

August 18, 2026

VIA EMAIL to council@Hillsboro-Oregon.gov

Mayor Pace and City Council
City of Hillsboro
Civic Center 5th Floor
150 E Main Street
Hillsboro, Oregon 97123

Re: Appeal Case Nos. Appeal-001-26 and Appeal-002-26
Appeals of Planning Commission Order No. 8492 (Case File No. DR-044-025)

Dear Mayor Pace and City Council,

This firm represents Miki and David Barnes, two of the named joint appellants in the above-referenced case. This appeal seeks review of the Planning Commission's decision to grant Development Review approval for seven aircraft hangars and associated improvements on a 13.70 leasehold on Port of Portland land within the Portland-Hillsboro Airport. This application must be denied because the applicable design review criteria set forth in Hillsboro Community Development Code (CDC) 12.80.040.H.7 are not satisfied.

In development review cases, like the one on appeal, the applicant "bears the burden of proof that the proposal complies with all applicable approval criteria and development standards." CDC12.70.160.L. Bearing this burden demands the production of sufficiently responsive and credible evidence upon which a reasonable person could rely to find that the applicable standard is satisfied. *Dodd v. Hood River County*, 317 Or 172, 179, 855 P2d 608 (1993). As explained below, rather than produce responsive evidence, the applicant pursues legal arguments that hollows out any meaningful evaluation of impacts. To the extent that these obligations are considered, the application, and staff-recommended findings in reliance, offer nothing more than conclusions. Conclusionary, unsupported statements and assurances that standards are satisfied do not constitute substantial evidence. *Pekarek v. Wallowa County*, 33 Or LUBA 225, 229 (1997).

In order to approve this application, the City Council must find compliance with the approval criteria set forth in CDC 12.80.040.H. In addition to finding that the use is permitted outright in the zone and complies with the various design and development standards (orientation, building height, and setbacks), CDC 12.80.040.H contains seven additional discretionary criteria that apply to non-residential applications, including the hangar campus proposed here. The applicant's responses to these criteria are little more than conclusions and are not substantial evidence. Each of the criteria that are not met are discussed in greater detail below:

“a. The transportation system can safely and adequately accommodate the proposed development.”

Paraphrased for ease of reference, the application summarizes a trip generation memo indicating that a full-scale trip impact analysis is not required and asserts that the “functional capacity is retained.” The applicant’s updated trip generation memorandum provides a site operations summary and trip generation estimate to explain why no detailed trip generation analysis is required. Application pdf 407-408. According to the staff report, Transportation Systems Engineer Joseph Auth reviewed this memorandum and concluded “that all study intersections currently operate acceptably, and that they are projected to continue operating acceptably through the 2029 buildout year.” Staff Report p 14. Assuming Engineer Auth did make this statement, the evidence relied on to draw this conclusion is not identified. Further, assuming that Engineer Auth did independently evaluate the capacity of the affected intersections, there is no evidence regarding the safety of these intersections. In addition to a sight distance evaluation which was provided as part of the Planning Commission’s review, a safely operating transportation system is one that considers stopping distance, intersection crash rates and potential for conflicts with other modes. None of this work was done and without this evidence, the City Council cannot conclude that this criterion is met. *Oregon Coast Alliance v. City of Wheeler*, LUBA Nos 2020-064/065 (Mar 9, 2021) (A traffic study showing a dedicated left-turn lane is unnecessary is not substantial evidence that a development will not create congestion.) Finally, to the extent that the applicant relies on Condition 40 requiring the installation of signal equipment and traffic control devices as may be required prior to occupancy, such a response fails to evaluate the necessary types of signage, or whether they will be sufficient in the first instance. On this record, the City Council cannot find that the transportation system can safely accommodate the proposed development.

“d. The design and operating characteristics of the proposed development are reasonably compatible with surrounding development and land uses”

Before turning to the evidence, the Council must first interpret this standard to determine what it requires. To start, the Council must identify the “design and operating characteristics of the proposed development.” The applicant has argued for an extremely narrow interpretation based on the definition of “development” focused solely on the physical, structural improvement alone without regard to the use made available by virtue of the structure. Among the many problems with the applicant’s approach, this interpretation fails to acknowledge that the definition of “development” includes any “human-made change ...to real estate.” Housing and preparing private airplanes for flight, and accommodating them upon return, on land that is a currently farmed field is a “human-made change” that qualifies as “development.” This same change triggering a need for compatibility analysis would be triggered if the proposal included nothing more than a grass covered taxiing area. Further, by focusing myopically on the term “development” in isolation, the applicant fails to give any meaning to the term “operating characteristics” which clearly and unambiguously includes how the various structures and site improvements will function (or “operate”) to accommodate a particular use.

Understanding the “operating characteristics” requires more than reciting a list of physical improvements that this campus will include. The operation must be defined in terms of scope and

intensity to allow a meaningful evaluation of compatibility. Questions that might be relevant include:

- (1) How many flights per day? – According to the applicant’s presentation before the Planning Commission, the expectation is 57-80 flights per week but the traffic memorandum assumes a significantly greater 47 flights per day, which could lead to 329 flights per week. Regarding air pollution, the applicant claims that only 60% of the aircraft within this campus are “new aircraft to the field” suggesting a 1.1%- 1.5% increase in takeoffs and landings. Yet, if pushed the applicant would also disclose that the City has no ability to limit the number of takeoffs and landings. The only meaning approach to resolving these inconsistencies would be to identify a single, reasonable daily flight assumption that guides all of the subsection (H) evaluation throughout.
- (2) How and where will maintenance, refueling and pre-flight checks occur? Presumably these efforts will be conducted within the campus and as such, will generate air pollution, machinery and maintenance noise (acknowledging that aircraft noise is exempt from the City’s noise ordinance), vibration, carbon emissions and increase in the likelihood and risk of incursions. The likelihood of these impacts were discussed at length by concerned neighbors before the Planning Commission and yet the applicant failed to acknowledge them.
- (3) How will two aboveground tanks for the fuel field, each holding 20,000 gallons of jet fuel, function? How often and how will they be safely filled? In the May 5 memo, Strata offers a list of operational safety and containment measures but fails to include any expert testimony to suggest that this list represents appropriate protection where a public library is located 538 feet away. Will these measures be sufficient in the event of an earthquake or other disaster? How will a parking lot and landscaping serve to contain a leak from a 20,000 gallon fuel tank? Similarly, there is no indication that the Oregon Fire Marshall or Hillsboro Fire & Rescue have reviewed or otherwise signed off that these tanks, coupled with the safety measures identified, will safely function to protect surrounding uses.

The applicant has asserted that adverse impacts caused by airplanes cannot be considered because the City lacks authority to evaluate impacts that are subject to regulation by the Federal Aviation Administration. The shortcoming with this argument is that it lacks any support in the CDC, except for with respect to noise which is exempt pursuant to HMC 6.24. If the City intended to exclude airport uses or aircraft-related activities from the compatibility or mitigation analysis, CDC 12.80.040.H.7.d would have stated as much. Yet, the CDC is silent on this point. It is often the case that state or federal agencies provide review consistent with their review authority – such as the Department of State Lands review of wetland fill obligations - but this tandem authority does not, on its own, pre-empt the City from applying standards that, when considered based on plain language, would apply. In fact, ORS 836.623(1) specifically authorizes local governments to adopt or apply compatibility and safety requirements for airports, which presumably, through CDC 12.80.040.H.7, the City has done so. Finally, whether the FAA does have exclusive jurisdiction over planes once they leave the ground, this does not excuse activities that occur on the ground such as pre-flight testing, run-ups and other maintenance that is likely to generate noise, air pollution, vibration, carbon emissions and an increased likelihood of incursions.

The second element for interpretation under this standard is to determine what existing uses are included within the “surrounding area.” Again, the narrow interpretation advocated by the applicant changes the language of “surrounding area” to the term “adjacent area.” By its express language, the term “surrounding area” is not so constrained. Rather, the “surrounding area” should be determined based on the nature of the impacts. If the proposed use would occur entirely within a fully enclosed, sound-proof building, perhaps the “surrounding area” would be narrow and might include only adjacent uses. Where a more impactful use is proposed, one where the externalities occur outside, it would be reasonable to interpret the “surrounding area” to be much larger. Here, the applicant has not identified any specific impact area and in fact, failed to acknowledge the Brookwood Library, which happens to be adjacent. Until the “surrounding uses” are defined and inventoried in a meaningful way, it is impossible for the Council to determine whether the use is compatible.

In the appeal report, staff acknowledged that impacts to the Brookwood Library were not considered before the Planning Commission and that they should have been considered. Although this is a step in the right direction, it falls far short of what is necessary to establish that this hangar campus operation will be compatible with the library. Compatibility requires some identification of impacts and an evaluation of their extent. *Columbia Riverkeeper v. Columbia County*, 70 Or LUBA 171, aff’d 267 Or App 637, 342 P3d 181 (2014)(Without describing the proposed uses or identifying their adverse impacts, the county could not meaningfully address whether the proposed uses are compatible with adjacent uses or will be rendered compatible through identified measures.) These impacts could, but may not be limited to, visual impacts, machinery noise, air pollution, vibration, carbon emissions or fuel leaks. The applicant has made no effort to quantify the nature of any of these impacts and without some discussion, any claim of “reasonable compatibility” is nothing more than a conclusion.

“e. Negative impacts of the development have been sufficiently minimized or mitigated.”

As with subsection (d), lacking any identification of the character and extent of the negative impacts caused by the proposed changes, any determination that mitigation is adequate lacks foundation. The only mitigation offered in the application is landscaping with trees and shrubs to “enhance the ‘parkway’ aesthetic of NE Brookwood Parkway.” The application contains no detailed landscape plan, nor does it contain any identification or description of the plantings from which to conclude that these plantings will “enhance the parkway” or that they will provide sufficient coverage in terms of density and height to serve as a visual buffer.

The Planning Commission imposed an additional condition requiring the installation of a 6-foot masonry wall which will “address ground-level aircraft movement at the street-facing edge,” according to the staff proposed findings at Ex B, p 13. This finding begs the question: What impacts will this wall “address”? During the hearing, there was discussion that this masonry wall would provide a better sound and visual buffer than a wooden fence. As proposed, this campus will be surrounded by a 7-foot tall chain link fence. Application pdf p 42. As the site rendering in the

application at pdf p 129 shows, airplanes are clearly visible over the top of this 7-foot fence.¹ If planes are visible over a 7-foot chain link fence, they most certainly will be visible over a masonry wall that is one-foot shorter. If the objective for this wall is to mitigate noise without more detail, no reasonable person would conclude that a masonry wall located below the height of airplane jets will have any noise attenuative effect. The record is lacking any evidence that operational impacts have been considered in the first instance and without this evaluation, the City is ill-equipped to evaluate the adequacy of any mitigation.²

Lacking the necessary expert-evaluation of acoustics, vibration, air pollution evaluations, landscape plans and post-development renderings that accurately represent the impacts, this decision lacks substantial evidence. Without identifying the extent of the impacts, the surrounding impact area cannot be identified and responsive mitigation measures pursued. The applicant has failed to carry its burden of proof by providing evidence necessary to address the CDC 12.80.040.H criteria. For these reasons, this application must be denied.

Please place this letter into the record and provide me notice of the final decision.

Very truly yours,



Carrie A. Richter

Cc: Clients

¹ Older private jets are typically 24 feet tall but new, modern jets are typically 28 feet tall. It is not clear which kind of jet is visible over the top of the fence in the applicant's rendering.

² Again, if the City Council intended to exclude airplane noise from this impact mitigation obligation it would have stated as much in the standard itself.