

No. 38577-5-II

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

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DIVISION II  
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STATE OF WASHINGTON  
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BRITT DUDEK and BRUCE BAGULEY,

Appellants,

v.

THE EASTERN WASHINGTON GROWTH MANAGEMENT  
HEARINGS BOARD; DOUGLAS COUNTY; CITY OF EAST  
WENATCHEE; PANGBORN MEMORIAL AIRPORT; THE PORT  
OF CHELAN COUNTY; and THE PORT OF DOUGLAS COUNTY,

Respondents.

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**RESPONDENT'S BRIEF BY DOUGLAS COUNTY**

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## I. INTRODUCTION

The County will refer to the Appellants as Petitioners, pursuant to RAP 10.4(e).

The County cites to the record throughout this brief. The County will cite to the superior court's record as Clerk's Papers, using CP. The record before the Eastern Washington Growth Management Hearings Board was limited to the exhibits submitted by the parties and admitted, rather than the entire record created by the County.<sup>1</sup> These exhibits will be cited using Ex, together with a description of the document and the Bates stamp number designated as R, indicating the location in the record created by the County. Several exhibits are attached at the Appendix.

## II. COUNTER-STATEMENT OF THE ISSUES

Douglas County proposes the following counter-statement of the issues presented by the Petitioners' appeal:

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<sup>1</sup> WAC 242-02-52001 Exhibits. (1) Except as otherwise provided in these rules, the evidence in a case shall consist of the exhibits cited in the briefs and attached thereto. A copy of any document cited in a brief shall be served on the opposing party or parties by the time specified by the board or presiding officer and an original and four copies of the exhibits shall be filed with the board.

Issue No. 1. Does RCW Chapter 36.70A, the Growth Management Act, require the county to protect Pangborn Memorial Airport? (Petitioners' Assignments of Error, Nos. 1 and 4)

Issue No. 2. Does conservation of agricultural resource lands have a greater priority than protection of general aviation airports under RCW Chapter 36.70A, the Growth Management Act? (Petitioners' Assignments of Error, Nos. 1 and 4)

Issue No. 3. Did the Petitioners meet their burden of proving the County's amendment of the Airport Overlay District regulations impermissibly authorized conversion of agricultural resource lands and affected agricultural practices in violation of RCW Chapter 36.70A, the Growth Management Act? (Petitioners' Assignments of Error, Nos. 1 and 4)

Issue No. 4. Did the Petitioners meet their burden of proving the County's amendment of the Airport Overlay District regulations violated the public participation requirements of RCW Chapter 36.70A, the Growth Management Act, and the Douglas County Code? (Petitioners' Assignments of Error, Nos. 2 and 4)

Issue No. 5. Did the Petitioners meet their burden of proving the County's amendment of the Airport Overlay District regulations and the decision of the Growth Management Hearings Board were

not supported by substantial evidence? (Petitioners' Assignments of Error, Nos. 1 and 3)

Issue No. 6. Where the County amended development regulations to expand protection of an airport, did the County properly limit non-project SEPA review alternatives to a 'no action' alternative? (Petitioners' Assignments of Error, Nos. 1 and 3)

Issue No. 7. Is an action untimely under RCW Chapter 7.24, the Uniform Declaratory Judgment Act, when brought to challenge a land use development regulation seven years after the regulation was adopted? (Petitioners' Assignment of Error, No. 5)

Issue No. 8. Did the Petitioners demonstrate standing to bring an action under RCW Chapter 7.24, the Uniform Declaratory Judgment Act, to challenge the constitutionality of DCC 18.65.040.E? (Petitioners' Assignment of Error, No. 5)

Issue No. 9. Did the Petitioners meet their burden of proving DCC 18.65.040.E constitutes an unconstitutional delegation of legislative authority? (Petitioners' Assignment of Error, No. 5)

Issue No. 10. Did the Petitioners meet their burden of proving DCC 18.65.040.E is unconstitutionally vague? (Petitioners' Assignment of Error, No. 5)

Issue No. 11. Is the County entitled to an award of reasonable attorney's fees and costs for successfully defending this appeal? (County's Request at Section IV, I of Argument)

### III. COUNTER-STATEMENT OF THE CASE

#### A. Statement of Procedure

The Petitioners' challenge the County's adoption of Resolution No. TLS 07-09B on May 9, 2007. The resolution adopted amendments to DCC Chapter 18.65, the Airport Overlay District (AP-O). Ex R-3 (R 694-708; Appendix C).

The Petitioners filed a petition for review with the Eastern Washington Growth Management Hearings Board (EWGMHB) under Case No. 07-1-0009. The EWGMHB issued a Final Decision and Order on December 18, 2007, denying the petition and finding the Petitioners failed to carry their burden on all issues. CP 13-51 (Petition for Review, Exhibit A, EWGMHB FDO; Appendix A).

The Petitioners sought review in the Thurston County Superior Court, No. 08-2-00074-2, under RCW Chapter 34.05, the Administrative Procedures Act (the APA), and also sought declaratory relief under RCW Chapter 7.24, the Uniform Declaratory Judgment Act (the UDJA). The trial was held before

the Honorable Gary R. Tabor on August 1, 2008, and the Petitioners presented no testimony or evidence at trial. On October 31, 2008, Judge Tabor entered an Order Dismissing Petition for Review and Declaratory Judgment holding the Petitioners failed to meet their burden of proof under the APA and the UDJA. CP 166. The Petitioners appeal that Order.

B. Statement of Facts

Pangborn Memorial Airport (Pangborn) has been North Central Washington's regional airport for decades and is operated under the joint authority of the Port of Douglas County and the Port of Chelan County (the Ports). The airport serves public general aviation, passenger service and cargo service. Ex R-1 (Airport Overlay District Advisory Committee Summary, R 846-854, at 846; Appendix E).

The AP-O was originally adopted in 2000 as part of the County's Resolution TLS No. 00-05-38. The AP-O provides a set of regulations protecting Pangborn. Ex R-4 (Text of former DCC Chapter 18.65, R 176-179; Appendix D).

Mr. Dudek owns and operates an orchard within the AP-O, and served on the Regional Planning Commission (RPC). Mr.

Baguley owns property within the AP-O, does not engage in any agriculture, and served on the Airport Overlay Advisory Committee.

In response to Pangborn's Federal Aviation Administration (FAA) approved and updated Airport Master Plan, the County began review of the existing AP-O. The RPC reviewed a set of proposed AP-O amendments in December 2004. Ex R-1 (Airport Overlay Advisory Committee Summary, at R 846; Appendix E).

The Board of County Commissioners (BOCC) held a public hearing in January 2005 and remanded the amendments to the RPC, with directions that new recommendations be developed after further consideration of the Airport Master Plan, requirements of the FAA and the Washington State Department of Transportation, Aviation Division (WSDOT), and public participation. Ex R-2 (BOCC Meeting Minutes, R 1542-1557; Appendix F); Ex R-1 (Appendix E, at R 846). The Ports established an Airport Overlay Advisory Committee to formulate recommendations. Ex R-12 (RR 1-4; Appendix G).

After over two years of public meetings and hearings by the Advisory Committee and the RPC, an RPC recommendation was forwarded to the BOCC. The BOCC held a public hearing on April 25, 2007, and accepted public comments. The hearing was

continued to May 9, 2007, to allow time for submittal of additional written comments.

The BOCC adopted Resolution No. TLS 07-9B at the continued public hearing. The BOCC rejected the proposed amendments creating new Zones 4 and 6 and rejected imposing restrictive easements on new development. Ex R-3 (Appendix C). The amendments to DCC Chapter 18.65 are summarized as follows:

<u>Section</u>	<u>Change</u>
DCC 18.65.010	Changed terminology of “ <i>safety zones</i> ” to “ <i>compatibility zones</i> ,” and added “ <i>WSDOT Aviation Land Use Compatibility, 2002 CALTRAN Airport Land Use Compatibility Handbook</i> ” to list of standards and guidelines
DCC 18.65.050.F	Deleted “ <i>the runway protection</i> ” that formerly described Zone 1, “ <i>and the inner safety zone</i> ” that formerly described Zone 2, and “ <i>or the inner turning zone</i> ” that formerly described Zone 3; Added “(6,000 gallons or more)” to define large concentrations of flammable material.
DCC 18.65.050.G	Deleted “ <i>multifamily</i> ” and “ <i>churches</i> ” from prohibited uses; Added “ <i>nursing homes</i> ” and “ <i>large day care centers</i> ” to prohibited uses; Deleted application within Zone 1 and added application for Zone 3.
DCC 18.65.050.H	Deleted “ <i>the runway protection</i> ” formerly describing Zone 1.
DCC 18.65.050.I	Deleted “ <i>the runway protection</i> ” and “ <i>inner</i> ”

*safety zone*” describing Zones 1 and 2.

- DCC 18.65.050.L Revised language required for note on plats, site plans and deeds.
- DCC 18.65.050.M A new section adopting non-residential use intensity maximums.
- DCC 18.65.050.N A new section providing: “Structures shall be located away from the extended centerline of the runway to the greatest extent possible.”
- DCC 18.65.070 Requirements for development permits to include new information; Changed “*to the runway protection zone 1, inner safety zone 2, and/or inner turning zone 3 as described in Section 18.65.080*” to “*in relation to the compatibility zones;*” Changed location and height limitations; Added “*transitional*” and “*approach*” to the surface areas having potential natural obstructions; Changed “*accident safety zone*” to “*compatibility zone.*”
- DCC 18.65.080 Deleted the definitions for previous Zones 1, 2 and 3, and established the graphic depictions of Zones 1, 2, 3 and 5; Subsection B was amended to decrease the visual approach distances for runway 7-25.

Ex R-3 (Appendix C); Ex R-4 (Appendix D)

1. *Agency and Public Participation Process Overview*

The County engaged in a lengthy agency and public participation process. The process involved the public, WSDOT, Pangborn and the Ports, the Overlay Advisory Committee, the

Washington Department of Community, Trade and Economic Development (DCTED), the RPC, East Wenatchee and the BOCC.

Agency participation was substantial: WSDOT submitted 13 separate comment sets and attended meetings and hearings; Pangborn and the Ports submitted eight different comment sets and attended meetings and hearings; the Airport Overlay Advisory Committee held 14 public meetings and submitted two separate comment sets; DCTED provided three separate comment sets; the RPC held six different public meetings and hearings and one workshop; and the BOCC held three public hearings and participated in the RPC workshop. The Overlay Advisory Committee and RPC solicited and received comments from the public.<sup>2</sup>

Numerous public comments were submitted to the BOCC at its public hearings. Petitioners submitted three different sets of written comments to the BOCC and also provided oral comments.<sup>3</sup> Ex. R-26 (BOCC Hearing Transcript Excerpts admitted on Motion to

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<sup>2</sup> The Public Participation Process was outlined, with citations to the record, in Respondent Douglas County's Hearing on the Merits Brief. pp. 10-13, filed with the EWGMHB.

<sup>3</sup> The public testimony and comments to the BOCC were summarized, with citations to the record, in Respondent Douglas County's Hearing on the Merits Brief. pp. 30-31, filed with the EWGMHB.

Supplement; Appendix H); Ex R-27 (BOCC Hearing Agenda and Written Comments admitted on Motion to Supplement)

#### IV. ARGUMENT

##### A. Standards of Review

###### 1. APA Standard of Review

Judicial review of a GMHB decision is conducted pursuant to the APA. The burden of demonstrating the invalidity of the GMHB's decision is on the party challenging the decision. RCW 34.05.570(1)(a). The superior court held the Petitioners failed to meet their burden of proof under the APA and denied the Petitioners' request that it reverse the EWGMHB's decision.

An appellate court applies the APA standards of review to the record before the GMHB. *City of Redmond v. Central Puget Sound Growth Management Hearings Board*, 136 Wn.2d 38, 45, 959 P.2d 1091 (1998); *Thurston County v. Cooper Point Association*, 148 Wn.2d 1, 7-8, 57 P.3d 1156 (2002).

Where an APA challenge alleges the GMHB erroneously interpreted or applied the law, the appellate court reviews issues of law *de novo*. Although the appellate court is not bound by the GMHB's interpretation of law, it gives substantial weight to the

GMHB's interpretation of the GMA. *City of Redmond v. Central Puget Sound Growth Management Hearings Board, supra*, at 46.

When sufficiency of the evidence is challenged under the APA, the appellate court reviews the record before the agency under the substantial evidence standard, defined as a "sufficient quantum of evidence in the record to persuade a reasonable person of the truth or correctness of the order." *Thurston County v. Cooper Point Association, supra*, at 8. The record before the EWGMHB, and subject to review under the APA, was limited to the exhibits attached to briefs or admitted as supplemental evidence. WAC 242-02-52001(1).<sup>4</sup>

The County's adopted comprehensive plan and development regulations are presumed to be valid. RCW 36.70A.3201.<sup>5</sup> The Legislature has emphasized the deference to be afforded to counties planning under the GMA. RCW 36.70A.320(1) provides:

[T]he legislature intends that the boards apply a more deferential standard of review to actions of counties and cities than the preponderance of the evidence standard provided for under existing law. In recognition of the broad

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<sup>4</sup> WAC 242-02-52001 Exhibits. (1) Except as otherwise provided in these rules, the evidence in a case shall consist of the exhibits cited in the briefs and attached thereto. A copy of any document cited in a brief shall be served on the opposing party or parties by the time specified by the board or presiding officer and an original and four copies of the exhibits shall be filed with the board.

<sup>5</sup> RCW 36.70A.320(1). Except as [to the shoreline element], comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption.

range of discretion that may be exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the boards to grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter. Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community.

This greater deference afforded to counties planning under the GMA has been applied by the appellate courts. *Quadrant Corp. v. Central Puget Sound Growth Management Hearings Board*, 154 Wn.2d 224, 233, 238, 110 P.3d 1132 (2005); *Thurston County v. Cooper Point Association*, *supra*, at 8. Further, the Supreme Court has made clear the GMA is *not* to be liberally construed to invalidate local actions. *Thurston County v. Western Washington Growth Management Hearings Board*, 164 Wn.2d 329, 342, 190 P.2d 38 (2008).

The Petitioners have the burden of proof and must demonstrate the EWGMHB erroneously interpreted and applied the GMA, demonstrate the record before the EWGMHB lacked

substantial evidence, and/or demonstrate the county's amendment of the AP-O violated the GMA.

## 2. UDJA Standard of Review

An appellate court reviews an action under the UDJA in the same manner as other civil actions under the ordinary rules of appellate procedure. RCW 7.24.070.<sup>6</sup> The appellate court reviews the trial court's findings of fact under the substantial evidence standard. Conclusions of law involving the interpretation of statutes and municipal ordinances are reviewed *de novo*. *Schneider v. Snyder's Foods, Inc.*, 116 Wn.App. 706, 713, 66 P.3d 640 (2003); *Landmark Dev., Inc. v. City of Roy*, 138 Wn.2d 561, 573, 980 P.2d 1234 (1999); *Nollette v. Christianson*, 115 Wn.2d 594, 599-600, 800 P.2d 359 (1990).

Under the UDJA, factual issues are tried and determined in the same manner as issues of fact are tried and determined in other civil actions. RCW 7.24.090.<sup>7</sup> Where a party has failed to

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<sup>6</sup> RCW 7.24.070 Review. All orders, judgments and decrees under this chapter may be reviewed as other orders, judgments and decrees.

<sup>7</sup> RCW 7.24.090. Determination of issues of fact. When a proceeding under this chapter involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions, in the court in which the proceeding is pending.

meet its burden of proof before the trial court and the trial court makes no findings of fact, the appellate court implies the factual findings against that party. *Brust v. McDonald's Corp.*, 34 Wn.App. 199, 209, 660 P.2d 320 (1983); *Fulle v. Boulevard*, 20 Wn.App. 741, 744, 582 P.2d 566 (1978); *Rhodes v. Gould*, 19 Wn.App. 437, 576 P.2d 914 (1978).

Where, as in this case, the UDJA action seeks to declare a local ordinance unconstitutional, the ordinance is presumed constitutional and the challenger bears a “heavy burden of showing otherwise.” *Housing Authority v. City of Pasco*, 120 Wn.App. 839, 843, 86 P.3d 1217 (2004); *Louthan v. King County*, 94 Wn.2d 422, 428, 617 P.2d 977 (1980); *Lawson v. City of Pasco*, 144 Wn.App. 203, 208-209, 181 P.3d 896 (2008); *Brown v. City of Yakima*, 116 Wn.2d 556, 559, 807 P.2d 353 (1991).

#### B. Pangborn Is an Airport that Must Be Protected Under the GMA

##### 1. Pangborn is an Airport Serving General Aviation

The EWGMHB held Pangborn was a general aviation airport that must be protected under the GMA, as a general aviation airport protected under RCW 36.70A.510 and RCW 36.70.547, and as an essential public facility. The Petitioners contend Pangborn has a

technical characterization other than a “general aviation airport” and is not entitled to protection under RCW 36.70A.510 and RCW36.70.547.<sup>8</sup>

There are no reported cases interpreting or applying RCW 36.70A.510 and RCW 36.70.547. The EWGHMB is entitled to deference with respect to its interpretation of the GMA. *City of Redmond v. Central Puget Sound Growth Management Hearings Board, supra*, at 46. Therefore, the County cites to several GMHB decisions.

The GMA was amended in 1996 to recognize the inherent social and economic benefits of aviation and to require that GMA land use planning include protection of airports. RCW 36.70A.510 provides:

Adoption and amendment of comprehensive plan provisions and development regulations under this chapter affecting a general aviation airport are subject to RCW 36.70.547.

RCW 36.70.547 provides:

Every county, city, and town in which there is located a general aviation airport that is operated for the benefit of the general public, whether publicly owned or privately owned public use, shall, through its comprehensive plan and development regulations, discourage the siting of

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<sup>8</sup> The Petitioners' argument relies upon an erroneous approach to prove “legislative history” that fails to include evidence of bill digests and reports, committee reports, testimony, floor debates, and other legislative materials. This Court should ignore such argument.

incompatible uses adjacent to such general aviation airport. Such plans and regulations may only be adopted or amended after formal consultation with: Airport owners and managers, private airport operators, general aviation pilots, ports, and the aviation division of the department of transportation. . . .

The language of RCW 36.70A.510 and RCW 36.70.547 is clear and unambiguous.

Under EWGMHB cases, airports serving public general aviation must be protected under the GMA. *McHugh, et al., vs. Spokane County, et al.*, EWGMHB, Case No. 05-1-0004, FDO (December 16, 2005) (Spokane International Airport must be protected); *Neighbors for Responsible Development vs. City of Yakima*, EWGMHB, Case No. 02-1-0009, FDO (December 5, 2002) (Yakima Air Terminal-McAllister Field must be protected); *Son Vida II vs. Kittitas County*, EWGMHB, Case No. 01-1-0017, FDO (March 14, 2002) (Bowers Field must be protected).

The other GMHBs have reached this same holding. The WWGMHB has held local governments have a duty to protect airports from incompatible uses. The WWGMHB relies heavily upon WSDOT Aviation Division guidelines and comments formulated during the planning process. *Durland vs. San Juan County*, WWGMHB, Case No. 00-2-0062c, FDO (October 15,

2002) and *Klein vs. San Juan County*, WWGMHB, Case No. 02-2-0008, FDO (October 15, 2002) (Airport Overlay failed to adequately protect existing airport); *CCARE vs. Anacortes*, WWGMHB, Case No. 01-2-0019, FDO (December 12, 2001) (Rezone required to protect airport.); *Abenroth vs. Skagit County*, WWGMHB, Case No. 97-2-0060, FDO (January 23, 1998).

The CPSGMHB has held RCW 36.70A.510 and RCW 36.70.547 provide explicit direction to local governments to give substantial weight to WSDOT Aviation Division comments and concerns regarding airport protection. *Pruitt, et al., vs. Town of Eatonville*, CPSGMHB, Case No. 06-3-0016, FDO (December 18, 2006) (Airport Overlay invalid where Town ignored comments and concerns of local pilots and WSDOT Aviation Division and failed to protect airport operations).

As mandated by RCW 36.70.547 and the decisions of the GMHBs, the County actively engaged WSDOT to formulate appropriate protection for Pangborn. (Ex R-13, WSDOT, *Aviation Land Use Compatibility Program FAQ's*, R 172-175; Ex R-14, WSDOT, *Aviation Land Use Compatibility Program*, R 220-267; Ex R-15, Memorandum from WSDOT dated August 2, 2005, R 533-534; Ex R-16, Comments from WSDOT dated July 20, 2005, R

537; Ex R-17, Comments from WSDOT dated November 22, 2005, R 546-547; Ex R-18, WSDOT, *Airport Land Use Compatibility Program Guidance and Reference Materials*, R 660-663; Ex R-19, WSDOT, *Aviation Land Use Compatibility Program Overview*, R 664-667; Ex R-20, WSDOT Presentation, R 668-693; Ex R-21, WSDOT, *Airport Land Use Compatibility Program, Program Overview*, R 907-908; Ex R-22, Comments from WSDOT dated February 21, 2007, R 953-955; Ex R-23, Comments from WSDOT dated February 20, 2007, R 963-967)

The issue regarding status as a “general aviation airport” was directly addressed by WSDOT in a letter to the County dated February 5, 2007:

Your letter poses two questions, which are as follows:

*Is Pangborn Memorial Airport a general aviation airport?*  
Yes.

The airport facility provides an area for the landing and take-off of aircraft, and has buildings and facilities that support aviation activity. Aviation activity at the airport includes general aviation as well as scheduled airline passenger and military operations as identified in the FAA Airport Master Record.

*Do the provisions of RCW 36.70A.070 and RCW 36.70.547 apply to the county?* Yes.

[T]he purpose of the legislation is to “protect general aviation facilities from encroachment of incompatible

land uses.” The legislation further requires every county, city and town in which there is located a public use general aviation airport in its jurisdiction to discourage the siting of incompatible uses adjacent to the airport through its comprehensive plan and development regulations.

\* \* \*

General aviation (GA) is one of two categories of civil aviation and is defined as all facets of aviation except military, schedule cargo service, and scheduled airline passenger service. General aviation aircraft range from ultralights and single engine aircraft to helicopters, air ambulances, air charter, experimental airplanes, and twin turboprops to large and small business jets.

According to records compiled by the state, Pangborn Memorial Airport is just one of the 140 public use airports within the Washington Aviation System that provide general aviation facilities and services to the air transportation system.

\* \* \*

According to the most recent inventory of airport facilities and services conducted by WSDOT in July 2006, general aviation operations at the airport accounted for just over 69 percent of all airport operations at the airport or 29,610 operations.

\* \* \*

In conclusion, any airport that has general aviation activity is considered a general aviation airport and that (sic) local jurisdictions that have public use general aviation airports within their jurisdiction are required to discourage incompatible land uses adjacent to them.

Ex R-24 (RR 973-975; Appendix I).

DCTED also issued an opinion regarding the applicability of RCW 36.70A.510 and RCW 36.70.547 to Pangborn:

Pangborn is considered a general aviation airport. As such, the provisions of RCW 36.70.547 are applicable.

Ex R-25 (R 985; Appendix J).

Without regard to technical labels (primary, commercial, general or reliever), the GMHBs have consistently required protection of airports serving public use by general aviation. *McHugh, et al. vs. Spokane County, et al., supra* (Spokane International Airport); *Neighbors for Responsible Development vs. City of Yakima, supra* (Yakima Air Terminal-McAllister Field); *Son Vida II vs. Kittitas County, supra* (Bowers Field Airport); *Durland vs. San Juan County, supra* (Orcas Island Airport); *CCARE vs. Anacortes, supra* (Anacortes airport); *Abenroth vs. Skagit County, supra* (Skagit Regional Airport), *Pruitt, et al., vs. Town of Eatonville, supra* (Swanson Field).

The EWGMHB held in this case that protection of Pangborn is also required:

The Board agrees with the Respondent that Pangborn Memorial Airport, as defined by the agency responsible for aviation in the State of Washington, is a "general aviation" airport. But, regardless of whether Pangborn Memorial Airport is a "general aviation" airport or not, the County has the authority

and the responsibility under a number of statutes, including RCW 14.12, RCW 36.70A.130, RCW 36.70A.200, and RCW 36.70A.510 to adopt and amend its comprehensive plan and development regulations to protect aviation. Even in their briefing, Petitioners admit that “protections are left to the local government to decide.”

CP 13-51 (FDO, p. 14, ll. 7-15; Appendix A).

2. *Pangborn is an Essential Public Facility*

The Petitioners challenged the County’s designation of Pangborn as an “essential public facility” before the EWGMHB. The EWGMHB found Pangborn was properly designated an essential public facility under the GMA and the County had a duty to protect the current and future use of the airport:

Both parties agree and acknowledge Pangborn Memorial Airport is an Essential Public Facility. Under that definition, the County has a duty to protect the present and future use of the facility. The action taken by the County ensures Pangborn Memorial Airport’s viability for future use. The expansion of the overlay holds in place the present agricultural activity and uses, thus protecting both the airport and agriculture.

CP 13-51 (FDO, p. 30, l.24 – p. 31, l. 4; Appendix A).

The Petitioners did not appeal this decision by the EWGMHB in the APA action and do not challenge this holding in the appeal before this Court.

Based upon the foregoing, it is clear that Pangborn must be protected under the GMA because it is a general aviation airport protected under RCW 36.70A.510 and RCW 36.70.547, and it is an essential public facility.

C. Conservation of Agricultural Resource Lands Does Not Have a Higher Priority than Protection of Pangborn

The Petitioners urge that absolute “untouchable” status be conferred the agricultural lands adjacent to Pangborn and rely upon two sections of the GMA:

Except as provided in RCW 36.70A.1701, **each county** that is required or chooses to plan under RCW 36.70A.040, and each city within such county, **shall adopt development regulations** on or before September 1, 1991, **to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.**

Regulations adopted under this subsection may not prohibit uses legally existing on any parcel prior to their adoption and shall remain in effect until the county or city adopts development regulations pursuant to RCW 36.70A.040.

**Such regulations shall assure that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals.**

RCW 36.70A.060(1)(a). (Emphasis added)

A county or a city may use a variety of innovative zoning techniques in areas designated as agricultural lands of long-

term commercial significance under RCW 36.70A.170. **The innovative zoning techniques should be designed to conserve agricultural lands and encourage the agricultural economy.** Except as provided in subsection (3) of this section, a county or city should encourage nonagricultural uses to be limited to lands with poor soils or otherwise not suitable for agricultural purposes.

RCW 36.70A.177(1). (Emphasis added)

The Petitioners also rely upon the Supreme Court cases of *King County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 14 P.3d 133 (2000), and *Lewis County v. Western Washington Growth Management Hearings Board*, 157 Wn.2d 488, 139 P.3d 1096 (2006), and the EWGMHB decision in *City of Walla Walla, et al., v. Walla Walla County*, EWGMHB, Case No. 02-1-0012c, FDO (November 26, 2002). The Petitioners' reliance is misplaced.

In *King County*, the Supreme Court considered comprehensive plan amendments allowing "active recreation facilities" on 40,500 acres of designated agricultural resource land. The Supreme Court found that the amendments failed to conserve such land in order to maintain and enhance the agricultural industry. The Supreme Court concluded at 562-563:

Although the GMA encourages recreational uses of land, there is no conservation mandate for recreational use as with agricultural use. **In this case**, the GMA mandates

conservation of the APD's limited, irreplaceable agricultural resource lands.

(Emphasis added)

In *City of Walla Walla*, the GMHB followed *King County*. The county's amended development regulations allowed active recreation uses as outright or conditional uses on widespread agricultural lands. The GMHB found that such recreational uses constituted incompatible and unrelated uses. The GMHB did not hold that agricultural resource lands are entitled to absolute protection under every circumstance.

In *Lewis County*, the Supreme Court considered the county's development regulations allowing nonfarm industrial or commercial "farm centers" as outright uses within agricultural resource lands. Although reversed on other issues, the Supreme Court upheld the GMHB's finding that the nonfarm uses had not been limited to avoid impacts on resource lands and resource activities, and did not maintain and enhance the agricultural industry.

All three cases involve widespread agricultural lands and authorize nonfarm uses as "innovative zoning techniques," thereby converting agricultural resource lands to other uses. This case involving Pangborn does not involve nonfarm land uses on

agricultural lands, does not involve “innovative zoning techniques” under RCW 36.70A.177, and does not involve conversion of agricultural resource lands to other uses. Further, the cases relied upon by Petitioners do not involve competing GMA provisions for conservation or protection.

The Petitioners urge this Court to ignore the GMA's mandated protection of airports and essential public facilities. Balancing of conflicting GMA goals is proper when a conflict exists. *Son Vida II vs. Kittitas County, supra*. However, Petitioners fail to demonstrate any conflicts or conversion of agricultural lands or uses to even trigger such balancing, as discussed in the following section.

#### D. Conflicts Do Not Exist Between Agricultural Land Conservation and Airport Protection Under the AP-O

The Petitioners contend the amendments to the AP-O constitute an “innovative zoning technique” impermissibly lessening the conservation of agricultural lands and adversely affecting continued agricultural uses. The Petitioners do not cite to specific amendments.

1. *The AP-O Amendment Does Not Authorize Conversion of Agricultural Resource Lands*

The amendments to the AP-O are outlined above in the Counter-Statement of the Case. Underlying zoning, development regulations and agricultural uses remain effective within the AP-O. Nothing in the AP-O authorizes conversion of agricultural lands to other uses. The Petitioners have not demonstrated any contrary evidence in the record.

2. *The AP-O Amendments Do Not Require Adjustment of Historical Farming Practices to Accommodate Aviation*

The Petitioners contend that agricultural practices have been impermissibly impacted by the amendments to the AP-O because the AP-O development standards prohibit attraction of wild birds, aerial spraying, ground spraying and limit the number of orchard workers allowed per acre.

The Petitioners do not cite to specific sections of the amended AP-O causing these impacts, do not demonstrate the existence of any historical practices, and do not demonstrate any impacts on such practices.

Based upon Petitioners' unsupported general statements in Appellants' Opening Brief, Statement of the Case, pp. 16-17, the

County infers that Petitioners are indirectly complaining of the impacts of DCC 18.65.050, subsections B, C, and M. Subsections B and C have existed since the original adoption of the AP-O, were not part of the amendments, and were not subject to GMHB review. Subsection M was adopted as an amendment. Ex R-3 (Appendix C); Ex R-4 (Appendix D). These three subsections of DCC 18.65.050 provide:

The following criteria shall be applied within the boundaries of the AP-O district:

\* \* \*

B. No use, building or structure shall emit emissions of fly ash, dust, vapor, gases or other forms of emissions **that may conflict with any planned operations of the airport.**

C. No use shall be permitted that would **foster an increase in bird population** and thereby increase the likelihood of a bird-impact problem.

\* \* \*

M. Nonresidential land usage intensity standards.

1) Non-residential land levels shall not exceed the following intensity levels:

Zones 1 & 2: 0-5 people **per acre**

Zone 3: 25 people **per acre**

Zone 5: 50 people **per acre**

(Emphasis added)

Petitioners contend these development standards will require adjustments to agricultural practices, without any specifics.

However, as to subsection B, aerial spraying is an aviation activity subject to FAA regulations and ground spraying would have to impact the airspace above the 150 foot FAR height limitations to be prohibited. As to subsection C, farming would have to cause an *increase* in bird population, even though farmers diligently work to keep birds away from their orchards. Under subsection M, a small five acre orchard would be allowed to have between 25 and 250 workers on-site, depending upon location. The Petitioners fail to cite to the record and to demonstrate the alleged impacts of these DCC 18.65.050 subsections.

Finally, the Petitioners ignore DCC 18.65.040.E, which has always exempted agricultural lands and uses from the AP-O development standards:

The following structures, uses or other activities **are exempt from the provisions of the AP-O district** when permitted in the underlying zoning district:

\* \* \*

**E. Nonresidential agricultural uses, structures and/or buildings**, provided that use will not penetrate the airspace with the APO district safety zones, the FAR Part 77 surfaces or otherwise create a safety impact as determined by the review official.

(Emphasis added)

### 3. The AP-O Enhances Conservation of Agricultural Resource Lands

The EWGMHB held, throughout its decision, that protections afforded Pangborn by the AP-O actually enhance conservation of agriculture through additional limitations on non-agricultural development. CP 3-51 (Petition for Review, Exhibit A). (See, amended DCC 18.65.050.I, prohibiting division of agricultural lands into parcels having less than ten acres and thereby discouraging conversion of agricultural lands to residential; amended DCC 18.65.050.G prohibiting hospitals, nursing homes, schools and large day care centers; amended DCC 18.65.050.M establishing limited nonresidential land use intensity levels; amended DCC 18.65.070 limiting building and structure height.) Ex R-3 (Appendix C); Ex R-4 (Appendix D).

Petitioners have not demonstrated any substantial evidence in the record that the AP-O amendments authorize or encourage conversion of agricultural resource lands and/or interfere with agricultural uses.

#### E. The AP-O Was Adopted Using Proper Public Participation

As outlined above in the Counter-Statement of the Case, the County engaged in an extensive process of public meetings and

hearings, and received a substantial amount of agency and public comments, both written and oral. The County promoted meaningful, extensive public participation at every stage of the AP-O review process. The County did not violate the GMA or its own procedures.

*1. The AP-O Amendments Were Adopted Following Extensive Public Participation*

The Petitioners contend the BOCC failed to provide an opportunity for public participation. The BOCC public hearing held on April 25, 2007, was attended by at least 54 members of the public (54 persons did "sign in"). Ex R-27 (BOCC Hearing Agenda, Comments, pp 2-5). The Chair opened the session as "a public hearing" and announced procedures for "public testimony." The BOCC accepted written and oral comments, and then extended time for receipt of written comments to May 4, 2007, and continued deliberations to May 9, 2007. Ex R-26 (Appendix H).

Clearly, Douglas County followed the spirit of public participation and met the requirements of public participation under the GMA.

2. The Douglas County Code Provisions  
Cited by Petitioners Are Not Applicable

The Petitioners contend that the County did not comply with its own procedures when adopting the AP-O amendments.

The Petitioners cite DCC 14.32.040 and contend there was more than one amendment to the County's comprehensive plan during 2007. Petitioners are challenging DCC Chapter 18.65 and amendments to the County's development regulations. DCC 14.32.040.C and RCW 36.70A.130 do not apply, as discussed below.

The Petitioners also cite DCC 14.10.050. This code section applies to review of *applications* for amendment of the comprehensive plan and/or development regulations. DCC 14.10.050 references applications and includes provisions for notice to the applicant, the entry of findings regarding the applicant's proposed development, and appeal by the applicant pursuant to the provisions of Land Use Petition Act. This case does not involve an application for amendment of the comprehensive plan and/or development regulations. Rather, this case involves amendments to the AP-O originally proposed as part

of the 2004 array of amendments received by the BOCC from the RPC. Ex R-2 (RR 1542-1557, Appendix F).

The Petitioners argue the BOCC improperly changed the recommendation of the RPC and adopted its own version of the proposed amendments. The BOCC received an array of amendments proposed for the AP-O and did reject some, as outlined in the Counter-Statement of the Case. The BOCC had the right to reject proposed amendments. The BOCC was acting as a policy body under its legislative authority. See, *Chipman vs. Chelan County*, EWGMHB, Case No. 05-1-0002, Order of Dismissal (January 31, 2006).

### 3. The County Complied With RCW 36.70A.106

The Petitioners contend the County did not comply with RCW 36.70A.106, which requires that proposed amendments be transmitted to DCTED for review and comment at least 60 days prior to adoption. However, RCW 36.70A.106 also provides that adopted amendments be submitted to DCTED within ten days after adoption.<sup>9</sup>

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<sup>9</sup> RCW 36.70A.106. (1) Each county and city proposing adoption of a comprehensive plan or development regulations under this chapter shall notify the department of its intent to adopt such plan or regulations at least sixty days prior to final adoption. . . .

DCTED received the proposed AP-O amendments well in advance of the 60 day requirement and provided comments to Douglas County on February 21, 2007. Ex R-9 (DCTED Comments, RR 961-962, Appendix K). The amendments were adopted on May 9, 2007. Ex R-3 (Appendix C).

The Petitioners base their entire argument on a May 17, 2007, letter from DCTED to the County. This letter acknowledged DCTED's receipt of "adopted Resolution No. TLS 07-09B" as "required under RCW 36.70A.106." The Petitioners disingenuously argue this DCTED letter, instead, acknowledged merely the start of DCTED's 60 day review process, rather than DCTED's receipt of adopted amendments.

The EWGMHB easily recognized the Petitioners' disingenuousness and affirmed the County's compliance with RCW 36.70A.106. CP 13-51 (FDO, p. 23, ll. 3-9; Appendix A).

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(2) Each county and city planning under this chapter shall transmit a complete and accurate copy of its comprehensive plan or development regulations to the department within ten days after final adoption.

(3)(a) Any amendments for permanent changes to a comprehensive plan or development regulation that are proposed by a county or city to its adopted plan or regulations shall be submitted to the department in the same manner as initial plans and development regulations under this section. Any amendments to a comprehensive plan or development regulations that are adopted by a county or city shall be transmitted to the department in the same manner as the initial plans and regulations under this section.

4. Amendment of the AP-O Did  
Not Violate RCW 36.70A.130

The Petitioners contend the County's adoption of the AP-O amendments violated RCW 36.70A.130(2) and DCC 14.32.040.<sup>10</sup> RCW 36.70A130(2)(a) provides:

Each county and city shall establish and broadly disseminate to the public a public participation program consistent with RCW 36.70A.035 and 36.70A.140 that identifies procedures and schedules whereby updates, proposed amendments, or revisions **of the comprehensive plan** are considered by the governing body of the county or city no more frequently than once every year. . . .

(Emphasis added)

DCC 14.32.040.C provides:

Pursuant to RCW 36.70A.130, **amendments to the Douglas County Comprehensive Plan** shall be considered by the board of county commissioners not more frequently than once a year.

(Emphasis added)

The EWGMHB properly held RCW 36.70A.130(2)(a) did not apply to amendment of the AP-O because the amended provisions are development regulations, following *LMI/Chevron v. Woodway*,

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<sup>10</sup> Ex P-22 and Ex P-23 are attached as Appendices L and M to Appellants' Opening Brief. The EWGMHB denied Petitioners' motion to supplement the record with these *draft* amendments, as beyond the scope of WAC 242-02-660 and WAC 242-02-670. The County has filed a Motion to Strike and this Court should not consider Ex P-22 and Ex P-23, nor should it consider the argument based on these exhibits at Appellants' Opening Brief, pp. 15-16 and pp. 30-31.

CPSGMHB Case No. 98-3-0012, Final Decision and Order (January 8, 1999) and 2005 Opinions Attorney General No. 11.<sup>11</sup>

F. Environmental Review Under SEPA Was Proper

The Petitioners challenge the County's environmental review under RCW Chapter 43.21C, the State Environmental Policy Act (SEPA), and contend the County failed to study "appropriate alternatives" under the general environmental guidelines set forth at RCW 43.21C.030(2)(e):

[A]ll branches of government of this state, including state agencies, municipal and public corporations, and counties shall:

\* \* \*

(e) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources . . .

The County's environmental review and amendment review was an integrated process, involving phased environmental review over several years for non-project GMA planning. The County issued an Adoption of Existing Environmental Document and Supplemental Environmental Impact Statement on October 1, 2004. Numerous prior environmental documents were incorporated

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<sup>11</sup> 2005 Opinions Attorney General No. 11, issued on September 7, 2005, opines, "The prohibition against amendments more than once per year applies only to comprehensive plans; the statute does not mention development regulations in this light."

by reference. The Supplemental Environmental Impact Statement listed the alternative to amendment as “*No Action.*” Ex R-5 (Supplemental Environmental Impact Statement, R 1562-1577); Ex R-6 (Notice of Availability, R 1600-1605).

Greater flexibility and broad statements of impacts are allowed when engaged in non-project environmental review. Environmental review may be combined with other planning documents as part of the integrated planning process. WAC 197-11-442(1); WAC 197-11-443(2).<sup>12</sup>

The Petitioners base their challenge on several erroneous assumptions for which there is no evidence in the record. First, SEPA focuses on “probable adverse environmental impacts which are significant.” RCW 43.21C.031(1). The Petitioners have never demonstrated evidence of such impacts. Second, the Petitioners

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<sup>12</sup> WAC 197-11-442

(1) The lead agency shall have more flexibility in preparing EISs on nonproject proposals, because there is normally less detailed information available on their environmental impacts and on any subsequent project proposals. The EIS may be combined with other planning documents.

WAC 197-11-443

(1) The provisions for phased review (WAC 197-11-060(5) and use of existing environmental documents, Part Six, apply to EISs on nonproject proposals.  
(2) A nonproject proposal may be approved based on an EIS assessing its broad impacts. When a project is then proposed that is consistent with the approved nonproject action, the EIS on such a project shall focus on the impacts and alternatives including mitigation measures specific to the subsequent project and not analyzed in the nonproject EIS. The scope shall be limited accordingly. Procedures for use of existing documents shall be used as appropriate, see Part Six.

incorrectly assume there are “unresolved conflicts concerning alternative uses of available resources,” but have never demonstrated evidence of “unresolved conflicts” or “alternative uses of available resources.” Finally, Petitioners assume that “no action” is insufficient as an alternative to amendment of the AP-O, but have never demonstrated evidence of reasonable alternatives other than “no action” and have never provided any legal authority that a “no action” alternative violates SEPA.

The Petitioners’ challenge of SEPA review is inconsistent with the Petitioners’ prior positions. Correspondence submitted by Petitioners is included in the record as Ex P-8, and attached at Appellants’ Opening Brief, Appendix J. The correspondence stated, “the county is NOT required to take this action [the Airport Overlay District amendments] to be compliant with the GMA” and asserted Pangborn is not a public use general aviation airport entitled to protection under the GMA. This is a “no action” alternative. (Ex P-8, R 738-739)

A Memorandum from Petitioner Dudek was admitted as Ex P-9 and is attached at Appellants’ Opening Brief, Appendix J. Mr. Dudek asserted the County was not required to protect Pangborn under the GMA. Mr. Dudek further claimed the proposed land use

restrictions were not warranted and were not reasonably needed, that laws and regulations already existed to restrict uses incompatible with the airport, and that the proposed zones, areas and surfaces were arbitrary. This is a “no action” alternative. Ex P-9 (R 732-734).

Ex P-10 is a submittal by Petitioner Baguley entitled *Overlay Committee Minority Report* and is attached at Appellants’ Opening Brief, Appendix K. Mr. Baguley, as a landowner in the AP-O, was part of the Ports’ citizen-stakeholder process and wrote the report to “express supplementary recommendations to those being submitted by the majority.” (Ex P-10, R 998) There is a great deal of discussion within the report regarding general planning requirements, such as GMA, WSDOT and FAA requirements. Mr. Baguley made some specific proposals:

- Mr. Baguley expressed strong concerns regarding the proposed “over-flight easement” recommendation and recommends the existing notice to title approach. (The proposed over-flight easement was ultimately rejected by the BOCC and the notice to tile approach was continued. Petitioners now challenge these actions.) (Ex P-10, R 1014, 1017)
- Mr. Baguley recommended that density limitations be imposed only in Zone 1 with certain development limitations, such as the existing prohibition against emissions of vapor and gases. (Petitioners now

challenge such existing development regulations.) (Ex P-10, R 1016)

- Mr. Baguley recommended that Zone 1 be reduced and that the airport acquire development rights for surrounding properties. (Ex P-10, R 1019)
- Mr. Baguley concluded by recommending that, sometime in the future, “the need for a possible future airport site” be studied. Mr. Baguley did not recommend that such study be conducted as part of the AP-O review process. (Ex P-10, R-1021)

The Petitioners’ comments on amendment of the AP-O do not refer to probable significant adverse environmental impacts, agricultural resource lands, agricultural uses, or unresolved conflicts concerning alternative uses of available resources. The Petitioners did not request or offer alternative proposals.

In its discussion and analysis, the EWGMHB held:

The “preferred” alternative and “no action” alternative are the outer boundaries, while the final decision is a mixture of public input, legal requirements and good planning.

CP 13-51 (FDO, p. 18, ll. 7-9; Appendix A).

Merely suggesting changes in the details of an array of proposed amendments does not create a “conflict” or an “alternative” requiring study under RCW 43.21C.030(2)(e). The Petitioners do not demonstrate any evidence in the record or legal authority supporting their challenge to the SEPA process.

G. Petitioners Do Not Demonstrate a Lack of Substantial Evidence

The Petitioners' *Assignments of Error* do not assign error to any specific findings by the County, the EWGMHB or the superior court. The Petitioners' *Issues Pertaining to Assignments of Error* do not address any specific factual issues and only tangentially challenge the sufficiency of the record. The Petitioners' do not set out challenged findings verbatim or summarize challenged findings.

A challenge to the sufficiency of the evidence is reviewed under the substantial evidence standard and inferences from the evidence are viewed in a light most favorable to the County, as the party that prevailed in the highest fact-finding forum. *Woods v. Kittitas County*, 162 Wn.2d 597, 617, 174 P.3d 25 (2007); *Benchmark Land Co. v. City of Battleground*, 146 Wn.2d 685, 694, 49 P.3d 860 (2002); *Wenatchee Sportsmen Association v. Chelan County*, 141 Wn.2d 169, 176, 4 P.3d 123 (2000).

The Supreme Court has addressed the failure to present adequate assignments of error and argument when reviewing a challenge to the sufficiency of evidence. In *Matter of Estate of Lint*, 135 Wn.2d 518, 531-532, 957 P.2d 755 (1998), the Supreme Court held:

As a general principle, an appellant's brief is insufficient if it merely contains a recitation of the facts in the light most favorable to the appellant even if it contains a sprinkling of citations to the record throughout the factual recitation. It is incumbent on counsel to present the court with argument as to why specific findings of the trial court are not supported by the evidence and to cite to the record to support that argument . . . .

Strict adherence to the aforementioned rule is not merely a technical nicety. Rather, the rule recognizes that in most cases, like the instant, there is more than one version of the facts. If we were to ignore the rule requiring counsel to direct argument to specific findings of fact which are assailed and to cite to relevant parts of the record as support for that argument, we would be assuming an obligation to comb the record with a view toward constructing arguments for counsel as to what findings are to be assailed and why the evidence does not support these findings. This we will not and should not do.

The Petitioners have failed to provide any meaningful argument or any other analytical framework by which this Court could review the record and conclude the action by the County, the decision of the EWGMHB and the Order entered by the superior court are not based substantial evidence.

#### H. The Declaratory Judgment Action Was Properly Dismissed

The Petitioners challenged DCC 18.65.040.E under the UDJA. The Petitioners contend DCC 18.65.040.E is an unconstitutional delegation of legislative authority and is facially unconstitutional due to vagueness.

The superior court held the Petitioners failed to demonstrate their UDJA action involved interests that are direct and substantial and, further, failed to provide sufficient evidence and a sufficient legal basis for declaratory relief. CP 166-172.

The Petitioners do not cite this Court to the record to support their appeal of the declaratory judgment action. Further, the Petitioners do not submit any legal basis for reversing the superior court or any argument specifically supporting the declaratory relief requested.

1. The UDJA Challenge Was Untimely

DCC 18.65.040.E is part of the original AP-O adopted in 2000 and was not amended by the County. Ex R-4 (Appendix D)

The Petitioners' request for relief under Chapter 7.24 is untimely. A UDJA action must be brought within a reasonable time, which is determined by analogizing to the time allowed for appeal of similar decisions. *Brutsche v. City of Kent*, 78 Wn.App. 370, 376, 898 P.2d 319 (1995) (Filing 73 days after adoption of zoning ordinance is time barred); *Federal Way v. King County*, 62 Wn. App. 530, 536-537, 815 P.2d 790 (1991) (Filing 37 days after vacation ordinance is time barred); *Kightlinger v. Public Utility District No. 1*, 119 Wn.App 501, 81 P.3d 876 (2003) (Filing by

taxpayer within 3 years after AGO declaring activity unlawful held timely).

Analogous time limitations for challenging development are the GMA, which is 60 days under RCW 36.70A.290, and LUPA, which is 21 days under RCW 36.70C.040. Seven years clearly exceeds these limitations.

The Supreme Court issued its decision in *Thurston County v. Western Washington Growth Management Hearings Board*, 164 Wn.2d 329, 342, 190 P.2d 38 (2008) after the trial in this case. If a timely challenge is not made, the County's development regulations are presumed valid and entitled to finality. *Id.*, at 344. The Petitioners seek declaratory judgment relief as a means of circumventing the long-expired limitation on initiating GMHB review of DCC 18.65.040E. Challenges must be brought within 60 days. RCW 36.70A.290(2).

DCC 18.65.040.E is a valid enactment of local government under the GMA and not subject to an untimely challenge.

*2. Petitioners Did Not Demonstrate  
Standing Under the UDJA*

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The record before the EWGMHB was the only evidence before the superior court. The Petitioners did not offer testimony or

other evidence at trial. The Petitioners failed to demonstrate several UDJA requirements for declaratory relief.

The Petitioners did not prove they are within a “zone of interest” and have “suffered an injury in fact, economic or otherwise” in order to establish standing under the UDJA. *Nelson v. Appleway Chevrolet, Inc.*, 160 Wn.2d 173, 186, 157 P.3d 847 (2007).

Also, Petitioners did not prove that a justiciable controversy exists. A justiciable controversy is:

(1) an actual, present, and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having genuine and opposing interests, (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be final and conclusive.

*Nelson v. Appleway Chevrolet, Inc.*, 160 Wn.2d 186; *South Tacoma Way, LLC v. State*, 146 Wn.App. 639, 191 P.3d 938 (2008).

3. Relief Under the UDJA is Not Supported by the Evidence or Legal Authority

The Petitioners fail to provide any legal basis for relief under the UDJA. The GMA cases cited by Petitioners are not

applicable to the case before this Court as they involve the inability to amend or repeal county development regulations by referendum.

The case of *Barry and Barry, Inc. v. Department of Motor Vehicles*, 81 Wn.2d 155, 500 P.2d 540 (1972), cited by Petitioners supports the County's position. In *Barry and Barry*, the Supreme Court approved the Legislature's delegation of power to the Department of Motor Vehicles to set fee schedules and abandoned a strict standards doctrine in favor of more relaxed review. The Supreme Court held, at 159:

[T]he requirement of specific legislative standards for the delegation of legislative power is excessively harsh and needlessly difficult to fulfill. We hold that the delegation of legislative power is justified and constitutional, and the requirements of the standards doctrine are satisfied, when it can be shown (1) that the legislature has provided standards or guidelines which define in general terms what is to be done and the instrumentality or administrative body which is to accomplish it; and (2) that procedural safeguards exist to control arbitrary administrative action and any administrative abuse of discretionary power.

The Supreme Court clarified its relaxed standard at 163-164:

Protection against arbitrary and unjustified administrative action can be more effectively obtained as follows:

First, the legislature must provide standards or guidelines which indicate in general terms what is to be done and the administrative body which is to do it. . . . Second, adequate procedural safeguards must be provided, in regard to the procedure for promulgation of the rules and for testing the constitutionality of the rules after promulgation. . . .

In the instant case, the applicable provisions of the Administrative Procedure Act, chapter 34.04 of RCW, ensure that interested parties will be heard before a rule is adopted. The act similarly provides for judicial review . . . .

RCW 36.70.670 empowers the BOCC to delegate zoning administration duties and powers to a department or official.<sup>13</sup> DCC 18.04.090 identifies the director of land services as having such duties and powers.<sup>14</sup> At DCC Title 15.10, international building code interpretation, powers and duties are delegated to the director of land services, the county building official or the county fire marshal, depending upon the applicable Title 15 Chapter.<sup>15</sup> Actions by these review officials are subject to appeal under DCC Chapter

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<sup>13</sup> RCW 36.70.670. The board may determine and establish administrative rules and procedures for the application and enforcement of official controls, and may assign or delegate such administrative functions, powers and duties to such department or official as may be appropriate.

<sup>14</sup> DCC 18.04.090. The director of land services or his/her designee shall have the authority and duty to administer the provisions of this title. The director may adopt, and revise as required, such instructions, policies and forms as are necessary to carry out the provisions of this title.

<sup>15</sup> DCC 15.10.010. The land services director shall enforce DCC Chapters 15.20 and 15.48 and is authorized to promulgate such rules, policies and/or procedures as may be deemed necessary to administer and enforce such regulations.

DCC 15.10.020. The building official shall enforce DCC Chapters 15.08 (except DCC Section 15.08.040—International Fire Code), 15.12, 15.16 and 15.32, and is authorized to promulgate such rules, policies and/or procedures as may be deemed necessary to administer and enforce such regulations.

DCC 15.10.030. The fire marshal shall enforce DCC Section 15.08.040 (International Fire Code) and DCC Chapters 15.24 and 15.28, including but not limited to . . . .

4.12.005.A<sup>16</sup> and further review under LUPA, RCW Chapter 36.70C.

The County's delegation in DCC 18.65.040.E is constitutional.

The Petitioners also cite *Anderson v. City of Issaquah*, 70 Wn.App. 64, 851 P.2d 744 (1993), as authority that DCC 14.65.040.E is unconstitutionally vague. The facts in *Anderson* are easily distinguishable from this case. Issaquah's code used development standards such as "a good relationship," "appropriate proportions;" "harmonious" colors rather than "bright" or "brilliant;" "monotony" should be avoided; the project should be "interesting;" and the building should be "compatible" with adjacent buildings, with "harmony in texture, lines, and masses."

The subjective criteria adopted by Issaquah was struck down by the Court of Appeals, holding the code failed to provide objective standards by which an applicant, the Development Commission, or the City Council could determine whether a given building design passed muster under the code and, further, that the development

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<sup>16</sup> DCC 14.12.005.A. An administrative appeal of a decision of the department after full administrative review shall be timely filed with the department by the applicant or any party of record. The hearing examiner shall hear the administrative appeal as an open record appeal at a public hearing.

code standards did not provide ascertainable criteria by which a court could review the city's decision.

Issaquah's code is clearly distinguishable. The exemption of agriculture from the development standards of the AP-O under DCC 18.65.040.E, states at the proviso:

. . . provided, that the use will not penetrate the airspace within the AP-O district safety zones, the FAR Part 77 surfaces or otherwise create a safety impact as determined by the review official.

All the standards of DCC Chapter 18.65 relate to aircraft safety, and reference WSDOT, NTSB and FAA resources. The phrase "or otherwise create a safety impact" is capable of objective determination when read in light of the entire AP-O.

The Petitioners' UDJA action is untimely. The Petitioners did not demonstrate standing under the UDJA. DCC 18.65.040.E is constitutional.

#### I. The County is Entitled to an Award of Attorney's Fees and Costs

The County is entitled to an award of reasonable attorney's fees and costs based upon successfully defending this appeal.

RCW 4.84.370 provides as follows:

(1) Notwithstanding any other provisions of this chapter, **reasonable attorneys' fees and costs shall**

**be awarded to the prevailing party or substantially prevailing party on appeal** before the court of appeals or the supreme court **of a decision by a county, city, or town to issue, condition, or deny a development permit involving a site-specific rezone, zoning, plat, conditional use, variance, shoreline permit, building permit, site plan, or similar land use approval or decision . . . .**

\* \* \*

(2) In addition to the prevailing party under subsection (1) of this section, **the county, city, or town whose decision is on appeal is considered a prevailing party if its decision is upheld at superior court and on appeal.**

(Emphasis added)

The County requests that this Court award the County reasonable attorney's fees and costs pursuant to RCW 4.84.370.

## V. CONCLUSION

The County's action under Resolution No. TLS 07-09B was supported by substantial evidence.

The EWGMHB's decision was supported by substantial evidence and the EWGMHB did not commit an error of law.

The Petitioners failed to meet their burden of proof and the superior court properly denied the petition for review under the APA and the request for declaratory relief under the UDJA.

The decisions made below should be affirmed and the County should be awarded reasonable attorney's fees and costs.

Respectfully submitted this 26<sup>th</sup> day of April, 2009,

A handwritten signature in black ink, appearing to read "Steven M. Clem", written over a horizontal line.

Steven M. Clem, WSBA #7466  
Prosecuting Attorney  
For Respondent Douglas County

## VI. INDEX TO APPENDICES

- Appendix A - EWGMHB Final Decision and Order  
(December 18, 2007) (CP 13-51)
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# APPENDIX A

EWGMHB Final Decision and Order  
(December 18, 2007)  
(CP 13-51)

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**State of Washington  
GROWTH MANAGEMENT HEARINGS BOARD  
FOR EASTERN WASHINGTON**

BRITT DUDEK and BRUCE BAGULEY,

Petitioners,

v.

DOUGLAS COUNTY; CITY OF EAST  
WENATCHEE; PANGBORN MEMORIAL  
AIRPORT; THE PORT OF CHELAN COUNTY;  
and THE PORT OF DOUGLAS COUNTY,

Respondents.

Case No. 07-1-0009

FINAL DECISION AND ORDER

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**I. SYNOPSIS**

On May 9, 2007, the Douglas County Board of County Commissioners (BOCC) passed Resolution No. TLS 07-9B, which adopted amendments to the Land Use Chapter of the Greater East Wenatchee Comprehensive Plan (GEWCP) and Chapter 18.65 of the Douglas County Code (DCC).

The Petitioners, Mr. Britt Dudek and Mr. Bruce Baguley, filed a timely Petition challenging Resolution No. TLS 07-9B raising eleven issues contending Douglas County (County) failed to comply with the goals and requirements of the Growth Management Act (GMA), the State Environmental Policy Act (SEPA), the Douglas County Comprehensive Plan (CP), and the Douglas County Development Regulations, and violated the following statutes: RCW 36.70A.060, RCW 36.70A.177, RCW 43.21C.030(2)(e), RCW 36.70A.070, RCW 36.70A.035, RCW 36.70A.106, RCW 36.70A.130, and DCC 14.32.

1 The Respondent, Douglass County, was joined in this action by the City of East  
2 Wenatchee, Pangborn Memorial Airport, the Port of Chelan County and the Port of Douglas  
3 County. The Respondents argued the County worked for over two years through an  
4 extensive and exhaustive public process to ensure the Airport Overlay District,  
5 Comprehensive Plan maps and other changes to the DCC were in compliance with the GMA,  
6 the SEPA and other applicable regulations.

7 On August 21, 2007, the Respondents filed a Motion to Dismiss with the Eastern  
8 Washington Growth Management Hearings Board (Board). After briefing by the Parties and  
9 telephonic oral arguments, the Board dismissed Issue Nos. 3, 7, and 12.

10 The Board held a Hearing on the Merits in Waterville, Washington on November 19,  
11 2007, and heard arguments from the Petitioners' attorneys and Respondent, Douglas  
12 County. The Board studied the issues as presented and determined from the Parties'  
13 arguments, the record, past Hearings Boards' decisions, case law, and the requirements set  
14 forth in the GMA, whether the County complied with the applicable statutes and regulations  
15 listed in the Petitioners' issues. Rather than reiterate the Board's analysis for every issue  
16 here in the synopsis, only a summary of the conclusions will be given.

17 The Board finds the Petitioners failed carry their burden of proof in all of the  
18 remaining issues, Issue Nos. 1, 2, 4, 5, 6, 8, 9, 10, and 11.

## 19 **II. INVALIDITY**

20 Invalidity was not requested in this action.

## 21 **III. PROCEDURAL HISTORY**

22 On July 5, 2007, BRITT DUDEK and BRUCE BAGULEY, by and through their  
23 representatives, James Klauser and Robert Rowley, filed a Petition for Review.

24 On August 1, 2007, the Board held a telephonic Prehearing conference. Present  
25 were John Roskelley, Presiding Officer, and Board Members, Dennis Dellwo and Joyce  
26 Mulliken. Present for the Petitioners were James Klauser and Robert Rowley. Present for the  
Respondents were Steve Clem, Douglas County; Devin Poulson, City of East Wenatchee;  
and Eric Wahlquist, Pangborn Airport, Port of Chelan County, Port of Douglas County.

1 On August 3, 2007, the Board issued its Prehearing Order.

2 On August 21, 2007, the Board received Respondent Douglas County's Motion to  
3 Dismiss Petition for Review, or in the Alternative, Issues set forth in the Petition for Review  
4 and to Supplement Record, and Memorandum Supporting Douglas County's Dispositive  
5 Motions.

6 On August 22, 2007, the Board received Petitioners' Request that Respondent  
7 Douglas County Certify a complete Record, or in the Alternative, that Parties be Allowed to  
8 Supplement the Certified Record with Relevant Material from Below.

9 On August 24, 2007, the Board received Douglas County's Response to Petitioners'  
10 Request for Certification of a Complete Record.

11 On August 30, 2007, the Board received the City of East Wenatchee's Memorandum  
12 in Support of Douglas County's Motion to Dismiss Petition.

13 On September 5, 2007, the Board received Petitioners' Response to Douglas County's  
14 Motions: 1. To Supplement the Record; and 2. To Dismiss All or Some of the Issues in the  
15 Petition; and B. Petitioners' Objection to City of East Wenatchee's Brief.

16 On September 6, 2007, the Board received Pangborn Memorial Airport, Port of  
17 Douglas County and Port of Chelan County's Memorandum in Support of Douglas County's  
18 Motion to Dismiss Petition.

19 On September 10, 2007, the Board received City of East Wenatchee's Rebuttal to  
20 Petitioners' Responses to Motions.

21 On September 12, 2007, the Board received Petitioners' Reply to Douglas County's  
22 Response to Petitioners' Motion that Douglas County Certify a Complete Record, or in the  
23 Alternative, that Parties be Allowed to Supplement the Certified Record.

24 On September 18, 2007, the Board held a telephonic motion hearing. Present were  
25 John Roskelley, Presiding Officer, and Board Member Dennis Dellwo. Present for the  
26 Petitioners were James Klauser and Robert Rowley. Present for the Respondent was Steve  
Clem, Douglas County.

On September 26, 2007, the Board issued its Order on Motions.

1 On November 19, 2007, the Board held the hearing on the merits. Present were  
2 John Roskelley, Presiding Officer, and Board Members Dennis Dellwo and Joyce Mulliken.  
3 Present for the Petitioners were James Klauser and Robert Rowley. Present for the  
4 Respondent was Steve Clem, Douglas County; Devin Poulson, City of East Wenatchee; and  
5 Eric Wahlquist, Pangborn Airport, Port of Chelan County, Port of Douglas County.

6 **IV. PRESUMPTION OF VALIDITY, BURDEN OF PROOF AND STANDARD OF**  
7 **REVIEW**

8 Comprehensive plans and development regulations (and amendments thereto)  
9 adopted pursuant to Growth Management Act ("GMA" or "Act") are presumed valid upon  
10 adoption by the local government. RCW 36.70A.320. The burden is on the Petitioners to  
11 demonstrate that any action taken by the respondent jurisdiction is not in compliance with  
12 the Act. The Board ". . . shall find compliance unless it determines that the action by the .  
13 . . County. . . is clearly erroneous in view of the entire record before the Board and in light  
14 of the goals and requirements of [Growth Management Act]." RCW 36.70A.320. To find an  
15 action clearly erroneous, the Board must be ". . . left with the firm and definite conviction  
16 that a mistake has been committed." *Department of Ecology v. Central Puget Sound*  
17 *Growth Management Hearings Board*, 142 Wn.2d 543, 552, 14 P.3d 133 (2000).

18 The Hearings Board will grant deference to counties and cities in how they plan  
19 under Growth Management Act (GMA). RCW 36.70A.3201. But, as the Court has stated,  
20 "local discretion is bounded, however, by the goals and requirements of the GMA." *King*  
21 *County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 561,  
22 14 P.2d 133 (2000). It has been further recognized that "[c]onsistent with *King County*, and  
23 notwithstanding the 'deference' language of RCW 36.70A.3201, the Board acts properly  
24 when it foregoes deference to a . . . plan that is not 'consistent with the requirements and  
25 goals of the GMA." *Thurston County v. Cooper Point Association*, 108 Wn. App. 429, 444, 31  
26 P.3d 28 (2001).

The Hearings Board has jurisdiction over the subject matter of the Petition for  
Review. RCW 36.70A.280(1)(a).

## V. ISSUES AND DISCUSSION

### Issue No. 1:

Does the decision fail to comply with RCW 36.70A.060, RCW 36.70A.177 and existing Douglas County Comprehensive Plans and development regulations adopted to implement RCW 36.70A.060 and RCW 36.70A.177, by authorizing the conversion of agricultural resources in a protected area to competing and incompatible aviation uses that do not conserve, enhance or preserve the agricultural resource, work to the detriment of the agricultural resources, and requires farmers and property owners of Agricultural resource lands to adjust historical farming practices to accommodate the aviation use?

### The Parties' Position:

#### Petitioners:

The Petitioners contend RCW 36.70A.510 and RCW 36.70.547 do not apply because Pangborn International Airport is not a "general aviation" airport. Therefore, the County does not have to adopt the regulations required in the above mentioned RCW's.

According to the Petitioners, the County fails to comply with multiple provisions of the GMA. They include: 1.) ignoring obligations owed agriculture simply because another GMA requirement may exist; 2.) failing to consider alternatives to the action based on a sound basis; 3.) failing to consider RCW 36.70A.060, conserve and enhance the Agricultural Resource, when there is a conflict; 4.) failing to disclose that the Washington State Department of Transportation (WSDOT) was satisfied with the original protections and did not have concerns with the existing protections, as reflected in the record; and 5.) misrepresents Pangborn Memorial Airport as a "general aviation airport", which provides protections contemplated by RCW 36.70.547.

Airport compatibility regulations found in Senate Bill (SB) 6422 require counties to discourage incompatible uses adjacent to "such reliever or general aviation airports". The original bill specifically recognized at least two types of airports, distinguishing "reliever" from "general aviation". Substitute SB 6422 amended SB 6422 by consolidating a number of sections and eliminating the requirement to discourage incompatible development

1 adjacent to "reliever" airports, leaving only "general aviation" airports within the ambit of  
2 that Bill. It was codified RCW 36.70.547.

3 The terms "reliever" and "general aviation" airports correspond in terminology to the  
4 definitions in the National Plan of Integrated Airport Systems (NPIAS). The State of  
5 Washington uses the NPIAS terminology and Pangborn Memorial Airport is designated as a  
6 "primary and commercial airport", not a "reliever" or "general aviation" airport. The  
7 Petitioners, therefore, contend RCW 36.70.547 and RCW 36.70A.510 do not apply.

8 The Petitioners argue even if Pangborn Memorial Airport is a "general aviation"  
9 airport, the protections provided by the County are not required or justified. They contend  
10 RCW 36.70.547 does not require any particular protections and these protections are left to  
11 the local government to decide. The County relied on the WSDOT publication, "Airports and  
12 Compatible Land Use Compatibility", which allow a wide discretion on the part of local  
13 governments.

14 The County also relied on the "California Airport Land Use Compatibility Planning  
15 Manual". This is not a binding document even in California and it characterizes its analysis  
16 as the beginning, not the end of compatibility review.

17 The Petitioners also contend the County failed to provide the required record to  
18 support its ignoring its RCW 36.70A.060 and RCW 36.70A.177 obligations. The Petitioners  
19 cite a Hearings Board case, *City of Walla Walla et al. v. Walla Walla County*, EWGMHB Case  
20 No. 02-1-0012c (2002), and two Supreme Court cases, *King County v. CPSGMHB*, 142  
21 Wn.2d 543, 14 P.3d 133 (2000) and *Lewis County v. WWGMHB*, 157 Wn.2d 488, 139 P.3d  
22 1096 (2006), to show Douglas County's position is clearly erroneous in light of past  
23 decisions concerning agricultural lands. The argument that agricultural and other competing  
24 uses (such as airport expansion) stand on an "equal footing" is a proposition that the  
25 Petitioners contend cannot be supported. Petitioners HOM brief at 15. The Petitioners argue  
26 the County has an obligation to produce a record to demonstrate that it has complied with  
these GMA mandates.

1 The Petitioners also contend the County's SEPA review failed to provide an  
2 opportunity to evaluate the impacts of the amendments on the agricultural resource lands.

3 **Respondent:**

4 The Respondent, Douglas County, contends the GMA, under RCW 36.70A.510 and  
5 RCW 36.70.547, was amended in 1996 to recognize the inherent social and economic  
6 benefits of aviation and to require land use planning to include consideration of airports.  
7 The language of these two RCW's indicate Pangborn Memorial Airport is a general aviation  
8 airport entitled to protection under the GMA. The Respondent argues all the Hearings  
9 Boards have reached the same conclusions as this Board concerning protecting airports. For  
10 instance, the Western Board held local governments have a duty to maintain current airport  
11 facilities and protect airports from incompatible uses. The Respondent cites four Western  
12 Board cases in support of their argument. The Central Board has held "the provisions of  
13 RCW 36.70A.510 and RCW 36.70.547 provide explicit statutory direction for local  
14 governments to give substantial weight to the WSDOT Aviation Division comments and  
15 concerns protecting airports." *Pruitt, et al., v. Town of Eatonville, CPSGMHB, Case No. 06-3-*  
16 *0016, FDO (Dec. 18, 2006).*

17 The Respondent argues the WSDOT Aviation Division participated throughout the  
18 Douglas County process as Pangborn Memorial Airport is a public use airport supporting  
19 general aviation use, as well as commercial, and cites numerous letters, comments and  
20 presentations. In fact, according to the Respondent, the WSDOT Aviation Division  
21 addressed the "general aviation" issue in a letter dated February 5, 2007. To the question  
22 of whether Pangborn Memorial Airport is a general aviation airport the WSDOT said "yes",  
23 and explained aviation activity at the airport included general aviation, as well as  
24 commercial and military operations. According to WSDOT, general aviation accounted for  
25 69% of all aircraft operations, while commercial accounted for 30%.

26 The WSDOT Aviation Division also agreed in their letter that the provisions of RCW  
36.70A.510 and RCW 36.70.547 apply to the county. The WSDOT Aviation Division closed  
its opinion by stating:

1 In conclusion, any airport that has general aviation activity is considered a  
2 general aviation airport and that (sic) local jurisdictions that have public use  
3 general aviation airports within their jurisdiction are required to discourage  
incompatible land uses adjacent to them. Respondent Exhibit R-22.

4 The Respondent also quotes the Community, Trade and Economic Department  
5 (CTED) as agreeing with WSDOT that Pangborn Memorial Airport is a general aviation  
6 airport and the two statutes are applicable.

7 The Respondent argues the Growth Management Hearings Boards have mandated  
8 protection to airports regardless of technical labels. The Respondent contends any airport  
9 serving the public use of general aviation is entitled to the protections of the two statutes  
10 and cites seven Hearings Boards cases concerning general aviation airports and the  
protections afforded them by the Hearings Boards.

11 The Respondent argues protection of agricultural resource lands under RCW  
12 36.70A.060 and RCW 36.70A.177 does not have a higher priority than the protection of  
13 general aviation airports under RCW 36.70.547 and RCW 36.70A.510. According to the  
14 Respondent, the Petitioners rely on RCW 36.70A.060 and RCW 36.70A.177, plus three  
15 previous Hearings Boards cases. They believe reliance on these statutes and cases as  
16 authority for absolute protection of existing agricultural resource lands and agricultural  
17 practices is misplaced. The Respondents contend in *King County v. CPSGMHB*, 142 Wn.2d  
18 543, 14 P.3d 133 (2000), the Court found, "In this case, the GMA mandates conservation of  
19 the APD's limited, irreplaceable agricultural resource lands. There are still thousands of  
20 acres suitable for athletic fields – outside the APD's."

21 In *City of Walla Walla, et al., v. Walla Walla County, EWGMHB*, Case No. 02-1-0012c,  
22 FDO (November 26, 2002), the Board found certain active recreational uses as outright or  
23 conditional uses on widespread agricultural lands incompatible and unrelated and could not  
24 qualify as "innovative zoning techniques" designed to conserve agricultural land and  
25 encourage the agricultural economy. The Eastern Board did not hold agricultural resource  
lands are entitled to absolute protection in every circumstance.

1 In *Lewis County v. WWGMHB*, 157 Wn2d 488, 139 P.3d 1096 (2006), the Supreme  
2 Court found non-farm uses had not been limited to avoid impacts on resource lands and  
3 activities and did not maintain and enhance the agricultural industry.

4 The Respondent argues all three cases involve widespread agricultural lands and  
5 non-farm uses adopted as "innovative zoning techniques", while this case does not involve  
6 non-farm land uses on agricultural lands and does not involve "innovative zoning  
7 techniques" under RCW 36.70.177. When a conflict exists between two GMA goals,  
8 balancing of those requirements is allowed.

9 The Respondent contends the Airport Overlay District (AOD) amendments do not  
10 authorize conversion of agricultural lands, do not work to the detriment of the agricultural  
11 resource, but do enhance conservation of agricultural land. The underlying zoning, related  
12 development regulations and agricultural land uses remain effective. According to the  
13 Respondents, the protections afforded to Pangborn Memorial Airport by the AOD actually  
14 further conservation of agricultural lands through additional limitations on development.

15 The Respondent argues the AOD amendments do not "require farmers and property  
16 owners to adjust historical farming practices to accommodate aviation." Respondent's HOM  
17 brief at 23. The Respondent contends the Petitioners' concerns about attracting birds, aerial  
18 spraying, ground spraying, and limited workers allowed per acre were most likely found in  
19 DCC 18.65.050, sections B, C, J, K and M. The Respondent argues, assuming these  
20 development standards are even applied to agricultural activities on agricultural land, there  
21 are other statutes and requirements already in place that restrict or prohibit these activities.  
22 The Respondent also contends all the restrictions of which the Petitioners complain,  
23 whether existing or newly adopted, do not apply to agricultural lands and uses and haven't  
24 since the AOD was first adopted.

**Petitioners HOM Reply:**

25 The Petitioners contend only two general sub-issues exist: (1) is Pangborn Memorial  
26 Airport a "general aviation airport" such that the proposed amendments are justified or

1 required? and (2) who's obligation is it to demonstrate that Agricultural Resource  
2 protections are considered and preserved – the County's burden or the Petitioners' burden?

3 The Petitioners argue it's the County's burden to produce a record to justify land use  
4 changes within Agricultural Resource areas and cite four Court and Board cases. The  
5 Petitioners contend the County failed to produce a record to "study, analyze, discuss, or  
6 otherwise assess the impacts of these changes upon the Agricultural Resource." Petitioners  
7 Reply brief at 6. Although the County "insinuates" that a member of the public must first  
8 meet an initial burden to show an impact caused by the proposed changes, the Petitioners  
9 argue the Courts impose no such burden on the Petitioners. Petitioners' Reply brief at 7.  
10 The Petitioners also contend the County failed to justify its choices and compromises and  
11 failed to do an alternatives study as required by RCW 43.21C.030(2)(e).

12 The Petitioners argue the County's brief focuses on demonstrating Pangborn  
13 Memorial Airport is a "general aviation" airport, believing this classification invokes RCW  
14 36.70.547 and .510 and, if these two statutes apply, the County is relieved of a burden to  
15 consider agricultural resource protections. According to the Petitioners, none of the Board  
16 cases cited by the Respondent concerning airport issues decide this issue. The Eastern  
17 Board has never decided what the legislature meant by its use of the term "general aviation  
18 airport" in RCW 36.70.547 and .510. The Petitioners argued in their opening brief the  
19 following: Pangborn Memorial Airport is a "primary commercial airport"; SB 6422 only  
20 applied to the two lowest categories of airports, "feeder" and "general aviation"; SSB 6422,  
21 which became RCW 36.70.547, reduced applicability and scope of the bill, eliminating its  
22 applicability to "feeder" airports and limiting it to "general aviation" airports; RCW 36.70.547  
23 applies only to "general aviation airports"; a "general aviation" airport is not every airport in  
24 the state as Douglas County implies.

25 The Petitioners acknowledge Pangborn Memorial Airport is an EPF and it may be  
26 expanded consistent with other provisions of the County Code and Comprehensive Plan,  
27 however the County needs to follow other competing policies and uses other than RCW  
28 36.70.547. The Petitioners argue the County cannot "square" the generalization and

1 contention with the record that Agricultural Resources is not a higher priority than  
2 protection of Pangborn Airport. According to the Petitioners, the County failed to study the  
3 alternatives or include the expansion of the runway in the EIS.

4 The County acknowledges this case involves competing resource uses, but ignores  
5 Supreme Court Case No. 76339-9, which provides pertinent guidance on competing "critical  
6 area" and "Agricultural Resource area" uses. The Petitioners contend the County "makes the  
7 giant leap to an unwarranted conclusion" that there is no conflict between conservation of  
8 agricultural lands and airport protection. Petitioners Reply brief at 11. In addition, the  
9 County puts the burden on the Petitioners to demonstrate substantial evidence in the record  
10 that the Airport Overlay District inappropriately converts the use of agricultural lands to  
11 other uses. This is not the case. The Petitioners burden is to demonstrate the County failed  
12 to create a record necessary to justify further intrusion into the Agricultural Resource area.

13 **Board Analysis:**

14 Regardless of the many tangents the Parties' arguments seem to take, the question  
15 under Issue No. 1, is whether the County's decision to adopt Resolution No. TLS 07-9B fails  
16 to comply with RCW 36.70A.060, RCW 36.70A.177 and the existing Douglas County  
17 Comprehensive Plan and development regulations. The Petitioners argue the County is  
18 converting agricultural resources in a protected area to competing and incompatible aviation  
19 uses, but fail to argue under this issue, what, if any, portions of the Comprehensive Plan  
20 and development regulations the County fails to comply with. After review of the statutes,  
21 the Parties briefs and oral arguments, the Board agrees with the Respondent concerning  
22 Issue No. 1.

23 In summary, RCW 36.70A.060 requires counties and cities to adopt development  
24 regulations to assure the conservation of agriculture. These regulations may not prohibit  
25 uses legally existing at the time of adoption or interfere with the continued use of these  
26 lands for agriculture. RCW 36.70A.177 allows counties and cities to use innovative zoning  
techniques in areas designated agricultural lands of long-term commercial significance.

1 The Petitioners' arguments fail to show how the County's action of amending the Airport  
2 Overlay District zone fails to protect and conserve agricultural resource land as required by  
3 RCW 36.70A.060(1) or allow innovative zoning techniques as allowed by RCW 36.70A.177.

4 The Petitioners contend in their Reply brief the County failed to justify its choices and  
5 compromises, and failed to do an alternatives study as required by RCW 43.21C.030(2)(e).  
6 Contrary to the Petitioner' position, the County submitted two alternatives, the "preferred"  
7 alternative and "no action" alternative, and followed its adopted public participation process.  
8 During that process, and according to the record, there were many suggestions proposed  
9 by citizens and organizations during the public hearing process before the Planning  
10 Commission and BOCC. Respondent Exhibit R-27. Several of the alternatives suggested

11 Alternatives to a plan are required by the SEPA, but the number of alternatives a  
12 county or city must study or offer to the public is discretionary. The County may not have  
13 offered as many alternatives as the Petitioners would have preferred, but the County did  
14 "[S]tudy, develop and describe appropriate alternatives to recommended courses of action",  
15 which did not prohibit or interfere with the continued use of agriculture within the overlay  
16 zone. Within the County's two alternatives was the possibility for a wide range of options.  
17 The BOCC adopted a compromise plan based on the input they received from the Planning  
18 Commission and the public hearing process. The BOCC's final plan protected the agricultural  
19 use and there were no unresolved conflicts concerning alternative uses of available  
20 resources. All agricultural activities, uses and procedures historically done prior to the  
21 adoption of the amended Airport Overlay District are still in effect and vested, thus  
22 protecting the land owners from regulations that may have a detrimental effect to  
23 agriculture within the Airport Overlay District zone.

24 The Petitioners also argue the County failed to find a balance between competing  
25 resource uses, specifically agriculture and an EPF, such as Pangborn Memorial Airport, as  
26 required by the GMA. The Board disagrees. As explained in the paragraph above, the  
County exempted agricultural activities from the regulations, protected the land from

1 inappropriate urban-like conversion, and vested the agricultural uses now in effect. In fact,  
2 the County's action prevents certain development activities on land under the new zoning,  
3 ensuring agricultural lands will be protected. The County's Airport Overlay District zone can  
4 be considered an "innovative zoning technique" as recommended in RCW 36.70A.177 for  
5 areas designated as agricultural lands of long-term commercial significance.

6 Although Issue No. 1 primarily concerns RCW 36.70A.060 and RCW 36.70A.177, the  
7 Petitioners and Respondent also argued under this issue whether Pangborn Memorial  
8 Airport is a "general aviation" airport, which invokes RCW 36.70A.510 and RCW 36.70.547,  
9 and whether agricultural resource lands were given the deference they deserve. The Board  
10 will address both issues here.

11 Both Parties agree that airports are Essential Public Facilities (EPF) as defined under  
12 RCW 36.70A.200(1) and determined in a number of Growth Board cases. Therefore, there is  
13 no question that Pangborn Memorial Airport is an EPF:

14 An airport is an EPF under the definition found in RCW 36.70A.200. *CCARE v.*  
15 *Anacortes*, WWGMHB Case No. 01-2-0019, FDO (December 12, 2001).

16 An airport is an essential public facility under the definition of RCW  
17 36.70A.200(1). *Achen v. Clark County*, WWGMHG Case No. 95-2-0067, FDO  
18 (September 20, 1995).

19 A local government may not preclude the siting of EPFs. Siting includes use or  
20 expansion of airport facilities for airport uses. *CCARE v. Anacortes*, CPSGMHB  
21 Case No. 01-2-0019, FDO (December 12, 2001) & *Desmoines v. CPSGMHB*, 98  
22 Wn. App. 23 (1999).

23 The Petitioners, however, do question whether Pangborn Memorial Airport is a  
24 "general aviation" airport as claimed by the Respondent. The Petitioners give credence to  
25 the WSDOT Aviation Division for designating Pangborn Memorial Airport a "primary and  
26 commercial" airport under the NPAIS system, yet fail to give the same credence to the  
27 Aviation Division's definition that "The State considers any airport with general aviation

1 activity to be a general aviation airport." Respondent Exhibit R-24. As the Central Board  
2 held in *Pruitt*, "The provisions of RCW 36.70A.510 and RCW 36.70.547 provide explicit  
3 statutory direction for local governments to give substantial weight to WSDOT Aviation  
4 Division comments and concerns protecting airports." The County did so based on the  
5 Aviation Division's determination.

6 The Board agrees with the Respondent that Pangborn Memorial Airport, as defined  
7 by the agency responsible for aviation in the State of Washington, is a "general aviation"  
8 airport. But, regardless of whether Pangborn Memorial Airport is a "general aviation" airport  
9 or not, the County has the authority and the responsibility under a number of statutes,  
10 including RCW 14.12, RCW 36.70A.130, RCW 36.70A.200, and RCW 36.70A.510 to adopt  
11 and amend its Comprehensive Plan provisions and development regulations to protect  
12 aviation. Even in their briefing, the Petitioners admit that "protections are left to the local  
13 government to decide" and "[T]he County relied on the WSDOT's publication, 'Airports and  
14 Compatible Land Use Compatibility', which allow a wide discretion on the part of local  
15 governments." The County used this discretion and its statutory authority to initiate the  
16 change to the Airport Overlay District.

17 There are several Growth Board cases that underline the importance of protecting  
18 public and/or private airports, define which agencies have statutory authority to give the  
19 local government expertise, and the importance of expansion:

20 [T]he provisions of RCW 36.70A.510 and RCW 36.70.547 provide explicit  
21 statutory direction for local governments to give substantial weight to WSDOT  
22 Aviation Division's comments and concerns related to matters affecting safety  
23 at general aviation airports. Eatonville "shall . . . discourage the siting of  
24 incompatible uses adjacent to [Swanson Field]." RCW 36.70.547. Likewise, the  
25 FAA's expertise and decades of experience, as reflected in FAR Part 77, cannot  
26 be summarily ignored. Both these agencies have statutory authority to inject  
their substantial experience and expertise into local governmental matters  
involving airport safety. *Pruitt, et al. v. Town of Eatonville*, CPSGMHB Case No.  
06-3-0016, FDO, at 10 (December 18, 2006).

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A county is not compliant with GMA requirements regarding siting of general aviation airports if it fails to preclude non-compatible uses within the final approach areas. *Klein v. San Juan County*, WWGMHB Case No. 02-2-0008, FDO (October 18, 2002).

RCW 36.70A.510 requires a local government to adopt land use policies and DRs that preclude incompatible land uses adjacent to airports. *Abenroth v. Skagit County*, WWGMHB Case No. 97-2-0060, FDO (Jan. 23, 1998).

The Petitioners question whether it is the County's burden or theirs to demonstrate that Agricultural Resource protections are considered and preserved. The GMA puts the burden of proof in this instance on the Petitioners. The cases that reference a requirement that a county provide the required record or "show their work" are directly related to the designation of urban growth area boundaries. That is not the case here. This Board will not shift the burden of proof from the Petitioners to the Respondent. The actions of the County are presumed valid. RCW 36.70A.320.

The Board disagrees with the Petitioners that the County gave one GMA goal deference over another. The Petitioners contend the County failed to study and consider other alternatives to the expansion of the Airport Overlay District zone, thus giving deference to the airport overlay. There is nothing in the record that substantiates the Petitioners' claim. The County followed the statutory process and its public participation plan to develop the AOD. The final product, Resolution No. TLS-07-9B, reflects years of study, proposals, public meetings, and public hearings, and protects not only the future expansion of an essential public facility, but protects agricultural resource lands within the AOD. The record shows neither goal was given preferential deference. Consequently, a balance was achieved.

**Conclusion:**

The Board finds the Petitioners' failed to carry their burden of proof required for Issue No. 1.

1 **Issue No. 2:**

2 Does the decision violate the requirements of RCW 43.21C.030(2)(e) by failing to  
3 include a study of available alternatives to the proposed alternative that would have  
4 resolved any resource conflict?

4 **The Parties' Position:**

5 **Petitioners:**

6 The Petitioners contend the County failed to determine, study, develop and describe  
7 "appropriate alternatives" regarding this unresolved resource dispute. Petitioners' HOM brief  
8 at 16. Furthermore, according to the Petitioners, the County ignored repeated requests to  
9 consider alternatives to the final action. The County referenced its SEPA review, but this  
10 document failed to mention Pangborn Memorial Airport, failed to mention the proposed  
11 amendment to the Airport Overlay, failed to mention the Agricultural Resource Area of Long  
12 Term Commercial Significance, and failed to mention resource conflicts or alternatives to  
13 resolve those conflicts. The Petitioners contend the County argues there is no alternative  
14 between a "no action" alternative and the "recommended" alternative. They believe this is  
15 not the case. The County simply failed to require a study and analysis of the problem.

15 **Respondent:**

16 The Respondent argues the environmental review and permit review is an integrated  
17 process and there was extensive public and agency participation. This amendment was first  
18 considered in late 2004 and early 2005 and the County issued an Adoption of Existing  
19 Environmental Document and Supplemental Environmental Impact Statement (SEIS).  
20 According to the Respondent, "[G]reater flexibility and broad statements of impacts are  
21 allowed when engaged in non-project environmental review". Respondent's HOM brief at  
22 27. The environmental review may be combined with other planning documents as part of  
23 the integrated planning process. WAC 197-11-442; WAC 197-11-443. The Respondent  
24 contends the Petitioners fail to cite specifics in this issue and their examples are "no action"  
25 alternatives. As to the Petitioners' Example P-10, the Overlay Committee Minority Report

1 does not refer to agricultural resource lands, impacts on agricultural uses, or unresolved  
2 conflicts concerning alternative uses of available resources.

3 The Respondent contends Pangborn Airport is an existing facility pre-dating the GMA.  
4 The underlying zoning of Pangborn and the underlying zoning of the agricultural lands  
5 surrounding Pangborn were not changed by the amendments. Merely suggesting changes in  
6 the details of a proposed action that may constitute a "conflict" or an "alternative" does not  
7 require study and development of "appropriate alternatives under RCW 43.21C.030(2)(e).  
8 Respondent's HOM brief at 29.

8 **Petitioners HOM Reply:**

9 The Petitioners contend the County's argument is not responsive. It suggests a  
10 phased environmental review was done without acknowledging the following: (1) RCW  
11 43.21C.030(2)(e) alternatives study is different from the EIS alternatives review required by  
12 RCW 43.21C.030(2)(c); (2) a "no-action" alternative is useless unless that alternative is also  
13 studied; and (3) the County failed to demonstrate in the record where it evaluated any  
14 alternative except the alternative sought by the airport.

14 **Board Analysis:**

15 The Board agrees with the Respondent on Issue No. 2. This issue was argued under  
16 Issue No. 1 and the Board incorporates their discussion under that issue and adds the  
17 following discussion. Again, there is no requirement in the GMA or RCW's that requires a  
18 minimum number of alternatives for an Environmental Impact Statement (EIS) or SEIS.  
19 RCW 43.21C.030(2)(e), which states, "[C]ounties shall...[s]tudy, develop, and describe  
20 appropriate alternatives to recommended courses of action...", requires more than one  
21 alternative, but is silent on the number of additional alternatives. In addition, the County, as  
22 lead agency, is allowed to use existing environmental documents for non-project actions  
23 under certain circumstances as the County has done. RCW 43.21C.034 authorizes the use of  
24 these documents:

24 Lead agencies are authorized to use in whole or in part existing environmental  
25 documents for new project or non-project actions, if the documents

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adequately address environmental considerations set forth in RCW 43.21C.030. The prior proposal or action and the new proposal or action need not be identical, but must have similar elements that provide a basis for comparing their environmental consequences such as timing, types of impacts, alternatives, or geography.

The process which the County followed allowed the Petitioners and any agency or member of the public to comment and recommend alternatives during the numerous public hearings. In fact, the "preferred alternative" recommended by the Douglas County Planning Commission was changed by the Douglas County BOCC based on public input. The "preferred" alternative and "no action" alternative are the outer boundaries, while the final decision is a mixture of public input, legal requirements and good planning.

**Conclusion:**

The Board finds the Petitioners' failed to carry their burden of proof required for Issue No. 2.

**Issue No. 4:**

Does the decision below fail to comply with RCW 36.70A.035 public participation requirements?

**The Parties' Position:**

**Petitioners:**

The Petitioners argue the BOCC received the recommendation from the Planning Commission (PC) and modified it at the BOCC meeting without fulfilling its public participation, notice and fact finding obligations under those circumstances. The County's Public Participation Plan (PPP) imposes public participation responsibilities on the Planning Commission, not the BOCC. The Petitioners argue this is an "independent defect in the County's PPP obligations." Petitioners' HOM brief at 17. They also contend the BOCC ignored other provisions of the County development regulations, which impose public participation obligations. The PPP recognizes, and the Douglass County Code requires (DCC 14.32.040), Comprehensive Plan and Development Regulations must be processed pursuant

1 to DCC 14.10.050, which under subsection (6) states, "The board of county commissioners  
2 must hold a public hearing to consider any changes to the recommendation of the planning  
3 commission."

4 The Petitioners contend at the public meeting, the BOCC had two options: accept or  
5 reject the recommendations of the Planning Commission. Instead it changed the  
6 recommendation and adopted its own version. According to the Petitioners, the County's  
7 own development regulations require the BOCC to conduct a public hearing, if such changes  
8 are consider.

9 By modifying the Planning Commission's recommendations, the BOCC accepted the  
10 recommended Findings and Conclusions supporting the recommended, but not adopted,  
11 amendments. DCC 14.10.050B(7) requires the entry of new findings if the recommendation  
12 is changed.

**Respondent:**

13 The Respondent contends the County engaged in an extensive process of public  
14 meetings and hearings. The Petitioners argue the BOCC failed to provide an opportunity for  
15 public participation prior to rejecting some of the proposed amendments to the AOD.  
16 According to the Respondent, this is not correct. The BOCC opened the April 25, 2007  
17 session as a public hearing and announced procedures for public testimony. The BOCC  
18 accepted public testimony and allowed submittal of written public comments before and  
19 during the public hearing, and extended time for receipt of written comments. The BOCC  
20 also continued deliberations to May 9, 2007.

21 Two provisions cited by the Petitioners in the Douglas County Code, DCC 14.10.050  
22 and DCC 14.10.040.4.B, apply to the review of applications for amendment. This case,  
23 according to the Respondent, does not involve an application for amendment of the  
24 Comprehensive Plan and/or development regulations. This case involves amendments  
25 originally proposed as part of the 2004 array of amendments received from the RPC. The  
26 Petitioners argue the BOCC changed the recommendation of the RPC and adopted its own  
version of the proposed amendments. The Respondent contends the BOCC made no

1 changes whatsoever to the text of the Comprehensive Plan, but did reject the  
2 recommended amendments to DCC 18.65: the addition of new Zone 4 and new Zone 6, and  
3 the imposition of restrictive easements upon all new development within the District.

4 The Respondent contends the BOCC did make one amendment not considered by  
5 the RPC, which was to retain the existing Notice to Title requirement under DCC  
6 18.65.050.L, by revising the language of that section. It is insignificant and the Respondent  
7 cites two Board cases to confirm this analysis.

8 **Petitioners HOM Reply:**

9 The Petitioners contend nothing in the County's public meeting notice informed the  
10 public the BOCC might conduct a hearing or contemplate modifying the PC's  
11 recommendation. The Petitioners argue DCC 14.32.040 and DCC 14.10.050 need to be read  
12 together with RCW 36.70.590 through 36.70.630. DCC Title 14.32 applies to all applications  
13 and proposals for amendments to the Comprehensive Plan. In addition, the Petitioners  
14 contend there is no authority to allow the BOCC to modify PC recommendations that are not  
15 substantial without referral back to the PC or alternatively, by providing a hearing before  
16 the BOCC on the proposed modifications.

17 **Board Analysis:**

18 RCW 36.70A.035(2)(a) concerns public participation and requires the legislative  
19 bodies, if they choose to consider a change to an amendment to a comprehensive plan or  
20 development regulation, and the change is proposed after the opportunity for review and  
21 comment has passed under the county's or city's procedures, "an opportunity for review  
22 and comment on the proposed change shall be provided before the local legislative body  
23 votes on the proposed change."

24 An additional opportunity for public review and comment is not required under (2)(a)  
25 if (subsections pertinent to this issue): (i) an environmental impact statement has been  
26 prepared under chapter 43.21C RCW for the pending resolution or ordinance and the  
27 proposed change is within the range of alternatives considered in the environmental impact

1 statement; or (ii) the proposed change is within the scope of the alternatives available for  
2 public comment.

3 The Petitioners argue the BOCC modified the Planning Commission's  
4 recommendations at their meeting without fulfilling its public participation, notice, and fact-  
5 finding obligations. They cite Douglas County Code 14.10.050 under B., which states in part  
6 under B.6., "The board of county commissioners must hold a public hearing to consider any  
7 changes to the recommendation of the planning commission." The Petitioners argue that  
8 only by involving the Planning Commission in the review of the changes proposed by the  
9 BOCC is the public's right of participation preserved.

10 The question is did the County follow its public participation plan, its own code and  
11 the GMA? The record shows the County engaged in an extensive process of public meetings  
12 and hearings held by both the Planning Commission and the BOCC, and received a  
13 substantial amount of agency and public comments throughout the process. According to  
14 the record, over a period of two years the Planning Commission held public meetings, heard  
15 public testimony, and then sent a final recommendation to the BOCC. The BOCC held a  
16 public hearing on April 25, 2007 to "consider proposals to adopt amendments to the Greater  
17 East Wenatchee Comprehensive Plan and the Douglas County Code, Chapter 18.65, AP-O,  
18 Airport Overlay District." Respondent Exhibit R-26. The BOCC continued that public  
19 hearing, for decision only, to May 9, 2007, after agreeing to accept further written public  
20 comment until May 4, 2007. The Petitioners and many other individuals and agencies not  
21 only testified at the public hearing, but also submitted written testimony as well.

22 The Board agrees with the Respondent concerning Issue No. 4. The BOCC's changes  
23 were within the parameters given in RCW 36.70A.035(2)(a)(ii) and the BOCC held a public  
24 hearing to consider "any changes to the recommendation of the planning commission" and  
25 "before the local legislative body votes on the proposed change", required by DCC  
26 14.10.050(B)(6) and RCW 36.70A.035(2)(a).

1 **Conclusion:**

2 The Board finds the Petitioners' failed to carry their burden of proof required for  
3 Issue No. 4.

4 **Issue No. 5:**

5 Does the decision below fail to comply with RCW 36.70A.106 notice requirements?

6 **The Parties' Position:**

7 **Petitioners:**

8 The Petitioners contend referral of the changes to the Planning Commission is the  
9 only way the County could have complied with the RCW 36.70A.106 requirement to provide  
10 60-day notice of the proposed amendments, as modified by the BOCC. The 60-day notice  
11 was actually initiated after the final BOCC action. RCW 36.70A.106 requires that notice 60  
12 days prior to adoption.

13 **Respondent:**

14 The Respondent argues CTED received the proposed amendments to the AOD on  
15 February 21, 2007. The amendments were adopted on May 9, 2007. The Respondent  
16 contends CTED's letter of May 17, 2007 acknowledged their receipt of "adopted Resolution  
17 No. TLS 07-09B as "required under RCW 36.70A.106." Respondent HOM brief at 34. The  
18 Petitioners argue the CTED letter, instead, acknowledged the start of CTED's 60-day review  
19 process, which is incorrect.

20 **Petitioners HOM Reply:**

21 The Petitioners agree with the Respondent concerning CTED's advance notice  
22 concerning the proposed amendments, but CTED did not receive a copy of the BOCC's  
23 modifications prior to their being adopted.

24 **Board Analysis:**

25 RCW 36.70A.106 requires counties and cities proposing to adopt a comprehensive  
26 plan or development regulations to "notify the department of its intent to adopt such plan  
or regulations at least sixty days prior to final adoption." Under RCW 36.70A.106(2), each  
county and city planning under this chapter shall transmit a complete and accurate copy of

1 its comprehensive plan or development regulations to the department (CTED) within ten  
2 days after final adoption.

3 The record shows CTED reviewed and commented on the proposed "amendments to  
4 the Greater East Wenatchee Comprehensive Plan, zoning map, and development  
5 regulations", in a letter sent to the County on February 21, 2007. Respondent Exhibit R-9.  
6 In addition, CTED acknowledged its receipt of adopted Resolution No. TLS 07-09B in  
7 another letter dated May 17, 2007, less than ten days after adoption of the resolution. RCW  
8 36.70A.106 requires the County to notify CTED on its intent to adopt sixty days prior to final  
9 adoption, and ten days after adoption. The County, therefore, fulfilled its requirement under  
10 RCW 36.70A.106.

11 **Conclusion:**

12 The Board finds the Petitioners' failed to carry their burden of proof required for  
13 Issue No. 5.

14 **Issue No. 6:**

15 Does the decision below fail to comply with RCW 36.70A.130 requirements and DCC  
16 14.32 process for once annual Comprehensive Plan and Development Regulation updates,  
17 amendments and revisions?

18 **The Parties' Position:**

19 **Petitioners:**

20 The Petitioners argue RCW 36.70A.130 limits the County's consideration of CP and  
21 development regulations updates to once annually. According to the Petitioners, the County  
22 amended its CP (GEWA Plan) twice in the same year. The Petitioners contend the statute is  
23 clear: the County can only amend its CP once a year. The County's own development  
24 regulations, under DCC 14.32.040, also require annual initiation of amendments. The  
25 Petitioners also contend the County violated RCW 36.70A.130(2)(b), which provides that all  
26 proposals shall be considered concurrently, so the cumulative effect of the various  
proposals can be ascertained.

1 **Respondent:**

2 The Respondent argues the County began its process of updating the Comprehensive  
3 Plan in late 2004. After a process involving more than two years of work, the AOD  
4 amendments returned to the BOCC and were adopted on May 9, 2007. The amendments to  
5 the AOD were a continuation of the 2004-2005 process. According to the Respondent,  
6 proposed amendments remain part of the calendar year annual process in which they were  
7 proposed. CTED reviewed and favorably commented on the proposed amendments. In  
8 addition, the Petitioners engaged in extensive public participation at every stage of the  
9 amendment review process.

10 **Petitioners HOM Reply:**

11 The Petitioners argue the County's interpretation of the language for process and  
12 docketing amendments is "puzzling". Petitioners Reply brief at 14. The Petitioners give three  
13 reasons for this: (1) this explanation ignores the requirements of DCC 14.32; (2) the  
14 County's argument ignores and undermines RCW 36.70A.130(2)(b) concurrency of  
15 consideration to assure ascertainment of the cumulative effect of proposals; and (3) it  
16 ignores language in RCW 36.70A.130(2)(a), distinguishing proposals from consideration by  
17 the governing body.

18 **Board Analysis:**

19 Under Issue No. 6, the Respondent contends the County began its process of  
20 updating the Comprehensive Plan in late 2004, pursuant to RCW 36.70A.130. The  
21 amendments to the Airport Overlay District were proposed as part of that update. The  
22 proposed amendments needed further work. Two years later, the BOCC adopted Resolution  
23 No. 07-9B. The amendments to the Airport Overlay zone were a continuation of the 2004-  
24 2005 process. Douglas County has interpreted the language in RCW 36.70A.130(2)(a) as a  
25 process and docketing limitation. CTED reviewed and favorably commented on the  
26 proposed amendments.

27 The Petitioners argue the BOCC resolution adopting the amendments were effective  
immediately, not at the end of 2007, as proposed by the Respondent. They also contend

1 the County's argument is "semantic", suggesting that "considered annually" is a broad term  
2 applicable to the entire planning and public participation process that may extend over  
3 multiple years as a distinct consideration always relating back to the year a proposal was  
4 first conceived. According to the Petitioners, this violates the restrictions of both RCW  
5 36.70A.130 and DCC 14.32.040. In addition, the Petitioners contend the County fails to  
6 follow RCW 36.70A.130(2)(b), which states "all proposals shall be considered by the  
7 governing body concurrently so the cumulative effect of the various proposals can be  
8 ascertained."

9 The legislature and the Hearings Boards believe the foundation of the GMA is to  
10 provide for coordinated and planned growth. Consistency in a jurisdictions planning process  
11 is important and a county or city needs to evaluate proposals for their cumulative effects. In  
12 other words, concurrency is an important concept in GMA.

13 Both the Western and Central Boards have found that RCW 36.70A.130 limits  
14 consideration of comprehensive plan amendments to no more frequently than once every  
15 year, except in limited circumstances as allowed under RCW 36.70A.130(2)(a) and (b).  
16 Amendments need to be placed before local government at one specific time, so the  
17 cumulative effect of the proposals can be ascertained. *Achen v. Clark County*, WWGMHB  
18 Case No. 95-2-0067, FDO (Sept. 20, 1995); *Ellis v. San Juan County*, WWGMHB Case No.  
19 97-2-0006, FDO (June 19, 1997); *LMI/Chevron v. Woodway*, CPSGMHB Case No. 98-3-  
20 0012, FDO (Jan. 8, 1999). But contrary to the Western Board, which has concluded  
21 development regulations must go through the same annual review process, the Central  
22 Board contends the statute does not apply to development regulations. Board emphasis.  
23 Zoning regulations, such as the Douglas County Airport Overlay District zone change, is a  
24 development regulation.

25 The Attorney General's Office concurs with the Central Board. Attorney General  
26 Opinion No. 11, issued on September 7, 2005, concluded, "The prohibition against  
amendments more than once per year applies only to comprehensive plans; the statute  
does not mention development regulations in this light."

1 This Board concurs with the Attorney General's opinion. RCW 36.70A.130 refers only  
2 to "updates, proposed amendments, or revisions of the comprehensive plan..." as this  
3 statute relates to the requirement that county's and city's consider these actions "no more  
4 frequently than once every year."

5 **Conclusion:**

6 The Board finds the Petitioners' failed to carry their burden of proof required for  
7 Issue No. 6.

8 **Issue No. 8:**

9 Did the decision below fail to comply with the GMA by improperly superimposing over  
10 GMA processes and policies as a superior and controlling policy the inapplicable provisions  
11 of RCW 36.70.547?

12 **The Parties' Position:**

13 **Petitioners:**

14 The Petitioners contend Pangborn Memorial Airport is being misrepresented as a  
15 "general aviation" airport by the County requiring protections contemplated by RCW  
16 36.70.547. The County assumes a reference to "general aviation" in RCW 36.70.547  
17 includes every airport in the state, including Pangborn Memorial Airport.

18 The Petitioners argue the nomenclature "reliever" and "general aviation" airports  
19 correspond to the National Plan of Integrated Airport Systems (NPIAS). Washington State  
20 airports are designated by the NPIAS, and Pangborn is designated as a "primary and  
21 commercial airport". Therefore, Pangborn is neither a "reliever" or "general aviation" airport  
22 and neither RCW 36.70.547 and RCW 36.70A.510 applies.

23 The Petitioners ask the Board to take notice of Appendices "A" and "B" of the  
24 WSDOT publication, "Airports and Compatible Land Use Compatibility". These two  
25 appendices contemplate wide discretion on the part of local government, not the "narrow  
26 and restrictive uses" contemplated by the County. Petitioners' HOM brief at 23. The County  
also invokes the "California Airport Land Use Compatibility Planning Manual". The Petitioners

1 argue this publication is not binding, even in California, and it characterizes its analysis as  
2 the beginning, not the end of compatibility review, which the County did not do.

3 **Respondent:**

4 The Respondent contends this is a repeat of the Petitioners' argument under Issue  
5 No. 1 and incorporates their argument under that issue here.

6 **Petitioners HOM Reply:**

7 The Petitioners contend the Respondents provided no additional argument on this  
8 issue.

9 **Board Analysis:**

10 The Board agrees with the Respondent's argument stated above and incorporates  
11 the Board's Analysis from Issue No. 1 for discussion. Even if Pangborn Memorial Airport is  
12 not a "general aviation" airport, the County still has a duty to balance the goals of the GMA,  
13 but in doing so, protect the function and expansion of this essential public facility.

14 **Conclusion:**

15 The Board finds the Petitioners' failed to carry their burden of proof required for  
16 Issue No. 8.

17 **Issue No. 9:**

18 Did the decision below fail to comply with the GMA, the Comprehensive Plan, and  
19 local development regulations by improperly according Essential Public Facility ("EPF")  
20 status without producing a record to demonstrate compliance with the evaluation required  
21 by local plans and development regulations (1) to expand an EPF, (2) to expand an EPF into  
22 an RCW 36.70A.060 Agricultural Resource Area of Long Term Commercial Significance, (3)  
23 to accommodate an airport landing strip extension not authorized by state and federal  
24 agencies with jurisdiction, and (4) by improper reliance upon an inapplicable state statute  
25 (RCW 36.70.547)?

26 **The Parties' Position:**

**Petitioners:**

The Petitioners agree Pangborn Memorial Airport is an essential public facility (EPF),  
but contend the County's policy, EPF-2, should be invoked when it is expanded, which

1 states EPF's will not be located in resource lands or critical areas, if they are incompatible  
2 with these uses. According to the Petitioners, the "sole justification for the proposed  
3 enlargement and intensification of airport protections is the incompatibility of agricultural  
4 uses with planned airport uses." This sets up the classic protection of agricultural resources  
5 requirement vs. other requirements conflict, which the County failed to address. The  
6 Petitioners argue this expansion is not essential, but is "merely a power and property rights  
7 grab". Petitioners HOM brief at 24.

8 The Petitioners contend reasonable local regulations do not preclude siting of an EPF,  
9 as provided for in *City of Des Moines v. Puget Sound Regional Council*, 98 Wn.App. 23, 108  
10 Wn.App 836, 988 P.2d 27, review denied 140 Wn.2d 1027, 10 P.3d 403, but the designation  
11 of agricultural resource areas is not only reasonable, but required by RCW 36.70A.060. The  
12 Petitioners argue the County should have conducted the mandatory RCW 43.21C.030  
13 alternative study to balance the competing interests.

14 **Respondent:**

15 As to sub-issues (1) and (2), the Respondent contends Pangborn Memorial Airport  
16 pre-exists the adoption of the GMA and its original siting was not subject to the GMA. In  
17 addition, both Parties agree Pangborn is an EPF. The amendment of the AOD is a non-  
18 project action and is not an expansion of an EPF.

19 As to sub-issue (3), the Respondent argues the comprehensive plan provides a set of  
20 policies reflecting the County's vision for future growth. Development regulations provide  
21 the requirements and limitations to accommodate future development in accordance with  
22 those policies. Site specific development approval by other agencies is not a proper basis or  
23 pre-condition for GMA planning or development regulations. The Petitioners' sub-issue (3)  
24 does not call into question the validity of the AOD amendments.

25 The Respondent does not repeat their argument for sub-issue (4), involving the  
26 application of RCW 36.70.547, they argued under Issue No. 1 and Issue No. 8, but  
incorporates these arguments in response to Issue No. 9, sub-issue (4).

1 **Petitioners HOM Reply:**

2 The Petitioners contend the sole purpose of this amendment is to expand the Airport  
3 Overlay in order to accommodate a hoped-for airport expansion. The County failed to  
4 review this amendment under its EPF criteria, choosing instead to review it under the  
5 inapplicable RCW 36.70.547 and .510.

6 **Board Analysis:**

7 Under Issue No. 9, the Respondent argues Pangborn Airport pre-exists the GMA and  
8 its original siting was not subject to the GMA. However, it is clear that Pangborn Memorial  
9 Airport is an Essential Public Facility under the GMA and Douglass County Code. It has also  
10 been characterized as an EPF in Douglas County's Comprehensive Plan and development  
11 regulations. Pangborn Memorial Airport AOD amendment is a non-project action. The  
12 airport adopted a FAA approved, updated Airport Master Plan that includes future  
13 lengthening of a runway. Site specific development approval by other agencies is not a  
14 proper basis or pre-condition for GMA planning or development regulations. The  
15 Respondent contends RCW 36.70.547 is not an "inapplicable state statute," as the  
16 Petitioners would like the Board to believe. This statute has been incorporated by the GMA  
17 at RCW 36.70A.510, and requires protection of Pangborn Airport. Respondent's Motion brief  
18 at 26.

19 The Petitioners contend they disagree with the Respondent concerning the  
20 amendment being a "non-project" action and the airport not an expansion of an EPF.  
21 Petitioners' Motion brief at 16. They argue the maps show clear and dramatic expansion of  
22 airport overlay uses into the Agricultural Resource area. The Petitioners contend this  
23 expansion of use is not essential and possibly a "power and property rights grab."  
24 Petitioners' Motion brief at 17. The Petitioners contend the County failed to do an adequate  
25 RCW 43.21C.030 alternative study to determine if the expansion was necessary given the  
26 agricultural land underneath the Overlay zone.

The Board agrees with the Respondent's arguments under Issue No. 9. Both Parties  
agree and acknowledge Pangborn Memorial Airport is an Essential Public Facility. Under that

1 definition, the County has a duty to protect the present and future use of the facility. The  
2 action taken by the County ensures Pangborn Memorial Airport's viability for future use. The  
3 expansion of the overlay holds in place the present agricultural activity and uses, thus  
4 protecting both the airport and agriculture. Pangborn Memorial Airport adopted a FAA  
5 approved, updated Airport Master Plan that includes future lengthening of a runway. Site  
6 specific development approval by other agencies is not necessary. And finally, RCW  
7 36.70.547 has been incorporated by RCW 36.70A.510 and is an applicable state statute to  
8 the GMA.

9 The Board incorporates this discussion with those discussions found under Issue Nos.  
10 1, 6 and 8.

11 **Conclusion:**

12 The Board finds the Petitioners' failed to carry their burden of proof required for  
13 Issue No. 9.

14 **Issue No. 10:**

15 Did Douglas County fail to show its work in that: (1) it conducted inadequate  
16 environmental review; (2) it inconsistently accepted findings of fact but rejected  
17 recommendations of the Douglas County Planning Commission; (3) it failed to provide  
18 evidence in the record to support necessary findings of fact to support its revisions to the  
19 Planning Commission Recommendations; and (4) it failed to provide public participation  
20 prior to changing Douglas County Planning Commission Recommendations?

21 **The Parties' Position:**

22 **Petitioners:**

23 The Petitioners contend the BOCC received the recommendation from the Planning  
24 Commission and modified it without fulfilling its public participation, notice, and fact/finding  
25 obligations under those circumstances. Although the County's PPP imposes public  
26 participation on the Planning Commission, other provisions of the development regulations  
do impose public participation obligations upon the BOCC, which were ignored. The  
Petitioners reiterate their argument under Issue No. 4 pertaining to DCC 14.32.040 and  
.050 claiming the BOCC revised document should have gone back to the Planning

1 Commission for public participation. Furthermore, the Petitioners argue the BOCC failed to  
2 enter independent findings of fact to support its modification and failed to study or develop  
3 appropriate alternatives other than the two preferred options.

4 The Petitioners contend the County's only reference to SEPA compliance was to refer  
5 to the October 2004 Supplemental Environmental Impact Statement (SEIS). The SEIS does  
6 not even mention Pangborn Airport, the proposed amendment to the Airport Overlay, the  
7 agricultural resource area of long term commercial significance, or the conflicts between  
8 agriculture and the EPF. The County failed to require the appropriate studies and analysis.

8 **Respondent:**

9 The Respondent contends sub-issue (1) was argued and answered under Issue No. 2  
10 and will not repeat this argument here. As to sub-issues (2), (3), and (4), the Respondent  
11 contends the Petitioners repeat their argument under Issue Nos. 4 and 6. Again, the  
12 Respondent will not repeat those responses here, but incorporates such argument under  
13 this issue. According to the Respondent, "[T]he county legislative authority need not agree  
14 with all who participate in the planning process or even the majority of those who  
15 participate, as long as the legislative authority complies with the GMA." Respondent's HOM  
16 brief at 41.

16 **Petitioners HOM Reply:**

17 The Petitioners argue the BOCC modified the amendment from the Planning  
18 Commission in a manner "prohibited by both state and local law", as argued before.

19 **Board Analysis:**

20 The Board agrees with the Respondent concerning Issue No. 10. The Petitioners'  
21 Issue No. 10 is the same as those argued under Issue Nos. 2, 4, and 6 and the Board will  
22 not discuss those issues again here. The Board incorporates their discussion and analysis  
23 from Issue Nos. 2, 4, and 6 for Issue No. 10.

23 **Conclusion:**

24 The Board finds the Petitioners' failed to carry their burden of proof required for  
25 Issue No. 10.

1 **Issue No. 11:**

2 Did the Douglas County decision fail to comply with the GMA and the applicable  
3 Comprehensive Plans in that it ignored agricultural resource values required by the GMA,  
4 SEPA and the Comprehensive Plan to be considered and resolved in favor of conservation,  
5 preservation and enhancement of the Agricultural Resource?

6 **The Parties' Position:**

7 **Petitioners:**

8 The Petitioners contend the County ignored its obligations to protect and enhance  
9 the Agricultural Resource area. The Petitioners at this point ask the Board to review Issue  
10 Nos. 1, 8 and "numerous others of the issues above" as argument on this issue.

11 **Respondent:**

12 The Respondent incorporates their arguments under Issue Nos. 1 and 8 and to the  
13 Petitioners' mention of "numerous other of the issues" to this issue. The Respondent objects  
14 to the Petitioners' general incorporation of other argument and asks the Board to strike this  
15 language from the Petitioners' HOM brief and limit their review to Issue Nos. 1 and 8.

16 **Petitioners HOM Reply:**

17 The Petitioners contend the Respondent offers no new argument on this issue.

18 **Board Analysis:**

19 As originally written for the Order on Motions, under Issue No. 11, the Respondent  
20 contends this is a similar argument to Issue No. 1. They argue that the GMA does not afford  
21 "untouchable" status upon the agricultural lands adjacent to the airport. Respondent's  
22 Motion brief at 28. Encouraging conservation of agricultural lands is only one of the thirteen  
23 goals. RCW 36.70A.020. Local governments do not violate the GMA when balancing those  
24 goals during the planning process. The Respondent contends the Petitioners have a  
25 substantial burden to demonstrate evidence in the record that the Airport Overlay converts  
26 the use of agricultural lands to other uses and/or impermissibly impacts those lands. The  
27 protections afforded to Pangborn Memorial Airport actually encourage conservation of

1 agricultural land surrounding the airport and lessen the potential for incompatible future  
2 impacts to that land.

3 The Petitioners argue statutory law requires counties to adopt development  
4 regulations which shall assure the "use of lands adjacent to agricultural...resource lands  
5 shall not interfere with the continued use in the accustomed manner and in accordance with  
6 best management practices, of these designated lands for the production of food,  
7 agricultural products..." RCW 36.70A.060(1). The Petitioners contend the County has not  
8 produced a record to demonstrate it has complied with these GMA mandates. The  
9 Petitioners argue the new Airport Overlay zone and the proliferation of intrusive zones now  
10 render the impacts significant to farmers. In addition, the SEPA review failed to evaluate the  
11 impacts of the new amendments. The SEIS only mentioned the Agricultural Resource area  
12 in the context of cluster housing.

13 The Board agrees with the Respondent's argument and incorporates their discussion  
14 and analysis for Issue Nos. 1 and 8 for this issue. The Petitioners have failed to show how  
15 the County ignored agricultural resource values required by the GMA, SEPA and the  
16 Comprehensive Plan. The record shows the County followed its public participation plan,  
17 allowed ample opportunity for public comment, protected the agricultural resource area  
18 through the Airport Overlay District zoning, and balanced the needs of the airport with  
19 agriculture.

20 **Conclusion:**

21 The Board finds the Petitioners' failed to carry their burden of proof required for  
22 Issue No. 11.

23 **VII. FINDINGS OF FACT**

- 24 1. Douglas County, is a county located East of the crest of the Cascade  
25 Mountains and opted to plan under the GMA and is therefore required  
26 to plan pursuant to RCW 36.70A.040.
2. Douglas County adopted Resolution No. TLS-07-09 on May 9, 2007,  
which adopted amendments to the Land Use Chapter of the Greater

1 East Wenatchee Comprehensive Plan (GEWCP) and Chapter 18.65 of  
2 the Douglas County Code (DCC).

- 3 3. The Board finds Douglas County in compliance with RCW 36.70A.060  
4 and RCW 36.70A.177, and its Comprehensive Plan amendments and  
5 development regulations adopted to implement these two statutes.
- 6 4. The Board finds Douglas County in compliance with RCW  
7 43.21C.030(2)(e).
- 8 5. The Board finds Douglas County in compliance with RCW 36.70A.035,  
9 public participation requirements.
- 10 6. The Board finds Douglas County in compliance with RCW 36.70A.106,  
11 notice requirements.
- 12 7. The Board finds Douglas County in compliance with RCW 36.70A.130  
13 and DCC 14.32 based on the record, the Board's determination and the  
14 Attorney General's Opinion No. 11, issued Sept. 7, 2005.
- 15 8. The Board finds Douglas County in compliance with RCW 36.70A.510  
16 and RCW 36.70.547.
- 17 9. The Board finds Douglas County in compliance with the GMA when it  
18 gave Pangborn Memorial Airport essential public facility status.
- 19 10. The Board finds Douglas County conducted an adequate environmental  
20 review; determined an appropriate course of action from the  
21 alternatives; provided sufficient findings of fact to support its revisions  
22 to the Planning Commission's recommendations; and followed its public  
23 participation plan and the GMA when the BOCC changed the Planning  
24 Commission's recommendations.
- 25 11. The Board finds Douglas County balanced the goals of the GMA by  
26 sufficiently considering agricultural interests, while designating an  
expansion of the Airport Overlay District zoning to protect and preserve  
Pangborn Memorial Airport, an essential public facility.
12. The Board finds the Petitioners failed to carry their burden of proof on  
Issue Nos. 1, 2, 4, 5, 6, 8, 9, 10, and 11.

1  
2  
3 **VIII. ORDER**

4 Based upon review of the Petition for Review, the briefs and exhibits submitted by the  
5 Parties, the GMA, prior Board Orders and case law, having considered the arguments of the  
6 Parties, and having deliberated on the matter the Board finds the Petitioners have failed to  
7 carry their burden of proof on all issues and the County's Resolution No. TLS 07-9B is in  
8 compliance with the Growth Management Act.

9 **Pursuant to RCW 36.70A.300 this is a final order of the Board.**

10 **Reconsideration:**

11 **Pursuant to WAC 242-02-832, parties have ten (10) days from the mailing of this**  
12 **Order to file a petition for reconsideration. Petitions for reconsideration shall**  
13 **follow the format set out in WAC 242-02-832. The parties filing a motion for**  
14 **reconsideration shall file the original and four (4) copies of the petition for**  
15 **reconsideration, together with any argument in support thereof, by mailing,**  
16 **faxing or delivering the document directly to the Board, with a copy to all other**  
17 **parties of record and their representatives. Filing means actual receipt of the**  
18 **document at the Board office. RCW 34.05.010(6), WAC 242-02-330. The filing of**  
19 **a petition for reconsideration is not a prerequisite for filing a petition for judicial**  
20 **review. If a party files a Motion for Reconsideration, the Board will accept the**  
21 **argument in the Motion for Reconsideration and a "Response" brief from the**  
22 **opposing party. The Board will only accept "Reply" briefs from the party(s) in**  
23 **rebuttal to the "response" brief, upon request by the Presiding Officer.**

24 **Judicial Review:**

25 **Any party aggrieved by a final decision of the Board may appeal the decision to**  
26 **superior court as provided by RCW 36.70A.300(5). Proceedings for judicial**  
**review may be instituted by filing a petition in superior court according to the**  
**procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil.**

**Enforcement:**

**The petition for judicial review of this Order shall be filed with the appropriate**  
**court and served on the Board, the Office of the Attorney General, and all parties**

1 within thirty days after service of the final order, as provided in RCW 34.05.542.  
2 Service on the Board may be accomplished in person or by mail. Service on the  
3 Board means actual receipt of the document at the Board office within thirty  
4 days after service of the final order.

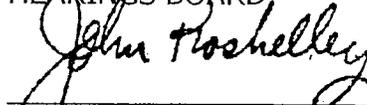
4 **Service:**

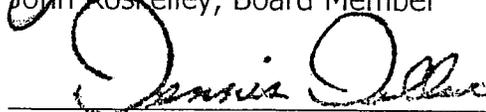
5 **This Order was served on you the day it was deposited in the United States mail.**

6 **RCW 34.05.010(19)**

7 **SO ORDERED** this 18<sup>th</sup> day of December 2007.

8 EASTERN WASHINGTON GROWTH MANAGEMENT  
9 HEARINGS BOARD

10   
11 \_\_\_\_\_  
12 John Roskelley, Board Member

13   
14 \_\_\_\_\_  
15 Dennis Dellwo, Board Member

16   
17 \_\_\_\_\_  
18 Joyce Mulliken, Board Member

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**State of Washington  
GROWTH MANAGEMENT HEARINGS BOARD  
FOR EASTERN WASHINGTON**

BRITT DUDEK and BRUCE BAGULEY,

Petitioners,

v.

DOUGLAS COUNTY; CITY OF EAST  
WENATCHEE; PANGBORN MEMORIAL  
AIRPORT; THE PORT OF CHELAN COUNTY;  
and THE PORT OF DOUGLAS COUNTY,

Respondents.

Case No. 07-1-0009

CERTIFICATE OF SERVICE

14 I am a citizen of the United States of America; I am over the age of 18 years and not  
15 a party to the within entitled action; am an employee of this board and my business  
16 address is 15 West Yakima Avenue, Suite 102, Yakima, Washington 98902.

17 On this date, I mailed a true copy of FINAL DECISION AND ORDER, in the above  
18 entitled matter, to each of the persons listed below by placing a true copy thereof in a  
19 sealed envelope with postage thereon fully prepaid, in the United States mail at Yakima,  
Washington as addressed herein:

20 James Klauser  
21 Robert Rowley  
22 557 Roy St., Suite 160  
Seattle, WA 98109

Steve Clem, Prosecuting Attorney  
P.O. Box 360  
Waterville, WA 98858

23 Board of Douglas County Commissioners  
24 P.O. Box 747  
25 Waterville, WA 98858

Douglas County Auditor  
P.O. Box 456  
Waterville, WA 98858

1 City of East Wenatchee, Mayor  
2 271 9<sup>th</sup> St. NE  
3 East Wenatchee, WA 98802

4 Devin Poulson, City Attorney  
5 271 9<sup>th</sup> St. NE  
6 East Wenatchee, WA 98802

7 Pete Fraley  
8 P.O. Box 1606  
9 Wenatchee, WA 98807

Jay Johnson  
Eric Wahlquist  
P.O. Box 2136  
Wenatchee, WA 98807

10  
11 I certify under penalty of perjury, that the foregoing is true and correct.

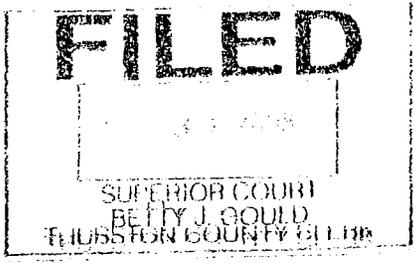
12 DATED this 18<sup>th</sup> day of December 2007, at Yakima, Washington.

13  
14  
15   
16 \_\_\_\_\_  
17 Angie Andreas

APPENDIX B  
Order Dismissing Petition for Review  
and Declaratory Judgment  
(CP166-172)

ORIGINAL

EXPEDITE  
 No Hearing set  
 Hearing is set  
 Date \_\_\_\_\_  
 Time: \_\_\_\_\_  
 Judge: \_\_\_\_\_  
 Calendar: \_\_\_\_\_



FILED COPY  
 IN \_\_\_\_\_  
 MR \_\_\_\_\_  
 8/23/08

SUPERIOR COURT OF WASHINGTON  
 FOR THURSTON COUNTY

BRITT DUDEK and BRUCE BAGULEY, )  
 )  
 Petitioners/Plaintiffs, ) No. 08-2-00074-2  
 )  
 vs. ) ORDER DISMISSING PETITION FOR  
 ) REVIEW AND DECLARATORY  
 ) JUDGMENT  
 THE EASTERN WASHINGTON GROWTH )  
 MANAGEMENT HEARINGS BOARD; )  
 DOUGLAS COUNTY, a Washington )  
 Municipal Corporation; CITY OF EAST )  
 WENATCHEE, a Washington Municipal )  
 Corporation; PANGBORN MEMORIAL )  
 AIRPORT; THE PORT OF CHELAN )  
 COUNTY; and THE PORT OF DOUGLAS )  
 COUNTY, )  
 )  
 Respondents/Defendants. )

THIS MATTER having come on regularly before the undersigned Judge of the Superior Court for trial on August 1, 2008, Petitioners appearing through their attorney, James J. Klauser of ROWLEY & KLAUSER, LLP, Respondent Douglas County appearing by and through its attorneys, Steven M. Clem, Douglas County Prosecuting Attorney, and Jeffrey G. Fancher, Special Deputy Prosecuting Attorney, the remaining Respondents not appearing for trial and not submitting written argument, the Court having considered the briefing submitted by the Petitioners and Respondent Douglas

1 County, the record before the Growth Management Hearings Board, the applicable  
2 statutes and case law, and having heard the argument of counsel, and the Court having  
3 issued its Letter Opinion Re: APA Appeal/Declaratory Judgment Request on September  
4 17, 2008 ("Letter Opinion"), it is now

5 ORDERED, ADJUDGED AND DECREED, as provided in the September 17,  
6 2008 Letter Opinion, Petitioners have failed to meet their burden of proof under RCW  
7 34.05.570 as to Assignment of Error #1, #2, #3, #4 and #5 as alleged in their Petition for  
8 Review. The Letter Opinion, attached hereto, is incorporated into this order by this  
9 reference; it is further

10 ORDERED, ADJUDGED AND DECREED, as provided in the September 17,  
11 2008 Letter Opinion, Assignment of Error #6 will not be addressed under the APA  
12 Review as the Court did not find any reference to the challenged error in the record nor  
13 has the ruling been appealed by Petitioners under the APA; it is further

14 ORDERED, ADJUDGED AND DECREED, as provided in the September 17,  
15 2008 Letter Opinion, that Petitioners' request for declaratory relief is denied as  
16 Petitioners have not established through the record that they are within a zone of  
17 interest or have suffered an injury in fact, economic or otherwise, in order to establish  
18 standing under the Uniform Declaratory Judgment Act, nor have they demonstrated that  
19 the matter involves interests that are direct and substantial, rather than potential,  
20 theoretical, abstract or academic. Furthermore, Petitioners have failed to provide  
21 sufficient evidence and sufficient legal basis for declaratory relief; it is further

22 ORDERED, ADJUDGED AND DECREED that the Final Decision and Order  
23 issued by the Eastern Washington Growth Management Hearings Board on December  
24

1 18, 2007, Case No. 07-1-0009, be and is hereby AFFIRMED consistent with the Letter  
2 Opinion; it is further

3 ORDERED, ADJUDGED AND DECREED that the <sup>relief requested under the</sup> Petition for Review of Eastern  
4 Washington Growth Management Hearings Board Decision and Request for  
5 Declaratory Judgment filed herein be and is hereby <sup>denied</sup> ~~dismissed with prejudice.~~ <sup>L.R. J.R.</sup>

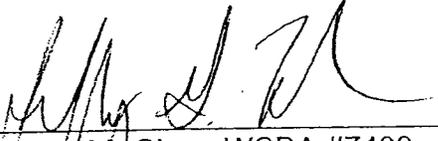
GARY R. TABOR

7 DATED: July 3, 2008

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The Honorable Gary R. Tabor, Judge

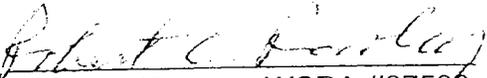
10 Presented by:

11   
12 

---

Steven M. Clem, WSBA #7466  
13 Prosecuting Attorney  
14 Jeffrey G. Fancher, WSBA #22550  
15 Special Deputy Prosecuting Attorney  
Attorneys for Respondent Douglas Co.

16 Approved as to form:

17   
18 

---

James J. Klauser, WSBA #27530  
19 Robert C. Rowley, WSBA #4765  
20 ROWLEY & KLAUSERM LLP  
21 Attorneys for Petitioners

Superior Court of the State of Washington  
For Thurston County

Paula Casey, Judge  
Department No. 1  
Richard A. Strophy, Judge  
Department No. 2  
Wm. Thomas McPhee, Judge  
Department No. 3  
Richard D. Hicks, Judge  
Department No. 4  
Christine A. Pomeroy, Judge  
Department No. 5  
Gary R. Tabor, Judge  
Department No. 6  
Chris Wickham, Judge  
Department No. 7  
Anne Hirsch, Judge  
Department No. 8

H



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Court Commissioner  
709-3201

Marti Maxwell  
Superior Court Administrator  
Gary Carlyle  
Assistant Superior  
Court Administrator  
Ellen Goodman  
Drug Court Program  
Administrator  
357-2482

September 17, 2008

James J Klauser and  
Robert C. Rowley,  
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P.O Box 360  
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Devin Poulson  
Attorney at Law  
City of East Wenatchee  
271 Ninth Street NE  
East Wenatchee, WA 98802

Re: *Britt Dudek & Bruce Baguley v. The Eastern Washington Growth Management  
Hearings Board, Douglas County, et al.*  
*Thurston County No. 08-2-00074-2*

Dear Counsel:

On August 1, 2008, this court heard oral arguments in the above-entitled case and took the matter under advisement. Now, having considered the arguments of counsel, the briefs submitted by the parties, the Record created below, and applicable Statutes and case authority, this court, for the reasons articulated below, **denies** Petitioners' appeal under the Administrative Procedure Act [APA] and Petitioners' request for Declaratory relief under the Uniform Declaratory Judgment Act [UDJA]

The facts in this case surround actions involving an Airport Overlay District [AOD] for Pangborn Memorial Airport located near East Wenatchee in Douglas County Washington

FILED  
SUPERIOR COURT  
THURSTON COUNTY, WASH.  
08 SEP 17 PM 2:40  
RETTY J. GOULD, CLERK  
BY \_\_\_\_\_  
DEPUTY

**LETTER OPINION RE:  
APA APPEAL / DECLARATORY  
JUDGMENT REQUEST**



and involve actions by the Regional Planning Commission [RPC], the Douglas County Board of County Commissioners [BOCC], Ports of Douglas County and Chelan County and The Eastern Washington Growth Management Hearings Board [Hearings Board].

Petitioners have filed this action under the APA and The UDJA. They appeal a Final Decision and Order of the Hearings Board entered on December 18, 2007 which upheld Douglas County BOCC Resolution No. TLS 07-9B entered on May 9, 2007. They further request that this Court declare TLS 07-09B unconstitutionally vague and an unlawful delegation of legislative powers to unspecified administrative officials.

### A. APA REVIEW

Petitioners made Six Assignments of Error in their APA Petition for Review. This court reviews decisions of the Hearings Board based upon the Administrative Record. The party alleging error has the burden of demonstrating the invalidity of Hearings Board action. RCW 34.05.570(1)(a). Relief is available only if the Court finds a violation of one or more of the 9 criteria set forth in RCW 34.05.570 (3). The Court reviews legal conclusions de novo and factual determinations on a "substantial" supporting evidence basis. The Respondent, Douglas County, argues that this court must accept factual "findings" that have not been challenged as they are "verities on appeal". This Court agrees with Petitioner that the section entitled "VII. Findings of Fact" at page 33 of the Hearings Board's Final Decision and Order are, for the most part, conclusions of law rather than factual findings. The analysis below considers the sufficiency of evidence regarding any conclusion of the Hearings Board:

1. & 4. As to Assignment of Error ## 1 and 4, This Court concludes that the Hearings Board did not err when it found that the BOCC complied with their Comprehensive Plan and adequately considered alternatives in enacting Resolution No. TLS 07-9B. The Petitioners have the burden of showing non-compliance. There is ample evidence in the record demonstrating that the County followed the statutory process in developing the AOD over a period of years. The Record clearly demonstrates that Pangborn Memorial Airport is indeed a "general aviation" airport and that the County properly considered alternative options before enacting the Resolution that protected both aviation and agriculture. Additionally, this Court can find no reference in which the Hearing Board held that Douglas County's action was required by law as alleged in Assignment of Error #4. Petitioners did not meet their burden of substantiating Assignments of Error # 1 and/or #4.

2. This Court Finds that the Hearings Board did not err as alleged in Assignment of Error #2 when it found that amendments to the AOD were development regulation 2 rather than amendments to the comprehensive plan. While RCW 36.70A.130 limits consideration of comprehensive plan amendments to no more frequently than once ever year, the Central and Eastern Growth Management Hearings Boards have found that the statute does not restrict development regulations in the same way. The record supports Respondent Douglas County's position that Resolution No. TLS 07-9B was a continuation of the process of updating the Comprehensive Plan begun in late 2004. Petitioners have

failed to carry their burden of showing this to be a violation of the Growth Management Act as alleged in Assignment of Error #2.

3. The Hearings Board did not err in denying Petitioners' challenge to public participation, hearing and notice requirements as set forth in Assignment of Error #3. The record demonstrates that the County engaged in an extensive process of public meetings and hearings and received a substantial amount of agency and public comments throughout the process. As to the May 9, 2007 decision, this came after continuing a public hearing that occurred on April 25, 2007 to May 9, 2007 for decision only and accepting further written public comment until May 4, 2007. The Hearings Board correctly found that any changes made to Planning Commission recommendations were in accordance with RCW 36.70A.035 (2)(a)(ii). Additionally, the state department of Community Trade and Economic Development [CTED] did receive notice as required. The record demonstrates that they knew of the proposed amendments in February and that they were provided a copy of the Resolution within ten days of its adoption. The Petitioners have failed to carry their burden as to Assignment of Error #3

5. This Court finds that the Review Board did not err, as alleged in Assignment of Error #5, when it found that an adequate environmental review took place and that the BOCC properly considered alternatives regarding unresolved resource disputes. The record demonstrates that the BOCC process allowed any agency or member of the public to comment and recommend alternatives during the numerous public hearings. The Growth Management Act does not set forth a minimum number of alternatives that must be considered. The term "alternative" obviously requires that more than one approach or course of action be considered. Here, the final decision did consider various alternatives before arriving at a final approach. Petitioners have not met their burden of proof as to Assignment of Error #5.

6. Assignment of Error # 6 is best addressed in the discussion concerning Petitioners' Declaratory Judgment request. While the alleged error indicates that the Review Board improperly ruled that the BOCC could delegate undefined authority to unidentified officials, the Court has located no such ruling in the record. Instead, the Review Board ruled that it would not address constitutional issues and denied review as to those arguments. Further, this ruling has not been appealed by Petitioners under the APA and will not be addressed in this section.

## **B. DECLARATORY JUDGMENT REVIEW**

Petitioners have the burden of showing that Douglas County Resolution TLS 07-9B is an unconstitutionally vague or an improper delegation of legislative authority. They complain that restrictions set forth in Douglas County Ordinance 18.65.040 were incorporated into Resolution No. TLS 07-9B and constitute an unconstitutional delegation of legislative power to unnamed officials.

The Respondent Douglas County first argues that this Declaratory Judgment action is improper because the Attorney General was not served. [The Thurston County Case File

No. 08-2-00074-2 contains a proof of January 14, 2008 service on an Assistant Attorney General at the Attorney General's Office so the court will not consider this argument.

Next, Respondent Douglas County argues that this Declaratory Judgment action is untimely since the Ordinance 18.65.040 was enacted over twelve years ago. This Court is unable to ascertain what language from this ordinance was changed or amended when TLS 07-9B was enacted, so no ruling on this argument will be rendered at this time.

Respondent Douglas County next argues that a justiciable controversy exists. This Court finds that Petitioners have not established through the record that they are within a "zone of interest" or have "suffered an injury in fact, economic or otherwise" in order to establish standing under the UDJA nor have they demonstrated that the matter involves "interests that are direct and substantial, rather than potential, theoretical, abstract or academic" *Nelson v. Appleway Chevrolet, Inc.*, 1260 Wash.2d 173, 157 P.3d 847 (2007).

Finally, Respondent Douglas County argues that there is insufficient evidence in the Record before the Hearings Board to support their request for declaratory relief and that Petitioner's have also not provided a sufficient legal basis for this request for relief. This Court agrees and, consequently, denies Petitioners' request for Declaratory Judgment relief under the UDJA.

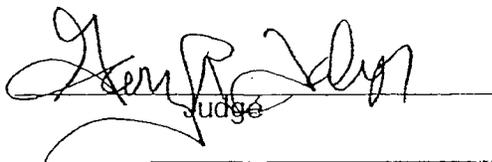
### C. OTHER RESPONDENTS

The City of East Wenatchee filed a Respondent Brief in this matter, primarily suggesting that they should be dismissed as a party in this matter. They did not file a formal motion to this effect. Petitioners argued in Reply that East Wenatchee was a required party. This Court will not rule on a matter that is not properly before it. The Eastern Washington Growth Management Board, Pangborn Memorial Airport, The Port of Chelan County and The Port of Douglas County did not file briefs or argue this court.

### CONCLUSION

For the reasons set forth above, This Court is denying the Petitioners' request to reverse the Review Board and impliedly, the Douglas County BOCC in regard to the enactment of Douglas County Resolution No. TLS 07-9B. The Resolution was properly enacted and is not Unconstitutional as alleged. Douglas County is deemed to be the prevailing party. Mr. Steven M. Clem, Douglas County Prosecuting Attorney is directed to prepare a proposed Order memorializing the decision of this court as set forth above.

Sincerely,



Judge

APPENDIX C  
Ex R-3  
(BOCC Resolution No. TLS 07-09B)

BOARD OF COUNTY COMMISSIONERS  
DOUGLAS COUNTY, WASHINGTON

Resolution No. TLS 07-9B

**FILE COPY**

Resolution adopting amendments to the )  
Land Use Chapter of the Greater East )  
Wenatchee Comprehensive Plan and ) LAND SERVICES  
Chapter 18.65 of the Douglas )  
County Code. )

WHEREAS, Douglas County has adopted a Comprehensive Plan pursuant to the Growth Management Act (GMA), RCW Chapter 36.70A, which covers all unincorporated areas within Douglas County, through a series of planning area Comprehensive Plans which were found to be consistent with each other and with the adopted GMA plans of adjoining jurisdictions; and

WHEREAS, Pangborn Memorial Airport is a general aviation airport for purposes of planning under RCW 36.70.547 as determined by the Aviation Division of the Washington State Department of Transportation and the Growth Management Division of the Washington State Department of Community, Trade and Economic Development.

WHEREAS, Douglas County has a responsibility under RCW 36.70.547 to discourage the siting of incompatible uses adjacent to such general aviation airports through its comprehensive plan and development regulations; and

WHEREAS, the Douglas County Regional Planning Commission has transmitted a recommendation to this Board to approve the amendments to the Greater East Wenatchee Comprehensive Plan and Chapter 18.65 of the Douglas County Code; and

WHEREAS, notice of all public hearings and public meetings on this matter have been published according to law.

NOW, THEREFORE, the Board of County Commissioners hereby accepts the Findings of Fact and Conclusions adopted by the Douglas County Regional Planning Commission, entering those findings into the record as their own as set forth in Attachment A and incorporating them in this resolution by this reference as though fully set forth herein.

BE IT FURTHER, hereby resolved and ordained that the recommendation of the Douglas County Regional Planning Commission is accepted, except as it pertains to Zones 4 and 6.

Resolution No. TLS 07-09B

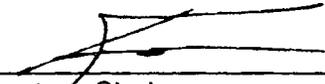
BE IT FURTHER, hereby resolved and ordained that the recommendation of the Douglas County Regional Planning Commission is accepted with the addition of revisions to the disclosure statement in Chapter 18.65.050(L) of the Douglas County Code.

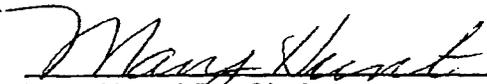
This resolution shall be effective immediately.

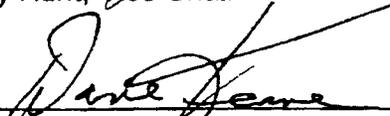
Dated this the 9<sup>th</sup> day of May 2007 in East Wenatchee, Washington.

BOARD OF COUNTY COMMISSIONERS  
DOUGLAS COUNTY, WASHINGTON

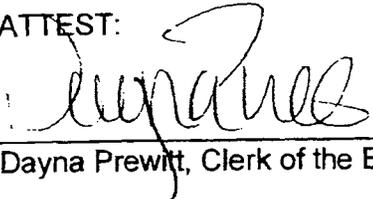


  
\_\_\_\_\_  
Ken Stanton, Chair

  
\_\_\_\_\_  
Mary Hunt, Vice Chair

  
\_\_\_\_\_  
Dane Keane, Member

ATTEST:

  
\_\_\_\_\_  
Dayna Prewitt, Clerk of the Board

## ATTACHMENT A

### Findings of Fact

1. Douglas County has adopted a Comprehensive Plan pursuant to the Growth Management Act (GMA), RCW Chapter 36.70A, which covers all unincorporated areas within Douglas County, through a series of planning area Comprehensive Plans there were found to be consistent with each other and with the adopted GMA plans of the adjoining jurisdictions.
2. Douglas County and the City of East Wenatchee have adopted the Greater East Wenatchee Area Comprehensive Plan, which contains a goal to "Provide state and federal system airports with reasonable protection from airspace obstructions, incompatible land uses and nuisance complaints that could restrict operations." The plan also has applicable policies including:
  - LU-1: Ensure that public or private development around existing airports allows the continued use of that facility as an airport. Land within aircraft approach and departure zones will be protected from inappropriate development.
  - LU-2: Preserve the right of airport owners and operators to continue present operations and allow for future air transportation and airport facility needs. It is also important to consider the present and future use of private property and the rights of private property owners.
  - LU-5: Enact overlay zoning to protect airspace around state and federal system airports from airspace obstructions and incompatible land uses with the approach, transitional, horizontal and conical surface zones, where such areas have been established by the FAA.
3. RCW Chapters 35A.63, 36.70 and 36.70A authorize the adoption of development regulations.
4. Amendments to the Greater East Wenatchee Area Comprehensive Plan and Douglas County Code are consistent with the Douglas County Regional Policy Plan (countywide planning policy) and RCW Chapter 36.70A.
5. Douglas County and the City of East Wenatchee each are responsible for long range planning matters and providing implementation recommendations to assure compliance with the growth management act. These measures include updates and amendments to the comprehensive plan; development regulations, environmental regulations, and any other rules, actions or regulations deemed necessary to implement the Growth Management Act. The city and the county have agreed to adopt consistent comprehensive plans and development regulations; and meeting in joint session is the most effective manner to coordinate the adoption of consistent plans and development regulations.
6. Opportunities to the public, local and state jurisdictions and agencies for early and continuous public participation in the drafting of amendments for the comprehensive plan and development regulations implementing the comprehensive plan have been provided. The public involvement component of this proposal once under the jurisdiction of the county and the city substantially meets the standards anticipated by RCW Chapter 36.70A.140. The public involvement component included the opportunity for oral and written comment, attendance at public workshops, and

testimony at public hearings advertised by legal notice, through affected agencies and news media.

7. Amendments and supporting documentation was sent to the Washington State Department of Community Trade and Economic Development and local and state agencies for a 60 day review pursuant to Section 36.70A.106. The 60-day review began on October 1, 2004 and ended on December 1, 2004. This 60-day review remains timely and in order.
8. Douglas County issued a supplemental environmental impact statement for all proposed amendments to the Greater East Wenatchee Area Comprehensive Plan on October 1, 2004 pursuant to WAC 197-11. The SEIS remains timely and in order for this proposal.
9. A Notice of Public hearing on February 8, 2007. The Notice of Public Hearing was published in the Empire Press and The Wenatchee World on February 8, 2007.
10. The Douglas County Regional Planning Commission and the City of East Wenatchee Planning Commission conducted a duly advertised public hearing on February 21, 2007. The Planning Commission entered into the record the files on this amendment, accepted public testimony, and deliberated the merits of the proposal.
11. The Port Districts of Chelan and Douglas Counties created a revised Airport Master Plan for Pangborn Memorial Airport (PMA) in April 2004. The master plan identified the expansion of Runway 12-30 to an ultimate length of 7,000 feet as a project necessary to accommodate the growth of air travel at Pangborn Memorial Airport (PMA). Runway 7-25 has also been re-designated and the current overlay protection schema is no longer consistent with this re-designation.
12. RCW 36.70.547 requires cities and counties in which there is located a general aviation airport that is operated for the benefit of the general public, whether publicly owned or privately owned public use, shall, through its comprehensive plan and development regulations, discourage the siting of incompatible uses adjacent to such general aviation airport. RCW 36.70.547 is referred to by RCW 35A.63.270 for cities planning under the optional municipal code.
13. PMA is a general aviation airport for purposes of planning under RCW 36.70.547 as confirmed by the Aviation Division of the Washington State Department of Transportation (refer to letter dated February 5, 2007) and the Growth Management Division of the Washington State Department of Community, Trade and Economic Development (refer to letter dated February 2, 2007).
14. PMA created a process and advisory committee meeting the requirements of RCW 36.70.547 and expanded to include interest groups, property owners and representatives of local government.
15. The recommendation of PMA for the revisions to the comprehensive plan and development regulations to address the requirements of RCW 36.70.547, and accommodate PMA as an essential public facility under RCW 36.70A.200, was developed with guidance from several sources including the Aviation Division of the Washington State Department of Transportation recommendations for Aircraft Accident Safety Zones for land uses surrounding general aviation airports published in February 1999; 2002 CALTRAN Airport Land Use Compatibility handbook,

National Transportation safety Board (NTSB) and Federal Aviation Regulations (FAR) Part 77 Imaginary Surfaces.

16. Pangborn Memorial Airport is designated as an Essential Public Facility in the Greater East Wenatchee Area Comprehensive Plan.
17. Pangborn Memorial Airport is a key component to the region's economic vitality and sustainability, providing transportation linkages not available via road or rail.
18. The Douglas County Regional Planning Commission and the City of East Wenatchee Planning Commission have reviewed the entire record including the goals and policies of the comprehensive plans, written and oral public testimony, and agency comments as it related to the proposed comprehensive plan and development regulations.
19. The creation of a system of allowances for land use through development regulations and the use of an airport disclosure statement to disclose the presence of the airport to future land owners as proposed by PMA represents a reasonable and appropriate approach to discourage the siting of incompatible uses adjacent to PMA and maintain the viability of PMA to serve the future needs of the region.

Conclusions:

1. The proposal to amend the Greater East Wenatchee Area Comprehensive Plan and development regulations discourages the siting of incompatible uses adjacent to Pangborn Memorial Airport as required by RCW 36.70.547.
2. The proposal will ensure that PMA will remain viable to serve the air and airport-related needs of the region.
3. The proposed amendments are consistent with RCW 36.70A, Douglas County Regional Policy Plan and the Greater East Wenatchee Area Comprehensive Plan.
4. The procedural and substantive requirements of the State Environmental Policy Act have been complied with.

## **PANGBORN MEMORIAL AIRPORT**

Pangborn Memorial Airport serves the counties of Chelan and Douglas, and portions of Okanogan and Grant counties, with a service area extending north to the Canadian border. Formerly known as Pangborn Field, Pangborn Memorial Airport is dedicated to the famous aviator, Clyde Pangborn, who landed at Fancher Field in 1931, to complete the first nonstop transpacific flight. Pangborn Memorial Airport is designated as an Essential Public Facility.

In April 2004 the airport, in conjunction with the Port Districts of Chelan and Douglas Counties, prepared an updated Airport Master Plan. This master plan identifies and plans for the needs of the airport and air service operations for the next 20 years. As the airport continues to grow in its importance to Douglas County and the region; it also grows in its impacts to the surrounding lands.

Pangborn Memorial Airport provides a critical link to the North Central Washington Region, state and national transportation system. It provides for the efficient movement of people, goods and services and serves as a commercial, cargo and general aviation airport. The airport is classified as a primary commercial airport within the National Plan of Integrated Airport Systems and as a commercial airport within the Washington State Aviation System Plan. Currently, the airport is ranked as the 6<sup>th</sup> largest commercial airport in the State of Washington and enplaned 49,258 scheduled passengers in 2000. It is also one of 24 airports within the state that has air cargo service. The airport ranks 20<sup>th</sup> in the state in based aircraft with approximately 122 based aircraft. Pangborn Memorial Airport is serviced by Horizon Air which provides both passenger and air cargo service while Airborne Express, FedEx, and United Parcel Service provide air cargo service.

### **Land Use Compatibility**

Over the last several decades, airports within the state and across the nation have faced increasing problems with the encroachment of incompatible development. Incompatible development can impact the operating capability of the airport as well as endanger the lives of people in the air and on the ground. As the airport continues to grow in its importance to Douglas County and the region, steps need to be taken to ensure that land use conflicts are minimized to the greatest extent possible.

The airport is located approximately one mile from the East Wenatchee Urban Growth Area (UGA). Existing land uses adjacent to the airport are predominantly large-lot agricultural with industrial designated lands located to the north and east of the airport. Only a small portion of the existing UGA is located within the airport traffic pattern.

To ensure that the function and value of the airport is maintained for future generations, several tools have been identified. These tools should be used together with the Airport Master Plan. Additionally, careful consideration should be given to topographical constraints and the natural environment.

### Height

To protect the operating airspace above and surrounding the airport, the State of Washington adopted RCW 14.12 Airport Zoning, which gave local jurisdictions the authority to regulate air space hazards. Air space hazards may endanger the lives and property of users of the airport and of occupants of land in its vicinity. Obstructions may also reduce the size of the area available for the landing, taking-off and maneuvering of aircraft, thus tending to impair the utility of the airport and the public investment.

The Federal Aviation Administration (FAA) has established Federal Aviation Regulations (FAR) Parts 77 Imaginary Surfaces. Development activity that encroaches into the Part 77 surfaces may pose a hazard to navigation and reduce the size of the area available for landing, taking-off, and maneuvering of aircraft, thereby increasing the potential for an accident. If development activity is allowed that does pose a hazard to navigation, then airport operation will be adversely affected. Figure \_\_\_\_\_ shows the FAR Parts 77 Imaginary Surfaces.

### Safety

The Airport Compatibility Zones were developed using information sources recommended by the WSDOT Aviation Division. A 7,000 foot runway is planned to accommodate future needs of larger aircraft. Available technical information for the sizing of compatibility zones categorizes all runways greater than 6,000 feet with the same zone dimensions. This approach does not attempt to balance airport protection with surrounding land uses. The Airport Compatibility Zones are sized based on a prorated approach and the use of a Runway Protection Zone sized for a  $\frac{3}{4}$  mile visibility approach.

Land use recommendations have been developed to limit the potential exposure and risk to people and property from aircraft accidents. Two strategies are employed to minimize the risks associated with potential aircraft accidents, including:

- Density guidance on the maximum number of dwellings and intensity guidance on the size and/or type of non-residential use.
- Avoiding certain types of critical land uses such as hazardous/explosive storage, public assembly of people and special uses such as schools, hospitals, and other uses in which mobility of occupants is limited, and storage of flammable or hazardous materials.

Figure \_\_\_\_\_ identifies and graphically illustrates the Airport Protection Zones.

### Noise

Noise is the single most significant "effect" from an airport and airport operations. The best way to ensure compatibility is to reduce the number of people exposed to noise generated by airport operations and to minimize the level of exposure. Figure \_\_\_\_\_ identifies the noise contours that are expected by the planned

level of airport operations. In the areas most affected by noise, 65 dnl or higher, additional precautions should be taken to minimize this impact.

Land use compatibility refers to a pattern of land uses around the airport which will be most compatible with activities on the airport. As airport operations and the land use picture surrounding the airport change, compatibility becomes more important. Additionally, ensuring compatible land use is a condition of grant assurances when accepting Federal Airport Improvement Program grants. In order to help assure compatibility between the airport and development activity, land use planning strategies have been developed. A summary of those strategies are listed below.

**Table 1 Airport Compatibility Zones Land Use Planning Strategies**

**Zone 1 –**

- a. No new residential
- ~~b. Require aviation easement for all new development~~
- e.b. Limit non-residential usage to 0-5 people per acre
- d.c. Limit storage of large (6,000 gallons) of hazardous or flammable material
- e.d. Airport ownership of property encouraged within the FAA Runway Protection Zone located within Zone 1.

**Zone 2 –**

- a. Limit to 1 dwelling unit per 10 acres
- ~~b. Require overflight easement for all new development~~
- e.b. Limit non-residential usage to 0-5 people per acre
- d.c. Prohibit children's schools, large day care centers, hospitals, nursing homes
- e.d. Limit storage of large (6,000 gallons) of hazardous or flammable material
- ~~f. Allow residential clustering only at the farthest feasible distance from extended runway centerline~~

**Zone 3 –**

- a. Limit to, 1 dwelling unit per 5 acres
- ~~b. Require overflight easement for all new development~~
- e.b. Limit non-residential usage to less than 25 people per acre
- d.c. Prohibit children's schools, large day care centers, hospitals, nursing homes
- ~~e. Allow residential clustering only at the farthest feasible distance from extended runway centerline~~

**Zone 4 –**

- a. Limit to 1 dwelling unit per 5 acres
- ~~b. Allow infill within urban growth area as stated in existing County Zoning~~
- ~~c. Require overflight easement for all new development~~

- ~~d. Limit non-residential usage to less than 40 people per acre~~
- ~~e. Prohibit children's schools, large day care centers, hospitals, nursing homes~~
- ~~f. Allow residential clustering only at the farthest feasible distance from extended runway centerline~~

Zone 5 –

- a. Usage limited to those specifically provided or encouraged in the adopted Airport Master Plan
- b. Limit non-residential usage to less than 50 people per acre.

Zone 6 –

- ~~a. No residential density limitations.~~
- ~~b. Allow infill within urban growth area and below the Wenatchee Reclamation District Canal as stated in existing County Zoning~~
- ~~c. Require overflight easement for all new development~~
- ~~d. Limit non-residential usage to less than 100 people per acre~~
- ~~e. Avoid children's schools, large day care centers, hospitals, nursing homes~~
- ~~f. Allow residential clustering only at the farthest feasible distance from extended runway centerline.~~

~~FAR Part 77 Horizontal Surface Area, including Zones 2, 3, 4, and 6~~

- ~~a. Require overflight easement for all new development~~

## Chapter 18.65 AP-O AIRPORT OVERLAY DISTRICT

### 18.65.010 Purpose.

The purpose of the airport overlay (AP-O) district is to protect the viability of the Pangborn Memorial Airport as a significant resource to the community by encouraging compatible land uses, densities and reducing hazards that may endanger the lives and property of the public and aviation users. The AP-O classification identifies a series of imaginary surfaces and safety compatibility zones within the airport influence area that have historically been prone to hazards associated with aircraft and airports. This chapter is based on aircraft accident data from the WSDOT Aviation Land Use Compatibility, 2002 CALTRAN Airport Land Use Compatibility Handbook, National Transportation Safety Board (NTSB) and the Federal Aviation Regulations (FAR) Part 77 Imaginary Surfaces. As the name implies, this classification is laid over the existing Douglas County zoning districts. Densities and land use requirements of the underlying zoning districts are consistent with the NTSB standards and provide for maximum protection to the public health, safety and general welfare of the community and for those citizens working and residing within the airport influence area.

### 18.65.020 Statutory authority.

This chapter is adopted pursuant to RCW 36.70 and 36.70A, which require a county to enact development regulations within its jurisdiction to discourage the siting of incompatible land uses adjacent to general aviation airports for the purposes of promoting the public health, safety and general welfare of county residents and aviation users.

### 18.65.030 Applicability.

The provisions of this chapter shall apply to all lands, buildings, structures, natural features or uses located within those areas that are defined by the AP-O airport overlay district designated on the official Douglas County zoning map.

### 18.65.040 Exemptions.

The following structures, uses or other activities are exempt from the provisions of the AP-O district when permitted in the underlying zoning district:

- A. Height. Any structure or object that would be shielded by existing structures of a permanent and substantial character or by natural terrain or topographic features of equal or greater height and would be located in an area of established development where it is evident beyond all reasonable doubt that the structure so shielded will not adversely affect safety in air navigation or penetrate the FAR Part 77 surfaces;
- B. Necessary Aviation Facilities. Any air navigation facility, airport visual approach, or aircraft arresting device, or meteorological device, or a type of device approved by the FAA, the location and height of which is fixed by its functional purpose;
- C. Temporary Uses. Temporary uses including but not limited to: circus, carnival or other outdoor entertainment events and religious assembly, so long as the period of operation does not exceed five days, except as otherwise prohibited herein;
- D. Nonconforming Uses. A use, lot, building or structure which legally exists prior to the effective date of the ordinance codified in this chapter is considered nonconforming and therefore is exempt, except as may be compelled by state or federal regulations. The use, lot, building or structure must adhere to the regulations prescribed in DCC Chapter 18.82, "Nonconforming Uses," and Section 18.65.050(F), provided that no building, structure or use shall be so changed as to result in a greater degree of nonconformity with respect to this chapter;

- E. Agricultural Uses. Nonresidential agricultural uses, structures and/or buildings, provided that the use will not penetrate the airspace within the AP-O district safety zones, the FAR Part 77 surfaces or otherwise create a safety impact as determined by the review official;
- F. Other Uses. Other uses may be exempt when determined by the review authority to be minor or incidental in nature and within the intent of this chapter.

**18.65.050 Development standards.**

The following criteria shall be applied within the boundaries of the AP-O district:

- A. No use shall be made of any land that will cause electrical interference with navigational signals or radio communications at the airport or with radio or electronic communications between the airport and aircraft.
- B. No use, building or structure shall emit emissions of fly ash, dust, vapor, gases or other forms of emissions that may conflict with any planned operations of the airport.
- C. No use shall be permitted that would foster an increase in bird population and thereby increase the likelihood of a bird-impact problem.
- D. No structure, device or other object shall be placed or erected that makes it difficult for pilots to distinguish between airport lights and other lights, results in glare in the eyes of pilots using the airports, impairs visibility in the vicinity of the airport, or otherwise endangers the landing, taking off or maneuvering of aircraft.
- E. Except as necessary and incidental to airport operations, no building, structure or object of natural growth shall be constructed, altered, maintained, or allowed to grow so as to project or otherwise penetrate the airspace surfaces.
- F. No use, building or structure shall be permitted within the ~~runway protection Zone 1, and the inner safety zone 2, 3, 4 and avoided in Zone 6 or the inner turning zone 3~~ that promotes large concentrations (6,000 gallons or more) of bulk storage of flammable substances or materials.
- G. The public assembly of people and other uses or activities that allow public concentration of people such as ~~multifamily, hospitals, nursing homes, schools, churches, schools and large day care centers~~, etc. shall be prohibited within the ~~runway protection zone 1, inner safety zone 2 or inner turning zone 3~~ Zones 2, 3, 4, and 6.
- H. No use, building, or structure shall be permitted or constructed within the ~~runway protection Zone 1~~, except accessory activities such as off-street parking facilities; stormwater detention facilities; low growing landscaping; mini-storage; agricultural storage buildings and/or other similar activities as approved by the review authority.
- I. Family farm support divisions; Ag-to-Ag transfers having a remainder less than ten acres in size; or accessory agricultural housing shall be prohibited within the ~~runway protection Zone 1 and inner safety Zone 2.~~
- J. Single-family dwellings lawfully permitted and established within the AP-O district prior to the adoption of this chapter may be maintained, repaired or reconstructed in accordance with the provisions of this chapter, provided the dwelling meets the applicable standards of the DCC. Permit applications under this subsection are not subject to the procedures of DCC Section 18.82.080.
- K. Other uses or activities determined to be incompatible with aviation and aviation safety as determined by the review authority shall be prohibited.
- L. A note shall be placed on a final plat, final short plat or final binding site plan and noted in the deed of record or on a notice to title for each lot when a subdivision, short subdivision, binding site plan or other development is located within the airport protection zones established pursuant to the Greater East Wenatchee Area ("GEWA") Comprehensive Plan and DCC Chapter 18.65, AP-O Airport Overlay District. The property owner shall sign an affidavit acknowledging the following statement and shall record it with the county auditor

for disclosure in the deed and mortgage records of the subject property. The statement shall read as follows:

"The subject property is located within airport protection zones for Pangborn Memorial Airport ("PMA") established pursuant to the Greater East Wenatchee Area ("GEWA") Comprehensive Plan and DCC Chapter 18.65, AP-O Airport Overlay District that are routinely subject to overflights by aircraft using PMA and, as a result, residents of the subject property may experience inconvenience, annoyance, discomfort and loss of quiet enjoyment arising from the noise, fumes, illumination, smoke, vibration and hours of operation (collectively "Overflight Effects") of such activities. Washington State law establishes that airports such as PMA are essential public facilities and need protection for the public interest of the people of the state of Washington. Residents of the subject property should be prepared to accept the inconvenience, annoyance, discomfort and loss of quiet enjoyment arising from the Overflight Effects, as well as normal aircraft and airport operations, which Overflight Effects, as well as the normal aircraft and airport operations shall not be subject to legal action as public nuisances, provided the Overflight Effects and the aircraft and airport operations are performed in accordance with county, state and/or federal law. Any subsequent deed conveying this parcel or subdivisions thereof shall contain a statement in substantially this form."

A note shall be recorded with the county auditor for each lot when subdivision, short subdivision, binding site plan, building permit or other development activity is located within the horizontal surface and those areas identified as "natural obstructions" on the overlay map. Additionally, the note shall specifically state when properties are located within the approach surfaces of the airport runways. The statement shall essentially read as follows:

The subject property is located within an airport overlay district in which a variety of aviation activities occur. Such activities may include but are not limited to noise, vibration, chemicals, odors, hours of operation and other associated activities.

M. Non residential land usage intensity standards

1) Non residential land uses shall not exceed the following intensity levels:

<u>Zones 1 &amp; 2:</u>	<u>0-5 people per acre</u>
<u>Zone 3:</u>	<u>25 people per acre</u>
<u>Zone 4:</u>	<u>40 people per acre</u>
<u>Zone 5:</u>	<u>50 people per acre</u>
<u>Zone 6:</u>	<u>100 people per acre</u>

2) Usage intensity data sources. The usage intensity depends on the specifics of the proposed land use and its design. Where necessary to determine the acceptability of a particular proposal, the maximum number of people per acre can be calculated based on any of the following methods:

a) Parking requirements. The number of automobile parking spaces required on the site according to the latest edition of the International Transportation Engineers Parking Generation Manual.

b) International Building Code (IBC) occupancy levels. The anticipated maximum number of people occupying indoor facilities on a site can be assumed to be no higher than the total floor area of the proposed use divided by the minimum square feet per occupant requirements listed in the IBC.

3) Usage intensity calculation factors. The maximum number of people permitted on a site shall be calculated based on the following factors:

a) All people (e.g. employees, customers, visitors, etc.) who may be on the property are to be included in the calculations.

b) The calculations must reflect the total number of people on the site at any time, except temporary special events.

c) All usage intensities are calculated on a gross acreage basis, including the use's share of adjacent roads and permanently open lands.

N. Structures shall be located away from the extended centerline of the runway to the greatest extent practicable.

O. Overflight Easement required:

Types of development activity subject to Overflight Easement:

Any division or transfer of real property, including, but not limited to, short subdivisions, major subdivision or binding site plans on property located within the FAR Part 77 Horizontal Surface, including airport compatibility zones 2, 3, 4, and 6;

Any land use permit, including but not limited to, conditional use permit, special use permit, administrative use permit or variance on property located within the FAR Part 77 Horizontal Surface, including airport compatibility zones 2, 3, 4, and 6.

2) No permit for development activity listed in this section shall be issued until Pangborn Memorial Airport is provided an Overflight Easement permitting the right of flight in the airspace above the subject property. Such easement shall be supplied in a form provided by Pangborn Memorial Airport and shall be recorded on the title of the subject property.

#### **18.65.060 General review procedures.**

No use, building, structure or development activity shall be established, altered or relocated by any person, firm or corporation, except as otherwise authorized by this chapter and shall be processed in accordance with applicable provisions of the underlying zone, and the following:

- A. Land use applications within any portion of the AP-O district shall be subject to the prescribed review of Title 14 of the Douglas County Code.
- B. The review authority may require the applicant to submit either or both of the following:
  1. A certificate from an engineer or land surveyor that clearly states that no airspace obstruction will result from the proposed use;
  2. The maximum elevation of proposed buildings or structures based on the established airport elevation and NAVD 1988-reference datum. Elevations shall be determined by an engineer or a land surveyor.

#### **18.65.070 Site plan requirements.**

An application for a building, structure, use, subdivision, short subdivision, binding site plan or other development activity shall submit the following information in addition to application materials required as set forth in the DCC.

- A. The site plan shall clearly delineate the location of the project in relation to the compatibility zones to the runway protection zone 1, inner safety zone 2, and/or inner turning zone 3 as described in Section 18.65.080.
- B. The location and height of all proposed buildings, structures and natural vegetation as measured from the airport surface and when located within the following:
  1. Runway protection Airport Compatibility Zones 1-3 & 65 zone 1; inner safety zone 2, and/or inner turning zone 3;

2. Horizontal, transitional, approach, and conical surfaces identified as a natural obstruction; and
3. Building or structures that exceed a height of thirty-five feet when located in any other accident safety compatibility zone or FAR Parts 77 imaginary surfaces not described in subsections A and B of this section.

**18.65.080 Airspace/accident potential surfaces.**

In order to carry out the purpose and intent of the AP-O district as set forth herein, and also to restrict those uses that may be hazardous to the operational safety of aircraft operating within the airport influence area, there are created and established the following air space and land use safety compatibility surfaces for runways 12-30 and 7-25 and are depicted on the official zoning map of Douglas County:-

**A. Aircraft Accident Safety Land Use Compatibility Zones.**

1. Runway protection zone 1: This zone begins from the outer boundaries of the primary surface, two hundred feet from the end of the runways and extends out one thousand seven hundred feet to its widest point, which measures one thousand ten feet across, five hundred five feet on either side of the runway centerline.
2. Inner safety zone 2: This zone begins at the end of the runway protection zone and extends out two thousand eight hundred feet. The zone measures one thousand feet across, five hundred feet on either side of the runway centerline.
3. Inner turning zone 3: This zone begins at the primary surface, two hundred feet from the end of the runway centerline and extends out with a sixty-foot radius arc on either side of the runway centerline to four thousand five hundred feet and connects to the centerline of the inner safety zone with sweeping arcs.

[SEE EXHIBIT A]

**B. Federal Aviation Regulations (FAR) Parts 77 Imaginary Surfaces.**

1. Primary approach/departure surface: The approach area is all that land which lies directly under an imaginary approach surface longitudinally centered on the runway, extending two hundred feet beyond the paved threshold of the runway in each direction.
  - a. Precision instrument runway 12-30: Runway 12-30's primary surface measures one thousand feet across because it is a precision instrument runway.
  - b. Visual approach runway 7-25: Runway 7-25's primary surface measures two hundred fifty feet across because it is a visual approach runway.
2. Approach surface: Inclined planes extending upward and outward from the ends of the primary surface.
  - a. Precision instrument runway 12-30: The precision approach is a fifty-thousand-foot-long trapezoid that is one thousand feet wide at the point where it meets the primary surface. It has a 50:1 slope for the first ten thousand feet and a slope of 40:1 for the remaining forty thousand feet. The approach surface is sixteen thousand feet wide at the outmost point.
  - b. Visual approach runway 7-25: The approach surfaces are two hundred fifty feet wide at the intersection with the primary surface. It extends outward for a distance of five

thousand feet at a 20:1 slope and is one thousand two hundred fifty feet wide at the outermost point.

3. Horizontal surface: A horizontal surface is one hundred fifty feet above the established airport elevation and begins by swinging arcs of five thousand feet from the center-end of the primary surface creating an elongated oval above the runway. The precision instrument runway 12-30 extends to a maximum length of ten thousand feet.
4. Transitional surface: The transitional surface begins on either side of the primary surface and slopes upward and outward at a 7:1 slope meeting the horizontal surface at one hundred fifty feet above the elevation of the airport. This surface is also connected to the approach surface at both ends of the runway at a slope of 7:1.
5. Conical surface: The conical surface begins at the edge of the horizontal surface and extends upward and outward for a distance of four thousand feet at a slope of 20:1 with an initial elevation of one hundred fifty feet above the airport elevation.

1. Primary approach/departure surface: The approach area is all that land which lies directly under an imaginary approach surface longitudinally centered on the runway, extending two hundred feet beyond the paved threshold of the runway in each direction.
  - a) Precision instrument runway 12-30: Runway 12-30's primary surface measures one thousand feet across because it is a precision instrument runway.
  - b) Visual approach runway 7-25: Runway 7-25's primary surface measures two hundred fifty feet across because it is a visual approach runway.
2. Approach surface: Inclined planes extending upward and outward from the ends of this primary surface.
  - a) Precision instrument runway 12-30: The precision approach is a fifty-thousand-foot-long trapezoid that is one thousand feet wide at the point where it meets the primary surface. It has a 50:1 slope for the first ten thousand feet and a slope of 40:1 for the remaining forty thousand feet. The approach surface is sixteen thousand feet wide at the outermost point.
  - b) Visual approach runway 7-25: The approach surfaces are two hundred fifty feet wide at the intersection with the primary surface. It extends outward for a distance of five one thousand feet at a 20:1 slope and is one thousand two seven hundred fifty feet wide at the outermost point.
- 2) Horizontal surface: A horizontal surface is one hundred fifty feet above the established airport elevation and begins by swinging arcs of five thousand feet from the center-end of the primary surface creating an elongated oval above the runway. The precision instrument runway 12-30 extends to a maximum length of ten thousand feet.
- 3) Transitional surface: The transitional surface begins on either side of the primary surface and slopes upward and outward at a 7:1 slope meeting the horizontal surface at one hundred fifty feet above the elevation of the airport. This surface is also connected to the approach surface at both ends of the runway at a slope of 7:1.
- 4) Conical surface: The conical surface begins at the edge of the horizontal surface and extends upward and outward for a distance of four thousand feet at a slope of 20:1 with an initial elevation of one hundred fifty feet above the airport elevation.

APPENDIX D  
Ex R-4  
(Text of pre-amendment  
DCC Chapter 18.65)

## Chapter 18.65 AP-O AIRPORT OVERLAY DISTRICT

### 18.65.010 Purpose.

The purpose of the airport overlay (AP-O) district is to protect the viability of the Pangborn Memorial Airport as a significant resource to the community by encouraging compatible land uses, densities and reducing hazards that may endanger the lives and property of the public and aviation users. The AP-O classification identifies a series of imaginary surfaces and safety zones within the airport influence area that have historically been prone to hazards associated with aircraft and airports. This chapter is based on aircraft accident data from the National Transportation Safety Board (NTSB) and the Federal Aviation Regulations (FAR) Part 77 Imaginary Surfaces. As the name implies, this classification is laid over the existing Douglas County zoning districts. Densities and land use requirements of the underlying zoning districts are consistent with the NTSB standards and provide for maximum protection to the public health, safety and general welfare of the community and for those citizens working and residing within the airport influence area. (Ord. TLS 00-05-38 Exh. B (part))

### 18.65.020 Statutory authority.

This chapter is adopted pursuant to RCW 36.70 and 36.70A, which require a county to enact development regulations within its jurisdiction to discourage the siting of incompatible land uses adjacent to general aviation airports for the purposes of promoting the public health, safety and general welfare of county residents and aviation users. (Ord. TLS 00-05-38 Exh. B (part))

### 18.65.030 Applicability.

The provisions of this chapter shall apply to all lands, buildings, structures, natural features or uses located within those areas that are defined by the AP-O airport overlay district designated on the official Douglas County zoning map. (Ord. TLS 00-05-38 Exh. B (part))

### 18.65.040 Exemptions.

The following structures, uses or other activities are exempt from the provisions of the AP-O district when permitted in the underlying zoning district:

- A. Height. Any structure or object that would be shielded by existing structures of a permanent and substantial character or by natural terrain or topographic features of equal or greater height and would be located in an area of established development where it is evident beyond all reasonable doubt that the structure so shielded will not adversely affect safety in air navigation or penetrate the FAR Part 77 surfaces;
- B. Necessary Aviation Facilities. Any air navigation facility, airport visual approach, or aircraft arresting device, or meteorological device, or a type of device approved by the FAA, the location and height of which is fixed by its functional purpose;
- C. Temporary Uses. Temporary uses including but not limited to: circus, carnival or other outdoor entertainment events and religious assembly, so long as the period of operation does not exceed five days, except as otherwise prohibited herein;
- D. Nonconforming Uses. A use, lot, building or structure which legally exists prior to the effective date of the ordinance codified in this chapter is considered nonconforming and therefore is exempt, except as may be compelled by state or federal regulations. The use, lot, building or structure must adhere to the regulations prescribed in DCC Chapter 18.82, "Nonconforming Uses," and Section 18.65.050(F), provided that no building, structure or use shall be so changed as to result in a greater degree of nonconformity with respect to this chapter;

- E. Agricultural Uses. Nonresidential agricultural uses, structures and/or buildings, provided that the use will not penetrate the airspace within the AP-O district safety zones, the FAR Part 77 surfaces or otherwise create a safety impact as determined by the review official;
- F. Other Uses. Other uses may be exempt when determined by the review authority to be minor or incidental in nature and within the intent of this chapter. (Ord. TLS 00-05-38 Exh. B (part))

**18.65.050 Development standards.**

The following criteria shall be applied within the boundaries of the AP-O district:

- A. No use shall be made of any land that will cause electrical interference with navigational signals or radio communications at the airport or with radio or electronic communications between the airport and aircraft.
- B. No use, building or structure shall emit emissions of fly ash, dust, vapor, gases or other forms of emissions that may conflict with any planned operations of the airport.
- C. No use shall be permitted that would foster an increase in bird population and thereby increase the likelihood of a bird-impact problem.
- D. No structure, device or other object shall be placed or erected that makes it difficult for pilots to distinguish between airport lights and other lights, results in glare in the eyes of pilots using the airports, impairs visibility in the vicinity of the airport, or otherwise endangers the landing, taking off or maneuvering of aircraft.
- E. Except as necessary and incidental to airport operations, no building, structure or object of natural growth shall be constructed, altered, maintained, or allowed to grow so as to project or otherwise penetrate the airspace surfaces.
- F. No use, building or structure shall be permitted within the runway protection zone 1, the inner safety zone 2 or the inner turning zone 3 that promotes large concentrations or bulk storage of flammable substances or materials.
- G. The public assembly of people and other uses or activities that allow public concentration of people such as multifamily, hospitals, schools, churches, schools, etc. shall be prohibited within the runway protection zone 1, inner safety zone 2 or inner turning zone 3.
- H. No use, building, or structure shall be permitted or constructed within the runway protection zone 1, except accessory activities such as off-street parking facilities; stormwater detention facilities; low growing landscaping; mini-storage; agricultural storage buildings and/or other similar activities as approved by the review authority.
- I. Family farm support divisions; Ag-to-Ag transfers having a remainder less than ten acres in size; or accessory agricultural housing shall be prohibited within the runway protection zone 1 and inner safety zone 2.
- J. Single-family dwellings lawfully permitted and established within the AP-O district prior to the adoption of this chapter may be maintained, repaired or reconstructed in accordance with the provisions of this chapter, provided the dwelling meets the applicable standards of the DCC. Permit applications under this subsection are not subject to the procedures of DCC Section 18.82.080.
- K. Other uses or activities determined to be incompatible with aviation and aviation safety as determined by the review authority shall be prohibited.
- L. A note shall be recorded with the county auditor for each lot when subdivision, short subdivision, binding site plan, building permit or other development activity is located within the horizontal surface and those areas identified as "natural obstructions" on the overlay map. Additionally, the note shall specifically state when properties are located within the approach surfaces of the airport runways. The statement shall essentially read as follows:

The subject property is located within an airport overlay district in which a variety of aviation activities occur. Such activities may include but are not limited to noise, vibration, chemicals, odors, hours of operation and other associated activities:  
(Ord. TLS 00-05-38 Exh. B (part))

**18.65.060 General review procedures.**

No use, building, structure or development activity shall be established, altered or relocated by any person, firm or corporation, except as otherwise authorized by this chapter and shall be processed in accordance with applicable provisions of the underlying zone, and the following:

- A. Land use applications within any portion of the AP-O district shall be subject to the prescribed review of Title 14 of the Douglas County Code.
- B. The review authority may require the applicant to submit either or both of the following:
  - 1. A certificate from an engineer or land surveyor that clearly states that no airspace obstruction will result from the proposed use;
  - 2. The maximum elevation of proposed buildings or structures based on the established airport elevation and NAVD 1988-reference datum. Elevations shall be determined by an engineer or a land surveyor. (Ord. TLS 00-05-38 Exh. B (part))

**18.65.070 Site plan requirements.**

An application for a building, structure, use, subdivision, short subdivision, binding site plan or other development activity shall submit the following information in addition to application materials required as set forth in the DCC.

- A. The site plan shall clearly delineate the location of the project to the runway protection zone 1, inner safety zone 2, and/or inner turning zone 3 as described in Section 18.65.080.
- B. The location and height of all proposed buildings, structures and natural vegetation as measured from the airport surface and when located within the following:
  - 1. Runway protection zone 1; inner safety zone 2, and/or inner turning zone 3;
  - 2. Horizontal and conical surfaces identified as a natural obstruction; and
  - 3. Building or structures that exceed a height of thirty-five feet when located in any other accident safety zone or FAR Parts 77 imaginary surfaces not described in subsections A and B of this section. (Ord. TLS 00-05-38 Exh. B (part))

**18.65.080 Airspace/accident potential surfaces.**

In order to carry out the purpose and intent of the AP-O district as set forth herein, and also to restrict those uses that may be hazardous to the operational safety of aircraft operating within the airport influence area, there are created and established the following air space and land use safety surfaces for runways 12-30 and 7-25:

- A. Aircraft Accident Safety Zones.
  - 1. Runway protection zone 1: This zone begins from the outer boundaries of the primary surface, two hundred feet from the end of the runways and extends out one thousand seven hundred feet to its widest point, which measures one thousand ten feet across, five hundred five feet on either side of the runway centerline.
  - 2. Inner safety zone 2: This zone begins at the end of the runway protection zone and extends out two thousand eight hundred feet. The zone measures one thousand feet across, five hundred feet on either side of the runway centerline.
  - 3. Inner turning zone 3: This zone begins at the primary surface, two hundred feet from the end of the runway centerline and extends out with a sixty-foot radius arc on either side of the runway centerline to four thousand five hundred feet and connects to the centerline of the inner safety zone with sweeping arcs.
- B. Federal Aviation Regulations (FAR) Parts 77 Imaginary Surfaces.

1. Primary approach/departure surface: The approach area is all that land which lies directly under an imaginary approach surface longitudinally centered on the runway, extending two hundred feet beyond the paved threshold of the runway in each direction.
  - a. Precision instrument runway 12-30: Runway 12-30's primary surface measures one thousand feet across because it is a precision instrument runway.
  - b. Visual approach runway 7-25: Runway 7-25's primary surface measures two hundred fifty feet across because it is a visual approach runway.
2. Approach surface: Inclined planes extending upward and outward from the ends of the primary surface.
  - a. Precision instrument runway 12-30: The precision approach is a fifty-thousand-foot-long trapezoid that is one thousand feet wide at the point where it meets the primary surface. It has a 50:1 slope for the first ten thousand feet and a slope of 40:1 for the remaining forty thousand feet. The approach surface is sixteen thousand feet wide at the outermost point.
  - b. Visual approach runway 7-25: The approach surfaces are two hundred fifty feet wide at the intersection with the primary surface. It extends outward for a distance of five thousand feet at a 20:1 slope and is one thousand two hundred fifty feet wide at the outermost point.
3. Horizontal surface: A horizontal surface is one hundred fifty feet above the established airport elevation and begins by swinging arcs of five thousand feet from the center-end of the primary surface creating an elongated oval above the runway. The precision instrument runway 12-30 extends to a maximum length of ten thousand feet.
4. Transitional surface: The transitional surface begins on either side of the primary surface and slopes upward and outward at a 7:1 slope meeting the horizontal surface at one hundred fifty feet above the elevation of the airport. This surface is also connected to the approach surface at both ends of the runway at a slope of 7:1.
5. Conical surface: The conical surface begins at the edge of the horizontal surface and extends upward and outward for a distance of four thousand feet at a slope of 20:1 with an initial elevation of one hundred fifty feet above the airport elevation. (Ord. TLS 00-05-38 Exh. B (part))

APPENDIX E  
Ex R-1  
(Airport Overlay Advisory  
Committee Summary)

## **Airport Overlay District Advisory Committee Summary**

Douglas County and the City of East Wenatchee are currently considering proposed amendments to existing provisions of both the Greater East Wenatchee Area Comprehensive Plan and the Douglas County Zoning Regulations as they relate to an airport overlay zone. The proposed amendments currently under consideration were developed, in part and most recently, through the efforts of an Airport Overlay Advisory Committee that was established and supported by Pangborn Memorial Airport and local government staff. The following is a brief summary of the process that has taken place over the past number of years, leading up to the current proposal. The summary concludes with a brief description of the major components of the proposed changes.

### **Events prior to formation of the Airport Overlay Committee**

In response to submission of an updated Airport Master Plan by Pangborn Memorial Airport to Douglas County, planning staff prepared recommended updates to the existing Douglas County Code (DCC) Chapter 18.65 AP-O Airport Overlay District during the summer of 2004.

October 1, 2004, Douglas County Transportation and Land Services mailed a Notice of Availability to the public outlining the proposed changes to DCC Chapter 18.65, commencing a GMA-required 60-day review process that ran from October 2004 through December, 2004.

On December 8, 2004, the Douglas County Regional Planning Commission (DCRPC) conducted a public hearing to consider the proposed changes to DCC Chapter 18.65. Although 4 members voted to approve the proposed changes, 3 members voted against the proposed changes. State law (RCW 36.70.600) requires that any recommendation to amend official controls (including zoning regulations) requires an "...affirmative vote of not less than a majority of the total members of the commission." Because the DCRPC consists of a total of 9 members, the recommendation on the proposed changes to DCC Chapter 18.65 was forwarded to the Board of County Commissioners (BCC) as one for denial, since only 4 members voted in the affirmative.

On January 19, 2005, Pangborn Memorial Airport sent a letter to the BCC requesting the amendment to DCC Chapter 18.65 be remanded back to the DCRPC. The airport offered to provide information that would assist the DCRPC "...in their evaluation of the changes needed to update the airport safety zones."

On January 24, 2005 the BCC took action to remand to the DCRPC the recommendation to not amend the airport overlay protection zones, citing new information received by Pangborn Memorial Airport from the Federal Aviation Administration (FAA). The remand directed the DCRPC to develop a new recommendation on the matter by ascertaining the following information:

- What is the extent of the revisions necessary to implement the airport master plan given the new information mentioned by the airport manager (letter of 1/19/05)?
- Inquire of the airport, the WSDOT and any other appropriate party as to why the airport protection standards of the State of Washington are different than those of the FAA.

## **Airport Overlay District Advisory Committee Summary**

- Inquire of the Airport of the public information opportunities they provided to communicate changes to neighboring property owners.

In response to a letter of February 10, 2005 from Land Services Director Mark Kulaas, airport and WSDOT staff presented information at the DCRPC public meeting on April 25, 2005 regarding the AP-O process and the new instrument landing system (ILS) project.

From the April 25, 2005 meeting, it was decided that an advisory committee should be formed to provide additional review and study of the airport overlay issues.

### **The Airport Overlay Committee Process**

The Airport Overlay Committee (AOC) was formed to be a diverse group of interests ranging from property owners, Chelan and Douglas County citizens, aviation business, realtors, business to chamber and transportation representatives. The search for members began by working from the previous, year 2000 airport overlay committee.

Two DCRPC members were asked to serve on the AOC, along with WSDOT Aviation staff members, the Executive Directors of the Wenatchee Valley Transportation Council and the Wenatchee Valley Chamber of Commerce. Additional members included representatives from the development community such realtors, builders and land developers, as well as neighbors of the airport; and representatives of aviation businesses. A total of 18 members were invited, 6 declined to continue and 1 resigned, leaving 12 active committee members (the complete list of invited members is attached for reference).

The committee met a total of 14 times starting in July of 2005 and ending in March of 2006, including 4 meetings specifically devoted to gathering public comments. On April 19, 2006 the AOC presented their findings to a joint public meeting of the Douglas County and City of East Wenatchee Planning Commissions.

At the first meeting of the AOC on July 7, 2005 a mission statement was written:

**Protect the viability of Pangborn Memorial Airport as an essential economic resource to the North Central Washington Region by ensuring compatible land uses, densities, and reducing hazards that may endanger the lives and property of the public and aviation users.**

Additionally, the first meeting covered a comprehensive study of the following information presented by the identified individuals.:

- a. Airport Master Plan (Patricia Moore, Airport Manager)
- b. DC Comprehensive Plan and Regulations (Curtis Lillquist, Douglas County Planner)
- c. Washington State Law (John Shambaugh, WSDOT/A Planner)
- d. Transportation Access (Jeff Wilkens, Chairman of the Wenatchee Valley Transportation Council)
- e. Review of the AP-O maps (Randy Asplund, Engineer RH2)
- f. Economic update by the Ports of Chelan and Douglas.

## Airport Overlay District Advisory Committee Summary

The AOC was provided numerous pieces of information during their process including the WSDOT Airports and Compatible Land Use Guide, the California Airport Land Use Planning Handbook, a list of guidance and references materials provided by WSDOT as well as reference to many websites with pertinent airport overlay issues. The committee spent much time debating which studies/guides were best to use for a basis for their recommendations. The final changes recommended reflect using both guides as a basis.

RH2 Engineering prepared information to help identify the zones and present maps that reflected the many changes that came out of the on-going discussions of the committee. An attorney was also provided to answer questions and provide a document for the overflight easement.

The AOC discussed at length the laws and statutes enacted by the U.S. Congress and the Washington State Legislature, which typically set general requirements and the authority for administrative adoption of more detailed regulations and policies. With respect to airports, most of the administrative actions are taken by the Federal Aviation Administration (FAA) and the Washington State Department of Transportation Division of Aviation (WSDOT Aviation). Land use compatibility planning around general aviation airports is required pursuant to RCW 36.70.547 and RCW 36.70A.510. The law requires every county, city and town having a general aviation airport in its jurisdiction to discourage the siting of land uses that are incompatible with the airport. These laws and regulations establish the basis for local development of airport plans, analyses of airport impacts, and enactment of compatibility policies. It should be stressed that promotion of compatible land uses must be accomplished at the local level as local governments have the authority to direct land use development.

The AOC also discussed the purpose of land use planning within the airport environs, recognizing that it is important to protect the airport from encroachment of incompatible land uses. Airports are unique facilities in that they occupy large parcels of land, have unique siting requirements, produce noise, and generate complex safety concerns, all of which impact neighboring communities. Because of their unique characteristics, airports cannot be easily relocated. Airports are also essential public facilities that provide the community with business opportunities and general aviation services. The goal of land use compatibility planning is to maintain long-term compatibility between neighboring land uses and to preserve the airport.

Compatibility issues generally focus on three areas: the safety of both pilots in flight (height) and general public on the ground (safety), as well as the adverse impacts to the surrounding area generated by aircraft noise (noise). Any of these three issues could threaten the ability of the airport to provide general aviation services. Should height hazards or obstruction to airspace be constructed on land outside the airport boundary, there is potential that a safe approach, as designated by the FAA, may no longer be available and the functionality of the airport may be in question. Unlike height hazards, neither safety of the public on the ground or noise issues directly impacts the airport's functionality. Rather, these issues are believed to threaten airport viability as public opinion may swing, determining the airport to be a nuisance and ultimately causing the airport to restrict operations or cease to exist. **Noise** is often perceived to be the most significant of the adverse impacts associated with airport activity and mitigating noise impacts is not new. While not as prevalent, safety of the public on the ground may also pose a

## Airport Overlay District Advisory Committee Summary

threat to airport viability. Should an aircraft accident in a developed area occur, it hardly ever results in pressure to eliminate the conflicting land use; rather the pressure inevitably is to restrict or close the airport.

A comprehensive study by the Port of Skagit County was used by the AOC to research and discuss the option of utilizing an aviation and/or overflight easement. The committee spent time at six meetings debating/refining four draft documents prepared by Port of Douglas Attorney, Jay Johnson. Ultimately, the committee determined that an aviation easement was not necessary as the airport presently held (23) aviation easements that protected the approach to all runway ends.

One issue the committee identified during the public/neighbor meetings was that some landowners stated that until the recent overlay discussions began they were not aware of aviation easements attached to the title of their property. The committee spent considerable time identifying a trigger that would notify future owners of any easements.

The committee recommended the Overflight Effect and Release Easement. This document would impose "Overflight Effects" on the landowner's property, containing language that specifically releases the Airport and Douglas County from any claims relating to present or future "Overflight Effects". This document would also offer the landowner protection from noise, as the FAA mandated level of 65 DNL was used as the maximum level before noise mitigation would be required.

The AOC discussed that the triggers for the "Overflight Effects" easement would be any division or transfer of real property, subdivisions, or binding site plans on property located within the FAR Part 77 Horizontal Surface. Additionally, any land use permit, conditional use permit or special use permit would trigger the "Overflight Effects" easement (a full copy of the proposed Overflight Effects document is attached).

The AOC discussed the issue of regulatory "takings" and reviewed information pertaining to that issue as follows:

The Washington State RCW's give municipalities (i.e. cities, counties, port districts, etc.) the obligation and right to protect airports and provide, in part, the following:

1. RCW 14.08.030(2) provides that property needed by a municipality for an airport or for the enlargement of an airport or for other airport purposes may be acquired by purchase, gift, devise, lease or other means. However, if the municipality is unable to agree with the owners on the terms of such acquisition, and otherwise by condemnation, full power to exercise the right of eminent domain for such purposes is granted.
2. The question came up in the committee as to whether an AP-O residential density that is more limiting than a potential future rezone of the underlying zone could be construed as a taking. At this time the law states that denying a variance or restricting possible added value in the future to any land is not a taking.

## **Airport Overlay District Advisory Committee Summary**

Evidence of what has caused failure at other airports was also presented. The committee was given several examples of how encroachment made certain airports either obsolete or subject to limited/restricted use.

1. One was an accident at Chicago Midway Airport in which a landing aircraft slid off the runway and killed a person in a car on a busy adjacent street. The press reported that the accident was caused by the fact that encroachment by high-density development had taken the land that would have allowed for buffers (i.e. Safety Zones) that would have prevented the fatality. It was discussed that this incident is the one that changed the FAA position on allowing use of the 6,300 feet on runway 30 at Pangborn. Grant Road creates the same situation as that at Midway.
2. Due to encroachments the San Diego Airport cannot accommodate the expansion required to remain viable.
3. The SEATAC third runway expansion has taken 16 years of litigation and approximately \$1 billion dollars to work through the issue of encroachment around the airport.

### **AP-O Safety Zones**

The AOC discussed the AP-O zones at length. There are two types of zones. The FAA requires Runway Protection Zones and other air space zones. These are mandated by the FAA and are not the zones established by the AP-O. The AP-O, which includes safety zones 1 through 6, is established by local jurisdictions to protect operations of the airport, people on the ground and property next to airports.

As outlined in the state guidelines offered, local jurisdictions are required to protect against land uses that are incompatible with airport operations – one example of incompatible uses is high residential density. If protection against incompatibility is not established by AP-O zoning, the underlying zoning could be changed, without consideration of the AP-O, to permit incompatible high-density residential development. This would eventually effect the viability of the airport, resulting in limited operations and possible closure.

During study of the safety zones, the committee requested six different designs. Many ways were sought to minimize the size of the zones. The concern was not to deviate too far from the standard dimensions of the WSDOT Aviation and CALTRANS guidelines.

Changes that were made by debate and compromise:

1. Limit the zones on Runway 12-30 by computing the length based on a percentage of the actual addition of future runway (700 feet) instead of using the standard shown in the planning guides for all runways over 6,000 feet.
2. End Zone 6 at the Chelan/Douglas County line.
3. Add language that allows infill within the Urban Growth Area and below the Wenatchee Reclamation District Canal as stated in the existing County zoning.
4. Add language that allows clustering in Zones 2,3,4 and 6.

Each zone was given attention and debated by the committee, but none so strongly as zone 6. Initially zone 6 was approved with a recommended residential density of 1 dwelling per 5 acres. During the ensuing meetings the issue became very controversial. Some argued that the

## Airport Overlay District Advisory Committee Summary

easements made a density limitation unnecessary. Others argued that zone 6 overlies land under an active airport traffic pattern, and therefore is subject to safety, height and noise issues.

The Chelan and Douglas Port Commissioners did not typically enter into committee deliberations. However, at the February 7, 2006 committee meeting, Douglas County Port Commissioner Huffman stated that both port commissions oppose any AP-O residential density restrictions in zone 6. Chelan County Commissioner, Jim Knapp, affirmed this. The committee then overturned the previous decision and voted to drop language in the AP-O regarding land use in zone 6.

Numerous provisions of State law were reviewed by the AOC,

1. Airports as Essential Public Facilities. Section 36.70A.200 of the RCW declares airports to be Essential Public Facilities, the siting of which the comprehensive plan cannot preclude. Airports are especially singled out for protection because of the difficulty to relocate them when circumstances prevent the airport expansion needed to maintain or restore airport viability.
2. Incompatible land use adjacent to airports:
  - A. RCW section 36.70.547 requires counties, under their Comprehensive Plans and development regulations, to prevent incompatible development adjacent to airports. Although, state law requires prevention of incompatible development, the local jurisdiction has the responsibility to carry it out, and the GMA through the RCW provides the legal authority to do so.
  - B. To define what is meant by incompatible land use, the Growth Hearing Board decision in *Abenroth v. Skagit Co.*, #97-2-0060c ruled that the siting of high-density residential development adjacent to airports is "inappropriate and incompatible".
  - C. In 2005 Mead & Hunt, Inc. evaluated the WSDOT Aviation Guidelines, identifying four items that are essential in maintaining viability of the airport system. 1) Preservation of Airports. 2) Safe air travel. 3) Adequate Facilities (i.e. runways, terminals, and preservation of areas around airports to meet capacity demands). 4) Minimize negative impact on airport operations.

Many other source documents were made available and many of these can be found on the WSDOT Aviation website at – [www.wsdot.wa.gov/aviation](http://www.wsdot.wa.gov/aviation). Any and all committee records and documents are available from Pangborn Memorial Airport upon request.

In response to all of this information, input and debate, the AOC crafted the recommended changes to the Greater East Wenatchee Area Comprehensive Plan and DCC Chapter 18.65 that are currently under consideration by Douglas County and the City of East Wenatchee. Generally, the effect of the proposed changes may be summarized, by zone, as follows:

### Zone 1 –

1. No new residential
2. Require aviation easement; needs to be signed only one time:
3. Limit non-residential usage to 0-5 people per acre
4. Limit storage of large (6,000 gallons) of hazardous or flammable material

## Airport Overlay District Advisory Committee Summary

5. Airport ownership of property encouraged within the FAA Runway Protection Zone located within Zone 1

### Zone 2 –

1. Limit to 1 dwelling unit per 10 acres
2. Require overflight easement; needs to be signed only one time:
  - A. Transfer or division of property, including, but not limited to, short plat, long plat, or binding site plan.
  - B. Any land use permit, including but not limited to, conditional use permit, special use permit, administrative use permit, or variance.
3. Limit non-residential usage to 0-5 people per acre
4. Prohibit children's schools, large day care centers, hospitals, nursing homes
5. Limit storage of large (6,000 gallons) of hazardous or flammable material
6. Residential clustering permitted only at the farthest feasible distance from extended runway centerline

### Zone 3 –

1. Limit to 1 dwelling unit per 5 acres
  - A. Require overflight easement; needs to be signed only one time:
    - Transfer or division of property, including, but not limited to, short plat, long plat, or binding site plan.
  - B. Any land use permit, including but not limited to, conditional use permit, special use permit, administrative use permit, or variance.
2. Limit non-residential usage to less than 25 people per acre
3. Prohibit children's schools, large day care centers, hospitals, nursing homes
4. Residential clustering permitted only at the farthest feasible distance from extended runway centerline

### Zone 4 –

1. Limit to 1 dwelling unit per 5 acres
2. Allow infill within urban growth area as stated in existing County Zoning
  - A. Require overflight easement; needs to be signed only one time:
    - Transfer or division of property, including, but not limited to, short plat, long plat, or binding site plan.
  - B. Any land use permit, including but not limited to, conditional use permit, special use permit, administrative use permit, or variance.
3. Limit non-residential usage to less than 40 people per acre
4. Prohibit children's schools, large day care centers, hospitals, nursing homes
5. Residential clustering permitted only at the most feasible distance from extended runway centerline

### Zone 5 –

1. Usage limited to those specifically provided for or encouraged in the adopted Airport Master Plan
2. Limit non-residential to less than 50 people per acre.

## Airport Overlay District Advisory Committee Summary

### Zone 6 –

1. No residential density limitations
2. Allow infill within urban growth area and below the Wenatchee Reclamation District Canal as stated in existing County Zoning
  - A. Require overflight easement; needs to be signed only one time:  
Transfer or division of property, including, but not limited to, short plat, long plat, or binding site plan.
  - B. Any land use permit, including but not limited to, conditional use permit, special use permit, administrative use permit, or variance.
3. Limit non-residential usage to less than 100 people per acre
4. Prohibit children's schools, large day care centers, hospitals, nursing homes
5. Residential clustering permitted only at the most feasible distance from extended runway centerline

FAR Part 77 Horizontal Surface Area, including Zones 2, 3, 4, and 6, requires an overflight easement for all new development

In addition to the recommended changes, the Committee offers the following answers to the BCC's questions posed in their letter of 1/24/2005:

1. Extent of the revisions necessary.
  - A. Committee recommended a 7,000 foot runway – the compatibility zones were prorated outward using the additional length of the runway (700 feet).
  - B. Zones 4, 5, and 6 were added.
  - C. An overflight easement for property lying under the FAR Part 77 Horizontal Surface.
2. Why are the Washington State standards different from the FAA standards.
  - A. State recommended Compatibility Zones are based on a safety standard which is defined by the National Transportation Safety Board accident statistics.
  - B. The State has identified noise as one of the most difficult compatibility issues to deal with by planning commissions.
  - C. FAA airspace regulations protect the aircraft. The runway protection zone is the only FAA zone that protects people on the ground.
3. Public discussions during the 9 months the committee worked.
  - A. August 23, 2005 – Public Meeting at Douglas County PUD
  - B. November 4, 2005 – Meeting devoted to public comments
  - C. November 8, 2005 – Meeting devoted to public comments
  - D. February 7, 2006 – Public comments taken at first half of overlay committee meeting

## Airport Overlay District Advisory Committee Summary

### Airport Overlay Committee Members ~

Name	Organization
<b>Voting Members</b>	
Jamie Loewen-Wallace	NCW Realtors -
Al Beidler	Property Manager
Jack Snyder	Industrial property representative
Hank Lewis	Property owner representative
Bruce Baguley	Property owner representative
Don Miller	Douglas Co Regional Planning Commission
Bill Millett	Douglas Co Regional Planning Commission
Don Harter	Executive Flight, Inc.
Craig Larson	Wenatchee Valley Chamber
Jeff Wilkens	Wenatchee Valley Transportation Council
Bill Stokes	Chelan County Resident - Retired Engineer
Steve Joy	Douglas County Resident - Retired Banker
<b>Non-Voting Members</b>	
Ken Stanton	Douglas Co Commissioner
Erin Martindale	City of East Wenatchee
<b>Attended 1<sup>st</sup> meeting but</b>	<b>asked to be excused</b>
Stan Evenhus	Property owner representative
Mike Nevers	Property owner representative
Wilbur Adams	Property owner representative
Duane Hevly	City of East Wenatchee Planning
Mr. Hunter	Wings of Wenatchee
Scherri Burgess	Horizon Air
<b>Staff Members</b>	
Patricia Moore, Manager	Pangborn Memorial Airport
Pat Haley, Manager	Port of Douglas County
Jim Huffman	Port of Douglas County
Mark Urdahl, Manager	Port of Chelan County
Jim Knapp	Port of Chelan County
John Shambaugh	Aviation Division, DOT Planning Commission
Mark Kulaas	Douglas Co Transportation & Land Services
Curtis Lillquist	Douglas Co Transportation & Land Services
Randy Asplund	RH2 Engineering

APPENDIX F  
Ex R-2  
(BOCC Meeting Minutes)

**BOARD OF COUNTY COMMISSIONERS PROCEEDINGS**

**JANUARY 24, 2005**

The Board of County Commissioners met in regular session at the Douglas County Courthouse, Waterville, WA. Commissioners Stanton, Keane and Hunt were present. Clerk of the Board was present.

**I. Vouchers/Warrants - 2004**

	<b>Department</b>	<b>Voucher/Warrant Nos.</b>	<b>Total Amount</b>
1.	<b>CE – Sheriff</b>	<b>9013 – 9020</b>	<b>2714.26</b>
2.	<b>RSN</b>	<b>9040 – 9046</b>	<b>28243.36</b>
3.	<b>RSN – DD</b>	<b>9037 – 9038</b>	<b>9306.49</b>
4.	<b>NCW District Fair</b>	<b>9022</b>	<b>36.16</b>
5.	<b>Crime Victims</b>	<b>9021</b>	<b>14.00</b>
6.	<b>Current Expense</b>	<b>9023 – 9036</b>	<b>26852.88</b>

**Vouchers/Warrants - 2005**

	<b>Department</b>	<b>Voucher/Warrant Nos.</b>	<b>Total Amount</b>
1.	<b>Temp Farm Housing</b>	<b>224</b>	<b>68.00</b>
2.	<b>Distressed County</b>	<b>220</b>	<b>20000.00</b>
3.	<b>Current Expense</b>	<b>225 – 239</b>	<b>126523.54</b>
4.	<b>Solid Waste/Litter Control</b>	<b>240 – 254</b>	<b>2441.99</b>
5.	<b>TLS</b>	<b>101 – 189</b>	<b>22023.53</b>
6.	<b>CE – Sheriff</b>	<b>190 – 211</b>	<b>6990.94</b>
7.	<b>Dare Fund – Sheriff</b>	<b>214</b>	<b>1056.82</b>
8.	<b>Major Crime – Sheriff</b>	<b>215</b>	<b>1000</b>
9.	<b>Crime Victims</b>	<b>221 – 222</b>	<b>1231.73</b>
10.	<b>MIS</b>	<b>216 – 218</b>	<b>1048.15</b>
11.	<b>Drug Fund</b>	<b>212 – 213</b>	<b>464.56</b>
12.	<b>NCW District Fair</b>	<b>223</b>	<b>167.40</b>

**II. 09:00 AM** The Board met with Danny Robbins, Kerry Newberger, Rockey Marshall, Eric Thrift, Sean Jeffries, Dave Castle, and Mike Baird.

1. **Discussion Held** **Apprenticeship Program**

Danny Robbins, Kerry Newberger, Rockey Marshall, Eric Thrift, Sean Jeffries, Dave Castle, and Mike Baird met with the Board asking if they would be willing to put "Apprenticeship Program" language in bid contracts within the county, and make it more of a mandated requirement. Board stated they would discuss in further detail with Transportation Land Services Director. **No action was taken.**

**JANUARY 24, 2005 CONTINUED**

**2. Received Letter**

**IBEW Local Union 191**

Received letter from IBEW Local Union 191 asking for support of construction apprenticeship programs in the county.

**III. 10:00 AM The Board met with Sheriff Dan LaRoche and Captain Don Culp.**

**1. Motion Approved**

**2005 Budget Vehicle purchase**

Commissioner Keane moved, Commissioner Hunt second, and Commissioner Stanton concurred the approval of having the Sheriff's Department purchase 4 vehicles from the CCEERP Fund with an estimated total of \$109,514. The Sheriff's department will slowly try and place a few more 4WD patrol vehicles into the fleet issued to deputies. They are not trying to convert the entire fleet to 4WD vehicles. Deputies would be chosen based on their performance, records of how they care for their cars, and whether they have a specific use for 4WD.

**2. Motion Approved**

**Purchase of 50" LCD Panasonic Television**

Commissioner Keane moved, Commissioner Hunt second, and Commissioner Stanton concurred the approval of the Sheriff's office Purchasing a 50" LCD Panasonic Television for training which will be funded through the Homeland Defense.

**3. Budget Approval**

**911 Fund**

The Board approved the budget amendment that will need to be done for 2005 for the Sheriff's Department 911 Dispatch in the amount of \$46,120.0 This will be used to for the following: Local Tel & Verizon regular office business phone lines and long distance services \$19,800; Emergency generator maintenance and repair services for phones & lines \$4200; Spillman maintenance agreement \$13000; and WSP Access fees \$9120.

**4. Personnel Approved**

**Out-of-State Travel**

Commissioner Hunt moved, Commissioner Keane second and Commissioner Stanton concurred the motion to approve the out of state travel for Sheriff Dan LaRoche to attend the Western States Sheriff Conference in Reno, NV from February 22-24.

**IV. 11:00 AM The Board met with the County Treasurer Mary Dodge**

**1. Discussion Held**

**Treasurer's Report**

**Mary Dodge, Treasurer:**

**JANUARY 24, 2005 CONTINUED**

- A. Asked to have discussion topic of Procedures for Courthouse Close to be added as a agenda item for the next Elected Official/Department Head Meeting
- B. Patty has found additional sales tax revenue that was being collected by East Wenatchee and will now be coming to Douglas County
- C. Provided the board with a spreadsheet of Revenues and reviewed with the Board.

**VI. 01:30 PM Public Hearing RES TLS 04-54 Planning Commission Recommendation**

**Present: Commissioners Stanton, Keane, Hunt. Director of Land Services Mark Kulaas, Senior Planner – Natural Resources Chuck Jones, Senior Planner – Advanced Planning Curtis Lillquist**

<b>Don Miller</b>	<b>Paul Schmidt</b>
<b>Jamie Loewen-Wallace</b>	<b>Roger Erlandsen</b>
<b>John Corning</b>	<b>Josh Corning</b>
<b>Joan Patterson</b>	<b>Dean Ramey</b>
<b>Cary bates</b>	<b>James Malloy</b>
<b>Geraldine Jones</b>	<b>Bill Hordan</b>
<b>Britt Dudek</b>	<b>Lee Hemmer</b>
<b>Lisa Parks</b>	<b>Carmen Houge</b>
<b>Mr. Houge</b>	<b>Calvin White</b>
<b>Jason Bromiley</b>	<b>Stephen Skylstad</b>

**Following is a summary of the public hearing; and it is not intended to be a verbatim transcript.**

Chair Stanton opened the public hearing for RES TLS 04-54 Consideration of Planning Commission Recommendation, and turned the hearing over to staff.

**A. RES TLS 05-03A Adopting Comprehensive Plan and Zoning Ordinance**

Lisa Parks, who is acting as the representative from City of Bridgeport and City of Rock Island presented to the Board and audience the recommendation to adopt the Comprehensive Plan and Zoning Ordinance of the City of Bridgeport and the Comprehensive Plan of the City of Rock Island as they apply to the Unincorporated Portions of the Towns' Urban Growth Areas. Both cities have adopted the plan as they have been presented to the Board. We would encourage you to approve the recommendations.

Staff noted that on Wednesday, December 15, 2004 the Douglas County Regional Planning Commission took action to recommend that the Board of Commissioners **ADOPT** the Comprehensive Plans for the cities of Bridgeport and Rock Island and the Zoning Ordinance for the City of Bridgeport as they apply to the unincorporated portions of the Bridgeport and Rock Island Urban Growth Ares. The motion to recommend adoption was unanimously approved.

**COMMENTS:** No comments were made on the recommendation.

**i. Recommendation Received Regional Planning Commissioner**

**JANUARY 24, 2005 CONTINUED**

Entered into record documentation from the Regional Planning Commission adopting Comprehensive Plan and Zoning Ordinance for the City of Bridgeport and City of Rock Island.

**B P**

**MOTION:**

- ii. RES TLS 05-03A Adopting the Comprehensive Plan & Zoning Ordinance**

**Commissioner Hunt moved to adopt RES TLS 05-03A Comprehensive Plan and Zoning Ordinance of the City of Bridgeport and the Comprehensive Plan of the city of Rock Island as they apply to the Unincorporated Portions of the Towns' Urban Growth Areas, Commissioner Keane second. Motion passed unanimously.**

**B P**

**B. RES TLS 05-03B**

**Application - CPRZ-04-0002**

**Senior Planner – Advanced Planning Curtis Lillquist**, presented to the Board and audience a power point presentation by applicant John's Retirement Plan Trust CPRZ-004-002. The map amendment proposes to re-designate and rezone approximately 7 acres of property from Residential Low to Residential Medium. The subject property is located inside of the East Wenatchee Urban Growth Area at the intersections of Fancher Field Road and Gun Club Road. On Wednesday, June 16, 2004 the Douglas County Regional Planning Commission took action to recommend that the Board of Commissioners **APPROVE** CPRZ-004-0002. The motion to recommend approval was unanimously approved by all commissioners present.

- i. Recommendation Received Regional Planning Commission**

Entered into record documentation from the Regional Planning Commission on Application CPRZ-04-002.

**B P**

**COMMENT:**

**Commissioner Hunt**, would this allow a low income family?

**Director Land Services Mark Kulaas**, Douglas County zoning does not differentiate the market for housing. We look strictly at the set backs, bulk, height, etc. I would say yes if that were the choice of the property owner.

**MOTION:**

- ii. RES TLS 05-03B Approval**

**Application CPRZ-04-002**

**JANUARY 24, 2005 CONTINUED**

**Commissioner Hunt moved to approve RES 05-03B Application by John's Retirement Plan trust to Change the Land Use Designation and Zoning district from Residential Low (R-L) to Residential Medium (R-M), Commissioner Keane second the motion. Motion passed unanimously.**

**B -- P**

**C. Recommendation to DENY**

**Application CPRZ-04-0003**

**Senior Planner – Advanced Planning Curtis Lillquist**, presented power point presentation and maps to audience. Application was submitted by Corral Creek LLC for a site specific map amendment to the Douglas County Countywide Comprehensive Plan and Development code. The map amendment proposes to re-designate and rezone approximately 15.35 acres of three 20 acre parcels from property from Rural Resources 20 to Rural Resource 5, and from Rural Resource 20 (RR-20) zoning district to Rural Resource 5 (RR-5) zoning district in the Douglas County Code. The subject property is located at the upstream (East) side of Beebe Flats. Legal description is outlined in light blue on the map. On Wednesday, June 16, 2004 the Douglas County Regional Planning Commission took action to recommend that the Board of Commissioners **DENY** CPRZ-004-0003. The motion to recommend denial was approved by a vote of 5 to 2.

**i. Recommendation Received**

**Regional Planning Commission**

Entered into record documentation from the Regional Planning Commission on Application CPRZ-04-003.

**B -- P**

**COMMENTS: None**

**MOTION:**

**ii. Approved Recommendation to Deny**

**Application CPRZ-04-003**

**Commissioner Keane moved to accept the recommendation by the Regional Planning Commission to deny CPRZ-04-003. Commissioner Hunt second. Motion passed unanimously.**

**B -- P**

**D. RES TLS 05-03C  
RES TLS 05-03D  
ORD 05-01**

**Proposed Amendments to the DC Countywide Plan  
Greater East Wenatchee Area Plan  
Douglas County Code**

Staff reviewed the following recommendations that the Regional Planning Commission made on December 8, 2004 and December 15, 2004:

**JANUARY 24, 2005 CONTINUED**

- i. Amendments to the commercial Chapter, Land Use Designations Map, and Chapter 18.48 Neighborhood Commercial Zoning District in the Douglas County Code (reference attachment "C" of staff report). **Senior Planner – Advanced Planning Curtis Lillquist** reviewed the five designations, site criteria, and boundary changes that will occur if adopted. In addition property owners that owned the property immediately to the west of the Grant & Kentucky site requested through the process the additional consideration of this district that the site be expanded one lot to the west in order to provide additional parking. Planning Commission has recommended some minor changes to the neighborhood commercial district uses that can be found in exhibit C. Purpose statement, implementation criteria, boundaries, and zoning text for Neighborhood Commercial Districts; Planning Commission voted on December 8, 2004 to **ADOPT**, unanimous vote of all commissioners present.

**COMMENTS: None**

**1. Staff Report                      Greater East Wenatchee Area Plan Amendments**

Entered into record staff report dated December 1, 2003 on the adoption of amendments to the commercial Chapter, Land Use Designation Map, chapters 18.48 Neighborhood Commercial District and 18.65 Airport overlay District & Zoning Map for the Greater East Wenatchee Area.

B        --        P

- ii. Airport overlay. During 2004 Port Districts of Chelan & Douglas adopted a new master plan to expand runway 12-30 going northwest & southeast to accommodate a project shift by Horizon Air within a 20 year time frame of the plan. The ultimate runway length identified in the master plan is 6300 feet. This is a key component in the economic development of the region. This extension of the runway necessitates a shift on the southeast runways safety zone 1, 2, 3, and 4. Recommendations by the WA State Department of Transportation Aviation noted there is a break in the classification and size of safety zones 1, 2, 3 at 6000 ft. This would require a larger runway category. Planning Commissioner reviewed on December 8<sup>th</sup> 2004, the motion was to except; however, they did not have a quorum. Therefore, the recommendation came to the Board as a denial per the Planning Commission by-laws. Director of Land Services Mark Kulaas noted letter the Board received from the Director of Pangborn Memorial Airport and the final ruling by the FAA on runway size, as a matter to be reviewed by the Planning Commission as it differs from the old proposal. The Planning Commission's recommendation on the New Airport Safety Zones necessitated by runway expansion was **DENIED**, by a 4 to 3 vote which did not pass with a quorum;

**JANUARY 24, 2005 CONTINUED**

**1. Letter Received**

**Pangborn Memorial Airport**

Entered into record letter from the Pangborn Memorial Airport regarding the Federal Aviation Administration final ruling, limiting Runway 30 length to 5,700 feet.

**COMMENTS: None**

- iii. Mineral Resource designations for the Greater East Wenatchee Area. **Senior Planner – Advanced Planning Curtis Lillquist** provided the following testimony: On October 22, 2003 the Planning Commission recommended that a Mineral Resource Advisory Committee be established to review mineral resource designations in the Greater East Wenatchee Area. The Board of County Commissioners appointed 13 citizens to this committee. The committee was comprised of representatives of the Planning Commission, state agencies, aggregate industry, realtors, and citizens. The committee reviewed the existing codes, policies, and designations. (reference staff report dated 12-7-03, page 7-8). The recommended amendments are to the Mineral Resource Designation Map and additional text in the Mineral portion of the Resource Lands Chapter. (Exhibit C, staff report). The Planning Commission recommended the Mineral Resource designations for the Greater East Wenatchee Area for; **ADOPTION**, vote of 6 to 1.

**1. Staff Report**

**Amendments to DC Countywide Plan**

Entered into record staff reports dated 12-7-2003 on the "Amendments to Douglas County Countywide Plan, Greater East Wenatchee Area Plan and Douglas County Code". Requested action: adoption of proposed amendments to the Greater East Wenatchee Area and Douglas County Comprehensive Plans. Proposed amendments are to critical areas provisions for wetlands and riparian areas; provisions for clustering, clustering of existing lots and limited lot segregations; land use designation and zoning maps; 2005-2010 Transportation Improvement Program; mineral resource designations for the Greater East Wenatchee Area; new zoning definitions; and provisions for in-home day care facilities and inert waste storage areas.

B P

**2. Letter Received**

**Mineral Resource Lands Advisory Committee**

Entered into record letter from the Mineral Resource Lands Advisory Committee not supporting the recommendations to the Baker Flat Mineral Extraction Area and requesting the ability to provide further clarification to the Planning Commission on the recommendation pertain to the Baker Flat area.

B P

**JANUARY 24, 2005 CONTINUED**

**Chair Stanton called for questions by the Board:**

**COMMENTS:**

**Commissioner Hunt**, what is the difference between point site and actual site.

**Senior Planner – Natural Resources Chuck Jones**, point sites in the past are reviewed as existing sites with an existing resource. We did not do any analysis of the long term significance of them. Which is the reason for the two in the north area? They do not have long term commercial significance, so they were removed and made to a point because it is still an existing permit. It does not effect what they are doing right now. We are looking at longer term commercial significant for a 50 year range.

**Commissioner Keane**, requested that the petition on the Hartel Pit/Bremmer Pit be entered into record.

**3. Petition Received**

**Hartel Pit/Bremmer Pit**

Entered into record the petition received by residents in the Douglas County/Rock Island Area asking for consideration to remove the Bremmer Pit aka "Hartel Pit", SW ¼ of S 22 T22 R 21, EWM, as a Mineral Resource Conservation Area. Petitioners originators Arnold & Geraldine Jones.

B P

**RETURN TO COMMENTS:**

**Director of Land Services Mark Kulaas**, the petition stems from an application being processed for environmental changes. Project as originally applied for has received considerable interest amongst neighbors. The application is being reviewed for environmental review at the present time. As far as the designation goes neither the Planning Commission or Mineral Resource Advisory Committee recommended it for deletion at the present time. It is not recommended for additions, because it is an existing mineral site. Those persons who are interested in the designation could make direct contact with the Planning Commission, by presenting an application to the Planning Commission. At the present time we are bound by state law to continue processing the application.

**Commissioner Keane**, wanted to get it clarification for individual's present today at the hearing. Noted the application is considered grandfather and it lies with the Hearing Examiner. The next step is for you is with the Hearing Examiner, or file an application with the Planning Commission to have it removed. Matter was addressed.

## JANUARY 24, 2005 CONTINUED

**Director of Land Services Mark Kulaas**, noted that he will add the names to the mailing list of those who have signed the petition. Currently, the application is within environmental review, and could be about a month before public review.

### **Chair Stanton call for public comment on Mineral Extraction:**

**Bill Horton**, member on the Mineral Task Force. Asked for a show of hands of all who were present and representing the Mineral Task Force. We are not in favor of adopting the map in the current form, particularly interested in the Baker Flat Area. Map that it before you is not the recommendation by the task force (showed line in question to the board and audience). Original recommendation was to have the line be brought down to match the urban area. The current users would not be able to use that area with this recommendation. Our request today is to have some additional time with the Planning Commission.

**Commissioner Stanton**, your concern is the Bakers Flat.

**Bill Horton**, yes, one other is in Rock Island but will not be discuss in further review.

**Jamie Loewen-Wallace**, name not on the mineral task force group; however, was able to sit in and be part of the site visits. Real Estate Brokers Association asked to have her be on the committee, due to potential conflict of interest with Jack Corning, but he was the only real estate agent representing the county on the committee. Therefore, asked to be part of the committee. Main concern is the future aesthetics of mineral sites and requirements for cleaning sites up.

**Commissioner Keane**, discussed some of the clean up with Hartel Pit. Noting that it has been under scrutiny and reviewed by the Department of Ecology, which has approved of at this point. Thanked the group that participated on the Mineral Extraction feels that they came up with great recommendations. I think we do have some issues that need to be looked at. Would like to commend the group for the work that was done, and that we do need to continue on with mineral extraction.

**Dean Rainey**, family owns about 1000 acres by the Baker Flat area where the current mineral extraction designation is being recommended for. He was pleased with the recommendation on designation. Has attending meetings, and not once have I heard that we wanted the line for the mineral extraction site in Baker Flats to match that of the urban growth line. Dean felt that it was an after thought. He would like the Board to go through with the recommendation being presented today.

## JANUARY 24, 2005 CONTINUED

**James Malloy, Rock Island**, is concerned about Rock Island and the Hartel Pit in association with his orchard. Would like to leave out the Hartel Pit.

**Calvin White**, objective was to keep this out of site from the public and reduce the noise. Would like boundary to stay within the designation and not show scaring by mineral extraction.

**Jason Bromiley**, remembers conversation about the view sheds and maintaining the views. The change to the boundary line was not brought up until the last Planning Commission meeting. He supports the current recommendation, and would not like to delay the process. Stated his concern about maintaining the views.

**Commissioner Hunt. Would like to appoint Jamie Loewen-Wallace to the Mineral Resource Task Force Committee. Mark will follow up.**

**Bill Horton**, feels that what you are hearing is some of the confusion by the group and the community. Some of the questions raised are legitimate and need to be discussed.

**Commissioner Stanton**, agreed with Bill Horton's statement. I was under the impression before your group came to speak with us that the designation was on top of the bluff. The concerns and issues you have brought forth should be reviewed by the Planning Commission, and public review.

**Commissioner Keane**. Wants to makes sure that the guidelines are met and we address questions that have been raised in Baker Flats area. There has been some question about the Hartel Pit, but it is an existing site and will be reviewed by the Hearing Examiner.

**Calvin White**, question about Hartel Pit and concern about water.

**Director of Land Services Mark Kulaas**, the jurisdiction of resurrection of a mineral site falls under Department of Natural Resources, and has to work with Department of Ecology. Gave Mr. Calvin further explanation the process on the Hartel Pit.

- iv. Clustering, Clustering of Existing Lots and limited Lot Segregation. At the request of the Planning Commission the Douglas County Board of Commissioners appointed a committee to review issues pertaining to clustering and similar rural land division methods. The recommended amendments are to the resource land polices in the comprehensive plan and to the zoning code. (Enclosure B of the staff report dated 12-7-03). On December 15, 2004 the Planning Commission voted to

**JANUARY 24, 2005 CONTINUED**

adopt the provisions for clustering, clustering of existing lots and limited lot segregations; **ADOPT**, Vote of 5 to 2; and

**COMMENTS:**

**Commissioner Hunt**, asked about the recommendation by the technical group.

**Director of Land Services Mark Kulaas**, stated that the Planning Commission made their recommendation based on the recommendation from the technical group. Feels that there will be a continued learning process on the development of the code pertaining to clustering, because it is new and will be tested as it is applied to development.

**Commissioner Stanton**, entered into record the memo received from Technical Planning Group.

1. **Memo Received** **Clustering, Limited Land Segregations, etc**

Enter into record the memo from the Technical Advisory Committee on Clustering, Limited Land Segregation, etc, which was read by Commissioner Stanton during the hearing.

B P

**Return to comments on clustering:**

**Commissioner Keane**, the recommendation that was brought to us by the Planning Commission does not preclude the recommendations by the Technical Advisory Committee from happening. By actions today it doesn't stop this, and needs to be discuss along with moving ahead in that direction.

- v. 2005-2010 Transportation Improvement Program. On October 20, 2004 the Douglas County Regional Planning Commission held a duly advertised public hearing to consider adoption of the 2005-2010 Transportation Improvement Program. Staff recommends adopting the 2005-2010 Transportation Improvement Program into the Transportation element of the Douglas county Comprehensive Plan. The Planning Commission held a hearing on December 15, 2004 forward a recommendation on the 2005-20010 Transportation Improvement Program; **ADOPT**, unanimous vote of all commissioners present; and this will be an annual event.

**COMMENTS: None**

**JANUARY 24, 2005 CONTINUED**

- vi. Land Use Designations and Zoning Map Changes. The Cities of Bridgeport and Rock Island have performed their ' 2002 review and update' and have adopted amended comprehensive plans and zoning ordinance. This will help with consistent zoning development ; ADOPT, unanimous vote of all commissioners present; and

**COMMENTS: None**

- vii. New zoning definitions. Staff has found a number of terms and definitions that were missing in the code. Senior Planner – Advanced Planning Curtis Lillquist referenced the revised definition on the staff report enclosure F lists the terms and definitions. The Planning Commission reviewed the proposed definition at their December 15, 2005 hearing and have forward a recommendation to; ADOPT, unanimous vote of all commissioners present; and

**COMMENTS:**

**Commissioner Hunt** had not seen definitions. No other comments were made.

- viii. Provisions for in-home day care facilities and inert waste storage areas. State legislation passed new legislation pertaining to day care provider's home facilities RCW 36.70.75. Addressing income home care facilities less than 12 or fewer children they are required to be treating as a single resident. Proposing change to the definition of daycare facility to an in home day care facility and other changes throughout the code to ensure consistency of the Douglas County Code. Proposed changes are found in the staff report enclosure G. Second portion of section is Inert Waste Storage Areas. This is in response to a task force that we established by representative from Douglas & Chelan Counties, Wenatchee, East Wenatchee, Chelan/Douglas Health and Chelan and Douglas Solid Waste with a goal to provide details on how inert waste facilities can be developed by local industry so that inert waste can be properly handled, recycled, and disposed of in our community. This would allow those with a conditional use permit to seek a administrative approval to allow inert recycling on their property. Would also set up a conditional use permits process for non-urban zoning district for commercial operations associated with it. Third area would allow as demolition occur the project to be storage and processed for use back on the site for non structural use on site.

**COMMENTS:**

**Commissioner Hunt** asked about time limit.

**Director of Land Services Mark Kulaas**, for the later relates to construction project most commercial are done 12-18 months. Other uses are 18 months is

## JANUARY 24, 2005 CONTINUED

considered for a temporary time frame, and a additional 6 month administrative extension to that.

**Senior Planner – Advanced Planning Curtis Lillquist**, stated that recommendation by the advisory group was sent to the Planning Commission on December 15, 2005 with a recommendation to; **ADOPT**, unanimous vote of all commissioners present; and

### COMMENTS:

**Commissioner Keane** stated that he appreciates and thanked those who worked on this. This will keep it out of the dump while being able to utilize the waste for additional uses such as fill material.

**Jamie Loewen-Wallace**, asked about contamination.

**Commissioner Keane**, this would be within the demolition side of the guidelines, and will be monitored by the CD Health District, which they have state regulations they will follow.

**Director of Land Services Mark Kulaas**, stated that with this they are putting together a coordinated effort to monitor this program.

### ix. **TLS 05-03C** **Great East Wenatchee Area Comprehensive Plan**

A proposal to amend the Greater East Wenatchee Area comprehensive Plan. Proposed amendments are to the land use designations map; Neighborhood Commercial Designation text, resource element language relating to clustering , clustering of existing lots and limited lot segregations; and mineral resources designation map and text (Agenda item E).

#### 1. MOTION:

**Commissioner Hunt motion to accept Resolution TLS 05-03C Adopting Amendments to the Greater East Wenatchee Area Comprehensive Plan. Commissioner Keane seconds motion for discussion.**

#### DISCUSSION:

**Statement by Commissioner Hunt**, In accepting the recommendations of the Planning Commission for mineral resource areas, the areas that caused so much controversy will be eliminated and new areas that have had considerable review will be designated. Since comprehensive plan amendments can only be made once a year, it is important to let people interested in the new sites get on with their planning. At the same time, there is interest in a more detailed look at the Baker's Flat area that should be done in the next few months. Legal counsel has advised us that the standard for amending plans once a year will still be

**JANUARY 24, 2005 CONTINUED**

met when the Board remands a matter to the Planning Commission for clarification and at the same time adopts other plan amendments.

**NO FURTHER DISCUSSION ON THE MOTION. MOTION PASSED UNANIMOUSLY.**

**2. MOTION:**

**Commissioner Hunt, motion to remand to the Planning Commission the recommendation to this Board regarding designating the area between the Baker's Flat industrial area and the mineral resource area above it as suitable for mineral extraction activities. Commissioner Keane second for discussion.**

**DISCUSSION:**

**Statement by Commissioner Hunt,** the Planning Commission will need to consider under what circumstances mineral extraction may be acceptable in this area and address issues such as aesthetics, critical areas, transportation, impacts on area properties, and other impacts. The Planning Commission may request persons supporting this designation to provide information critical to the evaluation including general plans, graphics, maps, photographs, etc. The Planning Commission should also request input from the Mineral Resource Advisory Committee. The Planning Commission also needs to provide reasonable public information opportunities for property owners and residents in the general vicinity. The report and recommendation of the Planning Commission is due 120 days from its next meeting.

**Statement by Commissioner Keane,** what this will allow is the ability to have the Mineral Resource Committee meet with the Planning Commission and discuss what was meant and the ability to further defined the meaning. I would like to have them discuss the boundary, accessibility, and aesthetics. Those are the things that need to be addressed further. I support this direction.

**Statement by Commissioner Stanton,** I think this is the opportunity for the Mineral Resource Committee to get with the Planning Commission, and present to them what they have presented to us in further detail. I think they will take a serious look at the visual impacts and what is ultimately going to be produced there. This will give you the opportunity to go back with the Planning Commission as you have requested.

**Commissioner Keane,** I think this is moving in a very positive direction for the land owners and entities involved in mineral extraction. I think this a great opportunity for this to happen.

**Commissioner Hunt,** I think the comments that have taken place today show that there was a misunderstanding of the direction. This motion will take it back to where everyone has time to address the issues and come up with a decision we all could be happy with.

**JANUARY 24, 2005 CONTINUED**

**Director of Land Service Mark Kulaas**, asked for clarification on the 120 days for it to be reviewed by the Planning Commission, and current schedule. Will leave the 120 days for the review, if running short on time the Planning Commissioner could address to the Board.

**NO FURTHER DISCUSSION ON THE MOTION. MOTION PASSED UNANIMOUSLY.**

x. **RES TLS 05-03D Amendments to the DC Countywide Comprehensive Plan**

A proposal to amend the Douglas County Countywide Comprehensive Plan. Proposed amendments are to the land use designations map; resource element language relating to clustering, clustering of existing lots and limited lot segregations; and 2005-2010 Transportation Improvement Program.

1. **MOTION:**

**Commissioner Keane moved for adoption RES TLS 05-03D Amendments to the Douglas County Countywide Comprehensive Plan. Commissioner Hunt second.**

**DISCUSSION:**

**Commissioner Stanton**, agrees that this will be the beginning of the clustering issue, and we will see what is working and what is not working. I would hope that the Technical Committee stays on board to continue to review the process and code. Appreciated the comments that the Technical Committee have made and will follow up on them.

**NO FURTHER DISCUSSION ON THE MOTION. MOTION PASSED UNANIMOUSLY.**

xi. **ORD TLS 05-01 ADOPTING AMENDMENTS TITLE 14 & 18 DC CODE**

A proposal to amend Titles 14 and 18 of the Douglas County Code. Proposed amendments include; new zoning definitions; provisions for home day care facilities and inert waste storage areas and amendments to the zoning map as they relate to Neighborhood Commercial zones, Bridgeport Urban Growth Area.

1. **MOTION:**

**Commissioner Hunt moved to adopt Ordinance TLS 05-01 Adopting Amendments to Title 14 and Title 18 of the DC Code. Commissioner Keane second.**

**JANUARY 24, 2005 CONTINUED**

**NO FURTHER DISCUSSION ON THE MOTION. MOTION PASSED UNANIMOUSLY.**

**xii. MOTION APPROVED AIRPORT OVERLAY AMENDMENTS**

Motion to remand the issue of airport overlay amendments to the Planning Commission which is pulled from RES TLS 05-03C. The Pangborn Memorial Airport is the key element to economic development in our community. It must be protected from activities that adversely effect its operation. We are also concerned for property owners in the area. The Planning Commission voted in favor of airport overlay amendments but did not have enough votes to recommend approval. The airport has also pointed out new information since the Planning Commission meeting. This issue needs to be looked at by the Planning Commission again.

**1. MOTION:**

**Commissioner Keane moved to remand to the Planning Commission the issue of Airport Overlay district amendments in light of the split vote of the Planning Commission and the new information provided by the airport manager. The Planning Commission is directed to ascertain the following information in developing a new recommendation to this Board:**

- 1. What is the extent of the revisions necessary to implement the airport master plan given the new information mentioned by the airport manager?**
- 2. Inquire of the airport, the WSDOT and any other appropriate party as to why the airport protection standards of the State of Washington are different than those of the FAA.**
- 3. Inquire of the Airport of the public information opportunities they provided to communicate changes to neighboring property owners.**

**The report and recommendation of the Planning Commission is due to this Board 180 days from the next meeting of the Planning Commission. Commissioner Hunt second.**

**NO FURTHER DISCUSSION ON THE MOTION. MOTION PASSED UNANIMOUSLY.**

**Recessed 3:00 pm.**

**VII. Other Business and Correspondence**

- 1. RES CE 05-04 Designate County Mental Health Professional (ITA)**

APPENDIX G  
Ex R-12  
(Establishment of Airport  
Overlay Advisory Committee)

# Memo

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To: Advisory Committee Representatives

From: Patricia Moore, Manager  
Pangborn Memorial Airport

Re: Update of Airport Safety Overlay Zone

Date: June 29, 2005

On behalf of the Ports of Chelan and Douglas Counties (the owners of Pangborn Memorial Airport) I want to thank you for volunteering your time and expertise to advise the Douglas County and East Wenatchee Planning Commissions as they undertake the very significant responsibility of updating the Airport Safety Overlay Zone. This task is extremely important, in that the Airport is an essential public facility that serves as our region's connection to the national and international air transportation systems. It not only serves the traveling public and recreational aviation, according to a recent State study it contributes over \$47,000,000 annually to our local economy and supports 632 jobs.

The need for the update is driven primarily by the development of the new instrument landing system (ILS). The ILS will improve overall safety and significantly reduce the number of cancellations caused by weather here in the Wenatchee Valley, and it also generates some changes in the way our airspace is used, which means that the safety overlay zones will require some adjustment.

Douglas County and the City of East Wenatchee will strive to balance and take into account the many different interests of the affected stakeholders in making these adjustments. In nominating individuals to serve on this committee, it has been our goal to see that representatives from general aviation, commercial and residential neighbors, economic development, and community leadership are at the table.

The first meeting of this committee is scheduled for:

Meeting Date	July 7, 2005
Time	7:00 PM
Location	Executive Flight Conference Room Off Union Street on Campbell Parkway East Wenatchee

Again, we thank you for your willingness to serve our communities by participating in this process. Please do not hesitate to contact me if you have any questions.

PANGBORN MEMORIAL AIRPORT  
Advisory Committee Representatives

	Name	Phone	E Mail	Address	City
NCW Realtors - Property Manager	Jamie Loewen-Wallace Al Bidler	663-1211 664-4017	<a href="mailto:jami@twallace.com">jami@twallace.com</a> <a href="mailto:alansage@nwi.net">alansage@nwi.net</a>	3110 4th St SE 135 S Worthen	E Wen Wen
Industrial property representative	Jack Snyder	662-7164	<a href="mailto:jack@c-onursery.com">jack@c-onursery.com</a>	C&O Grant Rd	E Wen
Property owner representative	Hank Lewis	886-7651	<a href="mailto:safari@nwi.net">safari@nwi.net</a>	Multiple Properties	E Wen
Property owner representative	Bruce Baguley	884-3677	<a href="mailto:ballman@cascademath.com">ballman@cascademath.com</a>	4150 8th St SE	E Wen
Property owner representative	Stan Evenhus	884-3072	None	1131 Park Roy Pl SE	E Wen
Property owner representative	Mike Nevers	884-0887	None	779 S Van Well Ave	E Wen
Wings of Wenatchee	Mr. Hunter	886-0233	None		
Horizon Air	Scherri Burgess		None		
Douglas Co Regional Planning Commission	Don Miller	884-4262	<a href="mailto:miller-don@charter.net">miller-don@charter.net</a>		
Douglas Co Regional Planning Commission	Bill Millett		<a href="mailto:millettw1@verixon.net">millettw1@verixon.net</a>		
Port of Douglas County	Jim Huffman		<a href="mailto:jimh509@charter.net">jimh509@charter.net</a>		
Port of Chelan County	Jim Knapp		<a href="mailto:jim@ccpd.com">jim@ccpd.com</a>		
City of East Wenatchee Planning	Waiting for response				
City of East Wenatchee	Erin Martindale	884-1796	None	271 9th St SE	E Wen
Aviation Division, DOT Planning Commission	John Shambaugh 360	708-7563	<a href="mailto:ShambaJ@wsdot.wa.gov">ShambaJ@wsdot.wa.gov</a>		
Wenatchee Valley Chamber	Craig Larson		<a href="mailto:larsen@wenatchee.org">larsen@wenatchee.org</a>		
Wenatchee Valley Transportation Council	Jeff Wilkens		<a href="mailto:jeff@wvtc.org">jeff@wvtc.org</a>		
Chelan County Resident - Retired Engineer	Bill Stokes	662-0270	None	1013 Poplar	Wen
Douglas County Resident - Retired Banker	Steve Joy	886-7569	<a href="mailto:tsjoy@charter.net">tsjoy@charter.net</a>	901 N James	E Wen

**Staff**

	Name	Phone	E Mail	Address	City
Pangborn Memorial Airport	Patricia Moore, Manager	884-2494	<a href="mailto:pangborn@bossiq.com">pangborn@bossiq.com</a>		
Port of Douglas County	Pat Haley, Manager	884-4700	<a href="mailto:pat@portofdouglas.org">pat@portofdouglas.org</a>		
Port of Chelan County	Mark Urdahl, Manager	663-5159	<a href="mailto:mark@ccpd.com">mark@ccpd.com</a>		
Douglas Co Transportation & Land Services	Mark Kulaas	884-7173	<a href="mailto:mkulaas@co.douglas.wa.us">mkulaas@co.douglas.wa.us</a>		
Douglas Co Transportation & Land Services	Curtis Lillquist	884-7173	<a href="mailto:clillquist@co.douglas.wa.us">clillquist@co.douglas.wa.us</a>		
RH2 Engineering	Randy Asplund	886-2900	<a href="mailto:rasplund@RH2.com">rasplund@RH2.com</a>		

PANGBORN MEMORIAL AIRPORT  
Advisory Committee Representatives

	Name	Phone	Cell	E Mail
NCW Realtors -	Pending			
Property Manager	Al Bidler			
Property Specialists	Jon Eberle			
Industrial property representative	Jack Snyder	662-7164		
Property owner representative	Hank Lewis	886-7651		
Property owner representative	Bruce Baguley	884-3677		
Wings of Wenatchee	Mr. Hunter	886-0233		
Horizon Air	Scherri Burgess			
Douglas County Regional Planning Commission	Don Miller			
Port of Douglas County	Jim Huffman			
Port of Chelan County	Jim Knapp			
City of East Wenatchee	Lori Barnett			
Aviation Division, DOT Planning Commission	John Shambaugh			
Wenatchee Valley Chamber	Craig Larson			
Wenatchee Valley Transportation Council	Jeff Wilkens			
Chelan County Resident - Retired Engineer	Bill Stokes	662-0270		
Douglas County Resident - Retired Banker	Steve Joy	886-7569		

Staff

	Name	Phone	Cell	E Mail
Pangborn Memorial Airport	Patricia Moore, Manager	884-2494		
Port of Douglas County	Pat Haley, Manager	884-4700		
Port of Chelan County	Mark Urdahl, Manager	663-5159		
Douglas County Transportation & Land Services	Mark Kulaas, Curtis Lindquist	884-7173		

## Pangborn Memorial Airport

### Advisory Committee Representatives

Property owner representative	-- Nat Mattern
Property owner representative	-- Candy Manke
Property owner representative	-- Dennis Jackson
Industrial property representative	-- Jack Snyder
Farm Bureau/Agriculture Representative	-- Britt Dudek
Wings of Wenatchee	-- Mr. Hunter
Horizon Air	-- Scherri Burgess
East Wenatchee Chamber of Commerce	-- <del>Don Collins</del> Dawn Collings
Quest for Economic Development	-- Jon Eberle
Douglas County Regional Planning Commission	-- Jace Miller
Douglas County Regional Planning Commission	-- Bill Millett
Pangborn Memorial Airport	-- Bill Wells
Port of Douglas County	-- Bob Corkrum
Port of Chelan County	-- John Stoltenberg
City of East Wenatchee	-- Lori Barnett
Aviation Division, Department of Transportation	-- Theresa Smith

### Staff

Pangborn Memorial Airport, Amie Clarke, Manager, 884-2494

Port of Douglas County, Linda Sutor, Manager, 884-4700

Port of Chelan County, Mark Urdahl, Manager, 663-5159

Douglas County Transportation & Land Services, Mark Kulaas, John Shambaugh or Brad Kilby,  
884-7173

Post-It* Fax Note	7671	Date	6-1-05	# of pages	1
To	Curtis	From	Lori Barnett		
Co./Dept.		Co.			
Phone #		Phone #	884.5396		
Fax #	886.3954	Fax #			

APPENDIX H  
Ex R-26  
(BOCC Recording Transcript  
Excerpts, Admitted on Motion  
to Supplement)

## TRANSCRIPT OF EXCERPT RECORDINGS, BOCC 4-25-07

Stanton: (00:00:12 - 00:01:48)

It is now 6:30 p.m. on Wednesday, April 25th, 2007, the date and time duly advertised by the Douglas County Board of Commissioners for the purpose of conducting a public hearing regarding Resolution TLS 07-09, to consider proposals to adopt amendments to the Greater East Wenatchee Comprehensive Plan and the Douglas County Code, Chapter 18.65, AP-O, Airport Overlay District.

This hearing is being held at the Douglas County Public Services Building in East Wenatchee. A quorum of the board is present. I'm Ken Stanton, Commissioner from District 1 and Chair of the Board.

\* \* \*

The Board of Commissioners conducts public hearings as required by state and county laws to consider the merits of certain proposals and to allow deliberations among commissioners as part of the decision-making process. The Board considers all relevant information, including written comments and other materials on file to formulate a decision.

The procedure for this evening will be as follows: The staff will present a report and recommendations. The proponents, proponents (sic) will be given an opportunity to speak. Those in the audience in favor may comment. We may be limiting you to two minutes. By the looks of the sheet we have several people who want to speak, so it may be longer than two, but we will limit the time. Those in the audience opposed may comment. The public testimony portion of the hearing will at that time be closed.

Stanton: (01:49:10 - 01:49:32)

Okay, all those in favor of the motion to extend the public hearing to May 9th at 9:00 a.m., here at the Public Services Building for decision only, written testimony to be accepted until May 4th, or postmarked May 4th, signify by saying "aye."

Hunt: Aye.

Keane: Aye.

Stanton: Aye.

Stanton: Motion carries unanimously.  
Thank you! [Directed to the audience]

APPENDIX I  
Ex R-24  
(WSDOT letter, February 5, 2007)



**Washington State  
Department of Transportation**  
Douglas B. MacDonald  
Secretary of Transportation

Aviation Division  
3704 172<sup>nd</sup> Street, Suite K2  
P.O. Box 3367  
Arlington, Washington 98223-3367  
360-651-6300 / 1-800-552-0666  
Fax: 360-651-6319  
TTY: 1-800-833-6388  
[www.wsdot.wa.gov](http://www.wsdot.wa.gov)

February 5, 2007

Mark Kulaas  
Director of Land Services  
Douglas County TLS  
140 19<sup>th</sup> Street NW, Suite A  
East Wenatchee, WA 98802

**FILE COPY**

RE: General Aviation Airports

Dear Mark Kulaas;

This correspondence is in response to your letter dated January 19, 2007 on whether Douglas County is obligated to meet the requirements established under state law for the Pangborn Memorial Airport.

The State considers any airport with general aviation activity to be a general aviation airport and that local jurisdictions that have public use general aviation airports within their jurisdiction are required to discourage incompatible land uses adjacent to them consistent with RCW 36.70A.070 and RCW 36.70.547. This letter provides a summary of the issues, as well as our conclusions based on state and federal data sources.

Your letter posed two questions, which are as follows:

***Is Pangborn Memorial Airport a general aviation airport? Yes.***

The airport facility provides an area for the landing and take-off of aircraft, and has buildings and facilities that support aviation activity. Aviation activity at the airport includes general aviation as well as scheduled airline passenger and military operations as identified in the FAA Airport Master Record.

***Do the provisions of RCW 36.70A.070 and RCW 36.70. 547 apply to the county? Yes.***

According to SSB 6420, the purpose of the legislation is to "protect general aviation facilities from encroachment of incompatible land uses." The legislation further requires every county, city and town in which there is located a public use general aviation airport in its jurisdiction to discourage the siting of incompatible uses adjacent to the airport through its comprehensive plan and development regulations.

The following provides additional information on how your questions were addressed.

- How are airports defined by the State of Washington?
- What is general aviation?
- What types of aircraft, facilities, and services are found at the airport?

- What is the purpose of SSB 6420 and legislative requirements?

*How are airports defined in the State of Washington?*

According to chapter 47.68 RCW, airports are defined as "any area of land or water which is used, or intended for use, for the landing and take-off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or right-of-way, together with all airport buildings and facilities located thereon. "

*What is general aviation?*

General aviation (GA) is one of two categories of civil aviation and is defined as all facets of aviation except military, scheduled cargo service, and scheduled airline passenger service. General aviation aircraft range from ultralights and single engine aircraft to helicopters, air ambulances, air charter, experimental airplanes, and twin turboprops to large and small business jets.

According to records compiled by the state, Pangborn Memorial Airport is just one of the 140 public use airports within the Washington Aviation System that provide general aviation facilities and services to the air transportation system. GA plays a vital role in the state's air transportation system and facilitates the cross-state mobility of people, goods, and services to local, national and international markets. GA aircraft are used for a wide range of flight operations and in 2003 accounted for more than 75 percent of all air traffic in the United States and more than 58 percent of all business and corporate travel. GA provides vital services for emergency services, MEDEVAC, agriculture, transporting of medical supplies, firefighting, rescue operations, and law enforcement.

*What types of aircraft, facilities, and services are found at the airport?*

Pangborn Memorial Airport offers a full range of aviation facilities and serves all types of aircraft, including general aviation. According to the most recent inventory of airport facilities and services conducted by WSDOT in July 2006, general aviation operations at the airport accounted for just over 69 percent of all aircraft operations at the airport or 29,160 operations. Scheduled airline passenger service and air cargo operations accounted for 30 percent, with military operations making up the remaining one percent. Additionally, Pangborn Memorial Airport has a total of 140 based aircraft and is ranked 20<sup>th</sup> in Washington State for based aircraft. Pangborn's based aircraft include 103 single-engine, 12 multi-engine, 3 helicopters, 12 gliders and 10 jets. There are no military or scheduled air cargo service or schedule airline passenger aircraft based at the airport.

According to WSDOT's recent airport facility and services inventory, the critical aircraft for Pangborn Memorial was identified as the Q-200 and Lear. The aircraft approach category and design group for the airport is a C III. Aviation support facilities at the airport include two runways (primary and secondary runways), taxiways, aprons, lighting, navigation aids and communication facilities. General aviation services provided at the airport include major/minor aircraft maintenance, aircraft rental, aircraft hangars, flight training, charter service, wildland fire fighting, airplane parts, aviation fuel and emergency medical transportation. A commercial passenger facility terminal is located on the airport and provides support for air cargo and scheduled airline passenger service.

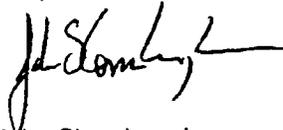
Mark Kulaas  
February 5, 2007  
Page 3

*What is the purpose of SSB 6420 and legislative requirements?*

In 1996, the governor signed into law an act "relating to protecting general aviation facilities from encroachment of incompatible land uses." This legislation, known as Substitute Senate Bill (SSB) 6422, amended Revised Code of Washington (RCW) 36.70A.070 and added a new section to the chapters 36.70; 35A.63; 35.63; and 36.70A RCW. New provisions within the legislation obligated all counties and cities that are required or choose to plan under RCW 36.70A.040 to inventory general aviation airport facilities within their transportation element. The bill also required every county, city and town in which there is located a public use general aviation airport to "discourage the siting of incompatible land uses adjacent to the airport through the adoption or amendment of their comprehensive plan and development regulations. Such plans and regulations may only be adopted or amended after formal consultation with aviation interests. The law also calls for a technical assistance program offered by the Washington State Department of Transportation (WSDOT) Aviation Division and the review of comprehensive plans and development regulations. For your consideration I have attached a copy of SSB 6420.

In conclusion, any airport that has general aviation activity is considered a general aviation airport and that local jurisdictions that have public use general aviation airports within their jurisdiction are required to discourage incompatible land uses adjacent to them. I hope this information assists you in your efforts to address airport land use compatibility for Pangborn Memorial. If you have any questions, or if we can be of further assistance, please contact us at (360) 651-6300.

Respectfully,



John Shambaugh  
Sr. Aviation Planner

Enclosure

cc: Joyce Phyllips, Senior Planner, Department of Trade and Economic Development  
Pat Moore, Airport Manager, Pangborn Memorial Airport

APPENDIX J  
Ex R-25  
(DCTED letter, February 2, 2007)



STATE OF WASHINGTON

DEPARTMENT OF COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT

128 - 10<sup>th</sup> Avenue SW • PO Box 42525 • Olympia, Washington 98504-2525 • (360) 725-4000

February 2, 2007

Mr. Mark D. Kulaas, AICP  
Director of Land Services  
Douglas County Transportation and Land Services  
140 19<sup>th</sup> Street Northwest, Suite A  
East Wenatchee, WA 98802-4191

RECEIVED  
FEB 07 2007  
#17-111111-100000 TLS

RE: Response to your letter dated January 19, 2007 regarding Pangborn Memorial Airport

Dear Mr. Kulaas;

Thank you for your recent inquiry regarding Pangborn Memorial Airport. In your letter you requested a written response to two questions. The first was whether or not Pangborn Memorial Airport is a general aviation airport. The second was whether or not the provisions of RCW 36.70.547 need to be incorporated into Douglas County's planning schema as it relates to Pangborn Memorial Airport.

My response to both questions is yes. Pangborn Memorial Airport is considered a general aviation airport. As such, the provisions of RCW 36.70.547 are applicable.

Please feel free to contact me, or Mr. John Shambaugh at the Washington State Department of Transportation Aviation Division, should you have further questions. You can reach me at (360) 725-3045 or [joycep@cted.wa.gov](mailto:joycep@cted.wa.gov). You may reach Mr. Shambaugh at (360) 651-6306 or [shambaj@wsdot.wa.gov](mailto:shambaj@wsdot.wa.gov).

Sincerely,

Joyce Phillips, AICP  
Senior Planner  
Growth Management Services

cc: John Shambaugh, WSDOT Aviation Division



APPENDIX K  
Ex R-9  
(DCTED Comments)



STATE OF WASHINGTON

DEPARTMENT OF COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT

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February 21, 2007

**RECEIVED**

**FEB 21 2007**

**DO. CO. TLS**

Mr. Mark Kulaas, AICP  
Director of Land Services  
Douglas County Transportation and Land Services  
140 19<sup>th</sup> Street Northwest, Suite A  
East Wenatchee, Washington 98802

RE: Airport Committee Recommendation for Pangborn Memorial Airport

Dear Mr. Kulaas:

Thank you for the opportunity to review and comment on the proposed amendments to the Greater East Wenatchee Comprehensive Plan, zoning map, and development regulations. The Washington State Department of Community, Trade and Economic Development (CTED) supports the proposed changes as they further the intent under the Growth Management Act (GMA) for land use and airport compatibility. Please submit this letter at the Planning Commission's public hearing scheduled for this evening.

The GMA requires cities and counties to discourage incompatible land uses adjacent to general aviation airports through their comprehensive plan policies and development regulations (RCW 36.70.547). The Washington State Department of Transportation Aviation Division (WSDOT Aviation) is tasked with providing technical assistance to help jurisdictions address aviation issues, as well as to review and comment on proposed plan and regulation language.

I have reviewed the proposed comprehensive plan language and have the following comments and/or suggestions:

- On page 1 under Land Use Compatibility, it is noted that a small portion of the existing urban growth area (UGA) is located within the airport traffic pattern. Upon reviewing Exhibit A it does appear to be only a very small portion of the UGA. In the future, any requests to expand the UGA should take into consideration the flight patterns of the airport and should be discouraged when there are potential conflicts from any increase in density in these areas.
- The safety section on page 2 of the recommendation notes that a runway expansion is planned to meet future needs for larger aircraft. CTED supports use of the safety recommendations of WSDOT Aviation and encourages Douglas County to take steps to provide for the long-term safety of its residents in relation to airport operations. This

Mr. Mark Kulaas  
February 21, 2007  
Page 2

includes limiting density of development in the overlay zones, for both residential and other types of development.

- On page 3, in Table 1 Airport Compatibility Zones Land Use Planning Strategies, there appears to be a typographical error for Zone 1, subsection d, and Zone 2, subsection e. I assume the word “quantities” or something similar would be added after the word “large”. For Zone 2d, and Zone 3d, Zone 4e, and Zone 6e, I would recommend adding language such as “or other similar uses, as determined by the Director.”
- You may wish to clarify that the plan allows for the siting and expansion of general aviation airports according to local provisions and state requirements for the siting of essential public facilities, in accordance with RCW 36.70A.200.

I have also reviewed the proposed Airport Overlay District, Chapter 18.65, and have the following comments or recommendations:

- 18.65.040, Exemptions: For subsection “A” I would suggest adding language to clarify that it would be up to the applicant or property owner to demonstrate compliance with this provision to qualify for the exemption.

CTED supports the recommendations and encourages Douglas County to take the steps necessary to provide land use and airport compatibility for this and future generations. Further, we support the recommendations of Mr. John Shambaugh, Senior Aviation Planner, in his letter to the Douglas County Regional Planning Commission dated February 20, 2007.

Again, thank you for the opportunity to review and comment on the proposed amendments to the comprehensive plan and development regulations. Should you have any comments or questions regarding information above, or any other issues related to the GMA, please contact me at (360) 725-3045 or [joycep@cted.wa.gov](mailto:joycep@cted.wa.gov). We extend our continued support to Douglas County and the City of East Wenatchee in achieving the goals of the GMA.

Sincerely,

Joyce Phillips, AICP  
Growth Management Planner  
Growth Management Services

cc: John Shambaugh, WSDOT Aviation Division  
Bill Wiebe, WSDOT Planning and Programming  
Leonard Bauer, AICP, Managing Director, Growth Management Services  
David Andersen, AICP, Planning Review and Technical Assistance Manager, Growth Management Services



Signed this same day at Waterville, Washington.

  
\_\_\_\_\_  
Shirley Long

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Mr. James J. Klauser  
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