

FILED
Court of Appeals
Division II
State of Washington
6/24/2019 4:44 PM
NO. 52020-6-II

COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

PACIFIC COAST SHREDDING, LLC, a Washington limited liability
company,

Appellant,

vs.

PORT OF VANCOUVER, USA, a Washington municipal corporation,

Respondent.

**RESPONSE BRIEF OF RESPONDENT,
PORT OF VANCOUVER, USA**

Colin Folawn, WSBA #34211
Kelly M. Walsh, WSBA #35718
Jill S. Gelineau, WSBA #16770
SCHWABE, WILLIAMSON & WYATT, P.C.
1420 5th Avenue, Suite 3400
Seattle, WA 98101-4010
Telephone: 206.622.1711
Facsimile: 206.292.0460
Attorneys for Respondent, Port of Vancouver, USA

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. ASSIGNMENT OF ERROR	2
III. STATEMENT OF THE ISSUES.....	2
IV. STATEMENT OF THE CASE.....	5
A. The taking	5
B. PCS’s reimbursement claim.....	17
C. The Panel hearing and decision, the first appeal to the Clark County Superior Court, and the Panel resolution on remand.....	19
V. STANDARD OF REVIEW	22
VI. ARGUMENT	26
A. General applicable law.....	26
B. There was no error in issuing Findings of Fact A.7–A.17 and B.18–25, because the Superior Court’s factual statements are not the law of the case.	28
C. There was no error in issuing Findings of Fact B.18–25, because they were supported by substantial evidence and PCS did not meet its burden of proof.....	30
D. The Panel did not err in concluding that PCS failed to provide sufficient credible evidence to establish that its claimed expenses were reasonable and necessary.	31
E. The Panel was correct to conclude that PCS’s move was a PPO relocation, because all that had to be relocated was personal property.	34
F. The Panel correctly distinguished between just compensation and reimbursement for relocation.....	36

TABLE OF CONTENTS

	Page
G. PCS has failed to support its sixth assignment of error with argument or authority, and the assignment is waived.....	36
H. Even if this Court were to reach PCS’s sixth assignment of error, this Court is not permitted to substitute its judgment of the evidence for that of the factfinder.....	37
I. The Panel considered PCS’s arguments and objections regarding safety, weighed the evidence, and properly concluded that PCS had failed to meet its burdens of proof and persuasion.....	38
J. The Panel’s finding that PCS maintained a truck path width of 14.9 feet was supported by substantial evidence.....	43
VII. CONCLUSION.....	48

TABLE OF AUTHORITIES

	Page
Cases	
<i>B&R Sales, Inc. v. DoLI</i> , 186 Wn. App. 367 (2015)	22
<i>Carle v. McChord Credit Union</i> , 65 Wn. App. 93, 827 P.2d 1070 (1992)	37
<i>City of Vancouver v. Pub. Emp't Relations Comm'n</i> , 107 Wn. App. 694, 33 P.3d 74 (2001)	22, 43
<i>Edwards v. Morrison-Knudsen Co.</i> , 61 Wn.2d 593, 379 P.2d 735 (1963)	28
<i>Galvis v. Dep't of Transp.</i> , 140 Wn. App. 693, 167 P.3d 584 (2007)	<i>passim</i>
<i>Hallin v. Bode</i> , 58 Wn.2d 280, 362 P.2d 242 (1961)	23
<i>Heidgerken v. Dep't of Natural Resources</i> , 99 Wn. App. 380, 993 P.2d 934 (2000)	31, 39
<i>Karanjah v. Dep't of Soc. & Health Services</i> , 199 Wn. App. 903, 401 P.3d 381 (2017)	23, 29
<i>King County v. Seawest Inv. Assocs.</i> , 141 Wn. App. 304, 170 P.3d 53 (2007)	23
<i>Kroger Co. v Reg'l Airport Auth.</i> , 286 F.3d 382 (6th Cir. 2002)	26
<i>Mason v. Mortgage Am.</i> , 114 Wn.2d 842, 792 P.2d 142 (1990)	23
<i>Miller v. Kenny</i> , 180 Wn. App. 772, 325 P.3d 278 (2014)	36
<i>Office of Attorney General, Public Counsel Unit v. Washington Utilities and Transportation Commission</i> , 4 Wn. App. 2d 657, 423 P.3d 861 (2018)	25

TABLE OF AUTHORITIES

	Page
<i>Office v. Utils. & Transp. Comm’n</i> , 128 Wn. App. 818, 116 P.3d 1064 (2005)	25
<i>PacifiCorp v. Wash. Utils. & Transp. Comm’n</i> , 194 Wn. App. 571, 376 P.3d 389 (2016)	<i>passim</i>
<i>Peacock v. Public Disclosures Comm’n</i> , 84 Wn. App. 282 (1996)	23
<i>People’s Org. for Wash. Energy Res. v. State Utils. & Transp. Com.</i> , 101 Wn.2d 425, 679 P.2d 922 (1984)	23
<i>Quinn v. Cherry Lane Auto Plaza</i> , 153 Wn. App. 710, 225 P.3d 266 (2009)	38
<i>Rios v. Dep’t of Labor & Indus.</i> , 145 Wn.2d 483, 39 P.3d 961 (2002)	37
<i>Ryan v. Dep’t of Soc. & Health Services</i> , 171 Wn. App. 454, 287 P.3d 629 (2012)	28
<i>Schons v. State Department of Transportation</i> , 43 Wn. App. 160, 715 P.2d 1142 (1985)	27
<i>Seattle Sch. Dist. No. 1 v. State</i> , 90 Wn.2d 476, 585 P.2d 71 (1978)	24
<i>Shelcon Constr. Group, LLC v. Haymond</i> , 187 Wn. App. 878, 351 P.3d 895 (2015)	24
<i>State Farm Fire & Cas. Co. v. Huynh</i> , 92 Wn. App. 454, 962 P.2d 854 (1998)	37
<i>State v. J.C.</i> , 192 Wn. App. 122, 366 P.3d 455 (2016)	26
<i>State v. P.M.P.</i> , 7 Wn. App. 2d 633, 645, 434 P.3d 1083 (2019)	29
<i>State v. Paul</i> , 64 Wn. App. 801, 828 P.2d 594 (1992)	37, 40

TABLE OF AUTHORITIES

	Page
<i>State v. Sublett</i> , 156 Wn. App. 160, 231 P.3d 231 (2010)	36
<i>Tapper v. Employment Sec. Dep’t</i> , 122 Wn.2d 397 (1993)	22, 25
<i>Terry v. Employment Sec. Dep’t</i> , 82 Wn. App. 745, 919 P.2d 111 (1996)	22, 23, 43
<i>Union Elevator & Warehouse Co. v. Dept. of Transp.</i> , 171 Wn.2d 54, 248 P.3d 83 (2011), 49 C.	4, 36
<i>Utter v. Dep’t of Soc. & Health Servs.</i> , 140 Wn. App. 293 (2007)	22
<i>Vitale v Kansas City</i> , 678 F. Supp. 220 (W.D. Mo. 1988)	26
<i>Williams v. Tilaye</i> , 174 Wn.2d 57, 272 P.3d 235 (2012)	23
 Statutes	
PCS (1).....	13
42 U.S.C. § 422(a)	26
42 U.S.C. §§ 4621–4638.....	1, 26
42 U.S.C. § 4621(b)	27
42 U.S.C. § 4622(a)	3, 5
RCW 8.26.010	36
RCW 8.26.035(1)(d)	35
RCW 34.05.570(1)(a)	31, 39
RCW 34.05.570(3).....	25
RCW Chapter 8.26.....	26

TABLE OF AUTHORITIES

	Page
Uniform Act	28
Uniform Relocation Act.....	3
Uniform Relocation Assistance and Real Property Acquisition Act	1
Washington Administrative Procedure Act, chapter 34.05	22
Other Authorities	
49 C.F.R. 24D § 10 (Feb. 16, 2006)	27
49 C.F.R. Part 24.....	26
49 C.F.R. § 24.3	4, 36
49 C.F.R. § 24.301	32
49 C.F.R. § 24.301(3)	18, 35
49 C.F.R. § 24.301(a).....	3, 5
49 C.F.R. § 24.301(a)(4).....	27
49 C.F.R. § 24.301(a) and (g)	27, 30
49 C.F.R. § 24.301(g), (h).....	26
RAP 10.3(g)	24
WAC 468-100-301.....	26

I. INTRODUCTION

Respondent Port of Vancouver USA (“the Port”) respectfully requests that this Court affirm in all respects the May 17, 2017 decision of the administrative panel (“the Panel”) that determined the reimbursement claim of Pacific Coast Shredding, Inc. (“PCS”).

The Uniform Relocation Assistance and Real Property Acquisition Act (“the Act” or the “URA”) provides for reimbursement of certain reasonable and necessary expenses incurred in relocating personal property within a condemned right-of-way.¹

In this case, PCS over reached. It opportunistically sought reimbursement for \$6,009,785.89² for a full reconfiguration of its entire site.³ This reconfiguration was not caused by the taking. PCS had already been considering the full-site reconfiguration before the taking. Moreover, only 1% of its leasehold was condemned. PCS ultimately failed to meet its burden to prove that any other expenses were reasonable, necessary, and resulting from the condemnation. This Court should affirm.

¹ 42 U.S.C. §§ 4621–4638.

² AR 009567:18–19 (stating that “this Panel should award PCS its claimed expenses in full at \$6,009,785.89 for the complete reconfiguration”).

³ The Port had already reimbursed PCS for moving the personal property that was actually in the condemned right-of-way.

II. ASSIGNMENT OF ERROR

The Port does not assign any error.

III. STATEMENT OF THE ISSUES

1. The Panel considered the testimony, weighed the evidence, and concluded that PCS's full-site reconfiguration was not reasonable and necessary (Findings of Fact A.7–17)⁴ and it was reasonable to take no action, rather than reconfigure the entire site (Findings of Fact B.18–25).⁵

The Superior Court sat as an appellate court and did not issue—or have authority to issue—factual findings. Moreover, the law of the case doctrine applies to legal rulings, not facts. Accordingly, any inconsistency between the factual statements made by the Superior Court and the Panel's findings of fact as to the truck path at issue are of no moment.

These findings were supported by substantial evidence. Therefore, PCS's first and second assignments of error lack merit and do not warrant reversal.

2. The Panel correctly concluded that PCS failed to present credible evidence regarding PCS's actual expenses, an explanation of those

⁴ AR 00929:3–AR 009833:5 (primary findings of fact that the full site reconfiguration was not reasonable and necessary).

⁵ AR 009833:6–AR 009836:11 (primary findings of fact that none of PCS's costs were reasonable and necessary, because “do nothing” was the reasonable solution).

expenses, whether each expense was reasonable and necessary, and whether they were eligible for reimbursement under the Act (Conclusion of Law E.19).⁶ The Panel's conclusion was legally correct because the Act requires that each expense be reasonable and necessary to reestablish the operation, not improve it.⁷

The Panel correctly applied the law regarding the standard of proof for establishing whether an expense is to be reimbursed, considered the evidence, and concluded that PCS did not meet its burden of proof. Therefore, PCS's third and tenth assignments of error lack merit and do not warrant reversal.

3. The Panel correctly concluded that PCS's move was a personal-property-only ("PPO") and that the only cost that could be reimbursed was the \$68,259.17 that the Port had already paid PCS to move scrap metal within the right-of-way, because the scrap metal was the only personal property within the condemned right-of-way (Conclusions of Law

⁶ AR 009849:7-16 (conclusion of law that expenses must be actual, reasonable, and necessary; specifically, PCS failed to present credible evidence on its actual expenses, the explanation for such expenses, how the expenses were reasonable and necessary, and how the expenses were eligible for reimbursement under the Uniform Relocation Act. Further, PCS failed to provide credible evidence or a breakdown of expenses and/or discussion of eligibility to support a partial reimbursement for the cost of the conveyor.).

⁷ *E.g.*, 42 U.S.C. § 4622(a) and 49 C.F.R. § 24.301(a).

A.6–7).⁸ Therefore, PCS’s fourth assignment of error lacks merit and does not warrant reversal.

4. The Panel correctly concluded that PCS improperly certified entitlement to just compensation and relocation benefits (Conclusion of Law D.15),⁹ because duplicate payments are not permitted.¹⁰ Therefore, PCS’s fifth assignment of error lacks merit and does not warrant reversal.

5. The Panel did not act arbitrarily and capriciously in issuing its Findings of Fact and Conclusions of Law. However, because PCS has failed to address its sixth assignment of error with argument or authority, this Court should not consider it. Regardless, the Findings of Fact and Conclusions of Law are consistent and supported by substantial evidence. PCS’s sixth assignment of error, which it fails to support with argument, lacks merit and does not warrant reversal.

6. The Panel correctly evaluated whether PCS met its burdens of proof and persuasion as to whether the claimed expenses were reasonable

⁸ AR 009845:3–8 (conclusion of law that PCS’s relocation was correctly identified as a PPO move).

⁹ AR 009847:15–AR 009848:6 (conclusion of law that PCS improperly certified entitlement to just compensation and relocation benefits, and PCS cannot be awarded relocation benefits for the same issue it was paid just compensation for).

¹⁰ See *Union Elevator & Warehouse Co. v. Dept. of Transp.*, 171 Wn.2d 54, 248 P.3d 83 (2011), 49 C.F.R. § 24.3, and the Washington State Department of Transportation Right of Way Manual (“the Manual”) at § 7.2.3.

and necessary, as the law requires.¹¹ Although PCS raised some arguments regarding safety, it was within the Panel’s authority, not that of the Superior Court, to consider the evidence, the relevance and weight of the evidence, and determine credibility. The Panel concluded that PCS did not meet its burden. Therefore, PCS’s seventh and eighth assignments of error lack merit and do not warrant reversal.

7. The Panel’s conclusion that PCS maintained a pre-taking traffic path with a width of 14.9 feet was supported by substantial evidence. Therefore, PCS’s ninth assignment of error and all other assignments of error that pertain to this factual issue lack merit and do not warrant reversal.

IV. STATEMENT OF THE CASE

A. The taking

The Port acquired certain leasehold property rights from PCS for a rail project (“the taking”). It is undisputed that before the taking (“the before condition”), PCS’s site covered 13 acres.¹² With the taking, the Port acquired a mere 47,598 square-foot strip of land at the southern edge of PCS’s leasehold. AR 05571–005737 (Master Lease entered into between

¹¹ 42 U.S.C. § 4622(a) and 49 C.F.R. § 24.301(a).

¹² Well before PCS and the Port came to an agreement on the taking, PCS has already started developing a concept to reconfigure the shred area. AR 003857:19–003858:5; *see also* AR 003855:18–003856:6 (testifying to the existence of “concepts,” “ideas,” and “collaborative discussions with people that have done stuff like this before”).

the Port and PCS to phase acquisitions to accommodate PCS's operations during construction of the Port's project. Specifically, *see* AR 005629–AR 005673 for descriptions and depictions of the Port's acquisitions.).

It is undisputed that the vast majority of the taking was behind a concrete barrier adjacent to the Columbia River and therefore never useable by PCS for its operations. The taking that actually affected PCS's operations was just 7,332 square feet. AR 005348 (overall sketch of Port's acquisitions; *see* area marked "Phase 2 Parcel 1 Phase 2 Rail Corridor Area—Cell 1"). This was approximately 1% of PCS's leasehold. *Id.*¹³

¹³ The size of PCS's leasehold was larger in the after condition, as the Port provided PCS with more property. AR 005574 (description of "before condition" leases); AR 005619–005622, AR 005646–005648, and AR 005653–005654 (conceptual plans from aster lease, discussing the phasing of the project and showing aerial photos with takings marked); AR 000844–000846 (portion of relocation plan describing personal property located within the acquisition area); AR 003037 (part of right-of-way activities diary where relocation specialist made site visit, including description of personal property within the acquisition area); AR 000873–000875, and 000879 (discussion of improvements in acquisition in revised formal offer—*asphalt* as the only improvement listed and treated as part of just compensation so not eligible for relocation assistance); AR 000911–000912 (description of improvements in Phase 1 appraisal); AR 000916–000920 (photos from Phase 1 appraisal); AR 000929–000930 (discussion of improvements in takings area—*asphalt* in Phase 1 appraisal); AR 001025–001026 (description of improvements in Phase 2 appraisal); AR 001029–001032 (photos from Phase 2 appraisal); AR 001041–001042 (discussion of improvements in takings area—*asphalt* in Phase 2 appraisal); AR 001151–001154 (aerials and graphics from PCS's relocation claim); AR 005333 (conceptual plan showing Port's Phase 1 acquisitions); AR 005334 (conceptual plan showing Port's Phase 1 and Phase 2 acquisitions); AR 005348 (surveyor's overall sketch of Port's acquisitions);

Both during and after the taking, PCS's operations continued without significant interruption, and the taking did not acquire or damage any buildings, structures, or equipment. *See* AR 004702:9–13 (Martyn Daniel testimony stating that conveyor could still operate and “we’re not touching the conveyor”), AR 004692:4–004693:1 (Martyn Daniel testimony regarding treatment of loader-stacked shred versus conveyor-stacked shred, and Port’s acquisitions “not touching the conveyor, it can still operate”), AR 004759:12–16 (Martyn Daniel testimony regarding Port’s accommodations to PCS in construction protocols), and AR 000660–675 (Construction Coordination Protocols limiting Port’s use of temporary access areas and temporary non-exclusive easement areas so as to not “unreasonably interfere” with operations or activities). The construction was phased so that PCS’s operations would not be interrupted. *See* AR 003854:7–11 (Neil Fitzpatrick testimony stating that PCS requested the Port use a two-phase approach for its project). Only land, not any other property, was taken. The sliver of taken land contained nothing other than personal property (i.e., scrap metal).

AR 005349 (surveyor’s sketch showing acquisition boundaries in relation to site improvements); AR 009210 (surveyor sketch showing acquisitions); and AR 009213 (aerial with acquisition lines marked); AR 006695–006693 (portion of Martyn Daniel’s April 8, 2015 report discussion of acquisition impacts and personal property within Port’s acquisitions).

The Port paid PCS \$68,259.17 to move the scrap metal that was inside the taking area. AR 009828:5–9 (Finding of Fact 2 regarding PCS’s eligibility for personal property move costs); AR 006499–006519 (Relocation Assistance Claim Determination, dated April 18, 2014). Following the taking, the site remained unchanged except for a narrowing of the truck path at the south end of the shred operation. AR 009006–009007 (aerial photos showing “before” and “after” taking side-by-side), and 009210 (surveyor drawing showing acquisition lines on “before” aerial). The truck path in the before condition was 14.9 feet wide. *See, e.g.*, AR 004693:8–004695:22 (Martyn Daniel testimony regarding determining width of “before” condition truck path); AR 004922:20–004923:15 (Todd Krout testimony regarding pinch point in “after” condition was consistent with “before” condition and estimated that truck path was “approximately 15 feet” wide); AR 009006–009007 (aerial photos showing “before” and “after” taking side-by-side), and 009210 (surveyor drawing showing acquisitions in relation to shredder). A pre-taking image demonstrates that the truck path was 14.9 feet at its narrowest point. AR 005349 (surveyor drawing showing conveyor and “before” width of truck path).

When customers’ vehicles entered the area, they would be weighed on an inbound scale. AR 003744:16–19 (Neil Fitzpatrick testimony regarding traffic circulation from facility entrance to inbound scale). The

trucks would leave the scale, circulate the shredder in a counter-clockwise direction, unload their material, continue around the shredder in a counter-clockwise direction, and they would be weighed again. *See* AR 003744:22–003745:3 (Neil Fitzpatrick testimony regarding traffic circulation of unloaded trucks weighing at outbound scale); *see also* AR 001154–001155 (part of PCS’s relocation assistance claim depicting traffic circulation in the “before” condition).

The taking required that the truck path move 8.5 feet to the north, in order to allow room for a 14.9-foot wide truck path around the south end of the shred operations, in the after condition. AR 006695 (Martyn Daniel April 8, 2015 report stating, “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”), and 004693:16–004696:6 (Martyn Daniel testimony regarding moving truck path to the north and truck path width). It is undisputed that moving the truck path did not affect buildings, structures, or equipment. The only affected area was the shred stack, which is composed of conveyor-stacked shred and loader-stacked shred (“the shred pile”).

By its nature, the shred pile constantly varies in size and shape. AR 004388:6–14 (Adam Aleksander testimony describing the fluidity of the site). Feedstock items (such as vehicles and appliances) are placed on an

infeed belt on the conveyor, and the material goes into a hammer mill, which is a series of hammers that brings the material down to fist-sized pieces. AR 003752:2–22 (Neil Fitzpatrick testimony describing handling material from feedstock to shred). Those pieces drop down to an undermill and are shaken and spread out. AR 003752:23–003753:2 (Neil Fitzpatrick testimony describing material flow from hammer mill to undermill). A set of magnets captures the magnetic (i.e., ferrous) pieces and moves them along the process. AR 003753:4–7 (Neil Fitzpatrick testimony regarding magnetic sorting of material). Anything that is not magnetic (i.e., non-ferrous) is shaken out of the process. AR 003753:13–19 (Neil Fitzpatrick testimony regarding role of shaker table). The ferrous pieces go from magnet to conveyor to a Z-box, to a picking station. AR 003753:20–25 (Neil Fitzpatrick testimony regarding “before” configuration from magnet to conveyor to Z-box to picking station then out of shredder). They then depart the conveyor, like a “waterfall.” AR 003753:25–003754:1 (Neil Fitzpatrick testimony regarding material leaving shredder).

Before the taking, the shred pile could store 22,800 cubic yards of conveyor-stacked and loader-stacked shred. AR 006787–006788. The taking displaced 820 cubic yards of shred storage capacity, which was 3.6% of the maximum volume. AR 006782 (Gerald Fielder April 8, 2015 report calculating volume of conveyor-stacked shred in the “after” condition) and

AR 004700:10–15 (Martyn Daniel testimony stating loss of 820 cubic yards of conveyor-stacked shred due to new truck path). Therefore, after the taking, the shred pile could store 21,980 cubic yards of shred, while still allowing for a 14.9-foot wide truck path at the south end of the shredding operations.

The minor displacement of shred storage could have been resolved by simply moving shred to another area on the site, if and when the shred stack was at maximum capacity and it became necessary to maintain the 14.9-foot truck path. AR 005035:15–005036:10 (Daniel Shapiro testimony stating that PCS’s full yard configuration was not a “necessary consequence of the taking,” and the loss of 820 cubic yards of storage capacity “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”); *see also* AR 006746 (Daniel Shapiro’s April 8, 2015 report stating “DJS sees an obvious benefit to the overall reconfiguration to the facility, that is, the site now has sufficient available area to handle multiple grades of scrap much more efficiently. The ultimate impact and outcome of reconfiguration was not necessitated by the loss of shredded storage space. The eight hundred and twenty (820) cubic yards of lost conveyor-stacked shred storage equates to seven hundred and seventy-five (775) net tons. At an assumed \$1.30 per Net Ton cost for a front-end loader

to move the shredded scrap forty-five (45) times per year the expense to PCS is \$45,000 per year. PCS reports their annual shredded production at two hundred and sixty-two thousand (262,000) Net Tons per year which calculates to an additional \$0.17 per ton to their overall shredder operation cost. This is an insignificant added cost to the operation and would represent their cost if they did absolutely nothing about the loss of property.” (footnote omitted)). In Neil Fitzpatrick’s experience, there was only one time in which PCS had to move shred to another area on the site. AR 003763:24–003764:4.¹⁴

Instead of conducting any analysis of the taking’s effect, instead of conducting any cost-benefit analysis, and instead of simply moving the truck path 8.5 feet to the north and finding ways to address the few times when shred storage was at capacity, PCS took an opportunity to conduct a full reconfiguration of its site that cost more than \$6 million. AR 004574:14–21 (Neil Alongi testimony stating no cost-benefit analysis was performed, but his “conclusion was based on the cost to reestablish an equivalent, safe, and efficient operation[.]” AR 004547:11–004548:8 (Neil Alongi testimony stating that loss of shred capacity “wasn’t really the issue,” but issue was “[a]re we going to be able to operate after the taking.”

¹⁴ The site is “very fluid,” and piles of shred grow and contract depending on market conditions and shipping. AR 004388:6–14.

Mr. Alongi did not calculate loss of shred capacity if PCS – did nothing but still continued to operate nor did he examine the cost to engage in extra loading that would occur.). PCS spent over \$6 million on its full scale site reconfiguration, which involved turning the shred conveyor 90 degrees and extending it an additional 77 feet west, as well as many other site improvements that were nowhere near the acquired right-of-way (e.g., the rail-spur relocation, new and relocated truck scales, a new entrance and deceleration lane, new and expanded parking, etc.).¹⁵

It is undisputed that, in addition to turning and extending the shred conveyor, PCS (1) added an enhanced dual picking conveyor, (2) constructed a new shred pad, (3) relocated the rail spur to the far west leasehold line, (4) performed substantial storm water upgrades, (5) constructed new employee parking with new lighting and striping, (6) demolished an old office building and installed temporary office trailers, planning to construct a new two-story office later, and (7) constructed a new entrance with relocated new truck scales and a new deceleration lane. AR 009831:16–009832:6 (Findings of Fact A.14 detailing PCS’s site reconfiguration work). PCS submitted the expense for all of these

¹⁵ The record shows the conveyor in its original condition (AR 005336 (Metal Shredding Solutions Pre-Configuration Plant Layout plan)) and after it was turned 90 degrees (AR 005337 (Metal Shredding Solutions Plant Layout Remodel plan)).

improvements in response to the taking.

PCS's general manager, Neil Fitzpatrick, was responsible for the decision to turn the conveyor and fully reconfigure the site, but he did not know the scope or the effect of the taking when he made this decision. AR 003851:15–003853:12 (Neil Fitzpatrick testifying that he did not investigate the actual impact—he didn't understand the taking had changed as a result of PCS's negotiations with the Port to reduce impacts and his investigation of the impacts was based on erroneous assumptions of larger acquisitions). In fact, in response to a question from the Panel, Mr. Fitzpatrick admitted that he did not know the scope of the taking *until the second day of the trial in this matter*:

Q: You—and I just want to make sure I understood exactly what you said, because this point was kind of belabored here, is that you did not—or you were not aware until today that the scope of the taking—that the area that the Port took was revised until today?

A: From that initial November document, yes.

AR 003898:11–19.¹⁶ Moreover, PCS's expert witness, who designed the

¹⁶ None of PCS's experts were asked how to address the effect of the taking; instead, they were asked to address the problems created by the pre-determined decision to turn the shred conveyor. AR 008992 (Neil Fitzpatrick's August 9, 2011 email to Ralph Miller stating, "I will work with Neil Alongi on getting the up to date facility layout i.e.—the as built with the additions we added this year and previous years I went to the liberty of putting a suggested 90 degree on the shredder just after the 2nd transfer conveyor as a starting point. While walking the yard I wanted to see what

site, testified that he performed no cost-benefit analysis before testifying that the site reconfiguration was reasonable and necessary. AR 004574:14–21 (Neil Alongi testifying that he did not perform a cost-benefit analysis); *see also* AR 004547:11–004548:8 (Alongi testifying that (1) he did not calculate the loss of shred capacity if PCS did nothing but still continued to operate and (2) he did not study what it would cost to engage any extra loading).

PCS did not evaluate the actual effects of the taking or any mitigating alternatives. AR 004574:14–21, AR 004547:11–004548:8 and AR 003962:15–003963:4.

PCS's \$6,009,785.89 full-site reconfiguration was not necessary or reasonably related to the taking because PCS routinely stockpiled shred

the furthest point going down toward the river we could swing 90 degrees to gain more efficient use of the space and yard by the back end of the ferrous area without moving the shredder position. (Keeping in mind the addition of the backend system down to Columbia Way and further investments in the future for NF). I understand we want to make this an efficient organized flow through the yard to handle the peaks and costs requirements of our business.”), AR 008993–AR 008996 (Neil Fitzpatrick's August 20, 2011 email to Ralph Miller describing work plan), AR 008976 (Neil Fitzpatrick's October 4, 2011 email to Kathy Holtby providing notice of PCS's intent to demolish PCS's office), AR 008977–AR 008979 (Tom Wiser's November 1, 2011 email to Neil Fitzpatrick regarding concept for new rail spurs), AR 004555:3–AR 004555:7 (Neil Alongi testifying that he did not consider any alternatives besides turning the entire shredder or moving the entire shredder), AR 003907:12–003908:8 (Mike Mullins testifying that his proposal was based on “basic parameters” provided by Neil Fitzpatrick of “We need to make a 90-degree turn past the Z-box”).

elsewhere before loading onto a vessel,¹⁷ which it could have done if the shred pile ever approached capacity. *See* AR 003763:17–003764:9 (Neil Fitzpatrick testifying regarding using material handler to load shred higher than the front-end loaders could, material storage on Terminal 2, and storing shred elsewhere on PCS’s site).¹⁸

¹⁷ Even if turning the conveyor was somehow reasonable and necessarily the result of the taking, it only cost \$347,800. AR 009008-009009 (Martyn Daniel Relocation Claim Analysis), AR 006757 (Reconfigured Stacking Conveyor without Enhancements plan from Daniel Shapiro April 8, 2015 report), and AR 005032:22–005033:22 (Daniel Shapiro testimony regarding cost savings “in excess of \$400,000” or “approximately \$465,000” to turn the conveyor without the extra equipment with total cost of “around \$340,000”). And even if PCS had not reconfigured, and even if it was necessary to move shred on occasion, the evidence indicated that this would cost only an estimated \$46,000 per year. *See* AR 006696 (Martyn Daniel April 8, 2015 report stating that “the total annual additional cost to PCS for this added work is approximately \$46,000 ...”); *see also* AR 004700:18–004701:18 (Martyn Daniel testifying that annual cost of moving material under a “do nothing” scenario was “about \$46,000”), AR 006746 (Daniel Shapiro’s April 8, 2015 report stating “the cost for a front-end loader to move the shredded scrap forty-five (45) times per year the expense to PCS is \$45,000 per year”), AR 006766 (portion of Daniel Shapiro’s April 8, 2015 report analysis shred volume data provided by PCS, AR 005035:15–005037:11 (Daniel Shapiro testimony stating that increased costs to running front-end loader to move shred is “about 17 cents” per ton due to loss of 820 cubic yards of material), and AR 006772–006790 (Gerald Fielder’s April 8, 2015 report calculating volume of shred pile in the “before” versus “after” condition).

¹⁸ Moving the 820 cubic yards of displaced shred would have added only \$0.17 per ton to PCS’s processing costs. AR 005035:15–005037:11 (Daniel Shapiro testifying the increased costs to running front-end loaders to move shred to handle 820 cubic yard loss). This represents an increased cost of 1/3 of 1%. AR 005036:2–005037:11 (Daniel Shapiro testifying that 17 cents incremental costs per ton would not cause PCS to “suffer significantly”), AR 005146:16–24 (Daniel Shapiro testifying that costs would have only

B. PCS's reimbursement claim

Upon receiving PCS's initial reimbursement request, the Port reviewed it and, in consultation with a senior relocation specialist at Universal Field Services, Inc., made a determination that PCS was eligible for a personal property move reimbursement. AR 006220–006223 (Notice of Eligibility, dated March 1, 2012).¹⁹ A personal property move is appropriate when “personal property is located on a portion of property that is being acquired but where the business located on the property can still operate after acquisition of the needed property and where the business will not incur reestablishment expenses.”²⁰ The Washington State Department of Transportation Right of Way Manual (“the Manual”) at § 12-10.2(C).²¹

“gone up 17 cents a ton if ... [PCS] had done nothing”), and AR 006746 (Daniel Shapiro's April 8, 2015 report stating, “The eight hundred and twenty (820) cubic yards of lost conveyor-stacked storage equates to seven hundred and seventy-five (776) net tons. At an assumed \$1.30 per Net Ton cost for a front-end loader to move the shredded scrap forty-five (45) time per year the expense to PCS is \$45,000 per year.”).

¹⁹ For visual depictions, see AR 005333 (conceptual plan showing Port's Phase 1 acquisitions), AR 005334 (conceptual plan showing Port's Phase 1 and Phase 2 acquisitions), AR 005348 (surveyor's drawing showing Port's acquisitions), AR 005349 (surveyor's drawing showing Port's acquisitions in vicinity of shredder and truck path), and AR 009210 (surveyor's drawing showing primary 7,332 square foot acquisition impacting PCS's operations).

²⁰ Reestablishment expenses are those that are incurred when a business must reestablish its operations “at a replacement location.” The Manual at § 12-8.2.3. PCS did not do that here.

²¹ This was correct because there was only personal property located in the

On April 18, 2014, the Port notified PCS that it was eligible for reimbursement of \$68,259.17 in personal property move costs for moving shred and other material located in the right-of-way. AR 006499–006519 (Port’s relocation assistance claim determination regarding eligibility of PCS’s submitted move costs). The Port paid that amount to PCS. AR 009828 (Finding of Fact 2 regarding Port’s determination that PCS was eligible for \$68,259.17 in personal property move costs); AR 003132-003133 (Jill S. Gelineau’s October 20, 2014 letter to Jennifer Gates regarding relocation assistance payment of \$68,259.17 via wire transfer), AR 003134 (wire transfer receipt for October 22, 2014 payment of \$68,259.17 for relocation assistance payment).

PCS appealed that decision to the Panel. AR 006224–006225 (PCS’s April 19, 2012 appeal of Notice of Eligibility seeking eligibility for reestablishment expenses only), AR 006236–006240 (PCS’s September 25, 2012 appeal of “Personal Property Only” move eligibility and detailing anticipated reconfiguration work by PCS), and AR 006520–006521 (PCS’s June 16, 2014 appeal of Port’s relocation assistance claim determination).

acquired area. *See* 49 C.F.R. § 24.301(3); *see also* The Manual at §§ 12-9.1–9.3.

C. **The Panel hearing and decision, the first appeal to the Clark County Superior Court, and the Panel resolution on remand**

The Panel conducted a full contested hearing, taking evidence and hearing witnesses and arguments of counsel. After a seven-day hearing, the Panel issued its ruling, which concluded that PCS was not eligible for any reimbursement beyond the \$68,259.17 that had already been awarded and paid by the Port. AR 009364–009382 (Panel’s Decision, dated July 27, 2015). The Panel noted that “[a]s presented by Pacific Coast Shredding, the Panel was faced with essentially an all or nothing proposition.” AR 009377:14–15 (Panel’s Decision, dated July 27, 2015). This was because PCS failed to break down its alleged costs of \$6,009,785.89 in any meaningful way, thereby preventing the Panel from determining how much was spent on each particular aspect of the reconfiguration, whether those amounts were reasonable and necessary, and whether each expense submitted by PCS was or was not reimbursable under the Act. PCS petitioned the Clark County Superior Court (“the Superior Court”) for review of that order.

The Superior Court,²² sitting as an appellate court, discounted the

²² PCS’s opening brief repeatedly refers to the Superior Court as “the trial court,” but the Superior Court was not functioning as a factfinder. The sole fact-finding function is with the Panel.

“all or nothing approach” and remanded the case to the Panel to determine what amount of PCS’s reconfiguration expenses were necessary and reasonably related to addressing a choke point in the traffic path near the southeastern corner of a conveyer-stacked metal shred pile. CP 193–194; AR 009397–009398 (Opinion, dated September 6, 2016, by Judge Lewis, Decision ¶¶ 8-10 and Order ¶ 2).

Following remand, the Panel allowed additional briefing and then issued its Findings of Fact and Conclusions of Law. AR 009827–009852. Rather than taking an “all or nothing approach” to the issue, the Panel followed the Superior Court’s second order and addressed (1) whether a full reconfiguration was reasonable and necessary,²³ (2) whether turning the conveyor 90 degrees was reasonable and necessary,²⁴ (3) whether relocation of the rail spur was reasonable and necessary,²⁵ and (4) whether the remaining aspects of PCS’s claim were reasonable and necessary.²⁶ Ultimately, the Panel determined that the reasonable solution to the taking

²³ AR 009829–009833 (findings establishing that the full reconfiguration was not reasonable and necessary).

²⁴ AR 009836–009837 (findings establishing that the conveyor turn was not reasonable and necessary).

²⁵ AR 009837–009840 (findings establishing that the relocation of the rail spur was not reasonable and necessary).

²⁶ AR 009840–009843 (findings establishing that the remaining aspects were not reasonable and necessary).

was for PCS to take no action, other than moving shred to another location on the site when the stack reached capacity. AR 009833–009836.²⁷ The Panel issued secondary findings as to amounts allocable to the various components of the reconfiguration, in the event that its decision was overruled again by the Superior Court, acting in an appellate capacity. AR 009836–009843 (Secondary Findings of Fact addressed whether turning the shredder 90 degrees was reasonable and necessary, and whether the “remaining dominoes” (i.e., the “ripple effect” work PCS claimed was caused by the need to turn the shredder 90 degrees) was reasonable and necessary).

PCS appealed again to the Superior Court, which accepted additional briefing, heard oral argument, and issued a memorandum and order. CP 365–370. The Superior Court concluded that PCS should be awarded an additional \$347,800 in expenses for turning the conveyor 90

²⁷ Moving displaced shred would have increased operating costs by 1/3 of 1%. *See* AR 005035:15–005037:11 (Daniel Shapiro testifying regarding increased costs of 17 cents per ton (incremental cost) to run front-end loader in a “do nothing” scenario); AR 005146:16–24 (Daniel Shapiro testifying confirming increased costs of 17 cents per ton if PCS had “done nothing”); and AR 006746 (Daniel Shapiro’s April 8, 2015 report stating “insignificant added cost to the operation and would represent their only cost if they did absolutely nothing about the loss of property” of \$0.17 per ton to their overall shredder operation cost, with an additional expense of “approximately \$45,000 per year” to use a front-end loader to move the shredded scrap 45 times per year).

degrees and \$46,000 in trammings costs²⁸ (for expenses allegedly incurred before the reconfiguration). CP 377. Following that memorandum and order, PCS appealed to this Court. CP 371.

V. STANDARD OF REVIEW

This Court reviews the Panel’s second decision, not the Superior Court’s second decision, pursuant to the Washington Administrative Procedure Act, chapter 34.05 RCW. *See Tapper v. Employment Sec. Dep’t*, 122 Wn.2d 397, 402 (1993); *Utter v. Dep’t of Soc. & Health Servs.*, 140 Wn. App. 293, 299 (2007); and *B&R Sales, Inc. v. DoLI*, 186 Wn. App. 367 (2015) (“On appeal from the superior court, we sit in the same position as the superior court and review the agency’s order based on the administrative record rather than the superior court’s decision.”).

This Court upholds findings that are supported by substantial evidence, which is “evidence sufficient to persuade a fair-minded person of their truth.” *City of Vancouver v. Pub. Emp’t Relations Comm’n*, 107 Wn. App. 694, 703, 33 P.3d 74 (2001); *see also Terry v. Employment Sec. Dep’t*, 82 Wn. App. 745, 748–49, 919 P.2d 111 (1996). The substantial evidence standard is highly deferential. *PacifiCorp v. Wash. Utils. & Transp. Comm’n*, 194 Wn. App. 571, 586–87, 376 P.3d 389 (2016).

²⁸ This refers to the process of moving material to another location.

This Court may affirm on any basis that is supported by the record, even if it was not considered below. *E.g.*, *King County v. Seawest Inv. Assocs.*, 141 Wn. App. 304, 310, 170 P.3d 53 (2007). Unchallenged findings of fact are verities on appeal. *PacifiCorp*, 194 Wn. App. at 587.

Upon appeal of a nonjury trial, the “respondents are entitled to the benefit of all evidence and reasonable inference therefrom in support of the findings of fact entered by the trial court.” *Mason v. Mortgage Am.*, 114 Wn.2d 842, 853, 792 P.2d 142 (1990). After all, “the trial court, having the witnesses before it, is in a better position to arrive at the truth than is the appellate court.” *Hallin v. Bode*, 58 Wn.2d 280, 281, 362 P.2d 242 (1961).

The Court reviews de novo conclusions of law. *Terry*, 82 Wn. App. at 748–49. Statutory interpretation is a question of law subject to de novo review. *Williams v. Tilaye*, 174 Wn.2d 57, 61, 272 P.3d 235 (2012). Where a statute is “plain, free from ambiguity, and devoid of uncertainty,” “there is no room for construction because the meaning will be discovered from the wording of the statute itself.” *People’s Org. for Wash. Energy Res. v. State Utils. & Transp. Com.*, 101 Wn.2d 425, 429–30, 679 P.2d 922 (1984). However, this Court gives “substantial weight to the agency’s interpretation of the law it administers, particularly where the issue falls within the agency’s expertise.” *Karanjah v. Dep’t of Soc. & Health Services*, 199 Wn. App. 903, 916, 921, 401 P.3d 381 (2017); *see also Peacock v. Public*

Disclosures Comm'n, 84 Wn. App. 282, 286 (1996).

PCS must assign error to each finding it challenges. RAP 10.3(g). This Court generally does not consider assignments of error that are unsupported by argument and citations to the record. *Seattle Sch. Dist. No. 1 v. State*, 90 Wn.2d 476, 496, 585 P.2d 71 (1978). For example, when a party purports to assign error to a finding of fact as written but fails to argue why substantial evidence does not support it, this Court need not consider it. *Shelcon Constr. Group, LLC v. Haymond*, 187 Wn. App. 878, 351 P.3d 895 (2015).

An agency's decision cannot be set aside absent a clear showing of abuse of discretion. *PacifiCorp*, 194 Wn. App. at 588. This Court has held, "We do not weigh evidence or judge witness credibility, and we defer to the [agency's] discretion in weighing the testimony of experts." *Id.* at 588–89; *see also Galvis v. Dep't of Transp.*, 140 Wn. App. 693, 711, 167 P.3d 584 (2007) (reversing superior court's order overruling findings of ALJ and reviewing officer, noting that appellate court will not review administrative decision-maker's weighing of evidence or determination of expert credibility).²⁹

Reversal is inappropriate unless the Panel's decision (1) violated a

²⁹ PCS's attempts to attack weight or credibility of evidence are not a basis for overturning the Panel's decision. *See, e.g.*, Opening Brief at 50–51.

constitutional provision, (2) lies outside the agency’s jurisdiction, (3) arose from an illegal procedure, (4) was based on an erroneous interpretation or application of the law, (5) lacked substantial evidence, or (6) was arbitrary or capricious.³⁰ RCW 34.05.570(3); *Tapper*, 122 Wn.2d at 402.³¹ An agency’s action is arbitrary and capricious only if it “‘is willful and unreasoning and taken without regard to the attending facts or circumstances.’” *Att’y Gen.’s Office v. Utils. & Transp. Comm’n*, 128 Wn. App. 818, 824, 116 P.3d 1064 (2005) (quoting *Hillis v. Dep’t of Ecology*, 131 Wn.2d 373, 383, 932 P.2d 139 (1997)). “‘Where there is room for two opinions, an action taken after due consideration is not arbitrary and capricious even though a reviewing court may believe it to be erroneous.’” *Id.* (quoting *Rios v. Dep’t of Labor & Indus.*, 145 Wn.2d 483, 501, 39 P.3d 961 (2002)). “Neither the existence of contradictory evidence nor the possibility of deriving conflicting conclusions from the evidence renders an agency decision arbitrary and capricious.” *Id.*³²

³⁰ PCS does not contend that the first, second, or third bases for reversal apply here.

³¹ *See also Office of Attorney General, Public Counsel Unit v. Washington Utilities and Transportation Commission*, 4 Wn. App. 2d 657, 423 P.3d 861 (2018).

³² Even when an agency’s determination is unsupported by the record, the proper remedy for a reviewing court is to remand to the agency for additional investigation or explanation, because a reviewing court is not generally empowered to conduct de novo inquiry into a matter being

VI. ARGUMENT

A. General applicable law

PCS's relocation assistance claim arose under Chapter 8.26 RCW, WAC 468-100-301, and the Uniform Relocation Assistance and Real Property Acquisition Act ("the Act"), which provides for reimbursement of certain relocation costs associated with a business that is required to move because of an acquisition of part or all of a property. 42 U.S.C. §§ 4621–4638.³³ Federal and state law and regulations provide guidance on its application. *See* 49 C.F.R. Part 24, RCW Chap. 8.26, and WAC 468-100-301. In addition, the Port follows the Manual. Relocation benefits do not pay for any land or improvements that are acquired; that is determined in a separate legal proceeding.

Non-residential relocation benefits can take the form of a PPO move or a full business relocation. *See* 49 C.F.R. § 24.301(g), (h). A PPO relocation is a "move of personal property from property acquired for right

reviewed or to reach its own conclusions based on such inquiry. *See State v. J.C.*, 192 Wn. App. 122, 133, 366 P.3d 455 (2016) (in the context of an appellate court reviewing a trial court's order); *Kroger Co. v Reg'l Airport Auth.*, 286 F.3d 382 (6th Cir. 2002); *see also Vitale v Kansas City*, 678 F. Supp. 220 (W.D. Mo. 1988) (court reviewing agency determination under 42 U.S.C. § 422(a) does not re-adjudicate administrative case, but merely determines whether there was rational basis for agency action).

³³ It is undisputed that the parties in this matter have referred to federal equivalents to Washington state law and regulation and do not contend that there is a material difference between them.

of way or project purposes, when there is not a need for a full relocation of a ... business operation ... from the acquired property.” The Manual at § 12-10.1. Reimbursement is not required unless the cost incurred was the direct result of the acquisition and the cost was reasonable and necessary. *See* 42 U.S.C. § 4621(b) and 49 C.F.R. § 24.301(a) and (g).³⁴

Unlike residential moves, the Act does not require the condemning agency to place a business in substantially the same position that it was in before the acquisition. *See* U.S. Department of Transportation Federal Highway Administration Federal-Aid Policy Guide, Payments for Moving and Related Expenses, NS 49 C.F.R. 24D § 10 (Feb. 16, 2006) (“the Guide”).³⁵ The Guide makes this perfectly clear:

The Uniform Act does not require that displaced business be made whole. Being made whole is not the Uniform Act’s standard for businesses. Congress intended different standards for residences and businesses. Businesses enjoy substantially fewer benefits under the Act than do homeowners and tenants of residential property... [T]he

³⁴ PCS’s opening brief reveals that its true intention was to improve the site, not to simply seek reimbursement: “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.” Opening Brief at 17 (emphasis added).

³⁵ *See also* *Torrente v. Metropolitan Atlanta Rapid Transit Authority*, 603 S.E.2d 470, 474 n. 10 (2004) (citing *Metropolitan Atlanta Rapid Transit Authority v. Funk*, 435 S.E.2d 196 (Ga. 1993)); 49 C.F.R. § 24.301(a)(4); and *Schons v. State Department of Transportation*, 43 Wn. App. 160, 162–166, 715 P.2d 1142 (1985).

A copy of the Guide is in the appellate record at AR 009254–AR 009257.

[Uniform Act does] not require businesses to be protected to the same extent as homeowners and tenants.

AR 009254–009257.

B. There was no error in issuing Findings of Fact A.7–A.17 and B.18–25, because the Superior Court’s factual statements are not the law of the case.³⁶

PCS argues that the Superior Court made factual findings that were binding on the Panel, specifically the Superior Court’s comment about a 20-foot wide truck path and that PCS could not “do nothing” in response to a slightly smaller shred pile area. This is wrong; the Superior Court was not the factfinder.

The Superior Court sat as an appellate court. As such, it did not have authority to make factual findings, because appellate courts cannot find facts. *Edwards v. Morrison-Knudsen Co.*, 61 Wn.2d 593, 598–99, 379 P.2d 735 (1963). Appellate courts neither weigh evidence nor judge witness credibility; instead, they must defer to the Panel’s discretion in weighing testimony. *PacifiCorp*, 194 Wn. App. at 588–89; *see also Galvis*, 140 Wn. App. at 711; *see also Ryan v. Dep’t of Soc. & Health Services*, 171 Wn. App. 454, 466, 287 P.3d 629 (2012) (stating that “[w]e do not make witness

³⁶ This pertains to PCS’s first and second assignments of error.

credibility determinations”).³⁷ For the same reason, it is irrelevant that the Superior Court made an incidental statement that PCS maintained a minimum 20-foot corridor before the taking. The Superior Court was not a factfinder, and it made no findings of fact. Therefore, PCS’s reliance on comments on facts (not holdings, as advanced by PCS) by the Superior Court is entirely misplaced, and it was entirely appropriate for the Panel to enter the Findings of Fact to which PCS assigns error.

PCS is wrong to impliedly argue that the law of the case doctrine applies to the Superior Court’s comments regarding the 20-foot truck path. “The law of the case doctrine ... applies to law, not facts.” *Karanjah v. Dep’t of Soc. & Health Services*, 199 Wn. App. 903, 916, 401 P.3d 381 (2017). PCS cites to numerous comments made by the Superior Court, especially the one about a truck path being 20 feet wide in the before condition. But those factual statements are not binding on the parties or this Court. It was the Panel, alone, that was in the position to determine the facts, and PCS has no authority to the contrary. Any differences between the Superior Court’s factual comments and the Panel’s findings of fact, which

³⁷ Sitting as an appellate court, the Superior Court could not make findings of fact if the finder of fact made insufficient findings. *See State v. P.M.P.*, 7 Wn. App. 2d 633, 645, 434 P.3d 1083 (2019).

are supported by substantial evidence,³⁸ do not warrant reversal.

C. **There was no error in issuing Findings of Fact B.18–25, because they were supported by substantial evidence and PCS did not meet its burden of proof.**³⁹

The Panel was obligated to evaluate whether PCS met its burden to establish that its claimed expenses were “reasonable and necessary.” *E.g.*, 49 C.F.R. § 24.301(a) and (g). It needed to determine whether any of the claimed expenses were reasonable in response to losing a small amount of shred pile capacity. The Panel found that they were not, and this finding was supported by substantial evidence.

PCS lost 3.6% of its shred pile capacity. But considering the evidence about PCS’s operations—namely, that PCS would place shred elsewhere when its shred pile reached capacity—there was nothing that PCS needed to do about the slight diminution in capacity. *See* AR 003763:12–003764:9 (Neil Fitzpatrick testifying regarding PCS’s operations when at full capacity, including using material handler to load shred higher, and storage at Terminal 2, and putting material elsewhere on PCS’s site). Accordingly, there was no need for PCS to incur any of its reconfiguration expenses as a result of the right-of-way.

³⁸ *See* Sections VI C and J, *supra*.

³⁹ This pertains to PCS’s second assignment of error.

This was also supported by a cost-benefit analysis, an analysis that the Panel, but not PCS, conducted. AR 009833–009836. PCS was not entitled to reimbursement, because it was not reasonable for PCS to incur these expenses in response to the taking. The Panel’s findings of fact should be affirmed.

D. The Panel did not err in concluding that PCS failed to provide sufficient credible evidence to establish that its claimed expenses were reasonable and necessary.⁴⁰

PCS failed to carry its burden of proving that its claimed expenses were reasonable and necessary. Although PCS now claims that the Panel was required to conclude otherwise, it was the Panel, not the Superior Court or this Court, that had the authority to hear testimony, weigh the evidence, and make determinations regarding credibility. *See PacifiCorp*, 194 Wn. App. at 588–89; *see also Galvis*, 140 Wn. App. at 711. PCS had the burden to prove its claim. RCW 34.05.570(1)(a) (providing that “[t]he burden of demonstrating the invalidity of agency action is on the party asserting invalidity”); *see also Heidgerken v. Dep’t of Natural Resources*, 99 Wn. App. 380, 384, 993 P.2d 934 (2000), and *PacifiCorp*, 194 Wn. App. at 586.⁴¹

⁴⁰ This pertains to PCS’s third and tenth assignments of error.

⁴¹ PCS argues to the contrary, but without any authority whatsoever. Opening Brief at 48.

Under the URA, the submitted expenses must be evaluated to determine whether they are both reasonable and necessary. 49 C.F.R. § 24.301. Otherwise, they cannot be reimbursed. This means that PCS had the obligation to sufficiently explain its costs in order for the Port to determine whether the costs were eligible for reimbursement under the URA. Such an obligation raises three core questions: (1) whether the cost was actually incurred; (2) whether the cost is reimbursable under the URA; and (3) whether the cost was reasonable and necessary. Instead of providing witness testimony, PCS provided an 18-page spreadsheet with 422 line items. AR 001202–001220.⁴² This spreadsheet was accompanied by invoices and payment receipts. But PCS provided no analysis or explanation of the individual expenses, thereby preventing the Port from evaluating whether the incurred costs were reimbursable under the URA as well as whether they were reasonable and necessary.⁴³

PCS's spreadsheet provided absolutely no explanation for either reasonableness or necessity. AR 009322–009357 (PCS's spreadsheet of

⁴² PCS provides no authority to support the proposition that witness testimony, or the lack thereof, should be somehow preempted by its conclusory and unexplained spreadsheet and invoices.

⁴³ PCS impliedly argues that the Manual creates a presumption that expenses are reasonable and necessary. Opening Brief at 56. The Manual does not say that.

relocation costs (Exhibit B to PCS's Post-Hearing Brief, dated May 29, 2015)). It simply listed the items with varying degrees of vagueness and provided no explanation as to the basis, other than PCS's conclusory statement as to which portion of the WAC it pertains to. *Id.* For example, the spreadsheet lists multiple entries of "[s]weeping at 1A" and "[s]weeping on the road," but it does not indicate why these amounts were either reasonable or necessary. Similarly, PCS submitted what the Port could only conclude were ineligible costs for at least the following items: (i) an enhanced picking system for \$385,000; (ii) the purchase of a Terex loader for use at the Parcel 1A temporary storage site for over \$400,000;⁴⁴ (iii) operating costs at the Parcel 1A storage facility; and (iv) legal fees and costs. AR 006701 (Martyn Daniel's April 8, 2015 report detailing categorically ineligible costs submitted by PCS). Unfortunately, many of the other line items submitted by PCS could not even be evaluated, given the lack of information provided.

Successfully prosecuting a reimbursement claim is not just a matter of authenticating a document; it requires evidence, including credible witness testimony.⁴⁵ PCS does not cite any testimony that established which

⁴⁴ This would have been disallowed for several reasons, including the ineligibility of equipment purchases and for costs of operating out of a storage facility.

⁴⁵ The Port never stipulated or agreed that PCS's expenses were reasonable

claimed expenses in the spreadsheet went to which aspects of the work. Mr. Jacobsen, the only PCS witness who testified regarding invoices, did not know what PCS was claiming, did not know the dollar amount of the claim, and did not assist in preparing PCS's claim letter. AR 004639:6–24. For reasons that are unknown, PCS made a tactical decision to not offer witness testimony—or any other evidence—on the reasonableness or necessity of the expenses in the spreadsheet, but that decision was PCS's, alone. Because of this approach, PCS failed to meet its burden of proof.

The remainder of PCS's argument on this issue attempts to bolster the credibility of its witnesses. Opening Brief at 57–59. But this Court is not in a position to weigh the credibility of witnesses and must defer to the Panel's determination of witness credibility. *Galvis*, 140 Wn. App. at 711. This Court should affirm the Panel.

E. The Panel was correct to conclude that PCS's move was a PPO relocation, because all that had to be relocated was personal property.⁴⁶

A PPO relocation is “a move of personal property from property acquired for the right of way or project purposes where there is not a need for a full relocation of a ... business operation ... from the acquired property.” The Manual at § 12-10.1. This is appropriate when “personal

and necessary.

⁴⁶ This pertains to PCS's fourth assignment of error.

property is located on a portion of 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. The Manual at § 12-10.2(c).⁴⁷

In this case, the acquired right-of-way contained only personal property (*i.e.*, shred material) and did not require PCS to incur reestablishment expenses; therefore, it was factually appropriate to characterize the move as a PPO relocation. 49 C.F.R. § 24.301(3); *see also* the Manual at §§ 12-10.1–12-10.3. It was not a full business move, as none of PCS's infrastructure (e.g., the shredder, the conveyor, the rail line, the office, the parking, the truck scales, etc.) was within the taking.⁴⁸ The only thing that was within the right-of-way, other than the shred, was a portion of the unpaved truck path that circulated the shredder. The Panel was correct to conclude that the move was a PPO relocation only.

⁴⁷ Reestablishment expenses, which are not allowed except in the case of a full business move, are capped at \$50,000. RCW 8.26.035(1)(d).

⁴⁸ For visuals, see AR 005333 (conceptual plan showing Port's Phase 1 acquisitions), AR 005344 (conceptual plan showing Port's Phase 1 and Phase 2 acquisitions), AR 005348 (surveyor's drawing showing Port's acquisitions), AR 005349 (surveyor's drawing showing Port's acquisitions in vicinity of shredder and truck path), and AR 009210 (surveyor's drawing showing Port's acquisitions with primary impact to PCS's operations highlighted).

F. The Panel correctly distinguished between just compensation and reimbursement for relocation.⁴⁹

The URA is not an eminent domain statute. *Union Elevator & Warehouse Co. v. Dep't of Transp.*, 171 Wn.2d 54, 67, 248 P.3d 83 (2011) (considering RCW 8.26.010 and the URA and concluding that “these statutes cannot be merged under one general claim”). Duplicate payments are not permitted. 49 C.F.R. § 24.3.

The Panel was correct to distinguish between just compensation and relocation reimbursement to ensure that there was no duplicative payment. There is no basis for reversing the Panel’s Conclusion of Law D.15.

G. PCS has failed to support its sixth assignment of error with argument or authority, and the assignment is waived.

When an appellant fails to provide argument or authority to support an assignment of error, that assignment of error is waived. *State v. Sublett*, 156 Wn. App. 160, 186, 231 P.3d 231 (2010); *see also Miller v. Kenny*, 180 Wn. App. 772, 818, 325 P.3d 278 (2014) (stating that “[t]he failure of an appellate to provide argument and citation of authority in support of an assignment of error precludes appellate consideration of an alleged error”).

In this case, PCS asserted that “[t]he Panel acted arbitrarily and

⁴⁹ This pertains to PCS’s fifth assignment of error.

capriciously in issuing its 26 pages of Findings of Fact and Conclusions of Law, AR 009827–009852, because they contradict each other.” Opening Brief at 3. But PCS does not support that assertion with sufficient argument or authority. Therefore, that issue is not properly before the Court and should be disregarded.

H. Even if this Court were to reach PCS’s sixth assignment of error, this Court is not permitted to substitute its judgment of the evidence for that of the factfinder.

Reversal is not warranted when an appellant simply points to different evidence or the possibility of reaching a different conclusion. At best, that is all that PCS has done.

An appellant fails to establish arbitrary and capricious action when there is room for two opinions, even if the appellate court disagrees with the factfinder below. *Rios v. Dep’t of Labor & Indus.*, 145 Wn.2d 483, 501, 39 P.3d 961 (2002). Courts recognize that “the burden of persuasion” means that “the trier of fact (not the appellate court) must be persuaded that the fact in issue is ... probable.” *State Farm Fire & Cas. Co. v. Huynh*, 92 Wn. App. 454, 465, 962 P.2d 854 (1998) (addressing the difference between the burden of production and the burden of persuasion); *see also Carle v. McChord Credit Union*, 65 Wn. App. 93, 98, 827 P.2d 1070 (1992) (stating that “[t]he burden of persuasion is applied by the trier of fact.”); *State v.*

Paul, 64 Wn. App. 801, 807, 828 P.2d 594 (1992) (stating that “[t]here can be substantial evidence to both prove and disprove a point”). This Court does not substitute its view of the evidence for that of the factfinder:

[W]here a trial court finds that evidence is insufficient to persuade it that something occurred, an appellate court is simply not permitted to reweigh the evidence and come to a contrary finding. It invades the province of the trial court for an appellate court to find compelling that which the trial court found unpersuasive. Yet, that is what appellant wants this court to do. There was conflicting evidence in this case. The trial judge weighed that conflicting evidence and chose which of it to believe. That is the end of the story.

Quinn v. Cherry Lane Auto Plaza, 153 Wn. App. 710, 717, 225 P.3d 266 (2009).

In this case, the factfinder was unpersuaded by PCS’s evidence, and it stated as such. The Panel’s Findings of Fact and Conclusions of Law are not contradictory. Moreover, they are supported by substantial evidence, as demonstrated by the numerous footnote citations made by the Panel. AR 009827–009852. PCS was not pleased with the result, but it is not entitled to re-try its case to this Court.

I. The Panel considered PCS’s arguments and objections regarding safety, weighed the evidence, and properly concluded that PCS had failed to meet its burdens of proof and persuasion.⁵⁰

Contrary to PCS’s argument, the Panel did consider PCS’s

⁵⁰ This pertains to PCS’s seventh and eighth assignments of error.

arguments regarding safety issues. This issue, however, is a red herring. PCS did not put on evidence of safety; rather, it claimed that the less-expensive alternatives, which the Port raised for the purpose of showing that PCS had not undergone any sort of cost-benefit analysis, were unsafe. PCS's sweeping claims were unsupported by specific evidence or testimony. Ultimately, the Panel simply did not find PCS's arguments to be meritorious or credible:

PCS'[s] primary objection to most [of] 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 at 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 009835:8–12 (Findings of Fact B.23 on reasonableness of “do nothing” solution).

PCS cites to no authority regarding any particular requirement of establishing or rebutting the safety of after conditions, but assuming for the sake of argument that safety needed to be considered, it was PCS who had the burden on the issues. RCW 34.05.570(1)(a); *Heidgerken*, 99 Wn. App. at 384; and *PacifiCorp*, 194 Wn. App. at 586.⁵¹

⁵¹ See also Division II General Order 2010-1 (providing that a party who appealed to Superior Court continues to bear the burden of establishing invalidity of agency action).

It is not enough to establish that PCS met a burden of producing evidence that *could have* convinced a trier of fact of its case. *See State v. Paul*, 64 Wn. App. 801, 806 (1992). The Panel was entitled to judge the evidence and decide if it was actually convinced by PCS’s evidence, including determining the credibility of the evidence. *See State v. Paul*, 64 Wn. App. at 807. “There can be substantial evidence to both prove and disprove a point.” *Id.*

In order to demonstrate that PCS had not engaged in a cost-benefit analysis before deciding to fully reconfigure its site, the Port gave examples of much less expensive options.⁵² PCS argued that these alternatives were

⁵² AR 009834:15–009835:12 and n. 29 (Findings of Fact B.23 on reasonableness of the “do nothing” solution); AR 009216 (Chart of Reasonable and Necessary Alternatives); AR 005068:7–005072:16 (Daniel Shapiro’s testimony regarding deflector chute option); AR 006783 (Gerald Fielder’s April 8, 2015 report regarding retaining wall mitigation); AR 004714 (Martyn Daniel testifying regarding retaining wall option cost estimate of total of \$117,000); AR 006785 (Gerald Fielder’s April 8, 2015 report regarding telescoping conveyor mitigation); AR 004722 (Martyn Daniel testimony regarding \$274,000 cost to install telescoping conveyor); AR 006786 (Gerald Fielder’s April 8, 2015 report regarding option of turning shred conveyor using new transfer conveyors); AR 004725 (Martyn Daniel testifying that cost of turning shred conveyor using new transfer conveyors was estimated at \$95,000); AR 005029–005030 (Daniel Shapiro testifying regarding turning shred conveyor using new transfer conveyors allowed for increased use of conveyor arc, increasing volume of conveyor-stacked material by 20%); and AR 005032–005033 (Daniel Shapiro testifying that cost to turn shredder without extra equipment was an “overall savings in excess of \$400,000” or “approximately \$465,000,” which makes the total cost “around \$340,000”).

unsafe, and the Panel considered those arguments. AR 009835:8–12 (Findings of Fact B.23 regarding PCS’s objections to alternatives based on safety not found to be “a credible response” and “there was no evidence presented that these alternatives would be unsafe”). The Panel did not find PCS’s safety objections to be credible. *Id.* Therefore, it is simply inaccurate for PCS to argue that the Panel “omitt[ed] safety in its interpretation of ‘reasonable’ and ‘necessary.’” Opening Brief at 45. The Panel did not find PCS’s arguments and evidence to be credible or persuasive.

Although PCS contends that the Panel found one of its witnesses on this issue, Adam Aleksander, credible, the Panel did not actually find this. Instead, the Panel found Mr. Aleksander’s testimony to be instructive on an entirely different issue, which did not involve his actual opinion and was not to PCS’s benefit. AR 009373. This was because of the many admissions by Mr. Aleksander that hurt PCS’s case.

For example, Mr. Aleksander admitted that “tramming,” the process of moving material to another location, was a reasonable and appropriate manner in which to resolve shred storage or spillage issues at other locations on the site. *See* AR 004390:7–004391:13 (Adam Aleksander testifying regarding piles of “moveable material,” “not fixed objects, or conveyors, or structures, or support towers, or the like. This is all stuff that, Hey, Joe, get in a buggy, we need to move that out of here, we need to move that out of

there”). Indeed, photographic evidence demonstrated that PCS blocked its own circulation path by piling shred in the past. *See* AR 005343–005345 (series of aerial photos of PCS’s site). Mr. Alexander also admitted that loader-stacked shred material could be placed elsewhere on the site. AR 004401:6–23. Mr. Aleksander also did not testify that PCS needed a minimum of 20 feet for safe operations. The Port’s scrap expert, Daniel Shapiro, however, testified that a 20-foot lane was not necessary:

Q: You indicate in your report that you prefer the 15-foot truck path over the 20-foot truck path to maximize storage; is that right?

A: That’s correct.

Q: And can you explain the basis for your opinion there?

A: I didn’t see any need for a full 20-foot wide path here (indicating), because all the traffic is moving in a counterclockwise circulation. You can’t load in this area (indicating) even beforehand because of the bank back here (indicating).

So by just having the 15-foot, you have the ability for trucks to pass through and, as shown here, once you get past the wall, you can circulate trucks past what’s being loaded and move up to the scale.

Q: Do you have any concerns that there are types of vehicles that would need to pass through that portion of the site that would be too wide for a 15-foot path?

A: Their alternative—if there is a piece of equipment in the yard that can’t go through, there are other alternatives. And depending on the time of day, I can’t—I don’t see that there would be a need to move a piece of equipment like that during operational periods down through here (indicating).

It could certainly come back and around the shredder on the other side.

AR 005012:18–005013:22. The Panel’s assessment of Mr. Aleksander’s credibility ultimately hurt PCS’s case because of the content of his testimony.

The Panel considered PCS’s arguments regarding safety. It simply did not find them credible. This Court defers to the Panel’s findings of credibility. *PacifiCorp*, 194 Wn. App. at 588–89; *see also Galvis*, 140 Wn. App. at 711. It should, therefore, affirm.

J. The Panel’s finding that PCS maintained a truck path width of 14.9 feet was supported by substantial evidence.⁵³

A substantial portion of PCS’s appeal is premised on a disagreement with the Panel’s finding that the truck path at issue had a width of 14.9 feet before the taking. *E.g.*, Opening Brief at 37–38 and 46–55. Those aspects of PCS’s appeal fail, because the Panel’s factual findings were supported by substantial evidence.

All findings of fact that are supported by substantial evidence must be upheld on appeal. *City of Vancouver*, 107 Wn. App. at 703; *see also Terry*, 82 Wn. App. at 749. This substantial evidence standard is highly

⁵³ This pertains to PCS’s ninth assignment of error, as well as all other assignments of error that pertain to the truck path issue.

deferential. *PacifiCorp*, 194 Wn. App. at 586–87.

This Court neither weighs evidence nor judges witness credibility; instead, it defers to the Panel’s discretion in weighing testimony. *PacifiCorp*, 194 Wn. App. at 588–89; *see also Galvis*, 140 Wn. App. at 711. As discussed below, the record on review establishes that there is substantial evidence to support the finding that the truck path at issue had a 14.9-foot width.

The Panel considered testimony from witnesses and weighed their credibility.⁵⁴ The testimony of Martyn Daniel demonstrated that the before condition was 14.9 feet:

Q: So when I asked you to do this assignment, did I ask you to look at this from the perspective of a property owner?

A: Yes. You wanted a different look at this. Rather than wearing the hat of a relocation agent working for a public agency, you asked me to look at it from a business standpoint as if PCS was my client.

Q: So once you studied the issue with the conveyer-stacked shred, how did you determine what an appropriate solution was?

A: Well, on the next slide, it shows the conveyor a little bit better. And what we needed to do was determine how much impact on this shred stack, the conveyer-stacked shred—or how much it was going to be impacted by moving

⁵⁴ It also reviewed exhibits that depicted the area at issue. AR 009006 (“before” and “after” aerial photos side-by-side), 009007 (“before” and “after” aerials side-by-side), and 009210 (surveyor drawing of Port’s acquisitions with primary impact to PCS’s operations highlighted).

this truck path (indicating) to the north and encroaching on this pile (indicating). So to do that, I had to figure out how wide that truck path needed to be.

Q: And how did you do that?

A: PCS provided some materials within their claim that showed—that helped out quite a bit. They, in this case—or in this photo, they painted the edge of the shred pad, as you can see, as a concrete joint there, and which is also—they said it was their edge of their—or the toe of their shred stack.

Q: So when you said they said that, you learned that at the meeting in December of 2013?

A: Yes. At the December meeting, they said that was the toe of the shred. And in this photo (indicating), you can see the concrete barriers along the right-hand side there. The project contractor had moved those barriers to the new lease line. So this is now, in effect, the—showing where the new lease line is and how it's going to impact this area (indicating). PCS then took—found the narrowest location between the shred pad and the new lease line, and they laid a tape measure there. And on the next photo, you can see that it measures 69 inches, which is—equates to five feet, nine inches, or if you want to go to decimals, 5.75 feet.

Q: So the photos that we're looking at on Exhibit 231 on page four, these were actual photos out of PCS's claim?

A: That's correct. Right.

Q: All right.

A: So to be sure this is the right dimension and to double check it, **I talked with Gary Ulrich, the surveyor on the project**, to get information from him on these dimensions to confirm or to see what he had in there for these dimensions. **So I had him look at what the narrowest point was of the truck path between the shred pad and the area that was available for the truck path through the edge, which was**

also a Jersey barrier at that time. And he calculated 14.9 feet.

Q: In the before?

A: **In the before condition.**

AR 004693:8–004695:22 (emphasis added). In addition, Todd Krout testified that the width as observed during a pre-hearing site visit (conducted after PCS's reconfiguration) was (1) approximately 15 feet and (2) consistent with the pre-taking condition:

Q: **Mr. Krout, have you had occasion to visit the PCS leasehold during the time that you've been employed by the Port?**

A: **Several times.**

Q: Okay. Were you out on the site visit on Friday with the panel?

A: Yeah, yes.

Q: Did you have a chance to observe the new—the truck path that runs along the south side of the leasehold?

A: Yes.

Q: Okay. **And did you observe the pinch point between the material that was on the property?**

A: **It appeared to be consistent with the pre-taking.**

Q: **And what's your estimate of the width of the truck lane from that visit?**

A: **About 15 feet.**

Q: Okay.

A: **Approximately 15 feet.**

AR 004922:20–004923:15 (emphasis added).

The Panel considered all of this testimony, as well as the evidence provided by PCS, and found the Port’s evidence to be more reliable, especially considering PCS’s own construction plans for its site reconfiguration—which were approved by the City of Vancouver—that provided for a 15-foot truck lane in the after condition. AR 009830 (Findings of Fact A.10), AR 005834 (Overall Site & Key Plan from Pacific Coast Shredding Site Plan Application, dated May 11, 2012), and AR 004206:13–004208:18 (testimony of Valerie Uskoski regarding width of truck path and measurement of width on PCS’s site plan with calipers at “approximately 15 feet.”). The Panel also conducted its own site visit as part of the hearing, which it found “very informative” and “really very helpful,” as well as providing “a lot of good information.” *See* AR 003626:5–8 (transcript of Pretrial Motions hearing). PCS also allowed for a 14.9-foot wide truck path around the south end of the shred operations in the after condition, further belying PCS’s contention that a wider path was required. AR 006695 (Martyn Daniel report stating that “[t]his existing truck path measured 14.9 feet at its narrowest point between the original usable property limits and the shred stack”); *see also* AR 004693:16–

004696:6 (Martyn Daniel testifying on how width of existing truck path was calculated). The Panel specifically found that Mr. Daniel's analysis was more reliable than the evidence put on by PCS at the trial. AR 009837 (Findings of Fact C.28). As noted above, there was substantial evidence to support the Panel's findings of fact that the before and after conditions required only a 14.9-foot wide truck path. Therefore, all of PCS's appellate arguments that are premised on attacking this finding fail. This Court should affirm.

VII. CONCLUSION

For the reasons discussed herein, this Court should affirm.

Dated: June 24th 2019

SCHWABE, WILLIAMSON & WYATT, P.C.

By: /s/ Colin Folawn
Colin Folawn, WSBA #34211
Kelly M. Walsh, WSBA #35718
Jill S. Gelineau, WSBA #16770
Telephone: 206.622.1711
Facsimile: 206.292.0460
*Attorneys for Respondent, Port of
Vancouver, USA*

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of June, 2019, I served the foregoing RESPONSE BRIEF OF RESPONDENT, PORT OF VANCOUVER, USA via the Court of Appeals Division II E-Filing System to the parties to this action as follows:

David Blount
Email: dblount@lbbblawyers.com
Christine N. Moore
Email: cmoore@lbbblawyers.com
Landye Bennett Blumstein, LLP
1300 SW Fifth Avenue, Suite 3600
Portland, OR 97201
Attorneys for Appellant

/s/ Colin Folawn, WSBA #34211
Colin Folawn, WSBA #34211

SCHWABE WILLIAMSON & WYATT, P.C.

June 24, 2019 - 4:44 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_20190624164028D2945735_7672.pdf
This File Contains:
Briefs - Respondents
The Original File Name was 2019 06 24 PCS Appellate response brief.pdf

A copy of the uploaded files will be sent to:

- CentralDocket@schwabe.com
- cmoore@lbblawyers.com
- dblount@lbblawyers.com
- jgelineau@schwabe.com
- kwalsh@schwabe.com

Comments:

Sender Name: Heather Stephen - Email: hkelly@schwabe.com

Filing on Behalf of: Colin Jeffrey Folawn - Email: cfolawn@schwabe.com (Alternate Email: AppellateAssistants@schwabe.com)

Address:
1420 Fifth Avenue
Suite 3400
Seattle, WA, 98101
Phone: (206) 292-1380

Note: The Filing Id is 20190624164028D2945735