

# City of Aurora

FOUNDED IN 1856  
"National Historic Site"

June 23, 2020

To: Marion County Board of Commissioners

Re: Zone Change/Comprehensive Plan Change/Conditional Use 19-002 -  
Comments for Board of Commissioners Hearing

Thank you for sending the Hearings Officer's recommendation (the "Recommendation") to us for review, and the City offers these comments in response. Please include this letter and the attached box of documents in the Board of Commissioners Record and acknowledge receipt of same. The City continues to believe this development could be a genuine benefit to the Aurora State Airport and north Marion County generally, and that it will be an appropriate use for this site once it has been annexed into the City. At that time, the land use regulations for approval of the proposed development will become straightforward, because goal exceptions are not required. *See* OAR 660-004-0010(1)(d)(A). At this time, prior to annexation, the proposal is subject to numerous requirements which are explained below.

There are several applicable land use regulations described in this letter that were not listed on the public notice. The county must apply all these provisions. Because these rigorous requirements are not and cannot be satisfied by the application, the City again encourages the applicant and Marion County to assist us with bringing the site into the City in order to facilitate its development with the necessary and proper public services.

## **MCRZC 17.119 Conditional Use Criteria**

Conditional uses must satisfy three discretionary criteria and several development standards. MCRZC 17.119.070.B is not satisfied because the proposed large scale office use is not in harmony with the Public zone. The use is not in harmony because it is not on the list of conditional uses in the Public zone, and would create an employment density far beyond the capacity of the available rural infrastructure and services. The application proposes a finding that "only airport-related uses be allowed" including "management

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office space". Yet it proposes 123,000 square feet of office space and 158,000 square feet of hangars and other uses, or 43% office. There is no information to support the assumption that management of airport operations requires 123,000 square feet of office space. For example, Wilson Construction has 4800 square feet of office and 32,000 square feet of hangar, or 13% office. (Hangar Juliet, R351434). The site plan effectively proposes many tens of thousands of square feet of office space that is not related to or necessary for management of aviation activities, and therefore it is not in harmony with the Public Zone. Moreover, the variance procedure for conditional uses was repealed by Ord 1397.

### **MCRZC 17.171.060.I Sewage Disposal**

This criterion provides two options for disposal of sewage. "Demonstrate 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."

The application does not demonstrate that it will not exceed the carrying capacity of the local sewage disposal system. This requires technical information about the existing wastewater treatment system, including the design criteria, current design capacity, and the additional load that will be placed on that system by the proposed development. The application does not provide that information.

In addition, there are two components to the additional load; the amount of sewage in gallons referenced above, and the nature of the sewage. The applicant's consultant reports that the sewage will be "domestic strength". See OAR 340-071-0100(123). However, the application does not propose residential use. Rather it 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 FBO. 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.)

Returning to the criterion, the application and Recommendation lack information which demonstrates the development will not exceed the carrying capacity of the local sewage disposal system.

The application does not meet the second option because it does not have an on-site sewage disposal site approved by Marion County or DEQ. The application does not include information demonstrating this approval has been obtained, or that it is feasible to do so. The applicant's septic report states the problem. "Onsite wastewater treatment does not appear feasible at this site. Challenges to the site include disturbed soil, a high seasonal water table, and limited space because of proposed development." The report does not explain how those challenges will be overcome by the local system or an on-site system. Moreover, the site plan does not designate an area for the customary drainage fields. The application materials are consistent in that none of them indicate an on-site disposal system is either feasible or proposed.

The county previously approved an expansion of the septic system on the site, in Conditional Use 73-37. The findings include the following. "The Marion County Health Department reports that, although the soils are very restrictive, this facility would be appropriate due to its seasonal use. However it reports that no further expansion will be approved." This application does not propose to limit the proposed uses to the summer season when the church camp operated and drainage was improved. There is no information in the record to contradict the Health Department's statement that no further expansion will be approved. Nor is there information in the record from the Health Department or DEQ that a modern design will allow disposal of sanitary wastewater on site.

Thus the application does not include information to demonstrate compliance with either option to satisfy this criterion. The consultant's report admits this problem. "The proposed facility will need additional information on the quantity and quality of the wastewater to be generated in order to develop plans[.]" In other words, nobody knows the quantity and quality of the sewage. Without those key inputs, the system cannot be designed. There are no plans demonstrating a system design, location, or feasibility. The site plan does not include a septic drainage area. There is no easement or other evidence that the applicant has the right to dispose of septic effluent on a neighboring property. Again, the consultant admits the problem. "Easement areas will need to be identified." It mentions easements along the runway, on

state-owned property; however there is no information showing that the subject property is benefited by that easement, or the capacity of the easement area. The capacity analysis cannot even be calculated until the quantity and quality of the septage are specified, and the design of the existing septic fields and their replacement areas are shown.

The Recommendation would postpone compliance with this criterion to a late, unspecified application; however, such postponement is not allowed by this conditional use criterion. Compliance with the criterion must be demonstrated before the conditional uses can be approved, and at this time, there is not sufficient information to support a finding that either the development will not exceed the capacity of the local sewage disposal system, or the development has an approved on-site sewage disposal site.

#### **MCRZC 17.171.060.J Traffic Analysis**

The application does not demonstrate that the development will be consistent with the identified function, capacity, and level of service of transportation facilities serving the site as required by this criterion. The traffic studies and related memoranda in the record show the development is not consistent with the identified function of Airport Rd as a major collector, and will exceed the capacity and level of service at numerous affected intersections. The application does not indicate that the proposed proportional payments will result in any specific intersection improvement, and therefore, absent assurance of partial mitigation that is coordinated with affected transportation agencies, the development will degrade the level of service for all of these intersections.

More specifically, the applicant's traffic studies undercount the passenger vehicle trip generation, and do not account for truck traffic at all. The first traffic study deducts 631 average daily passenger trips based on the former seasonal use of the property by the prior owner, the Beyond the Reef Theological Center. This deduction lacks an adequate factual base, for several reasons. First, because both the retreat center and the Missionary Memorial Church religious uses ceased more than one year ago, the nonconforming use status is lost and the property is subject to all the current regulations in Title 17. MCRZC 17.114.050. Following cessation of the religious uses, the property is now in forest use as demonstrated by the recent timber harvest, and subject to all regulations of the EFU zone, including state and county regulations that impose traffic analysis requirements for a rezone that are

based on the allowed uses in the EFU zone and not based on an expired nonconforming use.

Several documents confirm this. The retreat cabins have not been occupied or maintained in many decades, as shown in attached photos. The property was sold to the current owner, an aviation real estate developer, in June of 2015, as shown by the assessor records.

Finally, the retreat center's own web page and social media postings recap the proud history of their religious mission, the two elements of that mission on the site, and the transfer of their activities to Hawaii. Their Facebook page includes many photos of a religious service in July, 2017 at the Missionary Memorial Church, without any photos or other information to indicate the retreat cabins were utilized. Most importantly, the web page clarifies that the retreat center use terminated in 1988, and since then, the "main mission" has been the Missionary Memorial Church.

In 1977, Reverend Bush established Beyond the Reef Theological Center/Missionary Memorial Church in Aurora, Oregon by purchasing a 17 acre Methodist Church Camp. After remodeling the buildings, Beyond the Reef trained over 75 Micronesian and South Pacific island pastors from 1981-1988, while reaching out to multiple islands along the way.

From 1989-2017 Beyond the Reef responded to God raising up the people of Chuuk in the Northwest as its main mission. Missionary Memorial Church became the focal point of the ministry...

As of 2017, Beyond the Reef is now established on the island of Oahu, Hawaii...

<https://beyondthereefministry.com/about>.

In summary, the property has not been operated as a retreat center on a regular basis since at least 1989. The small scale Missionary Memorial Church use ceased in August 2017, more than one year before the current application was submitted. Therefore all nonconforming use rights are lost, and there is no basis for a reduction in the trip generation as calculated by the applicant's traffic report.

An additional flaw in the assumption is the scale of the religious use, which the applicant's traffic report indicates is 100,000 square feet. There is no information the traffic report to support the assertion that the buildings comprise 100,000 square feet. There is, however, substantial contrary information readily available from reliable sources. The county assessor data lists the square footage of all structures on the site, and those total to 21,251 square feet. County assessor staff are renowned for measuring buildings carefully and their data on the square footage is substantial information that a reasonable decision maker would rely on. Aerial photos taken since the timber harvest reveal clearly all the site structures, and there is no information on those photos or from any other source to support the assumed 100,000 square foot size of the former religious use reported in the applicant's traffic study. Even assuming the 21,251 square feet of buildings were occupied daily, the applicant's traffic report overstates trip generation for the former religious use by approximately 370%.

Because the religious use ceased more than one year before the application was submitted, all nonconforming use rights, including the right to deduct allegedly current trip generation, were lost, and as a result the applicant's traffic study underestimates the trip generation. The deduction for 631 trips lacks an adequate factual base, is contrary to the information in the county assessor records, and site conditions as shown in recent ground level and aerial photographs. The applicant's traffic report is not objective because it does not include all relevant and pertinent information regarding the scale and termination of the former religious uses, and therefore the report is not based on an adequate knowledge of the facts.

The applicant's first traffic report states the net increase in trip generation is 961 daily trips, when 1592 would be more accurate; a difference of 65%. Thus the report does not accurately evaluate the affected transportation facilities and the function, capacity or level of service for the surrounding roads and state highways. The intersection analyses must be repeated using at least 1592 daily trips.

In the county's Appendix B Marion County Rural Road Inventory, the 1.53 mile segment of Airport Rd from the Aurora city limits to Arndt Rd is identified as Road 59. In 2011, this segment had a volume of 2800 daily trips. (See also Figure 5-5c, Average Daily Traffic Volume, from Chapter 5 Urban Strategy, 2012, in the 2013 Rural Transportation System Plan Update.) Assuming the customary 2% annual increase in background traffic (the same

assumption utilized in the applicant's traffic report) there are an estimated 3280 daily trips in 2019. Therefore the addition of 1592 trips represents a 48% increase in daily trips on Airport Rd.

This increase in trips to near 5000 per day is not consistent with the functional classification of Airport Rd as a rural major collector with daily trips of 1000 or less, as per county TSP Table 8.2. Therefore Airport Rd must be reclassified to reflect its actual function as an urban collector, along the east frontage of the airport and its urban land uses. The lack of shoulders, the lack of stormwater detention or treatment, sidewalks, bike lanes and lighting demonstrate that Airport Rd lacks capacity for the various transportation modes that are customarily provided for large scale urban uses. The trip generation of the proposed urban use, in combination with adjacent urban uses at the airport, is not consistent with the levels of travel or access planned for Airport Rd with the current functional classification as a rural major collector. Because the application is not consistent with the functional classification of Airport Rd, that classification must be upgraded and appropriate urban facilities provided.

The applicant's first traffic report uses the ITE Land Use Code 150 for Warehousing without any explanation for why Land Use Code 022 General Aviation is not used. It also does not account for other uses allowed by the proposed rezone to Public that generate more trips than the uses proposed in this application, commonly known as the reasonable worst case scenario. This undercounting of the potential trip generation results in noncompliance with MCRZC 17.171.060(J), Traffic Analysis.

The applicant's second traffic report similarly undercounts trip generation for the proposed use, by deducting 341 average daily trips as the assumed worst case scenario under the existing EFU zoning. There are several errors in this assumption. The report notes "[s]everal farm stands and nurseries occupy properties zoned as EFU in the vicinity of the subject property, with building footprints up to 5000 square feet."

It then relies on the trip generation from ITE Land Use Code 817 "Nursery (Garden Center)" to estimate trips from a farm stand as the reasonable worst case scenario in the EFU zone; however the description of that use in the ITE Manual demonstrates many differences between the businesses that provided the source data in the manual and a farm stand in the EFU zone. Most importantly, the nurseries and garden centers studied in

the manual were retail stores located in suburban and urban locations which operated year round. They are not located on farms in rural areas. Suburban and urban retail uses are prohibited in EFU zones, and ITE Land Use Code 817 it is not a reasonable representation of the trip generation for the EFU zone.

Farm stands in the EFU zone, including all of the businesses referenced in footnote 7 of the second traffic study, are not located in suburban or urban locations. Most have no retail operations, or only operate seasonally. Boones Ferry Berry Farms is closed most of the year. See <http://www.boonesberry.com/>. Smith Gardens, TSW, and Oregon Nursery Sales are wholesale only. See, respectively, <https://www.tswnurseriesales.com/>; <http://smithgardens.com/facilities/aurora>; and <https://oregonnurseriesales.com>. Therefore most of the cited examples are not farm stands as defined in ORS 215.

Finally, the applicant's traffic reports do not account for truck trips. Clearly the scale of the development requires many truck trips, including tanker trucks for pumping of the proposed sewage holding tanks and delivery of aviation fuel to the proposed FBO. The applicant's traffic report utilizes the ITE Land Use Code 150, Warehousing, and therefore contemplates substantial truck traffic. This omission is contrary to the county's TIA requirements 10, 11, 13 and 17 for the following reasons. Requirement 10 states:

10) Complete trip generation figures for all aspects of the proposed development, including number of trips by vehicle type and size, and time-of-day and entering/exiting percentages. These figures shall include trip generation figures for any other proposed developments on the subject property, and/or any proposed developments that would share access with the subject property. For developments expected to generate a significant amount of truck traffic (more than 30 trucks per day), include separate figures for trucks. Document the sources of this trip generation data. If the source is other than ITE's Trip Generation, the preparer must obtain approval of the use of such data from County staff before using it in the TIA.

The applicant's traffic reports do not account for any vehicle types other than passenger vehicles. This is a problem due to the inherently different



characteristics of truck traffic; that is, they are both substantially larger and accelerate much more slowly than passenger vehicles. The tanker trucks carrying fuel and sanitary wastewater are especially slow. There are no provisions for these characteristics, such as turning lanes to accommodate them.

Second, this property will share access with the larger Southend Airpark properties. The application notes the new development will serve as a FBO; that is, a fixed base operator. That use is defined by Wikipedia as:

A fixed-base operator (FBO) is an organization granted the right by an airport to operate at the airport and provide aeronautical services such as fueling, hangaring, tie-down and parking, aircraft rental, aircraft maintenance, flight instruction, and similar services. In common practice, an FBO is the primary provider of support services to general aviation operators at a public-use airport and is located either on airport leasehold property or, in rare cases, adjacent to airport leasehold property as a "through the fence operation". (Footnotes and emphasis omitted.)

[https://en.wikipedia.org/wiki/Fixed-base\\_operator](https://en.wikipedia.org/wiki/Fixed-base_operator)

This means that trucks and other vehicles originating from the existing airport will share the access to Airport Rd and to Keil Road, as they move back and forth to the subject property for the goods and services provided by the proposed fixed base operator. The site plan clearly shows the reciprocal access to the applicant's other large land holdings on tax lots 01700, 30000, 70000 (commonly known as Yellow Gate Lane) and 90000. By not accounting for the truck traffic or the traffic from the existing Southend Airpark and other development that will use the proposed FBO goods and services, requirement 10 is not satisfied.

Requirement 11 is to include "[t]rip generation figures for any pending and approved developments that would affect the study area. County staff will facilitate procurement of applicable data in these cases." Pending developments include the proposed new hangars on tax lot 1700, among others. The applicant's traffic report omits mention of this pending building permit, or any other pending developments that will add additional trips to the affected facilities. Additional pending development includes the upgrades to the intersection of Hwy 55 and Ehlen Rd, and the upgrade to the I-5 interchange with Ehlen Rd. These projects will dramatically increase traffic on

Ehlen Rd and the intersection analyses provided do not account for these increases.

Number 13 requires “[t]rip distribution for the proposed development. For developments expected to generate more than 30 truck trips per day, include separate trip distribution figures for trucks.” Trip distribution for trucks is not discussed and as noted above, the large size and slow acceleration of trucks significantly affect intersection operations. Thus the distribution of those truck trips and their access points are especially important. The lack of any data on this point means the traffic study lacks an adequate factual base.

Number 17 presents a similar requirement; “[...]for developments expected to generate a significant percentage of truck traffic, demonstrate how the analysis adequately accounts for the presence of these trucks in the traffic flow.” The analysis of 158,000 square feet of warehouse without any evaluation of how trucks affect the flow of traffic on the transportation network is another omission that demonstrates the applicant’s traffic report lacks an adequate factual base.

The failure to satisfy county requirements by undercounting vehicle trips overall, and failing to account for any truck traffic, means that a new traffic report is required. The addition of another 631 daily vehicle trips and truck trips to the analysis will surely demonstrate more significant effects on surrounding roads and intersections than described in the current traffic study. This will require reconsideration of the county’s TIA requirements 26 and 27 regarding analysis of significantly affected facilities and mitigation thereof.

The memorandum of March 6, 2019 provided by Marion County Public Works is deficient in these areas because it is based on an incorrect assumption regarding a deduction for an expired nonconforming use. The county memo made no effort to examine the incorrect trip generation assumption and therefore lacks an adequate factual base. We note the memo is not stamped by a licensed engineer; and the county apparently made no effort to verify the false assumptions underlying the trip generation deduction.

In the section of the county's Traffic Impact Analysis Requirements titled Additional Study Requirements, the county notes:

County staff may require additional study beyond the scope of the original TIA, especially in cases where additional transportation system concerns arise either as part of the traffic analysis process, as part of the approval process, or from the general public.

The county's Methodologies and Analysis Parameter J requires that "[t]he conclusions presented in the TIA shall be consistent with and supported by the data, calculations, and analysis in the report. Inconsistent and/or unsupported conclusions will not be accepted, and may lead to the TIA being returned to the applicant's representative for correction." Based on the information provided in this memorandum, the county must implement this provision and compel a new study without a trip generation deduction for the expired nonconforming use, with truck traffic, with traffic from pending developments, and with traffic origination from the adjacent properties that will share access. Parameter K requires that "if any portion of the study area falls within another jurisdiction (such as a state highway or a city), consult that jurisdiction to determine the number of additional copies that they will need for their review." The applicant's traffic engineer has not consulted with the City of Aurora and must be required to do so.

The applicant's traffic engineer submitted a memo dated March 27, 2019 in response to comments made on this and other traffic issues. The memo states:

It is correct that the church is no longer occupied, however it was occupied at the time that the traffic counts were collected. The 100KSF estimated size was originally based on a reasonable Floor Area Ratio (FAR) for a 16+ acre property with a church use. A church use is permitted subject to standards under EFU, not a conditional use. This supports the notion that a substantially larger church is a reasonable worst case scenario under EFU zoning.

That response merits a careful review. The first phrase contradicts the statement of the applicant's attorney at the hearing which indicated the religious use continues. Next, the traffic counts were collected on June 7, 2017. The presence of some limited church activity and traffic more than one

year prior to submittal of the application does not satisfy the standard for preservation of nonconforming use rights under MCRZC 17.114.050. The applicant's traffic report, in footnote 1 of Table 5, states the estimated 100,000 square foot size was "for the existing church", and there is no discussion of 100,000 square feet being a reasonable floor area for a church on a 16 acre property in that report.

Furthermore, a 100,000 square foot church use is not allowed on this site for several reasons. The site has Amity silt loam soils, which is a Class 2 soil, as described on page 12 in the application narrative and the applicant's septic report. Class 2 soils are defined as "high-value farmland". ORS 215.710(a) and (b); OAR 660-033-0020(8)(a). The site is located less than three miles from the Aurora urban growth boundary, as described in the applicant's narrative.

MCRZC 17.136.040 describes uses subject to standards in the EFU zone. Subsection C.1.a states that new religious organizations "may not be established on high-value farmland." In other words, a new church of any size is prohibited due to the Class 2 soils, and is not permitted on this site subject to standards. Even in the absence of that prohibition, Subsection C.1.b.i states that "new religious organizations ...within three miles of an urban growth boundary shall meet the following standards: i. No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved, unless an exception is approved pursuant to OAR Chapter 660, Division 004." See also OAR 660-033-0130(2)(a).

This means the church would be limited to a capacity of 100 people, absent one or more goal exceptions. Clearly a church for 100 people does not require 100,000 square feet of buildings. A 100,000 square foot church that requires a goal exception is not permitted subject to standards, and there is no information in the record to support the assumption that goal exceptions for that use could be approved. For reference, attached is an aerial photo of the Mission Hills church in Littleton, CO which is approximately 100,000 square feet, next to an aerial photo at the same scale of the subject property. Also attached is a narrative description of Mission Hills indicating the sanctuary accommodates 1200 people, twelve times the maximum number allowed.

In the event that the hearings officer finds that the nonconforming status of the former church has not expired, both the county zoning code and the state administrative rule for agricultural lands still prohibit expansion of the existing church buildings to anything remotely close to 100,000 square feet because the site is within three miles of the Aurora urban growth boundary. MCRZC 17.136.040.C.2.b; OAR 660-033-0130(2)(a). There is no information in the record to support the notion that a church campus with maximum design capacity of 100 people requires 100,000 square feet of buildings, nor that 100 churchgoers would generate 631 average daily trips.

The assumptions by the applicant's traffic engineer that 631 vehicle trips can be deducted based on either 100,000 square feet of existing church, or based on the construction of new or expanded buildings comprising 100,000 square feet as a reasonable worst case scenario under the existing EFU zoning, lack an adequate factual base and are not consistent with state and local land use regulations.

The traffic engineer's response memo of March 27, 2019 also states:

While the project team is confident this approach is appropriate, we ran a sensitivity analysis of intersection operations to determine the impact of the full trip generation without the deduction of the existing church land use. Without this reduction, the general findings of the TPR/TIA remain the same. No additional intersection improvements are warranted. Some improvements may be triggered in the short term as opposed to the long-term, but the recommended improvements remain the same and adequately mitigate the impacts of the zone change.

When the deduction for the former religious use and the purported suburban or urban retail nursery/garden center are removed, the estimated daily trip generation rises to 1592, an increase of 65%. The sensitivity analysis accounting for that very large increase has not been provided for the record, and has apparently not been reviewed by Marion County, ODOT, Clackamas County or the City of Aurora. The applicant should provide a revised traffic report without a deduction for the former religious use or a suburban retail use, and until that report is provided and evaluated, there is not an adequate factual base to support findings that MCRZC 17.171.060(J) is satisfied.

For these reasons, the traffic analysis criterion MCRZC 17.171.060(J) is not satisfied.

### **Uses Allowed in the Public Zone**

Large scale office is not allowed, either as a permitted use or a conditional use.

When a local government takes a reasons exception, the zoning must limit the uses, density, public facilities and services, and activities to only those authorized by the exception. OAR 660-004-0018(4)(a).

### **Transportation Planning Rule**

Because the application includes comprehensive plan map and text changes, it must satisfy the Transportation Planning Rule, OAR 660-012-0060. Among the many purposes of transportation planning, “[c]oordinating land use and transportation planning will also complement efforts...protecting farm and forest land.” OAR 660-012-0000(3). The application is contrary to that purpose and does not satisfy several subsections of the rule, as follows.

The first subsection of the TPR (OAR 660-012-0060(1)) requires that:

- (1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:
  - (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);
  - (b) Change standards implementing a functional classification system; or
  - (c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part

of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.

(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or

(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.

The analysis begins with determining whether the zone change will “significantly affect an existing or planned transportation facility.” This requires analysis of the most traffic intensive use in the new Public zone, as compared to the most traffic intensive use of the current EFU zone. This analysis is commonly known as the reasonable worst case scenario. The applicant’s traffic report performs no such analysis, and neither do the county memoranda provided to date. Absent such analysis, the TPR is not satisfied.

The applicant’s traffic reports and memos do not study the reasonable worst case scenario for several reasons. It deducts 631 daily trips based on an assumed 100,000 square feet of church buildings, which vastly exceeds the actual square footage of existing buildings on the site. Most of the buildings from the former Beyond the Reef religious retreat center use have been abandoned for many decades, and all have been abandoned for more than one year, and thus no longer have nonconforming use status. MCRZC 17.114.050. Alternatively, the second traffic report deducts 341 daily trips for a suburban retail nursery (ITE Land Use Code 817), when that use is prohibited in the EFU zone. This inflated trip deduction for a purported worst case scenario for trip generation in the EFU zone is inconsistent with both the county’s TIA requirement and ODOT requirements. The traffic study wrongly uses the ITE Land Use Code 150 for Warehousing when the code 022 for

General Aviation should be used; and it does not account for other uses allowed in the Public zone that generate more trips than the uses proposed in this application. This undercounting of the potential trip generation means the reasonable worst case scenario has not been analyzed and therefore the TPR is not satisfied.

Subsection (1)(c)(A) applies because this application for expanding the urban uses at the Aurora Airport is not consistent with the functional classification of Airport Rd as a rural major collector with daily trips of 1000 or less, as per county TSP Table 8.2. Therefore Airport Rd must be reclassified to reflect its actual function as an urban collector, along the east frontage of the airport and its urban land uses. The lack of shoulders, the lack of stormwater detention or treatment, the lack of sidewalks and bicycle facilities and lighting demonstrate that Airport Rd lacks capacity for the various transportation modes that are customarily provided for large scale urban uses. The trip generation of the proposed urban use, in combination with adjacent urban uses at the airport, is not consistent with the levels of travel or access planned for Airport Rd given its current functional classification as a rural major collector. Because the application is not consistent with the functional classification of Airport Rd, that classification must be upgraded, and appropriate urban facilities provided.

The trip generation will also degrade the performance of the intersections of several county roads and state highways 551 and 99E which already do not meet the performance standards identified in the city and county TSPs. See OAR 660-012-0060(1)(c)(C) and the Intersection Operations summary on page 2 of the applicant's traffic study. The project will add at least several hundred more daily trips than were estimated in the applicant's traffic reports, causing further degradation of these intersections.

Subsection (2) requires that:

If a local government determines that there would be a significant effect, then the local government must ensure that allowed land uses are consistent with the identified function, capacity, and performance standards of the facility measured at the end of the planning period identified in the adopted TSP through one or a combination of the remedies listed in (a) through (e) below, unless the amendment meets the balancing test in subsection



(2)(e) of this section or qualifies for partial mitigation in section (11) of this rule.

The applicant concedes there is a significant effect, even though it vastly underestimates that effect. The county has not examined the reasonable worst case scenario, which is a high school; nor does it consider other educational organizations, such as Aurora Career Technical Education. Nor has the county considered limiting the land use on the site. In other words, none of the options listed in subsections (2)(a) through (e) have been proposed to limit the allowed land uses to be consistent with the limited capacity of this rural collector and surrounding intersections. Those options remain available for consideration, and will not be reviewed in this memo because for the time being they are not being considered.

Subsection (3) allows projects to be approved even without satisfying subsections (1) and (2) when other benefits to the transportation system are provided. It states:

(3) Notwithstanding sections (1) and (2) of this rule, a local government may approve an amendment that would significantly affect an existing transportation facility without assuring that the allowed land uses are consistent with the function, capacity and performance standards of the facility where:

(a) In the absence of the amendment, planned transportation facilities, improvements and services as set forth in section (4) of this rule would not be adequate to achieve consistency with the identified function, capacity or performance standard for that facility by the end of the planning period identified in the adopted TSP;

(b) Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development through one or a combination of transportation improvements or measures;

(c) The amendment does not involve property located in an interchange area as defined in paragraph (4)(d)(C); and

(d) For affected state highways, ODOT provides a written statement that the proposed funding and timing for the identified mitigation improvements or measures are, at a minimum, sufficient to avoid further degradation to the performance of the

affected state highway. However, if a local government provides the appropriate ODOT regional office with written notice of a proposed amendment in a manner that provides ODOT reasonable opportunity to submit a written statement into the record of the local government proceeding, and ODOT does not provide a written statement, then the local government may proceed with applying subsections (a) through (c) of this section.

Subsection (3)(a) applies because regardless of this project, area intersections exceed performance standards identified in the relevant TSPs. The application does not meet the requirements of subsection (3)(b) because there is no information to support an assertion that further degradation will not occur. Again, the reasonable worst case scenario of the property being developed for a school; or other educational organization such as Aurora Career Technical Education has not been considered. The applicant's traffic reports and memos and the county's acceptance thereof deduct assumed existing trips based on a long abandoned former religious use that operated on a much smaller scale than assumed in those reports, and a suburban retail use that is prohibited. Those reports lack an adequate factual base because the assessor's records, the religious group's own records, and the site and aerial photographs all demonstrate there has never been 100,000 square feet of church buildings that operate year round consistent with ITE Land Use Code 560, and the ITE Manual description of Land Use Code 817 is for a suburban retail store that is not allowed in the EFU zone. Until correct trip generation figures are provided, there is no substantial information to support a finding that the no further degradation standard is satisfied.

Subsection (3)(c) does not apply because this site is not in an interchange area. A report from ODOT on subsection (d) is not available at this writing, and is necessary to demonstrate compliance with the TPR. With or without a report from ODOT, subsections (a) and (b) are not satisfied.

Subsection (4) explains what planned but unbuilt transportation facilities may be relied on when performing the analyses required by subsections (1) through (3); however even with the benefit of future capacity upgrades that are planned, the application still does not satisfy subsections (1) through (3). The subsection includes several requirements:

(4) Determinations under sections (1)–(3) of this rule shall be coordinated with affected transportation facility and service providers and other affected local governments.

(a) In determining whether an amendment has a significant effect on an existing or planned transportation facility under subsection (1)(c) of this rule, local governments shall rely on existing transportation facilities and services and on the planned transportation facilities, improvements and services set forth in subsections (b) and (c) below.

(b) Outside of interstate interchange areas, the following are considered planned facilities, improvements and services:

(A) Transportation facilities, improvements or services that are funded for construction or implementation in the Statewide Transportation Improvement Program or a locally or regionally adopted transportation improvement program or capital improvement plan or program of a transportation service provider.

(B) Transportation facilities, improvements or services that are authorized in a local transportation system plan and for which a funding plan or mechanism is in place or approved. These include, but are not limited to, transportation facilities, improvements or services for which: transportation systems development charge revenues are being collected; a local improvement district or reimbursement district has been established or will be established prior to development; a development agreement has been adopted; or conditions of approval to fund the improvement have been adopted.

(C) Transportation facilities, improvements or services in a metropolitan planning organization (MPO) area that are part of the area's federally-approved, financially constrained regional transportation system plan.

(D) Improvements to state highways that are included as planned improvements in a regional or local transportation system plan or comprehensive plan when ODOT provides a written statement that the improvements are reasonably likely to be provided by the end of the planning period.

(E) Improvements to regional and local roads, streets or other transportation facilities or services that are included as planned improvements in a regional or local transportation system plan or comprehensive plan when the local government(s) or

transportation service provider(s) responsible for the facility, improvement or service provides a written statement that the facility, improvement or service is reasonably likely to be provided by the end of the planning period.

The first requirement is coordination with other affected local governments. The City of Aurora is an affected local government as a substantial percentage of trips pass through the city. The applicant's traffic study was not coordinated with the city, and the county's memo of March 6, 2019, correctly notes this deficiency. The coordination requirement is not satisfied, and the City of Aurora is prejudiced by this omission because it has not had sufficient opportunity to analyze the effect of the proposed zone change and plan amendment on its transportation facilities. The application does not satisfy subsection (b) because it does not explain the funding plans or mechanisms for the proposed improvements to the intersections of Airport Rd and Arndt Rd, Airport Rd and Ehlen Rd, and Arndt Rd and Highway 551.

The applicant's traffic reports and memos did not analyze the intersection of Ehlen Rd and Highway 99E, which will be further degraded by the application, nor does it describe a funding plan for capacity upgrades for that intersection. As of this writing, there are not statements from ODOT, Clackamas County or the City of Aurora that improvements to facilities in their jurisdictions are likely to be funded by the end of the planning period as required by subsections (b)(D) and (E). Subsection (e) clarifies that without these statements, the county "can only rely upon planned transportation facilities, improvements and services identified in paragraphs (b)(A)–(C) to determine whether there is a significant effect that requires application of the remedies in section (2)."

The application asserts that the proposed exceptions to Goal 3 and 14 are authorized under OAR 660-004-0022(1)(B) because the use has special features or qualities that necessitate its location at the proposed exception site near the runway at the Aurora State Airport and Interstate 5. Clearly, hangars for fixed wing aircraft must be located near a runway. The application also asserts the exceptions are authorized under OAR 660-004-0022(3) because the use is industrial.

However, Subsection 660-012-0060(5) of the TPR precludes reliance on the presence of a transportation facility as a basis for a goal exception taken pursuant to OAR 660-004-0022. The Aurora State Airport and

Interstate 5 are transportation facilities, and the application expressly relies on the presence of those facilities as a basis for the exceptions.

At the hearing, both the applicant's team and county staff discussed partial mitigation in the form of proportional payments as a method of compliance for traffic impacts, which is allowed under Subsection (11) of the TPR. The City of Aurora noted its agreement in principle at the March 27 hearing, but pointed out that the erroneous trip generation means the correct numerators for the affected intersections are not in the record. Because the actual trip generation is 65% higher than reported, the scope of the applicant's traffic reports and memos must be expanded to include the additional intersections identified by the City of Aurora (Ehlen Rd and Highway 99E) and Clackamas County (Airport Rd and Miley Rd). And the proportionate share analysis must also be expanded to include those intersections. The staff report's recommended Condition B must be revised to require this mitigation as well.

It is important to emphasize the county must propose actual traffic mitigation on the ground. Any payment by the applicant that does not result in construction of transportation improvements to one or more affected local facilities does not provide any mitigation, and does not comply with OAR 660-012-0060(2). The county must explain the specific partial mitigation that will be funded and constructed.

Thus far, the county has not satisfied the requirements of OAR 660-012-0060(11)(c) for partial mitigation, because the required notice was not provided to local governments, nor apparently to DLCD, and the Recommendation does not include the necessary findings. The county must describe: the proposed mitigating actions; analysis and projections of the extent to which the amendment will fall short of consistency with the function, capacity and performance standards of transportation facilities; findings on economic impacts; and findings that the benefits of the proposed amendments outweigh the negative effects on transportation facilities.

The notice and staff report for the March 27 hearing, and the Recommendation, do not include these items, although the City does not request new notice and another hearing. The substance of the traffic analysis is the important thing. The Recommendation does not include the information and findings on partial mitigation consistent with this rule, based

on accurate trip generation, and should be coordinated with affected local and state public agencies.

In conclusion, the rural transportation facilities that surround the site are insufficient to support the proposed expansion of urban development at the Aurora Airport. The applicant and the county freely acknowledge the urban uses both existing and proposed, yet insist that substandard rural transportation facilities are sufficient. Fortunately the TPR anticipates this situation, and assures that the development can be approved so long as the provisions for partial mitigation are applied and satisfied. Until accurate trip generation estimates are provided, the extent of the significant effects on state and local transportation facilities is unknown.

The TPR is not satisfied.

## Goal Exceptions

### Introduction

Goal exceptions are variances to the state land use planning goals. There are three types; physically developed, irrevocably committed, and reasons. See ORS 197.732(2)(a), (b) and (c). Portions of the subject property were developed decades ago as a rural religious retreat center, and the property was almost entirely covered by mature canopy of white oak, which was harvested in 2018. The religious and forestry uses were undoubtedly rural. Because the property is neither physically developed to the extent that it can no longer be available for resource uses, nor irrevocably committed to non-resource uses which are not allowed, the application proposes two reasons exceptions for the subject property.

The statute also compelled the Land Conservation and Development Commission to adopt rules implementing it, which are more detailed than the statute, and the discussion that follows references those rules.

An exception is a decision by a local government to exclude land from the requirements of one or more applicable statewide goals, and must be included within the county's comprehensive plan. See OAR 660-004-0000(2). In approving a proposed development, a local government must take an exception for each goal that is not satisfied. See OAR 660-004-0010(3). The application proposes exceptions to Goal 3, Agricultural Lands, and Goal 14, Urbanization for the subject property. The Goal 3 exception is

required because the office and aviation uses are not among the farm and nonfarm uses allowed on high-value farmland in an Exclusive Farm Use zone. See OAR 660-004-0010(1)(a). The Goal 14 exception is required to convert the high-value farmland to an urban use without bringing the property into the urban growth boundary of the City of Aurora. See OAR 660-014-0040(2).

No coordination with Aurora has occurred for this application, and therefore Goal 2, Part 1 is not satisfied. Aurora is an affected local government because it has planning responsibilities over the former church camp through the Aurora's land use programs that include this area. It is a party to 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. Aurora is likewise a party to the 2010 City of Aurora/Marion County Urban Growth Coordination Agreement which includes the area as well. Aurora's interests have not been considered to date.

As described in the application and the Recommendation, the proposed development of the subject property will be integrated with existing developments at the Aurora State Airport on both private and state-owned land. As noted in the March 20, 2019 staff report, 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 fixed wing aircraft on the subject property with access to the runway and related facilities, and the through the fence program will facilitate other activities. A FBO may be developed on the subject property to provide aviation fuel, maintenance, parking and other aviation services to the public. The development is in effect an expansion of the airport. This integrated relationship means that the development of the subject property will increase the existing aviation uses at the airport, and that increase requires a separate exception to Goal 2 for the existing airport. See OAR 660-004-0018. The application conflicts with OAR 660-004-0018(4)(a) because it does not limit the uses, density, public facilities and services, and activities to only those that are justified in the exception.

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).

In a related proceeding counsel for the applicant argued the goal exceptions are not required because ORS 836.600-630 exempts the church camp property from that requirement. The statute creates a limited land use exemption for a grandfathered "airport", defined as:

"the strip of land used for taking off and landing aircraft, together with all adjacent land used in 1994 in connection with the aircraft landing or taking off from the strip of land, including but not limited to land used for the existing commercial and recreational airport uses and activities as of December 31, 1994." ORS 836.605(2).

This grandfather clause was fixed in time, and does not authorize any future expansion beyond the December 31, 1994 airport land. The former church camp were not used or planned for airport uses on December 31, 1994, as shown on the 1999 aerial photo and the 1988 Airport Layout Plan. Therefore, the ORS 836.616(2) requirement to allow aviation uses does not apply.

In summary, the application and the Recommendation propose two goal exceptions, and additional exceptions are also required. Those exceptions will now be reviewed, and unfortunately are not satisfied.

## Goal 2

A Goal 2 exception is required for the existing Aurora Airport because the development of the subject property will increase the existing aviation uses at the Aurora Airport. See OAR 660-004-0018. The proposed application is described as an expansion of the airport, and proposes additional hangars with runway access, and FBO services to planes at the existing airport. That is, planes and personnel will travel back and forth, and the increased acreage and hangars will increase the level of aviation and office activities at the existing airport.

The Aurora State Airport and its adjacent private lands have received several goal exceptions since the 1970s, although those exceptions have not authorized or accounted for the proposed development of the subject property. To do otherwise would have been prohibited. See OAR 660-018-0018(1) and (2)(b)(B). For this application, the county must analyze the uses



that were approved in the prior exceptions, and measure those approved uses against the scale of the current development and uses combined with the proposed development and uses. Thus far, the application, the staff report and the Recommendation have not performed this analysis. The combination of existing and proposed uses exceeds what was authorized in the prior exceptions for the existing airport, and therefore a new reasons exception is required. See OAR 660-004-0018(1).

### Goal 3

The Goal 3 exception is required because the office and aviation uses are not among the farm and nonfarm uses allowed on high-value farmland in an Exclusive Farm Use zone. See OAR 660-004-0010(1)(a). The reasons exception must satisfy the criteria found in OAR 660-004-0018(4)(a), 660-004-0020(2)(a-d) and 660-004-0022(1).

OAR 660-004-0010(1)(a) requires that the county comprehensive plan and zoning “must limit the uses, density, public facilities and services, and activities to only those that are justified in the exception.”

The application and the Recommendation are not consistent with that requirement for several reasons. The proposed application of the Public zone to the subject properties does not limit the uses, density, public facilities or services to those justified in the exception; rather, it presumes that all uses and conditional uses allowed in the Public zone may be approved on the subject property. Those uses are listed in MCRZC 17.171.020 and 17.171.030 and include many uses that are not proposed in the application.

As explained in Section 7 of the Recommendation, the 2012 Airport Master Plan found that only 5 acres of land were needed. Tax lot 900 is 5.12 acres and would fully satisfy the purported need. There is no justification for including the additional 11.42 acres of tax lot 800 in the Goal 3 exception.

Regarding density, the application and the Recommendation propose no limits on the density of the proposed uses. See MCRZC 17.171.040, Scale of commercial uses in the Public zone. There is also no limitation on the public facilities and services that may be provided. For example, extension of sanitary sewer service is anticipated without a Goal 11 exception.

The application proposes a finding that “only airport-related uses be allowed” including “management office space”. However, the application proposes 123,000 square feet of office space and 158,000 square feet of hangars and other uses. There is no information to support the assumption that management of airport operations requires 123,000 square feet of office space. For example, Wilson Construction has 4800 square feet of office and 32,000 square feet of hangar; or 13% office. (Hangar Juliet, R351434). The site plan effectively proposes many tens of thousands of square feet of office space that is not related to or necessary for management of aviation activities and is not justified on resource land.

Compliance with OAR 660-004-0018(4)(a) requires that conditions be written into the Goal 3 exception that limit the uses, density, public facilities and services to the levels justified by the exception. Because the proposed uses are urban, this means the uses, density, public facilities and services must be limited to ensure that the proposed development remains compatible with adjacent uses, does not exceed the ability of the land to absorb the discharge waters from sanitary and storm sewers, protects the potential for continued resource management of surrounding EFU lands, assures that adequate levels of public facilities and services will be efficiently and timely provided, and is coordinated with the City of Aurora’s comprehensive plan. See OAR 660-014-0040(3).

The reasons exception for Goal 3 must also satisfy the criteria found in OAR 660-004-0020(2)(a-d). Subsection (2)(a) is not satisfied because the application and Recommendation misconstrue the requirement to show the proposed uses require a location on resource land. The application asserts that the “proposed use could not be located inside an urban growth boundary, because it would be hazardous or incompatible in a densely populated area.” Omitted from this assertion is any acknowledgement that the cities of Salem, Albany, Troutdale, McMinnville, and Hillsboro (among many others) have planned and zoned urban land for aviation and office uses within their city limits. The proposed uses do not require location on resource land. The assertion is also inconsistent with OAR 660-013, Aviation Planning, and OAR 660-033 Agricultural Land. Conspicuously absent from these governing administrative rules is any mention of the need for aviation uses to be located on resource lands. The contrary assertion made in the application is unsupported and inconsistent with the text of these two rules.

Subsection (2)(b) similarly requires showing “areas that do not require a new exception cannot reasonable accommodate the use.” Four specific “requirements” must be met. Requirement (A) is to list areas considered for the use, which is satisfied by the listing of the Salem, Troutdale, Hillsboro, Portland and Mulino airports. Requirement (B) is to justify the proposed site by discussing four items regarding why the areas listed in Requirement A “cannot reasonably accommodate the proposed use.”

Subsection (2)(b)(B)(i) requires an explanation why nonresource land cannot accommodate the use. The application and Recommendation expound on the benefits of locating the proposed uses on the subject properties, however they do not address the fundamental question of why the proposed uses require a location *on resource land*. The simple answer is that they do not, because many cities have ample land supplies of land already planned and zoned for office and aviation uses.

Subsection (2)(b)(B)(ii) requires an explanation why resource land irrevocably committed to nonresource uses cannot accommodate the proposed uses. The existing airport is subject to irrevocably committed exceptions, and has sufficient capacity for the proposed aviation uses. Tax lot 100 of T4S R1W S2D is 21 acres and approximately half developed. The surplus land is available for lease from the Department of Aviation, at varying rates for improved and unimproved sites. Tax lot 200 of T4S R1W S11A is 4.53 acres and the north half of the property is vacant. Tax lot 401 of T4S R1W S11A is 1.96 acres and the eastern two thirds of the property is vacant and available for lease from the Dept. of Aviation. Tax lot 1700 of T4S R1W S2D is 4.52 acres slated for development by the applicant. The application asserts this is not available, however the applicant’s web site advertises the land is available for Build to Suit from 12,000 to 95,000 square feet. The applicant’s web site also advertises that the following hangars are available: hangar Papa 22,679 sf; hangar November 75 3300 square feet; hangar Mike 62/69 8800 square feet; hangar Charlie 11,300 square feet. The applicant’s properties alone have approximately 140,000 square feet of available hangar space. Together with other vacant lands at the existing airport, the proposed aviation uses can be accommodated on land that is already subject to the irrevocably committed exceptions.

Subsection (2)(b)(B)(iii) requires an explanation why the uses cannot be accommodated inside an urban growth boundary. As further described in the Goal 14 exception discussion below, lands already planned and zoned for

office and aviation uses inside the urban growth boundaries of Aurora, McMinnville, Metro and Salem can reasonably and even better accommodate the proposed office and aviation uses than the Aurora airport, because they are properly planned and zoned, and have available municipal services. The Hillsboro and Salem airports can better accommodate the proposed aviation uses because they have substantially longer runways that can accommodate business jets without “constrained operations”; that is, the planes can be fully loaded with fuel and cargo, whereas the shorter runway at Aurora prohibits taking off with full loads.

Subsection (2)(b)(B)(iv) asks whether the proposed use can be accommodated without a proposed public facility or service. The subject properties lack a public potable water supply, and the proposed large scale office and aviation uses rely on a public water district for the provision of fire suppression water for sprinkling of the proposed buildings. The scale and of the uses and their corresponding building types require fire sprinklers and adequate fire flow to supply both those sprinklers and fire trucks that may respond to a fire. See 2019 Oregon Fire Code Section 507 Fire Protection Water Supplies, Section 903 Automatic Sprinkler Systems, Chapter 20 Aviation Facilities, and Appendix B Fire-flow Requirements for Buildings. The proposed uses cannot be accommodated without the proposed water district supplies of fire suppression water, yet there is no information provided to demonstrate there is sufficient water supply for these purposes. Before the conditional use can be approved, the fire flow capacities must be provided for review and compliance.

Subsection (2)(b)(C) necessitates “site specific comparisons” when specific sites that can more reasonably accommodate the use are described. Those specific sites are provided in the discussion of the Goal 14 exception below. The county must provide “a detailed evaluation” of these sites.

Subsection (2)(c) regards analysis of the long-term environmental, economic, social and energy consequences of the proposed exception, compared with locating the proposed uses at other locations that require a goal exception. This means analysis of other areas that can reasonably accommodate the proposed office and aviation uses presuming exceptions are approved. Tax lots 100 and 300 at the Mulino State Airport are zoned RA2, which prohibits office and aircraft land uses, such as hangars. See Clackamas County ZDO Table 316-1.

Lands already planned and zoned for urban office and aviation uses that do not require a new exception are described below regarding the Goal 14 exception.

Subsection (2)(d) requires a demonstration that “the proposed use is situated in such a manner that as to be compatible with surrounding natural resources and resource management or production practices.” The following information in the record demonstrates that airport uses are inherently incompatible with resource management and production practices.

The Dept of Aviation letter describes their preference to clear cut the mature canopy of Oregon white oak that grew on the subject properties until 2018. The Dept of Aviation similarly advocates for tree removal on surrounding lands on a regular basis. The growing of trees is a resource use that is allowed on EFU land. The Dept of Aviation advocates for tree removal to improve visibility and to reduce the risk of bird strikes. That advocacy is an inherent land use conflict with resource uses, including the growing of trees.

The applicant’s narrative also explains why traditional farm practices interfere with the proposed aviation uses. “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.” In the applicant’s view, traditional farm practices on EFU land that produce dust are prohibited in close proximity to the airport. That assertion is not consistent with the uses allowed in EFU zones and related Right to Farm legislation. In the event of a land use conflict between traditional farm practices that produce dust or otherwise limit visibility on EFU land and other nearby land uses, there is no authority for a prohibition on customary farm practices.

## **Goal 6**

Goal 6 is to: “maintain and improve the quality of the air, water and land resources of the state.” It requires that waste and process discharges “shall not exceed the carrying capacity of [land] resources considering long range needs.” The Recommendation lacked a Goal 6 finding that the proposed uses will be able to comply with applicable environmental standards, which must be shown before the exceptions can be approved.

Planning Guideline 2 is particularly relevant. “Plans should designate areas for urban...use only where approvable sewage disposal alternatives have been clearly identified in such plans.” The application violates Goal 6 because it proposes additional urban development that will increase sewage flows without identifying a specific approvable sewage disposal alternative. The soil drains poorly and the area for septic drainfields is reduced each year as undeveloped areas are covered with pavement and hangars. The Airport Master Plan admitted: “the land allowance may not be enough for septic fields[.]” (Page 5-3). The applicant’s site plan failed to illustrate any existing or planned septic fields.

In this context, approvable sewage disposal alternative means approvable under MCRZC 17.171.060.I Sewage Disposal, which allows only two specific methods. “Demonstrate that the development will not exceed the existing carrying capacity of the local sewage disposal system or has an on-site sewage disposal site[.]” Neither method was shown with any specificity in the EMS report.

The site plan must clearly illustrate septic drainage fields and replacement drainage fields, and illustrate the separation of these fields from water wells and other conflicting uses like taxiways and parking.

The Recommendation also failed to address the carrying capacity of the land requirement of Goal 6 which applies because the application proposes urban uses outside Aurora’s UGB and outside public facility service areas.

“Carrying capacity” is defined within the goals as the “[I]level of use that can be accommodated and continued without irreversible impairment of natural resources productivity, the ecosystem and the quality of air, land and water resources.” According to Marion County Public Works, “septic drainfields must be properly designed to protect groundwater from sewage contamination; and protect public health by properly treating and disposing of human waste. Improper sewage disposal can cause many diseases in humans.”

For septic effluent disposal, the carrying capacity of the land depends on soil type, and the airport soils are unfit for this purpose.<sup>1</sup> Marion County has denied septic permit applications due to unsuitable soils. These denials, and the construction of the air traffic control tower in 2015 without a septic

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<sup>1</sup> “Onsite wastewater treatment does not appear feasible at this site.”

system,<sup>2</sup> show the carrying capacity of the land is already exceeded and will be further exceeded by the proposed office and hangar development and increased flight operations.

Goal 6 is directed at the waste and process discharges from future development.” The application does not show successful treatment and disposal of the septic waste discharges from the development. The collection of untreated sewage in holding tanks for disposal by pumper truck conflicts with Goal 6, because in the Public zone, treated septic effluent must be disposed of locally without exceeding the carrying capacity of the land. MCRZC 17.171.060.I. The application does not specify where the pumper trucks—effectively a pipeline on wheels that extends city sewer service to the airport—will dispose of the sewage.

In 2015, the Marion County Board of Commissioners was confident that “sewer service from the City of Aurora would address these deficiencies.” Because the application makes no attempt to evaluate or address the deficiencies in sewage disposal, the Recommendation violated Goal 6. The total absence of a septic field shows these plans exceed the carrying capacity of the land.

Goal 6 required evaluation of waste discharges and that rural development cannot exceed the carrying capacity of the land. Yet the Recommendation failed to include findings on these environmental issues. The proposed development would displace existing septic fields, notwithstanding a lack of replacement fields and lack of coordination with either Marion County Public Works or Aurora. The Board of Commissioners frankly acknowledged “these deficiencies”. The failure to consider cumulative impacts of septic waste discharges into the poorly draining soil is also a deficiency.

The authorized hangar development will displace essential septic fields. The development must be relocated to a place where septic drainage is available, or the footprint of the buildings, taxiways and parking must be reduced, or the existing septic fields must be relocated.

As a result, the application conflicts with Goal 6. In order to be approved, an exception to Goal 6 is needed. See OAR 660-004-0010(2)(b).

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<sup>2</sup> Rec 1491.

## Goal 11

The notice for the March 27, 2019 public hearing identified Goal 11 and OAR 660-011 as applicable criteria, however the Recommendation punts on this problem, stating only that: “[a]pplicant should provide the BOC with information on whether OAR 660-011-0060 requirements are applicable and whether a goal exception might be required.” A Goal 11 exception is required for urban development of this rural land because it requires urban levels of water and sewer service, but the requirements cannot be satisfied.

The applicant asserts the no Goal 11 exception is required because the sewer system on the adjacent property does not include pump stations or force mains. In other words, if a sewer system can be extended by gravity flow, it is exempt from Goal 11. The assertion lacks merit for several reasons. The assertion is factually inaccurate because the Southend Corporate Airpark septic system schematic notes the system is gravity flow, “Except Where Indicated.” The exceptions include both pump stations and a force main for the effluent. These are clearly identified on the system schematic as “Pump Basins” and the “Pressure Drainfield.”

Second, the assertion misreads OAR 660-011-0060(1)(f). That rule also includes “pipelines” and “all other structures, devices, appurtenances and facilities used for treating or disposing of sewage or conducting sewage to an ultimate point for treatment and disposal.” The assertion misinterprets the structure of OAR 660-011-0060(1)(f) to mean that unless a sewer includes a pipeline or conduit, and a pump station, and a force main, it is not a sewer system. The assertion fails to account for the section of the rule that lists the actual exclusions from the definition: “the following are not considered a sewer system[.]” The list that follows does not include septic systems that cross property boundaries without using a pump station or force main. Finally, the interpretation leads to an absurd result because it would mean there is literally no limit to extension of sewer service to rural areas that are uphill from the municipal sewer being extended. For example, the Silverton hills area east of the city gradually rises into the Cascade range. The applicant’s theory would absurdly allow this entire rural area to be served by the Silverton sewer without a Goal 11 exception.

Conducting the sewage by pipeline to the Southend Airpark facilities for treatment and then by pipeline to the state-owned airport for disposal fits this definition for several reasons. The airpark and state-owned property are



separate legal units of land. The information in the record illustrates the pipelines and treatment facilities the airpark property, as well as the pipeline that conducts the treated septage onto the state-owned property for disposal. Therefore, the Recommendation is correct that the application requires a Goal 11 exception.

Previously, the county approved an expansion of the septic system on the site, in Conditional Use 73-37. The findings include the following. “The Marion County Health Department reports that, although the soils are very restrictive, this facility would be appropriate due to its seasonal use. However it reports that no further expansion will be approved.” This application does not propose to limit the proposed uses to the summer when the church camp operated, and there is no information in the record to contradict the Health Department’s statement that no further expansion will be approved. Nor is there information in the record from the Health Department or DEQ that a modern design will allow disposal of sanitary wastewater on site.

The applicant’s expert wrote that the “site does not appear to have soils suitable for an on-site system” and proposed “using an Easement for the Drainfield on another property...or becoming part of the adjacent condo association’s property and WPCF permit.” (EMS letter of November 27, 2018.)

The neighboring properties have the same unsuitable soils, and there is no explanation or math to support the assumption that these systems have surplus capacity sufficient for the proposed uses. The septic drainfields for surrounding properties are not shown in the EMS report, or elsewhere. These options to connect with existing septic systems on adjacent properties are defined as an extension of sanitary sewer service to the subject properties, and therefore a Goal 11 exception is required. OAR 660-011-0060(1)(b) and (9). Creation of a new system to serve this development also requires an exception under OAR 660-011-0060(1)(f) and 0060(2).

In evaluating the Goal 11 exception, the county must evaluate the proposed office and aviation uses, and must also evaluate the sanitary sewer facilities that are being extended to serve that use. However, there is no information provided to support this evaluation. The consultant’s report admits this problem. “The proposed facility will need additional information on the quantity and quality of the wastewater to be generated in order to

develop plans[.]” In other words, the consultant who will design the system is not aware of the quantity and quality of the sewage. Without those key inputs, the system cannot be designed. There are no plans demonstrating a system design, location, or feasibility. The site plan does not include a septic drainage area. There is no easement or other evidence that the applicant has the right to dispose of septic effluent on a neighboring property. Again, the consultant admits the problem. “Easement areas will need to be identified.” It mentions easements along the runway, on state-owned property; however there is no information showing that the subject property is benefited by that easement, or the capacity of the easement area. In a separate proceeding, the applicant argues that farming can occur around the runway, but septic fields cannot be driven on by heavy equipment. The capacity analysis cannot even be calculated until the quantity and quality of the septage are specified, and the design of the existing septic fields and their replacement areas are shown.

In 2015 the Board of Commissioners wrote that water wells have been insufficient, and that septic service is limited. That letter confirms that public facilities are inadequate even if a Goal 11 exception was obtained.

The criteria for a Goal 11 exception cannot be satisfied. OAR 660-011-0060(2)(a) and (c) are not satisfied because the application allows the establishment of a new sewer system outside Aurora’s UGB and outside an unincorporated community to serve a property that was not served by the system in 1998. OAR 660-011-0060(2)(b) is not satisfied because the application will extend the pipeline on wheels, which itself is a device “for conducting sewage to an ultimate point for treatment and disposal.” The pipeline on wheels will dispose of industrial wastewater that cannot be managed in a septic system into a municipal system that is not identified in the application.

#### Goal 14

The Goal 14 exception is required to convert the high-value farmland to an urban use without bringing the property into the urban growth boundary of the City of Aurora. OAR 660-014-0040(2).

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. OAR 660-014-0040(1). 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. These reasons may include but are not limited to findings that an urban level of facilities and services are necessary to support an economic activity that is dependent upon an adjacent or nearby natural resource.

The Aurora State Airport and its surrounding private lands comprise an economic activity; however there is no information in the record to identify a natural resource that supports the airport, nor other information to support the conclusion that the economic activity depends on an adjacent or nearby natural resource. The presence of numerous airports within cities demonstrates that the proposed airport related uses do not require a location on resource land. The Goal 14 exception cannot be justified under Subsection (2).

Subsection (3) includes five criteria which all must be satisfied. The county must first show “the proposed urban development cannot be reasonably accommodated in or through expansion of existing urban growth boundaries or by intensification of development in existing rural communities”. OAR 660-014-0040(3)(a). This criterion is not satisfied because the proposed office, aviation and emergency response uses can be developed within the urban growth boundaries of McMinnville, Metro, and Salem, or through expansion of the Aurora urban growth boundary, or by intensification of aviation development at the rural communities of Mulino and Whiskey Hill.

Within the McMinnville urban growth boundary, the McMinnville Airport and adjacent lands to the north and east are zoned M-2, General Industrial, where the airport is a permitted use. MZC 17.42.010.D. The policies supporting increased development at the airport are described in the McMinnville Airport Master Plan Update (1989-2009). In addition, the M-2 zone allows a wide variety of manufacturing, repairing, fabricating, processing, packing, and storage uses, the service and repair of machinery, and public use structures and activities. MZC 17.42.010.A & B, and MZC 17.39.020, among others. All of the uses proposed in the current application, including hangars, maintenance shops, warehouses, office, and a public emergency response center are allowed at the McMinnville Airport.

There is sufficient vacant land at and around the McMinnville Airport for these uses on the following properties: Tax Lots 100, 102, 201, 204, 600,

700, 701 in Section 26 of Township 4 South, Range West; and Tax Lots 100 and 200 in Section 27. These properties include many dozens of acres of vacant land that is planned and zoned for the proposed uses.

The applicant asserts these lands around the McMinnville Airport lack through the fence access and implies that this would preclude taxiway access to the runway. This assertion misconstrues the meaning and applicability of the through the fence statute and program, which only applies to designated rural airports with abutting private lands. ORS 836.640-642. The application erroneously presumes that participation in the through the fence program is required for runway access. If that were true, then none of the land at the McMinnville Airport would have runway access. There is no information to support the argument that the identified properties at the McMinnville airport lack access to the runway, and the master plan drawings demonstrate otherwise.

Within the Metro urban growth boundary, the Hillsboro Airport is zoned IG – Industrial General, where the airport is a permitted use. HCDC 12.25.130; 12.25.150. Adjacent lands to the north and east are zoned IP – Industrial Park, where hangars and related aviation development, and a wide range of office, emergency response, manufacturing and industrial services are also allowed. HCDC 12.25.230. The runway is 6600 feet, about 32% longer than the runway at the Aurora State Airport.

The plans for future aviation development at the airport are described in the 2018 Hillsboro Airport Master Plan Update. As shown on Exhibit 5H, Generalized Land Uses, there is sufficient vacant land available for aviation development on Tax Lots 1500, 3100 and 3400 in Section 28 of Township 1 North, Range 2 West, on Tax Lots 400 and 800 of Section 28BB, and on Tax Lots 200, 300, 700, 1100 and 1200 in Section 28BA. These properties include many dozens of acres of vacant land that is planned and zoned for all of the proposed uses.

The applicant asserts these lands around the Hillsboro Airport lack through the fence access and implies that this would preclude taxiway access to the runway. This assertion misconstrues the meaning and applicability of the through the fence statute and program, which only applies to designated rural airports with abutting private lands. ORS 836.640-642. The application erroneously presumes that participation in the through the fence program is required for runway access. If that were true, then none of the

land at the McMinnville Airport would have runway access. There is no information in the record to support the argument that the identified properties at the Hillsboro Airport lack access to the runway, and the master plan drawings including Exhibit 5H demonstrate otherwise.

Within the Salem and Keizer regional urban growth boundary, the Salem Municipal Airport (aka McNary Field) is zoned PS, where the airport is a permitted use. Adjacent lands to the south, north and east are zoned IP, IC and CG, where hangars and related aviation development, and a wide range of office, emergency response, manufacturing and industrial services are also allowed. The runway is 5811 feet, about 16% longer than the runway at the Aurora State Airport.

The plans for future aviation development at the airport are described in the 2012 Salem Municipal Airport Master Plan – Phase II and Runway Needs Assessment. As shown on Exhibit 5-4, Aircraft Storage and Airport Business Development, there is sufficient vacant land available for aviation development south and east of the runway, which is “expected to accommodate businesses that are aviation related, such as fixed base operator (FBO) expansion, and non-aviation related, such as research, development and manufacturing facilities.” Chapter 5, Section 2.6 Aircraft Storage and Landside Development.

There is sufficient vacant land available for the proposed uses on Tax Lot 100 in Section 1 of Township 8 South, Range 3 West, and on Tax Lot 100 in Section 1A. These properties at the Salem Municipal Airport feature many dozens of acres of vacant land that is planned and zoned for all of the proposed uses.

The second Subsection (3) criterion requires the long term ESEE consequences are not more adverse than would result from locating the use on other undeveloped rural lands. The consequences are more adverse due to the lack of suitable soils for septic effluent disposal, as compared with the Whiskey Hill and Mulino airports in Clackamas County. The application fails to

Consider whether the proposed urban aviation and office development “is limited by the air, water, energy and land resources at or available to the proposed site, and whether urban development at the proposed site will adversely affect the air, water, energy and land resources of the surrounding area.” OAR 660-014-0040(3)(b)(B).

The next criterion requires whether the application detracts from Aurora's ability to provide services. OAR 660-014-0040(3)(c)(A). The application detracts from Aurora's ability to provide services because as noted in the comprehensive plan, cities are to provide services to urban development, which allows large areas to be efficiently served. Here, a septic system cannot serve the development, in part due to industrial wastewater, which must be collected and then trucked away. Aurora already handles all types of wastewater, and is located nearby. The proliferation of miscellaneous private sewer systems around the edge of the city is not an efficient or orderly way to provide public services, and detracts from Aurora's ability to efficiently serve urban development in exception areas near the city, such as the Deer Creek development and the airport.

The fourth criterion is that "an appropriate level of public facilities and services are likely to be provided in a timely and efficient manner." OAR 660-014-0040(3)(d). The application simply argues connection to Aurora's services is not feasible, as if that was the standard. The applicant's resistance to annexing into Aurora is clear and contrary to this criterion. Approval of more goal exceptions to allow private sewer systems near the edge of a city is not a timely or efficient way to provide an appropriate level of public facilities and services.

The fifth criterion requires "new urban development on undeveloped rural land is coordinated with comprehensive plans of affected jurisdictions and consistent with plans that control the area proposed for new urban development." As noted in the Goal 2 discussion above, this application was not coordinated with Aurora, is contrary to the urban growth agreements referenced in that discussion, and is not consistent with Aurora's plans for the area.

As a result, the criteria for a Goal 14 exception are not satisfied.

### **Existing Exceptions**

The purposes of the existing exceptions and the Public zoning of the airport are to recognize the existing aviation uses and authorize potential expansion of those uses within the existing airport due to irrevocable commitment of the property to non-resource uses. However, the existing exceptions do not and cannot authorize increased intensity of similar or different uses at the existing airport resulting from the future geographic expansion onto resource land, for two reasons. First, such an authorization

would commit adjacent resource land to non-resource use, which is contrary to OAR 660-004-0018(2)(b)(B).

Second, the existing exceptions do not include findings that the Property is irrevocably committed to aviation use or account for the increased intensity of uses within the existing airport resulting from the flight operations of additional fixed wing and rotary wing aircraft based on the Property or visiting “transient aircraft”, from the provision of FBO services to the public, or from the “through the fence” activities. The application is not for a free standing land use, but rather for an expansion of that will operate seamlessly with the aviation activities there. (“Applicant’s proposed use, which would effectively expand the airport...”) OAR 738-014-0050(2).

The Decision increases therefore the intensity of the land uses approved under the existing exceptions, yet wrongly assumes there is no limit to the aviation and related uses approved by the existing exceptions. The existing exceptions do not accommodate the future growth of aviation development onto the subject property.

The application of the Public zone would erroneously establish “a zoning policy of general applicability.” ORS 197.732(1)(b)(A); OAR 660-004-005(1)(a). As noted by the Dept of Aviation: “there is no specific development proposal with this application.” The application proposes: “that the Conceptual Site Plan be approved as a masterplan, as the proposed site plan will comply [with] the property development standards for the Public zone.” On March 27, 2019, applicant’s counsel testified: “This is the way we have always done it.” The application would approve a generalized zone change without any specific development proposal, nor with any limits on non-aviation uses otherwise allowed in the Public zone, thereby establishing “a zoning policy of general applicability”.

## **COMPREHENSIVE PLAN**

The Recommendation notes the comprehensive plan amendments must be consistent with the plan’s goals and policies. The application conflicts with many goals and policies, as explained below.

### **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 application proposes expansion of an incompatible urban public facility onto agricultural land that is not allowed under the Marion County policies that follow.

### **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.

*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 application encourages the development of non-farm uses by proposing urban aviation uses on this agricultural land. They so without consideration of the adverse farm impacts. The proposal is not allowed under 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 application 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.

### **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 application does not identify any area for sewage disposal, and actually proposes development over the top of existing septic fields that served the former church camp. It will generate 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.

## 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 application 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. There is no indication of a health hazard at the church camp property.

*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 application 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.

## 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 application suggests it may include industrial uses; however, it does not indicate the property will operate in conjunction with farm or forest 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 application 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 proposes hundreds of employees. The site plan shows 489 parking spaces, which will accommodate more than 400 employees. (See 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.

*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 application 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 application 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 no support for a finding that this policy allows the uses proposed.

## **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 application 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 application 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. This is an urban development contrary to the rural character of this site outside the UGB, which was a forested church camp. 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 application conflicts 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 development.

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 application is inconsistent with this policy and the Goal 3, 11 and 14 rules that it implements.

### **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 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 application 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 application proposes 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 application 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 application 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 application assumes extension of fire suppression water service to the former church camp; 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.

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

### **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 application supports urbanization of high-value farmland without annexation to a city, and without an orderly transition. The application does not include specific information about sewer service. The application indicates the sewage cannot be managed on site, and does not include either a septic drainfield or an area for a replacement drainfield. The application

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 application 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 application 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 application is contrary to this policy because it does not contain urban land uses within an existing urban growth boundary. Rather, it proposes 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 application 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 application 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 application does



not address. The application 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 application 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 application 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 application 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 application 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 application 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 application 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 that can accommodate the proposed uses. In addition, the comprehensive plan notes the high-value farmland receives greater protection than other rural lands. The application 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 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 application 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 application 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 property and surrounding lands are Class II soils. The application 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.

### **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. The application is 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 this application. By definition, goal exceptions are not allowed under this policy. The application is 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 application for urban development without urban facilities and services 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 application 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 airport.

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

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

### **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 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 extension of sewer service to the site, 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 application 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 application 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 extension of water service to the former church camp requires a Goal 11 exception. The application 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 to suggest that the application has been coordinated with the Oregon Water Resources Department to implement this policy, and thus there is no basis for a finding that this policy is satisfied.

### **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 application 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 application does not account for the City's goals or acknowledge their consistency with the identified statewide planning goals. Therefore, the application 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 application 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 application 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 application 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 application 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 application 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 application 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 application 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 application omits mention of this purpose, and does not include information regarding the balance of jobs and housing in the affected area. It therefore lacks support 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 application is therefore inconsistent with the text of this purpose and the purpose of Goal 12 which it implements.

### **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 application. Likewise, the land use conflicts identified by the City have not been resolved. As a result, the application 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 application 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 application 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 application 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 application 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 application proposed urban development without the simultaneous provision of urban services in a rural area and thereby 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 application 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 application 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 application 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 application 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.

## **Marion County Rural Zoning Code**

### **MCRZC 17.171.030 Conditional Uses in the Public Zone**

The proposed uses are not permitted outright in the EFU zone. The application proposes 123,000 square feet of office space, although “office” is not listed as either a permitted use (see MCRZC 17.171.020) or a conditional use (see MCRZC 17.171.030) 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.

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 MCRZC 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 MCRZC 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 application 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.

### **MCRZC 17.171.060 Property Development Standards**

The development standards are land use regulations in the zoning code, which must be adequately addressed. 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 MCRZC 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 county 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 applied at this time.

The first sentence of the purpose and intent statement requires the application of development standards to the application. 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 MCRZC 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.

#### **MCRZC 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 application has not demonstrated compliance with either of these two options. As a starting point, the county 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 application.

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 application proposes 123,000 square feet of office. Deducing 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 application 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.

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 application proposes 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.

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 application.

The second option under MCRZC 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 that demonstrates there is surplus carrying capacity in a local sewage disposal system. The application lacks information on 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; soil suitability must also be shown.

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 application 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.

Feasibility for a septic system includes two components. There must be a calculation of the inflow from the proposed use, which is not provided. Second, a disposal area for the effluent must be shown. The application says that will occur on another parcel, without identifying the parcel, and without demonstrating there is an easement right to dispose of septic effluent on the other parcel. The consultant report indicates the drainfield is adjacent to the runway on state-owned land. There is no easement provided to demonstrate the state has authorized disposal of the effluent originating from the

proposed development on the church camp property. Without that easement, there cannot be a finding of feasibility.

In summary, the application does not provide any estimate of the urban-scale 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 and the mandatory 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 application 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 application omits specific consideration of this issue, and there is no information to support a finding that the application is allowed under MCRZC 17.171.060.I. The Recommendation correctly concluded this standard needs to be further addressed; however the applicant has not provided the information required by the Recommendation.

#### **MCRZC 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 show the application 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 application 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 application will degrade the level of service for all of these intersections.

The traffic study for the development of the former church camp demonstrates the application will not be consistent with the identified function, capacity, and level of service for surrounding intersections. The Recommendation correctly concluded this standard needs to be further addressed; however the applicant has not provided the information required

by the Recommendation.

### **MCRZC 17.123.060 Zone Change Criteria**

*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 is not consistent with the goals and policies of the comprehensive plan as described above, because the land use designation is Primary Agriculture.

*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 church camp property 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 MCRZC 17.171.060(l). 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 MCRZC 17.171.060(l). Thus far, no specific proposal for management of water and sewer services has been provided, and thus there is no basis to find this criterion is satisfied.

The traffic analysis provided 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 application does not account for these deficiencies or demonstrate a specific plan for providing the essential services. The application 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 other lands in the county already designated for aviation and office uses. There are many 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 aircraft 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. MCRZC 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 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.

As noted in the March 20, 2019 Marion County staff report, 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. The application is not consistent with the criteria for a zone change from EFU to Public.

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 application does not include a careful review of the farm practices on surrounding lands. Nor is there consideration of the effects of the office and aviation development on those farm practices, such as the effect of additional traffic on Airport Rd. and the problems that creates for slow moving farm vehicles travelling to and from the large farms on the east side of Airport Rd.

The application identifies the problems for aviation caused by dust that is generated by customary farm practices. As described in the application narrative, the dust is a land use 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.


### **Annexation into Aurora Resolves the Land Use Conflicts**

Annexation into the Aurora changes the land use classification of these parcels from rural to urban and resolves the identified land use conflicts. Until these parcels are brought into the city, the land use conflicts will remain unresolved.

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, without follow up action.

The City of Aurora is the solution to these issues, and looks forward to working together with all parties toward the timely extension of municipal services and the efficient transition from rural to urban land use. Annexation is the path forward.

Best regards,



Joseph Schaefer  
Planning Commission Chair



City of Aurora BCC Comments June 24, 2020

My name is Joseph Schaefer and I am the chair of the Aurora Planning Commission and am speaking today on behalf of the City. The address is 21420 Main St in Aurora, 97002. Thank you for inviting us to testify at today's hearing. In addition, yesterday the City Recorder hand delivered written testimony and exhibits which was accepted by staff for submittal into the land use record.

This is a large application with many parts, although one missing element is a Goal 11 exception. The applicant explained this is not required; however, the explanation is incorrect for two reasons. First, it interprets the definition of a sewer system to mean that unless a pump and pressurized line are necessary, Goal 11 does not apply. OAR 660-11-0060(1)(f). The effect of this interpretation is that sewer lines could be extended uphill from any city into rural areas without a Goal 11 exception. For example, cities like Silverton that are nestled against the edge of the valley could extend their sewers into the foothills, without an exception. That is a misinterpretation of the definition.

Second, the existing septic system at the Southend Airpark already uses a pump and a pressurized line. Extending that system even further across flat ground to serve the subject properties will likely require more pumps and pressurized lines.

Another issue is that the septic consultant's report does not calculate the sewage flows or provide a system design. It discusses various alternatives, but never explains why a particular one is feasible. The site plan does not show a drainfield, and there are no drainage easements provided. The Southend Airpark drainfield is on state-owned property, and we have not seen any indication the state is willing to accept wastewater from the church camp properties, or that it has adequate space for more drainfields. Without the flow calculations and a drainfield, there is not adequate information for the county to determine that sewer service is feasible or that a Goal 11 exception is not required.

Annexation into Aurora is the best solution to this situation. Thank you.

