

**CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON**

STEPHEN PRUITT and STEVEN VAN CLEVE,)	Case No. 06-3-0016
)	
Petitioners,)	(Pruitt)
)	
v.)	
)	ORDER FINDING
TOWN OF EATONVILLE,)	COMPLIANCE and
)	RESCISSION OF INVALIDITY
Respondent.)	
)	

I. BACKGROUND

On December 18, 2006, the Board issued its Final Decision and Order (**FDO**) in CPSGMHB Case No. 06-3-0016. The FDO provided in relevant part:

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, having considered the arguments of the parties, and having deliberated on the matter, the Board **ORDERS**:

1. The Town of Eatonville’s adoption of Ordinance 2006-6, establishing development regulations for Swanson Field, a general aviation airport, was **clearly erroneous**.
2. Ordinance 2006-6 **does not comply** with the requirements of RCW 36.70A.130(1), since the adopted development regulations for Swanson Field do not implement GMA compliant Policies in the Town’s Comprehensive Plan.
3. Ordinance 2006-6 **does not comply** with the requirements of RCW 36.70A.510 and RCW 36.70.547 requiring the Town of Eatonville to discourage the siting of incompatible uses near its general aviation airport – Swanson Field.
4. Additionally, the Board has found that the continued validity of Ordinance 2006-6 will potentially endanger those persons using the Eatonville general aviation airport and endanger the safety of the general public near this facility. The Board has determined that Ordinance 2006-6 substantially interferes with the fulfillment of Goals 3 and 11 – RCW 36.70A.020(3) and (11). Therefore the Board has entered a **determination of invalidity** with respect to the entirety of Ordinance 2006-6.
5. The Board **remands** Ordinance 2006-6 to the Town of Eatonville with direction to take the necessary legislative actions to adopt development

regulations for Swanson Field that are consistent with, and implement, its compliant Plan Policies, per RCW 36.70A.130(1), and comply with the requirements of RCW 36.70A.510 and RCW 36.70.547, as set forth and interpreted in this Order.

- The Board establishes **March 16, 2007**, as the deadline for the Town of Eatonville to take appropriate legislative action to comply with the GMA as interpreted and set forth in this Order.
- By no later than **March 23, 2007**, the Town of Eatonville shall file with the Board an original and four copies of the legislative enactment described above, along with a statement of how the enactment complies with the GMA and this Order (**Statement of Actions Taken to Comply - SATC**). The Town shall simultaneously serve a copy of the legislative enactment(s) and compliance statement, with attachments, on Petitioners. By this same date, the City shall also file a “**Compliance Index**,” listing the procedures (meetings, hearings etc.) occurring during the compliance period and materials (documents, reports, analysis, testimony, etc.) considered during the compliance period in taking the compliance action.
- By no later than **March 30, 2007**, the Petitioners may file with the Board an original and four copies of Response to the Town’s SATC. Petitioners shall simultaneously serve a copy of their Response to the Town’s SATC on the Town.
- Pursuant to RCW 36.70A.330(1), the Board hereby schedules the Compliance Hearing in this matter for **10:00 a.m. April 12, 2007**, at the Board’s offices. If the parties so stipulate, the Board will consider conducting the Compliance Hearing telephonically. If the Town of Eatonville takes the required legislative action prior to the **March 16, 2007**, deadline set forth in this Order, the Town may file a motion with the Board requesting an adjustment to this compliance schedule.

FDO, at 22-23.

On March 22, 2007, the Board received Eatonville’s “Statement of Actions Taken to Comply” (**SATC**) and a “Revised Index of the Record” (**Compliance Index**). The Compliance Index lists 50 items, dating from 1/2/07 through 2/27/07. Also attached to the SATC were five items from the Compliance Index, as follows:

- Item 21, attachment to Lind letter showing Amendments to the Comprehensive Plan in ~~strike-out~~ and underlined form.
- Item 29, a clean copy of the Amendments to the Comprehensive Plan
- Item 40, attachment to Lind letter showing Amendments to the Development Regulations in ~~strike-out~~ and underlined form.
- Item 48, a clean copy of the Amendments to the Development Regulations
- Item 35, Minutes of the public hearing held by the Planning Commission on February 12, 2007 addressing the new regulations.

The Town of Eatonville did not provide copies of either of the adopting Ordinances; however, they were identified as Item Nos. 29 and 48 in the Compliance Index.

On March 29, 2007, the Board received Petitioners' Pruitt and Van Cleve's "Response to Statement of Actions To Comply" (**Response to SATC**). Petitioners attached five proposed exhibits that were not included in the Town's Compliance Index. The five attachments are letters from the Washington State Department of Transportation, Aviation Division (**WSDOT**) commenting on the proposed Plan Amendments and Development Regulation Amendments. The first letter was in the record in the proceeding below; the other four letters were written in February 2007, during the Town's consideration of the Amendments to the Comprehensive Plan and Development Regulations. The attached items are as follows:

- 2/24/06 WSDOT letter to Town – **Index No. 51**¹
- 2/2/07 WSDOT letter to Planning Commission – **Index No. 52**
- 2/15/07 WSDOT letter Planning Commission – **Index No. 53**
- 2/26/07 WSDOT letter to Kask, Lind and Smallwood – **Index No. 54**
- 2/26/07 WSDOT letter to Smallwood – **Index No. 55**

All filings were timely.

On April 10, 2007, the Board notified the parties that the compliance hearing would be conducted telephonically at 10:00 a.m. on Thursday April 12, 2007. The Town was also notified of the Board's request for copies of the signed Ordinances and the public hearing notices.

On April 11, 2007, the Board received copies of the signed Ordinances – Nos. 2007-3 [Plan Amendments] and 2007-5 [Development Regulations] and respective notices of public hearings by the Town Council.

The Board conducted the Compliance Hearing (telephonically) on April 12, 2007, at 10:00 a.m. at the Board's offices Suite 2356, 800 Fifth Avenue, Seattle, Washington. Board Member Edward G. McGuire presided. Board member David O. Earling attended in person, while Board Member Margaret Pageler participated via telephone. *Pro se* Petitioners Stephen Pruitt and Steven Van Cleve participated as did Edward G. Hudson, representing the Respondent Town of Eatonville. Also participating with Mr. Hudson were Nick Bond, Tom Smallwood, Steve Lind and Mart Kask, all affiliated with the Town of Eatonville. The proceeding was recorded. The Compliance Hearing was adjourned at 11:45 a.m. April 12, 2007.

¹ At the compliance hearing the Town stipulated that these Exhibits should be included in the Compliance Index. The five exhibits were thus assigned Index numbers 51-55.

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II. DISCUSSION

FDO Context:

The Board's 12/18/06 FDO found that Eatonville's Airport Regulations, as adopted by Ordinance No. 2006-6, were not consistent with, and did not implement, the Town's Plan, and were therefore **noncompliant** with the requirements of RCW 36.70A.130(1). Additionally, Ordinance No. 2006-6 was found **noncompliant** because it did not discourage the siting of incompatible uses adjacent to a general aviation airport as required by RCW 36.70A.510 and RCW 36.70.547. Further, the Board entered a **determination of invalidity** due to the Town's *disregard for aviation safety* in violation of RCW 36.70A.020(3) and (11). FDO, at 10-18 and 22-23.

The Board's 12/18/06 FDO ordered the Town to take appropriate legislative action to comply with the requirements of RCW 36.70A.130(1), .510 and RCW 36.70.547 and set a compliance schedule. *Id.* 22-23. The Board's discussion of the Compliance Action addresses: 1) Whether the amended development regulations are consistent with and implement the amended Comprehensive Plan; 2) Whether the amended development regulations and Plan discourage the siting of incompatible uses adjacent to the airport; and 3) Whether the Town's adoption of Ordinance Nos. 2007-3 and 2007-5 removes substantial interference with Goals 3 and 11.

Compliance Action(s) of Eatonville – Adoption of Ordinance Nos. 2007-3 and 2007-5:

The Town of Eatonville responded in two ways to the Board's FDO.

First, the Town amended its Comprehensive Plan with Ordinance No. 2007-3. In short, it appears that the Town *deleted one* General Land Use Policy [LU 10.7.1(8)] and *revised three* General Land Use Policies, and *shifted them* to Airport Area Land Use Policies [General Land Use Policies LU 10.7.1(7), (9) and (10) were revised and shifted to Airport Area Land Use Policies LU 10.7.5(8), (9) and (10)]. These amendments adopt Federal Aviation Administration (FAA) Part 77 "Imaginary Surfaces" for height restrictions and *continue* to encourage the protection of the airport from incompatible uses and activities. SATC, at 2; and Ex. 29, at 2 and 6.

Secondly, the Town amended its Airport Development Regulations with Ordinance No. 2007-5. The amended regulations require adherence to the FAA Part 77 height limitations, but allow a variance from these limitations following FAA comment [applicant submittal of FAA Form 7460-1]. SATC, at 2, Ex. 48, at 6 and 10. Additionally, the new regulations have identified "Incompatible Land Uses" for the Airport Overlay Zones. *Id.* All residential uses are added as incompatible in Zone 1; hospitals, nursing homes, churches, mobile home parks are included as incompatible uses in Zone 2 and permitted residential densities of four dwelling units per acre (4 du/ac) is stricken and replaced by permitting residential uses under a conditional use permit (CUP) process. The same provision for permitting residential use by CUP is added to Zone 3. No changes were made to the identification of incompatible uses for Zones 4, 5 and 6.

Id. and Ex. 48, at 12-13. Also the Town’s variance process is clarified to require FAA to indicate whether a proposed structure that penetrates the FAA Part 77 imaginary surfaces would or would not be a hazard to air navigation. If a hazard, or hazards, to air navigation are identified by FAA, the Town’s Board of Adjustment may still grant a variance. *Id.* at 10. Finally, existing structures are permitted and not identified as nonconforming uses. *Id.* at 14.

The Town of Eatonville contends that these changes adhere to the FDO and comply with the relevant provisions of the GMA and RCW 36.70.547.

Petitioners’ Response to the Town’s adoption of Ordinance Nos. 2007-3 and 2007-5:

Petitioners note that the original challenge was to the development regulations, not the Comprehensive Plan. However, Petitioners question whether the Town, in addition to amending its development regulations, can amend its Plan. Response to SATC, at 2. Petitioners **concur** that the amended development regulations height restrictions are now consistent with FAA Part 77, and note that FAA’s provisions allow penetration of the imaginary planes, with mitigation. *Id.* Petitioners indicate that they **concur** with the Town’s actions related to FAA Part 77, Form 7469-1 process and widened primary surfaces. *Id.* at 3.

However, Petitioners are concerned with the “variance procedures” to the extent they would allow the Board of Adjustment (**BoA**) to permit a height variance that is less restrictive than the FAA’s safety recommendations or perhaps allow the BoA to vary safety setbacks. *Id.* Additionally, Petitioners contend that the Town is still in the process of identifying incompatible uses, leaving the airport currently unprotected, contrary to Airport Area Land Use Goal LU-5, “Protect the airport from incompatible land uses and height hazards through provisions in the Comprehensive Plan and Development Regulations.” *Id.* at 5. Finally, Petitioners claim that the regulations “Fail to limit residential density in zones 2 and 3,” “Fail to define incompatible land use,” and “Fail to restrict setbacks and height violations.” *Id.* at 6.

A. Consistency with, and Implementation of, the Plan

Compliance with RCW 36.70A.130(1), RCW 36.70A.510, and RCW 36.70.547:

Are Eatonville’s Airport Development regulations, as adopted by Ordinance No. 2007-5 consistent with, and do they implement, the Town’s Comprehensive Plan, as amended by Ordinance No. 2007-3? – Yes

Do Eatonville’s Development regulation, as adopted by Ordinance No. 2007-5, satisfy the consultation requirements with State and Federal agencies? - Yes

This case, and the Board’s FDO, centered on the Town’s adoption of *implementing development regulations* – Ordinance No. 2006-6, **not** the Town’s Comprehensive Plan. Nonetheless, on remand, the Town chose to not only amend its implementing

development regulations, but also amend its Comprehensive Plan. Petitioners question whether the Plan could have been amended outside the annual review requirements.

When the Board finds noncompliance with the GMA, as it did in this case, RCW 36.70A.300(3)(b) directs the Board to “remand the matter to the [Town]. The Board shall specify a time not in excess of one hundred and eighty days . . . within which the [Town] shall comply with the requirements of this chapter.” This is exactly what the Board did in its FDO; it remanded the matter to the Town and established a compliance schedule that was within the 180-days’ constraint of the GMA. The Board directed the Town of Eatonville “to take the necessary legislative actions to *adopt development regulations for Swanson Field that are consistent with, and implement, its compliant Plan Policies*, per RCW 36.70A.130(1), and comply with the requirements of RCW 36.70A.510 and RCW 36.70.547, as set forth and interpreted in this Order.” FDO, at 22-23 (emphasis added). The Board did not specify any particular legislative action that the Town was required to take, other than requiring such action(s) to achieve compliance with the GMA.

In Appendix A, the Board has set forth the prior Plan Policies and the Plan Policies, as amended and reorganized by Ordinance No. 2007-3. In short, the Board finds and **concludes the relocation and revision of certain Plan Policies from the General Land Use section to the Airport Area Land Use Policies yielded no substantive change in the prior Plan Policies, germane to this proceeding.** See Appendix A. The Board’s following discussion is based upon this conclusion.

Height Limitations:

The focus of concern regarding height has been the Town’s application, or lack thereof, of the Federal Aviation Administration’s (FAA) Part 77 regulations (hereafter, Code of Federal Regulations - **CFR Part 77**). The most critical comments from the FAA and WSDOT Aviation Division pertained to the application of these regulations to Swanson Field. See 12/18/06 FDO, at 14-15 and Index Ex. 51, at 3-4.

Amended Airport Area Land Use Policy 10 now reflects the “Adoption” of CFR Part 77’s imaginary surfaces; rather than “Encouraging the adoption” of the CFR Part 77. See Policy comparison in Appendix A. More importantly, Ordinance No. 2007-5 adopts CRF Part 77 as “establishing the boundaries, dimensions, and configurations (airspace protection thresholds), to reduce airspace obstruction and hazard to aviation in proximity to an airport.” See Ordinance No. 2007-5, Chapter 18.04.187(D)(1), 18.04.187(E)(1)(b), and 18.04.187(F)(3) Eatonville Municipal Code (**EMC**), at 6, 10 and 14, respectively.

Petitioners also state, “The petitioners are satisfied with the role of height restrictions and FAA 7460-1 process in the protection of CFR Part 77 imaginary surfaces. Petitioners are pleased as well to see a widened primary surface.” Response to SATC, at 3. The Board also notes that the most recent recommendations from WSDOT, the 2/26/07 letter, no longer address concerns about FAA 7460-1 or CFR Part 77. See Index Ex. 55.

Consequently, the Board finds and concludes that the Town of Eatonville’s remand actions [adoption of Ordinance Nos. 2007-3 and 2007-5) address the *height limitation and setback* concerns raised by Petitioners, the FAA and WSDOT, Aviation Division, as discussed in the 12/18/06 FDO, and are consistent with, and implement, the relevant Plan Policies and comply with the consultation requirements of the Act.

Discouraging Incompatible Uses:

In the 12/18/06 FDO, the Board discussed incompatible uses in the context of the *three* Airport Overlay Zones at issue – Zones 1, 2 and 3. These were the Overlay Zones where the Board found the Town permitted incompatible uses, contrary to Federal and State recommendations. *See* 12/18/06 FDO, at 10-11.

In their comments on the Town’s SATC, Petitioners question whether the Town has adequately protected the airport from incompatible uses in Airport Overlay Zone 5. Response to SATC, at 4. They also urge the Town to require “clustered” residential development in Zones 2 and 3 as recommended by the WSDOT, Aviation Division. *Id.* referring to Index Ex. 55.

The Table below shows the changes made by the Town in addressing “Incompatible Land Uses., (deleted language appears in ~~strikeout~~, new language is underlined; areas in **gray highlight** were not at issue in the original proceeding.)

**Table 1
Incompatible Land Uses**

Airport Overlay Zones	Incompatible Land Uses
<p>Zone 1 - Runway Protection Zone [Extending 900’ from the end of the primary surface, which is 250’ beyond the end of the runway.]</p>	<p>1. Land uses which by their nature will be relatively unoccupied by people should be encouraged (mini-storage, small parking lots, etc.)<u>All residential uses.</u></p> <p>2. Schools, hospitals, nursing homes, churches, day care centers, and mobile home parks. are prohibited.</p>
<p>Zone 2 - Inner Safety Zone [Extending 1,600’ from the end of Zone 1.]</p>	<p>1. <u>Schools, hospitals, nursing homes, churches, mobile home parks, and day care centers.</u> are prohibited.</p> <p>2. Outside the existing Eatonville UGA, the average density of residential development will be one (1) dwelling unit per ten (10) acres on the property at the date of adoption of this ordinance.</p>

	<p>3. Inside the Eatonville UGA the average density of residential development will be a maximum of four (4) dwelling units per acre on the property at the date of adoption of this ordinance. Residential development is permitted under the conditional use permit procedures as specified in Chapter 18.09.030 EMC.</p> <p>4. At the time surrounding development takes place, Weyerhaeuser Way South shall be built as a two-lane collector street with two twelve (12) foot travel lanes, separated by a ten (10) foot painted median and flanked by eight (8) foot paved shoulders, beginning at Center Street East and extending south for a distance of one thousand (1000) feet. The street section is constructed absent curb and gutter. Stormwater flows are managed by constructing low-level grassy swales. The above-specified roadway design and layout allows distressed aircraft to set down on this section of the street.</p>
<p>Zone 3 - Inner Turning Zone [<i>Fanning out at 60 degrees from each side of the centerline of the runway and extending 2,500' from the end of primary surface.</i>]</p>	<p>1. Schools and day care centers. are prohibited.</p> <p>2. <u>Residential development is permitted under the conditional use permit procedures as specified in Chapter 18.09.030 EMC.</u></p>
<p>Not at Issue in Case No. 06-3-0016</p>	
<p>Zone 4 – Outer Safety Zone</p>	<p>1. Schools. are prohibited.</p> <p>2. Outside the existing Eatonville Urban Growth Area (UGA), the average density of residential development will be one (1) dwelling unit per ten (10) acres on the property at the date of adoption of this ordinance.</p> <p>3. Inside the Eatonville Urban Growth Area (UGA), the average density of residential development will be a maximum of four (4) dwelling units per acre on the property at the date of adoption of this ordinance</p>

Zone 5 – Sideline Safety Zone	<ol style="list-style-type: none"> 1. All aviation-related uses are permitted. 2. Schools, hospitals, nursing homes, churches, day care centers, mobile home parks are prohibited. 3. All A_ - Aerospace District permitted uses are allowed.
Zone 6 – Traffic Pattern Zone	<ol style="list-style-type: none"> 1. There are no overlay restrictions.

Ordinance 2007-5, Chapter 18.04.187(E)(2) EMC, at 12-13.

The Board notes that concerns regarding incompatible uses in Zone 5 are new. The Board also notes that Ordinance No. 2007-5, amending the airport regulations, made no changes, discernable to the Board, in the identified incompatible uses in Zone 5. Consequently, the Board concludes that Petitioners’ challenge here is untimely, and apparently without merit.

Additionally, the Board finds and concludes that the Town’s identification of “All residential uses” as incompatible in Zone 1 is consistent with the recommendations of WSDOT Aviation Division and FAA. Likewise, the expansion of incompatible uses to include hospitals, nursing homes, churches, and mobile home parks in Zone 2, also has merit.

The Board also finds that the limitation of residential uses to only those satisfying conditional use permit (CUP) requirements appears to allay airport safety concerns raised by Petitioners and WSDOT, since there are no comments or recommendations to the contrary. *See* Index Ex. 54 and 55. The Board also notes that EMC 18.09.030(D) includes conditions for granting a CUP, and EMC 18.09.030(F), provides for appeals of CUP decisions to the Town Council. *See* EMC 18.09.030(D) and (F).² These provisions would appear to constrain residential development within Airport Overlay Zones 2 and 3. Finally, the Board notes that “clustering” any residential development within Zones 2 and 3 is typically an option that permit applicants may pursue, or perhaps a condition the Town may require. This decision is within the Town’s discretion.

Consequently, the Board finds and concludes that the Town of Eatonville’s remand actions [adoption of Ordinance Nos. 2007-3 and 2007-5) address the need to identify “Incompatible Uses” concern raised by Petitioners, the FAA and WSDOT, Aviation Division, as discussed in the 12/18/06 FDO. These provisions are consistent with, and implement, the relevant Plan Policies and comply with the consultation requirements of the Act.

The Variance Process:

The Town’s variance procedures, as discussed in the 12/18/06 FDO, were unclear, ambiguous and contradictory to CFR Part 77. Thus, the Board found them to be

² The Board takes **official notice** of these provisions of the Eatonville Municipal Code.

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noncompliant. The Board now finds that the variance provisions adopted in Ordinance No. 2007-5 rectify the ambiguity and follow CFR Part 77 procedures. The BoA review is now based upon review of height standards established by CFR Part 77, and the appropriate filing sequence for FAA Form 7460-1. Ordinance No. 2007-5 provides:

All uses shall be subject at all times to the height restrictions set forth in Section D above [referring to CFR Part 77]. *Any proposed structure or object that is likely to penetrate FAR 77 imaginary surfaces in any zone as identified in Subsection D.1.a through D.1.e can be granted a building or land development permit only after the applicant has filed a notice on Form 7460-1 with the Federal Aviation Administration, and having received a written statement that applicant's proposal "would not be a hazard to air navigation,"* but if one or more hazards to air navigation are identified, then upon the applicant having filed and received approval for a variance from the Town of Eatonville Board of Adjustment, under the variance procedures identified in Section F.3 of this Chapter. The decision of the Board of Adjustment is final unless appealed to the Pierce County Superior Court.

EMC 18.04.187(E)(1)(b); (emphasis supplied). The Board finds the italicized language to address the concerns addressed in the 12/18/06 FDO and compliant with the relevant provisions of the Act.

However, Petitioners voice a fear that the Eatonville's Board of Adjustment could ignore any hazards to air navigation identified by the FAA and allow a structure or development to proceed under requirements that are "less restrictive than the FAA safety recommendation." Response SATC, at 3. The Board notes that Index No. 35, a transcript of the Airport Committee meeting of February 12, 2007, includes discussion of mitigation measures that can be taken [e.g. beacons, lights, adjusted setbacks] that are often recommended by the FAA, to allow penetration of the imaginary surfaces. *See* Index No. 35, at 2-6.

The Board acknowledges that conceivably the Board of Adjustment could ignore the FAA recommendations; however, the Town would act at its own peril if it ignored the FAA findings of "hazard to air navigation" without mitigating in accordance with FAA recommendations. The Town must act in good faith to enforce the regulations it has adopted. The Board cannot assume otherwise.

The Board finds and concludes that the Town of Eatonville's remand actions [adoption of Ordinance Nos. 2007-3 and 2007-5) address the need to clarify the Variance Process to reflect adherence to CFR Part 77 and FAA filing requirements for Form 7460-1, raised by Petitioners, the FAA and WSDOT, Aviation Division, as discussed in the 12/18/06 FDO. These provisions are consistent with, and implement, the relevant Plan Policies and comply with the consultation requirements of the Act.

Conclusion

The Board finds and concludes that the Town of Eatonville's adoption of Ordinance Nos. 2006-3 and 2007-5 comply with the requirements of RCW 36.70A.130(1), RCW 36.70A.510 and RCW 36.70.547, as interpreted in the Board's 12/18/06 FDO. The Board will enter a Finding of Compliance.

B. Invalidity

Has the Town of Eatonville, in adopting Ordinance Nos. 2007-3 and 2007-5 removed substantial interference with Goals 3 and 11; thereby warranting a rescission of the Board's determination of invalidity? – Yes

Having found that the Town of Eatonville's adoption of Ordinance Nos. 2007-3 and 2007-5 **comply** with the requirements of RCW 36.70A.130(1), RCW 36.70A.510 and RCW 36.70.547, as interpreted in the Board's 12/18/06 FDO, there is no longer a basis for a determination of invalidity. Consequently, the Board **rescinds the Determination of Invalidity** regarding the Town of Eatonville's Airport Regulations.

III. FINDING OF COMPLIANCE/NONCOMPLIANCE

Based upon review of the 12/18/06 FDO, the SATC, the Response to the SATC, Ordinance Nos. 2007-3 and 2007-5, the arguments of the parties, and having deliberated on the matter, the Board, as reflected *supra*, the Board enters a **Finding of Compliance**, and **Rescission of Invalidity** for the Town of Eatonville regarding the adoption of Ordinance No. 2007-3 and 2007-5.:

IV. ORDER

Based upon review of the GMA, the 12/18/06 Final Decision and Order in this matter, the Statement of Actions Taken to Comply, briefs and exhibits, and presentations at the Compliance Hearing, the Board ORDERS:

- Eatonville's adoption of Ordinance Nos. 2007-3 and 2007-5, has removed substantial interference with the GMA's Goals 3 and 11. Therefore, the Board rescinds the determination of invalidity.
- Eatonville's adoption of Ordinance Nos. 2007-3 and 2007-5 corrected the compliance deficiencies found by the Board and now **complies** with the goals and requirements of the GMA [RCW 36.70A.130(1), RCW 36.70A.510 and RCW 36.70.547] as set forth in the Board's December 18, 2006 Final Decision and Order. The Board therefore enters a **Finding of Compliance** for the Town of Eatonville with respect to the Petitioners' challenge.

CPSGMHB Case No. 06-3-0016, *Pruitt v. Eatonville*, is **closed**.

So ORDERED this 19th day of April, 2007.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

David O. Earling
Board Member

Edward G. McGuire, AICP
Board Member

Margaret A. Pageler
Board Member

Note: This order constitutes a final order, as specified by RCW 36.70A.300, unless a party files a motion for reconsideration pursuant to WAC 242-02-832.

APPENDIX A

Relevant Plan Policies – Town of Eatonville’s Comprehensive Plan

Prior Plan Policies: The relevant Town of Eatonville Plan Policies from *the prior Plan* provide:

- Under General Land Use Goal LU-1,³ the following policies:

...

7. Encourage the protection of Swanson Airport from adjacent incompatible land uses and activities that could impact the present and future operations of the airport. Uses may include non-aviation residential, multifamily, height hazards, and special uses such as schools, hospitals, and nursing homes and explosive/hazardous materials.

...

9. Discourage the siting of uses adjacent to airports that attract birds, create visual hazards, or emit transmissions [that] would interfere with aviation communications and/or instrument landing systems, or otherwise obstruct or conflict with aircraft patterns, or result in potential hazards to aviation.

10. Encourage the adoption of development regulations that protect the airport from height hazards by developing a Height Overlay District [that] will prohibit buildings or structures from penetrating the Federal Aviation Regulations (FAR) Part 77 “Imaginary Surfaces.”

- Under Airport Lands Goal LU-5,⁴ the following policies:

...

2. Protect the viability of the airport as a significant economic resource to the community and the State;
3. Enhance coordination and consistency between comprehensive plans, implementing regulations and airport plans; and
4. Reduce hazards that may endanger the lives of property and the public.

...

³ LU-1 states: “To support and improve a rural small town, residential community comprised largely of single-family neighborhoods together with a central commercial area and a broad range of other support services and businesses which occur in identified commercial areas.

⁴ LU-5 states “Protect the airport from incompatible uses through provisions in the Comprehensive Plan and Development Regulations.”

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6. Encourage aviation related land uses, commercial and industrial development within the Aerospace zone.
7. Discourage all residential uses within 2,500 feet of the runway ends and limit the intensity of commercial, industrial or other land uses to five or less people per acre.

See 12/18/06 FDO, at 6-7. These Plan Policies, not having been timely challenged, were deemed compliant by the Board. The Board notes that none of the parties contested these Policies in the original proceeding.

Plan Policies, as amended by Ordinance No. 2007-03: As part of the Town's compliance action, on remand, the Town of Eatonville amended and reorganized several of these Policies as follows:

- Under General Land Use Goal LU-1, the Town deleted Policies 7, 9 and 10. However, they were revised and included under the Town's Airport Area Land Use Policies as 8, 9 and 10. Also Airport Area Land Use Policies 5 and 7 were revised.

See Ordinance No. 2007-3, Appendix A, at 2-3.

- Under Airport Lands Goal LU-5, the following policies were amended or added [deleted language is shown in strikeout, new language is underlined]:

5. The Town is in the process of revising its developing implementation ~~Development R~~regulations that ~~address, in detail, the compatible and identify~~ incompatible land uses adjacent to the Eatonville Airport / Swanson Field Airport. ~~The Eatonville Planning Commission will develop criteria, standards and identify compatible land uses that will protect the airport from incompatible development by reviewing a combination of zoning techniques including compatible zoning districts and development siting criteria for evaluating uses or activities in key areas adjacent to the airport for amendment to Chapter 18 of the Municipal Code.~~ The Planning Commission will is working in cooperation with the aircraft owners, operators, property owners, aviation interests, and residents in the Town of Eatonville., ~~In addition, the Planning Commission is working in cooperation with the Washington State Department of Transportation, Aviation Division and the Puget Sound Regional Council.~~ Special attention will be paid to safety issues at approach and departure zones, located at the ends of the airport runway.

...

7. ~~Discourage all residential uses within 2,500 feet of the runway ends and limit the intensity of commercial, industrial or other land uses to five or less people per~~

- aere. Within 2,500 feet of runway ends, discourage new residential and new intensive commercial and industrial development.
8. Encourage the protection of the Eatonville Airport / Swanson Field from adjacent incompatible land uses and activities that could impact the present and future operations of the airport.
 9. Discourage the siting of uses adjacent to airports that attract birds, create visual hazards, or emit transmissions that would interfere with aviation communications.
 10. Adopt Federal Aviation Administration (FAR) Part 77 “Imaginary Surfaces” regulations to protect the airport from height hazards so as to be subject to a case by case modification only obtainable after by an approved variance.

Ordinance No. 2007-3, Appendix A, at 5-6. Comparing the *prior* and *new* Plan Policies the Board notes that: Airport Policy 8 is very similar to prior General Land Use Policy 7 – the substance is the same; Airport Policy 9 is very similar to prior General Land Use Policy 9 – the substance is the same; and Airport Policy 10 is very similar to prior General Land Use Policy 10 – the substance is the same.