

**MEDIATED ROLE DETERMINATION PANEL  
SNOHOMISH COUNTY ADMINISTRATION BUILDING EAST  
FIRST FLOOR MEETING ROOM #1  
June 15, 2006**

**MEETING MINUTES**

**MRD PANEL ATTENDEES**

Don Doran	Tom Gaffney	Michelle Robles	Mark Wolken
Ray Stephanson	Tom Hoban	John Shaw	Kevin Laverty
	Lori Kaiser	Hugh Townsend	

**TECHNICAL ADVISERS ATTENDEES**

Paul Johnson	Russ Keyes	John Sibold
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**SNOHOMISH COUNTY STAFF ATTENDEES**

Peter Camp	Dave Waggoner	Christie Baumel	Donna Ambrose
Geoff Nelson	Mary Lynn Evans	Nona Anderson	

Co-Chair Ray Stephanson opened the meeting at 2:37.

Introductions were made.

Lori Kaiser made a motion to approve the minutes of the June 1 and May 18 meeting.  
Tom Gaffney seconded the motion. The vote for approval was unanimous.

Peter Camp reiterated County Executive Aaron Reardon's directive about the Panel's purpose, which is to review the Mediated Role Determination and make recommendations on improvements to the document that will make more it understandable and relevant. It is not to decide whether or not there should be air carrier service at Paine Field.

Public Comments;

Grant Woodfield stated that no airliner has expressed an interest in coming to Paine Field, and that the last commuter operation at Paine Field is no longer in business. He also stated that business at Paine Field is booming and that there are no buildings vacant at Paine. Mr. Woodfield stated that catering is up 400% and the Future of Flight is expecting 200,000 visitors a year. He then referred to the first quarter noise report and stated that the large jets generate the vast majority of noise complaints. He then stated airlines will not go where they are not wanted.

Co-chair Ray Stephanson addressed the Panel; he stated that in being mindful of the Panel's role, which is to review the MRD and determine the validity of it, he feels hamstrung in being asked to do something without all the information necessary. So, for the good of the order and to try to bring direction to the

process, Mr. Stephanson made a motion that the Panel request that County Executive Aaron Reardon obtain a new legal opinion by a respected private attorney to determine;

1. Since significant time has lapsed since the inception of the MRD, and many court cases have evolved, what is the validity of the MRD now?
2. What can legally be done to encourage or discourage airline activity at Paine Field?

Mark Wolken seconded the motion and a lengthy discussion ensued.

Lori Kaiser stated that the MRD is one sided. Why are we looking at the legality of the document when we have already established that it is a policy statement and not a legal document? If it was an interlocal agreement (ILA) then we could do a legal test.

Tom Gaffney agreed that it is not a legal document, but that the Panel needs direction in how they can encourage or discourage types of aviation activity.

Lori Kaiser stated that it has already been established that the MRD was a valid policy statement at the time it was developed in 1978, and that it is not a legal document. If it were an Interlocal Agreement it could be put to the test as to legality. Secondly, knowing that the County cannot prohibit aeronautical activity, this same type document (such as the MRD), is generally being used by other communities and they may include the terms "encourage and discourage" (as stated previously by the Barnard Dunkelberg company). The Panel is still waiting for the County's response to this issue.

Co-Chair Ray Stephanson stated that since that language (encourage/discourage) is in the MRD, the Panel needs someone to say if it is a legal, and does it jeopardize the County or the County's relationship with the Boeing Company? Without that information the Panel can't move forward.

Does the ANCA decision in 1992 make the MRD invalid? The situation requires a policy statement on how business will be done, whether it's a MRD or a local agreement, or some other policy, legal guidance is necessary.

Ms. Kaiser asked if independent legal counsel is more viable than information from Ryk Dunkelberg.

Mr. Stephanson stated that it is either valid or it is not. What impact did ANCA have on the MRD? The Panel does not have adequate information to revise the document.

Peter Camp related that the County's perspective on the question of validity of the MRD is that since it is not part of the Charter it is a policy. Because words have different meanings in different situations it is best to refine the question of the opinion. The second part of the Mr. Stephanson's motion is a better one for the independent counsel—how can the County encourage or discourage? Pieces of the MRD have been overtaken by events. What does validity mean?

Michelle Robles compared the MRD to the City's Comp Plan. If we were to say we encourage apartments, does that mean it will actually happen? As the community changes, the document needs to be updated.

Mr. Stephanson sees the MRD as a social contract that the Panel has been asked to review. Maybe review was the wrong question. There have been changes since the MRD—aircraft noise levels, legislation, court decisions, etc. If you are going to structure an MRD the wording needs to be such that it withstands a legal challenge at the risk of losing County control of Airport. The best way to deal with this is get a legal opinion, and not be afraid of the answer.

Don Doran asked if there was a suggestion that the MRD is a legally binding document. He observed that the MRD has been given a lot of weight, perhaps too much, since it is not a legal document. No one is suggesting that the MRD could be used to force the County or Airport into something. Do not spend on something that isn't necessary.

Mark Wolken asked about an apparent contradiction in the MRD. Since the MRD encourages commuters, would the opinion be favorable on a larger, but quieter plane? The answer from Save Our Communities was NO. But, is that answer correct? What box can we build, what are the legal parameters?

Don Doran said "Horizon is a commuter." Further, the "box is flawed logic." The idea that by limiting the size of the terminal, the airlines will be limited, is totally flawed. Southwest and Alaska Airlines were willing to put up \$280 million to upgrade Boeing Field. There is no business model that indicates Paine Field is viable.

Lori Kaiser recalled Ryk Dunkelberg's comment "You can't say no." This means you can't build a "box."

Ray Stephanson asked "If the MRD means nothing, then why are we here?" We are volunteering a lot of time.

Russ Keyes stated that we are here to blend the two documents and that any policy decisions dealing with scheduled airlines would be done by the county.

Tom Hoban is reluctant to have his name connected with anything that is contradictory to Ed Level's opinion. That opinion was commissioned by the very body that has asked us to review it.

The Panel needs an updated legal opinion.

Don Doran noted that the paper from Ed Level was a letter of resignation, not an official legal opinion.

Tom Hoban said he wanted a legal opinion.

Tom Gaffney wants to know what the Panel can and can't do. What are the basic rules?

John Shaw agrees with Mr. Camp on the legal opinion—task one in the motion is a bottomless pit. Mr. Stephanson has a good point about the changes in aircraft technology and legislation. The County would not want to discourage ethnicity in the workplace or discriminate at the airport. He wants to know if there is a tripwire out there--the Panel needs to know how aviation law affects this document.

Michelle Robles believes that a policy statement can be valid even when it is neither illegal or legal. The County can determine whether the MRD is valid or invalid from their standpoint. In Mountlake Terrace we get SeaTac traffic, not Paine Field traffic.

Ray Stephanson stated that people bought homes believing in the MRD. We need a legal opinion—we can't prohibit. The citizens need to know what can and cannot be prohibited; how accommodating does the County have to be if an airline wants to come. We should not be afraid of the answer.

Hugh Townsend believes that to make the document meaningful and useful a legal framework needs to be established. How can "encourage or discourage" be incorporated into the language and be valid?

Lori Kaiser expressed concern about asking for a legal opinion on how we can encourage or discourage. If the MRD was an ILA then we would really have to look at closely from a legal perspective. The MRD is a social contract. Do not give an attorney and open ended opportunity. He needs to know “What am I giving an opinion on?” Ms. Kaiser hopes that the Panel would give the attorney very specific guidelines on what the Panel and the County Executive are looking for, and also that her questions (from the June 1 meeting) be answered as well.

Ray Stephanson commented on the need for clarification of the MRD. Considering all the elapsed time, new technology and legislation, is the MRD the appropriate tool to be using? Does it put County control over the Airport in jeopardy?

Lori Kaiser said that Ryk Dunkelberg answered that question when he said that the “encourage/discourage” methodology was commonly used and was recognized by the FAA. It would be a social contract—we can’t “prohibit.”

Ray Stephanson stated that the Panel is being asked to revise/update a social contract and make recommendations. An attorney would not only validate, he would give the parameters to be used.

John Shaw noted that the material provided by Ryk Dunkelberg was not a legal opinion.

Mr. Camp stated that general questions get general answers. So, the more specific the questions are to the attorney, the better. We cannot prohibit any aeronautical use. Is the MRD the appropriate tool, and the tool to do what?

Mr. Stephanson stated a need to have answers to both questions in his motion (validity of the MRD, and legal limits of county’s ability to encourage or discourage air service).

Russ Keyes would like the Panel to agree on the blended document and then take it to the attorney.

Tom Gaffney would like the document, as Russ prepared it, given to the attorney as part of the opinion.

Michelle Robles said she thinks the Panel is walking around an elephant. There are no questions on General Aviation, or Boeing. The real questions is “Do We Want to allow scheduled airlines?” What can we do to encourage or discourage air service? Half will be happy, half not happy. The language needs to be cleaned up and requests that the motion be tabled.

Mayor Stephanson agreed that there will be people on both sides of this issue and restated his need for a legal opinion. In order to be respectful of people’s time the Mayor called for the question and a vote on the motion.

Michelle made a motion to split the original motion into two parts and Ms. Kaiser seconded it. The vote was three to split the original motion and seven opposed. The motion failed.

The vote on the original motion was then taken. It passed by a vote of seven to three.

John Shaw expressed his frustration with the pace of things. He would really like to honor the work that Russ Keyes has done.

Peter Camp will start work on the legal opinion. He told the Panel that in order for a legal opinion to be obtained, the approval of the Prosecuting Attorney and County Council is necessary and that the funding

is an issue. There is also a time issue involved, probably the opinion can be attained by August 1. Some of the issues will be:

- Define the scope of work
- What tools are available
- Can the County limit the level of expansion and what is the mechanism to do it
- Eliminate out dated wording (clean up, but not eliminate)
- Lori Kaiser's list
- Mark Wolken's toolbox
- Land use compatibility-- What would it look like to adopt 60 DNL.

Michelle Robles asked if GMA would be included in the validity review.

Ray Stephanson said that if GMA is appropriate for the review, the answer is, yes.

Don Doran asked if there was a need for the committee to meet again before the legal opinion is available.

Ray Stephanson thought that was a good question and agreed to cancel the July 6<sup>th</sup> meeting.

Tom Gaffney said the panel needs the opinion before the next meeting.

Peter Camp made the following comments:

1. We will need PA and County Council approval for the outside legal review
2. We will attempt to complete the legal review in time for a meeting of the MRD Review Panel on August 1.
3. Delta Airlines is now offering service from Bellingham to Salt Lake City.
4. Three MRD documents have been added to the County BRD Review Panel webpage.
  - a. Keyes highlighted MRD
  - b. Keyes DRAFT Blended MRD
  - c. Restated Role for Paine Field Selected

John Shaw stated he was frustrated with the pace of the MRD Review and urged the panel to move through it quickly.

Peter Camp told the panel he would move forward on the outside opinion and outlined the next meeting, which would include the legal opinion, the MRD restatement, Lori's list and Mark's toolbox.

Ray Stephanson restated the questions: "Can airports limit the level of service? How? What are the tools available?"

Hugh Townsend asked a question on land use compatibility—What would 60 DNL look like?

Peter Camp asked Christy Baumel (Snohomish County Planning) to research a 60 DNL model.

Deanna Dawson is now an employee of Snohomish County and will no longer serve on the Panel. Mayor Gary Haakenson will replace Deanna on the MRD Review Panel.

The July 6 meeting is canceled.

Meeting was adjourned at 4:10.