**State of Washington**
**GROWTH MANAGEMENT HEARINGS BOARD**
**FOR EASTERN WASHINGTON**

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| BRITT DUDEK and BRUCE BAGULEY,<br><br>Petitioners,<br><br>v.<br><br>DOUGLAS COUNTY; CITY OF EAST WENATCHEE; PANGBORN MEMORIAL AIRPORT; THE PORT OF CHELAN COUNTY; and THE PORT OF DOUGLAS COUNTY,<br><br>Respondents. | Case No. 07-1-0009<br><br>FINAL DECISION AND ORDER |

## I. SYNOPSIS

On May 9, 2007, the Douglas County Board of County Commissioners (BOCC) passed Resolution No. TLS 07-9B, which adopted amendments to the Land Use Chapter of the Greater East Wenatchee Comprehensive Plan (GEWCP) and Chapter 18.65 of the Douglas County Code (DCC).

The Petitioners, Mr. Britt Dudek and Mr. Bruce Baguley, filed a timely Petition challenging Resolution No. TLS 07-9B raising eleven issues contending Douglas County (County) failed to comply with the goals and requirements of the Growth Management Act (GMA), the State Environmental Policy Act (SEPA), the Douglas County Comprehensive Plan (CP), and the Douglas County Development Regulations, and violated the following statutes: RCW 36.70A.060, RCW 36.70A.177, RCW 43.21C.030(2)(e), RCW 36.70A.070, RCW 36.70A.035, RCW 36.70A.106, RCW 36.70A.130, and DCC 14.32.



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The Respondent, Douglass County, was joined in this action by the City of East Wenatchee, Pangborn Memorial Airport, the Port of Chelan County and the Port of Douglas County. The Respondents argued the County worked for over two years through an extensive and exhaustive public process to ensure the Airport Overlay District, Comprehensive Plan maps and other changes to the DCC were in compliance with the GMA, the SEPA and other applicable regulations.

On August 21, 2007, the Respondents filed a Motion to Dismiss with the Eastern Washington Growth Management Hearings Board (Board). After briefing by the Parties and telephonic oral arguments, the Board dismissed Issue Nos. 3, 7, and 12.

The Board held a Hearing on the Merits in Waterville, Washington on November 19, 2007, and heard arguments from the Petitioners' attorneys and Respondent, Douglas County. The Board studied the issues as presented and determined from the Parties' arguments, the record, past Hearings Boards' decisions, case law, and the requirements set forth in the GMA, whether the County complied with the applicable statutes and regulations listed in the Petitioners' issues. Rather than reiterate the Board's analysis for every issue here in the synopsis, only a summary of the conclusions will be given.

The Board finds the Petitioners failed carry their burden of proof in all of the remaining issues, Issue Nos. 1, 2, 4, 5, 6, 8, 9 , 10, and 11.

## II. INVALIDITY

Invalidity was not requested in this action.

## III. PROCEDURAL HISTORY

On July 5, 2007, BRITT DUDEK and BRUCE BAGULEY, by and through their representatives, James Klauser and Robert Rowley, filed a Petition for Review.

On August 1, 2007, the Board held a telephonic Prehearing conference. Present were John Roskelley, Presiding Officer, and Board Members, Dennis Dellwo and Joyce Mulliken. Present for the Petitioners were James Klauser and Robert Rowley. Present for the Respondents were Steve Clem, Douglas County; Devin Poulson, City of East Wenatchee; and Eric Wahlquist, Pangborn Airport, Port of Chelan County, Port of Douglas County.



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On August 3, 2007, the Board issued its Prehearing Order.

On August 21, 2007, the Board received Respondent Douglas County's Motion to Dismiss Petition for Review, or in the Alternative, Issues set forth in the Petition for Review and to Supplement Record, and Memorandum Supporting Douglas County's Dispositive Motions.

On August 22, 2007, the Board received Petitioners' Request that Respondent Douglas County Certify a complete Record, or in the Alternative, that Parties be Allowed to Supplement the Certified Record with Relevant Material from Below.

On August 24, 2007, the Board received Douglas County's Response to Petitioners' Request for Certification of a Complete Record.

On August 30, 2007, the Board received the City of East Wenatchee's Memorandum in Support of Douglas County's Motion to Dismiss Petition.

On September 5, 2007, the Board received Petitioners' Response to Douglas County's Motions: 1. To Supplement the Record; and 2. To Dismiss All or Some of the Issues in the Petition; and B. Petitioners' Objection to City of East Wenatchee's Brief.

On September 6, 2007, the Board received Pangborn Memorial Airport, Port of Douglas County and Port of Chelan County's Memorandum in Support of Douglas County's Motion to Dismiss Petition.

On September 10, 2007, the Board received City of East Wenatchee's Rebuttal to Petitioners' Responses to Motions.

On September 12, 2007, the Board received Petitioners' Reply to Douglas County's Response to Petitioners' Motion that Douglas County Certify a Complete Record, or in the Alternative, that Parties be Allowed to Supplement the Certified Record.

On September 18, 20007, the Board held a telephonic motion hearing. Present were John Roskelley, Presiding Officer, and Board Member Dennis Dellwo. Present for the Petitioners were James Klauser and Robert Rowley. Present for the Respondent was Steve Clem, Douglas County.

On September 26, 2007, the Board issued its Order on Motions.



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On November 19, 2007, the Board held the hearing on the merits. . Present were John Roskelley, Presiding Officer, and Board Members Dennis Dellwo and Joyce Mulliken. Present for the Petitioners were James Klauser and Robert Rowley. Present for the Respondent was Steve Clem, Douglas County; Devin Poulson, City of East Wenatchee; and Eric Wahlquist, Pangborn Airport, Port of Chelan County, Port of Douglas County.

## IV. PRESUMPTION OF VALIDITY, BURDEN OF PROOF AND STANDARD OF REVIEW

Comprehensive plans and development regulations (and amendments thereto) adopted pursuant to Growth Management Act ("GMA" or "Act") are presumed valid upon adoption by the local government. RCW 36.70A.320. The burden is on the Petitioners to demonstrate that any action taken by the respondent jurisdiction is not in compliance with the Act. The Board ". . . shall find compliance unless it determines that the action by the . . . County. . . is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of [Growth Management Act]." RCW 36.70A.320. To find an action clearly erroneous, the Board must be ". . . left with the firm and definite conviction that a mistake has been committed." *Department of Ecology v. Central Puget Sound Growth Management Hearings Board,* 142 Wn.2d 543, 552, 14 P.3d 133 (2000).

The Hearings Board will grant deference to counties and cities in how they plan under Growth Management Act (GMA). RCW 36.70A.3201. But, as the Court has stated, "local discretion is bounded, however, by the goals and requirements of the GMA." *King County v. Central Puget Sound Growth Management Hearings Board,* 142 Wn.2d 543, 561, 14 P.2d 133 (2000). It has been further recognized that "[c]onsistent with *King County,* and notwithstanding the 'deference' language of RCW 36.70A.3201, the Board acts properly when it foregoes deference to a . . . plan that is not 'consistent with the requirements and goals of the GMA." *Thurston County v. Cooper Point Association,* 108 Wn. App. 429, 444, 31 P.3d 28 (2001).

The Hearings Board has jurisdiction over the subject matter of the Petition for Review. RCW 36.70A.280(1)(a).



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## V. ISSUES AND DISCUSSION

**Issue No. 1:**

Does the decision fail to comply with RCW 36.70A.060, RCW 36.70A.177 and existing Douglas County Comprehensive Plans and development regulations adopted to implement RCW 36.70A.060 and RCW 36.70A.177, by authorizing the conversion of agricultural resources in a protected area to competing and incompatible aviation uses that do not conserve, enhance or preserve the agricultural resource, work to the detriment of the agricultural resources, and requires farmers and property owners of Agricultural resource lands to adjust historical farming practices to accommodate the aviation use?

**The Parties' Position:**

**Petitioners:**

The Petitioners contend RCW 36.70A.510 and RCW 36.70.547 do not apply because Pangborn International Airport is not a "general aviation" airport. Therefore, the County does not have to adopt the regulations required in the above mentioned RCW's.

According to the Petitioners, the County fails to comply with multiple provisions of the GMA. They include: 1.) ignoring obligations owed agriculture simply because another GMA requirement may exist; 2.) failing to consider alternatives to the action based on a sound basis; 3.) failing to consider RCW 36.70A.060, conserve and enhance the Agricultural Resource, when there is a conflict; 4.) failing to disclose that the Washington State Department of Transportation (WSDOT) was satisfied with the original protections and did not have concerns with the existing protections, as reflected in the record; and 5.) mis-represents Pangborn Memorial Airport as a "general aviation airport", which provides protections contemplated by RCW 36.70.547.

Airport compatibility regulations found in Senate Bill (SB) 6422 require counties to discourage incompatible uses adjacent to "such reliever or general aviation airports". The original bill specifically recognized at least two types of airports, distinguishing "reliever" from "general aviation". Substitute SB 6422 amended SB 6422 by consolidating a number of sections and eliminating the requirement to discourage incompatible development



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adjacent to "reliever" airports, leaving only "general aviation" airports within the ambit of that Bill. It was codified RCW 36.70.547.

The terms "reliever" and "general aviation" airports correspond in terminology to the definitions in the National Plan of Integrated Airport Systems (NPIAS). The State of Washington uses the NPIAS terminology and Pangborn Memorial Airport is designated as a "primary and commercial airport", not a "reliever" or "general aviation" airport. The Petitioners, therefore, contend RCW 36.70.547 and RCW 36.70A.510 do not apply.

The Petitioners argue even if Pangborn Memorial Airport is a "general aviation" airport, the protections provided by the County are not required or justified. They contend RCW 36.70.547 does not require any particular protections and these protections are left to the local government to decide. The County relied on the WSDOT publication, "Airports and Compatible Land Use Compatibility", which allow a wide discretion on the part of local governments.

The County also relied on the "California Airport Land Use Compatibility Planning Manual". This is not a binding document even in California and it characterizes its analysis as the beginning, not the end of compatibility review.

The Petitioners also contend the County failed to provide the required record to support its ignoring its RCW 36.70A.060 and RCW 36.70A.177 obligations. The Petitioners cite a Hearings Board case, *City of Walla Walla et al. v. Walla Walla County*, EWGMHB Case No. 02-1-0012c (2002), and two Supreme Court cases, *King County v. CPSGMHB*, 142 Wn.2d 543, 14 P.3d 133 (2000) and *Lewis County v. WWGMHB*, 157 Wn.2d 488, 139 P.3d 1096 (2006), to show Douglas County's position is clearly erroneous in light of past decisions concerning agricultural lands. The argument that agricultural and other competing uses (such as airport expansion) stand on an "equal footing" is a proposition that the Petitioners contend cannot be supported. Petitioners HOM brief at 15. The Petitioners argue the County has an obligation to produce a record to demonstrate that it has complied with these GMA mandates.



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The Petitioners also contend the County's SEPA review failed to provide an opportunity to evaluate the impacts of the amendments on the agricultural resource lands.

**Respondent:**

The Respondent, Douglas County, contends the GMA, under RCW 36.70A.510 and RCW 36.70.547, was amended in 1996 to recognize the inherent social and economic benefits of aviation and to require land use planning to include consideration of airports. The language of these two RCW's indicate Pangborn Memorial Airport is a general aviation airport entitled to protection under the GMA. The Respondent argues all the Hearings Boards have reached the same conclusions as this Board concerning protecting airports. For instance, the Western Board held local governments have a duty to maintain current airport facilities and protect airports from incompatible uses. The Respondent cites four Western Board cases in support of their argument. The Central Board has held "the provisions of RCW 36.70A.510 and RCW 36.70.547 provide explicit statutory direction for local governments to give substantial weight to the WSDOT Aviation Division comments and concerns protecting airports." *Pruitt, et al., v. Town of Eatonville*, CPSGMHB, Case No. 06-3-0016, FDO (Dec. 18, 2006).

The Respondent argues the WSDOT Aviation Division participated throughout the Douglas County process as Pangborn Memorial Airport is a public use airport supporting general aviation use, as well as commercial, and cites numerous letters, comments and presentations. In fact, according to the Respondent, the WSDOT Aviation Division addressed the "general aviation" issue in a letter dated February 5, 2007. To the question of whether Pangborn Memorial Airport is a general aviation airport the WSDOT said "yes", and explained aviation activity at the airport included general aviation, as well as commercial and military operations. According to WSDOT, general aviation accounted for 69% of all aircraft operations, while commercial accounted for 30%.

The WSDOT Aviation Division also agreed in their letter that the provisions of RCW 36.70A.510 and RCW 36.70.547 apply to the county. The WSDOT Aviation Division closed its opinion by stating:



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> In conclusion, any airport that has general aviation activity is considered a general aviation airport and that (sic) local jurisdictions that have public use general aviation airports within their jurisdiction are required to discourage incompatible land uses adjacent to them. Respondent Exhibit R-22.

The Respondent also quotes the Community, Trade and Economic Department (CTED) as agreeing with WSDOT that Pangborn Memorial Airport is a general aviation airport and the two statutes are applicable.

The Respondent argues the Growth Management Hearings Boards have mandated protection to airports regardless of technical labels. The Respondent contends any airport serving the public use of general aviation is entitled to the protections of the two statutes and cites seven Hearings Boards cases concerning general aviation airports and the protections afforded them by the Hearings Boards.

The Respondent argues protection of agricultural resource lands under RCW 36.70A.060 and RCW 36.70A.177 does not have a higher priority than the protection of general aviation airports under RCW 36.70.547 and RCW 36.70A.510. According to the Respondent, the Petitioners rely on RCW 36.70A.060 and RCW 36.70A.177, plus three previous Hearings Boards cases. They believe reliance on these statutes and cases as authority for absolute protection of existing agricultural resource lands and agricultural practices is misplaced. The Respondents contend in *King County v. CPSGMHB*, 142 Wn.2d 543, 14 P.3d 133 (2000), the Court found, "In this case, the GMA mandates conservation of the APD's limited, irreplaceable agricultural resource lands. There are still thousands of acres suitable for athletic fields – outside the APD's."

In *City of Walla Walla, et al., v. Walla Walla County*, EWGMHB, Case No. 02-1-0012c, FDO (November 26, 2002), the Board found certain active recreational uses as outright or conditional uses on widespread agricultural lands incompatible and unrelated and could not qualify as "innovative zoning techniques" designed to conserve agricultural land and encourage the agricultural economy. The Eastern Board did not hold agricultural resource lands are entitled to absolute protection in every circumstance.



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In *Lewis County v. WWGMHB*, 157 Wn2d 488, 139 P.3d 1096 (2006), the Supreme Court found non-farm uses had not been limited to avoid impacts on resource lands and activities and did not maintain and enhance the agricultural industry.

The Respondent argues all three cases involve widespread agricultural lands and non-farm uses adopted as "innovative zoning techniques", while this case does not involve non-farm land uses on agricultural lands and does not involve "innovative zoning techniques" under RCW 36.70.177. When a conflict exists between two GMA goals, balancing of those requirements is allowed.

The Respondent contends the Airport Overlay District (AOD) amendments do not authorize conversion of agricultural lands, do not work to the detriment of the agricultural resource, but do enhance conservation of agricultural land. The underlying zoning, related development regulations and agricultural land uses remain effective. According to the Respondents, the protections afforded to Pangborn Memorial Airport by the AOD actually further conservation of agricultural lands through additional limitations on development.

The Respondent argues the AOD amendments do not "require farmers and property owners to adjust historical farming practices to accommodate aviation." Respondent's HOM brief at 23. The Respondent contends the Petitioners' concerns about attracting birds, aerial spraying, ground spraying, and limited workers allowed per acre were most likely found in DCC 18.65.050, sections B, C, J, K and M. The Respondent argues, assuming these development standards are even applied to agricultural activities on agricultural land, there are other statutes and requirements already in place that restrict or prohibit these activities. The Respondent also contends all the restrictions of which the Petitioners complain, whether existing or newly adopted, do not apply to agricultural lands and uses and haven't since the AOD was first adopted.

**Petitioners HOM Reply:**

The Petitioners contend only two general sub-issues exist: (1) is Pangborn Memorial Airport a "general aviation airport" such that the proposed amendments are justified or



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required? and (2) who's obligation is it to demonstrate that Agricultural Resource protections are considered and preserved – the County's burden or the Petitioners' burden?

The Petitioners argue it's the County's burden to produce a record to justify land use changes within Agricultural Resource areas and cite four Court and Board cases. The Petitioners contend the County failed to produce a record to "study, analyze, discuss, or otherwise assess the impacts of these changes upon the Agricultural Resource." Petitioners Reply brief at 6. Although the County "insinuates" that a member of the public must first meet an initial burden to show an impact caused by the proposed changes, the Petitioners argue the Courts impose no such burden on the Petitioners. Petitioners' Reply brief at 7. The Petitioners also contend the County failed to justify its choices and compromises and failed to do an alternatives study as required by RCW 43.21C.030(2)(e).

The Petitioners argue the County's brief focuses on demonstrating Pangborn Memorial Airport is a "general aviation" airport, believing this classification invokes RCW 36.70.547 and .510 and, if these two statutes apply, the County is relieved of a burden to consider agricultural resource protections. According to the Petitioners, none of the Board cases cited by the Respondent concerning airport issues decide this issue. The Eastern Board has never decided what the legislature meant by its use of the term "general aviation airport" in RCW 36.70.547 and .510. The Petitioners argued in their opening brief the following: Pangborn Memorial Airport is a "primary commercial airport"; SB 6422 only applied to the two lowest categories of airports, "feeder" and "general aviation"; SSB 6422, which became RCW 36.70.547, reduced applicability and scope of the bill, eliminating its applicability to "feeder" airports and limiting it to "general aviation" airports; RCW 36.70.547 applies only to "general aviation airports"; a "general aviation" airport is not every airport in the state as Douglas County implies.

The Petitioners acknowledge Pangborn Memorial Airport is an EPF and it may be expanded consistent with other provisions of the County Code and Comprehensive Plan, however the County needs to follow other competing policies and uses other than RCW 36.70.547. The Petitioners argue the County cannot "square" the generalization and



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contention with the record that Agricultural Resources is not a higher priority than protection of Pangborn Airport. According to the Petitioners, the County failed to study the alternatives or include the expansion of the runway in the EIS.

The County acknowledges this case involves competing resource uses, but ignores Supreme Court Case No. 76339-9, which provides pertinent guidance on competing "critical area" and "Agricultural Resource area" uses. The Petitioners contend the County "makes the giant leap to an unwarranted conclusion" that there is no conflict between conservation of agricultural lands and airport protection. Petitioners Reply brief at 11. In addition, the County puts the burden on the Petitioners to demonstrate substantial evidence in the record that the Airport Overlay District inappropriately converts the use of agricultural lands to other uses. This is not the case. The Petitioners burden is to demonstrate the County failed to create a record necessary to justify further intrusion into the Agricultural Resource area.

**Board Analysis:**

Regardless of the many tangents the Parties' arguments seem to take, the question under Issue No. 1, is whether the County's decision to adopt Resolution No. TLS 07-9B fails to comply with RCW 36.70A.060, RCW 36.70A.177 and the existing Douglas County Comprehensive Plan and development regulations. The Petitioners argue the County is converting agricultural resources in a protected area to competing and incompatible aviation uses, but fail to argue under this issue, what, if any, portions of the Comprehensive Plan and development regulations the County fails to comply with. After review of the statutes, the Parties briefs and oral arguments, the Board agrees with the Respondent concerning Issue No. 1.

In summary, RCW 36.70A.060 requires counties and cities to adopt development regulations to assure the conservation of agriculture. These regulations may not prohibit uses legally existing at the time of adoption or interfere with the continued use of these lands for agriculture. RCW 36.70A.177 allows counties and cities to use innovative zoning techniques in areas designated agricultural lands of long-term commercial significance.



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The Petitioners' arguments fail to show how the County's action of amending the Airport Overlay District zone fails to protect and conserve agricultural resource land as required by RCW 36.70A.060(1) or allow innovative zoning techniques as allowed by RCW 36.70A.177.

The Petitioners contend in their Reply brief the County failed to justify its choices and compromises, and failed to do an alternatives study as required by RCW 43.21C.030(2)(e). Contrary to the Petitioner' position, the County submitted two alternatives, the "preferred" alternative and "no action" alternative, and followed its adopted public participation process. During that process, and according to the record, there were many suggestions proposed by citizens and organizations during the public hearing process before the Planning Commission and BOCC. Respondent Exhibit R-27. Several of the alternatives suggested during the public hearings were incorporated into the final resolution adopted by the BOCC.

Alternatives to a plan are required by the SEPA, but the number of alternatives a county or city must study or offer to the public is discretionary. The County may not have offered as many alternatives as the Petitioners would have preferred, but the County did "[S]tudy, develop and describe appropriate alternatives to recommended courses of action", which did not prohibit or interfere with the continued use of agriculture within the overlay zone. Within the County's two alternatives was the possibility for a wide range of options. The BOCC adopted a compromise plan based on the input they received from the Planning Commission and the public hearing process. The BOCC's final plan protected the agricultural use and there were no unresolved conflicts concerning alternative uses of available resources. All agricultural activities, uses and procedures historically done prior to the adoption of the amended Airport Overlay District are still in effect and vested, thus protecting the land owners from regulations that may have a detrimental effect to agriculture within the Airport Overlay District zone.

The Petitioners also argue the County failed to find a balance between competing resource uses, specifically agriculture and an EPF, such as Pangborn Memorial Airport, as required by the GMA. The Board disagrees. As explained in the paragraph above, the County exempted agricultural activities from the regulations, protected the land from



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inappropriate urban-like conversion, and vested the agricultural uses now in effect. In fact, the County's action prevents certain development activities on land under the new zoning, ensuring agricultural lands will be protected. The County's Airport Overlay District zone can be considered an "innovative zoning technique" as recommended in RCW 36.70A.177 for areas designated as agricultural lands of long-term commercial significance.

Although Issue No. 1 primarily concerns RCW 36.70A.060 and RCW 36.70A.177, the Petitioners and Respondent also argued under this issue whether Pangborn Memorial Airport is a "general aviation" airport, which invokes RCW 36.70A.510 and RCW 36.70.547, and whether agricultural resource lands were given the deference they deserve. The Board will address both issues here.

Both Parties agree that airports are Essential Public Facilities (EPF) as defined under RCW 36.70A.200(1) and determined in a number of Growth Board cases. Therefore, there is no question that Pangborn Memorial Airport is an EPF:

> An airport is an EPF under the definition found in RCW 36.70A.200. *CCARE v. Anacortes,* WWGMHB Case No. 01-2-0019, FDO (December 12, 2001).
>
> An airport is an essential public facility under the definition of RCW 36.70A.200(1). *Achen v. Clark County,* WWGMHG Case No. 95-2-0067, FDO (September 20, 1995).
>
> A local government may not preclude the siting of EPFs. Siting includes use or expansion of airport facilities for airport uses. *CCARE v. Anacortes,* CPSGMHB Case No. 01-2-0019, FDO (December 12, 2001) & *Desmoines v. CPSGMHB,* 98 Wn. App. 23 (1999).

The Petitioners, however, do question whether Pangborn Memorial Airport is a "general aviation" airport as claimed by the Respondent. The Petitioners give credence to the WSDOT Aviation Division for designating Pangborn Memorial Airport a "primary and commercial" airport under the NPAIS system, yet fail to give the same credence to the Aviation Division's definition that "The State considers any airport with general aviation



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activity to be a general aviation airport." Respondent Exhibit R-24. As the Central Board held in *Pruitt*, "The provisions of RCW 36.70A.510 and RCW 36.70.547 provide explicit statutory direction for local governments to give substantial weight to WSDOT Aviation Division comments and concerns protecting airports." The County did so based on the Aviation Division's determination.

The Board agrees with the Respondent that Pangborn Memorial Airport, as defined by the agency responsible for aviation in the State of Washington, is a "general aviation" airport. But, regardless of whether Pangborn Memorial Airport is a "general aviation" airport or not, the County has the authority and the responsibility under a number of statutes, including RCW 14.12, RCW 36.70A.130, RCW 36.70A.200, and RCW 36.70A.510 to adopt and amend its Comprehensive Plan provisions and development regulations to protect aviation. Even in their briefing, the Petitioners admit that "protections are left to the local government to decide" and "[T]he County relied on the WSDOT's publication, 'Airports and Compatible Land Use Compatibility', which allow a wide discretion on the part of local governments." The County used this discretion and its statutory authority to initiate the change to the Airport Overlay District.

There are several Growth Board cases that underline the importance of protecting public and/or private airports, define which agencies have statutory authority to give the local government expertise, and the importance of expansion:

> [T]he provisions of RCW 36.70A.510 and RCW 36.70.547 provide explicit statutory direction for local governments to give substantial weight to WSDOT Aviation Division's comments and concerns related to matters affecting safety at general aviation airports. Eatonville "*shall* . . . discourage the siting of incompatible uses adjacent to [Swanson Field]." RCW 36.70.547. Likewise, the FAA's expertise and decades of experience, as reflected in FAR Part 77, cannot be summarily ignored. Both these agencies have statutory authority to inject their substantial experience and expertise into local governmental matters involving airport safety. *Pruitt, et al. v. Town of Eatonville,* CPSGMHB Case No. 06-3-0016, FDO, at 10 (December 18, 2006).



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> A county is not compliant with GMA requirements regarding siting of general aviation airports if it fails to preclude non-compatible uses within the final approach areas. *Klein v. San Juan County,* WWGMHB Case No. 02-2-0008, FDO (October 18, 2002).
>
> RCW 36.70A.510 requires a local government to adopt land use policies and DRs that preclude incompatible land uses adjacent to airports. *Abenroth v. Skagit County,* WWGMHB Case No. 97-2-0060, FDO (Jan. 23, 1998).

The Petitioners question whether it is the County's burden or theirs to demonstrate that Agricultural Resource protections are considered and preserved. The GMA puts the burden of proof in this instance on the Petitioners. The cases that reference a requirement that a county provide the required record or "show their work" are directly related to the designation of urban growth area boundaries. That is not the case here. This Board will not shift the burden of proof from the Petitioners to the Respondent. The actions of the County are presumed valid. RCW 36.70A.320.

The Board disagrees with the Petitioners that the County gave one GMA goal deference over another. The Petitioners contend the County failed to study and consider other alternatives to the expansion of the Airport Overlay District zone, thus giving deference to the airport overlay. There is nothing in the record that substantiates the Petitioners' claim. The County followed the statutory process and its public participation plan to develop the AOD. The final product, Resolution No. TLS-07-9B, reflects years of study, proposals, public meetings, and public hearings, and protects not only the future expansion of an essential public facility, but protects agricultural resource lands within the AOD. The record shows neither goal was given preferential deference. Consequently, a balance was achieved.

**Conclusion:**

The Board finds the Petitioners' failed to carry their burden of proof required for Issue No. 1.



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**Issue No. 2:**

Does the decision violate the requirements of RCW 43.21C.030(2)(e) by failing to include a study of available alternatives to the proposed alternative that would have resolved any resource conflict?

**The Parties' Position:**

**Petitioners:**

The Petitioners contend the County failed to determine, study, develop and describe "appropriate alternatives" regarding this unresolved resource dispute. Petitioners' HOM brief at 16. Furthermore, according to the Petitioners, the County ignored repeated requests to consider alternatives to the final action. The County referenced its SEPA review, but this document failed to mention Pangborn Memorial Airport, failed to mention the proposed amendment to the Airport Overlay, failed to mention the Agricultural Resource Area of Long Term Commercial Significance, and failed to mention resource conflicts or alternatives to resolve those conflicts. The Petitioners contend the County argues there is no alternative between a "no action" alternative and the "recommended" alternative. They believe this is not the case. The County simply failed to require a study and analysis of the problem.

**Respondent:**

The Respondent argues the environmental review and permit review is an integrated process and there was extensive public and agency participation. This amendment was first considered in late 2004 and early 2005 and the County issued an Adoption of Existing Environmental Document and Supplemental Environmental Impact Statement (SEIS). According to the Respondent, "[G]reater flexibility and broad statements of impacts are allowed when engaged in non-project environmental review". Respondent's HOM brief at 27. The environmental review may be combined with other planning documents as part of the integrated planning process. WAC 197-11-442; WAC 197-11-443. The Respondent contends the Petitioners fail to cite specifics in this issue and their examples are "no action" alternatives. As to the Petitioners' Example P-10, the Overlay Committee Minority Report



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does not refer to agricultural resource lands, impacts on agricultural uses, or unresolved conflicts concerning alternative uses of available resources.

The Respondent contends Pangborn Airport is an existing facility pre-dating the GMA. The underlying zoning of Pangborn and the underlying zoning of the agricultural lands surrounding Pangborn were not changed by the amendments. Merely suggesting changes in the details of a proposed action that may constitute a "conflict" or an "alternative" does not require study and development of "appropriate alternatives under RCW 43.21C.030(2)(e). Respondent's HOM brief at 29.

**Petitioners HOM Reply:**

The Petitioners contend the County's argument is not responsive. It suggests a phased environmental review was done without acknowledging the following: (1) RCW 43.21C.030(2)(e) alternatives study is different from the EIS alternatives review required by RCW 43.21C.030(2)(c); (2) a "no-action" alternative is useless unless that alternative is also studied; and (3) the County failed to demonstrate in the record where it evaluated any alternative except the alternative sought by the airport.

**Board Analysis:**

The Board agrees with the Respondent on Issue No. 2. This issue was argued under Issue No. 1 and the Board incorporates their discussion under that issue and adds the following discussion. Again, there is no requirement in the GMA or RCW's that requires a minimum number of alternatives for an Environmental Impact Statement (EIS) or SEIS. RCW 43.21C.030(2)(e), which states, "[C]ounties shall…[s]tudy, develop, and describe appropriate alternatives to recommended courses of action…", requires more than one alternative, but is silent on the number of additional alternatives. In addition, the County, as lead agency, is allowed to use existing environmental documents for non-project actions under certain circumstances as the County has done. RCW 43.21C.034 authorizes the use of these documents:

> Lead agencies are authorized to use in whole or in part existing environmental documents for new project or non-project actions, if the documents



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> adequately address environmental considerations set forth in RCW 43.21C.030. The prior proposal or action and the new proposal or action need not be identical, but must have similar elements that provide a basis for comparing their environmental consequences such as timing, types of impacts, alternatives, or geography.

The process which the County followed allowed the Petitioners and any agency or member of the public to comment and recommend alternatives during the numerous public hearings. In fact, the "preferred alternative" recommended by the Douglas County Planning Commission was changed by the Douglas County BOCC based on public input. The "preferred" alternative and "no action" alternative are the outer boundaries, while the final decision is a mixture of public input, legal requirements and good planning.

**Conclusion:**

The Board finds the Petitioners' failed to carry their burden of proof required for Issue No. 2.

**Issue No. 4:**

Does the decision below fail to comply with RCW 36.70A.035 public participation requirements?

**The Parties' Position:**

**Petitioners:**

The Petitioners argue the BOCC received the recommendation from the Planning Commission (PC) and modified it at the BOCC meeting without fulfilling its public participation, notice and fact finding obligations under those circumstances. The County's Public Participation Plan (PPP) imposes public participation responsibilities on the Planning Commission, not the BOCC. The Petitioners argue this is an "independent defect in the County's PPP obligations." Petitioners' HOM brief at 17. They also contend the BOCC ignored other provisions of the County development regulations, which impose public participation obligations. The PPP recognizes, and the Douglass County Code requires (DCC 14.32.040), Comprehensive Plan and Development Regulations must be processed pursuant



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to DCC 14.10.050, which under subsection (6) states, "The board of county commissioners must hold a public hearing to consider any changes to the recommendation of the planning commission."

The Petitioners contend at the public meeting, the BOCC had two options: accept or reject the recommendations of the Planning Commission. Instead it changed the recommendation and adopted its own version. According to the Petitioners, the County's own development regulations require the BOCC to conduct a public hearing, if such changes are consider.

By modifying the Planning Commission's recommendations, the BOCC accepted the recommended Findings and Conclusions supporting the recommended, but not adopted, amendments. DCC 14.10.050B(7) requires the entry of new findings if the recommendation is changed.

**Respondent:**

The Respondent contends the County engaged in an extensive process of public meetings and hearings. The Petitioners argue the BOCC failed to provide an opportunity for public participation prior to rejecting some of the proposed amendments to the AOD. According to the Respondent, this is not correct. The BOCC opened the April 25, 2007 session as a public hearing and announced procedures for public testimony. The BOCC accepted public testimony and allowed submittal of written public comments before and during the public hearing, and extended time for receipt of written comments. The BOCC also continued deliberations to May 9, 2007.

Two provisions cited by the Petitioners in the Douglas County Code, DCC 14.10.050 and DCC 14.10.040.4.B, apply to the review of applications for amendment. This case, according to the Respondent, does not involve an application for amendment of the Comprehensive Plan and/or development regulations. This case involves amendments originally proposed as part of the 2004 array of amendments received from the RPC. The Petitioners argue the BOCC changed the recommendation of the RPC and adopted its own version of the proposed amendments. The Respondent contends the BOCC made no



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changes whatsoever to the text of the Comprehensive Plan, but did reject the recommended amendments to DCC 18.65: the addition of new Zone 4 and new Zone 6, and the imposition of restrictive easements upon all new development within the District.

The Respondent contends the BOCC did make one amendment not considered by the RPC, which was to retain the existing Notice to Title requirement under DCC 18.65.050.L, by revising the language of that section. It is insignificant and the Respondent cites two Board cases to confirm this analysis.

**Petitioners HOM Reply:**

The Petitioners contend nothing in the County's public meeting notice informed the public the BOCC might conduct a hearing or contemplate modifying the PC's recommendation. The Petitioners argue DCC 14.32.040 and DCC 14.10.050 need to be read together with RCW 36.70.590 through 36.70.630. DCC Title 14.32 applies to all applications and proposals for amendments to the Comprehensive Plan. In addition, the Petitioners contend there is no authority to allow the BOCC to modify PC recommendations that are not substantial without referral back to the PC or alternatively, by providing a hearing before the BOCC on the proposed modifications.

**Board Analysis:**

RCW 36.70A.035(2)(a) concerns public participation and requires the legislative bodies, if they choose to consider a change to an amendment to a comprehensive plan or development regulation, and the change is proposed after the opportunity for review and comment has passed under the county's or city's procedures, "an opportunity for review and comment on the proposed change shall be provided before the local legislative body votes on the proposed change."

An additional opportunity for public review and comment is not required under (2)(a) if (subsections pertinent to this issue): (i) an environmental impact statement has been prepared under chapter 43.21C RCW for the pending resolution or ordinance and the proposed change is within the range of alternatives considered in the environmental impact



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statement; or (ii) the proposed change is within the scope of the alternatives available for public comment.

The Petitioners argue the BOCC modified the Planning Commission's recommendations at their meeting without fulfilling its public participation, notice, and fact-finding obligations. They cite Douglas County Code 14.10.050 under B., which states in part under B.6., "The board of county commissioners must hold a public hearing to consider any changes to the recommendation of the planning commission." The Petitioners argue that only by involving the Planning Commission in the review of the changes proposed by the BOCC is the public's right of participation preserved.

The question is did the County follow its public participation plan, its own code and the GMA? The record shows the County engaged in an extensive process of public meetings and hearings held by both the Planning Commission and the BOCC, and received a substantial amount of agency and public comments throughout the process. According to the record, over a period of two years the Planning Commission held public meetings, heard public testimony, and then sent a final recommendation to the BOCC. The BOCC held a public hearing on April 25, 2007 to "consider proposals to adopt amendments to the Greater East Wenatchee Comprehensive Plan and the Douglas County Code, Chapter 18.65, AP-O, Airport Overlay District." Respondent Exhibit R-26. The BOCC continued that public hearing, for decision only, to May 9, 2007, after agreeing to accept further written public comment until May 4, 2007. The Petitioners and many other individuals and agencies not only testified at the public hearing, but also submitted written testimony as well.

The Board agrees with the Respondent concerning Issue No. 4. The BOCC's changes were within the parameters given in RCW 36.70A.035(2)(a)(ii) and the BOCC held a public hearing to consider "any changes to the recommendation of the planning commission" and "before the local legislative body votes on the proposed change", required by DCC 14.10.050(B)(6) and RCW 36.70A.035(2)(a).



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**Conclusion:**

The Board finds the Petitioners' failed to carry their burden of proof required for Issue No. 4.

**Issue No. 5:**

Does the decision below fail to comply with RCW 36.70A.106 notice requirements?

**The Parties' Position:**

**Petitioners:**

The Petitioners contend referral of the changes to the Planning Commission is the only way the County could have complied with the RCW 36.70A.106 requirement to provide 60-day notice of the proposed amendments, as modified by the BOCC. The 60-day notice was actually initiated after the final BOCC action. RCW 36.70A.106 requires that notice 60 days prior to adoption.

**Respondent:**

The Respondent argues CTED received the proposed amendments to the AOD on February 21, 2007. The amendments were adopted on May 9, 2007. The Respondent contends CTED's letter of May 17, 2007 acknowledged their receipt of "adopted Resolution No. TLS 07-09B as "required under RCW 36.70A.106." Respondent HOM brief at 34. The Petitioners argue the CTED letter, instead, acknowledged the start of CTED's 60-day review process, which is incorrect.

**Petitioners HOM Reply:**

The Petitioners agree with the Respondent concerning CTED's advance notice concerning the proposed amendments, but CTED did not receive a copy of the BOCC's modifications prior to their being adopted.

**Board Analysis:**

RCW 36.70A.106 requires counties and cities proposing to adopt a comprehensive plan or development regulations to "notify the department of its intent to adopt such plan or regulations at least sixty days prior to final adoption." Under RCW 36.70A.106(2), each county and city planning under this chapter shall transmit a complete and accurate copy of



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its comprehensive plan or development regulations to the department (CTED) within ten days after final adoption.

The record shows CTED reviewed and commented on the proposed "amendments to the Greater East Wenatchee Comprehensive Plan, zoning map, and development regulations", in a letter sent to the County on February 21, 2007. Respondent Exhibit R-9. In addition, CTED acknowledged its receipt of adopted Resolution No. TLS 07-09B in another letter dated May 17, 2007, less than ten days after adoption of the resolution. RCW 36.70A.106 requires the County to notify CTED on its intent to adopt sixty days prior to final adoption, and ten days after adoption. The County, therefore, fulfilled its requirement under RCW 36.70A.106.

**Conclusion:**

The Board finds the Petitioners' failed to carry their burden of proof required for Issue No. 5.

**Issue No. 6:**

Does the decision below fail to comply with RCW 36.70A.130 requirements and DCC 14.32 process for once annual Comprehensive Plan and Development Regulation updates, amendments and revisions?

**The Parties' Position:**

**Petitioners:**

The Petitioners argue RCW 36.70A.130 limits the County's consideration of CP and development regulations updates to once annually. According to the Petitioners, the County amended its CP (GEWA Plan) twice in the same year. The Petitioners contend the statute is clear: the County can only amend its CP once a year. The County's own development regulations, under DCC 14.32.040, also require annual initiation of amendments. The Petitioners also contend the County violated RCW 36.70A.130(2)(b), which provides that all proposals shall be considered concurrently, so the cumulative effect of the various proposals can be ascertained.



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**Respondent:**

The Respondent argues the County began its process of updating the Comprehensive Plan in late 2004. After a process involving more than two years of work, the AOD amendments returned to the BOCC and were adopted on May 9, 2007. The amendments to the AOD were a continuation of the 2004-2005 process. According to the Respondent, proposed amendments remain part of the calendar year annual process in which they were proposed. CTED reviewed and favorably commented on the proposed amendments. In addition, the Petitioners engaged in extensive public participation at every stage of the amendment review process.

**Petitioners HOM Reply:**

The Petitioners argue the County's interpretation of the language for process and docketing amendments is "puzzling". Petitioners Reply brief at 14. The Petitioners give three reasons for this: (1) this explanation ignores the requirements of DCC 14.32; (2) the County's argument ignores and undermines RCW 36.70A.130(2)(b) concurrency of consideration to assure ascertainment of the cumulative effect of proposals; and (3) it ignores language in RCW 36.70A.130(2)(a), distinguishing proposals from consideration by the governing body.

**Board Analysis:**

Under Issue No. 6, the Respondent contends the County began its process of updating the Comprehensive Plan in late 2004, pursuant to RCW 36.70A.130. The amendments to the Airport Overlay District were proposed as part of that update. The proposed amendments needed further work. Two years later, the BOCC adopted Resolution No. 07-9B. The amendments to the Airport Overlay zone were a continuation of the 2004-2005 process. Douglas County has interpreted the language in RCW 36.70A.130(2)(a) as a process and docketing limitation. CTED reviewed and favorably commented on the proposed amendments.

The Petitioners argue the BOCC resolution adopting the amendments were effective immediately, not at the end of 2007, as proposed by the Respondent. They also contend



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the County's argument is "semantic", suggesting that "considered annually" is a broad term applicable to the entire planning and public participation process that may extend over multiple years as a distinct consideration always relating back to the year a proposal was first conceived. According to the Petitioners, this violates the restrictions of both RCW 36.70A.130 and DCC 14.32.040. In addition, the Petitioners contend the County fails to follow RCW 36.70A.130(2)(b), which states "all proposals shall be considered by the governing body concurrently so the cumulative effect of the various proposals can be ascertained."

The legislature and the Hearings Boards believe the foundation of the GMA is to provide for coordinated and planned growth. Consistency in a jurisdictions planning process is important and a county or city needs to evaluate proposals for their cumulative effects. In other words, concurrency is an important concept in GMA.

Both the Western and Central Boards have found that RCW 36.70A.130 limits consideration of comprehensive plan amendments to no more frequently than once every year, except in limited circumstances as allowed under RCW 36.70A.130(2)(a) and (b). Amendments need to be placed before local government at one specific time, so the cumulative effect of the proposals can be ascertained. *Achen v. Clark County*, WWGMHB Case No. 95-2-0067, FDO (Sept. 20, 1995); *Ellis v. San Juan County*, WWGMHB Case No. 97-2-0006, FDO (June 19, 1997); *LMI/Chevron v. Woodway*, CPSGMHB Case No. 98-3-0012, FDO (Jan. 8, 1999). But contrary to the Western Board, which has concluded development regulations must go through the same annual review process, the Central Board contends the statute <u>does not apply to development regulations</u>. Board emphasis. Zoning regulations, such as the Douglas County Airport Overlay District zone change, is a development regulation.

The Attorney General's Office concurs with the Central Board. Attorney General Opinion No. 11, issued on September 7, 2005, concluded, "The prohibition against amendments more than once per year applies only to comprehensive plans; the statute does not mention development regulations in this light."



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This Board concurs with the Attorney General's opinion. RCW 36.70A.130 refers only to "updates, proposed amendments, or revisions of the comprehensive plan..." as this statute relates to the requirement that county's and city's consider these actions "no more frequently than once every year."

**Conclusion:**

The Board finds the Petitioners' failed to carry their burden of proof required for Issue No. 6.

**Issue No. 8:**

Did the decision below fail to comply with the GMA by improperly superimposing over GMA processes and policies as a superior and controlling policy the inapplicable provisions of RCW 36.70.547?

**The Parties' Position:**

**Petitioners:**

The Petitioners contend Pangborn Memorial Airport is being misrepresented as a "general aviation" airport by the County requiring protections contemplated by RCW 36.70.547. The County assumes a reference to "general aviation" in RCW 36.70.547 includes every airport in the state, including Pangborn Memorial Airport.

The Petitioners argue the nomenclature "reliever" and "general aviation" airports correspond to the National Plan of Integrated Airport Systems (NPIAS). Washington State airports are designated by the NPIAS, and Pangborn is designated as a "primary and commercial airport". Therefore, Pangborn is neither a "reliever" or "general aviation" airport and neither RCW 36.70.547 and RCW 36.70A.510 applies.

The Petitioners ask the Board to take notice of Appendices "A" and "B" of the WSDOT publication, "Airports and Compatible Land Use Compatibility". These two appendices contemplate wide discretion on the part of local government, not the "narrow and restrictive uses" contemplated by the County. Petitioners' HOM brief at 23. The County also invokes the "California Airport Land Use Compatibility Planning Manual". The Petitioners



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argue this publication is not binding, even in California, and it characterizes its analysis as the beginning, not the end of compatibility review, which the County did not do.

**Respondent:**

The Respondent contends this is a repeat of the Petitioners' argument under Issue No. 1 and incorporates their argument under that issue here.

**Petitioners HOM Reply:**

The Petitioners contend the Respondents provided no additional argument on this issue.

**Board Analysis:**

The Board agrees with the Respondent's argument stated above and incorporates the Board's Analysis from Issue No. 1 for discussion. Even if Pangborn Memorial Airport is not a "general aviation" airport, the County still has a duty to balance the goals of the GMA, but in doing so, protect the function and expansion of this essential public facility.

**Conclusion:**

The Board finds the Petitioners' failed to carry their burden of proof required for Issue No. 8.

**Issue No. 9:**

Did the decision below fail to comply with the GMA, the Comprehensive Plan, and local development regulations by improperly according Essential Public Facility ("EPF") status without producing a record to demonstrate compliance with the evaluation required by local plans and development regulations (1) to expand an EPF, (2) to expand an EPF into an RCW 36.70A.060 Agricultural Resource Area of Long Term Commercial Significance, (3) to accommodate an airport landing strip extension not authorized by state and federal agencies with jurisdiction, and (4) by improper reliance upon an inapplicable state statute (RCW 36.70.547)?

**The Parties' Position:**

**Petitioners:**

The Petitioners agree Pangborn Memorial Airport is an essential public facility (EPF), but contend the County's policy, EPF-2, should be invoked when it is expanded, which



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states EPF's will not be located in resource lands or critical areas, if they are incompatible with these uses. According to the Petitioners, the "sole justification for the proposed enlargement and intensification of airport protections is the incompatibility of agricultural uses with planned airport uses." This sets up the classic protection of agricultural resources requirement vs. other requirements conflict, which the County failed to address. The Petitioners argue this expansion is not essential, but is "merely a power and property rights grab". Petitioners HOM brief at 24.

The Petitioners contend reasonable local regulations do not preclude siting of an EPF, as provided for in *City of Des Moines v. Puget Sound Regional Council*, 98 Wn.App. 23, 108 Wn.App 836, 988 P.2d 27, review denied 140 Wn.2d 1027, 10 P.3d 403, but the designation of agricultural resource areas is not only reasonable, but required by RCW 36.70A.060. The Petitioners argue the County should have conducted the mandatory RCW 43.21C.030 alternative study to balance the competing interests.

**Respondent:**

As to sub-issues (1) and (2), the Respondent contends Pangborn Memorial Airport pre-exists the adoption of the GMA and its original siting was not subject to the GMA. In addition, both Parties agree Pangborn is an EPF. The amendment of the AOD is a non-project action and is not an expansion of an EPF.

As to sub-issue (3), the Respondent argues the comprehensive plan provides a set of policies reflecting the County's vision for future growth. Development regulations provide the requirements and limitations to accommodate future development in accordance with those policies. Site specific development approval by other agencies is not a proper basis or pre-condition for GMA planning or development regulations. The Petitioners' sub-issue (3) does not call into question the validity of the AOD amendments.

The Respondent does not repeat their argument for sub-issue (4), involving the application of RCW 36.70.547, they argued under Issue No. 1 and Issue No. 8, but incorporates these arguments in response to Issue No. 9, sub-issue (4).



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**Petitioners HOM Reply:**

The Petitioners contend the sole purpose of this amendment is to expand the Airport Overlay in order to accommodate a hoped-for airport expansion. The County failed to review this amendment under its EPF criteria, choosing instead to review it under the inapplicable RCW 36.70.547 and .510.

**Board Analysis:**

Under Issue No. 9, the Respondent argues Pangborn Airport pre-exists the GMA and its original siting was not subject to the GMA. However, it is clear that Pangborn Memorial Airport is an Essential Public Facility under the GMA and Douglass County Code. It has also been characterized as an EPF in Douglas County's Comprehensive Plan and development regulations. Pangborn Memorial Airport AOD amendment is a non-project action. The airport adopted a FAA approved, updated Airport Master Plan that includes future lengthening of a runway. Site specific development approval by other agencies is not a proper basis or pre-condition for GMA planning or development regulations. The Respondent contends RCW 36.70.547 is not an "inapplicable state statute," as the Petitioners would like the Board to believe. This statute has been incorporated by the GMA at RCW 36.70A.510, and requires protection of Pangborn Airport. Respondent's Motion brief at 26.

The Petitioners contend they disagree with the Respondent concerning the amendment being a "non-project" action and the airport not an expansion of an EPF. Petitioners' Motion brief at 16. They argue the maps show clear and dramatic expansion of airport overlay uses into the Agricultural Resource area. The Petitioners contend this expansion of use is not essential and possibly a "power and property rights grab." Petitioners' Motion brief at 17. The Petitioners contend the County failed to do an adequate RCW 43.21C.030 alternative study to determine if the expansion was necessary given the agricultural land underneath the Overlay zone.

The Board agrees with the Respondent's arguments under Issue No. 9. Both Parties agree and acknowledge Pangborn Memorial Airport is an Essential Public Facility. Under that



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definition, the County has a duty to protect the present and future use of the facility. The action taken by the County ensures Pangborn Memorial Airport's viability for future use. The expansion of the overlay holds in place the present agricultural activity and uses, thus protecting both the airport and agriculture. Pangborn Memorial Airport adopted a FAA approved, updated Airport Master Plan that includes future lengthening of a runway. Site specific development approval by other agencies is not necessary. And finally, RCW 36.70.547 has been incorporated by RCW 36.70A.510 and is an applicable state statute to the GMA.

The Board incorporates this discussion with those discussions found under Issue Nos. 1, 6 and 8.

**Conclusion:**

The Board finds the Petitioners' failed to carry their burden of proof required for Issue No. 9.

**Issue No. 10:**

Did Douglas County fail to show its work in that: (1) it conducted inadequate environmental review; (2) it inconsistently accepted findings of fact but rejected recommendations of the Douglas County Planning Commission; (3) it failed to provide evidence in the record to support necessary findings of fact to support its revisions to the Planning Commission Recommendations; and (4) it failed to provide public participation prior to changing Douglas County Planning Commission Recommendations?

**The Parties' Position:**

**Petitioners:**

The Petitioners contend the BOCC received the recommendation from the Planning Commission and modified it without fulfilling its public participation, notice, and fact/finding obligations under those circumstances. Although the County's PPP imposes public participation on the Planning Commission, other provisions of the development regulations do impose public participation obligations upon the BOCC, which were ignored. The Petitioners reiterate their argument under Issue No. 4 pertaining to DCC 14.32.040 and .050 claiming the BOCC revised document should have gone back to the Planning



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Commission for public participation. Furthermore, the Petitioners argue the BOCC failed to enter independent findings of fact to support its modification and failed to study or develop appropriate alternatives other than the two preferred options.

The Petitioners contend the County's only reference to SEPA compliance was to refer to the October 2004 Supplemental Environmental Impact Statement (SEIS). The SEIS does not even mention Pangborn Airport, the proposed amendment to the Airport Overlay, the agricultural resource area of long term commercial significance, or the conflicts between agriculture and the EPF. The County failed to require the appropriate studies and analysis.

**Respondent:**

The Respondent contends sub-issue (1) was argued and answered under Issue No. 2 and will not repeat this argument here. As to sub-issues (2), (3), and (4), the Respondent contends the Petitioners repeat their argument under Issue Nos. 4 and 6. Again, the Respondent will not repeat those responses here, but incorporates such argument under this issue. According to the Respondent, "[T]he county legislative authority need not agree with all who participate in the planning process or even the majority of those who participate, as long as the legislative authority complies with the GMA." Respondent's HOM brief at 41.

**Petitioners HOM Reply:**

The Petitioners argue the BOCC modified the amendment from the Planning Commission in a manner "prohibited by both state and local law", as argued before.

**Board Analysis:**

The Board agrees with the Respondent concerning Issue No. 10. The Petitioners' Issue No. 10 is the same as those argued under Issue Nos. 2, 4, and 6 and the Board will not discuss those issues again here. The Board incorporates their discussion and analysis from Issue Nos. 2, 4, and 6 for Issue No. 10.

**Conclusion:**

The Board finds the Petitioners' failed to carry their burden of proof required for Issue No. 10.



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**Issue No. 11:**

Did the Douglas County decision fail to comply with the GMA and the applicable Comprehensive Plans in that it ignored agricultural resource values required by the GMA, SEPA and the Comprehensive Plan to be considered and resolved in favor of conservation, preservation and enhancement of the Agricultural Resource?

**The Parties' Position:**

**Petitioners:**

The Petitioners contend the County ignored its obligations to protect and enhance the Agricultural Resource area. The Petitioners at this point ask the Board to review Issue Nos. 1, 8 and "numerous others of the issues above" as argument on this issue.

**Respondent:**

The Respondent incorporates their arguments under Issue Nos. 1 and 8 and to the Petitioners' mention of "numerous other of the issues" to this issue. The Respondent objects to the Petitioners' general incorporation of other argument and asks the Board to strike this language from the Petitioners' HOM brief and limit their review to Issue Nos. 1 and 8.

**Petitioners HOM Reply:**

The Petitioners contend the Respondent offers no new argument on this issue.

**Board Analysis:**

As originally written for the Order on Motions, under Issue No. 11, the Respondent contends this is a similar argument to Issue No. 1. They argue that the GMA does not afford "untouchable" status upon the agricultural lands adjacent to the airport. Respondent's Motion brief at 28. Encouraging conservation of agricultural lands is only one of the thirteen goals. RCW 36.70A.020. Local governments do not violate the GMA when balancing those goals during the planning process. The Respondent contends the Petitioners have a substantial burden to demonstrate evidence in the record that the Airport Overlay converts the use of agricultural lands to other uses and/or impermissibly impacts those lands. The protections afforded to Pangborn Memorial Airport actually encourage conservation of



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agricultural land surrounding the airport and lessen the potential for incompatible future impacts to that land.

The Petitioners argue statutory law requires counties to adopt development regulations which shall assure the "use of lands adjacent to agricultural…resource lands shall not interfere with the continued use in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products…" RCW 36.70A.060(1). The Petitioners contend the County has not produced a record to demonstrate it has complied with these GMA mandates. The Petitioners argue the new Airport Overlay zone and the proliferation of intrusive zones now render the impacts significant to farmers. In addition, the SEPA review failed to evaluate the impacts of the new amendments. The SEIS only mentioned the Agricultural Resource area in the context of cluster housing.

The Board agrees with the Respondent's argument and incorporates their discussion and analysis for Issue Nos. 1 and 8 for this issue. The Petitioners have failed to show how the County ignored agricultural resource values required by the GMA, SEPA and the Comprehensive Plan. The record shows the County followed its public participation plan, allowed ample opportunity for public comment, protected the agricultural resource area through the Airport Overlay District zoning, and balanced the needs of the airport with agriculture.

**Conclusion:**

The Board finds the Petitioners' failed to carry their burden of proof required for Issue No. 11.

## VII. FINDINGS OF FACT

1. Douglas County, is a county located East of the crest of the Cascade Mountains and opted to plan under the GMA and is therefore required to plan pursuant to RCW 36.70A.040.

2. Douglas County adopted Resolution No. TLS-07-09 on May 9, 2007, which adopted amendments to the Land Use Chapter of the Greater



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East Wenatchee Comprehensive Plan (GEWCP) and Chapter 18.65 of the Douglas County Code (DCC).

3. The Board finds Douglas County in compliance with RCW 36.70A.060 and RCW 36.70A.177, and its Comprehensive Plan amendments and development regulations adopted to implement these two statutes.

4. The Board finds Douglas County in compliance with RCW 43.21C.030(2)(e).

5. The Board finds Douglas County in compliance with RCW 36.70A.035, public participation requirements.

6. The Board finds Douglas County in compliance with RCW 36.70A.106, notice requirements.

7. The Board finds Douglas County in compliance with RCW 36.70A.130 and DCC 14.32 based on the record, the Board's determination and the Attorney General's Opinion No. 11, issued Sept. 7, 2005.

8. The Board finds Douglas County in compliance with RCW 36.70A.510 and RCW 36.70.547.

9. The Board finds Douglas County in compliance with the GMA when it gave Pangborn Memorial Airport essential public facility status.

10. The Board finds Douglas County conducted an adequate environmental review; determined an appropriate course of action from the alternatives; provided sufficient findings of fact to support its revisions to the Planning Commission's recommendations; and followed its public participation plan and the GMA when the BOCC changed the Planning Commission's recommendations.

11. The Board finds Douglas County balanced the goals of the GMA by sufficiently considering agricultural interests, while designating an expansion of the Airport Overlay District zoning to protect and preserve Pangborn Memorial Airport, an essential public facility.

12. The Board finds the Petitioners failed to carry their burden of proof on Issue Nos. 1, 2, 4, 5, 6, 8, 9, 10, and 11.



Eastern Washington
Growth Management Hearings Board
15 W. Yakima Avenue, Suite 102
Yakima, WA 98902
Phone: 509-574-6960
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## VIII. ORDER

Based upon review of the Petition for Review, the briefs and exhibits submitted by the Parties, the GMA, prior Board Orders and case law, having considered the arguments of the Parties, and having deliberated on the matter the Board finds the Petitioners have failed to carry their burden of proof on all issues and the County's Resolution No. TLS 07-9B is in compliance with the Growth Management Act.

**Pursuant to RCW 36.70A.300 this is a final order of the Board.**

**Reconsideration:**

**Pursuant to WAC 242-02-832, parties have ten (10) days from the mailing of this Order to file a petition for reconsideration. Petitions for reconsideration shall follow the format set out in WAC 242-02-832. The parties filing a motion for reconsideration shall file the original and four (4) copies of the petition for reconsideration, together with any argument in support thereof, by mailing, faxing or delivering the document directly to the Board, with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review. If a party files a Motion for Reconsideration, the Board will accept the argument in the Motion for Reconsideration and a "Response" brief from the opposing party. The Board will only accept "Reply" briefs from the party(s) in rebuttal to the "response" brief, upon request by the Presiding Officer.**

**Judicial Review:**

**Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil.**

**Enforcement:**

**The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties**



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**within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person or by mail. Service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order.**

**Service:**

**This Order was served on you the day it was deposited in the United States mail.**

**RCW 34.05.010(19)**

**SO ORDERED** this 18th day of December 2007.

EASTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

_____
John Roskelley, Board Member

_____
Dennis Dellwo, Board Member

_____
Joyce Mulliken, Board Member



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