

FILED  
Court of Appeals  
Division II  
State of Washington  
3/29/2019 1:44 PM  
No. 52020-6-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

---

PACIFIC COAST SHREDDING, L.L.C.,

Appellant,

v.

PORT OF VANCOUVER, USA,

Respondent.

---

ON APPEAL FROM THE SUPERIOR COURT  
OF CLARK COUNTY

The Honorable Robert Lewis

---

**OPENING BRIEF OF PACIFIC COAST SHREDDING, L.L.C.**

---

Christine N. Moore (WSBA #47347)  
David L. Blount (WSBA #32642)  
Landye Bennett Blumstein LLP  
1300 SW 5th Avenue, Suite 3600  
Portland, OR 97201  
Tel: (503) 224-4100  
Fax: (503) 224-4133  
[cmoore@lbblawyers.com](mailto:cmoore@lbblawyers.com)  
[dblount@lbblawyers.com](mailto:dblount@lbblawyers.com)

Of Attorneys for Pacific Coast  
Shredding, L.L.C.

## TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION .....	1
II. ASSIGNMENTS OF ERROR AND ISSUES PRESENTED .....	2
A. Assignments of Error .....	2
B. Statement of Issues .....	4
III. STATEMENT OF THE CASE.....	5
A. Procedural History .....	5
B. Statement of Facts.....	7
1. PCS is a scrap metal recycling operation dependent upon its safe, large vehicular traffic path.....	7
2. The Port notified PCS it was condemning a portion of PCS's leasehold. The Port repeatedly found its taking had no impact on PCS's traffic path.....	10
3. The PCS reconfiguration was reasonable and necessary to provide a safe and continuous operation of its business after the taking. The Port presented no evidence regarding safety.....	13
a. Keeping the southern end of PCS's traffic path open is critical to PCS's safe and efficient operation. ....	13
b. The taking eliminated significant shred products storage and cut off PCS's traffic path at the south end of the leasehold.....	16
c. PCS analyzed various options to maintain its operation post-taking. Repeatedly moving piles of shred, also known as tramming, was not viable. ....	17
d. Rotation of the ferrous conveyor was reasonable and necessary. ....	20
e. The reconfiguration did not improve PCS efficiency, nor did PCS previously intend to reconfigure. ....	23
f. Port witnesses recognized PCS's need to move the	

traffic path but did not consider safety in assessing the necessity and reasonableness of PCS's reconfiguration. ....	25
g. The Port proposed several cheaper but unsafe alternatives.....	29
4. The administrative body ("the Panel") found that the taking did not create a choke point in the traffic path while asserting PCS only required a 14.9-foot wide road.....	32
5. PCS appealed. The trial court reversed, finding that PCS required a 20-foot traffic path and the taking created a choke point.....	32
6. On remand, the Panel adopted whole-cloth the Port's 26-page Findings of Fact ("FOF") and Conclusions of Law ("COL"), again ordering zero reimbursement to PCS. ....	33
7. On appeal, the trial court reversed and ordered reimbursement to PCS. ....	34
IV. ARGUMENT.....	35
A. The Panel's FOF and COL are internally inconsistent, arbitrary and capricious, and contradict the law of the case.....	35
B. The Panel erroneously interpreted "reasonable" and "necessary" under the Relocation Act. ....	42
1. An assessment of what is "reasonable" and "necessary" must include consideration of safety.....	42
2. The Panel refused to consider safety in its interpretation of "reasonable" and "necessary." .....	44
3. The Panel's interpretation of "reasonable" and "necessary" substantially prejudiced PCS. ....	45
4. The Panel's finding that safety was not "a credible response" to the Port's proposed alternatives lacks evidentiary support and is arbitrary and capricious.....	47
5. The Panel's FOF and COL fail in their entirety because they are based upon a finding that a 14.9-foot road is sufficient, which is not supported by substantial evidence, fails to consider safety, and is arbitrary and capricious .....	49

C.	The Panel erred when it held that, under the Relocation Act, PCS did not present "credible" evidence as to its expenses.....	56
V.	CONCLUSION.....	59
VI.	APPENDIX.....	59

## TABLE OF AUTHORITIES

### Washington Cases

<i>Campbell v. Dep't of Soc. &amp; Health Servs,</i> 150 Wn.2d 881 (2004) .....	42
<i>City of Univ. Place v. McGuire,</i> 144 Wash. 2d 640 (2001).....	49
<i>Davidson v. Kitsop County,</i> 86 Wn. App. 673 (1997) .....	35
<i>Duncan v. City of Edgewood,</i> 196 Wash.App. 1045 *7 (2016).....	36
<i>Lutheran Day Care v. Snohomish County,</i> 119 Wash.2d 91 (1992).....	35
<i>Snohomish County v. Hinds,</i> 61 Wn. App. 371 (1991) .....	35
<i>Union Elevator and Warehouse Co. v. State ex rel.</i> <i>Department of Transportation,</i> 144 Wash. App. 593, 606-607 (2008).....	45
<i>Wash. Pub. Ports Ass'n v. State Dep't of Rev.,</i> 148 Wn.2d 637 (2003) .....	42
<i>Wilson v. Steinbach,</i> 98 Wash.2d 434 (1982).....	49

### Constitutional Provisions, Statutes and Court Rules

42 U.S.C. § 4601-4655 .....	1
42 U.S.C. § 4621(c)(2).....	43
42 U.S.C. § 4622(a) .....	43
49 C.F.R. § 24.1, <i>et seq.</i> .....	1
49 C.F.R. § 24.301 .....	38
RCW 8.26.010 .....	43
RCW 8.26.020(4).....	42
RCW 8.26.020(4)(a) .....	42

RCW 8.26.035 .....	43
WAC 468-100, <i>et seq.</i> .....	1
WAC 468-100-301(5).....	10
WAC 468-100-301(7).....	39, 47
Washington State Department of Transportation Right of Way Manual, Chapter 12 (August 2012).....	1, 41
Washington Department of Transportation Right of Way Manual 12-5.1.2(C)(11) .....	56
Washington State Department of Transportation Right of Way Manual §12-7 .....	38, 39, 43, 56
Washington State Department of Transportation Right of Way Manual §12-7.2.3 .....	43
Washington State Department of Transportation Right of Way Manual §12-7.2.3(A.).....	39
Washington State Department of Transportation Right of Way Manual 12-7.5.2(D)(1).....	56
Washington State Department of Transportation Right of Way Manual §12-9.1 .....	11, 39
Washington State Department of Transportation Right of Way Manual § 12-9.2 .....	11
Washington State Department of Transportation Right of Way Manual, §12-9.2(C).....	38
Washington State Department of Transportation Right of Way Manual §12-9.3(B)(3) .....	56, 59
Washington State Department of Transportation Right of Way Manual 12-9.4(B).....	56

## I. INTRODUCTION

The Relocation Act<sup>1</sup> is a compensatory statute that assists businesses undergoing the involuntary process of condemnation. Congress recognized that just compensation alone was insufficient redress for businesses because it often resulted in their closure. The Congressional remedy was to pass the Relocation Act to minimize the adverse impact of a taking on a business, ensure that the business will not suffer disproportionate injury, and reimburse it for its reasonable and necessary expenses incurred to move personal property and reestablish its operations. The Act provides for a broad range of financial assistance to facilitate a business with a site post-taking that operates comparably to its site pre-taking. In so doing, the "unique circumstances" of the business must be considered.

Here, the Port of Vancouver, USA ("Port") condemned a portion of Pacific Coast Shredding, L.L.C.'s ("PCS's") leasehold in the most critical area of its 20-acre scrap metal recycling operations. The trial court concluded, in its appellate capacity in a decision that neither party appealed, that the condemnation "forced" PCS to move its "traffic corridor

---

<sup>1</sup> This appeal concerns PCS's claim made pursuant to the Washington Relocation Assistance and Real Property Acquisition Act (RCW 8.26, *et seq.*), the corresponding administrative code (WAC 468-100, *et seq.*), the federal Uniform Relocation Assistance Act (42 U.S.C. § 4601-4655) and 49 C.F.R. § 24.1, *et seq.* (collectively the "Relocation Act"). The Port recognized the governing authority of the Relocation Act in its Resolution 7-2014. AR 1-2, 5. The Washington State Department of Transportation Right of Way Manual, Chapter 12 (August 2012) ("WSDOT Manual") also provides guidance on application of the Relocation Act. *See* AR 9229 (Port briefing recognizing WSDOT Manual governs).

and shred storage." It also concluded that PCS was entitled to reimbursement under the Relocation Act.

Yet, the administrative body in this matter has consistently determined that PCS is not due any reimbursement, despite the undeniable adverse impact that the Port's taking has had on PCS. The administrative body has not once taken into account either the policies of the Relocation Act or the unique circumstances of PCS as a major industrial facility that make safety a paramount consideration in its operations. Instead, it issued Findings of Fact and Conclusions of Law that contradict the trial court's binding decision, contain erroneous interpretation of the Relocation Act, are not supported by substantial evidence, and are arbitrary and capricious. This Court should reverse the administrative decision and remand for further proceedings.

## **II. ASSIGNMENTS OF ERROR AND ISSUES PRESENTED**

### **A. Assignments of Error**

1. The Panel erred upon remand in issuing Primary Findings of Fact A and supporting findings 7 through 17, AR 9829-9833, in contravention of the binding decision of the trial court acting in its appellate capacity. App 3-5.

2. The Panel erred upon remand in issuing Primary Findings of Fact B and supporting findings 18 through 25, AR 9833-9836, in contravention of the binding decision of the trial court acting in its appellate capacity.

3. The Panel erred upon remand in issuing Conclusion of Law

E.19, AR 9849, in contravention of the binding decision of the trial court acting in its appellate capacity.

4. The Panel erred upon remand in issuing Conclusion of Law A and supporting subconclusions 6 and 7, AR 9843-9844, in contravention of the binding decision of the trial court acting in its appellate capacity.

5. The Panel erred upon remand in issuing upon Conclusion of Law D and supporting subconclusion 15, AR 9847-9848, in contravention of the binding decision of the trial court acting in its appellate capacity.

6. The Panel acted arbitrarily and capriciously in issuing its 26 pages of Findings of Fact and Conclusions of Law, AR 9827-9852, because they contradict each other.

7. The Panel erroneously interpreted what is “reasonable” and “necessary” under the Relocation Act as being based upon cost alone, without consideration of safety. The Panel’s Primary Findings of Fact A, B, C, D, E and F, and supporting subheadings, and its Conclusions of Law A, B, C, E, and F, and supporting subheadings are based upon that erroneous interpretation. AR 9827-9852. PCS suffered substantial prejudice as a result of the Panel’s interpretation.

8. The Panel’s Finding of Fact B.23, AR 9834-9835, that safety was not a “credible response” to the Port’s evidence of alternative “and substantially cheaper solutions” is not supported by substantial evidence in the record and is arbitrary and capricious.

9. The Panel’s Findings of Fact and Conclusions of Law, AR

9827-9852, are not supported by substantial evidence and are arbitrary and capricious because they are premised upon a finding that PCS maintained a pre-taking traffic path of 14.9 feet in the southern end of the PCS leasehold.

10. The Panel erroneously interpreted in its Conclusion of Law E.19, AR 9849, and Finding of Fact B.25, AR 9835-9836, the Relocation Act's standards for proof of expenses. Substantial evidence in the record supports that PCS met the Relocation Act requirements for reimbursement under the Act.

**B. Statement of Issues**

1. Did the Panel err by issuing Findings of Fact and Conclusions of Law that repudiated a binding appellate decision and were arbitrary and capricious because they were riddled with contradictions? (Assignments of Error 1-6).

2. Did the Panel erroneously interpret "reasonable" and "necessary" under the Relocation Act to include only an assessment of cost without any consideration of safety? (Assignments of Error 7-8).

3. Did substantial evidence support the Panel's Finding of Fact that safety was not a "credible response" to the Port's evidence of alternative and cheaper solutions when the Port presented no evidence of whether those alternatives were safe? Was the Panel's Finding of Fact arbitrary and capricious because it was not supported by the record? (Assignment of Error 8).

4. Does substantial evidence support the Panel's Finding of

Fact and Conclusion of Law that PCS maintained a minimum pre-taking large vehicular traffic path of 14.9 feet when uncontroverted evidence established that width was unsafe, the trial court found in a binding decision the road was at a minimum 20-feet, Google photos (which the Panel found highly credible) support PCS maintained at least a 20-foot road, and multiple experts testified PCS maintained a 20-foot road? Was the Panel's Finding of Fact arbitrary and capricious because it was not supported by the record? (Assignment of Error 9).

5. Did the Panel erroneously interpret what is required under the Relocation Act for PCS to prove its expenses for purposes of reimbursement? Does substantial evidence in the record support a finding that PCS met the Relocation Act requirements for reimbursement under the Act? (Assignment of Error 10).

### **III. STATEMENT OF THE CASE**

#### **A. Procedural History**

In November 2010, the Port informed PCS that it was condemning the southern portion of PCS's leasehold. On March 1, 2012, the Port issued a "Notice of Eligibility, Entitlements & 90-day Assurance" to PCS. AR 847. On April 3, 2012, PCS appealed the Notice. AR 851-852. On May 21, 2012, the Port requested additional information from PCS. PCS provided that information on September 25, 2012, and requested an immediate hearing. AR 866. The Port responded on October 17, 2012, indicating it was considering PCS's submitted material and that it would be more productive to have a hearing at a later date. AR 867.

On September 11, 2013, PCS submitted to the Port its detailed claim for reimbursement of relocation expenses and accompanying invoices. AR 1181-2747. On April 18, 2014, the Port denied PCS's claim. AR 3045-3047, 6802-03. The Port found that the taking did not cut off PCS's traffic path, and limited PCS to a "Personal Property Only" move. AR 3045-47.

On June 16, 2014, PCS appealed the Port's determination. AR 3082-83. On August 20, 2014, PCS again requested a hearing. AR 3118-19. On September 23, 2014, the Port adopted for the first time its relocation appeal procedures, titled "Resolution 7-2014." AR 1-10, 3120. Thereafter, the Port convened a panel of three individuals (hereinafter "Panel") for an administrative hearing, which commenced on May 4, 2015. AR 12, 3680. On July 27, 2015, the Panel issued its decision. AR 9364-9382. The Panel denied PCS all relocation benefits.

PCS appealed on August 26, 2015, to the Superior Court of the State of Washington in and for the County of Clark. The trial court, acting in an appellate capacity, reversed and remanded the Panel's decision on September 8, 2016. Neither party appealed. On May 15, 2017, the Panel issued a final order and judgment and adopted 26 pages of Findings of Fact ("FOF") and Conclusions of Law ("COL"). AR 9827-52. The Panel again denied PCS relocation benefits.

On May 25, 2017, PCS appealed again to the trial court. On May 11, 2018, the trial court issued a Memorandum of Opinion and Order Deciding Pacific Coast Shredding, LLC's Second Petition for Review of

Final Agency Order. App 1. The trial court reversed the Panel's FOF and COL and awarded PCS \$68,259.17 for personal property move costs already paid and not at issue before this Court; \$347,800 in expenses for reconfiguration of the conveyor; and \$46,000 in tramming costs prior to reconfiguration.

**B. Statement of Facts**

**1. PCS is a scrap metal recycling business dependent upon its safe, large vehicular traffic path.**

PCS operates a primarily ferrous scrap metal recycling facility on property under a long-term lease with the Port. AR 459-625. PCS buys scrap metal from the public, the government, and private businesses, processes scrap through its shredder, stores scrap onsite until sufficient quantities are amassed, and transports the bulk scrap offsite for export or additional processing. AR 1141, 3740, 6797.

The key component of PCS's enterprise is a \$10-million shredder. AR 1142. Prior to the taking, the shredder was aligned generally north-south on the leasehold in a straight line, with in-feed at the north end and processed shred at the south end. AR 6797. The shredder and its components measure approximately 350 feet long. AR 1142. The shredder can chop into pieces 1,500 tons of scrap per day, including everything from washing machines to cars. AR 1142.

The shredder operates as follows: A material handler places scrap on a large conveyor belt (the in-feed conveyor) that transports it from the ground level feedstock pile to the shredder's mouth where the scrap is

pulverized into fist-size pieces. AR 1142-43, 3752. The shredder needs constant feeding thereby requiring that the feedstock pile be located next to the in-feed conveyor. Conveyors carry the fist-size pieces through a series of sorting mechanisms that separate ferrous and nonferrous scrap. AR 1142-43, 3746, 3753. The nonferrous material runs on conveyors through additional sorting processes and is deposited into piles. AR 3753.

Meanwhile, the ferrous material continues through a different conveyor system. The majority of shred (75%) fed into the shredder is ferrous material. AR 1143. The ferrous material goes through a Z box, which filters out impurities, and then to a picking station where employees pick out additional impurities. AR 1143, 3753-55. From there, a conveyor rotating on a fixed axis deposits ferrous shred in a semicircular pile up to 32 feet high and 60 feet wide at its base (referred to as "conveyor-stacked shred"). AR 1143, 6804. The conveyor-stacked shred pile is at times pushed by a front-loader into a higher and broader pile along the southwest edges of the conveyor stacked shred (referred to as "loader-stacked shred"). *See* AR 2760 (depicting shredder, conveyor, and shred pile).

PCS designed the circular traffic path on its leasehold around its shredder because 80% of its business involves delivery of material to the shredder and removal of processed shred for transporting after sufficient bulk is collected. AR 1142, 3744-48. Approximately 291 trucks, not including PCS's own equipment, travel the site daily, and 90% of all traffic on the site uses the dedicated vehicular traffic path. AR 1142,

3444, 6797. The traffic path traverses a circular route: entrance through the eastern front gate, west to the shredder feedstock pile, south from the shredder feedstock pile, easterly around the ferrous pile continuing parallel to the river, north past the nonferrous scrap piles, and exit through the gate. *See* AR 6256 (drawing depicting circular traffic path); AR 9107 (photograph evidencing same).

The piles adjacent to the traffic path fluctuate in size depending on incoming scrap received, and the product export shipping schedules. Correspondingly, the width of the traffic path also fluctuates, but never less than 20 feet wide. PCS buys significant material daily from the general public as they arrive at the site with scrap to sell to PCS. Thus, there is a large amount of unscheduled scrap coming in to PCS over which it has no direct control for planning purposes. AR 4495. The same concept applies to processed shred. Shred is a commodity sold by PCS; when ships are due at the Port, PCS must have sufficient processed shred on hand to load those ships for export. *Id.* At times, because of the shipping schedule, the processed shred pile becomes very large. *Id.* In order to remain profitable, PCS must maintain sufficient storage space to accommodate those fluctuating piles at their largest. AR 6800-01. Indeed, on appeal, the trial court found that the pile reached full storage capacity at least 45 times per year. AR 9392.

**2. The Port notified PCS it was condemning a portion of PCS's leasehold. The Port repeatedly found its taking had no impact on PCS's traffic path.**

The Port condemned 7,332 square feet of PCS's critical vehicular flow space that was an integral part of PCS's business operations. AR 9392. From the outset, and prior to the actual date of the taking, PCS repeatedly advised the Port that the condemnation would cut off PCS's traffic path, requiring PCS to move the shredder and shred piles. AR 1143, 3423, 3426-29, 3444-3445, 3739, 3758, 4044-45, 4163, 4500-02, 6802, 9187 (graphic depicting by orange line where taking would run through PCS site).

While the Port determined that PCS was a "displaced person" under the Relocation Act and had a right to receive appropriate relocation assistance, the Port concluded that the taking did not impede PCS's traffic path. AR 844, 847-849. Accordingly, on March 1, 2012, the Port limited PCS's relocation benefits to "personal property only," which restricts a business in the type of costs for which it may receive reimbursement. WAC 468-100-301(5), (7)(a)-(g) and (r).

On April 3, 2012, PCS appealed the Notice. AR 851-852. Not until May 21, 2012 did the Port's counsel respond to PCS's appeal, requesting that PCS submit detailed information as to what expenses PCS believed qualified for reimbursement under the Relocation Act. AR 853-854. On September 25, 2012, after seeking bids and researching options to respond to the taking, PCS provided the Port with a detailed description of the traffic path problem, and an estimated budget for reconfiguring the

site in order for PCS to maintain operations both during and after the taking. AR 861-865.

PCS objected to the PPO classification because the choke point the taking would create would prohibit it from operating after the acquisition, and, in order to facilitate the continuous operation of its business, PCS had to incur re-establishment expenses by moving the shredder conveyor and reconfiguring the PCS site layout. AR 861-862; *See* WSDOT Manual, §§ 12-9.2, 12-9.1.

The Port responded on October 17, 2012, indicating that it was considering the material submitted by PCS. AR 866. PCS heard nothing further from the Port. On September 11, 2013, PCS submitted to the Port its detailed claim for reimbursement of relocation expenses including construction costs and accompanying invoices. AR 1181-2747. More than seven months later, on April 18, 2014, the Port denied PCS's claim. AR 3045-3047, 6802-6803. The Port again found that the taking did not impede PCS's traffic path and limited PCS to a "Personal Property Only." AR 3045-3047. Prior to the Port's denial, Martyn Daniel, a relocation specialist retained by the Port, advised the Port that the taking would in fact restrict the traffic path at the southern end of the leasehold. Daniel recognized that merely moving shred was not sufficient and, instead, an engineered solution was required. AR 3068-3081, 3087-89. Indeed, Daniel conceded that: "PCS chose to *solve* the impacts by removing and reinstalling the conveyor system by turning it clockwise 90 degrees to allow room for the new truck path. This reorientation solved the truck

path problem." AR 6629. (emphasis added)

On June 16, 2014, PCS appealed the Port's April 18, 2014 determination. AR 3082-3083. The Port immediately issued payment of \$68,259.17 to PCS for relocation of scrap metal that was located directly on part of the condemned portion of the leasehold.<sup>2</sup> Thereafter, the Port hired the Panel. AR 12. That same Panel, as described more fully below, denied PCS any reimbursement, finding contrary to the Port's expert that the taking did not impede PCS's traffic path and PCS should have done nothing in response.

PCS appealed the Panel's first decision. The trial court recognized in its September 8, 2016 Order that:

"The Port's taking of the southern portion of the leasehold property *effectively closed the existing traffic path* when the 'conveyor-stacked' shred pile reached full storage capacity, which occurred approximately 45 times per year. *The path would narrow at a 'choke point' near the southeastern corner of the pile and traffic would be unable to circulate through this area.* In order to *safely and effectively* maintain its operations, PCS would be required to either (A) use machinery to "tram" materials away from the area and store these materials in additional 'loader-stacked shred' piles or (b) reconfigure the conveyor, and/or other components of the shredder plant, to deposit the 'conveyor-stacked shred' pile on another portion of the leasehold property."

AR 9392 (Emphasis added). Neither PCS nor the Port appealed that trial court decision.

---

<sup>2</sup> The payment of \$68,259.17 is not at issue before this Court.

- 3. The PCS reconfiguration was reasonable and necessary to provide a safe and continuous operation of its business after the taking. The Port presented no evidence regarding safety.**
  - a. Keeping the southern end of PCS's traffic path fully open is critical to PCS's safe and efficient operation.**

At the administrative hearing, Neil Fitzpatrick, Operations Manager at PCS, testified:

"Our yard receives scrap, we process scrap, and we deliver scrap. It's the three main things we do. We do it in a safe manner, and we do it with environmental compliance in mind. Those are the main aspects of running a site."

AR 3740. Fitzpatrick, who had previously worked at other shredder yards and had visited at least 10 to 15 such yards, testified that maintaining the full width of the traffic path was paramount to PCS's shredding operations, as it is for the entire industry. AR 3761, 3786.

Mike Vail, former PCS Vice-President of General Operations, who continues to work in the shredding business, also testified to the importance of safety and how that is ineluctably linked to PCS's circular traffic path. AR 3995-96, 4003-06, 4037-38, 4041. He described the "excruciating" amount of planning and design time he spent with engineering experts to ensure the PCS traffic path accommodated a safe turning radius of vehicles while maximizing available space. AR 4004-05, 4041. Because of the high volume of scrap that PCS handled on a very small acreage footprint, and in order to achieve operational goals, "extremely efficient flow" was imperative "at all times throughout [the] facility." AR 4036-37, 4074.

Dr. Adam Aleksander, an engineer who specializes in industrial safety issues, testified that: "PCS has survived for many years in this competitive business by maintaining some kind of a degree of efficiency."

"[Y]ou might imagine it's sort of like a ballet of different pieces of equipment working every day as efficiently as possible to maintain the flow, the distribution of their various inventory, the avoidance of rehandling of inventory, maintain traffic flow, which has to accommodate several hundred trucks per day, whose drivers may not have ever been there, who are guided by people and supervisors on the ground."

AR 4324-29, 4373. Dr. Aleksander testified that because of the size of the trucks and visibility concerns, the traffic path must route to the left in a counterclockwise circulation. AR 4374, 4379-4380. For example, routing to the left provides drivers greater visibility of workers on the site. AR 4381-82. Accordingly, the "traffic patterns are part of the safety underpinning of [the PCS] operation." AR 4374.

Neil Alongi, an engineer with over 40 years' experience and a principal at Maul Foster & Alongi (MFA) who has worked in the scrap metal shredding industry for 18 years, testified as to the import of assessing industrial facilities by visiting the site and examining conditions. AR 4421-24. Alongi has visited the PCS site between 100 to 300 times during a 17-year period. AR 4423. Alongi affirmed that it was imperative for both safety and efficiency that PCS keep its traffic path as routed and counterclockwise. AR 4430-31.

In large trucks, visibility is somewhat limited, and a left-hand turn, as well as backing to the left, is safest. AR 4432-33. Alongi testified as to

the common truck types on the site and established the minimum, safe-turning radii at critical points on the traffic path, including, most critically, at the southern corner of the pre-taking shred pile where on average 300 trucks per day traverse. AR 4433-4448.

Dr. Aleksander analyzed PCS's use of the southern portion of its site based upon a day-long site visit and Google Earth photos of the site from 2007 to 2014. AR 4329, 4333-4336, 6847. Dr. Aleksander testified that while the piles of material grow and shrink cyclically over time, the piles remain in the same general areas. AR 4336; *see also* AR 4072-73. He observed that the southern end was always preserved "for truck traffic, for loading shred, for operational use, for safety." AR 4337. Valerie Uskoski, an engineer at MFA, testified that pre-taking, the traffic path narrowed at the south end, but there was no choke point and it was safe and passable. AR 4263.

Alongi testified that the traffic path fluctuated from 28 feet to 34 feet in width depending upon the sizes of the piles. AR 4471. Dr. Aleksander confirmed, based upon his analysis of Google photos of the site over a seven-year period, that the traffic path at the site averaged 28 feet to 30 feet in width from 2007 to 2014, with a minimum at one point in time of 20 feet. AR 4338-4342, 4409-4410. Dr. Aleksander testified:

"An important finding of this study is that one, and only one, site process yard area was not used for storage and processing. This one area that was specifically protected was the 20 foot wide access road along the South-West perimeter of the site. This clear roadway extends for 560 feet along the South-West perimeter, and

continues 650 feet North-Easterly to the main gate. The South-West section has always been maintained at a 20 foot width, and in places in excess of 28 feet."

AR 6848, 6850 (referring to the southern end of the traffic path).

Dr. Aleksander testified that for the purposes of safety, the average width PCS should maintain for its traffic path is 28 feet, with a minimum 20-foot traffic path at the southern end. AR 4410-11, 6850-51. He opined that a minimum 20-foot traffic lane was necessary to ensure that:

"[a]ccess for all equipment at the PCS site will be unimpeded by continuing the 20 ft truck lane[, v]isibility with the current 20 ft truck lane has been and will be unrestricted[, a] 20 ft truck lane maximizes safety for pedestrians, drivers, and equipment."

AR 6850. Dr. Aleksander vehemently disagreed with the Port's recommendation that a 14.9-foot traffic path was sufficient post-taking, testifying that such a restricted pathway would cause a series of problems including dangerous and unsafe traffic conditions, poor visibility, and unreasonably limited access to shred. AR 4347. Notably, the trial court found, in its appellate capacity prior to remand to the Panel, that in order for PCS to facilitate its operations "a minimum 20 foot traffic corridor was maintained around the piles." AR 9391-92.

**b. The taking eliminated significant shred products storage and cut off PCS's traffic path at the south end leasehold.**

During the hearing, Alongi mapped for the Panel the exact taking line on the south end of the yard during a peak time when PCS had large shred piles. Alongi demonstrated how the taking cut through the shred pad and eliminated truck-turning room for trucks heading south from the feedstock pile. AR 4500-4502. Critically, he established that the taking

cut off the traffic path south of the shredder to five feet at its narrowest, creating "an unmanageable bottleneck effectively choking the flow of trucks and equipment." AR 4500-4502, 6802; *see also* AR 9193 (depicting taking line in orange and the visibility issue it created). Alongi emphasized that the actual size of the taking had no relevance; that what mattered was that the taking occurred at a "critical juncture in [the] whole entire site." AR 4565.

Uskoski confirmed Alongi's testimony and testified that, after the taking, PCS would not have been able to use over half of its shred pad. AR 4141-43, 4212. Vail testified that PCS's traffic path was one of the absolute most critical components on a go-forward basis for the continued success of Pacific Coast Shredding." AR 4045. The trial court concluded that that taking would have closed PCS's traffic path approximately 45 times per year, prohibiting traffic from circulating through the site. AR 9392.

**c. PCS analyzed various options to maintain its operation post-taking. Repeatedly moving piles of shred, also known as tramming, was not viable.**

Fitzpatrick testified that PCS looked at different options besides the reconfiguration it undertook. AR 3765-6. Fitzpatrick testified that PCS tried to find the best solution to minimally impact the business, support PCS's requirements for shipping and receiving, and accommodate the Port's taking. AR 3765.

PCS retained MFA to preserve the safe and efficient operation of the site after the taking, keep costs to a minimum, and use good

engineering practices. AR 3962-63, 4428-30. Uskoski and Alongi both testified that MFA analyzed various options to rectify the problem. AR 4143, 4544. In doing so, MFA considered: cost-effectiveness, safety, "[p]ermanent impacts to PCS's traffic circulation, loading/unloading operations (truck and rail), storage of shredder feedstock, storage of shred, [and] access for fixed equipment maintenance." AR 6802. MFA contemplated moving the entire operation but it was very costly. AR 4144, 4545. MFA considered turning the entire shredder, including conveyors, 180 degrees but that also proved cost prohibitive. AR 4144, 4545-47.

Uskoski testified that "obviously" MFA's first consideration was to do nothing. But, "the consequence of doing nothing was it shut us down completely. We couldn't continue to operate." AR 4143. Alongi testified that doing nothing was simply not an option because of the location where the taking occurred. AR 4579.

MFA also evaluated the option of moving a portion of the shred pile. AR 6802-03, 6837-38. Alongi determined that moving the pile to the nearest available areas within reach of the shredder would reduce PCS's ability to store conveyor-stacked shred volume by approximately 40%. AR 6803, 6837-38 (illustrating Port's proposed option). Alongi opined that, although the area where the taking occurred could have been relocated by moving a portion of the shred pile,

"the conveyor-stacked shred volume would have been reduced by approximately 40%, negatively impacting the efficiency of shred storage operations by requiring shred previously stacked in [the area where the taking occurred] directly adjacent to the conveyor, to now require relocation by loader into a loader-stacked shred pile

thereby significantly reducing the efficiency of the shred handling operation. This shred relocation by loader adds time and costs to the operation that were not previously required. Additionally, *the reduced conveyor-stacked shred would create safety concerns by requiring the shred loader equipment to operate closer to the conveyor shred stacking operation as these two operations (conveyor and loader stacking) occur simultaneously.*"

AR 6803 (emphasis added).

As a result of moving the piles into the nearest available areas, PCS would have had to significantly reconfigure the remainder of its site. AR 6803; AR 6838 (illustrating impacts on rest of site). For example, the move would have forced "the shredder feedstock area further to the north in order to provide an equivalent stockpile area to the pre-taking condition." AR 6803. The significance is that, "even if the unacceptable 40% loss of conveyor-stacked shred storage is ignored, the other impacts would still have needed to be addressed in the same manner as the 90 degree conveyor rotation alternative." AR 6803.

Dr. Aleksander testified at length about the inefficiencies of tramming, which is moving material from Point A to Point B. AR 4342. Dr. Aleksander made clear that once scrap is processed (*i.e.*, shredded and deposited on the shred pad), PCS should not re-handle it until it is time to ship it or provide it to a vendor. AR 4344. He opined it was unreasonable to expect PCS to use tramming. AR 4342-43, 4412.

Dr. Aleksander testified that pre-taking he had seen some overflow of shred (albeit not often) from the feedstock pile onto or into the southwest area of the primary traffic path, which travels on the western edge. AR 4346, 4406-4408. He explained:

"The ones that I have seen I don't think have been significant. If you send somebody down there and said, Hey, you know, grab a load or go clean up, we need that pathway right now, 45 minutes later it would be clear."

AR 4346. For that portion of the path (referred to in testimony as the "north-south line") Dr. Aleksander testified that PCS could use a front loader to push the material back off the path and, despite the blockage, the circulation pattern remained in place, allowing vehicles to continue to traverse the site. AR 4392-95; AR 6861 (photo evidencing material in north-south line but circulation pattern in place, including along south end of leasehold). However, as to the portion of the east-west traffic path that runs on the south edge parallel to the river (as opposed to the north-south line) where the choke point took place, Dr. Aleksander testified that he had never seen it blocked. AR 4346. "That's the primary egress to all the vehicles for passing and for loadout of the shred." AR 4346.

Fitzpatrick stressed the importance of maintaining the shred piles exactly where created by the shredder and adjacent to the traffic path and noted the expense of double handling it. AR 3763-64. Uskoski confirmed that the shred piles needed to be kept close to the shredder and testified that in order to remain operational as a business, PCS needed to maintain the same cost of material handling and the same efficiency. AR 4217-18, 4276-77. Uskoski agreed with Alongi's assessment that moving shred elsewhere would displace operations occurring wherever PCS moved the shred due to the small size of the leasehold. AR 4253-54.

**d. Rotation of the ferrous conveyor was reasonable and necessary.**

Uskoski testified that MFA determined the safest, most efficient, and least impactful solution was to rotate the ferrous shred path 90 degrees and reconfigure the site. AR 4144-45, 4216. Mark Mullins, who has worked in the metal shredding industry for over 35 years, testified that PCS had to rotate the ferrous conveyor system to the west, because due to the taking on the southern end, it was the only direction it could go. AR 3949-50. Alongi testified:

"A reconfiguration of the yard was required to reestablish the same level of *operational safety* and efficiency existing before the taking. PCS determined that modifying the ferrous outfeed conveyor from the shredder by rotating the conveyor approximately 90 degrees to the west would be the most cost-effective solution to achieve this goal."

AR 6802-3 (emphasis added). Alongi repeatedly emphasized that rotation of the conveyor and the reconfiguration of the yard is what preserved the safeness of the PCS site. AR 4505-6, 4508, 4519.

Dr. Aleksander opined that "the PCS reconfiguration plan and implementation was indeed the necessary reasonable resolution to PCS, to maintain safety, process flow, and material handling operations." AR 6847. Dr. Aleksander emphasized that "other options would compromise safe access and safe truck operations, and would unacceptably infringe on existing storage and yard equipment operation." AR 6850.

Fitzpatrick testified that PCS rotated the conveyor in order to accommodate the taking while moving the traffic path but keeping it at the same width. AR 4504-6. He testified that PCS performed the

reconfiguration in phases in order to remain operational during the taking and construction, and did major work on the weekends, such as the rotation itself. AR 3880-81; *see also, e.g.*, AR 5827. Fitzpatrick testified that in effectuating the reconfiguration, PCS's goal was to keep costs down and therefore PCS always accepted the lowest bid, unless the way the vendor was "going to do it was probably unsafe." AR 3828.

Rotation of the conveyor necessarily involved changes to the Z box,<sup>3</sup> picking station,<sup>4</sup> and shred pad. AR 3767-69, 3909-3913, 4169-4173. The changes to the Z-box and dual picking station did not increase efficiency, but rather, resolved uneven belt loading resulting from the 90-degree turn and allowed PCS access to the shredder to perform repairs, which had to be done on a nightly basis. AR 3773-80, 3825, 3909-3911, 3918, 4171. Dr. Aleksander testified he did not believe there were any other options PCS could have pursued for purposes of the picking station. AR 4416-17.

The 90-degree rotation also caused a series of repercussions in that PCS had to shift the conveyor slightly to the north/northwest in order to provide more room at the south end where the taking occurred, as well as to allow safe access to Cells 2 and 3. AR 3767-69, 3896; *see also* AR

---

<sup>3</sup> The Z-box takes material as it comes off the magnets and acts as a cyclone, using suction to extract impurities. AR 3771-79, 3783. The remaining material goes to the pickers at the picking station.

<sup>4</sup> The purpose of the picking station is to for workers to identify and remove non-metallics, such as car seats and foam, and materials that could cause a jam-up past the picking station. AR3755, 3771-3774.

6823 and 2869 (showing Cells 2 and 3). As a result, PCS had to move its rail line, secure environmental permits, and move the shredder feedstock area, among other changes. AR 4146-4160, 4166-86, 4508-18, 4555-9. Those changes allowed PCS to maintain a safe operating corridor throughout the site. AR 4519, 4527. Moving the rail line allowed PCS to stay operational, maintain its efficiencies and safety, and, "essentially, get through two construction projects going on simultaneously[.]" AR 4176. Uskoski testified that the reconfiguration allowed PCS to stay operational despite the taking. AR 4188. Alongi testified that the reconfiguration allowed PCS to maintain a "safe operating corridor through the site." AR 4519.

PCS also had to lease additional storage area (referred to as Parcel 1A) from the Port during the Port's construction period and PCS's reconfiguration. AR 626-654, 4186-88, 4222-24. PCS had to create safe zones onsite for construction, and remain operational while the work occurred. AR 3831, 4186. In order to create those zones, PCS had to temporarily move its heavy metal steel to Parcel 1A. AR 4185-4188. As Fitzpatrick emphasized in his testimony: when a company engages in construction on its operational site, it needs to have zones to stage materials where they can be accessed "in a safe manner." AR 3831.

**e. The reconfiguration did not improve PCS efficiency, nor did PCS previously intend to reconfigure.**

Vail testified that when he left PCS in 2010, PCS was not planning to reconfigure its site. AR 4039-41. Fitzpatrick emphasized that PCS did

not undertake the reconfiguration to make its operations more efficient, and that PCS would have preferred to leave the site as-is because that site "was safe." AR 3837; 3840. He also stated that no one at PCS had ever expressed to him any dissatisfaction with the layout of PCS's yard. Mullins testified that despite visiting the PCS site three or four times a year and having spoken to PCS representatives on a weekly basis since 2005, PCS never requested assistance in making the shredder more efficient. AR 3916. Uskoski clarified that PCS had not once directed her to improve PCS efficiency through the reconfiguration. AR 4189. Alongi also testified that PCS was very clear in its direction that MFA's purpose was not to better the site, but rather to maintain the safety and efficiency of the operation. AR 4614-15.

Daniel Jacobson, the Chief Financial Officer for Metro Metals Northwest, which owns PCS, testified that PCS tracks how much shred it processes and ships. AR 4616, 4622. Jacobson testified that PCS has a slim profit margin, and small impacts in efficiency can have big impacts on that margin. AR 4626. Jacobson testified that PCS is not more efficient post-configuration, as evidenced by the percentage of impurities in PCS's process shred. If PCS had become more efficient due to its reconfiguration, there would be fewer impurities in its processed shred. However, post-configuration, the impurities in PCS's shred have not decreased. AR 4627-4635.

Fitzpatrick testified that the reconfiguration did not improve PCS's operations, but rather PCS was "doing as good as we did before." AR

3781-2. Mullins confirmed there was nothing about the new picking station that allowed PCS to process more shred or process faster. AR 3917-18, 3921-29. Uskoski testified that the after-condition of the PCS site was as comparably safe as the before-condition but was neither safer nor more efficient. AR 4188-91. Dr. Aleksander testified that the amount of room at the south end of the traffic path after the reconfiguration was comparable to pre-taking. AR 4397-99. Alongi opined that the reconfiguration did not increase operational efficiency, but rather resulted in some loss of efficiency. AR 6808.

**f. Port witnesses recognized PCS's need to move the traffic path but did not consider safety in assessing the necessity and reasonableness of PCS's reconfiguration.**

Martyn Daniel, the Port's primary witness, is a relocation specialist. AR 4672-4674. Daniel testified that a relocation specialist helps businesses "understand the relocation guidelines so they can make informed decisions on relocating their business." The Port retained Daniel to evaluate the impact of the taking, determine whether PCS's reconfiguration was reasonable and necessary, and, if not, find alternative solutions that may have been eligible for reimbursement. AR 4688. Daniel is not an engineer, never saw the PCS site pre-taking, and only visited the PCS site once post-taking for approximately an hour. AR 4672-467, 4747, 4793. Daniel recognized that he had minimal experience with shredding operations. AR 4748-49.

Daniel testified that after December 2013 he studied how PCS operated its business and

"like everybody else, I realized that this truck path on the south end that you can see there on the property was a key element of their operation, and *felt that that needed to be recreated in the after condition.*"

AR 4690-91, 4753 (emphasis added). Daniel recognized that moving the truck path would also impact the shred piles located at the southern end of the leasehold by requiring PCS to move those piles. AR 4691-92, 6695.

Daniel believed that, pre-taking, PCS had maintained only a 14.9-foot wide traffic path through the area of the choke point and based all his expert reports and testimony on that width. AR 4694-4696, 6642, 6695.

Daniel opined:

"This partial property taking located at the Southern portion of the property has created a need to move an existing truck path 8.5 feet to the North. This existing truck path measured 14.9 feet at its narrowest point between the original usable property limits and the shred stack.

Moving this truck path [8.5 feet] to the North will encroach on the conveyor-stacked shred pile, a loader-stacked shred pile, and loader-stacked pile of steel plate. The loader-stacked piles can easily be moved to another location where future stacking will be outside of the new truck path. Because the shred stack in question is stacked by a stationary radial stacking conveyor, this shred stack cannot simply be moved one time for the new truck path to continue its function. The conveyor-stacked shred pile will need to be reduced in size or controlled. The method of reducing or controlling this shred stack is the key point in making changes to portions of PCS' operations[.]"

AR 6649. Daniel conceded that in deciding PCS had maintained a 14.9-foot traffic path in the southern end pre-taking, he did not assess the safety of such a path nor did he use engineering standards. AR 4754.

Instead, Daniel relied entirely on an undated aerial photo for his decision that a 14.9-foot path was appropriate. *See* AR 6628 (referring to

truck path as "approximately 14.9 feet wide (*see MacKay & Sposito sketch dated 2/18/14*)" (emphasis added); AR 5349 (aerial photo with MacKay Sposito dimensions); AR 6635 (aerial photo with Daniel's drawings); 4693-4696 (describing how determined width of truck path); AR 9063-9067, 9083. That undated aerial photo is one that PCS produced in its original claim seeking reimbursement. AR 4963-4696. The Port took that aerial photo and in 2014 had MacKay Sposito calculate measurements from it. AR 5349. Upon completion of calculating those measurements, MacKay Sposito stamped it with the disclaimer: "Aerial photo is for general reference only and is not current." AR 5439. MacKay Sposito indicated in the south end of the leasehold that the measurements were based upon an "approximate location of concrete shred slab (*not surveyed*)."  
*Id.* At the top of the photo, MacKay Sposito referred to it as a "sketch showing dimensions."  
*Id.* (emphasis added).

Daniel incorporated the MacKay Sposito "sketch" into his expert report and added further drawings to it, despite the fact that Daniel is neither an engineer nor a surveyor. AR 6635. Daniel cut the statement "not surveyed" off from the "sketch" used in his expert report. However, he indicated on the "sketch": "Dimensions and locations are *approximate*. Drawing is for presentation purposes only, *not for construction*."  
*Id.* (emphasis added). Nowhere on the photo does it indicate it is an official survey.

Daniel testified that he thought a 14.9-foot traffic path was reasonable based upon his experience driving semi-trucks, and his

knowledge that traffic lanes in towns are 12 feet. AR 4754. He testified that regulations require three feet of clearance on each side of a truck, which equates to 14.5 feet total. AR 4754. Daniel admitted that PCS uses equipment that is 14.3 feet wide, meaning it would need a traffic path that was at least 20.3 feet wide. AR 4755.

Daniel admitted that even with a 14.9-foot traffic path, moving the truck path to the north would "encroach on the conveyor-stacked shred pile, a loader-stacked pile, and [a] loader-stacked pile of steel plate." AR 6695. Daniel believed that PCS could relocate the loader-stacked shred with front-end loaders and move it anywhere on the property or up to 50 miles away. AR 4692. Daniel did not indicate where PCS had room on the property to move the loader-stacked shred, nor the costs of moving that shred, nor how moving it "up to 50 miles" away would impact PCS's operation. AR 4749-50, 4834-35.

Daniel conceded that the conveyor would no longer be able to "stack as much material in that area as it did in the before condition." AR 4698. Daniel recognized that PCS would lose 820 cubic yards, or 12% of its conveyor-stacked shred storage capacity. AR 4696-4700. Daniel totaled the cost of moving conveyor-stacked shred in order to adjust to the loss of 820 cubic yards at \$46,000 per year. AR 4699-701, 6695-96. That calculation, as well as all the alternatives that Daniel proposed to the reconfiguration undertaken by PCS were based upon a 14.9-foot traffic path. AR 6626-6634, 6640-6643, 6649-6656, 6695-6702.

Daniel admitted that, because "doing nothing" but continually

moving shred would impact the shredder's efficiency, under the Relocation Act PCS was "eligible for reimbursement to modify the conveyor to recreate its efficiency." AR 4692-3. Daniel opined that PCS could modify the conveyor itself "to recreate an equal function, as it did in the before condition." AR 4702. Daniel recognized that PCS was entitled under the Relocation Act to have a conveyor system that functioned "in the after condition as it did in the before condition." AR 4746.

**g. The Port proposed several cheaper but unsafe alternatives.**

Daniel proposed several alternatives to the reconfiguration undertaken by PCS: a variable speed drive, a retaining wall, a telescoping conveyor, and turning the shred conveyor while adding transfer conveyors.<sup>5</sup> AR 6626-6634, 6649-6656, 6696-97, 6701. Daniel testified he did not consider whether his proposed alternatives were safe and conducted no safety analysis. AR 4762-63. In Daniel's March 2014 expert report, he opined that the variable speed drive was the only reasonable and necessary remedy. AR 4360, 6626-6634. In Daniel's March 2015 report, he dropped the variable speed drive as an alternative and opined that the retaining wall was the only reasonable and necessary remedy. AR 6649-56, 6696-97, 6701.

Daniel Shapiro, a consultant in the scrap metal industry but not an engineer, was hired by the Port to evaluate the effect of the taking on PCS and the alternatives proposed by Daniel. AR 4999-5005, 5008. Shapiro

---

<sup>5</sup> See AR 009728 for a chart summarizing testimony disputing Daniel's and Shapiro's proposed alternatives.

rejected Daniel's proposed solution of a variable speed drive. AR 4363, 9290-9291. Shapiro determined that PCS needed to recreate its traffic path in the southern corner of its leasehold where the taking occurred. AR 5005-6. In his April 2015 expert report, Shapiro recommended alternatives to PCS's reconfiguration, including a retaining wall, deflector chute, and turning the existing equipment. AR 6740-43. Shapiro did not once visit the PCS site. AR 5061-62.

Shapiro based his proposed alternatives upon a 14.9-foot traffic path, because he believed that "14.9 feet of roadway is sufficient to circulate truck traffic." AR 6741. Shapiro assumed that Daniel's estimate of a loss of 820 cubic yards of material based on a 14.9-foot traffic path was correct.<sup>6</sup> From that calculation, he opined:

"The loss of 820 cu. yds. of material could have been handled with a front-end loader, move it to another location on what now is an expanded site without having to change all the rest of the yard configuration that went on."

AR 5036. Shapiro agreed with Daniel that the expense of moving the piles would be \$45,000 per year. AR 6746. Shapiro conceded that doing nothing but moving material around was not a good solution for PCS. AR 5060, 5097-98, 5103.

Shapiro opined that the deflector chute, not moving shred, was the best option, yet, another Port expert, Mike Allen, rejected the deflector chute as not a viable option. AR 4876-77. Shapiro admitted that he had

---

<sup>6</sup> Shapiro relied entirely on Daniel for all his calculations and data. AR 5104-5109.

never before recommended the deflector chute, did not consider how the electrical or conveyor system would need to change and provided no diagrams of what it would look like. AR 5069-72.

Dr. Aleksander testified that each of the Port's proposed alternatives was unsafe because they relied upon a 14.9-foot traffic path: "[a 14.9-foot traffic path] causes a series of problems in [the south corner], not the least of which is safety, visibility, access to the shred." AR 4347. Dr. Aleksander also testified that the variable speed drive was additionally unsafe because it would accelerate the scrap metal to a speed not ordinarily seen, without any ability to control the forward velocity of that material. AR 4360-4363. Daniel admitted that the variable speed drive would accelerate pieces of scrap metal at speeds of over 800 feet per minute. AR 4764-66.

Dr. Aleksander testified that a retaining wall would be highly unsafe for workers operating behind the wall, run a significant risk of loaders hitting the wall, create blind spots and contravene the Conveyor Equipment Manufacturers Association standards. AR 4348-4360, 4758-4760, 9288. Uskoski also testified that having a permanent structure in that area created a significant safety issue. AR 4145.

Mullins testified that he is unaware of a telescoping conveyor ever being used to deposit shred off a radial stacker. AR 3915-16; *see also* AR 4863-4866, 5073-5075 (Port witnesses testified same). Dr. Aleksander testified that the telescoping conveyor was unsafe because wind loading would occur, causing it to whip around or be torn off the shredder AR

4366-67. Mullins testified that turning existing equipment or turning the shred conveyor and adding transfer conveyors would create belt loading issues. AR 3909-12. Dr. Aleksander testified that those options would leave inadequate space for maintenance and allow no room for placement of loader stacked shred. AR 4368, 4370-71.

**4. The administrative body ("the Panel") found that the taking did not create a choke point in the traffic path while asserting PCS only required a 14.9-foot wide road.**

The Panel determined that PCS's full site reconfiguration was an unnecessary and unreasonable response to what the Panel referred to as a "potential" choke point, and denied PCS any reimbursement. AR 9364-9382. The Panel adopted the Port's conclusion that a 14.9-foot wide traffic path was sufficient. The Panel gave no consideration to safety. AR 9364-9832. However, the Panel relied heavily upon the testimony of PCS's safety expert, stating that his testimony was very instructive. AR 9373. The Panel found Dr. Aleksander very credible, concluding that: "Mr. Aleksander while seeming to have strong opinions provided honest and straight forward answers." AR 9375.

**5. PCS appealed. The trial court reversed, finding that PCS required a 20-foot traffic path and the taking created a choke point.**

PCS appealed the Panel's Decision to the trial court. On September 8, 2016, the trial court issued a Memorandum of Opinion and Order. AR 9390-9398. The trial court found that in order for PCS to facilitate its operations, "a minimum 20 foot corridor was maintained around the [shred] piles." AR 9391-9392. The trial court concluded that

the Port's taking "effectively closed the existing traffic path when the 'conveyer-stacked shred' pile reached full storage capacity, which occurred approximately 45 times per year." AR 9392. Thus, the trial court held that in order for PCS "to safely and effectively maintain its operations," PCS needed to either tram materials away from the area or "reconfigure the conveyer, and/or other components of the shredder plant." *Id.* The trial court remanded the matter to the Panel "to determine the amount necessary to reimburse PCS for reasonable expenses it incurred as a result of the Port's condemnation and the forced relocation of a portion of the traffic corridor and shred storage." AR 9398.

**6. On remand, the Panel adopted whole-cloth the Port's 26-page Findings of Fact ("FOF") and Conclusions of Law ("COL"), again ordering zero reimbursement to PCS.**

On remand, PCS argued that: (1) the reconfiguration was reasonable in that it allowed PCS to safely and effectively maintain its operations; (2) tramping to an unidentified location was not safe; and (3) the solutions proposed by the Port were not safe. AR 9552-9569; 9722-9728. The Port ignored safety and instead contended that PCS was not entitled to any reimbursement because PCS needed only a 14.9-foot traffic path. The Port asserted that its alternative solutions evidenced that PCS could have implemented a less costly solution. AR 9538-9547. The Port's only response to safety was a conclusory statement in a footnote: "Notwithstanding PCS's rhetoric, there is no credible evidence to support a finding that the property or operating in the after condition was unsafe,

necessitating the massive reconfiguration." AR 9739, n. 2.

The Port suggested that the parties submit findings of fact and conclusions of law. AR 9736. The Panel agreed. Thereafter, upon submission by both parties, the Panel adopted the Port's 26-page FOF and COL in its entirety, and again denied PCS any reimbursement under the Relocation Act.

**7. On appeal, the trial court reversed and ordered reimbursement to PCS.**

PCS appealed the Panel's FOF and COL. On May 11, 2018, the trial court issued its Memorandum of Opinion and Order. App 1. In that second Order, the trial court stated: "The court specifically ordered that the panel focus on a specific issue, given the agreement of the parties that an actual 'choke point' was caused by the taking and that PCS was required to address that 'choke point' in order to continue its operations[.]" App 3. The trial court also stated that its previous order "already determined that PCS was entitled to reimbursement" for "monetary costs associated with the 'choke point' problem." App 5. The court noted that the "parties did not appeal this court's decision." App 4.

The trial court criticized the Panel for finding the reconfiguration was not reasonable and necessary because that finding and the sub-findings supporting it "did not deal with any issues before the panel on remand." App 4. The court also rejected "[m]ost of the remaining findings of fact and conclusions of law adopted by the panel" as relating "to issues that were not before the panel on remand." App 5.

The court concluded by stating:

"Fortunately, buried in these immaterial findings and conclusions were secondary findings which allow for entry of a proper order without additional proceedings. \* \* \*. The court's previous order noted that the taking required PCS 'to either (a) use machinery to 'tram' materials away from the area and store these materials in additional 'loader-stacked shred' piles or (b) reconfigure the conveyor . . . to deposit the 'conveyor-stacked shred' pile on another portion of the leasehold property. The panel found that the reasonable cost of turning the conveyor was \$347,800. Finding of Fact C.28. The cost of tramping materials prior to turning the conveyor would be \$46,000 per year. Finding of Fact G. 40. The evidence suggests that tramping would have been necessary for approximately one year. These findings are supported by substantial evidence in the record."

App 5.

#### IV. ARGUMENT

##### **A. The Panel's FOF and COL are internally inconsistent, arbitrary and capricious, and contradict the law of the case.**

On an administrative appeal, the appellate court reviews the decision of the administrative body that made findings and conclusions. *See Davidson v. Kitsop County*, 86 Wn. App. 673, 681 (1997); *Snohomish County v. Hinds*, 61 Wn. App. 371, 375 (1991). Here, the FOF and COL of the Panel is the decision at issue. However, the Panel issued the decision after remand from the trial court, which was acting in an appellate capacity. Neither party appealed the trial court's decision. Thus, the trial court's September 2016 Order had binding effect on further proceedings before the Panel on remand. AR 9390-98; *See Lutheran Day Care v. Snohomish County*, 119 Wash.2d 91, 113 (1992); *Duncan v. City of Edgewood*, 196 Wash.App. 1045 \*7 (2016) (unpublished)(stating that

the law of the case doctrine means that once there is an appellate holding, it must be followed in subsequent litigation);.

The Panel committed error because its FOF and COL contradicted the binding decision of the trial court. Indeed, the trial court noted that it had "specifically ordered that the panel focus on a specific issue," neither party appealed its Order, and many of the Panel's FOF and COL were immaterial and on issues not before the Panel on remand. App 3-5.

First, the Panel committed legal error in its Primary Findings of Fact A and supporting subfindings 7 through 17: "The full site reconfiguration was not reasonable and necessary."<sup>7</sup> AR 9829-9833 (listing findings); *see also, e.g.*, App 3-5. That legal error is particularly evidenced by subfinding A.8.: "The site in the after condition \* \* \* remained unchanged except for the narrowing of the truck path at the south end of the shred operation." AR 9829. The trial court concluded that the Port's taking created an unworkable "choke point" prohibiting traffic from circulating through the southern end of the leasehold that required PCS to move both shred and its traffic path in order to maintain its operations. AR 9392, 9397. Thus, the site did not remain "unchanged" after the taking except for a "narrowing" of the road; PCS had to

---

<sup>7</sup> The Panel uses the misnomer "Findings of Fact" throughout its FOF and COL when indeed its conclusions under the "Findings of Fact" heading are either conclusions of law or mixed questions of law and fact. For example, the conclusion that PCS is entitled to just \$347,800 under the Relocation Act is a conclusion of law, which the Panel itself conceded. *See* AR 3182-83, 3187-90, 3628-36, 3656 (Panel stating that how each expense is reimbursable under the Relocation Act and the category under the Act that covers that expense is a legal conclusion).

effectuate a solution, whether it be through the reconfiguration or tramming. The Panel's FOF A and supporting subfindings ignored the trial court's binding decision that PCS, under the Relocation Act, was entitled to reimbursement for some determinable amount of its expenses, but not none. AR 9398. As the trial court noted in its second decision: "The primary finding, and the sub-findings that supported it, did not deal with any issue before the panel on remand." App 4.

Moreover, the Panel's FOF A is premised upon subfindings A.9 and A.10 that PCS maintained a 14.9-foot truck path prior to the taking. AR 9830. Yet, the trial court found that PCS maintained pre-taking "a minimum 20-foot corridor \* \* \* around the piles." AR 9391-9392. Again, neither party appealed the trial court decision; the Panel was bound by the trial court's conclusion that PCS maintained at minimum a 20-foot pre-taking path.

Second, the Panel committed legal error in its Primary Findings of Fact B and supporting subfindings B.18 through B.25: "None of PCS's costs were reasonable and necessary, because 'do nothing' was the reasonable solution." AR 9833-9836; *see also* App 4-5. And its Conclusion of Law E.19: "The Panel finds that none of PCS's claimed expenses were necessary or reasonably related to the taking." AR 9849. Those findings and conclusions are premised upon a road width of 14.9 feet, contrary to the trial court decision.<sup>8</sup> In addition, the trial court had

---

<sup>8</sup> The Panel found that PCS lost only 3.6% of its shred pile storage. AR 9833 (FOF B. 19.; *see also* FOF B. 21 (820 cubic yards premised upon 14.9-foot

rejected the Panel's first decision that "do nothing" was a reasonable solution. AR 9364-9382 (Panel's first decision); AR 9397 (trial court's first decision). As the trial court noted in its second decision: "The court's previous order already determined that PCS was entitled to reimbursement for these costs." App 5. Again, the Panel ignored the binding decision of the trial court.

Third, the Panel contravened binding precedent in its Conclusion of Law A and subconclusions A.6 and A.7: "PCS's relocation is correctly identified as a PPO move." AR 9844-9845. A "Personal Property Only" or "PPO move" is appropriate "where personal property is located on a portion of the property that is being acquired, but where the business located on the property can still operate after the acquisition of the needed property and where the business will not incur reestablishment expenses." AR 861; WSDOT Manual §12-9.2(C); 49 C.F.R. §24.301. A PPO classification is appropriate where the business must conduct only one move of the personal property from the acquired property. WSDOT Manual §12.9. However, a business "that must incur reestablishment expenses to facilitate continuous operation of their business on the subject property should be relocated under the provisions of Section 12-7." AR 861; WSDOT Manual §12-9.1. Section 12-7 generally governs full business moves and provides for substantially more categories of

---

road)). That percentage is based upon Martyn Daniel's conclusion that PCS maintained a 14.9 foot wide road pre-taking and would only need to move the shred pile 8 feet to accommodate the move of the road to eliminate the choke point.

reimbursement then a PPO move. WSDOT Manual §12-7; *Cf.* WAC 468-100-301(5) (limiting PPO moves to reimbursement for only certain categories under WAC 468-100-301(7)) and WAC 468-100-301(7).

Reestablishment expenses include items such as repairs, modification to replacement property, and increased costs of operations. WSDOT Manual §12-7.2.3(A.). Daniel, the Port's relocation specialist, opined that the following expenses incurred by PCS during its reconfiguration all constituted reestablishment expenses: surveying (AR 6719), permits (AR 6718), material handling (AR 6721), project management communications and cost accounting (AR 6723), and electricity and chemical toilets at Parcel 1A<sup>9</sup> (AR 6729-30); *see also* AR 9008.

The trial court concluded that: "In order to safely and effectively maintain its operation, PCS needed to address the issue created by the Port's action, either by relocating portions of its facilities or by increasing its operational expenses through the movement of excess shred." AR 9392, 9397. Thus, per the trial court decision, PCS could not in fact operate after the acquisition. Instead, it would need to incur reestablishment expenses to remain operational, either by increasing its operational costs (a reestablishment expense) or by effectuating the reconfiguration (which required PCS to incur reestablishment expenses).

---

<sup>9</sup> This list comprises only a few of the expenses that Daniel opined constituted reestablishment expenses. For a complete list, see AR 9008-9038 and 6671-6691.

Yet, the Panel disregarded that binding precedent and determined that PCS could operate after the taking by making a one-time move of personal property from the acquired area.

Fourth, the Panel committed legal error in its Conclusion of Law D "Just compensation v. relocation benefits." AR 9847. The trial court had already determined in its first decision that PCS was entitled to relocation benefits. AR 9398; App 5. Indeed, the Port did not raise its just compensation argument during the administrative hearing or on appeal to the trial court; it raised that argument for the first time upon remand to the Panel. The Panel's decision for Conclusion of Law D must be reversed.

Finally, it should be noted that the Panel's 26 pages of FOF and COL are internally contradictory<sup>10</sup> and correspondingly arbitrary and capricious. *Kendall v. Douglas, Grant, Lincoln, and Okanogan Counties Public Hosp. Dist. No. 6*, 118 Wash.2d 1, 14, 820 P.2d 497 (1991) (stating an agency decision is arbitrary and capricious if it's "willful and unreasoning action, taken without regard to or consideration of the facts and circumstances surrounding the action"). As the trial court acknowledged, for example, in addition to FOF B not being "supported by the record," it undeniably was "contradicted by the remainder of the sub-

---

<sup>10</sup> The FOF and COL are replete with contradictions. For purposes of this appeal, PCS focuses on a few examples. For instance, the Panel found in relation to one of its findings that: "Google images [*i.e.*, Google earth photos] are good evidence because they are random samples that no one controlled." AR 9838. But then, earlier in its FOF and COL, the Panel rejected PCS's argument that it had consistently maintained a 20-foot path pre-taking, as evidenced by multiple Google earth photos.

findings adopted on the issue, which indicated that PCS would in fact have to do something in response to the choke point[.]" App 4.

As another example, the Panel concluded in its Secondary Finding of Fact C that, if the trial court held that PCS's turn of the conveyor was reasonable and necessary, PCS would be entitled to \$347,800 of its expenses. AR 9837. The Panel cited to Exhibit 230 (AR 9008-9011), page 1, line 25 and page 2, line 70 through page 4, line 136 in support of its "finding." AR 9837 n. 38. At those cited lines, the \$347,800 in expenses are reimbursed as a "Full business move." Yet, subsequently, the Panel makes Conclusion of Law A. that PCS's expenses should be reimbursed under the "PPO move" classification. AR 9844. A move cannot be both a "PPO move" and a "full business move" under the Relocation Act.

In sum, the Panel committed legal error by ignoring the binding precedent of the trial court and acted arbitrarily and capriciously by issuing internally inconsistent findings of fact and conclusions of law. PCS suffered substantial prejudice as a result because the Panel conclusions are contradictory to the law of the case and unfavorable to PCS. The Panel's FOF and COL entirely defeat the purpose of binding appeal and instead require PCS to relitigate issues that were previously settled by a higher court.

**B. The Panel erroneously interpreted "reasonable" and necessary" under the Relocation Act.**

**1. An assessment of what is "reasonable" and "necessary" must include consideration of safety.**

The appellate courts review de novo an agency's conclusion of law, including its interpretation of statutes. *Wash. Pub. Ports Ass'n v. State Dep't of Rev.*, 148 Wn.2d 637, 645 (2003). An appellate court will only give substantial weight to an agency's interpretation of a statute that the agency itself administers. *Campbell v. Dep't of Soc. & Health Servs.*, 150 Wn.2d 881, 894 n.4 (2004). Here, this Court should not defer to the Panel's interpretation of the Relocation Act because the Port does not administer or have any particular expertise regarding the Act. *In re Elec. Lightwave, Inc.*, 123 Wn.2d 530, 540 (1994). The Panel erred in interpreting "reasonable" and "necessary" as requiring only an assessment of cost without consideration of safety.

Under the Relocation Act, a business qualifying as a "displaced person" may be entitled to reimbursement for its expense of moving personal property and reestablishing its business as a result of a taking. *See* RCW 8.26.020(4), AR 5. A "displaced person" is any business that "moves from real property, or [that] moves his or her personal property from real property." RCW 8.26.020(4)(a). The Port recognized that PCS was a displaced person and accordingly notified PCS of its rights to reimbursement under the Relocation Act.

The Relocation Act states that a government body "shall provide" payment to a displaced person for "actual, reasonable, and necessary

expenses. RCW 8.26.035; 42 U.S.C. § 4622(a). However, the Relocation Act does not define "reasonable" or "necessary." The WSDOT Manual provides some clarification of the meaning in the context of what constitutes a reestablishment expense:

"[For a reestablishment expense,] reasonable means the costs are typical in the geographic area in which the displacement occurred for the type of goods or services being purchased. Necessary means that such goods or services are needed to carry out the reestablishment of your business in conformance with the requirements of the Uniform Act. The test for reestablishment expenses at times may deal with comparing or matching amenities or characteristics of the replacement site against the displacement site. Also, the test is one of necessity, i.e., is the expense necessary to reestablish the displaced business."

WSDOT Manual §12-7.2.3 (August 2012). General guidelines for assessing "reasonable" and "necessary" include whether the claim is typical for the nature of the business operation and whether the business is reestablishing at a level greater than what it previously operated. *Id.*

Thus, an agency must consider the reasonableness of the costs expended. However, the agency must also consider whether the goods or services for which the business seeks reimbursement are "needed" to reestablish the business as it previously operated. The agency must account for the unique circumstances of the business. 42 U.S.C. § 4621(c)(2); RCW 8.26.010. And, as any prudent minded business would, the agency must consider safety in its assessment, particularly where the unique circumstance of an insurance business makes safety paramount to its operations. Congress certainly did not intend that a business would only qualify for reimbursement under the Relocation Act

if it implemented the cheapest solution to the taking, regardless of safety. Instead, Congress intended that the Act's financial assistance would provide a business a site post-taking that operates comparably to its site pre-taking. *Union Elevator and Warehouse Co. v. State, ex rel.*, 144 App. 593, 602-603, 606-607 (2008). *See Also* AR 4746, 4749 (Port expert testifying: "the conveyor that we're talking about \*\*\* should be able to function in the after condition as it did in the before condition.").

**2. The Panel refused to consider safety in its interpretation of "reasonable" and "necessary."**

PCS repeatedly emphasized to the Panel the critical importance of considering safety for assessing "reasonable" and "necessary" under the Relocation Act. Indeed, on remand, the trial court directed the Panel to evaluate reimbursement under the Act based on safety:

"In order to safely and effectively maintain its operations, PCS would be required to either (A) use machinery to 'tram' materials away from the area and store these materials in additional 'loader-stacked shred' piles or (b) reconfigure the conveyor, and/or other components of the shredder plant, to deposit the 'conveyor-stacked shred' pile on another portion of the leasehold property."

AR 9392 (emphasis added)

The Panel ignored that directive and, in determining what was reasonable and necessary, entirely omitted safety in assessing the reconfiguration.

Instead, the Panel determined what was "reasonable" and "necessary" by considering what it deemed was the most "cost-effective solution." That interpretation of the Relocation Act is contrary to the trial court's statement that the Panel should consider what PCS had to do to

"*reasonably* \* \* \* fix the problem." And it is contrary to the intent of the Relocation Act, which requires that businesses be placed in a comparable site post-taking. *Union Elevator and Warehouse Co.*, 144 Wash. App. at 602-603, 606-607. A heavy industrial site that lacks safety is certainly not comparable to what PCS had pre-taking. The Panel committed reversible error in omitting safety in its interpretation of "reasonable" and "necessary."

**3. The Panel's interpretation of "reasonable" and "necessary" substantially prejudiced PCS.**

At the administrative hearing, PCS presented the testimony of industrial safety expert Dr. Adam Aleksander, whom the Panel found highly credible. AR 9375. In addition, numerous PCS witnesses testified regarding safety. In comparison, the Port failed to present any safety evidence. The Port experts did not consider safety in formulating the Port's proposed alternatives. Nor did the Port's experts consider whether the reconfiguration undertaken by PCS was reasonable and necessary because it preserved operational safety.

Despite that lack of evidence, the Panel made not a single finding of fact regarding safety and the reconfiguration, and, instead, adopted the Port's arguments whole cloth. The Panel thereby blithely ignored safety and rejected the trial court's binding decision of a minimum 20-foot wide traffic path when it found that PCS had maintained a consistent 14.9-foot traffic path pre-taking, and therefore such a path was appropriate for PCS post-taking. Based on its rejection of the court's finding, the Panel further

found that a 14.9-foot traffic path around the entire southern end of PCS's leasehold displaced only a small portion of PCS's storage capacity for shred. AR 9830, 6635; *see supra* footnote 8. Indeed, the Port's 14.9-foot dimension for the PCS traffic path at the southern end of the leasehold is the lynchpin of the Port's entire defense that the reconfiguration undertaken by PCS was neither reasonable nor necessary. The Port's calculations of shred displacement, the Port's recommendation to "do nothing," and the Port's proposed alternatives all rely upon the Port's theory that PCS had maintained a 14.9-foot road pre-taking, even though that width was rejected by all the experts whose opinions addressed site safety.

The Panel also ignored other safety considerations, such as the necessity of the changes to the Z-box and dual picking station to accommodate safe access to the shredder to perform repairs.<sup>11</sup> AR 3773-80, 3825, 3909-3911, 3918, 4171. Or the fact that PCS had to move the conveyor and rail spur slightly to the north/northwest in order to allow safe access to Cells 2 and 3. AR 3767-69, 3896. Or that the reconfiguration in its entirety allowed PCS to maintain a "safe operating corridor through the site." AR 4519. If the Panel had considered "safety" in its analysis of the PCS reconfiguration, it could only have found based on the record before it that PCS's entire reconfiguration was reasonable

---

<sup>11</sup> The Panel ignored safety in assessing whether PCS could have used existing equipment and instead determined that the conveyor turn "could have been made using existing equipment at a significantly lower cost." AR 9836 (secondary FOF C.26).

and necessary, given the glaring lack of safety evidence presented by the Port.

PCS suffered substantial prejudice from the Panel's interpretation of "reasonable" and "necessary". This Court should reverse and remand the Panel's FOF and COL with instruction that the Panel must consider safety in determining the reasonableness and necessity of PCS's reconfiguration. The Panel then may proceed with the legal determination of what of those reasonable and necessary expenses are reimbursable under the different categories of the Act. *See, e.g.*, WAC 468-100-301(7) (listing categories).

**4. The Panel's finding that safety was not "a credible response" to the Port's proposed alternatives lacks evidentiary support and is arbitrary and capricious.**

The Panel concluded in its Finding of Fact B.23 that: "The reasonableness of the 'do nothing' solution is further supported by the fact that there were multiple ways that PCS could have resolved – or bettered – the storage capacity for a fraction of the amount PCS spent on the entire site reconfiguration." AR 9834. Although the Port presented no evidence regarding the safety of those alternatives, the Panel rejected PCS's safety evidence:

"PCS'[s] primary objection to most the Port's evidence of alternative-and substantially cheaper solutions-was that they would be unsafe. The Panel does not find this to be a credible response and in fact, as to as least some of the Port's alternatives (i.e.: the deflector chute and the telescoping conveyor) there was no evidence presented that these alternatives would be unsafe."

AR 9835.

The Panel's finding is based upon a fundamental misunderstanding. The Port presented the alternatives as defensive evidence, *i.e.*, cheaper options to PCS's reconfiguration. It was not up to PCS to prove whether those options were safe and could be effectuated; it was the Port's burden. The Port did not subject its proposals to any safety analysis. *See, e.g.*, AR 4762-63, AR 6740-6766 ("focus on resolving storage issue in the most operational and cost-effective way"; no mention of safety).

Moreover, the alternatives proposed by the Port are based upon an unsafe, untenable 14.9-foot traffic path. *See, e.g.*, AR 6741. PCS presented substantial evidence that safety required a 20-foot traffic path. And the law of the case is that PCS maintained a 20-foot path pre-taking. In addition, PCS presented evidence that each of the Port's "alternatives", regardless of the width of the traffic path, posed safety issues.

The Panel maintained that PCS's evidence the Port's alternatives were unsafe was not a "credible" response, but that safety evidence primarily came from Dr. Aleksander, whom the Panel found highly credible. AR 9373, 9375 and AR 4347-4360, 4758-60, 9288. Additionally, the Panel found that PCS could have implemented any one of the cheaper alternatives instead of the reconfiguration it undertook. Yet, any reasonable business would surely consider the safety of a constructed solution before undertaking to build, particularly where safety was paramount to its operations. However, the Port presented no evidence that its proposals were safe.

**5. The Panel's FOF and COL fail in their entirety because they are based upon a finding that a 14.9-foot road is sufficient, which is not supported by substantial evidence, fails to consider safety, and is arbitrary and capricious.**

If this Court determines that the Panel was not bound by the trial court's decision that PCS maintained a 20-foot traffic path pre-taking, in the alternative, substantial evidence does not support the Panel's finding that pre-taking, PCS maintained at a minimum a 14.9-foot traffic path. And, as stated above, the Panel also failed to consider safety when assessing whether PCS maintained a 14.9-foot path pre-taking.

On an administrative appeal, a court will view the evidence in a light most favorable to the "party who prevailed in the highest forum that exercised fact-finding authority." *City of Univ. Place v. McGuire*, 144 Wash. 2d 640, 652-53 (2001). That process entails "acceptance of the factfinder's views regarding credibility of witnesses and the weight to be given *reasonable* but competing inferences." *Id.* (emphasis added). Thus, the standard of review is not limitless but extends only to "reasonable" inferences. *See also Wilson v. Steinbach*, 98 Wash.2d 434 (1982) (only those inferences that are reasonable will be viewed in a light most favorable to the prevailing party).

The Panel found in Findings of Fact A.9 and 10 that PCS's truck path in the before-condition at the choke point area was 14.9 feet and the Port's evidence "more reliable than the evidence provided by PCS that the minimum width of the truck path had been 20 feet." AR 9830. The Panel based its determination upon three pieces of evidence: (1) a "survey" conducted by the Port (*see* AR 9830, AR 9366 n. 3); (2) standard city and

highway lanes are between 10 and 12 feet wide (AR 9830); and (3) PCS's City-approved construction plans, which the Panel stated "provided for a 15-foot truck lane in the after condition" (AR 9830 n. 12).

First, the Port did not present the testimony of a surveyor. Instead, Daniel incorporated a "survey" with subsequent drawings made by him into his expert report. AR 4693-4696, 6628, 5349, 6635, 9063-67, 9083. As previously described, the "survey" was for "general reference" and "presentation purposes," but "not for construction." AR 5349, 6635. The concrete slab where shred is placed, which would be displaced by the taking, was "not surveyed" and was merely an "approximate location." AR 5349. Daniel cut off the phrase "not surveyed" when he incorporated the "survey" into his expert report. AR 6635. Daniel testified he did not rely on safety principles in concluding that a 14.9-foot traffic path was sufficient, nor did he rely on engineering principles. AR 475, 4757. The "survey" on its face is not credible, Daniel clearly lacks qualifications as he is not a surveyor or engineer, and the inference that PCS would have maintained an unsafe traffic path at 14.9-feet is not reasonable.

Second, Daniel testified that he thought a 14.9-foot traffic path was reasonable because "[w]hen you look at traffic lanes and freeways in towns, they are twelve feet." AR 4754. Daniel believed that regulations require three feet of clearance on each side of trucks, which he testified equates to 14.5 feet. AR 4754. The Panel inferred from Daniel's testimony that if freeway lanes are the width of 14.5 feet, it was appropriate for PCS to maintain a traffic path of only 14.9 feet. However,

Daniel conceded that PCS uses large trucks and other equipment on its site, some that are up to 14.3 feet wide, necessitating a 20.3-foot wide road. AR 4755. The narrow width of 14.9 feet would prohibit PCS from using some of its equipment on the south end. For some smaller equipment, it would be passing through the 14.9-foot narrow road without the regulation-required three feet of clearance on each side. Thus, the Panel's inference is hardly reasonable.

Third, the Port misconstrued the testimony of Uskoski and the preliminary plan MFA created for a City permit in order to make it appear as if the plans represented that PCS was going to create a 15-foot traffic path along the southwest and through the choke point area. The "City-approved construction plans" to which the Panel cites is a document titled "Overall Site & Key Plan", which is stamped at the bottom as "PRELIMINARY." AR 5834; *see also* AR 9830 n. 12 (Panel finding of fact). The Plan shows a "truck lane" extended from the very top of the PCS site, in the northwest, to the very bottom of the PCS site in the south. AR 5834. The "truck lane" is represented by a dotted line. The Panel found that from the edge of the property to the dotted line is 15 feet and thus the 15-foot traffic lane on the Plan was the same as the traffic path at issue here. Therefore, the Panel held that the preliminary plan provided for a 15-foot truck lane in the after condition.

However, Uskoski testified that the Plan was "not [a] final engineering construction plan" but a "preliminary plan." AR 4164-65. She testified that PCS engaged in a "streamlined application" process with

the City, which the City endorsed, as the taking was quickly approaching. *Id.* Uskoski testified that it is not typical to use "preliminary plans" for a City permit but that the City allowed it for its streamlined process. AR 4165.

Uskoski was clear that the "Truck Lane" shown on the Preliminary Plan running from top-to-bottom of the PCS site was not the traffic path at issue here and on which PCS trucks circulated. She also testified that the dotted line was used as a placeholder, not as an engineered traffic path.

"So this - - this line coming in, you see it comes all the way from our eastern boundary and actually traverses all the way up to our western boundary following that takings line. There had been talk at various times that the Port would have an access road along that area, but I never had anything definitive of what it would be[.] I didn't have any information on that, and we felt it was prudent to understand that there was something that could happen there.

With the dashed line, it's just allocating that could be something there, and to be aware of it. It's not that it's a permanent proposed, that this is a truck lane and thou shalt drive through here."

AR 4174-76. When questioned further by Port counsel, Uskoski again emphasized that the dotted line was "not defining an actual truck path."

AR 4207. Port counsel had Uskoski measure from the boundary of the site to the dotted line, which was 15 feet according to the scale on the Plan. AR 4208. Uskoski testified that the 15 feet was not in any way related to the width of the preexisting traffic path that circulated trucks through the site and is where the choke point would occur. AR 4208-09.

The Plan itself supports Uskoski's testimony. The route of the "Truck Lane" on the Plan does not follow the circular route of the traffic

path at the PCS site. The Plan does not indicate that the distance from the edge of the property to the dotted line is the width of the truck lane. The dotted line could just as easily be the middle of the truck lane. The Port presented no countervailing evidence that the Plan was other than as evidenced by the Plan itself or Uskoski's testimony.

Nevertheless, the Panel made the inference that the dotted line marked "traffic lane" that vertically traversed the entire PCS leasehold in almost a straight line on the Plan was the exact same circular traffic path at issue here. The Panel even inferred that the dotted line was an engineered road and relied upon it for determining the width of the traffic path. The Panel's inference is far short of reasonable. One need only look at the truck lane on the preliminary plan and compare it to the traffic path here to realize they are entirely different roads. *Cf* AR 5834 (indicating dotted "truck lane") to AR 6256 (indicating circular traffic path).

In comparison, the Panel disregarded the trial court's decision that PCS maintained a 20-foot traffic path and the substantial quantity of evidence presented by PCS's engineering experts, employees with substantial shredding experience, and a safety expert that, at minimum, a 20-foot path was necessary, while a 14.9-foot path was too narrow and not safe. *See, e.g.*, AR 4694-4696, 6695. Dr. Aleksander, an engineer and safety expert who spent considerably more time at the PCS site than Daniel, rejected the Port's 14.9-foot truck path. Dr. Aleksander reviewed multiple Google Earth photos of the PCS site over an extended period of time and testified at length regarding his expert opinion that based upon

those photos, PCS maintained consistently at the very least a 20-foot path pre-taking.

Dr. Aleksander used engineering standards, Pixelstick, and a CAD-based system in conducting his analysis. AR 4329-4342, 4386-87. Notably, the Panel agreed in relation to another of its findings in its FOF and COL that "Google images are good evidence because they are random samples that no one controlled." AR 9838. The Panel relied upon Dr. Aleksander's expert report, in relation to that other finding, that:

"The important benefit of these historic [Google] photos is that they are true random samples of the activity of the site. PCS had and has no control over when these photos were taken, has no input on their availability, and has no control over what they show and do not show. Accordingly the[y] are an excellent record of PCS site utilization and show the location of material piles, roadways, and the variability of the various materials that are processed through the facility."

AR 9838 n. 41; *see also* AR 6847-6848, 4387-4395 (Aleksander report and testimony).

The Panel found Dr. Aleksander highly credible, providing "honest and straight forward answers." AR 9375. Dr. Aleksander repeatedly testified that a 20-foot traffic path was necessary at the southern end of the site for PCS to maintain operational safety. AR 4346-47, 4373, 4433-4448, 6850. The Panel also stated in its first decision that Dr. Aleksander's 20-foot minimum "was not consistent with more reliable survey information indicating a minimum width of 14.9 feet in the 'before' condition." AR 9374. That "survey" information to which the Panel refers is not, as shown above, even in fact a survey, but rather

drawings meant for "presentation purposes only," not for construction.

Dr. Aleksander was not the only expert who testified that a 14.9-foot traffic path was unsafe and did not represent the PCS truck path pre-taking. Alongi, an engineer who had been on the PCS site over a hundred times, testified that the traffic path fluctuated from 28-34 feet depending on the size of the shred piles. AR 4471. Alongi testified as to the need to maintain safe-turning radii at critical points on the traffic path, including at the southern corner of the pre-taking shred pile where approximately 300 trucks traverse daily. AR 4433-4448.

If this Court reverses the Panel's finding regarding the 14.9-foot wide truck path, the remainder of the Panel's findings and conclusions of law fail. The Panel found that in order to allow room for a 14.9-foot wide truck path, the taking required that the path be moved only "8.5 feet to the north." AR 9830. The Panel stated that moving the path 8.5 feet to the north resulted in a loss of storage volume of 11.7% but found 3.6% a more "appropriate number" because the "Shred Pile was constantly being worked with front-end loaders" (AR 9831) and that this "minimal displacement of shred storage" could have been easily resolved by moving shred elsewhere. Thus, the Panel found "that PCS's full site reconfiguration was not reasonable or necessary in order to address the loss of storage capacity in the Shred Pile that resulted from moving the truck path 8.5 feet to the north." AR 9833; *see also, e.g.*, AR 9833 ("do nothing" reasonable solution to loss of 3.6% of the Shred Pile storage capacity); AR 9833-34 (cost to move shred 3.6% shred with front loaders

is \$46,000 per year).

**C. The Panel erred when it held that, under the Relocation Act, PCS did not present "credible" evidence as to its expenses.**

The Panel stated in its Conclusion of Law E.19 and Finding of Fact B.25 that PCS did not present credible financial evidence that shows PCS is entitled to recovery of any expenditure under the Relocation Act. AR 9849, 9835-36. The Panel concluded that under the Relocation Act, a displaced business must present the testimony of witnesses to discuss each individual cost, opine whether that singular cost was reasonable and necessary, and assist the Panel with determining whether that cost was eligible for reimbursement under one of the categories listed in the WAC. AR 9836. The Relocation Act does not require such evidence for reimbursement.

The WSDOT Manual emphasizes that acceptable documentation for proof of actual and reasonable costs includes invoices or "receipts for payments," "copies of payment documents, time sheets of people hired to perform the move, etc." WSDOT Manual §§12-9.3(B)(3); 12-9.4(B); 12-5.1.2(C)11. The "proof of payment (invoices or receipts) [must] clearly identif[y] the work performed." WSDOT Manual 12-7.5.2(D)(1). Indeed, the Port told PCS to keep track of its invoices and submit them to the Port for determination of eligibility. AR 3448, 3454-55.

At the very outset, PCS informed the Port of the engineers it intended to use for the reconfiguration. AR 3448, 3453. On September 25, 2012, PCS provided the Port a detailed description of the

traffic path problem caused by the taking, and an estimated budget for reconfiguring operations to address the impact of the taking. AR 861-865. On September 11, 2013, PCS submitted to the Port its detailed claim for reimbursement of relocation expenses and accompanying invoices. AR 1181-2747. (Thus, the Port had most of PCS invoices almost two years before the hearing).

At the hearing, PCS presented extensive testimony regarding the reasonableness and necessity of each phase of the reconfiguration, commencing with turning the shred conveyor and shred path, moving the rail spur, moving the shredder feedstock area farther north, moving the PCS entrance on Port Way and the City-Mandated new parking area, the enviro rack, auto rack and new maintenance building, and the need for Parcel 1A for storage. *See, e.g.*, AR 9271-9278 (summarizing testimony); AR 9322 (listing each phase).

Daniel Jacobson, PCS's Chief Financial Officer, testified that he reviewed all invoices to ensure they were accurate, incurred as a result of the reconfiguration, and had the appropriate manager's approval. During Jacobson's testimony, PCS admitted a spreadsheet and invoices supporting each expense; the Port did not object. AR 4619-4621, 7426-8969. That spreadsheet mirrored the spreadsheet submitted by the Port, on which the Panel relied in making its FOF and COL. *See, e.g.*, AR 9837 (FOF C.28) and AR 9008, *cf.*, AR 7426-8969, 9322-9359 (PCS's spreadsheets). The spreadsheet detailed the date of the expense, the amount, the vendor, a description of the expense, and the phase or "project category" to which it

related. For example, pages AR 7435-7440 state “Temporary Storage at 1A” at the top of each page. All expenses related to that part of the reconfiguration are listed in the spreadsheet on those pages. PCS also submitted as exhibits the invoices for each expense. AR 7164-7385, 7386-7403, 7426-8969. As previously explained, testimony supports why each part of the reconfiguration was reasonable and necessarily incurred.

In addition, the parties also submitted a joint exhibit to the Panel that contained identical information to the spreadsheet and was a summary of the invoices presented. AR 22-40. Thus, in essence, the Port agreed through joint submission that PCS did not need to authenticate or otherwise provide a foundation for that information. Finally, in its port-hearing brief, PCS used the information from the spreadsheet admitted during the hearing and broke it down into even further phases of reconfiguration, and included the statutory basis for reimbursement of each invoice (what category the service is reimbursable for under the Relocation Act). AR 9322-9357. Yet, incongruously, the Panel stated that PCS failed “to provide an adequate breakdown of [its] costs.) AR 9849.

PCS provided exactly the proof that the Relocation Act requires: invoices and spreadsheets clearly identifying the work performed. The WSDOT Manual explains that if a question arises about the reasonableness of submitted costs, the condemning agency can obtain one or more bids or estimates to use as a comparison to determine if the costs are reasonable. WSDOT 12-9.3(B)(3). The Port did not submit a single

bid.

In sum, the Panel's interpretation that the Relocation Act required a witness to testify as to the reasonableness of each individual expense, whether it be \$248 of rigging materials (AR 9009) or \$65 in data and telephone cable (AR 9016), is erroneous. The Panel's decision that PCS failed to present "credible evidence" is not supported by the record and is arbitrary and capricious. This Court should reverse and remand the decision to the Panel with direction that the Panel consider the eligibility of PCS's expenses pursuant to the requirements of the Relocation Act.

#### **V. CONCLUSION**

PCS suffered substantial prejudice because the Panel denied PCS's claim for relocation benefits in its entirety based upon the Panel's legally erroneous, arbitrary and capricious decision that was not supported by evidence that is substantial when viewed in light of the whole record before this Court. This Court should reverse and remand the decision to the Panel for its consideration of what relocation benefits are available to PCS consistent with this Court's decision.

#### **VI. APPENDIX**

App 1 Memorandum of Opinion and Order Deciding Pacific Coast Shredding, LLC's Second Petition For Review of Final Agency Order

Dated this 29<sup>th</sup> day of March 2019.

Respectfully submitted,

*s/ Christine N. Moore*  
Christine N. Moore, WSBA #47347  
Of Attorneys for Appellant PCS

MAY 14 2018

**COPY  
ORIGINAL FILED**

**MAY 11 2018**

**Scott G. Weber, Clerk, Clark Co.**

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

PACIFIC COAST SHREDDING, LLC,	)	
	)	
Petitioner,	)	NO. 15-2-04253-3
	)	
vs.	)	MEMORANDUM OF OPINION
	)	AND ORDER DECIDING PACIFIC
PORT OF VANCOUVER, USA,	)	COAST SHREDDING, LLC'S
	)	SECOND PETITION FOR
	)	REVIEW OF FINAL AGENCY
	)	ORDER
Respondent.	)	
	)	[CLERK'S ACTION REQUIRED]

This matter came on regularly before the undersigned judge of the above-entitled court on the second petition of Pacific Coast Shredding, LLC, a Washington limited liability corporation (hereinafter PCS), for review of the final order and judgment of the panel of the respondent, Port of Vancouver, USA, a Washington municipal corporation (hereinafter the Port). The final order and judgment, dated May 15, 2017, denied PCS additional reimbursement for expenses associated with the reconfiguration of its business, beyond the \$68, 259.17 that had previously been awarded and paid for personal property

move costs for moving shred and other materials located in the right of way at the time of the taking.

The petitioner was represented by and through its attorneys, David Blount and Christine Moore of Landye Bennett Blumstein LLP. The respondent was represented by and through its attorneys, Jill Gelineau and Kelly Walsh of Schwabe, Williamson & Wyatt, PC. The court considered the records and files herein, and the written and oral argument presented by the parties, and is fully advised in the premises of the petition.

### **STATEMENT OF THE CASE**

An extensive recitation of the facts and procedural history of this case is unnecessary. The court's previous order (entered September 8, 2016) included the following recitation of applicable facts:

In November, 2010, the Port condemned part of the southern portion of the PCS leasehold, for use as a rail line. The property acquired totaled 47,598 square feet. However, most of this land was between a concrete barrier and the north bank of the Columbia River, and was not used in PCS operations. The portion of acquired property that was actually used by PCS in its operations, either as traffic path or shred storage, totaled 7,332 square feet.

The Port's taking of the southern portion of the leasehold property effectively closed the existing traffic path when the "conveyer-stacked shred" pile reached full storage capacity, which occurred approximately 45 times per year. The path would narrow at a "choke point" near the southeastern corner of the pile and traffic would be unable to circulate through this area. In order to safely and effectively maintain its operations, PCS would be required to either (a) use machinery to "tram" materials away from the area and store these materials in additional "loader-stacked shred" piles or (b) reconfigure the conveyer, and/or other components of the shredder plant, to deposit the "conveyor-stacked shred" pile on another portion of the leasehold property.

The Port advised PCS of the taking, and notified PCS of its right to receive appropriate relocation assistance under the Uniform Relocation Act. A relocation specialist determined that a full business move was not required by the taking and that PCS was only entitled to be reimbursed for the cost of moving shred and other materials off the area actually being acquired by the Port. The Port paid

PCS \$68,259.17 for removal under this “personal property only” (PPO) classification; this portion of the award is not in dispute.

In 2012-13, PCS reconfigured the shred conveyor by turning it 90 degrees to the west and extending it 77 feet. . . .In addition, multiple changes were made to other portions of the PCS property. . . .The cost for [all] changes to the PCS site totaled over \$6.1 million.

After completing the reconfiguration, PCS submitted a reimbursement claim to the Port for all of the site changes. . . .The Port rejected the claim. PCS appealed and the Port retained a three-person independent panel to determine the appeal. . . .

On July 27, 2015, the panel issued its final Decision. The 18-page document explained the panel’s reasoning, but did not include formal findings of fact. . . .[T]he panel decided that it “was faced with essentially an all or nothing proposition.” . . .“Was [PCS]’s full site reconfiguration a reasonable and necessary result of a taking by the Port. . . .?” Decision, p. 17. The panel concluded that the full site reconfiguration was an unnecessary and unreasonable response to the “potential choke point” and denied any additional reimbursement for relocation and reestablishment expenses. . . .

On appeal, this court determined that the panel had erred by concluding that the taking in this case created only a potential “choke point” on the PCS site. “Both parties recognized that the taking created an actual “choke point,” not a potential problem. In order to continue to operate its business, PCS was required to address the issue created by the Port’s action, either by relocating portions of its facilities or by increasing its operational expenses through the movement of excess shred.” The decision of the panel was reversed and remanded for further proceedings.

The court specifically ordered that the panel focus on a specific issue, given the agreement of the parties that an actual “choke point” was caused by the taking and that PCS was required to address that “choke point” in order to continue its operations:

The panel may consider this matter based solely upon the evidence already presented, or may request that the parties present additional evidence on the issue of the amount of PCS’s reconfiguration expenses that were necessary and

reasonably related to addressing the “choke point” caused by the Port’s condemnation of the southern portion of the leasehold property.

The parties did not appeal this court’s decision. The panel considered the matter with additional briefing and argument, but without allowing either party to present additional evidence. On May 15, 2017, the panel issued a final order and judgment and adopted twenty-six (26) pages of findings of fact and conclusions of law. The panel denied PCS any additional compensation. PCS filed a timely appeal.

### **DECISION**

1. The panel erred by denying PCS compensation for any portion of its reconfiguration expenses. A brief review of some of the “primary findings of fact” adopted by the panel demonstrates why this error occurred:

a. The panel found that “the full site reconfiguration was not reasonable and necessary.” This primary finding, and the sub-findings that supported it, did not deal with any issue before the panel on remand. Fixation on this “all or nothing” issue was the same error that the panel made in its first decision.

b. The panel determined that none of the reconfiguration costs “were reasonable and necessary, because “do nothing” was the reasonable solution.” This finding is not supported by the record. The finding is contradicted by the remainder of the sub-findings adopted on the issue, which indicated that PCS would in fact have to do something in response to the choke point – “limit the amount of shred stored in the Shred Pile.” The sub-findings recognized that this limitation would cause PCS to incur additional costs, either through moving equipment or materials. The panel’s

determination that PCS could “do nothing” is not supported by any evidence in the administrative record.

c. The panel determined that the costs associated with its “do nothing” approach were *de minimus*, in light of the cost of the entire reconfiguration, the amount of business revenue PCS receives and the amount that bearing these “do nothing” costs would add to the processing cost per ton for PCS. The panel was ordered to determine the monetary costs associated with the “choke point” problem, not to decide whether the panel considered these costs *de minimus*. The court’s previous order already determined that PCS was entitled to reimbursement for these costs. Neither party appealed this order.

2. Most of the remaining findings of fact and conclusions of law adopted by the panel relate to issues that were not before the panel on remand. Fortunately, buried in these immaterial findings and conclusions were secondary findings which allow for entry of a proper order without additional proceedings. The taking occurred in late 2010 and the site reconfiguration was commenced sometime in 2012. The court’s previous order noted that the taking required PCS “to either (a) use machinery to “tram” materials away from the area and store these materials in additional “loader-stacked shred” piles or (b) reconfigure the conveyor... to deposit the “conveyor-stacked shred” pile on another portion of the leasehold property.”

3. The panel found that the reasonable cost of turning the conveyor was \$347,800. Finding of Fact C.28. The cost of tramping materials prior to turning the conveyor would be \$46,000 per year. Finding of Fact G.40. The evidence suggests that tramping would have been necessary for approximately one year. These findings are supported by substantial evidence in the record.

## ORDER

Based on the decision noted above, IT IS HEREBY ORDERED, ADJUDGED and DECREED as follows:

1. The final order and judgment of the panel, entered May 15, 2017, is reversed.
2. This matter is remanded to the panel for entry of a final order and judgment in favor of Pacific Coast Shredding, LLC, in the following amounts:
  - a. \$68,259.17 in personal property move costs already paid;
  - b. \$347,800.00 in expenses for reconfiguration of the conveyor; and
  - c. \$46,000.00 in tramming costs prior to reconfiguration.
3. The parties did not seek a ruling concerning costs and fees from this court.

The panel may consider any requests related to costs and fees and may issue rulings consistent with the record and this court's orders.

3. The court shall provide a copy of this order to the attorneys for each of the parties. The clerk shall arrange to return the certified record of agency proceedings to the panel.

Dated this 11<sup>th</sup> day of May, 2018.

/s/ ROBERT A. LEWIS

---

Judge Robert A. Lewis

**DECLARATION OF DOCUMENT FILING AND SERVICE**

The undersigned certifies under penalty of perjury under the laws of the State of Washington that APPELLANT’S OPENING BRIEF was electronically filed in the Court of Appeals – Division II via CM/ECF and a true copy of the same was served on the following individual(s):

Colin Folawn  
Schwabe, Williamson & Wyatt, P.C.  
1211 SW 5th Avenue, Suite 1900  
Portland, OR 97204  
cfolawn@schwabe.com

Kelly Walsh  
Schwabe, Williamson & Wyatt P.C.  
700 Washington St., Suite 701  
Vancouver, WA 98660  
kwalsh@schwabe.com

*Attorneys for Respondent Port of Vancouver, USA*

by the following indicated method or methods on the date set forth below:

- U.S. Postal Service, regular mail, postage prepaid.
- Hand-delivery.
- E-mail (courtesy).
- Facsimile communication device.
- Overnight courier, delivery prepaid.

SIGNED this 29<sup>th</sup> day of March 2019 in Portland, Oregon.

LANDYE BENNETT BLUMSTEIN LLP

*s/ Kathy Baker*  
\_\_\_\_\_  
Kathy Baker, Assistant to Attorneys for  
Appellant Pacific Coast Shredding, L.L.C.

**LANDYE BENNETT BLUMSTEIN LLP**

**March 29, 2019 - 1:44 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 52020-6  
**Appellate Court Case Title:** Pacific Coast Shredding, LLC, Appellant/Cross-Res. v. Port of Vancouver, USA, Res./Cross-App.  
**Superior Court Case Number:** 15-2-04253-3

**The following documents have been uploaded:**

- 520206\_Briefs\_20190329134324D2801138\_0626.pdf  
This File Contains:  
Briefs - Appellants  
*The Original File Name was PCS Opening Brief 42X5006.pdf*

**A copy of the uploaded files will be sent to:**

- AppellateAssistants@schwabe.com
- cfolawn@schwabe.com
- dblount@lbblawyers.com
- jgelineau@schwabe.com
- kwalsh@schwabe.com

**Comments:**

Opening Brief of Pacific Coast Shredding, L.L.C.

---

Sender Name: Edward Goon - Email: egoon@lbblawyers.com

**Filing on Behalf of:** Christine Nichole Esq Moore - Email: cmoore@lbblawyers.com (Alternate Email: )

Address:  
1300 SW 5th Avenue  
Suite 3600  
Portland, OR, 97201  
Phone: (503) 224-4100 EXT 231

**Note: The Filing Id is 20190329134324D2801138**