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## Conditional Use Permit (Type III) CUP-22-02

### STAFF REPORT

**Date Submitted:** July 14, 2022  
**Agenda Date Requested:** July 21, 2022  
**To:** John Day Planning Commission  
**From:** Nicholas Green  
Chief Planning Official  
**Subject:** Conditional Use Permit (Type III Quasi-Judicial)  
**Location:** 57060 Industrial Park Road, John Day, OR 97845  
Map: 13S31E27D Tax Lot(s): 400 & 500  
**Zoning:** Airport Industrial Park (AIP)  
**Type of Action Requested:** Conditional Use Permit for ODF Helipad

<input type="checkbox"/>	<b>Resolution</b>	<input type="checkbox"/>	<b>Ordinance</b>
<input checked="" type="checkbox"/>	<b>Formal Action</b>	<input type="checkbox"/>	<b>Report Only</b>

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### 1. BACKGROUND

The Oregon Department of Forestry has requested to conduct helipad operations within the Airport Industrial Park (AIP) and the Airport Safety and Compatibility (ASCC) overlay zone. The applicant is requesting a Conditional Use Permit be issued by the Planning Commission through a Type III (Quasi-Judicial) Review as outlined in Code Section 5-4.4 - Conditional Use Permits.

### 2. APPLICABLE CRITERIA

The City of John Day Development Code (the Code) governs the procedure for reviewing Conditional Use Permits. All land use and development permit applications and approvals, except building permits, shall be decided by using the procedures contained in Chapter 5-4 of the Code. The procedure “type” assigned to each application governs the decision-making process for that permit or approval.

An application for a new conditional use shall be processed as a Type III procedure, per Section 5-4.1.040 of the Code. The application shall meet submission requirements in Section 5-4.4.030, and the approval criteria contained in Section 5-4.4.040.

Conditional Use Permits must be approved by the Planning Commission through a Type III procedure as outlined in Section 5-4.4. The standards of the Airport Industrial Park (AIP)

zone in Section 5-2.4 Industrial (I) Districts and Section 5-2.5 Airport Safety And Compatibility Overlay (AASC) Zone also apply.

Staff has reviewed the application pursuant to the Code and the requirements for a conditional use permit. The application was deemed technically complete (ready for review) on July 1, 2022 (Exhibit A). The City must make a final decision, including a final city council decision on any appeal, within 120 days, or by November 1, 2022.

### **3. PUBLIC NOTIFICATION**

The City of John Day sent public hearing notices to the applicant and property owners within 100-feet of the subject site on July 1, 2022 (Exhibit B). Notice of the hearing was printed in The Blue Mountain Eagle 14 days prior to the hearing as required by the Code (Exhibit C).

### **4. BURDEN OF PROOF**

The applicant has the burden of demonstrating that the proposal meets all applicable Code requirements. The applicant is also responsible for complying with building code requirements and applicable state or federal requirements. It is the Planning Commission's responsibility to interpret the Code based on findings of fact.

### **5. PLANNING COMMISSION AND CITY COUNCIL CONSIDERATIONS**

The Planning Commission's review must focus on the relevant code criteria and follow the public hearing requirements for a Type III procedure under section 5-4.1.040.

### **6. STAFF RECOMMENDATION**

Staff recommends that the Planning Commission **approve the request for conditional use permit CUP 21-05 with conditions and subject to any applicable public comments presented during the hearing.** It is the applicant's responsibility to demonstrate compliance with the conditions of approval.

### **7. APPROVAL CRITERIA AND FINDINGS**

John Day Development Code Section 5-4.4.040 Conditional Use Permits – Criteria, Standards and Conditions of Approval contains the applicable approval criteria for the conditional use permit application. The Planning Commission's evaluation of the project must focus on the relevant code criteria under Section 5-4.4.040 and follow the public hearing procedures for Type III (quasi-judicial) review under Section 5-4.1.040.

The applicable code criteria are provided below in *italics* typeface; staff's findings follow each code provision in regular typeface. The findings, which are based on information submitted by the applicant, are preliminary. The plans, exhibits, and narrative submitted by the applicant and used in making the findings are attached to this report and include:

- Application and Narrative (Exhibit A)
- Certification of Public Notice (Exhibit B)
- Legal Proof of Public Hearing Notice (Exhibit C)
- Site Plans (Exhibit D)

- Airport Master Record for Helipad Operations (Exhibit E)
- Notice of Heliport Airspace Analysis Determination Establish Private Use Heliport (Exhibit F)

All of the above documents are hereby incorporated and made part of the public record.

The application and staff report findings may be modified based on factual information entered into the public hearing record before the close of the record. Members of the public who have questions about the proposal or who would like to submit oral or written testimony are encouraged to appear at the public hearing or provide written testimony before the close of the hearing. Testimony should respond directly to the following criteria.

#### ***5-2.5.010 Scope And Purpose of Regulations***

*The purpose of the AASC overlay zone is to encourage and support the continued operation and vitality of Ogilvie Field and to support compatible land uses adjacent to the airport. The overlay establishes land use compatibility and navigational safety standards to reduce potential safety hazards for persons living, working and recreating near Ogilvie Field, consistent with applicable State law and administrative rules. [ORS 836.600; ORS 836.619; OAR 660-013-0070; OAR 660-013-0080]*

**Findings:** The application requires notice 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. Helipad operations at this location have already been approved by the FAA (see Exhibit E. Airport Master Record for Helipad Operations).

#### ***5-4.4.040 Conditional Use Permits – Criteria, Standards and Conditions of Approval***

*The City shall approve, approve with conditions, or deny an application for a conditional use or to enlarge or alter a conditional use based on findings of fact with respect to each of the standards and criteria in A-C.*

##### *1. Use Criteria*

- 1. The site size, dimensions, location, topography and access are adequate for the needs of the proposed use, considering the proposed building mass, parking, traffic, noise, vibration, exhaust/emissions, light glare, erosion, odor, dust, visibility, safety, and aesthetic considerations.*

**Findings:** The size of the property is two (2) acres with approximately 1.5 acres available for helipad operations.

- 2. The negative impacts of the proposed use on adjacent properties and on the public can be mitigated through application of other code standards, or other reasonable conditions of approval.*

**Findings:** Adjacent property owners were notified of the application, and no public comments were received concerning the potential negative impacts of the proposal as of the date of this report. Staff recommends applying the condition that the grassy field is

used in lieu of a gravel helipad to avoid creating debris that could impact surrounding buildings or vehicles.

3. *All required public facilities have adequate capacity or are to be improved to serve the proposal, consistent with City standards.*

**Findings:** The proposed use does not impact public facilities. This condition doesn't apply.

4. *A conditional use permit shall not allow a use that is prohibited or not expressly allowed under Article 5-2; nor shall a conditional use permit grant a variance without a variance application being reviewed with the conditional use application.*

**Findings:** The proposed use is consistent with the AIP allowed land uses. The AIP district is intended to provide for compatible land use adjacent to Ogilvie Field, and provide for economic development consistent with Oregon's Certified Industrial Lands program. As no specific development is proposed, there are not specific standards or use categories to consider for this criteria.

*B. Site Design Standards. The Site Design Review approval criteria (Section 5-4.2.060) shall be met. The Planning Official may waive the application requirements for the Site Design Review upon determining that the Conditional Use Permit application provides sufficient information to evaluate the proposal.*

**Findings:** As no development is proposed, planning staff elected to waive the site design review approval criteria.

*C. Conditions of Approval. The City may impose conditions that are found necessary to ensure that the uses is compatible with other uses in the vicinity, and that the negative impact of the proposed use on the surrounding uses and public facilities is minimized. These conditions include, but are not limited to, the following:*

1. *Limiting the hours, days, place and/or manner of operation;*

**Finding:** The "Notice of Heliport Airspace Analysis Determination Establish Private Use Heliport" (Exhibit E) recommends ODF not conduct night helicopter operations unless the heliport and wind indicator are lit in accordance with the current edition of AC 150/5390-2, paragraphs 411c and 415; the takeoff/landing area is appropriately marked, including the standard "H" marking, gross weight/overall length markings, and properly aligned with the preferred approach and departure routing.

2. *Requiring site or architectural design features which minimize environmental impacts such as noise, vibration, exhaust/emissions, light, glare, erosion, odor and/or dust;*

**Finding:** Require grass be utilized to prevent gravel from kicking up into the rotors or rotor wash forcing debris onto adjacent properties.

3. *Requiring large setback areas, lot area, and/or lot depth or width;*

**Finding:** Not required unless it is recommended by the commission.

- 4. Limiting the building or structure height, size, lot coverage, and/or location on the site;*

**Finding:** Not applicable.

- 5. Designating the size, number, location and/or design of vehicle access points or parking and loading areas;*

**Finding:** Not required unless it is recommended by the commission.

- 6. Requiring street right-of-way to be dedicated and street(s), sidewalks, curbs, planting strips, pathways, or trails to be improved.*

**Finding:** Not applicable.

- 7. Requiring landscaping, screening, drainage, water quality facilities, and/or improvement of parking and loading areas;*

**Finding:** Not required unless it is recommended by the commission.

- 8. Limiting the number, size, location, height and/or lighting of signs;*

**Finding:** Not applicable.

- 9. Limiting or setting standards for the location, design, and /or intensity of outdoor lighting;*

**Finding:** Not applicable.

- 10. Requiring berms, screening or landscaping and the establishment of standard for their installation and maintenance;*

**Finding:** Not required unless it is recommended by the commission.

- 11. Requiring and designating the size, height, location and/or materials for fences;*

**Finding:** Not applicable.

- 12. Requiring the protection and preservation of existing trees, soils, vegetation, watercourses, habitat areas, drainage areas, historic resources, cultural resources, and/or sensitive lands.*

**Finding:** Not applicable.

- 13. Requiring dedication of sufficient land to the public, and/or construction of pedestrian/bicycle pathways in accordance with adopted plans, or requiring the recording of a local improvement district non-remonstrance agreement for the same. Dedication of land and construction shall conform to the provisions of Chapter 5-3.1, and Section 5-3.1.030 in particular;*

**Finding:** Not applicable.

*14. Establish a time table for periodic review and renewal, or expiration, of the conditional use to ensure compliance with conditions of approval; such review may be subject to approval by the Planning Official or Planning Commission through a Type II Administrative Review or Type III Quasi-Judicial process at the discretion of the decision making body.*

**Finding:** Staff recommend limiting the duration of the Conditional Use Permit to the ODF lease of the properties, so that the use expires if and when ODF is no longer a tenant.

*15. Other Conditions of Approval*

**Finding:** The “Notice of Heliport Airspace Analysis Determination Establish Private Use Heliport” (Exhibit E) recommends the following conditions, some of which apply to an improved/permanent development as opposed to a temporary use:

- 1) Heliport meet and maintain the standards of FAA Advisory Circular 150/5390-2 (current version) Heliport Design and establish an acceptable level of safety for helicopter operations;
- 2) Any heliport on-site aircraft refueling operations should be conducted in accordance with FAA guidelines,
- 3) National Fire Protection Pamphlet (NFPA) 418 and local Fire Marshall Recommendations are followed. Fire protection is provided in accordance with the NFPA 418, local fire code and AC 150/5390-2.
- 4) Unauthorized persons are restrained from access to the takeoff/landing area during helicopter flight operations. If a barrier is utilized locate it outside the Safety Area and not penetrate the FAA AC 150/5390-2 approach/ departure surface area. CAUTION HELICOPTER OPERATIONS type signage be affixed near entrance(s) and parameter of heliport. Refer to FAA AC 150/5390-2 figure (2-34 GA acft) for example.
- 5) Establish communication plan between John Day Airport and the helicopter. Publish and distribute helicopter operational procedures to heliport operators and users.
- 6) The heliport proponent will reexamine obstacles in the vicinity of the approach/departure paths on an annual basis in accordance with AC 150/5390-2. Any new obstacles noted will be forwarded to the Airport District Office, Flight Standards District Office or Flight Standards Division.
- 7) A Flight Standard post-construction heliport evaluation should be completed within 15 days of construction completion and prior the operational use of the heliport. Contact the Airports Division, Flight Standards District Office, or Flight Standards Division to schedule the evaluation when nearing completion (only if improved beyond the grassy field).

## **8. PLANNING COMMISSION MOTION**

After hearing the applicant’s presentation and any public testimony, the Planning Commission must allow the applicant an opportunity to rebut any opposing testimony. Then the Commission will close the hearing and deliberate.

The Commission has the option to approve, deny, or approve with conditions the proposed application.

“I move to [approve/deny/approve with conditions] the Conditional Use Application CUP-22-02 based on the findings and subject to the conditions of approval contained in the staff report [as amended, if any].”

*The staff report may be amended during the course of the hearing.*

Respectfully submitted this 14th day of July 2022,

A handwritten signature in black ink, appearing to read "Nick Green", written in a cursive style.

Nicholas Green  
Chief Planning Official

Attachments:

- Application and Narrative (Exhibit A)
- Certification of Pre-Application Neighborhood Meeting (Exhibit B)
- Legal Proof of Public Hearing Notice (Exhibit C)
- Site Plans (Exhibit D)
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- Notice of Heliport Airspace Analysis Determination Establish Private Use Heliport (Exhibit F)