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COURT OF APPEALS DIVISION ONE  
STATE OF WASHINGTON

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Case No. 68532-5-I

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COURT OF APPEALS, DIVISION ONE,  
OF THE STATE OF WASHINGTON

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PATRICK A.T. JONES, individually and as assignee of all right, title, and  
interest of the chose in action of PETER POWELL,

APPELLANT,

v.

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION,  
WASHINGTON STATE DEPARTMENT OF ECOLOGY, and THE TOWN  
OF HUNTS POINT, a  
Municipality,

RESPONDENTS.

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APPELLANT'S REPLY BRIEF

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## I. UNDISPUTED FACTS

Respondents do not dispute the facts stated by Mr. Jones in his opening brief, except to claim that the final day on which the SSDP and CUP could be appealed to the Shoreline Hearings Board was March 8, 2011. Absent a dispute by Respondent to Mr. Jones' statement of facts, this Court should adopt the statement of facts as asserted by Jones in his opening brief. Jones will separately address the one fact Respondents' dispute below.

## II. REPLY

### A. **The doctrine of collateral estoppel does not bar Jones's appeal.**

There is no final decision on the merits; neither the parties are in privity nor does the doctrine of "virtual representation" apply; and, an injustice would be worked against Mr. Jones if his appeal is denied on the basis of collateral estoppel. Therefore, the court should reject WSDOE's argument in favor of applying collateral estoppel to Mr. Jones's appeal.

Collateral estoppel, or issue preclusion, bars re-litigation of an issue in a subsequent proceeding involving the same parties. *Christensen v. Grant Hosp. Dist. No. 1*, 152 Wn.2d 299, 306, 96 P.3d 957 (2004), citing 14A Karl B. Tegland, Washington Practice, *Civil Procedure* § 35.32, at 475 (1<sup>st</sup> ed.2003). Collateral estoppel may be applied to preclude only those issues that have actually been litigated and necessarily and finally determined in the earlier proceeding. *Id.* citing *Shoemaker v. City of*

*Bremerton*, 109 Wn.2d 504, 507, 745 P.2d 858 (1987). Further, the party against whom the doctrine is asserted must have had a full and fair opportunity to litigate the issue in the earlier proceeding. *Id.* citing *Nielson v. Spanaway Gen. Med. Clinic, Inc.*, 135 Wn.2d 255, 264-65, 956 P.2d 312 (1998).

The burden of proving whether collateral estoppel bars Mr. Jones' claim lies with Respondents. Respondents' failure to establish any one of the four required factors means that the doctrine may not be applied. Here, Respondents have failed to establish all of those factors, which are: (1) the issue decided in the earlier proceeding was identical to the issue presented in the later proceeding, (2) the earlier proceeding ended in a judgment on the merits, (3) the party against whom collateral estoppel is asserted was a party to, or in privity with a party to, the earlier proceeding, and (4) application of collateral estoppel does not work an injustice on the party against whom it is applied. *Christensen* at 306, citing *Reninger v. Dept. of Corrections*, 134 Wn.2d 437, 449, 951 P.2d 782 (1998); *State v. Williams*, 132 Wn.2d 248, 254, 937 P.2d 1052 (1997); *Claim and Issue Preclusion*, 60 Wn. L.Rev. at 831.

**i. There Is No "Final Judgment on the Merits."**

Quite simply, there is no final judgment in this case. The dismissal of an action for lack of jurisdiction is not a final decision on the merits. *Peacock v. Piper*, 81 Wn.2d 731, 734, 504 P.2d 1124 (1973). The long-

settled general rule is that a judgment of dismissal for want of jurisdiction is not a final decision on the merits, and consequently does not operate as a bar to a subsequent action before some appropriate tribunal. *Peacock*, 81 Wn.2d at 734, citing *Williams v. Minnesota Mining & Mfg. Co.*, 14 F.R.D. 1, 8 (D.C. 1953); *see also Stevedoring Services of Am., Inc. v. Eggert*, 129 Wn.2d 17, 41, 914 P.2d 737, 749 (1996) (“A dismissal for lack of jurisdiction is not res judicata.”). For this reason the “final judgment on the merits” element of the doctrine of collateral estoppel is not met.

In addition, collateral estoppel may be applied to preclude only those issues that have been actually litigated and necessarily and finally determined in the earlier proceeding. *Olympic Tug & Barge, Inc. v. Washington State Dept. of Revenue*, 163 Wn. App. 298, 259 P.3d 338 (2011). In *Olympic Tug*, the taxpayer, Olympic Tug, sought to extend the doctrine of collateral estoppel to preclude an appeal because the Department of Revenue had been statutorily prohibited from appealing an earlier informal decision of the Board of Tax Appeals. In that case, the Department of Revenue argued that it did not receive a full and fair opportunity to litigate the issue because it did not have the opportunity to appeal the informal decision by the Board. The *Olympic* court held that a party may not be denied the chance to litigate an issue if it was statutorily denied an opportunity to appeal. In addition, the Department was not entitled to appeal from the informal decision of the Board because

decisions entered in an informal appeal are not subject to judicial review. *Olympic*, citing WAC 456-10-010(1)(b). *Olympic* argued that the Department had the right to appeal the first decision because the Department had the opportunity to convert the Board review into a formal hearing and obtain review under the APA, and therefore collateral estoppel may be applied to the informal decision, rendering a final decision on the merits. *Id.*, at 304. However, the Court of Appeals disagreed, because the opportunity to preemptively select a different procedure, one that included judicial review, did not satisfy the elements necessary to apply collateral estoppel. Even in light of goal of judicial economy by encouraging use of an informal procedure where appropriate, the *Olympic* court determined that the Department of Revenue did not have the right to appeal the Board's 2001 decision, the issue was not fully and fairly litigated, and collateral estoppel was inappropriate to prevent the later appeal.

Similarly, where WSDOE did not follow the formal process for issuance of its decision, Mr. Jones could not have known the decision informally issued by WSDOE was its formal decision, or that an informal email of that decision would commence the clock running on his right to appeal. Here, there was a formal process that was authorized by statute and code, whereby transmission of the WSDOE decision could be made by mail or hand delivery. There was not a provision in the statute or code that authorized transmission of the decision by email. As Mr. Jones addresses

thoroughly below, Mr. White's email notification of receipt of Mr. Radabaugh's email should not be deemed "actual receipt," and should not take precedent over the statutory and code provisions. The bottom line is that WSDOE did not comply with the notice requirements through its informal process.

The merits of Mr. Jones' case, both to the SHB and to the King County Superior Court, as well as the merits of FBBC's, have not been addressed by the SHB or by the King County Superior Court. There was no final decision on the merits that operates to bar Mr. Jones's. No final decision on the merits having been reached, Respondents cannot establish the second requirement for collateral estoppel and Mr. Jones's claim is not barred.

**ii. Mr. Jones was not a party to FBBC's appeal and is not subject to the virtual representation doctrine.**

Mr. Jones was not a party to FBBC's appeal. FBBC filed its appeal on June 9, 2011. (*See* Appendix to Reply.) Mr. Jones filed his appeal July 5, 2011, before any motions or hearings on the issues had been set in the FBBC matter. (*Id.*) He did not wait to see how the FBBC appeal was decided before filing his own appeal. On July 8, 2011, FBBC set a hearing for August 26, 2011, and filed its opening brief. (*Id.*) The state appeared in Mr. Jones's appeal on July 19, 2011, almost six weeks before the hearing was to be held in the FBBC appeal. (*Id.*) Therefore, WSDOE had

knowledge of and was aware of the separate appeals well before the hearing in the FBBC appeal *and decided not to make a motion to consolidate* (or simply did not think of it) so that the same judge would be considering both appeals. Mr. Jones should not be estopped from continuing his appeal because of WSDOE's failure to consolidate. The ruling in the FBBC appeal was handed down on September 2, 2011; and, still WSDOE did not move to consolidate despite Mr. Jones's pending appeal.

Respondents argue, without relevant authority, that even though Mr. Jones was not a party to FBBC's appeal in the superior court, the doctrine of virtual representation should be applied. As Respondent points out, the factual scenario of this matter has not been addressed by the appellate courts. Respondents offer no authority, because none appears to exist, that there is some presumption that Mr. Jones's decision to appeal separately was the result of tactical maneuvering. (Respondents' Brief at 9-10.) To the contrary, Respondents either strategically decided not to consolidate the appeals or simply failed to do so.

Furthermore, there is no obligation imposed on Mr. Jones to consolidate his appeal with FBBC. Consolidation of two matters does not make the parties, issues, or claims identical among the matters. *See e.g. Angelo v. Angelo*, 142 Wn. App. 622, 639, 175 P.3d 1096, 1104 (2008) (permitting consolidation of tort claims with a dissolution claim with

related facts but different parties including some who do not have standing as to some of the consolidated claims, standards of proof, and remedies). Consolidation also does not require that the decision-maker issue the same decision for all of the parties. *See generally, id.* Nor is a party to one matter, whose case is consolidated with another matter, thereby made a party to the original claims of that second matter. *See generally, id.* They are separate matters with similar issues or facts, whose consolidation results in judicial economy but do not necessarily result in a single binding formal decision that applies to all the claims and parties. *Id.*

Here, the Shoreline Hearings Board consolidated the matters, and when two of the parties moved for appeal at separate times, the Department failed to request consolidation of the appeals. Mr. Jones had no obligation to file his appeal with FBBC; and Judge Gonzalez did not consider the issue before him in light of Mr. Jones' claims. Only the claims of FBBC were considered and the decision that issued is not binding on Mr. Jones. Therefore, consolidation of the cases before the Board of appeals but not before the superior court does not result in barring Mr. Jones's claims.

"Typically the doctrine of virtual representation is applied where there are successive suits...." *Diversified Wood Recycling, Inc. v. Johnson*, 161 Wn. App. 891, 906, 251 P.3d 908, 916-17 rev. denied, 172 Wn.2d 1025, 268 P.3d 224 (2011). This is not a successive suit or appeal, but an

on-going matter that is running along its own procedural timeline as permitted by the governing statutes and rules.

In *Diversified Wood*, the appellate court declined to rule on the issue of virtual representation for several reasons, including that the application of the doctrine involves a host of factual issues. *Diversified*, at 906. In that case, the trial court did not enter findings and conclusions pertaining to virtual representation, and the *Diversified* court had no decision to review.

Similarly here, the trial court has made no findings and conclusions pertaining to virtual representation. Respondents only speculate as to the reasoning that Jones and Powell did not appeal together with FBBC, but offer no facts that would support any presumption of tactical maneuvering. In all instances, Jones/Powell's and FBBC' appeals were substantively different. As FCCB's counsel pointed out to Mr. Hunter, the hearings examiner for the Town of Hunts Point: "FCCB members are private owners acutely interested in the impacts of this application . . . [t]he Fairweather Basin property owners each own homes on lots created exclusively for residential purposes in 1957 . . . [l]ot owners are subject to assessments for the expense of dredging and maintaining the channel and turning basin . . ." (CABR at 560-61, December 22, 2010 letter to T. Hunter dated December 22, 2010, pages 2-3) "WSDOT propose[d] to construct a facility to impound stormwater carrying oil, gasoline, copper,

and other vehicle traffic generated wastes . . . on lots 11 and 12 in the . . . FBBC . . . a waterfront residential neighborhood. The project [would] negatively impact [the] quality of life and property values [FBBC properties] . . . [in numerous ways]” (CABR 547-48, January 14, 2011 letter from FBBC to Ted Hunter at Hunts Point.) On the other hand, the properties of Mr. Jones and Mr. Powell were not part of the FBBC, but were adjacent to the FBBC properties and stood to be negatively impacted, but not in the same respect. The location of the facility proposed by the Town of Hunts Point in its application was within 200 feet of Jones’ property, and would negatively impact half a million in dredging responsibilities of Peter Powell. (AP 4)

Respondents offer no evidence that Mr. Jones or Powell would somehow gain an upper hand against the Respondents by separately appealing from FBBC. Indeed, if the Respondents were so concerned about Mr. Jones or Mr. Powell somehow benefitting from separately appealing, then it should be presumed that they should have requested the consolidation of the appeals to the superior court. Clearly, there was no benefit to Mr. Jones and Mr. Powell separately appealing, and Respondents’ presumption of tactical maneuvering should be rejected.

And, absent a showing that Mr. Jones was a party to the prior litigation, and absent a showing that he was in privity through the doctrine of virtual representation, the third prong of the doctrine of collateral

estoppel is not met.

**iii. The application of collateral estoppel works an injustice against Mr. Jones**

The application of collateral estoppel in this instance, especially regarding a procedural, jurisdictional issue that does not constitute a final decision on the merits, clearly works an injustice against Mr. Jones. The injustice element is most firmly rooted in procedural unfairness. *Thompson v. State*, 138 Wn.2d at 795. Washington courts look to whether the parties to the earlier proceeding received a full and fair hearing on the issue in question.” *Id.* at 795-96, quoting *In re Marriage of Murphy*, 90 Wn. App. 488, 498, 952 P.2d 624 (1998). Washington courts have noted the unfairness of permitting adjudication in an informal administrative setting, for example, to bar later criminal prosecutions. *Id.* at 796, citing e.g., *State v. Williams*, 132 Wn.2d 248, 937 P.2d 1052 (1997). Respondents failed to seek consolidation of the appeals and have a single judge decide the issue, and now seek to impose the result of that failure, Mr. Jones’s on-going appeal, against Mr. Jones. That result would be manifestly unfair and unjust when Respondents were aware of the separate appeals by Mr. Jones and FBBC well before the first decision was handed down by the superior court.

In addition, the adjudication at issue is related to an informal administrative action, i.e. the transmission of a decision in a manner not

authorized by statute or code. Had the WSDOE followed the law, WSDOE would have either been required to mail its decision or hand-deliver its decision. It did neither, and instead chose an informal form of communication not authorized by any law then in existence. It works an injustice against Mr. Jones for the SHB and subsequently the superior court to give effect to the WSDOE's unauthorized actions. Mr. Jones has not been given an opportunity for a full and fair hearing on the issue.

**iv. Collateral estoppel does not bar Mr. Jones's appeal.**

If this Court determines that Respondents have not established even one of the elements of collateral estoppel, the doctrine may not be applied. Here, three of the four elements fail. Therefore, Mr. Jones's appeal is not barred by the doctrine of collateral estoppel.

**B. The SHB's decision is not well-grounded in the statutory language governing shoreline permit appeals, and the Court should enforce the plain language of the statute.**

Respondents request that this Court ignore the mandatory statutory language and the requirements of the very rules and regulations put in place by the SHB and WSDOE. Instead Respondents are in favor of a reading of RCW 43.21B.001 without regard for the requirements necessary before the "actual receipt" language comes into play. Respondents ignore that WSDOE's actions were first to render and "transmit" to the local government and the applicant its final decision. The definition of transmit is by mail or hand delivery.

WAC 173-27-200(1) provides:

After local government approval of a conditional use . . . permit, local government shall submit the permit to the department for the department's approval, approval with conditions, or denial. The department shall render and transmit to local government and the applicant its final decision approving, approving with conditions, or disapproving the permit within thirty days of the date of submittal by local government pursuant to WAC 173-27-110.

WAC 173-27-030(16) provides:

“Transmit” means to send from one person or place to another by mail or hand delivery. The date of transmittal for mailed items is the date that the document is certified for mailing or, for hand-delivered items, is the date of receipt at the destination.

There is no definition of “transmit” that includes email delivery. Transmittal is only by mail or hand delivery. Mail cannot include email because the reference to the date of transmittal for mail is the date that the document is “certified” for mailing. Since there is no “certified” email, the rule includes only mail capable of being certified which is U.S. Mail.

The final decision was sent by certified mail, but it was not “certified” for mailing until February 24, 2011 as the envelope shows. (CABR at 117, Partial Dissent)

The department is required to first transmit to both the local government and the applicant before the decision can have a “date of receipt”. Under the definition of “transmit,” the decision was transmitted

on February 24, 2011 when it was certified for mailing, as the post mark reflects. It is only after the “transmit” portion is completed, that “actual receipt” can occur because otherwise the mandatory language of “shall transmit” would be allowed to be circumvented. Circumvention of the rules defining “transmit” by permitting “actual receipt” to occur first essentially allows all forms of actual receipt rather than those done in accordance with the definition of “transmit.”

The “date of receipt” argument requires the court to ignore the department’s requirement to transmit the final decision to both the local jurisdiction and the department and simply find that regardless of whether or when the “transmit” rule was complied with, the court can skip to the “date of receipt.” This argument permits actual receipt to occur by any and all means other than defined by “transmit.” It then circumvents the requirement that “transmit” actually occur because since “date of receipt” has already occurred whether it was transmitted to the local jurisdiction or applicant, becomes moot. However, the department is required to “transmit” to the local jurisdiction and the applicant, and until that happens, there should be no event that can start the clock on the 21-days.

Allowing date of receipt to occur before the proper transmitting of the decision is not a proper reading of the rules promulgated by the department for the purpose of complying with a statutory 21-day notice period. Rather, notice is to be afforded through transmitting the final

decision and affording the applicant and the local jurisdiction and the interested public to take action within that 21-day time period after the “transmit” has occurred. The “transmit” did not occur through email; it cannot, because the definition of transmit does not support electronic means. “Transmit” happened at the earliest on February 24, 2011, when the document was certified for mailing. If actual receipt can occur nine days prior to the final decision being transmitted, then the definition of “transmit” is not being honored and entire purpose of the rule is not being honored.

It is well-known that email receipt has the ability to be instantaneous. In the case of Scott White, he received the email within minutes of it being sent by WSDOE. However, that is not what either the RCW 43.21B.001 or WAC 173-27-200(1) and WAC 173-27-030(16) contemplated and therefore the Respondent’s argument must fail.

There is no question that Scott White, the agent for the applicant for WSDOT, (not the applicant himself), received the decision. The statute provides that the department send the decision to the applicant and the local jurisdiction. It does not say the applicant’s agent, it does not say by email, it says transmit which is by mail (on the date certified) or hand delivery, but ignoring all of that, the Respondent argues that only one thing matters, what date was it actually received by Scott White. This is not in compliance with the reading of the statutes and rules.

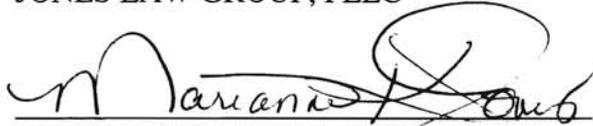
The Legislature recognized that failure to address email delivery was clearly a flaw in the system that needed to be corrected. However, at the time WSDOE failed to “transmit,” there was no provision allowing for WSDOE’s action, and there is no authority for giving retroactive application to the provision, which is considered remedial and affecting a substantive right or vested right. *See i.e., 1000 Virginia Ltd Partnership v. Vertecs Corp*, 158, Wn.2d 566, 584, 146 P.3d 432 (2006), *citing Wn. Waste Sys., Inc. v. Clark County*, 115 Wn.2d 74, 78, 794 P.2d 508 (1990), *citing McGee Guest Home, Inc. v. Dep’t of Soc. & Health Servs.*, 142 Wn.2d 316, 324, 12 P.3d 144 (2000) (*quoting State v. Cruz*, 139 Wn.2d 186, 191, 985 P.2d 384 (1999) (*citing In re F.D. Processing, Inc.*, 119 Wn.2d 452, 460, 832 P.2d 1303 (1992)); *Bayless v. Community College District No. XIX*, 84 Wn.App. 309, 311, 927 P.2d 254 (1996) *citing In re F.D. Processing, Inc.*, 119 Wn.2d 452, 462-63, 832 P.2d 1303 (1992) (*quoting In re Mota*, 114 Wn.2d 465, 471, 788 P.2d 538 (1990)).

This Court should give only prospective application to the 2011 amendment of the notice statute at issue. The language of the statute is plain and the Court should enforce it. There was no authority for WSDOE to provide the decision by email, and when it did it circumvented the rule requiring the department “transmit” its final decision to the local jurisdiction and the applicant. The Court should reverse the dismissal of

Mr. Jones' appeal to the superior court and remand the action to the superior court for further adjudication.

RESPECTFULLY SUBMITTED this 30<sup>th</sup> day of August, 2012.

JONES LAW GROUP, PLLC

A handwritten signature in black ink, appearing to read "Marianne K. Jones", written over a horizontal line.

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COURT OF APPEALS  
DIVISION ONE

AUG 30 2012

Case No. 68532-5-I

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COURT OF APPEALS, DIVISION ONE,  
OF THE STATE OF WASHINGTON

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PATRICK A.T. JONES, individually and as assignee of all right, title, and  
interest of the chose in action of PETER POWELL,

APPELLANT,

v.

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION,  
WASHINGTON STATE DEPARTMENT OF ECOLOGY, and THE TOWN  
OF HUNTS POINT, a  
Municipality,

RESPONDENTS.

---

APPENDIX TO APPELLANT'S REPLY BRIEF

---

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## Superior Court Case Summary

**Court:** King Co Superior Ct  
**Case Number:** 11-2-20490-1

Sub	Docket Date	Docket Code	Docket Description	Misc Info
1	06-09-2011	PETITION FOR JUDICIAL REVIEW	Petition For Judicial Review	
2	06-09-2011	CASE INFORMATION COVER SHEET LOCS	Case Information Cover Sheet Original Location - Seattle	
3	06-09-2011	CASE INFORMATION COVER SHEET	Case Information Cover Sheet	
4	06-09-2011	SET CASE SCHEDULE JDG0005	Set Case Schedule Judge Steven Gonzalez, Dept 5	11-18-2011ST
5	06-10-2011	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
6	06-13-2011	NOTICE OF APPEARANCE	Notice Of Appearance /state Transpo	
7	06-13-2011	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
8	06-14-2011	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
9	06-14-2011	NOTICE RE: EVIDENTIARY RULE	Notice Re: Evidentiary Rule	
10	06-15-2011	NOTICE OF APPEARANCE	Notice Of Appearance /state Ecology	
11	06-15-2011	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
12	06-16-2011	NOTICE OF APPEARANCE	Notice Of Appearance /wash State Of	
13	06-16-2011	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
14	06-16-2011	CORRESPONDENCE	Correspondence /atty General	
15	06-16-2011	NOTICE OF APPEARANCE	Notice Of Appearance /defs Town Of Hunts Point	

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 Seattle, WA 98104-2361

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**Appendix - 1**

16	06-17-2011	NOTICE OF ABSENCE/UNAVAILABILITY	Notice Of Absence/unavailability	
17	06-23-2011	CERTIFIED APPEAL BOARD RECORD	Certified Appeal Board Record	
18	07-08-2011	NOTICE OF HEARING	Notice Of Hearing /opening Brief	08-26-2011
19	07-08-2011	BRIEF	Brief /petr	
20	07-08-2011	DECLARATION	Declaration Of Aaron Laing	
21	08-05-2011	RESPONSE	Response Brief/dept Ecology	
22	08-05-2011	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
23	08-05-2011	RESPONSE	Response Brief/wsdot	
24	08-05-2011	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
25	08-19-2011	REPLY	Reply Brief Of Petitioner	
26	08-26-2011	RALJ HEARING HELD JDG0005	Ralj Hearing Held Judge Steven Gonzalez, Dept 5	
-	08-26-2011	AUDIO LOG	Audio Log Dr W941	
27	09-02-2011	ORDER DENYING MOTION/PETITION	Order Denying Mtn Fr Summ Jdgmnt & Hearing Board Affirming Decision Of Shorelines	

**Disclaimer**

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**Can I use the index to find out someone's criminal record?** No. The Washington State Patrol (WSP) maintains state criminal history record information. Click [here](#) to order criminal history



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## Superior Court Case Summary

## About Dockets

**Court:** King Co Superior Ct  
**Case Number:** 11-2-23162-3

Sub	Docket Date	Docket Code	Docket Description	Misc Info
1	07-05-2011	PETITION FOR JUDICIAL REVIEW	Petition For Judicial Review	
2	07-05-2011	SET CASE SCHEDULE JDG0024	Set Case Schedule Judge Patrick H. Oishi, Dept 24	02-13-2012ST
3	07-05-2011	CASE INFORMATION COVER SHEET LOCS	Case Information Cover Sheet Original Location - Seattle	
3A	07-11-2011	CORRESPONDENCE	Correspondence Re Appeal	
4	07-14-2011	ORDER	Order To Correct Filing Of Pet For Review Nunc Pro Tunc	
4A	07-14-2011	DECLARATION	Declaration Of Marianne K Jones	
4B	07-14-2011	DECLARATION	Declaration Of Joel Mcallister	
4C	07-14-2011	MOTION	Motion To Correct Petition/pet	
4D	07-14-2011	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
5	07-18-2011	NOTICE OF APPEARANCE	Notice Of Appearance /wa State Shor	
6	07-18-2011	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
7	07-18-2011	CORRESPONDENCE	Correspondence /marc Worthy	
8	07-19-2011	NOTICE OF APPEARANCE	Notice Of Appearance /state	
9	07-19-2011	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
10	07-28-2011	NOTICE OF APPEARANCE	Notice Of Appearance /town	

### About Dockets

You are viewing the case docket or case summary. Each Court level uses different terminology for this information, but for all court levels, it is a list of activities or documents related to the case. District and municipal court dockets tend to include many case details, while superior court dockets limit themselves to official documents and orders related to the case.

If you are viewing a district municipal, or appellate court docket, you may be able to see future court appearances or calendar dates if there are any. Since superior courts generally calendar their caseloads on local systems, this search tool cannot display superior court calendaring information.

### Directions

King Co Superior Ct  
 516 3rd Ave, Rm C-203  
 Seattle, WA 98104-2361

**Map & Directions**  
 206-296-9100  
 [Phone]  
 206-296-0986[Fax]  
**Appendix - 3**

11	08-11-2011	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
12	12-05-2011	ORDER FOR CHANGE OF JUDGE JDG0051	Order For Change Of Judge Judge John Erlick, Dept 51	
13	12-06-2011	ORDER FOR CHANGE OF JUDGE JDG0051	Order For Change Of Judge Judge John Erlick, Dept 51	
14	01-17-2012	TRIAL BRIEF	Trial Brief /rsp	
15	01-17-2012	DECLARATION	Declaration Of Deborah L Cade	
16	01-17-2012	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
17	01-30-2012	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
18	01-30-2012	DECLARATION	Declaration Of Marianne K Jones	
19	01-30-2012	RESPONSE	Response To Motion /pet	
20	01-30-2012	TRIAL BRIEF	Trial Brief /pet	
21	02-06-2012	NOTICE CHANGE TRIAL DATE	Notice Change Trial Date	02-24-2012ST
22	02-15-2012	TRIAL BRIEF	Trial Brief /rsp/amd	
23	02-15-2012	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
24	02-24-2012	SUMMARY JUDGMENT HEARING JDG0051	Summary Judgment Hearing Judge John Erlick, Dept 51	
-	02-24-2012	AUDIO LOG	Audio Log Dr W1060	
25	02-24-2012	ORDER DENYING MOTION/PETITION	Order Denying Petition Review	
26	03-22-2012	NOTICE OF APPEAL TO COURT OF APPEAL	Notice Of Appeal To Court Of Appeal	
-	03-22-2012	APPELLATE FILING FEE	Appellate Filing Fee	280.00
27	03-23-2012	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
28	03-27-2012	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/cert Of Service/amended	
29	04-23-2012	DESIGNATION OF CLERK'S PAPERS	Designation Of Clerk's Papers 68532-5/jones/pgs 1-35 & Crabr Trans Coa 5/23/2012	
30	04-26-2012	INDEX	Index Cks Pprs Pgs 1-35	
-	05-01-2012	CLERK'S PAPERS - FEE	Clerk's Papers - Fee	42.50

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**Appendix - 4**

		RECEIVED	Received 706268-cp/jones/pd 5/21/2012		
31	05-11-2012	DESIGNATION OF CLERK'S PAPERS	Designation Of Clerk's Papers Supp Trans Coa 6/27/2012 68532-5/cade/pgs 36-45		
32	05-11-2012	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service		
33	05-22-2012	COMMENT ENTRY	Cks Pprs Pgs 1-35		
34	05-23-2012	INDEX	Index Cks Pprs Pgs 36-45		
-	05-23-2012	CLERK'S PAPERS - FEE RECEIVED	Clerk's Papers - Fee Received 706333-cp/cade/pd 6/6/2012	30.00	
35	06-13-2012	COMMENT ENTRY	Cks Pps Pgs 36-45		
36	07-20-2012	DESIGNATION OF CLERK'S PAPERS	Designation Of Clerk's Papers 68532-5/ Cade		
37	07-20-2012	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service		
38	07-30-2012	INDEX	Index Cks Pprs Pgs 46-61		
-	07-30-2012	CLERK'S PAPERS - FEE ASSESSED	Clerk's Papers - Fee Assessed 706530-cp/cade	33.00	

Patrol (WSP) maintains state criminal history record information. Click [here](#) to order criminal history information.

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- ▶ **Guarantee that the information is in its most current form?**  
NO
- ▶ **Guarantee the identity of any person whose name appears on these pages?**  
NO
- ▶ **Assume any liability resulting from the release or use of the**

Appendix 5

Case No. 68532-5-I

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COURT OF APPEALS, DIVISION ONE,  
OF THE STATE OF WASHINGTON

---

PATRICK A.T. JONES, individually and as assignee of all right, title, and  
interest of the chose in action of PETER POWELL,

APPELLANT,

v.

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION,  
WASHINGTON STATE DEPARTMENT OF ECOLOGY, and THE TOWN  
OF HUNTS POINT, a  
Municipality,

RESPONDENTS.

---

PROOF OF SERVICE

---

Attorney for Appellant Jones

Jones Law Group, PLLC  
Marianne K. Jones  
11819 NE 34<sup>th</sup> Street  
Bellevue, WA 98005  
425-576-8899

I hereby certify that I caused to be served a true and correct copy of Jones Reply Brief and Appendix on this 30<sup>th</sup> day of June, 2012, on the following pursuant to e-service agreement:

Respondent Department of Transportation:

TPC Division e-mail box: [tpcef@atg.wa.gov](mailto:tpcef@atg.wa.gov)  
Deborah Cade: [DeborahC@atg.wa.gov](mailto:DeborahC@atg.wa.gov)  
  
Danielle Oliver: [DanielleO@atg.wa.gov](mailto:DanielleO@atg.wa.gov)

Respondent Department of Ecology:

Ecology Division e-mail box: [ecyolyef@atg.wa.gov](mailto:ecyolyef@atg.wa.gov)  
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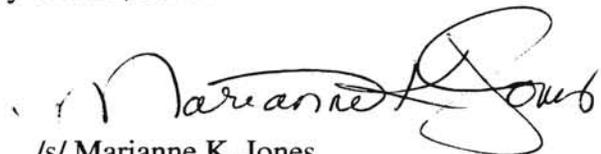
Respondent Town of Hunts Point:

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Michael Kenyon: [mike@kenyondisend.com](mailto:mike@kenyondisend.com)

Shoreline Hearings Board:

Marc Worthy: [marcw@atg.wa.gov](mailto:marcw@atg.wa.gov)

DATED this 30<sup>th</sup> day of June, 2012.

  
\_\_\_\_\_  
/s/ Marianne K. Jones  
MARIANNE K. JONES