

CP2

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of the Application of Tim and)
Michelle Bero for a Comprehensive Plan)
Map Amendment and Zone Change for a) ORDINANCE NO. 2009-1
Parcel Directly North and West of the)
Vernonia Airport)

The Board of County Commissioners for Columbia County, Oregon, ordains as follows:

SECTION 1. TITLE.

This Ordinance shall be known as Ordinance No. 2009-1.

SECTION 2. AUTHORITY.

This Ordinance is adopted pursuant to ORS 203.035, ORS 197.610 and 197.615, and ORS 197.732.

SECTION 3. PURPOSE.

The purpose of this Ordinance is to approve the Application of Tim and Michelle Bero for a Comprehensive Plan Map Amendment from Forest Resource to Rural Industrial and a Zone Change from Primary Forest-76 (PF-76) to Airport Industrial (AI), as well as a requisite Goal Exception to Statewide Planning Goal 4, for an approximately 27.8 acre area within a 70.8 acre project site, identified as a portion of Tax Lot No. 4501-000-00300.

SECTION 4. FINDINGS.

The Board of County Commissioners adopts Findings of Fact and Conclusions of Law, attached hereto as Attachment 1 and incorporated herein by this reference.

SECTION 5. AMENDMENT AND AUTHORIZATION.

- A. The Columbia County Comprehensive Plan Map designation for the approximately 27.8 acre subject area is hereby amended from Forest Resource to Rural Industrial.
- B. The Zoning Map designation for the approximately 27.8 acre subject area is hereby amended from Primary Forest-76 (PF-76) to Airport Industrial (AI).
- C. An Exception to Statewide Planning Goal 4 is taken and made a part of the Columbia County Comprehensive Plan for the approximately 27.8 acre subject area, based on the analysis provided in Attachment 1 and the documents incorporated therein.

D. As part of its Approval of Application PA 08-02/ZC 08-02, the Board of County Commissioners hereby imposes the following conditions of approval:

1. Any development on the approximately 27.8 acre Airport Industrial (AI) site will be subject to Site Design Review and Uses Under Prescribed Conditions, in accordance with the Columbia County Zoning Ordinance, Sections 900 (AI) and 1550 (Site Design Review). Any change of occupancy of any established structure shall also require Site Design Review approval.
2. The approximately 27.8 acre site zoned Airport Industrial (AI) shall only be used for those uses identified and justified in the Exception Statement and as allowed by State Statute. Other uses listed in the Airport Industrial (AI) Zone may not be located on this site without new Exceptions to the Statewide Planning Goals.
3. The Applicant shall either obtain approval of a Goal 14 Exception for the new Airport Industrial (AI) zoned site before on-site construction occurs or, to assure a rural level of service, limit any new development or industrial building so that it will not exceed 35,000 square feet in size.
4. Prior to development on the new Airport Industrial (AI) zoned site and subsequent to recommendation by the Columbia County Road Department, Vernonia Rural Fire Department and Oregon Department of Transportation, the Applicants or any future owner shall provide a traffic impact analysis or similar study conducted by a registered professional traffic engineer that identifies proposed uses to be established in this area and to what degree improvements would need to be made to the existing road system in conjunction with the proposed development. All improvements shall be constructed to County Road Standards.
5. Prior to obtaining any building permit, the Applicants or any future owner must coordinate with all local utility companies and shall construct, at their expense, any and all required improvements relating to construction of the industrial uses allowed within the Airport Industrial (AI) Zone including, but not limited to: upgrading utility sizing, improving planned utility corridors and provision of adequate fire suppression services (per Vernonia Fire District requirements).

// //

// //

// //

// //

6. No uses involving the discharge of firearms shall be allowed at the new Airport Industrial (AI) zoned site.

DATED this 4th day of March, 2009.

Approved as to Form

By: [Signature]
Office of County Counsel

Recording Secretary

By: [Signature]
Jan Greenhalgh, Recording Secretary

First Reading: 2-18-09

Second Reading: 3-4-09

Effective Date: 6-2-09

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: [Signature]
Rita Bernhard, Chair

By: [Signature]
Anthony Hyde, Commissioner

By: [Signature]
Earl Fisher, Commissioner

ATTACHMENT 1

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of the Application of Tim and)
Michelle Bero for a Comprehensive Plan)
Map Amendment and Zone Change for a) FINDINGS OF FACT AND
Parcel Directly North and West of the) CONCLUSIONS OF LAW
Vernonia Airport)

Following public notice, this matter came before the Columbia County Planning Commission (Planning Commission) for public hearings on May 5, 2008 and August 18, 2008, and before the Board of County Commissioners (Board) on December 1, 2008. Following the December 1, 2008 hearing, the Board held open the record for submittal of new evidence and testimony until January 7, 2009, and for submittal of rebuttal evidence and testimony until January 14, 2009. Applicants' final rebuttal (argument only) was due by January 21, 2009. On January 28, 2009, the matter came before the Board for final deliberation and decision-making.

Having carefully considered the testimony and evidence that was offered into the hearing record and accepted by the Planning Commission and the Board, and having carefully considered the recommendations of Staff for approval and a 3-2 vote of the Planning Commission recommending denial, the Board makes and adopts the following findings of fact and conclusions of law in support of its decision on the Applications.

A. Findings of Fact.

1. This matter is before the Board upon application by Tim and Michelle Bero (Applicants). The Applicants have requested two goal exceptions to Statewide Planning Goal 4, one to authorize airport related uses, including the uses authorized in ORS 836.616(2) and airport related industrial uses on approximately 27.8 acres next to Vernonia Airport, and one to allow a rural scale campground on forested land that is within three miles of the City of Vernonia urban growth boundary. The Applicants also are requesting a change in the plan map designation for the 27.8 acres from Forest Resource to Rural Industrial, and a zone change for these acres from Primary Forest 76 (PF-76) to Airport Industrial (AI). Initially, the Applicants also sought a zone change for their remaining approximately 43 acres from PF-76 to Community Service – Recreational (CS-R), but that portion of the application later was dropped and is not currently before the Board.

2. Applicants' Application was first prepared by CIDA and submitted in February, 2008. The Application was deemed complete on March 11, 2008. Thereafter, on April 21, 2008, CIDA provided supplemental findings addressing compliance with additional Columbia County Comprehensive Plan policies and Columbia County Zoning Ordinance provisions. On June 30, 2008, in a memorandum prepared by Angelo Planning Group, the Applicants provided additional supplemental findings addressing the goal exception standards in greater detail, as recommended in correspondence from the Department of

Land Conservation and Development. At that time, the Applicants removed their initial request to rezone 43 acres from PF-76 to CS-R. See Angelo Planning Group Memorandum dated June 30, 2008.

3. The applicable standards are those identified in the Notice of Public Hearing for December 1, 2008, incorporated herein by reference. Findings addressing those standards are set out in the Staff Report dated November 5, 2008, incorporated herein by reference. The Board agrees with and accepts the findings and reasons set out in the November 5, 2008 Staff Report and adopts those findings and reasons as its own.

4. Additional findings and reasons addressing compliance with the applicable review criteria and responding to issues and arguments raised by opponents and other interested parties are set out in the following documents: Applicants' initial application; the CIDA supplemental findings dated April 21, 2008; the Angelo Planning Group memorandum dated June 30, 2008; letters to the Board from Mark Greenfield, Attorney for Applicants, dated November 28, 2008 and January 5, 2009; and the "Final Rebuttal" memorandum to the Board from Mark Greenfield dated January 16, 2009. The Board has considered the findings and reasons contained in these documents and finds that, when taken together, the analysis of compliance with legal standards in these documents, and the response to opponent arguments and issues, is credible, thorough, persuasive and correct. Accordingly, the Board incorporates these documents by reference in these findings and adopts the facts and analysis set out in these documents as its own. In so doing, the Board is aware that these documents contain a few inconsistencies. For instance, the initial application was later amended to remove the rezoning to CS-R, and portions of the CIDA memorandum may not be consistent with the application as later amended. Also, while the applicants at one time spoke of constructing up to two buildings each not to exceed 35,000 square feet in size, the conceptual site plan instead shows four smaller buildings each approximately 12,800 square feet. The Applicants acknowledge and the Board finds that to comply with LCDC's rule on industrial uses in rural areas, no single building may exceed 35,000 square feet. To the extent further inconsistencies exist regarding an issue, the Board adopts the most recent statement of findings and reasons on that issue.

5. The Board agrees with the Applicants' reasons justifying the plan and zoning amendments to allow airport related uses, including airport industrial uses on the 27.8 acres. These findings and reasons are set out, in particular, in the Angelo Planning Group memorandum and in the documents prepared by Mark Greenfield. While the Applicants identified several specific potential airport related manufacturing uses for this property, the Board finds that the application was not limited just to those specifically mentioned uses, but sought approval for a broader range of airport related industrial uses and appropriate accessory uses such as roads, parking, utilities and the like, and the uses permitted under ORS 836.616(2). Consequently, the Board rejects the argument raised by opponents that only those airport related manufacturing uses expressly identified by the Applicants may be allowed. On the other hand, the Applicants have assured the Board that airport related industrial uses to be located at this site would not involve any firing of

fire arms at this location. To ensure this result, the Board imposes a condition of approval to that effect.

6. The Goal 4 exceptions approved and adopted herein are exceptions not only to Statewide Planning Goal 4 but also to those Columbia County Comprehensive Plan policies and Columbia County Zoning Ordinance provisions that implement the policies to which the exceptions are taken. The Board is aware that its Airport Industrial zone is not entirely consistent with the Airport Planning Rule, OAR 660, Division 13. Further, the County does not currently have the equivalent of a limited use overlay zone that would limit uses only to those authorized by goal exceptions. Consequently, to the extent the AI zone does not currently permit uses that OAR 660, Division 13 and ORS 836.616(1) otherwise authorize as outright uses at public use airports, the Board finds that the statute controls and that these uses shall be allowed. The Board finds that the applicants have expressly requested that all uses authorized by statute at public use airports be allowed here as part of this Application. Conversely, the AI zone permits some uses, like hotels, motels and cafeterias, that are not clearly authorized by statute. Although the AI zone is an acknowledged zoning district, and although the scale of those uses allowed in the zone is very limited, the uses hereby authorized at this site are limited to those that are requested in the exception, namely airport related industrial uses and appropriate accessory uses such as roads, parking, utilities and the like, and the uses permitted under ORS 836.616(2). Other uses like restaurants or hotels will require new exceptions.

7. Before the Board, opponents argued that airport related industrial uses could be located at Scappoose or Hillsboro airports. The Board finds that under ORS 836.600 and OAR 660-013-0010, the Board may approve land use actions intended to encourage and support the continued growth and vitality of Vernonia Airport even if vacant land is available at these other airports. Indeed, the Board finds that the Vernonia community is in great need of economic stimulus, especially with the flooding it has experienced in recent years, and that this Application provides both opportunity for economic stimulus for Vernonia and opportunity to make needed improvements at Vernonia Airport. Further, the Board finds that requiring Vernonia residents to travel 30 or more miles in each direction to find work at Scappoose or Hillsboro airports, simply because vacant land may be available for airport manufacturing at those airports, is neither reasonable nor fair to residents of Vernonia and not consistent with objectives of the Transportation Planning Rule to reduce principal reliance on the automobile. Regarding potential alternative sites in the Vernonia area, the Board agrees with the Applicants' findings and reasons provided in the alternatives analysis ("areas which do not need an Exception can not accommodate the use"), as well as the various correspondences to the Board from Mark Greenfield identified above.

8. Regarding existing vacant land zoned AI at Vernonia Airport, the Board agrees with the Applicants that the absence of needed services like water for fighting fires at the site, the City's testimony regarding lack of City resources to extend needed services to the site, and the presence of limitations like low elevations subject to flooding, render the site not reasonable to accommodate the Applicants' proposed industrial uses. The Board

also agrees that with approval of this Application, the extension of services by Applicants will help enable the City to improve its airport and attract the kind of airport related growth and development it has anticipated. Further, approval of this Application will provide the City the opportunity to improve and expand its runway. Both results further the policy objective in ORS 836.600. The Board expressly finds that its approval of this Application does not, in itself, extend the runway. As explained in the Applicants' Final Argument, the runway is under the operation and control of the airport sponsor, which is the City of Vernonia, not Applicants. To extend the runway, if and to the extent it so desires, the City will first need to amend its airport layout plan. At such time, if necessary, the City also can expand the airport landing field overlay zone. The Board agrees with the Applicants that for now, expanding the overlay zone is premature because final decisions on runway improvements have not yet been made by the airport sponsor with control and planning jurisdiction over the airport.

9. The Applicants' property currently is accessed through a private easement that is 40 feet wide. To meet county standards for private roads, the travel surface should be constructed to a width of 20 feet, with three foot shoulders on either side. Given the 40 foot width of the easement, the Board finds it is feasible to provide the necessary improvements within that easement. The Board further finds that internal circulation within the airport boundary could provide additional or alternative access to the Applicants' 27.8 acres. This stated, the Board finds it is not necessary to determine precisely how access will be provided at this time. Given the evidence in the record, the Board finds that permission is not precluded as a matter of law. See *Holbrook v. City of Rockaway Beach*, ___ Or LUBA ___ (LUBA No. 2008-064, January 15, 2009). On a related access issue, the Board finds that the subject Application contains no requests for new land partitions. Hence, approval of this Application does not approve a land partition.

10. An evaluation report from the County's On Site Sewer Division (Division) dated October 31, 2008, for a single septic system, indicates that sewage disposal appears feasible through the construction of a standard sewage disposal system, provided the facility is limited to one that supports a maximum of 20 full time employees per shift, up to two shifts per day. This number of employees is consistent with the number of persons the applicants estimated would be employed at a maximum 35,000 square foot building at the site. Because the most recent conceptual site plan shows smaller buildings about 12,800 square feet in size, that number of employees conceivably be could located instead within two or three buildings. At the time of any development approval, the limitation identified by the Division on the number of employees and shifts at the site shall be imposed for the approved system. Because the Division's analysis did not consider the septic capacity of the whole site or the possibility of an additional building for airport related industrial uses, the Board determines that should applicants request development approval that would accommodate more than 20 full time employees in two shifts, any such approval shall be limited to the maximum number of employees and shifts recommended by the Division based on a new Site Evaluation Application.

11. The Board finds that traffic associated with industrial uses will not convert what is now a local road serving the site to a collector. The Lancaster Engineering report dated October 22, 2008 indicates a worst case scenario of 250 additional daily weekday trips. The Board finds this testimony to be credible. It also finds that if the number of employees is limited to a maximum of 20 in two shifts, the number of additional trips using the road would likely be even lower.

12. The Board heard conflicting testimony regarding hazards, obstructions and deficiencies at the Vernonia Airport. For the reasons set out in the correspondences from Mark Greenfield to the Board identified above, the Board finds the comments of Chris Cummings, Oregon Department of Aviation, as set out in a September 25, 2008 memorandum from Angelo Planning Group, and also the testimony of Mike Seager, to be more believable and credible than the comments and testimony of Mr. Burns. The Board also agrees with the Applicants that Vernonia Airport is a strategic part of the Oregon aviation system.

13. The Board heard many local residents express concerns regarding potential incompatibilities between airport uses, including airport industrial uses, and residential uses. The Board is sensitive to these concerns but agrees with the Applicants that under OAR 660-013-0040, such concerns are addressed through landscaping and other mitigation measures during the permitting process. The Board also notes that Vernonia Airport has been in existence since before World War II, and it finds, for this reason, that persons purchasing land or constructing dwellings nearby knew, should have known, or reasonably could have anticipated that the airport might grow over time. The Board expressly acknowledges the state policy in ORS 836.600 to encourage and support the continued operation and vitality of all public use airports, and it finds that the proposed Applications are consistent with and further the objectives of this policy.

14. The Board heard opponent testimony that the Bero property would be put to more than one use, contrary to the requirements of CCZO 221. However, what CCZO 221 states is that only one "principal" use shall be located on each legal lot or parcel. The Board expressly finds that the principal use authorized on the Bero property is airport related uses. The Board finds that the uses located within the area rezoned AI are consistent with the principal use requirement. It also finds that the Beros also have expressed an intent to use the remainder of their property not zoned AI for uses that are related to the airport use, such as a bed and breakfast serving pilots and their passengers. The Board concludes that other uses occurring on the property would not constitute a principal use of the Bero property.

15. The Application includes an exception to allow campground use within three miles of the Vernonia urban growth boundary. As explained in the Angelo Planning Group memorandum dated June 30, 2008, based on a conversation with a representative of the Department of Land Conservation and Development, the policy objective behind this limitation is to avoid urban scale campground uses near cities. The Board finds that the proposed campground will be rural in intensity and thus will not violate that policy objective. To ensure this result, the campground shall be limited to six camping sites, up

to two of which may be yurts. RV sites at the campground shall comply with hook-up limitations set out in LCDC's rules.

16. In addition to testimony mentioned above, the Board also considered testimony in support of the application from CIDA, LandTech, Bud Dow and Andrew Glomb. Their testimony touched a number of issues including need, public facilities and services, airport hazards and obstructions, and potential industrial uses at the airport if the Application is approved. The Board finds these witnesses to be believable, and it finds their testimony to be more credible than that of the opponents on the issues they addressed. In all, the Board finds that the evidence in support of the Application is substantial evidence.

B. Conclusions of Law.

For all of the reasons stated above and in the documents incorporated by reference herein, the Board concludes that as conditioned, the proposed Application for plan and zoning amendments, including goal exceptions, comply with all applicable land use standards. Accordingly, the requested Application is approved.