

JEFFERSON COUNTY PLANNING COMMISSION

MINUTES FOR OCTOBER 6, 2004

- A. OPENING BUSINESS
- B. PUBLIC HEARING - 2004 COMPREHENSIVE PLAN AMENDMENT FINAL DOCKET
- C. ADJOURNMENT

**A. OPENING BUSINESS**

The regular meeting was called to order at the WSU Learning Center at 6:30 p.m. by Chair Tom McNerney. Planning Commission members present were Bud Schindler, Phil Flynn, Edel Sokol, Jim Hagen, Jenny Davis, and Allen Panasuk. Eileen Rogers and Dennis Schultz were excused.

DCD staff present were Josh Peters, Kevin Russell, Karen Driscoll, and Cheryl Halvorson, secretary. Jim Pearson, Public Works, was present for a portion of the meeting.

There were about forty members of the public present. Those who signed the guest list were Maria LaRocque, Larry Crockett, Robin Ornelas, Jan Fisler, George Fisler, Andrea Dickey, Ron Way, Robert Hoe, Marjorie M. Noga, Marilyn Hoefl, Anthony T. Noga, Linda Swisher, Lawrence Bushala, Donatas Kinderis, Michael Felber, Bill Berson, W. E. Seton, Jerry Chawes, Eric Toews, Randall Shelley, John Ratchford, Heidi Eisenhour, Stephanie Reith, Patrick Sherman, Ande Grahn, Gabe Ornelas, Linda A. Driver, and Mary Winters.

The Minutes for September 1, 2004, and September 15, 2004, were approved as submitted.

The Chair invited staff updates. Kevin Russell reported that he and Josh Peters had been in Portland at a planning conference.

**B. PUBLIC HEARING - 2004 COMPREHENSIVE PLAN AMENDMENT FINAL DOCKET**

**MLA04-27, Jefferson County (Agricultural Lands)**

The Chair invited a staff presentation for the Ag Lands site specific proposals.

Josh Peters stated that the DCD counter copy of the Staff Report and Recommendation was available at the meeting for the public to look at.

Josh Peters explained that these proposed site specific re-designations were the third phase of a 3-phase process for agricultural lands. The process began in 2003. He explained the contents of the first two steps. He stated that this step represented the final step in the process, which was to consider individual site specific parcels for an Ag Lands designation. He noted that maps were displayed which depicted the locations of the subject parcels. Mr. Peters explained that there had been a committee of three Planning Commissioners who reviewed all of the 250 plus parcels that were proposed for re-designation and made a preliminary recommendation to the full Planning Commission. He reported that the Ag Lands Committee recommended that most of the subject parcels be re-designated. There were a few parcels that were not recommended because the committee did not feel they met the criteria that was established in 2003.

Karen Driscoll stated that she was a retired planner and was also a farmer. A show of hands indicated that there was only one person in the audience who was interested in the Ag Lands issue. Ms. Driscoll explained some of the criteria used during the review. She explained that some parcels were recommended for denial because they were already designated as Ag Lands, or they were in a Forest classification, or they had commercial zoning, or they were designated as commercial shellfish lands, or the parcels were too small and were in an area of other small lots.

Tom McNerney clarified that the Ag Lands Committee developed the criteria and brought it before the full Planning Commission. The full commission reviewed the criteria, made some modifications, and adopted them.

For the record, Tom McNerney noted that three of the subject parcels were owned by the Planning Commission secretary, Karen Driscoll, and Planning Commission member Dennis Schultz. He stated that Mr. Schultz was absent from this meeting and intended to recuse himself from the issue.

The Chair read the public hearing procedure for site specific Comp Plan amendments. He noted that the written record would remain open until October 13. He then opened the hearing to public testimony.

Donatas Kinderis, Quilcene, stated that he owned property in Quilcene and intended to farm it. He explained that his property was not on the list before because they were just purchasing it. He asked that his parcel be added to the list.

Karen Driscoll explained that Mr. Kinderis' parcel application had been received timely and should be added to the list. It had not been because of the lack of clarity about the change in ownership. Tom McNerney stated that the Planning Commission would not be making a decision on a recommendation until the next meeting at the earliest. He thought there would be enough time for the subject parcel to be reviewed and added to the list.

There being no other testimony offered, the Chair closed the hearing on the Agricultural Lands issue.

#### **MLA03-232, Port of Port Townsend (Airport)**

The Chair opened the hearing by asking for a staff presentation.

Kevin Russell stated that there were two airport related proposals that would be heard. One was proposed by the Port of Port Townsend and the other by People for a Rural Quimper [PRQ]. He stated that they were very different proposals.

Kevin Russell displayed an overhead projection map of the airport 55 DNL which represented an Airport Overlay Zone. He stated that, inside that boundary, the county would regulate for incompatible land uses. He stated that both the federal government and the state DOT provided guidelines for uses that should not be sited near airports. He reported that staff had worked with the Port to establish a list of incompatible uses. Also, the boundary would be a triggering mechanism to apprise property owners of their proximity to the airport. He explained that Type 2 and 3 permits usually received notice anyway. The proposal also included disclosure information basically saying that a project was next to an airport and the airport was going to operate. He stated that the specific language was in the proposal included in the Staff Report.

Kevin Russell stated that the airport was designated an Essential Public Facility [EPF] under state law. He stated that the proposal would create the EPF as a standard or Euclidian zoning district. He stated that the Port's proposal included amendments to both the Comp Plan and the UDC. Their proposal would establish a few additional uses within the Airport EPF property. Mr. Russell stated that there was a Settlement Agreement in place

between the Port and the county stemming from a Port appeal to the Hearings Board. He explained that the uses that staff and the Port had agreed upon were primarily allowed in every zone, or they were airport related or airport dependent. He stated that, in addition, there would be some new language in the Comp Plan that talked about a collaborative process between the Port and the county to look at, and to take suggested amendments, to propose to possibly establishing some type of industrial uses at an appropriate scale.

Kevin Russell stated that the two proposals regarding the airport were very different. He stated that he would speak about the other proposal later.

Gene Seton asked if the airport property itself was depicted on the map and whether the 55 DNL included land outside of the airport property. Kevin Russell provided a paper copy of the map, stating that it did show the airport property.

The Chair opened the hearing by reading the public hearing procedure. He stated that the written comment period would remain open until October 13. That would provide enough time for anyone who wished to make a rebuttal to any testimony received. He stated that this issue was not a site specific, quasi judicial amendment; it was a legislative issue that would not fall under the Appearance of Fairness Doctrine. He stated that Planning Commissioner Jenny Davis wanted it on the record, however, that she had a previous relationship with the airport and that her family had a lease on some airport property. He then opened the hearing to public testimony.

Maria LaRocque, Port Hadlock, stated that she had been to many meetings on the airport issue. She stated that she still thought the noise overlay ordinance was ridiculous. It seemed to be putting the burden on the property owners. It also seemed like this was a preparation to allow louder and louder airplanes to fly into the airport. She stated that a jet flew over her house during Airport Days and the noise was tremendous. She stated that, if you put in a noise overlay, who was to say what decibel you would allow to go overhead. If that was the case, she thought the Port should buy all their properties so they could move to a quieter area. If it was just going to be standard propeller type airplanes, like what we had now, it would not be a problem. However, if the purpose was to allow people to fly in commercial jets or Leer jets, it was a whole other issue. She stated that she did not think the Port had been very forthcoming about what they had planned for the airport. She knew the Port wanted to make the airport more profitable. She questioned how that could happen if it was just the local residents who had planes coming in and out. She stated that the only thing that made the airport "international" was the people who came in from Canada. She questioned why there needed to be a noise overlay at all. If it did not have to be there, she questioned why we were wasting our time with it, unless there was more than met the eye.

For the record, Tom McNerney stated that Planning Commissioner Edel Sokol's husband was a Port Commissioner. He noted that Ms. Sokol had said that she would not participate or vote on the airport issue. He reiterated that this issue was a legislative issue, not quasi-judicial, and Ms. Sokol did not have to recuse herself.

Larry Crockett, Port of Port Townsend Executive Director, stated that jets had been landing at the airport for a long time. He stated that UPS and FedEx had landed there for some time. He stated that the airport was a FAA controlled airport and was part of the national FAA system of airports. He

stated that it was like US 101, you could not tell someone they could not drive their vehicle down the highway. No one could tell any pilot, if their airplane was suited to this length runway, that they could not land. Mr. Crockett stated that Eric Toews and worked with the Port on the proposal and with county staff. He stated that the Port supported the staff recommendation in the Staff Report. He stated that the staff time must amount to the thousands of hours, noting that the issue had been before the county for several years. It had been before the Planning Commission many times, as well as there being many meetings at the staff, Port and BOCC levels. Mr. Crockett stated that he tried to be open to any citizen coming into his office to discuss the issue and many had. He thought what the commission had seen over the year, and from what was directed in the 1998 Comp Plan in trying to meet the state law and the federal law's intent, was that we had reached a compromise that he thought met the minimal intent of the law so the county was not in violation of the state law, specifically. Yet, he thought they had satisfied essentially all of the concerns raised by citizens, although there still may be citizens who did not fully understand what was being proposed. He stated that single residential family dwellings were not impacted by this proposal. He stated that uses that brought lots of people together were regulated. Type 2 and 3 uses would be regulated. Nothing was going on anyone's property title. The zone would be on the county map so that anyone doing due diligence when buying property should be able to see it. It would be in the same category as a critical aquifer recharge zone. Mr. Crockett displayed an aerial photo depicting the 55 DNL. He stated that the blue dotted line on the photo depicted what would be the DOT Aviation Division airport safety zone and an overlay zone. He stated that this proposal was about one third or one quarter of what the zone could be. He stated that this was really a minimal attempt to meet the requirements of the state law to protect the EPF at the airport.

W. E. Seton, Discovery Road, stated that he only had one problem with the proposal. That was that we were planning to allow industrial or commercial uses at the airport that were not airport related. He stated that he owned land in the Glen Cove area that was zoned industrial/commercial at one time. It was downzoned under the Comp Plan. He stated that if the county allowed the airport to have what it took away from private citizens in other places, the county would see it in court.

Eric Toews, Cascadia Community Planning Services, consultant for the Port, provided a handout. He stated that he wished to address three basic questions related to the proposal: (1) Why are the amendments necessary? (2) What would the amendments accomplish? (3) How does the proposal before the commission differ from those that were submitted to the county earlier, particularly the proposal of April, 2003? The handout listed the answers to the three questions. Mr. Toews stressed that the issue of non-aviation related industrial uses at the airport was a future process. The proposal provided a framework, goals and policies for a future process that did not reach a conclusion as to what the ultimate range and intensity of uses would be. It simply committed the county to collaborating with the Port to attempt to ensure that the airport continued to be economically viable. He stated that the proposal represented the minimum policy and regulatory guidance needed to protect the continued viability of the airport. He stated that the proposal had been modified in response to public and agency comments received on the original proposal in 2003. It had also been modified based upon staff concerns and suggestions since the submission of the modified proposal submitted in February, 2004. He stated that the Airport Master Plan would not be adopted as a sub-area plan. The potential for permitting non-aviation

uses would be evaluated through a subsequent Comp Plan and UDC amendment process, including a full level of environmental and planning level analysis. He stated that the current proposal would create a significantly smaller airport overlay than was considered last year. He noted that there were only about 90 parcels outside the EPF ownership that would be affected. He stated that the proposal specifically eliminated any reference to a noise overlay zone ordinance. He stated that the purpose of the overlay was for (1) safety and (2) disclosure. The disclosure would be placed on official maps and on most new development applications occurring within the overlay, but, importantly, not on real property deeds and not on applications for single family residential building permits. Mr. Toews stated that the Port strongly encouraged the Planning Commission to recommend approval of the proposal as recommended by staff. He thanked staff for their diligence and collaborative working relationship in working out this proposal.

Randall Shelley, Port Ludlow, stated that he was a pilot with an airplane at the airport. He stated that he had been asked by the Jefferson County Pilot's Association to address the Planning Commission with regard to a concern they had about the 55 DNL overlay zone. He stated that their concern was that it would be viewed in the future as something that pertained to flight safety. He stated that it could not pertain to safety because it did not outline the typical pattern a pilot was required by the FAA to fly in order to land properly. Using a drawing on an easel, he explained how pilots must land or take off at the airport, explaining the direction and altitude. He stated that pilots did not have an option; they were precluded from doing anything different with the pattern. He explained that the concern was that the 55 DNL line would be misinterpreted as the line that pilots could not cross in their landing pattern. He stated that if the 55 DNL line was adopted, there needed to be some very clear language that it was not a restriction on where pilots flew when landing.

John Ratchford, Port Townsend, stated that he had been working on this issue for the last three to five years. He stated that he had seen all of the controversy about this issue. If this noise overlay district was adopted, it would open the neighborhood that was affected by it to "the camel's nose in the tent". What he meant was that they were asking the citizens who lived under the noise overlay district and within the environs of those DNL's to sign away their rights to not be able to sue the Port for future noise. He stated that everyone knew that airports got bigger; they did not get smaller. As they got bigger, noise impacts came along with it. As those noise impacts grew, those people who had bought into the 55 DNL now, could see a major impact on the airport in the future. No one knew the future. He thought that four years into the future, there could be a big impact from the airport. No one knew; it was all guesstimates. That would lock the citizens into that 55 DNL and when they went to the Port or county or FAA, there would be nothing they could do about it. He stated that if the Port wanted this noise overlay, which he thought was basically money driven because they would not get any more federal funding without it, there should be a proviso allowing the citizens to take the Port to court if there was a major impact in the future. He stated that if the county bought into this proposal now, it would give the Port a blank check. If the county was not willing to do that, he would fight the proposal, because we did not know what would happen in the future. In five or ten years, we could have 737's coming in. It could be and it had happened in other places.

Ande Grahn, representing PRQ, stated that they also had an airport amendment which would be discussed next. Ms. Grahn provided written comments for the

record. She stated that staff had indicated that the PRQ proposal was directly opposed to the Port's. She stated that they would not characterize it that way and wanted to make some comments on the joint proposal of the Port and county. She stated that it was a very different proposal from the one submitted last year. It certainly was a different proposal from the one we looked at three years ago. They wanted to acknowledge the hard work on the part of county and Port staff in listening to the community. She stated that they still had some objections to the current proposal. She stated that PRQ was commenting on specific portions of the proposal. However, failure to comment on other portions of the proposal should not be construed as a PRQ endorsement of it. She stated that, apparently, the Port had indicated in public meetings that PRQ was in favor of elements of the proposal, but PRQ was not on record in that way. She reiterated that failure to mention portions of the proposal did not mean PRQ supported it or was in favor of it. She stated that they did support the establishment of an Airport EPF district, a Euclidian zone. She stated that she did not think that zone was defined on the map, but it was defined in the ordinance as being those properties that were currently owned by the Port. She stated that they supported that being established as a zoning district and not as an overlay zone. She stated that PRQ wanted to be on the record in support of the airport being an EPF. She believed that was the goal of the county - to establish the airport as an EPF. It was also a role of the community and the Comp Plan to recognize and acknowledge the valuable contribution the airport provided to the network of small airports. Secondly, they did support the review of future expanded land uses within the airport EPF district using the annual Comp Plan amendment process as proposed in the Staff Report. They thought that would provide the greatest level of public process and scrutiny. She thought Mr. Seton's concerns would be addressed in such a process, as well as environmental concerns. PRQ also supported establishment of a limited overlay. She stated that they supported those portions of the overlay that addressed health and safety concerns as required by the RCWs and the WSDOT regulations. She stated that there was some very specific language that was amended to the GMA that required communities to recognize the importance of airports as EPFs and also addressed WSDOT guidelines that addressed health and safety concerns. They hoped the Planning Commission and staff would consider the concerns of the Pilot's Association as to whether the 55 DNL overlay was necessarily the best overlay to address health and safety land use concerns. Ms. Grahn stated that it was important for the record that land uses inside the proposed overlay would be restricted. She did not know if the individual land owners had been noticed that they would have restrictions on their property in the future; they may not be allowed to build things they were allowed now. She stated that they did support the restriction of high occupancy uses in the area that may be determined to be a health and safety zone. She emphasized that they did not support adoption of a noise overlay and those provisions on this overlay that addressed noise, that said airport noise was not a nuisance, or that the county indemnified the Port from future noise complaints. She stated that PRQ did not have an objection to a health and safety overlay being adopted, being published, being on the web site, and being included in the Comp Plan. They did not have a problem with land uses inside that overlay being noticed in the property application. They did object to all of the language that addressed noise overlays. There was no state regulation or guidelines that required counties to adopt a noise overlay or to protect airports from noise and nuisance complaints.

Gabe Ornelas, Cape George Road, representing PRQ, stated that it was vitally important to our community that had been involved in the question of this

noise overlay issue for the last six years. He stated that many of their properties had been placed at various risk. Yet the community had maintained a very civil discourse throughout these proceedings. He stated that the members of the community expected a fair, open, and objective analysis of their arguments before their elected and appointed officials. They wanted to avoid an appearance of unfairness or a perception of a bias in the decision making by our commissioners. He realized that the Chair had determined that there could not be an appearance of unfairness in this matter. However, he believed that this community had invested a lot of time and energy in this important matter as it pertained to their property rights and that this perception of bias and lack of fairness could be a likely one. He stated that any reasonable person would say that the right thing for our commissioners to do, speaking of Commissioners Davis and Sokol, would be to recuse themselves from this decision process. He stated that they appreciated that Ms. Davis had decided to declare her interest in this whole matter and that Ms. Sokol had recused herself.

Linda Driver, Port Townsend, expressed her gratitude to the Port for the changes they had made in the plan and the livability of the plan they created. She did not know if the area being considered was what pilots needed and hoped that would be looked at more closely. She stated that as a tax paying citizen of the county, she was grateful when the Port dealt with them as citizens. She appreciated them being more open to dealing with the citizens' concerns about the airport. She had trouble understanding why the county needed to defend the noise of the airport, however, and put itself on the line to run interference. She felt confident that Mr. Crockett and the other members of the Port were interested in having an airport which did not offend the airport's neighbors. She did not understand why the county should put itself in that position. She stated that we all knew we needed the airport. She stated that she had built houses within that airport overlay area. She did not know of anyone who had purchased one of her houses who had complained about airport noise. We did not have any complaints about the noise now. However, the language in the noise overlay was very vague. That was scary to her. She thought it should be one way or the other. She supported the health and safety factors but suggested that the noise issue "officiation" should be left to the Port. She stated that there were only a few small communities in this state that had a noise overlay. She stated that this was an independent community. She questioned why we needed more regulation. She stated that the Port had been quite reasonable. She did not know why the county should run interference for them. She thanked the Planning Commission for their consideration of that idea. She stated that you could hardly miss that the airport was there and it certainly had not been offensive to the community thus far.

Ron Way, Port Townsend, stated that he was a pilot who used the airport. He stated that he did not know why this had become such a problem. He stated that if you had an airport, you had noise. He stated that the airport had been there for about fifty years. He could not believe anyone could buy property around there and not know there was an airport. He thought the noise overlay was a suitable way of managing the whole airport area. They needed tools to work with. He thought both a noise overlay and a safety zone were needed.

Michael Felber, Adelma Beach Road, stated that what we were talking about with a noise overlay zone was protecting the airport from nuisance suits by the citizens of the community. He stated that the Port had said repeatedly that this proposal would not limit the citizen's right to litigate. While

that may be true, what it would do was limit the citizen's ability to succeed at litigation. What it was doing was limiting certain citizens from litigation against the airport if there was a nuisance, or if the airport created a nuisance. He stated that, if the airport did create a nuisance, he thought the citizens should have the right to deal with it, even through legal means. He did not think we should give the airport an advantage. He thought what was really going on was giving the airport an advantage on the noise nuisance cases.

Jerry Chawes, Cape George Road, stated that after listening to the testimony of the Pilot's Association, he questioned why the word "safety" was included in the noise overlay designation. It seemed like the word "safety" was thrown in just to make it sound right rather than the fact that it had anything to do with safety. He stated that safety had to do with the flying of the airplane, the FAA regulation, the altitudes they must maintain, where they turn, etc. That was the safety issue and had nothing to do with the noise overlay. He stated that life here was a dynamic thing. When he moved here, the airport was a grass strip. Then the runway was paved and the air traffic increased. He stated that, although the airport was called a necessity, in reality the airport was a recreational facility. Pilots enjoyed it and the rest of the community enjoyed having pilots having fun. He stated that what he began to wonder was "what was up the road". For instance, when bigger planes were developed that only needed shorter runways, he wondered whether the airport would become something it was not today. He stated that, when the proposed language was such that citizens could not litigate, it was equivalent to a taking of their property. He stated that they did not want to be in the position in the future that they could have no recourse about what would happen at the airport.

Mary Winters, attorney for the Port, stated that she wanted to be really clear that the Port had no regulatory authority over land uses for any protection of the airport. She stated that the Port had voluntary noise abatement procedures and followed FAA law, but the Port could not do this. That was why the counties across the state were doing it and increasingly so. She stated that the airport was an EPF which made it different from any other business or even other public space. The thought that the Port could do this on its own was incorrect; it could not happen. She stated that there was no federal money tied to the overlay. She stated that there was a lot of concern about the right to sue. She stated that, if the commission would look at the package provided, that was what ports were doing, and they were doing it in much more onerous ways than the Port was proposing. She described what was happening in other areas. What they were proposing was an overlay district; no one would see verbiage about a noise overlay. It would be on the web site. She thought that people who were concerned about the future of the airport would like the idea that, if you were buying in the area, you would know where to go. She stated that there was the nuisance provision, which in their view was pretty watered down but still a helpful provision. The county would simply recognize, like it did with mineral lands, that it was not a nuisance to have an airport, which was an EPF and had things like noise and vibration. She stated that people could still sue for a private reason. In terms of safety, she stated that they understood that the WSDOT guidelines were probably better criteria for safety because they more reflected what pilots said about the actual way they flew. She stated that the Port would be fine with that being the overlay if the county wanted to go that direction. What they proposed was well within it and significantly smaller because of their meetings with citizens. She emphasized what she thought was an important provision within the proposal

about the disclosure. Just because a parcel was not within the overlay did not mean it would not be subject to noise and vibration. The uses at the airport had come up. She stated that they were not proposing to do anything now. They were proposing a process for looking at non-aviation uses in the future. She stated that the existing Comp Plan already had provisions, but it was somewhat dated because it talked about looking at non-aviation uses during the Airport Master Plan process, which was supposed to become a sub-area plan to the Comp Plan. She stated that the Master Plan was huge and mostly irrelevant. She stated that they realized that did not make sense. They thought that clarifying language about what the future process would be was a much better approach to take.

Marilyn Hoeft, Port Townsend, stated that she was a pilot and owned property within the overlay zone. She stated that she moved there on purpose because she liked seeing the airplanes. She stated that pilots using the airport were well aware of the noise issue and tried to fly a pattern to mitigate it. She stated that for awhile there was a no-fly zone around Indian Island that made it more difficult, but that has since been lifted, so it made it easier for pilots to take off without hindering too many homes in the area. She stated that there was an issue brought up about growth. She stated that the runway was paved with a limitation of 12,500 pounds. She stated that you could make the runway twice as long, but it could not sustain more than that weight on the current runway. That in itself would limit any kind of growth as far as bigger jets was concerned. That was done purposely. She stated that the talk about extending the runway was only to allow for instrument landings. That had nothing to do with larger aircraft or more aircraft. She stated that the overlay was not a requirement for any kind of federal funding. Concerning land uses, she thought that any kind of commercial growth in the area would protect the residences from detrimental air pollution. She stated that it was really good that the county and Port were on the same page. She spoke about the possibility of SeaTac putting in a runway at Bremerton. She stated that just south of the Hood Canal Bridge was now the holding pattern for commercial jets going into SeaTac. If they had put in an extra runway at Bremerton, our airport and residences would have been right underneath that holding pattern. She thought our safety issues were really well handled. She thought the overlay was a good step and protective measure for our area.

There being no further testimony on this proposal, the Chair closed the public hearing on MLA03-232.

#### **MLA03-244, People for a Rural Quimper (Airport)**

The Chair invited a staff presentation on the proposal. Kevin Russell provided a brief presentation. He stated that it would delete all references in the Comp Plan for establishing a noise overlay. It would also utilize a sub-area planning process as a mechanism to guide future growth and development within the Airport EPF.

The Chair read the public hearing process for the conduct of the hearing, noting that it was a legislative matter and not quasi-judicial. He again noted that the written record would remain open until October 13 and that all comments would be provided to the Planning Commission. He then opened the hearing to public testimony.

Maria LaRocque, Port Hadlock, stated that she spoke to one of the pilots to find out about the limit on the weight of the airplanes that land there and

how difficult it would be to resurface the runway to allow for heavier airplanes. She stated that was one of her biggest concerns. Ms. LaRocque stated that the pilot informed her that would not happen. She stated that she was still not sure, based upon the technology, about what size planes could land there. She stated that even though certain planes might be within certain decibels to land, it did not mean we could not have continuous landings all day long compared to the smaller propelled planes. She stated that putting in any kind of threshold of noise would allow for continuous noise. She stated that anyone knew that continuous noise became a problem for peoples' health and welfare. From that aspect, she would say absolutely no noise overlay of any kind. She stated that it would prevent people from having any grounds to sue the Port for changing their livelihood.

Larry Crockett, Port Executive Director, stated that if the PRQ proposal was adopted, it was totally opposed to the Port's proposal and the county staff recommendation. He thought that would put the county at risk because it was the county's legal responsibility to enact land use rules around the airport EPF. He stated that there had been a lot of talk about what would happen in the future, the vision. He stated that the Port had finished a 2-year planning process for the Airport Master Plan in December, 2003. He stated that it was on the Port's web site. He stated that any questions about the future could be answered by that 20-year Master Plan. He stated that it talked about the types of planes that could land there. He stated that there was no plan to ballast the runway to allow for heavier planes. It would be prohibitively expensive. He stated that the FAA mandated that the grass strip be made into an asphalt strip. He stated that he had serious concerns that the Quimper Peninsula was wide enough to accept a heavy jet. He stated that such jets took around 12,000 foot runways. When you added the safety zones on each end, you would be out in Port Townsend Bay or Discovery Bay. He stated that he knew there were a lot of doubts and concerns, but invited people to read the Master Plan or talk to the Port staff. He stated that what was being proposed [by the Port] met the minimum requirements of the state law and was really pretty protective of the citizens living near the airport and the citizens throughout the county who all had a share in that airport, as well as the Port's interest.

Eric Toews, Port consultant, stated that it was not clear to him about what the PRQ proposal was, given Ande Grahn's earlier testimony. It seemed to indicate no objection to including an airport safety overlay. He hoped that would be clarified in subsequent testimony. He stated that the PRQ proposal as submitted and docketed purported to protect the ongoing viability of the Airport EPF merely through the zoning of the airport itself. He stated that the proposal was insufficient to protect this essential public facility that benefited all residents of the county. He stated that they believed that it also violated state law. Moreover, the PRQ proposal flatly violated the Second Settlement Agreement between the county and the Port as well as the county's own 1998 Comp Plan. He stated that the Port vehemently objected to any Comp Plan or code amendment that would eliminate the noise disclosure provisions because such an action would violate both the county's plan as well as the Second Settlement Agreement and the GMA.

Gabe Ornelas and Ande Grahn, representing PRQ, made their presentation together. Ms. Grahn stated that they wanted to present the PRQ proposal. She stated that Mr. Ornelas would speak about the history. Then she would speak about how they understood that the two proposed amendments were not completely dichotomous. She thought they could create an opportunity to approve their amendment as well.

Gabe Ornelas stated that they had been involved with the airport issue for about six years. He stated that they had said for the record on several occasions that this was not about noise; it was really about property rights. He provided a document depicting the noise overlay chronology. It began in 1998. He described the impact a noise overlay zone would have on property titles at that time. The Port proposal was tabled in 1999. Then in 2002, the Port and county settled to adopt a noise overlay with notification to title companies. Then in 2003, the Port proposed their second overlay and described the number of parcels impacted using the 50 DNL. Then they changed the overlay to the 55 DNL and described the number of parcels impacted. Then PRQ submitted their amendment. The Port then removed the title requirement, which put the disclosure notification on the property owners. At the end of 2003, both Comp Plan amendments were continued to the 2004 amendment docket.

Ande Grahn provided copies of their Comp Plan amendment proposal. She asked that the Planning Commission pay particular attention to Item C, which was the findings for why they were proposing the amendment. Ms. Grahn stated that Eric Toews had said that the genesis of the Port's request to have some kind of an overlay that dealt with noise came from the 1998 Comp Plan. She stated that the PRQ amendment proposed specific language addressing that language in the 1998 plan. She stated that they were not opposed to the Port requesting an airport zoning district. They were not opposed to the other elements of the Port proposal (the county proposal). She stated that what they were opposed to was relying on the 1998 Comp Plan language that said we would do a noise overlay and continuing to use that as an argument when PRQ had been asking the BOCC and Planning Commission to consider amending that language. She stated that we were at a point where the Port wanted to adopt some kind of noise overlay because the Comp Plan said the county was required to adopt one, and PRQ had been asking the county to take that language out of the Comp Plan. Then the Port would have to use some argument other than that it was in the Comp Plan to justify it. She stated that the Port had made a case, and the county staff had recommended against the PRQ proposal, that RCW 37.70A.510, RCW 36.70.547 and the WSDOT guidelines were the reason we needed a noise overlay. She stated that those RCWs and WSDOT guidelines did not say that the counties were required to adopt noise overlays or to regulate noise. They said the counties must designate the airports as EPFs and protect them from incompatible land uses. She stated that there was no case law or Hearings Board law that said the counties had to regulate noise. She asked the Planning Commission to consider their previous testimony and proposal as a third way the county could address their concerns and keep moving the Port process forward and provide the airport with the protection it needed in terms of an EPF. She stated that we should put appropriate land uses in a safety zone around the airport and not put nursing homes, multi-family dwellings, etc. in that zone. She urged the Planning Commission to get rid of the noise language.

Michael Felber, Adelma Beach Road, stated that Larry Crockett had said that the county was required to protect the airport and Eric Toews had said that the county would be violating state law if we did not have a noise overlay. That was not correct. He stated that the county was required to protect the airport. There were two ways the WSDOT guidelines recommended doing that. One was the EPF designation. The second was incompatible land use zoning laws. There were no legal requirements and no WSDOT recommendations for a noise overlay zone. The county was not in violation of the law. He reiterated that we were not required to protect the airport with a noise

overlay zone. We were only required to protect the airport with an EPF designation and to regulate incompatible land uses.

Mary Winters, Port attorney, stated that she had tried to avoid bringing up the litigation that happened over the UDC. She stated that the PRQ response was their proposal to simply take out of the Comp Plan anything to do with noise. She stated that would violate the law. She stated that you could not have a requirement, and not implement it, and then be challenged before a Hearings Board, and have a response of just taking it out. She stated that the Hearings Board would not let us do that. She stated that, in the Port's opinion, that was just the wrong response to the Hearings Board. She stated that it was true that you would not find a requirement to adopt an overlay in the statutes. But it was also true that the Comp Plan said that the county would do so as a means of protecting the airport. So, getting back to the county's own Comp Plan, that was what the county said it would do. She stated that Comp Plan planning was often controversial and the subject of much debate. That was what the Comp Plan said, and it came out of a process, and you had to respect that process. She stated that it was implicit. She stated that there were Hearings Board decisions about the issue of protecting airports now and in the future. She stated that different jurisdictions did it different ways. She cited an example where the law did not say you could not have high density residential near airports, but the Hearings Board had said you could not. She stated that you always had to look at what the law meant and that was how you interpreted it. Ms. Winters stated that it had come up earlier that the Port's proposal somehow required the county to indemnify the Port. She stated that there was absolutely nothing in the Port's proposal that remotely looked like that scenario. She stated that the issue of property rights had come up. She stated that certainly any kind of regulation impacted property rights, citing environmental regulations as an example. She stated that the takings law was for when a jurisdiction went too far. Ms. Winters stated that, in this case, you had the balance of an EPF, which was difficult to site, and the GMA recognized that. She stated that the GMA said you had to site them and then you had to protect them once you sited them. So there was a balance between the property rights of about ninety parcels, which were slightly impacted by having the overlay on the web site, against an EPF that served the entire county. She stated that, in the Port's view, the property rights issue was such a small impact and the benefits to the EPF were so great that, in this case, the property rights issue just did not exist. Ms. Winters stated that the noise ordinance that was the subject of much debate never actually happened; they were just proposals and never actually impacted any property. She stated that Mr. Ornelas had provided a good chronology of the sequence of events. She stated that the Port had done a lot to compromise.

Stephanie Reith, Port Townsend, pointed out on a map the location where she lived [Kala Point and Prospect Avenue area]. She requested that any future consideration of combined noise impact be discussed. She stated that the Navy flew over one area and the airport flight path used another area. She stated that most of the time they did not intersect and most of the time it was not a problem. However, sometimes they did intersect and then there was a noise problem. She asked that the Planning Commission just be aware of that, although she acknowledged that the county had no control over what the military did. She stated that the people who lived in that area did get significant aircraft noise from Whidbey Island. If anything was to increase related to the county airport, there could be a considerable noise impact on those residents.

Linda Driver, Port Townsend, stated that she had lived very near the noise overlay area and had built houses near it. She stated a concern that in 1998 there was an impression that there was a lot of public input. She wished to counter the impression that the public had a lot of input. She did not think there was more than a small number of people who were aware of what the Port was asking for. That was a fairly late comer as she remembered happening in 1998. She knew that we had language in the 1998 Comp Plan. However, she also knew that there were some issues about forcing it before the citizens really had time for the process. She was concerned now that we were stuck with 1998. She did not think that was what was happening and what was planned when people developed the Comp Plan. She stated that she was part of the Comp Plan planning process. She did not think the intention was to cut off public process and stick the citizens with something that came on so belatedly that it could not be adopted without the threat of a lawsuit. She did not think there was as much public process as the Port would like us to believe. She stated that if we did not have to have this overlay language, which most counties in the state did not have, she did not understand, if there was not some other agenda, why the Port was pushing it so hard. She stated that she did appreciate the concessions the Port had made, but stated that the concessions were made when people jumped on the bandwagon and started questioning the overlay. While she appreciated the Port backing off on its proposal and proposing something that was more livable, it did not mean that the 1998 Comp Plan was still being pushed. She thought the county should be able to consider other options.

There being no further public testimony, the Chair closed the hearing on this topic.

#### **MLA04-28, Jefferson County (Comp Plan Update)**

The Chair invited a staff presentation.

Josh Peters explained that the amendment was in two parts. Part A was in response to requirements of the GMA to review the Comp Plan and development regulations and, if necessary, update them. He stated that Jefferson County was part of a group of counties and cities in the first year for this update process. He stated that Part A was the staff response to those update items. He explained that the Appendix items represented the actual proposals. He listed the items in the Staff Report and Recommendation that pertained to Part A. Mr. Peters stated that Jim Pearson, Public Works, was present to answer any questions about transportation. Mr. Pearson also could provide a display item depicting the average daily trips for roads in the east county.

Josh Peters stated that Part B was the Planning Commission's 5-year assessment of the Comp Plan as required by the UDC. He stated that staff would be proposing that the current 5-year assessment requirement be changed to a 7-year review cycle to be consistent with the GMA required reviews. He provided an overview of the process the Planning Commission followed in arriving at its proposals. He listed the items related to Part B.

The Chair read the process for the conduct of the public hearing. He reiterated that the written record would remain open until October 13. He then opened the hearing to public testimony. He stated that the Planning Commission would take testimony on both Part A and Part B together.

David Whipple, Port Townsend, stated that he had been a Planning Commission member for six years. One of the first things he had been involved in was

the airport issue. He stated that his comments related to Part B and particularly the proposed rezone of the drive-in theater property. He stated that the whole point of the GMA was to look at planning comprehensively. He stated that what had happened with Rhody Drive, the SR 19/20 intersection, and Glen Cove would result in one long strip clear to the end of Water Street in Port Townsend. He stated that the county was doing spot commercial zones and then infill between them would happen. He stated that a clear precept of the GMA was public process. He stated that the county had not looked at these zoning issues comprehensively and they were all happening at the same time. He stated that if you took the whole map and started to put the commercial zoning together, the infill process was not out of the question. He also thought the line-in/line-out language for the goals and policies in the elements had not been properly provided to the citizens. He stated that it had not been in the newspapers. While it was on the web site, it was not all that easy to find. It was not there for the general public. He thought the county had failed repeatedly on public process. He thought it was ripe for appeal.

Heidi Eisenhour, Port Hadlock, stated that she was on the Planning Commission in 1988 and again in 1998-1999 when the Comp Plan was written and adopted. She stated that she had a big part in writing the Environment policies. She stated that she had not had a chance to read the entire policies, but after a 15-minute review she was shocked. She had started a goal by goal review and had four comments so far. She stated that Environmental Goal 6.0 now read "Consider air quality as on impacts of land use and development." She stated that it did not make sense. She suggested that someone needed to do basic grammatical checking. Another problem she saw was that in some instances the goals were removed and the first policy was moved up into the goal. She stated that goals and policies were very different things. She stated that when the commission developed the goals in 1998, it was a long process. She objected to the wholesale replacement of many of the Environmental goals with the policies, even though they were good policies. She stated that Environmental Policy 6.3 was changed to state "To create jobs and shopping in population centers ...". She stated that the goal was about air quality. She stated that policy needed to talk about air quality. The policy as written talked about economic development; it should be put in that element. She stated that the policies should reflect the goal. She stated that Environmental Goal 10.0 was a duplicate of Environmental Goal 7.0. She thought someone made a mistake when they were cutting and pasting, but it was an example of the kind of grammar and content that should be checked and reviewed for. Environmental Goal 11.0 addressed flood hazards. She stated that Len Palmer was a Planning Commissioner at the time and was a geologist and studied hydrology and flood hazards. She stated that Mr. Palmer basically wrote that goal and policies because he was so knowledgeable about the issue. She stated that she believed the county was in the process of adopting a Natural Hazards Mitigation Plan. She suspected that Environmental Goal 11.0 and its policies would conflict with the plan. She encouraged the Planning Commission to check. She stated that was another instance where the goal was removed and Policy 1 was moved into its place. Referring to Environmental Goal 12.0, she stated that it had been changed from "Protect and enhance" to "Promote the protection of". She stated that protecting and enhancing was a lot different from promoting. She stated that "promoting" was putting posters up at bus stops and going to public meetings. She stated that "Protect and enhance" was a goal. She referred to Environmental Goal 14.0, stating that "Protect and enhance wetlands in all their functions" was crossed out and had not been replaced. Then there was a list of policies. Ms. Eisenhour stated that she grew up here, went to school in Chimacum, was

on the Planning Commission, and cared about what was in the chapter for now and for the future. She stated that it was really hard when you saw something she had worked so hard on being so drastically changed.

Ande Grahn, Port Townsend, stated that she was speaking as a former Planning Commissioner as well. She stated that she was on the Planning Commission early in the GMA process during the interim ordinances process and spent a lot of time on the public participation process. She referred to the Blue Book, which was developed during her time on the Planning Commission. It developed a concept for a good public participation process for looking at the things that were really important local values to the community. She stated that the work did not come easily. She stated that she was glad the Planning Commission had the time to break into committees and come up with some suggestions. She highly recommended that the Planning Commission consider adopting Part A, which was more technical, and tabling Part B to consider for another year. She thought it would be acceptable to the state if it was explained that we needed more time to do a more thorough, comprehensive review process. She stated that it should go out to the community groups for their review. She reminded the commissioners that the Comp Plan was all the citizens' plan. She stated that it also required a comprehensive analysis to make sure it all fit together and that the overall goals of the GMA were met, which included the County-wide Planning Policies [CWPP]. She offered the opinion that it was timely to put the review on hold because the county and City were currently considering the CWPP for modification. She urged the Planning Commission to consider tabling Part B.

Stephanie Reith, Port Townsend, stated that she agreed with much of what Ms. Eisenhour had to say about the Environmental goals. She encouraged the Planning Commission to use more proactive and active verbs related to the goals for the Environment. She stated that to "consider" something or to "promote" something was essentially not to take any action whatsoever. She asked the commission to look again at the language of those goals. She encouraged the commission to write goals that were actually doable and not merely lip service to the environment.

There being no further public testimony, the Chair closed the hearing on MLA04-28. He also closed the overall public hearing on the Comp Plan Amendment Final Docket.

Phil Flynn stated that the airport had two state highways on either end of it. When you talked about extending the runway, it would make it closer to those highways. He thought that to extend the runway to accommodate larger aircraft would be impossible unless you closed the highways. He asked how you could accommodate that. Jim Pearson responded that he supposed you could put them (the highways) in some sort of underpass. Mr. Flynn stated that it would be cost prohibitive. Tom McNerney commented that one way to extend the runway would be to divert the Highway 20 traffic across Four Corners Road to Highway 19 and abandon that portion of Highway 20 on the one end of the airport. Kevin Russell suggested that, if the Planning Commission wanted more information about the airport, the commissioners could review the Airport Master Plan. He stated that it went into potential expansion. Mr. McNerney stated that the Port only planned to extend the runway 300 feet in order to accommodate instrument landings.

Tom McNerney stated that he thought the Airport Committee should take a close look at what had been raised in public testimony. Also, the Comp Plan Review Committee should consider what had been heard about the Comp Plan.

Tom McNerney stated that the schedule was for the Planning Commission to have two meetings for deliberations and recommendations to the BOCC.

Edel Sokol asked if staff would look at Part B of MLA04-28 and make comments on it. Josh Peters stated that staff was going to try to review it immediately and send a memo to the Planning Commission by about October 13. He was not certain staff could meet that goal. Mr. Peters stated that staff had received comments from the Prosecuting Attorney's office and hoped to weave those comments into the staff recommendations to the Planning Commission.

The commissioners discussed holding committee meetings to review and act on the public testimony received on the airport and the Comp Plan. The commissioners and staff discussed when staff would have their review of Part B ready. Concerning grammatical issues for the Part B proposal, Josh Peters stated that Bud Schindler had started to make such corrections and staff had those. The commissioners discussed meeting dates for the committees. Mr. Peters advocated for October 19 for the Comp Plan Review Committee in order to have the staff report on Part B ready.

Jim Hagen stated that there was a UDC Committee meeting scheduled, but questioned the advisability of holding it unless or until the other committees had met to revise their recommendations on the Comp Plan amendments. The commissioners agreed that the next UDC Committee meeting on October 12 should be cancelled.

Jim Hagen commented for the record in response to the comments on the subject of public process. He stated that the Planning Commission had done tremendous public outreach as far as the publication of the 5-year assessment was concerned. He stated that there had been real emphasis in the PDN that the Planning Commission was updating the Comp Plan. It was done on several occasions. There was even what he considered the extraordinary step of literally inviting the public to attend a committee meeting. He stated that we had three Planning Commission meetings on the 5-year update and we had a total of four people attend. For the record, he stated that to say there had not been public outreach and that the Planning Commission had not invited public participation was erroneous. Tom McNerney commented that he thought it was similar to the UGA issue when the commission got to the sewer issue. People ignored it until they found out it impacted them personally. However, he thought Mr. Hagen was right; there had been a lot of public outreach and opportunity.

Allen Panasuk questioned the reasoning for holding committee meetings instead of using the regular Planning Commission meetings to do the review. He stated that the commission had received the public testimony. Tom McNerney replied that we had two amendments [for the airport] that appeared to be diametrically opposed that needed to be reviewed. He thought they could benefit from a close review by the Airport Committee. Having the committees review the testimony and the amendments and providing a recommendation to the Planning Commission gave the commission a good head start on the discussion.

Phil Flynn referred to the airport overlay and the testimony the commission had received from the pilots about a safety zone. He stated that the overlay proposed by the Port was certainly not a safety overlay. He wondered whether it made sense to have two overlays. Jenny Davis suggested that the committee hold a meeting in order to talk about the issue. Kevin Russell thought a

committee meeting would be helpful. He noted that the Port's proposal contained multiple things.

The commissioners agreed that the Airport Committee would meet on October 18 at 6:30 p.m. They also agreed that the Comp Plan Review Committee would meet on October 19 at 1:00 p.m. Both meetings would take place at the DCD conference room, if available.

Bud Schindler stated that he had done a review of the goals, policies and strategies for the airport. He thought there was a lot of duplication and confusion between policies and strategies. It was agreed that he would provide his notes to staff for dissemination to the committee.

Concerning the airport, Jim Hagen suggested that the Airport Committee analyze an overlay boundary versus a safety boundary. He asked if that would spark a whole new round of public process. Some commissioners thought it would. Allen Panasuk questioned why you would not have a larger boundary if the issue was safety. Josh Peters stated that his understanding of what he heard during the hearing was that there was little opposition for a safety boundary that dealt with incompatible land uses adjacent to the airport. The issue was around the so-called noise overlay or the noise disclosure component of the airport overlay. It had a dual function. One was incompatible uses and the other was noise disclosure. He explained that the noise issue originated in the 1998 Comp Plan. It was not in state law as was noted by the Port's attorney. Tom McNerney asked if there was any reason why the safety zone and the noise zone had to be the same. Mr. Peters replied that the changes staff suggested to the Port were really some fine tuning of the code. He thought what the Port wanted to do, instead of having a noise overlay ordinance, was to combine the features of a safety zone with a noise disclosure zone. Mr. McNerney thought that they had suggested a zone that was so small it no longer functioned as a safety zone. Mr. Peters stated that he thought the Port felt like it was responding to expressed concerns. Mr. Peters stated that if the county just went with a safety zone that was based on distances from the runway, which was what the FAA recommended instead of basing it on a noise contour, he thought most people would be agreeable. There might be some property owners who felt their rights to develop their property would be impacted, such as the future church. He stated that it did not sound like anyone in the room tonight had such concerns, however. It was all about the noise disclosure. If the safety zone had nothing to do with noise, it might "fly" with the public, but he was not sure the Port would be satisfied.

Phil Flynn asked whose responsibility it was to address public safety. Josh Peters thought the law said the county had the responsibility. Mr. Flynn stated that if the county had the responsibility, then the zone had to be appropriate to where the danger was. Mr. Peters stated that the law said clearly that the county had to protect EPFs, and airports in particular, against encroaching incompatible uses. Inherent in that were some obvious planning principles about not putting things near airports that would create a safety situation. He thought there were certain safety requirements from the FAA.

Tom McNerney thought we were talking about two different things. One was a safety zone where you would not allow incompatible uses near the airport. The other was that some people did not want a lot of development near the airport, because once development occurred, there would be a huge cry against the airport, which could cause it to close. One issue was safety and the

other was encroachment on the airport. He thought the zone was proposed to protect the airport from lawsuits that may force the airport's closure.

Edel Sokol asked how you would protect an airport. Kevin Russell replied that there were WSDOT Aviation Division guidelines. There were six zones and as you got closer to the airport, less uses were allowed. Bud Schindler asked why the Port did not go that route. Mr. Russell responded that it did not address noise and disclosure. In trying to keep it simple, the Port said the noise contour would serve both purposes, the incompatible uses and the noise disclosure. Allen Panasuk stated that his question was why we could not have both. Phil Flynn stated that if the county had a responsibility for safety, then that noise overlay zone did not "fill the bill". Mr. Russell stated that there were several examples in the package the Port provided that gave what other jurisdictions were doing. He stated that a lot of places were using the WSDOT recommended zones. Bud Schindler commented that he was confused about why the Port did not follow suit with other airport authorities. Mr. Russell thought it was because of the long history and the Port compromised and said they were satisfied with the current proposal, because they wanted to get some regulations in force now.

Jim Hagen stated that there were nuisance provisions in the UDC related to resource lands. He asked if that was mandated by state law or if it was just a UDC provision. Josh Peters replied that it was more a county policy. However, the GMA did say to protect resource lands. Part of that protection was to include that kind of disclosure language. He thought the county had gone beyond what the GMA said. Mr. Hagen asked if the GMA used the same wording, to "protect" the EPFs. Kevin Russell replied that he thought it was "protect against incompatible land uses", with the emphasis on "incompatible uses". It was not necessarily noise disclosure.

#### **C. ADJOURNMENT**

The Chair formally appointed the UDC Review Committee. Bud Schindler was appointed as chair with Edel Sokol, Jim Hagen, and Dennis Schultz as members.

The meeting was adjourned at 9:42 p.m.

#### **D. APPROVAL OF MINUTES**

These minutes were approved this \_\_\_\_\_ day of October, 2004.

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Thomas McNerney, Chair

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Cheryl Halvorson, Secretary