



# City of Aurora

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"National Historic Site"

July 8, 2020

To: Marion County Board of Commissioners

Re: Zone Change/Comprehensive Plan Change/Conditional Use 19-002 –  
Submittal for First Open Record Period

Thank you for leaving the record open following the June 24, 2020 hearing for additional evidence and comments to be submitted into the record by interested parties. This letter comprises the City of Aurora's final submittal, and addresses several new topics that arose during the hearing and the first open record period. These include the applicant's conflicting testimony about the nature of the conditional use approval and the proposed list of uses, its conflicting testimony about the effect of the 2012 Aurora State Airport Master Plan, the procedure for segregation and preservation of the proposed proportional fee in lieu of traffic mitigation, the ready availability of alternative sites to accommodate the proposed land uses and the regional aviation companies identified by the applicant, the purported exemption from the statewide goals as a result of OAR 660-012-0065(3)(n), and Goal 13 regarding energy conservation. Finally, we present general comments on why the county's willingness to expand and intensify the urban uses at and around the Aurora Airport without annexation into the City and without the provision of customary public services is inconsistent with both the County's own comprehensive plan and Oregon's statewide planning goals. Aurora still believes the long term needs of the airport are best served by annexation prior to expansion of the state airport or the private adjacent urban uses.

## Conditional Uses

At the hearing, the applicant's representative insisted there is not a specific development proposal, notwithstanding the presentation of a detailed site plan with 123,000 square feet of office space, 153,000 square feet of shops and hangars with capacity for 37 aircraft. As noted by the Hearings Officer, there is "insufficient information in the record" on the proposed uses

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because a conditional use has characteristics “not entirely compatible with the zone, and cannot be permitted in the zone without review.” That review must occur in this proceeding. The applicant cannot present a site plan and list of uses by square footage, argue the site is suitable for the Life Flight national headquarters, and then postpone full review of compliance until a later proceeding that may not be subject to land use procedures.

The uses described in Mr. Faegre’s letter of June 30, 2020 include many urban industrial uses. For example, “[d]esign, development, fabrication, installation, manufacturing, maintenance, modifications, repair, research, sale, service, testing, and other similar uses of aircraft...” These are urban industrial uses which must comply with the goal exception rules in OAR 660-004-0022(3). There is no reason why these industrial uses must occur in a rural area, and there is no information regarding natural resource advantages that favor this site over an alternative urban airport.

Before a conditional use can be approved, an application must demonstrate compliance with “the Marion County Comprehensive Plan and applicable criteria in this title.” MCC 17.119.110. It is clearly not possible to determine compliance without careful review of each of the conditional uses proposed by the applicant against all these provisions, beginning with the purpose and intent of the Public zone. As the Hearings Officer correctly concluded, “the purpose and intent of the P zone is not proven, and MCC 17.119.070(B) is not met.”

The applicant also insisted at the hearing that the development standards of the Public zone do not apply in this proceeding. It is not possible to determine whether a proposed conditional use is in harmony with the Public zone without knowing what uses are proposed and at what scale, and without determining whether the uses meet the development standards of the zone. The proposed vague master plan is not allowed as a conditional use in the Public zone. Clearly a land use that is not compliant with the development standards cannot be in harmony with the zone, especially given that large scale office is not a use listed in the zoning code. The applicant has the burden of demonstrating complete compliance in this proceeding.

The conditional use criteria require that solutions to all compliance issues be presented in this application, and may not be postponed to another, later

proceeding that lacks the public notice and participation procedures of the Type 3 conditional use application.

### **The 2012 Aurora State Airport Master Plan**

The applicant's approach this master plan continues to change. The original application narrative and testimony to the Hearings Officer leaned heavily on this master plan as justification for the land need and for satisfying that need on these properties. However, there is no information in the record which demonstrates the master plan, which was reduced to writing in final form in December 2012, was approved by the Oregon State Aviation Board in December 2012, or subsequently, such as an agenda, minutes, or a written decision.

The Hearings Officer made two findings on the master plan that conflict with the application. First, she found that the 2012 Airport Layout Plan did not identify the subject properties "as future airport-related property". Second, she found that the "projected need for land not already zoned public will be just five acres." These findings indicate the application is not consistent with the master plan. The Hearings Officer aptly found that the plan was relevant, and requested that a complete copy be placed in the record, which the City submitted on June 23, 2020.

During the first open record period, the applicant submitted a lengthy argument from a different attorney that made numerous claims about the master plan, what statutes and administrative rules apply, the runway extension, and various other master plan topics. To the extent the argument implies that these applications must be approved because ORS 836 requires the county to zone the subject properties for airport use, the assertion fails because the subject properties are not part of the "airport" as that term is defined in ORS 836.605(2). The argument concluded the master plan is final and not subject to challenge, notwithstanding that in April 2019 the Director of the Oregon Department of Aviation unequivocally stated that the Oregon State Aviation Board "has not yet adopted a master plan for Aurora."

At the June 24, 2020 public hearing the attorney representing the applicant for these applications to Marion County vehemently distinguished between these applications and the master plan: "we're testifying here on behalf of a private property owner for a a [sic] zone change. This doesn't

have anything to do with the runway expansion or approving the airport master plan. That's not what this case is about.” This attorney correctly understands that because the issue is pending at LUBA, it would be premature for the county to rely on that plan in support of its decision for these applications.

### **Proportional Traffic Fee in Lieu of Mitigation**

Marion County Public Works representative John Rasmussen testified that the traffic fees “would be held as a dedicated funds [sic] for those projects.” The City of Aurora requests additional information regarding the segregation of those funds, to ensure that they are preserved in a dedicated account for mitigation of the traffic impacts of this development. Without clear procedures for this accounting in the form of a condition of approval, the BOC cannot find that the traffic mitigation is being provided. Paying traffic fees into a regular Public Works account which can be used by the county at its discretion for unspecified transportation projects is not sufficient to ensure mitigation of the specific affected intersections, including without limitation the intersection of Airport Road and Ehlen Road. The fees must be formally segregated into a capital account for that purpose, and held in that account until they are utilized improvements at the identified intersections.

### **Alternative Sites Can Accommodate the Uses**

At the hearing, the applicant’s attorney testified about the companies that serve a wide region, including LYNX and Life Flight. LYNX operates at eight locations across the US, including Aurora. Mr. Pauly testified about Life Flight’s offices in Wilsonville. The subsequent Salem Statesman Journal article described that Life Flight has the option to move their corporate offices from Wilsonville to the subject properties, or to the Redmond airport.

These are not local companies, and therefore limiting the market area for the alternatives analysis required by OAR 660-014-0040(3)(a) to sites within a 30 minute drive does not reflect the regional and national nature of these aviation businesses as described by the applicant. The alternative analysis should be expanded to include the Redmond and Eugene airports, which both can accommodate the proposed uses.

The Redmond Airport is within the city limits and UGB, as shown on the map titled “Redmond Zoning and Comprehensive Plan”. The Redmond Airport Layout plan drawings, including the Terminal Area Plan and North Building Area Plan, illustrate many acreage sites at the airport suitable for Life Flight with the designations “Future Commercial Development”, “Future Box Hangars”, and “Future Revenue Aeronautical Development”. Helipads are also shown. The available sites are on Tax Lot 100 of Map T15S R13E Section 22, and Tax Lot 1500 of Map T15S R13.

The Eugene Airport is also within the region, located in a rural area that is provided with municipal water and sewer services, and has surplus land to accommodate the proposed aviation development. The Eugene Airport Layout Plan, including the Airport Layout Plan Drawing and the Ultimate Airport Layout Plan Drawing, illustrate dozens of acres of developable land including “Non-Aeronautical Revenue” areas at the airport with zoning suitable for the proposed conditional uses being considered for the TLM Holdings, LLC properties. The available sites are on Tax Lot 100 of Map T17S R04W Section 26, and Tax Lot 500 of Map T17S R04W Section 5. Tax Lot 1000 of Map T16S R04W Section 31, and Tax Lot 600 of Map T16S R04W Section 32.

#### **OAR 660-012-0065(3)(n)**

At the June 24, 2020 hearing, the applicant asserted a new theory regarding this administrative rule. The rule was not included in the original application or the public notices of the applicable criteria, nor was it mentioned in the Hearings Officer’s recommendation. If the county intends to rely on this rule for its decision, the hearing must be re-noticed with the corrected information to prevent Aurora and other participants from being unprepared for what would be a dramatic change to the application itself and the criteria applied by the county.

Substantively, the rule does not apply because the applications are not an expansion of a public use airport. The public use airport is owned and operated by the Oregon Department of Aviation, a government agency. However, these applications are, in the words of the applicant’s attorney:

“[w]e’re testifying here on behalf of a private property owner for a a [sic] zone change. This doesn’t have anything to do with the

runway expansion or approving the airport master plan. That's not what this case is about. And second, there is no specific development proposal at this time. Those, we're trying to change the zoning to allow redevelopment from EFU to the Public zone. We're trying to get a conditional use permit that will allow up to 10 different airport-related uses on on [sic] the subject property at, at a concept level.”

This is a private entity applying for a zone change on private property, and it is not an expansion of the state-owned public use airport. Neither the Department of Aviation nor any other public agency has an interest in the property. No public agency is an applicant, or committed to locating public services on the site. Rather, the proposal is for “concept level” approval of merely “airport-related” private uses “that doesn’t have anything to do with” the state-owned public use airport. This administrative rule does not apply to this consolidated application.

### **Goal 13**

During discussion on sewer issues during the June 24, 2020 hearing, a commissioner remarked that: “sewer can be pumped, water can be bought, and so those aren’t controlling influences.” The remark is accurate in that there are trucks serving the airport today which deliver bottled drinking water, and pumper trucks that transport raw sewage from the airport and adjacent uses to municipal treatment facilities. It is not accurate regarding how the controlling statewide land use goals regulate this subject.

DLCD notes that: “Goal 13 requires local governments to consider the effects of its comprehensive planning decision on energy consumption.”<sup>1</sup> Thus far, neither the applicant nor the Hearings Officer have addressed this goal. Substantively, the goal requires that land use planning that will achieve “maximum efficiency in energy utilization.” One way to do so, as suggested by the Goal 13 guidelines, is to “minimize the depletion of nonrenewable sources of energy.”

The diesel-powered trucks delivering water and removing sewage are the least energy efficient method for transporting these heavy liquids. The

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<sup>1</sup> <https://www.oregon.gov/lcd/OP/Pages/Goal-13.aspx>.

most energy efficient would be pipelines to Aurora. Pipelines also have the additional environmental benefit in that they are less prone to spills.

The application seeks approval for 276,000 square feet of buildings, with employees and visitors that will generate tons of sewage daily. The diesel-powered trucks increase the use of non-renewal energy, and the findings must address this unusual energy consumption.

The alternative airports that can accommodate the proposed uses all provide municipal water and sewer service, and therefore Goal 13 supports locating the proposed uses at one or more of those airports.

### **Annexation is Necessary for Future Airport Expansion**

The unifying theme of Oregon's land use goals is that urban uses will be developed in cities, and rural areas will be preserved for rural uses. The theme was explained by the DLCDC.

“First, they seek to protect the natural resources on which much of Oregon's economy depends (in particular, farm and forest land) and our environmental quality. Second, the goals promote efficient urban development and an orderly transition from rural to urban use....

The twin concerns – development and preservation – meet in Goal 14. This urbanization goal requires that a city, in consultation with the county, local special districts, and neighboring jurisdictions, draw a boundary around itself to establish the projected limits of urban growth for about 20 years. Data to support the boundary is required, including 20-year growth forecasts. All land within the boundary – called an urban growth boundary (or UGB) – will be considered either urban or potentially urban, while land outside the UGB must remain predominantly rural in character.”<sup>2</sup>

The key principle is that each city drives its nearby urban development. In this application, the county continues to drive urban development through

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<sup>2</sup> Oregon Planning Commissioner Handbook, April 2015. Available at <https://www.oregon.gov/lcd/OP/Pages/index.aspx>.

the approval of goal exceptions, and it has consistently approved every prior application for a goal exception at or near the airport. In Aurora's view, this is not consistent with the statewide goals, or the County comprehensive plan, because an orderly transition from rural to urban land use requires a city to provide urban planning and urban public services. The availability of various engineering solutions to facilitate urban development in rural areas, especially the trucking of drinking water in and sewage out, is not nearly sufficient to demonstrate compliance with either the statewide goals or the county land use regulations.

The City of Aurora continues to believe this development could be a genuine benefit, and that urban development of the site will be appropriate once it has been annexed into the City and zoned for urban uses. At that time, the land use regulations that apply to the proposed development will have changed, and the goal exceptions will no longer be required. See OAR 660-004-0010(1)(d)(A).

### **A Final Word in Support of Oregon Legislative History**

The State of Oregon is clear in its view that when transitioning land from rural to urban use is appropriate, it must be carefully done. The legislative history of every land use bill passed by the state makes this point. And while generally speaking there may be a valid basis to allow an exception for an extraordinary purpose, in 2018 the legislature evaluated House Bill 4092 and expressly declined to create such an exception for the Aurora Airport. It is our view that the county should follow that recent example. However, by agreeing to every goal exception requested, the county is violating the spirit and the letter of these laws and regulations, not to mention the IGA.

Airport operations are clearly an urban use. Their multi-faceted effects on their neighbors – from traffic to noise to services – make the framework of a city the best governance structure to manage the needs of all to the benefit of all. That is why new urban development is welcomed within cities, while it is generally prohibited on resource land. In this instance, there are no extenuating circumstances that should affect this balance. As noted above, the needs of Aurora Airport operators, as they themselves say, can be met at other, urban airports.



Having companies and people move away from Aurora is certainly not our preference either. Instead, in the City's view, urban expansion at and around the airport can be orderly and efficiently accommodated, and more predictably, within the framework of the City. Just as Oregon imagines. The long term business and civic benefits of urban planning and public services that can only be provided by the City are too significant. The county should not obviate them with more impromptu land use exceptions.

Thank you for considering our comments.

Sincerely,



Joseph Schaefer  
Planning Commission Chair