JOINT LETTER
City of Burien | City of Des Moines | City of SeaTac

October 26, 2026

Mr. Steve Rybolt
Port of Seattle
AV Environment and Sustainability
P.O. Box 68727
Seattle, WA 98168

Re: Request to Postpone Issuance of the Final Environmental Impact Statement for the Sustainable Airport Master Plan Near-Term Projects Pending Resolution of Ninth Circuit Litigation Concerning the Underlying FAA Environmental Assessment

Dear Mr. Rybolt:

The Cities of SeaTac, Burien, and Des Moines ("Cities") write to urge that the Port of Seattle postpone issuance of the Final Environmental Impact Statement ("FEIS") for the Sustainable Airport Master Plan Near-Term Projects ("SAMP NTPs") until the United States Court of Appeals for the Ninth Circuit resolves the pending litigation challenging the Federal Aviation Administration's ("FAA") underlying Environmental Assessment ("EA"). Proceeding with the SEPA EIS before that NEPA litigation is resolved creates material risks of wasted resources, procedural defects, and reliance on findings that may not survive judicial review. Prudent administration counsels a pause.

Background: The Draft EIS Demonstrates that the Port's SEPA Review Is Analytically Dependent on the FAA's EA

The Draft EIS makes clear that the Port's SEPA review for the SAMP NTPs is not independent of the NEPA process. The Draft EIS is structurally and analytically dependent on the FAA EA in ways that make the EA's legal validity a prerequisite to the FEIS's adequacy. The Draft EIS expressly incorporates the EA's environmental consequences analysis and uses FAA-based significance thresholds as the operative framework for multiple SEPA resource categories. Specifically, the Draft EIS incorporates the NEPA EA's analyses by reference for biological resources, recreation, hazardous materials, historic and cultural resources, land use, shoreline and coastal resources, energy and natural resources, noise, water resources, and surface transportation — effectively adopting the EA's findings and significance conclusions as the analytical foundation for the corresponding SEPA sections.

The Draft EIS also carries forward the EA's technical inputs directly. Forecast tables, construction and operational emissions inventories, airside modeling assumptions, noise and air quality modeling parameters, and comparative emissions summaries presented in the Draft EIS were all developed for use in the NEPA EA. The FAA approved the updated Aviation Activity Forecast and Constrained Operating Growth Scenario specifically for support of the SAMP NTP environmental process, with derivative forecasts required to align with those approved values. The airside modeling documentation likewise confirms that constrained operating growth scenarios were developed for EA use and that modeling supported the EA's noise and air quality analyses.

In other words, the SEPA process does not stand apart from the NEPA process—it rests upon it. A judicial ruling invalidating, vacating and/or remanding the FAA EA could materially affect the adequacy of every SEPA section that incorporates the EA by reference and every analytical conclusion that depends on the EA's approved inputs.

Deficiencies in the EA will carry forward into the FEIS if the Port proceeds to finalization before the Ninth Circuit litigation is resolved.

The FAA EA is currently the subject of judicial challenge in the Ninth Circuit and the claims at issue directly concern the legal validity of the environmental review upon which the FEIS would depend. Until the Ninth Circuit issues a final determination, the EA's findings, thresholds, modeling inputs, and significance conclusions remain subject to material legal uncertainty.

Issuing the FEIS before that uncertainty is resolved creates the following concrete and avoidable problems:

> Rework and wasted effort. If the Ninth Circuit vacates or remands the FAA EA — or any of its component analyses — the Port may find that significant portions of the FEIS, which incorporate those analyses by reference, must be revised, supplemented, or reconsidered. The Cities' technical comments on the Draft EIS have already identified numerous respects in which the document's significance conclusions are predicated on the EA's methodological choices, modeling assumptions, and impact thresholds. A court ruling that those choices do not survive NEPA scrutiny would further, and profoundly, undermine the SEPA conclusions that rest upon them.
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> Loss of meaningful public participation. Issuance of the FEIS would close the principal opportunity for public participation in the SEPA process. If the EA is subsequently disturbed by the Ninth Circuit, any resulting revisions to the FEIS's foundational analyses would require supplementation and a further comment period — duplicating the effort already invested by affected jurisdictions, commenting agencies, and members of the public.
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> Increased litigation risk for the Port's SEPA determination. Proceeding to a final EIS and SEPA decision based on an EA that is later vacated will increase the vulnerability of the Port's SEPA determination to challenge. Courts and administrative tribunals have declined to credit environmental analyses performed under state law that incorporate or depend upon NEPA documents subsequently found inadequate. *See Boss v. Washington State Department of Transportation*, 113 Wn. App. 543, 554–55, 54 P.3d 207 (2002) (validity of the federal environmental analysis is material to the state process relies upon it); *see also Klickitat Cnty. Citizens Against Imported Waste v. Klickitat Cnty.*, 122 Wn.2d 619, 637, 860 P.2d 390, 401 (1993), *as amended on denial of reconsideration* (Jan. 28, 1994), *amended,* 866 P.2d 1256 (1994); WAC 197-11-600(3)(b)(ii). The Port cannot know until the Ninth Circuit rules whether the incorporated analyses remain reliable or will require revision.

In short, proceeding with the FEIS at this time presents the very real risk of creating considerable inefficiencies and increased costs for the Port, the Cities, and the other commenters. Postponing issuance of the FEIS pending final resolution of the Ninth Circuit litigation concerning the FAA EA eliminates that risk.

Last, it should be noted that the FAA's Final EA states that FAA and the Port affirmatively decided to conduct the NEPA and SEPA reviews "separately and sequentially," and the Port has publicly described the SEPA DEIS

as having "built upon" the completed FAA EA. The Port chose a process in which SEPA would follow and build upon NEPA – it is therefore most sensible to wait until the Ninth Circuit determines whether the federal analysis on which the later state process relies remains legally sound.

Conclusion

The FEIS's anticipated reliance on the FAA EA — for (*inter alia*) its technical inputs, its significance thresholds, and its impact conclusions across more than a dozen resource categories — makes the EA's legal validity a material precondition to the FEIS's adequacy. Proceeding to finalization before the Ninth Circuit resolves the pending challenge to the FAA's EA presents a host of significant problems and serves no one's long-term interests. A principled pause would preserve the integrity of the SEPA process and protect public, agency and potentially judicial resources.

The Cities request that this letter be placed in the SEPA administrative record and welcome the opportunity to discuss this request with the Port's SEPA staff and legal counsel. The Cities also reserve all rights.[1]

Respectfully submitted,

David Johanson
City of Burien
SEPA Responsible Official

Rebecca *Deming*
City of Des Moines
SEPA Responsible Official

Kaelene Nobis
City of SeaTac
SEPA Responsible Official

cc: *Sarah Cox, Aviation Environment and Sustainability Director and SEPA Responsible Official*

[1] Indeed, the Cities maintain that the Port cannot lawfully adopt analyses from the FAA's Environmental Assessment prepared under NEPA for its SEPA EIS.