that's fine — we'll do it project by project."

Participants in the annual joint meeting of the port and city elected officials acknowledged they were entering uncharted waters, but appeared ready to take the plunge.

See **BUDD INLET,** Page A2



The Olympian

INSIDE

Members of Olympia council, port commission spar at meeting

BY MATT BATCHELDOR
THE OLYMPIAN

OLYMPIA — After two hours of cordial discussion, an argument escalated between Councilman TJ Johnson and Port Commissioner Paul Telford at Monday night's joint Port-City Council meeting. After the meeting, Johnson said he no longer supports putting a new City Hall on Port property.

Johnson accused the Port of taking a piecemeal approach to its environmental reviews instead of taking them as a whole. He used the example of the Port's study of the site where Weyerhaeuser, a timber company, wants to put a new log export facility. That has been tied up in environmental delays, and Johnson said he's worried a proposed City Hall and Hands On Children's Museum could also be delayed, costing the city thousands of dollars. The Port has accepted responsibility for cleanup of the City Hall site.

"I have a real concern as you continue to look at all these things in the environment, you're not getting a sense of what the environmental impacts are," he said.

Telford said the Port is doing the best it can and accused Weyerhaeuser opponents of trying to shut down the Port's marine terminal. As for City Hall and the museum, "those things are your projects," Telford told Johnson.

Councilman Joe Hyer responded, "Actually those are our projects."

"I don't agree with that at all," Telford responded. "My agreement with City Hall is you're going to buy the land. It's yours."

Hyer said, "I guess I'm a little confused," he said. "I thought we were partners in all that."

Telford replied, "We're not going to help you build the thing," he said. "We're not going to help you operate it."

Johnson said, "The whole thing could get bogged down."

Commissioner Bob Van Schoorl said the Port has found minimal contamination and is on track to solve the problem, and said he hoped the groups don't start quibbling.

Johnson said after the meeting that he now opposes the City Hall project and will vote against it the first chance he gets.

"Environmental contamination and the sea level rise issues are all pretty significant barriers to building it there," he said.

In other business

■ **Johnson asked** Port officials when the city would be compensated for the May 2006 Port of Olympia protests. Port Director Ed Galligan said the Port is asking the Army to reimburse it, and hasn't heard back.

The May 2006 protests cost the city $9,513 in overtime payments and $4,532 in comp time. Twenty-nine police officers and four corrections officers spent a total of 213 hours at the event.

Matt Batcheldor covers the city of Olympia for The Olympian. He can be reached at 360-704-6869 or mbatcheldor@theolympian.com.

BUDD INLET

Continued from Page One

"What I see here is the first step towards a community action plan," Port Commissioner Bob Van Schoorl said. "The commissioners and port staff are eager to move forward."

"I think this community is ready to take this on," City Councilmember Doug Mah. "What's the next step?"

The next step is probably the hiring of an independent convener or facilitator to start the ball rolling, supported by local and state funds, Manning said.

"It's all new — nobody has done this," Manning said. "That's some of the danger and some of the fun."

The startup of a Budd Inlet restoration plan would fold into larger efforts to clean up and restore Puget Sound by 2020.

While details were sketchy on how the plan would proceed, a number of community activists who attended the city-port meeting supported it.

"It's the kind of thing we've been talking about for 20 years, 30 years," said Jerry Dierker, a port critic and environmental activist.

"What's not to like about this?" Bob Jacobs, ex-mayor of Olympia and a member of the conservation group People for Puget Sound, said.

John Dodge covers the environment and energy for The Olympian. He can be reached at 360-754-5444 or jdodge@theolympian.com

ISSUES FOR PLAN

The types of things a Budd Inlet plan would need to cover include:

- **Habitat** protection and restoration
- **Control** and cleanup of toxic chemicals
- **Stormwater** controls
- **Reduction** of pollution from septic systems and wastewater treatment plants

III. CONCLUSION

We reverse the district court's decision approving the FHWA's use of a DCE for the South DuPont interchange construction project. While we decline to order the interchange torn down, we direct the district court to order the requisite environmental review for Stage 1. We vacate the district court decision as it relates to Stage 2.

REVERSED and REMANDED.

THOMAS, Circuit Judge, dissenting:

A case is moot where the issues before the court no longer present a live controversy or the parties lack a cognizable interest in the outcome of the suit. *See Murphy v. Hunt*, 455 U.S. 478, 481, 102 S.Ct. 1181, 71 L.Ed.2d 353 (1982). There is nothing live about the controversy concerning the South DuPont interchange. Construction has ended. Thousands of automobiles traverse the interchange daily, as they have since it opened for traffic in October, 1997. The environmental damage of which Mr. West complains has been accomplished; it cannot be remedied by destruction and removal of the interchange, or additional environmental review. No order of this Court can alchemize concrete and asphalt into blueprint. *See Sierra Club v. Penfold*, 857 F.2d 1307, 1318 (9th Cir.1988) (holding that a completed mining operation cannot be "unmined"). Although the majority notes that there may exist other possibilities for damage mitigation, these ruminations are outside the relief Mr. West sought. He did not seek remediation; he wanted the interchange stopped. It was built. Therefore, there is no justiciable controversy pertaining to Phase I.

Although daily commuters have long since made the interchange construction controversy moot, the second portion of the project is but a gleam in the developer's eye. As the majority notes, it is only "vaguely defined, without a precise scope or timetable for completion." It is not funded, designed, or scheduled. In fact, there is no assurance it will ever be built, much less any final agency action. Thus, to the extent that Mr. West's complaint alleges any unique, specific challenges to Phase II, it is not ripe for adjudication.[1] *See Ohio Forestry Ass'n, Inc. v. Sierra Club*, 523 U.S. 726, 733–33, 118 S.Ct. 1665, 140 L.Ed.2d 921 (1998); *Laird v. Tatum*, 408 U.S. 1, 14, 92 S.Ct. 2318, 33 L.Ed.2d 154 (1972).

To the extent that the issues concerning the categorical exclusion grant are ripe and not moot, I would affirm the district court. "[A]n agency's interpretation of the meaning of its own categorical exclusion should be given controlling weight unless plainly erroneous or inconsistent with the terms used in the regulation." *Alaska Center for the Environment v. U.S. Forest Service*, 189 F.3d 851, 857 (9th Cir.1999). The agency has concluded that the term "access control" embraces this project which does, in fact, primarily involve access control. This interpretation is not plainly erroneous, nor inconsistent with regulatory terms.

guarantees a particular procedure, not a particular result. *Hence a person with standing who is injured by a failure to comply with NEPA procedure may complain of that failure at the same time the failure takes place, for the claim can never get riper.*

523 U.S. at 737 (citations omitted). The dissent's focus on harm to Mr. West also seems misplaced. West has surely been harmed by the application of a DCE since it precluded the kind of public comment and participation NEPA requires in the EIS process. But the core harm NEPA protects against is harm to the environment. *See Sierra Club v. Marsh*, 872 F.2d 497, 500 (1st Cir.1989) ("the harm consists of added risk to the environment that takes place when governmental decisionmakers make up their minds without having before them an analysis (with public comment) of the likely effects of their decision upon the environment. NEPA's object is to minimize that risk, the risk of uninformed choice....").

1. Mr. West's complaint does not reference Phase II, nor does the district court's opinion. Thus, I find it difficult to conclude that any adjudication was made as to issues unique to Phase II.

Port of Olympia

Commissioners
Bill McGregor
Paul Telford
Bob Van Schoorl

June 19, 2007

Sent by Email & Mail

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Re: Appeal of Port of Olympia SEPA 07-2

Dear Appellants:

Please know that the Port Commissioners acted on Monday evening to decline to hold an administrative hearing on the appeal you filed of the above Project, and to adopt the Decision of the Responsible Official as the Port's Final Decision for SEPA 07-2. This decision was made by formal Commission vote at the June 18, 2007 Commission meeting. You may consider today's date of June 19, 2007 as the date this Decision was "entered," for purpose of any further appeal.

BEFORE THE PORT OF OLYMPIA, WASHINGTON

In re: the Request for Reconsideration filed by Jerry Lee Dierker, Jr., Arthur West, Requestors, Patrisa DiFrancesca, Harry Branch, Jim Lazar, Dorothy Jean Mykland, Stanley Stahl, Walter Jorgensen, Olympians for Public Accountability, Suzanne Nott, Marissa Cacciari- Roy, Anne Beck	SEPA NO. 07-02 PORT OF OLYMPIA RESPONSIBLE OFFICIAL'S RESPONSE TO RECONSIDERATION

I. FINDINGS OF FACT

PROCEDURAL FACTS

1. On 6 April 2007, Jim Amador Terminal Manager for the Port of Olympia, John Seifert representing Weyerhaeuser Company and Ann Farr of Ann Farr & Associates submitted a SEPA checklist to the Port of Olympia as SEPA lead agency, requesting environment review of activities being implemented by the Port of Olympia (port infrastructure improvements) and Weyerhaeuser Company as a tenant located at the Port of Olympia, which is the subject of this reconsideration proposal ("Project").

2. The Project is generally described as:

Port:
As part of the Port of Olympia's ongoing program of capital improvements and maintenance, the Port proposes to pave an unpaved portion of the existing marine terminal area on the port peninsula, install improved lighting, extend utilities including electrical, water, communications, natural gas, and sanitary sewer, and upgrade

DATE June 14, 2007 **RECEIPT** 38603

RECEIVED FROM Jerry Dierker + Arthur West

ADDRESS

DOLLARS $ 300.00

FOR Request for Appeal of June 7, 2007 Denial of Reconsideration re April 16, 2007 MDNS

ACCOUNT			HOW PAID		
BEGINNING BALANCE			CASH	300.00	
AMOUNT PAID			CHECK		
BALANCE DUE			MONEY ORDER		

BY Jessi Bensley

6 Copies

TO: **EDWARD GALLIGAN, PORT OF OLYMPIA**
RESPONSIBLE SEPA OFFICIAL
915 WASHINGTON STREET, N.E.
OLYMPIA, WA 98507-1967

FROM: **JERRY DIERKER**
1720 BIGELOW ST. N.E.
OLYMPIA, WA 98506

ARTHUR WEST,
120 STATE AVE N.E. #1497
OLYMPIA, WA 98501

RE: **REQUEST FOR APPEAL OF JUNE 7, 2007 DENIAL OF RECONSIDERATION RE APRIL 16, 2007 MDNS (AS "MODIFIED") FOR PORT-WEYERHAEUSER PROPOSAL No. 07-2**

Please regard this as a formal request for **appeal** of the denial of reconsideration of MDNS 07-2 issued by the Port of Olympia on April 16, 2006, issued by port executive director Galligan on June 7, 2007.

i The requestors' mailing addresses are stated above.

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i The requestors' mailing addresses are stated above.

ii The requestor's present principle place of business are stated above, except for West, whose is 1313 Legion Street, Olympia Wa. 98501.

iii A copy of SEPA 07-2, and the June 7 denial is attached hereto.

38603

RECEIPT

DATE June 14, 2007

RECEIVED FROM Jerry Dierker + Arthur West

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BY Jerri Bentley

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