No. 90973-3

SUPREME COURT OF THE STATE OF WASHINGTON

PORT OF OLYMPIA, et al,
a municipal corporation of the State of Washington;

Petitioners, and

WEYERHAEUSER CO.,
a private corporation of the State of Washington,
the Port's CoLitigant, et al.

v.

ARTHUR WEST AND JERRY DIERKER,

Respondents.

RESPONDENT JERRY DIERKER'S ANSWER TO THE PORT'S NOTICE AND MOTION FOR VOLUNTARY DISMISSIAL OF REVIEW

JERRY LEE DIERKER JR.,
2826 Cooper Point Road NW
Olympia, WA 98502
Ph. 360-866-5287

I) Answer

As noted herein, in the interests of justice pursuant to RAP 1.2, GR 33 and 34, and the provisoins of equal acesss to due process of the law in this state for such persons, et seq., pro se, indigent, aged, "Service Connected" Disabled Air Force Veteran Mr. Jerry Lee Dierker Jr. objects in the strongest possible terms to any order of this Court granting the Port "Voluntary Withdrawal" of the Port's Petition for Discretionary Review of Unpublished Opinion of the Court of Appeals Division II (COA II) in this case, and Mr. Dierker also objects in the strongest possible terms to any order of this Court granting the Port's Motion for Dismissal of this Supreme Court's Review of the Unpublished Opinion of the Court of Appeals Division II (COA II) in this case.

This Port pleading in this case like the Port's Petition filed by the same new Port attorneys in this 8 year old case, clearly shows these new Port attorneys' lack of knowledge about the 8 years of facts, rulings, and proceedings in this case, et seq., that Mr. Dierker has been a part of for all of these 8 years, and this Port pleading also shows the lack of due dillgence and failures of the duties of care and duties of conscientious service these new Port attorneys owe to Mr. Dierker, this Court, and the public when such governmental attorneys act for in Court proceedings, and these new Port attorneys "harm" Mr. Dierker's fundamental equal protection and due process rights by failing in these legal duties during this case when these new Port attorneys make pleadings in this case that fail to follow the RAP pleading rules for making all claims based upon supporting "citations" to specific portions of relevant evidence and rulings within the record of a case for supporting a pleadings' claims. (See Mr. Dierker's attached August 25, 2014 Motion for Reconsideration also served upon these new Port attorneys in this case as well as Ms. Lake).

Instead of properly reviewing the record in this case, this Port pleading makes improper unsupported claims concerning Mr. Dierker and the rulings of the lower Court in this case here that appear barred by equitiable estoppel, collateral estoppel, and/or res judicata and which do not conform to facts within the record of this case, as follws these Port claims about the Superior Court's CR 41 Dismissal for Lack of Prosecution order dismissing both CoPlaintiffs Dierker and West's PRA claims in this case, et seq., appear to very to those the same new Port attorneys made in the Port's Petition concerning the Port's attorneys making this pleading that lack any clearly erroneous and/or misrepresented claims about the facts, law, proceedings, orders, and pleadings in the actual records of this 8 year long case which these new Port attorneys were not a part of until

now, and therefore, which these new Port attorneys have NO person knowledge of these 8 years and they cannot simply make these Port's "claims" without any proper **supporting** "citation" to any Port or Court record in this case, before these new Port attorneys decided to draft and file such an absurd, frivolous, and factually erroneous, misrepresented, unsupported and/or unsupportable claims in such pleadings in a case before the State Supreme Court.

In this new Port pleading's "Facts Relevant to Motion" section, these new Port attorneys made several absurd, frivolous, clearly erroneous, conflicting, barred, misrepresented, unsupported, and/or unsupportable claims and pleadings about this 8 year old case, which are based upon factual claims which conflict with the Port own pleadings and facts within the actual records in this case or which do not appear to be supported by citations or any facts within the actual records in this case, including that

This new Port pleading's "Facts Relevant to Motion" section states:

"On August 5, 2014, the Court of Appeals issued an unpublished decision in this case (Court of Appeals No. 43876-3-II), **reversing a previous Superior Court dismissal of Respondents' Public Records Act claims for want of prosecution** and remanding the case to Superior Court for a show cause hearing on the only remaining claim: Respondent Arthur West's Public Records Act claim. **The Court of Appeals affirmed dismissal of Respondent Jerry Dierker for lack of standing because he was not a party to the Public Records Act request forming the basis of Mr. West's claim.** The Court of Appeals also summarily affirmed a prior dismissal of Mr. West's and Mr. Dierker's SEPA claims for lack of standing. The Court of Appeals denied all parties' requests for attorneys' fees.

On October 10, 2014, Petitioner, the Port of Olympia, filed a Petition for Review with this Court of the Court of Appeals' decision regarding Mr. West's failure to prosecute his Public Records Act claim. **No other parties filed Petitions for Review regarding other issues in the case, although this Court granted Mr. Dierker's "Motion for Extension of Time, et al." allowing parties until January 21, 2015, to file any answers to the Port's Petition for Review.** (Footnote1) Subsequent to filing its Petition, the Port and Respondent, Mr. West, reached an amicable settlement that fully and finally resolves all of Mr. West's claims, including Mr. West's requests for attorneys' fees." Footnote 1 **The Port inadvertently omitted Mr. Dierker from service of its Petition for Review, an error that has been remedied.**(Id., at 1).

Mr. Dierker wants to make VERY clear now to this Supreme Court that **THE SUPEROIR COURT'S "dismissal of Respondents' Public Records Act claims for want of prosecution" pursuant to CR 41, Correctly NOTED BY THE PORT'S PLEADING here, CLEARLY DID NOT GRANT THE PORT AN ORDER OF DISMISSAL OF MR. DIERKER'S PRA CLAIMS "f" as THE PORT FALSELY CLAIMS IN THIS SAME PORT'S PLEADING WHERE THE PORT's "Facts" section here FALSELY CLAIMS THAT "The Court of Appeals affirmed (the Superior Court's) dismissal of Respondent**

Jerry Dierker for lack of standing because he was not a party to the Public Records Act request forming the basis of Mr. West's claim, when the Superior Court never dismissed Mr. Dierker's PRA claims for this reason at all, despite numerous requests and motions from the Port's former attorney trying to get the Superior Court to dismiss Mr. Dierker's PRA claims for lack of standing, which the Superior Court refused to do.

Clearly, this Port Motion is again attempting to "falsify" the Official Public Records of decisoins of both the Superior Court and COA II in this case, in order to improperly unreasonably justify COA II's invidiously discriminatory surprise "SUA Sponte" rulings denying Mr. Dierker's PRA appeal claims for lack of standing when the Superior Court did not, and when even the Port's Ms. Lake did not make any such pleadings in the Port's Response Brief filed in the COA II appeal which would give COA II a Port pleading to cite to for supporting COA II's completely erroneous, prejudicial, invidiously discriminatory, and surprise "SUA Sponte" rulings denying Mr. Dierker's PRA appeal claims for lack of standing when the Superior Court did not. (Compare the filed copies of the Orders of the Superior Court and COA II in this case).

This Port falsification of the record in this case the Port attorneys fraudulently made for the Port to improperly gain relief from this Court the Port has requested in this pleading, clearly bars this Court's granting of this Port Motion's requested relief under the Clean Hands Doctrine, since the Port actions here "has violated conscience or good faith or other equitable principle" of law and "seeks to set judicial machinery in motion and obtain some remedy" from this Court against Mr. Dierker based upon this clearly false Port claim in the Port's Motion here. (See Clean Hands Doctrine, Black's Law Dictionary, 5th Ed., page 227).

The Clean Hands Doctrine of law provides that a Court acting properly in "equity will not grant relief to a party, who, as actor, seeks to set judicial machinery in motion and obtain some remedy, if such party in his conduct has violated conscience or good faith or other equitable principle." (Id. referencing Franklin v. Franklin, 365 Mo. 442, 283 S.W. 2d 483, 486).

Here, the Port does not have the "Clean Hands" of a proper litigant properly requesting relief from a Court based upon true facts in this record, and thereby, for this reasaon alone this Court cannot grant the Port requests for relief based upon the Port's clearly false factual claims about this case for supporting the Port's Motoin here.

Mr. Dierker is sure that it is embarassing for the State Supreme Court judges and Clerks to

see the Port's governmental attorneys submitting such absurd, unsupported, false and frivolous pleadings, that make false claims about the facts, proceedings, and rulings of the lower Courts in this case, without any Port citations to the specific part of the record in this case that would "support" the Port's claims made in this new Port pleading and those made in the prior Petition also.

Clearly, in another invidiously discriminatory violation of Mr. Dierker's fundamental rights to equal protection of the law and a violation of the legal discretion of these governmental attorneys of the Port that I hope the governmental attorneys of this Court do not follow like those of the lower Courts have illegally done in this case, in violation of their judicial discretion, this new Port pleading "unequally" does not follow any of the same RAP rules on pleadings by attorneys that COA II repeatedly and unequally "sanctioned" in one way or another the pro se, indigent, aged, disabled Mr. Dierker for failing to follow. (See, e.g. --·COA II Commissioners' Dec.18, 2013 Ruling "edting" Dierker's Reply Brief; COA II Judges'·March 21, 2013 denying Dierker's Motion to Modify the COA II Commissioners' Dec.18, 2013 Ruling, sanctioning Mr. Dierker $200.00 and barring him from filing any pleadings in the case until payment of that sanction; COA II Clerk's Ruling of May 13, 2014 refusing to file or consider Mr. Dierker's "Prayer for consideration of ... (Dierker's) request for waiver to allow filing of his affidavit of financial need" submitted to COA II under RAP 1.2, et seq.).

In the COA II Commissioners' Dec.18, 2013 Ruling There the COA II unlawfully made several rulings which removed several key attachments to unlawfully "edit" Mr. Dierker's Opening and Reply Briefs in this Appeal, the by the COA II's granting of several improper and untimely Port motions COA II rulings granted in violatoin of their legal discretion, and when Mr. Dierker filed a Motion to Modify the COA II Commissioners' Dec.18, 2013 Ruling, COA II without any legal discretion under the law and without any stated reason why COA II was making this unlawful ruling sanctioning Mr. Dierker, on March 21, 2013 COA II made a completely abusive ruling denying his Motion to Modify and sanctioning Mr. Dierker $200.00 and barring him from filing any pleadings in the case until payment of that sanction, when the COA II knew Mr. Dierker was an indigent disable person that was unable to pay such a $200.00 which would effective eliminate all of Mr. Dierker's fundamental civil and constitutional rights to be able to gain due process and equal protection of the law from unabridged equal access to a "Court of Record"

in this State, where Dierker can petition his State Courts for redress of grievances that Dierker has in this case, and where to properly exercise judicial discretion in this case under the law and factual circumstances controlling this case for this State's Courts must act to protect Mr. Dierkers fundamental federal and stated-created civil and constitutional rights in order that justice for Mr. Dierker can be done openly and without unneccessary delay in this case, and Mr. West eventually paid the $200.00 sanction for him before the COA II ruled in this case, since he at least tried to protect Mr. Dierker's fundamental rights here that COA II continued to violate by refusing to "waive" the $200.00 due to Mr. Dierker's indigency. (Id., supra; see also COA II's Website, et seq., on this case).

However, as noted by the attached copy of Dierker's August 25, 2014 Motion for Reconsideration of COA II's August 5, 2014 Unpublished Opinongiven the numerous "examples" of the COA II's indvidiously disciminatory, irregular, clearly erroneous, arbitrary and capricious, prejudical, unlawful, unreasonable, unconsitutional, abusive, and aburd "Sua Sponte" surprise rulings made only against Mr. Dierker unsupported by any COA II citation to any supporting facts or rulings of the Supeior Court in the record in this case, in this case,where instead of "affirming" the Superior Court's CR 41 Dismissal for lack of prosecution of the "joint" Public Records Act (PRA) claims of **both** CoPlaintiffs West's and Dierker's joint judicial Complaint for APA RCW 34.05.570, et seq.,"judicial review" of West's and Dierker's joint administrative appeal of the Port's SEPA/PRA actions in this case related to this project, as noted by relevant evidence within the records of the Port's Adminstrative Record (AR) filed with the COA II in this case, where instead of "affirming" the Superior Court's Dismissal of Mr. Dierker's PRA claims for lack of prosection under CR 41 without any prior Port claims of briefing for such granted relief, the COA II's Judges without any cited support in the records of this case acted "Sua Sponte to make "new" completely false findings of fact and conclusions of law falsely alleging Mr. Dierker had "waived" both his PRA claims and his Bifurcation claims Mr. Dierker has plead for 8 years in this case, and the COA II falsely claimed without any PRA records to even review that Mr. Dierker lacked standing on his PRA claims based on the COA II false claim that Mr. Dierker was not in "privity" with Mr. West's PRA records claims in this case leading from the Port's June 12, 2007 PRA Records Response that the Port served upon Mr. Dierker who was authorize by Mr. West to recieve the Port PRA Public Records Response since at that time Dierker was West's

CoAppellant in the Port's SEPA Appeal, and where the COA II falsely claimed that Mr. Dierker did not act to "supplement the record" in the COA II with copies of Mr. Dierker's PRA requests for these same records the Port withheld from Mr. West, despite the fact that **a review of Mr. Dierker's pleadings in record of the COA II shows** Mr. Dierker **DID** act 3 or 4 times to "supplement the record" in the COA II with copies of Mr. Dierker's two 2006 and one 2012 PRA requests to the Port for these same records the Port withheld from Mr. West, **BUT since Mr. Dierker's was not an attorney and was disabled, the COA II preyed upon Mr. Dierker where the COA II's judges completely ignored Mr. Dierker's pleadings and the real facts within the record in this case for making all of** the COA II's several unequal, unlawful, and/or unconstitutional rulings against Mr. Dierker's claims in this case after 8 years in the Courts of this State arguing strenuously on his claims in this case, which COA II prejudicially made without any review or citation to any supporting facts in any record in violation of their judicial discretion. (See Mr. Dierker's attached pleadings, incorporated by reference into this pleading).

As noted herein, Mr. Dierker objects in the strongest possible terms to this Court's granting the Port's misrepresented and frivolous requests for relief made by the Port's new attorneys in the Port's "Notice of Voluntary Withdrawal of Petition and Motion for Dismissal of Review" to prevent any Supreme Court review of the Unpublished Opinion of the Court of Appeals Division II (COA II) in this case, which made serveral unsupported, unequal, unlawful, and unconstitutional rulings invidiously discriminating against Mr. Dierker to deny his well documented serious claims of Port actions taken to "cover-up" of the Port's and others' thefts and/or unlawful uses of TENS OF MILLIONS OF DOLLARS of public funds and resources in volation of too large a number of laws to even "list" in this short pleading, let alone detail and argue properly here, which this pro se, indigent, aged, and severely "Service Connected" Disabled Air Force Veteran litigant, Mr. Dierker, shared with Mr. Arthur West, his "CoPlaintiff and CoAppellant" throughout this case for 8 years, especially where, instead of the COA II "affirming the the COA II granted West's appeal of the Superior Court's Order of Dismissal of the **BOTH CoPlaintiffs**' Public Records Act claims made in a single "joint" Complaint in this case (the Second Amended Complaint of July, 2007) COA II by as Mr. Dierker has previously noted to this Supreme Court's Review of the Unpublished Opinion of the Court of Appeals Division II (COA II) in this case that .

Any "withdrawal" of the Port's Petition would continue the Port's and lower Court's

unconstitutional and illegal policies of "concealing" all relevant evidence of governmental continuing crimes, misconduct, prior restraints, and/or "takings" of the fundamental liberty, due process, equal protection, healthy life, and human rights and/or interests of Mr. Dierker, West and others by these governments' actions or ommission to properly act pursuant to law in this case and/or other, which harms the fundamental public and private life, liberty, due process, equal protection, and human rights and interests of Mr. Dierker, West, the public, and others in this state.

This Port's Petition provides some of the only uncontested Port disclosed relevant evidence showing the continuing unlawful and unconstitutional policies, habits, business practices, procedures and/or systems of prior restraints of the Port's and its attorneys', which would now again be "concealed" by the new Port attorneys' "withdrawal" and fraudulent concealment of the Port's Petition's relevant discoverable evidence, which shows that the Port had "piecemealed"he Port's one giant development project in this case into numerous interconnected, interrelated, and integral parts, in order for the Port to illegally evade disclosure of all relevant evidence on the Port's underlying actoinevade full consideration and, making inflamatory and prejudicial pleadings to "poison" all Courts in this State to prevent any meaningful consideration of Dierker's/West's claims in this case and in other related cases some of which the Port's Petition notes, and which show numerous of the Port's and the Courts of this State's "systems of unlawful prior restraints" used in this case to "take" the fundamental equal protection and due process rights of Dierker, his CoPlaintiff West, and other similarly situated persons, concerning both the "open" and the "concealed" actions and omissions of the staff, officials, and public and/or private attorneys of the Courts of this State, the Port, its "partner" Weyerheauser, and apparently other "concealed" parties, acting independently and/or together in concert, collusion and/or conspiracy in this case with the Courts, the Port, and/or their private and/or governmental attorneys who acted or failed to properly act in this case.

However, Mr. Dierker would not object to an Order of Dismissal with Prejudice with appropriate sanctions and terms, to dismiss the Port's improper, frivolous, and inflamatory Petition for Discretionary Review of the Unpublished Opinion of the Court of Appeals Division II (COA II) in this case, with one "sanction" being that Mr. Dierker gets to file a Petition for Discretionary Review of the Unpublished Opinion of the Court of Appeals Division II (COA II) in this case in this Court **after the Port completes the requires agency record necessary for review,** so that

Mr. Dierker can finally get "Justice done openly and without (further) unnecessary delay" in his 8 years of petitioning in the Courts of this State for redress of grievances he has done in this case on these claims that the COA II incompetently, unequally, unethically, improperly, unlawfully, unconstitutionally, and illegally ruled without any jurisdictoin or cited factual support from the record of this case, claimed in the COA II's Unpublished Opinion in this case that Dierker had "waived" and/or "lacked standing" to any fundamental right to have a Court conduct a proper meaingful opportunity for Dierker to be heard for obtaining redress of grievances to make these claims against the Port and the Courts of this State, so that like other People of this State, Mr. Dierker might also equally enjoy and exercise his and the public's fundamental due process rights to control the actions of his government with this State under the laws of this State and the United State of America, especially where the governmental of this State acts as if it is "lawless rogue state" like Nazi German was where such "robber barons" and "organized criminal racketering entities" act as "terrorists" preying upon the poor, disabled, aged, and/or any otherwise "undesireable persons" mostly, with the aid of the "lawless rogue state's" governmental, agents, officials, lawyers, and Courts, like has happened in this case.

Further, for similar reasons, Mr. Dierker also objects in the strongest possible terms to any Voluntary Withdrawal of the Port's Petition, since this would unequally act as a prior restraint to bar Mr. Dierker from filing his "Response and CounterPetition for Discretionary Review"of the Unpublished Opinion of the Court of Appeals Division II (COA II) in this case that unequally, unlawfully, and unconstritutionally denied the 8 year plead claims of this pro se, indigent, aged, and severely "Service Connected" Disabled Air Force Veteran, Mr. Dierker, in this Court in this case, as Dierker's previously requested in Dierker's first Motion for Extension of Time granted by this Court.

In this Mr. Dierker's "last" allowed pleading in this State's Courts on this case before having to seek other legal means of protecting the fundamental civil, constitutional, and human rights harmed here the pro se, indigent, aged, and severely "Service Connected" Disabled Air Force Veteran Mr. Dierker will once again try to get this State Supreme Court to "Clean-up their Own House" by ordering the removal of all of this State's current system of unequal and unlawful prior restraints, abridgments, thefts, harrassment, abuse, and/or violations of all such litigants fundamental civil and constitutional rights to act within the State of Washington to obtain relevant evidence on

the actions of his government, so that even such an "undesirable" pro se, indigent, aged, and severely "Service Connected" Disabled Air Force Veteran "litigant" like Dierker and a lot of other People in this State, can equally act to control the actions of his government by gaining the government's timely disclosure of such relevant evidence required petitioning the agencies and/or the Courts of this State for obtaining such Courts' redress of grievances that Mr. Dierker or others have against its governments, since Dierker has been unable to gain any properly unrestrained, unabridged, equal, unprejudiced, unprohibited, consitutional, ethical, or lawful "meaningful opportunity to be heard" have all timely disclosure of all discoverable evidence in this case so that Dierker could be able to properly draft pleadings to gain redress of grievances he has here from the Port and the Courts, during this 8 year long case where "Justice" has not been "done openly without unnecessary delay" by the Port and the Courts in this State -- and in fact clearly shows that this state has a system of unlawful prior restraints of Mr. Dierker and the Peoples fundamental rights to obtain equal due process of the law in the Court to be by for Dierker and the People of this State to be able to control the actions of the government and other damaging their personal and public interests in such matters as those noted by Mr. Dierker's numerous pleadings in this case. (See Mr. Dierker's attached pleadings in this case; see Tennesee v. Lane, et seq., Yick Wo, supra).

Dierker would object to any order of this Court's granting Voluntary Withdrawal of the Port's Petition for Discretionary Review since it is frivolous, prejudicial, inflamatory, arbitrary and capricious, clearly erroneous, invidiously discriminatory, unreasonable, unconstitutional, unlawful, unauthorized, unethical, abusive, harrassive, collusive, conspiratorial, and/or illegal, is based upon and contitues the harm to Mr. Dierker from the Port's and Court's unconstitutionally "judicially legislated" systems of unequal, unlawful, unconstitutional, and illegal prior restraints of Dierker's due process rights in this matter.

Dierker's Answer, et al, to the Port's two Dec. 15, 2014 consolidated pleadings noted in this Supreme Court's Dec. 16, 2014 Clerk's Letter, includes and incorporates by this reference all of his following, accompanying, attached, prior, and incorporated pleadings filed in the various Port and Court records this case, required to be reviewed by this Court pursuant the "Standards of Review" of such matter Mr. Dierker noted in his Opening Brief, his Reply Brief and his Motion for Reconsideration, et al, et seq., filed in COA II in this case. (Supra).

As a preliminary procedural matter, **before** this Court even considers the Port's Motion to

Dismiss the Review in this case, to provide Mr. Dierker with at least the minimum of due process and equal protection of the law in this case, in this this Court must order the Port to produce these improperly withheld records necsssary for this Court's proper exercise of judicial discretion for the consideration of the claims in this case which has never yet occured in this case, as shown by Mr. Dierker's repeated pleadings in this case. (Supra).

Clearly, it does not appear to be "fair" and "impartial" for this Court to even consider the Port's requests for dismissal of the review of this case at this time, when the powerful Port, its extremently powerful "partner" Weyerehaeuser, and their extremely powerful attorneys in this matter and the lower Courts' in this case actions to fraudulent conceal and withhold timely disclosure of the Port's relevant discoverable records on these Port actions from Dierker, the public, agencies, and these and this Courts' files in this case, and thereby, the Port and its attorneys, et al., clearly do not have "Clean Hands" to act to make this pleading requesting that this Supreme Court of this State Dismiss the Review of this case without allowing Mr. Dierker to plead his claims in this case, which will further violate Mr. Dierker's due process and equal protection rights in this case request that this Court the pro se, indigent, disabled, aged, Mr. Dierker's attempted petitioning of the Courts of this state for gaining redress of grievances by obtaining proper timely judicial review of the Port's agency action, policies, and decision denying the administrative appeal of Mr. Dierker and West to be able to exercise some control over the actions of his government within this State, as Mr. Dierker has tried to do in this case. (See Clean Hands Doctrine, Black's Law Dictionary, 5th Ed., page 227).

The Clean Hands Doctrine of law provides that "equity will not grant relief to a party, who, as actor, seeks to set judicial machinery in motion and obtain some remedy, if such party in his conduct has violated conscience or good faith or other equitable principle." (Id. referencing Franklin v. Franklin,365 Mo. 442, 283 S.W. 2d 483, 486). The Port does not have such "Clean Hands" in this case as Mr. Dierker's pleadings in this case have noted, and it would be another clear violation of Mr. Dierker's equal protection rights for this State's Supreme Court to even consider this Port motion to dismss review of this case which would ultimately act to deny Mr. Dierker's rights to due process and equal prottection of the law here by preventing him from being able to properly obtaining relevant discoverable Port evidence on the Port's actoins for Mr. Dierker's making of a factually supported petition to the Courts of this State for the pro se,

indigent, aged, disabled Mr. Dierker to properly gain redress of his grievances from the Courts of this State as noted herein this case. (See Dierker's Motion for Reconsideration of the COA II's decision in this case, see also the U.S. Supreme Court's decision in Tennesee v. Lane, supra).

However, as again noted herein, any such judicial review necessarily requires this Court to fully review and consider all of the Port's relevant agency records on this matter which the Port was required to "timely" disclose to Dierker, the public and agencies with jurisdiction and file with the Courts of this State in this case. (See the Civil Procedures Act RCW 4.01.005, and RCW 4.16.170-190 & .230, et seq., the Adminstrative Procedures Act (APA) RCW 34.05.470, .566, .570, and .574, et seq., the Public Records Act (PRA) RCW 42.56.030,.550, and .903, et seq., the State Environmental Policy Act RCW 43.21C.010, RCW 43.21C.075, and WAC 197-11, et seq.).

Mr. Dierker has previously noted that, while these and other applicable state and federal laws and constitutional provisions and the standards of equal access to the Courts for procedural due process of the law all require a Court reviewing the Port's agency actions and adminstrative appeal decisions to approve the use of public funds, resources and property in this case. Supra.

However, in direct violation of these laws, the Port continues to this day to "hide" the nature and exent of the size, sites, and areas impacted by the Port's "secret" development actions to make the construction giant project "InterModal" set of illegally project including a cargo moving air deep water marine port with giant 2 square mile freight yard and a "new" city the size of Alemeda, California, in several parts of Thurston County, Washington, by the Port's attorneys' contiuning illegal and frandualent concealment of these relevant required Port agency records and PRA "In Camera Review" records, containing the Port's "secreted" facts all of the various "piecemealed" of this matter the Port's attorneys are now still attempting to conceal from Mr. Dierker, the Courts, agencies with jurisdiction and/or approvals over these Port actions, and still being withhled by the Port today by these and other continues illegal and unconstitutional actions of the Port's current attorneys.

As Mr. Dierker's pleadings have claimed in this case, Mr. Dierker's and the public's fundamental human, civil and constitutional rights were violated by the independant, concerted, colluded, and/or conspriatorial governmental actions of agents, staff, employees and/or others acting with or to benefit the Port, its attorneys, it's known "private partner" (Weyerhaeuser) and/or its attorneys, and others acting for the Port, and/or the actions of the Courts of this State taken in this

case to benefit the Port in this case and in other "related" cases involving mostly Mr. West noted by the new Port attorneys' Petition for Discretionary Review's "Statement of the Case" filed in this case where these new Port attorneys who were unfamilar with this case unknowingly plead that these other cases were related to or integral, intereconnected and/or interrelated parts of this Port case Mr. Dierker is part of, which shows that the Port's had formerly illegally "piecemealed" cases these other "related" cases as Dierker's pleadings have claimed in this case. (Id.; see Dierker's relevant pleadings in his Port SEPA Comment, Port SEPA Appeal, and in the Courts in this case, supra).

Pursuant to law, Mr. Dierker clearly has a due process and equal protection civil, constitutional and human right to gain the Port's timely disclosure of Port held public records for Dierker to exercise some control over the actions of his government within this State, under the "Peoples' Reserved Rights", "Citizen Enforcement/Citizen Suit", "tolling" of statutes of limitation requiring timely filing of a legal petition for redress of grievances, and other provisions of the State and Federal laws, Constitutions and International Treaties on basic Human Rights, et seq., protecting Mr. Dierker's and the public's fundamental human, civil and constitutional rights, including those of having equal access to the Courts of this State's government and to the Port's"quasi-judicial" administrative Board for review of the Port's actions complained of herein, for this Port and the Courts of this State to properly and legally allow Mr. Dierker to gain a meaningful opportunity to petition and be herad by the Courts for Mr. Dierker to gain any redress of his grievances here, which must be done in order to provide Mr. Dierker with at least a minimum of the required protection of his rights to due process and equal protection of the law, which required the Port's proper timely disclosure of all of the Port's relevant records and evidence on the Port's complained of actions here to Mr. Dierker **8 and 7 years ago when he requested them, AND** which required the Port's proper "timely" disclosure of all these Port's relevant records **to the Courts of this state** 7 years ago on the Port's complained of actions here, both **long before this State Supreme Court recieved the Port's Petition in this case,** and **where all the Judges of the Courts of this State involved in this case have aided and abbetted the Port and its attorneys "frauduelent concealment" and it's illegal withholding this discoverable relevant evidence from Dierker, the Public, the agencies of this State with jurisdiction, and from the files of the Courts in this State, which has also lead to the Port's and these**

Courts' "falsifications " of the Official Public Records of the Port and these Courts in this case and others, which are clear violations of the legal discretion of the Port and these Courts in this case.

Clearly, without the Port's timely disclosure of all relevant Port held evidence on these Port actions complained of here, and with the lower Courts of this State also acting to aid the Port to conceal from the Court records all of this "Port withheld" relevant discoverable evidence in this case, which the laws of this state, et al, shows are required to be considered by all Courts in this State since such evidence is required for a proper exercise of judicial discretion in such a judicial review of the Port's actions in this case, and thereby, this Supreme Court of this State as of yet lacks legal jurisdiction to consider the Port's pleadings in this case until such Port withheld public records and/or other relevant evidence on this matter is finally disclosed to Mr. Dierker and/or filed with this Court **before this Court has jurisdiction to act in this case reviewing governmental actions and quasi-judicial decisions impacting Mr. Dierker,** as required by law. (See below on tolling of statutes of limitations for seeking any administrative or judicial review, et seq.

Clearly, as both a local government and "municipal corporation" of this State the Port is "equally" required to follow State laws in this case like the Port is required to do in other cases , which by law require this Port's timely disclosures of these "fraudulently concealed" Port records, et al, to Mr. Dierker, West, agencices with jurisdcition, and others **before any statutes of limitations for seeking any administrative or judicial review ever starts which Mr. Dierker would even be required to file even a SEPA Comments in this court case, for Dierker** to be able to exercise control over the Port, a part of Dierker's local government and a "municipal corporation" of this State both of which are required to follow all relevant State laws.

This is true of the Courts in this State who have aided the Port to continuing to illegally and unconstitutionally conceal these relevant Port records about the Port's actions in this case, which the new attorneys of the Port continue to improperly disclose Mr. Dierker and file in the Courts' files in this State Supreme Court case on this matter, which continues to deny Mr. Dierker's due process and equal protection of the law rights to have this Port-withheld discoverable evidence **before** he could be legally expected to be able to draft and file any reasonably supportable petitoin for review by this or any Court of the Port's actions Dierker has complained of here. (See Fritz v. Gorton, et seq.).

However, since files in this case of this State Supreme Court, COA II, and the Superior Court **do not have** a proper complete and adequate copy of set of all relevant descoverable Port agency records for any Court proper consideration of the Port's actions in this case, esecially since the Court's record in this case lacks the Port-filed PRA "In Camera Review" copy of all relevant Port "agency records" that the Port withheld from timely disclosure to Mr. Dierker and others in this case, et seq., all relevant Port agency records on all of the Port's various fraudulently concealed and piecemealed "Intermodal" development actions using public funds and resources, et seq., et al., that are integral, interrelated, and/or connected actions that are merely parts of the Port's larger concealed development action in this case impacting all of Western Washington, and the Court lacks a Port agency record of the Port's PRA responses and "Exemptions Logs" sent to Mr. Dierker, West, and others, where the Port's attorney, Ns. Lake, acted as the Port's Public Records Officer" to repeatedly efusal to follow the PRA and other laws requiring the Port to properly timely disclose to Mr. Dierker and ~~others~~ all ~~relevant~~ evidence in the Port's possession on all ~~of their~~ related actions concerning the Port actions complained of here in this case; and the Court also lacks all relevant Port agency records required by law to be dtimely disclosed on the Port's denial of the administrative SEPA appeal filed by Dierker and West in this case, et seq., et al., never reviewed by the Port admininstrative appeal nor by the judical review of the Superior Court nor by COA II.

Consequently, without these legally required Port factual records on these claims being in the record of this case, it is clearly impossible for this Court or any Court to be able to properly review the Port's actions and/or omissions to properly act pursuant to law since Plaintiffs' claims in this case involved a review of the Port's PRA, the Port's agency actions here, and the Port's decision denying the administrative SEPA appeal of Dierker and West of the Port's agency actions taken here, since all reviews of such claims requires the Court to have a Port-filed PRA "In Camera Review" records and copies of all relevant Port "agency records" that the Port by one illegal means or another, et seq., withheld from timely disclosure to Mr. Dierker and others during this case to be in the Court's record necessary for a Court's proper exercise of authority for judicial review of Dierker's claims in this case made against the Port concerning the Port's development actions using public funds and resources that underlies this case.

As Mr. Dierker has noted from the beginning of this case, no quasi-judicial the Port and no judicial official of a Court has any legal discretion under the law to consider pleadings and make

decisions on the claims in this case **WITHOUT such a "Tribunal" EVER HAVING ANY FILED COPIES OF ALL OF THE LEGALLY REQUIRED PORT RECORDS, AND WITHOUT ALL OF THE LEGALLY REQUIRED PORT RECORDS EVER BEING DISCLOSED TO MR. DIERKER OR THESE COURTS, and this continuing criminal conspiracy and/or collusion of the Port, its attorneys, judicial staff of the Superior Court and COA II, and others during this case, will all continue violating Mr. Dierker's fundamental equal protection and due process rights in this case until a Court finally acts properly in this case as required by law to order the Port and its attorneys to file copies of these relevant Port records with the Court of this State, so that Court could legally exercise its discretion to consider Dierker's claims in this case.**

Mr. Dierker must say that he is not "hopeful" that even this Court will act properly exercise it's discretion now after 8 years of the Port's and these State Courts' continued and repeated abuse and taking of pro se, indigent, aged, disabled Mr. Dierker's fundamental equal protection and due process rights in this case, especially after Mr. Dierker has been forced to file pleadings and evidence in this Court and the lower Courts in this case claiming and showing how the Port and these State Courts have continued and repeated abuse and taking of Mr. Dierker's fundamental equal protection and due process rights in this case -- lets face it, Judges who make decisions in a case NOT based upon the facts and the law controlling their actions, are clearly shown to believe that as Judges, etc., they have the power to make any decision over even the life or death of all people of this State, and as Judges, etc., they do not believe that they or their "associates" in the Bar Associations would ever "harm" the reputation of judges and attorneys in this State by ever doing anything "ethically" wrong, and as Judges, etc., they beleive that they have some twisted sort of duty to protect from any punishment themselves, or others like the lower court's judges and the Port's attorneys who are these Judges' "associates" in the Bar Associations, by the Port's and these State Courts Judges' violations of judicial discretion that have continued and repeatedly "taken" and abused Mr. Dierker and his fundamental equal protection and due process rights in this case, as if such Judge to do so was in anyway "ethical" -- such attorneys, Judges, and organizations like the Bar Association in this case obviously do not understand what "ethical" means and they obviously have similar "ethics" to use abuse and other agressive and repressive tactics like those used by the NAZI's against the disabled, the poor, the

aged, and other "undesirable non-human" people who the NAZI "Landed Gentry" abused to death, often with the aid of NAZI Germany's attorneys and its Courts.

Consequently, it appears from reviewing the pleadings in this Court alone, that the Port and its "new" pro-development-at-public-cost "private" governmental attorneys are continuing these illegal unlawful, and unconstitutional "policies" of the Port, et al, to have this State Supreme Court "order" dismissal of all review in this case to allow the Port, et al, to continue to fraudulently conceal these Port's records from this Court, Mr. Dierker, West, other agencies with jurisdiction, and the public when these Port's records from this Court, Mr. Dierker, West were required by numerous laws and legal provisions, and this Court should reasaonbly and legally act use its judicial powers to act to "correct" these problems caused by the Port, et al, in this case where the Port and the lower Courts in this case have already improperly acted to secretly and unneccessarily delay and deny justice to Mr. Dierker in this case for 8 years without any proper hearing on the merits of Mr. Dierker's claims made in this case based upon all of the relevant discoverable evidence on these related Port actions, much of which is still being concealed by the Port's "UnCleanHands" in this case. (See also below).

Dierker's Answer, et al, to the Port's Notice of Voluntary Dismissal of their Petition for Review, does not object to the Port's Notice of Voluntary Dismissal of the Port's Petition for Review, since it is frivolous, prejudicial, highly inflammatory, clearly erroneous, arbitrary and capricious, and violates Dierker's rights to equal protection and due proces of law in this case, as Dierker has previously noted in this case, and as further noted herein.

The record in this case clearly shows that certain of this Port's and this State's various Courts' officals, staff, and governmental attorneys, often with others, have acted or omitted to properly act pursuant to law to violate their oaths of office and/or certifications for employment by invidiously discriminatory, erroneously, unreasonably, unethically, illegally, unlawfully, unconstitutionally, arbirarily and capricously to "Take", steal, abridge, violate, chill, conceal, and/or unnecessarily delay the civil and constitutional rights of the aged, indigent, Disabled Veteran Mr. Dierker, the pro se Co-Respondent in this case, which has lead from these Port and Courts agents' continuous and repeated abuse of their governmental powers and legal authority in this case which these "legal authorities" which refuse to follow any law, have used to harrass and abuse the aged, indigent, Disabled Veteran Mr. Dierker almost to his death for over 8 years, by Port's and this

State's various Courts' agents' actions and ommissions to legally act pursuant to law in this case.

In fact, the actions of this Port and these Courts in their repeated and/or continuous invidiously discriminatory "taking" of Mr. Dierker's due process, equal protections of the law and other civil and constitutional rights in this matter that culminated in the COA II's Unpublished Opinon invidiously discriminatory "Sua Sponte" rulings and rulings made COA II against Mr. Dierker in this matter, have "Overturned" all of standards of law for providing any due process in governmental procedural due process proceedings, have "Overturned" all laws and precedents on protecting due process rights and other civil and human rights and prohibiting such governmental actions or omissions that are unequal violations of due process rights and/or other civil, constitutional, and/or human rights, and have "Overturned" all laws controlling the actions, omissions, and/or legal responsibilities of all employees, officials, attorneys, organizations of the governments in this State, which have been made people, governments and Courts in the last about 4,000 years since the Code of Hammurabi was made by the King of Babylon.

This "taking" of Mr. Dierker's due process, equal protections of the law and other civil and constitutional rights in this matter is clearly shown by a review of just the COA II's Unpublished Opinon's clearly erroneous, incompetently drafted, unsupported, invidiously dicriminatory, unlawful, unauthorized, unethical, unconstitutional and highly prejudicial "Sua Sponte" rulings "waiving" Mr. Dierker's claims in this case, where the COA II denied Mr. Dierker's "standing" to even gain review of his claims in this case COA II made after his 8 years of Mr. Dierker's procedural due process administrative and judicial petitioning to the Port and these Courts for redress of Mr. Dierker's grievances in this case.

Dierker has tried his best to gain discovery of relevant Port public records through this 8 years of the Port's and Court procedural due process administrative and judicial proceedings on this matter, so that he can have the relevant necessary to control the actions of his government in this State, especially when their are issues of wide public interest as in this case this State's governments to fraudulently, unlawfully, unconstititionally and illegally use the People's public funds, property, facilities, staff, organizations, and/or resources to allow this State's governments to fraudulently, unlawfully, unconstititionally and illegally conduct "secret" actions including "cover-ups" of the Port's actions, agreements, plans, policies, administrative SEPA Appeal regulations, development proposals with other public and private entities, that under the law by they have refused

to follow in this case are clearly improper, illegal, unlawful, unconstitutional, arbitgrary and capricious, prejudicial, discriminatory, unequal, and/or clearly erroneous, especially when the the Port's actions clearly lead to numerous significant adverse impact to the environmental, health, liberty, due process, equal protection, financial, and human rights and/or interests of the public and wildlife living in this impacted area and those of the indigent, aged, pro se U.S. Air Force Service-Connected Disabled Veteran, Mr. Dierker (1/4 Native American through his materal Grandmother born in the Cherokee Nation in the mid1890's) **and** Mr. Dierker's 4 children (1/8 Native American) and his 11 grand children (1/16 Native American), living in the local regional area impacted by the Port's and lower Courts' actions complained of in this pleading in this case, all of whose rights in this case and the future would be further impacted by the Port's and the Court's actions in this case harming Mr. Dierker, by what Mr. Dierker has been cleaerly shown through 8 years of this case's unlawful proceedings, et seq., to be an "unwritten" custom, polcy, habit, practice or procedure of the Port, governmental attorneys, and the Courts of this state to "fraudulently conceal"and "cover-up" the unlawful and illegal "pro-development" actions of private and/or governmental agents, agecies, entities, officials, attorneys and the Courts in this State, and Mr. Dierker has a right to act to protect **HIS** and **HIS LIVING DECENDANTS** private rights and interests impacted by all the various integral and interrelated but "concealed" by Port attorneys'"piecemealing" of the project and by the Port attorneys' "concealment" of public records withheld by the Port on this Port/Weyerhaeuser project from Dierker, West, other and agencies with jurisdiction as complained of here, all of which impacts Mr. Dierker's and the public's interests that he and his decendants share in the health of the entire Puget Sound Region and in controlling the actions of their governments through and pursuant to "Sunshine Laws", Right to Know laws and Citizen Enforcement and Citizen Suit provisions of the laws of this State and the United States, like the Public Records Act, the State Environmental Policy Act, the Administrative Procedures Act, et seq., which this Port and these Courts have **NOT** followed **and** have refused to follow after the 8 years of Mr. Dierker's numerous requests and pleadings about this case trying to get this Port and these Courts to stop violating their discretion pursuant to the laws of this State and the United States, et seq.,which, thereby, somehow resulted in the COA II's unsupported, unlawful, unconstitutional, unauthorized, absurd and invidiously discriminatory rulings claims that Mr. Dierker has "waived" and/or "lacks standing" for all of his various claims

his appeal of this case, despite Mr. Dierker's 8 years of numerous repeated proper requests and pleadings contesting the Port's and Courts' actions and rulings adversely impacting, delaying and denying his claims concerning the PRA, SEPA, "no Bifucations" of PRA/SEPA, and his other claims in this case that he has made over 8 years to this Port and these Courts in both administrative and judicial procedural due process venues where Mr. Dierker has been harrassed and abused repeatedly by abusing, exceeding, and/or acting in conflict with the laws or the governmental powers, discretion and legal authority of the People which the State Constitution and Stae and federal laws, et al, which has been granted to the lower portions of this State government's "hierarchial political subdivision structure", that includes these State Courts and this Port, et al.

However, ignoring Mr. Dierker's 8 years of pleading contesting the Port's SEPA action and SEPA Appeal decision complained of in this case, andthe COA II's absurd unsupported or improperly supported rulings denying Dierker's claims in the Appeal the pro se, aged, indigent, Disabled Veteran Mr. Dierker's pro se attempts to protect his civil and constitutional rights in this matter by Mr. Dierker's legal filing of SEPA Comments, Port and others SEPA/administrative appeals, and judicial appeals, pleadings and reasonable requests for discoverable governmental information in various administrative and judicial venues in this case, Mr. Dierker's civil and constitutional rights to have due process, equal protection of the law, access to the court's without abridgement, to gain equal fair unprejudiced procedural due process and access to "**Justice Done Openly And Without Unnecessary Delay**" in this State has clearly been violated by certain of this Port and the Courts of the State's officals, staff, and governmental attorneys have acting alone and/or in concert, collusion, and/or conspiracy with them and/or others in this case to deny Mr. Dierker any relief for his claims made in this case.

Further, as Mr. Dierker's pleadings have shows, the statute of limitations requiring Dierker's "timely" filing of a suit on the Port's actions, have been "tolled" by the "Un-Clean Hands" of the Port's actsoin and omssions, failure, and refusals to properly act pursuant to the laws controlling the Port's and the Court actions concerning Dierker's claims in this case, since the Port in still violating its legal discretion and the standards of law for providing a disabled person like Mr. Dierker with meaningful access to and opportunity to plead in a fair and impartial procedural administrative due process appeal proceeding which could lead to a judicial review of the Port's agency actions taken in this case here under RCW 34.05.570(1-4) and RCW 34.05.514,

where the Port has delayed any proper consideratoin of this case by the Port's continued refusals and failures to timely make, file and disclose to Mr Dierker a complete and adequate "Agency Record" on the Port's SEPA appeal regulation, the Port's SEPA actions and the Port's SEPA adminstrative appeal action reviewed in this case, when such a complete and adequate "agency Record" is necessary for judicial procedural due process reviews of this matter, despite the requirements for full disclosure and production of relevant Port public records that were considered by the Port before the Port took it's SEPA and other actions to construct this project, for the making of a "complete" and legally adequate Port "agency record" on the Port's rule, SEPA, and adminstrative appeal actoins taken for this project as required by RCW 34.05.566(1), (2), (6) & (7), RCW 34.05.476(1), (2), (3), RCW 34.05.570(1-4), RCW 34.05.514, RCW 43.21C.075, WAC 197-11-504, and all other procedural due process standards of law for "discovery" of relevant evidence, et seq., as Dierker's pleadings have noted previously.

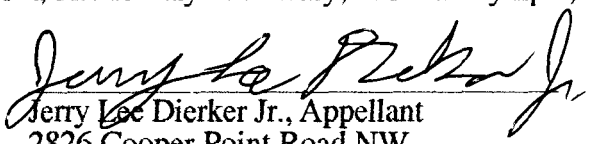
Thereby, the Port's continued fraudulent concealing of these relevant Port public records that were considered by the Port before the Port took it's SEPA and other actions to construct this project, has caused a situation where all "statutes of limitations" that would apply for disabled Mr. Dierker's filing of legal actions against the Port's actions complained of in this case over the past 8 years of the proceedings in this case have been "tolled" under the Discovery Rule Doctrine, the Doctrine of Fradulent Concealment, RCW 4.16.005, RCW 4.16.170, RCW 4.16.180, RCW 4.16.190, and RCW 4.16.230, so that even if this Supreme Court dismisses this case now, Mr. Dierker can merely refile his "tolled" claims in this case some time in the future **after** the Port finally discloses these withheld records to Dierker and the Court's and the agencies with jurisdiction, et al, pursant to the APA, PRA, SEPA, OPRA, due process, et seq., thereby leading to further "unnecessary delay" by the Port in Mr. Dierker's attempts to gain publically withheld evidence on the Port's use for or lending of public funds, facilities, staff, and resources for such projects to control the actions of his government for Mr. Dierker's attempts to control the actionspof his government by his use of his rights to equal and meaningful access to Justice Done Openly and Without Unnecessary Delay upon a complete record of the evidence the Port considered for making the Port's actions taken in this case. (See Crisman v. Crisman, 85 WnApp. 15, 931 P. 2d 163 (1997); Farrare v. City of Pasco, 68 WnApp. 459, 853 P. 2d 1082 (1992); Allen v. State, 118 Wn.2d 753, 826 P2d 200 (1992); PRA RCW 42.56.030 & RCW 42.56.903; et seq.).

PRA's RCW 42.56.020 &. 030 and RCW 42.56.903 provides Mr. Dierker with a"personal interest" in this"state-created" due process right for Dierker as a person residing in this State, to have a civivl right to full disclosure of all public documents of local and state governments in the State of Washington considered for any governmental action taken, so that he equll with other persons of this State can act to control the actions of his government which use or expend public funds, staff, facilities, pdroperty or other resources, as Mr. Dierker has attempted for 8 yers to do here, despite the repeated unlawful delays and denials of Mr. Dierker's rights to equal protection of the law and to procedural due process review of the Port's "agency record", agency rules, PRA/SEPA actions, and administrative appeal decision that were required by RCW 34.05.476(3) to be judicially reviewed by a Court properly based upon the complete Port agency record on the Port's complained of actions in this case, which cannot yet happen in this case with the Port's withholding of these relevant Port public records from the Port's Agency Record filed in this case, and especially without any Court having a copy of the Port's required PRA "in camera review" withheld records in this case for review by these Courts **before** these Courts made decisions on the PRA issues in this case, especially the COA II's absurd, prejudicial, and invidiously discriminatory PRA rulings against Mr. Dierker's PRA claims while in the same decision the COA II unequally granted Dierker's CoPlaintiff's, Mr. West's, same PRA claims made in the same "joint" Complaint filed for both CoPlaintiffs in this case, the CoPlaintiffs'"Second Amended Complaint" filed in this case.

Conclusion and Relief

Therefore, for the reasons noted herein and in Mr. Dierker's incorporated, cited and/or referenced evidence and pleadings, Mr. Dierker objects in the strongest possible terms to any order of this Court granting Voluntary Withdrawal of the Port's Petition for Discretionary Review, and Mr. Dierker also objects in the strongest possible terms to any order of this Court granting the Port's Motion for Dismissal of this Supreme Court's Review of the Unpublished Opinion of the Court of Appeals Division II (COA II) in this case that unequally, unlawfully, and unconstritutionally denied the 8 year plead claims of this pro se, indigent, aged, and severely "Service Connected" Disabled Air Force Veteran, Mr. Dierker, since such action would violate Mr. Dierker's fundamental rights to due process and equal protection of the law, et seq., in this case.

I certify the foregoing to be true and correct to the best of my knowledge, beliefs and/or abilities, under penalty of perjury of the laws of the State of Washington and the United States of America, this 6th day of January, 2015 in Olympia, Washington.



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

☐ EXPEDITE
☐ Hearing is set:
Date/Time: July 27, 2012, 1:15 pm
Calendar/Judge: *pro tem* Superior Court Judge Sam Meyer

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

ARTHUR WEST and JERRY DIERKER,
Plaintiffs
v.
PORT OF OLYMPIA, et al.,
Defendants.

NO. 07-2-01198-3

ORDER OF DISMISSAL AND FINDINGS OF FACT AND CONCLUSIONS OF LAW

Clerk's Action Required

Defendant Port of Olympia's MOTION TO DISMISS and Defendants Edward Galligan's. Bill McGregor's, Robert Van Schoorl's, and Paul Telford's MOTION TO DISMISS were heard by the Court on June 29, 2012. Plaintiff Arthur West's MOTION FOR TRIAL SETTING AND ISSUANCE OF NEW CASE SCHEDULE ORDER and Plaintiff Jerry Dierker's MOTION FOR SETTING OF REVISED TRIAL DATE & REVISED CASE SCHEDULE ORDER were also heard by the Court on June 29, 2012. The undersigned judge, the Honorable Sam Meyer, Superior Court Judge *pro tem*, heard the motions, all parties having consented to the undersigned's assignment to the case.

The requests presented by motion for decision were as follows: (1) Mr. Galligan, Mr. McGregor, Mr. Van Schoorl, and Mr. Telford claimed that Mr. West's and Mr. Dierker's claims vis-à-vis them had already been dismissed by this Court and that the individual defendants themselves should be likewise dismissed; Mr. Galligan, Mr. McGregor, Mr. Van Schoorl, and Mr. Telford also claimed that

CUSHMAN LAW OFFICES, P.S.
ATTORNEYS AT LAW
924 CAPITOL WAY SOUTH
OLYMPIA, WASHINGTON 98501
(360) 534-9183 FAX: (360) 956-9795
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Mr. West improperly named them in the caption on his pleadings that he filed after the claims vis-à-vis them had already been dismissed, and sought an award of CR 11 sanctions against Mr. West for improperly naming the defendants in the caption on his pleadings; (2) the Port of Olympia claimed that Plaintiffs Arthur West and Jerry Dierker had failed to note the case for trial for over one year since all issues of law and fact were joined, and moved for dismissal under CR 41(b)(1); the Port of Olympia also claimed that Plaintiff ~~Arthur West~~ had engaged in unacceptable litigation practices that went beyond mere inactivity, and moved for dismissal under this Court's independent authority to manage a case; (3) Plaintiff Arthur West sought a new trial date and case schedule order; and (4) Plaintiff Jerry Dierker sought at new trial date and case schedule order.

Plaintiff Arthur West appeared at the hearing through his attorney of record, Stephanie M. R. Bird of Cushman Law Offices, P.S.; Plaintiff Jerry Dierker appeared personally at the hearing, *pro se*; Defendant Port of Olympia appeared at the hearing through its attorney of record, Carolyn Lake of Goodstein Law Group PLLC; and Defendants Mr. Galligan, Mr. McGregor, Mr. Van Schoorl, and Mr. Telford appeared at the hearing through their attorney of record, Carolyn Lake of Goodstein Law Group PLLC.

The Court considered the following pleadings submitted in support of and in opposition to the four motions, including specifically the following:

1. Defendants Edward Galligan's, Bill McGregor's, Robert Van Schoorl's, and Paul Telford's Motion to Dismiss and for Sanctions;
2. Declaration of Carolyn Lake in Support of Defendants Edward Galligan's, Bill McGregor's, Robert Van Schoorl's, and Paul Telford's Motion to Dismiss and for Sanctions;
3. Defendant Port of Olympia's Motion to Dismiss;
4. Declaration of Carolyn Lake in Support of Defendant Port of Olympia's Motion to Dismiss;

CUSHMAN LAW OFFICES, P.S.
ATTORNEYS AT LAW
924 CAPITOL WAY SOUTH
OLYMPIA, WASHINGTON 98501
(360) 534-9183 FAX: (360) 956-9795

5. Plaintiff Jerry Lee Dierker Jr.'s Responses to the Port's 2 Motions to Dismiss, et al.;

6. Arthur West's Response to Motions to Dismiss;

7. Defendants' Reply in Support of Port of Olympia's Motions to Dismiss (West);

8. Defendant Port of Olympia's Reply in Support of Motions to Dismiss (Dierker);

9. Jerry Dierker's Motion to Strike and for Terms and Sanctions;

10. Defendant Port of Olympia's Reply in Opposition to Dieker [sic] Motions to Strike;

11. West's Motion for Trial Setting and Issuance of New Case Schedule Order; and

12. Dierker's Motion for Setting of Revised Trial Date & Revised Case Schedule Order.

The Court also considered the other pleadings and the docket on file in this case. Based on the arguments at the hearing and on the Court's consideration of the materials submitted and filed herein, the Court makes the following Findings of Fact:

I. FINDINGS OF FACT

1. Plaintiff Arthur West filed this action on June 18, 2007. Plaintiff Jerry Dierker joined him in the filing of the first amended complaint on July 6, 2007. At the outset of this litigation, both Mr. West and Mr. Dierker represented themselves *pro se*.

2. Mr. West and Mr. Dierker had made Public Records Act (Chapter 42.56 RCW) claims against the Port of Olympia and had made other, non-PRA-claims against the Port and other defendants in this case, including, but not limited, to Mr. Galligan, Mr. McGregor, Mr. Van Schoorl, and Mr. Telford.

3. On August 24, 2007, this Court, the Honorable Christine Pomeroy, granted Defendant Weyerhaeuser Company's motion to bifurcate, and segregated Plaintiffs' Public Records Act claims from the other causes of action in the case. Nothing in the bifurcation order prevented the PRA case from going forward.

CUSHMAN LAW OFFICES, P.S.
ATTORNEYS AT LAW
924 CAPITOL WAY SOUTH
OLYMPIA, WASHINGTON 98501
(360) 534-9183 FAX: (360) 956-9795

4. On March 21, 2008, this Court, the Honorable Chris Wickham, issued a case schedule order in this case that provided for a deadline of April 25, 2008 for hearing dispositive motions.

5. On April 2, 2008, the Port of Olympia filed responsive pleadings on the Public Records Act issue, demonstrating its readiness to show cause.

6. No show cause hearing has ever been held in this case.

7. On April 25, 2008, this Court, the Honorable Chris Wickham, heard dispositive motions on the PRA claims in the case and dismissed the case with prejudice. The record does not reflect that a show cause hearing on the Public Records Act claim took place. The Order, dated April 25, 2008, states, "Defendants shall file a copy of the transcripts of the Court's decision."

~~8. No copy of the transcript of the Court's decision was filed.~~

9. On May 30, 2008, this Court, the Honorable Chris Wickham, entered an order that replaced and superseded the Order of April 25. The May 30 Order dismissed, with prejudice, all claims in the case save for the Public Records Act Claim, which had been bifurcated from the rest of the case. This order, too, required "The Defendants shall file a copy of the transcript of the Court's decision." ~~No copy of the transcript of the Court's decision was filed.~~

10. No action was taken by anyone in this case until October 16, 2009 when Mr. West filed a Declaration in Support of Motion for Show Cause Order, on the Public Records Act issue.

11. A time period of 17 months passed from the date that Judge Wickham issued the amended order to the date that Mr. West filed his Declaration in Support of Motion for Show Cause Order.

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12. Beginning in October, 2009, and running through to June, 2011, Mr. West filed eight notices of issue for a show cause hearing on the Public Records Act issue that never took place for one reason or another.

13. Those reasons included Mr. West noting the hearing for a day he had previously been informed that counsel for the Port was not available, Mr. West noting the hearing for dates when the assigned judicial officer was not present and/or available and Mr. West failing to confirm the hearing in advance. None of the delays were caused by the Port of Olympia and none of the reasons the show cause hearing was never held were caused by the Port of Olympia.

14. On May 24, 2011, the case was reassigned from Judge Wickham to the Honorable Wm. Thomas McPhee for "judicial efficiency," Judge Wickham at the time being on juvenile court rotation.

15. On June 6, 2011, Mr. West filed a request for setting the matter for trial.

Prior to 6/10/11 Mr. Dierker made no filings in Sup. ct. since August 2007

16. On June 10, 2011, Mr. Dierker filed an Affidavit of Prejudice as to Judge McPhee.

17. On June 15, 2011, Mr. West filed a Declaration in support of his Public Records Act claims.

18. On June 23, 2011, Mr. Galligan, Mr. McGregor, Mr. Van Schoorl, and Mr. Telford filed a motion to dismiss and for sanctions, arguing that since Judge Wickham dismissed all claims vis-à-vis them, that they should be dismissed from the case, and also alleging that Mr. West had improperly named them in the caption since Judge Wickham's order of dismissal and the superseding order dismissing all claims except for the Public Records Act claims, and requesting CR 11 sanctions therefor.

19. This Court also finds that Mr. West did not oppose Mr. Galligan's, Mr. McGregor's, Mr. Van Schoorl's, and Mr. Telford's motion to dismiss the case, only opposing the request for CR 11 sanctions.

CUSHMAN LAW OFFICES, P.S.
ATTORNEYS AT LAW
924 CAPITOL WAY SOUTH
OLYMPIA, WASHINGTON 98501
(360) 534-9183 FAX: (360) 956-9795

20. On June 24, 2011, the Port of Olympia filed its Motion to Dismiss, arguing for involuntary dismissal pursuant to CR 41(b)(1) for failure to prosecute the case, alleging that Mr. West failed to note the Public Records Act issue since Judge Wickham's orders of dismissal; the Port of Olympia also argued for involuntary dismissal pursuant to this Court's inherent authority to manage a case, alleging that Mr. West had disobeyed a court order, had engaged in unacceptable litigation practices, and had substantially prejudiced the Port of Olympia's ability to prepare for trial.

21. On that same day, June 24, 2011, Mr. West filed an affidavit of prejudice against Judge McPhee and Judge McPhee recused himself.

22. Judge McPhee was fifth judge who was the subject of an affidavit of prejudice in this case.

23. Thereafter, the case languished for want of a judge.

24. On January 4, 2012, counsel appeared for Mr. West.

25. The undersigned, the Honorable Sam Meyer of Thurston County District Court, was assigned *pro tem* to the case. All parties consented to the assignment and following a telephone conference with both counsel and Mr. Dierker, the Port's motion to dismiss was set for hearing on June 29, 2012.

26. Shortly after the telephone conference which set the Port's motion to dismiss was for hearing, Counsel for Mr. West noted up a CR 30(b)(6) deposition of the Port of Olympia and moved this Court for the setting of a trial date and the issuance of a case schedule order. Mr. Dierker filed a motion for a revised trial date and the issuance of a revised case schedule order. Those issues were set over until the motion to dismiss could be decided.

27. This Court finds that the delays in this case have severely prejudiced the Port of Olympia, since the Public Records Act requires a mandatory daily penalty in the event that a court finds an

CUSHMAN LAW OFFICES, P.S.
ATTORNEYS AT LAW
924 CAPITOL WAY SOUTH
OLYMPIA, WASHINGTON 98501
(360) 534-9183 FAX: (360) 956-9795

agency to have violated the act and does not vest a court with discretion to reduce the number of days for which a penalty may be imposed. Mr. West and Mr. Dierker should not be allowed to benefit from the delays that they themselves caused.

Based on the above findings, the Court makes the following Conclusions of Law:

II. CONCLUSIONS OF LAW

1. This Court has jurisdiction over these parties, and over the subject matter of this suit.
2. Findings of Fact and Conclusions of Law are appropriate in this matter.
3. This Court concludes that dismissal of the individual defendants, Mr. Galligan, Mr. McGregor, Mr. Van Schoorl, and Mr. Telford, is appropriate, given that the claims made vis-à-vis these defendants have already been dismissed.
4. This Court is not imposing CR 11 sanctions against Mr. West.
5. The obligation of going forward in an action always belongs to the plaintiff and this Court concludes that Mr. West and Mr. Dierker have deliberately and willfully caused excessive delays in this case. And those delays have hindered the efficient administration of justice and prejudiced the defendant Port of Olympia.
6. This Court concludes that the delays caused by Mr. West and Mr. Dierker have prejudiced the Port of Olympia, since the Port of Olympia, if found to have violated the Public Records Act, will be subject to a daily penalty.
7. This Court concludes that lesser sanctions than dismissal will not suffice, since a court would have no discretion to reduce the number of days for which the Port of Olympia would be subject to a daily penalty.
8. This Court concludes that this case should be dismissed.

CUSHMAN LAW OFFICES, P.S.
ATTORNEYS AT LAW
924 CAPITOL WAY SOUTH
OLYMPIA, WASHINGTON 98501
(360) 534-9183 FAX: (360) 956-9795

9. This Court concludes that Mr. West's motion for trial setting and for issuance of a new case schedule order is moot.

10. This Court concludes that Mr. Dierker's motion for a revised trial date and a revised case schedule order is moot.

11. This Court concludes dismissal of this case is not unduly prejudicial to Mr. West or Mr. Dierker in that neither this Order of Dismissal, nor any of the Court's Findings of Facts or Conclusions of Law are intended to preclude Mr. West's or Mr. Dierker's ability to submit a new public records request to the Port of Olympia, including one that seeks the same records that were sought in the request at issue here.

This Court having considered arguments of counsel and of Mr. Dierker and deeming itself fully advised, and this Court having made the above Findings of Fact and Conclusions of Law, it is hereby:

ORDERED, ADJUDGED AND DECREED that Defendants Galligan, McGregor, Telford, and Van Schoorl are hereby DISMISSED from the above-entitled action; and it is further

ORDERED, ADJUDGED AND DECREED that Defendants' request for CR 11 sanctions is denied; and it is further

ORDERED, ADJUDGED AND DECREED that Defendant the Port of Olympia's Motion to Dismiss is GRANTED and the case is DISMISSED WITH PREJUDICE, with no costs or fees to any party; and it is further

ORDERED, ADJUDGED AND DECREED that Plaintiff West's Motion for Trial Setting and Issuance of a New Case Schedule Order is DENIED; and it is further

ORDERED, ADJUDGED AND DECREED that Plaintiff Dierker's Motion for a Revised Trial Date and a Revised Case Schedule Order is DENIED.

CUSHMAN LAW OFFICES, P.S.
ATTORNEYS AT LAW
924 CAPITOL WAY SOUTH
OLYMPIA, WASHINGTON 98501
(360) 534-9183 FAX: (360) 956-9795

DONE IN OPEN COURT this 27 of July, 2012.

Honorable Sam Meyer, Superior Court Judge Pro Tem

Presented by:

CUSHMAN LAW OFFICES, P.S.

By Stephanie M R Bird
Stephanie M. R. Bird, WSBA #36859
Attorneys for Plaintiff Arthur West

Copy received, approved for entry by:

GOODSTEIN LAW GROUP, PLLC

By
Carolyn Lake, WSBA #13980
Attorneys for Defendants

not present.
Jerry Dierker, *Pro Se*

CUSHMAN LAW OFFICES, P.S.
ATTORNEYS AT LAW
924 CAPITOL WAY SOUTH
OLYMPIA, WASHINGTON 98501
(360) 534-9183 FAX: (360) 956-9795

THURSTON COUNTY
WASHINGTON
SINCE 1852

THURSTON COUNTY DISTRICT COURT

Judge Kalo Wilcox
Department 1

Judge Samuel G. Meyer
Department 2

Judge M. Brett Buckley
Department 3

August 29, 2012

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

Carolyn A. Lake
Goodstein Law Group PLLC
501 S. G Street
Tacoma, WA 98405

Jerry Lee Dierker Jr.
2828 Cooper Point Rd. NW
Olympia, WA 98502

Re: West et al. v. Port of Olympia et. al.
Thurston County Superior Court Number 07-2-01198-3

Dear Counsel,

This case was filed on June 18 2007. Defendant's motion to dismiss was heard on June 29, 2012 and written findings and conclusions were entered on July 27, 2012. Dierker and West filed motions for reconsideration on August 6, 2012.

After reviewing the file, the motions for reconsideration and the response filed by Carolyn Lake on behalf of the Port of Olympia, both motions are denied.

Very truly yours,

Samuel G. Meyer

2000 Lakeridge Drive SW, Olympia, Washington 98502-6045 Court: (360) 786-5450,
Probation: (360) 786-5451 Pretrial Unit: (360) 754-8346 TDD: (360) 754-2933, FAX (360) 754-3359

2324.006

Washington State Court of Appeals
Division Two

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

December 18, 2013

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

Stephanie M R Bird
Cushman Law Offices PS
924 Capitol Way S
Olympia, WA 98501-1210
StephanieBird@CushmanLaw.com

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

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

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

Mr. Dierker & Counsel:

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

A RULING BY COMMISSIONER SCHMIDT:

The attachment to Dierker's reply brief is stricken as being outside the record, and any references to the attachment in the reply brief are stricken. The remainder of Dierker's reply brief is not stricken. The clerk's office will remove the stricken attachments from the brief.

Very truly yours,

David C. Ponzoha
Court Clerk

Washington State Court of Appeals
Division Two

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

May 13, 2014

Kimberly Arden Hughes
Weyerhaeuser Law Dept
PO Box 9777
Federal Way, WA, 98063-9777

Arthur West
120 State Ave. NE #1497
Olympia, WA, 98501

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

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

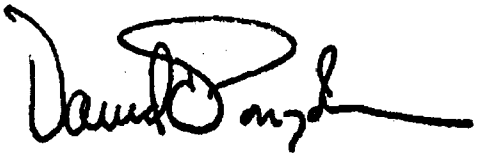
Seth S. Goodstein
Goodstein Law Group PLLC
501 S G St
Tacoma, WA, 98405-4715

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

Mr. Dierker:

The court is in receipt of "*your prayer for consideration of this declaration in clarification of his request for waiver to allow the filing of his affidavit of financial need.*" Pursuant to the order of March 21, 2014, there is no provision to file this document without the $200 sanction being paid. Therefore, the document will be placed in the pouch without action.

Very truly yours,



David C. Ponzoha
Court Clerk

DCP:cm

IN THE WASHINGTON STATE COURT OF APPEALS
Division II

ARTHUR S. WEST, and	)	No. 07-2-01198-3
JERRY L. DIERKER JR.,	)	COA II # 43876-3
Appellants;	)	
v.	)	Affidavit of Service
PORT OF OLYMPIA, et al,	)	
Respondents.	)	

Comes now Appellant Jerry Lee Dierker Jr., the undersigned, who declares and makes the following Affidavit of Service.

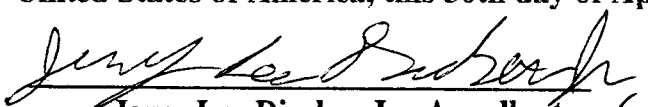
On April 30, 2014, I, the undersigned, caused this Court of Appeals and the following parties or attorneys of record in this matter to be served at their addresses of record by mail or personal service with copies of Appellant Dierker's April 30, 2014 Request for Waiver to allow him to file the included "Affidavit of Financial Need" noted in the Clerk's letter of March 17, 2014.

1) Defendants Port of Olympia, et al, through their attorneys of record;

2) Mr. West; and

3) Defendant Weyerhaeuser, through their attorney of record.

I certify the foregoing to be true and correct to the best of my knowledge, beliefs and/or abilities, under penalty of perjury of the laws of the State of Washington and the United States of America, this 30th day of April, 2013 in Olympia, Washington.



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

IN THE WASHINGTON STATE COURT OF APPEALS
Division II

ARTHUR S. WEST, and JERRY L. DIERKER JR., Appellants; v. PORT OF OLYMPIA, et al, Respondents.	)	No. 07-2-01198-3 COA II # 43876-3 Request for Waiver under RAP 1.2, et al, to Allow Filing of an included Affidavit of Financial Need

Comes now Pro Se Appellant Jerry Lee Dierker Jr., who acting pursuant to the Clerk's Letter Ruling of March 17, 2014 to allow me to file my following "Affidavit of Financial Need" on any attorney's fee requests in this case under RAP 18.1(c), and acting in the interests of justice under RAP 1.2, hereby requests a waiver of that portion of this Court's March 21, 2014 Order imposing a $200.00 Sanction barring my filing of any further pleadings in this case.

Further, I note that besides RAP 1.2 and RAP 18.1 (c), as my prior relevant pleadings show and other law shows, this request should also be granted since many due process provisions prohibit or provide waivers of such financial barring or abridging of my due process rights as an indigent disabled person to file and plead in the Courts, especially when my financial hardships are caused by my physical disabilities, and under just the U. S. Americans with Disabilities Act (ADA), the Washington State "Blind Disabled and Handicapped White Cane Law", and RCW 4's statutes on Civil Procedure in the Courts of this state also prohibit or provide waivers of such abridgments of due process rights for such personal disabilities as those that the open and notorious evidence of judicial notice in this case clearly shows that I have, and thereby, at the least, I am requesting that the Clerk file this included Affidavit of Financial Need as an "reasonable accommodation under the ADA, et seq. in these circumstances, effectively granting this request thereby, as follows. (Supra).

Affidavit of Financial Need

I, Pro Se Appellant Jerry Lee Dierker Jr., am an indigent severely Disabled Veteran of the American Air Force, living on a subsistence-level non-service disability pension of only $1054.00

per month with full household expenses which I share with no one, making and, I also note that on top of my normal extremely disabling conditions, many of which affect the use of both of my hands, I also currently have a badly broken left hand, making the typing of this pleading almost impossible and extremely painful.

Therefore, it would be an extreme and undue financial and physical hardship for me to be subjected to any further financial drain upon me and would further abridge my access to this Court, if I would have to pay an attorney's fee requests in this case, or pay the Court's March 21, 2014 $200.00 sanction that also bars me from filing this "Affidavit of Financial Need" on an attorney's fee requests noted in the Clerk's letter of March 17, 2014, when this Court's March 21, 2014 $200.00 sanction also abridging my reasonable access to this Court to the point that I am barred from even filing any Notice of Appeal in this case with the Clerk of this Court of Appeals should I lose this appeal case.

Consequently, I request this Court waive any award of attorney fees and waive this Court's March 21, 2014 $200.00 sanction abridging my reasonable access to this Court as noted here.

I certify the foregoing to be true and correct to the best of my knowledge, beliefs and/or abilities, under penalty of perjury of the laws of the State of Washington and the United States of America, this 30th day of April, 2013 in Olympia, Washington.

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

State of Washington

Court of Appeals, Division II
950 Broadway Suite 300
Tacoma, WA 98402-4427

Sales Receipt

Date
8/25/2014

Sold To
Jerry Lee Dierker, Jr. 2826 Cooper Point Rd NW Olympia, WA 98502

Check #	Payment Method	Case #
	Cash	438763

Description	Qty	Rate	Amount
Sanctions	1	200.00	200.00
		Total	$200.00

IN THE WASHINGTON STATE COURT OF APPEALS
DIVISION II

ARTHUR WEST and JERRY DIERKER, CoAppellants,	)	No. 43876-3-II
v.	)	DIERKER'S OBJECTIONS TO AND MOTION FOR RECONSIDERATION OF THE AUGUST 5, 2014 UNPUBLISHED OPINION IN THIS CASE, AND FOR OTHER RELIEF UNDER GR 33 & GR 34
PORT OF OLYMPIA, et al, Respondents.	)	

1. Identity of Moving Party

Pursuant to RAP 12.4 and CR 59, et seq., CoAppellant Jerry Dierker makes this Objections to and Motion for Reconsideration of this Court's August 5, 2014 "Unpublished Opinion" decision in this case and for Other Relief under GR 33 and GR 34, et seq., which must be granted to allow Dierker to request this Court to overturn those portions this Court's August 5, 2014 "Unpublished Opinion" decision in this case related to Co-Appellant Dierker's standing for the PRA claims, and related to both Co-Plaintiffs/Co-Appellants' claims on the bifurcation of the SEPA and PRA claims, and the "lack of standing" ruling on the SEPA and other 'nonPRA" claims in this case, et seq., as follows.

2. Statement of Relief Sought

CoAppellant Jerry Dierker request this Court grant Motion for Reconsideration of this Court's August 5, 2014 "Unpublished Opinion" decision in this case and for Other Relief under GR 33 and GR 34, et seq., which must be granted to allow Dierker to request this Court to overturn those portions this Court's August 5, 2014 "Unpublished Opinion" decision in this case related to Co-Appellant Dierker's standing for the PRA claims, and related to both Co-Plaintiffs/Co-Appellants' claims on the bifurcation of the SEPA and PRA claims, and related to the rulings on their "lack of standing" for making the SEPA and other 'nonPRA" claims in this case, et seq.

CoAppellant Jerry Dierker also requests that this Court grant him appropriate relief he requests herein to grant as noted in the CoAppellant Dierker's accompanying Declaration and Memorandum In Support and his requests for GR 33 and GR 34 relief elaborated there, where he is requesting various relief including wavier of the RAP pleadings rules that Dierker requests be

"waived" in this interests of just under RAP 1.2 and GR 33 and/or GR 34, to allow the aged, disabled, indigent, unrepresented Mr. Dierker to file an overlength and/or informal or otherwise non-conforming briefs here for proper liberal consideration of his claims under the 2 of this State's "Sunshine Laws" granting authority to the People, like Mr. Dierker, to act patriotically to protect their control over their government's actions, and requesting other appropriate relief, and within CoAppellant Dierker's and CoAppellant West's pleadings and supported by CoAppellants' pleadings and the various agency and Court records made in this case, which are incorporated herein by reference here. (See accompanying Declaration and Memorandum In Support; see both Public Records Act's (PRA) intent provisions in RCW 42.56.010, et seq.; and see State Environmental Policy Act's (SEPA) intent provisions in RCW 43.21C.010, and see the "Comments" and "Research References" on GR 33 and GR 34 in the Washington Court Rules Annotated for the last few years).

Mr. Dierker's Reconsideration pleadings here request Relief under RAP 1.2, GR 33 and GR 34, the ADA, and other law, et seq., to "waive" the RAP pleadings rules in the interests of justice due to Mr. Dierker's indigency, age, and sever physically disabling conditions he has being suffering with during the over 7 years he has drafted pleadings this case, which this Court has previously ignored without any directly granting to Mr. Dierker of any of the relief, response, comment or judicial notice of this Court, a violation of judicial discretion.

This Court knows, knew or should reasonably have known when considering Mr. Dierker's pleadings and his actions taken in this appeal and in the lower venues of the Superior Court and the Port's SEPA Appeal proceedings, et seq., that Mr. Dierker has been all of these over 7 years of this case an indigent, aged, disabled, nonattorney, and unrepresented party in this appeal and other venues' proceedings on this case, and therefore, Mr. Dierker should be granted relief under RAP 1.2, GR 33 and GR 34, ADA, et seq., to reasonably "waive" all narrow restrictions on consideration of his pleading in the RAP pleading rules in this appeal of this case, including for his Reconsideration pleadings here, especially since Dierker already unsuccessfully requested this Court to grant him such relief repeatedly throughout the proceedings of this case in the Superior Court and its appeal in this Court, as any reasonable "clearly erroneous" standard of review of the record of his pleadings clearly shows. (Id.).

Further, since GR 33 cites to the ADA Mr. Dierker has noted to this Court that the ADA's

Title II provisions of 42 USC §12131(2) et seq., protect the fundamental due process of law rights of disabled litigants like Mr. Dierker to be able to have any meaningful access to the Courts for redress of grievances, like those in this appeal case. (Tennessee v. Lane, 124 S, Ct. 1978 (2004); ADA Title 42 USC § 12101, 12131, 12132-12165, et seq., including but not limited to § 12112 Discrimination, § 12132 Discrimination in Public Services, § 12202 No State Immunity, et seq.; see also the Washington State's Blind, Handicapped, and Disabled Persons --"White Cane Law" RCW 70.84 et seq.).

Since Petitioner Dierker here is a severely disabled persons whose disabilities include, but are not limited to, having brain damage from accidents which causes him problems communicating his thoughts to others at times like this, the Superior Court should have and this Court of Appeals must "liberally construe" the pleadings of the disabled pro se Petitioner in this case required under state and federal law and under various Courts' controlling case law decisions on such matters, and should have made and must now make "reasonable accommodations" for the pleadings of this disabled pro se Petitioner in this case under the provisions of the ADA. (Tennessee v. Lane, Supra).

The Supreme Court in Lane found that Title II of the Americans with Disabilities Act of 1990 (ADA), 104 Stat. 337, 42 U.S.C. §§12131-12165, provides that

"no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any such entity." (§12132). ...

The Court cited four "access-to-the-courts" civil rights cases the ADA's Title II enforces:(1) the right of a party to be present at all critical stages of the trial, Faretta v. California, 422 U. S. 806, 819 (1975); (2) the right of litigants to have a "meaningful opportunity to be heard" in judicial proceedings, Boddie v. Connecticut, 401 U.S. 371, 379 (1971); (3) the right of a party to trial by a jury composed of a fair cross section of the community, Taylor v. Louisiana, 419 U. S. 522, 530 (1975); and (4) the public's right of access to legal proceedings, Press-Enterprise Co. v. Superior Court of Cal., County of Riverside, 478 U. S. 1, 8-15 (1986)." (Id., at pages 11-12 of the Lane Decision itself).

Therefore, in order to follow GR 33 to provide justice for all in this Courts of this State, Mr. Dierker requests that the Court grant him the relief he requests here as a reasonable accommodation under the ADA, RCW 49.60, and RCW 70.84, et seq., due to the facts and circumstances in the matter concerning his disabilities, which the Court knows.

Further, due to his indigency, his age and his known to be sever disabilities making him unemployable according the U.S. Veterans Administration who has granted Mr. Dierker, a Disabled American Veteran, a VA disability pension of $1054.00 per month with this years Cost of

Living Adjustment from Congress like all other Disabled American Veterans, and so Mr. Dierker is also unable to pay an attorney to draft pleadings and argue for him, and is unable to even have a computer that can be hooked to the Internet for filing pleadings in this case, which has caused him further undue hardships in his drafting of these Reconsideration pleadings due to Mr. Dierker's age and physically disabling conditions he has suffered during drafting of these Reconsideration pleadings which he has requested be liberally considered by this Court pursuant to RAP 1.2, GR 33 and the ADA, et seq., as he has previously requested.

Further, Dierker's GR 34, et seq. requests here are made due to his indigency concerning the $200 sanction he must pay this Court to regain his due process rights to file pleadings with the Clerk of this Court of Appeals, Mr. Dierker is making a request for relief under RAP 1.2, GR 33 and GR 34, ADA, et seq., for this Court to "waive" the $200 sanction to "refund" the $200.00 to Mr. Dierker borrowed from his CoAppellant Mr. West, for indigent Mr. Dierker's payment of this undue sanction, so that Mr. Dierker could file this Motion for Reconsideration of this erroneous order unsupported by the historical records of the Port and these Court in this case, et al., so that CoAppellant Dierker can aid CoAppellant West in support of these CoAppellants' pleadings in this appeal of the erroneous decisions of the Superior Court in this case, since Mr. Dierker was indigent due to his age and server disabilities, and is unable to pay this $200 sanction to regain his due process rights to file pleadings with the Clerk of this Court of Appeals, and therefore, this Court should grant this relief to Mr. Dierker.

This Court should grant this requested relief in the interests of justice.

3. Facts Related to the Motion and Grounds for Relief and Argument

The "Facts Related to the Motion" are more fully briefed in CoAppellant Dierker's accompanying Declaration and Memorandum In Support and within CoAppellant Dierker's, CoAppellant West's, and the other parties pleadings and the various agency and Court records made in this case, which are incorporated herein by reference herein, and which must be completely reviewed by this Court pursuant to the controlling Standards of Review under the "arbitrary and capricious", "clearly erroneous", and "de novo" standards of review this Court of Appeals is required to completely review in this case. (Id.; see Standards of Review section in the Declaration and Memorandum In Support; see also Standards of Review sections in Mr. Dierker's Opening

and Reply Briefs; Weyerhaeuser v. Pierce County, supra; Norway Hill, supra).

To name but one of the biggest errors of fact (and law) noted herein concerns this Court's vague factual allegations erroneously used by this Court for supporting this decision's rulings against the CoAppellants here, when this Court's vague factual allegations erroneously were used by this Court for supporting this decision's rulings against the CoAppellants' claims here, when this Court's vague factual allegations erroneously are unsupported by any proper references to the record required by RAP 10.4(f), when this Court's vague factual allegations are clearly erroneously since they are in directly in conflict with the CoAppellants' documented references to the actual records of this case, and/or when this Court's vague factual allegations erroneously appear to have been "invented" by this Court as part of it collusive actions with and aiding and abetting the Port's "falsification" of the records in this case and their illegal and unconstitutional fraudulent concealment of the actual "discoverable" records and facts irrelevant to this case, and the Court's factual claims complained here are contrary to properly referenced and documented facts of this case contained within Co-Appellants' proper specifically documented references to actual records of this case, as required by RAP 10.4(f) and this Court's repeated rulings concerning RAP 10.4(f) that were striking and/or requiring repeated amendment of Mr. Dierker's pleadings in this appeal, because the Court repeatedly failed to grant the aged, indigent, disabled and pro se Mr. Dierker any of his repeated requests for "reasonable accommodations" under the ADA, et seq., and for waiver of the certain RAP pleading rules and liberal consideration of Dierker pleadings in this appeal in the interests of justice for all in this case, which this Court was required by GR 33 to grant Mr. Dierker, but which this Court deliberately ignored each and every time Dierker made the requests, without this Court ever even mentioning these GR 33 style requests in any of this Court's erroneous and unlawful rulings which are in abuse and/or without any legal authority of this Court where it repeatedly denied Mr. Dierker access to this Court in this state for this case, and, thereby, for these reasons alone, this Court's decision and its rulings fail under RAP 10.4(f) to have required specific references to factual support in the records of this case for each factual claim, ruling and decision made by this Court in this case, as noted, thereby requiring reconsideration be granted here for this reason alone. (Id.; supra, see Declaration and Memorandum

Clearly, this Court and the Bar Association it represents so well against the weak, aged, indigent, disabled, and unrepresented People of this state, like Mr. Dierker, have been completely

corrupted by this Court's power over the life and death of certain persons in this State, so that this Court now believes that it can act to ignore the facts in the record of this, ignore the laws controlling the Court's and Respondents' actions in this case, ignore discovery rules, ignore the RAP rules and standards of review, and can misused its judicial discretion to abuse, harass, physically and financially harm, and unconstitutionally "take" Mr. Dierker's due process civil and constitutional rights away from him, and/or aid and abet the extremely powerful Port and Weyerhaeuser Respondents and their attorneys to do so here, all without this Court or its corrupt judges ever having to worry they will be liable in their individual capacities for these actions taken against Mr. Dierker in this case, because anyone who has legal authority to do so is also a Member of the Bar Association, whether he is an attorney, a judge, or prosecutor -- these judge's and judicial staff do not understand that when they do not follow the Court rules and laws authorize their actions, these judicial personnel are individually and jointly and severably liable in their personal and community property for their actions taken without or in abuse of their legal authority under the laws, where they have "removed" their "cloak of judicial immunity" granted to them by the laws they violate since by failing to follow their legal authority under those laws **these judicial personnel cannot gain "immunity" from liability of these laws which they have failed to follow at the time**, and for which the State is also jointly and severably liable. (See also the Declaration and Memorandum in Support).

To simplify citation of just some of the many erroneous parts of this Court's vague and undocumented factual allegations upon which this Court bases it's erroneous rulings against the CoAppellants in this Court's erroneous decision in this case, Mr. Dierker will "highlight" by **bolding** only those erroneous parts.

> We additionally hold that, (1) **Dierker does not have standing to enforce the PRA claims**, (2) **West and Dierker waived their arguments regarding the bifurcation order**, (3) **the trial court properly concluded that West and Dierker lacked standing for their SEPA claims**, and (4) none of the parties is entitled to attorney fees. (Decision, at 2).

However, as shown all 3 of these unsupported claims are incorrect, are in conflict with the documented facts in the records of this case in the Port's Administrative Record (AR), the Superior Court record and this Court of Appeals record in this case, even for the first two "surprise" "sua sponte" rulings of this Court not previously briefed in this part of this Appeal by any party, both of which are based upon this Court's lies and clearly false factual claims which are not supported by

the record and which are due to the this Court refusals to allow Mr. Dierker to Supplement to record with his 2006 PRA Requests to the Port and to require the Port to file the Port's agency record of the Port's PRA actions complained by both Mr. Dierker and West in this case, including this Court's failure to require the Port to file the "In camera review" withheld Public Records for review in this Appeal, and these factual claims behind these rulings are otherwise erroneous as is noted below in this pleading about these 2 "surprise" rulings of this Court.

This is especially true for the erroneous ruling that West and Dierker lacked standing for their SEPA claims properly argued against and this Court's rulings here have fail to follow the cited to precedents of statute and case law cited by Mr. Dierker, but ignored by this Court.

"FACTS"
"On March 17, 2007, West filed a public records request with the Port, seeking records related to the Port's lease with Weyerhaeuser. **On June 12, 2007, the Port sent West a letter listing the records it provided and the records it considered exempt**. The letter stated that the Port considered the request completed." (Decision, at 4).

First, the Court here made a lie of omission to hide the fact that Mr. Dierker had filed 2 earlier 2006 PRA requests to the Port, which Dierker tried to include in the record on this Appeal as noted by one of his Motions to Supplement the Record had previously requested from this Court that was denied by this Court of Appeals erroneously, as would be shown by the Court of Appeals own records in this case of Mr. Dierker's pleadings which have been erroneously ignored by this Court. (Id.)

Second, the Port's actual record on the Port's June 12, 2007 Response to Mr. West's March 17, 2007 **was by Mr. West's request hand-delivered to Mr. Dierker,** Mr. West's **"CoAppellant" in their joint Port's administrative SEPA appeal of the Port SEPA actions on this Port project, as noted in the Port's AR filed in this case**, and thereby, Mr. Dierker clearly had "privity" with Mr. West on West's March 17, 2007 PRA requests and the Port's PRA response to Mr. West disclosed to Mr. Dierker who was acting with and for Mr. West, who was not in this State on June 12, 2007, when the Port gave **Mr. Dierker** the Port's June 12, 2007 PRA Response to Mr. West's PRA March 17, 2007 Public Records Request that is the basis of Mr. West's current "standing" for his proper PRA claims this Court has found in this appeal of in this case, so Mr. Dierker also has standing for Mr. West's March 17, 2007 PRA requests, and has "standing" for his own 2 2006 PRA requests he tried to Supplement the Record in this case, since the Superior Court never held a PRA show cause hearing to make a proper record of the PRA

claims related relevant evidence which like the much of the rest of the normally required discoverable records for a Court's appellate consideration of such claims, which the Court have failed to have or review and consider in this appeal. (Id.).

As shown in the Port's 2800 page AR filed in this case, Dierker was acting in a special legal relationship with Mr. West in this case at the time as West's "CoAppellant" in the Port's administrative SEPA Appeal in this case, and Dierker had been authorized by West and the Port to receive the Port's June 12, 2007 disclosure of some of these requested Port public records when Dierker received the Port's June 12, 2007 PRA Response and PRA Exemption Log on West's March 2007 PRA records request to the Port on this project , and, thereby, under the provisions of Kleven v. City of Des Moines, 111 Wn. App. 284, 290, 44 P.3d 887 (2002), cited by this Court in this decision, Mr. Dierker, like Mr. West, has standing under the PRA here, and, this also shows that **both CoAppellants** also have "informational standing" to challenge the Port's SEPA actions in this case, clearly showing that this Court rulings must be overturned on reconsideration in this case as being clearly unlawful and factually erroneous.

Clearly, despite this Court's claims at page 5 to the contrary there **is** a "similar relationship between West and Dierker to show that West acted on Dierker's behalf" and shows that under Kleven, supra, Mr. Dierker has "standing" in this case: 1) since Dierker has a "personal stake in the outcome of" both the PRA and SEPA claims in this case; 2) since Dierker was acting as Mr. West's "CoAppellant" in the Port's administrative SEPA Appeal in this case as noted in the Port's 2800 page AR filed in this case which this Court has apparently never looked at all, who was "authorized by Mr. West and the Port to be the person that "received" the Port's June 12, 2007 PRA Response to Mr. West, and, consequently, Dierker **does** have standing to enforce the PRA claims and for the SEPA appeal he is not entitled to relief relating to these claims.

Clearly, the facts of this case show that Mr. Dierker did **not** "lack standing" to proceed in this case with his 3 PRA claims against the Port noted above, which were erroneously ignored by both this Court of Appeals and the Superior Court, and therefore, the Decision's relevant factual claims and rulings that Dierker lacked standing for suing the Port in this case under the PRA must be overturned on reconsideration for these reasons alone.

This Court's "standing" rulings here, like those of the Superior Court in this case are contrary to clearly established precedent on SEPA and NEPA cases where such CoAppellants have

"informational standing" by alleging particular harm from a project resulting from failure to consider all information and alternatives. (See West v. Secretary of Transportation, 206 F.3d. 856. (9th Circuit, 2000).

This Court's standing rulings here are contrary to Farris v. Munro, 81 Wn.2d 613, 503 P.2d 736 (1972), in that relaxed standing requirements are applicable to issues affecting substantial portions of the population and the implementation of Government services, and are directly counter to State ex rel Tattersall v. Yelle, 52 Wn.2d 856, 324 P.2d. 841, and the long line of precedent which requires only a showing of a demand upon the proper officer to act prior to instituting suit. (See also Appellants' arguments on "standing" in the 2008 Motions for Reconsideration, et al. CP 208, 209, 211, 215; see also Appellants' final Motion for Reconsideration of August 6, 2012)

For this Court rulings that CoAppellants' lacked of "standing" to sue under SEPA and the other 'non-PRA" claims in this case the Superior Court and this Court using Kucera v. Dept. of Transportation, 149, Wn.2d 200, 212, 995 P.2d 63 (2000) as its key legal basis for it's erroneous ruling that CoAppellants lacked standing for making the SEPA and other nonPRA claims in this case, were erroneously done using the Land Use Petition Act's (LUPA) RCW 36.70C.060(1)-(2) strict standards on "standing", despite the fact that no "Land Use" decision had been or could legally be made by the Port, since the Port has no LUPA powers to make "Land Use" decisions under LUPA, and when no LUPA petition had been filed in this case by CoAppellants, as noted by the records in this case this Court of Appeal has ignored.

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

In the appeal of a similar case Judge Wickham dismissed for lack of standing, the Supreme Court found that Judge Wickham's interpretation of the strict "standing" requirements of the LUPA was in error, and the Supreme Court found the Plaintiffs in that case had standing. (See

Knight v. City of Yelm 173 Wn.2d 325, at 340-347 (Dec. 2011); see also the case law on a court's consideration of a statute noted above).

Finally, another recent Court of Appeals decision found a Plaintiff's have "standing" for Plaintiff's issues in this case attempting to protect the legal sanctity of one agency's administrative appeal decision on a defending agency party to prevent violation of that agency decision by prohibited actions of that defending agency party, exactly the same kind of administrative appeal decision like that of Appellants' issue on protecting the sanctity of the City of Olympia Hearing Examiner's Dec. 19, 2006 Decision denying the Port's Weyerhaeuser Log Yard project complained of in this case, one the non-PRA SEPA issues of this case ignored by this Court of Appeals and the Superior Court by their abuses of discretion against the unrepresented parties, which included not only Mr. Dierker for this entire case, but includes Mr. West for most of this case. (See Stevens v. Washington State Growth Management Hearings Board, 163, Wn. App. 680 (June 2011).

A proper clearly erroneous review of the records in this case, clearly shows that Appellants clearly would have even met LUPA's "standing" requirements **if** Judge Wickham had not made an improperly narrow interpretation of LUPA's "standing" requirements in RCW 36.70C.060(1)-(2), like this Court's improperly narrow interpretation of LUPA's "standing" requirements to allow only "adjacent Landed Gentry" to sue in such cases -- absurd.

Clearly, despite this Court and the Superior Court's erroneous rulings, both CoAppellants have "standing" for suing the Port over its violations of the PRA, SEPA and the other misrepresented "nonPRA" claims in this case, and any contrary claims must be overturned on reconsideration by proper legal actions and a proper ruling of this Court that does not violate this Court's judicial discretion under the laws controlling this Court's actions.

This Court's bifurcation ruling was also factually erroneous as follows, where this Court claims without any proper references to specifc substantial evidence in the record to support this Court factual allegtion that is the basis of his Court's bifurcation ruling, which erroneously claimed:

"... (2) **West and Dierker waived their arguments regarding the bifurcation order**," (Decision at 2); (and falsely claimed)
"In August 2007, Weyerhaeuser moved to bifurcate the PRA claims from the rest of West's and Dierker's claims. **West agreed**, and the trial court granted the motion." Decision, at 3.

However, the Court's factual claims supporting its bifurcation ruling that "West and

Dierker waived their arguments regarding the bifurcation order" is shown to be false by the Court other erroneous factual allegation where it claims only that "West agreed" to the bifurcation, **not Mr. Dierker**. (Id.).

This erroneous ruling on bifurcation by this Court is also erroneously based upon this Court's clearly erroneous factual allegations that conflict with the CoAppellants' numerous briefs, objections, several Motions for Reconsideration of this bifurcation ruling along with other orders, which are in the Superior Court's record in this case, part of which have been submitted to this Court, and in the CoAppellants' related late-2007 Supreme Court case against Judge Pomeroy and the Superior Court on this bifurcation and repeated changing of judges in this case to confuse them by the Superior Court to allow the Port to venue shop. (See the Superior Court and Court of Appeals records and dockets in this case). as Appellants' repeated pleadings objecting to this bifurcation of the PRA and SEPA issues (misnamed "nonPRA" issues) in this case which have been erroneously ignored by the Courts in this case have noted

Further, it is clearly both the bifurcation rulings and the standing rulings of this Court of Appeals and of the Superior Court being reviewed here have repeatedly ignored, SEPA is primarily a procedural statute that, by its incorporation of requires the full disclosure of all environmental information relevant to an agency's actions, which is done to reflect SEPA' public policy to ensure that environmental values are given appropriate consideration in governmental decision making, as Appellants' repeated pleadings on an **ISSUE OF LAW** objecting to this bifurcation of the PRA and SEPA issues (misnamed "nonPRA" issues) in this case which have been erroneously ignored by the Courts in this case have noted. (Id., supra; see SEPA's RCW 43.21C.075 and SEPA's WAC 197-11-504(1), supra; Glasser v. City of Seattle 139 Wn. App. 728, 162 P.3d 1134, review denied 163 Wn.2d 1033, 187 P.3d 286; Norway Hill Preservation and Protection Ass'n. v, King County, 87 Wn. 2d 267, 552 P.2d 674 (1976); Swift v. Island County, 87 Wn. 2d 348, 552 P.2d 175 (1976); Words and Phrases, Environmental Law Key 577; see also attached supplemental authority written by Ms. Lake).

In any case, since ALL of the CoAppellants' numerous relevant opposing and objecting pleadings in this case related to bifurcation and standing rulings here are based by CoAppellants upon this one Issue of Law for BOTH the bifurcation AND ALL standing rulings of BOTH this

Court of Appeals AND of the Superior Court being reviewed here, have repeatedly been based by CoAppellants upon SEPA's incorporation of the PRA and the PRA's public records disclosure statutory provisions into SEPA statutory scheme noted by the Supreme Court's precedent of Norway Hill, et seq. SEPA's requirements prohibit such a bifurcation by denying the Superior Court any discretion or jurisdiction to bifurcate these the PRA claims from the so-called "nonPRA" claims in this case. (See SEPA's WAC 197-11-504(1) & WAC 197-11-330(2)(a); SEPA's RCW 43.21C.075(3); PCCE, Inc. v. United States, 159 F. 3d 425, 427 (9th Cir. 1998); Marriage of Wolfe, 99 Wn. 2d 531, at 536 663 P. 2d 469 (1983); Weyerhaeuser v. Pierce County, 124 Wn. 2d 26, at 38 (1994); Norway Hill Pres. & Prot. Ass'n v. King County Council, 87 Wn.2d 267, 552 P.2d 674 (1976); et seq.).

Further, the PRA, SEPA, the APA, and the State and Federal Constitutions, and the Court Rules all prohibit such a "bifurcation" by denying the Superior Court any discretion, authority or jurisdiction to act to prevent disclosure of the withheld evidence in the PRA claims from the so-called "nonPRA" claims in this case by the Superior Court's "bifurcating" these the PRA claims from being heard at the same time as the "nonPRA" SEPA and other claims. (Supra, see Fritz v. Gorton, 83 Wn.2d 275 (1974), which cited to New York Times v. Sullivan, 376 US 254, 11 L. Ed. 2d 686 (1964); Physicians Insurance Exchange v. Fisons Corporation, 122 Wn. 2d 299, 858 P. 2d 1054 (1993); Kelley; Gott v. Woody, 11 Wn. App. 504, at 506-507, 524 P.2d 452 (1974); Norway Hill; PCCE, Inc. v. United States; Marriage of Wolfe; Weyerhaeuser v. Pierce County, 124 Wn. 2d 26, at 38 (1994); Norway Hill Pres. & Prot. Ass'n v. King County Council, 87 Wn.2d 267, 552 P.2d 674 (1976); et seq.RCW 40.16; RCW 42.56.510; RCW 34.04.476; RCW 43.21C.075; WAC 197-11-504(1); Doctrine of Fraudulent Concealment, Black's Law Dictionary 5th Ed., page 596; Discovery Rule Doctrine, Black's 5th Ed., page 419; Fruit of a Poisonous Tree Doctrine, Black's 5th Ed., page 602; Clean Hands Doctrine, Black's 5th Ed., page 227).

Under the "Discovery Rule" doctrine, a statute of limitations on a claim does not begin to run until a plaintiff or appellant "discovers" or reasonably should have discovered the cause of an action. (Barrent v. U.S., 689 F. 2d 324 (1981); Ruth v. Dight, 75 Wn. 2d 660, 453 P. 2d 631 (1969); Tyson v. Tyson, 727 P. 2d 226 (1986); see Black's Law Dictionary Fifth Edition, page 419). Under the "Doctrine of Fraudulent Concealment", a statute of limitations on a claim will be tolled when the defendant or respondent concealed material facts or provided misrepresentations

concerning a cause of action. (Blank v. McKeen, 707 F. 2d 817 (9th Cir. 1983); Briley v. California, 564 F. 2d 849 (9th Cir. 1977); Stuekler v. Sceve Steel, 1 Wash. App. 391. 461 P. 2d 555 (1969); see also Physicians Insurance Exchange v. Fisons Corporation, 122 Wn. 2d 299, 858 P. 2d 1054 (1993); Oates v. Taylor, 31 Wn. 2d 898 (1948); see Black's Law Dictionary Fifth Edition, page 596); see also attached supplemental authority written by Ms. Lake.

The practical effect of the bifurcation order aiding the Port's fraudulent concealment of much of the key evidence from the record in this case, was in fact to prevent the PRA case from going forward ever, so as to conceal key evidence of the improper unlawful and criminal actions of the Port in this case. (See RCW 34.04.476; Mr. Dierker's Opening Brief).

This Court of Appeals cannot just act whimsically and erroneously act in violation of the Separation of Powers Doctrine of 3 Branches of government in this State's Constitution, by ignore the statute law made by the State Legislature controlling consideration of such incorporated PRA/SEPA claims in such cases, merely by a "waive" of this "ROYAL Court's Sorcerers' hands" over CoAppellants' above noted "Issues of Law" on the incorporated statutory scheme of the PRA/SEPA barring this Court's bifurcation and standing rulings and those of the Superior Court in this case, where, with a trumpet blowing and saying "PRESTO", and this Court changes them into "Issues of Fact" AND "changes and rewrites 7 years of History of the facts and this CoAppellant's pleadings in this case", several complete surprises to the two CoAppellants and all other parties in this case who was not in colluding with this Court in this clearly erroneous ultra vires manner, in direct violation of the law and this Court's legal authority to act in such cases as this one.

However, this Court cannot take such "ultra vires" actions, as has done in this case. (State v. Kelley, 64 Wn. App. 755, 764, 828 P.2d 1106 (1992).

"When a governmental entity carries out an act unauthorized by - or contrary to - statute, the act is invalid as ultra vires, or exceeding the rules. No later ratification can validate an ultra vires action.

An ultra vires action is one done either without authority or in violation of existing statutes. Dykstra v. Skagit County, 97 Wn. App. 670, 677, 985 P.2d 424 (1999), review denied, 140 Wn.2d 1016 (2000); accord S. Tacoma Way, LLC v. State, 169 Wash. 2d 118, 123, 233 P.3d 87, 874 (2010) ("Ultra vires acts are those performed with no legal authority and are characterized as void on the basis that no power to act existed, even where proper procedural requirements are followed.") Ultra vires acts cannot be validated by later ratification or events. Id.

The ultra vires doctrine may render unauthorized contracts by government entities void. Noel v. Cole, 98 Wn.2d 375, 378, 655 P.d 245 (1980), superseded by statute on other grounds by Snohomish County v. State, 69 Wn.App. 655, 850 P.d 546 (1993), review denied, 13 Wn.2d at 378

(1994). The rationale behind the ultra vires doctrine is 'the protection of those unsuspecting individuals whom the entity represents.' Noel, 98 Wn.2d at 378. A contract that is ultra vires is generally void and unenforceable. See Noel, 98 Wn.2d at 378."

Further, this Court should reasonably know that the CoAppellants' here have NO legal authority to "waive" a relevant statute or statutory scheme controlling and restricting this Court's legal responsibilities and restrictions when considering the claims and issues in such appeal cases, like SEPA's and the PRA's "incorporated" and "harmonized" statutory scheme in this case that ABSOLUTELY CONTROLS THE COURT'S ACTIONS RULINGS AND DECISION IN THIS CASE TO PROHIBIT BIFURCATION OF THE PRA CLAIMS FROM THE SEPA AND OTHER mis named "nonPRA ISSUES in the case here, which would also violated "discovery rules" since the PRA records are part of the discoverable evidence required by SEPA to be disclosed to Co-Appellants and considered by this Court and the Superior Court, before these Courts could even consider any "Dismissal" of Co-Appellants' claims for relief in this case, since the PRA and SEPA records withheld here are legally required to be part of administrative discovery to CoAppellants here, and, no dismissal is allowed under the relevant Standards of Review when the opposing Port party in this case has failed to comply these CoAppellants' clearly outstanding requests for PRA, SEPA, and APA statutorily required discovery, upon which this Court might e able to being to justify these erroneous dismissals of CoAppellants' claims in this case. (Id.).

This Court of Appeals Judges' clearly erroneous, unauthorized, ultra vires and unconstitutional actions here are clear violations of these Judges' judicial discretion, and must be overturned

This Court's Judges' actions to so extremely violate these Judges' judicial discretion, could have only been done to aid and abet this Port's attorney to continue after 8 years to "fraudulently conceal" same records requested in this case about this set of Port of Olympia projects, which these requested and discoverable records would have shown was being planned for construction of in **several** places in this County, and these relevant Port records had been withheld from Appellants and the Port's Administrative Record (AR) filed in this case, a set of illegal actions made to illegally falsify the Port's Administrative Record and the court records in this case which were especially required be given to the Co-Appellants, who were "known interested parties" under SEPA, on the Port's actions taken in this County which caused increased larger development of the Port of Olympia's Marine and Airport Terminal and other areas in the Thurston County which were being

"hidden" by concealment of the withheld public records of the Port here, part of which would have shown that the Port of Tacoma was also a "partner" in this action, as Mr. West later found while doing his two cases about copies of these same public records requested on this matter which were being held by the Port of Tacoma about these same, often "hidden" planned integral projects in "partnership" with the Port of Olympia in Thurston County, where Ms. Lake acted as both Port's Attorneys and both Port's "public records officers" making both Port's PRA Responses to these relevant PRA Requests for these same public records fraudulently concealed by **both Port's from** in this case by Ms. Lake, on such Ports plans for such a number of diversely located but integral and extremely large Port development projects on many sites some of which like the **2 square miles of the Maytown site of these Port's Freight Terminal integral for the Port's planned development of this South Sound Port of Olympia into a "small container" and "bulk freight" "satellite terminal" of the Port of Tacoma** have been "concealed" sites around Thurston County hidden by lack of disclosure of these Port public records for over 7 years, and such large and geographically extensive planned projects clearly adversely impact the healthful environment of Thurston County harming CoAppellants' Mr. Dierker's and Mr. West's rights and interests noted in their SEPA Comments and in their "joint" SEPA Appeal on the Port SEPA actions taken for this project which contain the CoAppellants' uncontested declarations on their standing in this case, as noted in this Port's AR filed in this Case. (Id., supra).

Further, even this Court of Appeals Decision's clearly erroneous and unconstitutionally narrow ruling on "adjacent Landed Gentry" for this Court's erroneous "lack of standing" rulings based upon Kucera, supra, on "nonPRA" claims in this case, **since these currently still fraudulently concealed discoverable public records on the Port's extensive project planned here in this case, could never have been reviewed by this Court in this Appeal in this case, and, thereby,** this Court, like the Superior Court, clearly still lacks an adequate record for review of **where all of the various locations of the planned integral parts of this** whether or not the Co-Appellants live "adjacent" to even one of the various "hidden" sites of the "hidden parts" of these integral and planned Port projects which would be shown in these requested public records, which this Court has again violated its judicial discretion to ignore in order to aid and abet the Port. (Id.; supra).

Consequently, since this Court does not have evidence in the "disclosed" and

"unconcealed" records on this Port's planned integral set of projects, as to even "where" the various "concealed" locations of the Port's planned developments of the Port's "hidden sites" and "hidden" interrelated and connected planned projects, which these hidden records would shows are but unlawfully "piecemealed" and illegally "concealed" integral parts of this large set of Port development projects planned here to be located throughout various sites Thurston County, which are unknown to this Court in this case without these Port "withheld" discoverable public records ever being parts a adequate, "complete", and "unpiecemealed" Port AR to provide a proper agency record for review by this Court and others, upon which this Court could then have a proper "factual basis" for a proper ruling on the CoAppellants' "standing" for the "nonPRA" issues in this case concerning SEPA.

Further, the violations of judicial discretion here of the Judges and staff of this Court's and at least 3 different Counties Superior Courts to act in concert, collusion and/or conspiracy with Ms. Lake the attorney and/or public records officer for both Port's in these cases where they and the Port have illegally obstructed discovery of these same Port Public Records about this same Port project held by 2 different Ports, are clearly part of a "pattern" of the Port's attorney's colluding with Judges and judicial staff to "obstruct justice" in this case, thereby "poisoning" this Court's rulings that lacks required "site specific" substantial evidence in the records filed in this case to every show where all of the sites were for each and every one of the many interrelated, connected and integral parts of this planned Port project, and thereby, as Mr. Dierker has repeatedly plead in this appeal, this Court lacks an adequate record for review of these rulings on standing at all, which resulted **from** these 3 Counties Superior Court's violations of discretion here have "gotten at least 3 different County Superior Court's to do is just like those recently found in this case on PRA dismissals and in at least two other case in both this Division Two Court of Appeals and Division One where t his Port's attorney and two of the Ports she represent of this violations of judicial discretion, which were done a series of several unlawful prior restraints of CoAppellants' fundamental due process rights discovery, pleading and access to the court's to redress of grievances, and to be from from a governments or a Court obstructIOn of justice in CoAppellants' proper exercise of their civil and constitutional right to due process and equal protection of the law in the Courts of this State, INCLUDING BEING FREE FROM THIS CORRUPTED COURT OF APPEALS' NUMEROUS OBSTRUCTIONS OF JUSTICE, this this CoAppellant's

pleadings have shown occurred in this case.

Clearly, this Court acted erroneously and improperly here when this Court "magically" "changes and rewrites" CoAppellants' bifurcation and standing claims and issues in this case and in this appeal, where this Court "magically" changes CoAppellants' bifurcation and standing "Issues of Law" into "Issues of Fact", simply by this Court's erroneous and irrelevant use of this Court clearly and absurdly false factual claims about alleged actions or omissions of the Co-Appellants in this case, who this Court's bifurcation ruling falsely claimed had "waived" CoAppellants' standing to appeal the bifurcation ruling in this case without any objection, despite to fact that CoAppellants did object to bifurcation repeatedly, and despite the fact that this Court clearly knows or should reasonably know, that this CoAppellants' here, like this Court's Judges, all have NO legal power or authority to "waive" the law enumerated in State Statutes and their statutory schemes which control the action of these two Courts preventing these unlawful "bifurcation" and "standing" rulings along with barring other obstructions of justice and violation of judicial discretion occurring in this case committed by the Judge's, officials, attorneys and/or staff of Port, the Thurston County Superior Court, and this Division Two of the Washington State Court of Appeals who have all refused to act in this case pursuant to controlling State statute law and controlling case law precedent, et seq., simply to aid the Respondents obstruction of justice in this case.

Therefore, for this reason alone, this Court must grant reconsideration to overturn this Court's relevant bifurcation and standing rulings that this Court erroneous made against CoAppellants in this Unpublished Opinion in this appeal case.

Further, as noted in these pleadings, CoAppellants Dierker and West have "standing" for the PRA and SEPA and other "nonPRA" claims in this case.

To summarize the other many grounds for relief made here, this Court of Appeals must grant reconsideration of certain portions of this Court of Appeals' decision in this case as noted herein and in this this CoAppellant's accompanying Declaration and Memorandum In Support, since despite CoAppellants' repeated cited pleadings, cited relevant evidence, and objections filed in this case made in the lower court, the Supreme Court and this Court of Appeals, where certain portions of this Court of Appeals' decision:

a) are clearly rulings or actions which are without basis in fact or law, abuses of judicial authority

j) were unlawfully and unreasonably prejudicial against the CoAppellants' prosecution of this case, where this Court abused its powers to repeatedly and unmercifully discriminate against and harass Mr. Dierker, a Disabled veteran, who is a severely disabled indigent pro se Appellant in this case;
k) was obtained by this Court's failure to require the Port to produce "In camera review" copies of the relevant evidence in the hidden PRA records in this case, and was obtained by this Court's failure to consider this missing relevant evidence in the hidden PRA records which the Port Respondents have still failed to submit to this Court for "In camera review" as required for the Court to make decisions on both the PRA and SEPA parts of this case;
l) was obtained by this Court's failure to properly consider CoAppellants' pleadings, incorporated exhibits, objections, et al, despite CoAppellants' objections;
m) was obtained by this Court's violating the civil and constitutional rights of the CoAppellants, especially discriminating against Mr. Dierker rights and interests noted herein and in the underlying pleadings in this case, despite this this CoAppellant's repeated objections;
n) were manifestly erroneous, unlawful, unconstitutional, prejudicial, unethical, clearly erroneous, and arbitrary and/or capricious in other ways, despite this this CoAppellant's repeated objections;
o) were contrary to clearly established legal precedents; and/or
p) substantial justice has not been done, despite this this CoAppellant's repeated objections. (See also this this CoAppellant's accompanying Declaration and Memorandum In Support; see the Public Records Act's (PRA) intent provisions in RCW 42.56.010, et seq.; see the State Environmental Policy Act's (SEPA) intent provisions in RCW 43.21C.010, and see the "Comments" and "Research References" on GR 33 and GR 34 in the Washington Court Rules Annotated for the last few years, and see Dierker's and West's prior relevant pleadings, references to the records in this case and citations to controlling case law supporting this this CoAppellant's claims and arguments in this appeal, which this Court's erroneous factually unsupported rulings with no specific references to substantial evidence in the records of this case here that this Court completely ignored).

Since, to fully brief the Grounds for Relief and Argument in this Motion would require an overlength brief for this Motion, this CoAppellant will elaborate these grounds for relief and argue them in the accompanying Declaration and Memorandum In Support of this Motion for Reconsideration, which as noted, may be "overlength" and otherwise non-conforming to the RAP

pleadings rules Dierker requests be "waived" in this interests of just under RAP 1.2 and GR 33. (Id.).

Clearly, this Court's rulings in this decision against the claims of Mr. Dierker and Mr. West in this appeal must be overturned on reconsideration for just one major error this Court made in violation of RAP 10.4(f) and the Standards for Review of such actions, since all of this Court's rulings in this decision here failed to have any proper specific references to facts in the records on this case to properly provide "substantial evidence" or in fact any proper evidence to properly "factually support" this Court's rulings in this decision here, which would show that this Court has followed the Standards for Review of such actions for the "arbitrary and capricious", "clearly erroneous" and "De novo" standards of review required in this case.

These Court's erroneous actions violating state law restrictions on these Courts' judicial discretion, amount to obstructions of justice and unconstitutional "prior restraints" of the CoAppellants' fundamental rights to due process of the law, to equal protection of the law, and to gain redress of grievances against governmental actors in the Court of this State, and such "prior restraints" are very narrow, have to have had prior notice of it given, and have to show a substantial governmental interest or they are barred by law in such cases, like they are barred here. (See below).

The Port's and Courts' actions and rulings on bifurcation and standing complained of above in this appeals constitute illegal "prior restraints" of CoAppellants' First, Fourth, Fifth, and Fourteenth Amendments due process and property rights, that bar him from having a meaningful opportunity to be heard to making responsive pleadings in "reply" to the Port's "response" pleadings made in this case, in his petitioning of the government for redress of grievances here, and the Port actions or omissions here violate and/or constitute at least deliberate indifference to Mr. Dierker's due process rights and rights to equal protection of the law here. (Supra).

Prior restraints of CoAppellants' First Amendment rights, like those for requesting of public records and like those sue process rights for petitioning the government for redress of grievances complaining of improper governmental actions, "must be narrowly drawn" or are prohibited. (See Broderick v. Oklahoma, 413 US 601, 37 L. Ed. 2d 830 (1973); see also New York Times v. Sullivan, 376 US 254, 11 L. Ed. 2d 686 (1964). Under Hughes v. Kramer, 82 Wn.2d 537, 511 P.2d 1344 (1973), among the rights protected by the First and Fourteenth Amendments of the U.S. Constitution are the freedoms of political belief, expression, dissension, criticism, and the

right to petition government for the redress of grievances. (Id.).

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

The Port's and these Courts' actions or omissions here constitute conduct that violates CoAppellants' clearly established statutory and constitutional rights of which a reasonable person would have known. (See Buckley v. Fitzsimmons, supra, at 2612-2613, quoting Harlow v. Fitzgerald, 457 U.S. 800 at 818, 102 S. Ct. 2727 at 2738 (1982). These claims involve violations of CoAppellants' civil and constitutional rights to equal protection, due process, liberty interests, the Supremacy clause, the separations of powers doctrine, international treaties, and other such federal legal questions to control the excesses of government here. (Id.; see Kuzinich v. County of Santa Clara, 689 F. 2d 1345 (9th Cir. 1982); referring to Yick Wo v. Hopkins, 118 US 356, 6 S. Ct. 1064, 30 l. Ed. 220 (1886); Halperin v. Kissinger, 606 F. 2d 1192 (DC Cir. 1979); Hill v. Tennessee Valley Authority, 549 F. 2d 1064 (1977), affirmed 98 S. Ct. 2279 (1978); Haygood v. Younger, 769 F. 2d 1350 (9th Cir. 1985).

Whether an official is protected by qualified immunity turns of the objective legal reasonableness of the action assessed in light of the legal rules that were clearly established at the time the action was taken. (Anderson v. Creighton 483 U.S. 635, 639, 107 S. Ct. 3034, 97 L. Ed 2d 523 (1987); Harlow v. Fitzgerald, 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982). The Court found that this standard requires a two-part analysis: 1) Was the law governing the official's conduct clearly established? 2) Under the law, could a reasonable person have believed the conduct was lawful? (Act Up!/Portland v. Bagley, 988 F. 2d 868, 871 (9th Cir. 1993) citing Anderson v. Creighton, supra.) The Anderson Court found that "...the right to due process of law is quite clearly established by the Due Process Clause, and thus there is a sense in which any action that violates that Clause (no matter how unclear it may be that particular action is a violation) violates a

clearly established right." (Id). "When government officials abuse their offices ..." a court must act to protect such constitutional guarantees. (Anderson v. Creighton, supra, referring to Harlow v. Fitzgerald, 457 U.S. 800, 73 L. Ed. 2d 396, 102 S. Ct. 2727 (1982).

The Port's and these Courts' actions or omissions to properly act here also violate the CoAppellants' rights to free speech, due process, and redress of their grievances on these issues by violating CoAppellants' rights to equal protection "that all persons similarly situated should be treated alike." (City of Cleburne v. Cleburne Living Center, 105 S.Ct. 3249, 3254, 87 L.Ed.2d 313 (1985); Pollard v. Cockrell, 587 P.2d 1002, 1112–1113 (5th Cir. 1978); Oriental Health Spa v. City of Fort Wayne, 864 F.2d 486, 490 (7th Cir. 1988). In the State of Washington, the law "must operate equally on every citizen or inhabitant of the state." (See State v. Zornes, 475 P. 2d. 109 at 119 (1970); see also the 5th and 14th Amendment to the U.S. Constitution and Article I Section 12 of the Washington State Constitution, et seq.). This State's case of Reanier v. Smith and its progeny recognize that the equal protection clause requires that all similarly situated individuals must be treated equally. (See Reanier v. Smith, 83 Wn. 2d. 342, 517 P. 2d. 949 (1974). The guaranty of equal protection of the laws is a pledge of the protection of equal laws." (See Yick Wo v. Hopkins, 118 U.S. 356, at 369, 68 S. Ct. 1064, 30 L. Ed. 220). "When the law lays an unequal hand on those who have ... intrinsically the same quality ... it has made as invidious a discrimination as if it had selected a particular race or nationality for oppressive treatment." (See Yick Wo v. Hopkins, supra; State of Missouri Ex Rel Gaines v. Canada, 305 U.S. 337, 59 S. Ct. 232, 83 L. Ed. 208). Violations of equal protection are reviewed under both rational basis and strict scrutiny standards of review to determine state interest in its scheme. (See Griess v. State of Colorado, 624 F. Supp. 450 (1985). The state must prove that a law, and their interpretation of it, furthers a substantial interest of the state. (Id; see also In Re Mota, 114 Wn. 2d 465, 477, 788 P. 2d 538 (1990); Plyler v. Doe, 457 U.S. 202, 72 L. Ed. 2d 786, 102 S. Ct. 2382, reh'g denied, 458 U.S. 1131, 73 L. Ed. 2d 1401, 103 S. Ct. 14 (1982).

Here, the Port's and these Courts' agents have lost any immunity of their office when they stepped outside their "Cloak of Office" by violating the public trust which resides in them, and thereby violating state law on abuse of office, misconduct of public officers, violation of oath of office, et al, which clearly acts to prejudice and/or violate Dierker's equal protection and due process rights and other interests in this matter. (See RCW 42.20, et seq.; RCW 42.21, et seq.;

RCW 42.22, et seq.; RCW 42.23, et seq.; RCW 42.12.010; Washington State Constitution Article I § 33).

Further, This Court's Unpublished Ruling does not meet the exact pleading requirements of the RAP pleading rules as noted noted above, even though it was drafted by attorneys of this Court of Appeals who are Judges or their law clerks who must follow the RAP pleading rules, at least as well as this Court has required Mr. Dierker an indigent, aged, disabled, nonattorney, and unrepresented party to do in this case, even though the attorneys of this Court's Opinion here **does not** meet the RAP pleading rules as well as this Court has required Mr. Dierker to do, as a review of the record in this appeal shows, the Court's clear violation of Mr. Dierker's rights to equal protection of the law and due process of law. (Id.).

In fact, to protect its cronies the Port's Attorneys, the Attorneys of this Court of Appeals went to the extreme point of even sanctioning the indigent, aged, disabled, nonattorney, and unrepresented Mr. Dierker $200 to bar him from even filing pleadings with the Clerks of this Court of Appeals until Mr. Dierker paid such a sanction though this Court knew or should reasonably have known that Mr. Dierker was an indigent, aged, disabled, nonattorney, and unrepresented party who should be granted relief under RAP 1.2, GR 33 and GR 34, ADA, et seq., especially since he already unsuccessfully requested this Court to grant him such relief repeatedly throughout the proceedings of this case in the Superior Court and its appeal in this Court, as any reasonable "clearly erroneous" standard of review of the record of his pleadings clearly shows. (Id.).

For these reasons alone this Court has violated its judicial discretion under laws controlling its actions, and thereby, this Court must grant this Motion for Reconsideration of this Unpublished Opinion in this case, overturning all erroneous findings of fact, conclusions of law, and rulings in this Court's Opinion in this case against the CoAppellants in this case.

Further, as noted above, this Court knows, knew or should reasonably have known when considering Mr. Dierker's pleadings and his actions taken in this appeal and in the lower venues of the Superior Court and the Port's SEPA Appeal proceedings, et seq., that Mr. Dierker has been all of these over 7 years of this case an indigent, aged, disabled, nonattorney, and unrepresented party in this appeal and other venues' proceedings on this case, and therefore, Mr. Dierker should be granted relief under RAP 1.2, GR 33 and GR 34, ADA, et seq., to reasonably "waive" all narrow restrictions on consideration of his pleading in the RAP pleading rules in this appeal of this case,

including for his Reconsideration pleadings here, especially since Dierker already unsuccessfully requested this Court to grant him such relief repeatedly throughout the proceedings of this case in the Superior Court and its appeal in this Court, as any reasonable "clearly erroneous" standard of review of the record of his pleadings clearly shows. (Id.).

For this reason alone, this Court of Appeal must grant reconsideration and overturn its erroneous finding and rulings against Mr. Dierker in this Unpublished Opinion, making a new Opinion where this Court documents its proper consideration of each and every one of Mr. Dierker's and the other parties claims, issues, arguments, responses, replies, and other pleadings in this Appeal, with proper references to each of them for providing a proper factual and legal basis for this Court's decision in this appeal, so that this Court can meet it's legal burdens for the drafting such an Opinion under the RAPs, or at least the pleading burdens that Mr. Dierker was under in this Appeal.

As noted noted above, Mr. Dierker's Motion for Reconsideration of this Unpublished Opinion in this appeal, also requested relief under RAP 1.2, GR 33 and GR 34, ADA, et seq., here, also incorporates by reference hereinto this Court's consideration of this Motion, both the Motion and it's Declaration and Memorandum in Support, where these pleading drafted by indigent, aged, disabled, nonattorney, and unrepresented party Mr. Dierker, also may not meet the exact pleading requirements of the RAP rules, similar to failure of this Court's Opinion to meet the same or similar exact pleading requirements of the RAP rules, though.

As noted here, Mr. Dierker's Reconsideration pleadings here also request Relief under RAP 1.2, GR 33 and GR 34, the ADA, and other law, et seq., to "waive" the RAP pleadings rules in the interests of justice due to Mr. Dierker's indigency, age, and sever physically disabling conditions he has being suffering with during the over 7 years he has drafted pleadings this case, which this Court has previously ignored without any directly granting to Mr. Dierker of any of the relief, response, comment or judicial notice of this Court, a violation of judicial discretion.

However, Mr. Dierker believes that the record in this case clearly shows that this Court has shown that it is too prejudiced against Mr. Dierker to even look at and cite to **Mr. Dierker's** pleadings in this case, simply because Mr. Dierker **is not an attorney who is a "member/crony" of the same Bar Association as is these Judges of this Court of Appeals**, so this Court believes it freely can act in collusion with and to aid and abet the Port and it's attorney in this case

who is a "member/crony" of the same Bar Association as is these Judges of this Court of Appeals. For the reasons noted herein, this Court must grant the relief requested in this Motion for Reconsideration, et al.

4. Conclusion

For the reasons noted herein, this Court must grant reconsideration of these erroneous bifurcation and standing rulings made in this Unpublished Decision against the CoAppellants, overruling those bifurcation and standing rulings, to grant CoAppellants' appeal, and remand this case back to the Superior Court, with instructions to follow the requirements of the laws controlling such erroneous actions of these Courts which are erroneous, unlawful and go so far as violate judicial discretion, obstruct justice, and abuse their judicial power to harm and harass such weak aged, poor, disabled, and/or unrepresented parties like they have done to Mr. Dierker here, without any legal authority under the laws of this state to obstruct justice in this way in any case.

I certify the foregoing to be true and correct to the best of my knowledge, beliefs and/or abilities, under penalty of perjury of the laws of the State of Washington and the United States of America, this 25th day of August, 2014 in Olympia, Washington.

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

IN THE WASHINGTON STATE COURT OF APPEALS
Division II

ARTHUR S. WEST, and JERRY L. DIERKER JR., Appellants; v. PORT OF OLYMPIA, et al, Respondents.	)	No. 07-2-01198-3 COA II # 43876-3 Declaration and Memorandum In Support

Comes now the indigent, aged, disabled, unrepresented CoAppellant Jerry Lee Dierker Jr.,the undersigned acting pro se in his and his CoAppellants' behalf in this case, who declares and makes the following Declaration and Memorandum In Support of his accompanying and incorporated Motion for Reconsideration of this Court's August 5, 2014 "Unpublished Opinion" decision in this case.

As noted in the Motion for Reconsideration pursuant to GR 33, et seq., this Declaration and Memorandum In Support may not meet the RAP pleadings standards for briefs, in a manner similar to this Court's Unpublished Opinion failures to meet the RAP pleadings standards for briefs or orders denying this appeal, as noted, and this Court should liberally construe Mr. Dierker's pleadings on reconsideration here to provide "Justice for All" in the Courts of this State, as required by GR 33 and GR 34, et seq.

A. Since this Court found at page 8 that pursuant to controlling standards of the law it could not reach the merits of CoAppeallants West's PRA claims in this case, because, when the Superior Court ruled on **both** CoAppellants' PRA claims in this case, the Superior Court never held a "Show Cause Hearing", and since neither the Superior Court at that time and this Court of Appeals does not have a copy of the Port's "In camera review records" Port agency records containing the Port's recieved PRA/SEPA requests for public records of the Port on this project and the Port's PRA Responses and Exemption Logs with copies of the withheld Port public records on **both** CoAppellants' PRA claims in this case agsint the Port, therefore, the two opposite

PRA appeal rulings on CoAppellants Dierker and West made in this Court's Unpublished Opinion **erroneously fail to have any proper references to supporting substantial evidence in the various records of this case as required by RAP 10.4(f) just for pleading, and erroneously fails to make an adequate record for review and for a parties making pleadings contesting, objecting to and appealing** this Court's Unpublished Opinion as **required by the State Supreme Court's decision in Weyerhaeuser v. Pierce County, supra, this Court of Appeals is required to follow, and also** erred and abusingly invidiously discriminated between the PRA claims of CoAppellants Dierker and West on appeal, where this Court's rulings here are erroneous as follows.

1) This Court's erroneous unsupported factual allegations and the rulings based upon erroneous unsupported factual allegations in this Unpublished Decisions, erroneously completely ignored Mr. Dierker's proper pleadings, ignored his proper references to supporting facts in the various records and supporting controlling statute and case law citations, simply because aged, indigent, disabled Air Force Veteran CoAppellant Dierker, who reasonably and repeatedly requested "reasonable accomodations" under the ADA for this Court's waiver in the interests of justice of certain parts of the RAP pleadings rules and waiver of a $200.00 sanction barring his pleading in this Appeal, due to his disabilities and indigency, without any success in this Court, who merely abused and harrassed Mr. Dierker unmercifully using this Court's "ultimate power", in violation of GR 33, GR 34, the ADA, and other law Mr. Dierker properly cited to that this Court erroneously violated their judicial discretion and oaths of office and employment by this State to ignore.

2) This Court erroneously denied CoAppellant Dierker's claims of improper dismissal CoAppellants' PRA claims in this case when this Court properly granted CoAppellant West's PRA improper dismissal claims in this case, while in a complete "surprise" ruling that CoAppellant Dierker's lacked PRA standing in this case, when this Court erroneously ignored that the Respondents Brief in this appeal did not properly briefed this issue in this appeal, and shows that the relevant Superior Court records in this case had to have been ignored and not properly referenced by this Court's Unpublished Decision and rulings as required by RAP 10.4(f), and this Court also lacks jurisdiction over this issues since those Superior Court records clearly show that a) the Superior Court never ruled that CoAppellant Dierker lacked PRA "standing" in this case

separate from his CoPlaintiff/CoAppellant Mr.West, b) the Respondents never properly objected to any Superior Court ruling or lack of ruling that CoAppellant Dierker lacked PRA "standing" in this case separate from his CoPlaintiff/CoAppellant Mr.West, c) the Respondents never properly filed any timely "Notice of Appeal" to properly appeal a Superior Court ruling or failure to rule that CoAppellant Dierker lacked PRA "standing" in this case separate from his CoPlaintiff/CoAppellant Mr.West.

3. This Court's erroneous denial of CoAppellant Dierker's appeal PRA claims if this case also erroneously ignored CoAppellant Dierker's relevant proper pleadings, references to substantial evidence in the records, controlling case and statute law citations, and reasonable supported arguments, and actions taken during the last 8 years, even completely ignoring Mr. Dierker attempts to Supplement the Record with his 2006 PRA Requests for Port public Documents complained of in this case.

4. It clearly appears that this Court without legal or subject matter jurisdiction in this "sua sponte" issue brought forth erroneously and prejudicially by this Court itself that ruled acted with invidious discrimination **against** CoAppellant Dierker while ruling **for** his CoAppellant West on the PRA claims in this case, simply because CoAppellant West **was** "represented" for a small part of this case by an Attorney (fired from this case Dec. 2013 before completing this appeal) who was one of these Judges' "cronies" who are Members of the Bar Associtation whose goal appears to be denying justice for all in this State, and simply becuase CoAppellant Dierker **was a weak, aged, disabled, and indigent person not** "represented" by an Attorney that this Court could use it's great judical powers to abuse Mr. Dierker in this case to protect the Court's extremely powerful local Attorney cronies, especially those of the Port here, who represent this Port and several other powereful Ports in this state as evidene of judicial notice shows, and who represent Weyerhaeuser Co. the largest land owner and one that largest industries owned by one of the most powerful families of this state -- also a clear violation of the Appearance of Fairness Doctrine of law in this State. (Id.; supra).

5. This Court's Unpublished Opinions "Facts" section and other unsupported allegations of

fact used to support this Court's rulings in this appeal erroneously attempt to change the past by "rewriting" the over 8 years of the history of this case, without the Court ever having most of the agency records on that 8 years of history of the PRA claims and SEPA claims in this case necessary for this Court making **any** decision on the PRA claims and the SEPA claims in this case, simply because for a small part of this case West **was** "represented" by an attorney West fired from this case in Dec. 2013, one of these Judges' "crony" Members of the Bar Associtation, while Dierker was an "unrepresented" party **not** "represented" by one of these Judges' "crony" Members of the Bar Associtation like those Judges, like his CoPlaintiff and CoAppellant for over 7 years in this case and in prior issues, adminstrative actions and cases going back over 20 years, just so that the Judges of this Court could used their "ultimate powers" here in a ultimately corrupt abuse of their judicial dicretion, office and authority, simply to protect other Bar Members from non-attorneys beating them in this Court, which clearly shows the Judges of this Court have abused their to exercise their known prejudices against "non-attorneys" attempting to plead in a case in this Court, especially such a weak pro se party as the aged, indigent, disabled Air Force Veteran Mr. Dierker is, to completely ignored Mr. Dierker's proper pleadings, ignored his proper referencecs to supporting facts in the records and supporting controlling statute and case law citations, in This Court's Unpublished Opinoin erred and invidiously discriminated between CoAppellants Dierker and West in this Court's unsupported decision lacking any proper cited specific reference to any of the records in this 7 year long casesubstantial evidence in the without proper jurisdiction, when since the Court lacked all required substantial evidence and and lacked all legal and subject matter jurisdiction to dismiss Dierker's PRA claims while granting West's, an granting the ruling that the Court denyies Mr. Dierker's PRA claim for lack of standing when grant Mr. West's claim the PRA inssues were improperly dismissed by the Superior Court, to properly draft this Court's Opinion to properly rule or distinguish between the two CoAppellants in this case, since this Court does not have jursdiction and since this Court does not have an "amended" Port AR contain the records on this project which maight be in the Missing""In camera review" records **not** filed with this Court in this Appeals, and which the Port has also illegally withheld from the Port's AR record in case with the aid of this Court and the Superior Court, and which are necessary to consider Mr. Dierker's "standing" claims on the PRA and SEPA issues, by preventing a Show Cause Hearing on the Por's withholding of this records in violation of discovery rules and the "full disclosure" of

evidence parts of PRA and SEPA, especially due to SEPA's incorporation of the PRA into SEPA "statutory scheme" Mr. Dierker previously noted to this Court, which this Court ignored, and thereby, there never has been an adequate agency record for review in this case, and thereby, this Court lacks a record necessary for making the SEPA and PRA rulings in this case, a violation of judicial discretion.

Respondents' Response Briefs also show the following. While Weyerhaueser's Response Brief shows Mr. Dierker had filed his July, 2007 "joint" claims with Mr. West in this case Amended Complaint and Second Amended Complaints to become a Plaintiff in this case, where as this Court's Unpublished Opinion and both of these Respondents' Response Briefs contained **no** proper reference or citation to any evidence in the record in violation of RAP 10.4(f) nor to any Port Respondents' action in the record to show the Port or it's Attorney here ever properly "amended" the Port's Administrative Record (AR) and the "missing" "In camera review" records for this case the Port originally filed in June 2007 for Mr. West's claims to ever include any of the Port's records on Mr. Dierker PRA, SEPA, and other claims, like Ms. Lake did for Mr. West's original Complaint of June 2007, **after** Mr. Dierker had filed his July, 2007 "joint" claims with Mr. West in this case Amended Complaint and Second Amended Complaints to become a Plaintiff in this case. (Id.).

Further, this Court of Appeals' Opinion is erroneous since this Court of Appeals unlawfully used an erroneous "pleading standard" instaed of following the RAP rules in making this Opinion, where all this Court's rulings erroneously failed to have any specific documented citations to supporting substantial evidence in this records of this case to factually support for each and everyone of this Court's erroneous "factual allegations" and the rulings based upon the Court's **phantom** "facts" that this unlawful drafting of the Court's Opinion has hidden from the parties and any higher Court reviews of this Court's decision on this appeal in this case, by this lack of any specifically documented references or citations to facts in the records in this case upon which this Court insubstantially and unlawfully based its numerous clearly erroneous rulings made against both CoAppellants' claims and requests for relief made in this appeal of this this case. (See RAP 10.4(f).

Clearly, due to the above error of this Court, there is no documented factual record of any alleged substantial evidence in the wording of this Opinion of this Court to support any of this

made in this Court's Decision, it is clearly impossible for CoAppellants or Respondents to make proper "reconsideration" pleadings to this Court citing to the "missing" documented references to "facts" supporting the Court rulings, and make an "appeal" pleading to any higher Court reviews of this Court's decision on this appeal in this case under the RAPs this Opinion and, thereby, requiring this Motion for Reconsideration be granted for this reason alone.

Further, a comparision of the **REAL** facts in agency and Court records in this case, some of which are noted by CoAppellants' specifically documented references or citations to the records made in the CoAppellants' pleadings in this appeal, clearly shows that this Court's unsupported "factual allegations" for supporting its legal rulings against the CoAppellants here are clearly erroneous and contrary to the **REAL** facts thatactully support CoAppellants' appeal requests, claims, and pleadings in this appeal. (Id.).

Claerly, most of the Court's unsupported and undocumented factual allegations against the CoAppellants pleadings here clearly acts to "re-write" the history of the relevant documented facts and history of the parties' and the Courts' actions in this case during the last 7 years, and Mr. Dierker at least does not believe that this Court has any legal or subject matter jurisdiction to change time in the past to "creat" new false and fraudlent facts and a "new" fraudulent history of this case "out-of-the-thin-air" of the corruption, prejudices, and invidious discrimination against the weakest litigant who have the audacity to bring cases before this Washington's "Royal Court of Inquisition" of this Court or the Port's attorney against the CoAppellants here -- despites this Court's clearly absurd belief that it has legal authority and power to change facts occuring in the past to conform to its erroneous prejudiced rulings in this decision, which is absolutely ridiculous, besides being unreasonable, arbitrary and capricious, clearly, erroneous, and ultra vires.

Clearly, this Court's failures to have any specifically documented references or citations to the records in this case for supporting each of the rulings made in this Court's Opinion made against the indigent, aged, disabled and unrepresented CoAppellant Mr. Dierker's and Mr. West's specifically documented references or citations to the records in this case for supporting each of the pleadings, requests, and claims in this appeal of this case, clearly shows that this Court obviously never even made a cursory review of the records in this case cited to by the CoAppellants in this case, and cleraly shows that this Court of Appeals failed to properly review its own records in this case, failed to properly review the Superior Court record in this case, failed to properly review the

2800+ page Port's Administrative Record in this case and the Port's "missing" PRA "In camera review records" on this Court's SEPA and PRA "standing" rulings in this case.

To factually support this Court's erroneous rulings in this erred Opinion this Court falsely changed the following facts of this case by this Court's making of false and misleading factual claims in this decision using mere false "factual allegations" without having specific reference to documented support in this case's records, which conflict with facts in the records of this case and Appellants' specific citations to documented facts in the records of this case, the most important of which are as follows.

1) At page 2 of this Court's Opinion, it falsely and misleadingly merely alleges without any reference to the record that "West and Dierker waived their arguments regarding the bifurcation" of the issus in this case into PRA and misnamed "nonPRA" issues, despite the facts in this Court of Appeals own records in this appeal showing these CoAppellants' numerous opposing pleadings, Mr. Dierker's August 24, 2007 Hearing Brief on bifurcation of PRA and SEPA issues, CoAppellants' repeated various repeated Objections and Motions for Reconsideration and even Sept. 2007 Supreme Court Case filed against Judge Pomeroy concerning and objecting to this unlawful and ultra vires bifurcation ruling that no Court has legal authority or jurisdiction to take, and despite CoAppellant Dierker's pleadings and submissions of copies of his pleadings opposing bifurcation of the PRA and SEPA issues he filed and/or properly referenced in his Response to the Respondents' Motion for Dismissal of the Appeal of the misnamed "nonPRA" claims in this case, especially when the PRA's provisions for disclosure of public records have been incorporated into SEPA's "statutory scheme" which shows that this Court and the Superior Court lacks jurisdction to "bifurcate" and unlawfully "piecemeal" the judicial review of the Port's SEPA actions from the judicial review of the Port's PRA actions in witholding Port public records related to the Port's SEPA actions taken in this case. (Id. supra; see Norway Hill, supra; SEPA's WAC 197-11-504(b), supra).

2. Further, this undocumented false factual allegation in this Court's claims made on page 2 of the Opinion here that **Mr. Dierker** had "agreed" to or "waived" his objections to this unauthorized "bifurcation" of the PRA from the SEPA issues in this case, is also related to this Court's conflicting and erroneous factual allegation on page 3 of the Opinion's unsupported "Facts" section this Court falsely claimed without any proper specific reference or citation to the

record in this case, that only "West agreed" to this bifurcation of the PRA and misnamed "nonPRA" issues in this case, and despite the records in this case showing that both of the CoAppellants made many specifically cited to pleadings opposing and objecting to this bifurcation existing in the Courts records in this case, which show that both CoAppellants made numerous objections to bifurcation of this case, and made numerous opposing pleadings, opposing oral arguments at various hearings in the transcripts of those hearing whinv this Court should have properly considered, Mr. Dierker's August 24, 2007 Hearing Brief opposing bifurcation of PRA and SEPA issues, CoAppellants' repeated various repeated Objections and Motions for Reconsideration and even Sept. 2007 Supreme Court Case filed against Judge Pomeroy concerning, opposing, and objecting to this unlawful and ultra vires bifurcation ruling that no Court has legal authority or jurisdiction to make to illegally "piecemeal" a Court's review of the Port's SEPA actions taken in a case.

Clearly, since there is not even vague reference in even this unsupported "Facts" section of this Opinion that **Mr. Dierker** "agreed" to or "waived" his objections to this unauthorized "bifurcation" of the PRA from the SEPA issues in this case, as it did with Mr. West, this Court must grant reconsideration to reverse its bifurcation ruling here at least as to Mr. Dierker, if not Mr. West.

Further, this Court also unlawfully changed this bifurcation issue from an "Issue of Law" about SEPA's incorporation of the PRA's dsclosure of public records provisions into SEPA's "Statutory Scheme" under WAC 197-11-504 (supra), into this Court's "surprise" false and fraudulent claim that this "bifurcation" claim is an "Issue of Fact" about whether Mr. Dierker and West **both** "agreed" or "waived" their objections to this bifucation of the PRA and SEPA issues in this case -- a deliberate false misrepresentation of the facts, the controlling law and the content of CoAppelants' pleadings in this case on this bifucation, which prejudically aids and abetts the illegal actions of the Port Respondents here, clearly prejudicially violating this Court required impartiality and violating any appearance that this Court was acting and ruling fairly in this appeal, in violation of the Court's Judges and staff's legal duties, authority and oaths of office for the Courts in this state, and thereby for this reason alone this Court must grant reconsideration to reverse its bifurcation ruling here.

This Court itself has actively violated both the PRA and SEPA by their active and deliberate

frauduent and unlawful actions to unlawfully and illegally aid and abet this illegal and unlawul actions of the Port Respondents in this case to hide required disclosable official public records needed for "discovery" of the evidence in the withheld PRA records the Port had relied upon to make their SEPA and other decisions in this case, which the collusive unlawful actions of this Court has aided the Port to fraudlently conceal this discoverable Port evidence about this case from Appellants and others including agencies with jurisdiction and permitting or approval powers over this Port project, and this Court's actions have adid and abetted the Port to illegally falsify several "Official Public Records" about this Port project and this case, a criminal act that is a Class B felony, which is this Court clearly does not have any legal jurisdiction to do, though not quite as absurd as this Court's changing of past history for this Court's "creation" of "new" unsupported false factual allegations about the history of this case to support this Court unreasaonble rulings, **when no records in this case during the last 7 years of this caseshow that such claimed false facts never existed before this Court's Opinon here, at least in the "reality" of the actual records of this case, which shows that this Court's rulings required this Court's "creation" of these false facts in this Opinion, and the actual facts in the records supporting CoAppellants' claims and pleadings for relief in this case where they cited properly in their pleadings, and thereby, it is clear that the actual records in this case were clearly ignored by this Court, simply because the actual facts in the records of this case would not support this Court's prejudicial, unlawful, illegal, unconstitutional and ultra vires rulings in this Opinion against the CoAppellants in this case!!!**

Consequently, this Court must grant reconsideration to reverse its bifurcation ruling here, and then this Court must recuses itself and transfers this case to another division of the State Court of Appeals for a proper "impartial" review of this case and its records by a "unprejudiced" Court of Appeals and judicial staff, who have not become "co-consprirators" and "coRespondents" to the Port's illegal and unlawful actions supported by this Court's noted collusion with the Port in this case to illegally fraudulently conceal relevant discoverable evidence in public records withheld by the Port on this Port project in this case and illegal falsify Official Public Records on the Port and the Court actions taken concerning this case.

2. At page 4 of this Court's Opinion, it falsely and misleadingly alleges that Dierker lacks standing for the PRA, partly because this Court falsely claims at Footnoe 3 that Mr. Dierker did not

try unsuccessfully to get this Court to allow him to supplement the record with his 2006 PRA Requests sent to the Port pursuant to RAP 9.6(a) , when the record in this Appeal shows that actually Mr. Dierker did try unsuccessfully to get this Court to allow him to Supplement the Record with his 2006 PRA Requests sent to the Port pursuant to RAP 9.6(a) -- clearly this Court improperly refused to grant Mr. Dierker's requests to be allowed to o Supplement the Record with his 2006 PRA Requests sent to the Port pursuant to RAP 9.6(a), just so this Court could use this to rule against Mr. Dierker's PRA Standing in this case.

4. Grounds for Relief

A. This Court of Appeals' "Unpublished Opinion's" rulings in this case repeatedly erred where the Court repeatedly ignored or ruled against the well documented and legally and factually supported reasonable requests and claims of indigent, aged, disabled and unrepresented CoAppellant Mr. Dierker in this appeal of this case, since this Court of Appeals' "Unpublished Opinion's" rulings against CoAppellant Mr. Dierker in this appeal in this case are without any "substantial evidence" for supporting each and every ruling this Court made in this appeal decision where the Court ignored or ruled against the requests and claims of indigent, aged, disabled and unrepresented Appellant Mr. Dierker in this appeal of this case, thereby, the rulings made in this Opinion are clearly arbitrary and capricious, clearly erroneous, unlawful, ultra vires and discriminatory

B. most of this Court of Appeals' many interactions and underlying rulings and orders in this case where the Court ignored or ruled against the requests and claims of indigent, aged, disabled and unrepresented Appellant Mr. Dierker in this appeal of this case, where the Court ignored and/or failed to grant the reasonable requests for reasonable accomodations under the ADA and other controlling State and Federal law claims of indigent, aged, disabled and unrepresented Appellant Mr. Dierker in this case, for supplemental of the record to put in Dierker's 2006 PRA requests to the Port, et seq., since the Port failed to provide this Court with a copy of the PRA . (RAP 10.4, Weyerhauser v. Pierce County, supra; Norway Hill, supra; ultra vires doctrine, supra).

B. All of this Court of Appeals "Unpublished Opinion's" unlawfully narrow and clearly discrimnatory rulings in this case against the claims of Appellants, especially those of Mr. Dierker, are without any "substantial evidence" for supporting each and every ruling this Court made in this

appeal decision and, thereby, is arbitrary and capricious, clearly erroneous, unlawful, and ultra vires. (RAP 10.4, Weyerhauser v. Pierce County, supra; Norway Hill, supra; ultra vires doctrine, supra).

This Court's "Unpublished Opinion" lacks any "substantial evidence" for supporting each and every ruling this Court made in this appeal decision and, thereby, is arbitrary and capricious, clearly erroneous, unlawful, and ultra vires, since it fails to have any specific **supporting references and citations** to specific facts and previous govenmental actions of the Respondents and the Courts actions during the over 8 years of this case in the various specifc parts of the several thousand pages of the various agency and court records in this appeal case, which Appellants' briefs had made numerous specific citations to support Appellants' claims in this case, which, thereby, were unopposed and not properly considered by this Court's Decision, in violation of their legal duties and responsibilities under the law. (RAP 10.4, Weyerhauser v. Pierce County, supra; Norway Hill, supra; ultra vires doctrine, supra).

This Court's erroneous Decision would, thereby, only further delay this 7 year long case further, requiring the State Supreme Court to quickly "remand" this case for the making of a proper order by this Court of Appeals to provide a proper record for review of this decision, and for any parties drafting any proper motion for reconsideration motion or appeal briefs under the RAP pleading rules, and, thereby, is arbitrary and capricious, clearly erroneous, unlawful, and ultra vires,. (RAP 10.4, Weyerhauser v. Pierce County, supra; Norway Hill, supra; ultra vires doctrine, supra).

Without any specific citation to specific facts or prior actions of the parties and Court in this case for supporting any of this Court's rulings in this decision, this Court Opinion in this case is arbitrary and capricious, clearly erroneous, unlawful, and ultra vires, since each and everyone of this Court's rulings in this Court decision also erroneously failed to meet the RAP rules and CR 8(d) for the making of even a "responsive pleading" to Appellants' numerous briefs cited to **oppose** Appellants' claims in this case pursuant to RAP 10.4, and, thereby, this Court's "Unpublished Opinion" rulings and decision must be overturned on reconsidertion by this Court of Appeals, for this reason alone.

2. This Court of Appeals **unsupported** "Unpublished Opinion's" rulings also made numerous unlawfully "narrow" and clearly discriminatory rulings in this case, where the record in this appeal shows that this Court acted unreasonably harshly against the indigent, aged, disabled unrepresented pro se Appellant Mr. Dierker, who repeatedly requested "resonable accomodations"

under the ADA without Mr. Dierker ever getting any GR 33 required response from this Court, even when he put it in motoin, his Opening and Reply Briefs, and numerous other places throughout this Court of Appeals' record of this appeal in this case, and, thereby, this Court has violated its legal duties.

This Court of Appeals' record of this appeal in this case clearly shows that, instead of this Court granting Mr. Dierker the ADA "reasonable acommodations" as required by GR 33, et seq., where Mr. Dierker requested waiver of or correct actoin by the Court to grant relief from the RAP pleading rules on lengths of briefs, supplementation of the record and extensions of time, et seq., for his drafting and filing of pleadings in this appeal, which he requested for his severe disabilites, or Mr. Dierker at least getting a direct "response" from this Court about these requests, this Court has prejudically acted extremely harshly to harrass Mr. Dierker simply because he was an old, disabled, indigent and unrepresented party who has to audacity to represent himself in court cases to sometimes tell the government and even Courts that they have made mistakes they need to fix.

This Court of Appeals' record of this appeal in this case also clearly shows that this Court has ignored each and everyone of his abridged Mr. Dierker's rights to due process and access to the Courts and Mr. Dierker's claims of indigency and his personal physical disability for gaining various reasonable relief or accomodations from this Court, and even shows that this Court has harrassed and abused his due process rights in this case, completely barring him from making any pleadings in this case by use of a $200.00 monetary sanction that this aged, indigent Disabled Air Force Veteran unrepresented Appellant Mr. Dierker living on a subsistence level VA disablitity pension was unable to pay, so that Mr. West had to volunteer to pay this for Mr. Dierker since this Court failed to consider Mr. Dierker's indigency or his disabilities in this appeal, thereby, this Court has unlawfully, unconstitutionally and unreasonably discriminated against Mr. Dierker in violation of GR 33 and GR 34, the U.S. Americans with Disability Act (ADA), Title 42, USCS §12101, 12131, 12132, 12133, et seq. RCW 49.60 Washington State, et seq.

This Court of Appeals **unsupported** "Unpublished Opinion's" rulings also made numerous unlawfully "narrow" and clearly discriminatory rulings in this case, where this Court improperly "switching" the burden of proof in such instances unlawfully from the Respondents to

the Appellants,

even changing their Bifurcation claims from Issue of Law of "the PRA's incorporation in SEPA's statutory scheme" noted in the numerous briefs oppossing objection to and requesting Mr. Dierker and Mr. West have previously filed with this Court of Appeals and/or the lower Court in this case, into an Issue of the Court of Appeals **"invented-out of thin-air-Fact"**, despite contrary controlling law and legal precedent, and despite lack of judicial authorityagainst the clear reasonable well documented and factually and legally supported claims of the CoAppellants in this case,

especially against the indigent, aged, disabled unrepreseted Appellant Mr. Dierker,

1. Despite the aged, indigent, pro se Disabled Veteran Mr. Dierker's repeated reasonable pleadings requesting "waiver" of the "pleading rules" or "reasonable accomodations" for various reasons including, in the interests of justice pursuant to RAP 1.2, "liberal construing" of complaintant's pleadings about the PRA and SEPA in such cases, "reasonable accomodations" for pleadings of diabled persons under Americans with Disability Act (ADA), et seq., required by GR 33, et seq., and failed to allow him to proceed in forma pauperis when tthis Court of Appeals unreasonably and illegally denied him any access to being able to plead in this Court by a prevention of any further pleadings until he paid a $200 sanction he did not deserve, despite GR 34 and despite RAP 15.5(a).

Thougth Mr. Dierker has repeatedly attempted to get this Court to consider his ADA and indigent pro se litigant pleadings and requests for waiver of the pleading requirements for ADA "reasonable accomodations" and indigency waiver for payment of a sanction barring his pleading in this case, this Court has ignored each and every one of them, and has failed to ever make any "response" let alone any decision to grant them, in clear violation of GR 33, GR 34, the ADA, et seq., and has thereby abrdiged and denied Mr. Dierker access to this Court for the purposes of pleading in this case to which he was a party. (Id.; see also the cases and law review articles cited attached copies of the State Supreme Court Libraries's copies the Annotated Court Rules GR 33 and GR 34).

Further, instead of waiving the Court's pleadings rules for Mr. Dierker's pleading here, this Court acted to protect and aid the Port's attorneys in this case, by this Court editing, falsification and "creation" of facts and legal claims which do not appear to be supported anywhere within the records of this case, while holding the indigent, aged, disabled pro se Mr. Dierker to pleading standards and restrictions that the Port's attorneys in this case did not have to meet ultimatel;y sanctioning Mr. Dierker to bar him from any further pleadings, while this Court "waived" these same pleading standards and restrictions for the Port's attorneys in this case, and though this Court's own decision here fails to meet these same pleading standards and restrictions this Court required Mr. Dierker to follow.

Consequently, despite the the clearly established Court Rules, and Federal and State statutes, and constitutional provisions of law prohibiting such actions and abuse of indigent, disabled and pro se unrepresented litigants in Court actions, and despite the indigent pro se Disabled Veteran Mr. Dierker's repeated reasonable pleadings making these"waiver" requests on pleading rules, during this appeal the staff and Judges of this Court of Appeals have repeatedly illegally and prejudicially abused their judical power to unreasonably and unlawfully abuse and harrass Mr. Dierker, a known to be serverly disabled Air Force Veteran who is an unrepresented indigent litigant in this case, unreasonably abridging and chilling Mr. Dierker's rights to access to the courts for redress of grievances violation of the law, especially in this case.

Further, on top of this unreasonably abridging and chilling Mr. Dierker's rights to access to the courts for redress of grievances violation of the law, especially in this case, this Court also appears to have ignored Mr. Dierker's numerous pleadings in this case, including ignoring sand failing to prperly read and consider all of Mr. Dierker's pleadings and/or citations to: 1) the relevant facts within the Administrative Record and Court records related to this case; 2) the earlier actions of the Superior Court, the Supreme Court, and this Court of Appeals in this case; 3) the prior and later relevant actions of the local, state and federal govenments related to this case; 4) Mr. Dierker controlling precedental case law citations, which prohibit such illegal and unreasonable decisions by Court personel, and it clearly appears that this Court failed to review any of the actual facutal and Court records in this case cited in Mr. Dierker pleadings filed in this case and submitted to the Court for review in this case.

For this reason alone, Mr. Dierker believes that this Court will continue to act prejudicially

to refuse to properly consider Mr. Dierker's pleadings and this Court will fail to cite to the factual record, as part of this Court's written or unwritten policy, custom, procedure, habit, or business practice to abuse and harrass Disabled Veteran Mr. Dierker and other aged, indigent and/or disabled person in this state, since this Court has been corrupted and has no shame for being this corrupt.

Therefore, this Court must grant reconsideration overturning this improper prejudicial decision.

The Court erred when Denying the Appeal of Dierker's Claims of improper Bifurcation in this case based soley upon the Court's unsupported and clearly false claims that Mr. West had not objected, especially when this Court failed to find that Mr. Dierker had made repeated objections to this ruling, mostly as Co-Plaintiff with Mr. West's objections, and especially when the PRA has been "incorporated" into SEPA's statutory scheme by law and by controlling legal precedent.

The Court complete erred when denying the appeal of Dierker's and West's claims of the Superior Court improperly "bifurcated" the SEPA and PRA claims in ths case, that the Court here based soley upon this Court's unsupported and clearly false claims that Mr. West had not objected to this ruling, and even though Mr. Dierker had repeatedly objected to this ruling, and despite the fact that Mr. West has no authority to "waive" away statutory and legal requirements of the laws of this State and Mr. West has no authority to grant this Court or the Superior Court the authority to "waive" and thereby, ignore requirements of a statute or controlling case law precedent on pretrila discover for such PRA/SEPA related actions, and this false claim or argument is barred under estoppel and res judicata, and when Mr. Dierker has clearly shown the PRA has been incorporated into SEPA's statutory scheme into being an environmental full disclosure law, as shown by the record in this case that this Court ignored. (See On File -- the November, 7, 2012 Commissioners Ruling Denying Respondent Weyerhaeuser's Oct. 10, 2012 Motion to Dismiss the non-PRA issues in this Appeal; see Respondent Weyerhaeuser's Oct. 10, 2012 Motion to Dismiss the non-PRA issues in our Appeal; Appellants' Oct. 31, 2012 Response to Respondents Motion for Dismissal of the non-PRA issues in this Appeal, and their allowed Nov. 30, 2012 Amended Response to Respondents Motion for Dismissal of the non-PRA issues in this Appeal;

Mr. Dierker's Nov. 1, 2012 Response opposing West's Attorney's Oct. 19, 2012 Motion to Bifurcate this Appeal; see the April 2, 2013 Commissioners Ruling in this Appeal; see Mr. Dierker's Opening and Reply Briefs on PRA's incorporation into SEPA's statutory scheme citing also the decision in Norway Hill, below; and see Weyerhaeuser v. Pierce County, 124 Wn. 2d 26, at 38 (1994).

Clearly, despite the Court's continuing unreasonable and false claims in this case, under controlling State law, the Public Records Act (PRA) is an integral part of the statutory scheme of the State Environmental Policy Act (SEPA), on how the Port's SEPA required documents were supposed to be disclosed by the Port to both Appellants and the Courts, since like the PRA's full disclosure provisions, the Court's the Norway Hill decision found that SEPA is an environmental full disclosure law, where portions of SEPA's statutory scheme at WAC 197-11-504(1) incorporates by reference the PRA as part of SEPA. (See Norway Hill v. King County Council, 87 Wn. 2d 267, at 274-275, 552 P. 2d 674 (1976).

Clearly, the required De Novo review of the Port's SEPA actions in this case and the De Novo review of the Superior Court's dismissal of these SEPA claims in this case, required a De Novo review of all of the evidence about the Port's and Superior Court's actions here, including that documented "best evidence" that the Port has continued to withhold from the Port's Administrative Records on this matter directly by the Port's illegal misuse of the PRA's "exemptions" and by the Port's illegal "Silent Withholding" of the relevant Port's Lease documents from the Port's Administrative Records on this matter, as both Appellants' pleadings in this case have previous noted, and this Court has again abused its discretion by dismissing this appeal while denying Mr. Dierker's Constitutional and Civil rights to gain discovery of all relevant evidence about the Port's project, SEPA and administrative appeal actions Appellants both complained of in this case.

Therefore, this clearly false claim by this Court of Appeals clearly shows that when considering Mr. Dierker pleadings on appeal, this Court deliberately acted to ignore even this Court of Appeals' own court records and own decisions previously made on this appeal, thereby illegally altering the Official Public Record of this appeal in this case.

Consequently, this clearly shows that this Court again has acted deliberately and unlawfully to ignore Mr. Dierker's pleadings and citations to all of the factual evidence in the incomplete

Administrative Record and the three different Court records relevant to this case, and ignored even the prior decisions of this Court of Appeals and the Superior Court in this case, simply to unlawfully and prejudically aid this Court's extremely powerful local "associates" in the lawyer buisness of the Goodsein Law Group representing the Port in this case.

Therefore, this Court must grant reconsideration overturning this improper prejudicial ruling in this decision.

This Court erred when Denying the Appeal of CoAppellants' SEPA Claim for Lack of Standing, based soley upon this Court's clearly erroneous and highly prejudicial and unlawfully narrow legal ruling making an "unlawful prior restraint" and/or an unlawful burden of proof, which violates Appellants' fundamental due process rights to access to the courts for redress of grievances and procedural due ptocess under SEPA, et seq., by this Court's ruling that only recognized "Landed Gentry" owning property adjacent to the Port would have "standing" to file suit against the Port on this project, which is contrary to the Appellants' cited controlling statute and case law of Washington State and the United States in such cases.

On the SEPA "standing" dismissal, this Court's decision failed to have documented references or citations to "substantial evidence" in the record to show that Appellants **do not** have "a fundamental and inalienable right to a healthful environment" and that Appellants **do not** have "a responsibility to contribute to the preservation and enhancement of the environment", under SEPA's statutes in RCW 43.21C.020(3), for Appellants to have standing to proceed in a judicial appeal of the Port's final administrative agency decision on Appellants joint SEPA Appeal decision, as Appellants have judicially appealed in this case, a clear violation of prcedural due process.

Respondents have failed to argue at all that Appellants **did not** pay for and prosecute a Port SEPA Appeal in a manner that would entitle them to "standing" and would show that Appellants had a significant "interest" in this matter for them to have "standing" for the prosecution of a judicial appeal of the Port's administrative appeal decisions denying Appellants SEPA appeal of the Port's actions complained of here

Respondents have failed to argue that Appellants **do not** have standing to proceed a judicial

appeal of the Port's SEPA Appeal final decision complained of in this case under the Port's own SEPA Policy on "standing" for judicial appeals of Port SEPA Appeal Final Decisions shows Appellants have "standing" for a judicial appeal of the Port's SEPA Appeal final decision complained of in this case, and under the Port's SEPA Appeal Final Decision written by Ms. Lake the Port's Attorney and sent to Appellants. (Supra).

In light of the appellants prosecution of a SEPA would Comment and multiple administrative appeal process of the Port's SEPA Policy, **and** based upon the fact that Appellants have "a fundamental and inalienable right to a healthful environment" and have "a responsibility to contribute to the preservation and enhancement of the environment" under RCW 43.21C.020(3), appealant appear to have "a fundamental and inalienable right" and a legal "responsibility" under the laws of this State to provide them with sufficient standing for their filing of the judicial appeal of these Port's administrative appeal decisions of the port's agency actions taken to approve respondents' joint project, including the 2 SEPA decisions, SEPA 07-2 and 07-3, and their 2007 Lease and contract agreement updating their August 2005 Lease and contract agreement that the Dec. 19, 2006 Decision of Hearing Examiner Thomas Bjorgen found was improper since the Port had failed to do a SEPA review of before signing their August 2005 Lease and contract agreement that the public received no sufficient prior notice of as that Dec. 19, 2006 Decision noted, even without having the "missing" page 49 of the Lease and its cited and incorported Environmental Site Assessment containing Weyerhaeuser's Terms and Conditions of Acceptance of the Port's 5 year Lease and agreement to of their joint project to construct and operate a deep water marine terminal and log export yard on the Port property in Budd Inlet of Puget Sound in Olympia, Washington the State Capital.

The Court erred when acting Sua Sponte to Deny Appeal of Dierker's PRA Claim for Lack of Standing.

The Court's Decision erred at Footnote 3 when falsely claiming Mr. Dierker had not acted to supplement the record for this appeal with Mr. Dierker's 2006 Public Records Requests to the Port for the withheld PRA records to show Mr. Dierker has "standing" for his PRA claims.

First, it is absurd and disingenious for this Court's Decision here to find that Mr. Dierker

has no "standing" for his PRA claims, especially when based upon the Court's clearly false claim at Footnote 3 that Mr. Dierker had **not** acted to supplement the record for this appeal with Mr. Dierker's 2006 Public Records Requests to the Port for the withheld PRA records, when the record in this Appeal shows that this Court's Commissioner Schmidt had improperly refused to allow Mr. Dierker to supplement the record for this appeal with Mr. Dierker's 2006 Public Records Requests to the Port for the withheld PRA records, and especially when this Court Decision here appears to show Mr. Dierker was properly acting when he attempted to supplement the record for this appeal with Mr. Dierker's 2006 Public Records Requests to the Port for the withheld PRA records. (See below).

Clearly, because this part of the Court Decision here is based a false and fraudulent claim the Mr. Dierker had failed to act to supplement the record for this appeal, when the record of this appeal shows that this Court denied all of Mr. Dierker's repeated attempts to "supplement the record" with Mr. Dierker's 2006 Public Records Requests to the Port for the withheld records and the missing PRA "in camera review" records this Court and the Superior Court did not consider, even sanctioning Mr. Dierker for his proper filing of a Motion to Modify to after Commissioner Schmidt denied Mr. Dierker repeatedly attempts to correct the Superior Court's incomplete record sent to this Court in this case. (Id.;

Obviously, just this one clearly false claim by this Court of Appeals clearly shows that when considering Mr. Dierker pleadings on appeal, this Court deliberately acted to ignore even this Court of Appeals' own court records and own decisions previously made on this appeal, thereby illegally altering the Official Public Record of this appeal in this case.

Consequently, this clearly shows that this Court again has acted deliberately and unlawfully to ignore Mr. Dierker's pleadings and citations to all of the factual evidence in the incomplete Administrative Record and the three different Court records relevant to this case, and ignored even the prior decisions of this Court of Appeals and the Superior Court in this case, simply to unlawfully and prejudically aid this Court's extremely powerful local "associates" in the lawyer buisness of the Goodsein Law Group representing the Port in this case.

Therefore, for this reason alone this Court must grant reconsideration overturning this improper prejudicial ruling in this decision.

The Court's Decision erred at Footnote 3 when making another unsupported and misleading claim that "the complaint in this case does not mention Mr. Dierker's alleged PRA requests", when the record in this case show that the original "complaint" in this case was filed in June 2007only by Mr. West before Mr. Dierker became Mr. West's Co-Plaintiff in this case with the July 2007 filing of the 2nd Amended Complaint filed in this case.

The Court's Decision erred at Footnote 3 when making another unsupported and misleading claim that "the complaint in this case does not mention Mr. Dierker's alleged PRA requests", when the record in this case show that the original "complaint" in this case was filed in June 2007only by Mr. West before Mr. Dierker became Mr. West's Co-Plaintiff in this case with the July 2007 filing of the 2nd Amended Complaint filed in this case.

This Court Lacked Legal and Subject Matter Jurisdiction to act Sua Sponte to Deny the Appeal of Dierker's PRA Claims in this case for Lack of Standing.

This Court lacks any and all legal jurisdiction over Mr. Dierker's "standing" to make the PRA claims in this case, since the Superior Court record and this Appeals Court's record in this case clearly shows:

1) in almost 7 years, the Superior Court **REFUSED** Mr. Dierker's and West's Superior Court **REFUSED** Mr. Dierker's to have a PRA Show Cause Hearing heard in this case, where the Superior Court **REFUSED** Mr. Dierker's Superior Court **REFUSED** Mr. Dierker's to present his evidence for his PRA claims in this case to the Superior Court, including Mr. Dierker's 2006 Public Records Requests to the Port for the withheld records -- there was no proper Superior Court review of the PRA claims in this case ever done, so this Court lacks any factual and legal record to even consider to make such a decision, and thereby, this Court lacks legal and subject matter jurisdiction on the issue of Mr. Dierker PRA Claims, which is clearly arbitrary and capricious and a violation of judicial discretion;

2) the Superior Court **DID NOT** dismiss Mr. Dierker's PRA claims in this case for his lack of "standing" to make the PRA claims in this case -- , instead, the Port's attorney got this Superior Courts to violate their judicial discretion to dismissed Mr. West's **and** Mr. Dierker's PRA claims in this case without conducting a Show Cause Hearing under CR 41, as this Court has found in this

case and as it and Division I have found in at least two of the several other cases related to this case, that, due to the improper actions of the Port's attorney in these 3 cases, and even though the delays of the PRA Show Cause Hearings in these 3 PRA cases was caused by concerted, collusive, and or/ conspiratorial actions of the Port's attorney **and** the 3 Superior Courts violations of judicial discretion in these 3 related PRA cases about this same set of Port integral and related development projects;

3) since the Port did not properly file any timely "Notice of Appeal" of any of the Superior Court's decisions in this case, including those concerning Mr. Dierker's"standing" to make the PRA claims in this case, and thereby this Court again lacks jurisdiction to even consider Mr. Dierker's "standing" to make the PRA claims in this case, let alone Mr. Dierker's his PRA claims;

4) no Port or Court citation to the record filed in this case shows that the Port ever timely objected that the Superior Court **did not** dismiss Mr. Dierker's PRA claims in this case for lack of "standing", and thereby, the Port could not have legally appealed such a claim in this case now under this Court's decision's own legal citations used to improperly deny Appellants "bifurcation" issue in this appeal;

5) in both the Superior Court case and this Court of Appeals, the Port did **not** brief the issue of whether or not Mr. Dierker lacked standing for maintaining a PRA claim in this case;

6) had available the missing "In Camera Review" records withheld by the Port under PRA, including the Port's PRA Response to Mr. West's 2007 PRA requests reviewed here, which this Court did NOT have to be able to review for making this erroneous ruling, despite Mr. Dierker's repeated attempts to have this Court order that these "In Camera Review" records withheld by the Port be filed in the Courts for consideration of this case, and thereby, this Court has clear acted make factual claims about the "record" on these PRA records requested without ever having and refusing to have filed to properly consider the actual agency records on the Port's PRA requests for records in this case; and

7) therefore, for these reasons this prejudical and invidiously discriminatory decision by this Court was a complete "surprise" to Mr. Dierker, especially in light of this Court's Decision's other false factual claims made about "the record" in this case, when the Court did not have any Port "agency record" on the Port's PRA actions, and this Court did not have the PRA "In Camera Review"

records necessary for this Court to make such claims asnd rulings about a "record" which the Courts and the Port have acted to fraudulently conceal in this case for 7 years on this issue. (Id; supra).

Clearly, when making this erroneous ruling, this Court did not have a "complete" record in this case necessarily for review of whether or not Mr. Dierker has standing for the PRA claims in this case, despite this Court's knowning false claims to the contrary.

Therefore, for these reasons alone this Court must grant reconsideration overturning this improper prejudicial ruling in this decision.

Mr. Dierker's also had "standing" to maintain a suit under the PRA even for Mr. West's 2007 PRA request for Port records about this Port project in this case, as Mr. Dierker was then acting with Mr. West and his "Co-Appellant" in the Port SEPA Administrative Appeal, et al, of this Port project complained of here.

Despite this Court's false claims at page 4-5 that "(t)he record does not show that Dierker joined with West in making the PRA request" and this Record and Mr. Dierker "has failed to show he has a personal stake in the outcome" of Mr. West's PRA request for Port records about this project, **THIS COURT DID NOT HAVE ANY PORT AGENCY RECORD RELATED TO THE PRA CLAIMS**

As the various administrative and Court records in this case ignored by this Court clearly shows, Mr. Dierker's also had "standing" to maintain a suit under the PRA even for Mr. West's 2007 PRA request for Port records about this Port project in this case, as Mr. Dierker was then acting with Mr. West and his "Co-Appellant" in the Port SEPA Administrative Appeal, et al, of this Port project complained of here

Further, these records in this case also shows that the Port knows that Mr. Dierker acted on behalf of Mr. West to pick up the Port's disclosed PRA records from Mr. West's PRA request heard in this case, since those records were necessary for Mr. Dierker and West's joint Port SEPA Adminstrative Appeal, which this Court would have known had they ever reviewed the Port's 2800 page Adminstrative Record and the missing PRA "In Camera Review" records that this Court refused to require the Port to file in this appeal, despite Mr. Dierker'sd repeated requests and pleadings about the lack of a proper record for review and requests for supplementation of the

record in this case. (Id.).

Had this Court had properly acted to make sure it had available the missing "In Camera Review" records withheld by the Port under PRA, including the Port's PRA Response to Mr. West's 2007 PRA requests reviewed here, this Court might not have made such a erroneous ruling here.

Mr. Dierker clearly had "standing" to maintain a suit under the PRA for Mr. West's 2007 PRA request for Port records about this Port project in this case had he been in privity are been had this Court ever reviewed the

Therefore, for these reasons alone this Court must grant reconsideration overturning this improper prejudicial ruling in this decision.

The Court erred when acting Sua Sponte to Deny Appeal of Dierker's PRA Claim for Lack of Standing by improperly discriminating between Co-Plaintiffs/Appellants Dierker and West who together prosecuted this case in the Port SEPA Appeal, the Superior Court case and in this Court of Appeals.

The Court's Decision erred by unlawfully narrowly construing the provisions of the Public Records Act when acting Sua Sponte to Deny Appeal of Dierker's PRA Claim for Lack of Standing.

The provisions of the Public Records Act (PRA) must be liberally construed by the agencies and Courts to promote disclosure of public records to the public, and the provisions of the PRA requires disclosure of public records when other laws require such disclosure of governmental records in this state, like the disclosure of agency records required by SEPA. (See *????*)

As noted herein on the "bifurcation" issue, the PRA has also been "incorporated" into SEPA's statutory scheme, and therefore, when SEPA is involved the PRA is also involved -- therefore Mr. Dierker has standing for maintaining a PRA suit in this matter, when the Port had determined that Mr. Dierker was a "known interested party" in this matter because Mr. Dierker has made so many numerous filings with the Port and others about the Port's actions taken to develope this Port site over the previous 8 years between 1999 and 2007 including his prosecution

of 2 Federal court cases on this project site at the Port, Mr. Dierkers repeated PRA requests for information about the Port's proposed development actions on this site, including Mr. Dierker's 2006 PRA requests to the Port noted in this case, the Port issued the SEPA MDNS decision on this project, and after Mr. Dierker had filed both a "SEPA Comment" and a Port SEPA Appeal on this Port SEPA action project, and thereby, the Port owned Mr. Dierker disclosure of these relevant public records under SEPA, the PRA and under discovery rules for disclosure of relevant evidence for adminstrative appeal due process standards under the law.

Therefore, for this reason alone this Court must grant reconsideration overturning this improper prejudicial ruling in this decision, which violates this Court's judicial discretion under the PRA, SEPA and due process standards for administrative appeals of agency actions, in order for this Court to both unreasonably and unlawfully support, aid and abett the unlawful and illegal, et al, actions of Respondents in this case, against CoAppellants' lawful and reasonable actions and requests for relief that are well documented and well supported by the CoAppellants' proper specific references to facts in the various records on this case constituting substantial evidence, and since Mr. Dierker's well supported specific references to facts in the records made pursuant to RAP 10.4(f) and citation to statute and case law in his pleadings in this appeal and throughout this case made pursuant to RAP 10.4(g) that "distinguish", and/or otherwise overrules by a higher court decision, this Court's legal citations that are the basis for the improper rulings of this Court's decision against CoAppellants to protect the Court's croines and, at least, colluding "partners in crime" with at least the Port Respondents attorney in this case touse their governmental power illegally to abuse and violate the civil and constitutional rights of such weaker, aged, indigent, and disabled persons like Mr. Dierker, who has been "blacklisted" by this Court's contempt for the due process rights of aged, indigent, disabled, pro se litigants like Mr. Dierker in this Court of Appeals, since this Court clearly prejudicially considers Mr. Dierker as a specific "suspect class" of persons who have less rights to justice than the worst criminal on Death Row still has even after death to clear his name, and this Court clearly believes the aged, indigent, disabled, pro se Mr. Dierker is "too Uppity" sich he "has the unmitigated gall" to even be granted his request for public records from the government about that government's actions which are or may reasonably be negatively affecting or harming him or his health and interests, so that he can exercise his rights to protect the health of his local environment, himself and his many children and grandchild,

sometimes using this information to petition the government and the Court's for redress of grievances, sometimes with Mr. West or some other non-attorney where he reasonably acts to properly try to help his government or to control his government in this State when it refuses his help, when this is supposed to be a government of **the People** of the State of Washington, and **not** merely a government of only the "adjacent-property Landed Gentry" and their Attorneys who have paid their Pole Tax and who under this court's legal basis for standing to sue are the **only** persons who have "standing" in this whole state to sue someone under this Court's alleged legal basis to sue anyone in this state --**clearly not "justice for all" intended by the Founding Fathers of this Country and State nor does it appear to follow the Supreme Court's Comment on GR 33 in the Washington Court Rules Annotated about "justice for all" in the Courts of this State** ---- a clearly unauthorized, unlawful, unconstitutional, and ultra vires prior restraint of Mr. Dierker's fundamental civil, consttutional, and human rights to hav no abridging or chill or violating of his rights to access to the courts of this State for redress of grievances complaing of governmental action, and his rights to equal protection and due process of law, and his rights to be free from this State government's creation of "special priviledges, franchises, or immunites", as this Court has done here for such "special" "adjacent-property Landed Gentry" and/or any Attorneys who have also paid their "judicial" "Pole Tax", so these "Special priviledged and franchised" persons are the only persons who could have any due process rights to have standing to sue in this Court of Appeals in such cases -- clearly absurd.

In fact, looking at the relevant rulings in this Court's improperly written decision which fails to meet even the RAP pleading standards of RAP Rules 10.4(f) and (g) and thereby, also do not provide a properly documented factual "basis for this Court Decsion's rulings in this case to meet the burden of RAP 5.5(c) for any party appealling this decision, and, further, the Court's false, vague, undocumented, and often apparently "Court-invented-facts" that change, and, thereby, this Court, like the Superior Court and this Port, have again illegally falsified many of the Official Public Records on this case, **where this Court changed the past documented "facts" in the actual records on this case made over the last 8 years that Mr. Dierker has lived through, into something bearing no resemblance to the actual facts in this case** -- clearly, this Court had to "invent" false facts which never happened or ignore facts in the actual records on this case which did happen, just so the Court could improperly, unreasonably, and prejudicially try to

"invent" factual support for its rulings in this decision made against Mr. Dierker and Mr. West here, all while the Court failed to properly make portions of this ruling that cite to, let alone consider and distingush, Mr. Dierker's and West's numerous proper legal citations to precedential Standards of Review, case and statute law, et seq., that were previously plead in this case and were clearly contrary to and conflicting with this Court's legal citations used by this Court's rulings against the CoAppellants in this decision, and thereby this decision also lacks a proper legal basis to meet the burdens of RAP 5.5(c) for providing a basis for this decision that was so poorly written as to make even this pro se litigant proud of his admittedly poor attempts at pleading in this case, due to this Court's undue hardships, abuse and harrassment, and due his age, indigency, and disabilities that this cold-hearted Court ignored and failed to ever act to fairly consider, just like his pleadings, facts and law cited in this case this Court ignored and failed to ever act to fairly consider before making this incompetently and poorly written Unpublished Opinion, which has no shown Mr. Dierker the reasona why for such case that have only an Unpublished Opinion this is **not** a "court of record" for this State, because this Court does not want others to see how incompetent and corrupt in the Washington Courts' law books, by reporting **only** "Published Opinions" of this Court in the case law decisions the Washington Courts' law books to **only** provide a offiicial judically recognized public "record" for **only** "Published Opinions" of this Court in the case law decisions, and to not give the State Supreme Court any reason to overrule this Court of Appeals in such cases where this Court has been so incompetent, corrupt, absurd, and cruel that it has to hide its actions in an "Unpublished Opinions" of this Court **not** "reported" in the law books providing an open public record of this Court's "Published Opinions" which it sometimes tries to write more competently.

Cleary, the Judges of this Court of Appeals and their staff under them in this case, have clearly violated their judicial discretion, authority, prohibitions, Oaths of Office, et al., and as such extreme "Oath-breakers" here, they have no judicial immunity from being sued for the civivl rights and other violations of civil law by this Court's judges and staff here by any of the parties in this case, and/or may be prosecuted by the State and Federal governments for their serious felonious "high crimes and misdemeanors" and the committed here by this Court's Judges and staff in this case -- their actions in this case have put this Court's Judges and staff in this case outside of any "cloak of judicially immunity" for their actions taken outside of the laws granting them their

authority and power in this state, especially since the State Constitution's provisoins on due process of law and equal protection of the law to provide for justice for all in the Courts of this State have been ignored with open contempt of this Court's Judges and staff in this

Further, it would be impossible in any Civil Appeal Statement filed in an appeal of Motion for Discretionary Review to the Supreme Court of this State pursuant to RAP Rule 5.5(c), when those unlawfully unsupported in fact and improperly and inadequately supported in law , at least .

The Court's unsupported and vague or completely false factual allegations and deliberate evasions and ignore of the controlling precedent of Co-Appellant Dierker's properly cited controlling case and statue law which had previously distinghed the same case law this Court cites improperly providing the basis for the Court's narrow in the "Introduction" and "Facts" sections and elsewhere throughout this Court's August 5, 2014 "Unpublished Opinion" decision in this case clearly shows that it is a mockery of justice based upon the Court's prejudicially unlawful and unconstitutional actions or omissions to properly act, where this Court has based this entire decision upon its unreasoanbly "edited" and falsified version of the history of this case completely ignoring relevant evidence showing Mr. Dierker's proper actions and legal interests in judicial review of the Port's integral connected development projects in the middle of the most contaminated part of Puget Sound on Budd Inlet noted in this case.

This Court's numerous false and unsupported factual claims made throughout this Court's August 5, 2014 "Unpublished Opinion" decision in this case, clearly fails to make a proper citation to the records in this case for each factual claim made by this Court, and despite the fact that this Court repeatedly required Mr. Dierker to make a proper citation to the various agency and Court records in this case for each factual claim his briefs made pursuant to RAP 10.4(f) and (g), and without such citations for each of its undocumented alleged" Facts" *sic* this Court alleges "support" this Court's rulings in this decision, and thereby, this August 5, 2014 "Unpublished Opinion" decision in this case does not meet this Court's burdens under the RAPs and legal standards for the making of such final judicial decisions, would thereby be unreasonable arbitray and capriciuous, in abuse or without legal authority, violates their oaths of office, and appears to show that the Judges of this Court are so incompetent that they cannot even follow the pleading requirements of the RAPs that Mr. Dierker and all attorneys (including Judges and court staff) are required to follow, as noted herein. (Id.; see below)

A comparison of this Court's undocumented factual allegations to supporting their rulings in this case, a proper review in the light of the entire various agency and Court records in this case required by the standards of reiew in this case, shows this Court completely rewrites the facutal and legal history of the last 7 years of this case and the last 15 years that Mr. Dierker has been trying to protect Puget Sound by trying to get the Port to properly cleanup this Port project's site containing the Port's worst industrial hazardous waste site Casade Pole Co., located on and/or "adjacent" to the uplands, shorelands and tidelands of Budd Inlet which has been found to be the most comtaminated area of the Puget Sound by the Dept. of Ecology, Fish and Wildlife and Natrural Resources, and other Federal and state agencies, and which is is a Section 303(d) "Listed Impaired Body of Water" under the Federal Cleanwater Act, and since Budd Inlet is the "headwaters" of Puget Sount farthest from the open part of Pacific Ocean, the Puget Sound Salmon and the marine mammals like Orca who eat them that are protected under the Endangered Species Act and who receive many of their worst chemical toxins from this Port site to make Puget Sound marine mammals who eat these toxic Salmon the most toxic marine mammals in the world, as the record in this case shows that Mr. Dierker's previous pleadings to this Court and the lower Court noted with Mr. Dierker's numerous citations to evidence in the record and/or as evidence of judicial notice shows. (Supra).

Thereby and for other reasons noted herein, this Appeals Court's decision and its conduct in this case this Court has done repeatedly in this case to invidiously discriminate against Mr. Dierker, an indigent, disable, aged and unrepresented party in this matter, which is violation of many of the most basic due process standards of law controlling these Judges/attorneys actions in case when interacting with such an indigent, disable, aged and unrepresented party in a case as Mr. Dierker has repeatedly noted in his many pleadings on such issues in this Court and the Superior Court in this matter. (Supra; see also GR 33 and GR 34)

As Mr. Dierker's numerous pleadings on waiver of the RAPs pleading standards under RAP 1.2, the Americans with Disabilities Act, pro se litigants throughout this case in this Court as well as the lower Court has unreasonably, prejudicially, unlawfully, and illegally, and burdened Mr. Dierker this Court and the lower Court has acted as if

As the Port requested, as noted in also erroneously sanctioning this indigent, disable, aged and unrepresented pro se party in this case, Mr. Dierker a Disabled Air Force Veteran living on a

subsistence level VA disablitiy pensions of $1054 per month, to bar Mr. Dierker from making any pleadings in this case until after he paid a $200.00 sanction, which he could not pay as he told this Court in small Motions/Decalartions twice without any relief from this Court that is required by GR 34, et seq., which Mr. West has graciously decisided to pay "under protest" so that his CoAppellant in this case Mr. Dierker may plead on reconsideration of this Court here to aid Mr. West in this case on any Motion for Recosideration Mr West files. (See the Comments and Reference citations in the Washingon Court Rules Annotated on GR 34 and GR 33; O'Connor v. Mazedorff, 76 Wn.2d 589 (1969); see Dierker's numerous rior pleadings in the record on such issues about his disabilities, indigency, pleadings in this case).

As noted in the Port and Dierker's pleadings made to this Court **after** Dec. 2, 2013, this Court had accepted Mr. Dierker's Oct. 12, 2013 Reply to the Respondents' Response in this appeal, until after Dec. 3, 2013 when Dec. 19, 2013 and subsequent to this in the Court later decision denying Mr. Dierker's Motion to Modfy this Dec. 19, 2013 Ruling, the Court repeatedly acting ultra vires to aid and protect the extremely powerful Port attorneys, by this Court's ignoring or "waiving" all "prior case scheduling orders" in this case, ignoring or "waiving" all the RAPs required "time periods" for filing of "motions to modify and Notices of Appeal for the Port to appeal the Commissioners ruling accepting Mr. Dierker's Oct. 12, 2013 Reply to the Respondents' Response in this appeal, **and** without ever requiring the Port to even file an "untimely"Motion to Modify, in order to unlawfully and prejudicially allow the Port to file some other motion for leave which is not authorized by the RAPs and required to this Court to violate it judicial discretion to violate the RAP rules which this Court did, unreasonably and predjucially sanctioning Mr. Dierker barring him from pleading in this appeal and later unlawfully "edited" despite the RAP rules to the contrary.

Clearly, this Court has repeatedly acted in an ultra vires manner in direct violation of their oath of office and/or state employment, many of the RAP's, many other Court Rules, statutes, controlling precedental case law decisions of the State Supreme Court and the U.S. Supreme Court, and/or other controlling legal standards this Court is sworn to follow, which this Court did merely to protect the powerful Port attorneys that are these Judges'/attorneys' "associates" and cronies in the local Pierce County Bar Association they are all members of, clearly also prejudicial and violates these Judges' impartiality showing that the ruling against Mr. Dierker where completely

unfair.

Further, since this Court's Decision contains no properly document citations to the facts in the various agency and court records in this case for supporting this Decision in this case, since this Decision actually ignores the actual factual evidence of the history of this case in the various agency and court records containing the real facts of this case that are relevant to this Court's rulings in this Decision and/or relevant to Dierker claims in this case here, and has ignored Appellants' proper citations to th actual factual evidence of the history of this case in the various agency and court records filed in this case, which this Court apparently failed in their duties to properly review completely in this case under the Standards of Review Mr. Dierker has noted, all while, out of thin air or apparently based solely on the Port attorneys' also false pleadings, this Court's Decision acts without and in abuse of the Judges' legal authority under the law to unreasonably "create" a completely "new" factual and legal history of the last 7 years of this case **which does <u>not</u> contian and or acts to misrepresent the actual facts of this case within the various agency and court records filed in this case, including this Appeals Court's own records on the law of this case which this Decision completely ignores to improperly deny Mr. Dierker's appeal here.** (Id; supra; see also below and the Motion for Reconsideration).

Consequently, since this Court's Decision here contains no citations to the records in this case, which, is now the prior "law of this case" shown by this Court Decision that "sets the legal pleading standards" in this case for pleading, apparently "waiving" the Court's rules and RAPs in this case, it is clearly impossible and this Court cannot expect the parties to make citations to the records in this case in order to request reconsideration or appeal review of this Court's Decision that contains **no** citations to the records in this case.

This Court's Decision containing **no** citations to the records in this case, unlawfully fails to provide factual support for each and every rulings in this Court's Decision, which fails to provide an adequate record of this decision necessary for any reconsideration or appeal review of it, and thereby, this Court must grant reconsideration and overturning of this Court's unsupported Decision, for this Court at least properly and competetly "rewite" it to include documented citations to the facts in the records in this case that this Court believes support its legal rulings and judgments in this Decision in this case, if for nothing else, than to provide a proper adequate record this Court's Decision in this case necessary for a proper reconsideration to be done in this Court

and to allow a proper appellate review of this case by a higher court. (Supra; see also below).

Consequently, under the RAPs and other standards for pleading in this Court, this Court has improperly made it impossible for Mr. Dierker or any other party to this case to be able to follow the RAPs to make "responsive" citations to the record for making a proper Motion for Reconsideration for this Court' review of this Court's Decision in this case, and this Court has improperly made it impossible for Mr. Dierker or any other party to this case to be able to follow the RAPs to make "responsive" citations to the record for making a proper to allow a proper appellate review of this Court's Decision in this case by a higher Court.

Therefore, it appears that this Court's "Unpublished Opinion" decision in this case is merely an unsupported mockery of justice based soley upon the Port's and this Court's unlawfully edited version of the history of Mr. Dierker's actions and interests in this case, as noted by in this "Unpublished Opinion's" unsupported "Facts" section, which fails to cite to the record in this case to support its rulings, and which makes material misrepresentations of fact and/or "creates" a "new history" of the case which edits out any contrary evidence which supports Appellant Dierker's claims in this appeal of this case, or where this Court merely fails under CR 8(d) to properly respond to each and everyone of Mr. Dierker's many factual and legal claims made in this case, by this Court unlawfully ignored most of Mr. Dierker's many supporting facts and claims in this case, without proper consideration by this Court. (Id.; supra, see also below).

Clearly, for just this reason alone this Court must grant this Motion for Reconsideration to make an adequate record of this Court's Decision in this case to allow a proper appellate review of this Court's Decision in this case by a higher Court, as required by law, so as not to further delay the prosecution of this case which has been delayed for over 7 years already by the ultra vires and improper actions of the Port, the Superior Court and this Court of Appeals so far.

Standards of Review of the decision in this case and on the drafting and consideration of pleadings made by indigent disabled unrepresented litigants.

Judicial review of the factual claims in this Appeal was to be done by the Court's full review of the complete agency administrative record, and the records of the Superior Court and Court of Appeals in this case, showing the agency's and these Courts' actions and decisions in this matter under "de novo", "substantial evidence", and "clearly erroneous" standards of review on the

case's merits, which were not followed by the Superior Court or the Court of Appeals in this case. (See SEPA's WAC 197-11-504(1) & WAC 197-11-330(2)(a); SEPA's RCW 43.21C.075(3); PCCE, Inc. v. United States, 159 F. 3d 425, 427 (9th Cir. 1998); Marriage of Wolfe, 99 Wn. 2d 531, at 536 663 P. 2d 469 (1983); Weyerhaeuser v. Pierce County, 124 Wn. 2d 26, at 38 (1994); Norway Hill Pres. & Prot. Ass'n v. King County Council, 87 Wn.2d 267, 552 P.2d 674 (1976).

While this Court could have merely "affirmed" the Superior Court's Orders of Bifurcation and Dismissal in this case as they were written, on any basis this Court supported by proper citations to the record and the law, this Court **cannot** take an "ultra vires" action to make a decision unsupported by citations to the record or to the law in this case, to allow this Court to make an order to affirm such an lower court's order, for some other alleged reason not in those records, especially **without** making a citation to the agency and Court records showing the history of the law, proceedings and facts in this case, to support each and everyone of this Court's findings and rulings in this Court's Decision in this case, which has unlawfully happened in this case requiring this Decision to be overturned for this reason alone. (State v. Kelley, 64 Wn. App. 755, 764, 828 P.2d 1106 (1992).

However, as noted herein, since this Court's Decision fails to have a properly documented citation to the agency or court records for each and every factual allegation that would provide support for the findings and rulings in this Court's Decision made in this case, in order for this Court to be able to show that that it had "substantial evidence" for supporting each of the findings and rulings in this Court's Decision, and in order to show that this Court's Decision was not "clearly erroneous" for lacking any citations to evidence to support each of the findings and rulings made in this Court's Decision. For this reason alone this Court's Decision must be overturned

"This court reviews questions of law and conclusions of law de novo." Weyerhaeuser Co. v. Calloway Ross, Inc., 133 Wn. App. 621, 624, 137 P.3d 879 (2006).

However, this Court of Appeals failed to follow this standard of review of questions of law and conclusions of law when considering this appeal and when making the unsupported and clearly erroneous findings and rulings in this Court's Decision made in this case, and, again, for this reason alone this Court's Decision must be overturned.

When considering any motion, including the motions to bifurcate or dismiss claims in a

case, a Court must consider the pleadings, facts and inferences therefrom, in the light most favorable to the non-moving parties, the Plaintiffs/Appellants, to the Respondents' motions to bifurcate and to dismiss the Plaintiffs/Appellants' claims in this case, which did not happen in this case as the Superior Court record shows, and this Appeals Court's Decision also unlawfully ignored this standard of review in its relevant unsupported rulings on these issues by unlawfully putting "legal burden" upon the Plaintiffs/Appellants in this appeal case, instead of the Respondnets as is lawful, and this Court of Appeal unlawfully failed to properly make citations to the parts of the agency and Superior Court records that might have supported the decisions of the . (Gaines v. Northern Pacific R. Co., 62 Wn.2d 45, 380 P.2d 863 (1963).

When a governmental entity, like the Port and the Courts of this State, carry out an act unauthorized by - or contrary to - statute or other controlling standard of law, the act is invalid as ultra vires, or exceeding the rules. No later ratification can validate an ultra vires action.

An ultra vires action is one done either without authority or in violation of existing statutes. Dykstra v. Skagit County, 97 Wn. App. 670, 677, 985 P.2d 424 (1999), review denied, 140 Wn.2d 1016 (2000); accord, S. Tacoma Way, LLC v. State, 169 Wash. 2d 118, 123, 233 P.3d 87, 874 (2010) ("Ultra vires acts are those performed with no legal authority and are characterized as void on the basis that no power to act existed, even where proper procedural requirements are followed.") Ultra vires acts cannot be validated by later ratification or events. Id. The ultra vires doctrine can render unauthorized contracts or actions by government entities generally void and unenforceable. Noel v. Cole, 98 Wn.2d 375, 378, 655 P.d 245 (1980), superseded by statute on other grounds by Snohomish County v. State, 69 Wn.App. 655, 850 P.d 546 (1993), review denied, 13 Wn.2d at 378 (1994). The rationale behind the ultra vires doctrine is "the protection of those unsuspecting individuals whom the entity represents." Noel, 98 Wn.2d at 378.

As noted here and in Mr. Dierker's pleadings , in this PRA/SEPA case done under these two of the "Sunshine Laws" of this State, there is evidence of judicial notice clearly showing that the Port and its attorneys, Ms. Lake and Seth Goodstein, has gotten several Superior Court Judges to violate judicial discretion to aid these Port attorneys to prevent and deny Mr. West **and** Mr. Dierker's from ever receiving even a Show Cause Hearing of the PRA claims made in this case for the Port's disclosure of Public Records containing relevant evidence about the Port's compained of actions in this case necessary under discovery rules to obtain the Port's fraudlently concealed

relevant evidence in these witheld public records for proper argument ofthe misrepresented "NonPRA Issues" to the Port's show failure to disclose relevant evidence necesssary for any SEPA review and has gotten certain staff, Commissioners, and/or Judges of this Court of Appeals to aid and abbet and the to violate waive all pleadings rules in the RAPs for the Port's powerful Attorneys to file an untimely Dec. 3, 2013 "Motion to allow the Port to file a Motion to Strike" Mr. Dierker's Reply Brief more than 50 days after Mr. Dierker had filed his reply, and more than when Seth Goodstein filed that Motion requested prohibited relief that the granted

Errors

1. This August 5, 2014 "Unpublished Opinion" decision in this case erroneously and incompetently fails to meet this Court's burden under the controlling RAPs and other Standards of Review for factually supporting each and everyone of the Court's factual allegations and rulings in it's decision here, where this Court's decision erroneously and incompetently:

a) failed to make properly written **specific citations** to each of the various different relevant records in this case, necessary for supporting this Court's alleged "factual" basis for this decision, and this Court also erroneously commited a violation of Mr. Dierker's and the other parties civil and constitutional rights to due process, equal protection of the law and for redress of grievances under the laws of this state;

b) failed to make a supportable record of the factual basis for the rulings in this decision necessary for the parties in this matter to follow RAP 10.4(f) and (g) to be able to write a proper Motion for Reconsideration of this improperly written decision, and where this Court also erroneously commited a violation of Mr. Dierker's and the other parties civil and constitutional rights to due process, equal protection of the law and for redress of grievances under the laws of this state;

c) failed to make a supportable record of the factual basis for the rulings in this decision necessary for the parties in this matter to follow RAP 10.4(f) and (g) to be able to write a properly supported Appeal of this improperly written decision to the State or Federal Supreme Courts to "respond" to it, which prevents those State or Federal Supreme Courts from having a supportable record of the factual basis for the rulings in this Court's decision necessary for appeallate review by those higher Courts, and where this Court also erroneously commited a

violation of Mr. Dierker's and the other parties civil and constitutional rights to due process, equal protection of the law and for redress of grievances under the laws of this state; and,

d) though this Court's decision was supposedly researched and written by at least three attorneys that are Judges of this State Court of Appeals and their legal staff, this decision in this case erroneously and incompetently fails to meet his Courts interpretations of the pleading standards of RAP 10.4(f) and (g) which this Court repeatedly used to abuse and harrass the indigent, aged, disabled, pro se Appellant Mr. Dierker to exhust what little physical, mental, financial resources and time that he was able to work on this case at all, as a part of invidious dicrimination against him, where this Court unreasonaably, unlawfull, unconstitutionally and illegally required Mr. Dierker to make repeated "amemded" pleadings in this appeal, and where, thereby, this Court also erroneously commited a violation of Mr. Dierker's civil and constitutional rights to due process, equal protection of the law and for redress of greivances in this state.

2. Pursuant to the controlling Standards of Review in this case, , when this Court's August 5, 2014 "Unpublished Opinion" decision in this case erroneously and incompetently failed to make **specific citations** to pages and parts of the Port's and Courts' records of the over 7 years of this case that is necessary for this Court to have a specific factual basis to support each and everyone of the rulings in this Court's decision denying this appeal, and therefore, this Motion for Reconsideration of this Order must be granted and this Court's unsupported decision must be entirely overturned for this reason alone. (Id.).

2. Pursuant to RAP 10.4 and due to the Court's errors made in this August 5, 2014 "Unpublished Opinion" decision in this case as noted above, the Court also erred and unduly burdened both Appellants and Defendants in any further proceedings in this case, since both Appellants and Defendants are now unable to properly make any Motion for Reconsideration to respond to the Court's **erroneously** "missing" **specific citations** to the various administrative and Court records containing the "facts" of this Court has alleged support it's decision in this appeal and this is **not** an adequate record for review of this appeal decision making erroneously and incompetently made without having any proper **specific citations** to the various administrative and Court records containing the facts upon which each and every ruling in this decision was based, which erroneously fails to make a proper adequate record of this Court's appeal decision in this case, that is necessary for appeal by Appellants or Defendants to any higher Courts for review of

this Court's decision on this appeal here, and thereby this Motion for Reconsideration of this Order must be granted.

review of this decision, even making it impossible to make properly suppported pleadings citing to the portions of the record in this that this Court's "facts" in this decision refer to, and thereby, which this did not do. (See also, e.g. -- RAP 10.4(f) and (g).

For this reason alone this Court must grant reconsideration to at least include citations to the record with consideration on the merits of Appellants' pleadings showing specific citations to the record and the law the Appellants and other parties in this case have made, with specific citations in the Court Opinion to the record and the law that this Court believes opposes each and every one of Appellants' well supported facutal and legal claims in this case, so that the Court's decision can show how it "distinguished" Appellants' citations to the record and laws in this decision, so that the Court could have substantial evidence and clear legal authority to diss any or all of Appellants' clims in this case, in order to properly have an adequate record for any review of this Court's rulings and judgments made in this August 5, 2014 "Unpublished Opinion" decision in this case.

2. Clearly, in light of this lack of citations to the record and the claims made in this Court's this Court has unreasonably, illegally, unlawfully and unconstititutionally held the indigent, aged, disabled, pro se Appellant Mr. Dierker, to extremely strick legal and pleading standards that this Court does not even follow itself nor hold its own legal writings to the same legal standards, a clear violation of Mr. Dierker's due process and equal protection, and makes material misrepresentations of fact.

The Court's "Unpublished Opinion" drulings and other rulings in this case clearly shows this Court's clear predjudice and deliberate, unreasonable, unauthorized, unlawful, illegal, unauthorized, ultra vires , and/or unconstitutional actions to abridge Mr. Dierker's civil and constitutional rights to redress of grevances of the Port's agency actions affecting Mr. Dierker's well known interests in this Port property and the wildlife, near-shorelands and waters of Puget Sound of the Pacific Ocean, as shown by Mr. Dierker's numerous citations to the Port's 2800 page "Agency Record" covering several years between 2004 and 2007 unconstitutionally ignored by this court.

A comparison of the Court's "Facts" section in this court's "Unpublished Opinion" in

this case to the Port's 2800 page "Agency Record" covering several years between 2004 and 2007shows that this Court's failure to conduct any review of even the Port's 2800 page "Agency Record" covering several years between 2004 and 2007

On Standing in suits on all such governmental actions related to a SEPA action and the Public Records containing information related to a SEPA action, etc.

This Court's Decision in this case is falsely and unreasonably based upon this Court's unlawfully and unconstitutionally narrow view that **ONLY** undisabled, "Landed Gentry" owning property adjacent to the Port, who have retained an attorney for at least part of a case, have thereby paid their 'judicial' "Pole Tax" *sic* this Court, have accessing to the Court's to gain redress of grevances in this State, though the Legislature did not and could not legally adopt such a 'judicial' "Pole Tax". (Id.; see Mr. Dierker's numerous citations to the Port's 2800 page "Agency Record" covering several years between 2004 and 2007 unconstitutionally ignored by this court's decision in this case.)

As noted, the Appeal Court's record of the prior actions of the Commissioners and/or Clerk's Office, repeatedly requiring disable pro se Appellant Dierker to rewrite and resubmit his Opening Brief and Reply Brief each several times, which appears to unequally and unfairly harassed and invidiously discriminated against him and his equal protection of law and due process rights to make such appeal pleadings here.

ruling improperly, unlawfully and unconstitutionally grants the Port's attorneys "special privileges, franchises, or immunities" which does not equally belong to all citizens or corporations and does not act equally on the due process rights of all citizens or corporations of this State, and is this Court's prohibited and unconstitutional "taking" of Mr. Dierker's vested rights to such due process of law, as noted herein. (See Adams v. Thurston County, 70 Wn. App. 471, at 479, 855 P.2d 284 (1993); Long v. Chiropractic Society, 93 Wn.2d 757, 761–762, 613 P.2d 124 (1980); Yick Wo v. Hopkins, 6 S.Ct. 1064 (1886); see also "vested rights" in Black's Law Dictionary 5th Edition, at page 1402; City of Cleburne v. Cleburne Living Center, 105 S.Ct. 3249, 3254, 87

L.Ed.2d 313 (1985); Pollard v. Cockrell, 587 P.2d 1002, 1112–1113 (5th Cir. 1978); Oriental Health Spa v. City of Fort Wayne, 864 F.2d 486, 490 (7th Cir. 1988); State v. Zornes, 475 P. 2d. 109 at 119 (1970); Reanier v. Smith, 83 Wn. 2d. 342, 517 P. 2d. 949 (1974); the 1st, 4th, 5th, 6th, 8th, 9th, 10th 11th and 14th Amendment to the U.S. Constitution; and Article I Section 12 of the Washington State Constitution, et seq.).

"The guaranty of equal protection of the laws is a pledge of the protection of equal laws." (See Yick Wo v. Hopkins, 118 U.S. 356, at 369, 68 S. Ct. 1064, 30 L. Ed. 220). "When the law lays an unequal hand on those who have ... intrinsically the same quality ... it has made as invidious a discrimination as if it had selected a particular race or nationality for oppressive treatment." (See Yick Wo v. Hopkins, supra; State of Missouri Ex Rel Gaines v. Canada, 305 U.S. 337, 59 S. Ct. 232, 83 L. Ed. 208).

Violations of equal protection are reviewed under both rational basis and strict scrutiny standards of review to determine state interest in its scheme. (See Griess v. State of Colorado, 624 F. Supp. 450 (1985). The state must prove that the law furthers a "substantial interest of the state". (Id; see also In Re Mota, 114 Wn. 2d 465, 477, 788 P. 2d 538 (1990); Plyler v. Doe, 457 U.S. 202, 72 L. Ed. 2d 786, 102 S. Ct. 2382, reh'g denied, 458 U.S. 1131, 73 L. Ed. 2d 1401, 103 S. Ct. 14 (1982).

Clearly, under both rational basis and strict scrutiny standards of review to determine state interest in its scheme, this Court has **NO** "substantial state interest" in invidiously discrimination in this unequal manner against Mr. Dierker, and fails to meet any of the requirements for equal protection and due process of the law, since the Court's August 5, 2014 rulings here denying Mr. Dierker's PRA claims while granting the PRA claims of his CoAppellants Mr. West, and this Court's other August 5, 2014 rulings against CoAppellants here, are clearly unequal and improper invidious discriminination, the Court's actions to use false factual claims, of changing Issues of Law into issues of fact, this Court's numerous illegal, unconstitutional, unlawful, and unreasonable "prior restraints" of CoAppellants' due process rights for redress of greivances in this case, this Court's unlawful "swiching" the Port's burden of proof it acted correctly when taking the Port's PRA and SEPA actions to the Appellants who had to prove the Port did not act correctly, this Court's discriminatory, unlawfully narrow and completely erroneous interpretations of law on "standing" claiming that the law only allows an "adjacent Landed Gentry" or their attorney who

have "paid" their "Pole Tax" have standing to bring suit in this case in such cases, this Court has used as one this Court's "prior restraints" barring the CoAppellants' due process rights for redress of greivances in this case, which uses case law, et seq, et al. (Id.).

CONCLUSION

For the reasons noted herein and in the accompaning Motion for Reconsideration, et al, this Court must grant reconsideration of these erroneous bifurcation and standing rulings made in this Unpublished Decision against the CoAppellants, expecaiilly those against Mr. Dierker, overruling those bifurcation and standing rulings to grant CoAppellants' appeal to remand this case back to the Superior Court, with instructions to follow the requirements of the laws controlling such erroneous actions of these Courts which are erroneous, unlawful and go so far as violate judicial discretion, obstruct justice, and abuse their judicial power to harm and harass such weak aged, poor, disabled, and/or unrepresented parties like they have done to Mr. Dierker here, without any legal authority under the laws of this state to obstruct justice in this way in any case.

I certify the foregoing to be true and correct to the best of my knowledge, beliefs and/or abilities, under penalty of perjury of the laws of the State of Washington and the United States of America, this 25th day of August, 2014 in Olympia, Washington.

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

IN THE WASHINGTON STATE COURT OF APPEALS

DIVISION II

ARTHUR WEST and JERRY DIERKER,	)	No. 43876-3-II
	)	
Appellants,	)	
	)	MOTION TO MODIFY THE DEC. 18,
v.	)	2013 COMMISSIONER'S RULING
	)	PURSUANT TO RAP 17.7. AND
	)	MOTION FOR CR11 SANCTIONS AND
PORT OF OLYMPIA, et al,	)	TERMS AND COSTS AGAINST PORT
	)	RESPONDENTS' ATTORNEY
Respondents.	)	

I. IDENTITY OF MOVING PARTY

Appellant Jerry Dierker, the moving party, requests that this Court grant this Motion to Modify the Dec. 18, 2013 Commissioner's Ruling in this matter granting the Dec. 3, 2013 Respondent Port of Olympia, which "censors" Mr. Dierker's Reply Brief by removing his attached Supplemental Legal Authority and all citations to it, as follows.

II. STATEMENT OF RELIEF SOUGHT,

Appellant Jerry Dierker, the moving party, requests that this Court grant this Motion to Modify the Dec. 18, 2013 Commissioner's Ruling in this matter and should prevent the the Clerks Office from "censoring" Mr. Dierker's Reply Brief by removing his attached Supplemental Legal Authority and all citations to it.

Further, in the event that this Court grants the above noted Motion to Modify the Dec. 18, 2013 Commissioner's Ruling in this matter, Appellant Jerry Dierker, the moving party, also requests that this Court grant him CR 11 sanctions, terms and costs for making this Motion to Modify and for making the prior Response to the Port's untimely and improper Motion granted by the Dec. 18, 2013 Commissioner's Ruling in this matter.

III. FACTS RELEVANT TO THIS MOTION

The Dec. 18, 2013 Commissioner's Ruling in this matter, incorporated by reference

hereinto this pleading, granted the Dec. 3, 2013 Motion of Respondent Port of Olympia (supra), incorporated by reference hereinto this pleading, that moved the Court to accept an untimely and unauthorized Motion to allow the Port to submit an incorporated and untimely Motion to Strike "prior to oral argument" portions of Appellant Jerry Dierker's Reply Brief, his attached Supplemental Legal Authority and all citations made in his Reply Brief to his attached Supplemental Legal Authority. (Id.; see also Jerry Dierker's Reply Brief and its attached Supplemental Legal Authority written July 9, 2013 by Port Attorney Carolyn Lake, incorporated by reference hereinto this pleading; and see also Jerry Dierker's Dec. 3, 2013 Response to the Port's Dec. 3, 2013 Motion to Strike, et al,, incorporated by reference hereinto this pleading).

The Dec. 18, 2013 Commissioner's "notation" Ruling in this matter does not cite to or fails to provide any legal authority for the Commissioner's "waiver" of the Rules of Appellate Procedure on the "time duration" for filing and considering such a Dec. 3, 2013 Motion to Strike **filed 51 days after** Mr. Dierker filed his Oct. 14, 2013 Reply Brief with attached "Appendix" containing this Supplemental Legal Authority and filed his Oct. 14, 2013 Motion for Leave to File this "overlength" Reply Brief containing this attached "Appendix".

This is a problem since this same Commissioner reviewed Mr. Dierker's Oct. 14, 2013 Reply Brief with attached "Appendix" containing this Supplemental Legal Authority when this same Commissioner considered and granted Oct. 14, 2013 Motion for Leave to File this "overlength" Reply Brief containing this attached "Appendix" in the Nov. 5, 2013 Commissioner's Ruling granting Mr. Dierker's Motion and stating in part that "(t)he brief is accepted for filing", and especially since the Port never timely filed a Motion to Modify this Nov. 5, 2013 Commissioner's Ruling granting Mr. Dierker's Motion for Leave to File this "overlength" Reply Brief containing this attached "Appendix" which stated in part that "(t)he brief is accepted for filing" which contained this attached "Appendix" and its Supplemental Legal Authority, as the record in this case shows. (Id.; see also Mr. Dierker's Dec. 3, 2013 Response to the Dec. 3, 2013 Motion of Respondent Port of Olympia).

Further, Mr. Dierker's Oct. 14, 2013 Motion for Leave to File this "overlength" Reply Brief containing this attached "Appendix" with its Supplemental Legal Authority that was filed pursuant to RAP 10.4(2)(c), and the Port's untimely Motion to Strike **and** the Commissioner's Dec. 18, 2013 Ruling does not even consider the provisions of RAP 10.4(2)(c) which allow filing

of such an attached "Appendix" with its Supplemental Legal Authority. (Id.).

There was no Port Response timely or untimely filed with this Court of Appeals, answering, denying, arguing against, or otherwise contesting the allegations and claims made in Mr. Dierker's Oct. 14, 2013 Motion for Leave to File this "overlength" Reply Brief containing this attached "Appendix" with its Supplemental Legal Authority, and thereby, pursuant to CR 8(d), et seq., the Port has again "waived" their rights to make such "responsive" pleadings.

Further, the Commissioner's November 5, 2013 Ruling granting Mr. Dierker's Oct. 14, 2013 Motion for Leave to File this "overlength" Reply Brief containing this attached "Appendix" with its Supplemental Legal Authority filed pursuant to RAP 10.4(2)(c), would effectively even meet the legal requirements of the second sentence of RAP 10.3(a)(8) on the filing of this Supplemental Legal Authority as a "new" supplemental factual document which was not contained in the Superior Court record reviewed in this case, especially since it was written on July 9, 2013 **almost a year after the Superior Court's July, 2012 final dismissal and the Superior Court's final September, 2012 order on reconsideration where made, so that this new July 2013 document written by the Port's attorney for another case could not reasonably been presented by Mr. Dierker to the Superior Court before July or September, 2012.**

Further, there was no Port Motion to Modify timely or untimely filed with this Court of Appeals for modifying the Commissioner's November 5, 2013 Ruling granting Mr. Dierker's Oct. 14, 2013 Motion for Leave to File this "overlength" Reply Brief containing this attached "Appendix" with its Supplemental Legal Authority, and thereby, pursuant to CR 8(d), et seq., the Port has again "waived" their rights to make such "responsive" pleading as such a Motion to Modify could be.

Consequently, this Port claim concerning this this Supplemental Legal Authority here and the Commissioner's following of that claim to grant the Port's Dec. 3, 2013 Motion to Strike here after the Nov. 5, 2013 Commissioner's Ruling previous granting of Mr. Dierker's Oct. 14, 203 Motion noted above, which was done **without the Port being required to <u>timely</u> file a Motion to Modify that Nov. 5, 2013 Commissioner's Ruling previous granting of Mr. Dierker's Oct. 14, 203 Motion noted above**, are clearly ultra vires, unreasonable, unlawful, unconstitutional, unethical, arbitrary and capricious, and the Commissioner lacks any legal or subject matter jurisdiction to consider or grant such an untimely and improper motion.

Further, since Mr. Dierker's Oct. 14, 203 Motion noted above and the Nov. 5, 2013 Commissioner's Ruling previous granting of Mr. Dierker's Oct. 14, 203 Motion noted above, effectively even meets the legal requirements of the second sentence of RAP 10.3(a)(8) on the filing of this Supplemental Legal Authority as a "new" supplemental factual document which was not contained in the Superior Court record reviewed in this case, **and** since this supplemental legal authority document was written July 9, 2013 by the Port's attorney during the "briefing" time of this Appeal and at the same time or just prior to when the Port's attorney wrote her Response Brief in this Appeal case, this Court of Appeals can consider the "factual" value of the Port attorney's July 9, 2013 supplemental legal authority document especially for "distinguishing" the Port's claims made in this case and in the Port's Response Brief in this Appeal, which Mr. Dierker is legally allowed to use for supporting Mr. Dierker claims that the Port's attorney knew she was illegally falsifying the Port's Administrative Record in this case and violating the State Environmental Policy Act and other laws complained of in this case, by the Port attorney's illegal removal of the "Terms and Conditions of Acceptance" by Weyerhaeuser of the Port's Lease of this Port property and publically-paid-for construction of these Port facilities, et seq., required by this Lease's missing "Terms and Conditions of Acceptance", especially when these missing "Terms and Conditions of Acceptance" included the "incorporated" Environmental Site Assessments, Wetlands Reports, and many other documents removed from the Port Lease to Weyerhaeuser of this property which is in the Port's Administrative Record in this case. (Id.; see also Mr. Dierker's prior appeal pleadings including Motions, et seq., requesting that the Court of Appeals allow correction and/or supplementation of the Port's falsified and incomplete Port Administrative Record improperly filed in this case, especially when, in any case, Judge Sam Meyer of the Thurston County Superior Court making the final order of dismissal of this case dismissed directly all of the PRA, SEPA and all other claims made in this case without having even the Port's falsified and incomplete Port Administrative Record available to him since it was not on file in this case during the entire time he had the case, since the Port's falsified and incomplete Port Administrative Record had been "mistakenly" and improperly removed from the "Case file" of the Thurston County Superior Court Clerk's Office for this case and improperly sent back to the Port's Attorney in mid-2009, and was not "refiled" back into the "Case file" of the Thurston County Superior Court Clerk's Office for this case until January 21, 2013,

Consequently, since Judge Sam Meyer of the Thurston County Superior Court making the final order of dismissal of this case dismissed directly all of the PRA, SEPA and all other claims made in this case without having even the Port's falsified and incomplete Port Administrative Record on this matter available to him due to the failure of the Port's attorney to re-file the Port's falsified and incomplete Port Administrative Record on this matter, it is disingenuous, unethical, and improper for the Port's attorney to now state that Mr. Dierker should have presented this "newly made" July 9, 2013 document to Judge Sam Meyer before he dismissed this case in July-September, 2012, besides being impossible, since it requires Mr. Dierker to "time travel" into the past just after he "discovered" this July 9, 2013 document, and then afterwards requires Mr. Dierker to "time travel" into what is then "the future", "now", to bring forth and cite to this July 9, 2013 document written by the Port's attorney. (See attached July 9, 2013 document).

Clearly, this Commissioner's untimely and improper acceptance, consideration and granting of the Port's Dec. 3, 2013 Motion to Strike and censor Mr. Dierker's attached Supplemental Legal Authority and all citations made in his Reply Brief to this attached Supplemental Legal Authority, filed 51 days after Mr. Dierker filed his Reply Brief and Appendix **and filed 28 days after the Nov. 5, 2013 Commissioner's Ruling accepting** Mr. Dierker's filed his Reply Brief and Appendix **without any Motion to Modify**. (Id.; see also Jerry Dierker's Dec. 3, 2013 Response to the Dec. 3, 2013 Motion of Respondent Port of Olympia).

Further, the Port's Motion was based upon the false allegation that there was 'oral argument' scheduled for this Appeal case, when **no 'oral argument"** has been asked for in this case by any party, and **no "oral argument"** has been scheduled for this Appeal by this Court. (Id., see Court Record inn this case; and see Jerry Dierker's Dec. 3, 2013 Response to the Port's Dec. 3, 2013 Motion to Strike, et al).

Further, the Port's argument and legal authorities cited to support the Port's Dec. 3, 2013 Motion to Strike, et al, only argues cites to cases concerning "new supplemental factual evidence" and the Port's Dec. 3, 2013 Motion to Strike **did not make any argument or citations to any legal authority, case law or court rule for striking an attached "supplemental legal authority"** which would allow the Port's untimely Motion to Strike, et al., to be considered by this Court of Appeals, and thereby, the Port's Dec. 3, 2013 Motion to Strike, et al,

The Port's Dec. 3, 2013 Motion to Strike, et al, even absurdly claims that this Supplemental

Legal Authority written on July 9, 2013 by Port Attorney Carolyn Lake, is actually "new factual evidence" had to have been considered by the Superior Court before the Sept. 2012 final dismissal of this case prior to this Appeal. (Id.).

However, there is no Port argument or reasoning in this Port Motion which does or even could show how Mr. Dierker could ever have presented this Supplemental Legal Authority written on **July 9, 2013** by Port Attorney Carolyn Lake to the Superior Court before the Superior Court's Sept., 2012 final dismissal of this case prior to this Appeal. (Id.).

Further, the record in this case shows that Judge Sam Meyer of the Superior Court completed the "final dismissal" of this case in **Sept. 2012, without ever having available to him and without ever considering any of the Port's Administrative Record or the "In Camera Review Withheld Public Records in this case**, since they also were not "on file" in the Superior Court Clerks Office since about May 2009, and since the "In Camera Review Withheld Public Records in this case are still not "on file" in the Superior Court or this Court of Appeals, though this Court is supposed to conduct a "de novo review" of the Port's withholding of requested relevant public records on this case under both the PRA and SEPA as all parties Briefs in this case shows.

Further, there was no Port Reply timely or untimely filed with this Court of Appeals, answering, denying, arguing against, or otherwise contesting the allegations and claims made in Mr. Dierker's Dec. 3, 2013 Response to the Dec. 3, 2013 Motion of Respondent Port of Olympia, and thereby, pursuant to CR 8(d), et seq., the Port has again "waived" their rights to make such "responsive" pleadings.

Clearly, Commissioner Schmidt and this Court do not have any jurisdiction, authority or physical or scientific ability over "time travel into the past and back to then future present time of now, to make such an order based upon a claim that Mr. Dierker must "time travel" into the past to present this Supplemental Legal Authority written on **July 9, 2013** by Port Attorney Carolyn Lake to the Superior Court before the Sept. 2012 final dismissal of this case prior to this Appeal, as Mr. Dierker's Dec. 3, 2013 Response to the Port's Dec. 3, 2013 Motion to Strike, et al, noted. (Id.).

As Mr. Dierker's Reply Brief notes its attached Supplemental Legal Authority is directly on point for the legal issues argued in that Reply Brief concerning the Port's failure to provide a legally complete and unfalsified Port Administrative Record concerning the Port's actions

complained of in this case, and shows this Supplemental Legal Authority attached to a cited to in his Reply Brief is directly on point for the legal issues argued in that Reply Brief concerning the Port's failure to provide all requested "public records" concerning this Port lease and the actions leading from it, which is the evidence necessary for this Court's "de novo" review of the issues of law in this Public Records Act and SEPA, et al, case and which was also necessary for several other cases on tis same project, some of which have already been decided by this Court **without having this key necessary evidence "silently withheld" from the Appellants, agencies with jurisdiction, and this and other Courts by the Port's and/or their attorneys' falsification of the Administrative Records illegally filed in this case and those other related cases.** (Id.).

However, simply because that attached Supplemental Legal Authority was directly on point for these legal arguments, and since its was a legal "Response" written July 9, 2013 by the Port's own Attorney during her "briefing" for this Appeal and written just prior to or during the same time that Port's Attorney was writing the Port's Response Brief in this Appeal. (See Mr. Dierker Dec. 12, 2013 Response to the Port's Motion to Strike, et al.).

Further, despite the fact that no 'oral argument" has been asked for in this case by any party and no "oral argument" has been scheduled for this Appeal by this Court, and this Court should prevent this prejudicial and invidiously discriminatory ruling, by which the Clerk's office would be required to "censor" Mr. Dierker's Reply Brief by removing his attached Supplemental Legal Authority and all citations to it, as part of a continuing set of several concerted actions which have repeatedly "censored" Mr. Dierker's Opening and Response Briefs in this case unequally and unfairly, merely to aid the Port Respondents and their attorney in this case to "fraudulent conceal" the Port Respondents' and/or their attorney's unlawful, unethical and illegal actions to continue to conceal the Weyerhaeuser's Terms of Acceptance of the Port's Lease, et al, which the Port's Attorney had illegally removed from the falsified and incomplete Port Administrative Record underlying the case, and when even this incomplete Port Administrative Record was not on file in the Superior Court Clerk's Office during the time Judge Sam Meyer had consider the case and made the final dismissal of this case. (See Appeal Court's record of the prior actions of the Commissioners and/or Clerk's Office, repeatedly requiring disable pro se Appellant Dierker to rewrite and resubmit his Opening Brief and Reply Brief each several times, which appears to

unequally and unfairly harassed and invidiously discriminated against him and his equal protection of law and due process rights to make such appeal pleadings here).

Consequently, this Dec. 18, 2013 Commissioners ruling improperly, unlawfully and unconstitutionally grants the Port's attorneys "special privileges, franchises, or immunities" which does not equally belong to all citizens or corporations and does not act equally on the due process rights of all citizens or corporations of this State, and is this Court's prohibited and unconstitutional "taking" of Mr. Dierker's vested rights to such due process of law, as noted herein. (See Adams v. Thurston County, 70 Wn. App. 471, at 479, 855 P.2d 284 (1993); Long v. Chiropractic Society, 93 Wn.2d 757, 761–762, 613 P.2d 124 (1980); Yick Wo v. Hopkins, 6 S.Ct. 1064 (1886); see also "vested rights" in Black's Law Dictionary 5th Edition, at page 1402; City of Cleburne v. Cleburne Living Center, 105 S.Ct. 3249, 3254, 87 L.Ed.2d 313 (1985); Pollard v. Cockrell, 587 P.2d 1002, 1112–1113 (5th Cir. 1978); Oriental Health Spa v. City of Fort Wayne, 864 F.2d 486, 490 (7th Cir. 1988); State v. Zornes, 475 P. 2d. 109 at 119 (1970); Reanier v. Smith, 83 Wn. 2d. 342, 517 P. 2d. 949 (1974); the 1st, 4th, 5th, 6th, 8th, 9th, 10th 11th and 14th Amendment to the U.S. Constitution; and Article I Section 12 of the Washington State Constitution, et seq.).

"The guaranty of equal protection of the laws is a pledge of the protection of equal laws." (See Yick Wo v. Hopkins, 118 U.S. 356, at 369, 68 S. Ct. 1064, 30 L. Ed. 220). "When the law lays an unequal hand on those who have ... intrinsically the same quality ... it has made as invidious a discrimination as if it had selected a particular race or nationality for oppressive treatment." (See Yick Wo v. Hopkins, supra; State of Missouri Ex Rel Gaines v. Canada, 305 U.S. 337, 59 S. Ct. 232, 83 L. Ed. 208).

Violations of equal protection are reviewed under both rational basis and strict scrutiny standards of review to determine state interest in its scheme. (See Griess v. State of Colorado, 624 F. Supp. 450 (1985). The state must prove that the law furthers a "substantial interest of the state". (Id; see also In Re Mota, 114 Wn. 2d 465, 477, 788 P. 2d 538 (1990); Plyler v. Doe, 457 U.S. 202, 72 L. Ed. 2d 786, 102 S. Ct. 2382, reh'g denied, 458 U.S. 1131, 73 L. Ed. 2d 1401, 103 S. Ct. 14 (1982).

Clearly, under both rational basis and strict scrutiny standards of review to determine state interest in its scheme, the Commissioner's Dec. 18, 2013 Ruling here is clearly unequal and

improper, has no "substantial state interest" in invidiously discrimination in this unequal manner, and fails to meet any of the requirements for equal protection and due process of the law. (Id.).

This is especially true in light of the fact that this Commissioner's Sept. 10, 2013 Ruling unequally and prejudicially denied Mr. Dierker's timely filed and reasonable Motion to Strike improper, false, unsupported, and prejudicial parts of the Port's Response Brief, which even made claim that Mr. Dierker had **criminally** violated the law by making constitutional claims citing to controlling decisions of the State and U.S. Supreme Courts on his 1st Amendment due process rights to the Port's disclosure of all relevant evidence on this Port action for Appellants' to be able to "petition the government for redress of grievances" in these Courts that Appellants' made in this case and other related cases. (Id.; supra; see Mr. Dierker's timely filed and reasonable Motion to Strike improper, false, unsupported, and prejudicial parts of the Port's Response Brief; Norway Hill Pres. & Prot. Ass'n v. King County Council, 87 Wn.2d 267, at 274-275, 552 P.2d 674 (1976); Fritz v. Gorton, 83 Wn.2d 275 (1974); see also administrative record requirements for judicial review in Weyerhaeuser v. Pierce County, 124 Wn. 2d 26, at 35-38 (1994); Marriage of Wolfe, 99 Wn. 2d 531, at 536 663 P. 2d 469 (1983); PCCE, Inc. v. United States, 159 F. 3d 425, 427 (9th Cir. 1998); Physicians Insurance Exchange v. Fisons Corporation, 122 Wn. 2d 299, 858 P.2d 1054 (1993); Doctrine of Fraudulent Concealment; Discovery Rule Doctrine).

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

Appellants have a constitutional due process right to be granted discovery of and to submit and/or correct relevant evidence and information concerning this case, which was denied by the Commissioner's Rulings and denied by Port's withholding of relevant evidence from Appellants and the Port's noted falsification of the Port's Administrative Record, et seq., and such nondisclosure of relevant evidence constitutes bad faith and is sanctionable under CR 11, etc. (Draper v. Washington, 372 U.S. 487, 83 S. Ct. 774 (1963); Griffin v. Illinois, 351 U.S. 12, 76 S. Ct. 585, 100 L. Ed. 891 (1957); Physicians Insurance Exchange v. Fison Corp., 122 Wn.2d 299, 338–356; 858 P.2d 1054 (1993).

A court should also consider relevant discoverable "Evidence of judicial notice" which is

composed of facts capable of immediate and accurate demonstration by resort to easily accessible sources of indisputable accuracy and verifiable certainty, since the Court can resort to "... any source of information that is generally considered accurate and reliable...". (See Spokane Arcades v. Eikenberry, 544 F. Supp. 1034 (1982), note 11, referring to State ex rel. Humiston v. Meyers, 61 Wn. 2d 772 at 779, (1963); see also Tyler Pipe Industries v. Dept. of Revenue, 96 Wn. 2d 785 at 796 (1982). The additional records, et al., attached to Mr. Dierker's Oct. 12, 2013 Replay Brief and those attached to his June 3, 2013 Opening Brief (besides his earlier relevant pleadings) are clearly evidence of judicial notice relevant to this case, which this Court must consider.

As previously noted, a Court or other reviewing body must decide if a governmental official's, agents, agency's, or organization's interpretation of a law or regulation conflicts with other general laws. (Supra; see e.g.; the Washington State Constitution's Article XI Section 11, et seq.; Adams v. Thurston County, 70 Wn. App. 471, at 479, et seq., 855 P.2d 284 (1993), et seq.). This is prevent by the Commissioner's Ruling here.

Clearly, this Commissioner has not acted legally, equally, impartially or fairly in this matter to discriminate against Mr. Dierker simply because he is a disabled person who is not an "attorney", and is not part of the same local Pierce County "Bar Association" and State "Bar Association", which this Commissioner **and** the Port's attorneys are members of. (Id., supra; see also Tennessee v. Lane, 124 S, Ct. 1978 (2004); ADA Title 42 USC § 12101, 12131, 12132-12165, et seq., including but not limited to § 12112 Discrimination, § 12132 Discrimination in Public Services, § 12202 No State Immunity, et seq.; see also the Washington State's Blind, Handicapped, and Disabled Persons --"White Cane Law" RCW 70.84 et seq.;

Further, since Mr. Dierker is a known disabled person who has repeatedly made requests to this Court of Appeals for "reasonable accommodations" for any failures of him to properly construct pleadings in this Appeal matter, and since this Court of Appeals has repeatedly unequally and unfairly harassed and invidiously discriminated against him and his equal protection of law and due process rights to make such appeal pleadings here without ever stating that it has granted him these "reasonable accommodations" for any failures of him to properly construct pleadings in this Appeal matter, this action again violates the U.S. Americans with Disabilities Act (ADA) Title 42 USC § 12101, 12131, 12132, 12133, et seq.; the Washington State's Blind, Handicapped, and Disabled Persons --"White Cane Law" RCW 70.84 et seq.; U.S. Civil Rights Act Title 42 USC §

1983, 1985, 1988; the U.S. Criminal Civil Rights Act Title 18 USC § 241 & 242; and violates the Commissioner's oath of office or terms of state employment, et seq. (See Adams, et seq., supra; see Tennessee v. Lane, 124 S, Ct. 1978 (2004); see Yick Wo v. Hopkins, supra; Kucinich v. Santa Clara, supra; et seq.)

Further, "A court may not abdicate its responsibilities under the Constitution ...". (See In Re Grand Jury Investigation, 600 F. 2d 420 (1979). "It is emphatically the province and duty of the Judicial Department to say what law is." (U.S. v. Richard Milhouse Nixon, 94 S. Ct. 3090, at 3093 Headnote 31 (1974). Even though the Port Respondents here are governmental officials does not protect them: no person in the government is completely immune from court action. "A proper regard for separation of powers does not require that courts meekly avert their eyes from presidential excesses while invoking a sterile view of the three branches of government entirely insulated from each other; such an abdication of the judicial role would sap the vitality of the constitutional rights whose protection is entrusted to the judiciary." (See Halperin v. Henry Kissinger, 606 F. 2d 1192(C. A. D. C., 1979), 100 S. Ct. 2915 (1980), 101 S. Ct. 3132 (1981), 102 S. Ct. 892 (1982).

These withheld records concern Appellants' claims made in this case and involve violations of Plaintiffs' rights to equal protection, due process, and liberty interests containing legal questions for these members of the public to try to get the Courts to control the excesses of government here. (Id.; see Kuzinich v. County of Santa Clara, 689 F. 2d 1345 (9th Cir. 1982); referring to Yick Wo v. Hopkins, 118 US 356, 6 S. Ct. 1064, 30 l. Ed. 220 (1886); Halperin v. Kissinger, 606 F. 2d 1192 (DC Cir. 1979); Hill v. Tennessee Valley Authority, 549 F. 2d 1064 (1977), affirmed 98 S. Ct. 2279 (1978); Haygood v. Younger, 769 F. 2d 1350 (9th Cir. 1985).

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

"The language and history of the Ninth Amendment reveal that the Framers of the Constitution believed that there are additional fundamental rights, protected from governmental infringement, which exist alongside those fundamental rights specifically mentioned in the first eight constitutional amendments." (Griswold v. Connecticut, supra). "Without those peripheral

rights the specific rights would be less secure." (Griswold v. Connecticut, supra; see also Pierce v. Society of Sisters, 268 U.S. 510, 69 L.Ed. 1070, 45 S. Ct. 571, 39 A.L.R. 468; Meyer v. Nebraska, 262 U.S. 390, 67 L. Ed. 1042, 43 S. Ct. 625, 29 A.L.R. 1446). "The foregoing cases suggest that specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance." (Griswold v. Connecticut, supra).

The problem here has not been any shortcoming in the laws, but simply a refusal of the Port, the Court, or its Clerks or other administrative agents or agencies to comply with them. This invokes a public interest of the highest order: the interest in having government officials act in accordance with law. (Olmstead v. United States, 277 U.S. 438, 485 (1928) (Brandeis, J., dissenting).

Clearly, with just the withheld Port public records in this case, the Port's incomplete and improper Administrative Record filed and refiled in this case, and the missing "In camera review" records (CP 2648-2657) returned to the Port, or lost or destroyed by the Superior Court, it would not be equitable to hear this appeal without this additional relevant evidence needed for this Court's review of this case to give Appellants a meaningful opportunity to be heard on the merits of their claims based upon a review of all discoverable relevant evidence that would violate Appellants' fundamental due process rights to have such discoverable evidence considered by this Port agency for its complained of actions taken in this case. (Fritz, supra; Long, supra; Kuzinich, supra; Yick Wo, supra; Lane, quoting Boddie, supra; et seq.; see also Mr. Dierker's June 20, 2013 Motion for Leave to File and Overlength Opening Brief with appendix for Supplementation of the Record, et al).

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

State of Florida, 711 S. 2d 11246, 1248 (Fla. 4th DCA 1998).

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

Since Mr. Dierker is acting "pro se" in this matter, Commissioner Schmidt should have "liberally construed" the pleadings of this pro se Appellant in this case, because under the law and under various Courts' decisions on such matters controlling such fundamental due process rights, these pro se litigants' pleadings "will be held to less stringent standards than formal pleadings drafted by lawyers", and even after a motion to dismiss or strike is considered such pro se Appellants should be given "an opportunity to amend their pleadings to overcome any deficiency unless 'it clearly appears ... that the deficiency cannot be overcome by amendment'", when this Commissioners ruling merely requires the Clerk to "censor" his Reply Brief, by the Clerk's removing of the "attachment and citations to it", and does not give Mr. Dierker a chance to "amend" his Reply Brief that was both timely filed and accepted by Commissioner Schmidt's Nov. 5, 2013 Ruling. (See Pena v. Gardner, 976 F. 2d 469 (9th Cir. 1992), at 471, 472, and 474; Gillespie v. Civiletti, supra, referring to Stanger v. City of Santa Cruz, slip opinion 2470 (March 24, 1980, 9th Cir.); Potter v. McCall, 433 F. 2d 1087, 1088 (9th Cir. 1970); see also Hutton v. Heggie, 454 F. Supp. 870 at 875 (1978), referring to Haines v. Kerner, 404 U.S. 519, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972); Cohen v. Genbro Hotel Co., 259 F. 2d 78 (9th Cir. 1958); Franklin v. State of

Oregon, State Welfare Division, 662 F. 2d 1337 (9th Cir. 1980); Balistreri v. Pacifica Police Dept. 901 F. 2d 696 (9th Cir. 1988); see also Ninth Circuit Court of Appeals Circuit Rule 32-5, et seq.).

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

The "attachment" to Mr. Dierker's Reply Brief also shows the Port's attorney knowlingly violated the Rules of Professional Conduct (RPC) 1.2, 1.3, 1.9, 3.1, 3.2, 3.3(a)(1, 2, 3, & 4), 3.4, 4.3, & 8.4, by making legal claims in this case conflicting with those in her July 9, 2013 "attachment".

Consequently, Commissioner Schmidt's Ruling here was unethical, unfair, unequal, improper, unlawful, unconstitutional, prejudicial, clearly erroneous, arbitrary and capricious, and directly violates Mr. Dierker due process rights and invidiously discriminates against Mr. Dierker as noted herein and in the cited and/or incorporated pleadings noted herein.

CONCLUSION

For the reasons noted herein, et al., this Motion to Modify the Dec. 18, 2013 Commissioner's Ruling should be granted to prevent the the Clerks Office from "censoring" Mr. Dierker's Reply Brief by removing his attached Supplemental Legal Authority and all citations to it, and this Court should grant him CR 11 sanctions, terms and costs for making this Motion to Modify and for making the prior Response to the Port's untimely and improper Motion improperly granted by the Dec. 18, 2013 Commissioner's Ruling in this matter.

I certify the foregoing to be true and correct to the best of my knowledge, beliefs and/or abilities, under penalty of perjury of the laws of the State of Washington and the United States of America, this 12th day of December, 2013 in Olympia, Washington.

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

GOODSTEIN
LAW GROUP
PLLC
501 S G St
Tacoma WA 98405
Fax: (253) 779-4411
Tel: (253) 779-4000

Carolyn A. Lake
Attorney At Law
clake@goodsteinlaw.com

July 9, 2013

Hand Delivered
Kittitas County Board of County Commissioners
Kittitas County Commissioners Office
205 West Fifth Street Suite #108
Ellensburg, WA 98926
509-962-7508 Phone
509-962-7679 Fax

Re: Response in Opposition to Notice of Intent for Public Lease to PacifiClean

Dear County Commissioners:

This law firm represents County Residents Against PacifiClean, a group of concerned citizens who reside, recreate and make their livings in Kittitas County and who will be adversely affected by the proposed compost facility at the Ryegrass site. We submit this letter in opposition to the Board's Notice of Intent to Lease. This Letter in Opposition is timely submitted based on applicable state law and County code.

The individual members of County Residents Against PacifiClean will be testifying as to the myriad of environmental, zoning and compliance issues associated with this proposed lease. This Letter in opposition supplements the Residents' testimony and focuses on the numerous procedural and legal deficiencies with the proposed lease.

The Board should decline to issue its intended Lease to PacfiClean for any one of the following reasons.

- The Board's proposed Lease with PacifiClean fails to comply with state law and County Code for leasing of public lands.

- When a governmental entity carries out an act unauthorized by - or contrary to - statute, the act is invalid as *ultra vires*, or exceeding the rules. No later ratification can validate an *ultra vires* action.

- The Board's purported public hearing is fatally flawed, as the public was given no advance notice of the Lease Terms and is therefore denied the opportunity to meaningfully comment.

Carolyn Lake
7-9-13

- The Board's consideration of the proposed Lease with PacifiClean is woefully premature as the County has failed to undertake environmental review of the lease, as is required before action is taken.

- SEPA requires review at earliest stage when project impacts can be determined, which was not done here.

- The County's environmental review of the lease necessarily must take into account the property use, which has not been done here.

- The County's lack of independence jeopardizes both lease and environmental review validity.

Proceeding with action to lease to Pacificlean under these circumstances and in the face of these procedural defects will render any ultimate final lease action irregular, jurisdictionally deficient, ultra vires and void. We provide the below analysis in support of our opposition.

1. The Board's Proposed Lease With Pacificlean Fails To Comply With State Law And County Code For Leasing Of Public Lands.

A. County Fails to Follow State Law Statutory Lease Process – RCW Chapter 36.34

Washington state law sets forth certain mandatory processes as condition precedents to leasing of county lands. See Chapter 36.34 RCW. Here, there is no evidence that Kittitas County complied with those mandatory steps.

First, the Applicant is to file a written application and submit a deposit to the county board of commissioners. RCW 36.34.150.

Next, if County wishes to proceed with lease consideration, a public hearing must be held. Presumably, tonight's hearing is intended to fulfill that requirement; however there is no evidence the County complied with the proper steps for notice. State law requires the County must file three consecutive weekly newspaper advertisements describing:

- The property
- Improvements to the property

- A day and time for the county commissioners to meet at the county courthouse to lease the property, within one week of the last newspaper notice

RCW 36.34.160. During the notice period and at the lease meeting, interested parties can file written objections to which the County must consider and publish its response in the newspaper of record. RCW 36.34.170.

The state statutory process envisions that after proper public notice hearing and consideration of and response to objections, the County may lease the property within thirty days of the meeting. Here, however, the state notice processes have not been followed, including but not limited to, the County failed to publish information regarding the intended improvements to the property.

State law also sets forth restrictions on the length of the proposed lease:

- Lease can be for a term of ten years, or
- A term of thirty five years is permissible but only if for municipal purposes.

If the County intends to rely on a purported lease for "municipal purposes", then additional requirements are imposed, none of which were met here.

- Lessee must file "general plans" and specifications of buildings
- If improvements and uses are not realized, lease is forfeited
- Changes to general plan must be approved by county commission
- Every five year period after the first ten years, the lessee and county must renegotiate the rent.

See RCW 36.34.180. Last, any public lease must be awarded to the highest responsible bidder. RCW 36.34.190. There is no evidence here that the County followed any competitive process regarding this lease.

B. County Fails To Follow Its Own County Code Process – KCC Chapter 2.81

The County's own Code sets forth certain self imposed mandatory processes as condition precedents to leasing of county lands. See Chapter 2.81 Kittitas County Code (KCC).

The County has limited the term of its leases. Leases with term of ten years are permissible. Lease of a term of thirty five years are allowed only in limited circumstances under County Code:

- Only if a lease is "necessary to the support or expansion of an adjacent facility," and the County is leasing to an adjacent owner, may a lease terms be 35 years.
- Or unless in the "best public interest" and improvements to property equal the value of the property, then 35 years.

KCC 2.81.070.[i] Here the County has not provided the public with any evidence of the value of the improvements to property to determine whether the criteria above are met.

The County Code does allow that certain real property transactions are exempted from the above, if:

- Worthless
- Limited use parcel
- Unmarketable
- Public Purpose Lease with "bona fide nonprofit"
- Reference KCC 2.81.090

KCC 2.81.090.[ii] The exceptions listed in the County's code simply are not on point here.

Last, the County Code expressly provides that "All sales or leases of county property shall be made to the highest responsible bidder at public sale, except where different provisions are made in this chapter." KCC 2.81.060, "*General Disposition of Property by Sale or Lease*". [iii]

There is no evidence that any competitive process was undertaken as part of this lease. The County's proposed Lease process flatly fails to comply with its own code.

2. County Is Required To Follow Statutory Processes, Which it Failed to Do.

[A] governmental entity's powers are limited to those conferred in express terms or those necessarily implied. *In re Seattle*, 96 Wash.2d 616, 629, 638 P.2d 549 (1981). As the Court stated in *Hillis*: "[i]f the Legislature has not authorized the action in question, it is invalid no matter how necessary it might be. [Emphasis added.] *Chemical Bank v.*

WPPSS, 99 Wn.2d 772, 792, 666 P.2d 329, quoting *Hillis Homes, Inc. v. Snohomish Cy.*, 97 Wash.2d 804, 808, 650 P.2d 193 (1982).

"[W]here a person or board is charged by law with a specific duty and the means for its performance are appointed by law, there is no room for implied powers, and the means appointed must be followed..." [Emphasis in original.] *State ex. rel Eastvold v. Maybury*, 49 Wn.2d 533, 539, 304 P.2d 663 (1956).

3. County's Failure to Follow State / County Requirements Renders Any Lease Action Ultra Vires & Void.

When a governmental entity carries out an act unauthorized by - or contrary to - statute, the act is invalid as *ultra vires*, or exceeding the rules. No later ratification can validate an *ultra vires* action.

An ultra vires contract is one done either without authority or in violation of existing statutes. Dykstra v. Skagit County, 97 Wn. App. 670, 677, 985 P.2d 424 (1999), review denied, 140 Wn.2d 1016 (2000); *accord S. Tacoma Way, LLC v. State*, 169 Wash. 2d 118, 123, 233 P.3d 871, 874 (2010) ("Ultra vires acts are those performed with no legal authority and are characterized as void on the basis that no power to act existed, even where proper procedural requirements are followed.") Ultra vires acts cannot be validated by later ratification or events. *Id.*

The ultra vires doctrine may render unauthorized contracts by government entities void. *Noel v. Cole*, 98 Wn.2d 375, 378, 655 P.2d 245 (1982), superseded by statute on other grounds by Snohomish *County v. State*, 69 Wn.App. 655, 850 P.2d 546 (1993), *review denied*, 123 Wn.2d 1003 (1994). The rationale behind the ultra vires doctrine is 'the protection of those unsuspecting individuals whom the entity represents.' *Noel*, 98 Wn.2d at 378. A contract that is ultra vires is generally void and unenforceable. See *Noel*, 98 Wn.2d at 378.

Here, the County is foreclosed from entering into the proposed lease because the County failed to follow the necessary prerequisite steps as required by both state law and the County's own Code. Any purported lease would be void as ultra vires.

4. The Board's Purported Public Hearing Is Fatally Flawed, As The Public Was Given No Advance Notice Of The Lease Terms And Is Therefore Denied The Opportunity To Meaningfully Comment.

State law provides and requires procedures prerequisite to a lease of county property. The procedures include notice, timeframes, and enough information regarding the proposed lease so that the public may comment and submit written concerns. *See* RCW

§§ 36.34.160-190. The purpose of the notice required by this statute is to fairly and sufficiently apprise those who may be affected by the proposed action of the nature and character of the amendment so that they may intelligently prepare for the hearing. *Barrie v. Kitsap Cnty.*, 84 Wash. 2d 579, 584-85, 527 P.2d 1377 (1974). Here, the County failed to provide the substance of the mandatory notice required before a meeting on a proposed lease.

Although the County purports to hold a hearing on the "lease," and three purported "notices" were published, the information in the notice is inadequate. The notice cites only to the legal description, and no description of improvements. Further, public has not been given access to the Lease under consideration. A County Staff Report emerged yesterday at the request of a concerned citizen; however, distribution of the Staff Report has been limited, and provided less than 24 hours before the hearing. Further, only bare skeletal lease terms are revealed. As a result, the public has not been afforded any meaningful opportunity to comment on the lease proposal. This hearing does not comport with the state law requirement to have well informed public and Commission.

The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Mathews v. Eldridge,* 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976).

Washington courts have held that notice must apprise interested citizens of the nature and purpose of the hearing so they can participate effectively. *Responsible Urban Growth Grp. v. City of Kent*, 123 Wash. 2d 376, 386, 868 P.2d 861 (1994). The County failed to provide the public with terms of the proposed lease. The public has been denied advance notice of the proposed lease terms, and therefore denied the opportunity to meaningfully comment. The remedy for defective notice that even "conceivably" deprives the affected parties of the pending land use action of their opportunity to be heard is to declare the county action void. *Barrie v. Kitsap County,* 84 Wash. 2d at 585-86.

5. **The Board's Consideration Of The Proposed Lease With Pacificlean Is Woefully Premature As The County Has Failed To Undertake Environmental Review Of The Lease, As Is Required Before Action Is Taken.**

There has been no SEPA review of the proposed lease to PacifiClean as is required.

Agencies must make a threshold determination before taking any major action. RCW 43.21C.030(2)(c), .031. A threshold determination is the agency's decision whether to require preparation of an EIS. WAC 197-11-310. A threshold determination is required

for any nonexempt proposal which meets the SEPA definition of action. WAC 197-11-310.

The act of leasing requires environmental review unless it is categorically exempt. Leases may be categorically exempt only when "term of the lease will remain essentially the same as the existing use" which is not the case here. See WAC 197-11-800 as adopted by reference by the County in Article IX, KCC 15.04.240 (c), "The lease of real property when the use of the property for the term of the lease will remain essentially the same as the existing use, or when the use under the lease is otherwise exempted by this chapter."

Here, PacifiClean proposes to impose a use described as a composting facility. We understand that the prior use of the property was Limited purpose Landfill, which was permitted in 1996. The MSW Landfill was closed in 1998. The Landfill area is used for other purposes today. Since the property use will change under the Lease, the action of leasing here is not categorically exempt and SEPA review is required prior to County lease approval.

6. SEPA requires Review at Earliest Stage When Project Impacts can be Determined

Sound public policy requires the County to undergo SEPA prior to consideration of the lease. The environmental review process allows opportunity for public comment and scrutiny. Unless the full extent of environmental impacts is fully vetted, the opportunity for the public to meaningfully comment on the revised proposal is lost. This would frustrate the centerpiece purpose of SEPA.

The point of environmental review is ***not*** to evaluate agency decisions ***after*** they are made, but rather to provide environmental information to assist with making those decisions. *Norway Hill,* 87 Wash.2d at 279, 552 P.2d 674; *Sisley v. San Juan Cy.,* 89 Wash.2d 78, 86-87, 569 P.2d 712 (1977).

One of SEPA's purposes is to provide consideration of environmental factors at the earliest possible stage to allow decisions to be based on complete disclosure of environmental consequences. *Stempel v. Department of Water Resources,* 82 Wash.2d 109, 118, 508 P.2d 166 (1973); *Loveless v. Yantis,* 82 Wash.2d 754, 765-66, 513 P.2d 1023 (1973). Decision-making based on complete disclosure would be thwarted if the bulk of the revenant correct information is submitted after opportunity for comment has ended.

The County's proposed action on the Lease, without knowledge if its environmental consequences "may begin a process of government action which can "snowball" and

acquire virtually unstoppable administrative inertia". See *Rodgers, The Washington Environmental Policy Act,* 60 Wash. L. Rev. 33, 54 (1984) (the risk of postponing environmental review is "a dangerous incrementalism where the obligation to decide is postponed successively while project momentum builds").

"Even if adverse environmental effects are discovered later, the inertia generated by the initial government decisions (made without environmental impact statements) may carry the project forward regardless. When government decisions may have such snowballing effect, **decision makers need to be apprised of the environmental consequences before the project picks up momentum, not after."** *King County v. Washington State Boundary Review Bd. for King County, 122* Wn.2d 648, 860 P.2d 1024, (Wash. 1993) at 664.

7. Environmental Review of the Lease Necessarily Must Take into Account the Property Use

As a practical and legal matter, the environmental review of the Lease must take into account the Lease's intended use. For the MDNS to survive judicial scrutiny, the record must demonstrate that "environmental factors were adequately considered in a manner sufficient to establish prima facie compliance with SEPA," and that **the decision to issue a MDNS was based on information sufficient to evaluate the proposal's environmental impact.** *Pease Hill,* 62 Wash. App. at 810, 816 P.2d 37 (citing *Sisley,* 89 Wash.2d at 85, 569 P.2d 712; *Brown v. City of Tacoma,* 30 Wash. App. 762, 766, 637 P.2d 1005 (1981) as quoted in Anderson v. Pierce County, 86 Wn.App. 290, 936 P.2d 432, (Wash. App. Div. 2 1997) at 302 .

For the MDNS to survive judicial scrutiny, the record must demonstrate that "environmental factors were adequately considered in a manner sufficient to establish prima facie compliance with SEPA," and that **the decision to issue a MDNS was based on information sufficient to evaluate the proposal's environmental impact.** *Pease Hill,* 62 Wash. App. at 810, 816 P.2d 37 (citing *Sisley,* 89 Wash.2d at 85, 569 P.2d 712; *Brown v. City of Tacoma,* 30 Wash. App. 762, 766, 637 P.2d 1005 (1981) as quoted in Anderson v. Pierce County, 86 Wn.App. 290, 936 P.2d 432, (Wash. App. Div. 2 1997) at 302.

Environmental review is not required to address "every conceivably relevant issue," or impacts which are "remote and speculative". *Richland,* 100 Wash.2d at 868, 676 [920 P.2d 1212] P.2d 425; *Cheney,* 87 Wash.2d at 344, 552 P.2d 184; *Mentor,* 22 Wash. App. at 290, 588 P.2d 1226. However, the courts will uphold remand where the full impacts of a planned Project could not be adequately assessed due to lack of detail:

> In contrast, the bicycle trail at issue here was already in the planning stages. .... Here, the SEIS was justified based upon Gilbert Western's **failure to disclose the full effect of truck traffic on bicyclists and other trail users**, and the company's failure to discuss meaningfully the alternative of direct access ramps onto State Route 14. The Board did not err in ordering SEIS.

Kiewit Const. Group Inc. v. Clark County, 83 Wn.App. 133, 920 P.2d 1207 (Wash. App. Div. 2 1996) at 141.

The purpose of SEPA's early review requirement is to provide enough information about the Project to allow for meaningful review of its compliance with state and local regulations and for realistic examination of its environmental impacts. For an MDNS to survive judicial scrutiny, the record must demonstrate that environmental factors were considered in a manner sufficient to amount to show compliance with a procedural requirement for SEPA and that the decision to issue an MDNS was based upon information sufficient to evaluate the proposal's environmental impact. See *Wenatchee Sportsman's Association vs. Chelan County*, 141 Wa.2d 169, 4 P.3d 123, (WA 2000), citing *Norway Hill Preservation and Protection Association vs. King County Council*, 87 Wa.2d, 267, 274, 552 P.2d 674 (1976) and *Anderson vs. Pierce County*, 86 Wn.App 290, 302, 936 P.2d 432, *PeasHill Community Group vs. County of Spokane*, 62 Wn.App 800, 810, 816 P.2d 37 (1991).

> The portion of the SDP application relating to the community dock on Lot C fails to meet the minimum requirements of WAC 173-14-110. It contains no site plan of the **Project. As** a result, there is **no information indicating the site boundary and property dimensions or detailing the size, design or location of the dock on the site. Delineation** of the ordinary high water mark or **wetlands on the Project site is wholly lacking. The application contains insufficient detail about** the proposed use of the property, fails to address the full range of dock users and **does not specify parking for the site users.**
>
> The lack of information contained in the SDP application precluded Stevens County and this Board from adequately assessing the dock Project's compliance with the SMA, the draft SCSMP and **SEPA.**

Larson Beach Neighbors a Washington, Non-Profit Corporation and Jeanie Tausch Wagenman, Appellants, 1995 WL 879195, at 879195.

A reviewing Court's "role is to determine whether a proposed action's environmental effects are disclosed, discussed and substantiated by opinion and data." *Citizens Alliance To Protect Our Wetlands (CAPOW) v. City of Auburn*, 126 Wash.2d 356, 362,

894 P.2d 1300 (1995); *SWAP*, 66 Wash. App. at 442, 832 P.2d 503.

Here, the County is impermissibly considering a lease without first undertaking SEPA, and without consideration of the impacts of the intended use, and without the public's opportunity to meaningfully comment. The County should decline to entertain approval of the Lease until proper compliance with state law, County code and environmental review is undertaken.

8. County's Lack of Independence Jeopardizes Both Lease and Environmental Review Validity

A. County's Actions to Date Compromise Lease Consideration and Approval

Should the County Commissioners approve a lease to PacifiClean, that action would indicate they are pre-disposed to approve a subsequent CUP and any permits required. This advance "approval" runs afoul of the appearance of fairness doctrine, compromising the validity of the Board's actions.

The appearance of fairness doctrine was developed to preserve the highest public confidence in governmental processes that regulate land use. *Evergreen Sch. Dist. No. 114, Clark Cnty. v. Clark Cnty. Comm. on Sch. Dist. Org., Clark Cnty.*, 27 Wash. App. 826, 831, 621 P.2d 770, 774 (1980).

Application of the appearance of fairness doctrine in land use matters is statutory. *King County v. Central Puget Sound Growth Management Hearings Bd.*, 91 Wn.App. 1, 33, 951 P.2d 1151 (1998).

The appearance of fairness doctrine applies to the "quasi judicial actions of the local decision-making bodies as defined in this section." RCW 42.36.010. Quasi judicial actions determine the rights, duties and privileges of parties in a hearing or other contested proceeding. *Id.* Both the present lease action and the Conditional Use Permit process are quasi-judicial proceedings, to which the appearance of fairness doctrine applies.

B. SEPA Also Requires Independence.

The Board's prior actions endorsing the proposed use before the Seattle City Council and in the Board's contemplated "pre-permit" lease to the Applicant robs the County of independence required for valid environmental review.

In making a threshold determination, the SEPA responsible official must (1) review the

environmental checklist and **independently** evaluate the responses of the applicant, (2) determine if the proposal is likely to have a "probable significant adverse environmental impact", and (3) consider mitigation measures which the applicant will implement as part of the proposal. WAC 197-11-330(1). The criteria and procedures for determining whether a proposal is likely to have a significant adverse impact are specified in WAC 197-11-330.

Any subsequent County environmental determination may be rendered inadequate, based upon the perceived failure of the County SEPA Responsible Official to exercise independent review of the Project's probably adverse environmental impact.

9. Conclusion: Decline Action of the Lease.

We understand that the Commissioners stated at a recent BOCC meeting that the criteria they would use to decide action on the lease of the Ryegrass site to PacifiClean would be:

- Did this lease serve the interest of the Kittitas County?
- What was the resulting liability to the County?
- What was the benefit to the County, and
- What would the costs be to the County?

Here the County has failed to follow state and county law, meaning that any resulting lease approval would be ultra vires and void.

Further, the County is impermissibly considering a lease without first undertaking SEPA, and without consideration of the impacts of the intended use, and without the public's opportunity to meaningfully comment.

The County has compromised its required role as an independent evaluator of the Lease, any environmental review under SEPA and of the Conditional Use permit.

The Commission should find that:

- the interest of the County are **not** being served,
- the County surely would be subject to judicial challenge and the resulting costs due to the improper processes, and
- it is impossible to understand any benefits to and or liability of the County until meaningful and independent environmental review is undertaken of the lease's intended use.

For all the above reasons, the Commissioners should decline to take action on any proposed lease with PacifiClean.

Sincerely,

Carolyn A. Lake

Carolyn A .Lake
Legal Counsel for County Residents Against PacifiClean

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[i] **KCC 2.81.070 Real Property Leases - Length of Term and Other Conditions.**
The county may lease real property for a term of years and upon such terms and conditions as may be deemed in the best interests of the public and the county. No lease shall be for a longer term in any one instance than ten (10) years; PROVIDED, that when the board determines it to be in the best public interest, real property necessary to the support or expansion of an adjacent facility may be leased to the lessee of the adjacent facility for a term to expire simultaneously with the term of the lease of the adjacent facility, but not to exceed thirty-five (35) years; PROVIDED FURTHER, that when the board determines it to be in the best public interest, where the property to be leased is improved or is to be improved, and the value of the improvement is or will be at least equal to the value of the property to be leased, the county may lease such property for a term not to exceed thirty-five (35) years; PROVIDED FURTHER, that where the property to be leased is to be used for major airport, purposes, requiring extensive improvements, the county may lease such property for a term equal to the estimated useful life of the improvements, but not to exceed seventy-five (75) years. (Ord. 2009-04, 2009)

[ii] **2.81.090 Exempted Transactions Designated.**
The following transactions are exempted from the provisions of Sections 2.81.060 through 2.81.070:

1. **Worthless Property.** Where personal property is determined to be worthless, such property may be disposed of by the department involved in the most cost-efficient manner. The property may be donated to the public at large in the discretion of the department involved.
2. **Intergovernmental Transactions.** The board may sell or lease county property to another governmental agency by negotiation, upon such terms as may be agreed upon and for such consideration as may be deemed adequate by the board.
3. **Private Exchange.** The board may authorize the exchange of surplus county real property for privately owned real property, subject to the provisions of this subsection; PROVIDED, that the exchange of tax title lands shall be governed by Chapter 36.35 RCW. The value of the real property to be exchanged by the county and the value of the real property to be received by the county shall be determined by qualified independent appraiser(s), except that on-staff appraisers may be utilized where the property value does not exceed one hundred thousand dollars ($100,000). The board may approve the exchange and specify whether the difference in value, if any, shall be paid in cash at closing or be paid pursuant to an appropriate real estate contract or deed of trust.
4. **Trade-ins.**

a. The county may trade-in property belonging to the county when purchasing other property. If the county elects to trade-in property, it shall include in its call for bids on the property to be purchased a notice that the county has for sale or trade-in property of a specified type, description and quantity, which will be sold or traded in on the same day and hour that the bids on the property to be purchased are opened. Any bidder may include in its offer to sell an offer to accept the designated county property in trade by setting forth in the bid the amount of such allowance.
b. In determining the lowest and best bid, the county shall consider the net cost to the county after trade-in allowances have been deducted. The county may accept the bid of any bidder without trade-in of the county property, but may not require any such bidder to purchase the county property without awarding the bidder the purchase contract. The county shall consider offers in relation to the trade-in allowances offered to determine the next best sale and purchase combination for the county.

5. **Emergency.** In the event of an emergency, when the interest or property of the county would suffer material injury or damage by disposition in accord with the foregoing provisions, the board, upon declaring the existence of such an emergency, may authorize the sale or lease of such property upon such terms and procedures as to the board may appear to be in the public interest.
6. **Unmarketable Parcels.** A parcel of surplus real property, which in and of itself would have little utilitarian value because of its size, shape or other factors, may be offered and sold to owners of adjoining properties by private negotiation.
7. **Limited-Use Parcels** - Covenant Restrictions. Where restrictive covenants, dedication limitations, grant conditions or other legally enforceable restraints, including such restraints placed upon property by the county or one of its cities or towns therein, limit use of surplus property to a specific public purpose, such property may be conveyed by negotiation upon such terms and conditions as are consistent with such restraint and based upon an opinion of value from a member of the Institute of Real Estate Appraisers or a professional appraiser having similar ethical and professional standards.
8. Limited-Use Parcels - **Restrictive Characteristics. Property determined to be surplus to the immediate needs of the county, but which because of its location, configuration or other characteristic is especially and uniquely suitable for a particular quasi-public use requiring special legal, financial or technical qualifications, all as determined by the board, may be sold or leased through a public request for proposal process.**
9. **Public Purpose Leases.** The board may enter into rental agreements for the use of county property with bona fide nonprofit organizations wherein the organization is to make improvements or provide services to further a recognized county purpose. The agreement may be for less than fair market rental so long as the general public is not unreasonably restricted from access to the improvements or services so provided.
10. **Short-Term Rentals.** A department, upon approval of that department's lead official, may permit use of county facilities by a third party for up to seventy-two (72) hours upon such terms as may be mutually agreed upon; PROVIDED, however, that such use furthers a county purpose.
11. **Established Rental Value.** Where the fair market rental value of county real property has been established by the board, or through delegation to a county employee qualified to make such determination, to be less than One Thousand Five Hundred Dollars ($1,500) per month; or where the fair market value has been established in accord with accepted appraisal methods and standards by a member of the American Institute of Real Estate Appraisers or a professional appraiser having similar ethical and professional qualifications, to be One

Thousand Five Hundred dollars ($1,500) or more per month, such property may be leased by private negotiation at no less than the value so established.

12. **Watchman's Property.** Leases that include watchman's responsibility for adjoining county-owned property may be leased by private negotiation.
13. **Real Estate Broker Services.** Notwithstanding any other provisions set forth in this chapter, if in the judgment of the board of county commissioners the sale of real property of the county would be facilitated and a greater value realized through the use of the services of licensed real estate brokers or by such other method as is determined to most likely result in the receipt of full value for such property, a contract for such services may be negotiated and concluded; PROVIDED, that a minimum sales price for such property shall be set by a member of the American Institute of Real Estate Appraisers or professional appraiser having similar ethics and professional qualifications.
14. **Relocation Sales.** The board may authorize the direct sale by private negotiation of county-owned residences to a person being relocated by a county project; provided, that the sale price for such property shall not be less than its appraised value as determined by a member of the Institute of Real Estate Appraisers or professional appraiser having similar ethical and professional standards.
15. **Public Purpose Sales.**
    a. Regarding county personal property, the board of county commissioners may convey title to county personal property which is no longer needed for county purposes, with or without further consideration, to a bona fide nonprofit organization to be used to further a recognized county purpose.
    b. Regarding county real property, the board of county commissioners may convey title to county real property to a bona fide nonprofit organization, with or without further consideration, to be improved and utilized in perpetuity to further a recognized county purpose, in exchange for the promise to continually operate services benefiting the public on the site, subject to the conditions set forth in this section 15; PROVIDED, the conveyance document(s) shall contain appropriate contract provisions and/or deed or deed of trust restrictions and covenants relating to timing of improvements, disposition of revenue, accessibility by the general public, nondiscrimination, compliance with laws, removal of liens, and reversion of title.
    c. Regarding subsection 15(b) above, the deed conveying county real property to a bona fide nonprofit organization must provide for immediate reversion back to the county, along with all facilities constructed thereon, if the nonprofit organization or its nonprofit organization successor ceases to use the property for a bona fide social service nonprofit purpose -- such purpose to include but not be limited to, services for individuals with physical or mental disabilities including nonprofit community centers, close-to-home living units, employment and independent living training centers, vocational rehabilitation centers, developmental disabilities training centers, community homes for individuals with mental illness; and for social and health services for adult and juvenile correction or detention, child welfare, day care, drug abuse and alcoholism treatment, mental health, developmental disabilities, and vocational rehabilitation.
    d. The nonprofit organization is authorized to sell the property acquired under this section 15 only if all of the following conditions are satisfied:
        i. Prior written approval shall first be obtained from the board of county commissioners;

ii. All proceeds from said conveyance must be applied to the purchase of a different property of equal or greater value than the original;
iii. Any new property must be used to advance the purpose of the same or another nonprofit organization that provides recognized social services beneficial to the county -- including, but not limited to, those purposes described in subsection 15(c) above;
iv. The new property must be available for use and accessible to county citizens within one year of the conveyance; and
v. If the nonprofit organization or its nonprofit organization successor later ceases to use the new property for the social services described, but not limited to, those purposes set forth in subsection 15(c) above, then the nonprofit organization or its nonprofit organization successor must reimburse the county for the value of the original property at the time of conveyance.

e. If the nonprofit organization ceases to use the original property as a social service organization devoted to such purposes described but not limited to those set out in subsection 15(c) above, then the original property and all facilities constructed thereon shall revert immediately to the county, at which time the county must determine if the property (or the reimbursed amount if there is a reimbursement under subsection 15(d)(5) above), may be used by another social service program providing social services beneficial to the county.

16. **Mineral Rights.** The sale or lease of mineral rights for extraction of aggregate on county property as a portion of a larger project to prepare such property for future public use may be by request for proposals.
17. **Police Dogs.** Where the sheriff of Kittitas County, in his or her discretion, determines, upon retirement of a police dog from service, that the interest of the animal, its handler, the county or the public would best be served thereby, the sheriff may make any appropriate disposition of such police dog, provided the recipient of the police dog agrees to assume all future liability for its actions, care, maintenance and medical needs . (Ord. 2009-04, 2009)

[iii] **KCC 2.81.060 General Disposition of Property by Sale or Lease.**

1. Unless otherwise exempt as provided in this chapter, property that has been declared surplus to the county's needs shall be sold at auction or by sealed bid in accord with notice and process as provided in Chapter 36.34 RCW.
2. **All sales or leases of county property shall be made to the highest responsible bidder at public sale, except where different provisions are made in this chapter.**
3. In sales for cash, the highest bidder shall be deemed responsible. In determining the highest responsible bidder for other sales and for leases, the board may consider the price and terms bid, the character, integrity, reputation and financial responsibility of the bidder, and previous experience, if any, of the county with the bidder.
4. **All leases of real property and all sales of real property shall be subject to board approval.**
5. Sales on Other Than Cash Basis. If real property is offered for sale on other than a cash basis, the terms must be stated in the notice. (Ord. 2009-04, 2009)

IN THE WASHINGTON STATE COURT OF APPEALS
DIVISION II

ARTHUR WEST and JERRY DIERKER, Appellants,	)	No. 43876-3-II
	)	DIERKER'S REPLY TO PORT'S
	)	RESPONSE TO DIERKER'S
v.	)	MOTION TO MODIFY THE DEC. 18,
	)	2013 COMMISSIONER'S RULING, et al
PORT OF OLYMPIA, et al, Respondents.	)	

Appellant Jerry Dierker makes this Reply, et al, to Seth Goodstein's Jan. 27, 2014 Port Response to Appellant Dierker's Motion to Modify, et al, the Dec. 18, 2013 Commissioner's Ruling granting of the relief requested in Seth Goodstein's Dec. 3, 2013 Port "Motion to be allowed to file a Motion Strike, et al", striking portions of Appellant Dierker's Reply Brief and its attached Supplemental Authority which were copies of exerts of relevant case law and one July 9, 2013 document containing relevant legal citations the Port attorney(s) were familiar with having written it, which Mr. Dierker felt would simplify and shorten the argument of this case. Further, the Court is prohibited by RAP 10.7 from granting the relief in the Dec. 18, 2013 Commissioner's Ruling, and the Court lacked jurisdiction to consider and grant Seth Goodstein's Dec. 3, 2013 Port Motion which was improperly made, signed, filed by him, because Seth Goodstein was **not** a Port "attorney of record" in this case on Dec. 3, 2013, and was not **until Jan. 27, 2014**. (See attached Declaration on Attached Exhibits; July 9, 2013 Exhibit 4; Seth Goodstein's "27 rd (27th?) day of January, 2014" "Notice of Association of Counsel", filed with the Port's Jan. 27, 2014 Response to Appellant Dierker's Motion to Modify the Dec. 18, 2013 Commissioner's Ruling; On File).

REPLY

In Reply, despite the below noted very-far-ranging false factual and legal claims about the entire case the Jan. 27, 2014 Port Response relied upon appearing to exist only in the Seth Goodstein's "Port Reality" of his extremely limited experience and his "lack of due diligence" in his very inaccurate review of this case where he is misquotes/misrepresents the actual facts in this case, in order for him to improperly obtain relief granted to the Port by Commissioner Schmidt's Dec. 18, 2013 Ruling, when in everyone else's reality the "Relevant Facts and Issues" in this case are as follows for this Motion to Modify, and for replying to the Port's many irrelevant very-far-

ranging false factual and legal claims which are about the entire case this case's over 7 year long record in this Public Records Act (PRA) and SEPA, et al., case.

A) Background

1. In July - Sept., 2012, the Superior Court's Pro Tem Judge Sam Meyer dismissed the Public Records Act (PRA) case as a sanction under the PRA's per day penalty provision, and dismissed this entire case pursuant to his first-time experience and misinterpretation of PRA, and thereby dismissed the entire case. (See On File -- the July 25, 2012 Order of Dismissal).

However, the Port's Jan. 27, 2014 Response falsely claimed the Superior Court had dismissed the PRA case as a sanction under the Court's inherent power to control Appellant's unacceptable litigation practices, which clearly did not happen.

2. The record in the Superior Court shows this July - Sept., 2012 dismissal was done without the Superior Court's ever conducting any Public Records Act hearing in this case, due to the mechanizations of the Port and Weyerhaeuser Respondents' actions and/or due to E-mail admitted "mistakes" of apparently inept and allegedly prejudicial associated Superior Court staff and officials controlling this case from late 2007 through Sept. 2013. (See On File -- Dierker Opening Brief's citations to the Superior Court's 2011 E-mails admitting the Superior Court's "mistakes"; and see Dierker Opening Brief's citations to the Superior Court's July 25, 2012 Order of Dismissal, directly denying the Port's cited requests for a sanction of dismissal under CR 11 for Appellant's unacceptable litigation practices, **and** not granting the Port's cited requests for a sanction of dismissal under the Court's inherent power to control Appellants' behavior in the Superior Court).

3. This July - Sept., 2012 dismissal was done without the Superior Court's ever conducting any Public Records Act hearing in this case, despite the fact that in May 2018 the Superior Court had dismissed the SEPA, et al. claims without the Superior Court ever reviewing the later "lost" "In Camera Review" withheld Port Public Records that are required to be a necessary part of the evidence in any Port Administrative Record on the Port's Marine Terminal actions pursuant to the Administrative Procedures Act, the Administrative Record Act, the PRA and SEPA for a De Novo review of the SEPA, et al, claims in this Appeal, as well as for the PRA claims in this appeal and its dismissal without PRA Show Cause hearing for disclosure of the withheld Port public records. (See On File -- Dierker Opening Brief's citations to the Superior Court's 2011 E-mails admitting

the Superior Court's "mistakes"; see Dierker Opening Brief's "Standards of Review" on De Novo Review of PRA and SEPA, et al.; see Weyerhaeuser's Response Brief's "Standards of Review" on De Novo Review of PRA and SEPA, et al.).

However, the Port's Jan. 27, 2014 Response falsely claims that that Mr. Dierker's pleadings about the lack of a "complete" administrative record in this case are barred by the Port's false claims that the Court's April 2, 2013, Commissioner Rulings found that the record in this case was "complete", when the Ruling does not even contain the word "complete"; and are barred by the Port's Response false claims that Mr. Dierker's pleadings about the lack of a "complete" administrative record in this case are irrelevant since the Port's Response falsely claims this Appeal is only about the July - Sept. 2012 dismissal of the PRA claims, and thereby , the Port's Response is falsely claiming that this Appeal is not about a De Novo review of the Superior Court's May 30, 2008 Dismissal of the SEPA, et al, claims in this case is not a part of this Appeal in this case, when this claim or argument is barred under Estelle and res judicata, and when Mr. Dierker has clearly shown the PRA has been incorporated into SEPA's statutory scheme into being an environmental full disclosure law. (See On File -- the November, 7, 2012 Commissioners Ruling Denying Respondent Weyerhaeuser's Oct. 10, 2012 Motion to Dismiss the non-PRA issues in this Appeal; see Respondent Weyerhaeuser's Oct. 10, 2012 Motion to Dismiss the non-PRA issues in our Appeal; Appellants' Oct. 31, 2012 Response to Respondents Motion for Dismissal of the non-PRA issues in this Appeal, and their allowed Nov. 30, 2012 Amended Response to Respondents Motion for Dismissal of the non-PRA issues in this Appeal; Mr. Dierker's Nov. 1, 2012 Response opposing West's Attorney's Oct. 19, 2012 Motion to Bifurcate this Appeal; see the April 2, 2013 Commissioners Ruling in this Appeal; see Mr. Dierker's Opening and Reply Briefs on PRA's incorporation into SEPA's statutory scheme citing also the decision in Norway Hill, below; and see Weyerhaeuser v. Pierce County, 124 Wn. 2d 26, at 38 (1994).

Clearly, despite the Port's continuing unreasonable and false claims in this case, the Public Records Act (PRA) is an integral part of the statutory scheme of the State Environmental Policy Act (SEPA), on how the Port's SEPA required documents were supposed to be disclosed by the Port to both Appellants and the Courts, since like the PRA's full disclosure provisions, the Court's the Norway Hill decision found that SEPA is an environmental full disclosure law, where portions of SEPA's statutory scheme at WAC 197-11-504(1) incorporates by reference the PRA as part of

SEPA. (See Norway Hill v. King County Council, 87 Wn. 2d 267, at 274-275, 552 P. 2d 674 (1976). Clearly, the required De Novo review of the Port's SEPA actions in this case and the De Novo review of the Superior Court's dismissal of these SEPA claims in this case, requires a De Novo review of all of the evidence about the Port's and Superior Court's actions here, including that documented "best evidence" that the Port has continued to withhold from the Port's Administrative Records on this matter directly by the Port's illegal misuse of the PRA's "exemptions" and by the Port's illegal "Silent Withholding" of the relevant Port's Lease documents from the Port's Administrative Records on this matter.

B) Facts/Issues Relevant to Motion to Modify the Commissioner's Dec. 18, 2013 Ruling

1. Did the relief granted to the Port by Commissioner Schmidt's Dec. 18, 2013 Ruling violate RAP 10.7 prohibitions, and if it does, did this Court and Commissioner Schmidt lack "legal matter" jurisdiction to grant such prohibited relief? Yes and Yes.

2. Did Commissioner Schmidt's Dec. 18, 2013 Ruling grant the Port this same relief requested in Seth Goodstein's Dec. 3, 2013 Motion filed on behalf of the Port? Yes.

3. On Dec. 3, 2013 when he made, signed and filed this Motion on behalf of the Port, was Seth Goodstein a Port of Olympia "Attorney of Record" in this case who could legally make, sign and file a pleading in this appeal case on behalf of the Port? No.

4. Did the Court of Appeals and Commissioner Schmidt lack legal and subject matter jurisdiction to file, consider and grant relief requested in the Dec. 3, 2013 Motion filed on behalf of the Port by Seth Goodstein who was **not** a Port of Olympia "Attorney of Record" in this case on Dec. 3, 2013? No.

5. Did Mr. Dierker's Oct. 2013 Reply Brief cite to the "facts" within the July 9, 2013 Response that is Mr. Dierker's "attached" supplemental legal authority complained of by Seth Goodstein here? No.

6. Did Mr. Dierker's Oct. 2013 Reply Brief cite to the "legal authorities" in the July 9, 2013 Response that is Mr. Dierker's "attached" supplemental legal authority complained of by Seth Goodstein here? Yes.

7. Under the RAP's standards for drafting such pleadings, can the "Facts Relevant to the Motion" sections of Seth Goodstein's the Dec. 3, 2013 Motion **and** in the Port's Jan. 27, 2013, contain numerous false, inflammatory, and clearly erroneous allegations, many of which appear to

be barred by Estelle and/or by res judicata of the actual rulings of both the Superior Court and Appeals Court in this case, including such things as misquotes and misrepresentations of tiny parts Appellant's pleadings in his Reply Brief and direct "white to black, day to night" type of misrepresentations and/or misquotes of both the Superior Court and Appeals Court rulings in this case? No. Do the pleadings Seth Goodstein made in the Port's Jan. 27, 2013 Response ignore similar claims made in Mr. Dierker's Dec. 12, 2013 Response and his Motion to Modify, in violation of CR 8(d)? Yes.

7. Were Seth Goodstein's "relevant facts" supporting his requests for relief for the Port in the Dec. 3, 2013 Motion **and** in the Port's Jan. 27, 2013 merely Seth Goodstein's falsifications of fact which Seth Goodstein created out of improper misquotes and misrepresentations of tiny parts Appellant's pleadings in his Reply Brief, and/or which Seth Goodstein created out of direct "white to black, day to night" type of misrepresentations and/or misquotes of the rulings of both the Superior Court and Appeals Court in this case? Yes. Did the pleadings Seth Goodstein made in the Port's Jan. 27, 2013 Response ignore Mr. Dierker's Motion to Modify's similar claims in violation of CR 8(d)? Yes.

8. Were Seth Goodstein's actions in making, signing and filing on behalf of the Port his Dec. 3, 2013 Motion requesting relief unauthorized, untimely, unethical, unfair, unequal, improper, unlawful, unconstitutional, prejudicial, clearly erroneous, arbitrary and capricious actions and or failures to properly act pursuant to the law and real facts of in this case? Yes. Did the pleadings Seth Goodstein made in the Port's Jan. 27, 2013 Response ignore Mr. Dierker's Motion to Modify' similar claims in violation of CR 8(d)? Yes. Do the pleadings Seth Goodstein made in the Port's Jan. 27, 2013 Response ignore similar claims made in Mr. Dierker's Dec. 12, 2013 Response and his Motion to Modify, in violation of CR 8(d)? Yes.

9. Did Seth Goodstein act as the Port's "ex-officio" governmental counsel on Dec. 3, 2013 in this case, though he was **NOT** legally authorized to by the Port's "attorney of record" in this case until Jan. 27, 2013. Yes. Do the pleadings Seth Goodstein made in the Port's Jan. 27, 2013 Response ignore similar claims made in Mr. Dierker's Dec. 12, 2013 Response and his Motion to Modify, in violation of CR 8(d)? Yes.

10. Does the Port's "ex-officio" governmental attorney's actions on Dec. 3, 2013 in this case and Commissioner Schmidt's Dec. 18, 2013 Ruling directly violate Mr. Dierker's fundamental due

process rights under the standards of the law? Yes. Did the Port's Jan. 27, 2013 Response ignore this in violation of CR 8(d)? Yes. Do the pleadings Seth Goodstein made in the Port's Jan. 27, 2013 Response ignore similar claims made in Mr. Dierker's Dec. 12, 2013 Response and his Motion to Modify, in violation of CR 8(d)? Yes.

11. Does the Port's "ex-officio" governmental attorney's actions on Dec. 3, 2013 in this case and Commissioner Schmidt's Dec. 18, 2013 Ruling invidiously discriminates against the disabled pro se Mr. Dierker under the Americans with Disabilities Act, another Federal law which the Governmental attorneys in this case and this Court of Appeals appear to have ignored, as noted herein and in the cited and/or incorporated pleadings for the reasons noted herein and in my Motion to Modify here? Yes. Do the pleadings Seth Goodstein made in the Port's Jan. 27, 2013 Response ignore similar claims made in Mr. Dierker's Dec. 12, 2013 Response and his Motion to Modify, in violation of CR 8(d)? Yes.

12. Do Seth Goodstein's Dec. 3, 2013 unauthorized and improper actions noted herein violate the RAPs and/or other due process laws and legal standards, and, if they do, are Seth Goodstein's Dec. 3, 2013 actions sanctionable under RAP 18.9 and/or CR 11? Yes and Yes.

13. Is Mr. Dierker a severely disabled person who this Court and all governmental attorneys, et seq., owe a duty of care to disabled Mr. Dierker under the ADA requiring them to grant Mr. Dierker "reasonable accommodations" to give disabled Mr. Dierker meaningful access to the Courts and to justice for gaining redress of grievances, including giving disabled Mr. Dierker a meaningful opportunity to be heard to be granted meaningful due process in this case, which has also been ignored here? Yes and Yes.

14. Do all of the governmental attorneys involved in this case owe a specific "duty of conscientious service" to Mr. Dierker, the Court of Appeals and the other parties in this case under the decision in Meza v. Washington State Dept. of Social and Health Services, 633 F. 2d 314 (1982, 9th Cir.), the Court rules, and procedural due process requirements, and which has also been ignored here? Yes, Yes, Yes, and Yes.

15. Do all of the attorneys involved in this case owe a specific "duty of care" to Mr. Dierker to act with "Fairness to (an) Opposing Party" under RPC 3.4 to "make reasonable efforts to correct (any) misunderstanding" when "Dealing with (A) Unrepresented Person" like Mr. Dierker under RPC 4.3, and which have also been ignored here? Yes, Yes and Yes.

16. Do all of the attorneys involved in this case owe a number of specific "duties of care" to Mr. Dierker and to the Court, a) to act with "Candor Toward The Tribunal" by not violating the terms of RPC 3.3(a)(1-4) and RPC 3.3(e), b) to make only "Meritorious Claims and Contentions" "Expiditing Litigation" as required by RPC 3.1 and 3.2, in a manner which does not "seek to influence a judge ... or other official by means prohibited by law" that would violate the "Impartiality and Decorum of the Tribunal" pursuant to RPC 3.5, and which have also been ignored here? Yes, Yes, Yes, and Yes.

17. Does Seth Goodstein's Dec. 3, 2013 Motion and/or his Jan. 27, 2013 Port Response contain numerous irrelevant claims and numerous misquotes, misrepresentations, and falsifications of fact and false legal claims relevant to the Motion to Modify, many of which are barred by Estelle and/or res judicata? Yes, and Yes.

18. Do the pleadings Seth Goodstein made in the Port's Jan. 27, 2013 Response violate CR 8(d) by failing to make responsive pleadings to oppose or contest many of Mr. Dierker's above noted claims made in the Dec. 12, 2013 Response to Seth Goodstein's Dec. 3, 2013 Motion and/or made in Mr. Dierker's Motion to Modify, thereby, making Mr. Dierker's unopposed claims "admissions" by the Port? Yes, Yes, and Yes.

C) Facts and Issues Relevant to the Entire Case which Are in Reply to the Port Response's False Facts, Misquotes, Misrepresentations, and/or are Irrelevant to the Motion to Modify the Dec. 18, 2013 Commissioner's Ruling

1. Did Seth Goodstein use the Jan. 27, 2013 Port Response to make more improper pleadings, barred claims, and falsifications of fact about the entire 7 years of this case which are unsupported or which directly conflict with the record in this case, in violation of the RAPs and/or other due process laws and legal standards in such cases, and, if they do, are Seth Goodstein's Jan. 27, 2013 improper pleadings in the Port Response sanctionable under RAP 18.9 and/or CR 11? Yes and Yes.

2. Does Seth Goodstein's Dec. 3, 2013 Motion and/or his Jan. 27, 2013 Port Response contain numerous irrelevant claims and numerous misquotes, misrepresentations, and falsifications of fact and false legal claims, many of which are barred by Estelle and/or res judicata? Yes, and Yes.

Argument

1. First, pursuant to RAP 10.7 Submission of Improper Brief, the Court must overturn Commissioner Schmidt's Dec. 18, 2013 Ruling granting of the Dec. 3, 2013 Motion's relief requested for the Port due to Mr. Dierker's "submission of a improper brief". (Id.; On File).

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

In this case RAP 10.7's restrictions alone show that Commissioner Schmidt lacked legal authority and "legal jurisdiction" to make the Dec. 18, 2013 Ruling granting requested relief prohibited by RAP 10.7, where Commissioner Schmidt's Dec. 18, 2013 Ruling here could only:

"1) order the brief returned for correction or replacement within a specified time, 2) order the brief stricken from the files with leave to file a new brief within a specified time, or 3) accept the brief." (See RAP 10.7).

However, both the Dec. 3, 2013 Motion's requests for relief and Commissioner Schmidt's Dec. 18, 2013 Ruling granting that requested relief, do not conform or comply with the provisions on the 3 types of orders allowed by RAP 10.7 Submission of Improper Brief, Commissioner Schmidt's Dec. 18, 2013 Ruling must be overturned for Commissioner Schmidt's lack of authority and lack of "legal matter" jurisdiction to make such a ruling in violation of RAP 10.7, which is especially true since Seth Goodstein has admitted he was not the Port's "attorney of record" on Dec. 3, 2013. (Id.; supra; On File).

Further, since the Dec. 3, 2013 Motion complaining of Mr. Dierker's submission of an improper Reply Brief was clearly not filed properly pursuant to RAP 10.7 Submission of Improper Brief, and, in fact, the Dec. 3, 2013 Motion, at pages 1-2, falsely claims that there was "no" authority for the Commissioners' granting of this relief requested in the Dec. 3, 2013 Motion at all, thereby, Commissioner Schmidt's Dec. 18, 2013 Ruling must be overturned for Commissioner Schmidt's lack of "subject matter" jurisdiction, which is especially true since Seth Goodstein has admitted he was not the Port's "attorney of record" on Dec. 3, 2013. (Id.; supra; On File; see also

below).

The Dec. 18, 2013 Commissioners' Ruling reviewed here violated RAP 10.7, when, without granting the Mr. Dierker a chance to "amend" his Reply Brief, the Commissioner acted improperly without jurisdiction under RAP 10.7 to improperly "censor" these attached legal authorities out of Mr. Dierker's Reply Brief, by ordering the Clerk to remove from Mr. Dierker's Reply Brief his attached Supplemental Authority and all of his Reply Brief's citations to the recently written case law authority in it, clearly showing that the Port, the Superior Court, and this Court of Appeal all still lack adequate Superior Court records on this matter because the Superior court lacked the required legally adequate Port of Olympia PRA, SEPA, APA, et seq., administrative records and and lacked the withheld Port public records on the Port's entire related and connected actions to develop the Port's Marine Terminal Area in the transferred Superior Court record on this case, necessary for legally proper procedural due process judicial appellate "De Novo" review under PRA, SEPA, APA, et seq., due in part to the Port's improper use of the Public Records Act to withhold relevant Port public records from the Port's falsified PRA, SEPA, APA, et seq., administrative records and partly due to the Port's unlawful "piecemealing" of this project and its many different reviews in the many administrative and judicial venues covering the many "piecemealed" integral unconnected parts of this Port project, including the Port's illegal "silent withholding" of certain key evidence from even the Port's Administrative Record filed Jan. 23, 2013 in this case that eliminated the Lease's Terms and Conditions of Acceptance of Weyerhaeuser, and eliminated its "incorporated" Environmental Site Assessment, Wetlands Report and other documents which would conflict with the Port's pleadings made in this case for the last 7 years, as the Port's and these Courts actually record clearly show as noted by Mr. Dierker's many pleadings in this case. (Id.; supra e.g. -- see also April 2, 2013 Commissioner's ruling "attached" to the Port's Response).

Clearly, the legally "complete" and adequate set of records required for this Court's "De Novo" review of the Port's PRA and SEPA, et al., actions in this case and for the Court's "De Novo" reviews of the Superior Court's improper bifurcation and two "cart-before-the-horse" dismissals of the claims in this case, are **not** "complete" or adequate, despite the Port's clearly false claims to the contrary that are barred under estopple and/or res judicata by the actual wording of the records and orders in this case, not a Port Response's false uniformed "personal opinions"

of a brand-new Port attorney who also lacks any knowledge of this case. (Id.; supra; On File).

Despite the Port's Response's false claims here, Mr. Dierker's Oct. 10, 2013 Reply Brief **does not state that July 9, 2013 Response is "evidence"**, since that key Port false claim is falsely based upon this new Port attorney's deliberate misquote of Mr. Dierker's Reply Brief, where the word **"evidence"** is actually part of the phrase in that sentence -- ", and **evidence in the Motion to Strike**" (the Port's Response Brief). A review of Mr. Dierker's Reply Brief shows it only makes citations to the recently written **legal authorities cited** in the Port Attorneys' July 9, 2013 Response here, and any reference to that other case's "surrounding facts" of the July 9, 2013 Response, were done merely to show the "relevancy" of the Port's action taken this case to another County government's similar actions complained of in the Port's attorneys' July 9, 2013 Response's **cited legal authorities**, which Mr. Dierker also cited to. (Id.; On File).

Since the Port's entire argument and legal claims for relief here depend entirely on the Port's one clearly false factual claim here, thereby, there is **no factual support** for the entire argument and legal claims for relief made in the Port's Dec. 3, 2013 Motion, there is **no factual support** for the Dec. 18, 2013 Commissioner's ruling granting the relief requested in the Port's Dec. 3, 2013 Motion, and there is **no factual support** for the entire argument and legal claims for relief made in the Port's Jan. 27, 2014 Response opposing this Motion to Modify, and this Court must grant this this Motion to Modify for this reason alone. (Id.)

Further, the Port's Jan. 27, 2014 Response legal argument at page 12, also absolutely depends on the Port's false claim that this appeal only concerns the Superior Court's dismissal of the PRA part of this case, which is barred by res judicata of the Court of Appeals' late-2012 denial of Respondents' Motion for Partial Dismissal of this Appeal, where the Port continues to falsely claims that the Superior Court's July 2012 dismissal in this case was for Appellants' "abuse of process" in this case, despite the fact that rulings in the Superior Court's July 2012 Order of Dismissal in this case actually denied the Port's claims for sanctions under CR 11, et seq., because the Judge determined the Appellants' **had not been found to have caused an** "abuse of process" in this case that was "sanctionable". (Id.; supra).

This is another of the "dead-horse issues" previously settled in this case that the Port and Weyerhaeuser Respondents have already lost in this case, and such arguments are now barred under estopple and res judicata under the "real" facts, rulings and orders in this case -- not in some

alternate "Port reality" where the Port can change "our reality" to where the Port to always wins everything they ask for in this "Port reality" where the Port's false factual and legal claims, allegations, and/or opinions miraculously become "true facts", despite the conflicting wording of the actual documents and orders this Court is required to reviewed under the "Best Evidence Rule" in this Appeal. (Id.). Again, for this reason alone, this Motion to Modify must be granted.

Clearly, this July 9, 2013 Response that is one of the several attached Supplemental Authorities is part of Mr. Dierker's responsive pleading pursuant to CR 8(d) since its relevant legal citations directly "replies" to and/or is in directly conflicts with and opposes many of the Port's claims made in the Port's Response Brief in this case, since it directly supports many of Appellants' key legal claims in this case ignored and/or opposed by Respondents' Response Briefs in this case, some of which the Superior Court's improper bifurcation and two dismissals of this case also ignored, concerning the lack an adequate Superior Court record in this case necessary for legally proper procedural due process judicial appellate "De Novo" review by this Court of Appeals under the "standards of review" for such claims and rulings in the PRA, SEPA, et seq.

The record in this case shows that the Port Respondents' failed and refused to make an adequate set of the "disclosed", "PRA exemption withheld" and illegally "silently withheld" Port public records on the Port's entire related and connected actions to develop the Port's Marine Terminal Area for the Superior Court as required for the Port of Olympia PRA, SEPA, APA, et seq., administrative records in this case, which were **supposed to be** on "file" with the Superior Court when it dismissed this case but which were **NOT** in violation of the PRA, SEPA, APA, Agency Administrative Record Act, the First Amendment to the U.S. Constitution, Article I of the State Constitution, et seq.

The record in this case shows that the Port Respondents' failures and refusals to follow PRA, SEPA, APA, et seq., were compounded by the Superior Court's concerted, collusive, and/or conspiratorial failures and refusals to follow PRA, SEPA, APA, et seq., to require the Port to properly and legally make a complete and adequate set of Administrative Record on this matter, has caused this Court of Appeal's lack of adequate Port Administrative Records and Superior Court records in this case, which necessary for legally proper procedural due process judicial appellate "De Novo" review made in the Court of Appeals' review of Mr. Dierker's Appeal and his Motion to Modify here, as noted by Port Response's section "IV. Standards of Review", one of its only

correct parts.

As noted herein, this brand-new Port attorney's completely improper and non-responsive Port Response's "Port's Response Opposing Motion" is based upon "Facts Relevant to the Motion" that are actually just this brand-new Port attorney's false opinions about what the "Facts" in this case ought to be, which ignores the actual wording of the Port's cited and attached documents from the record in this that contain the actual wording of those "facts" within the records of this case, that appear very different from the Port's mere false claims. (Id.; supra, see also below).

As noted herein, the Port "Response's" *(sic)* clearly improper non-responsive argument section "V. Port's Response Opposing Motion" is incorrect and irrelevant, as well as being improperly based upon mere uniformed false "opinions" as to the facts of this case, and therefore, cannot be reasonably or legally used by the Port as a false "factual" *(sic)* basis for the Port's far-ranging, falsified, misquoted, misrepresented, and legally barred argument of the Port's single misrepresented "Issue" in the Port Response's section V "Port's Response Opposing Motion" based upon allegations as to rulings in this case that ignores the actual wording of the Rulings and Orders of the Superior Court and this Court of Appeals in this case.

This brand-new Port attorney's false opinions about what the "Facts" in this case ought to be are due in part to this brand-new Port attorney's lack of any time to do his required "due diligence" to investigate the "facts" **before** writing this Port Response on Jan. 27, 2014 violating CR 11, which is understandable since this brand-new Port attorney just became part of this case on Jan. 27, 2014, and he has not had any time to learn about the actual "Facts" of this over 7 year long case, and thereby, this brand-new Port attorney must rely upon his uninformed "opinions" or rely on another's false and unsupportable "opinions" for basing his incorrect factual claims and arguments in this improper Port Response. (See Seth Goodstein's Jan. 27, 2014 filed appearance "Notice of Association of Counsel" for the Port in this case).

As the actual records in this case clearly shows, **this brand-new Port attorney's** mere extremely inaccurate, far-ranging factual allegations in the Port's "Facts Relevant to the Motion" section, are based solely upon **this brand-new Port attorney's** false and unsupportable "opinions" based upon his deliberate misquotes and/or misrepresentations of the actual he real wording of the Port' "facts" in this case, as noted in a proper review of even just the Port's own

cited and attached documents from this case, and, thereby, **this brand-new Port attorney's** false and unsupportable "opinions" are legally barred from being used as "Fact" to support the claims and arguments made in this Port Response under Estelle and/or res judicata, and which were clearly falsely alleged by **this brand-new Port attorney**.

Further, as noted, while the Port Response also improperly ignores most of the Motion to Modify's more important claims as to relevant facts, issues, and law, in violation of CR 8(d), the Port's many other improper "diversion tactics" used in this part of this case, are but another part of the many improper "non-responsive" tactics continually that have been used by the Port attorneys to delay this case for over 7 years, by Port's confusing and flooding the Courts with numerous pleadings containing irrelevant false factual and legal claims mostly barred by law, done to prevent discovery of the Port's fraudulently concealed necessary relevant evidence have hidden from the Courts for over 7 years in numerous cases, and was done by the Port to prevent the Courts' discovery of the Port's fraudulently concealed numerous conflicting legal authorities some of which are noted in Mr. Dierker's "attached supplemental authority" written by the Port's attorneys, which the Port attorneys have done by the Port's Attorney's to divert the Courts from this case's actual issues and missing evidence hidden from the Courts for over 7 years in numerous cases. (Id.).

In any case, under CR 8(d), CR 11 and under RPC 3.3(a)(1 & 2) and RPC 3.4(a-f) he is legally barred from presenting his clearly false opinions as "Facts Relevant to the Motion" here, and any such opinions must be stricken. Therefore, for these reasons alone the Court must overturn Commissioner Schmidt's Dec. 18, 2013 Ruling granting of the Dec. 3, 2013 Motion's relief requested for the Port. (Id.; supra, see also below).

2. As noted the Port's Jan. 27, 2014 Response and as noted in my prior pleadings on this matter, all of Seth Goodstein's false legal claims made in the Dec. 3, 2013 Motion here are based upon Seth Goodstein's clear out of context "misquote" of part of a single sentence in Dierker's Reply Brief at page 30. (Compare, e.g. -- Dierker's Reply Brief at page 30; to Port's Response at page 4, section 7, misquoting out of context Dierker's Reply Brief at page 30).

Clearly, a comparison of the wording of the two pleadings in these two Briefs shows that Seth Goodstein has improperly added the word "evidence" to the end of a phrase about "newly discovered attached 'supplemental authority'" of that sentence, when the ", **and**" before the word

"evidence" written there shows "evidence" was obviously part of later phrase", **and evidence in the Motion to Strike**" in a later part of that same sentence.

Despite the Port's false claims here, **Mr. Dierker's Reply Brief does not state that the July 9, 2013 Response is "evidence"**, since Dierker's Reply Brief only cites to the "law" in July 9, 2013 Response that is one of several "attached ... supplemental authorities" containing relevant citations to common law, case law, et seq., and just because it was admittedly written by Seth Goodstein and Ms. Lake does not somehow make it into relevant "evidence" that the Superior Court would have had seen before July, 2012 to be considered by this Court of Appeals now in Feb. 2014, as Seth Goodstein falsely claims again in this Response. (Id.; On File).

Clearly, Seth Goodstein's deliberate misquote about the word "evidence" in Dierker's Reply Brief at page 30, has been misrepresented by Seth Goodstein into becoming Seth Goodstein's falsified evidence used as factual basis for Seth Goodstein's false claims that Mr. Dierker's Reply Brief stated that the July 2013 Response was "evidence", when Mr. Dierker's Reply Brief **NEVER** stated the July 2013 Response was "evidence", and Mr. Dierker's Reply Brief actually stated that the July 2013 Response was filed as one of Mr. Dierker's "newly discovered attached supplemental authorities". (Id.; On File).

Clearly, for this reason alone there is also no actual factual basis for supporting the Dec. 18, 2013 Commissioner's Ruling granting the Port relief requested by Seth Goodstein's unauthorized Dec. 3, 2013 Motion and its false factual claims that the July 2013 Response was "evidence" in this matter, when there is no longer any "real" evidence contesting that Mr. Dierker's Reply Brief actually stated that the July 2013 Response was filed as one of Mr. Dierker's "newly discovered attached supplemental authorities". (Id.; On File).

Consequently, for this reason alone this Court must grant the Motion to Modify to overturn this clearly unsupported Dec. 18, 2013 Commissioner's Ruling granting the Port relief requested by Seth Goodstein's unauthorized Dec. 3, 2013 Motion.

4. Next, as noted above, Seth Goodstein could **not legally act to** make, request, sign, file, or win any motion on behalf of the Respondent Port of Olympia in this case until at least Jan. 27, 2014. (See Court of Appeals' own "On File" Records in this case, see also Seth Goodstein's "27 rd (27th?) day of January, 2014" "Notice of Association of Counsel", filed by Seth Goodstein with the Port's Jan. 27, 2014 Response to Appellant Dierker's Motion to Modify the Dec. 18,

2013 Commissioner's Ruling; 2) the name of the Port's "attorney of record" "Carolyn A. Lake" in this case noted by the Clerk of the Court of Appeals on the Rulings of Jan. 13, 2014, Dec. 18, 2013, Nov. 5, 2013, Sept. 10, 2013, April 2, 2013, at all times before Jan. 27, 2014; and 3) Port's Jan. 23, 2014 Motion for Extension of Time was made, signed and filed by Seth Goodstein who acted there only on behalf of the Port's "attorney of record" "Carolyn A. Lake", thereby, Seth Goodstein has admitted he knew he wasn't a Port "attorney of record" even on Jan. 23, 2014).

Clearly, Seth Goodstein did not represent the Port in this case on Dec. 3, 2013, and he could not file any pleading in this Court requesting relief for the Port that could be granted by the Dec. 18, 2013 Ruling reviewed here.

Further, the Port's Jan. 27, 2014 Response makes no responsive pleading or argument opposing or contesting in Dierker's key pleadings and arguments made in both his Motion to Modify and his Dec. 12, 2013 Response to Seth Goodstein's illegally filed Dec. 3, 2013 Motion to Strike, et al, which claimed and showed that Seth Goodstein unlawfully acted without any legal authority to make and file the unauthorized and illegal Dec. 3, 2013 Motion that improperly requested, argued for, and/or otherwise sought the relief granted to the Port by the Dec. 18, 2013 Commissioner's Ruling reviewed here, and that, thereby, that Motion's requested relief granted to the Port by the Dec. 19, 2013 Commissioner's Ruling and the Ruling itself must be overturned by action of this Court Panel as mere "Fruit of the Poisoness Tree" and "ill gotten gains" of the Port which lead directly from Seth Goodstein's not being an attorney of record for the Port in this case when he filed the unauthorized and illegal Dec. 3, 2013 Motion requesting relief granted to the Port by the Dec. 19, 2013 Commissioner's Ruling. (Id., supra;"On File").

The Port's Jan. 27, 2014 Response unreasonably makes **NO** reference to the Port Response's "attachment" -- a "27 rd (27th?) day of January, 2014" "Notice of Association of Counsel" for Seth Goodstein's **first legal** "appearance" in this Appeal case, which clearly shows that on Dec. 3, 2014 Seth Goodstein was **NOT** an "attorney of record" for the Port in this Appeal case, and shows that Seth Goodstein did not become an "attorney of record" for the Port in this Appeal case until Jan. 27, 2014. (Id., supra; "On File").

Therefore, pursuant to CR 8(d) and RAP 17.4 (e), since the Port's Response fails to make a direct responsive pleading to answer or oppose my "averment" in my Motion to Modify that alleging that the Dec. 18, 2013 Ruling granting the relief requested in the Dec. 3, 2013 Motion must

be overturned since the Appeals Court record in this case shows that Seth Goodstein was not an "attorney of record" for the Port in this Appeal case at the time of filing of the Dec. 3, 2013 Motion and shows that Seth Goodstein was not an "attorney of record" for the Port in this Appeal case at the time of the Court's Dec. 18, 2013 Ruling granting of the Dec. 3, 2013 Motion's relief requested for the Port, and thereby, the Court's Dec. 18, 2013 Ruling granting of the Dec. 3, 2013 Motion's relief requested for the Port must be overturned by the Court when deciding this Motion to Modify here, for these reasons alone.

5. Further, the Motion to Modify should also be granted since when Seth Goodstein admitted the Motion for Extension of Time was fraudulently obtained, when Seth Goodstein, not Carolyn Lake, had made, signed and filed Jan. 27, 2014 the Response the Motion to Modify for the Port. (Id.; On File).

The Port's Jan. 23, 2014 Motion for Extension of Time for Port "attorney of record" Carolyn A. Lake to file the Port's Response to the Motion to Modify was based upon the misrepresentation of fact that alleged the Extension of Time was needed for the Port "attorney of record" Carolyn A. Lake to file the Port's Response by Jan. 23, 2014 because Port "attorney of record" Carolyn A. Lake lacked enough time. (Id.; On File). Clearly, the Motion for Extension of Time was **not based upon Seth Goodstein's** lack of enough time to file the Port's Response by Jan. 23, 2014, and thereby, the Motion for Extension of Time was fraudulently made, signed, filed, and won by Seth Goodstein for Carolyn A. Lake the Port's only "attorney of record" on Jan. 23, 2014, especially since Seth Goodstein had admitted there he knew he was not a Port "attorney of record" on Jan. 23, 2014 when signing the Motion for Extension of Time on behalf of "Carolyn A. Lake" the Port's only "attorney of record" on Jan. 23, 2014.

Consequently, since Seth Goodstein, not Ms. Lake, signed the Port's Jan. 27, 2014 Response to the Motion to Modify here, this shows the Jan. 23, 2014 Motion for Extension of Time has no relevant factual basis for it, and, thereby, as mere "Fruit of the Poisoness Tree" and "ill gotten gains" of the Port, the Court's Jan. 30, 2014 Ruling granting the Jan. 23, 2014 Motion for Extension of Time for the Port to file a the Response the Motion to Modify by Jan. 27, 2014 was improper and should be overturned, and, thereby, the Court should strike the Port's Jan. 27, 2014 Response the Motion to Modify as untimely and/or improperly obtained by fraud or misrepresentation of fact as a sanction to grant the Motion to Modify for this reason alone.

Consequently, as noted previously, Commissioner Schmidt's Ruling here lacked legal and subject matter jurisdiction and was unauthorized, unethical, unfair, unequal, improper, unlawful, unconstitutional, prejudicial, clearly erroneous, arbitrary and capricious, and directly violates Mr. Dierker due process rights and invidiously discriminates against Mr. Dierker as noted herein and in the cited and/or incorporated pleadings noted herein.

Therefore, for these reasons alone the Court's Dec. 18, 2013 Ruling granting of the Dec. 3, 2013 Motion's relief requested for the Port must be overturned by the Court when deciding this Motion to Modify here.

6. Pursuant to RAP 18.9(a), CR 11, et seq., this Court should sanction Seth Goodstein, the Port and Carolyn Lake, the Port's only attorney of record in this case on Dec. 3, 2013, since Seth Goodstein was not an attorney of record for any party in this case until Jan. 27, 2014, and since all of these improper unauthorized actions taken under his name where he acted as if he was the Port's attorney of record filing relief requests to this Court on behalf of the Port or Carolyn Lake before Jan. 27, 2014 in this case, were unauthorized and are in violation of many of the Court Rules and laws of this State, including, but not limited to the below noted RPC's and the other Court Rules and standards of the law violated by Seth Goodstein, et al, here, that are noted herein and in my prior pleadings on these matters.

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

RAP 18.7 provides that "Each paper filed pursuant to these rules should be dated and signed by an attorney or party", and CR 11's requirements also apply to proceedings in the appellate courts. (Id.; see also Carrillo v. City of Ocean Shores, 122 Wa. App. 592, 618, n. 18, 94 P/3d 961 (Div. 2, 2004).

Further, the Rules of Professional Conduct (RPC) , 3.1, 3,4, and 3.5, et al, the attorneys of the Port government Respondents here are legally required to act with "Candor Toward the

be overturned since the Appeals Court record in this case shows that Seth Goodstein was not an "attorney of record" for the Port in this Appeal case at the time of filing of the Dec. 3, 2013 Motion and shows that Seth Goodstein was not an "attorney of record" for the Port in this Appeal case at the time of the Court's Dec. 18, 2013 Ruling granting of the Dec. 3, 2013 Motion's relief requested for the Port, and thereby, the Court's Dec. 18, 2013 Ruling granting of the Dec. 3, 2013 Motion's relief requested for the Port must be overturned by the Court when deciding this Motion to Modify here, for these reasons alone.

5. Further, the Motion to Modify should also be granted since when Seth Goodstein admitted the Motion for Extension of Time was fraudulently obtained, when Seth Goodstein, not Carolyn Lake, had made, signed and filed Jan. 27, 2014 the Response the Motion to Modify for the Port. (Id.; On File).

The Port's Jan. 23, 2014 Motion for Extension of Time for Port "attorney of record" Carolyn A. Lake to file the Port's Response to the Motion to Modify was based upon the misrepresentation of fact that alleged the Extension of Time was needed for the Port "attorney of record" Carolyn A. Lake to file the Port's Response by Jan. 23, 2014 because Port "attorney of record" Carolyn A. Lake lacked enough time. (Id.; On File). Clearly, the Motion for Extension of Time was **not based upon Seth Goodstein's** lack of enough time to file the Port's Response by Jan. 23, 2014, and thereby, the Motion for Extension of Time was fraudulently made, signed, filed, and won by Seth Goodstein for Carolyn A. Lake the Port's only "attorney of record" on Jan. 23, 2014, especially since Seth Goodstein had admitted there he knew he was not a Port "attorney of record" on Jan. 23, 2014 when signing the Motion for Extension of Time on behalf of "Carolyn A. Lake" the Port's only "attorney of record" on Jan. 23, 2014.

Consequently, since Seth Goodstein, not Ms. Lake, signed the Port's Jan. 27, 2014 Response to the Motion to Modify here, this shows the Jan. 23, 2014 Motion for Extension of Time has no relevant factual basis for it, and, thereby, as mere "Fruit of the Poisoness Tree" and "ill gotten gains" of the Port, the Court's Jan. 30, 2014 Ruling granting the Jan. 23, 2014 Motion for Extension of Time for the Port to file a the Response the Motion to Modify by Jan. 27, 2014 was improper and should be overturned, and, thereby, the Court should strike the Port's Jan. 27, 2014 Response the Motion to Modify as untimely and/or improperly obtained by fraud or misrepresentation of fact as a sanction to grant the Motion to Modify for this reason alone.

Consequently, as noted previously, Commissioner Schmidt's Ruling here lacked legal and subject matter jurisdiction and was unauthorized, unethical, unfair, unequal, improper, unlawful, unconstitutional, prejudicial, clearly erroneous, arbitrary and capricious, and directly violates Mr. Dierker due process rights and invidiously discriminates against Mr. Dierker as noted herein and in the cited and/or incorporated pleadings noted herein.

Therefore, for these reasons alone the Court's Dec. 18, 2013 Ruling granting of the Dec. 3, 2013 Motion's relief requested for the Port must be overturned by the Court when deciding this Motion to Modify here.

6. Pursuant to RAP 18.9(a), CR 11, et seq., this Court should sanction Seth Goodstein, the Port and Carolyn Lake, the Port's only attorney of record in this case on Dec. 3, 2013, since Seth Goodstein was not an attorney of record for any party in this case until Jan. 27, 2014, and since all of these improper unauthorized actions taken under his name where he acted as if he was the Port's attorney of record filing relief requests to this Court on behalf of the Port or Carolyn Lake before Jan. 27, 2014 in this case, were unauthorized and are in violation of many of the Court Rules and laws of this State, including, but not limited to the below noted RPC's and the other Court Rules and standards of the law violated by Seth Goodstein, et al, here, that are noted herein and in my prior pleadings on these matters.

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

RAP 18.7 provides that "Each paper filed pursuant to these rules should be dated and signed by an attorney or party", and CR 11's requirements also apply to proceedings in the appellate courts. (Id.; see also Carrillo v. City of Ocean Shores, 122 Wa. App. 592, 618, n. 18, 94 P/3d 961 (Div. 2, 2004).

Further, the Rules of Professional Conduct (RPC) , 3.1, 3,4, and 3.5, et al, the attorneys of the Port government Respondents here are legally required to act with "Candor Toward the

Tribunal" (RPC 3.3) and "Fairness to Opposing Party(s)"(RPC 3.4) to make only "Meritorious Claims and Contentions" (RPC 3.1) "Expiditing Litigation" (RPC 3.2) in a case, while not violating the "Impartiality and Decorum of the Tribunal" by the "lawyer ... seek(ing) to influence a judge ... or other official by means prohibited by law" (RPC 3.5).

The record in this case clearly shows sanctions under 18.9(a) and CR 11 are warranted here, since Seth Goodstein violated RAP 18.7, all of these RPC's, as even the Port's Jan. 27, 2014 Response and its "attached" appearance "Notice" in this case shows Seth Goodstein made numerous admissions he has done when Seth Goodstein wrote, signed and filed his Dec. 3, 2013 Motion requesting relief for the Port granted by the Dec. 19, 2013 Commissioners' Ruling reviewed here, without Seth Goodstein being the Port's "attorney of record" in this case on Dec. 3, 2013. (Id.; On File).

Clearly, since Seth Goodstein was **not** the Port's "attorney of record" in this case on Dec. 3, 2013, everything he did and/or argued in the Dec. 3, 2013 Motion requesting relief was improper and sanctionable, the Dec. 3, 2013 Motion requesting relief was improperly granted by the Dec. 19, 2013 Commissioners' Ruling, **and** all of claims in the Port's Jan. 27, 2014 Response are improper and sanctionable that were improperly made to support Seth Goodstein's Dec. 3, 2013 Motion and try to support the Dec. 19, 2013 Commissioners' Ruling resulting from his actions. (Supra).

Clearly, the Court must sanction this attorney, the Port and Ms. Lake, for Seth Goodstein's "non-attorney of record's" improper signing and filing of the Dec. 3, 2013 pleadings in this Appeal case on behalf of this Port governmental agency in this case without any legal authority, which alone clearly violates the Court's Rules including, violating the Rules of Professional Conduct (RPC) 1.7(a) without following 1.7(a)(1) & (2) and violates RPC 1.2, 1.3, 1.8, 1.10, 1.11, 1.15(1), 3.1, 3.2, 3.3(a)(1, 2, 3, & 4), 3.4(a) & (b), 3.5(a), 4.3, 5.5 and 8.4(a), (c), & (d), partly due to the Port attorneys' making of legal claims conflicting with their own cited **legal authorities** in the July 9, 2013's in another case for another client by Port's attorneys. (Id.; see Footnote 3 on page 4 of the Port's Jan. 27, 2014 Response, On File).

Clearly, despite the Port's other false and/or irrellevant claims, Seth Goodstein did not represent the Port in this case on Dec. 3, 2013, and he could not file any pleading in this Court requesting relief for the Port that could be granted by the Dec. 18, 2013 Ruling reviewed here, and the Court must sanction this attorney, the Port and Ms. Lake for these improper actions. (Supra).

Further, the July 9, 2013 "supplemental authority" "attached" to Mr. Dierker's Reply Brief contained citations to legal authorities supporting Appellants' claims showing that Seth Goodstein and the Port's attorney Ms. Lake have knowingly violated the Rules of Professional Conduct (RPC) 1.7(a) without following 1.7(a)(1) & (2) and violates RPC 1.2, 1.3, 1.8, 1.10, 1.11, 1.15(1), 3.1, 3.2, 3.3(a)(1, 2, 3, & 4), 3.4(a) & (b), 3.5(a), 4.3, 5.1(a), (b) & (c), 5.2(a) & (b), 5.5 and 8.4(a), (c), & (d), partly due to the Port attorneys' making of legal claims in this case that directly conflict these Port's attorneys' July 9, 2013 own cited **legal authorities** in another case. (Id.; On File; see also the Admission to Practice Rules APR).

I also note that there is no legal arguments or even bare legal claims without support made anywhere in this Response or in the Dec. 3, 2013 Motion, alleging that the Port's citations of legal authorities are in any way false that were written within the Port's attorneys' July 9, 2013 "supplemental authority" "attached" to Mr. Dierker's Reply Brief, which I found are directly relevant to the most important issues in this case filed by Mr. West and myself, and , thereby, this Court must consider these the Port's citations of legal authorities to be "true", for the purposes of my claims relevant to my citations to the Port's citations of their July 9, 2013 legal authorities "attached" to Mr. Dierker's Reply Brief. (Id.; On File).

Clearly, the Court of Appeals' own Records in this case agree with me and clearly show that Seth Goodstein has made documented admissions showing he knew **he** was **not** a Port "attorney of record" until Jan. 27, 2014 when he filed his appearance "Notice" with the port Response, Seth Goodstein knew he wasn't a Port "attorney of record" when he signed and filed the Dec. 3, 2013 "Motion to be allowed to file a Motion Strike, et al", requesting the relief for the Port that was granted by the Dec. 18, 2013 Commissioner's Ruling reviewed here, and thereby, the Dec. 18, 2013 Ruling here was merely the "Fruit of the Poisoness Tree" of this Court's granting of Seth Goodstein's unauthorized, improper, and falsely supported arguments and requests for this same relief made in the Dec. 3, 2013 "Motion to be allowed to file a Motion Strike, et al". (Id.; On File).

How this completely improper Dec. 3, 2013 Motion could ever have been "lawfully" made, signed and filed, let alone won, by someone who was not a Port "attorney of record" at the time in this Court of Appeals case is beyond the authority of this Court, and the Court's Ruling granting this Dec. 3, 2013 Motion's requested relief is beyond the legal authority of this Court grant, and, for this reason alone the Dec. 18, 2013 Ruling must be overturned by the Court here for this reason

alone. Consequently, if granting this Motion to Modify here, this Court should grant Mr. Dierker requests for sanctions, terms and costs against Seth Goodstein, the Port and Carolyn Lake, when the Court overturns the Commissioner's Dec. 18, 2013 Ruling granting relief requested in Seth Goodstein's Dec. 3, 2013 Motion for the Port. (Id. On File).

7. Mr. Dierker denies the validity of the Port's Response's many other false, irrelevant and misrepresented factual and legal claims too numerous to mention in this short briefing space that appear to be absurd, false, and barred by estopple and res judicata in light of this case's record.

CONCLUSION

As the pleadings and record in this case shows, this Court must overturn the Dec. 18, 2013 Commissioner's Ruling granting relief requested improperly by Seth Goodstein's Dec. 3, 2013 Port "Motion to be allowed to file a Motion Strike, et al" since: this Motion lacks an "unfalsified" factual basis and lacks a relevant legal basis; the ruling granted relief prohibited by RAP 10.7; the Court had **no** legal and/or subject matter jurisdiction over this Motion since Seth Goodstein was **not** a Port attorney of record in this case on Dec. 3, 2013, so the Clerk could not even legally file Seth Goodstein's Dec. 3, 2013 Motion in this case on behalf of the Port; and this Motion and Ruling are otherwise improper, unlawful, unconstitutional, prejudicial, clearly erroneous, arbitrary and capricious, and/or invidiously discriminate against disabled pro se Mr. Dierker directly violating his due process rights under the State and Federal laws and Constitutions here. Supra.

Consequently, for these reasons this Motion to Modify the Dec. 18, 2013 Commissioner's Ruling overturning it should be granted, and this Court should grant Mr. Dierker RAP 18.9(a) or CR 11 sanctions, terms and costs for his making of this Motion to Modify, this Reply, and for making the prior Dec. 12, 2013 Response to Seth's Goodstein's Dec. 3. 2013 Motion, et al, improperly granted by the Dec. 18, 2013 Commissioner's Ruling in this matter.

I certify the foregoing to be true and correct to the best of my knowledge, beliefs and/or abilities, under penalty of perjury of the laws of the State of Washington and the United States of America, this 11th day of February, 2014 in Olympia, Washington.

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

IN THE WASHINGTON STATE COURT OF APPEALS
Division II

ARTHUR S. WEST, and JERRY L. DIERKER JR., Petitioners; v. PORT OF OLYMPIA, et al, Defendants.	)	No. 07-2-01198-3 COA II # 43876-3 Declaration on Attached Exhibits

Comes now Petitioner Jerry Lee Dierker Jr., the undersigned, who declares and makes the following Declaration.

A. I declare that the following listed attached Exhibits are relevant to this case as noted herein and have been filed in support of Appellant Dierker's Reply, et al, to the Port's Response to Appellant Dierker's Motion to Modify the Dec. 18, 2013 Commissioner's Ruling granting relief requested in Attorney Seth Goodstein's Dec. 3, 2013 Motion striking portions of Appellant Dierker's Reply Brief and its attached Supplemental Authorities filed in this case, and the attached Exhibits are allowed under the RAPs and CR 8(d) for Mr. Dierker's responsive Reply pleadings opposing the Port Response's pleadings that make citations to a certain document without the opposing party's attaching it to opposing party's pleadings in this matter, as occurred here.

B. I also declare that the following is a list of the attached copies of Exhibits, which are true and correct copies of Respondents' own pleadings and Exhibits previously filed with this Court of Appeals in this matter, and/or are true and correct copies of the following noted pleadings, both Courts' various Orders and Rulings cited, misquoted, and/or misrepresented in the Port's Response to Appellant Dierker's Motion to Modify the Dec. 18, 2013 Commissioner's Ruling, which the Port's Response's attached exhibits improperly did not include, though as noted in Mr. Dierker's Reply pleadings here, Mr. Dierker's attached Exhibits are clearly relevant to his Reply to this Port Response in this case and for this Court proper consideration of the validity of the Port's claims and arguments based upon these and other false factual and legal claims, since Mr. Dierker's attached Exhibits show the invalidity of the Port Response's false factual and legal claims concerning these pleadings, Courts' Orders and Rulings in this matter, and Respondents are

barred by the doctrines of estopple and/or res judicata from making such "ex post facto" (after the fact) Port's false factual and legal claims, et al., in the Port's improper Motions and Response's improperly based upon these and the many other of the Port's false factual and legal claims, et al., concerning the pleadings, Courts' Orders and Rulings, and the records necessary for a required De Novo review of all of the various issues in this matter. (Id.).

EXHIBITS

Exhibit 1) A copy of an exert from the decision portion of the Thurston County Superior Court's July 27, 2012 Order of Dismissal, showing the Superior Court's Pro Tem Judge Sam Meyer dismissed the Public Records Act (PRA) claims in this case as a sanction under the PRA's per day penalty provision, due to his first-time experience with and his misinterpretation of PRA stemming from the Port's misrepresentations of law and fact at the time, which shows that the Superior Court had **Denied** the Port's requests for dismissal of the PRA case "as a sanction under the Court's inherent power to control Appellant's unacceptable litigation practices", and shows that the Superior Court had also **Denied** the Port's requests for dismissal and/or for any other CR 11 type of sanctions against Appellants for the Port's claims Appellant's unacceptable litigation practices. See full Order of Dismissal already On File with this Court of Appeals. (Copied from the Port's Nov. 7, 2012 Motion to Clarify and/or Reconsider the Nov. 7, 2012 Commissioners Ruling; On File).

This clearly shows the falsehood of the Port Jan. 27, 2014 Response's factual and legal claim that the Superior Court had dismissed the PRA case "as a sanction under the Court's inherent power to control Appellant's unacceptable litigation practices" (at page 10), or for Appellants' alleged "abuse of process" in this case (at page 12), which clearly did not happen, where the Port falsely alleges that this appeal only concerns the Superior Court's dismissal of the PRA part of this case. (Id.).

However, since the Port's Jan. 27, 2014 Response legal argument absolutely depends on the "truth" of the Port's clearly false claim that this appeal only concerns the Superior Court's dismissal of the PRA part of this case, and this Port false claim and this Port argument are barred by res judicata, and, thereby this Motion to Modify must be granted.

Exhibit 2) A copy of the Nov. 7, 2012 Commissioner's Rulings denying Respondent

Weyerhaeuser's Motion to Dismiss the nonPRA issues in this case, and denying the Motion to Bifurcate, shows the falsehood of the Port's false claim that this appeal only concerns the Superior Court's dismissal of the PRA part of this case made in Port's Jan. 27, 2014 Response legal argument at pages 10 and 12, which as noted, absolutely depends on this Port false claim, and this Port false claim and this Port argument are barred by res judicata, and, thereby this Motion to Modify must be granted. (Copied from the Port's Nov. 7, 2012 Motion to Clarify and/or Reconsider the Nov. 7, 2012 Commissioners Ruling; On File).

Exhibit 3) A copy of pages 1-3 of Respondent Port of Olympia's Answer in Support of Respondent Weyerhaeuser's Motion to Dismiss, showing that the Port supported Respondent Weyerhaeuser's Motion to Dismiss denied on Nov. 7, 2012. (Copied from the Port's Nov. 7, 2012 Motion to Clarify and/or Reconsider the Nov. 7, 2012 Commissioners Ruling; On File).

Exhibit 4) A copy of the Port Attorneys' July 9, 2013 Response, Mr. Dierker's Reply Brief's "newly discovered attached 'supplemental authority'" containing many relevant legal authorities Mr. Dierker's Reply Brief cites to that the Port Attorney are familiar with, concerning a government's withholding disclosure evidence of their actions, a government's withholding disclosure of the terms and conditions of a Lease of public lands, a government's withholding disclosure of evidence in public records, and a government's withholding disclosure of evidence in environmental reviews under SEPA, et seq., relevant to Mr. Dierker's similar claims in this case, which the Port's Response cites to but falsely claims is improper supplemental "evidence" supporting Mr. Dierker's Reply Brief that is irrelevant to the issues in this case. (Id.; On File). However, since the Port's Jan. 27, 2014 Response legal argument absolutely depends on the "truth" of this Port false claim, and since this Port false claim and this Port argument based upon it are barred by res judicata, thereby, this Motion to Modify must be granted.

Exhibit 5) A copy of exerted page 30 of the Mr. Dierker Oct. 12, 2013 Consolidated Reply Brief to Respondents' two "consolidated/joined" Response Briefs filed in this appeal, showing that, despite the Port Response's false claims at page 4, et seq., here, **Mr. Dierker's Reply Brief does not state that the July 9, 2013 Response is "evidence"**, when a comparison of the wording of the two pleadings in these two Briefs shows that Seth Goodstein has improperly misquoted Mr. Dierker's Reply Brief by Seth Goodstein's improper adding of the word "evidence" to the end of a phrase of that sentence about "newly discovered attached 'supplemental

authority'" , when the "**and**" before the word "evidence" written there shows "evidence" was obviously part of the next phrase of that same sentence which was "**and <u>evidence</u> in the Motion to Strike**" -- so the "**<u>evidence</u>**" was **"in the Motion to Strike", not** in the "newly discovered attached 'supplemental authority'" as the Port falsely claims upon which to base their pleadings here. (Id.; On File). However, since the Port's Jan. 27, 2014 Response legal argument absolutely depends on the "truth" of this Port false claim, and since this Port false claim and this Port argument based upon it are barred by res judicata, thereby, this Motion to Modify must be granted.

I certify the foregoing to be true and correct to the best of my knowledge, beliefs and/or abilities, under penalty of perjury of the laws of the State of Washington and the United States of America, this 11th day of February, 2014 in Olympia, Washington.

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

IN THE WASHINGTON STATE COURT OF APPEALS
DIVISION II

ARTHUR WEST and JERRY DIERKER, Appellants,	)	No. 43876-3-II
	)	DIERKER'S RESPONSE TO PORT'S
	)	"MOTION TO ACCEPT SURREPLY"
v.	)	TO DIERKER'S REPLY TO PORT'S
	)	RESPONSE TO DIERKER'S
PORT OF OLYMPIA, et al, Respondents.	)	MOTION TO MODIFY THE DEC. 18,
	)	2013 COMMISSIONER'S RULING, et al

Appellant Jerry Dierker makes this Response to the Port's Feb. 24, 2014 "Motion to Accept Surreply" and "attached" "Surreply" to Mr. Dierker's Feb. 11, 2014 Reply claiming it was an improper brief to respond to the Port's claims made in the Port's responsive pleadings to Dierker's Motion to Modify, et al, the Dec. 18, 2013 Commissioner's Ruling granting the Port relief requested in Seth Goodstein's Dec. 3, 2013 "Motion to be allowed to file a Motion Strike, et al" that also claimed Mr. Dierker's Reply Brief in this Appeal was an improper brief, both of which should be considered under RAP 10.7 "Improper and RAP 17.3, and the port motion here must be denied.

These Port requests for relief for Dierker's alleged "improper briefs" clearly fail to comply with the relief provisions RAP 10.7's "Improper Briefs" , appear to fail to comply with RAP 17.3(a) "Content of Motion, Generally" provisions, et seq., and the Port's reason for granting this Port Motion to Accept Surreply misuses and perverts the "in the interests of justice" provisions of RAP 1.2, asking this Court to act "in the interests of justice" to violate Mr. Dierker's fundamental and procedural due process rights in this case to make responsive pleadings in "reply" to the Port's pleadings, or to make new "issues of law" pleadings due to factual or legal admissions by the Port's "response" pleadings in this case, and the Port's actions and pleadings here are improper in other ways, as noted herein Mr. Dierker's relevant pleadings in this case.

The Port has again filed another admittedly unauthorized Motion requesting the Court strike portions of Appellant Dierker's Reply Brief in this appeal and its "attached" Supplemental Authority which were copies of exerts of relevant case law and one July 9, 2013 document containing relevant legal citations the Port attorney(s) were familiar with, having written it, which Mr. Dierker felt would simplify and shorten the SEPA argument in this Court's "De novo" review

of the SEPA part of this extremely long case which continues to be delayed by the repeated actions of the Port's counsel that Appellants have to respond to here unnecessarily making another new round of filings in this 7 year long case with its already bloated docket from the Port's attorney's delaying of the case through her improper and unacceptable litigation practices in this and other related cases, her concealment of the contracts and other basic facts of this case and her piecemealing of the integral, interrelated, and interconnected "joint" actions of both the Port of Tacoma and Port of Olympia who are both represented by Ms. Lake, to allow her to prolong each of the several "piecemealed" cases" on this single joint action taken by both Port's, and is done to allow her to pad the record of each of these piecemealed case to support her higher claims for attorney fees, which the Port's attorney's has made to Courts and these Port's in this and other related cases and has made claims for attorney services for both the Port, and her piecemealing. (See this Court of Appeals directly related "piecemealed" case of Arthur West v. Port of Tacoma, recently decided against the Port of Tacoma, where Mr. West there attempted to get part of the public records which the Port of Olympia claimed they lost about the Port of Olympia's Marine Terminal Development/Weyerhaeuser project reviewed by the SEPA decision in Mr. Dierker's and West's case against the Port of Olympia here).

This Port Feb. 24, 2014 Motion, et al, is improper and must be denied, et seq., for the following reasons.

a. The Port's Motion to Accept Surreply here fails to follow any of RAP 17.3(a)'s basic "Content of Motion" requirements for all "motions" necessary to give this Court jurisdiction to consider this Port "motion" under the RAP's, where RAP 17.3(a) states:

> "Generally. A motion must include (1) a statement of the name and designation of the person filing the motion, (2) a statement of the relief sought, (3) a reference to or copies of parts of the record relevant to the motion, and (4) a statement of the grounds for relief sought, with supporting argument."

However, the Port's Motion to Accept Surreply fails to follow any of RAP 17.3(a)'s basic "Content of Motion" requirements for all "motions" necessary to give this Court jurisdiction to consider this Port "motion" under the RAP's, and, thereby, this Court lacks jurisdiction to consider this Port "motion" under the RAP 17.3(a) and the Court must deny this improper Port Motion to Accept Surreply, et seq.

b. Further, the Port's Motion to Accept Surreply's requests for relief for Dierker's alleged

"improper brief" in reply to the Port's responsive pleadings made in response to Dierker's Motion to Modify, et al., here, and clearly fails to comply with the "relief" provisions of RAP 10.7 for consideration of "Improper Briefs", and thereby, pursuant to RAP 10.7 this Court lacks jurisdiction to grant the Port's Motion to Accept Surreply, et seq.

c. The Port's Attorneys' claim in the Port's Motion to Accept the Port's Surreply, et al., constitutes a claim that Mr. Dierker cannot act pursuant to CR 8(d) and the Court's relevant rulings in this case to make an overlength responsive pleading in Reply to the Jan. 27, 2014 Port Response's pleadings including Seth Goodstein's Jan. 27, 2014 Notice of Association of Counsel and the Port's Jan. 24, 2014 Motion for Extension of Time.

Since the Court and the Port and its attorneys are all governmental entities of this State under the "special relationship" exception to the public duty doctrine, Mr. Dierker has a right to reasonably rely upon certain things in this case. (Bailey v. Forks, 108 Wn.2d 262, 265, 268, 737 P.2d 1257 (1987); Meaney v. Dood, 111 Wn.2d 174, 759 P.2d 455 (1988); Chambers-Castanes v. King Cy., 100 Wn.2d 275, 288, 669 P.2d 451, 39 A.L.R.4th 671 (1983); Taylor v. Stevens Cy., 111 Wn.2d 159, 759 P.2d 447 (1988); Rogers v. Toppenish, 23 Wn. App. 596 P.2d 1096, review denied, 92 Wn.2d 1030 (1979).

To allow the disabled pro se Mr. Dierker to make this overlength responsive pleading in "reply" to the Port's opposing pleadings in this case, Mr. Dierker reasonably relied upon:

1) the Court Rules, especially CR 8(d), allowing and requiring responsive pleading in "reply" to the Port's opposing pleadings in this case;

2) the Court of Appeals' scheduling ruling on the Motion to Modify allowing the disabled pro se Mr. Dierker to make a "Reply" to the Port Attorneys' pleadings made in the Port's Response to Mr. Dierker's Motion to Modify;

3) that Mr. Dierker had previously claimed in his Dec. 12, 2013 Response to the Port's Dec. 3, 2013 Motion granted by the Dec. 18, 2014 Commissioners' Ruling reviewed in Dierker's Motion to Modify here that Seth Goodstein was not a "noticed" Port attorney of record in this case on Dec. 3, 2013;

4) that the disabled pro se Mr. Dierker "replied" to and relied upon the Port's "responsive pleadings" in "response" to Dierker's Motion to Modify made by the Port Attorneys' Jan. 27, 2014 Port Response including both Seth Goodstein's Jan. 27, 2014 Notice of Association of

Counsel, and the Seth Goodstein's Jan. 24, 2014 Motion for Extension of Time, since the last two of clearly made Port "responsive pleadings" that were in "response" to Mr. Dierker's Dec. 12, 2013 Response's claim that Seth Goodstein was not a "noticed" Port attorney of record in this case on Dec. 3, 2013; and

5) the disabled pro se Mr. Dierker relied upon the Court of Appeals' granting of his Motion for Extension of Time, et al., that partly requested under his repeated requests for "reasonable accommodations pursuant to the Americans with Disabilities Act (ADA) and partly requested under his due process rights to a meaningful opportunity to be heard in response to an opposing party's claims under the due process standards, where the disabled pro se Dierker requested he be allowed to have an "extension of time" to make his probably overlength Reply to the Jan. 27, 2014 Port Response's pleadings including Seth Goodstein's Jan. 27, 2014 Notice of Association of Counsel, due to the many Port Response's many new issues of fact and law, and several old claims the Port previously lost in this case, which the Port Attorneys made in the Port's Response to Mr. Dierker's Motion to Modify, including Seth Goodstein's Jan. 27, 2014 Notice of Association of Counsel, which had clearly "opened the door" for Mr. Dierker to make such overlength "responsive pleadings" arguing the Port Attorneys' new issues and factual claims **not** supported by the record in this case made in the Port's Response, where, as an example, **in just a footnote** of the Port Response made **32** false factual claims supporting the Port's legal claims in the Response, alleging without any support in the record of this appeal, that Dierker has made 32 alleged "improper pleadings" during this appeal of this case, despite the fact that: a) most of the Port attorney's 32 alleged "improper pleadings" were written by this Court or by Mr. West's former attorney who is no longer part of this case, as noted by Mr. West's recent Reply to the Port's Response to Mr. Dierker Motion for Extension of Time granted by this Court, b) despite the fact that this Court has **not** found that Mr. Dierker made these or some other **32** alleged "improper pleadings" to allow the Port to claim these are "facts" enough to support the Port's Response here. (Id.).

Further, as Dierker's pleading noted, beside the Port's 32 false or misleading and unsupported "factual" claims made **in just a footnote** of the Port Response, there are many other either new "first time" claims, false claims, and/or other claims, some which the Port has previously lost in this case, which required Dierker to make an overlength Reply to the Ports Response to the Motion to Modify to properly make responsive pleadings pursuant to law to these

most wild and false Port claims which were mostly irrelevant to the subject of Dierker's Motion to Modify. (Id.).

Before Dierker ever wrote this Reply, the Port and this Court previously knew that Dierker's Reply would probably be an overlength Reply due to the many new claims made in the Port's Response, as argued in Dierker's Motion for Extension of Time, et al., that was granted by this Court, granting Dierker more time for filing Mr. Dierker's probably overlength Reply to the Port's Response to Dierker's Motion to Modify here. (Id.).

Further, even the Port's own argument in the Port's Response to Dierker's Motion for Extension of Time here granted by this Court, complained that Dierker's Motion for Extension of Time, et al., had argued that Mr. Dierker might need to file an overlength Reply due to Mr. Dierker's claims that the Port's Response had made many new claims Mr. Dierker's Reply would have to respond to with proper pleadings, **and** this Court still granted Dierker's Motion for Extension of Time, et al. (Id.).

The Port's older conflicting Response pleading above on Dierker's Motion for Extension of Time, et al., shows that the Port Motion's "overlength" Reply argument was legally barred under the doctrines of "collateral" or "equitable" estoppel, and/or was legally barred under the doctrine of res judicata of this Court's granting of Dierker's Motion for Extension of Time, et al.

Consequently, it is clear that when this Court granted Dierker's Motion for Extension of Time, et al., the Port and this Court knew Mr. Dierker's Reply would be overlength, and this "overlength" Reply argument here has already been made by the Port and has already been considered by this Court, before this Court granted Dierker's Motion for Extension of Time, et al. (Id.).

Clearly, the Port Motion's claims (at page 1) that Dierker's Reply was 1) "grossly overlength" and 2) contained "new" first time claims, are both knowingly improper and are at best misrepresentations of the circumstances here, and thereby, this Port Motion has no basis in fact or law and must be denied.

For these reasons the Court must deny this Motion to Accept Surreply, et seq.

d. The Port's Motion to Accept Surreply at page 1, admitted the RAPs do not allow or authorize a Port "Surreply" to be even considered by this Court let alone granted, and for this reason alone the Court must deny this Port Motion to Accept Surreply, et seq.

e. Instead of following RAP 10.7, et seq., the Port's only claimed legal reason for granting this Port Motion to Accept Surreply at page 1, misuses and perverts the "in the interests of justice" provision of RAP 1.2, where the Port improperly requests that "in the interests of justice" *(sic)*, the Court should just accept the Port's unauthorized "Surreply", while the Court denies any further pleadings by Mr. Dierker or other parties in "response" to the Port's pleadings here, thereby violating Mr. Dierker and other parties fundamental due process rights meaningful opportunity to be heard in "response" to this Port Motion to Accept Surreply, et al. (Id.).

The Port Motion's "reason" *(sic)* for this Court's granting of this Port Motion to Accept Surreply **without** allowing Mr. Dierker and other parties fundamental due process rights meaningful opportunity to be heard in "response", is because:

"(t)he Port's alternative would be to file a Motion to Strike per RAP 17.3, and thereby **invite a whole new round of filings in this case's already-swollen docket**, .. .". (Id. at page 1).

However, just because a Port motion would "invite a whole new round of filings in this case's already-swollen docket" is not a valid "reason" that this Court must act "in the interests of justice" to refuse Mr. Dierker and other parties their fundamental due process rights to respond or rebut the new Port pleadings and claims made in the Port's Motion here. (See below).

This Court cannot use the Port's improper and unconstitutional "reason" to justify the Port's request that "in the interests of justice" this Court should waive the RAPs and all of the standards of due process of law, to make an Order violating Mr. Dierker and other parties' fundamental due process rights to have a meaningful opportunity to be heard in "response" to this Port's Feb. 24, 2014 "Motion to Accept Surreply" here, which would amount to an unconstitutional "prior restraint" of Mr. Dierker's and other parties' rights to due process of the law, to equal protection of the law, and to gain redress of grievances against governmental actors in the Court of this State, and such "prior restraints" are very narrow, have to have had prior notice of it given, and have to show a substantial governmental interest or they are barred by law in such cases, like they are barred here. (See below).

The Port's Response and any granting of it by this Court constitute illegal "prior restraint" of Mr. Dierker's First, Fourth, Fifth, and Fourteenth Amendments due process and property rights, that bar him from having a meaningful opportunity to be heard to making responsive pleadings in "reply" to the Port's "response" pleadings made in this case, in his petitioning of the government for redress of grievances here, and the Port actions or omissions here violate and/or constitute at

least deliberate indifference to Mr. Dierker's due process rights and rights to equal protection of the law here. (Supra).

Prior restraints of First Amendment rights, like those for requesting of public records and like those for petitioning the government for redress of grievances, "must be narrowly drawn" or are prohibited. (See Broderick v. Oklahoma, 413 US 601, 37 L. Ed. 2d 830 (1973); see also New York Times v. Sullivan, 376 US 254, 11 L. Ed. 2d 686 (1964). Under Hughes v. Kramer, 82 Wn.2d 537, 511 P.2d 1344 (1973), among the rights protected by the First and Fourteenth Amendments of the U.S. Constitution are the freedoms of political belief, expression, dissension, criticism, and the right to petition government for the redress of grievances. (Id.).

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

The Port actions or omissions constitute conduct here violates Dierker's and other parties' clearly established statutory and constitutional rights of which a reasonable person would have known. (See Buckley v. Fitzsimmons, supra, at 2612-2613, quoting Harlow v. Fitzgerald, 457 U.S. 800 at 818, 102 S. Ct. 2727 at 2738 (1982). These claims involve violations of Dierker's and other parties' civil and constitutional rights to equal protection, due process, liberty interests, the Supremacy clause, the separations of powers doctrine, international treaties, and other such federal legal questions to control the excesses of government here. (Id.; see Kuzinich v. County of Santa Clara, 689 F. 2d 1345 (9th Cir. 1982); referring to Yick Wo v. Hopkins, 118 US 356, 6 S. Ct. 1064, 30 l. Ed. 220 (1886); Halperin v. Kissinger, 606 F. 2d 1192 (DC Cir. 1979); Hill v. Tennessee Valley Authority, 549 F. 2d 1064 (1977), affirmed 98 S. Ct. 2279 (1978); Haygood v. Younger, 769 F. 2d 1350 (9th Cir. 1985).

Whether an official is protected by qualified immunity turns of the objective legal reasonableness of the action assessed in light of the legal rules that were clearly established at the time the action was taken. (Anderson v. Creighton 483 U.S. 635, 639, 107 S. Ct. 3034, 97 L. Ed 2d

523 (1987); Harlow v. Fitzgerald, 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982). The Court found that this standard requires a two-part analysis: 1) Was the law governing the official's conduct clearly established? 2) Under the law, could a reasonable person have believed the conduct was lawful? (Act Up!/Portland v. Bagley, 988 F. 2d 868, 871 (9th Cir. 1993) citing Anderson v. Creighton, supra.) The Anderson Court found that "...the right to due process of law is quite clearly established by the Due Process Clause, and thus there is a sense in which any action that violates that Clause (no matter how unclear it may be that particular action is a violation) violates a clearly established right." (Id). "When government officials abuse their offices ..." a court must act to protect such constitutional guarantees. (Anderson v. Creighton, supra, referring to Harlow v. Fitzgerald, 457 U.S. 800, 73 L. Ed. 2d 396, 102 S. Ct. 2727 (1982).

The Port's actions or omissions to properly act here also violate the Plaintiffs' rights to free speech, due process, and redress of their grievances on these issues by violating Appellants rights to equal protection "that all persons similarly situated should be treated alike." (City of Cleburne v. Cleburne Living Center, 105 S.Ct. 3249, 3254, 87 L.Ed.2d 313 (1985); Pollard v. Cockrell, 587 P.2d 1002, 1112–1113 (5th Cir. 1978); Oriental Health Spa v. City of Fort Wayne, 864 F.2d 486, 490 (7th Cir. 1988). In the State of Washington, the law "must operate equally on every citizen or inhabitant of the state." (See State v. Zornes, 475 P. 2d. 109 at 119 (1970); see also the 5th and 14th Amendment to the U.S. Constitution and Article I Section 12 of the Washington State Constitution, et seq.). This State's case of Reanier v. Smith and its progeny recognize that the equal protection clause requires that all similarly situated individuals must be treated equally. (See Reanier v. Smith, 83 Wn. 2d. 342, 517 P. 2d. 949 (1974). The guaranty of equal protection of the laws is a pledge of the protection of equal laws." (See Yick Wo v. Hopkins, 118 U.S. 356, at 369, 68 S. Ct. 1064, 30 L. Ed. 220). "When the law lays an unequal hand on those who have ... intrinsically the same quality ... it has made as invidious a discrimination as if it had selected a particular race or nationality for oppressive treatment." (See Yick Wo v. Hopkins, supra; State of Missouri Ex Rel Gaines v. Canada, 305 U.S. 337, 59 S. Ct. 232, 83 L. Ed. 208). Violations of equal protection are reviewed under both rational basis and strict scrutiny standards of review to determine state interest in its scheme. (See Griess v. State of Colorado, 624 F. Supp. 450 (1985). The state must prove that law furthers a substantial interest of the state. (Id; see also In Re Mota, 114 Wn. 2d 465, 477, 788 P. 2d 538 (1990); Plyler v. Doe, 457 U.S. 202, 72 L. Ed. 2d 786, 102

S. Ct. 2382, reh'g denied, 458 U.S. 1131, 73 L. Ed. 2d 1401, 103 S. Ct. 14 (1982).

Here, the Port and/or its agents have lost any immunity of their office when they stepped outside their "Cloak of Office" by violating the public trust which resides in them, and thereby violating state law on abuse of office, misconduct of public officers, violation of oath of office, et al, which clearly acts to prejudice and/or violate Dierker's equal protection and due process rights and other interests in this matter. (See RCW 42.20, et seq.; RCW 42.21, et seq.; RCW 42.22, et seq.; RCW 42.23, et seq.; RCW 42.12.010; Washington State Constitution Article I § 33).

Further if this Court were to grant the Port's requests here, would make this Court also liable for this harm caused to Mr. Dierker's protected rights and interests here.

However, in contrast and in violation of RAP 17.3(a)(4), this just over 1 page Port's Motion here failed to "cite" to any legal authority on "in the interests of justice" to support granting a RAP 1.2 such an unauthorized to support the Port's Attorneys' claims for the relief requested by the Port's Attorneys' Motion here.

Clearly, the Port did not act properly here "in the interests of justice" and this Court cannot properly act "in the interests of justice" use this improper and unconstitutional Port reason to justify the Port's request that this Court should waive the RAPs and the standards of due process to deny Mr. Dierker and other parties' fundamental due process rights to have a meaningful opportunity to be heard in "response" to this Port's Feb. 24, 2014 "Motion to Accept Surreply" here "in the interests of justice".

Therefore, the relief requested by the Port's Motion here is **NOT** "in the interests of justice" under RAP 1.2, and therefore, this Court must deny this Port's Motion here which did not even try to "cite" to any legal authority to support the Port's Attorneys' claims for the relief requested by the Port's Attorneys' Motion here.

Clearly, the Port Motion is not "in the interests of justice" and does not meet the criteria to be "in the interests of justice", and does not meet the criteria to be any "exceptional" reason, justifying this Court's wavier of all due process under the RAPs and standards of due process, in order to allow this Court's to grant this Port Motion to accept a "Surreply" not authorized by RAPs, without allowing any "responsive pleadings" for a meaningful opportunity to be heard on this Port Motion and Surreply filed here.

Consequently, for these reasons this Court should deny this Port Motion to Accept

Surreply, and this Court should not accept consideration of the Port's unauthorized Port Surreply for argument of the Motion to Modify, except for the Court's consideration of Dierker's CR 11 claims of the Port's attorneys' misconduct and unacceptable litigation practices in this part of this 7 year long case here.

f. Further, despite the false claims of the Port's Motion here that "this case's already-swollen docket" had been "swollen" by Appellants' actions, the record in this case shows that "this case's already-swollen docket" had been "swollen" mostly by the unlawful and unreasonable actions of the Port's attorney of this pleading, since pro se appellants will never make more money on any "padding of the record" of this case when the Port's attorneys in this case can charge the Port attorney fees and costs for each page printed.

A review of cash awards in Public Records Act cases shows attorneys make the most money from more pleadings or longer delay of such cases, like the Port's attorney here, who is getting paid to make every page of every pleading she has used to delay this case so far -- clearly, the disabled pro se appellants cannot make the amount of money the Port's attorney has milked out of this 7 year long case and its related and the other several "piecemealed" sister-cases which have also been delayed by the Port attorney's unlawful tactics to "milk" the Port of Olympia's and Port of Tacoma's "public cash cows" to death, and to delay any proper Court action on this case, where the Port's attorneys use pleadings like this unauthorized Port Motion to Accept Surreply and the unauthorized Port Surreply here to delay and bill for again. The Port's claims here are clearly false and are, at best, misrepresentations of the facts in this case, as shown by the record in this case.

Also, this same sentence in the Port's Motion here contains another clear misrepresentation of fact that "the delay" in this case was caused by the Appellants, when that Port-created "fact" is no more than an unproveable factual allegation not supported by even the Superior Court records which noted that Court's "mistakes" about this case, which were unreasonably ignored by the final judge of the Superior Court making the Order of Dismissal in this case that is currently being appealed here. (Id.) The Port's claims here are clearly false and are misrepresentations of the facts in this case.

Thereby, for these reasons alone this Court should deny this Port Motion to Accept Surreply, and this Court should not accept consideration of the Port's unauthorized Port Surreply

here, except as noted herein.

g. Further, at the bottom of page 1 of the Port's Motion, the Port's attorneys drafting this Port pleading here has adopted the actual wording of the Superior Court's Order of Dismissal, that comprises the wording of Mr. Dierker's appellate claims, arguments, and citations on the Superior Court's Order of Dismissal in this case, and, thereby, the Port has now "abandoned" the Port's prior **false** claim made in this Appeal that the Superior Court's "dismissal of this case was a sanction for Appellants' "unacceptable litigation practices under the Superior Court's "inherent powers"" *(sic)*, **which clearly did not happen in this case despite the Port's prior false claims in this appeal**. (Id; see copy of the exerted "ORDERED" page of the the Superior Court's Order of Dismissal attached to Dierker's Reply to the Port's Response to Dierker's Motion to Modify here).

Mr. Dierker's appellate claims, arguments, and citations about the Superior Court's Order of Dismissal, clearly showed that the Superior Court's dismissal of this case was based upon the Superior Court Judge's clearly misinterpretation that the "per day public Records Act penalty" statute, RCW 42.56.550(4) somehow gives a Superior Court the authority and the jurisdiction to dismiss a Public Record Acts case without any Show Cause Hearing, simply because the Superior Court fails or refuses to conduct such a hearing, despite evidence and controlling law to the contrary, simply because the Port's attorney tells the Judge of the Superior Court he must do this to save her and the Port from these mean disabled pro se plaintiffs, Mr. Dierker and West, who she believes must be persecuted by the Courts by showing how improperly her or her clients act in this and other such related situations and circumstances.

As the record in this case shows, the Port has previously based its entire legal and factual argument of the final dismissal of the PRA claims in this case on the Port's false claim that the final dismissal of the PRA claims in this case in the Superior Court's Order of Dismissal was for Appellants' "unacceptable litigation practices" delaying this case, when as the Port's Motion notes that the Superior Court's Order of Dismissal in this case was actually legally based upon the "per-day Public Records Act penalty sought by the Appellants against the Port". (See Port's false claims concerning the final dismissal in this case in the Port's Response Brief in this appeal, and in the Port's Jan. 27, 2014 Response to Dierker's Motion to Modify).

Clearly, the Port's false claim that the final dismissal of the PRA claims in this case in the

Superior Court's Order of Dismissal was for Appellants' "unacceptable litigation practices" delaying this case is now barred under the doctrines of "collateral" or "equitable" estoppel, by the Port's conflicting pleading here which **NOW** finally at least partly follows Mr. Dierker's correct factual and legal claims and the record in this case, though the Port still falsely claims the "delay" in this case was Appellants fault, despite the Court's E-mails and record to the contrary. (Id.).

Consequently, I do thank the Port's attorney for finally giving up the Port's previously made false claims concerning the final dismissal of the PRA claims in this case, where the Port's Motion here admits that the Superior Court' dismissal in this case was legally based upon the "per-day Public Records Act penalty sought by the Appellants against the Port", as the "ORDERED" page of the Superior Court's Order of Dismissal attached to Mr. Dierker's Reply here clearly stated, and as Mr. Dierker's pleadings in his Reply Brief in this Appeal clearly showed.

Therefore, for the reasons noted herein, not only must this Court deny the Port's Motion to Accept Surreply, but this Court should also grant Dierker's Motion to Modify, and this Court should act *sua sponte* to grant Mr. Dierker "summary judgment" to grant this Appeal, since the Port has now admitted the falsehood of the Port's previous legal and/or factual claims relied upon by both the Port's Response Brief in this appeal and the Port's Jan. 27, 2014 Response to Dierker's Motion to Modify.

h. Despite Seth Goodstein's Jan. 27, 2014 Notice of Association of Counsel being filed with the Port's Response to the Motion to Modify, the Port Motion and Surreply here falsely claims that Mr. Dierker "spends most of his 'reply' incorrectly arguing for the first time that Seth Goodstein was not a noticed participant in this case", as a Port "attorney of record" in this case on Dec. 3, 2013 as Mr. Dierker's Dec. 12, 2013 Response to the Port's Dec. 3, 2013 Motion noted, while the Port's Response spends most of its Motion "incorrectly arguing for the first time" in numerous false, irrelevant, and/or misleading Port claims and pleadings that Seth Goodstein actually was "a noticed participant in this case" on Dec. 3, 2013.

However, this claim in the Port's Feb. 24, 2014 admittedly unauthorized Surreply is false, since the record shows that Seth Goodstein was **not** a Port "attorney of record" in this case on Dec. 3, 2013 and was not **until Jan. 27, 2014**, which the Port's Motion to Accept Surreply" falsely claims are "new accusations in Reply outside the Scope of Appellant Dierker's Motion to Modify". (Id.; see also Seth Goodstein's "27 rd (27th?) day of January, 2014" "Notice of

Association of Counsel", filed with the Port's Jan. 27, 2014 Response to Appellant Dierker's Motion to Modify the Dec. 18, 2013 Commissioner's Ruling; On File).

Clearly, the record in this case shows that Seth Goodstein was **not** a "noticed" participant in this case" until Jan. 27, 2014 when Seth Goodstein's "27 rd (27th?) day of January, 2014" "Notice of Association of Counsel" as a "noticed" Port "attorney of record" in this case.

Further, despite Ms. Lake's false claims to the contrary, Mr. Dierker's Dec. 12, 2013 Response at page 4, is where Mr. Dierker "argued for the first time" this claim that Seth Goodstein was **not** a Port "attorney of record" in this case on Dec. 3, 2013 when he filed the Port's Motion for the relief granted by the Dec. 18, 2014 Commissioner's Ruling, and this is clearly **not** a "new" issue concerning the Port's Motion or the relief granted by the Dec. 18, 2014 Commissioner's Ruling which Mr. Dierker seeks to modify here.

Further, even if Mr. Dierker's Dec. 12, 2013 Response at page 4, had not already "argued for the first time" this claim that Seth Goodstein was **not** a Port "attorney of record" in this case on Dec. 3, 2013 when Seth Goodstein filed the Motion for the relief granted to the Port by the Dec. 18, 2014 Commissioner's Ruling, because pursuant to CR 8(d), et seq., since Seth Goodstein's "27 rd (27th?) day of January, 2014" "Notice of Association of Counsel" was filed with the Port's Response to the Motion to Modify here, this "Notice" part of this Port Response clearly "opened-the door" for the opposing party, Mr. Dierker, to make "responsive pleadings" concerning Seth Goodstein's "Notice" admitting that he was not a "noticed" participant in this case" until Jan. 27, 2014, and, thereby, also arguing again that Seth Goodstein was **not** a Port "attorney of record" in this case on Dec. 3, 2013, like Mr. Dierker did in his Dec. 12, 2013 Response to Seth Goodstein's Dec. 3, 2013 Motion granted by the Dec. 18, 2013 Commissioner's Ruling reviewed in the Dierker's Motion to Modify here. (Id.).

Further, since Seth Goodstein's "27rd (27th?) day of January, 2014" "Notice of Association of Counsel" was now filed in this case, Jan. 27, 2014 was the very first day that Mr. Dierker had this "new" evidence, and all "statutes of limitations" on such civil actions must be "tolled", and this Court must allow argument of this "new" evidence that was part of the Port "Response" under the Discovery Rule Doctrine and the Doctrine of Fraudulent Concealment, or the Court would be denying Dierker's rights to due process and equal protection of the law, even if Mr. Dierker had not made this claim in his Dec. 12, 2013 Response to the Port's Dec. 3, 2013

motion granted by the Dec. 18, 2013 Commissioner's Ruling, which is the subject of the Motion to Modify here.

Further, despite Ms. Lake's false claims to the contrary, Seth Goodstein's "27 rd (27th?) day of January, 2014" "Notice of Association of Counsel" is clearly the "Best Evidence" to show that Seth Goodstein was **not** a "noticed" Port "attorney of record" in this case on Dec. 3, 2013, and show that Seth Goodstein was **not** "a noticed participant" as a Port "attorney of record" in this case **until Jan. 27, 2014 when he filed his first "notice" of appearance in this case for the Port**. (See also the other evidence cited by Mr. Dierker's Reply on his Motion to Modify showing that Seth Goodstein was **not** a Port "attorney of record" in this case until Jan. 27, 2014).

Further, despite Ms. Lake's false claims to the contrary, other "Best Evidence" in this case cited in Mr. Dierker's Reply showing Seth Goodstein was **not** a "noticed" Port "attorney of record" in this case on Dec. 3, 2013, is the Clerk's and/or Commissioner's of the Court of Appeals Rulings of Jan. 13, 2014, Dec. 18, 2013, Nov. 5, 2013, Sept. 10, 2013, April 2, 2013, and at all times before Jan. 27, 2014, which clearly show that on Dec. 3, 2013 the name of the Port's "noticed" "attorney of record" in this case was "Carolyn A. Lake", **not Seth Goodstein**. (Id.)

Further, other "Best Evidence" in this case cited in Mr. Dierker's Reply showing Seth Goodstein was **not** a "noticed" Port "attorney of record" in this case on Dec. 3, 2013, is the Port's Jan. 23, 2014 Motion for Extension of Time, that was made, signed and filed by Seth Goodstein, who did not sign this Motion as the Port's "noticed" "attorney of record" in this case, but instead, acted there only signing this Motion "on behalf of" Carolyn A. Lake, the Port's real "noticed" "attorney of record" in this case, and thereby, Seth Goodstein clearly has admitted he knew he wasn't a Port "attorney of record" even on Jan. 23, 2014, let alone on Dec. 3, 2013 when he made the Port's Motion granted by the Dec. 18, 2013 Commissioners ruling here. (Id.).

Clearly, the "Best Evidence" Rule and the record in this case shows that that Seth Goodstein was **not** "a noticed participant" as a Port "attorney of record" in this case on Dec. 3, 2013, and shows that Seth Goodstein was **not** a Port "attorney of record" in this case until Jan. 27, 2014 when he filed his "Notice of Association of Counsel" Seth Goodstein's first "notice" of appearance in this case for the Port when Seth Goodstein became "a noticed participant" in this case as a Port "attorney of record" in this case on Jan. 27, 2014.

Therefore, since Seth Goodstein has admitted when he filing his "Notice of Association of Counsel" that he was **not** "a noticed participant" as a Port "attorney of record" in this case on Dec. 3, 2013, Seth Goodstein's Dec. 3, 2013 Motion was improperly made, signed, filed by him, and this Court had no legal or subject matter jurisdiction to consider Seth Goodstein's Dec. 3, 2013 Motion or to grant the Motion's relief requested for the Port by making the Dec. 18, 2013 Commissioners Ruling here.

Further, the Port's Attorney writing this Port Motion should have known that the Port Motion's claims and pleadings made here were false, and any similar Port claim that Seth Goodstein **was** "a noticed participant" as a Port "attorney of record" in this case on Dec. 3, 2013, are completely barred under equitable and/or collateral estoppel, since Seth Goodstein has admitted when he filed his Jan. 27, 2014 "Notice of Association of Counsel" and when he filed the Port's Jan. 23, 2014 Motion for Extension of Time, clearly showing that he was **not** "a noticed participant" as a Port "attorney of record" in this case on Dec. 3, 2013.

Consequently, the Port's Attorney writing this Port Motion should be sanctioned for making such a false claim and such a frivolous Motion under RAP 18.9 and/or CR 11, et seq., and for this reason the Court must deny this Motion to Accept Surreply, et seq., and must grant this Motion to Modify.

Further, the claims of the Port's Surreply citing State v. Jones, 92 Wn.App. 555, 558, 964 P.2d 398, 399 (Div. 2 1998) are irrelevant here, since:

1) the Goodstein Law Group is a private company with private attorneys that has continued to act as a private company with private attorneys representing private parties even while at the same time also representing the governmental Port clients in this appeal of this case and others, and which are continuing to do so;

2) since Seth Goodstein was a private attorney who was not a part of the Goodstein Law Group at the time the Group was hired by the Port for this case in 2007, and since no Port contract for services was produced showing Seth Goodstein had been hired by the Port as it's attorney by Dec. 3, 2013 for this case; and

3) since all Port attorneys are "governmental attorneys" acting under a governmental contract required by State law, who must each first be individually "hired" by the Port of Olympia itself for each case that the attorney, and there has been no production of evidence of a Port contract for Seth

Goodstein to be a Port attorney or even a "declaration" from Seth Goodstein, Ms. Lake, or the Port to support this claim of the Port's which might show that Seth Goodstein was hired by the Port of Olympia to act as one of the Port of Olympia's attorneys covering this case, **before Dec. 3, 2013**. (Id.). Thereby, the claims of the Port's Surreply citing State v. Jones are irrelevant here, and should not be considered.

i. Further, this false claim of the Port's Surreply citing State v. Jones, that all of the Goodstein Law Group's attorneys, including Seth Goodstein, are actually all Port "noticed" attorneys of record in this case, clearly shows that Seth Goodstein lied for Ms. Lake when he making the Port's Jan. 23, 2014 Motion for Extension of Time, which clearly showed that he was **not** "a noticed participant" as a Port "attorney of record" in this case on Dec. 3, 2013, when claiming in the Jan. 23, 2014 Motion for Extension of Time, and **Ms. Lake** needed extra time until Jan. 27, 2014 to make the Port's Response to Mr. Dierker Motion to Modify, due to **Ms. Lake's** busy trial and legal schedule, as the Port's only "attorney of record" in this case on Jan. 24, 2014, which the Court here granted based upon these false claims that **Ms. Lake** was going to write the Port's Response to Mr. Dierker Motion to Modify as the Port's only "attorney of record" in this case on Jan. 24, 2014, **not Seth Goodstein who actually wrote** the Port's Jan. 27, 2014 Response to Mr. Dierker Motion to Modify. (Id.).

However, since the Court only granted the Port's Jan. 23, 2014 Motion for Extension of Time for **Ms. Lake** to have time to write the Port's Response to Mr. Dierker Motion to Modify as the Port's only "attorney of record" in this case on Jan. 23, 2014, it was clearly improper for **Seth Goodstein** to use **Ms. Lake's** extension of time for **Seth Goodstein** to write the Port's late Jan. 27, 2014 Response to Mr. Dierker Motion to Modify on the same day he becomes a "noticed" Port "attorney of record" in this case by filing his Jan. 27, 2014 "Notice of Association of Counsel". (Id.).

Consequently, **Seth Goodstein's** writing of the Port's Jan. 27, 2014 Response to Mr. Dierker Motion to Modify appears to violate the Court's Ruling granting **Ms. Lake's** extension of time to write the Port's Jan. 27, 2014 Response to Mr. Dierker Motion to Modify, and thereby, the Port's Jan. 23, 2014 Motion for Extension of Time was obtained by the misconduct and/or fraud of Seth Goodstein here.

Clearly, with only a single "scribbled" and unreadable signature over at least two different

Port attorneys names on the bottom of these Port pleadings, it is impossible to even "identify" which of these Port attorneys is writing these Port pleadings.

Consequently, under RAP 18.9 and/or CR 11, et seq., the Port, Ms. Lake, and Seth Goodstein should be sanctioned for improperly, falsely, and/or fraudulently making and obtaining the relief requested in the Port's Jan. 23, 2014 Motion for Extension of Time that was based upon such false claims for the Ms. Lake's improperly obtaining this Extension of Time to write the Port's Response to Mr. Dierker Motion to Modify, and thereby, the Port's Response to Mr. Dierker Motion to Modify written by Seth Goodstein, **not** Ms. Lake, is clearly improper and "untimely" and should be stricken, and the Court must grant Dierker's Motion to Modify here.

j. Further, the Port's governmental attorneys' recent actions in this case clearly violate these Port attorney's legal duties as governmental attorneys under the law, violating their Duty of Conscientious Service owed to Mr. Dierker other parties and the Court in this case under Meza, and violating these governmental attorneys' "duties of due care" under the exceptions to the "public duty doctrine" owed to Mr. Dierker other parties and the Court in this case under Meaney, which is on top of these Port Attorneys' violations of their duties of due diligence owed to Mr. Dierker other parties and the Court in this case pursuant to RAP 18.9, CR 11, et seq. (See Meza v. Washington State Dept. of Social and Health Services, 633 F. 2d 314 (1982, 9th Cir.); Meaney v. Dood, 111 Wn.2d 174, 759 P.2d 455 (1988); RPC 1.3, 3.1, 3.2, 3.3, 3.4, 4.3; CR 11; RAP 18.9; Physicians Insurance Exchange v. Fisons Corporation, 122 Wn. 2d 299, 858 P. 2d 1054 (1993).

Despite the Port's clearly false claims made in this new unauthorized Motion and Surreply about Mr. Dierker's failures to properly plead in his Reply to the Port's Response to Dierker's Motion to Modify here, **before filing this new unauthorized Motion and Surreply making these false claims,** the Port's attorney clearly failed to do any due diligence in this case, and the Port's attorney previously failed to use their meaningful opportunity to be heard to timely answer or deny many of Dierker's legal and factual claims made in his Motion to Modify, its Reply, and in his Dec. 12, 2013 Response to Seth Goodstein's Dec. 3, 2013 Motion requesting relief for the Port granted by the Dec. 18, 2013 Commissioner's Ruling. (Id.). Consequently, pursuant to CR 8(d), the Port's "failure to deny" here alone is reason enough for the Court to deny this Motion to Accept Surreply, et seq., and grant Dierker's Motion to Modify.

k. Further, again in violation CR 8(d), even **the Port's unauthorized Motion and Surreply**

also fails to deny most of Dierker's claims relevant to the Motion to Modify, et seq., concerning this Court's the Dec. 18, 2013 Commissioner's Ruling striking parts of his Reply Brief by claiming it was an improper brief, which is covered by RAP 10.7, though Attorney Seth Goodstein apparently did not look at the RAP Rules when he made his Dec. 3, 2013 Motion requesting relief for the Port granted by the Dec. 18, 2013 Commissioner's Ruling that is the subject of the Motion to Modify here. Consequently, even in **the Port's unauthorized Motion and Surreply** the Port's attorneys again "failed to deny" many Dierker's claims relevant to Dierker's Motion to Modify here in violation CR 8(d).

For this reason the Court must deny this Motion to Accept Surreply, et seq., and must grant this Motion to Modify.

l. Further, while Dierker's Reply in the Motion to Modify also notes that pursuant to RAP 10.7, the Court lacked jurisdiction to consider and grant the Dec. 3, 2013 Port Motion, since the Court is prohibited by RAP 10.7 on Improper Briefs from granting the specific relief noted in the Dec. 18, 2013 Commissioner's Ruling, there are **NO** *Port* citations to nor *Port* argument in the Port's Motion and/or Surreply or in the Port's Response to the Motion to Modify here of even this one of Dierker's many legal claims made here. (Id).

Consequently, pursuant to CR 8(d), the Port's "failure to deny" this one of Dierker's many legal claims made here in his Motion to Modify and his Dec. 12, 2013 Response to Seth Goodstein's Dec. 3, 2013 Motion requesting relief for the Port granted by the Dec. 18, 2013 Commissioner's Ruling is reason enough for the Court to grant this Motion to Modify.

For this reason the Court must deny this Motion to Accept Surreply, et seq., and must grant this Motion to Modify.

m. Finally, the Pro se Disabled Appellant Mr. Dierker notes here that none of the Port Attorney's pleadings related to this Motion to Modify have ever responded to Mr. Dierker's pleadings concerning his requests to the Court and these Port Attorneys to give Mr. Dierker certain "reasonable accommodations" in the Court's and these Port Attorney's considerations of Dierker's pleadings made in this case, pursuant to the Americans with Disabilities Act (ADA). (Id.; supra).

Since the Port's Motion here has again ignored and failed to contest Mr. Dierker's Motion for Extension of Time requests and supporting pleadings for ADA "reasonable accommodations"

in the Court's and these Port Attorney's considerations of Dierker's Reply to the Port's Response to the Motion to Modify that Dierker made in this case, pursuant to CR 8(d), the Port has "admitted" Dierker's ADA pleadings are true and must be granted by this Court, and, thereby, this Court must grant Mr. Dierker's requests for ADA "reasonable accommodations" in the Court's and these Port Attorney's considerations of Dierker's Reply to the Port's Response to the Motion to Modify that Dierker made in this case, unless the Court already has granted in the Ruling granting the Motion for Extension of Time, et al., noted above. (Id.; supra).

Pursuant to CR 8(d), the Port's failure to defend against Dierker's ADA claims here shows that the Port has "admitted" Dierker's ADA pleadings are true and must be granted by this Court, and this legal bars the Port from ever making such claims about Dierker's pleadings being "improper" in this case, pursuant to the doctrines of waiver, equitable and/or collateral estoppel.

Clearly, under Dierker's requested "reasonable accommodations" "admitted" by the Port's failure to defend under CR 8(d) here, the Port Attorney's new Motion has no legal basis for the "overlength" claims about Dierker's Reply to the Port's Response to the Motion to Modify that Dierker made in the Port's new Motion this case, as the Port's attorney should have known.

For this reason the Court must deny this Motion to Accept Surreply, et seq., and must grant this Motion to Modify.

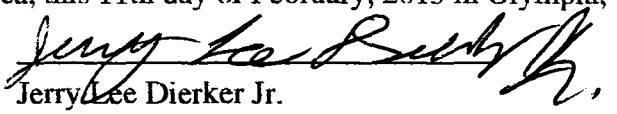
CONCLUSION AND RELIEF

For the reasons noted here and in Mr. Dierker related pleadings, this Court must deny this unauthorized and improper Port Motion to Accept Surreply, et seq., and this Court should not accept or consider the Surreply as part of the pleadings on Dierker's Motion to Modify, and this Court must grant Dierker's Motion to Modify and grant his sanctions requested in this matter.

Further, as noted above, this Court should act *sua sponte* to grant Mr. Dierker "summary judgment" to grant this Appeal, since the Port's Motion here made an "admission" that shows that the Superior Court's dismissal of the public records act portion of this case was done pursuant to the Superior Court's interpretation of "the per-day Public Records Act penalty" provision of RCW 42.56.550, which show the the falsehood of the Port's main factual and legal claims made and relied upon by the Port in both the Port's Response Brief and in the Port's Response to the Motion to Modify in this case, where the Port's attorney repeatedly makes the false claim that the

Superior Court's dismissal of the public records act portion of this case was done pursuant to the Superior Court's "inherent power" supposedly to control Appellants' alleged "unacceptable litigation practices", that clearly conflicts with the Superior Court's actual "ORDERED" portion of the Order of Dismissal in this case attached to Mr. Dierker's Reply on the Motion to Modify.

I certify the foregoing to be true and correct to the best of my knowledge, beliefs and/or abilities, under penalty of perjury of the laws of the State of Washington and the United States of America, this 11th day of February, 2013 in Olympia, Washington.



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

IN THE WASHINGTON STATE SUPREME COURT

PORT OF OLYMPIA, et al., the "partly named"Petitioners, and WEYERHAEUSER CO., the Port's "un-named" client/partner here, "un-named" Petitioners, et al,;) v. ARTHUR S. WEST, named Respondent, and JERRY L. DIERKER JR., the "un-named"Respondent.	Supreme Court Case No. 90973-3 COA Case No. 43876-3-II Superior Court Case No. 07-2-01198-3 Affidavit of Service

Comes now Appellant Jerry Lee Dierker Jr., the undersigned, who declares and makes the following Affidavit of Service.

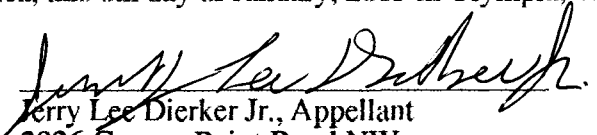
On January 6, 2015, I, the undersigned, caused this Supreme Court and the following parties in this matter to be served at their addresses of record by personal service or by mail with copies of the Dierker's Answer and attachments in this case reponding to the Ports "Notice of Voluntary Withdrawal of the Port's Petition and Motion for Dismissal of Review" seeking dismissal of this Court's Discretionary Review of the Aug. 5, 2014 Unpublished Opinion of the Court of Appeals Division II (COA II) in this case:

1) Defendants Port of Olympia, et al, through their new attorneys of record Heather Burgess and Kelly Wood, et al.;

2) Defendant Weyerhaeuser, through their attorney of record; and

3) Mr. West.

I certify the foregoing to be true and correct to the best of my knowledge, beliefs and/or abilities, under penalty of perjury of the laws of the State of Washington and the United States of America, this 6th day of January, 2015 in Olympia, Washington.



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