

NO. 94328-1

SUPREME COURT  
OF THE STATE OF WASHINGTON

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CITY OF MUKILTEO, a municipal corporation; and SAVE OUR  
COMMUNITIES, a Washington non-profit corporation,

Appellants,

vs.

SNOHOMISH COUNTY and  
PROPELLER AIRPORTS PAINE FIELD, LLC, a Delaware LLC,

Respondents.

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RESPONDENT PROPELLER AIRPORTS PAINE FIELD, LLC'S  
ANSWER TO AMICI CENTER FOR ENVIRONMENTAL LAW AND  
POLICY, FUTUREWISE, SPOKANE RIVERKEEPER, AND  
WASHINGTON ENVIRONMENTAL COUNCIL'S REVISED  
MEMORANDUM IN SUPPORT OF PETITION FOR REVIEW

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## I. INTRODUCTION

Contrary to the assertion of the Center For Environmental Law and Policy, Futurewise, Spokane Riverkeeper, and the Washington Environmental Council (“Amici”), the small step (now moot)<sup>1</sup> of executing an Option to Lease in the context of resuming commercial passenger air service at Paine Field does not present an issue of substantial major importance under the Washington State Environmental Policy Act, RCW 43.21C (“SEPA”), requiring resolution by this Court. Thus, Respondent Propeller Airports Paine Field, LLC (“Propeller Airports”) contends that discretionary review should be denied.

## II. ARGUMENT IN SUPPORT OF ANSWER

The minor step of signing the Option is not a SEPA action, as set out in Snohomish County’s Answer, pp.2-5. Amici do not address this fundamental point.

Stating as much, SEPA was extensively (1) used to examine the use decision to resume the commercial passenger air service and then (2) re-employed to look at site specific impacts. Amici’s general statement of broad SEPA principles are not controlling over the actual facts of this case and the law as applied to the specific facts.

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<sup>1</sup> The lease was fully signed on May 2, 2017, effective June 1, 2017.

The Amicus brief fails to address the condition for the completion of successful SEPA review before the lease was signed. Nowhere do Amici address that fact that a lease could not be optioned until Propeller Air obtained permits through the environmental review process that SEPA requires. The Option expressly requires completion of full SEPA review prior to execution of any lease, and reserves to the County SEPA authority:

2. ... This Option may be exercised following completion of environmental review as provided in paragraph 7 herein ....

\*\*\*

**7. Exercise of Option Subject to SEPA Compliance.** Exercise of the Option and execution of the Lease are subject to compliance with RCW 43.21C, the State Environmental Policy Act ("SEPA"). Propeller and County agree that a SEPA process must be completed prior to exercise of the Option and execution of the Lease.

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Amici talk about everything other than the main compelling feature of the Option: that it is conditioned on SEPA review. Paragraph 7 demonstrates that execution of a lease is specifically conditioned on completion of SEPA review. *See* County Answer, p.5. The type or level of SEPA review remained in the discretion of the County's SEPA Responsible Official if Propeller Airports opted to go forward with a land use application, which it did. *See* County Answer, pp.3-4.

Amici also fail to acknowledge that under these circumstances the County does have the “unfettered freedom” to satisfy itself regarding environmental concerns and considerations. Specifically, the County reserved its authority to (1) impose mitigation; (2) adopt more environmentally sensible designs; or (3) reject a proposed project based on the review.

Everything Amici say should happen did happen in terms of SEPA review. Since the Option became effective in March 2015, Propeller Airports has successfully obtained a Mitigated Determination of Nonsignificance (“MDNS”) dated February 26, 2017 for its proposal to construct commercial passenger facilities. The County issued a Notice of Decision (“NOD”) for Land Disturbing Activity on February 26, 2017.<sup>2</sup> Neither the City of Mukilteo nor Save our Communities appealed the MDNS or the NOD, and are thus foreclosed from doing so under the doctrine of finality.

Before execution of the Option, SEPA was used to guide preparation of numerous regional or broad policy planning documents addressing use options for Paine Field. Relevant programmatic studies

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<sup>2</sup> See <http://www.heraldnet.com/news/commercial-passenger-flights-at-paine-another-step-closer/> (last visited 4/24/2017). These permitting decisions are consistent with the outcome of the Federal environmental review established by *City of Mukilteo v. U.S. Dep't of Transportation*, 815 F.3d 632 (9th Cir. 2016), n.1.

include, but are not necessarily limited to: Paine Field Master Plan and Amended Master Plan (November 2003);<sup>3</sup> Paine Field Master Drainage Plan (October 2008); Snohomish County Airport Environmental Assessment (September 2012); Snohomish County General Policy Plan (July 2015); Transportation Element (TR-1 and 2, TR-14 through TR-16); Snohomish County's 2015 Capital Facilities Plan (pp.62-63); Snohomish County Comprehensive Plan 2015 Update (Final EIS, Transportation); Snohomish County Comprehensive Plan 2015 Update; Washington Aviation Council's policies set out in its Long-Term Air Transportation Study.

These studies show that significant environmental review occurred relating to use of Paine Field, including for commercial air passenger service. Thus, SEPA has in no way been ignored, nor put off. Executing the Option is simply a discreet step in a comprehensive SEPA review process, both programmatic and site-specific.

### **III. CONCLUSION**

For the reasons stated, it is respectfully requested that the Petition for Review be denied.

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<sup>3</sup> The 2002-2021 Airport Master Plan Update is found at <http://www.paineairport.com/153/Airport-Master-Plan> (last visited April 22, 2017)

RESPECTFULLY submitted on this 14<sup>th</sup> day of June, 2017.

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**CERTIFICATE OF SERVICE**

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on the 14<sup>th</sup> day of June, 2017, I arranged for service via U.S. Mail (with a courtesy copy by email) of the foregoing "Respondent Propeller Airports Paine Field, LLC's **Answer** To Amicus Curiae's Revised Memorandum In Support of Petition For Review" on the parties to this action as follows:

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DATED this 14<sup>th</sup> day of June, 2017, at Bainbridge Island, Washington.

  
\_\_\_\_\_  
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**DENNIS REYNOLDS LAW OFFICE**

**June 14, 2017 - 4:22 PM**

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**Comments:**

Answer to Amici Revised Memorandum in Support of Petition for Review

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