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BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Amending Ordinance No. 2009-1)
on Remand from the Oregon Land Use Board of)
Appeals for Findings on Goal Exception Criterion,) ORDINANCE No. 2010-4
OAR 660-004-0020(2)(d), and Airport Planning)
Rule Criterion, OAR 660-013-0040(6))

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

SECTION 1. TITLE

This Ordinance shall be known as Ordinance No. 2010-4, amending Ordinance No. 2009-1 for findings on OAR 660-004-0020(2)(d) and OAR 660-013-0040(6).

SECTION 2. AUTHORITY

This Ordinance is adopted pursuant to ORS 203.035 and ORS 197.732.

SECTION 3. PURPOSE

The purpose of this Ordinance is to amend Ordinance No. 2009-1, which adopted a Comprehensive Plan Map Amendment and Zone Change for a parcel north and west of the Vernonia Airport, to include findings on Goal Exception criterion OAR 660-004-0020(2)(d) and Airport Planning Rule criterion OAR 660-013-0040(6), on remand from the Oregon Land Use Board of Appeals.

SECTION 4. HISTORY

On March 9, 2009, the Board of County Commissioners for Columbia County ("Board") adopted Ordinance No. 2009-1, which approved the application of Tim and Michelle Bero for a Comprehensive Plan Map Amendment, Zone Change, and an exception to Statewide Planning Goal 4. Specifically, the approval changed the Comprehensive Plan Map designation 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 from Forest Resource to Rural Industrial and changed the Zoning for the same site from Primary Forest-76 (PF-76) to Airport Industrial (AI).

On March 23, 2009, Patty Brockman, John Burns, Lee and Adeline Duvall, David and Wendy Fife, Heather Hines, Tony Krause, Leonard and Betty Schmidlin, Tim and Tammy Sook, and Pat Zimmerman ("Petitioners") filed a notice of intent to appeal Ordinance 2009-1 with the Oregon Land Use Board of Appeals ("LUBA"). On March

26, 2009, the applicants filed a motion to intervene on the side of Respondent, Columbia County.

In their petition for review, petitioners raised seven assignments of error.¹ LUBA denied all assignments of error, except for one sub-issue in petitioners' third assignment of error. Specifically, petitioners argued that "substantial increases in air traffic associated with the industrial and commercial developments proposed here would cause significant damage to children and adults on the existing residential properties adjacent to the airport." (Pet Br 33-34). LUBA held that the Board's finding that the increase in air traffic would be compatible with the adjoining areas was not supported by the record because the record contained no evidence on the expected increase in air traffic. *Brockman v. Columbia County*, 59 Or LUBA 302, 318 (2009). Accordingly, LUBA remanded the decision to the County to identify the expected increase in air traffic from the proposed uses, and to determine whether such impacts would be compatible with adjoining uses, and if not compatible, to consider whether reasonable steps could be taken to mitigate the adverse impacts.² *Id.*

¹ The petitioners contended that the Board erred as follows: (1) "No showing of justification for Goal 4 exception and Comprehensive Plan and zone changes for the 22 acre portion of parcel"; (2) "No showing of justification for Goal 4 exception and Comprehensive Plan and zone changes for the six acre portion of parcel"; (3) "Inadequate showing of means to mitigate impacts on neighbors of the proposed use of [] the 28 acre area"; (4) "The uses proposed for the 73 acre parcel violate county road standards for private roads"; (5) "No showing of justification for the Goal 4 exception for the campground on the 45 acre portion of the parcel"; (6) "The combination of the bed and breakfast, commercial campground, "flex" commercial rental and industrial uses on the same parcel violates the CCZO prohibition against more than one principal use of any parcel"; and (7) "The exceptions granted by the County do not provide a mechanism for ensuring that only uses justified by the exception criteria will occur on the parcel." (Pet Br 1-2).

² As stated by LUBA in *Brockman*, 59 Or LUBA at 318:

No party has identified any evidence in the record regarding how much additional air traffic might be expected at the airport, as a result of the uses authorized by the disputed exception. Until that is known, the county is simply not in a position to know if that increased air traffic will be incompatible with adjoining uses. If the increased air traffic will not be incompatible with adjoining uses, the proposal complies with OAR 660-004-0020(2)(d). Even if increased air traffic might be incompatible with adjoining uses, the county is required under OAR 660-004-0020[(2)](d) and 660-013-0040(6) to consider 'measures designed to reduce adverse impacts' and take 'reasonable steps to eliminate or minimize the incompatibility through location, design, or conditions.'

Following a written request from the applicants on February 17, 2010, the Board initiated local proceedings to review the issue that LUBA remanded. On March 9, 2010, the Board mailed notice of its deliberation proceedings on remand to all persons and entities who participated in the original hearing on adoption. The notice provided for the submission of written evidence, argument and testimony by March 24, 2010; written rebuttal evidence, argument and testimony by April 7, 2010, and final argument on April 21, 2010. The notice specified that review would be limited to the issue on remand and stated that the Board would hold a public meeting to deliberate on May 12, 2010.

In accordance with the deliberation schedule, the applicants submitted written evidence, argument and testimony on the expected increase in air traffic and the impacts of such air traffic on the adjoining uses. The applicants submitted evidence of the expected increase in air traffic and used the Area Equivalent Method ("AEM") to determine that the increased air traffic would generate insignificant noise impacts. Petitioners then submitted rebuttal evidence and argument questioning, among other things, the propriety of the applicants' reliance on the AEM. In response, the applicants asked the Board to revise its deliberation schedule to allow the applicants to analyze noise impacts through the more precise Intergrated Noise Model ("INM") methodology, as petitioners suggested.

The Board granted the applicants' request, and on April 20, 2010, sent notice of a revised schedule for remand proceedings. The revised schedule provided additional time for the submittal of new evidence, rebuttal evidence and final argument, and set August 11, 2010 as the date of the public meeting for deliberation.

On August 4, 2010, County staff submitted a report recommending the approval of the application. Staff found that the applicants' expected increase in air traffic was supported by substantial evidence and that the noise generated from such increase would not be incompatible with adjoining residential uses and therefore would not require mitigation. The Board held a public meeting to deliberate on the matter on August 11, 2010. The Board voted to tentatively approve the application and direct staff to prepare findings and an ordinance for adoption.

SECTION 5. FINDINGS

The Board adopts staff's findings on remand, attached hereto as Exhibit "A" and incorporated herein by this reference, and makes the following additional findings:

1. For the reasons explained in the staff report, the Board finds that the applicants' estimate of an increase in air traffic of 2,100 flight operations is supported by substantial evidence in the record. The Board also recognizes that the estimation of 4,000 current flight operations, which is supported by the airport manager's testimony, is a high estimate compared with the 1,875 flight operations in the Oregon Department of Aviation reports for Vernonia Airport. Consequently, the Board finds that the 6,100 total flight operations expected by the year 2025,

although supported by substantial evidence, represents a worst-case scenario and that flight operations are likely to be much lower.

2. The Board finds that applicants' noise impact analysis using the Integrated Noise Model is credible. The analysis was prepared by Rainse Anderson, a licensed engineer and director of aviation for WH Pacific, a reputable engineering consulting firm. WH Pacific's report explains that noise contours were determined based on runway length, approach and take-off patterns, airport elevation, and the number of flight operations. The report used the airport manager's high estimate of 4,000 current operations as a baseline, which would increase to 6,100 operations by the year 2025. The study also used a mix of general aviation airplanes with less than 12,000 pounds gross weight, with the Cessna 206 as the most heavily used. The Board finds that mix of aircraft to be appropriate considering Vernonia Airport's classification as a Category V airport, which is generally restricted to single-engine, general-aviation airplanes weighing less than 12,000 pounds. Although petitioners' contend that the INM study fails to identify and account for the noise of the light-sport aircraft planned to be manufactured on the site, the Board finds that evidence in the record indicates that the new aircraft will generate between 63 decibels at take off and 55 decibels in flight. Considering the INM analysis shows noise contours at the airport as high as 65 DNL, the Board does not believe that the new light-sport aircraft at 63 decibels at its loudest will change the projected noise contours.
3. Pursuant to OAR 660-004-0020(2)(d), the Board finds that the expected increase in air traffic will be compatible with the adjoining residential uses. As shown on the WH Pacific noise contour map, three homes lie between the 55 and 60 DNL noise contours. According to OAR 660-013-0080(1)(b), Exhibit 5, Local Government Land Use Compatibility Requirements for Public Airports, residential uses are compatible without restrictions within the 55 and 65 DNL contours. Petitioners note that the Oregon Department of Aviation's Airport Land Use Compatibility Guidebook identifies in Appendix E.070, an FAA recommendation that interior noise levels inside residences be at 45 decibels or less. The FAA recommendation is in contrast to the Guidebook's recommendation as a Best Management Practice that building permit applicants demonstrate that their building design "will achieve and indoor noise level equal to or less than 55 [DNL]". As noted, Appendix E provides *recommendations*, not requirements, for Best Management Practices for residential interior noise levels. The Board does not find such restrictions necessary here where the outside noise levels for the three residences under a worst-case scenario for expected air traffic will be within the 55 to 60 DNL, which OAR 660-013-0080 Exhibit 5 identifies as compatible without restrictions.

SECTION 6. ADOPTION

Ordinance No. 2010-4, amending Ordinance 2009-1, on remand from the Oregon Land Use Board of Appeals for findings on whether the impacts from the expected

increase in air traffic from the proposed uses authorized by the Goal 4 exception will be compatible with adjoining uses and if not, whether reasonable steps can be taken to minimize incompatible impacts, is hereby adopted.

Ordinance No. 2009-1 is amended to include the supplemental findings on remand, attached hereto as Exhibit "A".

SECTION 7. SEVERABILITY

If for any reason any court of competent jurisdiction holds any portion of this Ordinance or any portion or portions of the attached Exhibit "A" to be invalid, such portion or portions shall be deemed separate, distinct, and independent, and any such holding shall not affect the validity of the remaining portions thereof.

SECTION 8. EFFECTIVE DATE

The effective date of this Ordinance shall be December 15, 2010.

Dated this 22nd day of September, 2010.

Approved as to form

By: [Signature]
Office of County Counsel

Attest:
By: [Signature]
Recording Secretary

First Reading: 9-8-10
Second Reading: 9-22-10
Effective Date: 12-15-10

BOARD OF COUNTY
COMMISSIONERS FOR COLUMBIA
COUNTY, OREGON

By: [Signature]
Anthony Hyde, Chair

By: [Signature]
Earl Fisher, Commissioner

By: [Signature]
Rita Bernhard, Commissioner

EXHIBIT "A"

**COLUMBIA COUNTY
BOARD OF COMMISSIONERS**

STAFF REPORT
August 4, 2010

DELIBERATION ON REMAND FROM LUBA(BERO)

DELIBERATION DATE: August 11, 2010

ORDINANCE NO: Ord. No. 2009-1 - Planning File No. PA 08-02 ZC 08-02

APPLICANTS / OWNERS: Tim and Michelle Bero; 55325 Timber Road, Building A
Vernonia, OR 97064

LUBA PETITIONERS: LUBA Nos. 2009-044 and 2009-045
Patty Brockman, John Burns, Lee Duvall, David Fife,
Heather Hines, Tony Krause, Leonard Schmidlin, Tim
Snook and Pat Zimmerman, et al..

SITE LOCATION: Abutting lands directly north and west of the Vernonia
Airport

TAX MAP NO: 4501-000-00300 (portion of)

ZONING: Primary Forest - 76 (PF-76)

SITE SIZE: 27.8 acres of entire tax lot (70.8 acres)

REQUEST: A **Major Map Amendment** consisting of a **Comprehensive Plan Amendment** to change property designated Forest Resource to Rural Industrial and a **Zone Change** from Primary Forest - 76 (PF-76) to Airport Industrial (AI) of 27.8 acres of the 70.8 acre site.

APPLICABLE REVIEW CRITERIA:

1) Land Use Board of Appeals Final Opinion and Order - REMAND (Attached)
Brockman v. Columbia County, 59 OR LUBA 302 (2009)

2) Oregon Administrative Rule (OAR) Page
OAR 660-004-0020(2)(d)
OAR 660-013-0040(6)

LUBA REMAND DATE: AUGUST 3, 2009

BACKGROUND:

On March 4, 2009 the Board of Commissioners approved Ordinance No. 2009-1 amending the Comprehensive Plan and approving a zone change for 27.8 acres directly north and west of the Vernonia Airport. The purpose of the amendment was to allow for an expansion of the airport runway and provide more land for airport industrial uses. Petitioners appealed Ordinance No. 2009-1 to the Land Use Board of Appeals (LUBA) and LUBA remanded the case back to the County on the following grounds: *“the county failed to establish that the uses authorized by the exception will not have increased air traffic impacts that cannot be minimized or eliminated so that the uses will be compatible with adjoining development”*. In its decision LUBA also stated: *“no party has identified any evidence in the record regarding how much additional air traffic might be expected at the airport, as a result of the uses authorized by the disputed exception. Until that is known, the county is not in a position to know if that increased air traffic will be incompatible with adjoining uses.”*

After the applicants requested the County to review the remand on March 17, 2010 the applicants submitted documentation on proposed increased air traffic and a noise study using the Area Equivalent Method to determine noise impacts. The petitioners rebutted the study, and in response to the applicants' request for additional time to address the petitioners' rebuttal evidence, the Board issued a revised schedule, allowing the applicants to submit new evidence and the petitioners to submit evidence and argument in rebuttal. Submittal of final argument was established for July 21, 2010 and Board deliberation on August 11, 2010.

Staff is not aware of any time requirements for the County to resolve the remanded LUBA Final Order; however, a reasonable time for adequate decisions should be allowed. Statute does provide that a LUBA Final Order may be enforced in appropriate judicial proceedings. The applicants would like to continue with their planned development and have formally requested the County review the Remand.

REVIEW CRITERIA, FACTS, ANALYSIS & FINDINGS:

Oregon Administrative Rule (OAR)

OAR 660-004-0020(2)(d)

(2) The four factors in Goal 2 Part II required to be addressed when taking an exception are:

- (a) -omitted- (reviewed previously)
- (b) -omitted- (reviewed previously)
- (c) -omitted- (reviewed previously)
- (d) “The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts”. The exception shall describe how the proposed use will be rendered compatible with adjacent land uses. The exception shall demonstrate that the proposed is situated in such a

manner as to be compatible with surrounding natural resources and resource management or production practices. "Compatible" is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.

OAR 660-013-0040(6)

(6) When compatibility issues arise, the decision maker shall take reasonable steps to eliminate or minimize the incompatibility through location, design, or conditions. A decision on compatibility pursuant to this rule shall further the policy in ORS 836.600.

Finding 1: For the following reasons, staff finds, as directed by LUBA, that the proposed use requiring a goal exception is compatible with other adjacent uses in accordance with OAR 660-004-0020(2)(d). Consequently, mitigation is not required pursuant to that rule and OAR 66-013-0040(6).

Increased Air Traffic from Anticipated Development

As to whether the increased air traffic will be compatible with existing residential uses the County must first establish what will be the increase in air traffic. The applicants estimate that the anticipated development will generate an increase of 1900 to 2100 flight operations annually. Staff finds that the applicants' estimation of 2100 additional flight operations is supported by the evidence in the record.

First, the applicants' estimation derives in part from the written testimony of Andrew Glomb of ATI Group International, future partner of approximately half of the proposed manufacturing space. Glomb estimates a maximum of 1000 additional flight operations based on the number of aircraft he plans to manufacture and the number of test flights required for each aircraft.

Second, applicants Tim and Michelle Bero also testified in writing that the other half of the proposed space will be devoted to uses that support ATI's manufacturing as well as current uses such as aircraft and power plant mechanics. Moreover, the proposed development will eventually include single engine aircraft hangers. Based on the anticipated take offs and landings, the applicants estimate that those proposed uses will generate an additional 900 annual flight operations (400 operations per year from the support development, 300 operations per year from Aircraft and Power plant repair work, and 200 operations per year from hangar leases).

Although the petitioners characterize the applicants' estimations as insufficient, staff finds that Andrew Glomb's projections are based on his manufacturing plans and are sufficiently detailed. The applicants' estimations for the other half of the proposed development are based on less precise data. However, in light of the fact that the applicants' estimated flight operations is nearly equal to Glomb's for approximately the same development area and for related uses, that number does not seem implausible. Moreover, the petitioners have not provided any evidence to contradict the applicants' estimation. Staff therefore finds that the applicants' estimation of an

additional 2,100 flight operations without any evidence to the contrary is supported by substantial evidence.

Impact of Increased Air Traffic on Adjacent Uses

There are three homes identified in the applicants' Aircraft Noise Contours that are located along the south side of Airport Road which runs parallel to the existing airstrip. These lands south of the airstrip property are zoned Forest Agriculture (FA-19). There are no residentially zoned properties in the immediate vicinity of this Plan Amendment request. The County has no record of land use approvals for these existing three houses immediately south of Airport Road which were built prior to county adopting a Comprehensive Plan and zoning for this area.

As raised in the record, the only incompatibility for the nearby residential uses with the proposed increased air traffic is an impact of increased airport generated **noise** at damaging decibels. In response to the petitioners' initial rebuttal evidence, the applicants submitted a more precise noise study using the Integrated Noise Model (INM). This INM Study produced noise contours for the Vernonia Airport using a worst case impact scenario of 6,100 annual flight operations. The Study assumes a 2010 current level of 4,000 flight operations per year, based on an estimate from the airport's manager. That estimate, however, is considerably higher than the Oregon Department of Aviation reports, which indicate about 1,875 annual flight operations at Vernonia Airport in 2005 and project that same number for 2010. The Study concludes based on the worst case scenario projections of 6,100 flight operations per year (4,000 currently with an increase of 2,100), that by the year 2025 three existing dwellings will be within the 55 DNL contour but not within the 60 DNL contour. Oregon Airport Planning Rule, Noise Compatibility, states that all residential uses are compatible without restrictions between the 55-65 DNL contours. The applicants therefore argue that no restrictions or mitigation of noise impacts on adjacent residential uses are required.

The petitioners do not dispute the INM Study and methodology, but maintain that a noise level of 55 DNL is damaging to hearing and is therefore incompatible with residential uses. Petitioners further argue that certified noise data for the type of aircraft the applicants plan to manufacture has not been provided. Also, noise levels of the manufacturing itself has not been provided; and other aircraft such as helicopters may use the airpark that was not accounted for in the noise study.

The applicants state that the type of aircraft using the Vernonia Airport will be primarily single engine general aviation aircraft. Oregon Department of Aviation classifies the Vernonia Airport as a Category V, with a 2900 feet grass run way with no tower or lights for night operations. This type of airport generally restricts the types of aircraft that may use it to single engine, general aviation aircraft. The WH Pacific Study, Airport Noise Contours, uses a mix of aircraft considered general aviation airplanes weighing less than 12,000 pounds gross weight. For the number of aircraft operations WH Pacific used the larger numbers of anticipated operations for a worst case estimate. Two maps were presented showing the noise contours for existing year 2010 (4,000 operations per year) and for the projected year 2025 (6,100 operations per year). The projected year 2025 noise contours also takes into account a longer runway to 3,840 feet. Noise

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Rule Criterion, OAR 660-013-0040(6))

COLUMBIA COUNTY
PUBLIC NOTICE OF
ORDINANCE No. 2010-4 SEP 23 2010
COUNTY COUNSEL

NOTICE IS HEREBY GIVEN that on August 11, 2010, the Columbia County Board of Commissioners (Board) held a public meeting to deliberate on the application of Tim and Michelle Bero for a Comprehensive Plan Map Amendment, Zone Change, and Goal Exception for a portion of Tax Lot No. 4501-000-00300 on remand from the Land Use Board of Appeals (LUBA). The Board limited its review of the application to the issue on remand, *i.e.*, findings on Goal Exception criterion OAR 660-004-0020(2)(d) and Airport Planning Rule Criterion OAR 660-013-0040(6). Specifically, the Board limited its review to: (1) the increased air traffic expected from uses authorized by the Goal Exception, and (2) if such air traffic is incompatible with adjacent uses, whether reasonable steps can be taken to eliminate or mitigate the incompatibility.

At the public meeting, the Board deliberated on the written evidence, testimony and argument received from proponents and opponents of the application. The Board then voted to tentatively approve the application and directed County staff to prepare an ordinance. On September 8, 2010, Ordinance No. 2010-4 was read for the first time. The Board voted to adopt Ordinance No. 2010-4 following the second reading on September 22, 2010. Ordinance No. 2010-4 will become effective on December 15, 2010.

Persons who participated in writing in the proceedings leading to Ordinance No. 2010-4 may appeal the decision to LUBA under ORS 197.830 to 197.845. A notice of intent to appeal the Ordinance must be filed with the LUBA not later than 21 days after the date this Notice is mailed to persons entitled to notice. The reverse side of this Notice indicates when this Notice was mailed.

Ordinance No. 2010-4 is available for review at no cost and copies can be made for .25 cents/page at the Board of County Commissioners' Office, Room 318 Columbia County Courthouse, 230 Strand Street, St. Helens, Oregon. Questions may be directed to Jan Greenhalgh at (503) 397-4322.

DATED this 22nd day of September, 2010.

By: 
Jan Greenhalgh, Board Secretary