March 28, 1991

Harold M. Clark, Jr.
Washington State Department
of Natural Resources
Olympia, WA 98504

Dear Mr. Clark:

This is in response to your letter of March 21, 1991, in which you asked several questions relating to the use of state owned or leased aircraft for fire suppression related duties. Since your questions are quite broad in nature, my response will, by necessity, be quite general. However, I would be happy to discuss the specifics of a proposed operation at any time in the future. Your questions generally relate to two broad areas of concern, operation of public aircraft and operation near or over populated areas.

"Public Aircraft" as defined by the Federal Aviation Act means "any aircraft used exclusively in the service of any government or of any political subdivision thereof, including the government of any State, Territory, or any possession of the United States, or the District of Columbia, but not including any government-owned aircraft engaged in carrying persons or property for commercial purposes." The term "used exclusively in the service of" means, for other than the Federal Government, an aircraft which is owned and operated by a governmental entity for other than commercial purposes or which is exclusively leased by such governmental entity for not less than 90 continuous days. (Underlining added)

To determine whether you are required to comply with the Federal Aviation Regulations applicable to civil aircraft, the State must first determine whether their operations constitute the use of public aircraft. The basic definition, as described in the previous paragraph, should assist you in that determination. If the State operates a public aircraft, it is not required to comply with certain provisions of the Federal Aviation Regulations. For instance, the State would not be required to comply with the certification requirements of FAR Part 133 (Rotorcraft External Load Operations). However, it would still have to comply with the operating rules and airworthiness requirements of Part 133. Similarly, public aircraft do not have to comply with the requirements of regulations which specifically state that they are applicable to "civil aircraft." It

is important to read the regulations carefully to determine their applicability. Of course, if you have any specific questions in this area, the Seattle Flight Standards District Office should be more than capable of advising you on the proper course of action.

Operations in the vicinity of persons or property are generally governed by FAR 91.119 (Minimum Safe Altitudes: General). I have attached a copy of that regulation for your consideration. As a general rule you should consider the following guidelines:

1) Helicopters and Fixed wing aircraft must be operated above an altitude which would allow them to make an emergency landing in the event of a power failure without undue hazard to persons or property on the surface. A determination of what altitude is proper in this respect must take into consideration the gliding or autorotation capabilities of the aircraft as well as the nature of the landing sites available below the aircraft.

2) Fixed wing aircraft operations

(a) Over a congested area must be operated at an altitude of at least 1,000 feet above the highest obstacle within a 2,000 foot radius. There is no standard definition of what is a "congested area" or "open air assembly of persons", but case law has indicated that a subdivision of homes constitutes a congested area, as does a small rural town.

(b) Over other than congested area, generally must be operated at least 500 feet from persons, vessels vehicles or structures.

3) Helicopters do not have to comply with the requirements of paragraph (2) above provided that they conduct their operations without hazard to persons or property on the surface. The specific facts of each operation must be considered to determine whether the operation constitutes a hazard. For instance, in a recent case, the pilot of a TV news helicopter, which was covering a fire was determined to be operating in a hazardous manner because his rotor wash actually aggravated the fire and made it more difficult for the fire fighters to do their job.

As you can see, each operation must consider on its own specific merits. I would strongly advise you to establish contact with the Seattle Flight Standards District office to discuss your concerns and proposed operations. Additionally, the Flight Standards District Office might be able to assist you in securing exemptions from the regulations for certain of your planned operations.

We hope that this letter has been responsive to your request. If we

can provide further information, please contact our office.

Sincerely yours,

John Callahan
Deputy Assistant Chief Counsel