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December 5, 2016

By Email (tom.barnett@snoco.org) and Hand Delivered

Tom Barnett

Principal Economic Development Officer

Snohomish County PDS

3000 Rockefeller Avenue, M/S 604

Everett, WA 98201

Re: File No. 16-109244 LDA: Proposal to Construct Passenger Facilities at Snohomish County Airport – Paine Field (SCA-PA)

Dear Mr. Barnett:

I represent Propeller Airports, LLC with regard to the Propeller/Paine Field application. This letter responds to July 19, 2016 comments provided by Mr. Peter J. Eglick on behalf of the City of Mukilteo (“the City”). The following comments are not intended in the slightest to chide the City’s decision to comment.

### **SEPA Review.**

The immediate task is to evaluate reasonably probable significant adverse impacts relating to executing a lease with Snohomish County to resume measured and limited commercial air passenger service at Paine Field. Air passenger service is a permitted use under the Snohomish County Code. Pursuant to applicable federal law, use of Paine Field must be offered by the County to all users on a non-discriminatory basis.

The vehicle to trigger local environmental review is the need to secure a Site Development Permit. That permit is for a focused project with incremental impacts that can be mitigated via a Mitigated Determination of Nonsignificance (“MDNS”). The proposal itself is of regional significance which implements established policy choices for use of transportation infrastructure, such as airports. The regional perspective controls over more narrow parochial interests.

### **Unique Context.**

The proposal is unique in many respects. One, it is not new development, but rather resumption of a use that will for the most part use not expand existing building footprints Two, even though it is not new development and an historic use, the proposal must meet numerous applicable laws and permit requirements, *e.g.*, storm water control regulations and Clean Water Act obligations imposed by its Airport General Industrial NPDES approval. These laws and requirements apply without regard to SEPA and are intended to ameliorate environmental impacts. Three, as noted, the policy choice to use Paine Field for commercial air passenger

service has already been made by Congress, and the Federal Aviation Administration. The Snohomish County Zoning Code recognizes and implements the federal action.

In this regard, these choices have gone through significant environmental and programmatic review. On the last point, as set out more fully below, the public record shows that the federal decisions occurred after review under the National Environmental Policy Act (FAA Finding of No Significant Impact and Record of Decision, December 2012).

The State Environmental Policy Act (“SEPA”) was used to guide preparation of numerous regional or broad policy planning documents addressing use options for Paine Field. Relevant programmatic studies include, but are not necessarily limited to: Paine Field Master Plan and Amended Master Plan (November 2003); Paine Field Master Drainage Plan (October 2008); Snohomish County Airport Environmental Assessment (September 2012); Snohomish County General Policy Plan (July 2015), Transportation Element (TR-1 and 2, TR-14 through TR-16); Snohomish County’s 2015 Capital Facilities Plan (pp.62-63); Snohomish County Comprehensive Plan 2015 Update (Final EIS, Transportation); Snohomish County Comprehensive Plan 2015 Update; Washington Aviation Council’s policies set out in its Long-Term Air Transportation Study.

Snohomish County is empowered to take these studies into account during its SEPA review. *See* WAC 197-11-210 (SEPA/GMA integration); WAC 197-11-600 (use of existing environmental documents).

In addition, the County must follow the Puget Sound Regional Council’s (“PSRC”) Vision 2040 Plan.<sup>1</sup> The PSRC is designated:

... by the governor of the State of Washington, under federal and state laws, as the Metropolitan Planning Organization (MPO) and Regional Transportation Planning Organization (RTPO) for the central Puget Sound region encompassing King, Kitsap, Pierce, and Snohomish counties; and

PSRC Resolution A-08-04 dated April 24, 2008 (Vision 2040 – Puget Sound Regional Council, p.ii.).

Vision 2040 places a strong emphasis on maximum use of existing facilities.

Section Overview. VISION 2040’s transportation section is structured around three broad areas: (1) Maintenance, Management, and Safety, (2) Supporting the Growth Strategy, and (3) Greater Options and Mobility. These policy areas address getting more out of current systems and past

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<sup>1</sup> Vision 2040 was adopted after SEPA review. *See* Vision 2040 Plan, Appendix A-2, A-3.

investments, the critical link between transportation and land use, and an approach to improving mobility through a variety of viable travel choices.

Vision 2040 – Puget Sound Regional Council, p.78.

PSRC duties include airports:

Aviation Systems Planning: T-Action-10.

The Puget Sound Regional Council will regularly assess the regional airport system and, as needed, update the Regional Airport System Plan, Strategic Plan for Aviation, Regional Airport Ground Access Plan, and Regional Air Cargo Strategy, in cooperation with member jurisdictions, airport sponsors, state agencies, and the Federal Aviation Administration.

Vision 2040 – Puget Sound Regional Council, p.87.

Turning to the site-specific aspects of the proposal, the Option expressly requires completion of full SEPA review prior to execution of any lease, and reserves to the County full SEPA authority, as follows:

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

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

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CP 77-78. Paragraph 7 demonstrates that execution of a lease is specifically conditioned on completion of SEPA review, which the City correctly notes. The type or level of SEPA review remains in the discretion of the County’s SEPA Responsible Official if Propeller Airports opts to go forward with a land use application, which it has done.

### **The Appeals.**

(1) NEPA

For the record, two federal approvals are required from the FAA: (1) amendment of the “operating specifications” of the airlines who will provide commercial service; and (2) modification of the operating certificate to reflect provision of commercial service as a

“Class I airport.” This triggered a federal environmental review process through the National Environmental Policy Act (“NEPA”).

The U.S. Department of Transportation in December 2009 completed a “Draft Environmental Assessment (“EA”) for initiation of Air Carrier Operations, Amendment to its FAR Part 139 Certificate and Modification of the Terminal Building.” Snohomish County held open a public comment period, during which the City of Mukilteo raised its concerns about noise and traffic impacts, among other issues. After considering hundreds of comments, the FAA issued a Final Environmental Assessment allowing commercial passenger service to recommence at Paine Field. Thereafter, the FAA approved a Finding of No Significant Impact and Record of Decision (“FONSI/ROD”) on December 4, 2012 for the proposal, concluding that commercial airplanes could fly out of Paine Field without significantly adding to local noise and traffic.

The City (among others) challenged the FAA’s decision, claiming that the FAA failed to fully analyze the environmental, noise, and traffic impacts arising from new commercial airline services at Paine Field. *Mukilteo*, \_\_\_ F.3d \_\_\_, slip op. No. 13-70385 at 6. On March 4, 2016, the U.S. Court of Appeals for the Ninth Circuit rejected every argument raised by petitioners and affirmed the FONSI/ROD. *Id.* at 10, 12-13. The Court denied Mukilteo’s petition for rehearing *en banc* on April 12, 2016.

The County has leave to use in whole or part the existing NEPA documents which the courts have upheld. See State Environmental Policy Act Handbook, (“SEPA Handbook”). p. 104, p. 33; Adoption Forms, Appendix D. (“SEPA allows the use of NEPA documents to meet SEPA requirements. A NEPA document... may be adopted or incorporated by reference.”

(2) SEPA

The City filed a petition for judicial review, writ of review, and a declaratory judgment order in King County Superior Court, asking the court to declare the Option void. The City alleged that the County approved the Option in violation of SEPA.

The Superior Court dismissed the complaint, concluding that execution of the Option was not a “project action” nor did the County violate its Code:

The March 11, 2015 Option to Lease Land at the Snohomish County Airport (“Option Agreement”) specifically provides that exercising the option to the lease was contingent upon and subject to compliance with RCW 43.21C, the State Environmental Policy Act (“SEPA”). Paragraph 2 states “This Option may be exercised following completion of environmental review as provided in paragraph 7,” which in turn states “Propeller and County agree that a SEPA process must be completed prior to exercise of the Option and execution of the Lease.” As such, compliance

with SEPA constitutes a condition precedent for exercising the option by Propeller Airports.

This Court does not find that the execution of the Option Agreement constituted a “project action” as defined under RCW 43.21C.

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Finally, this Court does not find that Respondent Snohomish County violated SCC 2.10.010(2) and, therefore grants summary judgment in favor of the County.

(Order dated October 9, 2015, Cause No. 15-2-06802-4.)

Accordingly, the Superior Court entered judgment in favor of the County and Propeller Air.<sup>2</sup> Appeal of the Superior Court order is not yet complete. Although the appeal was argued November 7, 2016, no decision has yet been issued. The merits of the appeal could be mooted, in whole or part, by the current permitting process.

### **Noise**

The SEPA review process is continuing, so I make no specific comments until the additional evaluations the County has directed occur are completed and reviewed by Propeller Airports.

Propeller Airports is a lessee/operator, so it defers to the County Airport Authority on noise regulation. Generally, Propeller Airports understands airspace control is the sole authority of the federal government pursuant to 49 U.S.C. § 40103(a)(1). Snohomish County, as the owner and operator of the Airport, has no ability to regulate aircraft noise in airspace. The County receives and responds to noise complaints as part of its noise monitoring program, but the County has not adopted any ordinance imposing its own aircraft noise restrictions. The Airport has a voluntary noise abatement procedure and a noise monitoring program to measure the success of its voluntary noise abatement procedures. The draft lease addresses noise abatement as follows:

The County and Propeller recognize the importance and joint responsibility of compatibility between the Airport and the surrounding community. Therefore, Propeller shall actively participate and comply in all material respects with all noise abatement procedures, policies, and programs as set for the by the County to greatest extent possible.

(Section 9.08 Noise Abatement).

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<sup>2</sup> The Superior Court did not reach the alternative ground for dismissal of the complaint offered by Respondents that execution of the Option was categorically exempt under SEPA.

Tom Barnett  
December 5, 2016  
Page 6

Here, the County has not adopted any noise ordinance under the “Municipal-Proprietor exemption.” Accordingly, there is not a question of preemption and the Federal laws are controlling. That does not preclude imposing feasible mitigation under the voluntary compliance program, as envisioned by the lease, understanding that the use has been approved by the federal government and Snohomish County.

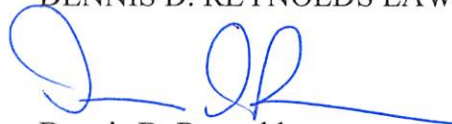
The case cited by Mr. Eglick contains an incorrect citation – it is *Alaska Airlines, Inc. v. City of Long Beach*, 951 F.2d 977 (9th Cir. 1991). He cites it as 957 F.2d 977.

That said, the case discusses a municipality’s right to enact noise regulations that are not preempted by federal law. It certainly does not require the County to enact its own noise ordinances, however. In *Alaska Airlines*, the court affirmed that the city was not precluded from enacting and enforcing its own noise regulations.

Thank you for your kind attention to these comments.

Very truly yours,

DENNIS D. REYNOLDS LAW OFFICE



Dennis D. Reynolds

DDR/cr