

REVIEWED

LEGAL COUNSEL



For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code *
Title 18, Chapter 18.76, Airport Development *
("AD") Zone, and Chapter 18.80, Airport Safety *
("AS") Combining Zone, to add an Air Traffic *
Control Tower as a new permitted use and allow an *
Air Traffic Control Tower to be up to 115 feet in
height, and Declaring an Emergency.

ORDINANCE NO. 2023-027

WHEREAS, the City of Bend ("City") applied under land use file number 247-23-000470-TA to amend Chapter 18.76 of Title 18, Deschutes County Zoning, to adopt a definition of an Air Traffic Control Tower, allow a single Air Traffic Control Tower as a use permitted outright, and allow an Air Traffic Control Tower to be up to 115 feet in height; and

WHEREAS, the City applied under said land use file to amend Chapter 18.80 of Title 18, Deschutes County Zoning, to adopt a definition of an Air Traffic Control Tower, clarify the review criteria that apply to an Air Traffic Control Tower, and allow an Air Traffic Control Tower to be up to 115 feet in height; and

WHEREAS, after notice was given in accordance with applicable law, a public hearing was held on October 2, 2023, before the Deschutes County Hearings Officer, and;

WHEREAS, on November 21, 2023, the Hearings Officer approved the amendments and recommended the Board adopt an ordinance; and

WHEREAS, pursuant to Deschutes County Code 22.28.030(B), the Board shall, in the absence of an appeal adopt the Hearings Officer's recommendation; now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1. AMENDMENT. Chapter 18.76, Airport Development Zone, is amended to read as in Exhibit "A", attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strike through~~.

Section 2. AMENDMENT. Chapter 18.80, Airport Safety Combining Zone, is amended to read as in Exhibit "B", attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strike through~~.

Section 3. FINDINGS. The Board adopts as its findings, Exhibit "C" attached and incorporated by reference herein.

Section 4. EMERGENCY. This Ordinance being necessary for the public peace, health and safety, an emergency is declared to exist and this Ordinance takes effect 30 days following its passage.

Dated this 13th of Dec., 2023

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON




ANTHONY DEBONE, Chair

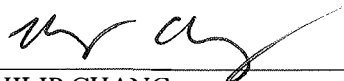
(Not present)

PATTI ADAIR, Vice Chair

ATTEST:



Recording Secretary



PHILIP CHANG

Date of 1st Reading: 13th day of Dec., 2023.

Date of 2nd Reading: 13th day of Dec., 2023.

Record of Adoption Vote:

Commissioner	Yes	No	Abstained	Excused
Anthony DeBone	<u>X</u>	—	—	—
Patti Adair	—	—	—	<u>X</u>
Philip Chang	<u>X</u>	—	—	—

Effective date: 12th day of Jan., 2024.

Chapter 18.76. AIRPORT DEVELOPMENT ZONE – A-D

- 18.76.010. Purpose.**
- 18.76.020. Standards in All Districts.**
- 18.76.030. Uses Permitted Outright.**
- 18.76.040. Conditional Uses.**
- 18.76.050. Use Limitations.**
- 18.76.060. Dimensional Standards.**
- 18.76.070. Airfield Operations District (AOD).**
- 18.76.080. Aviation Support District (ASD).**
- 18.76.090. Aviation-Related Industrial District (ARID).**
- 18.76.100. Design and Use Criteria.**
- 18.76.110. Additional Requirements.**

18.76.010. Purpose.

The purpose of the Airport Development (AD) Zone is to allow for development compatible with ongoing airport use consistent with the most recently adopted Deschutes County Year Comprehensive Plan and the most recently approved Bend Airport Master Plan, while providing for public review of proposed development likely to have significant impact on surrounding lands. The AD Zone is composed of three separate zoning districts, each with its own set of allowed uses and distinct regulations, as further set forth in DCC 18.76.

(Ord. 2020-018 §1, 2020; Ord. 2003-036 §2, 2003; Ord. 91-020 §1, 1991)

18.76.015. Definitions.

The following definitions apply only to Chapter 18.76.

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

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

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

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

- A. Storage of active aircraft.
- B. Shelter for maintenance, repair, or refurbishment of aircraft, but not the indefinite storage of non-operational aircraft.
- C. Construction of amateur-built or kit-built aircraft

- D. Storage of aircraft handling equipment, e.g., tow bar, glider tow equipment, workbenches, and tools and materials used to service, maintain, repair or outfit aircraft; items related to ancillary or incidental uses that do not affect the hangars' primary use.
- E. Storage of materials related to an aeronautical activity, e.g., balloon and skydiving equipment, office equipment, teaching tools, and materials related to ancillary or incidental uses that do not affect the hangars' primary use; storage of non-aeronautical items that do not interfere with the primary aeronautical purpose of the hangar (for example, televisions, furniture).
- F. A vehicle parked at the hangar while the aircraft usually stored in that hangar is flying, subject to local airport rules and regulations.
- G. A hangar may include restrooms, pilot lounge, offices, briefing rooms, and crew quarters.
(Ord. 2023-027 §1, 2023; Ord. 2020-018 §1, 2020)

18.76.020. Standards in All Districts.

- A. Approval Required. Any use in an AOD, ASD, or ARID District shall be subject to DCC 18.124.
 - 1. Hangars not associated with a commercial or industrial use are exempt from DCC 18.124.
 - 2. Airfield improvements including but not limited to runways, taxiways, taxilanes, aircraft parking aprons, service roads, navigational aids, and runway and safety facilities required by the Federal Aviation Administration (FAA) are not subject to County review.
- B. Solar Setbacks. The setback from the north lot line shall meet the solar setback requirements of DCC 18.116.180.
- C. Building Code Setbacks. In addition to the setbacks set forth herein, any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or Deschutes County under DCC 15.04 shall be met.
- D. Off-Street Parking and Loading. Off-street parking and loading shall be provided subject to the parking provisions of DCC 18.116.
- E. Outdoor Lighting. All outdoor lighting shall be installed in conformance with DCC 15.10.
- F. Excavation, Grading and Fill and Removal. Excavation, grading and fill and removal within the bed and banks of a stream or river or in a wetland shall be subject to DCC 18.120.050 and/or DCC 18.128.270.
- G. Signs. All signs shall be constructed in accordance with the provisions of DCC 15.08.
- H. Notification. Deschutes County shall provide notification of all land use applications in an AD zone to the airport manager owner's designee in accordance with the provisions of DCC Title 22.
(Ord. 2020-018 §1, 2020; Ord. 2003-036 §2, 2003)

18.76.030. Uses Permitted Outright.

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

- A. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by DCC 18.116.230.
- B. Class III road or street project.
- C. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.
- D. Farm use as defined in DCC Title 18.
- E. Customary and usual aviation-related activities.
- F. Hangars are subject to the standards and criteria established by DCC 18.76.105.
- G. A single air traffic control tower in the Airport Development Zone, no higher than 115 feet in height.
(Ord. 2023-027 §1, 2023; Ord. 2020-018 §1, 2020; Ord. 2003-036 §2, 2003; Ord. 2001-039 §10, 2001; Ord. 2001-016 §2, 2001; Ord. 93-043 §11, 1993; Ord. 91-020 §1, 1991)

18.76.040. Conditional Uses.

The following uses may be allowed in all of the Airport Districts subject to DCC 18.128.

- A. Farm accessory buildings and uses, excluding residential uses.
 - B. Utility facility necessary for public service except landfills.
 - C. Excavation, grading and fill and removal within the bed and banks of a stream or river or in a wetland subject to DCC 18.120.050 and/or DCC 18.128.270.
- (Ord. 2003-036 §2, 2003; Ord. 2001-039 §10, 2001; Ord. 2001-016 §2, 2001; Ord. 91-038 §1, 1991)

18.76.050. Use Limitations.

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

- A. The height of any plant growth or structure or part of a structure such as chimneys, towers, antennas, power lines, etc., shall not exceed 35 feet.
 - B. A single air traffic control tower up to 115 feet in height shall not require a height exception or variance.
 - ~~BC.~~ In approach zones beyond the clear zone areas, no meeting place designed to accommodate more than 25 persons for public or private purposes shall be permitted.
 - ~~CD.~~ All parking demand created by any use permitted by DCC 18.76 shall be accommodated on the subject premises entirely off-street.
 - ~~DE.~~ No use permitted by DCC 18.76 shall require the backing of traffic onto a public or private street or road right of way.
 - ~~EF.~~ No power lines shall be located in clear zones.
 - ~~FG.~~ No use shall be allowed which is likely to attract a large quantity of birds, particularly birds which normally fly at high altitudes.
- (Ord. 2023-027 §1, 2023; Ord. 2003-036 §2, 2003; Ord. 91-020 §1, 1991)

18.76.060. Dimensional Standards.

The following dimensional standards shall apply in the Airport Districts:

- A. The minimum lot size shall be determined subject to the provisions of DCC 18.76 relative to setback requirements, off-street parking and loading requirements, lot coverage limitations or as deemed necessary by the Planning Director or Hearings Body to maintain air, land and water resource quality, protect adjoining and area land uses, and to ensure resource carrying capacities are not exceeded.
 - B. An airport related use or structure located adjacent to or across the street from an existing residential use or platted residential lot shall not exceed 70 percent lot coverage and shall require off-street parking and loading areas.
 - C. The minimum setback between any structure and an arterial or collector right of way shall be 50 feet. The minimum setback between any structure and all local streets shall be 20 feet.
 - D. The minimum setback between any structure and a property line adjoining a residential use or lot shall be 50 feet.
 - E. The minimum lot frontage shall be 50 feet.
 - F. The minimum side setback between any structure and a property line shall be three feet, and the minimum total of both side setbacks shall be 12 feet.
 - G. The minimum rear setback between any structure and a rear property line shall be 20 feet.
 - H. The minimum setback from internal airport streets, access roads, and drives shall be 10 feet from the edge of pavement.
- (Ord. 2020-018 §1, 2020; Ord. 2003-036 §2, 2003; Ord. 94-008 §24, 1994; Ord. 91-020 §1, 1991)

18.76.070. Airfield Operations District (AOD).

Uses Permitted Outright. The uses permitted outright are those listed under DCC 18.76.030.

(Ord. 2020-018 §1, 2020; Ord. 2003-036 §2, 2003)

18.76.080. Aviation Support District (ASD).

- A. Uses Permitted Outright. The uses permitted outright are those listed under DCC 18.76.030.
 - B. Conditional Uses Permitted. The following conditional uses may be permitted subject to DCC 18.128 and a conditional use permit:
 - 1. Restaurant, which may include a bar or cocktail lounge as an accessory use. One restaurant per airport. Restaurant, including any accessory use, to be 2,500 square feet or less in size.
 - 2. Airport or aviation-related businesses that benefit from an on-airport location.
- (Ord. 2020-018 §1, 2020; Ord. 2004-013 §8, 2004; Ord. 2003-036 §2, 2003)

18.76.090. Aviation-Related Industrial District (ARID).

- Uses Permitted Outright. The uses permitted outright are those listed under DCC 18.76.030.
- A. Airport or aviation-related commercial or industrial businesses that benefit from an on-airport location.
- (Ord. 2020-018 §1, 2020; Ord. 2003-036 §2, 2003)

18.76.100. Design and Use Criteria.

The following dimensional standards shall apply in the Airport Districts:

The Planning Director or Hearings Body shall take into account the impact of any proposed conditional use within the AD Zone on nearby residential and commercial uses, and on the capacity of transportation and other public facilities and services. In approving a proposed conditional use, the Planning Director or Hearings Body shall find that:

- A. The proposed use is in compliance with the Comprehensive Plan, including the current version of the adopted Bend Airport Master Plan.
- B. The proposed use is in compliance with the intent and provisions of DCC Title 18.
- C. Any adverse social, economical, physical or environmental impacts are minimized.
- D. The proposed use is not sensitive to noise of the character anticipated by the current and expected noise level contours of the airport.
- E. The proposed use is compatible with adjacent agricultural and residential uses.
- F. There are sufficient public facilities and services to support the proposed use.
- G. The location and site design of the proposed facility will not be hazardous to the safety and general welfare of surrounding properties, and that the location will not unnecessarily restrict existing and future development of surrounding lands as indicated in the Comprehensive Plan.
- H. The use shall make the most effective use reasonably possible of the site topography, existing landscaping and building placement so as to preserve existing trees and natural features, preserve vistas and other views from public ways, minimize visibility of parking, loading and storage areas from public ways and neighboring residential uses, and minimize intrusion into the character of existing developments and land uses in the immediate vicinity of the proposed use.

(Ord. 2018-006 §9, 2018; Ord. 2003-036 §2, 2003; Ord. 91-020 §1, 1991)

18.76.105. Hangars.

- A. Review Process.
 - 1. Hangars, as defined in section 18.76.015, shall be processed as a development action pursuant to DCC 22.16 and are not subject to DCC 18.124.
 - 2. Hangars intended to support fixed based operators, flight schools, paint shops, and other commercial and industrial uses are subject to DCC 18.124.
- B. Hangar Approval Criteria.

1. The location and height of proposed structures must be clear of FAA protected surfaces including runway safety area, runway protection zone, runway object free area, taxiway/taxilane object free area, FAA Part 77 surfaces, FAA TERPS surfaces, and other clear areas identified on the currently adopted Airport Layout Plan.
2. No above ground utility installations shall be allowed
3. All exterior lighting shall be shielded so that direct light does not project off site pursuant to DCC 15.10.
4. Parking Requirement.
 - a. Hangars under 10,000 square feet of floor space are not subject to the parking requirement under DCC 18.116.030(8).
 - b. Hangars greater than or equal to 10,000 square feet of floor space are subject to the parking requirement under DCC 18.116.030(8). This required vehicle parking can be accommodated inside the hangar.

(Ord. 2020-018 §1, 2020)

18.76. 110. Additional Requirements.

As a condition of approval for any conditional use proposed within the AD Zone, the Planning Director or Hearings Body may require:

- A. An increase in required setbacks.
- B. Additional off-street parking and loading facilities and building standards.
- C. Limitations on signs or lighting, hours of operation, points of ingress and egress and building heights.
- D. Additional landscaping, screening and other improvements.
- E. Glare-resistant materials in construction or other methods likely to reduce operating hazards.
- F. Other conditions considered necessary to achieve compliance and policies of the Comprehensive Plan.

(Ord. 2003-036 §2, 2003; Ord. 91-020 §1, 1991; Ord. 80-221 §1, 1980)

Chapter 18.80 AIRPORT SAFETY COMBINING ZONE - AS

- 18.80.010. Purpose.**
- 18.80.020. Application of Provisions.**
- 18.80.022. Definitions.**
- 18.80.024. Imaginary Surfaces and Noise Impact Boundaries.**
- 18.80.026. Notice of Land Use and Permit Applications.**
- 18.80.028. Height Limitations.**
- 18.80.030. Redmond Municipal Airport.**
- 18.80.032. Bend Municipal Airport.**
- 18.80.034. Sunriver Airport.**
- 18.80.036. Sisters Eagle Air Airport.**
- 18.80.038. Cline Falls Airpark.**
- 18.80.040. Juniper Airpark.**
- 18.80.044. Land Use Compatibility.**
- 18.80.050. Uses Permitted Outright.**
- 18.80.054. Conditional Uses.**
- 18.80.056. Additional Requirements.**
- 18.80.058. Non-Conforming Uses.**
- 18.80.060. Variances.**
- 18.80.062. Dimensional Standards.**
- 18.80.064. Procedures.**
- 18.80.072. Water Impoundments.**
- 18.80.074. Wetland Mitigation, Creation, Enhancement and Restoration.**
- 18.80.076. Water Impoundment Notification.**
- 18.80.078. FAA Notification (Form 7460-1).**

18.80.010. Purpose.

In any zone that is overlain by an Airport Safety Combining Zone (AS Zone), the requirements and standards of DCC 18.80.010 shall apply in addition to those specified in the ordinance for the underlying zone. If a conflict in regulations or standards occurs, the more restrictive provisions shall govern.

The purpose of the AS Zone is to restrict incompatible land uses and airspace obstructions around airports in an effort to maintain an airport's maximum benefit. The imaginary surfaces and zones; boundaries and their use limitations comprise the AS Zone. Any uses permitted outright or by conditional use in the underlying zone are allowed except as provided for in DCC 18.80.044, 18.80.050, 18.80.054, 18.80.056 and 18.80.058. The protection of each airport's imaginary surfaces will be accomplished through the use of those land use controls deemed necessary to protect the community it serves. Incompatible uses may include the height of trees, buildings, structures or other items and uses that would be subject to frequent aircraft over-flight or might intrude into areas used by aircraft.

(Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

18.80.020. Application of Provisions.

The provisions of DCC 18.80.020 shall only apply to unincorporated areas located under airport imaginary surfaces and zones, including approach surfaces, transitional surfaces, horizontal surfaces, conical surfaces and runway protection zones. While DCC 18.80 identifies dimensions for the entire imaginary surface and zone, parts of the surfaces and/or zones do not apply within the Redmond, Bend or Sisters Urban Growth Boundaries. The Redmond Airport is owned and operated by the City of Redmond, and located wholly within the Redmond City Limits.

Imaginary surface dimensions vary for each airport covered by DCC 18.80.020. Based on the classification of each individual airport, only those portions (of the AS Zone) that overlay existing County zones are relevant.

Public use airports covered by DCC 18.80.020 include Redmond Municipal, Bend Municipal, Sunriver and Sisters Eagle Air. Although it is a public-use airport, due to its size and other factors, the County treats land uses surrounding the Sisters Eagle Air Airport based on the ORS 836.608 requirements for private-use airports. The Oregon Department of Aviation is still studying what land use requirements will ultimately be applied to Sisters. However, contrary to the requirements of ORS 836.608, as will all public-use airports, federal law requires that the FAA Part 77 surfaces must be applied. The private-use airports covered by DCC 18.80.020 include Cline Falls Airpark and Juniper Airpark. (Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

18.80.022. Definitions.

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

AB. Aircraft. Helicopters and airplanes, but not hot air balloons or ultralights. (Balloons are governed by FAR Part 30, and ultralights by FAR Part 103. Ultralights are basically unregulated by the FAA.)

BC. Airport. The strip of land used for taking off and landing aircraft, together with all adjacent land used in connection with the aircraft landing or taking off from the strip of land, including but not limited to land used for existing airport uses.

CD. Airport Direct Impact Area. The area located within 5,000 feet of an airport runway, excluding lands within the runway protection zone and approach surface. (Redmond, Bend, and Sunriver)

DE. Airport Elevation. The highest point of an airport's usable runway, measured in feet above mean sea level.

EF. Airport Imaginary Surfaces (and zones). Imaginary areas in space and on the ground that are established in relation to the airport and its runways.

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

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

FG. Airport Noise Criterion. The State criterion for airport noise is an Average Day-Night Sound Level (DNL) of 55 decibels (dBA). The Airport Noise Criterion is not designed to be a standard for imposing liability or any other legal obligation except as specifically designated pursuant to OAR 340, Division 35.

GH. Airport Noise Impact Boundary. Areas located within 1,500 feet of an airport runway or within established noise contour boundaries exceeding 55 DNL.

HI. Airport Safety Combining Zone (AS Zone). A Deschutes County zone intended to place additional land use conditions on land impacted by the airport while retaining the existing underlying zone. The airport imaginary surfaces, impact areas, boundaries and their use limitations comprise the AS Zone. The AS Zone may apply to either public-use or private-use airports.

IJ. Airport Secondary Impact Area. The area located between 5,000 and 10,000 feet from an airport runway. (Redmond, Bend, and Sunriver)

JK. Airport Sponsor. The owner, manager, or other person or entity designated to represent the interests of an airport.

KL. Airport Uses. Those uses described in OAR 660-013-0100 and 660-013-0110.

LM. Approach Surface. A surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface.

For Redmond, Bend, Sunriver, and Sisters airports:

1. The inner edge of the approach surface is the same width as the primary surface and it expands uniformly to a width of:

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

For the Cline Falls and Juniper airports:

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

MN. Average Day-Night Sound Level (DNL). Average day-night sound level is the FAA standard measure for determining the cumulative exposure of individuals to noise. DNL is the equivalent of noise levels produced by aircraft operations during a 24-hour period, with a ten-decibel penalty applied to the level measured during nighttime hours (10:00 p.m. to 7:00 am).

NO. Conical Surface. An element of the airport imaginary surfaces that extends outward and upward from the periphery of the horizontal surface at a slope of 20:1 for a horizontal distance of 4,000 feet and to a vertical height of 350 feet above the airport elevation.

OP. Department of Aviation. The Oregon Department of Aviation, formerly the Aeronautics Division of the Oregon Department of Transportation.

PQ. FAA. Federal Aviation Administration.

QR. FAA's Technical Representative. As used in DCC 18.80, the federal agency providing the FAA with expertise on wildlife and bird strike hazards as they relate to airports. This may include, but is not limited to, the USDA-APHIS-Wildlife Services.

RS. FAR. Regulation issued by the FAA.

ST. FAR Part 77. Regulation, Part 77, "Objects Affecting Navigable Airspace," establishes standards for determining obstructions to navigable airspace.

TU. Height. The highest point of a structure or tree, plant or other object of natural growth, measured from mean sea level.

HV. Horizontal Surface. A horizontal plane 150 feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of specified radii from the center of each end of the primary surface of each runway of each airport and connecting the adjacent arcs by lines tangent to those arcs. The radius of each arc is:

1. 5,000 feet for all runways designated as utility.
2. 10,000 feet for all other runways.
3. The radius of the arc specified for each end of a runway will have the same arithmetical value. That value will be the highest determined for either end of the runway. When a 5,000-foot arc is encompassed by tangents connecting two adjacent 10,000-foot arcs, the 5,000-foot arc shall be disregarded on the construction of the perimeter of the horizontal surface.

W. Non-precision Instrument Runway. A runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for

which a straight-in non-precision instrument approach has been approved, or planned, and for which no precision approach facilities are planned or indicated on an FAA-approved airport layout plan or other FAA planning document.

~~WX~~. Non-Towered Airport. An airport without an existing or approved control tower on June 5, 1995.

~~XY~~. Obstruction. Any structure or tree, plant or other object of natural growth that penetrates an imaginary surface.

~~YZ~~. Other than Utility Runway. A runway that is constructed for and intended to be used by turbine-driven aircraft or by propeller-driven aircraft exceeding 12,500 pounds gross weight.

ZAA Precision Instrument Runway. A runway having an existing instrument approach procedure utilizing air navigation facilities that provide both horizontal and vertical guidance, such as an Instrument Landing System (ILS) or Precision Approach Radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated by an FAA-approved airport layout plan or other FAA planning document.

~~AABB~~. Primary Surface. A surface longitudinally centered on a runway.

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

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

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

BBCC. Public Assembly Facility. A permanent or temporary structure or facility, place or activity where concentrations of people gather in reasonably close quarters for purposes such as deliberation, education, worship, shopping, employment, entertainment, recreation, sporting events, or similar activities. Public assembly facilities include, but are not limited to, schools, religious institutions or assemblies, conference or convention facilities, employment and shopping centers, arenas, athletic fields, stadiums, clubhouses, museums, and similar facilities and places, but do not include parks, golf courses or similar facilities unless used in a manner where people are concentrated in reasonably close quarters. Public assembly facilities also do not include air shows, structures or uses approved by the FAA in an adopted airport master plan, or places where people congregate for short periods of time such as parking lots or bus stops.

~~CCDD~~. Runway. A defined area on an airport prepared for landing and takeoff of aircraft along its length.

~~DDEE~~. Runway Protection Zone (RPZ). An area off the runway end used to enhance the protection of people and property on the ground. The RPZ is trapezoidal in shape and centered about the extended runway centerline. The inner width of the RPZ is the same as the width of the primary surface. The outer width of the RPZ is a function of the type of aircraft and specified approach visibility minimum associated with the runway end. The RPZ extends from each end of the primary surface for a horizontal distance of:

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

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

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

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

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

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

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

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

(Ord. 2023-027 §2, 2023; Ord. 2020-001 §10, 2020; Ord. 2018-006 §10, 2018; Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

18.80.024. Imaginary Surface and Noise Impact Boundaries.

For the Redmond, Bend, Sunriver, and Sisters airports, the airport elevation, the airport noise impact boundary, and the location and dimensions of the runway, primary surface, runway protection zone, approach surface, horizontal surface, conical surface and transitional surface shall be delineated for each airport subject to this overlay zone and shall be made part of the official Zoning Map. All lands, waters and airspace, or portions thereof, that are located within these boundaries (including direct and secondary impact boundaries) or surfaces shall be subject to the requirements of this overlay zone.

For the Cline Falls and Juniper airports, The airport elevation, the airport noise impact boundary, and the location and dimensions of the runway, primary surface and approach surface shall be delineated for each private use airport subject to this overlay zone and shall be made part of the official Zoning Map. All lands, waters and airspace, or portions thereof, that are located within these surfaces shall be subject to the requirements of this overlay zone. [ORS 836.608(2), (8); OAR 660-013-0050; OAR 660-013-0070(1)(b); OAR 660-013-0155(2)] [ORS 836.619; OAR 660-013-0040(8); OAR 660-013-0070(1)]
(Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

18.80.026. Notice of Land Use and Permit Applications.

Except as otherwise provided herein, written notice of applications for land use or limited land use decisions, including comprehensive plan or zoning amendments, in an area within this overlay zone, shall be provided to the airport sponsor and the Department of Aviation in the same manner as notice is provided to property owners entitled by law to written notice of land use or limited land use applications. [ORS 836.623(1); OAR 738-100-010; ORS 215.416(6); ORS 227.175(6)]

For the Redmond, Bend, Sunriver, and Sisters airports:

- A. Notice shall be provided to the airport sponsor and the Department of Aviation when the property, or a portion thereof, that is subject to the land use or limited land use application is located within 10,000 feet of the sides or ends of a runway:
- B. Notice of land use and limited land use applications shall be provided within the following timelines.

1. Notice of land use or limited land use applications involving public hearings shall be provided prior to the public hearing at the same time that written notice of such applications is provided to property owners entitled to such notice.
2. Notice of land use or limited land use applications not involving public hearings shall be provided at least 20 days prior to entry of the initial decision on the land use or limited land use application.
3. Notice of the decision on a land use or limited land use application shall be provided to the airport sponsor and the Department of Aviation within the same timelines that such notice is provided to parties to a land use or limited land use proceeding.
4. Notices required under DCC 18.80.026(B)(1-3) need not be provided to the airport sponsor or the Department of Aviation where the land use or limited land use application meets all of the following criteria:
 - a. Would only allow structures of less than 35 feet in height;
 - b. Involves property located entirely outside the approach surface;
 - c. Does not involve industrial, mining or similar uses that emit smoke, dust or steam; sanitary landfills or water impoundments; or radio, radiotelephone, television or similar transmission facilities or electrical transmission lines; and
 - d. Does not involve wetland mitigation, enhancement, restoration or creation.

For the Cline Falls and Juniper airports:

- C. Written notice of applications for land use or limited land use decisions, including comprehensive plan or zoning amendments, shall be provided to the airport sponsor and the Department of Aviation in the same manner and within the same timelines as notice is provided to property owners entitled by law to written notice of land use or limited land use applications. Where the application does not involve a public hearing, such notice shall be provided at least 20 days prior to entry of the initial decision on the land use or limited land use application. [ORS 215.416(6); ORS 227.175(6); OAR 738-100-010]
- D. Notice of the decision on a land use or limited land use application shall be provided to the airport sponsor and the Department of Aviation within the same timelines that such notice is provided to parties to a land use or limited land use proceeding.

(Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

18.80.028. Height Limitations.

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

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

D. A single air traffic control tower may be up to 115 feet in height.

(Ord. 2023-027 §2, 2023; Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

18.80.030. Redmond Municipal Airport.

The Redmond Municipal Airport is a Category 1, Commercial Service Airport. Its function is to accommodate scheduled major/national or regional commuter commercial air carrier service. The two approximately 7,040' long by 100'-150' wide, "other than utility" paved runways are located at an elevation

of 3,077'. The proposed extension to runway 4-22 and the planned new parallel runway are both identified on the FAA-adopted Airport Layout Plan. Therefore, these improvements are used in the layout of the Airport Safety Combining Zone. The same safety zone dimensional standards used for Runway 4-22 will also apply to the planned parallel runway.

- A. Primary Surface - For Redmond, the primary surfaces are 1,000' wide by 7,440' long for Runway 10-28, 1,000' wide by 9,100' long for Runway 4-22, and 1,000' wide by 7,400' long for the proposed new parallel runway.
- B. Runway Protection Zone (RPZ)- Two different RPZs apply to the Redmond Airport because it has a total of three potential runways with two possible approaches. Runway 4-22 and the planned parallel runway will both have precision approaches. Runway 10-28 has a non-precision approach on each end. The precision RPZ forms a 1,000' wide by 2,500' long by 1,750' wide trapezoid while the non-precision RPZ forms a 500' wide by 1,700' long by 1,010' wide trapezoid.
- C. Approach Surface - The current ILS precision approach surface to runway 22, and the planned precision approaches to Runway 4 and future parallel runway 4-22, are 1,000' wide by 50,000' long by 16,000' wide, with an upward approach slope ratio of 50:1 (one foot vertical for each 50 feet horizontal) for the first 10,000', then a slope ratio of 40:1 for the remaining 40,000'. The non-precision approach surface is 500' wide by 10,000' long by 3,500' wide, with an upward approach slope ratio of 34:1.
- D. Horizontal Surface - The surface boundary is comprised of connected arcs drawn 10,000 feet outward and centered on the ends of the primary surface. The elevation of the horizontal surface for the Redmond Airport is 3,227 feet.

(Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

18.80.032. Bend Municipal Airport.

Bend Municipal Airport is a Category 2, Business or High Activity General Aviation Airport. The 5,005 long by 75' wide paved runway is located at an elevation is 3,453'. Imaginary surface dimensions for the Bend Airport are based on planned improved operational characteristics, and an upgrade from a "utility" to "other than utility" runway, but do not reflect any planned extension to the existing runway.

- A. Primary Surface - For Bend, the primary surface is 500' wide by 5,405' long.
- B. Runway Protection Zone (RPZ) –Both Runway #16 and #34 have, or are proposed to have non-precision approaches. Both RPZs begin 200-feet off the ends of the runway. The non-precision RPZs form 500' wide by 1,700' long by 1,010' wide trapezoids.
- C. Approach Surface - The non-precision approach surfaces are 500' wide by 10,000' long by 3,500' wide, with an upward approach slope ratio of 34:1 (one-foot vertical for each 34 feet horizontal).
- D. Horizontal Surface - The surface boundary is comprised of connected arcs drawn 10,000 feet outward and centered on the ends of the primary surface. The height of the horizontal surface for the Bend Airport is 3,603 feet.

(Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

18.80.034. Sunriver Airport.

The Sunriver Airport is a Category 4, Community General Aviation Airport. It is privately owned and open to the public. The 5,500' long by 65' wide paved runway is located at an elevation of 4,155'. The Sunriver Airport imaginary surfaces are based on the existing "utility" runway, not any planned improvements or airport upgrades. If and when planned airport improvements are identified through a master planning process, the County will have the option of adjusting the boundaries of the imaginary surfaces to reflect any planned changes.

- A. Primary Surface - For Sunriver, the primary surface is 500' wide by 5,900' long.
- B. Runway Protection Zone (RPZ) - The Sunriver Airport has two different approaches. Runway #18 has a non-precision approach, while Runway #36 has a visual approach. The non-precision RPZ forms a 500' wide by 1,700' long by 1,010' wide trapezoid. The visual RPZ is 500' wide by 1,000' long by 700' wide.

- C. Approach Surface – The non-precision approach surface is 500' wide by 5,000' long by 2,000' wide, with an upward approach slope ratio of 20:1 (one-foot vertical for each 20 feet horizontal). The visual approach is 500' wide by 5,000' long by 1,500' wide at the same 20:1 slope ratio.
 - D. Horizontal Surface - The surface boundary is comprised of connected arcs drawn 5,000 feet outward and centered on the ends of the primary surface. The elevation of the horizontal surface for the Sunriver Airport is 4,305 feet.
- (Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

18.80.036. Sisters Eagle Air Airport.

The Sisters Eagle Air Airport is a Category 4, Community General Aviation Airport. It is privately owned and open to the public. The 3,550' long by 50' wide paved runway is located at an elevation of 3,165'.

- A. Primary Surface - For Sisters, the primary surface is 250' wide by 3,950' long.
- B. Runway Protection Zone (RPZ) - The Sisters Airport has two similar visual approaches. The visual RPZ is 250' wide by 1,000' long by 700' wide.
- C. Approach Surface – The visual approach surfaces are 250' wide by 5,000' long by 1,250' wide, with an upward approach slope ratio of 20:1 (one-foot vertical for each 20 feet horizontal).
- D. Horizontal Surface - The surface boundary is comprised of connected arcs drawn 5,000 feet outward and centered on the ends of the primary surface. The elevation of the horizontal surface for the Sisters Airport is 3,315 feet.

(Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

18.80.038. Cline Falls Airpark.

The Cline Falls Airpark is classified by the state as a privately owned, private-use airport that was the base for three or more aircraft as of December 31, 1994. Located at an elevation of 2,920', the single dirt/turf runway is 3,000' long by 100' wide.

- A. Primary Surface - The primary surface is 200' wide by 3,000' long.
- B. Approach Surface - The dimensions of the visual approach surfaces are 200' wide by 2,500' long by 450' wide, with an upward approach slope ratio of 20:1 (one-foot vertical for each 20 feet horizontal).

(Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

18.80.040. Juniper Airpark.

The Juniper Airpark is classified by the state as a privately owned, private-use airport that was the base for three or more aircraft as of December 31, 1994. Located at an elevation of 3,490', the single turf runway is 2,640' long by 100' wide.

- A. Primary Surface - The primary surface is 200' wide by 2,640' long.
- B. Approach Surface - The dimensions of the visual approach surfaces are 250' wide by 2,500' long by 450' wide, with an upward approach slope ratio of 20:1 (one-foot vertical for each 20 feet horizontal).

(Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

18.80.044. Land Use Compatibility.

Applications for land use or building permits for properties within the boundaries of this overlay zone shall comply with the requirements of DCC 18.80 as provided herein. When compatibility issues arise, the Planning Director or Hearings Body is required to take actions that eliminate or minimize the incompatibility by choosing the most compatible location or design for the boundary or use. Where compatibility issues persist, despite actions or conditions intended to eliminate or minimize the incompatibility, the Planning Director or Hearings Body may disallow the use or expansion, except where the action results in loss of current operational levels and/or the ability of the airport to grow to meet future community needs. Reasonable conditions to protect the public safety may be imposed by the Planning Director or Hearings Body. [ORS

836.619; ORS 836.623(1); OAR 660-013-0080] An air traffic control tower, as defined in DCC 18.80.022, is not subject to this section.

- A. Noise. Within airport noise impact boundaries, land uses shall be established consistent with the levels identified in OAR 660, Division 13, Exhibit 5 (Table 2 of DCC 18.80). Applicants for any subdivision or partition approval or other land use approval or building permit affecting land within airport noise impact boundaries, shall sign and record in the Deschutes County Book of Records, a Declaration of Anticipated Noise declaring that the applicant and his successors will not now, or in the future complain about the allowed airport activities at the adjacent airport. In areas where the noise level is anticipated to be at or above 55 DNL, prior to issuance of a building permit for construction of a noise sensitive land use (real property normally used for sleeping or as a school, religious institutions or assemblies, hospital, public library or similar use), the permit applicant shall be required to demonstrate that a noise abatement strategy will be incorporated into the building design that will achieve an indoor noise level equal to or less than 55 DNL. [NOTE: FAA Order 5100.38A, Chapter 7 provides that interior noise levels should not exceed 45 decibels in all habitable zones.]
- B. Outdoor lighting. No new or expanded industrial, commercial or recreational use shall project lighting directly onto an existing runway or taxiway or into existing airport approach surfaces except where necessary for safe and convenient air travel. Lighting for these uses shall incorporate shielding in their designs to reflect light away from airport approach surfaces. No use shall imitate airport lighting or impede the ability of pilots to distinguish between airport lighting and other lighting.
- C. Glare. No glare producing material, including but not limited to unpainted metal or reflective glass, shall be used on the exterior of structures located within an approach surface or on nearby lands where glare could impede a pilot's vision.
- D. Industrial emissions. No new industrial, mining or similar use, or expansion of an existing industrial, mining or similar use, shall, as part of its regular operations, cause emissions of smoke, dust or steam that could obscure visibility within airport approach surfaces, except upon demonstration, supported by substantial evidence, that mitigation measures imposed as approval conditions will reduce the potential for safety risk or incompatibility with airport operations to an insignificant level. The review authority shall impose such conditions as necessary to ensure that the use does not obscure visibility.
- E. Communications Facilities and Electrical Interference. No use shall cause or create electrical interference with navigational signals or radio communications between an airport and aircraft. Proposals for the location of new or expanded radio, radiotelephone, and television transmission facilities and electrical transmission lines within this overlay zone shall be coordinated with the Department of Aviation and the FAA prior to approval. Approval of cellular and other telephone or radio communication towers on leased property located within airport imaginary surfaces shall be conditioned to require their removal within 90 days following the expiration of the lease agreement. A bond or other security shall be required to ensure this result.
- F. Limitations and Restrictions on Allowed Uses in the RPZ, Transitional Surface, Approach Surface, and Airport Direct and Secondary Impact Areas.
For the Redmond, Bend, Sunriver, and Sisters airports, the land uses identified in DCC 18.80 Table 1, and their accessory uses, are permitted, permitted under limited circumstances, or prohibited in the manner therein described. In the event of conflict with the underlying zone, the more restrictive provisions shall control. As used in DCC 18.80.044, a limited use means a use that is allowed subject to special standards specific to that use.

(Ord. 2023-027 §2, 2023; Ord. 2020-007 §12, 2020; Ord. 2020-001 §10, 2020; Ord. 2018-006 §10, 2018; Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

18.80.050. Uses Permitted Outright.

Any uses permitted outright in the underlying zone with which the AS Zone is combined shall be allowed except as provided in DCC 18.80.044.

(Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

18.80.054. Conditional Uses.

Uses permitted conditionally shall be those identified as conditional uses in the underlying zone with which the AS Zone is combined, and shall be subject to all conditions of the underlying zone except as provided in DCC 18.80.044.

(Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

18.80.056. Additional Requirements.

As a condition of approval of any conditional use proposed within any AS Zone, the Planning Director or Hearings Body may require:

- A. An increase in required setbacks.
- B. Additional off-street parking and loading facilities and building standards.
- C. Limitations on signs or lighting, hours of operation, points of ingress and egress and building heights.
- D. Additional landscaping, screening and other improvements.
- E. Use of glare-resistant materials in construction or other methods likely to reduce operating hazards.
- F. Other conditions considered necessary to achieve compliance and policies of the comprehensive plan.

(Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991; Ord. 80-221 §1, 1980)

18.80.058. Non-conforming Uses.

- A. These regulations shall not be construed to require the removal, lowering or alteration of any structure not conforming to these regulations. These regulations shall not require any change in the construction, alteration or intended use of any structure, the construction or alteration of which was begun prior to the effective date of this overlay zone.
- B. Notwithstanding DCC 18.80.058(A), the owner of any existing structure that has an adverse effect on air navigational safety as determined by the Department of Aviation shall install or allow the installation of obstruction markers as deemed necessary by the Department of Aviation, so that the structures become more visible to pilots.
- C. No land use or limited land use approval or other permit shall be granted that would allow a nonconforming use or structure to become a greater hazard to air navigation than it was on the effective date of this overlay zone.

(Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

18.80.060. Variances.

- A. Any person desiring to erect or increase the height of any structure, or use not in accordance with provisions prescribed in DCC 18.80 may apply for a variance.
- B. Application for Variance must be accompanied by a determination from the Oregon Department of Aviation and the Federal Aviation Administration (FAA) as to the effect of the proposal on the safe and efficient use of navigable airspace.
- C. Any variance granted may be conditioned as to require the owner of the structure to install, operate and maintain obstruction markers, at the owner's expense.

(Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

18.80.062. Dimensional Standards.

- A. Minimum lot size and setbacks shall be those indicated in the underlying zone with which the AS Zone is combined.
- B. Where an area is covered by more than one height limitation, the more restrictive shall prevail.
- C. The airport owners, or their agents, shall be permitted at mutually agreed upon times to enter onto private property to reduce the height of trees that exceed the height limitations herein established.

(Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

18.80.064. Procedures.

An applicant seeking a land use or limited land use approval in an area within this overlay zone shall provide the following information in addition to any other information required in the permit application:

- A. A map or drawing showing the location of the property in relation to the airport imaginary surfaces. The Community Development Department shall provide the applicant with appropriate base maps upon which to locate the property.
- B. Elevation profiles and a site plan, both drawn to scale, including the location and height of all existing and proposed structures, measured in feet above mean sea level.
And, additionally, if a height variance is requested:
- C. Letters of support from the airport sponsor, the Department of Aviation and for Redmond, Bend and Sunriver Airports, the FAA as well. The letter(s) shall include specific references to the particular variance and findings for approval.

(Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

18.80.072. Water Impoundments.

Any use or activity that would result in the establishment or expansion of a water impoundment shall comply with the requirements of DCC 18.80.072. (ORS 836.623(2); OAR 660-013-0080(1)(f))

- A. No new or expanded water impoundments of one-quarter acre in size or larger are permitted:
 - 1. Within an approach surface and within 5,000 feet from the end of a runway; or
 - 2. On land owned by the airport sponsor that is necessary for airport operations.
- B. New or expanded water impoundments of one-quarter acre in size or larger are permitted:
 - 1. Within 10,000 feet from the end or edge of a runway (outside an approach surface), or
 - 2. Between 5,000 feet and 40,000 feet within an approach surface for an airport with a precision instrument approach, unless Deschutes County first adopts findings of fact, supported by substantial evidence in the record, that the impoundments are likely to result in a significant increase in hazardous movements of birds feeding, watering or roosting in areas across the runways or approach corridors.

[NOTE: FAA Part 77 discourages water impoundments within 50,000 feet of a runway, within an approach surface.] [ORS 836.623(2)(c); OAR 660, Division 13, Exhibit 1, Section 3(b)(C)]

- C. Process. An application for approval of a new water impoundment shall be considered utilizing the review process applied to applications for conditional use permits. In addition to the parties required by law to be mailed written notice of the public hearing on the application, written notice of the hearing shall be mailed to the airport sponsor, the Seattle Airports District Office of the FAA, the FAA's technical representative, and the Oregon Department of Aviation.
 - 1. Prior to filing its application, the applicant shall coordinate with the airport sponsor, the Department of Aviation, and the FAA (Seattle Airports District Office) and FAA's technical representative regarding the proposed water impoundment, its short and long term potential to significantly increase hazardous movements of birds feeding, watering or roosting in areas across runways or approach surfaces, and proposed mitigation.
 - a. For water impoundments individually or cumulatively exceeding five acres in size on the subject property, the applicant shall prepare a draft bird strike study as provided in DCC 18.80.072(C)(1)(a). The airport sponsor, the Department of Aviation, and the FAA and FAA's technical representative shall have 45 days to review the study draft. Their comments shall be included and addressed in a final bird strike study.
 - b. For water impoundments that do not individually or cumulatively exceed five acres in size on the subject property, the bird strike study requirements in DCC 18.80.072(B)(2) may be reduced or waived upon agreement by the airport sponsor, the Department of Aviation, and the FAA and FAA's technical representative if the applicant can demonstrate, to the satisfaction of the airport sponsor, the Department of Aviation, and the FAA and FAA's technical representative that the proposed water impoundment, with appropriate short and long term mitigation, will not result in

- a significant increase in hazardous movements of birds feeding, watering or roosting in areas across runways or approach surfaces. As used herein, "appropriate mitigation" means small-scale measures of proven reliability that can be applied in perpetuity and that the applicant has the financial resources to support.
- c. An application shall not be deemed complete for land use review purposes until the applicant has filed with the Director the final bird strike study addressing comments from the airport sponsor, the Department of Aviation, and the FAA and FAA's technical representative. When no bird strike study is required, the application shall not be deemed complete until the applicant has filed with the Director correspondence or other proof demonstrating agreement among the airport sponsor, the Department of Aviation, and the FAA and FAA's technical representative that no bird strike study is required.
2. Bird Strike Study. A bird strike study required under DCC 18.80.072 shall contain at least the following information:
 - a. A description of the proposed project, its location in relation to the airport, and the bird strike study area, which shall include at least the project site, the airport property, all lands within 10,000 feet from the end or edge of the airport runway, and other surrounding habitat areas which form the local bird ecosystem.
 - b. A description of bird feeding, watering and roosting habitats in the bird strike study area, including discussion of feeding behavior and food sources and identification of loafing, watering, roosting and nesting area locations.
 - c. A description of existing and planned airport operations and air traffic patterns and any available history of bird strike incidents.
 - d. Wildlife surveys and documentation of existing bird species, populations, activities and flight patterns in the bird strike study area. The surveys shall address bird species and their composition; bird population estimates and densities per unit area; feeding behavior; food sources; seasonal use patterns; frequency of occurrence; location of loafing, roosting and nesting areas; and analysis of the relation of bird flight movements to airport traffic patterns and navigational safety. The airport sponsor shall provide approach and departure air space information up to five statutory miles from the airport.
 - e. An evaluation of the anticipated effects of the proposal on the population density, behavior patterns, movements and species composition of birds within the bird strike study area and of the impact of these effects on air navigation and safety considering possible mitigation.
 - f. Identification and evaluation of proposed and alternative short and long term mitigation measures that would prevent a significant increase in hazardous movements of birds feeding, watering or roosting in areas across runways and approach surfaces that otherwise might result from the proposed use. The evaluation shall discuss the proven reliability of proposed measures, their effectiveness over both the short and long term, their costs, and the applicant's financial ability to assure their perpetual implementation, i.e. ongoing implementation for as long as a potential bird strike hazard persists.
 - g. Such other information as is recommended by the FAA's technical representative or is required to demonstrate compliance with the requirements of DCC 18.80.072(C)(3).
 3. Required Findings. The determination whether a proposed new water impoundment, with reasonable and practicable mitigation measures, is likely to significantly increase hazardous movements of birds feeding, watering or roosting in areas across runways or approach surfaces shall be based upon the proposal's potential, both in the short term and in the long term, to significantly increase bird strike hazards to air navigation, and the appropriateness, effectiveness and affordability of proposed mitigation measures or other conditions needed to reduce bird strike hazards. In determining compliance with this standard, the findings shall address each of the following factors:
 - a. The demonstrated overall effectiveness and reliability of proposed measures and conditions, in both the short and long term and under similar circumstances and conditions, to avoid a significant increase in bird strike hazards to air navigation. Experimental measures or measures

- not based on accepted technology and industry practices shall be considered ineffective, inappropriate and of unproven reliability.
- b. The economic, social and environmental impacts of proposed measures to the neighboring community and the affected natural environment.
 - c. The applicant's ability to pay for necessary short and long-term mitigation measures, including fallback measures that may be required if initially proposed mitigation measures prove ineffective, and to assure the perpetual implementation of those measures for as long as a potential bird strike hazard persists. An applicant's failure to demonstrate its financial ability to assure the perpetual implementation of necessary and appropriate measures shall render those measures unreasonable and impracticable for purposes of the application.
 - d. The applicant's ability to accurately monitor the effectiveness of mitigation over time.
 - e. The potential impacts to navigational safety and air travel if the applicant cannot perform necessary mitigation measures or maintain those measures in perpetuity, or if those measures prove to be ineffective at avoiding a significant increase in bird strike hazards to air navigation.
 - f. The applicant's reclamation plan.
4. Mitigation Measures and Approval Conditions. A decision approving an application shall require, as conditions of approval, all measures and conditions deemed appropriate and necessary to prevent in perpetuity a significant increase in hazardous movements of birds feeding, watering or roosting in areas across runways and approach surfaces.
 - a. Only customary measures based on accepted technology and industry practice may be considered and imposed as approval conditions.
 - b. Serious consideration shall be given to all measures and conditions recommended by the Department of Aviation and the FAA and FAA's technical representative. Generally, such measures and conditions shall be attached to a decision approving an application unless findings are adopted, supported by substantial evidence, demonstrating why such measures and conditions are not necessary to reduce bird hazard impacts resulting from the water impoundment to an insignificant level.
 - c. A decision to approve shall require from the applicant a performance bond or other form of secure financial support. Such bond or security shall be in an amount sufficient to assure perpetual implementation of appropriate and necessary mitigation measures for as long as a potential bird strike hazard persists.
 - d. A decision to approve shall require appropriate monitoring of the effectiveness of mitigation over time. Upon request, monitoring data and reports shall be made available to the airport sponsor, the Department of Aviation, and the FAA and FAA's technical representative. The decision shall allow for modifications to approval conditions should existing mitigation measures prove ineffective at preventing a significant increase in hazardous movements of birds feeding, watering or roosting in areas across runways and approach surfaces. Modifications to approval conditions shall be considered utilizing the review process applied to applications for conditional use permits.
 5. Exemptions. The requirements of DCC 18.80.072 shall not apply to:
 - a. Storm water management basins established by an airport identified under ORS 836.610(1).
 - b. Seaplane landing areas within airports identified under ORS 836.610(1).
 - c. Lands owned or managed by Sunriver Resort, Crosswater and their affiliates.
- (Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

18.80.074. Wetland Mitigation, Creation, Enhancement and Restoration.

- A. Notwithstanding the requirements of DCC 18.80.072, wetland mitigation, creation, enhancement or restoration projects located within areas regulated under DCC 18.80.072 shall be allowed upon demonstration of compliance with this requirements of DCC 18.80.074.

- B. Wetland mitigation, creation, enhancement or restoration projects existing or approved on the effective date of this ordinance and located within areas regulated under DCC 18.80.072 are recognized as lawfully existing uses.
- C. To help avoid increasing safety hazards to air navigation near public use airports, the establishment of wetland mitigation banks in the vicinity of such airports but outside approach surfaces the areas regulated under DCC 18.80.072 is encouraged.
- D. Applications to expand wetland mitigation projects in existence as of the effective date of this ordinance, and new wetland mitigation projects, that are proposed within areas regulated under DCC 18.80.072 shall be considered utilizing the review process applied to applications for conditional use permits and shall be permitted upon demonstration that:
 - 1. The affected wetlands provide unique ecological functions, such as critical habitat for threatened or endangered species or ground water discharge, and it is not practicable to provide the mitigation off-site; and
 - 2. The wetland creation, enhancement or restoration is designed and will be maintained in perpetuity in a manner that will not increase hazardous movements of birds feeding, watering or roosting in areas across runways or approach surfaces.
- E. Wetland mitigation permitted under DCC 18.80.074(D) shall be designed and located to avoid creating a wildlife hazard or increasing hazardous movements of birds across runways or approach surfaces.
- F. Proposals for new or expanded wetland mitigation, creation, enhancement or restoration projects regulated under DCC 18.80.074 shall be coordinated with the airport sponsor, the Department of Aviation, the FAA and FAA's technical representative, the Oregon Department of Fish & Wildlife (ODFW), the Oregon Division of State Lands (DSL), the US Fish & Wildlife Service (USFWS), and the US Army Corps of Engineers (Corps) as part of the permit application.
- G. Exemptions. The requirements of DCC 18.80.74 shall not apply to activities related to the management or modification of golf courses owned or managed by Sunriver Resort, Crosswater and their affiliates.
(Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

18.80.076. Water Impoundment Notification.

- A. Deschutes County shall provide notice to the Oregon Department of Aviation when it, or its designee, receives an application for a comprehensive plan amendment, zone change or permit as defined in ORS 215.402 or 227.160 that, if approved, would result in a water impoundment larger than one-quarter acre within 10,000 feet of the Redmond, Bend, Sunriver or Sisters Airports.
- B. A final determination regarding a new water impoundment described in ORS 836.623 shall be made by local governments as provided in ORS 836.623.
(Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

18.80.078. FAA Notification (Form 7460-1).

A. Federal and State Notice.

Federal Aviation Regulation (FAR) Part 77 requires that anyone proposing to construct anything which may obstruct the use of airspace by aircraft to provide a notice to that effect to the FAA. In addition, OAR 738.070.0060 requires notice also be sent to the Oregon Department of Aviation. Generally, construction proposals in the vicinity of airports may obstruct airspace. Notice to the FAA and Oregon Department of Aviation is required for anything which may affect landing areas, either existing or planned, which are open to the public, or are operated by one of the armed forces.

B. FAA Form 7460-1 "Notice of Proposed Construction or Alteration" is the notification form. It is to be submitted by the applicant directly to the FAA and Oregon Department of Aviation. Forms are available from the Oregon Department of Aviation or the Northwest Regional Office of the FAA.

C. FAA Form 7460-1 should be submitted if the proposed construction or alteration meets the following criteria:

1. Anything over 200' AGL (above ground level at the site).
2. Proposals in the vicinity of an airport, if the proposal would be higher than a slope from the nearest point on a runway and increasing its elevation at a ratio of:

<u>Longest Runway</u>	<u>Proximity to Runway</u>	<u>Slope</u>
> 3,200'	Within 20,000'	100 to 1
3,200' or less	Within 10,000'	50 to 1
For a Heliport	Within 5,000'	25 to 1

D. For identification purposes, Deschutes County has established FAA Notification Areas around each of the public use airports within Deschutes County. The boundaries of these areas are based on the runway length. If a proposed construction project is located in one of these areas, the applicant shall determine if the height of the proposed project will require FAA notification as per DCC 18.80.076(C). In Deschutes County, each of the public-use airports has a runway longer than 3,200 feet. Therefore, each FAA notification area includes all land within 20,000 feet of each airport's runway(s), and the slope to be used is 100 to 1.

E. FAA notification is NOT required for any of the following construction or alteration:

1. Any object that would be shielded by existing structures of a permanent and substantial character or by natural terrain or topographic features of equal or greater height, and would be located in the congested area of a city, town, or settlement where it is evident beyond all reasonable doubt that the structure so shielded will not adversely affect safety in air navigation.
2. Any antenna structure of 20 feet or less in height except one that would increase the height of another antenna structure.
3. Any air navigation facility, airport visual approach or landing aid, aircraft arresting device, or meteorological device, of a type approved by the Administrator, or an appropriate military service on military airports, the location and height of which is fixed by its functional purpose.
4. Any construction or alteration for which notice is required by any other FAA regulation.

(Ord. 2014-009 §2, 2014; Ord. 2001-001 §2, 2001; Ord. 91-020 §1, 1991)

TABLE 1--Land Use Compatibility

Use:	Location:				
	RPZ(1)	Transitional Surface	Approach Surface(8)	Direct Impact Area	Secondary Impact Area
Public Airport	L(2)	P	L(9)	P	P
Residential	N	N	L(10)	P	P
Commercial	N	L(14)	L(9)	P	P
Industrial	N	P	L(9)	P	P
Institutional	N	L(14)	L(9)	P	P
Farm Use	P(3)	P(3)	P(3)	P(3)	P(3)
Road/Parking	L(4)	P	P	P	P
Utility	L(5)	L(5)	L(5)	L(5)	L(5)
Parks/Open Space	L(6)	P	P	P	P
Golf Course (17)	L(7)	L(7)	L(7,9)	L(7)	L(7)
Athletic Field	N	N	L(9)	P	P
Sanitary Landfill	N	N	N	N	N(16)
Waste Water Treatment Plant	N	N	N	N	L(15)
Mining	N	N	L(11)	L(11)	L(11)

Water Impoundment	N	N	N,L(12)	L(12)	L(12)
Wetland Mitigation	N	N	L(13)	L(13)	L(13)

Key to Table:

P = Use is Permitted.

L = Use is Allowed Under Limited Circumstances (see notes).

N = Use is Not Allowed.

Numbers in parentheses refer to notes on next page.

Notes for Table 1:

1. No structures shall be allowed within the Runway Protection Zone. Exceptions shall be made only for structures accessory to airport operations whose location within the RPZ has been approved by the Federal Aviation Administration.
2. In the RPZ, public airport uses are restricted to those uses and facilities that require location in the RPZ.
3. Farming practices that minimize wildlife attractants are encouraged.
4. Roads and parking areas are permitted in the RPZ only upon demonstration that there are no practicable alternatives. Lights, guardrails and related accessory structures are prohibited. Cost may be considered in determining whether practicable alternatives exist.
5. In the RPZ, utilities, power lines and pipelines must be underground. In approach surfaces and in airport direct and secondary impact areas, the proposed height of utilities shall be coordinated with the airport sponsor and the Department of Aviation.
6. Public assembly facilities are prohibited within the RPZ.
7. Golf courses may be permitted only upon demonstration, supported by substantial evidence, that management techniques will be utilized to reduce existing wildlife attractants and avoid the creation of new wildlife attractants. Such techniques shall be required as conditions of approval. Structures are not permitted within the RPZ. For purposes of DCC 18.80, tee markers, tee signs, pin cups and pins are not considered to be structures.
8. Within 10,000 feet from the end of the primary surface of a non-precision instrument runway, and within 50,000 feet from the end of the primary surface of a precision instrument runway.
9. Public assembly facilities may be allowed in an approach surface only if the potential danger to public safety is minimal. In determining whether a proposed use is appropriate, consideration shall be given to: proximity to the RPZ; density of people per acre; frequency of use; level of activity at the airport; and other factors relevant to public safety. In general, high-density uses should not be permitted within airport approach surfaces, and non-residential structures should be located outside approach surfaces unless no practicable alternatives exist.
10. Residential densities within approach surfaces should not exceed the following densities: (1) within 500 feet of the outer edge of the RPZ, 1 unit/acre; (2) within 500 to 1,500 feet of the outer edge of the RPZ, 2 units/acre; (3) within 1,500 to 3,000 feet of the outer edge of the RPZ, 4 units/acre.
11. Mining operations involving the creation or expansion of water impoundments shall comply with the requirements of DCC 18.80 regulating water impoundments.
12. See DCC 18.80.072 regulating water impoundments.
13. See requirements in DCC 18.80.074.
14. Overnight accommodations, such as hotels, motels, hospitals and dormitories, are not permitted.
15. Due to land availability constraints, limited wastewater treatment plants within the Secondary Impact Area are permitted on lands owned or managed by the Sunriver Resort or Sunriver utilities.
16. Organic composting facility is permitted.

17. Since Sunriver Resort owns and controls the Sunriver Airport, golf courses operated as part of the Sunriver Resort, Crosswater and their affiliates are exempted.

TABLE 2--Noise Compatibility*

Yearly Day-Night Average Sound Levels (DNL) in decibels

Land Uses	Below 65	65-70	70-75	75-80	80-85	Over 85
Residential						
Residential, other than mobile homes and 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
Public Use						
Schools	Y	N(1)	N(1)	N	N	N
Hospitals and nursing homes	Y	25	30	N	N	N
Religious institutions or assemblies, 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
Commercial Use						
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
Manufacturing and Production						
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
Recreational						
Outdoor sports arenas and 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

Numbers in parentheses refer to notes.

*The designations contained in this table do not constitute a Federal determination that any use of land covered by the program is acceptable or unacceptable under Federal, State, or local law. The responsibility for determining the acceptable and permissible land uses and the relationship between specific properties and specific noise contours rests with the local authorities. FAA determinations under Part 150 are not intended to substitute federally determined land uses for those determined to be appropriate by local authorities in response to locally determined needs and values in achieving noise compatible land uses.

Key to Table:

SLUCM = Standard Land Use Coding Manual.

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 the design and construction of the structure.

25, 30, or 35 = Land use and related structures generally compatible; measures to achieve NLR of 25, 30, or 35 dB must be incorporated into design and construction of structure.

Notes for Table 2:

1. Where the community determines that residential or school uses must be allowed, measures to achieve outdoor to indoor Noise Level Reduction (NLR) of at least 25 dB and 30 dB 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 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 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 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.

Declaration of Anticipated Noise

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

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

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

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

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

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

Dates this ____ day of ____, 20__

Grantor
[Name]

On this ____ day of _____, 2____, before me, a Notary Public in and for said County and State, personally appeared _____, known to me to be the _____ of _____ who executed the above document on behalf of said Department.

Notary Public for: _____
My Commission Expires: _____

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

FILE NUMBERS: 247-23-000470-TA

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

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

APPLICANT: City of Bend

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

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

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

HEARINGS OFFICER: Tommy A. Brooks

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

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I. APPLICABLE STANDARDS AND CRITERIA

Deschutes County Code

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

Title 22, Deschutes County Development Procedures Ordinance

State Statutes

- ORS 836.610
- ORS 836.616

State Administrative Rules

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

II. BACKGROUND AND PROCEDURE

A. Background

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

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

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

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

B. Notice and Hearing

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

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

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

C. Nature of Decision

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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III. FINDINGS AND CONCLUSIONS

A. Adoption and Incorporation of Findings in Staff Report

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

B. Issues Raised in Opposition to the Application

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

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

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

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

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

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

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

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

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

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

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

Participant Tye asserts the Text Amendments do not comply with Goal 3 (and its related statutes), the language of which aims to "preserve and maintain agricultural lands." The specific assertion relating to Goal 3 appears to be that the Applicant has not addressed ORS 215.243.² That statute, however, is a legislative policy statement, which provides guidance on the intent of other language in ORS Chapter 215. ORS 215.243 does not appear to impose any specific requirements with respect to the County's ability to adopt Text Amendments relating to land that is not zoned for farm use, nor does participant Tye attempt to identify any such requirement. Participant Tye does describe potential impacts on farming resulting from airplane operations. As the Staff Report notes, however, there do not appear to be any operating characteristics of an air traffic control tower (the subject of the Text Amendments) that would impact nearby farm properties.

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

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

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

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

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

V. CONCLUSION AND RECOMMENDATION

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

Dated this 20th day of November 2023



Tommy A. Brooks
Deschutes County Hearings Officer

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

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

Exhibit A: Proposed Text Amendments

Chapter 18.76, Airport Development Zone

18.76.015 Definitions

The following definitions apply only to Chapter 18.76.

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

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

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

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

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

18.76.030 Uses Permitted Outright

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

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

18.76.050 Use Limitations

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

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

Chapter 18.80, Airport Safety Combining Zone

18.80.022 Definitions

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

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

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

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

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

For Redmond, Bend, Sunriver, and Sisters airports:

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

For the Cline Falls and Juniper airports:

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

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

Z. Other than Utility Runway. A runway that is constructed for and intended to be used by turbine-driven aircraft or by propeller-driven aircraft exceeding 12,500 pounds gross weight.

AA. Precision Instrument Runway. A runway having an existing instrument approach procedure utilizing air navigation facilities that provide both horizontal and vertical guidance, such as an Instrument Landing System (ILS) or Precision Approach Radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated by an FAA-approved airport layout plan or other FAA planning document.

BB. Primary Surface. A surface longitudinally centered on a runway.

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

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

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

CC. Public Assembly Facility. A permanent or temporary structure or facility, place or activity where concentrations of people gather in reasonably close quarters for purposes such as deliberation, education, worship, shopping, employment, entertainment, recreation, sporting events, or similar activities. Public assembly facilities include, but are not limited to, schools, religious institutions or assemblies, conference or convention facilities, employment and shopping centers, arenas, athletic fields, stadiums, clubhouses, museums, and similar facilities and places, but do not include parks, golf courses or similar facilities unless used in a manner where people are concentrated in reasonably close quarters. Public assembly facilities also do not include air shows, structures or uses approved by the FAA in an adopted airport master plan, or places where people congregate for short periods of time such as parking lots or bus stops.

DD. Runway. A defined area on an airport prepared for landing and takeoff of aircraft along its length.

EE. Runway Protection Zone (RPZ). An area off the runway end used to enhance the protection of people and property on the ground. The RPZ is trapezoidal in shape and centered about the extended runway centerline. The inner width of the RPZ is the same as the width of the primary

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

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

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

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

18.80.028 Height Limitations

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

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

18.80.044 Land Use Compatibility

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

...

18.80 Declaration Of Anticipated Noise

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

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

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

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

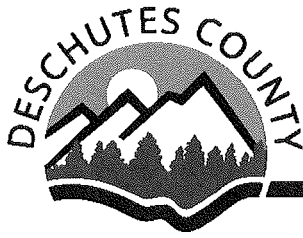
This Declaration of Anticipated Noise runs with the land and is binding upon the heirs, successors and assigns of the undersigned's interest in the described real property or any persons acquiring through he undersigned an interest in the described real property.

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

Dates this ____ day of _____, 20_____

Grantor [Name]

[insert notarial certificate]



STAFF REPORT
AIRPORT DEVELOPMENT ZONE CONTROL TOWER TEXT AMENDMENT

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

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

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

APPLICANT: City of Bend

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

STAFF CONTACT: Audrey Stuart, Associate Planner
Phone: 541-388-6679
Email: Audrey.Stuart@deschutes.org

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

I. APPLICABLE CRITERIA

Deschutes County Code
Title 18, Deschutes County Zoning Ordinance:

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

Title 22, Deschutes County Development Procedures Ordinance

Oregon Revised Statutes

ORS 836.610

ORS 836.616

Oregon Administrative Rules

OAR Chapter 660, Division 013

II. **BASIC FINDINGS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Central Oregon Irrigation District, Spencer Stauffer

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

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

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

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

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

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

Deschutes County Building Division, Randy Scheid

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

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

Oregon Department of Aviation, Brandon Pike

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

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

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

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

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

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

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

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

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

III. FINDINGS & CONCLUSIONS

Title 18 of the Deschutes County Code, County Zoning

Chapter 18.136, Amendments

Section 18.136.010, Amendments

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

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

DCC 22.04.020 includes the following definition:

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

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

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

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

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

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

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

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

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

Results in a decision

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

Apply existing criteria

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

Small number of persons

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

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

Title 22 of the Deschutes County Code, Development Procedures Ordinance

Chapter 22.12, Legislative Procedures

Section 22.12.010, Hearing Required

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

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

Section 22.12.020, Notice

A. *Published Notice.*

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

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

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

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

Section 22.12.030, Initiation Of Legislative Changes

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

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

Section 22.12.040, Hearings Body

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

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

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

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

Section 22.12.050, Final Decision

All legislative changes shall be adopted by ordinance.

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

Chapter 22.28, Land Use Action Decisions

Section 22.28.030, Decision On Plan Amendments And Zone Changes

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

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

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

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

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

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

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

Deschutes County Comprehensive Plan

Transportation System Plan

Section 3.4, Rural Economy

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

...

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

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

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

OREGON REVISED STATUTES

Chapter 836 – Airports and Landing Fields

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

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

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

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

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

836.616, Rules for airport uses and activities.

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

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

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

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

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

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

FINDING: Applicable Oregon Administrative Rules are addressed below.

OREGON ADMINISTRATIVE RULES CHAPTER 660, LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

Division 13 – Airport Planning

OAR 660-013-0020, Definitions

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

...

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

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

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

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

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

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

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

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

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

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

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

- (1) A local government shall adopt an Airport Safety Overlay Zone to promote aviation safety by prohibiting structures, trees, and other objects of natural growth from penetrating airport imaginary surfaces.**
 - (a) The overlay zone for public use airports shall be based on Exhibit 1 incorporated herein by reference.**
 - (b) The overlay zone for airports described in ORS 836.608(2) shall be based on Exhibit 2 incorporated herein by reference.**
 - (c) The overlay zone for heliports shall be based on Exhibit 3 incorporated herein by reference.**

- (2) For areas in the safety overlay zone, but outside the approach and transition surface, where the terrain is at higher elevations than the airport runway surface such that existing structures and planned development exceed the height requirements of this rule, a local government may authorize structures up to 35 feet in height. A local government may adopt other height exceptions or approve a height variance when supported by the airport sponsor, the Oregon Department of Aviation, and the FAA.**

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

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

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

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

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

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

DIVISION 12, TRANSPORTATION PLANNING

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

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

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

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

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

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

...

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

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

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

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

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

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

DIVISION 15, STATEWIDE PLANNING GOALS AND GUIDELINES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Goal 11: Public Facilities and Services

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

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

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

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

Goal 13: Energy Conservation. To conserve energy.

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

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

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

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

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

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

IV. CONCLUSION & RECOMMENDATION

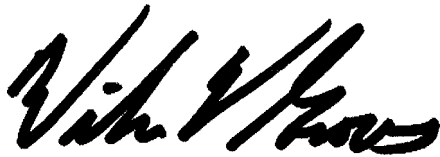
Staff requests the Hearings Officer determine if the Applicant has met the burden of proof necessary to justify the proposed Text Amendment through effectively demonstrating

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

DESCHUTES COUNTY PLANNING DIVISION

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

Written by: Audrey Stuart, Associate Planner

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

Reviewed by: Will Groves, Planning Manager

Attachments: 1) Proposed Text Amendments

Chapter 18.76, Airport Development Zone

18.76.015 Definitions

The following definitions apply only to Chapter 18.76.

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

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

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

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

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

18.76.030 Uses Permitted Outright

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

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

18.76.050 Use Limitations

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

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

Chapter 18.80, Airport Safety Combining Zone

18.80.022 Definitions

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

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

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

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

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

For Redmond, Bend, Sunriver, and Sisters airports:

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

For the Cline Falls and Juniper airports:

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

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

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

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

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

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

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

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

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

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

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

18.80.028 Height Limitations

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

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

18.80.044 Land Use Compatibility

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

...

18.80 Declaration Of Anticipated Noise

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

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

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

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

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

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

Dates this ____ day of _____, 20_____

Grantor [Name]

[insert notarial certificate]



**BOARD OF
COMMISSIONERS**

AGENDA REQUEST & STAFF REPORT

MEETING DATE: December 13, 2023

SUBJECT: First reading of Ordinance No. 2023-027 – Bend Airport Text Amendment

RECOMMENDED MOTION:

Move approval of first reading of Ordinance No. 2023-027 by title only.

BACKGROUND AND POLICY IMPLICATIONS:

The City of Bend applied for a text amendment to Title 18 of Deschutes County Code. The proposed amendments to Chapter 18.76, Airport Development Zone, and Chapter 18.80, Airport Safety Combining Zone, would allow an air traffic control tower as a new permitted use and allow an air traffic control tower to be up to 115 feet in height. The Airport Development Zone only applies to the Bend Municipal Airport, which is located to the northeast of Bend.

A public hearing was held before the Deschutes County Hearings Officer on October 2, 2023 and the Hearings Officer's recommendation was mailed on November 21, 2023. The Hearings Officer found the proposal complied with all applicable criteria and recommended approval. At a work session on November 29, 2023, the Board voted to adopt the Hearings Officer's recommendation.

The entirety of the record can be viewed from the project website at:
<https://www.deschutes.org/cd/page/247-23-000470-ta-%E2%80%93-air-traffic-control-tower-text-amendment>

BUDGET IMPACTS:

None

ATTENDANCE:

Audrey Stuart, Associate Planner