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By electronic mail

Hillsboro City Council
c/o Ruth Klein, Senior Planner
150 E. Main Street
Hillsboro, Oregon, 97123
Council@Hillsboro-Oregon.gov
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Re: Open Record Letter and Proposed Findings
Appeal-001-26 (Barnes et al); Appeal-002-26 (Richmond et al)
Case File DR-044-25 Sky Harbour Hangars

Dear Mayor Pace and Members of the City Council,

On behalf of Mr. Brett Hamilton, appellant in Appeal-002-26, please accept the following letter for the record in the proceedings for the Sky Harbour appeals.

A. The City Has the Authority to Mitigate and Minimize the Noise from the Resulting Development

The applicant argues that because the City's noise ordinance—which is not part of the development code that the City must apply in these proceedings—excludes aircraft, that the City cannot mitigate or minimize the impacts of aircraft noise or otherwise consider whether the design and operating characteristics of the proposed development are compatible with surrounding uses. The applicant is wrong. The plain language of the development code CDC 12.80.040.H does not exclude aircraft, hangars, or resulting noise from aircraft's use of hangars from consideration. The City has the discretion and the authority to interpret and apply the plain language of the development code. *Siporen v. City of Medford*, 349 Or 247, 259 (2010) (citing ORS 197.829(1)).

The plain language of CDC 12.80.040.H.7.d and H.7.e allow the City to consider aircraft noise when evaluating the “design and operating characteristics of the proposed development,” when determining whether those characteristics are compatible with surrounding development, and when considering whether “[n]egative impacts of the development have been sufficiently minimized or mitigated.” Nothing in those provisions indicates that the City could ignore impacts caused by sound, much less sound from aircraft that will be using the applicant's proposed development.

Open Record Letter, Sky Harbour DR-044-25, Appeal

The applicant argues that the use of the term “development” means that the City cannot consider how that development would be used. Here too, the applicant is wrong. The applicant’s arguments are absurd and would result in an overly narrow and limited interpretation of the city’s development code.

The applicant has proposed a series of hangars of a particular size and orientation on the site as well as other structures required for jet aircraft. Those hangars and the resulting outdoor space would accommodate up to 30 jets that the applicant proposes to store and use on site. This represents a doubling of the number of jets based at the airport. The off-site noise impacts of the jets that would use the physical buildings and structures—which the applicant has designed specifically to accommodate 30 jet aircraft—are plausibly included within the plain meaning of the phrases “[n]egative impacts *of the development*” and “design and *operating characteristics of the proposed development.*” CDC 12.80.040.H.7.d, H.7.e That remains true even though “aircraft” are not themselves structures or buildings. The plain meaning of the term negative impacts “of” development plausibly includes impacts caused by the way in which the development would be used by the applicant and the various uses for which the development has been designed.

The City Can Make the Following Findings Related to Noise and Noise Mitigation:

1. The City can determine that its design review process allows it to consider means of mitigating or minimizing the noise impacts of aircraft that would use the proposed development at the site.
2. The City can determine that based on the evidence submitted by the applicant that the applicant has failed to provide the information about the noise impacts of the development needed to allow the City to make the findings required by CDC 12.80.040.H.7.d and H.7.e. Without additional information, the City can conclude that it cannot make the findings required by CDC 12.80.040.H.7.d and H.7.e and therefore cannot approve the application.
3. The City can determine that mitigation measures covered by CDC 12.80.040.H.7.e can include the things like the orientation, location, and size of buildings on site or requiring additional structures (such as walls, berms, or barriers) to reduce noise. None of these changes would exceed the City’s authority or jurisdiction, but would still address the impacts that the City must consider in CDC 12.80.040.H.7.d and H.7.e.
 - Changing the orientation and location of buildings could have the effect of blocking or significantly minimizing noise from jet engines from reaching users of the sidewalks, streets, and nearby properties (including the library) located to the east of the site.
 - Changing the size and capacity of the buildings could have the effect of reducing the number and size of jets that would be located on the site. This in turn could

also mitigate and minimize the impacts of noise of the development or its operating characteristics on surrounding development and land uses.

4. The City can determine the scope of the term “surrounding development and land uses” used in CDC 12.80.040.H.7.d.
 - These surrounding uses can include both uses and users such as pedestrians, vehicles, patrons of the Brookwood library, users of nearby greenspace, and workers in office buildings located to the east of the site.
 - The surrounding development and land uses could also include neighborhoods beneath the flight path of jets that would utilize the development. These surrounding uses would be impacted by noise from the number and size of the jets that would utilize the development. Changing the design of the development provides one way of mitigating and minimizing these noise impacts, and it is entirely within the City’s control and jurisdiction.

B. The City Has the Authority to Mitigate and Minimize the Fuel, Fumes, and Pollution the Will Result from the Proposed Development.

Based on the authority provided by CDC 12.80.040.H.7.d and H.7.e the City may consider the impacts of pollution and fumes generated from aircraft, the proposed above ground fuel tanks, and the fueling process facilitated by the proposed development. Again, the plain language of the City’s development code allows the City to consider these impacts when evaluating the “design and operating characteristics of the proposed development,” when determining whether those characteristics are compatible with surrounding development, and when considering whether “[n]egative impacts of the development have been sufficiently minimized or mitigated.” Nothing in those provisions indicates that the City could ignore impacts caused by pollution and fumes generated by the applicant’s proposed development and the vehicles and aircraft that would utilize the site.

Similar to the proposed findings above, the applicant has proposed a development that would be built for 30 jet aircraft. This represents a doubling of the number of jets based at the airport and potentially a doubling or more of the amount of jet fuel used at the airport. Again, the applicant has not provided information sufficient to determine the scale of the change in the amount of Jet-A and diesel fuel stored and used.

The off-site impacts of the fuel tanks, jets, and fuel tankers that would use the physical buildings and structures are plausibly included within the plain meaning of the phrases “[n]egative impacts *of the* development” and “design and *operating characteristics of the* proposed development.” CDC 12.80.040.H.7.d, H.7.e That remains true even though “aircraft” are not themselves structures or buildings. The plain meaning of the term negative impacts “of” development plausibly includes impacts caused by the way in which the development would be used by the applicant and the various uses for which the development has been designed.

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The City Can Make the Following Findings Related to Fuel, Fumes, and Pollution:

1. The City can determine that its design review process allows it to consider means of mitigating or minimizing the impacts of fuel tanks and fuel used by aircraft stored on site as part of the use of the proposed development.
2. The City can determine that based on the evidence submitted by the applicant that the applicant has failed to provide the information about the impacts associated with storing fuel and fueling aircraft and other vehicles on site needed to allow the City to make the findings required by CDC 12.80.040.H.7.d and H.7.e. Without additional information, the City can conclude that it cannot make the findings required by CDC 12.80.040.H.7.d and H.7.e and therefore cannot approve the application.
3. The City can determine that mitigation measures covered by CDC 12.80.040.H.7.e related to fuel, fumes, and air pollution can include things like the size and location of fuel tanks as well as the location of fueling activity. None of these changes would exceed the City's authority or jurisdiction, but would still address the impacts that the City must consider in CDC 12.80.040.H.7.d and H.7.e.
 - One possible mitigation measure could be to move the location of the above ground fuel tanks for diesel and jet fuel further from the eastern boundary of the subject property.
 - Another mitigation measure could be to deny the applicant's request to build fuel tanks on the site or conduct fueling operations on site, requiring the applicant to rely on fuel tanks located at a different location on the subject property or elsewhere on land owned by the site's property owner that is further away from adjoining uses.
 - Relocating the fuel tanks and fueling activities could significantly minimize the fumes and pollution that reaches users of the sidewalks, streets, and nearby properties (including the library) located to the east of the site.
 - Finally, similar to the possible mitigation for noise, discussed above, the City can require changes to the size and capacity of the fuel tanks and/or the hangars, which would have the effect of reducing the number and size of jets that would require fuel and fueling on the site. This could further minimize and mitigate the impacts of fumes and pollution. (CDC 12.80.040.H.7.e). These changes could also limit the effects of the development's operating characteristics on surrounding development and land uses. (CDC 12.80.040.H.7.d).

4. For fumes and pollution resulting from the jet and diesel fuel stored in the proposed fuel tanks, the City can determine the scope of the term “surrounding development and land uses” used in CDC 12.80.040.H.7.d.
 - These surrounding uses can include both uses and users such as pedestrians, vehicles, patrons of the Brookwood library, users of nearby greenspace, and workers in office buildings located to the east of the site.
 - For the purpose of mitigating and minimizing pollution from the development, the City could interpret “surrounding development and land uses” to include neighborhoods beneath the flight path of jets that would utilize the development. These surrounding uses would be impacted by the amount of fuel stored on site and ultimately used to fuel jets stored on site. Changing the design elements of the development provides one way of mitigating and minimizing these pollution impacts, and it is entirely within the City’s control and jurisdiction.

C. The Applicant has Failed to Demonstrate Compliance with Federal Law and therefore Failed to Demonstrate Compliance with CDC 12.01.130.A

Local code requires the applicant to demonstrate compliance with state and federal laws. CDC 12.01.130.A (“All use or development of land or structures within the City limits of Hillsboro shall comply with the Hillsboro Comprehensive Plan, the Hillsboro Municipal Code, and applicable regional, State, Federal and local laws.”) The CDC further states that the applicable federal authority will determine compliance with federal laws and that “[a] determination of compliance with such law shall not be a standard or condition of approval, *except that proof that mandatory permits have been obtained may be required by specific standards of this Code or as a condition of approval imposed by the Review Authority.*” CDC 12.01.130.A.

In this case, opponents of the Sky Harbour application are not asking for the City to make a “[d]etermination of compliance with... Federal... law.” In other words, opponents do not ask the City Council to stand in the shoes of federal regulators, wade through federal code, and determine whether the applicant’s project has or has not met federal law. Instead, opponents and appellant request that the City determine that the applicant has failed to provide “proof that mandatory permits have been obtained,” for the project as described to the City. Or in the alternative opponents seek to require the City to condition any approval on the requirement that the applicant obtain the FAA order required by the National Environmental Policy Act (NEPA) for the proposed project as described in the applicant’s application to the City.

The applicant has attempted to show that the project has already obtained an order from the FAA required by NEPA, for the purpose of evaluating the project’s environmental impacts. However, the evidence in the record shows that the project reviewed by the FAA in the process of issuing that order differed significantly from the project that the applicant applied for in its land use application to the City. The information provided to the FAA left off key details about the scale and scope of the project that the applicant now asks the City to approve.

Federal law requires compliance with the NEPA, and the FAA's implementation of those regulations. The applicant's airport sponsor applied for a categorical exclusion (CATEX) for a hangar project proposed by Sky Harbour that would be located on the subject property. However, the evidence in this record shows that the project described in the NEPA application does *not* accurately describe the project proposed by the applicant in the City land use proceedings. That discrepancy in the project's description between the two applications demonstrates the applicant has failed to demonstrate that the project, as proposed here, has complied, would comply, or could comply, with federal law. CDC 12.01.130.A.

Because of the discrepancy between the project described in the FAA application and the application currently before the City, the City Council can conclude that the applicant's project, as proposed and described to the City, has yet to demonstrate compliance with applicable federal laws as required by CDC 12.01.130.A. Pursuant to CDC 12.01.130.A, the City Council can (1) deny the application for failure to demonstrate compliance with NEPA by failing to obtain the required FAA orders for the project described in the City land use applications; or, (2) in the alternative, condition any approval on the requirement that the applicant resubmit the project to the airport sponsor and the FAA for review pursuant to NEPA with an accurate description of the project and its proposed impacts as the project has been described in its application.

The City Can Make the Following Findings Related to the Requirement to Obtain an Order for the Proposed Project from the FAA Demonstrating Compliance with the NEPA Process:

1. The evidence in the record demonstrates that the applicant provided information about the hangar project to the airport sponsor. For example, the project title for the March 6, 2026 FAA CATEX order is listed as "HIO Sky Harbour Jet Hangars."¹
2. When asked about the NEPA process at the City Council hearing, the applicant's representative implied that there was no coordination or communication between the airport sponsor and the applicant regarding the CATEX application to the FAA.
3. The evidence in the record shows that the project was not accurately described in the FAA application for the project's NEPA review process. When asked to explain whether the project would "result in an increase in aircraft operations, nighttime operations, or change in aircraft fleet mix," the NEPA application stated "no."² The evidence in this record directly contradicts the description of the project provided to the FAA:
 - The record for the application before the City shows that the applicant's hangar project would double the number of jets based at the airport, from 33 in 2025 to 63 after the 30 jets proposed by the applicant. This represents a significant

¹ See Planning Commission Record, Exhibit H 22 "260408 Applicant NEPA" (Attachment 1).

² See Appeal Staff Report 5 at pdf 31, August 18 2026 email Brett Hamilton.

“change in aircraft fleet mix” and would “result in an increase in aircraft operations,” especially for jets.

- This record in this proceeding shows that the applicant’s hangar project would result in an increase in nighttime operations.
4. The evidence in the record shows that the inaccurate statements in the NEPA application regarding aircraft operations, nighttime operations, and aircraft fleet mix was also used to justify the lack of submission of “a noise analysis” to the FAA.³

The evidence described above demonstrates that the description provided to the FAA of the project and its effect on the aircraft fleet and operations at the airport was (1) not accurate and (2) does not reflect the project (or the project’s impacts to airport operations) currently proposed by the applicant in the land use application before the City.

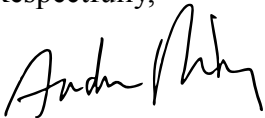
5. On that basis, the applicant has failed to demonstrate compliance with applicable federal law, has not obtained the authorizations or review required by NEPA, and has not demonstrated compliance with CDC 12.01.130.A.

The City can (1) deny the application for failure to obtain the required federal order demonstrating compliance with NEPA, or (2) alternatively condition its decision on a requirement that the applicant to obtain an FAA order that demonstrates compliance with NEPA based on an accurate description of the changes in aircraft fleet mix, changes in aircraft jet operations, and changes in nighttime operations described in the applicant’s application to the City.

D. Conclusion.

For those reasons, I respectfully request that the City deny the applicant’s request.

Respectfully,



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³ *Id.* (Appeal Staff Report 5 at pdf 31, August 18 2026 email Brett Hamilton.)

ARP SOP No. 5.2

Effective Date: 3/31/2025

FAA Decision

Having reviewed the above information, it is the FAA's decision that the proposed project (s) or development warrants environmental processing as indicated below.

Name of Airport, LOC ID, and location:

Hillsboro Airport (HIO)
3355 NE Cornell Road
Hillsboro, Oregon 97124



Project Title:

HIO Sky Harbour Jet Hangars

☒ No further NEPA review required. Project is categorically excluded per (cite applicable FAA Order 1050.1 (current version) and CATEx that applies).

FAA Order 1050.1G, Appendix B, B-2.4.f.u.

☐ An Environmental Assessment (EA) is required.

☐ An Environmental Impact Statement (EIS) is required.

☐ The following additional documentation is necessary for FAA to perform a complete environmental evaluation of the proposed project.

Name: Laura Sample **Title:** Environmental Protection Specialist
Responsible FAA Official

Signature: Laura Sample **Date:** 3/6/2026