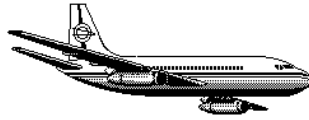




## **Alternatives to the Conditional Use Approval Process for Portland International Airport (PDX)**



### **Final Report**



**City of Portland Bureau of Planning  
Intergovernmental Coordination Team  
August 2001**

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## **ALTERNATIVES TO THE CONDITIONAL USE APPROVAL PROCESS FOR PORTLAND INTERNATIONAL AIRPORT**

### **Introduction**

Portland International Airport (PDX) is a major contributor to a diverse and strong economy, to the region's livability, and to the convenience of air passenger travelers. Over the past decade, PDX has experienced steady growth due to the strong economic expansion in Oregon and Southwest Washington. As the airport grows, so does the potential impact to surrounding neighborhoods in terms of noise, transportation, and environmental concerns. The Bureau of Planning (BOP) is attempting to address these potential impacts by evaluating what role the City should play in regulating land uses at, and around, the Airport through the appropriate land use approval process.

This report outlines the land use history of PDX and the issues associated with the current land-use approval process. The report then explores several land use approval options that may be available to the Port of Portland (Port) before their conditional use permit expires in August 2003. This report clarifies these options and makes recommendations for the most appropriate approval process.

This report also documents the events and process that produced the intergovernmental agreement between the City and the Port. The Council resolution and agreement are attached as appendices for future reference.

### **Why consider alternatives**

There are several reasons for considering an alternative to the conditional use process.

- ◆ First, master plans are typically used for church, university, or medical campuses. These are considerably smaller in scale and complexity than PDX.
- ◆ Second, the 120-day requirement for the current quasi-judicial process is relatively short. It does not provide the Office of Planning and Development Review (OPDR) staff with adequate time to respond to the increasingly complicated issues at PDX.
- ◆ Third, the Port recognizes, and OPDR staff concur, that the land use approval criteria lack specificity and direction about how to address the increasingly complex set of issues involving the *Airport Master Plan*. Community members, such as the Airport Traffic Issues Roundtable (AIR), are asking for greater input into the Port's planning process and don't believe that the current conditional use permit process offers sufficient citizen involvement.

### **Background**

Portland International Airport (PDX) contains approximately 3,300 acres consisting of a variety of air transportation and transport facilities, including commercial airport terminals, general aviation infrastructure, a military air base, airfreight development, and aviation support facilities. PDX is located primarily in a General Industrial 2 (IG2)<sup>1</sup>

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<sup>1</sup> IG2 implements the Industrial Sanctuary map designation of the *Comprehensive Plan*. It provides areas of mostly industrial uses, while other uses are restricted to avoid potential conflicts and reserve land for industry. IG2 areas have larger lots and irregular or large block patterns compared to IG1. IG1 areas tend to be in the City's more developed, older industrial areas.

zone, with small portions in General Employment (EG2)<sup>2</sup> as shown in Attachment B. Aviation And Surface Passenger Terminals are a conditional use in the IG2 and EG2 zones. Conditional use permits are in effect a maximum of ten years, or until it is amended or renewed. Therefore, the Port must apply for a conditional use permit at least every ten years.<sup>3</sup> Since PDX has over 500,000 square feet of floor area and the Port is proposing to expand the amount of floor area by more than ten percent, a master plan is required under *Zoning Code* Chapter 33.820. In addition, the proposed uses and possible future uses must comply with the applicable conditional use criteria. (see Attachment A)

After two public hearings and several years of Advisory Committee meetings, the Port Commission adopted an updated *Portland International Airport Master Plan* in the fall of 2000. The Port's master plan is a facility plan with forecasts for growth in passengers, cargo, and operations. It contains an analysis of alternative facility development scenarios to meet the projected growth. The Port's planning process has recently evolved to address the environmental impacts of the airport in terms of noise, air, and water quality. In an effort to broaden the scope of the plan, the Port convened a planning advisory committee representing regional stakeholders in 1996. The plan also includes contributions by the Portland State University Regional Air Transportation Demand Task Force, a task force initiated to test the Port's forecasts and assumptions. In the past, the Port has used the master plan as the basis for applying to the City for a conditional use permit.

### **History and Current Status of the Conditional Use Permit**

In 1977, PDX was annexed into the City of Portland. At that time, the Port initiated a two-year master plan study. The purpose was to prepare an airport master plan and environmental assessment report for the airport and the surrounding vicinity through the year 2000. In 1979, the County zoning was changed to City M3. Later that year, a conditional use permit for a master plan, CU 56-79, was approved with conditions.

In 1985, the Port requested a modification of the approved master plan to change the designation on a 48-acre parcel east of NE 82<sup>nd</sup> Avenue from "future airport support and remote parking" to "airport light industrial and office." The modification was approved as CU 58-85, with conditions that included submitting a complete master plan update.

In 1986, a new 20-year master plan was proposed with greater flexibility to allow growth and diversification to occur in response to the changing air cargo and transportation markets. CU 29-86 was approved with conditions.

In 1991, Portland City Council adopted the Aircraft Landing Zone and the Portland International Airport Noise Impact Zone, illustrated in Attachment B. The Aircraft

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<sup>2</sup> EG2 implements the Mixed Employment map designation of the *Comprehensive Plan*. It allows a wide range of employment opportunities without conflicts from residential uses. Other commercial uses are allowed to support a wide range of services and employment opportunities. EG2 areas have larger lots and irregular or large block patterns compared to EG1.

<sup>3</sup> PCC 33.820.060.

Landing Zone limits the height of structures to provide safer operating conditions for aircraft in the vicinity of the airport. The Noise Impact Zone reduces the impact of aircraft noise on development within the noise impact area surrounding the airport. The boundary for the zone was established based on the *1990 Portland International Airport Noise Abatement Plan Update*. The Port mapped the noise contours generated by PDX as part of this plan, and outlined noise abatement measures to mitigate for the impacts of noise. The City established the Noise Impact Overlay Zone for all areas with a Ldn noise contour of 65 or greater. Ldn is the level day/night reading of a noise level index that gives an average noise level for a 24-hour period/365 days per year.

In 1993, the Port proposed another 20-year conceptual master plan for PDX. The application included an adjustment to eliminate the required landscaping for parking lots within 300 feet of an aircraft operating area. The adjustment was granted and the conditional use permit was approved with conditions. The conditions included mitigation of transportation impacts, participating with the City in transportation improvements, and the granting of easements for the 40-Mile Loop Trail.<sup>4</sup>

In addition, the Hearings Officer responded to testimony from citizens by including condition F. She required the following condition F documentation be added to the master plan by the Port within one year:

1. A community involvement plan;
2. An explanation of how citizens should make complaints and how PDX will respond to such complaints;
3. An explanation of activities that will be submitted to the Noise Abatement Advisory Committee or the City's Noise Review Board;
4. An explanation of the Port's intent regarding various properties; and
5. Documentation of compliance with any conditions of approval previously imposed by the City.

The Port submitted the material and in January 1995, the land use review section of the Bureau of Planning, now OPDR, rendered an administrative decision accepting the material as compliant with condition F as a Type II procedure. A member of the Noise Abatement Advisory Committee appealed the administrative decision on the grounds that the Port did not satisfy the requirements of condition F. The Hearings Officer decided that the Port did meet all the relevant previous conditions of approval.<sup>5</sup>

It is likely this issue will surface again in future proceedings. As the report of the Hearings Officer stated "It is reasonable to require each Master Plan Update to include a section on compliance with previously imposed conditions."<sup>6</sup> The Port plans to submit this report as part of the next conditional use application process in 2003.

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<sup>4</sup> Report and decision of the Hearings Officer, LUR 93-00174 MS AD, p.19.

<sup>5</sup> Report and decision of the Hearings Officer, LUR 94-00614 MS AD.

<sup>6</sup> Report and decision of the Hearings Officer, LUR 93-00174 MS AD, p.10.

### **Alternatives to a Conditional Use Permit Master Plan Process**

PDX is an unusual situation. Church facilities and medical or college campuses undertake the majority of land use master plans. As a result, City bureaus have begun discussions concerning the appropriateness of a conditional use master plan process for PDX. In addition, the Port provided the City with a report on how other airports in the country are regulated. This report suggests that the majority of airports in the country are allowed by right rather than as a conditional use. A summary of this report is included as Attachment C. Within the BOP, meetings of the Direction Team and Management Team have begun to explore the various alternatives to a master plan process for the Port. These options include the following:

1. Continue with the conditional use master plan process unchanged;
2. Create a development agreement for PDX;
3. Use an Impact Mitigation Plan process;
4. Develop a “specific” development plan, a planning tool used in California;
5. Create an “airport zone” overlay that would allow Aviation Terminals by right;
6. Create a plan district for PDX and adjacent land with a set of development standards tailored to the facility; or
7. Modify the current practice with a quasi-judicial/legislative hybrid. This would involve incorporating a citizen involvement process into the conditional use master plan process and rewriting the conditional use criteria for airports.

#### **1. Conditional Use Master Plan Permit**

This process is obviously the path of least resistance and would be sufficient to approve the Port’s master plan. But, the reasons for questioning the current conditional use master plan process are several. Master plans are typically used for churches and university or medical campuses. These are considerably smaller in scale than PDX and do not have the same requirements for infrastructure to support the growth of PDX, in terms of freight and passenger use, experienced in the past decade.

Testimony heard by the Hearings Officer in 1993 and 1994 has three common themes. First, the issue of enforcement has been raised numerous times. Members of the Citizens Noise Advisory Committee (CNAC) and the Airport Traffic Issues Roundtable (AIR), convened by Commissioner Saltzman’s office, believe that current regulations are not being enforced at the airport. It is not clear whether this is an enforcement issue, or that the regulations simply are not sufficient. Second, they are not satisfied with the level of input they are allowed in the Port’s master planning process. They feel their concerns are not being addressed sufficiently and their only recourse is the conditional use permit process. This leads to the third theme. The current conditional use criteria are not specific enough to address the many complicated issues at PDX, with noise as the most prominent issue. Saltzman’s AIR group has requested that a more formalized process of citizen input be inserted into the planning and approval process. Additionally, AIR has requested a formalized standard for reporting and monitoring of development activities at PDX.

Below is an analysis of each suggested alternative to the conditional use permit process.

## **2. Development Agreement Option**

Research indicates that development plans are primarily used for redevelopment projects in urban settings and may not be appropriate for the airport. The intent of a development plan is to provide greater certainty for the developer by binding future City Councils to decisions made at the time of the agreement. The enabling state statutes (ORS 94.504) have specific provisions for development agreements that may create problems for PDX. First, the duration of a development agreement is limited to seven years. Second, the agreement must specify a period of time for the entire project or phase to begin and be completed. This may not provide enough flexibility for the Port to respond to even minor changes in development, since Council must approve changes to the agreement by ordinance.

## **3. Impact Mitigation Plan (IMP)**

An IMP is intended to foster the growth of major institutions providing educational and medical services and employment to Portland's residents.<sup>7</sup> IMPs are intended for uses in the Institutional Residential (IR) zone. The reason IMPs were suggested, is that once an institution has an approved impact mitigation plan, a conditional use master plan is not required. However, this would require a zone change for PDX from employment and industrial zones to residential. Airports are currently not allowed in an IR zone and it would be difficult to argue that PDX would not "sacrifice the overall residential neighborhood image and character."<sup>8</sup>

One option is to create a similar IMP provision specifically for PDX. Through a legislative process, the City could develop a set of approval criteria that address the impacts of the airport on surrounding areas and require strategies to mitigate for those impacts. The approval process for an IMP is a Type III procedure with amendments requiring a Type II procedure. The current IMP language does not place a specific expiration date on the IMP, but requiring an IMP for PDX every three, five, or ten years is plausible.

## **4. "Specific" Development Plans**

Specific planning is a concept originally developed in California. These plans function as a versatile tool for implementing the "general" plan under state statute. In 1992, a Department of Land Conservation and Development (DLCD) task group explored the use of specific plans in Oregon.<sup>9</sup> According to the group, the principle aim of specific development plans is to secure the benefits of both discretion and certainty in the development process. The legislative process moves the exercise of discretion into a public planning process, while producing a plan with sufficient detail to allow certainty of a rapid development approval process. The public planning process, not the development approval process, becomes the forum for design review and public involvement. A specific plan would involve rezoning with an area-wide overlay zone and a specific underlying land use designation. The zone designations would permit land

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<sup>7</sup> PCC 33.848.

<sup>8</sup> PCC 33.120.010, Purpose Statement, p 120-2.

<sup>9</sup> Urban Growth Management Task Group on Development Inside Urban Growth Boundaries, *Recommendations*, Oregon Department of Land Conservation and Development, November 17, 1992.

division and development in conformance with the specific plan outright, without discretionary review.

Portland briefly explored specific development plans envisioned under the Livable City Project in 1992. Planning staff received a grant from DLCDC to conduct a pilot project to test specific development plans. This was a cooperative planning effort in three different areas of the City titled Designed Infill in NW, Main Streets in SE, and Transit Stations in Hollywood. The emphasis of this pilot was to bring together adjacent property owners, existing residents and businesses to create a vision for the neighborhood. The process would ideally grant local government planners and residents an active role in designing the community, rather than reacting to developers' proposals.

Unfortunately, the grant did not produce a "specific" plan similar to the ones in California. Nor did DLCDC provide a framework for how specific plans would operate within Oregon's land use planning framework. In 1992, Tri-Met retained the attorney Mark Greenfield to prepare a memo titled "Specific Plan Implementation." Greenfield's memo explores, procedurally, how specific plans would work in Oregon. Specific plans would require some form of enabling legislation, either adopted as a comprehensive plan element or a zoning code element, or treated similarly to master plans. Greenfield acknowledges that there are many remaining questions, and that his memo simply "sets the table" for further discussion.<sup>10</sup>

The "Specific Plan Implementation" memo states that amendments to *Comprehensive Plan* text may be necessary to authorize development and adoption of the plans. The *Comprehensive Plan* should provide the broad policy framework outlining how specific plans are adopted and amended. The *Comprehensive Plan Map* would require a zoning designation to allow specific plans. Greenfield's example is to create a "transit supportive mixed use" zone that permits a mix of uses a certain distance from light rail stations. One issue with creating a mixed-use zone is that the City must demonstrate compliance with LCDC goals, particularly Goals 9, 10, and 14. Alternatively, an overlay zone could permit uses broader than shown on the *Comprehensive Plan Map* and allow some shifting of the location of certain uses.<sup>11</sup>

Greenfield's analysis of specific plans was tailored to light rail station area development, and generally raised more questions than it answered. Specific plans are certainly an option for the City, but would require a significant commitment to adopt the enabling legislation within the *Zoning Code* and develop a process for creating the plans. The idea needs further research by legal counsel and outreach to potential stakeholders to determine whether or not the process would be well received.

## **5. Airport Zone**

The Portland State University Regional Air Transportation Demand Task Force suggested creating an "airport" zone in the *Comprehensive Plan* and the *Zoning Code*.

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<sup>10</sup> Greenfield, Mark J. "Memo to Henry Markus, Tri-Met Station Area Development Coordinator," November 17, 1992.

<sup>11</sup> Ibid.

This would allow the airport to operate by right, rather than as a conditional use. It appears that a basic city function, such as an airport, should be allowed to exist in one of the City's zones (see Attachment C for examples of airport zones used in other cities). The primary concern with this allowing a land use outright without conditions is that once adopted, there is typically no recourse for stakeholders as new issues arise. Additionally, it may be difficult to draft code language flexible enough to allow for future changes to airport facilities. This could potentially place a burden on the Port to apply for amendments to the *Zoning Code* or *Zoning Map*.

## **6. PDX Plan District**

"Plan Districts address concerns unique to an area when other zoning mechanisms cannot achieve the desired results."<sup>12</sup> Plan districts provisions may apply additional regulations or allow exceptions to any portion of the regulations of the base zone, overlay zone, or other regulations of Title 33. Chapter 33.500 sets forth adoption criteria, which includes requirements for demonstrating the need for a plan district, the inadequacy of current regulations, and that the plan district is in conformance with the *Comprehensive Plan*. Additionally, the plan district and regulations must be the result of a legislative study or plan documenting the special characteristics or problems and how the plan district will address the issues. One issue for plan districts is that they are not intended for small areas or individual properties.

A plan district for PDX would involve some modifications from the traditional plan district model used in the City. The language in the plan district should include more detailed land use requirements and a process for periodic approval of the Port's master plan by Planning Commission and City Council. The Port could be required to conduct a public involvement process and develop mitigation plans for issues raised during the process. The submittal requirements could include mitigation plans with some or all of the following elements: transportation, natural resources (the Columbia Slough in particular), noise, and public involvement. Finally, the language could be as detailed or open as desired and have provisions requiring the Planning Commission and City Council to approve the master plan and mitigation plans every three, five, or ten years.

## **7. Modify Approval Criteria**

One option worth exploring is retaining the quasi-judicial process, but using a legislative process to add more detail to both the conditional use criteria (PCC 33.820.050) and the required components of a Master Plan (PCC 33.820.070). The City would initiate a legislative project and recommend specific approval criteria addressing stakeholder issues. The required components of a Master Plan could be expanded to include impact mitigation plans. Each mitigation plan could address separate issues such as noise, transportation, public involvement, and the environment. As part of this legislative process to amend the *Zoning Code*, the City could require that the 120-day process be extended six to twelve months. The extra time would allow for a process, bringing together stakeholders and the Port, to discuss land use issues and the application of the conditional use criteria. This process would help to inform OPDR on the salient issues and allow for additional preparation time prior to the hearing.

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<sup>12</sup> PCC 33.500.010, Purpose.

## Comparative Analysis

### 1. Conditional Use Master Plan Process

#### PRO

- ◆ No budget implication

#### CON

- ◆ Approval criteria lacks specificity
- ◆ Minimal citizen involvement  
Places staffing burden on OPDR & Hearings Officer

### 2. Development Agreement

#### PRO

- ◆ Provides greater certainty to Port and stakeholders

#### CON

- ◆ Used primarily for redevelopment plans in urban areas
- ◆ Insufficient flexibility
- ◆ Requires ordinance for minor amendments
- ◆ Moderate budget implications

### 3. Impact Mitigation Plan Process

#### PRO

- ◆ IMPs replace master plans  
Requires mitigation plans to address PDX impacts

#### CON

- ◆ Requires amendments to the *Zoning Code*
- ◆ No clear citizen involvement component  
Moderate to high budget implications

### 4. “Specific” Development Plan

#### PRO

- ◆ Provides both certainty and discretion
- ◆ Provides flexibility in terms of zoning

#### CON

- ◆ Requires enabling legislation and amendments to both the *Comprehensive Plan* and *Zoning Code*
- ◆ No implicit citizen involvement component
- ◆ Untested in Oregon
- ◆ High budget implications

### 5. “Airport Zone”

#### PRO

- ◆ Allows PDX uses by right
- ◆ Provides certainty to Port
- ◆ Low budget implications

#### CON

- ◆ Requires amendments to the *Zoning Code*
- ◆ After allowing a use outright, typically there is no recourse for stakeholder issues as they arise
- ◆ May not provide sufficient flexibility for Port’s changing needs

## 6. Plan District

### PRO

- ◆ Provides certainty for Port and stakeholders
- ◆ Provides flexibility - a plan district can be anything
- ◆ Incorporates a citizen involvement process
- ◆ Requires mitigation plans for impacts of PDX
- ◆ Places difficult issues before Planning Commission and City Council rather than the Hearings Officer

### CON

- ◆ Requires amendments to the *Zoning Code*
- ◆ High budget implications

## 7. Modify Approval Criteria

### PRO

- ◆ Incorporates a citizen involvement process
- ◆ Requires mitigation plans for impacts of PDX
- ◆ Allows additional time for OPDR staff to prepare for hearing

### CON

- ◆ Requires amendments to the *Zoning Code*
- ◆ Moderate budget implications

### **Tentative Recommendation**

Considering how the various alternatives address the problems raised in this memo, staff has narrowed the alternatives to three, depending on availability of funding.

1. The first preferred option is a new **“plan district”** model, which assumes Council, or the Port, is willing to fund a legislative project. The plan district provides the greatest flexibility to craft a process incorporating a public involvement component that places the difficult issues before the Planning Commission and City Council. The plan district model could also require the Port to produce impact mitigation plans for transportation, environmental, and noise issues. Which bureau reviews these mitigation plans, and what the criteria is for approving the plans, would need to be specified in the plan district language.
2. The second preferred option is to **“modify the approval criteria.”** This option retains the current Hearings Office approval process, but uses a legislative process to add more specificity to the approval criteria. As in the plan district model, the requirements for a master plan could include separate impact mitigation plans for transportation, environmental, and noise issues. This option could also require the Port to conduct a six to twelve month public involvement process where stakeholders are invited to discuss land use issues. This process would allow OPDR staff additional time to evaluate the issues and prepare a report for the Hearings Officer.
3. If no funding is available for a legislative process, staff recommends a third option. At the minimum, the City should request that the Port waive the 120-day rule to allow OPDR staff additional time of six to nine months.

### **Implications of Different Options**

The recommended alternatives have different implications in terms of staffing, budgeting, and timing. Currently, this project is not funded and the legislative alternatives would require a lengthy process and staff dedicated to preparing the proposal, presenting it to Planning Commission, and forwarding a recommendation to City Council. Additionally, any legislative action would require BOP to initiate a formal proposal within the next three to nine months. This timeline is necessary to have an approval process in place prior to the expiration of the Port’s current conditional use permit in August 2003. Staff does not recommend granting the Port an extension of the current CUP since sufficient time is available to adopt a legislative alternative before 2003.

The issue of funding is important for BOP and the other City bureaus. Previously, Transportation has entered into transportation agreements with the Port coinciding with the conditional use approval process. These agreements are typically outside the conditional use process and represent a significant staffing requirement. Environmental Services will be actively involved with future activities at PDX in relation to the Columbia River and the Slough. Funding decisions will need to reflect the activities of staff from all the City bureaus.

The costs associated with developing an airport plan district are currently estimated at \$360,000. Costs would include expenses to reimburse affected bureaus, and retain a consultant who would facilitate meetings with stakeholders and prepare the plan district

elements. This estimate also includes BOP staff costs. A legislative process to amend the conditional use criteria would probably require slightly fewer resources depending on the extent of changes, but is difficult to estimate.

One funding option is for the City to request a Memorandum of Understanding with the Port outlining a process where the Port will refund the City for some, or all, expenses relating to pursuing a legislative project. This memorandum would clearly state that the City would be responsible for developing the project scope, selecting the project consultant, and managing the overall project. It will be very important to avoid giving the impression that the Port is paying for a solution favorable only to the Port. This will be an issue for the City Council to decide.

Regardless of the option chosen, it is important for the City to carefully lay out its interests with respect to the airport and what the City is able to reasonably address through the land use approval process. The City Attorney reviewed federal and state regulations to help determine what authority the City has in regulating land use activities at the airport, summarized in Attachment D.

**Next Steps**

Based on the selected alternative, more thought is needed on how to incorporate the selected proposal into the current workplan. Planning is in the first year of a two year budget cycle and the availability of funds plays a role in this decision making process. Additionally, any change to the current approval process will affect OPDR, the Port, and the various stakeholders. Staff recommends the following actions:

- Consult with OPDR, PDOT, and BES;**
- Consult with the Port;**
- Consult with AIR, CNAC, and other citizen organizations;**  
*Consultation with stakeholders, which include City Bureaus and the Port, occurred during the winter of 2001. This report was modified based on input.*
- Convene a City Council informal work session on alternatives;**  
*Council held a work session on April 10, 2001 and directed the Bureau of Planning to prepare an intergovernmental agreement together with the Port outlining a future land use approval process for the airport. Planning Bureau Director Gil Kelley held several meetings with stakeholders in the spring/summer of 2001 to reach agreement on a broad policy statement in the form of a Council Resolution (see attachment). The Port and City agreed to proceed with the conditional use process for the short term and initiate a legislative process within five years of the permit's approval. The Port also agreed to waive the 120 day requirement and allow the City 240 days to process the conditional use application. On July 11, the Port Commission formalized these agreements through a resolution.*
- Reach agreement with affected parties on a preferred alternative;**  
*The preferred alternative is currently a plan district, or some equivalent legislative land use process.*
- Reach agreement on timing, funding, and staffing of the legislative process; and**
- Prepare a work program, budget, timeline, and determine staffing.**

## **Attachments**

- A. *Zoning Code* language, October 2000
- B. Map of Portland International Airport Zoning, October 2000
- C. Land Use Control Survey of US Airports, Port of Portland, Fall 2000
- D. City Attorney Analysis for April 10 Council Work Session
- E. City Council Resolution on Airport Planning, Summer 2001
- F. City / Port Intergovernmental Agreement, Fall 2001 ***in progress***



The Airport is subject to the following zoning designations and Plan District:

- h, Aircraft Landing Zone
- x, Portland International Airport Noise Impact Zone
- s, Scenic Resources Zone (N. Marine Drive, N.E. 33<sup>rd</sup> Avenue)
- c, Environmental Zone (slough)
- sec, Interim Resource Protection Zone (TL 26, Section 15)
- Columbia South Shore Plan District (N.E. 82<sup>nd</sup> Ave and eastward)

The master plan must be in conformance with the *Transportation Element of the Comprehensive Plan* and address the following criteria in *Title 33, Planning and Zoning*:

**CHAPTER 33.815  
CONDITIONAL USES**

**Approval Criteria**

**33.815.200 Aviation And Surface Passenger Terminals**

These approval criteria allow Aviation And Surface Passenger Terminals at locations where their impacts on surrounding land uses, especially residential, are limited. The approval criteria are:

**A. Airports.**

1. Master plan. A conditional use master plan is required. Facilities that are not related to the airport within the airport boundaries must be included in the master plan. See Chapter 33.820, Conditional Use Master Plans;
2. Public services.
  - a. The proposed use is in conformance with either the Arterial Streets Classification Policy or the Downtown Parking and Circulation Policy, depending upon location;
  - b. The transportation system is capable of safely supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street capacity and level of service, access to arterials, transit availability, on-street parking impacts, access requirements, neighborhood impacts, and pedestrian safety; and
  - c. Public services for water supply, police and fire protection are capable of serving the proposed use, and proposed sanitary waste disposal and stormwater disposal systems are acceptable to the Bureau of Environmental Services.
3. Noise abatement plan and noise impact overlay zone. An airport noise abatement plan and noise impact overlay zone have been developed in order to reduce the impact of aircraft noise on development within the noise impact area surrounding the airport; and
4. Benefit. The public benefit of the use outweighs any impacts which cannot be mitigated.

In addition, the Port must address the following regulations in Title 33, Planning and Zoning:

**CHAPTER 33.820**  
**CONDITIONAL USE MASTER PLANS**

**33.820.050 Approval Criteria**

Requests for conditional use master plans will be approved if the review body finds that the applicant has shown that all of the following approval criteria are met:

- A.** The master plan contains the components required by 33.820.070;
- B.** The proposed uses and possible future uses in the master plan comply with the applicable conditional use approval criteria; and
- C.** The proposed uses and possible future uses will be able to comply with the applicable requirements of this Title, except where adjustments are being approved as part of the master plan.

**33.820.060 Duration of the Master Plan**

The master plan must include proposed uses and possible future uses that might be proposed for at least 3 years and up to 10 years. An approved master plan remains in effect until development allowed by the plan has been completed or the plan is amended or superseded.

**33.820.070 Components of a Master Plan**

The applicant must submit a master plan with all of the following components. The review body may modify the proposal, especially those portions dealing with development standards and review procedures. The greater the level of detail in the plan, the less need for extensive reviews of subsequent phases. Conversely, the more general the details, the greater the level of review that will be required for subsequent phases.

- A. Boundaries of the use.** The master plan must show the current boundaries and possible future boundaries of the use for the duration of the master plan.
- B. General statement.** The master plan must include a narrative that addresses the following items:
  - 1. A description in general terms of the use's expansion plans for the duration of the master plan;
  - 2. An explanation of how the proposed uses and possible future uses comply with the conditional use approval criteria; and
  - 3. An explanation of how the use will limit impacts on any adjacent residentially zoned areas. The impacts of the removal of housing units must also be addressed.

- C. Uses and functions.** The master plan must include a description of present uses, affiliated uses, proposed uses, and possible future uses. The description must include information as to the general amount and type of functions of the use such as office, classroom, recreation area, housing, etc. The likely hours of operation, and such things as the approximate number of members, employees, visitors, special events must be included. Other uses within the master plan boundary but not part of the conditional use must be shown.
- D. Site plan.** The master plan must include a site plan, showing to the appropriate level of detail, buildings and other structures, the pedestrian, bicycle, and vehicle circulation system, vehicle and bicycle parking areas, open areas, and other required items. This information must cover the following:
1. All existing improvements that will remain after development of the proposed use;
  2. All improvements planned in conjunction with the proposed use; and
  3. Conceptual plans for possible future uses.
  4. Pedestrian, bicycle, and transit facilities including pedestrian and bicycle circulation between:
    - a. Major buildings, activity areas, and transit stops within the master plan boundaries and adjacent streets and adjacent transit stops; and
    - b. Adjacent developments and the proposed development.
- E. Development standards.** The master plan may propose standards that will control development of the possible future uses that are in addition to or substitute for the base zone requirements. These may be such things as height limits, setbacks, FAR limits, landscaping requirements, parking requirements, sign programs, view corridors, or facade treatments. Standards more liberal than those of the code require adjustments.
- F. Phasing of development.** The master plan must include the proposed development phases, probable sequence for proposed developments, estimated dates, and interim uses of property awaiting development. In addition the plan should address any proposed temporary uses or locations of uses during construction periods.
- G. Transportation and parking.** The master plan must include information on the following items for each phase.

1. Projected transportation impacts. These include the expected number of trips (peak and daily), an analysis of the impact of those trips on the adjacent street system, and proposed mitigation measures to limit any projected negative impacts. Mitigation measures may include improvements to the street system or specific programs to reduce traffic impacts such as encouraging the use of public transit, carpools, vanpools, and other alternatives to single occupancy vehicles.
  2. Projected parking impacts. These include projected peak parking demand, an analysis of this demand compared to proposed on-site and off-site supply, potential impacts to the on-street parking system and adjacent land uses, and mitigation measures.
- H. Street vacations.** The master plan must show any street vacations being requested in conjunction with the proposed use and any possible street vacations which might be requested in conjunction with future development. (Street vacations are under the jurisdiction of the City Engineer. Approval of the master plan does not prejudice City action on the actual street vacation request.)
- I. Adjustments.** The master plan must specifically list any adjustments being requested in conjunction with the proposed use or overall development standards and explain how each adjustment complies with the adjustment approval criteria.
- J. Other discretionary reviews.** When design review or other required reviews are also being requested, the master plan must specifically state which phases or proposals the reviews apply to. The required reviews for all phases may be done as part of the initial master plan review, or may be done separately at the time of each new phase of development. The plan must explain and provide enough detail on how the proposals comply with the approval criteria for the review.
- K. Review procedures.** The master plan must state the procedures for review of possible future uses if the plan does not contain adequate details for those uses to be allowed without a conditional use review.

### Regulation of Airport Noise

#### Federal Role

1. Through successive pieces of legislation and implementing rules adopted by the Federal Aviation Administration (FAA), Congress has granted the FAA sole authority to regulate:
  - airspace use and management
  - air traffic control
  - air safety
  - aircraft noise at its source

#### Examples:

Federal Aviation Act (declares that “the United States Government has exclusive sovereignty of airspace of the United States” and gives the FAA plenary authority to regulate use and management of navigable airspace, air traffic control, air navigation facilities and aircraft noise.)

Aviation Safety and Noise Abatement Act (ASNA)(directs the establishment of “a single system of measuring noise that has a highly reliable relationship between projected noise exposure and surveyed reactions of individuals to noise and is applied uniformly in measuring noise at airports and in the surrounding area” and “a single system for determining the exposure of individuals to noise resulting from airport operations.”)

Part 150 Regulations adopted by the FAA implement the ASNA by providing a process and standards for airport proprietors to voluntarily prepare and submit noise exposure maps and airport noise compatibility programs. Approval of a map and compatibility program makes an airport proprietor eligible for federal grants and funding to implement measures outlined in the approved program. Part 150 also identifies land uses that are normally compatible with various levels of exposure to airport/aircraft noise and establishes a 65 LDN threshold. The Part 150 program requires the airport proprietor to consult with affected local governments and citizens, among others, in the development of the noise exposure maps and airport noise compatibility program.

2. The federal courts have repeatedly held that the FAA has preempted the field of aircraft noise regulation. The courts have indicated, however, that while the FAA alone may regulate the source of aircraft noise, local governments may adopt local noise abatement plans that do not infringe on the FAA’s regulation of aircraft noise.

3. The FAA has recognized local governments retain the authority to plan and zone. Traditionally, local governments have used their zoning powers to abate noise by limiting or restricting the uses allowed near airports, as discussed below.
4. A recent draft federal policy reaffirmed the local role in noise abatement through zoning regulating noise sensitive uses near airports. The FAA expressed support for locally-established buffers that limit or prevent noise sensitive uses near airports. (FAA draft Aviation Noise Abatement Policy 2000)
5. The federal courts and the FAA have recognized a greater role in direct noise regulation for cities that also own and operate airports. As airport proprietors, cities may impose restrictions on airport users for purposes of noise control and abatement so long as the restrictions are not unreasonable, arbitrary or discriminatory.

#### State Regulation of Airports

1. The Statewide Planning Goals address noise and airports generally as follows:

Goal 6 is “to maintain and improve the quality of the air, water and land resources of the state.” Among the guidelines for implementing this goal, Guideline 3 states that “plans should buffer and separate those land uses which create or lead to conflicting requirements and impacts upon the air, water and land resources.”

Goal 12 is “to provide and encourage a safe, convenient and economic transportation system.” Implementation Guideline B.3 states that “lands adjacent to major mass transit stations, freeway interchanges, and other major air, land and water terminals should be managed and controlled so as to be consistent with and supportive of the land use and development patterns identified in the comprehensive plan of the jurisdiction within which the facilities are located.”
2. In 1995, the legislature enacted local government airport regulations, codified at ORS 836.600 – 836.630. Recognizing the importance of the state’s airports to the state’s economy and public safety and recreation, “the policy of the State of Oregon is to encourage and support the continued operation and vitality of Oregon’s airports.”
  - a. LCDC must adopt rules for airports under the regulations and the state Department of Aviation must adopt a list of airports subject to the regulations. Local governments are required to comply with the rules and amend their comprehensive plans and land use regulations as needed at the first periodic review after the airport list is published.

- b. The regulations authorize local governments to adopt land use compatibility and safety requirements that are more stringent than the minimum required by LCDC's rules to the extent they have the authority to do so.
- 3. LCDC's rules are found at OAR Chapter 660-13. The stated purpose of the rules is "to promote a convenient and economic system of airports in the state and for land use planning to reduce risks to aircraft operations and nearby land uses." The rules identify the minimum elements local comprehensive plans and zoning codes must contain concerning airports and also identify "safe harbors" that are considered to satisfy the rules. Safe harbors include "portions of existing acknowledged comprehensive plans, land use regulations, Airport Master Plans and Airport Layout Plans adopted or otherwise approved by the local government as mandatory standards or requirements."
  - a. The rules make clear that the term "compatible" is "not intended as an absolute term meaning no interference or adverse impacts of any type with surrounding land uses." The rules direct that where compatibility issues arise, the local government must take reasonable steps to eliminate or minimize the incompatibility through "location, design or conditions" in a manner consistent with the policy expressed in the state regulations.

#### City Comprehensive Plan and Zoning Code

1. The City's comprehensive plan contains several relevant goals and policies:

Goal 5 expresses a policy to "foster a strong and diverse economy which provides a full range of employment and economic choices for individuals and families in all parts of the city."

Policy 5.4 (Transportation System) states: "promote a multi-modal regional transportation system that encourages economic development."

Goal 6 is the City's transportation goal.

Policy 6.19 (Multimodal) states in part: "Coordinate the planning, development and interconnection of all modes of passenger transportation. Portland International Airport is the hub air passenger facility; direct connections for all modes should be provided to the airport."

Policy 6.27 (Adequacy of Transportation Facilities) states: "Ensure that amendments to the Comprehensive Plan or land use

regulations which change allowed uses, including goal exceptions, map amendments, zone changes, conditional uses, and master plans, and which significantly affect a transportation facility, are consistent with the identified function, capacity and level of service of the facility.”

Goal 8 establishes a policy to “maintain and improve the quality of Portland’s air, water and land resources and protect neighborhoods and business centers from detrimental noise pollution.”

Policy 8.21 (Portland International Airport Noise Impact Area) states: “Ensure compatible land use designations and development within the noise impacted area of the Portland International Airport while providing public notice of the level of aircraft noise and mitigating the potential impact of that noise within the area.”

Implementing measures for this policy include:

--Prohibiting new residential development in areas within the 1977 Ldn 68 or higher noise contour and limiting residential zoning and comprehensive plan map designations to R10 in R-designated areas and R1 in C-zoned areas located between the 1983 Ldn 65 and the 1977 Ldn 68 noise contours.

--Requiring sound insulation to achieve a day/night average interior noise level of 45 dBA for most structures.

--Providing documentation of the level of aircraft noise to developers of residential property and requiring developers to sign a noise disclosure statement and dedicate a noise easement to the Port prior to construction.

2. The City’s zoning code implements the comprehensive plan as follows:

Chapter 33.209 (Aviation Facilities) states that interior and exterior alterations to the Portland International Airport (PIA) are governed by the base zone regulations and the PIA Master Plan.

Chapter 33.400 (Aircraft Landing Zone) establishes an aircraft landing overlay zone in which the height of structures and vegetation is restricted. Exceptions to the height limits are approved by the FAA in consultation with the Port.

Chapter 33.470 (Portland International Airport Noise Impact Zone) establishes a second overlay zone applicable to all property within the Ldn 65 noise contour as shown in the 1990 PIA Noise Abatement Plan Update. Within the zone, all new structures must be built with sound insulation or other means to achieve a day/night average interior noise level of 45 dBA. New residential uses within the

Ldn 68 or higher noise contour are prohibited. Density is limited to that of the R10 zone for all residentially designated property between the Ldn 65 and Ldn 68 noise contour. All commercially designated property between the same noise contours may develop at a density that does not exceed the R1 zone density. This chapter also requires developers to sign and record noise disclosure statements prior to obtaining building permits and to dedicate noise easements to the Port.

#### Summary

1. FAA has sole authority to regulate:

- Aircraft noise at the source
- Airspace
- Flight operations
- Air traffic/aircraft in flight
- Aviation rates, routes or services
- Aircraft safety
- Aircraft emissions
- Air navigation (air control towers, radio navigation systems and other navigation aids)

2. Local governments retain authority to regulate:

- Noise abatement in ways that do not infringe on the FAA's control over aircraft noise, airspace management or aircraft operations.
- Land use and zoning
- Development
- Housing

3. Examples of accepted local government noise abatement measures:

- Zoning regulations that prohibit or limit the kinds of land uses that may locate near airports.
- Zoning regulations that identify the zones in which airport and airport uses are allowed by right, conditionally allowed or prohibited.
- Acquisition of property (either vacant land or land containing incompatible uses) near airports; land banking.
- Relocation of noise sensitive uses and/or redevelopment of noise sensitive areas into more compatible land uses.
- Requiring additional sound insulation to achieve lower interior noise levels.
- Purchasing noise easements.
- Requiring disclosure of noise levels to prospective purchasers in real estate transactions for properties close to airports.



**Resolution No.****36018**  
*As Amended*

Direct the Bureau of Planning to prepare an intergovernmental agreement between the City of Portland and the Port of Portland outlining future land use approvals for Portland International Airport (Resolution).

WHEREAS, Portland International Airport (PDX) is a major contributor to a diverse and strong economy and to the convenience of air passenger travels; and

WHEREAS, over the past decade, PDX has experienced steady growth due to strong economic expansion in Oregon and Southwest Washington. As PDX grows, so does the potential for noise, transportation, and environmental impacts on surrounding areas; and

WHEREAS, the Port of Portland (Port) and the City of Portland (City) recognize the potential impacts growth may create on the community, and are committed to addressing or using reasonable efforts to avoid, reduce, or mitigate these potential impacts; and

WHEREAS, the potential impacts associated with expansion of PDX facilities or operations need to be assessed comprehensively to identify cumulative impacts on the community and natural environment; and

WHEREAS, the City has regulated land uses at the airport through the conditional use permit process since 1979; and

WHEREAS, the current conditional use master plan approval criteria lack specificity and direction on how to address the land use, environmental, transportation, and noise impacts on surrounding neighborhoods and natural areas; and

WHEREAS, the Port is committed to cooperative planning efforts with the City and its citizens on the future of PDX as part of development of the next conditional use approval and a subsequent legislative process to consider additional land use regulations for PDX; and

WHEREAS, the Port and City have agreed to develop an intergovernmental agreement (IGA) to more fully identify the specific scope of these planning efforts;

NOW, THEREFORE, BE IT RESOLVED that the City will participate with the Port in the development of an IGA that will identify and outline the future land use planning reviews and legislative efforts necessary to address the potential impacts of PDX on surrounding neighborhoods and natural areas; and

BE IT FURTHER RESOLVED that the Council desires that the IGA address the following issues: (1) the scope of the Port's next application for a conditional use master plan for the airport with a goal of limiting the master plan area to the expansion area and plans approved as part of the Port's 1993 master plan, together with clearly defined changes necessary to implement Phase 1 in the Port's 2000 master plan and explicitly excluding any actions associated with the construction of a new terminal or a third runway; (2) additional topics to be considered by the Port in consultation with the various City bureaus, including environmental, transportation, noise, and enforcement issues; and (3) the Port's proposed process for involving the City and the public in the development of the next conditional use master plan application; and

BE IT FURTHER RESOLVED that the Council desires the City participate with the Port in a planning process to begin immediately. The planning process will have a strong emphasis on public participation and will be developed with the assistance of stakeholders. Elements of the public involvement strategy will be included as part of the IGA; and

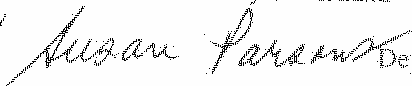
BE IT FURTHER RESOLVED that the Council desires the IGA to specify a general timeline that reflects the time necessary to engage in appropriate planning and public participation for each of the following: (1) the Port's preparation and submittal of its next conditional use master plan; (2) the Port's subsequent master planning process, as required by the Federal Aviation Administration; and (3) development and submission to the Planning Commission and City Council of a legislative proposal for additional appropriate land use regulations for the airport; and

BE IT FURTHER RESOLVED that the Council desires that a future legislative process make use of the studies to be conducted by the Port, in order to evaluate potential impacts associated with future land use approvals at PDX, on the following: (1) capacity preservation (including regional airport coordination, high speed rail, cargo handling at other airports, terminal demand management strategies, runway/airspace demand management strategies, and technological changes to improve capacity); (2) environmental assessment; (3) transportation assessment; (4) noise assessment; and (5) other features related to phases 2 and 3 of the Port's 2000 master plan; and

BE IT FURTHER RESOLVED that the Council directs the City Planning Bureau Director to negotiate and participate in drafting the IGA on the City's behalf; and

BE IT FURTHER RESOLVED that the Council directs the Bureau of Planning to initiate a short-term legislative amendment to the Conditional Uses chapter of the Zoning Code, and to add approval criteria relating specifically to land use impacts on natural resources, prior to the Port submitting their Conditional Use Master Plan in the spring of 2002.

Adopted by the Council, AUG 22 2001  
Mayor Vera Katz.  
Bob Clay  
August 22, 2001

GARY BLACKMER  
Auditor of the City of Portland  
By  Deputy