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No. 41334-5-II

**IN THE COURT OF APPEALS OF THE
STATE OF WASHINGTON, DIVISION II**

FILED
COURT OF APPEALS DIVISION
STATE OF WASHINGTON
2011 JUN 27 AM 11:06

ARTHUR WEST, WALTER JORGENSON, EVE JOHNSON

Vs.

PORT OF OLYMPIA and WEYERHAEUSER

**Appeal from the rulings of
the honorable Judge Hicks**

APPELLANT WEST'S REPLY BRIEF

**Arthur West
120 State Ave N.E. #1497
Olympia, Washington, 98501**

TABLE OF CONTENTS

Table of Contents.....2

Table of Authorities.....2

I THE PORT CANNOT DENY THAT IT UNLAWFULLY FAILED TO DISCLOSE THE 2005 WETLANDS DELINEATION REPORT TO THE CITY OF OLYMPIA OR THE SUPERIOR COURT IN PENDING CASES

II IN FAILING TO BASE ITS RULING ON THE INDIVIDUAL CIRCUMSTANCES OF THE PORT'S REPLY TO WEST, THE SUPERIOR COURT FAILED TO RECOGNIZE THE OVERRIDING PURPOSE OF THE EXERCISE OF DISCRETION AND THE YOUSOUFIAN FACTORS IS THE NECESSITY OF APPLYING A GENERAL PRINCIPLE OF LAW TO A SPECIFIC SET OF FACTS

III THE PORT CANNOT IMPEACH THE RECORD THEY FILED IN THE TRIAL COURT—A RECORD THAT INDISPUTIBLY DEMONSTRATES THAT THE FLOYD SNYDER ESA WAS NOT DISCLOSED TO APPELLANT WEST

IV CONCLUSION THE COURT'S RULINGS WERE UNTENABLE, UNSUPPORTED BY EVIDENCE OR PRECEDENT, BASED ON ARBITRARY AND CAPRICIOUS PRECONCEIVED NOTIONS, AND A FAILURE TO CONSIDER THE INDIVIDUAL FACTORS NECESSARY FOR A VALID EXERCISE OF DISCRETION

Conclusion.....20

TABLE OF AUTHORITIES

Bethke v. Bain, 193 Or 688, 240 P2d 958 (1952).....22

Hyundai v. Magana, 170 P.3d 1165,
141 Wash. App. 495 (2007).....21

Matheson v. Gregoire, 161 P.3d 654,
139 Wash. App. 624, (2007).....21

Parentage of Jannot, 110 Wn. App. 16,
37 P.3d 1265, (2002).....12-13

Washington State Physicians Exchange v.
Fisons Corp., 172 Wn.2d 299, 858 P.2d 1054 (1993).....21

ARTICLES

Maurice Rosenberg, Judicial Discretion of
the Trial Court, Viewed from Above,
22 Syracuse L. Rev. 635, 643 n.19 (1971).....12

Kenneth Kulp Davis, Discretionary Justice:
A Preliminary Inquiry, P. 17, Louisiana
State University Press. 1969.....12

Roscoe Pound, Discretion, Dispensation and
Mitigation: The Problem of the Individual
Special Case, 35 N.Y.U. L. Rev. 925 (1960).....13

CJS Appeal and Error @670.....17

CJS Appeal and Error @671.....18

**I THE PORT CANNOT DENY THAT IT UNLAWFULLY
FAILED TO DISCLOSE THE 2005 WETLANDS
DELINEATION REPORT OR THE FLOYD SNYDER
ENVIRONMENTAL SITE ASSESSMENT TO THE CITY
OF OLYMPIA AND THE SUPERIOR COURT**

While the Port attempts to dispute (unconvincingly) that the documents recently discovered by Jorgenson and Johnson are responsive to the appellants' requests, and it similarly disputes (speciously) whether it provided the Floyd Snyder Environmental Site Assessment to West, (despite clear evidence in the record that it did not) there is no dispute that the Port repeatedly withheld critical information from both the City of Olympia and the Thurston County Superior Court, in order to obtain project approvals and frustrate any effective environmental review.

As CP 1569 70 demonstrate, **the Port never disclosed the Floyd Snyder ESA to the City of Olympia**, despite applying for and receiving approval for development on the site covered by the Site Assessment.

Further, as the plaintiff argued to the Court on August 24, and as reflected in the record at CP 1280 and 817-888, the Port also withheld this critical evidence from the Superior Court in order to obstruct a full environmental review of the site conditions

The Floyd Snyder ESA and Wetlands delineation report represent a critical body of information suppressed by the Port, information concerning the presence of wetlands and contamination on sites that the Port had an economic interest in developing. Since the filling and development of federal wetlands required a section 404(d) permit from the Corps of Engineers, a wetland delineation report showing federal wetlands on approximately half of the port's project site was of paramount importance to any environmental review, and the suppression of this information allowed federal wetlands to be filled in with impunity.

That the port was able to suppress the information establishing the presence of federal wetlands in order to advance a project involving filling and developing federal wetland areas in violation of the Clean Water Act demonstrates conclusively that the port's disregard of the PRA was deliberate and calculated course of action aggravated by more serious substantive violations of the State and federal environmental laws.

The fact that the port was also able to obstruct and conceal the evidence of the project site's contamination with toxic cancer causing contaminants is also very disturbing and illustrates that even the best laws are useless in the face of deliberate pattern of evasion and concealment of evidence of violations. Obviously, even the most benign public policy goals of the sunshine laws and environmental regulation can not be achieved if agencies are allowed to suppress information concerning their violations of the law.

In this case the Port was able to selectively suppress information that would be detrimental to their accelerated time schedule, a schedule that called for a breakneck pace of construction on federal wetlands and contaminated waste sites without proper permits or adequate planning for storm water treatment. (See released record No. 00032-00036).

Significantly, this suppression was not confined to West and Jorgenson/Johnson, but extended to the City of Olympia and the Thurston County Superior Court.

In failing to recognize these aggravating circumstances and instead relying upon an arbitrary preconceived notion that no one in some imagined “community” could do anything with an ulterior motive, the trial court entered a series of rulings that are singularly untenable and unsupported by any rational criteria

Clearly, the Trial Court did not reasonably apply the Yousoufian factors in a tenable manner in this case.

II IN FAILING TO BASE ITS RULING ON THE INDIVIDUAL CIRCUMSTANCES OF THE PORT'S REPLY TO WEST, THE SUPERIOR COURT FAILED TO RECOGNIZE THE OVERRIDING PURPOSE OF THE EXERCISE OF DISCRETION AND THE YOUSOUFIAN FACTORS IS THE NECESSITY OF APPLYING A GENERAL PRINCIPLE OF LAW TO A SPECIFIC SET OF FACTS

If the Supreme Court in Yousoufian can be said to have set and bright line standard it would have to be the requirement that the assessment of penalties must be based upon a consideration of the individual circumstances of the agencies response, (or lack thereof) to a specific request.

Such a conclusion is in keeping with a long line of precedent involving judicial discretion in the State of Washington that establishes the necessity for the exercise of judicial discretion to be a process where general principles of law are applied based upon individual and specific circumstances.

In this case, however, despite manifestly different nature of the Port's responses to West, (see CP 413, 667) as

it differed from the response to Jorgenson and Johnson, (See CP 480-666) that West described in his Motion for penalties, Motion for Reconsideration, and argument in the transcript of the hearing on August 24, 2010, the Court arbitrarily and capriciously refused to consider or even acknowledge that the port's response was in any way different to West and Jorgenson/Johnson.

Such a basic refusal to recognize the individual circumstances of the port's response to the appellants was not only arbitrary and capricious, it undermined the very reason for judicial discretion and appellate deference to such exercise, the necessity for determinations based upon consideration of individual circumstances.

Not only did the court fail to exercise its discretion in a tenable manner based upon evidence and the applicable standard of law, it utterly refused to recognize that there were individual circumstances to consider, in effect failing to

exercise its discretion in regard to the particular facts of the port's response to West, as they differed from that to Johnson/ Jorgenson.

Significantly, the Port's response to West (CP 413) was made by Rudy Rudolph, on November 16 of 2005 while port counsel replied to Jorgenson and the League over two months later in January of 2006. (CP 480) Further, the Port, through interim director Rudolph initially (in November of 2005) denied having any responsive records whatsoever other than an expurgated copy of the lease (Missing page 49 and the ESA that was supposed to be appended to the lease incorporated by reference in the missing page 49) in response to West's request. (CP 732-734, 1614-1734)

This was much different than the port's initial response made to Jan Witt in December (CP 1618) (or Jorgenson and Johnson in January of 2006, (CP 480) which

was made by Port counsel and was much more responsive, acknowledging the existence of records.

In addition, it is an indisputable fact that West was required to file a suit to even get the port to admit it had responsive records to begin with, and that the Port had a deliberate policy of responding differently to different individuals, as evidenced by three separate and differing responses to essentially the same requests for records by West, Witt and Jorgenson/Johnson.

A further individual and specific circumstance, evidenced by the record of the port's letter response to West, and its nonexistent missing "attachments" as served on West and filed in the trial court (and appearing as CP 1585-1734) is the port's deliberate refusal to disclose the Floyd Snider ESA to West, although it was apparently disclosed to Jorgenson/Johnson. The concealment of this particular record was supported by the evidence offered to the trial

court (and appearing at CP 817-888, 1398-9), that not only was it not appended to the correspondence of the late Robert Goodstein, its existence was also suppressed in cause No. 07-2-01198-3 by the filing of a falsified administrative record that omitted the infamous Page 49 of the lease, the Floyd Snider ESA, and (of course) the 2005 Wetlands Delineation Report. (See evidence admitted by supplementation)

Clearly, the trial court's refusal to consider any of these specific facts and circumstances violated the single “overriding” principle of judicial discretion that the Washington Courts recognized in *Parentage of Janott*, 110 Wn. App. 16, (2002)...

If there is one overriding purpose for the exercise of discretion, it is the necessity of applying a general principle of law to a specific set of facts. Maurice Rosenberg, *Judicial Discretion of the Trial Court, Viewed from Above*, 22 *Syracuse L. Rev.* 635, 643 n.19 (1971) (citing Kenneth Kulp Davis, *Discretionary Justice: A Preliminary Inquiry* 17 (1969)). (Like) Parenting plans, and particularly custody of children, (PRA penalty

determinations) are matters that are very individual. Parentage of Jannot, 110 Wn. App. 16, 37 P.3d 1265, (2002)

The refusal of the trial court to even consider the individual facts of the port's response not only violated the procedures set forth in Yousoufian and undermined the very basis for an exercise of discretion, also eliminated any valid argument for deference to its rulings, in that the basic concept of deference is predicated upon the premise that the trial court is best able to assess the particular facts and circumstances of each individual case--an assessment that simply did not occur in the trial court in regard to the individual circumstances of the port's response to West. As the Jannot Court noted...

Deference to a trial judge's discretion recognizes that there must be some "individualizing agent" in the administration of justice. See Roscoe Pound, Discretion, Dispensation and Mitigation: The Problem of the Individual Special Case, 35 N.Y.U. L. Rev. 925 (1960). Some judicial actor must look at these affidavits, consider the above factors in

light of the requirements..., and then decide The trial judge is in the best position to make this determination...

In this case, the crucial “Individualizing agent was absent due to the court's arbitrary refusal to consider the “Individual” circumstances of the port's disparate replies to West, Witt, and Jorgenson/Johnson. Such a ruling violated the central basis for the exercise of judicial discretion, as well as the intent of the Yousoufian factors, that the consideration of the particular facts of each individual case.

For example, in *State v. White*... The appellate court affirmed the exercise of discretion noting that: “[i]t is apparent that no bright line rule can be formulated for this issue and that each case will have to be determined on its facts.” *Id.* at 586.

It is important to recognize, as the Court did in *Jannot*, that the abuse of discretion standard is not, of course, unbridled discretion. Through case law, appellate

courts set parameters for the exercise of the judge's discretion. At one end of the spectrum the trial judge abuses his or her discretion if the decision is completely unsupported, factually. On the other end of the spectrum, the trial judge abuses his or her discretion if the discretionary decision is contrary to the applicable law. Here, the ruling in *Yousoufian* provided the criteria, and the court refused to apply them to individual circumstances.

While in an ordinary case appellate Court should not lightly interfere with the due exercise of judicial discretion, in this case the outright refusal of the trial court to evaluate the individual circumstances of the port's reply to West as they differed from *Jorgenson/Johnson* failed to meet the standards of a valid exercise of discretion in compliance with the requirements of *Yousoufian*.

Simply stated, a valid and tenable exercise of judicial discretion differs in many crucial respects from the one size

fits all approach to justice employed by the trial court in this case. Unfortunately, this refusal to consider specific facts and circumstances was compounded by the court's arbitrary and untenable consideration of improper factors to justify its preconceived notion that the port could do no wrong.

III THE PORT CANNOT IMPEACH THE RECORD THEY FILED IN THE TRIAL COURT—A RECORD THAT INDISPUTIBLY DEMONSTRATES THAT THE FLOYD SNYDER ESA WAS NOT DISCLOSED TO APPELLANT WEST

The Port stands both reason and the record of the trial court on its head when it attempts to establish that a deceased law partner had disclosed the Floyd Snider ESA to West in 2006, despite the port's own filings that establish that the correspondence they sent West did not contain the several hundred page long Environmental Site Assessment and its critical environmental information.

As the record of the trial court designated by West (CP 1584-1734) clearly demonstrates, the unsigned letter that

counsel claims to have been sent to sent West along with the
ESA is a false document in that the true letter (which
appears in actual signed form in the court file, with
attachments, at CP 1618-1734) .contained an actual
signature and did not have any Floyd Snyder ESA attached.

In this regard, counsel's attempt to impeach the record
in the trial court violates the principle that...

Generally speaking,, when properly
authenticated or certified, the record filed for
the purpose of appeal imports absolute verity,
and is the sole, conclusive, and
unimpeachable evidence of the proceeding in
the lower court. Under this rule the parties
and the reviewing court are bound by the
record. CJS Appeal and Error @670 (further
citations omitted)

Under these circumstances where the letter of Robert
Goodstein purported to have been sent by counsel (CP 1247-
1259) appears in the record in actual original form without
any claimed Environmental Site Assessment attached, it was
a manifest abuse of discretion for the Trial Court to

conclude that counsel's impeachment of the explicit record of the trial court was an accurate portrayal of fact.

The record in the trial court, (CP 1584-1734), which demonstrates that the port did not disclose the ESA to appellant West, is entitled to absolute verity, and is the sole, conclusive, and unimpeachable evidence of the proceeding in the lower court and of what the port actually sent to West.

If the record on appeal is incomplete or incorrect, amendment or correction must be sought by appropriate proceedings, rather than by impeachment on the hearing in the appellate court. The record cannot be impeached, changed, altered, or varied on appeal by..statements of counsel such as those made orally, on motion, or in a brief. CJS Appeal and Error @671 (further citations omitted)

In a demonstration of desperation by the port, it has attempted to assert that (1) since a private individual at one time (in 2008) sent an Email to which West was allegedly a

recipient of, the port had disclosed the ESA to West in 2006, and (2) that since the port at one time claims to have filed the ESA in a case that West was not a party to he somehow received a copy via some form of litigious telekinesis.

Such representations are ludicrous and strain credulity past the breaking point. Jan Witt is not and has never been an agent or public records officer of the port of Olympia and cannot be used as an agent of the Port to establish the port's compliance with the PRA.

Further, despite being party to a number of cases where the plaintiff actually was a party, the port cannot cite to a single case where the withheld ESA records were duly disclosed to West. By way of contrast West, in his motion for penalties, (CP 397-462) cited to numerous cases where the ESA and its relation to the lease would have been invaluable had they been disclosed to West in a timely manner, and introduced evidence that the port, and port counsel,

deliberately submitted a false declaration to eliminate the ESA and page 49 of the Weyerhaeuser lease from the Court's consideration, as well as hiding it from the City of Olympia despite their application to the City to approve their project.

The Port cannot deny the clear reality of the trial court record that establishes that not only did they hide the ESA from West, they overtly falsified administrative record to suppress the existence of the ESA and wetlands report so that the City of Olympia, the Courts and administrative hearing officers would not see them either and be aware of the environmental problems that the records identified.

This was in addition to the suppression and concealment of the large number of newly discovered records identified by Jorgenson and Johnson (CP 82-386) that were obviously responsive to the appellants' records requests—records that were deliberately suppressed for partisan advantage in litigation. See Washington State

Physicians Exchange v. Fisons Corp., 172 Wn.2d 299, 858 P.2d 1054 (1993).

IV CONCLUSION THE COURT'S RULINGS WERE UNTENABLE, UNSUPPORTED BY EVIDENCE OR PRECEDENT, BASED ON ARBITRARY AND CAPRICIOUS PRECONCEIVED NOTIONS, AND A FAILURE TO CONSIDER THE INDIVIDUAL FACTORS NECESSARY FOR A VALID EXERCISE OF DISCRETION

The valid exercise of judicial discretion connotes direction by the judges reason and conscience, taking into account the law and the particular circumstances of the case.

As this court has recently found, an abuse of discretion is found if a court relies on unsupported facts, applies the wrong legal standard, or bases its ruling on an erroneous view of the law. Matheson v. Gregoire, 161 P.3d 654, 139 Wash. App. 624, (2007), Hyundai Motor America v. Magana, 170 P.3d 1165, 141 Wash. App. 495 (2007)

In this case the court inexplicably refused to admit that the multitude of newly discovered records submitted by

Jorgenson and Johnson were responsive to the appellants' records requests, refused to consider the facts concerning the individual circumstances of the port's responses to West (including the original obstructive "response" and its subsequent failure to comply with the Act for three months prior to the first response to Jorgenson/Johnson), as required by the Yousoufian guidelines.

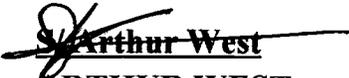
Instead, the Court arbitrarily considered improper factors such as (1) its own communitarian prejudice, (2) the refusal of the port (after the ruling of Division I) to be able to assert a credible argument to support the exemptions it had relied upon to withhold records for nearly 3 years, and (3) actions by a third party inadmissible under the evidence rules. In so acting, the Court violated the principle that

"Judicial discretion" never authorizes arbitrary, capricious action that tends to defeat the ends of substantial justice. *Bethke v. Bain*, 193 Or 688, 704-05, 240 P2d 958 (1952)

In this case, the arbitrary and capricious determinations of the trial court that the port had acted in good faith and disclosed all of the responsive records, combined with its refusal to consider the individual facts and circumstances of the port's response as required by the Yousoufian factors and the court's arbitrary and openly expressed prejudgment of the central issue of bad faith combined to produce a manifestly untenable and inequitable result.

For the foregoing reasons, the ruling of the Superior Court in this case should be overturned as factually and legally untenable, and due to its manifestly unreasonable nature.

Done June 25, 2011.

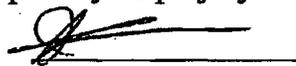

~~Arthur West~~
ARTHUR WEST

1 Attached to this declaration is a true and correct copy of a records response from
2 the City of Olympia. Despite the fact that the City issued several permits for
3 developments on the Port peninsula, the City of Olympia has apparently not yet been able
4 to locate a complete copy of the Weyerhaeuser Lease or the Floyd Snider ESA other than
5 the one provided to them by Jan Witt. Plaintiff does not believe they ever were provided
6 with these records either, despite the various permit applications they submitted to the
7 City.

8 Despite the creative mis-representations of counsel, neither the City nor the Port
9 ever provided plaintiff West with a correct copy of the lease or the Floyd Snider report in
10 any of the administrative proceedings or Court cases involving developments on Port of
11 Olympia property, including the East Bay project that is currently before Division II of
12 the Court of Appeals.

13 Also attached are true and correct copies of page 48 and 50 of the August 2005
14 lease, Bates Stamped sequentially in an altered administrative record certified to be
15 correct by Port Counsel and duly filed in the Superior Court in Cause No 08-2-01198-3.

16 I certify the foregoing to be correct and true under penalty of perjury of the Laws
17 of Washington. Done September 23, 2010, in Lacey.



18 **ARTHUR WEST**

19 City of Olympia

show details Sep 2

to me

September 2, 2010

Dear Arthur West:

Your public records request for:

"1) All records of any submission to the City or City Officers or Agents to include Thomas
Bjorgen of the 2005 lease between Weyerhaeuser and the Port of Olympia, from the Port,

which do not contain page 49 of the lease, along with any accompanying documents, submitted by the Port with any such lease.

2) All records of any submission to the City of the 2005 Floyd Snider ESA (Environmental Site Assessment) incorporated into the lease by page 49.

3) All communications concerning the Floyd Snider ESA, the missing page 49 of the lease, and any records concerning or relating to the submission to the City of a complete copy of the lease by the Port.”

was dated and received August 26, 2010.

A CD containing a copy of the lease between the Port of Olympia and Weyerhaeuser including page 49 and the Environmental Site Assessment prepared by Floyd Snider is available for you to pick up at the Utility Billing counter at City Hall. **Please note that this copy of the lease and ESA was submitted by Ms. Jan Witt as an exhibit for the hearing examiner for case 08-0044.**

Your request encompasses documents held by multiple departments. The City anticipates it will need until December 8th, 2010 to further respond to your request.

CPD project files concerning the Weyerhaeuser Log Yard are available for inspection if you would like to arrange a time with me to review them.

If additional time is necessary or if the documents or installments can be made available in less time, I will let you know. As provided in RCW 42.56.520, additional time required to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt from disclosure.

As I progress with your request, I may contact you to clarify your request. If you have any questions, please do not reply directly to this message as direct replies are automatically routed to a central mailbox which may delay my receipt of your message. Instead, send messages directly to me at nphillip@ci.olympia.wa.us.

For additional information see the City of Olympia's Public Disclosure Policy at <http://www.olympiawa.gov/city-government/public-records-requests.aspx>

Sincerely,

Nicole Phillipson

Administrative Services

360.753.8213

0-000001570



Commissioners
Steve Pottle
Paul Telford
Bob Van Schoerl

November 16, 2005

Mr. Arthur West
3217 18th Avenue SE
Olympia, WA 98501

Dear Mr. West:

Thank you for your recent correspondence regarding the Port's lease with the Weyerhaeuser Corporation. The lease was categorically exempt under Section 19711 800(5) (c) of the Washington Administrative Code. The Port has no plans to reconsider the lease at this time.

With regard to your public records request:

- There is no index to all Port records related to the Weyerhaeuser lease
- There was no recent paving project
- There are no SEPA records associated with the lease

I have enclosed for you review:

- A copy of the lease
- A copy of the Port SEPA Policy
- An invoice for copies printed

Respectfully,

A handwritten signature in black ink, appearing to read "R. Rudolph".

Rudy Rudolph, A.A.E.
Interim Executive Director

c: Goodstein Law, A. Fontenot,

SCANNED

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Tel: (253) 779-4000

Robert I. Goodstein
Attorney at Law
rgoodstein@goodsteinlaw.com

January 10, 2005

Arthur S. West
3217-A 18th Avenue S.E
Olympia, WA 98501

Re: Arthur S. West's Second Public Records Request Directed to the Port of
Olympia and received by the Port of Olympia on January 3, 2006.

Dear Mr West,

Our office represents the Port of Olympia and has been tasked with responding to your
Second Request for Public Records.

By a letter dated November 16th, 2005, the Port responded to your First Public Records'
Request and provided you with a copy of the Weyerhaeuser lease and a copy of the
Port's SEPA Policy.

Your Second Public Records' Request repeats Section 1 of your first request and in
addition refers to a records' request made by Ms. Jan Witt.

Enclosed you will find the Port of Olympia's responsive letter to Ms. Witt, along with
the documents the Port of Olympia deemed responsive to Ms. Witt's request. The Port
of Olympia withheld documents from disclosure to Ms. Witt pursuant to RCW
42.17.310(1) subsections (i) & (j).

You have requested to review the documents withheld from Ms. Witt. At this time the
Port is withholding those documents from your review on the same basis it withheld
documents from Witt; RCW 42.17.310(1) subsections (i) & (j). These documents and
transmittals are comprised of internal memorandum, draft-documents, and information
subject to the attorney-client privilege. As such they are exempt from public inspection
and copying pursuant to RCW 42.17.310.

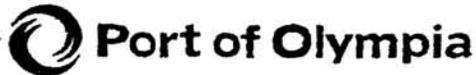
Our office will continue to search Port of Olympia records to discern if there are other documents responsive to your request and will require approximately five more business days to complete a record review.

This response should not be considered in any way to constitute a response to the complaint you have filed in Thurston County Superior Court or a waiver of any defenses to your complaint. If you have any questions or concerns, please contact me.

Sincerely,



Robert I Goodstein
Goodstein Law Group PLLC



Commissioners
Steve Pottle
Paul Telford
Bob Van Schoorl

December 15, 2005

Jan Witt
3022 Fir Street SE
Olympia, WA 98501

Re: Weyerhaeuser Records Request

Dear Ms. Witt,

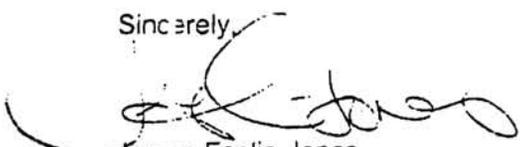
Thank you for your continuing interest in the Port of Olympia.

Attached to this letter you will find the documents that apply to your request that we are able to release at this time. We are withholding documents in accordance to RCW 42.17.310 (1) subsections (i) and (j) stating:

- (i) Preliminary drafts, notes, recommendations and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.
- (j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

We will mail you a list of all items being withheld along with whatever copies you have requested from the attached items.

Sincerely,



Jennie Foglia-Jones
Special Projects Coordinator

Enclosure

Co: Bob Goodstein, Goodstein Law Group
Ed Galligan, Executive Director
Jim Amador, Marine Terminal Director
Jeri Sevier, Administrative Manager
Andrea Fontenot, Public Works Director

SCANNED

File

**GOODSTEIN
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Tacoma, WA 98402

Fax: (253) 779-4411

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Carolyn A. Lake

Attorney at Law

clake@goodsteinlaw.com

January 17, 2005

Fax & Mail

E.L. Johnson, President

Walter Jorgensen

League of Women Voters of Thurston County

1063 Capital Way Suite 212

Olympia, Washington 98501

Re: Public Records Request Directed to the Port of Olympia dated January 5, 2006.

Dear President Eve Johnson and Mr. Jorgenson:

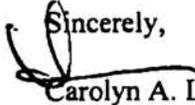
Our office represents the Port of Olympia. We respond on their behalf to your public records request dated January 5, 2006. Thank you for your public support of the Port and its mission expressed in your letter, and for your request to learn more about the Port and its recent lease with Weyerhaeuser Company.

Enclosed please find public documents responsive to your request. In addition to the documents disclosed, our review has determined that some documents relating to your request are exempt from public disclosure pursuant to one or more exemptions listed in RCW 42.17.310(1). Exemptions include but are not limited to subsections (i) & (j). The exempt documents consist of internal memorandum, draft-documents, and information subject to the attorney-client privilege. As such, they are exempt from public inspection and copying pursuant to RCW 42.17.310. A copy of the state exemption statute is enclosed.

Because the documents you request have been the subject of similar public records requests, we also enclose a copy of those request and our responses. Please know the Port is continuing to review its records to confirm our present disclosure is complete. Given the breadth of your request, and to ensure our records search, disclosure and any explanation for non disclosure of exempt documents is as thorough as possible, we will require additional time. We estimate we can respond more completely to your request by January 23, 2006, or earlier if possible.

If you have any questions or comments, please contact me. Thank you again for your interest in the Port.

Sincerely,


Carolyn A. Lake

Goodstein Law Group PLLC

Enclosures: Sent only by Mail

cc: Ed Galligan, Port of Olympia Executive Director

Rudy Rudolph, Port of Olympia

Robert Goodstein, Port General Counsel

SCANNED

060117.ltr.League of Women voters PRR.doc

1 agents, including the Commissioners, as well as communications among or
2 between any of the above with any Weyerhaeuser employees or agents.

- 3 4. On or about January 10, 2006, the Port received one letter sent jointly from Eve L.
4 Johnson, the President of the League of Women Voters for Thurston County and
5 Walter Jorgenson requesting the same documents described in the e-mail. This letter
6 was written on the letterhead stationary of League of Women Voters of Thurston
7 County. See Exhibit A attached.
- 8 5. The next day, on January 11, 2006, I made a telephone call to Eve L. Johnson, the
9 President of the League of Women Voters for Thurston County. During the
10 telephone conversation, I informed Johnson that the Port would provide the League
11 with its response to the League's request for public documents within the timeframe
12 required by law.. The Port required additional days to respond to the League's
13 requests because the amount of records requested exceeded 2,000 pages, which
14 needed to be carefully reviewed prior to either disclosing or withholding.
- 15 6. On January 17, 2006, the Port, through its legal counsel, made its initial response to
16 the League. In doing so, the Port provided the League with public documents that
17 were responsive to the League's request. In addition, the Port provided the League
18 with copies of similar letters of requests made by other citizens and the Port's
19 responses to those citizen requests, as well as the documents that the Port had
20 produced to the other citizens. The Port also explained that some documents would
21 be withheld from the League under exemptions listed in the Public Disclosure Act.
22 Finally, the Port informed the League that the Port would require additional time to
23
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FILED
SUPERIOR COURT
THURSTON COUNTY WA

'10 AUG 24 P4:52

BETTY J. GOULD CLERK

BY _____ DEPUTY

Expedite
 Hearing is set
Date: 08/25/2010
Time: 1:30 p.m.
Judge/Calendar: Hicks/Civil

**SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY**

ARTHUR WEST and WALTER
JORGENSEN and EVE JOHNSON,

Plaintiffs,

v.

PORT OF OLYMPIA,

Defendant.

No. 06-2-00141-6

DECLARATION OF ARTHUR
WEST

ARTHUR WEST declares as follows:

1. I am over the age of 18, and otherwise competent to testify in the Courts of the State of Washington. I make this declaration based on my own personal knowledge.
2. The Port never provided me a copy of the lease with page 49 in it prior to the COA ruling. The Port never provided me a copy of the Floyd Snyder ESA.
3. Attached as Exhibit A is a true and correct copy of the lease the Port of Olympia submitted to the Department of Ecology as Exhibit 14 to its environmental check list. That lease also omits page 49 and the Floyd Snyder ESA.
4. Attached as Exhibit B is a copy of the lease before Judge Tabor in March of 2006, which also omits page 49.
5. Attached as Exhibit C is page 49 of the lease which incorporates by reference the

1 Floyd Snyder ESA, neither of which I ever got.

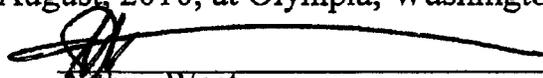
2 6. Attached as Exhibit D is an email chain beginning August 17, 2005 and ending
3 August 30, 2005. These documents were not provided to me, but were provided to the
4 Green Party much later. On the first email of August 17 is the original schedule 6.1,
5 which identifies eight known and documented environmental hazards at the lease site,
6 which the Port failed to disclose. This schedule 6.1 was deleted from the final lease
7 and Exhibit C was substituted instead.

8 7. All so included in Exhibit D are a series of emails where the Port successfully
9 attempts to get the environmental consultant to substitute two pages in his report with
10 changed language by omitting acknowledgments that there are known environmental
11 hot-spots on the site. The ports attorney says, "the changes only affect two pages of
12 the document, and could be made by revising and printing the two affected pages and
13 substituting them into the rest of the report."

14 8. The Port intentionally failed to disclose critical enviornmental information in its
15 possession and actilvely saught, succseccully, to supress that information.

16 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE
17 STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

18 SIGNED this 24th day of August, 2010, at Olympia, Washington.

19 
20 _____
21 Arthur West