

INTERLOCAL AGREEMENT

Regarding

**CONSIDERATION OF A
SUB-AREA PLAN AND ASSOCIATED PERMITS
FOR THE
ANACORTES AIRPORT**

Between



THE PORT OF ANACORTES,
a municipal corporation of the State of Washington,

and



THE CITY OF ANACORTES,
a municipal corporation of the State of Washington.



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INTERLOCAL AGREEMENT

Regarding

CONSIDERATION OF A SUB-AREA PLAN AND ASSOCIATED PERMITS FOR THE ANACORTES AIRPORT

THIS AGREEMENT (the "Agreement"), dated this ___ day of **November** 2004, is made pursuant to Ch. 39.34 RCW, by and between:

THE PORT OF ANACORTES, a municipal corporation of the State of Washington; and

THE CITY OF ANACORTES, a municipal corporation of the State of Washington;

(collectively, the "Parties").



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A. RECITALS

WHEREAS, the Port of Anacortes ("Port") owns and operates the Anacortes Airport which is located within the city limits of the City of Anacortes ("City"); and

WHEREAS, the property for the Anacortes Airport was purchased with grants from the Federal Aviation Administration (the "FAA"). The grants contain assurance requiring *inter alia* that the property be available for aeronautical purposes; and

WHEREAS, there are FAA regulations concerning safety and operational issues at the Anacortes Airport; and

WHEREAS, over the past decade, the Port and the City have been engaged in discussions concerning the appropriate balance between (i) the needs of the surrounding community, (ii) the development and operation of the Anacortes Airport and (iii) compliance with Federal Aviation Regulations, including Part 77 relating to obstructions on and off Anacortes Airport property. The Port and the City have to date been unable to agree on a land use plan and an obstruction removal plan, that meets the requirements of the Port, the FAA and the City; and

WHEREAS, in September 2004, the Parties entered into an interlocal agreement entitled "Agreement Regarding the Permitting and Mitigation for the Anacortes Airport Fence Project" which addressed issues surrounding the Port's application to build, at the expense of the Port, a safety fence that meets the FAA minimum standards for a safety fence. Based upon that

agreement, the City issued a fence construction and clearing permit. The Port's SEPA and the City's permits have been appealed (the "Permit Appeals"); and

WHEREAS, recently, the Port has consulted with the FAA concerning the construction of that safety fence at FAA expense and a global resolution of the land use and development issues at Anacortes Airport. In those discussions, the FAA agreed to a proposal that may provide funding for the safety fence and global resolution of the development and land use issues at the Anacortes Airport (the "Hopley Proposal"); and

WHEREAS, the Port has discussed the Hopley Proposal with the City at the City/Port liaison committee meetings. City staff has indicated that the Hopley Proposal has merit and should be considered in the context of a SEPA process and the creation of a sub-area plan, including appropriate zoning, for the Anacortes Airport; and

WHEREAS, on November 10, 2004, the Port presented the Hopley Proposal to the public at a presentation at City Hall; and

WHEREAS, the Port and the City agree that the public input in the SEPA process and the sub-area planning process is both desirable and necessary to fully evaluate the Hopley Proposal; and

WHEREAS, the FAA has indicated that there are certain aspects of the Hopley Proposal which, if changed, will make the Hopley Proposal unacceptable to the FAA; and

WHEREAS, the Parties agree that it would not be productive for the City to continue a process or adopt a sub-area plan that would not meet the Port's minimum requirements; and

WHEREAS, the Interlocal Cooperation Act, Ch. 39.34 RCW, permits governmental entities, including municipal corporations like the Port and the City, to enter into interlocal agreements, such as this Agreement.

THEREFORE, for and in consideration of the mutual terms and conditions contained herein, the Parties hereby agree as follows:

B. TERMS AND CONDITIONS

1. **The Hopley Proposal.** The Port shall submit the Hopley Proposal to the City for initiation of a Sub-Area Plan for the Anacortes Airport. The Hopley Proposal generally contemplates that the Port will undertake (i) the construction of a chain link safety fence, (ii) the construction of a perimeter four strand smooth wire fence, (iii) clearing of some or all of the trees within the area enclosed by the safety fence and (iv) the de-obligation by payment to the FAA of certain property on Anacortes Airport. In addition, the Hopley Proposal contemplates that the City will undertake the creation of a sub-area plan, including zoning, for the Anacortes Airport.
2. **Joint SEPA Process.** The Port and the City will act as joint SEPA lead agencies, will provide a joint SEPA checklist and issue a joint threshold determination, unless the Port and the City agree on some other process.
3. **Use of Port's SEPA Administrative Process.** The Port and the City agree that the Port will be responsible for managing the SEPA process for the Hopley Proposal using the Port's SEPA procedures. The Port will be responsible for



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providing administrative support for the SEPA process, including but not limited to, drafting SEPA documents, publishing all appropriate notices, receiving all public comment letters and addressing any appeals.

4. Joint Sub-Area Planning Process. The Port and the City will cooperate in a joint Sub-Area planning process based upon the Hopley Proposal.
5. Concurrence of the Port Prior to the Adoption of Any Sub-Area Plan or Zoning for Anacortes Airport: The parties recognize that the Port's ability to implement the Hopley Proposal is contingent on acceptance of the Sub-Area Plan and zoning by the FAA. Therefore, the City shall not consider nor adopt any Sub-Area Plan or zoning amendments resulting from the Hopley Proposal unless the Port has first approved the Sub-Area Plan exactly as submitted to the City council for adoption. In the event the Port fails to act or declines to approve the Sub-Area Plan within twenty-one (21) days after the Sub-Area Plan is completed by City and Port staff, then City shall be entitled to initiate its own process, including its own SEPA review and planning process to create a Sub-Area plan. The Port shall be free to comment on the new proposal, as it deems appropriate. The City will not adopt or initiate any amended ordinance, amended Sub-Area Plan or amended zoning without first obtaining the Port's approval during the term of this Agreement.
6. Withdrawal of Hopley Proposal. Recognizing the need of the Port to comply with FAA regulations and the need to move quickly to construct a safety fence, the Port may, at any time, withdraw the Hopley Proposal from further City consideration by providing five (5) days written notice.
7. Stay of Pending Airport Fence SEPA and Land Clearing Appeals. The Port will seek a stay of the pending SEPA challenge filed in Skagit County Superior Court and a stay of the land clearing appeals before the Anacortes Board of Adjustment. The Port will provide the City with five (5) days written notice prior to seeking or agreeing to a lifting of the stays.
8. Dispute Resolution. The Parties shall attempt to resolve all claims, disputes, and other matters in question, arising out of or related to this Agreement, first through informal discussions and then through formal written notification and opportunity to cure, before resorting to arbitration or litigation.
9. Term. This Agreement shall be effective when signed and notarized by the duly authorized representatives of the Port and the City. It shall expire upon (i) the adoption of the Sub-Area Plan by the City, (ii) the failure to approve or decision to decline approval of the Sub-Area Plan within the twenty-one (21) day period noted above or (iii) the withdrawal of the Hopley Proposal by the Port, but no later than two (2) years from the date of this Agreement.
10. Entire Agreement. This Agreement, including its Recitals, embodies the Parties' entire agreement on the issues covered by it, except as supplemented by subsequent written agreements the Parties make. All prior negotiations and draft written agreements are merged into and superseded by this Agreement.




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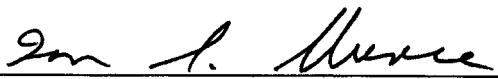
11. Modifications. This Agreement may be amended and modified by a written agreement signed by the Parties, in the same manner as the signing of the original Agreement.
12. Severability. If any term or condition contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other term or condition hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein.
13. Waiver. No failure by the Parties to insist upon the strict performance of any term or condition of this Agreement, or to exercise any right or remedy upon a breach thereof, shall constitute a waiver or breach of any other term or condition of this Agreement.
14. Governing Laws. This Agreement and the rights of the Parties hereto shall be governed by and construed in accordance with the laws of the State of Washington.
15. Execution. The persons signing below represent and warrant that they have the requisite authority to bind the Party on whose behalf they are signing.

IN WITNESS HEREOF, the Port and the City have caused this Agreement to be executed in their names and to be attested by their duly authorized officers this 23rd day of November 2004.

PORT OF ANACORTES

By: 
Dan Stahl, Executive Director
Date: 23 Nov 2004

CITY OF ANACORTES

By: 
Ian Munce, Director of Planning & Community Development
Date: 24 November, 2004



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