

Comments on the Proposed Findings of Compatibility for the Aurora  
State Airport Master Plan and the Airport Layout Plan

Oregon State Aviation Board  
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## I. Introduction

Thank you for inviting comments for the State Aviation Board's consideration as it reviews the 2012 Aurora State Airport Master Plan (the "Master Plan") and the Airport Layout Plan. The City of Aurora promotes sound land use planning and the efficient development of public facilities to serve the community. Its policy is that new urban development on surrounding lands should occur within the City, and therefore additional geographic expansion of the airport must be preceded by annexation. The City cannot support the Master Plan as drafted, although it could support the plan if it were revised consistent with the City's policy, Goal 11 and Goal 14. The City looks forward to working with the Department of Aviation and Marion County to bring the airport into the City in accordance with these goals and related land use regulations that direct urban land uses to areas within urban growth boundaries.

These comments follow up on the City's oral testimony on Goal 12 that was presented at the September 24, 2019 hearing and the prior electronic submittals. A list of the submitted documents is attached. (Ex 1). Please add this memorandum to the record, and ensure all materials submitted by all participants are placed before, and accepted by, the State Aviation Board.

## II. Preliminary Issues

This unique proceeding raises several historical and procedural issues that will be reviewed to provide the background and set the land use context. State agency coordination is reviewed first. The City's status as an "affected governmental unit" is established second. Then the elements of the Master Plan and the Airport Layout Plan that affect land use are illustrated and described. Next there is a discussion of which land use criteria apply to this process. There is an unusually large number of criteria because the Master Plan and Airport Layout Plan would further expand an already large urban public facility onto agricultural land that is outside an urban growth boundary, which is disfavored. The importance of a complete record and the quasi-judicial nature of this proceeding are summarized, and the current status of the Master Plan and the Airport Layout Plan are analyzed.

Annexation into Aurora would reclassify the land from rural to urban, and thereby resolve the identified land use conflicts and deliver the needed public

services. The City looks forward to working together with the Department of Aviation to expeditiously accomplish the annexation.

### **A. Legislative Policy for State Agency Coordination**

All local governments and state agencies have had statutory comprehensive land use planning responsibilities since 1973. (1973 c.80 §1, 2). In the ensuing decades, those responsibilities were not always carried out successfully. To address this deficiency, the Oregon legislature reinitiated those responsibilities in 2009, when it found and declared that:

(1) Improving coordination and consistency between the duties and actions of state agencies that affect land use and the duties and actions of local governments under comprehensive plans and land use regulations is required to ensure that the actions of state agencies complement both state and local land use planning objectives.

(2) Improved coordination is necessary to streamline state and local permitting procedures.

(3) The Department of Land Conservation and Development has not engaged in a formal and concerted effort to update state agency land use coordination programs since 1989, and that state agency rules, plans and programs affecting land use and local government comprehensive plans and land use regulations have changed substantially since that time.

(4) Rules of the Land Conservation and Development Commission regarding state agency land use coordination and state permit compliance and compatibility should be:

(a) Reviewed to eliminate unclear or conflicting provisions and to ensure that local land use decisions authorizing a use generally precede state agency decisions on permits for the use or for aspects of the use; and

(b) Updated regularly to maintain a high level of coordination between state agencies and local governments in reviewing authorizations for a use of property. (2009 c.606 §1).

For the Master Plan, the two key provisions are subsections (1) and (3). Subsection (3) is significant because it informs the question whether the 1990

ODOT SAC, which has not been updated in nearly 30 years, can be the basis for finding that the Master Plan complies with state agency coordination requirements. This renewed emphasis on updating state agency coordination since 2009 prioritizes compliance with the current state and local land use regulations. Some participants insist that the Master Plan can be approved now because it comports with the 1990 ODOT SAC and because the proposed runway extension and related improvements were contemplated, albeit in a different configuration, in prior airport master plans and county comprehensive plans from decades ago. That position is contrary to this statute.

The Master Plan is a state agency action that must “complement both state and local land use planning objectives.” ORS 197.173(1). This legislative finding and declaration is implemented through ORS 197.180(1), which requires:

“state agencies shall carry out their planning duties, powers and responsibilities and take actions that are authorized by law with respect to programs affecting land use:

- (a) In compliance with the goals, rules implementing the goals and rules implementing this section; and
- (b) In a manner compatible with acknowledged comprehensive plans and land use regulations.

## **B. Department of Aviation State Agency Coordination Program**

It is uncertain whether there is an approved SAC in effect, and if so, which among three versions is in effect today, or was in effect and applicable to the Master Plan circa 2011 and 2012. There are at least four potential answers to this question: there is no SAC in effect; the 1990 ODOT SAC (and the ODOT stage agency coordination administrative rule OAR 731-015) is in effect; the 2013 Department of Aviation SAC (and the Department of Aviation state agency coordination administrative rule OAR 738-130) is in effect; and the 2017 Department of Aviation SAC (and OAR 738-130) is in effect.

### **1. There is No Certified Coordination Program**

DLCD maintains a web page that lists, and provides links to, the current “approved state agency coordination plans”. The Department of Aviation does not appear on that list.

<https://www.oregon.gov/lcd/About/Pages/State-Agency-Coordination.aspx>.

The Department of Aviation was created by the legislature in 1999, and has existed as an independent state agency without interruption since that time. 1999 c.935 §2; ORS 835.100 et seq. The Master Plan materials do not clarify whether LCDC ever requested that the Department of Aviation provide a state agency coordination program in accordance with ORS 197.180(4), and do not clarify whether LCDC has ever certified a SAC for the Department of Aviation.

The Department of Aviation's letter of April 24, 2019 explains that the State Aviation Board adopted a SAC in 2017 which "has been sent to the Department of Land Conservation and Development for review and certification by the Land Conservation and Development Commission. Adoption of the 2012 Aurora State Master Plan is on hold until this process is complete." (Ex 2). Although the department's August 21, 2019 letter attempts to clarify and correct the April 24, 2019 letter regarding adoption of the Master Plan, it does not similarly attempt to clarify or correct the letter regarding the SAC. (Ex 3). Therefore it is possible there is no state agency coordination program in effect to govern the Master Plan and the Airport Layout Plan.

## 2. 1990 ODOT Coordination Program

Prior to the creation of the Department of Aviation as a new and independent state agency in 1999, the state airports, including Aurora, were operated by the Aeronautics Division within the Department of Transportation. The ODOT coordination program dated September 18, 1990 describes the land use activities of the Aeronautics Division.

ORS 197.180 and OAR 660-030 do not include provisions in their text regarding creation of a new state agency from a division that was previously within an existing state agency that had a certified SAC in effect. There is no authority in their text for a new state agency to utilize the coordination program of its parent agency; therefore, the State Aviation Board should decline the invitation to create a new implicit exception to adopted state administrative rules on state agency coordination. *Tualatin Riverkeepers v. ODEQ*, 55 Or LUBA 569, 586 (2008); ORS 174.010. Alternatively, it is possible the ODOT 1990 coordination program may remain in effect "until the Commission certifies agency programs pursuant to ORS 197.180 and OAR chapter 660, division 30;



however, prior Commission approval shall not constitute certification.” OAR 660-030-0080(2).

ODOT has adopted administrative rules governing land use coordination for facility plans, which include provisions for an airport master plan. OAR 731-015-0015(10); 731-015-0065. It is possible that the provisions for the land use programs of the Aeronautics Division that are included within the 1990 ODOT coordination program and the administrative rules regarding airport master plans in OAR 731-015 are in effect.

### **3. 2013 Department of Aviation Coordination Program**

It is not clear whether the Department of Aviation’s SAC dated November 1, 2013 was ever presented by the department to, or approved by, the State Aviation Board. Nor is the City aware whether this SAC was ever presented to DLCD, or certified by LCDC, as may be required. ORS 197.180(7); OAR 660-030-0055.

The Department of Aviation letter of April 24, 2019 describes the status of the 2017 SAC, without reference to the prior 2013 SAC. This omission of any reference to the 2013 SAC in that letter, and its absence from DLCD’s list of approved programs, suggest that the 2013 SAC was not in effect in 2017, and is therefore not currently in effect.

The LCDC administrative rule does provide that in the event an agency submits a coordination program to DLCD and does not receive a response, the agency “may deem that [DLCD] finds the new or amended rule or program to have satisfied ORS 197.180 and OAR chapter 660, division 30.” OAR 660-030-0075(5). It is possible the 2013 SAC was submitted to DLCD and that no response was forthcoming. It is possible the 2013 SAC was certified by LCDC but inadvertently was not added to the list of approved programs on the DLCD web page. It is possible the 2013 SAC is in effect and governs the Master Plan.

### **4. 2017 Department of Aviation Coordination Program**

The Department of Aviation letter of April 24, 2019 explains that the SAC dated March 7, 2017 was adopted by the State Aviation Board in 2017 and sent to DLCD for review and then certification by LCDC. The letter is consistent with state agency obligations under ORS 197.180(4) and OAR 660-

030-0045(1).

It is uncertain whether the 2017 SAC has been formally reviewed by DLCD pursuant to ORS 197.180(5), OAR 660-030-0045(2) and OAR 660-030-0075(3)(b). The April 24, 2019 letter neither indicates when the 2017 SAC was sent to DLCD, nor articulates the current status of that review. Review of LCDC agendas from 2017 to the present does not reveal any indication that the 2017 SAC was presented to the Commission for certification, or for any other purpose.

Again, the rule provides that if an agency submits a coordination program to DLCD and does not receive a response, the agency “may deem that [DLCD] finds the new or amended rule or program to have satisfied ORS 197.180 and OAR chapter 660, division 30.” OAR 660-030-00075(5). Therefore it is possible that the March 7, 2017 SAC program is in effect – which is not to say it is compliant with ORS 197.180 and OAR 660-030 – because it was submitted to DLCD and the Department of Aviation has not received a response.

## **5. Analysis of State Agency Coordination Issues**

It is unclear whether there is a state agency program in effect, and whether the State Aviation Board is required to adopt findings on the LCDC administrative rules that implement the statewide land use planning goals. There are material differences in the SAC provisions on airport master plans which may affect the State Aviation Board’s decision. Assuming that the Department of Justice is correct that the 2017 SAC is in effect, significant complications ensue because that SAC replaced key provisions of the 2013 SAC with new provisions that do not comply with ORS 197.180 because they allow postponement of land use compliance for airport master plans that affect land use.

Consistent with Goal 2, SACs are designed to ensure state agency compliance with the goals and their administrative rules, and with the LCDC agency coordination rules in OAR 660-030, as well as to ensure compatibility with local comprehensive plans and land use regulations. See ORS 197.180(1)(a-b). Compliance and compatibility are required during the development of a state agency program that affects land use, and cannot be postponed until a later stage of a program or of a project being implemented under that adopted program. If the Master Plan when being drafted is not

compatible with a local comprehensive plan, any goal exceptions, comprehensive plan amendments and zone changes that are necessary to make the project compatible must be adopted before the Master Plan. *Witham Parts and Equipment v. ODOT*, 41 Or LUBA 588 (2002).

The 1990 ODOT SAC does not include any provisions specific to airport master plans, and does not anticipate the development of private airport-related uses on private lands (the former church camp) that is proposed by the Master Plan.

Chapter 4 of the 2013 SAC describes the Department of Aviation's coordination procedures for adopting a final airport master plan. Section 2 explains that if land use compatibility issues are identified, then three "means of resolving them" are specified. First, the draft master plan can be changed "to eliminate the conflicts". Second, the local government comprehensive plans can be amended to eliminate the conflicts. Third, the Department can commit to resolving the conflicts prior to the conclusion of the airport master plan.

The Master Plan does not specify which if any of these three means will be utilized by the Department of Aviation to resolve the identified conflicts and bridge the gap between the existing agricultural zoning and future urban zoning that is needed for the airport-related development recommended in the Master Plan. The proposed findings conclude that "no comprehensive plan conflicts were identified." Yet the new proposed findings, and the various communications and documents that are referenced therein, have not identified or analyzed the Marion County Comprehensive Plan provisions that apply to urban development on rural land, to rural public services, and to Primary Agriculture land. The findings simply look the other way.

There is a substantial change between the 2013 SAC and 2017 SAC regarding the approval of an airport master plan. Section 3 of Chapter 4 of the 2017 SAC includes the coordination procedures for an airport master plan, which is remarkably consistent with ODOT's administrative rule on Coordination Procedures for Adopting Final Facility Plans. OAR 731-015-0065(3). Neither the ODOT rule nor the Department Aviation administrative rule were adopted by LCDC. The rule procedures similarly describe identification of land use conflicts and three means of resolving them. The second means (working with local governments to amend their plans to eliminate the conflict) is unchanged; although the first and third means are materially different.

The first means in the 2013 SAC is changing the draft airport master plan to eliminate the conflicts; whereas the 2017 SAC describes this as “changing the draft facility plan”. The document at issue in this appeal is an airport master plan, which cannot legitimately be rebranded as a “draft facility plan”, because it far exceeds the limits of the runway and control tower and the other areas that are within the Department of Aviation’s current ownership. As long as the geographic area that is governed by the Master Plan and the Airport Layout Plan extend well beyond the transportation facility, this provision in the 2017 SAC should not apply.

The third means of resolving conflicts in the 2013 SAC is committing the Department of Aviation to “resolving the conflicts prior to the conclusion of the Airport Master Plan[.]” The third means listed in the 2017 SAC is: “Identifying the conflicts in the draft facility plan and including policies that commit the Department to resolving the conflicts prior to the conclusion of the transportation planning program for the affected portions of the transportation facility.” The operative term “[T]ransportation planning program” is not defined in either the 2017 SAC or the ODOT rule. The record does not include documentation to indicate that DLCD formally reviewed and approved this material change in the 2017 SAC. Nor was the change, or any Department of Aviation SAC, certified by LCDC.

The Master Plan and Airport Layout Plan are not merely a draft facility plan that is subject to something less than full compliance with the statewide planning goals and local comprehensive plans and land use regulations prior to final adoption. They are approved by the FAA. The uncertified 2017 SAC does not comply with the state law on agency coordination because it allows the Department of Aviation to postpone indefinitely the resolution of the land use conflicts. This includes the conflicts identified in the Master Plan, and the additional land use conflicts described in the record both circa 2011-2012, and during this 2019 process on the findings. ORS 197.180 does not allow any such postponement.

## **6. OAR 738-130 State Agency Coordination Program**

Furthermore, the Master Plan itself does not even attempt to comply with Coordination Procedure 3 of the 2017 SAC because conflicts with the statewide goals and comprehensive plan were identified; however the Master Plan does not acknowledge any conflicts. The proposed findings disavow the conflicts asserted by interested parties, and therefore do not explain how they

will be resolved. OAR 738-130-0055(3)(a-c).

The Master Plan and Airport Layout Plan do not include any changes that were made to the draft facility plan to eliminate land use conflicts. For example, there was no change made to reduce the displacement of agricultural land by shortening the runway extension or reducing the 55.13 acre fee acquisition. Therefore, the first method for resolving conflicts was not utilized. OAR 738-130-0055(3)(a).

The Master Plan and the record circa 2010-2019 do not include any information that the Department of Aviation is or was previously working with Marion County or the City of Aurora to amend their local comprehensive plans to eliminate the land use conflicts. For example, the Department has not yet applied to Marion County for the goal exceptions and comprehensive plan and map amendments needed to change the 55.13 acre fee acquisition area from the current designation of Primary Agriculture to Public. Neither has the Department worked with the City of Aurora to bring this land into the City's urban growth boundary consistent with Goal 14 and ORS 197A.310, and thereby convert the 55.13 acre area from agricultural land to urbanizable land. Thus the second method for resolving conflicts was not utilized. OAR 738-130-0055(3)(b).

The Master Plan does not include any policies that commit the Department of Aviation to resolving the land use conflicts caused by the development of urban land uses in the Exclusive Farm Use ("EFU") zone before the transportation planning program for the runway extension is complete, or at any other time. For example, there is no policy to resolve land use conflicts prior to submitting grant applications to the state or the federal government for funding of the runway extension. Adoption of mere findings on this topic is not sufficient, especially at this late date. The policies must be written into the text of the Master Plan. The third method for resolving conflicts was not utilized. OAR 738-130-0055(3)(c). Even if it had been utilized, it was never certified by LCDC and conflicts with state law.

The text of ORS 197.180(1) is clear and unambiguous. Because the Master Plan and the Airport Layout Plan are a Department of Aviation program that affects land use, they must always be in compliance with the statewide land use planning goals, both when they are first adopted and throughout the life cycle of the program. That is the reasoning behind the Department of Aviation's April 24, 2019 letter. Future compliance is not sufficient.

Because the Master Plan and Airport Layout Plan text written circa 2011 and 2012 omit any serious discussion of land use conflicts, and because there have been no attempts to resolve the conflicts in the ensuing years, there is not substantial evidence to support a finding that the coordination procedures in the 1990 ODOT SAC, OAR 731-015-0065, the 2017 SAC, or OAR 738-0130-0055 were utilized or satisfied. The land use conflicts remain unresolved and the Master Plan and Airport Layout Plan conflict with the statewide planning goals, and local comprehensive plans and land use regulations.

Some participants assert the 1990 ODOT SAC was in effect and applied to the Master Plan circa 2011 and 2012. ODOT also adopted administrative rules for state agency coordination for final facility plans in 1990, OAR 731-015-0065. The key text in the 2017 SAC is copied straight from OAR 731-015-0065(3), and provides the same three options for addressing identified land use conflicts. Therefore, regardless of whether the 2017 SAC or the 1990 ODOT SAC and administrative rules apply to the Master Plan, the coordination requirements for addressing land use conflicts are the same. The text in the Department of Aviation's administrative rule on state agency coordination is also the same. OAR 738-130-0055.

An airport master plan is a state agency program affecting land use. The Master Plan identifies land use conflicts and the lack of zoning "suitable for airport-related development recommended in this Master Plan." (Page 6-4). That statement confirms that the Master Plan understands and accepts that the new development which it recommends on Class 2 agricultural land does not comply with state and local land use regulations. However, it does not commit the Department of Aviation to resolving the land use conflicts at any time, much less prior to final adoption. Therefore, it does not comply with the mandates of ORS 197.180(1)(a-b).

On October 17th, 2019 the State Aviation Board changed the October 31, 2019 meeting agenda item 20 from "Adopt the Aurora Master Plan, Airport layout, Findings of Compatibility, and Findings of Compliance" to "Adopt Findings of Compatibility and Compliance in Support of ODA's State Agency Coordination Program for Aurora State Airport Master Plan Update." On October 18th, the City of Aurora requested an explanation for the change from the Department of Aviation. It received this response from the Department of Justice that suggests the change announced on October 17th was later revised.

“At the October 31 Oregon Aviation Board meeting, ODA will present findings of compatibility with Marion County’s comprehensive plan and findings of compliance with applicable statewide planning goals to the board for review and adoption for the Aurora Master Plan. The board will take testimony from interested parties and has allotted 2 minutes per person to provide oral comment. It is strongly suggested that you submit testimony in writing prior to the board meeting if possible, or bring 15 copies of your testimony to the board meeting.” (Ex 4).

The 2017 SAC is not in compliance with ORS 197.180, and the Department of Aviation’s self-adopted administrative rule for its state agency coordination is hindered by the same defect. The rule states its purpose is to “assure that Department land use programs are carried out in compliance with the statewide planning goals and in a manner compatible with acknowledged comprehensive plans, as required by ORS 197.180 and OAR 660, divisions 30 and 31.” Despite this compliant purpose, the rule then inexplicably narrows its focus down to airport master plans “which significantly affect the objectives of the Transportation Goal (Goal 12).” OAR 738-130-0035(1). There is no authority to support the exclusion of the other statewide land use planning goals from this rule.

It is noteworthy that the LCDC rule consistently uses the plural form “goals”. Examples are seen in OAR 660-030-0065(1-5). In OAR 738-130-0035(1) the Department of Aviation attempts to authorize itself to significantly affect statewide planning goals other than Goal 12, while simultaneously excluding urban aviation facilities and activities that affect other Goals (such as a runway extension onto agricultural land that affects Goals 3, 9, 11 and 14) from the rule’s definition of “Activities Which Significantly Affect Land Use”. There is no justification for the Department to define activities that affect land use so narrowly.

The Department of Aviation has yet to complete the coordination procedures needed for adoption of the Master Plan. The Cities of Aurora and Wilsonville and Clackamas County have previously identified land use conflicts between the Master Plan and the statewide land use planning goals. However, the Department of Aviation has not yet met “with the local government planning representatives to discuss ways to resolve the conflicts” as required. OAR 738-130-0045.

With regard to the findings the State Aviation Board plans to adopt on October 31st, this memorandum and other participants have identified numerous applicable statewide land use planning goals. The relevant LCDC administrative rule lists seven situations which compel the adoption of findings with all applicable statewide land use goals. OAR 660-030-0065(3)(a-g). However, the Department of Aviation has attempted to limit, without authority, the scope of review to just one of the seven situations, when three subsections (b), (d) and (e) apply.

“(3) A state agency shall adopt findings demonstrating compliance with the statewide goals for an agency land use program or action if one or more of the following situations exists:

(b) An agency takes an action that is not compatible with an acknowledged comprehensive plan after exhausting efforts to be compatible as described in OAR 660-030-0070; or

\* \* \*

(d) A statewide goal or interpretive rule adopted by the Commission under OAR chapter 660 establishes a compliance requirement directly applicable to the state agency or its land use program; or

(e) An acknowledged comprehensive plan permits a use or activity contained in or relating to the agency’s land use program contingent upon case-by-case goal findings by the agency[.]”

The Department of Aviation’s administrative rule is therefore not compliant with either OAR 660-030-0065(3) or with the state law that it implements (ORS 197.180) because it simply neglects six out of seven subsections; two of which apply to the Master Plan and the Airport Layout Plan. This means the proposed findings are therefore inadequate because they do not address subsections (b) and (e).



OAR 660-030-0065

(4) A state agency which is in one of the compliance situations described in section (3) of this rule shall address directly only those goals that have not otherwise been complied with by the local government. To assist in identifying which statewide goals may be directly applicable to the agency's land use program, the agency may:

- (a) Utilize its agency coordination program, where certified;
- (b) Consult directly with the affected local government;
- (c) Request interpretive guidance from the Department; and
- (d) Rely on any applicable goal interpretations for state agencies adopted by the commission under OAR chapter 660.

(5) State agencies shall include the following elements in their goal compliance procedures adopted under sections (1) and (3) of this rule:

- (a) Identification of the specific statewide goals which are most likely to be addressed directly by the agency;
- (b) Commitment to address directly other applicable goals if requested or required; and
- (c) Description of the most likely situations in which the agency will address statewide goal requirements in addition to any compatibility findings regarding the acknowledged comprehensive plan.

Marion County has yet to comply with the Goal 2, Part 2 (and OAR 660-004) exceptions process for statewide planning goals that are required for the airport expansion proposed by the Master Plan and the Airport Layout Plan. *Murray v. Marion County*, 23 Or LUBA 268, 283 (1992). (Ex 5). The Board of Commissioners is the only County body with authority to approve a goal exception.

The Department of Aviation has not made any effort to comply with this rule as shown by the Master Plan's lack of any discussion about it. The 2017 SAC and OAR 738-130 have not been certified by LCDC. The department has not consulted directly with the affected governments of the City of Aurora, the

City of Wilsonville or Clackamas County. There is no information in the record that the Department relied on applicable goal interpretations adopted by LCDC.

### **C. The City of Aurora is an Affected Governmental Unit**

Goal 2 provides for the inclusion of “affected governmental units” in the planning process, and defines them as: “those local governments, state and federal agencies and special districts which have programs, land ownerships, or responsibilities within the area included in the plan.”

The City of Aurora has several land use programs that govern the Master Plan area. First, the City is included as an essential party in the 2008 Intergovernmental Agreement On the Coordination of Growth Management and Transportation Issues Between the City of Aurora, Marion County and the Oregon Department of Aviation which expressly includes the Master Plan area. Second, the City is a party to the 2010 City of Aurora/Marion County Urban Growth Coordination Agreement which also expressly includes the Master Plan area. Third, the entire geographic limits of the City are included within the county’s Airport Overlay zone. The City administers the overlay within the City limits through municipal code Chapter 16.24, Airport Overlay. These programs and responsibilities demonstrate the City is an affected governmental unit under Goal 2. See also OAR 738-130-0015(1).

### **D. Master Plan and Airport Layout Elements That Affect Land Use**

There are three primary elements of the Master Plan and Airport Layout Plan that affect land use that are addressed in this memorandum. Each of these elements does not comply with the statewide land use planning goals, their administrative rules, and local land use regulations.

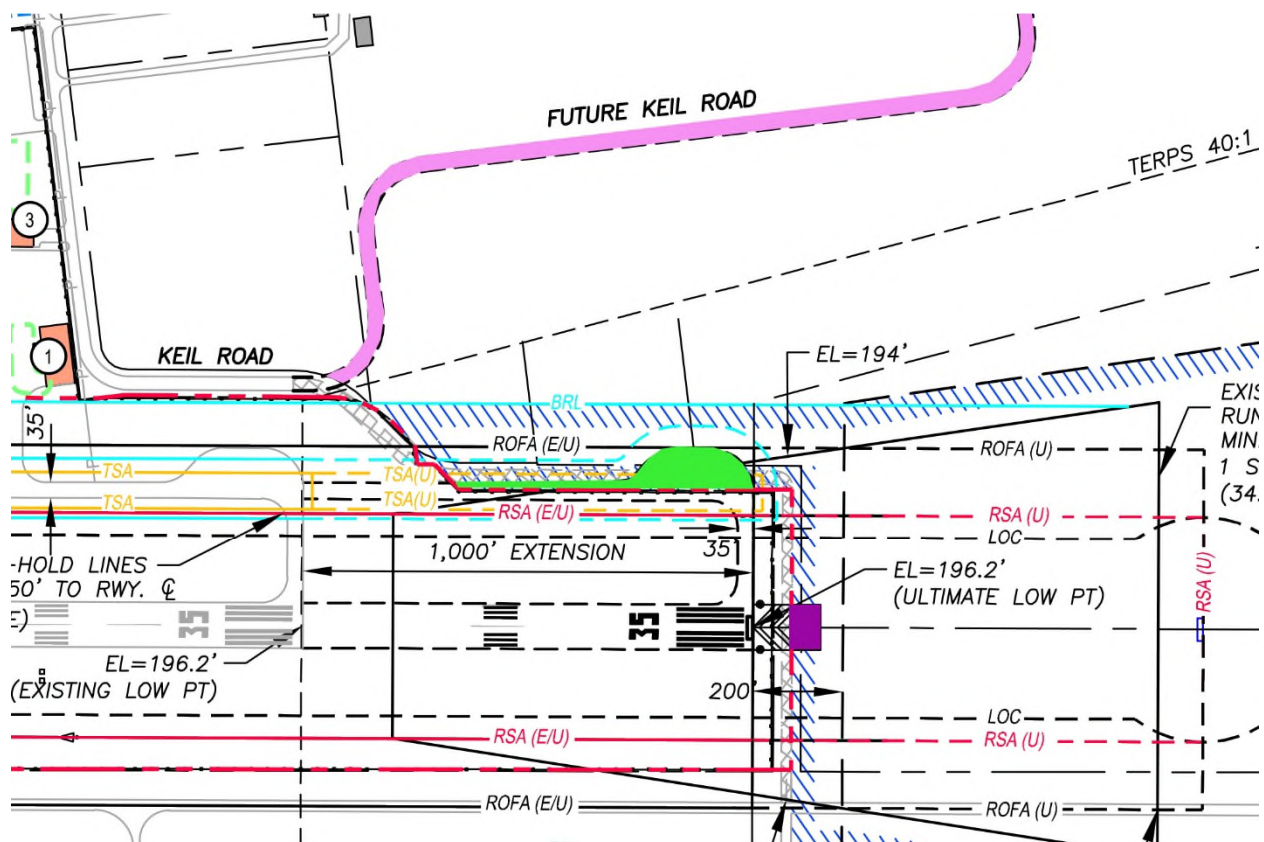
#### **1. Runway 35 Extension**

Many acres are required for the extension, which will be filled to raise the grade up to the level of the runway. The runup and the stopway encroach past the east and south boundaries of the Public zone into the EFU zone. This additional acreage will include the paved runup area, the paved southern portion of the stopway, the runway protection zone, and accessory equipment including lighting and the localizer.

The Master Plan CIP budget for this project known as the “Phase II Runway Extension Subtotal” is listed at \$12.068 million. In December 2018

the Department of Aviation obtained permission from the legislature's Emergency Board to apply for an FAA grant for \$37 million for the project. There is no explanation in the record to justify the cost increase, raising questions about the cost estimates in the Master Plan CIP budget.

It has been argued that the runway extension will be entirely within the existing limits of the Public zone; that is, entirely within the Department of Aviation's existing property that is north and west of Keil Rd. This highlighted excerpt of the Airport Layout Plan reveals three areas where new paving will indisputably occur outside the existing airport property and on land that is zoned for exclusive farm use.



**NEW PAVEMENT OUTSIDE EXISTING AIRPORT PROPERTY**



The chevron-striped area off the end of the runway is paved to provide extra stopping distance, known as a “stopway”, which is defined by the FAA as:

“an area beyond the takeoff runway, no less wide than the runway and centered upon the extended centerline of the runway, able to support the airplane during an aborted takeoff, without causing structural damage to the airplane, and designated by the airport authorities for use in decelerating the airplane during an aborted takeoff.” 14 CFR § 1.1.

The southern segment (shown in purple) of the paved stopway is plainly located outside the Public zone and south of both the airport’s current property line and the Keil Rd. right-of-way. It extends onto Class 2 agricultural land. The stopway is not shown in this location in any prior acknowledged comprehensive plan, airport master plan, or airport layout plan. The runway extension affects land use because it paves over Class 2 agricultural land for an urban use.

The Airport Layout Plan also illustrates that the paved runup area east of the south end of the runway (shown in green) will also extend onto Class 2 agricultural land east of Keil Rd. in the fee acquisition area.

There is no de minimis exception that allows these paved areas for an urban public facility to be approved on Class 2 agricultural land. The runway extension project and its adjacent runup area affect land use because they displace Class 2 agricultural land for an urban public facility.

The proposed findings rely on a statement from Marion County that the capital improvement projects in the Master Plan “appear generally consistent with the 1976 Aurora State Airport Master Plan.” However, there are material changes between the two plans that the findings overlook. The current plan extends runway 35 and its stopway past Keil Rd. both to the east and to the south and closes Keil Rd, whereas the 1976 Master Plan proposed none of these features. (Ex 6).

The 2012 Airport Layout Plan proposes to purchase 55.13 acres to accommodate the runway extension to the south; whereas the 1976 plan indicates no purchase of any of those same acres. This evidence in the record is directly contrary to the statement that the proposed findings rely on. A reasonable decision maker would not find the projects are generally consistent or that a project which purchases and paves EFU land for an urban public facility is consistent with a project that does not.

It has been argued that other uses proposed within the fenced 55.13 acre EFU area, such as the runway lighting and localizer, should be classified as utilities necessary for public service which are permitted in the EFU zone, and therefore the runway extension does not affect land use because it is only located on existing exception land. This argument is unpersuasive. Specialty lighting and navigation equipment are not utilities. They are not subject to regulation by the Public Utilities Commission. They lack an approved service area, a franchise agreement or other features of a utility service. Rather, they are fixtures that rely upon a utility (electricity) to operate. Of course PGE can extend its electric lines through the EFU zone to serve the localizer and other rural customers. However, these fixtures are planned for the sole purpose of supporting an urban use on rural land, and essential for operation of the airport. They have no purpose for other users, and serve only the runway. They are not utilities.

There is not a land use distinction between the various elements of the runway extension. This is demonstrated by HB 4092 (2 018) which was drafted to exempt the runway extension from the goals. (Ex 7). The legislative counsel that drafted that bill expressly defined “runway area” to mean “a runway, taxiway, safety area or runway protection zone.” Later the bill confirms that all the navigation equipment is encompassed by that same definition. “A state airport runway area extension under this section may include new or expanded ground-based navigation facilities and related navigation equipment and any fencing required for airport safety or security.”

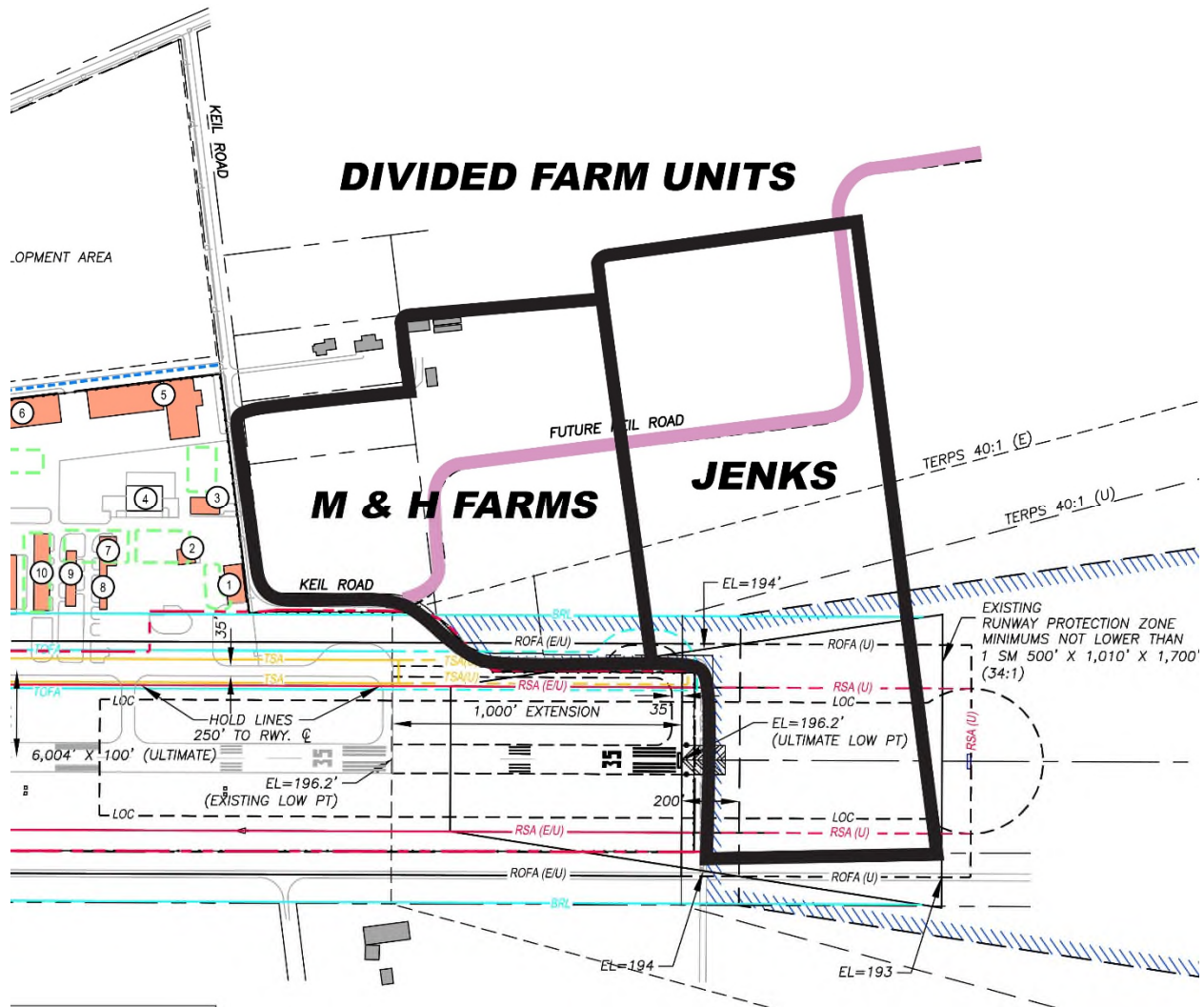
In other words, the twenty-four sponsoring legislators and the legislative counsel think the runway extension is one land use that includes a taxiway, safety areas such as the runup and the stopway, the runway protection zone, navigation equipment, and fencing. There is no mention of utilities necessary for public service, and the word “utilities” does not appear in the proposed text. There is no precedent for classifying the individual elements of the Aurora State Airport such as the localizer or the runway protection zone separately from the runway itself, which is an urban public facility. Nor is there precedent for designating different zoning districts for these elements. When the airport expands onto Class 2 agricultural land, goal exceptions are required. *Murray v. Marion County*, 23 Or LUBA 268, 283 (1992).

There is also no precedent for the application of urban zoning to the runway of an urban airport but rural zoning to the runup and stopway that

serve the runway. All of the nearby airports that serve private jets include the runway, the stopway, and the runup in the same zone. (McMinnville (M-2 Zone); Salem (PS Zone); Hillsboro (IG Zone); Troutdale (GI Zone); and Portland (IG-2 Zone)).

## 2. Keil Road Relocation

The Master Plan and Airport Layout Plan relocate Keil Rd. A new north-south right-of-way (shown in magenta) will be extended south across Class 2 agricultural land. The Master Plan CIP budget is \$1.427 million. This new right-of-way will divide two economic farm units: the M&H Farms economic farm unit on tax lots 900, 1200 and 1500 of map T4S R1W S11A; and the Jenks economic farm unit on tax lots 200, 201, 202 and 203 of map T4S R1W S11D.

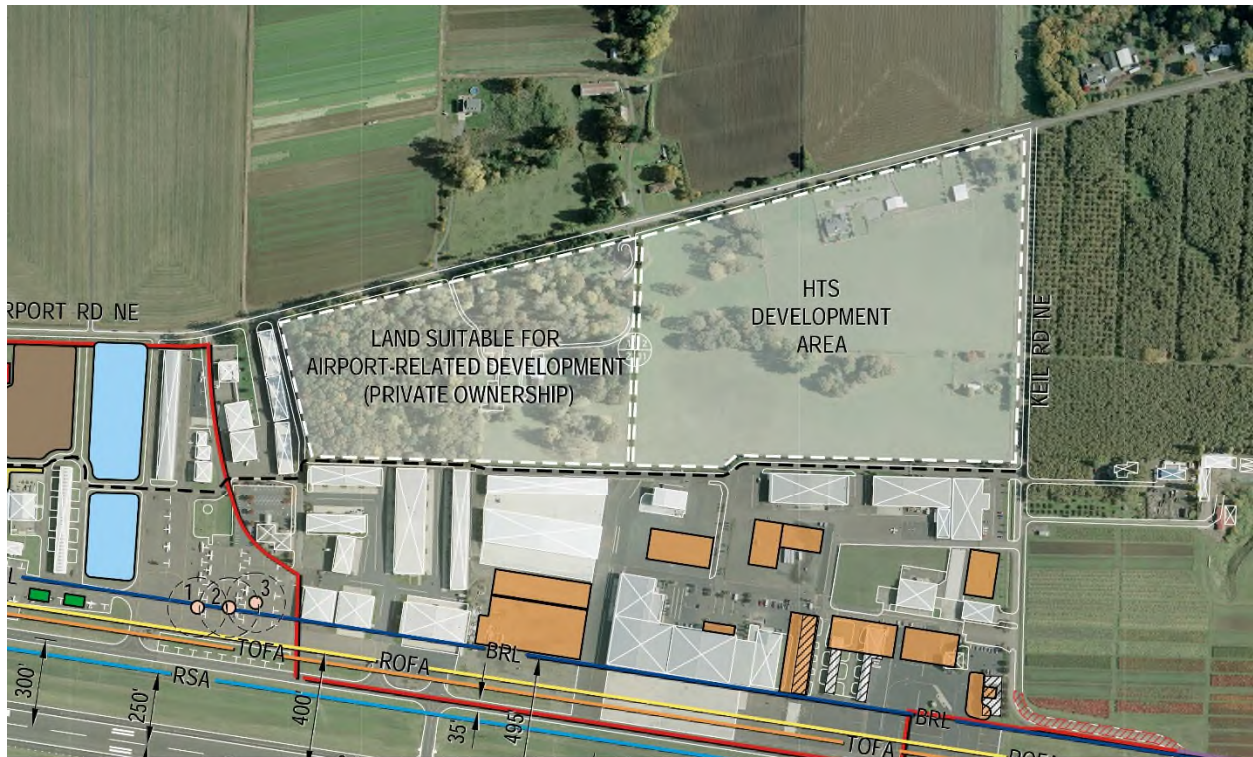


The Airport Layout Plan neither illustrates the southern segment of the new north-south right-of-way, nor indicates where it will connect to Highway 551. This proposed right-of-way is not shown in the Marion County Rural Transportation Plan, in the City of Aurora Transportation System Plan, or in any other adopted or acknowledged transportation or land use plan. This new road affects land use because it is being created in a rural area to support urban development, it crosses Class 2 agricultural land, and it will divide two economic farm units into four new parcels that are substantially smaller than the minimum parcel size allowed in the EFU zone. The road would have significant adverse effects on current farm operations, because slow moving equipment would need to cross it, and airport traffic would impede these crossings.

### **3. Development of the Former Church Camp**

Until 2017, tax lots 800 and 900 of map T4S R1W S2D (the “former church camp”) were used for religious and forest purposes. The former church camp is designated as Primary Agriculture in the Marion County Comprehensive Plan, zoned EFU, and has Class 2 agricultural soils. Following sale to a non-religious entity in 2017, the mature oak forest was clear cut, and no replanting has occurred. The land has been partially cleared and grubbed.

The former church camp is identified as “Land Suitable for Airport-Related Development” on the Master Plan’s Preferred Alternative 5J map, excerpted on the following page. In so doing, the Master Plan concedes the lack of current zoning “suitable for airport-related development recommended in this Master Plan.” (Page 6-4). This is a land use conflict that is not resolved in the Master Plan. Most of the costs for development of the former church camp will be privately funded; although the Master Plan CIP budget does include \$129,000 for taxi lane development for hangar access that may support this urban development.



# Aurora State Airport

Aurora, OR

## Exhibit 5J Preferred Alternative

Revised 06/27/11

In February 2019, the property owner applied to Marion County for exceptions to Goals 3 and 14 “to site an urban use on rural land.” The application also proposes a zone change from EFU to Public and a conditional use master plan approval to allow large scale office and aviation development. The applicant’s narrative emphasizes how the proposed development complies with the Master Plan, and suggests the following finding on the reasons why the state policy that supports Goal 3 policy should not apply.

**“Proposed Finding:** Reasons justify why the state policy embodied in Goal 3, preserving and maintaining agricultural lands, should not apply. As identified in the 2013 Master Plan, there is a need for expansion of airport-related uses surrounding the Airport. The 2013 Master Plan updates the previous 1976 Aurora Airport Master Plan (as defined below) and the 2013 [sic] was undertaken ‘to assess the Airport’s role, evaluate the Airport’s capabilities, forecast future aeronautical activity for the next 20 years, and plan



for the timely development of any new or expanded Airport facilities needed to accommodate future aviation activity.’ See Exhibit E, (2013 Master Plan, Executive Summary p. 1). As discussed in detail below, the Master Plan identified not only a need for expansion, but it specifically identified the Subject Property as an ideal location for such expansion to occur.”

Development of the former church camp for office and aviation uses affects land use because large scale aviation and office uses are not allowed in the EFU or Public zones, and because a zone change from EFU to Public requires goal exceptions.

### **E. Criteria Applicable to the Findings**

The Master Plan must first demonstrate compliance with the statewide planning goals and their respective administrative rules. ORS 197.180(1)(a). In this instance, the applicable goals are Goal 1 Citizen Involvement; Goal 2 Land Use Planning; Goal 3 Agricultural Lands; Goal 6 Air, Water and Land Resources Quality; Goal 9 Economic Development; Goal 11 Public Facilities and Services; Goal 12 Transportation; and Goal 14 Urbanization. The State Aviation Board must give the goals equal weight when adopting findings on the Master Plan and Airport Layout Plan. ORS 197.340(1). The Master Plan must also demonstrate compliance with the administrative rules that have been promulgated to implement the goals by LCDC.

There is uncertainty about whether the Department of Aviation has an approved state agency coordination program in effect. This matters because if the Department of Aviation does not, then it is possible that the LCDC administrative rules that implement the goals do not apply directly to this Master Plan. ORS 197.180(10) states:

“Until rules and state agency plans and programs are certified as compliant with the goals and compatible with the acknowledged comprehensive plans and land use regulations of affected local governments, the state agency shall make findings when adopting or amending its rules and state agency plans and programs as to the applicability and application of the goals or acknowledged comprehensive plans, as appropriate.”

Because this subsection describes findings on the goals, but not on the administrative rules that implement the goals, compliance with those rules may not be required in this 2019 proceeding. Alternatively, the mandate in ORS

197.180(1) that requires compliance with both the goals and the “rules implementing the goals and rules implementing this section” may control.

The statute also requires compliance with local government regulations.

“State agency rules, plans or programs affecting land use are not compatible with an acknowledged comprehensive plan if the state agency takes or approves an action that is not allowed under the acknowledged comprehensive plan.” ORS 197.180(13).

This provision requires prompt conformance with all applicable local comprehensive plans, which is addressed below.

#### **F. The State Aviation Board Record**

The record of documents and other materials that were placed before, and not rejected by, the State Aviation Board during 2011 and 2012 is apparently incomplete. The record materials made available by the Department of Aviation for this 2019 proceeding omit several items that are customarily provided in the record of a state agency’s final action. These include the March 2011 staff report that recommended the no-build option, which is essential to understanding farm impacts. Nor does the available information include documents regarding the State Aviation Board’s action(s), such as board agendas, packets, meeting minutes, a signed decision approving the Master Plan, or a published notice of that decision that is signed by the State Aviation Board or its authorized representative. The record of this 2019 proceeding must include all of these documents and all testimony presented to the State Aviation Board circa 2011 and 2012. See OAR 661-010-0025(1).

Compilation of these historical documents is a challenge at this late date. However, until all of this information is available, interested participants are unable to thoroughly examine the evidence that was or was not relied upon by the State Aviation Board throughout 2011 and 2012, and will or will not be relied on in this current 2019 procedure for adoption of findings. The inability to examine the full record prejudices the City of Aurora because it is compelled to address compliance and specify any purported noncompliance based on incomplete information, which creates burdensome complications for everyone involved.

## G. Adoption of the Findings is a Quasi-Judicial Decision

The Master Plan and Airport Layout Plan are limited to one specific location; the Aurora State Airport and its abutting through the fence land. For purposes of state agency coordination, they are effectively a site plan approval for expansion of the Aurora State Airport. They do not apply to any other location or airport, nor do they create any policy that will apply statewide or to another airport. The facts are closely circumscribed.

The State Aviation Board is compelled to adopt a final decision to update the Master Plan and the Airport Layout Plan, as it has done many times on prior occasions, to comply with FAA requirements and qualify for its grant programs. (See FAA Circular AC 150/5070-6B – Airport Master Plans and Section 2 of the Aurora State Airport Assessment Report). It is also compelled to adopt a final decision including land use findings by the state agency coordination regulations described herein. The commitment to adoption of the findings is reflected in the agenda for today which states without reservation: “Adopt Findings”. It is an action item.

The Master Plan and the Airport Layout Plan are also subject to preexisting, specific land use criteria. These begin with the applicable statewide planning goals and their implementing administrative rules, and also include numerous provisions of the Marion County Comprehensive Plan and Rural Zoning Code. See ORS 197.180(1), (10) and (13). Thus, the adoption of land use findings by the State Aviation Board in support of the Master Plan and the Airport Layout Plan, or in support of the Department of Aviation’s agency coordination program and rules, is a quasi-judicial land use decision. *Strawberry Hills 4 Wheelers v. Board of Commissioners of Benton County*, 287 Or 591, 601 P2d 769 (1979).

The effects of that classification bear directly on the State Aviation Board, which must act as an impartial tribunal. It must adopt findings that detail whether and how the Master Plan and the Airport Layout Plan comply with each applicable criterion; generalizations and conclusions are not sufficient. And it should acknowledge and be sensitive to the pressure asserted on Marion County and the Aurora State Airport by the lobbying efforts of private economic interests. *Fasano v. Board of County Commissioners of Washington County*, 264 Or 574, 507 P2d 23 (1973).

## H. The Current Status of the Master Plan

The State Aviation Board process for adoption of the Master Plan, that Airport Layout Plan and their land use findings is not complete. Some participants think it is possible that the Department of Aviation's August 21, 2019 letter is a land use decision that adopted the Master Plan, and that the Master Plan was not previously adopted; however, that letter does not include the necessary findings. Other participants believe the Master Plan was lawfully adopted in 2011, or in 2012; however there are no apparent instruments of adoption, such as a final order or land use findings from that time period.

On August 21, 2019, the Department of Aviation wrote that: "ODA will present findings of compatibility" of the Master Plan "with applicable land use plans and statewide planning goals." On October 18, 2019 the Department of Justice informed the City of Aurora that: "At the October 31 Oregon Aviation Board meeting, ODA will present findings of compatibility with Marion County's comprehensive plan and findings of compliance with applicable statewide planning goals to the board for review and adoption for the Aurora Master Plan." This uncertainty invites a careful review of prior events.

It may be that the Master Plan and Airport Layout Plan cannot be in effect without the land use findings. The State Aviation Board should expressly adopt findings on this question, in order to clarify whether and how the State Aviation Board's actions in 2011 and 2012 resulted in a final land use decision. OAR 661-010-0010(3) indicates that "a decision becomes final when it is reduced to writing and bears the necessary signatures of the decision maker(s)[.]"

### 1. 2011 and 2012 Events

In March 2011 the no-build option was recommended by the staff to the State Aviation Board, as reported in the news media. The Department of Aviation staff recommendation is apparently unavailable at this writing and must be added to the record prior to the adoption of findings on October 31st. Revised alternatives were presented in April 2011, which the State Aviation Board acted on in June 2011, voting on an 800 foot runway extension to the north, as was previously contemplated by the 1976 Aurora State Airport Master Plan.

The FAA disliked this plan, which somehow was switched to a 1000 foot runway extension to the south. The switch was made without any apparent written notice to, or coordination with, the advisory committee or the affected local governments including the City of Aurora. This omission substantially prejudiced the City of Aurora because it had no opportunity to timely submit

comments or testimony to the Department of Aviation or the State Aviation Board on how this reversal did or did not comply with the applicable statewide planning goals and local land use regulations.

There is evidently no instrument of adoption for the complete Master Plan. The August 21, 2019 Department of Aviation letter reports that the State Aviation Board “approved the Master Plan for submittal to the Federal Aviation Administration.” The letter does not indicate or imply that the Master Plan or the Airport Layout Plan were in final form when approved, nor that the approval was for any other purpose than a preliminary review by the FAA.

The same letter reports that the Master Plan “was printed in final form” in December 2012, following revisions made to the draft that was approved by the State Aviation Board for submittal to the FAA in October 2011. The letter does not reveal whether those revisions had a material effect on land use issues, or whether the December 2012 version was ever presented to the State Aviation Board, approved by it, or signed by the State Aviation Board or an authorized delegate. Curiously, the Airport Layout Plan with the southerly extension was executed by the Department of Aviation on October 17, 2012, and then by the FAA on the following day, two months before the Master Plan was printed in its final form.

It is plain that the State Aviation Board actions on the Master Plan and Airport Layout Plan in 2011 and 2012 were not consistent with the applicable requirements of OAR 660-010-0010(3) and ORS 197.180(1), (10) and (13). Those actions do not comprise one or more final land use decisions because they were required to but did not apply several statewide land use planning goals. See ORS 197.015(10)(a)(B); 197.180(1). Thus the State Aviation Board needed to expressly apply the statewide land use planning goals and also apply the acknowledged comprehensive plans and land use regulations in the purported decision(s) to adopt the Master Plan and Airport Layout Plan in 2011 and 2012. ORS 197.180(1).

The Master Plan and Airport Layout Plan are a nullity from the land use perspective until all processes for adoption of land use findings and adoption of the Master Plan and the Airport Layout Plan are complete. This is consistent with the Department of Aviation’s letter of April 24, 2019. Notwithstanding the August 21, 2019 clarification letter, the April 24 letter is accurate that the December 2012 final draft has not been submitted to the State Aviation Board or approved by it. The arguments made to the contrary are not supported by substantial evidence, such as a State Aviation Board agenda and packet in or after December 2012 that include adoption of the Master Plan and Airport

Layout Plan, a written final order, or notice of the final order to interested parties. The April 24 letter is also very accurate that the correct procedural sequence for adoption is first to have the 2017 SAC certified by LCDC, and then adopt the Master Plan.

If the State Aviation Board believes the December 2012 version of the Master Plan and the Airport Layout Plan are in effect, then it should provide all of the interested parties and affected local governments with additional documentation to demonstrate that that version of the plan was placed before it, adopted by vote in a public meeting where adoption of the Master Plan and the Airport Layout Plan was on the agenda and previously noticed to interested parties, reduced to writing with land use findings, and signed by the Board Chair or an authorized delegate. Absent this documentation, the April 24, 2019 letter must be presumed correct that the December 2012 draft of the Master Plan has not been submitted to the State Aviation Board.

## **2. 2016 Revision to the Airport Layout Plan**

The Department of Aviation's web page for the Aurora State Airport includes a tab that is labelled: "Download Current ALP (2016)". The tab leads to just one sheet titled "Airport Layout Plan Drawing" (Ex 8); however it indicates there are 10 sheets in total. The revised sheet provided has not yet been signed by either the Department of Aviation or the FAA. The City of Aurora is not aware of any coordination procedures for this version of the layout plan, or whether the changes made in 2016 have been presented to or adopted by the State Aviation Board, and acknowledges that the changes may not have a material effect on the relevant land use issues.

It is nevertheless important that this 2019 process be complete and up to date in every respect, and if the Department of Aviation and FAA are relying on the 2016 Airport Layout Plan, all ten sheets should be included in the record and presented to the State Aviation Board on October 31st. New notice will likely be required. The notice and proposed findings should explain the changes between the 2012 and 2016 versions of the Airport Layout Plan.

### **III. Application of the Goals and Local Comprehensive Plans and Regulations**

#### **A. Introduction to the Applicable Criteria**

Compliance with the myriad applicable land use regulations is particularly challenging for a growing urban airport that is located outside of an urban growth boundary, because a fundamental purpose of Oregon's land use

planning system is to restrict urban expansion in rural areas. See Goal 14, Implementation Guideline B.2. Goal 14 and the other applicable regulations mean that until the airport is brought within the City of Aurora's urban growth boundary, the expansion of the urban aviation and aviation-related uses described in the Master Plan cannot comply with the applicable state and local land use regulations.

The Master Plan should be modified, although it is not necessary to change the Airport Layout Plan or operations plans. The Master Plan should be revised to clarify that annexation of the airport into the City's urban growth boundary and implementation of a conventional urban growth management agreement will precede the geographic expansion of the airport, and precede the extension of urban infrastructure and development onto surrounding Class 2 agricultural lands that are currently planned and zoned for exclusive farm use. With those revisions the Master Plan could be supported.

During the Master Plan process, several alternatives were considered. The staff recommended no extension of the runway to the south due to land use conflicts with the EFU-zoned properties and Goal 3. The selected alternative nevertheless proposes the expansion of the airport to the south to accommodate a runway extension, and to the east for airport-related development on the former church camp. Both of those expansion areas have Amity silt loam soil, which is a Class 2 soil that is good for farming; although it drains poorly in the rainy season and therefore is not a good candidate for the disposal of storm water or septic fields, which creates conflicts with Goal 6, Goal 9 and Goal 11. These expansion areas are the primary reason the Master Plan does not comply with the applicable rules and regulations.

The City and Marion County have acknowledged comprehensive plans which "identify and separate urbanizable land from rural land." *1000 Friends of Oregon v LCDC (Curry County)*, 301 Or 447, 455, 724 P2d 268 (1986), (quoting the then-current Goal 14). The Master Plan describes the conversion of resource land to urban uses outside the City's urban growth boundary as such: "not all property within the Airport Environs – the footprint of the land nearby the Airport within the boundaries of the four surrounding roads – is zoned in a manner suitable for airport-related development recommended in this Master Plan." (Page 6-4). The Master Plan describes potential annexation into the City, although without explanation of the sequence of urban development and the annexation. "While ODA recognizes the complexities of Oregon's land use system and potential need for upgrades to City of Aurora utilities prior to annexation, ODA is generally supportive of annexation of the

Airport by the City of Aurora[.]” (Page 1-4). The City’s prior written comments on the prior draft Master Plan also consider annexation.

Several statewide land use planning Goals compel the annexation to occur prior to the development of additional urban uses on resource land near the airport. The Department of Aviation is correct that the existing EFU zoning is not “suitable for airport-related development.” (Page 6-4). However, the Master Plan does not acknowledge that annexation must necessarily precede urban zoning. This discrepancy is a land use conflict identified in the Master Plan that has not yet been resolved. Annexation is the best method for resolution consistent with the goals.

## **B. Statewide Land Use Planning Goals and Implementing Administrative Rules**

### **Goal 1: Citizen Involvement**

Goal 1 is “to develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.” It includes the requirement for state agencies to “coordinate their planning efforts with the affected governing bodies and make use of existing local citizen involvement programs established by counties and cities.”

The current Master Plan process has not provided suitable opportunities for citizens to participate. The September 24, 2019 hearing was held more than 20 miles away from the airport. It made no attempt to utilize the City of Aurora’s local facilities, or those of the airport itself. The hearing was held during the afternoon, and strictly limited testimony to a parsimonious two minutes, after which the microphone was unplugged. Though scheduled for a full two hours, the hearing lasted only 45 minutes. The panel declined to answer questions and there was no dialogue with citizens and public officials who came to testify. There is a remarkable dearth of two-way communication, contrary to Goal 1, item 2 Communication.

At the hearing, the Department of Aviation did not present a staff report. No explanation of why the Department of Aviation apparently decided – some seven years after the purported adoption of the Master Plan and Airport Layout Plan – to have a hearing on compliance with the statewide land use goals and local regulations.

More specifically, while there was a public involvement program leading up to the tentative approval of the Master Plan in 2011, there was not a subsequent published decision. Then the Master Plan was sent to the FAA



which required revisions. However, there was apparently no public involvement regarding the changes to the Master Plan made at the behest of the FAA. Those changes have not been clearly explained to the public or to affected governmental units.

The public involvement deficiencies are explained in the Aurora State Airport Assessment Report that was prepared by Oregon Solutions in December 2018. “There is contention with the process used by the Oregon Aviation Board to approve the 2012 Master Plan with a runway extension.” (Section 3.3, Page 18). The report continues that: “it is arguable that ODA, as the owner of the asset, owns the burden of proper communication related to the airport. While it has worked to provide public engagement for planning processes, the question of how meaningful that engagement was still exists.” (Section 4.2, pp. 23-24).

Transportation agencies such as the Department of Aviation are supposed to “provide assistance to” local government citizen involvement programs as described in Guideline D.1. That assistance has not been forthcoming, and therefore the department is obligated to reinstate a public involvement program for the current drafts of the 2012 Master Plan and the 2016 Airport Layout Plan.

## **Goal 2: Land Use Planning**

Part 1 of Goal 2 is to “establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.” The Master Plan has not demonstrated compliance with this goal because it is inadequately coordinated with the comprehensive plan of Marion County, which planned and zoned the two airport expansion areas for agricultural use. It also is not coordinated with the City of Aurora comprehensive plan because it authorizes further expansion of urban aviation uses onto agricultural land that is outside the City’s urban growth boundary.

The Master Plan does not identify the issues and problems raised by the goals described in this memo, nor does it provide adequate facts to support an “evaluation of alternative courses of action and ultimate policy choices, taking into consideration social, economic, energy and environmental needs.” Goal 2, Part 1.

Also included in Goal 2, Part 1 is the mandate to coordinate with affected governmental units. Both Clackamas County and the City of Wilsonville have emphasized why they are impacted by the airport, and why they should be

classified as affected governmental units. The record has not shown that the Master Plan identified their issues and attempted to resolve the identified conflicts, as required by Guidelines A(4) and B of Part 3. As described above, the City of Aurora has several land use programs within the Master Plan area and therefore is clearly an affected governmental unit under Goal 2.

A third element of Part 1 is the requirement for an adequate factual base. The Master Plan relies on traffic projections that are about ten years old. No actual traffic counts were taken, and there was no traffic impact study that evaluated the impact of implementation of the Master Plan. The short traffic memorandum that was prepared does not include the information required by Marion County for a traffic impact study.

Since 2012, there have been two traffic studies of related facilities. The Master Plan cannot in 2019 be said to have an adequate factual base when it relies on non-specific and incomplete historical data. Therefore, it should be revised to account for current data, including the trip counts taken for the DKS traffic impact study on conversion of the former church camp to urban use and the ODOT study regarding the intersection of Highway 551 and Ehlen Rd. A reasonable decision maker would not rely on incomplete historic traffic information that does not comply with Marion County's standards for a traffic impact study, when two more current and complete reports, one performed to county standards and one performed to ODOT specifications, are available.

The same inadequate factual basis is evident in the Master Plan data on airport operations, which was derived from optimistic forecasts made about ten years ago. In 2015 the control tower was constructed, and now, for the first time there are accurate counts of flight operations. The Master Plan's reliance on historic forecasts is inadequate. It should be updated based on the accurate data from the tower flight logs. That newer data demonstrates the forecasts in the Master Plan were not accurate, thereby revealing that the Master Plan lacks accurate estimates of flight operations; that is, an adequate factual base. A reasonable decision maker would not rely on outdated, aspirational projections of flight operations when more current and accurate information in the form of actual control tower reports is available.

The Master Plan does not expressly address compliance with Goal 2 and its administrative rule. In particular, it does not describe the facts essential to demonstrating compliance with this goal or its administrative rule, and thus lacks an adequate factual base. For example, it does not outline the facts that support the assumption that the City of Wilsonville and Clackamas County do not qualify as affected governmental units. Without those facts, it is not

possible to consider the respective roles of all affected government units. The City of Wilsonville and Clackamas County are affected governmental units. The Master Plan should explain how the identified land use conflicts presented by the various local governments were resolved prior to adoption.

Part 2 of Goal 2 regards goal exceptions. The owner of the former church camp applied to Marion County for exceptions to Goal 3 and Goal 14 (and other land use approvals) to convert the camp properties to office and aviation uses. The fact that this development described in the Master Plan requires goal exceptions confirms that the Master Plan does not comply with these goals. If the Master Plan did comply with the goals, then exceptions would not be required. This discrepancy is a land use conflict that can only be resolved by bringing the airport into the City of Aurora.

The last time the runway was extended to the south, LUBA found that “both the existing and proposed airport uses are clearly urban public facility uses.” *Murray v. Marion County*, 23 Or LUBA 268, 283 (1992). LUBA concluded that: “[t]his requires that exceptions to Goals 11 and 14 be adopted for those 10 acres.” *Id.*, at 284. Those 10 acres include the current runway protection zone between the south end of the runway and Keil Rd. The result of these holdings is that LUBA confirmed that the Aurora State Airport’s runway and runway protection zone are an urban public facility that requires goal exceptions. The same is true in 2019, as there has been no substantive change in the law since that time. Due to the increased development since 1992 as shown on the aerial photos (Ex 9), and the increased number of flight operations, this urban classification is even more apt today.

A list of the prior goal exceptions for the airport is maintained by DLCD. In 2017, the City of Aurora asked Marion County’s senior planner about the runway extension and received a prompt reply. “New land added to the airport requires a Goal 3 and perhaps Goal 14 exception.” (Ex 10). The owner of the former church camp applied to Marion County for both Goal 3 and Goal 14 exceptions as an initial step for conversion of that property to aviation and office uses. All of these private and public entities have consistently agreed that the airport is an urban use and therefore expanding it in any way requires goal exceptions. A goal exception by definition means that the proposed development is not in compliance with the goals. Like prior expansions the Master Plan does not comply with these relevant goals, because it proposes to add 55.13 acres to the airport for the runway extension and accessory facilities, add 16.54 acres for private aviation development, and punch a new road through existing farms in the EFU zone. These land use conflicts can only be

resolved by bringing the airport into the City of Aurora and thereby converting rural land to urban land.

The Goal 2, Part 2 administrative rule governing goal exceptions is OAR 660-004. The Master Plan does not even attempt to demonstrate compliance with this rule for goal exceptions; and omits any discussion of the rule. For example, the Master Plan discusses extension of sewer service to the airport; however it does not address the rules for sanitary sewer service to rural lands. (See OAR 660-004-0000(1)(a) and OAR 660-011-0060(9)). Nor does the Master Plan discuss the applicable rules for extension of the runway and its appurtenant facilities onto rural land. (See OAR 660-004-0000(1)(b & c); OAR 660-012-0070; and OAR 660-014-0040). Finally, the Master Plan does not address the Goal 12 exception rule for the relocation of Keil Rd. onto Class 2 agricultural lands that will divide economic farm units into additional new parcels. OAR 660-012-0070.

These omissions demonstrate the Master Plan and Airport Layout Plan do not comply with Goal 2 as drafted. For Part 1, the Master Plan must be revised to respond to the land use conflicts identified by local governments in the area. These responses cannot be accomplished through findings alone. Moreover, the record lacks sufficient information to demonstrate compliance with the Part 2 exception requirements. The fact that goal exceptions are required for the runway protection zone and development of the former church camp confirms that the Master Plan and Airport Layout Plan cannot be made compliant with the applicable goals through the adoption of findings alone.

### **Goal 3: Agricultural Lands**

Goal 3 is “to preserve and maintain agricultural lands.” The airport is surrounded by Class 2 agricultural land, and the expansion proposed in the Master Plan conflicts with this goal and its administrative rule. Services such as transportation facilities in agricultural lands should not be connected to non-farm uses and should be “limited in capacity to serve specific service areas and identified needs.” Implementation Guideline B.3.

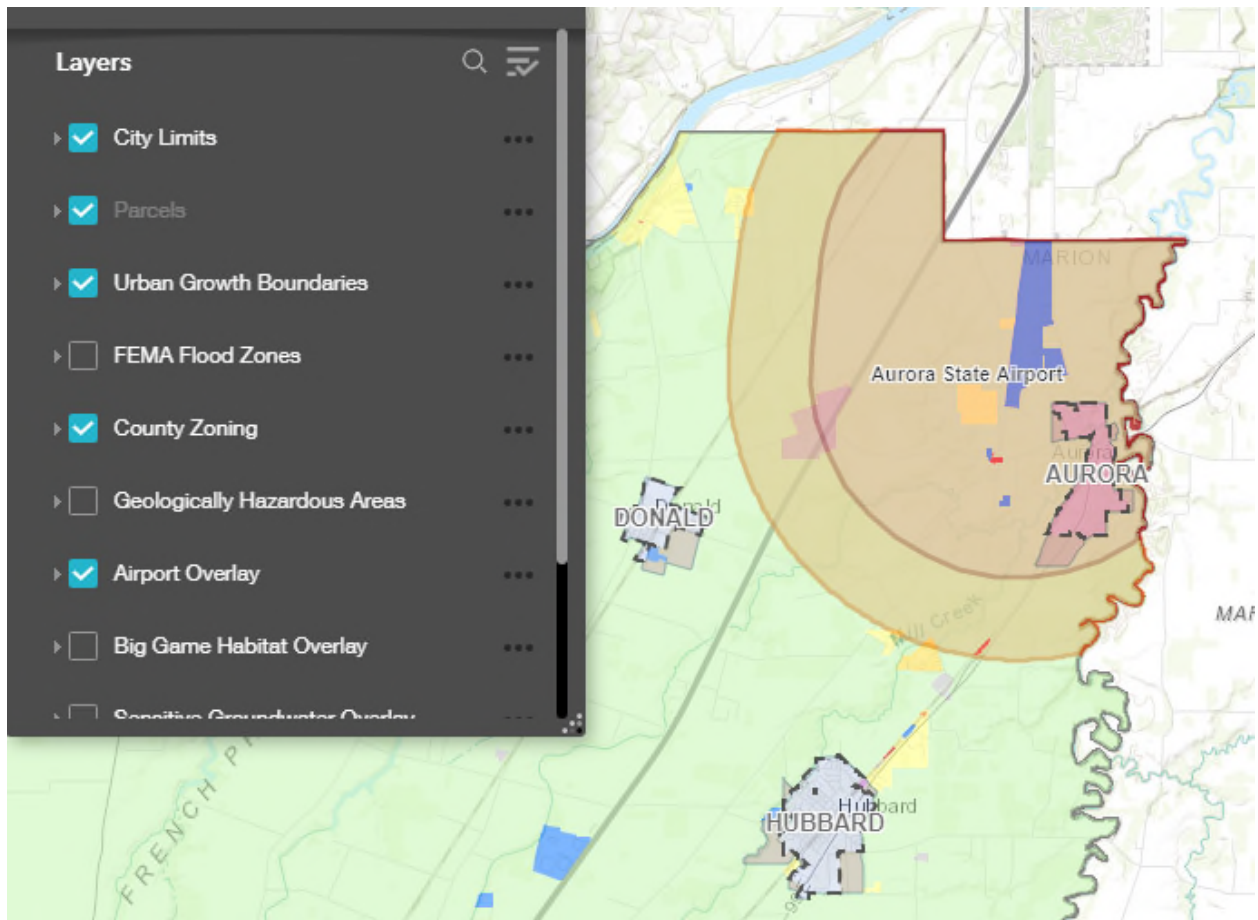
The Master Plan and Airport Layout Plan propose to extend the runway and the runway protection zone south of Keil Rd. and to close that road. The “proposed fee acquisition” shown on the Airport Layout Plan comprises 55.13 acres. This acreage is zoned EFU by Marion County. It is not included within any prior adopted master plan for the airport, nor within any prior goal exception for the airport. It is designated as Primary Agriculture in the Marion County Comprehensive Plan.

The land is within the Marion County Airport Overlay Zone; however, this overlay does not authorize use of 55.13 acres for urban aviation uses, such as a stopway, a runup area, the runway protection zone, or the localizer. The overlay zone text expressly describes its limited applicability to only “200 feet beyond the end of the runway” at ground level. Marion County Zoning Code (“MCZC”) 17.177.020.C.1. The Airport Layout Plan shows the 55.13 acre area extends approximately 1600 feet south of the extended runway and stopway.

There is no list of approved or conditional uses for the overlay zone. The term “runway protection zone” does not appear in the text. MCZC 17.177. Rather, the overlay zone governs the airspace above the land in order to regulate tall buildings and other potential hazards to aviation. The restrictive EFU zoning remains in effect. The purpose statement of the overlay zone confirms this.

“The airport overlay zone is intended to minimize potential dangers from, and conflicts with, the use of aircraft at public airports based on the adopted master plans for each airport. It is to be used in conjunction with the underlying zone. If any conflict in regulation or procedure occurs with the underlying zoning districts, the more restrictive provisions shall govern.” MCZC 17.177.010.

The overlay zone covers about ten square miles as shown in brown and tan on the county zoning map excerpt on the following page. The theory that all runway and airport uses are permitted in this overlay zone would mean the entire overlay could be developed into a massive airport, without regard to the EFU zone or the various other conflicting zones in the City of Aurora and around north Marion County. The rhetorical reach of this argument exceeds its grasp.



The EFU zoning regulations within MCZC 17.136 are much more restrictive than the regulations of the Airport Overlay Zone. For example, MCZC 17.136 does not allow urban public facilities such as the Aurora State Airport, nor does it allow the proposed office and aviation uses that have been applied for on the former church camp. Note that the church camp is also within the Airport Overlay Zone, and the application includes exceptions to Goal 3 and Goal 14. This confirms the overlay zone does not authorize urban aviation uses when the underlying zoning prohibits those uses. Another relevant example is the proposed relocation of Keil Rd. and construction of a new north-south road that will divide the M&H Farms and Jenks farm units. MCZC 17.136.050.J.4 is more restrictive than the Airport Overlay Zone, and confirms that a Goal 3 exception is required for this road.

The Class 2 agricultural land south and east of Keil Rd. lies several feet below the grade of the existing Department of Aviation property, as shown by the LIDAR images from DOGAMI and site photos. (Ex 11).

The new runup area, new stopway and new runway protection zone will require extensive structural fill up to the elevations specified on the Airport Layout Plan. Assuming the average depth of the fill is six feet to simplify the equation, more than a half million cubic yards of fill will be required. (55.13 acres x 43,560 square feet, ÷ 9 x 2 = 533,658 cubic yards). This fill will cover the existing Class 2 soils in order to support the pavement, airplanes that inadvertently leave the pavement due to an emergency, helicopters and other equipment. It would remove these acres from agricultural production.

In response the Department of Aviation has said it can still farm this land, notwithstanding that it will be fenced off, will not be Class 2 soils, and will pose an obvious safety hazard to farm workers working in the flight path. There is no information that the Department of Aviation has ever farmed the land around the runway, including land in the existing runway protection zone, despite prior findings adopted by Marion County that this land “would be leased for continued farming.” *Murray*, at 276. There is no reason to think this time will be any different.

The Department of Aviation lacks legal authority to conduct “farm use” as that term is defined in ORS 215.203(2)(a), which requires that farm use be “for the primary purpose of obtaining a profit in money.” The Department of Aviation is a state agency whose primary purpose is to promote and regulate aviation, not to earn a profit in money. There is no information in the Master Plan that commits the Department of Aviation to either farming the land for a profit or leasing the land to a private farmer; therefore any finding on this topic lacks substantial evidence. It seems improbable that any private sector farmer would be interested in leasing the land under the onerous restrictions that would apply. Clearly, this remains an unresolved land use conflict.

Guideline A.1 of Goal 3 specifically addresses new urban development. “Urban growth should be separated from agricultural lands by buffer or transitional areas of open space.” The Master Plan conflicts with this guideline by proposing the direct expansion of new urban uses onto the adjacent agricultural lands without any consideration of appropriate buffers. The Master Plan does not include the facts to demonstrate these guidelines have been considered in more than a cursory manner, and does not include facts to show an appropriate buffer.

Goal 3 only allows nonfarm uses “that will not have significant adverse effects on farm or forest practices.” The Department of Aviation maintains an active program of tree removal on the surrounding agricultural land. This is demonstrated by the Department’s letter of support for the harvest of the

mature oak forest on the former church camp property, which has not and will not be replanted. In response to the irreconcilable needs of trees and aviation, the Department's policy is to cut the trees, and it maintains an active program for tree removal. However, Goal 3 requires that forest uses "should be permitted on agricultural land" and the county zoning code that implements Goal 3 expressly allows forestry as a permitted use on EFU land. MCZC 17.136.020.B. The Department of Aviation's programs cannot supersede local zoning. See ORS 836.035. The urban aviation uses proposed in the Master Plan, including the tree removal program, conflict with Goal 3 and MCZC 17.136.020.B.

The pending land use application for the former church camp describes land use conflicts between aviation and farm uses, including the problem caused when agricultural dust interferes with sensitive aviation instruments. This is precisely the type of conflict that could be resolved with a suitable buffer.

The Goal 3 administrative rule includes provisions for non-farm uses. A transportation facility (the runway) and its accessories (lighting and other instruments) are allowed as a conditional use only upon demonstrating that there are no substantial adverse impacts to farm and forest operations. See OAR 660-033-0130(13) and (16)(a)(D); ORS 215.296. The Master Plan and Airport Layout Plan do not analyze potential adverse impacts from the runway extension. The limited record does not provide substantial evidence to support a finding that there are no substantial adverse impacts to farm and forest operations.

The record demonstrates both that the Master Plan and Airport Layout Plan will force a significant change in farm practices, and that the changes will significantly increase costs, because Keil Rd. will be closed and a new north-south road will be constructed between Keil Rd. and Ehlen Rd. This new road will divide the existing M&H Farms and Jenks economic farm units into several smaller parcels. The Master Plan does not demonstrate the runway extension, the placement of fill, the extension of its equipment, and the runway protection fencing onto agricultural land will not force a significant change in existing farm practices or a significant increase in the cost of those farm practices. See OAR 660-033-0130(13) and (16)(a)(D).

Therefore a Goal 3 exception will be required for the Master Plan. By definition, a state agency land use program affecting land use that requires a new goal exception "does not comply with some or all goal requirements[.]" Goal 2, Part 2. Because both the Master Plan and the Airport Layout Plan as written do not comply with Goal 3, they are also not in compliance with ORS



197.180(1)(a) and (10). There is not substantial evidence in the record that can support a finding that those plans are in compliance with these regulations.

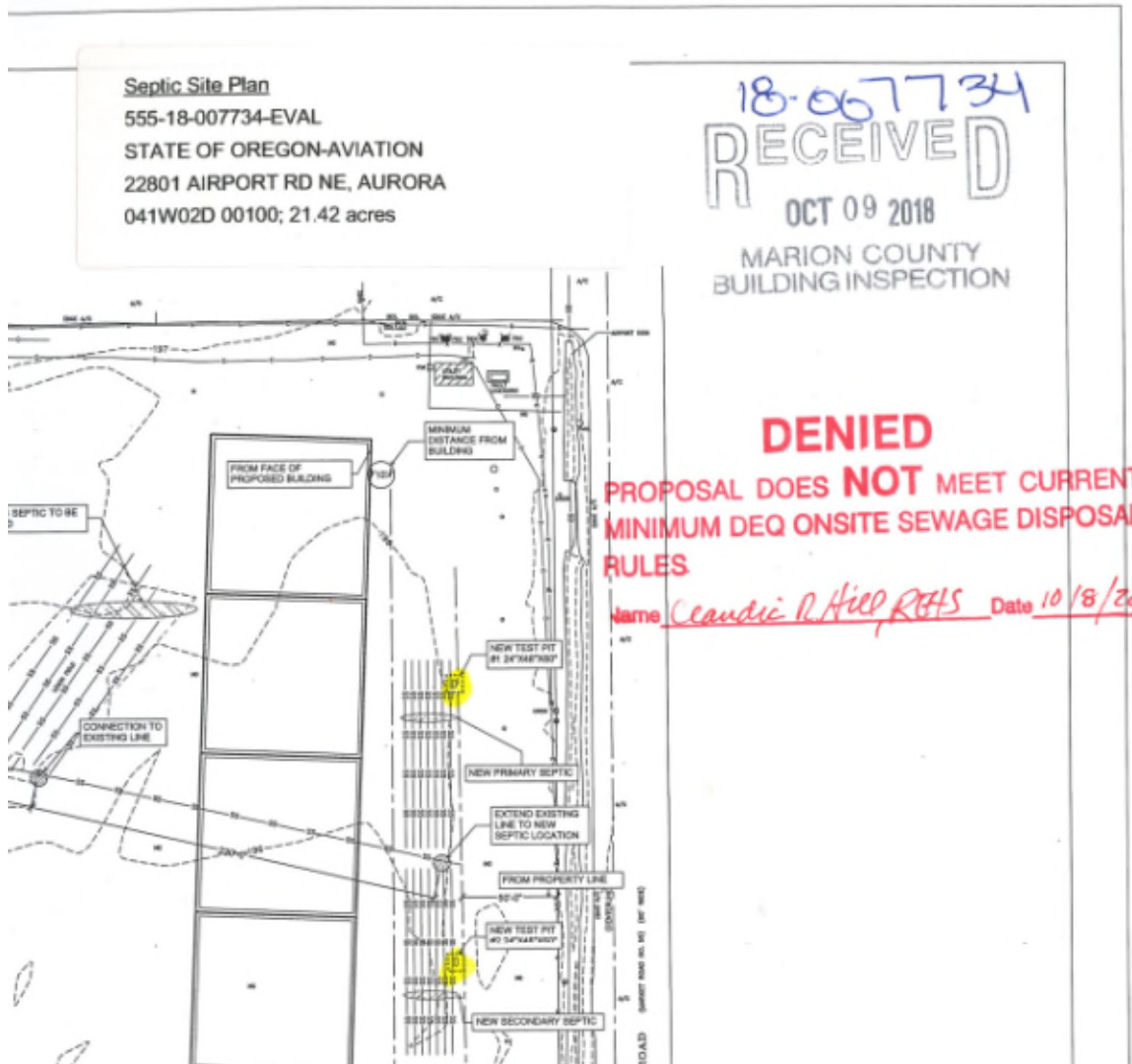
### **Goal 6: Air, Water and Land Resources Quality**

Goal 6 is to: “maintain and improve the quality of the air, water and land resources of the state.” Waste and process discharges “shall not exceed the carrying capacity of [land] resources considering long range needs.” The well documented problems with the airport’s septic effluent disposal are further described below with regard to MCZC 17.171.060.I Sewage Disposal, and that discussion is incorporated herein by this reference.

Planning Guideline 2 of Goal 6 is especially relevant here. “Plans should designate areas for urban and rural residential use only where approvable sewage disposal alternatives have been clearly identified in such plans.” The Master Plan and Airport Layout Plan are not in compliance with this guideline because they propose additional urban development that will increase sewage flows without identifying approvable sewage disposal alternatives. They only apply to the specific conditions at and adjacent to Aurora State Airport, where the soil condition is poor and the available area for septic drainfields is further limited each year as undeveloped areas are covered with more pavement and hangars.

Approvable in this context means approvable under the MCZC 17.171.060.I Sewage Disposal, the relevant zoning code that only allows two specific alternatives. Neither alternative is addressed in the Master Plan or the Airport Layout Plan. For example, the Airport Layout Plan designates two hangar development areas; however it does not identify a single septic field. The record shows the proposed hangar development areas are required for existing septic fields. A recent septic system application would displace an existing septic field with twelve new jet hangars on property owned by the Department of Aviation, near the blue gate on Airport Road.

The application was denied by Marion County, as illustrated on the following page. (Permit No. 18-007734). Two septic test pits were dug. The first was denied because the “soil” was comprised of “fill, garbage, rebar, gravel and plastic.” The second pit was denied “due to evidence of saturation too close to the surface.”



Septic Site Plan  
 555-18-007734-EVAL  
 STATE OF OREGON-AVIATION  
 22801 AIRPORT RD NE, AURORA  
 041W02D 00100; 21.42 acres

18-067734  
**RECEIVED**  
 OCT 09 2018  
 MARION COUNTY  
 BUILDING INSPECTION

**DENIED**  
 PROPOSAL DOES **NOT** MEET CURRENT  
 MINIMUM DEQ ONSITE SEWAGE DISPOSAL  
 RULES

*James Candice R. Hill REHS Date 10/18/2019*

Previous test pits nearby on the same property were also denied in 2014, for permit number 14-001749.

Every other rural development is required first to provide a Site Evaluation, followed by an application with a site plan that clearly designates septic drainage fields and replacement drainage fields, and that illustrates the separation of these fields from water wells and other conflicting uses like roads and parking areas. The Airport Layout Plan needs to be revised to add this key information.

Planning Guideline 6 is directed to the Master Plan and Airport Layout Plan. “Plans of state agencies before they are adopted should be coordinated with and reviewed by local agencies with respect to the impact of these plans on the air, water and land resources in the planning area.” Clearly the Department of Aviation is struggling to implement the Master Plan and Airport

Layout Plan because they did not comply with this guideline prior to proceeding with the development of additional jet hangars in the designated hangar development area. The addition of these hangars does not comply with MCZC 17.171.060.I; that is, there is no means of disposing of more septic effluent at that location.

The Master Plan and Airport Layout Plan propose new hangars in the hangar development area where an existing septic field lies. This was not coordinated with the experts at Marion County Public Works that regulate on-site sewage disposal prior to the purported adoption of the plans circa 2011 and 2012. Furthermore, this development exceeds the carrying capacity of the land. The Master Plan and the Airport Layout Plan have also not been coordinated with the City of Aurora or its sewer master plans. The collection of untreated sewage in holding tanks for disposal by pumper truck conflicts with Goal 6 and also with MCZC 17.171.060.I. The Master Plan and Airport Layout Plan do not specify where the pumper trucks – effectively a pipeline on wheels – will dispose of the sewage.

As noted in their February 13, 2015 letter, the Marion County Board of Commissioners is confident that “sewer service from the City of Aurora would address these deficiencies.” (Ex 12). Because the Master Plan and the Airport Layout Plan make no attempt to evaluate or address the deficiencies in sewage disposal at the airport, they are not in compliance with Goal 6. Nor is there substantial evidence in the record that could support findings that these plans do not exceed the carrying capacity of the land or that the plans have been coordinated with the key government agencies that are responsible for sewage disposal.

### **Goal 9: Economic Development**

Goal 9 is to “provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon’s citizens.” Planning Guideline 5 requires consideration “as a major determinant, the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.”

The Master Plan does not meaningfully consider the limited carrying capacity of the land in terms of providing water and sewer services for the airport. As described more fully below in the discussion regarding Goal 11 and MCZC 17.171.060.I, the development proposed in the Master Plan will exceed the carrying capacity of the land because the available soils are inadequate for

disposal of the septic system effluent for two reasons. First, the continued expansion of buildings and pavement has reduced the area available for septic drainfields beyond the minimum necessary. Second, the Amity silt loam soils drain poorly and thus are not suitable for the large scale septic systems required. Therefore, the Master Plan and Airport Layout Plan exceed the carrying capacity of the land and are not in compliance with Goal 9.

It is noteworthy that the Goal 9 administrative rule (OAR 660-009) only applies within urban growth boundaries, which is where urban economic activity is focused within Oregon. Marion County already has adequate opportunities for urban jet aviation at the Salem Airport which is equipped with a lengthy runway like the one proposed for the Aurora State Airport in the Airport Layout Plan. Goal 9 works in concert with several other goals to foster urban scale economic development within cities and their urban growth boundaries. That both the Master Plan and the Airport Layout Plan promote urban economic development outside of the urban growth boundary and city limits of Aurora demonstrates an inability to comply with Goal 9 and its administrative rule.

### **Goal 11: Public Facilities**

The purpose of Goal 11 is to, “plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.” It places a specific requirement on state agencies that applies to the current Master Plan. “In accordance with ORS 197.180 and Goal 2, state agencies that provide funding for transportation, water supply, sewage and solid waste facilities shall identify in their coordination programs how they will coordinate that funding with other state agencies and with the public facility plans of cities and counties.”

This goal is not met because urban development is proposed on rural lands without coordination of necessary public water and sewer improvements with the public facility plans of the City of Aurora. Planning Guideline 2 requires that public “facilities and services for rural areas should be provided at levels appropriate for rural use only and should not support urban uses.” The Master Plan conflicts with this provision because it fosters expansion of the airport’s public facilities to support urban uses in a rural area.

The airport needs these services, as confirmed in 2015 by the Marion County Board of Commissioners. “Wells at the airport have, at times, been insufficient to provide the water necessary for businesses located at the airport. Also, septic systems are difficult to locate at the airport due to soil conditions.

The provision of water and sewer service from the City of Aurora would address these deficiencies in rural services.” (Ex 12).

Planning Guideline 7 includes a similar provision to Goal 9 regarding the carrying capacity of the land resources of the planning area. Again, the development proposed in the Master Plan exceeds the carrying capacity of the land for septic effluent disposal, contrary to this goal.

As noted in the March 20, 2019 staff report regarding development of the former church camp, the “addition of 16.54 acres of land in airport use to the existing 298 acres of airport will result in more aircraft being based at the Aurora Airport and increase the number of takeoffs and landings at the airport.” More flights means more septic effluent, and more hangars means less area for septic drainfields. The application also proposes to extend the sanitary sewer system from an adjacent property onto the subject property. That extension of sewer service onto rural land requires an exception to Goal 11. See OAR 660-011-0060(9). As it is currently drafted, the Master Plan does not adequately or clearly address this consequence of the increased aviation development proposed.

In the Goal 11 administrative rule, airport facilities in the Master Plan are expressly governed. OAR 660-011-0005(7)(d)(F). The Master Plan must be revised to include an urban growth management agreement regarding the extension of City of Aurora water and sewer service to the airport. OAR 660-011-0010(1)(e). The lack of this agreement conflicts with this rule.

This coordination with the City is also required by OAR 660-011-0015(4) which references state agency coordination agreements. As part of its state agency coordination program, the Department of Aviation has yet to coordinate its public facility plan, including plans for water and sewer services to the airport, with the City of Aurora.

Most importantly, the Master Plan does not address the Goal 11 administrative rule on sewer service to rural lands, OAR 660-011-0060. The current airport operates on a patchwork of septic systems. The Master Plan proposes extending this patchwork system which is now proposed to include extension of an existing system outside the Aurora urban growth boundary to serve new office and aviation uses on the former church camp that are also outside the urban growth boundary. This is described in detail in the consultant’s report for the development on the former church camp, as well as on the Airport Layout Plan, which illustrates additional hangar development areas. Such plans are contrary to OAR 660-011-0060(2)(c). The continued

collection of untreated sewage in holding tanks for disposal by countless pumper truck conflicts with Goal 11 and also with MCZC 17.171.060.I. This is essentially a pipeline on wheels that leads to municipal sewage plants where the pumper trucks are emptied.

The Master Plan and Airport Layout Plan are not in compliance with Goal 11 and lack the substantial evidence necessary to support findings that it could comply with this goal and its administrative rule without prior coordination of public facilities plans with, and annexation into, the City of Aurora.

### **Goal 12: Transportation**

Goal 12 is intended to “provide and encourage a safe, convenient and economic transportation system.” Planning Guideline 3 states that no major transportation facility should be planned or developed outside urban growth boundaries on Class 1 and Class 2 agricultural land “unless no feasible alternative exists”. The existing airport and its proposed runway extension combined with the Keil Rd. relocation are a major transportation facility because they serve national and international destinations, and because they support the largest employment base in north Marion County, even though the airport is located in a less densely developed area. OAR 660-012-0005(11).

It has been argued that this major transportation facility proposed by the Master Plan and the Airport Layout Plan will not occur on agricultural land, because the runway pavement will be located only on exception land. However, the Airport Layout Plan clearly shows that the paved and striped stopway and the runup area extend onto agricultural land. Other accessory components of the major transportation facility include the 55.13 acre runway protection zone, the navigation equipment in the runway protection zone, and the relocated Keil Rd. All these components of the major transportation facility are urban uses that are proposed on Class 2 agricultural land that is not subject to any goal exception.

These components of the Master Plan and the Airport Layout Plan do not comply with Goal 12, because they are both located on Class 2 agricultural land, and because they will divide existing economic farm units. Goal 12, Planning Guidelines A.3 & 4.

The NRCS soil maps confirm that the runway extension, the new runway protection zone, and the relocation of Keil Rd. will all occur on Class 2 soil, Amity silt loam. The new runway protection zone and the relocation of Keil Rd. will occur on land designated as Primary Agriculture in the Marion County Comprehensive Plan, and zoned EFU. The land is also within the Airport

Overlay Zone; however, that zone does not affect the restrictions from the Primary Agriculture comprehensive plan designation and EFU zoning. Rather, the overlay “is to be used in conjunction with the underlying zone. If any conflict in regulation or procedure occurs with the underlying zoning districts, the more restrictive provisions shall govern.” MCZC 171.117.010.

The localizer is a system of horizontal guidance in the instrument landing system, which guides aircraft along the axis of the runway. It is a radio system with frequencies that are generally between 108 and 112 megahertz. It has no other purpose other than to support the urban aviation uses, and is accessory to the runway. The localizer would not exist if not for the runway. For land use purposes, the localizer is a fixture that should be classified as being customarily provided in conjunction with an urban runway.

The argument has been made that the localizer, which will be moved into the new runway protection zone that is now zoned EFU, does not affect land use because it is classified as a permitted use under ORS 215.283(1)(c); MCZO 17.136.040(l); and MCZO 17.177.020(c)(5), in the underlying EFU zone that is covered by the Airport Overlay zone. However, the terms “Instrument Landing System Localizer”, “localizer”, “radio” and “navigation equipment” do not appear in the text of the cited provisions, nor in the text of OAR 660-033-0130 which lists uses allowed in agricultural zones.

This runway and its protection zone have already been classified by LUBA as an urban public facility which requires exceptions to Goals 11 and 14. *Murray, supra*. It is not a private use airport. It is not a structure or a utility that supports a farm use or that is provided in conjunction with, or accessory to, a farm use because even geolocated farm equipment will not use the localizer. There is no explanation of how the localizer relates to any farm use. *Bratton v. Washington County*, 65 Or LUBA 461, 477 (2012). The State Aviation Board should find the localizer is intended to be used as an accessory to the public use airport authorized in the Public Zone. The localizer cannot be permitted under ORS 215.283(1)(c); MCZO 17.136.040(l); or MCZO 17.177.020(c)(5).

Planning Guideline A.4 of Goal 12 states that major transportation facilities “should avoid dividing existing farm units...unless no feasible alternative exists”. The runway extension has the essential characteristics of a major transportation facility and it includes the closure of Keil Rd. The Master Plan and the Airport Layout Plan both include a separate project to relocate portions of Keil Rd., and to construct a new north-south road from Keil Rd.

south toward Ehlen Rd. that will divide existing economic farm units, including the M&H Farms property and the Jenks farm, contrary to this guideline.

The Master Plan does not include any review of other feasible options for Keil Rd. For example, it does not consider converting it to a dead end street, or routing it further east along property lines to obviate the division of these farm units. The omission of this alternatives analysis means there is no substantial evidence in the record to support a finding that Planning Guideline A.4 of Goal 12 is satisfied.

The relocation of Keil Rd. to serve an urban development is not a permitted or conditional use in the EFU zone. MCZC 17.136.020-050. The EFU zoning code anticipates this issue, and requires an exception to Goal 3 in order to authorize the proposed road. MCZC 17.136.050.J.4. The fact that a goal exception is required means that the Master Plan and the Airport Layout Plan do not comply with Goal 3. The relocation and construction of a new north-south road to serve the new urban airport development also clearly conflicts with the Goal 12 administrative rule for transportation improvements on rural lands, because it will divide economic farm units and thereby have a significant adverse impact on them. OAR 660-012-0065(5). Because the Keil Rd. project is necessary to support an urban public facility use, exceptions must also be taken to Goals 11 and 14. The Master Plan and the Airport Layout Plan do not consider the land use requirements for the Keil Rd. project.

There are several feasible alternatives to the runway extension and Keil Rd. relocation that are not fully explored in the Master Plan and Airport Layout Plan. The first alternative is the no-build option. This is feasible because the runway extension is only needed to serve national and international jet traffic, and that service is already provided at the Salem, Portland and Hillsboro airports. A second option is to develop the runway extension consistent with the 1976 Aurora State Airport Master Plan; that is, extend the runway to the north and thereby avoid removal of 55.13 acres of Class 2 agricultural land from production, and avoid constructing a new north-south road through those lands. The findings must analyze these alternatives.

Implementation item B.1 of Goal 12 requires that new transportation facilities should conform to existing land use plans and policies that will “direct urban expansion to areas identified as necessary and suitable for urban development. The planning and development of transportation facilities in rural areas should discourage urban growth.” Both the Master Plan and the Airport Layout Plan conflict with this essential element of Goal 12 because they expand urban development on Class 2 soils. The Aurora State Airport has already been



classified by LUBA and acknowledged by DLCD and LCDC as an urban use. The runway extension and its protection area expand the south portion of the airport by 55.13 acres. This expansion of the airport will serve national and international destinations. There is no evidence in the record to demonstrate that these national and international flights require an airport located outside an urban growth boundary. The Master Plan and the Airport Layout Plan do not comply with this element of Goal 12.

Implementation item B.2 of Goal 12 requires extensive findings.

“Plans for new or for the improvement of major transportation facilities should identify the positive and negative impacts on: (1) local land use patterns, (2) environmental quality, (3) energy use and resources, (4) existing transportation systems and (5) fiscal resources in a manner sufficient to enable local governments to rationally consider the issues posed by the construction and operation of such facilities.”

The record lacks the substantial evidence necessary to support findings that the Master Plan and the Airport Layout Plan have carefully evaluated or applied these five factors. For example, there is not any information in the record about the negative impacts on the local land use pattern, such as the division of two economic farm units. Environmental quality issues are merely postponed to a later environmental assessment and environmental impact statement. There is not any information on the energy consequences of the pipeline on wheels that trucks drinking water in and sewage out from this airport that lacks both public water and sewer service.

As described more fully below in the discussion on MCZC 17.171.060.J, the limited information on the impact to existing surface transportation systems is well out of date, and does not meet Marion County standards for a transportation impact study. Finally, there are no reports on the fiscal impacts to local governments. The omission of these five factors means the Master Plan and the Airport Layout Plan are not in compliance with Goal 12. Nor is there substantial evidence in the record to support findings that these factors can be satisfied.

The Master Plan also requires compliance with OAR 660-012-0060 because the continued expansion of the airport will generate additional motor vehicle traffic and requires comprehensive plan map amendments and zoning map amendments. The limited traffic information provided in the Master Plan

is not substantial evidence upon which a reasonable decision maker could rely to find that it complies with Goal 12.

The airport is the largest land use in North Marion County in terms of employment and trip generation. However, the Master Plan does not include a traffic study in the conventional sense. The typical traffic study first examines existing conditions with specific traffic counts in the field and measurement of the level of service of nearby intersections. It then estimates the new traffic created by the project (trip generation). Next, it determines which directions the traffic to and from the site will go (trip distribution), and then what effect that additional traffic will have on surrounding roads and intersections, including intersections in the City of Aurora. Most importantly, the traffic study does not attempt to identify or recommend specific mitigation for the traffic caused by the Master Plan projects. These necessary elements of a traffic study are explained in more detail in the Marion County Traffic Impact Analysis Requirements document, which has been placed into the record.

The Master Plan does not include this essential traffic information, and the lack of information on intersection operations is especially problematic. The information it does include is more than ten years out of date, and the City of Aurora has placed more recent traffic data in the record. A reasonable decision maker would not rely on incomplete, decade-old data when adopting findings on compliance with Goal 12 when more current and accurate data, including detailed analysis of intersection operations consistent with both Marion County and ODOT requirements, is available. The Master Plan lacks substantial evidence to support the necessary findings.

The Master Plan and the Airport Layout Plan propose to close Keil Rd., and construct a new north-south road across Class 2 agricultural land between Keil Rd. and Ehlen Rd. This change in the traffic pattern has not been evaluated in the Master Plan, nor has it been evaluated in any other process or document such as an adopted or acknowledged transportation plan. This omission means that the Master Plan is not compatible with Goal 12's Planning Guideline A.3, and that there is not substantial evidence to support a finding of compliance.

The March 10, 2011 meeting summary notes:

“Traffic Analysis Recommendations: Rainse [Anderson, of consultant WH Pacific] said that ODA will continue to work with Marion County and the City of Aurora as improvements to Airport Road are considered and the appropriate considerations will have to be made with regard to airport businesses and entrances along

Airport Road. He added that it is likely that there will be sharing of the costs in the system development, similar to what HTS did with their system development, but this will need to be worked out between the entities.”

And that:

“Charlotte Lehan said that the traffic analysis doesn’t recognize Clackamas County’s role in surface transportation. She explained that Clackamas County’s concerns are related to surface transportation impacts and the impacts to area agriculture...Charlotte added that Clackamas County has been excluded from some of the planning steps in this process.”

There is no information in the record to support a finding that the surface transportation impacts to area farmers is addressed in a manner that ensures the cost of farm operations on surrounding agricultural lands will not be substantially increased.

Regarding aviation traffic, the City of Aurora has requested the forecast information in the constrained operations study from the Department of Aviation on multiple occasions; however the information has not been forthcoming. Since the Department of Aviation has declined to provide the information, the City “may limit the airport boundary to areas currently devoted to airport uses[.]” OAR 660-013-0040(9). The Master Plan and the Airport Layout Plan proposal to expand the airport is not consistent with this rule.

For these reasons, the Master Plan is not in compliance with Goal 12 and its implementing rules, and the transportation data in the record is insufficient to support a finding that compliance can be achieved.

#### **Goal 14: Urbanization**

Goal 14 is to “provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.”

Implementation Guideline B.2 of Goal 14 requires that “the type, design, phasing and location of major public transportation facilities (i.e., all modes: air, marine, rail, mass transit, highways, bicycle and pedestrian) and improvements thereto are factors which should be utilized to support urban expansion into urbanizable areas and restrict it from rural areas.” The expansion proposed in

the Master Plan and the Airport Layout Plan is a major transportation facility because it serves both national and international destinations, and because it supports the largest employment base in north Marion County, even though the airport is located in a less densely developed area. See OAR 660-012-0005(11).

The Master Plan and the Airport Layout Plan are not in compliance with this goal because it is a major public transportation facility in a rural agricultural area. A Goal 14 exception is required to extend the runway to the south onto agricultural land because the proposed airport uses including the runway protection zone “are clearly urban public facility uses.” *Murray*, at 283.

The Master Plan proposes to convert more than 70 acres of high-value farmland to urban uses without bringing the property into the urban growth boundary of the City of Aurora, and detracts from the City’s ability to provide services. See OAR 660-014-0040(2) & (3)(c)(A). The subject property is classified as “undeveloped rural land” because it is outside an acknowledged urban growth boundary and is not committed to urban development. See OAR 660-014-0040(1). This is clearly contrary to Implementation Guideline B.2.

A reasons exception to Goal 14 is authorized by OAR 660-014-0040(2), when reasons justify why the policies in Goals 3, 4, 11 and 14 should not apply. However, the need for these goal exceptions confirms that the Master Plan and the Airport Layout Plan are not in compliance with any of these goals. Nor is there substantial evidence in the record to support a finding that they could be compliant with Goal 14, because they promote urban development on rural land, which is the opposite of what Goal 14 requires.

### **C. Marion County Comprehensive Plan**

“State agency rules, plans or programs affecting land use are not compatible with an acknowledged comprehensive plan if the state agency takes or approves an action that is not allowed under the acknowledged comprehensive plan.” ORS 197.180(13).

This quotation demonstrates the Master Plan cannot be approved without detailed findings on compatibility with the acknowledged Marion County Comprehensive Plan. As described below, the Master Plan is not compatible with that plan in several respects, although it could comply with that plan by requiring annexation into the City of Aurora. Until the Master Plan is revised to ensure that annexation precedes additional urban development of the airport, it conflicts with this statute.

The principal justifications set forth in the Master Plan emphasize the economic advantages of expanding the Aurora airport, without adequate consideration of other County policies which favor the protection of high-value agricultural land and urbanization in cities. These other policies ensure urban development that can be accommodated within existing urban growth boundaries is not built on resource land. To that end, they mandate that development outside urban growth boundaries must be compatible with surrounding agricultural uses, and require development in rural areas to mitigate its traffic impacts and to dispose of its sewage on site. As explained in the comprehensive plan, “the State land use program provides greater protection for high-value farmland compared with other farmland protected under Goal 3.” (II Goals and Policies, Agricultural Lands, Introduction.) The former church camp, the 55.13 acre runway extension area, and the proposed new right-of-way for the Keil Rd. relocation all are located on Class 2 soils, which is high-value farmland.

The Master Plan neither interprets nor applies the comprehensive plan and zoning code of Marion County. It lacks substantial evidence for doing so, and is inconsistent with the purposes, policies, and text of those regulations, and inconsistent with the state land use regulations which the comprehensive plan implements. As a result, the Master Plan proposes new development that is not allowed under the following provisions of the Comprehensive Plan.

### **1. Agricultural Lands**

The introduction to the comprehensive plan section on agriculture includes two statements that emphasize agriculture’s vital role.

“Protection and preservation of farmland is primarily for the purpose of maintaining the soil resource and farm industry as a basis for food and fiber production now and in the future. Because of its dependence on the land resource, farming is sensitive to the effects of land use change and intensity. As explained in the rural issues and problems discussion, the division of land into small parcels and the presence of non-farm activities can drastically affect farm operations. Therefore, to achieve the goal of protecting and preserving the agricultural industry, non-farm activities in rural farm areas of Marion County must be strictly controlled.”

“It is the intent of Marion County to maintain the ability to economically farm these lands by limiting conflicts with non-farm uses. This will be accomplished by prohibiting incompatible non-farming activities and by limiting

land division to those compatible with agricultural needs consistent with the requirements of either ORS 215.213 or 215.283 and OAR 660-033.”

The Master Plan and Airport Layout Plan propose expansion of an incompatible urban public facility onto agricultural land that is not allowed under the Marion County policies that follow.

## 2. Agricultural Lands Policies

*1. Preserve lands designated as Primary Agriculture by zoning them EFU (Exclusive Farm Use).*

The airport and its surrounding lands have Amity silt loam soil, rated as Class 2 and as high-value farmland. Thus outside the airport, the land is designated Primary Agriculture by the Comprehensive Plan and zoned EFU.

*2. Maintain primary agricultural lands in the largest areas with large tracts to encourage larger scale commercial agricultural production.*

The Master Plan and Airport Layout Plan propose to divide the M&H Farms and Jenks economic farm units, which are both large tracts comprised of several parcels, and therefore they are not allowed under this policy.

*3. Discourage development of non-farm uses on high-value farmland and ensure that if such uses are allowed that they do no cause adverse impacts on farm uses.*

The Airport Layout Plan and Master Plan encourage the development of non-farm uses by proposing urban aviation uses on this agricultural land. They do so without consideration of the adverse farm impacts. The proposal is not allowed under this policy.

*5. Divisions of agricultural lands shall be reviewed by the County and comply with the applicable minimum parcel size and the criteria for the intended use of the property.*

The relocation of Keil Rd. will divide several existing parcels into smaller parcels that cannot comply with the minimum parcel size in the EFU zone. Therefore the Master Plan and Airport Layout Plan are not consistent with this policy.

*9. When creation of a non-farm parcel is warranted, the size of the parcel shall be as small as possible to preserve the maximum amount of farmland in the farm parcel. Requirements may need to be imposed when non-*

*farm parcels are allowed in farm use areas to minimize the potential for conflicts with accepted farm management practices on nearby land. These may include special setbacks, deed restrictions and vegetative screening.*

The Master Plan does not address this policy, nor does it propose any mitigation such as special setbacks, deed restrictions or vegetative screening that has the potential to minimize the potential for conflicts with farm management. The proposed development is not allowed under this policy.

### **3. Rural Development**

The introduction to this section of the comprehensive plan defines rural development as “the conversion of land outside of all urban growth boundaries to a more intensive non-resource-oriented use[.]” That is precisely what is proposed. The general development policies applicable to the proposed urban development of the subject rural properties follow.

*3. Rural industrial, commercial and public uses should be limited primarily to those activities that are best suited to a rural location and are compatible with existing rural developments and agricultural goals and policies.*

The proposed urban aviation and office uses are not best suited to a rural location, especially on high-value farmland, because they are proposed at an urban density. For example, the Master Plan and Airport Layout Plan do not identify any area for sewage disposal, and actually propose hangar development over the top of an existing septic field. It will generate more than 1000 new daily vehicle trips which will exceed the capacity of the rural transportation system. They are urban uses typically found inside urban growth boundaries where they serve local population centers.

The uses are not compatible with agricultural goals and policies because they displace the former resource use of the subject properties, and place urban development on high-value farmland. Rural industrial, commercial and public uses should not be located on high-value farmland when they can be reasonably accommodated within existing urban growth boundaries where they will not displace resource land uses and not conflict with agricultural goals and policies. Nor should they be located near existing UGBs where they will adversely affect the urban development of the City of Aurora consistent with Goal 14.

#### 4. Rural Development Policies

1. *Where there is a demonstrated need for additional commercial uses in rural Marion County they should be located in designated unincorporated communities.*

Marion County includes the following designated rural communities, none of which include the Aurora State Airport: Brooks, Butteville, Labish Village, Macleay, Mehama, Marion, Monitor, Quinaby and Shaw. The proposed aviation and office uses should be located within these designated communities, or within urban growth boundaries. The Master Plan conflicts with this policy.

2. *The boundaries of identified unincorporated communities shall not be expanded to accommodate additional development.*

Consistent with this policy, the boundary of the unincorporated Aurora Airport should not be expanded to accommodate additional development until urban services are provided; that is, until the airport is annexed into the City of Aurora.

3. *Service districts within unincorporated communities may be created and expanded to serve the entire designated rural community; however, services shall not be extended outside of the community unless necessary to correct a health hazard.*

The water service district that would supply the fire suppression water should not be expanded outside the existing airport boundary.

4. *Public facilities in rural communities and rural service centers should be designed to service low density rural development and not encourage urbanization.*

The airport is an urban public facility, and the Master Plan proposes expansion contrary to this policy, because it is designed to serve high density urban development. It encourages further urbanization because it provides an urban service to a rural area, in support of urban scale buildings and uses.



## 5. Rural Industrial Policies

1. *Industrial uses in conjunction with farm or forest uses shall be evaluated to determine if they need to be located on resource lands or whether an equally suitable location is available in an urban area or on non-resource lands in a rural area.*

The Master Plan suggests the airport may include industrial uses; however, it does not indicate the airport operates in conjunction with farm or forest uses. The airport operates independently from the surrounding agricultural uses. Equally suitable locations for the urban aviation uses are available in the McMinnville, Hillsboro and Salem urban areas. Equally suitable locations for the office uses proposed on the former church camp are available in Wilsonville, Aurora, and Salem, among other communities. Therefore, the expanded urban uses proposed in the Master Plan do not need to be located on Class 2 resource land as proposed.

2. *Rural industries should be compatible with existing development and farm or forest uses in the vicinity, should not involve a large number of employees, should not require heavy truck traffic through residential areas or on unimproved roads, and should not have the potential to exceed the environmental capacity of the site or require urban services.*

The proposed aviation and office uses are not compatible with existing agricultural development on surrounding high-value farmland. Customary farm practices including plowing and fertilizing produce dust, which is a conflict because it harms sensitive aviation instruments. The comprehensive plan confirms that: “the State land use program provides greater protection for high-value farmland compared with other farmland protected under Goal 3.” (II Goals and Policies, Agricultural Lands, Introduction.) Conflicts must be resolved in a manner that protects farm uses on high-value farmland.

The application for development of the former church camp proposes hundreds of employees. The site plan shows 489 parking spaces, which will accommodate more than 400 employees. (See Master Plan Sheet L1.0, attached as Exhibit I to the application). For a rural area, this is an extraordinarily large number of employees, and is contrary to this policy.

As described below, that application proposes to truck the septic system wastewater that cannot be disposed of on the site due to the poor drainage of the soil, and will also truck away the industrial wastewater. Those trucks will travel through residential areas in the City of Aurora (at the southern segment

of Airport Rd, which is zoned and developed for residential uses) or Canby (on Knights Bridge Rd, also zoned and developed for residential uses).

The scale of the proposed uses vastly exceeds the environmental capacity of the site soils for treatment and disposal of the sanitary sewer wastewater, as more fully described below.

*3. A non-resource-related industrial use should not be permitted on resource lands unless an evaluation of the relevant County and State goals and the feasibility of locating the proposed use in an urban growth boundary or rural non-resource lands show that the proposed site on resource lands is the most suitable.*

The Master Plan proposes airport-related industrial use; however, it does not evaluate the relevant County and State goals, or the feasibility of locating the industrial uses in the nearby City of Aurora, or other surrounding cities. Nor does the Master Plan consider other non-resource lands in the rural area in north Marion County. The omission of information in the record to support this required analysis demonstrates there is not substantial evidence for a finding that this policy allows the uses proposed in the Master Plan.

## **6. Rural Services Policies**

### **General Policies**

*1. The impact on existing services and the potential need for additional facilities should be evaluated when rural development is proposed.*

The Master Plan is inconsistent with this policy (and the Goal 11 rule that it implements) because it postpones evaluation of the impact on existing septic systems, and because the need for additional facilities is well known since the existing septic systems lack sufficient capacity for the increased sewage flow. The Master Plan does not evaluate the need for public water and sewer services, notwithstanding the clear statement of this need by the Marion County Board of Commissioners. “The provision of water and sewer service from the City of Aurora would address these deficiencies in rural services.”

*2. It is the intent of Marion County to maintain the rural character of the areas outside of urban growth boundaries by only allowing those uses that do not increase the potential for urban services.*

Nearly 300,000 square feet of urban office and aviation buildings are proposed on the former church camp, in addition to many acres of “hangar development area” within the current airport boundary. These urban uses are

inconsistent with the rural character outside of urban growth boundaries. This is urban development which increases the potential and the need for urban services, as described by the Marion County Board of Commissioners' letter of February 13, 2015. The Master Plan and Airport Layout Plan are inconsistent with this policy and the Goal 11 rule that it implements.

*3. Only those facilities and services that are necessary to accommodate planned rural land uses should be provided unless it can be shown that the proposed service will not encourage development inconsistent with maintaining the rural density and character of the area.*

The proposed urban uses are not included within the adopted comprehensive plan; that is, they are not planned or allowed rural uses. They are inconsistent with this policy and the Goal 11 and Goal 14 rules that it implements, because they encourage additional urban development that is inconsistent with the rural density of the surrounding area.

*4. The sizing of public or private service facilities shall be based on maintaining the rural character of the area. Systems that cannot be cost effective without exceeding the rural densities specified in this Plan shall not be approved. The County shall coordinate with private utilities to ensure that rural development can be serviced efficiently.*

This policy is especially important due to its use of the word "shall" and the resulting mandatory prohibition on exceeding rural density. The proposed extension of the Aurora Airport Water Control District and extension of the community sewage to support urban development of the subject properties "shall not be approved". This policy precludes the extension of the water district services and the community septic system to serve the proposed runway extension and development on the former church camp.

The rural character of the area is determined by its classification as high-value farmland. The comprehensive plan emphasizes that: "the State land use program provides greater protection for high-value farmland compared with other farmland protected under Goal 3." (II Goals and Policies, Agricultural Lands, Introduction.) The Master Plan is inconsistent with this policy and the Goal 3, 11 and 14 rules that it implements.

## 7. Special District Policies

*1. Marion County shall coordinate with the special service districts in the County in planning for growth and development which will occur within the districts. A joint review process established through coordination agreements will be used to facilitate this coordinated planning.*

This policy specifically states the future growth and development will occur “within the districts”. The proposed development described in the Master Plan is outside the boundary of the Aurora Airport Water Control District and therefore extension of the district’s services beyond that boundary is contrary to the express text of this policy. There is no information in the record to demonstrate the necessary coordination has occurred, and the City of Aurora must be included in the joint review process. The Master Plan is not allowed under this policy or the Goal 2, 11 and 14 rules that it implements.

*6. The creation or expansion of any sewer district as well as the extension of sewer services to lands outside an existing service district's boundaries, unincorporated communities' boundaries, urban growth boundaries or city limits shall be discouraged unless the area to be served has demonstrated persistent health hazard problems confirmed by the County Health Department and the State Department of Environmental Quality and needs for which no other practical and reasonable alternative is available. Cost may be a factor in determining whether an alternative is practical and reasonable; however, cost shall not be the only factor or even the primary factor. Any extension shall require the approval of the Marion County Board of Commissioners and an exception to Goal 11 (Public Facilities and Services).*

The pending development applications for the former church camp propose to provide sewer service by extensions of the system(s) on neighboring properties and by truck, for the collection and disposal of sanitary and industrial wastewater that cannot be disposed of on site. There is no information in the record to demonstrate there is a persistent health hazard, and thus the extension of sewer service is to be discouraged.

The Master Plan does not evaluate the cost of annexing into Aurora and connecting to its municipal system. As noted elsewhere, the extension of sewer service to the former church camp, by whatever means, requires a Goal 11 exception, and this policy confirms that “any” extension of sewer service requires the Goal 11 exception. The Master Plan is not allowed under this policy, or under the Goal 11 rule that it implements.

7. *The creation or expansion of any water district as well as the extension of water services to lands outside an existing service district's boundaries, unincorporated community's boundaries, urban growth boundaries or city limits shall be discouraged unless the area to be served has demonstrated persistent health hazard problems confirmed by the County Health Department and the State Department of Environmental Quality and needs for which no other practical and reasonable alternative is available. Cost may be a factor in determining whether an alternative is practical and reasonable; however, cost shall not be the only factor or even the primary factor. Any extension shall require the approval of the Marion County Board of Commissioners.*

The Master Plan assumes extension of fire suppression water service to the former church camp and other hangar development areas; however, there is no information in the record to demonstrate there is a persistent health hazard, and thus the extension of water service is to be discouraged. It also requires Board of Commissioners approval, and there is no information in the record that such approval has been or could be obtained.

Marion County must provide notice of any application for such an extension and the Goal 11 exception that such an extension requires. The Master Plan is not consistent with this policy, or the Goal 11 rule that it implements.

## **8. Urban Land Use Goals**

The urbanization goal of Marion County is to provide for an orderly and efficient transition from rural to urban land use. Sub-goals for beneficial patterns of urban land use include the following:

*a. Development of urbanization consistent with area-wide goals and objectives.*

The Master Plan supports urbanization of high-value farmland without annexation to a city, and without an orderly transition. The Master Plan does not include specific information about sewer service. The applications for the former church camp indicate the sewage cannot be managed on site, and the Airport Layout Plan does not include either a septic drainfield or an area for a replacement drainfield. The Master Plan omits discussion of potable water, but assumes extension of a fire suppression water supply without any information that the supply will be sufficient, especially since the pending application for the former church camp proposes large office buildings with much higher occupancy than any existing buildings currently served or sprinkled by that

water supply. The proposed urbanization conflicts with the area-wide goals for the preservation of agricultural land and the Master Plan is therefore not allowed under this policy and the Goal 3, 11 and 14 rules that it implements.

*b. Establish urban growth boundaries to identify and separate urbanizable land from rural land and contain urban land uses within those areas most capable of supporting such uses.*

The Master Plan and Airport Layout Plan are contrary to this policy because they do not contain urban land uses within an existing urban growth boundary. Rather, they approve an urban land use outside an urban growth boundary, notwithstanding the availability of land inside the Salem urban growth boundary that is already planned, zoned, and available for lease that can reasonably accommodate the proposed aviation and office uses. There is not information in the record to demonstrate the Aurora State Airport area is capable of supporting the proposed urban uses, which is why the wastewater must be collected on site and then transported to a municipal system by truck for treatment and disposal. The Master Plan would impair urban-level utilization of lands already within the City of Aurora and its UGB, and is inconsistent with this policy and the Goal 14 rule that it implements.

*c. To provide for an orderly transition from rural to urban land use.*

The transition to urban land use includes the transition to urban governance with full urban services. The Master Plan would continue the long history of serial goal exceptions for urban land uses without urban governance or services, contrary to this policy and the Goal 14 rule that it implements, because urban uses are intended to be located within cities.

It is also contrary to Goal 2, Land Use Planning because the lack of municipal zoning for urban land uses has allowed an urban area to develop without such basic urban public facilities as a single public street or sidewalk within the airport, potable water service, or sanitary sewer service. The proposed urban growth near the City of Aurora's UGB, with its consequent increase in noise and traffic, will have a direct impact on the City of Aurora and be inconsistent with its comprehensive plan, which the Master Plan does not address. The Master Plan does not adequately balance the needs of the City of Aurora or citizens in the area, and therefore is not allowed under this policy and the Goal 2, Goal 11, Goal 12, and Goal 14 rules that it implements.

*d. Development of a population distribution pattern in which most persons employed within an urban community live in and participate in the activities and government of that community.*

The Master Plan would approve additional large scale employment uses on high-value farmland that is geographically isolated from an urban community and residential lands. It therefore is not allowed under this policy and the Goal 2 and Goal 14 rules that it implements.

*f. Development of a commercial land use pattern which assures a convenient and adequate supply of goods and services to the resident, transient and trade area population.*

The Master Plan would authorize additional commercial uses isolated from any urban area, contrary to this policy. The proposed office and aviation uses would be more conveniently located at the Salem airport, where they would be more convenient to area residents, transient aviators and passengers who utilize nearby urban amenities such as hotels, rental cars and restaurants, and to the trade area population because the airport is located within a large area zoned for complementary commercial and industrial uses. The Master Plan is contrary to this policy and the Goal 9 and Goal 14 rules that it implements.

*g. Development of commercial areas and employment centers that favor being located in relation to the urban transportation system.*

The Master Plan would authorize new large scale commercial and employment growth well away from the urban transportation system. As noted elsewhere, Airport Rd. is a major rural collector and is not classified as an urban street or developed for the proposed urban uses, contrary to this policy. As written, the Master Plan would seriously frustrate urban-level utilization of lands in Salem and Aurora is therefore not allowed under this policy and the Goal 12 and 14 rules that it implements.

*h. Development of industrial land use within urbanized areas unless an industry specifically is best suited to a rural site.*

The proposed uses are by definition urban public facilities as LUBA and Marion County previously determined in the prior Goal 11 and Goal 14 exceptions. The Master Plan would allow the uses in an agricultural area instead of an urban area as required by this policy. The uses are not best suited to a rural site; they are urban uses which, in Oregon's land use system, are compelled to locate within an urban growth boundary when there is land within a boundary that can reasonably accommodate the use. As described elsewhere, there is aviation land within the urban growth boundaries of Metro and Salem, including longer runways, that can accommodate the proposed uses. In addition, the comprehensive plan notes the high-value farmland receives

greater protection than other rural lands. The Master Plan is inconsistent with this policy and the Goal 3 and 14 rules that it implements.

*i. Provision of sufficient areas for future industrial land use.*

The Master Plan is silent on this topic. However, the history of similar applications makes it clear that the county's standard practice is to continue the conversion of high-value agricultural land to industrial uses that qualify as through the fence businesses, one goal exception at a time. The history of land use in the area demonstrates that there is no long range industrial land use plan, which can only occur in an urban growth boundary. The Master Plan for continued expansion of an urban industrial area outside an urban growth boundary through serial goal exceptions is inconsistent with this policy and the Goal 14 rule that it implements. The Master Plan would seriously frustrate urban-level utilization of lands in Aurora.

*j. Direct urbanization away from agricultural areas composed of major units of Class I through IV soils.*

The subject properties and surrounding lands are Class II soils. The Master Plan is contrary to this policy because it would direct urbanization toward Class 2 agricultural properties. Therefore it is inconsistent with the text of this policy and the Goal 3 and Goal 14 rules that it implements.

## **9. Urban Growth Policies**

*1. The type and manner of development of the urbanizable land shall be based upon each community's land use proposals and development standards that are jointly agreed upon by each city and Marion County and are consistent with the LCDC Goals.*

The City of Aurora disagrees with the proposed urban development of the subject properties. The Aurora State Airport and Master Plan are not consistent with several LCDC Goals, which is why several goal exceptions have been taken in the past for former expansions, and are required for the expansion proposed by the pending Master Plan and Airport Layout Plan. By definition, goal exceptions are not allowed under this policy. The Master Plan and Airport Layout Plan are therefore inconsistent with this policy and the Goal 2, 3, 6, 9, 11, 12 and 14 rules that this policy implements.

*2. The provision of urban services and facilities should be in an orderly economic basis according to a phased growth plan.*



The continued urban development around the airport using serial goal exceptions, without urban services such as water, sewer and sidewalks and without a phased growth plan that includes urban services, conflicts with this policy. The Master Plan would allow additional urban development without urban facilities and services, which is inconsistent with the text of this policy and the Goal 11, 12 and 14 rules that it implements.

*3. Development of the urban area should proceed from its center outward.*

This policy promotes the growth of cities, with increasing density at their core. The Master Plan would allow just the opposite; that is, urbanization that proceeds from outside a city toward the City of Aurora, and thus is inconsistent with the text of this policy and the Goal 14 rule that it implements. It also conflicts with the goals of the City of Aurora to extend its UGB in order to accommodate urban development of the subject properties.

*4. Development should occur in areas of existing services before extending new services.*

The Aurora State Airport is running out of land. New services should be extended from the City of Aurora to support the aviation development proposed in the Master Plan. As drafted, the Master Plan omits serious consideration of the need for public services and therefore is not allowed under this policy.

*5. Divisions of urbanizable land shall consider the maximum utility of the land resource and enable the logical and efficient extension of services to such parcels.*

The airport is not classified as urbanizable land because it is outside an urban growth boundary. The Master Plan nonetheless proposes to divide economic farm units by constructing a new right-of-way through them. This adversely affects the land resource and thus is not consistent with this policy.

*6. Generally cities are the most logical providers of urban services. Where special service districts exist beyond the city limits and within the urban growth boundary such as around Salem, all parties shall work towards the development of the most efficient and economical method of providing needed services. Urban services shall not be extended beyond the urban growth boundary, except as provided for in Special District Policies 6, 7 and 8.*

The City of Aurora is the logical provider of urban services. The proposed extension of fire suppression water service to the hangar development area and the former church camp is not consistent with Special District Policies 6, 7, and 8. The use of the word “shall” emphasizes that this prohibition is mandatory, and therefore the Master Plan is not allowed under this policy.

## 10. Special District Policies

*6. The creation or expansion of any sewer district as well as the extension of sewer services to lands outside an existing service district's boundaries, unincorporated communities' boundaries, urban growth boundaries or city limits shall be discouraged unless the area to be served has demonstrated persistent health hazard problems confirmed by the County Health Department and the State Department of Environmental Quality and needs for which no other practical and reasonable alternative is available. Cost may be a factor in determining whether an alternative is practical and reasonable; however, cost shall not be the only factor or even the primary factor. Any extension shall require the approval of the Marion County Board of Commissioners and an exception to Goal 11 (Public Facilities and Services).*

The former church camp application proposes to provide sewer service by truck, for the collection of sanitary and industrial wastewater that cannot be disposed of on site. There is no information in the record to demonstrate there is a persistent health hazard, and thus the extension of sewer service is to be discouraged. The Master Plan vaguely describes annexing into Aurora and connecting to its municipal system, but it does not include cost estimates or civil engineering data. The extension of sewer service to the former church camp, by whatever means, requires a Goal 11 exception and this policy confirms that “any” extension of new sewer service requires the Goal 11 exception. The Master Plan is not consistent with this policy, or the Goal 11 rule that it implements.

*7. The creation or expansion of any water district as well as the extension of water services to lands outside an existing service district's boundaries, unincorporated community's boundaries, urban growth boundaries or city limits shall be discouraged unless the area to be served has demonstrated persistent health hazard problems confirmed by the County Health Department and the State Department of Environmental Quality and needs for which no other practical and reasonable alternative is available. Cost may be a factor in determining whether an alternative is practical and reasonable; however, cost shall not be the only factor or even the primary*

*factor. Any extension shall require the approval of the Marion County Board of Commissioners.*

The Master Plan assumes extension of fire suppression water service to the new development; however, there is no information in the record to demonstrate there is a persistent health hazard, and thus the extension of new water service is to be discouraged. The Master Plan obliquely references the cost of annexing into Aurora and then connecting to its municipal system, without providing cost estimates or civil engineering data. Therefore, it lacks substantial evidence. As noted elsewhere, the extension of water service to the former church camp requires a Goal 11 exception. The Master Plan is not consistent with this policy, or the Goal 11 rule that it implements.

*8. Consistent with Policy No. 7 above, it is strongly encouraged that the State Water Resources Department examine the need to abandon those wells on properties connecting to the extended water service with the goal of stabilizing aquifers and preventing further decline in groundwater levels.*

There is no information in the record to suggest that the Master Plan has been coordinated with the Oregon Water Resources Department to implement this policy, and thus there is not substantial evidence for showing that this policy is satisfied.

## **11. Growth Management Framework Purposes**

The purposes of the comprehensive plan's Growth Management Framework are to:

*1. Identify common goals, principles, and tools that will lead to more coordinated planning and promote a collaborative approach to developing solutions to growth issues.*

The common goals of the Oregon statewide planning system are identified in OAR 660-015. The Master Plan is not compatible with those goals, as demonstrated by the need for new goal exceptions every time the airport expands. The City of Aurora's identified goal is to bring the Aurora State Airport into the urban growth boundary consistent with the statewide goals for economic development, efficient provision of public services, transportation and urbanization. The Master Plan does not account for the City's goals or acknowledge their consistency with the identified statewide planning goals. Therefore, the Master Plan is inconsistent with this purpose and the purposes of Goals 2, 9, 11, 12, and 14 which it implements.

*2. Be consistent with city plans for growth by modifying the growth projections in response to city feedback.*

The Master Plan is not consistent with City of Aurora plans for growth, and does not modify the proposed urban growth on rural land in response, for example by limiting the proposed development to rural scale. The Master Plan is inconsistent with this purpose and the purpose of Goal 2 which it implements.

*3. Protect farm, forest, and resource lands throughout the County by considering the existing growth capacity of each community, fostering the efficient use of land, and evaluating urban growth boundary expansion needs.*

The Master Plan does not protect farm land because it authorizes unwarranted urban development on Class 2 agricultural land without considering the existing urban growth capacity of Aurora, or of the cities which already have land available inside their urban growth boundaries to reasonably accommodate the proposed uses. The Master Plan does not describe how the proposed aviation facilities will foster the efficient use of land, nor does it evaluate the urban growth boundary expansion needs of Aurora and how those needs could promote the mandated efficiency of land use. Therefore, the Master Plan is not allowed by the text of this purpose and the purposes of Goals 2, 3, 11, and 14 which it implements.

*4. Maintain physical separation of communities by limiting urbanization of farm and forest lands between cities.*

The Master Plan conflicts with this purpose by promoting the growth of urban uses on farm land between the City of Aurora and the City of Wilsonville. It is therefore inconsistent with the text of this purpose and the purposes of Goals 3 and 14 which it implements.

*5. Maintain community identity by encouraging each community to decide how it should grow and by promoting city decision-making control.*

The Master Plan is inconsistent with this purpose because it discourages the City of Aurora, and is contrary to the City's policy to bring the airport into the urban growth boundary and city limits prior to the approval of additional airport development. It therefore is not allowed by the text of this purpose and the purposes of Goals 2, 11 and 14 which it implements.

*6. Support a balance of jobs and housing opportunities for communities and areas throughout the County that contribute to the needs of regional and city economies.*

The Master Plan omits mention of this purpose, and does not include information regarding the balance of jobs and housing in the affected area. It therefore lacks substantial evidence for finding that this purpose is satisfied.

*7. Provide transportation corridors and options that connect and improve accessibility and mobility for residents along with the movement of goods and services throughout the County.*

Traffic on Airport Rd. already exceeds the capacity of a rural major collector, therefore the lack of substantial frontage improvements means that safety and mobility for residents, goods, and services are impaired by the proposal. The Master Plan is therefore inconsistent with the text of this purpose and the purpose of Goal 12 which it implements.

## **12. Growth Management Framework Goals**

*1. Base decisions on a long-range vision for the area, incorporating both community visions and long-range city plans. Ensure that the effects city decisions have on the surrounding County and neighboring cities are understood and considered, and that identified conflicts are resolved.*

The long range vision for the area includes the City of Aurora's intention to expand its urban growth boundary to encompass the airport. This is neither understood nor considered in the Master Plan. Likewise, the land use conflicts identified by the City have not been resolved. As a result, the Master Plan is inconsistent with the text of this goal and the purposes of Goal 2 and Goal 14 which it implements.

*2. Foster the use of creativity and innovation in planned growth and development projects to maintain the unique character of all cities.*

The properties designated for urban development in the Master Plan are not planned for urban growth; they are planned and zoned for agricultural use. The proposed urban development of this rural land does nothing to maintain the unique character of Aurora, and therefore the Master Plan is inconsistent with the text of this goal and Goals 2 and 14 which it implements.

*3. Provide for balanced and managed growth to ensure equity among the cities and allow for more efficient use of our natural resources.*

The proposed development does not ensure equity among the cities, because it promotes urban development outside of any city or urban growth boundary. The prior letter from the City of Salem emphasizes the ongoing inequity of continued urban growth at the Aurora State Airport. The Master

Plan is therefore inconsistent with the text of this purpose and the purpose of Goals 2 and 14 which it implements.

*4. Honor the unique identities of communities and strengthen unique characteristics.*

The City of Aurora has formally identified with the airport since it began comprehensive planning in 1983. The airport acts so as to continue expanding without regard for the City's comprehensive plan. The Master Plan does not honor the City's perspective, and is therefore inconsistent with the text of this purpose and the purpose of Goal 2 which it implements.

*5. Embrace ethnic and cultural diversity and address the needs of different cultures in land use decisions and consider ethnic and cultural differences in the long-range vision and zoning designations.*

The Master Plan's proposed urban development without the simultaneous provision of urban services in a rural area promotes land use conflicts, which Oregon communities traditionally consider and resolve through utilization of the Goal 14 urbanization procedures, which provide the framework for resolving the rural and urban land use conflicts. Because the Master Plan requires another Goal 14 exception, it is contrary to this purpose and the Goal 14 rule that it implements.

*6. Rely on the strengths of city decision-making coordinated with a Countywide vision.*

The Master Plan conflicts with the City of Aurora's decision to formally urbanize the Aurora State Airport, and does not rely upon or even acknowledge the strengths of the City's decision making. It is therefore inconsistent with the text of this purpose and the purposes of Goals 2 and 14 which it implements.

*7. Ensure long-range coordination among the County, cities, and special districts through monitoring of the cumulative effects of city plans and decisions, and utilization of uniform standards.*

The Master Plan is inadequately coordinated with the City of Aurora, and mere provision of notice pursuant to ORS 197.763(2) does not satisfy the coordination policy requirements of ORS 197.010(1) and 197.180. The Master Plan does not monitor City plans and decisions, and disregards Goal 14 urbanization procedures in favor of taking repeated goal exceptions to allow urban growth on high-value farmland. It frustrates urban-level utilization of lands in in the City of Aurora and its existing UGB, and therefore is inconsistent

with the text of this purpose, the purposes of Goals 2 and 14, and the policies of ORS 197.010(1) and 197.180 which it implements.

#### **D. Marion County Rural Zoning Code**

“State agencies shall carry out their planning duties, powers and responsibilities and take actions that are authorized by law with respect to programs affecting land use... in a manner compatible with acknowledged comprehensive plans and land use regulations.”

This quotation from ORS 197.180(1)(b) demonstrates the Master Plan cannot be approved without detailed findings on compatibility with the acknowledged Marion County Rural Zoning Code. As described below, the Master Plan is not compatible with numerous zoning code provisions. Until the Master Plan is revised to ensure that annexation precedes additional urban development of the airport, it conflicts with this statute.

The principal justifications set forth in the Master Plan emphasize the economic advantages of expanding the airport, without full consideration of zoning code provisions, which mandate that development outside urban growth boundaries must be compatible with surrounding agricultural uses, must mitigate its traffic impacts, and must dispose of its septic effluent on site.

The Master Plan and proposed findings neither interpret nor apply the rural zoning code of Marion County. There is insufficient substantial evidence for doing so. The Master Plan and Airport Layout Plan conflict with the purposes, policies, and text of the referenced development standards and criteria, and are inconsistent with the state land use regulations which the zoning code implements. As a result, the Master Plan proposes new uses that are not allowed under the following provisions of the zoning code.

##### **1. MCZC 17.171.030 Conditional Uses in the Public Zone**

The Master Plan’s proposed uses are not permitted outright in the EFU zone. The application for conversion of the former church camp proposes 123,000 square feet of office space, although “office” is not listed as either a permitted use (see MCZC 17.171.020) or a conditional use (see MCZC 171.17.030) in the Public zone. The word “office” does not appear in the text. The prohibition by exclusion of office from the lists of permitted and conditional uses means there is an affirmative obligation to demonstrate the proposed

office is actually related to the airport. The Master Plan findings should address this discrepancy.

Assuming a zone change to Public, conditional uses must still satisfy three discretionary criteria:

*A. That it has the power to grant the conditional use;*

*B. That such conditional use, as described by the applicant, will be in harmony with the purpose and intent of the zone;*

*C. That any condition imposed is necessary for the public health, safety or welfare, or to protect the health or safety of persons working or residing in the area, or for the protection of property or improvements in the neighborhood.*

Criterion A is satisfied because the Board of Commissioners has the requisite authority. Criterion B requires analysis of, and compliance with, the purpose and intent of the Public zone, found in MCZC 17.171.010:

*The purpose and intent of the P (public) zone is to provide regulations governing the development of lands appropriate for specific public and semi-public uses and to ensure their compatibility with adjacent uses. It is intended that this zone be applied to individual parcels shown to be an appropriate location for a certain public or semi-public use. If the use existing at the time the P zone is applied is discontinued or if a proposed use is not established, it is the intent that the land be rezoned to conform to surrounding zoning or be devoted to permitted uses. It is not intended that a property zoned public for one type of use be allowed to change without demonstrating that the proposed conditional use will be compatible with adjacent uses and the property is better suited to the proposed use than alternative locations.*

The first purpose “is to provide regulations governing development” and therefore to be in harmony with the purpose and intent of the Public zone, an application must demonstrate compliance with the ten Property Development Standards for the Public zone listed in MCZC 17.171.060. In other words, the conditional use criterion makes the purpose statement a criterion, and the purpose statement makes the development standards criteria. The Master Plan findings must ascribe meaning to the operative phrases “to provide regulations



governing development” and “appropriate for specific public and semi-public uses” and describe why large, urban scale office and aviation uses are appropriate in the Public zone and compatible with adjacent aviation and agricultural uses.

## **2. MCZC 17.171.060 Property Development Standards**

The development standards are land use regulations in the zoning code, which must be adequately addressed in the Master Plan findings. ORS 197.180(1)(b). There is no language in the text of the Public zone that allows or anticipates postponement of compliance with the use limitations and development standards for any use, much less for a conditional use, nor is there any designated procedure for a second, later review of these requirements. There is not a two-step process for approving conditional uses. Conclusory statements of feasibility with the use limitations of MCZC 17.171.020 and .030 and the development standards of .060 are not consistent with their text or the purpose of the Public zone.

If the State Aviation Board wishes to interpret and apply these traditional development standards such as building height and septic feasibility differently than those standards have traditionally been interpreted and applied by other land use decision makers, then it must articulate an interpretation of why those standards need not be reviewed and evaluated as part of the findings on the SAC and the Master Plan. Any such interpretation would conflict with the mandate in ORS 197.180(1)(b).

The first sentence of the purpose and intent statement requires the application of development standards to the Master Plan. Any finding that compliance with the development standards can be postponed to an unspecified future proceeding fails to give effect to the first sentence of the purpose and intent statement, and is therefore unpersuasive.

Findings of compliance with the “regulations governing development” are essential to demonstrating compliance with the purpose and intent of the Public zone, and therefore essential to a finding of compliance with conditional use criterion MCZC 17.119.070.B. (“That such conditional use, as described by the applicant, will be in harmony with the purpose and intent of the zone.”) A proposed use cannot be in harmony with the purpose of the Public zone if it does not satisfy the “regulations governing development” for that zone as described in the purpose statement.

### 3. MCZC 17.171.060.I Sewage Disposal

Standard I requires “that the development will not exceed the existing carrying capacity of the local sewage disposal system or has an on-site sewage disposal site approved by Marion County or the Department of Environmental Quality.” Thus far the Master Plan has not demonstrated compliance with either of these two options. As a starting point, the State Aviation Board must identify how many square feet of what land uses are being approved in order to know what the septic requirements are. Without specific use descriptions and limitations, it is not possible to know whether the septic system(s) that will be utilized for disposal have sufficient carrying capacity for the additional sewage that will be produced by the development described in the Master Plan, including the identified hangar development area.

The most recent expert information comes from the application materials for the development of the former church camp, and the DEQ table of wastewater flows (OAR 340-071-0220 Table 2) which indicates that office and factory workers generate 15 gallons of sewage per shift. The former church camp application proposes 123,000 square feet of office. Deducting a 15% load factor for common areas like elevators, hallways and bathrooms, that leaves 104,550 leasable square feet. Allowing a generous 200 square feet per person, the proposed office buildings have capacity for approximately 522 employees, or 7830 gallons per day. For the proposed hangars and shop spaces, DEQ estimates each factory worker also generates 15 gallons per day. With 105,000 square feet of space for these uses, and assuming 2500 square feet per worker, that means 42 workers and the sewage flow is 630 gallons per day. The total is 8460 gallons per day. Calculated a different way, the site plan includes 489 passenger vehicle parking spaces, which is a reasonable amount for 564 employees.

There is no information in the Master Plan record to support a finding that the existing carrying capacity of the local sewage disposal system can accommodate 8460 gallons per day from the former church camp, or the additional sewage created by the proposed hangar development area within the existing airport boundary shown on the Airport Layout Plan.

With regard to private sewage treatment facilities, the Rural Services and Facilities section of the comprehensive plan states:

“Basically there are two types of systems: mechanical, which is the most widely used type; and nonmechanical or lagoon systems. These can be designed and used separately or combined to allow the most efficient use of both. All of these are currently experiencing problems ranging from poorly trained operators to inadequately designed systems... Some problems could be eliminated by establishment of local policies dealing with the use of these systems. This would allow the County to evaluate the feasibility of the system prior to approval of the proposed development.”

The Rural Service Issues section of the comprehensive plan further notes that:

“Rural developments must have sufficient land with suitable soil characteristics to provide a viable subsurface disposal system. In areas where soil type or terrain restrict the use of standard subsurface septic systems, private community water or sewage treatment facilities may be provided if enough property will benefit to make construction economically feasible. Experience with privately maintained systems has been mixed as noted above. When difficulties arise the County is not in a position to assume responsibility.”

Contrary to the comprehensive plan, the Master Plan and Airport Layout Plan propose expansion of urban uses without demonstrating that the myriad sewage treatment facilities in the Public zone have the capacity and ability to accept, treat and dispose of the sewage from additional urban development. There is no information regarding nearby land with suitable soil characteristics, nor a site plan showing where the existing or proposed drainfields will be located. The county acknowledges it does not accept responsibility when difficulty arises, and difficulty in this context means pollution from insufficiently treated sewage. There is no information in the record to show a septic system design that is capable of managing the proposed sewage flows, and no confirmation from DEQ that the concepts set forth by the expert are feasible for the former church camp properties or the other properties designated as hangar development area.

The soils on the site and on surrounding properties are Amity silt loam, as shown on the NRCS maps. On November 27, 2018 the expert described the soils as “hydric and considered ‘somewhat poorly drained’ with a depth to water table being 6-18 inches. The expert also wrote that: “[t]he site does not

appear to have soils appropriate for an on-site system, so other DEQ approvable options will likely need to be utilized.” The expert’s statement is consistent with the Marion County Board of Commissioners’ letter. “Also, septic systems are difficult to locate at the airport due to soil conditions.” (Ex 12). There is no contradictory information in the record.

The second option under MCZC 17.171.060.I is to show the local sewage disposal system has sufficient carrying capacity for disposal of the wastewater from the proposed development. There is no information in the record that demonstrates there is surplus carrying capacity in a local sewage disposal system. The Master Plan lacks information that the airport has the right to discharge septic system wastewater on another property. The expert’s report indicates: “Easement areas will need to be identified.” Identification of new easement area alone is insufficient. Moreover, there is no information in the record to support a finding that a neighboring property owner is willing and able to grant an easement for septic drainfield uses.

Compliance with Standard I requires both a written easement and a demonstration that the carrying capacity will not be exceeded. The surrounding properties, including the state owned lands around the runway and taxiway, and the adjacent Southend Corporate Airpark, have the same Amity Silt Loam soils. The expert’s report acknowledges that use of these lands for disposal “will require further test pits”. However, there is no information that such testing has been done, or has been approved by the county sanitarian or DEQ, and no information indicates there is surplus carrying capacity on any adjacent properties.

To evaluate the carrying capacity, both the volume and the strength of the wastewater generated by the proposed development must be analyzed. The volume can be calculated using the standard DEQ Table 2 of OAR 340-071, at the rate of 15 gallons per day per employee. This table and related provisions of the administrative rule described below provide relevant context for interpreting and applying Subsection I.

The Master Plan proposes a variety of commercial and aviation uses, including office space and aircraft fueling, maintenance and repair, and therefore the development will be classified as “Industrial Waste” for purposes of DEQ regulations. See OAR 340-071-0100(85) and OAR 340-045-0010(10). These activities will generate sewage that exceeds residential strength wastewater, such as solvents and oils from the laundry generated by the maintenance shops and fixed-base operator. They are classified differently

than residential wastewater systems by DEQ, and require compliance with different administrative rules. (OAR 340-045 instead of OAR 340-071).

The expert's report indicates that "[i]ncidental spills or high strength industrial wastewater will not be discharged on site. Such discharges will be collected via containment facilities, routed to holding tanks for pumping and removal to appropriate treatment facilities." In other words, the application acknowledges that not all of the wastewater will be residential strength, and that wastewater from the proposed industrial uses will be transported by pumper truck to a municipal sewer treatment plant. This is not one of the two options allowed by Standard I. Because Standard I expressly identifies that only two types of sewage disposal are allowed, other types of sewage disposal are prohibited.

In summary, the Master Plan does not provide any estimate of sewage flows, any soil test data that shows an area that drains well enough to accommodate a septic drainfield, any location for a septic drainfield or replacement drainfield, any analysis of the carrying capacity of septic systems or drainfields on other properties, any easements to utilize septic systems on other properties, any preliminary septic system design, or any information indicating the county sanitarian or DEQ have reviewed the proposed development and found that either option for disposal of wastewater allowed by Standard I is feasible. The Master Plan has not met its burden of demonstrating that the effluent can be disposed on site or that it will not exceed the carrying capacity of an existing local sewage disposal system which it has an easement right to utilize. The Master Plan omits specific consideration of this issue, and there is no information in the record to support a State Aviation Board finding that the Master Plan is allowed under MCZC 17.171.060.I.

#### **4. MCZC 17.171.060.J Traffic Analysis**

This criterion requires demonstration that "the development will be consistent with the identified function, capacity, and level of service of transportation facilities serving the site." This criterion is similar to, but separate from, the TPR analysis required for a zone change, and has somewhat different requirements. The traffic studies and related memoranda in the record show the Master Plan is not consistent with the identified function of Airport Rd. as a rural major collector, and will substantially exceed the capacity and level of service at numerous affected intersections. The Master Plan does not indicate that the airport will make proportional payments or construct any specific intersection improvement, and therefore, absent assurance of partial

mitigation that is coordinated with affected transportation agencies, the Master Plan will degrade the level of service for all of these intersections.

The traffic study for the development of the former church camp demonstrates the Master Plan will not be consistent with the identified function, capacity, and level of service for surrounding intersections. The State Aviation Board must explore this issue in detail and describe in the findings how additional traffic generated by the development proposed in the Master Plan will be mitigated.

Currently there is inadequate traffic information in the Master Plan to support a finding that it is consistent with MCZC 17.171.060.J. The State Aviation Board should rectify this by ordering a traffic study that includes all of the enumerated items in Marion County's Traffic Impact Analysis Requirements.

#### **5. MCZC 17.123.060 Zone Change Criteria**

The Master Plan acknowledges the lack of zoning "suitable for airport-related development recommended in this Master Plan." (Page 6-4). Therefore, it must be compatible with Marion County's criteria for a zone change, in order to comply with ORS 197.180(1)(b).

*A. The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the goals and policies of the Comprehensive Plan and the description and policies for the applicable land use classification in the Comprehensive Plan; and*

The zone change to Public required to implement the Master Plan is not consistent with the goals and policies of the comprehensive plan as described above.

*B. The proposed change is appropriate considering the surrounding land uses and the density and pattern of development in the area; and*

The proposed zoning change is inappropriate because it places an urban use in a rural area. The land uses and density of surrounding lands on all four sides of the airport are zoned EFU, and it is not appropriate to continuously grow an exception area that is surrounded by EFU land.

*C. Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property; and*

The airport lacks municipal services, which is especially important because the soils in the exception area are not suitable for on-site septic systems as required by MCZC 17.171.060(I). Compliance with this criterion could only occur if annexation precedes development, which will ensure the necessary public services are provided.

Compliance with this criterion requires identification of an available method for providing adequate sewage disposal and domestic water service to the proposed development that is reasonably certain to comply with applicable standards, including MCZC 17.171.060(I).

The traffic analysis provided in the Master Plan does not demonstrate that adequate transportation facilities are in place, and mitigation is not proposed.

Adequate public facilities are not available, and the Marion County Board of Commissioners emphasizes that “the City of Aurora would address these deficiencies”. (Ex 12). The Master Plan is not allowed under this criterion.

*D. The other lands in the county already designated for the proposed use are either unavailable or not as well suited for the anticipated uses due to location, size or other factors; and*

There are appropriately zoned parcels at the Salem Airport, which are better suited for the proposed use because they are served by adequate public facilities including sanitary sewer. Moreover, the runway at McNary Field is much longer thereby avoiding the limitations of constrained operations. Those lands are also available in a variety of sizes and at locations with runway access, and at locations without runway access but zoned for commercial use. “Not as well suited” should not be interpreted to mean less than ideal, but rather it must be weighed in the context of conversion of Class 2 agricultural lands. McNary Field and the surrounding land at the Salem Airport provide all the essential characteristics for aviation and aviation-related uses and therefore are capable of being used for the proposed uses.

*E. If the proposed zone allows uses more intensive than uses in other zones appropriate for the land use designation, the new zone will not allow uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses.*

The Public zone allows unlimited building sizes and development density at the Aurora Airport. MCZC 17.171.040.C. This zoning, and the urban uses it facilitates, will significantly and adversely affect the farm uses on adjacent EFU lands. The application for conversion of the former church camp explains why the proposed aviation uses interfere with traditional farm practices. “Any farming activity could not produce dust because it would reduce visibility in the area and potentially damage sensitive equipment already located at the Airport.”

Externalities from farm or forest operations such as dust, spray, smoke and noise are inherent aspects of rural life in agricultural zones. In the event of a land use conflict with traditional farm practices that produce dust or otherwise limit visibility on EFU land and other nearby land uses, other uses cannot impose significant adverse effects on farm practices. ORS 215.296.

The Master Plan is not consistent with the criteria for a zone change from EFU to Public, and therefore it does not meet the requirements of ORS 197.180(1)(b).

As noted in the March 20, 2019 Marion County staff report for the former church camp, the “addition of 16.54 acres of land in airport use to the existing 298 acres of airport will result in more aircraft being based at the Aurora Airport and increase the number of takeoffs and landings at the airport.” There is an easement to provide runway access for fixed wing aircraft from the former church camp property, and the through the fence program will facilitate other activities. An FBO may be developed there. These uses are not allowed in the EFU zone.

## **6. MCZC 17.136.050.J.4 Road Improvements**

This provision must be satisfied for the Keil Rd. relocation in the EFU zone.

Roads, highways, and other transportation facilities and improvements not otherwise allowed in this chapter, when an exception to statewide Goal 3 and any other applicable statewide planning goal with which the facility or improvement does not comply, and subject to OAR Chapter 660, Division 12.



The proposed Keil Rd. relocation is contrary to this provision because a Goal 3 exception is required for the reasons described above. The sole basis of the relocation is to address the abutting Aurora State Airport and the runway extension; however, goal exceptions are prohibited for this purpose.

“The presence of a transportation facility or improvement shall not be a basis for an exception to allow residential, commercial, institutional or industrial development on rural lands under this division or OAR 660-004-0022 and 660-004-0028.” OAR 660-012-0060(5).

In other words, the Keil Rd. relocation requires a Goal 3 exception which must also comply with Division 12 of OAR 660; however the quoted subsection prohibits the goal exception in cases like this one where the basis for the exception is the presence of the airport. The Master Plan and Airport Layout Plan are not compatible with MCZC 17.136.050.J.4.

#### **7. MCZC 17.136.060.A.1 Farm Impact Test**

This code section applies to all conditional uses in the EFU zone. “The use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use.” The Master Plan does not include a careful review of the farm practices on surrounding lands. Nor is there consideration of the effects of the Master Plan and Airport Layout Plan on those farm practices, such as the effect of closing Keil Rd. There is not substantial evidence in the record to support a finding that this very rigorous code requirement can be satisfied.

### **IV. The Proposed Findings of Compatibility**

#### **A. Exhibit G**

The proposed findings note the prime contractor was WHPacific, whose web page regarding aviation services begins: “Broad engineering capabilities combined with proven experience results in custom project teams for every client.” (<http://www.whpacific.com/transportation-2/>). Exhibit G is a staff email that discounts the accuracy of the fully executed Airport Layout Plan. The email maintains that the approved Airport Layout Plan is just “a concept document that shows where future development might go”. Later, it remarks: “I couldn’t give you an exact answer as to whether it would be in EFU land or land zoned

public.” These equivocations are no substitute for the actual Airport Layout Plan drawing.

The Aurora Airport Improvement Association’s letter of August 15, 2019 provides context: “both the State of Oregon through its former ODA Director, and the FAA, had signed legally significant papers that bound each other to the runway extension and that such extension is a necessary and crucial safety improvement for the airport.” The letter reiterates that “the state is legally committed to the Aurora Airport Master Plan and its 1000’ runway extension.”

Contrary to this commitment, Exhibit G reports that the agency’s intent is “not to construct any pavement on current EFU land.” The staff apparently has decided that the Department of Aviation no longer intends to abide by the Airport Layout Plan and extend the runway 1000 feet to the south because the extension includes stopway pavement and runup pavement on EFU land. The email and the findings incorrectly assume that if all the paving is within the Public zone, then the Master Plan and Airport Layout Plan will not adversely affect EFU land.

The staff manifestly lacks authority to disavow the Airport Layout Plan and the State of Oregon’s commitment to it. Staff’s intent in 2019 has no bearing on the fully executed 2012 Airport Layout Plan, and Exhibit G cannot support the proposed findings. The findings report the Airport Layout Plan was “accepted by the Oregon Department of Aviation” and “approved” by the FAA. Both entities signed the Airport Layout Plan in October 2012. A reasonable decision maker would not rely on this last minute attempt to sidestep crucial land use conflicts presented by the Master Plan and the Airport Layout Plan.

Exhibit G represents that the 2012 and 2016 Airport Layout Plans no longer reflect the Department of Aviation’s intentions for the runway extension. This may be contrary to FAA rules. As noted in Subsection 202(c) of FAA Circular AC 150/5070-6B, “keeping the ALP current is a legal requirement for airports that receive Federal assistance.” Subsection 1001(b) “requires that the sponsor keep the ALP up to date at all times.” (Ex 13). Either the 2012 Airport Layout Plan is current as executed, or the Aurora State Airport is ineligible for Federal assistance. The proposed findings would have it both ways; however the State Aviation Board must make a choice. For the adoption of findings, the State Aviation Board can only address the Airport Layout Plan

as it exists. It cannot adopt findings based on the novel assertion that the plan is merely a rough concept that may or may not include paving on EFU land.

Subsections 1001(e)(1&2) explain the land use significance of the executed Airport Layout Plan.

“The ALP provides a guideline by which the airport sponsor can ensure that development maintains airport design standards and safety requirements, and is consistent with airport and community land use plans...and as a reference for community deliberations on land use proposals and budget resource planning.”

In other words, the FAA requires that the Airport Layout Plan be sufficiently accurate for land use purposes, so that local governments and the State Aviation Board can rely on it as the go to reference for addressing land use proposals. Exhibit G now disclaims its accuracy for land use purposes. “I couldn’t give you an exact answer as to whether it would be in EFU land or land zoned public.” If it is true that the Airport Layout Plan is not accurate enough to show what zone the pavement is in, then the Airport Layout Plan does not satisfy FAA requirements and does not qualify as substantial evidence.

Exhibit G acknowledges that the Airport Layout Plan may propose new pavement on EFU land. However, the proposed findings inexplicably ignore this admission and assume the only possible answer to the question is that the pavement is entirely on the existing airport ownership. The findings must be revised to address the fact that the Airport Layout Plan does propose pavement on EFU land in three locations.

Even if the runway was shortened, the runup area still extends east of Keil Rd. and paves land in the EFU zone. In that zone, there is no de minimis exception to allow such pavement without goal exceptions. If it was true that the proposed paving does fit within the existing airport ownership, the Airport Layout Plan would not clearly illustrate the closure and rerouting of Keil Rd. Exhibit G reports “unofficial and off the record discussions with County Roads Department” on this topic. Unofficial and off the record means just that, and an email summarizing such discussions is not evidence that a reasonable decision maker would rely on.

Exhibit G states the stopway “does not need to be pavement in order to be in compliance with FAA design standards.” There may be a discrepancy.

The FAA's airport design standards are in Circular AC 150/5300-13A-Airport Design. Section 312 Stopway Standards of that circular states: "Refer to AC 150/5320-6 for pavement strength requirements for a stopway." (Ex 14). Chapter 6 Pavement Design of Circular AC 150/5320-6 articulates two options for paving the surface of the stopway, asphalt and concrete. (Ex 15). Presumably the State Aviation Board does not intend to replace the current paved stopway with something other than asphalt or concrete.

The Airport Layout Plan was prepared by a well-qualified engineering firm with an established aviation practice. It specifies the land area to be purchased to within 1/100th of an acre, the size of a two car garage. It specifies the final grade of that entire 55.13 acres to within one foot, and the final grade of the runway to within 1/10th of a foot. This sudden discovery – seven years after the fact – that it is insufficiently accurate for land use purposes strains credulity. The Airport Layout Plan and the aerial photo on Sheet 4 of the layout plan drawings both clearly show that the runup is on EFU land east of Keil Rd., that the stopway is on EFU land south of Keil Rd., and that Keil Rd. is rerouted to the southeast across EFU land. The findings must be based on the fully executed Airport Layout Plan, without reliance on the surprising staff speculations in Exhibit G. The State Aviation Board should expressly reject Exhibit G and exclude it from the record.

## **B. Compatibility with Marion County Regulations**

ORS 197.180(1)(b) requires findings that the Master Plan and the Airport Layout Plan are compatible with Marion County's acknowledged comprehensive plan and land use regulations. The State Aviation Board findings must address any relevant goals, policies and purpose statements from the comprehensive plan. The draft findings do not attempt to satisfy that obligation, and therefore are inadequate to demonstrate compliance with the comprehensive plan. The findings are also silent on the relevant provisions in the Marion County Rural Zoning Code. Marion County's conclusory expressions of compliance with the county regulations as a whole cannot substitute for adequate State Aviation Board findings that address the comprehensive plan and rural zoning code provisions identified in this memo.

The findings must first identify the applicable goals, policies and purpose statements from the comprehensive plan, and the applicable provisions from the rural zoning code. If the State Aviation Board thinks the County land use regulations identified in this memo do not apply to the Master Plan and the

Airport Layout Plan, then it must articulate that assessment. *Oregon Coast Alliance v. Curry County*, 63 Or LUBA 324 (2011); *Kingsley v. City of Sutherlin*, 49 Or LUBA 242 (2005). A blanket finding that the identified provisions are not applicable is not sufficient. *Chin v. City of Corvallis*, 46 Or LUBA 1 (2003).

The findings must address all of the identified provisions, and the State Aviation Board must determine the relevancy of the County provisions and address those it deems relevant. *Stefan v. Yamhill County*, 18 Or LUBA 820 (1990); *Heitsch v. City of Salem*, 65 Or LUBA 187 (2012).

Because this a quasi-judicial matter, each finding must identify the provision, explain the relevant substantial evidence from the record that bears on the provision, and then describe why the State Aviation Board thinks the evidence clearly supports the conclusion that the provision is satisfied. Reliance on general statements of compliance made by Marion County that do not address the identified County land use regulations is not sufficient.

### **C. Compliance with the Goals and Implementing Rules**

ORS 197.180(1)(a) requires adequate findings to demonstrate that the Master Plan and the Airport Layout Plan are in compliance with the statewide goals and their various implementing rules. Therefore, the State Aviation Board must adopt adequate findings that address the relevant goals and administrative rules. The draft findings do not satisfy that obligation.

The findings must first identify the applicable goals and rules. If the State Aviation Board thinks the goals and their rules identified in this memo do not apply, then it must articulate that thinking. A blanket finding that the identified goals and rules are not applicable is not sufficient. The findings must consider and adopt findings on all of the identified goals and rules, and the State Aviation Board must determine the relevancy of the identified provisions and address those it deems relevant.

Because this a quasi-judicial matter, each finding must identify the provision of the goal or rule, explain the relevant substantial evidence from the record, and then describe why the State Aviation Board thinks the evidence clearly supports the conclusion that the provision is satisfied. Reliance on vague statements of support or compliance made by Marion County that do not address the identified provisions in the goals and rules is not sufficient.

The proposed Goal 3 finding that “no farm land will be impacted by the Master Plan” is conclusory and does not account for the substantial and contrary evidence in the record. The Airport Layout Plan clearly shows new pavement in three locations on EFU land, and the purchase of 55.13 acres for conversion to an urban public facility. The Preferred Alternative 5J map clearly shows conversion of the former church camp to airport-related use. The 2017 County email informed the City of Aurora that expansion of the airport requires goal exceptions. No farming has ever occurred within the airport fence and there is no substantial evidence to support the claim that this time will be different. The 55.13 acre area will be filled to the grades identified on the Airport Layout Plan but there is no evidence in the record to support a finding that the fill material will be Class 2 soil. The Goal 12 finding postpones any consideration of impacts to farming caused by the closure of Keil Rd. until a later and different process.

The proposed Goal 11 findings concede that new growth may be limited by the sanitary facilities, and asserts “the improvements planned for the airport do not require any improvements to these utilities.” That assertion is contradicted by the facts in the record. The Airport Layout Plan illustrates the hangar development area, where a septic system is being displaced and the proposed replacement drainfield area was denied by Marion County.

The findings do not address other public facilities besides the private sewer systems. The proposed Goal 11 findings do not address the specific provisions in Goal 11 and its administrative rules identified in this memo.

The proposed Goal 12 findings lack any consideration of Planning Guidelines A.3 and A.4 and the evidence in the record does not support the mandatory feasibility analyses. The findings expressly postpone analysis of the impacts to transportation or farming, when compliance is required prior to the adoption. For surface traffic, the proposed finding only describes a cursory review of the Boone Bridge; without considering other roads or intersections. And the finding fails to account for the more recent and thorough traffic information in the record that was prepared for the former church camp and for the ODOT improvements to the intersection of Highway 551 and Ehlen Rd.

The proposed Goal 14 finding ignores the Airport Layout Plan and the Preferred Alternative 5J maps, and presumes that “all improvements contemplated by the Master Plan will occur in the County’s acknowledged P zone.” The materials clearly show the conversion of the former church camp

from EFU to urban use, the filling and fencing of 55.13 acres of Class 2 agricultural land, and paving in the EFU zone. The localizer and the entire 55.13 acre area are essential components of the Master Plan and require Goal 11 and Goal 14 exceptions.

#### V. Annexation into Aurora Resolves the Land Use Conflicts

Annexation into the City of Aurora changes the land use classification of these parcels from rural to urban and resolves the land use conflicts identified in this memo. Until these parcels are reclassified, the land use conflicts will remain unresolved.

The aerial photos and the Airport Layout Plan exemplify the land shortage at the Aurora State Airport. In their letter of February 13, 2015, the Marion County Board of Commissioners frankly acknowledged the consequences and presented the smart, land use compliant solution. "Wells at the airport have, at times, been insufficient to provide the water necessary for businesses located at the airport. Also, septic systems are difficult to locate at the airport due to soil conditions. The provision of water and sewer service from the City of Aurora would address these deficiencies in rural services." These deficiencies are often discussed, and then brushed aside without follow up action.

The City of Aurora is the solution to these issues, and looks forward to working together with the State Aviation Board toward the timely extension of municipal services and the efficient transition from rural to urban land use. Annexation is the path forward, and we encourage you to join us soon.

Best regards,



Joseph Schaefer  
Planning Commission Chair

## VI. EXHIBITS

1. City of Aurora Record Submittals
2. Department of Aviation Letter, April 24, 2019
3. Department of Aviation Letter, August 21, 2019
4. Department of Justice Email, October 18, 2019
5. LUBA Final Opinion and Order, May 19, 1992
6. 1976 Airport Layout Plan, Figure 23
7. A-Engrossed House Bill 4092 Excerpt, February 15, 2018
8. 2016 Airport Layout Plan Drawing
9. Aerial Photos, 1991 and 2018
10. Marion County Email December 15, 2017
11. DOGAMI LIDAR Images and Site Photo, October, 2019
12. Marion County Letter, February 13, 2015
13. FAA Circular AC 150/5070-6B Excerpts, January 27, 2015
14. FAA Circular AC 150/5300-13A Excerpts, September 28, 2012
15. FAA Circular AC 150/5320-6F Excerpts, November 10, 2016



## **City of Aurora Record Submittals October, 2019**

1. Aurora Airport Water Control District request for support—November 1, 2013  
ODA SAC Program—March 7, 2017
2. Marion County Staff Report on Airport Water Extension—January 10, 2014  
Aaron Faegre letter on water—January 14, 2014  
Chapter 5 comments from the City of Aurora
3. Aurora City Council Work Session Transcript—October 4, 2018  
City of Aurora Comments to C Cummings for inclusion in the Airport Master Plan—February 2011  
DLCD Notice of Withdrawal—January 22, 2014  
Follow-up comments from January 21 meeting
4. City of Aurora email from Renata Wakely to Jim Meiorow and Nick Kaiser—February 2011  
City of Aurora Email correspondence about Chapter 5 comments—March 2011  
Mayor Bill Graupp email to Don Russo—October 18, 2013  
Constrained Operations Study - Seven month year to year operations comparison  
ODA SAC Program—November 1, 2013
5. ODOT Highway 551 at Ehlen Alternatives Analysis Memo and Attachments—May 17, 2016
6. City of Aurora Resolution 771—September 10, 2019
7. 2004 Aerial Photo
8. 1956 Aerial Photo  
1969 Aerial Photo
9. 1976 Aerial Photo
10. 1983 Aerial Photo  
1989 Aerial Photo
11. 1991 Aerial Photo  
1999 Aerial Photo

12. Aurora State Airport Master Plan—July 1988
13. Marion County Goal Exceptions
14. 1000 Friends of Oregon letter to House Committee on Rural Communities, Land Use and Water in opposition to SB 534—May 12, 2015
15. Oregon Department of Agriculture - Identification and Assessment of the Long-Term Commercial Viability of Metro Region Agricultural Lands—January 2007
16. USDA NRCS Soils Map 2019
17. USDA Natural Resource Conservation Service soil classification data—October 1, 2019
18. TLM Application—January 22, 2019
- TLM site evaluation report—November 27, 2018
- TLM soil maps—September 18, 2018
19. Airport Rezone Transportation Impact Study—February 2019
- 1976 Airport Master Plan
20. Aurora/Marion County UGB Coordination agreement—September 10, 2010
- I-5 Donald Aurora Presentation—March 12, 2019
21. City of Aurora – Joseph Schaefer ODA hearing testimony—September 24, 2019
- Oregon Laws Chapter 935, 1999 and Chapter 606 from 2009
- ODOT SAC program—September 18, 1990
- ODA Administrative Overview—October 2001
22. City of Aurora Jim Meiorow letter to ODA Director Mitch Swecker—April 15, 2011
23. City of Aurora Cover Letter—October 1, 2019
24. Marion County letter to Rep. Rick Lewis in support of HB 4092—January 25, 2018
- Bruce Bennett handout—February 9, 2018
- Charlotte Lehan testimony in opposition to HB 4092—February 8, 2018
- Mike Iverson testimony—February 9, 2018
- Tony Helbling testimony in support of HB 4092—February 9, 2018
- Tom Potter testimony in opposition of HB 4092—February 9, 2018
25. HB 4092—2018 session
- 1000 Friends of Oregon letter in opposition to HB 4092—February 9, 2018

Aurora Planning Commission Partial Transcript of Wendie Kellington testimony—December 5, 2017

Bruce Bennett testimony in support of HB 4092—February 9, 2018

Bruce Bennett testimony in support of HB 4092—February 12, 2018

Tom Potter testimony in opposition to HB 4092—February 9, 2018

Tom Potter report on total operations at the airport—February 9, 2018

26. TLM support letters—July 2018

Marion County TLM staff report—March 20, 2019

Runway extension soil map—October 3, 2019

27. Current aerial photo—October 3, 2019

ODA Mitch Swecker reply to House Committee on Transportation on HB 4092—February 12, 2017

28. 2012 Salem Airport Master Plan 1 of 2

29. Hillsboro Airport Master Plan Update—December 13, 2018

30. Statesman Journal article—October 26, 2018

Marion County Transportation Systems Plan, Chapter 5—December 21, 2005

Runway Protection Zone topography—October 2019

Aurora Planning Commission Audio recording—December 5, 2017

31. Clackamas County Traffic Comments—March 22, 2019

Marion County TIA Checklist—October 2019

Marion County TIA Requirements—October 2019

DLCD List of Certified State Agency Coordination Programs, October 8, 2019

32. 2008 IGA—City of Aurora and Marion County and ODA

1974 Airport Map

1974 Airport Plan Designation

Airport Exception

Marion County email re: Airport Exceptions December 15, 2017

33. Marion County Comprehensive Plan 2019

Existing Airport Navigation Equipment Controller photo—October 2019

Existing Airport Runway Localizer photo—October 2019

Divided Farm Units Map—October 2019

34. Airport Layout Plan—2016

Marion County Septic Permit Records 1 of 3

35. Marion County Septic Permit Records 2 of 3

Marion County Septic Permit Records 3 of 3

36. Marion County Septic Permit Records zip file 1 of 2

37. Master Plan Alternative 5J Excerpt of Former Church Camp – June 27, 2011

38. Marion County Septic Permit Records zip file 2 of 2

39. Runway Extension Zone Map

Jenks Tax Map

M&H Jenks Assessor Data

40. M&H Tax Map

Draft UAO Constrained Operations Runway Justification Study

DOGAMI LIDAR Bare Earth

41. October 31, 2019 Memorandum on Proposed Findings – Hand Delivered

Exhibits to October 31 Memorandum on Proposed Findings – Hand Delivered

1. City of Aurora Record Submittals
2. Department of Aviation Letter, April 24, 2019
3. Department of Aviation Letter, August 21, 2019
4. Department of Justice Email, October 18, 2019
5. LUBA Final Opinion and Order, May 19, 1992
6. 1976 Airport Layout Plan, Figure 23
7. A-Engrossed House Bill 4092 Excerpt, February 15, 2018
8. 2016 Airport Layout Plan Drawing
9. Aerial Photos, 1991 and 2018
10. Marion County Email December 15, 2017
11. DOGAMI LIDAR Bare Earth Hillshade and Slope Images, October, 2019
12. Marion County Letter, February 13, 2015
13. FAA Circular AC 150/5070-6B Excerpts, January 27, 2015
14. FAA Circular AC 150/5300-13A Excerpts, September 28, 2012
15. FAA Circular AC 150/5320-6F Excerpts, November 10, 2016



# Oregon

Kate Brown, Governor

Oregon Department of Aviation

3040 25<sup>th</sup> Street SE  
Salem, OR 97302-1125

Office: 503-378-4880

Fax: 503-373-1688



April 24, 2019

Jeffrey Kleinman  
Attorney at Law  
1207 SW Sixth Avenue  
Portland, OR

Re: your January 28, 2019 Letter

Dear Mr. Kleinman:

I apologize for the delay in responding to your January 28<sup>th</sup> letter. I became Director on February 4<sup>th</sup>, 2019, and delayed responding to your letter until I could better understand the history and issues related to the Aurora Airport. I understand that our Assistant Attorney General, Lucinda Jackson, has been in contact with you regarding your public records request, and that you have submitted a revised scope of what documents you would like to receive.

The following are answers to the questions in your January 28<sup>th</sup> letter:

1) Has a draft master plan been submitted to the State Aviation Board for adoption?

No. The last Aurora Airport Master Plan was completed in December 2012 but it has not been submitted to the board for adoption.

2) Has the Board in fact adopted or approved a master plan for Aurora Airport? If so, when?

When the 1976-1995 Aurora Airport Master Plan was developed, there was no independent department of aviation in Oregon. Instead, the plan was prepared by the Aeronautics Division of the Oregon Department of Transportation and was subject to approval requirements of the Oregon Transportation Commission. The Aeronautics Division became the Oregon Department of Aviation in 1999. ORS 835.100. The State Aviation Board was also created at that time. ORS 835.102. The board has not yet adopted a master plan for Aurora.

3) If no master plan has been submitted to the Board, what is its current status?

The board adopted ODA's State Agency Coordination (SAC) program in 2017. This has been sent to the Department of Land Conservation and Development for review and certification by the Land Conservation and Development Commission. Adoption of the 2012 Aurora State Master Plan is on hold until this process is complete.

*Oregon Department of Aviation's mission is to provide infrastructure, financial resources,  
and expertise to ensure a safe and efficient air transportation system*

EX 2

4) What is the status of the Department's state agency coordination efforts with respect to the master plan? Have these been carried out? If not, how and when will they be carried out and completed?

See the answer to #3.

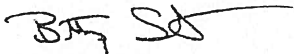
5) What citizen involvement efforts have been undertaken with respect to the master plan? What further citizen involvement efforts are planned or being planned?

When the 2012 Aurora Airport Master Plan was prepared, ODA established a Planning Advisory Committee (PAC), representing Airport users and neighbors, which participated in the planning process. In addition to six PAC meetings, public involvement in the master plan update included a website that disseminated information and gathered comments and questions, and ODA held five open houses for the general public.

Once ODA's SAC program is certified, ODA will comply with any applicable requirements in the SAC program when adopting the airport master plan.

I hope this answers your questions. If not, please feel free to continue to contact Lucinda Jackson for further information as well as for the public records request. Thanks again for your patience as I learn the history and issues surrounding the Aurora Airport.

Sincerely,



Betty Stansbury, AAE  
Director



# Oregon

Kate Brown, Governor

Oregon Department of Aviation

3040 25<sup>th</sup> Street SE  
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Office: 503-378-4880

Fax: 503-373-1688



August 21, 2019

Jeffrey Kleinman  
Attorney at Law  
1207 SW Sixth Avenue  
Portland, OR 97204

Re: Aurora State Airport Master Plan

Dear Mr. Kleinman:

We have completed a review of our historical file on the 2012 Aurora State Airport Master Plan Update (Master Plan) and found some discrepancies in the information I previously provided you in my April 24, 2019, letter. Please consider this letter a clarification and correction of that information.

In your first two questions, you asked if the Master Plan had been submitted to the Oregon Aviation Board (OAB) and whether the OAB had adopted the Master Plan. The Master Plan was submitted to the OAB at several of its meetings in 2011. On October 27, 2011, the OAB approved the Master Plan for submittal to the Federal Aviation Administration. Subsequent to this, the FAA approved the Airport Layout Plan (ALP) on October 12, 2012. The Master Plan was revised to incorporate changes suggested by the FAA and the ALP. It was printed in final form December 2012.

You also asked what the status of the Department's (ODA) state agency coordination (SAC) efforts were with respect to the master plan. ODA is currently in the process of gathering information on the compatibility of the Master Plan with applicable land use plans and statewide planning goals. ODA will present findings of compatibility to the OAB at its October 31, 2019, meeting. Since this meeting is being held in Sunriver, ODA has chosen to hold a meeting in Salem to receive comment from the public. This meeting is on September 24 from 3:00-5:00 p.m. I have enclosed a copy of the notice.

Sincerely,

Betty Stansbury, AAE  
Director

*Oregon Department of Aviation's mission is to provide infrastructure, financial resources,  
and expertise to ensure a safe and efficient air transportation system*

EX 3

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**From:** Jackson Lucinda D <Lucinda.D.Jackson@doj.state.or.us>

**Sent:** Friday, October 18, 2019 9:23:08 AM

**To:** Sara Kendrick <sara@sekendricklaw.com>

**Cc:** BUELL Mary (Mary.Buell@aviation.state.or.us) <Mary.Buell@aviation.state.or.us>; STANSBURY Betty (Betty.STANSBURY@aviation.state.or.us) <Betty.STANSBURY@aviation.state.or.us>; PECK Heather <Heather.PECK@state.or.us>; FOREST Kristen R (Kristen.R.FOREST@aviation.state.or.us) <Kristen.R.FOREST@aviation.state.or.us>

**Subject:** FW: UPDATE: October 30-31, 2019 Aviation Board Meeting

Sara,

I am the attorney representing the Oregon Department of Aviation on matters relating to the Aurora Airport. ODA received the email below from Joseph Schaefer. I am sending the responses to you as Aurora's attorney so that you can share it with Mr. Schaefer.

ODA adopted its State Agency Coordination program in 2017. It was an update to ODOT's SAC program which applied at the time the Aurora State Airport Master Plan Update was adopted by the board. The two plans and rules implementing the plans are almost identical. See OAR 731-015-0065 and 738-130-0055.

At the October 31 Oregon Aviation Board meeting, ODA will present findings of compatibility with Marion County's comprehensive plan and findings of compliance with applicable statewide planning goals to the board for review and adoption for the Aurora Master Plan. The board will take testimony from interested parties and has allotted 2 minutes per person to provide oral comment. It is strongly suggested that you submit testimony in writing prior to the board meeting if possible, or bring 15 copies of your testimony to the board meeting.

Please let me know if I can provide further clarification on this matter.

Lucinda

Lucinda D. Jackson  
Senior Assistant Attorney General  
Government Services Section I General Counsel Division  
Oregon Department of Justice  
1162 Court St. NE, Salem, OR 97301  
503-947-4530

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EX 4



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BEFORE THE LAND USE BOARD OF APPEALS  
OF THE STATE OF OREGON

JACK MURRAY, RICHARD HIGHFILL, )  
and JIM WILSON, )  
Petitioners, )  
vs. )  
MARION COUNTY, )  
Respondent, )  
and )  
OREGON DEPARTMENT OF )  
TRANSPORTATION, )  
Intervenor-Respondent. )

LUBA No. 91-187  
FINAL OPINION  
AND ORDER

Appeal from Marion County.

Edward J. Sullivan and Daniel H. Kearns, Portland, filed the petition for review. With them on the brief was Preston, Thorgrimson, Shidler, Gates & Ellis. Edward J. Sullivan argued on behalf of petitioners.

Jane Ellen Stonecipher, Salem, filed a response brief and argued on behalf of respondent. With her on the brief was Robert C. Cannon.

Lucinda D. Moyano, Salem, filed a response brief and argued on behalf of intervenor-respondent. With her on the brief was Charles S. Crookham, Attorney General.

SHERTON, Referee; HOLSTUN, Chief Referee; KELLINGTON, Referee, participated in the decision.

REMANDED 05/19/92

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

1 Opinion by Sherton.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a county ordinance approving (1) an  
4 exception from Statewide Planning Goal 3 (Agricultural  
5 Lands) for 10 acres of agricultural land; (2) a  
6 comprehensive plan map change from Primary Agricultural to  
7 Public Use for the 10 acres; (3) a corresponding zone change  
8 from Exclusive Farm use (EFU) to Public (P); (4) lot line  
9 adjustments adding 11.8 acres (including the 10 acres which  
10 are the subject of the goal exception and plan and zoning  
11 map changes) to a 144 acre parcel at the site of the Aurora  
12 State Airport; and (5) a conditional use permit for airport-  
13 related improvements on the resulting 155.8 acre parcel.

14 **MOTION TO INTERVENE**

15 The Oregon Department of Transportation, Aeronautics  
16 Division (hereafter OAD), the applicant below, moves to  
17 intervene in this proceeding on the side of respondent.  
18 There is no opposition to the motion, and it is allowed.

19 **FACTS**

20 On June 18, 1980, the county adopted a "committed"<sup>1</sup>  
21 exception from Goal 3 for approximately 250 acres at the  
22 site of the Aurora State Airport (hereafter airport). The  
23 1980 exception area is designated Public Use on the Marion

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<sup>1</sup>ORS 197.732(1)(b) allows local governments to adopt exceptions to a statewide planning goal where the subject land is "irrevocably committed \* \* \* to uses not allowed by the applicable goal \* \* \*."

1 County Comprehensive Plan (plan) map and is zoned P.  
2 Additionally, the county's Airport Overlay zone has been  
3 applied to both the 1980 exception area and the area  
4 proposed to be added to it.

5 There are two residential developments designated Rural  
6 Residential and zoned Acreage Residential (AR) adjoining the  
7 1980 exception area to the west and southwest. Otherwise,  
8 the 1980 exception area is surrounded by land in farm use,  
9 designated Primary Agricultural and zoned EFU. Clackamas  
10 County adjoins the exception area to the north. Keil Road,  
11 a county road, abuts the exception area at its southeastern  
12 and southern boundaries. The City of Aurora is  
13 approximately one mile southeast of the airport.<sup>2</sup>

14 The 1980 exception area includes a 144 acre parcel  
15 owned by the state. The state owned parcel currently  
16 includes (1) a north-south oriented paved and lighted  
17 runway, 100 ft. wide and 4,100 ft. long; (2) a parallel  
18 taxiway, with a centerline 200 ft. from that of the runway;  
19 and (3) an area to the east of the runway-taxiway containing  
20 a beacon, communications equipment, hangars, airplane  
21 parking aprons, automobile parking and offices. The  
22 remainder of the 1980 exception area is comprised of  
23 privately owned parcels adjoining the runway-taxiway to the  
24 east. These parcels are the site of hangars, airplane

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<sup>2</sup>The airport is not within the city's urban growth boundary (UGB).

1 parking aprons, fuel facilities and airport-related  
2 businesses and offices. The airport and airport-related  
3 uses within the 1980 exception area are served by individual  
4 wells and septic systems.

5 As indicated above, the airport itself is owned by the  
6 state and is operated by OAD. When the county adopted its  
7 1980 exception to Goal 3 for the airport, it also adopted as  
8 part of its comprehensive plan, OAD's "Aurora State Airport  
9 Master Plan 1976-1995" (hereafter 1976 Airport Plan). Plan  
10 Transportation Policy 15. The 1976 Airport Plan states that  
11 the airport serves "several counties" and describes the  
12 airport as "part of a regional system of airports for the  
13 greater Portland area." 1976 Airport Plan 3. According to  
14 the 1976 Airport Plan, in 1975-1976 there were 127 aircraft  
15 based at the airport and 90,000 annual aircraft operations.  
16 The 1976 Airport Plan predicts that these figures will  
17 increase to 248 and 209,000, respectively, by 1995. Id. at  
18 22-24.

19 The 1976 Airport Plan states the airport at that time  
20 satisfied Federal Aviation Administration (FAA) design  
21 standards for a "General Utility" airfield, one serving  
22 propellor aircraft with maximum gross weights under 12,500  
23 lbs. Id. at 23. The plan also projects that between 1985  
24 and 1990, use of the airport by increased numbers and types  
25 of aircraft will necessitate improving the airport to comply  
26 with FAA design standards for a "Basic Transport" airfield,

1 one serving propellor aircraft with maximum gross weights up  
2 to 60,000 lbs. and turbojet aircraft. Id. at 23, 25.  
3 According to the 1976 plan, by 1995, the existing runway  
4 should be lengthened by 1,900 ft., 1,000 ft. at the north  
5 end and 900 ft. at the south end. Id. at 25, 31. The 1976  
6 Airport Plan also proposes that the taxiway-runway  
7 separation be increased to 225 ft., and that new  
8 navigational aids be added.<sup>3</sup> Id. at 30.

9 In 1988, OAD adopted a new master plan for the airport,  
10 the "Aurora State Airport Master Plan Report, July 1988"  
11 (hereafter 1988 Airport Plan).<sup>4</sup> The 1988 Airport Plan finds  
12 that in 1987, there were approximately 254 aircraft based at  
13 the airport and approximately 60,000 total aircraft  
14 operations; and the plan projects that those figures will  
15 increase to 360 and 140,000, respectively, by the year 2007.  
16 1988 Airport Plan 3-4, 53-54.<sup>5</sup> The 1988 Airport Plan  
17 proposes that the airport be developed in accordance with  
18 the FAA's Transport airfield classification wherever

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<sup>3</sup>The 1976 Airport Plan refers to adding a Microwave Landing System or its equivalent in 1985-1995. Id. at 30, 45. It also refers to adding a Non-directional Beacon in 1975-1980. Such beacon was installed some time after adoption of the 1976 Airport Plan, and is currently in use.

<sup>4</sup>The 1988 Airport Plan has not been adopted as part of the county comprehensive plan.

<sup>5</sup>The 1988 Airport Plan is in the local record both as a separate document and at Supplemental Record 228-452. Because the Supplemental Record pages omit some oversize maps and charts, citations in this opinion are to the 1988 Airport Plan itself.

1 feasible.<sup>6</sup> 1988 Airport Plan 4-6.

2 In early 1991, OAD applied for the subject land use  
3 approvals, in order to carry out the following airport  
4 improvements endorsed by the 1988 Airport Plan:

- 5 (1) Addition of a 100 ft. wide by 1,000 ft. long  
6 extension to the southern end of the existing  
7 runway.
- 8 (2) Addition of a 40 ft. wide by 1,000 ft. long  
9 extension to the southern end of the existing  
10 parallel taxiway.
- 11 (3) Increase in runway/taxiway centerline  
12 separation from 200 ft. to 300 ft.
- 13 (4) Installation of a precision instrument  
14 approach (PIA) system.<sup>7</sup>

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<sup>6</sup>In 1983, the FAA extensively revised its airfield design standards. The former General Utility and Basic Transport design standard classifications were replaced by General Utility Stage I, General Utility Stage II and Transport classifications. The former General Utility classification was divided into the new General Utility Stage I and Stage II classifications. The former Basic Transport classification was generally intermediate in nature between the new General Utility Stage II and Transport classifications. 1988 Airport Plan 71-72, 76. The 1988 Airport Plan recognizes that the present mix of aircraft using the airport fits the definition of General Utility Stage I, but that the airport was built to satisfy the old General Utility design standards, and for the most part currently satisfies the design standards for General Utility Stage II (nonprecision approach). Id. at 72-73, 76.

The 1988 Airport Plan also states that projected future use of the airport "falls on the line between the General Utility Stage II and Transport classifications." Id. at 72. The plan proposes development in accord with Transport standards, with the exception that a waiver be obtained from Transport design standards for Building Restriction Line (BRL) and Aircraft Parking Limit (APL) distances, because these Transport standards cannot be met without severe disruption of existing airport and off-airport development, and are excessive for the anticipated usage of the airport. Id. at 5, 99.

<sup>7</sup>The 1988 Airport Plan proposes installation of a conventional Instrument Landing System, but recognizes that use of the more recently

1           The county approved an exception to Goal 3 for  
2 approximately 10 acres of agricultural land adjoining the  
3 southern and southeastern boundaries of the 1980 exception  
4 area, with corresponding plan and zoning map changes, for  
5 the purpose of carrying out the above described  
6 improvements. These 10 acres include portions of three  
7 parcels, totalling 4.6 acres, owned by Donnelly and  
8 currently used as a filbert orchard. They also include 5.4  
9 acres of a 40 acre parcel owned by Jenks and currently used  
10 to produce grass turf. The county also approved lot line  
11 adjustments adding these 10 acres, and 1.8 acres of land  
12 already within the 1980 exception area, to the 144 acre  
13 state-owned airport parcel. Finally, the county approved a  
14 conditional use permit allowing the above described  
15 airport-related improvements on the resulting 155.8 acre  
16 state-owned parcel.<sup>8</sup> This appeal followed.

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developed Microwave Landing System referred to in the 1976 Airport Plan is a possibility. 1988 Airport Plan 88. At present, an aircraft landing at the airport must use either a visual approach or one of two established nonprecision instrument approaches.

<sup>8</sup>The county imposed conditions of approval prohibiting (1) improvement of the runway to increase its load carrying capacity to more than 30,000 lbs. per axle, and (2) use of the airport by "fixed wing aircraft in excess of 45,000 lbs. gross take-off weight and fixed wing single wheel aircraft in excess of 30,000 lbs. gross take-off weight." Supp. Record 2, 63. As we understand it, these restrictions, together with the proposed runway length, runway-taxiway separation and waivers from FAA Transport BRL and APL distances, result in limiting the weight, size and speed of aircraft that will be able to use the airport. See 1988 Airport Plan 74, 76, 81-86, 106, Table 18. In other words, not every type of aircraft that could use an airport meeting all FAA Transport design standards will be able to use this airport, as it is proposed and approved by the county.

1 **FIRST ASSIGNMENT OF ERROR**

2 The first assignment of error addresses goal  
3 exceptions. The justification for the county's exception to  
4 Goal 3 is challenged in subassignments one through four.  
5 Petitioners' fifth subassignment challenges the county's  
6 failure to adopt an exception to Goals 11 (Public Facilities  
7 and Services) and 14 (Urbanization).

8 **A. Subassignment One**

9 "Respondent's findings are inadequate to support a  
10 'reasons' justification for a Goal 3 exception in  
11 this case; moreover, the record lacks substantial  
12 evidence necessary to support such an exception."

13 ORS 197.732(1)(c) establishes four standards for  
14 adopting "reasons" goal exceptions. ORS 197.732(1)(c)(A)  
15 sets out the following standard:

16 "Reasons justify why the state policy embodied in  
17 the applicable goals should not apply[.]"

18 OAR 660-04-020(2)(a) provides that to satisfy this standard:

19 "\* \* \* The exception shall set forth the facts and  
20 assumptions used as the basis for determining that  
21 a state policy embodied in a goal should not apply  
22 to specific properties or situations including the  
23 amount of land for the use being planned and why  
24 the use requires a location on resource land."<sup>9</sup>

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<sup>9</sup>Additionally, OAR 660-04-022(1) provides that reasons adequate to satisfy ORS 197.732(1)(c)(A) include, as relevant:

"(a) There is a demonstrated need for the proposed use or activity, based on one or more of the requirements of Statewide Goals 3 to 19; and \* \* \*

"\* \* \* \* \*



1 (Emphasis added.)

2 Petitioners contend the challenged exception does not  
3 adequately justify expansion of the existing airport use to  
4 include the runway, taxiway and precision instrument  
5 approach improvements described above. Petitioners also  
6 contend that even if the proposed airport improvements are  
7 justified, the challenged exception does not establish why  
8 the subject 10 acres of agricultural land must be designated  
9 and zoned for other than agricultural use.

10 **1. Justification for Airport Improvements**

11 Petitioners contend the county improperly based its  
12 goal exception for the proposed airport improvements on a  
13 projected increase in "market demand" for use of the  
14 airport. 1000 Friends of Oregon v. Marion County, 18 Or  
15 LUBA 408, 410-17 (1989) (1000 Friends) (reasons exception to  
16 expand an existing recreational vehicle (RV) park); see  
17 BenjFran Dev. Co. v. Metro Service Dist., 95 Or App 22, 767  
18 P2d 467 (1989). Petitioners argue the record shows the FAA  
19 will not approve a PIA for the airport unless the number of  
20 instrument approaches at the airport increases and the real  
21 reason for having a PIA is to attract "substantial corporate  
22 aircraft activity." 1988 Airport Plan 86-87.

23 Petitioners further contend the county has not

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"(c) The proposed use or activity has special features or qualities that necessitate its location at or near the proposed exception site."

1 demonstrated that it cannot satisfy the requirements of one  
2 or more of Goals 3-19, or the requirements of its  
3 acknowledged comprehensive plan, without allowing the  
4 proposed airport improvements. Petitioners argue the county  
5 has failed to demonstrate that the projected increase in  
6 airport use cannot be accommodated at other airports in the  
7 vicinity or in the Portland metropolitan market area.  
8 According to petitioners, the county's findings that the  
9 proposed airport improvements are needed for safety reasons  
10 do not provide adequate justification for the exception  
11 because they relate to operational safety of the proposed  
12 expanded airport, rather than the existing facility.

13 1000 Friends, supra, was similar to this case in that  
14 it involved a "reasons" goal exception adopted to allow  
15 expansion of a previously adopted "committed" goal exception  
16 area. In 1000 Friends, supra, 18 Or LUBA at 414, we found  
17 the county's findings inadequate to comply with  
18 ORS 197.732(1)(c)(A) because they did not establish that the  
19 county could not achieve the policies of the plan or of  
20 relevant goals without expanding the subject exception area  
21 to provide additional RV spaces. We said the findings were  
22 inadequate because they did not show the increased demand  
23 for RV spaces had to be met at the subject location, rather  
24 than elsewhere in the area.

25 In this case, petitioners base their arguments on a  
26 similar premise that accommodating increased demand for

1 airport facilities is not a sufficient justification for a  
2 "reasons" goal exception, and that such an exception  
3 requires a demonstration that the increased demand cannot be  
4 satisfied at other airports in the area. However, there is  
5 a significant difference in this case; the acknowledged  
6 county comprehensive plan, which includes the 1976 Airport  
7 Plan, projects and provides for future growth in use of the  
8 Aurora State Airport and for substantially the same airport  
9 improvements challenged in this appeal.<sup>10</sup> As described  
10 above, the 1976 Airport Plan recognizes that the airport is  
11 part of a regional airport system in the Portland  
12 metropolitan area, projects significantly increased use of  
13 the airport in the future and calls for runway extensions,  
14 increased runway-taxiway separation, and a PIA system.

15 The 1976 Airport Plan has been acknowledged by the Land  
16 Conservation and Development Commission (LCDC) under ORS  
17 197.251 as complying with the statewide planning goals. The  
18 county is not required to rejustify these acknowledged plan  
19 provisions in this proceeding. However, to comply with  
20 ORS 197.732(1)(c)(A) and OAR 660-04-020(2)(a), the county  
21 must establish the reasons why the proposed new goal

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<sup>10</sup>The county adopted its "committed" goal exception for the airport in 1980. Section (2) of OAR 660-04-018 ("Planning and Zoning for Exception Areas"), which became effective on March 20, 1986, provides that planning and zoning for committed exception areas must limit uses of such areas to the existing types of uses or certain other rural uses. However, OAR 660-04-018 applies only to goal exceptions adopted by local governments after the effective date of the rule. OAR 660-04-018(4).

1 exception is required to carry out substantially the same  
2 airport growth and expansion provided for in the  
3 acknowledged 1976 Airport Plan. Whether an exception from  
4 Goal 3 for the subject 10 acres is required to carry out the  
5 proposed airport improvements is addressed below.

6 This subassignment of error is denied.

## 7 **2. Requirement for Subject Property**

8 We understand petitioners to argue that even if the  
9 proposed airport improvements are permissible, the county  
10 has not demonstrated that those improvements require the  
11 adoption of an exception from Goal 3 for all or part of the  
12 subject 10 acres. Petitioners argue the challenged decision  
13 does not explain why the county's purposes cannot be  
14 accomplished through use of aviation easements or other  
15 means, rather than changing the designation of the subject  
16 10 acres from Primary Agricultural to Public Use.  
17 Petitioners point out that the findings state the 5.4 acre  
18 Jenks property at the southern end of the proposed exception  
19 area "would be leased for continued farming." Supp.  
20 Record 29.

21 Petitioners further argue that OAR 660-04-020(2)(a)  
22 requires findings justifying "the amount of land for the use  
23 being planned." According to petitioners, under Dyke v.  
24 Clatsop County, 18 Or LUBA 787 (1990), the following county  
25 finding is clearly insufficient to justify the acreage  
26 subject to the goal exception:

1 "The minimum total land area which is necessary to  
2 facilitate the long-planned [airport] improvements  
3 will be converted to nonfarm use. \* \* \*" Supp.  
4 Record 42.

5 Respondents' only response to this argument is to state  
6 that the above quoted finding is adequate. Respondents'  
7 Brief 12.

8 The 1976 Airport Plan did not envision that additional  
9 land would be required to carry out the airport improvements  
10 called for by that plan. 1976 Airport Plan 25. The record  
11 shows that the proposed runway extension will end  
12 approximately 1,000 ft. north of the southern boundary of  
13 the 1980 exception area and that the proposed PIA facilities  
14 will not be located on the proposed exception area. Record  
15 357, 363. The record shows that a small portion of the  
16 extended taxiway, perhaps one acre in area, will be located  
17 on the northeast corner of the proposed exception area.  
18 Record 357. The parties do not identify any other findings  
19 or evidence in the record explaining why an exception from  
20 Goal 3 is required for the remaining approximately nine  
21 acres of the proposed exception area to facilitate the  
22 proposed airport improvements.<sup>11</sup> Therefore, except with

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<sup>11</sup>We note that the 1988 Airport Plan includes a table entitled "Property Acquisition Summary." This table lists the "Proposed Use" of the portions of the three Donnelly parcels to be acquired as "Inside BRL, Realign Road," and that of the Jenks property as "Clear Zone." 1988 Airport Plan 23. However, what is lacking is an explanation of why an exception from Goal 3 is required for land within the BRL or Clear Zone, or for relocation of Keil Road. We note that OAD does not propose to acquire, nor the county to

1 regard to the portion of the proposed exception area where  
2 the extended taxiway is proposed to be located, we agree  
3 with petitioners that the county's findings do not justify  
4 why a goal exception is required for the proposed exception  
5 area.

6 This subassignment of error is sustained.<sup>12</sup>

7 **B. Subassignment Two**

8 "The decision lacks an analysis of alternative  
9 sites which could accommodate the use without an  
10 exception. Even if the decision included an  
11 adequate alternatives analysis, the record does  
12 not contain substantial evidence sufficient to  
13 support the conclusion that no alternatives to  
14 this site exist which do not require an  
15 exception."

16 ORS 197.732(1)(c)(B) sets out the following standard  
17 for "reasons" goal exceptions:

18 "Areas which do not require a new exception cannot  
19 reasonably accommodate the use[.]"

20 Petitioners contend the county's findings fail to satisfy  
21 this standard because they do not consider whether the  
22 projected increased airport use can be accommodated at other  
23 airports within the county, in the Portland metropolitan  
24 area or within an urban growth boundary.

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take an exception for, all land within the proposed Clear Zone for the extended runway.

<sup>12</sup>Petitioners also argue under this subassignment of error that the county failed to limit the uses of the proposed exception area to those for which the subject "reasons" exception is justified, as required by OAR 660-04-018(3)(a). Because the county's findings do not identify the uses of the subject 10 acres for which the proposed goal exception is justified, we do not address this aspect of petitioners' argument.

1       As we explained under the previous subassignment of  
2 error, in view of the acknowledged 1976 Airport Plan, we do  
3 not believe the county is required to consider whether the  
4 projected increased airport usage can be accommodated at  
5 other airports or at other locations. Therefore, what the  
6 county is required to consider under this standard is  
7 whether the proposed improvements to this airport can be  
8 reasonably accommodated without requiring a goal exception,  
9 i.e. within the 1980 exception area.

10       In addition to the approved alternative of extending  
11 the existing runway to the south and carrying out PIA from  
12 the north, the county considered extending the runway to the  
13 south and carrying out PIA from the south, extending the  
14 runway to the north and carrying out PIA from the north and  
15 extending the runway to the north and carrying out PIA from  
16 the south. The county found that all of these alternatives  
17 require use of some resource designated lands. Supp.  
18 Record 27. Petitioners do not contend there are other  
19 alternatives for carrying out the proposed improvements at  
20 this airport in addition to these four identified by the  
21 county. Additionally, petitioners do not contend that the  
22 three other alternatives do not require a goal exception.<sup>13</sup>  
23 Therefore, petitioners provide no basis for concluding that

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<sup>13</sup>In fact, petitioners appear to concede that the alternatives which include extending the runway to the north would include "conversion" of some agricultural land, although less than is included in the approved exception area. Petition for Review 28, n 30.

1 there are alternative sites for the proposed improvements at  
2 this airport which do not require a new goal exception to  
3 which ORS 197.732(1)(c)(B) applies.

4 This subassignment of error is denied.

5 **C. Subassignment Three**

6 "The decision violates OAR 660-04-020(2)(c) which  
7 requires findings that the long-term consequences  
8 resulting from the use at the proposed site, with  
9 measures designed to reduce adverse impacts, are  
10 not significantly more adverse than would  
11 typically result from the same proposal being  
12 located in other areas requiring a goal exception.  
13 The decision has no such findings or discussion,  
14 and the record lacks substantial evidence to  
15 support findings to this effect."

16 As explained under the preceding subassignment, the  
17 county considered three alternatives for carrying out the  
18 proposed improvements at the subject airport, all of which  
19 involve agricultural land and require an exception.  
20 Petitioners contend, however, that the county failed to  
21 evaluate the long-term consequences of using these three  
22 alternatives and to compare them to those of the proposed  
23 alternative.

24 We agree with petitioners that ORS 197.732(1)(c)(C) and  
25 OAR 660-04-020(2)(c) require comparing the long-term  
26 economic, social, environmental and energy (ESEE)  
27 consequences of allowing the proposed use at the proposed  
28 site with the consequences of locating the proposed use in  
29 other areas which also require a goal exception. Johnson v.  
30 Tillamook County, 16 Or LUBA 855, 864 (1988); Jensen v.



1 Clatsop County, 14 Or LUBA 776, 782 (1986).

2 The county's findings describe the ESEE consequences of  
3 the approved alternative, Supp. Record 28-32, but do not  
4 describe the ESEE consequences of the other three  
5 alternatives or compare them to those of the chosen  
6 alternative. The findings state that the approved  
7 alternative "has been chosen to be the best alternative,  
8 from an aeronautical perspective, due to the existing site  
9 constraints and design considerations." (Emphasis added.)  
10 Supp. Record 27. Although aeronautical reasons favoring the  
11 chosen alternative may be relevant in the analysis of ESEE  
12 consequences required by ORS 197.732(1)(c)(C) and  
13 OAR 660-04-020(2)(c), they do not obviate the requirement  
14 for such an analysis.<sup>14</sup>

15 This subassignment of error is sustained.

16 **D. Subassignment Four**

17 "Respondent's findings that the proposed use is  
18 compatible with other adjacent land uses are

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<sup>14</sup>Respondents contend that even if the county's findings are inadequate, under ORS 197.835(9)(b), we may nevertheless affirm this part of the county's decision because there is "relevant evidence in the record which clearly supports [this] part of the decision \* \* \*." However, the evidence in the record identified by the parties is conflicting with regard to the ESEE consequences of the proposed use at the proposed location. Additionally, there is conflicting evidence in the record with regard to the amount of resource land required by the other three alternatives considered by the county, particularly those involving extension of the northern end of the runway, and the ESEE consequences of those alternatives. Therefore, we cannot affirm this part of the county's decision under ORS 197.835(9)(b). Forster v. Polk County, \_\_\_ Or LUBA \_\_\_ (LUBA No. 91-108, December 2, 1991), slip op 6; Kellogg Lake Friends v. Clackamas County, 17 Or LUBA 277, 290 (1988), aff'd 96 Or App 536 (1989).

1       inadequate and are not supported by the  
2       substantial evidence in the record."

3       ORS 197.732(1)(c)(D) sets out the following standard  
4 for "reasons" goal exceptions:

5       "The proposed uses are compatible with other  
6       adjacent uses or will be so rendered through  
7       measures designed to reduce adverse impacts."

8       OAR 660-04-020(2)(d) requires an exception to "describe how  
9 the proposed use will be rendered compatible with adjacent  
10 land uses" and to "demonstrate that the proposed use is  
11 situated in such a manner as to be compatible with  
12 surrounding \* \* \* resource management or production  
13 practices."

14       Petitioners contend the record includes testimony that  
15 focuses on the issue of compatibility of the proposed  
16 aeronautical activities with the farm use of the Donnelly  
17 and Jenks properties. Therefore, according to petitioners,  
18 the county is required to respond to this issue in its  
19 findings. Norvell v. Portland Area LGBC, 43 Or App 849, 604  
20 P2d 896 (1979). Petitioners argue that the county's  
21 findings are impermissibly conclusory.

22       We agree with petitioners that ORS 197.732(1)(c)(D) and  
23 OAR 660-04-020(2)(d) require the county to adopt findings  
24 that (1) describe the uses adjacent to the proposed  
25 exception area, and (2) explain why the proposed use of the  
26 exception area is or will be rendered compatible with those  
27 uses. Johnson v. Tillamook County, supra, 16 Or LUBA

1 at 865. However, petitioners' argument under this  
2 subassignment is partly based on a premise that in this  
3 case, ORS 197.732(1)(c)(D) and OAR 660-04-020(2)(d) require  
4 the county to demonstrate that the increased airport usage  
5 facilitated by the proposed goal exception is compatible  
6 with uses adjacent to both the proposed and existing  
7 exception area. We disagree with this premise.

8 In the unique situation presented by this case, where  
9 the increased airport usage facilitated by the proposed goal  
10 exception is planned for in the county's acknowledged  
11 comprehensive plan and the subject of an acknowledged goal  
12 exception, we believe the county need only consider  
13 compatibility issues raised by the addition of the proposed  
14 10 acres to the 1980 exception area.<sup>15</sup> Petitioners may not  
15 use the proposed goal exception for addition of 10 acres to  
16 the airport site as a vehicle to challenge whether the type  
17 and intensity of airport use planned for by the acknowledged  
18 comprehensive plan is compatible with uses adjacent to the

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<sup>15</sup>However, Marion County Zoning Ordinance (MCZO) 119.070(b) requires findings that a proposed conditional use "will be in harmony with the purpose and intent of the zone." MCZO 171.010 provides that the purpose of the P zone is "to provide regulations governing the development of lands appropriate for specific public \* \* \* uses and to ensure their compatibility with adjacent uses." (Emphasis added.) For the reasons stated in n 17, infra, we do not address petitioners' assignment of error concerning compliance of the challenged decision with MCZO conditional use permit approval requirements. Accordingly, we express no opinion on the scope of the compatibility analysis required by MCZO 119.070(b) and 171.010 for approval of a conditional use permit for the proposed airport-related improvements on the 155.8 acre state-owned parcel created by the proposed lot line adjustments.

1 airport.

2       The exception findings adopted by the county include  
3 conclusory statements that the proposed airport improvements  
4 will be compatible with adjacent uses. Supp. Record 32  
5 (findings 42 and 43). They also state that the discussion  
6 on compatibility "in the comprehensive plan amendment and  
7 zone change portion of this consolidated application, is  
8 hereby incorporated by this reference." Id. (finding 44).  
9 Whether this statement refers to other portions of the  
10 findings or to portions of the OAD applications is unclear,  
11 and where any such discussion of compatibility is located in  
12 the record is not identified. Respondents contend the  
13 county's goal exception compatibility findings are supported  
14 by plan amendment findings at Supp. Record 35-37. These  
15 findings address whether acquisition of the subject 10 acres  
16 would prevent continued farm use of the remaining Donnelly  
17 orchards and Jenks turf farm.

18       As we stated under subassignment one, supra, the  
19 county's findings do not explain why an exception from  
20 Goal 3 is required for approximately 9 of the 10 acres for  
21 which an exception is proposed. Similarly, the  
22 compatibility findings described in the preceding paragraph  
23 do not establish what use will be made of the subject  
24 property, except to say that the 5.4 acre portion of the  
25 Jenks property might remain in farm use. Supp. Record 36.  
26 Without establishing the uses to be made of the proposed

1 exception area, the findings can provide no basis for  
2 determining those uses will be compatible with adjacent  
3 uses, as required by ORS 197.732(1)(c)(D) and  
4 OAR 660-04-020(2)(d).

5 This subassignment of error is sustained.

6 **E. Subassignment Five**

7 "Goal[s] 11 and 14 exceptions are required here  
8 because the proposed use necessarily converts what  
9 is presently farm land into urban land through the  
10 introduction of urban facilities and uses.  
11 Respondent made no attempt to take exceptions to  
12 Goals 11 and 14 in this case."

13 Petitioners argue the county's findings establish that  
14 the proposed airport improvements are urban in nature.  
15 Supp. Record 18, 31-32, 40. Petitioners argue that a  
16 comprehensive plan amendment allowing urban uses on rural  
17 land must be supported by either (1) a demonstration of  
18 compliance with Goal 14, or (2) adoption of an exception to  
19 Goal 14. 1000 Friends of Oregon v. LCDC (Curry County), 301  
20 Or 447, 470-71, 724 P2d 268 (1986). Petitioners further  
21 argue that OAR 660-12-065(4)(o) and 660-12-070(1), although  
22 not directly applicable to the challenged decision because  
23 the subject applications were filed before these rules  
24 became effective, indicate that an exception to Goals 11 and  
25 14 is required to locate a transportation facility of the  
26 nature proposed on rural land. Petitioners point out that  
27 exceptions from Goals 11 and 14 have never been adopted for  
28 the Aurora State Airport, and contend such exceptions must

1 be adopted as part of the challenged decision.

2 Respondents contend petitioners failed to raise the  
3 issue of whether the OAD proposal requires an exception to  
4 Goals 11 and 14 during the county proceedings and,  
5 therefore, are precluded from raising this issue before  
6 LUBA. ORS 197.763(1), 197.835(2).

7 We have stated that where a local government's notice  
8 of hearing does not comply with ORS 197.763(3)(b) because it  
9 fails to identify an approval criterion relevant to the  
10 proposed development, under ORS 197.835(2)(a) petitioners  
11 may raise the local government's failure to require  
12 compliance with that approval criterion as an issue in a  
13 LUBA appeal proceeding. Neuenschwander v. City of Ashland,  
14 20 Or LUBA 144, 157 (1990). Where a local government's  
15 notice of hearing fails to identify an applicable statewide  
16 planning goal as an approval criterion, petitioners  
17 similarly may raise the local government's failure either to  
18 comply with or to adopt an exception from that goal as an  
19 issue in a LUBA appeal proceeding. There is no dispute that  
20 the county's notices of hearing did not identify Goals 11  
21 and 14 as applicable criteria and, therefore, if Goals 11  
22 and 14 are applicable to the challenged decision,  
23 petitioners may raise failure to adopt exceptions from Goals  
24 11 and 14 in this appeal.

25 Respondents argue that Goals 11 and 14 do not apply to  
26 the challenged decision, because the findings and evidence

1 in the record establish that the proposed airport  
2 improvements are not urban in nature. Supp. Record 30, 37;  
3 Record 349-50.

4 We agree with petitioners that in view of the area  
5 served and level of service provided, both the existing and  
6 proposed airport uses are clearly urban public facility  
7 uses. Thus, the acknowledged county comprehensive plan  
8 authorizes urban use of the 1980 exception area.<sup>16</sup> However,  
9 the challenged decision amends the county's comprehensive  
10 plan and zoning maps to designate and zone an additional 10  
11 acres for use as part of this urban airport use. This  
12 requires that exceptions to Goals 11 and 14 be adopted for  
13 those 10 acres. We note, however, that because such  
14 exceptions to Goals 11 and 14 would be based on the need to  
15 facilitate improvements to an urban public facility use that  
16 are already authorized by the acknowledged comprehensive  
17 plan, the text of such exceptions probably could be very  
18 similar to that required for the proposed exception to  
19 Goal 3.

20 This subassignment of error is sustained.

21 The first assignment of error is sustained, in part.

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<sup>16</sup>The county's plan is acknowledged as complying with Goals 11 and 14, and the proposed plan and zoning map amendments are allegedly required to carry out the airport development authorized by the acknowledged plan. Petitioners may not use their appeal of the challenged decision as a means of requiring the county to adopt Goal 11 and 14 exceptions to allow the airport development that is already authorized by the acknowledged plan.

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<sup>17</sup>In sustaining the first assignment of error, we determine the county's exception to Goal 3 is inadequate, and that the county failed to adopt required exceptions to Goals 11 and 14. The comprehensive plan map change, zoning map change, conditional use permit and lot line adjustment approvals challenged in petitioners' other assignments of error are all dependent upon county approval of the required goal exceptions. We therefore do not consider petitioners' arguments that other approval criteria for plan and zone amendments, conditional use permits and lot line adjustments are violated by the challenged decision. ORS 197.835(9)(a) requires that we decide all issues when reversing or remanding a decision, to the extent that we can do so consistent with the deadline established for issuing our final opinion and order. Resolution of the remaining issues raised by petitioners would require further extensions of the statutory deadline for issuing our final opinion and order.





# A-Engrossed House Bill 4092

Ordered by the House February 15  
Including House Amendments dated February 15

Sponsored by Representatives LEWIS, VIAL, Senator GIROD; Representatives BARRETO, BOONE, DOHERTY, ESQUIVEL, HELFRICH, LIVELY, MCKEOWN, MEEK, NEARMAN, NOBLE, OLSON, POST, RESCHKE, WHISNANT, WILSON, WITT, Senators BENTZ, BEYER, BOQUIST, ROBLAN, THOMSEN (Presession filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Establishes standards for expansion of state airport on land zoned for exclusive farm use.  
**Directs Oregon Homeland Security Council to prioritize state airports for resiliency investments.**

## A BILL FOR AN ACT

1  
2 Relating to state airports; creating new provisions; and amending ORS 215.283.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. (1) As used in this section:**

5 (a) **"Runway area" means a runway, taxiway, safety area or runway protection zone.**

6 (b) **"State airport" means an airport or air navigation facility owned or controlled by the**  
7 **State of Oregon.**

8 (2) **If a state airport has at least 350 based aircraft, as reported to the Federal Aviation**  
9 **Administration, then the Oregon Department of Aviation, as authorized by the State Avi-**  
10 **ation Board and the county in which the state airport is located, may extend a state airport**  
11 **runway area on land not zoned for a state airport, including land zoned for exclusive farm**  
12 **use, subject to subsection (3) of this section.**

13 (3)(a) **Notwithstanding ORS 215.296 (1), if the extension of a state airport runway area**  
14 **will be placed on land zoned for exclusive farm use, a local planning body shall approve the**  
15 **extension of the state airport runway area under this section unless, after a public hearing,**  
16 **the body finds that:**

17 (A) **The extension will cause significant impacts in existing farm practices on surround-**  
18 **ing lands zoned for and dedicated to farm use; or**

19 (B) **The extension will impose significant adverse effects to public health, safety or wel-**  
20 **fare of individuals working or residing in the area.**

21 (b) **Notwithstanding ORS 215.296 (2), a local planning body may impose only those condi-**  
22 **tions on the extension of the state airport runway area upon an area zoned for exclusive**  
23 **farm use that are necessary to address the conditions under paragraph (a)(A) and (B) of this**  
24 **subsection.**

25 (4) **A state airport runway area extension under this section may include new or ex-**  
26 **panded ground-based navigation facilities and related navigation equipment and any fencing**

NOTE: Matter in boldfaced type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.  
New sections are in boldfaced type.

1 required for airport safety or security.

2 **SECTION 2.** (1) A local government shall amend its comprehensive plan and land use  
3 regulations as appropriate to conform to the provisions of section 1 of this 2018 Act.

4 (2) Notwithstanding ORS 197.251 and 836.610, a local government amending its compre-  
5 hensive plan or land use regulations under this section or approving a state airport runway  
6 area extension is not:

7 (a) Subject to the post-acknowledgement procedures under ORS 197.610 to 197.651;

8 (b) Required to demonstrate compliance with any statewide planning goal; or

9 (c) Required to obtain an exception to any statewide planning goal.

10 **SECTION 3.** ORS 215.283 is amended to read:

11 215.283. (1) The following uses may be established in any area zoned for exclusive farm use:

12 (a) Churches and cemeteries in conjunction with churches.

13 (b) The propagation or harvesting of a forest product.

14 (c) Utility facilities necessary for public service, including wetland waste treatment systems but  
15 not including commercial facilities for the purpose of generating electrical power for public use by  
16 sale or transmission towers over 200 feet in height. A utility facility necessary for public service  
17 may be established as provided in:

18 (A) ORS 215.275; or

19 (B) If the utility facility is an associated transmission line, as defined in ORS 215.274 and  
20 469.300.

21 (d) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the  
22 farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild,  
23 grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm  
24 operator does or will require the assistance of the relative in the management of the farm use and  
25 the dwelling is located on the same lot or parcel as the dwelling of the farm operator.  
26 Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel size requirements under ORS  
27 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or  
28 other financing secured by the dwelling and the secured party forecloses on the dwelling, the se-  
29 cured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure  
30 shall operate as a partition of the homesite to create a new parcel.

31 (e) Subject to ORS 215.279, primary or accessory dwellings and other buildings customarily  
32 provided in conjunction with farm use.

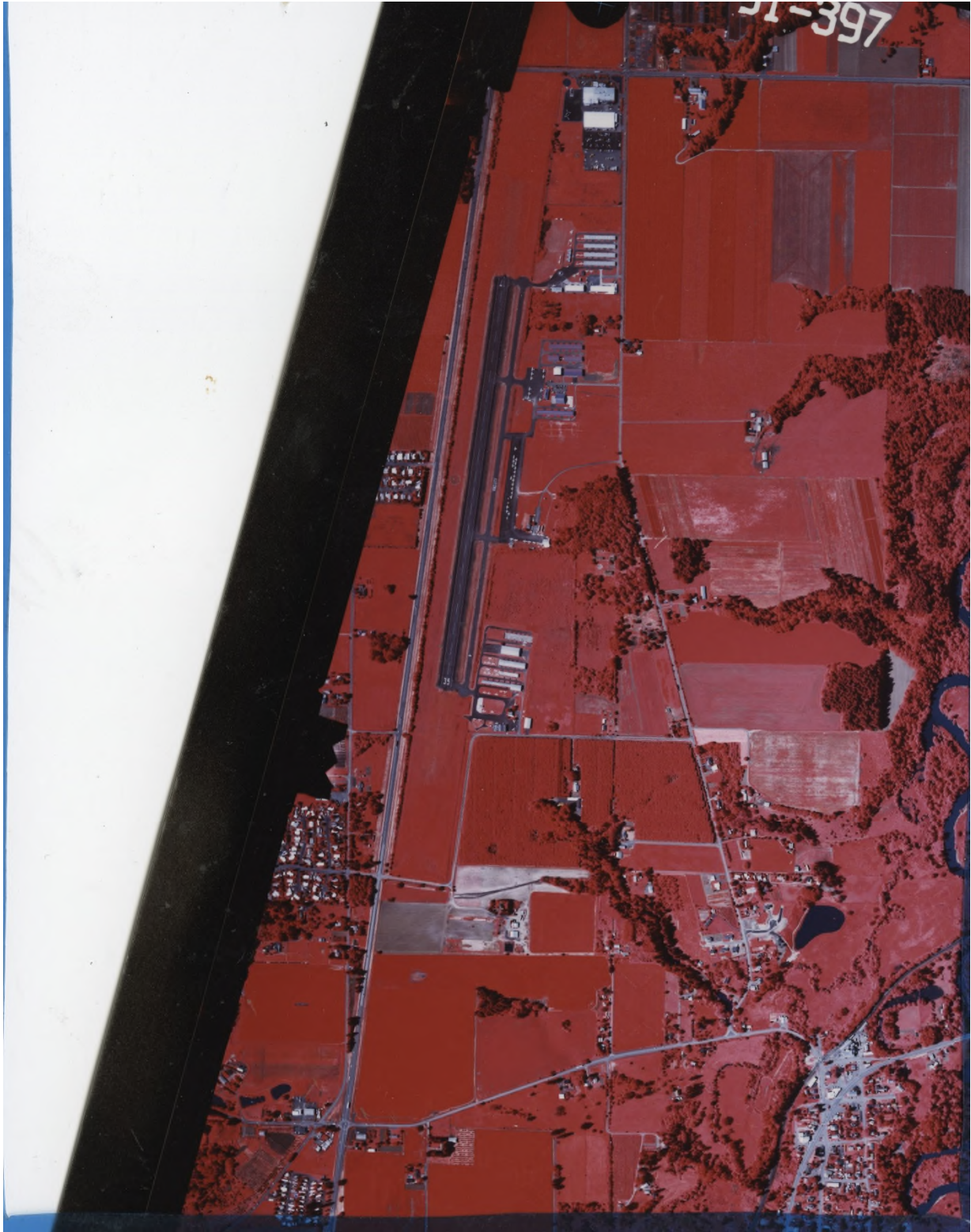
33 (f) Operations for the exploration for and production of geothermal resources as defined by ORS  
34 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of  
35 compressors, separators and other customary production equipment for an individual well adjacent  
36 to the wellhead. Any activities or construction relating to such operations shall not be a basis for  
37 an exception under ORS 197.732 (2)(a) or (b).

38 (g) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or  
39 construction relating to such operations shall not be a basis for an exception under ORS 197.732  
40 (2)(a) or (b).

41 (h) Climbing and passing lanes within the right of way existing as of July 1, 1987.

42 (i) Reconstruction or modification of public roads and highways, including the placement of  
43 utility facilities overhead and in the subsurface of public roads and highways along the public right  
44 of way, but not including the addition of travel lanes, where no removal or displacement of buildings  
45 would occur, or no new land parcels result.





1991 Aerial Photo



2018 Aerial Photo

▲ Brandon Reich [BReich@co.marion.or.us]



Friday, December 15, 2017 8:21 AM

The exception is attached. There were not many requirements for taking an exception back then. There are no requirements for the land in the exception; the current Public zone regulates development and is what applies. New land added to the airport requires a Goal 3 and perhaps Goal 14 exception.

Brandon

>>> Joseph Schaefer <JSchaefer@ci.aurora.or.us> 12/14/2017 2:02 PM >>>

▲ *Joseph Schaefer*



*Sent items*

Thursday, December 14, 2017 2:02 PM

Brandon the attorney for the airport owners has raised some questions about a potential Goal 14 exception for the runway extension, so we wanted to circle back and check the exceptions status of the airport properties. The Comp Plan Introduction refers to a Background and Inventory Report which is not apparent online, although in theory the information is in there.

In any case, can you please send the exception info for the airport properties? I know HTS is separate and so that one is not required.

Thanks

## AREA 2.1 - AURORA AIRPORT

Total Acreage	<u>250</u>
Total Parcels	<u>9</u>
Occupied Parcels	<u>5</u>

Plan Designation: Public Use  
Zoning: P (Public)

### Findings and Conclusions

1. Approximatley 140 acres of this area is owned and operated by the state of Oregon as public airport. The long narrow strip paralleling State Highway 144 contains the runway.
2. Many of the other developed parcels contain private airport related commercial businesses.
3. The entire area is identified in the State Board of Aeronautics Master Plan as being needed for future airport facilities. It is, therefore, recognized by Marion County as being committed to airport related development.

## AREA 2.2 - SUNSET HAVEN

Total Acreage	<u>10</u>
Total Parcels	<u>35</u>
Occupied Parcels	<u>34</u>

Plan Designation: Rural Residential  
Zoning: AR (Acreage Residential)

### Findings and Conclusions

1. This area is a subdivision platted in 1968 creating thirty-five 10,000 square foot lots.
2. All but one of the 10,000 square foot lots presently contain dwellings and the area is therefore developed.

## AREA 2.3 - DEER CREEK

Total Acreage	<u>82</u>
Total Parcels	<u>148</u>
Occupied Parcels	<u>121</u>

Plan Designation: Rural Residential  
Zoning: AR (Acreage Residential)

### Findings and Conclusions

1. Deer Creek Estates Subdivision (1971), with approximately 10,000 square foot lot sizes, occupies 53 acres of this area. This subdivision is 90 percent occupied with dwellings and is therefore developed.
2. An additional seven acres at the southwest corner of the area was platted in 1974 into five lots as Cederfield Subdivision. Two dwellings occupy this subdivision with the remaining three lots committed to future development.





DOGAMI BARE EARTH LIDAR HILLSHADE  
<https://gis.dogami.oregon.gov/maps/lidarviewer/>



DOGAMI LIDAR BARE EARTH SLOPE  
<https://gis.dogami.oregon.gov/maps/lidarviewer/>



Elevated grade of south end of existing airport property, looking north across Keil Rd. Photo October 28, 2019.



**Marion County**  
OREGON

**Board of Commissioners**

(503) 588-5212

(503) 588-5237-FAX February 13, 2015

**BOARD OF  
COMMISSIONERS**

Janet Carlson  
Kevin Cameron  
Sam Brentano

Senator Lee Beyer, Chair  
Senate Committee on Business and Transportation  
900 Court St. NE, S-419  
Salem, Oregon 97301

**RE: Support Senate Bill 534**

Dear Senator Beyer:

**CHIEF  
ADMINISTRATIVE  
OFFICER**

John Lattimer

The Marion County Board of Commissioners supports Senate Bill 534, allowing airports and cities to enter into an agreement for sewer and water services. SB 534 would allow Aurora Airport in Marion County to connect to the water and sewer services necessary for its continued success as a regionally significant employer. Wells at the airport have, at times, been insufficient to provide the water necessary for businesses located at the airport. Also, septic systems are difficult to locate at the airport due to soil conditions. The provision of water and sewer service from the City of Aurora would address these deficiencies in rural services.

While the provision of urban facilities is allowed by state law under certain circumstances, it is a difficult and long process for the city, the county, and property owners. SB 534 promises a simpler, more streamlined process that the city and the airport would be involved in without requiring county approval of the extension of services. We support this approach for airports in the State of Oregon.

We urge your support of SB 534 and thank you for your consideration.

Sincerely,

Janet Carlson, Chair  
Commissioner

Kevin Cameron, Vice Chair  
Commissioner

Sam Brentano  
Commissioner

cc: Marion County Legislative Delegation

- 5) **Aviation Forecasts** – Forecasts of aeronautical demand for short-, medium-, and long-term time frames.
  - 6) **Facility Requirements** – Assess the ability of the existing airport, both airside and landside, to support the forecast demand. Identify the demand levels that will trigger the need for facility additions or improvements and estimate the extent of new facilities that may be required to meet that demand.
  - 7) **Alternatives Development and Evaluation** – Identify options to meet projected facility requirements and alternative configurations for each major component. Assess the expected performance of each alternative against a wide range of evaluation criteria, including its operational, environmental, and financial impacts. A recommended development alternative will emerge from this process and will be further refined in subsequent tasks. This element should aid in developing the purpose and need for subsequent environmental documents.
  - 8) **Airport Layout Plans** – One of the key products of a master plan is a set of drawings that provides a graphic representation of the long-term development plan for an airport. The primary drawing in this set is the Airport Layout Plan. Other drawings may also be included, depending on the size and complexity of the individual airport.
  - 9) **Facilities Implementation Plan** – Provides a summary description of the recommended improvements and associated costs. The schedule of improvements depends, in large part, on the levels of demand that trigger the need for expansion of existing facilities.
  - 10) **Financial Feasibility Analysis** – Identify the financial plan for the airport, describe how the sponsor will finance the projects recommended in the master plan, and demonstrate the financial feasibility of the program.
- c. **Airport Layout Plan Updates** – An update of the airport layout plan (ALP) drawing set should be an element of any master plan study. In fact, keeping the ALP current is a legal requirement for airports that receive Federal assistance. An update of the ALP drawing set will reflect actual or planned modifications to the airport and significant off-airport development. An accompanying ALP Narrative Report should explain and document those changes and contain at least the following elements:
- 1) Basic aeronautical forecasts.
  - 2) Basis for the proposed items of development.
  - 3) Rationale for unusual design features and/or modifications to FAA Airport Design Standards.
  - 4) Summary of the various stages of airport development and layout sketches of the major items of development in each stage.

## Chapter 10 Airport Layout Plans

### 1001. GENERAL

- a. This chapter provides guidance for the preparation of the drawings that make up the Airport Layout Plan (ALP) drawing set. The ALP depicts existing airport facilities and proposed developments as determined from the planners' review of the aviation activity forecasts, facility requirements, and alternatives analysis. The process outlined in this chapter also applies to ALPs that are prepared without a master plan.
- b. FAA Order 5100.38, *Airport Improvement Program Handbook*, provides supplemental guidance for the preparation of an ALP. United States Code (USC) 47107(a) requires, in part, a current ALP approved by both the sponsor and FAA prior to the approval of an airport development project. USC 47107(a)(16) requires that the airport sponsor maintain an ALP that ensures the safety, utility and efficiency of the airport. Grant assurance number 29 requires that the sponsor keep the ALP up to date at all times. As stated in Order 5100.38, an ALP remains current for a five-year period, or longer, unless major changes at the airport are made or planned.
- c. The minimum elements of the ALP drawing set are defined in Appendix F, *Airport Layout Plan*, of this AC. This chapter complements the ALP drawing set requirements in Appendix F.
- d. The ALP preparer must work closely with the airport sponsor, the responsible FAA office, and if appropriate, the applicable state agency, to define the requirements, standards, and criteria to be employed. To ensure that the ALP is comprehensive, all parties must agree to its content and standards. ARP Standard Operating Procedure (ARP SOP) 2.00, FAA Review and Approval of Airport Layout Plans (ALPs), and ARP SOP 3.00, FAA Review of Exhibit 'A' Airport Property Inventory Maps, should be referenced for specific ALP review and approval procedures and additional preparation guidance. Current versions of these SOPs are located at <http://www.faa.gov/airports/resources/sops/>.
- e. The five primary functions of the ALP that define its purpose are:
  - 1) An ALP creates a blueprint for airport development by depicting proposed facility improvements. The ALP provides a guideline by which the airport sponsor can ensure that development maintains airport design standards and safety requirements, and is consistent with airport and community land use plans.
  - 2) The ALP is a public document that serves as a record of aeronautical requirements, both present and future, and as a reference for community deliberations on land use proposals and budget resource planning.
  - 3) The approved ALP enables the airport sponsor and the FAA to plan for facility improvements at the airport. It also allows the FAA to anticipate budgetary and

**e. Notification.** When a clearway is provided, the clearway length and the declared distances, as specified in paragraph 322.a, must be provided in the Airport/Facility Directory A/FD (and in the Aeronautical Information Publication for international airports) for each operational direction. When a clearway is provided at an airport with an FAA-approved Airport Layout Plan (ALP), it must be designated on the ALP.

**f. Clearway location.** The clearway is located at the far end of TORA. The portion of runway extending into the clearway is unavailable and/or unsuitable for takeoff run and takeoff distance computations.

### **312. Stopway standards.**

A stopway is an area beyond the takeoff runway centered on the extended runway centerline and designated by the airport owner for use in decelerating an aircraft during an aborted takeoff. (See Figure 3-20.) It must be at least as wide as the runway and able to support an aircraft during an aborted takeoff without causing structural damage to the aircraft. Refer to AC 150/5320-6 for pavement strength requirements for a stopway. Their limited use and high construction cost, when compared to a full-strength runway that is usable in both directions, makes their construction less cost effective. When a stopway is provided, the stopway length and the declared distances must be provided in the A/FD (and in the Aeronautical Information Publication for international airports), as specified in paragraph 322.f, for each operational direction. The use of a stopway for takeoff computations requires that the stopway complies with the definition of Part 1. This definition can be found in paragraph 102.zzz. When a stopway is provided at an airport with an FAA-approved ALP, it must be designated on the approved ALP.

### **313. Surface gradient.**

**a. Aircraft approach categories A and B.** The longitudinal gradient standards for the centerline of runways and stopways are as follows and as illustrated in Figure 3-21. Keep longitudinal grades and grade changes to a minimum.

- (1) The maximum longitudinal grade is  $\pm 2.0$  percent.
- (2) The maximum allowable grade change is  $\pm 2.0$  percent.
- (3) Vertical curves for longitudinal grade changes are parabolic. The length of the vertical curve is a minimum of 300 feet (91 m) for each 1.0 percent of change. A vertical curve is not necessary when the grade change is less than 0.40 percent.
- (4) The minimum allowable distance between the points of intersection of vertical curves is 250 feet (76 m) multiplied by the sum of the grade changes (in percent) associated with the two vertical curves.
- (5) Present maximum and minimum transverse grades for runways and stopways. Keep transverse grades to a minimum and consistent with local drainage requirements. The ideal configuration is a center crown with equal, constant transverse grades on either side. However, an off-center crown with different grades on either side and with

## CHAPTER 6. PAVEMENT DESIGN FOR SHOULDERS

### 6.1 Purpose.

- 6.1.1 This chapter provides the FAA design procedure for paved airfield shoulders. Note blast pads and stopways may be designed following these same procedures.
- 6.1.2 Paved or surfaced shoulders provide resistance to erosion and debris generation from jet blast. Jet blast can cause erosion of unprotected soil immediately adjacent to airfield pavements. The shoulder must be capable of safely supporting the occasional passage of the most airplanes as well as emergency and maintenance vehicles.
- 6.1.3 Paved shoulders are required for runways, taxiways, taxilanes, and aprons accommodating Airplane Design Group (ADG) IV and higher aircraft and are recommended for runways accommodating ADG III aircraft. For shoulders adjacent to runways accommodating only ADG I and ADG II aircraft, the following surface types are recommended: turf, aggregate-turf, soil cement, lime, or bituminous stabilized soil. Refer to AC 150/5300-13 for standards and recommendations for airport design.

### 6.2 Shoulder Design.

- 6.2.1 Shoulders are designed to accommodate the most demanding of (1) a total of 15 fully loaded passes of the most demanding airplane or (2) anticipated traffic from airport maintenance vehicles. Minimum shoulder pavement layer thicknesses are given in Table 6-1. Shoulder pavement thicknesses are designed to allow safe operation of an airplane on an emergency basis across the paved shoulder area without damage to the airplane. Flexible shoulder pavement sections may experience noticeable vertical movements with each passage of an airplane and may require inspection and/or limited repair after each airplane operation. Rigid shoulder pavement sections may experience cracking after each airplane operation.
- 6.2.2 Drainage from the adjacent airfield pavement base and subbase must be considered when establishing the total thickness of the shoulder pavement section. A thicker shoulder section than structurally required and edge drains may be necessary to avoid trapping water under the airfield pavement. Typically this is accomplished by using minimum base/subbase on the outer edge and tapering back to match with the base/subbase under the adjacent runway pavement. AC 150/5320-5, *Airport Drainage Design*, provides additional guidance on drainage requirements.
- 6.2.3 Shoulder pavement thickness is determined using the FAARFIELD design software. Because the pavement is not intended to carry regular aircraft traffic, a complete traffic mixture is not considered. Instead the airplane requiring the thickest pavement section is used to determine the pavement shoulder thickness. As described in the procedure below, it is not necessary to perform a separate design for each airplane in the traffic mix. Rather, several airplanes with the largest contribution to the CDF should be evaluated to determine which is the most demanding for shoulder design. Aircraft



Rescue and Firefighting (ARFF), maintenance, and snow removal vehicles that operate on the shoulder should be considered separate of the aircraft in shoulder thickness pavement design.

6.2.4 The following steps are used for the shoulder design procedure:

**Step 1:** Create a new job file in FAARFIELD with the proposed pavement section for the shoulder design. Include all desired pavement layers, e.g., surface course, base course, stabilized course, subbase course, etc. Layer thickness should meet minimum thickness requirements for shoulder design.

**Note:** It may be necessary to use the User Defined pavement layer to represent the proposed shoulder pavement cross-section because of the minimum shoulder pavement layer thickness requirements.

**Step 2:** Input all airplanes from the traffic mixture and set annual departures to 1,200 annual departures. From the FAARFIELD Structure screen, click the “Life” button. Return to the airplane mixture, and scroll over to the column labeled “CDF Max for Airplanes”. In most instances, the airplane with the highest CDF Max value will be the most demanding airplane and will control the shoulder pavement design. However, the top few airplanes with high CDF max values should be evaluated because the thickness of the pavement section will influence which aircraft is the most demanding.

**Step 3:** Return to the FAARFIELD Airplane screen and clear the traffic mixture except for the most demanding airplane to be used to design the shoulder pavement thickness. Adjust operating weight as appropriate.

**Step 4:** Change annual departures to 1 departure.

**Step 5:** Return to the Structure screen and confirm the design period is 15 years. The intent is to design a pavement for 15 total departures of the most demanding airplane or vehicle.

**Step 6:** Confirm the composition and thickness of pavement layers and that the correct layer is designated for thickness iteration. The iteration layer will be shown with a small arrow along the left side.

**Step 7:** Click on the “Design Structure” button to design the minimum pavement section for the individual airplane.

**Step 8:** Repeat Steps 3-7 for all airplanes with significant CDF max contributions in the traffic mixture. The design for the shoulder pavement is the pavement section with the greatest thickness requirement.

**Note:** A thicker shoulder section than structurally required and edge drains may be necessary to provide drainage from the

adjacent airfield pavement base and subbase to avoid trapping water under the airfield pavement.

- Step 9: Check shoulder pavement thickness requirements for ARFF, snow removal, and maintenance vehicles that operate at the airport. Return to the FAARFIELD Airplane screen and clear all airplanes from the traffic mix. Add vehicles from the “Non-Airplane Vehicles” group in the FAARFIELD internal airplane library, and adjust the gross weights as necessary. In place of “Annual Departures” for non-airplane vehicles, enter the number of annual operations on the shoulder pavement. Use the number of operations that will be expected and do not limit to 15. After adding all non-airplane vehicles to be considered, return to the Structure screen and click on the “Design Structure” button to design the pavement section.
- Step 10: In areas prone to frost, check frost protection requirements as discussed in paragraph 6.4.
- Step 11: The final shoulder thickness design will be the greatest of the thickness requirements for the most demanding airplane (Steps 3-7), non-airplane vehicle traffic, minimum layer thickness required for frost protection, or the minimum shoulder pavement layer thickness (Table 6-1).

### 6.3 **Shoulder Material Requirements.**

#### 6.3.1 Asphalt Surface Course Materials.

The material should be of high quality, similar to FAA Item P-401/P-403, and compacted to an average target density of 93 percent of maximum theoretical density. See AC 150/5370-10, Item P-401 and Item P-403.

#### 6.3.2 Portland Cement Concrete Surface Course Materials.

The material should be of high quality, similar to FAA Item P-501, with a minimum design flexural strength of 600 psi (4.14 MPa). See AC 150/5370-10, Item P-501.

#### 6.3.3 Base Course Materials.

Base course materials must be high quality materials, similar to FAA Items P-208, P-209, P-301, or P-304. See AC 150/5370-10, Item P-208, P-209, P-301 or P-304.

#### 6.3.4 Subbase Course Materials.

Place subbase course material in accordance with AC 150/5370-10, Item P-154.

#### 6.3.5 Subgrade Materials.

Prepare subgrade materials in accordance with AC 150/5370-10, Item P-152.

#### 6.4 Shoulders Areas Susceptible to Frost Heave.

In areas prone to frost heave, it may be necessary to increase the thickness of the shoulder pavement to avoid differential frost heave. Additional thickness of the pavement beyond that necessary for structural design may be achieved with any material suitable for pavement construction. The material should possess a CBR value higher than the subgrade and have non-frost susceptible properties. Place the additional layer immediately on the subgrade surface below all base and subbase layers. The FAA recommends limited subgrade frost protection in accordance with paragraph 3.12.17.

#### 6.5 Reporting Paved Shoulder Design.

Include FAARFIELD analysis as part of the Engineer's Design Report on federally funded projects.

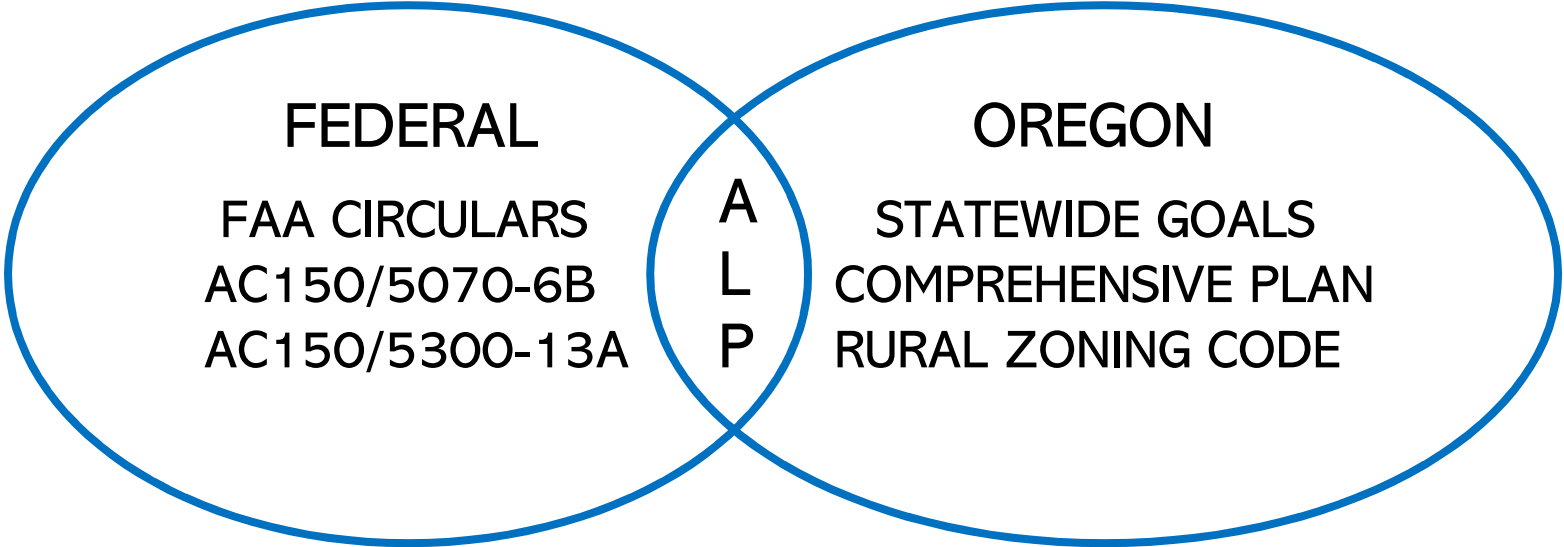
**Table 6-1. Minimum Shoulder Pavement Layer Thickness**

Layer Type	FAA Specification Item	Minimum Thickness, in (mm)
HMA Surface	P-401, P-403	4.0 (100)
PCC Surface	P-501	6.0 (150)
Aggregate Base Course	P-209, P-208,	6.0 (150) <sup>1</sup>
Subbase (if needed)	P-154	4.0 (100)

**Note:**

1. Minimum thickness of aggregate base

# WHAT IS AN AIRPORT MASTER PLAN?



## SAB Hearing Testimony October 31, 2019

Thank you for inviting the City of Aurora to your meeting today. My name is Joseph Schaefer and I am the chair of the Aurora Planning Commission, which along with the City Council, voted unanimously to participate in this process.

The two boards are a highlighted enlargement of the Airport Layout Plan illustrating three places where new pavement is located outside the current airport boundary, and a Venn diagram of federal and state Master Plan requirements.

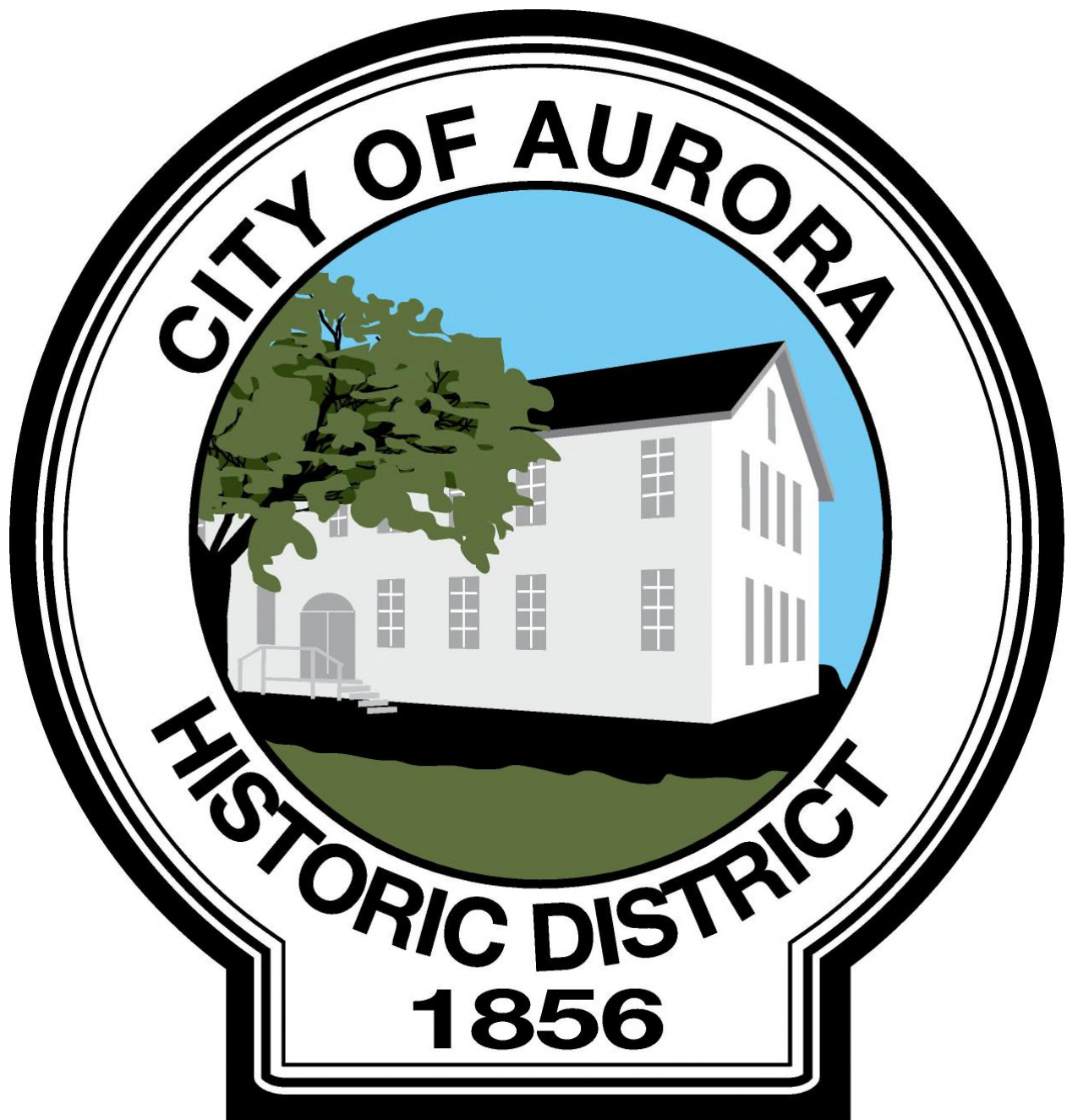
The Marion County Board of Commissioners wrote:

“Wells at the airport have, at times, been insufficient to provide the water necessary for businesses located at the airport. Also, septic systems are difficult to locate at the airport due to soil conditions. The provision of water and sewer service from the City of Aurora would address these deficiencies.”

The need for city services is often acknowledged, but nothing practical has been done. The City believes that working together to build this essential infrastructure is more productive than wrangling about zoning. We hope you will agree.

Special recognition goes to Mary Buell in your office and the City Recorder Scott Jorgensen for managing our extensive submittals, and to Wendie Kellington, for teaching me how to make a land use record. Thanks also to Angela Carnahan and Gordon Howard at DLCD for helping the City understand how the state agency coordination system operates.

The City appreciates your interest in our community and I would be happy to answer any questions.



Comments on the Proposed Findings of Compatibility for the Aurora  
State Airport Master Plan and the Airport Layout Plan

Oregon State Aviation Board  
October 31, 2019