

Case No. 94328-1

SUPREME COURT OF THE STATE OF WASHINGTON

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

Appellants,

v.

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

**SNOHOMISH COUNTY'S ANSWER TO THE PETITION FOR
REVIEW OF THE CITY OF MUKILTEO AND SAVE OUR
COMMUNITIES**

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I. INTRODUCTION

Snohomish County asks this Court to deny the Petition for Review filed by the City of Mukilteo and Save Our Communities (collectively, “the City”) in which the City seeks review of *City of Mukilteo and Save Our Communities v. Snohomish County and Propeller Airports Paine Field LLC*, No. 74327-9-1 (Division I, January 23, 2017) (“the Decision”).

The Court should reject review for three reasons. First, the City does not seek review of a controlling issue decided in favor of the County and Propeller Airports Paine Field LLC (“Propeller”) by the Court of Appeals. That issue is whether the execution of the “Option to Lease Land at the Snohomish County Airport Contingent on Compliance with SEPA” (“the Option”) is categorically exempt under WAC 197-11-800(5)(c). Because the City did not seek review of this controlling issue, the Court cannot grant the relief sought and any opinion this Court might ultimately issue would be advisory only, which is highly disfavored.

Second, the Court should reject review because this matter is moot. The County, consistent with the Option, conducted State Environmental Policy Act (SEPA) review and issued a Mitigated Determination of Non-Significance (MDNS). Neither the City of Mukilteo nor Save Our Communities appealed the MDNS, which reviewed the proposed project

in its entirety. The SEPA review sought by the City is complete and the Court cannot grant the City relief.

Third, the Court should reject review because the City does not satisfy RAP 13.4(b). The City mischaracterizes the Option in a manner rejected by both the trial court and the Court of Appeals. The Option does not bind the County to lease Paine Field to Propeller for commercial air service under the terms of the lease. Nor does the Option prevent the County from shaping the final project in response to environmental review. And execution of the Option does not create a “snowball effect”; not performing SEPA review for a categorically exempt activity cannot, by definition, be an improper delay of SEPA review. The Decision, which upheld the execution of the Option, is consistent with relevant case law and does not present an issue of substantial public interest under RAP 13.4(b). Review is not warranted.

II. IDENTITY OF RESPONDENT

Snohomish County, Respondent, asks that this Court deny review.

III. STATEMENT OF THE CASE

A. Paine Field and the National Airport System

For over 75 years Paine Field has been operating as an airport, accommodating aircraft take-offs and landings (“aircraft operations”). CP 39. Military aircraft began operating out of Paine Field in 1941. *Id.* The terminal was constructed in 1956. *Id.* In 1966, the County entered into a

joint use agreement with the Boeing Company, allowing Boeing aircraft operations to start in 1969; Boeing currently operates various iterations of the Boeing 747, 767, 777, and 787 at Paine Field. *Id.* From December 1, 1987, to December 1, 1988, San Juan Airlines operated scheduled commercial air service with non-stop flights between Everett and Portland, and Everett and Vancouver, BC. CP 40. In 2014, there were 113,460 aircraft operations at Paine Field. *Id.* This was down from a high of 213,291 aircraft operations in 2000. *City of Mukilteo v. U.S. Dept. of Transp.*, 815 F.3d 632, 636 n.2 (9th Cir. 2016) (“*Mukilteo*”).

The County has a legal obligation to make Paine Field available to commercial air service. Paine Field has received over \$100,000,000 in grants from the federal government to pave and light its runways and taxiways as part of the national airport system. CP 38. The County agrees to Grant Assurances, which commit the County to certain requirements, every time it accepts a Federal Aviation Administration (FAA) grant. Grant Assurance 22(a) obligates the County to make Paine Field “available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.” *Id.* Breach of the Grant Assurances could result

in an FAA order terminating future grant eligibility, suspending payment of current grants, and potential legal action for repayment of past grants.

B. Commercial Air Service at Paine Field

In 2008, Allegiant Airlines and Horizon Air expressed interest in operating commercial air service at Paine Field. CP 40. Amendment of the operating specifications of the airlines and of Paine Field's FAA-issued operating certificate were needed, which triggered federal environmental review under the National Environmental Policy Act (NEPA). *Id.* Over 900 people participated in the process, for which there were three (3) public hearings. *Id.* The FAA issued a Final Environmental Assessment with a Finding of No Significant Impact and a Record of Decision (FONSI/ROD) in 2012. CP 40. The review considered the provision of commercial air service operations at Paine Field. It reviewed the need for terminal construction to accommodate passengers and baggage facilities, parking needs, and the increase in daily airplane operations, including related noise and surface transportation impacts, as a result of commercial air service, among other things. CP 241-257. The City and others challenged the FONSI/ROD claiming the FAA unreasonably restricted the scope of review, failed to include connected actions, and predetermined the outcome. *Mukilteo*, 815 F.3d at 635. In the meantime, the County's negotiations with Allegiant and

Horizon failed by the end of 2013. The County was approached by Propeller in 2014 to discuss its provision of commercial air service at Paine Field from a two-gate passenger terminal to be financed, constructed, and operated by Propeller. CP 235.

On March 4, 2016, the Ninth Circuit Court of Appeals rejected all arguments and affirmed the 2012 FONSI/ROD for commercial airline service at Paine Field, including, specifically, Propeller's two-gate passenger terminal commercial service proposal, which the court found would neither exceed nor expand the level of use contemplated by Allegiant and Horizon and evaluated in the 2012 FONSI/ROD upheld by that court. *See Mukilteo*, 815 F.3d at 638.¹

C. The Option

The County and Propeller entered into the Option at issue here on March 11, 2015. CP 43. The Option grants Propeller "an exclusive right and option to negotiate and enter into a lease of the Property, in substantially the form attached hereto as Exhibit B...." CP 43, § 1. The Option provides that a SEPA process must be completed prior to exercise of the Option and execution of a lease and reserves to the County full SEPA authority. CP 44-45, § 7 ("[e]xercise of the Option and execution of the Lease are subject to compliance with RCW 43.21C..."). Propeller

¹ The Ninth Circuit's decision is attached hereto as Appendix A.

has no authority to impact the land or the environment under the terms of the Option. Propeller may only access the property to make engineering studies and determine the suitability of the property for Propeller's proposed use. CP 44, § 4.1.

The Option allows the County to conduct a full environmental review of the proposed use of County property before making any commitment to lease the property. The County recently completed this SEPA review. The County issued an MDNS on February 26, 2017, adopting and incorporating by reference the NEPA Final Environmental Assessment upheld by the Ninth Circuit in *Mukilteo*.² The County expanded its review of the proposal's impact on traffic and noise beyond those flight operations and related enplanements evaluated in the NEPA Final Environmental Assessment to address concerns raised by the City. Appendix B at 2. The County's SEPA process reviewed the proposed project in its entirety. Appendix B at 1. Neither the City of Mukilteo nor Save Our Communities challenged the MDNS, which is now final after an appeal by another entity was resolved on April 17, 2017.³ Negotiation of lease terms between the County and Propeller presently is ongoing.

² The County asks that the Court take judicial notice under ER 201 of the County's February 26, 2017, Mitigated Determination of Non-Significance, Local File Number 16-109244 LDA, attached hereto as Appendix B.

³ The County asks that the Court take judicial notice under ER 201 of the Stipulation and Order Modifying Permit and Dismissing Appeal, In the Matter of Appeal of the Paine

D. The Decision

In an unpublished decision dated January 23, 2017, Division I of the Court of Appeals affirmed the trial court's grant of summary judgment to the County and Propeller. The court concluded that execution of the Option: (1) was not a project action under WAC 197-11-704; (2) was categorically exempt under WAC 197-11-800(5)(c) and not excepted from that exemption by WAC 197-11-305(1)(b)(i); (3) created no undue momentum or "snowball" effect; (4) did not limit reasonable alternatives contrary to WAC 197-11-070; and (5) did not violate section 15.04.040 of the Snohomish County Code. The City filed a Motion for Reconsideration which the court denied on February 27, 2017.

The City's Petition to this Court followed.

IV. ARGUMENT WHY REVIEW SHOULD NOT BE ACCEPTED

A. The City Does Not Ask this Court to Review the Court of Appeals' Determination that Execution of the Option is Categorically Exempt under WAC 197-11-800(5)(c)

The Court should reject this Petition because the City does not seek review of a controlling issue decided in favor of the County and Propeller. Unmentioned in the City's Petition is the Court of Appeals' conclusion that execution of the Option is categorically exempt under WAC 197-11-800(5)(c). The City does not challenge this aspect of the

Field Passenger Terminal Project, Case Nos. MDNS 16-109244 and 16-109244 LDA. A copy of the Stipulation and Order is attached hereto as Appendix C.

Decision and does not identify resolution of the question of categorical exemption as an issue for this Court. Any review this Court could provide of the two issues identified by the City would be incomplete, would not provide the relief the City seeks, and would function effectively as an advisory opinion, which is highly disfavored.

The City largely focuses its attention on whether execution of the Option is a “project action” requiring environmental review under WAC 197-11-704. However, even if execution of the Option falls within the definition of “project action,” it is nonetheless categorically exempt from SEPA requirements under WAC 197-11-800. *See Dioxin/Organochlorine Center v. Pollution Control Hearings Bd.*, 131 Wn.2d 345, 348, 932 P.2d 158 (1997) (holding “actions classified as categorically exempt are immune from SEPA review”). The Court of Appeals concluded that execution of the Option is categorically exempt under WAC 197-11-800(5)(c), a conclusion that the City does not challenge or even mention in its Petition.⁴ Decision at 15-18. Therefore, even if this Court was to conclude the Option does constitute a “project action,” the Option is categorically exempt from SEPA requirements under that unchallenged portion of the Court of Appeals Decision.

⁴ Also unchallenged is the conclusion that the exception in WAC 197-11-305(1)(b)(i) to the exemption is inapplicable in this case. Decision at 17-18.

RAP 13.7(b) provides that the scope of review is “only the questions raised in ... the petition for review and the answer, unless the Supreme Court orders otherwise upon the granting of the ... petition.” The City did not raise the issue of categorical exemption to this Court. It would not be appropriate for this Court to grant review of an issue that the City specifically excluded from its Petition. This is not the circumstance presented in some cases where this Court invokes its “inherent authority to consider issues not raised by the parties if necessary to reach a proper decision.” *See, e.g., Quinault Indian Nation v. Imperium Terminal Services, LLC*, 187 Wn.2d 460, 477, 387 P.3d 670 (2017). Here, the issue was raised and argued and the Court of Appeals concluded that execution of the Option is categorically exempt. Decision at 16-17.

Presentation for review of limited issues that would not fully resolve a case effectively renders any opinion this Court would enter merely advisory, which is highly disfavored. *See To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001). Any determination by this Court would not be final and conclusive because the question of categorical exemption is governed by the Decision. Resolution of the limited issues presented by the City could not provide the relief sought by the City. The Court should reject review.

B. This Challenge is Moot

The Court should not accept review because this matter is moot. The general rule is that where only moot questions or abstract propositions are presented, an appeal should be dismissed. *Pedersen v. Maleng*, 101 Wn.2d 288, 289-90, 677 P.2d 767 (1984) (citation omitted). As previously described in Section III of this brief, the commercial air service objected to by the City has been reviewed twice – once under NEPA and once under SEPA. Both reviews are final and all appeals have been exhausted. The Court can provide the City no relief, and the case is moot.

The exception to the general rule on mootness – that matters of continuing and substantial public interest are involved – is not present here. *See Pedersen*, 101 Wn.2d at 289-90 (citation omitted). The question of whether execution of an option to lease Paine Field for commercial air service was subject to SEPA review is not likely to recur as, assuming Propeller’s proposal moves forward, commercial air service will already be established at Paine Field. Similarly, there is no need for an “authoritative determination for the future guidance of public officers.” *Id.* at 290 (citation omitted). The City’s failure to appeal the February 26, 2017, MDNS must be interpreted as the City’s acquiescence with or indifference to the SEPA review conducted by the County, as specifically

contemplated in the Option. There simply is no “continuing question of great public importance” here. *Id.*

The City’s challenge is moot and this Court should decline review.

C. The Determination that Execution of the Option is Not a “Project Action” is Consistent with Case Law and Does Not Create an Issue of Substantial Public Interest

The Court should not grant review of the City’s Petition due to the City’s failure to appeal a controlling issue and because the case is moot. But even if the Court can move past these fatal flaws in the City’s Petition, the substance of the Petition does not warrant review.

The Court of Appeals correctly concluded that execution of the Option is not a “project action” under WAC 197-11-704. The Court of Appeals did not misapprehend the law on option contracts nor did it rule in conflict with precedent. Execution of the Option does not coerce a specific final outcome or create a “snowball effect.” There is no issue of substantial public interest for this Court’s review.

1. The Court of Appeals did not Misapprehend Option Contracts

The Decision does not conflict with case law concerning option contracts. In an option contract, the optionor “parts only with the right to sell the property to any other person during the time limited....” *Pardee v. Jolly*, 163 Wn.2d 558, 573, 182 P.3d 967 (2008) (citation and internal quote omitted). The optionee acquires only the right to purchase the

property in the future, upon the terms and conditions set forth in the option. *Id.* While an option contract contemplates a potential future action, the option contract is not that potential future action. In assessing whether execution of the Option constituted an agency decision to lease publicly-owned land, it was completely appropriate for the Court of Appeals to consider the fact that “[a]n option conveys no legal or equitable interest in the real property....” Decision at 10 (citation omitted). The Decision properly recognized “the distinctive legal natures of the option to lease and the lease itself.” Decision at 10. The Decision aligned its analysis with legal standards, noting that an option contract “is merely a contractual right to be exercised in accordance with its terms.” Decision at 10 (citing *Pardee*, 163 Wn.2d at 568).⁵

Unpersuasive is the City’s insistence that the County, by execution of the Option, effectively executed a lease. It did not. Exercise of the Option is contingent on compliance with SEPA. CP 44-45, § 7. Failure to comply with the terms and conditions of the Option will result in a future

⁵ The City’s citation to *Mukilteo Retirement Apartments, L.L.C. v. Mukilteo Investors L.P.*, 176 Wn.App. 244, 310 P.3d 814 (2013), is unavailing. First, the portion of that case cited by the City is unpublished, which the City fails to indicate consistent with GR 14.1. Second, the cited proposition is unremarkable – that an option contract is a binding agreement – and is consistent with the Court of Appeals’ determination that the Option is a contractual right to be exercised in accordance with its terms. Decision at 10.

agreement never coming to fruition. The Option simply is not a lease. This fact does not change with repetition of the contrary proposition.

Similarly unpersuasive is the City's insistence that the County retained no ability to negotiate the terms of a lease. While a draft lease is attached to the Option, exercise of the Option is for execution of a lease "substantially in the form" of the draft lease. CP 43, § 1. This language clearly contemplates modification of the lease. And the draft lease makes clear that project plans, including all relevant conditions, as well as operating procedures, will be created or refined during the option period and will modify any future lease agreement. CP 92; 141; 142 (noting that the project specifications and operating procedures will be created or refined during the option period). The decision to lease is left for another day, after SEPA review and negotiation of full lease terms and conditions consistent with that review.

The Court of Appeals did not misapprehend the law on option contracts or the terms of the Option at issue here.

2. Consistent with Analogous Precedent, the Court of Appeals Properly Concluded Execution of the Option is not a Project Action

The Court of Appeals properly concluded that execution of the Option is not a "project action" under WAC 197-11-704(2)(a)(ii). Decision at 4-13. Nevertheless, the City argues that the Court of Appeals

erred, relying on *Magnolia Neighborhood Planning Council v. City of Seattle*, 155 Wn.App. 305, 230 P.3d 190, review denied, 170 Wn.2d 1003 (2010). *Magnolia* is distinguishable, and the Court of Appeals more appropriately analogized the Option to the memorandum of understanding (MOU) at issue in *International Longshore and Warehouse Union Local 19 v. City of Seattle*, 176 Wn.App. 512, 309 P.3d 654 (2013).

Because the Option is contingent on environmental review, it is similar to the MOU in *International Longshore*. The MOU conditioned possible local government expenditures of public funds for an arena on the completion of SEPA review and determinations by local government “whether it is appropriate to proceed with or without additional or revised conditions based on the SEPA review....” *Id.* at 517-518.

Similarly here, the Option is conditioned on performance of SEPA review. Section 7 of the Option provides: “Exercise of the Option and execution of the Lease are subject to compliance with RCW 43.21C.... Propeller and the County agree that a SEPA process must be completed prior to exercise of the Option and execution of the Lease.” CP 44-45. The County retains full authority to change course or alter the plan with respect to Paine Field if the results of SEPA review warrant such a decision. See RCW 43.21C.060 (providing that any governmental action may be conditioned or denied under SEPA). The draft lease specifies that

it will include the project plans as developed during the option period, as informed by the required SEPA process. CP 92; 141. The County retains discretion to approve, condition, or deny any land use permits. CP 45, § 9 (“...construction and grading permits must be obtained from the County in accordance with applicable law”). The County also has the ongoing authority, after SEPA review, to require compliance with all laws, ordinances, codes, rules, and regulations applicable to the project, which will be an express lease requirement, if executed. CP 128-29.

In *Magnolia*, appropriately distinguished by the Court of Appeals, Seattle sought to acquire federal real property and, as part of the required federal process, approved a plan for residential development of the property that, if accepted by the federal government, would “bind the City’s use of the property upon federal approval.” *Magnolia*, 155 Wn.App. at 308-309. The court held that Seattle’s residential development plan constituted a project action under WAC 197-11-704(2)(a)(ii) because Seattle was bound to it upon occurrence of an action Seattle had no control over – adoption of the plan by the federal government as a condition of real property transfer. *Id.* at 317.

That is not the case here. The execution of the Option was not a decision to lease but a decision that preceded “the possibility that a lease may follow.” Decision at 9. Exercise of the Option is conditioned on the

County's performance of SEPA review, which places the County in a different position than Seattle in *Magnolia*: the County retains full control over environmental review and future decisions on conditions as a result of that environmental review, including the determination whether to lease Paine Field. CP 44-45; *see also* RCW 43.21C.060.

Magnolia is further distinguishable because the securing of options is specifically contemplated under WAC 197-11-070(4) as an appropriate preliminary step, so long as doing so is consistent with WAC 197-11-070(1) regarding preservation of reasonable alternatives, which occurred here and which the County addresses in Section IV.C.3, below.

The Decision was consistent with WAC 197-11-704(2)(a)(ii) and *International Longshore* and appropriately distinguished *Magnolia*. Execution of the Option is not a project action. In any event, the Court of Appeals held that execution of the Option is categorically exempt and the City does not challenge that. This Court should reject review.

3. *The Decision Does Not Conflict with King County v. Washington State Boundary Review Board for King County or Columbia Riverkeeper v. Port of Vancouver*

The City contends that the Court of Appeals erred in holding that execution of the Option did not create the "snowball effect" warned of in *King County v. Washington State Boundary Review Board for King County*, 122 Wn.2d 648, 860 P.2d 1024 (1993). The City is mistaken.

King County is inapposite. There, the question was whether SEPA review of an annexation, a “project action” under WAC 197-11-704(2)(a)(ii), should have resulted in a DNS or an EIS and the appropriate analysis to apply “to impacts arising from possible future development in assessing the need for an EIS.” *King County*, 122 Wn.2d at 661-62. The Court concluded that review of the environmental effects of future development of the annexed properties was warranted. *Id.* at 663. The source of the Court’s concern for the “snowball effect” articulated in *King County* was a “project action” – annexation – that during SEPA review did not consider future development. The Court was concerned with the scope of the required SEPA review, not whether SEPA review was required in the first instance. That is distinguishable from the circumstance here where execution of the Option is not a “project action” and, in any event, execution of the Option is categorically exempt under WAC 197-11-800(5)(c). There is simply no snowball, as the Court of Appeals accurately observed. Decision at 20. Not performing SEPA review for a categorically exempt activity cannot, by definition, constitute improper delay of SEPA review.

The City also contends that the Decision conflicts with this Court’s recent opinion in *Columbia Riverkeeper v. Port of Vancouver*, ___ Wn.2d ___, No. 92335-3 (March 16, 2017). It does not. There, the Port executed

a lease agreement for the construction of a crude oil transportation facility prior to SEPA review. Addressing only the question of whether the Port improperly limited its reasonable alternatives contrary to WAC 197-11-070, this Court concluded that it did not, because: (1) the Port's lease was subject to a condition precedent involving review by the Energy Facility Site Evaluation Council, which performs environmental review, and (2) the Port retained authority to approve development, construction, and operations plans. *Riverkeeper* Slip op. at 3. An analogous situation is presented here. Execution of the Option is subject to a condition precedent requiring environmental review, and the County retains full authority to approve development, construction, and operation plans, consistent with SEPA review.

The Decision, consistent with *Riverkeeper*, concluded that execution of the Option did not limit the County's reasonable alternatives.⁶ Decision at 21-24. Under the Option the County retains the ability to "shape the final project in response to environmental review." *See Riverkeeper* Slip op. at 23. And that is precisely what occurred with the SEPA process conducted by the County and unchallenged by the City. The County imposed a number of conditions on the project in response to

⁶ WAC 197-11-786 defines a "reasonable alternative" as "an action that could feasibly attain or approximate a proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation."

environmental review. These include the requirement to coordinate with Everett Transit for public transportation access to Paine Field, providing a minimum of four electric vehicle charging stations within the project parking areas, payment to the City of Mukilteo of \$94,406.25 for mitigation of traffic impacts, compliance with the Fly Friendly/Quiet Departure Program to reduce departure noise, and direction for Propeller to seek air carrier agreement to limit scheduled flights during nighttime hours.⁷ Appendix B at 4. The County's reasonable alternatives were not limited by execution of the SEPA-contingent Option.

The Court of Appeals did not rule contrary to this Court's later opinion in *Riverkeeper* when it concluded that execution of the Option did not limit the County's reasonable alternatives or otherwise create a "snowball effect."

V. CONCLUSION

For the foregoing reasons, Snohomish County respectfully requests this Court deny review.

Respectfully submitted this 28th day of April, 2017.

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⁷ The City did not appeal the MDNS, presumably because the County's mitigation addressed the City's concerns. See Section IV.B, above, concerning mootness.

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Appendix "A"

City of Mukilteo v. U.S. Dept. of Transp.,
815 F.3d 632 (2016)

815 F.3d 632
United States Court of Appeals,
Ninth Circuit.

CITY OF MUKILTEO, Washington, a non-charter code city; City of Edmonds, Washington, a non-charter code city; Save our Communities, a tax exempt organization; Michael Moore, an individual; Victor M. Coupez, an individual, Petitioners,

v.

U.S. DEPARTMENT OF TRANSPORTATION; Anthony Foxx, Secretary of Transportation; Federal Aviation Administration; Michael P. Huerta, Acting Administrator, FAA; David Suomi, Regional Administrator, FAA Northwest Mountain Region **, Respondents.

No. 13-70385.

|
Argued June 18, 2014.

|
Submitted Oct. 9, 2015.

|
Filed March 4, 2016.

Synopsis

Background: Two cities, an environmental conservation group, and two individuals petitioned for review of an order of the Federal Aviation Administration (FAA) which issued finding of no significant impact (FONSI) determining that no environmental impact statement (EIS) was necessary to commence operating commercial passenger airline service at airport.

Holdings: The Court of Appeals, Tallman, Circuit Judge, held that:

[1] FAA's demand-based projections were neither arbitrary nor capricious;

[2] FAA acted well within bounds of National Environmental Policy Act (NEPA) by advocating for commercial service at airport;

[3] FAA did not violate NEPA by giving contractor schedule which included date on which FONSI could issue; and

[4] neither private entity stepping forward to pay for construction of already-approved terminal nor potential change in specific airlines likely to use terminal merited preparation of supplemental environmental assessment (EA).

Petition denied.

West Headnotes (9)

[1] Environmental Law

↪ Duty of government bodies to consider environment in general

National Environmental Policy Act (NEPA) only guarantees a particular procedure, not a particular result, and a person with standing who is injured by a failure to comply with the NEPA procedure may complain of that failure at the time the failure takes place, for the claim can never get riper. National Environmental Policy Act of 1969, § 2 et seq., 42 U.S.C.A. § 4321 et seq.

Cases that cite this headnote

[2] Environmental Law

↪ Assessments and impact statements

When reviewing agency decisions under National Environmental Policy Act (NEPA), the starting point is the administrative record and the court's task is to determine whether the agency made an arbitrary and capricious decision based on that record. National Environmental Policy Act of 1969, § 2 et seq., 42 U.S.C.A. § 4321 et seq.

Cases that cite this headnote

[3] Environmental Law

↪ Aviation

Federal Aviation Administration's (FAA) demand-based projections were neither arbitrary nor capricious in determining that no environmental impact statement (EIS) was

necessary to commence operating commercial passenger airline service at airport and issuing finding of no significant impact (FONSI), even though FAA considered only use initially proposed by two airlines rather than potential for general use of airport for commercial passenger flights, where FAA's projections as to number of air carriers operating at airport were consistent with current terminal construction efforts, and, because hypothetical future airlines would need to seek amendment to specifications in order to operate at airport, changing airport's certificate to allow commercial passenger operations did not open floodgates to general use. National Environmental Policy Act of 1969, § 2 et seq., 42 U.S.C.A. § 4321 et seq.; 49 U.S.C.A. §§ 41713(b)(1), 47524(c)(1); 40 C.F.R. § 1508.9.

1 Cases that cite this headnote

[4] **Federal Courts**
↳ Aviation

Court of Appeals will defer to the Federal Aviation Administration (FAA), especially in areas of agency expertise such as aviation forecasting.

1 Cases that cite this headnote

[5] **Environmental Law**
↳ Aviation

Federal Aviation Administration (FAA) did not act arbitrarily or capriciously when it included no connected actions in its final environmental assessment (EA) determining that no environmental impact statement (EIS) was necessary to commence operating commercial passenger airline service at airport, where petitioners challenging FAA's decision offered only speculation that FAA's actions would lead to more aircraft activity at airport in future than was covered in EA. National Environmental Policy Act of 1969, § 2 et seq., 42 U.S.C.A. § 4321 et seq.; 40 C.F.R. § 1508.25.

Cases that cite this headnote

[6] **Environmental Law**
↳ Aviation

Federal Aviation Administration (FAA) acted well within bounds of National Environmental Policy Act (NEPA) by advocating for commercial service at airport, where enabling legislation that created FAA included express congressional directive that agency should promote and encourage development of commercial aviation throughout United States. National Environmental Policy Act of 1969, § 2 et seq., 42 U.S.C.A. § 4321 et seq.

Cases that cite this headnote

[7] **Environmental Law**
↳ Duty of government bodies to consider environment in general

National Environmental Policy Act (NEPA) does not prohibit agencies from having or expressing a favored outcome, as agencies are required only to conduct the required environmental review objectively and in good faith, rather than as subterfuge to rationalize a decision already made. National Environmental Policy Act of 1969, § 2 et seq., 42 U.S.C.A. § 4321 et seq.

Cases that cite this headnote

[8] **Environmental Law**
↳ Aviation

Federal Aviation Administration (FAA) did not violate National Environmental Policy Act (NEPA) by giving environmental assessment (EA) contractor schedule which included date on which finding of no significant impact (FONSI) could issue with respect to commencement of commercial passenger airline service at airport, as this schedule did not obligate FAA to reach FONSI, but instead schedule was tentative and consistent with regulations that encouraged FAA to identify preferred

alternative and to set time limits during environmental review process, and FAA did "careful and thorough" review of the final EA before issuing its finding. National Environmental Policy Act of 1969, § 2 et seq., 42 U.S.C.A. § 4321 et seq.; 40 C.F.R. §§ 1501.8, 1502.14(c).

1 Cases that cite this headnote

[9] **Environmental Law**
 Aviation

Neither private entity stepping forward to pay for construction of small passenger terminal that Federal Aviation Administration (FAA) had previously approved nor potential change in specific airlines likely to use terminal merited preparation of supplemental environmental assessment (EA) with respect to commencement of commercial passenger airline service at airport, as neither of these changes, in themselves, would necessarily alter environmental impact, and any airline wishing to fly out of airport would need to request access from FAA and amendment to their specifications, potentially triggering another round of environmental assessment subject to scrutiny under National Environmental Policy Act (NEPA), National Environmental Policy Act of 1969, § 2 et seq., 42 U.S.C.A. § 4321 et seq.

Cases that cite this headnote

Attorneys and Law Firms

*634 Barbara E. Lichman (argued), Buchalter Nemer, Irvine, CA, for Petitioners.

Lane N. McFadden (argued), Attorney, Environment & Natural Resources Division; Robert G. Dreher, Acting Assistant Attorney General, United States Department of Justice, Washington, D.C.; Patricia A. Deem, Office of Regional Counsel, NW Mountain Region, Federal Aviation Administration, Seattle, WA, for Respondents.

On Petition for Review of an Order of the U.S. Department of Transportation Federal Aviation Administration.

Before: DIARMUID F. O'SCANNLAIN, MARSHA S. BERZON, and RICHARD C. TALLMAN, Circuit Judges.

OPINION

TALLMAN, Circuit Judge:

Paine Field, located in Snohomish County, Washington, near the city of Everett, was originally constructed in 1936 when it was envisioned to become a major airport serving the communities located north of Seattle. Over the years, it has been used for military purposes (both during and after World War II), and for commercial and general aviation aircraft. Today, the Boeing Company operates its 747 aircraft production factory at Paine Field. There are a host of related commercial businesses which repair and service large airplanes, providing jobs to more than 30,000 people. For that reason, the three existing runways are as long as 9,010 feet.

Paine Field has not, however, become the hub of commercial passenger traffic originally envisioned when it was first built. In 2012, authorization was given to commence service by commercial passenger carriers, starting with permission to build a small two-gate terminal. This case brings to our attention a longstanding public debate over the future of the airfield.

Petitioners challenge the Federal Aviation Administration's (FAA) decision that no Environmental Impact Statement (EIS) is necessary to commence operating commercial passenger service at Paine Field. The FAA made that decision after preparing a draft Environmental Assessment *635 (EA), a less robust form of environmental review. See *Earth Island Inst. v. U.S. Forest Serv.*, 697 F.3d 1010, 1021–22 (9th Cir.2012). Two and a half years and over 4,000 public comments later, the FAA published a final EA in September 2012. It found no significant environmental impacts as a result of the FAA's approval. Petitioners claim that the FAA unreasonably restricted the scope of the EA, failed to include connected actions as required, and predetermined an outcome before conducting its review.

We heard argument on this appeal in June of 2014. Shortly thereafter, the parties requested that we stay this action because, for lack of funding, it appeared

unlikely that development would proceed. Construction of the passenger terminal was indefinitely delayed after Snohomish County, which owns and operates Paine Field, decided it would not fund the three million dollars needed to construct a building that could handle passengers and their baggage. At the time, no one else was willing to step forward with the money, even though Alaska Airlines, through its subsidiary Horizon Air, and Allegiant Airlines had expressed an interest in providing service in and out of Paine Field if adequate facilities were made available.¹

After argument, we stayed the proceeding and requested interim status reports every six months. Based on the Respondents' September 2015 undisputed assurances that construction is now imminent, we reinstated this case and now reach the merits of the petition.

We have jurisdiction over this appeal under 49 U.S.C. § 46110(a). We have reviewed the record compiled by the agency in support of its decision. We hold that the scope of the FAA's analysis was not arbitrary and capricious: we recognize that under the enabling act that created it, the FAA is allowed to express a preference for a certain outcome; and we deny the petition for review and uphold the FAA's decision to permit commercial passenger operations to begin at Paine Field once the terminal is built.

1

Petitioners make several arguments about the scope of the FAA's review, essentially claiming that the FAA wrongly failed to analyze what would happen if more airlines followed the first two proposed airlines into Paine Field. Under the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321–4370h, and its implementing regulations, the FAA was required to analyze all “reasonably foreseeable” environmental impacts of its decision to open Paine Field to commercial passenger traffic. See 40 C.F.R. § 1508.9 (requiring EAs to analyze environmental impacts of the proposed action); *Id.* at § 1508.8(b) (equating “impact” with “effect” and defining “indirect effects” as those that are “reasonably foreseeable”); *Id.* at § 1508.7 (defining “cumulative impacts” as those which result from the addition of impacts from current and past actions to those of “reasonably foreseeable” future actions). Similarly, the Clean Air Act, 42 U.S.C. §§ 7401–7671, and related federal

regulations also require the FAA to analyze “reasonably foreseeable” emissions resulting from its action. See 40 C.F.R. § 93.153(b) (requiring agencies to analyze indirect and direct emissions); *Id.* at § 93.152 (defining “indirect emissions” *636 as those that are, among other things, “reasonably foreseeable”).

[1] [2] The Supreme Court has emphasized that NEPA only “guarantees a particular procedure, not a particular result” and “a person with standing who is injured by a failure to comply with the NEPA procedure may complain of that failure at the time the failure takes place, for the claim can never get ripper.” *Ohio Forestry Ass'n, Inc. v. Sierra Club*, 523 U.S. 726, 737, 118 S.Ct. 1665, 140 L.Ed.2d 921 (1998). Accordingly, when reviewing agency decisions under NEPA, the starting point is the administrative record. *Animal Def. Council v. Hodel*, 840 F.2d 1432, 1436 (9th Cir.1988), *amended*, 867 F.2d 1244 (9th Cir.1989). Our task is to determine whether the agency made an arbitrary and capricious decision based on that record. *Id.*

[3] Here, the FAA based its flight operation projections on demand and determined that the only additional, and reasonably foreseeable, flights were those initially proposed by two airlines, amounting to approximately twenty-two operations² per day. Those airlines proposed to employ smaller aircraft with a capacity of up to 150 passengers. In contrast, the projections touted by petitioners were based solely on the airport's maximum capacity and do not take into account actual historical demand. While it is true that we do not have the most current projections before us, that data is not necessary to determine whether the FAA based its 2012 decision on reasonable grounds. Further, the ongoing validity of that 2012 decision is unchallenged. The FAA claims that the 2012 finding of no significant impact (FONSI) is still valid because Propeller Air, Inc., the new outside investor, now plans to build “a terminal facility consistent with that evaluated in the Final EA,” and that the number of operations will be similar. Petitioners submitted nothing to challenge that statement.

The final EA evaluated four proposed FAA actions.³ The FAA must still take at least one of those original four actions—amending Paine Field's Part 139 Certificate—to allow commercial passenger operations. Given that the major action⁴ analyzed in the original EA is now

likely to occur, and the FAA maintains that it will occur “consistent” with the original plan, we evaluate the 2012 FONSI based on the existing administrative record.

[4] Petitioners do not contest the FAA’s claim that the projections regarding *637 the number of air carrier operations in the FONSI are still consistent with the current terminal construction efforts, despite being given the opportunity to do so. Given that we are to defer to the FAA “especially in areas of agency expertise such as aviation forecasting,” the FAA’s demand-based projections of approximately 8,340 operations per year in 2018, were not arbitrary and capricious.⁵ *Natl Parks & Conservation Ass’n v. U.S. Dep’t of Transp.*, 222 F.3d 677, 682 (9th Cir.2000). We decline to apply the less deferential standard advanced by Petitioners because this is a factual determination dependent on agency expertise rather than a legal determination. *See San Luis Obispo Mothers for Peace v. Nuclear Regulatory Comm’n*, 449 F.3d 1016, 1028 (9th Cir.2006).

We also reject Petitioners’ argument that amending Paine Field’s Part 139 Certificate to allow commercial passenger operations means that Paine Field “must allow access by all aircraft so requesting” in the future. Petitioners have provided no support for this come one, come all theory and instead rely on statutory provisions that limit the ability to take away airport access once access has been granted to a particular airline. *See* 49 U.S.C. § 47524(c) (1) (providing limits on new airport access restrictions); 49 U.S.C. § 41713(b)(1) (preempting state restrictions on access). The statutes cited by the Petitioners only go into effect after access has been authorized—meaning that the airport is open to commercial operations generally (via the airport’s Part 139 Certificate) and the airline specifically has authority to conduct operations at that airport (via the airline’s Part 119 Specifications). Thus, our decision today does not open the floodgates because any future airline must still get an amendment to its Part 119 Specifications in order to operate out of Paine Field. The FAA, therefore, reasonably based the EA on the number of operations Horizon and Allegiant intended to carry out, not on the speculative number of operations that could someday be carried out at Paine Field if other airlines also seek an amendment to their Part 119 Specifications.

Given the existing administrative record, we hold that the FAA’s demand-based projections were neither arbitrary nor capricious.

II

[5] Petitioners next argue that the FAA violated 40 C.F.R. § 1508.25, which requires agencies to consider “connected actions” in NEPA documents. Connected actions are those that are interdependent or automatically triggered by the proposed action. *See* 40 C.F.R. § 1508.25. The FAA determined that there were no connected actions for this project, and Petitioners have failed to provide anything more than mere speculation that the FAA’s actions now will lead to more aircraft activity at Paine Field in the future than covered in the EA. Thus, it was not arbitrary for the FAA to have included no connected actions in the final EA.

III

Petitioners also argue that the FAA decided what the result would be before performing the EA for two reasons: (1) the FAA made statements favoring passenger service at Paine Field; and (2) the FAA gave a schedule to the consulting firm that prepared the EA which included the date on which a FONSI could issue. Petitioners *638 argue this schedule and the FAA’s statements show that the FAA decided to issue a FONSI before even starting the environmental review process. We reject both of these bias-based arguments.

[6] [7] Petitioners’ first argument, that the FAA favored commercial service, is easily rejected because NEPA does not prohibit agencies from having or expressing a favored outcome. *Metcalf v. Daley*, 214 F.3d 1135, 1142 (9th Cir.2000). Agencies are required only to conduct the required environmental review “objectively and in good faith,” rather than as “subterfuge to rationalize a decision already made.” *Id.* at 1142. Indeed, the enabling legislation that created the FAA includes an express congressional directive that the agency shall promote and encourage the development of commercial aviation throughout the United States. *See* Federal Aviation Act of 1958, Pub. L. No. 85–726, §§ 102–103, 72 Stat. 731, 740 (later recodified and repealed) (explaining that the FAA is charged with “[t]he promotion, encouragement, and

development of civil aeronautics”). The FAA acted well within the bounds of NEPA by advocating for commercial service at Paine Field.

[8] Petitioners' second argument, based on the FAA giving the EA contractor a schedule which included the date a FONSI could issue, is also without merit. As the FAA points out, approving a schedule which included the date a FONSI *could* issue did not obligate the FAA to reach a Finding of No Significant Impact. The FAA simply identified its preferred outcome and laid out an optimistic timetable for achieving that outcome. This is consistent with regulations that actually encourage the FAA to identify a preferred alternative and encourage the FAA to set time limits during the environmental review process. *See* 40 C.F.R. § 1501.8 (encouraging time limits); 40 C.F.R. § 1502.14(c) (encouraging listing a preferred alternative).

As the FONSI at issue in this case states, the FAA did a “careful and thorough” review of the final EA before issuing its finding. Because the FAA reserved the “absolute right” to determine whether a FONSI would issue or not, creating this tentative schedule did not violate NEPA. *See Friends of Southeast's Future v. Morrison*, 153 F.3d 1059, 1063–65 (9th Cir.1998) (holding that tentative timber cutting schedule released before EIS did not violate NEPA).

In short, the FAA's Finding of No Significant Impact was not predetermined by the creation of an optimistic schedule for completing the environmental review or statements favoring commercial service at Paine Field. The FAA performed its NEPA obligations in good faith and did not prematurely commit resources to opening the terminal. The Petitioners' bias arguments fail.

IV

Footnotes

- * Anthony Foxx is substituted for Ray LaHood as Secretary of Transportation. *See* Fed. R. App. P. 43(c)(2).
- ** David Suomi is substituted for Kathryn Vernon as Acting Regional Administrator, FAA Northwest Mountain Region. *See* Fed. R.App. P. 43(c)(2).
- 1 It appears Horizon Air and Allegiant Airlines may no longer be interested in providing service at Paine Field. The government has represented, however, that there is no reason to believe that the new commercial service proposed at Paine Field would involve a different number of flight operations than provided for in the original proposal.

[9] We emphasize that we base our decision today on the current administrative record. So far as that record shows, the only changes in the status quo since the FAA issued its 2012 decision is that a private entity, Propeller Air, Inc., has now stepped forward to pay for building the small passenger terminal which the FAA has previously approved, and that the airlines likely to use the terminal may change. These changes are not enough to warrant a supplemental EA, as neither of these changes, in themselves, will necessarily alter the environmental impact. *See Great Old Broads for Wilderness v. Kimbell*, 709 F.3d 836, 854 (9th Cir.2013) (holding that supplementation is not required when the final project is a “minor variation” of one of the alternatives discussed in *639 (the NEPA document); *see also* FAA Order 1050.1E (Change One) § 402b(1) (requiring the FAA to supplement an EA only if “significant changes” have been made to the project).

Practical concerns also weigh against requiring the FAA to reevaluate or supplement the EA at this time. As previously discussed, any airline wishing to fly out of Paine Field, besides Horizon or Allegiant, needs to request access from the FAA and an amendment to their Part 119 Specifications, potentially triggering another round of environmental assessment subject to scrutiny under NEPA. We do not prejudice Petitioners by deciding this case on the current record because if they want post-2012 facts reviewed, the Petitioners can simply challenge the FAA's future actions when further expansion is sought. But on this record we cannot say the FAA's decision to permit limited commercial passenger operations to begin at Paine Field without a full environmental impact statement was arbitrary and capricious.

PETITION FOR REVIEW DENIED.

All Citations

815 F.3d 632, 16 Cal. Daily Op. Serv. 2437, 2016 Daily Journal D.A.R. 2229

- 2 An "[a]ir carrier operation" is defined as a single takeoff or landing. See 14 C.F.R. § 139.5. Historical data shows that Paine Field peaked in air carrier operations around the year 2000. That year, Paine saw a total of 213,291 "operations." More recently, operations declined to 117,104 operations per year in 2011. Thus, adding by 2018 approximately 8,340 operations per year from commercial passenger operators will leave the overall airport operations within the level of historic variation.
- 3 The four actions were: (1) amending Paine Field's Part 139 Certificate to allow it to host commercial passenger service; (2) amending the Part 119 Specifications for Horizon to allow flights in and out of Paine; (3) amending the Part 119 Specifications for Allegiant to allow flights in and out of Paine; and (4) determining whether Snohomish County was eligible to receive a federal grant to defray the cost of expanding and updating the existing terminal. Only action (1) is challenged here.
- 4 According to Petitioners, this, and the construction of a new terminal, are the FAA actions that they really seek to challenge. In a letter submitted to us on May 20, 2014, the Petitioners said the "cause of the harm that Petitioners allege and from which they require relief" is the FAA's "plans to turn Paine Field into a commercial airport, and expand its facilities to accommodate commercial service," rather than the change in Horizon's and Allegiant's Part 119 Specifications.
- 5 These demand-based projections were actually quite close to the maximum terminal capacity projections advanced by Petitioners, which predicted 8,760 operations per year by 2018.

End of Document

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Appendix "B"

Mitigated Determination of
Nonsignificance, issued 2/26/17



Snohomish County
Planning and Development Services

Dave Somers
County Executive

Barb Mock, Director
3000 Rockefeller Avenue M/S #604
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(425) 388-3311 FAX (425) 388-3832

MITIGATED DETERMINATION OF NONSIGNIFICANCE

Local File Number: 16-109244 LDA

Project File Name: Paine Field Passenger Terminal

Applicant: Propeller Airports Paine Field

DESCRIPTION OF PROPOSAL:

The proposal would construct a new terminal between the existing terminal building and the control tower. The proposed terminal building would total approximately 29,300 square feet of interior space in compliance with FAA Advisory Circular 150/5360-13 Planning and Design Guidelines for Airport Terminal Facilities. The main components of the building would include the entrance and check-in, Transportation Security Administration (TSA) security screening, passenger waiting, and boarding area.

Existing parking areas described in the leasehold will be reconfigured into new parking facility areas to support the proposed new passenger terminal. This would include four surface lots totaling approximately 600 parking stalls of automobile parking for airline passengers, waiting, rental cars and terminal employees. One parking area would be configured northeast of the proposed terminal on land currently used by the Airport as an aircraft parking apron area and adjacent grass. The foregoing is cumulatively referred to as the "Proposal".

Construction of a passenger terminal building will have the related effect of enabling passenger commercial air service by regional and narrow body aircraft at Paine Field subject to the independent authority of the Federal Aviation Administration (FAA). Accordingly, for purposes of evaluating the environmental impacts of the Proposal under SEPA, the lead agency anticipates the Proposal at an estimated terminal capacity which has the potential to serve between six to eight turns per gate/per day (generating an estimated 12 to 16 flight operations per gate/per day). This equates to a corresponding passenger activity of 2,700 to 3,600 per day (inclusive of arrivals and departures). At such time as the terminal reaches estimated capacity, the Proposal is anticipated to result in 433-510 directional vehicle trips per day (total traffic generation estimated at 866 to 1,020 daily vehicle trips), based on an estimated capacity of six to eight turns per gate/per day (generating an estimated 12 to 16 flight operations per gate/per day).

Location of Proposal: 3300 – 100th Street SW, Everett, Washington; located at the Paine Field Airport

Tax Account Number: 280415-004-001-00

Lead Agency: Snohomish County Department of Planning and Development Services

THRESHOLD DETERMINATION:

The lead agency for this proposal has determined that the proposal, as conditioned below, does not have a probable, significant adverse impact on the environment. An environmental impact statement (EIS) is NOT required under RCW 43.21C.030(2)(c). This decision is based in part upon adoption of that existing Final Environmental Assessment (EA) prepared under the National Environmental Policy Act (NEPA) by the

Federal Aviation Administration (FAA) relating to the FAA's Environmental Assessment for Amendment to the Operations Specifications for Air Carrier Operations, Amendment to a FAR Part 139 Certificate, and Modification of the Terminal Building dated September 2012, as more fully set forth in that Adoption of Existing Environmental Document notice filed concurrently herewith. Impacts to elements of the environment which were deemed not adequately addressed in the existing Paine Field Final NEPA Environmental Assessment adopted herewith were further reviewed by Snohomish County based upon a completed environmental checklist and other information on file with this agency and such information is adopted herein by reference. This information is available for public review upon request.

This Mitigated Determination of Nonsignificance is issued under WAC 197-11-340 (2) and is subject to a 14 day comment period. Written comments may be submitted to the lead agency at the address below. Comments must be received by March 13, 2017.

Adoption of NEPA Environmental Assessment (WAC 197-11-610): In accordance with that adoption notice filed concurrently herewith, the lead agency hereby adopts, and otherwise incorporates by reference, that Final NEPA Environmental Assessment for the Amendment of Operations Specifications for Air Carrier Operations, Amendment of a FAR Part 139 Certificate, and potential Funding for Modification and Modular Expansion of the Terminal at the Snohomish County Airport/Paine Field dated September 2012, together with all referenced tables, illustrations and appendices (hereinafter "Paine Field Final NEPA Environmental Assessment") in support of the foregoing SEPA mitigated determination of non-significance.

For purposes of the SEPA determination made hereunder, the lead agency has expanded the review of the Proposal's impact upon traffic and noise beyond those flight operations and related enplanements evaluated under the Paine Field Final NEPA Environmental Assessment to consider the related effect upon noise and traffic based upon increased utilization of the terminal. For purposes of the above, the lead agency adopts as addendums to this MDNS the following supplemental studies and reports which add analysis and information about the Proposal's impacts upon noise and traffic in the event of the terminal's capacity:

1. Updated Noise Contour Study;
2. Updated Traffic Study

COMPLIANCE WITH DEVELOPMENT REGULATIONS (RCW 43.21C.240): In making the foregoing SEPA threshold determination the lead agency has determined in the course of review of the Proposal that the requirements for environmental analysis, protection and mitigation measures in Snohomish County's development regulations and comprehensive plan adopted under Ch. 36.70A RCW, and in other local, state, or federal laws and rules provides adequate analysis and mitigation for the following specific environmental impacts as provided by RCW 43.21C.240 and WAC 197-11-158. Our agency will not require any additional mitigation measures under SEPA relating to said impacts. Approval of the proposal shall be subject to, and conditioned upon, compliance with the requirements or mitigation measures set forth in the following development regulations:

1. Stormwater/Water Quality (SCC 30.61.122): The Director of PDS hereby determines that compliance with the requirements of Ch. 30.43C, 30.43D, 30.44, 30.62A, 30.62B, 30.62C, 30.63A, 30.63B, 30.63C, 30.65 and 30.67 SCC is adequate analysis and mitigation of the specific probable adverse environmental impacts of the Proposal upon on-site and off-site changes to stormwater volume, release rate, erosion, sedimentation, stream channel stability and water quality where applicable.

2. Critical Areas (SCC 30.62A.030): The Director of PDS hereby determines that compliance with the requirements of Ch. 30.62A SCC is adequate analysis and mitigation of the specific probable adverse environmental impacts of the proposal on wetlands, fish and wildlife habitat conservation areas and their buffers where applicable.

3. **Traffic/Road Impact Mitigation (SCC 30.66B.010(2)):** The Director of PDS hereby determines that compliance with the requirements of Ch. 30.66B SCC, including payment of any road impact mitigation fee as determined thereunder, is adequate analysis and mitigation of the specific probable adverse environmental impacts of the proposal on impacts to the road system (including traffic).

4. **Noise from Air Carrier Operations (Airport Noise and Capacity Act 1990, 49 USC § 47521 et seq., and implementing regulations contained in the Code of Federal Regulations (CFR) Title 14 Part 36 – Noise Standards),** requiring turbojet aircraft with a maximum weight of more than 75,000 pounds to comply with Stage 3 noise levels.

The FAA has established 65 DNL as the threshold above which aircraft noise is considered to be incompatible with residential areas. In addition, the FAA has determined that a significant impact occurs if a proposed action would result in an increase of 1.5 DNL or more on any noise sensitive area within the 65 DNL exposure level. (FAA Order 1050.1E; 14 CFR Part 150 Section 150.21(a)(2)(d); FICON 1992, Pp. 3-5.

MITIGATING CONDITIONS:

In addition to compliance with those applicable development regulations set forth above, this Mitigated Determination of Nonsignificance (MDNS) is issued subject to the following conditions:

1. Best Management Practices during construction to reduce or control erosion, sediment controls and spill prevention will include silt fences, storm drain inlet protection, straw wattles and high visibility plastic fencing as appropriate. Temporary erosion and sedimentation control plans as well as permanent measures such as storm water vaults consistent with the facility's Storm Water Pollution Prevention Plan will be approved by Snohomish County Planning and Development Services. A certified Erosion and Sediment Control Lead (CESCL) will monitor the site for compliance with approved plans.
2. Construction equipment maintenance would be performed in a designated area, using best management practices, and will include spill control measures.
3. The redeveloped site will comply with Snohomish County's 2016 drainage manual.
4. A water quality storm water detention vault will be installed to detain runoff from disturbed areas to discharge into Japanese Gulch in conjunction with the Snohomish County Drainage Manual. Shutoff valves will be installed to prevent accidental discharges in the event of a spill, and the Snohomish County Airport operates a spill response program.
5. The site will also include an oil/water separator with coalescing plates sized for fueling operations for the aircraft fueling outside the building. Impervious ground surfaces will drain through the proposed water quality facility and canisters with storm filters pre-approved by the Washington State Department of Ecology will be used to filter contaminants.
6. Aircraft deicing will occur on the existing aircraft deicing pad located at Alpha-1 or at any other approved airport area designated by the Airport.
7. Propeller Airports Paine Field will provide electrical power and heating, ventilating, and air conditioning (HVAC) for aircraft at the gates so the aircraft will not need to run the onboard auxiliary power unit (APU).
8. Roofing materials on the proposed terminal building will be non-pollution generating by excluding the use of materials such as zinc or copper.

9. The project shall comply with applicable laws for storm water control and management, including Snohomish County Code Chapter 30.63A.
10. Propeller Airports Paine Field shall require all air carriers that utilize the proposed terminal to operate aircraft that are, at a minimum, categorized by the Federal Aviation Administration (FAA) as "Stage 3" compliant or greater unless a waiver has been issued to the carrier by the FAA. The FAA regulates the maximum noise level that an individual civil aircraft can emit through requiring aircraft to meet certain noise certification standards. These standards designate changes in maximum noise level requirements by "stage" designation. The U.S. noise standards are defined in the Code of Federal Regulations (CFR) Title 14 Part 36 – *Noise Standards: Aircraft Type and Airworthiness Certification* (14 CFR Part 36). The FAA publishes certificated noise levels in the advisory circular *Noise Levels for U.S. Certificated and Foreign Aircraft*. This advisory circular provides noise level data for aircraft certificated under 14 CFR Part 36 and categorizes aircraft into their appropriate "stages". Any aircraft that is certified for airworthiness in the U.S. needs to also comply with noise standard requirements to receive a noise certification.
11. Propeller Airports Paine Field will cooperate with Paine Field Operations and the air carriers in support of the Fly Friendly / Quiet Departure Program for Air Carrier operations with passengers to reduce departure noise. Air carriers and the aircraft crew when not a safety risk will adhere to the noise abatement procedures approved by their airplane manufacturer and the air carrier's operating certificate.
12. Propeller Airports Paine Field will coordinate with Everett Transit, the public transit agency with direct access to the proposed terminal building, to assist the implementation and availability of public transportation.
13. Propeller Airports Paine Field will designate a minimum of 15% of the planned parking spaces as compact car parking, to reduce the total amount of impervious surfaces.
14. Propeller Airports Paine Field will support and encourage the use of electric powered aircraft support equipment on the aircraft ramp.
15. Propeller Airports Paine Field will provide a minimum of four electric vehicle charging stations within the project's parking areas.
16. Propeller Airports Paine Field shall pay an impact fee to Snohomish County for traffic impacts to Transportation Service Area D in the amount of \$206,161.40, in accordance with the provisions of SCC 30.66B.340.
17. Propeller Airports Paine Field shall make a payment to Snohomish County for the Washington State Department of Transportation (WSDOT) in the amount of \$32,695.20 for mitigation of traffic impacts to State highways.
18. Propeller Airports Paine Field shall make a payment to the City of Mukilteo in the amount of \$94,406.25 for mitigation of traffic impacts to city roads.
19. All air carriers utilizing the terminal shall comply with aircraft operational procedures as may be established by the Airport (subject to adoption by the FAA), such as preferential runway use, noise abatement approach and departure procedures and profiles, and flight tracks. Propeller Airports shall inform all carriers to comply with such other noise abatement as may be established by the Airport, from time to time, such as restrictions on taxiing and engine run-ups, which do not limit the total number of aircraft operations, or limit the hours of aircraft operations, at the airport.
20. Propeller Airports shall seek voluntary agreement with all air carriers utilizing the terminal to limit scheduled flights (inclusive of arrivals and departures), during nighttime hours (10:00 p.m. to 6:00

a.m. Pacific Standard Time), to no more than four (4) in any Twenty-Four-hour period, This limitation shall not apply to unscheduled flight operations which occur during nighttime hours due to weather delays, mechanical problems or re-routing of aircraft. In the event Propeller Airports is unable to secure such voluntary agreement with all air carriers, the County shall retain the right as proprietor of the Airport to submit such noise and access restrictions as the County deems appropriate to the United States secretary of transportation for approval as provided in 49 USC Sec. 47524

This Mitigated Determination of Nonsignificance is issued under WAC 197-11-340 (2) and is subject to a 14 day comment period. Written comments may be submitted to the lead agency at the address below. Comments must be received by March 13, 2017.

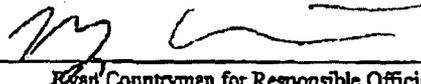
APPEALS:

This MDNS may be appealed pursuant to the requirements of Section 30.61.300 SCC and Chapter 2.02 SCC. The fourteen (14) day appeal period commences on the date of publication of notice. Any appeal must be addressed to the County Hearing Examiner, accompanied by a filing fee of \$500.00, and be filed in writing at the Customer Support Center on the 2nd Floor, County Administration Building East, Everett, WA. The appeal must be received by March 13, 2017. The appeal must contain the items set forth in 30.71.050(5) SCC as follows:

- (a) Facts demonstrating that the person is aggrieved by the decision;
- (b) A concise statement identifying each alleged inadequacy in the threshold determination;
- (c) The specific relief requested; and
- (d) Any other information reasonably necessary to make a decision on appeal.

Please note that failure to file a timely and complete appeal including all the above items shall constitute waiver of all rights to an administrative appeal under county code. In addition to the above requirements, SCC 30.61.305(1) also requires that any person filing an appeal of a threshold determination made pursuant to this chapter shall file with the hearing examiner, within seven days of filing the appeal, a sworn affidavit or declaration demonstrating facts and evidence, that, if proven, would demonstrate that the issuance of the threshold determination was clearly erroneous.

Contact Person: Tom Barnett, Project Manager
Responsible Official: Barb Mock, Director
Planning and Development Services
Address: County Administration Building East, 2nd Floor
3000 Rockefeller Avenue, M/S 604
Everett, Washington 98201

Signature: 
Ryan Countryman for Responsible Official

Date: 2/17/17

Date Issued: February 26, 2017 - SSullivan/ARC

VOLUNTARY OFFERS:

This threshold determination was reached on the basis of mitigation offered voluntarily by the developer. The voluntary offers submitted were evaluated as part of this threshold determination, and are considered necessary to reduce the overall level of impact below that which is probable, significant and adverse.

DISCLAIMER:

The determination that an environmental impact statement does not have to be filed does not mean there will be no adverse environmental impacts. Snohomish County codes governing noise control, land use performance standards, construction and improvement of county roads, off site road improvement obligations, drainage control, fire protection and building practices will provide substantial mitigation of the aforementioned impacts.

The issuance of this Mitigated Determination of Nonsignificance should not be interpreted as acceptance or approval of this proposal as presented. Snohomish County reserves the right to deny or approve said proposal subject to conditions if it is determined to be in the best interest of the county and/or necessary for the general health, safety and welfare of the public to do so.

DISTRIBUTION LIST:

Snohomish County	Department of Public Works, Environmental Services Fire District 1 Snohomish Health District Snohomish County Airport
Washington State	Department of Ecology Department of Transportation Department of Fish and Wildlife
Utilities	Public Utility District #1 of Snohomish County Mukilteo Water and Wastewater District
Other Agencies	Mukilteo School District No. 6 Federal Aviation Administration
Adjacent Property Owners	Notice of the issuance of this Mitigated Determination of Nonsignificance has been mailed to property owners of record within 500 feet of the external boundaries of this project.
Parties-of-Record	Bill Dolan Snohomish County Airport 3220 – 100 th Street SW, Suite A Everett, WA 98204 William Lider Lider Engineering, PLLC 2526 – 205 th Place SW Lynnwood, WA 98036 Shelly Morgan Mukilteo School District 9401 Sharon Drive Mukilteo, WA 98204

Peter Eglick
Eglick & Whited PLLC
1000 Second Avenue, Suite 3130
Seattle, WA 98104

Chanda Emery
Community Development Department
Development & Business Services Center
4114 - 198th St. SW
Lynnwood, WA 98036

Ron Fronheiser
4615 Harbour Heights Drive
Mukilteo, WA 98275

Sabina Popa,
Everett Transit
3201 Smith Ave, Suite 215
Everett, WA 98201

Patricia Love
City of Mukilteo Community Development
11930 Cyrus Way
Mukilteo, WA 98275

Mike Moore
Save Our Communities
P.O. Box 482
Mukilteo, WA 98275

Joe A. Kunzler
AvgeekJoe Productions
901 Metcalf Street, PMB 21
Sedro-Woolley, WA 98284

Noah Haglund
Everett Herald
P.O. Box 930
Everett, WA 98206

ATTACHMENTS

1. Environmental Checklist
2. Vicinity Map
3. Ownership & Zoning Map
4. Site Plan

16-109244 LD



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Land Disturbing Activity (LDA) and Forest Practices Activity (FPA)
Application & Submittal Requirements
Vested on or after January 22, 2016

RECEIVED
JUN 06 2016
PLANNING & DEVELOPMENT
SERVICES

General Project Information

Project Name: Paine Field Passenger Terminal
Site Address: 3220 100th Street SW, Everett, WA 98204
Project File Number (PFN): _____
Property Tax Account Number(s): 28041500400100
Section, 15, Township 28N, Range 4E
Number of Lots: 1 Total Site Acreage: 11.15 ac
Number of Tracts: N/A

In addition to the LDA permit, are you applying for any of the following?

- Class IV-General forest practices permit (converting forested land to a nonforestry use) (SCC 30.43F.100)
- Lift of the six-year development moratorium (SCC 30.43F.230)
- Waiver of the six year development moratorium (SCC 30.43F.240)
- Conversion Option Harvest Plan review (SCC 30.43F.110)

APPLICANT: Propeller Airports Paine Field
Mailing Address: 9724 32nd Drive West City: Everett
Zip: 98204 Phone: 425-216-3010 E-mail: _____

CONTACT PERSON: Mark Reichin
Mailing Address 9724 32nd Drive West City: Everett
Zip: 98204 Phone: 425-216-3010 E-mail: Mark@propellerairports.com

PROPERTY/LAND OWNER: Snohomish County Airport
Mailing Address: 3230 100th Street SW Suite A City: Everett
Zip: 98204 Phone: _____ E-mail: _____

CONTRACTOR: Unknown
Mailing Address: _____ City: _____
Zip: _____ Phone: _____ E-mail: _____



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WA State Contractor's License No. _____

TIMBER OWNER: N/A

Mailing Address: _____ City: _____

Zip _____ Phone: _____ E-mail: _____

Related File Number(s): _____

Detailed Project Description:

Propeller Airports Paine Field, LLC proposes to construct new passenger facilities at Snohomish County Airport-Paine Field consisting of a terminal building and associated parking on a developed site currently occupied by existing aviation support functions. SCA-PA currently has no schedule commercial air service, and the existing terminal building cannot accommodate commercial airline service. The proposal would construct a new terminal between the existing terminal building and the control tower. The building would comply with FAA guidelines and local health and safety codes. The proposed terminal building would total approx 29,300 sf of interior space. The main components of the building would include the entrance and check-in, TSA security screening, passenger waiting, boarding area, concessions, baggage handling and claim.

Existing parking areas described in the leasehold will be reconfigured into new parking facility areas to support the proposed new passenger terminal. This would include four surface lots totalling approx 574 stalls of automobile parking for airline passengers, waiting, rental cars, and terminal employees. One parking area would be configured northeast of the proposed terminal on land currently used by the airport as an aircraft parking apron.

In signing this application, the landowner(s) or agent hereby grants Snohomish County Planning & Development Services the right to enter the above described location to inspect the work proposed, in progress, or work completed. I hereby affirm and certify, under penalty of perjury, that I am one of the owners or am under contract with the owners, and I believe that the above information and/or statements are true in all respects to the best of my knowledge.

Marc Rich, COO Propeller 6/6/16
 SIGNATURE (Check one) Applicant Agent Kirans Date



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Summary Information

Application is for: Clearing [] Grading [] Forest practices (timber harvest) [] Other [X] Land Disturbing Activities

Is the proposal New Development (SCC 30.91N.044) Yes [] No [X], or

Is the proposal Redevelopment (35% existing hard surface) (SCC 30.91R.070) Yes [X] No []

Clearing in sq ft 0

Percent of parcel to be harvested: 0

Board feet of timber harvested: 0

Forest Tax Reporting Account number of Timber Owner (if harvesting): N/A

Conversion of Native Vegetation to Lawn/Landscaped Areas in sq. ft.: 0

Conversion of Native Vegetation to Pasture in sq. ft.: 0

Grading Quantities in cubic yards. Cut/Excavation: 12,000 Fill: 5,000

Proposed Hard Surface in sq ft.:

New: 53,000 Replaced 77,000 New, Plus Replaced Total: 130,000

Does the LDA require engineered construction plans under SCC 30.63B 200? Yes [X] No []

Are there any outstanding forest practice violations on the subject site, written approval from DNR stating that the outstanding final order, decisions, or violations have been corrected must be submitted (SCC 30.43F.230)? Yes [] No [X]

Waivers, Modifications and Deviations

Is a request attached for a.

Yes [] No [X] Modification? (SCC 30.63A.830) If Yes, attach Stormwater Modification or Waiver Request Form

Yes [] No [X] Waiver? (SCC 30.63A 840) If Yes, attach Stormwater Modification or Waiver Request Form

Yes [] No [X] Deviation from the EDDS? If Yes, attach EDDS Deviation Request Form

Yes [] No [X] Is the submittal a follow-up on an approved LDA Emergency Action? Cite specific code. Drainage Manual, or EDDSS section(s) (See also Assistance Bulletin #88)

CESCL (Certified Erosion & Sediment Control Lead) for projects that disturb one or more acres:

Mailing Address: TBD City:

Zip: Phone: E-mail:

CIVIL ENGINEER: AECOM Mr. Phil Newton, PE

Mailing Address: 1111 Third Avenue, Suite 1600 City: Seattle

Zip: 98101 Phone: 206-438-2011 E-mail: phil.newton@aecom.com



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LAND SURVEYOR: DHA Duane Hartman Assoc. Inc. Doug Hartman

Mailing Address: 16928 Woodinville Redmond Road, B-107 City: Woodinville
 Zip: 98072 Phone: 425-483-5355 E-mail: dahartman.dha@frontier.com

GEOTECHNICAL or SOILS ENGINEER: AECOM, Dr. Martin McCabe, PE

Mailing Address: 1111 Third Avenue, Suite 1600 City: Seattle
 Zip: 98101 Phone: 206 438 2700 E-mail: martin.mccabe@aecom.com

ENGINEERING GEOLOGIST or HYDROGEOLOGIST: N/A

Mailing Address: _____ City: _____
 Zip: _____ Phone: _____ E-mail: _____

Additional Contacts: Pursuant to SCC 30.63A 855, the applicant or owner shall notify PDS when any of the following professionals responsible for reviewing and inspecting the installation of stormwater or drainage facilities including stormwater best management practices is replaced on a job. Working requiring the review and inspection shall be stopped until a professional of record is replaced.

Submittal Requirements

Check each applicable report required for the project proposal and submit 5 copies

- Yes No Geotechnical Engineering Report pursuant to SCC 30.63B.220
- Yes No Soils Engineering Report pursuant to SCC 30.63B.230
- Yes No Engineering Geology Report pursuant to SCC 30.63B.240
- Yes No Liquefaction Report pursuant to SCC 30.63B.250
- Yes No Specify other applicable reports that depend on the project scope (i.e., hydrological, hydrogeological, wetland mitigation report, etc.) Geotechnical data from previous adjacent site development.
- Yes No Verification from DNR that the proposal site is not or has not been subject to a notice of conversion to a nonforestry use during the six-year period prior to the submission of the permit application pursuant to 30.43F.100. (for Class IV-G permit)
- Yes No Are any outstanding forest practice violations on the subject site? If yes, written approval from DNR stating that the outstanding final order, decisions, or violations have been corrected must be submitted pursuant to SCC 30.43F.230 (for Lifting the six-year development moratorium)

Miscellaneous Documents Required Pursuant to County Code

Check each applicable document required for the project proposal and submit 5 copies

- Yes No Plans/reports necessary for compliance with Chapter 30.63A SCC (Drainage and LID Feasibility Analysis, existing conditions survey map)



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- Yes No Zero-rise analysis pursuant to SCC 30.63B.120(3)
Yes No Haul route agreements related to the land disturbing or forest practice activity
Yes No Rockery or retaining wall permit and fee when applicable

Environmental Review

Check all environmental documents that are applicable and submit 5 copies:

- Environmental checklist pursuant to Chapter 30.61 SCC (SEPA) is required if project occurs on lands wholly or partially covered by water, if more than 500 cubic yards of earth material is to be moved, Class IV-G permit, and lifting the six-year development moratorium.
- A critical area study for any development activity or action requiring a project permit occurring in critical areas or their buffers (30.62A.140 SCC).
- A critical area report that: Calculates and depicts effective impervious surfaces within the buffers of all wetlands, streams, lakes and marine shorelines; and within 300 feet of all wetlands, streams, lakes, and marine shorelines containing salmonids.
- A hydrogeologic report is required for any activity or use requiring a project permit regulated under Chapter 30.62C SCC and proposed within a sole source aquifer, Group A wellhead protection area, or critical aquifer recharge area with high or moderate sensitivity (30.62C.140 SCC).
- A geotechnical report for any development activity or action requiring a project permit proposed within: an erosion hazard area, landslide hazard area or its setback, 200 feet of a mine hazard area or its setback, 200 feet of any faults (30.62B.140 SCC).
- Other required critical area reports when applicable (Channel Migration Zone, etc.):

Site Plan (SCC 30.63B.180 and 30.63B.190, and Chapter 30.43F SCC)

Please submit 5 sets of plans

Please submit a land disturbing activity site plan that clearly indicates the nature and extent of the proposed land disturbing activity work. Provide sufficient detail or notes to indicate the effect of the proposed work on the adjacent property. Map adjacent features at the same datum, contour interval, and accuracy standards used for the site map. When an adjacent property owner does not grant permission to map the features, they shall be estimated. Aerial photography or LIDAR based topography may be used in the estimate.

Plan Sheet Size: Plan specifications apply to the following projects: Planned Residential Developments (PRD), single-family residences, duplexes, all subdivisions and road projects. For single-family residences and duplexes, plans may be a minimum of 8½ by 11 inches, if adequate details can be shown and a maximum of 11 X 17 inches. For other projects including commercial projects, submit plans in 24 by 36 inches or 22 by 34 inches per Engineering Design and Development Standards (EDDS) 10 - 02(A)(1).



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Plan Copies Shall Meet the Following Specifications:

- a. **Plan View:** 1 inch = 50 feet for sites of five acres or less
1 inch = 100 feet for sites of more than five acres but less than twenty acres
1 inch = 200 feet for sites of more than twenty acres
- b. **Details:** 1 inch = 10 feet or 1 inch = 20 feet. Please choose the scale that will give the most information on the sheet selected. Individual details may require larger scales.
- c. **Cross sections and profiles:** Minimum 1 inch = 50 feet horizontal and 1 inch = 5 feet vertical. The ratio of the vertical to the horizontal scale shall be 1 inch V:10 feet H, except the bridge plans shall have horizontal and vertical scales of 1 inch = 20 feet.
- d. **Overall Plan View:** Indicate isolated enlargement of the site development area, to be shown at another location or on a separate sheet, at a minimum scale of 1 inch = 50 feet.

Items Required on All Plan Sheets

- _____ 1. Project file number _____ (placeholder located in large, bold type in the lower right corner)
- _____ 2. Project title
- _____ 3. Sheet titles (Examples: "Site Plan," "Targeted Stormwater Site Plan," "Stormwater Pollution Prevention Plan")
- _____ 4. Section, township, and range (located at the top of each sheet)
- _____ 5. Graphic scale clearly indicated on plan view
- _____ 6. North arrow clearly indicated on plan view
- _____ 7. Current engineer's stamp, signature, and date signed, if engineering is required
- _____ 8. Current land surveyor's stamp signature and date signed, if boundary, utility and topographic survey is required

Items Required on all Plan Cover Sheets

- _____ 1. Items required on all sheets per the section above in checklist.
- _____ 2. Owner and applicant's name, address, e-mail address, and phone and fax numbers
- _____ 3. Contact person or agent's name, address, e-mail address, and phone and fax numbers
- _____ 4. Engineer's name, address, phone number, and e-mail address
- _____ 5. Certified Erosion and Sediment Control Lead's (CESCLs) contact information
- _____ 6. Vicinity map with north arrow and scale
- _____ 7. Legal description of project site
- _____ 8. Site address, if applicable, or driving instructions
- _____ 9. Property tax account number(s) of subject property and adjacent properties
- _____ 10. Sheet index
- _____ 11. Grading quantities in yards of earth moved (both cut/excavation and fill amounts)
- _____ 12. Amount of new hard surface in square ft.



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- _____ 13. Amount of replaced hard surface in square ft.
- _____ 14. Amount of new, plus replaced hard surface in square ft.
- _____ 15. Total proposed hard surface in square ft.
- _____ 16. Topographic survey of slopes over 33 percent gradient
- _____ 17. Board feet of timber to be harvested

Site Plan View Sheets Shall Depict the Following:

- _____ 1. Zoning designation(s) and the limits of zones (Title 30 SCC)
- _____ 2. Shoreline designations and limits of shoreline jurisdiction shall be depicted on the map. (See Chapter 30.44 SCC)
- _____ 3. Property lines with distances, and, when the legal description depends on subdivision corners, the location of sufficient other controlling monuments (such as section corners, quarter corners, or plat corners) to locate the site. Existing conditions map prepared by a licensed land surveyor showing the boundary and topographic data of the site and 200 feet beyond the site boundary.
- _____ 4. Datum and note on benchmark used, tied to Mean Sea Level (MSL), (NGVD 29) or (NAVD 88) with equation for MSL when required
- _____ 5. Existing contours (shown by dashed lines) of the land at intervals of no greater than five feet except for flat properties having less than 5% slope the contour may be depicted at intervals of two feet.
- _____ 6. Proposed contours (shown as solid lines) pursuant to the intervals stated above.
- _____ 7. Open Space, tree retention and replacement areas, if applicable
- _____ 8. Clearing limits of land disturbing activity
- _____ 9. Timber Harvest boundaries and location of any proposed landings.
- _____ 10. Calculation of timber harvest in board feet.
- _____ 11. Location of all areas to be graded, showing areas of cuts, excavation, fill, embankments and stockpile locations (before and after completion of proposed clearing or land disturbing activity)
- _____ 12. Soils specifications for compaction
- _____ 13. Proposed rockeries or retaining walls
- _____ 14. Terracing, keyways, and benches
- _____ 15. Type of soils and vegetative cover, as well as the location of areas with high erosion hazards using soil survey maps from the Natural Resources Conservation Service or Soil Conservation Service
- _____ 16. Landscape, open space areas, tree and native vegetation retention and replacement areas
- _____ 17. Locations of all critical areas including required setbacks/buffers for each:
- _____ 18. Wetlands and fish & wildlife habitat conservation areas within 300 feet of the site (SCC 30.62A.130),
- _____ 19. Geologically hazardous areas on or within 200 feet of the site (SCC 30.62B.130);
- _____ 20. Location, size, and type of all aquifer recharge areas on the subject property (SCC 30.62C.130)
- _____ 21. Flood hazard areas and Community Panel number of the Flood Insurance Rate Map
- _____ 22. Location of all existing native growth protection areas (NGPAs) or native growth protection areas easements (NGPAEs), and proposed critical area protection areas (CAPAs) (see SCC 30.62A.160), and required open space areas, tracts or easements, if applicable
- _____ 23. Location of critical aquifer recharge areas (CARA) when present on the site.
- _____ 24. Location of flood hazard areas and identify the Community Panel number of the Flood Insurance Rate Map.
- _____ 25. Pre-existing drainage systems and pattern(s), (I.e., ditch lines, culverts, catch basins, french drains, and surface drainage or sheet flows)



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- _____ 26. Location, size, and type of all existing structures, hard surface areas, drainage facilities, stormwater facilities, roads, and utilities on the site and adjacent on-and off-site utilities, and setbacks, on-site when applicable.
- _____ 27. Location, size, and type of all proposed structures, hard surface areas, drainage facilities, stormwater facilities, roads, and utilities on the site and adjacent on-and off-site utilities, and setbacks, when applicable.
- _____ 28. Existing structures within 15 feet of the subject property boundaries (identify structure use) and property boundaries with bearings and distances and ties to controlling corners, or subdivision corners. Show structures farther away when they will be affected by single family residential construction
- _____ 29. Location of existing and or proposed wells, drainfields, and drainfield reserve areas, located within 100 feet of the proposed development or redevelopment and applicable setbacks (relates to Snohomish Health District regulations)
- _____ 30. Location of existing and proposed easements.
- _____ 31. Areas to be protected, if applicable, due to LID feasibility.
- _____ 32. A description of construction specifications, operations, and scheduling pursuant to requirements in the EDDS.
- _____ 33. Engineer's stamp, signature, and date, when required.

Compliance with Chapter 30.63A SCC (Drainage)

Stormwater Site Plan and Stormwater Pollution Prevention Plan (SWPPP). All land disturbing activity shall comply with Chapter 30.63A SCC (Drainage). LDA applications must be accompanied by the required stormwater site plan submittals. Stormwater site plans shall comply with the applicable stormwater site plan submittal checklist. See Chapter 30.63A SCC thresholds for stormwater site plans (SCC 30.63A.300, 30.63A.310, 30.63A.805, 30.63A.815 and 30.63A.820) for more information. Please check the following drainage review box below and attach the appropriate stormwater site plan submittals:

- Targeted Stormwater Site Plan and Construction/Full SWPPP (SCC 30.63A.300 or .310)
 - Project results in or adds 2,000 sq. ft. but less than 5,000 sq. ft. of new, replaced or new plus replaced hard surface area; or
 - Project results in 7,000 sq. ft. or greater of land disturbing activity (SCC 30.91L.025)
 - Attach additional Checklists and required documentation:
 - Targeted Stormwater Site Plan Submittal Checklist
 - Construction / Full Stormwater Pollution Prevention Plan (SWPPP) Submittal Checklist
- Full Stormwater Site Plan and Construction/Full SWPPP (SCC 30.63A.300 or .310)
 - Project results in 5,000 sq. ft. or more of new, replaced or new plus replaced hard surface area, or
 - Project converts three-quarters of an acre (32,670 sq. ft.) or more of vegetation to lawn or landscaped areas, or
 - Project converts 2.5 acres or more of native vegetation to pasture.
 - Attach additional Checklists and required documentation:
 - Construction / Full Stormwater Site Plan Submittal Checklist
 - Construction / Full Stormwater Pollution Prevention Plan (SWPPP) Submittal Checklist



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Limited exception from certain provisions of Minimum Requirements 1, 5 and 9 per SCC 30.63A.210 may apply.

YES NO Project meets criteria in SCC 30.63A.210 and is therefore eligible for the exception.

16-109244 LDA



SEPA ENVIRONMENTAL CHECKLIST

Purpose of checklist:

Governmental agencies use this checklist to help determine whether the environmental impacts of your proposal are significant. This information is also helpful to determine if available avoidance, minimization or compensatory mitigation measures will address the probable significant impacts or if an environmental impact statement will be prepared to further analyze the proposal.

Instructions for applicants:

This environmental checklist asks you to describe some basic information about your proposal. Please answer each question accurately and carefully, to the best of your knowledge. You may need to consult with an agency specialist or private consultant for some questions. You may use "not applicable" or "does not apply" only when you can explain why it does not apply and not when the answer is unknown. You may also attach or incorporate by reference additional studies reports. Complete and accurate answers to these questions often avoid delays with the SEPA process as well as later in the decision-making process.

The checklist questions apply to all parts of your proposal, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

Instructions for Lead Agencies:

Please adjust the format of this template as needed. Additional information may be necessary to evaluate the existing environment, all interrelated aspects of the proposal and an analysis of adverse impacts. The checklist is considered the first but not necessarily the only source of information needed to make an adequate threshold determination. Once a threshold determination is made, the lead agency is responsible for the completeness and accuracy of the checklist and other supporting documents.

The help links in this checklist are intended to assist users in accessing guidance on the checklist questions. Links are provided to the specific sections of the guidance applicable to the questions. However, the links may not work correctly on all devices. If the links do not work on your device, open the guidance at www.ecy.wa.gov/programs/sea/sepa/apguide/EnvChecklistGuidance.html and navigate to the appropriate section.

Use of checklist for nonproject proposals: [\[help\]](#)

For nonproject proposals (such as ordinances, regulations, plans and programs), complete the applicable parts of sections A and B plus the SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS (part D). Please completely answer all questions that apply and note that the words "project," "applicant," and "property or site" should be read as "proposal," "proponent," and "affected geographic area," respectively. The lead agency may exclude (for non-projects) questions in Part B - Environmental Elements -that do not contribute meaningfully to the analysis of the proposal.

PFN: 16 109244 000 00 LDA
Paine Field Passenger Terminal

Received - 06/07/2016

AGENCY COMMENT
BY TOM BARNETT
PROJECT MANAGER
SNOHOMISH COUNTY
PLANNING AND
DEVELOPMENT
SERVICES

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A. Background [\[help\]](#)

1. Name of proposed project, if applicable: [\[help\]](#)

Propeller Airports Paine Field Passenger Terminal

2. Name of applicant: [\[help\]](#)

Propeller Airports Paine Field, LLC

3. Address and phone number of applicant and contact person: [\[help\]](#)

Mark Keichin
Propeller Airports Paine Field LLC
9724 32nd Drive West
Everett, WA 98204

Tel: 425-216-3010

4. Date checklist prepared: [\[help\]](#)

May 26, 2016

5. Agency requesting checklist: [\[help\]](#)

Snohomish County Planning & Development Services

6. Proposed timing or schedule (including phasing, if applicable): [\[help\]](#)

Construction would commence upon issuance of necessary permits, scheduled for summer 2016. The terminal building will be shelled (enclosed) in approximately 5 months. The associated construction would involve the delivery of materials, minimal site grading and preparation, and connection to the existing utilities and infrastructure

Following the construction and enclosure of the terminal, interior fit-out and furnishings will occur. Automobile parking lot improvements will take place concurrently with terminal construction and subsequent interior fit-out.

7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain. [\[help\]](#)

There are no plans for future additions or expansions related to this proposal at this time. Passenger ramps may be upgraded to enclosed passenger boarding bridges.

Agency comment:
Any future expansion
(currently unplanned)
will require further
SEPA and NEPA
evaluation.

8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal. [\[help\]](#)

Previously prepared environmental information related to this proposal includes:
Snohomish County Airport Environmental Assessment (September 2012)

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Federal Aviation Administration (FAA) Finding of No Significant Impact and Record of Decision (FONSI/ROD) (December 2012)
Paine Field Airport Master Plan Update 2002-2021
Paine Field Passenger Terminal Traffic Impact Analysis (March 2016) – Gibson Traffic Engineers
Mukilteo Water and Wastewater District Certificate of Sewer and Water Availability (April 2016)
Stormwater Site Plan Paine Field Passenger Terminal – Snohomish County Airport (March 2016)

Snohomish County will adapt the Final NEPA Environmental Assessment for the amendment of Operations Specifications for Air Carrier Operations, Amendment to a FAR Part 139 Certificate and Potential Funding for Modification and Modular Expansion of the Terminal at the Snohomish County Airport / Paine Field dated September 2012. County will issue a separate Notice of Adoption of Existing Environmental Document.

9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain. [\[help\]](#)

There are no other applications pending. A previously prepared NEPA Environmental Assessment for the property was approved by FAA with a FONSI/ROD.

10. List any government approvals or permits that will be needed for your proposal, if known. [\[help\]](#)

Snohomish County Land Disturbing Activity and Building permits for passenger terminal and parking facilities
FAA 7460-1 Notice of Proposed Construction and Alteration
Stormwater site plan including Stormwater Pollution Prevention Plans for construction (by the contractor) and for facilities (by the owner)
Washington State Construction Stormwater Permit (NPDES)

11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.) [\[help\]](#)

Propeller Airports Paine Field, LLC proposes to construct new passenger facilities at Snohomish County Airport-Paine Field consisting of a terminal building and associated parking on a developed site currently occupied by existing aviation support functions. See Figure 1 for the site vicinity, Figures 2a and 2b for project site boundary, and Figures 3a, 3b and 4 for site plan and terminal floor plan. Snohomish County Airport-Paine Field currently has no scheduled commercial air service, and the existing terminal building cannot accommodate commercial airline service. The proposal would construct a new terminal between the existing terminal building and the control tower. The proposed terminal building would total approximately 29,300 square feet of interior space in compliance with FAA Advisory Circular 150/5360-13 Planning and Design Guidelines for Airport Terminal Facilities. The main components of the building would include the entrance and check-in, Transportation Security Administration (TSA) security screening, passenger waiting, boarding area, concessions, baggage handling and claim.

Existing parking areas described in the leasehold will be reconfigured into new parking facility areas to support the proposed new passenger terminal. This would include four surface lots totaling approximately 600 parking stalls of automobile parking for airline passengers, waiting rental cars and terminal employees. One parking area would be configured northeast of the proposed terminal on land currently used by the airport as an aircraft parking apron area and adjacent grass.

12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist. [\[help\]](#)

The project site for the proposal is approximately 12 acres within the boundaries of Snohomish County Airport-Paine Field. Snohomish County Airport-Paine Field is located in unincorporated Snohomish County south of State Route 526 and east of State Route 525 at 3220 100th Street SW. See Figure 1 for the site vicinity and Figures 2a and 2b for project site boundary. The site is just north of 100th Street SW near the existing terminal building on tax parcel 28041500400100. The proposal is located in Township 28N Range 4E, Section 15.

B. ENVIRONMENTAL ELEMENTS [\[help\]](#)

1. Earth [\[help\]](#)

a. General description of the site. [\[help\]](#)

(circle one): Flat, rolling, hilly, steep slopes, mountainous, other _____

b. What is the steepest slope on the site (approximate percent slope)? [\[help\]](#)

The site is generally flat with slopes less than 2 percent.

c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any agricultural land of long-term commercial significance and whether the proposal results in removing any of these soils. [\[help\]](#)

The site is classified by NRCS as Urban land. Currently, the majority of the site is paved with a combination of asphalt and concrete paving consistent with other sites at the airport.

d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe. [\[help\]](#)

The site is located in an area with low liquefaction susceptibility, and there is no known history of unstable soils in the immediate vicinity.

- e. Describe the purpose, type, total area, and approximate quantities and total affected area of any filling, excavation, and grading proposed. Indicate source of fill. [\[help\]](#)

There would be earthwork for utilities and the building site preparation. Approximately 15,000 cubic yards of cut and 5,000 cubic yards of fill. Imported gravel/crushed aggregate from permitted sites would be used to backfill utility trenches and prepare approximately 31,000 square feet of grass/shrub area for landscaped asphalt pavement and limited areas of small concrete slabs.

- f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe. [\[help\]](#)

Temporary erosion would occur during clearing and construction that would be controlled by Best Management Practices.

- g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)? [\[help\]](#)

The project would increase the net impervious coverage on the site by about 1/2 acre. This would increase impervious surfaces from approximately 91 to 96 percent.

- h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any: [\[help\]](#)

Best Management Practices during construction to reduce or control erosion may include silt fences, storm drain inlet protection, straw wattles and high visibility plastic fencing. Temporary erosion sedimentation control plans as well as permanent measures such as stormwater vaults consistent with the facility's Stormwater Pollution Prevention Plan would be approved by Snohomish County Planning and Development Services. A Certified Erosion and Sediment Control Lead (CESCL) will monitor the site for compliance with approved plans.

2. Air [\[help\]](#)

- a. What types of emissions to the air would result from the proposal during construction, operation, and maintenance when the project is completed? If any, generally describe and give approximate quantities if known. [\[help\]](#)

Temporary emissions would generally be consistent with other types of typical construction projects, including those from construction equipment, vehicles and trucks. Emissions from construction would primarily occur during the approximately five month construction period, including vehicles in use at the airport for material delivery, site preparation, utilities connections and terminal construction. The interior fit-out and furnishing will result in minimal external equipment activity.

The proposal would enable commercial air service and increase ground support, but increases in emissions during operation would be a minimal indirect impact and therefore not addressed in this analysis. Changes in surface traffic patterns and vehicle miles traveled for air travelers are anticipated to result in a minor increase in emissions with the proposal.

A General Conformity Applicability Analysis was conducted in accordance with the requirements of the Clean Air Act Amendments, and project-related emissions would be below the defined de-Minimis threshold. A conformity determination would not be required for the proposal (Suquamish County Airport Environmental Assessment 2012).

b. Are there any off-site sources of emissions or odor that may affect your proposal? If so, generally describe. [\[help\]](#)

No.

c. Proposed measures to reduce or control emissions or other impacts to air, if any. [\[help\]](#)

Best Management Practices during construction would include muffler systems on vehicles, use of a water truck to control dust, compliance with Puget Sound Clean Air Agency industry standards, and minimizing idling of trucks and equipment. Use of some electric vehicles and equipment including tugs, carts and belt loaders would reduce the long-term emission potential of terminal and ramp operations. Conditioned air and ground power will be provided for aircraft to minimize auxiliary power unit use (APU)

3. Water [\[help\]](#)

a. Surface Water:

1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into. [\[help\]](#)

No. The proposal is located in the Japanese Gulch drainage, which drains north to the Japanese Gulch Creek and Puget Sound.

2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans. [\[help\]](#)

No work would occur near creeks or wetlands.

3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material. [\[help\]](#)

None

4) Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if known. [\[help\]](#)

No.

5) Does the proposal lie within a 100-year floodplain? If so, note location on the site plan. [\[help\]](#)

No.

- 6) Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge [\[help\]](#)

No.

b. Ground Water

- 1) Will groundwater be withdrawn from a well for drinking water or other purposes? If so, give a general description of the well, proposed uses and approximate quantities withdrawn from the well. Will water be discharged to groundwater? Give general description, purpose, and approximate quantities if known. [\[help\]](#)

No.

- 2) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, containing the following chemicals: . . . ; agricultural; etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve. [\[help\]](#)

None. The proposal would use the Mukilteo Water and Waste Water district's municipal sanitary wastewater treatment system.

c. Water runoff (including stormwater):

- 1) Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe. [\[help\]](#)

Stormwater from the landside including parking areas, roadways and roofs will be collected in catch basins and conveyed to new detention and water quality facilities meeting the 2016 Snohomish County Stormwater Management Code. Stormwater from airside including ramps will be collected through trench drains and catch basins then conveyed to a new oil water separator. Downstream of the oil water separator, this water will be combined with landside runoff, then flow through the new detention and water quality facilities. There are no water disposal systems (such as infiltration or irrigation) planned as part of this proposal. The quantity of water leaving the site is approximately equal to the amount of rainfall less losses through evaporation or other natural means. The rate of flow leaving the site will comply with the 2016 Snohomish County Management Code considered as previously forested which is a significantly lower rate of flow than current conditions on the existing developed site. Stormwater having passed through the detention and water quality facilities will be conveyed in pipes into the existing Paine Field drainage system which flows north through the Boeing property, then west discharging into Paine Field Airport's Alpha Pond. Alpha Pond drains north to the Japanese Creek drainage, ultimately flowing into the waters of Puget Sound.

See Figure 5 for the drainage site plan.

2) Could waste materials enter ground or surface waters? If so, generally describe. [\[help\]](#)

There is the potential for waste from the site to enter surface or groundwater. However, the site is being designed with a Stormwater Site Plan to comply with the county's stormwater regulations. Potential contamination (or spills) from the paved areas must all flow across the surface of the pavements (non-permeable), into trench drains or catch basins, through both an oil/water separator and a water quality vault prior to entering the airport's water quality system that discharges into the Japanese Gulch.

3) Does the proposal alter or otherwise affect drainage patterns in the vicinity of the site? If so, describe. [\[help\]](#)

No. Stormwater from the proposal would be treated and detained in Alpha Pond before being released into Japanese Gulch Creek at predevelopment flow rates.

d. Proposed measures to reduce or control surface, ground, and runoff water, and drainage pattern impacts, if any. [\[help\]](#)

All construction activities would occur under the Stormwater Construction General Permit. A Notice of Intent would be sent to the Washington State Department of Ecology and advertised in a local business journal or newspaper prior to construction. Best Management Practices including erosion and sediment controls and spill prevention would occur during construction to prevent water pollution. Construction equipment maintenance would be performed in a designated area and include spill control measures. Guidance in the county's Capital Facilities Plan (Snohomish County 2015) would be followed for the proposal.

The proposal would be consistent with the Stormwater Industrial Permit. As explained below, the redeveloped site would include numerous provisions to protect water quality compliant with Snohomish County's 2016 Drainage Manual (See: <http://snohomishcountywa.gov/1130/Drainage-Manual>). A water quality vault will be installed to detain runoff from disturbed areas to discharge into Japanese Gulch in conjunction with the Snohomish County Drainage Manual. Shutoff valves would be installed to prevent accidental discharges in the event of a spill, and Snohomish County Airport-Paine Field operates a spill response program. The site would also include an oil/water separator with coalescing plates sized for fueling operations for the aircraft fueling outside the building. Impervious ground surfaces would drain through the proposed water quality facility and canisters with storm filters pre-approved by Ecology would be used to filter contaminants. De-icing will occur on the existing de-icing pad. New roofs will be non-pollution generating by excluding the use of materials such as zinc or copper that could pollute water.

The proposal would comply with all applicable laws for stormwater control and management, including Snohomish County Code, Chapter 30.63A.

4. Plants [\[help\]](#)

a. Check the types of vegetation found on the site: [\[help\]](#)

- deciduous tree: alder, maple, aspen, other
- evergreen tree: fir, cedar, pine, other
- shrubs
- grass
- pasture
- crop or grain
- Orchards, vineyards or other permanent crops.
- wet soil plants: cattail, buttercup, bullrush, skunk cabbage, other
- water plants: water lily, eelgrass, milfoil, other
- other types of vegetation

b. What kind and amount of vegetation will be removed or altered? [\[help\]](#)

The new terminal building would be located on an existing paved apron area. Approximately 31,000 square feet of grass-covered infield would be removed and replaced with a landscaped parking area.

c. List threatened and endangered species known to be on or near the site [\[help\]](#)

There are no known threatened or endangered species known to occur near the site.

d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any: [\[help\]](#)

Since the site is within the perimeter of an operating airport, the FAA Circular AC 150/5200-33, *Hazardous Wildlife Attractants on or Near Airports*, precludes the use of plants that animals and birds find attractive. Landscape areas within and adjacent to the new parking area and terminal would meet county code requirements which permit deviations through landscape modification pursuant to SCC 30.25.040 to accommodate the airport's unique needs. The airport's USDA wildlife biologist will review and approve landscape plans to ensure compliance with the Paine Field Wildlife Hazard Management Plan. (See: <http://www.paineairport.com/205/Wildlife-Management>).

e. List all noxious weeds and invasive species known to be on or near the site. [\[help\]](#)

There are no known noxious weeds near the site. Himalayan Blackberry (*Rubus armeniacus*) and Reed-Canary grass (*Phalaris arundinacea*) exist along roadways and surface waters in surrounding areas.

5. Animals [\[help\]](#)

a. List any birds and other animals which have been observed on or near the site or are known to be on or near the site. [\[help\]](#)

Examples include:

birds: hawk, heron, eagle, songbirds, other:

mammals: deer, bear, elk, beaver, other:
fish: bass, salmon, trout, herring, shellfish, other _____

- b. List any threatened and endangered species known to be on or near the site. [\[help\]](#)

There are no known threatened or endangered species or critical habitat near the site. There is a designated Washington Department of Fish and Wildlife (WDFW) Priority Habitats and Species (PHS) habitat approximately 1,200 feet north of the site known as Paine Field Open Space.

- c. Is the site part of a migration route? If so, explain. [\[help\]](#)

The area is part of the Pacific Flyway

- d. Proposed measures to preserve or enhance wildlife, if any: [\[help\]](#)

There are no proposed measures to enhance wildlife. Wildlife in general is considered to be a safety risk to the activities that take place at the airport. Snohomish County Airport-Paine Field developed a Wildlife Hazard Management Plan to address this issue (See: <http://www.paineairport.com/205/Wildlife-Management>).

- e. List any invasive animal species known to be on or near the site. [\[help\]](#)

The airport monitors potential wildlife hazards on and around the airport. Enhancing safe aircraft operations by monitoring potential wildlife hazards is a primary objective at Snohomish County Airport-Paine Field. Pursuant to CFR Title 14 Federal Aviation Regulations (FAR) part 139.337(3), Snohomish County Airport-Paine Field developed a Wildlife Hazard Management Plan (See: <http://www.paineairport.com/205/Wildlife-Management>) in cooperation with the U.S. Department of Agriculture's Wildlife Services program to comply with regulations set forth by the FAA. Habitat on and around the airfield is managed in a manner that is non-conducive to hazardous wildlife.

6. Energy and Natural Resources [\[help\]](#)

- a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc. [\[help\]](#)

There would be temporary uses of fuels during construction from trucks and equipment. The proposed terminal would use natural gas and electricity for heating/cooling the building and for lighting. Fuels would be used during operation of commercial aircraft. Most ramp vehicles and equipment including tugs, carts and belt loaders would be electrically powered.

- b. Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe. [\[help\]](#)

No, the height of the proposed passenger terminal would be consistent with the heights of adjacent facilities.

- c. What kinds of energy conservation features are included in the plans of this proposal?
List other proposed measures to reduce or control energy impacts, if any: [\[help\]](#)

The design for the proposed terminal will meet or exceed energy requirements in the Washington State Energy Code.

The project is currently in design phase on all building systems and applicable energy conservation features, and possible LEED certifications are being evaluated.

7. Environmental Health [\[help\]](#)

- a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste, that could occur as a result of this proposal? If so, describe. [\[help\]](#)

- 1) Describe any known or possible contamination at the site from present or past uses.
[\[help\]](#)

Multiple Phase I assessments have been conducted at Snohomish County Airport-Paine Field and other environmental investigations throughout airport property. No known hazardous material sites are located on or within close proximity to the site of the proposed terminal.

- 2) Describe existing hazardous chemicals/conditions that might affect project development and design. This includes underground hazardous liquid and gas transmission pipelines located within the project area and in the vicinity. [\[help\]](#)

There are no hazardous conditions that would affect construction of the proposal. Any underground pipelines or utilities would be identified and secured prior to any ground-disturbing activities.

- 3) Describe any toxic or hazardous chemicals that might be stored, used, or produced during the project's development or construction, or at any time during the operating life of the project. [\[help\]](#)

During construction and operation of the proposed passenger terminal, fuels, paints, adhesives, and other toxic or hazardous chemicals would be securely stored on site. There would be an increase in aircraft fueling during terminal operation using existing aircraft fueling procedures.

- 4) Describe special emergency services that might be required. [\[help\]](#)

None.

- 5) Proposed measures to reduce or control environmental health hazards, if any: [\[help\]](#)

Any use of hazardous materials during construction or operation would be performed according to applicable regulations, including spill prevention measures. If an accident were to occur, immediate corrective actions would occur including notifying the National Response Center. Shut-off valves and other measures in the Stormwater

Industrial Permit would minimize spill impacts. Snohomish County Airport-Paine Field's spill response plan outlines procedures for rapid response, containment and disposal of hazardous materials.

b. Noise [help]

- 1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)? [help]

Existing noise includes aircraft operations and airport equipment and on-site and off-site traffic. These typical noise sources would not affect construction or operation of the proposal.

- 2) What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site. [help]

Noise contours were prepared and reviewed as part of the 2012 Environmental Assessment and subject to public process. Noise would be created by construction activity in the short term, and by vehicle traffic and aircraft operations in the long term. Construction noise would be temporary and at the highest level during exterior construction.

The proposal would allow for commercial air service, which would increase aircraft operations at the airport slightly. According to the 2012 Environmental Assessment, there would be a 2% or 17.6 acre increase in the 65 Day-Night Average Sound Level (DNL) noise contour (713.6 acres from 696 acres) that would extend off of airport property, but the commercial/industrial land uses surrounding the airport would be compatible with this level of aircraft noise. The 65 DNL is used as the FAA's threshold of significance when determining noise impacts. There would be no residential or other noise sensitive receptors within the future 65 DNL contour.

- 3) Proposed measures to reduce or control noise impacts, if any: [help]

Construction and operation would comply with the Snohomish County Noise Ordinance. The airport also has an active noise abatement program to reduce the noise impacts of approaches and departures from multiple aircraft types including those associated with this proposal (See: <http://www.paineairport.com/159/Noise-Abatement-Procedures>).

8. Land and Shoreline Use [help]

- a. What is the current use of the site and adjacent properties? Will the proposal affect current land uses on nearby or adjacent properties? If so, describe. [help]

The project site for the proposal is approximately 12 acres within the boundaries of Snohomish County Airport-Paine Field. The airport's administrative offices, aviation businesses, an aviation-related technical school and the airport's control tower surround the project site.

ADDITIONAL NOISE
MODELLING HAS
BEEN PROVIDED:
1) Paine Field
AEDT NOISE
CONTOUR
UPDATE 12/21/10
BY BRIDGET
INTERNATIONAL
2) AEDT NOISE
CONTOUR
UPDATE
2/2/17
BY BRIDGET
INTERNATIONAL
3) RESPONSE &
COMMENTS
2/2/17
BY BRIDGET
INTERNATIONAL
(ATTACH)

(12)

b. Has the project site been used as working farmlands or working forest lands? If so, describe. How much agricultural or forest land of long-term commercial significance will be converted to other uses as a result of the proposal, if any? If resource lands have not been designated, how many acres in farmland or forest land tax status will be converted to nonfarm or nonforest use? [\[help\]](#)

No.

1) Will the proposal affect or be affected by surrounding working farm or forest land normal business operations, such as oversized equipment access, the application of pesticides, tilling, and harvesting? If so, how: [\[help\]](#)

No.

c. Describe any structures on the site. [\[help\]](#)

The site is currently occupied by surface parking, vegetated infield, and a small metal pole barn-style shed used for vehicle storage.

d. Will any structures be demolished? If so, what? [\[help\]](#)

A small metal pole barn-style vehicle storage shed would be disassembled. This structure is less than 50 years old and ineligible for listing as a historic resource. No other structures would be demolished.

e. What is the current zoning classification of the site? [\[help\]](#)

The airport is zoned as Light Industrial in unincorporated Snohomish County.

f. What is the current comprehensive plan designation of the site? [\[help\]](#)

Snohomish County Airport-Paine Field and the immediate surrounding area are designated as the Paine Field Area *Manufacturing Industrial (MIC) Overlay* (Snohomish County 2015).

g. If applicable, what is the current shoreline master program designation of the site? [\[help\]](#)

Not applicable.

h. Has any part of the site been classified as a critical area by the city or county? If so, specify. [\[help\]](#)

No.

i. Approximately how many people would reside or work in the completed project? [\[help\]](#)

An estimated 30-50 permanent employees would work at the proposed terminal once commercial airline service begins.

j. Approximately how many people would the completed project displace? [\[help\]](#)

None.

k. Proposed measures to avoid or reduce displacement impacts, if any: [\[help\]](#)

No measures are required or proposed.

L. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any: [\[help\]](#)

The proposed project will be compliant with the Paine Field Airport Master Plan, the Snohomish County Code and appropriate Snohomish Comprehensive Plan land use designation. No measures are required or proposed.

m. Proposed measures to ensure the proposal is compatible with nearby agricultural and forest lands of long-term commercial significance, if any: [\[help\]](#)

No measures are required or proposed.

9. Housing [\[help\]](#)

a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing. [\[help\]](#)

None.

b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing. [\[help\]](#)

None.

c. Proposed measures to reduce or control housing impacts, if any: [\[help\]](#)

No measures are proposed.

10. Aesthetics [\[help\]](#)

a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed? [\[help\]](#)

The proposed passenger terminal would be approximately 30 feet tall with siding containing a mix of glass, wood, metal and aggregate.

b. What views in the immediate vicinity would be altered or obstructed? [\[help\]](#)

The proposed terminal and parking facilities would be compatible with the existing airport, and no views would be altered or obstructed. See Figures 6a and 6b for overall and enlarged exterior elevations.

c. Proposed measures to reduce or control aesthetic impacts, if any: [\[help\]](#)

The proposed passenger terminal would be constructed with a Northwest Lodge character, high-quality materials, well-proportioned forms, appropriately scaled massing, an articulated façade and context-sensitive landscaping. No other measures are required or proposed.

11. Light and Glare [\[help\]](#)

- a. What type of light or glare will the proposal produce? What time of day would it mainly occur? [\[help\]](#)

There would be a slight change to the light environment around the airport due to increased lighting at night for the proposed terminal and for the commercial airport parking facilities.

- b. Could light or glare from the finished project be a safety hazard or interfere with views? [\[help\]](#)

The main lights at the airport are the FAA-required lighting for runways, taxiways and navigation. The proposal would not substantially change the existing airport lighting. New lighting would have downward directed fixtures to reduce glare beyond the perimeter of the site. The airport is surrounded by mostly industrial areas, and lighting improvements are not anticipated to be a safety hazard or interfere with views.

- c. What existing off-site sources of light or glare may affect your proposal? [\[help\]](#)

Surrounding industrial areas would not affect construction or operation of the proposal.

- d. Proposed measures to reduce or control light and glare impacts, if any: [\[help\]](#)

Light and glare from the proposed action would be designed to not interfere with ongoing operations at the airport, adjacent roadways or other adjacent facilities. Aircraft lighting is governed by FAA. The proposal will be reviewed by FAA to ensure it does not result in light, glare or visibility impacts to air traffic.

12. Recreation [\[help\]](#)

- a. What designated and informal recreational opportunities are in the immediate vicinity? [\[help\]](#)

The City of Everett's Kasch Park is located about ¾ mile to the east, and the Paine Field Community Park is located about 1 mile to the south of the proposal.

- b. Would the proposed project displace any existing recreational uses? If so, describe. [\[help\]](#)

No.

- c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any: [\[help\]](#)

No measures are proposed.

13. Historic and cultural preservation [\[help\]](#)

- a. Are there any buildings, structures, or sites, located on or near the site that are over 45 years old listed in or eligible for listing in national, state, or local preservation registers located on or near the site? If so, specifically describe. [\[help\]](#)

The Area of Potential Effects (APE) included the proposed terminal area and the area within the 65 DNL contour (see Noise section). A review of 49 facilities listed on the National Register of Historic Places for Snohomish County was conducted. No historical, architectural, archaeological or cultural sites are known to exist on airport property.

- b. Are there any landmarks, features, or other evidence of Indian or historic use or occupation? This may include human burials or old cemeteries. Are there any material evidence, artifacts, or areas of cultural importance on or near the site? Please list any professional studies conducted at the site to identify such resources. [\[help\]](#)

No historical, architectural, archaeological or cultural sites are known to exist on the site.

- c. Describe the methods used to assess the potential impacts to cultural and historic resources on or near the project site. Examples include consultation with tribes and the department of archeology and historic preservation, archaeological surveys, historic maps, GIS data, etc. [\[help\]](#)

The FAA initiated Section 106 consultation with the Department of Archaeology and Historic Preservation (DAHP) in September 2009. The FAA also initiated both Section 106 and government-to-government consultation with the Stillaguamish, Sauk-Suiattle and Tulalip Tribes in September 2009.

The FAA received responses from the Department of Archaeology & Historic Preservation and the Tulalip Tribes that can be found in the appendices of the Final Environmental Assessment.

- d. Proposed measures to avoid, minimize, or compensate for loss, changes to, and disturbance to resources. Please include plans for the above and any permits that may be required. [\[help\]](#)

If historic archaeological items are found, construction will cease immediately and appropriate agencies, including the DAHP, will be contacted.

14. Transportation [\[help\]](#)

- a. Identify public streets and highways serving the site or affected geographic area and describe proposed access to the existing street system. Show on site plans, if any. [\[help\]](#)

The Airport Road/128th Street SW corridor provides the most direct access to the terminal entrance and passes through the east side of airport property. Airport Road connects with I-5 approximately 3 miles southeast of the airport where it becomes SR 96, and with Boeing Freeway (SR 526) at the north side of the airport which connects with I-5 4 miles east. Direct landside access to airport property is provided by a series of streets with access to the terminal area provided by 100th Street SW.

- b. Is the site or affected geographic area currently served by public transit? If so, generally describe. If not, what is the approximate distance to the nearest transit stop? [\[help\]](#)

Yes, Everett Transit and Community Transit provides service on Airport Road at the 100th Street SW and 94th Street SW intersections.

- c. How many additional parking spaces would the completed project or non-project proposal have? How many would the project or proposal eliminate? [\[help\]](#)

The project will add 210 parking stalls for a total of approximately 600 by reconfiguring existing parking lots and other paved areas and paving approximately 1 acre of grass. The proposed project parking complies with SCC 30.26 and the Uniform Development Code.

S.C.C. 30.26.030(1) requires 10 parking stalls for each 1,000 square feet of "waiting area" in an air passenger terminal. If entire structure is considered

- d. Will the proposal require any new or improvements to existing roads, streets, pedestrian, bicycle or state transportation facilities, not including driveways? If so, generally describe (indicate whether public or private). [\[help\]](#)

The proposed parking facilities will be accessed off of 100th Street SW. Existing sidewalk / pedestrian facilities from Airport Road along 100th Street SW to the existing terminal will be extended to the new passenger terminal.

then 293 stalls are required; site plan show 571 stalls.

- e. Will the project or proposal use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe [\[help\]](#)

The proposed project is located on Snohomish County Airport-Paine Field which currently has no scheduled commercial air service. The proposal would construct the terminal for commercial air service as described in the 2012 FAA FONSI/ROD. WSDOT ferry to Clinton on Whidbey Island and Sound Transit's Sounder commuter rail to Edmunds, Everett and Seattle both provide service at Mukilteo are located less than 5 miles from the proposed project site. A small amount of passenger traffic may potentially use those facilities.

- f. How many vehicular trips per day would be generated by the completed project or proposal? If known, indicate when peak volumes would occur and what percentage of the volume would be trucks (such as commercial and nonpassenger vehicles). What data or transportation models were used to make these estimates? [\[help\]](#)

As discussed in the attached Gibson 2016 Traffic Impact Analysis, the proposed passenger terminal is anticipated to generate 922 new average daily trips by terminal employees and airline passengers. The maximum anticipated trips during the peak-hour have been estimated at 212 trips. The trip generation calculations are based on the assumption that there would be one flight arrival and one departure at each of the gates during one hour. Based on data gathered at similar airports, this is a conservatively high assumption since the time for one complete arrival and departure at each gate is closer to two hours. The peak-hour trip generation of the proposed terminal has been assumed to occur during the AM and PM peak-hours of the adjacent streets

(including Airport Road, Airport Road/128th Street SW and Beverly Park Road) to account for the greatest impact on the operations of the surrounding street system.

The proposed completed project is expected to generate marginal additional truck traffic. This estimate is supported by the Institute for Traffic Engineers (ITE) Trip Generation Manual, according to which trucks account for less than 1 percent of the trips generated by commercial airports.

The trip generation calculations are based on anticipated operations provided by the project proponent, data collected at Bellingham International Airport, discussions with Snohomish County's traffic engineer and a comparison to ITE data. The distribution of trips is based on regional modeling information provided by PSRC, review by the Snohomish County Traffic Engineer with consultation from the Snohomish County traffic modeling group, City of Everett staff, traffic studies approved in the site vicinity and peak-hour turning movement counts at the surrounding intersections.

- g. Will the proposal interfere with, affect or be affected by the movement of agricultural and forest products on roads or streets in the area? If so, generally describe. [\[help\]](#)

No.

- h. Proposed measures to reduce or control transportation impacts, if any: [\[help\]](#)

Vehicle traffic impacts of the proposed terminal would be mitigated based on the payment of established traffic mitigation fees for Snohomish County and the surrounding jurisdictions based on the volume of projected traffic. This would include fees to Snohomish County, the Washington State Department of Transportation (WSDOT) and the City of Mukilteo. These traffic mitigation fees will help fund roadway improvements identified by Snohomish County and the surrounding jurisdictions.

A Transportation Demand Management (TDM) site plan will be prepared per the Snohomish County Code. This will show the pedestrian connectivity, bicycle parking, and ADA access.

15. Public Services [\[help\]](#)

- a. Would the project result in an increased need for public services (for example: fire protection, police protection, public transit, health care, schools, other)? If so, generally describe. [\[help\]](#)

Yes, security at the proposed passenger terminal will be provided by the TSA, a division of the U.S. Department of Homeland Security. Local law enforcement will be provided by the Snohomish County Sheriff, and building fire protection and aircraft rescue and firefighting by the Snohomish County Airport Fire Department.

- b. Proposed measures to reduce or control direct impacts on public services, if any. [\[help\]](#)

Additional local law enforcement and firefighting personnel required for the proposed terminal operations will be funded by the terminal operator.

16. Utilities [help]

a. Circle utilities currently available at the site; [help]

electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system,
other _____

b. Describe the utilities that are proposed for the project, the utility providing the service,
and the general construction activities on the site or in the immediate vicinity which might
be needed. [help]

The proposal would require connections for electricity (Snohomish County PUD #1),
natural gas (Puget Sound Energy), telephone/data service (Verizon), and water and
sewer services (Mukilteo Water and Wastewater District). Refuse services are
provided by Waste Management Northwest.

C. Signature [help]

The above answers are true and complete to the best of my knowledge. I understand that the
lead agency is relying on them to make its decision.

Signature: _____

Name of signee: MARK REICHIN

Position and Agency/Organization: COO

Date Submitted: 6/6/16

RECEIVED
SUPREME COURT
STATE OF WASHINGTON

CLERK'S OFFICE

4/28/2017 2:14 pm

RECEIVED ELECTRONICALLY

Appendix "C"

Stipulation and Order Modifying Permit and
Dismissing Appeal (SCC 30.71.110(2))

(Snohomish County Hearing Examiner #MDNS 16-
109244, 16-109244 LDA & HEA-2017-01)

Date: April 10, 2017

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**BEFORE THE HEARING EXAMINER
IN AND FOR THE COUNTY OF SNOHOMISH**

In the Matter of an Appeal of the
Paine Field Passenger Terminal Project --
MDNS:
Sno-King Watershed Council,
Appellant,
Propeller Airports Paine Field,
Applicant,
Snohomish County Planning and
Development Services,
Respondent.

No. MDNS 16-109244
No. 16-109244 LDA
No. HEA-2017-01

**STIPULATION AND ORDER
MODIFYING PERMIT AND
DISMISSING APPEAL
[SCC 30.71.110(2)]**

COMES NOW Appellant, Sno-King Watershed Council by and through its
representatives William Lider, PE, CESCL; Applicant Propeller Airports Paine
Field, by and through its attorney Dennis D. Reynolds; and Respondent Snohomish
County Department of Planning and Development Services (PDS), by and through
its attorney Brian J. Dorsey, Deputy Prosecuting Attorney, and hereby stipulate and
agree as follows:

1. Appellant filed an appeal of the above referenced Mitigated
Determination of Nonignificance (MDNS) and related Land Disturbing Activity

STIPULATION AND ORDER OF DISMISSAL - 1
C:\Users\BFD\Documents\Lider Engineering\Clients\Paine Field Terminal Expansion Settlement Meeting
31442017\16-109244 LDA StipOrderDismissal Lider April 10, 2017.docx

Snohomish County
Prosecuting Attorney - Civil Division
Robert J. Drawel Bldg., 8th Floor, M/S 504
3000 Rockefeller Ave
Everett, Washington 98201-4060
(425)388-6330 Fax: (425)388-6333

1 (LDA) permit as issued by Snohomish County Department of Planning and
2 Development Services under File No. 16-109244 LDA.

3 2. Appellants primary issues on appeal relate to the capacity of the water
4 detention vault as approved under Permit No. 16-109244 LDA to detain the full
5 volume of stormwater runoff projected to enter the detention system, and the
6 corresponding water quality treatment proposed by the Applicant.
7

8 3. In accordance with SCC 30.61.307 the parties were required to engage in
9 mandatory settlement conference pursuant to which the Appellant and Applicant
10 were able to reach agreement upon certain terms and conditions including
11 modification of the LDA permit as issued to increase the capacity of the detention
12 vault and to provide for enhanced water quality treatment as more fully set forth in
13 that Settlement Agreement attached hereto as Exhibit A.
14

15 4. Subject to such modifications, Appellants stipulate and agree that the
16 LDA permit as modified adequately complies with the County's stormwater
17 drainage regulations as set forth in Ch. 30.63A SCC, and that such compliance
18 constitutes adequate review and mitigation of potential adverse environmental
19 impacts associated with stormwater runoff from the Project as proposed in
20 accordance with SEPA (RCW 43.21C.240).
21

22 5. The parties stipulate and agree that the proposed modifications to the
23 LDA permit as issued will enhance the detention capacity and water quality
24 treatment of the proposed drainage system as approved and, thus, that such
25 modifications will not result in any changes to the proposal that is likely to have a
26

1 significant adverse environmental impact and, thus, that the MDNS determination as
2 issued in this matter may stand and does not need to be withdrawn in accordance
3 with WAC 197-11-340(3).

4 6. In accordance with SCC 30.71.110 the parties stipulate and agree that the
5 Hearing Examiner shall enter an order approving and modifying the LDA permit as
6 issued to incorporate those modifications set forth in the Settlement Agreement
7 attached hereto as Exhibit A; Provided, however, all monetary provisions for
8 payment of any sums by the Applicant to the Appellant under the terms of the
9 Settlement Agreement shall be the separate contractual obligation of the Appellant
10 and not incorporated as a modification or condition of the LDA permit as issued.
11

12 7. Within fifteen (15) calendar days of the date of entry of this order
13 Applicant shall submit revised engineering drawings to PDS modifying the
14 approved drainage system to incorporate the revisions set forth in the Settlement
15 Agreement attached hereto (hereinafter "Revised Plan Set"); Provided, however, it
16 is recognized and understood that the Applicant may propose an alternative design
17 meeting the overall intent of this agreement as provided in Paragraph 5 of the
18 Settlement Agreement. PDS shall review the Revised Plan Set for compliance with
19 the modifications set forth herein and may require the Applicant to make further
20 revisions as necessary to comply with the modifications as set forth herein. Upon
21 review and approval by PDS of the Revised Plan Set, compliance with and
22 installation of a drainage system in accordance with the Revised Plan Set shall be
23 made a condition of Permit No. No. 16-109244 LDA.
24
25
26

STIPULATION AND ORDER OF DISMISSAL - 3
C:\Users\388\Documents\16-109244 LDA Engineering\Client\Plan Field Terminal Expansion Settlement Meeting
31March2017\16-109244 LDA Set Order Dismissal Ldr April 10, 2017.docx

Snohomish County
 Prosecuting Attorney - Civil Division
 Robert J. Orwell Bldg., 6th Floor, M/S 564
 3000 Rockefeller Ave
 Everett, Washington 98201-4060
 (425)388-6330 Fax: (425)388-6333

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8. Except as modified above, the parties stipulate and agree that the MDNS decision and LDA permit decision which are the subject of this appeal set forth above shall be affirmed and that this appeal shall be dismissed concurrent with the entry of this order.

ORDER

This matter having come on before the above entitled Hearing Examiner upon the stipulation of the parties, NOW, THEREFORE, IT IS ORDERED AS FOLLOWS:

1. The SEPA threshold determination (MDNS) as issued by PDS in this matter is affirmed based upon the LDA permit as modified below.

2. The LDA permit decision (File No. 16-109244 LDA), is affirmed subject to the following modifications which are imposed pursuant to SCC 30.71.110(2):

a. The capacity of the Storm Water Detention Vault shall be increased in accordance with Paragraph 1 of the Settlement Agreement which is attached hereto as Exhibit A and incorporated by reference herein; Provided, however Applicant may propose an alternative design meeting the overall intent of the Settlement Agreement as provided in Paragraph 5 of the settlement Agreement;

b. The approved storm water drainage plan shall be revised to add enhanced water quality treatment in accordance with Paragraph 2 of the Settlement Agreement which is attached hereto as Exhibit A and incorporated by reference herein;

c. The Applicant shall submit landscape drawings as part of the building permit application in accordance with Paragraph 3 of the Settlement Agreement which is attached hereto as Exhibit A and incorporated by reference herein;

STIPULATION AND ORDER OF DISMISSAL - 4

C:\Users\BRI\Documents\Lidar Engineering\Clients\Fairfield Terminal Expansion\Settlement Meeting
31March2017\16-109244 LDA Sup Order\Dismissal Lidar April 18, 2017.docx

Snohomish County
Prosecuting Attorney - Civil Division
Robert J. Drawal Bldg., 8th Floor, M/S 804
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(425)388-6330 Fax: (425)388-6333

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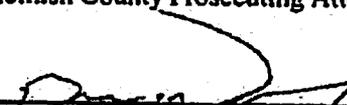
3. Subject to the foregoing modifications to the LDA permit, the MDNS decision and LDA permit decision which are the subject of the above entitled appeal are affirmed and this appeal is hereby dismissed with prejudice.

DATED this 17 day of April, 2017.


THEODORE PAUL HUNTER
Hearing Examiner
Sound Law Center

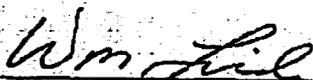
Presented by:

MARK K. ROE
Snohomish County Prosecuting Attorney

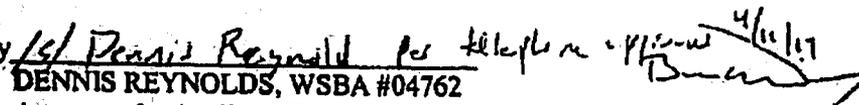
By: 
BRAN J. DORSEY, WSBA #18639
Deputy Prosecuting Attorney
Attorneys for Respondent Snohomish County
Planning and Development Services

Copy Received; Approved as to Form:

Sno-King Watershed Council

By: 
WILLIAM LIDER, PE, CESCL, Board Member

Propeller Airports Paine Field

By:  ^{4/11/17}
DENNIS REYNOLDS, WSBA #04762
Attorneys for Applicant Propeller Airports Paine Field

SETTLEMENT AND MUTUAL RELEASE AGREEMENT

This Settlement and Mutual Release Agreement ("Agreement"), effective as of April ____, 2017 ("Effective Date") is made by and between (1) William Lider, of Sno-King Watershed Council; and (2) Mark Reichin, Chief Operating Officer of Propeller Airports Paine Field, LLC, referred to collectively as the "Parties."

RECITALS

1. The Sno-King Watershed Council filed a timely administrative appeal of Snohomish County's SEPA mitigated determination of non-significance and related land disturbance permit approval. The appeal is titled *In the Matter of the Appeal of Sno-King Watershed Council of a Land Disturbing Activity Permit and MDNS*, Before the Snohomish County Hearing Examiner, Case No. MDNS 16-109244 / 16-109244 LDA / HEA-2017-01 ("the Appeal").

2. On April 7, 2017, the Parties met, reached agreement on a basis to resolve the Appeal, and executed a "Conceptual Settlement Agreement." Snohomish County Planning and Development Services reviewed the Conceptual Settlement Agreement and suggested no changes and stated the County's willingness to implement the Parties' agreement as part of the process for building permit application and approval. The County's legal advisor approved the Conceptual Settlement Agreement as to form.

3. The Parties now desire to enter into this formal Compromise and Settlement Agreement which: (a) incorporates the terms of this Conceptual Agreement; and (b) results in the dismissal with prejudice of the Appeal.

AGREEMENT

In consideration of the mutual promises and agreements set forth in this Agreement, the Parties agree as follows:

1. Modify the Storm Water Detention Vault to provide the Code required storm water detention for 8.43 acres. Essentially the Vault footprint will remain the same size, but the height of the Vault will be increased by approximately 2-3 feet for additional detention and basic water quality treatment, that will occur within the vault or in an adjacent manhole as approved by the County Code. The top of the vault would be lowered, providing cover over the top of the vault to facilitate paving by lowering the base of the vault in the excavated area as needed.

2. Add water quality treatment that is approved by the Department of Ecology for enhanced water quality treatment. The process installed will be on the approved list that can be found at the following web address:

<http://www.ecy.wa.gov/programs/wa/stormwater/newtech/technologies.html>.

3. As a part of this settlement, the Applicant will submit landscape drawings as part of the building permit application, including tree and shrub plantings that meet the requirements of SCC § 30.25 and FAA requirements for landscaping on airports.

4. In consideration of the professional time and effort put into its appeal and settlement negotiations by the Sno-King Watershed Council, the Applicant agrees to make a onetime payment of \$10,500 to cover administrative and professional costs incurred by the Sno-King Watershed Council once the Appeal is dismissed with prejudice.

5. If during the final design of the storm water system, Propeller Airports finds a more ecologically sound method that is in keeping with the overall intent of this agreement and is in compliance with then current SCC codes, it can implement that method. Sno-King Watershed Council Board Member William Linder will have an opportunity to review the design before it is approved and implemented.

6. The Parties shall cause the Appeal to be dismissed with prejudice by filing the attached form of Stipulation and Order of Dismissal (Exhibit 1 hereto, by reference made part of this Agreement) the same or next day with the Snohomish County Hearing Examiner.

7. Counterpart Execution. This Agreement may be executed in counterparts, each of which shall be considered an original of the same instrument when each of the parties has executed and delivered a counterpart. Delivery of documents by facsimile or PDF attachment to electronic mail will be deemed delivery of an original.

8. Successors. This Agreement is binding upon the Parties and their shareholders, members, partners, officers, directors, employees, agents, affiliates, successors, heirs, and assigns.

9. Integration. This Agreement contains the entire understanding and agreement among the Parties in respect of the subject matter of this Agreement. This Agreement supersedes and replaces all prior settlement negotiations regarding the Lawsuit.

10. Construction. The Parties, through their counsel, have reviewed and/or participated in the preparation of this Agreement. The Parties agree that any ambiguities will not be construed against a party.

11. Warranty of Authority to Settle. Each individual signing this Agreement on behalf of a party warrants that he or she is fully authorized to sign this Agreement and to bind the party on whose behalf the signature is given.

12. No Admission of Fault or Liability. This Agreement is intended to compromise disputed claims, including those known and unknown, and to avoid the expense and risks of litigation. It is not, and shall not be construed or characterized as, an admission of liability or wrongdoing on the part of any Party.

13. Amendment or Alteration. This Agreement may not be amended, changed, or otherwise altered except by execution by all Parties of a written amendment to this Agreement.

14. Law and Forum Selection. This Agreement is governed by the laws of the State of Washington, and any legal proceedings regarding this Agreement shall take place in the State of Washington, Snohomish County.

15. Severability. If any provision of this agreement shall be deemed to be unenforceable by a court of competent jurisdiction, no other provision shall be affected by such determination, but all remaining provisions hereof shall continue in full force and effect.

16. Time. Time is of the essence in the performance of the obligations set forth in this Agreement.

17. Costs/Attorney Fees. If any Party employs an attorney to enforce any rights under this Agreement, the substantially prevailing Party shall recover its reasonable attorney fees and collection costs.

SNO-KING WATERSHED COUNCIL

By: William Lider
William Lider, Lider Engineering
Pro Se for Appellant Sno-King Watershed Council

Date: 4/10/2017

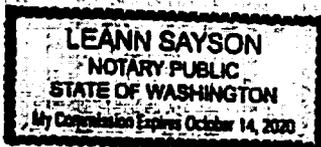
State of Washington)
County of Snohomish } ss.

On this 10th day of April, 2017, I, the undersigned, a Notary Public for the State of Washington duly commissioned and sworn, certify that I know or have satisfactory evidence that WILLIAM LIDER is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as a Member of the Sno-King Watershed Council, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

SUBSCRIBED and SWORN to before me this 10th day of April, 2017.

Leann Sayson
[Signature]

[Print Name]



NOTARY PUBLIC in and for the State of Washington
Residing at Lynnwood BELL, WA.
My commission expires October 10th, 2020.

PROPELLER AIRPORTS PAINE FIELD, LLC

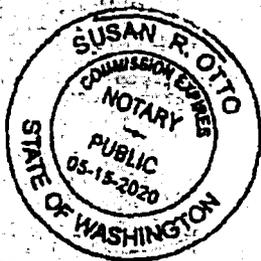
By: *Mark Reichin*
Mark Reichin
Chief Operating Officer

Date: 4/10/17

State of Washington }
 } ss.
County of Snohomish }

On this 10th day of April, 2017, I, the undersigned, a Notary Public for the State of Washington duly commissioned and sworn, certify that I know or have satisfactory evidence that MARK REICHIN is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Chief Operating Officer of Propeller Airports Paine Field, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

SUBSCRIBED and SWORN to before me this 10th day of April, 2017.



Susan R Otto
Susan R. Otto [Print Name]

NOTARY PUBLIC in and for the State of Washington
Residing at Marysville, WA.
My commission expires 5/15/20, 2020

Approved as to Form:

SNOHOMISH COUNTY OFFICE OF PROSECUTING ATTORNEY

By: *Brian J. Dorsey*
Brian J. Dorsey, WSPA #18639
Attorney for Respondent Snohomish County

Date: 4/10/17

Case No. 94328-1

SUPREME COURT OF THE STATE OF WASHINGTON

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

DECLARATION OF SERVICE
Re. Snohomish County's Answer to PRF

MARK K. ROE

Snohomish County Prosecuting Attorney

Alethea Hart, WSBA #32840

Deputy Prosecuting Attorney

Robert J. Drewel Bldg., 8th Floor, M/S 504

3000 Rockefeller Avenue

Everett, Washington 98201-4046

(425) 388-6330 Fax: (425) 388-6333

ahart@snoco.org

DECLARATION OF SERVICE

I, Cindy Ryden, hereby certify that I am an employee of the Civil Division of the Snohomish County Prosecuting Attorney and that on this 28th day of April, 2017, I served a true and correct copy of Snohomish County's Answer to Petition for Review of the City of Mukilteo and Save Our Communities upon the persons listed herein and by the following method indicated:

David A. Bricklin Jacob Brooks Bryan Telegin Bricklin & Newman, LLP 1001 Fourth Avenue, Suite 3200 Seattle, WA 98154 <i>Attorneys for Appellants City of Mukilteo & Save Our Communities</i>	<input checked="" type="checkbox"/> E-Service: <i>bricklin@bnd-law.com cahill@bnd-law.com; brooks@bnd-law.com; telegin@bnd-law.com</i> <input type="checkbox"/> Facsimile: <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Messenger Service
Dennis D. Reynolds 200 Winslow Way West, Suite 380 Bainbridge Island, WA 98110	<input checked="" type="checkbox"/> E-Service: <i>dennis@ddrlaw.com; christy@ddrlaw.com; jon@ddrlaw.com</i> <input type="checkbox"/> Facsimile: <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Messenger Service
Brian Trevor Hodges Pacific Legal Foundation 10940 NE 33 rd Place, Suite 210 Bellevue, WA 98004 <i>Attorneys for Respondent Propeller Airports Paine Field, LLC</i>	<input checked="" type="checkbox"/> E-Service: <i>bth@pacificallegal.org</i> <input type="checkbox"/> Facsimile: <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Messenger Service

I declare under the penalty of perjury of the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

SIGNED at Everett, Washington, this 28th day of April, 2017.



Cindy Ryden, Legal Assistant

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Friday, April 28, 2017 2:43 PM
To: 'Ryden, Cynthia'
Cc: Dave Bricklin; 'Peggy Cahill'; brooks@bnd-law.com; dennis@ddrlaw.com; christy@ddrlaw.com; jon@ddrlaw.com; Bryan Telegin; Hart, Alethea
Subject: RE: E-Filing for: City of Mukilteo, et al. v. Snohomish County, et al; Supreme Ct. #94328-1

Received 4/28/17.

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

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http://www.courts.wa.gov/appellate_trial_courts/supreme/clerks/

Looking for the Rules of Appellate Procedure? Here's a link to them:

http://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=app&set=RAP

Searching for information about a case? Case search options can be found here:

<http://dw.courts.wa.gov/>

From: Ryden, Cynthia [mailto:Cynthia.Ryden@co.snohomish.wa.us]
Sent: Friday, April 28, 2017 2:42 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Dave Bricklin <bricklin@bnd-law.com>; 'Peggy Cahill' <cahill@bnd-law.com>; brooks@bnd-law.com; dennis@ddrlaw.com; christy@ddrlaw.com; jon@ddrlaw.com; Bryan Telegin <telegin@bnd-law.com>; Hart, Alethea <Alethea.Hart@co.snohomish.wa.us>
Subject: RE: E-Filing for: City of Mukilteo, et al. v. Snohomish County, et al; Supreme Ct. #94328-1

Hello,

Please accept the following document for e-filing: Respondent Snohomish County's Declaration of Service Re. Answer to PFR

Case Name: City of Mukilteo; Save Our Communities vs. Snohomish County;
Propeller Airports Paine Field, LLC

Case #: 94328-1

Filed by: Alethea M. Hart, WSBA #32840
Deputy Prosecuting Attorney
Snohomish County Prosecutor's Office
(425) 388-6330 x6354
ahart@snoco.org

Thank you.