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BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION

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In re Application TC-130708 of ) Docket TC-130708  
 ) Pages 1-22  
NORTHWEST SMOKING & CURING, INC. )  
d/b/a SEATAC DIRECT, )  
 )  
For a Certificate of Public Convenience )  
and Necessity to Operate Motor Vehicles )  
in Furnishing Passenger and Express )  
Service as an Auto Transportation )  
Company )

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PREHEARING CONFERENCE, VOLUME I  
Pages 1-22  
ADMINISTRATIVE LAW JUDGE STEPHANY A. WATSON

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1:30 P.M.  
AUGUST 5, 2013  
Washington Utilities and Transportation Commission  
1300 South Evergreen Park Drive Southwest  
Olympia, Washington 98504-7250

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A P P E A R A N C E S

ADMINISTRATIVE LAW JUDGE:

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360.679.4003  
mike@seatacshuttle.com  
john@seatacshuttle.com

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OLYMPIA, WASHINGTON, AUGUST 5, 2013

1:30 P.M.

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P R O C E E D I N G S

JUDGE WATSON: Good afternoon, everyone. My name is Stephany Watson. I'm the administrative law judge for you today at the Washington Utilities and Transportation Commission.

The docket number in the case is TC-130708, and the matter is: In re the application of Northwest Smoking & Curing, Incorporated, doing business as SeaTac Direct. This is an application for a certificate of public convenience and necessity to operate a motor vehicle in furnishing passenger and express service as an auto transportation company under the Revised Code of Washington Chapter 81.68.

First, I'd like to clarify that this original application was filed with the Commission on May 7, 2013, but a corrected, or at least replacement pages for the application, was filed with the Commission on May 16, 2013.

Does anyone have information that that's not the entirety of the application, or that I'm otherwise incorrect about that?

MR. FASSIO: Your Honor, this is Michael Fassio, Assistant Attorney General. And that is one of the things I was going to ask to clarify as a preliminary matter, but that is a

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1 correct understanding that the replacement pages -- a completed  
2 application was filed on the 16th prior to the application being  
3 published -- or notice of the application being published on the  
4 transportation docket, and it came to Commission Staff's  
5 attention subsequent to that that those pages hadn't been posed  
6 originally.

7 And those pages have now been posed to the docket --

8 JUDGE WATSON: Okay.

9 MR. FASSIO: -- and there is also in the record an  
10 e-mail from the Records Center to all Protestants basically  
11 clarifying what you have just stated.

12 JUDGE WATSON: Thank you, Mr. Fassio. We'll probably  
13 need to talk about that a little more, but, I'm glad to have  
14 that correction kind of opened up.

15 So we can take appearances now, please, starting with  
16 the Applicant, SeaTac Direct.

17 First of all, is that the way the Company would like  
18 to be referred to --

19 MR. KRONENBERG: It is.

20 JUDGE WATSON: -- SeaTac Direct?

21 MR. KRONENBERG: SeaTac Direct, yes.

22 JUDGE WATSON: Okay. Will you please give me your  
23 name, company name, address, phone number, e-mail, all that  
24 stuff, but with one special thing.

25 We had a little trouble figuring out how to spell --

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1 not really spell -- but how to capitalize SeaTac.

2 MR. KRONENBERG: Okay.

3 JUDGE WATSON: So when you explain the name of the  
4 company, let us know if we should be capitalizing both the  
5 "s" --

6 MR. KRONENBERG: Okay.

7 JUDGE WATSON: -- and the "t."

8 MR. KRONENBERG: Okay. That's a good question  
9 because I have some difficulty with that myself.

10 But the last choice was to do a capital S, and then a  
11 capital T.

12 JUDGE WATSON: So that is correct?

13 MR. KRONENBERG: Right.

14 JUDGE WATSON: Okay. Please tell me your name.

15 MR. KRONENBERG: So my name is Joel Kronenberg, and  
16 the company is SeaTac Direct, doing business as Northwest  
17 Smoking -- or sorry. Vice versa.

18 JUDGE WATSON: Vice versa?

19 MR. KRONENBERG: Yeah, right.

20 JUDGE WATSON: And could you state your address,  
21 phone number, and e-mail address for the record?

22 MR. KRONENBERG: Do you want business address or  
23 personal?

24 JUDGE WATSON: Wherever you prefer to get  
25 correspondence from the Commission.



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1 representatives for Shuttle Express; is that right?

2 MR. LAUVER: That is not correct.

3 JUDGE MOSS: What did I say? Oh, I beg your pardon.  
4 SeaTac Shuttle.

5 MR. LAUVER: Big difference.

6 JUDGE WATSON: I'm terribly sorry.

7 MR. LAUVER: And my name is Mike Lauver, L-a-u, "v,"  
8 as in Victor, e-r. Phone number is 360.679.4003; e-mail is  
9 mike@seatacshuttle -- all one word -- dot com; and our address  
10 is P.O. Box 2895, Oak Harbor, Washington 98277.

11 JUDGE WATSON: Thank you, sir.

12 Is there anyone else on the bridge line who would  
13 like to identify him or herself at this time?

14 MR. SOLIN: Yes. This is John Solin, S-o-l-i-n,  
15 also with SeaTac Shuttle. P.O. Box 2895, Oak Harbor, Washington  
16 98277; 360.679.4003; and -- (phone beeps) -- @seatacshuttle.com.

17 JUDGE WATSON: Ms. Fukushima, were you able to get  
18 that information? Except when the beep went on, so was that at  
19 the ZIP code part?

20 MR. SOLIN: I'll just go through the address. P.O.  
21 Box 2895.

22 JUDGE WATSON: Sir? Sir? Mr. Solin, could you slow  
23 down a little bit? We have a court reporter present in the  
24 hearing room. And she's fantastic, but she still needs enough  
25 time to type, so slow down, please.

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1 MR. SOLIN: Okay. I assume you got the name,  
2 S-o-l-i-n, with SeaTac Shuttle. Our address is P.O. Box 2985,  
3 in Oak Harbor, Washington 98277; phone is 360.679.4003; and my  
4 e-mail is john@seatacshuttle.com.

5 JUDGE WATSON: Thank you, Mr. Solin.

6 Is anyone else present on the bridge line?

7 Thank you. The first question I have for both SeaTac  
8 Shuttle and Wickkiser is that what the Commission received from  
9 your companies are letters of protest, and I want to make  
10 certain that your intention is to intervene in this matter and  
11 be a party who's entitled to service of the documents and to  
12 present testimony and that sort of thing.

13 Is that what you meant to do? I mean, there's no  
14 criticism here. I just want to be sure of your intentions.

15 MR. JOHNSON: Yeah. From Wickkiser's point of view,  
16 that is what we intend to do, yes.

17 JUDGE WATSON: Thank you.

18 Mr. Lauver or Mr. Solin?

19 MR. LAUVER: Yes. That is still our position.

20 MR. SOLIN: Ditto.

21 JUDGE WATSON: Terrific. Are there any objections to  
22 the intervention of either SeaTac Shuttle or Wickkiser?

23 MR. FASSIO: Your Honor, Staff does have a concern  
24 with SeaTac Shuttle's protest and the standing of SeaTac Shuttle  
25 to participate as a Protestant in this hearing. So,



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1 procedurally, I'd bring this concern forward in the form of a  
2 motion to strike the protest of SeaTac Shuttle specifically, and  
3 I will explain our position.

4           The Commission's procedural rules, specifically WAC  
5 480-07-370(f), state that "A person who asserts that its  
6 interests would be adversely affected if an application is  
7 granted may file a 'protest,'" and that a protest must conform  
8 to the requirements of any special rules that apply to the  
9 application being protested.

10           So reflecting that rule, the auto transportation  
11 rules, specifically 480-30-116, contain requirements as to the  
12 form of protest for an auto transportation application such as  
13 that the Company must specify reasons for its protest, specify  
14 the Protestant's interest in the proceeding, and identify the  
15 portion or portions of the Company's certificate that's the  
16 basis for their protest.

17           And so in reviewing SeaTac Shuttle's protest, as well  
18 as their certificate, Staff is concerned that it's deficient in  
19 that the protest itself, SeaTac Shuttle does not assert that its  
20 interest would be adversely affected if the application is  
21 granted, let alone any asserting interest of its own. The only  
22 interest that's asserted by SeaTac Shuttle appears to relate to  
23 the certificate authority of Wickkiser International, which is  
24 another Protestant that is represented here today.

25           In addition, the protest does not describe or explain

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1 any portion of SeaTac Shuttle's certificate that is the basis  
2 for the protest or relates to the application itself. Staff  
3 reviewed the Company's auto transportation certificate that is  
4 on file at the Commission, and I do have copies here today that  
5 I can provide to the Bench.

6 And it appears that while SeaTac Shuttle does serve  
7 Sea-Tac Airport, it has no authority to operate on any route  
8 between Bellingham and Sea-Tac Airport, which is the sole route  
9 that is being applied for today.

10 And so in short, the certificate on its face does not  
11 appear to demonstrate an interest that SeaTac Shuttle would have  
12 in this proceeding, and so for those reasons, I bring that  
13 concern forward in the form of a motion to strike the protest.

14 And I can provide you and the other parties here with  
15 copies of that certificate for you review.

16 JUDGE WATSON: Mr. Kronenberg?

17 MR. KRONENBERG: Yes?

18 JUDGE WATSON: Do you have a position on the  
19 intervention of Seattle Shuttle -- SeaTac Shuttle?

20 Stephany, I'm messing this up twice today. Sorry.

21 MR. KRONENBERG: No, I don't. I can understand the  
22 protest, but I think what was just said in terms of the route  
23 being contested, as it will, that between Bellingham and Sea-Tac  
24 is specifically what we are proposing to serve.

25 And as far as the protest coming from Skagit County

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1 or any other routes that -- that is not my intention to serve  
2 anything other than Bellingham to SeaTac direct.

3 JUDGE WATSON: Thank you.

4 Mr. Lauver? Mr. Solin?

5 MR. LAUVER: Yes, Your Honor. We still assert that  
6 we are affected by this and that we do have authority to file a  
7 protest and have that protest expand.

8 And we refer back to 480-07-370(f), which states that  
9 any party that may be adversely affected by this may file. Also  
10 as a certificate holder in good standing, I believe we have the  
11 ultimate right to intervene and file a protest in any  
12 application.

13 In this particular instance, the granting of this  
14 application adversely affects us, and it would clearly establish  
15 a precedent of allowing overlapping service in an area that's  
16 properly being serviced to the satisfaction of the Commission  
17 currently, and, therefore, would open up our area to such  
18 unwarranted intrusion.

19 JUDGE WATSON: So if I could summarize your position,  
20 it is that allowing the Applicant's application to be granted  
21 might set a precedent that would be adverse to your company even  
22 though it's in a different area?

23 MR. LAUVER: That's correct. It would demonstrate  
24 that the Commission would allow anybody who says, I will do  
25 something slightly different, though it might be within one

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1 block of your current service, to come in and essentially rob  
2 your passenger base.

3 And this would affect not only us, but every other  
4 certificate holder out there.

5 JUDGE WATSON: Thank you.

6 Mr. Johnson, do you have a position?

7 MR. JOHNSON: Sure. Yeah. I mean, we also believe  
8 that SeaTac Shuttle has a right to protest this application. I  
9 think the Commission's responsibility is to do things in the  
10 public's interest, and that's certainly written down in a lot of  
11 your documents. And from that point of view alone, I think  
12 SeaTac Shuttle believes that this is not in the public's  
13 interest, and so, therefore, is protesting.

14 And then in support of what Mike said, I think -- as  
15 an industry as a whole, I think we're all concerned that if this  
16 application is allowed to continue, you're setting a  
17 precedent -- or the Commission is setting a precedent that  
18 overlapping service is where they're at despite territories  
19 existing, and that's a concern for us all.

20 So I think on those two points, we genuinely support  
21 SeaTac Shuttle's protest.

22 JUDGE WATSON: Thank you.

23 Anyone else?

24 MR. FASSIO: Well, just, Your Honor, in response to  
25 that, I would simply assert that, again, SeaTac Shuttle has

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1 essentially reflected an interest that's already represented  
2 here today by the other Protestant who has allegedly the  
3 overlapping service, and SeaTac Shuttle has not set forth that  
4 their particularized interest would be affected by that  
5 application.

6 And I just would at this time, for the record, would  
7 like to approach the Bench with SeaTac Shuttle's certificate so  
8 that you have an opportunity to have that in front of you as you  
9 make your decision.

10 JUDGE WATSON: Sure. Do you have copies for the  
11 other parties here?

12 MR. FASSIO: I do, Your Honor.

13 If I may approach?

14 MR. LAUVER: And SeaTac Shuttle, we're happy to  
15 stipulate that this particular application does not overlap on  
16 our certificate. Our concern is that it opens up the  
17 possibility of overlapping service and essentially creates the  
18 dissolution of territories which are the entire basis of the  
19 certificates issued.

20 JUDGE WATSON: Thank you. If we could just have a  
21 moment. We have just been handed SeaTac Shuttle's certificate,  
22 and I'm going to take -- and I think everyone is going to take a  
23 look at it for a moment.

24 (Pause in the proceedings.)

25 MR. FASSIO: And, Your Honor, if I may just add to

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1 that, the Commission's rules do provide there's a provision, an  
2 alternative provision, for parties to intervene not as  
3 Protestants, per se, but as Intervenors. They may file a  
4 petition for intervention.

5 We did not interpret this is a petition for  
6 intervention, but the standards under that are in 480-07-355.  
7 The Commission may allow intervention if the Petitioner  
8 discloses a substantial interest in the subject matter or  
9 participation as in the public interest.

10 Again, we do not believe that, and that the  
11 Intervenor, it's generally understood, will not seek to broaden  
12 the issues of the proceeding. And so we believe under that  
13 standard the protest that was filed does not meet the standards  
14 for a petition to intervene.

15 MR. JOHNSON: So, Mike, did you say -- I mean, I  
16 thought you were suggesting an intervention is okay, and then in  
17 your last sentence you said maybe SeaTac Shuttle does not meet  
18 those standards?

19 MR. FASSIO: No. I was merely stating that the  
20 parties may be considered Protestants, as a Protestant status,  
21 or, alternatively, if they're not Protestant status, maybe  
22 considered Intervenors if they file a petition to intervene.

23 MR. JOHNSON: Okay.

24 MR. FASSIO: It's a different standard under the  
25 Commission's rules, but we stipulate that we didn't believe that

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1 that was a petition to intervene.

2 JUDGE WATSON: I think that I already asked both  
3 SeaTac and Wickkiser if they intended and wanted to intervene,  
4 and they're entitled to do that as of the time of this hearing,  
5 and I heard an affirmative answer from both. And my decision is  
6 to allow SeaTac to stay in the case as an Intervenor with a  
7 caveat -- and I think it's a good one -- that Mr. Fassio just  
8 mentioned with regard to not broadening the issues.

9 So the matter that's before us is the -- excuse me --  
10 the petition of SeaTac Direct. And so to the extent that SeaTac  
11 Shuttle has some information to assist us in a decision with  
12 that application one way or the other, that will be fine. So  
13 that's how I'm going to leave it right now.

14 What we're really here for today, besides deciding  
15 who's going to stay in the case, is to come up with a schedule  
16 and to kind of find out what the contours of the case are going  
17 to be with regard to what kind of documents you might need from  
18 each other and, perhaps, I'm hopeful, a hearing date. And what  
19 I'm even more hopeful about is to set a settlement date for you  
20 in case you are, with good fortune, able to come up with a  
21 resolution of the issue without my help.

22 So have the parties had a chance to talk about dates  
23 by any chance?

24 MR. FASSIO: We have not, Your Honor. And I did have  
25 one other, I guess, clarification, and it does relate to

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1 documents provided. And I didn't know if this would be an  
2 appropriate time before we get into scheduling just to --

3 JUDGE WATSON: I think that would be fine.

4 MR. FASSIO: -- to raise that issue for the record.

5 JUDGE WATSON: I think that would be fine.

6 MR. FASSIO: Okay. And I just wanted to reflect for  
7 the record -- and this is slightly different than what we spoke  
8 about early on, but the Commission's Regulatory Services Staff  
9 recently asked the Applicant to provide some additional  
10 information that's required by the application rule 480-30-096,  
11 that it recently discovered is not specifically on the  
12 Commission's auto transportation application form that was  
13 provided to the Applicant.

14 And we don't believe this is the fault of the  
15 Applicant, and the Commission's Licensing Staff -- Licensing  
16 Services Staff is separately in the process of reviewing and  
17 updating its application forms.

18 And Staff's position is that the Applicant did submit  
19 a complete application form as provided by the Commission, but  
20 the additional information required by the rule includes an  
21 income statement for the first 12 months of operations and  
22 ridership and revenue forecasts for the first 12 months of  
23 operation.

24 Staff believes this information will be necessary for  
25 the Commission to determine whether the Company has the



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1 financial resources to operate this service it proposes, and  
2 it's my understanding that Regulatory Services Staff has  
3 contacted the Company before the prehearing conference and  
4 instructed them if they could provide that information to Staff  
5 and at the same time file it with the Records Center to ensure  
6 that it's part of the formal record, and that the Company will  
7 be doing that soon, and I think Mr. Kronenberg is prepared to  
8 address that.

9 And we just wanted to propose, at least as part of  
10 this process, to formalize a commitment by the Company to do  
11 that and perhaps a date by which the Company would be doing that  
12 and just have that reflected in the record.

13 JUDGE WATSON: Mr. Fassio, did Staff extend this  
14 request to Mr. Kronenberg in writing?

15 MR. FASSIO: I believe it was informally by telephone  
16 at this point.

17 JUDGE WATSON: Just by telephone?

18 MR. FASSIO: Yes.

19 JUDGE WATSON: And I'm getting body language saying  
20 no or yes.

21 MR. FASSIO: I've been corrected by Staff that it was  
22 in writing.

23 JUDGE WATSON: Oh, good. Okay. Good to know.

24 Mr. Kronenberg, have you received that?

25 MR. KRONENBERG: Yes. I've been chomping at the bit

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1 here. We actually did receive that last week and we submitted  
2 that information this morning downstairs.

3 JUDGE WATSON: Okay. That sounds very, very good.

4 Very good. So unless you have more questions -- and  
5 I'm hopeful you could, you know, resolve those simply.

6 So what I propose, I believe, is for you guys to take  
7 10 minutes, 15 minutes. Talk among yourselves about your  
8 schedule, what might work for you, how much time you might need  
9 for a hearing, and also choose a date to get together without me  
10 for a settlement conference.

11 MR. JOHNSON: Judge, may I ask a question first?

12 JUDGE WATSON: Sure.

13 MR. JOHNSON: The whole process is unfamiliar. You  
14 know, just, I think, carrying on about the application, your  
15 comments on the application, I see there's a lot of questions in  
16 the entire application, and I think it's frivolous on an  
17 application.

18 When is the appropriate time to ask you to make a  
19 summary judgment on the application? Is that done in this  
20 hearing today?

21 JUDGE WATSON: No. It's definitely not done in this  
22 hearing. And if you have an application for a summary  
23 determination, it's done by motion, which is merely just asking  
24 the Commission to act. And I would read the rules or consult  
25 counsel with regard to what is, you know, required of a summary

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1 determination, but the essence of it is that there are no  
2 material questions of fact; that it's just a question of law.

3           And it seems to me in your letter of protest that,  
4 you know, what were raised were a number of questions of fact.  
5 If you would like to engage in formal discovery in this, you can  
6 talk about with the other parties when I'm out of the room. You  
7 can send requests to Mr. Kronenberg with regard to, you know,  
8 what you would like to know and maybe can narrow down or  
9 eliminate all the issues of fact and just be able to say it's a  
10 question of law.

11           MR. JOHNSON: All right.

12           JUDGE WATSON: Okay.

13           MR. JOHNSON: Thanks. Yeah.

14           JUDGE WATSON: But where you'll really be wanting to  
15 make your arguments, assuming that we don't have that kind of  
16 hearing, will just be at the regular evidentiary hearing that  
17 you guys are going to try to come up with a date for, I'm  
18 guessing, in the next couple of months, okay?

19           So I'm going to excuse myself, and you'll be off the  
20 record. And you can talk freely, and I'll see you at about ten  
21 after two. Thank you.

22                           (Discussion off the record.)

23           JUDGE WATSON: We're back on the record in  
24 Docket No. TC-130708, and have had a productive conversation  
25 with regard to scheduling in this matter. And at this time,

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1 it's as follows -- I don't know whether I should go backwards.  
2 I think I want to go backwards and say that the hearing in this  
3 matter will commence on October 2, 2013, at 9:30 a.m., in this  
4 room, 206, at the Commission.

5           And on September 24, 2013, the parties will  
6 informally, with a cc to me, exchange exhibit lists and witness  
7 lists.

8           On September 17th, there will be two events. One is  
9 that will be the discovery deadline. And by that I mean that  
10 all of the -- and request for discovery will be served on or  
11 before that date. And the settlement conference, should the  
12 blessed event occur, will be on September 17, 2013, also.

13           I think we typically schedule those here at the  
14 Commission, but the parties are free to accommodate each other  
15 and come up with a more advantageous place or even do it on the  
16 phone if that works for you. I'm just going to leave it to your  
17 good judgment.

18           MR. FASSIO: And, Your Honor, just for the benefit of  
19 other parties, since they're all pro se today.

20           Is there any instructions that you can provide in  
21 terms of filing documents with the Records Center?

22           JUDGE WATSON: Yes, I can, but I prefer to do that as  
23 part of the order that I issue, mostly because I'm just -- I  
24 think it will be clearer if it's in writing rather than, And 12  
25 copies of this, and this address, and so forth and so on, so

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1 you'll see that in my order.

2                   And if it is not clear, make sure that -- you know,  
3 that you let me know, and I'll clarify it. You can do that by  
4 e-mail and send it to the other parties and say, I don't  
5 understand when I'm supposed to do something, and that will be  
6 fine.

7                   Do you think that would work, Mr. Fassio?

8                   MR. FASSIO: Yes, thank you.

9                   JUDGE WATSON: Sure. I think it was a good  
10 suggestion of yours as well.

11                   Okay. Hearing no requests to make other statements  
12 today, we're adjourned and we're off the record and thank you  
13 very much and thank you very much, gentlemen, on the phone.

14                   (Proceeding concluded at 2:37 p.m.)

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C E R T I F I C A T E

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3 STATE OF WASHINGTON )  
4 ) ss  
5 COUNTY OF KING )

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6 I, SHELBY KAY K. FUKUSHIMA, a Certified Shorthand Reporter  
7 and Notary Public in and for the State of Washington, do hereby  
8 certify that the foregoing transcript is true and accurate to  
9 the best of my knowledge, skill and ability.

10 IN WITNESS WHEREOF, I have hereunto set my hand and seal  
11 this 13th day of August, 2013.

12

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\_\_\_\_\_  
SHELBY KAY K. FUKUSHIMA, CCR

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16 My commission expires:  
17 June 29, 2017

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