

**DECISION, FINDINGS AND RECOMMENDATION OF  
THE DESCHUTES COUNTY HEARINGS OFFICER**

**FILE NUMBERS:** 247-23-000470-TA

**HEARING DATE:** October 2, 2023, 6:00 p.m.

**HEARING LOCATION:** Videoconference and  
Barnes & Sawyer Rooms  
Deschutes Services Center  
1300 NW Wall Street  
Bend, OR 97708

**APPLICANT:** City of Bend

**SUBJECT PROPERTIES:** The subject properties comprise the Bend Municipal Airport, which includes the following addresses and tax lots:

1. 63155 Gibson Air Rd – 1713200000200
2. 63110 Powell Butte Hwy – 1713200000201
3. 63205 Gibson Air Rd – 171317C000100
4. 63482 Powell Butte Hwy – 1713170000200
5. 22550 Nelson Pl – 1713200000202
6. 63144 Powell Butte Hwy – 1713200000300

**REQUEST:** Applicant requests text amendments to Deschutes County Code (“DCC” or “Code”) Chapter 18.04, Title Purpose and Definitions; DCC Chapter 18.76, Airport Development Zone; DCC Chapter 18.80, Airport Safety Combining Zone; and DCC Chapter 18.120, Exceptions. The proposed text amendments would modify the Code to add a definition of an air traffic control tower, establish air traffic control towers as a use permitted outright in the Airport Development Zone, and modify the height limit to allow air traffic control towers up to 115 feet in height.

**HEARINGS OFFICER:** Tommy A. Brooks

**SUMMARY OF DECISION:** The Hearings Officer finds that the Applicant’s request satisfies all procedural and substantive criteria necessary to approve the Applicant’s request for amendments to the text of the Code as modified during this proceeding. The Hearings Officer recommends the Deschutes County Board of County Commissioners adopt by ordinance the Code language set forth in this Recommendation as Exhibit A.

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## **I. APPLICABLE STANDARDS AND CRITERIA**

### Deschutes County Code

Title 18, Deschutes County Zoning Ordinance  
Chapter 18.04, Title, Purpose and Definitions  
Chapter 18.76, Airport Development Zone  
Chapter 18.80, Airport Safety Combining Zone (AS)  
Chapter 18.120, Exceptions  
Chapter 18.136, Amendments

Title 22, Deschutes County Development Procedures Ordinance

### State Statutes

ORS 836.610  
ORS 836.616

### State Administrative Rules

OAR Chapter 660, Division 013  
OAR Chapter 660, Division 015

## **II. BACKGROUND AND PROCEDURE**

### A. Background

The Applicant in this proceeding is the City of Bend (“City”). The City owns and operates the Bend Municipal Airport (“Airport”) on the Subject Properties.<sup>1</sup> The Subject Properties are zoned Airport Development (AD) (“AD Zone”) and are the only properties in the County with that zoning designation. The City initially requested various text amendments to Deschutes County Code (“DCC” or “Code”) Chapter 18.04, Title Purpose and Definitions; DCC Chapter 18.76, Airport Development Zone; DCC Chapter 18.80, Airport Safety Combining Zone; and DCC Chapter 18.120, Exceptions. The City included its requested text amendments in the Application. After the Hearing, the City submitted a revised version of the specific text amendments it seeks, which modify only DCC Chapter 18.76, Airport Development Zone, and DCC Chapter 18.80, Airport Safety Combining Zone. This Recommendation will refer to the Applicant’s final version of the text amendments, attached as Exhibit A, as the “Text Amendments.”

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<sup>1</sup> The Subject Properties listed above differ slightly from the list of properties included in the Application. Specifically, the Application does not refer to Tax Lot 1719200000300. The Applicant and the Staff Report also refer to a different source for the address of each lot, which makes the addresses appear to be different, although they likely are not. Because the Applicant did not object to the list of properties presented in the Staff Report, and because the Staff Report list of properties appears more inclusive, I have used the list of properties as presented in the Staff Report as the “Subject Properties.”

Staff from the County’s Community Development Department (“Staff”) issued a Staff Report on September 25, 2023, describing the Application and the applicable criteria (“Staff Report”). As described by the City and acknowledged in the Staff Report, the purpose of the Text Amendments is as follows:

The proposed text amendments will support master planning for the Bend Municipal Airport. The proposed amendments are intended to support the construction of an air traffic control tower, which is now an improvement supported by the FAA. The amendments are proposed to ensure the establishment of a tower will support airport operations and, in a manner, consistent with the master planning for the Bend Municipal Airport. The amendments are further limited to the Bend Airport so that another use could not be established through these amendments.

**B. Notice and Hearing**

On September 7, 2023, the County issued a Notice of Public Hearing (“Hearing Notice”) for this matter. The County mailed the Hearing Notice to all owners of property within 250 feet of the AD Zone and the Airport boundaries. The County also published the Hearing Notice in the Bend Bulletin on September 10, 2023.

Pursuant to the Hearing Notice, I presided over the Hearing as the Hearings Officer on October 2, 2023, at 6:00 p.m. The Hearing took place in a hybrid format, with the Applicant, Staff, and other participants present in the Hearing Room and the Hearings Officer participating remotely.

At the beginning of the Hearing, I noted for the record that this phase of the adoption of the Text Amendments would be quasi-judicial in nature and, therefore, I directed participants to direct comments to the approval criteria and standards, and to raise any issues a participant wanted to preserve for appeal if necessary. At the conclusion of the evidentiary Hearing, and at the request of the Applicant, I announced that the record would remain open for written materials as follows: (1) any participant could submit additional materials until October 9, 2023; (2) any participant could submit rebuttal materials until October 16, 2023 (“Rebuttal Period”); and (3) the Applicant could submit a final legal argument without new evidence until October 23, 2023. Participants were further instructed that all submittals must be received by the County by 4:00 p.m. on the applicable due date.

**C. Nature of Decision**

The Text Amendments involve changes only to the language of the Code. Due to the unique nature of the AD Zone, the changes, if adopted, impact only one property owner – the City. This matter therefore involves a threshold question of whether the Text Amendments are legislative, or whether they are quasi-judicial in nature. As explained below, this is a unique situation in which the Text Amendments are both. DCC 18.136.010 governs amendments to the Code:

DCC Title 18 may be amended as set forth in DCC 18.136. The procedures for text or legislative map changes shall be as set forth in DCC 22.12. A request by a property owner for a quasi judicial map amendment shall be

accomplished by filing an application on forms provided by the Planning Department and shall be subject to applicable procedures of DCC Title 22.

By its express terms, this provision states that the process for a text amendment is as set forth in DCC 22.12. But DCC 22.12 broadly governs “legislative” procedures. DCC 22.04.020 defines legislative changes as follows:

Legislative changes generally involve broad public policy decisions that apply to other than an individual property owner. These include, without limitation, amendments to the text of the comprehensive plans, zoning ordinances, or the subdivision or partition ordinance and changes in zoning maps not directed at a small number of property owners.

As Staff points out in the Staff Report (attached to this decision as Exhibit B), the Text Amendments do not fit squarely within this definition. Further, the Code does not expressly define “text amendment” in the context of legislative changes or in the context of a quasi-judicial land use application, even though DCC 22.12.030 allows an individual to seek legislative changes through an application process. The Staff Report suggests that the Text Amendments should be processed in the same manner as a quasi-judicial plan amendment, which is governed by DCC 22.28.030.

In support of its conclusion, Staff provides a detailed analysis under *Strawberry Hill 4 Wheelers v. Benton Co. Bd. of Comm.*, 287 Or 591, 601 P2d 769 (1979) (“*Strawberry Hill 4 Wheelers*”). In that case, the Oregon Supreme Court set out a multi-factor test to determine what process applies to a land use application:

Generally, to characterize a process as adjudication presupposes that the process is bound to result in a decision and that the decision is bound to apply preexisting criteria to concrete facts. The latter test alone [applying preexisting criteria to concrete facts] proves too much; there are many laws that authorize the pursuit of one or more objectives stated in general terms without turning the choice of action into an adjudication. Thus a further consideration has been whether the action, even when the governing criteria leave much room for policy discretion, is directed at a closely circumscribed factual situation or a relatively small number of persons. The coincidence both of this factor and of preexisting criteria of judgment has led the court to conclude that some land use laws and similar laws imply quasijudicial procedures for certain local government decisions. *Strawberry Hill 4 Wheelers* at 602-03.

As Staff correctly notes, the *Strawberry Hill 4 Wheelers* decision sets out three factors which must be considered:

1. Is the inquiry bound to result in a decision?
2. Are there preexisting criteria that are applied to concrete facts?

3. Is the inquiry directed at a closely circumscribed factual situation or a relatively small number of persons?

Although it is a close call, the Hearings Officer agrees with Staff that the three factors listed above, in this case, warrant following a quasi-judicial process for the City's Application, at least initially. First, even if the Text Amendments are legislative changes, the Code provides an opportunity for an individual to make an application to initiate amendments. Whether the County approves or denies that application, a decision will result, so the inquiry is bound to result in a decision. Second, the Code contains preexisting criteria applicable to the City's request. Although those Code provisions are largely procedural, the quasi-judicial process can determine if those requirements are met. Third, as already acknowledged, this matter is directed at a relatively small number of persons because the City is the only property owner within the AD Zone and, therefore, the only property owner directly impacted by the Text Amendments.

At the same time, the Text Amendments carry the qualities of a legislative act. The language in DCC 22.04.020 provides that legislative changes "generally involve broad public policy decisions that apply to other than an individual property owner" (emphasis added), and that definition does not state that decisions applicable to only one individual property owner cannot be legislative. Indeed, that Code provision goes on to list examples of legislative decisions, including amendments to the text of zoning ordinances.

An important component of DCC 22.12 is DCC 22.12.050, addressing final decisions. That Code provision states that "[a]ll legislative changes shall be adopted by ordinance." That language does not distinguish between purely legislative changes and those legislative changes that may be processed using a quasi-judicial process. This makes sense because the DCC is adopted by ordinance, and any changes to the text of the Code would be an amendment to that adopted ordinance. It also makes sense because ORS 215.503(2) requires that "[a]ll legislative acts relating to comprehensive plans, land use planning or zoning adopted by the governing body of a county shall be by ordinance" (emphasis added).

Based on the foregoing, I find that, in this case, the adoption of text amendments proposed by an applicant is a two-step process. In the first step of the process, the Applicant has a right under the Code to submit and to have considered an application to amend the Code's text. This phase of the process is quasi-judicial in nature and it is appropriate to have a hearing and to build a record following the principles of a quasi-judicial process. As part of that process, the Hearings Officer is addressing the application only of the County's existing laws. The second step of the process is for the Deschutes County Board of Commissioners ("County Board") to adopt an ordinance to incorporate any text amendments to the Code. Amendments to the text of a zoning ordinance are a change in the County's law, and only the County Board can make such a change. In other words, the Hearings Officer is without authority to amend the County's Code. The Hearings Officer, however, can make a recommendation to the County Board based on what develops in the quasi-judicial phase of the process. The County Board is free to accept or to reject the Hearings Officer's recommendation.

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### **III. FINDINGS AND CONCLUSIONS**

#### **A. Adoption and Incorporation of Findings in Staff Report**

The Staff Report contains a comprehensive discussion and conclusion of the criteria applicable to the Application. The vast majority of the conclusions in the Staff Report are not challenged in this proceeding. I find that the Staff Report correctly lists the applicable criteria, and I hereby adopt the discussion and conclusions in the Staff Report as my findings. The remainder of the findings in this Recommendation are intended to supplement the Staff Report. To the extent any of the findings in this Recommendation conflict with the discussion and conclusions in the Staff Report, the findings set forth in this Recommendation control anything to the contrary in the Staff Report.

#### **B. Issues Raised in Opposition to the Application**

Other than the Applicant and Staff, only one individual participated in this proceeding. That individual, Dorinne Tye, resides near the Airport and opposes the Application. The comments and evidence submitted by participant Tye largely address health and safety concerns associated with aviation activities in general. Very few, if any, of those comments identify a Code criterion they are intended to address, and very few of those comments, if any, specifically address air traffic control towers. In the findings below, I attempt to identify and address criteria that may be invoked by participant Tye's testimony, and these findings explain why the issues raised by participant Tye do not undermine the conclusions set forth in the Staff Report.

As an initial matter, there is some uncertainty as to whether participant Tye submitted all post-Hearing materials in a timely manner. As explained at the conclusion of the Hearing, post-hearing submittals were due at 4:00 p.m. on the applicable due date. For electronic submittals, the timing of a submittal is determined based on the date and time the submittal is received by the County's servers. Multiple submittals from participant Tye appear to have time stamps after 4:00 p.m. on the due date. However, those submittals also appear to be re-submittals of items that were sent before the 4:00 p.m. deadline but that may have been initially delivered to the wrong Staff email address. Because the record is unclear whether the County's servers did not receive the submittals by the appropriate deadline, I am allowing them to be included in the record.

The record also contains an email from participant Tye to Staff, dated October 16, 2023, stating a desire to have "a few extra days to reply." It is not clear if that request was intended to be a request to the Hearings Officer to modify the Rebuttal Period. Because this portion of the proceeding is being conducted as a land use action, the hearing procedures are set forth in DCC Chapter 22.24. Within that Code chapter, DCC 22.24.140 sets forth the specific basis for continuances and record extensions. Because participant Tye does not identify a specific basis under the Code for seeking a record extension, the request, to the extent it is one to the Hearings Officer, is subject to the discretion of the Hearings Officer. In light of the fact that participant Tye was able to submit materials during the Rebuttal Period, and in the absence of any particular information explaining what additional information would be provided that is not already in the record, I find that it is not necessary to extend the record period and, therefore, decline that request.

As noted above, the majority of the comments opposing the Application are general in nature and relate to health and safety issues, and those comments do not identify specific Code criteria on which the Application should be analyzed. Indeed, most of the comments fail to recognize that the specific issue before the County is a proposal to amend the text of the Code rather than an approval of a specific development. Those comments also fail to recognize the purpose of the Text Amendments as allowing an air traffic control tower as a permitted use, rather than amendments to Code language that alter whether and how airplanes use the Airport – an activity that already occurs under the current Code.

One specific argument participant Tye makes is that the County should not approve any changes to the Airport without first conducting a “cumulative impacts analysis” that considers factors like noise and air emissions from airplanes. Like other comments, participant Tye does not identify any Code provision that requires a cumulative impacts analysis before the County can adopt text changes to the Code. On that basis alone, I find that this argument should be rejected. In the alternative, to the extent that the cumulative impacts of flight operations should be considered, the record reveals that the purpose of the Text Amendments is to allow the Applicant to better manage existing and planned air operations. Participant Tye does not explain whether or how the Text Amendments themselves will add air operations that are not already planned and, therefore, lead to the additional impacts as asserted. To the contrary, it is the existing impacts from the Airport as it is currently developed that seem to be the center point of participant Tye’s arguments. As presented to the Hearings Officer, there is no basis to review the Airport’s current operations through this proceeding.

Another specific argument participant Tye makes relates to the adequacy of notice related to this proceeding. However, that argument appears to assert that the notice of the Application and the Hearing Notice are “unacceptable” rather than assert that they were not legally sufficient or otherwise did not occur as required by the Code. To the contrary, participant Tye’s comments acknowledge that the Hearing Notice was given to property owners within 250 feet of the Subject Properties and 26 days prior to the Hearing, both of which satisfy the Code’s requirements.

Participant Tye’s comments assert a general conflict of interest by an un-named member of the County Board. The source of that conflict of interest appears to be that the Commissioner also serves on the Redmond Airport Advisory Board, although that assertion, too, is not clear. I find that any arguments relating to conflicts of interest are not well formulated and, therefore, impossible for me to address in these findings. To the extent that a different decision maker has a conflict of interest, that issue can be raised if and when this matter comes before that decision maker.

Participant Tye submitted several comments relating to the behavior of pilots using the Airport. Those comments, however, do not explain what relationship individual pilot behavior has to the Text Amendments. Without such an explanation, I find that this argument is not well formulated and, therefore, impossible for me to address in these findings.

Participant Tye makes several comments, the theme of which is that an air traffic control tower is merely a desire of the Applicant and not actually needed for the Airport. Those comments, however, do not identify a Code provision that requires a text amendment to allow only those uses that are needed, or that prohibits a text amendment to allow a use that is desirable even if it is not needed. Further, whether an air traffic control tower is needed appears to be a question for the Airport operator and the entities that

regulate the Airport's operations. As proposed, the Text Amendments and Code still require the Airport operator to comply with all federal and state laws. Thus, to the extent the need for an air traffic control tower is relevant, that decision would be made in a different venue.

Participant Tye makes several generic assertions that the Text Amendments are not consistent with Statewide Planning Goals ("Goal"). One specific argument participant Tye makes is that the Text Amendments violate Goal 1, the language of which aims to "develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process." Participant Tye appears to take issue with how the Airport's master plans have been developed and, as noted above, the type of notice provided for the Hearing. I agree with the finding in the Staff Report, however, that the process for adopting the Text Amendments complies with Goal 1 "because the County is relying on its citizen involvement program and land use procedures ordinance to conduct public review of these amendments." Further, even if the development of the Airport's master plans was relevant, the Applicant provided evidence of the myriad of ways in which the public is involved in that process.

Participant Tye asserts the Text Amendments do not comply with Goal 3 (and its related statutes), the language of which aims to "preserve and maintain agricultural lands." The specific assertion relating to Goal 3 appears to be that the Applicant has not addressed ORS 215.243.<sup>2</sup> That statute, however, is a legislative policy statement, which provides guidance on the intent of other language in ORS Chapter 215. ORS 215.243 does not appear to impose any specific requirements with respect to the County's ability to adopt Text Amendments relating to land that is not zoned for farm use, nor does participant Tye attempt to identify any such requirement. Participant Tye does describe potential impacts on farming resulting from airplane operations. As the Staff Report notes, however, there do not appear to be any operating characteristics of an air traffic control tower (the subject of the Text Amendments) that would impact nearby farm properties.

Participant Tye asserts that the Text Amendments do not comply with Goal 5 and Goal 6, but does not explain why. The insinuation in the testimony is that airplane operations potentially impact historic buildings, natural resources such as wildlife, and environmental quality. However, as noted in the Staff Report, Goal 5 is not directly applicable to the Text Amendments because they do not include any changes to the County's Goal 5 inventories. Further, in the absence of any specific assertion that an air traffic control tower itself would impact an inventoried Goal 5 resource, I find that this argument is not well formulated and cannot otherwise be addressed in these findings. For a similar reason, I find that participant Tye's arguments relating to Goal 6 are unavailing, because they do not assert that an air traffic control tower itself will cause any harm to air or water quality.

Participant Tye asserts that the Text Amendments do not comply with Goal 12, which aims to provide and encourage a safe, convenient and economic transportation plan. In support of the Applicant, the Applicant provided a Traffic Impact Analysis ("TIA"). The Applicant also submitted a revised TIA based on initial comments it received from the County's transportation planning staff. The County's Senior Transportation Planner reviewed the TIA as revised and agreed with its assumptions, methodology, and conclusions, which demonstrate compliance with the applicable provisions of Goal 12 as implemented

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<sup>2</sup> Participant Tye cites to ORS 215.241, but that appears to be a typo and the statutory language quoted in the testimony mirrors the language in ORS 215.243.



through state administrative rules. Participant Tye expresses disagreement with the outcome of the TIA, but does not identify any purported errors in the TIA. Participant Tye does question whether the number of employees associated with an air traffic control tower is an accurate assumption in the TIA. However, the record reveals that the number of employees assumed in the TIA – five – is based on a literature review and engineering studies. In the absence of any counter evidence as to the appropriate number of employees that should be used in the TIA, I find that the preponderance of the evidence in this record demonstrates that five employees is an appropriate number to use in the TIA.

Based on the foregoing,<sup>3</sup> I find that the adoption of the Text Amendments will be consistent with the Goals.

## **V. CONCLUSION AND RECOMMENDATION**

Based on the Findings above, the Applicant’s proposed amendments to DCC Chapter 18.76 and DCC Chapter 18.80 comply with the County’s provisions for amending the Code. The Hearings Officer therefore recommends that the Deschutes County Board of Commissioners adopts the amendments presented in Exhibit A by ordinance unless the Board of Commissioners determines there is a legislative reason not to adopt the amendments.

Dated this 20th day of November 2023



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Tommy A. Brooks  
Deschutes County Hearings Officer

Attachment:  
Exhibit A – Text Amendments  
Exhibit B – Staff Report

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<sup>3</sup> Participant Tye mentions other Goals, but does so without a well formulated argument for why those Goals are not met. For example, with respect to Goal 10 relating to housing, participant Tye makes statements like “calling our farms ‘suburban’ in documents is damaging to our housing....” Such a statement does not present an argument supporting a conclusion that the Text Amendments violate Goal 10, and I find that it is not possible to further address those statements in these findings.

## Chapter 18.76, Airport Development Zone

### **18.76.015 Definitions**

The following definitions apply only to Chapter 18.76.

"Air Traffic Control Tower" means a terminal facility which, through the use of air/ground communications, visual signaling, and other devices, provides air traffic control services to airborne aircraft operating in the vicinity of an airport and to aircraft operating on the airport movement area.

"Customary and usual aviation-related activities" include, but are not limited to, takeoffs, landings, aircraft hangars, tiedowns, construction and maintenance of airport facilities, fixed-base operator facilities, a residence for an airport caretaker or security officer, and other activities incidental to the normal operation of an airport. Residential, commercial, industrial, manufacturing; and other uses, except as provided in this rule, are not customary and usual aviation-related activities and may only be authorized pursuant to OAR 660-013-0110.

"Fixed-base operator or FBO" means a commercial business granted the right by the airport sponsor to operate on an airport and provide aeronautical services such as fueling, hangaring, tie-down and parking, aircraft rental, aircraft maintenance, flight instruction, etc.

"Hangar" means an airport structure intended for the following uses:

1. Storage of active aircraft.
2. Shelter for maintenance, repair, or refurbishment of aircraft, but not the indefinite storage of nonoperational aircraft.
3. Construction of amateur-built or kit-built aircraft
4. Storage of aircraft handling equipment, e.g., tow bar, glider tow equipment, workbenches, and tools and materials used to service, maintain, repair or outfit aircraft: items related to ancillary or incidental uses that do not affect the hangars' primary use.
5. Storage of materials related to an aeronautical activity, e.g., balloon and skydiving equipment, office equipment, teaching tools, and materials related to ancillary or incidental uses that do not affect the hangars' primary use; storage of non-aeronautical items that do not interfere with the primary aeronautical purpose of the hangar (for example, televisions, furniture).
6. A vehicle parked at the hangar while the aircraft usually stored in that hangar is flying, subject to local airport rules and regulations.
7. A hangar may include restrooms, pilot lounge, offices, briefing rooms, and crew quarters.

### **18.76.030 Uses Permitted Outright**

The following uses and their accessory uses are permitted outright in all of the Airport Districts:

- A. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by DCC 18.116.230.
- B. Class III road or street project.
- C. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.
- D. Farm use as defined in DCC Title 18.
- E. Customary and usual aviation-related activities.
- F. Hangars are subject to the standards and criteria established by DCC 18.76.105.
- G. [A single air traffic control tower in the Airport Development Zone, no higher than 115 feet in height](#)

#### **18.76.050 Use Limitations**

The following limitations and standards shall apply to all permitted uses in the Airport Districts:

- A. The height of any plant growth or structure or part of a structure such as chimneys, towers, antennas, power lines, etc., shall not exceed 35 feet.
- B. [A single air traffic control tower up to 115 feet in height shall not require a height exception or variance.](#)
- C. In approach zones beyond the clear zone areas, no meeting place designed to accommodate more than 25 persons for public or private purposes shall be permitted.
- D. All parking demand created by any use permitted by DCC 18.76 shall be accommodated on the subject premises entirely off-street.
- E. No use permitted by DCC 18.76 shall require the backing of traffic onto a public or private street or road right of way.
- F. No power lines shall be located in clear zones.
- G. No use shall be allowed which is likely to attract a large quantity of birds, particularly birds which normally fly at high altitudes.

## Chapter 18.80, Airport Safety Combining Zone

### **18.80.022 Definitions**

- A. [Air Traffic Control Tower. A terminal facility which, through the use of air/ground communications, visual signaling, and other devices, provides air traffic control services to airborne aircraft operating in the vicinity of an airport and to aircraft operating on the airport movement area.](#)
- B. Aircraft. Helicopters and airplanes, but not hot air balloons or ultralights. (Balloons are governed by FAR Part 30, and ultralights by FAR Part 103. Ultralights are basically unregulated by the FAA.)
- C. Airport. The strip of land used for taking off and landing aircraft, together with all adjacent land used in connection with the aircraft landing or taking off from the strip of land, including but not limited to land used for existing airport uses.
- D. Airport Direct Impact Area. The area located within 5,000 feet of an airport runway, excluding lands within the runway protection zone and approach surface. (Redmond, Bend, and Sunriver)
- E. Airport Elevation. The highest point of an airport's usable runway, measured in feet above mean sea level.
- F. Airport Imaginary Surfaces (and zones). Imaginary areas in space and on the ground that are established in relation to the airport and its runways.

For the Redmond, Bend, Sunriver and Sisters airports, the imaginary surfaces are defined by the primary surface, runway protection zone, approach surface, horizontal surface, conical surface and transitional surface.

For the Cline Falls and Juniper airports, the imaginary areas are only defined by the primary surface and approach surface.

- G. Airport Noise Criterion. The State criterion for airport noise is an Average Day-Night Sound Level (DNL) of 55 decibels (dBA). The Airport Noise Criterion is not designed to be a standard for imposing liability or any other legal obligation except as specifically designated pursuant to OAR 340, Division 35.
- H. Airport Noise Impact Boundary. Areas located within 1,500 feet of an airport runway or within established noise contour boundaries exceeding 55 DNL.
- I. Airport Safety Combining Zone (AS Zone). A Deschutes County zone intended to place additional land use conditions on land impacted by the airport while retaining the existing underlying zone. The airport imaginary surfaces, impact areas, boundaries and their use limitations comprise the AS Zone. The AS Zone may apply to either public-use or private-use airports.
- J. Airport Secondary Impact Area. The area located between 5,000 and 10,000 feet from an airport runway. (Redmond, Bend, and Sunriver)

- K. Airport Sponsor. The owner, manager, or other person or entity designated to represent the interests of an airport.
- L. Airport Uses. Those uses described in OAR 660-013-0100 and 660-013-0110.
- M. Approach Surface. A surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface.

For Redmond, Bend, Sunriver, and Sisters airports:

1. The inner edge of the approach surface is the same width as the primary surface and it expands uniformly to a width of:
  - a. 1,250 feet for a utility runway having a visual approach;
  - b. 1,500 feet for other than a utility runway having a visual approach;
  - c. 2,000 feet for a utility runway having a non-precision instrument approach;
  - d. 3,500 feet for a non-precision instrument runway, other than utility, having visibility minimums greater than three-fourths statute mile;
  - e. 4,000 feet for a non-precision instrument runway, other than utility, having visibility minimums at or below three-fourths statute mile; and
  - f. 16,000 feet for precision instrument runways.
2. The approach surface extends for a horizontal distance of
  - a. 5,000 feet at a slope of 20 feet outward for each foot upward for all utility runways;
  - b. 10,000 feet at a slope of 34 feet outward for each foot upward for all non-precision instrument runways, other than utility; and
  - c. 10,000 feet at a slope of 50 feet outward for each one foot upward, with an additional 40,000 feet at slope of 40 feet outward for each one foot upward, for precision instrument runways.
3. The outer width of an approach surface will be that width prescribed in DCC 18.80.022 ~~(H)~~(M)(3) for the most precise approach existing or planned for that runway end.

For the Cline Falls and Juniper airports:

4. The inner edge of the approach surface is the same width as the primary surface and it expands uniformly to a width of 450 feet for that end of a private use airport with only visual approaches. The approach surface extends for a horizontal distance of 2,500 feet at a slope of 20 feet outward for each one foot upward.

- N. Average Day-Night Sound Level (DNL). Average day-night sound level is the FAA standard measure for determining the cumulative exposure of individuals to noise. DNL is the equivalent of noise levels produced by aircraft operations during a 24-hour period, with a ten-decibel penalty applied to the level measured during nighttime hours (10:00 p.m. to 7:00 am).
- O. Conical Surface. An element of the airport imaginary surfaces that extends outward and upward from the periphery of the horizontal surface at a slope of 20:1 for a horizontal distance of 4,000 feet and to a vertical height of 350 feet above the airport elevation.
- P. Department of Aviation. The Oregon Department of Aviation, formerly the Aeronautics Division of the Oregon Department of Transportation.
- Q. FAA. Federal Aviation Administration.
- R. FAA's Technical Representative. As used in DCC 18.80, the federal agency providing the FAA with expertise on wildlife and bird strike hazards as they relate to airports. This may include, but is not limited to, the USDA-APHIS-Wildlife Services.
- S. FAR. Regulation issued by the FAA.
- T. FAR Part 77. Regulation, Part 77, "Objects Affecting Navigable Airspace," establishes standards for determining obstructions to navigable airspace.
- U. Height. The highest point of a structure or tree, plant or other object of natural growth, measured from mean sea level.
- V. Horizontal Surface. A horizontal plane 150 feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of specified radii from the center of each end of the primary surface of each runway of each airport and connecting the adjacent arcs by lines tangent to those arcs. The radius of each arc is:
1. 5,000 feet for all runways designated as utility.
  2. 10,000 feet for all other runways.
  3. The radius of the arc specified for each end of a runway will have the same arithmetical value. That value will be the highest determined for either end of the runway. When a 5,000-foot arc is encompassed by tangents connecting two adjacent 10,000-foot arcs, the 5,000-foot arc shall be disregarded on the construction of the perimeter of the horizontal surface.
- W. Non-precision Instrument Runway. A runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in non-precision instrument approach has been approved, or planned, and for which no precision approach facilities are planned or indicated on an FAA-approved airport layout plan or other FAA planning document.
- X. Non-Towered Airport. An airport without an existing or approved control tower [on June 5, 1995](#).
- Y. Obstruction. Any structure or tree, plant or other object of natural growth that penetrates an imaginary surface.

- Z. Other than Utility Runway. A runway that is constructed for and intended to be used by turbine-driven aircraft or by propeller-driven aircraft exceeding 12,500 pounds gross weight.
- AA. Precision Instrument Runway. A runway having an existing instrument approach procedure utilizing air navigation facilities that provide both horizontal and vertical guidance, such as an Instrument Landing System (ILS) or Precision Approach Radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated by an FAA-approved airport layout plan or other FAA planning document.
- BB. Primary Surface. A surface longitudinally centered on a runway.

For the Redmond, Bend, Sunriver, and Sisters airports, when a runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each end of that runway. When a runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The width of the primary surface is:

1. 250 feet for utility runways with only visual approaches,
2. 500 feet for utility runways having non-precision instrument approaches,
3. 500 feet for other than utility runways having non-precision instrument approaches with visibility minimums greater than three-fourths statute mile, and
4. 1,000 feet for non-precision instrument runways with visibility minimums at or below three-fourths statute mile, and for precision instrument runways.

For the Cline Falls and Juniper airports, the primary surface ends at each end of a runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The width of the primary surface is 200 feet.

- CC. Public Assembly Facility. A permanent or temporary structure or facility, place or activity where concentrations of people gather in reasonably close quarters for purposes such as deliberation, education, worship, shopping, employment, entertainment, recreation, sporting events, or similar activities. Public assembly facilities include, but are not limited to, schools, religious institutions or assemblies, conference or convention facilities, employment and shopping centers, arenas, athletic fields, stadiums, clubhouses, museums, and similar facilities and places, but do not include parks, golf courses or similar facilities unless used in a manner where people are concentrated in reasonably close quarters. Public assembly facilities also do not include air shows, structures or uses approved by the FAA in an adopted airport master plan, or places where people congregate for short periods of time such as parking lots or bus stops.
- DD. Runway. A defined area on an airport prepared for landing and takeoff of aircraft along its length.
- EE. Runway Protection Zone (RPZ). An area off the runway end used to enhance the protection of people and property on the ground. The RPZ is trapezoidal in shape and centered about the extended runway centerline. The inner width of the RPZ is the same as the width of the primary

surface. The outer width of the RPZ is a function of the type of aircraft and specified approach visibility minimum associated with the runway end. The RPZ extends from each end of the primary surface for a horizontal distance of:

1. 1,000 feet for utility runways.
2. 1,700 feet for other than utility runways having non-precision instrument approaches.
3. 2,500 feet for precision instrument runways.

[NOTE: the outer width of the RPZ is specified by airport type in OAR 660, Division 13, Exhibit 4]

FF. Significant. As it relates to bird strike hazards, "significant" means a level of increased flight activity by birds across an approach surface or runway that is more than incidental or occasional, considering the existing ambient level of flight activity by birds in the vicinity.

GG. Structure. Any constructed or erected object, which requires a location on the ground or is attached to something located on the ground. Structures include but are not limited to buildings, decks, fences, signs, towers, cranes, flagpoles, antennas, smokestacks, earth formations and overhead transmission lines. Structures do not include paved areas.

HH. Transitional Surface. Those surfaces that extend upward and outward at 90 degree angles to the runway centerline and the runway centerline extended at a slope of seven feet horizontally for each foot vertically from the sides of the primary and approach surfaces to the point of intersection with the horizontal and conical surfaces. Transitional surfaces for those portions of the precision approach surfaces which project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at a 90-degree angle to the extended runway centerline.

II. Utility Runway. A runway that is constructed for and intended to be used by propeller driven aircraft of 12,500 maximum gross weight and less.

JJ. Visual Runway. A runway intended solely for the operation of aircraft using visual approach procedures, where no straight-in instrument approach procedures or instrument designations have been approved or planned, or are indicated on an FAA-approved airport layout plan or any other FAA planning document.

KK. Water Impoundment. Includes wastewater treatment settling ponds, surface mining ponds, detention and retention ponds, artificial lakes and ponds, and similar water features. A new water impoundment includes an expansion of an existing water impoundment except where such expansion was previously authorized by land use action approved prior to the effective date of this ordinance.

### **18.80.028 Height Limitations**



All uses permitted by the underlying zone shall comply with the height limitations in DCC 18.80.028. When height limitations of the underlying zone are more restrictive than those of this overlay zone, the underlying zone height limitations shall control. [ORS 836.619; OAR 660-013-0070]

- A. Except as provided in DCC 18.80.028(B-D), no structure or tree, plant or other object of natural growth shall penetrate an airport imaginary surface. [ORS 836.619; OAR 660-013-0070(1)]
- B. For areas within airport imaginary surfaces but outside the approach and transition surfaces, where the terrain is at higher elevations than the airport runway surfaces such that existing structures and permitted development penetrate or would penetrate the airport imaginary surfaces, a local government may authorize structures up to 35 feet in height.
- C. Other height exceptions or variances may be permitted when supported in writing by the airport sponsor, the Department of Aviation and the FAA. Applications for height variances shall follow the procedures for other variances and shall be subject to such conditions and terms as recommended by the Department of Aviation and the FAA (for Redmond, Bend and Sunriver.)
- D. [A single air traffic control tower may be up to 115 feet in height.](#)

#### **18.80.044 Land Use Compatibility**

Applications for land use or building permits for properties within the boundaries of this overlay zone shall comply with the requirements of DCC 18.80 as provided herein. When compatibility issues arise, the Planning Director or Hearings Body is required to take actions that eliminate or minimize the incompatibility by choosing the most compatible location or design for the boundary or use. Where compatibility issues persist, despite actions or conditions intended to eliminate or minimize the incompatibility, the Planning Director or Hearings Body may disallow the use or expansion, except where the action results in loss of current operational levels and/or the ability of the airport to grow to meet future community needs. Reasonable conditions to protect the public safety may be imposed by the Planning Director or Hearings Body. [ORS 836.619; ORS 836.623(1); OAR 660-013-0080] [An air traffic control tower, as defined in DCC 18.80.022, is not subject to this section.](#)

...

#### **18.80 Declaration Of Anticipated Noise**

As a condition of the grant of development approval pursuant to DCC 18.80, the undersigned, hereinafter referred to as Grantor hereby covenants and agrees that it shall not, by reason of their ownership or occupation of the following described real property, protest or bring suit or action against the \_\_\_\_\_ [Name of Airport] or Deschutes County, for aviation-related noise, including property damage or personal injury from said noise connected when such activities conform to:

1. Airport activities lawfully conducted in connection with a pre-existing airport, as that term is defined in DCC 18.80.022(~~B~~)(C), at the described airport; or 2. Airport activities that might be lawfully conducted in the future at the described airport under County or State permits or exemptions.

The real property of Grantor subject to this covenant and agreement is situated in Deschutes County, State of Oregon, and described as set forth in that certain [Statutory Warranty Deed] dated [date], as record in [the Official Records of Deschutes County as instrument number 20xx-xxxxx] OR [Volume xx, Page xx of the Deschutes County Board of Records];.

Grantor acknowledge that by virtue of such grant he/they have no remaining rights to complain or protest about the protected activities described above.

This Declaration of Anticipated Noise runs with the land and is binding upon the heirs, successors and assigns of the undersigned's interest in the described real property or any persons acquiring through he undersigned an interest in the described real property.

Deschutes County requires the execution of this covenant and agreement by the Grantor as a pre-requisite to Deschutes County approving a partition, subdivision, or issuing a building permit for Grantor's development on the above described real property, which real property is located within the noise impact boundary of the \_\_\_\_\_ [Name of Airport]. This Declaration is executed for the protection and benefit of the \_\_\_\_\_ [Name of Airport] and Deschutes County's interest in said airport and to prevent development in adjacent lands to said airport which will interfere with the continued operation existent and development of said airport.

Dates this \_\_\_\_ day of \_\_\_\_, 20 \_\_\_\_\_

Grantor [Name]

*[insert notarial certificate]*



**STAFF REPORT**  
**AIRPORT DEVELOPMENT ZONE CONTROL TOWER TEXT AMENDMENT**

**FILE NUMBER(S):** 247-23-000470-TA

**SUBJECT PROPERTY:** The Airport Development (AD) Zone encompasses the Bend Municipal Airport (Airport), which includes the following addresses and tax lots:

- 63155 Gibson Air Rd – 1713200000200
- 63110 Powell Butte Hwy – 1713200000201
- 63205 Gibson Air Rd – 171317C000100
- 63482 Powell Butte Hwy – 1713170000200
- 22550 Nelson Pl – 1713200000202
- 63144 Powell Butte Hwy – 1713200000300

**APPLICANT:** City of Bend

**REQUEST:** Amendments to Deschutes County Code (DCC) Chapters 18.04, Title Purpose and Definitions; Chapter 18.76, Airport Development Zone; Chapter 18.80, Airport Safety Combining Zone; and Chapter 18.120, Exceptions. The proposed amendments will modify the DCC to add a definition of an air traffic control tower, establish air traffic control towers as a use permitted outright in the Airport Development Zone, and modify the height limit to allow air traffic control towers up to 115 feet in height.

**STAFF CONTACT:** Audrey Stuart, Associate Planner  
Phone: 541-388-6679  
Email: [Audrey.Stuart@deschutes.org](mailto:Audrey.Stuart@deschutes.org)

**RECORD:** Record items can be viewed and downloaded from:  
<https://www.deschutes.org/cd/page/247-23-000470-ta-%E2%80%93-air-traffic-control-tower-text-amendment>

**I. APPLICABLE CRITERIA**

Deschutes County Code  
Title 18, Deschutes County Zoning Ordinance:

Chapter 18.04, Title, Purpose and Definitions  
Chapter 18.76, Airport Development Zone  
Chapter 18.80, Airport Safety Combining Zone (AS)  
Chapter 18.120, Exceptions  
Chapter 18.136, Amendments

Title 22, Deschutes County Development Procedures Ordinance

Oregon Revised Statutes

ORS 836.610

ORS 836.616

Oregon Administrative Rules

OAR Chapter 660, Division 013

## II. **BASIC FINDINGS**

**LOT OF RECORD:** The Bend Municipal Airport consists of multiple legal lots of record through previous land use decision issued by Deschutes County. In addition, DCC 22.04.040(B) does not require lot of record verification for Text Amendment applications.

**SITE DESCRIPTION:** The AD Zone encompasses the Airport, which has a total area of 340 acres. The AD Zone is comprised of three zoning districts—Airfield Operations District (AOD), Aviation Support District (ASD), and Aviation-Related Industrial District (ARID). The Bend Municipal Airport is developed with a number of aviation-related uses including taxiways, runways, a helipad, internal roads and parking areas, and a number of structures. Powell Butte Highway, a Rural Arterial, runs along the west boundary of the airport property and Gibson Air Road is a private road within the airport property.

**PROPOSAL:** The submitted Burden of Proof includes the following background on why this Text Amendment is necessary for the Airport:

The applicant proposes several amendments to the text of the Deschutes County Zoning Ordinance that would allow construction of an air traffic control tower at the Bend Municipal Airport. The City of Bend has established a need for an [Air Traffic Control Tower] ATCT at the Bend Municipal Airport, and the Federal Aviation Administration (FAA) has accepted the airport as a candidate in the Federal Contract Tower Program. The proposed amendments to the Deschutes County Zoning Ordinance would allow the City to establish an air traffic control tower at the Bend Airport, and to a height no greater than 115 feet. This proposed height would provide for a cab level height of 85 feet from which air traffic controllers could direct aircraft operations (takeoffs, landings) at the airport.

The proposed language of the Text Amendment is included as Exhibit 1 and summarized as follows:

- The Applicant proposes to add the Federal Aviation Administration (FAA) definition for Airport Traffic Control Tower.<sup>1</sup>

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<sup>1</sup> Reference FAA website: <https://aspm.faa.gov/aspmhelp/index/Glossary.html>

- The Applicant proposes to add an Air Traffic Control Tower as a new use permitted outright in the AD Zone.
- The Applicant proposes to allow Air Traffic Control Towers up to 115 feet in height.

**PUBLIC AGENCY COMMENTS:** The Planning Division mailed notice on July 5, 2023, to several public agencies and received the following comments:

Deschutes County Senior Transportation Planner, Tarik Rawlings, August 17, 2023 Comments

I have reviewed the application materials for a control tower at the Bend Airport (File 247-23-000470-TA) and it appears that the application may not be complete where it pertains to the Transportation Planning Rule (OAR 660-012-060) for the following reasons. The application addresses Goal 12 (Transportation) on pages 10-11. Under the Goal 12 findings, the burden of proof states there will be five (5) staff resulting in 10 new daily trips. It is unclear where that number of employees came from; perhaps there are standard staffing levels recommended or required by the FAA for aircraft control towers based on number of operations, i.e., takeoffs and landings. For the purpose of this comment, staff utilizes the applicant's assumption for five (5) employees.

The submitted analysis does not appear to review potentially affected County intersections. The application materials do not appear to have a site plan and, as a result, it is unclear to staff how the five employees may enter the Bend Airport. Potential intersections that could be utilized by the employees are Powell Butte Hwy/Bend Airport driveway; Nelson Road/Nelson Place; Nelson/Gibson Air Road; McGrath Road/Rotor Way. To answer the TPR questions posed by OAR 660-012-060(1)(c)(B) and (C), the applicant should provide at least minimal traffic analysis related to the proposal. Examples could include, but not be limited to, current operational level of the selected intersection(s); projected operation based on the current TSP; and number of employee trips sent to the selected intersection(s), and resulting operations of those intersections. The applicant has addressed the trip generation portion of analysis in projecting 10 new trips but the applicant should also provide additional analysis related to the existing volumes and operations of the affected roadway segments and/or intersections. Examples of needed information would be Average Daily Traffic (ADT), whether the acknowledged 2020-2040 TSP has identified any failing intersections or road segments or whether these intersections or road segments meet County performance standards; if there are deficiencies, identify if there are already programmed or planned improvement to mitigate the deficiencies, etc. It would also be helpful if the applicant could provide more information about the hours during which the proposed tower will be staff, including any applicable FAA recommendations, if available.

This additional analysis could be included in a brief trip generation memo given the small number of new trips associated with the proposal.

Deschutes County Senior Transportation Planner, Tarik Rawlings, September 18, 2023 Comments

I have reviewed Mr. Bessman's September 6, 2023, Traffic Impact Analysis related to County file no. 247-23-000370-TA and I agree with the assumptions, methodology, and conclusions contained therein. As Mr. Bessman utilizes the 2040 planning horizon year (reflective of the most recent data included in the County's forthcoming Transportation System Plan update) this analysis appears to comply with relevant criteria. Mr. Bessman utilizes the acceptable road segment standard of 13,900 Average Daily Trips (ADT) which is incorporated into the County's most recent 2020-2040 Transportation System Plan. The literature review and engineering studies referenced in relation to staffing numbers and associated peak hour trips (5 employees and 5 total p.m. peak hour trips) are adequate. Staff agrees with Mr. Bessman's summary of Transportation Planning Rule (TPR) Compliance and finds that relevant TPR provisions appear to be satisfied through the submittal of this additional information.

The subject Text Amendment will not absorb any road capacity as that term is commonly accepted and, therefore, no SDC fees are associated with the subject Text Amendment at this time.

#### Central Oregon Irrigation District, Spencer Stauffer

Please be advised that Central Oregon Irrigation District (COID) has reviewed the application received on July 10, 2023, for the above referenced project located tax lots 1713200000200, 1713200000201, 171317C000100, 1713170000200, 1713200000202, 1713200000300. The applicant is requesting Amendments to Deschutes County Code (DCC) Chapters 18.04, Title Purpose and Definitions, Chapter 18.76, Airport Development Zone, Chapter 18.80, Airport Safety Combining Zone, and Chapter 18.120, Exceptions. The proposed amendments will modify DCC to add a definition of an air traffic control tower, establish air traffic control towers as a use permitted outright in the Airport Development Zone, and modify the height limit so that air traffic control towers can be up to 115 feet in height.

There are 0.84 acres COID mapped water rights appurtenant to tax lot 1713200000202. There are 2.5 acres of mapped pond water rights appurtenant to tax lot 1713200000200. Please note, COID's B-Lateral enters tax lot 1713200000200 in its southwest corner. The B-lateral travels east through tax lot 1713200000202 before continuing east through tax lot 1713200000200. The B-Lateral then turns north before leaving tax lot 1713200000200 to the east. The B-Lateral has a 30-foot right of way easement, 15-feet either side of the center of the pipe. The B-Lateral also has a 20-foot road easement on the east side of the pipe. That road easement is not utilized.

Listed below are COIDs initial comments to the provided application. All development affecting irrigation facilities shall be in accordance with COID's Development Handbook and/or as otherwise approved by the District.

- Tax Map 1713200000202 has 0.84 acres of appurtenant COID irrigation water mapped to a specific place of use. Construction of a structure, driveway, or other impermeable surface on top of a mapped water right is not allowed.

- The application will not impact COID facilities or water rights. Should the plans change, please contact COID to determine if COID water rights or facilities will be impacted.
- Irrigation infrastructure and rights-of-way are required to be identified on all maps and plans.
- No structures or encroachment of any kind, including fence or crossing, are permitted within COID property/easement/right of way without written permission from this office.
- Comply with Requirements of COID Developer Handbook including restriction on drilling / blasting and excavation within and adjacent to the existing canal embankment.
- Policies, standards and requirements set forth in the COID Developer Handbook must be complied with.

Our comments are based on the information provided, which we understand to be preliminary nature at this time. Our comments are subject to change and additional requirements may be made as site planning progresses and additional information becomes available. Please provide updated documents to COID for review as they become available.

#### Deschutes County Building Division, Randy Scheid

The Deschutes County Building Safety Divisions code mandates that Access, Egress, Setbacks, Fire & Life Safety, Fire Fighting Water Supplies, etc. must be specifically addressed during the appropriate plan review process with regard to any proposed structures and occupancies.

Accordingly, all Building Code required items will be addressed, when a specific structure, occupancy, and type of construction is proposed and submitted for plan review.

#### Oregon Department of Aviation, Brandon Pike

I took a look through the ATCT Siting Report prepared by the applicant, and I don't envision ODAV having any issues with this. We would be OK with an exemption for the ATCT height, whether through a variance or codified through a text amendment. And, yes, you're correct that OAR 660-013-0070 requires the FAA, ODAV, and the airport sponsor to sign off on exceptions to this rule. We would need them to go through the usual Notice of Construction process through ODAV and FAA; that's how the FAA and ODAV would formally sign off on the development.

The highest point on the tower will be approximately 115' above ground level (AGL), correct? I believe that's what I saw in the Siting Report.

Regarding a definition for an ATCT, I would take a look at this webpage from the FAA: <https://aspm.faa.gov/aspmhelp/index/Glossary.html>

Their definition is as follows: A terminal facility which, through the use of air/ground communications, visual signaling, and other devices, provides air traffic control services to airborne aircraft operating in the vicinity of an airport and to aircraft operating on the movement area.

I think it will be important to be very clear in your text amendment to identify that it's only ATCTs that are allowed to exceed the height limit.

The following agencies did not respond to the notice: Bend Fire Department, Bend Municipal Airport, Bureau of Land Management, City of Bend Growth Management Department, Deschutes County Assessor, Deschutes County Road Department, District 11 Watermaster, and Office of the State Fire Marshal.

**PUBLIC COMMENTS:** The Planning Division mailed notice of the application to all property owners within 250 feet of the subject property on July 5, 2023. The Applicant also complied with the posted notice requirements of Section 22.24.030(B) of Title 22. The Applicant submitted a Land Use Action Sign Affidavit indicating the Applicant posted notice of the land use action on August 11, 2023. No public comments were received.

**NOTICE REQUIREMENT:** On September 7, 2023, the Planning Division mailed a Notice of Public Hearing to all property owners within 250 feet of the subject property and public agencies. A Notice of Public Hearing was published in the Bend Bulletin on Sunday, September 10, 2023. Notice of the first evidentiary hearing was submitted to the Department of Land Conservation and Development on August 26, 2023.

**REVIEW PERIOD:** According to Deschutes County Code 22.20.040(D), the review of the proposed quasi-judicial Text Amendment application is not subject to the 150-day review period.

### III. FINDINGS & CONCLUSIONS

#### **Title 18 of the Deschutes County Code, County Zoning**

#### **Chapter 18.136, Amendments**

#### Section 18.136.010, Amendments

***DCC Title 18 may be amended as set forth in DCC 18.136. The procedures for text or legislative map changes shall be as set forth in DCC 22.12. A request by a property owner for a quasi-judicial map amendment shall be accomplished by filing an application on forms provided by the Planning Department and shall be subject to applicable procedures of DCC Title 22.***



**FINDING:** The Applicant, as the property owner, has requested a quasi-judicial Text Amendment and filed the corresponding application. The Applicant has filed the required land use application forms for the proposal. The application will be reviewed utilizing the applicable procedures contained in Title 22 of the Deschutes County Code.

DCC 22.04.020 includes the following definition:

"Quasi-judicial" zone change or plan amendment generally refers to a plan amendment or zone change affecting a single or limited group of property owners and that involves the application of existing policy to a specific factual setting. (The distinction between legislative and quasi-judicial changes must ultimately be made on a case-by-case basis with reference to case law on the subject.)

The subject application is not a request to change the zoning or Comprehensive Plan designation of the subject property. However, as described below, the quasi-judicial process of a Comprehensive Plan Amendment is the most applicable guidance regarding Text Amendments that are not squarely legislative. Therefore, staff includes the definition of a quasi-judicial process above for reference and also addresses the provisions of DCC 22.28.030, regarding final action on Comprehensive Plan amendments. The Airport most recently went through a Text Amendment in Deschutes County file 247-20-000482-TA. The Hearings Officer decision for file 247-20-000482-TA made the following findings regarding whether the application should be processed as a quasi-judicial Text Amendment:

Based on the foregoing, the Hearings Officer finds that, in this case, the ultimate adoption of the Text Amendments is a two-step process. The role of the Hearings Officer is to apply the law, not to change it. In the first step of the process, the Applicant has a right under the DCC to submit and to have considered an application to amend the Code's text. This phase of the process is quasi-judicial in nature and it is appropriate to have a hearing and to build a record following the principles of a quasi-judicial process. As part of that process, the Hearings Officer is addressing the application of the County's existing laws. The second step of the process is for the Deschutes County Board of Commissioners ("Board") to adopt an ordinance to incorporate any text amendments to the Code. Amendments to the text of a zoning ordinance are a change in the County's law, and only the Board can make such a change. In other words, the Hearings Officer is without authority to amend the County's Code. The Hearings Officer, however, can make a recommendation to the Board based on what develops in the quasi-judicial phase of the process.

The Oregon Supreme Court case *Strawberry Hill 4 Wheelers* provides guidance on how to distinguish between a legislative and quasi-judicial process, and outlines a three-part test that continues to be applied throughout case law. The Court of Appeals applied and expanded on the *Strawberry Hill 4 Wheelers* decision in *Hood River Valley v. Board of Cty. Commissioners*, 193 Or App 485, 495, 91 P3d 748 (2004):

Given those concerns, "[t]he fact that a policymaking process is circumscribed by \* \* \* procedural requirements [such as public hearings] does not alone turn it into an

adjudication." *Id.* at 604. Rather, at least three other considerations generally bear on the determination of whether governmental action represented an "exercise of \* \* \*quasi-judicial functions." ORS 34.040(1). First, does "the process, once begun, [call] for reaching a decision," with that decision being confined by preexisting criteria rather than a wide discretionary choice of action or inaction? *Strawberry Hill 4 Wheelers*, 287 Or at 604. Second, to what extent is the decision-maker "bound to apply preexisting criteria to concrete facts"? *Id.* at 602-03. Third, to what extent is the decision "directed at a closely circumscribed factual situation or a relatively small number of persons"? *Id.* at 603.

Those three general criteria do not, however, describe a bright-line test. As we noted in *Estate of Gold v. City of Portland*, 87 Or App 45, 51, 740 P2d 812, *rev den*, 304 Or 405 (1987), *Strawberry Hill 4 Wheelers* "contemplates a balancing of the various factors which militate for or against a quasi-judicial characterization and does not create [an] 'all or nothing' test[.]" (Citation omitted.) In particular, we noted that the criteria are applied in light of the reasons for their existence-*viz.*, "the assurance of correct factual decisions" and "the assurance of 'fair attention to individuals particularly affected.'" *Estate of Gold*, 87 Or App at 51 (quoting *Strawberry Hill 4 Wheelers*, 287 Or at 604).

As noted above, the *Strawberry Hill 4 Wheelers* test requires a case-specific analysis of all three factors in combination. Individuals most affected by the proposed Text Amendment include the Airport Sponsor and neighboring property owners, all of whom were mailed notice pursuant to DCC 22.24.030.

Staff addresses each component of the *Strawberry Hill 4 Wheelers* test below:

#### Results in a decision

The applicant has submitted an application for a Text Amendment, in order to construct an Air Traffic Control Tower on the subject property. The request will result in either an approval or a denial, and a decision will be issued by the Board of County Commissioners (Board) pursuant to DCC Title 22. As opposed to a policy change initiated by staff or decision-makers, which has a wide discretionary choice between action and inaction, the subject request was submitted as a land use application by the property owner and the County must take final action on it. Staff finds the subject amendment clearly meets this component of the *Strawberry Hill 4 Wheelers* test and may be considered a quasi-judicial process.

#### Apply existing criteria

The subject request is being reviewed based on criteria in DCC Chapter 18.136, Amendments, and applicable state statutes. Oregon Revised Statutes (ORS) 836.616, Rules for airport uses and activities, provides a list of the uses that may be permitted within an airport under a local jurisdiction's land use code. The application is being reviewed to confirm compliance with the DCC along with applicable OARs and ORSs, and staff therefore finds existing criteria are being applied to the subject application. Consequently, the application meets this component of the *Strawberry Hill 4 Wheelers* test for a quasi-judicial process.

Small number of persons

The Airport Development Zone encompasses the Airport, and no other properties. The subject property is owned and operated by the City of Bend, who manages leases and oversees uses within the Bend Municipal Airport. While staff notes the Bend Municipal Airport is utilized by members of the public and various businesses, a new use can only be established on the property if the City of Bend initiates or authorizes an application. The subject request will impact the development potential of the Airport property and no other properties. Therefore, staff finds the subject request complies with this component of the *Strawberry Hill 4 Wheelers* test and may be categorized as quasi-judicial.

When the factors above are considered in combination, staff finds they indicate the subject Text Amendment is a quasi-judicial process. As noted in *Hood River Valley v. Board of Cty. Commissioners*, the differentiation between a legislative and quasi-judicial process is important in order to ensure all affected parties are given a fair process. In this case the proposal will impact one property owner, the applicant, and processing the request through a quasi-judicial process will provide for a public hearing before a Hearings Officer and final action by the Board. For these reasons, staff finds the request meets the three-part test outlined in *Strawberry Hill 4 Wheelers* as well as the intent of a quasi-judicial process.

**Title 22 of the Deschutes County Code, Development Procedures Ordinance**

**Chapter 22.12, Legislative Procedures**

Section 22.12.010, Hearing Required

***No legislative change shall be adopted without review by the Planning Commission and a public hearing before the Board of County Commissioners. Public hearings before the Planning Commission shall be set at the discretion of the Planning Director, unless otherwise required by state law.***

**FINDING:** As described above, staff finds the subject request is a quasi-judicial Text Amendment. However, the procedural steps will be similar to those outlined in the Hearing's Officer decision for file 247-20-000482-TA, which finds amendments to allowed airport uses carry the qualities of a legislative act. The subject amendments will be adopted through an ordinance, consistent with the process for a legislative amendment. The Planning Director has exercised their discretion not to set a hearing before the Planning Commission.

Section 22.12.020, Notice

**A. *Published Notice.***

- 1. *Notice of a legislative change shall be published in a newspaper of general circulation in the county at least 10 days prior to each public hearing.***
- 2. *The notice shall state the time and place of the hearing and contain a***

*statement describing the general subject matter of the ordinance under consideration.*

- B. Posted Notice.** Notice shall be posted at the discretion of the Planning Director and where necessary to comply with ORS 203.045.
- C. Individual Notice.** Individual notice to property owners, as defined in DCC 22.08.010(A), shall be provided at the discretion of the Planning Director, except as required by ORS 215.503.
- D. Media Notice.** Copies of the notice of hearing shall be transmitted to other newspapers published in Deschutes County.

**FINDING:** Notice of the proposed Text Amendment was published in the Bend Bulletin. As noted above, the applicant complied with the posted notice requirement and staff mailed notice to property owners within 250 feet of the Airport boundary. Notice was provided to the County public information official for wider media distribution.

Section 22.12.030, Initiation Of Legislative Changes

***A legislative change may be initiated by application of individuals upon payment of required fees as well as by the Board of Commissioners or the Planning Commission.***

**FINDING:** The applicant has submitted the required fees and requested a Text Amendment. Staff finds the applicant is granted permission under this criterion to initiate a legislative change and has submitted the necessary fee and materials.

Section 22.12.040, Hearings Body

- A. The following shall serve as hearings or review body for legislative changes in this order:**
  - 1. The Planning Commission.**
  - 2. The Board of County Commissioners.**

**FINDING:** As described above, the subject application meets the definition of a quasi-judicial application. For this reason, this application was referred to a Hearings Officer rather than the Planning Commission for a recommendation. The adoption of the proposed text amendments will follow a legislative process because it must be approved by the Board. For the purpose of this criterion, staff notes the application has properties of both a quasi-judicial and legislative amendment.

- B. Any legislative change initiated by the Board of County Commissioners shall be reviewed by the Planning Commission prior to action being taken by the Board of Commissioners.**

**FINDING:** The subject application was not initiated by the Board. Staff finds this criterion does not apply.

Section 22.12.050, Final Decision

***All legislative changes shall be adopted by ordinance.***

**FINDING:** Staff finds this criterion requires action by the Board to effect any legislative changes to Deschutes County Code. If the proposed Text Amendment is approved, it will become effective through the Board adoption of an ordinance.

**Chapter 22.28, Land Use Action Decisions**

Section 22.28.030, Decision On Plan Amendments And Zone Changes

- A. ***Except as set forth herein, the Hearings Officer or the Planning Commission when acting as the Hearings Body shall have authority to make decisions on all quasi-judicial zone changes and plan amendments. Prior to becoming effective, all quasi-judicial plan amendments and zone changes shall be adopted by the Board of County Commissioners.***
- B. ***In considering all quasi-judicial zone changes and those quasi-judicial plan amendments on which the Hearings Officer has authority to make a decision, the Board of County Commissioners shall, in the absence of an appeal or review initiated by the Board, adopt the Hearings Officer's decision. No argument or further testimony will be taken by the Board.***

**FINDING:** As detailed above, staff finds the proposal should be viewed as a quasi-judicial plan amendment. For this reason, staff finds these criteria apply. This application is being referred to a Hearings Officer for a recommendation. If an appeal is not filed and the Board does not initiate review, the Board shall adopt the Hearings Officer's recommendation as the decision of the county.

- C. ***Plan amendments and zone changes requiring an exception to the goals or concerning lands designated for forest or agricultural use shall be heard de novo before the Board of County Commissioners without the necessity of filing an appeal, regardless of the determination of the Hearings Officer or Planning Commission. Such hearing before the Board shall otherwise be subject to the same procedures as an appeal to the Board under DCC Title 22.***

**FINDING:** The subject Text Amendment does not require a goal exception and does not concern lands designated for forest or agricultural use. For this reason, a de novo hearing before the Board is not required.

- D. ***Notwithstanding DCC 22.28.030(C), when a plan amendment subject to a DCC 22.28.030(C) hearing before the Board of County Commissioners has been consolidated for hearing before the hearings Officer with a zone change or other permit application not requiring a hearing before the board under DCC 22.28.030(C), any party wishing to obtain review of the Hearings Officer's decision on any of those***

***other applications shall file an appeal. The plan amendment shall be heard by the Board consolidated with the appeal of those other applications.***

**FINDING:** No other application is being consolidated with the subject Text Amendment. Staff finds this criterion does not apply.

## **Deschutes County Comprehensive Plan**

### **Transportation System Plan**

Section 3.4, Rural Economy

***Goal 1. Maintain a stable and sustainable rural economy, compatible with rural lifestyles and a healthy environment.***

...

***Policy 3.4.6 Support and participate in master planning for airports in Deschutes County***

**FINDING:** The County's Comprehensive Plan includes a number of guiding policies such as the rural economy goal cited above. In addition, Appendix C - Transportation System Plan includes goals specific to airport planning. Staff finds the relevant Comprehensive Plan policies are implemented through Deschutes County Code, and the Comprehensive Plan goals themselves are not specific approval criteria. However, to the extent the Hearings Officer finds this policy is an applicable approval criterion, staff includes the applicant's response below as alternate findings:

The proposed text amendments will support master planning for the Bend Municipal Airport. The proposed amendments are intended to support the construction of an air traffic control tower, which is now an improvement supported by the FAA. The amendments are proposed to ensure the establishment of a tower will support airport operations and, in a manner, consistent with the master planning for the Bend Municipal Airport. The amendments are further limited to the Bend Airport so that another use could not be established through these amendments.

## **OREGON REVISED STATUTES**

### **Chapter 836 – Airports and Landing Fields**

836.610, Local government land use plans and regulations to accommodate airport zones and uses; funding; rules.

- 1) Local governments shall amend their comprehensive plan and land use regulations consistent with the rules for airports adopted by the Land Conservation and***

**Development Commission under ORS 836.616 and 836.619. Airports subject to the rules shall include:**

- (a) Publicly owned airports registered, licensed or otherwise recognized by the Department of Transportation on or before December 31, 1994, that in 1994 were the base for three or more aircraft; and**
  - (b) Privately owned public-use airports specifically identified in administrative rules of the Oregon Department of Aviation that:**
    - (A) Provide important links in air traffic in this state;**
    - (B) Provide essential safety or emergency services; or**
    - (C) Are of economic importance to the county where the airport is located.**
- (2)(a) Local governments shall amend their comprehensive plan and land use regulations as required under subsection (1) of this section not later than the first periodic review, as described in ORS 197.628 to 197.651, conducted after the date of the adoption of a list of airports by the Oregon Department of Aviation under subsection (3) of this section.**
- (b) A state agency or other person may provide funding to a local government to accomplish the planning requirements of this section earlier than otherwise required under this subsection.**
- (3) The Oregon Department of Aviation by rule shall adopt a list of airports described in subsection (1) of this section. The rules shall be reviewed and updated periodically to add or remove airports from the list. An airport may be removed from the list only upon request of the airport owner or upon closure of the airport for a period of more than three years. [1995 c.285 §4; 1997 c.859 52]**

**FINDING:** The AD Zone encompasses the, which is a publically-owned airport. In addition, the Airport was registered prior to December 31, 1994, and staff therefore finds it is subject to this section. The applicant proposes to amend the land use regulations for this airport consistent with ORS 836.616 and ORS 836.619.

836.616, Rules for airport uses and activities.

- (1) Following consultation with the Oregon Department of Aviation, the Land Conservation and Development Commission shall adopt rules for uses and activities allowed within the boundaries of airports identified in ORS 836.610 (Local government land use plans and regulations to accommodate airport zones and uses) (1) and airports described in ORS 836.608 (Airport operation as matter of state concern) (2).**
- (2) Within airport boundaries established pursuant to commission rules, local government land use regulations shall authorize the following uses and activities:**
  - (a) Customary and usual aviation-related activities including but not limited to takeoffs, landings, aircraft hangars, tie-downs, construction and maintenance of airport facilities, fixed-base operator facilities and other activities incidental to the normal operation of an airport;**

**FINDING:** DCC 18.76.030(E) currently permits customary and usual aviation-related activities in the AD Zone. The applicant proposes to add a new use category for air traffic control towers, which staff finds are a type of customary and usual aviation-related activity.

- (3) ***All land uses and activities permitted within airport boundaries, other than the uses and activities established under subsection (2) of this section, shall comply with applicable land use laws and regulations. A local government may authorize commercial, industrial and other uses in addition to those listed in subsection (2) of this section within an airport boundary where such uses are consistent with applicable provisions of the acknowledged comprehensive plan, statewide land use planning goals and commission rules and where the uses do not create a safety hazard or limit approved airport uses.***
- (4) ***The provisions of this section do not apply to airports with an existing or approved control tower on June 5, 1995. [1997 c.859 §5 (enacted in lieu of 836.615)]***

**FINDING:** The applicant proposes a new use category consisting of an air traffic control tower. As described above, staff finds this is a type of customary and usual aviation-related activity and is therefore a use listed in subsection (2). No additional uses are proposed within the AD Zone and staff finds subsection (3) does not apply. Furthermore, the Airport did not contain an existing or approved control tower on June 5, 1995. Therefore, staff finds subsection (4) does not apply.

836.619, State compatibility and safety standards for land uses near airports; rules.

***Following consultation with the Oregon Department of Aviation, the Land Conservation and Development Commission shall adopt rules establishing compatibility and safety standards for uses of land near airports identified in ORS 836.610 (Local government land use plans and regulations to accommodate airport zones and uses) (1). [1997 c.859 §8 (enacted in lieu of 836.620)]***

**FINDING:** Applicable Oregon Administrative Rules are addressed below.

## **OREGON ADMINISTRATIVE RULES CHAPTER 660, LAND CONSERVATION AND DEVELOPMENT DEPARTMENT**

### **Division 13 – Airport Planning**

OAR 660-013-0020, Definitions

***For purposes of this division, the definitions in ORS Chapter 197 apply unless the context requires otherwise. In addition, the following definitions apply:***

- ...
- (4) ***“Non Towered Airport” means an airport without an existing or approved control tower on June 5, 1995.***



**FINDING:** Staff includes this definition for reference, to demonstrate the Airport meets the definition of a non towered airport. The applicant proposes the subject Text Amendment for the purpose of establishing a control tower in the AD Zone in the future. The Airport did not contain an existing or approved control tower on June 5, 1995, and therefore will continue to meet the definition of a non towered airport even if a control tower is established in the future.

OAR 660-013-0303, Preparation and Coordination of Aviation Plans

- (2) ***A city or county with planning authority for one or more airports, or areas within safety zones or compatibility zones described in this division, shall adopt comprehensive plan and land use regulations for airports consistent with the requirements of this division and ORS 836.600 through 836.630. Local comprehensive plan and land use regulation requirements shall be coordinated with acknowledged transportation system plans for the city, county, and Metropolitan Planning Organization (MPO) required by OAR 660, division 12. Local comprehensive plan and land use regulation requirements shall be consistent with adopted elements of the state ASP and shall be coordinated with affected state and federal agencies, local governments, airport sponsors, and special districts. If a state ASP has not yet been adopted, the city or county shall coordinate the preparation of the local comprehensive plan and land use regulation requirements with ODA. Local comprehensive plan and land use regulation requirements shall encourage and support the continued operation and vitality of airports consistent with the requirements of ORS 836.600 through 836.630.***

**FINDING:** The submitted Burden of Proof provides the following statement.

The proposal is consistent with this rule because it proposes amendments to the text of the County's land use regulations that apply to the Bend Airport. The proposed text amendments would have the effect of allowing the development of one (1) air traffic control tower at the Bend Municipal Airport. The siting of a tower consistent with these amendments would support the continued operation and vitality of the Bend Municipal Airport by ensuring air traffic to and from the Airport was safely controlled and directed.

Staff concurs with this description and finds the proposed amendment to the DCC will encourage and support the continued operation of the Airport.

OAR 660-013-0050, Implementation of Local Airport Planning

***A local government with planning responsibility for one or more airports or areas within safety zones or compatibility zones described in this division or subject to requirements identified in ORS 836.608 shall adopt land use regulations to carry out the requirements of this division, or applicable requirements of ORS 836.608, consistent with the applicable elements of the adopted state ASP and applicable statewide planning requirements.***

**FINDING:** This administrative rule imposes a mandatory requirement on the County to adopt land use regulations consistent with the applicable elements of the adopted state Aviation System Plan (“ASP”) and applicable statewide planning requirements. The applicant proposes to amend the Airport Safety Combining Zone, which implements this administrative rule. Other applicable statewide planning requirements are addressed below, and staff finds this criterion will be met.

OAR 660-013-0070, Local Government Safety Zones for Imaginary Surfaces

- (1) A local government shall adopt an Airport Safety Overlay Zone to promote aviation safety by prohibiting structures, trees, and other objects of natural growth from penetrating airport imaginary surfaces.**
  - (a) The overlay zone for public use airports shall be based on Exhibit 1 incorporated herein by reference.**
  - (b) The overlay zone for airports described in ORS 836.608(2) shall be based on Exhibit 2 incorporated herein by reference.**
  - (c) The overlay zone for heliports shall be based on Exhibit 3 incorporated herein by reference.**
  
- (2) For areas in the safety overlay zone, but outside the approach and transition surface, where the terrain is at higher elevations than the airport runway surface such that existing structures and planned development exceed the height requirements of this rule, a local government may authorize structures up to 35 feet in height. A local government may adopt other height exceptions or approve a height variance when supported by the airport sponsor, the Oregon Department of Aviation, and the FAA.**

**FINDING:** The County has adopted an Airport Safety Combining Zone, and staff therefore finds subsection(1), is met. Subsection (2), above, allows a jurisdiction to adopt height exceptions to the imaginary surfaces of the Airport Safety Overlay Zone when supported by the airport sponsor, the Oregon Department of Aviation, and the FAA. The applicant in this case is the airport sponsor, and their request for a Text Amendment therefore indicates support for the height exception. Comments submitted August 14, 2023 from Oregon Department of Aviation indicate general support for the proposal, and the application materials document ongoing coordination between the airport sponsor and the FAA regarding the proposed tower.

OAR 660-013-0100, Airport Uses at Non-Towered Airports

**Local government shall adopt land use regulations for areas within the airport boundary of non-towered airports identified in ORS 836.610(1) that authorize the following uses and activities:**

- (1) Customary and usual aviation-related activities including but not limited to takeoffs, landings, aircraft hangars, tiedowns, construction and maintenance of airport facilities, fixed-base operator facilities, a residence for an airport caretaker or security officer, and other activities incidental to the normal operation of an airport. Residential, commercial, industrial, manufacturing, and other uses, except**

***as provided in this rule, are not customary and usual aviation-related activities and may only be authorized pursuant to OAR 660-013-0110.***

**FINDING:** The applicant proposes to add an air traffic control tower as a use permitted outright in the AD Zone. Staff finds an air traffic control tower is an airport facility and is, therefore, a customary and aviation-related activity.

## **DIVISION 12, TRANSPORTATION PLANNING**

### OAR 660-012-0060 Plan and Land use Regulation Amendments

- (1) *If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:***
- (a) *Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);***
  - (b) *Change standards implementing a functional classification system; or***
  - (c) *Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.***
    - (A) *Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;***
    - (B) *Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or***
    - (C) *Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.***

**FINDING:** This above language is applicable to the proposal because it involves an amendment to a land use regulation, specifically the provisions of the AD Zone. The proposed amendment would allow an air traffic control tower as a use permitted outright in the zone, with a height of up to 115 feet. While the Applicant is not proposing any land use development of the subject property at this time, the application materials indicate the intent is future construction of one air traffic control

tower at the Airport. Therefore, for the purpose of this criterion staff evaluates whether the applicant has demonstrated this future construction of an air traffic control tower will comply with the Transportation Planning Rule.

In the application materials submitted on June 9, 2023, the applicant estimates the air traffic control tower will generate no more than 10 additional vehicle trips per day, and therefore did not require additional analysis for transportation impacts. The County Transportation Planner then requested additional information, particularly regarding impacts to County intersections near the subject property. The Applicant then submitted a Traffic Impact Analysis (TIA) dated September 6, 2023, prepared by Joe Bessman of Transight Consulting LLC, which provided the following analysis of impacts to surrounding roadways and intersections:

The proposed comparative assessment of scenarios with and without the text amendment allowing an ATCT shows that there is very little change in the trip generation potential of the site. For purposes of a "reasonably likely" scenario, the assessment considered both volume scenarios with western and eastern access.

...

Based on the review presented herein, the proposed amendment to allow an Air Traffic Control Center within the adjacent Airport Development Zone would comply with the intent of the zoning, as it would allow implementation of the adopted Bend Municipal Airport Master Plan. This would only create minor impacts in area traffic volumes, as with this limited trip generation potential (5 additional weekday p.m. peak hour trips) this amendment would not:

- Change the functional classification of existing or planned transportation facilities;
- Change standards implementing a functional classification system, or
- Result in types of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility.

The revised TIA was reviewed by the County Senior Transportation Planner, who agreed with the report's conclusions. Staff finds that the proposed Text Amendment will be consistent with the identified function, capacity, and performance standards of the County's transportation facilities in the area. The proposed air traffic control tower will not change the functional classification of any existing or planned transportation facility or change the standards implementing a functional classification system. Regarding the memo dated September 6, 2023, the County Transportation Planner provided the following comments in an email dated September 18, 2023:

I have reviewed Mr. Bessman's September 6, 2023, Traffic Impact Analysis related to County file no. 247-23-000370-TA and I agree with the assumptions, methodology, and conclusions contained therein. As Mr. Bessman utilizes the 2040 planning horizon year (reflective of the most recent data included in the County's forthcoming Transportation System Plan update) this analysis appears to comply with relevant criteria. Mr. Bessman utilizes the acceptable road segment standard of 13,900 Average Daily Trips (ADT) which is incorporated into the County's most recent 2020-2040 Transportation System Plan. The literature review and engineering studies referenced in relation to staffing numbers and associated peak hour trips (5 employees and 5 total p.m. peak hour trips) are adequate. Staff agrees with Mr.

Bessman's summary of Transportation Planning Rule (TPR) Compliance and finds that relevant TPR provisions appear to be satisfied through the submittal of this additional information.

Based on the County Senior Transportation Planner's comments and the traffic memo prepared by Transight Consulting LLC, staff finds compliance with the Transportation Planning Rule has been effectively demonstrated.

## **DIVISION 15, STATEWIDE PLANNING GOALS AND GUIDELINES**

OAR 660-015, Division 15, Statewide Planning Goals and Guidelines

**FINDING:** The Statewide Planning Goals and the Applicant's findings are quoted below:

**Goal 1: Citizen Involvement. To develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process.**

**FINDING:** The proposed amendments will be consistent with Goal 1 because the County is relying on its citizen involvement program and land use procedures ordinance to conduct public review of these amendments. The procedures require a public hearing before a County hearings officer and subsequent review by the Board of County Commissioners before adoption. The applicant has proposed these findings for the County to rely and/or build upon to explain their final decisions on these amendments to the public.

**Goal 2: Land Use Planning. PART 1 - PLANNING: To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure on adequate factual base for such decisions and actions.**

**FINDING:** The proposed amendments will meet this goal because the applicant has developed an adequate factual base upon which the County may base its decision. The applicant has provided documentation with these findings that demonstrate the necessity for the air traffic control tower, including a decision by the FAA to include the Bend Municipal Airport in the Federal Contract Tower Program. The applicant has provided the potential locations for the air traffic control tower that were included in the 2021 Bend Airport Master Plan, also approved by the FAA and in the 2020 Tower Siting Report.

**Goal 3: Agricultural Lands. To preserve and maintain agricultural lands.**

**FINDING:** This goal is applicable because the areas surrounding the Bend Municipal Airport includes areas designated for Agriculture on the County's Comprehensive Plan and zoned EFUTRB, Exclusive Farm Use-Tumalo/Redmond/Bend subzone. The proposed text amendments would allow the City to establish an air traffic control tower at the Bend Municipal Airport. The tower itself does not have any operating characteristics that will either force a significant change or significantly increase the cost of accepted farming practices

occurring on EFU lands around the airport. The operation of the tower will not generate levels of noise or vibrations that would result in changes to farm practices and will not generate levels of traffic to and from the airport that would interfere with movement of farm equipment. The operation of the tower will involve a beacon that will rotate white and green to inform pilots of its location. Finally, the operation of the air traffic control tower will not require the use of irrigation water and in amounts that would impact irrigating pasture grasses on properties zoned EFU.

**Goal 4: Forest Lands. To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.**

**FINDING:** Goal 4 is not applicable to review of the proposed text amendments because none of the surrounding properties are designated Forest Lands under the County's Comprehensive Plan.

**Goal 5: To protect natural resources and conserve scenic and historic areas and open spaces.**

**FINDING:** Goal 5 is not applicable to review of the proposed text amendments because they do not include any changes to the County's Goal 5 inventories in its Comprehensive Plan, and do not also propose a use that would impact a Goal 5 resource.

STAFF NOTE: The County's Goal 5 protections are partially implemented through DCC Chapter 18.84, the Landscape Management Combining Zone. This overlay zone protects scenic resources through design limitations and additional protections for designated roadways, rivers, and streams. The subject property is not located within the Landscape Management Combining Zone and is not subject to these provisions.

**Goal 6: Air, Water and Land Resources. To maintain and improve the quality of the air, water and land resources of the state.**

**FINDING:** The proposal is consistent with Goal 6 because the operation of the air traffic control tower will help improve air quality around the airport. The establishment of the air traffic control tower and staff for its operation will help manage aircraft operations, aircraft landing and taking off, so that fewer aircraft are circling around the airport waiting to land.

**Goal 7: Natural Hazards. To protect people and property from natural hazards.**

**FINDING:** Goal 7 is not applicable to review of the proposed text amendments because there are no natural hazards mapped adjacent to the Bend Airport.

**Goal 8: To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.**

**FINDING:** The applicant finds that elements of Goal 8 are applicable to review of the proposed text amendments and other elements of Goal 8 are not. This finding begins by addressing the applicability of Goal 8 to the potential increase in recreational aviation activity that may result from having an ATCT at the Bend Municipal Airport. The purpose of the ATCT is to support a crew of air traffic controllers who would direct takeoffs and landings at the Bend Airport. The improved management of air traffic at the airport may provide for more reliable and safer aircraft operations, including those for tourists and visitors recreating in Central Oregon. The applicant finds that this element of the proposal would satisfy Goal 8 by providing for safer air traffic for citizens of the state recreating in Deschutes County.

The applicant finds that the elements of Goal 8 regarding destination resort siting and siting of necessary recreational facilities are not applicable to review of the proposed text amendments because they do not impact any Goal 8 destination resorts have been established in Deschutes County and do not propose any changes to the land use regulations under DCC Chapter 18.113. In addition, Goal 8 is not applicable because the proposed text amendment does not propose and will not impact recreational facilities in Deschutes County. The proposed text amendments will not influence existing or planned public parks or trails.

**Goal 9: Economic Development. To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.**

**FINDING:** The applicant finds that this goal is applicable because one of the outcomes of establishing an air traffic control tower at the Bend Municipal Airport will be safer aircraft operations, including those related to business traffic and related to airport-based businesses at the airport. The establishment of the air traffic control tower will support aviation-related economic development by improving safety and operations (takeoffs, landings) efficiency at the airport.

**Goal 10: Housing. To provide for the housing needs of citizens of the state.**

**FINDING:** Goal 10 is not applicable to review of the proposed text amendments because the amendments do not propose changes to the Deschutes County Zoning Ordinance that would provide needed housing.

**Goal 11: Public Facilities and Services**

**FINDING:** Goal 11 is not applicable to review of the proposed text amendments because they do not propose any changes to the County Toning Ordinance that would affect the provision of water, wastewater collection, or transportation facilities in Deschutes County. The amendments focus on changes that would allow the siting of one (1) air traffic control

tower at the Bend Municipal Airport. There are no amendments proposed that would involve any public facilities being extended to serve rural development. These proposed text amendments would also not have the effect of changing the existing water, wastewater, and transportation facilities that serve the Bend Municipal Airport.

**Goal 12: Transportation. To provide and encourage a safe, convenient and economic transportation system.**

**FINDING:** The proposed amendments are consistent with Goal i.2 because they will allow development of an air traffic control tower at the Bend Municipal Airport. The establishment of an air traffic control tower through these amendments will be consistent with Goal 12 by ensuring safer airport flight operations that are directed through the airport staff stationed at the air traffic control tower.

**Goal 13: Energy Conservation. To conserve energy.**

**FINDING:** Goal 13 is not applicable to these proposed text amendments because they do not include any changes that would affect energy conservation. These amendments do not propose any renewable energy facilities at the Bend Airport.

**Goal 14: Urbanization. To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.**

**FINDING:** Goal 14 is not applicable to review of the proposed text amendments because they do not affect an adopted urban growth boundary. Goal 14 is also not applicable because the proposed text amendments would not have the effect of allowing urban land uses on rural land.

**Goal 15: Willamette River Greenway; Goal 16: Estuarine Resources; Goal 17: Coastal Shorelands; Goal 18: Beaches and Dunes, and Goal 19: Ocean Resources.**

**FINDING:** These goals are not applicable to review of the proposed text amendments because the Bend Airport is not adjacent to the Willamette River and not adjacent to the coast or the Pacific Ocean.

Staff generally accepts the Applicant's responses and finds compliance with the applicable Statewide Planning Goals has been effectively demonstrated.

**IV. CONCLUSION & RECOMMENDATION**

Staff requests the Hearings Officer determine if the Applicant has met the burden of proof necessary to justify the proposed Text Amendment through effectively demonstrating



compliance with the applicable criteria of DCC Title 18 (the Deschutes County Zoning Ordinance), the Deschutes County Comprehensive Plan, and applicable sections of OAR and ORS.

**DESCHUTES COUNTY PLANNING DIVISION**

A handwritten signature in black ink that reads "Audrey Stuart". The signature is written in a cursive, flowing style.

Written by: Audrey Stuart, Associate Planner

A handwritten signature in black ink that reads "Will Groves". The signature is written in a bold, cursive style.

Reviewed by: Will Groves, Planning Manager

Attachments: 1) Proposed Text Amendments

## Chapter 18.76, Airport Development Zone

### **18.76.015 Definitions**

The following definitions apply only to Chapter 18.76.

“Customary and usual aviation-related activities” include, but are not limited to, takeoffs, landings, aircraft hangars, tiedowns, construction and maintenance of airport facilities, fixed-base operator facilities, a residence for an airport caretaker or security officer, and other activities incidental to the normal operation of an airport. Residential, commercial, industrial, manufacturing; and other uses, except as provided in this rule, are not customary and usual aviation-related activities and may only be authorized pursuant to OAR 660-013-0110.

“Fixed-base operator or FBO” means a commercial business granted the right by the airport sponsor to operate on an airport and provide aeronautical services such as fueling, hangaring, tie-down and parking, aircraft rental, aircraft maintenance, flight instruction, etc.

“Hangar” means an airport structure intended for the following uses:

1. Storage of active aircraft.
2. Shelter for maintenance, repair, or refurbishment of aircraft, but not the indefinite storage of nonoperational aircraft.
3. Construction of amateur-built or kit-built aircraft
4. Storage of aircraft handling equipment, e.g., tow bar, glider tow equipment, workbenches, and tools and materials used to service, maintain, repair or outfit aircraft: items related to ancillary or incidental uses that do not affect the hangars' primary use.
5. Storage of materials related to an aeronautical activity, e.g., balloon and skydiving equipment, office equipment, teaching tools, and materials related to ancillary or incidental uses that do not affect the hangars' primary use; storage of non-aeronautical items that do not interfere with the primary aeronautical purpose of the hangar (for example, televisions, furniture).
6. A vehicle parked at the hangar while the aircraft usually stored in that hangar is flying, subject to local airport rules and regulations.
7. A hangar may include restrooms, pilot lounge, offices, briefing rooms, and crew quarters.

["Air Traffic Control Tower" means a terminal facility which, through the use of air/ground communications, visual signaling, and other devices, provides air traffic control services to airborne aircraft operating in the vicinity of an airport and to aircraft operating on the airport movement area.](#)

### **18.76.030 Uses Permitted Outright**

The following uses and their accessory uses are permitted outright in all of the Airport Districts:

- A. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by DCC 18.116.230.
- B. Class III road or street project.
- C. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.
- D. Farm use as defined in DCC Title 18.
- E. Customary and usual aviation-related activities.
- F. Hangars are subject to the standards and criteria established by DCC 18.76.105.
- G. [An air traffic control tower, no higher than 115 feet in height.](#)

### **18.76.050 Use Limitations**

The following limitations and standards shall apply to all permitted uses in the Airport Districts:

- A. The height of any plant growth or structure or part of a structure such as chimneys, towers, antennas, power lines, etc., shall not exceed 35 feet.
  - 1. [DCC 18.76.050\(A\) does not apply to the siting of an air traffic control tower. An air traffic control tower up to 115 feet shall not require a height exception or variance.](#)
- B. In approach zones beyond the clear zone areas, no meeting place designed to accommodate more than 25 persons for public or private purposes shall be permitted.
- C. All parking demand created by any use permitted by DCC 18.76 shall be accommodated on the subject premises entirely off-street.
- D. No use permitted by DCC 18.76 shall require the backing of traffic onto a public or private street or road right of way.
- E. No power lines shall be located in clear zones.
- F. No use shall be allowed which is likely to attract a large quantity of birds, particularly birds which normally fly at high altitudes.

## Chapter 18.80, Airport Safety Combining Zone

### **18.80.022 Definitions**

- A. [Air Traffic Control Tower. A terminal facility which, through the use of air/ground communications, visual signaling, and other devices, provides air traffic control services to airborne aircraft operating in the vicinity of an airport and to aircraft operating on the airport movement area.](#)
- B. Aircraft. Helicopters and airplanes, but not hot air balloons or ultralights. (Balloons are governed by FAR Part 30, and ultralights by FAR Part 103. Ultralights are basically unregulated by the FAA.)
- C. Airport. The strip of land used for taking off and landing aircraft, together with all adjacent land used in connection with the aircraft landing or taking off from the strip of land, including but not limited to land used for existing airport uses.
- D. Airport Direct Impact Area. The area located within 5,000 feet of an airport runway, excluding lands within the runway protection zone and approach surface. (Redmond, Bend, and Sunriver)
- E. Airport Elevation. The highest point of an airport's usable runway, measured in feet above mean sea level.
- F. Airport Imaginary Surfaces (and zones). Imaginary areas in space and on the ground that are established in relation to the airport and its runways.

For the Redmond, Bend, Sunriver and Sisters airports, the imaginary surfaces are defined by the primary surface, runway protection zone, approach surface, horizontal surface, conical surface and transitional surface.

For the Cline Falls and Juniper airports, the imaginary areas are only defined by the primary surface and approach surface.

- G. Airport Noise Criterion. The State criterion for airport noise is an Average Day-Night Sound Level (DNL) of 55 decibels (dBA). The Airport Noise Criterion is not designed to be a standard for imposing liability or any other legal obligation except as specifically designated pursuant to OAR 340, Division 35.
- H. Airport Noise Impact Boundary. Areas located within 1,500 feet of an airport runway or within established noise contour boundaries exceeding 55 DNL.
- I. Airport Safety Combining Zone (AS Zone). A Deschutes County zone intended to place additional land use conditions on land impacted by the airport while retaining the existing underlying zone. The airport imaginary surfaces, impact areas, boundaries and their use limitations comprise the AS Zone. The AS Zone may apply to either public-use or private-use airports.
- J. Airport Secondary Impact Area. The area located between 5,000 and 10,000 feet from an airport runway. (Redmond, Bend, and Sunriver)

- K. Airport Sponsor. The owner, manager, or other person or entity designated to represent the interests of an airport.
- L. Airport Uses. Those uses described in OAR 660-013-0100 and 660-013-0110.
- M. Approach Surface. A surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface.

For Redmond, Bend, Sunriver, and Sisters airports:

1. The inner edge of the approach surface is the same width as the primary surface and it expands uniformly to a width of:
  - a. 1,250 feet for a utility runway having a visual approach;
  - b. 1,500 feet for other than a utility runway having a visual approach;
  - c. 2,000 feet for a utility runway having a non-precision instrument approach;
  - d. 3,500 feet for a non-precision instrument runway, other than utility, having visibility minimums greater than three-fourths statute mile;
  - e. 4,000 feet for a non-precision instrument runway, other than utility, having visibility minimums at or below three-fourths statute mile; and
  - f. 16,000 feet for precision instrument runways.
2. The approach surface extends for a horizontal distance of
  - a. 5,000 feet at a slope of 20 feet outward for each foot upward for all utility runways;
  - b. 10,000 feet at a slope of 34 feet outward for each foot upward for all non-precision instrument runways, other than utility; and
  - c. 10,000 feet at a slope of 50 feet outward for each one foot upward, with an additional 40,000 feet at slope of 40 feet outward for each one foot upward, for precision instrument runways.
3. The outer width of an approach surface will be that width prescribed in DCC 18.80.022 ~~(H)~~(M)(3) for the most precise approach existing or planned for that runway end.

For the Cline Falls and Juniper airports:

4. The inner edge of the approach surface is the same width as the primary surface and it expands uniformly to a width of 450 feet for that end of a private use airport with only visual approaches. The approach surface extends for a horizontal distance of 2,500 feet at a slope of 20 feet outward for each one foot upward.

- N. Average Day-Night Sound Level (DNL). Average day-night sound level is the FAA standard measure for determining the cumulative exposure of individuals to noise. DNL is the equivalent of noise levels produced by aircraft operations during a 24-hour period, with a ten-decibel penalty applied to the level measured during nighttime hours (10:00 p.m. to 7:00 am).
- O. Conical Surface. An element of the airport imaginary surfaces that extends outward and upward from the periphery of the horizontal surface at a slope of 20:1 for a horizontal distance of 4,000 feet and to a vertical height of 350 feet above the airport elevation.
- P. Department of Aviation. The Oregon Department of Aviation, formerly the Aeronautics Division of the Oregon Department of Transportation.
- Q. FAA. Federal Aviation Administration.
- R. FAA's Technical Representative. As used in DCC 18.80, the federal agency providing the FAA with expertise on wildlife and bird strike hazards as they relate to airports. This may include, but is not limited to, the USDA-APHIS-Wildlife Services.
- S. FAR. Regulation issued by the FAA.
- T. FAR Part 77. Regulation, Part 77, "Objects Affecting Navigable Airspace," establishes standards for determining obstructions to navigable airspace.
- U. Height. The highest point of a structure or tree, plant or other object of natural growth, measured from mean sea level.
- V. Horizontal Surface. A horizontal plane 150 feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of specified radii from the center of each end of the primary surface of each runway of each airport and connecting the adjacent arcs by lines tangent to those arcs. The radius of each arc is:
  - 1. 5,000 feet for all runways designated as utility.
  - 2. 10,000 feet for all other runways.
  - 3. The radius of the arc specified for each end of a runway will have the same arithmetical value. That value will be the highest determined for either end of the runway. When a 5,000-foot arc is encompassed by tangents connecting two adjacent 10,000-foot arcs, the 5,000-foot arc shall be disregarded on the construction of the perimeter of the horizontal surface.
- W. Non-precision Instrument Runway. A runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in non-precision instrument approach has been approved, or planned, and for which no precision approach facilities are planned or indicated on an FAA-approved airport layout plan or other FAA planning document.
- X. Non-Towered Airport. An airport without an existing or approved control tower on June 5, 1995.
- Y. Obstruction. Any structure or tree, plant or other object of natural growth that penetrates an imaginary surface.

- Z. Other than Utility Runway. A runway that is constructed for and intended to be used by turbine-driven aircraft or by propeller-driven aircraft exceeding 12,500 pounds gross weight.
- AA. Precision Instrument Runway. A runway having an existing instrument approach procedure utilizing air navigation facilities that provide both horizontal and vertical guidance, such as an Instrument Landing System (ILS) or Precision Approach Radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated by an FAA-approved airport layout plan or other FAA planning document.
- BB. Primary Surface. A surface longitudinally centered on a runway.

For the Redmond, Bend, Sunriver, and Sisters airports, when a runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each end of that runway. When a runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The width of the primary surface is:

1. 250 feet for utility runways with only visual approaches,
2. 500 feet for utility runways having non-precision instrument approaches,
3. 500 feet for other than utility runways having non-precision instrument approaches with visibility minimums greater than three-fourths statute mile, and
4. 1,000 feet for non-precision instrument runways with visibility minimums at or below three-fourths statute mile, and for precision instrument runways.

For the Cline Falls and Juniper airports, the primary surface ends at each end of a runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The width of the primary surface is 200 feet.

- CC. Public Assembly Facility. A permanent or temporary structure or facility, place or activity where concentrations of people gather in reasonably close quarters for purposes such as deliberation, education, worship, shopping, employment, entertainment, recreation, sporting events, or similar activities. Public assembly facilities include, but are not limited to, schools, religious institutions or assemblies, conference or convention facilities, employment and shopping centers, arenas, athletic fields, stadiums, clubhouses, museums, and similar facilities and places, but do not include parks, golf courses or similar facilities unless used in a manner where people are concentrated in reasonably close quarters. Public assembly facilities also do not include air shows, structures or uses approved by the FAA in an adopted airport master plan, or places where people congregate for short periods of time such as parking lots or bus stops.
- DD. Runway. A defined area on an airport prepared for landing and takeoff of aircraft along its length.
- EE. Runway Protection Zone (RPZ). An area off the runway end used to enhance the protection of people and property on the ground. The RPZ is trapezoidal in shape and centered about the extended runway centerline. The inner width of the RPZ is the same as the width of the primary

surface. The outer width of the RPZ is a function of the type of aircraft and specified approach visibility minimum associated with the runway end. The RPZ extends from each end of the primary surface for a horizontal distance of:

1. 1,000 feet for utility runways.
2. 1,700 feet for other than utility runways having non-precision instrument approaches.
3. 2,500 feet for precision instrument runways.

[NOTE: the outer width of the RPZ is specified by airport type in OAR 660, Division 13, Exhibit 4]

- FF. Significant. As it relates to bird strike hazards, "significant" means a level of increased flight activity by birds across an approach surface or runway that is more than incidental or occasional, considering the existing ambient level of flight activity by birds in the vicinity.
- GG. Structure. Any constructed or erected object, which requires a location on the ground or is attached to something located on the ground. Structures include but are not limited to buildings, decks, fences, signs, towers, cranes, flagpoles, antennas, smokestacks, earth formations and overhead transmission lines. Structures do not include paved areas.
- HH. Transitional Surface. Those surfaces that extend upward and outward at 90 degree angles to the runway centerline and the runway centerline extended at a slope of seven feet horizontally for each foot vertically from the sides of the primary and approach surfaces to the point of intersection with the horizontal and conical surfaces. Transitional surfaces for those portions of the precision approach surfaces which project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at a 90-degree angle to the extended runway centerline.
- II. Utility Runway. A runway that is constructed for and intended to be used by propeller driven aircraft of 12,500 maximum gross weight and less.
- JJ. Visual Runway. A runway intended solely for the operation of aircraft using visual approach procedures, where no straight-in instrument approach procedures or instrument designations have been approved or planned, or are indicated on an FAA-approved airport layout plan or any other FAA planning document.
- KK. Water Impoundment. Includes wastewater treatment settling ponds, surface mining ponds, detention and retention ponds, artificial lakes and ponds, and similar water features. A new water impoundment includes an expansion of an existing water impoundment except where such expansion was previously authorized by land use action approved prior to the effective date of this ordinance.

### **18.80.028 Height Limitations**



All uses permitted by the underlying zone shall comply with the height limitations in DCC 18.80.028. When height limitations of the underlying zone are more restrictive than those of this overlay zone, the underlying zone height limitations shall control. [ORS 836.619; OAR 660-013-0070]

- A. Except as provided in DCC 18.80.028(B-D), no structure or tree, plant or other object of natural growth shall penetrate an airport imaginary surface. [ORS 836.619; OAR 660-013-0070(1)]
- B. For areas within airport imaginary surfaces but outside the approach and transition surfaces, where the terrain is at higher elevations than the airport runway surfaces such that existing structures and permitted development penetrate or would penetrate the airport imaginary surfaces, a local government may authorize structures up to 35 feet in height.
- C. Other height exceptions or variances may be permitted when supported in writing by the airport sponsor, the Department of Aviation and the FAA. Applications for height variances shall follow the procedures for other variances and shall be subject to such conditions and terms as recommended by the Department of Aviation and the FAA (for Redmond, Bend and Sunriver.)
- D. [An air traffic control tower may be up to 115 feet in height.](#)

#### **18.80.044 Land Use Compatibility**

Applications for land use or building permits for properties within the boundaries of this overlay zone shall comply with the requirements of DCC 18.80 as provided herein. When compatibility issues arise, the Planning Director or Hearings Body is required to take actions that eliminate or minimize the incompatibility by choosing the most compatible location or design for the boundary or use. Where compatibility issues persist, despite actions or conditions intended to eliminate or minimize the incompatibility, the Planning Director or Hearings Body may disallow the use or expansion, except where the action results in loss of current operational levels and/or the ability of the airport to grow to meet future community needs. Reasonable conditions to protect the public safety may be imposed by the Planning Director or Hearings Body. [ORS 836.619; ORS 836.623(1); OAR 660-013-0080] [An air traffic control tower, as defined in DCC 18.80.022, is not subject to this section.](#)

...

#### **18.80 Declaration Of Anticipated Noise**

As a condition of the grant of development approval pursuant to DCC 18.80, the undersigned, hereinafter referred to as Grantor hereby covenants and agrees that it shall not, by reason of their ownership or occupation of the following described real property, protest or bring suit or action against the \_\_\_\_\_ [Name of Airport] or Deschutes County, for aviation-related noise, including property damage or personal injury from said noise connected when such activities conform to:

1. Airport activities lawfully conducted in connection with a pre-existing airport, as that term is defined in DCC 18.80.022(~~B~~)(C), at the described airport; or 2. Airport activities that might be lawfully conducted in the future at the described airport under County or State permits or exemptions.

The real property of Grantor subject to this covenant and agreement is situated in Deschutes County, State of Oregon, and described as set forth in that certain [Statutory Warranty Deed] dated [date], as record in [the Official Records of Deschutes County as instrument number 20xx-xxxxx] OR [Volume xx, Page xx of the Deschutes County Board of Records];.

Grantor acknowledge that by virtue of such grant he/they have no remaining rights to complain or protest about the protected activities described above.

This Declaration of Anticipated Noise runs with the land and is binding upon the heirs, successors and assigns of the undersigned's interest in the described real property or any persons acquiring through he undersigned an interest in the described real property.

Deschutes County requires the execution of this covenant and agreement by the Grantor as a pre-requisite to Deschutes County approving a partition, subdivision, or issuing a building permit for Grantor's development on the above described real property, which real property is located within the noise impact boundary of the \_\_\_\_\_ [Name of Airport]. This Declaration is executed for the protection and benefit of the \_\_\_\_\_ [Name of Airport] and Deschutes County's interest in said airport and to prevent development in adjacent lands to said airport which will interfere with the continued operation existent and development of said airport.

Dates this \_\_\_\_ day of \_\_\_\_, 20 \_\_\_\_\_

Grantor [Name]

*[insert notarial certificate]*