

Joseph A. Brogan

MEMBER



SEATTLE

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SERVICES

Land Use, Planning & Zoning (Chair)

Environmental & Natural Resources

Environmental Litigation Infrastructure

Municipal Government

Native American

Ports

Real Estate

Retail & Consumer Products

Transportation

Water Rights (Chair)

Wine, Beer & Spirits

PRACTICE OVERVIEW

Joe is chair of the firm's Land Use, Planning & Zoning and Water Rights practices and has more than 25 years of experience in local, state, and federal permitting, enforcement matters and water rights. Joe puts his past experience working for city and county agencies and EPA Region 10 to work for his clients and delivers cost-effective legal services that produce results. He works closely with consultants, developers, lenders, real estate investors, and agency officials to achieve the client's objectives. Joe has served under two gubernatorial administrations as Regulatory Performance Advisor to the Washington State Department of Ecology.

He is one of the leading water rights lawyers in Washington state, providing strategic advice, permitting, and litigation support to water purveyors, public utility districts, ports, industry clients and private property owners. Joe represents clients in administrative appeals and in state and federal court on a wide range of water rights and water resource matters.

Joe's clients include: Costco Wholesale, Inc.; Safeway Inc.; Port of Tacoma; Pierce County; King County Department of Natural Resources; King County Facilities Management Division; Skagit PUD; Asotin PUD; City of Anacortes; ICON Materials; Goodman Real Estate; Vulcan, Inc.; Beacon Capital Partners; Swedish Hospital; Harborview Medical Center; Virginia Mason Hospital & Medical Center; Triad Development; Seattle Pacific University; Madison Marquette; City of Renton; Klickitat County; Skamania County; Spokane County; City of White Salmon; Wright Runstad & Co.; City of Yelm; Olympic Property Group; Griffin Capital Corporation; and Green Diamond Resources Company.

REPRESENTATIVE CASES

- Serves as lead outside environmental counsel for major Western Washington port in several Clean Water Act Section 404 compliance matters in federal District Court.
- Served as lead counsel successfully defending appeal of municipal water rights granted to City of Yelm.

- Served as lead litigator representing City of Anacortes and Skagit PUD in multi-year water rights litigation before the Washington Growth Management Hearings Board and in State court concerning revision and implementation of the Skagit River Instream Flow Rule.
- City of Anacortes - *Skagit County v. Washington State Dept. of Ecology*, Thurston County Superior Court, 2003-2012, Lead attorney on all aspects of multi-year complex water right litigation
- City of Yelm - *Foster v. Ecology & City of Yelm*, Pollution Control Hearings Board, 2011-2013
- *EPA v. Port of Tacoma, et al.*, Western District Court, 2010- Present, Lead attorney on Section 404 enforcement and Consent Decree
- *Dugan v. Orton*, King County Superior Court, 2012-Present
- *McQuarrie - McQuarrie v. City of Seattle*, King County Superior Court, 2006-2008
- City of Long Beach - *McArthur v. City of Long Beach and Pacific County*, Shorelines Hearings Board, 2003
- Washington Forest Protection Association - *The Mountaineers v. Washington State Department of Natural Resources*, Washington Forest Practices Appeals Board, 2001
- Pierce County - *Pierce County v. Washington State Dept. of Corrections*, Pierce County Superior Court, 2001

REPRESENTATIVE TRANSACTIONS

- Serves as special counsel to Eastern Washington PUD on water right acquisition and transfer issues.
- Serves as lead Endangered Species Act outside counsel for Pierce County on ESA Section 9 compliance.
- Serves as lead water right counsel for major forest products company in the acquisition of water rights to serve nine new residential communities in the state of Washington.
- Represented dozens of real estate investors on land use due diligence related to development of residential and commercial properties in Washington state.
- Serves as land use counsel on the preparation and City of Seattle approval of Major Institution Master Plans and Master Plan development projects for Seattle's largest hospitals and universities.
- Serves as special counsel to King County for the re-development of its Juvenile Justice Center in Seattle.
- Safeway Inc. - Strategic planning and permitting for the new Safeway Auburn 1.4 million square foot Auburn Distribution Center. Obtained all local, state and federal permits on budget, ahead of schedule and without a single permit appeal. Project specifically recognized by Governor as a model for permitting Washington businesses.
- Washington Mutual Bank - Cedarbrook Corporate Training Center - Acquired an 18-acre site in the City of SeaTac and coordinated all development permits culminating in an on-schedule opening.
- King County Department of Natural Resources - Strategic planning and permitting for the new Brightwater Sewage Treatment Plant. Responsibilities included strategic planning, site screening, and due diligence for locating both treatment plant and conveyance pipelines.
- Beacon Capital Partners - Co-lead attorney completing land use due diligence for Beacon's acquisition of office/residential buildings in one of the largest real property acquisitions in Washington history.
- Triad Development - Lead attorney for coordinating land use due diligence matters for Triad residential projects in California. Provide strategic advice regarding land use permitting matters in western Washington.
- Goodman Real Estate - Lead attorney and land use counsel for City of Seattle acquisitions and development projects.
- Swedish Hospital - Strategic planning and development of hospital Master Plan. Serve as land use entitlement counsel.
- Virginia Mason Hospital & Medical Center - Strategic planning and development of VMHC's Master Plan projects.
- Harborview Medical Center - Co-lead attorney advising clients on redevelopment of Seattle campus.
- Westwater, Inc. - Serve as land use counsel for redevelopment of shoreline properties.
- Old Castle Materials/ICON - Lead counsel for water rights matters.

RECOGNITION

- Rising Star, Washington Super Lawyers list, 2002-2010
- United States Environmental Protection Agency, Region 10, Water Resources, Research Fellow
- Broome County Association Scholarship for Academic Achievement & Community Service, Recipient
- Dean’s Academic Scholarship, Seattle University School of Law, Recipient

ACTIVITIES

- Governor’s Regulatory Performance Advisory Committee for the Department of Ecology Regulatory Reform Initiative, Member, 2002-2014
- Washington State Dept. of Ecology Water Resources Advisory Committee
- American Bar Association
- American Water Resources Association
- King County Bar Association

PUBLICATIONS

- [“Significant Water Rights Bill Passes, Alters State Supreme Court Rulings in *Hirst* and *Foster* Cases,”](#) Author, Foster Pepper News Alert, January 2018
- [“Three Cases Create New Challenges to Secure Water Supply for Development,”](#) Co-author, Foster Pepper News Alert, November 2016
- [“Pollution Control Hearings Board Clarifies Use of Overriding Consideration of Public Interest Statute,”](#) Author, Foster Pepper News Alert, March 2013
- “Department of Ecology Adopts New State Water Quality Standards,” Author, Foster Pepper News Alert
- “Governor Signs Critical Water Legislation Benefiting Municipalities,” Author, Foster Pepper News Alert
- “FP Attorneys Obtain Approvals For New Safeway Facility in Auburn,” Author, Foster Pepper Land Use & Environmental News
- “Ecology Seeks to Reinvent Itself Under Regulatory Reform Initiative,” Author, Foster Pepper Land Use & Environmental News
- “Frequently Asked Questions About the Endangered Species Act,” Author, Foster Pepper Bulletin
- “Reader Alert: Effective Date of Final 4(d) Rule Fast Approaching,” Author, Foster Pepper Land Use & Environmental News
- “Final 4(d) Rule Prohibits “Take” or “Harm” of Threatened Salmon Species; Governmental and Private Development Activities Impacted,” Co-author, Foster Pepper Land Use & Municipal News
- “Municipalities Have Options Regarding ESA Compliance,” Co-author, Foster Pepper Land Use and Municipal News

PRESENTATIONS

- [“New Developments in Water Law and the *Hirst* Decision,”](#) Speaker, Tri-Cities Municipal Government & Public Finance Seminar, July 2018
- [“Intro to Washington Water Law,”](#) Speaker, KCBA Environmental & Land Use Section CLE & Networking Social, April 2018
- [“Impacts of the *Hirst* Decision,”](#) Speaker, Foster Pepper 2017 Real Estate/Land Use Briefing: Essential Industry Updates, November 2017
- [“Water Availability for New Development,”](#) Speaker, Foster Pepper 2016 Real Estate/Land Use Briefing: Essential Industry Updates, November 2016

- "[New City of Seattle Shoreline Master Program](#)," Speaker, Foster Pepper 2015 Land Use/Real Estate Briefing: Essential Industry Updates, October 2015
- "Wetland Mitigation – Advance Mitigation, Banking and Strategies for Making it Work," Speaker, Northwest Environmental Business Council (NEBC) Meeting, June 2015
- "Water Rights Issues Affecting Water Supply," Speaker, 37th Annual Washington Operator Workshop, March 2015
- "[Foster Pepper 2014 Land Use/Real Estate Briefing: New Regulatory Developments and their Impact on the Future of Land Use and Real Estate](#)," Speaker, November 2014
 - + Shoreline Master Programs
 - + City of Seattle Regulatory Update
- "Application of Overriding Considerations of the Public Interest Statute," Speaker, Washington State Association of Municipal Attorneys Fall Conference, October 2014
- "Other New State & Federal Regulatory Developments," Speaker, Wetlands in Washington: Evolving Regulations, Opportunities, and Best Practices, October 2013
- "Use of the OCPI (Overriding Consideration of Public Interest) Exception for Revisiting Established Minimum Flows for Fish," Co-Presenter, Law Seminars International Tribal Water in the Pacific Northwest Conference, July 2013
- "Permitting Marinas and Boatyards: 2012 Regulatory Developments," Speaker, Northwest Marina & Boatyard Conference, November 2012
- "Update on the New Nationwide Permits: Developments arising from the U.S. Army Corps of Engineers 2012 adoptions," Speaker, 12th Annual Seminar on Wetlands in Washington: Evolving regulations, opportunities, and best practices, October 2012
- "Expert Panel Discussion: 2012 Residential & Commercial Update," Panelist, 2012 Land Use & Environmental Seminar, October 2012
- "Municipal Stormwater - Key Issues, Tips and Traps," Co-Presenter, December 2011

EXPERIENCE

- Foster Pepper PLLC
 - + Member, 2007-Present
 - + Associate, 2000-2007
- United States Environmental Protection Agency Region 10, Office of Regional Counsel, Legal Research Fellow, 1999-2000
- King County Department of Natural Resources, Water and Land Resources Division, Program Coordinator, 1992-1997
- City of Seattle Department of Construction and Land Use, Code Development and Community Relations Division, Planning and Development Specialist, 1990-1992
- City of Seattle Office for Long Range Planning, Environmental Planner, 1989-1990

BAR ADMISSIONS

- Washington, 2000
- U.S. District Court
 - + Western District of Washington, 2010
- 9th Circuit U.S. Court of Appeals

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EDUCATION

- J.D., Seattle University School of Law (*cum laude*), 2000
- Master of Public Administration, University of Washington, 1990
- B.A., State University of New York-Binghamton, 1987