

**Executive Summary and Staff Analysis**  
**Port of Tacoma Officials (John Wolfe, CEO) & Port of Tacoma (6626)**  
**Economic Development Board for Tacoma-Pierce County (6627)**  
**Tacoma-Pierce County Chamber (6628)**  
(45-Day Citizen Action Complaint)

This summary highlights staff's findings, conclusions, and recommendations regarding the allegations contained in PDC Cases 6626, 6627, and 6628. These cases resulted from a 45-Day Citizen Action Complaint (Complaint) filed on June 16, 2016 by Arthur West with the Washington State Attorney General and the Pierce County Prosecutor. Mr. West alleged that Port of Tacoma Officials, the Port of Tacoma, the Economic Development Board for Tacoma-Pierce County (EDB), and the Tacoma-Pierce County Chamber (Chamber) may have violated RCW 42.17A.

### **Background**

The Attorney General's Office referred the Complaint to the PDC on July 13, 2016, for investigation and possible action. On July 15, 2016, PDC staff sent a letter to the Port of Tacoma, the EDB, and the Chamber, informing the respondents that staff had opened a formal investigation, and requesting a written response. On July 21, 2016, counsel for all Respondents provided a response to the allegations. Carolyn Lake responded on behalf of Port of Tacoma officials and the Port of Tacoma (Case 6626), Jason Whalen responded on behalf of the EDB (Case 6627), and Valarie Zeek responded on behalf of the Chamber (Case 6628).

### **Allegations**

The Complaint alleged that Port of Tacoma Officials may have violated RCW 42.17A.555 by using public facilities to oppose Tacoma Code Initiative 6 and Tacoma Charter Initiative 5. The complaint also alleged that the Port of Tacoma, the EDB, and the Chamber may have violated RCW 42.17A.205, .235, and .240 by failing to register and report their expenditures for legal services to oppose Initiatives 5 and 6, individually, and as a group, as political committees.

### **Investigative Findings and Conclusion**

Based on the factors identified in the investigation, staff found and concluded as follows:

**First Allegation:** Port of Tacoma Officials (John Wolfe, CEO) did not use facilities of the Port of Tacoma to oppose Tacoma Code Initiative 6 and Tacoma Charter Initiative 5 in a manner prohibited by RCW 42.17A.555 because the Port's expenditures were "normal and regular" in that that they were lawful, and usual and customary.

**Second Allegation:** The Port of Tacoma, the EDB, and the Chamber did not violate RCW 42.17A.205, .235, and .240 because neither the Port of Tacoma, the EDB, nor the Chamber were a "receiver of contributions" in support of or in opposition to candidates or ballot propositions, and because making expenditures to support or oppose candidates or ballot propositions is not one of the primary purposes for these entities. The Port of Tacoma's primary purpose is to operate as a special purpose public port district under Title 53 of the Revised Code of Washington, the EDB's mission is to retain

and recruit existing primary businesses in Tacoma-Pierce County, and the Chamber's vision and goal is to secure the economic future of the local business community, and to become the go-to-organization when there are tough issues that need to be addressed locally, statewide, and nationally. The Port does not engage in electoral political activity. The EDB's and the Chamber's electoral political activity in this instance may have furthered their respective stated goals and mission, but the non-electoral activities of each entity are those most clearly designed to further each organization's stated goals and mission. No evidence was found that the EDB or the Chamber has, or could, substantially achieve its stated goals and mission through a favorable outcome of an election. The EDB and the Chamber clearly use means other than electoral political activity to achieve their respective stated goals. No evidence was found that the Port of Tacoma, the EDB, and the Chamber pooled funds to form a joint political committee.

The EDB's and the Chamber's expenditures, totaling \$9,994 and approximately \$10,000, respectively, appear to have been made for the purpose of opposing Tacoma Code Initiative 6 and Tacoma Charter Initiative 5 at a time when both initiatives were ballot propositions, even if an active campaign had not been started, and these expenditures were required to be reported as independent expenditures pursuant to RCW 42.17A.255.

### **Recommendation**

For the reasons described above, staff recommends that:

*For Port of Tacoma Officials (John Wolfe, CEO)* the Commission find there is no apparent violation of RCW 42.17A.555, and recommend to the Washington Attorney General that that office take no further action with respect to this allegation in the Complaint.

*For the Port of Tacoma, the Economic Development Board for Tacoma-Pierce County, and the Tacoma-Pierce County Chamber,* the Commission find there is no apparent violation of RCW 42.17A.205, .235, and .240 by failing to register and report their respective expenditures for legal services to oppose Initiatives 5 and 6, individually, and as a group, as political committees, and recommend to the Washington Attorney General that that office take no further action with respect to these allegations in the Complaint.

*For the Economic Development Board for Tacoma-Pierce County and the Tacoma-Pierce County Chamber,* the Commission find there is an apparent violation of RCW 42.17A.255, and recommend to the Washington Attorney General that that office take appropriate action concerning the apparent failure of the EDB and the Chamber to report expenditures totaling \$9,994 and approximately \$10,000, respectively, as independent expenditures opposing Charter Initiative 5 and Code Initiative 6.



STATE OF WASHINGTON  
PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111 • FAX (360) 753-1112  
Toll Free 1-877-601-2828 • E-mail: [pdc@pdc.wa.gov](mailto:pdc@pdc.wa.gov) • Website: [www.pdc.wa.gov](http://www.pdc.wa.gov)

BEFORE THE PUBLIC DISCLOSURE COMMISSION  
OF THE STATE OF WASHINGTON

In RE COMPLIANCE WITH  
RCW 42.17A

Port of Tacoma Officials (John Wolfe, CEO) and Port of Tacoma (6626); Economic Development Board for Tacoma-Pierce County (6627); and Tacoma-Pierce County Chamber (6628)

Respondents.

PDC Case 6626, 6627, 6628

Report of Investigation

**I. Background and Allegations**

- 1.1 On February 19, 2016, a group calling itself "Save Tacoma Water" filed a Committee Registration (C1-pc) with the PDC for the stated purpose of supporting a ballot proposition on the November 8, 2016 general election ballot. The registration listed Sherry Bockwinkel as its campaign manager and Donna Walters as its treasurer.
- 1.2 On March 7, 2016, Save Tacoma Water filed Charter Initiative 5 with the Tacoma City Clerk, and on March 11, 2016, they filed Code Initiative 6 with the Tacoma City Clerk. Both initiatives were approved as to form, and on June 30, 2016, Save Tacoma Water submitted its signatures to the Tacoma City Clerk.
- 1.3 Code Initiative 6 sought to have the City Council enact changes to the Tacoma Municipal Code by imposing a requirement that any land use proposal requiring water consumption of one million gallons of water or more daily from Tacoma be submitted to a public vote prior to the City providing water service for such a project. A companion measure, Charter Initiative 5, repeated all the same provisions as Code Initiative 6.

- 1.4 On June 6, 2016, the Port of Tacoma, the Economic Development Board for Tacoma-Pierce County (EDB), and the Tacoma-Pierce County Chamber (Chamber) brought a declaratory judgment action in the Superior Court of Pierce County to determine whether the two initiatives exceeded the scope of local initiative power. On June 8, 2016, the City of Tacoma, named as a defendant, agreed with the plaintiffs that the initiatives exceeded the scope of the City's authority.
- 1.5 On June 16, 2016, Arthur West filed a 45-Day Citizen Action Complaint (Complaint) with the Washington State Attorney General and the Pierce County Prosecutor under RCW 42.17A.765(4). The complaint alleged that Port of Tacoma Officials may have violated RCW 42.17A.555 by using public facilities to oppose Tacoma Code Initiative 6 and Tacoma Charter Initiative 5. The complaint also alleged that the Port of Tacoma, the EDB, and the Chamber may have violated RCW 42.17A.205, .235, and .240 by failing to register and report individually, and as a group, as political committees, their expenditures for legal services to oppose Initiatives 5 and 6. **(Exhibit 1)** The 45 days under RCW 42.17A.765 expired on July 31, 2016.
- 1.6 Mr. West alleged that Port of Tacoma officials used the Port's facilities to oppose Initiatives 5 and 6 by making expenditures to file a lawsuit to keep the initiatives off the ballot.
- 1.7 On July 1, 2016, Superior Court Judge Jack Nevin agreed with the Plaintiffs, enjoining placement of the initiatives on the ballot.
- 1.8 On July 13, 2016, the Attorney General's Office (AGO) sent a letter to the Public Disclosure Commission (PDC) asking staff to review the complaint, and as appropriate, investigate the allegations. The AGO asked that the PDC send with its recommendation a complete copy of any report of investigation or materials the Commission staff compiles. **(Exhibit 2)**
- 1.9 On July 15, 2016, PDC Staff sent a copy of the complaint to the Port of Tacoma, the EDB, and the Chamber, requesting responses by July 21, 2016.
- 1.10 On July 21, 2016, the Port of Tacoma, the EDB, and the Chamber submitted written responses to the complaint. **(Exhibits 3, 4, 5 & 6)**

## **II. Findings**

### **Allegation that Port of Tacoma Officials may have violated RCW 42.17A.555 by using public facilities to oppose Tacoma Charter Initiative 5 and Code Initiative 6**

- 2.1 Charter Initiative 5 and Code Initiative 6 became ballot propositions on March 7, 2016 and March 11, 2016, respectively. These were the dates Save Tacoma

Water initially filed the propositions with the Tacoma City Clerk before they were circulated for signatures.

- 2.2 On July 21, 2016, Carolyn Lake, an attorney representing the Port of Tacoma, provided a written response to the complaint. **(Exhibits 3 & 4)**
- 2.3 The Port of Tacoma said they understood that Code Initiative 6 expressly purported to elevate the proposed Charter amendment above state law, and overrule and or disavow the U.S. Constitution, along with international, federal, and state laws that interfered with the proposed amendment. The Port said they were aware that Initiatives 5 and 6 were nearly identical to initiatives recently found to be legally invalid by being outside the scope of local initiative powers by the Washington Supreme Court in a City of Spokane case.
- 2.4 On June 6, 2016, the Port of Tacoma, along with Co-Plaintiffs the EDB and the Chamber filed a declaratory judgment lawsuit to seek a judicial determination under Washington's Uniform Declaratory Judgment Act. The lawsuit asked the Pierce County Superior Court to (1) declare that the local initiatives exceed the proper scope of local initiative powers and therefore are invalid, and (2) enjoin the Initiatives' signatures from being validated, and enjoin the initiatives from being placed on the November 2016 ballot, or adopted by the City. The Port spent approximately \$45,000 in that legal effort. **(Exhibit 3, Page 5)**
- 2.5 On June 8, 2016, the City of Tacoma filed its Answer and Cross Claims, agreeing that the Initiatives were legally defective. The City of Tacoma filed a cross claim against the Initiative sponsors within the existing lawsuit.
- 2.6 Ms. Lake stated that on June 18, 2016, the Port of Tacoma Commissioners held a properly noticed public meeting, and provided notice that the Commission intended to vote to *"ratify the Port's action of filing a Declaratory Judgment and Injunctive challenge of two proposed initiatives filed with the City of Tacoma-Charter Amendment 5 and Code Initiative 6."*
- 2.7 On July 1, 2016, the Pierce County Superior Court granted the Plaintiffs' Motion for Declaratory Judgment, finding the two Initiatives invalid and granting injunctive relief to prevent the Pierce County Auditor from placing the measures on the ballot. **(Exhibit 4, pages 13-19)**
- 2.8 The Port stated that its actions were consistent with a long list of legal cases in which public agencies have properly sought judicial review of the legal sufficiency of a proposed initiative, and noted that in no case were these actions found to violate RCW 42.17A.555. **(Exhibit 3, Pages 13 & 14)**
- 2.9 The Port asserts that they took no campaign action to influence the vote on a ballot measure, stating that the expenditures at issue were made prior to a ballot initiative campaign, and were in fact related to challenging the initiation of such a

campaign on the grounds that the ordinance was facially unconstitutional. The Port argued that their action in pursuing a legal determination from the neutral judicial system was not campaigning, but instead was consistent with the underlying purpose of Washington campaign laws to protect the integrity of the voting process. **(Exhibit 3, Page 2)**

- 2.10 RCW 53.57.030(3) states that a port development authority, in managing maritime activities, may sue and be sued. Under this authority, the Port of Tacoma filed its declaratory judgment lawsuit concerning Initiatives 5 and 6. It was also usual and customary for the Port of Tacoma to engage in litigation concerning issues that affect the Port District. From 2000-2016, the Port of Tacoma engaged in litigation in Pierce County Superior Court 66 times, King County Superior Court 6 times, Thurston County Superior Court 3 times, Lewis County Superior Court 2 times, and U.S. District Court for the Western District of Washington 15 times. **(Exhibit 7)**

**Allegation that the Port of Tacoma may have violated RCW 42.17A.205, .235, and .240 by failing to register and report individually as a political committee, and with the EDB and Chamber as a group, as a political committee**

- 2.11 A political committee is defined as “any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.” In addition, Interpretation 07-02 “Primary Purpose Test” Guidelines, sets forth two alternative prongs under which an individual or organization may become a political committee and subject to the Act’s reporting requirements: (1) a “receiver of contributions” prong; and (2) a “making expenditures to further electoral political contributions” prong. A requirement of the “making expenditures” prong states that the organization making expenditures must have as its “primary or one of its primary purposes ... to affect, directly or indirectly, governmental decision making by supporting opposing candidates or ballot propositions ...”
- 2.12 The Interpretation states that an appropriate framework for determining whether electoral political activity is one of the organization’s primary purposes should include an examination of the stated goals and mission of the organization and whether electoral political activity is a primary means of achieving the stated goals and mission during the period in question.
- 2.13 The interpretation states that a nonexclusive list of analytical tools that may be used to evaluate the evidence includes:
1. The content of the stated goals and mission of the organization;
  2. Whether the organization’s actions further its stated goals and mission;
  3. Whether the stated goals and mission of the organization would be substantially achieved by a favorable outcome in any upcoming election; and

4. Whether the organization uses means other than electoral political activity to achieve its stated goals.

- 2.14 The Port of Tacoma is a special purpose public port district that operates under Title 53 of the Revised Code of Washington, and is classified as a special purpose district. The Port is a member of The Northwest Seaport Alliance, a marine cargo operating partnership with the Port of Seattle. Five Commissioners are elected to four-year terms, and serve as the Port's board of directors. The Commission hires the CEO, sets policy and strategic direction, and approves all major expenditures. The Port put in place a 10-year strategic plan in 2012 that it updates annually. The Plan focuses on four areas: (1) Strategic investments; (2) New business opportunities; (3) Customer care; and (4) Community Pride.
- 2.15 The Port's mission is to "Deliver prosperity by connecting customers, cargo and community with the world." The Port's core values are: (1) Integrity; (2) Customer focus; (3) Teamwork; (4) Courage; (5) Competitive spirit; and (6) Sustainability. The Port has a legislative mandate to foster economic development in Tacoma and Pierce County. The Port also owns land, and as part of its mission, leases land to tenants.
- 2.16 The Port of Tacoma is not a "receiver of contributions" in support of, or in opposition to candidates or ballot propositions. In addition, the primary purpose of the Port of Tacoma is to operate as a special purpose port district as described in its mission and legislative mandate. There is no evidence that the primary purpose, or one of the primary purposes of the Port is to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions.
- 2.17 In addition, PDC Interpretation 91-02 addresses legal fees related to placing, or not placing, a proposition on the ballot. It says in Statement #2, "Expenditures made by a government agency to defend its official actions related to whether or not a measure should be placed on a ballot or to the wording of a ballot title are not reportable as campaign expenditures." Although the Port of Tacoma's declaratory judgment request was not to defend the act of placing an initiative on the ballot, it appears to be similar to such an action in that the Port appears to have acted in good faith in seeking judicial review of the legal sufficiency of the proposed initiatives.
- 2.18 The PDC has never alleged or found that a public agency whose activities supported or opposed candidates or ballot propositions was a political committee subject to the Act's reporting requirements, or that a public agency engaging in such activities was subject to independent expenditures or electioneering communications reporting requirements. Rather, the Commission has always evaluated such alleged activities by public agencies as subject to the prohibitions that are presently codified in RCW 42.17A.555.

- 2.19 No evidence was found that the Port of Tacoma was part of a joint political committee with the EDB and the Chamber. In an email received July 29, 2016, the Port of Tacoma stated that it did not pool any funds with anyone, including the EDB or the Chamber, related to the legal action taken. In addition, the Port stated that it did not have any expectation to seek contributions to pay for its legal actions concerning Charter Initiative 5 and Code Initiative 6, and that it did not consider payment of legal fees an expenditure in support of, or in opposition to, any candidate or any ballot proposition as defined in RCW 42.17A.255. **(Exhibit 10)**

**Allegation that that the EDB may have violated RCW 42.17A.205, .235, and .240 by failing to register and report individually as a political committee, and with the Port of Tacoma and the Chamber as a group, as a political committee**

- 2.20 On July 21, 2016, Jason Whalen, an attorney representing the EDB, provided a written response to the complaint. **(Exhibit 5)** The EDB is a private Washington non-profit corporation, actively incorporated in the State of Washington since 1977. It is not a state government agency or a local government agency subject to the prohibitions and restrictions in RCW 42.17A.555. The complaint did not allege that the EDB is a public agency subject to the prohibitions of RCW 42.17A.555.
- 2.21 The EDB has a two-prong mission: (1) retention; and (2) recruitment of existing primary businesses in Tacoma-Pierce County. The EDB's website lists its vision and mission as:
- VISION 2040:** Tacoma-Pierce County is the most attractive location in the Pacific Northwest for local, national and global business investment and job creation.
- MISSION:** COMPETE EVERY DAY FOREVER – The EDB grows primary businesses by working with its partners to spur private capital investment and job creation in Tacoma-Pierce County.
- 2.22 The EDB work plan to accomplish its stated mission is developed by a volunteer board of directors, and the work plan is executed by private staff members. The EDB's work plan is funded by its member investors, both private and public. The EDB states that it does not seek, as its primary or one of its primary purposes, to affect, directly or indirectly, governmental decision-making by supporting or opposing candidates or ballot propositions.
- 2.23 The EDB stated that because of its stated mission, it had legal standing to pursue a pre-election review of the legal sufficiency of the proposed initiatives, and joined the Port of Tacoma and the Chamber as a Co-Plaintiff in the lawsuit that sought declaratory and injunctive relief to determine whether the initiatives were beyond the proper scope of initiative power. **(Exhibit 5, Page 2)**

- 2.24 The EDB stated, "The Washington Supreme Court has held that pre-election review is proper to determine whether such local initiatives are beyond the scope of the initiative power. See e.g. *City of Port Angeles v. Our Water-Our Choice!* 170 Wn.2d 1, 239 P.3d 589 (2010). This exact issue (pre-election review of local initiatives involving water rights) was recently reaffirmed by the Washington Supreme Court in February 2016 in *Spokane Entrepreneurial Center v. Spokane Moves to Amend the Constitution*. 185 Wn.2d 97; 369 P.3d 140 (2016)." **(Exhibit 5, Page 2)**
- 2.25 The EDB stated that it spent \$9,994 from its operating budget in pursuit of a legal determination of the validity of the Initiatives. The EDB stated that they have not received, and do not expect to receive, contributions toward any electoral goals. The EDB denied that its participation as a Co-Plaintiff made then a political committee. **(Exhibit 8)**
- 2.26 The EDB acknowledged that it had concerns that the proposed initiatives, if passed, would irreparably harm the EDB's work plan and efforts to attract business to the Puget Sound region, but claimed that seeking a legal determination on a purely legal issue in which the EDB and the other Co-Plaintiffs had legal standing was a far cry from engaging in political activity that would make them a political committee subject to reporting with the PDC. **(Exhibit 5, Page 3)**
- 2.27 When applying the Primary Purpose Test Guidelines in Interpretation 07-02, it appears that EDB's actions were done to further its stated goals and mission because they were done to protect the region's business environment. It does not appear that EDB's stated goals and mission would be substantially achieved by defeating the initiatives, or by keeping the initiatives off of the ballot. The EDB uses means other than electoral political activity to achieve its stated goals.
- 2.28 No evidence was found that the EDB was part of a joint political committee with the Port of Tacoma and the Chamber. The Port of Tacoma stated that it did not pool any funds related to the legal action taken with anyone, including the EDB or the Chamber. **(Exhibit 10)**
- 2.29 Although not alleged in the complaint, PDC staff looked at whether the expenditures by the EDB to seek a declaratory judgment to keep the initiatives off of the November 2016 ballot were required to be reported as an independent expenditure. RCW 42.17A.255 requires any expenditure of \$100 or more in the aggregate made in support of or in opposition to any candidate or ballot proposition that is not otherwise required to be reported pursuant to RCW 42.17A.220, 42.17A.235, and 42.17A.240 to be reported within five days after the date of making the expenditure.

2.30 Charter Initiative 5 and Code Initiative 6 were ballot propositions as of March 7 and March 11, 2016, respectively. On June 6, 2016, the EDB joined the Port of Tacoma's lawsuit as a Co-Plaintiff, spending \$9,994 on this effort. While the EDB states that its expenditures were to bring an action for declaratory relief before the Pierce County Superior Court on the sole issue of whether the Initiatives were beyond the proper scope of local initiative power, it appears that the EDB's expenditures were also for the purpose of opposing Initiatives 5 and 6 at a time when they were ballot propositions, even if an active campaign had not been started. Thus it appears that the EDB's expenditures may have been required to be reported as independent expenditures, pursuant to RCW 42.17A.255.

**Allegation that the Chamber may have violated RCW 42.17A.205, .235, and .240 by failing to register and report individually as a political committee, and with the Port of Tacoma and the Chamber as a group, as a political committee**

2.31 On July 21, 2016, Valarie Zeeck, an attorney representing the Chamber, provided a written response to the complaint. The Chamber is a Washington non-profit corporation whose President and Board of Directors are selected by a process outlined in its bylaws. It is not a state government agency or a local government agency. The complaint did not allege that the Chamber is a public agency subject to the prohibitions of RCW 42.17A.555. **(Exhibit 6)**

2.32 The Chamber's website does not include a formal Mission Statement, but does include a message from Mr. Tom Pierson, its President and CEO. The message states:

"In recent years, we have worked to strategically transform the Tacoma-Pierce County Chamber. Our goal is to become the go-to-organization when there are tough issues that need to be addressed locally, statewide, and nationally. We are sought after by business and government leaders, contributing to solutions that affect the business community. The results of these efforts have been significant & measurable. Our commitment to our members continues through our strategic programming and advocacy efforts."

2.33 The Tacoma-Pierce County Chamber's vision, goal and focus are as follows:

**VISION:** "is to secure the economic future of our local and business community."

**FOCUS:** "is to build a healthy local economy by being the Voice for Business; uniting, advocating, and supporting economic growth in Pierce County."

**GOAL**: “is to become the go-to-organization when tough issues need to be addressed at the local, state, and federal level. We are considered leaders among stakeholders and contribute to solutions that impact the business community.”

**COMMITMENT**: “to you, our members, continues through our strategic programming and advocacy efforts. We encourage innovation, entrepreneurial approaches, consensus, and collaboration.”

- 2.34 The Chamber stated that it does not meet the definition of a “political committee” because when it acted as a Co-Plaintiff with the Port of Tacoma and the EDB, it was not receiving contributions or making expenditures “in support of or in opposition to” political activity as contemplated by the Fair Campaign Practices Act (FCPA). It further stated that Initiatives 5 and 6 were not “ballot propositions” as defined in the FCPA. **(Exhibit 6, Pages 3 & 4)** However, as explained above, this is not correct.
- 2.35 The Chamber stated that it filed a lawsuit not to “further electoral political goals,” but rather to obtain a neutral judicial determination as to whether the initiatives were lawful. The Chamber states that no reported Washington case has held that seeking a judicial determination of the validity of a ballot measure is “political activity” or constitutes “promoting an electoral political goal.” **(Exhibit 6, Page 4)**
- 2.36 The Chamber stated that filing a lawsuit to determine the legality of a local initiative is not advertising, communicating with voters, campaigning, lobbying or electioneering, and stated that because the Chamber engaged in legal activity - seeking a neutral, judicial decision of a Washington State Judicial Officer – rather than attempting to sway voters or promote or oppose an issue electorally, the PDC should dismiss the Complaint. **(Exhibit 6, Page 5)**
- 2.37 The Chamber also stated that even if the Chamber was engaging in support of or opposition to the proposed initiatives, it would not meet the definition of a “political committee” because the initiatives were not ballot propositions as defined in the FCPA. The Chamber stated that its expenditures as Co-Plaintiffs occurred before there was any “ballot issue campaign” but were related to challenging the initiation of such a campaign on the grounds that the ordinance was facially unconstitutional and beyond the scope of the initiative power. **(Exhibit 6, Page 5)**
- 2.38 The Chamber stated that it has spent approximately \$10,000 in legal fees on the court action. The Chamber said it used funds from its normal operating budget to pay the fees. The Chamber said it did not seek contributions for this purpose, or have an “expectation” of making expenditures for this purpose until the illegality of the initiatives became apparent. **(Exhibit 9)**

- 2.39 When applying the Primary Purpose Test Guidelines in Interpretation 07-02, it appears that the Chamber's actions were done to further its stated goals and mission because they were done to protect the region's business environment. It does not appear that the Chamber's stated goals and mission would be substantially achieved by defeating the initiatives, or by keeping the initiatives off of the ballot. The Chamber uses means other than electoral political activity to achieve its stated goals.
- 2.40 No evidence was found that the Chamber was part of a joint political committee with the Port of Tacoma and the EDB. The Port of Tacoma stated that it did not pool any funds related to the legal action taken with anyone, including the EDB or the Chamber. **(Exhibit 10)**
- 2.41 Although not alleged in the complaint, PDC staff looked at whether the expenditures by the Chamber to seek a declaratory judgment to keep the initiatives off of the November 2016 ballot were required to be reported as an independent expenditure. RCW 42.17A.255 requires any expenditure of \$100 or more in the aggregate made in support of or in opposition to any candidate or ballot proposition that is not otherwise required to be reported pursuant to RCW 42.17A.220, 42.17A.235, and 42.17A.240 to be reported within five days after the date of making the expenditure.
- 2.42 Charter Initiative 5 and Code Initiative 6 were ballot propositions as of March 7 and March 11, 2016, respectively. On June 6, 2016, the Chamber joined the Port of Tacoma's lawsuit as a Co-Plaintiff, spending approximately \$10,000 on this effort. While the Chamber states that its expenditures were to challenge the initiation of such a campaign on the grounds that the ordinance was facially unconstitutional and beyond the scope of the initiative power, it appears that the Chamber's expenditures were also for the purpose of opposing Initiatives 5 and 6 at a time when they were ballot propositions, even if an active campaign had not been started. Thus it appears that the Chamber's expenditures may have been required to be reported as independent expenditures, pursuant to RCW 42.17A.255.

### **III. Scope**

- 3.1 PDC staff reviewed the following documents:
- The Citizen Action Letter filed with the Attorney General's Office and the Pierce County Prosecutor by Arthur West against the Port of Tacoma, the Economic Development Board for Tacoma-Pierce County, and the Tacoma-Pierce County Chamber on June 16, 2016. **(Exhibit 1)**

- Request from the Washington State Attorney General asking the PDC to review Mr. West's 45-Day Citizen Action Complaint, received at the PDC on July 13, 2016. (**Exhibit 2**)
- Response from the Port of Tacoma, received on July 21, 2016 (**Exhibits 3 & 4**)
- Response from the Economic Development Board for Tacoma-Pierce County, dated July 21, 2016 (**Exhibit 5**)
- Response from the Tacoma-Pierce County Chamber, dated July 21, 2016 (**Exhibit 6**)
- Port of Tacoma litigation (2000-2016) (**Exhibit 7**)
- Response from the EDB about litigation costs (**Exhibit 8**)
- Response from the Chamber about litigation costs (**Exhibit 9**)
- Response from the Port of Tacoma about pooling funds, and about expenditures reportable under RCW 42.17A.255 (**Exhibit 10**)

#### **IV. Laws**

4.1 **RCW 42.17A.555** states in part: (1) No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency. However, this does not apply to the following activities:

(1) Action taken at an open public meeting by members of an elected legislative body or by an elected board, council, or commission of a special purpose district including, but not limited to, fire districts, public hospital districts, library districts, park districts, port districts, public utility districts, school districts, sewer districts, and water districts, to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition so long as (a) any required notice of the meeting includes the title and number of the ballot proposition, and (b) members of the legislative body, members of the board, council, or commission of the special

purpose district, or members of the public are afforded an approximately equal opportunity for the expression of an opposing view; ...

(3) Activities which are part of the normal and regular conduct of the office or agency.

- 4.2 **WAC 390-05-273** states: Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW 42.17A.555, means conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner. No local office or agency may authorize a use of public facilities for the purpose of assisting a candidate's campaign or promoting or opposing a ballot proposition, in the absence of a constitutional, charter, or statutory provision separately authorizing such use.
- 4.3 **RCW 42.17A.005(4)** "Ballot proposition" means any "measure" as defined by RCW **29A.04.091**, or any initiative, recall, or referendum proposition proposed to be submitted to the voters of the state or any municipal corporation, political subdivision, or other voting constituency from and after the time when the proposition has been initially filed with the appropriate election officer of that constituency before its circulation for signatures.
- 4.4 **RCW 29A.04.091** "Measure" includes any proposition or question submitted to the voters.
- 4.5 **RCW 42.17A.005(37)** defines "political committee" as "any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition."
- 4.6 **Interpretation 07-02 "Primary Purpose Test" Guidelines** The Act sets forth two alternative prongs under which an individual or organization may become a political committee and subject to the Act's reporting requirements. "Political committee" means any person ... having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition." RCW 42.17A.005(37) **Thus, a person or organization may become a political committee by either (1) expecting to receive or receiving contributions, or (2) expecting to make or making expenditures to further electoral political goals.** [Footnote: We use the phrases "electoral political goals" and "electoral political activity" to convey the statutory language "support of, or opposition to, any candidate or any ballot proposition"]

A requirement of the "making expenditures" prong states that the organization making expenditures must have as its "primary or one of the primary purposes

... to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions ...”

In addition, the Interpretation states that an appropriate framework for determining whether electoral political activity is one of the organization’s primary purposes should include an examination of the stated goals and mission of the organization and whether electoral political activity is a primary means of achieving the stated goals and mission during the period in question.

A nonexclusive list of analytical tools that may be used to evaluate the evidence includes:

1. The content of the stated goals and mission of the organization;
2. Whether the organization’s actions further its stated goals and mission;
3. Whether the stated goals and mission of the organization would be substantially achieved by a favorable outcome in any upcoming election; and
4. Whether the organization uses means other than electoral political activity to achieve its stated goals.

4.7 **RCW 42.17A.205 – Statement of organization by political committees.**

States in part: Every political committee shall file a statement of organization with the commission. The statement must be filed within two weeks after organization or within two weeks after the date the committee first has the expectation of receiving contributions or making expenditures in any election campaign, whichever is earlier.

4.8 **RCW 42.17A.235 and 240** require continuing political committees to file timely, accurate reports of contributions and expenditures. Under the full reporting option, until five months before the general election, C-4 reports are required monthly when contributions or expenditures exceed \$200 since the last report.

4.9 **RCW 42.17A.255**, states in part: (1) For the purposes of this section the term "independent expenditure" means any expenditure that is made in support of or in opposition to any candidate or ballot proposition and is not otherwise required to be reported pursuant to RCW **42.17A.220**, **42.17A.235**, and **42.17A.240**. ... (2) Within five days after the date of making an independent expenditure that by itself or when added to all other such independent expenditures made during the same election campaign by the same person equals one hundred dollars or more, or within five days after the date of making an independent expenditure for which no reasonable estimate of monetary value is practicable, whichever occurs first, the person who made the independent expenditure shall file with the commission an initial report of all independent expenditures made during the campaign prior to and including such date.

4.10 **Interpretation 91-02 – Legal Fees Related to Placing, or Not Placing, a Proposition on the Ballot.**

**Statement #1** Expenditures made by a person or political committee to place a measure on a ballot, to influence the wording of a ballot title or to require that a government agency place a measure on the ballot are campaign expenditures reportable under RCW 42.17A.

**Statement #2** Expenditures made by a government agency to defend its official actions related to whether or not a measure should be placed on a ballot or to the wording of a ballot title are not reportable as campaign expenditures.

**Discussion:** The proponents of a proposed ballot measure are clearly acting to support or advance that measure when they take an action to require that it be placed before the voters. It is also in their interest to have the measure stated in terms most favorable to them. The proponents, therefore, have discretion in the action they take regarding the issue. They are also not closely bound by law in the range of actions they may take. The government agency, on the other hand, is closely regulated by law in its actions regarding measures that are presented to it. It first of all is expected to remain neutral in its approach to ballot proposals. The way in which a measure is processed is specified and the government is given little leeway in its actions. If a government agency takes an official action (e.g., to write a ballot title or to refuse to place a measure on the ballot) it must be assumed that the agency is acting in good faith. If the government action is challenged, the agency then has little or no discretion in whether to defend its action. Thus, while the agency's act may serve the ultimate end of opposing a ballot proposal, since the agency lacks discretion in the situation, it has not made a campaign expenditure as envisioned by RCW 42.17A.

Respectfully submitted this 4<sup>th</sup> day of August 2016.

  
Philip E. Stutzman  
Sr. Compliance Officer

**List of Exhibits**

- Exhibit 1** 45-Day Citizen Action Complaint to the Washington State Attorney General and the Pierce County Prosecutor, from Mr. Arthur West, received June 16, 2016
- Exhibit 2** Request from Washington State Attorney General to review Arthur West's 45-Day Citizen Action Complaint, received July 13, 2016,
- Exhibit 3** Response from Port of Tacoma, received July 21, 2016
- Exhibit 4** Attachments to Port of Tacoma response, received July 21, 2016
- Exhibit 5** Response from the Economic Development Board for Tacoma-Pierce County with attachments, received July 21, 2016
- Exhibit 6** Response from the Tacoma-Pierce County Chamber, received July 21, 2016
- Exhibit 7** Port of Tacoma litigation 2000-2016
- Exhibit 8** Email from the EDB stating litigation costs
- Exhibit 9** Email from the Chamber stating litigation costs
- Exhibit 10** Email from Port of Tacoma about pooling funds, and about expenditures reportable under RCW 42.17A.255

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JUN 16 2016

June 16, 2016

2016 JUN 16 AM 9: 33

Public Disclosure Commission

**TO: WASHINGTON STATE ATTORNEY GENERAL ROBERT  
FERGUSON, PIERCE COUNTY PROSECUTOR MARK  
LINDQUIST, AND THE WASHINGTON STATE PUBLIC  
DISCLOSURE COMMISSION**

**RE: CITIZEN'S ACTION LETTER RE UNLAWFUL CAMPAIGN  
ACTIVITY BY THE PORT OF TACOMA, THE ECONOMIC  
DEVELOPMENT BOARD OF TACOMA-PIERCE COUNTY,  
THE TACOMA-PIERCE COUNTY CHAMBER, AND THE  
"THIRD TRIUMVIRATE" CREATED BY THEIR CONCERTED  
ALLIANCE OPPOSING TACOMA CITIZENS' INITIATIVES  
AND COMPLAINT FOR VIOLATION OF RCW 42.17A.555  
BY THE PORT OF TACOMA IN EXPENDING PUBLIC  
FUNDS TO OPPOSE A BALLOT MEASURE**

**FROM: ARTHUR WEST  
120 State Ave. NE #1497  
Olympia, Washington, 98501**

Please consider this as a complaint for violation of RCW 42.17A.555 and a formal citizen's action letter under RCW 42.17.765 concerning the continuing unregistered campaign activity, unregistered PAC activity, and failure to report campaign related receipts and expenditures to oppose Tacoma Citizen's Initiatives 5 and 6 by the Port of Tacoma, the Economic Development Board of Tacoma-Pierce County, the Tacoma-Pierce County Chamber, and by the "Third Triumvirate" formed by the organized political alliance of these three powerful and influential organizations.

RCW 42.17A.555 provides...

**COMPLAINT RE UNLAWFUL CAMPAIGN ACTIVITY BY THE PORT OF TACOMA, CHAMBER  
EDC, AND THE THIRD TRIUMVIRATE FORMED BY THEIR JOINT ORGANIZATIONAL CABAL**

1

No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency...

While there is an exemption in this for “normal and usual” activities of an agency, this exemption is limited in scope and strictly construed against actions of agencies such as the Port to influence legislative actions of another governmental body such as the City of Tacoma, which is what the Port is attempting to do in their present suit.

As a longstanding 1975 Opinion of the Attorney General has maintained for over 40 years now...

The possible authority of any public officer or employee to expend funds to influence legislative action by another governmental body is to be viewed with special strictness. In fact, as we have pointed out in previous opinions, the rule in this state has long been that such expenditures are contrary to public policy and illegal in the absence of express authority ...

This restriction has been most often applied to expenditures for influencing action of the state legislature. However a similar rule has been consistently applied to expenditures made by municipal corporations (such as school districts) for the purpose of influencing votes on ballot propositions. See, our opinion of January 20, 1972 [[an Informal Opinion, AIR-72598]], to Senator Rasmussen...

Finally, in determining whether an elected official is or is not in compliance with RCW 42.17.130, supra, one cannot

safely rely solely upon a determination of whether a particular act may be legal in a technical sense. The phrase "normal and regular" in the proviso thereto must be taken to denote some qualification of conduct over and above that of being merely lawful; otherwise, presumably, the proviso would have used that term. Every word and phrase of a statute must be given its full meaning, where possible, and no word or choice of wording should be regarded as insignificant. Murray v. Dept. of Labor & Industries, 151 Wash. 95, 275 Pac. 66 (1929).

Consequently, to give full effect to the proviso, the phrase must be construed to mean such activities as are not only lawful, but also to at least some extent, within the "usual" conduct of the office in question. Thus, an action by an elected official for a purpose prohibited by RCW 42.17.130 will not necessarily be saved by the proviso merely because the governing body of the agency ultimately ratified the expenditure or even gave the official in question special authority, in advance, to expend funds for the purpose in question.

In practical effect what this means is that the proviso must be strictly construed as provisos usually are. Tabb v. Funk, 170 Wash. 545, 17 P.2d 18 (1932). Generally, therefore, expenditures made in extraordinary cases, or authorized in some extraordinary manner or by some extraordinary process of reasoning, cannot be held to be "normal and regular conduct" of an office under the proviso with which [[Orig. Op. Page 9]] we are here concerned. AGO 1975, No. 23 cited in King County Council v. Public Disclosure Commission, 93 Wn.2d 559, 611 P.2d 1227, (1980), cited in Knowing the Waters, Basic Legal Guidelines for Port Districts, Robert Hauth (2007), at page 23-24.

By using public funds to oppose Tacoma Citizen's Initiatives 5 and 6 in an extraordinary manner that was not part of the "normal and usual" conduct of the Port of Tacoma, as these terms have been understood for over 40 years in Attorney General Opinions entitled to great weight, (See Citizens

Alliance for Property Rights Legal Fund v. San Juan County, \_\_\_ Wn.2d \_\_\_ (2015), citing Five Corners Family Farmers v. State, 173 Wn.2d 296, 308, 268 P.3d 892 (2011), the Port violated RCW 42.17A.555.

In addition, campaign and PAC reporting requirements appear to have been violated, in that PDC Interpretive letter 07-2 states...

- a person or organization may become a political committee by either (1) expecting to receive or receiving contributions, or (2) expecting to make or making expenditures to further electoral political goals.
- The organization making expenditures must have as its "primary or one of the primary purposes ... to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions..." State v. Dan J. Evans Campaign Comm., 86 Wash.2d at 509, 546 P.2d 75 (Pages 598-599)
- An organization is a political committee if one of its primary purposes is to affect governmental decision making by supporting or opposing candidates or ballot propositions, and it makes or expects to make contributions in support of or in opposition to a candidate or ballot measure.

The recent actions, pleadings, press releases and statements of the Port of Tacoma, the Economic Development Board of Tacoma-Pierce County (EDB) and the Tacoma-Pierce County Chamber clearly demonstrate that (despite the legal restrictions upon the use of public funds to oppose ballot measures) one of the actual primary purposes of each of these groups individually, and as their new incarnation as a tripartite political organization with a unified political agenda, is to affect governmental decision making by opposing ballot measures such as Tacoma Citizen's Initiatives 5 and 6.

Attached and incorporated by reference is a copy of a lawsuit and exhibits that demonstrate the nature of the organized concerted actions of this Third Triumvirate, and the circumstance that one of the primary

**COMPLAINT RE UNLAWFUL CAMPAIGN ACTIVITY BY THE PORT OF TACOMA, CHAMBER  
EDC, AND THE THIRD TRIUMVIRATE FORMED BY THEIR JOINT ORGANIZATIONAL CABAL**

4

purposes of each of the organizations it is composed of is to oppose ballot measures such as Tacoma Citizen's Initiatives 5 and 6.

As their websites demonstrate, the members of the Triumvirate all apparently believe that opposing ballot measures such as Tacoma Citizen's Initiatives 5 and 6 is one of their primary purposes, and it is apparent that the organization created by their joint efforts has no other purpose whatsoever than to oppose these two measures.

By so acting, the Port of Tacoma, the Economic Development Board of Tacoma-Pierce County, the Tacoma-Pierce County Chamber and the organization they created to oppose Tacoma Citizen's Initiatives 5 and 6 failed to register or report campaign related expenditures made to oppose a ballot measure, and in addition failed to register or report as PACs as required by RCW 42.17A.205-240 of organizations opposing ballot propositions such as Tacoma Citizen's Initiatives 5 and 6

This violated the intent of RCW 42.17.0001, including section (1) That political campaign and lobbying contributions and expenditures be fully disclosed to the public and that secrecy is to be avoided.

Please investigate and take any necessary action in regard to this complaint and Citizen's Action Letter. If you believe any further information would be helpful to your investigation, do not hesitate to ask.

Done June 16, 2016, in Olympia. I, Arthur West, certify the factual assertions above to be correct and true under penalty of perjury of the laws of the State of Washington.

  
ARTHUR WEST

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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR PIERCE COUNTY**

PORT OF TACOMA, a Washington State  
Municipal Corporation, ECONOMIC  
DEVELOPMENT BOARD FOR TACOMA-  
PIERCE COUNTY, a Washington State Non-  
profit Corporation, and the TACOMA-  
PIERCE COUNTY CHAMBER, a Washington  
State Non-profit corporation.

Plaintiffs,

vs.

SAVE TACOMA WATER, a Washington  
political committee, DONNA WALTERS,  
sponsor and Treasurer of SAVE TACOMA  
WATER, JON AND JANE DOES 1-5,  
(Individual sponsors and officers of SAVE  
TACOMA WATER), CITY OF TACOMA, a  
Washington State Municipal Corporation,  
and JULIE ANDERSON, IN HER CAPACITY  
AS PIERCE COUNTY AUDITOR

Defendants.

**No.**

**COMPLAINT FOR  
DECLARATORY JUDGMENT  
& INJUNCTIVE RELIEF**

**I. INTRODUCTION**

1. On or around March 7, 2016, Defendants SAVE TACOMA WATER, a  
Washington political action committee, DONNA WALTERS, sponsor and Treasurer of

COMPLAINT FOR DECLARATORY JUDGEMENT  
& INJUNCTIVE RELIEF --1 of 27

160606.f. complaint

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Tacoma, WA 98405  
253.779.4000  
FAX 253.779.4411

1 SAVE TACOMA WATER, and JON AND JANE DOES (Individual sponsors and officers  
2 of SAVE TACOMA WATER) 1-5 (collectively "STW") submitted what became "Charter  
3 Amendment 5" ("Charter Initiative"). See Copy **Attachment A**. The Charter Initiative 5  
4 seeks that any land use proposal requiring water consumption of 1336 CCF (one million  
5 gallons) of water or more daily from Tacoma be submitted to a public vote prior to "the  
6 City" "providing water service" for such a project. (Section 4.24 (A)). STW's Charter  
7 Initiative expressly purports to elevate its proposed Charter amendment above state law,  
8 by pronouncing that "all laws adopted by the legislature of the State of Washington, and  
9 rules adopted by any state agency, shall be the law of the City of Tacoma only to the  
10 extent that they do not violate the rights or mandates of this Article. (Section 4.24 (B)).  
11 STW's Charter Initiative expressly also purports to overrule and/or disavow the United  
12 States Constitution, along with "international, federal [and] state laws" that "interfere"  
13 with the proposed amendment. (Section 4.24 (C)). STW's Charter Initiative further  
14 expressly purports to curtail the jurisdiction of state and federal courts, and to eliminate  
15 certain rights of corporations, in conflict with the Washington and Federal  
16 Constitutions, as well as U.S. Supreme Court rulings. STW apparently seeks all of these  
17 results by proclamations sought to be contained in the Tacoma City Charter.

18 2. On or around April 15, 2016, STW submitted what became "Initiative 6"  
19 ("Code Initiative"). STW's Code Initiative seeks to amend the City of Tacoma Municipal  
20 Code Title 12 to require that any proposal which will use 1336 CCF (one million gallons)  
21 of water or more daily from Tacoma be submitted to a public vote prior to "the City"

22 "providing water service" for such a project. The Code Initiative repeats all the same

23 COMPLAINT FOR DECLARATORY JUDGEMENT  
& INJUNCTIVE RELIEF --2 of 27

24 160606.f. complaint

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Tacoma WA  
Tacoma, WA 98405  
253.779.4000  
FAX 253.779.4411

1 defective provisions of the Charter Initiative, which conflict with the US and  
2 Washington Constitutions and state and federal law.

3       3.     The Plaintiffs Port of Tacoma ("Port"), Economic Development Board for  
4 Tacoma-Pierce County ("EDB") and the Tacoma-Pierce County Chamber ("Chamber")  
5 seek a declaration that both the Charter Initiative and Code Initiative are beyond the  
6 proper scope of the local initiative power, and seek injunctive relief.

7       4.     Local initiatives are limited in permissible scope.

8       5.     The City of Tacoma's Charter provides that the "initiative shall be  
9 exercised ... in accordance with the general laws of the state." *Tacoma Charter 2.19.*

10       6.     Local initiatives that exceed the scope of the initiative power of a city in  
11 any manner are invalid and should not be placed on the ballot. Pre-election challenges  
12 to the scope of the initiative power are both permissible and appropriate.

13       7.     STW's proposed Charter and Code Initiatives are beyond the scope of local  
14 initiative power for one or more of the following reasons:

- 15       a.     STW's Charter and Code Initiatives invalidly attempt to administer a  
16             proprietary function of Tacoma, which exceeds the scope of initiative powers.
- 17       b.     STW's Charter and Code Initiatives improperly attempt to oversee and classify  
18             utility customers which delve into an expressly legislative matter and thus  
19             exceed the valid scope of initiative powers.
- 20       c.     The operation of Tacoma City utilities exceeds the scope of initiative power  
21             given to the electorate.

22 **COMPLAINT FOR DECLARATORY JUDGEMENT**  
23 **& INJUNCTIVE RELIEF --3 of 27**

24 160606.f. complaint

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Tacoma, WA 98405  
253.779.4000  
FAX 253.779.4411

1 d. STW's Charter and Code Initiatives are flatly inconsistent with the plain terms  
2 of Tacoma's Charter. Tacoma's Charter delegates the power to operate its  
3 water utility to the Tacoma Public Utility ("TPU") Board. *Tacoma Charter*  
4 4.10.

5 e. STW's Charter and Code Initiatives fail because their provisions are directly  
6 contrary to the water rights system established by the State.

7 f. STW's Charter and Code Initiatives conflict with Washington law that holds  
8 zoning and development matters are not subject to initiative power.

9 g. STW's Initiatives impermissibly seek to interfere with Tacoma's role as a  
10 regional water service provider, which role extends beyond the territorial  
11 jurisdiction of the City of Tacoma.

12 h. STW's Initiatives impermissibly seek to transfer grants of property rights from  
13 Tacoma's water utility to the "people".

14 i. STW's Initiatives are an invalid attempt to interfere with the authority vested  
15 in the Tacoma City Council to control Tacoma's budget.

16 j. STW's Initiatives conflict with state law by attempting to apportion between  
17 classes of utility users.

18 k. STW's Initiatives seek to strip the legal rights of any corporation that  
19 "violates" the "rights" sought to be established in Tacoma's Charter and Code  
20 by these Initiatives, which directly conflicts with the US and Washington state  
21 Constitutions and the United States Supreme Court's ruling in *Citizens United*

22 *v. Federal Election Commission*, 558 U.S. 310, 342-43, 130 S. Ct. 876, 175 L.

23 COMPLAINT FOR DECLARATORY JUDGEMENT  
& INJUNCTIVE RELIEF --4 of 27

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501 South G Street  
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253.779.4000  
FAX 253.779.4411

24 160606.f. complaint

1 Ed. 2d 753 (2010), which held corporations have rights under the federal  
2 constitution.

3 l. STW's Initiatives must be invalidated because they expressly and  
4 impermissibly purport to disavow such superior law as state laws, state rules,  
5 federal laws, the United States Constitution, and the Washington State  
6 Constitution.

7 m. STW's Initiatives are wholly invalid and cannot be severed, salvaged, or  
8 salvaged in part.

9 8. The Plaintiffs seek resolution of these legal issues in accordance with the  
10 Washington State Supreme Court ruling in *Philadelphia II v. Gregoire*, 128 Wash.2d  
11 707 (1996), which held that the proper method for resolving whether a proposed local  
12 initiative exceeds the scope of local initiative power as seeking a judicial determination  
13 under Washington's Uniform Declaratory Judgment Act, RCW Ch. 7.24, before the  
14 County Auditor validates signatures and or places the matters on a ballot.

15 9. The Court should declare the Charter and Code Initiatives invalid and  
16 enjoin the County Auditor from (a) validating Petition signatures and (b) from placing  
17 the Initiatives on the 2016 November general election ballot.

18 **II. PARTIES, JURISDICTION AND VENUE**

19 10. Plaintiff Port is a special purpose public port district organized under the  
20 laws of the State of Washington. The Port has a legislative mandate to foster economic  
21 development in Tacoma and Pierce County. The Port has standing to challenge

22 Defendants' Charter and Code Initiatives because the Port also is owner of land both

23 COMPLAINT FOR DECLARATORY JUDGEMENT  
& INJUNCTIVE RELIEF --5 of 27

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501 South G Street  
Tacoma WA  
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253.779.4000  
FAX 253.779.4411

24 160606.f. complaint

1 within and outside of Tacoma city limits. A critical segment of the Port's state  
2 mandated mission, use of tax dollars and business is to lease lands to tenants, which  
3 tenants can and do include industrial entities that may and do use over one million  
4 gallons of water a day.

5 11. More than 29,000 jobs are generated by Port activity, which also provides  
6 \$195 million per year in state and local taxes to support education, roads and police and  
7 fire protection for our community. [Port Economic Impact Study, 2014]. The Tacoma-  
8 Puyallup Industrial Subarea's 21,300 jobs make up 4 percent of the Puget Sound  
9 Region's industrial employment. [PSRC Industrial Lands Analysis, 2015]. These jobs  
10 pay an average \$80,000 a year. [PSRC Industrial Lands Analysis, 2015].

11 12. The state legislatively-mandated mission of the Port will be adversely  
12 affected by the passage of the Charter Initiative and Code Initiatives which, if adopted,  
13 would interfere with Tacoma's administration of its longstanding program to provide  
14 necessary water service to industrial and commercial users throughout Pierce County.

15 13. Plaintiff EDB is a nonprofit Washington corporation headquartered in  
16 Tacoma, Washington. The EDB receives funding by its member investors, including  
17 businesses, individuals, municipalities, and other governmental entities. The EDB's  
18 mission is to retain, expand and recruit primary company jobs in, to, and within  
19 Tacoma-Pierce County. To accomplish its mission and annual work plan, the EDB  
20 actively engages in public advocacy, business and economic development, physical  
21 improvement projects, public safety, beautification, and marketing programs. Each of  
22 these programs is intended to ensure the continued success of Tacoma and Pierce

COMPLAINT FOR DECLARATORY JUDGEMENT  
& INJUNCTIVE RELIEF --6 of 27

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501 South G Street  
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253.779.4000  
FAX 253.779.4411

160606.f. complaint

1 County's economic vibrancy. The EDB's member investors have pledged approximately  
2 \$500,000 toward the EDB's five-year work plan, which necessarily includes active  
3 engagement of elected officials, as well as businesses and industrial entities that may use  
4 over one million gallons of water a day. The EDB and its member investors have  
5 interests they are seeking to protect that are within the zone of interests (determination  
6 of water availability and interests) that the proposed Initiatives seek to protect or  
7 regulate. Moreover, the EDB and its member investors would suffer economic impact  
8 and injury should the Initiatives pass and serve to restrict the EDB's funded work plan  
9 to recruit, expand, and retain primary company jobs in Tacoma-Pierce County. Further,  
10 individual members of the EDB include Tacoma residents who are eligible to vote.<sup>1</sup> As  
11 such, the EDB has standing to challenge the Initiatives because the mission of the EDB  
12 and the economic interests of its member investors would be adversely affected by the  
13 passage of legislation in any form which interferes with Tacoma's administration of its  
14 longstanding program to provide necessary water service to industrial and commercial  
15 users throughout Pierce County.

16 14. Plaintiff Chamber is a nonprofit Washington corporation headquartered in  
17 Tacoma, Washington. The Chamber serves as a Tacoma/ Pierce County economic  
18 advocate, and strives to lead the way to exceptional business and community growth. It  
19 is dedicated to enhancing the quality and economic vitality of Tacoma and Pierce

20  
21 <sup>1</sup> *Mukilteo Citizens for Simple Government v. City of Mukilteo*, 174 Wn.2d 41, 46, 272 P.3d 227 (2012),  
22 finding that an association of city residents had standing to challenge a proposed initiative because the  
23 individual members had standing as "Mukilteo residents who are eligible to vote."

24  
COMPLAINT FOR DECLARATORY JUDGEMENT  
& INJUNCTIVE RELIEF --7 of 27

160606.f. complaint

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Tacoma, WA 98405  
253.779.4000  
FAX 253.779.4411

1 County. The Chamber is involved in public advocacy, business and economic  
2 development, physical improvement projects, public safety, beautification, and  
3 marketing programs, all of which contribute to building a prosperous community. Each  
4 of these programs is intended to ensure the continued success of Tacoma and Pierce  
5 County's economic vibrancy, growth and prosperity. The Chamber's membership  
6 includes individuals and businesses throughout the City of Tacoma and Pierce County  
7 and the surrounding area. On behalf of its membership, the Chamber engages elected  
8 officials, (including elected members of the Tacoma City government and candidates for  
9 elected office) and promotes efforts to attract and support investment in Tacoma and  
10 Pierce County, which can include industrial entities that may use over one million  
11 gallons of water a day. Further, individual members of the Chamber include Tacoma  
12 residents who are eligible to vote.<sup>2</sup> The mission of the Chamber would be adversely  
13 affected by the passage of legislation which interferes with Tacoma's administration of  
14 its longstanding program to provide necessary water service throughout Pierce County.

15 15. Even in the unlikely event that the Court finds that one or more Plaintiffs  
16 lack standing, the Court should still address the issues raised in the matter because the  
17 issues of the validity of the two local initiatives involve significant importance that  
18 merit judicial resolution. *American Traffic Solutions, Inc., v. The City of Bellingham*  
19 *et al, Washington Campaign For Liberty et al , 163 Wn. App. 427; 260 P.3d*  
20 *245;(2011), see also See Farris v. Munro, 99 Wn.2d 326, 330, 662 P.2d 821 (1983)*

21 \_\_\_\_\_  
22 <sup>2</sup> *Id.*

1 (addressing challenge to state lottery even though plaintiff lacked standing); *see also*  
2 *Wash. Natural Gas Co. v. Pub. Util. Dist. No. 1 of Snohomish County*, 77 Wn.2d 94,  
3 96, 459 P.2d 633 (1969).

4 16. Defendant SAVE TACOMA WATER by information and belief is a political  
5 action committee, listing an address of 5020 South Asotin, Tacoma, WA 98408 on its  
6 Washington state Political Committee Registration. STW claims to exist for the sole  
7 purpose of advocating Tacoma Initiative No. 1 for the 2016 election year.<sup>3</sup>

8 17. Defendant Donna Walters is listed as the “sponsor” and “treasurer” of  
9 SAVE TACOMA WATER.

10 18. Defendants Jon and Jane Does 1-5<sup>4</sup> are the officers and/or responsible  
11 leaders connected to the political committee SAVE TACOMA WATER. Under  
12 Washington law, initiative drafters and sponsors are proper defendants in  
13 challenges to the scope of an initiative.

14 19. This Court has personal jurisdiction over Defendants STW, Donna Walters  
15 and Jon and Jane Does 1-5 because these Defendants have registered as a Washington  
16 state Political Committee, or as Officer or Manager thereof and/or maintain offices and  
17 transact business in Pierce County, and seek results within Pierce County.

18  
19 <sup>3</sup> STW claims in its PDC Registration to handle less than \$5,000. (“No more than \$5,000 will be raised  
or spent and no more than \$500 in the aggregate will be accepted from any one contributor”).

20 <sup>4</sup> State law requires SAVE TACOMA WATER to register with the Public Disclosure Commission, and  
21 nominate “The names, addresses, and titles of its officers; or if it has no officers, the names, addresses,  
and titles of its responsible leaders....” RCW 42.17A.025(9)(c). Plaintiffs may seek to name additional  
22 Jon and Jane Doe defendants meeting the description set forth in RCW 42.17A.0255, as those persons  
become known.



1 and Chamber their fees, costs and disbursements in this action as allowed by law and  
2 equity.

3 5. For such other relief as the Court may find appropriate.

4 DATED this \_\_6th\_\_ day of June 2016. GOODSTEIN LAW GROUP PLLC

5 By /s/Carolyn A. Lake  
6 By /s/Seth Goodstein  
7 Carolyn A. Lake, WSBA #13980  
8 Seth Goodstein, WSBA #45091  
9 Attorneys for Plaintiff Port of Tacoma

10 DATED this \_\_6th\_\_ day of June 2016. LEDGER SQUARE LAW, P.S.

11 By: /s/ Jason M. Whalen  
12 Jason M. Whalen, WSBA #22195  
13 Attorneys for Plaintiff EDB

14 DATED this \_\_6th\_\_ day of June 2016. GORDON THOMAS HONEYWELL LLP.

15 By: /s/Shelly Andrew  
16 Shelly Andrew, WSBA # 41195  
17 Attorneys for Plaintiff Chamber

18  
19  
20  
21

22 COMPLAINT FOR DECLARATORY JUDGEMENT  
23 & INJUNCTIVE RELIEF --27 of 27

24 160606.f. complaint

GOODSTEIN LAW GROUP PLLC  
501 South G Street  
Tacoma WA  
Tacoma, WA 98405  
253.779.4000  
FAX 253.779.4411

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From:

<http://www.tacomachamber.org/content/taking-political-action-business>

The Chamber promotes a pro-business agenda with political action programming. We study, analyze and make recommendations on a myriad of issues of interest to the Pierce County business community. When we take advocacy positions on those issues, we communicate the Chamber's viewpoint clearly and strongly to our membership, elected officials and the community at-large. The Chamber organizes events such as candidates forums and provide tools like an electronic listing of bills of interests during the legislative session. By providing strategic communication to our members, we keep them informed on upcoming elections, ballot measures and issues to help them make educated voting decisions.

## EDB joins Port of Tacoma, Chamber in lawsuit to protect jobs and the environment

Today, the Economic Development Board for Tacoma-Pierce County, along with the Port of Tacoma and the Tacoma-Pierce County Chamber, filed a complaint asking a Pierce County Superior Court to invalidate two proposed ballot initiatives in Tacoma.

The two proposed measures seek to require a public vote on any development that would use more than 1 million gallons of water a day – a requirement that courts across the country have said is illegal, and one that risks the health and future of Pierce County's economy.

"Putting water use for commercial projects up for a public vote will interfere with the EDB's core mission: to recruit and retain those businesses that bring new jobs, and new dollars, into Pierce County," said Bev Losey, Economic Development Board chair and senior vice president of insurance firm Brown & Brown of Washington.

"Environmentally progressive businesses succeed here, because we have a rigorous permitting process to protect the natural resources we all hold dear," Losey said.

The EDB's Board of Directors voted last week to join the lawsuit.

These initiatives, whose backers are currently gathering signatures, are similar to initiatives that have been declared invalid in jurisdictions across the country. Just this February, the Washington State Supreme Court unanimously struck down an almost-identical Spokane initiative. It ruled, among other things, that the initiative improperly tried to expand a city law into a constitutional issue.

In fact, state law is clear: Initiative and referendum powers cannot be used this way. Utilities are required to meet water and power demand in their service territories, and to make sure the infrastructure exists to support any legal use of water or power. Moreover, Tacoma Public Utilities' water division serves several jurisdictions beyond the City of Tacoma.

"The EDB looks forward to helping shed light on the value of a balanced portfolio of primary companies in the South Sound, including industrial manufacturing," said EDB President & CEO Bruce Kendall. "The most successful regions in the world – with the highest quality of life, including environmental quality – are those that embrace the global economy and innovate better approaches to creating products and services across a variety clusters.

"Environmental quality suffers when economies are weak," Kendall said.

Beyond simple short-sightedness, the proposed initiatives don't reflect the reality of industrial water use. Tacoma Water's statistics show that the average demand for businesses on the Tideflats has dropped by more than half in the past 30 years.

Pierce County, along with Washington state, has long balanced high environmental standards with policies that encourage businesses to grow and innovate. That commitment has led to a robust industrial sector that employs tens of thousands of skilled workers and pays an annual wage much higher than the median.

People who work with their hands deserve the same support and investment opportunities as white-collar workers. Putting up barriers to private investment like these ballot measures put an entire sector of the economy – and the jobs it creates – at risk. The state, under the Environmental Policy Act, requires rigorous review of each development's environmental impact, including water use. Additionally, land-use and zoning issues are up for public debate regularly at the municipal level. There is no shortage of opportunity for public involvement on commercial development. Requiring a public vote on each one is unnecessary.



**Bob Ferguson**  
**ATTORNEY GENERAL OF WASHINGTON**

Government Compliance & Enforcement Division  
PO Box 40100 • Olympia, WA 98504-0100 • (360) 664-9006

July 13, 2016

Evelyn Lopez, Executive Director  
Public Disclosure Commission  
PO Box 40908  
Olympia, WA 98504-0908

**RE: Citizen Action Notice – Port of Tacoma; The Economic Development Board of Tacoma-Pierce County; Tacoma-Pierce County Chamber of Commerce**

Dear Ms. Lopez:

On June 16, 2016, the Attorney General received a notice from Arthur West alleging that the above-named entities had violated provisions of RCW 42.17A. Specifically, it alleged that they violated state laws by using public facilities to oppose a ballot measure. A copy of the notice was previously provided to you but is attached again with this letter. The 45 days under RCW 42.17A.765 will expire on July 31, 2016.

The Attorney General's Office is requesting that your agency review and as appropriate, investigate the allegations. My office will await the results of that review and any recommendation the Commission may have. I would request that when the Commission's recommendation is sent to the Attorney General's Office, a complete copy of any report of investigation or materials the Commission staff compiles also be forwarded.

Chad Standifer and I have been assigned the file in our office and are available to answer any legal questions you or the staff may have during the course of your review or investigation. If you have any questions, please do not hesitate to call me.

Sincerely,

LINDA A. DALTON  
Senior Assistant Attorney General  
(360) 753-0543

LAD:dg  
Enclosure

cc: Shane Esquibel, Chief Deputy Attorney General  
Darwin Roberts, Deputy Attorney General  
Arthur West, Complainant  
Mark Lindquist, Pierce County Prosecutor  
John Wolfe, Port of Tacoma (w/encl.)  
Bruce Kendall, Economic Development Board for Tacoma-Pierce County (w/encl.)  
Tom Pierson, Tacoma-Pierce County Chamber of Commerce (w/encl.)

**GOODSTEIN  
LAW GROUP**

PLLC

501 S. G Street  
Tacoma, WA 98402  
Fax: (253) 779-4411  
Tel: (253) 779-4000

Carolyn A. Lake  
**Attorney at Law**  
*clake@goodsteinlaw.com*

July 21, 2016

**VIA EMAIL**

William A. Lemp, III  
(William.lemp@pdc.wa.gov)  
Lead Political Finance  
Investigator State of  
Washington  
Public Disclosure  
Commission PO Box 40908  
Olympia, WA 98504-0908

RE: PDC Case 6626 – Port of Tacoma Response to Complaint

Dear Mr. Lemp:

We represent the Port of Tacoma (“Port”) and submit this response to the Public Disclosure Commission (“Commission”) in PDC Case 6626 , as a result of the Citizen Action Complaint (Complaint”) filed by Arthur West with the Washington State Attorney General’s Office (AG) on June 16, 2016. We understand that the AG forwarded the Complaint to the Commission on July 14, 2016. The Commission has requested a response from the Port by July 21, for consideration at the Commission’s July 28, 2016 meeting.

**I. SUMMARY RESPONSE**

The Port of Tacoma responds to Mr West’s Complaint, wherein he alleges two primary campaign violations:

- RCW 42.17A.205-240- failure to register or report campaign related expenditures made as a political committee,
- RCW 42.17A.555- use of public facilities for campaign purposes

After consideration of the Complaint and our information provided herein, the Port respectfully urges the Commission to find that there is no evidence to establish a material violation of any laws or regulations under the jurisdiction of the Commission and to dismiss the Complaint.

The Port did not violate RCW 42.17A.205, .235, and .240. The Port is not a political committee with a requirement to register and report with the PDC, because the Port is not a “receiver of contributions” in support of, or in opposition to candidates or ballot propositions, and because supporting candidates or ballot propositions is not one of its primary purposes.

The Port did not use public facilities for campaign purposes. Judicial review is not use of public funds for campaign purposes. The Port (1) filed a declaratory judgement lawsuit to request a neutral fact finder to make a judicial determination on the legal validity of the Initiatives, and (2) held a public vote to ratify that action during a properly noticed, public meeting where public comment for and against was received, consistent with RCW 42.17A.555(1). The Port’s legal action also is consistent with the long list of legal cases in which public agencies have properly sought judicial review of the legal sufficiency of a proposed Initiative; in no case were these action found to violate RCW 42.17A.555.

The Port took no campaign action to influence the vote on a ballot measure. Here, any expenditures at issue were made prior to a ballot initiative campaign, and were in fact related to challenging the initiation of such a campaign on the grounds that the ordinance was facially unconstitutional. If a proposed local initiative is facially beyond the local initiative power and unconstitutional, it can logically never become part of a legitimate "ballot initiative campaign."

There is *no* First Amendment right to place an initiative on the ballot, much less an invalid one. Including invalid initiatives on the ballot does not vindicate or protect any rights, rather it undermines the integrity of a system intended to enact laws. The Port’s action in pursuing a legal determination from the neutral judicial system was not campaigning but instead was consistent with the underlying purpose of Washington campaign laws to protect the integrity of the voting process.

Before we address each allegation in detail below, we first provide the Commission with background facts regarding the Port, as well as facts related to the Port’s legal action.

## **II. BACKGROUND FACTS**

### **A. The Port.**

The Port is a special purpose public port district that operates under Title 53 of the Revised Code of Washington and is classified as a special purpose district. The Port is a member of The Northwest Seaport Alliance, a marine cargo operating partnership with the Port of Seattle. Under a port development authority, the ports manage the container, breakbulk, auto and some bulk terminals in the Seattle and Tacoma harbors. Today, the Port covers more than 2,700 acres in the Port industrial area. The Port is one of the top container ports in North America and a major gateway for trade with Asia and

Alaska. Five Commissioners are elected to four-year terms by the citizens of Pierce County to serve as the Port's board of directors. The commission hires the CEO, sets policy and strategic direction, and approves all major expenditures.

**Port Strategic Plan.** With input from community members, customers, business leaders and employees, the Port has in place a 10-year Strategic Plan in 2012 ("Plan"), found at <http://portoftacoma.com/sites/default/files/StrategicPlanBrochure.pdf>. The Plan is updated annually to provide further focus and clarity to the initiatives. The Plan focuses on four areas that build on the Port's specific strengths to make better connections:

- ***Strategic investments***  
We will make strategic investments that enhance the Port's waterway, terminal, road, rail and industrial property infrastructure to create the most efficient, productive and cost-effective system possible to move our customers' freight to the marketplace.
- ***New business opportunities***  
To create opportunity for future investments, we will focus attention on attracting new business opportunities with healthy income streams and increase the diversity of the Port's business portfolio.
- ***Customer care***  
We're serious about our tagline "People. Partnership. Performance." We will continue to demonstrate great care for our business relationships with customers and key stakeholders.
- ***Community pride***  
Business development, environmental stewardship and livable communities go hand in hand. We continually hear that our community's support of the Port and trade-related jobs is a key competitive advantage. We intend to grow the Port responsibly to ensure continued trust in our collective future.

**Port Mission.** The Port mission is to "Deliver prosperity by connecting customers, cargo and community with the world". The Port' Core values are as follows:

- ***Integrity***  
Being ethically unyielding and honest; inspiring trust by saying what we mean and matching our behaviors to our words; acting in the public interest and in a manner to maintain public confidence.
- ***Customer focus***  
Creating long-term relationships by consistently delivering value; helping customers to become high-performance businesses by understanding their business needs; establishing realistic expectations and meeting commitments.

- **Teamwork**  
Focusing on the success of the entire organization; fully utilizing our collective skills, knowledge and experiences to achieve our goals; encouraging diversity, respect and full participation; being effective collaborators with a broad range of partners in the region; having fun together.
- **Courage**  
Facing challenges with fortitude; setting aside fears and standing by personal principles; extending beyond personal comfort zones to achieve goals; taking responsibility for actions.
- **Competitive spirit**  
Pursuing our goals with energy, drive and the desire to exceed expectations; going the extra mile for our customers and to differentiate ourselves in the market; demonstrating passion and dedication to our mission; constantly improving quality, timeliness and value of our work.
- **Sustainability**  
Focusing on long-term financial viability; valuing the economic well-being of our neighbors; doing business in a way that improves our environment.

As a public port district, the Port has a legislative mandate to foster economic development in Tacoma and Pierce County. The Port also is owner of land both within and outside of Tacoma city limits. A critical segment of the Port's state mandated mission, use of tax dollars and business is to lease lands to tenants. More than 29,000 jobs are generated by Port activity, which also provides \$195 million per year in state and local taxes to support education, roads and police and fire protection for our community. [Port Economic Impact Study, 2014]. The Tacoma-Puyallup Industrial Subarea's 21,300 jobs make up 4 percent of the Puget Sound Region's industrial employment. [PSRC Industrial Lands Analysis, 2015]. These jobs pay an average \$80,000 a year. [PSRC Industrial Lands Analysis, 2015].

## **B. Port's Legal Challenge**

The Port became aware of two potential City of Tacoma Initiatives, led by a committee called Save Tacoma Water (STW). STW's Code Initiative 6 seeks to have the City Council enact the changes to the Tacoma Municipal Code ("Code Initiative"). STW's Code Initiative 6 sought to impose a requirement that any land use proposal requiring water consumption of 1336 CCF (one million gallons) of water or more daily from Tacoma be submitted to a public vote prior to "the City" "providing water service" for such a project. (*Code Initiative at §A*). The Initiative would accomplish this by requiring developers seeking that water use to fund the "costs of the vote on the people" and only if "a majority of voters approve the water utility service application and all other application requirements may the City provide the service." *Id.*

STW's Code Initiative expressly purports to elevate its proposed Charter amendment above state law, by pronouncing that "all laws adopted by the legislature of the State of Washington, and rules adopted by any state agency, shall be the law of the City of

Tacoma only to the extent that they do not violate the rights or mandates of this Article. (*Id.*, §B). STW's Code Initiative expressly purports to overrule and/or disavow the United States Constitution, along with "international, federal [and] state laws" that "interfere" with the proposed amendment. (*Id.*, §C), and to curtail the jurisdiction of state and federal courts, and to eliminate certain rights of corporations, in conflict with the Washington and Federal Constitutions, as well as U.S. Supreme Court rulings. The Initiative deprives corporations of their right under the Washington state constitution to sue and defend against lawsuits in courts, "like natural persons." Wash. Const. art. I, § 12, and seeks to deprive the courts and other "government actors" from recognizing any "permit, license, privilege, charter or other authorizations" that would violate the Initiative. *Id.* The Initiative also gives "any resident of the city" the right to enforce the Initiative. *Code Initiative* § D. STW apparently sought all of these results through Tacoma Municipal Code provisions. The companion measure, STW's Charter Initiative 5, repeats all the same provisions of the Code Initiative.

The Port was aware that STW's Initiatives were near identical to Initiatives recently found to be legally invalid (outside the valid scope of local initiative powers) by the Washington Supreme Court in *Spokane Entrepreneurial Ctr. v. Spokane Moves to Amend the Constitution*, 185 WA 2d. 97 (Feb. 4, 2016).

The Port, along with co-Plaintiffs Economic Development Board for Tacoma-Pierce County ("EDB") and the Tacoma-Pierce County Chamber ("Chamber") filed a legal action on June 6, 2016 to seek judicial determination under Washington's Uniform Declaratory Judgment Act, RCW Ch. 7.24, that both the Charter Initiative and Code Initiative are beyond the proper scope of the local initiative power, and for injunctive relief. The Port spent approximately \$45,000 in that legal effort.

The City of Tacoma filed its Answer and Cross Claims on June 8, 2016. In its pleadings, the City agreed the Initiatives were legally defective and filed a cross claim against the Initiative sponsors within the existing suit.

On June 18, 2016, the Port Commission held a public meeting, which it noticed in advance the Commission's intention to take up a vote to "ratify the Port's action of filing a Declaratory Judgment and Injunctive challenge of two proposed local initiatives filed with the City of Tacoma—Charter Amendment 5 and Code Initiative 6 ("Initiatives"). The Declaratory Judgment asks the Pierce County Superior Court to (1) declare that local Initiatives exceed the proper scope of local initiative powers and therefore are invalid, and (2) enjoin the Initiatives' signatures from being validated and enjoin the Initiatives from being placed on the November 2016 ballot, or adopted by the City." See Port of Tacoma Commission Agenda for June 16, 2016, **Exhibit 1**. Staff provided a Commission Memo which was publically available. **Exhibit 2**. The Commission took public comment on the matter from over 20 persons, who spoke for and primarily

against the action. The Commission voted unanimously to ratify filing the legal action. See Minutes of June 16, 2016 Port meeting, **Exhibit 3**.

On July 1, 2016, the Pierce County Superior Court granted Plaintiffs' Motion for Declaratory Judgement, finding the two Initiatives invalid and granting an injunctive relief to prevent the Pierce County Auditor from placing the measures on the ballot. See **Exhibit 4**.

### III. RESPONSE TO ALLEGATIONS

#### A. First Allegation:

The Port did not violate RCW 42.17A.205, .235, and .240. The Port is not a political committee with a requirement to register and report with the PDC, because the Port is not a "receiver of contributions" in support of, or in opposition to candidates or ballot propositions, and because supporting candidates or ballot propositions is not one of its primary purposes.

**1. Relevant authority** to be considered on this question includes the following:

- **RCW 42.17A.005(37)**

"Political committee" means any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.

- **Interpretation 07-02 "Primary Purpose Test" Guidelines**

Interpretation 07-02 is a summary of the "primary purpose test" Guidelines that relate to "political committees" under Washington State law. It sets forth two alternative prongs under which an individual or organization may become a political committee and subject to the Act's reporting requirements: (1) a "receiver of contributions" prong; and (2) a "making of expenditures to further electoral political goals" prong. A requirement of the "making of expenditures" prong states that the organization making expenditures must have as its "primary or one of its "primary or one of its primary purposes ... to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions ..." (WA Court of Appeals, *EFF v. WEA*, 2003). In addition, the Interpretation states that an appropriate framework for determining whether electoral political activity is one of the organization's primary purposes should include an examination of the stated goals and mission of the organization and whether electoral political activity is a primary means of achieving the stated goals and mission during the period in question.

A nonexclusive list of analytical tools that may be used to evaluate the evidence includes:

- (1) the content of the stated goals and mission of the organization;

- (2) whether the organization's actions further its stated goals and mission;
- (3) whether the stated goals and mission of the organization would be substantially achieved by a favorable outcome in an upcoming election; and
- (4) whether the organization uses means other than electoral political activity to achieve its stated goals.

- **RCW 42.17A.205**

Every political committee shall file a statement of organization with the commission. The statement must be filed within two weeks after organization or within two weeks after the date the committee first has the expectation of receiving contributions or making expenditures in any election campaign, whichever is earlier.

- **RCW 42.17A.235 and .240**

Every political committee is required to file ongoing reports of contributions and expenditures at specified intervals.

**2. Analysis.** The Committee should find that there is no evidence that the primary or one of the primary purposes of the Port is to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions, such that the Port is a political committee subject to the Public Disclosure Act's disclosure requirements.

The Commission's Interpretation 07-02, "Primary Purpose Test" Guidelines ("Interpretation"), sets forth two alternative prongs under which an individual or organization may become a political committee and subject to the Act's reporting requirements:

- (1) a "receiver of contributions" prong; and
- (2) a "making of expenditures to further electoral political goals" prong. A requirement of the "making of expenditures" prong states that the organization making expenditures must have as its "primary or one of its primary purposes ... to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions ...". *Evergreen Freedom Foundation v. Washington Education Association*, 111 Wn. App. 586, 49 P.3d 894 (2002), *review denied* 148 Wn.2d 1020, 66 P.3d 639 (2003).

In addition, the Interpretation states that an appropriate framework for determining whether electoral political activity is one of the organization's primary purposes should include an examination of the stated goals and mission of the organization and whether electoral political activity is a primary means of achieving the stated goals and mission during the period in question.

A nonexclusive list of analytical tools that may be used to evaluate the evidence includes: (1) the content of the stated goals and mission of the organization; (2) whether the organization's actions further its stated goals and mission; (3) whether

the stated goals and mission of the organization would be substantially achieved by a favorable outcome in an upcoming election; and (4) whether the organization uses means other than electoral political activity to achieve its stated goals.

**Receiver of Contributions Prong:** There is no evidence that the Port was a receiver of contributions under RCW 42.17A, nor has it been demonstrated that the Port has any expectation of receiving contributions reportable under RCW 42.17A.

**Primary Purpose /Expenditure Test Prong:** To address this allegation, PDC is urged to reviewed evidence relevant to the analysis recommended by the *EFF v. WEA* court , i.e., whether one of the Port’s primary purposes is to support or oppose candidates or ballot propositions. (“If, after making these considerations, the fact finder determines that, on the whole, the evidence indicates that one of the organization's primary purposes was electoral political activity during the period in question, and the organization received political contributions as defined in the Act, then the organization was a political committee for that period and should comply with the appropriate disclosure requirements. (*Id* at 600).

There is no evidence that one of the organization's primary purposes is electoral political activity. To the contrary, the Port is a special purpose district whose primary mission is to create economic development activity. The Port’s Strategic Plan focus is to “create opportunity for future investments, we will focus attention on attracting new business opportunities with healthy income streams and increase the diversity of the Port’s business portfolio”. Its mission is to “Deliver prosperity by connecting customers, cargo and community with the world”. Electoral political activity appears nowhere in the Port’s mission statement, goals or stated purpose.

Instead, the Port has long been a public policy advocate on issues affecting industrial and manufacturing preservation and theses sector’s role in economic vitality. Port communications regarding the need to preserve and protect industrial lands and jobs is part of the Port’s normal and regular conduct of the Port. Examples of such communications include:

- The Port’s standard presentation on the 2012-2022 Strategic Plan. Example attached as **Exhibit 5** is one was given to the Propeller Club.
- The Port’s Gateway stories about Frederickson’s industrially-zoned property, attached as **Exhibit 6 and 7**.
- The Port’s presentation PowerPoint that shows the Port’s role in economic and industrial growth over the years, attached as **Exhibit 8**.

The Port’s PowerPoint presentation **Exhibit 8** includes excerpts of Port Annual Reports where its mission of economic development and industrial preservation is a constant theme:

“A major asset of the Port of Tacoma is our ownership of prime industrial land adjacent to deep water marine berths. The combination of excellent road and rail access, large vacant industrial tracts, and close proximity to deep water marine berths, gives the Port of Tacoma a competitive advantage in attracting industrial clients...”

~Ernest L. Perry, General Manager, 1974 Annual Report

“Through a combination of natural advantages, an emphasis on service and careful planning, the versatile Port of Tacoma expects to expand in the 1980s.”

~Richard Dale Smith, Executive Director, 1980 Annual Report

“In the last few years, the Port of Tacoma has become a major player in the shipping industry...The Port of Tacoma has accomplished this expansion by its innovativeness and its willingness to provide for its customers’ needs, whether those needs are in facilities, services or labor.”

~Robert G. Earley, Port Commissioner, 1987 Annual Report

“Tacoma and the Puget Sound Region will benefit from a dramatic expansion of the Pacific Rim and perhaps European trade throughout region because of the settlement with the Puyallup Tribe of Indians.”

~John McCarthy, Port Commissioner, 1991 Winter Pacific Gateway

“By taking care of our customers, building a foundation for growth and most importantly, being a good neighbor to our surrounding communities, the Port of Tacoma has succeeded in its mission of job creation, economic development and environmental stewardship. I am optimistic that the best is yet to come.”

~Jack Fabulich, Port Commissioner, 2006 Annual Report

Thus, under the *EFF v. WEA* test of whether a primary Port purpose is electoral political activity, the Committee should find that the Port is not a political action committee. *State v. Evans*, 86 Wn.2d 503, 546 P.2d 75 (1976) is in accord.

In *Evans*, the State Supreme Court considered whether a committee bearing the governor’s name that made a single contribution to the fund of the state Republican Central Committee became a political committee within the meaning of (former) RCW 42.17. **The Court held that in the absence of showing that such committee made expenditures for the purpose of supporting or opposing a specific candidate or ballot proposition, or contribution of similar nature, and in the absence of evidence that the committee solicited, received, or had the expectation of receiving contributions to be used in support of or opposition to candidates or ballot propositions, such a committee was not a**

**political committee and not subject to the disclosure requirements of RCW (former) 42.17.** The same is true here.

No evidence exists or has been provided showing that supporting candidates or ballot proposition campaigns is or was a top priority for the Port. No evidence exists or has been suggested that the Port has substantially achieved its stated goals and mission by a favorable outcome in an election or ballot measure. It is clear that Port uses means other than electoral political activity to achieve its stated goals. Thus, the Port does not meet the definition of a political committee under RCW 42.17A.005(37) (“Political committee’ means any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.”) (emphasis added).

The Committee should find that there is no evidence that the primary or one of the primary purposes of the Port is to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions, such that the Port is a political committee subject to the Public Disclosure Act’s disclosure requirements.

**B. SECOND ALLEGATION.** RCW 42.17A.555, use of public facilities for campaign purposes.

**1. Relevant authority** to be considered on this question includes the following:

- **RCW 42.17A.555 Use of public office or agency facilities in campaigns—Prohibition—Exceptions.**

No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency. However, this does not apply to the following activities:

(1) Action taken at an open public meeting by members of an elected legislative body or by an elected board, council, or commission of a special purpose district including, but not limited to, fire districts, public hospital districts, library districts, park districts, port districts, public utility districts, school districts, sewer districts, and water districts, to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or

oppose a ballot proposition so long as (a) any required notice of the meeting includes the title and number of the ballot proposition, and (b) members of the legislative body, members of the board, council, or commission of the special purpose district, or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;

(2) A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry;

(3) Activities which are part of the normal and regular conduct of the office or agency.

(4) This section does not apply to any person who is a state officer or state employee as defined in RCW 42.52.010.

**2. Analysis.** The Port did not use public facilities for campaign purposes. Judicial review is not use of public funds for campaign purposes. The Port (1) filed a declaratory judgement lawsuit to request a neutral fact finder to make a judicial determination on the legal validity of the Initiatives, and (2) held a public vote to ratify that action during a properly noticed, public meeting where public comment for and against was received, consistent with RCW 42.17A.555(1). The Port's legal action is consistent with the long list of legal cases in which public agencies have properly sought judicial review of the legal sufficiency of a proposed Initiative; in no case were these action found to violate RCW 42.17A.555. The Port took no electioneering or campaign action to influence the vote on the ballot measure. Including invalid initiatives on the ballot does not vindicate or protect any rights, rather it undermines the integrity of a system intended to enact laws. The Port's action in pursuing a legal determination from the neutral judicial system was not campaigning but instead was consistent with the underlying purpose of Washington campaign laws to protect the integrity of the voting process.

### **2.1 Judicial Review is Not Use of Public Funds for Campaign Purposes.**

The Port's action was confined to the judicial and not the campaign/ electioneering arena. No funds were raised or spent to campaign in support or opposition of the Initiatives.

The Port's declaratory judgement action is nothing close to the advertising campaign analyzed in *Voter Educ. Comm. v. Pub. Disclosure Comm'n.*, 161 Wn.2d 470 (2007). There, the advertisement slammed a particular candidate and concluded that "Deborah Senn Let Us Down." Because Senn was not an incumbent, the Court held that the advertising "had contemporary significance only with respect to Senn's candidacy for attorney general." 161 Wn.2d at 791. Here, in contrast, the Port's request for judicial determination was not accompanied by any information that explicitly or implicitly asks

voters to cast their ballot for or against the measures.

Raising questions about the legal sufficiency of a measure does not constitute electoral communications and does not seek to support or oppose any measure. The Port sought to engage a neutral fact finder on the legal status of the measures so that the Pierce County Auditor (and City Council) would have the benefit of that judicial ruling.

Just as the Court found in *Seattle v. State*, 100 Wn.2d 232 668 P.2d 1266 (1983), that “An even-handed program of assistance available to *all* candidates based on objective minimum qualification criteria simply does not involve the abuses of public trust which inspired RCW 42.17.130.”, neither does a strictly judicial inquiry into the legal legitimacy of a measure offend the purpose for which RCW 42.17.130 was enacted. The purpose intended was to prohibit the use of public facilities for partisan campaign purposes. *Id.* at 248.

AGO 2006 No. 1 is in accord: “...the statute prohibits the use of public resources to aid one side or another of a ballot measure campaign; it does not prohibit efforts to provide information about a proposed measure where the office or agency providing the information would be affected, or where information is shared as part of its responsibilities. AGO 1994 No. 20, at 10 (citing *City of Seattle v. State*, 100 Wn.2d 232, 247-48, 668 P.2d 1266 (1983)); see also AGO 1975 No. 23, at 13 (noting that the statute does not prohibit the use of public resources to provide information simply to explain the measure in relation to the functions of a particular office or agency).”

The purpose of Washington’s campaign laws is to ensure that the financing of *political campaigns and lobbying* are fully disclosed to the public. RCW 42.17A.001. The laws are designed to let the voters know who is attempting to influence their vote.<sup>1</sup> Filing a lawsuit to determine the legality of a local initiative is not advertising, communicating with voters, campaigning, lobbying or electioneering.

Washington courts routinely exercise Declaratory Judgment power pursuant to Chapter 7.24 RCW in pre-election initiative challenges like that brought by the Port.<sup>2</sup>

Under the Uniform Declaratory Judgment Act, a Court has the "power to declare rights, status and other legal relations." RCW 7.24.010. That power includes declaring the pre-election status of a local initiative as beyond the scope of the local initiative power and the right of the Auditor to refrain from placing invalid measures on the ballot. See, e.g., *Seattle Bldg. & Constr. Trades Council v. City of Seattle*, 94 Wn.2d 740, 746 (1980)

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<sup>1</sup> *Voters Educ. Comm. v. Washington State Pub. Disclosure Comm'n*, 161 Wn.2d 470, 488, 166 P.3d 1174 (2007).

<sup>2</sup> *Spokane Entrepreneurial Ctr. v. Spokane Moves to Amend the Constitution*, 185 Wn. 2d 97 (Feb. 4, 2016), See also *City of Longview v. Wallin*, 174 Wn. App. 763, 301 P.3d 45 (Div. 2 2013), *cert denied*, 178 Wn.2d 1020 (2013); *Eyman v. McGehee*, 173 Wn. App. 684, 294 P.3d 847 (Div. 1 2013);

(affirming declaratory judgment for private plaintiffs declaring local initiative exceeded initiative power); *Ford v. Logan*, 79 Wn.2d 147, 151 (1971) (affirming declaratory judgment for private plaintiffs declaring local initiative exceeded initiative power); *Am. Traffic Solutions, Inc. v. City of Bellingham*, 163 Wn. App.427, 432-33 (2011) (upholding pre-election challenge to scope of initiative as exceeding initiative power and therefore invalid); *City of Seattle v. Yes for Seattle*, 122 Wn. App. 382, 386 (2004) (affirming declaratory judgment "striking [initiative] from the ballot").

The Port sought judicial, and not political or campaign, resolution of the legal issues in accordance with the Washington State Supreme Court ruling in *Philadelphia II v. Gregoire*, 128 Wash.2d 707 (1996), which held that courts should determine whether a proposed initiative exceeds the scope of local initiative power.

The Port's legal action also is consistent with the long list of legal cases in which public agencies have properly sought judicial review of the legal sufficiency of a proposed Initiative (below); in no case were these action found to violate RCW 42.17A.555.

- *Spokane Entrepreneurial Ctr. v. Spokane Moves to Amend the Constitution*, 185 Wn.2d 97, 101-105 369 P.3d 140 (2016) ("The petitioners include Spokane County....Applying those existing standing requirements, we hold that petitioners in this case have standing to bring their challenge".)
- *City of Sequim v. Malkasian*, 157 Wn.2d 251, 259-60, 138 P.3d 943, (2006) (Supreme Court of Washington described "it is will settled that it is proper for cities to bring challenges that the subject matter is beyond the scope of the initiative power & "In this case, like many other cases, the local officials had a valid concern that the proposed initiative was outside the scope of the initiative power" 157 Wn.2d at 269)
- *Whatcom Cty. v. Brisbane*, 125 Wn.2d 345, 346, 884 P.2d 1326 (1994) (Whatcom County Superior Court sustains "a challenge by Whatcom County to a referendum petition to amend portions of a critical areas ordinance")
- *Snohomish Cty. v. Anderson*, 124 Wn.2d 834, 836, 881 P.2d 240 (1994) ("The Snohomish County Council (County or Council) commenced an action against the citizens seeking and successfully securing a declaratory judgment the ordinance was not subject to a referendum")
- *City of Longview v. Wallin*, 174 Wn. App. 763, 783, 301 P.3d 45 (Div. 2, 2013) (Cities have standing to bring court challenges to local initiatives that exceed the scope of initiative powers)
- *City of Seattle v. Yes for Seattle*, 122 Wn. App. 382, 387, 93 P.3d 176 (Div. 1, 2004) (City challenge to local initiative, "limited to whether the initiative was beyond the initiative power, was appropriate".)
- *City of Port Angeles v. Our Water-Our Choice!*, 170 Wn.2d 1, 6-7, 239 P.3d 589 (2010) ("The city council declined to either enact the initiatives or refer them to the ballot.

Instead, the council sought declaratory judgment that the initiatives were beyond the scope of the local initiative power because they concerned administrative matters; because the Washington State Legislature had vested the responsibility to run the water system to the council, not the city; and because the initiatives were substantively invalid.”)

- *King Cty. v. Taxpayers of King Cty.*, 133 Wn.2d 584, 592, 949 P.2d 1260 (1997) (“The County filed a complaint seeking a declaratory judgment under RCW 7.25.020 validating the bonds. Specifically, the County sought a declaration...determining that Initiative 16 is inapplicable to the issuance of the Bonds as authorized by the Bond....”)
- *Pierce Cty. v. Keehn*, 34 Wn. App. 309, 311, 661 P.2d 594 (Div. 2, 1983) (“the County filed an action to declare Initiative 1 invalid. In September the trial court granted the County's motion for summary judgment, holding that the auditor (and County Executive) properly refused ‘to accept, verify, register, or file the initiative petition under Article V, Section 5.40 of the [Pierce] County Charter.’”)
- *Spokane v. Taxpayers of Spokane*, 111 Wn.2d 91, 94, 758 P.2d 480 (1988). (“In response to the filing of this initiative, the City began this declaratory action on October 6. Named as defendants were Spokane's taxpayers, the ratepayers of the City's refuse utility, and the City's qualified and registered electors. In its suit, the City sought a declaratory judgment that the initiative did not apply to the waste-to-energy project and that the City Council could proceed with the issuance and sale of the revenue bond” & “We hold a justiciable controversy exists as to the ratepayers and electors”. 111 Wn.2d at 96)
- *Clallam Cty. v. Forde*, No. 28487-1-II, 2003 Wash. App. LEXIS 47, 3 (Unpublished Div. 1, 2003) (“Clallam County commissioners voted against holding public hearings on the petition, concluding that the proposed repeal was not within the initiative power of the people. The county subsequently moved for and was granted relief on summary judgment”.)
- *City of Monroe v. Wash. Campaign for Liberty*, No. 68473-6-I, 2013 Wash. App. LEXIS 378, 5 (Unpublished Div. 1, 2013) (“In July 2011, the City filed a complaint for declaratory relief against Seeds of Liberty and the other sponsors of Monroe Initiative No. 1. The City sought a declaration that the initiative, ‘in its entirety, is invalid because it is beyond the scope of the local initiative power, and therefore null and void.’”)

The Washington Supreme Court case of *King County Council v. Public Disclosure Commission*, 93 Wn.2d 559; 611 P.2d 1227(1980) is also instructive. There, the Supreme Court reviewed and reversed the Public Disclosure Commission's (commission) decision that four members of the King County Council (council) violated RCW 42.17.130 by voting to endorse a ballot measure. That statute (predecessor to current RCW 42.17A.555) prohibited the use of the facilities of a public office to promote or oppose an individual's candidacy or a ballot proposition.

The Council to endorsed Initiative No. 335, a statewide anti-pornography ballot measure, after a public meeting where 12 citizens were heard. Some spoke for and

others against the motion. Council members debated and the motion passed by a 4-to-3 vote.

The Commission argued the county council's endorsement violated: (1) Const. art. 7, § 1 (amendment 14) because it amounts to an expenditure of public money for private purposes; (2) *Const. art. 1, § 19*, which states all elections shall be "free and equal"; and (3) the First Amendment and *Const. art. 1, § 4*, which guarantee the rights to petition and initiative. The Supreme Court disagreed as to all counts.

In rejecting the Commission's argument that the council action violated the prohibition against spending public money for a private purpose, the Court expressly found that the Council's vote (to support) the Initiative was **not** a campaign activity<sup>3</sup>:

**A campaign was not waged in the instant case.** The public hearing was not expenditure in support of the initiative so the constitution has not been violated.

**2.2 Even if the Port was engaging in support of or opposition to the STW Initiatives (which it was not), the Port's public meeting and vote precisely complied with RCW 42.17A.555(1)'s exception<sup>4</sup> to use of public office or agency facilities in campaigns.**

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<sup>3</sup> The Appeals Court took into account (1) Const. art. 7, § 1 (amendment 14) which provides in part: ". . . All taxes . . . shall be levied and collected for public purposes only." The same limitation is imposed by this provision upon the *expenditure* of public money. *State ex rel. Collier v. Yelle, 9 Wn.2d 317, 326, 115 P.2d 373 (1941)*, as well as (2) Attorney General opinions: "The Attorney General has advised that state expenditures for an individual's candidacy would not be for a public purpose. Attorney General Opinion, February 16, 1979, at 4; Attorney General Opinion, July 7, 1976, at 5-6. But these opinions evaluate the use of college facilities on behalf of candidates rather than ballot measure endorsements.

<sup>4</sup> RCW 42.17A.555(1): "No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency. However, this does not apply to the following activities:

(1) Action taken at an open public meeting by members of an elected legislative body or by an elected board, council, or commission of a special purpose district including, but not limited to, fire districts, public hospital districts, library districts, park districts, port districts, public utility districts, school districts, sewer districts, and water districts, to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition so long as (a) any required notice of the meeting includes the title and number of the ballot proposition, and (b) members of the legislative body, members of the board, council, or commission of the special purpose district, or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;"

State campaign law provides an express exception to the otherwise express prohibition on use of public office or agency facilities in campaigns. The Port meeting notice and process satisfy the RCW 42.17A.555(1) criteria; no violation occurred.

RCW 42.17A.555(1) allows an elected legislative body or by an elected board, council, or commission of a special purpose district including, but not limited to, port districts to express a collective position and even vote to support or oppose a ballot proposition so long as (a) any required notice of the meeting includes the title and number of the ballot proposition and (b) public comments pro and against are allowed and taken.

On June 18, 2016, the Port Commission held a public meeting, which it noticed in advance the Commission's intention to take up a vote to "ratify the Port's action of filing a Declaratory Judgment and Injunctive challenge of two proposed local initiatives filed with the City of Tacoma—Charter Amendment 5 and Code Initiative 6 ("Initiatives").

See Port of Tacoma Commission Agenda for June 16, 2016, **Exhibit 1**. Staff provided a Commission Memo which was publically available. **Exhibit 2**. The Commission took public comment on the matter from over 20 persons, who spoke for and primarily against the action. The Commission voted unanimously to ratify filing the legal action. See Minutes of June 16, 2016 Port meeting, **Exhibit 3**. The Port meeting notice and process satisfy the RCW 42.17A.555(1) criteria; no violation occurred.

**2.3 Even if the Port was engaging in support of or opposition to the STW Initiatives (which it was not), no violation occurred because the STW Initiatives are not "ballot propositions" as defined in Washington law.**

The Port supports and adopts by reference as if fully set forth herein the analysis submitted by the Chamber and EDB, in PDC Cases 6627 (EDB) and Case 6628 (Chamber). This includes but is not limited to the analysis that because a "ballot proposition" is defined under RCW 42.17A.005(4) as an issue which is submitted to the secretary of state prior to the gathering of signatures (RCW 29A.72.010), a local initiative can never qualify as a "ballot proposition" as defined by RCW 42.17A.005(4). And only when the petition is submitted to the voters does it become a measure' under RCW 29A.04.091.

Here, any expenditures at issue were made prior to a ballot initiative campaign, and were in fact related to challenging the initiation of such a campaign on the grounds that the ordinance was facially unconstitutional. If a proposed local initiative is facially beyond the local initiative power and unconstitutional, it can logically never become part of a legitimate "ballot initiative campaign."

**2.4. Legal challenges to patently invalid Initiatives are consistent with the public purpose of Washington's Campaign laws designed to protect the integrity of the Voting process.**

Here, the initiative sponsors freely exercised their rights to petition the government and speak. The Port's actions in no way interfered with signature gathering, and indeed the Port meeting where the Port's legal action was publically noticed arguably beneficially gave the public, both for and against, an additional forum of expression, as was favorably observed by the Supreme Court in *King County Council v. PDC*, *Id* at 1231, ("The endorsement also served beneficial purposes, including generation of public interest and debate, informing citizens of their elected representatives' stands on the ballot issue and furtherance of *local* antipornography policy")

At the same time, it must be emphasized that "[t]here is *no* First Amendment right to place an initiative on the ballot." *Angle v. Miller*, 613F.3d 1122, 1133 (9th Cir. 2012) (emphasis added) (citing *Meyer v. Grant*, 486 U.S. 414, 424 (1988)).

Initiative supporters have no right to use the ballot as a forum for political expression. The purpose of the ballot is to elect candidates and enact law -not for political expression. As the U.S. Supreme Court explained in the Washington Top 2 Primary case, "[b]allots serve primarily to elect candidates, *not as forums/or political expression.*" *Wash. Grange v. WA Republican Party*, 552 U.S. 442, 453 n.7 (2008) (emphasis added) (citation and internal quotation marks omitted).

Washington law is the same. In *City of Longview v. Wallin*<sup>5</sup>, Initiative sponsors argued that they had a First Amendment right to have their initiative appear on the ballot. There, the defendant relied on *Coppernoll*<sup>6</sup> to argue a pre-election challenge to the scope of a local initiative violated his free speech rights. 301 P.3d at 59. The Court rejected the argument that a pre-election challenge infringed on the sponsor's free speech rights and explained there was no constitutional right at issue. The local initiative power derives from statute, **not** the constitution, so "local powers of initiative do not receive the same vigilant protection as the constitutional powers addressed in *Coppernoll* [a statewide initiative case]." *Id.*

The Court in *Wallin* also concluded that where, as here, "the petition sponsors were permitted to circulate their petition for signatures and to submit that petition to the county auditor *to* have the signatures counted," the sponsors suffered no impairment of their right to political speech. 301 P.3d at 60.

The Court rejected the sponsors' argument that the First Amendment affords initiative sponsors the "right to have any initiative, regardless of whether it is outside the scope of local initiative power, placed on the ballot." *Id.* As in *Wallin*, including invalid

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<sup>5</sup> *City of Longview v. Wallin*, 174 Wn. App. 763, 301 P.3d 45 (Div. 2 2013), *cert denied*, 178 Wn.2d 1020 (2013).

<sup>6</sup> *Coppernoll v. Reed*, 155 Wn.2d 290, 299 (2005).

initiatives on the ballot does not vindicate or protect any rights, rather it undermines the integrity of a system intended to enact laws. The Port's action in pursuing a legal determination from the neutral judicial system was not campaigning but instead was consistent with the underlying purpose of Washington campaign laws to protect the integrity of the voting process.

**C. Reservation of Additional Analysis.** The Port understands that the PDC set a very short deadline for the Port's response based on pending statutory deadlines. The Port complied with that directive, but also respectfully reserves the opportunity to present additional analysis and authority as may be warranted.

#### IV. CONCLUSION.

After consideration of the Complaint and our information provided herein, the Port respectfully urges the Commission to find that there is no evidence to establish a material violation of any laws or regulations under the jurisdiction of the Commission and to dismiss the Complaint.

Sincerely,

Goodstein Law Group PLLC

*Carolyn A. Lake.*

Carolyn A. Lake  
CAL:dkl  
Enclosures : Exhibits 1-8

cc: John Wolfe, CEO, Port of Tacoma  
Port of Tacoma Commissioners



**PORT OF TACOMA  
FINAL AGENDA  
THURSDAY, JUNE 16, 2016  
The Fabulich Center, Room 104  
3600 Port of Tacoma Road  
Tacoma, Washington**

**9:30 AM: EXECUTIVE SESSION**

1. CALL TO ORDER
2. RECESS INTO EXECUTIVE SESSION:
  - A. Two (2) Litigation Items-RCW 42.30.110 (i)
  - B. One (1) Personnel: Collective Bargaining Item-RCW 42.30.140 (4)(b)
  - C. One (1) Personnel: Performance Review Item-RCW 42.30.110 (g)

**12:00 PM: COMMISSION MEETING**

1. RETURN TO ORDER:
  - A. Flag Salute
2. CONSENT AGENDA:
  - A. Check Certifications
3. STAKEHOLDER UPDATES:
  - A. US Open Briefing: Denise Dyer, Pierce County

3A\_Memo

3A Presentation

- B. Puyallup River Watershed Update: Harold Smelt, Pierce County

3B Presentation

Exhibit 1

## 4. STUDY SESSION:

A. Port of Tacoma Available Property Overview4A Memo4A PresentationB. Annual Port of Tacoma Master Policy Update Discussion4B Memo4B Attachment-2015 Master Policy Resolution4B Presentation

## 5. ACTION AGENDA:

A. Request Commission vote to ratify the CEO's action of filing a "Declaration Judgement and Injunctive" challenge of two proposed local Initiatives filed with the City of Tacoma: Charter Amendment 5 and "Code Initiative 6," which asks the Pierce County Superior Court to (1) declare that local Initiatives exceed the proper scope of local initiative powers and therefore invalid and, (2) enjoin the Initiatives' signatures from being validated and enjoin the Initiatives from being placed on the November 2016 ballot, or adopted by the City.

5A Memo5A Presentation

B. Request authorization for the CEO to execute a time-only amendment to existing Interlocal Agreement No. CC-78445 between Pierce County and the Port of Tacoma to extend the termination date from December 31, 2016 to December 31, 2017 to support the General Investigation Study on the Puyallup River.

5B Memo5B Attachment-ILA5B Presentation

C. THIS ITEM HAS BEEN PULLED: Request authorization to issue a request for proposals for a personal services agreement for state lobbying services not to exceed \$264,000 over four years.

D. THIS ITEM WAS POSTPONED DUE TO TIME CONSTRAINTS: Consider the annual CEO evaluation and any proposed change in compensation.

6. PUBLIC COMMENT
7. COMMISSIONER COMMENT
8. ADJOURNMENT

**DATE:** June 10, 2016  
**TO:** Port Commission  
**FROM:** John Wolfe, Chief Executive Officer  
Project Manager: Tara Mattina, Communications Director  
**SUBJECT:** Commission Ratification of Port Legal Challenge to two Tacoma Initiatives

#### **A. ACTION REQUESTED**

Request Commission vote to ratify the Port's action of filing a Declaratory Judgment and Injunctive challenge of two proposed local initiatives filed with the City of Tacoma—Charter Amendment 5 and Code Initiative 6 (“Initiatives”). The Declaratory Judgment asks the Pierce County Superior Court to:

- (1) Declare that local Initiatives exceed the proper scope of local initiative powers and therefore are invalid.
- (2) Enjoin the Initiatives' signatures from being validated and enjoin the Initiatives from being placed on the November 2016 ballot or adopted by the City.

#### **B. BACKGROUND**

##### **1. The Initiative Actions**

Signature gathering is underway for two proposed City of Tacoma Initiatives: Charter Amendment 5 (“Charter Initiative”) **Attachment A** and “Code Initiative 6” (“Code Initiative”) **Attachment B**. One Initiative seeks to amend the Tacoma Charter; the other to amend the Tacoma Municipal Code, but both are substantively the same. Both Initiatives seek: (1) to require a public vote on any land use proposal that consumes more than 1,336 CCF (1 million gallons) of water or more daily from Tacoma, (2) to overrule and/or disavow the United States Constitution, along with “international, federal [and] state laws” that “interfere” with the proposed amendment, (3) to curtail the jurisdiction of state and federal courts, and certain rights under the federal Constitution, including rights of corporations.

The Initiatives are driven by an entity called Save Tacoma Water (STW), a registered political committee.

##### **2. Flawed Initiatives Provide Strong Basis for Successful Challenge**

In Washington, local initiative and referendum powers may only be used to pass and repeal certain types of ordinances. Overall, local initiatives cannot compel a vote on zoning or development projects, set conditions for the provision of water, interfere with existing city administrative management of water operations and city budgeting, or conflict with local, state and federal laws. The two Tacoma local Initiatives contain all these defects.

### 3. Current Tacoma Water Operations

Tacoma has operated a municipal water system for more than 123 years. Under the Tacoma City Charter, Tacoma Water (TPU) is a regional water utility established in the City's Department of Public Utilities.

Tacoma has a legal obligation under state laws (RCW 80.28.110, 80.04.010, 80.04.380, and 80.04.385) to serve water and power demand in its service territories, and to acquire supplies and develop facilities (if necessary) to do so. The proposed Initiatives include pronouncements that go beyond the scope of Tacoma's city limits, affecting hundreds if not thousands of customers outside the Tacoma City limits.<sup>1</sup>

Both the Charter and Chapter 35.33 RCW provide that the Tacoma city legislative authority (the City Council) alone is authorized to may make changes and adjustments to the budget. TPU, a division of the City of Tacoma accounts for **41 percent** of Tacoma's budget.

Tacoma has a lengthy history of administering the supply of water to commercial, manufacturing, technological and industrial consumers and has sufficient infrastructure, capacity and supply to serve future large water users:

Current Total System Average Day Demand	Water	2015:	56 MGD
		Peak Day:	97 MG
	Power	2015:	551 aMW
		Peak Day:	907 MW
Historical & Current Tide flats Average Industrial Demand	Water	1985:	35.4 MGD
		2015:	16.9 MGD
	Power	1985:	158.4 aMW
		2015:	53.7 aMW

The operation of the Tacoma City water system, including the authority to contract to provide for water service and what quantities and by what means, are all city administrative functions. These functions are beyond the scope of local initiative powers.

The local Initiatives which purport to allow a public vote on whether to grant or deny water service within TPU's water service area, conflicts with state water law. Tacoma cannot validly be compelled through local initiative to enact regulations that limit the rights of other jurisdictions to access Tacoma's water service.

Washington law holds zoning and development matters are not subject to initiative power. The two local Initiatives impermissibly attempt to require a public vote over what are essentially zoning/permitting decisions over developments that use a threshold amount of water, which would negatively impact the region's economy and send a negative message for business recruitment.

<sup>1</sup> Save Our Water concedes: "Residents of Tacoma, Fife, Milton, Kent, Covington, Lakewood, Bonney Lake, Federal Way, the Muckleshoot and Puyallup Reservations and portions of Auburn and Des Moines are dependent on fresh water from Tacoma Public Utility...." Petitions, **Attachments A & B.**

The Initiative would interfere with the budgeting power of the Tacoma City Council because the Initiatives would, outside of the statutory budget process, create a significant revenue impact upon the City.

#### **4. Form of Challenge**

The legal challenge takes the form of a “Declaratory Judgment and Injunctive” action, which asks the Court to (1) declare that Initiatives exceeds the proper scope of initiative power and therefore are invalid, and (2) enjoin the Initiatives’ signatures from being validated and enjoin the Initiatives from being placed on the November 2016 ballot, or adopted by the City.

The Economic Development Board for Tacoma-Pierce County (“EDB”) and the Tacoma-Pierce County Chamber (“Chamber”) joined the Port in the action as co-Plaintiffs, based on their shared concern of the Initiatives’ impact on their mission of economic development for the region.

The Port of Tacoma has a state legislative mandate to foster economic development in Tacoma and Pierce County. A critical Port mission is to lease lands to tenants, who can and do include manufacturing, commercial, technological and industrial entities that may and do use more than 1 million gallons a day from TPU.

The EDB and the Chamber serve as Tacoma/Pierce County economic advocates and each are dedicated to enhancing economic vitality and promoting efforts to attract investment in Tacoma and Pierce County, which can include manufacturing, commercial, technological and industrial entities that may use more than 1 million gallons of water a day. The Port, EDB and Chamber would be adversely affected by the Initiatives which, if adopted, would interfere with Tacoma’s longstanding program to provide necessary water service to technologic, manufacturing, industrial and commercial users throughout Pierce County.

The City of Tacoma agrees the Initiatives are defective and have filed a cross claim against the Initiative sponsors within the existing suit.

### **C. TIMEFRAME/PROJECT SCHEDULE**

The legal challenge was filed June 6, 2016. The City filed its Answer and Cross Claims on June 8, 2016. The Port expects Plaintiffs to file preliminary Motions shortly, and seek resolution of the issues at the trial court level within 6 weeks.

### **D. FINANCIAL SUMMARY**

The Port’s legal budget is \$60,000.00.

### **E. ECONOMIC INVESTMENT**

The Port undertook this action in defense of its economic development mission, and on behalf of those residents and water users outside the Tacoma city limits, as well as on behalf of future technologic, manufacturing, industrial and commercial users throughout Pierce County, which are served by Tacoma Water, and who would be denied a voice in Tacoma’s provision of water under the Initiatives.

**F. ENVIRONMENTAL IMPACTS / REVIEW**

There are no environmental impacts associated with the Port's legal action.

**G. NEXT STEPS**

The Port's Legal Counsel will continue to work with its partners at the EDB and Chamber to pursue the challenge.

**BOARD OF COMMISSIONERS  
THE FABULICH CENTER, ROOM 104  
3600 PORT OF TACOMA ROAD, TACOMA, WASHINGTON**

**COMMISSIONERS PRESENT:**

1. Connie Bacon, President
2. Dick Marzano, Vice President
3. Don Meyer, Secretary
4. Clare Petrich, 1<sup>st</sup> Assistant Secretary
5. Don Johnson, 2<sup>nd</sup> Assistant Secretary

**STAFF PRESENT:**

1. John Wolfe, Chief Executive Officer
2. Carolyn Lake, Port Counsel
3. Judi Doremus, Executive Assistant
4. Sean Eagan, Director, Government Affairs
5. Jason Jordan, Director, Environmental Programs
6. Scott Francis, Director, Real Estate
7. Erin Galeno, CFAO
8. Mark Little, Director, Contracts & Purchasing

**9:30 am: EXECUTIVE SESSION**

Call to order and recess into Executive Session:

1. Two Litigation Items RCW 42.30.110 (i)
2. One Personnel-Collective Bargaining Item RCW 42.30.140 (4) (b)
3. One Personnel-Performance Review Item RCW 42.30.110 (g)

**12:00 noon: REGULAR COMMISSION MEETING**

**1. RETURN TO ORDER:**

- A. Flag Salute

**2. CONSENT AGENDA:**

- A. Voucher Certification: Checks #208715 through #209012 and wire transfers in the total amount of \$9,458,346.18 during the period of May 11, 2016 through June 7, 2016 were certified.

*Motion was made by Commissioner Johnson, seconded by Commissioner Petrich:*

**“Approve the above Consent Agenda”.**

**VOTE: MOTION CARRIED 5-0**

**3. STAKEHOLDER UPDATES:**

- A. U.S. Open Briefing - Denise Dyer, Pierce County Economic Development Director:

1. The economic benefits to the region were discussed.
2. The coverage of the Pacific Northwest worldwide was discussed.
3. Purchasing of flowers, food and HVAC system were local.
4. The USGA respected the wishes of the community to include honoring the military, free kid days and donating all of the leftover food to the local foodbank. The USGA now has a policy that all leftover food will be donated each year.

- B. Puyallup River Watershed Update – Harold Smelt, Pierce County Surface Water Management:

1. Progress to date on this project was discussed.
2. Proposed is one long setback levee (eight miles in length) from Tacoma to Puyallup.
3. Planning and engineering will take approximately three years and construction is estimated to take approximately six years. This timeline includes property acquisition.
4. Other approaches, including their pros and cons, were discussed.

**4. STUDY SESSIONS:**

- A. Port of Tacoma Available Property Overview-Scott Francis, Real Estate Director:

1. CEO Wolfe stated that, with Commission direction, future potential leases will be brought forward in two readings. The first reading will be a briefing for the Commission and public. During the second reading, if no changes occur, the action will be brought to the Commission for action. Commission requests that this be made a written policy.
2. Port of Tacoma Real Estate goals for available properties were reviewed.
3. Commissioner Meyer requests more visibility to the RFP process upfront, to include a public hearing to discuss the options for marketed properties.
4. Commissioner Marzano requests a report showing the number of acres of Port-owned properties versus the number of acres owned privately.
5. Ralph Ibarra, Diverse America Network: Asked about a foreign trade zone. Our FTZs can be established anywhere in the county. These do change based on user needs.
6. Arthur West: Asked about the Port owning property in Thurston County (Maytown). Initially there was an ILA with Thurston County, but this has ended. The Port is in compliance for the property during this wind-down phase with the intent to sell the property.
7. Dr. Linda Fortune: Reminded the Commission of their desire to have a dialogue with the public. She recommend that we have a dialog with the public regarding the types of industries that should be on each property.

8. Michael Lafreniere: Stated that he is interested in a subarea plan discussion between the Port of Tacoma and the City of Tacoma. He asked if the Port will be engaging with the City of Tacoma regarding subarea planning. Commission responded that there is a scheduled joint study session with the City of Tacoma on June 28<sup>th</sup>. The City of Tacoma is hosting this meeting and has a policy that public comment is not taken during study sessions.
9. Jan \_\_\_\_\_ (last name unknown, as not on public comment sign-up sheet) She asked why residents don't receive notices of cleanups or large proposed projects in the Tideflats. Staff responded that there are different statute requirements for different projects. Notices are given by the regulatory agency involved (not the Port), and each one has different notification requirements.
10. Billy Blattler: Requested that public meetings be listed on the website. Commissioner Bacon responded that all public meetings are listed on our website. Tara Mattina, Communications Director, suggested anyone who is interested go to [www.Portoftacoma.com](http://www.Portoftacoma.com)/subscribe to sign up for any distribution lists that are of interest.
11. Alan Oldstudent: Requested that the meetings be held at a time when "normal working people" can attend. Commissioner Bacon responded that we have held meetings in the evenings in the past and did not have any sizable community members attending. We moved the meetings to 12 noon so people could attend during the lunch hour. The meetings are also webstreamed live and available online at any time. They are also played multiple times on public TV. Since so many people work swing shifts or evening shifts, there really is no "normal working people" time.

**B. Master Policy Update Discussion-Erin Galeno, CFO and Mark Little, Director, Contracts & Purchasing:**

1. In Section III staff intends to add language regarding implementing two readings of leases to the Master Policy in 2016. Commissioner Marzano recommends that second readings be used in a broader sense.
2. Under Section III: Commissioner Meyer would like future dialogue on updates to the RFP process.
3. Small properties for nonprofits: Staff looks at documented economic value and market value of properties.
4. Commissioner Meyer suggested that under the Legal Section that, as elected officials, the Commission should not delegate legal action to the CEO.
5. Ralph Ibarra: Commended the Port of Tacoma for its support of small business. Economic empowerment through the Port of Tacoma is germane to the concerns that citizens state around transparency. With the Master Policy the Commission has an opportunity to be creative and innovative in keeping dollars collected by the Port of Tacoma circulating in our communities.
6. Arthur West: Stated that it important that before an agency takes legal action that their elected officials be in agreement.

**5. ACTION AGENDA:**

**A. Challenge of Two Proposed Local Initiatives:**

**“Request ratification of the Port’s action of filing a Declaratory Judgment and Injunctive challenge of two proposed local initiatives filed with the City of Tacoma: (1) Charter Amendment 5 and (2) Code Initiative 6.”**

*Moved by Commissioner Johnson, seconded by Commissioner Petrich:*

1. CEO Wolfe gave a brief introduction. Commissioner Bacon stated that because this an active litigation issue, our legal counsel cannot answer questions from the public that would violate the attorney-client privileged information.
2. The reasons the two initiatives are not legal actions were discussed.
3. Robert Mack, Tacoma Public Utilities (TPU), Public Affairs and Linda McCrea, Tacoma Water Superintendent, were in attendance and provided information on the legal requirements of TPU. If the City operated on the language in the initiatives they would violate state law. Mack stated that water use is down approximately 50% since 1985.
4. Claudia Reidener: Regarding the available water: She stated that Lake Haven Water District sold water to Tacoma last year. She asked why Tacoma is buying water while saying we have a surplus of water.  
Robert Mack: Responded that last year was an exceptional year for high temperatures and lack of precipitation. Lake Haven is one of TPU's partners and they provide the Lake Haven area with water. There is a regional system in place so that when one partner needs water more than another they can borrow from the other partners. The system is designed for exchanges. He stated that TPU does not withdraw water above approved levels from the Green River. He stated that there is a law stating that TPU will provide water to all customers and cannot discriminate based on the amount used. The same law applies to electrical power. Public utilities cannot say that because there are low-flow months during a decade that they won't provide water to any customer. There is policy they must comply with. The law requires public utilities to serve the public and put in provisions for low-flow periods.
5. Judi Chelotti: She was unable to attend the meeting, but submitted a written statement, which is attached to these minutes.
6. As this is an active litigation issue, our legal counsel cannot answer questions from the public that would violate the attorney-client privileged information.
7. Carolyn Lake: Stated that the Port of Tacoma is not seeking damages from anyone. When the City of Tacoma filed a cross complaint they asked for attorney fees, but they filed an amended complaint withdrawing that. There will be a hearing to present positions in two to four weeks.
8. Michael Lafreniere: Stated that they filed with the City of Tacoma for a new standard to protect water. They have collected 16,000 signatures in 100 days. Both initiatives strive to protect the public from users who would use more than 1 million gallons per day. He spoke that he opposes the Port challenging the two initiatives. He feels it is undemocratic to keep the initiatives off of the ballot.

9. William Kupinse: He has concerns about the amount of money needed to subsidize the PSE LNG project. PSE has put \$5.5 million toward reopening the Tideflats fire station, but there is a \$5 to \$7 million gap. He also stated that PSE is looking to receive reimbursement for this money they invested in the fire station. He feels we should not develop any fossil fuel projects.
10. Alan Oldstudent: Stated that citizens of Tacoma are not in the mood to be told what they can do. They have tried to conserve water. He asked about showing respect to citizens. He added that the water belongs to the voters. He feels this challenge is an attack on voice of people.
11. Donna Walters, Save Tacoma Water: Stated that the group of citizens who elected the Commissioners have lost faith in their judgement. Walters is the Co-Chair and Sponsor of Save Tacoma Water. She stated that citizens must speak up when they disagree with actions taken by elected officials. This group wants to protect our resources. They are not against jobs. They want to protect our water. She stated that the Commission has not reached out to citizens since this initiative began four months ago. She asked that the Port of Tacoma withdraw from the lawsuit.
12. Rita Andreeva: Stated that water is a commodity with supply and demand. In other countries cities have run out of water. Climate change is a serious threat. Each year could be worse than the year before. She asked what will happen if we allow an industry to use large amounts of water and there is not enough for the public. She stated that the humane thing would be to give the water to the people and not industry. Citizens should be able to have a voice in their government. Even though we have enough water here we might need to give it to people south of us when they run out.
13. LaDonna Robertson: Stated she is speaking on behalf of Redline, Save Tacoma Water and We the People. She stated that the lawsuit brought against passage of the two water initiatives, which would put TPU against state law, wouldn't come to that. They only want to bring companies to our area that would use our resources responsibly.
14. Billie Blattler: Stated that she is concerned about decisions that have been made that seem unattractive to the people. She doesn't know why only City of Tacoma citizens could sign the water initiative petition since this would affect people outside of the city. She stated that it is our water and you need to listen to the voters.
15. Christina Brown: Stated that we need to craft a different vision for Pierce County. Money and law are very dry, but businesses are made up of people. We need to craft a future together instead of butting heads. We are in a dire emergency with the climate. We need to pay attention and look at what we can do to conserve water. We need more efforts. We want a clean environment. LNG Plant: In the EIS it is described as a marine bunkering facility. She is confused at this point how the Port can make this happen. She has safety issue concerns for an LNG plant and a bunkering facility. It is not recommended to put this in a dense urban environment and in an active port.
16. Scott McNabb, Tacoma Longshore: Stated that he spent over 2,000 hours working in port last year. He feels that the PSE LNG project is a progressive one. The shipping industry that is not going anywhere. Everyone in the maritime industry is switching to LNG. LNG is the cleanest way to power the ships. He stated that we are trying to do whatever we can to make it better. He asked people to consider that the only alternative is to continue with diesel, which is much worse for the environment and the workers.
17. Russ Higley: Stated that he feels it is disingenuous to say we have excess water when we had a water shortage last year and also to say that the Tacoma initiative would exclude people outside the city limits. The Port of Tacoma website states that the Commission sets policy. He feels that the Commission is going in the wrong direction. Referring to the EIS process: Commissioners have no decision power in the EIS.
18. Arthur West: Stated that the Port of Tacoma is using its power. He can identify with some of the frustrations vented today. He stated that the Port has a history of bullying citizens and withholding records. He is concerned about corporations and the government joining forces with the EDB and the Chamber. He has submitted a written complaint alleging illegal election practices. He feels that the Port is illegally spending funds to oppose ballot measures.
19. Bea Christopherson: Stated that she is fed up with entrenched corrupt government. Suits inflame voters. She feel that the "We the People" has been lost. She wants control over the government and stated that they need to stop steamrolling over us. She considers the challenge to the initiative wrong. In regard to the methanol versus LNG plant: LNG is fairly safe. In liquid form it is not a flammable risk. LNG is safer and cleaner than diesel. PSE is a good guy. She advised the public to pick their battles wisely.
20. Roxanne Murray: Stated that there is a misconception that LNG is a green form of energy. That is not true. LNG results in less carbon dioxide, but increases methane. We would be trading one greenhouse gas for another.
21. Grant Regal, PSE: Responded to the level of threat that the LNG project poses to downtown Tacoma: He stated that safety requirements are in the design. It poses no threat of explosion or fire to Tacoma. There are specific requirements to be addressed and contained to the project site in the permits. The design has confirmed this. He stated that the primary use of the facility would be for peak shaving. There are other facilities in this area that accomplish this. There is one in Gig Harbor. PSE also has a decades-old facility near Centralia. At these sites natural gas is inserted into the ground and withdrawn on peak use days. This is key to keeping natural gas coming to homes and businesses. The implication that we would export LNG from the Tideflats facility is not true. It is not big enough. It would take over a year to fill one tanker ship from this facility.
22. Dean McGrath, ILWU: Stated that we definitely are in some challenging times. He welcomes the public's interest. He is discouraged to see the accusations being made against the Commission stating that it is against the public. Commissioners don't make a lot of money and their decisions have made this community successful. However, people do bring up some good points. There is a lot of misinformation out there. I don't think anyone is maliciously trying to do anything in bad faith. He suggested that the Port, along with some of these groups, could form some kind of committee to get to the bottom of issues. Our community needs to be successful. We could form a committee to bring these issues forward with equal representation from many groups to move forward and make rational decisions.

23. Sue Clemmons: Regarding the LNG plant being a peak shave facility: She stated that Attachment J to the EIS shows the following use: 7% peak shaving, 18% other uses and 75% marine bunkering. However, Attachment J was not with the final document. There will be much more than 7% of that facility used on peak cold days. On other days it is there as a backup. Will check on Attachment J. Today there are two known uses: peak shaving and TOTE's ships. There are discussions underway regarding converting Washington State ferries over to LNG fuel, as well as over-the-road trucking discussions. Nothing is in place at this point, however.
24. Claudia Reidener: Asked why the Port waited several months before file this lawsuit. Why didn't they step in earlier? Contrary to what we heard, she stated that the Port and Chamber are asking for damages and attorney costs. You are supporting keeping the status quo by only requiring that three Commissioners approve a lease. Diesel is bad, but we are pushing pollution upstream with LNG. Regarding safety: This will be the first bunkering LNG facility in the nation and the permits are not yet in place.
25. Carolyn Lake: Stated that the City of Tacoma is deleting the section of the suit asking for financial damages. The Port's suit inadvertently asks for attorney fees, and an amended complaint is going out this afternoon that takes this language out.
26. Billie Blattler: Stated that she is not sure if anyone here today asked the Commission to withdraw their challenge. She is asking that they withdraw this challenge. She stated that we are talking about honest people who have concerns.
27. Commissioner Don Meyer: Stated that we have to get past reactionary thinking. He is looking forward to sitting down as a community to decide how we want to move forward. The Port needs to reestablish our community connections,
28. Commissioner Connie Bacon: Stated that we need to find a way to get together. She stated this suit is a democratic process, and that she is ready to stand by the court's response. She hopes the public is too.
29. Commissioner Dick Marzano: Stated that the Commission learned a valuable lesson during the methanol project. It should not be us against them. We should sit down and discuss projects. He added that the public may not always agree with the Commission, but we should sit down as a tri-party group. He also stated that when we used to hold meetings at 6:00 pm that it did not work for some citizens. There is a large majority of people who are not here today. Perhaps we could consider having alternating start times.
30. Commissioner Clare Petrich: She stated that over the years there has been very little activity from citizens. It is heartening to see the passion today. She also added that it is too bad to see the public walk away when it is the Commission's time to speak. We have listened to you. We need to expand our conversation on our strategic plan. She is looking forward to broader conversations with the public. Initiatives don't always benefit people. Someone said you have to have a challenge to have a decision on it. This process of challenging this initiative is to save the expense that would occur at a later time. Because of the legal issues with these initiatives, it would be more expensive to deal with them at a later time.
31. Commissioner Connie Bacon: Stated that we want to say we are a city that is open for business to the national and international customers. She also asked that the public please consolidate their comments into one speaking opportunity. Regarding the suit, she is ready to abide by whatever decision the court makes.

**AMENDED MOTION: "Request ratification of the Port's action of filing a Declaratory Judgment and Injunctive challenge of two proposed local initiatives filed with the City of Tacoma: (1) Charter Amendment 5 and (2) Code Initiative 6, and no fees or other costs will be sought in conjunction with this challenge."**

*Moved by Commissioner Meyer, seconded by Commissioner Petrich:*

**VOTE TO AMEND MOTION: CARRIED 5-0**

*Moved by Commissioner Johnson, seconded by Commissioner Petrich:*

**VOTE ON AMENDED MOTION: CARRIED 5-0**

**B. ILA Extension: City of Tacoma/Port of Tacoma-Puyallup River General Investigation:**

1. Staff is asking for an extension of the ILA for one additional year, as the general investigation will take seven years, rather than the expected six years.
2. This is a time-only extension. There will be no additional costs to the Port. Originally the Commission approved a not-to-exceed amount of \$300,000.

**"Authorize the Chief Executive Officer to execute a time-only amendment to existing Interlocal Agreement No. CC-78445 between Pierce County and the Port of Tacoma, to extend the termination date from December 31, 2016, to December 31, 2017, to support the General Investigation Study on the Puyallup River, Project Master Identification No. 098191."**

*Moved by Commissioner Johnson, seconded by Commissioner Petrich:*

**VOTE: MOTION CARRIED 5-0**

C. This item was pulled.

D. This item will be rescheduled to the July Commission Meeting.

*Commissioner Petrich left the meeting at this point.*

**6. PUBLIC COMMENT:**

Ralph Ibarra: Spoke on using minority state contracts for completing SR-167. Since state money is funding this project let's make sure that the money comes back to our minority communities. He encouraged the Commission to have a broader conversation about Connecting Washington, and ask themselves what the Port can do to make sure those dollars flow back to the community.

**7. COMMISSIONER COMMENT:**

**Commissioner Comment:**

Commissioner Johnson: Reported on the recent Audit Committee Meeting. The 2015 financial audit and State Auditor's Office compliance audit were once again clean. We had our sixth internal compliance report. Annually, the department heads have to sign off on compliance issues.

**8. ADJOURNMENT:**

There being no further business, President Bacon adjourned the meeting at 3:39 pm.

---

Constance T. Bacon, President  
Port of Tacoma Commission

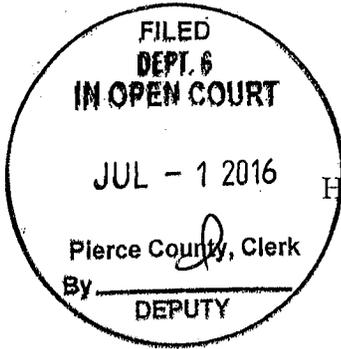
ATTEST:

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Donald G. Meyer, Secretary  
Port of Tacoma Commission

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Judi Doremus, Clerk of the Port  
Port of Tacoma



JUDGE Nevin  
HEARING DATE: Friday, July 1, 2016  
TIME: 10:00 a.m.

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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR PIERCE COUNTY**

PORT OF TACOMA, a Washington State  
Municipal Corporation, ECONOMIC  
DEVELOPMENT BOARD FOR TACOMA-  
PIERCE COUNTY, a Washington State  
Nonprofit Corporation,

Plaintiffs,

vs.

SAVE TACOMA WATER, a Washington  
political committee, DONNA WALTERS,  
sponsor and Treasurer of SAVE TACOMA  
WATER, JON AND JANE DOES 1-5,  
(Individual sponsors and officers of SAVE  
TACOMA WATER), CITY OF TACOMA, a  
Washington State Municipal Corporation,  
and PIERCE COUNTY, a political subdivision  
by and through JULIE ANDERSON, IN HER  
CAPACITY AS PIERCE COUNTY AUDITOR

Defendants.

No. 16-2-08477-5  
*and City of Tacoma*

[PROPOSED] ORDER GRANTING  
PLAINTIFFS' MOTION FOR  
DECLARATORY JUDGMENT &  
PERMANENT INJUNCTIVE  
RELIEF *& Dismissing*

*STW's motion to Dismiss*

1 CITY OF TACOMA,

2 Third-Party Plaintiff,

3 vs.

4 SAVE TACOMA WATER, an Washington  
5 political action committee, DONNA  
6 WALTERS, Co-Chair and Treasurer SAVE  
7 TACOMA WATER; SHERRY BOCKWINKLE,  
8 Co-Chair and Campaign Manager of SAVE  
9 TACOMA WATER; JOHN AND JANE DOES  
1-5, (Individual sponsors and officers of SAVE  
TACOMA WATER); and Julie Anderson, in  
her official capacity as Pierce County Auditor

Third-Party Defendants.

10 THIS MATTER came before the Court upon the Plaintiffs' Motion for  
11 Preliminary and Permanent Injunction and for Declaratory Judgment, noted for  
12 consideration on July 1, 2016. The Court has considered the arguments of Counsel and  
13 has reviewed the following pleadings:

- 14 1. CITY MOTION FOR PRELIMINARY INJUNCTION
- 15 2. DECLARATION OF KYMBERLY K EVANSON
- 16 3. DECLARATION OF PETER HUFFMAN
- 17 4. DECLARATION OF ROBERT MACK
- 18 5. DECLARATION OF TC BROADNAX
- 19 6. PORT & EDB MOTION FOR PRELIMINARY, PERMANENT AND  
20 DECLARATORY JUDGMENT
- 21 7. DECLARATION OF JOHN WOLFE
- 22 8. DECLARATION OF COUNSEL CAROLYN LAKE
- 23 9. DECLARATION OF SUSAN SUESS
- 24 10. PIERCE COUNTY'S ANSWER AND AFFIRMATIVE DEFENSES

23 ORDER GRANTING PLAINTIFFS' MOTIONS FOR  
24 DECLARATORY JUDGMENT & PERMANENT  
INJUNCTIVE RELIEF 2 of 7  
160629.pldg.Port EDB Chamber PR'SD ORDER. PERMANENT Injunction &  
25 DEC JUD

GOODSTEIN LAW GROUP PLLC  
501 South G Street  
Tacoma, WA 98405  
253.779.4000

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- 11. CHAMBER MOTION FOR PRELIMINARY AND PERMANENT INJUNCTION AND DECLARATORY JUDGMENT
- 12. DECLARATION OF TOM PIERSON
- 13. CITY RESPONSE TO MOTIONS FOR PRELIMINARY AND PERMANENT INJUNCTION AND DECLARATORY JUDGMENT
- 14. AFFIDAVIT/DECLARATION OF COUNSEL
- 15. STW RESPONSE TO PRELIMINARY INJUNCTION MOTION
- 16. DECLARATION OF LINDSEY SCHROMEN-WAWRIN
- 17. DECLARATION OF SHERRY BOCKWINKEL
- 18. CHAMBER REPLY IN SUPPORT OF PRELIMINARY, PERMANENT AND DECLARATORY JUDGMENT
- 19. PORT REPLY IN SUPPORT OF PRELIMINARY, PERMANENT AND DECLARATORY JUDGMENT

20. STW'S MOTION TO DISMISS

The Court finds as follows:

- 1. A justiciable controversy exists. There is an actual, present, and existing dispute between parties with genuine and opposing interests that are direct and substantial. Post-election events will not further sharpen the issue whether Tacoma Code Initiative 6 and Tacoma Charter Initiative 5 (the "STW Initiatives) are beyond the scope of the local initiative power.
- 2. Plaintiffs have standing. Plaintiffs fall within the zone of interests the STW Initiatives seek to regulate and have demonstrated sufficient injury in fact. Further, this case involves significant and continuing issues of public importance that merit judicial resolution.
- 3. The STW Initiatives exceed the local initiative power and are invalid.

1 a. The requirement for a binding vote of Tacoma residents before providing  
2 water utility service to an applicant that intends to use 1336 CCF (one  
3 million gallons) of water daily from the City of Tacoma (“Water  
4 Provision”) is a land use and development provision and exceeds the  
5 local initiative power because it is administrative in nature and involves  
6 powers delegated under RCW Title 35 to the legislative bodies of  
7 municipalities. STW Initiatives’ Water Provisions also is administrative  
8 because they seek to change or hinder Tacoma’s pre-existing water utility  
9 management and operations.

10 b. The Water Provisions exceed the local initiative power because they  
11 conflict with state law, and are administrative in nature. The Water  
12 Provisions seek to interfere with water utility service requirements that  
13 are subject to Washington's state water rights and service laws, and the  
14 Growth Management Act. STW Initiatives’ Water Provisions would add  
15 requirements to these pre-existing regulations, and would interfere with  
16 pre-existing regulations. The Water Provisions therefore conflict with  
17 state law and are outside the scope of the local initiative power. The  
18 Water Provisions are also administrative because they seek to change or  
19 hinder pre-existing water regulations. The Water Provisions are also  
20 outside the scope of the local initiative power because they attempt to  
21 impose rights on Tacoma residents regarding water usage outside the  
22 boundaries of Tacoma City limits, and they attempt to create new

1 constitutional rights. The City of Tacoma lacks jurisdiction to enact such  
2 legislation, <sup>people of the</sup> through the initiative.

- 3 c. STW Initiatives' provisions which seek to invalidate any conflicting  
4 Washington and state agency laws and rules exceed the local initiative  
5 power because they conflict with state law and seek to elevate city  
6 code/charter above state law which is beyond the City of Tacoma's  
7 jurisdiction to enact.
- 8 d. The STW Initiatives' corporate rights provisions exceed the local  
9 initiative power because they attempt to change the rights of  
10 corporations under federal and state law. The provisions therefore  
11 conflict with federal and state law, and are outside the scope of the local  
12 initiative power. The local initiative power does not include the ability to  
13 limit U.S. Supreme Court precedent, including *Citizens United v. Federal*  
14 *Election Commission*, 558 U.S. 310 (2010). The local initiative power  
15 does not include the ability to override the "personhood" rights to  
16 corporations under federal and state law, including under the First and  
17 Fifth Amendments of the United States Constitution and Wash. State  
18 Const. art. XII, § 5. The STW Initiatives exceed the local initiative power  
19 because they attempts to strip corporations of their First and Fifth  
20 Amendment rights, which would conflict with U.S. Supreme Court  
21 precedent.
- 22 e. The STW Initiatives provisions that seek to limit a court's authority to

1 interpret the law or to determine whether a "permit, license, privilege or  
2 charter" is valid are outside the scope of the local initiative power  
3 because they conflict with federal and state law and seek to elevate city  
4 code/charter above state law which is beyond the City of Tacoma's  
5 jurisdiction to enact.

6 4. The STW Initiatives are not severable. All substantive provisions of both  
7 Initiatives are invalid. Once the Initiatives' substantive provisions A-C are held  
8 invalid, the enforcement, severability, and effect sections are moot.

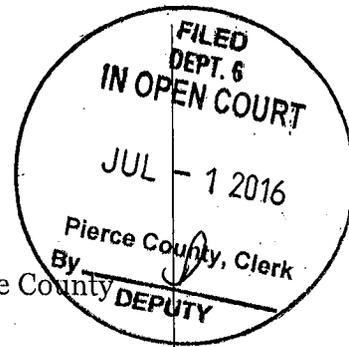
9 5. Plaintiffs <sup>City</sup> have established clear, legal or equitable rights to prevent invalid  
10 Initiatives, which exceed the scope of local initiative power, from appearing on  
11 the official ballot for the November 2016 election or any ballot thereafter;

12 6. Plaintiffs <sup>City</sup> have established a well-grounded fear of immediate invasion of those  
13 rights because the Pierce County Auditor, at the direction of the City, will place  
14 the STW's Tacoma Code Initiative 6 on the official ballot in September 2016  
15 absent contrary direction from this Court; and

16 7. Plaintiffs <sup>City</sup> have established that placing invalid initiatives on the ballot will  
17 result in actual or substantial injury to Plaintiffs.

18 **Now, therefore, it is hereby ORDERED:**

- 19 1. Plaintiffs' <sup>City</sup> Motion for Declaratory Judgment is GRANTED.  
20 2. The Court DECLARES that the STW Initiatives are invalid as outside the scope  
21 of the local initiative power.  
22 3. The Court further DECLARES that neither STW Initiative shall appear on the



- 1 November 2016 election or any ballot thereafter, and directs the Pierce County
- 2 Auditor not to include them on that or any ballot.
- 3 4. Plaintiffs' <sup>City</sup> Motions for Preliminary and Permanent Injunction is GRANTED.
- 4 5. The motion to consolidate the hearings on the motions for preliminary and
- 5 permanent injunctive relief and the merits is GRANTED.
- 6 6. This Order shall serve as the Court's final Order and Judgement adjudicating
- 7 the merits of this action.
- 8 7. The Pierce County Auditor is hereby enjoined from including the STW
- 9 Initiatives on the ballot for the November 2016 election or any other election

10 ballot.  
 11 *B. Court has subject matter jurisdiction & STW's Motion to Dismiss is denied.*  
 DATED this 1 day of <sup>July</sup> ~~June~~, 2016.

12 Jack Nevin  
 13 Jack Nevin, Superior Court Judge

14 Presented By:

14 GOODSTEIN LAW GROUP PLLC  
 15 By /s/Carolyn A. Lake  
 16 By /s/Seth Goodstein  
 Carolyn A. Lake, WSBA #13980  
 Seth Goodstein, WSBA #45091  
 Attorneys for Plaintiff Port of Tacoma

PACIFICA LAW GROUP  
 BY Kyberly K. Evanson  
 KYBERLY K. EVANSON # 39973  
 Counsel for City of Tacoma

17 LEDGER SQUARE LAW, P.S.  
 18 By: /s/ Jason M. Whalen  
 19 Jason M. Whalen, WSBA #22195  
 Attorneys for Plaintiff EDB

MARK LINDQUIST, PROS. ATTY  
 BY David Prattner #8292  
 DAVID PRATTNER, DEPUTY

20 GORDON THOMAS HONEYWELL LLP  
 21 By: /s/ Warren E. Martin  
 Warren E. Martin, WSBA # 17235  
 Shelly Andrew, WSBA # 41195  
 Attorneys for Plaintiff Chamber

22 Approved as to form:  
 by Lindsey Schramm-Wawrin 46352  
 GOODSTEIN LAW GROUP PLLC

23 ORDER GRANTING PLAINTIFFS' MOTIONS FOR  
 24 DECLARATORY JUDGMENT & PERMANENT  
 INJUNCTIVE RELIEF 7 of 7  
 160629.pldg.Port EDB Chamber PR/SD ORDER. PERMANENT Injunction &  
 DEC JUD 253.779.4000

Approved as to form:  
7. Michael Morris STW  
 701 South G Street  
 Tacoma, WA 98405  
 253.779.4000  
 PDC Exhibit 4 Page 19 of 75

# Staying ahead of the challenges

Strategic Plan (2012 – 2022)

# 10 targets in 10 years

- 

1 Double container volume to 3 million TEUs
- 

2 Double dry bulk throughput to 12 million metric tons
- 

3 Increase breakbulk volume by 30% to 200,000 short tons
- 

4 Increase automobile import volume by 20% to 200,000 units
- 

5 Improve the Port's operating margin by 30%

- 

6 Increase net income by 50%
- 

7 Increase return on assets by 35%
- 

8 Clean up an additional 200 acres of Port-owned, contaminated property to industrial standards
- 

9 Reduce diesel pollutants attributed to cargo operations by 85% from 2005 baseline
- 

10 Increase Port-related direct jobs by 4,700 and Port-related indirect jobs by 2,000

# Four areas of focus

- Make **strategic investments** in Port infrastructure
- Attract **new business opportunities** that contribute to our financial stability
- Continue first-class **customer care**
- **Community pride** ensures continued support

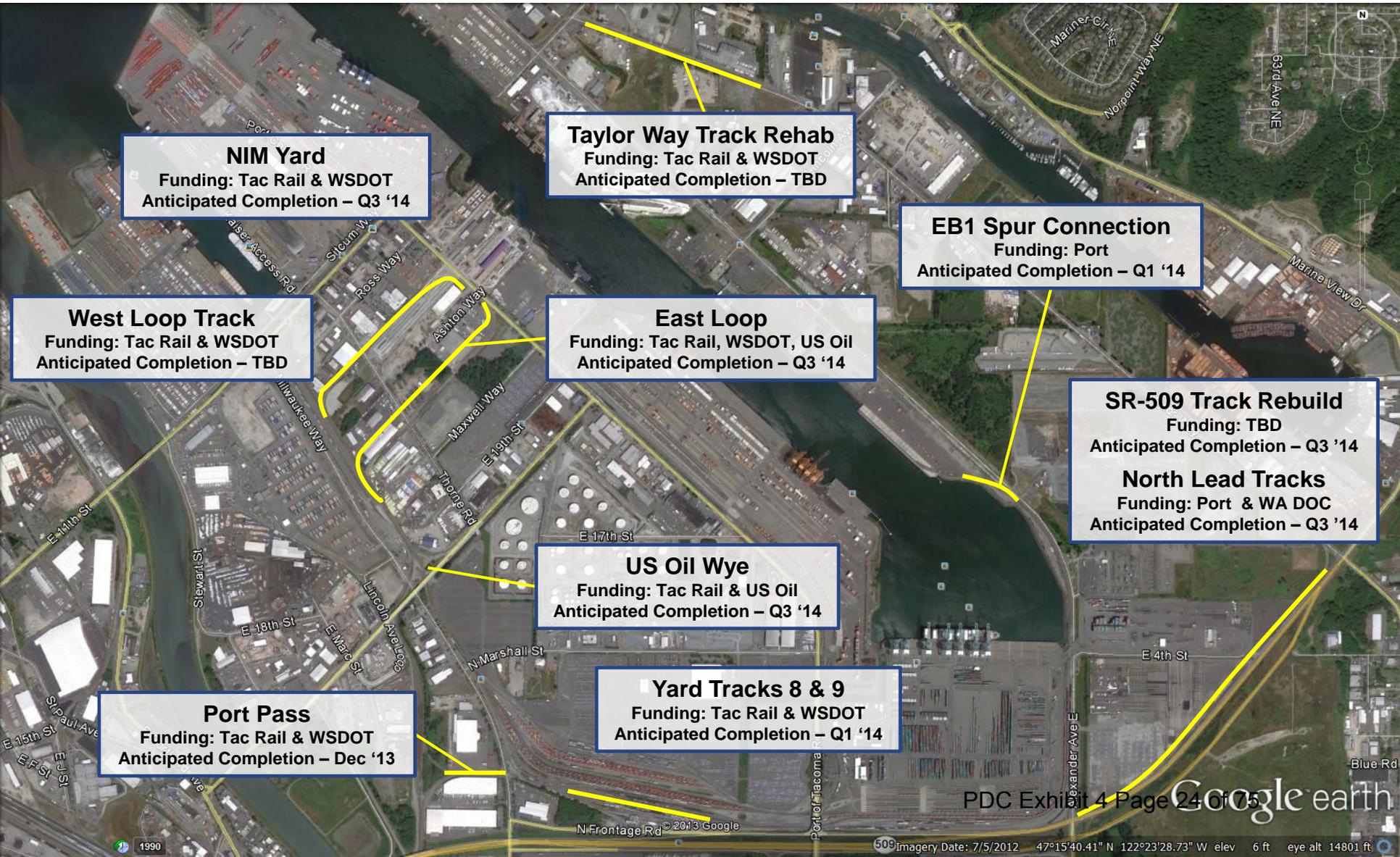


# Strategic investments in infrastructure

## Pier 3 upgrade - \$20 million



# Strategic investments in infrastructure



**NIM Yard**  
Funding: Tac Rail & WSDOT  
Anticipated Completion – Q3 '14

**Taylor Way Track Rehab**  
Funding: Tac Rail & WSDOT  
Anticipated Completion – TBD

**EB1 Spur Connection**  
Funding: Port  
Anticipated Completion – Q1 '14

**West Loop Track**  
Funding: Tac Rail & WSDOT  
Anticipated Completion – TBD

**East Loop**  
Funding: Tac Rail, WSDOT, US Oil  
Anticipated Completion – Q3 '14

**SR-509 Track Rebuild**  
Funding: TBD  
Anticipated Completion – Q3 '14  
**North Lead Tracks**  
Funding: Port & WA DOC  
Anticipated Completion – Q3 '14

**US Oil Wye**  
Funding: Tac Rail & US Oil  
Anticipated Completion – Q3 '14

**Port Pass**  
Funding: Tac Rail & WSDOT  
Anticipated Completion – Dec '13

**Yard Tracks 8 & 9**  
Funding: Tac Rail & WSDOT  
Anticipated Completion – Q1 '14

# Strategic investments in infrastructure

## State Route 167 - \$1.5 billion



# New business investment

- SAFE Boats: 100 jobs
- Former Kaiser site: adding rail capacity



# New business opportunities



## Grand Alliance calls Tacoma



# Environmental stewardship

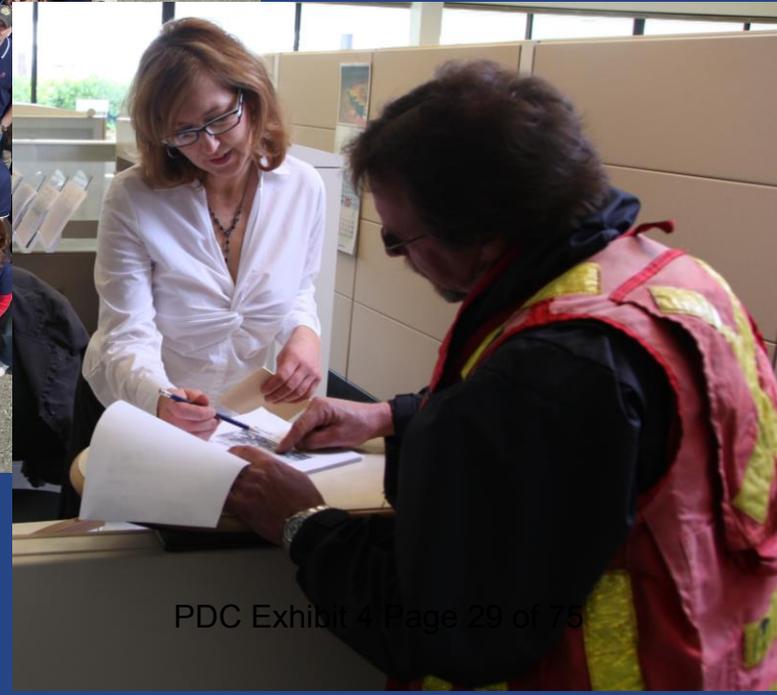


Northwest Ports Clean  
Air Strategy



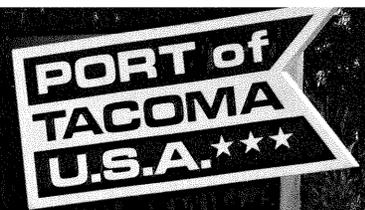
Develop stormwater  
best management  
practices

# Customer care



# What's next

Updates every year to  
measure progress



# Frederickson Industrial Area



# GROWTH OPPORTUNITIES

## *Frederickson Industrial Area Offers Wide Open Space for Development*

**F**orty years ago, growth-minded leaders at the Port of Tacoma imagined a day when cargo volumes would be so high that the Tideflats would no longer support businesses that did not need to be on the water. They envisioned a new employment center.

“Perhaps they got on the train and went east until they found plenty of flat land. Frederickson was it,” speculates the Port’s Manager of Industrial Real Estate, Derrick Urquhart.

From 1964 to 1981, the Port bought land in Frederickson and invested in industrial-strength infrastructure and utilities. Today, the Port of Tacoma’s 553-acre Frederickson Industrial Area is the Puget Sound’s single largest industrial site zoned for heavy manufacturing.

Frederickson is home to a number of companies, including The Boeing Company, Toray Composites America, Inc., Medallion Foods, Tacoma Guitars and others. These companies were recently joined by Northwest Door.

Running out of room at its South Tacoma site, Northwest Door looked in Thurston County and in Everett for a site large enough to construct its expanded operation – a 480,000 square-foot facility in two phases. Ultimately, the company chose to stay in Pierce County. “Frederickson was the only place in Pierce County where they could find a large site in one piece,” said Urquhart.

Northwest Door will employ up to 300 people, including 70 new hires. According to Urquhart, the

company decided to stay in Pierce County, partly because of Frederickson’s Employment Center (EC) zoning – a designation that allows qualified businesses to use streamlined permitting, taking valuable time off of the construction schedule.

With one of the nation’s largest ports just 13 miles away, rail access, improved access to Interstate 5 via the Cross-Base Highway in the future and plenty of qualified workers – all in the shadow of Mount Rainier – Urquhart says Frederickson is an ideal site for businesses that are poised for growth.

While 24 industrial users already call Frederickson home, the Port still has sites available, the largest parcel able to accommodate a 1.5 million square-foot building with up to 1,000 employees. “As space is filling up, we’re getting even more selective about the kinds of businesses we want to attract. We want tenants to contribute a minimum amount of traffic impact while maximizing employment opportunities,” said Urquhart.

“With the success of Frederickson, the foresight of Port leadership decades years ago is paying dividends for the people of Pierce County today,” says Urquhart. “Now as the Port’s business grows, we’re asking ourselves is, ‘Where is our next Frederickson?’”

EXHIBIT 6

**For more information about the Port of Tacoma’s Frederickson Industrial Area, contact Derrick Urquhart at 253-383-9407.**

# Frederickson: Community Effort Brings a Hot Property to Market



Wood products are manufactured at the Ostermann & Scheiwe, U.S.A. plant at Frederickson Industrial District.

In order to develop Pierce County to its greatest potential, a cooperative effort is needed between the County, the Port, and the City of Tacoma. This team has been successful in bringing many new businesses to the area, and is currently at work again to develop the Port's Frederickson Industrial District.

The Port purchased 537 acres of the industrially zoned Frederickson property, located 13 miles south of Commencement Bay, in 1968 for use by companies which don't need direct

access to marine terminals. Some of the companies currently located in the Frederickson area include Olympic Pipeline, Spanaway Lumber, Ostermann & Scheiwe, U.S.A., Inc., Puget Sound Power, and A.M.A. Timber Products Ltd.

Unlike other Port property, which cannot be sold, the Frederickson area is for sale or lease. Since acquisition by the Port, some 200 acres have been sold.

In order to make the remaining property more attractive to potential

businesses, Frederickson is now being improved with water and sewer service. A major County road also is being extended to provide greater access to the property.

The total cost of extending Canyon Road will be \$4.7 million, of which the Port will pay 48% and the County will pay the remaining 52%. The project, which extends Canyon Road from 166th Street to 192nd Street, is expected to be completed by the Fall of 1988.

"It is really helpful when public agencies are able to cooperate for the greater good of the community," said Port of Tacoma Commissioner Jack Fabulich. "Improving the Frederickson property benefits everyone: the Port benefits by revenue from selling or leasing the land; the County benefits by taxes paid on such development; and the citizens of Pierce County benefit by the increased job opportunities such developments create."

In addition to the road, the Port is also joining with the County on an \$8.2 million sewer project that will include the Frederickson area. It is also cooperating with the City of Tacoma on installing a water line. Puget Sound Bank and another private developer are also involved in the utilities

**'It is really helpful when public agencies are able to cooperate for the greater good of the community,' said Port of Tacoma Commissioner Jack Fabulich.**

improvements, making the project a public/private partnership as well. "Frederickson is a very important

piece of property, because it is the only large industrially zoned area of land in Pierce County," Fabulich said. "Because the Port is interested in creating the kind of development that will be an asset to the County, we belong to the Clover Creek Community Council, which meets monthly to ensure good communication between developers and the local community."

Frederickson has many advantages, he noted. "First of all, it's ready to go; other properties in the area would need to be re-zoned. Another advantage is that a developer has a choice in the size of land parcels. Add to that the fact that Frederickson is serviced by Tacoma City Light, which is the lowest-cost utility in the U.S., and you have one highly attractive piece of property." ■



An aerial view shows portions of Frederickson, with Ostermann & Scheiwe in the foreground and Spanaway Lumber in the background.

EXHIBIT 7

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# PORT HISTORY, PART II

1960 - present



“Progress’ was the word in every aspect of the Port of Tacoma’s Industrial development program.”

~A.E. Blair, Port Commissioner, 1961 Annual Report



*1961 aerial view of the Port*

## Milestones

- Port Industrial Yard activated (former Tacoma Naval Station, purchased by the Port in 1959 for \$2 million from the federal government as surplus property)
- The Port's Industrial Park Addition open for business (60 acres, southwest of Milwaukee Way and Lincoln Ave)
- The pioneer channel for the 3,800-foot extension of the Hylebos Waterway completed. Dredge material used as fill at present day Arkema, Weyerhaeuser Log, and Pony Lumber
- 1,200-foot Sitcum Waterway pier completed (Pier 7), two 45-ton cranes moved from the Port Industrial Yard
- United Grain Terminal pier reconstructed to support new elevator and vessel capacity



1963 aerial view of the Port Industrial Waterway

1962

Revenues	Port Assets	Port Liabilities
\$1,400,000	\$17,100,000	\$7,000,000

## Milestones

- Port begins “cutting down” Hylebos Hill for fill material for over 100 acres of industrial development along the expanded Hylebos Waterway
- Hylebos Waterway widening and straightening completed to allow the passage of the Puget Sound’s largest ship ever to enter regular service – the *Argyll*, a 106-foot beamed bulk carrier delivering salt to chemical plants
- Pacific Lime plant operational on the Port-Industrial Waterway (later named the Blair Waterway)
- Port begins negotiations and preliminary engineering with the City of Tacoma for utility relocations anticipating the 6,000-foot extension of the Port Industrial Waterway and the 3,800-foot extension of the Hylebos Waterway



“The Port, with a \$5,233,000 budget for 1963, looks forward to continued progress, including the dredging of additional waterways to provide more deep-water frontage for new industry, the filling of more low-lying lands so that industry may find more and better property here, the development of better terminal facilities in order that new industry may receive its raw materials and ship its products across Port of Tacoma piers.”

~Conclusion from the 1962 Port of Tacoma Annual Report

## Milestones

- Puyallup River dredged to provide enough fill to create a 50-acre tract of land northwest of Lincoln Avenue
- Port of Tacoma Road opened to traffic from Highway 99
- Fire at Terminal 7 results in a “crash” program of repairs on the pier’s two berths
- Plans completed for a third berth of 600-feet at Terminal 7 on the Sitcum Waterway
- Federal Government announces it will participate in the extension of the Hylebos and Port Industrial Waterways, adding almost four miles of industrial waterfront to the Port
- The Tacoma Tideflats landfill, a municipal landfill of household and industrial waste north of the Puyallup River between Lincoln Ave and Highway 99, is closed

“In the Port’s Industrial Development District, dredging of extensions to the Hylebos and Port-Industrial (Blair) Waterways continued apace...(w)hen the job is done, almost four miles of deepwater industrial frontage will have been added to the district, plus approximately 1,500 acres of highly valued industrial land, reclaimed from sub-marginal areas by filling with dredged material to bring the property up to a suitable grade.”

~Maurice Raymond, 1965 Annual Report



*1966 aerial view expanding the Port Industrial Waterway*

1967

Revenues	Port Assets	Port Liabilities
\$4,300,000	\$35,400,000	\$19,100,000

## Milestones

- Comprehensive Scheme of Harbor Improvements modified to include the “Nisqually Flats”, a 2,500-acre site at the Nisqually River delta, where the river meets the Puget Sound, to provide terminal facilities large and deep enough to handle the “ever-growing size of the world’s merchant ships”. This project is later dropped.
- Hylebos and Port Industrial Waterway extensions are completed, creating 1,500 acres of highly valued industrial land reclaimed from “sub-marginal areas by filling with dredged material”
- 80,000 SF of warehouse development occurred on Piers One and Seven
- Bulk Cargo facility at Terminal 7 completed



*1967 aerial view of the Sitcum Waterway*

## Milestones

- Began reclaiming 20 acres of land behind Terminal 7
- The first alumina storage dome completed on Terminal 7 in 1967
- Terminal 4 on the Port Industrial Waterway combination container and general cargo operations completed
- Completed construction of 6.5 miles of new road, 6.75 miles of new storm drainage and water lines underway to promote industrial district growth around the expanded Port Industrial and Hylebos Waterways
- Port establishes the Frederickson Industrial Development District, by purchasing a 510-acre area south of the Tideflats
- Terminal 4 dedicated, featuring a 1,242-foot concrete pier, 150,000 square foot warehouse and 27-acres of paved storage



*1967 aerial view of the expanded Port Industrial Waterway, soon after renamed the Blair Waterway*

## Milestones

- Capacity at the bulk liquid terminal doubled
- Port Industrial Waterway renamed the “Blair Waterway” in honor of long-time Port Commissioner A.E. “Archie” Blair, who passed away in 1969
- Completed the Port’s 450-car railroad marshalling yard and tracks, totaling over 13.5 miles in length between the Sitcum and Blair Waterways (present day North Intermodal Yard)

“A major asset of the Port of Tacoma is our ownership of prime industrial land adjacent to deep water marine berths. The combination of excellent road and rail access, large vacant industrial tracts, and close proximity to deep water marine berths, gives the Port of Tacoma a competitive advantage in attracting industrial clients...”

~Ernest L. Perry, General Manager, 1974 Annual Report



*1973 view of the Pierce County Terminal's construction*

1972

Revenues	Port Assets	Port Liabilities
\$7,600,000	\$81,400,000	\$49,000,000

## Milestones

- Construction of the second alumina storage dome at Terminal 7 completed
- Container crane at Terminal 4 (“Big Red”) completed and goes into active service
- Sold \$16 million in Pollution Control bonds. The Port was the first port authority in Washington State to finance an environmental control facility for local industry
- The City-County-Port coordinating coalition was formed to facilitate infrastructure and land development
- The Pierce County Terminal Complex opens at the southeastern end of the Blair Waterway, featuring an 800-foot wharf, 100,000 square foot warehouse, 50,000 square foot manufacturing building and 12 acres of paved cargo area



*1973 aerial view of the Port's Sitcum Waterway and Terminal 7*

## Milestones

- Began the 900-foot extension of Terminal 7's wharf to a 2,700-foot total length. The water depth of the Sitcum is -50 feet at low tide
- Issued \$44 million in pollution control bonds to assist Kaiser Aluminum and Chemical Company and the St. Regis Paper Company
- Port purchased 41 acres of waterfront property from the Milwaukee Railroad adjacent to the Sitcum Waterway after eight years of negotiations
- Two high-speed cranes were installed at Terminal 4 on the Blair Waterway capable of handling 20 containers per hour
- The "Big Red" crane was moved from Terminal 4 to Terminal 7's berth D



*1976 aerial view of the Port's Sitcum Waterway and Terminal 7*

1977

Revenues	Port Assets	Port Liabilities
\$17,400,000	\$123,500,000	\$73,300,000

## Milestones

- The Tideflats booms with its industrial connection to the Alaska pipeline project. A barge slip was created in the Blair Waterway turning basin to efficiently load pipe destined for Alaska by barge
- Continental Grain Company Terminal completed on Schuster Parkway– the first shipload sets a world's record for the largest load ever from one facility
- TOTE begins Tacoma operations at Terminal 7
- Chrysler Corporation began importing Dodge Colts and Plymouth Arrows at Pierce County Terminal
- West Coast Orient Lumber Company sets up a facility in Tacoma on 65 acres of land
- Port moves its offices to Slip Two on the Blair Waterway  
PDC Exhibit 4 Page 45 of 75



*1976 aerial view of the Port's Blair-Hylebos Peninsula*

*"The manpower required for this activity, along with the continued progress of shipbuilding in the area, turned the traffic situation into a headache, but one borne easily because of the aspirin of prosperity and high employment".*

~from the Port of Tacoma 1975 Annual Report

## Milestones

- 1978, Puyallup Tribe of Indians claim title to 12 acres of land occupied by the Port since 1950
- Terminal 7's Berth A and B rehabilitated with pre-stressed concrete
- Port develops the "Alaska Terminal" for TOTE at Terminal 7, featuring a roll-on/roll-off berth and 28 acres of paved yard
- A new container crane was installed at berth D to accommodate containerized cargos at Terminal 7
- Port purchased 114.7 acres of waterfront acres from the Milwaukee Railroad
- Fredrickson land sales were in high demand. Port, City and County began cooperative efforts to provide major road access, water and sewer services to the area

We are ushering in a period of change for the  
Port of Tacoma

~Richard Dale Smith, Executive Director, 1976 Annual Report



*1982 aerial view of the Port's new Administration Building and Sitcum Waterway*

1982

Revenues	Port Assets	Port Liabilities
\$29,400,000	\$176,500,000	\$69,200,000

## Milestones

- The 52-acre East Blair Terminal was completed, and Mazda began importing vehicles through the Port
- Port Pioneers the intermodal rail concept by opening the North Intermodal Yard, the west coast's first dockside rail facility
- 55-acre terminal backup land was developed at the 128-acre PCT
- Construction completed on a 43,000 square foot Port administrative office building at the head of the Sitcum Waterway
- Slip 2 was filled for Terminal 4 expansion, its moorage relocated
- Port awarded contract for the 47-acre fill west of Milwaukee Way
- ITS leased Terminal 7-D from the Port
- "The Tacoma Advantage" is coined by the Port

“Through a combination of natural advantages, an emphasis on service and careful planning, the versatile Port of Tacoma expects to expand in the 1980s.”

~Richard Dale Smith, Executive Director, 1980 Annual Report



*1982 aerial view of the Port's new Administration Building and Sitcum Waterway*

1982

Revenues	Port Assets	Port Liabilities
\$29,400,000	\$176,500,000	\$69,200,000

## Milestones

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- Port awarded contract for the 47-acre fill west of Milwaukee Way
- ITS leased Terminal 7-D from the Port
- "The Tacoma Advantage" is coined by the Port



*1983 aerial view of Terminal 4*

## Milestones

- Port established Foreign Trade Zone #86
- Sea-Land (Tacoma Terminals, Inc), signed a 30-year terminal operating and lease agreement with the Port
- TOTE relocated to a 33-acre terminal on the Blair Waterway
- Terminal 4 expanded to 30 acres
- Panasonic begins operations at a new 151,000 square foot warehouse and distribution center
- The Tacoma Dome is completed and the Tacoma-Pierce County Chamber of Commerce launched its “New Beginnings” campaign to aggressively market the area for new business and industry
- EPA declares Commencement Bay a Superfund site
- Cranes arrived for Sea-Land; the first time fully-built cranes were shipped across the Pacific Ocean

“In the last few years, the Port of Tacoma has become a major player in the shipping industry...The Port of Tacoma has accomplished this expansion by its innovativeness and its willingness to provide for its customers’ needs, whether those needs are in facilities, services or labor.”

~Robert G. Earley, Port Commissioner, 1987 Annual Report



*1985 aerial view of the Port*

1987

Revenues	Port Assets	Port Liabilities
\$39,400,000	\$262,400,000	\$205,300,000

## Milestones

- Sea-Land opened its 76-acre site on the Sitcum Waterway and container growth booms by 495%
- Maersk Line starts calling at the Port
- Port developed the 9.5-acre estuary Gog-le-hi-te in 1985
- North Intermodal Yard expanded
- The South Intermodal Yard opened on 25-acres, adjacent to the Sea-Land site
- Free Trade Zone #86 expanded to 620-acres
- Port opened the World Trade Center (the 38th WTC in the world) to capitalize on the Port's growing opportunities in international markets
- A Port-Private partnership with Northwest Building Corporation builds an industrial park on more than 100 acres of Port property



*1987 view of Terminal 3 construction*

## Milestones

- Maersk Line moved its operations to Terminal 4 from Terminal 7
- Terminal 3 begins construction featuring 950-foot pier, 25-acre container yard and access to the North Intermodal Yard
- Tribal Agreement allowed for construction of Terminal 3, and extension of Sea-Lands' 1,600-foot pier by 1,100-feet
- In 1987, United Grain Terminal demolished to make way for the North Intermodal Yard expansion
- The "Milwaukee Fill" began environmental cleanup and expansion of Sea-Land's terminal
- Four-lane road extension completed to Frederickson Industrial Area completed
- President George H.W. Bush signed the 1988 Puyallup Indian Land Claims Settlement Agreement

“Tacoma and the Puget Sound Region will benefit from a dramatic expansion of the Pacific Rim and perhaps European trade through out region because of the settlement with the Puyallup Tribe of Indians.”

~John McCarthy, Port Commissioner, 1991 Winter Pacific Gateway



1992 aerial view of Terminals 3 and 4 on the Blair Waterway

1992

Revenues	Port Assets	Port Liabilities
\$52,500,000	\$348,500,000	\$123,500,000

## Milestones

- In 1991, Evergreen Line started calling at the Port's Terminal 4
- Port topped a million TEUs for the first time in 1991
- The Blair Waterway 2010 Plan is finalized and its findings published in the Winter edition of the Port's *Pacific Gateway* magazine. The plan identified opportunities for Port growth along the Blair Waterway, including terminals, waterway modifications, road and rail infrastructure, and other industrial development supporting the Port's mission.

“There are two ways to paint the Port of Tacoma in the dying light of the 20th century: "We're in big trouble," and "The future never looked brighter.”

~Tacoma News Tribune, *1999 and Beyond: Port's Vision of 21<sup>st</sup> century is a double image*, December 26, 1999, Al Gibbs



1999 aerial view of the Port

1997

Revenues	Port Assets	Port Liabilities
\$57,800,000	\$466,700,000	\$174,200,000

## Milestones

- 1995, Tacoma became the first port in the United States to launch an Internet web site
- SR 509 route opened in January 1997, and the Blair Bridge was closed two days later marking a milestone for "unlocking" the potential development on the Blair Waterway
- The Puyallup Tribe opened its Emerald Queen Casino on the Blair Waterway in 1996
- Hyundai Merchant Marine signed a 30-year lease with the Port for a new terminal on the upper Blair Waterway. The \$100 million, 60-acre terminal, complete with a dockside intermodal yard, was opened in May 1999
- Port completed its Vision 2020 Study in 1999, predicting by the year 2020, containerized cargo volumes through Puget Sound could reach 6 million TEU

“Like the Port, our region is working hard to invent its future. Look no farther than the City of Tacoma’s Thea Foss Waterway. Today, the area is emerging as a textbook illustration of urban revitalization...The Port of Tacoma is proud to help shape our region’s future as we continue to invent our own.”

~Dick Marzano, Port Commissioner, 2002 Annual Report



*2001 aerial view of the Port of Tacoma Road Overpass*

## Milestones

- Port completed the 20-acre expansion of Washington United Terminals. With the expansion, the terminal is 80-acres and on-dock rail with 52 double-stack car capacity
- The \$33 million Port of Tacoma Road Overpass opens—the first FAST Corridor project to be completed
- APM Terminals opened the new \$9.2 million pier extension that lengthens the pier by 600 feet--from 1,600 to 2,200 feet
- The Port started clean up under EPA order of about two-thirds of the three-mile long Hylebos Waterway
- The Port completed a \$4 million upgrade of its North Intermodal Yard
- The Port began dredging Sitcum Waterway to a depth of 57 feet

2002

Revenues	Port Assets	Port Liabilities
\$72,900,000	\$534,700,000	\$157,800,000



*2003 aerial view of the Blair Waterway*

## Milestones

- Kaiser closes its Tacoma plant
- The Port of Tacoma Commission approved a contract with Kaiser Aluminum to purchase the company's closed aluminum smelter located on 96 acres
- Port invested in the establishment of the University of Washington Tacoma Institute of Technology and creates the Port of Tacoma Endowed Chair
- The \$12 million terminal expansion TOTE terminal is completed, making room for the line's two new ships that entered service in 2003
- Port and Auto Warehousing Company (AWC) opened the new \$40 million, 144-acre Marshall Avenue Auto Facility
- Port dedicates the 'Auto Bridge', connecting the Blair Terminal to the Marshall Avenue Auto Facility



*2004 arrival of Pierce County Terminal's first four cranes*

## Milestones

- The Port and the Puyallup Tribe of Indians signed a cooperative economic development agreement
- Port industrial building space under lease broke the 1,000,000 square foot threshold
- Four of the world's largest container cranes destined for Pierce County Terminal arrive fully assembled
- Operational gridlock strikes LA/LB ports as vessels stack up at anchor and steamship lines seek alternative gateways
- The Comprehensive Tideflats Transportation Study is finalized, providing road and rail infrastructure recommendations for capital improvements to the rail and roadway systems that will meet the Port's capacity and future growth needs.

“By taking care of our customers, building a foundation for growth and most importantly, being a good neighbor to our surrounding communities, the Port of Tacoma has succeeded in its mission of job creation, economic development and environmental stewardship. I am optimistic that the best is yet to come.”

~Jack Fabulich, Port Commissioner, 2006 Annual Report



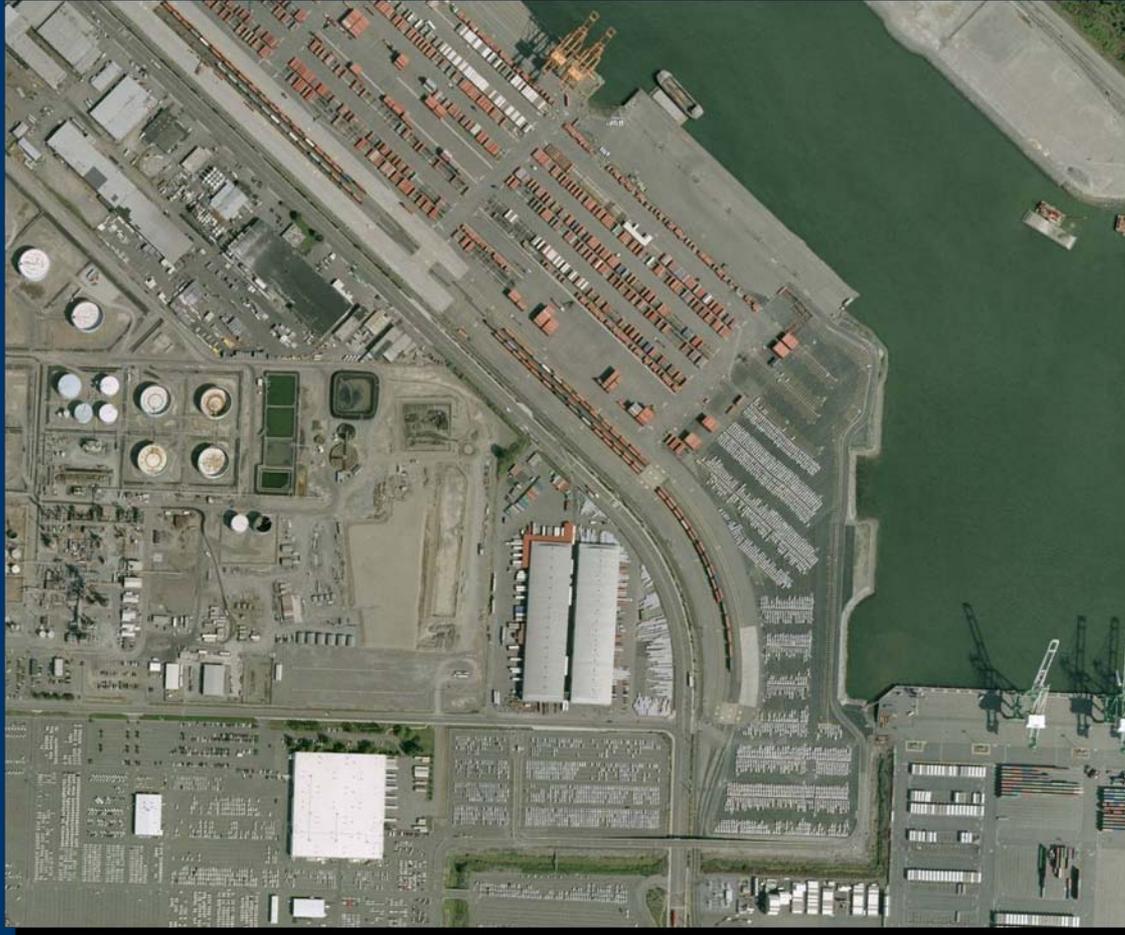
*2007 aerial view of the Blair Waterway*

2007

Revenues	Port Assets	Port Liabilities
\$97,800,000	\$1,038,800,000	\$590,100,000

## Milestones

- Pierce County Terminal opened as a 171-acre container terminal featuring on-dock rail and two berths at the head of the Blair Waterway
- International Transportation Service, Inc (ITS) moved from Terminal 7 to a refurbished Husky Terminal 93-acre facility on Terminals 3-4
- Olympic Container Terminal opened for Yang Ming Lines on the Sitcum Waterway's Terminal 7, with 54 acres and on-dock intermodal at the Port's North Intermodal Yard
- Slip One was filled and capped with Hylebos Waterway dredge material
- Carlile Transportation Systems, one of Alaska's largest trucking companies, moved to the Port



*2007 Washington United Terminal's 20-acre expansion near the Blair Waterway Turning Basin*

## Milestones

- The Port Commission directed that all Port-operated terminal activity use ultra-low sulfur diesel fuel (ULSD).
- The Port of Tacoma breaks the 2-million TEU milestone.
- Capacity improvements at Bullfrog Junction and Chilcote Junction completed.
- Washington United Terminals exercises their 20 acre expansion, but upon its delivery subleases the expansion area for auto storage.
- The Tribe's economic development arm, Marine View Ventures (MVV) announces a partnership with SSA; a terminal operating company that had previously purchased the Reichhold property.



*2007 aerial view of the Port of Tacoma*

## Milestones

- WUT announces purchase of a 7th crane triggering a 1000' non-preferential wharf extension under their lease option. The Port and WUT subsequently agree on a 600' preferential berth extension.
- Port announces the NYK Lines lease for the YTTI Terminal.
- The Port Commission authorizes eminent domain action as respects 22 property owners on the Blair Hylebos Peninsula
- Port announces the TOTE lease for the expanded and relocated terminal at the northern end of the Blair-Hylebos Peninsula.
- Port, Puyallup Tribe of Indians, Marine View Ventures, and SSA announce four agreements focusing on cooperation and coordination of marine terminal development on the Blair-Hylebos Peninsula.

## Milestones

- Initial 30% cost estimates for the Blair-Hylebos redevelopment program are delivered in mid April 2008. The refined estimates are substantially higher than anticipated.
- Environmental review under a SEPA EIS begins for the Blair Hylebos redevelopment program
- The D Street Overpass opens, de-conflicting the at-grade rail crossing at the southern end of the Foss Waterway and opening up the Foss Peninsula to unimpeded traffic.

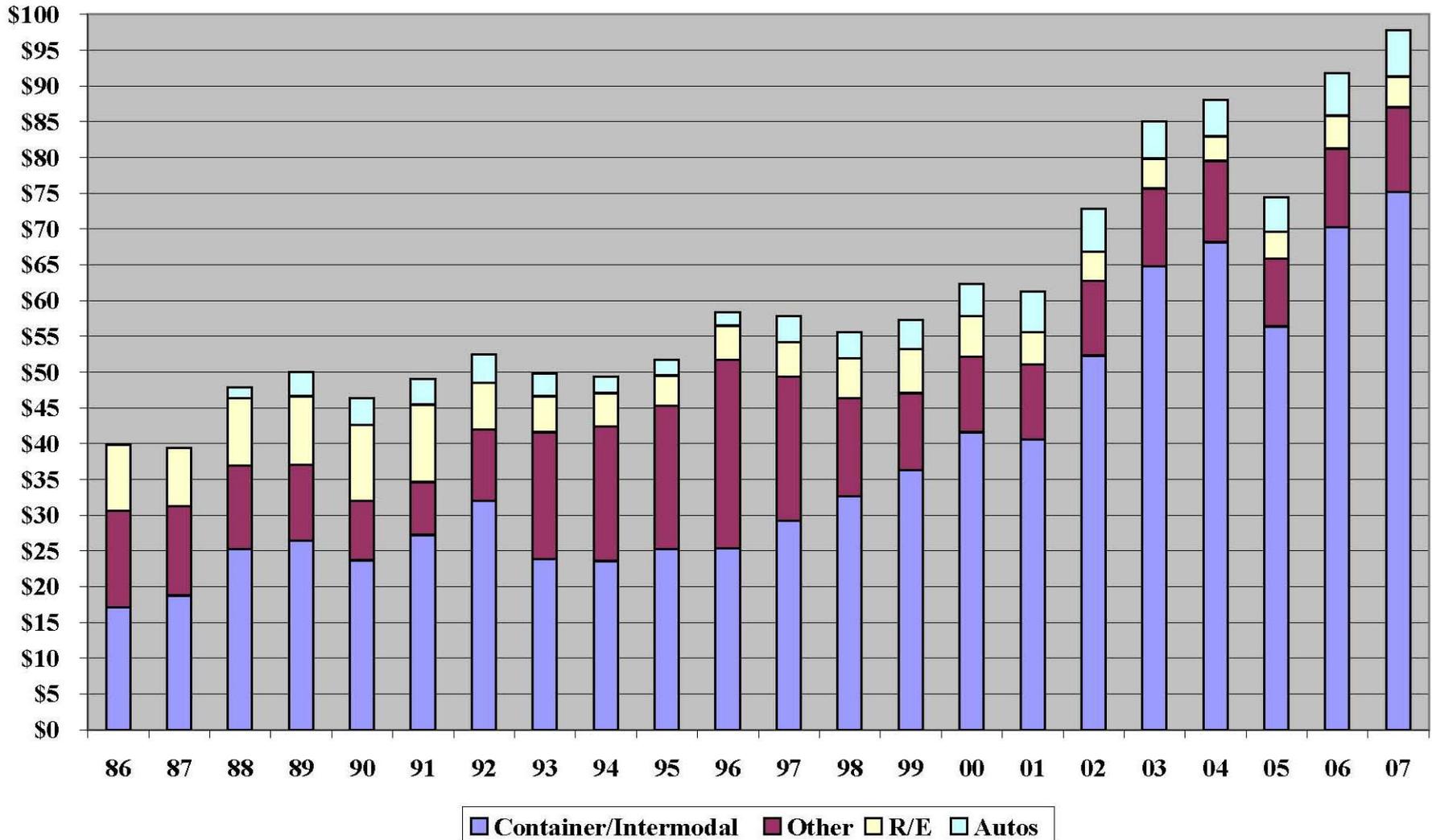


*2008 opening of the D Street Overpass*

# Port of Tacoma Financial History

## Port of Tacoma - Revenue by Major Groups

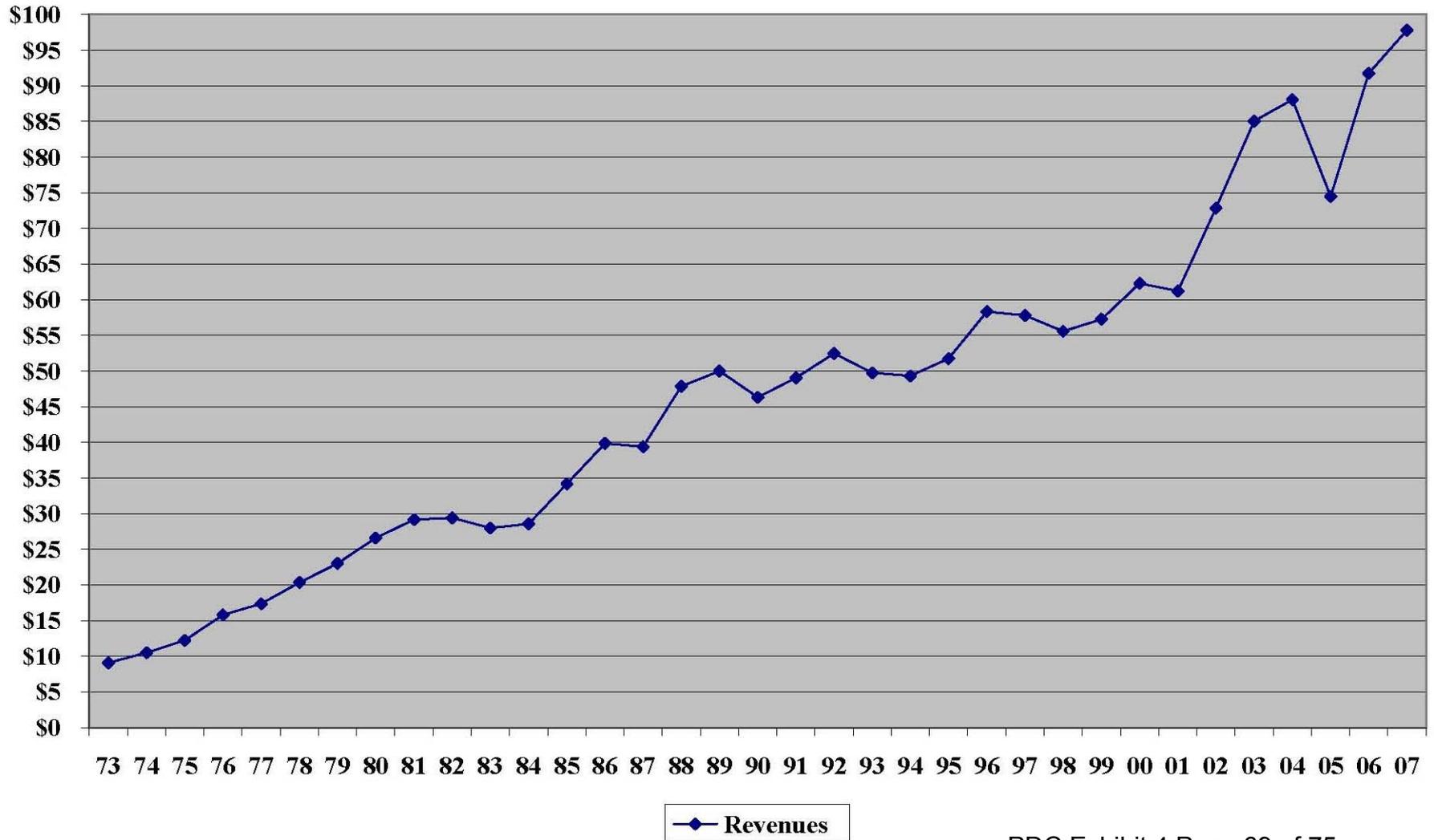
\$ millions



# Port of Tacoma Financial History

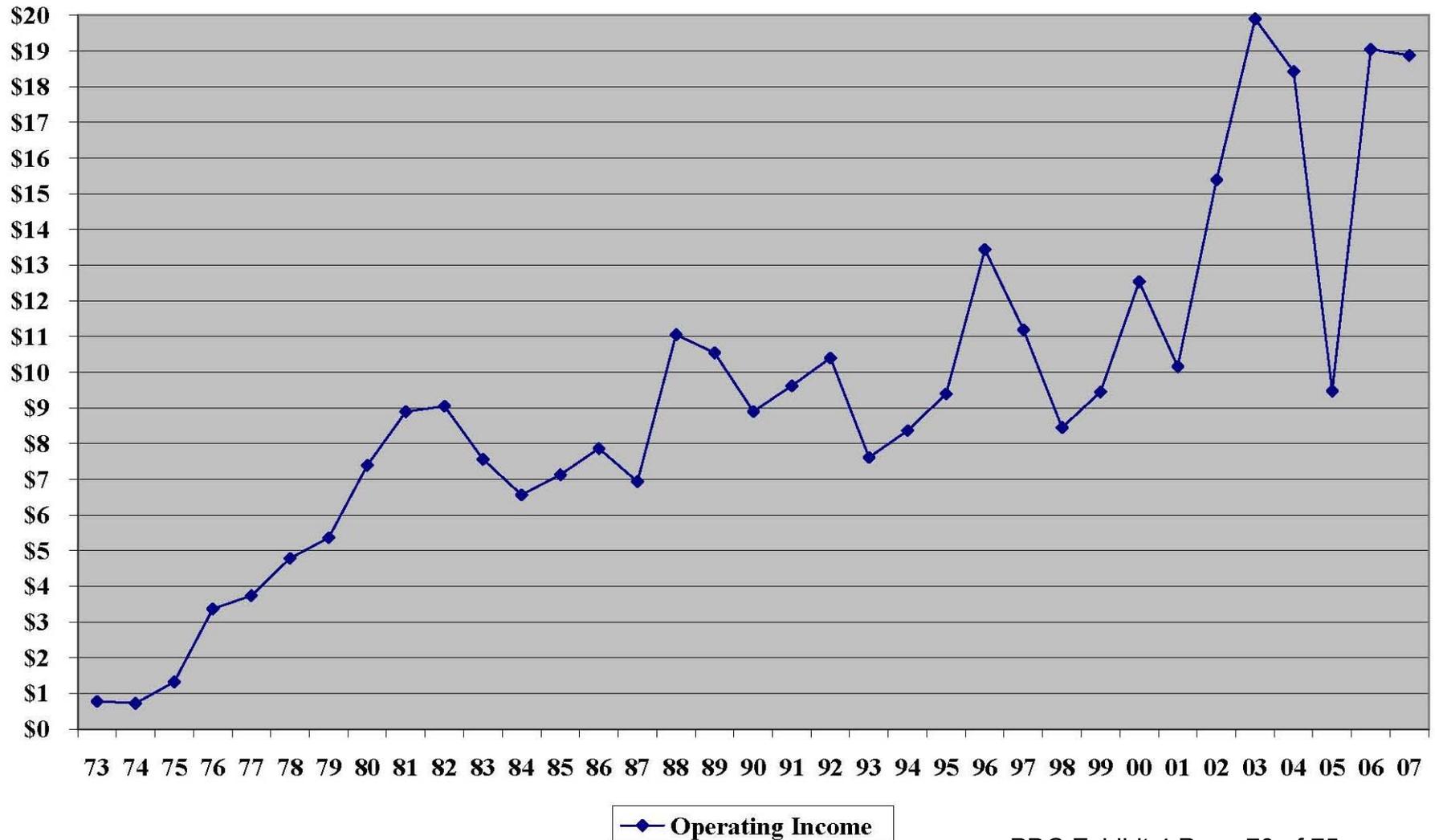
## Port of Tacoma - Revenues

\$ millions



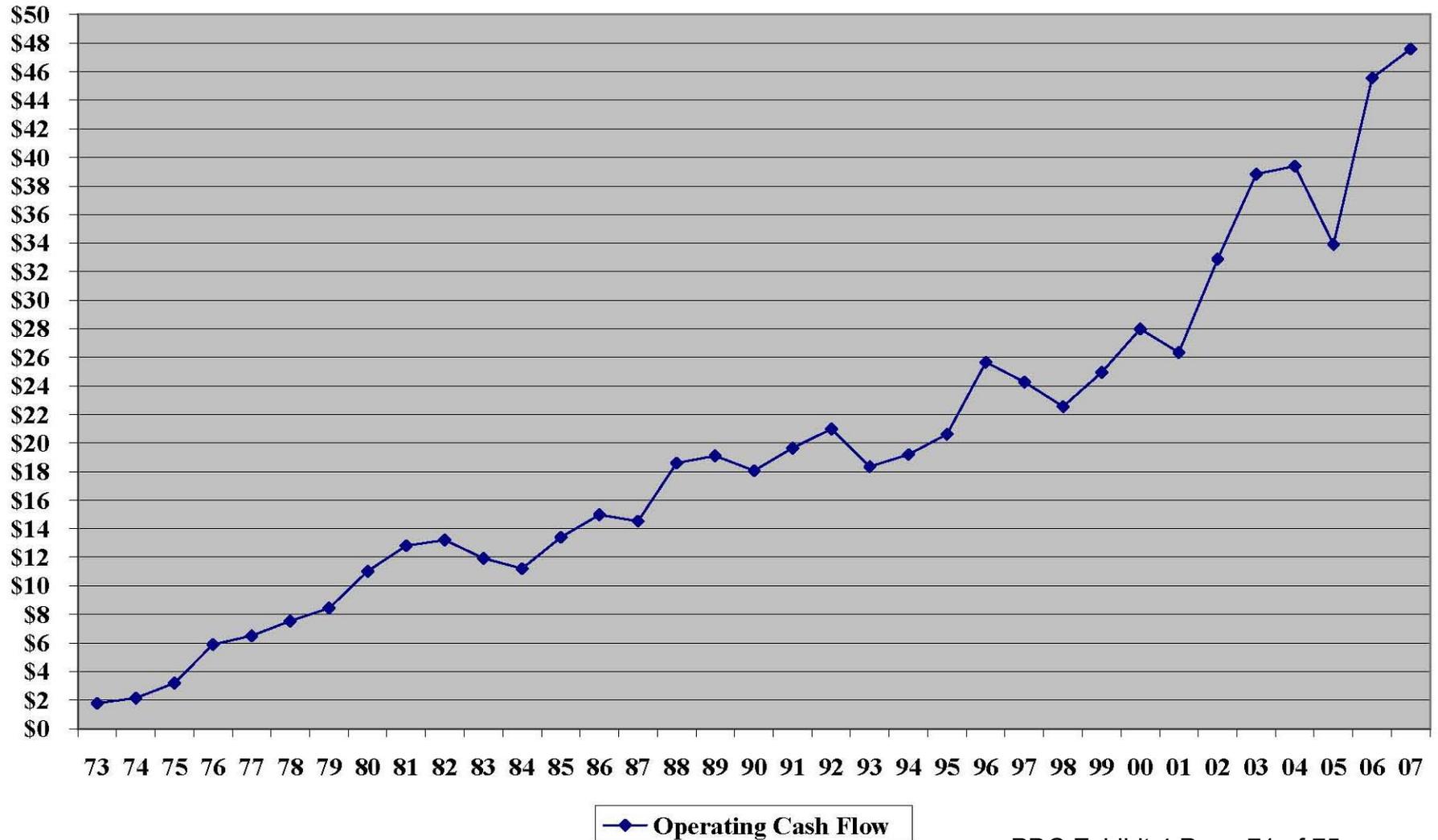
# Port of Tacoma Financial History

## Port of Tacoma - Operating Income (Includes Depreciation)



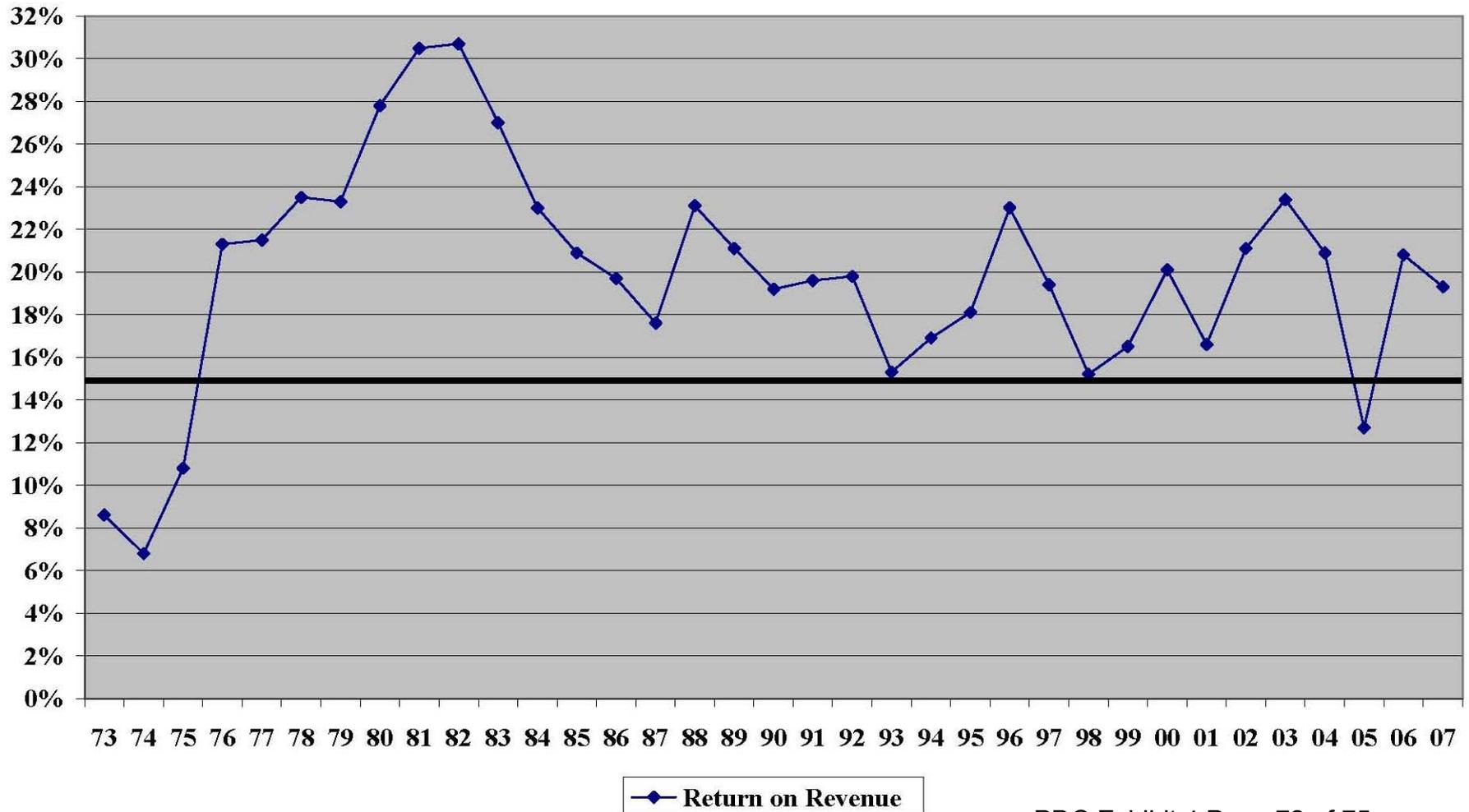
# Port of Tacoma Financial History

## Port of Tacoma - Operating Cash Flow (Excludes Depreciation)



# Port of Tacoma Financial History

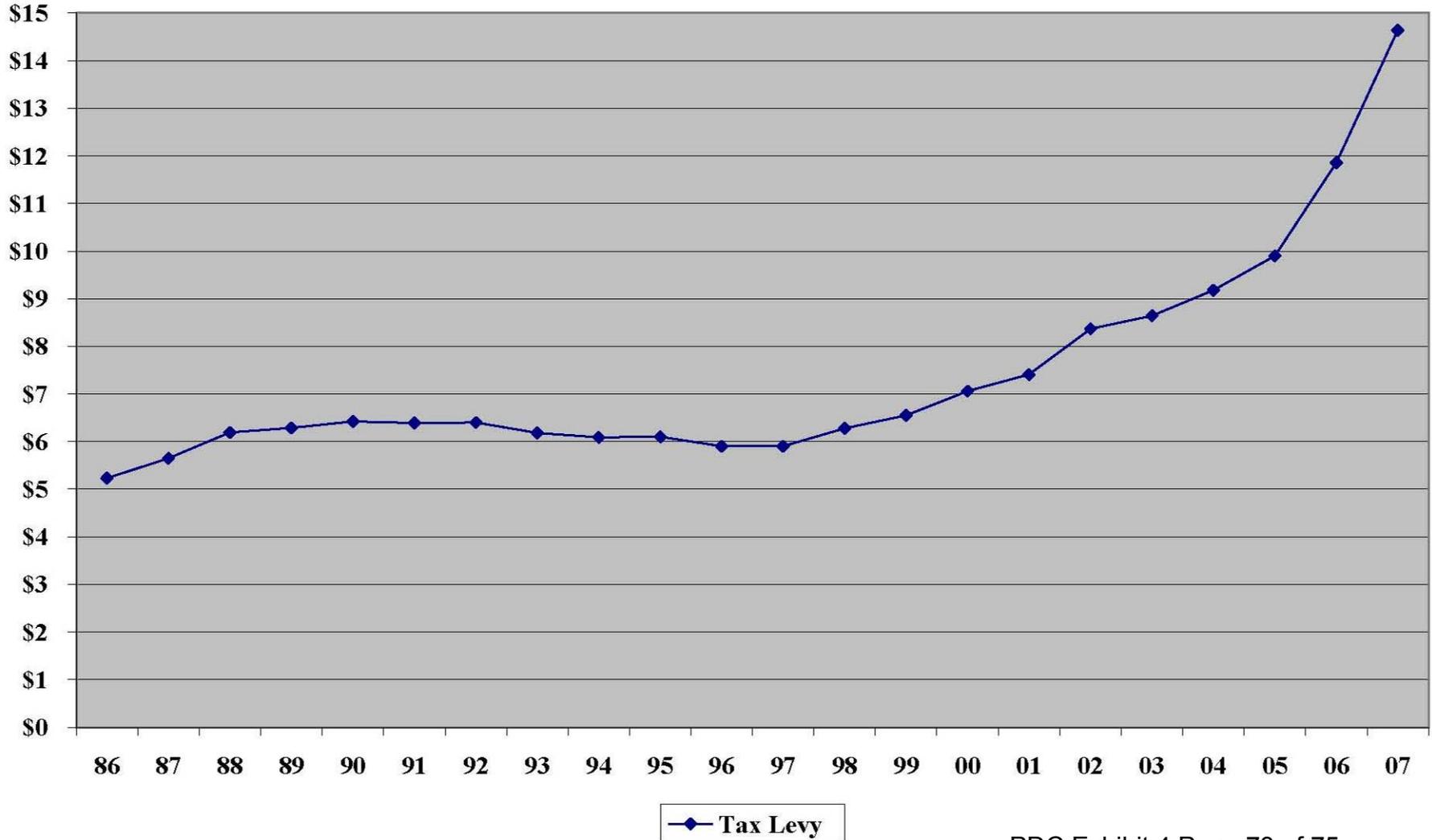
## Port of Tacoma - Return on Revenue (Operating Income Divided by Revenue)



# Port of Tacoma Financial History

## Port of Tacoma - Tax Levy

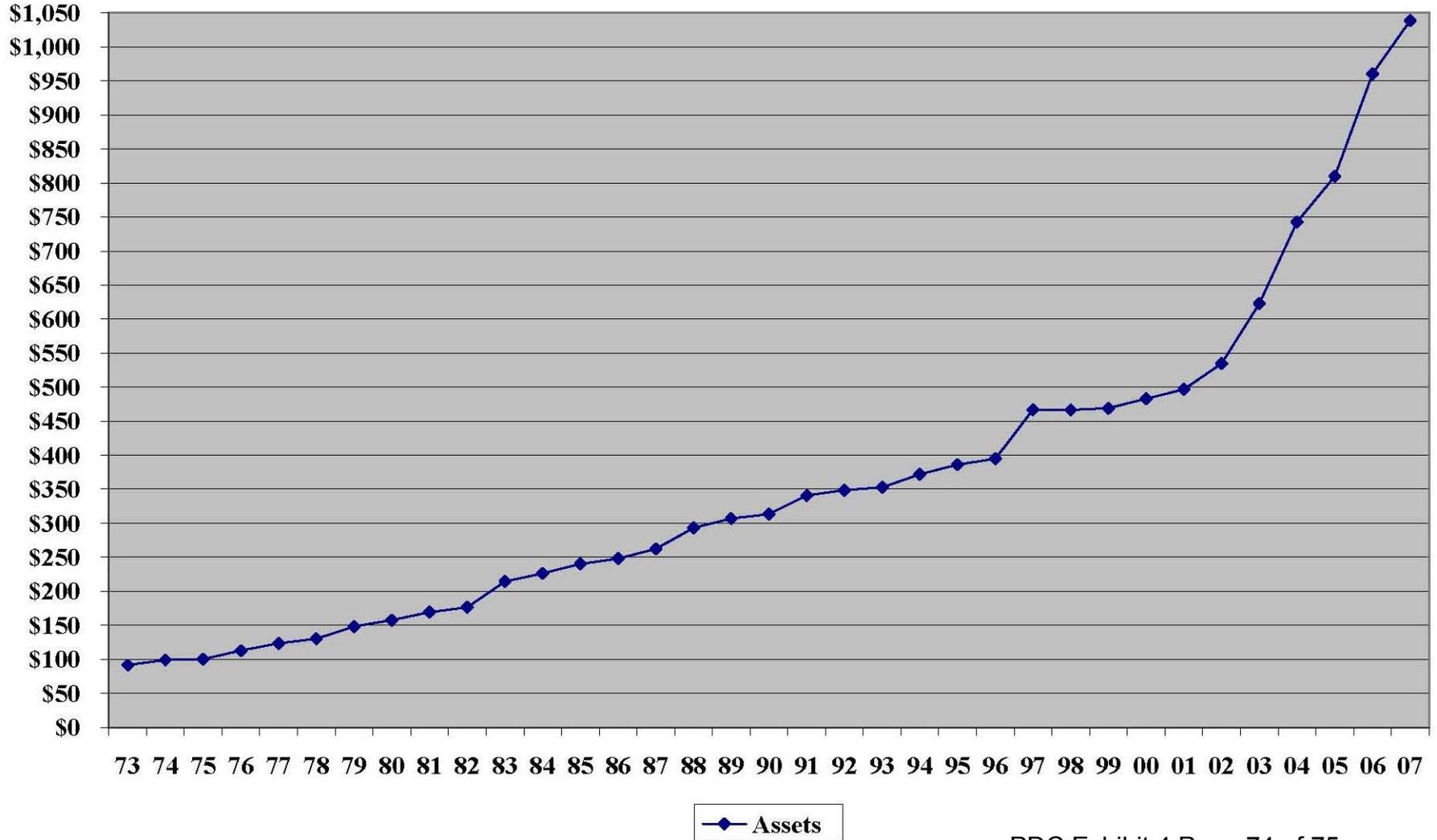
\$ millions



# Port of Tacoma Financial History

## Port of Tacoma - Assets

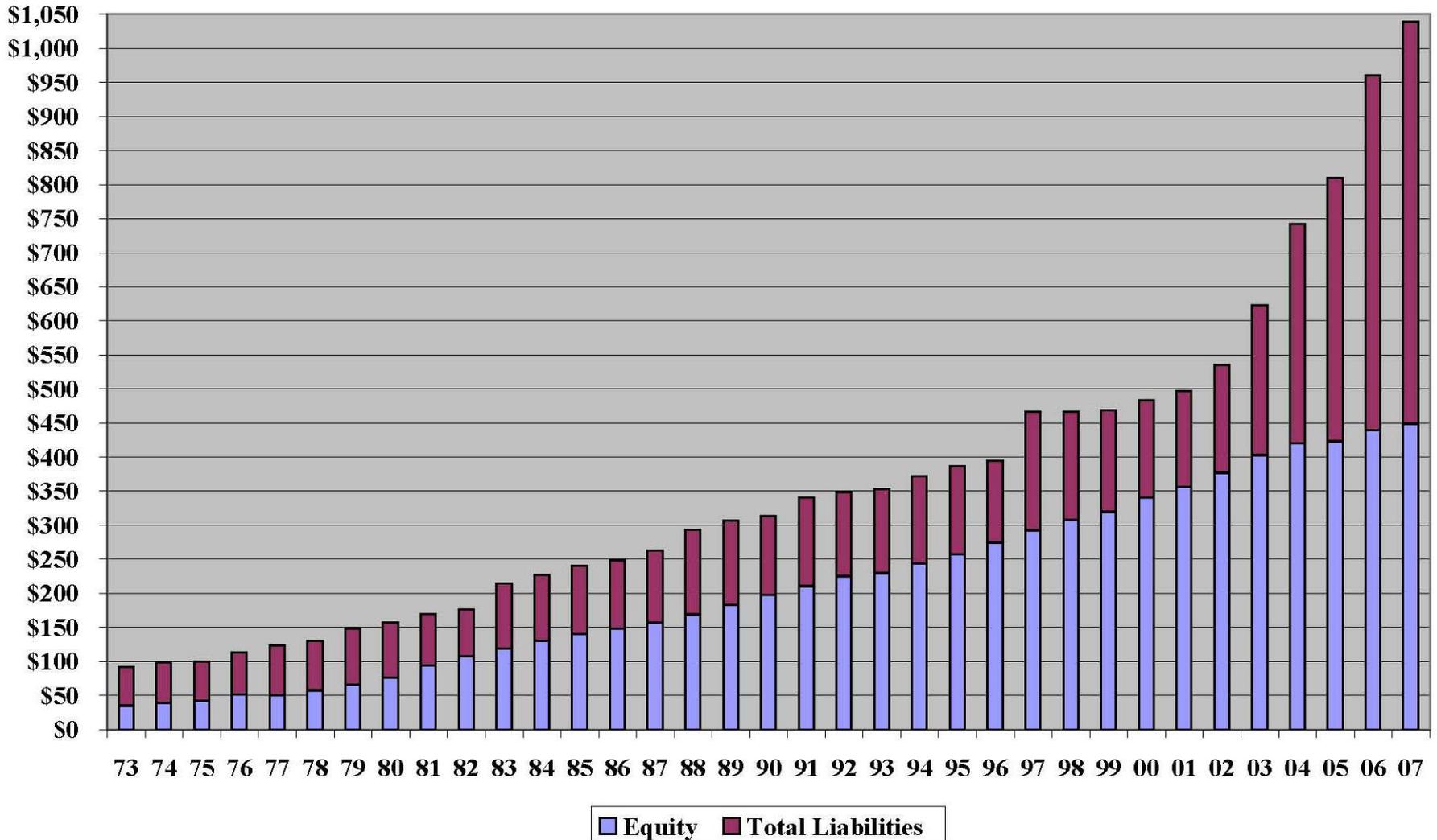
\$ millions



# Port of Tacoma Financial History

## Port of Tacoma - Total Liabilities & Equity

\$ millions





JASON M. WHALEN  
Direct Dial: (253) 327-1701  
jason@ledgersquarelaw.com

July 21, 2016

Via email: [william.lemp@pdc.wa.gov](mailto:william.lemp@pdc.wa.gov)

William A. Lemp, III  
Lead Political Finance Investigator  
State of Washington  
Public Disclosure Commission  
PO Box 40908  
Olympia, WA 98504-0908

Re: EDB's Response to 45-Day Citizens Action Complaint filed by Arthur West  
PDC Case 6627

Dear Mr. Lemp:

This firm represents the Economic Development Board For Tacoma-Pierce County ("EDB"). This letter serves as the EDB's response to your letter of July 14, requesting a response to the Citizens Action Complaint filed by Arthur West, under PDC Case No. 6627. For the reasons set forth below, there is no legal or factual basis for the Complaint filed by Mr. West and the EDB respectfully requests that the PDC close its investigation.

The EDB is Not a Public Office or Agency.

As an initial response to your letter, the EDB is not a public office or agency subject to the restrictions of RCW 42.17A.555. RCW 42.17A.005 (2) defines "Agency" as including all state agencies and all local agencies. A "state agency" is defined to include "every state office, department, division, bureau, board, commission, or other state agency. A "local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

By definition, the EDB is not a public agency, subject to the restrictions of RCW 42.17A.555. To the contrary, the EDB is a private Washington non-profit corporation, actively incorporated in the State of Washington since 1977. See Corporations Registration Detail provided by Washington Secretary of State, attached as Exhibit "A." As plainly stated on the front page of the EDB website ([www.edbtacomapierce.org](http://www.edbtacomapierce.org)), the EDB has a two prong mission: retention and recruitment of existing primary businesses in Tacoma-Pierce County. The EDB's work plan to accomplish its stated mission is developed by a volunteer board of directors. The work plan is executed by private staff members. The EDB's work plan for business recruitment

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LEDGERSQUARELAW.COM

and retention is funded by its member investors, both private and public. The EDB does not seek, as its primary or one of its primary purposes, to affect, directly or indirectly, governmental decision-making by supporting or opposing candidates or ballot propositions.

The EDB Sought a Legal Determination of the Propriety of a Proposed Local Initiative.

Because the EDB's stated mission is to recruit and retain primary businesses in Tacoma-Pierce County, the EDB had the requisite legal standing to pursue a *pre-election review* of the legal sufficiency of the proposed local initiatives, identified in your letter as Tacoma Citizen's Initiatives 5 and 6 ("Initiatives"). As such, the EDB was a Co-Plaintiff in the legal action ("Complaint") filed in the Pierce County Superior Court under Case No. 16-2-08477-5, which sought declaratory and injunctive relief given that the Initiatives were beyond the proper scope of the initiative power (the "Pierce County Legal Action"). On July 1, 2016, the Honorable Jack Nevin concurred and granted the Plaintiffs' (and the City of Tacoma's) requested declaratory and injunctive relief, which precluded placement of the Initiatives on the ballot.

The Washington Supreme Court has held that pre-election review is proper to determine whether such local initiatives are beyond the scope of the initiative power. See e.g., City of Port Angeles v. Our Water—Our Choice!, 170 Wn.2d 1, 239 P.3d 589 (2010). This exact issue (pre-election review of local initiatives involving water rights) was recently reaffirmed by the Washington Supreme Court in February 2016 in Spokane Entrepreneurial Center v. Spokane Moves to Amend the Constitution, 185 Wn.2d 97; 369 P.3d 140 (2016). As the Court noted, the petitioners who filed the declaratory judgment action challenging the validity of the Spokane initiatives included Spokane County, individual residents of Spokane, for-profit corporations and companies in Spokane, and nonprofit associations, including the Spokane Association of Realtors, the Spokane Building Owners and Managers Association, the Spokane Home Builders Association and the local chambers of commerce. Spokane Entrepreneurial, 185 Wn.2d at 101-102.

Like the EDB, the Spokane Entrepreneurial petitioners had legal standing to challenge the initiatives in the context of a pre-election declaratory judgment action in the superior court. Ultimately, the Washington Supreme Court agreed with the petitioners in that case and held that the proposed initiative exceeded the scope of local legislative authority and thus "should not be put on the ballot." Id., at 110.

In the pursuit of a legal determination of the validity of the Initiatives in this case, the EDB paid for legal services directly to this firm, as its legal counsel, from its operating budget. The EDB has not received, nor does it expect to receive, "contributions" toward any "electoral goals" as its focus was solely to obtain a pre-election legal ruling on the merits of the proposed Tacoma Citizen's Initiatives.

The EDB's Participation as a Co-Plaintiff in the Pierce County Legal Action was not tantamount to action as a "Political Committee."

Your letter also references Mr. West's alleged violations of RCW 42.17A.205, .235, and .240 by failing to register and report "campaign expenditures as a political committee." As you

are well aware, those referenced sections of the Act are dependent on a determination that the EDB was a “political committee.”

The EDB’s pursuit of a legal determination, as a Co-Plaintiff with the Port of Tacoma and the Tacoma-Pierce County Chamber of Commerce, does not make the EDB part of a “political committee” subject to the Fair Campaign Practices Act.

RCW 42.17A.005(37) defines a “political committee” as “any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.” See also Utter v. Building Industry Ass’n of Washington, 182 Wn.2d 398, 416, 341 P.3d 953 (2015)(discussing the “contribution” prong as requiring evidence that an organization “expects to receive or receives contributions toward electoral goals.”).

“Expenditure,” as defined in RCW 42.17A.005(20), includes a payment, contribution, subscription, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a promise to pay, a payment, or a transfer of anything of value in exchange for goods, services, property, facilities, or anything of value for the purpose of assisting, benefitting, or honoring any public official or candidate, or assisting in furthering or opposing any election campaign.

Pursuing legal rights (and paying legal fees to do so), under established Washington Supreme Court precedent does not fall within any reasonable definition of an “expenditure” by a “political committee.” As the Court of Appeals held in State ex rel. Evergreen Freedom Foundation v. Washington Educ. Ass’n., 111 Wn. App. 586, 599, 49 P.3d 894 (Div. II 2002), in determining whether an organization is a “political committee,” the organization making the expenditures must have as its “primary or one of the primary purposes . . . to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions.” As the Court noted in this case, “. . . if electoral political activity is merely one means the organization uses to achieve its legitimate broad nonpolitical goals, electoral political activity cannot be said to be one of the organization’s primary purposes.” Id. At 600.

It is undisputed that the EDB was a Co-Plaintiff in the Pierce County Legal Action. The EDB’s stated mission is to recruit and retain primary businesses in Tacoma and Pierce County. While the EDB was concerned that the Initiatives, if passed, would irreparably harm the EDB’s work plan and efforts to attract business in our region, seeking a legal determination on a purely legal issue in which the EDB (and the other Co-Plaintiffs) had legal standing, is a far cry from the requisite electoral political activity necessary to be deemed a “political committee” with the other Co-Plaintiffs.

In sum, the EDB participated in a legal process, and incurred legal fees, to bring an action for declaratory relief before the Pierce County Superior Court on the sole issue as to whether the Tacoma Citizens Initiatives were beyond the proper scope of local initiative power. The Superior Court found that the EDB and the other Co-Plaintiffs had standing and were entitled to the declaratory relief requested. Clearly, the lawful pursuit of declaratory relief in the Superior Court is not the kind of activity that is subject to the restrictions of RCW 42.17A.555.

The EDB Expects an Impartial Investigation of the Citizen's Action Complaint.

As referenced in your July 14 letter, the EDB understands that the PDC has opened a "formal investigation." From our review of the applicable provisions of the Washington Administrative Code, the initiation of a formal investigation is at the direction and discretion of the executive director of the PDC. WAC 390-37-060(1)(a)-(d). As indicated in subpart (d): "The director shall initiate a formal investigation whenever an initial review of a complaint indicates that a material violation of chapter 42.17A RCW may have occurred." We also understand, based on the cited WAC, that the executive director "shall initiate" an adjudicative proceeding or provide a report to the commission "whenever a formal investigation reveals facts **that the executive director has reason to believe** are a material violation of chapter 42.17A RCW and do not constitute substantial compliance." WAC 390-37-060(3).

Because the executive director retains significant discretion in these matters, we ask that the formal investigation include the EDB's concerns over the executive director's appearance of fairness in this matter.

Evelyn Fielding Lopez currently serves as Executive Director of the Public Disclosure Commission. In this capacity, it appears that Ms. Lopez has exercised her discretion under the WACs and has initiated this formal investigation.

Unfortunately, based on the EDB's review of public comments made by Ms. Lopez to the media and on her own social media (Facebook), it appears that Ms. Lopez cannot exercise her discretion in a fair and impartial manner. For instance, as recently as January 22, 2016, as indicated in the attached documentation, Ms. Lopez publicly commented (on a discussion of the recent methanol issue) that "**... we can't let the venal and irresponsible Port and Chamber continue with this nonsense—time for the real people of Tacoma to decide what is in the best interest of our city.**"

The EDB takes exception to being the subject of a formal investigation by the Executive Director of the Public Disclosure Commission where the Executive Director has clearly stated her bias toward members of the business community, including the Port, the Chamber, and, in our case, the EDB with the initiation of this formal investigation on a Citizens Complaint that facially lacks legal or factual merit.

Asserting one's opinion in the public forum is a matter of free speech. However, where one acts in the capacity of an executive director of an agency charged with discretionary review of allegations that may or may not rise to the level of a "formal investigation," we believe the appearance of fairness doctrine (RCW 34.05.425(3)) demands transparency and an unbiased review, analysis and determination of the issues.

Because the EDB does not believe Ms. Lopez can participate in this matter in an unbiased manner, we ask that the Commission exclude her from any further participation in the formal investigation or in the determination of any findings.

July 21, 2016  
Page 5

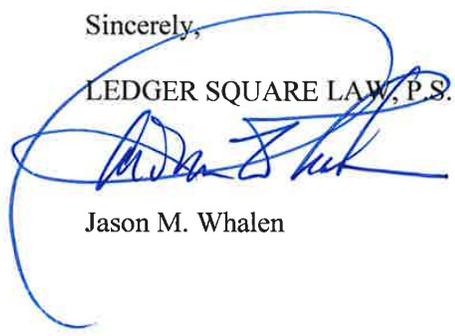
We trust that the information presented addresses the concerns and complaints alleged. As you will likely receive similar responses from the Port of Tacoma and the Pierce County Chamber of Commerce, we ask that you view the facts and analysis provided in their entirety and conclude that there is no merit to the Citizen's Action Complaint filed by Mr. West. We look forward to notification that the "formal investigation" has been closed with no findings.

Reservation of Rights. Because of the limited time the EDB was provided to respond to this Citizen's Complaint, the EDB reserves the right to provide additional authority with respect to all issues involved. Additionally, the EDB intends to join in any Request for Recusal and/or Motion for Disqualification which may be filed by any other party to this formal investigation under Case Nos. 6626, 6627, or 6628.

If you have any further questions or need further information, please feel free to call me.

Sincerely,

LEDGER SQUARE LAW, P.S.



Jason M. Whalen

JMW:mjr  
Encls

cc: Client  
Carolyn Lake, Counsel for Port of Tacoma  
Valerie Zeeck, Counsel for Tacoma-Pierce County Chamber of Commerce

Due to technical difficulties some search results may not be current or reflect the most recent filing. We are hoping to have this corrected shortly.

**ECONOMIC DEVELOPMENT BOARD FOR TACOMA-PIERCE COUNTY**



UBI Number 601168742  
 Category REG  
 Profit/Nonprofit Nonprofit  
 Active/Inactive Active  
 State Of Incorporation WA  
 WA Filing Date 10/11/1977  
 Expiration Date 10/31/2016  
 Inactive Date

Duration Perpetual

Charity This corporation is also a charity. [View Info » \(http://www.sos.wa.gov/charities/search\\_detail.aspx?charity\\_id=36760\)](http://www.sos.wa.gov/charities/search_detail.aspx?charity_id=36760)

**Registered Agent Information**

Agent Name Rebecca Ray  
 Address 950 PACIFIC AVE #410

City TACOMA  
 State WA  
 ZIP 98401

**Special Address Information**

Address PO BOX 1555  
 City TACOMA  
 State WA  
 Zip 98401

**Governing Persons**

Title	Name	Address
President	KENDALL, BRUCE	PO BOX 1555 TACOMA, WA 98401
Secretary	MCCARTHY, PAT	PO Box 1555 TACOMA, WA 98401
Vice President	SUESS, SUSAN M	PO BOX 1555 TACOMA, WA 98401

**EXHIBIT**     A



**Justin D. Leighton** · Executive Director at Washington State Transit Association

I am certain we could use less of this "key ingredient" in our lives. <https://www.washingtonpost.com/.../by-2050-there-will-be.../>

Like · Reply · 3 · Jan 22, 2016 4:14pm



**Wade Neal** · Assistant Executive Director at The Grand Cinema

If the writer does not know "the facts" why is he clearly for the plant?

Like · Reply · 8 · Jan 22, 2016 3:50pm



**Evelyn Fielding Lopez** · Tacoma, Washington

This may be the most ridiculous explanation I've read lately: "It's new because it's environmentally advanced." Talk about Wyle E. Coyote and Acme products--that line is right out of an Acme products advertisement! Tacoma, we can't let the venal and irresponsible Port and Chamber continue with this nonsense--time for the real people of Tacoma to decide what is in the best interest of our city.

Like · Reply · 7 · Jan 22, 2016 3:01pm



**Ladymae Walters**

If environmental agencies permit this catastrophic disaster in the making they are not doing their job .  
They are the first ones to shout about climate change , less snow cap , receding glaciers .  
Warm water low water in our rivers .  
If they permit this in the heart of a city .  
They've been bought !  
It's not rocket science to know it's not a good idea ...  
Save Our Water says recall Port Commissioners asap .

Like · Reply · 5 · Jan 19, 2016 9:20pm



**Kathlyn Neal** · Psychotherapist, Clinical Social Worker at Kathlyn Neal LICSW

In addition to the health and safety concerns of the proposed methanol plant to current Tacoma residents and the depletion of our natural resources, I wonder how many corporations/businesses will pass over Tacoma as their future home should it be built. This is not an effective way to attract future commerce. In fact, it seems contrary to attracting future business. I hear a lot of talk about how cutting edge and less polluting this plant would be...compared to what? Older, more polluting technology? FACT: This methanol plant will cause more pollution to our land and waters and people than if it were not built.

Like · Reply · 9 · Jan 18, 2016 9:19pm



**Ladymae Walters**

Look at the big players involved with Northwest innovations ..  
It says it all .  
Sad day for Tacoma if this is approved .

Like · Reply · 5 · Jan 18, 2016 8:29am



**Nancy McFarland** · Tacoma Community College

I've read about this methanol plant to to understand why there is so much public outcry; this is really not a good deal for Tacoma. Let's not lose sight of the enironmental concerns because we are excited about desparately needed jobs. Yes, we need more jobs in Tacoma, but we do not need this methanol plant! I am sure there are many other corporations in the United States that would be interested in Tacoma if they were given some incentives.

COMMENTS

7 Comments

Sort by Newest

Add a comment...



**Gavin Guss**

i'm pleased to see all the good ideas and intelligent comments on this thread. it still confounds me how opaque our elected representatives remain when the issue requires direct and immediate dialog.

Like · Reply · 3 · Feb 2, 2016 2:17pm



**Brett Ogin** · Works at Westcoastbiasedsports.com

warehouses, manufacturing, giant hotel and casino (sorry that's me being selfish) all sound better to me than toxic gas emitting time bomb.

Like · Reply · 3 · Feb 1, 2016 10:30am



**Evelyn Fielding Lopez** · Tacoma, Washington

The idea of placing warehouses on the Tideflats is interesting. If freeway access were improved, that might be a better option than converting good farmlands into warehouses in Fife and Puyallup. There should be a comprehensive discussion about what we want the future of Tacoma to look like--rather than leasing land to the first suitor without any critical thought or discussion. I remain deeply disappointed in the Port Commissioners, but maybe we can use the scoping and EIS process to have those critical discussions. I expect our City leaders to participate as well--what is the point of having vision exercises like Tacoma 2025 if you don't do anything to help those positive goals and visions become reality?

Like · Reply · 3 · Feb 1, 2016 9:30am



**Ladymae Walters**

The visions project ...  
About \$ 225 , 000 another waste of tax dollars ....

Like · Reply · Feb 2, 2016 7:24pm



**Alvarita Allen** · Tacoma, Washington

Read the article in Time Magazine on methanol facilities. They are leaking in many locations throughout the world, including the U.S.A. Will Tacoma and the Port guarantee to buy my home at the "former" value when the methanol facility here leaks? If NOT, then this plant should not be built.

Like · Reply · 4 · Feb 1, 2016 8:22am



**Pamela Taylor** · Works at CEO Taylor Household

Anyone remember the superfund clean up!? Such a colossal waste of money and time to only turn around and do this. Oh and whoever is operating here. They should know that in the event of an earthquake 6.8 or higher, break out the surfboard and prepare for the 12 foot high wall of water that will be coming for them

[https://en.m.wikipedia.org/wiki/Tacoma Fault](https://en.m.wikipedia.org/wiki/Tacoma_Fault)

**POLITICS & GOVERNMENT** MARCH 10, 2016 5:58 PM

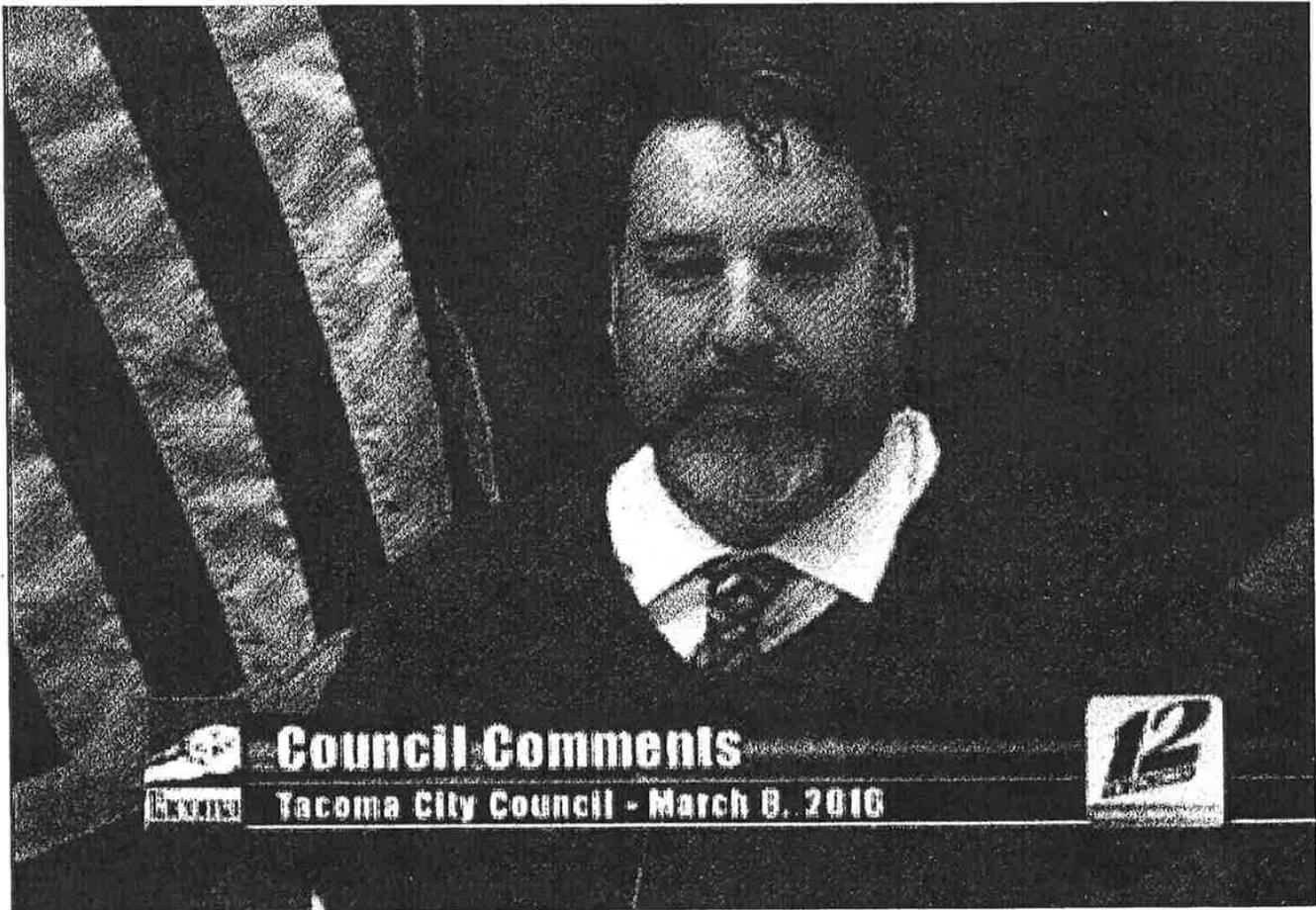
# Fashion statement or political message? Tacoma councilman's sweater joins methanol debate

## HIGHLIGHTS

Dozens of methanol plant opponents wore red at City Council meeting

Protesters viewed Councilman Campbell's sweater as a sign of solidarity

Council members say they want to raise questions, but not influence study



Her caution made sense to her colleagues, who seconded her remarks at last month's meeting. Some of them have raised questions about the project, including Councilman Ryan Mello, who submitted a two-page letter detailing the issues he hopes the city planning department will consider in its review.

Not present at last month's meeting was Councilman Robert Thoms, who wrote a guest column in Sunday's News Tribune that advocated for a less industrial future at the port.

"My vision is of a city that is less industrial than its past," Thoms wrote. "We can have jobs and commerce and quality of life, but we also must have a better understanding of what the parcels in the port and surrounding area are able to handle, and what are the right projects and zoning to create the future we want."

To some outside city government, that was the first sign that the council was breaking its perceived silence on the project.

Evelyn Fielding Lopez, an attorney and chairwoman of the state Public Disclosure Commission who lives in Tacoma, said she thought the council was being too cautious with the stance its members articulated last month.

"They have a really important role because they represent the citizens of the city, and if they engage, great, but to stand on the sidelines and say 'We can't be involved whatsoever,' that's not great," Lopez said.

Three council members reached by The News Tribune this week would not describe the legal advice they received regarding how they could talk about the methanol proposal.

They said their decisions were informed both by their experiences navigating past controversial projects and by the regular guidance they receive on maintaining the appearance of fairness as elected officials.

City Attorney Elizabeth Pauli also declined to describe the advice she gave to the council regarding the project. But she did say no law or precedent prohibits council members from discussing a topic like the methanol plant.

"There's no such thing," Pauli said. "There are some different concepts that have probably led to caution with regard to what they can and can't say and when."

Other elected bodies in the state have opened themselves to pricey lawsuits when they've either taken gifts from a project applicant or abruptly put up obstacles to projects that otherwise would have complied with local zoning rules. In one case, the city of Spokane had to pay hundreds of

sell it back to the US at a profit.  
5. No one has addressed the possible explosion hazard.  
6. All this for 250 jobs?  
And the TNT appears to support this?

Like · Reply ·  7 · Apr 24, 2016 9:18am



**Evelyn Fielding Lopez** · Tacoma, Washington

City and Port leaders should embrace the notion that they are elected to serve the people. Yes, use social media. Yes, ask the community what their vision for Tacoma and the Port might be. Yes, find out what industrial use is forward looking and resource appropriate. Yes, have a public discussion before the lease is signed. More asking, more consulting, less telling. Be respectful of the people you serve. This is not easy--but we will all benefit. It is a very good thing to have an engaged and active community--use that resource.

Like · Reply ·  6 · Apr 24, 2016 9:10am



**Jerry Bauer**

"If you have a community that's against everything, it's awfully hard to recruit businesses that want to come here," Port Commissioner Don Johnson

I'm pretty sure no one would have been against either of the other two options you guys nixed

Like · Reply ·  5 · Apr 24, 2016 8:53am



**Debby Herbert**

The politicking has already begun for the next boondoggle, "If you have a community that's against everything, it's awfully hard to recruit businesses that want to come here," Port Commissioner Don Johnson said

The issue was the largest methanol plant in the world being built in the middle of town. Obvious twisting of the conversation. Hundreds and thousands of residents have sent letters to the port and officials insisting on sustainable jobs and industry. Selling off our limited natural resources of barely breathable air, water and power to the highest bidder is not sound in any way, including economically, when all accounted for. We just barely dodged a bullet and we have to stay involved to not let this happen again.

Like · Reply ·  10 · Apr 24, 2016 10:23pm · Edited



**Ladymae Walters**

Save Tacoma Water  
Amendment 5 Initiative 6  
The People's Right to Water Protection Ordinance .  
Will not get to the ballot box without City of Tacoma registered voters signing the petitions .  
SaveTacomaWater.org.

Like · Reply ·  4 · Apr 24, 2016 8:17am



**Marba Armstrong Cowan** · St. Martin's University

Hemp production for biodegradable plastics and earth friendly textiles. Who knows what other petroleum based products could be replaced?

Like · Reply ·  3 · Apr 24, 2016 6:51am



**Veronica Niechajczyk**

Valarie S. Zeeck  
Direct: (253) 620-6427  
E-mail: vzeeck@gth-law.com

July 21, 2016

**VIA EMAIL**

William A. Lemp, III  
(William.lemp@pdc.wa.gov)  
Lead Political Finance Investigator  
State of Washington  
Public Disclosure Commission  
PO Box 40908  
Olympia, WA 98504-0908

***RE: Case 6628 - Tacoma-Pierce County Chamber Response to Complaint***

Dear Mr. Lemp:

I represent the Tacoma-Pierce County Chamber (“Chamber”). This letter is the Chamber’s response to the letter from the Public Disclosure Commission (“PDC”) dated July 14, 2016, regarding the complaint referenced above (“Complaint”).

**OBJECTION TO PARTICIPATION IN FORMAL INVESTIGATION**

The Chamber assumes that the PDC opened a “formal investigation” based on an determination by the Executive Director of the Public Disclosure Commission, Evelyn Lopez, that a material violation of RCW 42.17A may have occurred.<sup>1</sup> If that is inaccurate, please advise immediately. If the Chamber’s assumption is accurate, the Chamber objects to participating in this investigation because it has information which raises questions about Ms. Lopez’ ability to fairly make such an initial determination. The Chamber requests that this investigation be suspended until the full Commission can determine whether it should proceed based on Ms. Lopez’ initial determination. As will be more fully set out in documents to be filed shortly, Ms.

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<sup>1</sup>WAC 390-37-060(d) states: “the director shall initiate a formal investigation whenever an initial review of the complaint indicates that a material violation of chapter 42.17A RCW may have occurred.”

Reply to:  
Tacoma Office  
1201 Pacific Ave., Suite 2100 (253) 620-6500  
Tacoma, WA 98402 (253) 620-6565 (fax)

Seattle Office  
600 University, Suite 2100 (206) 676-7500  
Seattle, WA 98101 (206) 676-7575 (fax)

Lopez should recuse herself or be disqualified from this case (and related cases 6627 and 6626) based on personal bias with respect to the subject matter of the complaint. The Executive Director has on multiple occasions publicly voiced support for proponents of the STW Initiatives (as defined below) and related actions by a small group of citizens in the City of Tacoma. Related to these issues, Ms. Lopez has referred to the Chamber and the Port of Tacoma as “venal and irresponsible.” At a minimum, her conduct raises the appearance that she cannot be fair in the handling of this case. The Executive Director has additional duties related to the ultimate resolution of the Complaint, as set out in WAC 390-37-060, without limitation. The Chamber objects to any participation by Evelyn Lopez in this matter, and further requests that the Commission investigate her conduct with regard to the Complaint to date.

Without waiver and reserving all rights to challenge any determination by the Commission, including without limitation, the validity of the Executive Director’s initial determination that a “formal investigation” was warranted, the Chamber submits the following response to the PDC’s request for information.

#### **FACTS**

On March 7, 2016, a citizens’ group called Save Tacoma Water filed two initiatives (the “SWT Initiatives”) with the Tacoma City Clerk. The STW initiatives were flagrantly and facially illegal, at least in part, because, by their own language, they asserted that they were superior to the Federal and Washington State Constitutions and to Washington State law. They further stated that no state or federal court could determine they were illegal.

The Chamber, with other plaintiffs, brought a declaratory judgment action in the Superior Court of Pierce County to determine whether the STW Initiatives exceeded the scope of local initiative power. The City of Tacoma, named as a defendant, agreed with the plaintiffs that the STW Initiatives could never become part of the Tacoma City Code and City Charter, because they were facially illegal in that they exceeded the scope of any authority the City of Tacoma has. The Court agreed with the plaintiffs and the City. It determined that, in fact, the STW Initiatives were illegal, and permanently enjoined their placement on the ballot.

#### **SUMMARY OF RESPONSE**

The complaint asserts the Chamber violated Washington's Fair Campaign Practices Act (FCPA)<sup>2</sup> by failing to register as a political committee and report contributions and expenditures related to the lawsuit testing the STW Initiatives. The complaint should be dismissed because

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<sup>2</sup> RCW Ch. 42.17A

the Chamber is not a public agency, filing a lawsuit to determine whether an initiative is legal is not political activity contemplated by the FCPA, and the STW Initiatives were not “ballot propositions” as defined by the FCPA.

**A. The Chamber cannot violate RCW 42.17A.555, which by its terms applies only to “elective officials,” public agencies, their employees and public resources.**

In relevant part, RCW 42.17A.555 prohibits elected officials or public employees from using public facilities and resources to promote or oppose any ballot proposition. The Chamber is a private, not public, organization, and thus it cannot have violated the statute.

The Chamber is Washington non-profit corporation. It’s President and Board of Directors are not elected by a public vote, but rather are selected by process outlined in its duly adopted bylaws. Its resources are not public resources, but are rather private in nature, consisting of membership dues, event admission fees, etc. As a result, the PDC must dismiss the complaint asserting that the Chamber has violated this statute.

The complaint either misapprehends the legal status of the Chamber or erroneously believes that filing a lawsuit as a plaintiff with other entities converts the Chamber to a “public agency.” This is facially absurd. No legal authority can be cited in support of such a proposition.

**B. The Chamber did not otherwise violate the FCPA.**

The complaint also alleges the Chamber violated RCW 42.17A.205, 235, and 240 by failing to register as a political committee and report its campaign contributions and expenditures. The Chamber is not a “political committee” as defined by the FCPA, and the STW Initiatives are not “ballot propositions” as defined by the FCPA.

**1. The Chamber is not a political committee and as a result, cannot violate RCW 42.17A.205, and .235.**

By their plain language, RCW 42.17A.205 and .235 apply only to “political committees” as defined at RCW 42.17A.005(37):

Political committee means any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.

The Chamber does not meet the definition of a political committee with respect to the STW Initiatives for at least two reasons. First, it was not acting (receiving contributions or

making expenditures) “in support of, or opposition to” political activity as contemplated by the FCPA. Second, the STW Initiatives were not “ballot propositions” as defined by the FCPA.

**a. The Chamber was not acting “in support of, or opposition to” political activity as contemplated by the FCPA.**

Providing further definition of the term “political committee,” the Washington Court of Appeals has held that “an organization is considered a political committee under the FCPA by either (1) expecting to receive or receiving contributions, or (2) expecting to make or making expenditures to *further electoral political goals*.” *State ex rel. Evergreen Freedom Found. v. Washington Educ. Ass'n*, 111 Wn. App. 586, 599, 49 P.3d 894 (2002) (Emphasis added). Notably, the organization must have as “its primary or one of the primary purposes” to affect governmental decision making “by supporting or opposing candidates or ballot propositions.” *Id.* at 599.

The Chamber filed a lawsuit not to “further electoral political goals,” but rather to obtain a neutral judicial determination as to whether the STW Initiatives were lawful. Simply, the Chamber engaged in “legal activity,” not “political activity” or “campaign activity.” Nothing in the language of the FCPA requires reporting costs or contributions related to filing a legal challenge to an illegal ballot measure. If the legislature had intended to make legal activity subject to the public disclosure laws, it would have included language to that effect. No reported Washington case has held that seeking a judicial determination of the validity of a ballot measure is “political” activity” or constitutes “promoting an electoral political goal.” In this case, the Pierce County Superior Court followed a recent decision of the Washington Supreme Court and found the STW Initiatives exceeded the scope of local initiative power and were thus illegal.

In *Voters Educ. Comm. v. Washington State Pub. Disclosure Comm'n*, 161 Wn.2d 470, 488, 166 P.3d 1174 (2007), the Washington State Supreme Court upheld the FCPA in the face of a vagueness challenge. In doing so, the court held that a person of ordinary intelligence would have a reasonable opportunity to understand the meaning of “in support of, or opposition to” in the definition of in the “political committee.” In reaching this conclusion, the Court relied upon a decision of the United States Supreme Court<sup>3</sup> which defined the terms “oppose” and “support” in terms of *communications* that refer to a candidate and promote or attack that candidate. *Id.* at 488 n.9. In other words, as the Court acknowledged, the statute is only constitutional insofar as a reasonable person would understand what “oppose” and “support” mean, and a reasonable person would understand those terms to refer to *communications or advertisements* in support of

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<sup>3</sup> *McConnell v. Federal Election Commission*, 540 U.S. 93 (2003).

or opposing a candidate or ballot measure. Filing a lawsuit does not fit within this definition, no reasonable person would understand these terms to so mean, and the term would render the statute unconstitutional if so interpreted.

The purpose of the FCPA is to ensure that the financing of *political campaigns and lobbying* are fully disclosed to the public. RCW 42.17A.001. The FCPA only applies to organizations that have a “primary purpose” of campaigning, lobbying, or electioneering in favor or against a candidate or ballot proposition. The law is designed to let the voters know who is trying to sway their vote.<sup>4</sup> Filing a lawsuit to determine the legality of a local initiative is not advertising, communicating with voters, campaigning, lobbying or electioneering.

Because the Chamber engaged in legal activity – seeking a neutral, judicial decision of a Washington State Judicial Officer – rather than attempting to sway voters or promote or oppose an issue electorally, the PDC should dismiss the Complaint.

- b. Even if the Chamber was engaging in support of or opposition to the STW Initiatives (it was not), it would still not meet the definition of a “political committee” because the STW Initiatives are not “ballot propositions” as defined in the FCPA.**

As the Ninth Circuit held in *Human Life of Washington Inc. v. Brumsickle*, 624 F.3d 990 (9th Cir. 2010), the FCPA is constitutional because it is narrow, and its requirements are substantially related to an important government interest. The *Brumsickle* court explained that the FCPA only applies to “expenditures and advertisements made in conjunction with *an ongoing election or vote*. . . . By definition, disclosure obligations do not apply *absent a pending election or ballot initiative campaign*.” *Id.* at 1018 (emphasis added).<sup>5</sup> Here, any purported expenditures were made prior to any ballot initiative campaign, and were in fact related to challenging the initiation of such a campaign on the grounds that the ordinance was facially unconstitutional and beyond the scope of the local initiative power. There was no “ballot initiative campaign,” because the measure was never submitted to the voters because it was unconstitutional and beyond the scope of the local initiative power. *See, e.g.*, RCW 29A.04.091 (defining “Measure” as “any proposition or question *submitted to the voters*”) (emphasis added).

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<sup>4</sup> *Voters Educ. Comm., supra*

<sup>5</sup> Moreover, if a proposed local initiative is facially beyond the local initiative power and unconstitutional, it can logically never become part of a legitimate “ballot initiative campaign.” *See also id.* at 1019 (“An organization engaging in issue advocacy like Human Life may avoid disclosure requirements any time that the issue about which it is speaking is not the subject of a ballot initiative or other public vote. Once the issue becomes the subject of a ballot initiative campaign, Human Life may continue to advocate all it wants; the only difference is that it must provide certain disclosures at times tied to the date of the vote.”).

This precise issue was addressed by a Washington court, and in *State of Washington v. Evergreen Freedom Foundation*, No 15-2-01936 (Thurston Cnty. Sup. Ct. 2015),<sup>6</sup> the court dismissed an FCPA suit premised on legal expenditures related to challenged proposed ballot initiatives.<sup>7</sup> As the court explained in dismissing the suit, “unless there is clear and unambiguous guidance in the statutes, that people cannot be held to have violated these regulations.” In *Evergreen*, the court held that the FCPA does not clearly encompass legal expenditures “before the matter ever went to any kind of vote.” The same result should be reached here. *Order Granting Defendant’s Motion to Dismiss, State of Washington v. Evergreen Freedom Foundation*, No. 15-2-01936-4 (filed May 17, 2016) (attached).

### **FURTHER RESERVATION OF RIGHTS**

Although the statutory process for responding to a citizen complaint provides 45 days for a determination to be made as to whether legal action will be taken, the Chamber was required to respond to the complaint within five business days. The Chamber objects to the minimal time provided by the Commission, and reserves the right to provide additional authority with respect to all issues involved.

As a second reservation of rights, the Chamber believes that, as a matter of law, it is not required to disclose to the Commission 1.) whether it paid for legal services with respect to the declaratory judgment action and 2) if it did pay for legal services, how much was spent. It respectfully declines to answer those questions at this time. The Chamber also believes that it is not required to respond to the remainder of the questions at the top of page two of your letter dated July 14, 2016. The Chamber voluntarily, however, responds that any work related to the declaratory judgment action referenced herein was taken to determine the legal validity of facially and flagrantly unconstitutional local ballot initiatives, and for no other purpose. The Chamber voluntarily responds that it denies working with the Port of Tacoma and the Economic Development Board of Tacoma-Pierce County as a political committee to oppose the STW Initiatives.

With respect to its objection to the Executive Director’s participation in this matter, the Chamber will file additional information or join in filings by other respondents within the near future.

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<sup>6</sup> *Oltman v. Holland Am. Line USA, Inc.*, 163 Wn.2d 236, 248, 178 P.3d 981 (2008) (“Insofar as the analysis in another trial judge’s decision might be helpful, there is no rule or precedent that bars its consideration by a trial judge. Further, trial judges can be presumed to know that other trial court rulings are not precedential.”).

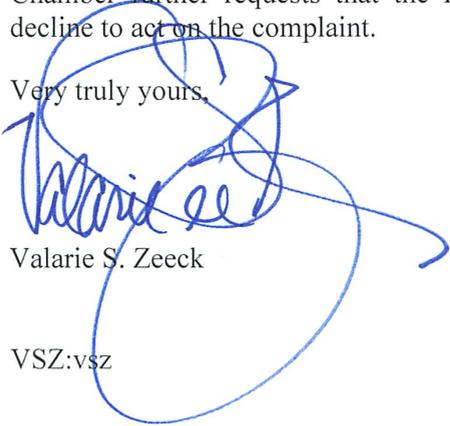
<sup>7</sup> See Defendant’s Motion to Dismiss, *State of Washington v. Evergreen Freedom Foundation*, No 15-2-01936 (Filed April 4, 2016) (attached).

Gordon Thomas Honeywell<sup>LLP</sup>  
July 21, 2016  
Page 7

### CONCLUSION

For the reasons stated herein, the Chamber denies that it was or is required to register as a political committee and disclose contributions and expenditures related to filing a lawsuit in which the STW Initiatives were found to be illegal as in excess of local initiative power. The Chamber further requests that the Public Disclosure Commission and the Attorney General decline to act on the complaint.

Very truly yours,



Valarie S. Zeeck

VSZ:vsz

[4834-3701-3557]

**PORT OF TACOMA LITIGATION MATTERS  
2000-2016**

<b>PIERCE COUNTY SUPERIOR COURT</b>					
<b>LITIGANT</b>	<b>CAUSE NUMBER</b>	<b>TYPE</b>	<b>CASE TITLE</b>	<b>FILE DATE</b>	<b>TYPE</b>
PORT OF TACOMA	<u><b>09-2-14216-1</b></u>	RSP	ARTHUR WEST VS. CONNIE BACON	10/06/09	Public Records Act (PRA)
PORT OF TACOMA	<u><b>08-2-04312-1</b></u>	DEF	ARTHUR WEST VS. PORT OF TACOMA	01/14/08	PRA
PORT OF TACOMA	<u><b>09-2-07119-1</b></u>	DEF	ARTHUR WEST VS. PORT OF TACOMA	03/19/09	PRA
PORT OF TACOMA	<u><b>15-2-06420-2</b></u>	DEF	ARTHUR WEST VS. PORT OF TACOMA	03/02/15	PRA
PORT OF TACOMA	<u><b>16-2-07446-0</b></u>	DEF	ARTHUR WEST VS. PORT OF TACOMA	04/29/16	PRA
PORT OF TACOMA	<u><b>07-2-08366-4</b></u>	DEF	CUTTER INC VS. EVERGREEN AMERICA CORPORATION	05/23/07	FORECLOSURE
PORT OF TACOMA	<u><b>07-2-11292-3</b></u>	DEF	CUTTER INC VS. PRIME ELECTRIC INC	08/20/07	FORECLOSURE
PORT OF TACOMA	<u><b>00-2-13763-5</b></u>	DEF	DAVID A MILLER ET AL VS PORT OF TACOMA ET AL	12/06/00	COMMERCIAL
PORT OF TACOMA	<u><b>04-2-08681-2</b></u>	DEF	DAVID GARCIA VS. AMERICAN FAST FREIGHT INC	06/09/04	PERSONAL INJURY
PORT OF TACOMA	<u><b>13-2-11281-2</b></u>	DEF	E3 ENERGY PARTNERS LLC VS. G R SILICATE NANO-FIBERS AND CARBONATES LLC	07/19/13	UNLAWFUL DETAINER
PORT OF TACOMA	<u><b>12-2-09647-9</b></u>	DEF	GENERAL METALS OF TACOMA INC VS. TACOMA INDUSTRIAL PROPERTIES LP	06/04/12	ENVIRO
PORT OF TACOMA	<u><b>11-2-15815-8</b></u>	DEF	HD FOWLER CO INC VS. OMA CONSTRUCTION INC	11/17/11	COMMERCIAL BOND
PORT OF TACOMA	<u><b>03-2-08407-2</b></u>	DEF	HERTZ EQUIPMENT RENTAL CORPORATION VS. FIDELITY & DEPOSIT COMPANY OF MA	06/09/03	COMMERCIAL BOND

**PORT OF TACOMA LITIGATION MATTERS  
2000-2016**

PORT OF TACOMA	<u>08-2-09832-5</u>	DEF	INTERNATIONAL LONGSHORE & WAREHOUSE UNION LOCAL 23 VS. PORT OF TACOMA	06/30/08	COLLECTIVE BARGAINING
PORT OF TACOMA	<u>00-2-09246-1</u>	DEF	JOHN E MEEK DBA VS PORT OF TACOMA	06/30/00	COMMERCIAL
PORT OF TACOMA	<u>08-2-15032-7</u>	DEF	JOHN T LOVETT VS. PORT OF TACOMA	12/01/08	PERSONAL INJURY
PORT OF TACOMA	<u>04-2-11351-8</u>	DEF	JR SWIGART COMPANY INC VS. LYDIG CONSTRUCTION INC	09/03/04	COMMERCIAL CONSTRUCTION
PORT OF TACOMA	<u>09-2-06959-5</u>	DEF	KEY DEVELOPMENT INVESTMENT VS. PORT OF TACOMA	03/16/09	TORT/ CONTRACT
PORT OF TACOMA	<u>14-2-06561-8</u>	DEF	KEY DEVELOPMENT INVESTMENT VS. PORT OF TACOMA	02/28/14	TORT/ CONTRACT
PORT OF TACOMA	<u>04-2-05982-3</u>	DEF	LEGACY INVESTMENTS ADVISORS LLC VS. PORT OF TACOMA	03/15/04	PROPERTY DAMAGE
PORT OF TACOMA	<u>12-2-06071-7</u>	3DF	LEO KARYAVYY VS. TACOMA RAIL	02/08/12	PERSONAL INJURY
PORT OF TACOMA	<u>07-2-06744-8</u>	DEF	NEXANS DEUTSCHLAND INDUSTRIES GMBH & CO KG VS. POTELCO INC	04/03/07	FORECLOSURE
PORT OF TACOMA	<u>14-2-09106-6</u>	DEF	PETROLEUM RECLAIMING SERVICE INC VS. PORT OF TACOMA	05/28/14	TORT/ CONTRACT
PORT OF TACOMA	<u>14-2-11856-8</u>	DEF	PETROLEUM RECLAIMING SERVICE INC VS. PORT OF TACOMA	08/26/14	TORT/ CONTRACT
PORT OF TACOMA	<u>05-2-08464-8</u>	DEF	PIERCE COUNTY VS. 16117 KESTERSON LAND TRUST	06/03/05	FORECLOSURE
PORT OF TACOMA	<u>09-2-09730-1</u>	DEF	PIERCE COUNTY VS. VARIOUS PARCELS	06/05/09	EMINENT DOMAIN
PORT OF	<u>07-2-08713-9</u>	PET	PORT OF TACOMA VS. A H POWERS	06/01/07	EMINENT DOMAIN

**PORT OF TACOMA LITIGATION MATTERS  
2000-2016**

TACOMA					
PORT OF TACOMA	<b><u>07-2-10864-1</u></b>	PET	PORT OF TACOMA VS. EMERALD TACOMA LLC	08/08/07	EMINENT DOMAIN
PORT OF TACOMA	<b><u>11-2-08324-7</u></b>	PLA	PORT OF TACOMA VS. GUADALUPE MARTINEZ	04/13/11	EMINENT DOMAIN
PORT OF TACOMA	<b><u>07-2-08715-5</u></b>	PET	PORT OF TACOMA VS. PACIFIC PAPER PRODUCTS	06/01/07	EMINENT DOMAIN
PORT OF TACOMA	<b><u>03-2-06999-5</u></b>	PET	PORT OF TACOMA VS. PUGET SOUND TRUCK LINES INC	04/25/03	EMINENT DOMAIN
PORT OF TACOMA	<b><u>07-2-08714-7</u></b>	PET	PORT OF TACOMA VS. ROGER W MOLT	06/01/07	EMINENT DOMAIN
PORT OF TACOMA	<b><u>04-2-11532-4</u></b>	PLA	PORT OF TACOMA VS. WEYERHAEUSER COMPANY	09/10/04	EMINENT DOMAIN
PORT OF TACOMA	<b><u>15-2-13754-4</u></b>	PLA	PORT OF TACOMA VS. ECO BUILDING PRODUCTS INC	11/16/15	UNLAWFUL DETAINER
PORT OF TACOMA	<b><u>06-2-14061-9</u></b>	PET	PORT OF TACOMA VS. ARKEMA INC	12/19/06	EMINENT DOMAIN
PORT OF TACOMA	<b><u>14-2-07812-4</u></b>	PLA	PORT OF TACOMA VS. AT&T CORP	04/14/14	QUIET TITLE
PORT OF TACOMA	<b><u>07-2-10861-6</u></b>	PET	PORT OF TACOMA VS. BUFFELEN WOODWORKING CO	08/08/07	EMINENT DOMAIN
PORT OF TACOMA	<b><u>07-2-10874-8</u></b>	PET	PORT OF TACOMA VS. CHEMICAL PROCESSORS INC	08/08/07	EMINENT DOMAIN
PORT OF TACOMA	<b><u>08-2-11889-0</u></b>	PLA	PORT OF TACOMA VS. CLEAN CARE CORPORATION	08/27/08	EMINENT DOMAIN
PORT OF TACOMA	<b><u>07-2-10870-5</u></b>	PET	PORT OF TACOMA VS. CONTINENTAL LIME INC	08/08/07	EMINENT DOMAIN
PORT OF TACOMA	<b><u>11-2-15993-6</u></b>	PLA	PORT OF TACOMA VS. EDWARD D CAMPBELL	11/23/11	CONTRACT

**PORT OF TACOMA LITIGATION MATTERS  
2000-2016**

PORT OF TACOMA	<u>07-2-10869-1</u>	PET	PORT OF TACOMA VS. EVA NARS	08/08/07	EMINENT DOMAIN
PORT OF TACOMA	<u>07-2-10862-4</u>	PET	PORT OF TACOMA VS. GARDNER TACOMA LLC	08/08/07	EMINENT DOMAIN
PORT OF TACOMA	<u>14-2-08893-6</u>	PLA	PORT OF TACOMA VS. GR SILICATE NANO-FIBERS AND CARBONATES LLC	05/19/14	EMINENT DOMAIN
PORT OF TACOMA	<u>02-2-07805-8</u>	PLA	PORT OF TACOMA VS. KALMAR INDUSTRIES AB	05/20/02	PERSONAL INJURY
PORT OF TACOMA	<u>07-2-10867-5</u>	PET	PORT OF TACOMA VS. MARIANA PROPERTIES INC	08/08/07	EMINENT DOMAIN
PORT OF TACOMA	<u>07-2-10871-3</u>	PET	PORT OF TACOMA VS. PATRICIA A DUCOLON	08/08/07	EMINENT DOMAIN
PORT OF TACOMA	<u>07-2-10863-2</u>	PET	PORT OF TACOMA VS. PETROLEUM RECLAIMING SERVICES INC	08/08/07	EMINENT DOMAIN
PORT OF TACOMA	<u>07-2-10868-3</u>	PET	PORT OF TACOMA VS. PHILADELPHIA QUARTZ COMPANY	08/08/07	EMINENT DOMAIN
PORT OF TACOMA	<u>07-2-10860-8</u>	PET	PORT OF TACOMA VS. RANGAR WEST ONE LLC	08/08/07	EMINENT DOMAIN
PORT OF TACOMA	<u>07-2-10865-9</u>	PET	PORT OF TACOMA VS. RTH TACOMA LLC	08/08/07	EMINENT DOMAIN
PORT OF TACOMA	<u>16-2-08477-5</u>	PLA	PORT OF TACOMA VS. SAVE TACOMA WATER	06/06/16	DECLARATORY JUDGEMENT
PORT OF TACOMA	<u>16-2-08637-9</u>	PLA	PORT OF TACOMA VS. SOUND MATTRESS & FELT COMPANY	06/13/16	EMINENT DOMAIN
PORT OF TACOMA	<u>07-2-08712-1</u>	PET	PORT OF TACOMA VS. W A SILVA	06/01/07	EMINENT DOMAIN
PORT OF TACOMA	<u>06-2-12214-9</u>	DEF	POTELCO INC VS. PORT OF TACOMA	10/12/06	CONTRACT

**PORT OF TACOMA LITIGATION MATTERS  
2000-2016**

PORT OF TACOMA	<u>15-2-14604-7</u>	RSP	PUYALLUP TRIBE OF INDIANS VS. CITY OF TACOMA	12/17/15	LUPA
PORT OF TACOMA	<u>00-2-04578-1</u>	DEF	RICHARD CASTANEDA ET AL VS PORT OF TACOMA ET AL	01/24/00	PERSONAL INJURY
PORT OF TACOMA	<u>03-2-12994-7</u>	DEF	ROBERT A BONNER VS. PORT OF TACOMA	11/06/03	PERSONAL INJURY
PORT OF TACOMA	<u>04-2-05239-0</u>	DEF	ROBERT A BONNER VS. PORT OF TACOMA	02/18/04	PERSONAL INJURY
PORT OF TACOMA	<u>10-2-05149-5</u>	DEF	SCS REFRIGERATED SERVICES VS. PORT OF TACOMA	01/07/10	LUPA
PORT OF TACOMA	<u>12-2-06401-1</u>	DEF	SOUND MATTRESS & FELT CO VS. PORT OF TACOMA	02/21/12	ENVIRO
PORT OF TACOMA	<u>07-2-12243-1</u>	DEF	SSA MARINE INC VS. PORT OF TACOMA	09/18/07	PRA
PORT OF TACOMA	<u>01-2-13020-5</u>	DEF	TIMOTHY EDWARD LINCOLN VS JOHN E THOMSON ET AL	10/29/01	TORT MOTOR VEHICLE
PORT OF TACOMA	<u>07-2-05330-7</u>	DEF	WALDNER CONSULTING INC VS. MILLER CONTRACTING INC	02/15/07	COMMERCIAL
PORT OF TACOMA	<u>11-2-13808-4</u>	DEF	WALLENUS WILHELMSSEN LOGISTICS AMERICAS LLC VS. PORT OF TACOMA	09/22/11	PRA
PORT OF TACOMA (ENGINEERING)	<u>06-2-06320-7</u>	DEF	MORSE DISTRIBUTION INC VS. PACIFIC CARGO COMPANY LLC	03/24/06	COMMERCIAL BOND

**PORT OF TACOMA LITIGATION MATTERS  
2000-2016**

**KING COUNTY SUPERIOR COURT**

LITIGANT	CAUSE NUMBER	TYPE	CASE TITLE	FILE DATE	TYPE
PORT OF TACOMA	00-2-01097-4	PLA	PORT OF WHITMAN COUNTY ET AL VS WASHINGTON STATE OF ET ANO	01-12-00	MISCELLANEOUS
PORT OF TACOMA	04-2-29621-8	GAR DEF	PSC INC VS MCKEOUGH	02-20-04	COLLECTION
PORT OF TACOMA	05-2-03787-3	GAR DEF	ELLIOTT BAY ADJUSTMENT CO INC VS LEVITON	01-27-05	TRANSCRIPT OF JUDGMENT
PORT OF TACOMA	08-2-37522-6	DEF		10-30-08	TORT-OTHER
PORT OF TACOMA	12-2-39446-6	PLA	PORT OF TACOMA VS CAMPBELL	12-11-12	ABSTRACT OF JUDGMENT
PORT OF TACOMA	4-2-26791-6	DEF	WEST VS SEATTLE PORT COMMISSION ET AL	09-26-14	WRIT OF MANDAMUS

**THURSTON COUNTY SUPERIOR COURT**

LITIGANT	CAUSE NUMBER	TYPE	CASE TITLE	FILE DATE	TYPE
PORT OF TACOMA	11-2-01660-6	DEF	FRIENDS OF ROCKY PRAIRIE VS THURSTON COUNTY ET AL	07/28/2011	LUPA LAND USE PETITION ACT
PORT OF TACOMA	08-2-01381-0	DEF	MARINE VIEW INC ET AL VS PORT OF TACOMA	06/09/2008	COMMERCIAL
PORT OF TACOMA	00-2-02068-3	DEF	CITY OF BURIEN ET AL VS STATE REVENUE ET AL	11/09/2000	INJUNCTION

**PORT OF TACOMA LITIGATION MATTERS  
2000-2016**

**LEWIS COUNTY SUPERIOR COURT**

LITIGANT	CAUSE NUMBER	TYPE	CASE TITLE	FILE DATE	TYPE
PORT OF TACOMA	11-2-00396-3	PLA	PORT OF TACOMA VS THURSTON COUNTY, BLACK HILLS AUDUBON SOCIETY ET AL	03/31/2011	LUPA LAND USE PETITION ACT
PORT OF TACOMA	11-2-00395-5	PLA	MAYTOWN SAND AND GRAVEL LLC VS THURSTON COUNTY ET AL	03/31/2011	LUPA LAND USE PETITION ACT

**U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON**

LITIGANT	CAUSE NUMBER	TYPE	CASE TITLE	FILE DATE	TYPE
PORT OF TACOMA	<u>3:2007-CV-05294</u>	(DFT)	CAREFREE CARTAGE INC ET AL V. HUSKY TERMINAL & STEVEDORING INC ET AL	06/12/2007	ENVIRONMENTAL MATTERS
PORT OF TACOMA	<u>3:2005-CV-05103</u>	(DFT)	UNITED STATES OF AMERICA V. PORT OF TACOMA ET AL	02/07/2005	ENVIRONMENTAL MATTERS
PORT OF TACOMA	<u>3:2004-CV-05473</u>	(DFT)	YOUNG V. PORT OF TACOMA ET AL	08/10/2004	CIVIL RIGHTS: JOBS
PORT OF TACOMA	<u>3:2004-CV-05056</u>	(DFT)	CUBITT ET AL V. MAERSK INC ET AL	02/05/2004	P.I.: OTHER
PORT OF TACOMA	<u>3:2010-CV-05547</u>	(DFT)	WEST V. CHUSHKOFF ET AL	08/05/2010	MANDAMUS & OTHER
PORT OF TACOMA	<u>2:2000-CV-01950</u>	(DFT)	BETHEL V. PORT OF SEATTLE, ET AL	11/16/2000	PRISONER: CIVIL RIGHTS

**PORT OF TACOMA LITIGATION MATTERS  
2000-2016**

LITIGANT	CAUSE NUMBER	TYPE	CASE TITLE	FILE DATE	TYPE
PORT OF TACOMA	<u>3:2006-CV-05008</u>	(3PD)	HOFFMAN V. CITY OF TACOMA ET AL	01/09/2006	FEDERAL EMPLOYER'S LIABILITY
PORT OF TACOMA	<u>3:2011-CV-05205</u>	(DFT)	WEST V. PORT OF TACOMA ET AL	03/16/2011	CIVIL RIGHTS: OTHER
PORT OF TACOMA	<u>3:2016-CV-05340</u>	(CLM)	IN THE MATTER OF THE COMPLAINT OF NORTHWEST ROCK PRODUCTS, INC., ET AL	05/06/2016	OTHER STATUTORY ACTIONS
PORT OF TACOMA	<u>2:2014-CV-01518</u>	(DFT)	WEST V. SEATTLE PORT COMMISSION ET AL	09/29/2014	OTHER STATUTORY ACTIONS
PORT OF TACOMA	<u>3:2002-CV-05130</u>	(DFT)	RINKS V. PORT OF TACOMA, ET AL	03/15/2002	CIVIL RIGHTS: JOBS
PORT OF TACOMA	<u>3:2011-CV-05253</u>	(DFT)	UNITED STATES OF AMERICA V. PORT OF TACOMA ET AL	04/01/2011	ENVIRONMENTAL MATTERS
PORT OF TACOMA	<u>3:2008-CV-05132</u>	(PLA)	PORT OF TACOMA V. TODD SHIPYARDS CORPORATION ET AL	03/05/2008	ENVIRONMENTAL MATTERS
PORT OF TACOMA	<u>3:2003-CV-05117</u>	(DFT)	USA V. ADVANCE ROSS SUB CO, ET AL	03/03/2003	ENVIRONMENTAL MATTERS
PORT OF TACOMA	<u>3:2014-CV-05775</u>	(DFT)	ARTHUR S WEST V. SEATTLE PORT COMMISSION ET AL	09/29/2014	OTHER STATUTORY ACTIONS

## Phil Stutzman

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**From:** Jason Whalen <jason@ledgersquarelaw.com>  
**Sent:** Thursday, July 28, 2016 2:31 PM  
**To:** William Lemp  
**Cc:** Phil Stutzman  
**Subject:** RE: 45-Day Citizen Action Complaint - Port of Tacoma, Economic Development Board of Tacoma-Pierce County and the Tacoma-Pierce County Chamber

Mr. Lemp,

Now that I am back in the office, I can do something better than text you an estimated \$ number.

The EDB incurred legal fees to our firm in the amount of \$9993.55 for the legal work on the lawsuit through the hearing. I understand this was funded from the EDB's operating budget; no contributions were made specific to this legal action, nor were any contributions sought.

Let me know if you need further information.

Jason

Jason M. Whalen  
Attorney  
Ledger Square Law, P.S. | [www.ledgersquarelaw.com](http://www.ledgersquarelaw.com)  
710 Market Street, Tacoma, WA 98402  
Direct: (253) 327-1701  
Main: (253) 327-1900  
Fax: (253) 327-1700

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**From:** William Lemp [mailto:william.lemp@pdc.wa.gov]  
**Sent:** Thursday, July 28, 2016 9:06 AM  
**To:** Jason Whalen <jason@ledgersquarelaw.com>; Zeeck, Valarie <VZeeck@gth-law.com>  
**Cc:** Phil Stutzman <phil.stutzman@pdc.wa.gov>  
**Subject:** 45-Day Citizen Action Complaint - Port of Tacoma, Economic Development Board of Tacoma-Pierce County and the Tacoma-Pierce County Chamber

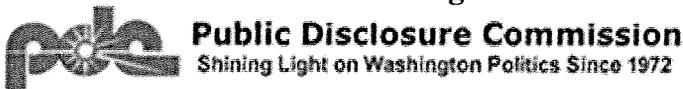
Good Morning All

As part of our on-going investigation I am requesting information on how much was spent by both of your organizations for the court action against Tacoma Initiatives 5 and 6.

Your assistance will be greatly appreciated.

Respectfully

William A. Lemp III  
**Lead Political Financial Investigator**



**Phil Stutzman**

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**From:** Zeeck, Valarie <VZeeck@gth-law.com>  
**Sent:** Thursday, July 28, 2016 2:55 PM  
**To:** William Lemp  
**Cc:** Phil Stutzman  
**Subject:** RE: 45-Day Citizen Action Complaint - Port of Tacoma, Economic Development Board of Tacoma-Pierce County and the Tacoma-Pierce County Chamber

Mr. Lemp,

The Chamber maintains its position that it is not required to provide this information to the PDC.

Without waiving that objection, in answering your question below, the Chamber responds that the billing is not yet finalized in the declaratory judgment matter, but the Chamber has spent approximately \$10,000 in legal fees on the court action. The Chamber used funds from its normal operating budget to pay the fees. It did not seek contributions for this purpose, nor did it have an "expectation" of making expenditures for this purpose until the illegality of the STW initiatives became apparent.



**Valarie S. Zeeck**  
Attorney at Law  
T 253 620 6427  
F 253 620 6565

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**From:** William Lemp [mailto:william.lemp@pdc.wa.gov]  
**Sent:** Thursday, July 28, 2016 9:06 AM  
**To:** Jason Whalen; Zeeck, Valarie  
**Cc:** Phil Stutzman  
**Subject:** 45-Day Citizen Action Complaint - Port of Tacoma, Economic Development Board of Tacoma-Pierce County and the Tacoma-Pierce County Chamber

Good Morning All

As part of our on-going investigation I am requesting information on how much was spent by both of your organizations for the court action against Tacoma Initiatives 5 and 6.

Your assistance will be greatly appreciated.

Respectfully

William A. Lemp III  
Lead Political Financial Investigator



**Phil Stutzman**

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**From:** Carolyn Lake <CLake@goodsteinlaw.com>  
**Sent:** Friday, July 29, 2016 12:50 PM  
**To:** PDC  
**Cc:** jdoremus@nwseaportalliance.com; Phil Stutzman; jwolfe@nwseaportalliance.com  
**Subject:** RE: PDC - Port of Tacoma - Alleged violation of RCW 42.17A.555 using public facilities to oppose a ballot proposition; RCW 42.17A.205, .235, and .240 unreported PAC activities (June 2016)

Mr Lemp:

Thank you for this update. Will the 8/8/2016 meeting be transmitted via live audio feed? And, by what date will the PDC staff transmit any supporting written material to the Commission in advance of the 8/8 meeting?

In response to your inquiry, the Port did not pool any funds related to the its legal action with anyone, including the EDB or Chamber. It is our understanding that each Co-Plaintiff in the legal action was responsible for its own fees and costs. The Port authorized a legal budget from its own operating funds.

The Port did not have any expectation to seek contributions, and did not seek contributions for this purpose, nor did it consider payment of legal fees an expenditure in support of, or opposition to, any candidate or any ballot proposition as defined in RCW 42.17A.255 (and in reliance on and consistent with the Thurston County Superior Court's *Order Granting Defendant's Motion to Dismiss in State of Washington v. Evergreen Freedom Foundation*, No. 15-2-01936-5, dated May 13, 2016 and Pierce County *Order Granting Plaintiff's Motion for Summary Judgement in Institute for Justice et al v. State of Washington*, No. 15-2-01936-5, dated February 20, 2015.

We also offer that the Port's legal payment also does not qualify as an RCW 42.17A.005 (26) "Independent expenditure", as that definition applies solely to expenditures in support of or in opposition to a candidate for office.

Please advise if more is needed.

We reserve our opportunity to provide additional materials for your consideration. Thank you again,

*Carolyn A. Lake.*

Goodstein Law Group PLLC – 501 South "G" Street - Tacoma, WA 98405  
253.779.4000 office -253.229.6727 cell -253.779.4411 fax

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*"An appeaser is one who feeds a crocodile, hoping it will eat him last."*

**Sir Winston Churchill**