

RESOLUTION NO. 2015 - H

**A RESOLUTION OF THE TOWN OF EATONVILLE,
WASHINGTON, APPROVING WITH AMENDMENTS PACIFIC
NORTHWEST DEVELOPMENT AND LAND COMPANY'S
REQUEST TO MODIFY CERTAIN CONDITIONS OF APPROVAL
FOR THE AVIATOR HEIGHTS PRELIMINARY PLAT**

WHEREAS, on January 23, 2014, Pacific Northwest Development and Land Company (hereinafter the Applicant) submitted a complete application requesting to modify certain conditions of approval for the Aviator Heights preliminary plat; and

WHEREAS, on February 24, 2014, May 12, 2014, and January 26, 2015, the Town Council held duly noticed public hearings to receive oral and written testimony, as well as written material relevant to the Applicant's request; and

WHEREAS, on February 23 and March 23, 2015 the Town Council deliberated as to the Applicant's request in open sessions held during the Council's regularly scheduled Council meetings; now, therefore,

**THE TOWN COUNCIL OF THE TOWN OF EATONVILLE,
WASHINGTON, HEREBY RESOLVES AS FOLLOWS:**

The Town Council for the Town of Eatonville makes the following findings of facts and conclusions of law.

Section 1. Open Record Public Hearing.

A. *Notice.* Notice of the open record public hearings held on February 24, 2014, May 12, 2014, and January 26, 2015 was in accordance with Eatonville Municipal Code (EMC) 17.22.100(B) and 17.20.070(B) and (C).

B. *Appearance of Fairness.* At the outset of the hearings, the Town Attorney asked the decision-makers to disclose any appearance of fairness, ex parte communications, or conflict of interest matters, and there was no response. The public was asked whether any member of the public wished to challenge any member of the decision-making body, and there was no response.

C. *Administrative Record.* The administrative record consists of the oral and written testimony, as well as other written materials, submitted at the public hearings on

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February 24, 2014, May 12, 2014, and January 26, 2015. An index of the administrative record is attached as Exhibit 1.

D. Oral Testimony. The following persons presented oral testimony to the Town Council at the aforementioned public hearings:

February 24, 2014

1. Warren Hendrickson. Mr. Hendrickson is the executive director of the Washington Airport Management Association. He expressed concern that there was no airspace easement in place and no evidence of compliance with the Federal Aviation Administration's (FAA) regulations governing hazards to air navigation. He questioned whether the proposed residential use was compatible with the adjacent airport/industrial use.
2. Tim Brown. Mr. Brown is an Eatonville resident and pilot. He believes the requested plat modifications would adversely impact pilots and the use of Swanson Field. He believes the proposed residential use is incompatible with the adjacent airport.
3. Dan Mulkey. Mr. Mulkey is a resident of Eatonville and the director of the aviation academy at Swanson Field. He is against the modifications and favors more investigation before a decision is made.
4. Steve Van Cleve. Mr. Van Cleve is a resident of Eatonville and was the chair of the planning commission when the Airport District zoning category and related regulations were established. He believes the regulations were adopted to prevent incompatible land uses adjacent to the airport. He is not opposed to the original plat approval but he does not support the modifications now proposed.

May 12, 2014

5. Lisa Klein and Sean Comfort. Ms. Klein and Mr. Comfort are employed by AHBL, agent for and consultant to the Applicant. They described the five conditions which the Applicant is requesting be modified and the two new conditions that are proposed. They explained the reason for the modifications. They testified the modified plat would be a compatible use with the adjacent airport because: there are already 4 hangars constructed on Tract B; additional hangars would be allowed on Tract C; gates will allow planes direct access between the existing taxiway and Tract C; strong "notification" language would be added to plat documents to ensure future purchasers of residential lots were informed of the existing airport uses adjacent to the development; and an airport themed play area is proposed for Tract D.

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6. Jim Cross. Mr. Cross is a resident of Eatonville and testified he supports the Applicant's modifications.
7. Dan Mulkey. Mr. Mulkey is a resident of Eatonville. He testified that he believes the original developer duped the Town. He favors a compromise solution but is not convinced the structures on Tract C should be allowed for uses other than hangars. He also questions the viability to the proposed gate at the end of the runway.
8. Carter Timmerman. Mr. Timmerman is employed by the Washington Department of Transportation, Aviation Division (WSDOT). He is opposed to the proposed modifications because they are incompatible with the adjacent airport use and the modifications are inconsistent with the Town's land use policies. He questioned whether the FAA had approved the four existing hangars and expressed concern about the proposed fencing on Tract B.
9. Steve Van Cleve. Mr. Van Cleve is a resident of Eatonville and a pilot who uses Swanson Field. He does not want to lose existing aviation rights. He is concerned that future owners of the homes in the proposed development may oppose airport activities and lobby to close the airport. He thinks the proposed development is an incompatible land use.
10. Dixie Walter. Ms. Walter is a resident of Eatonville. She thinks the Council should wait until the FAA review of the proposed development is completed.
11. Lisa Klein and Sean Comfort. Ms. Klein and Mr. Comfort, the Applicant's consultants, responded to several comments and questions from the public. In their opinion, the Council should approve the plat modifications and then the Applicant would seek FAA review prior to constructing any structures.
12. Alison Moss. Ms. Moss is the attorney for the Applicant. She testified that the Eatonville Municipal Code allows single family residential within the Aerospace District. Whether the project complies with the Town's development regulations is the key issue. In light of questions regarding FAA review and approval, she asked the Council to allow the Applicant to seek and obtain the necessary FAA approvals before the Council decides whether to approve or deny the request for plat modifications.
13. Dan Simon. Mr. Simon is the Applicant and owner of Pacific Northwest Development and Land Company. He acknowledged that certain infrastructure had been built by a prior owner/developer. In his opinion, the development as originally approved will never be built because there is no market for upscale homes with attached airplane hangars served by a road/taxiway. He does not believe his proposed modifications to the plat will harm the adjacent airport. He will not build anything without first obtaining FAA approval.

DRAFT ONLY
SUBJECT TO FINAL REVIEW AND APPROVAL BY TOWN COUNCIL

January 26, 2015

14. Sean Comfort and Lisa Klein. Mr. Comfort and Ms. Klein, the Applicant's consultants, updated the Council on the status of the FAA review and approvals the Applicant had obtained since the last public hearing. The Applicant submitted in excess of 100 notices of determination to the FAA. As a consequence of the FAA's review, the request for modification of the preliminary plat has been revised, including: Lots 1 and 2 will not be built on; the remaining residential lots are subject to certain height restrictions; hangar 1 has been eliminated; and the fence and gate at the south end of the runway have been removed.
15. Carter Timmerman. Mr. Timmerman, of WSDOT, testified that he still recommends denial. He observed that the FAA review and approvals address hazards to air navigation; they do not address incompatible land use issues. He is against using the structures on Tract C for any purpose other than airplane hangars. He believes the roadway in front of the Tract C structures requires FAA review.

E. *WSDOT, Aviation Division Consultation.* On March 25, 2014, the Town held a duly noticed consultation with the Washington Department of Transportation, Aviation Division in accordance with RCW 36.70.547. The consultation was open to the public. At the consultation:

1. The Applicant, Dan Simon, described the proposed modifications and explained why the project as modified continued to be compatible with the adjacent airport use. In his opinion, the original aviation-oriented vision for the development is not marketable in today's world.
2. Carter Timmerman, an employee of WSDOT, explained that he was not opposed to those components of the project that involved commercial uses related to aviation. However, WSDOT did have several concerns: 1) in general, residential development adjacent to airports is not favored but given the original plat approval in 2007, the next best step was to keep the development aviation-oriented by continuing to allow hangars to be built on the residential lots and allowing aircraft to use the private road as a taxiway; 2) the proposed security gate on Tract B is not compatible with safe operation of aircraft using Swanson Field; and 3) the FAA had not reviewed and approved the four existing hangars and had not yet been asked to review and approve the structures described in the proposed plat modification.
3. Dan Shoemaker, an employee of the FAA, confirmed any structures that penetrate airspace are considered a hazard to air navigation. He also confirmed that the four existing hangars were not reviewed by FAA prior to

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SUBJECT TO FINAL REVIEW AND APPROVAL BY TOWN COUNCIL

their construction by the original owner/developer. The FAA does not object to the plat modifications but will require the Applicant to submit Form 7460-1 for all structures in advance of construction.

Section 2. Findings of Fact. Based on the administrative record, the Town Council identifies the following findings of fact as relevant to the Applicant's request for modification of the Aviator Heights preliminary plat.

A. The Aviator Heights preliminary plat abuts the west side of Weyerhaeuser Road and the east side of the southerly portion of Swanson Field (also referred to as the Airport) in Eatonville, WA. The tax parcel numbers are 0416144156, 0416144157, and 0416144158. The zoning is Aerospace (AP) and the property is subject to the airport overlay zone regulations set forth in EMC 18.04.187.

B. On February 12, 2007, the Town Council adopted Resolution 2007-F approving the Aviator Heights preliminary plat with 21 conditions. The initial applicant was Summit Properties/DN Properties II, Inc. The preliminary plat provided for 23 single family residential lots and four tracts (A through D) located on 18.543 acres adjacent to Swanson Field. The residential lots were to be served by a private cul-de-sac roadway. The roadway was approved to also serve as a taxiway for airplanes. The four tracts were proposed for undetermined commercial use (Tracts A and B), airplane hangar storage (Tract C), and open space (Tract D).

C. Following the 2007 approval, the original owner partially developed the plat by constructing a road, installing sanitary sewer and stormwater systems, and undertaking other improvements including the construction of four hangars. For several years no work has been undertaken on the project.

D. On January 23, 2014, Pacific Northwest Development and Land Company (the Applicant) submitted a complete application requesting modifications to Aviator Heights preliminary plat conditions 2, 3, 9, 17, 19, 21, and the addition of a new condition 22. No changes were proposed to the number or size of the 23 residential lots. No changes were proposed to the number or size of Tracts A through D.

E. On February 24, 2014, May 12, 2014, and January 26, 2015, the Town Council held duly noticed public hearings, in accordance with Eatonville Municipal Code (EMC) 17.22.100(B) and 17.20.070(B) and (C), and received oral and written testimony, as well as other relevant written materials. The hearing notices identified the time, date, location, and purpose of the hearing, and included a location description of the Aviator Heights plat.

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SUBJECT TO FINAL REVIEW AND APPROVAL BY TOWN COUNCIL

F. On March 25, 2014, the Town held a duly noticed consultation with the Washington Department of Transportation, Aviation Division, in accordance with RCW 36.70.547. The consultation was open to and attended by the public.

G. At the conclusion of the May 12, 2014 public hearing, the Applicant requested and the Town Council agreed to delay its deliberations until the Applicant could obtain FAA review of certain proposed structures and provide Council with the results of that review.

H. Following the May 12, 2014 public hearing, the Applicant submitted FAA Form 7460-1 for all lots, fences, gates, hangars, and commercial buildings. In response, the FAA issued 175 determinations of either “no hazard,” “no hazard with conditions,” or “hazard” for each requested point of compliance. Copies of the FAA determinations are a part of the administrative record.

I. As a result of the FAA’s determinations, the Applicant proposes: 1) no structures will be built on original lot numbers 1 and 2, thus reducing the total number of residential lots from 23 to 21; 2) new lot numbers 20 and 21 will be limited to single story residences; 3) Unit #1 of the proposed 50-unit structures to be built on Tract C will be eliminated; 4) the security gate proposed in Tract B is eliminated and 5) the traditional fencing proposed along the runway side of Tract C and the perimeter of Tract B will be replaced with a laser-type fence with breakaway posts, as approved by the FAA.

J. At a Town Council study session held January 12, 2015, the Applicant made a presentation to the Council regarding the results of the FAA’s determinations.

K. At the January 26, 2015 public hearing, the Applicant updated the Town Council on the status of the FAA review. In light of the FAA’s determinations, the Town Council was asked to approve the following modifications to the conditions of approval for the Aviator Heights preliminary plat. A drawing of the plat with the proposed modifications is attached as Exhibit 2. The specific request, the rationale for the request, and the proposed changes to the preliminary plat conditions of approval are set forth below.

1. Condition of Approval No. 2: Adjust the Applicant’s responsibility for constructing certain improvements to Weyerhaeuser Road in light of similar requirements imposed on the nearby Lynch Creek Quarry project, which is required to make improvements to the west side of Weyerhaeuser Road from Center Street East to the plat entrance road.

A transportation study was submitted with the development application and following mitigation is required as a condition of final approval:

DRAFT ONLY
SUBJECT TO FINAL REVIEW AND APPROVAL BY TOWN COUNCIL

Weyerhaeuser Road Design: The applicant shall be responsible for preparing The Weyerhaeuser Road reconstruction plans from the public private road boundary ~~at~~ adjacent to lot 21 to the plat entrance road Center Street E. This design should include sidewalks, storm water facilities, and street improvements. The design should include a realignment of Weyerhaeuser Road North with Weyerhaeuser Road South. The design shall be approved by the Town's Public Works department prior to final approval. Out of that design the applicant shall construct the western sidewalk and identified stormwater improvements, but shall not be responsible for street reconstruction or the eastern sidewalk improvements. The town may require minor street improvements in order to complete the stormwater and sidewalk improvements, to ensure that those improvements are compatible with the existing street, and to ensure safety until which time as full reconstruction will occur. Sidewalks on the west of Weyerhaeuser Road between Center Street and the entrance to the development shall be 8 feet in width to facilitate their use as part of the future trail system.

2. Condition of Approval No. 3: Remove the requirement that the private road that serves the residential development should also serve as a taxiway for airplanes. According to the Applicant there is no market for a residential development that combines a residence and an airplane hangar on a single residential lot. In addition, allow a security gate to be installed at the entrance to the private road. According to the Applicant, this is a marketing issue. Security gates are a highly desirable feature for potential purchasers of homes in new residential developments above a certain price point and they help to maintain property values. The security gate would be designed with an emergency vehicle and utilities department rapid entry system that allows for easy access.

The proposed private road within the development is sufficient for continued processing, however, it should be noted on the face of the plat that this is a private road, ~~taxiway,~~ and utility easement. Roadway design and construction shall be in accordance with all applicable provisions of the EMC. All roadway plans shall be signed and stamped by an engineer and the plans shall be submitted to the town public works department for review and approval prior to construction. The proposed security gate ~~and turnaround~~ is unacceptable as allowed per EMC 17.18.180 and is required to meet rapid entry access requirements for public safety and utility maintenance to the town as it may interfere with

DRAFT ONLY
SUBJECT TO FINAL REVIEW AND APPROVAL BY TOWN COUNCIL

~~the taxiing of aircraft on the designated aircraft access easement located on lot 1 and would make emergency vehicle access and town access to public utilities located within the development more difficult. A maintenance agreement shall be created and recorded for the private road as a condition of final approval. The agreement shall be approved by the planning director and public works director prior to being brought to council at final approval. The private road design including stormwater management and sidewalks should be airplane compatible and shall be evaluated by the town public works director or his/her designee for compatibility. Five foot sidewalks are required on both sides of the proposed private road and around the cul-de-sac.~~

3. Condition of Approval No. 9: Change the type of fencing along the east side of lots 13-23 from wooden to black vinyl cyclone, which is a more durable material. Also, the FAA will not allow a traditional fence along the runway side of Tract C or around Tract B. Therefore, the Applicant proposes to install a laser-type fence with breakaway posts subject to FAA approval.

~~The applicant shall construct a 6-foot wooden fence along the east side of lots 13-23-11 - 21 and Tract D as a means to prevent access to this private section of Weyerhaeuser Road North and to ensure safety. The applicant shall be allowed to install fencing as approved by the FAA and depicted on Exhibit 2 attached to the AHBL Project Memo dated January 22, 2015.~~

4. Condition of Approval No. 15: Amend the text to be included on the face of the final plat to be more specific about the residential development's proximity to Swanson Field, the scope and nature of the activities that are permitted at the airport, and the role of the FAA. The additional text is requested to ensure that future lot owners are aware of the nature and scope of the aviation activities associated with Swanson Field.

~~The following shall be recorded on the face of the plat: "This property is located within the Airport Overlay Zoning District and is adjacent to and within close proximity and flight paths of Swanson Field in which a variety of airport aviation activities occur. Such airport aviation activities may impact the use of your the property. Such activities may include, but are not limited to, noise, vibration, chemical odors, hours of operation, low overhead flights, and other associated activities. Current and future property owners are also notified that the Federal Aviation Administration (FAA) establishes standards and notification requirements for potential~~

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SUBJECT TO FINAL REVIEW AND APPROVAL BY TOWN COUNCIL

height hazards that may be caused by structures, buildings, tress, and other objects affecting navigable air space through 14 CFR Federal Aviation Regulations (FAR) Part 77, Civil Aviation Imaginary Surfaces. Any questions on establishing height hazards or obstructions should be directed to the FAA”

5. Condition of Approval No. 17: Amend text to clarify, pursuant to the Eatonville Municipal Code, the allowed commercial uses within Tract C are not limited to hangars. EMC section 18.04.185 and the plat as originally approved allow certain commercial and industrial uses in addition to hangars.

Taxi Way Paving and Construction. The applicant shall pave the gravel taxiway on the east side of the runway for the entire frontage of the applicant's property and shall connect the taxiway to the runway at two points. Further, the applicant shall construct a private access road from the public road to the proposed multi-use/hangar locations on tract C, construct a separate taxiway from the private road to the proposed multi-use hangars, maneuvering areas, and runway access, and construct aircraft taxing and maneuvering areas, fire access, and vehicle access in front of all proposed multi-use hangars sites. All construction shall be in accordance with the Town of Eatonville public works standards, shall be airplane compatible, and shall be approved by the public works director or his/her designee prior to construction.

6. Condition of Approval No. 19: Amend text on the face of the plat to clarify, pursuant to the Eatonville Municipal Code, the allowed commercial uses within Tract C are not limited to hangars. EMC section 18.04.185 and the plat as originally approved allow certain commercial and industrial uses in addition to hangars.

The statement “Future uses as permitted in Ordinance 2006-6” on the face of the plat shall be replaced with “future uses of Tracts A, B, and C as permitted by the EMC.” It is understood that the uses in Tract C will not be limited to airplane hangars and could include other uses of a size and number as allowed by the EMC.

7. Condition of Approval No. 21: Consistent with the request to modify Condition of Approval No. 3, amend the requirement for signage on the private road so as to prohibit the use of the road by airplanes. A sign alerting

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SUBJECT TO FINAL REVIEW AND APPROVAL BY TOWN COUNCIL

drivers to the hazard of the taxiway is not necessary if, as requested, the road is not used as a taxiway.

Private Road/Taxiway signage which alerts drivers and pedestrians to the hazard of the taxiway prohibits use of the road by airplanes shall be installed at the entrance to the private road; however, such signage shall not prohibit any public access with statement such as "no trespassing."

8. New Condition of Approval No. 22: Add a new condition to specify the nature of the recreational improvements to be made to Tract D. These recreational improvements are offered as one of the ways to maintain a link with the aviation activities at Swanson Field.

The recreational improvements to Tract D shall include, but not be limited to, aviation-related toys and interpretive signage describing the history of Swanson airport and general information related to different types of planes, how planes fly, and other aviation matters of general interest.

L. Swanson Field is a publically owned, public use airport encompassing over 10-acres within Eatonville's town limits. It is home to approximately 22 single-engine aircraft. The airport is occasionally used by Medivac helicopters; state, county, and military aircraft; and search and rescue missions. The airport's sole runway is 3,000 feet long and 36 feet wide.

M. The Aviator Heights plat abuts the southerly portion of Swanson Field. Several single family residences and privately owned hangars abut the northerly portion of Swanson Field.

N. Federal Aviation Regulations (FAR) Part 77 "Objects Affecting Navigable Airspace" apply five "imaginary surfaces" to dictate the boundary of the area required for airspace protection: primary surface; approach surface; transitional surface; horizontal surface; and conical surface. The Aviator Heights plat is located within the transitional surface zone of Swanson Field.

O. To promote land use compatibility, WSDOT has established, and the EMC recognizes, six safety zones for the area around an airport: runway protection zone (Zone 1); inner safety zone (Zone 2); inner turning zone (Zone 3); outer safety zone (Zone 4); sideline safety zone (Zone 5); and traffic pattern zone (Zone 6). The Aviator Heights plat is located within the sideline safety zone (Zone 5) for Swanson Field.

Section 3. Conclusions of Law. Based on the findings of fact set forth above in Section 2, the Town Council makes the following conclusions of law.

DRAFT ONLY
SUBJECT TO FINAL REVIEW AND APPROVAL BY TOWN COUNCIL

A. Plat Modification Process. The Applicant's request to modify the Aviator Heights preliminary plat is governed by EMC section 17.22.100 "Modification of Plat." Section 17.22.100 requires the Town Council to: hold a duly noticed public hearing;¹ prepare findings of fact that address three criteria set forth in the Code; and by resolution approve or disapprove the modification of the proposed plat.

B. Notice. The Town Council has complied with the notice and hearing requirements set forth in EMC sections 17.22.100 and 17.20.070(B) and (C).²

C. Existing Hangars Excluded. The four existing hangars are not included as a part of the Applicant's request to modify the Aviator Heights preliminary plat. In making the decision set forth in this Resolution, the Town Council does not waive any arguments or claims it may have as to whether the construction and location of the hangars fails to comply with local, state, or federal regulations.

D. Plat Modification Requirements. Prior to making a decision on whether to approve or disapprove the request for plat modification, EMC 17.22.100(C) directs the Town Council to consider the following criteria:

1. *Why the modification is necessary;*
2. *Whether appropriate provisions are made as required by EMC 17.20.080(B)(2); and*
3. *Whether the public use and interest will be served as required by the provisions plat [sic].*

The Applicant has the burden of establishing that each of the criteria set forth in EMC 17.22.100(C) has been met.

E. First Requirement. The Applicant has met its burden as to the first criteria in EMC 17.22.100(C)(1). The Applicant has provided a reason for why each of the requested modifications is necessary.³

F. Second Requirement. The second criteria in EMC 17.22.100(C) requires the Applicant to address the requirements of EMC 17.20.080(B)(2), which reads as follows:

2. *Whether appropriate provision was made for:*
 - a. *The public health, safety, and general welfare,*
 - b. *Open spaces,*

¹ In accordance with the requirements of EMC section 17.20.100(B) and (C).

² Finding of Fact (FOF) Section 2, ¶E.

³ FOF §2, ¶K1 through K8.

- c. *Drainageways,*
- d. *Streets or roads, alleys, other public ways,*
- e. *Potable water supplies,*
- f. *Sanitary wastes,*
- g. *Parks and recreation,*
- h. *Playgrounds,*
- i. *Schools and school grounds, considering all relevant facts, including sidewalks, and other planning features that assure safe walking conditions for students who only walk to and from school;*

The Applicant has either made appropriate provision for or is not seeking to change the requirements of the approved preliminary plat relating to open spaces, drainageways, streets or roads, alleys, other public ways, potable water supplies, sanitary wastes, parks and recreation, playgrounds, or schools.⁴

To determine whether the Applicant has made appropriate provision for the public health, safety, and general welfare, one must examine whether the proposed modifications to the preliminary plat are consistent with the Town's zoning and development regulations. The Aviator Heights plat is zoned Aerospace District.⁵ Single-family residential and commercial uses are among the permitted uses in the Aerospace District.⁶

The Aviator Heights plat is adjacent to Swanson Field.⁷ Therefore, it is also subject to the airport overlay zone regulations set forth in EMC 18.04.187. The stated purpose and intent of the airport overlay zone regulations is as follows:

18.04.187(A). Purpose and Intent. The purpose and intent of this section is....to protect the health, welfare, safety, and quality of life of the general public, property owners, airport operators, and aviation community; and also to ensure compatible land uses in the vicinity of the affected environments of the airport overlay zoning district.

To ensure the health, welfare, safety, and quality of life of the general public, property owners, airport operators, and aviation community, and also to ensure compatible land uses in the vicinity of Swanson Field, proposed development within the airport overlay zone must meet height restrictions and air safety zone requirements.⁸

⁴ Id.

⁵ FOF §2, ¶A.

⁶ EMC §18.04.185(A)(1).

⁷ FOF, §2, ¶A.

⁸ EMC §18.04.187(D) and (E).

The Applicant is proposing to construct structures that will penetrate the transitional surface zone associated with Swanson Field. EMC 18.04.187(E)(1)(b) requires all such uses to be reviewed by the FAA before the Town grants a building or land development permit. The Applicant's request for modification is consistent with this requirement.⁹ The proposed modifications to the Aviator Heights plat comply with the height restrictions and/or the procedures set forth in the EMC 18.04.187 for structures that will penetrate the transitional surface zone.

The Applicant is proposing uses and structures located in the sideline safety zone (Zone 5) associated with Swanson Field.¹⁰ EMC 18.04.187(E)(2) – Table 1 identifies incompatible land uses within the six safety zones recognized by WSDOT and defined in EMC 18.04.187(D)(2). In regards to Zone 5, Table 1 reads in its entirety as follows:

Zone 5 – Sideline Safety Zone	<ol style="list-style-type: none">1. All aviation-related uses are permitted.2. Schools, hospitals, nursing homes, churches, day care centers, and mobile home parks are prohibited.3. All AP aerospace district permitted uses are allowed.
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The uses proposed by the Applicant are permitted uses in the AP aerospace district and they are not expressly prohibited in Table 1.¹¹ The Applicant's proposed modifications to the Aviator Heights preliminary plat comply with the safety zone requirements set forth in EMC 18.04.187 for structures and uses that are located within the Zone 5 – Sideline Safety Zone.

The proposed modifications comply with the height restriction and safety zone requirements set forth in the airport overlay zone. Compliance with the height restriction and safety zone requirements ensures the health, welfare, safety, and quality of life of the general public is protected. Accordingly, the Applicant has met his burden of establishing compliance with the second criteria in EMC 17.22.100(C)(2).

G. Third Requirement. The third and final criteria that must be established under EMC 17.22.100(C) is whether the public use and interest will be served. Several factors and values contribute to determining whether the public use and interest will be served, such as whether or not: the proposal will protect the public health, safety and welfare; the proposal is consistent with the intent and purpose of the airport overlay zone regulations; the proposed structures have been or will be subject to FAA review; the proposal will contribute to the Eatonville community; and the proposal will contribute or detract from the use and operations at Swanson Field.

⁹ FOF §2, ¶¶H, I, and N.

¹⁰ FOF §2, ¶O.

¹¹ FOF §2, ¶¶A and O.

As set forth above in paragraph F, the proposed modifications are protective of the public health, safety and welfare and they are consistent with the Town's airport overlay zone regulations. The proposed use is a permitted use within the Aerospace District.¹² The proposed structures comply with the airport overlay zone's height restrictions.¹³ The proposed uses are compatible uses within the Zone 5 – Sideline Safety Zone.¹⁴ The FAA has made "no hazard" determinations for the structures that the Applicant proposes to build.¹⁵ If further FAA review is required, the Applicant must provide the Town with written statements of FAA determinations before building or land development permits will be issued.¹⁶

Although the original owner/developer began construction, the plat is only partially complete and there has been little or no activity for several years.¹⁷ The plat modifications proposed by the Applicant appear to be the basis for a more marketable project. The public use and interest will be promoted if the plat is completed. New homes in the community and new property tax revenue are in the public's interest. In addition, the proposed plat modifications have the potential to increase the number of airplane hangars for planes that use Swanson Field.

For all these reasons, the Applicant has met its burden of proving the plat modifications serve the public use and interest, except as to the private security gate and provided wooden slats are added to the black vinyl cyclone fence that is a part of Condition of Approval No. 9.

H. Security Gate. EMC 17.18.180 provides in part:

Public access to developments or parts of developments containing private streets shall not be limited by the use of gates or other measures except when such limitation is approved by the town as a part of the consideration of the related preliminary land division approval or by approval in writing by the public works director.

The Aviator Heights plat will be served by a private road and therefore a security gate may not be installed to limit public access without Town Council approval.¹⁸ The Town Council has never approved a security gate and, at present, there are no developments in Eatonville

¹² FOF §2, ¶A

¹³ Id.

¹⁴ Conclusion of Law (COL) §3, ¶N.

¹⁵ FOF §2, ¶¶H, I, and K.

¹⁶ EMC §18.04.187(E)(1)(b).

¹⁷ FOF §2, ¶C.

¹⁸ FOF §2, ¶B.

DRAFT ONLY
SUBJECT TO FINAL REVIEW AND APPROVAL BY TOWN COUNCIL

with security gates. Security gates serve to segregate neighbors and neighborhoods from one another. Gated communities are not consistent with the character of the town or the Council's vision for the greater community. Accordingly, the security gate would not serve the public use and interest.

Section 4. Decision.

A. Based on the findings of fact and conclusions of law set forth above, the Town Council approves the following modifications to the conditions of the Aviator Heights preliminary plat, with amendments.¹⁹

1. Condition of Approval No. 2:

A transportation study was submitted with the development application and the following mitigation is required as a condition of final approval:

Weyerhaeuser Road Design: The applicant shall be responsible for preparing The Weyerhaeuser Road reconstruction plans from the public private road boundary at adjacent to lot 21 to the plat entrance road. This design should include sidewalks, storm water facilities, and street improvements. The design should include a realignment of Weyerhaeuser Road North with Weyerhaeuser Road South. The design shall be approved by the Town's Public Works department prior to final approval. Out of that design the applicant shall construct the western sidewalk and identified stormwater improvements, but shall not be responsible for street reconstruction or the eastern sidewalk improvements. The town may require minor street improvements in order to complete the stormwater and sidewalk improvements, to ensure that those improvements are compatible with the existing street, and to ensure safety until which time as full reconstruction will occur. Sidewalks on the west of Weyerhaeuser Road between Center Street and the entrance to the development shall be 8 feet in width to facilitate their use as part of the future trail system.

2. Condition of Approval No. 3:

The proposed private road within the development is sufficient for continued processing, however, it should be noted on the face of the plat that this is a private road and utility easement. Roadway design and construction shall be in accordance with all applicable provisions of the

¹⁹ FOF §2, ¶K

EMC. All roadway plans shall be signed and stamped by an engineer and the plans shall be submitted to the town public works department for review and approval prior to construction. The proposed security gate is not in the public use or interest and is denied. A maintenance agreement shall be created and recorded for the private road as a condition of final approval. The agreement shall be approved by the planning director and public works director prior to being brought to council at final approval. The private road design including stormwater management and sidewalks shall be evaluated by the town public works director or his/her designee for compatibility. Five foot sidewalks are required on both sides of the proposed private road and around the cul-de-sac.

3. Condition of Approval No. 9:

The applicant shall construct a 6-foot black vinyl cyclone fence with wooden slats along the east side of lots 11-21 and Tract D as a means to prevent access to this private section of Weyerhaeuser Road North and to ensure safety. The applicant shall be allowed to install fencing around the remaining Tracts as approved by the FAA and depicted on Exhibit 2.

4. Condition of Approval No. 15:

The following shall be recorded on the face of the plat: "This property is located within the Airport Overlay Zoning District and is adjacent to and within close proximity and flight paths of Swanson Field in which a variety of airport aviation activities occur. Such airport aviation activities may impact the use of the property. Such activities may include, but are not limited to, noise, vibration, chemical odors, hours of operation, low overhead flights, and other associated activities. Current and future property owners are also notified that the Federal Aviation Administration (FAA) establishes standards and notification requirements for potential height hazards that may be caused by structures, buildings, tress, and other objects affecting navigable air space through 14 CFR Federal Aviation Regulations (FAR) Part 77, Civil Aviation Imaginary Surfaces. Any questions on establishing height hazards or obstructions should be directed to the FAA"

5. Condition of Approval No. 17:

Taxi Way Paving and Construction. The applicant shall pave the gravel taxiway on the east side of the runway for the entire frontage of the

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SUBJECT TO FINAL REVIEW AND APPROVAL BY TOWN COUNCIL

applicant's property and shall connect the taxiway to the runway at two points. Further, the applicant shall construct a private access road from the public road to the proposed multi-use/hangar locations on tract C, construct a separate taxiway from the private road to the proposed multi-use hangars, maneuvering areas, and runway access, and construct aircraft taxing and maneuvering areas, fire access, and vehicle access in front of all proposed multi-use hangars sites. All construction shall be in accordance with the Town of Eatonville public works standards, shall be airplane compatible, and shall be approved by the public works director or his/her designee prior to construction.

6. Condition of Approval No. 19:

The statement "Future uses as permitted in Ordinance 2006-6" on the face of the plat shall be replaced with "future uses of Tracts A, B, and C as permitted by the EMC." It is understood that the uses in Tract C will not be limited to airplane hangars and could include other uses of a size and number as allowed by the EMC.

7. Condition of Approval No. 21:

Private Road signage which prohibits use of the road by airplanes shall be installed at the entrance to the private road; however, such signage shall not prohibit any public access with statement such as "no trespassing."

8. New Condition of Approval No. 22:

The recreational improvements to Tract D shall include, but not be limited to, aviation-related toys and interpretive signage describing the history of Swanson airport and general information related to different types of planes, how planes fly, and other aviation matters of general interest.

PASSED by the Town Council of Town of Eatonville and attested by the Town Clerk in authentication of such passage this _____ day of March 2015.

Mike Schaub, Mayor

ATTEST:

Kathy Linnemeyer, Town Clerk

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SUBJECT TO FINAL REVIEW AND APPROVAL BY TOWN COUNCIL

February 23, 2015	Council Meeting Minutes
February 23, 2015	Council Agenda packet
February 19, 2015	Aviator Heights Preliminary Plat / AHBL
January 26, 2015	Council Meeting Minutes
January 26, 2015	Agenda Staff Report – Aviator Heights request for plat modification
January 26, 2015	AOPA Ltr – re: Aviator Heights plat modification
January 26, 2015	Council Agenda packet
January 22, 2015	Aviator Heights – Minor modification – Summary of FFA – req'd. Proj. chgs.
January 15, 2015	Aviator Heights – Minor modification submittal
December 18, 2015	Results of filing of FAA Form 7460-1
December 6, 2015	Email – Doug Beagle from Lisa Klein – AHBL – Meeting follow-up
October 31, 2014	Federal Aviation Administration – Aeronautical Study # 2014-ANM-2584-OE
September 9, 2014	Federal Aviation Administration – Aeronautical Study # 2014-ANM-1032-OE
August 27, 2014	Federal Aviation Administration – Aeronautical Study # 2014-ANM-1038-OE
August 27, 2014	Federal Aviation Administration – Aeronautical Study # 2014-ANM-1011-OE
May 12, 2014	Town Council Notice of Public Hrg of Aviator Hgts
May 9, 2014	AOPA from AOPA_Ltr addressing Aviator Hgts Preliminary Plat
May 8, 2014	Email from Bill Diamond to Doug Beagle – Condition #2
May 7, 2014	WSDOT – Aviator Hgts Preliminary Plat
May 6, 2014	Email to Doug Beagle from Dan Simon - Pacific Northwest Development
May 5, 2014	Email to Lisa Klein – AHBL @ AHBL from Kathy Linnemeyer Mail to Doug Beagle from Lisa Klein-AHBL Email to Greg Jacoby from Bill Diamond Email to Doug Beagle from Dan Simon - Pacific Northwest Development
May 2, 2014	Ltr to Council from AHBL – Aviator Hgts Minor Modification Email to Doug Beagle from Sean Comfort – AHBL

Email to Doug Beagle from Bill Diamond – Aviator Hgts add’i. information submitted.

Washington State Patrol – Fire Marshall-inspection at hangars

May 1, 2014 AHBL – Aviator Hgts Minor amendment and SEPA review

April 29, 2014 Email to Doug Beagle from Sean Comfort – AHBL
 Email to Doug Beagle from Bill Diamond
 Email to Doug Beagle from Scott Clark

April 28, 2014 Email to Doug Beagle from Bill Diamond

April 23, 2014 Email to Dan Simon - Pacific Northwest Development from Doug Beagle re: Invoice
 Email to Doug Beagle from Dan Simon - Pacific Northwest Development re: Invoice

April 22, 2014 Email to Doug Beagle from - Dan Simon - Pacific Northwest Development – Invoice

April 21, 2014 Email to Doug Beagle from Lisa Klein – AHBL

April 17, 2014 Email to Doug Beagle from Bill Diamond

April 14, 2014 Email to Doug Beagle from Lisa Klein – AHBL
 Email to Doug Beagle from Bill Diamond – Weyerhaeuser Rd Improve.

April 10, 2014 Email to Lisa Klein – AHBL from Bill Diamond

April 7, 2014 Email to Doug Beagle from Sean Comfort – AHBL

April 1, 2014 Email to Doug Beagle from Lisa Klein – AHBL

March 21, 2014 Email from John Collins (AOPA)

March 21, 2014 Email from Lisa Klein – AHBL

March 21, 2014 Email from Sara Coccia – AHBL – WSDOT consultation Power Point

February 24, 2014 Email form Carter Timmerman (WSDOT Aviation) – Towns Attorney Contact Information

February 21, 2014 Letter from John Collins (AOPA) ref: preliminary plat proposed modifications

January 23, 2014 Application from Dan Simon – Pacific Northwest Development

