

Confidential: Deliberative Process Exemption under the PRA and CR 408 Apply

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and between Jefferson County, a Washington municipality (“the County”), and the Port of Port Townsend, a Washington municipality (“the Port”), as of the Effective Date. The County and the Port are referred to in this Agreement individually as a “Party” or collectively as the “Parties.”

I. RECITALS

1. The Port applied for a binding site plan approval to construct a rural industrial park with 11 tracts on a 24-acre parcel identified by Jefferson County Tax Parcel No. 001331005 (“Parcel 1005”), along with access through an adjacent approximately 3-acre parcel identified by Jefferson County Tax Parcel No. 001334041 (“Parcel 4041”) near the corner of Four Corners Road and Night Owl Road in unincorporated Jefferson County (“the Project”). The application for the Project is a Type III land use application under the Jefferson County Code (“JCC”).

2. The Jefferson County Hearing Examiner (“Hearing Examiner”) approved the Project subject to conditions (the “Decision”) dated January 20, 2026, attached as Appendix A, which the Port appealed to Kitsap County Superior Court under Case No. 26-2-00347-18 under the Land Use Petition Act, chapter 36.70c RCW (the “LUPA Appeal”). The Hearing Examiner determined that the Project “will serve the public interest as expressed in the comprehensive plan and development regulations.” Decision at 26.

3. In the LUPA Appeal, the Port asserts that the Decision:

- a. Includes numerous erroneous facts.
- b. Misapplies the Jefferson County Code by limiting the uses permitted based on the Airport Overlay, then conditioned the development of each lot within the Project on compliance with this incorrect and too narrow interpretation of the County Code in Condition of Approval No. 35. The correct interpretation and application of the County Code with respect to Parcel 1005 is that it is located at the Jefferson County International Airport (JCIA) and within the AEPF (Airport Essential Public Facility) District and Airport Overlay III. Overlay III is the only overlay applicable within the AEPF. Airport Overlay III expands the range of permissible uses within the underlying AEPF District to include non-aviation-related light industrial uses in addition to those uses otherwise permitted, both outright and conditionally, within the underlying AEPF District. Accordingly, non-aviation-related light industrial/manufacturing uses meeting the definition of “light industrial” in JCC 18.10.120 and “manufacturing” in JCC 18.10.130 are permitted on Parcel 1005 in addition to those otherwise allowable within the underlying AEPF district as set forth in JCC 18.15.1114 to 18.15.1120.

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- c. Misapplied the County Code by requiring the Port to include certain development standards within any lease the Port enters on Parcel 1005. Nothing in the Decision should require the Port to include use restrictions or development standard within any lease agreement that may be entered into by the Port and a future tenant leasing property within Parcel 1005.
 - d. Misapplied the County Code in Decision Condition No. 35 by requiring a traffic analysis be provided to the County Public Works and the Washington State Department of Transportation for any use development within for Parcel 1005. The County should have the discretion to, but not be compelled to, require a supplemental traffic study for any future development within the Parcel 1005.
 - e. Misapplied County Code and screening requirements for perimeter screening. Perimeter screening should only be required around the exterior of the development on Parcel 1005, not between any individual lots located within that parcel.
4. The Project will support operations of the Jefferson County International Airport (JCIA) as an essential public facility, and it will promote compatible land uses and the long-term economic viability of the JCIA, the preservation of rural character, and economic development.
5. The Port is a known and trusted partner of the County, and has committed to provide a limited opportunity for rural scale non-aviation-related industrial uses that contribute to enhance the economic vitality and quality of life for the citizens of Jefferson County that is authorized by the Jefferson County Comprehensive Plan and the implementing development regulations in the JCC.
6. The Parties desire to execute this Agreement to modify the Decision and make provisions for the Project to proceed consistent with this Agreement and the Stipulated Order Correcting Hearing Examiner's Errors (the "Stipulated Order") filed in the LUPA Appeal. A form-of copy of the Stipulated Order is attached to this Agreement as **Exhibit "A"**. The understanding of the Parties is that this Agreement and the Stipulated Order control over any inconsistency in the Hearing Examiner Decision.

II. AGREEMENT

A. TERMS OF THIS AGREEMENT

1. PARTIES BOUND.

This Agreement applies to and is binding upon, and inures to the benefit of each of the Parties.

2. Effective Date.

This **Agreement** is effective on the date the last Party executes this **Agreement**.

3. Purpose of this Agreement.

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The purpose of this **Agreement** is to resolve all disputes between Parties regarding the Project, the Decision, and the LUPA Appeal.

4. Consistency with JCC and Applicable Statutes.

The Parties hereby agree that any and all changes to the Decision herein are consistent with the requirements of Jefferson County Code, chapter [58.17](#) RCW, and chapter [43.21C](#) RCW. For example, the relevant binding site approval criteria are found at JCC [18.35.490](#)(1).

5. No Modification of SEPA Determination.

The Parties hereby agree that this Agreement does not have any impact on the Mitigated Determination of Non-Significance issued for the Project, which was not appealed and is therefore final under applicable state and local laws.

6. Project Summary.

The Project consists of two separate parcels, identified as Parcel 1005 and Parcel 4041. The Decision approves establishes a Binding Site Plan (“BSP”) to divide Parcel 1005, a 24-acre parcel, located at the southeast corner of the Jefferson County International Airport (“JCIA”), into 11 one-acre tracts for light industrial uses. Parcel 4041 will accommodate access and utility infrastructure serving the development.

Parcel 1005

Parcel 1005 is located within the Jefferson County International Airport Essential Public Facility District (“AEPF”) and is subject to Airport Overlay III. Although no specific uses are proposed with the BSP, future development and use of the individual tracts will be governed by the relevant provisions of the Jefferson County Code (“JCC”), including those established for the AEPF in JCC [18.15.1110](#) through [18.15.1132](#) and Airport Overlay III standards in JCC [18.15.453](#), as now adopted or may hereafter be amended.

Consistent with JCC [18.15.453](#)(4) and (5), new development within the rural light industrial park will be subject to limitations including, but not limited to, a maximum building size of 10,000 square feet and restrictions on allowable uses. Notwithstanding the permitted, conditional and prohibited uses specified for the underlying AEPF, Airport Overlay III also permits non-aviation-related light industrial and manufacturing uses as those terms are defined in JCC [18.10.120](#) and [18.10.130](#), respectively.

Parcel 4041

Parcel 4041 lies outside both the AEPF and Airport Overlay III. It is designated and zoned as Rural Residential 1:10, and is subject to Airport Overlays I and II. Parcel 4041 will be used only for an access road and utilities serving the proposed 11-tract development on Parcel 1005. All other uses are prohibited unless the BSP is formally amended and that amendment is approved.

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7. **Corrections to Findings of Fact.** The Parties agree that the Findings of Fact in the Hearing Examiner's Decision should be read consistent with this Section 7 of this Agreement.
 - a. *Independent clause on lines 1-3, page 8, under the sub-heading "Comprehensive Plan Designations and Zoning."*

The Parties agree this language should be corrected to read:

AEPF Airport Overlay II, which applies only to ~~both Parcels 1005 and Parcel~~ 4041, is defined as follows in the Comprehensive Plan:

- b. Text under sub-heading "H. The Requirements for Uses Proposed on Tracts within the Binding Site Plan to Comply with Comprehensive Plan and Development Regulations – JCC 18.35.490(1)(a)," subsection (3).

The Parties agree this language should be corrected to read:

The Comprehensive Plan guides the development of the site and the greater JCIA Airport Essential Public Facility District. Parcel 1005 is located within the AEPF District and Airport Overlay Districts II and III. ~~Airport Master Plan at Fig. A.2. Comprehensive Plan~~ Policy CF-P-10.1 and JCC 18.15.405 requires that all new uses in these areas be consistent with the Airport Master Plan.

- c. Text under the sub-heading "H. The Requirements for Uses Proposed on Tracts within the Binding Site Plan to Comply with Comprehensive Plan and Development Regulations – JCC 18.35.490(1)(a)," subsection (15).

The Parties agree subsection (15) should be corrected to read:

Parcel 1005 and 4041, because it is located at the JCIA and within the AEPF District and Airport Overlay District III, is subject to the restrictions set forth in JCC 18.15.1124 to 18.15.1132 and 18.15.453(3) as properties within the AEPF II District, also carry other numerous restrictions due to their proximity to JCIA. Therefore, the following restrictions are also applicable to this parcel:

- A. Land uses and development shall comply with the standards established in the Federal Aviation Regulations (FAR), Part 77 (Objects Affecting Navigable Airspace). Where the standards contained in this section conflict with FAR, Part 77, the more restrictive shall apply. All

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other development standards and review and approval criteria in this code shall also apply. JCC 18.15.1124.

B. Any development shall comply with the following standards in the Comprehensive Plan and development regulations:

(i) Lighting shall not create glare or interfere with the lights necessary for aircraft navigation, including landing and take-off. JCC 18.15.1128; Policy CF-P-11.5.

(ii) Facilities which emit electrical currents must install and use equipment in a manner that does not interfere with communication systems or navigational equipment. Policy CF-P-11.6; JCC 18.15.1126.

(iii) Any parcel within the BSP is subject to the FAA-established building restriction line and all applicable regulations. JCC 18.15.453(3).

C. ~~JCC 18.15.453 Development Standards.~~ In addition to the standards for new development in the AEPF district set forth in JCC [18.15.1124](#) through [18.15.1132](#), the development standards set forth in JCC 18.15.453(5) for the Airport Overlay III shall also apply to all development occurring on Parcel 1005 following provisions apply:

~~(i) Impervious Surface Coverage, Building Dimension and Height Restrictions.~~

~~(a) Total impervious surface coverage shall not exceed 25 percent.~~

~~(b) No structure shall exceed 10,000 square feet in size.~~

~~(c) Notwithstanding JCC [18.15.1130](#), in no instance may structures exceed 35 feet in height.~~

~~(ii) Vegetation Retention and Perimeter Buffering. Existing vegetation shall be maintained to the maximum extent practicable in order to reduce soil erosion, provide habitat for wildlife, screen light industrial uses from view, and maintain the predevelopment hydrologic regime. Additionally, Parcel 1005 shall maintain a minimum 50 foot wide buffer along the outer perimeter of each ownership parcel (i.e., not leasehold parcels created through a future binding site plan process) within the overlay to screen industrial uses from view and maintain the unincorporated rural aesthetic values of the locale.~~

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D. JCC 18.15.1132 requires that all uses shall be served by adequate transportation facilities, including appropriate facilities for transit, pedestrians, and bicycles. Where transportation facilities are not adequate to serve a proposed use, the applicant shall make provision for necessary improvements. Transportation facilities shall be deemed adequate, if necessary improvements are planned and funded in the Jefferson County Comprehensive Plan Six-Year Transportation Improvement Program. Transportation facilities shall meet the design standards of the department of public works and Jefferson Transit. These standards include, but are not limited to, the American Association of State Highway and Transportation Officials (AASHTO) “Policy on Geometric Design of Highways and Streets,” the Institute of Transportation Engineers “Trip Generation Manual,” and the Washington Department of Transportation “Highway Design Manual” and “Standard Specifications for Road, Bridge, and Municipal Construction.”

E. Any development occurring ~~within AEPF II~~ on Parcel 1005 (within Airport Overlay III) shall incorporate Low Impact Development (LID) practices to the maximum extent feasible. The most recent edition of the Low Impact Development Technical Guidance Manual for Puget Sound (May 2005) shall be used as a primary source in reviewing and mitigating development occurring with the overlay district. *See JCIA Master Plan* at A6 (2014).

F. The JCIA Master Plan ~~requires~~ indicates that Parcel 1005 will be provided with ~~obtain~~ water service ~~to the Industrial Park~~ by utilizing the existing water service from the ~~northside~~ north side of the Airport. Stormwater and wastewater are proposed for conveyance from the site to the southeast corner of the Airport, with detention and treatment facilities implemented on airport property. An FAA compliance assessment may be required to evaluate this potential stormwater and wastewater detention and treatment proposal. *JCIA Master Plan* at ~~D21~~ D22 (2014). The Port

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clarified at hearing that this ~~requirement~~ provision within the Master Plan was conceptual in nature, and the Port has determined that water service will be obtained from Four Corners Road, south of the property. Ex. 28.

G. The development is appropriate and ~~constitutes a use within~~ will facilitate a limited range of non-aviation-related rural light industrial uses that ~~foster the Port's ability to assure~~ support the long-term financial viability of the JCIA AEPP. It ~~shall be~~ is consistent with, and helps to implement, the FAA-approved JCIA master plan, which anticipates non-aviation-related industrial development to the south of the runway areas.

H. Prior to approval of a conditional use permit for a use located within Airport Overlay II (i.e., on Parcel 4041) the administrator or hearing examiner shall make the following finding: "The proposed use is compatible with ongoing flight operations conducted at the Jefferson County International Airport Essential Public Facility." JCC 18.15.450.

- d. Language under the sub-heading "I. Compliance with JCC 18.35.490(1(b))¹ – Infrastructure Requirements," subsection (5).

The Parties agree the language under sub-heading I should be corrected to read:

5. Roads and Transit Facilities: A Traffic Impact Analysis (TIA) dated November 19, 2024, was submitted by Applicant as part of the application. See Ex. 12. Given there is ~~a~~ virtually no information regarding the uses that will occupy the development, it is impossible to gauge accurately the traffic demand that will occur as a result of the development. As stated by the staff report, "The limited TIA found the Levels of Service (LOS) at the study intersections and site access would operate at an acceptable level." ~~This proposal~~ The proposed development will be accessed via ~~accesses~~ a county road that intersects with ~~two different highways~~ State Highways 19 and 20. The Washington State Department of Transportation recognized that review at this time was inconclusive and stated that it "reserves comment" until such time the tenants are proposed to determine whether the assumptions made in the TIA are accurate. Ex. 25. ~~Therefore, this proposal shall be conditioned to require a traffic analysis as a part of each approval for a new use within the developed project.~~ Accordingly, this proposed BSP should be conditioned to afford staff the discretion to require a supplemental TIA in the event a future proposed use appears likely to generate significant unforeseen traffic impacts.

- e. Language under the sub-heading "I. Compliance with JCC 18.35.490(1(b))¹ – Infrastructure Requirements," subsection (8).

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The Parties agree the language under sub-heading I should be corrected to read:

8. Lighting: Applicant testified that there will be no lighting on the site, except for lights provided by tenants on the individual tracts. As a condition of this approval, ~~each lease with an individual tenant of one of the tracts~~building permits issued for structural development within the BSP shall contain the following requirement: “All exterior lighting shall be energy-efficient and designed to minimize light pollution. Fixtures must be shielded or recessed to ensure that direct glare and reflections are contained within the boundaries of the parent lot. New development that produces glare or lighting that interferes with aircraft navigation, including land and take-off, is prohibited.” *See id.*

8. **Corrections to Conditions of Approval 1, 34 and 35.** The Parties agree that the Conditions in the Hearing Examiner’s Decision should be read consistent with this Section 8 of this Agreement.

The Parties agree that the Decision should be amended to be consistent with this section 7.

a. Revised Condition 1.

Condition 1 is amended to read:

“The applicant shall obtain a Class IV General Forest Practice Application (FPA) from the Department of Natural Resources (DNR) to remove the timber from the site. A 50-foot buffer of native vegetation is required along the perimeter of the development area within this binding site plan. If this vegetation is removed below Landscape Screen-A standards found in Section 18.30.130(3)(a) JCC, a landscaping plan meeting the standards of JCC 18.30.130 shall be submitted to the Department of Community Development (DCD) for review and approval. Any area that is cleared ~~within the “Native Vegetation Protection Area” identified in Exhibit 18~~ for any reason within the 50-foot buffer along the outer perimeter of Parcel 001331005 must be revegetated with like vegetation to screen industrial uses from view and maintain the unincorporated rural aesthetic values of the locale. ~~that will provide equivalent protection to surrounding areas from the light industrial and manufacturing uses on site.~~”

b. Revised Condition 34.

Condition 34 is stricken in its entirety:

~~“The final binding site plan submittal must demonstrate compliance with all conditions of approval, including any requirements in the Hearing Examiner Decision.”~~

c. Revised Condition 35.

Condition 35 is amended to read:

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“The following language shall be clearly shown on the face of the final binding site plan, under the heading “DEVELOPMENT NOTES:”

- The access and utility corridor parcel (APN 001334041) is zoned Rural Residential 1 Unit/10 Acres (RR 1:10) and is restricted to use for access or utility purposes only. No other development is permitted unless an amendment to the Binding Site Plan is completed and approved.
- Activities identified in Jefferson County Code Table 18.22.330(1) are classified as high-impact due to their potential adverse effects on groundwater and are strictly prohibited within this binding site plan.
- Development on each individual lot is dependent on compliance with applicable development standards, review and approval criteria, ~~as summarized in Section II of the Findings of Fact in the Hearing Examiner’s Decision Approving the Preliminary Binding Site Plan Approval.~~ Applications for development or building permits will be reviewed at the time of submittal for consistency with current federal, state, and county codes and ordinances. Review may include additional review under the State Environmental Policy Act (SEPA).
- ~~Any new use proposed for Parcel 1005 must submit a traffic analysis to the Department of Public Works and the Washington State Department of Transportation as a part of the application.~~ *A supplemental traffic impact analysis may be required if the proposed use is expected to generate unanticipated traffic impacts or degrade the Levels of Service (LOS) at study intersections and site access points beyond what was analyzed in the traffic impact analysis done for the Binding Site Plan (SUB2025-00007).*
- ~~No use approved for Parcel 1005 may involve a development that could employ or accommodate more than 100 persons per acre.~~
- Any new use which involves release of airborne substances, such as steam, dust, and smoke which interferes with aircraft operations is prohibited.
- Any new use that attracts concentrations of birds, waterfowl, or wildlife (including but not limited to, mixed solid waste landfill disposal facilities, waste transfer facilities, feeding stations, and the growth of certain vegetation) is prohibited.
- Any new use that is determined to pose a hazard to the safe operation of the airport is prohibited.

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- Land uses and development must comply with the standards established in the Federal Aviation Regulations (FAR), Part 77 (Objects Affecting Navigable Airspace). Where county regulations conflict with FAR, Part 77, the more restrictive shall apply.
- Any use or activity that emits electrical currents must be installed in a manner that does not interfere with communication systems or navigational equipment.
- All exterior lighting shall be energy-efficient and designed to minimize light pollution. Fixtures must be shielded or recessed to ensure that direct glare and reflections are contained within the boundaries of the parent lot. New development that produces glare or lighting that interferes with aircraft navigation, including landing and take-off, is prohibited.
- Development is subject to the applicable standards set forth in Jefferson County Code Chapter 18.15 Article III-A (Jefferson County International Airport Essential Public Facility District, AEPF) and Chapter 18.15.453 (Airport Overlay III) and must incorporate low impact development practices to the maximum extent feasible.
- Any new use in the development seeking water shall submit a request for water availability to JPUD.”
- ~~Any new use is restricted to a building structure of a maximum of 10,000 square feet. Total impervious surface coverage shall not exceed 25% on each new lot. No structure may exceed 35 feet in height.~~

The Port otherwise accepts the Decision and agrees to comply with its requirements, as amended above.

9. The Port’s Release of the County.

Related solely to the Project, the Decision, and the LUPA Appeal, the Port hereby releases the County from any and all claims it has or may have for damages, attorney’s fees, costs and actual or alleged claim, demand, request, action, duty, right, obligation (including contractual, common law or statutory), fine, penalty, sanction, liability, order, suit, lawsuit or proceeding of every kind and nature, wherever and whenever occurring, whether at law or in equity, and whether sounding in tort, contract, equity, nuisance, trespass, negligence, strict liability or any statutory or common law cause of action, duty or obligation of any sort.

10. Stipulated Order of Dismissal with Prejudice and Termination of LUPA Appeal.

Within 7 business days of the Effective Date, the County and the Port shall promptly sign and the County and the Port shall by joint motion request shall request an order be entered in substantially

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in the same form as the Stipulated Order in Exhibit “A” attached hereto, without costs or attorney’s fees awarded to any Party.

11. General Terms and Conditions.

a. Admissibility of this Agreement.

Any evidence of the existence, terms or negotiation of this Agreement will be inadmissible in any Lawsuit between the Parties; provided, however, that such evidence may be offered in any dispute concerning this Agreement itself and the Parties may offer such evidence in response to any allegation of breach by them. This Agreement has been entered into in reliance upon the provisions of Washington ER 408 and Rule 408 of the Federal Rules of Evidence.

b. Arms-Length Negotiations.

The Parties agree that this Agreement has been negotiated at arms-length, with the assistance and advice of competent, independent legal counsel.

c. Assignment.

Any and all rights the Port has under this Agreement may be assigned in whole or in part to any other Party with the written consent of and prior notice to the County. The consent of the County to the assignment will not be unreasonably withheld.

d. Attorney’s Fees.

The Parties shall bear their own attorney’s fees and costs related to the LUPA Appeal. Further, in the event of any controversy, claim or dispute between any of the Parties arising out of this Agreement, the Parties shall bear their own attorney’s fees and costs.

e. Construction and Headings.

The captions and paragraph headings used in this Agreement are inserted for convenience of reference only and are not intended to define, limit, or affect the interpretation or construction of any term or provision of this Agreement.

f. Cooperation.

The Parties agree to execute and deliver all necessary documents and to cooperate and perform all additional actions that may be reasonably necessary to carry out the provisions of, and to give full force and effect to, the terms and intent of this Agreement.

g. Controlling law.

It is understood and agreed that this Agreement is entered into in the State of Washington. It is agreed that this Agreement is be governed by and construed in accordance with the laws of the

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United States and of the State of Washington as if applied to transactions entered into and to be performed wholly within Washington between Washington residents. No Party may argue or assert that any law other than Washington law applies to the governance or construction of this Agreement.

h. Counterparts; PDF Signatures.

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same instrument. A PDF or electronically transmitted signature on this Agreement shall be binding as an original.

i. Effect of Partial Invalidity.

If any term or provision of this Agreement is found to be invalid, in violation of public policy or unenforceable to any extent, such finding shall not invalidate any other term or provision of this Agreement, and such other terms and provisions shall continue in full force and effect. The Parties understand, intend, and agree that this Agreement and each of the terms, covenants, and provisions of this Agreement shall be enforced to the greatest extent permitted by law. If any part of this Agreement is found invalid or unenforceable, that part shall be amended to achieve as nearly as possible the same economic effect as the original provision and the remainder of this Agreement shall remain in full force.

j. Entire Agreement

This Agreement is an integrated agreement, and it contains the entire agreement between the Parties relating to this subject matter and its terms are contractual, not a mere recital. Except as specifically provided in this Agreement, this Agreement supersedes all prior or simultaneous representations, discussions, negotiations, and agreements, whether written or oral. This Agreement supersedes and controls all prior communications between the Parties or their representatives relative to the matters contained in this Agreement.

k. Headings.

The section headings in this Agreement are included as a matter of convenience and are not intended to and will not be construed as affecting the terms and conditions of this Agreement.

l. Independent Legal Advice and Investigation.

In entering into this Agreement, the Parties acknowledge that they have received independent legal advice from their own counsel and have relied on their own investigation and upon the advice of their own attorney with respect to the advisability of making the settlement provided in this Agreement.

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m. Investigation and Complete Understanding.

The Parties acknowledge that they have made such investigation of the facts pertaining to this Agreement and all matters contained in this Agreement as they deem necessary, desirable, or appropriate. The Parties expressly understand that the facts later may turn out to be other than or different from the facts now known or believed to be true. The Parties expressly assume the risk of such different facts and agree that all provisions of this Agreement will remain in all respects effective and enforceable and not subject to termination or rescission because of any such different facts.

n. Joint Drafting Effort.

The Parties acknowledge and agree that the drafting of this Agreement has been a joint effort by the Parties and that this Agreement will not be deemed prepared or drafted by any one of the Parties. The terms of this Agreement will be interpreted fairly and in accordance with their intent and not for or against any one of the Parties. The Parties further acknowledge and agree that each of the Parties possesses equal bargaining power with respect to this Agreement.

o. Modification of this Agreement.

This Agreement may be amended or supplemented only by a writing that is signed by duly authorized representatives of all the Parties.

p. No Oral Waiver.

No term or provision of this Agreement will be considered waived by either Party, and no breach excused by either Party, unless such waiver or consent is in writing signed on behalf of the Party against whom the waiver is asserted. No written consent by either Party to, or waiver of, a breach by either Party, whether express or implied, will constitute a consent to, waiver of, or excuse of any other, different, or subsequent breach by either Party.

q. No Inducements.

The Parties acknowledge that they are not executing this Agreement in reliance on any promise, representation, or warranty as an inducement to execute this Agreement not otherwise contained herein. This Agreement may not be supplemented, modified, or amended in any manner except by written agreement executed by the Parties.

r. Representation and Warranties.

Each of the persons signing this Agreement covenant, represent, and warrant that they:

- (1) Have all authority necessary to execute this Agreement and to bind the Party for which they are signing and that no consent or approval of any other person, is required or necessary for this Agreement to be binding;

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- (2) Know that the Party on behalf of which they are signing has taken all necessary actions to duly approve the making and performance of this Agreement and that no other approval is necessary;
- (3) Have read this Agreement in its entirety and know the contents of this Agreement;
- (4) Have signed this Agreement, having obtained the advice of legal counsel;
- (5) Understand that the terms of this Agreement are contractual and not merely recitals; and,
- (6) Understand that upon full and mutual execution, this Agreement will be fully binding and enforceable in accordance with its terms.

s. Severability.

Should any part of this Agreement be declared invalid, illegal, or unenforceable in any respect, such declaration shall not affect the validity, legality, or enforceability of any remaining terms of the Agreement, which shall remain in full force and effect. It is hereby declared the intention of the Parties that they would have executed the remaining portion of this Agreement without including any such part or parts that may later be determined to be invalid, illegal, or unenforceable. Entire Agreement and Integration.

t. Third-Party Beneficiaries.

The County and the Port are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide, any right or benefit, whether directly or indirectly or otherwise, to any other person any other person.

u. Voluntary Undertaking.

The Parties acknowledge that they have read this Agreement and are fully aware of the contents of this Agreement and its legal effect. This Agreement is entered into voluntarily and without any coercion by or undue influence on the part of any person, firm, or corporation.

(SIGNATURES APPEAR ON THE NEXT PAGES)

Draft: August 29, 2026

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ADOPTED and APPROVED this _____ day of _____, 2026.

SEAL:

JEFFERSON COUNTY BOARD OF
COUNTY COMMISSIONERS

Greg Brotherton, Chair

Heidi Eisenhour, Member

Heather Dudley-Nollette, Member

ATTEST:

APPROVED AS TO FORM:

Carolyn Gallaway, CMC Date

Philip C. Hunsucker, Date
Chief Civil Deputy Prosecuting Attorney

Draft: August 29, 2026

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ADOPTED and APPROVED this _____ day of _____, 2026.

PORT OF PORT TOWNSEND
BOARD OF COMMISSIONERS

District 1: Pam Petranek

District 2: Carol L. Hasse

District 3: Peter “Pete” W. Hanke

APPROVED AS TO FORM:

Timothy D. Schermetzler, Date
Counsel for the Port

Draft: August 29, 2026

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EXHIBIT “A”

Form-of Stipulated Order

1
2
3
4
5
6 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
7 **IN AND FOR THE COUNTY OF KITSAP**

8 THE PORT OF PORT TOWNSEND, a
9 Washington Municipal Corporation,

10 Petitioner,

11 v.

12 JEFFERSON COUNTY, a Washington
13 Municipal Corporation,

14 Respondent.

No. 26-2-00347-18

**STIPULATED ORDER CORRECTING
HEARING EXAMINER'S ERRORS**

JUDGE CADINE FERGUSON-BROWN

15 **COMES NOW**, the Petitioner and Respondent ("the Parties") and stipulate as
16 follows:

17 **I. STIPULATIONS**

18 **WHEREAS**, the Port of Port Townsend (the "Port" or "Petitioner") applied to
19 Jefferson County (the "County" or "Respondent") for a binding site plan approval to
20 construct a rural industrial park with eleven (11) tracts on an approximately 24-acre parcel
21 identified by Jefferson County Tax Parcel No. 001331005 ("Parcel 1005"), along with
22 access through an adjacent approximately three (3) acre parcel identified by Jefferson
23 County Tax Parcel No. 001334041 ("Parcel 4041") near the corner of Four Corners Road
24 and Night Owl Road in unincorporated Jefferson County ("the Project"). The application for

1 the Project is a Type III land use application under the Jefferson County Code (“JCC”),
2 which requires approval by the Jefferson County Hearing Examiner (“Hearing Examiner”).

3 **WHEREAS**, the Hearing Examiner approved the Project subject to conditions dated
4 January 20, 2026 (the “Decision”), a copy of which is filed herewith as **Exhibit A**.

5 **WHEREAS**, the Parties agree with the overall decision of the Hearing Examiner to
6 approve the Project, but the Parties identified errors in the underlying facts and conditions
7 within the Decision that ultimately led to the Port filing this appeal (this “LUPA Appeal”).

8 **WHEREAS**, the Parties entered into a settlement agreement filed herewith as
9 **Exhibit B**, by which they agree to modify the Decision to address the identified errors in the
10 underlying facts and conditions within the Decision.

11 **WHEREAS**, the Parties hereby stipulate to certain facts and agree to modify
12 conditions in the Decision to correct underlying facts identified in the settlement agreement
13 that were incorrect in the Decision and to modify conditions to correct clearly erroneous
14 application of the law consistent with RCW 36.70C.130.

15 **Overlays**

16 **WHEREAS**, the Project will support operations of the Jefferson County International
17 Airport (“JCIA”) as a County-identified essential public facility, promote compatible land
18 uses and the long-term economic viability of the JCIA, preserve rural character, and foster
19 economic development.

20 **WHEREAS**, the Project will permit both aviation- and non-aviation-related industrial
21 uses at a rural scale that contribute to enhance the economic vitality and quality of life for
22 the citizens of Jefferson County as authorized by the Jefferson County Comprehensive
23 Plan and the implementing development regulations of the JCC.

24 **WHEREAS**, Airport Overlay II applies only to Parcel 4041.

1 **WHEREAS**, Parcel 1005 is located at the JCIA and within the AEPF (Airport
2 Essential Public Facility) District and Airport Overlay III. Overlay III is the only overlay
3 applicable within the AEPF.

4 **WHEREAS**, Parcel 1005 is also located within the geographic area of the Federal
5 Aviation Administration (“FAA”) approved Master Plan and Airport Layout Plan Map.

6 **WHEREAS**, the development standards for Parcel 1005 are set forth in the
7 applicable JCC for both the AEPF District and Airport Overlay III.

8 **WHEREAS**, Airport Overlay III expands the range of permissible uses within the
9 underlying AEPF District to include non-aviation-related light industrial uses in addition to
10 those uses otherwise permitted, both outright and conditionally, within the underlying AEPF
11 District. Accordingly, non-aviation-related light industrial/manufacturing uses meeting the
12 definition of “light industrial” in JCC 18.10.120 and “manufacturing” in JCC 18.10.130 are
13 permitted on Parcel 1005 in addition to those otherwise allowable within the underlying
14 AEPF district as set forth in JCC 18.15.1114 to 18.15.1120.

15 **Leases**

16 **WHEREAS**, nothing in the Decision shall require the Port to include use restrictions
17 or development standards within any lease agreement that may be entered into by the Port
18 and a future tenant leasing property within the Project. Such restrictions and standards
19 may be imposed by County staff within a building permit or similar approval issued for
20 structural development within the Project, consistent with applicable JCC.

21 **Traffic**

22 **WHEREAS**, the Port submitted a traffic impact analysis for this Project dated
23 November 19, 2024 which the County reviewed and relied upon in granting the approval.
24 The County has the discretion to, but is not required to, require a supplemental traffic study

1 for any future development proposed within the Project that appears likely to generate
2 significant unforeseen traffic impacts.

3 **Buffer**

4 **WHEREAS**, the landscaping and screening required by JCC 18.30.130, as cited in
5 the Decision, is only required along the outer perimeter of Parcel 1005. No screening or
6 buffering is required between the eleven (11) newly created lots within the Project.

7 **WHEREAS**, the Parties further stipulate that the interpretation of the requirements in
8 the Decision, including without limitation Sections G, H and I, should reflect and be
9 modified based on these stipulations regarding the identified errors in the underlying facts
10 and conditions within the Decision.

11 **WHEREAS**, the Parties have entered into the settlement agreement (***Exhibit B***),
12 which is consistent with the above stipulations and this Order.

13 **WHEREAS**, the Petitioner has prepared and filed with the Court the verbatim
14 transcript of the Hearing Examiner hearings (the "Transcript") as required by RCW
15 36.70C.110.

16 **WHEREAS**, the County has assembled and filed with the Court a certified copy of
17 the record of the Hearing Examiner hearings ("the Record") as required by RCW
18 36.70C.110.

19 **II. FINDINGS OF FACT**

20 **THIS MATTER** having come before the Court *ex parte* upon a stipulation of the
21 Parties, and the Court having reviewed the other pleadings and filings herein, and it
22 appearing from the Transcript, the Record and the stipulations of the Parties in Section I
23 that there are reasonable grounds for granting the relief sought, now makes the following

24 Findings of Fact. The Stipulations in Section I, including the agreed upon factual

25 STIPULATED ORDER CORRECTING
HEARING EXAMINER ERRORS – 4

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1 corrections of the Decision in the settlement agreement (**Exhibit B**), are supported by
2 substantial evidence and are hereby adopted as Findings of Fact.

4 III. CONCLUSIONS OF LAW

5 Based upon the above findings of fact, the court makes the following Conclusions of
6 Law.

8 **LUPA Petition Requirements**

9 1. This action is filed under the Land Use Petition Act (LUPA), chapter 36.70C
10 RCW.

11 2. LUPA requires that a petition be filed no later than 21 days after a land use
12 decision is issued. RCW 36.70C.040(3). The petition must contain: "A separate and
13 concise statement of each error alleged to have been committed." RCW 36.70C.070(7).
14 The Port's LUPA petition was timely filed and satisfies this requirement in RCW
15 36.70C.070(7).

16 **Standard of Review**

17 3. This court sits in an appellate capacity when considering land use decisions.
18 This court has only the appellate jurisdiction conferred by the LUPA statute. *Knight v. City*
19 *of Yelm*, 173 Wn.2d 325, 337, 267 P.3d 973, 980 (2011).

20 4. In a LUPA action, a court may grant relief only if the petitioner has carried the
21 burden of establishing that one of the standards set forth in subsections (a) through (f) of
22 RCW 36.70C.130(1) has been met:

1 (a) The body or officer that made the land use decision engaged in
2 unlawful procedure or failed to follow a prescribed process, unless the error was
3 harmless;

4 (b) The land use decision is an erroneous interpretation of the law, after
5 allowing for such deference as is due the construction of a law by a local jurisdiction
6 with expertise;

7 (c) The land use decision is not supported by evidence that is substantial
8 when viewed in light of the whole record before the court;

9 (d) The land use decision is a clearly erroneous application of the law to
10 the facts;

11 (e) The land use decision is outside the authority or jurisdiction of the body
12 or officer making the decision; or

13 (f) The land use decision violates the constitutional rights of the party
14 seeking relief.

15 Petitioners bear the burden of establishing one of the errors as set forth above. *See Quality*
16 *Rock Prods., Inc. v. Thurston Cy.*, 139 Wn. App. 125, 159 P.3d 1 (2007). Petitioners have
17 established errors in standards (b), (c) and (d).

18 5. Standards (a), (b), (e), and (f) of RCW 36.70C.130(1) present questions of
19 law. *Julian v. City of Vancouver*, 161 Wn. App. 614, 624, 255 P.3d 763, 768 (2011);
20 *Cingular Wireless v. Thurston Cy.*, 131 Wn. App. 756, 767, 129 P.3d 300, 305 (2006),
21 amended on reconsideration (May 23, 2006). The Hearing Examiner erroneously
22 interpreted the law, including the JCC and application of allowable uses within the Airport
23 Overlays and AEPP District and the applicable development standards within those areas.

24 **Application of Standards of Review**

25 STIPULATED ORDER CORRECTING
HEARING EXAMINER ERRORS – 6

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1 6. Standards of review (a), (e) and (f) of RCW 36.70C.130(1) do not apply.

2 7. Standard of review (c) of RCW 36.70C.130(1) requires a review for
3 substantial evidence. *Cingular Wireless*, 131 Wn. App. at 768, 129 P.3d at 306. Substantial
4 evidence is evidence sufficient to convince a rational, unprejudiced person. *See Griffin v.*
5 *Thurston Cy. Bd. of Health*, 165 Wn.2d 50, 55, 196 P.3d 141, 143 (2008). Substantial
6 evidence exists within the Transcripts of the hearing examiner hearings and the Record to
7 support the above stipulations of the Parties.

8 8. Standard of review (d) of RCW 36.70C.130(1) requires the clearly erroneous
9 test, involves applying the law to the facts. *Cingular Wireless*, 131 Wn. App. at 768, 129
10 P.3d at 306. When a decision is clearly erroneous, it leaves the reviewing court with the
11 definite and firm conviction that a mistake has been committed. *Oyster Growers Ass'n v.*
12 *Moby Dick Corp.*, 115 Wn. App. 417, 429, 62 P.3d 912, 918 (2003). The Hearing Examiner
13 made factual errors in the Decision that resulted in a clearly erroneous application of the
14 law to the facts regarding Parcel 1005 and Parcel 4041. The Decision is a clearly
15 erroneous application of the Airport Overlay II code to the facts because it applies Airport
16 Overlay II to both Parcel 1005 and Parcel 4041, when Airport Overlay II only applies to
17 Parcel 4041. Parcel 1005 is located within Airport Overlay III and is subject to the
18 restrictions set forth in JCC 18.15.1124 to 18.15.1132 and 18.15.453(3) and the
19 development standards set forth in JCC 18.15.453(5).

20 9. Deference is accorded to the County in questions of law under standard (b) of
21 RCW 36.70C.130(1) when appropriate. In the case of interpreting statutory construction of
22 a code that DCD applies routinely in permit decisions, the court will accord some
23 deference. *See Cornelius v. Wash. Dep't of Ecology*, 182 Wn.2d 574, 585, 344 P.3d 199
24

(2015) (citations omitted). Here, the County stipulates that the Hearing Examiner made errors of law related to the interpretation that Airport Overlay III applies to Parcel 1005.

10. Even when there are procedural errors in the decision-making process, a land use decision may not be reversed under LUPA if the court determines the errors were harmless. See RCW 36.70C.130(1)(a); *Thornton Creek Legal Fund v. Seattle*, 113 Wn. App. 34, 54, 52 P.3d 522, 531 (2002). The errors in the Decision were not harmless because they erroneously limited use of Parcel 1005 to Airport Overlay II uses and effectively prohibited uses allowed for Parcel 1005 in Airport Overlay III.

IV. ORDER

Based on the above conclusions of law, the Court enters the following order:

1. Any finding of fact that should have been entered as a conclusion of law is hereby entered as a conclusion of law and vice versa.

2. The settlement agreement filed herewith as **Exhibit B**, in which the Parties agreed to modify the Decision to address the identified errors in the underlying facts and conditions within the Decision, is approved.

3. The Stipulations in Section I and the agreed upon factual corrections of the Decision in the settlement agreement (**Exhibit B**), are hereby adopted.

4. The Decision is hereby modified to be consistent with the Stipulations in Section I and the agreed upon factual corrections of the Decision in the settlement agreement (**Exhibit B**).

5. The Decision is hereby modified to revise the conditions of approval to be consistent with the modification of conditions agreed between the Parties in the settlement agreement (**Exhibit B**).

