

ORDINANCE NO. 799

AN ORDINANCE RELATING TO PLANNING AND ZONING; AMENDING THE SCAPPOOSE COMPREHENSIVE PLAN TO ADD "AIRPORT LAND USE GOALS AND POLICIES" AND AMENDING THE SCAPPOOSE MUNICIPAL CODE TO ADD A NEW CHAPTER 17.73 REGARDING "AR AIRPORT RELATED USES."

WHEREAS, an application was filed by Sierra Pacific Communities, LLC to amend the Comprehensive Plan to add an "Airport" designation and to amend the Development Code to add an "Airport Related" zoning designation, both of which could be applied to areas near the Scappoose Industrial Airpark, and

WHEREAS, the Planning Commission held a hearing on the application on November 8, 2007 and the City Council held hearings on the application on January 22, 2008 and May 19, 2008; now therefore,

THE CITY OF SCAPPOOSE ORDAINS AS FOLLOWS:

Section 1. The application referenced in the above recitals is approved.

Section 2. The listing of Land Use Goals and Policies within the Scappoose Comprehensive Plan is hereby amended to read as follows: (Underlined language is added, stricken language is deleted)

"LAND-USE GOALS AND POLICIES

- 1) GENERAL GOALS FOR LAND USES
- 2) URBAN GROWTH BOUNDARY
- 3) GENERAL RESIDENTIAL
- 4) SUBURBAN RESIDENTIAL
- 5) MANUFACTURED HOME RESIDENTIAL
- 6) COMMERCIAL
- 7) INDUSTRIAL
- 8) AIRPORT LAND USE GOALS AND POLICIES
- 9) PUBLIC AND SEMI-PUBLIC LANDS
- ~~9~~ 10) HAZARD AREAS
- ~~10~~ 11) OPEN SPACE-DESIGN REVIEW LANDS"

Section 3. The Land Use Goals and Policies section of the Scappoose Comprehensive Plan is hereby amended by adding the text contained in Exhibit A, attached hereto and hereby incorporated by reference.



Section 4. The Scappoose Municipal Code is hereby amended by adding a new chapter 17.73, AR AIRPORT RELATED. The text of the new chapter is attached hereto as Exhibit B and hereby incorporated by reference.

Section 5. The City Council adopts the Findings of Fact attached hereto as Exhibit C in support of the amendments adopted herein.

Passed and adopted by the City Council this 23rd day of June, 2008, and signed by the Mayor and City Recorder in authentication of its passage.


CITY OF SCAPPOOSE, OREGON



Scott Burge, Mayor

First reading May 19, 2008
Second reading June 23, 2008

Attest:



Susan Pentecost, City Recorder



EXHIBIT A

AIRPORT LAND USE GOALS AND POLICIES

Preface

The Airport designation covers airport related development. The Land Use and Development Code will specify whether the land can be used for airport-related light industrial activities or airport residential development.

The Airport designation will aid in the economic development of the Scappoose Industrial Airpark by identifying locations for future airport related development that can support and take advantage of airport operations. This designation broadens the range of economic development opportunities allowed near the Airpark while encouraging and supporting the Airpark's continued operation and vitality.

Airport related light industrial uses are permitted outright within the Airport designation thus encouraging airport related industry to locate near the airport. In addition to allowing airport related light industrial uses, this designation will allow airport residential development as a conditional use in the Airport Related Zone, as specified in the Development Code. Airport residential development provides economic development opportunities by attracting airport related business owners and by increasing the size of the local fleet, which in turn increases opportunities for aircraft maintenance and repair businesses. Airport residential development would also provide a steady base of financial support for the airport through access fees. Residential development at the Scappoose Industrial Airpark would require exploration of siting options and would occur only on private land in the vicinity of the Airpark, thus requiring cooperation between the private sector and the airport sponsor.

Significant Findings of the Plan with Regards to the Airport Land Use Designation

- 1) The Scappoose Industrial Airpark is located within the city limits of Scappoose along Honeyman Road, northeast of downtown Scappoose. Access to the airport is provided by Crown Zellerbach Road and West Lane Road.
- 2) The airport is owned, operated, and maintained by the Port of St. Helens, the airport sponsor.
- 3) Per the State Aviation System Plan, the Scappoose Industrial Airpark is a Category 2 airport and is the second busiest airport without an air traffic control tower in the State of Oregon. A Category 2 airport is defined as a business or high activity general aviation airport with over 30,000 operations per year and at least 500 turbine aircraft operations. In 2007, the Scappoose Industrial Airpark had over 80,000 operations.

- 4) The airport is one of three airports with a runway over 5,000 feet in length within a 30 nautical mile radius of the Portland International Airport. The airport has one runway, 5,100 feet by 100 feet, and one main parallel taxiway on each side of the runway.
- 5) The airport is considered a major airport in the Portland metropolitan area.
- 6) The primary fixed base operator (FBO) at the airport is Transwestern Aviation. Other airport businesses include Sherpa Aircraft Manufacturing, Sport Copter, Inc., Oregon Aero, Composites Universal Group, Evergreen Aviation Services and Restorations, Overall Aviation Services and the Northwest Antique Airplane Club.
- 7) Utilities serving the airport include Columbia River PUD (electricity), City of Scappoose (water, west side of the airport), and Century Tel (telephone). With the exception of new construction on the west side of the airport, which is served by public sewer, buildings have on-site septic systems.
- 8) The Scappoose Rural Fire Protection District provides rescue and fire fighting services for the airport.
- 9) The Scappoose Industrial Airpark is a valuable resource and provides economic benefits to the City. The City supports the continued operation and vitality of the airport.
- 10) This chapter addresses only the Scappoose Industrial Airpark and land adjacent to the airport.

Goals for the Airport (A) Land Use Designation

It is the goal of the City of Scappoose to:

- 1) Support and promote the continued safe operation and economic vitality of the Scappoose Industrial Airpark.
- 2) Provide a location for airport-related light industrial activities in an industrial business park setting where there is good highway and airport access and where their environmental effects will have a minimal impact upon the community.
- 3) Utilize the Scappoose Industrial Airpark as an attractor for aviation-related industries that are dependent upon or compatible with and benefit from aircraft and air transportation and interact strongly with the cluster of aviation-related businesses also located near the airport.

4) Take advantage of the transportation options provided by the Scappoose Industrial Airpark by allowing airport-related land uses, including industrial, commercial, and residential.

Policies for the Airport (A) Land Use Designation

It is the policy of the City of Scappoose to:

- 1) Locate light industrial and airport related development areas so they have a convenient relationship to the community's transportation system; this includes vehicular and aircraft transportation systems.
- 2) Screen or set back the boundaries of airport related development areas from abutting existing residential uses outside the Airport land use designation; within the Airport land use designation, screen or set back airport residential uses from airport related light industrial uses.
- 3) Apply this designation to areas near the airport.
- 4) Protect the stability and functional aspects of airport related uses by prohibiting incompatible uses that create safety hazards or otherwise interfere with customary and usual aviation-related activities (as defined by the Development Code).
- 5) Restrict airport residential development to subdivisions or partitions in accordance with the Airport Related Zone in the Development Code.
- 6) Work with the Port of St. Helens to maintain the continuing viability of the Scappoose Industrial Airpark.

EXHIBIT B

Chapter 17.73

AR AIRPORT RELATED

Sections:

17.73.010	Purpose.
17.73.020	Conformance with Public Use Airport Safety and Compatibility Overlay Zone.
17.73.030	Definitions.
17.73.040	Permitted uses.
17.73.050	Conditional uses.
17.73.060	Uses Permitted Subject to the Acceptance of the Airport Sponsor.
17.73.070	Notices and Restrictions for Development Within the Airport Related Zone.
17.73.080	Lot standards.
17.73.090	Setbacks.
17.73.100	Building Height.
17.73.110	Landscaping Requirements.
17.73.120	Circulation.
17.73.130	Parking.

17.73.010 Purpose. The purpose of the Airport Related (AR) zone is to support and promote the Scappoose Industrial Airpark in its operation and future development by protecting it from incompatible uses and encouraging economic development of the City by allowing airport-related industrial and airport residential development.

The Airport Related (AR) zone is intended to:

1. Provide locations for development activities dependent upon aircraft or air transportation when such activities require or are aided by a location within or immediately adjacent to an airport providing primary flight operations and passenger or cargo service facilities.
2. Provide locations for development activities that are compatible with and benefit from air transportation, including those businesses that experience improved performance and have an interdependent relationship with the aviation-related businesses located near the airport.
3. Take advantage of the transportation options provided by the Scappoose Industrial Airpark by allowing airport-related industrial and airport residential development that has a connection to the airport through permitted access.

17.73.020 Conformance with Public Use Airport Safety and Compatibility Overlay Zone. All uses, activities, facilities and structures allowed in the Airport Related (AR) Zone shall comply with the requirements of the Public Use Airport Safety and Compatibility Overlay (AO) Zone, Chapter 17.88. In the event of a conflict between the requirements of this zone and those of the Public Use Airport Safety and Compatibility Overlay (AO) Zone, the requirements of the overlay shall control.



17.73.030 Definitions. Unless the context specifically indicates otherwise, the meaning of terms used in this chapter shall be as follows:

A. "Aircraft" includes airplanes and helicopters, but not hot air balloons or ultralights.

B. "Airport residential development" is a residential development in the vicinity of the Scappoose Industrial Airpark requiring a conditional use permit that has a through-the-fence agreement with the airport sponsor to facilitate runway access for residents of the development.

C. "Airport sponsor" is the owner, manager, person, or entity designated to represent the interests of an airport. For the Scappoose Industrial Airpark, the airport sponsor is the Port of St. Helens.

D. "Avigation easement" is a property right acquired from a land owner that grants the right-of-flight; the right to cause noise and vibrations, related to lawful aircraft operations; the right to restrict or prohibit certain lights and electromagnetic signals; and the right to unobstructed airspace over the property above the specified height.

E. "Clear area" is a land area required to be clear of obstructions per Federal Aviation Administration regulations for airports and airspace.

F. "Combination garage" is a garage for the parking and storage of automobiles and aircraft for commercial, industrial, or residential uses.

G. "Development activities dependent upon aircraft or air transportation" include businesses that utilize aircraft as key functions of their business activities or the regular use of general aviation aircraft by the businesses or their clients.

H. "Disclosure statement" is a statement, recorded in the County records by the property owner, acknowledging that the property is located in close proximity to the airport and signifying the owner's awareness of the associated noise levels, vibrations, fumes, dust, fuel, fuel particles, and other effects that may be caused by aircraft operations on or near the airport or may be caused by any other land uses authorized by the City and allowed within this zone.

I. "FAA" is the Federal Aviation Administration.

J. "General aviation" is any flight that is not military, does not fly on a regular schedule, and is not classified as a commuter or regional air carrier.

K. "Hangar" is a building for the storage and maintenance of aircraft.

L. "Jointly owned hangars" are private buildings for the storage and maintenance of aircraft located on a separate parcel or lot from the residential dwelling it serves.

M. "Object free area" is an area on the ground centered on a runway or taxiway centerline provided to enhance the safety of aircraft operations by having the area free of objects, except for objects that are permitted in the Object Free Area for air navigation or aircraft ground maneuvering purposes per FAA Advisory Circular 150/5300-13.

N. "Runway" is a defined rectangular surface on an airport prepared or suitable for the landing and takeoff of aircraft.

O. "Residential aircraft hangar" is an accessory building less than two thousand (2,000) square feet and twenty feet in height, constructed on a one- or two-family residential property where aircraft are stored. Such use will be considered as a residential accessory use incidental to the dwelling, consistent with Oregon Structural Specialty Code, Section 412.3. Any hangar on a residential lot that does not meet the definition of "residential aircraft hangar" shall comply with other applicable building code provisions.

P. "Safety areas" are defined surfaces surrounding the runway prepared or suitable for reducing the risk of damage to airplanes in the event of an undershoot, overshoot, or excursion from the runway.

Q. "Taxiway" is a paved path established for the taxiing of aircraft from one location to another location.

R. "Through the fence" is access to an airport's public landing area by aircraft based on land adjacent to, but not part of, the airport public property requiring a permit from the airport sponsor.

S. "Tie-down" is a paved or grass area intended for parking aircraft.

T. "Vehicular garage" is a garage for the parking and storage of automobiles but not aircraft.

17.73.040 Permitted uses. Uses shall be developed and located in a manner consistent with the most recent federally approved airport layout plan, the 2004 Scappoose Industrial Airpark Airport Master Plan (as amended August 9, 2006). Only the following uses, their accessory uses, and activities are permitted in the Airport Related (AR) Zone:

A. Customary and usual aviation-related activities, including but not limited to takeoffs and landings; aircraft hangars and tie-downs; construction and maintenance of airport facilities; fixed based operator facilities; a residence for an airport caretaker or security officer; and other activities incidental to the normal operation of an airport. Except as provided in this chapter, "customary and usual aviation-related activities" do not include residential, commercial, industrial, manufacturing and other uses;

B. Air passenger and air freight services and facilities, at levels consistent with the classification and needs identified in the Oregon Department of Aviation Airport System Plan;

C. Emergency medical flight services, including activities, aircraft, accessory structures, and other facilities necessary to support emergency transportation for medical purposes. Emergency medical flight services do not include hospitals, medical offices, medical labs, medical equipment sales, and other similar uses;

D. Law enforcement and firefighting activities, including aircraft and ground-based activities, facilities and accessory structures necessary to support federal, state or local law enforcement or land management agencies engaged in law enforcement or firefighting activities. Law enforcement and firefighting activities include transport of personnel, aerial observation, and transport of equipment, water, fire retardant and supplies;

E. Search and rescue operations, including aircraft and ground-based activities that promote the orderly and efficient conduct of search or rescue related activities;

F. Manufacturing, assembly, processing, packaging, testing, treatment, repair, or distribution of aircraft or aircraft related components or products for sale to the public;

G. A business that relies on the use of a general aviation aircraft for its business activities including the transport of goods, services, employees, or clients;

H. Aerial surveying, mapping, and photography;

I. Flight instruction, including activities, facilities, and accessory structures located at airport sites that provide education and training directly related to aeronautical activities. Flight instruction includes ground training and aeronautic skills training, but does not include schools for flight attendants, ticket agents, or similar personnel;



J. Aircraft rental, including activities, facilities and accessory structures that support the provision of aircraft for rent or lease to the public;

K. Aircraft sales and the sale of aeronautic equipment and supplies including activities, facilities, and accessory structures for the storage, display, demonstration, and sales of aircraft and aeronautic equipment and supplies to the public but not including activities, facilities, or structures for the manufacturing of aircraft or aircraft-related products for sale to the public;

L. Aircraft service, maintenance, and training including activities, facilities, and accessory structures provided to teach aircraft service and maintenance skills and to maintain, service, refuel or repair aircraft or aircraft components. "Aircraft service, maintenance and training" includes the construction and assembly of aircraft and aircraft components for personal use, but does not include activities, structures, or facilities for the manufacturing of aircraft or aircraft-related products for sale to the public;

M. Tie-downs or hangars for the parking, storage, and maintenance of business or personal aircraft;

N. Greenways and other open space, including but not limited to bicycle and pedestrian paths and parks. Greenways and other open space shall be separated from taxiways by natural or man-made barriers;

O. Home occupation (Type I) subject to Chapter 17.142, Home Occupations;

P. Other airport compatible light industrial uses.

17.73.050 Conditional uses. The following uses and their accessory uses may be permitted when authorized by the Planning Commission in accordance with the requirements of Chapter 17.130, Conditional Use, other relevant sections of this title, and any conditions imposed by the Planning Commission. Notification of the airport sponsor is required in accordance with Chapter 17.88, Public Use Airport Safety and Compatibility Overlay. Uses in subsection (A) shall provide a letter from the Federal Aviation Administration in support of the proposed project and a statement from a qualified aviation expert demonstrating that the proposed residential development meets the safety and security standards of the FAA and the airport sponsor upon submittal of an application for a conditional use permit for the proposed residential development:

A. Airport residential development with a physical connection to the airport through private taxiways within a residential subdivision or partition that has been approved through the Conditional Use and Subdivision (Chapter 17.150) or Partition (Chapter 17.152) processes. Allowable dwelling types shall include single-family, detached residential dwelling units; manufactured homes on individual lots; or, if the property is subject to the Planned Development Overlay, alternative housing concepts (e.g. cluster units, row houses, town homes) permitted under Section 17.81.030. Individual housing units and their associated accessory buildings within the approved subdivision or partition do not need Conditional Use Permits.

B. Home occupation (Type II) subject to Chapter 17.142, Home Occupations and based on written confirmation by the airport sponsor that the home occupation does not hinder aviation related activities or uses.

C. Accessory Dwelling Units (ADU's) subject to the provisions of Chapter 17.92, Accessory Dwelling Units.

D. All residential dwelling units located within the fifty-five Ldn airport noise contour identified in the 2004 Scappoose Industrial Airpark Airport Master Plan (as amended August 9, 2006) shall utilize Noise Level Reduction (NLR) construction methods that

provide at least twenty-five Ldn NLR between interior dwelling space and exterior. Prior to issuance of a building permit for such dwellings, a noise report prepared by a professional engineer shall be submitted demonstrating conformance with these criteria.

17.73.060 Uses Permitted Subject to the Acceptance of the Airport Sponsor. The following uses and activities and their associated facilities and accessory structures are permitted in the AR zone upon demonstration of acceptance by the airport sponsor:

A. Aeronautic recreational and sporting activities, including activities, facilities and accessory structures at airports that support recreational usage of aircraft and sporting activities that require the use of aircraft or other devices used and intended for use in flight. Aeronautic recreation and sporting activities authorized under this section include, but are not limited to, fly-ins; glider flights; ultralight aircraft flights; displays of aircraft; aeronautic flight skills contests; and gyrocopter flights, but do not include hot air ballooning, flights carrying parachutists or parachute drops (including all forms of skydiving);

B. Crop dusting activities, including activities, facilities and structures accessory to crop dusting operations. Crop dusting activities include, but are not limited to, aerial application of chemicals, seed, fertilizer, defoliant and other chemicals or products used in a commercial agricultural, forestry or rangeland management setting;

C. Agricultural and forestry activities, including activities, facilities and accessory structures that qualify as a "farm use" as defined in ORS 215.203 or "farming practice" as defined in ORS 30.930.

17.73.070 Notices and Restrictions for Development Within the Airport Related Zone.

- A. Prior to recording a final plat or issuance of development permits, a "through the fence" agreement shall be secured from the airport sponsor for uses in subsection (A) of Section 17.73.050.
- B. Avigation Easement. In conjunction with the recording of a land division plat, the owner shall dedicate an avigation easement to the airport sponsor and shall provide a copy of the recorded easement to the City. The avigation easement shall grant unobstructed flight in the airspace and prohibit any structures, growth, or other obstructions from penetrating Federal Aviation Regulation (FAR) Part 77 surfaces and provide a right of entry to remove, mark, or light any structure of any such obstruction at a cost to the property owner. The easement shall hold the City, airport sponsor, Scappoose Industrial Airpark, and public harmless from any damages caused by noise, vibrations, fumes, dust, fuel, fuel particles, or other effects that may be caused by the operation of aircraft taking off, landing, or operating on or near the airpark, not including the physical impact of aircraft or parts thereof.
- C. Disclosure Statement. In conjunction with the recording of a land division plat, the owner shall record a Disclosure Statement (as defined in Section 17.73.030) in the County records and shall provide a copy of the recorded Disclosure Statement to the City.
- D. Covenants, Conditions, and Restrictions (CC&Rs):
 - a. A residential subdivision or partition approved through the Conditional Use process shall create a homeowners association and shall have associated CC&Rs enforced by the board of directors of the homeowners association.



Items that the CC&Rs shall address include, but are not limited to, the following:

- i. Construction standards;
 - ii. Architectural guidelines;
 - iii. Landscaping requirements;
 - iv. Parking standards; and
 - v. Maintenance of common facilities, taxiways, and open space tracts
- b. All CC&Rs shall be reviewed and approved by the City prior to final plat approval. The applicant shall provide a copy of the CC&R's to the airport sponsor for review and comment.
- E. Except as provided in subsection (F) below, at a minimum each residential lot shall have a hangar or residential aircraft hangar on site to provide for the storage and maintenance of at least one aircraft. An occupancy permit for a dwelling shall not be issued until the occupancy permit for the adjacent or attached hangar is issued.
- F. Up to twenty-five percent of the dwelling units in a residential subdivision shall be permitted to have hangars constructed in a location other than on the lot itself provided the location is within the boundary of the subdivision or partition. Hangars not located on individual residential lots shall be jointly owned with dedicated rights to a specific lot within the subdivision. A deed restriction shall be recorded with the final plat that includes language referencing which residential lots are tied to the jointly owned hangar units and that these hangar units cannot be sold or transferred separate from the sale or transfer of the corresponding residential lot; these lots shall not be required to construct a hangar. The residential lots without hangars shall have a similar deed restriction as the jointly owned hangar units. The applicant shall provide a master list with the subdivision application that references which lots would have hangars located on the lots and which lots would have assigned hangars to ensure the twenty-five percent threshold is not exceeded. An occupancy permit for a dwelling shall not be issued until the occupancy permit for the dedicated hangar is issued.
- G. Uses and structures shall conform to the land use compatibility requirements on noise, outdoor lighting, glare, industrial emissions, communications facilities and electrical interference, and limitations and restrictions on allowed uses in Section 17.88.070.
- H. Taxiways shall not be located within fifty feet of an abutting existing residential zone.

17.73.080 Lot standards. No lot shall have less than the following standards.

- A. Lot area.
1. The minimum lot area shall be ten thousand square feet.
 2. The minimum average lot area for a subdivision shall be one-half acre, based on net site area. Net site area is the gross site area minus public rights-of-way, public support facilities, sensitive lands where development is prohibited under Title 17, and open space.
- B. Lot dimensions and frontage.
1. The minimum lot width shall be fifty feet, except the minimum lot width on the arc of an approved full cul-de-sac shall be thirty feet.

2. Each lot shall have frontage on a public street for a distance of at least fifty feet or have vehicular access to a public street through an access easement that is at least twenty-five feet wide. Flag lots shall provide a minimum of twenty-five feet of frontage along a public right of way. No private streets or easements shall be created to provide frontage or vehicular access, unless approved by the City Engineer and Planning Commission.

3. Each lot including a hangar shall have frontage on a private taxiway for a distance of eighty feet or have aircraft access to a private taxiway through an easement that is at least eighty feet wide. A paved connection shall be provided from the tie-down and hangar to the taxiway.

C. Lot coverage. The maximum lot coverage shall be eighty percent for all structures and impervious areas.

D. Additional requirements shall include any applicable section of this title.

17.73.090 Setbacks. The minimum setback requirements for all development sites are as follows:

A. The front yard setback shall be a minimum of twenty feet.

B. The front of vehicular garages or carports shall be located a minimum of twenty feet from the property line where access occurs.

C. A tie-down may be located with no setbacks to side or rear property lines.

D. Combination garages shall be located a minimum of 20 feet from the front property line.

E. Side yard setbacks shall total a minimum of fifteen feet with any street side setback no less than ten feet. Internal lots shall have one side setback no less than ten feet.

F. The rear yard setback shall be a minimum of twenty feet, except the minimum rear yard setback for an accessory building shall be five feet.

G. If residential lots with hangars or lots with industrial uses abut an existing residential zone, the minimum building setback is fifty feet on the side abutting or facing the existing residential district. The Planning Commission may reduce this required yard setback by fifty percent pursuant to Chapter 17.100, Landscaping, Screening and Fencing.

H. In the interest of protecting and supporting airport light industrial uses, residential lots closest to the perimeter of an approved airport residential development shall have a minimum setback of twenty-five feet on the side facing the perimeter of the development.

I. Where a utility easement is located adjacent to a lot line, there shall be a yard setback no less than the width of the easement.

J. Clear areas, safety areas, object free areas, and tie-down areas may be counted as required yards for a building.

K. Additional requirements shall include any applicable section of this title.

17.73.100 Building Height.

A. No building, except for hangars, shall exceed thirty-five feet in height. The maximum height for accessory buildings other than hangars or residential aircraft hangars shall be twenty-two feet.

B. The maximum height for residential aircraft hangars (as defined in Section 17.73.030) is twenty feet, consistent with Oregon Structural Specialty Code, Section 412.3; other hangars on residential lots not meeting the definition of "residential aircraft

hangars" shall have a maximum height of thirty-two feet. The maximum height for all other hangars shall be fifty feet. Within one hundred feet of an existing residential zone, hangars shall not exceed thirty-five feet in height.

C. No structure shall penetrate an airport imaginary surface as outlined in Chapter 17.88, Public Use Airport Safety and Compatibility Overlay (AO) Zone.

D. Additional requirements shall include any applicable section of this title.

17.73.110 Landscaping Requirements.

A. Street trees shall be required along all public streets, subject to Chapter 17.104, Street Trees. Street trees shall not be planted along private taxiways. The selected street trees shall be varieties which do not grow to heights that may interfere with navigable airspace. The applicant shall provide a master street tree plan with the preliminary subdivision application.

B. No buildings, fences, or vegetation over eighteen inches in height shall be allowed within the object free area.

C. All landscaping plans as a part of a proposed development will be subject to review by the airport sponsor. Coordination between the applicant and the airport sponsor regarding the landscaping plan is a requirement for tentative plan approval. This coordination shall be documented and submitted with the tentative plan application.

D. Airport residential development shall be screened and buffered in accordance with Section 17.100.090 except where a shared taxiway provides the equivalent buffer width. Other uses within the AR zone do not need to provide screening or buffering adjacent to airport residential development.

E. Additional requirements shall include any applicable section of this title.

17.73.120 Circulation.

A. At-grade intersections of public streets and private taxiways are prohibited.

B. Access Control devices are required to regulate ingress and egress between airport residential developments with a physical connection to the Scappoose Industrial Airpark. A minimum of four foot high fence must be provided between the residential areas and the runway to keep children, pets, and visitors from accidentally gaining access to the airport runway environment.

C. The City may require the property owner to grant an emergency vehicle access easement to a private taxiway to provide for adequate emergency vehicle circulation.

17.73.130 Parking.

A. Each use shall provide vehicular parking subject to Chapter 17.106, Off-Street Parking and Loading Requirements. A minimum of one vehicle parking space shall be provided either in the interior of the hangar or outside the hangar for each jointly owned hangar.

CITY OF SCAPPOOSE

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EXHIBIT C

CPTA 1-07/DCTA 1-07

May 9, 2008

Sierra Pacific Airport Related Legislative Amendments

SCAPPOOSE CITY COUNCIL FINDINGS OF FACT

Approval of two proposed legislative text changes to the Comprehensive Plan and Development Code:

- 1) Comprehensive Plan Text Amendment (CPTA1-07) to add an "Airport" designation that could be applied to areas near the Scappoose Industrial Airpark.
- 2) Development Code Text Amendment (DCTA1-07) to add a "Airport Related" zoning designation that could be applied to areas near the Scappoose Industrial Airpark.

Applicant: Sierra Pacific Communities, LLC

EXHIBITS

1. Application, "Legislative Amendments Scappoose, Oregon," August 2, 2007
2. Airport Planning Rule (OAR 660 Division 13)
3. Scappoose Industrial Airpark Airport Master Plan, September 2004 (by reference only)
4. Letter from Oregon Department of Aviation, dated September 4, 2007
5. Letter from U.S. Department of Transportation Federal Aviation Administration, dated September 5, 2007
6. Letter from Oregon Department of Transportation, dated September 20, 2007
7. Letter from Mark J. Greenfield, on behalf of the Port of St. Helens, dated October 2, 2007
8. Letter from Department of Land Conservation and Development, dated October 3, 2007
9. Letter from the Applicant's Attorney to Port of St. Helens Commissioners, with accompanying attachment, dated October 19, 2007
10. Diagram of Scappoose Industrial Airpark Noise Contours (Exhibit 4A from the September 2004 Scappoose Industrial Airpark Airport Master Plan)
11. Letter from Mark J. Greenfield, on behalf of the Port of St. Helens, with accompanying attachments, dated November 8, 2007 (submitted into the record at the November 8, 2007 Planning Commission hearing).
12. Official Record of Comments of Daniel Clem given at Port of St. Helens Work Session October 24, 2007.
13. Letter from Daniel E. Clem, Director of Oregon Department of Aviation, dated November 8, 2007 addressed to Dennis Roberts, Regional Administrator, FAA.
14. Letter from David L. Bennett, Director, Office of Airport Safety and Standards, Federal Aviation Administration, dated December 12, 2007 addressed to Daniel E. Clem, Director of Oregon Department of Aviation

15. Port of St. Helens Memorandum from Kim Shade to Mark Greenfield, dated December 12, 2007
16. Minutes from January 22, 2008 City Council hearing
17. Buildable Land Inventory, dated June 11, 2003 (by reference only)
18. Land Use Needs Analysis, dated June 30, 2003 (by reference only)
19. Staff report and adopted findings for CPA1-05/ZC2-05/SB7-05, dated May 10, 2006 (by reference only)
20. Staff report and adopted findings for CPA2-04/ZC3-04, dated September 1, 2004 (by reference only)

INTRODUCTION

On January 22, 2008, the City Council directed staff to work with the applicant to revise the proposed text amendments and prepare findings in support of the proposed Legislative amendments to the Comprehensive Plan CPTA1-07 and Development Code DCTA1-07 by a 5-2 vote. The following are the City Council's findings in support of this decision.

APPLICATION SUMMARY

COMPREHENSIVE PLAN AND DEVELOPMENT CODE TEXT AMENDMENTS

The approved policy and regulatory text changes are as follows:

1) Amend the Comprehensive Plan to include an "Airport" Comprehensive Plan designation. Exhibit A to the attached Ordinance makes the following additions to the Comprehensive Plan:

- *Preface*
- *Significant Findings of the Plan with Regards to the Airport Land Use Designation*
- *Policies for the Airport Land Use Designation*
- *Goals for the Airport Land Use Designation*

This approval does not include an amendment to the Comprehensive Plan map at this time.¹

2) Amend the Development Code (Title 17 of the Municipal Code) to include an "Airport Related" (AR) zoning designation. The specific code language for the AR zone is provided in Exhibit B to the attached Ordinance. The AR zone creates a new zone that could be applied to property in proximity to the Scappoose Industrial Airpark. Perhaps the most significant feature of the AR zone is the addition of residential development as a Conditional Use within the zone. Airport residential development, in this case, is defined as:

¹ The existing Comprehensive Plan land use designation for land zoned Public Use Airport (PUA) is Industrial.

17.73.30 Definitions

E. "Airport residential development" is a residential development in the vicinity of the Scappoose Industrial Airpark that has a through-the-fence agreement with the airport sponsor to facilitate runway access for residents of the development.

The AR zone also includes a number of airport-related uses as permitted uses. The City's Public Use Airport Safety and Compatibility Overlay Zone will be applied to all property within the Airport Comprehensive Plan designation, which will include property designated AR. The approval does not include a zone change to the new AR zone for any specific property.

COMPATIBILITY WITH PUBLIC USE AIRPORT SAFETY AND COMPATIBILITY OVERLAY ZONE

A provision of the proposed Airport Related (AR) zone is that the Public Use Airport Safety and Compatibility Overlay Zone, Chapter 17.88 of the Development Code, shall apply to development within the AR zone. The existing Public Use Airport Safety and Compatibility Overlay Zone, along with the Public Use Airport zone, is designed to protect the continuing operation of the Scappoose Industrial Airpark as a viable facility. These regulations are modeled on the text contained within the Airport Planning Rule and example documents issued by the Oregon Department of Aviation (ODA), which publishes an Airport Land Use Compatibility Guidebook containing a model "Public Use Airport Safety and Compatibility Overlay Zone."

The overlay zone defines and delineates the airport's imaginary surfaces and noise impact boundaries and regulates allowed land uses in these areas.² Specifically, Table 17.88.1 prohibits residential uses in the Runway Protection Zone (the RPZ, which extends out from the physical edge of the runway); limits residential densities within specific distances of the approach surfaces; and prohibits residential in the transition surface. The transition surface area means those surfaces that extend upward and outward at ninety-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. Some of the land eligible for the proposed Airport Comprehensive Plan designation falls within the imaginary surfaces of the Airpark. However, it is possible residential structures may be built below the outermost boundary of the transition surface area as long as they do not penetrate the prescribed plane. Table 17.88.1 of the City's Public Use Airport Safety and Compatibility Overlay Zone indicates the following limitations for residential uses:

Table 17.88.1 (Excerpt)

² Definitions for the imaginary surfaces surrounding an airport can be found in 17.88.020. Graphical depictions of the airport environs and the critical areas regulated by the City's airport overlay (e.g., the Runway Protection Zone) can be found on several maps and diagrams within the Airport Master Plan, including: Chapter 1, Exhibit 1-G, Part 77; Chapter 4, Sheet 3, Airport Airspace Plan; Chapter 4, Sheet 5, Runway Protection Zone and Profiles; Chapter 4, Sheet 6, Land Use Plan, and; Chapter 4, Exhibit 4A, Noise Contours.

- (10) *Residential densities within approach surfaces should not exceed the following densities:*
- (A) *Within 500 feet of the outer edge of the RPZ, 1 unit/acre.*
 - (B) *Within 500 to 1,500 feet of the outer edge of the RPZ, 2 units/acre.*
 - (C) *Within 1,500 to 3,000 feet of the outer edge of the RPZ, 4 units/acre.*
- (14) *Within the transition surface, residential uses and athletic fields are not permitted.*

PUBLIC & PRIVATE AGENCIES AND PUBLIC NOTICE

- The Port of St. Helens, the Oregon Department of Aviation, the Federal Aviation Administration, the Scappoose Rural Fire Protection District, the Columbia County Planning Department, the Oregon Department of Transportation, the Columbia County Road Department, and the Oregon Department of Land Conservation and Development have been provided the opportunity to review copies of this proposal. Communications from organizations that responded to the application are found in the "Exhibits" section of these findings; comments from these organizations have been incorporated into these findings.
- The City's Planning Commission reviewed the application at its November 8, 2007 meeting and held a public hearing. At the conclusion of the public hearing, the Commission adopted the then-current version of the Staff Report as findings for a recommended denial of the application. The Council respects the effort and process used by the Planning Commission. However, additional information was brought forward by the applicant, City staff, and other interested parties during the Council's process which better clarified the limited scope of the application request. Before the Planning Commission, much of the testimony focused on the assumed impacts of residential development in a defined area adjacent to the airport. Before the Council, the focus was the policy issue of whether the possibility of residential use, generally in the airport area would be a useful alternative available to the City and interested property owners (including the applicant), permitting the City and affected owners to take advantage of the unique and favorable circumstances presented by the airport's location and attractiveness to a wide range of future users. The Council's decision to approve the new AR zone is a product of this more general, policy-based discussion. Council finds that the implementation of the AR zone, particularly through the conditional use process for future residential proposals, responds to the primary concerns expressed in the original Staff report and the Planning Commission's reservations about the application. In short, the posture of the discussion changed from that before the Planning Commission. This provided the Council with an opportunity to evaluate the application from a different and broader perspective, while factoring in the Planning Commission's issues. In light of the adopted text of the AR zone, evaluation of possible development scenarios is premature at this point. Such scenarios will be fully aired as part of later processes, should a residential use proposal be offered for property in the airport's vicinity.

- Consistent with Section 17.160.025 of the Development Code, notice of this request was published in the *South County Spotlight* on October 24, October 31 and November 7, 2007 and January 16, May 7, and May 14, 2008.

FINDINGS OF FACT

1. The following Statewide Planning Goals have been considered by the City of Scappoose as they pertain to this request:

A. Citizen Involvement (Goal 1)

Objective: To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

Finding:

The City's acknowledged Comprehensive Plan & Development Code includes citizen involvement procedures with which the review of this application has complied. This process allows for citizens to communicate their input into the legislative amendment review conducted by the City at public hearings or by submitting written comments. The City of Scappoose Planning Commission reviewed and commented on the proposed text changes to the Comprehensive Plan and Development Code on November 8, 2007, at which time the applicant and the Port of St. Helens submitted testimony. The City Council held a hearing on January 22, 2008. The City published notices, consistent with the requirements of the Development Code, in the *South County Spotlight* on October 24, October 31 and November 7, 2007 and January 16, May 7, and May 14, 2008 and provided opportunity for public testimony at both the Planning Commission and City Council hearings. This process is consistent with the objectives of Goal 1.

B. Land Use Planning (Goal-2)

Objective: 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 an adequate factual base for such decisions and actions.

Finding:

Goal 2 requires that the Scappoose Comprehensive Plan be coordinated with the plans of affected governmental agencies. The procedural requirements for legislative amendments are contained in the Scappoose Municipal Code (Chapter 17.160), which include standards for decision-making, notice to affected parties, and public hearings. As required, notice of the proposed Comprehensive Plan and Development Code text amendment has been provided by the City of Scappoose to affected governmental agencies, including the Oregon Department of Transportation, the Oregon Department of Aviation, the Oregon Department of Land Conservation and Development (DLCD), the Port of St. Helens, and the Federal Aviation Administration. The agencies listed here have submitted letters in response to this proposal (see Exhibits 4, 5, 6, 7, and 8).

The letter submitted by the Port of St. Helens (prepared by Mark Greenfield, October 2, 2007) suggests that adequate coordination with the Port did not take place prior to the submittal of this application. The Port's letter states that the applicant has not secured through-the-fence access to the airport for parcels that may petition for the proposed Airport designation and Airport Related zone. However, since the proposed zoning designation is not being applied to a specific parcel of land, the Council finds that it is not necessary for the applicant to secure a through-the-fence agreement with the Port at this point in the process.

Other coordination issues raised by the Port's letter include location and density of residential uses allowed in the vicinity of the Airpark and the ability of the Port to attract new industrial and commercial users to the Airpark if residential uses were allowed in the vicinity. However, the Council finds that the proposed AR zone is designed to minimize a prospective industrial user's concerns with compatibility with nearby residential uses by measures recognizing that airport and industrial uses are the primary intended uses in the zone and that residential uses are secondary uses. Most airport and industrial uses are permitted uses in the AR zone. Airport-related residential uses are conditional uses and are subject to a higher level of scrutiny in the review/approval process.

Council finds that coordination between the applicant and the Port did occur and that the Port's views were directly considered before submittal of the application. Many of the issues the Port raised were site-specific and will be addressed when an application for development comes forward. To address these site-specific issues at this point in the process would be premature. The City has made extensive efforts to fulfill the requirements of Goal 2. Therefore, the City Council concludes that adequate coordination amongst the City, the Port, and the applicant has occurred. Certainly, substantial additional coordination amongst these groups will need to occur prior to application of the plan and zoning designations.

The applicant is also required to coordinate with the Federal Aviation Administration (FAA) and the Oregon Department of Aviation (ODA). The Scappoose Industrial Airpark is a public-use airport that receives federal financial support. For the reasons cited in their letter (see Exhibit 5), the FAA considers any residential use which is too close to the Airpark to be an incompatible land use; the determination of what is too close is based on separation from applicable airport noise contours and airport safety areas. However, the FAA's Grant Assurance 21, Compatible Land Use, does not specifically say that residential airparks cannot be built at a public airport, especially if it can prove compliance with FAA noise and safety requirements. Furthermore, as evidenced in the record, the City Council finds that the FAA has not referenced or presented a federal law that clearly prevents Oregon airports funded under the National Program of Integrated Airport System (NPIAS) Program from establishing residential airparks. These conclusions are supported by the testimony given by Daniel Clem, Director of the Oregon Department of Aviation (Exhibit 12) and the letter submitted to Dennis Roberts, Regional Administrator, FAA by Daniel Clem dated November 8, 2007 (Exhibit 13).

Council also finds that existing residential uses under the south approach to the runway are not identified as or considered incompatible by the Port or FAA under the most recent FAA approved Airport Master Plan. Specifically both R-1 (minimum lot size 7,500 square feet outside of the flood plain) and R-4 (minimum lot size of 6,000 square feet for single-family homes outside of the flood plain) zoned properties are acknowledged approximately 400 to 800 feet beyond the outer edge of the RPZ on sheet 6 of the Master Plan. The Port and FAA is accepting of those properties as compatible even though when considering airpark residential they recommend a minimum of two acres lots rather than the approved density of 10,000 square-foot lots. At this location, aircraft would normally be as close as 120 feet directly above the residences while staying clear of the 1:20 clear approach slope. Council finds that this inconsistency on the part of FAA is confusing and standards of what is compatible residential use and what is not should be more clearly defined.

For the reasons cited above, City Council concludes that the application is consistent with Goal 2.

C. Agricultural Lands (Goal 3)

Objective: To preserve and maintain agricultural lands.

Finding:

This Goal is not applicable because the proposed Comprehensive Plan and zoning designations are intended to apply to land within the City of Scappoose Urban Growth Boundary and not on land zoned for agriculture.

D. Forest Lands (Goal 4)

Objective: 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:

This Goal is not applicable because the proposed Comprehensive Plan and zoning designations are intended to apply to land within the City of Scappoose Urban Growth Boundary and not on land zoned for forest uses.

E. Open Spaces, Scenic and Historic Areas and Natural Resources (Goal 5)

Objective: To protect natural resources and conserve scenic and historic areas and open spaces.

Finding:

This legislative amendment request is not site-specific. Upon adoption of the Comprehensive Plan and Development Code amendments, individual property owners could request site-specific plan designation and zone changes. At that time, a property owner would provide Goal 5 findings for the subject property. The proposed policies in the "Airport" designation's text suggest that the designation is appropriate only for areas that are located in the vicinity of the Airpark. There are no mapped Goal 5 resources in the land in the vicinity of the Airpark. The proposed Comprehensive Plan and Development Code amendments are consistent with the objectives of Goal 5.

F. Air, Water and Land Resources Quality (Goal 6)

Objective: *To maintain and improve the quality of the air, water and land resources of the state.*

Finding:

The proposed Comprehensive Plan and Development Code amendments do not have a direct affect on air, water, or land resources quality. Development allowed through the proposed text amendments shall comply with applicable state and federal environmental quality standards. Future development shall be subject to City regulations that do not allow off-site impacts from noise, vibration, odors, glare, or other "nuisance" effects. Changes in land use designation from Industrial to (new) Airport will result in negligible, if any, net harmful effects on air, water, or land resource quality. The application will have no significant impact with respect to Goal 6.

G. Areas Subject to Natural Disasters and Hazards (Goal 7)

Objective: *To protect people and property from natural hazards.*

Finding:

The proposed Comprehensive Plan designation and Airport Related zoning will be applied to areas in the vicinity of the Scappoose Industrial Airpark, consistent with the proposed Airport designation policies. The Airpark and lands within its vicinity are not located within a mapped flood plain, potential flood hazard, potential landslide hazard, or earthquake hazard area. At the time of development, the City's review process will address standards and requirements for areas found to contain natural hazards. The proposal is consistent with avoidance of natural disasters and hazards under Goal 7.

H. Recreational Needs (Goal 8)

Objective: *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 proposed amendments do not address recreational needs. Areas in the vicinity of the Airpark are zoned Public Use Airport and have not been planned for recreational opportunities. The requested text changes to establish an Airport designation and Airport Related zone will have no significant impact on the City's planning for recreational needs and is consistent with the objectives of Goal 8.

I. Economic Development (Goal 9)

Objective: *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 City prepared a *Buildable Lands Inventory* and *Land Use Needs Analysis* in 2003. The *Land Use Needs Analysis* recommended the addition to the City of over 200 acres of land for industrial development by the year 2025 in locations buffered from residential uses and with good access to transportation. In applying the Public Use Airport (PUA) designation to approximately 132 acres west of the existing Airpark in 2006, the City found that land near the airport is suitable for industrial use as a key aspect of economic development (ANX1-06/ZC1-06, ANX2-06/ZC2-06, and ANX3-06/ZC3-06).³ City staff raised concern that the proposed Airport plan designation and Airport Related (AR) zone would allow residential uses in areas that have been found to be well-suited for industrial uses and on acreage that currently helps to reduce the City's employment lands deficit. The Council finds that the proposed Airport Related zone will create more diverse opportunities for economic development and does not prohibit any currently allowed industrial uses under the PUA designation. In addition, the issue of employment lands being supplanted with residential uses will be examined under the City's Comprehensive Plan Goal 9 requirements when an application to rezone a property is submitted. The adopted AR zone does not, in and of itself, create a loss of industrial lands.

Comments from DLCD further supports City Council's view by identifying the residential designation of lands previously designated for industrial use as a potential Goal 9 issue when a site-specific application to zone land AR occurs. DLCD noted that, if such an application were to be filed, a Goal 9 analysis would be required of that application. Since this application does not apply the Airport Comprehensive Plan or AR zoning designations to specific properties, DLCD has deferred specific comments related to Goal 9 (see Exhibit 8).

³ Staff report findings for ANX1-06/ZC1-06 stated that the annexation of the 92-acre site satisfied an immediate need for industrial land on a site that could accommodate large industrial users. The 2003 *Land Use Needs Analysis* indicated that Scappoose had a need for an additional 10.5 gross acres of industrial land, plus a need for large sites totaling roughly 200 acres to accommodate large industrial users.

The Port of St. Helens raised concerns regarding the compatibility of residential uses with industrial uses in an AR zone. Their comments said that future industrial uses may be less likely to locate in an AR zoning knowing that residential uses could be located in close proximity, thereby creating the potential for land use conflicts and reducing opportunity for future industrial uses at the Airpark. However, the proposed AR zone is designed to minimize a prospective industrial user's concerns with compatibility with nearby residential uses by measures recognizing that airport and industrial uses are the primary intended uses in the zone and that residential uses are secondary uses. Most airport and industrial uses are permitted uses in the AR zone. Airport-related residential uses are conditional uses. In addition, the applicant has included language in the proposed AR zone that requires residential homeowners to sign a Disclosure Statement that will be recorded with any final subdivision plat or partition plat. The Disclosure Statement acknowledges that the property is located in close proximity to the Airpark, signifies the buyer's awareness of the associated activities, and notifies the buyer that residential development proximate to the airport ought to assume impacts from air traffic including noise impacts. Testimony from the Oregon Department of Aviation and the applicant describes the positive economic benefit that future Airport Related residential uses may have in attracting businesses to cities and airports as well as maximizing a unique economic resource (the airport) which distinguishes Scappoose from other communities and business local.

For the reasons cited above, City Council concludes that the application, to the extent that it applies to Goal 9, is consistent with this Goal.

J. Housing (Goal 10)

Objective: *To provide for the housing needs of citizens of the state.*

Finding:

The proposed Airport land use designation and corresponding AR zone would increase the amount of land in Scappoose that is available for residential use. However, the type of housing allowed conditionally in this zone—single-family residences on 10,000 square-foot lots with a “physical connection to the airport”—would likely meet the needs of a relatively limited segment of the population. This segment of the population is growing as the demand for residential airparks has increased across the nation. This type of housing is specialty housing like any other housing that is facility or amenity driven. However, in contrast to more typical factors like cost, access to schools, lot or house size, this type of housing is driven by its connection to the airport. The zone is not intended to be, nor does Council believe it will be, erosive of density targets or to designated housing areas.

The City's Comprehensive Plan, which must be consistent with this and all relevant Statewide Planning Goals, identifies density targets for the City's residential land needs. The density target for low density residential is 5 units per acre. However, the lands that would be designated with the AR zone are not utilized for the purposes of meeting needed housing. Therefore, this density requirement is not applicable to the proposed plan

designation and zoning district since these designations are primarily aviation and industrial designations which only allow residential uses as a conditional use.

The City's 2003 *Land Use Needs Analysis* highlighted the need for "alternative housing types" to meet the needs of aging and smaller households, as well as to address affordability. The analysis states that "...emphasis has been placed on a greater projected need for alternative housing types versus large-lot single-family residences in the next 20 years." The proposed plan and development code text amendments will add variety of housing by providing the opportunity to live in a unique neighborhood. The AR zoning designation conditionally allows detached single-family housing (and possibly other forms of housing, including townhouses, row houses, and cluster units, allowed under the Planned Development Overlay) that must be airport related and, therefore, will be integrated with the surrounding land uses, which also relate to the Airpark, and the transportation options provided by the Airpark. The new Comprehensive Plan and zoning designations do not preclude housing that will accommodate those with special needs.

Additionally, property owners wishing to develop residential uses under the proposed text amendments would first need to request, and receive, approval for an amendment to the Comprehensive Plan Map and Zoning Map. This would consist of a separate application and approval process following the standards of either Chapter 17.162 or Chapter 17.164 of the Scappoose Land Use and Development Code. Once a specific site is re-zoned, an individual property owner would apply for a Conditional Use Permit. It is likely that a developer would not go to these lengths unless he or she was responding to a market demand for a development type only permitted under the proposed text amendments.

For the reasons cited above, the City Council concludes that the application is consistent with Goal 10.

K. Public Facilities and Services (Goal 11)

Objective: To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

Finding:

The proposed Airport plan designation and Airport Related (AR) zoning district is intended to be applied to properties within the Urban Growth Boundary (UGB). Extension of public facilities and services to urbanizing properties would be at the developer's expense at the time the property is developed. Adequate levels of public facilities would be required as a condition of approval through future subdivision or site development review application processes.

The City and the Port of St. Helens previously cooperated in a project to provide water service to the land around the Airpark to stimulate economic development. Public facilities currently have capacity and are available for development in this area.

For the reasons cited above, the City Council concludes that the application is consistent with Goal 11.

L. Transportation (Goal 12)

Objective: *To provide and encourage a safe, convenient and economic transportation system.*

Finding:

Statewide Planning Goal 12 is implemented by the Department of Land Conservation and Development's (DLCDC's) Transportation Planning Rule (TPR), OAR 660, Chapter 12. It is the intent of the proposed Airport Comprehensive Plan text that this designation and the implementing Airport Related (AR) zone be applied to land in the vicinity of the Scappoose Industrial Airpark.

Comments on transportation impacts were received from DLCDC and ODOT (Exhibits 6 and 8). Both agencies indicated that findings supporting Goal 12 and the Transportation Planning Rule would need to be provided at the time a new comprehensive plan and/or zoning designation was applied to specific property. The Transportation Planning Rule does not apply to the creation of a new land use zone. Therefore, when the new zoning is applied to specific properties, the Transportation Planning Rule will apply at that time and ODOT will likely request a traffic impact analysis to evaluate whether a significant effect would result from the zone change.

An application to rezone land to AR would need to analyze the transportation impacts to determine whether planned improvements in the area would be sufficient to handle the anticipated traffic. Coordination with ODOT will also be necessary to ensure that future proposals are consistent with the Oregon Highway Plan and with the identified function, capacity, and performance standard for Highway 30. The City may require improvements to the roadway network as conditions of approval for subsequent development proposals submitted for sites with the AR zoning designation.

The application does not trigger a Transportation Planning Rule assessment or specific analysis or improvements at this point; therefore, the application is consistent with Goal 12 and the TPR.

M. Energy Conservation (Goal 13)

Objective: *To conserve energy.*

1. Land use plans should be based on utilization of the following techniques and implementation devices which can have a material impact on energy efficiency:

- a. Lot size, dimension, and siting controls;*
- b. Building height, bulk and surface area;*

- c. Density of uses, particularly those which relate to housing densities;*
- d. Availability of light, wind and air;*
- e. Compatibility of and competition between competing land use activities; and*
- f. Systems and incentives for the collection, reuse and recycling of metallic and nonmetallic waste.*

Finding:

Uses permitted in the AR zone include aircraft or air transportation businesses and businesses that rely on aircraft as an “important tool or platform for business.” Locating such businesses close to the airport could limit travel distances for employees and goods associated with these businesses, thereby having the effect of conserving energy.

In addition, through the conditional use process, land with the AR zoning could also be developed with housing. Each lot would have a private airplane hangar and private taxiway access from the hangar to accommodate property owners who enjoy aviation as a recreational activity or wish to run a home-based business that benefits from air transportation and interacts strongly with the cluster of aviation-related businesses located nearby. With this design, the aviation-related businesses and aviation enthusiasts will have shorter trips, as they are located in close proximity to one another. These factors further enforce the energy savings provided by the new designations.

For the reasons cited above, the City Council finds this application to be consistent with Goal 13.

N. Urbanization (Goal 14)

Objective: 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:

The proposed Airport Comprehensive Plan designation and corresponding AR zoning are not specific to a particular parcel or parcels. However, these designations would be applied to land within the Urban Growth Boundary and near the existing airport. The Comprehensive Plan and Development Code amendments will allow a broader range of uses than presently allowed by the Industrial Comprehensive Plan designation and the PUA zone. As urban level residential densities currently exist near the airport, the AR zone will create an opportunity to design transitional areas between the existing residential neighborhoods and the airport.

Future development of a site under the AR zone would trigger requirements for the developer to provide infrastructure, including necessary sewer lines, storm drainage lines, water line extensions, and street improvements to support the proposed uses. Council finds that public facilities currently have capacity and are available for development in the area around the airport.

O. Other Goals

Finding:

The following goals are not applicable to this application:

- Willamette River Greenway (Goal 15)
- Estuarine Resources (Goal 16)
- Coastal Shorelands (Goal 17)
- Beaches and Dunes (Goal 18)
- Ocean Resources (Goal 19)

2. The following Statutes and Administrative Rules have been considered by the City of Scappoose as they pertain to the legislative text amendments:

TRANSPORTATION PLANNING RULE

OAR 660 Division 12 – Transportation Planning:

660-012-0060 Plan and Land Use Regulation Amendments

(1) Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g., level of service, volume to capacity ratio, etc.) of the facility. 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) As measured at the end of the planning period identified in the adopted transportation system plan:

(A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

(B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or

(C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.

Finding:

Comments on transportation impacts were received from DLCD and ODOT (Exhibits 6 and 8). Both agencies indicated that findings supporting Goal 12 and the Transportation Planning Rule would need to be provided at the time a new comprehensive plan and/or zoning designation was applied to specific property. The Transportation Planning Rule does not apply to the creation of a new land use zone. Therefore, when the new zoning is applied to specific properties, the Transportation Planning Rule will apply at that time and ODOT will likely request a traffic impact analysis to evaluate whether a significant effect would result from the zone change.

An application to rezone land to AR would need to analyze the transportation impacts to determine whether planned improvements in the area would be sufficient to handle the anticipated traffic. Coordination with ODOT will also be necessary to ensure that future proposals are consistent with the Oregon Highway Plan and with the identified function, capacity, and performance standard for Highway 30. The City may require improvements to the roadway network as conditions of approval for subsequent development proposals submitted for sites with the AR zoning designation.

The application does not trigger a Transportation Planning Rule assessment at this point; therefore, the application is consistent with the TPR.

AIRPORT PLANNING RULE

OAR 660 Division 13 – Airport Planning

(Note: see Exhibit 2 for the full text of the Airport Planning Rule)

660-013-0010 Purpose and Policy

(1) This division implements ORS 836.600 through 836.630 and Statewide Planning Goal 12 (Transportation). The policy of the State of Oregon is to encourage and support the continued operation and vitality of Oregon's airports. These rules are intended to promote a convenient and economic system of airports in the state and for land use planning to reduce risks to aircraft operations and nearby land uses.

(2) Ensuring the vitality and continued operation of Oregon's system of airports is linked to the vitality of the local economy where the airports are located. This division recognizes the interdependence between transportation systems and the communities on which they depend.

Finding:

The Airport designation is intended to be applied to land located close to the Scappoose Industrial Airpark and would encompass land currently in the existing Public Use Airport zone. Letters from the Port of St. Helens (Exhibit 7) and the Federal Aviation Administration (Exhibit 5) argue that the proposed amendment may impact the operation

and vitality of the Scappoose Industrial Airpark. Residential development adjacent to a public use airport is considered an incompatible use by the FAA; however, the FAA's Grant Assurance 21, Compatible Land Use, does not specifically say that residential airparks cannot be built at public use airports. The approved policy changes will allow residential uses in the vicinity of the airport by implementing a zone that allows residences as conditional uses. The zone itself does not permit outright any residential use. Any proposed residential use will need to demonstrate compliance with the type of policies described in the Airport Planning Rule.

Also raised in these letters are questions regarding the proposed through-the-fence access for private use from future residential uses. The Port's letter states that it is not clear that such access is legally available for residential uses. This is because ORS 836.640(4)—the Oregon statute that creates a pilot study program for specific through-the-fence activities for three Oregon airports—does not reference residential uses. This statute originates from SB 680 which was passed in 2005 to encourage through-the-fence operations of commercial and industrial uses at airports to promote the creation of jobs and a tax base. The Oregon Department of Aviation (ODA) is responsible for the administration of this statute and on October 24, 2007, Daniel Clem, the Director of ODA, testified at the Port of St. Helen's Work Session (Exhibit 12). On page 6 & 7 of Clem's testimony, he points out that ORS 836.640 does not prohibit airpark residential from having access to a runway via a through-the-fence agreement: "In Oregon, when we talk about through-the-fence, its legislation ... for the intent of promoting economic development with regard to commercial and industrial. It doesn't mean because the state operates a residential air park or at least an airport with a residential air park, that it was ever intended to prohibit [residential]. It was silent on it because it wasn't created to address residential air parks." This statute was drafted with consultation from the Department of Land Conservation and Development (DLCD) and there was never consideration or discussion that the statute should or would prohibit all airport residential development in the State of Oregon. There is no evidence that Oregon statute forbids residential through-the-fence access.

Council has found no evidence that there are federal laws that prohibit residential uses adjacent to public use airports. SB 680 does not require FAA approval of through-the-fence operations. FAA may not favor residential airpark—yet there are many cases where they have approved Airport Layout Plans that acknowledge their existence. The FAA's concerns are to minimize potential safety and noise incompatibilities which are issues that can be addressed through careful site planning (which will be required through the conditional use process) and the establishment of CC&Rs (which would be required in the proposed AR zone text).

Concerns were raised that if future residents in the vicinity were to have direct access to the Airpark's runways, these users would compete with industrial and commercial users. Council finds the potential increase in the number of airplanes that use the airpark on a regular basis could also increase local opportunity for aircraft maintenance and repair businesses that currently cannot locate at the Port of Scappoose due to the lack of demand. Therefore, a residential airpark may, in fact, increase industrial and commercial

interest in locating and utilizing the Airpark. In addition, a residential airpark would provide a steady base of financial support for the airport through access fees and would create a local community of people who are invested in the airport and its viability.

For the reasons cited above, the Council finds that the proposed AR zone is consistent with the Airport Planning Rule's stated purpose and policy.

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.

(2) Emergency Medical Flight Services, including activities, aircraft, accessory structures, and other facilities necessary to support emergency transportation for medical purposes. "Emergency Medical Flight Services" does not include hospitals, medical offices, medical labs, medical equipment sales, and similar uses.

(3) Law Enforcement and Firefighting Activities, including aircraft and ground based activities, facilities and accessory structures necessary to support federal, state or local law enforcement and land management agencies engaged in law enforcement or firefighting activities. These activities include transport of personnel, aerial observation, and transport of equipment, water, fire retardant and supplies.

(4) Flight Instruction, including activities, facilities, and accessory structures located at airport sites that provide education and training directly related to aeronautical activities. "Flight Instruction" does not include schools for flight attendants, ticket agents, or similar personnel.

(5) Aircraft Service, Maintenance and Training, including activities, facilities, and accessory structures provided to teach aircraft service and maintenance skills, maintain, service and repair aircraft and aircraft components, but not including activities, structures, and facilities for the manufacturing of aircraft for sale to the public or the manufacturing of aircraft related products for sale to the public. "Aircraft Service, Maintenance and Training" includes the construction of aircraft and aircraft components for personal use. The assembly of aircraft and aircraft components is allowed as part of servicing, maintaining, or repairing aircraft and aircraft components.

(6) Aircraft Rental, including activities, facilities, and accessory structures that support the provision of aircraft for rent or lease to the public.

(7) Aircraft Sales and the sale of aeronautic equipment and supplies, including activities, facilities, and accessory structures for the storage, display, demonstration and sale of aircraft and aeronautic equipment and supplies to the public.

(8) Aeronautic Recreational and Sporting Activities, including activities, facilities and accessory structures at airports that support recreational use of aircraft and sporting activities that require the use of aircraft or other devices used and intended for use in flight. Aeronautic Recreation and Sporting Activities on airport property shall be subject to approval of the airport sponsor. Aeronautic recreation and sporting activities include but are not limited to: fly-ins; glider flights; hot air ballooning; ultralight aircraft flights; displays of aircraft; aeronautic flight skills contests; gyrocopter flights; flights carrying parachutists; and parachute drops onto an airport. As used in this rule, parachuting and parachute drops includes all forms of skydiving. Parachuting businesses may be allowed only where they have secured approval to use a drop zone that is at least 10 contiguous acres. A local government may establish a larger size for the required drop zone where evidence of missed landings and dropped equipment supports the need for the larger area. The configuration of 10 acre minimum drop zone shall roughly approximate a square or circle and may contain structures, trees, or other obstacles if the remainder of the drop zone provides adequate areas for parachutists to safely land.

(9) Crop Dusting Activities, including activities, facilities and structures accessory to crop dusting operations. These include, but are not limited to: aerial application of chemicals, seed, fertilizer, pesticide, defoliant and other activities and chemicals used in a commercial agricultural, forestry or rangeland management setting.

(10) Agricultural and Forestry Activities, including activities, facilities and accessory structures that qualify as a "farm use" as defined in ORS 215.203 or "farming practice" as defined in ORS 30.930.

(11) Air passenger and air freight services and facilities at public use airports at levels consistent with the classification and needs identified in the state ASP.

Finding:

The proposed Airport Related (AR) zone, in section 17.XX.040 "Permitted Uses" allows all the uses listed in the Airport Planning Rule for non-towered airports. The AR zone complies with this section of the Airport Planning Rule.

660-013-0110 Other Uses Within the Airport Boundary

Notwithstanding the provisions of OAR 660-013-0100, a local government may authorize commercial, industrial, manufacturing and other uses in addition to those listed in OAR 660-013-0100 within the airport boundary where such uses are consistent with applicable provisions of the acknowledged comprehensive plan, statewide planning goals

and LCDC administrative rules and where the uses do not create a safety hazard or otherwise limit approved airport uses.

Finding:

This section grants authority to the City to approve the proposed text amendments provided they are consistent with the applicable provisions of the acknowledged comprehensive plan, statewide planning goals, and Land Conservation and Development Commission administrative rules, and do not create a safety hazard or otherwise limit approved airport uses. The Council finds the proposed text amendments to be consistent with the above-listed standards.

660-013-0080 Local Government Land Use Compatibility Requirements for Public Use Airports

(1) A local government shall adopt airport compatibility requirements for each public use airport identified in ORS 836.610(1). The requirements shall:

(a) Prohibit new residential development and public assembly uses within the Runway Protection Zone (RPZ) identified in Exhibit 4;

(b) Limit the establishment of uses identified in Exhibit 5 within a noise impact boundary that has been identified pursuant to OAR 340, Division 35 consistent with the levels identified in Exhibit 5;

(c) Prohibit the siting of new industrial uses and the expansion of existing industrial uses where either, as a part of regular operations, would cause emissions of smoke, dust, or steam that would obscure visibility within airport approach corridors;

(d) Limit outdoor lighting for new industrial, commercial, or recreational uses or the expansion of such uses to prevent light from projecting directly onto an existing runway or taxiway or into existing airport approach corridors except where necessary for safe and convenient air travel;

(e) Coordinate the review of all radio, radiotelephone, and television transmission facilities and electrical transmission lines with the Oregon Department of Aviation;

(f) Regulate water impoundments consistent with the requirements of ORS 836.623(2) through (6); and

(g) Prohibit the establishment of new landfills near airports, consistent with Department of Environmental Quality (DEQ) rules.

(2) A local government may adopt more stringent regulations than the minimum requirements in section (1)(a) through (e) and (g) based on the requirements of ORS 836.623(1).

Finding:

In 2002, the City of Scappoose created the Public Use Airport zone, which has a stated purpose “to encourage and support the continued operation and vitality of the Scappoose Industrial Airpark by allowing certain airport-related commercial, manufacturing and recreational uses in accordance with state law.” In 2002 the City also created the Public Use Airport Safety and Compatibility Overlay Zone, which has a stated purpose “to encourage and support the continued operation and vitality of the Scappoose Industrial Airpark by establishing compatibility and safety standards to promote air navigational safety at the Airpark and to reduce potential safety hazards for persons living, working or recreating near the Airpark.” Adoption of these regulations was coordinated with Columbia County and the Port of St. Helens. The adopted findings for Ordinance 726, which created the Public Use Airport zone and the Public Use Airport Safety and Compatibility Overlay Zone, demonstrate compliance with the Airport Planning Rule.

The proposed Airport Related (AR) zone specifies that in the event of a conflict between the requirements of the proposed zone and the Public Use Airport Safety and Compatibility Overlay Zone, the requirements of the Overlay Zone will control. The proposed zone also requires an “Avigation Easement” prior to the issuance of building permits that prohibits structures or other obstructions from penetrating Federal Aviation Regulation Part 77 surfaces. These “imaginary surfaces” are defined and regulated through the City’s Public Use Airport Safety and Compatibility Overlay Zone (Chapter 17.88). Part 77 surfaces are mapped in the Scappoose Industrial Airpark Airport Master Plan (Exhibit 3). Referencing this map and the land use compatibility Table 17.88.1 for the Overlay Zone, it is clear that some land that may be intended to have the AR zone would not be able to be developed with residential uses, or that the residential densities would be limited.

The Port of St. Helens has also raised compatibility issues with regards to the residential density allowed by the proposed AR zone (Exhibit 7). The Port’s concerns will be addressed with site specific considerations of a development application. Moreover, the issues the Port raised will be addressed in the conditional use process.

Citing the State’s Airport Compatibility Guidebook, the Port suggests that areas in the vicinity of the airport be considered rural due to the level of existing background noise being lower than in more urban areas. The consequence of this consideration is that residential development within the Runway Protection Zone above the 55 decibel noise level would be prohibited. However, both the airport and the areas surrounding the airpark that could possibly have the proposed zone applied to them are located within the City of Scappoose’s urban growth boundary. More importantly, the FAA and DEQ do not make this distinction between rural and urban airports. The FAA standards allow residential uses outright up to the 65 decibel noise level, but for residential uses between the 65 and 75 decibel noise levels require that measures be incorporated in the design and construction of the houses to achieve a 25 to 30 dB Noise Level Reduction. The standards in the AR zone require all proposed housing within the 55 decibel noise level to utilize Noise Level Reduction construction methods that provide at least 25 dB Noise

Level Reduction between interior dwelling space and exterior. This is much more conservative than the FAA's requirements. The FAA has funded a 55 DNL contour analysis for the Scappoose Industrial Airpark, which is contained in the W&H Pacific prepared 2004 Master Plan on Sheet 4A. This analysis will be used to determine the location of noise contours.

For the reasons cited above, the applicant has satisfied the land use compatibility issues, as required by this section of the Airport Planning Rule.

3. The following Comprehensive Plan goals and policies have been considered by the City of Scappoose as they pertain to this request:

In addition to the findings listed below, the Council's findings under the Statewide Planning Goals address many of the same goals and policies found in the Comprehensive Plan.

GOAL FOR ECONOMICS

It is the goal of the City of Scappoose to:

- 1) *Maintain conditions favorable for a growing, healthy, stable, and diversified business and industrial climate.*

Finding:

As previously noted, development of additional airport-related businesses and residences at the airport may help spur the development of aircraft maintenance and repair businesses at the airport. The new Airport Related (AR) zone allows residential uses as a conditional use. The Airport Related zone allows new airport-related businesses as allowed uses as discussed under the Airport Planning Rule section in this report, in addition to allowing a broader range of compatible uses. The type of uses allowed to be developed under the AR zone does not eliminate any currently permitted uses; instead, it allows a broader range of development than presently allowed (but not mandated) by the existing PUA zone. The text amendments will expand economic development to include airport-related mixed-use development and enhance the City's economic base by adding new employment opportunities within the city limits.

POLICIES FOR ECONOMICS

It is the policy of the City of Scappoose to:

- 1) *Make sufficient land available for the anticipated expansion of commercial and industrial activities.*

Finding:

The 2003 *Buildable Lands Inventory* and *Land Use Needs Analysis* identified a need of over 200 acres of land by the year 2025 for industrial development. Ideal locations for

future industrial users were described as sites that are buffered from residential uses and have good access to transportation, including land in the vicinity of the Scappoose Industrial Airpark. The proposed Airport Related (AR) zone includes all of the uses allowed in the existing Public Use Airport and expands uses to include air transportation-related businesses and a broader range of compatible uses. In addition, the issue of employment lands being supplanted with residential uses will be examined under the City's Comprehensive Plan Goal 9 requirements when an application to rezone a property is submitted.

4) *Encourage the expansion of employment opportunities within the urban area, so residents can work within their community as well as commute to jobs outside the City.*

Finding:

The proposed Airport Related (AR) zone allows all of the uses allowed in the existing Public Use Airport (PUA) and proposes allowances for new air transportation-related businesses. In addition, residential uses are allowed in the proposed zone conditionally. The applicant states that by allowing residences in close proximity to the Airpark that have access to the runways, the City is encouraging airport-related home-based businesses and businesses that are air travel-dependent. With the growing demand for airport residential communities throughout the country, the result of this new zone may create an influx of businesses and professionals seeking convenient access to airplanes and airplane transportation and commerce.

GOALS FOR PUBLIC FACILITIES AND SERVICES

It is the goal of the City of Scappoose to:

1) *Provide the public facilities and services which are necessary for the well being of the community and which help guide development into conformance with the Comprehensive Plan.*

Finding:

Adequate levels of public facilities will be required as a condition of approval through future subdivision or site development review application processes. It is anticipated that public facilities—including public water, sanitary sewer, stormwater conveyance, and public streets—can be extended into areas to which the proposed Airport designation and AR zone may be applied. Extension of public facilities and services to urbanizing properties will be at the developer's expense at the time the property is developed. The City and the Port of St. Helens previously cooperated in a project to provide water service to the land around the Airpark, thus creating capacity in the existing systems. This investment was made to stimulate economic development in the areas designated Industrial by the Comprehensive Plan.

4) *Avoid the provision or expansion of public utilities and facilities in sparsely settled non-urban areas, when this would tend to encourage development or intensification of uses, or to create the need for additional urban services.*

Finding:

The amendments do not extend services to non-urban areas.

GOAL FOR TRANSPORTATION

It is the goal of the City of Scappoose:

- 1) *To develop and maintain diverse methods for moving people and goods which are:*
- A) *Responsive to the needs and preferences of individuals, business and industry;*
 - B) *Suitably integrated into the fabric of the urban community; and*
 - C) *Safe, rapid, economical and convenient to use.*

Finding:

At the time of application of the AR zone to land near the Airpark, additional transportation analysis and findings will address whether or not planned improvements in the area would be sufficient to handle the anticipated traffic. Coordination with ODOT will also be necessary to ensure that future proposals are consistent with the Oregon Highway Plan and with the identified function, capacity and performance standard for Highway 30. The City will require improvements to the roadway network as conditions of approval for subsequent development proposals submitted for sites with the AR zoning designation.

4) *To strengthen the economy by facilitating diverse means for transporting industrial goods.*

Finding:

The proposed Airport Related (AR) zone allows for all of the industrial uses currently allowed by the City's Public Use Airport (PUA) zone. The zone also allows for more diverse commercial uses than the PUA zone, thereby increasing the variety of airport-related business able to locate near the Airpark and transport goods more readily. In addition to air transport, the land near the Airpark (that the proposed Comprehensive Plan and zoning designations could potentially be applied to) is easily accessible from U.S. Highway 30 via West Lane Road and Crown Zellerbach Road.

6) *To provide a more reliable basis for planning new public and private developments whose location depends upon transportation.*

Finding:

As stated in the application, the proposed Comprehensive Plan and zoning designations are intended to be applied to land located close to the Scappoose Industrial Airpark. Once

rezoned, the provisions of the proposed Airport Related (AR) zone would control development in these areas. Consistent with the proposed text of the Airport designation and AR zone, the proposed allowed and conditionally allowed business and residential uses in this zone would derive benefits from their proximity to the airport.

7) To cooperate closely with the County and State on transportation matters.

Finding:

Prior to submitting the proposal, the applicant met with representatives from the City and the Oregon Department of Transportation and corresponded with Columbia County.

8) To assure that roads have the capacity for expansion and extension to meet future demands.

Finding:

At the time of application of the AR zone to land near the Airpark, additional transportation analysis and findings will need to address whether planned improvements in the area will be sufficient to handle the anticipated traffic. Coordination with ODOT will also be necessary to ensure that future proposals are consistent with the Oregon Highway Plan and with the identified function, capacity and performance standard for Highway 30. The City may require improvements to the roadway network as conditions of approval for subsequent development proposals submitted for sites with the AR zoning designation.

10) To encourage energy conservation modes of transit such as car pooling.

Finding:

The proposed Airport Related (AR) zone will conditionally permit low density housing. Lands with this designation may develop at a density of 4 dwelling units per acre (the minimum lot area is 10,000 square feet; the minimum average lot area for a subdivision is 0.5 acre), a land use pattern that is not economically served by traditional mass transit. It is not inconceivable that future residents or employees working at businesses allowed by the zone would carpool or even "plane pool" to work. Additionally, the proposed AR zone will provide increased opportunity for people to live in the same location where they work, therefore eliminating the need to commute at all.

13) Work with the Port of St. Helens to maintain the continuing viability of the Scappoose Industrial Airpark.

Finding:

The proposed Airport Comprehensive Plan designation is intended to apply to land located in the vicinity of the Scappoose Industrial Airpark and to encompass the existing Public Use Airport (PUA) zone. The proposed Airport Related (AR) zone would permit airport-related industrial uses and air travel-related commercial uses and would conditionally permit low density residential uses. The Preface of the proposed Airport

Comprehensive Plan designation states that residential development at the Scappoose Industrial Airpark will require exploration of actual siting options to determine if such a use is appropriate. This use, if authorized, would occur only on privately owned adjacent land, and thus requires cooperation between the property owner and the airport sponsor. The Airport Related zone includes several requirements of notification of and coordination between the applicant and the airport sponsor. Notification of the airport sponsor is required for the (residential) conditional uses in addition to documentation that any proposed residential development meets the safety and security standards of the FAA and the airport sponsor. The applicant also must provide a copy of the CC&Rs to the airport sponsor for review and comment, and coordination between the applicant and the airport sponsor regarding the landscaping plan is a requirement for tentative plat approval. In addition, all properties accessing the Scappoose Industrial Airpark shall pay a fair and equitable access fee to the airport sponsor that would be used to maintain the public runway, taxiways, and navigational aids.

Testimony submitted by the Port of St. Helens (Exhibit 7) states that the Port “believes that a much greater level of coordination between the Port and Sierra Pacific is needed than was provided in this application, and that coordination needs to occur at a much earlier stage of the process.” The applicant has submitted testimony that it has coordinated with the Port over the course of the past one and a half years (see Exhibit 9). The applicant is committed to ongoing coordination with the Port and the City.

The applicant has provided evidence that the FAA has approved several Airport Layout Plans that acknowledge the existence of residential airparks and that the FAA’s and Port’s primary concern is to minimize potential safety and noise incompatibilities. The Council finds that these are issues that can be addressed through careful site planning and the establishment of CC&Rs.

POLICIES FOR TRANSPORTATION

It is the policy of the City of Scappoose to:

[...]

3) Cooperate with the County and State on plans to improve transportation facilities--especially on Highway 30.

Finding:

The Comprehensive Plan and AR zoning designations do not relate to the City’s process, cooperation between jurisdictions, or specific improvements to Highway 30 including signs and sign lighting in any location, railroad issues, or commercial uses along Highway 30. Therefore, these policies are not applicable to the proposed text amendment.

11) Work with the Port of St. Helens on their plans for the Scappoose Industrial Airpark, as well as for industrial development and transportation. Apply appropriate zoning designations to ensure that land identified for airport use in the 2004 Scappoose

Industrial Airpark Airport Master Plan (as amended August 9, 2006) is utilized for airport-related development.

Finding:

Chapter 4, Airport Plans, of the *Airport Master Plan* discusses land use compatibility adjacent to the airport. This Chapter states that the City has “appropriately addressed the land use that is within their jurisdiction around the airport” by adopting the Public Use Airport Safety and Compatibility Overlay (AO) Zone. The Airport Related (AR) zone includes the requirement that development comply with the requirements of the AO zone. Additionally, the AR zone regulates land use to ensure that land zoned AR is used only for airport-related development.

The *Airport Master Plan* was amended in 2006 to include a statement expressing the willingness of the Port of St. Helens to work with the private sector to provide residential development with airport access.

As discussed in the applicant’s submittal, the *Airport Master Plan* states that residential airparks exist at public use airports across the country and many residential developments are currently in the planning stages. The applicant has provided examples in the application for the proposed plan and zone designations.

GOAL FOR HOUSING

It is the goal of the City of Scappoose:

- 1) *Increase the quantity and quality of housing for all citizens.*

Finding:

The Comprehensive Plan and Development Code text amendments would increase the availability of land to be developed with housing and add to the City’s variety of housing by providing opportunities for unique living environments that relate to aviation.

GOAL FOR THE INDUSTRIAL LAND USE DESIGNATION

It is the goal of the City of Scappoose to:

- 1) *Provide a place for industrial activities where their requirements can be met, and where their environmental effects will have a minimal impact upon the community.*

Finding:

The Comprehensive Plan and Development Code text amendments would allow for all of the uses currently allowed in the Public Use Airport zone and will provide a location for all manners of airport-related development, including industrial uses. Uses that benefit from air transportation and uses which interact strongly with the cluster of aviation-related businesses located near the Airpark will have opportunity to locate in an area zoned Airport Related.

POLICIES FOR THE INDUSTRIAL LAND USE DESIGNATION

It is the policy of the City of Scappoose to:

1) Provide suitable areas for industrial expansion, utilizing for such purposes relatively large, flat areas that are separated by buffers from the City's residential districts.

Finding:

The Comprehensive Plan and zoning designations address airport-related industrial development and the Airport Related (AR) zone includes industrial uses that are currently allowed in the Public Use Airport zone. These uses have been found to be suitable for areas in the vicinity of the Airpark (see ANX1-06/ZC1-06, ANX2-06/ZC2-06, and ANX3-06/ZC3-06).

2) Prevent industrial development from disrupting homogeneous residential neighborhoods.

Finding:

The Comprehensive Plan and Development Code text amendments would allow for a mix of airport-related uses. This includes airport-related industrial uses, as well as proposed commercial and residential uses. The proposed Airport Related zone includes development standards that require a buffer (fifty-foot setback) between residential lots that have hangars located on them, industrial uses, and commercial uses and existing residential districts zoned R-1, R-4, MH, or A-1. This will ensure compatibility between existing residential uses and uses that may disrupt traditional residential neighborhoods.

3) Locate industrial areas so they have a convenient relationship to the community's transportation system, without generating heavy traffic through residential districts; additionally, the clustering of industrial activities will allow carpooling by employees.

Finding:

The Airport designation and Airport Related (AR) zone addresses airport-related industrial uses. The AR zone allows all uses currently allowed under the Public Use Airport (PUA) zone and the new zone is intended to be applied to areas currently zoned PUA. Industrial uses, therefore, are consistent with this City policy. The AR zone also allows residential uses conditionally. The proposed AR zone includes standards to protect future residential development in the vicinity of the airport from impacts from industrial traffic.

4) Screen, setback or buffer the boundaries of industry, particularly unsightly areas which can be viewed from arterials or from residential use.

Finding:

The Airport Plan designation and Airport Related (AR) zone would allow a mix of residential, commercial and industrial uses. New development in Scappoose is subject to Chapter 17.100 (Landscaping, Screening, and Fencing) of the Development Code. The proposed designations do not preclude new development from complying with Chapter 17.100 of the Development Code.

5) Apply this designation where industrial concerns have become established and where vacant industrial sites have been set aside for this purpose.

Finding:

The City's Comprehensive Plan designates the land near the Airpark for Industrial uses, which is a key element of the City's economic development strategy. This land is suitable for industrial use and should be kept in the City's industrial land inventory. In 2006, the City annexed approximately 130 acres of land west of the airport and zoned the area Public Use Airport (PUA), consistent with the policy stated above (ANX1-06/ZC1-06, ANX2-06/ZC2-06, and ANX3-06/ZC3-06). The Airport designation and AR zone would allow residential uses in areas that have been found to be well-suited for industrial uses and on acreage that currently helps to reduce the City's employment lands deficit. However, the proposed text amendments allow industrial uses that are currently permitted in the PUA zoning designation, therefore vacant industrial land sites will not be displaced by the proposed text amendments. Rather, they will retain the opportunity to develop with industrial uses.

6) Protect the stability and financial aspects of industrial areas by protecting them from incompatible uses.

Finding:

The proposed Comprehensive Plan and Development Code text amendments would allow for a mix of airport-related uses. This includes airport-related industrial uses, as well as proposed airport-related commercial and residential uses. Residential development under the AR zone must be approved through the conditional use permit process; this process gives the City flexibility in their review of airport-related residential uses. The unifying factor, and what makes the broad range of uses allowed by the proposed comprehensive plan and zoning designations compatible, is that each use has a relationship to the Airport and aviation activities.

4. The following Implementing Ordinances from Title 17 of the Scappoose Municipal Code (Land Development Code) have been considered by the City of Scappoose as they pertain to this request:

Chapter 17.160 PROCEDURES FOR DECISION MAKING—LEGISLATIVE

17.160.120 The standards for the decision. A. The recommendation by the planning commission and the decision by the council shall be based on consideration of the following factors:

1. *Any applicable statewide planning goals and guidelines adopted under Oregon Revised Statutes Chapter 197;*
2. *Any federal or state statutes or rules found applicable;*
3. *The applicable comprehensive plan policies and map; and*
4. *The applicable provisions of the implementing ordinances.*

Finding:

The Planning Commission's recommendations and the City Council's decisions are based on applicable statewide planning goals and guidelines, federal and state statutes and rules, Comprehensive Plan policies, and provisions of the Scappoose Municipal Code, as detailed in the findings. Section 17.160.120(A) is satisfied.

CONCLUSION

Currently, all the land around the airport has an "Industrial" designation. An "Airport" Comprehensive Plan designation would be a useful mechanism for identifying properties specifically planned for airport-related development rather than other types of industry. In addition, the proposed zoning ordinance will allow an airport residential use that has the potential to create new opportunities for economic development around the Scappoose Industrial Airpark.

The Airport Related (AR) zone requires conditional use permits for airport residential development and requires any application for development within the zone to comply with all applicable FAA safety and security standards. The applicant has addressed all the recommended changes made by staff, resulting in a proposed Airport Related chapter with clear and objective standards.

Based on the findings of fact in this report—applicable statutes, rules, Comprehensive Plan provisions and implementing ordinances—and the information within the September 2004 Scappoose Industrial Airpark Airport Master Plan, the City Council **APPROVES** the application CPTA 1-07/DCTA 1-07 amending the City's Comprehensive Plan and Development Code.

Exhibit 1

Legislative Amendments Scappoose, Oregon

Request for
Comprehensive Plan Text Amendment
and
Land Use and Development Code Text Amendment
Final Submittal:
Includes Original Submittal and Response to Incompleteness Items

Prepared for
Sierra Pacific Communities, LLC



Otak Project No. 13927
Updated August 2, 2007

APPLICATION SUMMARY

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REQUESTED APPROVALS:

The requested approvals include text amendments to the following City of Scappoose documents:

- Comprehensive Plan
- Land Use and Development Code

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APPENDICES

Appendix A	City of Scappoose Application Form and Fee
REMOVED	Appendix B — Airport Comprehensive Plan Designation (see Appendix G for update)
REMOVED	Appendix C — Public Use Airport — Mixed Use Zoning Designation (see Appendix H for update)
Appendix D	Transportation Planning Rule Compliance Letter, prepared by Dunn Traffic Engineering, LLC
Appendix E	Definitions for Airport Surfaces and Areas, Scappoose Land Use and Development Code Chapter 17.88
Appendix F	Airport Airspace Plan, Scappoose Industrial Airpark Airport Master Plan

ADDITIONAL APPENDICES TO ADDRESS INCOMPLETNESS ITEMS

Appendix G	Updated Airport Comprehensive Plan Designation
Appendix H	Updated Mixed Use Airport Designation
Appendix I	Response Letter Addressing TPR Compliance of Scappoose Text Amendments, prepared by Dunn Traffic Engineering, LLC

I. Request

The purpose of the proposed text amendments is to recognize and address the demand for a greater variety of airport-related uses than currently permitted by the Industrial Comprehensive Plan designation and Public Use Airport (PUA) Zone. The purpose of this application is to demonstrate that the proposed text amendments meet the approval criteria of the Scappoose Land Use and Development Code.

The proposed text amendments will create a new Comprehensive Plan designation, Airport, to encompass the existing Public Use Airport (PUA) Zone and the new Mixed Use Airport (MUA) Zone. The full text of the proposed text amendments is included in this application as Appendix G, Updated Airport Comprehensive Plan Designation, and Appendix H, Updated Mixed Use Airport Zoning Designation. These new designations will allow a broader range of uses including light industrial, business/commercial, and residential; the unifying factor is that all these uses are airport related and benefit from locating near an airport. The new MUA zone would allow airport-related residential development as a conditional use. The Port of St. Helens recognized in the August 9, 2006 adoptions to the Scappoose Industrial Airpark Airport Master Plan that airport related “...residential development has proven feasible at select general aviation airports” and that they are “...supportive of a residential component adjacent to the Airpark...”

The requested package of approvals includes the following:

City of Scappoose Comprehensive Plan Text Amendment

The proposed Comprehensive Plan text amendment will create a new comprehensive plan designation to address light industrial and airport-related mixed-use development. The new comprehensive plan designation, Airport, is intended to be applied to land surrounding the Scappoose Industrial Airpark. The new designation will accommodate the existing Public Use Airport Zone, as well as a proposed zone, Mixed Use Airport. The new designation will not accommodate the existing Light Industrial Zone; this zone is more appropriately located in the Industrial comprehensive plan designation. The Public Use Airport Safety and Compatibility Overlay Zone will be applied to all property within the Airport Comprehensive Plan designation. Individual property owners can request the new designation be applied to their property. The City can request the new designation be applied to property following an annexation or expansion of the Urban Growth Boundary. In both instances, the appropriate public process will be followed at the time the comprehensive plan map amendment is requested; no change to the Comprehensive Plan Map is requested as part of this application.

City of Scappoose Land Use and Development Code Text Amendment

The Land Use and Development Code text amendment will create a new zone, Mixed Use Airport (MUA), to address airport-related mixed-use development. The MUA zone will only be permitted within the proposed Airport Comprehensive Plan designation. The Public Use Airport Safety and Compatibility Overlay Zone will be applied to all property zoned MUA. The Public Use Airport Safety and Compatibility Overlay Zone (AO) currently applies to areas near the airport; the proposed text amendments will not change the purpose or current locations of the overlay zone. Individual property owners must request the new zone be applied to a specific site; the appropriate public process will be followed to approve or deny this request. The MUA zone permits residential dwellings as a conditional use. The AO prohibits residential uses in the Runway Protection Zone and limits residential uses in the Approach Surface and Direct Impact Areas (Table 17.88.1, Scappoose Land Use and Development Code). The areas where residential uses are prohibited or limited by the overlay zone would be mapped as part of any zone change and take precedence over the conditional uses permitted by the MUA Zone.

Typically, an amendment to the Zoning Map is requested when an amendment to the text of the Land Use and Development Code is requested. However, no amendment to the Zoning Map is requested as part of this application, meaning the Land Use and Development Code will contain text for a zoning designation that is not reflected on the Zoning Map. Within the City of Scappoose, this is not unique; the Heavy Industrial (HI) Zone is not reflected on the Zoning Map, it exists as text only.

Complete Approval Process for Development in the Proposed Comprehensive Plan Designation and Zone

The complete approval process offers multiple opportunities for agency and citizen input. The first step in the approval process is this application, which proposes text amendments to create a new Comprehensive Plan designation, Airport, and a new zone, Mixed Use Airport (MUA). No other approval is requested at this time. Following adoption of the text amendments, individual property owners or the City can apply for a comprehensive plan map and zoning map amendment. Once a specific site is correctly zoned, an individual property owner would apply for a Conditional Use Permit, for airport related subdivisions, or Site Development Review, for commercial or industrial uses. At each stage of the approval process, the appropriate public process will be followed to approve or deny this request.

II. Compliance with Applicable City of Scappoose Standards

Organization of Section II

This section demonstrates how the proposed text amendments comply with the applicable City of Scappoose approval criteria. Per Section 17.22.020 of the Land Use and Development Code, the decision standards for a Legislative Comprehensive Plan Text Amendment are found in Section 17.160.120 of the Land Use and Development Code. The direct citation of each decision standard is below in *italics* with a response detailing what items are used to address the decision standard.

17.160.120 The Standards for the Decision

A. The recommendation by the planning commission and the decision by the council shall be based on consideration of the following factors:

- 1. Any applicable statewide planning goals and guidelines adopted under Oregon Revised Statutes Chapter 197;*

Response: The following Statewide Planning Goals are addressed:

- Goal 1 Citizen Involvement
- Goal 2 Land Use Planning
- Goal 3 Agricultural Lands
- Goal 4 Forest Lands
- Goal 5 Open Space, Scenic and Historic Areas, and Natural
- Goal 6 Air, Water and Land Resources Quality
- Goal 7 Areas Subject to Natural Disasters and Hazards
- Goal 8 Recreational Needs
- Goal 9 Economic Development
- Goal 10 Housing
- Goal 11 Public Facilities and Services
- Goal 12 Transportation
- Goal 13 Energy Conservation
- Goal 14 Urbanization

- 2. Any federal or state statutes or rules found applicable;*

Response: No federal statutes or rules were found regarding airport residential development. Information found when searching for federal statutes and rules primarily related to the Federal Aviation Administration opinion of residential airports. The following state statutes and rules are addressed:

- Statewide Transportation Planning Rule Division 12
 - OAR 660-012-0060, Plan and Land Use Regulation Amendments
- Statewide Airport Planning Rule, Division 13,
 - OAR 660-013-0010, Purpose and Policy
 - OAR 660-013-0100, Airport Uses at Non-Towered Airports
 - OAR 660-013-0110, Other Uses Within the Airport Boundary
- Airport Land Use Compatibility Guidebook from the Oregon Department of Aviation

3. *The applicable comprehensive plan policies and map; and*

Response: The following comprehensive plan policies are addressed:

- Goals and Policies for Economics
- Goals for Public Facilities and Services
- Goals and Policies for Transportation
- Goals and Policies for Housing
- Goals and Policies for Industrial Land Use Designation

4. *The applicable provisions of the implementing ordinances.*

Response: All applicable provisions of the implementing ordinances are addressed by the above-listed decision standards.

B. *Consideration may also be given to: Proof of a substantial change in circumstances, a mistake, or inconsistency in the comprehensive plan or implementing ordinance which is the subject of the application.*

Response: Examples of three residential airparks are provided in response to this decision standard.

Response to Applicable Approval Standards

Direct citations of applicable approval standards are shown in *italics*.

17.160.120 *The Standards for the Decision*

17.160.120.A. The recommendation by the planning commission and the decision by the council shall be based on consideration of the following factors:

17.160.120.A.1. Any applicable statewide planning goals and guidelines adopted under Oregon Revised Statutes Chapter 197;

Response: The applicable Statewide Planning Goals are discussed in the following narrative. The following are not applicable to the proposed text amendments: Goal 15, Willamette River Greenway; Goal 16, Estuarine Resources; Goal 17, Coastal Shorelands; Goal 18, Beaches and Dunes; and Goal 19, Ocean Resources.

Goal 1 Citizen Involvement

To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

Response: This application complies with the citizen involvement processes included in the City's acknowledged Comprehensive Plan and Land Use and Development Code, which is consistent with this Goal. The planning commission and city council will hold public hearings on the proposed text amendments prior to adopting any amendments to the Comprehensive Plan or Land Use and Development Code; notice will be given by the City in accordance with Section 17.160.025 of the Land Use and Development Code.

Goal 2 Land Use Planning

To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions.

Response: This application proposes text amendments to the City's acknowledged Comprehensive Plan and Land Use and Development Code. Per Section 17.160 of the Land Use and Development Code, legislative decisions first require a planning commission hearing and recommendation to the city council, which then makes a decision based on said recommendation. Both the planning commission and city council public hearings are open to the public. The decision made by the city council will be based upon substantial evidence in the record following public notice, public hearing, and ample opportunities for coordination among the City and other local and state agencies and jurisdictions.

Goal 3 Agricultural Lands

To preserve and maintain agricultural lands.

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.

Goal 5 Open Spaces, Scenic and Historic Areas, and Natural Resources

To protect natural resources and conserve scenic and historic areas and open spaces.

Response: The new comprehensive plan and zoning designations created by the proposed text amendments address airport-related development and will be applied to property located near the Scappoose Industrial Airpark. Per the City of Scappoose Comprehensive Plan Map, land located near the airpark is designated Industrial or Public Use. Per the City of Scappoose Zoning Map, land located near the airpark is zoned Public Use Airport (PUA) or Light Industrial (LI). Neither map indicates land located near the airpark has been inventoried, planned, or zoned for agricultural use or forest use. No property located near the airpark is acknowledged on a City Comprehensive Plan Goal 5 inventory. Therefore, these Goals are not applicable to the proposed text amendments.

Goal 6 Air, Water and Land Resources Quality

To maintain and improve the quality of the air, water and land resources of the state.

Response: The purpose of this goal is to maintain and improve the quality of the air, water, and land resources of the state. Generally, this goal requires development to comply with applicable state and federal air and water quality standards. It is reasonable to conclude that the development allowable through the proposed text amendments will be able to comply with applicable state and federal environmental quality standards. Moreover, it is probable that the mixed-use and residential development allowed under the proposed comprehensive plan and zoning designations will have less impact to the quality of air, water, and land resources than the strictly industrial uses currently allowed, primarily due to decreased vehicle miles traveled inherent in a mixed-use development.

Goal 7 Areas Subject to Natural Disasters and Hazards

To protect people and property from natural hazards.

Response: The new comprehensive plan and zoning designations

created by the proposed text amendments address airport-related development and will be applied to property located near the Scappoose Industrial Airpark. No property located near the airpark is located in a known area of natural hazards or disasters; therefore, it is reasonable to conclude that development allowable through the proposed text amendments will not be located in a known area of natural hazards and disasters. Should an area of natural hazard or disaster be found as future development occurs, the City-review process will address standards and restrictions for development in said area.

Goal 8 Recreational Needs

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.

Response: The proposed zoning designation, Mixed Use Airport (MUA), permits greenways and other open space, such as bicycle and pedestrian paths and parks.

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.

Response: The City prepared a Buildable Lands Inventory and Land Use Needs Analysis in 2003. The Land Use Needs Analysis recommends the addition of over 200 gross acres of land for industrial development to the City and concludes that *"The additional land should allow for a range of industrial activities."* The proposed text amendments do not eliminate any currently permitted industrial uses; rather, they allow a broader range of compatible uses than presently allowed by the Industrial Comprehensive Plan designation and Public Use Airport (PUA) zoning designation. The proposed text amendments will expand economic development to include airport-related mixed-use development and enhance the city's economic base by adding new employment opportunities within the city limits.

Property wishing to develop under the proposed text amendments would first need to request, and receive, approval for an amendment to the Comprehensive Plan Map and Zoning Map. This would consist of a separate application and approval process following the standards of either Chapter 17.162 or Chapter 17.164 of the Scappoose Land Use

and Development Code. It is likely that a developer would not go to these lengths unless they were responding to a market demand for a service or product only permitted under the proposed text amendments.

Goal 10 Housing

To provide for the housing needs of citizens of the state.

Response: The City of Scappoose Land Use Needs Analysis, prepared in 2003, found that “...smaller households, older households and higher housing costs are expanding markets for “alternative housing” and reducing the demand for traditional large-lot single-family development.” and that “...emphasis has been placed on a greater projected need for alternative housing types versus large-lot single-family residences in the next 20 years.”

The proposed text amendments will increase the amount of land available for residential development and add to the variety of housing by providing the opportunity to live in a unique neighborhood. The new comprehensive plan and zoning designations created by the proposed text amendments address airport-related development and will be applied to property located near the Scappoose Industrial Airpark. The new zoning designation, Mixed Use Airport (MUA), permits detached single-family housing. This housing must be airport-related and, therefore, will be integrated with the surrounding land uses, which also relate to the airpark, and the transportation options provided by the airpark. The new comprehensive plan and zoning designations do not preclude housing that will accommodate those with special needs.

Property wishing to develop residential uses under the proposed text amendments would first need to request, and receive, approval for an amendment to the Comprehensive Plan Map and Zoning Map. This would consist of a separate application and approval process following the standards of either Chapter 17.162 or Chapter 17.164 of the Scappoose Land Use and Development Code. Once a specific site is correctly zoned, an individual property owner would apply for a Conditional Use Permit. It is likely that a developer would not go to these lengths unless they were responding to a market demand for a product only permitted under the proposed text amendments.

Goal 11 Public Facilities and Services

To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

Response: Future development within the new comprehensive plan and zoning designations will be required to provide public facilities to accommodate their growth in accordance with all applicable City standards and adopted utility and facility plans. Adequate levels of public facilities will be required to be provided by water lines, sanitary sewer, storm sewer, and streets at the time of development. The proposed zoning designation, Mixed Use Airport (MUA), permits green infrastructure in the form of greenways and other open space, such as bicycle and pedestrian paths and parks.

Goal 12 Transportation

To provide and encourage a safe, convenient and economic transportation system.

Response: Goal 12 is implemented and interpreted by the Land Conservation and Development Commission's (LCDC's) Transportation Planning Rule (TPR), OAR 660 Chapter 12, which is addressed in the Updated Transportation Planning Rule Compliance Letter, prepared by Dunn Traffic Engineering, and attached as Appendix I.

In May 2006, the City processed an annexation and zone change for property located near the Scappoose Industrial Airpark; see case file ANX1-06/ZC1-06 titled, *Sierra Pacific Communities "Wagner Property" Annexation and Zone Change*. At the time of application, the City of Scappoose, the Oregon Department of Transportation (ODOT), and the Oregon Department of Land Conservation and Development (DLCD) all agreed the Public Use Airport (PUA) zoning designation to be applied to the annexed property would be consistent with the Statewide Transportation Planning Rule (TPR) and the City's 1997 Transportation System Plan. All three parties also agreed that the transportation improvements planned for adjacent streets, such as West Lane Road, a designated major collector, would accommodate the anticipated traffic from the subject site under the PUA zoning designation. The City also acknowledged that improvements to the roadway network would be required as conditions of approval for subsequent development proposals submitted for the subject site.

Using the findings of the *Sierra Pacific Communities "Wagoner Property"*

Annexation and Zone Change and the Institute of Transportation Engineers Trip Generation Manual, the Transportation Planning Rule Compliance Letter, prepared by Dunn Traffic Engineering, concludes that future development on any site under the proposed MUA (Mixed Use Airport) zoning designation would not be materially different than what would be generated under the current PUA zoning designation in terms of peak-hour vehicle trips. In fact, the letter concludes that development under the proposed MUA zone could generate less trips during the weekday a.m. and p.m. peak hours than development under the current PUA zone. Based on these findings, and based on the fact that the City of Scappoose, ODOT, and DLCD found no significant affect or impact on the planned transportation system under the current PUA zoning, there should be no significant affect or impact under the proposed MUA zoning. Therefore, the proposed designations are consistent and in compliance with this goal.

Goal 13 Energy Conservation

To conserve energy.

Response: The intent of the proposed text amendments is to provide a location for all manners of airport-related development. For businesses, the clustering of airport-related development will provide energy conservation as employees can conveniently carpool, or possibly “plane-pool”, to work. The proposed comprehensive plan and zoning designations will be applied to land located close to the Scappoose Industrial Airpark. As such, businesses that benefit from air transportation and interact strongly with the cluster of aviation-related businesses located near the airpark will locate here. The airpark is in close proximity to the existing rail line and Highway 30; easy access is available to both facilities and principal roadways designated for truck traffic. Property owners who enjoy aviation as a recreational activity or wish to run a home-based business that benefits from air transportation and interacts strongly with the cluster of aviation-related businesses located near the airpark will locate here. When interacting, the aviation-related businesses and aviation enthusiasts will have shorter trips, as they are located in close proximity to one another. These factors further enforce the energy savings provided by the new designations.

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.

Response: The proposed Airport comprehensive plan designation will allow a broader range of uses through the creation of a new mixed use zone, Mixed Use Airport. Future development in the proposed zone will be a good transition from more traditional residential development, located south of Crown Zellerbach Road, to industrial uses and the airport because it will have larger lots but allow residential and employment uses. Future development under the proposed designations would be required to provide public infrastructure such as sewer lines, storm drainage lines, water line extensions, and street improvements in accordance with all applicable standards. This public infrastructure is proximate and can be expanded in an efficient manner.

17.160.120.A.2. Any federal or state statutes or rules found applicable;

Response: The applicable state statutes are discussed in the following narrative.

Statewide Transportation Planning Rule – Division 12
OAR 660-012-0060, Plan and Land Use Regulation Amendments

- (1) *Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. 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) *As measured at the end of the planning period identified in the adopted transportation system plan:*
 - (A) *Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;*
 - (B) *Reduce the performance of an existing or planned*

transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or

- (C) *Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.*

Response: As explained in the Updated Transportation Planning Rule Compliance Letter, prepared by Dunn Traffic Engineering and attached as Appendix I, the proposed text amendments to the City's Comprehensive Plan and Land Use and Development Code will not materially change the trip generating potential of development sites where the new designations are applied. In fact, the letter concludes that development under the proposed Mixed Use Airport (MUA) zone would likely generate less weekday a.m. and p.m. peak hour vehicle trips than development under the current Public Use Airport (PUA) zone. Therefore, the proposed designations will have no significant effect on the existing or planned transportation system and would be consistent with the identified function, capacity, and performance standards of the facility.

Statewide Airport Planning Rule – Division 13
OAR 660-013-0010, Purpose and Policy

- (1) *This division implements ORS 836.600 through 836.630 and Statewide Planning Goal 12 (Transportation). The policy of the State of Oregon is to encourage and support the continued operation and vitality of Oregon's airports. These rules are intended to promote a convenient and economic system of airports in the state and for land use planning to reduce risks to aircraft operations and nearby land uses.*
- (2) *Ensuring the vitality and continued operation of Oregon's system of airports is linked to the vitality of the local economy where the airports are located. This division recognizes the interdependence between transportation systems and the communities on which they depend.*

Response: The intent of the proposed text amendments is to provide a location for all manners of airport-related development. The proposed comprehensive plan designation, Airport, will be applied to land located close to the Scappoose Industrial Airpark and will encompass the existing Public Use Airport (PUA) Zone and the proposed Mixed Use Airport (MUA) Zone. The proposed designations

do not prohibit the continued expansion of the Scappoose Industrial Airpark and will cluster future airport-related development near existing airport-related development.

The proposed text amendments will continue to foster favorable economic conditions and support the business and industrial climate in Scappoose. The proposed text amendments do not eliminate any currently permitted industrial uses; rather, they allow a broader range of development than presently allowed by the Industrial Comprehensive Plan designation and Public Use Airport (PUA) Zone. The proposed text amendments will expand economic development to include airport-related mixed-use development and enhance the city's economic base by adding new employment opportunities within the city limits. The proposed amendments are only to the text of the Comprehensive Plan and Land Use and Development Code. Any property wishing to develop under the new comprehensive plan and zoning designations would first need to request, and receive, approval for an amendment to the Comprehensive Plan Map and Zoning Map.

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, tie-downs, 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.*
- (2) Emergency Medical Flight Services, including activities, aircraft, accessory structures, and other facilities necessary to support emergency transportation for medical purposes. "Emergency Medical Flight Services" does not include hospitals, medical offices, medical labs, medical equipment sales, and similar uses.*
- (3) Law Enforcement and Firefighting Activities, including aircraft and ground based activities, facilities and accessory structures necessary to support federal, state or local law enforcement and land management agencies engaged in law enforcement or firefighting activities. These activities include transport of personnel, aerial observation, and transport of equipment, water, fire*

- retardant and supplies.*
- (4) *Flight Instruction, including activities, facilities, and accessory structures located at airport sites that provide education and training directly related to aeronautical activities. "Flight Instruction" does not include schools for flight attendants, ticket agents, or similar personnel.*
 - (5) *Aircraft Service, Maintenance and Training, including activities, facilities, and accessory structures provided to teach aircraft service and maintenance skills, maintain, service and repair aircraft and aircraft components, but not including activities, structures, and facilities for the manufacturing of aircraft for sale to the public or the manufacturing of aircraft related products for sale to the public. "Aircraft Service, Maintenance and Training" includes the construction of aircraft and aircraft components for personal use. The assembly of aircraft and aircraft components is allowed as part of servicing, maintaining, or repairing aircraft and aircraft components.*
 - (6) *Aircraft Rental, including activities, facilities, and accessory structures that support the provision of aircraft for rent or lease to the public.*
 - (7) *Aircraft Sales and the sale of aeronautic equipment and supplies, including activities, facilities, and accessory structures for the storage, display, demonstration and sale of aircraft and aeronautic equipment and supplies to the public.*
 - (8) *Aeronautic Recreational and Sporting Activities, including activities, facilities and accessory structures at airports that support recreational use of aircraft and sporting activities that require the use of aircraft or other devices used and intended for use in flight. Aeronautic Recreation and Sporting Activities on airport property shall be subject to approval of the airport sponsor. Aeronautic recreation and sporting activities include but are not limited to: fly-ins; glider flights; hot air ballooning; ultralight aircraft flights; displays of aircraft; aeronautic flight skills contests; gyrocopter flights; flights carrying parachutists; and parachute drops onto an airport. As used in this rule, parachuting and parachute drops includes all forms of skydiving. Parachuting businesses may be allowed only where they have secured approval to use a drop zone that is at least 10 contiguous acres. A local government may establish a larger size for the required drop zone where evidence of missed landings and dropped equipment supports the need for the larger area. The configuration of 10 acre minimum drop zone shall roughly approximate a square or circle and may contain structures, trees, or other obstacles if the remainder of the drop zone provides adequate areas for parachutists to safely land.*
 - (9) *Crop Dusting Activities, including activities, facilities and structures accessory to crop dusting operations. These include, but are not limited to: aerial application of chemicals, seed, fertilizer, pesticide, defoliant and other activities and chemicals used in a commercial agricultural, forestry or*

rangeland management setting.

- (10) *Agricultural and Forestry Activities, including activities, facilities and accessory structures that qualify as a "farm use" as defined in ORS 215.203 or "farming practice" as defined in ORS 30.930.*
- (11) *Air passenger and air freight services and facilities at public use airports at levels consistent with the classification and needs identified in the state ASP.*

Response: This section details uses that require a location on or adjacent to airport property and must be permitted within the airport boundary per OAR 660-013-0040, Aviation Facility Planning Requirements. The proposed zone, Mixed Use Airport (MUA) prohibits some of these uses. When an individual property owner or the City requests a zone change to MUA, the airport boundary will be mapped as part of the application. The MUA zone will not be applied within the airport boundary.

OAR 660-013-0110, Other Uses Within the Airport Boundary

Notwithstanding the provisions of OAR 660-013-0100, a local government may authorize commercial, industrial, manufacturing and other uses in addition to those listed in OAR 660-013-0100 within the airport boundary where such uses are consistent with applicable provisions of the acknowledged comprehensive plan, statewide planning goals and LCDC administrative rules and where the uses do not create a safety hazard or otherwise limit approved airport uses.

Response: This section grants authority to the City to approve the proposed text amendments provided they are consistent with the applicable provisions of the acknowledged comprehensive plan, statewide planning goals, and Land Conservation and Development Commission administrative rules, and do not create a safety hazard or otherwise limit approved airport uses. This application demonstrates that the proposed text amendments are consistent with the above-listed standards.

Airport Land Use Compatibility Guidebook from the Oregon Department of Aviation

Response: The purpose of this document is to provide a comprehensive source of information that can be used as a guide to preserve aviation facilities and provide for the safety of individuals near these airports through the use of compatible land uses. The guidebook does not indicate that residential developments are incompatible with

airports. However, it does suggest that residential development near an airport should be low density. The minimum permitted lot size in the proposed zone, Mixed Use Airport (MUA), is 10,000 square feet; this lot size is generally considered low density in a residential zone.

The guidebook does raise two primary concerns regarding residential development near an airport; noise impacts and safety. Table 1-1, Land Use Troubleshooting Matrix, suggests a hold harmless agreement/fair disclosure statement to address the noise concerns of residential development residents. The table also suggests that the local jurisdiction has a comprehensive plan to address the safety concerns of residential development near an airport.

The proposed zone, MUA, requires an aviation easement and a disclosure statement prior to the issuance of a building permit for new construction. The aviation easement grants unobstructed flight in the airspace and prohibits any structures, growth, or other obstructions from penetrating the approach surface and provides a right-of-entry to remove mark, or light any structure or any such obstruction and must be dedicated to the airport sponsor. The disclosure statement acknowledges that the property is located in close proximity to the airport and signifies the owner's awareness of the associated noise levels, vibrations, fumes, dust, fuel, fuel particles, and other effects that may be caused by aircraft operations on or near the airport and must be recorded in the County records.

Table 3-4, Compatible Land Uses per FAR (Federal Aviation Regulation) Part 77 Surfaces and FAA Safety Areas, offers a comparison of the compatibility of land uses with FAR Part 77 Surfaces and FAA Safety Areas. FAR Part 77 establishes, in part, the standards and notification requirements for determining obstructions in navigable airspace. The table shows land uses and with what surfaces and areas the land use is generally compatible, incompatible, or not clearly compatible or incompatible, thereby requiring specific study. The table lists the following surfaces and areas: primary surface, transitional surface, horizontal surface, conical surface, approach surface, and runway protection zone. Chapter 17.88, Public Use Airport Safety and Compatibility Overlay Zone, of the City of Scappoose Land Use and Development Code, provides definitions for the above listed surfaces and areas; these definitions are found in Appendix E.

These surfaces have been delineated for the Scappoose Industrial Airpark and made part of the City of Scappoose's zoning map. The property within these limits is subject to the requirements of the Public Use Airport Safety and Compatibility Overlay (AO) zoning designation.

Table 3-4 of the Airport Land Use Compatibility Guidebook indicates that residential development is compatible with the conical surface, and not compatible with the primary or transitional surfaces and the RPZ; specific study is required for the horizontal and approach surfaces. The proposed comprehensive plan and zoning designations address the compatibility of all development, not just residential, with the surfaces and areas listed above. Future development occurring under the proposed designations is restricted to a maximum building height of 35 feet; accessory buildings are restricted to a maximum height of 22 feet. The proposed zone, MUA, requires permitted uses, activities, facilities and structures to comply with the requirements of the AO Zone and that, in the event of a conflict between the requirements of the zones, the requirements of the overlay zone controls. In addition, the proposed zone does not permit any structures to penetrate an airport imaginary surface as outlined in Chapter 17.88 of the Scappoose Land Use and Development Code, Public Use Airport Safety and Compatibility Overlay (AO) Zone.

17.160.120.A.3. The applicable comprehensive plan policies and map; and

Response: The applicable Comprehensive Plan policies are discussed in the following narrative.

Goals for Economics

- 1. Maintain conditions favorable for a growing, healthy, stable, and diversified business and industrial climate.*
- 2. Establish greater local control over the density of local economic development.*
- 3. Allow the free market economy to operate with an absolute minimum of restrictions.*

Response: The proposed text amendments will continue to maintain favorable economic conditions and support the business and industrial climate in Scappoose. The proposed text amendments do not eliminate any currently permitted industrial uses; instead, they allow a broader

range of development than presently allowed by the existing zoning. The proposed text amendments will expand economic development to include airport-related mixed-use development and enhance the city's economic base by adding new employment opportunities within the city limits. The proposed amendments are only to the text of the Comprehensive Plan and Land Use and Development Code. Any property wishing to develop under the proposed text amendments would first need to request, and receive, approval for an amendment to both the Comprehensive Plan Map and the Zoning Map. The proposed text amendments will grant the City greater local control over the density of economic development as it will have the opportunity to review all development applications.

Policies for Economics

1. *Make sufficient land available for the anticipated expansion of commercial and industrial activities.*

Response: The proposed text amendments allow for the expansion of airport-related commercial and industrial activities; indeed, they allow a broader range of development than presently allowed by the Industrial Comprehensive Plan designation and Public Use Airport (PUA) zoning designation.

2. *Encourage the preservation, improvement and renewal of the existing business district of the City so that it will be allowed to play a role as a center of economic and civic activity for the entire community.*
3. *Encourage the filling of vacancies in the present commercial strips, together with design features that would reduce conflict with traffic flow, such as frontage roads and single access joint off of the street parking.*

Response: The proposed text amendments apply specifically to airport-related development and will not apply to or degrade the existing business district or commercial strips of the city. Therefore, these policies are not applicable to the proposed text amendments.

4. *Encourage the expansion of employment opportunities within the urban area, so residents can work within their community as well as commute to jobs outside the County.*

Response: The proposed text amendments allow for the expansion of airport-related commercial and industrial activities

within the urban area and will provide employment opportunities within the city limits.

5. *Promote pollution free industrial development necessary to provide a balanced tax base for the operation of local government services.*

Response: The proposed text amendments apply to airport-related development, including mixed-use and residential. It is likely that these types of airport-related development will be lower-pollution than the currently allowed industrial only uses. The city's tax base will be bolstered by the proposed text amendments through development and the provision of employment opportunities for city residents.

6. *Cooperate with other agencies, interest groups and businesses in efforts to develop program strategies for improving the local economy.*

Response: Development under the proposed text amendments will, at a minimum, require cooperation and coordination amongst the property owner, the developer, the City, and Port of St. Helens. At the time of development, as applicable, coordination may occur with other governmental organizations, interest groups, and businesses.

7. *Assist in programs to attract desirable industries in terms of diversification, labor-intensiveness, and non-pollution rather than accept any industry which may wish to locate here; additionally, to prohibit industries with excessive levels or pollution or other undesirable effects which would cancel possible economic benefits or threaten the existing quality of living.*

Response: The proposed text amendments do not eliminate any currently permitted uses; rather, they allow a more diverse range of development than presently allowed by the Industrial Comprehensive Plan designation and Public Use Airport (PUA) zoning designation. The proposed text amendments will expand economic development to include airport-related mixed-use development. It is likely that these types of airport-related development will have a variety of labor intensiveness and be lower pollution than the currently allowed industrial only uses.

8. *Work with local mining industries to rehabilitate the gravel pits so that there will be an efficient use of land and the pits will not be an eyesore.*

9. *Work with Department of Environmental Quality and Fish and Wildlife in enacting controls and performance standards for industrial operations to reduce the possibility of excessive impact upon the environment.*
10. *Work with Department of Environmental Quality and Fish and Wildlife in enacting controls and performance standards for industrial operations to reduce the possibility of excessive impact upon the environment.*
{Within the Comprehensive Plan, these policies have the same text.}

Response: The proposed text amendments apply to airport-related development only. They will not apply to the gravel pits located within the city or address performance standards for industrial operations. Therefore, these policies are not applicable to the proposed text amendments.

11. *Identify special locations for industrial activities that will assist in energy conservation; specifically, industries should be clustered:*
 - a. *Close to existing rail lines.*
 - b. *To allow for employees to use carpools.*

Response: The clustering of all manners of airport-related development will provide energy conservation as employees can conveniently carpool, or possibly “plane-pool,” to work. The proposed comprehensive plan and zoning designations will be applied to land located close to the Scappoose Industrial Airpark. Businesses that benefit from air transportation and interact strongly with the cluster of aviation-related businesses located near the airpark will locate here, further enforcing the energy savings and synergy of the new designations.

The airpark is in close proximity to the existing rail line and Highway 30; easy access is available to both facilities and principal roadways designated for truck traffic.

12. *REMOVED*
{Within the Comprehensive Plan, this policy has been removed.}

13. *Coordinate its plans for public facilities to accommodate expected industrial and residential growth.*

Response: Future development within the new comprehensive plan and zoning designations created by the proposed text amendments will be required to provide public facilities to accommodate their growth in accordance with all applicable City standards. Adequate levels of public services, including water, sanitary sewer, storm sewer, and streets, will be provided at the time of future development. Public water is located in West Lane Road; future development can connect here and loop service through the development site. Sanitary sewer is located adjacent to the west and south sides of the airport; future development can connect at this location. Storm sewer will be managed on a site-by-site basis. Franchise utilities are available at the intersection of West Lane Road and Crown Zellerbach Road and will be extended north as demand requires.

14. *Limit the amount of time the City has to review site design review proposals to prevent unreasonable delays for commercial and industrial enterprises.*
15. *Encourage design features on Highway 30 that reduce conflicts with traffic flow, as congestion and traffic hazards can only hinder local economic development.*
16. *Encourage energy saving building practices in future commercial and industrial buildings.*

Response: The proposed text amendments apply to airport-related development. They do not address the process for design review, processes, development on or adjacent to Highway 30, or building practices. Therefore, these policies are not applicable to the proposed text amendments.

17. *REMOVED*
{Within the Comprehensive Plan, this policy has been removed.}

Goals for Public Facilities and Services

1. *Provide the public facilities and services which are necessary for the well being of the community and which help guide development into conformance with the Comprehensive Plan.*

Response: Adequate levels of public facilities, in accordance with applicable City standards, will be required and provided at

the time of future development. These public facilities include public water, sanitary sewer, storm sewer, and streets.

2. *Direct public facilities and services, particularly water and sewer systems, into the urban growth area.*

Response: The new comprehensive plan and zoning designations will only be applied to property within the urban growth boundary, thereby directing public facilities and services within the urban growth area.

3. *Ensure that the capacities and patterns of utilities and other facilities are adequate to support the residential densities and intensive land use patterns of the Comprehensive Plan.*

Response: Future development within the new comprehensive plan and zoning designations created by the proposed text amendments will be required to conform to adopted utility and facility plans. The City, through its long range planning efforts and review of development applications, will determine the residential densities and intensive land use patterns of the Comprehensive Plan.

4. *Avoid the provision or expansion of public utilities and facilities in sparsely settled non-urban areas, when this would tend to encourage development or intensification of uses, or to create the need for additional urban services.*

Response: The new comprehensive plan and zoning designations will be applied to property located near the Scappoose Industrial Airpark. The area west of the airpark has recently experienced significant growth. The area east of the airpark, currently outside the city limits and urban growth boundary, is in close proximity to existing urban areas within the city limits such as the residential neighborhood located south of Crown Zellerbach Road.

5. *Integrate schools with land use, transportation and recreation in order to realize their optimum value for local residents.*

Response: The proposed text amendments are intended to provide a location for airport-related development; therefore,

schools are not a permitted use within the new zoning designations.

6. *Create and maintain ample places for recreation in Scappoose.*

Response: The proposed zoning designation, Mixed Use Airport (MUA), permits greenways and other open space, such as bicycle and pedestrian paths and parks.

7. *Provide an effective law enforcement system responsive to the needs of the public as well as the rights of the individual.*

8. *Reduce the loss of lives and property from fire and minimize the hazards of structural, equipment, and material exposure to fire risks through building and fire codes.*

Response: Future development within the proposed comprehensive plan and zoning designations would be required to comply with all applicable city, county, state, and federal standards; this includes all applicable standards relating to fire safety. The proposed Mixed Use Airport (MUA) zoning designation would require residential subdivisions or partitions to grant emergency vehicle access to private taxiways in the form of emergency access easements on the final plat.

9. *Provide library services capable of meeting the needs of area residents.*

Response: Libraries are not a permitted use within the new designations; the proposed text amendments are intended to provide a location for airport-related development.

10. *Work with the County in the effective management of the disposal of solid wastes.*

Response: Future development within the new comprehensive plan and zoning designations created by the proposed text amendments will be required to conform to the utility and facility plans adopted by the City, including the effective management of the disposal of solid wastes.

11. *Insure that the green infrastructure is regarded as equally important as the gray infrastructure recognizing the urban forest, watersheds, ridgelines and*

open spaces as equally important to our well being and health as utilities, roads and sewers.

Response: The proposed text amendments allow a more diverse range of development than presently allowed by the Industrial Comprehensive Plan designation and Public Use Airport (PUA) zoning designation. Generally the light industrial development occurring in the PUA Zone requires the removal of all trees to accommodate large building footprints and paved circulation and parking areas. The flexibility of uses permitted in the proposed zoning designations should allow a greater number of trees to be preserved. It is envisioned that future development will preserve existing trees in groves to support their continued health and incorporate the groves into the development layout. The proposed zoning designation, Mixed Use Airport (MUA), permits greenways and other open space, such as bicycle and pedestrian paths and parks as outright permitted uses.

Goals for Transportation

1. *To develop and maintain diverse methods for moving people and good which are:*
 - A. *Responsive to the needs and preferences of individuals, business and industry;*
 - B. *Suitably integrated into the fabric of the urban community; and*
 - C. *Safe, rapid, economical and convenient to use.*

Response: The intent of the proposed text amendments is to provide a location for all types of airport-related development. The proposed comprehensive plan and zoning designations will be applied to land located near the Scappoose Industrial Airpark, making air transportation rapid, economical, and convenient to use. In addition, the existing street network provides rapid, economical, and convenient access to Highway 30 and downtown Scappoose. The unifying factor, and what makes the broad range of uses allowed by the proposed designations compatible, is that each use has a direct relationship to the Scappoose Industrial Airpark. Businesses that benefit from air transportation and interact strongly with the cluster of aviation-related businesses located near the airpark and property owners who enjoy aviation as a recreational activity or wish to run a home-based business that benefits from air transportation and

interacts strongly with the cluster of aviation-related businesses located near the airpark will locate here. These businesses and individuals have a strong preference for locating near an airport; the proposed designations provide the means for them to do so.

2. *To remove existing congestion and prevent future congestion so that accidents and travel time would be reduced.*

Response: The proposed comprehensive plan and zoning designations will not have a detrimental effect on traffic circulation issues.

3. *To create relatively traffic-free residential areas.*

Response: The proposed comprehensive plan and zoning designations do not address traffic in residential areas. Therefore, this goal is not applicable to the proposed text amendments.

4. *To strengthen the economy by facilitating diverse means for transporting industrial goods.*

Response: The intent of the proposed text amendments is to provide a location for all manners of airport-related development. The proposed text amendments will be applied to property located near the Scappoose Industrial Airpark. They will increase the variety of airport-related business able to locate near the airpark and transport their goods more readily. The airpark is in close proximity to the existing rail line and Highway 30. Both transportation facilities are accessible without difficulty via West Lane Road and Crown Zellerbach Road.

5. *To develop and maintain a road network that is an asset to existing commercial areas.*

Response: The proposed comprehensive plan and zoning designations do not address commercial uses. Therefore, this goal is not applicable to the proposed text amendments. However, future development within the proposed comprehensive plan and zoning designations are not precluded from complying with Section 17.154, Street and Utility Improvement Standards, of the Land Use and Development Code.

6. *To provide a more reliable basis for planning new public and private developments whose location depends upon transportation.*

Response: The proposed comprehensive plan and zoning designations will be applied to land located close to the Scappoose Industrial Airpark and allow the clustering of airport-related uses. The unifying factor, and what makes the broad range of uses allowed by the proposed designations compatible, is that each use has a relationship to the Scappoose Industrial Airpark. Businesses that benefit from air transportation and interact strongly with the cluster of aviation-related businesses located near the airpark and property owners who enjoy aviation as a recreational activity or wish to run a home-based business that benefits from air transportation and interacts strongly with the cluster of aviation-related businesses located near the airpark will locate here.

7. *To cooperate closely with the County and State on transportation matters.*

Response: The proposed comprehensive plan and zoning designations do not address cooperation between jurisdictions. Therefore, this policy is not applicable to the proposed text amendments.

8. *To assure that roads have the capacity for expansion and extension to meet future demands.*

9. *To insure the paths of future arterial rights-of-way are preserved.*

Response: The proposed text amendments do not preclude future development from complying with Section 17.154, Street and Utility Improvement Standards, of the Land Use and Development Code or planned projects identified in the City's Transportation System Plan.

10. *To encourage energy conservation modes of transit such as car pooling.*

Response: The proposed comprehensive plan and zoning designations do not address energy conservation modes of transit. However, it is noted that the clustering of airport-related development will provide energy conservation as employees can conveniently carpool, or possibly "plane-pool," to work. The proposed comprehensive plan and zoning designations will be

applied to land located close to the Scappoose Industrial Airpark.

11. *To provide special protected routes for walking and bicycling.*

Response: The proposed text amendments do not preclude the provision of pedestrian paths and bikeways. In fact, the proposed zoning designation, Mixed Use Airport, includes greenways, parks, other open space, and bicycle and pedestrian paths as outright permitted uses.

12. *Enhance the aesthetics of all streets and roadways through planting and maintenance of street trees.*

Response: The proposed comprehensive plan and zoning designations do not preclude future development from complying with Section 17.104, Street Trees, of the Land Use and Development Code.

13. *Work with the Port of St. Helens to maintain the continuing viability of the Scappoose Industrial Airpark.*

Response: The proposed comprehensive plan designation, Airport, will be applied to land located near the Scappoose Industrial Airpark and will encompass the existing Public Use Airport (PUA) Zone and the proposed Mixed Use Airport (MUA) Zone. The proposed designations allow a variety of airport-related light industrial, business, and residential uses. The proposed comprehensive plan designation states that “...residential development at the Scappoose Industrial Airpark will require exploration of options and cooperation with the private sector.” All manners of future airport-related development will necessitate a joint effort with the Port of St. Helens to further the continued viability of the airpark.

Policies for Transportation

1. *Require all newly established streets and highways to conform to Scappoose Municipal Code requirements for width, alignment, design and construction, and require existing one way streets to be upgraded to Scappoose Municipal Code requirements for alignment, design and construction prior to conversion to two way traffic.*

Response: The proposed text amendments do not preclude future development from complying with Section 17.154, Street and Utility Improvement Standards, of the Land Use and Development Code or the City's Transportation System Plan.

2. *Review diligently all subdivision plats and road dedications to insure the establishment of a safe and efficient road system.*
3. *Cooperate with County and State plans to improve transportation facilities – especially on Highway 30.*
4. *Regulate signs and sign lighting along major routes to avoid distractions for motorists.*
5. *Work with private rail companies and the Oregon Department of Transportation Rail Division to improve the safety at railroad crossings.*
6. *Regulate the expansion of commercial enterprises along Highway 30 to limit traffic hazards and congestion.*

Response: The proposed comprehensive plan and zoning designations do not address City process, cooperation between jurisdictions or specific improvements to Highway 30, signs and sign lighting in any location, railroad issues, or commercial uses along Highway 30. Therefore, these policies are not applicable to the proposed text amendments.

7. *Adopt and comprehensively implement the Scappoose Transportation System Plan and improve the local circulation network by requiring recommended road improvements at the time of approval of each development application.*
8. *Regulate or prevent development within areas which will be needed for future collector streets for widening rights of way.*

Response: The proposed comprehensive plan and zoning designations do not preclude future development planned projects identified in the City's Transportation System Plan occurring under the new zoning designation to comply with Section 17.154, Street and Utility Improvement Standards, of the Land Use and Development Code or planned projects identified in the City's Transportation System Plan.

9. *Encourage a car pooling program (possibly by utilizing City Hall as an information center.*
10. *Design a transportation system that keeps in mind energy conservation.*

Response: The proposed comprehensive plan and zoning designations do not address a city-wide carpooling program or the design of a city-wide transportation system. However, it is noted that the clustering of airport-related development will provide energy conservation as employees can conveniently carpool, or possibly “plane-pool,” to work. The proposed comprehensive plan and zoning designations will be applied to land located close to the Scappoose Industrial Airpark. As such, businesses that benefit from air transportation and interact strongly with the cluster of aviation-related businesses located near the airpark and property owners who enjoy aviation as a recreational activity or wish to run a home-based business that benefits from air transportation and interacts strongly with the cluster of aviation-related businesses located near the airpark will locate here, further enforcing the energy savings provided by the new designations.

11. *Work with the Port of St. Helens on their plans for the Scappoose Industrial Airpark, as well as for industrial development and transportation. Apply appropriate zoning designations to ensure that land identified for airport use in the 2004 Scappoose Industrial Airpark Master Plan (as amended August 9, 2006) is utilized for airport-related development.*

Response: The intent of the proposed text amendments is to provide a location for all manners of airport-related development. The proposed comprehensive plan and zoning designations will be applied to land surrounding the Scappoose Industrial Airpark and will encompass the existing Public Use Airport (PUA) Zone and the proposed Mixed Use Airport (MUA) Zone; the Public Use Airport Safety and Compatibility Overlay (AO) Zone will continue to apply to these properties. The Scappoose Industrial Airpark Airport Master Plan recognizes that with the AO zoning designation “...the City has appropriately addressed the land use that is within their jurisdiction around the airport.”

The Scappoose Industrial Airpark Airport Master Plan states that “The most notable trend in general aviation is the continued strong use of general aviation aircraft for business and corporate uses.” In addition, language was adopted on August 9, 2006 regarding airport

residential development. The adopted language states the following: *“Residential airparks at select general aviation airports have proven feasible. It is already happening at 30 public use airports across the country with multiple airport residential developments currently in the planning stages. These airports have residential airparks adjacent to the airport land and have developed through-the-fence agreements to facilitate runway access.”* and *“The Port of St. Helens Board of Commissioners is supportive of a residential component adjacent to the Airpark and is willing to work with the private sector to provide residential development with airport access, if reasonable and customary terms and conditions are adopted that will provide appropriate protection for the airport and will enhance its viability.”* The proposed designations allow a variety of airport-related light industrial, business, and residential uses. Detached single-family housing must be approved through the conditional use permit process; this is to give the City flexibility in their review of airport-related residential uses.

The proposed designations will permit the continued expansion of the Scappoose Industrial Airpark and will cluster future airport-related development near the airpark and existing airport-related development. Based on Exhibit 3B, Landside Development Alternative, of the Scappoose Industrial Airpark Airport Master Plan, the majority of growth planned by the airport will occur to the east. Growth to the west is limited to hangar construction and an industrial business park (see Exhibit 3C) on land within the current airport property limits. Exhibit 3B also illustrates the acquisition of land adjacent to the western airport property line. This acquisition will depend on individual property owners; the proposed designations do not preclude this expansion.

12. *Encourage the design features that would reduce conflict with traffic flow, such as frontage roads and single access joint off-street parking.*

Response: The proposed comprehensive plan and zoning designations do not address specific design features as these items are more appropriately reviewed as part of a land development application. Therefore, this policy is not applicable to the proposed text amendments.

13. *Control street intersections, rail crossings, and the construction of industrial, commercial and residential drives at the Columbia River Highway (Highway*

30) per the plans and policies detailed within the Oregon Highway Plan, the Portland-Astoria (Highway 30) Corridor Plan, the Scappoose Transportation System Plan, and the Scappoose Public Works Design Standards and Specifications in order to regulate traffic patterns and promote safety. The means to do this shall include, but is not limited to: closing, combining, or limiting the number of access points; encouraging safe setbacks from the highway and rail corridor right-of-way; encouraging the construction planned development centers or "cluster" developments; and utilizing frontage road and access collection points as much as possible.

14. *Review the street standards of the City of Scappoose to make sure that they are adequate but not excessive.*

Response: The proposed comprehensive plan and zoning designations address airport-related development and do not address development along Highway 30 or City street standards. Therefore, these policies are not applicable to the proposed text amendments.

15. *Develop a system of pedestrian paths and bikeways, encouraging their construction through the Development Code.*

Response: The proposed comprehensive plan and zoning designations do not address the development of pedestrian paths and bikeways. However, it is noted that the proposed text amendments do not preclude the provision of pedestrian paths and bikeways. In fact, the proposed zoning designation allows greenways, parks, other open space, and bicycle and pedestrian paths as outright permitted uses.

16. *The 1989-1994 Six Year Highway Improvement program contains projects within the Scappoose Urban Growth Boundary. The City will coordinate with ODOT to implement the Six Year Highway Improvement Program.*

Response: The proposed comprehensive plan and zoning designations do not address the Six Year Highway Improvement Program; this is more appropriately addressed as part of a development application. Therefore, this policy is not applicable to the proposed text amendments.

17. *Implement street design standards requiring planting strips for street trees and appropriate mechanisms for mitigating potential damage to utilities and paving.*

Response: The proposed comprehensive plan and zoning designations do not preclude development occurring under the new zoning designations to comply with Section 17.154, Street and Utility Improvement Standards, of the Land Use and Development Code.

Goals for Housing

1. *Increase the quantity and quality of housing for all citizens.*

Response: The proposed text amendments will increase the quantity of housing within the city by permitting detached single-family homes; the proposed text amendments will add to the city's variety of housing by providing opportunities for unique living environments that relate to aviation.

2. *Locate housing so that it is fully integrated with land use, transportation and public facilities.*

Response: The new comprehensive plan and zoning designations created by the proposed text amendments address airport-related development and will be applied to property located near the Scappoose Industrial Airpark. The new zoning designation, Mixed Use Airport (MUA), permits detached, single-family housing. This housing must be airport-related and, therefore, will be integrated with the surrounding land uses, which also relate to the airpark and the transportation options provided by the airpark. Adequate levels of public facilities will be required to be provided by water lines, sanitary sewer, storm sewer, and streets at the time of development.

3. *Concentrate high-density multi-family dwellings in a few areas of the City and distribute low density multi-family dwellings throughout the City.*

Response: The proposed comprehensive plan and zoning designations do not address or permit multi-family housing. Therefore, this goal is not applicable to the proposed text amendments.

4. *Protect residential areas from conflicting land uses, unnecessary through traffic, or other undesirable influences.*

Response: The proposed zoning designation, Mixed Use Airport (MUA), permits detached, single-family housing. This housing must be airport-related and, therefore, will be compatible with surrounding land uses. Future development applications will address site-specific traffic issues.

Policies for Housing

1. *Maintain adequate zoning, subdivision, and building codes to help achieve the City's housing goals.*

Response: The proposed text amendments address airport-related development and help achieve the City's housing goals as described above.

2. *Limit housing in hazardous areas as well as in significant fish and wildlife areas.*

Response: The proposed comprehensive plan and zoning designations will be applied to property located near the Scappoose Industrial Airpark. Per the City of Scappoose Zoning Map, no land designated FWW (Sensitive Lands-Fish and Riparian Corridor Overlay) is located near the airpark. The Zoning Map does not illustrate the additional sensitive lands designations recognized by the City and included in the Land Use and Development Code: Flooding, Wetlands, and Slope Hazard.

3. *Encourage high-density multi-family dwellings in a few areas of the City and distribute low density multi-family dwellings throughout the City.*

4. *Work with all interested agencies and organizations to facilitate housing conservation and construction, and to improve sub-standard dwellings; moreover, to encourage and cooperate with all efforts to provide adequate housing for those with special needs.*

5. *Permit multi-family dwellings which conform to the following general conditions and criteria:*

- A. *They should not be so large or close to single-family dwellings as to block their sunlight or to unduly interfere with an established, well-maintained single-family neighborhood.*
- B. *They should include ample open space or recreational facilities for their residents as well as ample off-street parking and adequate access.*

- C. *They should not adversely affect the design capacities of the sewer, water, drainage or street systems as determined by the City Engineer.*
 - D. *They should be encouraged in areas close to commercial centers.*
6. *Permit mobile homes only in mobile home parks and subdivisions within the City limits; they shall be developed so that they conform to the following general conditions:*
- A. *They should not interfere with an established well-maintained single-family neighborhood.*
 - B. *They should include ample open space or recreational facilities for their residents as well as ample off-street parking and adequate access.*
 - C. *They should not adversely affect the design capacities of the sewer, water, drainage or street systems as determined by the City Engineer.*
7. *Ensure that subdivision provide a full array of public services at the expense of the developer.*

Response: The new comprehensive plan and zoning designations proposed by the text amendments address airport-related development and will be applied to property located near the Scappoose Industrial Airpark. The proposed zoning designation, Mixed Use Airport (MUA), permits outright greenways and other open space, including bicycle and pedestrian paths and parks. Detached, single-family housing is permitted as a conditional use; housing that will accommodate those with special needs is not precluded. Multi-family housing is not permitted; therefore, Policies 3 and 5 are not applicable to the proposed text amendments.

Currently, no established single-family neighborhoods are located north of Crown Zellerbach Road or east of West Lane Road. Given that this is the area where the proposed zoning designations will be applied, there will be no direct interference with any established single-family neighborhoods. All partitions and subdivisions within the proposed MUA Zone will be required to comply with Section 17.130, Conditional Use, and Section 17.150, Land Division – Subdivision of the Land Use and Development Code. Future development applications will address site-specific public facility issues.

- 8. *Re-evaluate City ordinances and, where possible, streamline administrative and requirements in order to reduce development costs.*

13. Pursuant to state law, permit siting of manufactured homes on all land zoned for single-family residential uses.

Response: The proposed comprehensive plan and zoning designations apply to airport-related development and do not address City housing policies or propose single-family residential zoning. Therefore, these policies are not applicable to the proposed text amendments.

Goal for the Industrial Land Use Designation

1. Provide a place for industrial activities where their requirements can be met, and where their environmental effects will have a minimal impact upon the community.

Response: The intent of the proposed text amendments is to provide a location for all manners of airport-related development, including industrial. The proposed comprehensive plan and zoning designations will be applied to land located close to the Scappoose Industrial Airpark. As such, uses that benefit from air transportation and interact strongly with the cluster of aviation-related businesses located near the airpark will locate here, further enhancing the synergy of the new designations.

Policies for the Industrial Land Use Designation

1. Provide suitable areas for industrial expansion, utilizing for such purposes relatively large, flat areas that are separated by buffers from the City's residential districts.
2. Prevent industrial development from disrupting homogeneous residential neighborhoods.
3. Locate industrial areas so they have a convenient relationship to the community's transportation system, without generating heavy traffic through residential districts; additionally, the clustering of industrial activities will allow carpooling by employees.

Response: The new comprehensive plan and zoning designations proposed by the text amendments address airport-related development and will be applied to property located near the Scappoose Industrial Airpark. The property surrounding the airpark is designated Industrial by the Comprehensive Plan Map and Public Use Airport (PUA) by the Zoning Map. The proposed comprehensive plan designation, Airport, will encompass the existing Public Use Airport (PUA) Zone and the

proposed Mixed Use Airport (MUA) Zone. Areas suitable for airport-related industrial expansion will not be displaced by the proposed text amendments.

The airpark is in close proximity to the existing rail line and Highway 30; easy access is available to both facilities and principal roadways designated for truck traffic. Currently, no established single-family neighborhoods are located north of Crown Zellerbach Road or east of West Lane Road. Given that this is the area where the proposed designations will be applied, there will be no direct interference with any established single-family neighborhoods.

4. *Screen, setback or buffer the boundaries of industry, particularly unsightly areas which can be viewed from arterials or from residential areas.*

Response: The proposed designations do not preclude new development from complying with Section 17.100 Landscaping, Screening, and Fencing of the City of Scappoose Land Use and Development Code.

5. *Apply this designation where industrial concerns have become established and where vacant industrial sites have been set aside for this purpose.*

Response: The new comprehensive plan and zoning designations proposed by the text amendments address airport-related development and will be applied to property located near the Scappoose Industrial Airpark. The property surrounding the airpark is designated Industrial on the Comprehensive Plan Map and Public Use Airport (PUA) on the Zoning Map. The proposed comprehensive plan designation, Airport, will encompass the existing PUA Zone and the proposed Mixed Use Airport (MUA) Zone. Vacant industrial sites will not be displaced by the proposed text amendments; they will retain the opportunity to develop with industrial uses.

6. *Protect the stability and functional aspects of industrial areas by protecting them from incompatible uses.*

Response: The intent of the proposed text amendments is to provide a location for all manners of airport-related development, including industrial. This will allow the clustering of future airport-related industrial uses near existing airport-related

industrial uses, away from incompatible uses. Detached, single-family housing within the proposed zoning designation, Mixed Use Airport (MUA), must be approved through the conditional use permit process; this is to give the City flexibility in their review of airport-related residential uses. The unifying factor, and what makes the broad range of uses allowed by the proposed comprehensive plan and zoning designations compatible, is that each use has a relationship to the Scappoose Industrial Airpark.

4. *The applicable provisions of the implementing ordinances.*

Response: The applicable provisions of the implementing ordinances are addressed within this application.

17.160.120.B. *Consideration may also be given to: Proof of a substantial change in circumstances, a mistake, or inconsistency in the comprehensive plan or implementing ordinance which is the subject of the application.*

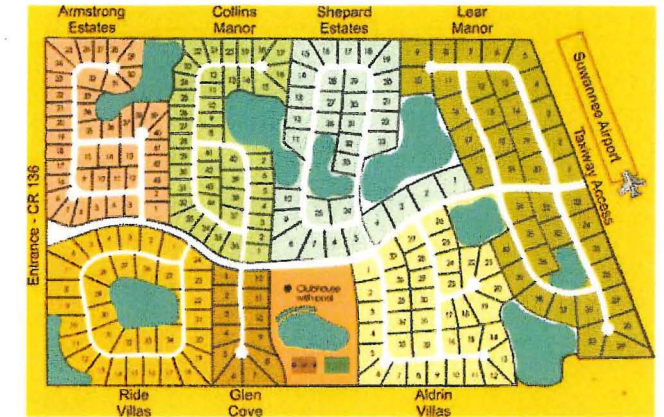
Response: Residential airparks are a new and innovative development concept that has proven viable in a range of climates and diverse cultural locations; existing residential airparks are located in such assorted states as Florida, Texas, Washington, and Oregon. Residents of these airparks are aviation enthusiasts with a strong desire to live adjacent to an active airport. For these enthusiasts, the sound of airplanes taking off and landing is a pleasure, not a nuisance. They see no conflict in living near an airport. The close proximity allows them to easily pursue their passion for flying. A brief summary of selected residential airparks is found below; the success of these airparks demonstrates the strong demand for this unique living environment.

Suwannee Landing (www.swanneelanding.com)

This development in Suwannee County, North Florida is located on 270 acres, south of the Suwannee County Airport. The development includes a 13-acre common area and the development is surrounded by a nature-filled recreation area and walking trails.

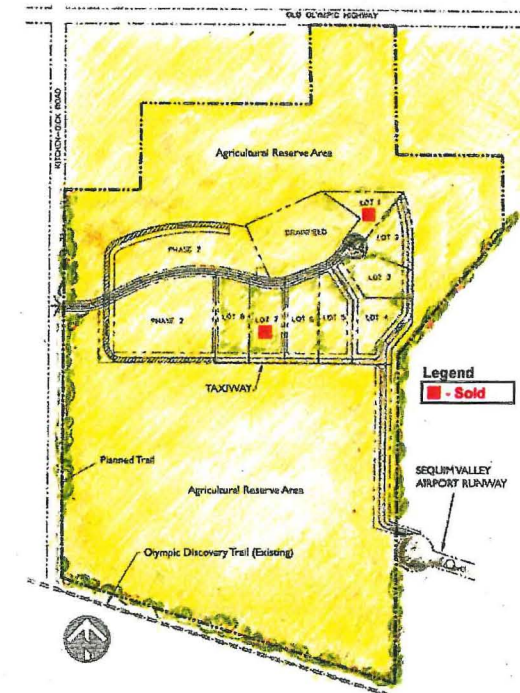


Airport home sites with hangars and sites without hangars are also available. Homes are currently being sold in Phase 1 and Phase 6; a total of seven phases is planned.



Olympic Discovery Trail Farm (www.discoverytrailfarm.com)

This 65-acre development is located in Sequim, Washington, just west and slightly north of the Sequim Valley Airport; cooperation between the developers and airport have created this residential community.



Home sites are grouped in a pedestrian friendly neighborhood and surrounded by approximately 50 acres of farmland that has been placed in a conservation easement to prevent future development.

The first phase includes eight lots ranging in size from 0.60 acres to 1.40 acres; construction began last fall. A private taxiway from the residential community leads to the public airport runway. The community boasts a nationally-recognized multi-user trail and borders the Discover Trail Farm to the south.

Independence Airpark (www.isasg7s5.com)

The Independence Airpark, located one mile north of Independence, Oregon, adjacent to the Independence State Airport, is the premier example of residential airpark development in the State of Oregon. The development has featured residential dwellings in compatibility with a working airport for over 30 years; Phases I, II, and III of the airpark received a 30-year access permit from the Oregon Aeronautics Division and the FAA in June 1974 and a new permit was granted in 2004. Since 1974 two additional airparks have been developed: North Airpark Annex, located on Stearman



Street, in 1992 and North Park Annex, located on Skyraider Street and Corsair Street, in 1994. Separate 10-year access permits, with renewal options, were granted to the additions. Improvements and amenities include the Stardust Café, rental hangars, and

underground aircraft fuel storage tanks with a card-lock facility.

The Independence State Airport Master Plan, prepared by Century West Engineering Corporation, was adopted by the Oregon Department of Transportation Aeronautics Division in November 1985. The same year, Ordinance No. 78, Chapter 180 and 181, was established by the Polk County Board of Commissioners to amend the Polk County Zoning Ordinance establishing the Airport Development District.



This photo was taken from the east; the residential airpark is clearly visible. Note that streets are cul-de-sacs from the east and the taxiways in the backyards are cul-de-sacs from the west; aircraft and automobiles do not compete for right-of-way.

III. Conclusion

The applicant has met the burden of proof that the proposed text amendments comply with all applicable criteria and respectfully requests approval of this application.

Appendix A



Type of Application	Type of Application
Development Code/Comp Plan Text Amendment <input checked="" type="checkbox"/>	Site Development Review
Comp Plan Map Amendment	Conditional Use
Zone Change	Variance (Major or Minor)
Annexation	Sign Permit
Subdivision Tentative Plan	Temporary Commercial Use
Partition (Major or Minor)	Vacation (Street or Easement)
Property Line Adjustment	Public Land Tree Removal
Sensitive Lands Development: Flooding	Type II Home Occupation
Sensitive Lands Development: Wetlands	Determination of Similar Use
Sensitive Lands Development: Riparian Corridor	Modification to Previous Approval
Sensitive Lands Development: Steep Slope	Pre-Application Conference

Requirements for each specific type of application will be attached to this form and constitute part of the application packet.

Applicant: _____ Owner: N/A

Mailing Address: _____ Mailing Address: N/A

City State Zip City State Zip

Phone: _____ Fax: _____ Phone: N/A Fax: N/A

Property Address or Location: N/A

Tax Account Number: N/A

Is a pre-application conference required: _____ If required, pre-application conference date: 9/26/06

if pre-application conference is waived, the applicant must sign here: N/A

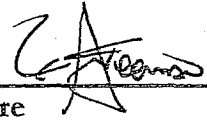
I certify that this application and its related documents are accurate to the best of my knowledge. I understand that the signature on this application authorizes the City and its agents to enter upon the subject property to gather information pertinent to this request.

 Signature of Applicant Signature of Owner

To be completed by City Staff:
 Date application was submitted: _____ Amount of Fee paid: _____ Receipt Number: _____
 Before this application will be processed, the Planner must certify that all applicable items are included and the application is complete. Date application accepted as complete: _____

Applicant

Sierra Pacific Communities
Ed Freeman
P.O. Box 1754
Lake Oswego, OR 97035



Signature

4-5-07

Date

Appendix D



April 6, 2007

Project #: 0054.0

Brian Varricchione
City Planner & Assistant City Engineer
City of Scappoose
33568 E. Columbia Avenue
Scappoose, OR 97056

RE: Compliance of Scappoose Text Amendments with the Transportation Planning Rule

Dear Mr. Varricchione:

Dunn Traffic Engineering, LLC has prepared this letter to demonstrate how the proposal to add a new comprehensive plan designation of *Airport* and a new zoning designation of *Public Use Airport - Mixed Use (PUA-MU)*, which may ultimately be applied to areas currently zoned for *Public Use Airport (PUA)* near or adjacent to the Scappoose Industrial Airpark, complies with the Statewide Transportation Planning Rule. Specifically, this letter provides a comparison of reasonable worst-case trip generation scenarios for a hypothetical development site adjacent to the Scappoose Industrial Airpark to illustrate how development under the proposed *PUA-MU* zone will generate less vehicle trips during the critical weekday a.m. and p.m. peak hours than if the same site were developed under the current *PUA* zone. Because the trip-generating potential of the proposed *PUA-MU* zone is less than that of the current *PUA* zone, in terms of the weekday a.m. and p.m. peak hours, the proposed text amendments to the City's comprehensive plan will not "significantly affect" any existing or planned transportation facility within the City's urban growth boundary. For this reason, compliance with the TPR is assured. The remaining sections of this letter support this conclusion.

Background on Transportation Planning Rule

Division 12 of the Transportation Planning Rule (OAR 660-012) gives the Oregon Department of Land Conservation and Development (DLCDD) the power to interpret and implement Statewide Planning Goal 12 (Transportation). Section 660-012-0060 of the TPR provides specific language on how to deal with any plan and land use regulation amendments. This section of the TPR states the following:

(1) *Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. 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) *As measured at the end of the planning period identified in the adopted transportation system plan:*

(A) *Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;*

(B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or

(C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.

As demonstrated in the next section, the proposed text amendments to the City's comprehensive plan will not "significantly affect" an existing or planned transportation facility.

Comparison of Trip Generation Intensities (Current Zoning vs. Proposed Zoning)

For the purpose of demonstrating compliance with the Transportation Planning Rule and "no significant effect" result on any existing or planned transportation facility, reasonable worst-case trip generation estimates were prepared for two hypothetical development scenarios; one under the current *PUA* zoning and another under the proposed *PUA-MU* zoning. For this analysis, it was assumed that both hypothetical development scenarios would occur on a 50-acre parcel located near or adjacent to the Scappoose Industrial Airpark.

A good resource to help determine a reasonable worst-case trip generation estimate for development under the current *PUA* zoning is the findings from the *Sierra Pacific Communities "Wagoner Property" Annexation and Zone Change*, approved by the City of Scappoose in May of 2006 with the support of both the Oregon Department of Transportation (ODOT) and DLCD. (*The findings of this annexation and zone change are provided as Attachment "A" to this letter*). Within the City's staff report, it is stated that private developments located within a *PUA* zone are expected to generate 10 average daily vehicle trips per gross acre, and 1.75 vehicle trips per gross acre during both the weekday a.m. and p.m. peak hours. For a hypothetical development site that is 50 gross acres in size, this translates into 500 average daily vehicle trips, and 88 vehicle trips during the weekday a.m. and p.m. peak hours.

To estimate a reasonable worst-case trip generation for a hypothetical development under the proposed *PUA-MU* zone, several assumptions had to be made. First, the land uses that will be allowed within the proposed *PUA-MU* zone support a pattern of airport-related, home-based, businesses located on owner-occupied lots. For this reason, the ITE trip generation rates for *Single Family Detached Homes* (ITE Code #210) were assumed to apply to development within the *PUA-MU* zone. Any other ITE land use category would either generate less trips (as is the case for other types of residential uses) or trips that are already consistent with the current *PUA* zone (such as industrial type businesses). It was also assumed for this analysis that 15 percent of the gross acreage of the hypothetical development site would be set aside for public streets and right-of-way, possible protection of wetland areas and riparian habitats, the need for neighborhood park space, and the possible presence of community hangers. Of the 50 gross acres, this would leave 42.5 acres of net developable property. Finally, one last assumption was made that the owner-occupied properties within the development would average one-half acre in size. Although the text amendment language for the proposed *PUA-MU* zone allows for a minimum lot size of 10,000 square feet, it is likely there will be demand for much larger sized parcels, beyond 10,000 square feet, to create airport-related, home-based, businesses which may include on-site features such as private work spaces, private hangers, and/or taxiways located at the rear of the properties to provide access the airport runways. It is also important to note that the proposed text amendments for the new *PUA-MU* zone include language that requires each subdivision application to go through a conditional use permit process with the City. The City is not likely to approve a subdivision with only 10,000 square-foot lots. Based on all of these assumptions, the 42.5 acres of net developable property developed at an average density of one-half acre lots, yields a total unit count of 85 residences. Based on ITE trip rates for single-family detached homes, this translates into 813 average daily vehicle trips, 64 weekday a.m. peak hour trips, and 86 weekday p.m. peak hour trips.

The results of the trip generation estimates for the PUA and PUA-MU development scenarios, including a comparison between the two, are provided in Table 1 below. As demonstrated by this table, the proposed PUA-MU zone has the potential to generate approximately 313 more average daily vehicle trips than development under the current PUA zone. But more importantly, the proposed PUA-MU zone has the potential to generate less traffic during both the weekday a.m. and p.m. peak hours, which are the time periods critical for determining impacts on the capacity of the surrounding street network, and thus, compliance with the Transportation Planning Rule.

**TABLE 1
TRIP GENERATION COMPARISON FOR HYPOTHETICAL DEVELOPMENT SITE
(CURRENT PUA ZONE VS. PROPOSED PUA-MU ZONE)**

Zoning	Trip Basis	Size of Site	Average Daily Traffic	Weekday AM Peak Hour Trips	Weekday PM Peak Hour Trips
Public Use Airport (Current)	Findings from "Wagoner Property" Annexation and Zone Change*	50 Gross Acres**	500	88	88
Mixed Use Airport (Proposed)	Institute of Transportation Engineers***	85 Single Family Homes ****	813	64	86
Net Difference			+313	-24	-2

* The Scappoose City Council adopted the findings of the Sierra Pacific Communities "Wagner Property" Annexation and Zone Change. Within the City's staff report, a table identifies the following trip generation rates for development within the current PUA zone: 10 trips per gross acre for average weekday, and 1.75 trips per gross acre for both the weekday a.m. and p.m. peak hours.


** - A hypothetical site development size of 50 gross acres was selected for this trip generation comparison analysis.

*** - The basis of trips for the PUA-MU zone is the ITE Trip Generation manual for single family detached homes (ITE 210).

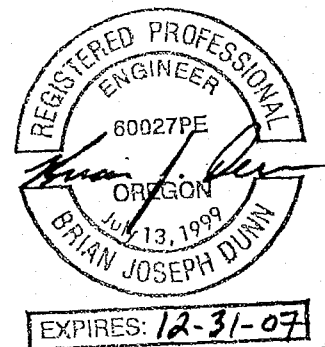
**** - The number of residences shown is based on reasonable worst-case assumptions that 85% of gross acreage is developable property and that parcels are subdivided into one-half acre, owner-occupied, lots.

Conclusions and Recommendations

Based on the findings of this letter, the weekday a.m. and p.m. peak hour trip-generating potential for developments built under the proposed PUA-MU zoning will be less than developments built under the current PUA zone, thus, demonstrating there will be no "significant effect" on the existing or planned transportation network. Therefore, compliance with the Transportation Planning Rule has been demonstrated. If you have any questions or comments regarding the assumptions, analyses, or findings contained in this letter, please contact me at (503)-774-2669.

Sincerely,
DUNN TRAFFIC ENGINEERING, LLC

Brian J. Dunn, P.E.
Principal

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ATTACHMENT A

ANX1-06/ZC1-06

May 31, 2006

Sierra Pacific Communities "Wagner Property" Annexation and Zone Change

CITY OF SCAPPOOSE STAFF REPORT

Request: Approval of an application for annexation and a corresponding zone change to Public Use Airport (PUA) for approximately 92 acres.

Location: The subject parcel is located on West Lane Road, west of the Scappoose Industrial Airpark. The property consists of that portion of Parcel 2 of Partition Plat Number 2004-25 lying within the Scappoose Urban Growth Boundary. The site is described as Columbia County Assessor Map No. 3106-000-00801, 3212-011-00100, and a portion of 3107-000-00100. See attached Vicinity Map (**Exhibit 1**).

Applicant: Sierra Pacific Communities, LLC

Owner(s): Stanley C. Wagner Trust

EXHIBITS

1. Vicinity Map
2. Application
3. Letter from Oregon Department of Land Conservation and Development, dated 4/27/06
4. Letter from Oregon Department of Transportation, dated 5/18/06
5. Letter from Scappoose Sand & Gravel Co., dated 5/10/06
6. E-mail from Oregon Department of Land Conservation and Development, dated 5/25/06

SUBJECT SITE

- The subject site is a 92-acre portion of a 233-acre parcel described as Parcel 2 of Partition Plat Number 2004-25. As noted above, the land proposed for annexation is only that portion of the parcel that lies within the City's Urban Growth Boundary (UGB), and is described with three separate tax account numbers in the Columbia County Assessor records. See **Exhibit 1**, Vicinity Map.
- The western boundary of the site is West Lane Road, a County road annexed by the City in 1997. To the west beyond West Lane Road is land zoned Heavy Industrial (M-1) by Columbia County and used as a gravel surface mine. To the east of the site is County land zoned Primary Agriculture-38 (PA-38), as well as the Scappoose Industrial Airpark, which is located within the City of Scappoose and zoned Public Use Airport (PUA). North of the site is land zoned PUA within City Limits. To the south of the site, land is zoned PA-38, Mobile Home Residential (MHR), and Single-Family Residential (R-10) by Columbia County.

- The site, which is primarily utilized for pasture, has a moderate slope from northwest to southeast. The site is improved with the house, barn, and outbuildings associated with the Wagner ranch.
- The site is within the boundaries of the Scappoose Rural Fire Protection District and the Scappoose Public School District. The site is currently under the police protection of the Columbia County Sheriff's Department.
- According to the Flood Insurance Rate Map (FIRM) 41009C0463 the majority of the property is located outside of the 500-year flood plain, and some portion lies within the 100-year floodplain protected by the dike. According to the Scappoose Local Wetlands Inventory Map there are no wetlands within the property.

OBSERVATIONS

CONCURRENT ANNEXATION AND ZONE CHANGE APPLICATIONS

- The applicant has requested annexation of the property and a corresponding zone change to Public Use Airport (PUA). The site is currently zoned Primary Agriculture-38 (PA-38) and Resource Industrial - Planned Development (RIPD) by Columbia County and has an Industrial Designation on the Scappoose Comprehensive Plan Map. According to Section 17.136.070 of the Scappoose Development Code, because the parcel has an Industrial (I) Comprehensive Plan designation, upon annexation the land shall automatically be zoned Light Industrial (LI). The applicant has requested that the City annex the site and re-zone the property to Public Use Airport (see **Exhibit 2**). The applicant has not requested an amendment to the Comprehensive Plan map. Comprehensive Plan policies support reserving this land for airport-related uses.

ANTICIPATED INDUSTRIAL USE

- The applicant has stated an intention to develop the site for airport related activities. Future development proposals will be required to apply for Site Development Review to ensure compliance with the Scappoose Development Code and Public Works Design Standards. Development must be consistent with the requirements of Chapter 17.88, AO Public Use Airport Safety and Compatibility Overlay Zone, of the Scappoose Development Code.

STREET SYSTEM AND TRANSPORTATION IMPACTS

- The site has frontage on West Lane Road, a County road with a 40-foot right-of-way that was annexed by the City in 1997. The City's Transportation System Plan (TSP) designates West Lane Road as a Major Collector Street, for which the standard right-of-way (ROW) is 66 feet. Consequently, additional ROW dedication and street improvements would be required as a part of a development proposal following annexation.
- The City's standard practice is to require half-street improvements as minimum conditions of development proposals, to be installed and funded by developers. If development of the site causes negative impacts prior to the completion of the County's planned improvements to

Sierra Pacific Communities "Wagner Property" Annexation and Zone Change

West Lane Road, the applicant may be required to perform additional improvements to accommodate the projected impact.

- Traffic from the site is anticipated to primarily access Highway 30 via West Lane Road southbound to Crown Zellerbach Road westbound, connecting to the highway at the signalized intersection. Upon reviewing the application, DLCDC staff raised transportation planning concerns regarding this application (**Exhibit 3**). Further analysis by staff reveals that the City can conclude that the proposed annexation and zone change application is consistent with the scheduled street improvement projects and will not cause systemwide transportation failure. After reviewing the staff report, DLCDC commented that "the additional transportation findings address the concerns raised in our previous letter and the requirements of TPR Section 0060" (**Exhibit 6**). Full discussion of the traffic impacts associated with the annexation and zone change is found in Findings of Fact #2, Transportation Planning Rule.
- Development of the subject site could be anticipated to require a traffic study in accordance with Section 5.0013 of the Scappoose Public Works Design Standards, which states that:
The City's Engineer will require a traffic analysis report as determined by the type of development and its potential impact to existing street systems. A traffic analysis will generally be required for a development, 1) when it will generate 1,000 vehicle trips per weekday or more, or 2) when a development's location, proposed site plan, and traffic characteristics could affect traffic safety, access management, street capacity, or known traffic problems or deficiencies in a development's study area.
- The City's Transportation System Development Charges (SDC's) are directly related to the volume of traffic generated by specific types of use. The SDC's collected from airport-related development can be used to pay for improvements to projects included in the City's Transportation System Plan.

UTILITIES & STORM DRAINAGE

- Electricity, phone, and City water service are available to the site from West Lane Road. Natural gas and fiber optic service are planned for the area.
- Storm drainage and sanitary sewer service are not available to the site at this time. When the property is developed, the applicant would be required to provide infrastructure to serve the site. Nearby development is anticipated to extend public sanitary and storm sewer lines through the site to serve adjoining property. The new sanitary sewer and storm sewer can be designed to accommodate flow from the subject site.
- The eastern portion of the site lies within the Scappoose Drainage Improvement District, and the western portion would naturally drain toward the District. Any development proposals will have to ensure that development of the site does not degrade water quality or increase water quantity draining to the Scappoose Drainage Improvement Company. This evaluation would be made at the time of a review of a specific development proposal.

PUBLIC & PRIVATE AGENCIES AND PUBLIC NOTICE

- The City of Scappoose City Manager, Engineering, Building, and Police Departments; Columbia County Road Department, Planning Department, and Board of Commissioners; the Port of St. Helens; the Scappoose Drainage Improvement Company; Scappoose Rural Fire Protection District; the Scappoose School District; the Oregon Department of Transportation (Region 1); and the Oregon Department of Land Conservation and Development have been provided an opportunity to review the proposal. Comments from these organizations have been incorporated into this staff report. DLCDC staff submitted comments attached as **Exhibits 3 and 6**. DLCDC recommended analysis of transportation impacts. Following further discussion of transportation issues with DLCDC, ODOT, and City staff, ODOT sent a letter attached as **Exhibit 4** stating that the annexation and zone change is consistent with the function, capacity, and performance of Highway 30. The Columbia County Road Department, which has oversight over West Lane Road, had no objections to the application.
- Notice of this request was mailed to property owners located within 200 feet of the subject site on April 20, 2006, with revised notice on May 15, 2006. Notice was also posted on the property on April 20 and published in the local newspaper on April 26, May 3, May 10, May 17, May 24, and May 31. Staff has received one written comment from the public regarding the application. **Exhibit 5** is a letter from Scott Parker, President of Scappoose Sand & Gravel Co., requesting that the applicant voluntarily record a letter or non-remonstrance with respect to the nearby gravel mine.

APPLICABILITY OF STATEWIDE PLANNING GOALS

A number of Oregon's 19 Statewide Planning Goals and Guidelines apply to this application, as discussed in the *Findings of Fact*.

FINDINGS OF FACT AND CONCLUSIONARY FINDINGS FOR APPROVAL

1. The following Statewide Planning Goals have been considered by the City of Scappoose as they pertain to this request:

A. Citizen Involvement (Goal 1)

Objective: To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

Finding:

The City's acknowledged Comprehensive Plan & Development Code includes citizen involvement procedures with which the review of this application will comply. This process allows for citizens to communicate their input into the zoning map amendment review conducted by the City at public hearings or by submitting written comments. The City of Scappoose Planning Commission will review and comment on the proposed annexation and zoning map amendment on May 25, 2006 to make a recommendation to the City Council. The City Council will hold a hearing on June 5, 2006. The Applicant is required to post site notices, the City mails notices to nearby property owners, and notice is published in the newspaper. This process complies with the Goal.

B. Land Use Planning (Goal 2)

Objective: *To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.*

Finding:

The procedural requirements for annexation and zone changes are contained in the Scappoose Municipal Code, which involve assessment of the application's merits, notice to affected parties, and public hearings. The proposal is to change the zoning designation of urban land within the Urban Growth Boundary, in compliance with Goal 2. Notice of the annexation and zoning map amendment has been provided by the City of Scappoose to the Oregon Department of Land Conservation and Development (DLCD) as required. DLCD staff has submitted comments attached as **Exhibits 3 and 6**. The City's decision is based on findings of fact.

C. Agricultural Lands (Goal 3)

Objective: *To preserve and maintain agricultural lands.*

Finding:

This Goal is not applicable because the site is within the City of Scappoose Urban Growth Boundary. When the site was added to the UGB, the City and the County agreed that the PA-38 agricultural zoning would be maintained until annexation to keep the property in a "holding zone" as specified by Policy #8 for the Urban Growth Boundary in the Comprehensive Plan.

D. Forest Lands (Goal 4)

Objective: *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:

This Goal is not applicable because the site is within the City of Scappoose Urban Growth Boundary and no identified forest resources are located on site.

E. Open Spaces, Scenic and Historic Areas and Natural Resources (Goal 5)

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

Finding:

There are no identified Goal 5 resources on or near the site. The subject site is not designated as open space, a scenic or historic area, or a natural resource area by the City of Scappoose and does not contain any known significant open space, scenic, historic, or natural resources. The proposed annexation and zone change do not conflict with this Goal.

F. Air, Water and Land Resources Quality (Goal 6)

Objective: To maintain and improve the quality of the air, water and land resources of the state.

Finding:

The site is currently planned for industrial use. If the annexation is approved, the site would be subject to City regulations that do not allow off-site impacts from noise, vibration, odors, glare, or other "nuisance" effects. The potential harmful effects on air, water and land resource quality is limited. The annexation and zone change proposal will therefore have no significant impact with respect to this Goal.

G. Areas Subject to Natural Disasters and Hazards (Goal 7)

Objective: To protect people and property from natural hazards.

Finding:

The subject site is not located within a mapped flood plain, potential flood hazard, potential landslide hazard, or earthquake hazard area. The proposal to zone the subject property for airport-related development is consistent with avoidance of natural disasters and hazards under Goal 7.

H. Recreational Needs (Goal 8)

Objective: 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 site is presently designated for industrial development and has not been planned for recreational opportunities. The requested zone change to Public Use Airport (PUA) will therefore not result in a reduction in land planned or reserved for recreational use. Consequently, the proposed Annexation and Zone Change will have no significant impact on the City's planning for recreational needs.

*Sierra Pacific Communities "Wagner Property" Annexation and Zone Change**I. Economic Development (Goal 9)*

Objective: *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 City prepared a Buildable Lands Inventory and Land Use Needs Analysis in 2003. The Land Use Needs Analysis recommends the addition to the City of over 200 acres of land for industrial development in locations that are buffered from residential uses and have good access to transportation, including the nearby Scappoose Industrial Airpark. Land near the airport is suitable for industrial use as a key aspect of economic development.

The proposed annexation and zoning map amendment should result in development that contributes to the state and local economy. As noted later, the Comprehensive Plan anticipated the use of this area for airport-related economic development. Therefore, the application is consistent with this Goal.

J. Housing (Goal 10)

Objective: *To provide for the housing needs of citizens of the state.*

Finding:

The property proposed for annexation is designated Industrial on the Comprehensive Plan map. The proposed annexation and zone change to Public Use Airport would have no effect on the housing supply within City Limits. Goal 10 is not applicable to this request.

K. Public Facilities and Services (Goal 11)

Objective: *To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.*

Finding:

The subject property lies within the Urban Growth Boundary (UGB) and therefore requires the extension of public facilities and services at the developer's expense at such time that the property is developed. Water is available in West Lane, and sanitary sewer and storm sewer would be constructed as conditions of approval for future subdivision or site development review applications.

L. Transportation (Goal 12)

Objective: *To provide and encourage a safe, convenient and economic transportation system.*

Finding:

This Goal requires the City to prepare and implement a Transportation System Plan (TSP). The 1997 Scappoose TSP designates West Lane Road as a Major Collector street and identifies improvements to the roadway in the TSP project list. The 2002 Scappoose Rail Corridor Study estimated 1,700 daily trips from the industrial development of the area near the Scappoose Industrial Airpark. DLCDC staff suggested that those figures are too low compared to what could be developed on the site (**Exhibit 3**). Planned improvements to West Lane Road will accommodate the anticipated traffic from the site, even if the daily volume exceeds 1,700 trips. The City will require improvements to the roadway network as conditions of approval for subsequent development proposals submitted for the site. ODOT staff has submitted comments (**Exhibit 4**) stating that the annexation is consistent with the transportation planning for Scappoose and consistent with the identified function, capacity and performance standard for Highway 30. Subsequent comments from DLCDC indicate that transportation impacts have been adequately discussed in the staff report (see **Exhibit 6**). Additional findings are found in Findings of Fact #2, Transportation Planning Rule.

M. Energy Conservation (Goal 13)

Objective: *To conserve energy.*

1. *Land use plans should be based on utilization of the following techniques and implementation devices which can have a material impact on energy efficiency:*
 - a. *Lot size, dimension, and siting controls;*
 - b. *Building height, bulk and surface area;*
 - c. *Density of uses, particularly those which relate to housing densities;*
 - d. *Availability of light, wind and air;*
 - e. *Compatibility of and competition between competing land use activities; and*
 - f. *Systems and incentives for the collection, reuse and recycling of metallic and nonmetallic waste.*

Finding:

Clustering industrial activities near the airport facilitates carpooling by employees and allows for convenient access to principal roadways designated for truck traffic. The subject property is adjacent to the Scappoose Industrial Airpark and to land approved for an airport-related industrial park. Therefore, the proposal will contribute to a more energy-efficient land use pattern within the City's Urban Growth Boundary.

N. Urbanization (Goal 14)

Objective: *To provide for an orderly and efficient transition from rural to urban land use.*

Finding:

The subject property is within the Urban Growth Boundary and no expansion of the UGB is proposed. The proposed annexation and zone change is the first step in the transition from rural to urbanized land as foreseen in the Comprehensive Plan. Development of the site will trigger requirements for the developer to provide infrastructure, including necessary sewer lines, storm drainage lines, water line extensions, and street improvements. Demonstration of need for employment opportunities is found under Findings of Fact #3, specifically the Goal for Economics.

*O. Other Goals***Finding:**

The following goals are not applicable to this application:

- Willamette River Greenway (Goal 15)
- Estuarine Resources (Goal 16)
- Coastal Shorelands (Goal 17)
- Beaches and Dunes (Goal 18)
- Ocean Resources (Goal 19)

2. **The following Administrative Rule has been considered by the City of Scappoose as it pertains to this request:**

TRANSPORTATION PLANNING RULE*OAR 660 Division 12 – Transportation Planning:**660-012-0060 Plan and Land Use Regulation Amendments*

(1) Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. 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) As measured at the end of the planning period identified in the adopted transportation system plan:

(A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

Sierra Pacific Communities "Wagner Property" Annexation and Zone Change

(B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or

(C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.

[...]

(3) Notwithstanding sections (1) and (2) of this rule, a local government may approve an amendment that would significantly affect an existing transportation facility without assuring that the allowed land uses are consistent with the function, capacity and performance standards of the facility where:

(a) The facility is already performing below the minimum acceptable performance standard identified in the TSP or comprehensive plan on the date the amendment application is submitted;

(b) In the absence of the amendment, planned transportation facilities, improvements and services as set forth in section (4) of this rule would not be adequate to achieve consistency with the identified function, capacity or performance standard for that facility by the end of the planning period identified in the adopted TSP;

(c) Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development through one or a combination of transportation improvements or measures;

(d) The amendment does not involve property located in an interchange area as defined in paragraph (4)(d)(C); and

(e) For affected state highways, ODOT provides a written statement that the proposed funding and timing for the identified mitigation improvements or measures are, at a minimum, sufficient to avoid further degradation to the performance of the affected state highway. However, if a local government provides the appropriate ODOT regional office with written notice of a proposed amendment in a manner that provides ODOT reasonable opportunity to submit a written statement into the record of the local government proceeding, and ODOT does not provide a written statement, then the local government may proceed with applying subsections (a) through (d) of this section.

(4) Determinations under sections (1)-(3) of this rule shall be coordinated with affected transportation facility and service providers and other affected local governments.

(a) In determining whether an amendment has a significant effect on an existing or planned transportation facility under subsection (1)(c) of this rule, local governments shall rely on existing transportation facilities and services and on the planned

Sierra Pacific Communities "Wagner Property" Annexation and Zone Change

transportation facilities, improvements and services set forth in subsections (b) and (c) below.

(b) Outside of interstate interchange areas, the following are considered planned facilities, improvements and services:

(A) Transportation facilities, improvements or services that are funded for construction or implementation in the Statewide Transportation Improvement Program or a locally or regionally adopted transportation improvement program or capital improvement plan or program of a transportation service provider.

[...]

(e) For purposes of this section, a written statement provided pursuant to paragraphs (b)(D), (b)(E) or (c)(A) provided by ODOT, a local government or transportation facility provider, as appropriate, shall be conclusive in determining whether a transportation facility, improvement or service is a planned transportation facility, improvement or service. In the absence of a written statement, a local government can only rely upon planned transportation facilities, improvements and services identified in paragraphs (b)(A)-(C) to determine whether there is a significant effect that requires application of the remedies in section (2).

Finding:

Analysis of the transportation impacts from the proposed annexation and zone change can be divided into four subtopics:

1. Traffic likely to be generated from airport-area development;
2. Impact of development-generated traffic on local street segments;
3. Impact of development-generated traffic on affected intersections; and
4. Transportation impact conclusions.

1. Traffic likely to be generated from airport-area development

The Scappoose Rail Corridor Study (Kittelson & Associates, October 2002) examined growth and transportation issues with particular emphasis on highway/rail grade crossing opportunities and constraints. As a part of the study, Kittelson prepared traffic projections that included anticipated industrial growth within 435 acres in the vicinity of the Scappoose Industrial Airpark. Under this "full build" scenario, development of the entire 435 acres in the vicinity of the airport would generate 1,700 daily trips, 225 weekday morning peak hour trips, and 220 weekday evening peak hour trips (Table 3-2, p. 3-7). In response to this application, DLCD staff commented that the City's 1997 Transportation System Plan (TSP) and 2002 Rail Corridor Study might have underestimated the amount of traffic that can be anticipated from the airport area and recommended further analysis of traffic impacts (see **Exhibit 3**). Subsequent discussion with DLCD staff identified the need to quantify the area likely to develop within the planning period and to specify the amount of traffic likely to be generated from development.

The Rail Corridor Study did not include a map or description of the 435 acres in the vicinity of the airport that were utilized as the land base for estimating trip generation for the "full build" scenario. Staff's analysis of Columbia County Assessor maps reveals that this figure likely includes the runway and taxiways at the Scappoose Industrial Airpark, as well as some portion of the Scappoose Sand & Gravel property, which is an active mining operation.¹ As a result, a more realistic area for which to estimate traffic may be 300 acres rather than 435 acres.

The land use classifications contained in the Institute of Transportation Engineers (ITE) "Trip Generation" manual do not directly correlate to specialized airport-related uses. DLCDC staff correctly observes that the ITE manual predicts 18,600 daily trips from 435 acres of light industrial development. However, the Public Use Airport (PUA) zone is likely to generate significantly less traffic than typical light industrial operations. The PUA zone is a relatively land-intensive zone because of the combined provision of taxiways, hangars, manufacturing facilities, parking, truck loading facilities, accessways, and related services. As a result, the PUA zone would generate fewer trips per acre than typical Light Industrial development. The following table compares the Light Industrial trip generation rates in the ITE manual with rates that may be anticipated from development in the PUA zone.

Comparison of trip generation rates for Light Industrial and PUA zones

	Light Industrial rates	Likely PUA Zone rate
Weekday trips	5.21-159.38 trips per acre (average 51.80)	10 trips per acre
Weekday AM Peak Hour	1.61-34.38 trips per acre (average 7.51)	1.75 trips per acre
Weekday PM Peak Hour	1.32-28.00 trips per acre (average 7.26)	1.75 trips per acre

Combining the 300-acre land base with the likely trip generation rate for the PUA zone, traffic generation from airport-area development may be on the order of 3,000 average daily trips, 525 weekday morning peak hour trips, and 525 weekday evening peak hour trips. While these figures are higher than those projected by the Rail Corridor Study, the Major Collector streets identified by the City's Transportation System Plan and Rail Corridor Study can accommodate the traffic volumes from airport-area development.

2. Impact of development-generated traffic on local street segments

A small percentage of site-generated traffic may be expected to connect to Highway 30 by traveling north and west on West Lane Road. However, due to the existing failing conditions at the Highway 30/West Lane Road intersection, the majority of site traffic will travel southbound on West Lane Road, connecting to Highway 30 via Crown Zellerbach Road. Both West Lane Road and Crown Zellerbach Road are designated as

¹ Full development of this latter property would first require gravel mine reclamation, which is anticipated to be some years in the future.

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Major Collector streets to account for the planned industrial development anticipated by the Comprehensive Plan. The signalized Highway 30/Crown Zellerbach Road/Scappoose-Vernonia Highway intersection was recently realigned to improve operations, and the City recently performed full-street improvements (consisting of through lanes, turn lanes, bicycle lanes, and sidewalks) to Crown Zellerbach Road in anticipation of airport-related development. According to the TSP, the capacity of two-lane roads is estimated at 700 vehicles per hour in each direction, not accounting for intersection operations. Therefore, West Lane Road and Crown Zellerbach Road have adequate capacity to accommodate large volumes of traffic, and the capacity-controlling facility will be the traffic signal at the Crown Zellerbach Road/Highway 30 intersection (discussed below).

The 2006-2009 Statewide Transportation Improvement Program (STIP) allocates \$2,000,000 for improvements to West Lane Road between the Scappoose Industrial Airpark and the Crown Zellerbach Road (Project 14011, scheduled for 2006). Columbia County and ODOT are currently in the process of reviewing and finalizing the intergovernmental agreement to start engineering design for this project. The improvements will widen the road to Major Collector standards to accommodate freight traffic between industrial lands and Highway 30. An access management plan and engineering design will accommodate industrial traffic from the area by providing turn lanes and other features as warranted. The intent of the scheduled street improvements is to divert traffic away from the unsignalized intersection of Highway 30 and West Lane, as well as to permit development that would stimulate job creation.

Since the West Lane Road improvements are funded for implementation in the STIP, the City finds that the West Lane improvements will be "in-place" and available to provide transportation capacity well before the end of the planning period (the year 2017) to accommodate the proposed annexation and zone change. This proposal does not "significantly affect" West Lane Road between Crown Zellerbach Road and the airport, including the West Lane Road/Honeyman Road intersection and the West Lane Road/Crown Zellerbach Road intersection.

3. Impact of development-generated traffic on affected intersections

Traffic from airport-area industrial development will utilize four primary intersections.

a. West Lane Road/Highway 30 intersection

The Rail Corridor Study indicates that the Highway 30/West Lane Road intersection currently operates at an unacceptable level of service and will continue to do so in the future regardless of whether development occurs near the airport. The intersection has a Level of Service "F" and a delay exceeding 50 seconds in the morning and evening peak hours under existing conditions (Figures 2-4 and 2-5) and under the "full growth" scenario (Figures 3-5 and 3-6).

DLCD staff underscored that the West Lane/Highway 30 intersection would operate at an unacceptable level of service with the future development of the

Scappoose Industrial Airpark and nearby sites (**Exhibit 3**). The City finds that the proposal does "significantly affect" the unsignalized intersection of West Lane Road and Highway 30 because development of the site would worsen the performance of a failing intersection. Project H in the Preferred Plan of the Scappoose Rail Corridor Study identifies needed geometric and signalization improvements at the Highway 30/West Lane intersection. In the absence of a written determination from ODOT that improvements to the West Lane Road/Highway 30 intersection are "reasonably likely," the City does not consider Project H as a "planned transportation improvement" (as defined in the Transportation Planning Rule). Therefore, there are no planned improvements that would permit the intersection of Highway 30 and West Lane to operate at acceptable levels.

The failing Level of Service at the West Lane Road/Highway 30 intersection would be slightly intensified if site-generated traffic utilizes that facility. ODOT policy would generally not permit a traffic signal at the intersection of Highway 30 and West Lane due to the classification of the road as a Statewide Highway, unless ODOT deemed that the intersection warranted a signal. To mitigate this condition, the City and County have endeavored to minimize traffic at that intersection by providing an alternate route to the signalized Highway 30/Crown Zellerbach Road/Scappoose-Vernonia Highway intersection.

ODOT Region 1 has jurisdiction over the West Lane Road/Highway 30 intersection and the Crown Zellerbach Road/Highway 30 intersection. ODOT has provided a written statement included as **Exhibit 4**. ODOT has affirmed that the proposed annexation and zone change is consistent with the planning process and Rail Corridor Study that ODOT, ODOT Rail, Portland & Western Railroad, and the City completed in 2002. Furthermore, ODOT stated that "the proposed annexation and zone change is consistent with the identified function, capacity and performance standard for the US 30 facility." ODOT staff has stated verbally that ODOT does not have concerns about the impact of the proposed annexation and zone change on the Highway 30/West Lane Road intersection due to the Crown Zellerbach Road/West Lane improvements.

b. Crown Zellerbach Road/Highway 30 intersection

The Rail Corridor Study indicates that the Highway 30/Crown Zellerbach Road intersection will operate at a Level of Service "B" in the morning and evening peak hours under the "base growth" scenario, with a Level of Service "C" in the morning and evening peak hours under the "full growth" scenario (Figures 3-3, 3-4, 3-5, and 3-6). As discussed previously, airport-area development may generate more traffic than the Rail Corridor Study anticipated (on the order of 525 peak hour trips rather than 225 peak hour trips). The additional trips would not materially degrade the operation of this intersection. This intersection is under the jurisdiction of ODOT, and ODOT has provided a determination that the planned improvements to West Lane and the prior improvements to Crown Zellerbach

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Road "are sufficient to avoid degradation of the ODOT mobility standards for the Hwy 30 intersection at Crown Zellerbach Road" (see **Exhibit 4**). The proposed annexation and zone change does not "significantly affect" this intersection.

c. West Lane Road/Honeyman Road intersection

d. West Lane Road/Crown Zellerbach Road intersection

The City does not have daily, morning peak hour, or evening peak hour traffic data for the West Lane Road/Honeyman Road intersection or the West Lane Road/Crown Zellerbach Road intersection. However, it is not anticipated that additional traffic from airport-area development would cause these intersections to fall below the City's standards requiring a Level of Service "E" or better for unsignalized intersections. Crown Zellerbach Road was designed with turn lanes at its intersection with West Lane Road. Engineering design for the West Lane Road STIP improvements will include turn lanes as necessary to ensure functional operations at both these intersections. It is unlikely that traffic would meet warrants for signalized intersections at these locations. The proposed annexation and zone change does not "significantly affect" these intersections because of the inclusion of the West Lane Road project on the STIP.

4. Transportation impact conclusions

Consistent with the Comprehensive Plan, the requested zone change to Public Use Airport alters the type of industrial development that would be permitted on site, ensuring that it will be airport-related or airport-compatible. Based on trip generation levels applicable to the PUA zone, the City finds that the proposed annexation and zone change are consistent with the land uses envisioned by the Comprehensive Plan and the Transportation System Plan. Applying the Public Use Airport zone rather than the Light Industrial zone serves to significantly reduce the number of trips that would be generated at the site compared to typical Light Industrial development.

The impact at the West Lane Road/Highway 30 intersection is mitigated to ODOT's satisfaction by the improvements to West Lane Road and Crown Zellerbach Road. ODOT is also satisfied that the Crown Zellerbach Road/Highway 30 intersection will operate acceptably. The STIP project will improve the unsignalized intersections on West Lane Road so they will operate within the City's standards. Therefore, the proposed annexation and zone change are consistent with the Comprehensive Plan and TSP and would not require a change in the functional classification or street standards. DLCD staff submitted comments stating that these findings adequately address the applicable Transportation Planning Rule provisions (**Exhibit 6**).

It should be noted that interim transportation congestion and safety hazards could exist on West Lane Road if the site were developed before the STIP project had been completed. Consequently, the City could require mitigation between the site and Crown Zellerbach Road. As spelled out by Section 5.0013 of the Scappoose Public Works Design Standards, specific types development proposals would trigger the requirement

for traffic analysis reports identifying projected trip generation levels, recommendations for public improvements, and access management. The mitigation strategies prompted by the results of the traffic analysis reports would be installed as conditions of development. To the extent that the level of development is consistent with the engineering design and access management outlined in the STIP, site-specific studies may not be required.

3. The following Goals and Policies from the Scappoose Comprehensive Plan are applicable to this request:

GOAL OF THE URBAN GROWTH BOUNDARY

It is the goal of the City of Scappoose to:

- 1) *Create within the City and its growth area, optimal conditions of livability.*
- 2) *Locate all major public and private developments such as schools, roads, shopping centers, and places of employment, so that they do not tend to attract residential development to locations outside the designated urban growth boundary.*
- 3) *Include within the urban growth boundary ample land for future development.*
- 4) *Promote employment generating uses within the airport section of the urban growth boundary. The amount of land required for the use should not dominate the amount of employment generated by the use.*
- 5) *Develop the airport area in a manner to create an industrial park.*

POLICIES FOR THE URBAN GROWTH BOUNDARY

It is the policy of the City of Scappoose to:

- 2) *Review the supply of buildable lands within the Urban Growth Boundaries, in cooperation with Columbia County during each major review of the City's plan. The process of expanding the urban growth areas may begin when there is less than a five year supply of residential land or when 75 percent of the industrial or commercial lands are built on.*
- 8) *Consider annexation of industrial lands only when sufficient capacity exists for the delivery of sewer, water, street, police and fire services.*
 - A) *The area east of West Lane Road zoned PA-38 shall be retained in an agricultural "holding zone" until approved for industrial or airport related development.*

Policies 1, 3-7, and 9-11 are not applicable to this application.

Finding:

Annexing the land comprising this site will provide an industrial employment opportunity immediately adjacent to the airport. This site is zoned PA-38 and RIPD by

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Columbia County. Annexing the site removes the land from the agricultural holding zone and allows airport related development as envisioned by the Comprehensive Plan goals and policies. The site's relative proximity to residential zones within the City supports existing and proposed residential development and promotes the City's livability by allowing short commutes.

The City has reviewed its supply of buildable lands and estimated the demand for land to the year 2025, using stratified residential, commercial and industrial categories. The 2003 Land Use Needs Analysis found that the City should add more than 200 acres of industrial land to meet calculated long-term needs. The deficit was 10.5 gross acres in 2003 (not including a provision for large sites). Based on staff calculations that account for the 2003 deficit, subsequent rezoning actions, and annexation and de-annexation on West Lane, the City currently has a small deficit of industrial land (8.1 gross acres), not including a provision for large sites. Annexation of this site is consistent with the Comprehensive Plan and would satisfy the immediate deficit of industrial land.

The applicable goals and policies of the GOAL OF THE URBAN GROWTH BOUNDARY and POLICIES FOR THE URBAN GROWTH BOUNDARY are satisfied.

GOAL FOR PUBLIC FACILITIES AND SERVICES

- 1) *Provide the public facilities and services which are necessary for the well being of the community and which help guide development into conformance with the Comprehensive Plan.*
- 2) *Direct public facilities and services, particularly water and sewer systems, into the urban growth area.*
- 3) *Ensure that the capacities and patterns of utilities and other facilities are adequate to support the residential densities and intensive land use patterns of the Comprehensive Plan.*
- 4) *Avoid the provision or expansion of public utilities and facilities in sparsely settled non-urban areas, when this would tend to encourage development or intensification of uses, or to create the need for additional urban services.*

Goals 5-11 are not applicable to this application.

POLICIES FOR PUBLIC FACILITIES AND SERVICES

- 1) *Design urban facilities and services, particularly water and sewer systems, to eventually serve the designated urban growth area; also, ensure that services are provided to sufficient vacant property to meet anticipated growth needs; also, develop a design review process to insure that public services and facilities do not unreasonably degrade significant fish and wildlife habitats.*

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- 9) *Control local flooding and groundwater problems through the use of existing storm drainage systems and construction of new facilities in accordance with the Scappoose Storm Drain System Master Plan.*
- 20) *Approve annexations of new industrial lands only when there is sufficient capacity in the sewer, water, street, fire, and police systems of the city.*

Policies 2-8, 10-19 and 21-27 are not applicable to this application.

Finding:

The City Engineer, City Manager, Chief of Police, Fire Chief, and school Superintendent were provided with the opportunity to determine whether sufficient capacity exists for needed facilities and services. No objection to this annexation has been expressed by City Departments or public service agencies. The public facility requirements must be met at the time that the applicant proposes a Development Plan for industrial uses. All plans and improvements are subject to review by the City Engineer and must conform to the requirements of the Scappoose Municipal Code and the Public Works Design Standards and Standard Specifications.

Fire & Police Protection

- The Scappoose Rural Fire District provides fire protection. The station is located at 52751 Columbia River Highway, approximately 1.5 miles from the site. The impact to the fire protection services from annexation of this site will be relatively low since the site is already in the Fire District. Furthermore, development of the site will have to comply with all applicable fire and building codes and would provide hydrants in sufficient numbers and at locations deemed appropriate by the Scappoose Rural Fire District.
- The impact on police services would also be relatively low from the anticipated use of airport related light industrial operations. Historically, the Scappoose Industrial Airpark and surrounding areas have required law enforcement services infrequently. The applicant has proposed airport related development for the site. The proposed use is consistent with existing uses at the airport and should not require law enforcement support beyond the historic level of the airport.

Schools

- It is unclear what impact additional employees and their families will have on local school district enrollment. The local school district should receive additional revenues due to increased valuation as a result of future development to partially offset any increase in school district enrollment.

Water Service

- There is an existing 18" City water line in West Lane Road to which the property would have access upon annexation.

*Sierra Pacific Communities "Wagner Property" Annexation and Zone Change**Sewer and Storm Drainage*

- The nearest sanitary sewer can be found south of the Crown Zellerbach Road in West Lane Road and in Miller Road. The City does not propose to fund extension of sewer service to the site at this time due to the distance between the site and existing sewer infrastructure. The applicant would be required to extend sewer lines to connect to the sewer system at the time of development. The City has approved a nearby airport-related industrial park (Subdivision SB5-05) which will necessitate the construction of sewer lines passing through the subject site. Future development of the site could utilize the new sewer infrastructure.
- There is no public storm drain system in the vicinity of the site so the applicant will have to provide stormwater management at such time that the property develops. The storm drainage system would be designed to ensure that development of the site does not degrade water quality or increase water quantity draining to the Scappoose Drainage District or cause other flooding or groundwater problems.
- Upon annexation and a zone change, a closer evaluation of the sewer service and drainage options will happen during Site Development Review.

The applicable goals and policies of the GOAL FOR PUBLIC FACILITIES AND SERVICES, and the POLICIES FOR PUBLIC FACILITIES AND SERVICES, are satisfied.

GOAL FOR ECONOMICS

It is the goal of the City of Scappoose to:

- 1) *Maintain conditions favorable for a growing, healthy, stable, and diversified business and industrial climate.*
- 2) *Establish greater local control over the density of local economic development.*

POLICIES FOR ECONOMICS

It is the policy of the City of Scappoose to:

- 1) *Make sufficient land available for the anticipated expansion of commercial and industrial activities.*
- 4) *Encourage the expansion of employment opportunities within the urban area, so residents can work within their community as well as commute to jobs outside the City.*
- 5) *Promote pollution free industrial development necessary to provide a balanced tax base for the operation of local government services.*
- 7) *Assist in programs to attract desirable industries in terms of diversification, labor-intensiveness, and non-pollution rather than accept any industry which may*

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wish to locate here; additionally, to prohibit industries with excessive levels of pollution or other undesirable effects which would cancel possible economic benefits or threaten the existing quality of living.

- 11) *Identify special locations for industrial activities that will assist in energy conservation; specifically, industries should be clustered:

 - a. *Close to existing rail lines.*
 - b. *To allow for employees to use carpools.**

- 13) *Coordinate its plans for public facilities to accommodate expected industrial and residential growth.*

Policies 2-3, 6, 8-10, 12, and 14-17 are not applicable to this application.

Finding:

The subject property is located in the Scappoose Urban Growth Boundary and is designated Industrial on the Comprehensive Plan Map in recognition of planned industrial uses at such time that the City annexes the property. Industrial development will enhance the City's economic base, providing additional employment opportunities within the City Limits. The 92-acre site is not adjacent to a rail line, but the site and the adjacent Scappoose Industrial Airpark provide an opportunity for carpooling. The City's system plans for water and sanitary sewer service are capable of accommodating industrial use of the subject property. The Crown Zellerbach Road was recently improved to City standards to accommodate truck traffic between Highway 30 and businesses near the airport.

The 2003 Land Use Needs analysis indicated that Scappoose had a need for an additional 10.5 gross acres of industrial land, plus a need for large sites totaling roughly 200 acres to accommodate large industrial users. Staff has updated this figure to account for subsequent annexations, zone changes, and one de-annexation, and has computed that the City has a current deficit of 8.1 industrial acres plus a need for large sites. Annexing this 92-acre site will satisfy the immediate need for industrial land. Annexation of this property also affords the City direct control over development.

The proposed airport related operations would be low-pollution activities that would bolster the City's tax base and provide employment opportunities for City residents. Annexation will allow this development to occur within City Limits.

The applicable goals and policies of the GOAL FOR ECONOMICS and the POLICIES FOR ECONOMICS are satisfied.

GENERAL GOALS FOR LAND USES

- 1) *The growth of the City should be orderly and in accordance with the public health, safety and welfare, while preserving individual choice and recognizing existing patterns of development.*
- 3) *A suitable balance between competing land use should be established so that, insofar as possible, the complete range of social, economic, cultural, and aesthetic needs of the community are met.*
- 8) *Industrial areas should be suitable for their purpose, properly located, and adequate for future needs.*
- 13) *A safe and convenient transportation system should be developed to meet future needs.*
- 14) *The local economy should be strengthened and diversified.*

Goals 2, 4-7, 9-12, and 15-19 are not applicable to this application.

Finding:

The subject property is located in the UGB by the Scappoose Industrial Airpark and is suitably located to accommodate contemporary industrial needs. This area is not in conflict with residential uses and would benefit from the proximity of nearby industrial development. Annexation of this site provides for orderly development of the area around the Scappoose Industrial Airpark and provides a balanced land use supply by eliminating the immediate deficit of industrial land within the City. Providing an opportunity for development by annexing the site will increase the number of job opportunities within the City.

The applicable goals and policies of the GENERAL GOALS FOR LAND USES are satisfied.

GOAL FOR THE INDUSTRIAL LAND USE DESIGNATION

It is the goal of the City of Scappoose to:

- 1) *Provide a place for industrial activities where their requirements can be met, and where their environmental effects will have a minimal impact upon the community.*

POLICIES FOR THE INDUSTRIAL LAND USE DESIGNATION

It is the policy of the City of Scappoose to:

- 1) *Provide suitable areas for industrial expansion, utilizing for such purposes relatively large, flat areas that are separated by buffers from the City's residential districts.*

- 3) *Locate industrial areas so they have a convenient relationship to the community's transportation system, without generating heavy traffic through residential districts; additionally, the clustering of industrial activities will allow carpooling by employee.*

Policies 2 and 4-6 are not applicable to this application.

Finding:

The subject site is suitable for industrial uses since it is clustered near existing industrial and noise-generating uses (i.e., the airport) rather than being located adjacent to residential areas. Access to the property from Highway 30 is relatively direct via West Lane Road and Crown Zellerbach Road, which was recently improved.

The 2003 Land Use Needs analysis indicated that Scappoose had a need for an additional 10.5 gross acres of industrial land, plus a need for large sites totaling roughly 200 acres to accommodate large industrial users. The City Council approved two Zone Changes in 2004 and one Zone Change in 2006 that converted land from industrial to residential uses, annexed approximately 36 industrial acres in 2005, and approved the withdrawal of one parcel from City Limits in 2006. Collectively, these changes have led to an immediate deficit of 8.1 acres of industrial land, plus a need for large sites. Annexing this 92-acre site would satisfy the immediate need for industrial land and could accommodate large industrial users. Rezoning the site to PUA is consistent with the Industrial Comprehensive Plan designation.

The applicable goals and policies of the GOAL FOR THE INDUSTRIAL LAND USE DESIGNATION and POLICIES FOR THE INDUSTRIAL LAND USE DESIGNATION are satisfied.

GOAL FOR TRANSPORTATION

[...]

- 8) *To assure that roads have the capacity for expansion and extension to meet future demands.*

POLICIES FOR TRANSPORTATION

- 1) *Require all newly established streets and highways to be of proper width, alignment, design and construction, and to ensure that they are in conformance with the City's Subdivision Ordinance.*
- 2) *Review diligently all subdivision plats and road dedications to insure the establishment of a safe and efficient road system.*

Finding:

West Lane will require improvements in conjunction with any future development of the subject site to ensure a safe and efficient road system. The required improvements and construction of new streets serving the site must meet the requirements of the

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Transportation System Plan and the Public Works Design Standards. The City has designated West Lane as a Major Collector, which will be constructed to accommodate heavy traffic volumes. Additional findings are found in Findings of Fact #2, Transportation Planning Rule.

4. The following sections of Title 17 of the Scappoose Municipal Code (Scappoose Development Code) are applicable to this request:

Chapter 17.22 AMENDMENTS TO THE TITLE, COMPREHENSIVE PLAN, AND MAPS

17.22.010 Purpose. The purpose of this chapter is to set forth the standards and purposes governing legislative and quasi-judicial amendments to this title, the acknowledged comprehensive plan, and the related maps.

17.22.030 Quasi-judicial amendments. Quasi-judicial amendments shall be in accordance with the procedures set forth in Chapter 17.162 and the following:

A. The commission shall make a recommendation to the Council to approve, approve with conditions or deny an application for a quasi-judicial comprehensive plan map amendment or zone changes based on the following:

- 1. The applicable comprehensive plan policies and map designation;*
- 2. The change will not adversely affect the health, safety and welfare of the community;*
- 3. The applicable standards of this title or other applicable implementing ordinances; and*
- 4. Evidence of change in the neighborhood or community or a mistake or inconsistency with the comprehensive plan or zoning map as it relates to the subject property.*

B. The council shall decide the applications on the record.

C. A quasi-judicial application may be approved, approved with conditions or denied.

Finding:

~~1. THE APPLICABLE COMPREHENSIVE PLAN POLICIES AND MAP DESIGNATION~~

As specified by Section 17.136.070 of the Scappoose Municipal Code, if this property is annexed it would automatically receive the Light Industrial (LI) zoning designation since the site had an "Industrial" Comprehensive Plan Map designation. The applicant requests that the property be re-zoned to Public Use Airport (PUA) if the annexation is successful. The Comprehensive Plan *Goal of the Urban Growth Boundary and Policies for the Urban Growth Boundary* specify that the area around the airport has been identified for airport-related development. The purpose of the PUA zone is to encourage and support the continued operation and vitality of the Scappoose Industrial Airpark by allowing certain airport-related commercial, manufacturing and recreational uses in accordance with state law. The PUA zone thus most closely achieves the Comprehensive Plan goals and is consistent with the Industrial Comprehensive Plan designation.

~~2. THE CHANGE WILL NOT ADVERSELY AFFECT THE HEALTH, SAFETY AND WELFARE OF THE COMMUNITY;~~

The proposed annexation is consistent with the Comprehensive Plan because the property lies within the urban growth boundary. The zone change to PUA rather than LI implements the Industrial Comprehensive Plan designation while tailoring the type of development that may occur. Operations of industrial or airport-related developments are regulated to ensure minimal off-site impacts. Therefore the proposal will not adversely affect health, safety, and welfare.

3. THE APPLICABLE STANDARDS OF THIS TITLE OR OTHER APPLICABLE IMPLEMENTING ORDINANCES;

The proposed annexation and zone change are policy decisions subject to guidance by the full policy framework established by the Oregon Statewide Land Use Planning Goals and associated Oregon Administrative Rules (OAR), and by the Scappoose Comprehensive Plan and Development Code. Full discussion of the applicable standards is found in this report. The analysis demonstrates consistency and compliance with all applicable approval standards.

4. EVIDENCE OF CHANGE IN THE NEIGHBORHOOD OR COMMUNITY OR A MISTAKE OR INCONSISTENCY WITH THE COMPREHENSIVE PLAN OR ZONING MAP AS IT RELATES TO THE SUBJECT PROPERTY.

The subject site is designated Industrial in the Comprehensive Plan Map. Comprehensive Plan policies state that land adjacent to the airport is slated for industrial development. The PUA zone more closely achieves this objective than does the LI zone. It would therefore be inconsistent to apply Section 17.136.070 by automatically zoning the property Light Industrial. The requested zone change to PUA rectifies that mistake by reserving the site for airport-related development.

Chapter 17.70 LI LIGHT INDUSTRIAL

17.70.030 Permitted uses. In the light industrial zone, activities are subject to site development review, Chapter 17.120, Site Development Review. Only the following uses and their accessory uses are permitted outright:

[...]

F. Building materials sales and service;

[...]

L. Retail facilities on sites greater than one hundred thousand square feet;

M. Manufacturing of finished products;

N. Manufacturing of components for use in finished products;

O. Packaging of previously processed materials;

P. Participation sports and recreation: indoor and outdoors;

Q. Processing and packing of food products; [...]

Y. Wholesale, storage, and distribution; [...]

Finding:

A variety of uses are permitted in the Light Industrial zoning district, including uses that are not airport-related. The applicant has request that the zoning for the site be changed to Public Use Airport (PUA). Section 17.70.030 is satisfied.

Chapter 17.69 PUA PUBLIC USE AIRPORT

17.69.040 Permitted uses. *The following uses and activities are permitted outright in the PUA zone:*

[...]

F. Flight instruction, including activities, facilities, and accessory structures located at airport sites that provide education and training directly related to aeronautical activities. Flight instruction includes ground training and aeronautic skills training, but does not include schools for flight attendants, ticket agents or similar personnel;

G. Aircraft service, maintenance and training, including activities, facilities and accessory structures provided to teach aircraft service and maintenance skills and to maintain, service, refuel or repair aircraft or aircraft components. "Aircraft service, maintenance and training" includes the construction and assembly of aircraft and aircraft components for personal use, but does not include activities, structures or facilities for the manufacturing of aircraft or aircraft-related products for sale to the public;

[...]

I. Aircraft sales and the sale of aeronautic equipment and supplies, including activities, facilities and accessory structures for the storage, display, demonstration and sales of aircraft and aeronautic equipment and supplies to the public but not including activities, facilities or structures for the manufacturing of aircraft or aircraft-related products for sale to the public;

[...]

L. Manufacturing, assembly, processing, packaging, testing, treatment, repair, or distribution of aircraft or aircraft related components or products for sale to the public;
and

M. Other airport compatible light industrial uses.

Finding:

A variety of airport-compatible uses are permitted in the Public Use Airport zoning district, some of which are listed above. Future development proposals would be reviewed for consistency with the permitted uses in the proposed zone. Section 17.69.040 is satisfied.

Chapter 17.136 ANNEXATIONS17.136.020 Policy.

Annexations shall be considered on a case-by-case basis, taking into account the goals and policies in the Scappoose Comprehensive Plan, long range costs and benefits of annexation, statewide planning goals, this title and other ordinances of the City and the policies and regulations of affected agencies' jurisdictions and special districts.

A. *It is the City's policy to encourage and support annexation where:*

1. *The annexation complies with the provisions of the Scappoose Comprehensive Plan*
2. *The annexation would provide a logical service area, straighten boundaries, eliminate or preclude islands of unincorporated property, and contribute to a clear identification of the City.*
3. *The annexation would benefit the City by addition to its revenues of an amount that would be at least equal to the cost of providing service to the area.*
4. *The annexation would be clearly to the City's advantage in controlling the growth and development plans for the area.*

Finding:

The proposed annexation complies with the goals and policies of the Comprehensive Plan as previously discussed in Finding of Fact #3. The annexation connects two areas that are already part of the City, expanding the City's logical service area. Revenues from the area are anticipated to cover the cost of providing services, especially factoring in the employment that could occur on site. Annexation will allow the City to manage growth and alleviate an immediate need for industrial property within the City Limits. Annexation of the property provides for City inspection and approval of all development.

Section 17.136.020(A) is satisfied.

B. *It is the City's policy to discourage and deny annexation where:*

1. *The annexation is inconsistent with the provisions of the Scappoose Comprehensive Plan.*
2. *The annexation would cause an unreasonable disruption or distortion of the current City boundary or service area.*
3. *The annexation would severely decrease the ability of the City to provide services to an area either inside or outside of the City.*
4. *Full urban services could not be made available within a reasonable time.*

Finding:

The proposal is consistent with the provisions of the Scappoose Comprehensive Plan as previously discussed. The annexation does not decrease the ability of the City to provide services and does not cause an unreasonable disruption of the current City boundary. The

Sierra Pacific Communities "Wagner Property" Annexation and Zone Change

proposed annexation site can be served by urban services provided that the applicant installs sewer and storm facilities to serve the site and improves the streets in conjunction with future development. Section 17.136.020(B) is satisfied.

17.136.040 Approval standards.

A. *The decision to approve, approve with modifications or deny, shall be based on the following criteria:*

1. *All services and facilities are available to the area and have sufficient capacity to provide service for the proposed annexation area;*

Finding:

Existing municipal police services can be made available to the site immediately. The site fronts onto an existing road within the City. The property is already located within the Scappoose Rural Fire District, the Scappoose School District, the Scappoose Library District, and the Scappoose Parks and Recreation District. Telephone and electric services are already provided to neighboring properties.

Water and sewer service can be made available to the site; water is available immediately and sewer could be provided when the applicant extends the sewer lines. The water treatment plants and wastewater treatment plant have excess capacity to accommodate development of this and other sites.

Section 17.136.040(A).1 is satisfied.

2. *The impact upon public services which include but are not limited to police and fire protection, schools and public transportation to the extent that they shall not be unduly compromised;*

Finding:

As discussed previously, the proposed annexation will have a minimal impact on the capacity of public service providers, especially since the site is already within the service areas of the Fire District and other service providers. Section 17.136.040(A).2 is satisfied.

3. *The need for housing, employment opportunities and livability in the City and surrounding areas;*

Finding:

This annexation would provide an additional 92 acres for airport-related development and long-term employment, and would also create temporary employment opportunities for the construction of streets, utilities, and structures. Annexation would stimulate economic development. Section 17.136.040(A).3 is satisfied.

4. *The location of the site in relation to efficient provision of public facilities, services, transportation, energy conservation, urbanization and social impacts.*

Finding:

This site is contiguous to the existing City limits and is bordered on three sides by land within the City. Water service is available to the site from West Lane Road, and police and fire protection can be supplied by the Scappoose Police Department and Scappoose Rural Fire Protection District, respectively. The site has convenient transportation access to Highway 30 via West Lane and Crown Zellerbach Road and is close to existing industrial development, making carpooling and energy conservation possible. Urbanization of the site is consistent with the City's Comprehensive Plan, and site development is not anticipated to impose adverse social impacts. Increasing the industrial land supply will benefit the City by providing employment opportunities and satisfying the immediate need for industrial land. Section 17.136.040(A).4 is satisfied.

17.136.070 Zoning upon annexation. Upon annexation, the area annexed shall be automatically zoned to the corresponding land use zoning classification as shown in the table below. The zoning designation shown on the table below is the city's zoning district which most closely implements the city's comprehensive plan map designation.

<i>Comprehensive Plan</i>	<i>Zoning Classification</i>
<i>SR</i>	<i>R-1, Low Density Residential</i>
<i>GR</i>	<i>R-4, Moderate Density Residential</i>
<i>MH</i>	<i>MH, Manufactured Home Residential</i>
<i>C</i>	<i>Expanded Commercial</i>
<i>I</i>	<i>Light Industrial</i>

Finding:

The site has a Comprehensive Plan designation of I, Industrial. Upon annexation, the site would automatically be zoned LI, Light Industrial. The applicant has requested that the site be zoned Public Use Airport in accordance with Comprehensive Plan goals and policies. Section 17.136.070 is satisfied.

Chapter 17.162 PROCEDURES FOR DECISION MAKING--QUASI-JUDICIAL

17.162.090 Approval authority responsibilities. [...]

C. The planning commission shall conduct a public hearing in the manner prescribed by this chapter and shall have the authority to approve, approve with conditions, approve with modifications or deny the following development applications:

- 1. Recommendations for applicable comprehensive plan and zoning district designations to city council for lands annexed to the city;*
- 2. A quasi-judicial comprehensive plan map amendment except the planning commission's function shall be limited to a recommendation to the council. The*

commission may transmit their recommendation in any form and a final order need not be formally adopted;

3. A quasi-judicial zoning map amendment shall be decided in the same manner as a quasi-judicial plan amendment; [...]

Finding:

The applicant has requested the concurrent review of Annexation and a Zone Change. The Planning Commission will make a recommendation to the City Council regarding the applicant's request. Based on the submitted materials and the staff report the applicant's proposal complies with the City's Comprehensive Plan and with the requirements of Title 17 of the Scappoose Municipal Code. Section 17.162.090(C) is satisfied.

RECOMMENDATION

The airport-related use proposed for this site is consistent with the City of Scappoose Comprehensive Plan and the parcel is within the city's Urban Growth Boundary. The site is also within the boundaries of the special districts and departments providing public services to the areas within the City.

Based on the findings of fact, the conclusionary findings for approval, and the material submitted by the applicant, staff recommends that the Planning Commission recommend **APPROVAL** of the application ANX1-06/ZC1-06 by the City Council for placement on the ballot.

Appendix E



Appendix E

Definitions for Airport Surfaces and Areas, Scappoose Land Use and Development Code Chapter 17.88

- **Primary Surface**
A surface longitudinally centered on a runway. When a runway has a specially prepared hard surface, the primary surface extends two hundred 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. For the Scappoose Industrial Airpark, the width of the primary surface is five hundred feet. If visibility minimums are reduced to three-fourths statute mile, then the width of the primary surface would be one thousand feet.
- **Transitional Surface**
Those surfaces that extend upward and outward at ninety-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 five thousand feet measured horizontally from the edge of the approach surface and at a ninety-degree angle to the extended runway centerline.
- **Horizontal Surface**
A horizontal plane one hundred fifty 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 and connecting to adjacent arcs by lines tangent to those arcs. For the Scappoose Industrial Airpark, the radius of each arc is ten thousand feet.
- **Conical Surface**
A surface extending outward and upward from the periphery of the horizontal surface at a slope of twenty to one for a horizontal distance of four thousand feet.
- **Approach Surface**
A surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surfaces. For the Scappoose Industrial Airpark:
 1. The inner edge of the approach surface is the same width as the primary surface and it expands uniformly to a width of three thousand five hundred feet. If visibility minimums are reduced to three-fourths statute mile, then the approach surface would expand uniformly to a width of four thousand feet;

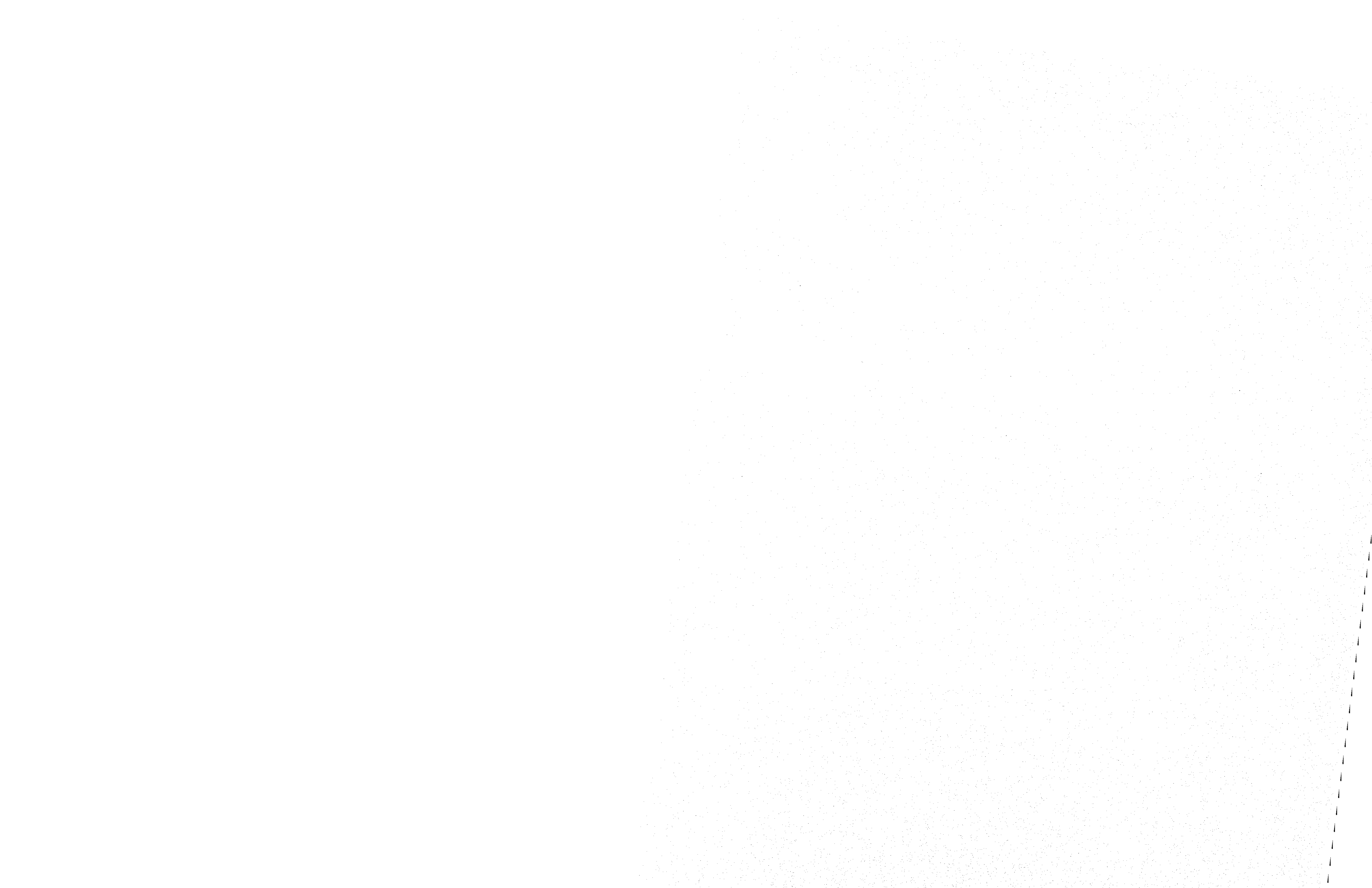
Appendix E

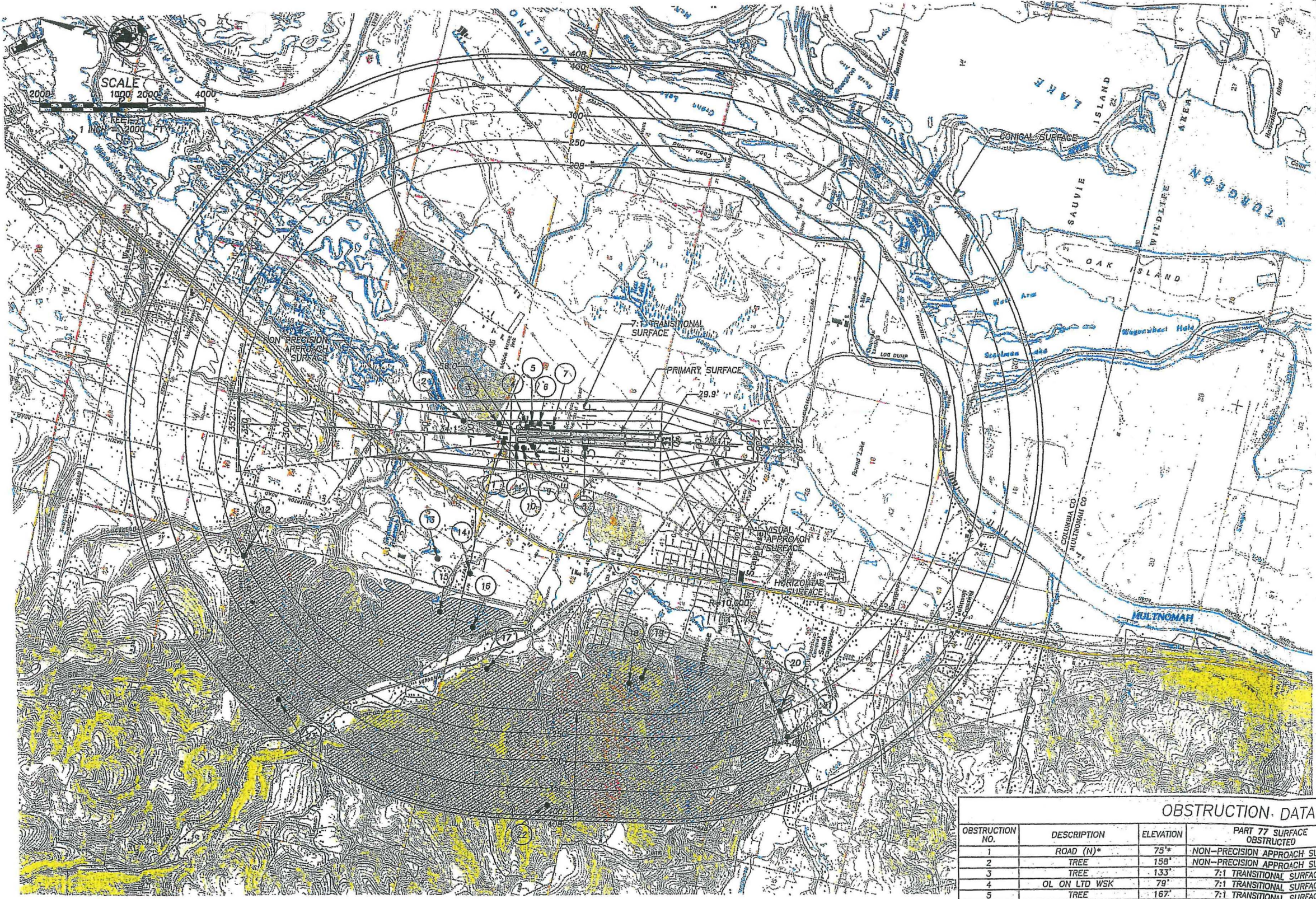
Definitions for Airport Surfaces and Areas, Scappoose Land Use and Development Code Chapter 17.88

2. The approach surface extends for a horizontal distance of ten thousand feet at a slope of thirty-four feet outward for each foot upward; and
 3. The outer width of an approach surface is three thousand five hundred feet at a distance of ten thousand feet from the end of the primary surface. If visibility minimums are reduced to three-fourths statute mile, then the outer width of the approach surface would be four thousand feet at a distance of ten thousand feet from the end of the primary surface.
- **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. For the Scappoose Industrial Airpark, the RPZ extends from each end of the primary surface for a horizontal distance of one thousand feet. If visibility minimums are reduced to three-fourths statute mile, then the RPZ would extend from each end of the primary surface for a horizontal distance of one thousand seven hundred feet.
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Appendix F







NOTES:

1. OBSTRUCTIONS LISTED INFORMATION WAS OBTAINED FROM NOAA AIRPORT OBSTRUCTION CHART AND AERONAUTICAL DATA SHEET, USGS QUAD MAPS, AND AIRPORT MANAGEMENT. NO SURVEY WAS PERFORMED.
2. A GROWTH ALLOWANCE WAS NOT INCORPORATED INTO THE OBSTRUCTION REVIEW.
3. THE FOLLOWING HEIGHTS WERE ADDED TO THE SURFACE ELEVATION FOR CERTAIN GROUND FEATURES:
10FT FOR A PRIVATE ROAD
15FT FOR A PUBLIC ROAD
17FT FOR AN INTERSTATE ROAD
23FT FOR RAILROAD TRACKS
4. ALL ELEVATIONS ARE ON THE NAVD 88 DATUM, WITH THE EXCEPTION OF THE USGS MAP, WHICH IS NGVD 29.
5. PART 77 SURFACES PROTECTED BY CITY OF SCAPPOOSE AND COLUMBIA COUNTY AIRPORT OVERLAY ZONE.
6. SEE SHEET 4 FOR A MORE DETAILED VIEW OF CLOSE-IN OBSTRUCTIONS.

LEGEND:

- OBSTRUCTIONS
- ⊙ GROUP AND MULTIPLE OBSTRUCTIONS

*THE PREPARATION OF THESE DOCUMENTS MAY HAVE BEEN SUPPORTED, IN PART THROUGH THE AIRPORT IMPROVEMENT PROGRAM FINANCIAL ASSISTANCE FROM THE FEDERAL AVIATION ADMINISTRATION (PROJECT NUMBER 3-41-0096-12) AS PROVIDED UNDER TITLE 49, UNITED STATES CODE, SECTION 47104. THE CONTENTS DO NOT NECESSARILY REFLECT THE OFFICIAL VIEWS OR POLICY OF THE FAA. ACCEPTANCE OF THESE DOCUMENTS BY THE FAA DOES NOT IN ANY WAY CONSTITUTE A COMMITMENT ON THE PART OF THE UNITED STATES TO PARTICIPATE IN ANY DEVELOPMENT DEPICTED HEREIN NOR DOES IT INDICATE THAT PROPOSED DEVELOPMENT IS ENVIRONMENTALLY ACCEPTABLE IN ACCORDANCE WITH APPROPRIATE PUBLIC LAWS.

OBSTRUCTION DATA TABLE

OBSTRUCTION NO.	DESCRIPTION	ELEVATION	PART 77 SURFACE OBSTRUCTED	SURFACE ELEVATION	PENETRATION	PROPOSED DISPOSITION OF OBSTRUCTION
1	ROAD (N)*	75'	NON-PRECISION APPROACH SURFACE	64'	11'	SEE NOTE BELOW
2	TREE	158'	NON-PRECISION APPROACH SURFACE	113'	45'	REMOVE
3	TREE	133'	7:1 TRANSITIONAL SURFACE	85'	48'	REMOVE
4	OL ON LTD WSK	79'	7:1 TRANSITIONAL SURFACE	69'	10'	TO REMAIN
5	TREE	167'	7:1 TRANSITIONAL SURFACE	89'	78'	REMOVE
6	TREE	174'	7:1 TRANSITIONAL SURFACE	85'	89'	REMOVE
7	APBN	98'	7:1 TRANSITIONAL SURFACE	62'	36'	REMOVE
8	OL ON LTD WSK	72'	7:1 TRANSITIONAL SURFACE	56'	16'	TO REMAIN
9	OL ON LTD WSK	87'	7:1 TRANSITIONAL SURFACE	73'	14'	TO REMAIN
10	TREE	180'	7:1 TRANSITIONAL SURFACE	82'	98'	REMOVE
11	TREE	183'	7:1 TRANSITIONAL SURFACE	82'	101'	REMOVE
12	GROUND SURFACE	200'-220'	CONICAL SURFACE	VARIES	VARIES	FIXED; NO ACTION
13	TREE	273'	HORIZONTAL SURFACE	208'	65'	NO ACTION
14	TREE	253'	HORIZONTAL SURFACE	208'	45'	NO ACTION
15	TREE	363'	HORIZONTAL SURFACE	208'	155'	NO ACTION
16	TREE	364'	HORIZONTAL SURFACE	208'	156'	NO ACTION
17	TREE	408'	HORIZONTAL SURFACE	208'	200'	NO ACTION
18	TREE	620'	HORIZONTAL SURFACE	208'	412'	NO ACTION
19	TREE	549'	HORIZONTAL SURFACE	208'	341'	NO ACTION
20	GROUND SURFACE	200'-240'	CONICAL SURFACE	VARIES	VARIES	FIXED; NO ACTION
21	GROUND SURFACE	250'-265'	CONICAL SURFACE	VARIES	VARIES	FIXED; NO ACTION
22	GROUND SURFACE	200'-860'	CONICAL SURFACE	VARIES	VARIES	FIXED; NO ACTION
23	GROUND SURFACE	200'-580'	CONICAL SURFACE	VARIES	VARIES	FIXED; NO ACTION

NOTE: * ROAD ELEVATION IS AN APPROXIMATED AND NEEDS TO BE SURVEYED FOR CONFIRMATION PRIOR TO ADDRESSING IT AS AN OBSTRUCTION.

DESIGNED BY:	LAW	CHECKED BY:	REA
DRAWN BY:	CMB	APPROVED BY:	REB
LAST EDIT:	08/18/03	PLOT DATE:	08/27/04
DATE BY:	REVA	REVISION:	ICK/DIAPR

**PORT OF ST. HELENS
SCAPPOOSE INDUSTRIAL AIRPARK
AIRPORT AIRSPACE PLAN**

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Appendix G



AIRPORT LAND GOALS AND POLICIES

Preface

The airport designation covers light industry, airport-related mixed-use development, and airport residential development. The Land Use and Development Code will specify whether the land can be used for light industrial activities with no off-site impact, mixed-use development, or airport residential development.

Residential development has proven feasible at a number of general aviation airports. As each general aviation airport is unique, residential development at the Scappoose Industrial Airpark will require exploration of options and cooperation with the private sector.

Significant Findings of the Plan with Regards to the Airport

- 1) The Scappoose Industrial Airpark is located within the city limits of Scappoose along Highway 30, north-east of downtown Scappoose. Access to the airport is provided by West Lane Road and Columbia Avenue.
- 2) The airport is owned, operated, and maintained by the Port of St. Helens; the Port of St. Helens is the airport sponsor.
- 3) Per the State Aviation System Plan, the Scappoose Industrial Airpark is a Category 2 airport and is the second busiest airport without an air traffic control tower in the State of Oregon. A Category 2 airport is defined as a business or high activity general aviation airport with over 30,000 operations per year and at least 500 turbine aircraft operations.
- 4) The airport is one of three airports with a runway over 5,000 feet in length within a 30 nautical mile radius of the Scappoose. The airport has one runway, 5,100 feet by 100 feet, and two main parallel taxiways on either side of the runway.
- 5) The airport is considered a major airport in the Portland Metropolitan Area.
- 6) The primary fixed base operator (FBO) at the airport is Transwestern Aviation. Other FBO's include Sherpa Aircraft Manufacturing, Sport Copter, Inc., Oregon Aero, Composites Unlimited, Inc., and the Northwest Antique Airplane Club.
- 7) Utilities serving the airport include Columbia River PUD (electricity), City of Scappoose (water, west side of the airport), and Century Tel (telephone). With the exception of new construction on the west side of the airport, which is served by public sewer, buildings have on-site septic systems.
- 8) The Scappoose Rural Fire Protection District provides aircraft rescue and fire fighting services for the airport.
- 9) The Scappoose Industrial Airpark is a valuable resource and provides economic benefits to the City. The City supports the continued operation and vitality of the airport.
- 10) The Port of St. Helens is supportive of a residential component adjacent to the airport and is willing to work with the private sector to provide residential development with airport access.
- 11) This chapter addresses only to the Scappoose Industrial Airpark and land surrounding the airport.

Goal for the Airport Land Use Designation

It is the goal of the City of Scappoose to:

- 1) Support and promote the continued operation and vitality of the Scappoose Industrial Airpark.
- 2) Provide a location for airport-related light industrial activities in an industrial business park setting where their requirements can be met and where their environmental effects will have a minimal impact upon the community.
- 3) Utilize the Scappoose Industrial Airpark as an attractor for non-aviation-related industries that are dependent upon or compatible with and benefit from aircraft and air transportation and interact strongly with the cluster of aviation-related businesses also located near the airport.
- 4) Take advantage of the transportation options provided by the Scappoose Industrial Airpark by allowing airport-related mixed-use and airport residential development.

Policies for the Airport Land Use Designation

It is the policy of the City of Scappoose to:

- 1) Locate light industrial, airport-related mixed-use and airport residential development areas so they have a convenient relationship to the community's transportation system; this includes vehicular and aircraft transportation systems.
- 2) Screen, setback, or buffer the boundaries of airport mixed-use or airport residential development areas from light industry.
- 3) Apply this designation where light industrial, airport mixed-use, or airport residential development interests have become established and where vacant sites have been set aside for this purpose.
- 4) Protect the stability and functional aspects of light industrial, airport mixed-use, and airport residential areas by safeguarding them from incompatible uses.

Appendix H



Chapter 17.XX

MUA MIXED USE AIRPORT

Sections:

17.XX.010	Purpose.
17.XX.020	Conformance with Public Use Airport Safety and Compatibility Overlay Zone.
17.XX.030	Definitions.
17.XX.040	Permitted uses.
17.XX.050	Conditional uses.
17.XX.060	Prohibited uses.
17.XX.070	Notices and Restrictions for Development Within the Mixed Use Airport Zone.
17.XX.080	Lot standards.
17.XX.090	Setbacks.
17.XX.100	Building Height.
17.XX.110	Landscaping Requirements.
17.XX.120	Circulation.
17.XX.130	Parking.

17.XX.010 Purpose. The purpose of the Mixed Use Airport (MUA) Zone is to support and promote the Scappoose Industrial Airpark in its operation and future development by protecting it from incompatible uses and encouraging economic development of the City by allowing airport-related mixed-use and residential development.

The Mixed Use Airport (MUA) Zone is intended to:

1. Provide locations for commercial and non-commercial activities dependent upon aircraft or air transportation when such activities, in order to function, require, or benefit from a location within or immediately adjacent to an airport providing primary flight operations and passenger or cargo service facilities.
2. Provide locations for commercial and non-commercial activities that are compatible with and benefit from air transportation, including non-aviation businesses that experience improved performance and have an interdependent relationship with the aviation-related businesses located near the airport.
3. Take advantage of the transportation options provided by the Scappoose Industrial Airpark by allowing airport-related mixed-use and residential development that has a physical connection to the airport through private taxiways.

17.XX.020 Conformance with Public Use Airport Safety and Compatibility Overlay Zone. All uses, activities, facilities and structures allowed in the Mixed Use Airport (MUA) Zone shall comply with the requirements of the Public Use Airport Safety and Compatibility Overlay (AO) Zone, Chapter 17.88 of the Scappoose Land Use and Development Code. In the event of a conflict between the requirements of this zone and those of the Public Use Airport Safety and Compatibility Overlay (AO) Zone, the requirements of the overlay shall control.

17.XX.030 Definitions. Unless the context specifically indicates otherwise, the meaning of terms used in this chapter shall be as follows:

A. "Aircraft" includes airplanes and helicopters, but not hot air balloons or ultralights.

B. "Airport compatible business" is a business, aviation or non-aviation in nature, which is not incompatible with the airpark.

C. "Airport mixed-use development" (as used in this chapter) is a mix of airport related residential development, with a minor emphasis on commercial uses, within a multi-modal environment.

D. "Air transportation business" is a business engaged in the business of transporting personnel and/or cargo by air.

E. "Airport residential development" (as used in this chapter) is a residential development adjacent to the Scappoose Industrial Airpark that has a through-the-fence agreement with the airport sponsor to facilitate runway access for residents of the development.

F. "Airport sponsor" is the owner, manager, person, or entity designated to represent the interests of the airport. For the Scappoose Industrial Airpark, the airport sponsor is the Port of St. Helens.

G. "Avigation easement" is a grant of a property interest in land over which a right of unobstructed flight in the airspace is established and which prohibits any structures, growth, or other obstructions from penetrating the approach surface and provides a right-of-entry to remove, mark, or light any structure of any such obstruction.

H. "Clear area" is a land area required to be clear of obstructions per Federal Aviation Administration regulations for airports and airspace.

I. "Combination garage" is a garage for the parking and storage of automobiles and aircraft.

J. "Disclosure statement" is a statement, recorded in the County records by the property owner, acknowledging that the property is located in close proximity to the airport and signifies the owner's awareness of the associated noise levels, vibrations, fumes, dust, fuel, fuel particles, and other effects that may be caused by aircraft operations on or near the airport.

K. "Efficiency loft" is a small apartment with a bathroom and kitchenette.

L. "General aviation" is any flight that is not military, does not fly on a regular schedule, and is not classified as an air carrier, commuter or regional. General aviation may include business flights, private aviation, flight training, ballooning, parachuting, gliding, hang gliding, aerial photography, foot-launched powered hang gliders, air ambulance, crop dusting, charter flights, traffic reporting, police air patrols, forest fire fighting, as well as many other types of flying.

M. "Hangar" is a building for the storage and maintenance of aircraft. A hangar is not considered an accessory building.

N. "Object free area" is an area on the ground centered on a runway or taxiway centerline provided to enhance the safety of aircraft operations by having the area free of objects, except for objects that need to be located in the Object Free Area for air navigation or aircraft ground maneuvering purposes.

O. "Parking apron" is a paved or grass area intended for parking aircraft.

P. "Private hangar" is a private or semi-private building for the storage and maintenance of aircraft located on a separate parcel or lot from the residential dwelling it serves.

- Q. "Runway" is a defined rectangular surface on an airport prepared or suitable for the landing and takeoff of aircraft.
- R. "Safety areas" are defined surfaces surrounding the runway prepared or suitable for reducing the risk of damage to airplanes in the event of an undershoot, overshoot, or excursion from the runway.
- S. "Taxiway" is a defined path established for the taxiing of aircraft from one location to another location. All taxiways must be paved with an all weather surface.
- T. "Tie-down" is a paved or grass area intended for parking aircraft.
- U. "Vehicular garage" is a garage for the parking and storage of automobiles.

17.XX.040 Permitted uses. In the Mixed Use Airport Zone, activities are subject to Site Development Review, Chapter 17.120 of the Scappoose Land Use and Development Code. Only the following uses, their accessory uses, and activities are permitted outright in the Mixed Use Airport (MUA) Zone:

- A. Aircraft or air transportation businesses;
- B. A business that owns an aircraft, keeps it at the work site, and relies on the aircraft as an important tool or platform for business. The business shall demonstrate that the aircraft is used primarily for business purposes and any personal use is secondary;
- C. A business activity that relies on regular use of a general aviation aircraft by the business or its clients;
- D. Aerial surveying, mapping, and photography;
- E. Flight instruction, including activities, facilities, and accessory structures located at airport sites that provide education and training directly related to aeronautical activities. Flight instruction includes ground training and aeronautic skills training, but does not include schools for flight attendants, ticket agents, or similar personnel;
- F. Aircraft rental, including activities, facilities and accessory structures that support the provision of aircraft for rent or lease to the public;
- G. Aircraft sales and the sale of aeronautic equipment and supplies including activities, facilities, and accessory structures for the storage, display, demonstration, and sales of aircraft and aeronautic equipment and supplies to the public but not including activities, facilities, or structures for the manufacturing of aircraft or aircraft-related products for sale to the public;
- H. Aircraft service, maintenance, and training including activities, facilities, and accessory structures provided to teach aircraft service and maintenance skills and to maintain, service, refuel or repair aircraft or aircraft components. "Aircraft service, maintenance and training" includes the construction and assembly of aircraft and aircraft components for personal use, but does not include activities, structures, or facilities for the manufacturing of aircraft or aircraft-related products for sale to the public;
- I. Aircraft hangars for the storage and maintenance of business or personal aircraft. An aircraft hangar may contain an efficiency loft;
- J. Tie-down or hangar for the parking, storage, and maintenance of aircraft;
- K. Greenways and other open space, including but not limited to bicycle and pedestrian paths and parks. Greenways and other open space will be separated by natural or man-made barriers from taxiways;
- L. Accessory Dwelling Units (ADU's) subject to the provisions of Chapter 17.92, Accessory Dwelling Units, of the Scappoose Land Use and Development Code;

M. Home occupation (Type I) subject to Chapter 17.142, Home Occupations, identified in the Scappoose Land Use and Development Code.

17.XX.050 Conditional uses. The following uses and their accessory uses may be permitted when authorized by the Planning Commission in accordance with the requirements of Chapter 17.130, Conditional Use, of the Scappoose Land Use and Development Code, other relevant sections of this title, and any conditions imposed by the Planning Commission. Notification of the airport sponsor is required:

A. Single-family, detached residential dwelling units with a physical connection to the airport through private taxiways and within a residential subdivision or partition that has been approved through the Conditional Use process. Individual housing units within the approved subdivision or partition do not need Conditional Use Permits;

B. Single-family, detached residential dwelling units with a physical connection to the airport through a private taxiway and outside an approved residential subdivision or partition. Individual housing units outside an approved subdivision or partition shall apply for Conditional Use Permits;

C. Home occupation (Type II) subject to Chapter 17.142, Home Occupations, of the Scappoose Land Use and Development Code.

17.XX.060 Prohibited uses. The following uses and activities are prohibited in the Mixed Use Airport (MUA) Zone:

A. Emergency medical flight services including activities, aircraft, accessory structures, and other facilities necessary to support emergency transportation for medical purposes. Emergency medical flight services do not include hospitals, medical offices, medical labs, medical equipment sales, and other similar uses;

B. Law enforcement and firefighting activities including aircraft and ground-based activities, facilities, and accessory structures necessary to support federal, state or local law enforcement or land management agencies engaged in law enforcement or firefighting activities. Law enforcement and firefighting activities include transport of personnel, aerial observation, and transport of equipment, water, fire retardant, and supplies;

C. Search and rescue operations including aircraft and ground-based activities that promote the orderly and efficient conduct of search or rescue related activities;

D. Crop dusting activities including activities, facilities, and structures accessory to crop dusting operations. Crop dusting activities include, but are not limited to; aerial application of chemicals, seed, fertilizer, defoliant, and other chemicals or products used in a commercial agricultural, forestry, or rangeland management setting.

17.XX.070 Notices and Restrictions for Development Within the Mixed Use Airport Zone.

A. Avigation Easement. Prior to the issuance of a building permit for new construction, the owner shall dedicate an avigation easement to the airport sponsor. Prior to the issuance of a building permit for new construction, the owner shall dedicate an avigation easement to the airport sponsor. The avigation easement shall grant unobstructed flight in the airspace and prohibit any structures, growth, or other obstructions from penetrating Federal Aviation Regulation (FAR) Part 77 surfaces and provide a right of entry to remove, mark, or light any structure of any such obstruction at a cost to the property owner. The easement shall hold the City, Port of St. Helens,

airpark, and public harmless from any damages caused by noise, vibrations, fumes, dust, fuel, fuel particles, or other effects that may be caused by the operation of aircraft taking off, landing, or operating on or near the airpark, not including the physical impact of aircraft or parts thereof.

B. Disclosure Statement. In preparation for closing, perspective buyers and title companies shall have access to a disclosure statement which will be available in the Columbia County records. The Disclosure Statement acknowledges that the property is located in close proximity to the Scappoose Industrial Airpark, signifies the buyer's awareness of the associated activities, and notifies the buyer that residential development proximate to the airport ought to assume, at some indefinite date, an impact from air traffic. Additionally, prior to the issuance of a building permit for new construction, the owner shall record a Disclosure Statement in the County records.

C. Covenants, Conditions, and Restrictions (CC&Rs):

a. A residential subdivision or partition approved through the Conditional Use process shall have associated CC&Rs. Individual housing units outside an approved subdivision or partition do not need to have associated CC&Rs. CC&Rs shall contain architectural guidelines for the approved subdivision or partition. Items that the CC&Rs shall address include, but are not limited to, the following:

- i. Construction standards
- ii. Architectural guidelines
- iii. Landscaping requirements
- iv. Parking standards
- v. Maintenance of common facilities, taxiways, and open space tracts

b. All CC&Rs shall be reviewed and approved by the City prior to final plat approval. The City will provide a copy of the CC&R's to the airport sponsor for review and comment; the airport sponsor shall have 30 days to provide comments to the City.

D. At a minimum, each residential lot shall have a hangar or permanent rights to a nearby private hangar to provide for the storage and maintenance of one aircraft. The building permit application shall include the dwelling and the hangar; if the hangar is not included in the building permit application, the City shall deny the application.

E. Up to 25% of the lots in a residential subdivision shall be permitted to have permanent rights to a nearby private hangar only; these lots shall not be required to construct a hangar.

F. Light fixtures shall be placed and aimed to minimize objectionable glare to pilots.

G. No glare producing building material including, but not limited to, unpainted metal or reflective glass shall be used on the exterior of structures located where glare could impede a pilot's vision.

17.XX.080 Lot standards. No lot shall have less than the following standards.

A. Lot area.

1. The minimum lot area shall be ten thousand square feet.
2. The minimum average lot area for a subdivision shall be one-half acre and be based on net site area. Net site area is the gross site area minus public rights-of-way, lots containing public hangar sites, and greenways and other open space.

B. Lot dimensions and frontage.

1. The minimum lot width shall be fifty feet, except the minimum lot width on the arc of an approved full cul-de-sac shall be thirty feet.

2. Each lot shall have frontage on a public street for a distance of at least fifty feet or have vehicular access to a public street through an access easement that is at least twenty-five feet wide. No new private streets shall be created to provide frontage or vehicular access, unless approved by the City engineer.

3. Each lot including a hangar shall have frontage on a private taxiway for a distance of eighty feet or have aircraft access to a private taxiway through an easement that is at least eighty feet wide. A paved connection shall be provided from the tie-down and hangar to the taxiway.

C. Lot coverage. The maximum lot coverage shall be 75% for all structures and impervious areas.

D. Additional requirements shall include any applicable section of this title.

17.XX.090 Setbacks. The minimum setback requirements are as follows:

A. The front yard setback shall be a minimum of twenty feet;

B. The front of vehicular garages or carports shall be located a minimum of twenty feet from the property line where access occurs;

C. A tie-down may be located with no setbacks to property lines.

D. The front of combination garages shall be located a minimum of 20 feet from the property line where access occurs and shall be adjacent to a parking apron.

E. Side yard shall total a minimum of fifteen feet with any street side setback no less than ten feet. Internal lots shall have one side setback no less than ten feet;

F. The rear yard setback shall be a minimum of twenty feet, except the minimum rear yard setback for an accessory building shall be five feet.

G. When adjacent to other properties within the Mixed Use Airport (MUA) Zone, hangars shall be located a minimum of five feet from the property line where access occurs. When adjacent to other properties not within the MUA Zone, hangars shall be located a minimum of twenty feet from the property line where access occurs.

H. Where a utility easement is located adjacent to a lot line, there shall be a yard setback no less than the width of the easement.

H. Additional requirements shall include any applicable section of this title.

17.XX.100 Building Height.

A. No building shall exceed thirty-five feet in height. The maximum height for accessory buildings shall be twenty-two feet.

B. No structure shall penetrate an airport imaginary surface as outlined in Chapter 17.88, Public Use Airport Safety and Compatibility Overlay (AO) Zone, of the Scappoose Land Use and Development Code.

C. Additional requirements shall include any applicable section of this title.

17.XX.110 Landscaping Requirements.

A. Street trees shall be required along all public streets, subject to Chapter 17.104, Street Trees, of the Scappoose Land Use and Development Code. Street trees shall not be planted along private taxiways. The selected street trees shall be varieties which do not grow to heights that may interfere with navigable airspace.

17.XX.100—17.XX.130

B. No landscaping, except for grass, shall be required for any area within fifty feet of aircraft operations areas including, but not limited to, aircraft parking aprons and tie-downs; taxiways; clear areas; safety areas; object free areas; and the runway.

C. No buildings, fences, or vegetation over eighteen inches in height shall be allowed within the object free area.

D. Additional requirements shall include any applicable section of this title.

17.XX.120 Circulation.

A. At-grade intersections of public streets and private taxiways are strictly prohibited.

B. The City may require an emergency vehicle access to a private taxiway be granted in the form of an emergency vehicle access easement as needed to provide for adequate emergency vehicle circulation.

17.XX.130 Parking.

A. Each lot shall provide vehicular parking subject to Chapter 17.106, Off-Street Parking and Loading Requirements, of the Scappoose Land Use and Development Code.

Appendix I



May 23, 2007

Project #: 0054.0

Brian Varricchione
City Planner & Assistant City Engineer
City of Scappoose
33568 E. Columbia Avenue
Scappoose, OR 97056

RE: Response Letter Addressing TPR Compliance of Scappoose Text Amendments

Dear Mr. Varricchione:

Dunn Traffic Engineering, LLC has prepared this letter as a response to the incompleteness comments received from City staff regarding the first submittal of proposed text amendments to the City's Comprehensive Plan and Land Use and Development Code to add a new Mixed Use Airport (MUA) zone, and how these text amendments relate to compliance with the State's Transportation Planning Rule (TPR, Section 660-012-0060). Based on your latest feedback, our position on TPR compliance has changed relative to the findings stated in our previous letter dated April 6, 2007. We are no longer certain that the proposed Mixed Use Airport (MUA) zone will not have any "significant affect" on an existing or planned transportation facility. The reason for our change of view is because future development activity under the proposed MUA zone could conceivably generate more vehicle trips on an average daily and weekday peak hour basis than what would otherwise be generated by development activity under the current PUA zone.

The basis for our change of view has to do with a specific piece of proposed MUA zoning language allowing a minimum lot size of 10,000 square feet. Under a worst-case development scenario, a subdivision built within a defined MUA zone could consist of a majority of 10,000 square-foot parcels, resulting in a much higher density than what was previously assumed in our April 6th letter. Our previous assumption was that the average lot size for developments under the proposed MUA zone would be around one-half acre, or around 21,780 square feet. It was and continues to be our belief that there will be demand for much larger sized parcels beyond one-half acre in size to create businesses which incorporate on-site features such as private work spaces, private hangers, and/or taxiways located at the rear of the properties to provide access the airport runways. Nevertheless, it is now evident from the proposed MUA zoning language and from comments made by City staff that there is no constraint on overall development size or density within the proposed MUA zone, except for the minimum lot size limitation of 10,000 square feet. This is consistent with the remainder of Title 17 (Land Use and Development) of the Scappoose Municipal Code of Ordinances, which does not specify a density standard for any existing zoning designation.

Therefore, under a worst-case development scenario, where a majority of owner-occupied units are below one-half acre in size, due to a multitude of 10,000 square-foot lots, there is cause for concern that the proposed MUA zoning may "significantly affect" the existing or planned transportation system. To determine whether or not a "significant affect" could occur, a more formal transportation impact assessment is necessary and would be completed as part of an application requesting a comprehensive plan map or zoning map amendment. The assessment would consist of an analysis of the impacts to the existing and future network of streets and intersections during the weekday a.m. and p.m. peak hours of the future planning year, and under a worst-case development scenario involving the proposed zone.

Such an assessment would likely include an evaluation of traffic impacts at the following intersections located within the influence area of the Scappoose Industrial Airpark:

- o US 30 at East Columbia Avenue;
- o US 30 at Crown Zellerbach/Scappoose-Vernonia Highway;
- o US 30 at West Lane Road;
- o West Lane Road at North Honeyman Road;
- o West Lane Road at Crown Zellerbach Road; and,
- o West Lane Road at East Columbia Avenue.

Conclusions and Recommendations

In conclusion, it is our professional opinion that any development under the proposed MUA zone has the potential to generate more vehicle trips than what would otherwise be generated under the current PUA zone. Therefore, additional transportation impact analysis is necessary as part of any application requesting a comprehensive plan map or zoning map amendment to determine whether or not there will be a "significant affect" to the existing or planned transportation network. The depth and breadth of such a study should be coordinated with all affected agencies, including the City of Scappoose, ODOT, and Columbia County. If you have any questions or comments regarding the assumptions or findings contained this letter, please contact me at (503)-774-2669.

Sincerely,

DUNN TRAFFIC ENGINEERING, LLC

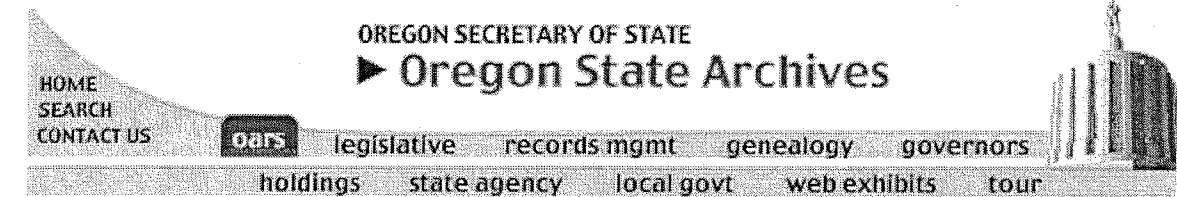


Brian J. Dunn, P.E.

Principal

File: TPR compliance letter_response update_052307.doc

Exhibit 2



The Oregon Administrative Rules contain OARs filed through October 15, 2007

LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

DIVISION 13

AIRPORT PLANNING

660-013-0010

Purpose and Policy

(1) This division implements ORS 836.600 through 836.630 and Statewide Planning Goal 12 (Transportation). The policy of the State of Oregon is to encourage and support the continued operation and vitality of Oregon's airports. These rules are intended to promote a convenient and economic system of airports in the state and for land use planning to reduce risks to aircraft operations and nearby land uses.

(2) Ensuring the vitality and continued operation of Oregon's system of airports is linked to the vitality of the local economy where the airports are located. This division recognizes the interdependence between transportation systems and the communities on which they depend.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 836.600 - ORS 836.635 & 1997 OL, Ch. 859

Hist.: LCDC 6-1996, f. & cert. ef. 12-23-96; LCDD 3-1999, f. & cert. ef. 2-12-99

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:

(1) "Airport" means 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.

(2) "Aircraft" means helicopters and airplanes, but not hot air balloons or ultralights.

(3) "Airport Uses" means those uses described in OAR 660-013-0100.

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

(5) "Public Assembly Uses" means a structure or outdoor facility where concentrations of people gather for purposes such as deliberation, education, worship, shopping, business, entertainment, amusement, sporting events, or similar activities, excluding airshows. Public Assembly Uses does not include places where people congregate for short periods of time such as parking lots and bus stops or uses approved by the FAA in an adopted airport master plan.

(6) "Sponsor" means the owner, manager, other person, or entity designated to represent the interests of an airport.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 836.600 - ORS 836.635 & 1997 OL, Ch. 859

Hist.: LCDC 6-1996, f. & cert. ef. 12-23-96; LCDD 3-1999, f. & cert. ef. 2-12-99

660-013-0030

Preparation and Coordination of Aviation Plans

(1) The Oregon Department of Aviation (ODA) shall prepare and adopt a state Aviation System Plan (state ASP) in accordance with ORS Chapters 835 and 836 and the State Agency Coordination Program approved under ORS 197.180. ODA shall coordinate the preparation, adoption, and amendment of land use planning elements of the state ASP with local governments and airport sponsors. The purpose of the state ASP is to provide state policy guidance and a framework for planning and operation of a convenient and economic system of airports, and for land use planning to reduce risks to aircraft operations and nearby land uses. The state ASP shall encourage and support the continued operation and vitality of Oregon's airports.

(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.

Stat. Auth.: ORS 183 & 197

Stats. Implemented: ORS 836.600 - 836.630 & 1997 OL, Ch. 859

Hist: LCDC 6-1996, f. & cert. ef. 12-23-96; LCDD 3-1999, f. & cert. ef. 2-12-99; LCDD 3-2004, f. & cert. ef. 5-7-04

660-013-0040

Aviation Facility Planning Requirements

A local government shall adopt comprehensive plan and land use regulation requirements for each state or local aviation facility subject to the requirements of ORS 836.610(1). Planning requirements for airports identified in ORS 836.610(1) shall include:

(1) A map, adopted by the local government, showing the location of the airport boundary. The airport boundary shall include the following areas, but does not necessarily include all land within the airport ownership:

(a) Existing and planned runways, taxiways, aircraft storage (excluding aircraft storage accessory to residential airpark type development), maintenance, sales, and repair facilities;

(b) Areas needed for existing and planned airport operations; and

(c) Areas at non-towered airports needed for existing and planned airport uses that:

(A) Require a location on or adjacent to the airport property;

(B) Are compatible with existing and planned land uses

surrounding the airport; and

(C) Are otherwise consistent with provisions of the acknowledged comprehensive plan, land use regulations, and any applicable statewide planning goals.

(d) "Compatible," as used in this rule, is not intended as an absolute term meaning no interference or adverse impacts of any type with surrounding land uses.

(2) A map or description of the location of existing and planned runways, taxiways, aprons, tiedown areas, and navigational aids;

(3) A map or description of the general location of existing and planned buildings and facilities;

(4) A projection of aeronautical facility and service needs;

(5) Provisions for airport uses not currently located at the airport or expansion of existing airport uses:

(a) Based on the projected needs for such uses over the planning period;

(b) Based on economic and use forecasts supported by market data;

(c) When such uses can be supported by adequate types and levels of public facilities and services and transportation facilities or systems authorized by applicable statewide planning goals;

(d) When such uses can be sited in a manner that does not create a hazard for aircraft operations; and

(e) When the uses can be sited in a manner that is:

(A) Compatible with existing and planned land uses surrounding the airport; and

(B) Consistent with applicable provisions of the acknowledged comprehensive plan, land use regulations, and any applicable statewide planning goals.

(6) When compatibility issues arise, the decision maker shall take reasonable steps to eliminate or minimize the incompatibility through location, design, or conditions. A decision on compatibility pursuant to this rule shall further the policy in ORS 836.600.

(7) A description of the types and levels of public facilities and services necessary to support development located at or planned for the airport including transportation facilities and services. Provision of public facilities and services and transportation facilities or systems shall be consistent with applicable state and local planning requirements.

(8) Maps delineating the location of safety zones, compatibility zones, and existing noise impact boundaries that are identified pursuant to OAR 340, Division 35.

(9) Local government shall request the airport sponsor to provide the economic and use forecast information required by this rule. The economic and use forecast information submitted by the sponsor shall be subject to local government review, modification and approval as part of the planning process outlined in this rule. Where the sponsor declines to provide such information, the local government may limit the airport boundary to areas currently devoted to airport uses described in OAR 660-013-0100.

Stat. Auth.: ORS 183 & 197

Stats. Implemented: ORS 836.600 - ORS 836.630 & 1997 OL, Ch. 859

Hist.: LCDC 6-1996, f. & cert. ef. 12-23-96; LCDD 3-1999, f. & cert. ef. 2-12-99

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.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 836.600 - ORS 836.630 & 1997 OL, Ch. 859

Hist.: LCDC 6-1996, f. & cert. ef. 12-23-96; LCDD 3-1999, f. & cert. ef. 2-12-99

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.

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 183

Stats. Implemented: ORS 836.600 - 836.630 & 1997 OL, Ch. 859

Hist: LCDC 6-1996, f. & cert. ef. 12-23-96; LCDD 3-1999, f. & cert. ef. 2-12-99; LCDD 3-2004, f. & cert. ef. 5-7-04

660-013-0080

Local Government Land Use Compatibility Requirements for Public Use Airports

(1) A local government shall adopt airport compatibility requirements for each public use airport identified in ORS 836.610(1). The requirements shall:

(a) Prohibit new residential development and public assembly uses within the Runway Protection Zone (RPZ) identified in Exhibit 4;

(b) Limit the establishment of uses identified in **Exhibit 5** within a noise impact boundary that has been identified pursuant to OAR 340, Division 35 consistent with the levels identified in **Exhibit 5**;

(c) Prohibit the siting of new industrial uses and the expansion of existing industrial uses where either, as a part of regular operations, would cause emissions of smoke, dust, or steam that would obscure visibility within airport approach corridors;

(d) Limit outdoor lighting for new industrial, commercial, or recreational uses or the expansion of such uses to prevent light from projecting directly onto an existing runway or taxiway or into existing airport approach corridors except where necessary for safe and convenient air travel;

(e) Coordinate the review of all radio, radiotelephone, and television transmission facilities and electrical transmission lines with the Oregon Department of Aviation;

(f) Regulate water impoundments consistent with the requirements of ORS 836.623(2) through (6); and

(g) Prohibit the establishment of new landfills near airports, consistent with Department of Environmental Quality (DEQ) rules.

(2) A local government may adopt more stringent regulations than the minimum requirements in section (1)(a) through (e) and (g) based on the requirements of ORS 836.623(1)

[ED. NOTE: Exhibits referenced are available from the agency]

Stat. Auth.: ORS 183 & 197

Stats. Implemented: ORS 836.600 - 836.630 & 1997 OL, Ch. 859

Hist: LCDDC 6-1996, f. & cert. ef. 12-23-96; LCDD 3-1999, f. & cert. ef. 2-12-99; LCDD 3-2004, f. & cert. ef. 5-7-04

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.
- (2) Emergency Medical Flight Services, including activities, aircraft, accessory structures, and other facilities necessary to support emergency transportation for medical purposes. "Emergency Medical Flight Services" does not include hospitals, medical offices, medical labs, medical equipment sales, and similar uses.
- (3) Law Enforcement and Firefighting Activities, including aircraft and ground based activities, facilities and accessory structures necessary to support federal, state or local law enforcement and land management agencies engaged in law enforcement or firefighting activities. These activities include transport of personnel, aerial observation, and transport of equipment, water, fire retardant and supplies.
- (4) Flight Instruction, including activities, facilities, and accessory structures located at airport sites that provide education and training directly related to aeronautical activities. "Flight Instruction" does not include schools for flight attendants, ticket agents, or similar personnel.
- (5) Aircraft Service, Maintenance and Training, including activities, facilities, and accessory structures provided to teach aircraft service and maintenance skills, maintain, service and repair aircraft and aircraft components, but not including activities, structures, and facilities for the manufacturing of aircraft for sale to the public or the manufacturing of aircraft related products for sale to the public. "Aircraft Service, Maintenance and Training" includes the construction of aircraft and aircraft components for personal use. The assembly of aircraft and aircraft components is allowed as part of servicing, maintaining, or repairing aircraft and aircraft components.
- (6) Aircraft Rental, including activities, facilities, and accessory structures that support the provision of aircraft for rent or lease to the public.
- (7) Aircraft Sales and the sale of aeronautic equipment and supplies, including activities, facilities, and accessory structures for the storage, display, demonstration and sale of aircraft and aeronautic equipment and supplies to the public.

(8) Aeronautic Recreational and Sporting Activities, including activities, facilities and accessory structures at airports that support recreational use of aircraft and sporting activities that require the use of aircraft or other devices used and intended for use in flight. Aeronautic Recreation and Sporting Activities on airport property shall be subject to approval of the airport sponsor. Aeronautic recreation and sporting activities include but are not limited to: fly-ins; glider flights; hot air ballooning; ultralight aircraft flights; displays of aircraft; aeronautic flight skills contests; gyrocopter flights; flights carrying parachutists; and parachute drops onto an airport. As used in this rule, parachuting and parachute drops includes all forms of skydiving. Parachuting businesses may be allowed only where they have secured approval to use a drop zone that is at least 10 contiguous acres. A local government may establish a larger size for the required drop zone where evidence of missed landings and dropped equipment supports the need for the larger area. The configuration of 10 acre minimum drop zone shall roughly approximate a square or circle and may contain structures, trees, or other obstacles if the remainder of the drop zone provides adequate areas for parachutists to safely land.

(9) Crop Dusting Activities, including activities, facilities and structures accessory to crop dusting operations. These include, but are not limited to: aerial application of chemicals, seed, fertilizer, pesticide, defoliant and other activities and chemicals used in a commercial agricultural, forestry or rangeland management setting.

(10) Agricultural and Forestry Activities, including activities, facilities and accessory structures that qualify as a "farm use" as defined in ORS 215.203 or "farming practice" as defined in ORS 30.930.

(11) Air passenger and air freight services and facilities at public use airports at levels consistent with the classification and needs identified in the state ASP.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 836.600 - ORS 836.630 & 1997 OL, Ch. 859

Hist.: LCDC 6 -1996, f. & cert. ef. 12-23-96; LCDD 3-1999, f. & cert. ef. 2-12-99

660-013-0110

Other Uses Within the Airport Boundary

Notwithstanding the provisions of OAR 660-013-0100, a local government may authorize commercial, industrial, manufacturing and other uses in addition to those listed in OAR 660-013-0100 within the airport boundary where such uses are consistent with applicable provisions of the acknowledged comprehensive plan, statewide planning goals and LCDC administrative rules and where the uses do not create a safety hazard or otherwise limit approved airport uses.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 836.600 - ORS 836.630 & 1997 OL, Ch. 859

Hist.: LCDC 6-1996, f. & cert. ef. 12-23-96; LCDD 3-1999, f. & cert. ef. 2-12-99

660-013-0140

Safe Harbors

A "safe harbor" is a course of action that satisfies certain requirements of this division. Local governments may follow safe harbor requirements rather than addressing certain requirements in these rules. The following are considered to be "safe harbors":

(1) Portions of existing acknowledged comprehensive plans, land use regulations, Airport Master Plans and Airport Layout Plans adopted or otherwise approved by the local government as mandatory standards or requirements shall be considered adequate to meet requirements of these rules for the subject areas of rule requirements addressed by such plans and elements, unless such provisions are contrary to provisions of ORS 836.600 through 836.630. To the extent these documents do not contain specific provisions related to requirements of this division, the documents can not be considered as a safe harbor. The adequacy of existing provisions shall be evaluated based on the specificity of the documents and relationship to requirements of these rules;

(2) This division does not require elimination of existing or allowed airport related uses authorized by an acknowledged comprehensive plan and land use regulations; and

(3) Notwithstanding the safe harbor provisions of this rule, land use regulations applicable to non-towered airports shall authorize airport uses required by this division.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 836.600 - ORS 836.630 & 1997 OL, Ch. 859

Hist.: LCDC 6-1996, f. & cert. ef. 12-23-96; LCDD 3-1999, f. & cert. ef. 2-12-99

660-013-0155

Planning Requirements for Small Airports

(1) Airports described in ORS 836.608(2) shall be subject to the planning and zoning requirements described in ORS 836.608(2) through (6) and (8).

(2) The provisions of OAR 660-013-0100 shall be used in conjunction with ORS 836.608 to determine appropriate types of uses authorized within airport boundaries for airports described in 836.608(2).

(3) The provisions of OAR 660-013-0070(1)(b) shall be used to protect approach corridors at airports described in ORS 836.608(2).

(4) Airport boundaries for airports described in ORS 836.608(2) shall be adopted by local government pursuant to the requirements in ORS 836.608(2).

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 836.600 - ORS 836.630 & 1997 OL, Ch. 859

Hist.: LCDD 3-1999, f. & cert. ef. 2-12-99

660-013-0160

Applicability

This division applies as follows:

(1) Local government plans and land use regulations shall be updated to conform to this division at periodic review, except for provisions of chapter 859, OR Laws 1997 that became effective on passage. Prior to the adoption of the list of airports required by ORS 836.610(3), a local government shall be required to include a periodic review work task to comply with this division. However, the periodic review work task shall not begin prior to the Oregon Department of Aviation's adoption of the list of

airports required by ORS 836.610(3). For airports affecting more than one local government, applicable requirements of this division shall be included in a coordinated work program developed for all affected local governments concurrent with the timing of periodic review for the jurisdiction with the most land area devoted to airport uses.

(2) Amendments to plan and land use regulations may be accomplished through plan amendment requirements of ORS 197.610 to 197.625 in advance of periodic review where such amendments include coordination with and adoption by all local governments with responsibility for areas of the airport subject to the requirements of this division.

(3) Compliance with the requirements of this division shall be deemed to satisfy the requirements of Statewide Planning Goal 12 (Transportation) and OAR 660, Division 12 related Airport Planning.

(4) Uses authorized by this division shall comply with all applicable requirements of other laws.

(5) Notwithstanding the provisions of OAR 660-013-0140 amendments to acknowledged comprehensive plans and land use regulations, including map amendments and zone changes, require full compliance with the provisions of this division, except where the requirements of the new regulation or designation are the same as the requirements they replace.

Stat. Auth.: ORS 183 & 197

Stats. Implemented: ORS 836.600 - 836.630 & 1997 OL, Ch. 859

Hist: LCDC 6-1996, f. & cert. ef. 12-23-96; LCDD 3-1999, f. & cert. ef. 2-12-99; LCDD 3-2004, f. & cert. ef. 5-7-04

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Oregon

Theodore R. Kulongoski, Governor



Exhibit 4

Oregon Department of Aviation

3040 - 25th Street SE
Salem, OR 97302-1125
Phone: (503) 378-4880, ext. 223
Toll Free: (800) 874-0102
FAX : (503) 373-1688

September 4, 2007

Brian Varricchione
City Planner
City of Scappoose
33568 East Columbia Avenue
Scappoose, Oregon 97056

Re: Sierra Pacific's Rezone Application

Thank you for allowing the Oregon Department of Aviation (ODA) the opportunity to review the abovementioned proposal. ODA supports activities that will enhance aviation and/or the Port of St. Helens' ability to fund airport improvements provided that such activities do not interfere with future airport development plans, access, security, or operations. Inasmuch, the Port of St. Helens' comments should be carefully considered prior to any approval.

The application in question proposes a Comprehensive Plan Text Amendment and Land Use and Development Code Text Amendment in that it suggests a new zoning designation of MUA Mixed Use Airport adjacent to the Scappoose Industrial Airpark. The proposed zoning allows for the mixing of aviation related residential, commercial, and light industrial uses. It also excludes aviation related uses such as emergency medical flight services, law enforcement, search and rescue, and agricultural activities.

This being said, ODA does have some concerns regarding the proposed ordinance.

1. OAR 660-013-0100 of the Airport Planning Rule states that 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:

- Customary and usual aviation-related activities; and
- Emergency medical flight services; and
- Law enforcement and firefighting activities; and
- Flight instruction; and
- Aircraft service and maintenance and flight training; and
- Aircraft rental; and
- Aircraft and aeronautical equipment sales; and
- Aeronautical recreational and sporting activities; and
- Crop dusting, agricultural and forestry activities; and
- Air passenger and air freight services and facilities.

Furthermore, OAR 660-013-0110 allows a local government to authorize commercial, industrial, manufacturing and other uses, **in addition** to those listed above, in an airport

boundary where the uses do not create a safety hazard or otherwise limit approved airport uses.

Areas considered to be within an airport boundary shall not exclude the statutorily eligible uses noted above. While the applicant has indicated that the property in question will not be included within the airport boundary, the "through the fence" nature of the development indicates otherwise. The Port of St. Helens has applied for and been named a "through the fence" pilot site in accordance with ORS 836.640. Section 2(4) of the legislation defines a "through the fence operation" as a customary and usual aviation-related activity that:

- (a) Is conducted by a commercial or industrial user of airport property within an airport boundary; and
- (b) Relies, for business purposes, on the ability to taxi aircraft directly from the property employed for the commercial or industrial use to an airport runway.

Additionally, ORS 836.640(4) states that

"The Department of Land Conservation and Development, the county and a city, if any, within whose jurisdiction a pilot site is located shall coordinate with the Oregon Department of Aviation to ensure that the applicable comprehensive plans and land use regulations, including airport zoning classifications pursuant to ORS 836.600 to 836.630, facilitate through the fence operations and support the development or expansion of the pilot site consistent with applicable statewide land use planning requirements."

The inclusion of light industrial and commercial uses in the proposed ordinance is consistent with "through the fence" operations, therefore necessitating the need for inclusion of the property into the airport boundary and allowing all the uses defined in ORS 836.610(1).

2. The definition of "Airport Compatible Business" in Section 17.XX.030 of the proposed ordinance is rather vague and should more clearly define appropriate uses.

3. The ability to create "efficiency lots" may greatly increase density beyond recommended compatibility guidelines.

In conclusion, ODA is constantly open to innovative means of supporting airport growth and stability. ODA does not oppose the proposed concept provided it complies with statutory requirements. Should you have any questions, feel free to contact me at 503-378-3168.

Sincerely,



Chris Cummings
Aviation Planning Analyst



U.S. Department
of Transportation
Federal Aviation
Administration

Exhibit 5

Northwest Mountain Region
Seattle Airports District Office
1601 Lind Avenue S.W., Suite 250
Renton, Washington 98057-3356

September 5, 2007

Mr. Brian Varricchione
City of Scappoose
335568 East Columbia Ave.
Scappoose, OR, 97056

Mr. Varricchione:

Scappoose Industrial Airport
Proposed Rezone of Adjacent Property

Thank you for the opportunity to comment on Land Use Action Referral (CPTA1-07 / DCTA 1-07). We have previously reviewed a draft of this proposed land use change for the Port of St. Helens, and have indicated in a letter to the Port, our objections to this change. We have enclosed a copy of the letter for your information. It appears that any changes from the draft do not substantially affect our points of objection, and therefore we recommend denial of the application.

Our primary objection to the Mixed Use Airport zoning is the inclusion of residential use in the area. While the Federal Aviation Administration (FAA) does not object to residential use near privately owned airports, it considers such a use near a National Plan of Integrated Airport System (NPIAS) airport to be an incompatible land use. A letter explaining this distinction by the Airports Associate Administrator, dated August 29, 2005, is part of our letter to the Port of St. Helens.

In addition, a significant portion of the parcel to be rezoned is shown on the Airport Layout Plan, for future purchase by the Port, and inclusion in the Airport. The proposed zone change would prohibit certain commercial aviation activities which the Port is under Federal grant assurances to allow on the airport. Thus, these parcels would require rezoning back to Public Use Airport (PUA) prior to inclusion in the airport.

If there are any questions, please call me at (425) 227-2629.

Sincerely,

Dave Roberts
Project Manager SEA-643

Enclosure: 2007 Letter to Port of St. Helens

cc: Port of St. Helens



U.S. Department
of Transportation
Federal Aviation
Administration

Northwest Mountain Region
Seattle Airports District Office
1601 Lind Avenue S.W., Suite 250
Renton, Washington 98055-4056

April 25, 2007

Mr. Jerry Meyer
Port Manager
Port of St. Helens
P. O. Box 598
St. Helens, OR 97051

Dear Mr. Meyer:

Scappoose Industrial Airpark, Scappoose, Oregon
Sierra Pacific Communities, Proposal for Rezoning to Mixed-Use

This letter is in response to Ms. Shade's April 3, 2007, letter requesting a review of a proposed application to rezone property adjacent to the current Scappoose Airport boundary. As we understand it, this application to the City of Scappoose was originated by Sierra Pacific Communities, LLC, and that the Port of St. Helens (Port), has been asked to be a co-applicant, at least support the application. The parcel of land outlined in the application is located at the south west end of the airport near runway 33 (enclosure 1). A portion of this parcel is shown on the Airport Layout Plan (ALP) for future airport acquisition. The application requests a rezoning change the zoning of this parcel from Public Use Airport (PUA), to Public Use Airport-Mixed Use (PUA-MU). Also, the application appears to recommend amending the City of Scappoose comprehensive plan to state that "Airport designation to cover light industry, airport related mixed use development and airport residential development". We also received preliminary comments from the Port's attorney concerning the application.

In our August 17, 2006, letter to the Port, the Federal Aviation Administration (FAA) highly recommended against the adoption to the Scappoose Industrial Airpark Master Plan, of an amendment which supports or encourages residential development adjacent to the airport. It appears from the adoption of that amendment that the commission is not discouraging the development of through-the-fence residential communities but rather encouraging dialogue with potential developers of adjacent property.

A through-the-fence residential airpark is a residential use, and therefore an incompatible use of the land on, or immediately adjacent to, a public airport. The fact that there is aircraft parking collocated with the house does not change the fact that this is a residential use. Since 1982, the FAA has emphasized the importance of avoiding the encroachment of residential development on public airports. Encouraging residential airparks on or near a Federally obligated airport, as this rezoning would do, would be inconsistent with the past efforts of the FAA. Enclosed is a letter by the former Associate Administrator for Airports addressing these concerns to a developer.

Allowing an incompatible land use, such as residential development, on or next to a Federally obligated airport is inconsistent with 49 USC 47104(a) (10) and associated FAA Grant Assurance 21, *Compatible Land Use*. Recently there has been an administrative law decision under Title 14 of CFR Part 16 against Afton-Lincoln County, Wyoming, concerning this assurance in association with development of an adjacent residential airpark. The decision stated in part: "The FAA

CONCURRENCES
ROUTING SYMBOL SEA-643
INITIALS/SIGNATURE <i>Jm</i>
DATE <i>4/14/07</i>
ROUTING SYMBOL SEA-640
INITIALS/SIGNATURE <i>BW</i>
DATE <i>4/20</i>
ROUTING SYMBOL 626
INITIALS/SIGNATURE <i>Matt</i>
DATE <i>4/26</i>
ROUTING SYMBOL 620
INITIALS/SIGNATURE <i>Matt</i>
DATE <i>4/26</i>
ROUTING SYMBOL ENFO ANM 600
INITIALS/SIGNATURE <i>[Signature]</i>
DATE <i>4/23/07</i>
ROUTING SYMBOL SEA-600
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generally discourages residential airparks adjacent to airport property, because such airparks can create a compatible land use problem, especially with noise compatibility and zoning issues in the future. Grant assurance 21, *Compatible Land Use*, requires sponsors to take appropriate action, including adoption of zoning laws, to restrict use of land adjacent to, or in the immediate vicinity of, the airport to activities and purposes compatible with normal airport operations, including landing and taking off of aircraft. The FAA recognizes residential development adjacent to airport property as an incompatible land use," (Carey v. Afton-Lincoln County Municipal Airport, FAA Docket No. 16-06-06, Directors Determination dated January 19, 2007). In this case, the City was found in non-compliance for failing to object to and encouraging an adjacent residential airpark. While it is possible that this decision may be appealed, we recommend you review the details of it (available at our web site: <http://www.faa.gov/airports%5Fairtraffic/airports/airport%5Fobligations/complaints>).

Besides our objection to residential use in the PUA-MU zoning, there are several specific aspects of the zoning designation that have potential adverse affects on airport operation and control.

- 1) There is a proposed restriction in the zoning which would limit the types aeronautical activity allowed. A portion of this parcel is shown on the ALP for future acquisition as airport property. Thus, if this portion of the parcel was purchased, then this zoning would limit the types of aeronautical activity on the airport.
- 2) A large portion of the parcel extends beyond the Runway 33 end. This portion is outside the runway protection zone, but may be within the TERPS (United States standard for Terminal Instrument Procedures) departure obstruction clearance surface for Runway 15. This obstruction surface is much larger, and has a flatter slope, than the Part 77 approach surfaces. Future construction that penetrates this departure surface could negatively impact the instrument approaches for the airport.
- 3) Although the application states that residential use would be aviation related, there does not appear to be a requirement to provide a hangar at each residence, and thus non-aviation related residential use could occur. How would the rezoning keep the airpark portion of the parcel from becoming mixed with non-aviation related residential housing?
- 4) There are no guidelines on control of access to the airport taxiway system.
- 5) Conditional use section of the application only requires notification of the airport sponsor, not sponsor approval, even though one section discusses "detached residential dwelling units with a physical connection of the airport".

Based upon the above reasons and past discussions we have had with the Port on this matter, we strongly recommend that you not participate, and actively oppose the application for rezoning of the area shown. If there are any questions, please call me at (425) 227-2658, or Dave Roberts at (425) 227-2629.

Sincerely,

William L. Watson,
Supervisor, Oregon/Idaho Section

Enclosures: Plat survey of rezone parcel
Administrator Letter of August 29, 2005
SEA643:DROBERTS:SRD:X2629:04/26/07 09:24 AM:FILE:SCAPPOOSE, OR - COMPLIANCE

Vasconcelos



U.S. Department
of Transportation
Federal Aviation
Administration

Office of Associate Administrator
for Airports

800 Independence Ave., SW.
Washington, DC 20591

AUG 29 2005

Mr. Hal Shevers
Chairman
Clermont County-Sporty's Airport
Batavia, OH 45103

Dear Mr. Shevers:

Thank you for your letter of July 18. In your letter, you suggested the Federal Aviation Administration promote developing residential airparks as a means to improve airport security and reduce the closure rate of general aviation airports. Residential airparks developed next to an airport usually rely on "through-the-fence" agreements to gain access to the airfield.

First, I would like to make clear that the FAA does not oppose residential airparks at private use airports. Private use airports are operated for the benefit of the private owners, and the owners are free to make any use of airport land they like. A public airport receiving Federal financial support is different, however, because it is operated for the benefit of the general public. Also, it is obligated to meet certain requirements under FAA grant agreements and Federal law. Allowing residential development on or next to the airport conflicts with several of those requirements.

An airpark is a residential use and is therefore an incompatible use of land on or immediately adjacent to a public airport. The fact there is aircraft parking collocated with the house does not change the fact that this is a residential use. Since 1982, the FAA has emphasized the importance of avoiding the encroachment of residential development on public airports, and the Agency has spent more than \$300 million in Airport Improvement Program (AIP) funds to address land use incompatibility issues. A substantial part of that amount was used to buy land and houses and to relocate the residents. Encouraging residential airparks on or near a federally obligated airport, as you suggest, would be inconsistent with this effort and commitment of resources.

Allowing an incompatible land use such as residential development on or next to a federally obligated airport is inconsistent with 49 USC §47104(a) (10) and associated FAA Grant Assurance 21, *Compatible Land Use*. This is because a federally obligated airport must ensure, to the best of its ability, compatible land use both off and on an airport. We would ask how an airport could be successful in preventing incompatible residential development before local zoning authorities if the airport operator promotes residential airparks on or next to the airport.

Additionally, residential airparks, if not located on airport property itself, require through-the-fence access. While not prohibited, the FAA discourages through-the-fence operations because

they make it more difficult for an airport operator to maintain control of airport operations and allocate airport costs to all users.

A through-the-fence access to the airfield from private property also may be inconsistent with security guidance issued by the Transportation Security Administration (TSA). TSA created guidelines for general aviation airports: Information Publication (IP) A-001, *Security Guidelines for General Aviation Airports*. The TSA guidelines, drafted in cooperation with several user organizations including the Aircraft Owners and Pilots Association (AOPA), recommend better control of the airport perimeter with fencing and tighter access controls. Accordingly, we do not agree with your view that a residential airpark and the associated through-the-fence access points can be said to improve airport security. In fact, multiple through-the-fence access points to the airfield could hinder rather than help an airport operator maintain perimeter security.

Finally, we find your statement that general aviation airports have been closing at an alarming rate to be misleading, because it is simply untrue with respect to *federally obligated* airports. In fact, the FAA has consistently denied airport closure requests. Of approximately 3,300 airports in the United States with Federal obligations, the number of closures approved by the FAA in the last 20 years has been minimal. The closures that have occurred generally relate to replacement by a new airport or the expiration of Federal obligations. AOPA has recognized our efforts. In its latest correspondence to the FAA on the *Revised Flight Plan 2006-2010*, AOPA stated, "the FAA is doing an excellent job of protecting airports across the country by holding communities accountable for keeping the airport open and available to all users."

For the above reasons, we are not able to support your proposal to promote the development of residential airparks at federally obligated airports.

I trust that this information is helpful.

Sincerely,

Original signed by:
Woodie Woodward

Woodie Woodward
Associate Administrator
for Airports

Cntl: 20051267-0/FAA-050816-006

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Page: 1

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Original, 26 Aug 2005 07:18

Style Index 11, Excellent for a Letter

Average Sentence 22, Fair

Passive Index 16, Good



Oregon
Theodore R. Kulongoski, Governor

Oregon Department of Transportation
ODOT Region 1
123 NW Flanders St
Portland, OR 97209 - 4037
Telephone (503) 731-8200
FAX (503) 731-8259

File code: PLA9 - 92
ODOT Case No: 2843

September 20, 2007

Scappoose, City of
Planning Department
33568 E Columbia Avenue
Scappoose, OR 97056-

Attn: Brian Varricchione, City Planner

Re: CPTA1-07 / DCTA 1-07: Legislative Amendments (Airport, Mixed Use Airport)

Dear Brian,

In ODOT comments submitted on September 7, 2007, we had commented that the Transportation Planning Rule would apply to the proposed legislative amendments to the City's Comprehensive Plan and Development Code. Upon discussion with Gary Fish, DLCD, we have determined that the Transportation Planning Rule does not apply to the creation of a new land use zone. Therefore, when the new zoning is applied to specific properties the Transportation Planning Rule will apply at that time and ODOT will likely request a traffic impact analysis. ~~Comments previously submitted by ODOT will be applicable at the time the zoning is applied to specific properties.~~

Prior to commencing a TIS, the applicant should contact **Martin Jensvold PE**, ODOT Region 1 Traffic Analyst at (503) 731-8219 to obtain ODOT concurrence with the scope of the study. Thank you for providing ODOT the opportunity to participate in this land use review. If you have any further questions regarding this matter, please contact me at (503) 731-8234.

Sincerely,

Seth Brumley
Development Review Planner

C: Martin Jensvold PE, ODOT Region 1 Traffic

Exhibit 7

MARK J. GREENFIELD

Attorney at Law

495 NW Greenleaf Road
Portland, Oregon 97229
Telephone: (503) 227-2979
Facsimile: (503) 292-1636

October 2, 2007

Scappoose Planning Commission
33568 E. Columbia Avenue
Scappoose, Oregon 97056

Subject: Sierra Pacific Communities Application for Text Amendments to
Scappoose Comprehensive Plan and Development Code

Dear Commissioners:

This letter is written on behalf of the Port of St. Helens in response to the above-identified application, which proposes to amend the City's comprehensive plan and development code to create a new comprehensive plan designation, "Airport", addressing light industrial and airport-related mixed use development (including residential development), and a new zoning district, "Mixed Use Airport" (MUA), implementing the Airport designation.

The Port has reviewed the proposed amendments and offers the following comments. The Port asks that this letter be made part of the record of this proceeding.

A. Residential Development Near the Airpark.

1. Generally.

Conceptually, the Port is not opposed to limited residential development on privately owned lands near the airport, provided such development is designed to avoid or minimize potential safety and noise incompatibilities. The City of Scappoose Airport Safety Overlay limits the intensity of residential development near an airport to avoid or minimize potential incompatibilities. The Port understands that under the proposed amendments, any residential development that would occur would be outside the Runway Protection Zone and be required to comply with the overlay zone. The Port deems the continued applicability of the overlay zone to proposed residential or other development near the airport to be a matter of utmost importance.

The state Airport Planning Rule, at OAR 660-013-0080(1), prohibits new residential development within the Runway Protection Zone and above the 65 decibel noise impact boundary. However, the Oregon Department of Aviation's *Airport Compatibility Guidebook* (2003) indicates that rural areas exposed to noise levels between 55 and 65 decibels are more affected by noise than urban areas, because the level of

background noise in urban areas tends to be higher. Consequently, it recommends applying a 55 decibel noise level to residential development near rural airports.

Given of the rural setting of the Scappoose Industrial Airpark, the noise contour used to map appropriate locations for residential development should be the 55 decibel contour recommended for rural areas in the Airport Compatibility Guidebook. Further, the mapping should be based on noise levels produced by the kinds of planes the Port anticipates using its airport in the foreseeable future, rather than those using the Airpark today. Also, given the very close proximity of Sierra Pacific's property to the runway, the Port believes the density of residential development proposed for the MUA zone is too intense. A more appropriate minimum lot size would be 1-2 acres. In providing these comments, the Port is well aware that noise is a major problem at airports where residential use is located in very close proximity to the airport. The Port wants to avoid such problems in Scappoose. This means that any permitted residential development must be very low in density and subject to deed restrictions.

2. Through the Fence Access.

"Through the fence" access to the airport from a residential airpark raises very different issues of both a legal and policy nature. Legally, the biggest issue is that state law permits "through the fence" access to airports only for commercial and industrial uses, not residential uses. As stated in ORS 836.640(4), which is the 2005 statute that regulates through the fence access to airports:

"(4) 'Through the fence operation' means a customary and usual aviation-related activity that:

~~"(a) Is conducted by a commercial or industrial user of property within an airport boundary; and~~

"(b) Relies, for business purposes, on the ability to taxi aircraft directly from the property employed for the commercial or industrial use to an airport runway." (Emphasis added.)

Unless the statute is amended to authorize through the fence access for residential uses, it is not permitted.¹ Until that occurs, the proposed amendments authorizing such access are premature.

There is a second legal complication as well. Through the fence residential use almost certainly would not be allowed at the Scappoose Industrial Airpark because (1) the

¹ The Port recognizes that through the fence access is available to a residential airpark located near the airport in Independence, Oregon. However, that residential airpark was created prior to the enactment of ORS 836.640 and is thus a grandfathered use.

Oregon Department of Aviation's administrative rules regulating the through the fence pilot program, at OAR 738-014-0040(1), require the Port to amend its Airport Layout Plan (ALP) to address proposed new through the fence operations²; (2) ALP amendments require Federal Aviation Administration (FAA) approval; and (3) FAA's written testimony in response to Sierra Pacific's application strongly opposes any residential development near or through the fence access to the Scappoose airport.³

From a policy standpoint, the Port is concerned that through the fence access for residential users could significantly impede the Port's ability to attract new industrial and commercial users to the Airpark and surrounding industrial lands. The Port believes many potential commercial and industrial Airpark users would not want to locate at or near the Airpark if a residential airpark is provided direct, uncontrolled general public access to the runway. Further, the Port believes potential users like the proposed police academy would reject Scappoose on this ground and on security concerns, thus denying Scappoose a potentially major economic asset. The Port finds it important to preserve the ability to attract major enterprises of this nature to this area. Indeed, the Port's statutory mandate directs it to encourage economic growth and development. Consequently, the Port believes that should residential development occur near the Airpark, it must gain access to the Airpark by the existing, conventional means, using the hangars and taxiways located at the Airpark rather than having separate facilities and taxiways associated with through the fence access.

B. Permitted Uses.

Under ORS 836.640(1) and OAR 738-014-0020(6)(a), a through the fence operation is conducted "within an airport boundary." As such, it must comply with statutory and rule requirements regulating uses inside airport boundaries, including the requirement in ~~ORS 836.616(2) and OAR 660-013-0100~~ that certain specified uses be permitted outright, and the requirement in ORS 836.616(3) that other uses not "limit approved airport uses".

Because the proposed mixed use airport zone would prohibit certain uses that state law requires be allowed outright in an airport zone, it does not comply with these statutes and rules.

² OAR 738-014-0040(1) provides: "Each pilot site sponsor shall work with the appropriate local government to amend its Airport Layout Plan as necessary to address proposed new through the fence operations. Amendments must conform to ORS 836.610(1) and OAR chapter 660, division 13 (Airport Planning)."

³ If residential through the fence operations were permitted under state law, the Port still would have concerns over certain elements of the Sierra Pacific proposal. In particular, the Port would want every lot to include its own hangar, and it would want deed restrictions (rather than covenants, conditions and restrictions) to ensure that all future owners of such lots were pilots owning their own airplane. Absent such provisions, properties could quickly fall into the hands of non-pilots, increasing the likelihood of conflicts and complaints regarding customary and usual aviation activities at the airport.

C. Coordination.

The Port supports Sierra Pacific's efforts to contribute substantially to the economic well being of the City and its residents over the coming years by encouraging the siting of new industrial or institutional uses on its properties near the Airpark. However, as the airport sponsor, the Port believes that a much greater level of coordination between the Port and Sierra Pacific is needed than was provided in this application, and that coordination needs to occur at a much earlier stage of the process. This is particularly so where "through the fence" operations are proposed, since they require the Port to obtain FAA approval of Airport Layout Plan amendments before they can go forward.

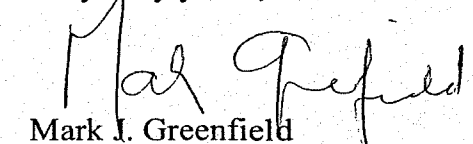
D. Conclusions.

While conceptually, the Port believes it may be possible to locate a limited amount of residential use near an airport under carefully prescribed circumstances that preserve and protect the Airpark's ability to attract new economic development, the current application, with its proposed through the fence residential access, exceeds what is permitted under current law. Additionally, the Port is concerned that direct "through the fence" residential access to the airport would discourage or preclude desirable industries or institutional uses from locating on or near the Airpark in the future.

Given the current law, the FAA's very strong objections to this proposal, and the potential negative implications of direct residential airport access on the Port's ability to attract industrial and institutional users to the Airpark, the Port cannot support the proposed through the fence access for residential development. As to potential commercial and industrial through the fence access, the application needs to be reworked to ensure full compliance with ORS chapter 836 and OAR 738, Division 14. Towards that end, the Port would be happy to meet with the applicant to discuss changes to the proposal.

The Port appreciates this opportunity to comment on this proposal.

Very truly yours,



Mark J. Greenfield
Of Attorneys for Port of St. Helens

cc: Port of St. Helens Commission
Gerald P. Meyer, Executive Director, Port of St. Helens
Kim Shade, Operations Manager, Port of St. Helens
Harold Olsen, General Counsel, Port of St. Helens

Scappoose Planning Commission

October 2, 2007

Page 5

Brian Varricchione, City of Scappoose

Dave Roberts, Federal Aviation Administration

Carol Key, Federal Aviation Administration

Chris Cummings, Oregon Department of Aviation

Gary Fish, Department of Land Conservation and Development

Senator Betsy Johnson

Ed Freeman, Sierra Pacific



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2524

Phone: (503) 373-0050

First Floor/Costal Fax: (503) 378-6033

Second Floor/Director's Office: (503) 378-5518

Web Address: <http://www.oregon.gov/LCD>

Exhibit 8

October 3, 2007

Brian Varricchione, City Planner
City of Scappoose
33568 E. Columbia Ave.
Scappoose, OR 97056



SUBJECT: DLCD PAPA file # 003-07, Scappoose # CPTA 1-07/DCTA 1-07
Creation of a new zoning district – Mixed Use Airport Zone for future application to land near the Scappoose Industrial Airpark

Dear Brian:

Thank you for the opportunity to comment on this post-acknowledgement plan amendment (PAPA) to create a new Mixed Use Airport zoning district. These comments address the proposed zoning ordinance amendment and raise considerations for the future potential designation of land near the Scappoose Industrial Airpark with a new Mixed Use airport zone. Further comments may be forthcoming if such a zoning map amendment is proposed in the future. Based on the information provided for our review, we submit the following comments. Please enter these comments into the record of the planning commission hearing and any subsequent hearings on the matter.

ISSUES RELATED TO THE PROPOSED MIXED USE AIRPORT ZONE

Residential Land Policies and Density Targets

The 1991 Comprehensive Plan for the City of Scappoose identifies density targets for the city's residential land needs (p. 69). The density target identified in the comprehensive plan for the low density residential area is 5 units/acre, while the moderate density residential area has a density target of 6.5 units/acre. The minimum residential lot size identified for the Mixed Use Airport zone is 10,000 sq. ft. This large lot size does not fall within the city's identified single family residential density targets of 5 – 6.5 units/acre.

We understand that the Port of St. Helens' position is that residential development on private land near the airport should be very low density with an even larger lot size (1 – 2 acres) than the 10,000 sq. ft. proposed in the new zone, which the Port has labeled as "too intense".¹ The Port's concerns with creation of denser residential development near the airport appear to be related to noise and safety impacts. Coupled with the city's density targets for single family residential development, the department recognizes the inconsistency this causes in creation of residential

¹ Comment letter from Mark Greenfield on behalf of the Port of St. Helens, dated October 2, 2007.

development in close proximity to the Scappoose Industrial Airpark, but we believe it is an issue the city needs to address during consideration of creating this proposed zoning designation.

In addition, the department is concerned with the potential impacts and compatibility issues raised by allowing the development of single family residential uses in such close proximity to the industrial and commercial uses also allowed by the proposed zone. The opportunity for mitigation of industrial/residential impacts and compatibility concerns appears to be limited and is not adequately addressed by the conditional use review required for single family dwellings in the mixed use zone. The department believes that the city should review and address industrial/commercial/residential compatibility concerns during the creation of the mixed use zone.

“Through the Fence” Operation

The comment letter from the Port of St. Helens suggests that provisions of ORS 836.640 affect the city’s authority to zone land. We disagree. While there are legitimate policy considerations raised in the Port’s comments, ORS 836 does not supplement or pre-empt the statutes, goals and rules regarding planning and zoning of land.

FUTURE CONSIDERATIONS

Industrial Land

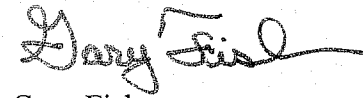
Please be aware that, after creation of the zone, application of the new Airport Mixed Use zone would trigger requirements in the Goal 9 administrative rule if it is applied to land currently designated for industrial use. OAR 660-009-010(4) requires a jurisdiction that changes its comprehensive plan designations of lands in excess of two acres from industrial use to a non-industrial use, to address all applicable planning requirements. This includes, but is not limited to, demonstrating the proposed PAPA is consistent with the parts of the city’s acknowledged comprehensive plan that address the requirements of Goal 9.

Goal 12 – Transportation Planning Rule

The Transportation Planning Rule (TPR) requires that the city assess whether the proposed zone change will significantly affect the transportation system, and, if it does, take steps to assure that planned land uses are supported by adequate planned transportation facilities. Mixed use zones combining industrial, residential, and commercial uses such as the proposed Mixed Use Airport zone would do, typically allow types and levels of land uses that will generate much more traffic than are typically allowed in a light industrial district. At the time of application of the new zone to current industrial land near the Scappoose Industrial Airpark, additional findings and analysis will be needed to assess whether or not planned improvements in the area will be sufficient to handle the additional traffic. Given the proximity of the subject properties to Highway 30, the eventual TPR analysis should be coordinated with ODOT and address the requirements of the Oregon Highway Plan as necessary.

Thank you again for the opportunity to comment on this post-acknowledgment plan amendment to create a Mixed Use Airport zone for application near the Scappoose Industrial Airpark. Please don't hesitate to contact me by phone at (503) 373-0050, ext. 254, or by e-mail at gary.fish@state.or.us, if you have any questions.

Yours truly,



Gary Fish
Regional Representative

cc: Gerald Meyer, Executive Director, Port of St. Helens (e-mail)
Seth Brumley, ODOT Region 1 Development Review Planner (e-mail)
Cora Parker, DLCD Acting Director; Rob Hallyburton, DLCD Planning Services
Division Manager; Darren Nichols, DLCD Community Services Division Manager (all
by e-mail)
DLCD staff - Tom Hogue, (e-mail), Bill Holmstrom (e-mail), Gloria Gardiner (e-mail),
file

Exhibit 9

BALL JANIK LLP

A T T O R N E Y S

101 SOUTHWEST MAIN STREET, SUITE 1100
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JACK L. ORCHARD

October 19, 2007

Commissioners
Port of Saint Helens
Messrs. Robert Keyser, Mike Avent, Cliff Tetreault, Terry Luttrell and Ms. Colleen DeShazer at
their home addresses.

Re: Sierra Pacific Communities Application for Text Amendments to
Scappoose Comprehensive Plan and Development Code

Dear Commissioners:

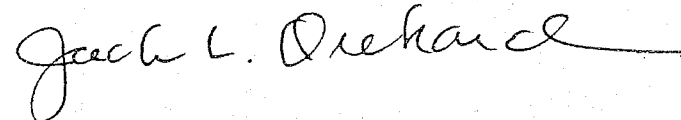
On Sierra Pacific's behalf, I transmit to you the accompanying analysis of Mark Greenfield's October 2, 2007 letter concerning the above land use applications pending before the City of Scappoose. The analysis was performed by Aron Faegre who has done extensive work regarding airport development and operations and airport regulatory matters.

As Mr. Faegre notes in his letter to Mr. Freeman, Mr. Faegre and I, along with Heather VanDyke (Otak), met with Mark Greenfield on October 17 to discuss the issues raised in Mark's October 2 letter.

We understand that the Port Commission will discuss Sierra Pacific's proposed plan and code amendments at its October 24 meeting. Mr. Freeman wanted to the Commissioners to receive Mr. Faegre's analysis for the Commissioners' consideration as part of that discussion.

Thank you for your continuing attention to this matter.

Sincerely,



Jack L. Orchard

JLO:jrw
Enclosure

cc: With enclosures to parties who were recipients of Mr. Greenfield's October 2, 2007 letter.

October 19, 2007

Ed Freeman
Sierra Pacific Communities
PO Box 1754
Lake Oswego, Oregon 97035

RE: RESPONSE TO GREENFIELD / PORT OF ST. HELENS 10-2-07 LETTER RE
SIERRA PACIFIC COMP PLAN AND DEV CODE AMENDMENTS

Dear Ed:

This letter is to provide a response and additional information to the Scappoose Planning Commission concerning your application for text amendments to the Scappoose Comprehensive Plan and Development Code. It is also intended to provide additional information for the Port of St. Helens Commission so they might consider issuing a revised comment letter to replace their initial letter of comment with one that is more favorable or at least neutral on the proposed text amendments.

First I must say that I have worked with Mark Greenfield jointly on projects in the past and respect his knowledge and abilities very much. However, I think he has in this case misinterpreted some aspects of Oregon and FAA rules about airports and subscribed to some FAA biases against residential airparks and through the fence operations that are based on "preferences" or "desires" rather than on actual definitive requirements.

This letter has also benefited from a meeting held with Mark Greenfield on October 17th during which we gained additional background for the Port's concerns in this issue.

Comments will be in the same order as topics in the Greenfield letter:

A. Residential Development Near the Airpark

1. Generally

Greenfield begins with the note that the Port is "not opposed to limited residential development on privately owned lands near the airport, provided such development is designed to avoid or minimize potential safety and noise incompatibilities." That is a laudable approach, and in the following paragraphs we will show that the proposed residential airpark community meets that high standard.

First it should be noted that the providing of a private residential airpark adjacent to the airport is foreseen and recommended in the Port's own Airport Master Plan. The Airport Master Plan acknowledges that the addition of a private residential airpark would be an acceptable and appropriate use to be placed next to the airport with the following specific language:

"The Port of St. Helens Board of Commissioners is supportive of a residential component adjacent to the Airpark and is willing to work with the private sector to provide residential

development with airport access, if reasonable and customary terms and conditions are adopted that will provide appropriate protection for the airport and will enhance its viability." Master Plan amendment, page 1-9, adopted August 9, 2006.

Greenfield's letter then goes on to note: "The Port understands that under the proposed amendments, any residential development that would occur would be outside the Runway Protection Zone and be required to comply with the overlay zone." This is affirmed as correct and the applicant concurs with the Port that this is "a matter of utmost importance." There is no problem with meeting this requirement.

Greenfield's letter then suggests that no residential development should be allowed within the 65 dBA noise impact boundary (note that dBA in these paragraphs refers to integrated day-night levels commonly referred to as DNL contours) per OAR 660-013-0080(1) (the "Airport Planning Rule" administered by the Oregon Department of Aviation (ODA)). It should be noted that OAR 660-013-0080(1) then references DEQ noise standards for airports in OAR 340-035-0045. In our opinion a close review of these DEQ rules shows that residential uses within the 65 dBA are not prohibited, but if allowed must have noise reduction technologies incorporated into the structures. Greenfield references an attachment table to OAR 660-013-0080 which says no residence shall be located within the 65 DNL. However this OAR 660 section contradicts the Oregon administrative rule governing airport noise found in DEQ's noise regulations, and if the OAR 660 provision were actually enforced would create enormous problems for Portland International Airport. We suggest that the DEQ more detailed noise rules pre-empt the general table.

Specifically, the DEQ regulations require airports to create a "land use and development plan" (OAR 340-035-0045(4)(C)) using a 55 dBA "Noise Impact Boundary" as a maximum area for analyzing potential impacts. It is important to note that these rules do not say that there is any use within the 55 dBA that is mandated as being impacted. Rather it provides a kind of outer limit for circling an airport to determine potential for impact. The implication is that there can never be an impact outside of this boundary, but there could be impacts within that boundary. Within this context we note that OAR 340-035-0045(4)(C)(v) allows residential uses within the 65 dBA as long as in this case a governmental agency plays a major role in implementing a soundproofing program: Specifically the OAR 340 provision states:

(v) Soundproofing programs within the 65 dBA boundary, or within the Noise Impact Boundary (55 dBA) if the governmental entity with land use planning responsibility desires, and will play a major role in implementation.

It is proposed that any residential airpark uses near the airport be required to incorporate this requirement within the 55 dBA boundary. It is recommended that the City of Scappoose play that role so that it can apply to any future residential projects that might also fall under these criteria.

At this point it is important to note that due to budget cuts DEQ no longer has any permanent staff assigned to noise issues and this whole section of the OAR's functions in a vacuum of voluntary compliance. DEQ's rules are very old and there has been no attempt made to update them or otherwise stay current with airport noise issues.

However, the FAA has a strong program in noise abatement; the DEQ and ODA rules are in fact largely based on prior versions of the FAA's efforts in this area. It is the FAA's rules, funding, and guidance which in the real world deal with airport noise impact issues. In this regard, the FAA does not use the 55 dBA (DNL) contour but starts with the 65 dBA (DNL) contour to determine potential impacts from aircraft. The FAA's basic table showing standards for development within differing noise impact contours is as follows:

FAA Land-Use Compatibility with DNL

Land Use	Yearly Day-Night Average Sound Level (Ldn) In Decibels					
	Below					Over
	65	65-70	70-75	75-80	80-85	85
<u>Residential</u>						
Residential, other than mobile homes & transient lodgings.....	Y	N(1)	N(1)	N	N	N
Mobile Home Parks.....	Y	N	N	N	N	N
Transient Lodgings.....	Y	N(1)	N(1)	N(1)	N	N
<u>Public Use</u>						
Schools.....	Y	N(1)	N(1)	N	N	N
Hospitals and Nursing Homes.....	Y	25	30	N	N	N
Churches, Auditoriums, and Concert Halls ..	Y	25	30	N	N	N
Governmental Services.....	Y	Y	25	30	N	N
Transportation.....	Y	Y	Y(2)	Y(3)	Y(4)	Y(4)
Parking.....	Y	Y	Y(2)	Y(3)	Y(4)	N
<u>Commercial Use</u>						
Offices, Business and Professional.....	Y	Y	25	30	N	N
Wholesale and Retail—Building Materials, Hardware and Farm Equipment.....	Y	Y	Y(2)	Y(3)	Y(4)	N
Retail Trade--General.....	Y	Y	25	30	N	N
Utilities.....	Y	Y	Y(2)	Y(3)	Y(4)	N
Communication.....	Y	Y	25	30	N	N
<u>Manufacturing and Production</u>						
Manufacturing General.....	Y	Y	Y(2)	Y(3)	Y(4)	N
Photographic and Optical.....	Y	Y	25	30	N	N
Agriculture (except livestock) and Forestry.....	Y	Y(6)	Y(7)	Y(8)	Y(8)	Y(8)
Livestock Farming and Breeding.....	Y	Y(6)	Y(7)	N	N	N
Mining and Fishing, Resource Production and Extraction.....	Y	Y	Y	Y	Y	Y
<u>Recreational</u>						
Outdoor Sports Arenas, Spectator Sports.....	Y	Y(5)	Y(5)	N	N	N
Outdoor Music Shells, Amphitheaters.....	Y	N	N	N	N	N
Nature Exhibits and Zoos.....	Y	Y	N	N	N	N
Amusements, Parks, Resorts and Camps.....	Y	Y	Y	N	N	N
Golf Courses, Riding Stables and Water Recreation.....	Y	Y	25	30	N	N
Y (Yes)	Land-use and related structures compatible without restrictions.					
N (No)	Land-use and related structures are not compatible and should be prohibited.					
NLR	Noise Level Reduction (outdoor to indoor) to be achieved through incorporation of noise attenuation into design and construction of the structure.					

25, 30 or 35 Land uses and structures generally compatible; measures to achieve NLR of 25, 30, or 35 dB must be incorporated into design and construction of the structure.

NOTES:

1. Where the community determines that residential uses must be allowed, measures to achieve outdoor to indoor Noise Levels Reduction (NLR) of at least 25dB and 30dB should be incorporated into building codes and be considered in individual approvals. Normal residential construction can be expected to provide a NLR of 20 dB; thus, the reduction requirements are often stated as 5, 10, or 15 dB over standard construction and normally assume mechanical ventilation and closed windows year-round. However, the use of NLR criteria will not eliminate outdoor noise problems.
2. Measures to achieve NLR of 25 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas, or where the normal noise level is low.
3. Measures to achieve NLR of 30 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas, or where the normal noise level is low.
4. Measures to achieve NLR of 35 dB must be incorporated into the design and construction of portions of these buildings where the public is received office areas, noise sensitive areas, or where the normal noise level is low.
5. Land-use compatible, provided special sound reinforcement systems are installed.
6. Residential buildings require an NLR of 25.
7. Residential buildings require an NLR of 30.
8. Residential buildings not permitted.

SOURCE: Federal Aviation Regulations, Part 150, Airport Noise Compatibility Planning, dated January 18, 1985.

Thus, FAA standards allow residential uses outright up to the 65 DNL level, but for residential uses between the 65 and 75 DNL levels require that measures be incorporated in the design and construction of the houses to achieve a 25 to 30 dB Noise Level Reduction. As noted above, it is proposed that this standard be applied to all proposed housing within the 55 DNL which is much more conservative than that required by the FAA. The FAA has funded a 55 DNL contour analysis for the Scappoose Industrial Airpark, which is contained in the W&H Pacific prepared 2004 Master Plan on Sheet 4A. This analysis should be used to determine the location of noise contours.

Greenfield suggests that because the Scappoose Industrial Airpark is in a rural area it should have more stringent noise standards. In fact, the majority of airports in the US are in rural areas because it is difficult to find adequate space for runways and approach clear zones within urban areas. In any case, the proposed development is within the City of Scappoose. More importantly, the FAA and DEQ do not make this distinction so there are no rules to base this hypothetical approach upon.

To give context to this issue, Oregon's most important airport – Portland International Airport (PDX) – has approximately 1,500 people living within the 65 DNL. It does have a noise abatement finance program that helps home owners add noise insulation to their homes. PDX has approximately 28,000 people located between the 65 DNL and the 55 DNL contour. It does not provide any assistance or protection for those homeowners. The proposal for Scappoose Industrial Airpark is more conservative and would provide protection for such homeowners.

In conclusion, to address noise impact concerns the City of Scappoose is encouraged to adopt a standard consistent with FAA noise abatement rules for residential properties near an airport as follows:

“Residential dwellings constructed within the 55 DNL airport noise contour identified in the most recent Airport Master Plan shall utilize Noise Level Reduction construction methods that provide at least 25 dBA NLR between interior dwelling spaces and exterior. Prior to issuance of a building permit for such dwellings, a noise report prepared by a professional engineer shall be submitted showing conformance of the building plans with this criteria.”

In addition, it is proposed that the deed to each residential property include an acknowledgement that it is within a noise contour of the airport and include a restriction on objecting to noise and operations associated with the airport.

More importantly than any of the above discussion of noise regulations, residential airparks are an “airport-dependent” use, since they by their nature must be located at an airport. The residents of residential airparks like the sound of aircraft, and are accepting of it. So the normal land use assumption to keep residential uses distant from the airport as a noise measure no longer is relevant. In fact, the residents at airpark residential communities become champions for the airport, often developing safety watch groups, volunteer airport maintenance groups, and community activist groups who work to protect the airport interests.

With these criteria the noise concerns are met and comply with the FAA and DEQ specific rules and overall goals, as well as with common sense and the reality of how other residential airparks typically function compatibly with their adjacent airports.

2. Through the Fence Access

Greenfield references ORS 836.640(4) and states that it “regulates through the fence access to airports.” He concludes that because the statute does not reference residential uses they are not allowed.

Rather, ORS 836.640(4) is part of an economic development program for encouraging through the fence operations of commercial and industrial uses at airports to promote the creation of jobs and increase local tax bases. It does not have language prohibiting any other through the fence uses. It does not prohibit through the fence museums, nor through the fence parks, through the fence golf courses, and so forth, all of which exist at various Oregon airports. Not listing residential airparks has no bearing on whether residential airparks are allowed at Oregon airports.

The statute comes from SB 680 which was passed in 2005. The drafting of that bill intentionally excluded the encouragement of residential through the fence only because it was recognized that the Department of Land Conservation and Development (DLCD) objects to residential airparks being placed outside of urban growth boundaries and many of Oregon’s airports are outside of urban growth boundaries. In addition, since SB 680 was about specific kinds of economic activity, there was no overwhelming belief that adding residences at airports was necessarily relevant to that goal. This statute was drafted with consultation from DLCD and there was never consideration or discussion that the statute should or would prohibit all airport residential development in the State of Oregon.

To further that conclusion, during the 2007 legislative session SB 807 was introduced and debated. It included a mechanism for creating an airport tax increment financing district

consisting of the airport related uses at an airport, with up to 50% of increased future tax revenues going to the airport and the remainder going to the taxing authorities. During the review and debate on that bill, Senator Starr called a meeting of all involved and interested parties to attempt to craft a consensus amendment, which he did accomplish with that meeting. One aspect of the amendment was consideration of amending the bill to allow residential airparks (houses with taxiway access to an airport) to be allowed to be included in the airport taxing district. DLCD staff was present, as were representatives of cities and counties, and all present said that this would be acceptable to put into the bill as an amendment.

Similarly, HB 3153 was submitted by the Oregon Agricultural Alliance (with well known pilot Andy Anderson who lives at Independence Airport Residential Airpark as the principal advocate). Since the bill potentially impacted many land use issues, meetings were held with Oregon Department of Aviation (ODA) and DLCD staff to discuss potential amendments. DLCD staff in those meeting specifically said that their policy about residential airparks is that they are okay if the land is within the urban growth boundary, but they are opposed to them if they are outside of the urban growth boundary.

Finally, the City of Newberg in 2006 created and adopted a zoning ordinance allowing residential airpark uses adjacent to Sportsman Airpark, a public airport. DLCD acknowledged those rules and found no objection to them.

To the FAA the term "through the fence" refers to "access to the public landing area by aircraft based on land adjacent to, but not a part of, the airport property." (FAA Order 5190.6A, 6-6) The FAA considers the "airport boundary" to be around only the public airport lands and that is precisely why they call it "through the fence" meaning "through the airport boundary". In SB 680 a "through the fence operation" (note the term is not just "through the fence" but includes the word "operation") for purposes of the economic development program created as part of the bill is defined as:

SB 680 Section 2(4) "Through the fence operation" means a customary and usual aviation-related activity that: (a) Is conducted by a commercial or industrial user of property within an airport boundary; and (b) Relies, for business purposes, on the ability to taxi aircraft directly from the property employed for the commercial or industrial use to an airport runway.

The intent of this is that no assistance provided under that program could go to anything but commercial and industrial use proposals. Thus, the SB 680 model program could not be used to assist residential through the fence development; but it does not prohibit residential airpark nor any other airport through the fence use.

For future clarity, it is proposed that the Scappoose Industrial Airpark use the following terms: a) "airport boundary" to mean FAA recognized airport boundary; b) "through the fence commercial-industrial airport boundary" to mean areas with commercial-industrial uses, and c) "through the fence residential airport boundary" to mean areas with residential uses.

In conclusion, we believe a more careful reading of ORS 836.640 and review of DLCD positions on residential airparks will find that the Sierra Pacific Communities proposed residential airpark is acceptable under Oregon land use rules because it is within the City of Scappoose.

Greenfield then suggests that the addition of a residential airpark should not be allowed because it will, in the future, require FAA approval of a new Airport Layout Plan (ALP), which would not be approved by the FAA because of the inclusion of the residential airpark. Nowhere does SB 680 reference the terms ALP or FAA. It does require coordination of the through the fence facilities with the rest of the airport in Section 3(3)(C)(b), but it does not require FAA approval of this information:

SB 680 Section 3(3)(C)(b) Require submission, review, approval and, as appropriate, revision of a facility site plan for each through the fence operation so that the real property covered by the site plan can be incorporated into the airport boundary and coordinated with the other aspects of the airport master plan;

The “review and approval” here is intended to be that of the airport owner, not the FAA. It is important to note that the FAA at most reviews and approves the “fence” part of the adjacent real property. This requirement in SB 680 was precisely to make sure that safety and other issues can be dealt with in a combined public-private facility document. For example, it should be noted that although Boeing has a major through the fence operation at Renton Airport, the Renton ALP does not show the entire adjacent Boeing private property because the FAA does not want to be involved with the planning of the private part of the Boeing site. The important coordination is at the through the fence location, and that is shown on the Renton ALP. Yet it is worth noting that the FAA does provide funding and airport planning assistance such that Renton Airport is maintained with sufficient runway and taxiway structural strength to specifically serve the private Boeing 737 manufacturing plant located through the fence there. The aircraft using the airport are much lighter and a different standard would exist if the private Boeing plant was not there. The FAA works very hard to ensure that the airport functions well for the Boeing plant, without getting involved with the details of the Boeing property.

We are in agreement that the FAA “does not like” residential airparks. However, they approve ALP plans that acknowledge their existence all the time. The FAA’s concerns are those addressed in the opening lines of Greenfield’s letter – to “minimize potential safety and noise incompatibilities” – and this is lauded. It is extremely important that the site layout of a residential airpark at Scappoose Industrial Airpark minimize safety and noise incompatibilities. The noise issue has been discussed and resolved on prior pages of this letter. The primary safety incompatibilities of residential airparks involve the following:

- Avoidance of pets, children, and unauthorized persons from crossing the line between the residential airpark and onto the airport active operations areas.
- Avoidance of vehicles from crossing the line between the residential airpark and onto the airport active operations areas.

These are both solved by careful site planning which may include such features as:

- Fence between residential airpark and rest of airport.

- Rolling gate access for aircraft between residential airpark and the airport, controlled by electronic means, but always in a normally closed position.
- Establishment of CC&R's for the residential airpark which addresses safety issues.
- Separation of aircraft and other traffic (pedestrian, bicycle, and vehicular) by use of separate routes.

It is important to recognize that although the FAA generally opposes residential airparks, its own regulations acknowledge their existence and acceptability. FAA Order 5190.6A establishes Airport Compliance Requirements and specifically addresses "through the fence" issues. Section 6-6 of Order 5190.6A specifically acknowledges that through the fence access can be granted to residential uses:

"6-6(d)(2) Where an individual or corporation, actually residing or doing business on an adjacent tract of land, proposes to gain access to the landing area solely for aircraft use incidental to such residence or business without offering any aeronautical services to the public. This situation is commonly encountered where an industrial park is developed in conjunction with the airport."

The FAA generally opposes through the fence, but it is important to recognize that the FAA's main intent is to avoid competitive advantage of private airport development over public airport development. In the case of residential airpark uses, the FAA would never allow public funds to be spent for residential airpark uses on the public property so there is no competitive advantage issue.

Incidentally, the FAA Seattle Airports District Office, which oversees Scappoose Industrial Airpark, also prohibits establishing industrial type uses on the public portion of an airport, even if they involve the making of aircraft parts. The FAA views airports as primarily only places to land, takeoff, and store an aircraft. They discourage any use from being placed on the public airport property that could be placed somewhere else. This position gets so rigid that at times the FAA has said that propeller shops, avionics shops, and similar uses should not be on the airport unless they have an associated hangar to which an aircraft can taxi.

This limited view by the FAA of the importance of airports is counter to the Oregon Economic and Community Development Department's (OECDD) approach of encouraging the development of clusters of businesses as the fundamental approach for targeting economic development. Private developments on properties adjacent to the Scappoose Industrial Airpark are intended to specifically result in jobs and increased tax bases for the larger Scappoose community. The FAA begrudgingly admits that through the fence is important to Boeing in several State of Washington airports, but says in those cases there are good agreements in place to protect the airport interests. There is no reason that what is good for Boeing can't be equally as good for smaller aviation-related industrial, commercial, and residential uses in Scappoose, Oregon.

The trend in urban zoning is to promote mixed use developments, including home-office working conditions. The residential airpark will promote a similar approach of combined uses

related to aviation uses and activities. There is a saying that in this global economy if a company or person has direct access to high speed internet and a good airport they can compete with anyone. We strongly believe that the residential airpark, if allowed, will have small home businesses and small start-up businesses in their midst which should be considered a positive use for the City of Scappoose.

The Port of St. Helens has spent considerable time preparing and gaining FAA approval of a standardized through the fence agreement as Resolution 2005-003 which has been carefully crafted to ensure that it does protect the airport's interests. Now is the time that Resolution should be put to use.

It is worth noting that the FAA addresses safety in Order 5190.6A as well:

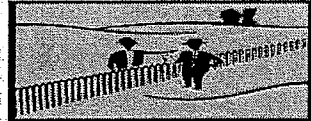
"6-6(c) Safety Considerations. Arrangements that permit aircraft to gain access to a landing area from off-site properties complicate the control of vehicular and aircraft traffic. Special safety operational requirements may need to be incorporated in the "through-the-fence" agreement."

Such safety operational requirements have been accomplished at many residential airparks in Oregon and these can be used as examples for the Scappoose Industrial Airpark. Specific examples were provided in the above paragraph with bulleted items.

Each year the FAA puts on a two day seminar about current airport planning issues. The issue of through the fence often comes up. In 2006 a presentation on airport compliance issues was made by Kevin Willis, Compliance Officer from the FAA Washington D.C. Headquarters office. Below is one of the PowerPoint slides he presented which clarifies that through the fence is allowed if done properly:


TTF OPERATIONS ALLOWED

THE FAA HAS FOUND SOME TTF OPERATIONS TO BE CONSISTENT WITH FEDERAL OBLIGATIONS



- AIRPORT RECEIVES EQUITABLE COMPENSATION
- CONTROLS THE FENCE
- DOES NOT DISCRIMINATE AGAINST ON-AIRPORT USERS
- PROMOTES COMPETITION
- PUBLIC BENEFIT
- ADOPTS GRANT ASSURANCES

Land Use Compliance
April 12, 2005

 Federal Aviation
Administration

14

The FAA Headquarters staff made it clear at the conference that through the fence agreements are allowed as long as a careful approach is used. There may be some split in view between FAA Headquarters and some of the long time staff at the Seattle Airports District Office. FAA Headquarters appears to better recognize the importance of an airport to meet multiple community needs, not just serve as a place for airplanes, as evidenced in the following quote from FAA Administrator Marion Blakey on September 25, 2006 at St. Georges Airport:

“Aviation is about more than just airplanes — it’s about providing the kind of economic connections communities need to thrive”.

Oregon has 57 public airports eligible for FAA funding. Of these, almost a third (18) of them have through the fence operations as shown in the list below:

Oregon NPIAS Airports (Eligible for Federal Aviation Funds)
 Data as of Year 2000 (Most Recent NPIAS Available)

Airport Serves City	Airport Name	ID	Based Aircraft	TTF at Airport	Comment
Scheduled Service Airports					
Eugene	Mahlon Sweet Field	EUG	183 ^a		
Klamath Falls	Klamath Falls International	LMT	119		
Medford	Rogue Valley International -- Medford	MFR	158		
Newport	Newport Municipal	ONP	27		
North Bend	North Bend Municipal	OTH	68		
Pendleton	Eastern Oregon Regional at Pendleton	PDT	95		
Portland	Portland International	PDX	98		
Redmond	Roberts Field	RDM	105	Yes	Business
Non-Scheduled Service Airports					
Albany	Albany Municipal	S12	76	Yes	Fairground
Ashland	Ashland Municipal - Sumner Parker Field	S03	88		
Astoria	Astoria Regional	AST	47		
Aurora	Aurora State	UAO	387 ^a	Yes	Many properties
Baker City	Baker City Municipal	BKE	35		
Bandon	Bandon State	S05	31		
Bend	Bend Municipal	S07	132		
Boardman	Boardman	OR33	2		
Brookings	Brookings	BOK	29		
Burns	Burns Municipal	BNO	29		
Chiloquin	Chiloquin State	2S7	5		
Christmas Valley	Christmas Valley	62S	6	Yes	Many houses; hangars
Condon	Condon State - Pauling Field	3S9	8	Yes	2 hangars
Corvallis	Corvallis Municipal	CVO	161		
Cottage Grove	Cottage Grove State	61S	42		
Creswell	Hobby Field	77S	93	Yes	House/Hangar
Florence	Florence Municipal	6S2	31		

Gold Beach	Gold Beach Municipal	4S1	12		
Grants Pass	Grants Pass	3S8	128	Yes	AC Maint. Shop/Hngr.
Hermiston	Hermiston Municipal	HRI	38		
Hillsboro (Portland)	Portland - Hillsboro	HIO	375 ^a		
Hood River	Hood River	4S2	80	Yes	Several houses, museum
Illinois Valley (Cave Junction)	Illinois Valley	3S4	16	Yes	2-3 Hangars
Independence	Independence State	7S5	95	Yes	Many houses (residential airpark)
John Day	John Day State	5J0	29		
Joseph	Joseph State	4S3	6		
La Grande	La Grande / Union County	LGD	45		
Lakeview	Lake County	LKV	23		
Lebanon	Lebanon State	S30	40	?	
Lexington	Lexington	9S9	9	Yes	Ag operator & residence
Madras	City - County	S33	34		
McDermitt	McDermitt State	26U	3		
McMinnville	McMinnville Municipal	MMV	147	Yes	Evergreen Airline, Museum
Mulino (Portland)	Portland - Mulino	4S9	58		
Myrtle Creek	Myrtle Creek Municipal	16S	10		
Newberg	Sportsman Airpark	2S6	31	Yes	
Ontario	Ontario Municipal	ONO	58		
Portland	Portland Downtown Heliport	61J	0		
Portland	Portland - Troutdale	TTD	191	Yes	US Forest Service
Prineville	Prineville	S39	44		
Roseburg	Roseburg Regional	RBG	101		
Salem	McNary Field	SLE	211	Yes	National Guard
Scappoose	Scappoose Industrial Airpark	SPB	93	Yes	Transwestern
Seaside	Seaside Municipal	56S	6		
Siletz Bay (Gleneden Beach)	Siletz Bay State	S45	15	?	Adjacent houses may have airport access, hangars
Sunriver	Sunriver	S21	47	Yes	Residential Airpark (8-9 house/hangar units)
The Dalles	Columbia Gorge Regional / The Dalles Municipal	DLS	48		
Tillamook	Tillamook	S47	49		
Wasco	Wasco State	35S	6	Yes	Ag operator hangar

Notes:

^a This footnote indicates that the number was updated to 2004 FAA data.

The point of the above information is that through the fence should not be considered unusual. It occurs at 31% of all of Oregon's FAA funded airports, and therefore, is ordinary and standard. The FAA objects because in some cases "sweetheart" or "no-cost" deals have been given for this access. It is important that all users of an airport participate in a fair and equally shared burden to support the cost of maintaining the airport. Likewise, it must be accomplished in a way that maintains safety of the airport and ensures that noise complaints will not become a problem.

Greenfield ends this section of his letter expressing concern that a residential airpark might, from a policy standpoint, impede the Port's ability to attract new industrial and commercial users.

This is a hypothetical concept and could as easily be hypothesized in the reverse. There may be business owners who will be attracted by locating their aviation related industrial or commercial businesses at the airport because they love aviation so much and want to live with their aircraft at their home near their business. Based on our 20 years of aviation planning experience with aircraft owners and businesses, we suspect that this is the more likely probable condition. We do concur with Greenfield's underlying concern about compatibility to the extent that we believe it is appropriate to establish residential uses in one area, rather than sprinkling residential uses throughout the overall development adjacent to an airport. Sierra Pacific Communities is preparing plans that meet this concept of concentrating residential uses in one area by proposing all residential airpark development in the southwest quadrant of their property, adjacent to existing normal residential areas.

Finally, it should be pointed out that residential airpark communities contain properties that are purchased by people who want to be near airports. There is no record of problems of residential airpark communities rising up to close down their airports. On the contrary, residential airparks become strong protectors of the airport in the community, typically creating airport safety watch groups and becoming active in attending local planning commission meetings and other land use activities as advocates for their airport. Residential airparks make very compatible uses adjacent to airports and in particular provide a good transition between normal residential use areas and the airport itself.

In conclusion, through the fence residential exists at many Oregon airports, is permitted by the FAA, is permitted by Oregon land use statutes, and can be placed at the Scappoose Industrial Airpark if the City of Scappoose approves land use zoning for it. It is recognized that the Port of St. Helens has a natural concern that such residential airpark uses be established carefully to protect the interests of the airport, and this can be done by working together to establish a site plan layout, safety, and noise criteria that meet all parties' needs.

B. Permitted Uses

Greenfield discusses airport uses relative to the concept of "within an airport boundary" but does not acknowledge that the term "airport boundary" will have different meanings in different contexts. For the FAA, the airport boundary will always remain the land in public ownership. For public-private partnership developments at airports, the airport boundary will often mean the combined public and private properties which have access to the airfield.

We concur with the sentiment of his concern that the final form of the zoning regulations should not limit the public FAA controlled airport boundary area from uses allowed by state law. The proposed zoning text is being revised to reflect Greenfield's suggestion.

C. Coordination

Coordination has been actively going on between the Port of St. Helens and Sierra Pacific Communities for approximately one and a half years. Up until the receipt of Greenfield's letter dated October 2, 2007 the Port had not once expressed significant objection to this proposal. In fact, there was excitement and encouragement from the Port to proceed with the proposal to the City up until that point.

D. Conclusions

The Greenfield letter, we assume, was created to make sure that if the project proceeds these important issues of noise, access, and safety will be adequately addressed. As to the FAA concerns, there is no reason citizens and small businesses involved with aviation-related interests should not be given the same respect, rights and privileges that are accorded to Boeing at Renton Airport for their aviation-related interests. In that light, it is recommended that the City staff, Port staff, Greenfield, and representatives of Sierra Pacific Communities sit down together immediately and attempt to resolve these issues in a positive manner. With the Port, City, and Sierra Pacific interests resolved, that would be the point to go to the FAA to then work out any remaining concerns they may have.

We are well aware of the FAA's general, strong opposition to residential airparks and the FAA's overall attempt to blur the real distinction between residential that uses the airport as a positive place to takeoff and land aircraft with the homeowner's own aircraft, and residential that is, at most, neutral, but more often in opposition to the noise of aircraft at the airport. There is a real and substantive difference between these two kinds of residential uses; we are prepared to work with the Port, the City, and the Seattle Airports District Office to ensure the project result is compatibility with the airport. Once we review an actual site plan layout, and consider the issues of noise and safety in their specificity, we believe that the proposed residential airpark not only will be compatible, but will also provide financial support to the airport and makes it a better airport than it would be otherwise.

We are aware of the strong language the FAA has put into prior enforcement determinations, which include threats to terminate FAA airport improvement grants, such as the determination (Docket No. 16-06-06) issued January 19, 2007 about Afton-Lincoln County Municipal Airport in Wyoming. In this determination FAA Director David L. Bennett, Office of Airport Safety and Standards found the airport:

"... currently in violation of grant assurance 21, Compatible Land Use, as a result of (a) failing to enforce a prohibition on residential use of hangars on the airport, and (b) encouraging the development of a residential airpark adjacent to the airport."

In that case the Afton-Lincoln County Airport board was allowing on-airport hangars to have residential apartments and even sold airport encumbered public land to the developer (without FAA permission) for development of the private residential airpark. We concur with the FAA that the Afton-Lincoln County Airport erred by doing those things without gaining FAA review and approval, and working with the FAA to ensure that noise and safety issues were adequately resolved.

The FAA is not a monster. They are smart enough to be reasonable when the noise and safety issues are adequately resolved. In the case of the Afton-Lincoln County Airport, following the finding of violation, the FAA worked with the airport board and has since then allowed airport access for the 54 lot residential airpark development and an associated airport camping area; the project is proceeding. The City of Afton is providing sewer and water and is enthusiastic in its

support of the \$85 million development which adds an important tax base to its community and furthers the City's goal of being a gateway to its nearby world class recreational areas.



Afton Residential Airpark being constructed

The FAA's Grant Assurance 21, Compatible Land Use, does not specifically say that residential airparks cannot be built at public airports. It does require that the airport sponsor take action to "restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft." The proposed Sierra Pacific residential airpark is a land use that can be designed to comply with this criterion by addressing the noise and safety concerns and meets the fundamental premise of using land to promote the landing and taking off of aircraft.

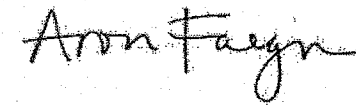
Finally, we must acknowledge that our world is in a fundamental period of change. Former Vice President Al Gore has recently been awarded the Nobel Peace Prize because he has taken the initiative to suggest that we all take strong action to counteract the loss of habitat and increase of pollution which are causing global warming. Sierra Pacific has in part proposed this residential airpark because it will allow the saving of approximately 161 large Douglas fir trees most of which would be lost if the site was simply developed as an industrial park.

Response to Greenfield Letter dated October 2, 2007
October 19, 2007
Page 15

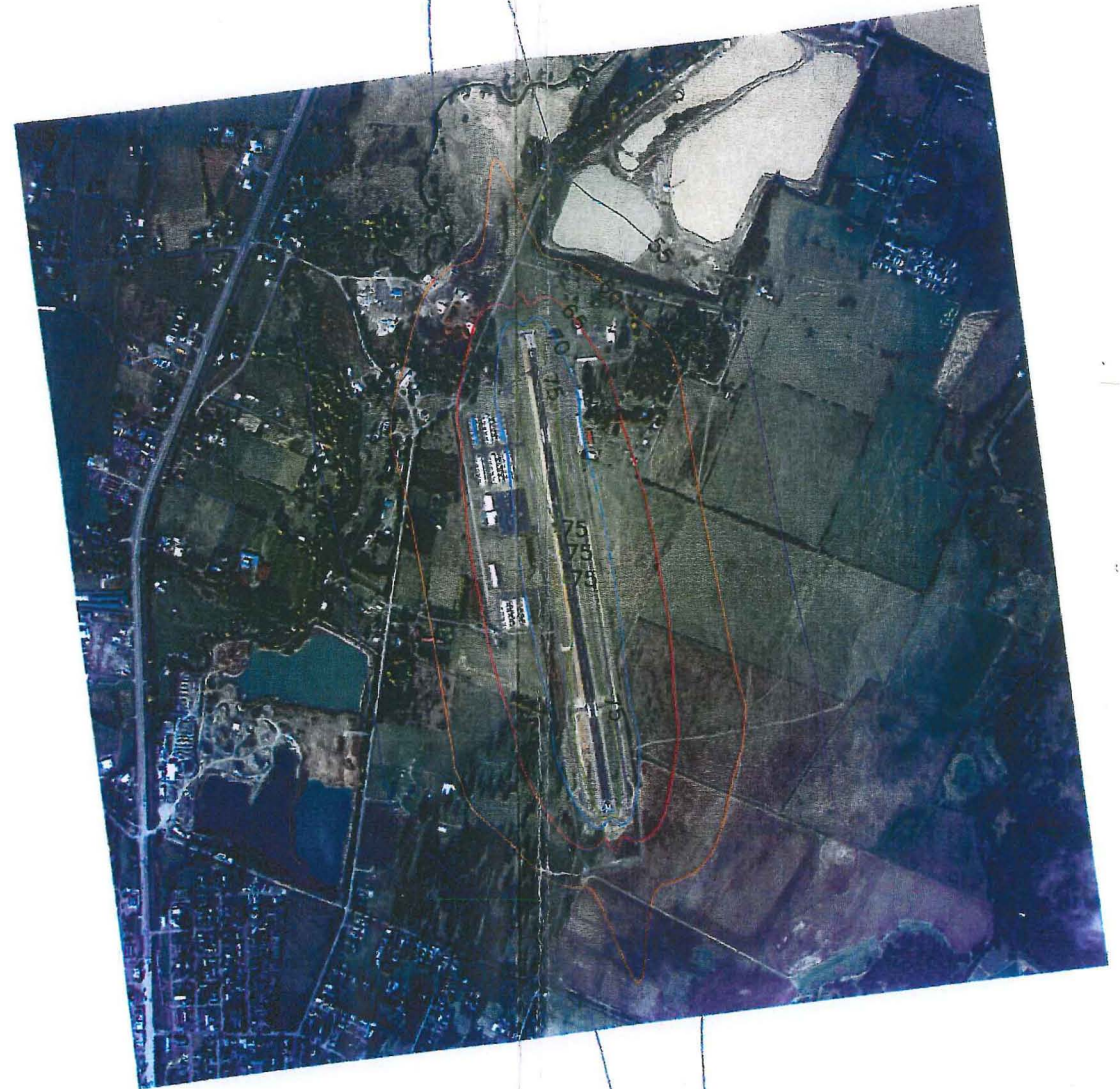
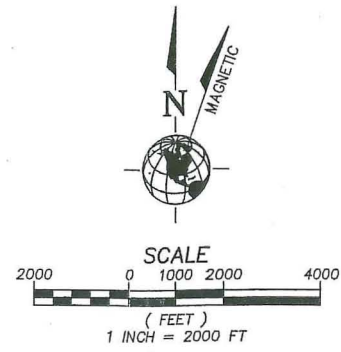
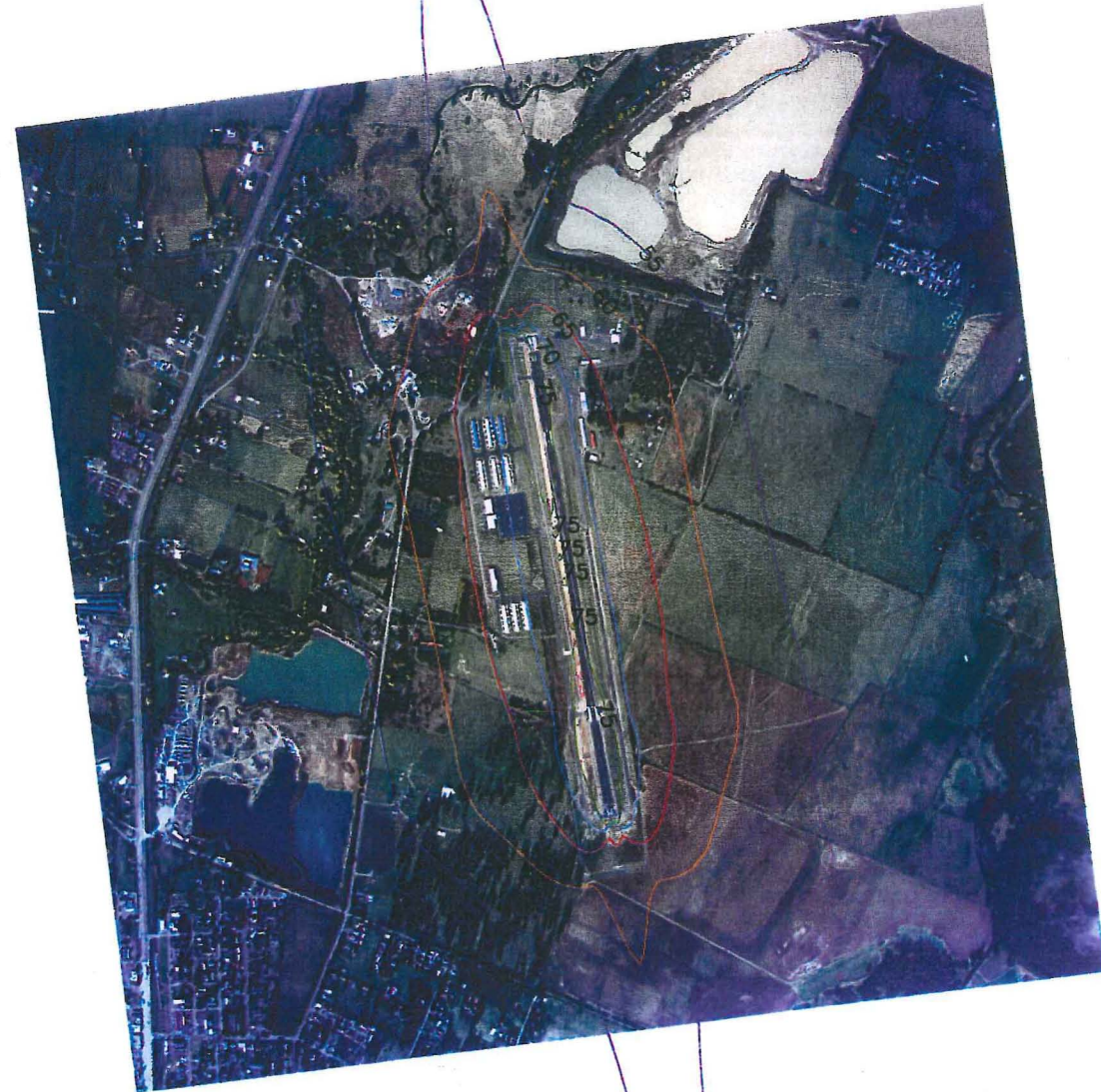
Sierra Pacific requests the Port of St. Helen's good will to be allowed to accomplish the comprehensive plan and zoning text changes, so that substantive discussions can then be held on an actual residential airpark site plan which addresses the airport's interests, the City's interests, and the interest of saving trees on the site. We recognize that we are asking a lot but can promise that we will do our part to make this a project of which you and the FAA will be proud.

Respectfully,

Aron Faegre & Associates

A handwritten signature in black ink that reads "Aron Faegre". The signature is written in a cursive, slightly slanted style.

Aron Faegre, AIA, PE



EXISTING NOISE CONTOURS - 2002

ULTIMATE NOISE CONTOURS - 2007

Office: SEATTLE / System: WIP-SEA-BRCY121 / User: CBONTEMPO

DESIGNED BY:	CHECKED BY:	LAM			
DRAWN BY:	APPROVED BY:				
LAST EDIT:	PLOT DATE:	03/08/04			
DATE	BY	REV#	REVISION	CK'D	APPR.

W&H PACIFIC
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 Planners • Engineers • Surveyors • Landscape Architects

**PORT OF ST. HELENS
 SCAPPOOSE INDUSTRIAL AIRPARK
 NOISE CONTOURS
 EXHIBIT 4A**

SCAPPOOSE SCALE: 1"=2000'	PROJECT NO. 30398	DRAWING FILE NAME: EXHIBIT-4a	OREGON 4A SHEET
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November 8, 2007

Scappoose Planning Commission
33568 E. Columbia Avenue
Scappoose, Oregon 97056

Subject: Sierra Pacific Communities Application for Text Amendments to
Scappoose Comprehensive Plan and Development Code

Dear Commissioners:

In support of the written and oral comments offered by the Port of St. Helens in response to Sierra Pacific's application, I offer the following documents into the record on behalf of the Port of St. Helens.

1. Email correspondence dated October 1, 2007 from Carol Key, Federal Aviation Administration (FAA) to Cliff Tetreault, Port of St. Helens explaining the FAA's policy on residential airparks, with attached email correspondence from Joelle Briggs, Phillip Braden and Miguel Vasconcelos (all FAA). See in particular the email from Miguel Vasconcelos, which includes the following comments:

"This matter has been adjudicated at the highest level within the agency. It is formal and final finding under Part 16. The response that 'residential airparks communities are non-compatible land uses' is enough. That is the final agency position on this matter. The FAA will not fund airports that are [residential] airparks or that are going to permit residential airpark development adjacent to the airport." (Emphasis added.)

and

"The bottom line is that the sponsor of a federally obligated airport CANNOT enter into a through the fence agreement for a residential airpark. It does, they will lose funding. They will be making a choice between being a residential airpark or a federally obligated airport. They can not be both. If they enter into this residential airpark agreement they will be cut off from [the Airport Improvement Program]. Please pass this on to them." (Emphasis added.)¹

¹ The Airport Improvement Program is the program that provides federal airport financial assistance for the development of public use airports.

2. A copy of FAA Director's Determination in *Carey v. Afton-Lincoln County Municipal Airport Joint Powers Board*, Docket No. 16-06-06 (Issued January 19, 2007), which is the case referenced by Mr. Vasconcelos. See especially pages 1-3, 10-11, 13 (Grant Assurance 21), and 39-43 (Issue 7).

3. A copy of the Port's Grant Assurances with the FAA under the federal Airport Improvement Program (AIP). Title 49 USC 47101 sets forth assurances to which an airport sponsor must agree as a condition of receiving federal funds. Upon acceptance of an AIP grant, the assurance becomes a binding contractual obligation between the airport sponsor and the federal government. These assurances are important factors in maintaining a viable national airport system.

4. Email correspondence dated October 18, 2007 from Joelle Briggs, FAA to Dave Roberts, FAA, responding to an October 17, 2007 email from Dave Roberts to Kim Shade, Port of St. Helens (attached).

The email from Dave Roberts states that the "driving force" for the FAA policy on residential through the fence access is "FAA Headquarters not the airport district office or the regional office." It says that the headquarters is not pushing this new policy on existing airports but rather on the establishment of new residential through the fence agreements. (This may distinguish the Afton airport circumstance from the situation in Independence, Oregon.) It also states:

"By the way Mr. Faegre notes Newburg (*sic*) and Sunriver as NPIAS airports, which they are, but they are not federally obligated airports so the grant assurances do not apply." (Emphasis added.)

In other words, Newberg and Sunriver do not receive federal funds pursuant to the AIP program. (*See also* Exhibit 9 below.)

The email from Joelle Briggs repeats that the determination that residential through the fence access is a non-compatible land use in violation of Grant Assurance 21, "Compatible Land Uses" was neither a Seattle or Regional office determination but was made in FAA headquarters in Washington DC. It adds that this message from headquarters to the regions was made "very clearly".

5. Letter dated October 22, 2007 from Carol Key, FAA to Gerald Meyer, Port of St. Helens, with 4 pages of attachments, reconfirming that

"a residential airpark, whether on or adjacent to a federally obligated airport, is an incompatible land use, and that granting TTF [through the fence] access to a residential airpark is inconsistent with the terms, conditions and restrictions contained in federal land transfer documents,

grant assurance 21, Compatible Land Use, contained in Airport Improvement Program funding grants and 49 USC 47107(a)(10).”

Ms. Key adds:

“As a result of this latest determination, we are compelled to inform you that granting TTF access to a residential development could result in the airport being placed in non-compliance, and jeopardize your eligibility for federal funding.” (Emphasis added.)

6. Email correspondence dated October 25, 2007 from Kevin Willis, FAA to Cliff Tetreault, Port of St. Helens, stating that he gave a presentation on general land use at the 2006 Northwest Mountain Regional Airport Conference and, while he did not use the word “residential”, “residential use is not consistent with airport operations or the requirements of Grant Assurance 21.” This correspondence appears intended to clarify remarks made by Aron Faegre.

7. Email correspondence dated October 30, 2007 from Carol Key (FAA) to Cliff Tetreault (Port of St. Helens), responding to an attached October 30, 2007 email from Cliff Tetreault and stating that “Headquarters is now taking a very hard line against residential development adjacent to airports. What might have been acceptable in the past is no longer acceptable.” The letter adds:

“In fact, Headquarters has even stated that permitting residential development could definitely affect the federal financing support of your airport. This is much different than past actions and statements. We strongly encourage you to follow the national direction on objecting to any zone change and/or through-the-fence for residential development.”

8. A letter dated Nov. 7, 2007 from Charles Erhard, Manager, Airports Compliance Division, FAA, to Gerry Meyer, Port of St. Helens, clarifying the FAA’s position on residential airport development. The letter states:

“The FAA is on record opposing the development of residential airparks with through-the-fence access to public-use, federally obligated airports. In fact, FAA has denied future funding to airports that have permitted airfield access from off-airport residential airparks. Such developments can conflict with Title 49 U.S.C. Sec. 47107(a)(10), Grant Assurance 21, Compatible Land Use and possibly other grant assurances. A federally obligated airport must ensure, to the best of its ability, compatible land use both on and off airport. An airport sponsor will not be successful in defending its airport from incompatible residential development if the sponsor is also promoting residential airparks on or next to the airport. A residential dwelling with an

attached hangar is still a residential dwelling and once introduced can lead to additional residential encroachment." (Emphasis added.)

The letter adds that since 1983, the FAA has invested over \$54,328,502 in AIP funds to improve and develop the airport as part of the National Airport System, and adjacent residential development "undermines the federal investment." It also clarifies:

"FAA does not oppose residential airparks at private use airports. Private use airports are operated for the benefit of the private owners, and the owners are free to make any change to the airport's operation, including imposing restrictions on aeronautical activity. A public use airport receiving federal financial assistance is different. It operates for the benefit of the public and in no way should become subordinate to the private interests of airpark residents erecting residential structures whose value is tied to the airport. The two interests, public and private, are not compatible in this case." (Emphasis added.)

9. Email correspondence dated November 7, 2007 from Ann Crook, former Director, Oregon Department of Aviation to Gerry Meyer, Port of St. Helens, explaining how a residential airpark at an airport like Scappoose can interfere with future commercial and industrial activities and create incompatibilities for the airport, and stating that the Port can expect to invest an "extreme amount of effort" managing home owner concerns and objections if the residential use goes in.

This letter addresses airport/residential land use incompatibilities in more detail than most of the other exhibits. It notes that there has been a "surge of enthusiasm" for residential airparks with through-the-fence access in the last several years, as this provides a pleasurable lifestyle for pilots. And it confirms what proponents of such airparks (including Sierra Pacific's consultant) argue, that there is a strong supportive relationship between the residents and the airport.

However,

"this is true, so long as the airport serves primarily the desires of the residents. But a public use airport must be available for all aeronautical users. In the case of the Scappoose Airport, I know that the Port of St. Helens has worked for years to attract aviation-related industrial activity to the airport. Residents of an airpark take a personal interest in preserving the airport for their own use. These personal preferences can interfere with future industrial/commercial activities.

"To be more specific, I have received noise complaints from residents of an airpark when the aircraft noise was at a time of day or from a type of aircraft not consistent with the usual aircraft associated with the residential

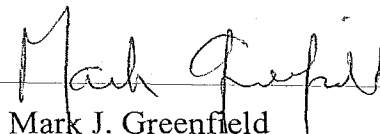


development. Similarly, residents of an airpark have opposed proposed expansion to accommodate jet traffic which was being considered to support the needs of local businesses. In this case, the airpark residents were concerned about the 'nature' of the airport changing from the primarily residential use which they enjoyed. It will be argued that these types of issues can be addressed through avigation easements and CC&Rs [Covenants, Conditions and Restrictions]. But even with very well-written documents, the Port of St. Helens should expect to invest an extreme amount of effort in managing residential homeowner concerns and in continuing to recruit new business against the backdrop of these types of residential objections." (Emphasis added.)

Ms. Crook's letter also reconfirms Dave Roberts' comment that Sunriver and Sportsman's Airpark do not receive public funding, so "the issues associated with through-the-fence agreements and the diversion of revenues from the public investment to off-airport property owners do not exist." As to Independence Airport, it does receive significant state and federal funding, but "the extent of residential development there is limiting the possible future 'public use' nature of the airport."

In addition to these exhibits, the Port respectfully requests that the City provide it with written notice of the final decision of the City of Scappoose in this matter.

Very truly yours,



Mark J. Greenfield
Of Attorneys for Port of St. Helens

mark j greenfield

From: "Gerry Meyer" <meyer@portsh.org>
To: "mark j greenfield" <markgreenfield@involved.com>
Sent: Monday, October 15, 2007 3:59 PM
Subject: FW: Re: Seattle Airports District Office Staff Directory

Mark-

Information as promised.

Gerry

-----Original Message-----

From: ctetreault@comcast.net [mailto:ctetreault@comcast.net]
Sent: Monday, October 01, 2007 11:09 AM
To: Kim Shade; Gerry Meyer; Colleen Deshazer
Subject: FW: Re: Seattle Airports District Office Staff Directory

Forwarding this message to you. This was a follow up question to Carol's presentation at the end of the morning on Wednesday. In a segment on residential airparks, she stated that there was a new policy from FAA clearly stating the opposition at a national level. I asked for a citation on the policy.

Regards,
Cliff

----- Forwarded Message: -----

From: Carol.Key@faa.gov
To: ctetreault@comcast.net
Subject: Re: Seattle Airports District Office Staff Directory
Date: Mon, 1 Oct 2007 17:22:19 +0000

Thanks for your inquiry. Here is the string of emails regarding the FAA's policy on Residential Airparks. The message is pretty clear. Good luck!
Carol

Joelle
Briggs/ANM/FAA
ANM-620, Safety & To
Standards Paul Johnson/ANM/FAA@FAA, Marc C
Miller/ANM/FAA@FAA, Gary
Gates/ANM/FAA@FAA
09/17/2007 08:47 cc
AM Craig Sparks/ANM/FAA@FAA, John
Bauer/ANM/FAA@FAA, Dave
Stelling/ANM/FAA@FAA, Wade
Bryant/ANM/FAA@FAA, Carol
Key/ANM/FAA@FAA, Carolyn
Read/ANM/FAA@FAA, Bill
Watson/ANM/FAA@FAA
Subject
INFO: Fw: Residential Airparks

10/15/2007

Hi all,

Phillip Braden and I had been corresponding on the FAA position on TTF to residential airparks and discussing the recent Director's Determination in Afton, WY finding the airport in non-compliance for allowing such a TTF agreement. He just passed on this e-mail correspondence from HQ. I thought you might find it helpful and further confirmation/clarification on the agency's position.

Feel free to share it with your ADO.

Joelle Briggs
FAA, Northwest Mountain Region
Airports Division
425-227-2626
joelle.briggs@faa.gov

----- Forwarded by Joelle Briggs/ANM/FAA on 09/17/2007 08:42 AM -----

Phillip
Braden/ASO/FAA
ASO-MEM-ADO, To
Memphis, TN Joelle Briggs/ANM/FAA@FAA
cc

09/17/2007 08:02 Subject
AM Fw: Residential Airparks



I guess HQ is consistent on this topic. Thought you may find interest in this response. Have a great day....

Phillip J. Braden
Manager
FAA, Memphis Airports District Office
(901) 322-8181

10/15/2007

(901) 322-8195 fax
Phillip.Braden@faa.gov

----- Forwarded by Phillip Braden/ASO/FAA on 09/17/2007 10:00 AM -----

Miguel
Vasconcelos/AWA/F
AA To
AAS-400, Airport Phillip Braden/ASO/FAA@FAA
Compliance cc
Division Charles Erhard/AWA/FAA@FAA, Dave
Cushing/AWA/FAA@FAA, Jim
Castleberry/ASO/FAA@FAA, Mike
09/14/2007 05:57 Thompson/ASO/FAA@FAA, Roger
AM Hall/ASO/FAA@FAA, Rusty
Chapman/ASO/FAA@FAA
Subject
Re: Residential Airparks(Document
link: Phillip Braden)

Phillip,

We understand that the airport sponsor put a lot of work into this. I also understand that the ADO committed to reviewing and considering the airpark, but unfortunately, ~~that was and is inconsistent with our policy.~~ We can't do it.

There is nothing to modify from a national policy standpoint. This matter had been adjudicated at the highest level within the agency. It is formal and final finding under Part 16. The response that "residential airparks communities are non-compatible land uses" is enough. That is the final agency policy on this matter. The FAA will not fund airports that are airparks or that are going to permit residential airpark development adjacent to the airport. That is the message we need to pass on to the airport.

The policy as outlined in the part 16 is very clear: NO RESIDENTIAL AIRPARK THROUGH THE FENCE. We are not going to debate distances, e.g. the first home is 50 feet out or 100 feet away, in order to change the policy. Although it is clear that a home in the RPZ, RSA OR OFA is a no-no, the 65 contour is not a factor either. Remember, people and airports want to restrict access when the 65 is well within the airport boundaries. We have lost cases in Federal court (Naples), meaning that restrictions were adopted despite our objections, because there were people complaining in

10/15/2007

the 45 contour, over a mile away from the airport. If we were to simply state that a home must be in the 65 contour before we have an incompatible land use at a GA airport, we would have a serious problem here.

The bottom line is that the sponsor of a federally obligated airport CANNOT enter into a through the fence agreement for a residential airpark. It does, they will lose funding. They will be making a choice between being a residential airpark of a federally obligated airport. They can not be both. If they enter into this residential airpark agreement they will be cut off from AIP. Please pass this on to them.

Mig



UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D.C.

M. Daniel Carey and Cliff Davenport,
COMPLAINANTS

v.

Afton-Lincoln County Municipal
Airport Joint Powers Board,
RESPONDENT

Docket No. 16-06-06

Issued January 19, 2007

DIRECTOR'S DETERMINATION

I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA), Director of the Office of Airport Safety and Standards, to investigate pursuant to the Rules of Practices for Federally Assisted Airport Enforcement Proceedings found in Title 14 Code of Federal Regulations (CFR), Part 16.

M. Daniel Carey and Cliff Davenport (Complainants) filed a formal Complaint pursuant to 14 CFR Part 16 against the Afton-Lincoln County Municipal Airport Joint Powers Board (Respondent), operator of the Afton Municipal Airport. Complainants allege the Respondent violated Title 49 United States Code (U.S.C.) §§ 47107(a) and 40103(e), and related federal grant assurances 22, *Economic Nondiscrimination*, and 23, *Exclusive Rights*, by (A) granting an exclusive right to one entity to provide certain aeronautical services on the airport, and (B) denying Complainants the opportunity to provide aeronautical services to the public. Complainants also allege respondent violated six additional grant assurances, and the FAA has determined that three more grant assurances are applicable to this case. Altogether, we considered Respondent's compliance with 11 grant assurances in reference to the issues raised in this Part 16 Complaint, including (in numerical order):

- (1) Grant assurance 5, *Preserving Rights and Powers*
- (2) Grant assurance 13, *Accounting System, Audit, and Record Keeping Requirements*
- (3) Grant assurance 21, *Compatible Land Use*
- (4) Grant assurance 22, *Economic Nondiscrimination*
- (5) Grant assurance 23, *Exclusive Rights*
- (6) Grant assurance 24, *Fee and Rental Structure*

- (7) Grant assurance 25, *Airport Revenues*
- (8) Grant assurance 26, *Reports and Inspections*
- (9) Grant assurance 29, *Airport Layout Plan*
- (10) Grant assurance 30, *Civil Rights*
- (11) Grant assurance 31, *Disposal of Land*.

Based on the Director's review and consideration of the evidence submitted, the administrative record designated at FAA DD Exhibit 1, the relevant facts, and the pertinent laws and policy, the Director concludes the Respondent is currently in violation of four grant assurances related to three of the 11 issues reviewed:

- Grant assurance 24, *Fee and Rental Structure*, as a result of failing to collect lease payments in accordance with the fee schedule for the fixed-base operator.¹ (See Issue 2, item 3.)
- Grant assurance 22, *Economic Nondiscrimination*, and grant assurance 23, *Exclusive Rights*, as a result of enforcing airport minimum standards inconsistently. (See Issue 6.)
- Grant assurance 21, *Compatible Land Use*, as a result of (a) failing to enforce a prohibition on residential use of hangars on the airport, and (b) encouraging the development of a residential airpark adjacent to the airport. (See Issues 7(a) and 7(b).)

The Respondent is not currently in violation of the other seven (7) grant assurances considered in this Part 16 Complaint.

The basis for the Director's conclusion is set forth herein.

II. PARTIES

A. Airport

Afton Municipal Airport (AFO) in Wyoming is a federally obligated general aviation public airport owned jointly by the Town of Afton and Lincoln County. It is operated and controlled by the Afton-Lincoln County Municipal Airport Joint Powers Board (Airport Board), which was formed for this purpose. The airport has one runway and approximately 80 single engine airplanes, one multi-engine aircraft, two jets, and one helicopter based there. [FAA DD Exhibit 1, Item 1.]

The airport has received more than \$9 million in grant funds since 1983. The most recent grant of \$3.9 million to extend the runway was given in 2004. [FAA DD Exhibit 1, Item 2.]

¹ A fixed-base operator (FBO) is a commercial entity providing aeronautical services such as fueling, maintenance, storage, ground and flight instruction, etc., to the public. [See FAA Order 5190.6A, *Airport Compliance Requirements*, October 2, 1989, Appendix 5.]

B. Complainants

Complainants M. Daniel Carey and Cliff Davenport are individual tenants on the airport. Each has expressed a desire to operate some type of aeronautical business offering services to the public. At various points, they have submitted separate business proposals to the Airport Board. Most recently, the Complainants submitted a supplemental proposal indicating they would be conducting their business(es) jointly. To date, the Airport Board has not approved any of the Complainants' proposals.

III. BACKGROUND and PROCEDURAL HISTORY

The Afton Municipal Airport decided to expand the services it provided its aeronautical users with the establishment of a fixed-base operator (FBO). A lease was negotiated with Bradley D. Morehouse and Richard G. Russell doing business as Afton Aircraft Services Inc., to start its FBO operation in March 2004. Later the same year, Complainants submitted a proposal to offer competing services.

Initially, the Airport Board had granted an exclusive right to Afton Aircraft Services, Inc., preventing competition in various service areas, including those Complainants intended to offer. However, the FAA Denver Airports District Office advised the Airport Board that granting an exclusive right was contrary to the Airport Board's federal obligations. The Airport Board dissolved the exclusive right initially granted to Afton Aircraft Services, Inc.

At the FAA's suggestion, the Airport Board revised its minimum standards to place additional requirements on FBO services. While the minimum standards were being developed, a moratorium was placed on all new business ventures on the airport, including the proposals submitted by the Complainants. Once the revised minimum standards were adopted, the Complainants could resubmit their proposals to meet the new standards. The Airport Board excluded Afton Aircraft Services, Inc. from meeting the new standards since its business was started prior to the adoption of the revised minimum standards. Complainants objected to having to meet a higher level of standards than their FBO competitor. To date, Complainants have not entered into a business venture offering aeronautical services to the public at Afton Municipal Airport.

Following are the facts in chronological order.

At the July 17, 2002, Airport Board meeting, the Airport Board discussed the need for a fixed-base operator (FBO) location on the airport. [FAA DD Exhibit 1, Item 3, exhibit page 5, page 6.]

At the December 17, 2003, Airport Board meeting, the Airport Board discussed proposals to establish a fixed-base operator (FBO) on the airport. [FAA DD Exhibit 1, Item 3, exhibit page 35.]

At the January 21, 2004, Airport Board meeting, the Airport Board discussed the Bradley D. Morehouse² proposal for a fixed-base operator (FBO). The Airport Board agreed to accept the proposal with some stipulations. In addition, the Airport Board discussed reviewing the then-present hangar lease and agreed to draft a lease to cover the FBO buildings and property. (FAA DD Exhibit 1, Item 3, exhibit page 41, pages 41-42.)

At the February 25, 2004, Airport Board meeting, airport manager Charles Van Slyke reported to the Airport Board that the airport's consultants were working on a design for the entire ramp area including the space for an FBO operation. [FAA DD Exhibit 1, Item 3, exhibit page 50.]

On March 17, 2004, the Lincoln County Attorney stated in an e-mail he had reviewed the proposed FBO lease. [FAA DD Exhibit 1, Item 3, exhibit page 54.]

At the March 17, 2004, Airport Board meeting, the airport manager passed out a copy of the proposed FBO lease, and the Airport Board discussed it. There was a motion to accept the lease and sign it if there was no major opposition by the following day. [FAA DD Exhibit 1, Item 3, exhibit page 56.]

On March 22, 2004, the Airport Board entered into a lease agreement with Afton Aircraft Services, Inc. to provide various FBO services, including sale and maintenance of aircraft and aviation supplies and equipment; the maintenance and repair services for aircraft and aviation equipment; the sale of aviation fuel and oil; rental cars and trucks and corporate aircraft services. The lease granted the FBO the exclusive right to (A) sell all fuels and aviation fluids and supplies, and (B) provide all automobile and truck rentals. [FAA DD Exhibit 1, Item 3, exhibit page 60.]

At the April 21, 2004, Airport Board meeting, the Airport Board discussed selling or leasing the fuel system to the FBO operator at a determined fair price. [FAA DD Exhibit 1, Item 3, exhibit page 70.]

At the May 19, 2004, Airport Board meeting, the Airport Board agreed that a fair price to ask for the fuel system was \$85,000 plus the cost of any fuel in the tanks at the purchase date. [FAA DD Exhibit 1, Item 3, exhibit page 75.]

Also at the May 19, 2004, Airport Board meeting, the Airport Board agreed to cast lots to adjust the three-year terms of the six members so that the term of one member from the city and one member from the county would expire each year. [FAA DD Exhibit 1, Item 3, exhibit page 75.]

² Bradley D. Morehouse and Richard G. Russell entered into a lease agreement with the Afton-Lincoln County Airport Joint Powers Board as the entity Afton Aircraft Services, Inc. effective March 22, 2004. In the administrative record, this entity is referred to interchangeably as Mr. Morehouse, Morehouse, or Afton Aircraft Services, Inc. Respondent argues it has not entered into a contract with the person identified in the Complaint as Morehouse. [See FAA DD Exhibit 1, Item 5, page 2.] This is disingenuous. Mr. Morehouse clearly signed the contract and entered into this agreement on behalf of Afton Aircraft Services, Inc. In this determination, references to Mr. Morehouse or Morehouse shall be intended to refer also to the Afton Aircraft Service, Inc. FBO business entity.

At the July 21, 2004, Airport Board meeting, the Airport Board agreed to sell the fuel system to Bradley D. Morehouse (FBO owner) for \$60,000 plus the cost of fuel in the tanks. [FAA DD Exhibit 1, Item 3, exhibit page 86.]

At the August 18, 2004, Airport Board meeting, the Airport Board discussed the pros and cons of selling the fuel system. One member proposed selling it at a determined fair price with a reversion to the airport if the FBO were to go out of business. Another member opposed the motion. The motion passed. [FAA DD Exhibit 1, Item 3, exhibit page 92.]

At the September 15, 2004, Airport Board meeting, the Airport Board discussed living areas being built in the hangars. The airport manager agreed to meet with hangar owners, airport consultants, and the FAA to develop a set of guidelines for hangar living areas. [FAA DD Exhibit 1, Item 3, exhibit page 98.]

At the October 20, 2004, Airport Board meeting, the airport manager reported to the Airport Board that the FAA does not recommend living areas in hangars. [FAA DD Exhibit 1, Item 3, exhibit page 103.]

Also at the October 20, 2004, Airport Board meeting, Complainant Cliff Davenport requested that he be allowed to open a second fuel business. One Airport Board member suggested the airport should have a set of minimum operating standards for the FBO and fuel. [FAA DD Exhibit 1, Item 3, exhibit page 103.]

At the November 17, 2004, Airport Board meeting, Complainant Cliff Davenport presented a written proposal to install a second fuel farm on the airport. [FAA DD Exhibit 1, Item 3, exhibit page 108.]

At the November 20, 2004, Airport Board discussion meeting, it was noted that the Airport Board needed to update the minimum standards. The airport manager provided the Airport Board with a copy of the old minimum standards, asking members to make updates. [FAA DD Exhibit 1, Item 3, exhibit page 113.]

Also at the November 20, 2004, Airport Board discussion meeting, the Airport Board noted it did not know that apartments were being put in hangars. Complainant M. Daniel Carey advised the Airport Board that a place to stay is important to the pilots, especially those who have crews to fly their planes. The Airport Board agreed it would prefer to change the lease to allow living quarters, with regulations governing use, and to look at rezoning. [FAA DD Exhibit 1, Item 3, exhibit page 113.]

At the January 27, 2005, Airport Board meeting, the airport manager noted that the FAA does not recommend apartments at the airport. [FAA DD Exhibit 1, Item 3, exhibit page 117.]

At the April 27, 2005, Airport Board meeting, the Airport Board noted the FAA was in the process of reviewing the revised minimum standards and zoning for the airport. [FAA DD Exhibit 1, Item 3, exhibit page 135.]

Also at the April 27, 2005, Airport Board meeting, Complainant Cliff Davenport proposed to operate an open source of fuel. He had provided a proposal in December and wanted to have fuel production going by the spring. The Airport Board noted it was waiting for recommendations from the FAA on whether this type of business is allowed. [FAA DD Exhibit 1, Item 3, exhibit page 135.]

Also at the April 27, 2005, Airport Board meeting, Complainant M. Daniel Carey presented a request for a second FBO operation at the airport. He distributed a copy of the request to Airport Board members. [FAA DD Exhibit 1, Item 3, exhibit page 135.]

At the May 18, 2005, Airport Board meeting, Complainant Cliff Davenport asked the Airport Board for a decision regarding his proposed FBO operation. It was noted that Complainant Cliff Davenport wanted to provide fuel sales only. Complainant M. Daniel Carey wanted to operate an FBO with fuel sales and other services. An FAA representative from the Denver Airports District Office advised that the airport must allow everyone the right to operate an FBO who wants to. However, the FAA stressed the Airport Board should have detailed minimum standards that will require services beyond fuel sales alone. The Airport Board agreed to delay any decisions on new commercial activity for 90 days. [FAA DD Exhibit 1, Item 3, exhibit page 141.]

On July 7, 2005, the airport issued *draft* minimum standards for the airport. [FAA DD Exhibit 1, Item 3, exhibit page 152.] Individuals had an opportunity to comment on the draft minimum standards. [See FAA DD Exhibit 1, Item 3, exhibit page 199.]

On August 9, 2005, Complainant M. Daniel Carey wrote a letter to the FAA alleging grant assurance violations at the airport, as well as revenue diversion. [FAA DD Exhibit 1, Item 3, exhibit page 193.]

In an August 10, 2005, letter to the Joint Powers Board of Directors, Complainant M. Daniel Carey disagreed with the proposed minimum standards and provided comments in a letter to the Airport Board. [FAA DD Exhibit 1, Item 3, exhibit page 199.]

On September 8, 2005, Counsel for Complainant Cliff Davenport demanded the Airport Board allow Mr. Davenport nondiscriminatory access to the airport to operate a fuel farm on reasonable terms as required by the grant assurances. [FAA DD Exhibit 1, Item 3, exhibit page 212.]

On September 9, 2005, Counsel for Complainant Cliff Davenport sought FAA assistance in permitting both Complainants the opportunity to operate on the airport. Complainant Cliff Davenport wanted to operate a fuel farm; Complainant M. Daniel Carey wanted to operate a small FBO. [FAA DD Exhibit 1, Item 3, exhibit page 215.]

On September 22, 2005, FAA Denver Airports District Office advised the airport that a portion of airport land was sold without FAA approval; that the current FBO has an exclusive right contrary to the grant assurances; and that FAA would provide no funding for work associated with the taxiway on the north end of the airport. [FAA DD Exhibit 1, Item 3, exhibit page 219.]

On September 28, 2005, the airport issued its revised minimum standards. [FAA DD Exhibit 1, Item 3, exhibit page 233.]

On September 29, 2005, the Airport Board provided explanations to the FAA in response to issues raised in FAA's September 22, 2005 letter. The Airport Board agreed to resolve the exclusive rights violation with regard to the current FBO (Afton Aircraft Services, Inc.). In addition, the Airport Board stated it had recently adopted a set of minimum standards and would invite all parties to resubmit their plans for commercial development on the airport for Airport Board review. [FAA DD Exhibit 1, Item 3, exhibit page 275.]

On October 12, 2005, the FAA advised the Airport Board that its request for approval to release a parcel from aeronautical use was inadequate. Among other requirements, the Airport Board was advised that it needed an appraisal and a review appraisal of the subject property. [FAA DD Exhibit 1, Item 3, exhibit page 278.]

On January 23, 2006, Counsel for Complainants M. Daniel Carey and Cliff Davenport demanded resolution of various grievances, including allowing both Complainants to operate commercial enterprises on the airport. [FAA DD Exhibit 1, Item 3, exhibit page 283.]

On March 17, 2006, Complainants filed this Part 16 Complaint, received March 21, 2006. [FAA DD Exhibit 1, Item 3.]

On March 30, 2006, FAA Office of Chief Counsel docketed the Complaint. [FAA DD Exhibit 1, Item 4.]

On April 19, 2006, Respondent filed its Answer, received April 25, 2006. [FAA DD Exhibit 1, Item 5.]

On April 27, 2006, Complainants requested a 30-day extension to file their Reply to Respondent's Answer. [FAA DD Exhibit 1, Item 6.]

On April 28, 2006, FAA granted Complainants an extension to May 31, 2006, to file their Reply to Respondent's Answer. [FAA DD Exhibit 1, Item 7.]

On June 29, 2006, Complainants filed their Reply to Respondent's Answer, received July 7, 2006. [FAA DD Exhibit 1, Item 9.]

IV. ISSUES

Upon review of the allegations and the relevant airport-specific circumstances, the FAA has determined that the following 11 issues require analysis in order to provide a complete review of Respondent's compliance with applicable federal law and policy. The Director notes that grant assurances 5, *Preserving Rights and Powers*; 21, *Compatible Land Use*; and 24, *Fee and Rental Structure*, were not raised in the Complaint, but are being raised by the FAA based on information developed during the investigation of the Complaint.

A. *Issue 1:*

Whether Respondent is in violation of grant assurance 23, *Exclusive Rights*, by granting an exclusive right to one tenant to provide all fixed-base operator (FBO) services, including aviation supplies and equipment, sale of fuel and oil, and rental cars and trucks. [FAA DD Exhibit 1, Item 3, page 4.]

B. *Issue 2:*

Whether Respondent is in violation of grant assurance 25, *Airport Revenues*, or grant assurance 24, *Fee and Rental Structure*, by transferring or leasing property and assets at less than fair market value. [FAA DD Exhibit 1, Item 3, pages 7-8.]

C. *Issue 3:*

Whether Respondent is in violation of grant assurance 26, *Reports and Inspections*, by failing to provide requested documents to Complainants. [FAA DD Exhibit 1, Item 3, pages 8-9.]

D. *Issue 4:*

Whether Respondent is in violation of grant assurance 13, *Accounting System, Audit, and Record Keeping Requirements*, by failing to prepare or maintain reliable accounting systems. [FAA DD Exhibit 1, Item 3, page 10.]

E. *Issue 5:*

Whether Respondent is in violation of grant assurance 30, *Civil Rights*, by excluding individuals who are not members of The Church of Jesus Christ of Latter-day Saints' local Mormon Church Wards (Mormon Church) from airport business opportunities. [FAA DD Exhibit 1, Item 3, pages 10-12.]

F. *Issue 6:*

Whether Respondent is in violation of grant assurance 22, *Economic Nondiscrimination*, and grant assurance 23, *Exclusive Rights*, by enforcing airport minimum standards inconsistently. [FAA DD Exhibit 1, Item 3, page 12.]

G. *Issue 7:*

(a) Whether Respondent is in violation of its federal grant assurances by failing to enforce a prohibition on residential use of hangars on the airport. [FAA DD Exhibit 1, Item 3, pages 12-13.]

- (b) Whether Respondent is in violation of grant assurance 21, *Compatible Land Use*, by encouraging the development of a residential airpark adjacent to the airport.
- (c) Whether Respondent is in violation of grant assurance 24, *Fee and Rental Structure*, by failing to assess a reasonable fee for airport access to off-airport individuals and entities.

H. Issue 8:

Whether Respondent is in violation of grant assurance 22, *Economic Nondiscrimination*, by excluding Complainants from conducting a commercial aeronautical business on the airport. [FAA DD Exhibit 1, Item 3, page 13.]

I. Issue 9:

Whether Respondent is in violation of grant assurance 29, *Airport Layout Plan*, by permitting or building airport features that are not consistent with the approved Airport Layout Plan (ALP). [FAA DD Exhibit 1, Item 3, page 14.]

J. Issue 10:

Whether Respondent is in violation of grant assurance 31, *Disposal of Land*, or grant assurance 5, *Preserving Rights and Powers*, by transferring or releasing airport property without FAA permission. [FAA DD Exhibit 1, Item 3, pages 15-16.]

K. Issue 11:

Whether Respondent is in violation of its federal obligations as a result of (1) awarding contracts without public disclosure and FAA oversight, (2) promoting and concealing conflicts of interest among Airport Board members, (3) accepting gratuities and business accommodations from an airport tenant, (4) conducting secret meetings in violation of Wyoming law, and (5) failing to observe requirements of the Joint Powers Agreement and the Airport Board's Charter and Bylaws.

In addition to reviewing the issues above, Complainants request that the FAA conduct an audit of the airport's finances and management and asks that the Comptroller General of the United States conduct an audit of the airport's accounting system.

Our determination in this matter is based on the applicable federal law and FAA policy, review of the arguments and supporting documentation submitted by the parties, and the administrative record reflected in the attached FAA DD Exhibit 1.³

³ The attached FAA DD Exhibit 1 provides the *Index of Administrative Record* in this proceeding.

V. APPLICABLE FEDERAL LAW AND FAA POLICY

The Federal Aviation Act of 1958, as amended (FAAct), 49 U.S.C. § 40101, et seq., assigns the FAA Administrator broad responsibilities for the regulation of air commerce in the interests of safety, security, and development of civil aeronautics. The federal role in civil aviation has been augmented by various legislative actions that authorize programs for providing federal funds and other assistance to local communities for the development of airport facilities. In each such program, the airport sponsor assumes certain obligations, either by contract or by restrictive covenants in property deeds and conveyance instruments, to maintain and operate its airport facilities safely and efficiently and in accordance with specified conditions. Commitments assumed by airport sponsors in property conveyance or grant agreements are important factors in maintaining a high degree of safety and efficiency in airport design, construction, operation and maintenance, as well as ensuring the public fair and reasonable access to the airport.

The following is a discussion pertaining to (A) the Airport Improvement Program, (B) Airport Sponsor Assurances, (C) the FAA Airport Compliance Program, and (D) Enforcement of Airport Sponsor Assurances.

A. Airport Improvement Program

Title 49 U.S.C. § 47101, *et seq.*, provides for federal airport financial assistance for the development of public-use airports under the Airport Improvement Program (AIP) established by the Airport and Airway Improvement Act of 1982 (AAIA), as amended. Title 49 U.S.C. § 47101, *et seq.*, sets forth assurances to which an airport sponsor agrees as a condition of receiving federal financial assistance. Upon acceptance of an AIP grant, the assurances become a binding contractual obligation between the airport sponsor and the federal government. The assurances made by airport sponsors in AIP grant agreements are important factors in maintaining a viable national airport system.

B. Airport Sponsor Assurances

As a condition precedent to providing airport development assistance under the Airport Improvement Program, 49 U.S.C. § 47101, *et seq.*, the Secretary of Transportation and, by extension, the FAA must receive certain assurances from the airport sponsor. Title 49 U.S.C. § 47107(a) sets forth the statutory sponsorship requirements to which an airport sponsor receiving federal financial assistance must agree.

The FAA has a statutory mandate to ensure that airport owners comply with these sponsor assurances.⁴ FAA Order 5190.6A, *Airport Compliance Requirements*

⁴ See, e.g., the Federal Aviation Act of 1958, as amended and recodified, Title 49 U.S.C. §§ 40101, 40113, 40114, 46101, 46104, 46105, 46106, 46110; and the Airport and Airway Improvement Act of 1982, as amended and recodified, Title 49 U.S.C. §§ 47105(d), 47106(d), 47107(k), 47107(l), 47111(d), 47122.

5190.6A), issued on October 2, 1989, provides the policies and procedures to be followed by the FAA in carrying out its legislatively mandated functions related to federally obligated airport owners' compliance with their sponsor assurances. The FAA considers it inappropriate to provide federal assistance for improvements to airports where the benefits of such improvements will not be fully realized due to inherent restrictions on aeronautical activities.

Two federal grant assurances apply directly to the circumstances set forth in this complaint: (1) grant assurance 22, *Economic Nondiscrimination*, and (2) grant assurance 23, *Exclusive Rights*. Complainants also allege violations of six additional grant assurances, including grant assurance 13, *Accounting System, Audit, and Record Keeping Requirements*, grant assurance 25, *Airport Revenues*, grant assurance 26, *Reports and Inspections*, grant assurance 29, *Airport Layout Plan*, grant assurance 30, *Civil rights*, and grant assurance 31, *Disposal of Land*. The FAA has determined that grant assurance 5, *Preserving Rights and Powers*, grant assurance 21, *Compatible Land Use*, and grant assurance 24, *Fee and Rental Structure*, are also applicable to this case.

The 11 applicable grant assurances are listed below in numerical order for ease in reference: (1) grant assurance 5, *Preserving Rights and Powers*, (2) grant assurance 13, *Accounting System, Audit, and Record Keeping Requirements*; (3) grant assurance 21, *Compatible Land Use*; (4) grant assurance 22, *Economic Nondiscrimination*; (5) grant assurance 23, *Exclusive Rights*; (6) grant assurance 24, *Fee and Rental Structure*; (7) grant assurance 25, *Airport Revenues*; (8) grant assurance 26, *Reports and Inspections*; (9) grant assurance 29, *Airport Layout Plan*, (10) grant assurance 30, *Civil Rights*; and (11) grant assurance 31, *Disposal of Land*.

1. Grant Assurance 5, Preserving Rights and Powers

Grant assurance 5, *Preserving Rights and Powers*, requires the airport owner or sponsor to retain all rights and powers necessary to ensure the continued operation of the airport consistent with its federal obligations. This assurance implements the provisions of the Airport and Airway Improvement Act of 1982 (AAIA), 49 U.S.C. § 47107(a), et seq., and requires, in pertinent part, that the owner or sponsor of a federally obligated airport "...will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor."

Grant assurance 5 states in pertinent part:

- a. [The airport owner or sponsor] will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which

would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

- b. [The airport owner or sponsor] will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which federal funds have been expended, for the duration of the terms, conditions, and assurances in the grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of the grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.

2. **Grant Assurance 13, Accounting System, Audit, and Record Keeping Requirements**

Grant assurance 13, *Accounting System, Audit, and Record Keeping Requirements*, states:

- a. [The airport owner or sponsor] shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of the grant, the total cost of the project in connection with which the grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
- b. [The airport owner sponsor] shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to the grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which the grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

3. Grant Assurance 21, Compatible Land Use

Grant assurance 21, *Compatible Land Use*, implements 49 U.S.C. § 47107 (a)(10) and requires that:

“[The airport owner or sponsor] will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which federal funds have been expended.”

Noise compatible land use in the vicinity of airports is necessary to protect the public's health and welfare while preserving the airport's capability to meet aviation transportation needs efficiently.

Incompatible land use includes usage that adversely affects flight operations at and near airports, such as obstructions to aerial navigation, noise impacts resulting from residential construction too close to the airport, or any other land usage that creates a negative impact on the operation of an airport.

FAA guidance regarding airport-related environmental assessments identifies documentation needed to support the requirements stipulated in grant assurance 21. Specifically, documentation relating to existing and planned land uses is to include information depicting what is being done by the jurisdiction(s) having land use control authority.⁵ FAA recognizes that not all airport owners or sponsors have direct jurisdictional control over property surrounding or near the airport. However, for the purpose of evaluating airport owner or sponsor compliance with compatible land use, the FAA does not *per se* accept an owner or sponsor declining any action on the simple grounds that it does not possess zoning authority outside the airport boundaries.

In those cases, FAA expects appropriate actions to the extent reasonable on the part of the owner or sponsor to minimize incompatible land use and hence minimize the adverse impact on the airport. More often than not, airport owners or sponsors have a voice in the affairs of the community in which the airport development is undertaken and should be required, as a minimum, to make their best effort to assure proper zoning or other land use controls near the airport. Some level of participation in local zoning activities pertaining to or having an impact on the operation of the airport is expected.

Depending upon the owner or sponsor's capabilities and authority, "appropriate action" could include actions such as exercising zoning authority as granted under state law or

⁵ FAA Order 5050.4A, *Airport Environmental Handbook*, paragraph 47, (e) (2).

active representation and defense of the airport's interests before the pertinent zoning authorities. Appropriate action may also include taking steps with respect to implementing sound insulation, land acquisition, purchase of easements, and real estate disclosure programs or initiatives to establish that areas are compatible with airport operations.

4. Grant Assurance 22, Economic Nondiscrimination

The owner of any airport developed with federal grant assistance is required to operate the airport for the use and benefit of the public. Grant assurance 22, *Economic Nondiscrimination*, deals with both the reasonableness of airport access and the prohibition of adopting unjustly discriminatory conditions as a potential for limiting access. Grant assurance 22 of the prescribed sponsor assurances implements the provisions of 49 U.S.C. § 47107(a)(1) through (6), and requires, in pertinent part:

[The airport sponsor] will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport. [Assurance 22(a).]

Each fixed-base operator (FBO) at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-base operators making the same or similar uses of such airport and utilizing the same or similar facilities. [Assurance 22(c).]

[The airport sponsor] will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees (including but not limited to maintenance, repair, and fueling) that it may choose to perform. [Assurance 22(f).]

In the event the sponsor itself exercises any of the rights and privileges referred to in the assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions. [Assurance 22(g).]

The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport. [Assurance 22 (h).]

The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public. [Assurance 22(i).]

Subsection (h) qualifies subsection (a), and subsection (i) represents an exception to subsection (a) to permit the sponsor to exercise control of the airport sufficient to

preclude unsafe and inefficient conditions that would be detrimental to the civil aviation needs of the public.

In all cases involving restrictions on airport use imposed by airport owners for safety and efficiency reasons, the FAA will make the final determination on the reasonableness of such restrictions when those restrictions deny or limit access to, or use of, the airport.

5. Grant Assurance 23, Exclusive Rights

Title 49 U.S.C. § 40103(e), provides, in relevant part, that “there shall be no exclusive right for the use of any landing area or air navigation facility upon which federal funds have been expended.”

Title 49 U.S.C. § 47107(a)(4) similarly provides, in pertinent part, that “there will be no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public.”

Grant assurance 23, *Exclusive Rights*, of the prescribed sponsor assurances implements both statutory provisions, and states in its entirety:

[The airport sponsor] will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-base operator shall not be construed as an exclusive right if both of the following apply:

- a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-base operator to provide such services, and
- b. If allowing more than one fixed-base operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-base operator and such airport.

[The airport sponsor] further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including but not limited to, charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

6. Grant Assurance 24, Fee and Rental Structure

Grant assurance 24, *Fee and Rental Structure*, states in pertinent part:

[The airport] will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection.

7. Grant Assurance 25, Airport Revenues

Grant Assurance 25, *Airport Revenues*, states:

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. Provided, however, that if covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.
- b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.
- c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

8. Grant Assurance 26, Reports and Inspections

Grant assurance 26, *Reports and Inspections*, states,

[The airport sponsor] will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;
- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of the grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and
- d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
 - (i) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
 - (ii) all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

9. Grant Assurance 29, Airport Layout Plan

Grant assurance 29, *Airport Layout Plan*, requires the airport owner or sponsor to keep its Airport Layout Plan (ALP), which is a planning tool for depicting current and future airport use, up to date. Grant assurance 29 prohibits the airport owner or sponsor from making or permitting any changes or alterations in the airport or any of its facilities that are not in conformity with its FAA-approved Airport Layout Plan. Grant assurance 29 states:

- a. [The airport owner or sponsor] will keep up to date at all times an Airport Layout Plan of the airport showing (1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed

additions thereto; (2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars, and roads), including all proposed extensions and reductions of existing airport facilities; and (3) the location of all existing and proposed non-aviation areas and of all existing improvements thereon. Such Airport Layout Plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the Airport Layout Plan. The sponsor will not make or permit any changes or alternations in the airport or any of its facilities that are not in conformity with the Airport Layout Plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility, or efficiency of the airport.

- b. If a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the Airport Layout Plan as approved by the Secretary, the owner or operator will, if requested by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities.

10. Grant Assurance 30, Civil Rights

Grant assurance 30, *Civil Rights*, states:

[The airport owner or sponsor] will comply with such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from funds received from this grant. This assurance obligates the sponsor for the period during which federal financial assistance is extended to the program, except where federal financial assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon in which case the assurance obligates the sponsor or any transferee for the longer of the following periods: (a) the period during which the property is used for a purpose for which federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits, or (b) the period during which the sponsor retains ownership or possession of the property.

11. Grant Assurance 31, Disposal of Land

Grant assurance 31, *Disposal of Land*, states:

a. For land purchased under a grant for airport noise compatibility purposes, [the airport owner or sponsor] will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will, at the discretion of the Secretary, (1) be paid to the Secretary for deposit in the Trust Fund, or (2) be reinvested in an approved noise compatibility project as prescribed by the Secretary.

b. (1) For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (a) upon application to the Secretary, be reinvested in another eligible airport improvement project or projects approved by the Secretary at that airport or within the national airport system, or (b) be paid to the Secretary for deposit in the Trust Fund if no eligible project exists.

(2) Land shall be considered to be needed for airport purposes under this assurance if (a) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (b) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.

c. Disposition of such land under (a) and (b) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

C. The FAA Airport Compliance Program

The FAA discharges its responsibilities for ensuring airport owners' compliance with their federal obligations through its Airport Compliance Program. The FAA's airport compliance efforts are based on the contractual obligations an airport owner accepts when receiving federal grant funds or the transfer of federal property for airport purposes. These obligations are incorporated in grant agreements and instruments of conveyance in order to protect the public's interest in civil aviation and to ensure compliance with federal laws.

The FAA Airport Compliance Program is designed to ensure the availability of a national system of safe and properly maintained public-use airports operated in a manner consistent with the airport owners' federal obligations and the public's investment in civil aviation.

The Airport Compliance Program does not control or direct the operation of airports. Rather, it monitors the administration of the valuable rights pledged by airport sponsors to the people of the United States in exchange for monetary grants and donations of federal property to ensure that the public interest is being served. FAA Order 5190.6A, *Airport Compliance Requirements*, sets forth policies and procedures for the FAA Airport Compliance Program. Order 5190.6A is not regulatory and is not controlling with regard to airport sponsor conduct. Rather, it establishes the policies and procedures to be followed by FAA personnel in carrying out the FAA's responsibilities for ensuring airport compliance. It provides basic guidance for FAA personnel in interpreting and administering the various continuing commitments made to the United States by airport owners as a condition of receiving a grant of federal funds or the conveyance of federal property for airport purposes. Order 5190.6A analyzes the various obligations set forth in the standard airport sponsor assurances, addresses the nature of those assurances, addresses the application of those assurances in the operation of public-use airports, and facilitates interpretation of the assurances by FAA personnel.

The FAA Compliance program is designed to achieve voluntary compliance with federal obligations accepted by owners and/or operators of public-use airports developed with FAA-administered assistance. Therefore, in addressing allegations of noncompliance, the FAA will make a determination as to whether an airport sponsor is *currently* in compliance with the applicable federal obligations. Consequently, the FAA will consider the successful action by the airport to cure any alleged or potential past violation of applicable federal obligation to be grounds for dismissal of such allegations. [See e.g. Wilson Air Center v. Memphis and Shelby County Airport Authority, FAA Docket No. 16-99-10, (8/30/01).]

D. Enforcement of Airport Sponsor Assurances

FAA Order 5190.6A covers all aspects of the airport compliance program except enforcement procedures.

Enforcement procedures regarding airport compliance matters may be found at *FAA Rules of Practice for Federally Assisted Airport Enforcement Proceedings* (14 CFR Part 16). These enforcement procedures were published in the Federal Register (61 FR 53998, October 16, 1996) and became effective on December 16, 1996.

VI. ANALYSIS, DISCUSSION, and FINDINGS

The Complainants allege the Respondent violated (A) grant assurance 23, *Exclusive Rights*, by granting an exclusive right to one entity to provide certain aeronautical services on the airport, and (B) grant assurance 22, *Economic Nondiscrimination*, by denying Complainants the opportunity to provide aeronautical services to the public. Complainants also allege respondent violated grant assurance 13, *Accounting System, Audit, and Record Keeping Requirements*, grant assurance 25, *Airport Revenues*, grant assurance 26, *Reports and Inspections*, grant assurance 29, *Airport Layout Plan*, grant assurance 30, *Civil Rights*, and grant assurance 31, *Disposal of Land*. The FAA has also determined that grant assurance 5, *Preserving Rights and Powers*, grant assurance 24, *Fee and Rental Structure*, and grant assurance 21, *Compatible Land Use*, are applicable to this case.

In addition, Complainants request that the FAA conduct an audit of the airport's finances and management and asks that the Comptroller General of the United States conduct an audit of the airport's accounting system.

The Complainants' allegations are addressed in the 11 issues discussed below. The issues are numbered and presented in the order in which the Complainants numbered and addressed them in the Complaint.⁶ The Complainants' audit request is addressed following the 11-numbered issues.

⁶ The first allegation presented by Complainants includes multiple issues in addition to alleging Respondent violated grant assurance 23, *Exclusive Rights*. Only the exclusive rights allegation in Complainants' section "A" related to the fixed-base operator (FBO) lease agreement between the Respondent and Afton Aircraft Services, Inc. is discussed in *Issue 1* in this determination. The remaining allegations from Complainants' "Count 1" are discussed in the Complainants' other ten issues under the categories where they more appropriately belong, or are included under *Issue 11*, which was added by FAA to address allegations not falling into the other categories. For example, Complainants include a section "C" in the first issue alleging an exclusive rights violation as a result of instituting the airport's revised minimum standards. This allegation is covered in *Issue 6* of this determination. Items raised in section "B" of Complainants' first issue are likewise covered in the remaining issues: Item 1 is covered in *Issue 8*; item 2 is covered in *Issue 1*; item 3 is covered in *Issue 6*; item 4 is covered in *Issue 11*; item 5 is covered in *Issue 2*; item 6 is covered in *Issue 11*; item 7 is covered in *Issue 2* and *Issue 11*; item 8 is covered in *Issue 11*. [See FAA DD Exhibit 1, Item 3, pages 5-6.]

We have conducted our review and analysis to determine whether the Respondent is currently in violation of its federal obligations with respect to its policies and practices.

A. Issue 1:

Whether Respondent is in violation of grant assurance 23, *Exclusive Rights*, by granting an exclusive right to one tenant to provide all fixed-base operator (FBO) services, including aviation supplies and equipment, sale of fuel and oil, and rental cars and trucks. [FAA DD Exhibit 1, Item 3, page 4.]

The record shows that the Afton-Lincoln County Municipal Airport Joint Powers Board entered into a real property lease/FBO agreement with Afton Aircraft Services, Inc., signed by Bradley D. Morehouse, President of Afton Aircraft Services, Inc., and Richard G. Russell, Vice President of Afton Aircraft Services, Inc., on March 25, 2004, and effective as of March 22, 2004. [FAA DD Exhibit 1, Item 3, exhibit pages 60-68.]

This agreement included terms granting various exclusive rights to Afton Aircraft Services, Inc., including the exclusive right (a) to sell all fuels and aviation fluids and supplies at the Airport, (b) to provide all automobile and truck rentals, and (c) to provide FBO services at the Airport. [FAA DD Exhibit 1, Item 3, exhibit pages 61 and 64]

Grant assurance 23, *Exclusive Rights*, prohibits an airport owner or sponsor from granting an exclusive right for the use of the airport by any person providing or intending to provide aeronautical services to the public. The lease agreement, as presented, includes exclusive rights provisions that are in conflict with grant assurance 23.

On May 18, 2005, representatives from the FAA Denver Airports District Office attended a meeting of the Afton-Lincoln County Municipal Airport Joint Powers Board (Airport Board) and advised the Airport Board members that the exclusive rights granted to Mr. Morehouse in the Afton Aircraft Services, Inc. lease were a direct violation of grant assurance 23. The FAA followed this with a letter dated September 22, 2005, asking how the Respondent intended to correct the violation. [FAA DD Exhibit 1, Item 3, exhibit page 220.] On September 29, 2005, the Airport Board advised the FAA that it had been working with the lessee's attorney to develop an acceptable modification to the lease agreement. In addition, the Airport Board stated it had adopted a set of minimum standards and would invite all parties to resubmit their plans for commercial development on the Airport. [FAA DD Exhibit 1, Item 3, exhibit page 277.]

In its Answer to this Complaint, the Respondent reports again that it has been working with the FAA and with the lessee to resolve the improper exclusive use language in the lease. [FAA DD Exhibit 1, Item 5, page 2.] To that end, Respondent passed a resolution stating that it "could not and cannot enter into any exclusive lease, past or present, with any person or entity unless approved in writing, by the Federal Aviation Administration." The resolution further states, "no person or entity may rely on any document or lease that states that the Afton-Lincoln County [Municipal] Airport Joint Powers Board has provided an exclusive lease in any matter, unless approved in writing by the Federal Aviation Administration." The administrative record includes a copy of Resolution No.

01-2006, passed, approved, and adopted by the Afton-Lincoln County Municipal Airport Joint Powers Board on March 30, 2006. [FAA DD Exhibit 1, Item 5, exhibit A.]

At the time the Respondent entered into the lease agreement with Afton Aircraft Services, Inc. granting various exclusive rights to the lessee, the Respondent was in violation of grant assurance 23, *Exclusive Rights*. The Respondent was notified of this violation by the FAA and corrected this issue of noncompliance through its Resolution two years later. In addressing allegations of noncompliance, the FAA looks for *current* compliance. The successful action by the airport owner or sponsor to cure a past violation is grounds for dismissal of that allegation. [See section V.C, *The FAA Airport Compliance Program*, above.]

Therefore, the Director finds that the Afton-Lincoln County Municipal Airport Joint Powers Board is not currently in violation of grant assurance 23, *Exclusive Rights*, as a result of having entered into a past agreement offering various exclusive rights that have since been rescinded.⁷

B. *Issue 2:*

Whether Respondent is in violation of grant assurance 25, *Airport Revenues*, or grant assurance 24, *Fee and Rental Structure*, by transferring or leasing property and assets at less than fair market value. [FAA DD Exhibit 1, Item 3, pages 7-8.]

Complainants argue the Respondent violated grant assurance 25, *Airport Revenues*, and diverted airport revenue by (1) transferring approximately 5½ acres of airport property in exchange for less valuable access to a water line, (2) selling the airport's fuel depot at less than fair market value, (3) failing to charge or collect ground rent, (4) selling grant-funded construction material at below market rate, and (5) giving valuable trees and shrubs away without consideration.⁸ [FAA DD Exhibit 1, Item 3, pages 7-8.] While making land available or giving land away for less than fair market value could be effective revenue diversion in some cases, we have determined that grant assurance 24, *Fee and Rental Structure*, is the more appropriate standard to assess the allegations made by the Complainants in *Issue 2*.

Complainants provide over 300 pages in exhibits, but they do not cite specific documents to support these allegations. They argue in their Reply to Respondent's Answer that documents requested in January 2006 were not produced. [FAA DD Exhibit 1, Item 9, page 8.]

The Respondent denies these allegations. [FAA DD Exhibit 1, Item 5, page 12.]

⁷ The administrative record does not contain a fully executed amendment to the lease. However, the FAA is satisfied the Respondent has taken appropriate actions to extinguish, and is no longer honoring, the express exclusive right initially granted under the lease.

⁸ Under *Issue 2*, Complainants allege airport property items were disposed of at less than fair market value. Under *Issue 10*, Complainants allege the same items were disposed of without FAA permission. These are discussed separately.

(1) Transferring Land for Access to Water Line

Complainants argue the Respondent engaged in unauthorized diversion of airport revenue by transferring approximately 5½ acres of airport property in exchange for less valuable access to a water line. [FAA DD Exhibit 1, Item 3, page 7.]

The Complainants do not state the basis for this allegation.

Minutes from the January 27, 2005, meeting of the Afton-Lincoln County Municipal Airport Joint Powers Board (Airport Board) describe the following land swap: “Mr. Morehouse and Mr. McCutcheon will receive the old taxiway from the airport. In return, Mr. Morehouse and Mr. McCutcheon will pay for an 8-inch water line to run from the airport’s property line South to North and then West to Lincoln Street access, along with boring under Highway 89.” [FAA DD Exhibit 1, Item 3, exhibit page 118.] The motion was passed. The minutes from this meeting do not reflect any specific discussion regarding the value of the land or the value of the water line.

Later, in the April 27, 2005, Airport Board minutes, the value of the trade is discussed.⁹ The estimated value of the old runway property was stated to be \$3,000 to \$5,000 per acre.¹⁰ Based on 5 ½ acres, the total value if sold would be between \$16,500 and \$27,500. The cost of installing 1,600 feet of water line was estimated at \$40 per foot, which would cost the airport \$64,000. In addition, the airport would save the cost of removal and disposal of the runway, estimated at \$40,000, if they traded it. [FAA DD Exhibit 1, Item 3, exhibit page 136.]

The record, however, does not include an independent appraisal to determine the fair market value of this airport property at its highest and best use. Airport real property cannot be released for sale without FAA approval¹¹; the FAA will not authorize the sale or disposal of airport land unless the fair market value has been supported by at least one independent appraisal report determined to be acceptable by the FAA. [See FAA Order 5190.6A, *Airport Compliance Requirements*, October 2, 1989, sec. 7-8(d).]

The Director notes that several federal obligations and grant assurance violations are involved in this land transfer, including the potential violation of revenue diversion. In September 2005, the FAA Denver Airports District Office informed the airport manager that the Afton-Lincoln County Municipal Airport Joint Powers Board did not follow the appropriate steps required to obtain a release from federal obligations prior to giving up this land, which is shown on the airport’s “Exhibit A” property map. [FAA DD Exhibit 1, Item 3, exhibit pages 220-221.] Again on October 12, 2005, the FAA informed the Airport Board that proper procedures were not followed and the FAA requires an

⁹ See FAA DD Exhibit 1, Item 3, exhibit page 136.

¹⁰ The record does not reflect how the estimate was derived or who prepared the estimate.

¹¹ See Federal Grant Assurance 5, *Preserving Rights and Powers*, which states: “[The airport sponsor] will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A ... for the duration of the terms, conditions, and assurances in the grant agreement without approval by the Secretary.”

appraisal and a review appraisal for the property. [FAA DD Exhibit Item 3, exhibit page 278.] We confirmed with the FAA Denver Airports District Office that the Respondent is working with the FAA Denver Airports District Office to resolve these matters and to ensure the equivalent of the fair market value for this land is deposited into the airport account. Thus, for the purpose of this Part 16, the issue is moot. Therefore, it is unnecessary for the Director to make a finding regarding the Respondent's compliance with its federal obligations with respect to transferring or releasing this airport property. This issue is addressed in *Issue 10*. [See FAA DD Exhibit 1, Item 10.]

(2) Fuel Depot

Complainants argue the Respondent engaged in unauthorized diversion of airport revenue by selling the airport's fuel depot at less than fair market value. [FAA DD Exhibit 1, Item 3, page 7.]

The Complainants do not state the basis for this allegation, and the Respondent does not address this specific allegation in its Answer.

Minutes from the April 21, 2004, Airport Board meeting show that the Airport Board discussed the pros and cons of selling or leasing the airport's fuel system to the FBO operator (Afton Aircraft Services, Inc./Bradley D. Morehouse). The Airport Board decided to sell the system at a "determined fair price." [FAA DD Exhibit 1, Item 3, exhibit page 70.] The minutes did not indicate how the fair price would be determined.

Minutes from the May 19, 2004, Airport Board meeting show that an Airport Board member moved that a fair price to ask for the fuel system was \$85,000 plus the cost of any fuel in the tanks at the purchase date. The move was seconded and passed. [FAA DD Exhibit 1, Item 3, exhibit page 75.] The minutes do not indicate how the amount was determined. There is no mention of obtaining independent appraisals in the minutes.

Minutes from the July 21, 2004, Airport Board meeting show that after some "interesting ideas concerning the fuel system" were presented by Bradley D. Morehouse, the Airport Board agreed to sell the fuel system for \$60,000 plus the cost of fuel in storage. [FAA DD Exhibit 1, Item 3, exhibit page 86.] The minutes do not include the specific justification for the drop in price from \$85,000 to \$60,000.

Neither the Complainant nor Respondent provides appraisals or other documents to support the contention that the final price of \$60,000 was – or was not – fair and reasonable under the circumstances. The obligation to obtain an independent fair market value appraisal for the highest and best use applies to the sale and disposal real property, such as the land transfer discussed above, and not to chattel, as in this case.

Grant assurance 24, *Fee and Rental Structure*, obligates the airport sponsor to maintain a fee and rental structure that will make the airport as self-sustaining as possible under the particular circumstances of that airport. Airport sponsors must receive fair market value from nonaeronautical users for real and personal property. However, it is FAA policy to

permit airport sponsors to set fees for aeronautical facilities and services at below fair market price as circumstances warrant. The fuel depot is an aeronautical facility. The administrative record in this Complaint does not contain persuasive evidence to show the fee obtained from the fuel depot was not reasonable under the circumstances.

The Director finds the Respondent is not currently in violation of grant assurance 24, *Fee and Rental Structure*, as a result of selling the airport's fuel depot.

(3) Ground Rent

Complainants argue Respondent engaged in unauthorized diversion of airport revenue by failing to charge and collect ground rent from Mr. Morehouse for the area occupied by his FBO building, as well as an undetermined amount of ramp space Mr. Morehouse controls and uses for personal activities. [FAA DD Exhibit 1, Item 3, page 7.] Respondent does not address this specific allegation in its Answer.

While a failure to charge for use of the airport or transfer airport property for less than fair market value could, in some cases, be revenue diversion, it is more appropriate in this case to analyze the alleged actions as a potential violation of the obligation to maintain a self-sustaining rate structure.

Grant assurance 24, *Fee and Rental Structure*, requires the airport sponsor to maintain a fee and rental structure for the facilities and services at the airport that will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. It is FAA policy that airport sponsors may set fees at below fair market value price for aeronautical activities so long as the amount is not de minimis. In complying with this grant assurance, the FAA expects the airport sponsor to charge fees sufficient to cover airport costs and to collect the fees it has assessed.

The administrative record includes a copy of the March 22, 2004, lease between the Afton-Lincoln County Airport and Afton Aircraft Services, Inc., represented by Bradley D. Morehouse, President, and Richard G. Russell, Vice President. [FAA DD Exhibit 1, Item 3, exhibit pages 60-68.] The leased property is identified as FBO Space, described as a parcel of real property including improvements and fixtures thereon. [FAA DD Exhibit 1, Item 3, exhibit page 60.] The lease amount¹² is set in the agreement at \$320 per year for the first ten-year period payable the first day of each year. Payments more than 30 days late accrue interest at the rate of ten percent per year. [FAA DD Exhibit 1, Item 3, exhibit page 62.] As Table 1 shows, the Respondent should have collected \$320 on or about March 22, 2004, March 22, 2005, and March 22, 2006.¹³

¹² The administrative record shows lease payments for all tenants are recorded in airport account 4500, *Lease Income*.

¹³ Complainants submitted this Part 16 Complaint May 17, 2006, five days before the third lease payment would have been due on the lease in question. [FAA DD Exhibit 1, Item 3, page 16.]

Table 1: Fees Set for Fixed-base Operator (FBO) Lease

Date Due	Expected Lease Payment
March 22, 2004	\$320
March 22, 2005	\$320
March 22, 2006	\$320

Complainants allege that the rent was not paid. [FAA DD Exhibit 1, Item 3, page 7.] Respondent does not address Complainants allegations that the airport did not receive timely rent payments for the FBO lease from Afton Aircraft Services, Inc.

The administrative record includes the record of deposits for airport account 4500, lease income, from March 15, 2004, through June 2, 2005. No lease payments at all are recorded for Afton Aircraft Services, Inc. during this time.¹⁴ In addition, there is no record of payment for the dates or amounts identified in the Afton Aircraft Services, Inc., lease from either Bradley D. Morehouse or Richard G. Russell.¹⁵

As Respondent does not refute the allegation, and based on the record, the Director finds that the Respondent did not collect fees it established for the Afton Aircraft Services, Inc. FBO lease in violation of grant assurance 24, *Fee and Rental Structure*.

(4) Construction Material

Complainants argue Respondent engaged in unauthorized diversion of airport revenue by selling grant-funded construction material at below market rates without approval. [FAA DD Exhibit 1, Item 3, page 8.]

The Complainants do not state the basis for this allegation. They do not identify the price received. They do not provide an amount or documents to support a market rate. They do not identify whether the personal property was sold for aeronautical or

¹⁴ We did not review the administrative record for other types of payments Afton Aircraft Services, Inc. may have made to the airport. (We did note a payment of \$82,021 from Afton *Aviation Services* on August 4, 2004, for the purchase of fuel. We understand that Afton *Aviation Services* is actually Afton *Aircraft Services*. Nonetheless, it is not a lease payment.) [See FAA DD Exhibit 1, Item 3, exhibit page 95.]

¹⁵ Bradley D. Morehouse made a lease payment of \$374.40 on April 1, 2004. [FAA DD Exhibit 1, Item 3, exhibit page 71.] We have determined that was not a lease payment on behalf of Afton Aircraft Services, Inc. According to the terms of the lease, late payments incurred a fee of 10% per year added to the payment. The lease payment due on March 22, 2004, was \$320. Had payment on that lease been made on April 1, 2004, the penalty would have brought to lease payment to \$320.88 (10% per year for 10 days), not \$374.40.

Richard G. Russell made lease payments of \$100 on October 12, 2004, and \$693 on March 15, 2005. [FAA DD Exhibit 1, Item 3, exhibit pages 111 and 128.] Bradley D. Morehouse made a lease payment of \$100 on December 30, 2004. [FAA DD Exhibit 1, Item 3, exhibit page 120.] The amounts and dates suggest these payments were not on behalf of the Afton Aircraft Services, Inc. lease.

nonaeronautical purposes. They do not provide evidence to show the construction material should not have been sold at all.

Respondent does not address this specific allegation in its Answer.

As noted in the sections above, grant assurance 24, *Fee and Rental Structure*, might be applicable to this allegation if the Complainants had shown that (a) the fee obtained was indeed below market rate, (b) the property was sold for a nonaeronautical purpose, and (c) the rate was not justified by the specific circumstances at Afton Municipal Airport. Complainants neither stated this to be the case, nor did they provide documentation to support such a possibility.

The FAA makes conclusions of fact and law regarding the Complainant's allegations. Underlying these conclusions is the basic requirement of Part 16 that the Complainant show with evidence that the airport owner or sponsor is violating its commitments to the federal government to serve the interests of the public by failing to adhere to its grant assurances. [See Part 16, Sections 16.23 and 16.29.] The burden of proof rests with the Complainants. Complainants have not met this burden with respect to this allegation.

(5) Trees and Shrubs

Complainants argue Respondent engaged in unauthorized diversion of airport revenue by giving valuable trees and shrubs away without consideration. [FAA DD Exhibit 1, Item 3, page 8.]

The Complainants do not state the basis for this allegation, and Respondent does not address this specific allegation in its Answer.

Grant assurance 24, *Fee and Rental Structure*, might be applicable. However, Complainants have failed to provide sufficient information or documentation on which to evaluate this allegation. In a Part 16 Complaint, the burden of proof rests with the complainant.

Conclusion on Issue 2:

Complainants do not state a basis for any of the five allegations in *Issue 2*. Rather, Complainants state simply, "Complainants are informed and believe that Respondents have engaged in unauthorized diversion of airport income ..." [FAA DD Exhibit 1, Item 3, page 7.] Complainants rely on their argument that Respondent "failed to produce any evidence to controvert" the five counts of alleged revenue diversion. [FAA DD Exhibit 1, Item 9, page 8.] However, the burden of proof rests with the Complainants (who are bringing the action), not the Respondent. It is the Complainants' responsibility to provide a concise but complete statement of the facts relied upon to substantiate each allegation. [14 CFR § 16.23(b)(3).]

Complainants provide numerous documents in the administrative record without identifying which of the supporting records, if any, relate to a specific allegation. While

we are not obligated to search through records that are not directly cited in the Complainants' statement of facts, we have attempted to do so in this case. We have also contacted the FAA Denver Airports District Office for clarification on some of these issues. Based on the record and clarifying information, the Director finds the Respondent is not currently in violation of grant assurance 25, *Airport Revenues*, or grant assurance 24, *Fee and Rental Structure*, by transferring or leasing property and assets at less than fair market value.¹⁶

The Director does find, however, based on the record, that the Respondent is in violation of grant assurance 24, *Fee and Rental Structure*, by failing to collect lease payments. In addition, the Respondent is advised that failing to collect lease payments from one airport tenant while collecting such lease payments from other similarly situated tenants is also a violation of grant assurance 22, *Economic Nondiscrimination*. In this case, the Complainants have neither made such an allegation nor provided evidence to support that such is the case.¹⁷

C. *Issue 3:*

Whether Respondent is in violation of grant assurance 26, *Reports and Inspections*, by failing to provide requested documents to Complainants. [FAA DD Exhibit 1, Item 3, pages 8-9.]

Complainants allege they have requested and been denied access to numerous airport documents. [FAA DD Exhibit 1, Item 3, pages 8-9.] The administrative record reflects scheduling difficulties that did impede document review. [FAA DD Exhibit 1, Item 9, exhibit pages 321-322.] Nonetheless, Complainants have submitted over 300 pages of exhibits, some of which appear to have come from city or airport files.

Respondent counters that it "opened their entire files for [Complainants'] review." [FAA DD Exhibit 1, Item 5, page 4.]

The request to review the documents listed in the Complaint was made pursuant to Wyoming Statute 16-4-201 to 205. [FAA DD Exhibit 1, Item 3, exhibit page 286.]

Respondent argues that the only documents in its possession that it did not provide were protected under Wyoming Law primarily under attorney client privilege. [FAA DD Exhibit 1, Item 5, page 4; and Item 5, exhibit B, March 29, 2006, letter from Bowers & Associates Law Offices.]

FAA is not in a position to interpret Wyoming Law or privilege.

¹⁶ Respondent is in noncompliance with its grant assurances by releasing airport real property without FAA approval and without obtaining independent appraisals to determine the fair market value of the land. These items – and their resolution – are discussed in *Issue 10*.

¹⁷ While the administrative record includes a limited history of lease payments in airport account 4500, the record does not include sufficient information to track any given lease payment to an agreement with the Airport. Therefore, the FAA cannot determine from the administrative record whether all, some, or none of the airport tenants are remitting the correct lease payments.

Complainants' request for documents also included a request for financial report FAA Forms 5100-126 and 127,¹⁸ pursuant to 49 U.S.C. § 47107(a)(19) and grant assurance 26.

Grant assurance 26, *Reports and Inspections*, refers to financial and operations reports that the Secretary of Transportation may request. Financial reports and budgets requested by the Secretary must also be available to the public at reasonable times. FAA Forms 5100-126 and 127 are forms required by federally obligated commercial service airports that enplane 2,500 or more passengers in a calendar year. The Secretary does not require airports with fewer than 2,500 enplanements in one year to file the financial forms for the following year. Afton Municipal Airport is a small general aviation airport. It had just six (6) enplanements in 2003 and seven (7) enplanements in 2004. It does not meet the criteria for being required to submit the financial forms referred to in grant assurance 26 and in 49 U.S.C. § 47107(a)(19). [See Advisory Circular (AC) 5100-19C, dated April 19, 2004.]

The Director finds the Respondent is not currently in violation of grant assurance 26, *Reports and Inspections*, by failing to provide documents it is not required by the Secretary to prepare.

D. Issue 4:

Whether Respondent is in violation of grant assurance 13, *Accounting System, Audit and Record Keeping Requirements*, by failing to prepare or maintain reliable accounting systems. [FAA DD Exhibit 1, Item 3, page 10.]

Complainants state, "Complainants are informed and believe that Respondents have failed to prepare and maintain reliable accounting systems as required by [grant] assurance 13." [FAA DD Exhibit 1, Item 3, page 10.]

The Complainants do not state the basis for this allegation.

Respondent argues that its accounting records are audited by a professional auditing company and the information is available for public review and forwarded to the FAA. [FAA DD Exhibit 5, page 5.] We contacted the FAA Denver Airports District Office. They advised us that they had telephone conversations with the company performing the audit on or around June 1, 2006, but as of December 28, 2006, have not received the financial audit for fiscal year 2005. [FAA DD Exhibit 1, Item 10.]

Grant assurance 13 requires obligated airports to maintain an adequate accounting system to record and disclose all amounts associated with grant-funded projects. This Complaint does not address grant-funded projects other than an allegation that grant-funded construction material was sold at less than fair market value.¹⁹ The FAA Denver Airports District Office advised us that the Respondent has submitted the necessary

¹⁸ Complainants identify FAA forms 5100-125 and 126. The referenced forms have been renumbered 5100-126, *Financial Government Payment Report*, and 5100-127, *Operating and Financial Summary*. In this determination, we have referred to 126 and 127 for accuracy.

¹⁹ See *Issue 2*, Item (4), *Construction Material*, above.

requests for reimbursement as well as project invoices for its Airport Improvement Program grant with no apparent irregularities. [FAA DD Exhibit 1, Item 10.]

It is the Complainants' responsibility to provide a concise but complete statement of the facts relied upon to substantiate each allegation. [14 CFR § 16.23(b)(3).] Complainants have not met this burden.

Based on the record herein, the Director does not find that the evidence shows the Respondent failed to prepare or maintain a reliable accounting system to track grant-funded projects. Therefore, the Director finds the Respondent is not in currently violation of grant assurance 13, *Accounting System, Audit, and Record Keeping Requirements*, by failing to prepare or maintain reliable accounting systems.

E. Issue 5:

Whether Respondent is in violation of grant assurance 30, *Civil Rights*, by excluding individuals who are not members of The Church of Jesus Christ of Latter-day Saints' local Mormon Church Wards (Mormon Church) from airport business opportunities. [FAA DD Exhibit 1, Item 3, pages 10-12.]

Complainants state that all members of the Airport Board, with the exception of one former member, are closely affiliated with The Church of Jesus Christ of Latter-day Saints' local Mormon Church Wards (Mormon Church). Complainants state their primary competitor, FBO operator Mr. Morehouse, is also a member of this church. Complainants state it is widely known that Complainants are not members of this church. [FAA DD Exhibit 1, Item 3, page 11.]

In support of this allegation, Complainants makes several statements, which are listed below. After each statement, we identify where the point raised has been addressed in other *Issues* in this document. If it is not addressed elsewhere, we have addressed it under this *Issue*.

- The Respondent awarded an exclusive right to parishioner Bradley D. Morehouse to operate an FBO on the airport. [FAA DD Exhibit 1, Item 3, page 11, #1.]

The exclusive right violation referred to here is addressed in *Issue 1* in this determination.

- The Respondent instituted minimum standards designed to protect Mr. Morehouse and exclude others. [FAA DD Exhibit 1, Item 3, page 11, #2.]

Matters related to the Respondent's revised minimum standards are addressed in *Issue 6*.

- Respondent involuntarily removed the one Airport Board member, Gene Shinkle, who was not affiliated with the Mormon Church Ward, after Mr. Shinkle expressed support for Complainants. [FAA DD Exhibit 1, Item 3, page 11, #3.]

Respondent counters that Mr. Shinkle was removed from the Airport Board because he relocated his primary residence out of the State of Wyoming to the State of Idaho. [FAA DD Exhibit 1, Item 5, page 6.] Complainants do not dispute this.

Complainants do not point out where in the administrative record it shows Mr. Shinkle's support of their proposals was followed by his dismissal from the Airport Board. On the contrary, the administrative record shows that Airport Board Chairman Chad Burton may have been supporting Complainants' desire to operate a business on the airport when he reminded the Airport Board on May 18, 2005, that Complainant Cliff Davenport would like an answer regarding his proposal to operate an FBO. [FAA DD Exhibit 1, Item 3, exhibit page 144.] The discussion that followed, which included FAA representatives from the Denver Airports District Office, supported placing a moratorium on new construction until new, stronger minimum standards could be developed.

- Respondent failed to observe provisions in the Airport Board's Charter and Bylaws relating to specific term period. [FAA DD Exhibit 1, Item 3, page 11, #4.]

This item is discussed in *Issue 11*.

- Respondent permitted the Airport Board chairman to remain in his post beyond the proscribed end to his term. [FAA DD Exhibit 1, Item 3, page 11, #5.]

This item is discussed in *Issue 11*.

- Respondent manipulated Airport Board membership by abandoning the schedule of terms of appointed members. [FAA DD Exhibit 1, Item 3, page 11, #6.]

This item is discussed in *Issue 11*.

- Respondent granted, and then perpetuated, the exclusive right to fellow parishioner Bradley D. Morehouse to provide the only fixed-base operator (FBO) service at the airport. Complainants argue Mr. Morehouse is less qualified than they are to provide this service. Complainants also state Mr. Morehouse has not provided all of the services specified in his lease. [FAA DD Exhibit 1, Item 3, page 11, #7.]

The granting of the exclusive right to Mr. Morehouse in his initial lease is addressed in *Issue 1*. Perpetuating the exclusive right, whether intentionally or not, through the application of the revised minimum standards is addressed in *Issue 6*. The Complainants' business proposals and Respondent's failure to approve their individual or joint proposals are covered in *Issue 8*.

- Respondent observes a de facto policy that a controlling majority of Airport Board members must be officers, members, and regular attendees of the local Mormon Church Wards. [FAA DD Exhibit 1, page 11, #8.]

Complainants provide no supporting documents for this statement. If such a policy exists, it is not apparent from reviewing the administrative record in this matter. The March 23, 2005, Airport Board meeting minutes describe the recommended size for the Airport Board, which would be increased to seven (7) members: three (3) appointed by the City, three (3) appointed by the County, and one (1) appointed by the Airport Board itself. [FAA DD Exhibit 1, Item 3, exhibit page 127.] No other criteria are stated.

- Respondent cancels regular public meetings of the Airport Board in favor of conducting airport business at informal, private meetings among Airport Board members at unspecified locations. Complainants state these last-minute cancellations occurred in December 2005 and February 2006, coinciding with Complainants' attempts to resolve issues. [FAA DD Exhibit 1, Item 3, pages 11-12, #9]

The administrative record shows that Complainant Cliff Davenport expressed concern in January 2005, that notification was not always received when Airport Board meeting dates and times changed. [FAA DD Exhibit 1, Item 3, exhibit page 118.] At the following Airport Board meeting, the airport manager advised the Airport Board based on information obtained from the airport attorney that meeting dates and times need to be made available to the newspaper, but the Respondent need not pay for a special advertisement. For changes in scheduled meetings, a flyer would need to be distributed. [FAA DD Exhibit 1, Item 3, exhibit page 122.]

- Respondent calls executive sessions without appropriate justification and without summary disclosure of the items considered or decided in these meetings. Complainants allege the purpose of these executive sessions is to exclude individuals who are not members of the Mormon Church Ward from the meetings. [FAA DD Exhibit 1, Item 3, page 12.]

The matter of calling executive session meetings is addressed in *Issue 11*. If the purpose of calling these executive session meetings is to exclude individuals who are not members of the Mormon Church Ward, that is not clear from the administrative record. The administrative record shows that the Airport Board called an executive session on April 27, 2005. Complainant M. Daniel Carey was present, and he questioned the need to go into executive session at that time. The Airport Board explained that it is standard procedure to go into executive session when the Airport Board needs to talk about employees, legal issues, or land issues. [FAA DD Exhibit 1, Item 3, exhibit page 135.] On May 18, 2005, the Airport Board meeting minutes reflect that the Airport Board again went into executive session. It is clearly stated in the meeting minutes that the purpose was to discuss legal and personnel issues. [FAA DD Exhibit 1, Item 3, exhibit page 144.]

Conclusion on Issue 5

Complainants argue that Respondent excludes individuals who are not members of The Church of Jesus Christ of Latter-day Saints' local Mormon Church Wards (Mormon Church) from airport business opportunities. [FAA DD Exhibit 1, Item 3, pages 10-12.]

Complainants point out that their primary competitor, Mr. Morehouse, and members of the Airport Board are all parishioners of the same church.

That may be, but there is no indication in the administrative record that being a member of a particular church is a requirement for Airport Board membership. Three (3) members are selected by the City, three (3) by the County, and one (1) is appointed by the Airport Board itself. [FAA DD Exhibit 1, Item 3, exhibit page 127.]

The administrative record shows that Mr. Morehouse, whether a member of the Mormon Church Ward or not, has received some preferential treatment. (This is addressed in *Issue 6*.) If the underlying reason for this preferential treatment is Mr. Morehouse's affiliation with a particular church group, then that is not evidenced in the administrative record.

Complainants argue Respondent is excluding individuals (not just Complainants) from entering into business opportunities on the airport based on religion. Yet Complainants do not state, nor do they provide evidence to show, that all airport business enterprises currently on the airport are owned by members of the Mormon Church Ward. In addition, Complainants do not state, nor do they provide evidence to show, that all proposals from individuals who are not members of the Mormon Church Ward are denied access to the airport to establish a business.

What the administrative record shows is that Complainants have submitted proposals to conduct business on the airport, and those proposals have not been approved. Complainants are not members of the Mormon Church Ward. The Airport Board members are affiliated with the Mormon Church Ward. Those are two facts, but they are not necessarily related. The Respondent argues, and the FAA agrees, that Complainants' proposals to date do not comply with the current minimum standards. (This matter is discussed fully in *Issue 8*.) Nothing in the administrative record supports Complainants' contention that decisions relating to their proposals were based on religious affiliation.

Based on the record herein, the Director finds the Respondent is not currently in violation of grant assurance 30, *Civil Rights*, by excluding individuals who are not members of The Church of Jesus Christ of Latter-day Saints' local Mormon Church Wards (Mormon Church) from airport business opportunities. [FAA DD Exhibit 1, Item 3, pages 10-12.]

F. Issue 6: Minimum Standards:

Whether Respondent is in violation of grant assurance 22, *Economic Nondiscrimination*, and grant assurance 23, *Exclusive Rights*, by enforcing airport minimum standards inconsistently. [FAA DD Exhibit 1, Item 3, page 12.]

The FAA encourages airport management, as a matter of prudence, to establish minimum standards to be met by all who would engage in a commercial aeronautical activity at the airport. It is the prerogative of the airport owner or sponsor to impose conditions on users of the airport to ensure its safe and efficient operation. Such conditions must be

fair, equal, and not unjust. Discriminatory. They must be relevant to proposed activity, reasonably attainable, and uniformly applied.

The FAA ordinarily makes an official determination regarding the relevance and/or reasonableness of the minimum standards only when the effect of a standard denies access to a public-use airport. If such a determination is requested, it is limited to a judgment as to whether failure to meet the qualifications of the standard is a reasonable basis for such denial or whether the standard results in an attempt to create an exclusive right.

The airport owner or sponsor may quite properly increase the minimum standards from time to time in order to ensure a higher quality of service to the public. Manipulating the standards solely to protect the interest of an existing tenant, however, is unacceptable.

FAA Advisory Circular (AC) 150/5190-7, *Minimum Standards for Commercial Aeronautical Activities*, August 28, 2006, provides guidance on developing effective airport minimum standards.

Complainants allege Respondent instituted inappropriate minimum standards and began enforcing them against everyone except Mr. Morehouse. [FAA DD Exhibit 1, Item 3, page 12.] Respondent argues that the revised minimum standards were adopted to protect the welfare, health, and safety of the airport and the community. Respondent also states the minimum standards were adopted after input from the FAA and were modified after similar airports in Wyoming. [FAA DD Exhibit 1, Item 5, page 7.] Respondent does not address in its Answer the allegation that the revised minimum standards are applied inconsistently. Complainants provided documents in its Reply detailing the areas where it alleges Afton Aircraft Services, Inc. (represented by Mr. Morehouse and Mr. Russell) does not meet the revised minimum standards. [FAA DD Exhibit 1, Item 9, exhibit pages 310-316.] Respondent did not provide a Rebuttal to Complainants' Reply.

(1) Adoption of Minimum Standards

Complainants argue the minimum standards adopted are not relevant to the needs and requirements of airport users at Afton Municipal Airport. They state the "sham" minimum standards were obtained from a dissimilar airport with no adaptation to Afton Municipal Airport.²⁰ [FAA DD Exhibit 1, Item 3, page 12.] Complainant M. Daniel Carey identified problems he had with the proposed minimum standards in an August 10, 2005, memorandum to the Joint Powers Board of Directors. [FAA DD Exhibit 1, Item 3, exhibit pages 199-201.]

²⁰ While Complainants argue the minimum standards were "lifted wholesale from another airport," they do not identify the airport in the Complaint. [FAA DD Exhibit 1, Item 9, page 10.] However, the administrative record includes an August 10, 2005, memorandum from Complainant M. Daniel Carey stating the minimum standards for Yellowstone Regional Airport were adopted by the Afton-Lincoln County Municipal Airport. [FAA DD Exhibit 1, Item 3, exhibit page 199.]

Respondent argues that the minimum standards are relevant, and that Respondent consulted with the FAA before adopting the referenced minimum standards. Respondent also states the minimum standards were modified based on similar airports in Wyoming.²¹ [FAA DD Exhibit 1, Item 5, page 7.] The Airport Board meeting minutes from April 27, 2005, state, “the FAA is reviewing the minimum standards and zoning for the airport” and “after approval from the FAA, the Airport Board will then review it before it is finalized.” [FAA DD Exhibit 1, Item 3, exhibit page 135.]

The FAA confirmed in the May 18, 2005, Airport Board meeting the need to have “really strong detailed minimum standards.” At this meeting, FAA representative Craig Sparks from the FAA Denver Airports District Office stated that he reviewed the minimum standards; he recommended they be made stronger. He also advised the Airport Board that there needs to be a timeframe listed in the minimum standards for those who don’t meet the standard to come up to code. The timeframe would be decided by the Airport Board. FAA representative Mark Neiner confirmed the Airport Board could put a moratorium on building while the minimum standards were being developed. [FAA DD Exhibit 1, Item 3, exhibit pages 141-142.]

Complainants argue the FAA review of the minimum standards was cursory and FAA did not actually approve the new standards. [FAA DD Exhibit 1, Item 9, page 10.]

FAA suggests that airport sponsors establish reasonable minimum standards that are relevant to the proposed aeronautical activity with the goal of protecting the level and quality of services offered to the public. Minimum standards should be tailored to the airport to which they will apply. [See FAA Advisory Circular (AC) 150/5190-7, *Minimum Standards for Commercial Aeronautical Activities*, dated August 28, 2006.]

The FAA will review proposed minimum standards at the airport sponsor’s request to identify areas where the revised standards may conflict with the airport sponsor’s federal obligations. We contacted the FAA Denver Airports District Office. They advised us they had reviewed a draft copy of the minimum standards and provided comments in a letter dated July 1, 2005. [FAA DD Exhibit 1, Item 10.] FAA advice provided with respect to minimum standards is optional, but highly recommended.

The FAA does not *approve* minimum standards.

(2) Application of Minimum Standards

Once the airport sponsor has established minimum standards, it should apply them objectively and uniformly to all similarly situated on-airport aeronautical activities and services. [See FAA Advisory Circular (AC) 150/5190-7, section 1.1.]

Complainants argue the minimum standards were established to perpetuate the monopoly given to Mr. Morehouse. [FAA DD Exhibit 1, Item 3, exhibit page 215.]

²¹ Respondent states the minimum standards were modified based on similar Wyoming airports, but does not identify the airports.

The FAA advised the Airport Board at its May 18, 2005, meeting that the revised minimum standards should include a timeframe listed for those who don't meet the standard to come up to code. [FAA DD Exhibit 1, Item 3, exhibit pages 141-142.]

The September 28, 2005 minimum standards, however, do not include such a timeframe. Rather, they state, "These Minimum Standards are not retroactive and do not bear on or affect any written agreement or lease properly executed prior to the date of adoption and approval of these Minimum Standards." [FAA DD Exhibit 1, Item 3, exhibit page 237.] This would tend to give an economic advantage to Mr. Morehouse by not requiring him to meet the more stringent revised minimum standards. However, this statement in the minimum standards is in conflict with the terms of the Afton Aircraft Services, Inc. lease itself.

We note that the March 22, 2004, lease agreement with Afton Aircraft Services, Inc. signed by Mr. Morehouse and Mr. Russell, includes a clause stating, "Lessee shall comply with all laws, rules and regulations, or code of ordinances of the Afton Airport as the same now exist or as may be properly amended in the future." [FAA DD Exhibit 1, Item 3, exhibit page 61.] Airport minimum standards fall into this category. They have been properly amended.

The Airport Board could have elected to establish a specified period to allow tenants not meeting the revised minimum standards to come up to code; it elected not to do so.

We do not expect the revised minimum standards to be applied retroactively to actions that have already been completed, such as the application requirements.²² We do expect to see reasonable current standards for commercial aeronautical activities met by those entities operating such a business. For example, the September 28, 2005, minimum standards require:

- A fixed-base operator to offer at least five of nine services and facilities identified in the minimum standards. [FAA DD Exhibit 1, Item 3, exhibit page 250.]
- A fixed-base operator to maintain hours of operation not less than 12 hours per day, seven days per week (adjusted seasonally) with at least one qualified employee on duty during the hours of operation. [FAA DD Exhibit 1, Item 3, exhibit page 250.]

We would expect to see every fixed-base operator on the airport meeting these standards. Complainants allege Afton Aircraft Services, Inc. offers only two services and facilities identified in the minimum standards. Complainants state that six other services and

²² Complainants submitted an explanation of how Mr. Morehouse's March 22, 2004, lease does not meet the September 28, 2005, minimum standards. Twenty-one (21) points refer to application requirements established in the September 28, 2005 minimum standards. [FAA DD Exhibit 1, Item 9 exhibit pages 310-312.] The FAA does not agree that Mr. Morehouse should have met application standards in 2004 that were not even adopted until 2005.

facilities have been approved, but are either not provided or are not operating. [FAA DD Exhibit 1, Item 9, exhibit page 312.]

Complainants allege Afton Aircraft Services, Inc. has just one employee. [FAA DD Exhibit 1, Item 9, exhibit page 313.] Complainants argue they would be required to employ several employees for 12 hours a day, seven days a week while competitor Afton Aircraft Services, Inc. employs just one person for 40 hours a week. [FAA DD Exhibit 1, Item 9, page 11.] This would place Complainants at an economic disadvantage.

The Director finds the Respondent expects the Complainants to meet the revised minimum standards while others on the airport are not required to do so. In this case, excluding the Afton Aircraft Services, Inc. fixed-base operator lease from the revised minimum standards while holding other similarly situated airport tenants to these same standards results in a violation of grant assurance 22, *Economic Nondiscrimination*.

Minimum standards that are not objectively and uniformly applied to all similarly situated on-airport aeronautical activities and services results in a violation of grant assurance 23, *Exclusive Rights*, as well.

We are aware that the explicit exclusive rights initially granted to Mr. Morehouse through the March 22, 2004, agreement between the Afton-Lincoln County Municipal Airport Joint Powers Board and Afton Aircraft Services, Inc., was effectively extinguished March 30, 2006, by Resolution No. 01-2006. [See *Issue 1* above.] Nonetheless, the prohibition on exclusive rights applies regardless of how the exclusive right was created. An exclusive rights violation occurs when the airport sponsor excludes others, either intentionally or unintentionally, from participating in an on-airport aeronautical activity. [See FAA Advisory Circular (AC) 150/5190-6, *Exclusive Rights at Federally Obligated Airports*, January 4, 2007, section 1.2.] In this case, the minimum standards may not be unreasonable, but the Respondent is applying the minimum standards in such a manner to provide an advantage for one tenant to the detriment of others. This results in the granting of an exclusive right to the tenant enjoying the advantage.

The administrative record demonstrates that the Respondent is enforcing its revised minimum standards inconsistently. Respondent failed to enforce the Afton Aircraft Services, Inc. lease, which requires it to meet properly amended rules and regulations. The revised minimum standards are properly amended rules and regulations.

At the same time, Respondent requires others to meet these standards as a condition of providing services and facilities on the airport. This action gives Afton Aircraft Services, Inc. an economic advantage over potential competitors. It also grants an exclusive right to Afton Aircraft Services, Inc., to be the only fixed-based operator to enjoy a reduced level of requirements.

The Director finds the Respondent is in violation of grant assurance 22, *Economic Nondiscrimination*, and grant assurance 23, *Exclusive Rights*, as a result of enforcing airport minimum standards inconsistently.

G. Issue 7: Residential Hangars

Information contained in the administrative record led us to review the use and development of residential hangars both on the airport and adjacent to airport property, as well as fees charged for through-the-fence access.

(1) Issue 7(a): Residential Hangars on the Airport

Whether Respondent is in violation of its federal grant assurances by failing to enforce a prohibition on residential use of hangars on the airport.

Complainants assert the Respondent is in violation of grant assurance 22, *Economic Nondiscrimination*, by allowing one tenant to use his hangar as a residence while not allowing others to have residential hangars on the airport. [FAA DD Exhibit 1, Item 3, pages 12-13.] We found grant assurance 21, *Compatible Land Use*, is applicable.

Complainants state that Afton City officials notified airport hangar owners and the Airport Board on or about December 14, 2004, that city zoning laws prohibit residential use of hangars. The Airport Board advised that the FAA also prohibits such use. On September 19, 2005, the City Attorney sent notices to all hangar owners that it would fine any person residing in his hangar \$750 per day. [FAA DD Exhibit 1, Item 3, exhibit page 217.] Nonetheless, Complainants argue, Mr. Morehouse continues to reside in his hangar while all others are denied the same privilege. [FAA DD Exhibit 1, Item 3, pages 12-13.]

Respondent does not deny this allegation. Rather, Respondent states that zoning violations and enforcement of the ban on residential hangars is the responsibility of the Town of Afton. In addition, Respondent states that the Complainants and their family members have also used their hangars for personal activities. [FAA DD Exhibit 1, Item 5, pages 7-8.] Respondent does not indicate the time period referenced for the "personal activity." However Complainant M. Daniel Carey acknowledged that he had previously intended to have living accommodations in his hangar, but that as of September 22, 2005, he no longer had living quarters in either hangar. [FAA DD Exhibit 1, Item 3, exhibit page 218.]

While the Respondent argues that the matter of residential hangars on airport property is a zoning issue that is outside the control or influence of the Airport Board, the administrative record clearly shows that the Airport Board has been actively involved in discussions on this topic.

- September 15, 2004 -- The Airport Board discussed residential hangars. At that time, the Airport Board asked the airport manager to meet with various groups, including the FAA to formulate a set of guidelines. [FAA DD Exhibit 1, Item 3, exhibit page 98.]

- October 20, 2004 -- The airport manager reported to the Airport Board that the FAA does not recommend living areas in hangars. [FAA DD Exhibit 1, Item 3, exhibit page 103.]
- December 20, 2004 – The Airport Board meeting minutes reflect that airport tenants had been advised by the City Attorney that building residential units in aircraft hangars was a building violation. At that time, the Airport Board suggested it rezone the airport. The airport manager was asked to check with the FAA to see if airports can have apartments. The Airport Board indicated a desire to allow apartments for temporary stays, but not for permanent living quarters. The Airport Board acknowledged a problem controlling pedestrians and automobiles with residential hangars. [FAA DD Exhibit 1, Item 3, exhibit page 113.]
- January 27, 2005 – The Airport Board meeting minutes reflect that board members were still trying to find a way to allow living quarters at the airport. The airport manager informed the Airport Board that the FAA does not recommend apartments at the airport. [FAA DD Exhibit 1, Item 3, exhibit page 118.]
- April 27, 2005 – The Airport Board chairman acknowledged that the Airport Board could prevent hangar owners from using the facility as an apartment. [FAA DD Exhibit 1, Item 3, exhibit page 135.]

The Respondent *is* responsible for overseeing activities on the airport and for ensuring the sponsor meets its federal obligations, including the grant assurances. Allowing residential hangars to exist on an airport could create a conflict with various grant assurances.

In this case, Complainants assert a violation of grant assurance 22, *Economic Nondiscrimination*. An airport sponsor is obligated to make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds, and classes of aeronautical activities. The Complainants assert the Respondent is in violation of grant assurance 22 by allowing one tenant to use his hangar as a residence while not allowing others to have residential hangars on the airport. [FAA DD Exhibit 1, Item 3, pages 12-13.] Grant assurance 22 refers to unjust discrimination regarding *aeronautical* activities only. Using hangars to store aircraft is an aeronautical purpose; using hangars for a personal residence is not. Complainants should have no expectation that the grant assurances will enable them to enjoy a privilege that is improperly granted to another. Grant assurance 22 does not convey a right to engage in an unapproved activity. On the contrary, the FAA insists that the improper use be discontinued.

Grant assurance 21, *Compatible Land Use*, obligates the airport sponsor to restrict the use of the airport to activities and purposes compatible with normal airport operations. The FAA has determined that having residential communities on airport property is not compatible with normal airport operations. The FAA does not permit residential hangars

on airport property.²³ Neither does the Town of Afton permit residential dwellings on airport property.²⁴ [FAA DD Exhibit 1, Item 3, exhibit page 33.] Even though zoning may be the responsibility of the Town of Afton, the Respondent is expected to meet its grant assurance obligations. The Respondent is responsible for ensuring hangars are not used for residential facilities and that no residential facilities are developed on the airport in conflict with the Airport Layout Plan and the other grant assurances.

The administrative record in this matter is persuasive. Complainants allege at least one tenant is permitted to use his hangar as a residence. The Respondent does not deny the claim. Rather, the Respondent attempts to deflect attention by stating (a) it is not the responsibility of the Respondent to enforce zoning violations, and (b) the Complainants have or had also used hangars for personal activities. [FAA DD Exhibit 1, Item 5, pages 7-8.] It does appear the Respondent is not enforcing the ban on residential hangars on airport property. We expect the Respondent to confirm that hangars are not being used for residential facilities and to exert whatever effort is necessary to ensure this activity is not permitted on airport property. At this time, the Director finds the Respondent is in violation of grant assurance 21, *Compatible Land Use*, by failing to enforce a prohibition on residential use of hangars on the airport.

(2) Issue 7(b): Residential Hangars Adjacent to Airport Property

Whether Respondent is in violation of grant assurance 21, *Compatible Land Use*, by encouraging the development of a residential airpark adjacent to the airport.

The administrative record shows a residential airpark was developed adjacent to airport property with Airport Board support.

- On August 18, 2004, the Airport Board discussed a proposal to combine privately owned acreage adjacent to the airport for use as an airpark that would include hangars, residences, and a camping area. The Airport Board discussed turning the old runway into a road to provide access to the park area. [FAA DD Exhibit 1, Item 3, exhibit page 93.]
- On November 17, 2004, the Airport Board again discussed plans for the proposed airpark. [FAA DD Exhibit 1, Item 3, exhibit page 109.]
- On January 27, 2005, the Airport Board discussed the water source for the airpark, the resolution of the old taxiway, and the general aviation camping area.

²³ See *Land Use Compatibility and Airports: A Guide for Effective Land Use Planning* at http://www.faa.gov/airports/airtraffic/airports/environmental/land_use/. Page 2 of 141 lists examples of incompatible land uses, including residential, schools, and churches. Grant assurance 21, *Compatible Land Use*, obligates the airport to implement whatever steps are necessary to prevent incompatible land use.

²⁴ In a September 19, 2005, letter to Complainant M. Daniel Carey from James K. Sanderson, Counsel for the Town of Afton, Mr. Sanderson stated, "under no circumstances were there to be living quarters contained within the hangars at the airport. The airport is not currently zoned for any residential dwellings." [FAA DD Exhibit 1, Item 3, exhibit page 217.]

In addition, the Airport Board discussed whether airpark residents should be assessed a user fee for accessing the airport. [FAA DD Exhibit 1, Item 3, exhibit page 117.]

- On September 29, 2005, the Airport Board acknowledged in a letter to the FAA that it traded a parcel of airport property to the airpark development company in exchange for certain access rights and taxiway repairs, as well as extending a water line through the development to airport property. [FAA DD Exhibit 1, Item 3, exhibit pages 275-276.]

The FAA generally discourages residential airparks adjacent to airport property because such airparks can create a compatible land use problem, especially with noise compatibility and zoning issues, in the future. Grant assurance 21, *Compatible Land Use*, requires airport sponsors to take appropriate action, including the adoption of zoning laws, to restrict the use of land adjacent to, or in the immediate vicinity of, the airport to activities and purposes compatible with normal airport operations, including landing and taking off of aircraft. The FAA recognizes residential development adjacent to airport property as an incompatible land use.

In this case, the Respondent not only failed to object to establishing the residential airpark, but also is actively involved in promoting its development. The Respondent made airport property available to the developer for the airpark,²⁵ which includes residential homes.²⁶ In addition, an Airport Board member is listed as the contact person for the residential airpark.²⁷ Having residential homes adjacent to the airport is an incompatible land use. The Director finds the Respondent is in violation of grant assurance 21, *Compatible Land Use*, by allowing and promoting the development of a residential airpark adjacent to the airport.

(3) Issue 7(c): Fees for Through-the-Fence Access

Whether Respondent is in violation of grant assurance 24, *Fee and Rental Structure*, by failing to assess a reasonable fee for airport access to off-airport individuals and entities.

On January 27, 2005, the Airport Board discussed having a user fee in the future for airpark residents to access the airport. [FAA DD Exhibit 1, Item 3, exhibit page 117.] FAA advised the Airport Board May 18, 2005, that anyone wanting to access the airport should be charged a user fee. [FAA DD Exhibit 1, Item 3, exhibit page 142.] This could be accomplished with through-the-fence agreements between the Respondent and the airpark residents. A through-the-fence agreement establishes fees and requirements the

²⁵ See FAA DD Exhibit 1, Item 3, exhibit pages 275-276.

²⁶ An advertisement for the airpark states, "Live with your airplane..." [FAA DD Exhibit 1, Item 9, exhibit page 325.]

²⁷ Mr. Blake Hoopes is listed as the contact person at www.airporthomes.com for Afton Airpark. In addition, he is identified as an Airport Board member and an employee of fixed-base operator Mr. Morehouse. [See FAA DD Exhibit 1, Item 3, page 13.] It is unknown whether he continues to be a member of the Airport Board.

user must meet for the purpose of accessing the airport from an off-airport site rather than leasing space on the airport property itself.

As a rule, the FAA discourages through-the-fence agreements. If not structured properly, these agreements can create a situation where on-airport tenants bear a greater burden of the cost of airport operations than off-airport users, who may pay little or nothing. The airport sponsor has no federal obligation to provide airport access to off-airport enterprises or individuals. In addition, through-the-fence users are not protected by the grant assurances.

The administrative record includes an undated advertisement for residential hangars in Afton Airpark. [FAA DD Exhibit 1, Item 9, exhibit page 325.] On August 9, 2006, we contacted a representative from Hale's Valley Properties, LLC, who advised there would be no through-the-fence agreement necessary and no user fee charged for access to the airport from off-airport residential hangars.²⁸

However, on August 31, 2006, we called Mr. Blake Hoopes, who is listed as a contact for the Afton Airpark and is, or has been, a member of the Airport Board.²⁹ He told us the airport charges an annual per-lot fee of \$400 for property owners to access the airport from the airpark. We confirmed this on October 4, 2006, with Respondent's attorney who advised the fee was included in the property owner's association fees.³⁰ We do not find the Respondent currently in violation of grant assurance 24 regarding access fees charged to airpark residents.

H. Issue 8: Excluding Complainants

Whether Respondent is in violation of grant assurance 22, *Economic Nondiscrimination*, by excluding Complainants from conducting a commercial aeronautical business on the airport. [FAA DD Exhibit 1, Item 3, page 13.]

The Complainants in this case are two individuals who are each seeking to establish some type of business enterprise on the airport. They have at various times indicated an interest in establishing one or more business activities separately and together. For example, the administrative record shows the following requests were made or discussed:

²⁸ We called the phone number listed on an undated advertisement included in the administrative record. [FAA DD Exhibit 1, Item 9, exhibit page 325.] We also reviewed the web site at www.hvpsold.com. A representative from the real estate firm stated that (1) the property was off the airport, (1) there would be a \$200 association fee that did not go to the airport, (3) there was no requirement for a through-the-fence agreement with the airport, and (4) there were no fees charged by the airport for direct access to the taxiway and runway.

²⁹ Internet site www.airporthomes.com listed Blake Hoopes at (307) 885-7030, as the contact person for the Afton Airpark. Blake Hoopes is also identified in the administrative record as a member, or former member, of the Airport Board. [See FAA DD Exhibit 1, Item 3, page 13.]

³⁰ Respondent's attorney, John D. Bowers, confirmed this rate is comparable or higher than the access fees charged to on-airport tenants.

- October 20, 2004 – Complainant Cliff Davenport orally requested permission to operate a fuel business. [FAA DD Exhibit 1, Item 3, exhibit page 103.]
- November 17, 2004 – Complainant Cliff Davenport submitted a written request for approval to construct, maintain, and operate a second fuel farm on the airport, including operating fuel trucks and fuel storage tanks. The proposal also asked for approval for storage and ramp parking of transient and home-based aircraft on the airport. [FAA DD Exhibit 1, Item 3, exhibit page 108.]
- April 27, 2005 – Complainant Cliff Davenport presented a proposal to operate an open source of fuel. [FAA DD Exhibit 1, Item 3, exhibit page 136.]
- April 27, 2005 -- Complainant M. Daniel Carey presented a request to operate a second FBO on the airport. [FAA DD Exhibit 1, Item 3, exhibit page 136.] Complainant's proposal included a flight school, aviation maintenance, aircraft appraisal, and War Bird Restorations in addition to fuel sales. [FAA DD Exhibit 1, Item 5, exhibit C.]
- May 18, 2005 – Airport Board meeting minutes note Complainant Cliff Davenport intended to provide fuel sales only as an FBO. [FAA DD Exhibit 1, Item 3, exhibit page 144.]
- May 18, 2005 – Airport Board meeting minutes note Complainant M. Daniel Carey would like to operate an FBO with fuel sales and other services. (The "other services" were not identified.) [FAA DD Exhibit 1, Item 3, exhibit page 144.]
- September 8, 2005 – In a letter through his attorney, Complainant Cliff Davenport repeats his request to operate a fuel farm. [FAA DD Exhibit 1, Item 3, exhibit page 214.]
- January 23, 2006 – In a letter through their attorney, Complainants request jointly to operate an FBO with fuel service, as well as a flight school and repair facility. [FAA DD Exhibit 1, Item 3, exhibit page 283.]
- May 30, 2006 – Complainants submitted a joint supplement to their previous written proposals. This supplement identifies services to be offered in addition to fuel sales, including airframe, power plant, inspections and repair, flight instruction and rental, and aircraft storage. Although the document refers to FBO services on the airport, it identifies the proposed activity as a modified Specialized Aviation Service Operation (SASO). [FAA DD Exhibit 1, Item 9, exhibit page 303.]
- June 29, 2006 -- Complainants state in their Reply that they intend to operate a small flight school, maintenance shop, and fuel facility. [FAA DD Exhibit 1, Item 9, page 11.]

Table 2 identifies the services each Complainant requested permission to provide and the dates the proposal was either presented or discussed at various Airport Board meetings.

Table 2: Services Complainants Requested Permission to Provide

Date	Complainant	Service	Service	Service	Service
		<i>FBO</i>	<i>SASO</i>	<i>Fuel</i>	<i>Other Services</i>
October 20, 2004	Davenport			X	
November 17, 2004	Davenport			X	
April 27, 2005	Davenport			X	
April 27, 2005	Carey	X			X
May 18, 2005	Davenport	X		X	
May 18, 2005	Carey	X		X	X
September 8, 2005	Davenport			X	
January 23, 2006	Davenport & Carey	X		X	X
May 30, 2006	Davenport & Carey		X	X	X
June 29, 2006	Davenport & Carey			X	X

Both Complainants Davenport and Carey consistently requested permission to provide fuel sales. These requests began as early as October 2004. Sometimes the requests were combined with an intent to operate as an FBO; other times, the requests were to sell fuel as a stand-alone operation. To date, permission has not been granted for either Complainant to offer commercial fuel sales on the airport.

The FAA advised the Airport Board on May 18, 2005, that the airport must allow everyone the right to operate an FBO. [FAA DD Exhibit 1, Item 3, exhibit page 144.] However, the FAA also advised that detailed minimum standards should be in place to prevent the FBO from limiting its services to selling fuel only. Although the FAA has no restriction against allowing an FBO to limit its services to selling fuel only, experience has shown that FBOs will not develop the necessary aeronautical support services if there is no requirement to do so. [FAA DD Exhibit 1, Item 3, exhibit page 141.] Fuel sales tend to be the most lucrative service of the FBO business. It is important to tie this activity to other commercial services in order to provide aeronautical users with the commercial support service necessary to use the airport fully. [See FAA DD Exhibit 1, Item 3, exhibit page 144.]

Following the advice of FAA on May 18, 2005, the Respondent placed a moratorium on allowing new service while it revised its minimum standards. [FAA DD Exhibit 1, Item 3, exhibit page 142.] The revised minimum standards, which required FBOs to offer additional services besides fuel sales, were adopted September 28, 2005. [FAA DD Exhibit 1, Item 3, exhibit page 233.]

Respondent states it has not permitted Complainants to establish an FBO on the airport because Complainants have not submitted a written proposal consistent with the revised minimum standards. Respondent argues that Complainants submitted a two-page document stating they wanted to start some type of business activity at the airport without stating how they would meet the minimum standards. Respondent states it "would expect

the Complainants to file some type of information with the Respondent, stating how the minimum standards are to be met or in the alternative, why certain areas of the minimum standards cannot be met, providing other alternatives that would ensure the safety of the airport and the community. [FAA DD Exhibit 1, Item 5, page 7.]

The administrative record includes a two-page proposal from Complainant M. Daniel Carey, doing business as Star Valley Aeronautical Services, Inc., requesting permission to provide multiple commercial aeronautical activities, including flight school, aviation maintenance aircraft appraisal service, and War Bird Restoration, in addition to fuel sales. This proposal is dated April 27, 2005, prior to the date of the revised minimum standards. [FAA DD Exhibit 1, Item 5, exhibit C.]

The administrative record also includes a one-page proposal from Complainant Cliff Davenport for fuel sales and related activities. This proposal was presented November 17, 2004, prior to the date of the revised minimum standards. [See FAA DD Exhibit 1, Item 3, exhibit page 108.]

Complainants argue that these proposals were preliminary and designed to obtain Airport Board input regarding the concepts addressed. Complainants state these preliminary proposals were never intended to be presented as the final product. According to the Complainants, the Airport Board did not provide the input needed to proceed with the proposals. [FAA DD Exhibit 1, Item 9, page 7.]

Complainants refer to amended proposals dated May 2006. [FAA DD Exhibit 1, Item 9, page 7.] The administrative record contains a combined proposal from both Complainants M. Daniel Carey and Cliff Davenport, doing business as Star Valley Aeronautical Services, Inc., dated May 30, 2006. This two-page document is identified as a *supplement* to the prior proposals. The prior proposals were *individual* proposals, not joint. In the prior proposal for Complainant Cliff Davenport, only fuel sales and related activities had been identified. The prior proposal for M. Daniel Carey identified his proposed business as a fixed-base operator (FBO). The supplement identifies the joint business as a Specialized Aviation Service Operation (SASO). [FAA DD Exhibit 1, Item 9, exhibit page 303.]

The September 28, 2005, minimum standards have separate sections for FBOs and for SASOs. An FBO is defined as an entity that offers fuel sales *plus* at least *five* of nine services identified.³¹ [FAA DD Exhibit 1, Item 3, exhibit page 250.] A SASO may offer as few as one specialized service, but cannot sell fuel. [FAA DD Exhibit 1, Item 3, exhibit page 254.]

The various proposals from Complainants Carey and Davenport show they want to sell fuel. Even the May 30, 2006, supplemental proposal includes a fueling operation. That

³¹ The additional five services must be from the following list: (1) ramp services, (2) aircraft repair, maintenance and preventive maintenance, (3) aircraft loading, unloading and towing, (4) new or used aircraft sales, (5) flight instruction and aircraft rental, (6) air charter/air taxi service, (7) aerial application, (8) commercial hangar storage, and (9) car rental. [FAA DD Exhibit 1, Item 3, exhibit page 250.]

service, and freight operations. [FAA DD Exhibit 1, exhibit page 317.] The Respondent was able to work with Mr. Morehouse to develop a suitable lease.

- The administrative record also shows at the January 27, 2005, Airport Board meeting, Mr. Trent Peterson with Star Valley Helicopters, LLC, verbally requested approval to operate a helicopter scenic flight business at the airport. The Airport Board approved the proposal pending Mr. Peterson's ability to get a business license and insurance. [FAA DD Exhibit 1, Item 3, exhibit page 117.] There does not appear to be any written proposal. The Respondent was able to work with this tenant to develop a suitable plan.

We agree with the Respondent that the Complainants have not yet submitted a cohesive proposal consistent with the minimum standards for their desired business enterprise. Respondent is not obligated to permit Complainants to establish a commercial fuel service if Complainants do not comply with the minimum standards for an FBO.³⁴ Complainants may elect to offer some services, excluding fuel sales, under a SASO. If so, we would expect the Respondent to work with the Complainants to meet the applicable minimum standards for that service.

At this time, the Respondent is not in violation of grant assurance 22, *Economic Nondiscrimination*, by excluding Complainants from conducting a commercial aeronautical business on the airport. Complainants have not submitted a cohesive proposal consistent with current minimum standards. However, we expect the Respondent to work with the Complainants in the same manner Respondent worked with Mr. Morehouse and Mr. Trent to bring Complainants' incomplete proposal(s) to fruition.

I. Issue 9:

Whether Respondent is in violation of grant assurance 29, *Airport Layout Plan*, by permitting or building airport features that are not consistent with the approved Airport Layout Plan (ALP). [FAA DD Exhibit 1, Item 3, page 14.]

Complainants allege Respondent has permitted unauthorized structures, including (1) an aircraft hangar placed on a planned and approved taxiway, and (2) nonconforming placement of the fuel depot. [FAA DD Exhibit 1, Item 3, pages 14-15.]

The record reflects that FAA representatives advised the Airport Board in the May 18, 2005, Airport Board meeting that an updated Airport Layout Plan was required with each construction project or every five years, whichever comes first. [FAA DD Exhibit 1, Item 3, exhibit page 142.] Respondent states it has been working with a consultant and the FAA to update its Airport Layout Plan. [FAA DD Exhibit 1, Item 5, page 8.]

We contacted the FAA Denver Airports District Office. They advised us that they are currently working with the Respondent and the consultant on construction updates to the current Airport Layout Plan for the runway extension project. The update does not

³⁴ Complainants' objections to a competitor Afton Aircraft Services, Inc., FBO being allowed to follow a more lenient earlier version of airport minimum standards is addressed under *Issue 6* above.

include revising the terminal area layout sheet, which depicts the hangar locations. All of the hangars have been through the airspace process, which has allowed FAA to comment and/or object to any proposed construction that would adversely affect the safe use of the airport by aeronautical users. The Denver Airports District Office states it does not object to the hangars being built on the proposed taxiway. They advised us that the next scheduled Airport Layout Plan update will reflect the changes to the layout. The Denver Airports District Office is not aware of any fuel depot located in an unauthorized location. [FAA DD Exhibit 1, Item 10.]

The Director finds the Respondent is not currently in violation of grant assurance 29, *Airport Layout Plan*, by permitting or building airport features that are not consistent with the approved Airport Layout Plan (ALP). [FAA DD Exhibit 1, Item 3, page 14.]

J. *Issue 10:*

Whether Respondent is in violation of grant assurance 31, *Disposal of Land*, or grant assurance 5, *Preserving Rights and Powers*, by transferring or releasing airport property without FAA permission. [FAA DD Exhibit 1, Item 3, pages 15-16.]

Complainants allege Respondent is in violation of grant assurance 31, *Disposal of Land*, as a result of unauthorized disposal of airport property, including: (1) transferring approximately 5½ acres of airport property in exchange for access to a water line without FAA permission, (2) selling the airport's fuel depot without FAA permission, (3) selling construction material without FAA permission, and (4) giving valuable trees and shrubs away without FAA permission.³⁵ [FAA DD Exhibit 1, Item 3, pages 15-16.] We have determined grant assurance 5, *Preserving Rights and Powers*, is appropriate for this allegation.

Grant assurance 31, *Disposal of Land*, discusses how airport land purchased under a grant is to be disposed of when it is no longer needed for airport purposes or for noise compatibility purposes. Basically, the land must be sold at fair market value and the proceeds reinvested in another projects or returned to the Trust Fund.

Grant assurance 5, *Preserving Rights and Powers*, states that the airport sponsor will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on "Exhibit A" or for a noise compatibility program without FAA approval. "Exhibit A" is the airport property map that accompanies grant agreements.

(1) Land Transfer

Complainants allege Respondent disposed of 5½ acres of airport property without FAA approval and without receiving fair market value. [FAA DD Exhibit 1, Item 3, page 15.] (This land transfer is also addressed in *Issue 2*.)

³⁵ Complainants allege in *Issue 10* that airport property was disposed of without FAA permission. Under *Issue 2*, Complainants allege the same items were disposed of at less than fair market value. These issues are discussed separately.

The Respondent states in its Answer that the 5½ acres referred to in this allegation was donated land, not land acquired with grant funds. However, the property was shown on the "Exhibit A" airport property map. [FAA DD Exhibit 1, Item 5, page 3.]

All land shown on the "Exhibit A" airport property map constitutes the airport property obligated for compliance under the terms and covenants of a grant agreement. A sponsor is obligated to obtain FAA consent to delete any land so described and shown.

The Respondent admits it transferred this property without getting proper FAA approval and without obtaining the appropriate appraisals. [FAA DD Exhibit 1, Item 5, page 3.]

The FAA Denver Airports District Office became aware of this situation prior to the filing of this Part 16 Complaint and brought the matter to the attention of the Airport Board. We contacted the FAA Denver Airports District Office. They advised us that they received the appraisals for this land on August 28, 2006. Along with the appraisals, the Respondent submitted a formal request to release the parcel from aeronautical use and from the "Exhibit A" airport property map. The Denver Airports District Office is in the process of evaluating the request for release. [FAA DD Exhibit 1, Item 10.]

The FAA Compliance program is designed to achieve voluntary compliance with federal obligations accepted by owners and/or operators of public-use airports developed with FAA-administered assistance. Therefore, in addressing allegations of noncompliance, the FAA will make a determination as to whether an airport sponsor is *currently* in compliance with the applicable federal obligations. Consequently, the FAA will consider the successful action by the airport to cure any alleged or potential past violation of applicable federal obligation to be grounds for dismissal of such allegations. [See e.g. Wilson Air Center v. Memphis and Shelby County Airport Authority, FAA Docket No. 16-99-10, (8/30/01).]

Although the Respondent is currently in noncompliance with grant assurance 31, *Disposal of Land*, and grant assurance 5, *Preserving Rights and Powers*, as a result of disposing of airport property without FAA permission, the Respondent is actively working with the FAA Denver Airports District Office to cure this noncompliance. The FAA Denver Airports District Office is working with the Respondent to resolve this matter and to ensure the equivalent of the fair market value for this land is deposited in to the airport account. Thus, for the purpose of this Part 16, the issue is moot. Therefore, it is unnecessary for the Director to make a finding regarding the Respondent's compliance with its federal obligations with respect to transferring or releasing this airport property.

(2) Fuel Depot

The fuel depot referred to in this allegation was an improvement on the land. This improvement (not the land) was sold to an aeronautical service provider who continued to use it for an aeronautical purpose. Whether or not to sell the fuel depot was an airport business decision not subject to FAA review. Selling the fuel depot is neither a violation

of grant assurance 31, *Disposal of Land*, nor grant assurance 5, *Preserving Rights and Powers*.

(3) Construction Material

The construction material referred to in this allegation is loose property. It is not land shown on the airport property map. Whether or not to sell the construction material was an airport business decision not subject to FAA review. Selling the construction material is neither a violation of grant assurance 31, *Disposal of Land*, nor grant assurance 5, *Preserving Rights and Powers*.

(4) Trees and Shrubs

The trees and shrubs referred to in this allegation are personal property, not real property, and are severable from the land. Whether or not to sell the trees and shrubs was an airport business decision not subject to FAA review. Selling the trees and shrubs is neither a violation of grant assurance 31, *Disposal of Land*, nor grant assurance 5, *Preserving Rights and Powers*. (The allegation that the trees and shrubs were given away without receiving any compensation for them is addressed in *Issue 2* above.)

K. Issue 11:

Whether Respondent is in violation of its federal obligations as a result of (1) awarding contracts without public disclosure and FAA oversight, (2) promoting and concealing conflicts of interest among Airport Board members, (3) accepting gratuities and business accommodations from an airport tenant, (4) conducting secret meetings in violation of Wyoming law, and (5) failing to observe requirements of the Joint Powers Agreement and the Airport Board's Charter and Bylaws, as well as canceling public meetings in favor of private meetings and calling executive session meetings without justification or disclosure.

(1) Awarding Contracts

Complainants allege Respondent awarded lucrative government contracts to Mr. Morehouse and his related companies without public disclosure and FAA oversight. [FAA DD Exhibit 1, Item 3, page 6.] Complainants do not provide the facts upon which this allegation is based. Two contracts are referenced in the administrative record with regard to Mr. Morehouse: (a) a lease agreement between the Airport Board and Afton Aircraft Services, Inc., which is discussed fully in other issues of this determination, and (b) a contract for concrete work between Mr. Morehouse and the Airport Board Chairman. [FAA DD Exhibit 1, Item 3, page 13.] Neither of these is a government contract. One is a lease agreement between the Respondent and an airport tenant; the other is a contract between an airport tenant and a member of the Airport Board acting in a personal capacity. The FAA neither approves nor enforces the terms of lease agreements between and among sponsors and tenants.

(2) Conflicts of Interest

Complainants allege Respondent promoted and concealed conflicts of interest among Airport Board members, airport employees, and Mr. Morehouse's companies. [FAA DD Exhibit 1, Item 3, page 6.] Specifically, Complainants allege a conflict of interest with (a) Airport Board chairman Chad Burton and (b) Airport Board member Blake Hoopes. [FAA DD Exhibit 1, Item 3, page 13.] Complainants allege these conflicts of interest resulted in excluding the Complainants from conducting an aeronautical business on the airport in violation of grant assurance 22, *Economic Nondiscrimination*, and grant assurance 23, *Exclusive Rights*. [FAA DD Exhibit 1, Item 3, pages 6 and 13.]

(a) Chad Burton

Complainants allege Mr. Morehouse awarded Mr. Burton's concrete firm a contract to install concrete for the construction of Mr. Morehouse's FBO during the time that Mr. Burton presided, without recusal, over matters involving Mr. Morehouse and his affiliates. [FAA DD Exhibit 1, Item 3, page 13.]

Complainants provide no statement of facts to support this allegation, nor do Complainants explain how this alleged conflict directly, or indirectly, resulted in Complainants' failure to obtain approval for an on-airport aeronautical business venture.

(b) Blake Hoopes

Complainants state that Airport Board Chairman Chad Burton allowed and supported the continued appointment of Airport Board member Blake Hoopes for approximately 10 months after becoming a direct employee of Mr. Morehouse. During the time that Mr. Hoopes was both employed by Mr. Morehouse and served on the Airport Board, Complainants allege Mr. Hoopes regularly voted and advocated on Mr. Morehouse's behalf without recusal on matters involving Mr. Morehouse and on Complainant's requests to establish a commercial business on the airport. [FAA DD Exhibit 1, Item 3, page 13.]

Complainants do not provide a statement of facts to support their allegation that Mr. Hoopes' dual responsibilities were, in fact, concealed from public information. In reviewing the Airport Board minutes included in the administrative record, we found Mr. Blake Hoopes first listed as an Airport Board member in the February 23, 2005, meeting minutes. [FAA DD Exhibit 1, Item 3, exhibit page 122.] At the following month's meeting, March 23, 2005, Complainant M. Daniel Carey pointed out to the Airport Board members that Mr. Hoopes was employed by Afton Aircraft Services, Inc. and that Mr. Carey considered this a conflict of interest. [FAA DD Exhibit 1, Item 3, exhibit page 127.] At the next meeting, April 27, 2005, the Airport Board discussed the possibility of a conflict of interest regarding Mr. Hoopes. The Airport Board meeting minutes from that date state, "A letter was sent from the Airport Board attorney stating that there was not a conflict of interest with Blake on the [Airport] Board." [FAA DD Exhibit 1, Item 3, exhibit page 136.]

The administrative record does not support Complainants' contention that the Airport Board concealed Mr. Hoopes' connection to Mr. Morehouse's business. The possibility that there might have been a conflict of interest was addressed by the Airport Board in conjunction with the airport attorney.

Complainants do not state whether the situation continues to exist. However, based on the language in the Complaint, it appears Mr. Hoopes may no longer be serving in both capacities at this time.

The FAA does not oversee the appointment of members to airport management teams or airport boards. Nor does the FAA monitor management decisions of the airport sponsor or individual airport tenants. Allegations of conflict of interest by local officials are a state law matter for the applicable state or local ethics agency of officials; they will not be addressed by the Director.³⁶

(3) Gratuities and Business Accommodations

Complainants allege the Respondent accepted gratuities and business accommodations from competitor Mr. Morehouse. [FAA DD Exhibit 1, Item 3, page 6.] Complainants do not provide a statement of facts to support this allegation. Nonetheless, the administrative record shows that the Airport Board at least considered accepting an arrangement that included office accommodations for the airport manager in the FBO building operated by Mr. Morehouse.

- On September 15, 2004, Mr. Morehouse offered to provide office space for the airport manager in exchange for supervising the fixed-base operator (FBO) operation at a cost of \$25 per month. [FAA DD Exhibit 1, Item 3, exhibit page 104.]
- On December 20, 2004, the Airport Board agreed it did not want the airport manager's office in Mr. Morehouse's FBO building. [FAA DD Exhibit 1, Item 3, exhibit page 114.]
- Five months later, on May 18, 2005, the Airport Board made another motion to lease office space in Mr. Morehouse's FBO building. At this meeting, an FAA representative from the Denver Airports District Office questioned whether a future FBO operator might feel unfairly treated if the airport manager had an office in the current FBO building. Others present also objected. (It is unclear from the minutes whether the motion passed or was defeated.) [FAA DD Exhibit 1, Item 3, exhibit page 143.]

³⁶ The Director notes Complainants allege the conflict of interest referred to in this allegation resulted, either directly or indirectly, in violations of the Respondent's grant assurances. That connection is not clearly demonstrated in the administrative record. The Director notes that the Complainants' primary concern – that of being prohibited from establishing a commercial aeronautical business on the airport under comparable terms with competing aeronautical businesses – is addressed elsewhere under *Issue 6* and *Issue 8*.

The FAA may advise, but does not monitor or control the management decisions of airport sponsors. Where the actions of the sponsor result in a violation of the sponsor's federal grant assurances, the FAA will step in to resolve the matter. Otherwise, the FAA does not intercede in the management decisions of the airport sponsor. Complainants do not provide a statement of facts or supporting documents to show that the location of the airport manager's office is currently resulting in a grant assurance violation.

(4) Violation of Wyoming Law

Complainants allege Respondent conducted secret airport business meetings in violation of the *Wyoming Open Meetings Act: Wyo. Stat. §§ 16-4-401 to 16-4-407*. [FAA DD Exhibit 1, Item 3, page 6.]

The FAA monitors airport sponsor compliance with its federal obligations. The FAA does not intercede in state law matters. Complainants must address matters of state law with the appropriate authorities in the state.

(5) Joint Powers Agreement, Charter and Bylaws

Complainants allege Respondent refuses to observe appropriate corporate formalities when conducting Airport Board meetings and has not conducted votes and appointment renewals in accordance with the Joint Power's Agreement. [FAA DD Exhibit 1, Item 3, page 13.]

Complainants allege the Airport Board cancels regular public meetings without meaningful notice in favor of conducting airport business at informal, private meetings among Airport Board members. Complainants state such private meetings have occurred regularly from late 2003 to the present, with the latest last-minute cancellations occurring in December 2005 and February 2006, coinciding with the Complainants' attempts to resolve their issues with the Respondent. [FAA DD Exhibit 1, Item 3, pages 11-12.]

Complainants also allege the Airport Board calls executive sessions without appropriate justification and without summary disclosure of the items considered or decided in these meetings. Complainants allege the purpose of these executive sessions is to exclude individuals who are not members of the Mormon Church Ward from the meetings. [FAA DD Exhibit 1, Item 3, page 12.]

Complainants also allege the Airport Board members failed to observe the provisions in the Airport Board's Charter and Bylaws relating to specific term periods. In particular, Complainants allege Airport Board Chairman Chad Burton remained in his position as Chairman beyond the end of his term.³⁷ Complainants also state the Respondent manipulated Airport Board membership by abandoning the schedule of terms of appointed members. [FAA DD Exhibit 1, Item 3, page 11.]

³⁷ The administrative record shows that Chad Burton eventually relinquished his position, and Mark Heiner was later acting as the Airport Board Chairman. [See FAA DD Exhibit 1, Item 9, page 4.]

As noted earlier, the FAA does not monitor or control the management decisions of airport sponsors. The FAA is not a party to the Airport Board's Joint Power's Agreement or the Airport Board's Charter and Bylaws; we have no role in enforcing their requirements. Complainants have not shown that failure of the Airport Board members to comply with the terms of the Joint Powers Agreement or the Airport Board's Charter and Bylaws has resulted in a grant assurance violation.

Conclusion on Issue 11

Complainants allege the various points addressed in *Issue 11* combine to prevent Complainants from being approved to start an aeronautical business on the airport. While the points addressed here may have contributed to that outcome, the causal relationship is not clear. Moreover, it appears that the state process is the appropriate forum for such allegations. As a result, the Director finds the Respondent is not currently in violation of its federal obligations as a result of the following allegations: (1) awarding contracts without public disclosure and FAA oversight, (2) promoting and concealing conflicts of interest among Airport Board members, (3) accepting gratuities and business accommodations from an airport tenant, (4) conducting secret meetings in violation of Wyoming law, and (5) failing to observe requirements of the Joint Powers Agreement and the Airport Board's Charter and Bylaws. The Director notes the Complainants' primary concern – that of being prohibited from establishing a commercial aeronautical business on the airport under comparable terms with competing aeronautical businesses – is addressed under *Issue 6* and *Issue 8* in this determination.

L. Audit Request

Complainants request that the FAA conduct an audit of the airport's finances and management to evaluate the propriety of the land swaps and other private deals discussed under *Issue 2* above. [FAA DD Exhibit 1, Item 9, page 8.] Complainants also request that the Comptroller General of the United States conduct an audit of the airport's accounting system under *Issue 4* above. [FAA DD Exhibit 1, Item 3, page 10.] The FAA declines both of these requests.

VII. CONCLUSIONS

Throughout the administrative record, Complainants argue that Respondent's failure to refute Complainants' claims with evidentiary support is proof of the allegation. This is not correct. The burden of proof lies with the Complainants. Complainants who file under 14 CFR Part 16 shall provide a concise but complete statement of the facts relied upon to substantiate each allegation. [See 14 CFR § 16.23(b)(3).] For many of the issues raised, Complainants did not meet this burden. Although Complainants submitted over 300 pages in exhibits, they consistently failed to explain how the individual exhibits supported specific allegations. Nonetheless, FAA reviewed all documents submitted in this Complaint to determine whether allegations could be supported by the administrative record. We also contacted the FAA Denver Airports District Office for additional information where warranted, pursuant to § 16.29.

Upon consideration of the submissions and responses by the parties, the entire record herein, applicable law and policy, and for the reasons stated in the *Analysis, Discussion, and Findings* section above, the Director of the FAA Office of Airport Safety and Standards finds and concludes as follows:

The Director finds the Respondent is currently in violation of four grant assurances related to three of the 11 issues reviewed.

(1) Respondent is currently in violation of grant assurance 24, *Fee and Rental Structure*, as a result of failing to collect lease payments in accordance with the fee schedule for the fixed-base operator. (See *Issue 2*, item 3.)

(2) Respondent is currently in violation of grant assurance 22, *Economic Nondiscrimination*, and grant assurance 23, *Exclusive Rights*, as a result of enforcing airport minimum standards inconsistently. (See *Issue 6*.)

(3) Respondent is currently in violation of grant assurance 21, *Compatible Land Use*, as a result of (a) failing to enforce a prohibition on residential use of hangars on the airport, and (b) encouraging the development of a residential airpark adjacent to the airport. (See *Issues 7(a) and 7(b)*.)

The Director notes the Respondent is currently working with the FAA Denver Airports District Office to resolve issues related to the unapproved transfer of airport property (*Issue 2* and *Issue 10*). The Director makes no finding on this matter pending the successful resolution with the Denver Airports District Office.

The Director finds the Respondent is not currently in violation of the remaining grant assurances related to the 11 issues reviewed.

ORDER

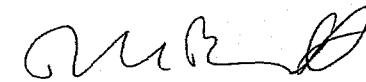
Accordingly, it is ordered that:

1. The Respondent, Afton-Lincoln County Municipal Airport Joint Powers Board, is required to submit a corrective action plan consistent with the principles discussed herein within 30 days from the date of this Order to the Director, Airport Safety and Standards that explains how the Respondent intends to eliminate the violations outlined above.
2. At the expiration of the 30 day period listed in paragraph (1) above, if the Respondent has not filed a corrective action plan acceptable to the FAA, the FAA will withhold, pursuant to 49 U.S.C. § 47106 (d), approval of any applications submitted by the Respondent, Afton-Lincoln County Municipal Airport Joint Powers Board, for grant amounts apportioned under 49 U.S.C. § 47114(d) and/or discretionary fund grant amounts authorized under 49 U.S.C. § 47115.

3. All Motions not expressly granted in this Determination are denied.

RIGHT OF APPEAL

This Director's determination is an initial agency determination and does not constitute a final agency decision and order subject to judicial review. [Title 14 CFR 16.247(b)(2).] A party to this proceeding adversely affected by the Director's determination may appeal the initial determination to the FAA Associate Administrator for Airports pursuant to 14 CFR 16.33(b) within thirty (30) days after service of the Director's determination.



January 19, 2007

David L. Bennett
Director, Office of Airport
Safety and Standards

Date: _____

ASSURANCES
Airport Sponsors

A. General.

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of the grant offer by the sponsor, these assurances are incorporated in and become part of the grant agreement.

B. Duration and Applicability.

1. **Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.** The terms, conditions and assurances of the grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.
2. **Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.** The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.
3. **Airport Planning Undertaken by a Sponsor.** Unless otherwise specified in the grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 30, 32, 33, and 34 in section C apply to planning projects. The terms, conditions, and assurances of the grant agreement shall remain in full force and effect during the life of the project.

C. Sponsor Certification. The sponsor hereby assures and certifies, with respect to this grant that:

1. **General Federal Requirements.** It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

Federal Legislation

- a. Title 49, U.S.C., subtitle VII, as amended.
- b. Davis-Bacon Act - 40 U.S.C. 276(a), et seq.¹
- c. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
- d. Hatch Act - 5 U.S.C. 1501, et seq.²

- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et seq.^{1,2}
- f. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470(f).¹
- g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.¹
- h. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.
- i. Clean Air Act, P.L. 90-148, as amended.
- j. Coastal Zone Management Act, P.L. 93-205, as amended.
- k. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. 4012a.¹
- l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f))
- m. Rehabilitation Act of 1973 - 29 U.S.C. 794.
- n. Civil Rights Act of 1964 - Title VI - 42 U.S.C. 2000d through d-4.
- o. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
- p. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- q. Architectural Barriers Act of 1968 - 42 U.S.C. 4151, et seq.¹
- r. Power plant and Industrial Fuel Use Act of 1978 - Section 403- 2 U.S.C. 8373.¹
- s. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.¹
- t. Copeland Anti kickback Act - 18 U.S.C. 874.¹
- u. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.¹
- v. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
- w. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.²
- x. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.

Executive Orders

- Executive Order 11246 - Equal Employment Opportunity¹
- Executive Order 11990 - Protection of Wetlands
- Executive Order 11988 - Flood Plain Management
- Executive Order 12372 - Intergovernmental Review of Federal Programs.
- Executive Order 12699 - Seismic Safety of Federal and Federally Assisted New Building Construction¹
- Executive Order 12898 - Environmental Justice

Federal Regulations

- a. 14 CFR Part 13 - Investigative and Enforcement Procedures.
- b. 14 CFR Part 16 - Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
- c. 14 CFR Part 150 - Airport noise compatibility planning.
- d. 29 CFR Part 1 - Procedures for predetermination of wage rates.¹
- e. 29 CFR Part 3 - Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.¹
- f. 29 CFR Part 5 - Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).¹
- g. 41 CFR Part 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).¹

- h. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.³
- i. 49 CFR Part 20 - New restrictions on lobbying.
- j. 49 CFR Part 21 - Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
- k. 49 CFR Part 23 - Participation by Disadvantage Business Enterprise in Airport Concessions.
- l. 49 CFR Part 24 - Uniform relocation assistance and real property acquisition for Federal and federally assisted programs.^{1 2}
- m. 49 CFR Part 26 - Participation By Disadvantaged Business Enterprises in Department of Transportation Programs.
- n. 49 CFR Part 27 - Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance.¹
- o. 49 CFR Part 29 - Government wide debarment and suspension (non-procurement) and government wide requirements for drug-free workplace (grants).
- p. 49 CFR Part 30 - Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
- q. 49 CFR Part 41 - Seismic safety of Federal and federally assisted or regulated new building construction.¹

Office of Management and Budget Circulars

- a. A-87 - Cost Principles Applicable to Grants and Contracts with State and Local Governments.
- b. A-133 - Audits of States, Local Governments, and Non-Profit Organizations

¹ These laws do not apply to airport planning sponsors.

² These laws do not apply to private sponsors.

³ 49 CFR Part 18 and OMB Circular A-87 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in the grant agreement.

2. Responsibility and Authority of the Sponsor.

- a. **Public Agency Sponsor:** It has legal authority to apply for the grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
- b. **Private Sponsor:** It has legal authority to apply for the grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative and shall in writing direct and authorize that person

to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

3. Sponsor Fund Availability. It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under the grant agreement which it will own or control.

4. Good Title.

- a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.
- b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

5. Preserving Rights and Powers.

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.
- b. It will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in the grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of the grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.
- c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.
- d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that

property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the pro / owner whenever there is substantial non-compliance with the terms of the agreement.

- e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.
 - f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations and the terms, conditions and assurances in the grant agreement and shall insure that such arrangement also requires compliance therewith.
6. **Consistency with Local Plans.** The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.
 7. **Consideration of Local Interest.** It has given fair consideration to the interest of communities in or near where the project may be located.
 8. **Consultation with Users.** In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.
 9. **Public Hearings.** In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.
 10. **Air and Water Quality Standards.** In projects involving airport location, a major runway extension, or runway location it will provide for the Governor of the state in which the project is located to certify in writing to the Secretary that the project will be located, designed, constructed, and operated so as to comply with applicable air and water quality standards. In any case where such standards have not been approved and where applicable air and water quality standards have been promulgated by the Administrator of the Environmental Protection Agency, certification shall be obtained from such Administrator. Notice of certification or refusal to certify shall be provided within sixty days after the project application has been received by the Secretary.
 11. **Pavement Preventive Maintenance.** With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such

reports on pavement condition and pavement management programs as the Secretary determines may be useful.

12. **Terminal Development Prerequisites.** For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 44706 of Title 49, United States Code, and all the security equipment required by rule or regulation, and has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.
13. **Accounting System, Audit, and Record Keeping Requirements.**
 - a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of the grant, the total cost of the project in connection with which the grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
 - b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to the grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which the grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.
14. **Minimum Wage Rates.** It shall include, in all contracts in excess of \$2,000 for work on any projects funded under the grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.
15. **Veteran's Preference.** It shall include in all contracts for work on any project funded under the grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Veterans of the Vietnam era and disabled veterans as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.
16. **Conformity to Plans and Specifications.** It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval of the Secretary, shall be incorporated into this grant agreement. Any modification to the approved

plans, specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into the grant agreement.

17. **Construction Inspection and Approval.** It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

18. **Planning Projects.** In carrying out planning projects:

- a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.
- b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
- c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.
- d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
- e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
- f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
- g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
- h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

19. **Operation and Maintenance.**

- a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably

operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary.

In furtherance of this assurance, the sponsor will have in effect arrangements for-

- (1) Operating the airport's aeronautical facilities whenever required;
- (2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
- (3) Promptly notifying airmen of any condition affecting aeronautical use of the airport.

Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.

- b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

20. Hazard Removal and Mitigation. It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

21. Compatible Land Use. It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

22. Economic Nondiscrimination.

- a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.
- b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-
 - (1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
 - (2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

- c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.
- d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
- e. Each air carrier using such airport (whether as a tenant, non tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non tenants and signatory carriers and non signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.
- f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.
- g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.
- h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.
- i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

23. Exclusive Rights. It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

- a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and
- b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport.

It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations,

aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

24. Fee and Rental Structure. It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

25. Airport Revenues.

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. Provided, however, that if covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.
- b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.
- c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

26. Reports and Inspections. It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use

agreements, regulations and other instruments, available for inspection by any authorized agent of the Secretary upon reasonable request;

- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of the grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and
- d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
 - (i) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
 - (ii) all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

27. **Use by Government Aircraft.** It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that-

- a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or
- b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

28. **Land for Federal Facilities.** It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

29. **Airport Layout Plan.**

- a. It will keep up to date at all times an airport layout plan of the airport showing (1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto; (2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities; and (3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon. Such airport layout plans and each amendment, revision, or modification thereof, shall

be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.

- b. If a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities.

30. **Civil Rights.** It will comply with such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from funds received from this grant. This assurance obligates the sponsor for the period during which Federal financial assistance is extended to the program, except where Federal financial assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon in which case the assurance obligates the sponsor or any transferee for the longer of the following periods: (a) the period during which the property is used for a purpose for which Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits, or (b) the period during which the sponsor retains ownership or possession of the property.

31. **Disposal of Land.**

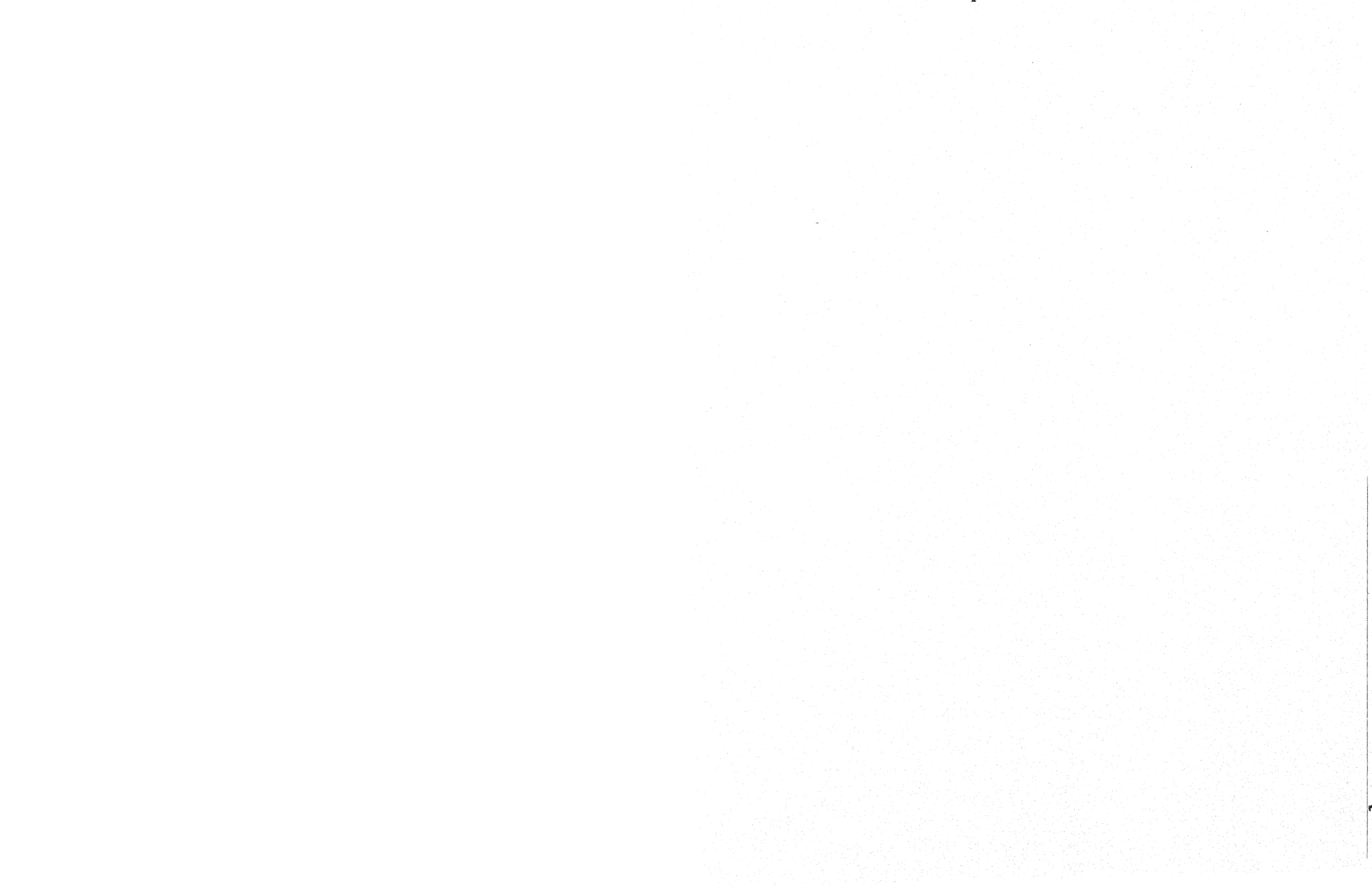
- a. For land purchased under a grant for airport noise compatibility purposes, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will, at the discretion of the Secretary, (1) be paid to the Secretary for deposit in the Trust Fund, or (2) be reinvested in an approved noise compatibility project as prescribed by the Secretary, including the purchase of nonresidential buildings or property in the vicinity of residential buildings or property previously purchased by the airport as part of a noise compatibility program.
- b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (1) upon application to the Secretary, be reinvested in another eligible airport improvement project or projects approved by the Secretary at that airport or within the national airport system, or (2) be paid to the Secretary for deposit in the Trust Fund if no eligible project exists.

non discrimination in the award and administration of DOT-assisted contracts. The recipient's Disposal program, as required by 49 CFR Part 26, and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801).

38. Hangar Construction. If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

39. Competitive Access.

- a. If the airport owner or operator of a medium or large hub airport (as defined in section 47102 of title 49, U.S.C.) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that:
 1. Describes the requests;
 2. Provides an explanation as to why the requests could not be accommodated; and
 3. Provides a time frame within which, if any, the airport will be able to accommodate the requests.
- b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date



From: <Joelle.Briggs@faa.gov>
To: <Dave.Roberts@faa.gov>
Cc: <Carol.Key@faa.gov>; " " <shade@portsh.org>
Sent: Thursday, October 18, 2007 8:29 AM
Attach: pic07376.jpg
Subject: Re: Fw: Sierra Pacific Communities Response 10-16-07 draft (2).doc

Kim,

The determination that residential TTF access is a non-compatible land use is not an ADO or a Regional determination. As Dave has stated, the Afton Director's Determination was made in our FAA Headquarters, Airports Division, and was signed by the Director of the Office of Airports Safety and Standards Division. I have recently returned from our annual internal compliance training, where we heard very clearly from the headquarters staff that granting of through the fence access to a residential airpark is an incompatible land use that is contrary to grant assurance 21.

Just a couple of notes about the presentation by Mr. Willis in 2006 that is being quoted by Mr. Fagre. Mr. Willis' presentation was focused mainly on non-residential TTF agreements. As, Dave states, the last slide of Mr. Willis's presentation stated that off-airport/non-aviation uses should be compatible with grant assurance 21 "Compatible Land Use". In the Afton DD (which occurred in Jan. 2007 -- after Mr. Willis' presentation), the agency has made clear that residential use near the airport is not a compatible land use.

I will contact our HQ office to see if they can get you anything more before Nov. 8th. Until then, the DD is the clearest statement of the agency position.

Joelle Briggs
FAA, Northwest Mountain Region
Airports Division
425-227-2626
joelle.briggs@faa.gov

10/18/2007

From: <Dave.Roberts@faa.gov>
To: "Kim" <shade@portsh.or>
Cc: <Carol.Key@faa.gov>; <Joelle.Briggs@faa.gov>
Sent: Wednesday, October 17, 2007 2:59 PM
Attach: pic06334.jpg
Subject: Re: Fw: Sierra Pacific Communities Response 10-16-07 draft (2).doc

I am not sure there is anybody else to ask. I am cc Joelle Briggs who is helping write up the letter which we said we would send to you. The driving force for this is FAA Headquarters not the airport district office or the regional office. The Afton-Lincoln County decision was made at the Washington D.C. level not here. At the present time, I don't think HQ is pushing the result of Afton-Lincoln on existing airparks but rather the establishment of new residential through-the-fence agreements. That explains why many ALPs have been approved in the past that have had airparks adjacent to the airport. By the way Mr. Faegre notes Newburg and Sunriver as NPIAS airports, which they are, but they are not federally obligated airports so the grant assurances do not apply. I believe the presentation by Mr. Willis that is quoted by Mr. Faegre did not include residential through-the-fence. The last slide of Mr. Willis's presentation stated that off-airport/non-aviation uses should be compatible with grant assurance 21 "Compatible Land Use". Residential use near the airport is not a compatible land use. The compliance Order 5190.6A is under review and will be reissued in the future and deal differently with the residential through-the-fence.

Dave Roberts
FAA Seattle ADO
1601 Lind Ave. SW, #250
Renton, WA 98055
(425) 227-2629
dave.roberts@faa.gov

10/18/2007

October 22, 2007

Mr. Gerald Meyer
Port Manager
Port of St. Helens
P. O. Box 598
St. Helens, OR 97051

Dear Mr. Meyer

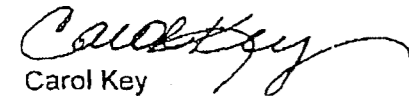
Scappoose Industrial Airpark, Scappoose, Oregon
Through-the-Fence Residential Airpark

This letter is to follow up our letters dated April 25, 2007, and September 5, 2007, to the Port and the City respectively, regarding potential through-the-fence (TTF) access to a residential development. The Federal Aviation Administration (FAA) position is that a residential airpark, whether on or adjacent to a federally obligated airport, is an incompatible land use, and that granting TTF access to a residential airpark is inconsistent with the terms, conditions, and restrictions contained in federal land transfer documents, grant assurance 21, *Compatible Land Use*, contained in Airport Improvement Program (AIP) funding grants and 49 USC 47107(a)(10). This position is outlined in the enclosed August 29, 2005, Associate Administrator's letter.

On January 19, 2007, the FAA stated in a Director's Determination that, "The FAA recognizes residential development adjacent to airport property as an incompatible land use." This determination held the sponsor in non-compliance for failing to object to establishing the residential airpark, and being actively involved in promoting its development by granting TTF access to the airpark. (*Carey & Davenport V. Afton-Lincoln County Municipal Airport Joint Powers Board*, Docket No. 16-06-06).

As a result of this latest determination, we are compelled to inform you that granting TTF access to a residential development could result in the airport being placed in non-compliance, and jeopardize your eligibility for federal funding. Should you have any questions about our position concerning residential or commercial airparks, please let us know.

Sincerely,

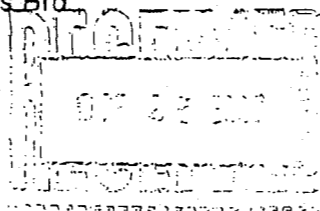


Carol Key
Acting Assistant Airport District Manager

Enclosures:

August 29, 2005 Associate Administrator for Airports Letter
Portion of Carey & Davenport Vs Afton-Lincoln County Municipal Airport Joint Powers Brd
Docket No. 16-06-06, 1/19/07 Director's Determination

COPY





AUG 29 2005

Mr. Hal Shevers
Chairman
Clermont County-Sporty's Airport
Batavia, OH 45103

Dear Mr. Shevers:

Thank you for your letter of July 18. In your letter, you suggested the Federal Aviation Administration promote developing residential airparks as a means to improve airport security and reduce the closure rate of general aviation airports. Residential airparks developed next to an airport usually rely on "through-the-fence" agreements to gain access to the airfield.

First, I would like to make clear that the FAA does not oppose residential airparks at private use airports. Private use airports are operated for the benefit of the private owners, and the owners are free to make any use of airport land they like. A public airport receiving Federal financial support is different, however, because it is operated for the benefit of the general public. Also, it is obligated to meet certain requirements under FAA grant agreements and Federal law. Allowing residential development on or next to the airport conflicts with several of those requirements.

An airpark is a residential use and is therefore an incompatible use of land on or immediately adjacent to a public airport. The fact there is aircraft parking collocated with the house does not change the fact that this is a residential use. Since 1982, the FAA has emphasized the importance of avoiding the encroachment of residential development on public airports, and the Agency has spent more than \$300 million in Airport Improvement Program (AIP) funds to address land use incompatibility issues. A substantial part of that amount was used to buy land and houses and to relocate the residents. Encouraging residential airparks on or near a federally obligated airport, as you suggest, would be inconsistent with this effort and commitment of resources.

Allowing an incompatible land use such as residential development on or next to a federally obligated airport is inconsistent with 49 USC §47104(a) (10) and associated FAA Grant Assurance 21, *Compatible Land Use*. This is because a federally obligated airport must ensure, to the best of its ability, compatible land use both off and on an airport. We would ask how an airport could be successful in preventing incompatible residential development before local zoning authorities if the airport operator promotes residential airparks on or next to the airport.

Additionally, residential airparks, if not located on airport property itself, require through-the-fence access. While not prohibited, the FAA discourages through-the-fence operations because



they make it more difficult for a port operator to maintain control of airport operations and allocate airport costs to all users.

A through-the-fence access to the airfield from private property also may be inconsistent with security guidance issued by the Transportation Security Administration (TSA). TSA created guidelines for general aviation airports: Information Publication (IP) A-001, *Security Guidelines for General Aviation Airports*. The TSA guidelines, drafted in cooperation with several user organizations including the Aircraft Owners and Pilots Association (AOPA), recommend better control of the airport perimeter with fencing and tighter access controls. Accordingly, we do not agree with your view that a residential airpark and the associated through-the-fence access points can be said to improve airport security. In fact, multiple through-the-fence access points to the airfield could hinder rather than help an airport operator maintain perimeter security.

Finally, we find your statement that general aviation airports have been closing at an alarming rate to be misleading, because it is simply untrue with respect to *federally* obligated airports. In fact, the FAA has consistently denied airport closure requests. Of approximately 3,300 airports in the United States with Federal obligations, the number of closures approved by the FAA in the last 20 years has been minimal. The closures that have occurred generally relate to replacement by a new airport or the expiration of Federal obligations. AOPA has recognized our efforts. In its latest correspondence to the FAA on the *Revised Flight Plan 2006-2010*, AOPA stated, "the FAA is doing an excellent job of protecting airports across the country by holding communities accountable for keeping the airport open and available to all users."

For the above reasons, we are not able to support your proposal to promote the development of residential airparks at federally obligated airports.

I trust that this information is helpful.

Sincerely,

**Original signed by:
Woodie Woodward**

Woodie Woodward
Associate Administrator
for Airports

Cntl: 20051267-0/FAA-050816-006
AAS-400\MVasconcelos:78730:08/26/05:scb
G: AAS-400\Vasconcelos\Final Airport Issues\20051267-0 Shevers.doc
AAS-400\I\ARP\AGL-600\Vasconcelos

Page: 1
[0] Statistics 20051267-0 Shevers2.doc, 705 words
Original, 26 Aug 2005 07:18
Style Index 11, Excellent for a Letter
Average Sentence 22, Fair
Passive Index 16, Good



on airport property.²³ Neither does the Town of Afton permit residential dwellings on airport property.²⁴ [FAA DD Exhibit 1, Item 3, exhibit page 33.] Even though zoning may be the responsibility of the Town of Afton, the Respondent is expected to meet its grant assurance obligations. The Respondent is responsible for ensuring hangars are not used for residential facilities and that no residential facilities are developed on the airport in conflict with the Airport Layout Plan and the other grant assurances.

The administrative record in this matter is persuasive. Complainants allege at least one tenant is permitted to use his hangar as a residence. The Respondent does not deny the claim. Rather, the Respondent attempts to deflect attention by stating (a) it is not the responsibility of the Respondent to enforce zoning violations, and (b) the Complainants have or had also used hangars for personal activities. [FAA DD Exhibit 1, Item 5, pages 7-8.] It does appear the Respondent is not enforcing the ban on residential hangars on airport property. We expect the Respondent to confirm that hangars are not being used for residential facilities and to exert whatever effort is necessary to ensure this activity is not permitted on airport property. At this time, the Director finds the Respondent is in violation of grant assurance 21, *Compatible Land Use*, by failing to enforce a prohibition on residential use of hangars on the airport.

(2) Issue 7(b): Residential Hangars Adjacent to Airport Property

Whether Respondent is in violation of grant assurance 21, *Compatible Land Use*, by encouraging the development of a residential airpark adjacent to the airport.

The administrative record shows a residential airpark was developed adjacent to airport property with Airport Board support.

- On August 18, 2004, the Airport Board discussed a proposal to combine privately owned acreage adjacent to the airport for use as an airpark that would include hangars, residences, and a camping area. The Airport Board discussed turning the old runway into a road to provide access to the park area. [FAA DD Exhibit 1, Item 3, exhibit page 93.]
- On November 17, 2004, the Airport Board again discussed plans for the proposed airpark. [FAA DD Exhibit 1, Item 3, exhibit page 109.]
- On January 27, 2005, the Airport Board discussed the water source for the airpark, the resolution of the old taxiway, and the general aviation camping area. /

²³ See *Land Use Compatibility and Airports: A Guide for Effective Land Use Planning* at http://www.faa.gov/airports_airtraffic/airports/environmental/land_use/. Page 2 of 141 lists examples of incompatible land uses, including residential, schools, and churches. Grant assurance 21, *Compatible Land Use*, obligates the airport to implement whatever steps are necessary to prevent incompatible land use.

²⁴ In a September 19, 2005, letter to Complainant M. Daniel Carcy from James K. Sanderson, Counsel for the Town of Afton, Mr. Sanderson stated, "under no circumstances were there to be living quarters contained within the hangars at the airport. The airport is not currently zoned for any residential dwellings." [FAA DD Exhibit 1, Item 3, exhibit page 217.]



In addition, the Airport Board discussed whether airpark residents should be assessed a user fee for accessing the airport. [FAA DD Exhibit 1, Item 3, exhibit page 117.]

- On September 29, 2005, the Airport Board acknowledged in a letter to the FAA that it traded a parcel of airport property to the airpark development company in exchange for certain access rights and taxiway repairs, as well as extending a water line through the development to airport property. [FAA DD Exhibit 1, Item 3, exhibit pages 275-276.]

The FAA generally discourages residential airparks adjacent to airport property because such airparks can create a compatible land use problem, especially with noise compatibility and zoning issues, in the future. Grant assurance 21, *Compatible Land Use*, requires airport sponsors to take appropriate action, including the adoption of zoning laws, to restrict the use of land adjacent to, or in the immediate vicinity of, the airport to activities and purposes compatible with normal airport operations, including landing and taking off of aircraft. The FAA recognizes residential development adjacent to airport property as an incompatible land use.

In this case, the Respondent not only failed to object to establishing the residential airpark, but also is actively involved in promoting its development. The Respondent made airport property available to the developer for the airpark,²⁵ which includes residential homes.²⁶ In addition, an Airport Board member is listed as the contact person for the residential airpark.²⁷ Having residential homes adjacent to the airport is an incompatible land use. The Director finds the Respondent is in violation of grant assurance 21, *Compatible Land Use*, by allowing and promoting the development of a residential airpark adjacent to the airport.

(3) Issue 7(c): Fees for Through-the-Fence Access

Whether Respondent is in violation of grant assurance 24, *Fee and Rental Structure*, by failing to assess a reasonable fee for airport access to off-airport individuals and entities.

On January 27, 2005, the Airport Board discussed having a user fee in the future for airpark residents to access the airport. [FAA DD Exhibit 1, Item 3, exhibit page 117.] FAA advised the Airport Board May 18, 2005, that anyone wanting to access the airport should be charged a user fee. [FAA DD Exhibit 1, Item 3, exhibit page 142.] This could be accomplished with through-the-fence agreements between the Respondent and the airpark residents. A through-the-fence agreement establishes fees and requirements the

²⁵ See FAA DD Exhibit 1, Item 3, exhibit pages 275-276.

²⁶ An advertisement for the airpark states, "Live with your airplane..." [FAA DD Exhibit 1, Item 9, exhibit page 325.]

²⁷ Mr. Blake Hoopes is listed as the contact person at www.airporthomes.com for Afton Airpark. In addition, he is identified as an Airport Board member and an employee of fixed-base operator Mr. Morehouse. [See FAA DD Exhibit 1, Item 3, page 13.] It is unknown whether he continues to be a member of the Airport Board.



mark j greenfield

From: "Kim" <shade@portsh.org>
To: "Mark Greenfield" <markgreenfield@involved.com>
Sent: Friday, October 26, 2007 9:11 AM
Subject: Fw: Re: TTF Residential-Willis communication

----- Original Message -----

From: ctetreault@comcast.net
To: Kim Shade
Sent: Friday, October 26, 2007 9:02 AM
Subject: FW: Re: TTF Residential-Willis communication

----- Forwarded Message: -----

From: kevin.willis@faa.gov
To: ctetreault@comcast.net
Cc: Carol.Key@faa.gov, CBS@clatskanie.com (Robert Keyser), meyer@portsh.org (Gerry Meyer), Joelle.Briggs@faa.gov
Subject: Re: TTF Residential
Date: Thu, 25 Oct 2007 18:21:54 +0000

Mr. Tetreault,

I did give a presentation on General Land use at the 2006 Northwest Mountain Regional Airport Conference. While I did not use the word "residential", I spoke of land uses being compatible with airport operations as required by Grant Assurance 21. Residential use is not consistent with airport operations or the requirements of Grant Assurance 21. Also since my presentation, agency decisions dealing with the issue of residential use and through the fence access at airports have taken a strong position to find airport sponsor's actions regard ing this activity to be inconsistent with the grant assurances and to jeopardize AIP funding.

I promised the Regional office we would provide you with a letter explaining national policy on this issue, can you please provide the name and address of the individual I should address the letter to. I hope this answers your inquiry

Kevin Christopher Willis
Federal Aviation Administration
AAS-400, Airport Compliance Division
800 Independence Avenue, SW
Washington, DC 20591
202-267-8741
202-267-5257 fax

10/26/2007

ctetreault@comca

st.net

To

10/25/2007 01:23 meyer@portsh.org (Gerry Meyer),

PM Kevin Willis/AWA/FAA@FAA

cc

meyer@portsh.org (Gerry Meyer),

CBS@clatskanie.com (Robert Keyser),

Carol Key/ANM/FAA@FAA

Subject

TTF Residential

Kevin.

Dealing with a situation in which a developer wants to put airport residential on private land next to the Scappose Industrial Airpark (Oregon). Airport is sponsored by the Port of St. Helens and has TTF for two private businesses. I am a commissioner at the Port.

The developer is stating that FAA's position on TTF for residential is one of disapproval (noncompliant use) but willing to accept airport residential. He cites a presentation you gave, A Policy Framework for General Land Use, in Washington, D.C. in 2006 as evidence of FAA's position of airport residential. I've looked at your entire Powerpoint presentation and find nothing re: residential airport development.

Several Port staff spoke with Carol Key, early this October. She stated that FAA does not approve of airport residential. Developer says that the Seattle ADO has a bias, not held at the national level. Developer's consultant says he's telephoned ADO's across the country and found support and approval for airport residential.

The officers and staff of the Port of St. Helens are trying to make valid decisions re: zoning of adjacent land and the topic of airport residential in general. Can you help us sort out the fact from fiction, and misleading information from truth?

Thanks,
Cliff Tetreault
St. Helens Port Commission

10/26/2007

mark j greenfield

From: "Gerry Meyer" <meyer@portsh.org>
To: "mark j greenfield" <markgreenfield@involved.com>
Sent: Tuesday, October 30, 2007 12:47 PM
Subject: FW:

Mark-
FYI

-----Original Message-----

From: Carol.Key@faa.gov [mailto:Carol.Key@faa.gov]
Sent: Tuesday, October 30, 2007 12:43 PM
To: ctetreault@comcast.net
Cc: Robert Keyser; Gerry Meyer; Joelle.Briggs@faa.gov;
Dave.Roberts@faa.gov; Craig.Sparks@faa.gov
Subject: Re:

There has been a change recently, and that being that Headquarters is now taking a very hard line and position against residential development adjacent to airports. What might have been acceptable in the past is no longer acceptable. The Denver ADO would not approve a new request today based on this new direction from Headquarters. In fact, Headquarters has even stated that permitting residential development could definitely affect the federal financial support of your airport. This is much different than past actions and statements. We strongly encourage you to follow the national direction on objecting to any zone change and/or through-the-fence for residential development. I shared the emails from Headquarters previously, and we expect a more formal policy to be forthcoming soon.

You have the backing of the Seattle ADO to deny the developers request.

Thank you. Carol

Carol A. Key
Acting Assistant Manager
Seattle Airports District Office
Federal Aviation Administration
425-227-2657

10/30/2007

ctetreault@comcas

t.net

To 10/30/2007 11:37 Carol Key/ANM/FAA@FAA

AM
cc

meyer@portsh.org (Gerry Meyer),

Keyser) CBS@clatskanie.com (Robert

Subject

Carol.

The situation here re: airport residential development (ARD) is moving into another phase. The developer is presenting a request for a zoning change on November 8 on his private property adjacent to the Scappose Industrial Airpark, with the intent for runway access. Speaking with his Columbia County representative yesterday, I was harassed with justifications why the Port District should go along with the proposed development. Through Gerry Meyer, the Port Director, and our land use attorney, the Commissioners have

10/30/2007



what I believe to be adequate data to make a decision re: the zoning change proposed. We are not supporting it. ... the meantime, two Commissioners have been heavily lobbied, by the county advocate for the developer, to change our decision. Here are a few pieces I was presented with yesterday:

- The FAA Seattle Office has a bias against airport residential development

ARD/TTF not found at the national level. The Denver office does not have this bias and is supportive, or would not attempt to discourage it, ARD/TTF. This is so elsewhere in the country.

- If FAA was opposed to ARD/TTF, why did it allow Afton, Wyoming to build an ARD?

- FAA has never blocked funds to an airport because of a private residential development. Why would it start now?

- There is no national policy re: ARD. "If I were to ask for a Policy Document re: Airport Residential there would be no document".

- Dan Clem, Director Oregon Department of Aviation, thinks airport residential "is wonderful". (This is second-hand information from the developer's advocate.)

- When I asked the advocate whether he contacted FAA re: the policy information we had received, he said, "No, they won't talk with us."

I picked up from the advocate (developer's representative) yesterday that there will be an attempt, at the Planning Commission hearing, to frame this matter as a belligerent Port wanting to stifle development, and use the press to stimulate the community to pressure the Port to change it's stand.

Carol, again the Port of St. Helens staff and commission are trying to "do the right thing". The issues, raised by the developer, are ones that I can't confidently respond. Can you help out? Maybe I don't need to,

10/30/2007



but I
have a Don Quixote complex and want to right the wrongs (or
misinformation)
spread in this community.

I've cc'd this memo to Robert Keyser, Commission President, and Gerry
Meyer, Port Executive Director. Could to "reply to all" so we can all
be
abreast of your information?

Thanks,

Cliff Tetreault, Port Commission

10/30/2007





U.S Department
of Transportation
Federal Aviation
Administration

Office of Airport Safety
And Standards

800 Independence Ave., S.W.
Washington, D.C. 20591

Mr, Gerry Meyer, Executive Director
Port of St. Helens Commission
Post Office Box 598
St. Helens, Oregon 97051

Nov 7 2007

Dear Mr. Meyer:

Thank you for the opportunity to clarify the Federal Aviation Administration's (FAA) policy on residential airpark development. We understand that the Commission is considering a proposal for an off-airport residential airpark development with a through-the-fence access on to Scappoose Industrial Airpark.

The FAA is on record opposing the development of residential airparks with through-the-fence access to public-use, federally obligated airports. In fact, FAA has denied future funding to airports that have permitted airfield access from off-airport residential airparks. Such developments can conflict with Title 49 U.S.C, §47107(a)(IO), Grant Assurance 21, *Compatible Land Use* and possibly other grant assurances. A federally obligated airport must ensure, to the best of its ability, compatible land use both on and off airport. An airport sponsor will not be successful in defending its airport from incompatible residential development if the sponsor is also promoting residential airparks on or next to the airport. A residential dwelling with an attached hangar is still a residential dwelling and once introduced can lead to additional residential encroachment.

Since 1983, FAA has invested over 54,328,502 in Airport Improvement Program funds to improve and develop the airport as a part of the National Airport System. Residential development adjacent to the airport undermines the federal investment.

FAA does not oppose residential airparks at private use airports. Private use airports are operated for the benefit of the private owners, and the owners are free to make any change to the airport's operation, including imposing restrictions on aeronautical activity. A public use airport receiving federal financial assistance is different. It operates for the benefit of the public and in no way should become subordinate to the private interests of airpark residents erecting residential structures whose value is tied to the airport. The two interests, public and private, are not compatible in this case.

Finally, and more importantly, if an airport sponsor elects to promote or permit through-the-fence access on to the airport from an off-airport residential airpark, it is possibly jeopardizing receipt of all future Airport Improvement Program (AIP) grant funds. The FAA strongly recommends that the Commission not compromise the future funding of this public asset by permitting through-the-fence access to the proposed residential airpark.

Sincerely,

Charles C. Erhard Manager,
Airports Compliance Division

Cc: Donna Taylor, AMM
Joelle Briggs, ANM



Sydell

From: "Kim" <shade@portsh.org>
To: "Sydell" <cotton@portsh.org>
Sent: Thursday, November 08, 2007 12:46 PM
Subject: Fw: Comments on PAPA

----- Original Message -----

From: <ACROOK@stny.rr.com>
To: <meyer@portsh.org>
Cc: <shade@portsh.org>
Sent: Wednesday, November 07, 2007 4:42 PM
Subject: Comments on PAPA

Dear Mr. Meyer;

As the first Director of the Oregon Department of Aviation and a two-time President of the Oregon Airport Management Association, as well as a professional airport manager with over 22 years experience, I have been asked to share with you my thoughts about a proposal to create a Public Airport Mixed-Use zone on or adjacent to the Scappoose Industrial Airpark.

I must start by telling you that I am currently managing an airport in New York State. I no longer work in Oregon and have no professional connection to any airport in Oregon. Also, I recognize that some people consider me strongly opposed to through-the-fence operations at airports. That characterization is incorrect. I am very strongly in favor of protecting and encouraging the long-term viability of public use airports. I have seen through-the-fence agreements harm this viability by converting public investments made in public airport improvements into benefits for private individuals. But, I have also seen good through-the-fence operations which have benefitted airport operations and the communities the airports serve, and have been on-record saying this.

The proposal that you are entertaining is for zoning which would allow for the creation of a residential airpark with through-the-fence access to the Scappoose Airport. There has been a surge of enthusiasm for residential airparks in the last several years. Indeed, residential airparks can provide a pleasurable lifestyle for pilots who choose to live with their planes. My concerns with this concept are two-fold: the channeling of public funds into private residences, and the standard concerns for safety, security, and revenue-diversion associated with any through-the-fence operation.

There has been much discussion about the pros and cons of through-the-fence agreements in Oregon over the past several years. I don't

11/8/2007

believe there is anything that I can add to that discussion, other than any such agreement must strongly favor the airport. In my experience, most adjacent property owners propose a through-the-fence agreement when they feel they can get a better financial deal or reduced regulatory structure over leasing property on-airport. If a through-the-fence agreement does, indeed, provide these benefits to the private property owner, then it comes at the expense of the airport and the access should not be allowed.

Proponents of residential airparks tout the strong supportive relationship between the residents and the airport. And this is true, so long as the airport serves primarily the desires of the residents. But a public use airport must be available for all aeronautical users. In the case of the Scappoose Airport, I know that the Port of St. Helens has worked for years to attract aviation-related industrial activity to the airport. Residents of an airpark take a personal interest in preserving the airport for their own use. These personal preferences can interfere with future industrial/commercial activities.

To be more specific, I have received noise complaints from residents of an airpark when the aircraft noise was at a time of day or from a type of aircraft not consistent with the usual aircraft associated with the residential development. Similarly, residents of an airpark have opposed proposed expansion to accommodate jet traffic which was being considered to support the needs of local businesses. In this case, the airpark residents were concerned about the "nature" of the airport changing from the primarily residential use which they enjoyed. It will be argued that these types of issues can be addressed through aviation easements and CC&Rs. But even with very well-written documents, the Port of St. Helens should expect to invest an extreme amount of effort in managing residential homeowner concerns and in continuing to recruit new business against the backdrop of these types of residential objections.

I understand that the proposed development is being compared to successful residential airparks at Independence, Sunriver, and Newberg. I would like to point out that Sunriver and Sportsman's Airpark do not receive public funding. So the issues associated with through-the-fence agreements and the diversion of revenues from the public investment to off-airport property owners do not exist. The Independence State Airport does receive a significant amount of State and Federal funding. But the extent of the residential development there is limiting the possible future "public use" nature of the airport. In addition, the FAA's firm stance against investing Federal funds in a residential airpark should be taken quite seriously by both the Port of St. Helens and by the State of Oregon as regards the Independence State Airport.

I offer these comments as simple advice gained from experience. If you have any questions, I'd be happy to talk with you more at any time.

11/8/2007



Sincerely,

Ann B. Crook, CM

11/8/2007

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PORT OF ST. HELENS WORK SESSION

OCTOBER 24, 2007

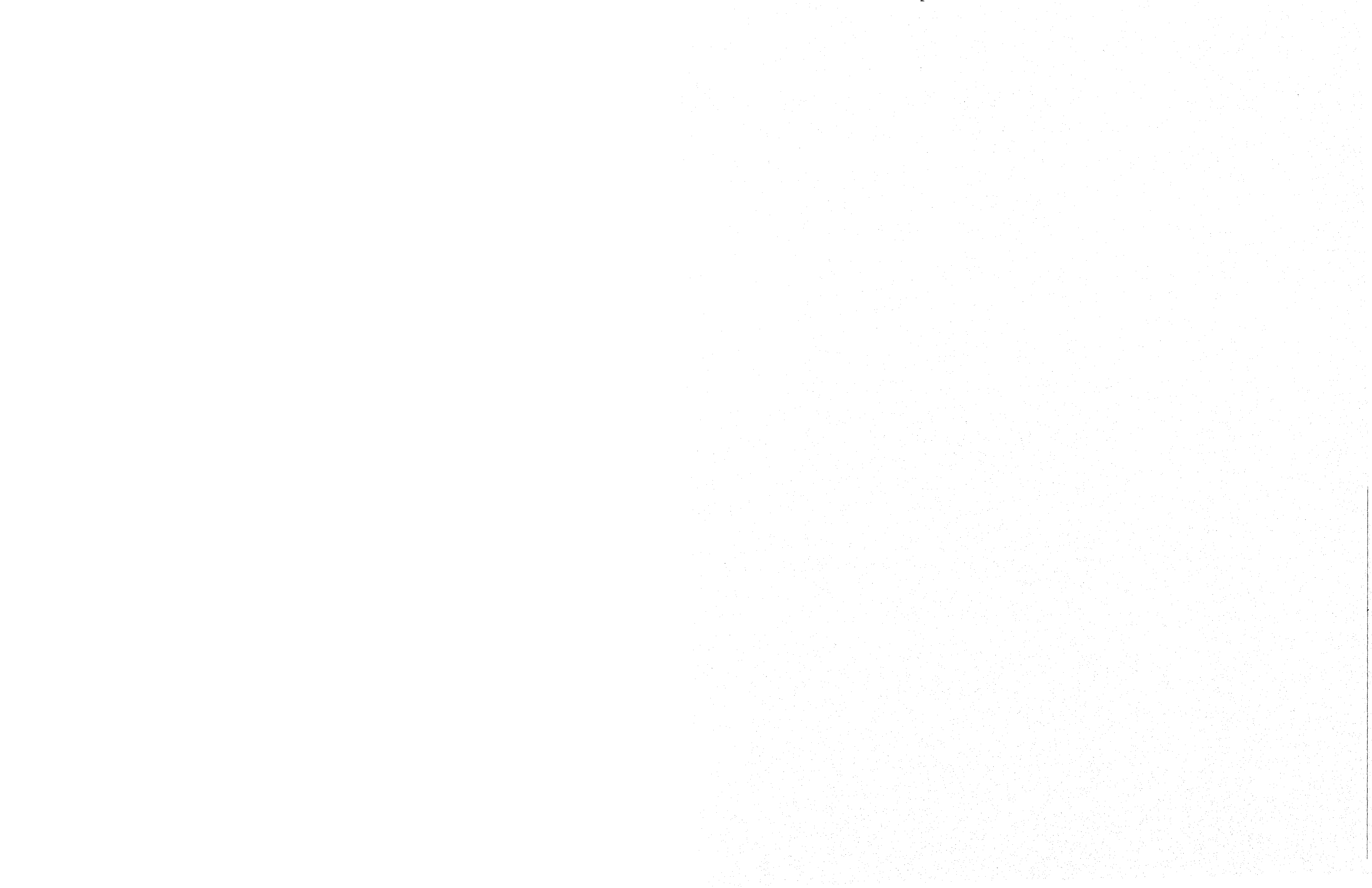
COMMENTS OF DANIEL CLEM

Director, Oregon Department of Aviation

1 DANIEL CLEM: Again my name is Dan Clem.
2 I'm the newly appointed director of the Department of
3 Aviation and I've had the pleasure of meeting three of
4 your commissioners at the tri-state airport managers
5 conference, so appreciate that.

6 I'm not here on behalf of any one party. I'm
7 a little concerned that your minutes reflect that I'm
8 in fact here to answer questions that you may have.
9 The State of Oregon -- this is a local land use
10 matter. We have provided a letter to the Port, we
11 have provided a letter to the city, essentially
12 indicating that we thought the residential air park
13 would work but that the Port should recommend to the
14 city a number of conditions and requirements such that
15 the Port is protected in whatever the city does, such
16 that the Port has some jurisdiction over what any kind
17 of, quote, commercial and/or residential development
18 happens out here.

19 As a matter of course, I was at the same
20 conference with Carol Key. Her presentation came
21 later after our discussion and I will tell you that
22 the State of Oregon -- I don't have any paperwork in
23 front of me to share with you but the State of Oregon
24 is taking exception to the FAA's purported policy
25 against residential air parks.



1 You cited the Wyoming -- somebody cited the
2 Wyoming issue and the compliance officer, I believe.
3 First thing I did when I got back to the office is I
4 asked my staff, show me the published national policy.
5 We operate an independent state airport which has a
6 residential air park.

7 We intend on continuing to support such that
8 they meet all federal and local land use requirements.
9 Residential air parks, as -- has nothing to do with
10 the through-the-fence, it has everything to do with
11 access agreements. I think I shared with three of you
12 commissioners that we're just as concerned about
13 making sure that through-the-fence, as an economic
14 tool, that there's equity in what people pay to help
15 operate the airport.

16 FAA's concern is that those folks living in
17 houses with big garages, hangars, aren't paying their
18 fair share. The running battle that I have with Bill
19 Watson, who I think was quoted, is that I can prove
20 that they're paying for their hangar space -- for
21 their access fee, they're paying an equitable amount
22 as they would pay if they were renting a hangar, at
23 least at independent state airports.

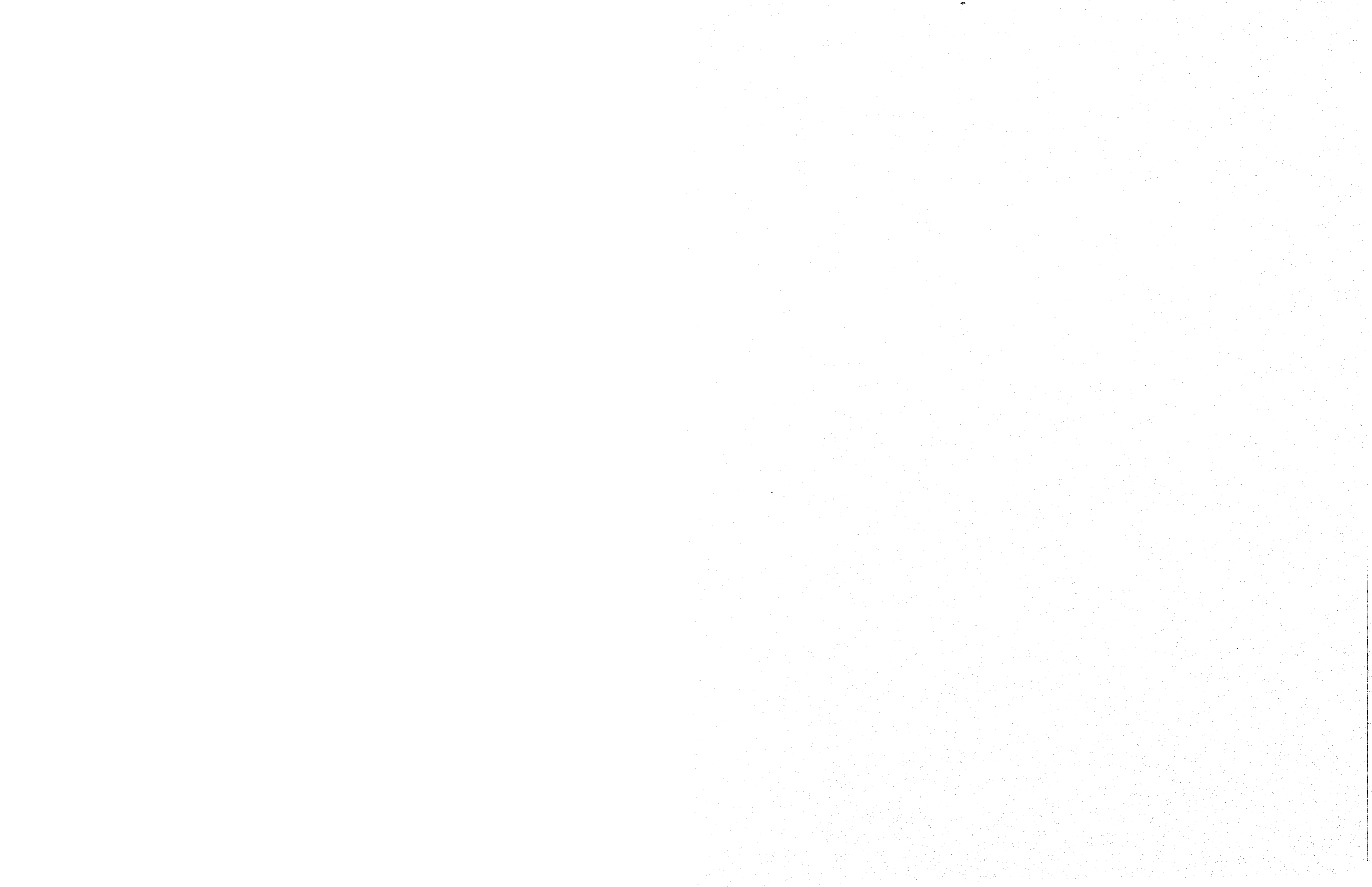
24 So I think when we made our recommendation to
25 you in writing, oh, six weeks ago, I think we wanted

1 to underscore that in fact that you have to have --
2 you have to have control of whatever it is that the
3 city allows to happen. So again my first issue is
4 that Oregon Department of Aviation and the state
5 aviation board do not concur with -- or we are
6 challenging FAA's national policy.

7 Carol Key represented that this was a
8 national policy. I will tell you that to date, upon
9 request, they've provided nothing in the way of
10 national policy. They've not promulgated
11 administrative rule making, they have not withheld any
12 grant assurances, nor have they removed anybody from
13 the AIP.

14 So I'm not so much in support of whatever you
15 do here. Obviously the state is neutral on whatever
16 your decision is. It is what it is. I will tell you
17 that we operate a residential air park and we don't
18 believe that the policy changes have been anything
19 more than regional compliance officers or staff being
20 aggressive in reciting what they've heard from their
21 leadership, but that it has in fact not gone through a
22 due process of federal rule making.

23 So both the state, as it operates independent
24 state airport, and you folks as you're considering
25 what you want to do with your airport, are caught in



1 this sort of pre-policy development conundrum of
2 trying to second guess what the FAA will do or won't
3 do.

4 I did ask Bill Watson, nationwide was he
5 aware that any grant assurances -- that the FAA moved
6 against any airport or airport sponsor for grant
7 assurances related to residential air park. He
8 indicated that has never happened. Has any airports
9 been removed from the AIP list? He has indicated that
10 that has not happened.

11 So I'm a little -- the state is concerned
12 that the federal government is presuming and I would
13 be very concerned about that. I'm aware that your
14 attorney had contacted one of the state's attorneys
15 with regard to the through-the-fence program.

16 I went back and looked at -- I have not seen
17 any correspondence other than Mr. Greenfield's letter
18 and I wanted to confirm for myself as the new director
19 that under the through-the-fence legislation that
20 there was a prohibition that the legislation only
21 intended to address commercial and industrial
22 through-the-fence operations but that it -- also that
23 there was either testimony or evidence provided in the
24 hearings in the legislative process that talked about
25 prohibiting residential and/or residential air park.

1 I could find none. Any supposition that
2 Senate Bill 680, the through-the-fence legislation,
3 intended to prohibit residential air parks, I can't
4 find any evidence of. When folks make public records
5 requests about aviation issues, as they have on the
6 through-the-fence program, they come to my department
7 because we hold a lot of the -- we hold all the
8 testimony for all the public meetings and I understand
9 some were held here during the legislation and after.

10 But I will tell you that we are very
11 concerned that whatever you do that you do take a look
12 at making sure that whatever uses you allow here, that
13 they're in fact compatible and that you have a lot of
14 control over that because, understand, it's a city
15 code or a city issue that's being looked at.

16 We're very concerned that the airport sponsor
17 has got to be in the driver's seat in terms of making
18 sure that everybody's charged for access to the
19 airport, so when they say through-the-fence agreements
20 in the federal context they're talking about both
21 commercial and residential air park.

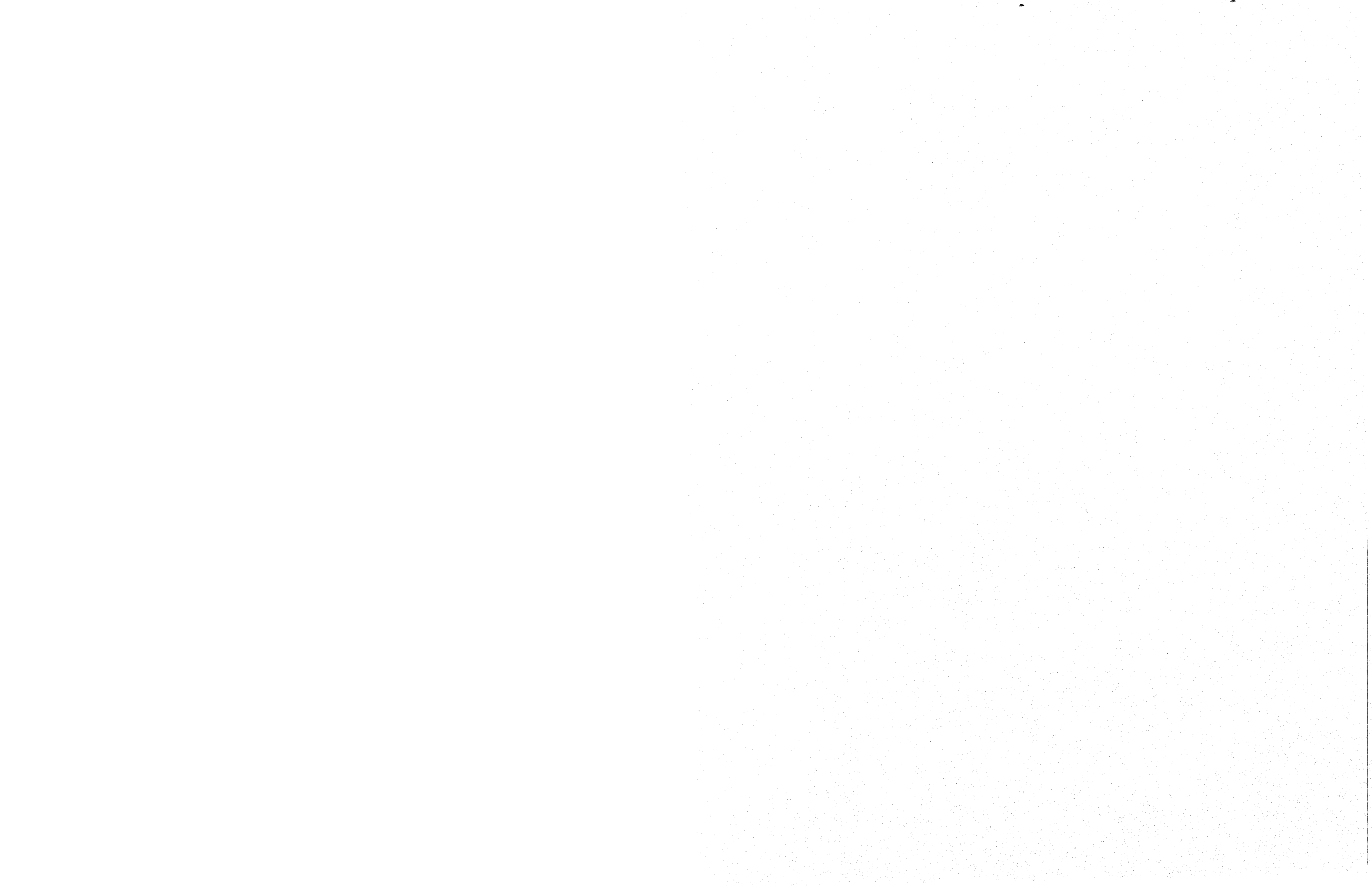
22 In Oregon, when we talk about
23 through-the-fence, it's legislation to promote -- for
24 the intent of promoting economic development with
25 regard to commercial and industrial. It doesn't mean

1 because the state operates a residential air park or
2 at least an airport with a residential air park that
3 it was ever intended to prohibit that. It was silent
4 on it because it wasn't created to address residential
5 air parks.

6 My big issue is that -- and it's the FAA's
7 issue under grant assurances, is that whatever access,
8 all airport users and those off the airport who want
9 access, are treated in an equitable manner, that they
10 all pay and contribute toward the operation of the
11 airport.

12 So again we don't see that residential air
13 parks on a nationwide basis -- and this was discussed
14 at the National Aviation State Officials Conference
15 that we hosted in Portland in September, you will find
16 by and large most states completely support --
17 aviation directors, my counterparts, support
18 residential air parks, particularly where the
19 appropriate controls have been put in place to insure
20 that they comply with design standards for noise.

21 The biggest problem with residential air
22 parks from the FAA's perspective is you've got kids on
23 bikes and dogs running out onto the airport. So there
24 comes with residential air parks the need to control
25 and have a very active homeowners association or condo

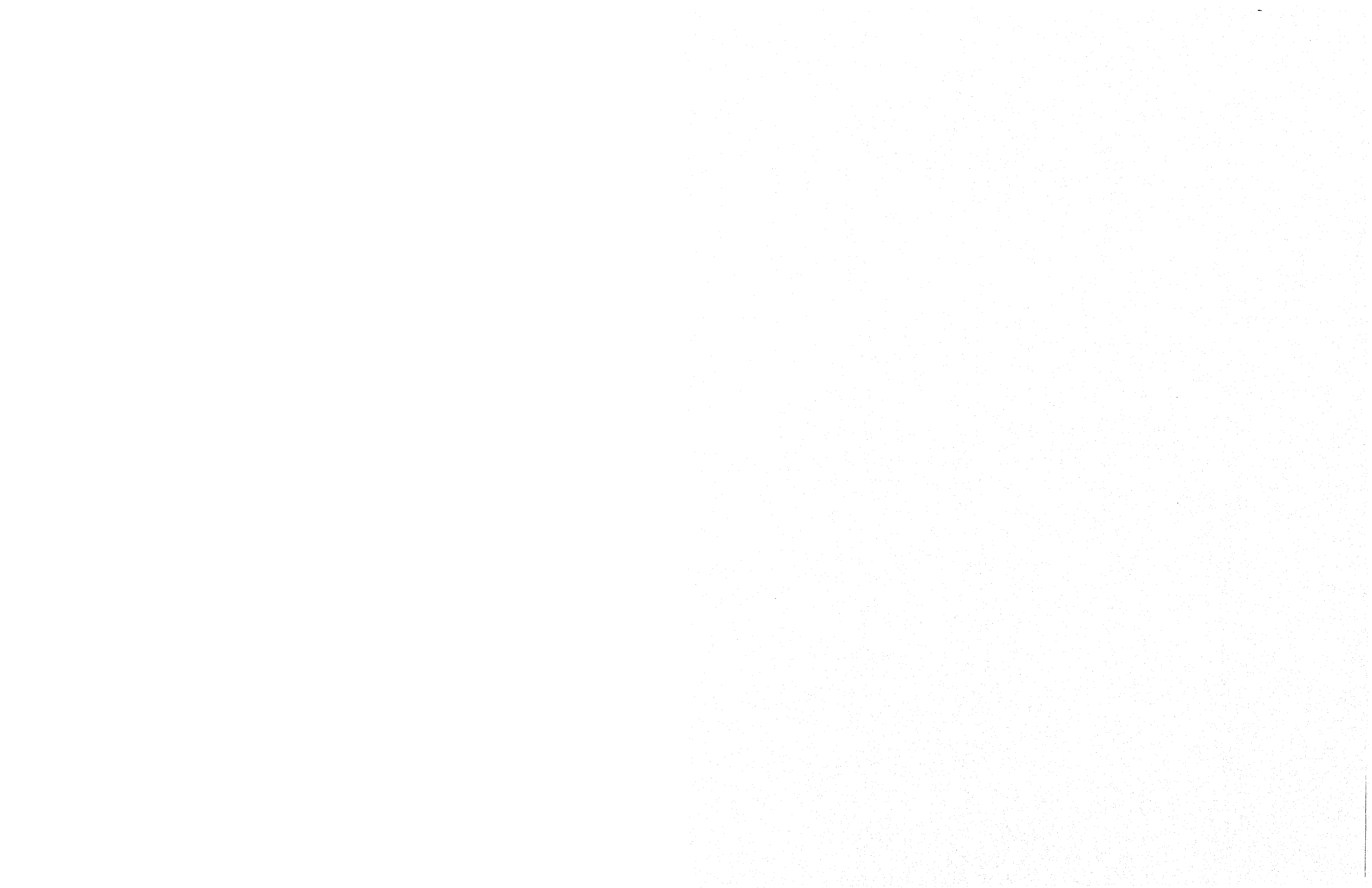


1 association with enforced CC and Rs and that sort of
2 stuff.

3 So again, my two points are through-the-fence
4 legislation, from all the evidence that I've looked
5 at, was never intended to prohibit anything. It was
6 essentially to empower -- and this being one of the
7 three pilot airports in the program -- commercial,
8 industrial, economic growth.

9 And the other point is the Oregon Department
10 of Aviation, the state aviation board, are challenging
11 the FAA's belief and unpublished statements about
12 residential air parks with regard to funding or future
13 funding.

14 So let me answer any questions I can.
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Oregon

Theodore R. Kulongoski, Gov



3040 25th Street SE
Salem, OR 97302-1125
Phone: (503) 378-4880
(800) 874-0102
FAX: (503) 373-1688

November 8, 2007

Mr. Dennis Roberts, Regional Administrator
Federal Aviation Administration
NW Mountain Region
1601 Lind Avenue SW
Renton, WA 98057

Mr. Roberts:

In light of the increased interest of residential airport development throughout Oregon, I request that the Federal Aviation Administration (FAA) provide Oregon Department of Aviation (ODA) with written clarification regarding the FAA's position on residential airport development. To date, ODA has been unable to confirm that actual rules, policies, or statutes have been created to explicitly deny the development of said airports. Recent verbal and written communications by the FAA have indicated that the FAA considers residential airports to be an incompatible land use. Furthermore, the FAA has indicated that airport sponsors risk losing grant funds should access for residential airports be approved.

The following references indicate the aforementioned:

1. Carey v. Afton-Lincoln County Municipal Airport, FAA Docket No. 16-06-06, Directors Determination dated January 19, 2007
2. FAA letter Dated April 25th 2007 from William Watson to Port of St. Helens regarding proposed rezone application by Sierra Pacific Communities.

The Oregon Department of Aviation questions the validity of these two documents in that they, by effect, attempt to re-define FAA policy and rule without due process. These opinions state beliefs that residential airports are synonymous with the term "residential," which in operational and in land-use terms, is incorrect. These opinions are being cited as "National Policy," without substantiation as to rule- or policy-making efforts by the FAA. Please cite what rule- or policy-making efforts the FAA has completed to substantiate a redefinition of the term "residential airports."

The Oregon Department of Aviation enjoins and complies with FAA policies and grant assurances with regard to residential development on/nearby airports. The ODA further considers this to be a matter of high importance, as local land-use jurisdictions are, in some cases, relying on the documents referenced above in making land-use decisions which may be successfully challenged in litigation and in state aviation practices.



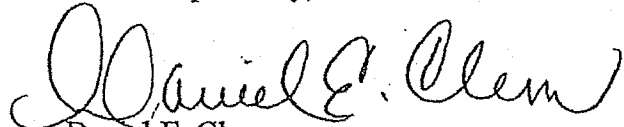
The FAA supported and continues to provide funding for residential airparks under the National Program of Integrated Airport System (NPIAS) Program for several public-use airports throughout the nation, including airports in Oregon (Independence State Airport, Christmas Valley, Creswell, Hood River, Lexington and Sun River). The health and safe operations of public-use airports are, to an appreciable degree, positively impacted by the known and accepted presence of residential airparks on and/or adjacent to those airports. It seems duplicitous now for the FAA to "change its minds" on an informal or an uncoordinated manner to re-define residential airparks as "residential," particularly when experience and data prove the benefit, not the detriment, of residential airparks for general aviation airports.

FAA's grant assurances require airport sponsors receiving federal funds or benefit to operate the airports in a lawful manner, without unjust discrimination, to be financially self-sufficient. Without the ability for certain general aviation airports to obtain access fees available from residential airparks, airport sponsors may not be able to comply with this grant assurance. It could be viewed as duplicitous for the FAA to force airport sponsors to delete lawful revenue streams, while requiring those revenue streams for financial stability needed to continue to operate the airport safely.

The current trend of the closure of general aviation airports across the nation is due to several factors, with a principal factor being the inability for airport sponsors to financially meet expenses. Any effort by the FAA to redefine residential airparks must be done in a transparent and orderly manner, with public input. ODA is concerned that this may not be occurring at this time.

The Oregon Department of Aviation requests that the FAA initiate either formal policy- and/or rule-making within the purview of the general public and aviation community. I welcome the opportunity to share Governor Kulongoski vision for sustainable communities through a safe and contemporarily relevant aviation system in Oregon at our meeting on November 9, 2007.

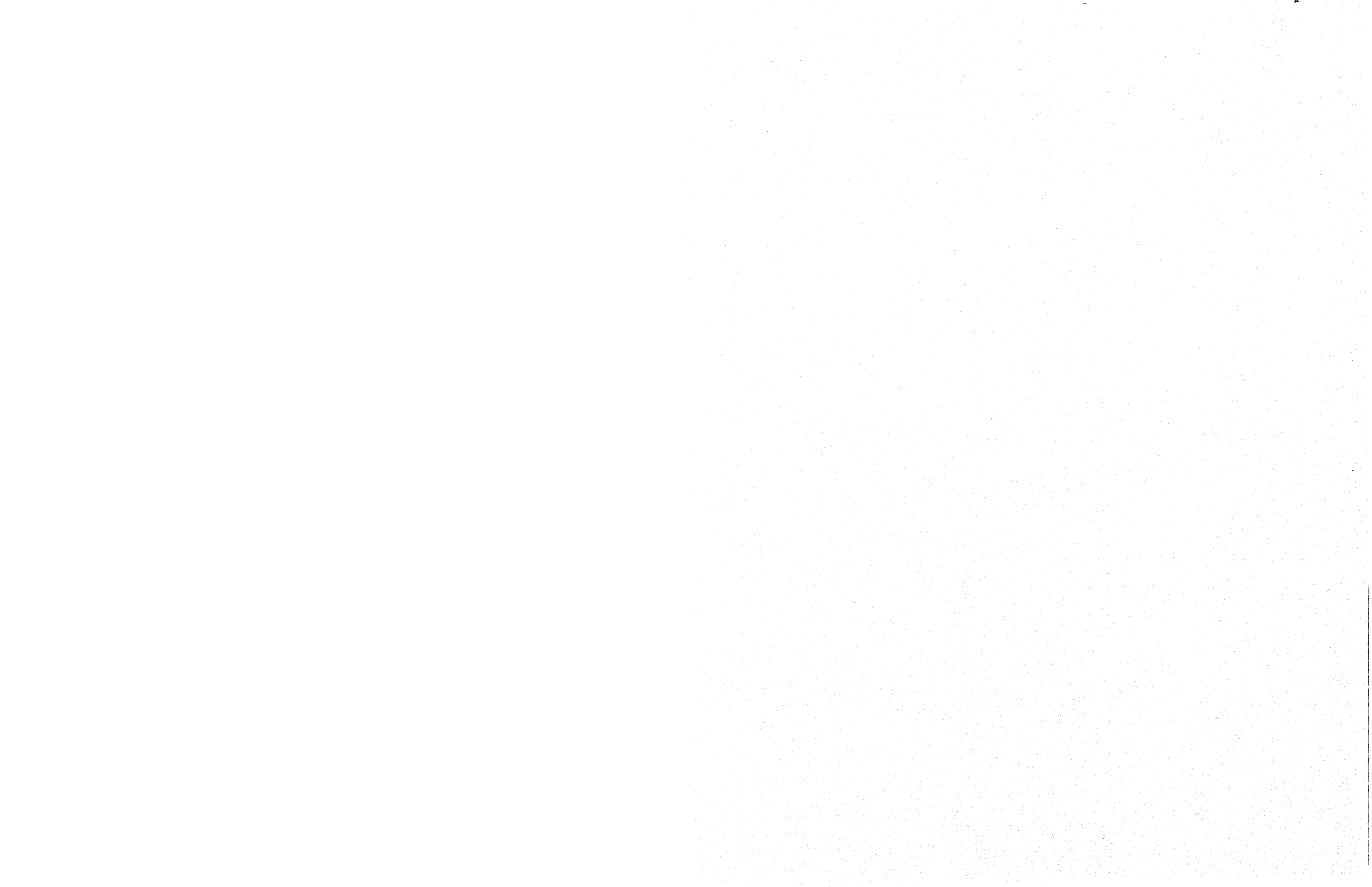
Yours respectfully,



Daniel E. Clem
Director

Cc:

Hans Bernard, Governor's Office, State of Oregon
The Honorable Senator Betsy Johnson, Senate District 16, State of Oregon
Michael Burrill, Sr, Chairman, State Aviation Board
Donna Taylor, Airports District Office, NW Mountain Region, FAA
Henry O, Executive Director, National State Aviation Officials Association
Michael Ferguson, NW Representative, Aircraft Owners and Pilots Association
Gary LeTellier, Chairman, Oregon Airport Manager's Association
John Sibold, Director, Washington State Department of Aviation
Gerry Meyer, Executive Director, Port of St. Helens, Oregon



Mr. Daniel E. Clem
Director, Oregon Department
of Aviation
3040 25th Street SE.
Salem, OR 97302

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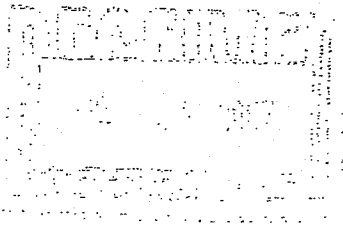
Dear Mr. Clem:

Regional Administrator Dennis E. Roberts has asked me to respond to your November 8 letter, asking the Federal Aviation Administration (FAA) to provide the Oregon Department of Aviation (ODA) with a written clarification of the FAA's position on residential airparks.

The FAA does not oppose residential airparks at private use airports, such as the one at Sun River, Oregon. Private use airports are operated for the benefit of the private owners, who are free to make any change to the airport's operation, including imposing restrictions on aeronautical activity. The same does not apply for a public use airport receiving federal financial assistance. In this case, the airport is operated for the benefit of the public, and the public interest should in no way become subordinate to the private interests of airpark residents. The two interests, public and private, are not compatible in this instance.

We can agree that a successful private use airport, with or without a residential airpark, is good for aviation. However, we cannot endorse the introduction of residential airparks at federally-obligated airports like Scappoose, Christmas Valley, Creswell, Hood River or Lexington; or the expansion of an existing airpark at Independence State.

Your letter questions the validity of two documents concerning the FAA's position on airparks: (1) FAA Docket Number 16-06-06, *Carey V. Afton-Lincoln Municipal Airport*, dated January 19, 2007, and (2) a letter from Mr. William Watson of FAA to the Port of St. Helens concerning a rezoning application by Sierra Pacific Communities. Both of these documents reflect existing FAA policy, and applicable federal statutes and obligations affecting grant funded airports. These documents do not re-define FAA policy. They reflect existing FAA interpretation of federal law and policy and require no separate rule-making procedures.



COPY

The FAA Docket Number 16-06-06 constitutes an FAA administrative decision resulting from the adjudication of a case involving violations of certain federal statutes and related FAA grant assurances, including violations that resulted from the introduction of a residential airpark. The applicable statute and grant assurance in this case was Title 49 of United States Code §47107 (a) (10), *Compatible Land Use*. This statute requires airport sponsors to take appropriate action to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities compatible with normal airport operations.

Title 14 of the Code of Federal Regulations (CFR) Part 16, *FAA Rules of Practice for Airport Enforcement Proceedings* may be used to interpret and enforce the grant assurances. These enforcement procedures were published in the Federal Register (61 FR 53998, October 16, 1996), and became effective on December 16, 1996. A decision under 14 CFR Part 16 interprets existing law and policy in an adjudication and is persuasive precedent for future FAA decisions.

Your letter also expresses a belief that residential airparks are not residential developments and, as such, the FAA should not oppose them. The word residential is used in the term "residential airpark," because it describes a situation where homes and aviation hangars are collocated. The implication in this use of the word residential always has been that it involves a residence where people live. As such, we did not misunderstand the meaning of the word residential in this context. Residential airpark residents with a financial interest in their homes are no different than residents without airplanes. Both seek to preserve one of their most valued possessions, their home and the quality of life while at home. This is why many residential airparks have restrictions on aircraft operations. Airpark residents may seek restrictions on the operation and future development of the airport to preserve the investment in their homes and a quiet home environment. Such restrictions may undermine the federal investment that was made to provide access for all current and future aeronautical users.

Since 1982, the FAA has spent more than \$1.8 billion in federal funding to address land use incompatibility issues at federally obligated airports. A substantial part of this funding was used to buy land and houses and to relocate residents. Encouraging residential airparks on or near a federally obligated airport, as you suggest, would undermine this significant commitment of federal financial resources.

It would be inconsistent for the FAA to require an airport sponsor to prevent residential development in the vicinity of its airport while endorsing the introduction of a residential airpark. Similarly, if an airport promotes a residential airpark, it will not be successful in preventing other incompatible residential development before local zoning authorities. In fact, Oregon's own *Airport Land Use Compatibility Guidebook (January, 2003)* outlines the need to comply with the FAA grant assurances. It also specifically identifies, as *Goals and Policies Related to Land Use Issues*, several measures to protect an airport from incompatible land uses. Further, the guidebook also states that residential use (homes) is an incompatible land use in the airport's Part 77 *transitional surfaces*, which is the area immediately adjacent to the airport where an airpark typically would be located.

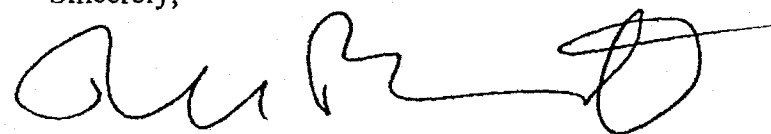
Concerning airport closures, we disagree with your assessment. There are no significant airport closure trends as 1. as federally obligated, public use airports are concerned, and the FAA has always aggressively denied requests to close airports. In addition, the FAA invests a significant amount of resources in the planning, funding, and development of more than 3,300 federally funded airports nationwide, the vast majority of which are general aviation facilities. The number of closures approved by the FAA in the last 20 years has been minimal.

Even the Aircraft Owners and Pilots Association (AOPA) has recognized FAA's efforts. In its correspondence to the FAA on the Revised Flight Plan 2006-2010, AOPA stated, "The FAA is doing an excellent job of protecting airports across the country by holding communities accountable for keeping the airport open and available to all users."

The FAA will continue to support the future federal funding of Scappoose Industrial Airpark by urging the Port of St. Helens Commission not to permit the penetration of its fence for access to the airfield by residents of an adjacent airpark. As part of its Airport Improvement Program, the FAA reserves the discretion to fund certain projects at federally obligated airports. In cases where the full public benefit is not achieved or is undermined by violations of the federal obligations, the FAA may discontinue federal funding and has done so. In certain instances, the FAA has chosen to not fund airports that promote residential airpark development when it undermines the utility of the federal investment and is not in compliance with the airport's federal obligations.

I hope I have clarified the FAA's position on this matter.

Sincerely,



David L. Bennett
Director, Office of Airport
Safety and Standards

cc: Gerry Meyer, Executive Director Port Of St Helens Commission

Memorandum

December 12, 2007

TO: Mark Greenfield
 FROM: Kim Shade
 RE: Oregon Airports Through the Fence Activities

Based on telephone conversations I had with representatives of the Oregon Department of Aviation and most of Oregon's 97 airports obtained the following information regarding through the fence activities at these airports:

<u>Category</u>	<u># of TTF Residences</u>	<u>TTF Industrial/Commercial</u>
1 (7 airports)	0	2 airports (both federally funded) Robert's Field – 1, Lancair Rogue Valley International – several freight delivery agreements
2 (11 airports)	0	5 airports (all federally funded) Aurora State – 5 agreements but several users McMinnville Municipal – 1, Evergreen Aviation Museum Salem McNary Field – 2, National Guard, State of OR Scappoose Industrial Airpark – 2, Transwestern & Oregon Aero Troutdale – 1, US Forestry
3 (7 airports)	0	0
4 (36 airports)	13 airports (5 are federally funded)	4 airports (3 are federally funded) Condon State – 1, ag operator Grants Pass - ? Independence State – 1, ag operator Sunriver – 2, drywall & auto repair/flight instruction
5 (36 airports)	10 airports (2 federally funded)	1 airport (federally funded) Wasco State – ag operator

Conclusion:

The highest use airports, category 1, 2 & 3 do not have residential through the fence. Approximately 23% of Oregon airports have residential through the fence. There are very few industrial/commercial through the fence agreements. Aurora and Robert's Field are the only airports with similar industrial/commercial through the fence agreements as Scappoose.

Public Use Airports (97)

<u>Airport</u>	<u># of TTF Residences</u>	<u># of TTF Industrial/Commercial</u>
<i>Category 1</i>		
Eastern Oregon Regional – Pendleton	0	0
Eugene Mahlon Sweet Field	0	0
Klamath Falls	0	0
North Bend Municipal	0	0
Portland International	0	0
Roberts Field – Redmond	0	1, Lancair
Rogue Valley International – Medford	0	several freight delivery agreements
<i>Category 2</i>		
Astoria Regional	0	0
Aurora State	0	5 agreements but several businesses access
Bend Municipal	0	0
Corvallis Municipal	0	0
Hillsboro (Portland)	0	0
McMinnville Municipal	0	1, Evergreen Aviation
Portland Downtown Heliport	0	0
Roseburg Regional	0	0
Salem McNary Field	0	2, National Guard, State of Oregon
Scappoose Industrial Airpark	0	2, Transwestern, Oregon Aero
Troutdale (Portland)	0	1, US Forest
<i>Category 3</i>		
Baker City Municipal	0	0
Burns Municipal	0	0
Columbia Gorge Regional/The Dalles Municipal	0	0
Grant County Regional/Olgivie Field		
La Grande/Union County	0	0
Lake County		

Ontario Municipal		
<i>Category 4</i>		
Albany Municipal	0	0
Ashland Municipal	0	0
Bandon State	0	0
Brookings		
Chehalem Airpark (Private)		
Chiloquin State	0	0
Condon State	0	1 ag operator
Cottage Grove State	1	0
Country Squire Airpark (Private)	0 (two houses on airport)	0
Creswell Hobby Field	2	
Enterprise Municipal	1 (no agreement)	0
Florence Municipal		
Gold Beach Municipal		
Grants Pass	0	yes
Hermiston Municipal		
Illinois Valley		
Independence State	2 home owner assoc. With 100's of homes	1 ag operator
Joseph State	0	0
Ken Jernstedt Airfield – Hood River	1 (museum & residence)	0
Lebanon State	0	0
Lenhardt Airpark (Private)	3 (no agreements)	0
Lexington	?	
Madras City – County		
Mulino (Portland)	0	0
Myrtle Creek Municipal		
Newport Municipal		
Prineville		

Sandy River (Private)	2 (owners)	0
Seaside Municipal		
Siletz Bay State	1	0
Sisters Eagle Air (Private)	yes	
Sportsman Airpark (Private)	14	8 private hangars, 2 (drywall & auto repair/flight instruction)
Stark's Twin Oaks (Private)	1 (owner)	
Sunriver (Private)	22	
Tillamook		
Valley View (Private)	yes	0

Category 5

Alkali Lake State	0	0
Arlington Municipal	0	0
Beaver Marsh (Private)	yes	
Boardman	0	0
Cape Blanco State	0	0
Cascade Locks State	0	0
Christmas Valley	2	0
Crescent Lake State	0	0
Davis (Private)	yes	
George Felt (Private)		
Lake Billy Chinook (Private)	yes	
Lake Woahink SPB (Private)		
Lakeside State	1	0
Malin	0	0
McDermitt State	0	0
McKenzie Bridge State	0	0
Memaloose USFS	0	0
Miller Memorial Airpark	0	0
Monument Municipal	0	0

Nehalem Bay State	0	0
Oakridge State	0	0
Owyhee Reservoir State	0	0
Pacific City State	2	0
Paisley	0	0
Pinehurst State	1	0
Powers	0	0
Prospect State	0	0
Rome State	0	0
Santiam Junction State	0	0
Silver Lake USFS	0	0
Skyport (Private)	1	0
Toketee State	0	0
Toledo State	0	0
Vernonia Airfield	0	0
Wakonda Beach State	yes	0
Wasco State	yes	1 ag operator

Bold = NPIAS (Sunriver, Sportsmen and Downtown Heliport are not currently federally obligated)

(Private) = Privately-owned

The National Plan of Integrated Airport Systems (NPIAS) lists development considered necessary to provide a safe, secure, efficient, and integrated airport system meeting the needs of civil aviation, national defense, and the U. S. Postal Service. An airport must be included in this plan to be eligible to receive a grant under the AIP.



Exhibit E-1: Oregon Airport Functional Categories

Category ¹	Significant Function ²	Designation Criteria
1. Commercial Service Airports	Accommodate scheduled major/national or regional/commuter commercial air carrier service	• Scheduled commercial service.
2. Business or High Activity General Aviation Airports	Accommodate corporate aviation activity, including business jets, helicopters, and other general aviation activities.	• 30,000 or more annual operations, of which a minimum of 500 are business related (turbine) aircraft. Business use heliports.
3. Regional General Aviation Airports	Accommodate a wide range of general aviation users for large service areas in outlying parts of Oregon. Many also accommodate seasonal regional fire response activities with large aircraft.	• Generally less than 30,000 operations. • Geographically significant location with multiple communities in the service area. Nearest Category 1 airport is more than 90 minutes average travel time by road.
4. Community General Aviation Airports	Accommodate general aviation users and local business activities.	• 2,500 or more annual operations or more than ten based aircraft.
5. Low Activity General Aviation Airports	Accommodate limited general aviation use in smaller communities and remote areas of Oregon. Provide emergency and recreational use function.	• Less than 2,500 annual operations and ten or fewer based aircraft.

Notes:

1. Category 1 airports are divided into two groups based on the level of air service provided and the forecast design aircraft.
2. "Significant Function" identifies the most demanding function associated with each airport. Most airports have multiple functions. It is recognized that in addition to the highest primary function identified, each airport also provides many of the functions identified in the subsequent categories.
3. Activity breakdowns or thresholds listed in the "Criteria" column reflect existing distributions among Oregon airports. Among Oregon's 101 public-use airports, only 22 have more than 30,000 annual operations; nearly half of Oregon's 101 public-use airports have less than 2,500 annual aircraft operations and ten or fewer based aircraft.

The Oregon Department of Aviation anticipates adopting the following definitions for Airport Categories January 15, 2008:

Category I - Commercial Service Airports

These airports support some level of scheduled commercial airline service in addition to a full range of general aviation aircraft. This includes both domestic and international destinations.

Category II - Urban General Aviation Airports

These airports support all general aviation aircraft and accommodate corporate aviation activity, including business jets, helicopters, and other general aviation activity. These airports' primary users are business related and service a large geographic region or they experience high level of general aviation activity.

Category III - Regional General Aviation Airports

These airports support most twin- and single-engine aircraft and may also accommodate occasional business jets. These airports support a regional transportation need.

Category IV - Local General Aviation Airports

These airports support primarily single-engine, general aviation aircraft, but are capable of accommodating smaller twin-engine general aviation aircraft. These airports support local air transportation needs and special use aviation activities.

Category V - RAES (Remote Access/Emergency Service) Airports

These airports support primarily single-engine, general aviation aircraft, special use aviation activities, and access to remote areas or provide emergency service access.

SKATE PARK WORK SHOP
JANUARY 22, 2008
AT 6:00 P.M.

Present at the Skate Park Workshop: Mayor Burge, Council President Ingham, Councilor Gedlich, Councilor Bernhard, Councilor Meres, Councilor Heerwagen, City Manager Hanken, Police Chief Greisen, City Recorder Pentecost.

City Manager Hanken explained in late October a representative from CCIS (City's liability insurance company) came and did a regular inspection of the City grounds/building for the annual insurance audit. He explained one of the things CCIS noticed when they were out was the condition of the skate park. He explained one of the issues the insurance company has with the condition of the skate park is it poses as a liability risk for them. He explained what CCIS has asked the City to do to come up with some sort of a long term solution for the skate park. He explained in a letter that was given to the City by CCIS there were a number of issues addressed. He explained the solutions go from all various ranges from closing the skate park to totally rebuilding it. He explained CCIS also recognizes the financial realities that municipalities have. He explained what CCIS is looking for is what is the City's long term solution to the skate park and how are we going to get to that long term solution in terms of a time frame. He explained we wanted this workshop to have the users of the park involved to help discuss these issues. He wanted to lay out the options: they can range from tearing it out and rebuilding the facility at the current location, going with a modular type skate park in the current location, rebuilding at another location, build at the same size, build it smaller, build it larger, do modular, do concrete. He explained there are a ton of options when it comes to a skate park and what can and needs to be done. He explained from Councils standpoint we need to come up with some sort of an action plan to move this liability to an acceptable risk for the insurance company. He explained the insurance company knows it may take us a few years to do that, but they want to see what our action plan is, the time frame and how we are committing money to make that happen.

City Manager Hanken asked members of the audience if they are familiar with the skate park on Cornelius Pass Road and Francis Street. ~~Several of the members of the audience were familiar with the site.~~ He showed photos of that skate park for Council to look at so they kind of have an idea as to some of the things he would like to at for a skate park. He in addition he talked about the possibility of modular units and he handed out information on them. In Pendleton the estimated cost for their 12,000 square foot skate park is around \$400,500.00. He explained if we were to look at construction costs and building a concrete skate park it would be in the \$30.00 to \$33.00 range per square foot.

Councilor Bernhard explained he doesn't have a problem supporting a new skate park, he thinks it is a great idea, but he is just curious where the City would come up with the funding for this. Councilor Gedlich stated maybe we can talk about this during the budget process and dedicate more funds. City Manager Hanken explained you would already have an existing facility so in order to repair or rebuild to the same standard if would be coming out of general funds. He explained Oregon Parks Program does a funding cycle once every two years and there would be no funding available until two years from now.

City Manager Hanken explained what the insurance company wants to see is a plan. He explained when the insurance representative was here he pointed out that we would not be able to do it in one funding cycle and the representative was ok recognizing it may take us a couple of years to put money in a fund in order to do this. He explained we are under the gun with the insurance company but they understand and want us to come up with a plan to resolve that issue permanently.

Mayor Burge discussed the issue that there is some indication that a modular is less preferred.

Scott Warneke explained the thing about modular skate parks is the surfacing is not optimum for skate board because it is a urethane finish and the skate board wheels are urethane and together it kind of sticks too much. He explained they are prefabricated so they are kind of limited by the kinds of obstacles that can be added.

Jeff Erickson explained he brought the Public Skate Park Development Guide for Council to look at. He explained he actually builds custom boards here in town. He explained what the Council is discussing it is in the book.

Scott Warneke discussed the issue of possibly high lighting the bad areas on the skate park.

Councilor Gedlich feels the cost of repairing would be a waste of funds.

City Manager Hanken explained the insurance company isn't looking for short term fixes, they want long term fixes. He explained from his standpoint the skate park is beyond minor repairs. He explained he does believe from a recreational standpoint the skate park is the most widely used recreational facility that we have. He would hate to see it shut down and he would hate to see where we get to a point where we have to make a decision between liability insurance and recreation. He explained what he is hoping to get out of tonight's workshop is what does Council want to do long term.

Councilor Heerwagen asked about fund raising. Councilor Bernhard was hoping that Jeff Erickson could answer that question and also discuss corporate funding.

Jeff Erickson explained a lot of companies will grant money but you have to put your proposal on paper to present it to the corporations. He explained there are a lot of community fund raisers.

Councilor Gedlich asked Scott Warneke what size of a skate park they are looking for. Scott Warneke replied probably in the 8 to 9 thousand square foot range.

Jeff Erickson explained a lot of times in terms of design some of the builders who are skaters themselves they will assist a lot of times in the actual design work. He explained also the City should talk to the skaters to help design the park so there are not issues when the park is complete. He explained you can build something small and if it is designed well it will be a world class park.

Councilor Judd arrived at 6:30 p.m.

Councilor Gedlich asked if there is a new facility built are the people in the audience that use the park going to help maintain it? A lot of people in the audience replied yes.

Mayor Burge asked how many people in the audience would be interested in committing their time to be on a committee. He explained we want you involved, but we also want your parents involved. Several people in the audience are willing and there was a sign up list past around and 21 people signed up.

City Manager Hanken explained as we are moving forward with the new park on JP West we have additional ongoing expenses that will need to be incurred and they have to be put in to the budget as well. He explained he understands the need for the parks to get done but he also has to make sure that all budgets balance and all the financials fall in to place.

Councilor Bernhard explained knowing the issues we have had at the skate park, the last thing he wants to see is the skate park moved to an uncontrolled area, from a security and safety standpoint.

Some one in the audience stated having the skate park in front of the police station is pretty uncomfortable. He explained it really shows the distrust in the youth of Scappoose. He stated it is healthy for kids to have a semi secluded spot instead of worry about having the police around watching them. Councilor Gedlich feels they should be happy to have one no matter where the location is.

Police Chief Greisen went over the hand out of statistics for the calls at the Skate Park. He explained in 2005 there was a total of 14 different activities that took place last year there was only 1. He feels the new park hours that took effect November 7, 2005 and the 24/7 police coverage has helped a lot with issues. He explained what he would strongly suggest if a new skate park is constructed on the Veterans Park have the Skate Park built right by JP West Road, were it is not in the back corner. He explained at McCormick Park there are drugs, alcohol and fights.

Councilor Gedlich asked if the skate park is to be located on the Veterans Park site will there be a way to lock it up after hours? Chief Greisen explained the gates could be lock were they open and close at a certain time. He feels if it was located right by JP West Road it would be easier to patrol.

Councilor Bernhard feels the park should be located were it is currently. He asked why do we even go down the road of the potential of having issues if it located at some other location. He is completely opposed to relocating it anywhere else. He feels it is safe, it is secure it gives them what they need.

Some one in the audience explained there are cops patrolling the area even up JP West.

Some one else in the audience stated he was thinking if the skate park was in the current location but larger in size what about the sauerkraut festival and everything else that takes place at the park? Councilor Bernhard replied that would be a design issue.

Kevin lives on JP West right by the park and if the skate park were to be built in the forward right corner that place floods every year and that wouldn't be good.

Some one else in the audience stated we need to find a way to ride bikes in the skate park because they have no other place to ride then on the side walk or in the bike lane and where they do ride they get kicked out.

Kevin stated one of the perks of a large skate park is more people can take turns to skate or ride bikes.

Scott Warneke explained he doesn't feel they as a whole are apposed of being by the police station as long as they can have some more room and also a skate park that will be multi use, possibly year round facility where maybe some of it would be partially covered.

Mayor Burge explained what it looks like we want to look at is replacement of the skate park, formation of a skate park advisory committee that will include 3 or 4 skate boarders or citizens and one member of Council. City Manager Hanken explained what he will do in terms of a letter is talk about a 3 year window of time. He explained he will right something up and bring it back to Council to review.

Mayor Burge adjourned the workshop at 6:55 p.m.

**REGULAR CITY COUNCIL MEETING
AT 7:00 P.M.
SCAPPOOSE, OREGON**

Call to Order

Mayor Burge called the meeting to order at 7:00 p.m.

Flag Salute

Roll Call

The meeting of the City of Scappoose City Council was held at 7:00 p.m. in the Council Chambers; 33568 East Columbia Avenue; Scappoose, Oregon with the following present:

City Council Members:

Scott Burge	Mayor
Judie Ingham	Council President
Jeff Bernhard	Councilor
Donna Gedlich	Councilor
Charles Judd	Councilor
Larry P. Meres	Councilor
Art Heerwagen	Councilor

Staff:

Jon Hanken	City Manager
Doug Greisen	Police Chief
Susan Pentecost	City Recorder
Brian Varricchione	City Planner

Cindy Phillips	Legal Counsel
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Press:
none

Approval of Agenda

Council President Ingham moved and Councilor Gedlich seconded the motion to approve the agenda. Motion passed (7-0). Mayor Burge, aye; Council President Ingham, aye; Councilor Bernhard, aye; Councilor Gedlich; aye, Councilor Judd, aye; Councilor Meres, aye and Councilor Heerwagen, aye.

Public Comments

none

Consent Agenda

Council President Ingham moved and Councilor Bernhard seconded the motion to approve the minutes from the January 7, 2008 Council meeting. Motion passed (6-0). Mayor Burge, aye; Council President Ingham, aye; Councilor Judd, aye; Councilor Bernhard, aye; Councilor Meres; aye; and Councilor Heerwagen, aye. Councilor Gedlich abstained.

Old Business

Ordinance No. 795, an Ordinance Relating to Land Use and Amending Municipal Code Chapters 17.96 (Lots – Exceptions and Additional Setbacks) and 17.152 (Land Division-Major and Minor Land Partitions and Property Line Adjustments)

City Manager Hanken explained what is before Council this evening is a second reading of an ordinance related to land use. He explained there are no changes to the ordinance that was originally submitted to Council.

Motion passed (6-0). Mayor Burge, aye; Council President Ingham, aye; Councilor Judd, aye; Councilor Bernhard, aye; Councilor Meres, aye; and Councilor Heerwagen, aye. Councilor Gedlich abstained.

New Business

City Hall Carpet Bid

City Manager Hanken explained as Council will recall in the annual budget he has been putting money aside to do some improvements to City Hall and the Council Chambers. He explained what we have for you tonight is a very brief presentation of the carpet and painting that we want to have done in terms of bringing City Hall and the Council Chambers up to a more professional standard. He explained tonight they will also have a request to approve a bid for the carpet.

Jill Herr went over the staff report. She showed samples of what staff would like to have placed in City Hall and in the Council Chambers. Several of the Councilors can't wait for it to be finished. Several of the Councilors thanked Jill Herr for her hard work.

Councilor Gedlich moved and Councilor Bernhard seconded the motion that Council approve the carpet bid from Columbia River Carpet One in the amount not to exceed \$14,118.40 as presented. Motion passed (7-0). Mayor Burge, aye; Council President Ingham, aye; Councilor Bernhard, aye; Councilor Gedlich, aye; Councilor Judd, aye; Councilor Meres, aye and Councilor Heerwagen, aye.

Resolution 08-02, A Resolution Petitioning Multnomah County to Install Guard Rails along the Entire Eastern Side of Cornelius Pass Road from Highway 30 to Skyline Blvd

City Manager Hanken went over the staff report.

Mayor Burge explained he was mentoring Taija for her senior class project which was political activist. He explained when this accident occurred he was affected by it as well and this resolution seemed like a good way for the City to start to look at over all more then just what we are doing in the City. He stated what happens in Northern Multnomah County does effect our City. He explained he went to a Metro Regional Meeting a week and half ago because he wants to start being there to make sure our voice is heard. He asked City Manager Hanken to prepare this Resolution to have before the Council.

Councilor Gedlich explained she too has known several young people who have died on Cornelius Pass Road and she is pleased that the City is trying to do something.

Jim spoke on behalf of the family and thanked Council for the opportunity to stand in front of Council this evening. He explained the phrase often heard during the days after losing Taija by people sending their condolences is I can't imagine. He explained the reality of those words can not be more true. Until you get that phone call, see the shock on her mothers face and hear the screams of a grandmother running down a dark highway and in to our arms, until you stand looking at a wrecked car laying in a creek and a tarp covering a 17 year old girl that was sudden gone, you truly can not imagine. Until you see the heartbroken faces of 100's of her friends by candle light, tears streaming down their faces you can not imagine. Taija was 17, a student, a seeker, an activist and a community volunteer. She has vision and depth, she touched many with kindness and her smile and her loss was truly a loss to the world. She dreamed of being a special

needs teacher and traveling to Africa and changing the World. In the days after her death and idea was put forward and that idea is the reason we are here tonight. Cornelius Pass is a public danger, its terrain turns, line of sight, lack of lighting, increasing use and lack of shoulders and barricades have lead to 95 crashes in 5 years. It is rank number one in crashes on the West side and fifth over all in Multnomah County, which spans from Scappoose City Line to Lake Oswego. Estimates range from eleven to fourteen thousand commuters daily from Columbia, Multnomah and Washington Counties. Simple put the road has out grown its physical and functional designation of a rural arterial road and with the double expected usage over the next 10 years by building in Washington County a change needs to be made and made now. We ask for guard rails yes but that is only a start. A survey was done in 1997 which highlighted the exact issues concerning this road and yet with the exception of repairing a slide area and making a hair turn corner easier for commercial trucks to negotiate, improvements have not been made. Now 10 years later deaths, dismemberments, disability, and painful and costly crashes continue to occur at an alarming rate why, because there is no margin for error on this road. Tonight they ask Council to pass a Resolution to pledge their support to approving the safety of Cornelius Pass and to urge Multnomah County to take steps necessary to do so, but he asks for more in addition to signing the resolution he asks Council to pledge their resolve. You resolve to use your personal and political network to what ever end is necessary to protect the families of the residence of the community of which you serve. Thank you from the family of Taija Belwood.

Council President Ingham moved and Councilor Gedlich seconded the motion that Council adopt Resolution 08-02, A Resolution Petitioning Multnomah County to Install Guard Rails along the Entire Eastern Side of Cornelius Pass Road from Highway 30 to Skyline Blvd.

Mayor Burge explained he did receive a phone call from Senator Johnson before the meeting and she wanted him to announce that she had spoken with Senator Metsger and sounds like they are going to put together a hearing down in Salem regarding the safety of this road during the Special Session.

Motion passed (7-0). Mayor Burge, aye; Council President Ingham, aye; Councilor Bernhard, aye; Councilor Gedlich; aye, Councilor Judd, aye; Councilor Meres, aye and Councilor Heerwagen, aye.

Proposals for Airport-related Legislative Amendments (Comprehensive Plan Text Amendment CPTA1-07 and Development Code Text Amendments SCTA1-07)

Mayor Burge opened the public hearing.

Mayor Burge read the opening statement.

City Planner Brian Varricchione explained this is a proposal for amendments to the Comprehensive Plan and the Development Code. He explained these proposed amendments were submitted by Sierra Pacific Communities. The Planning Commission held a hearing on this and has recommended denial based on insufficient evidence provided by the applicant and staff also recommends denial. He explained for more detail he is going to turn it over to Frank Angelo from Angelo Planning Group. He explained Mr. Angelo was retained by the City to assist us with the evaluation of this application.

Frank Angelo went over the staff report. He explained this is a legislative plan amendment and it contains two elements. He explained the first element is an amendment to the Scappoose Comprehensive Plan to include an Airport Comprehensive Plan Designation. He explained the application itself clearly states the Comprehensive Plan Designation would apply to lands specifically near the Scappoose Airpark and that land is currently zoned public use airport with a comprehensive plan designation of industrial. He explained that if the Airport Comprehensive Plan Designation were adopted, one of the features would be to enable

residential development where the comprehensive plan Airport were applied. He explained the second part of the application is to amend the City's development code or zoning code to include a Mixed Use Airport (MUA) zoning designation. He explained this would be a brand new zone that would be included in the Development Code. He explained the applicant has proposed specific code language for the MUA zone and that is included in the application in appendix H. He explained residential would be allowed where the MUA zone was applied as a conditional use. He stated the applicant is not applying this to any specific property they are proposing to create and enable it in the City's Comprehensive Plan and Zoning Code. He explained since Council has received their staff report three other pieces of written testimony have been provided to the staff. He explained one is a transcription of October 24, 2007 comments of Daniel Clem, Director of Oregon Department of Aviation to the Port of St. Helens Commission. That information was submitted by the applicant. There was a letter submitted from David Bennett, Federal Aviation Administration Director of the Office of Airport Safety and Standards. A letter from Mr. Bennett to Daniel Clem responding to questions from Mr. Clem. The final piece is a memorandum from Kim Shade, Port of St. Helens, to Mark Greenfield that discussed residential through the fence operations at airports around Oregon. He addressed the concerns that are in the staff report. He explained the criteria does allow decision makers the opportunity to consider a substantial change in circumstances, a mistake or an inconsistency in the application of a plan designation. He explained the applicant in their application did not argue that a mistake had been made or that an inconsistency was present or applicable to their application. He explained the applicant appeared in their application to argue that there has been a change in circumstance because residential parks are a new and innovative development concept that has proven successful in other parts of the county. That was the extent of the applicant's identification of the change in circumstance. He explained the Planning Commission and staff didn't believe that discussion really rose to the level of a substantial change in circumstance that the City's criteria requires. He explained in summary based on the analysis and the application of the criteria staff found that the applicant did not meet the review standards and the Planning Commission agreed with that recommendation at the hearing in November and unanimously agreed with the recommendation for denial.

Council President Ingham asked about the Land Use Needs Analysis recommendation. City Planner Brian Varricchione replied the report was written with a 20 year analysis period. He explained the report is one step of analyzing the urban growth boundary which has not been completed. He explained you do a 20 year supply and demand assessment and increase the urban growth boundary by the amount specified in the analysis that would show what you need for the entire 20 year period. He explained that is more of the issue rather than looking at the target year, the land is meant to be brought in all at the same time.

Councilor Bernhard asked how short are we then if this zoning was to be changed and we are short on our industrial land size, how many acres are we short for the 20 year piece. City Planner Brian Varricchione replied part of that answer would depend on how large a site was proposed to get this zone. He stated at this point it is a little ambiguous but basically when the most recent set of annexations near West Lane Road was performed that did bring in approx 120 acres and that satisfied the immediate deficit for industrial land. He explained there was an identified need for sites total approx 200 acres and that has not been met.

Bruce Hugo, St. Helens, explained he works for Sierra Pacific. He explained picking up with a question that was asked. He explained quoting from the ordinance and the staff report for the annexation on West Lane Road "The City has reviewed a supply of buildable lands and estimated the demand for land to the year 2025 using stratified residential commercial industrial categories. The 2003 land use needs analysis found that the City should add more then 200 acres of industrial land to meet calculated long term needs. The deficit was 10.5 gross acres in 2003 not including a provision for large sites. Based on staff calculations that account for the 2003 deficit subsequent rezoning actions and annexation and de-annexation on West Lane, the City currently has a small deficit of industrial land of 8.1 gross acres (in 2003) not including a provision for large sites. Annexation of this site is consistent with the comprehensive

plan and would satisfy the immediate deficit of industrial land". He stated the question that Council President Ingham raised is answered in the statement "The City has reviewed a supply of buildable lands and estimated the demand for land to the year 2025". He stated what Sierra Pacific has done so far, what Council knows, is a 37-acre industrial park has been platted and recorded. Out of the 7 lots 5 are sold and the other 2 are pending. They have an additional 39 acres immediately north called Aero Business Center North. He explained the bulldozers are warming up for that. He explained Sierra Pacific has approx 30 acres fronting West Lane Road. He explained the needs analysis was done in 2003 and this is the end of 2007 so they are more then half way there.

Ed Freeman, Sierra Pacific, explained they have filed to rezone an additional 130 acres that they own in the County adjacent to the airport, they are applying to rezone that to industrial.

Council President Ingham asked when is the next process to bring to more property into the urban growth boundary. City Manager Hanken replied technically we are currently in the periodic review process. He explained there are Grants available from the State to do additional work. City Planner Brian Varricchione explained the City did apply for a grant but did not receive the funding in part because DLCD felt they already paid the City for that and we never finished the job.

Bruce Hugo explained they have been contacted by the Governors office. He explained the Governor would like to expedite urban growth boundary expansions and other things that will help economic development. He explained Mr. Denny Houle of the Oregon Economic and Community Development Department contacted him last week and would like to set up a meeting with LCDC, ODOT and Economic Development to see how they can expedite expansion of the urban growth boundary and start planning for the entire east side of the run way.

Bruce Hugo went over the five things that Frank Angelo listed. He explained if Sierra Pacific can bring in 100 acres of industrial acres in 2 years he feels they can make it by 2025. He explained he did a timeline of how they got here and frankly he is not too sure why there is so much controversy at this point. He explained the controversy is going to come when Sierra Pacific comes back to the City for a rezone of a particular property with a particular proposal for an airport residential airpark. He explained they are not going to do that until they are sure they have all the questions answered with the FAA, the Port of St. Helens, with the City of Scappoose, with ODOT, DLCD, and everybody else. He explained all they are asking Council tonight is to please adopt the zone so they can start that conversation with all those people. He explained the City of Scappoose received a letter from the Port of St. Helens' attorney Mark Greenfield on October 2. Earlier that morning on October 2 Jon Hanken called him and asked him to come visit with him and the topic was where is the Port on this application; are they going to support it? He explained the original idea was to be a co-sponsor on a joint application. He explained to City Manager Hanken that he hadn't heard and he didn't know what was going on maybe Mr. Freeman knows. City Manager Hanken called Mr. Freeman and Mr. Freeman reported that the day before he had called Mr. Meyer the Port's Executive Director and set up a meeting for October 3. He explained at 4:45 p.m. on October 2 the letter came in opposing it. He explained they had no notice they had even discussed taking a position. He explained they didn't do it at a regular meeting they did it at a special meeting because of the conflict with some of their members, they did it in executive session, there is no records of the minutes and they didn't notify Sierra Pacific. He explained Sierra Pacific submitted the application to the City and the Port on April 9. He explained on April 11 he went to the Port's regular meeting to make sure they received the application and he wanted to get everyone together to review the application. The Port Commission appointment was with Commissioners Tetreault and DeShazer, Airport Manager Kim Shade and one member from the advisory board to meet with City Planner Brian Varricchione, and Sierra Pacific's contract planner from OTAK to go over the application. He explained that meeting was set for April 20. He explained the written comments came from the Port's attorney Mark Greenfield on the 12th, which was very

helpful, unfortunately nobody from the Port was at the meeting. He explained the meeting went on with OTAK and City Planner Brian Varricione. He explained there were some changes made due to suggestions from Mr. Greenfield they were incorporated and sent back to the Port. He explained on June 22 they actually had a meeting with staff but no Commissioner. They agreed to most of the amendments. The Port wanted final say on land use and they had to remind them that the City is solely responsible for land use. He explained the amendments came out the first part of July and to this day they never heard back about those amendments. He stated when people talk about lack of coordination it is really a sore point with Sierra Pacific. He stated all they are asking of the City tonight and they hope Council will take action, is put the zone in place and maybe the Port will talk with Sierra Pacific. He explained airpark will not be an inhibitor it will be an asset. He explained people who own aviation companies are normally pilots. He explained they like the idea of having their own airplanes and they don't mind the noise. He explained it would be nice as another option of their marketing plan to be able to promote people locating their company with the offer a residential adjacent to the airport where they would be able to walk to work. He explained as far as economic development, he knows of CEO's that fly and have asked Sierra Pacific how much are the lots going to be, how big are they going to be and when are they going to be ready. He explained that will be an asset for aviation related businesses. He explained the letters from FAA and Washington D.C. would be more appropriate if Sierra Pacific had an application before Council to build airpark residential. He explained all they are asking Council to do now is put the zone in place so they can find out if they can do it. He explained the real fight is between the State of Oregon and the FAA over Independence Airport. He stated one thing that is for sure is Sierra Pacific is caught in the middle between several different groups: FAA, ODOT, etc. He explained the City of Scappoose has exclusive zoning authority over the airport because the airport is in the City. He explained the Port of St. Helens has got to come to understand that it has to be a partner with the City just as Sierra Pacific has come to understand that. He explained the City needs the Port, the Port needs the City and Sierra Pacific needs us both. He explained together we have got to start working on some things because the big opportunity for all of us is on the east side of the runway. He stated if you are going to manufacture airplanes you need more than 200 acres. He explained in 2003 when the Airport Master Plan was being drafted there was a big issue over the Port including private residential property as targeted for future acquisition. The property owners were not amused because that devalued their property. He explained at that meeting Mr. Watson of the FAA attended and helped address these issues. He explained Mr. Watson said at that meeting the reason why the FAA doesn't support private property being allowed access to public airports because 9 out of 10 private access developments are faulty. He wants to know who the one is that isn't faulty. He stated he feels it would be more help to the City, Sierra and the Port if the FAA would tell us what makes a good development but instead of that they decided to threaten withholding funds. He stated they obviously have some criteria in order to make that statement and Sierra would like to know what that criteria is. He explained another point Mr. Watson made was between 1977 and 2002 the FAA has provided the Port of St. Helens with nearly 4.3 million dollars in airport funds. He stated that is an awful lot of money and he doesn't mean to minimize that. Sierra Pacific has spent much more than that in the last 2 years. His point in that is that they are both investing in the area and Sierra wants to protect that investment as much as anybody because that is a lot of money. He stated the sewer lines, the storm water lines and streets are all private investment, no public money. He explained they hope to make a reasonable return on the investment and reinvest in the community and that is another reason why airpark residential is important to them, they have identified a market, there is a demand. He explained frankly the profit that can be made from the residential airpark could help Sierra build the Crown Road further out and then to the Myer Site on the east. He explained to start this whole process going Sierra Pacific is asking Council to adopt a Mixed Use Airport zone so they can sit down with everybody involved and see if they can make it work, if they can't make it work they won't be back.

Ed Freeman stated he would like to thank the Council for allowing Sierra Pacific this opportunity to present these text amendment applications. He explained there was a question earlier regarding how many acres is

this going to impact and how many more acres are we going to need for industrial. He explained this particular issue before Council tonight doesn't impact any acres it doesn't take anything away from industrial or add anything to residential all they are asking Council to do is create a new tool to put in the planning tool box for the City of Scappoose, and they wouldn't use it until they can come to agreement with the Port and the FAA. He is not sure why the Port is here tonight to object to this because they are not asking to apply this new zone to any piece of property.

Aron Faegre, Portland, explained he is an architect, civil engineer, and airport planner. He explained he has worked on projects at the Scappoose Airport for approximately 15 years. He explained the idea of airpark residential is not new there are a good number of airports around the State that have them. He explained his own opinion is the FAA model for these small airports is just way outdated. He explained as a planner, as an architect, and as an engineer, the issues that are being discussed are all solvable, there is no enormous problem here. He explained he brought some copies of the Urban Land Magazine and there is even an article that really highlights the things we are doing in Oregon with these public/private partnerships. He explained it really focuses on Scappoose Airport, so the airport is even getting National attention as a leader in finding ways of using these airports for jobs and creating innovative places.

Council President Ingham asked Mr. Faegre if he has proof or is there any proof out there that FAA has ever pulled funding or grant monies from any airport that has done a residential airpark? Mr. Faegre replied at one of the Port meetings Dan Clem who is the Director of Aviation for the State testified at one of their meetings that he went to the FAA office in Seattle where the funds come out of for Scappoose and asked that question specifically to the staff that would know and they called headquarters and checked and to their knowledge they said no airport had ever been denied funds. He explained the Port references the Afton Airport in Colorado and they reference a reprimand letter from the FAA that says we are going to take your funding away. He explained he researched this a little more and discovered the park is all there and it has been approved by the FAA.

City Planner Brian Varricchione read from the copy of the letter dated December 12, 2007 from the FAA to Mr. Clem. He read where it states in cases where the full public benefit is not achieved or is undermined by violations of the federal obligations, the FAA may discontinue federal funding and has done so. In certain instances, the FAA has chosen to not fund airports that promote residential airpark development when it undermines the utility of the federal investment and is not in compliance with the airport's federal obligations. Bruce Hugo explained that is the reason Mr. Clem went to Renton, Washington asking them to show the policy to hold money back because that is a "may," "may withhold."

Councilor Gedlich feels the citizens of Scappoose voted in the property based on it being for economic development to create jobs and that is her biggest concern.

Mike Dennis, St. Helens, explained he owns Oregon Aero. He explained they do different kinds of manufacturing of hundreds of different products and they have between 75 and 80 employees. He explained they have made investments in millions of dollars at the airport. He explained it has been suggested there will be negative ramification if there are some sort of housing developments out by the airport. He feels the perfect mix is having the airpark residential versus jets that are running sitting next to residential. He explained if this were to happen he would buy property and build a house. He stated this is a really attractive community. He explained he gets asked all the time if there is an opportunity to build business at Scappoose.

Jim Vaneck, Scappoose, owner of Sport Copter, explained they manufacture aircraft. He explained he recently got a letter of intent for 25 aircraft and because of that they will be hiring 30 additional employees. He feels the mix of housing and light industrial would be a great asset. He feels a buffer zone of airpark

residential would be good buffer between the airport and existing residential. Councilor Meres commented that the noise would carry if the plan are brought close to West Lane for the row houses. Councilor Gedlich inquired if people would have to be wealthy to live there.

Mark Greenfield, Portland, attorney representing the Port of St. Helens and the Port Commissioners. He introduced President of the Port Commission Robert Keyser, Commissioner Cliff Tetreault, and Commissioner Terry Luttrell, Port Executive Director Gerry Meyer and Port Operations Manager Kim Shade. He explained he has been representing the Port since 1992 and has also worked with the Department of Aviation on several different projects. He explained Sierra Pacific has asked them to adopt a new plan designation and a new zoning that would authorize the creation of a residential airpark with through the fence access to the Scappoose Airport. He explained the Port is not opposed to Sierra's efforts to encourage and promote commercial and industrial use at the airport; the Port's concern is with the residential element. He stated there are both legal and policy implications to what Sierra Pacific is proposing. He believes the amendments that are being proposed cannot lawfully be approved at this time. He explained the applicable law is in ORS 836.640. He explained because the Scappoose Airport is a designated through the fence pilot site through this Statue, therefore proposals affecting the Scappoose Airport have to comply with the Statue then they have to comply with rules that the Oregon Department of Aviation has adopted consistent with the Statue. He explained the Statue defines through the fence operations as "A customary unusual aviation activity that "A" is conducted by a commercial or industrial user of property within an airport boundary and "B" relies for business purposes on the ability to taxing aircraft directly from the property employee for the commercial or industrial use to an airport runway". He explained the Statute provides that the purpose of the through the fence pilot program is to promote economic development by creating family wage jobs by increasing local tax bases and by creating financial support for rural airports. He explained there is nothing in the Statue that addresses residential development. Because Scappoose Airport is a pilot site under the Statue they believe under the terms of the Statue residential through the fence access is not an available option. They don't feel Council can lawfully approve it. He stated economic development is the Port's mission so they feel unless the Statue is amended to specifically authorize residential it requires a denial of the application.

Cliff Tetreault explained a couple of years he seems to have directed the Port to some extent in this direction. He explained after several discussions on this issue the Port decide to place some language into their Master Plan and he read that language. He explained the Port didn't realize they needed to go to FAA first. He explained the Port has also had some turnover in the management. He explained they heard directly from the FAA staff they cannot do this, it is not compatible. He explained in return for complying with those rules and regulations the Port is funded 95% of any land they acquire adjacent to the airport. He explained there is a flow of money that is coming in from FAA. He explained he was able to set up a meeting with FAA in October of last year and there were a couple of Directors from FAA at the meeting along with Kim Shade, Gerry, Colleen DeShazer and Dan Clem. He explained they heard directly from the Seattle FAA staff you cannot do this, it is a non-compatible use, you are jeopardizing your funding. He explained in November of last year they realized they needed to suspend the language pending further investigation or revision of the Master Plan. He explained their concern is the loss of Federal funding. He explained they also talked to Compliance Director of FAA from Washington DC and he said they are hearing the same thing that this is a non-compatible use. He explained the Port is no longer supporting airport residential. He explained he thinks the Port's concern is the focus has strayed from Scappoose Industrial Airport. He explained the Port Commission is asking the Council to consider long term development at Scappoose Industrial Airport. He explained the Port Commissioners don't feel at this time a short term financial gain for the developer regardless to how the funds will be used warrants compromising the potential at the airport. He explained the airport is taking all the risks with little or to no gain. He explained if federal funds are withheld the developer says "oops, there is a mistake" and the airport is stuck with the consequences. He explained it is not a risk that the Port should or is willing to take. He stated if we

go with residential the Port will run the risk of losing the funds from Federal Government, funds that are used for operations and management at the airport.

Councilor Gedlich asked how many years has the Port received \$173,000 from the FAA, why it hasn't increased, what the Port has done with that money and what future uses the Port is going to do with that money.

Council President Ingham moved and Councilor Gedlich seconded the meeting to extend the meeting to 10:00 p.m. Motion passed (7-0). Mayor Burge, aye; Council President Ingham, aye; Councilor Bernhard, aye; Councilor Gedlich; aye, Councilor Judd, aye; Councilor Meres, aye and Councilor Heerwagen, aye.

Kim Shade, Operations Manager, explained since 1977 the Port has received over 4.8 million dollars in grant funds. She explained a lot of the projects they do with the money received is taxiway sealing, over coat, they have extended the runway, they have acquired property for future development. She explained the Port's next project will be the business park.

Mayor Burge recessed for a break at 9:00 p.m. and reconvened at 9:10 p.m.

Mark Greenfield explained the Port is fine with having private industrial development at the airpark. He explained the mission of the Port is to encourage more family wage jobs. He explained the Port's concern is the loss of funding and the fact that the incompatibilities that are posed by residential may actually undermine and harm the Port's ability to attract this kind of development. He read over a letter from Charles Earhart who is the manager of the Compliance Division for the Federal Aviation Administration. He stated what this letter shows is incompatibility is not limited to issues like kids or dogs running on to a runway it goes a lot deeper than that. He explained it talks about how the FAA is opposed to development of residential airparks on federally obligated airports, which Scappoose is one. The letter states "A federally obligated airport must ensure to the best of its ability compatible land use both on and off airport. An airport sponsor will not be successful in defending its airport from incompatible residential development if the sponsor is also promoting residential airparks on or next to the airport. A residential dwelling with an attached hanger is still a residential dwelling and once introduced can lead to additional residential encroachment. FAA does not oppose residential airparks at private use airports. Private use airports are operated for the benefit of the private owners and the owners are free to make any changes to the airport operation including imposing restrictions on aeronautic activity. A public use airport receiving federal financing assistance is different, it operates for the benefit of the public and in no way should become subordinate to the private interest of airport residents erecting residential structures whose value is tied to the airport. The two interests public and private are not compatible in this case."

Mr. Greenfield explained one of the big concerns the Port had earlier on in this looking at the draft CC & R's, in his opinion, they essentially would take control of the airport away from the Port and put it in the hands of Sierra Pacific, just by the way they were drafted. He explained the November 7th letter from Ann Crook, who is the former Director of the Oregon Department of Aviation which is in the record, acknowledges that there has been a surge of enthusiasm for residential airparks with through the fence access in recent years because pilots like this lifestyle. He explained we are not here to disagree with what you hear from a couple of pilot tonight that they would like to live there. He explained the letter from Ms. Crook confirms their point that there is a strong supportive relationship between residents and the airport but she says this is true so long as the airport serves primarily the desire of its residents, but a public use airport must be available for all aeronautical users. He read from the letter "Residents of an airpark take a personal interest in preserving the airport for their own use. These personal preferences can interfere with future industrial/commercial activities. To be more specific, I have received noise complaints from residents of an airpark when the aircraft noise was at the time of day or from a type of aircraft not

consistent with the usual aircraft associated with the residential development. Similarly, residents of an airpark have opposed proposed expansion to accommodate jet traffic which was being considered to support the need of local businesses. He explained he thinks he has heard even tonight that jet traffic may be encouraged at this airport. He read more from the letter "In this case, the airpark residents were concerned about the 'nature' of the airport changing from the primarily residential use which they enjoyed. It will be argued that these types of issues can be addressed through avigation easements and CC&R's. But even with very well-written documents the Port of St. Helens should expect to invest an extreme amount of effort in managing residential home owner concerns and in continuing to recruit new business against the backdrop of these types of residential objections." He explained the incompatibility issue gets down to the fundamental nature of the airport. He asked is it industrial or is it residential and what the letter is saying is it can't be both. He explained the Ports Airport Manager Kim Shade took a closer look at the nature of the airports in Oregon which have been identified by the applicant as allowing through the fence residential. They wanted to see if the applicant did a fair "apples to apples" comparison but what they found out it was really "apples to oranges." He explained there are five airport categories in Oregon. He explained the highest is category one that is type of airport you would have; an example would be Portland Airport, the lowest is a category five, being a low activity generator airport. He explained Scappoose is a category two. He explained category two are businesses or high activity, general aviation airports with over 30,000 annual operations. He explained Scappoose has over 75,000 annual operations. He explained of the 23 airports that have through the fence residential all are category four and five. He explained category five is less than 2,500 annual operations. He explained category four is over 2,500 operations. He explained category three is under 30,000. He explained so you are talking about the smallest airports; Independence, Sunriver, Creswell, Sportsman, they are all category four airports; community general aviation airports. He explained they are not airports that are aimed at attracting business for a high level of general aviation.

He also wanted to bring to Council's attention to the letter dated December 12, 2007 that David Bennett, the Director of the Office of Airport Safety and Standards for the FAA in Washington D.C., wrote to Dan Clem, the director of the Oregon Department of Aviation. He explained the letter says that through the fence residential at private airports is fine but that the FAA will not allow residential airparks at Federally obligated airports, even category four airports, because a public use airport receiving Federal financial assistance and he quoted "Is operated for the benefit of the public, and the public interest should in no way become subordinate to the private interest of airpark residents. The two interests, public and private, are not compatible in this instance." He explained he adds residential airpark residents with a financial interest in their homes are no different than residents without airplanes. Both seek to preserve one of their most valued possessions, their home and the quality of life while at home. Airpark residents may seek restrictions on the operation and future development of the airport to preserve the investment in their homes and a quiet home environment. Such restrictions may undermine the federal investment that was made to provide access for all current and future aeronautical users. He explained Bruce Hugo brought attention to this letter where it states in cases where the full public benefit is not achieved or is undermined by violations of the federal obligations, the FAA may discontinue federal funding and has done so. He explained Mr. Hugo emphasized the word "may" but he doesn't know that he mentioned the words "and has done so". He read the next sentence in the letter that states "In certain instances, the FAA has chosen to not fund airports that promote residential airpark development when it undermines the utility of the federal investment and is not in compliance with the airport's federal obligations. He feels they have made it clear in their letters that airport residential here would not be in compliance with the Ports Federal obligation. He explained the FAA, as Cliff has mentioned, threatened to eliminate federal funding for the Port if airpark residential is approved here. He explained the Port takes this warning very seriously as the FAA provides about 95% of the Port's funding but that is not the only reason why the Port takes this very seriously. He explained the Port believes that a residential airpark would impede its ability to sustain and expand economic development. He explained you have heard some folks here tonight say well they know some other pilots who probably like to establish businesses here. He explained we have heard them say quite

clearly that they established their business here without having an airpark here. There is interest in establishing different businesses here. He explained the airpark that Sierra Pacific would build would benefit the private property owners, it would not benefit the public. It does what is best for Sierra Pacific as a business and he thinks what it really does is provide them seed money and he doesn't believe providing them seed money is a good reason to put an incompatible use next to an airport. He explained it doesn't do what is in the best interest of the Port, it doesn't do what is in the best interest in the larger public interest that the Port represents and that the Port needs to protect. He explained in addition to all of this there are a number of reasons, many reasons set out in the staff report why this application should be denied. The Port supports those reasons and agrees with those reasons. He stated we would bring your attention especially to the findings under transportation Goal 13 and transportation policy 11 which talks about working with the Port to achieve Port objectives. He explained there is an issue of coordination with Goal 2, this would be a plan amendment. Goal 2 requires that plan amendments be coordinated with State and Federal Agencies and coordination is defined as accommodating needs as much as possible. He explained he would say that the FAA has been absolutely clear on this and he thinks this would be absolutely in violation of the coordination requirement to accommodate their need. He explained in summary a residential through the fence may be a good policy for some airports, but it doesn't make sense for an airport with 75,000 operations right now and is likely to grow with businesses in the area. It doesn't make sense to have the conflicting use there. He explained the Port doesn't think it furthers the City's interest in economic development. The Port thinks it is inconsistent with the reasons why the City annexed this property, which is for industrial development purposes. He explained bringing in houses does not bring in sustaining family wage jobs to the airport and housing can go elsewhere in this City. He feels it is important that the City preserves the land near the airpark for airpark industrial development. He stated this is an industrial airpark.

Mark Greenfield wanted to respond to a number of the comments that were made. He explained Bruce Hugo mentioned that they may be coming in to seek rezoning for the Meier's site. He explained he doesn't think the argument that pilots would like to live here is going to fly because that kind of a market demand has never been a basis to justify the exception. He explained if it is an urban growth boundary expansion again you are going to have to justify why you are bringing in more residential development and he feels that will be a very difficult thing to do. He explained we have heard them say this is simply just allowing the opportunity for a zone change it is not making a zone change for this use at this time so maybe we can work things out with the FAA and the Port. He feels it can't be any clearer than the FAA has been in the letters, this is not going to be negotiated out with the FAA. He explained that effort was made we saw the result when Dan Clem wrote his letter, it was an emphatic no. He explained secondly we know where they want to put it. They want to put it next to the airport, they are calling it an airport designation and mixed use zone so we know it is going to go near the airport, so it is not going to eliminate the incompatibilities that we've identified. It will happen, whether it is on the west side or whether they decide to put it on the Meier site or if they do both sides, it is going to happen. He stated Bruce said that the Port needs to be a partner with the City. He explained the Port already considers itself to be a partner with the City. He explained the Port wants to work with the City to encourage economic development but the Port feels that residential development is not in the best interest of the airport and therefore not in the best interest of the City. It is in the best interest of the developer. He explained Ed Freeman said this is just a new tool for Scappoose and it has not been applied now so why does the Port question it. He replied the Port does question it because it will be applied next to the airport. He stated why adopt something saying "gee we may never use" it if in fact you may never use it. You should adopt it only if you intend to use it and you shouldn't adopt it prematurely. He explained if Mr. Freeman is saying we will try to work things out with the FAA, Mr. Greenfield feels they should do that before they adopt it and if you can't work it out you shouldn't adopt it. He explained there was a comment made by he believes Aron Faegre about the Afton case saying he is not aware of any circumstance where the funding was pulled and thinks that hasn't happened. Kim Shade explained on the Afton Case she did speak with FAA representatives. She explained the FAA did pull the funding and then there is an arbitration process they go through and they do a

negotiation and the outcome of that is they will not do any more residential development or they won't receive any more funds. She explained they ended up receiving the funding they had requested after this process, it was a long process and it is costly. He explained he heard Bruce Go say if they can bring in jobs they can bring in jets. He would simply say jets are going to bring in more noise and if you are going to bring in more noise you are going to have exactly the kind of problem that Ann Crook said "the people who live there may like the noise in terms of what it is now won't like the noise in terms of what it will become with the jets". He explained Mike Dennis from Oregon Aero talked about bringing in more jobs, needing all of this land for his business and probably wanting more land as well for his business and he is saying that without the people living there already. He stated this is going to happen without those folks living there and those are the opportunities you want to maintain and keep at the airport. You don't want to convert the lands next to the airport to residential use. He stated he thinks Jim Vaneck had similar comments about expanding his business and again he points out this is happening without a residential airpark. He stated you don't need to live at the airpark to work there.

Cliff Tetreault explained what the Port has done in the past year to recruit businesses for the airport. He explained the Port has kind of gone through turmoil with their staffing and they replaced the Deputy Director position with a Marketing Manager. He explained so they are now actively marketing these properties and following up on leads. He stated it wasn't happening before but it is happening now.

Mayor Burge asked about the suspended language on the Airport Master Plan, was that forwarded to the City? Cliff Tetreault replied he does not know. Mayor Burge replied it is his understanding that the Master Plan is incorporated within our Master Plan which is the master plan. Cliff Tetreault explained it should have been forwarded.

Mark Greenfield explained that is under the Department of Aviation Rule for Through the Fence Pilot Sites; all development that occurs within the Pilot Site becomes part of the airport boundary, subject to the Airport Master Plan. He stated the Airport Master Plan must be approved by the FAA and the FAA have said they will not approve this. He stated we need to ask do you really want to be approving something that is going to require a master plan amendment the FAA will not accept. They think the FAA is clear here. He explained all the risk is here with the Port and it is not a risk the Port wants to take and it is not a risk the Port feels is worth taking.

Councilor Heerwagen asked Mr. Greenfield to explain why residential airpark is not in the City's interest. Mr. Greenfield explained he thinks it is not in the City's interest for several reasons. He explained first of all it is going to convert land that is available for industrial development to a residential development. He explained the industrial development will pay taxes to the City and over long term will have relatively small demands in terms of services. He explained the residential in terms of economic development while it is being built there is economic development, but after it is built there is no more economic development. He explained the jobs created with residential are only for a short period of time. Secondly he doesn't feel it is in the City's interest if there is a potential for the use there to interfere with other uses or discourage other uses from locating at the airport. He feels it is in the City's interest to maximize the potential of attracting industrial development to the airport. Third he feels the City can put residential in other locations where you can avoid the incompatibility, you have already done that, you have planned in a way that separates residential areas from the airport and industrial areas. He thinks that makes a lot of sense. He stated the people at the FAA who are the experts, the former Director of the Aviation who is not with the FAA but is also an expert is all telling us the same things and we respect what they are saying and believe it.

Council President Ingham asked Cliff Tetreault if the Port Commission has ever entertained or had a presentation from Sierra Pacific regarding this application. Cliff Tetreault replied we had some

presentations but they haven't had anything geared to the particular request for which Council is conducting a hearing. Council President Ingham asked when was this application originally filed. City Planner Brian Varricchione replied it was actually in April but the application was deemed incomplete at that time for a variety of reasons and then the subsequent version was received in August. Council President Ingham asked Mr. Tetreault if he was aware this application had been made. Cliff Tetreault replied he was and he talked to Bruce Hugo about the Port coming in as a co-presenter for this. Council President Ingham stated there was one point that Cliff Tetreault brought up in his presentation about a discussion with Sierra Pacific regarding protection at the airport so that opportunity has not come up with the Port and Sierra Pacific. Mark Greenfield explained when Sierra Pacific's application first came in he wrote some detailed comments, which he believes were made available to Sierra Pacific saying these are all the concerns he has if residential went through. He explained it included things like lots size, because the Port felt at that time, and this is before Cliff Tetreault had his discussion with the FAA and the FAA came out with their letters, the Ports feeling was there should be a minimum 2 acre lot size. He explained DLCD says no there should be 6 ½ or 7 units to the acre instead of 1 unit on 2 acres. He explained they talked about having all the hangers on each individual lot. He explained they talked about all sorts of things in the letter regarding the CC & R's and the response was to his knowledge they never talked with anyone at the Port about that they simply came in with the revised document that changed a few things but mostly left the rest of it all the way it was.

Councilor Bernhard thanked the Port and Mr. Greenfield for coming forward. He feels they have made some very valid points and he appreciates that. He explained most of his questions have been going toward economic development, very similar to what the Port's goals are and what they are looking for at the airpark. He asked what kind of economic development the Port has been involved with over the past 5, 10, 15 years or so and what the Port has actually brought to the airport. He explained when we are talking tonight with Sierra Pacific they are seeing obviously possibility of economic growth. Cliff Tetreault replied their attentions have been skewed. He explained they have been doing a lot of North County Port Westward side; the PGE Plant, the ethanol plant is coming in, they are dealing with Bio-diesel coming in. They have put a lot of energy into that site. He stated at this point they realize they need to divert energy down here. He explained they have a marketing director that is working to get businesses here on their properties. Councilor Bernhard asked but what has the Port done in the past. He realizes the Port is gearing up now but what he is hearing from him unfortunately right now is that "no we haven't done much now we are ready to," is that correct? Cliff Tetreault replied "yeah I think you got it." Kim Shade explained the Port has participated in different programs right now which helps encourage private development out at the airport. She explained they have had meetings at the Barnstormer trying to get the cluster concept going with the Oregon Economic and Community Development Department. She explained one of the struggles for the Port is they don't have a lot of land, they need to lease land at the airport because FAA has funded that. The Port of St. Helens cannot sell land, so their land is leased. She explained a lot of their tenants are beginner businesses and they can't afford to buy property. She explained what the Port's goal has always been, and she went back to check in to it regarding Industrial Airpark, clear back to 1988 the Commission was talking about economic growth at the airport and if you have seen pictures of the airport from back then to now you can really see the growth. She explained the airport was purposely named Scappoose Industrial Airport by the Commission so that they could try to get economic development out there and make it an industrial airport job creation and so forth. She explained unfortunately the Port hasn't done a lot of marketing in the last few years but as the business park gets developed and we do have land available there is about 20 acres the Port could sell over there, things are going to change and it has changed. She explained Oregon Aero is a major success for the Port and they are really happy that they are able to move and buy land. That is a great story that they started as a small business and grew and they can now afford their own property and that is what they have been wanting to do is help people get started.

Councilor Bernhard asked Mr. Greenfield about the comment made that this could contract development industrial economic growth out there possibly bringing in a residential airpark. He explained from what he is seeing on the other side is that this could actually spur on growth instead of deterring growth or contract growth. He asked him to elaborate a little more on how he honestly believes this could contract growth and put us in a spot where we are not growing any longer because he is seeing just the opposite of that. Mr. Greenfield replied he doesn't think from what we heard that people have to live at the airpark in order to bring economic growth to the industrial airpark. He explained other people who said they would like to live there, don't have to live there it is a preference but it is not something that is essential for the growth to come in. He explained if people are attracted to the area and they like Scappoose and they like the proximity they can come out here and they can establish their business here and we want to have opportunities for them and we very much support what Sierra Pacific is doing in that regard. He explained in other words he feels you can separate industrial development from residential development. He explained you don't have to have the residential in order to get the industrial. He explained there are some industrial uses that may be uncomfortable with the fact that people who live in a residential area have direct access to the airport through the fence. He explained if you want to have security you can't block those people off because they have direct access and this is a concern and some of the uses may be very concerned that residents can just get on to the airport.

Councilor Bernhard stated early on the Port was in favor of this before talking to the FAA. Cliff Tetreault replied the Port was open to the idea. He explained the Port was supportive if certain conditions could be met. Councilor Bernhard explained his concern was that Mr. Greenfield made a comment that CC & R's could be a problem those types of things but yet what he goes back to unfortunately is the Port at one point was actually in support of this and now you are saying you are not because of the FAA or is it other items. He stated it sounds like the FAA came in with their big stick and said you know what we are not going to give you your average of \$173,000.00 a year, that to him sounds like that is the key issue right there and that incorrect. Cliff Tetreault replied he is speaking for himself and yes that is his main concern. He explained we have a federal sponsor for the airport saying you can't do this and he feels at this point and time they took a stand two years ago and they said yes they want to be supportive of this enterprise but that was in ignorance. He explained the Port really didn't understand what FAA's policy was. He explained they then researched it and talked to those folks, they corresponded with them and it is pretty clear to him what their stand is. Councilor Bernhard explained he keeps on going back to the \$173,000.00 on the average, maybe that is an incorrect assumption on his part, but he goes back to it because he starts asking the possibility of economic growth associated with an airpark, in his point of view, could bring in enough income and growth for the area in the community that the \$173,000.00 average per year doesn't mean swat. He is wondering if we are getting to the point to where are we looking at a developer, Sierra Pacific, that can bring in enough economic growth, economic development to this particular area. He asked does it actually overstep what the FAA could bring to the table. Cliff Tetreault replied he doesn't know he hasn't seen that penciled out. Robert Keyser, Port Commission Chair explained he agrees with what Councilor Bernhard is saying and that thought was crossing his mind tonight. He thinks the distinction is that you're equating the FAA money with economic development. He thinks this Commission would probably be very receptive to tell the FAA thanks but we can do it on our own privately but he doesn't think the residential component is what is triggering any of the economic development. He thinks we will get it with out it. He thinks if the FAA was in conflict with commercial industrial development we would certainly consider just using the fees and the tax revenue that comes from that type of development would easily take care of it. They just don't feel residential will and they do feel it is a hindrance even with pilots that told Council they would like to have one. Councilor Bernhard thanked Mr. Keyser and said he appreciates that.

Councilor Gedlich has a concern because she heard someone make the comment in the last several years that the Port really hasn't done a whole lot of things in the Scappoose area. She asked why has it taken the Port so long to deal with these issues that all of the sudden just come up working with other

intergovernmental agencies. She explained the reason why she is asking this is because she has had a lot of experience with the Port, not only on this body but when she worked for the City. She explained it was like all of the Port's monies and energies were outside the Scappoose area and then all the sudden things started happening in our area and she is not sure where the communication gap got lost. She explained she is a little concerned about the thousands of dollars that Sierra Pacific has brought to our community and the citizens voted to annex the property for economic development. She explained her concern has been for months is the incorporation with different agencies that we don't know enough information, we have pages and pages here that talk about compliance of land use or noncompliance and her concern basically is economic development. She asked if he could tell her who and how long you are going to work with your marketing department and tell her they can bring in a lot of jobs within the next two years. Cliff Tetreault replied he guesses he can't tell her that but he knows that the Port has a marketing manger that is working on that and he can't tell her what is going to be here a year or two from now. Councilor Gedlich explained she has a real issue with for years we haven't done anything with the Port and the Port hasn't done anything in our community and now all of the sudden we are being asked to do some changes or not do changes and this body is more worried about job creation. She doesn't care if there are 10 houses out there or 100 she doesn't care if it is next to the airport. She is worried about the citizens in the community that are hoping for jobs from the Port and what is being done. Mr. Keyser replied as the Chair of the Port Commission and having been a Port Commissioner for a little over three years that was his question. He explained he thinks this Commission has said for the last couple of years we need to concentrate on large scale high value wage jobs and those are best going to be created by developing the Port Westward Energy Park Site and developing the Scappoose Airport and why aren't we doing that. He explained since then there has been a new Port Commission, many new staff members and that is their mission. He hopes it never changes, elections change, people change, but this Commissions priority will be Scappoose and Clatskanie, The Port would like to acquire a large industrial site in St. Helens, he feels that is needed also. He thinks the Port is transitioning from a small rental management company to industrial developers. He explained they don't think they are the only ones who can do it either; they don't disagree with Sierra Pacific and all the development except the residential. He explained we wish them the best. He explained granted communications aren't the best between us and he hopes they can fix that, if not they can still do it with out the Port, he hopes that doesn't have to happen. He explained he thinks they are key to the future here, them, Oregon Aero, several others. The Port plans to work hard on it and that is their priority and you are right it hasn't been.

Mayor Burge asked Mr. Greenfield that he believes that if Council didn't pass this setup it could not be lawfully implemented yet, the proponent specifically cited the Newberg airport he believes it was as an example of someone who already has this in their toolbox of planning tools. Mr. Greenfield replied Newberg is not pilot sites, so Newberg is not subject to this law, he thinks that is the simple answer. He explained his comment about Newberg is that it is a category 4 airport which is a very small airport compared to Scappoose in terms of its annual operations.

Councilor Bernhard discussed the pilot piece, he wants to make sure he is getting terminology correct. He stated when he thinks about a pilot he is not thinking about someone flying a plane he is talking about a test program. Mr. Greenfield replied yes, they call is a pilot test program. Councilor Bernhard replied a test program, in his private world, is something that can change, that is not for sure, that it is just a test and how long has this test being going on and can it change to where it can involve residential airparks. Mr. Greenfield replied he thought he answered that but he will try again. The pilot test program has been going on since 2005, that is when the Statute was adopted. He explained it is limited currently to commercial and industrial, residential is not part of that for through the fence, it is not authorized under that Statute. He stated can it change, yes if the Oregon Legislature chooses to change it. He explained whether the Oregon Legislature would do that in the face of what you see for instance from the FAA and their letters he doesn't know if they would or not. He is not sure if they would want to pick that fight.

Mayor Burge stated one of the things Mr. Greenfield said is in the incompatibility but if you look at the Scappoose Airport and development this point up to Crown Zellerbach Road where it is not developed everything on the south side of Crown Zellerbach is residential, everything on the other side was planned on light industrial. He stated it sounds like what some of the proponents were saying is that some of this would provide a buffer between that residential and this airport related light industrial. He stated to him at any point given that kind of option he kind of leans to having some sort of buffer verses having the airport related light industrial right against people who live and have been living there for 20 ~ 30 years because that is where you get into those noise complaints and problems. Mr. Greenfield replied the closer you are to the airport the louder the noise is. He explained they have noise contours and in fact he thinks if he recalls correctly from some of the comments that are in the record at least a portion of the Sierra Pacific site is within an area that would violate the noise contours and would not be permitted under State Law. He explained another portion of it he thinks it is between 55 and 65 decibels and that is an area where it is recommended that you not have residential. He explained he thinks the argument you are hearing is we are residential but we are pilots and we are not going to complain about and because we are not going to complain then that creates a buffer don't really think of us a residential like you would for residential being occupied by non-pilots. He explained all he can do is go by what he reads in the letters that say the pilots because invested in their residences and it may be fine for the current level of noise that is at the airport but when you get a business that wants to have a jet and that business wants to locate here and they find out they are going to be arguing because the jet is going to make more noise and they are going to say we don't want more noise, then you have a problem.

Council President Ingham moved and Councilor Bernhard seconded the motion to extend the meeting until 11:00 p.m. Motion passed (6-1). Council President Ingham, aye, Councilor Bernhard, aye; Councilor Gedlich; aye, Councilor Judd, aye; Councilor Meres, aye; Councilor Heerwagen, aye and Mayor Burge, nay.

City Attorney Cindy Phillips explained she was concerned about a part of the staff report that seemed to indicate and she hasn't heard mention of it tonight so she thought that Council would probably need clarification on this before you go further. She explained there is a part of the staff report that refers to the language that is being suggested for this mixed use airport zone and it talks about prohibited uses. She explained those uses appear to be in conflict with ORS 836.616 but she hasn't heard anybody mention that tonight so perhaps that language has been changed.

Mr. Greenfield explained there are certain uses that the Statute requires be allowed in airport zones that the proposed zone does not allow. He explained the proposed zone expressly prohibits emergency medical flight services, law enforcement, fire fighter activities, search and rescue operations, crop dusting; those are the major categories that are required by law to be in the zone and that are not in their zoned as proposed. Ed Freeman replied they have no objection to those being included he thought they were resubmitted and included. Mr. Greenfield stated that would raise a question on their part what else did Sierra Pacific intend to put back that they didn't.

Councilor Gedlich asked City Planner Brian Varricchione to give a brief scenario of what the compatibility with public use airport safety and compatibility overlay zone means. City Planner Brian Varricchione replied in essence this means that the City currently has an airport overlay zone that restricts residential development and when you map the restricted area it means that some of the land that is by the airport could not be used for residential purposes at any great density, in some areas it couldn't be used at all very close to the runway.

Council President Ingham asked City Planner Brian Varricchione if the City were to create this zone that would automatically amend this part of the zone. City Planner Brian Varricchione replied the airport overlay currently in effect would overrule the proposed amendment this evening. Mr. Greenfield stated the applicant notes that in their application that the overlay would be applied to the mixed use airport zone.

Bruce Hugo explained Mr. Greenfield wanted to talk about legal issues and policy issues. He explained the legal issue was ORS 836.640, which was formerly Senate Bill 680 in the 2005 Legislative Session. He stated let me tell you about Senate Bill 680, it was the Oregon Legislature thumbing their collective nose at the FAA. The FAA does not like through the fence so the Legislative said we are going to set up a pilot program for Aurora and two other to be named airports and we want them to use through the fence for industrial and commercial activity and report to the Oregon Department of Aviation every year and the Oregon Department of Aviation is going to give a report on how effective if at all through the fence is and FAA stay out of it. That is what Senate Bill 680 was. He explained it was given to the Oregon Department of Aviation for administration the first thing that happens when you pass a law, he know very well and Council probably does to, who ever is going to enforce it, whatever agency, has to adopt Administrative Rules to put the flesh on the skeleton. He stated those rules were also written under the Oregon Department of Aviation. He explained Dan Clem on October 24th came all the way up here to Scappoose to attend a Port work session for two reasons; one to tell the Port that their attorneys interpretation of Senate Bill 680 is wrong and two that the Oregon Department of Aviation is challenging the FAA through what ever procedures they are going to go through on the funding issue. He quoted what Dan Clem said "He has not seen correspondences other then Mr. Greenfield's letter and he wanted to confirm for himself as the new director that under the through the fence Legislation that there was a prohibition that the Legislation only intended only intended to address commercial and industrial through the fence operations but that it also there was either testimony or evidence provided in the hearings in the Legislative process that talked about prohibiting residential and or residential airpark. I could find none. Any supposition that Senate Bill 680 through the fence Legislation intended to prohibited residential airparks and I can't find any evidence of. When folks make public records request about aviation issues as they have on through the fence program they come to my department. We hold all the testimony for all public meetings and I understand some were held here during the Legislation and after". Bruce Hugo explained there was no prohibition, it was a test program. He explained it was a test program for three airports for industrial and commercial use to report to aviation department and that is the legal issue that Mr. Greenfield brought up tonight and also the legal issue that was brought up at the Planning Commission meeting in November after Mr. Clem came all the way up here in October to tell them they were wrong.

He stated on the issue of Scappoose Industrial Airpark Ted White is the one who suggested that. He explained Mr. White's thought on that was if we call it Industrial Airpark we'll get industry here. He explained there is also something called the Boardman Space Age Industrial Airpark in Boardman, Oregon. He stated if they call it Space Age Industrial Airpark they'll get space business, about as effective. He stated it is an airport, it is a publicly owned, public use B-2 class cat 2 airport. He stated the \$173,000 a year issue, Kim Shade mention they are going to be developing the business park which is on the frontage of West Lane Road on the North West corner. She points out that they are going to put a taxi way in to access the business park. He replied Sierra Pacific is putting the taxi way in to access their property. The taxi lane will come down the north side of our 29 acres and they are doing it so the Port can have access to their property. He discussed private industrial development, the Port is concerned about loss of funding and incompatibility. He stated he just doesn't get it. He stated Mayor Burge brought up the issue if they do maintenance stuff out there for jets and it starts on the north end of Crown Road you are going to get complaints about noise but not from airpark residential people from the people who live over there already. He explained there are 500 trees out there and they not only do the CO₂ restoration but they are also sound barriers. He explained when Mr. Greenfield discussed Ann Crook's letter, Ann Crook wanted control. She did not want through the fence she did not want airport residents. He stated if you talk to Dan Clem, the

current Director and if you talk to the President of the Association of Independence they have a volunteer group that goes around and cleans up the airport, it is their home they protect it. He explained when the City of Independence authorized regular residents on the other side it was the park people who fought the encroachment of residential against their airport. He stated those are the people who are going to be protecting the airport because they have the biggest investment in it. He stated as far as industrial development being impeded by airparks he just doesn't see that at all. He stated as he said earlier that airport has been here since 1943 without an airpark and it has been impeded by itself. The reason is they have no marketing plan, they have no marketing structure, they have no resources, they have no target audience. He stated we don't wait for people to call. We are targeting various aviation users and calling them on the phone. He stated marketing is called identifying the market, sales is going after that identified market, that is marketing. He stated there was a meeting in Salem not too long ago where Aurora, Baker City and the Port of St. Helens met with a bunch of other people, this is part of the marketing program that St. Helens reported on. He stated marketing is getting on the phone and calling people, it is not going to a bunch of meetings with a bunch of State agencies. He stated we are in the business of making money and one of the problems of making money is we have to invest and one of the problem of investing money in a government environment is we have to go to the government for permission. He explained they have had great communication with the City, no problem with the County, we need to talk to the Port. He needs Council to pass this amendment tonight so they can start talking to the Port.

Councilor Gedlich asked Bruce Hugo about the letter to Mr. Clem from David Bennett. She stated in the last paragraph it talks about the non-compatibility with residential. She asked if he could address this. Mr. Hugo explained when Kim Shade was here someone asked her if anyone has ever lost money and she replied they came to arbitration to keep from losing money. Bruce Hugo replied you don't arbitrate law, either there is a law that prohibits airpark residential from airports under the FAA or there is not. He stated people in Renton, WA and Washington D.C. have no idea what Oregon's Land Use Laws are. He stated read the phase if you allow airpark residential next an airport the next thing you know you'll have regular residential development encroachment. He stated it is not a concern for him, and he doesn't think it is a concern for the City and it shouldn't be a concern for the Port. He explained what Mr. Greenfield argues about Senate Bill 680 is that it somehow prohibits a through the fence use airport residential, when in fact it permits three airports to involve themselves in a pilot program to demonstrate if through the fence increases industrial and commercial activity. He stated it doesn't prohibit other through the fence activities, other uses are just not part of the pilot program is all. He stated if it is not written in the Law it doesn't mean anything. He stated Mr. Greenfield is putting something into the Statue that is not there, a prohibition, there is no prohibition in that Bill.

Don Hanson, OTAK, planners working on the application for Sierra Pacific. He explained he is here early, he is typically the guy who designs the project and takes it through the approval process. He thanked the City Attorney for the housekeeping item, they left out emergency services, law enforcement, rescue and crop dusting, they intended to have that language in there and have those uses allowed. He explained he wanted to address some of the comments that Cliff Tetreault said. He explained first of all they want the airport to succeed, they want it to flourish because it is so integral to what they are doing in that district of Scappoose. He stated they don't want to do anything to the detriment of the Airport. He wants to make that really clear. He explained everything Sierra Pacific is proposing out there is very much kind of anchored to success at the airport, that is a common goal that we have. He stated we want to make sure what we proposed is compatible and we think there are a number of ways to do that. He explained we also want to address capacity, and they are committed to that. He explained they want to have a discussion with the Port about compatibility. He stated when you think about proposing housing everyone said a residential airpark, we don't even know if that is what it is going to be at this point, we are just requesting the zone so we can explore alternatives. He stated it might be a lodge for pilots or a lodge for people who are training to become pilots, it could be loft housing that is anchored to hangers in a small portion of the site. They don't

really know, they don't know how close they want to go to the runway. There are density restrictions that the FAA has but they haven't really explored those design alternatives but they look forward to doing it. He explained the worst compatibility issues that he has experienced around airports, and he has built some housing projects next to airports so he understands noise and he understand how you build to mitigate for noise, typically it is when there is not good planning and when one use has been pushed up against another. He explained we have a unique opportunity here that we can anticipate that and propose the housing in the correct location, build it correctly and make it compatible not only with the airport's activities but with the kind of business that might move in to this area. He explained with the MUA we want to diversify our development pattern out there. We don't want to just have industrial here and housing here, they are looking to blend it and that is why they have really used the term mixed use airport. He explained there may be a number of live work opportunities that they look at that make perfect sense out there. He explained the trend they are seeing in all the development projects they are doing is toward mixed use; it reduces vehicle miles, travel, people can live near their work, live near their activity. He wanted to talk about Sierra Pacific a little bit because sometimes his client is a little humble about the financial commitments he has made in the community. He explained they talked about extending the sewer and storm drainage systems and water systems, they are also dedicating right-of-way for the widening of West Lane and they are also building a portion of that frontage. He explained that is the main entry to the airport and they are committed to doing that, it benefits them and it benefits the airport. They want to look for a number of improvement opportunities like that out there that they can do and that they can agree on with the Port. He thinks they look forward to that collaboration. He stated the key thing is they are just requesting the zone right now and they think diversifying that area out there it is really going to be a catalyst, they can appeal to a lot more people that want to be near this great asset, the Scappoose Airport. He stated Mark Greenfield used the term Sierra Pacific is looking for seed money and quite honestly he resents that statement. He explained they are not looking for seed money they are looking for a catalyst that can not only develop the property close to the airport on the east side but it may also open up land on the west side. He explained there are a ton of issues to go through with the Urban Growth Boundary adjustments etc, that is down the road but first you want to look for a catalyst that can make that happen and that is why they are here. He explained the last point he wants to make is about the process, they are just proposing a zone to kind of start to work with. He stated obviously there is going to be a lot of scrutiny by the Planning Commission, by your staff, by your City Manager and by City Council. He explained that is going to occur at the zone change, when they identify a piece of land and begin to explore the design alternative that makes sense for all parties. He wanted to address the buffering very clearly too. He stated also the conditional use permit condition that says if they want to propose residential of any type there they have to get a conditional use permit. He explained if you look at the approval criteria of a conditional use permit it is all about compatibility, the Council is use to that, they deal with that. He stated so anything Sierra proposes not only estimate the zone change test within the larger context it has got to meet the conditional use permit test and that is where we deal with the details about what they propose, how they build, how it is compatible not just with its surrounding uses but with the offsite impacts of traffic, etc. He thinks the process gives the City the hammer. He stated again we are not proposing anything specific in terms of site area that is for a later date.

Ed Freeman talked about economic development and he has an aerial photo that show approximately 700 acres that they either own or have under contract around the airport, it shows some t-hangers, Oregon Aero that the Port has been involved in developing over the last 40 years and the vision he has for the airport and the things they can make happen almost immediately in relation to the last four decades that they have accomplished it is just night and day. He explained that is not to say the Port are bad people or that they are mis-intended, they are excellent people. He explained the new Port Commission he has all the respect for. He stated Cliff Tetreault is a wonderful guy and Sierra Pacific can work with them very cooperatively. He explained the Council has a real good idea of what Sierra Pacific is doing out there and the money they are spending and they are bringing the sewer to the Port. The Port hasn't had any development and they are not

going to have development because they can't flush the toilet until we bring the sewer to them. He explained the big thing that really hit Cliff and the rest of the Commission that really turned them around was the threat from the FAA and they take that seriously. He explained this airport is the whole reason we are here like Don just said we are not going to shoot ourselves in the foot with the millions of dollars we have already invested and the millions of dollars they have spent on land. He explained they are very close to putting this whole training center deal together with the regional police. He explained they are talking six to ten million dollars just to build a road and sewer around to that facility were they are going to basically donate the ground for the regional training facility where they are going to have 125 people a day working if it all goes together. He stated there are just a whole bunch of things that he could talk about but it comes back to this whole issue with the FAA so he is reading trying to learn as much as he can about airports. He explained he is reading Business and Commercial Aviation which is aimed at these types of developments executive airports. He explained the editor in the December issue wrote an article about the FAA and it is titled "We are here to hurt". He stated the FAA needs to be drug in to the 21st century and Cliff and the rest of the Port Commissioners are rightfully afraid that they FAA might try and hurt them. He explained everything they have been able to come up with is that the FAA really never acts on these treats. He explained the editor of this national magazine in talking about the FAA makes a couple of points. He explained the editor stated the FAA's field representatives are not to be believed, that their Council and judgment can be set aside or reversed whenever headquarters so chooses. Third that the trust and respect that has sustained advanced aviation community for decades is misplaced. Fourth that FAA bureaucrats can suspend due process at will ruining companies' reputations without any accountability or recourse. Fifth that the FAA leaders lie. He explained there was a newspaper article that came out December 18th specifically about the FAA office in Seattle/Renton. He stated it is titled "Former FAA Official sentenced for fraud". He explained US District Judge Marshall Peckman said at the sentencing it appears the whole agency has run afoul with what their duty is as a government agency which is of course to follow the rules, to be transparent and be honorable. He explained this is a little bit of what the Port is having to deal with. He stated obviously not everybody at the FAA is that way, there are some wonderful people there. He explained the FAA doesn't make land use laws in the City of Scappoose and they have someone they have to answer to and that is our US Senators. He explained they have been in contact with both of Oregon's US Senators in conversations about the FAA because they were concerned about potential threats that they put on the Port. He explained because of these types of things Senator Wyden's office is already looking into the FAA on a National level. He explained Senator Gordon Smith's office has expressed on numerous occasions the willingness to get involved and help out if they have any troubles with the FAA. He stated the point is they just want to get this zone in place so them they can go talk with the Port and get things worked out. He explained they do have the ability to work with the FAA and try to make some things happen there. He explained if they decide on a certain piece of property they will be back before the Planning Commission and Council to try to get this approved, there will be plenty of time to work out the details.

City Planner Brian Varricchione explained we have heard a lot of testimony tonight, some conflicting with each other. He stated he would just point Council to the cover page on the staff report outlining the two options. He explained the first option is to adopt the findings in the staff report. He explained these findings for denial are based on the staff's review and the Planning Commission's review of the application. He explained the application was analyzed with respect of the approval criteria that are found in the development code and State Law and staff's conclusion and Planning Commission's conclusion was that the evidence did not support endorsing the application and findings were made for denial. He explained those are found in the staff report and should you choose to deny the application those could be adopted this evening. He explained option two would be to adopt findings in support of the application. He explained to do that Council would need to direct staff to write those findings and provide guidance on what specifically those should be and staff would have to write an ordinance enacting the proposed amendments. He explained staff did have reservations about the text of the proposed ordinance and would

want to make some changes before that could be implemented. He explained if Council does opt for option two in support of the application staff would request that this hearing would be continued so that the findings and all the other documentation could be developed for the Councils adoption at a later date.

City Attorney Cindy Phillips explained if Council is going to approve the language the text of the zone change needs to come back before Council. She explained we don't apparently have the correct text before you tonight. She explained so just to supplement what City Planner Brian Varricchione said, staff and the applicant need to work to modify this language so it complies with what the applicant apparently wanted to submit. She stated that really needs to be ironed out. She explained that has to come back to Council at a public hearing.

Frank Angelo explained the uses that the applicant prohibited need to be added back in to the zone and the applicant appears to be willing to do that. He explained there are some other mechanical things that need to be addressed if Council were to adopt this. He explained there has been a lot of discussion by the applicant on buffering for instance there is not buffering standards being proposed by the applicant. He explained if Council feels that is important if they were to adopt this there should be standards because the zoning code will be the rules. He stated so we need to make sure it accurately reflects what you want to achieve out there.

City Planner Brian Varricchione reminded Council if they do lean toward the direction of approving this, part of their responsibility would be to provide staff with guidance on what specifically the findings for approval would be so they can craft that in to the documentation that ultimately gets adopted. City Manager Jon Hanken observed that if the Council follows the recommendation of the Planning Commission and staff, the findings can be adopted tonight.

Mayor Burge closed the public hearing at 10:35 p.m.

Council President Ingham moved and Councilor Bernhard seconded the motion to adopt the findings in support of the application with needed amendments and direct staff to write an ordinance enacting the proposed amendments for a MUA zone.

City Manager Hanken asked to adopt findings? Council President Ingham replied that is what it says here that they need to adopt findings in support of the application and amendments and direct staff to write an ordinance enacting the proposed amendments.

Cindy Phillips replied what might be somewhat better, if you will, is to direct staff to work with the applicant to bring back language to Council in two weeks. City Planner Brian Varricchione replied two weeks is insufficient. Councilor Bernhard asked for clarification. Cindy Phillips stated the motion might be that staff be directed to work with the applicant to bring back language for the zone change for further hearing by the Council.

Frank Angelo stated he thinks where she is going with this is you may want to consider directing staff to work with the applicant to prepare findings in support of their application because the findings you have in the record now are for denial. He stated if you are going the other way this has to change. To continue to direct staff to work with the applicant on the content of the MUA zone and bring that back to Council in a public hearing forum so Council can have final approval on that.

Councilor Gedlich stated if we are going to clarify it what we need to do is put we are doing an amendment to our comprehensive plan and we are also doing development code text amendment and she thinks somehow that needs to be in that motion for clarification in order to do findings.

Councilor Gedlich moved that the Scappoose City Council direct staff for Legislative changes to the Comprehensive Plan CPTA1-07 and Development Code DCTA1-07 and bring back findings in support of that text amendments and work with the applicant with the amendments for the MUA to be brought back for a public hearing.

Council President Ingham agreed to that clarification of the motion. Councilor Bernhard seconded.

Councilor Bernhard explained during this process he wrote down some thoughts. He explained the Port brings valid points. He explained some of them were you don't have to live at the airport to work there, he agrees with that piece. He explained he agrees with the FAA funding also. He explained new leadership and marketing manager at the Port was a very positive response and very valid points. He stated he has the utmost respect for the Port and their honesty in terms of past communications and in terms of future partnership so please do not take this as not being supportive of the Port, but Ed Freeman at Sierra Pacific has a plan in place that in his opinion brings economic growth and development to our area and they have also shown it in the past. The Port has responsibility of all the citizens in the community to actively market and capture industrial economic business. Unfortunately the Port has admitted to putting Scappoose on the back burner and the Industrial Airport Park. He stated the citizens of this community deserve a little better. He explained the FAA is a concern but to be honest with you he has never responded very well to threats and he is willing to play poker and willing to call their bluff at this time. He explained therefore he is in support of the new zone and a mixed used airport zoning. He thanked Mr. Freeman for his economic package. He is hopeful that instead of being labeled as a killer of the industrial airpark he was actually part of spearheading some economic growth for our area.

Councilor Gedlich thanked everyone that testified this evening and gave Council some really insightful information. She explained her comment earlier when she talked about the citizens voting for the annexation for the economic development and job creation that was one of her big concerns; however listening to Mr. Freeman and his future hopes and dreams out there she wants to congratulate him for what he has done for our community. She is also in support of the Port of St. Helens and she hopes we can work together in the future in a very positive way. She has to say she is very disappointed in past commissioners or past staff who ever they happen to be who really put our community on the back burner for so long without doing anything. She is in support of this.

Council President Ingham explained this is great dialog this evening and she learned a lot. She feels creating this zone is the caveat for the City of Scappoose, the Port of St. Helens and Sierra Pacific to work together for something really good for our community and she thinks that is the bottom line. She feels residential airpark is a compatible use. She explained regarding Councilor Gedlich's annexation issue for the public she thinks if we would have presented the annexation as a multi use airpark to begin with she thinks the public would have annexed it under those pretenses as well. She explained 95% of all annexations pass so she thinks if it would have been presented in that matter it would have passed. She stated the other thing is a valid point that City Planner Brian Varricchione discussed about annexing properties and bringing in more land to the UGB. She stated the focus on the economic development out at the airport has been when the airpark was going to be able to provide what we wanted it to provide for this community. She thinks that is the most appropriate area to bring into the UGB. She is excited about this and hopes we can all work together. She stated she will be the first one in line to talk and facilitate dialog if that is what we need to do. She thanked everyone for being here.

Councilor Judd explained he agrees with his fellow Councilors regarding the Port. He is very disappointed with them. He explained he has been working with the Port for many years and they don't appear to have an economic development plan for Scappoose, that is disappointing. He explained his conclusion is

different from his fellow Councilors; he doesn't think homes for wealthy CEO's at the airport is the way to go. He thinks we have pushed the industrial park to the constituents. We have had the citizens of Scappoose be supportive of that and now to toss in a dozen or so of very wealthy homes that may or may not have some bearings on the future of the park. He doesn't think that is the way to go.

Councilor Meres explained he somewhat concurs with Councilor Judd. He feels changing the zone is just giving them a blank check. He stated is it 12 houses, is it 35 houses, is it 80. He explained the applicant comes to us and says we are not really going to do it we just want to have this in our tool box. He stated obviously someone has thought about it somebody must have some sort of figures. He explained he is not sure this would pass if you were to bring it to the public for a vote.

Mayor Burge reminded there has been one annexation that has failed that the City of Scappoose has proposed since we have been required to go to a vote. He explained he finds it interesting when people talk about annexations. He tends to be concurring with Councilors Ingham and Bernhard. He stated this is a tool, it is much like a tool that the Metro Area requested during the last Legislative Session that allowed for them to plan for Rural and Urban Reserves, another tool in their planning tool belt. He stated it is a conditional use which means any application would have to come back before the Planning Commission for approval, but it could be appealed. He explained it still has to have conditions that the Planning Commission will put on. He explained the zone change will come to Council. He explained there are conditions that he would want to see in there before anything was approved. He explained the biggest one is he doesn't think he would approve a zone change for someone who was going to do airpark residential who didn't have an agreement with the airport owner for access. He explained it could be in the tool box but until that issue was worked out he doesn't see it going any further than that so he feels its is a useful tool that always makes a statement that this isn't that bad of an idea and maybe the FAA should look a little closer at it.

Motion passed (5-2). Mayor Burge, aye; Council President Ingham, aye; Councilor Bernhard, aye; Councilor Gedlich; aye, and Councilor Heerwagen, aye. Councilor Judd, nay; Councilor Meres, nay.

Announcements

Mayor Burge went over the Calendar.

City Manager

City Manager Hanken explained Council should have received a copy of the audit. He explained this is the first year that we didn't get recommendations for handling practices with money.

Councilors

Councilor Gedlich thanked everyone for coming.

Councilor Meres thanked everyone also and wished a lot of success out at the airport.

Council President Ingham stated she wanted to state her admiration and respect to the School District for their open arms and their facilitating the citizens and the school children of Vernonia, it was a wonderful act.

Councilor Heerwagen stated he is pleased with the outcome of tonight's public hearing. He thinks Mr. Freeman needs the chance to do what he does best out there.

Mayor Burge thanked everyone.


Adjournment

Mayor Burge adjourned the meeting at 10:53 p.m.

City of Scappoose, Oregon



Scott Burge, Mayor

Attest 

Susan M Pentecost, City Recorder

