COMPLAINANTS	**COMPLAINT**
Citizens of Ebey's Reserve For A Healthy, Safe and Peaceful Environment, COER, and Concerned Island Citizens, CIC, on behalf of there members, and as Private Attorneys General for the Citizens of The State of Washington;	To Washington State Board of Health AGAINST Dr. Brad Thomas, Island County Health Officer; Keith Higman, Director, Public Health and Administrative Officer, Island County Public Health

This complaint alleges violations of Chapter 70.05 of the Revised Code of Washington (RCW) by the local health officer and the local administrative officer. Also alleged, is their neglect and refusal to obey or enforce specific rules, regulations or orders of the state board of health made for the protection of the health of the people of this state.

This complaint is filed pursuant to RCW 70.05.120 (1) which provides:

> Any local health officer or administrative officer appointed under RCW 70.05.040, if any, who shall refuse or neglect to obey or enforce the provisions of chapters 70.05, 70.24, and 70.46 RCW or the rules, regulations or orders of the state board of health or who shall refuse or neglect to make prompt and accurate reports to the state board of health, may be removed as local health officer or administrative officer by the state board of health and shall not again be reappointed except with the consent of the state board of health. **Any person may complain to the state board of health concerning the failure of the local health officer or administrative officer to carry out the laws or the rules and regulations concerning public health, and the state board of health shall, if a preliminary investigation so warrants, call a hearing to determine whether the local health officer or administrative officer is guilty of the alleged acts.** Such hearings shall be held pursuant to the provisions of chapter 34.05 RCW, and the rules and regulations of the state board of health adopted thereunder.

RCW 70.05.120 (emphasis supplied).

Under this statute, the filing of this complaint triggers a duty requiring the state board of health to conduct a preliminary investigation to assess the substance of this complaint. If that initial investigation demonstrates that the complaint's allegations may have merit, a hearing is required pursuant to the rules of the state administrative procedures act (chapter 34.05 RCW).

In this complaint, we will demonstrate that good cause exists for initiating the hearing process contemplated by this statute. We will demonstrate that the local health officer and the administrative officer have neglected or refused to comply with state laws and regulations designed to protect public health. The local health officer has been commanded to ignore the health problems at issue by a three to two vote of the local health board and by the dictates of the local administrative officer**.** Nonetheless, his failures and the more reprehensible failures of the administrative officer warrant a full investigation by the state board of health**.**

DUTIES OF THE LOCAL HEALTH OFFICIAL AND ADMINISTRATIVE OFFICER

The statutory duties of the local health official are set forth in RCW 70.05.070:

> The local health officer, acting under the direction of the local board of health or under direction of the administrative officer appointed under RCW 70.05.040 or 70.05.035, if any, shall:
>
> (1) Enforce the public health statutes of the state, rules of the state board of health and the secretary of health, and all local health rules, regulations and ordinances within his or her jurisdiction including imposition of penalties authorized under RCW 70.119A.030 and 70.118.130, the confidentiality provisions in RCW 70.02.220 and rules adopted to implement those provisions, and filing of actions authorized by RCW 43.70.190;

> (2) Take such action as is necessary to maintain health and sanitation supervision over the territory within his or her jurisdiction;
>
> (4) Inform the public as to the causes, nature, and prevention of disease and disability and the preservation, promotion and improvement of health within his or her jurisdiction;
>
> (5) Prevent, control or abate nuisances which are detrimental to the public health;
>
> (9) Take such measures as he or she deems necessary in order to promote the public health, to participate in the establishment of health educational or training activities, and to authorize the attendance of employees of the local health department or individuals engaged in community health programs related to or part of the programs of the local health department.

This complaint demonstrates that the public health officer, Dr. Brad Thomas, is violating several or all of these duties. Despite overwhelming evidence that recurrent, high intensity jet engine noise is creating health hazards for Island County residents, the local health officer has neglected to warn Island County residents of this health hazard (in violation of subsection 4, above); neglected to take any action to control or abate the nuisance caused by the excessive jet engine noise (in violation of subsection 5, above); neglected to take necessary measures to promote public health and establish health educational activities in the face of the harmful, excessive jet engine noise (in violation of subsection 9, above); and neglected to take any other action to protect Island County residents from these harmful health effects (in violation of subsection 2, above). In addition, we demonstrate below that the inaction by the local health officer violates various state laws and regulations in violation of subsection 1, above.

The evidence provided below indicates that Dr. Thomas was threatened with loss of employment by local health board's chairperson and further discouraged from performing his duties by the directives from the local health board and its administrative officer. Still, the statutory duties listed above apply. We urge you to take appropriate action pursuant to the statute. But given the role of the local health board and the local administrative officer, we urge the State Board also to **pursue the indirect remedies identified above *vis a vis* those other parties (*i.e.,* referral to the Secretary of Health and the Attorney General for action by those officers).**

As noted above, the State Board also has authority to review the actions of the local administrative officer to assure that he, too, is "carry[ing] out the laws or the rules and regulations concerning public health." RCW 70.95.120 (1). The administrative officer, Keith Higman, is supposed to provide administrative support to the local board. RCW 70.95.045. But Mr. Higman has gone far beyond providing mere administrative support. He has been actively involved in opposing the protective measures requested by citizens and considered by Dr. Thomas.

Keith Higman' job description as Island County's Director of Public Health includes the interpretation and enforcement of "public health and environmental public health laws." He is also to "assist the Island County Health Officer in the implementation of his/her role and responsibilities consistent with RCW 70.05."[i] Dr. Brad Thomas's relied heavily on the Keith Higman, who was the former chairperson of the State Board of Health, for the interpretation of those laws and rules.

Mr. Higman's actions, detailed below, directly undermine the ability of the Island County Health District and its local health officer to comply with state mandates to protect public health. *See* RCW 70.95.070 (quoted and discussed above). **As such, the State Board of Health should not hesitate to complete the preliminary investigation of Mr. Higman's actions mandated by RCW 70.95.120 (1) and initiate the full-scale administrative hearing process authorized by that section**

REVIEW BY THE STATE BOARD OF HEALTH IS NOT LIKE JUDICIAL REVIEW OF AGENCY DECISIONS

We anticipate that the health officer, or his attorney, may argue that the duties imposed by the statute are discretionary and point to cases where judges have refused to order administrative agencies and officers to take action that is committed to their discretion. The State Health Board should not be misled by reference to such cases. The role of the judiciary and the role of the State Board of Health are quite distinct. The judiciary is rightfully reluctant to intrude on the exercise of discretion by agencies which are involved in making decisions about technical issues entrusted to agencies with expertise in such matters. In explaining the basis for this judicial reluctance, the courts explain:

> [W]hen reviewing matters within the agency's discretion, **the appellate court** must "limit its function to assuring that the agency has exercised its discretion in accordance with law, and shall not itself undertake to exercise the discretion that the legislature has placed in the agency." RCW 34.05.574(1). **The reviewing court** must also give due deference to the agency's knowledge and expertise.

Clausing v. State, 90 Wn. App. 863, 870–71, 955 P.2d 394, 398 (1998) (citations omitted; emphasis supplied).

> We [the court] cannot substitute our judgment for that of the board, even if we were to see the evidence differently than the agency. Further, we must give due deference to the knowledge and expertise of the board.

Matter of Johnston, 99 Wn.2d 466, 483, 663 P.2d 457, 466 (1983) (citations omitted).

> In the course of **judicial review**, due deference must be given to the specialized knowledge and expertise of the administrative agency. The reviewing court cannot simply substitute its judgment for that of the agency. Certainly, any **judicial**

> **appraisal** of the rationality of an agency's decision not to act must be sensitive to the special problems of priority setting and resource allocation which may lie behind a particular case of agency inaction. Where inaction is the result of determinations of this sort, **a court** should proceed with great caution.

Hillis v. State, Dep't of Ecology, 131 Wn.2d 373, 393–94, 932 P.2d 139, 150 (1997) (citations omitted; emphasis supplied).

In contrast to the limits on review of agency decisions by judges who lack expertise in the issues confronting expert agencies, no such limits restrain the State Health Board's review of decisions made by local health boards and local health officers. Unlike judges, the State Board of Health is comprised of persons with expertise in public health issues. Unlike judges, the State Board of Health is charged by the Legislature with the duty to oversee the decisions made by local health officers and to take action where necessary based on the expertise of the State Board of Health and its overriding interest in advancing the State's interest in protecting public health.

The legislative system that grants oversight of local health officials to the State Board of Health is a recognition that oversight of the local health officer by the local health board may not always be sufficient. Local health boards may not have the experience of the State Health Board or may fall prey to local political pressures that compromise their focus on protecting the public health. The Legislature has anticipated these issues by entrusting the State Health Board with the ultimate power to review decisions made and actions taken (and not taken) by local health officers to assure that the State's paramount interest in protecting public health is maintained. Your responsibilities in this arena are weighty and may be fraught with not just public health, but also political, challenges. We urge you to focus on the public health issues at stake and not waver in the face of parochial political forces.

BACKGROUND: THE IGNORED PUBLIC HEALTH EMERGENCY

Wording found in the Revised Code of Washington and the Washington Administrative Code touches on issues at the heart of this complaint and refutes the arguments of those who would have it dismissed.

RCW 70.107.010 states in part, "The legislature finds that inadequately controlled noise adversely affects the health, safety and welfare of the people, the value of property, and the quality of the environment."

This legislative finding, along with the specific laws and rules cited in this complaint, make it clear that the adverse impacts from exposure to dangerous levels of noise is a health issue that is within the authority of the Washington State Board of Health, local health boards, and local health officers to address.

The known and potential health harms at issue in this complaint are caused by low-flying (200 to 500 feet above ground level) Navy EA18G Growler Jets. Hazardous levels of noise from thousands of annual repetitive low-level training flights, saturates homes, schools, recreational areas and places of business. Measured noise levels outside and in people's homes at levels known to cause loss of hearing and a host of other health harms.

If the areas under low-level Growler flight paths were on a Navy site, many residents would mandatorily be part of a "Hearing Conservation Program" because they are in what the Navy calls a "Hazardous Noise Area." Workers in those areas who are exposed to 65 dbl or louder would automatically be considered "At Risk" and required to undergo frequent hearing tests and health monitoring. They would also be required to wear hearing protection.

This complaint is made necessary because the health protections afforded to those exposed to hazardous noise on military sites is being denied to citizens living, working, and recreating in non-military areas who are exposed to similar levels of hazardous noise in Island County, Washington. Island County's Board of Health (ICBH), its health officer and administrative officer have refused simple requests to post warning signs in known hazardous noise areas where Growler noise has exceeded the Navy's Hearing Conservation Zone threshold up to 7 fold. Additionally, Whidbey Island is a major state tourist destination and attracts thousands of unsuspecting tourists who have no prior knowledge of the jet noise on Whidbey

Island. These visitors are totally unprepared and unprotected and at risk of health harms as a result of Growler jet noise. Deception Pass State Park has issued their own website warning about jet noise, as hundreds of visitors end up reserving camping spaces, but leave once they hear the Growlers overhead. Most of these visitors are families and have young children, who are at more risk than the adults, for health harms. Warning signs would be especially helpful to these thousands of unsuspecting people.

Citizens of Ebey's Reserve and other members of the community requested the posting of signs to warn members of the public in identified hazardous noise areas of the potential for exposure to during growler over-flights. The signs were to advise citizens of the need to wear hearing protection or consider leaving the area. Such signage would serve the purpose of educating members of the public about a potential health hazard and the options they can exercise to mitigate or prevent exposures. Also requested was the closure of certain public parks during periods when Growlers are screaming several hundred feet above the ground in sequence and only minutes apart. Adults, children and pets in these areas are exposed to over 120 dBA during these repetitive overflights.

The ICBH, its local health officer, and its administrative officer have been provided with ample information to justify such postings, including science-based data, Navy noise-related data, research, and articles addressing noise-related health harms. They have been provided with declarations of patients, treating doctors and medical professionals attesting to those harms, and they have heard, on numerous occasions, the testimony of noise victims at ICBH meetings, and concerned citizens from Oak Harbor, Greenbank, Freeland, Langley and Coupeville.

Real-time measurements of noise by acoustical experts have also been provided to ICBH, its local health officer, and it administrative officer. Those measurements, which are uncontested by the Navy, exceed community standards established by the State of Washington, the EPA, the Occupational and Health Administration (OSHA), and the World Health Organization." In addition, over a thousand residential properties lie within an area the Navy stipulates no residential housing should be permitted (2005 Air Installation Compatibility Use [AICUZ] document for NASWI).

The real-time noise measurements that have been provided to ICBH, local health officer, and administrative officer include those taken at Rhododendron Park, a youth ballpark where a session of 30 Growler flyovers generated sound exposure levels of 122 to 128 dBA. Had parents and children been present, as they sometimes are, they would have experienced in one 40-min session (30 flyovers) a cumulative 2.25 minutes of noise over 100 dB or about 1 minute over what EPA has identified as a noise dose sufficient to cause permanent hearing loss. This observation is reinforced by standards of the National Institute for Occupational Safety and Health (NIOSH). Furthermore, children are well known to be more sensitive to noise.

The Rhododendron youth ballpark is one of the locations where the posting of warning signs was requested by Citizens of Ebey's Reserve (COER) and other members of the community but denied by the local Board of Health, its administrator, and its health officer. COER also strongly urged that the park be closed when Growlers are practicing overhead.

COER retained a well-known environmental and occupational health physician, Dr. James Dahlgren, professor at UCLA and on the staff at Cedars Sinai Hospital in Los Angeles, to review sound data, including that provided by the Navy, and advise as to the attendant health risks. His conclusion in July 2014 is that "the Navy has created a public health emergency at Central Whidbey Island." He went on to say:

> "If there was a poisonous gas cloud over Central Whidbey and people were falling over dead, they would know why. But because the health impacts are more gradual and cumulative most citizens do not yet know why they are suffering more strokes, more severe strokes, strokes at a younger age, cardiovascular events such as arrhythmias, heart attacks, hypertension, psychological damage such as anxiety, depression and panic attacks, along with sleep disorders, weight gains, hearing loss, tinnitus, and in children, especially, troubling learning disorders and attention deficit disorder."

Dr. James Dahlgren, who reviewed the declarations of residents with health problems they attributed to Growler noise exposure, further stated;

> "The noise from the Navy's Growler aircraft landing and taking off from Outlying Landing Field Coupeville (OLFC), Washington is causing and has caused

> serious adverse health effects in the residents as described in the thirteen declarations of residents living near the field. As predicted from hundreds of scientific studies of health effects from noise at the levels measured near the OLF Coupeville by JGL Acoustics in 2013, such levels of noise pressure are causing insomnia, anxiety, depression, impaired concentration, hearing loss, tinnitus (ringing in the ears), hypertension, worsening diabetes, gastrointestinal difficulties and a major decrement in quality of life."

The declaration of Ann C. Dannhauer, M.D., states, "with reasonable medical certainty", that her patient's health "seriously declined" after Growlers began flying, "a couple hundred feet high." She states that the noise creates an "extreme amount of stress" that is "adversely exacerbating" her patients health problems.

Karen R. Bowman, MN, RN, COHN-S, an expert in occupational and environmental health for over twenty-five years has conducted an extensive literature review and reviewed the confidential health surveys of Central Whidbey Island residents. According to Bowman, "ongoing injuries being suffered by neighbors of OLF Coupeville are medically consistent with well-known effects of repeated loud noises." Her declaration identifies numerous studies linking noise to various adverse health effects. She states that nighttime operations are "exquisitely exacerbating the stress reaction which causes a cascade of health effects listed"

An internal Island County Health Department memorandum recognizes the association between hazardous jet noise and adverse health effects, an assertion now being denied by the majority of local Board of Health members. The memo references an Island County Health Department's requirement for a permit pertaining to a short plat subdivision located in the a Noise Zone 2. As specified in the 2005 AICUZ, this zone should have no residential development and lies directly under the approach to the OLF. Instead of denying the subdivision, it was permitted with this language:

> "This short subdivision lies within AICUZ Noise Zone 2, meaning that noise levels of up to 115 decibels may be reached and the severity of noise is such that individuals may experience adverse health effects."

Such noise levels are not limited to Central Whidbey Island or associated only with Growler operations at the outlying field (OLF). Similar and even higher noise levels have been documented in northern portions of Whidbey where thousands of low-level Growler flights from the Navy's Ault Field occur more frequently each year.

Hazardous Growler noise now occurs in places where men, women, and children live, work and play. They do so with no hearing protection or knowledge that protection is needed. All are within the jurisdiction of the local health board and its health officer.

THE SUBORDINATION OF HEALTH CONCERNS TO POLITICS AND SELF-INTEREST

On August 16, 2016 the local health board passed Resolution C-16 HD, a copy of which is marked Exhibit A, attached hereto, and incorporated herein by this reference. The controversial resolution, which passed by a 3 to 2 vote, denied citizens requests for warning signs and disavowed local health board jurisdiction and duty regarding noise related health harms and risks. It was passed after Keith Higman, ICBH's administrative officer, falsely assured ICBH members and the public that it's wording was consistent with the laws and rules of the State of Washington.

Keith Higman told a group of concerned citizen that he had been asked to review the resolution the day before it was introduced. However, emails obtained pursuant to an Open Records request revealed that he had received a draft from Jill Johnson for his review and edits five days earlier. Her email seeks advise on a "a better way" of "moving it forward" other than adding it to the boards agenda. Resolution C-16HD was not shared with other ICBH members or the local health officer prior to being introduced. Neither was it placed on the ICBH's meeting agenda and properly noticed so as to allow for timely public consideration and comment.

Resolution C-16 HD expresses a medical opinion that none of the ICBH Board members who supported it have the qualifications and credentials to make. Dr. Brad Thomas, ICBH's Health Officer, publicly objected to the medical opinion expressed in the resolution.

C-16 HD effectively sets agency policy that will discourage, if not prevent, the staff and advisory boards of Island County Public Health from addressing public health problems related

to hazardous noise exposure. It is intended is to prevent the local health officer from posting warning signs and performing lawful duties to address a public health hazard as set forth in (RCW) 70.05.070. The resolution will prevent the local health officer from performing the duties related to noise as required in 246-366 WAC. **Mr. Higman provided the rope to the three members of the local board for purposes of tying Dr. Thomas's hands.**

As stated by ICBH member Richard Hannold, Resolution C-16 HD is also intended to end the public's voicing of concerns about jet noise at ICBH public meetings. The consequence of this resolution is a public gag order imposed upon professional staff and personnel and citizens concerned about noise and public health.

As a County Commissioner, Jill Johnson wrote the Navy on Island County Commission letterhead stating, "I welcome the continued and expanded flights of the EA-18G, including the use of the Outlying Field in Coupeville…" Her letter of 12-3-2013 was written before the Navy's completion of a required Environmental Impact Statement that was supposed to assess the potential health harms and risks of Growler over-flights. The area where she welcomed the expanded Growler flights in December of 2013 is the area where residents in Central Whidbey Island now experience the "public health emergency" described by Dr. Dahlgren.

The motion to approve resolution C-16 HD was seconded by County Commissioner Richard Hannold, a retired Navy Chief who worked for a contractor providing Growler training services to the Navy. Bob Severns, Board of Health member and Mayor of Oak Harbor where the Naval Air Station is located, voted for the resolution. He previously participated in gathering petitions at the local Walmart in support of expanded Growler numbers and training, including training over the area where residents in Central Whidbey Island now experience the "public health emergency" referenced by Dr. Dahlgren.

Resolution C-16 HD, and the public statements by ICBH members who supported it, demonstrate a callous disregard for the adverse health impacts to citizens exposed to hazardous jet noise.

"I don't see a lot of need to look into it .." ICBH Chairperson, Jill Johnson, responding to citizens presentation of information on the health effects of noise and the need for warning signs in hazardous noise areas. (April 19,2016 statement on the record)

"The best way to protect public health is to have this Navy Economy." ICBH Chairperson, Jill Johnson, responding to citizens' presentation of information on the health effects of noise and the need for warning signs in hazardous noise areas. (statement on record)

"I live under the flight path and I love the sound of freedom." Capt. Frederick McDonald, the Navy's ex-officio representative on Island County Board of Health in response to testimony of noise victims. (statement on the record)

JURISDICTION AND DUTY

It is only because the noise problem is caused by Navy jet engines that there is even a debate over what would otherwise be non-issues of jurisdiction, authority, and duty. Instead of trying to find a way to address an obvious problem, the ICBH members have looked for excuses to ignore it.

Noise victims are told that local health boards and health officers have no jurisdiction over health impacts of noise, and to take their concerns to the Department of Ecology or one of the many elected officials who shudder at the prospect of publicly suggesting that the Navy's actions are harmful. Or, they are told to move.

The Department of Ecology may establish and approve noise standards and controls pursuant to RCW 70.107.060. The Navy may have the power, if not the legal authority, to harm the people it has sworn to protect. However, the health impacts and risks and the charge to inform and protect citizen subjected to the Navy's hazardous noise is clearly within the jurisdiction of Washington State Board of Health and Island County's Board of Public Health.

The deferring of citizen concerns about health impacts of noise to the Department of Ecology is an unacceptable shirking of responsibility. The Department of Ecology was never intended to be the dumping ground for all issues related to the health effects of noise. RCW 70.107.060 makes it clear that the statutory duties of the Department of Health, State Board of

Health and local Boards of Health are not to be supplanted by those of the Department of Ecology. RCW 70.107.060 (2) states that duties and powers assigned of the Department of Ecology shall not "deny, abridge or alter any powers, duties and functions relating to noise abatement and control now or hereafter vested in any state agency..."

RCW 70.05.060 Powers and duties of local board of health, states, "Each local board of health shall have supervision over all matters pertaining to the preservation of the life and health of the people within its jurisdiction and shall: (1) Enforce through the local health officer or the administrative officer appointed under RCW 70.05.040, if any, the public health statutes of the state and rules promulgated by the state board of health and the secretary of health;"

The following are a few examples of public health rules that recognize the adverse impacts noise can have on human health. Also recognized is the local Board of Health and its local health officer's powers and duties to address noise related health issues.

Provisions of Chapter 246-366 WAC recognize the adverse impacts of noise and establish related responsibilities of local health officer. WAC 246-366-110 Sound Control, requires the local health officer to determine compliance with identified background noise levels. Also identified are, "Maximum Noise Exposures Permissible" in vocational education and music areas. WAC 246-366-110 (5) identifies sound levels (dBA) and durations of exposure above which no student shall be exposed without hearing protection."

Provisions of WAC2 46-366A WAC, which are to become effective in 2017, were adopted by the legislature after parents, and teachers requested the strengthening of existing rules to better protect children's health and safety.

In direct contradiction of these and other laws and rules, (ICBH), with the concurrence and support of its administrative officer, deny having jurisdiction over noise related health issues. To justify their refusal to post warning signs in known hazardous noise areas, ICBH passed resolution C-16 HD that falsely states, "the Washington State Board of health has not

adopted administrative rules governing the production and the protection of public health as it pertains to noise …"

ALLEGED VIOLATIONS

RCW) 70.05.070 Local health officer—Powers and duties, states, the local health officer or the administrative officer appointed under 70.05.04 or 70.05.035, if any, shall, (1) "Enforce the public health statutes of the state, rules of the state board of health and the secretary of health, and all local health rules, regulations and ordinances within his or her jurisdiction including imposition of penalties authorized under RCW 70.119A.030 and 70.118.130, the confidentiality provisions in RCW 70.02.220 and rules adopted to implement those provisions, and filing of actions authorized by RCW 43.70.190;"

WAC 246-366-040 Plan Review and Inspection of Schools (2)(b) states, "The health officer shall: "Make periodic inspections of each existing school within his jurisdiction, and forward to the board of education and the administrator of the inspected school a copy of his findings together with any required changes and recommendations."

The failure of the local health officer "to make periodic inspections of each existing school in his jurisdiction and forward reports and findings as required by WAC 246-366-040 (2)(b) constitutes the failure to enforce a health statute of the state and a rules of the state board of health in violation of (RCW) 70.05.070 (1).

The local health officer is not involved in any inspections of schools, nor does he review the reports of inspections conducted by others. The failure to perform the duty, specifically assigned to the "local health officer" in WAC 246-366-040 (2)(b) is a violation of WAC 246-366-040 (2)(b).

Navy identifies noise impacts at the Olympic View Elementary School from a single event Growler flyover at 102.1 (dB). The Navy uses computer modeling to identify noise levels. Such modeling has been shown to underestimate actual noise levels. Clover Valley Hand-in Hand Learning Center offers special needs programs for children

3 to 5. The Island County Health Department has taken no noise measurements at schools, nor had measurements taken by others. The inspection report of 5-14-2014, prepared by a county health department inspector under the supervision of the administrative officer, has the notation 'jet noise' on the front page. The notation indicates a concern that was never acted on.

RCW 70.05.070(4) states that the local health officer shall, "Inform the public as to the causes, nature, and prevention of disease and disability and the preservation, promotion and improvement of health within his or her jurisdiction;"

It is the professional opinion of County Health Officer Brad Thomas, as stated to Island County Board of Health members, that exposure to hazardous noise can cause hearing loss, stress, and high blood pressure, which he identified as a major risk factor for heart disease. He also acknowledged that the articles, scientific studies, and declarations of health professionals he receive from COER suggest hazardous noise can cause or be a contributing cause of various diseases and disability.

Dr. Thomas also acknowledged the testimony of noise victims and a treating physician presented at numerous ICBH public meetings. After hearing this testimony, he stated, "I've learned to listen to the patient." At no time has Dr. Thomas discounted their claims or ruled out hazardous Growler noise as a cause or contributing cause of their health problems.

Prior to be threatened with termination of employment by ICBH Chairperson, Jill Johnson, he stated to a group of concerned citizen that he thought the posting of warning signs was a "good idea." He discussed the possible source of funding for signs and even contacted the Navy about the possibility of providing earplugs for the community.

Despite the Local Health Officer's acknowledgement of the risks and harms associated with exposure to hazardous noise, he has taken no steps to 'inform the public as to the causes, nature, and prevention of disease and disability and the preservation,

promotion and improvement of health within his jurisdiction' as it relates to hazardous noise exposure. His regularly published 'News from the Health Officer' offers information about the risk of exposure to Dengue, and Chickungungya viruses from far off lands, but nothing about risks posed to the many residents being exposed to hazardous noise in his jurisdiction.

RCW 70.05.070 (5) states the local health officer shall, "Prevent, control or abate nuisances which are detrimental to the public health;" (5) Provide for the prevention, control and abatement of nuisances detrimental to the public health;

Actionable Nuisance is defined by RCW 7.48.010 as "whatever is injurious to health or indecent or offensive to the senses, or an obstruction to the free use of property, so as to essentially interfere with the comfortable enjoyment of the life and property, is a nuisance and the subject of an action for damages and other and further relief." A public nuisance is defined by RCW 7.48130 as "one which affects equally the rights of an entire community or neighborhood, although the extent of the damage may be unequal."

The refusal of the health officer to take any action, or recommend action, to warn citizens of potential exposure to hazardous Growler noise, which is both a nuisance and a health hazard, constitutes a failure to prevent, control, or abate a nuisance detrimental to the public health and is a violation of RCW 70.05.070 (5). Such warnings would allow citizens the opportunity to avoid, prevent, or abate harmful exposures by wearing hearing protection, leaving the area, or avoiding the area altogether.

RCW 70.05.070 (9) states that the local health officer shall, "Take such measures as he or she deems necessary in order to promote the public health, to participate in the establishment of health educational or training activities, and to authorize the attendance of employees of the local health department or individuals engaged in community health programs related to or part of the programs of the local health department.

County Health Officer Brad Thomas publicly recognized the need for health education and training activities relating to hazardous noise, yet failed to take any action to

provide or promote such public education. He publicly recognized the need to prevent health harms before they occur, and made such statements on the record as related to hazardous noise. However, he failed to promote or recommend any measures to prevent or mitigate harmful exposures to noise before they occur. Such measures include the educating and training of health department staff, presenting information on noise and adverse health impacts in his regularly published newsletter, posting of information and warning signs, distribution of educational materials to schools, the providing of information in his regular newsletter.

REMEDY SOUGHT BY COMPLAINANTS

RCW 70.05.120 Violations—Remedies—Penalties (1) states in part that any local health officer who shall refuse or neglect to obey or enforce the provisions of chapters 70.05 may be removed as local health officer by the State Board of Health. Such removal is to be preceded by a preliminary investigation and a hearing. Complainants request a thorough investigation and the opportunity to further substantiate the allegations set forth in this complaint. Also requested is the public correction of the misinformation provided by the administrative officer and the exercise of whatever authority or influence the State Board of Health may have to address the harm and threat at issue in this complaint.

While the procedures of RCW 70.05.120(1) do not provide a mechanism for this board to take action against the three members of the local board who have commanded their staff to ignore their duties, **other provisions of state law provide this board with other means to address the issue.** Pursuant to RCW 43.70.190, the Secretary of Health has authority to file suit to prevent any violation of the state' health laws:

> "The secretary of health or local health officer may bring an action to enjoin a violation or the threatened violation of any of the provisions of the public health laws of this state or any rules or regulation made by the state board of health or the department of health pursuant to said laws, or may bring any legal proceeding authorized by law, including but not limited to

> the special proceedings authorized in Title 7RCW, in the superior court in the county in which such violation occurs or is about to occur, or in the superior court of Thurston county. Upon the filing of any action, the court may, upon a showing of an immediate and serious danger to residents constituting an emergency, issue a temporary injunctive order ex parte."

Upon reviewing the allegations in this complaint, the state board of health should ask the Secretary of Health to initiate an action to compel members of the Island County Board of Health to comply with state health laws.

The state Board of Health can also utilize the tools made available by RCW 70.05.120(2):

> Any member of a local board of health who shall violate any of the provisions of chapters 70.05, 70.24, and 70.46 RCW or **refuse or neglect to obey or enforce any of the rules, regulations or orders of the state board of health** made for the prevention, suppression or control of any dangerous contagious or infectious disease **or for the protection of the health of the people of this state,** is guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more than two hundred dollars.

Emphasis added.

The state Board of Health should request the Attorney General to initiate action as allowed by this statute to assure that the members of the Island County Board of Health who are responsible for ignoring a public health problem and the passage of Resolution C-16 HD are called to account.

ATTACHMENT A

BEFORE THE BOARD OF HEALTH
OF ISLAND COUNTY, WASHINGTON

IN THE MATTER OF ACTING ON BEHALF OF A REQUEST FOR ACTION FROM CITIZENS OF EBEYS RESERVE	))))	RESOLUTION NO.: C- -16 HD- -16

WHEREAS, the Island County Board of Health has been asked by members of Citizens of Ebey's Reserve (COER) to take a series of action steps to address various claims about alleged health impacts from jet noise; and

WHEREAS, the scientific support for these arguments is not sufficient to ascertain causation between jet noise and the asserted health impacts or rule out all other probable/possible causes of the health conditions mentioned, and

WHEREAS, United States District Court under the decision making authority of Judge Thomas S. Zilly found that the evidence provided in *Citizens of Ebey's Reserve for a Healthy, Safe and Peaceful Environment vs. U.S. Department of the Navy* "has not sufficiently demonstrated that its members (COER) will suffer irreparable harm" and

"WHEREAS, the Judge Zilly decision issued in August 2015 went further declaring that the evidence presented "demanded caution when considering complaints of anxiety and stress related to government action" and noted that the expert reports referenced failed to raise new information that would support the assertions that jet noise has a disproportional impact on public health and the case was dismissed; and

WHEREAS, upon review it has been determined that Island County does not have any notable trends in terms of health conditions, educational impacts, or mental health conditions that are factually known to be caused by or exacerbated by known noise zones compared to citizens living in areas of lesser to no noise exposure; and

WHEREAS, extensive research and studies have consistently shown that heredity, overall lifestyle, choices including food intake, exercise, and access to medical care are known contributors to overall health effects much more than intermittent contributors, such as aircraft noise; and

WHEREAS, RCW 70.05.060 lists the powers and duties of local boards of health and limits the boards authority to seven focus areas, none of which extend beyond the local jurisdiction, making the Board's involvement in federal aviation activity outside of the expressed scope; and

WHEREAS, the Washington State Board of Health has not adopted administrative rules governing the production and the protection of public health as it pertains to noise; and

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WHEREAS, the United State Navy through the EIS process is required to examine and analyze the effects of proposed activities on the environment including both the physical environment and the relationship of people with that environment; and

WHEREAS, this responsibility rests at the federal, not local, level of government and is funded accordingly, and

WHEREAS, no citizen of Island County is required to live in a known noise zone and expose oneself to jet noise or engage in any behavior that they believe to put their health at risk thus making exposure a personal choice;

BE IT HEREBY RESOLVED, that the Island County Board of Health has determined that there is no public health crisis at issue and that no facts have been presented to demonstrate causation between jet noise and individual health concerns. Thus, there is no need for action to be taken to protect against the unknown, unquantifiable and unverifiable public health and safety claims regarding the United State Navy and the EA-18 Growler and their related training at Ault Field or OLF Coupeville.

BOARD OF HEALTH

ISLAND COUNTY WASHINGTON

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